

JUVENILE TRAINING IMMERSION PROGRAM

Coordinator and Trainer's Guide



NATIONAL JUVENILE DEFENDER CENTER

ModelsforChange
Systems Reform in Juvenile Justice

MODELS FOR CHANGE

Models for Change is an effort to create successful and replicable models of juvenile justice reform through targeted investments in key states, with core support from the John D. and Catherine T. MacArthur Foundation. Models for Change seeks to accelerate the progress toward a more efficient, fair, and developmentally sound juvenile justice system that holds young people accountable for their actions, provides for their rehabilitation, protects them from harm, increases their life chances, and manages the risk they pose to themselves and the public. The initiative is underway in Illinois, Pennsylvania, Louisiana, and Washington, and through the action networks focusing on key issues in California, Colorado, Connecticut, Florida, Kansas, Maryland, Massachusetts, New Jersey, North Carolina, Ohio, Texas, and Wisconsin.

JUVENILE TRAINING IMMERSION PROGRAM

Drafting and Review Committee

Patricia Puritz, Chairperson

Lead Author

Kristin Henning

Contributing Author

Cathryn Crawford

Primary Editors

Tim Curry

Mary Ann Scali

Rebecca Trent

With Contributions from

Sarah Bergen

Barbara Fedders

Kim Forte

Kathryn Gravely

Stephanie Harrison

Eileen Hirsch

Angie Junck

Julie Kilborn

Paul Lee

Hector Linares

Michael Lindsey

Jody Marksamer

Jaime Michel

Kacey Mordecai

Marie Osborne

Nadia Seeratan

Wendy Wolf

George Yeannakis

With the Assistance of

Rey Cheatham Banks

John Curtin

Susan DeBusk

Vanice Dunn

Sam Goldberg

Leslie Graham

Emily Pelletier

David Shapiro

Reviewed by

Jacqueline Baillargeon

Wallace Mlyniec

Bridgett Ortega

Abbe Smith

Angela Vigil

John Wilson

With special thanks to Randy Hertz for the range of substantive materials drawn from
the *Trial Manual for Defense Attorneys in Juvenile Court*.

Drafting and Review Committees

The Drafting and Review Committees consisted of members from the Juvenile Indigent Defense Action Network, the NJDC Board of Directors, the directors of NJDC's nine regional juvenile defender centers, and additional specialized experts and consultants. These Committee members worked on two companion products producing the Juvenile Training Immersion Program and the National Juvenile Defense Standards.

Kimberly Ambrose	Randy Hertz	Marie Osborne
Bill Bachman	Eileen Hirsch	Maureen Pacheco
Jacqueline Baillargeon	Candice Jones	Ali Pearson
Rey Cheatham Banks	Corene Kendrick	Emily Pelletier
Jennifer Barnes Swan	Julie Kilborn	Winston Peters
Sarah Bergen	Barbara Krier	Patricia Puritz
Mary Berkheiser	Jonathan Laba	Susan Roske
Julie Biehl	Carrie Lee	Mary Ann Scali
Kim Brooks Tandy	Patti Lee	Nadia Seeratan
Sue Burrell	Marsha Levick	Luciana Silva
Elizabeth Calvin	Hector Linares	Sandra Simkins
Betsy Clarke	Michael Lindsey	Abbe Smith
Laura Cohen	Robert Listenbee	Ji Seon Song
Cathryn Crawford	Ellen Marrus	Lisa Thurau
Erica Cushna	Malikah Marrus	Linda Uttal
Joshua Dohan	Robert Mason	Angela Vigil
Gerry Glynn	Carlos Martinez	John Wilson
Sherry Gold	Rhonda McKitten	Wendy Wolf
Samuel Goldberg	Wallace Mlyniec	George Yeannakis
Kathryn Gravely	Marjorie Moss	Cyn Yamashiro
Stephanie Harrison	Chris Northrop	Eric Zogry
Kristin Henning	Bridgett Ortega	

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FOREWORD

The role of the juvenile defender is highly complex and specialized, and juvenile defenders have fought hard to keep pace with the times. Since the United States Supreme Court's 1967 ruling in *In re Gault*, which established that children have the right to counsel in delinquency proceedings, there has been controversy regarding the scope and breadth of that right. Some argue that counsel is simply unnecessary or undesirable in the rehabilitative setting of the juvenile court, while others see no urgency for such appointments when compared to the ever-pressing demands of the adult indigent defense system. Children's advocates disagree and believe that skilled lawyers are essential to preserving fairness in the juvenile court. Over the years, the rehabilitative ideals of the juvenile court have weakened and changed because of political or philosophical shifts. One thing remains constant, however: children, most of all, need access to competent counsel when they come before the power of the state. Regardless of rehabilitative intentions, the truth remains that when a child's liberty and freedom are at risk, meaningful access to legal advice and counsel is essential.

The post-*Gault* effort to implement defender programs required a redefinition of the role of the lawyer in delinquency proceedings, from guardian or intermediary to defender. Implementation of these counsel programs has been slow, spotty, and insufficient, though courts at all levels have consistently acknowledged the important role that juvenile defense counsel must play in helping a child navigate the confounding justice system. Addressing this very issue, the American Bar Association, citing the Code of Professional Responsibility, stated that "... counsel's principal function is a derivative one; it lies in furthering the lawful objectives of his client through all reasonably available means permitted by law." This is true for children as well as adults.

Evidence abounds as to the unique and special status of childhood and the impact that immaturity, disabilities, or trauma may have in the case at hand. The juvenile defender must be clear about his or her role and be able keep pace with the growing body of scientific research and legal jurisprudence that applies directly to the representation of children. Toward that end, two companion products were developed under NJDC's guidance to integrate the law with best practices and the latest developments regarding defending children. The *Juvenile Training Immersion Program* (JTIP) that follows and the *National Juvenile Defense Standards*—a comprehensive set of national standards that seek to guide and inform the ethical and professional performance of juvenile defense attorneys.

Juvenile defenders have a heightened duty to meet their ethical obligations toward their child-clients. JTIP sets forth a framework for representation that is anchored in the law, science, and professional codes of responsibility. The Lessons provide instruction for effective practice ranging from the early and timely appointment of counsel to representation in post-disposition and appellate proceedings. Uniquely, JTIP also acknowledges the important and vital role that juvenile defenders must play in providing holistic advocacy on behalf of youth.

This work builds on a solid foundation laid over the decades by legal scholars, social scientists, ethicists, commentators, and practitioners. We are grateful to those leaders who charted this course. At their best, juvenile defenders are zealous protectors and champions of children's legal rights and communities seek their partnership in the quest for fairness, justice, and safety. The Juvenile Training Immersion Program strives to steadfastly hone the skills necessary to balance these obligations and values in today's world.

Wallace Mlyniec, *President*

Board of Directors, National Juvenile Defender Center

Lupo-Ricci Professor of Clinical Legal Studies, Director Juvenile Justice Clinic

Georgetown University Law Center, Washington, DC

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The development and promulgation of the Juvenile Training Immersion Program (JTIP) was made possible by the generous support of the John D. and Catherine T. MacArthur Foundation through the Models for Change Initiative – a national initiative designed to accelerate the pace of juvenile justice reform across the country. JTIP is designed to enhance the capacity of juvenile defense attorneys across the country to provide high-quality, meaningful representation to youth in the juvenile and criminal justice systems. We are indebted to the Foundation, especially Laurie Garduque, Director of Justice Reform, for their support and vision.

Over a five-year period, and under the rubric of the Juvenile Indigent Defense Action Network, JTIP was drafted, promulgated, and reviewed by multi-disciplinary teams with the guidance and support of juvenile indigent defense experts and consultants from across the nation. These multi-disciplinary teams were led by juvenile defenders and included public defenders, appointed counsel, law school clinicians, non-profit attorneys, judges, legislators, prosecutors, probation officers, clinicians, government officials, advocates, philanthropists, and a myriad of other juvenile defense stakeholders. The teams also included the directors of the NJDC regional juvenile defender centers and the NJDC Board of Directors. Without their dedication and the countless hours they devoted to drafting, editing, reviewing, and revising JTIP, this comprehensive product would not have been possible.

HOW TO USE THIS GUIDE

This Guide is targeted toward both Training Coordinators and Trainers and is designed to help them meet the requirements needed to deliver JTIP Training. While sometimes the person responsible for coordinating and organizing a training program will also be one of the people responsible for delivering that training, this is not always the case. This guide includes sections to address the needs of both roles; **Tips for Training Coordinators** and **Tips for Trainers**. Because JTIP is unlike any other training curriculum, planning and facilitation of the program has some unique considerations.

The **Introduction** provides an overview of the JTIP curriculum's design and scope.

The **Tips for Training Coordinators** provides Training Coordinators with information on the content of each of the curriculum's 40 Lessons as well as guidance on selecting the Lessons, or combination of Lessons, that are most appropriate for the target audience's needs. This section also explores some of the logistical considerations that come from a program with a dual focus on substantive learning and on-your-feet skills practice and interaction.

The **Tips for Trainers** provides those who are facilitating individual JTIP Lessons with information on the Lessons' format and structure, tips for delivering substantive material and facilitating exercises, and a discussion of the JTIP philosophy for providing effective and constructive feedback to participants.

INTRODUCTION

The Juvenile Training Immersion Program (JTIP) reflects a core commitment to the unique role and critical importance of specialized defense counsel in juvenile courts across America, consistent with a young person’s fundamental right to counsel. While there have been several trial advocacy programs and some key resources on substantive juvenile law, there has never been a curriculum aimed at providing integrated and comprehensive training on both skills and substance for juvenile defenders. Every youth accused of a delinquency offense or who is otherwise at risk of losing his or her liberty, has a constitutional right to meaningful access to counsel throughout the duration of the court process. JTIP is meant to be the “gold standard” in training for juvenile defenders. It is our hope that this curriculum will help inspire and equip defenders across the country to provide the highest level of advocacy for their clients.

The role of the juvenile defender has evolved to require a challenging and complex skill set needed to meet core ethical obligations. Youth need attorneys to help them navigate the complexities of the justice system. The juvenile defender protects the client’s due process rights; presents the legal case as well as the social case; promotes accuracy in decision making; provides alternatives for decision makers; and monitors institutional treatment, aftercare, and re-entry. Without such assistance, the due process interests and constitutional rights of thousands of youth annually are significantly compromised and resources are wasted. Juvenile defense attorneys are a critical buffer against injustice and are at the heart of ensuring that the indigent defense system established for youth operates fairly, accurately, and humanely.

In combination with the *National Juvenile Defense Standards*—which focuses on the defenders’ ethical and professional responsibilities toward their child-clients at every stage of system involvement—JTIP will help ensure that juvenile defenders not only appreciate their unique role in the delinquency system, but that they will have the tools to competently and zealously advocate for their clients.

JTIP and Standards Guiding Principles

JTIP and the *Standards* were drafted with a shared understanding of purpose and is framed by a set of Guiding Principles to ensure fidelity to a set of common values rooted in law and science:

1. Juvenile defenders play a critical role in the fair administration of justice for children;
2. Juvenile defense is a specialized practice anchored in juvenile-specific training and practice skills;
3. Juvenile defense requires zealous advocacy;
4. Juvenile defense requires competence and proficiency in court rules and the law;
5. Juvenile defense requires representation that is individualized;
6. Juvenile defense requires representation that is developmentally appropriate;
7. Juvenile defense is based on the clients’ expressed interests;
8. Juvenile defense requires that clients be meaningful participants in their defense;
9. Juvenile defense includes counseling clients through the legal and extralegal processes;

10. Juvenile defense includes ensuring that clients and their families are treated with dignity, respect and that there is decorum in the courtroom;
11. Systemic barriers and deficiencies impair juvenile defenders' abilities to provide high-quality representation; and,
12. Systemic barriers and deficiencies lead to disproportionate representation of vulnerable, underserved populations at every contact and stage of the juvenile delinquency court process.

Purpose of JTIP

JTIP is a highly specialized, comprehensive 40-lesson juvenile defense trial advocacy training program designed to enhance the capacity of juvenile defense attorneys across the country. The training program provides the foundation for high-quality, meaningful representation and is structured to help defenders meet their obligations at every stage of the delinquency system. The materials provide a substantive overview of juvenile and criminal law and guides for teaching effective trial advocacy skills. JTIP is designed to encourage dynamic learning through interactive exercises, hypothetical case scenarios, and facilitated discussions on developing legal arguments. JTIP aims to elevate the practice of juvenile law and improve the delivery of legal services to all youth.

Scope of JTIP Lessons

As a dynamic training program, JTIP will always be evolving. We will supplement the Lessons regularly to reflect advances in law and science, as well as feedback from Trainers and participants. JTIP consists of 40 Lessons, divided into 12 Units.

Unit I: Introduction to Juvenile Defense provides an *Overview of the Juvenile Justice Process* and takes a close look at the unique *Role of the Juvenile Defense Counsel* in providing zealous, client-directed advocacy for youth accused of delinquency. Unit I also offers strategies for *Managing the Juvenile Caseload*.

- Lesson 1. Overview of the Juvenile Justice Process
- Lesson 2. Role of Juvenile Defense Counsel
- Lesson 3. Organization 101: Managing the Juvenile Caseload

Unit II: The Client pays special attention to the unique needs and characteristics of child and adolescent clients. The Lessons provide an overview of the key principles of *Adolescent Development*, which affect the attorney-client relationship and influence adolescent decision-making in the juvenile justice system. The Unit provides guidance on *Interviewing and Counseling the Youth Client* and *Interviewing the Youth's Collateral Contacts*. This Unit also recognizes that defenders must be acutely aware of the impact of racial, cultural, and other important differences between clients and other stakeholders in the system. To that end, the Unit offers training on *Sexual Orientation, Gender Identity, and Gender Expression* and *Dealing with Difference*.

- Lesson 4. Adolescent Development
- Lesson 5. Interviewing and Counseling the Youth Client
- Lesson 6. Interviewing the Youth's Collateral Contacts
- Lesson 7. Sexual Orientation, Gender Identity, and Gender Expression
- Lesson 8. Dealing with Difference

Unit III: Arrest and Detention focuses on the front end of the juvenile justice system and recognizes the need for zealous advocacy when youth are first in contact with the police, juvenile probation, or intake officers. The Lessons in this Unit seek to prepare juvenile defenders to zealously and creatively advocate for youth at the *Arrest and Intake* stage and when *Challenging Probable Cause and Detention*.

Lesson 9. Arrest and Intake

Lesson 10. Challenging Probable Cause and Detention

Unit IV: Winning the Case Out of Court highlights the critical role of negotiations, informal advocacy, and effective communication with institutional actors in securing desired outcomes for youth in the juvenile justice system. Focusing on the need to cultivate allies and support for youth, this Unit offers training in effective *Interactions with Probation Officers, Prosecutors, Judges and Parents*.

Lesson 11. Interactions with Probation Officers, Prosecutors, Judges, and Parents

Unit V: Case Planning recognizes that successful defense advocacy requires thoughtful case planning that is guided and continuously revised in accordance with the defense's *Theory of the Case*. This Unit also emphasizes the essential role of *Investigation* and the *Pretrial Discovery Practice* in planning for the case.

Lesson 12. Theory of the Case

Lesson 13. Investigation

Lesson 14. Pretrial Discovery Practice

Unit VI: Pretrial Decisions draws attention to the critical decisions that must be made before any trial, including whether and how to challenge a client's *Competence to Stand Trial* and how to advise youth on the decision to accept or decline *Guilty Pleas*.

Lesson 15. Competence to Stand Trial

Lesson 16. Guilty Pleas

Unit VII: Transfer to Adult Court offers strategies for *Challenging Transfer to Adult Court*, paying particular attention to the law and procedures of transfer and the use of experts.

Lesson 17. Challenging Transfer to Adult Court

Unit VIII: Motions Practice seeks to enhance the capacity of defenders to identify and argue motions challenging the state's evidence, ensure access to discovery, and raise other legal issues before, during, and after trial. The Unit includes a Lesson on the basic *Principles of Motions Practice* as well as more in depth trainings on *Fourth Amendment Challenges*, *Challenging Juvenile Statements*, and *Challenging Identification Testimony*.

Lesson 18. Principles of Motions Practice

Lesson 19. Fourth Amendment Challenges

Lesson 20. Challenging Juvenile Statements

Lesson 21. Challenging Identification Testimony

Unit IX: Trial Skills provides comprehensive training for all stages of the juvenile trial, including skills-based techniques for effective trial advocacy. Lessons focus on issues and practices related to *Opening Statement, Cross-Examination, Direct Examination and the Defense Witness, Use of Documents and Exhibits, Impeachment, Evidence and Objections, Hearsay, Experts, Motion for Judgment of Acquittal/Directed Verdict,* and *Closing Argument*. These Lessons feature many exercises that allow the attorneys to practice trial skills during the training session.

- Lesson 22. Opening Statement
- Lesson 23. Cross-Examination
- Lesson 24. Direct Examination and the Defense Witness
- Lesson 25. Use of Documents and Exhibits
- Lesson 26. Impeachment
- Lesson 27. Evidence and Objections
- Lesson 28. Hearsay
- Lesson 29. Experts
- Lesson 30. Motion for Judgment of Acquittal/Directed Verdict
- Lesson 31. Closing Argument

Unit X: Special Challenges on the Juvenile Docket, offers training and practical advice to defenders representing youth in specialized circumstances. The training on *Sex Cases* recognizes that sexual assault allegations involving youth present unique challenges, calling for specialized experts, well-tailored discovery requests, and a comprehensive motions practice, while the training on *Drug Cases* encourages creativity in challenging one of the most common delinquency allegations. This Unit concludes with a training on *Immigration Consequences* to address the special legal and social needs of non-citizen youth.

- Lesson 32. Challenging Juvenile Sex Cases
- Lesson 33. Drug Cases
- Lesson 34. Immigration Consequences

Unit XI: Disposition and Post-Disposition, recognizes that *Disposition Advocacy* is a complex and critical stage of a juvenile case, requiring defense planning from the time the lawyer is appointed to the case. The Lesson on *Preserving the Record and Engaging in Appellate Advocacy* looks at what defenders need to know about appellate work, both during the trial phase and once the trial has ended. Beyond appeals, *Post-Disposition Advocacy* is equally important, but is often one of the most neglected aspects of juvenile defense practice. This Unit reminds defenders that their ethical duty to zealously advocate for the youth's stated interest begins before and extends well beyond the trial phase of the juvenile case.

- Lesson 35. Disposition Advocacy
- Lesson 36. Preserving the Record and Engaging in Appellate Advocacy
- Lesson 37. Post-Disposition Advocacy

Unit XII: Holistic Juvenile Defense Advocacy, completes the JTIP curriculum by recognizing that a client's criminal or delinquency case rarely exists in a vacuum. Instead it impacts and is impacted by other systems in the youth's life. This Unit provides defenders with a basic overview of *Advocacy in Special Education Cases* and *Advocacy in School Discipline Cases* and encourages defenders to engage in *Multi-Systemic Advocacy with Family, School and State Agencies* or to partner with experts who can help youth navigate other systems.

Lesson 38. Multi-Systemic Advocacy: Family, School and State Agencies

Lesson 39. Advocacy in Special Education Cases

Lesson 40. Advocacy in School Discipline Cases

TIPS FOR TRAINING COORDINATORS

Planning a JTIP Training Program

Several considerations will drive JTIP training including the substantive content which is most needed by the prospective audience; how much time is available; who the Trainers are likely to be; and what costs are involved. While JTIP is a comprehensive, skills-based, 40-lesson immersion training program, the reality is that many users of the curriculum may not have the time, resources, or need to conduct a training program that incorporates *all* Lessons. JTIP is intended to be flexible to meet many training needs. As such, JTIP can be used as an intensive, multi-week defender immersion training program to develop juvenile defense specialists, or it can be adapted for smaller, more targeted trainings. All 40 Lessons can be offered individually as stand-alone sessions or used as part of a larger one-day or multi-day training program with several different focuses. This provides Training Coordinators with the option to mix and match sessions to fit the participants' unique training needs. For example, a Training Coordinator may opt to plan a multi-day training that focuses on a key area of need, such as building trial skills, encompassing all ten of the Lessons in Unit IX. Alternatively, a Training Coordinator may see the need to cultivate greater skill in working with children, utilizing the five Lessons in Unit II. Another Training Coordinator may only have time or resources for a single day of training that will focus on one or several key areas of improvement the Coordinators believe the intended audience may need. In those circumstances, the Training Coordinator may elect to conduct just one Lesson or a variety of Lessons from different Units.

Whether you are holding a multi-day foundational program or a stand-alone session, these Tips for Training Coordinators will help you determine how JTIP can be used to meet your training and logistical needs.

- **Lesson Selection:** Various factors will influence the development of a JTIP training program. For example, while the substantive needs of the training audience will help planners decide which Lessons to include, other factors to consider include the experience level of the participants, the set-up of the facility where the training is being held, the number of small group facilitators available, and the amount of interaction anticipated during the session. Additionally, in reviewing the JTIP Lesson Overviews that follow, Training Coordinators should consider how the individual Lessons relate to each other, particularly whether the participants have been exposed to other JTIP Lessons that lay a foundation for the current Lesson. Some JTIP Lessons are complementary or build on some basic skills from other Lessons. For example, Lesson 22 on *Opening Statements* presumes participants have already received training from Lesson 12 on the *Theory of the Case*, or already have significant foundational knowledge in developing a defense theory. Similarly, Lesson 26 on *Impeachment* presumes basic knowledge of cross-examination techniques. Training Coordinators should review the topics they plan to address in a given training program to ensure they provide a proper foundation or that the participants already have sufficient background for some of the more advanced Lessons.
- **Lesson Running Time:** Lessons come with an approximated running time. However, the Lessons are designed to be flexible enough for Trainers and Training Coordinators to identify discrete sections that may be removed to accommodate timing restrictions. The timing of any Lesson will vary depending on a variety of factors, such as whether the participants have already been exposed to other JTIP Lessons that lay a foundation for the current Lesson, the experience level of the participants, the set-up of the room, and the amount of interaction engendered during the session. Each of the Lessons is broken into topical sections, so Trainers and Training Coordinators also have the ability to adjust any of the Lessons to meet the needs

of the training participants or the goals of the overall training program. Trainers and Training Coordinators should be mindful to give participants enough information and time to make the Lesson meaningful. Before dissecting Lessons, however, it is important to remember that participant interaction and the use of the Forensic Exercises to apply the information from the Lessons are a fundamental component of the program. Significant reductions to the core Lesson risk diminishing utility for participants, whereas significant cuts to the exercises risk depriving participants of the opportunity to effectively and immediately apply what they have learned and to receive feedback.

- **Training Materials:** The Training Materials listed at the beginning of each Lesson are materials that are intended to be *physically distributed to the participants during or immediately following the session*. The Training Materials include fact patterns, case file samples, expert reports, and materials the participants will need during the Lesson. Other Training Materials may include charts, tools, summaries, or bibliographies of key resources. Training Materials are available to Certified JTIP Trainers for downloading and printing directly from www.njdc.info. These handouts are designed in Microsoft Word® so that the Trainer can easily edit and customize them according to local statutes and practices. Additionally, for many of the Lessons, Trainers are asked to gather and distribute to the participants any local rules, statutes, and case law related to the topic at hand.
- **Supplemental Materials:** The Supplemental Materials are additional resources that may assist lawyers after they leave the training and are applying their JTIP learning to their daily practice. Participants need not have the Supplemental Materials for use during the training session, though it is useful for the Trainer to become familiar with them before the training program. Examples of Supplemental Materials include sample pleadings, expert reports, key cases, and useful articles.
- **Forensic Exercises:** Contained within most of the Lessons are Forensic Exercises which facilitate interactive learning and provide defenders with an opportunity to apply the knowledge and skills acquired through the training in realistic juvenile case scenarios. The participants are given factual summaries, reports, or other documents and asked to engage in a series of interactive exercises. In some instances, the participants will be asked to identify issues and apply cases discussed in the Lesson (*e.g.*, develop a theory of case or identify appellate issues); in others, they will be asked to apply their knowledge in a skills exercise (*e.g.*, conduct a mock interview, develop and deliver an examination or argument). Forensic Exercises are intended for small group work, but can be adjusted for larger groups if necessary. *The goal of every Forensic Exercise is to be interactive and to actively engage as many participants as possible.* With smaller groups, all participants will have the opportunity to get on their feet to practice particular skills and get a chance to actually learn by doing. Within the Lessons, suggested “answer keys” are provided for the Trainer, although it is expected that Trainers will bring their own expertise to bear when leading the participants in discussion or providing feedback. It is important to note that when Forensic Exercises are conducted in small groups, it may be necessary, as a logistical matter, to have multiple breakout rooms and a sufficient number of facilitators who are familiar with the JTIP materials to guide the participants through those exercises.

Selecting JTIP Trainers

Developed to meet the training needs of both national and local audiences, JTIP works best when sessions are co-facilitated by a local Trainer and a Certified JTIP Trainer. The Certified JTIP Trainer brings an outside perspective to the

material and is often better able to challenge ingrained culture or practices in the local jurisdiction or suggest ways that participants might address barriers to effective defense practice. Local Trainers provide invaluable insight into the statutes, rules, practices, and case law that are particular to the jurisdiction. The JTIP curriculum requires Trainers to locate and incorporate key state and local statutes, court rules, and case law into each of the trainings so that they are directly relevant to individual jurisdictions. To preserve this dual-perspective model, each JTIP training session will require the engagement of a Certified JTIP Trainer who can partner with local Trainers identified by the Training Coordinator. NJDC has Certified JTIP Trainers around the country and would be happy to help Training Coordinators identify those in their area.

Trainer Selection: While a Certified JTIP Trainer and a local Trainer may partner to facilitate a particular Lesson, it is also important to keep in mind that some of the Forensic Exercises work best if additional Trainers are available to facilitate small group breakout work. Therefore, other local facilitators may be needed to help lead portions of the Exercises. If breaking into small groups is simply not feasible, many of the exercises can be adjusted for use in a large group. Whether Trainers will be able to effectively break participants into small groups depends on the logistics of the venue (breakout rooms are needed for small groups to work independently) and whether there are enough Trainers on hand to effectively oversee each small group. Additionally, given the density of some Lessons, it may be difficult for a single Trainer to present on more than one or two topics in a single day. The number of Trainers available over a given number of days is something that may affect which Lessons are taught or in which order.

Certification for JTIP Trainers: NJDC will be holding limited JTIP Certification programs. If you or any of your staff are interested in becoming a Certified JTIP Trainer or to learn about Certified JTIP Trainers in your area, please contact NJDC at (202) 452-0010.

Planning Considerations: As you begin to design and plan your JTIP training, please contact the National Juvenile Defender Center at (202) 452-0010 to request training assistance. NJDC will walk you through all pertinent steps and help identify Certified JTIP Trainers who can partner with you to bring JTIP training to your jurisdiction.

TIPS FOR TRAINERS

The Format of the Lessons

JTIP is premised in part on the recognition that people learn better when they are actively engaged. The Lessons are thus a combination of teaching, discussion, and Forensic Exercises that require participants to actively participate in the learning experience, whether through multi-media displays, interactive discussions, on-your-feet practice scenarios, or other forms of “learning by doing.” Although juvenile defense is very much a local practice, the JTIP curriculum was developed from a comprehensive national perspective. As a result, the Lessons necessitate that Trainers locate and incorporate state and local statutes, court rules, and case law into each of the trainings so they are directly relevant and customized for each jurisdiction.

Each Lesson is broken into four main parts: 1. Cover Page, 2. Trainer’s Overview, 3. Trainer Notes, and 4. Forensic Exercises.

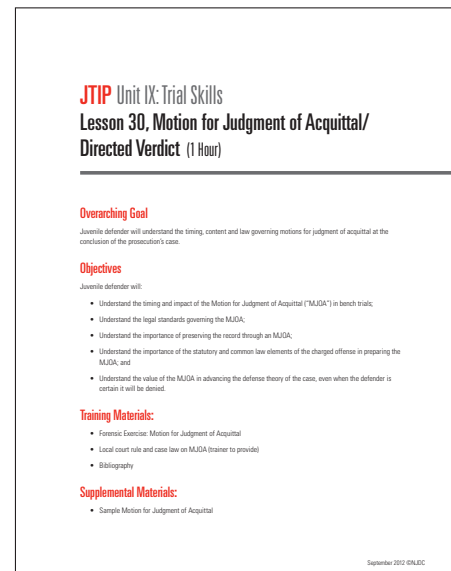
1. Cover Page

Each Lesson begins with a *cover page*, which contains a statement of the Overarching Goals of the Lesson, delineated Objectives, a list of the Training and Supplemental Materials associated with the Lesson, and the *estimated* amount of time needed to cover all of the materials and Forensic Exercises.

The **timing** of any Lesson will of course vary depending on a variety of factors, such as whether the participants have already been exposed to other JTIP Lessons that lay a foundation for the current Lesson, the experience of the participants, the set-up of the room, the amount of interaction engendered during the session, etc. Each of the Lessons is also broken into topical sections, so Trainers and Training Coordinators also have the ability to adjust any of the Lessons to meet the needs of the training participants or the goals of the overall training program. Trainers should consult both the training materials and the supplemental materials as they prepare for each Lesson.

The **Training Materials** listed at the beginning of the Lesson are materials that are intended to be physically distributed to the participants during or immediately following the session. All Training Materials are available for downloading and printing from www.njdc.info. These handouts are designed in Microsoft Word® so that they can be edited and customized according to local statutes and practices. The Training Materials include fact patterns, case file samples, expert reports and materials the participants will need during the Lesson. Other Training Materials may include charts, tools, summaries, or bibliographies of key resources. *Trainers must review all of the Training Materials prior to the session and must customize them for use in the local jurisdiction.* Additionally, for many of the Lessons, Trainers are asked to gather and distribute to the participants any local rules, statutes, and case law related to the topic at hand.

The **Supplemental Materials** are additional resources that will assist lawyers when they are applying their JTIP learning to their practice following the training. While the Supplemental Materials will not be used on during the training session, the Trainer should familiarize himself or herself with them before the training program. Examples of



Supplemental Materials include sample pleadings, expert reports, key cases, and useful articles. The Trainer can opt to include any of the Supplemental Materials in the training and we encourage the Trainer to make the electronic versions of the supplemental material available to the participants. Participants will be able to access the supplemental materials at www.njdc.info following the training.

2. Trainer's Overview

The Trainer's Overview is an outline of the Lesson designed to give the Trainer a quick summary of the entire session. The Overview includes the estimated timing for each section of the Lesson to help guide the Trainer in planning and executing the Lesson. The Overview provides information about the material covered in the Lesson to guide decisions about how much of the Lesson to include and whether it is appropriate for the intended audience. The Overview is also a useful outline for Trainers to use during the Lesson to keep themselves on track and aware of timing.

3. Trainer Notes

The Trainer Notes provide the detailed, substantive content for each Lesson. The Trainer Notes generally include key principles to be addressed in each Lesson, a summary of relevant case law, and techniques for skills-based sessions. Within the Trainer Notes, Trainers will find three distinct training cues to help guide the Trainer through the Lesson:

Note To Trainer



Note to Trainer: These provide ideas on ways to facilitate the information outlined in the Trainer Notes, including questions for sparking interactive discussions and instructions on how to organize exercises or brainstorming activities.



Practice Tip

Practice Tip: These offer concrete suggestions on strategic considerations as well as tactics that may not be applicable or customary in all jurisdictions but are worth considering nonetheless.



Caution

Caution: These are areas that Trainers and participants should be aware may be risky or are tips for avoiding potential pitfalls.

4. Forensic Exercises

The Forensic Exercises provide the platform for interactive learning and give defenders an opportunity to apply the newly acquired knowledge and skills in realistic juvenile case scenarios. The *Notes to Trainer* within each Exercise provide explicit instructions on when and how to conduct the exercises. While suggested "answer keys" are provided in sections labeled as *Discussion Points*, it is expected that Trainers will bring their own expertise to bear when leading the participants in discussion or providing feedback.

Most of the Forensic Exercises are based on real case scenarios. The participants are given factual summaries, reports, or other documents and asked to engage in a series of interactive exercises. In some instances, the participants will be asked to identify issues and apply cases discussed in the Lesson (*e.g.*, develop a theory of case or identify appellate issues); in others, they will be asked to apply their knowledge in a skills exercise (*e.g.*, conduct a mock interview, develop and deliver an examination or argument).

Some important things to note about the design of the Forensic Exercises are:

- **Dates:** Participants should assume that the task in the exercise is occurring in real time. Because these materials are intended to last for several years, the lessons would quickly become out of date as time progressed. To that end, rather than include the year of an event, reference is made to “Year minus a number”, or YR – #. This means that YR – 0 signifies the current year; YR – 1 means last year; YR – 16 means 16 years ago; and YR + 1 means next year.
 - Example: Assume the training is occurring on January 15, 2014 and the case scenario explains that Johnny was born on April 16, YR–15. He was arrested in school three days ago. This means that Johnny, who was born on April 16, 1999, is 14 years old and was arrested on January 12, 2014.
 - Trainers should feel free to edit the handouts that are designed in Microsoft Word® to reflect actual years, so that the participants receive a clearer fact pattern as they prepare to conduct the exercises.
- **Charges:** Several of the Forensic Exercises involve alleged offenses (such as assault and battery) that may have different elements in different jurisdictions, which can affect the fact pattern. For example, “assault” in one state may include verbal threats, but in another would require physical contact, which is also referred to as “battery.” Additionally, what one jurisdiction calls Unlawful Use of a Motor Vehicle (UUV) may be termed Use of a Motor Vehicle without Owner Consent (UMVOC) in another. The Trainer should use offense terminology reflected in the governing criminal code of the local jurisdiction. If, for example, the Lesson included a hypothetical Forensic Exercise that required participants to receive a handout of the fact pattern, the Trainer may need to edit the downloadable handouts to reflect the local reality. If a Forensic Exercise includes reference to an offense that is not prosecuted in the training jurisdiction, the Trainer may make a substitution of facts or omit that portion of the Exercise.

Key Points for the Trainer

- **JTIP is intended to be the gold standard of juvenile defense practice.** NJDC recognizes that defenders face many challenges to engaging in best practices. It is our hope that this curriculum will inspire defenders to strive to practice at the highest level without becoming discouraged or disheartened by the suggested practices within each Lesson and the level of detail in the templates. To that end, the Trainer should endeavor to be supportive of and empathic to the defenders, while simultaneously encouraging them to advance due process by trying new things and adopting best practices. Trainers should encourage participants to challenge the status quo and use both the *National Juvenile Defense Standards* and JTIP as support when they push the envelope. Reluctance to change longstanding practices is often rooted in real and sometimes negative experiences, but the perception that change is impossible is typically an erroneous assumption. Unless those experiences are challenged and defenders are encouraged to try new approaches, the status quo will remain.
- **Forensic Exercises are intended for small group work, but can be adjusted for larger groups if necessary.** The goal of every Forensic Exercise is to be as interactive as possible and to actively engage as many participants as possible. Small group work is ideal for engaging all participants effectively. With smaller groups, all participants will have the opportunity to get on their feet to practice particular skills and get a chance to actually learn by doing. Whether Trainers will be able to effectively break participants into small groups depends on the logistics of the venue (breakout rooms are needed for small groups to work independently) and whether there are

enough Trainers on hand to effectively oversee each small group. It is optimal to have two Trainers lead a Lesson with several additional training personnel on hand to facilitate small group work when the time comes.

The realities of some trainings, however, are that the needs of the organization and logistics may not always allow for the optimal small group size. Every attempt should be made to ensure that each training, regardless of size, has sufficient numbers of assistant trainers to help facilitate multiple small groups. When this is not possible, however, most exercises are adaptable for differing group sizes. When breaking into small groups is simply not feasible, many of the exercises can be adjusted for use in a large group. While this will not allow full participation of all participants, the benefits of the exercises are not completely lost. This arrangement can work well for exercises that require extensive brainstorming, interactive discussions, or role-plays intended to model particular skills or behaviors.

Where logistical limitations prohibit small group work, there are ways to adapt the exercises to encourage participation by a greater number of participants. Examples include:

- **Tag-Teaming (a.k.a. Round-Robin):** This approach can be used when the exercise calls for an in-depth or lengthy skills practice, such as delivering an argument or conducting a cross-examination. In larger groups, the Trainer may elect to have various members of the group take on a single chapter or line of cross-examination, with participants rotating in and out until the cross-examination is complete.
- **Model and Supplement:** This is where one or a few participants will model the task in front of the entire group and other participants will be asked to fill in gaps in an examination or provide supplemental arguments once the model exercise is completed.
- **Alter the Goal:** There may be exercises in which the Trainer may change the overall goal of the exercise in order to accommodate more participants. For example, in an exercise that requires a cross-examination, instead of having anyone perform the cross, it may be just as advantageous for the group to instead work together and focus on developing comprehensive questions that get at all the points one needs in order to win the argument, rather than do a cursory prep and have individuals perform the cross-examination. This is often a good solution when the ultimate issue for the Lesson is a concept, such as challenging identification testimony, rather than a skill, such as impeachment.
- **Simulations and Role Plays:** The Trainer may engage the audience by assigning participants to play different roles in the problem. For example, in a Fourth Amendment argument exercise, a portion of the room may be assigned to play the role of defense counsel, while another portion of the room is assigned to the role of prosecutor. Others might even be assigned to play the role of judge to ask follow up questions and rule on the outcome of the argument. In an interviewing exercise, half of the room may be assigned to play the role of client and the other half to play the role of lawyer. Such one-on-one pairing can often work in large room settings. Role plays not only allow the participants to practice their skills as a lawyer, but they also help the participants imagine or experience what others (*e.g.*, clients, judges, prosecutors) might think and experience in the juvenile justice system. Of course, it will be important for the faculty to close out any role play or simulated exercise by providing feedback and making sure all of the participants have a clear and accurate understanding of the law, strategy, and best practices that should be promoted in the exercise.
- **Guided Discussion:** Many of the exercises can be facilitated as a guided discussion, in which the facilitator prepares questions that will guide participants into discovery of the learning points. The Trainer will

ask specific, planned questions to draw learning points from the discussion. The Trainer will augment the participants' responses by making more in-depth learning points. Many of the JTIP exercises already have questions the Trainer can use to facilitate a guided discussion.

- **Collective Brainstorming and Charting:** When the Trainer is particularly short on time and cannot have participants make an oral argument on a given legal issue, the Trainer may engage the entire group in analyzing the fact pattern provided in the Forensic Exercise. The participants may collectively identify the legal issues to be raised with the court and write them on a series of large charts posted on the wall. Thereafter, the participants may fill in the charts by identifying the legal principles, case law, and facts that will best advance the legal issues raised. Brainstorming and charting can be used in any number of exercises, ranging from substantive legal discussions to trial skills exercises. Charting may be particularly useful in trial skills exercises that ask the participants to first identify the lines (goals) of direct or cross-examination and then fill in specific facts and questions.
- **Quick Writes:** A quick write allows each participant to think about and write down their response to a Trainer's question *before* there is a group discussion. The Trainer may pose a question raised in the Forensic Exercise and then allow a few minutes for the participants to write. Quick writes are useful to encourage greater participation, especially when the participant group is dominated by a few participants who speak first and speak often. The quick writes slow the pace of the discussion and give participants an opportunity to understand the issues and clarify their own ideas before speaking. Giving participants an opportunity to think before speaking also increases the sophistication of the conversation. After the period of silence, the Trainer may ask the participants to share their insights orally. The Trainer can build upon ideas offered by the group and if necessary, give the participants more time to think and write.
- **Small Group Discussions:** Even if the Trainer cannot send the participants to breakout rooms for the Forensic Exercises, the Trainer might still have the participants divide into small groups within the larger classroom. The participants might share a table or get together in a corner of the room. Small groups allow the Trainer to share the teaching function by encouraging and facilitating feedback among the participants and often help the participants generate more ideas in response to a question or problem presented. At the end of any small group discussion, the Trainer will need to make sure the information generated and exchanged within the groups has been accurate by having representatives from each group share one or two of their ideas and by summarizing the law, principles and strategies the participants should take away from the exercise.
- **Drills:** When the Trainer wants to reinforce a learning goal, the Trainer may drill the participants through a series of questions that have mostly right answers (*e.g.*, a statute or a case). For example, the Trainer may ask participants to cite to the relevant state statute and list any statutory criteria that govern the admissibility of a juvenile's statement. Rather than teach this information in a "lecture," the Trainer can elicit the information from the audience. The Trainer may also provide this information in written form before the training and have participants find it and read it out loud for understanding and emphasis. To reinforce the point, the Trainer might circle back to this material later in the training and ask the participants to repeat the statutory citation and criteria for admissibility of statements. Drills may also be useful in skills-based Lessons to reinforce a skill such as leading questions. The Trainer may move around the room and have each participant ask one leading question until it is clear that all participants have mastered the skill.

JTIP Method of Providing Feedback to Participants

The Trainer's feedback to participants is an important part of the Forensic Exercise. Many educational theorists believe that the most effective way to ensure learning is to create experiences in which learners can actively engage, followed by guided reflection on that experience. The JTIP Lessons have been developed with an eye toward providing the participants with an experience on which they can reflect, both through feedback from the Trainers and through self-reflection. While there is some debate in pedagogical literature on how best to effectively provide feedback, JTIP promotes a three-step approach to providing feedback.

1. **State the Rule** the Trainer will be evoking in the critique, so everyone understands the framework (*e.g.*, direct examination requires open ended questions).
2. **Replay** examples from the participant's examination that illustrate the point on which feedback is focused, so that the critique is concrete and directs the participant's reflection back to actions that can change (*e.g.*, "you asked: 'and then you went to the store.' That is a leading question.>").
3. **Model a Solution** for doing better next time (*e.g.*, "Instead of the leading question, you should ask, 'what did you do next?'). Depending on the group and the situation, Trainers may decide to elicit suggestions from the person being critiqued or from other participants where appropriate, rather than providing the model solution immediately (*e.g.*, "So, what's an example of an open question that would get to the same point?").

Feedback should be directed at skills that can be achieved, not at personality traits or aspects of a participant that cannot be easily changed. If the feedback is *related* to a personality trait (such as being timid) the Trainer should try to find a way to focus on a skill that demonstrated that trait (*e.g.* the questioning) and model an example, followed by a discussion on how the two different styles may be received differently. Changing an attitude or a practice (being too tentative in questioning) is different than changing a personality trait (being timid).

Ideally, the Trainer should limit feedback to between one and three points for each participant to ensure that every participant has an opportunity to conduct a segment of the exercise. Because participants often make the same mistakes, the Trainer will eventually have an opportunity to make all necessary points. The Trainer should also try to have at least one positive point of feedback for each participant. The Trainer may want to let participants know in advance that critique will be limited and the reasoning behind this method in an attempt to minimize hurt feelings or participants wondering why someone else was not critiqued for doing the same thing.

Of course, the Trainer should always provide feedback without embarrassing participants. If the Trainer sees something especially problematic or unique to a certain defender, the Trainer should consider having a private conversation after the training rather than discussing it in front of the group.

It is important to remember that the feedback a Trainer provides is not necessarily directed solely at the person whose performance the Trainer is critiquing; the feedback is intended to instruct all the participants who are present.

Getting Feedback on JTIP from Participants, Trainers, and Training Coordinators

Because JTIP is a dynamic training program, it will always be evolving. We expect to update the Lessons on a regular basis to reflect advances in law and science, as well as feedback from participants, Trainers, and Training Coordinators. As the community of Certified JTIP Trainers grows, NJDC is very interested in hearing about how individual trainings went, as well new ideas, additional media, state-specific issues, and revised content that Trainers found

particularly helpful. We also encourage feedback on things that do not work and suggestions for how to improve the materials. We have developed both participant and Trainer evaluations we hope you will use and share results with us. JTIP necessarily needs to change with revisions in law and practice and we look forward to continuing to build it, while simultaneously growing the cadre of juvenile defense specialists who use it.

JTIP LESSON OVERVIEWS

These Lesson Overviews are intended to assist Trainers and Training Coordinators in gauging which lessons are most appropriate for the needs of their audience, while also understanding the anticipated timing for each lesson and how the Forensic Exercises are intended to flow. Each complete JTIP Lesson is available only to Trainers who have been certified to teach according to the JTIP methodology. Certified JTIP Trainers will share the Lesson with local Trainers with whom they are partnered to co-facilitate the training. The overviews provided here, however, afford a comprehensive summary of each JTIP Lesson.

JTIP Unit I: Introduction to Juvenile Defense

Lesson 1, Overview of the Juvenile Justice Process (2 Hours)

Overarching Goal

Juvenile defender will understand the origins and purpose of juvenile court and be familiar with key terminology, the role of juvenile defense counsel and the key stages of a juvenile case.

Objectives

Juvenile defender will:

- Understand historical purpose of juvenile court and locate Purpose Clause of state juvenile justice code;
- Learn juvenile court terminology;
- Understand the chronological flow of a juvenile case;
- Identify critical stages and key decision points to advance the strategic goals of a juvenile case, including stages at which youth can be diverted from the juvenile justice system;
- Have a basic understanding of the standards and ethical obligations of juvenile defense counsel;
- Understand that juvenile defense is a specialized practice that requires knowledge and skills of a criminal defense attorney plus a specialization in juvenile litigation; and
- Recognize severe consequences of juvenile adjudication.

Training Materials:

- A copy of the Purpose Clause of the local jurisdiction's Juvenile Justice Code (trainer to provide)
- A local jurisdiction-specific flow chart of the juvenile court process or Sample Flowchart of the Juvenile Justice System (trainer to provide, or sample provided)
- Sample Comparative Criminal/Juvenile Court Terms Chart (trainer to update with local terms)
- Bibliography

Supplemental Materials:

- Juvenile Justice Terminology Handout
- Annotated Outline of Critical Stages and Key Decision Points in a Juvenile Case

Trainer's Overview

I. Juvenile Court Origins and Legal Underpinnings (30 minutes)

- Trainer should provide copies of the Purpose Clause of the jurisdiction's juvenile justice code and facilitate a discussion on the purpose and goals of the court, why the purpose matters and how defenders can use the purpose to better advocate for their clients.
- Trainer should give a short lecture on the foundational principles of juvenile court, the evolution of the juvenile court and the implications of this history and current trends in juvenile defenders' practice.
 - A. Purpose/Goal of the Juvenile Justice System
 - B. Historical Purposes and Current Trends in Juvenile Court

II. What's in a Name? (25 minutes)

- Trainer should reference the Sample Comparative Criminal/Juvenile Court Terms Chart found in the Trainer Notes and conduct an interactive exercise noting jurisdictional differences in terminology and ensuring that participants have a familiarity with relevant terms.
- Trainer should have a short discussion about the stakeholders in juvenile court, encouraging participants to add to the trainer's list of key players and discuss their various roles.
 - A. Key Terms
 - B. Key Players in Juvenile Court

III. Role of the Defender (40 minutes)

- Trainer should guide participants through a youth's right to counsel, supporting case law and related due process rights.
- Trainer should lead an interactive discussion on a juvenile defender's ethical duties, the elements of zealous advocacy, the importance of understanding adolescent development and expressed interests representation.
 - A. Right to Counsel
 - B. Role of Counsel

IV. Flow of a Juvenile Court Case (25 minutes)

- Trainer should hand out a jurisdiction-specific flow chart of the juvenile court process and critical decision points. (If no flow chart is available from the local jurisdiction, the trainer can use the sample flow chart provided with this lesson).
- Trainer should supplement the general flow chart of the critical stages of a juvenile case with jurisdiction-specific information and then lead an interactive discussion on local practice and court procedure.
 - A. Chronological Flow of a Juvenile Case
 - B. Critical Stages and Key Decision Points of a Juvenile Case

JTIP Unit I: Introduction to Juvenile Defense

Lesson 2, Role of Juvenile Defense Counsel (2.5 Hours)

Overarching Goal

Juvenile defender will understand ethical obligation to represent clients' expressed interests and ensure that their rights are sufficiently protected and advanced throughout the life of the case.

Objectives

Juvenile defender will:

- Understand how case law, local rules, American Bar Association Model Rules of Professional Conduct ("ABA Model Rules") and National Juvenile Defense Standards dictate ethical obligations of juvenile defense counsel;
- Appreciate how the role of a juvenile defender is similar to and different from that of an adult defender;
- Know the concrete duties and responsibilities of defense counsel in delinquency cases;
- Be cognizant of challenges associated with a youth's parents/guardians in a delinquency case, and understand the need to maintain loyalty to the youth and his or her stated interests;
- Understand the full scope of representation on behalf of a client in a delinquency case; and
- Understand the distinction between a defender's ethical duty and the ethical duty of a *Guardian ad Litem*.

Training Materials:

- Forensic Exercise: Role of Juvenile Defense Counsel
- State/Local Attorney Practice Standards (trainer to provide copies of local Attorney Practice Standards and/or corresponding state statutes if they exist)
- Summary of Key ABA Model Rules Handout
- Bibliography

Supplemental Materials:

- NATIONAL JUVENILE DEFENDER CENTER, ROLE OF JUVENILE DEFENSE COUNSEL IN DELINQUENCY COURT (2009), http://www.njdc.info/pdf/role_of_juvenile_defense_counsel.pdf.
- AMERICAN COUNCIL OF CHIEF DEFENDERS & NATIONAL JUVENILE DEFENDER CENTER, 10 CORE PRINCIPLES FOR PROVIDING QUALITY DELINQUENCY REPRESENTATION THROUGH INDIGENT DEFENSE DELIVERY SYSTEMS (2005), http://www.njdc.info/pdf/10_Principles.pdf.

Trainer's Overview

This training is best taught by facilitating an interactive discussion using the Forensic Exercise. Depending on the amount of time allotted for this training, the trainer can deliver either one or two parts of the Forensic Exercise.

Note To Trainer



The participants will learn the substantive material as they answer the questions presented in the Forensic Exercise. The Trainer and Discussion Points provide the substantive discussion that must be covered with the participants during the Forensic Exercise. The trainer should make sure answers to questions in the Forensic Exercise are accurate and thoroughly explained.

The trainer should also make sure to highlight practical tips, such as the importance of establishing boundaries with clients and how to avoid burning out.

I. Forensic Exercise: Role of Juvenile Defense Counsel Part 1 (1 hour)

- The trainer should distribute Part 1 of the Forensic Exercise, and allow 10 minutes for participants to read the fact pattern and begin to think about the corresponding questions.
- The trainer should move through the questions in Part 1 one at a time, allowing the participants to answer aloud and respond to one another. Often differing opinions will surface among the participants.
- The trainer should then provide the final analysis, being sure to highlight the relevant case law and rules of professional conduct.

II. Review Questions (20 minutes)

- At the end of the training related to Part 1, the trainer may close with a series of review questions to summarize key learning points. For example:
 - Is the role of juvenile defense counsel the same or different from that of an adult criminal defense attorney? How would you define the role of juvenile defense counsel?
 - What role does the parent play in directing the course of representation for a youth in a delinquency case?
 - What are the key components of any attorney-client relationship?

III. Forensic Exercise: Role of Juvenile Defense Counsel Part 2 (50 minutes)

- If there is time, the trainer should distribute Part 2 of the Forensic Exercise and allow the participants an additional five minutes to read the fact pattern and begin to think about the questions.
- Part 2 introduces the participants to issues of competence and cognitive difficulties associated with representing youth.
- The trainer should move through the questions in Part 2 one at a time, allowing the participants to answer aloud and respond to one another. Often differing opinions will surface among the participants.
- The trainer should then provide the final analysis, being sure to highlight the relevant case law and rules of professional conduct.

IV. Systemic Role Confusion (20 minutes)

- If there is additional time, the trainer may also facilitate a discussion about systemic confusion over the proper role of juvenile defense counsel. For example, the trainer may pose the following questions:
 - Is there role confusion in your jurisdiction? Are other stakeholders in the jurisdiction confused about the juvenile defense attorney's role?
 - What strategies might you implement to ensure that other stakeholders understand the proper role of juvenile defense counsel?

JTIP Unit I: Introduction to Juvenile Defense

Lesson 3, Organization 101: Managing the Juvenile Caseload (2.5 Hours)

Overarching Goal

Juvenile defender will learn strategies to effectively manage, represent, and promote client goals.

Objectives

Juvenile defender will:

- Develop a proposed timeline and plan for representing a youth client at all stages of the case;
- Understand ethical obligation to maintain client files and document all developments in the youth's case;
- Learn organizational strategies to effectively manage, represent, and promote the goals of each client;
- Learn to write a Case Planning/Investigative Memo at the outset of any new case;
- Develop tools to track a large caseload;
- Develop tools to identify next steps and track deadlines in a large caseload; and
- Identify tools and strategies for maintaining a healthy mental balance.

Training Materials:

- Local Attorney Practice Standards (trainer to provide)
- Proposed Timeline for Effective Advocacy
- Sample Investigative Memo
- Sample Motions, Investigation, and Discovery Checklists
- Sample Case List
- Sample Weekly Client Check-In and To-Do List
- Sample Case File Form

- Sample Trial Notebook Guide
- Sample Trial Memo

Supplemental Materials:

- Sample Case Outline

Trainer's Overview

I. The Ethics and the Reality (25 minutes)

- The trainer should lead an introductory discussion on the importance of case management.

A. A Statement of Goals

- The trainer should lead an interactive discussion, posing questions to and eliciting answers from participants, on the ethical obligations of juvenile defenders.
- The length of this portion will depend on whether or not the participants have received the training Role of Juvenile Defense Counsel. If participants have received that training, then the trainer should treat this section as a review. If participants have not received that training, then the trainer will have to spend more time discussing the juvenile defender's ethical obligations.

B. The Ethics

- Through an interactive discussion, the trainer should quickly highlight minimum requirements set forth in the Local Standards. If there are no Local Standards, an example of requirements from Attorney Practice Standards in other jurisdictions is provided in the Trainer Notes.

C. The Challenge: A Myriad of Tasks

II. Where Does the Time Go? (20 minutes)

- Trainer should lead a brief discussion to acknowledge and examine the time pressures that exist in the life of a given delinquency case.

A. Time Pressures

- The trainer should then lead an interactive discussion about the short- and long-term goals and corresponding tasks contained within the timeline. Trainer should encourage participants to share their own methods of keeping timelines and discuss alternatives for the order or prioritization represented in the proposed timeline.

B. Proposed Timeline for Effective Advocacy

III. Case Planning/Investigation Memos (30 minutes)

- Trainer should lead an interactive discussion on the benefits of using case planning and/or investigation memos.

A. The Benefits

- The trainer should highlight the key components of a case planning or investigative memo, and should encourage participants to share their own strategies for constructing such preparatory memos.
- The trainer should also note that certain components may not be necessary or appropriate for certain cases and discuss prioritization and realistic memo length.

B. Key Components of Investigative or Case Planning Memo

IV. Time-Saving and Organizational Tools (40 minutes)

- The trainer should lead an interactive discussion on standardized time-saving tools within participants' offices and talk about the use of templates. This discussion should encourage sharing of materials and tools among colleagues and within the juvenile defense community.

A. Time-Saving Tools

- The trainer should use the samples to lead a discussion on developing individualized checklists that work best for a defender's work style and needs, and solicit ideas for good checklists and/or other tools from participants.

B. Developing Routine Checklists

- The trainer should acknowledge that not all defenders will have the time or resources to produce the types of in-depth trial preparatory materials featured in this lesson. Accordingly, the trainer should lead a discussion on strategies for organization with limited resources, including getting assistance from college and/or law students.

C. Getting Assistance from College Students and Law Students in the Community

- The trainer should lead a discussion on various examples of good case management tools, encouraging participants to share particularly effective tools they have utilized.

D. Case Management Tools for High Caseloads

V. Trial Preparation (35 minutes)

- The trainer should lead an interactive discussion on ineffective assistance of counsel ("IAC"). Trainer will present participants with questions on the minimum standards, relevant case law and common grounds for findings of IAC.

A. Avoiding Ineffective Assistance of Counsel ("IAC")

- The trainer should lead an interactive discussion, asking participants to brainstorm about the elements of effective trial preparation.

B. Guidelines for Effective Trial Preparation

- The trainer should lead an interactive discussion on the utility of trial notebooks and outlines in the preparation stage.
- The trainer should solicit ideas for similar preparation strategies and tools from participants.

C. Trial Memos and Trial Notebooks

JTIP Unit II: The Client

Lesson 4, Adolescent Development¹ (2.5 Hours)

Overarching Goal

Juvenile defender will understand key features of adolescent development, how those concepts affect a youth's involvement at all stages of the juvenile and adult criminal justice systems and how to use adolescent development arguments to advance the client's interests and the legal strategies of a case.

Objectives

Juvenile defender will:

- Understand key features of adolescent development;
- Become familiar with important developmental research studies that are specifically related to adolescents' decision-making in legal contexts;
- Understand how key features of adolescence affect youth's capacity to make knowing, voluntary and intelligent waivers of constitutional rights;
- Understand adolescent development as it relates to all aspects of representation, such as youth's competency, *mens rea* and culpability at trial, disposition and transfer to adult court;
- Learn how key features of adolescence impact the attorney-client relationship;
- Learn key Supreme Court cases that recognize the significance of the developmental sciences; and
- Be able to identify strategies for educating the court and other juvenile justice stakeholders about the impact of adolescent development at all stages of a juvenile delinquency case.

Training Materials:

- Forensic Exercises: Adolescent Development
 - Exercise 1: *Sleepers* Clip Exercise
 - Exercise 2: Using Developmental Research in Juvenile Defense
 - Part A: Pretrial Detention

¹ Much of the substance of this lesson was drawn from NAT'L JUVENILE DEFENDER CTR. & JUVENILE LAW CTR., *Adolescent Development: Module 1, in MODELS FOR CHANGE, TOWARD DEVELOPMENTALLY APPROPRIATE PRACTICE: A JUVENILE COURT TRAINING CURRICULUM* 19-20, 23-24 (2009).

- Part B: Statement Suppression
- Part C: Theory of the Case and Affirmative Defenses
- Part D: Theory of the Case
- Part E: Disposition
- Annotated Bibliography of Key Adolescent Development Studies
- Adolescent Development PowerPoint Template (available at www.njdc.info)
- Video Clip: *Sleepers* (1996) – “Stealing the Hot Dog Cart” Scene
- Bibliography

Supplemental Materials:

- Sample Alternative Disposition Report Incorporating Adolescent Development
- Sample Disposition Memorandum

Trainer’s Overview

I. Introduction (5 minutes)

- Working with the theme that “kids are different,” the trainer should emphasize the importance of understanding adolescent development because of the far-ranging impact it can have on the attorney-client relationship and case strategy.

II. The Basics of “Normative” Adolescent Development (10 minutes)

- The trainer should help participants understand *why* kids are different by providing an overview of “normative” – *i.e.*, typical, common or normal – behaviors.

III. Cognitive Development (15 minutes)

- The trainer should provide an overview of cognitive capacities, using research studies to facilitate a discussion of how cognitive development relates to legal issues, including its influence on a youth’s ability to understand and reason in juvenile justice contexts.
 - A. Overview of Cognitive Capacities
 - B. Research on Adolescents’ Cognitive and Law-Related Capacities
 - C. Adolescents’ Cognitive Development and Decision-Making in Legal Contexts

IV. Psychosocial Development (15 minutes)

- The trainer should provide an overview of psychosocial development, using research studies to draw a connection between psychosocial concepts and legal issues and to familiarize participants with the empirical research on psychosocial development, and facilitate a discussion about youth's psychosocial immaturity and its role in different legal contexts.
 - A. Overview of Psychosocial Development
 - B. Research on Psychosocial Development
 - C. Relevance of Adolescents' Psychosocial Characteristics on Adolescent Decision-Making in Legal Contexts

V. Brain Development (15 minutes)

- The trainer should provide an overview of brain research, explain the dual-systems model, and also stress the limitations of the research.
 - A. Brain Research and Brain Structure
 - B. Dual-Systems Model of Adolescent Brain Development
 - C. What Does It All Mean?
 - D. Limitations of Brain Science

VI. Social and Identity Development (5 minutes)

- The trainer should explain that the adolescent years are an important time, affecting the way teenagers feel about themselves (identity), their sexual feelings (sexuality), their relationships and interpersonal behaviors (intimacy) and their ability to function responsibly on their own (autonomy).

VII. The Supreme Court's Recognition of Developmental Science (5 minutes)

- The trainer should provide brief summaries of the Supreme Court's recent jurisprudence recognizing developmental science.
 - A. *Roper v. Simmons*
 - B. Post-*Roper* Case Law

VIII. Disabilities, Trauma, and Victimization Affecting Normative Adolescent Development (10 minutes)

- The trainer should explain to participants the importance of considering how any disability a client has can impact his or her behavior and decision-making capacities, and provide examples of such disabilities.
- The trainer should note that, like disabilities, trauma and victimization can impact normative behavior, and explain that, as a result, attorneys should be mindful of how to use adolescents' trauma and victimization histories to mitigate culpability and argue for more rehabilitative dispositional options.
 - A. Disabilities
 - B. Trauma and Victimization

IX. Getting the Evidence In (10 minutes)

- The trainer should review the steps that should be taken before introducing developmental science and then provide examples of how to introduce the evidence, both with experts and without.
 - A. Steps to Take Before Introducing Developmental Studies
 - B. Examples of How to Introduce Developmental Science

X. Forensic Exercises: Adolescent Development (60 minutes)

- There are two Forensic Exercises in this lesson. Exercise 1 is based on a scene from the movie *Sleepers* where a group of boys decide to steal some hot dogs and wind up releasing the hot dog cart down subway stairs and crushing a man. Exercise 2 is based on short vignettes. In both exercises participants are asked to use developmental concepts in their defense arguments.

Exercise 1: *Sleepers* Clip Exercise

- The trainer should show the film clip of the “Stealing the Hot Dog Cart” scene from the *Sleepers* video. Afterward, the trainer should distribute the *Sleepers* Clip Exercise Handout and engage participants in a discussion of how they could use adolescent development to in their defense of “Shakes,” the boy who stole the hot dog, at an initial detention hearing, at a discretionary transfer hearing, to suppress his statement to the police, at adjudication, and at disposition.

Exercise 2: Using Developmental Research in Juvenile Defense

- There are five parts to this Exercise, each based on a brief hypothetical, to engage participants in thinking about how to use adolescent development research in juvenile defense. The trainer should distribute the materials for Exercise 2 and give participants time to develop their answers for each part. Participants may refer to the *Annotated Bibliography of Key Adolescent Development Studies* to complete these parts.
 - Part A: Pretrial Detention
 - Part B: Statement Suppression
 - Part C: Theory of the Case and Affirmative Defenses
 - Part D: Theory of the Case
 - Part E: Disposition

JTIP Unit II: The Client

Lesson 5, Interviewing and Counseling the Youth Client (2 to 2.5 Hours)

Overarching Goal

Juvenile defender will learn to effectively interview a youth client in order to pursue the client's expressed interests and develop a strong attorney-client relationship.

Objectives

Juvenile defender will:

- Identify challenges associated with interviewing youth;
- Become familiar with developmental features of adolescence that may impact the interview of a youth in a delinquency case;
- Learn strategies to accommodate, enhance or overcome developmental barriers to a successful interview;
- Understand that the interview process is fluid over the life of a case and contingent on a number of environmental and interpersonal factors;
- Understand the importance of interviewing collateral contacts such as neighbors, parents/guardians and teachers to advance the strategic goals of a case;
- Be able to explain the attorney-client relationship to the youth client in age-appropriate language;
- Be able to conduct effective initial cellblock and follow-up interviews throughout the duration of a case;
- Identify important social and factual information needed from the client to secure his or her release at the detention hearing, if consistent with the client's expressed interests;
- Learn to interview youth clients in developmentally appropriate language, allocating adequate time for the interview and using visual aids; and
- Be able to establish a trusting relationship with a youth client and learn to identify and address client's primary concerns during the interview.

Training Materials:

- Forensic Exercises
- Sample Initial Custodial Interview Form
- Sample Client Representation Agreement
- Sample Release of Information Form

Supplemental Materials:

- Interview Tips Cheat Sheet
- Michele LaVigne, *Breakdown in the Language Zone: The Prevalence of Language Impairments Among Juvenile and Adult Offenders and Why It Matters*, 15 U.C. DAVIS J. JUV. L. & POL'Y 37 (2011).
- DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (3rd ed. 2011). (trainer to note that this is a book and not available online)

Trainer's Overview

I. Interviews in Context (5 minutes)

- The trainer should facilitate a short discussion about the different contexts in which the defender will need to interview the youth client.
 - A. Introduction to Client Interviews: Types of Client Interviews

II. Interview Challenges and Solutions: Shared Experiences (30 minutes)

- The trainer should ask participants what common challenges attorneys face in interviewing youth clients and tie the ideas gathered to the research and discussion of developmental barriers that most often interfere with the attorney-client relationship.
 - A. Developmental Issues That Impact the Attorney-Youth Interview
- The trainer should ask participants to share strategies they have found successful in overcoming each of the challenges identified earlier in interviewing youth clients, and then lead a discussion on useful strategies not identified by participants. The trainer should then lead a series of interactive discussions on useful strategies and common mistakes when interviewing youth.
 - B. Strategies to Accommodate, Enhance or Overcome Developmental Barriers to the Attorney-Youth Interview

III. The Custodial Interview (30 minutes)

- Using a combination of interactive discussion and lecture, the trainer should walk participants through a custodial (*i.e.*, cellblock) interview.
 - A. The Initial Custodial Interview
- The trainer should review both the goals of the interview and suggest tips for enhancing the interviewer's style.
 - B. Goals of the Initial Custodial Interview

IV. Considerations for Interviewing Youth in Other Contexts (10 minutes)

- The trainer should discuss how the skills needed in the initial custodial interview (*e.g.*, establishing rapport) could be transferred to other interview contexts, highlighting what these contexts may look like.
 - A. Stationhouse Consultation
 - B. Follow-Up Fact-Based Interview
 - C. Disposition Preparation
 - D. Preparing Client to Testify
 - E. Post-Disposition Interviews

V. Special Note on Parents/Guardians and Interviewing the Youth Client (10 minutes)

- The trainer should begin this section with a discussion of why the defender must interview the youth without the parent/guardian. This discussion should lead into a review of the importance of establishing privacy and confidentiality with the youth.
 - A. Establishing Privacy and Confidentiality with the Youth
 - B. Following Up with the Parent/Guardian and Cultivating the Parent/Guardian as an Ally for the Youth

VI. Forensic Exercises: Client Interviews (35 minutes for just the first exercise / 1 hour 10 min. for both exercises)

- There are two Forensic Exercises:
 - A. Initial Custodial Interview
 - B. Office Interview
- Both Forensic Exercises have "Defender Confidential Material" and "Client Confidential Material." The trainer can have the participants engage in one or both exercises. If the trainer is going to conduct both exercises in sequence (as opposed to at the same time), assignments should be made to ensure that a participant plays the role of the defender in one exercise and the client in the other.

- For each exercise, the trainer should instruct the participants to break into pairs. One member of the pair will be assigned to play the role of the juvenile defender, while the other will play the role of the client. The trainer should distribute a copy of the Defender Confidential Material Handout to the defenders, and a copy of the Client Confidential Material Handout to the client.
- The initial custodial interview will last for only 10 or 15 minutes to keep the realistic time pressure. Time permitting, the office interview should last longer.
- The trainer should walk around during the interviews and take note of interview strategies that work and do not work.

JTIP Unit II: The Client

Lesson 6, Interviewing the Youth's Collateral Contacts (1.5 to 2 Hours)

Overarching Goal

Juvenile defender will be able to identify and interview important contacts in the youth's life, including the youth's parents, guardians, teachers, coaches, therapists, social workers, religious leaders, *Guardian ad Litem* and probation officer to further advance the expressed interests of the client.

Objectives

Juvenile defender will:

- Be able to identify key contacts in the youth's life;
- Understand the importance of gathering information about the youth's strengths and needs from the youth's collateral contacts;
- Understand the ethical obligations of confidentiality in communicating with collateral contacts;
- Be able to explain the role of the defender to collateral contacts and conduct an effective interview;
- Learn to gather educational, mental health, medical and other records that might affect the attorney-client relationship, disposition, competency determination or trial;
- Understand the need to obtain the client's permission before contacting or interviewing collateral contacts;
- Understand the importance of engaging parents/guardians as allies in a delinquency case; and
- Understand possible conflicts (*e.g.*, conflicts created by a parent participation order).

Training Materials:

- ABA Model Rules of Professional Conduct Rules 1.14 (Client with Diminished Capacity) and 1.6 (Confidentiality of Information) and the corresponding state rules of professional conduct (trainer to provide)
- Parent-child Privilege Statute: the trainer should identify whether such a statute exists in the local jurisdiction (trainer to provide)

- Forensic Exercise A: Conducting the Parent Interview
- Forensic Exercise B: Interviewing the Special Education Teacher
- Sample Release of Information Form
- Bibliography

Trainer's Overview

I. Identifying Collateral Contacts (20 minutes)

- The trainer should lead an interactive discussion about identifying potential important collateral contacts in a youth's life. The trainer should consider using a whiteboard to write down responses and encourage further brainstorming.
- The trainer should lead an interactive discussion about the defender's goals for interviewing a youth's collateral contacts and how such interviews can be helpful in the representation of a client. The trainer should consider using a whiteboard to write down responses and encourage further brainstorming.
- The trainer should lead an interactive discussion about potential information that a youth's collateral contacts may be able to provide and how this information could serve to further the strategic goals of the case.
- The trainer should provide a brief overview of the interview practice tips provided in the Trainer Notes.
 - A. Collateral Contacts
 - B. Goals in Collateral Contact Interviews
 - C. Information Gathering
 - D. Conducting the Interview: Practical Tips for Collateral Interviews

II. Challenges in Interviewing Parents/Guardians (20 minutes)

- The trainer should lead an interactive discussion on challenges experienced or anticipated by defenders in interviewing the parents/guardians of a youth, highlighting the importance of representing a client's expressed interests, maintaining confidentiality, managing conflicts of interests and being aware of parental influence on the child.
- The trainer should distribute ABA Model Rules of Professional Conduct Rules 1.14 (Client with Diminished Capacity) and 1.6 (Confidentiality of Information) and the corresponding state rules of professional conduct to help explain the role of the juvenile defender.
 - A. Potential Challenges
 - B. Explaining the Role of Counsel

III. Forensic Exercises: Interviewing Parents and Teachers (50 minutes - 1 hour and 20 minutes, depending on time allotted for the session)

A. Forensic Exercise: Conducting the Parent Interview (45 minutes)

- The trainer should instruct participants to pair off in groups of two, hand out the Forensic Exercise materials and tell participants to simulate a parent interview in 10 to 15 minutes with one participant playing the defender and the other playing the client's parent.
- After leading the Forensic Exercise, the trainer should poll the participants about what questions and tactics worked well and what did not work well.
- The trainer should ask participants questions about the specific challenges and potential conflicts that arose during the simulated interview with the client's parent.

B. Forensic Exercise: Interviewing the Special Education Teacher (5 – 30 minutes, depending on time allotted for the session)

- If time permits, the trainer should lead the participants in either:
 - collectively developing a list of questions for a special education advocate; or
 - a full Forensic Exercise in which participants play the roles of defender and special education teacher, followed by a group debriefing.

JTIP Unit II: The Client

Lesson 7, Sexual Orientation, Gender Identity, and Gender Expression (2 Hours)

Overarching Goal

Juvenile defenders will learn strategies for representing Lesbian, Gay, Bisexual and Transgender (LGBT)¹ youth in delinquency cases consistent with the client's stated goals and interests, as well as how to talk to clients about sexual orientation, gender identity, and gender expression.

Objectives

Juvenile defenders will:

- Understand the importance and relevance of youth's sexual orientation, gender identity, and gender expression at all stages of a delinquency case: from client counseling to investigation to disposition planning;
- Learn practical ways to approach cases involving LGBT youth;
- Understand the importance of culture in developing client rapport; and
- Identify resources that aid in the representation of LGBT youth.

Training Materials:

- Survey Handout: What is My Knowledge?
- Survey Handout: Answer Key
- Handout: Common LGBT Terms and Definitions
- List of LGBT resources in the local community (trainer to provide)

¹ This lesson uses the acronym LGBT, which stands for lesbian, gay, bisexual and transgender, and collectively refers to lesbian, gay, bisexual and transgender people. There are many other variations or extensions of the LGBT/GLBT abbreviation that include initials to represent terms such as questioning, queer, intersex, allied and undecided, some of which are later defined within the lesson itself. Please note that when this chapter uses the acronym "LGBT," it is intended to emphasize the broad range of sexual orientation and gender identity-based terms and should be read as being inclusive of all relevant terminology.

- Forensic Exercises:
 - Forensic Exercise 1: Interviewing LGBT Youth, Video Clip: “Don’t Ask, Don’t Tell: How NOT to Interview At-Risk LGBT Youth” by the Correctional Association of New York with the Legal Aid Society of New York, and/or Transcript for Video Clip
 - Forensic Exercise 2: Challenging Detention of LGBT Youth (exercise requires trainer to provide local detention statute)
 - Forensic Exercise 3 (Optional): Interviewing Ann
- Bibliography

Supplemental Materials:

- Sample Court Order Re: Transgender Youth’s Right to Healthcare in Detention
- Key Concepts for Understanding Gender Identity and Sexual Orientation
- LGBT Youth in Juvenile Court: Practice Tips for Juvenile Defenders
- Handout: Medical and Mental Health Care for Transgender Youth

Trainer’s Overview

I. Introduction to Sexual Orientation, Gender Identity, and Gender Expression (20 minutes)

- The trainer should familiarize participants with terminology used in discussing sexual orientation, gender identity, and gender expression issues. The trainer should then facilitate a discussion with participants about specific challenges, risks or concerns related to sexual orientation, gender identity, and gender expression that youth experience at all stages of the juvenile justice process.
 - A. Terminology
 - B. Risk Factors Related to Youth’s Sexual Orientation, Gender Identity, and Gender Expression

II. Interviewing Youth and Preparing for the Detention Hearing (30 minutes)

- The trainer should emphasize key principles for being mindful of sexual orientation, gender identity, and gender expression when interviewing youth, and then conduct Forensic Exercise 1.
 - A. Key Principles for Interviewing Youth
 - B. Forensic Exercise 1: Interviewing LGBT Youth
 - The trainer will either show a four-minute video entitled “Don’t Ask, Don’t Tell: How NOT to Interview At-Risk LGBT Youth” (available online at www.njdc.info) or distribute the transcript of the video clip and conduct a role-play using the script.

- The trainer should lead the participants in a facilitated discussion, asking participants to list the poor techniques the defender used to interview Danny. The trainer should also ask participants for better alternatives to the bad techniques. If there is additional time, the trainer should have participants role-play the beginning of the interview and/or ask participants to, in role, respond differently to one of Danny's answers.

III. The Detention Hearing (25 minutes)

- The trainer should discuss reasons LGBT youth are unnecessarily detained, articulate strategies for responding to bias in the courtroom, and provide guidance on how to draft orders to ensure the appropriate treatment of LGBT youth in detention.
 - A. Factors Leading to Unnecessary Detention
 - B. Responding to Bias in the Courtroom
 - C. Drafting Proposed Court Orders for the Safe and Appropriate Treatment of LGBT Youth

IV. Advocating for LGBT Youth In Detention (5 minutes)

- The trainer should outline the basic constitutional rights afforded LGBT youth in detention and give participants concrete strategies for how to ensure that those rights are protected.
 - A. Basic Constitutional Rights
 - B. Actions Defenders Can Take to Protect Rights

V. Disposition (5 minutes)

- The trainer should emphasize the importance of: becoming familiar with community resources competent to serve LGBT youth; articulating the various placement/programmatic options available to the client; and advocating for the client's preferences at the disposition hearing, using experts, evaluations, etc., as necessary.
 - A. Before the Disposition Hearing
 - B. During the Disposition Hearing

VI. Concluding Tips for Representing LGBT Youth (5 minutes)

- The trainer should recap the important takeaways from the lesson, stressing the importance of defenders' education and understanding when it comes to dealing with LGBT clients.

VII. Forensic Exercises (30 minutes)

- A. Forensic Exercise 2: Challenging Detention of LGBT Youth
 - The trainer should distribute both the Handout for Forensic Exercise 2 and *applicable local detention statutes*. The participants will have approximately 7-10 minutes to review the materials and jot down notes. The trainer should then lead the participants in a discussion on the first two questions posed in the Handout. After discussing those questions, the trainer may simply move on to the third question (re: strongest arguments against detention) or have the participants prepare and present mock arguments. Instructions for the mock arguments follow in the Discussion Points.

B. Forensic Exercise 3 (Optional): Interviewing Ann

- The trainer should divide the participants into two groups. Members of Group A will play the role of the client, and members of Group B will play the role of the attorney. Group A should be provided with Confidential Client Information, and Group B should be provided with Confidential Attorney Information. The participants should divide either into groups of two (one A and one B) or groups of three (one A and two Bs). The attorneys should interview the client for about 15 minutes. During the interviews, the trainer should walk around the room and take notes on approaches that were effective or ineffective. At the end of 15 minutes, the trainer should bring the entire group together to discuss how the interviews went. The trainer should then engage participants in an interactive discussion using the questions provided in the Discussion Points for Forensic Exercise 3.

JTIP Unit II: The Client

Lesson 8, Dealing with Difference (2 to 2.5 Hours)

Overarching Goal

Juvenile defender will understand the importance of culturally competent lawyering and will discuss considerations in representing youth from different backgrounds than the lawyer and/or other institutional players in the juvenile justice system.

Objectives

Juvenile defender will:

- Discuss common points of difference (such as class, language, culture and sexual orientation) between accused youth and institutional actors in the juvenile justice system;
- Focus on the particular impact of racial and cultural differences at all stages of the juvenile justice system;
- Understand the importance of recognizing difference in developing an effective attorney-client relationship;
- Learn to help other juvenile justice stakeholders understand the relevance of recognizing difference at every stage of the juvenile justice process;
- Learn strategies for advocating for the expressed cultural needs of youth in the juvenile justice system; and
- Identify resources and strategies to aid in the representation of youth of color and non-English-speaking youth.

Training Materials:

- “Silent Beats” Video: *available at* www.njdc.info; *at* the Uniting to Understand Racism website <http://www.understandracism.org/video/silent-beats>; or on YouTube *at* <http://www.youtube.com/watch?v=76BboyrEI48>.
- Materials to conduct Forensic Exercise A (to be supplied by trainer)
- Handout for Forensic Exercise B: Identifying Differences and Similarities
- Handout for Forensic Exercise C: Discussion Exercises
- Bibliography

Trainer's Overview

I. Societal Expectations (30 minutes)

- The trainer should show a short video and engage participants in a discussion on the importance of seeing beyond first impressions and not making assumptions based on stereotypes. The trainer should be sure to highlight the importance of understanding points of difference, becoming culturally competent with respect to each client and appreciating the impact of stereotypes.
 - A. Societal Expectations of the Clients We Represent
 - B. Importance of Difference in the Juvenile Justice System
 - C. Importance of Culture in Understanding the Client and His or Her Reaction to the System
 - D. Perceptions and Stereotypes
 - E. Forensic Exercise A: Identifying Stereotypes
 - The trainer will create 5 to 10 flipchart pages, each labeled with a possible difference between a lawyer and a juvenile client, and post them around the room.
 - The trainer should provide each of the participants with either a small stack of “sticky notes” that participants can use to stick a comment on the flipchart paper or markers to write directly on the paper.
 - The participants will move from paper to paper jotting down an existing stereotype they are aware of that some people attribute to that area of difference.
 - The trainer will then lead an interactive discussion on stereotypes that exist and may be at play within the local juvenile system.

II. Attorney-Client Relationship (30 minutes)

- The trainer should use interactive discussions and Forensic Exercise B to highlight the types of similarities and differences that may exist between defenders and clients, and provide tips on how to bridge cross-cultural differences and expectations on both sides of the relationship. The trainer should also provide practical insights on how to overcome language barriers with the client.
 - A. Points of Connection and Points of Difference in the Attorney-Client Relationship
 - B. Forensic Exercise B: Identifying Differences and Similarities
 - Participants will individually be brainstorming about differences between themselves and a particular client they have represented
 - The trainer will then lead participants through a directed analysis of those differences.
 - Finally, the trainer will facilitate an interactive discussion on how both differences and similarities can lead to assumptions that may be affecting this attorney-client relationship.

C. Client Expectations of the Lawyer

D. Language Barriers

III. Impact of Race, Class, Culture, and Other “Differences” in the Juvenile Justice System (15 minutes)

- The trainer should explain how cultural assumptions may impact delinquency proceedings – from motions to detention to disposition – and provide tips for how to overcome negative perceptions and be an effective advocate on behalf of your client.

A. Cross-Cultural Decision-Making in the Juvenile Justice System

B. The Juvenile Defender’s Role in Cross-Cultural Advocacy

IV. Systemic Efforts to Address Racial Disparities (15 minutes)

- The trainer should review efforts defenders can make to address cultural differences within the jurisdiction (to improve attorney-client relationships across cultures and/or to address the impact of racial/cultural disparities in decision-making in the juvenile justice system).

V. Forensic Exercise C: Scenarios for Discussion (15 minutes to 1 hour)

- There are four scenarios in this Forensic Exercise, each of which takes approximately 15 minutes to conduct. Trainers may choose to conduct any number and combination of scenarios that time will permit.
- The scenarios use short fact patterns that mimic potential situations defenders may face in representing their clients and are followed by questions the trainer can use to facilitate an interactive discussion on strategies for dealing with the problems raised by the fact pattern. Because these questions are intended to spark discussion and learning through the experiences of the participants, no Discussion Points have been developed. The trainer should simply lead the discussion by prompting participants with the questions provided.

JTIP Unit III: Arrest and Detention

Lesson 9, Arrest and Intake (2 Hours)

Overarching Goal

Juvenile defender will learn to protect and advocate on behalf of youth at pre-arrest and interrogation phases of the juvenile justice system.

Objectives

Juvenile defender will:

- Understand the need to make himself/herself available to advise and protect the youth's legal rights at the earliest possible stage of the juvenile case, including during the execution of a warrant, the interrogation phase, line-ups, show-ups, booking and probation intake;
- Identify ways to gain access to a client who has been recently arrested;
- Understand constitutional rights of youth in interacting with police at or before arrest, including during the execution of search warrants, identification procedures and interrogation;
- Be able to advise the client and parents/guardians about the consequences of pretrial statements;
- Be able to prepare the client for intake interview with the probation department; and
- Develop strategies for negotiating with law enforcement and prosecutors during detention and charging decisions.

Training Materials:

- Relevant local law addressing the use of statements made to intake (trainer to provide)
- Forensic Exercise: Arrest and Intake
- Sample Declaration of Rights

Supplemental Materials:

- Sample "Shut Up" Card

Trainer's Overview

I. Introduction (15 minutes)

- The trainer should discuss circumstances when a defender may need to counsel a client before the arraignment. The trainer should stress the importance of acting quickly, highlighting the role of the defender and the various procedures that a youth client may be subjected to between his/her initial contact with police and the arraignment.
 - A. Assisting the Suspected Youth Before the Arraignment and Detention Hearing
 - B. Move Quickly!
 - C. Process Before the Detention Hearing

II. Youth Who are "Wanted" (15 minutes)

- The trainer should lead a discussion about the importance of strategizing prior to contacting the police or prosecutor to find out about a warrant or surrendering the youth to the police in response to a warrant.
 - A. Youth Contacts the Defender about a Warrant
 - B. Talking to the Police and Prosecutor
 - C. Counseling the Youth on Surrender
 - D. Planning the Surrender

III. Youth Just Arrested and at the Police Station (15 minutes)

- The trainer should lead participants in a discussion on how to proceed when the defender learns that a youth has been taken into custody by police.
 - A. When Parents/Guardians Call the Defender
 - B. Locating the Youth
 - C. Youth Calls from Police Custody

IV. Steps after Locating the Client (20 minutes)

- The trainer should lead a discussion about the various strategies defenders can take in trying to protect juvenile clients being held in police stations.
 - A. Accessing the Youth at the Police Station
 - B. Counseling the Youth by Phone
 - C. Speaking with Police
 - D. Speaking with the Youth's Parents/Guardians

- E. Protecting the Youth's Interests During Police Investigation Procedures
- F. Accessing the Client at the Detention Facility and Advocating for Release

V. Protecting the Youth's Interests in the Intake Process (10 minutes)

- The trainer should review steps the defender can take to advocate for the youth's release and explain the impact that lack of confidentiality has on what should be said during the intake process.

- A. Counseling the Youth and Parents/Guardians before Intake Interviews
- B. Defender Involvement in the Intake Process

VI. Forensic Exercise: Arrest and Intake (45 minutes)

- The trainer should distribute the Forensic Exercise materials and instruct participants that they will have 10 minutes to read the exercise and another 15-20 minutes to answer the questions.
- The trainer should then use the Discussion Points to guide participants in an interactive discussion about the questions posed in the exercise.

JTIP Unit III: Arrest and Detention

Lesson 10, Challenging Probable Cause and Detention (2.0 to 4.5 Hours)¹

Overarching Goal

Juvenile defender will understand importance of zealous advocacy at the detention hearing, including challenging probable cause, and will develop skills and strategies to challenge probable cause and advocate for alternatives to detention at every stage of the delinquency process.

Objectives

Juvenile defender will:

- Understand the psychological impact of detention on youth;
- Understand the importance of release of youth pending trial for investigation, case preparation and case outcomes;
- Understand the law supporting right to counsel at the detention hearing;
- Understand the constitutional and statutory basis for requiring a probable cause determination before detention;
- Understand the role of counsel in challenging probable cause determinations;
- Understand statutory and case law standards relating to detention, including key Supreme Court cases such as *Gerstein v. Pugh*, *Riverside v. McLaughlin* and *Schall v. Martin*;
- Learn to prepare to advocate with probation intake officer in advance of the detention hearing;
- Understand local practice and use of risk assessment tools in/at detention;
- Learn to identify and advocate for legal alternatives to detention;
- Understand how to educate parents/guardians on harms of detention, how to talk to them about their needs and how to meet those needs;
- Identify and learn to address other issues that may need to be addressed at the detention hearing, such as shackling and pretrial psychological evaluations;

¹ The length of time this lesson will take to conduct is dependent upon which sections and exercises the trainer opts to use.

- Identify issues and learn to address issues that may arise after the detention hearing;
- Understand the importance of demanding a recorded hearing and transcript of the probable cause and detention hearing; and
- Learn how to challenge probable cause and detention through witness examinations and arguments.

Training Materials:

- Copies of statutes, rules and any relevant case law from the local jurisdiction relating to probable cause/detention (trainer to provide)
- List of names, addresses and contact information for secure detention facilities, shelter homes, adult facilities and home-based programs (alternatives to detention) in the local jurisdiction (trainer to provide)
- Forensic Exercise A: Challenging Probable Cause on the “Papers” (6 exercises)
- Forensic Exercise B: Challenging Probable Cause Through an Evidentiary Hearing
- Forensic Exercise C: Five Detention Problems
- Bibliography

Supplemental Materials:

- Sample Suspect Information Reports
- Sample Risk Assessment Tool
- Sample Motion to Oppose Psychological Evaluation
- Sample Motion to Reduce Detention
- Sample Conditions of Release Form
- National Juvenile Defender Center Detention Tools: 1) *Ten Principles for Providing Effective Defense Advocacy at Juvenile Detention Hearings*; 2) *Achieving Excellence in Detention Advocacy: A Checklist to Evaluate Defense Representation at Detention Hearings*; 3) *Achieving Excellence in Detention Advocacy: Guidelines for Juvenile Defenders to Provide Zealous Advocacy at Initial Detention Hearings*; and 4) *Management Tool to Enhance Juvenile Detention Advocacy*
- Shackling Resources: 1) Sample Memo Challenging Shackling; 2) Sample Motion for Child to Appear Free from Restraints; 3) In Re: Amendments to the Florida Rules of Juvenile Procedure (sets forth reasons against shackling); 4) Affidavit of Marty Beyer (describes harms of shackling); 5) NJDC Commentary on New Mexico Children’s Court Legislation Re: Shackling of Youth (provides general arguments against shackling)

Trainer's Overview

Note To Trainer



This lesson is designed to focus on both parts of a detention hearing – the probable cause determination followed by strategies for advocating against detention. The lesson can be conducted as a single unit or in two parts (probable cause and the release). The trainer is encouraged to teach the full lesson as detention advocacy is such a critical component of juvenile defense.

I. The Detention Hearing: Basic Overview (5 minutes)

- The trainer should explain the purpose of the detention hearing and the rights afforded to minors subject to detention. This will include a review of the applicable statutory and case law for the training jurisdiction.

II. Probable Cause Determinations (20 minutes)

- The trainer will review the principles and rules governing probable cause determinations and discuss different strategies for challenging probable cause.

III. Forensic Exercise A: Challenging Probable Cause on the Papers (6 exercises) (30-45 minutes)

- The trainer should distribute the Handout of Forensic Exercise A, provide the relevant local statutory provisions for each offense and, if necessary, rename the charged offense. The trainer should instruct participants that before they start their probable cause arguments, they should make sure they know the **elements** of each charge (or potential charge).
- Using the copy of the Forensic Exercise and the Discussion Points below, the trainer should:
 - Give the entire group time to read all six (6) police reports and jot quick notes on reasons the judge should not find probable cause. The participants should also think about what additional information they would want to know as they prepare to argue against a finding of probable cause.
 - Divide the participants into six (6) small groups. Each group should be assigned to discuss one police report only. Each group should collectively identify all reasons the judge should not find probable cause.
 - **NOTE:** If the audience is too large, increase the number of small groups and assign multiple groups to the same problem.
 - Have one representative from each group make the probable cause argument and then, using the Discussion Points for each exercise, walk carefully through the analysis and critique/add to participants' arguments as necessary.

IV. Evidentiary Probable Cause Hearings (20 minutes)

- The trainer should explain how an evidentiary probable cause hearing offers the defender opportunities to challenge, discover and lock in information in the government's case. The trainer should relay the importance of knowing the elements of each charge and brainstorming, and then give pointers on strategies to effectively plan a cross. The trainer should review common mistakes made by defenders in evidentiary probable cause hearings.

A. Introductory Comments by Trainer

- B. Tips for Effective Cross-Examination at a Probable Cause Hearing
- C. Most Common Errors/Omissions in Evidentiary Probable Cause Hearings

V. Forensic Exercise B: Challenging Probable Cause in an Evidentiary Hearing (30-45 Minutes)

- The trainer should use the tips and errors addressed in Section III of the Training Notes to guide participants through Forensic Exercise B. The trainer should distribute the handout of the exercise to the participants and then should use the exercise materials and Discussion Points herein to conduct the exercise as follows (time permitting):
 - Have the participants read and prepare for cross-examination and arguments against a finding of probable cause.
 - Have the participants cross-examine the police officer (played by a participant or the trainer) with one or more areas of cross-examination. This exercise is optimal with multiple trainers who can divide the participants into smaller groups for cross-examination. If you have one trainer, you can also have the participants conduct a cross tag-team style, with one participant crossing on one area then passing to another participant for the next area of cross.
 - Have participants stand and argue against a finding of probable cause after the cross-examination. The participants should be limited to arguing only those facts they successfully elicited on cross-examination.

VI. Overview: Standards for Detention or Release (5 minutes)

- The trainer should review the applicable standards for release or detention, levels of detention and bail.

VII. The Detention Hearing (30 minutes)

- The trainer should review what information the defender should elicit from the client and the client's parents/guardians to prepare for the hearing and note the importance of determining the positions of the probation officer/prosecutor, gathering and reviewing records, knowing about the use of risk assessment tools and, if necessary, preparing to challenge shackling.
 - A. Preparation for the Detention Hearing
 - B. Additional Preparation Before the Detention Hearing

VIII. Crafting a Detention Argument (25 minutes)

- The trainer should frame the types of issues that may arise when presenting a release argument, such as the client's danger to self/community, flight risk, etc. The trainer should then have participants brainstorm effective defense responses to common prosecution and probation arguments for detention, closing with a review of the dangers that detention poses, including the risk of sexual victimization.
 - A. Common Issues to Address in Formulating a Release Argument
 - B. Defense Responses to Common Prosecutorial Arguments for Detention and Objections to Release
 - C. Impact of Detention on Youth

IX. Miscellaneous Issues at Time of Detention (5 minutes)

- The trainer should discuss the statutory authority for and reasons why psychological evaluations may be ordered, and provide participants with suggestions on how to oppose such orders. The trainer should then explain the general statutory nature of state extradition laws.
 - A. Arguing For or Against Pretrial Psychological Evaluations
 - B. Extradition to Another State and the Interstate Compact

X. Next Steps After Detention Hearing (10 minutes)

- The trainer should discuss options available to the defender if the client is detained, including filing motions to reduce detention and monitoring conditions of confinement. The trainer should then provide tips to ensure that youth understand and comply with conditions of release.
 - A. Next Steps if Client is Detained
 - B. Next Steps if Client is Released

XI. Forensic Exercise C: Five Detention Problems (30-45 minutes)

- There are five Forensic Exercises below related to detention advocacy. The trainer should distribute the Hand-out of Forensic Exercise C. The trainer will then refer to the exercise materials and Discussion Points herein to lead the participants through the detention problems.
- Make sure that each participant has a copy of the relevant detention statute or write it on a whiteboard/flip chart.
- There are three different ways to conduct the Forensic Exercises on detention advocacy:
 - **Method #1:** The trainer divides participants into four groups and gives one of the first four fact patterns to each group. Participants brainstorm together and then prepare to make a detention argument. If the group is too large, one person from each group makes a detention argument.
 - **Method #2:** The trainer distributes the fifth detention problem and divides the participants into three groups – one group will brainstorm and then prepare the cross of the probation officer; the second group will brainstorm and then prepare the direct examination of the father; and the third will brainstorm and then deliver an argument against detention, incorporating the information elicited in the examinations. The trainer can have the participants conduct a tag-team cross, direct and close: assign multiple people to conduct the direct, cross-examination (which will allow participants to see the different approaches and styles) and close.
 - **Method #3:** The trainer can take a hybrid approach with some or all of the five fact patterns.

JTIP Unit IV: Winning the Case Out of Court

Lesson 11, Interactions with Probation Officers, Prosecutors, Judges, and Parents (2 Hours)

Overarching Goal

Juvenile defenders will learn how to interact effectively with key players in a delinquency proceeding to further the client's stated interests and strategic goals in a case.

Objectives

Juvenile defender will:

- Learn to build allies among adversaries and other key players in a delinquency proceeding while maintaining complete loyalty to the youth client;
- Understand the importance of communication with other stakeholders in the juvenile justice system;
- Learn to work effectively with probation officers to ensure the client's desired outcome without violating client confidences;
- Discuss strategies for appearing before difficult judges;
- Learn strategies for working with parents/guardians; and
- Ensure the client understands the defender's relationship with other parties and the purpose of negotiations.

Training Materials:

- Forensic Exercise: Negotiation 101

Supplemental Materials:

ROGER FISHER & WILLIAM L. URY, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN* (Bruce Patton ed., 2d ed. 2011) (The trainer may want to purchase or review this book at the library and/or refer participants to it as a potential resource.)

Trainer's Overview

I. Initial Considerations (10 minutes)

- The trainer should ask participants to brainstorm about the various juvenile court stakeholders with whom they may have to interact in delinquency cases, as well as the potential situations in which defenders may have to use negotiation skills. The trainer may want to write down the participants' responses for everyone to see in order to further stimulate the discussion.

II. Approaching and Preparing for Negotiation (25 minutes)

- The trainer should lead a short lecture on some of the fundamental principles of negotiation, as laid out in the conflict resolution book, *Getting to Yes*. The trainer should lead an interactive discussion by asking participants to share any tips or strategies for successful negotiations they have had with difficult prosecutors, probation officers or other stakeholders.
- The trainer should lead an interactive discussion about the important ethical considerations a juvenile defender must make in the course of interacting with other juvenile court stakeholders. The trainer should remind participants that throughout negotiations with other stakeholders, it is a defender's duty to remain client-centered and consistently pursue the client's interests. The trainer should try to thread this consideration throughout the lesson and/or strongly emphasize it at this point in the lesson.
- The trainer should lead an interactive discussion on negotiation considerations specific to juvenile defenders.
 - A. Fundamental Principles
 - B. Ethical Considerations of Working with Other Stakeholders
 - C. Specific Tips for Juvenile Defenders

III. Tips for Interacting with Parties (25 minutes)

- The trainer should lead a two-part discussion on general tips for interacting with prosecutors and tips for engaging in plea negotiations with prosecutors.
- The trainer should elicit from participants examples of challenges they have faced in dealing with or negotiating with prosecutors.
- The trainer should facilitate a discussion on effective ways of working with probation officers while remaining loyal to the client's expressed interests and maintaining confidences.
- The trainer should elicit from participants examples of challenges they have faced in dealing with probation officers.
- The trainer should lead an interactive discussion on the participants' experiences with judges in their jurisdictions and elicit examples of effective strategies the participants employ in their interactions with judges.

- The trainer should lead an interactive discussion on common interactions and challenges that juvenile defenders have with clients' parents/guardians by providing examples and hypotheticals and by eliciting experiences from the participants themselves.
 - A. General Tips
 - B. Tips for Interacting with Prosecutors
 - C. Tips for Interacting with Probation Officers
 - D. Tips for Interacting with Judges
 - E. Tips for Interacting with Parents/Guardians

IV. Forensic Exercise: Negotiation 101 (1 hour)

- The trainer should distribute Part 1 of the Forensic Exercise to all participants and instruct them to read over the fact patterns/questions and brainstorm independently for five minutes.
- The trainer should then reconvene the participants to have a facilitated conversation addressing each question.
- The trainer should divide the participants into two groups, giving members of one group "Confidential Instructions/Information for Defenders" and the other "Confidential Instructions/Information for Mother." The trainer will give the participants five minutes to read over the materials and prepare for the negotiation.
- Once participants have read through the materials, the trainer should instruct the participants to pair off, with one assuming the role of the client's mother and the other assuming the role of defender.
- The trainer should then reconvene the group to discuss the role-play and ask participants to share lessons learned and challenges confronted.
- The trainer should instruct participants to split into two groups: one group will play the role of prosecutor, the other defender. The trainer will distribute role-specific materials and allow participants five minutes to review. Participants will then pair off to conduct the negotiation.
- After the role-play, the trainer should reconvene the group to discuss lessons learned and challenges confronted.

JTIP Unit V: Case Planning

Lesson 12, Theory of the Case (2 Hours)

Overarching Goal

Juvenile defender will learn to develop a theory of the case that accounts for all of the admissible evidence and relevant law through a persuasive narrative that compels a finding of not guilty.

Objectives

Juvenile defender will:

- Understand the range of possible defense theories in every case;
- Understand the importance of thorough fact investigation in developing a theory of the case;
- Understand the role of the case theory in every phase of the juvenile court case, from pretrial motion to jury selection to trial;
- Understand the need to begin developing a case theory at the initial interview and the need to adjust/refine the case theory as the defender gathers new information through investigation and discovery;
- Understand the law guaranteeing the right to present a defense;
- Understand the law requiring defense notice before presentation of certain defenses; and
- Understand how to use adolescent development in developing the theory of the case.

Training Materials:

- Case Theory Charts (A & B)
- Forensic Exercises: Theory of the Case
 - Forensic Exercise A: Brainstorming a Case Theory
 - Exercise A requires the trainer to find a newspaper article discussing a contemporary high-profile crime in the local area, preferably with an alleged youth perpetrator (or use the Sample Fact Pattern provided).
 - Forensic Exercise B: Choosing a Theory of the Case

Supplemental Materials:

- American Bar Association Model Rule of Professional Conduct Rule 3.3. *Candor to the Tribunal* with Commentary
- Theory and Themes: The Process of Persuasive Litigation
- Practice Tips: Developing a Theory of the Case (from the Public Defender Service for the District of Columbia Criminal Defender Training Program)

Trainer's Overview

I. Definition: What is a Case Theory? (15 minutes)

- The trainer and participants should brainstorm and arrive at a standard definition for “theory of the case.” The trainer should then provide an overview of key components of a good case theory and explain the need to distill the theory into a succinct theme.
 - A. Theory of the Case Definitions
 - B. Components of a Good Theory of the Case
 - C. Theme of the Case

II. Working Backwards: How Do You Develop a Case Theory? And What Do You Do With It? (15 minutes)

- The trainer should provide tips on how to come up with case theories, pointing out that at different points in the case the defender may have different theories, or even sub-theories.
 - A. Developing the Case Theory
 - B. Other Tips for Developing Case Theory
 - C. Handout of All Possible Defenses

III. The Evolution and Incorporation of the Case Theory Throughout the Trial (10 minutes)

- For an audience with new lawyers, the trainer will need to make sure that the audience fully understands how a trial starts and ends. The trainer should then provide an overview of all the ways to use the case theory at different points in a trial.
 - A. Using the Case Theory in a Trial

IV. Forensic Exercise: Theory of the Case

Forensic Exercise A: Brainstorming a Case Theory (20 minutes)

- The trainer should find a newspaper article discussing a contemporary high-profile crime in the local area (preferably with an alleged youth perpetrator) or use the sample fact pattern provided.

- The trainer should distribute copies of the news articles/fact pattern to each participant at the start of the segment and allow a few minutes to read.
- The trainer should have participants come up with as many defense theories (or alternative explanations) for the scenario as possible. The trainer should encourage participants to be as creative as possible – there is no theory that is too outrageous for this exercise.
- The trainer should then facilitate an interactive discussion with participants making a master list of defense theories suggested by the participants on the board.

Forensic Exercise B: Choosing a Theory of the Case (1 hour)

- The trainer should distribute Forensic Exercise B to all participants at the start of the segment and allow a few minutes to read.
- The trainer should ask participants to list all possible defense theories, no matter how far-fetched, being as inclusive as possible.
- The trainer should instruct participants to choose a preferred theory and be ready to justify the choice.
- The trainer should instruct participants to list all of the evidence defenders would want to elicit (either through cross- or direct examination) to support their theory.
- The trainer should then guide an interactive discussion about the possible theories, facts, and evidence supporting those theories, and how to choose among those theories.

JTIP Unit V: Case Planning

Lesson 13, Investigation

(2 Hours and 10 Minutes without Forensic Exercises)

(3.5 Hours with Forensic Exercises)*

Overarching Goal

Juvenile defenders will understand the critical role of investigation in representing an accused youth and develop strategies for effective investigation in every case.

Objectives

Juvenile defender will:

- Understand the importance and constitutional obligation for early and thorough investigation in every case;
- Understand the ethical and statutory constraints associated with investigation;
- Identify key steps in any investigation plan (people, places, things);
- Learn to write an investigative memo for each case;
- Understand the mechanics of interviewing witnesses and taking witness statements;
- Understand the various methods of collecting documents and real evidence;
- Discuss legal and other strategies for obtaining the assistance of an investigator in a juvenile case; and
- Learn strategies for investigating with limited resources.

Training Materials:

- Local or state attorney practice standards and court rules or statutes that relate to defense investigation, witness interviewing, taking and producing witness statements and notes, subpoena power/access to various types of records and the relationship between attorneys and investigators and between investigators and the case. (to be provided by trainer)
- Forensic Exercise A: Developing an Investigation Plan

* See the Note to Trainer in the Trainer's Overview for details on adjusting the timing of this Lesson.

- Forensic Exercise B: Taking Witness Statements (Interviewers and Interviewees)
- Sample Witness Statement (to be distributed after the Forensic Exercise B is completed)

Supplemental Materials:

- Sample Witness Interview Memo (to be distributed after the exercise)
- Sample Investigative Checklists
- Sample *Ex Parte* Motion for Investigator Funds
- Sample Student Confidentiality Agreement
- Sample Cases Where Investigation Was Key: Examples of cases where there was a failure to investigate and examples of powerful investigation stories are provided. The trainer should seek out similar samples from the local jurisdiction.

Trainer's Overview

Note To Trainer



The timing of this lesson includes options with or without the Forensic Exercises. The developers of JTIP strongly believe that these exercises provide participants with valuable practical experience using the concepts in this Lesson. However, they do require time. Trainers are encouraged to examine both Forensic Exercises and decide whether both or either is appropriate for the training and develop the rest of the Lesson around those decisions and the timeframe allotted for the session. There are seven sections to the Training Notes and the trainer may decide to exclude one or more of the later sections, depending on the training priorities and the anticipated needs of the participants.

To make this lesson successful, the trainer should:

Note To Trainer



- Consider conducting it with an experienced juvenile defense investigator;
- Find a local or state appellate case that turned on investigation to use as a sample throughout the lesson; and
- Distribute local statutes, rules and attorney practice standards related to investigation, work product and discovery.

I. The Importance of Thorough and Prompt Defense Investigation (20 minutes)

- The trainer should stress the importance of investigating a case before taking a plea, explain the ethical and constitutional duties to conduct a thorough investigation and provide tips for learning the prosecution's case, preserving evidence and observing the scene of a crime.
 - A. The Importance of Investigation in Relation to Pleas
 - B. Ethical Duties and Standards in Investigation
 - C. Constitutional Obligations
 - D. Learning the Prosecution's Case
 - E. Preserving Evidence
 - F. Observing the Scene of the Crime

II. Creating an Investigative Plan (15 minutes without exercise, 45 minutes with exercise)

- The trainer should discuss the importance of creating an investigative plan before investigating a case. The trainer should stress that the time put into writing an investigative plan pushes counsel to focus on a course of action while also serving as a quick reference for case information. The discussion should include:
 - A. Importance of an Investigative Plan
 - B. Using Case Theory to Guide the Investigation
 - C. Components of the Investigative Plan
 - D. Forensic Exercise A: Developing and Investigative Memo
 - The trainer has the option of conducting the first Forensic Exercise at this time or at the end of the full lesson, depending on the needs and logistics of the training.
 - The trainer should distribute the Handout of the partially completed Lopez Investigative Memo and either:
 - Give participants 7 minutes to review and then conduct a group brainstorming session to develop an investigative plan; or
 - Give participants 7 minutes to review and then spend 15-20 minutes in teams or individually developing an investigative plan.
 - After participants develop the investigative plan, the trainer should lead an interactive discussion using the Discussion Points that follow as a guide.

III. Locating and Interviewing Witnesses (15 minutes)

- The trainer should facilitate a discussion about how to locate witnesses and ensure that participants are aware of all ethical rules and standards that govern investigating and interviewing witnesses in the local jurisdiction. The trainer should also provide tips on interviewing witnesses and ask experienced investigators in the audience to share their most effective strategies for interviewing witnesses and eliciting difficult or sensitive information.
 - A. Locating Witnesses
 - B. Ethical Rules for all Interviewers
 - C. Interviewing Witnesses

IV. Taking Witness Statements (40 minutes without exercise, 90 minutes with exercise)

- The trainer should lead a brief discussion on the strategic considerations involved in deciding whether to take a written witness statement. The trainer should then provide the participants with important tips and guidelines for taking a witness statement, including goals, techniques and strategies for taking statements from reluctant government witnesses, such as police officers and young children.
 - A. Deciding Whether to Take Statements of Witnesses
 - B. Taking Statements
 - C. Techniques for Taking Statements
 - D. When Government Witnesses are Reluctant to Talk
 - E. Common/Special Witnesses
 - F. Forensic Exercise B: Taking Witness Statements
 - The trainer has the option of conducting the first Forensic Exercise at this time or at the end of the full lesson, depending on the needs and logistics of the training.
 - Dividing the group into two groups (A & B), assigning Group A as the witnesses and Group B as the lawyers. Witnesses and lawyers should be given their respective packets (*i.e.* Group A: Confidential Instructions for Witness Sabrina Williams and Group B: Confidential Instructions for Defense Attorney).
 - Give the groups about 5-7 minutes to review their packets before beginning the Forensic Exercise. Lawyers should then pair up with Witnesses and conduct an interview of the witness that should last 40 minutes to 1 hour depending on available time.

V. Gathering Police Reports, Other Documents and Real Evidence (15 minutes)

- The trainer should facilitate a discussion on what other materials, documents and real evidence should be gathered during investigation, addressing the following:
 - A. Documents
 - B. Methods for Gathering Information
 - C. Other Materials and Exhibits to Gather

VI. Selecting and Directing Your Investigator (15 minutes)

- The trainer should facilitate a discussion about how to use, select and train a good investigator to assist the defense team. The discussion should include:
 - A. Utilizing an Investigator
 - B. Qualities of a Good Investigator/Selecting Your Investigator
 - C. Guidelines for Training and Supervising Investigators

VII. Strategies for Investigating with Limited Resources (10 minutes)

- The trainer should generate and offer ideas for recruiting volunteer investigators from local law schools and colleges. The trainer should discuss various low-cost investigative and information-sharing strategies.
 - A. Recruit and Train Investigative Interns from Local Colleges and Universities
 - B. Seek Volunteers from Churches, Advocacy Groups, etc.
 - C. Use the Internet
 - D. Create a Subpoena Bank
 - E. Maintain Files

JTIP Unit V: Case Planning

Lesson 14, Pretrial Discovery Practice (1.5 Hours)

Overarching Goal

Juvenile defender will understand law governing the right to discovery and develop strategies for obtaining all discovery youth is entitled to from the prosecutor.

Objectives

Juvenile defender will:

- Understand local discovery rules and case law;
- Be able to identify documents, photographs, records and other information to which youth and defense counsel are entitled in a juvenile case;
- Identify effective legal and other strategies for obtaining complete discovery;
- Appreciate the importance of documenting all discovery requests and responses;
- Understand the government's ongoing obligations during trial;
- Learn to seek sanctions for the government's failure to comply with discovery obligations; and
- Understand defense counsel's discovery obligations.

Training Materials:

- Local discovery statutes, rules, and case law (trainer to provide)
- Statutes and local rules that govern subpoena power and access to various types of records (trainer to provide) (optional)
- Summaries of Key Constitutional Cases
- Forensic Exercise: Pretrial Discovery Practice
- Log of Documents Requested and Received (to be distributed at the end of the training)

Supplemental Materials:

- Sample Discovery Letter
- Sample Motion for Pretrial Discovery
- Sample Motion to Compel Discovery
- Sample Motion for Discovery Sanctions

Trainer's Overview

Note To Trainer



This training is especially effective when taught in conjunction with Lesson 13 – Investigation. If that session will not be taught, the trainer should be aware of the level of experience and aptitude of the participants and be prepared to supplement some of the material that follows with information regarding investigation. Trainers should be aware that this may add time to the lesson.

I. The Basics of Discovery (20 minutes)

- The trainer should lead the participants through an interactive discussion about discovery, making sure they know what discovery is, who is obligated to provide discovery and why they need it.
 - A. Discovery Defined
- The trainer should distribute local statutes and court rules governing discovery and make sure the participants understand the constitutional, statutory and rule-based obligations the prosecutor has to produce discovery.
 - B. Law of Discovery: Local Statutes and Rules
- Using the Summaries of Key Constitutional Cases handout as a guide, the trainer should review seminal cases related to discovery.
 - C. Law of Discovery: Constitutional Principles

II. Obtaining Discovery from the Government (20 minutes)

- The trainer should make sure the participants understand the practice and procedures associated with obtaining initial discovery from the government in the local jurisdiction and for seeking to compel or obtain sanctions for failure to comply with discovery requests. The discussion should include the following:
 - A. Making the Request
 - B. Responding to Prosecutorial Barriers to Discovery
 - C. Judicial Intervention in the Discovery Process

D. Possible Policy Arguments for Broader Discovery

E. Sanctions and Remedies

III. Obtaining Material from Third Parties using the Formal Court Process (5-10 minutes) (optional)

- The trainer will review the types of documents and materials defenders should seek through subpoenas. The discussion should address:
 - A. Issuing Agency Subpoenas
 - B. Subpoena *Duces Tecum*
 - C. Examples of Third-Party Subpoenas

IV. Discovery Requests by Prosecutors (20 minutes)

- The trainer should lead the participants through a discussion of the reciprocal discovery obligations of the juvenile defender to the prosecutor. The discussion should include the following:
 - A. The Reciprocal Discovery Obligation of the Defender
 - B. Fifth Amendment Limitations on Prosecutorial Discovery
 - C. Defense's Obligation to Respond to Proper Requests

V. Forensic Exercise: Pretrial Discovery Practice (30 minutes)

- The trainer should allow the participants time to read the Forensic Exercise and brainstorm by themselves about what discovery they would request. The trainer should then elicit ideas collectively from the participants, writing them on a whiteboard. The participants should also be asked to indicate what steps they would take if the police failed to preserve some of the evidence. The trainer should hand out the Sample Log of Documents Requested and Received as reference materials that the participants can take home.

JTIP Unit VI: Pretrial Decisions

Lesson 15, Competence¹ to Stand Trial (2.5 to 3 Hours)

Overarching Goal

Juvenile defender will understand the law and practice of challenging a youth's competence to stand trial.

Objectives

Juvenile defender will:

- Review *Dusky v. United States*, 362 U.S. 402 (1960), and any state standards regarding competence to stand trial;
- Learn to gather documents to aid the evaluator and court in assessing the youth's competence to stand trial;
- Understand how to identify, hire, and prepare an expert for a competence hearing;
- Learn how to challenge a government expert in a competence hearing;
- Discuss case law and explore challenges to competence remediation;
- Consider how to maintain a normal client relationship when a client is found competent by the court, but is not competent; and
- Explore ethical obligations that arise when representing youth who are found incompetent, particularly for minor offenses.

Training Materials:

- Local statutes, rules, and cases that govern competence/fitness (trainer to provide)
- Local statutes, rules, and cases that govern confidentiality and/or admissibility of information obtained during a competence evaluation (trainer to provide)

¹ The word competence in this context can be used interchangeably with fitness.

- Forensic Exercise: Competence to Stand Trial
 - Part I: Whether to Seek a Competence Evaluation
 - Part II: The Competence Hearing
- Bibliography

Supplemental Materials:

- Sample *Ex Parte* Motion for Appointment of Psychological Expert

Trainer's Overview

I. Law of Competence to Stand Trial (30-60 minutes)

- The trainer should discuss the meaning, standard, and necessity for competence determinations, highlighting local statutes and rules that govern fitness/competence. The trainer should then address factors that should prompt the juvenile defender to consider whether or not a competence evaluation is necessary and explain the difference between being competent to stand trial vs. competent to waive rights. The trainer should close with a discussion of the burden and standard for determining competence in juvenile proceedings.
 - A. Standard for Determining Competence to Stand Trial
 - B. Reasons for Requiring Competence
 - C. State Statutes and Court Rules
 - D. Factors Considered in the Evaluation of Competence
 - E. Competence to Stand Trial vs. Competence to Waive Rights
 - F. Determination of Competence in Juvenile Proceedings

II. Decision to Challenge Competence (20 minutes)

- Through discussion, the trainer should assist participants in identifying the potential disadvantages to challenging competence as well as evaluating when and how to challenge competence when such a challenge is warranted.
 - A. Issues to Consider Before Raising Juvenile Incompetence in Delinquency Matters
 - B. Civil Commitment
 - C. Best Cases in Which to Challenge Competence
 - D. Seeking Outside Direction on How to Address Competence Concerns

III. Procedure for Raising a Claim of Incompetence (30 minutes)

- The trainer should guide participants through the necessary procedures for raising the question of a client's competence to the courts and retaining and working with an expert.
 - A. Timing
 - B. Raising the Issue in Court
 - C. Retaining an Expert
 - D. Gathering Information to Assist an Expert
 - E. Considerations for the Mental Health Examiner
 - F. Filing Claim of Incompetence with the Court
 - G. Screening Examination
 - H. Full Competence Examination
 - I. Evidentiary Hearing and Challenging Finding of Competence

IV. Preparing the Defense Expert (10 minutes)

- The trainer should facilitate a discussion on the advantages and disadvantages of having an expert prepare a written report. In addition, the trainer should guide participants through steps for preparing a defense expert for cross-examination.
 - A. Deciding Whether to Have a Written Expert Report
 - B. Preparing the Defense Expert for Cross-Examination

V. Competence Remediation (20 minutes)

- The trainer should discuss the potential options for remediation of youth depending on the reasons they were found incompetent (*i.e.* mental illness, intellectual disability, and/or immaturity). The trainer should guide participants through steps to challenge competence remediation if necessary.
 - A. Competence Remediation Treatment
 - B. Competence Remediation of Youth
 - C. Challenging Competence Remediation

VI. Forensic Exercise: Competence to Stand Trial (40 minutes)

- This Forensic Exercise has 2 parts. Part I: Whether to Seek a Competence Evaluation, engages participants in an analysis of the pros and cons of pursuing competence. Part II: The Competence Hearing, prompts a discussion about how to counter a government witness, how to prepare for a competence hearing, and how to proceed within the hearing.
- The trainer should distribute the Forensic Exercise and instruct participants that they have 10-15 minutes to read Parts I & II and jot down answers to the questions in each section. The trainer should then use the Discussion Points to help facilitate an interactive discussion with participants.

JTIP Unit VI: Pretrial Decisions

Lesson 16, Guilty Pleas (2 Hours)

Overarching Goal

Juvenile defender will understand the law relating to guilty pleas, learn how and when to advise youth in deciding whether to enter a plea and ensure that the youth makes only knowing, voluntary, and intelligent waiver of the right to trial.

Objectives

Juvenile defender will:

- Understand the obligation to provide effective assistance of counsel during the plea negotiation stage;
- Understand that the decision to accept or decline a plea offer is ultimately the decision of the client;
- Understand significant consequences and disadvantages of guilty pleas, including all long-term collateral consequences;
- Develop skills and strategies to assist youth in weighing the advantages and disadvantages of plea or trial;
- Understand the mechanics of entering a plea and the minimum requirements of a plea colloquy in juvenile court to ensure that a youth's waiver of the right to trial is knowing, voluntary, and intelligent;
- Be able to prepare client for the colloquy at the plea hearing;
- Understand the law regarding withdrawal of a guilty plea;
- Understand ethical duty to ensure client's expressed interests are adhered to in plea offers; and
- Be able to fully advise and counsel client regarding a plea offer to ensure the decision is knowing and voluntary.

Training Materials:

- Forensic Exercise

Supplemental Materials:

- *Missouri v. Frye*, 132 S.Ct. 1399 (2012)
- *Lafler v. Cooper*, 132 S.Ct. 1376 (2012)
- *State of Washington v. A.N.J.*, 225 P.3d 956 (2010)

Trainer's Overview

I. Guilty Pleas: The Law (10 minutes)

- The trainer should review the law of guilty pleas and ensure that participants understand their constitutional obligation to provide effective assistance of counsel at the plea negotiation stage. The trainer should also ensure that participants know the necessary elements of a plea colloquy and the rights a client waives when entering a plea. The training will include:
 - A. Right to Effective Assistance of Counsel
 - B. Knowing, Voluntary, and Intelligent Waivers
 - C. *Alford* Pleas

II. The Decision: Plea or Trial? (20 minutes)

- The trainer should review the advantages and disadvantages of guilty pleas and walk participants through counseling a client using the Cost-Benefit Analysis.
 - A. Advantages of a Plea in Juvenile Cases
 - B. Disadvantages and Consequences of a Plea
 - C. Framework for the Plea Decision – the Cost-Benefit Analysis

III. Negotiating the Plea (10 minutes)

- The trainer should review the process of plea negotiation and ensure participants know the bargaining factors most important to a juvenile plea negotiation. The discussion will include:
 - A. Timing of Plea Negotiations
 - B. Discovery
 - C. Points of Negotiation
 - D. Memorializing the Plea Agreement

IV. Plea Counseling with the Youth Client (10 minutes)

- The trainer should underscore the importance of the lawyer as counselor and advisor in the plea discussion and ensure that participants understand that it must be the client's decision whether or not to accept a plea.
 - A. Advising the Client
 - B. Advice and Persuasion vs. Manipulation
 - C. Ethics: Pleading Guilty While Maintaining Innocence
 - D. Parents and the Plea Decision

V. Plea Colloquy: Preparing the Client for the Plea Hearing and the Colloquy (10 minutes)

- The trainer should engage participants in a discussion about how to prepare a client for a plea.
 - A. The Colloquy
 - B. Preparing the Client for the Colloquy
 - C. The Plea Hearing
 - D. When a Guilty Plea 'Breaks Down' and the Judge Rejects the Plea

VI. Withdrawing or Vacating a Guilty Plea (5 minutes)

- The trainer should ensure that participants understand the legal grounds for vacating or withdrawing a plea.
 - A. Withdrawing a Valid Plea
 - B. Vacating an Invalid Plea

VII. Appellate Rights After a Guilty Plea (5 minutes)

- The trainer will ensure that participants understand youths' appellate rights after entering a plea.

VIII. Forensic Exercise: Guilty Pleas (50 minutes)

- There are three parts to the Forensic Exercise. The trainer should distribute the Handout with the fact pattern and the instructions to the first exercise and give the participants time to read the case materials and begin to think about how they will proceed. The trainer will then use the instructions in each part to facilitate the activities. For each part, the trainer should also use the Discussion Points to guide the debriefing of each exercise.
- **Part 1: Negotiating the Plea.** The trainer should divide the participants in half, with half playing the role of defender and the other half playing the role of prosecutor. In this part the defenders will meet with the prosecutors and attempt to negotiate the desired plea.
- **Part 2: Evaluating the Offer from the Government.** The participants should then spend time alone evaluating the offer provided in the case materials and think about how to explain it to the client and the parent. The participants will then role-play a counseling session with the client, helping him or her decide whether or not to take the plea. The trainer will then reconvene the participants, asking those who played the role of client to describe some of the counseling techniques the defender used particularly well.
- **Part 3: Preparing Your Client for the Plea.** After the counseling session, in Part 2, the defenders should moot the clients for the plea colloquy with the judge.

JTIP Unit VII: Transfer to Adult Court

Lesson 17, Challenging Transfer to Adult Court

(2 Hours)

Overarching Goal

Juvenile defender will learn to effectively challenge transfer¹ to adult court, consistent with the client's stated interest.

Objectives

Juvenile defender will:

- Understand the relevant local law and procedures for transferring youth to adult court jurisdiction;
- Be able to identify experts to assist in challenging transfer;
- Learn to challenge and cross-examine government witnesses at a transfer hearing;
- Discuss strategies for preparing for a transfer hearing;
- Learn how to present affirmative evidence at a transfer hearing;
- Learn how to negotiate with prosecutors to avoid transfer;
- Learn how to preserve the record for appeal in a transfer hearing; and
- Learn how to incorporate adolescent development research into a transfer hearing.

Training Materials:

- State transfer statute (trainer to provide)
- Any relevant local case law, statutes or rules relating to Extended Jurisdiction Juvenile ("EJJ") or Blended Sentence mechanisms (trainer to provide)
- Forensic Exercise (Part 1: Preparing for the Transfer Hearing, and Part 2: Cross of a Government Witness at the Transfer Hearing)

¹ The words "transfer" (as in transfer of jurisdiction to adult court) and "waiver" (as in waiver of juvenile court jurisdiction) are used interchangeably. The trainer should use the term that applies in the local jurisdiction.

Trainer's Overview

I. Introduction (10 minutes)

- The trainer should distribute copies of the local transfer statute and have participants identify the statutory criteria for transfer in their state. The trainer should also give a brief overview of the types of waiver (*e.g.*, Automatic Waiver, Reverse Waiver, etc.).
 - A. Authority to Transfer

II. Strategies for Challenging Transfer or Waiver (15 minutes)

- The trainer should review the paramount role of the prosecutor and address why it may be helpful for the defender to meet with the prosecutor. The trainer should use an interactive discussion format to guide participants through the procedural protections a client is entitled to when a transfer hearing is requested.
 - A. Negotiate with the Prosecutor
 - B. Demand a Transfer Hearing and Other Procedural Protections

III. Preparing for a Transfer Hearing (15 minutes)

- The purpose of this section is to help participants learn how to investigate a client's social and delinquency history in preparation for the transfer hearing. The trainer should review the factors defenders should review when determining whether or not to oppose transfer.
 - A. Investigating the Client's History and Charged Offense
 - B. Decision to Oppose Transfer

IV. The Transfer Hearing (20 minutes)

- Through interactive discussion, the trainer should review the basics of a transfer hearing in the relevant jurisdiction, including the structure, burden and standard of proof and evidentiary rules. The trainer should review the benefits and drawbacks to contesting certain issues. The trainer should explain the pros/cons of presenting evidence that the client would benefit from treatment and review the role of experts in this area. The trainer should explain that youth must be given reasons for a decision to transfer.
 - A. The Basics
 - B. Deciding What Issues to Contest
 - C. Putting on Affirmative Evidence
 - D. Statement of Reasons

V. Developmental Considerations in Transfer (10 minutes)

- The trainer should review how developmental research and information gained from a client's individual forensic evaluation can address the specific factors (*e.g.*, seriousness of the offense) the court considers in determining if youth should be transferred
 - A. Implications of Adolescent Development on Transfer Policies
 - B. Implications of Adolescent Development on Transfer Hearings

VI. Appealability of Transfer (5 minutes)

- The trainer should briefly review statutory requirements regarding timing for appeal of transfer decision.

VII. Forensic Exercise (45 minutes)

- This Exercise is conducted in two parts: Part 1: Preparing for the Transfer Hearing centers on an interactive discussion of the fact pattern provided, while Part 2: Cross of a Government Witness at the Transfer Hearing has the participants prepare and conduct a cross-examination for a transfer hearing. (Part 1 may be incorporated into Section III of the lesson to break up the session.)
- The trainer should distribute the Handout for Part 1: Preparing for the Transfer Hearing *only* to the participants and give them 5 minutes to review the probation report. The trainer should then facilitate a 15-minute discussion about ways to prepare for the transfer hearing using the Discussion Points that follow as a guide.
- At the conclusion of the discussion, the trainer should hand out Part 2: Cross of a Government Witness at the Transfer Hearing. The trainer should give the participants 10 minutes to prepare a cross-examination of the teacher. In the remaining 15 minutes, the trainer should have the participants conduct part of the cross-examination.
- Time permitting, the trainer may ask the participants to stand up and deliver a portion of their argument based on the examination of the teacher.

JTIP Unit VIII: Motions Practice

Lesson 18, Principles of Motions Practice (1.5 Hours)

Overarching Goal

Juvenile defender will understand the ethical obligation to file motions to protect the youth's legal rights and preserve the appellate record, and will identify a full range of motions that may be filed at all stages of the delinquency process to advance the strategic goals of the case.

Objectives

Juvenile defender will:

- Understand the role of motions in protecting youth's constitutional rights, obtaining information about the case and preserving the youth's appellate record;
- Identify motions that may be filed at all stages of the juvenile justice process;
- Evaluate strategic considerations in deciding whether to raise an issue in a pre-trial motion or a contemporaneous objection; and
- Learn when and how to seek an evidentiary hearing on a motion.

Training Materials:

- Local statutes, rules or case law governing the filing of motions (*e.g.*, timing, content, etc.) (trainer to provide)
- Local case law on common issues related to filing motions (*e.g.*, suppression, discovery, release from detention, experts, etc.) (trainer to provide)
- Forensic Exercise: Identifying Motions and Making Strategic Decisions

Supplemental Materials:

- Sample Motions
- What Motions Can I File? A Non-Exhaustive Checklist

Trainer's Overview

I. Motions 101 (20 minutes)

- The trainer should engage participants in an interactive discussion about the benefits of an active motions practice and should help participants develop a comprehensive list of motions that may be filed in a delinquency case.
 - A. Benefits of Active Motions Practice
 - B. Motions that Counsel Should Consider

II. Strategic Considerations in Filing Motions (15 minutes)

- The trainer should help the participants identify all of the strategic decisions that must be made in an active motions practice. The discussion should provide participants with a framework for making the following decisions:
 - A. Pre-trial Motion v. Contemporaneous Objection at Trial
 - B. Form of the Motion
 - C. Evidentiary Hearing v. Affidavits Alone

III. Preserving the Record for Appeal (10 minutes)

- The trainer should talk about the importance of preserving the record for appeal and discuss ways to do so.
 - A. Actions Defenders Should Take

IV. Forensic Exercise: Identifying Motions and Making Strategic Decisions (45 minutes)

- The trainer should divide participants into small groups and instruct them to review the case file provided in the Forensic Exercise. The trainer should then instruct each group to brainstorm all possible motions that could be filed based on the facts provided in the case file. The trainer should instruct participants to be prepared to answer the following questions:
 1. *What are the potential legal issues/motions to be litigated in this case?*
 2. *When should they be raised and why?*
 3. *Which should be in writing or oral?*
 4. *Should you request an evidentiary hearing?*
- The trainer should reconvene the group to discuss the various strategic decisions that may be made in the Forensic Exercise using the Discussion Points provided.

JTIP Unit VIII: Motions Practice

Lesson 19, Fourth Amendment Challenges

(2-4 Hours)¹

Overarching Goal

Juvenile defender will advance the strategic and client-centered goals of the case by examining and arguing all potential Fourth Amendment challenges.

Objectives

Juvenile defender will:

- Review statutory and constitutional law on search and seizure;
- Understand challenges to the full range of interactions with the police;
- Discuss special limitations and challenges to search and seizures in automobiles;
- Learn parameters of Fourth Amendment protections in the school context; and
- Consider the ways adolescent development affects Fourth Amendment challenges.

Training Materials:

- Fourth Amendment Analysis Cheat Sheet
- Forensic Exercises
- Annotated Bibliography

Special Note On Conducting The Fourth Amendment Lesson

This training is designed to address four large domains in which youth often have police interaction: on the street, in homes, in cars and at school. Because much of the foundational law for understanding the Fourth Amendment comes from on-the-street interactions or searches involving the home, the primary lesson uses these two domains as the basis for teaching the Fourth Amendment and then supplements the lesson with special considerations regarding

¹ The time it will take to teach this lesson will depend on which of the three alternative lessons in this module the trainer wishes to use and the number of Forensic Exercises the trainer wishes to employ. Better timing guides have been provided throughout the lessons to help trainers get a more specific sense of timing.

automobiles or school settings. If, however, your training needs to focus more specifically on automobile-related or school-setting Fourth Amendment law, we have alternative lessons that are designed to focus specifically on those areas of Fourth Amendment law, and which incorporate those themes throughout the lesson (not as a supplement). Therefore, this lesson is actually three separate lessons, and the trainer should identify which lesson he or she will follow. Specifically, the three lessons are:

- **Alternative #1: The Full Fourth Amendment Lesson (starting on page 3)** The full original Fourth Amendment lesson, focusing primarily on street encounters and home issues, but including sections on “specialized concerns” for automobile and school scenarios.
- **Alternative #2: The Automobile-Specific Fourth Amendment Lesson (starting on page 56)** An automobile-specific lesson that uses the on-the-street scenarios to teach the basic law, with automobile-specific information integrated throughout the lesson.
- **Alternative #3: The School Specific-Fourth Amendment Lesson (starting on page 89)** A school-specific lesson that uses on-the-street scenarios to teach the basic law, with school-specific law integrated throughout the lesson.

Alternative #1: The Full Fourth Amendment Lesson (3–4 Hours)

Trainer’s Overview

I. The Law (10 minutes)

- The trainer should facilitate a discussion with participants on the Fourth Amendment and the basic challenges that can be brought based on the type of contact with law enforcement, *i.e.*, street encounters, dwellings, automobiles and schools.
 - A. What Does the Fourth Amendment Actually Say?
 - B. How Do We Use the Fourth Amendment to Our Client’s Advantage in Juvenile Delinquency Cases?

II. Steps in Fourth Amendment Analysis: Tangible Evidence (70 minutes)

- The trainer will briefly introduce a six-step analysis that can be used with any Fourth Amendment consideration.
 1. What are you trying to suppress?
 2. Does your client have standing to challenge the intrusion or seizure?
 3. What level of intrusion or seizure was there? When did it occur?
 4. Was the seizure justified? (Will depend on the level of seizure)
 5. Was the scope of the search justified?
 6. Which fruits are the result of the illegality (or the unlawful seizure)?

- The trainer will then walk through each of the six steps in detail, highlighting constitutional and local law supporting each analysis.

III. Specialized Fourth Amendment Protections (30 minutes)

- A. Automobiles
- B. School Context

IV. Adolescent Development and the Fourth Amendment (10 minutes)

V. Forensic Exercises (1-2 hours)

- This lesson provides two **alternative** Forensic Exercise options. The trainer should choose *either* Option A *or* Option B. Each Option is designed to run two hours, though either is adaptable for a shorter timeframe.
- **Option A** focuses on developing a suppression theory and arguing that theory to a judge. This option gets to the essence of understanding the issues of suppression and having defenders think on their feet.
- **Option B** focuses on developing a suppression theory and conducting a cross-examination that elicits the facts the defender needs to support the theory. This option is ideal if trainers want to couple the Fourth Amendment session with trial skills development.

Alternative #2: The Automobile-Specific Fourth Amendment Lesson (2-2.5 Hours)

Trainer's Overview

I. The Law (10 minutes)

- The trainer should facilitate a discussion with participants on the Fourth Amendment and the basic challenges that can be brought based on the type of contact with law enforcement generally, with a focus on street encounters and automobiles.
 - A. What Does the Fourth Amendment Actually Say?
 - B. How Do We Use the Fourth Amendment in Juvenile Delinquency Cases?
 - C. Car-Specific Fourth Amendment Considerations

II. Steps in Fourth Amendment Analysis (70 minutes)

- The trainer will briefly introduce a six-step analysis that can be used with any Fourth Amendment consideration.
 1. What are you trying to suppress?
 2. Does your client have standing to challenge the intrusion or seizure?

3. What level of intrusion or seizure was there? When did it occur?
 4. Was the seizure justified? (Will depend on the level of seizure)
 5. Was the scope of the search justified?
 6. Which fruits are the result of the illegality (or the unlawful seizure)?
- The trainer will then walk through each of the six steps in great detail, highlighting constitutional and local law that supports each analysis.

III. Adolescent Development and the Fourth Amendment (10 minutes)

IV. Forensic Exercises (1 hour for both scenarios or 30 minutes for a single scenario)

- For **Exercise A**, the trainer should divide the participants into smaller groups corresponding to the number of trainers available to monitor each group. Within each group, assign half of the participants to play the role of the defender and half to play the role of the prosecutor. Each half will be asked to review a short fact pattern and then work together to craft a theory and argument in support (defenders) or against (prosecutors) suppression. Depending on the number of participants in each group, the trainer may have them work together and either (a) assign one person to make the argument or (b) present the argument in tag-team fashion (each person taking a different issue). Alternatively, if there is sufficient time, the trainer may ask each participant to prepare an argument and have participants deliver them one after another.
 - Each group should have **10 minutes to review** their respective fact pattern to brainstorm and consider the four questions associated with each. The trainer should then have participants deliver arguments in support of or against suppression. The trainer should allot **10 minutes for the arguments for each problem**. After the arguments, the trainer should ask participant what information not in the fact pattern would have been helpful in this analysis.
 - Finally, the trainer will have 10 minutes to debrief with participants and provide constructive feedback on their performance both substantively and technically. Please refer to the JTIP User's Guide for tips on providing effective feedback.
- For **Exercise B**, the instructions are the same. If the trainer plans to do both exercises, however, the two groups should swap roles so that everyone gets the chance to be the defender and the prosecutor.

Alternative #3: The School-Specific Fourth Amendment Lesson (2-2.5 Hours)

Trainer's Overview

I. The Law (10 minutes)

- The trainer should facilitate a discussion with participants on the Fourth Amendment and the basic challenges that can be brought based on the type of contact with law enforcement, *i.e.*, street encounters, dwellings, automobiles and schools.
 - A. What Does the Fourth Amendment Actually Say?
 - B. How Do We Use the Fourth Amendment to Our Client's Advantage in Juvenile Delinquency Cases?
 - C. School-Specific Fourth Amendment Considerations

II. Steps in Fourth Amendment Analysis: Tangible Evidence (70 minutes)

- The trainer will briefly introduce a six-step analysis that can be used with any Fourth Amendment consideration.
 1. What Are You Trying to Suppress?
 2. Does Your Client Have Standing?
 3. What Level of Seizure Was There? When Did It Occur?
 4. Was the Seizure Justified?
 5. Was the Scope of the Search Justified?
 6. Which Fruits Are the Result of the Illegality?
- The trainer will then walk through each of the six steps in detail, highlighting constitutional and local law supporting each analysis.

III. Adolescent Development and the Fourth Amendment (10 minutes)

IV. Forensic Exercises (1 hour for both scenarios or 30 minutes for a single scenario)

- For **Exercise A**, the trainer should divide the participants into smaller groups corresponding to the number of trainers available to monitor each group. Within each group, assign half of the participants to play the role of the defender and half to play the role of the prosecutor. Each half will be asked to review a short fact pattern and then work together to craft a theory and argument in support (defenders) or against (prosecutors) suppression. Depending on the number of participants in each group, the trainer may have them work together and either (a) assign one person to make the argument or (b) present the argument in tag-team fashion (each person taking a different issue). Alternatively, if there is sufficient time, the trainer may ask each participant to prepare an argument and have participants deliver them one after another.

- Each group should have 10 minutes to review their respective fact pattern to brainstorm and consider the four questions associated with each. The trainer should then have participants deliver arguments in support of or against suppression. The trainer should allot 10 minutes for the arguments for each problem. After the arguments, the trainer should ask participant what information not in the fact pattern would have been helpful in this analysis.
- Finally, the trainer will have 10 minutes to debrief with participants and provide constructive feedback on their performance both substantively and technically. Please refer to the JTIP User's Guide for tips on providing effective feedback.
- For **Exercise B**, the instructions are the same. If the trainer plans to do both exercises, however, the two groups should swap roles so that everyone gets the chance to be the defender and the prosecutor.

JTIP Unit VIII: Motions Practice

Lesson 20, Challenging Juvenile Statements

(3 Hours)

Overarching Goal

Juvenile defender will understand the law and strategy of challenging the admissibility of a youth's statement.

Objectives

Juvenile defender will:

- Understand strategic reasons for seeking to suppress the client's statement, whether inculpatory or exculpatory;
- Identify state and federal Constitutional, statutory, rule-based, and common law grounds for suppressing or excluding statements;
- Consider impact of adolescent development on voluntariness of statement and capacity of child to knowingly, intelligently, and voluntarily waive *Miranda* rights;
- Discuss the research on false confessions and strategies for challenging their admission pre-trial and/or their evidentiary value during trial;
- Understand principles of law associated with interrogation in schools;
- Review evidentiary principles governing suppression hearings;
- Identify goals and practice techniques for cross-examination at hearings to suppress a statement;
- Identify and prepare appropriate witnesses and experts to aid defense case at hearings to suppress statements; and
- Prepare oral arguments for suppression hearings.

Training Materials:

- Relevant Jurisdiction Specific Statutory Law (trainer to provide)
- Forensic Exercises: Challenging Juvenile Statements
 - Part 1: Developing a Suppression Theory

- Part 2: Developing a Cross or Direct Examination
- Part 3: Arguing in Support of a Motion to Suppress
 - Fact Pattern
 - Case File:
 - Jonathan Lopez Voluntary Statement
 - Jonathan Lopez Client Interview
 - Interview with Jonathan Lopez's Special Education Teacher
 - Blank Suppression Theory Chart

Supplemental Materials:

- Key Case Principles for Statement Suppression and Voluntariness
- Summary of the Reid Interrogation Technique
- Sample Motion to Suppress Based on the Jonathan Lopez Case File
- False Confessions Resources:
 - R.A. Nash & K.A. Wade, *Innocent But Proven Guilty: Eliciting Internalized False Confessions Using Doctor-Video Evidence*, 23 APPLIED COGNITIVE PSYCHOL., 624-37 (2009).
 - S. M. Kassin & K. L. Kiechel, *The Social Psychology of False Confessions: Compliance, Internalization, and Confabulation*, 7 PSYCHOL. SCI. 125-28 (1996).
 - S. M. Kassin, et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3-28 (2010).
 - Brief for The Innocence Network as Amicus Curiae Supporting Defendant-Appellant, *Rivera v. Illinois*, 556 U.S. ____, 129 S. Ct. 1446 (2009) (No.07-9995).

Trainer's Overview

I. Introduction (10 minutes)

- The trainer should review what a statement is, how to determine what statements the client made and when to challenge them.
 - A. Statement Defined (Incriminating and Non-Incriminating Statements)
 - B. Discovery

II. Grounds for Suppressing a Statement (60 minutes)

- The trainer should engage participants in an in-depth discussion of grounds upon which to challenge statements. The discussion should include all the topics below and should incorporate local law where necessary.
 - A. All Possible Grounds for Suppression or Exclusion
 - B. *Miranda*
 - C. Involuntariness
 - D. False Confessions

III. Incorporation of Cognitive Limitations/Adolescent Development and Discussion of Possible Defense Witnesses (10 minutes)

- The trainer should discuss ways in which a youth's cognitive limitations and/or adolescent development may affect admissibility and identify potential defense witnesses who may testify for the defense based on these factors.
 - A. Impact on Admissibility of a Youth's Statement
 - B. Potential Defense Witnesses

IV. Forensic Exercise: Challenging Juvenile Statements (1 hour 40 minutes (30 minutes for each exercise plus 10 minutes for wrap up discussion))

- There are three parts to this forensic exercise. The trainer should distribute the Fact Pattern and Case File and inform participants that they will be representing 15-year-old Jonathan Lopez, who is charged with Possession with Intent to Distribute Cocaine. Participants should be instructed to read the materials which serve the basis of the three exercises. Detailed instructions are provided in each part of the exercise, but the following is an overview:

Part 1: Developing a Suppression Theory

- After participants have reviewed the materials they should be given 10 minutes to fill out the Blank Suppression Theory Chart by identifying statements to suppress or exclude, as well as the legal and factual theories on which to do so. The trainer will then engage participants in an interactive discussion by asking them to present their results to the group, and then use the Discussion Points (*i.e.*, completed Suppression Chart) to guide the discussion.

Part 2: Developing a Cross or Direct Examination

- Participants will be asked to prepare and execute a portion of a cross or direct examination in support of a Motion to Suppress Statements.

Part 3: Arguing in Support of the Motion to Suppress

- Participants will be asked to develop and present five minutes of an argument in support of a Motion to Suppress.
- After the three parts of the Forensic Exercise have been completed the trainer should conduct a “wrap up.” The trainer should distribute the Key Case Principles for Statement Suppression and Voluntariness handout (if not already distributed as part of the Forensic Exercises). The trainer should distribute the Sample Motion to Suppress Based on the Jonathan Lopez Case File and discuss the strategic implications – *i.e.*, defense counsel may not want to be as thorough with the arguments in the pre-trial pleading so as not to give the government a preview of the defense case. However, defense counsel will want to provide enough information to educate the judge.

JTIP Unit VIII: Motions Practice

Lesson 21, Challenging Identification Testimony

(2 to 2.5 Hours)

Overarching Goal

Juvenile defender will understand the law and strategy for challenging admission of in-court and out-of-court identification testimony.

Objectives

Juvenile defender will:

- Understand state and federal constitutional, statutory, and common law grounds for suppressing or excluding identification testimony;
- Develop strategy for challenging identification testimony;
- Be able to recognize and challenge various identification procedures, including show-up identifications, line-ups and photo arrays;
- Become familiar with social science related to identifications;
- Become familiar with police procedures related to identifications; and
- Be able to present expert testimony related to eyewitness identifications.

Training Materials:

- State/local statutes, rules, cases, and/or guidelines governing:
 - 1) Motions to suppress identifications (trainer to provide);
 - 2) Admission of eyewitness expert testimony (trainer to provide); and
 - 3) Identification procedures (trainer to provide)
- Forensic Exercise: Challenging Identification Testimony
 - Part 1: Bases for Suppression of Identification

- Part 2: Courtroom Exercises – Challenging Identifications
- Case File:
 - Police Report
 - Line-up Report
 - Investigative Memo
 - Statement of Mrs. Victor Gonzalez
 - Sunnydale Police Special Order
 - Sunnydale Line-up/Photo-Spread Advisory Form
 - Eyewitness Expert Report
- Bases for Suppression Arguments (Optional Handout to use at Conclusion of Forensic Exercise)
- Bibliography

Supplemental Materials:

- *State v. Henderson*, 27 A.3d 872 (N.J. 2011)
- *Perry v. New Hampshire*, 565 U.S. ____, 132 S.Ct. 716 (2012)
- U.S. DEP'T OF JUSTICE & NAT'L INST. OF JUSTICE, EYEWITNESS EVIDENCE: A GUIDE FOR LAW ENFORCEMENT (1999)
- GARY L. WELLS, NANCY K. STEBLAY & JENNIFER E. DYSART, A TEST OF THE SIMULTANEOUS VS. SEQUENTIAL LINEUP METHODS: AN INITIAL REPORT OF THE AJS NATIONAL EYEWITNESS IDENTIFICATION FIELD STUDIES (2011)
- State Cases Modifying, Providing Alternatives to or Rejecting the *Manson v. Brathwaite/Biggers* Factors
- Jurisdictional Case Law Summaries Re: Willingness to Allow Expert Testimony on the Reliability of Eyewitness Identifications
- Sample Memorandum in Support of Motion to Suppress Identification

Trainer's Overview

The trainer should consider conducting this lesson with an expert on eyewitness identifications. As this is a complex area of law that is constantly evolving, it is important that the trainer check for new federal and state decisions that may impact the local jurisdiction.

I. Introductory Discussion (10 minutes)

- The trainer should facilitate a discussion on the importance of challenging identification testimony, the different kinds of identification procedures and the constitutional and other doctrines that apply to the use of identification testimony at trial.
 - A. Identification Procedures
 - B. Doctrines for Suppressing and Excluding Identification

II. Due Process Grounds for Suppressing an Identification (20 minutes)

- The trainer should describe the inquiry used to determine due process violations, discuss practices/conduct that may create a suggestive identification, review reliability factors for identifications and describe in-court identification procedures.
 - A. The Due Process Standard: Undue Suggestivity and Reliability
 - B. Suggestivity of Specific Identification Procedures
 - C. Reliability Factors
 - D. In-Court Identification with "Independent Source"
 - E. Examining *Perry v. New Hampshire*

III. Challenging Eyewitness Testimony at Trial (15 minutes)

- The trainer should provide examples of common areas of cross for eyewitnesses and their identification testimony, review the types of investigation to conduct in order to identify suggestive identification practices and provide general tips on how to conduct an effective cross-examination. The trainer should also explain why he or she might want his or her client excused from the courtroom.
 - A. Cross-Examination of the Eyewitness
 - B. Cross-Examination of Law Enforcement
 - C. General Tips for Cross-Examination
 - D. Excusing Client from ID Suppression Hearing

IV. Raising Fallibility of Eyewitness Identification: Expert Testimony (15 minutes)

- The trainer should explain the benefits of eyewitness identification experts and provide examples of the types of issues they can challenge. The trainer should then offer an overview of the scientific research related to identifications and highlight recent developments in the law.
 - A. Eyewitness Identification Experts
 - B. Standard for Admission of Expert Testimony
 - C. Science

V. Forensic Exercises: Challenging Identification Testimony (1-1.5 hours)

- This exercise consists of two parts: Part 1: Bases for Suppression of Identification, and Part 2: Courtroom Exercises – Challenging Identifications. Depending on time and participants the trainer may decide to use only Part 1 or Part 2. This exercise may be done in either the large group or in small groups headed by facilitators. The materials required for each part of the exercise are as follows:

Part 1: Bases for Suppression of Identification

- The trainer should instruct the participants that they will have 10-15 minutes to review the case materials and jot down possible theories/arguments for suppression or exclusion of the identification. The trainer should then facilitate a discussion about the legal bases for the suppression or exclusion of the identification testimony. Participants should also identify what witnesses they would call in support of a Motion to Suppress.
- The materials required for each part of the exercise are as follows:
 - Police Report
 - Line-up Report
 - Investigative Memo
 - Statement of Mrs. Victor Gonzalez
 - Sunnydale Police Special Order
 - Sunnydale Line-up/Photo-Spread Advisory Form

Part 2: Courtroom Exercises – Challenging Identifications

- The trainer should decide whether to have participants prepare for a suppression hearing or prepare to challenge the eyewitness testimony at trial.
- In either scenario, the trainer should divide the participants and give them 10-15 minutes to develop one or more of the following, based on the materials: a direct or cross-examinations, an opening statement, a motions argument, or a closing argument.
- The materials required for each part of the exercise are as follows:
 - All materials from Case File in Part I above
 - Eyewitness Expert Report

JTIP Unit IX: Trial Skills

Lesson 22, Opening Statement (2.5 Hours)

Overarching Goal

Juvenile defender will understand the strategy and technique for developing and delivering a compelling and effective opening statement.

Objectives

Juvenile defender will:

- Understand the impact of an opening statement on the fact-finder;
- Identify and apply the law on opening statements;
- Incorporate narratives, themes and storytelling to develop a compelling opening; and
- Practice strategies and techniques for delivering a compelling opening statement.

Training Materials:

- Handout for Forensic Exercise: Preparing an Opening Statement

Trainer's Overview

Note To Trainer



Before beginning this training, it is critical that participants have a firm understanding of the definition and purpose of a defense theory and have practiced developing a defense theory. *See Theory of the Case, Lesson 12.* The timeframes that follow presume that participants have already learned about defense theory and will not need a lengthy summary on that topic.

I. Goals of an Opening Statement (5 minutes)

- The trainer should help participants understand the important role an opening statement plays in a trial by engaging them in an interactive discussion about the goals of the opening.

II. Preparing an Opening Statement (20 minutes)

- The trainer should provide the participants with tips and guidelines for preparing a compelling and effective opening statement. The tips will include guidance regarding:
 - A. Language
 - B. Organization and Structure
 - C. Selecting Facts to Include in the Opening

III. Delivering an Opening Statement (5 minutes)

- The trainer should provide the participants with tips for a passionate and engaging delivery of the opening statement. The following topics will be covered:
 - A. Preparation
 - B. Tone
 - C. Body Language
 - D. Time

IV. Forensic Exercises: Opening Statement Preparation and Practice (2 hours)

- There are two Forensic Exercises in this lesson:
 - A. Preparing an Opening Statement
 - The trainer should pass out the Handout for the Forensic Exercise and allow 15 minutes for participants to read the fact pattern and witness statement and begin to think about the corresponding questions.
 - The trainer should then facilitate a group discussion of the questions posed in the Exercise handout, using the Discussion Points provided, to encourage the participants to consider the facts, law, and emotions needed to develop a defense theory that will guide the creation of their opening statement.
 - The trainer may need to rename the offenses described in the Forensic Exercise handout, consistent with proper statutory offenses in the local jurisdiction.
 - B. Delivering an Opening Statement
 - The purpose of Forensic Exercise B is to allow participants to practice delivering the opening statement they began to develop in Forensic Exercise A. The time allotment for this exercise depends on the number of participants.

- The trainer should then ask participants to take turns delivering their opening statements as the trainer plays the role of the judge. This exercise works best in small groups where more participants will have the opportunity to deliver openings and facilitators will be able to provide substantive and direct feedback to more people. However, depending on timing, the size of the group, the availability of space, and the number of facilitators present, the trainer may ask individuals to deliver an opening for the entire group instead. Regardless of how the participants are broken up, all participants should be given 5 minutes to organize an outline for the opening, even if not everyone will have time to present one.

JTIP Unit IX: Trial Skills

Lesson 23, Cross-Examination (2.5 Hours)

Overarching Goal

Juvenile defender will understand the law governing the right to cross and learn strategies and techniques needed to develop an effective cross-examination consistent with the case theory.

Objectives

Juvenile defender will:

- Understand the law governing the right to cross-examination;
- Learn when to cross-examine and when not to;
- Identify goals of effective cross-examination that advance the strategic goals in each case; and
- Learn techniques for effective cross-examination of different types of witnesses: police witnesses, accomplices, complainants who identify the client, complainants in a rape or sexual assault case and youth complainants or witnesses.

Training Materials:

- Forensic Exercises: Cross-Examination
- Bibliography

Trainer's Overview

Note To Trainer



This training works best when taught in conjunction with Lesson 25 -Use of Documents and Exhibits and Lesson 26 - Impeachment. Section IV of this lesson only provides a cursory overview of these two topics. If the training program does not include separate lessons on Exhibits and Impeachment, the trainer must consider whether it is necessary to supplement section IV of this lesson, which will add time to the overall presentation.

I. Law Governing Cross-Examination (5 minutes)

- The trainer should facilitate an introductory discussion with participants about the law governing cross-examination.

II. Deciding the Content of Cross-Examination (30 minutes)

- The trainer should define cross-examination and explain its purpose and goals. The trainer should then provide insight on what goes into preparing a cross, including strategies for how to incorporate theories of the case/witness, ideas for developing different lines of questioning and tips for organizing the examination. The trainer should also explain the benefits of requesting a stipulation of facts.
 - A. Definition
 - B. Purpose
 - C. Goals
 - D. Preparation
 - E. Theory of the Case and Theory of the Witness
 - F. Developing Lines of Cross-Examination
 - G. Organization
 - H. Stipulation of Facts

III. Conducting Cross-Examination (20 minutes)

- The trainer should provide key strategies for conducting an effective cross.
 - A. Form of the Question – Five Commandments of Cross-Examination
 - B. Defender Presence During Cross-Examination

IV. Use of Documents/Exhibits for Impeachment and Refreshing Recollection (20 minutes)

- The trainer should provide a brief overview of how to impeach a witness using prior inconsistent statements and documents as well as an explanation of when and how to refresh a witness's recollection.
 - A. Introducing Documents/Exhibits for Impeachment
 - B. Refreshing Recollection

V. Common Tips for Particular Witnesses (15 minutes)

- If time permits, the trainer should offer some common tips for particular types of witnesses.
 - A. Police Witnesses
 - B. Accomplices Turned State Witnesses
 - C. Identification Witnesses
 - D. Complainants in a Rape or Sexual Assault Case
 - E. Youth Complainant or Witness

VI. Forensic Exercises: Cross-Examination (1 hour)

- Ideally the Forensic Exercises Handout should be distributed to participants before the date of the training with instructions to review the case materials. In the event that it is not possible to do this, the trainer should distribute the Forensic Exercises Handout at the training and allow participants 10 minutes to review the materials. The trainer should follow the instructions and use the Discussion Points in Part 1 to guide the cross-examination exercise/discussion. In addition, if time permits, the trainer may hand out and conduct one or both of the optional exercises provided in Part 2 and Part 3.

Part 1: Conduct a Cross-Examination

Part 2: Closing Argument (Optional)

Part 3: Impeachment (Optional)

JTIP Unit IX: Trial Skills

Lesson 24, Direct Examination and the Defense Witness (2.5 Hours)

Overarching Goal

Juvenile defender will learn strategy, technique and law required to develop an effective direct examination that advances the defense theory of the case.

Objectives

Juvenile defender will:

- Understand the importance of effective communication with the client to facilitate investigation and identify witnesses and evidence that may be admissible and valuable for the defense theory of the case;
- Consider the strategic implications involved in deciding whether to present a defense case, including character evidence, impeachment evidence and expert testimony;
- Discuss strategic implications involved in deciding whether to call the client to testify;
- Learn to identify goals of effective direct examination in order to advance the defense theory of the case;
- Evaluate the use of demonstrative evidence such as charts, photos and maps, and understand whether such evidence will harm rather than help the theory of the case; and
- Practice techniques of effective direct examination.

Training Materials:

- Forensic Exercise: Direct Examination

Trainer's Overview

Note To Trainer



This training is especially effective when taught in conjunction with Lesson 25 – Use of Documents and Exhibits. If that session will not be taught, the trainer should be aware of the level of experience and aptitude of the participants and be prepared to supplement some of the material that follows with information regarding the use of the documents and exhibits. Trainers should be aware that this may add time to the lesson.

I. Identifying Defense Witnesses and Defense Evidence (10 minutes)

- The trainer should facilitate a discussion with participants about the need to communicate with the client in order to conduct an investigation and identify defense witnesses and evidence.
 - A. Categories of Witnesses
 - B. Tangible or Demonstrative Evidence
 - C. Risks of Seeking/Introducing Evidence

II. Law Governing Direct Examination (5 minutes)

- The trainer should review the law guaranteeing defendants the right to present defense evidence.

III. Helping the Youth Decide Whether to Testify (20 minutes)

- The trainer should engage participants in a discussion about the importance of establishing a strong attorney-client relationship, gaining the client's trust and helping the client decide whether to testify. The discussion should include:
 - A. Protecting the Fifth Amendment Privilege Against Self-Incrimination
 - B. Advising the Client
 - C. Assessing the Need for the Client's Testimony in an Affirmative Defense

IV. Deciding Whether to Call Defense Witnesses (10 minutes)

- The trainer should facilitate a discussion about the benefits and risks of calling defense witnesses. The trainer should make clear that even though the ultimate decision about whether to call a defense witness should be deferred and reevaluated at the conclusion of the government's case, witnesses should be prepared as if they will have to testify.
 - A. Timing the Decision
 - B. Benefits
 - C. Risks

V. Developing the Content of the Direct Examination (30 minutes)

- The trainer should facilitate a discussion about the goals, purpose and organizing principles for an effective direct examination.
 - A. Goals
 - B. Establishing Witness Credibility
 - C. Organizing the Direct Examination
 - D. Developing Themes and Content for the Direct Examination
 - E. Witness Preparation

VI. Techniques for Effective Direct Examination (20 minutes)

- The trainer should facilitate a discussion about the techniques necessary for an effective direct examination.
 - A. Ask Open-Ended Questions, Not Leading Questions
 - B. No Compound Questions
 - C. Do Not Assume Any Fact that is Not in Evidence
 - D. Listen to Your Witnesses Carefully
 - E. Learn the Art of Looping
 - F. Use Transitions/Headlines
 - G. Use Diagrams, Photographs, Other Exhibits and Demonstrations
 - H. Redirect

VII. Techniques for Character Witnesses and Alibi Witnesses (10 minutes)

- The trainer should provide an overview of the admissibility and uses of character evidence and alibi witnesses.
 - A. Character Witnesses
 - B. Alibi Witnesses

VIII. Forensic Exercise: Direct Examination (45 minutes)

- The trainer should distribute the Forensic Exercise and allow participants 10 minutes to review the materials. The trainer should use the Discussion Points to guide the exercise/discussion. In addition, there are two optional exercises that the trainer may choose to conduct, time permitting.

JTIP Unit IX: Trial Skills

Lesson 25, Use of Documents and Exhibits

(2 Hours to 2.5 Hours)

Overarching Goal

Juvenile defender will be able to introduce and use standard documents in a juvenile case, such as police reports, witness statements, photographs, diagrams, probation reports, and mental health evaluations.

Objectives

Juvenile defender will:

- Identify documents that are consistent with the case theory and strategic goals of the case and may aid the fact-finder in trial or at disposition;
- Understand the rules of evidence that govern the admissibility of documents and exhibits; and
- Understand the mechanics of introducing documents and exhibits.

Training Materials:

- Copies of the relevant state rules and Federal Rules of Evidence (FRE) (trainer to provide)
- Forensic Exercise: Use of Documents and Exhibits
- Bibliography

Supplemental Materials:

- Information to Consider Before Issuing a Subpoena for Social Media Records
- Chart: Directory for Requesting Information from Social Media Services
- Important Information to Consider Before Issuing a Subpoena for Cell Phone Records
- Chart: Directory for Requesting Information from Cell Phone Companies

- Sample Letter of Request to Accompany a Subpoena for Cell Phone Records
- Sample Consent to Release Facebook Information
- Myspace Legal Request Cover Sheet
- Myspace Sample Consent Form

Trainer's Overview



Note To Trainer

This training would be most effective if taught in conjunction with the lessons on Cross-Examination, Impeachment, and Hearsay.

I. Documents and Exhibits (40 minutes)

- The trainer should discuss possible types of exhibits (including social media/cell phone records), offer tips on how to locate and obtain them, review the evidentiary requirements that need to be met to admit them, and address how to prepare them to be admitted at trial.
 - A. Possible Exhibits
 - B. Obtaining Documents and Exhibits
 - C. Evidentiary Requirements for Admissibility
 - D. Social Media Evidence
 - E. Cell Phone Records
 - F. Preparing Exhibits to be Admitted

II. Admitting Documents and Exhibits (30 minutes to 1 hour)

- The trainer should describe how to lay a foundation, review the “mark, show, approach, show” formulation, address how to impeach a witness, and how to refresh a witness’ recollection.
 - A. Mechanics of Admitting Documents and Exhibits as Evidence
 - B. Introducing Documents and Exhibits for Impeachment
 - C. Use of Documents and Exhibits to Refresh Recollection

III. Exhibits Chart (5 minutes)

- The trainer should draw or provide the sample exhibit chart to illustrate how to keep track of defense and prosecution exhibits at trial.

IV. Forensic Exercise: Use of Documents and Exhibits (45 minutes)

- Ideally the materials for the Forensic Exercise should be distributed to participants before the date of the training with instructions to review the materials. Otherwise, the trainer should distribute the Forensic Exercise materials on the day of the training and give participants 10 minutes to review them.
- The Forensic Exercise materials contain a summary of the case, vehicle photo, scan of a cancelled check, proposed stipulation, a group home activity logbook, a subpoena *duces tecum* for the 911 Call Log, and the 911 Call Log. Participants should prepare the direct or cross-examination of witnesses they intend to use for the introduction and admission of documents/exhibits. If there are time constraints, the trainer may ask participants to prepare only one direct examination for a witness chosen by the trainer.

JTIP Unit IX: Trial Skills

Lesson 26, Impeachment (2.5 Hours)

Overarching Goal

Juvenile defender will understand the importance of investigation, strategy and the mechanics of impeaching prosecution witnesses to advance the defense theory of the case.

Objectives

Juvenile defender will:

- Understand the importance of investigation and discovery in obtaining witness statements that may be used to impeach prosecution witnesses and advance the defense goals of the case;
- Be able to make wise strategic decisions regarding whether or not to impeach a witness;
- Identify various impeachment methods that achieve various goals within the case;
- Understand the rules and principles of evidence that govern witness impeachment; and
- Develop effective impeachment skills.

Training Materials:

- Any local rules of evidence, statutes or case law regarding impeachment (trainer to provide)
- Forensic Exercises Handout
- Sample Impeachments (to be distributed at the end of the training)
- Handout entitled *"2 Cs" Method vs. "3 Cs" Method*
- Bibliography

Trainer's Overview

Note To Trainer



This training is especially effective when taught in conjunction with Lesson 25 – Use of Documents and Exhibits and Lesson 23 – Cross-Examination. If those sessions will not be taught, the trainer should be aware of the level of experience and aptitude of the participants and be prepared to supplement some of the material that follows with information regarding cross-examination and the use of documents and exhibits where necessary. Trainers should be aware that this may add time to the lesson.

I. What is Impeachment? (10 minutes)

- The trainer should introduce the topic by giving a brief overview of impeachment.

II. Investigation, Discovery and Preparation (30 minutes)

- The trainer should emphasize the importance of starting to investigate a case as soon as possible and provide tips on witness interviews and document collection. The trainer should also note materials to obtain through discovery and provide guidance on how to use those materials with adverse witnesses and defense witnesses.
 - A. Investigation
 - B. Discovery
 - C. Preparing for Impeachment of Adverse Witness
 - D. Preparing Defense Witnesses to Avoid Impeachment

III. Impeachment vs. Refreshing Recollection (10 minutes)

- The trainer should highlight the difference between impeachment and refreshing recollection and provide examples of how to refresh with documents and recordings.

IV. Methods of Impeachment Using Prior Inconsistent Statements (35 minutes)

- The trainer should explain the various ways of using prior inconsistent statements by a witness to impeach that witness' testimony by detailing:
 - A. Goals for Using Prior Inconsistent Statements
 - B. Showing Inconsistency with an Out-of-Court Statement: the "3 Cs" Method of Impeachment
 - C. Showing the Prior Out-of-Court Statement Is True: the "2 Cs" Method of Impeachment
 - D. Crediting the Out-of-Court Statement
 - E. Using Documents, Recordings and Exhibits to Demonstrate a Prior Inconsistent Statement
 - F. Tips for Impeaching or Refreshing the Prosecution's Witnesses

V. Impeachment by Omission (5 minutes)

- The trainer should engage the participants in a discussion on when impeachment by omission is appropriate and how it differs from impeachment using prior inconsistent statements.

VI. Impeachment with Prior Convictions or Prior Bad Acts (15 minutes)

- The trainer should review impeachment techniques for prior convictions and bad acts by covering the following topics:
 - A. Adult Convictions
 - B. Juvenile Adjudications
 - C. Prior Bad Acts
 - D. Closing the Impeachment

VII. Forensic Exercises (45 minutes)

- The trainer should distribute the handout of the Forensic Exercise and give participants 10 minutes to read the fact pattern and subsequent exercises. The trainer should then guide participants through each of the four impeachment exercises using the Discussion Points that follow in this lesson. The trainer should instruct participants to think about the goal of impeachment for each exercise (*e.g.*, credibility, bias) and briefly jot down how they would question the witness to lay the foundation and complete the impeachment.
- For each exercise, the trainer should have at least one volunteer stand up and conduct the impeachment, including the foundation. Where there is time, other participants may even repeat exercises, given that the issue is practicing a skill that is difficult to get right the first time. The trainer should encourage all other participants to make any additions or suggestions to facilitate discussion.

JTIP Unit IX: Trial Skills

Lesson 27, Evidence and Objections (2 Hours)

Overarching Goal

Juvenile defender will review the rules of evidence and understand the concepts of relevance, foundation and objections.

Objectives

Juvenile defender will:

- Identify the sources of the rules of evidence and evidentiary law in his or her jurisdiction;
- Be able to determine when evidence is relevant;
- Be able to lay foundation for various types of evidence;
- Strategize about the timing and method of objections to evidence;
- Be able to identify which objections apply in which context and make the accompanying arguments;
- Anticipate objections that the defender can make during the government's case and objections that may be made during the defense case;
- Be prepared to respond to potential objections and tie them into the defense theory of the case and/or counter-narrative; and
- Understand the value of drafting the closing argument at the outset of the case to focus the defender on the facts he or she wants to get in and facts he or she wants to keep out.

Training Materials:

- Local Rules of Evidence and Case Law (trainer to provide)
- Forensic Exercise: Evidence and Objections

Supplemental Materials:

- Handout: Essential Objections (trainer may choose to provide in conjunction with Forensic Exercise)
- Handout: What is Hearsay? (trainer may choose to provide in conjunction with Forensic Exercise)
- Sample Motion *in limine*

Trainer's Overview

I. Evidence: The Basic Definition (10 minutes)

- The trainer should provide an overview of the different types of evidence and provide guidance on how to find/distinguish the local rules from the Federal Rules of Evidence.
 - A. Evidence
 - B. Knowing Where to Find the Local Rules of Evidence

II. Relevance (5 minutes)

- The trainer should facilitate a discussion with participants regarding the definition of relevance and the requirement that all evidence be relevant.

III. Laying Foundation for Various Types of Evidence (15 minutes)

- The trainer should explain what foundation must be established before calling a witness to testify and then provide tips on introducing real, physical, and demonstrative evidence. The trainer should also provide guidance on stipulating to evidence and judicial notice.
 - A. Introducing Witness Testimony
 - B. Introducing Real or Physical Evidence and Exhibits
 - C. Introducing Demonstrative Evidence
 - D. Stipulations
 - E. Judicial Notice

IV. Objections (25 minutes)

- The trainer should explain the purpose of objecting to evidence, highlighting the importance of preserving the record. The trainer should then offer tips on assessing whether or not to make objections, how/when to make them, and the types of specific objections that can be made.
 - A. Deciding Whether to Object to the Evidence
 - B. The Law: Preserving the Record

- C. Making the Objection
- D. Timing of Objections
- E. Specific Objections

V. Evidence Blocking (25 minutes)

- The trainer should provide an overview of considerations in blocking prosecution evidence, explain the uses of witness *voir dire*, and engage participants in an interactive exercise in which they develop a *voir dire* of a youth witness.
 - A. Blocking the Prosecution's Evidence
 - B. *Voir Dire* of a Prosecution Witness
 - C. Competence of a Youth Witness

VI. Anticipating Objections to Defense Evidence (10 minutes)

- The trainer should provide practice tips on how to avoid objections from the prosecution through thoughtful preparation and proffer.
 - A. Avoiding and Preparing to Respond to Objections
 - B. Proffers on Objections to Defense Evidence

VII. Forensic Exercise: Evidence and Objections (30 minutes)

- The trainer should choose two volunteers from the group to play the role of prosecutor and prosecution witness. The trainer should provide these two volunteers with a Copy of the Confidential Script, and then follow the Instructions/Discussion Points to guide participants through the Forensic Exercise.
- The trainer should divide the remainder of the group in half. One group will assume the role of defense counsel to object and to argue in support of the objections and the other will assume the role of the state and will defend against the objections.
- The trainer may choose to distribute the handouts on Objections and Hearsay, available as Supplemental Materials at www.njdc.info, to participants to assist them in making the appropriate objections/responses during the Forensic Exercise or may choose to see if the participants can raise the objections without such assistance.

JTIP Unit IX: Trial Skills

Lesson 28, Hearsay (2 Hours)

Overarching Goal

Juvenile defender will know the definition of hearsay, identify exceptions to the hearsay rule and understand the various methods for objecting to or introducing hearsay at trial consistent with the defense theory of the case.

Objectives

Juvenile defender will:

- Understand the definition of hearsay;
- Identify and understand law governing hearsay exceptions;
- Identify multiple methods for objecting to hearsay and understand the timing of contemporaneous oral hearsay objections;
- Learn to introduce out-of-court statements as an exception to the hearsay rule when the statement advances the defense case;
- Understand interplay between Confrontation Clause and hearsay;
- Review law of *Crawford* and *Davis*; and
- Be able to object to oral hearsay and written hearsay within documents.

Training Materials:

- “What is Hearsay?” Handout
- Forensic Exercise: Hearsay
- State Rules of Evidence in jurisdictions that have not yet adopted FRE (trainer to provide)
- Local statutes and case law defining hearsay (trainer to provide)
- *Crawford v. Washington*, 541 U.S. 36 (2004), and local/state cases relevant to *Crawford* (trainer to provide)
- *Davis v. Washington*, 547 U.S. 813 (2006), and local/state cases relevant to *Davis* (trainer to provide)

Trainer's Overview

I. Defining Hearsay (15 minutes)

- The trainer should assess the group's understanding of hearsay, clear up misconceptions and make sure participants understand that hearsay can be oral or written.

II. The Law of Hearsay: Rules of Evidence (45 minutes)

- The trainer should begin with an analysis of the Federal Rules of Evidence and distribute the applicable federal rules along with any local rules of evidence relating to hearsay. The trainer should identify differences in the applicability of hearsay rules at different stages of the proceedings, *e.g.*, preliminary hearing versus suppression motion versus trial.

A. Making the Objection

- The trainer should note the importance of making both the state-law hearsay objections and federal Confrontation Clause objections.

B. Rules of Evidence

- Using the "What is Hearsay?" handout as a guide, the trainer should review the applicable federal and local hearsay rules in detail, making sure to explain non-hearsay, the exceptions to hearsay, double hearsay and the importance of being able to attack or support the credibility of the hearsay declarant.

III. Constitutional Principles: the Confrontation Clause, Crawford & Davis (15 minutes)

- The trainer should provide background on the Confrontation Clause of the Sixth Amendment and Supreme Court jurisprudence that bans the introduction of certain out-of-court statements by the prosecutor when the defendant has had no opportunity to confront the witness.

A. Confrontation Clause

B. Understanding *Crawford & Davis*: Testimonial Statements

IV. Forensic Exercise: Hearsay (45 minutes)

- The trainer should provide the Forensic Exercise Handout. After allowing participants time to read over the Handout, the trainer should consult the Discussion Points, which includes possible answers to each of the six questions.
- The trainer should use these answers in conjunction with responses solicited from participants to work through each question in the Forensic Exercise.

JTIP Unit IX: Trial Skills

Lesson 29, Experts (3 Hours)

Overarching Goal

Juvenile defender will consider benefits of expert testimony in a juvenile case, discuss strategy and technique for identifying, hiring, and preparing experts to testify, and will learn to challenge prosecution experts.

Objectives

Juvenile defender will:

- Identify a range of experts who may be called in a juvenile case to advance the strategic goals of the case;
- Be aware of discovery obligations associated with the use of an expert;
- Learn to locate and hire effective experts;
- Learn how to use multiple experts for separate issues before, during, and after trial;
- Learn how to obtain funding from the court or from the public defender office for appointment of an expert;
- Learn to use an expert either as a consultant to the defense or as a witness in the juvenile trial;
- Be able to prepare an expert witness for trial;
- Learn to evaluate and challenge the admissibility of the prosecution's experts in pretrial pleadings and preliminary *voir dire*;
- Learn to cross-examine an expert at trial; and
- Be aware of the prosecution's discovery obligations related to expert witnesses.

Training Materials:

- Local statutes, rules, and case law on experts. Including but not limited to admissibility of expert testimony and reports, notice obligations regarding use of experts, discovery rules covering information obtained from experts, and funding for experts. (trainer to provide)
- Forensic Exercise A: Qualifying Defense Experts
- Forensic Exercise B: *Voir Dire* of Prosecution Experts

- *Voir Dire* of Prosecution Expert (to be distributed after the participants have completed the forensic exercises)
- *Voir Dire* of Defense Expert (to be distributed after the participants have completed the forensic exercises)
- Bibliography

Supplemental Materials:

- Sample Motion to Appoint Expert

Trainer's Overview

I. Use of Experts in the Defense Case (60 minutes)

- A. Determining the Need for Expert Assistance
 - The trainer should introduce the topic of experts by asking participants how they might use expert assistance in preparation for a juvenile case.
- B. Types of Expert Assistance
 - The trainer should facilitate a discussion by asking the group to discuss their experience with different types of experts and/or identify types of experts that may be used in a juvenile case. The trainer should spend the remaining time allotted discussing types of experts the group did not mention but that are discussed in the Training Notes.
- C. Right to Expert Assistance: Law and Practice
 - For this section, the trainer should begin by prompting the group to discuss the right to expert assistance and the legal basis for that right.
- D. Admissibility of Expert Testimony
 - The trainer should have prepared and distributed copies of all local statutes, rules, and/or case law regarding the admissibility of expert testimony. The trainer should tailor this section to the local jurisdiction's standard of admissibility
- E. Notice of Expert Testimony: Defense Discovery Obligations
 - The trainer should provide the local rule(s) regarding notice of intent to use expert testimony at trial.
- F. Locating and Hiring an Expert
 - The trainer should begin this section by facilitating a discussion with the group about what professional qualifications to look for in an expert and what characteristics an ideal expert should possess if he or she needed to testify at trial.

G. Obtaining Funding for Court-Appointed Expert Assistance

H. Preparing an Expert for Trial

II. Challenging the Prosecution's Expert (30 minutes)

A. Prosecution Notice and Discovery Obligations

- The trainer should reference the local rule(s) regarding notice of intent to use expert testimony at trial (already provided to participants per section I.E., *supra*).

B. Challenging the Relevance and Need for Prosecution Expert Testimony

- The trainer should facilitate a discussion on how the expert's testimony must be "beyond the ken of the average layman," how it should help the fact-finder decide the ultimate issue of guilt beyond reasonable doubt and how the fact-finder weighs the expert's testimony with regard to probative value vs. prejudicial effect.

C. Challenging the Expert's Qualifications

- The trainer should facilitate a discussion with the group on how to investigate expert credentials. The trainer should also discuss pre-trial pleadings and areas to cover in *voir dire*.

III. Forensic Exercises: Experts (90 minutes)

Forensic Exercise A: Qualifying Defense Experts

- The trainer should distribute Forensic Exercise A and instruct the participants to take 5 minutes to read the case materials and think about what kind of experts they may want to engage for this case.
- The trainer should then lead the participants in a 10-minute brainstorming session in which participants identify the various types of experts that they might engage (and for what purpose). The trainer should list these experts on the board.
- At the conclusion of the brainstorming session, the trainer should instruct participants to choose an expert from the list generated on the board and take 10 minutes to draft a *voir dire* to qualify the expert. After 10 minutes, the trainer should have participants stand up and *voir dire* their expert. The trainer may play the role of the expert or ask one of the participants to do so.

Forensic Exercise B: *Voir Dire* of Prosecution Experts

- Exercise B is further broken down into two parts:
 - Part I: Qualifications
 - Part II: Bias and Methodology
- This exercise is divided into two parts – I: Qualifications; and II: Bias and Methodology. These exercises can be conducted separately, one after another (recommended), OR jointly where the trainer distributes both parts of the exercise at once.
- A sample *voir dire* is included at the end of this lesson. The trainer can use all or part of this sample to model for the participants.

JTIP Unit IX: Trial Skills

Lesson 30, Motion for Judgment of Acquittal/ Directed Verdict (1 Hour)

Overarching Goal

Juvenile defender will understand the timing, content and law governing motions for judgment of acquittal at the conclusion of the prosecution's case.

Objectives

Juvenile defender will:

- Understand the timing and impact of the Motion for Judgment of Acquittal ("MJOA") in bench trials;
- Understand the legal standards governing the MJOA;
- Understand the importance of preserving the record through an MJOA;
- Understand the importance of the statutory and common law elements of the charged offense in preparing the MJOA; and
- Understand the value of the MJOA in advancing the defense theory of the case, even when the defender is certain it will be denied.

Training Materials:

- Forensic Exercise: Motion for Judgment of Acquittal
- Local court rule and case law on MJOA (trainer to provide)
- Bibliography

Supplemental Materials:

- Sample Motion for Judgment of Acquittal

Trainer's Overview

I. Introduction: Law and Practice (20 minutes)

- The trainer will provide an overview of the law related to MJOA including the following:
 - A. Terminology
 - B. Constitutional Standard
 - C. Right to MJOA
 - D. Timing
 - E. The Ruling: Dismissal and Insight
 - F. Impact on Appellate Rights

II. MJOA Practical Tips (5 minutes)

- The trainer should review tips for crafting a successful MJOA and provide examples of common reasons MJOA are granted.

III. Forensic Exercise (35 minutes)

- The trainer should allow participants five minutes to read the MJOA fact pattern. The trainer should then use the Discussion Points to guide participants in developing all the grounds in support of a Motion for Judgment of Acquittal on all three charges in the fact pattern. If time permits, the trainer should then ask participants to stand up and argue the MJOA on each charge.

JTIP Unit IX: Trial Skills

Lesson 31, Closing Argument (1.5 Hours to 3 Hours)

Overarching Goal

Juvenile defender will demonstrate understanding of strategies and techniques for developing and delivering a compelling and effective closing argument.

Objectives

Juvenile defender will:

- Understand the importance of closing argument;
- Review the legal standards governing the court's determination of guilt or innocence;
- Discuss the role of narrative, themes, and storytelling in developing a compelling closing;
- Discuss the effect of inferences and presumptions; and
- Learn strategy and techniques for developing a compelling closing argument.


Training Materials:

- Video: Defense Attorney Jordan Savage's Closing Argument: *The Flawed Good Samaritan* available at <http://www.youtube.com/watch?v=JkNUsz5h2mg> (trainer to provide this or other video clip of an inspiring/memorable closing)
- Forensic Exercise A: Formulating Arguments
- Forensic Exercise B: Using Impeachment
- Forensic Exercise C: Character Witnesses
- Forensic Exercise D: Delivering a Closing Argument
- Local statutory provisions governing Possession With Intent to Distribute a Controlled Substance (trainer to provide – used in the Forensic Exercise)
- Strategy Chart (used in the Forensic Exercise)

Supplemental Materials:

- Transcript: Defense Attorney Jordan Savage’s Closing Argument: *The Flawed Good Samaritan*

Trainer’s Overview

Note To Trainer  This training is most effective when taught in conjunction with Lesson 12—Theory of the Case.

I. Inspiring Closing Arguments (30 minutes)

- To inspire participants and get them in the frame of mind for the discussion about closing argument, the trainer may start the training off with a video clip from an inspiring or otherwise memorable closing argument. The clip should provide a springboard for a conversation about the components of an effective closing argument. The trainer may be able to obtain a clip from Court TV or elsewhere. In lieu of other video, the trainer may consider a clip from *The Flawed Good Samaritan* closing to illustrate how the defender can use a clip to trigger discussion with participants. The clip can be found at: <http://www.youtube.com/watch?v=JkNUsz5h2mg>. Should the trainer not have access to audio-visual equipment, a transcript of *The Flawed Good Samaritan* closing is available in the Supplemental Materials.
 - A. Show Excerpt from An Inspiring or Effective Closing or *The Flawed Good Samaritan*
 - B. Analyze the Closing: Points for Discussion from *The Flawed Good Samaritan*

II. The Right and Importance of Closing Argument (15 minutes)

- The trainer should explain the legal foundation for the right to make a closing argument and discuss the importance of closing argument in helping the fact-finder understand the defense theory of the case.
 - A. The Right to a Closing Argument
 - B. The Importance of a Closing Argument
 - C. The Components of a Closing Argument

III. General Guidelines and Tips for an Effective Closing Argument (15 minutes)

- The trainer should provide an overview of how to organize an effective closing argument and offer tips on how to deliver it convincingly.
 - A. Organizing the Closing Argument – Basic Structure
 - B. Other Guidelines or Tips for Delivering an Effective Closing Argument
 - C. Notes About Bench Trials

IV. Forensic Exercises: Closing Argument (30 minutes - 2 hours)

- There are four Forensic Exercises provided in this lesson to guide participants in using theory, theme, inferences, and character evidence in developing effective closing arguments. Depending on time, the trainer may use one or all four of the Forensic Exercises.
- For each Forensic Exercise, the trainer should give participants 10 minutes to read the fact pattern, think about the corresponding questions, jot down notes, and be prepared to give a five-minute closing after discussion.
 - Forensic Exercise A: Formulating Arguments
 - Forensic Exercise B: Using Impeachment
 - Forensic Exercise C: Character Witnesses
 - Forensic Exercise D: Delivering a Closing Argument

JTIP Unit X: Special Challenges on the Juvenile Docket

Lesson 32, Challenging Juvenile Sex Cases

(3 to 4 Hours)

Overarching Goal

Juvenile defender will be able to challenge allegations of sexual assault by a youth and address issues unique to a juvenile sex offense case.

Objectives

Juvenile defender will:

- Learn how to interview a youth client in a juvenile sex case;
- Be able to conduct effective investigation and seek discovery in juvenile sex cases;
- Be able to identify and address special evidentiary and strategic issues associated with youth complaining witnesses;
- Learn to develop effective defense theories in juvenile sex offense cases;
- Be able to identify and challenge potential prosecution and defense experts in juvenile sex cases;
- Have a basic understanding of the Adam Walsh Act and sex offender registration;
- Learn to raise mitigating factors and plan for disposition in a juvenile sex case, consistent with the client's stated interests; and
- Learn how to approach intra-familial juvenile sex cases or cases involving relatives or close friends.

Training Materials:

- State law on Sex Offender Registration (trainer to provide)
- Forensic Exercise: Challenging Juvenile Sex Cases
- Sample *Voir Dire* of Youth Witness in Juvenile Sex Case (to be used in conjunction with the Forensic Exercise, time permitting)
- Mitigation and Disposition Handout (trainer to distribute after teaching section VII)
- Bibliography

Supplemental Materials:

- Sample Motion to *Voir Dire* Youth Witness and Exclude Witness Testimony

Trainer's Overview

I. Introduction to Juvenile Sex Offenses (5 minutes)

- The trainer should review common types of alleged sexual offenses.

II. Preparing for a Juvenile Sex Case (35 minutes)

- The trainer should provide ideas for creative alternatives to detention and instruct participants to be cautious before agreeing to treatment and/or evaluation. The trainer should offer tips on how to prepare for and conduct interviews of clients and witnesses, as well as insights into what types of discovery to seek in a juvenile sex case.
 - A. Addressing Detention and Other Pretrial Issues
 - B. Interviewing the Youth Client
 - C. Interviewing the Youth Witness
 - D. Requesting Discovery

III. Common Defense Theories (25 minutes)

- The trainer should discuss what defense theories are available to defenders in a juvenile sex offense case and how they would argue them. The discussion should cover the following:
 - A. Consent
 - B. Complainant's Past Sexual Acts Support Consent
 - C. Fabrication
 - D. Adult Contamination and Suggestibility of Youth
 - E. Credibility of the Witness
 - F. Misidentification

IV. Challenging Prosecution Evidence in Juvenile Sex Cases (20 minutes)

- The trainer should discuss challenging evidence in the following circumstances:
 - A. Challenging DNA Evidence
 - B. Independent Testing of Evidence
 - C. Seizure of Blood, Hair, and Saliva from the Youth
 - D. Medical Records and Hearsay Within Medical Records

V. The Youth Witness (30 minutes)

- The trainer should facilitate a discussion of ways to challenge the testimony of a youth complainant or youth witness in a sex case. Areas of discussion should include the following:
 - A. Challenging Competency to Testify
 - B. Suggestibility
 - C. Cross-Examining the Youth Witness
 - D. Opposing Closed Circuit Testimony

VI. Use of Experts in Sex Cases (20 minutes)

- The trainer should discuss the uses and roles of experts in sex cases and review a list of considerations defenders should review when hiring an expert.
 - A. Expert Assistance for the Defense
 - B. Expert Assistance for the Prosecution
 - C. Locating and Hiring an Expert

VII. Mitigation and Disposition (10 to 25 minutes)

Note To Trainer



If there are time constraints, the trainer should skip ahead and teach only Sections E and F, Evaluations and Treatment respectively. The trainer should provide participants with the Mitigation and Disposition Handout, which contains the information in Sections A-D and G of the Training Notes, and advise them to review the handout after the training.

- The trainer should review the following topics relevant to mitigation and disposition planning in sex cases:
 - A. Juveniles are Different from Adults
 - B. Common and Uncommon Sexual Behaviors Among Youth
 - C. Sexual Play and Problematic Sexual Behavior
 - D. Normal Sexual Desire and Behaviors among Adolescents
 - E. Evaluations: The Pros and Cons
 - F. Treatment
 - G. Recidivism

VIII. Sex Offender Registration Requirements (5 to 30 minutes)

Note To Trainer



If there are time constraints, the trainer may skip this section and distribute copies of the local in-state sex offender registration requirements to participants. The trainer should instruct participants to review the requirements on their own time after the training.

- The trainer should provide background information about the origins of sex offender legislation as well as an overview of current federal registration requirements and the resulting implications. The trainer should also highlight the differences in registration laws across jurisdictions, being sure to discuss the law in the local jurisdiction.
 - A. The Emergence of Sex Offender Registration Laws
 - B. Implications of the Sex Offender Registration and Notification Act (SORNA)
 - C. Tier Registration Under SORNA
 - D. Mandatory In-Person Reporting
 - E. Differences Across Jurisdictions

IX. Forensic Exercise: Challenging Juvenile Sex Cases (30 to 50 minutes)

- The trainer should distribute a copy of the Forensic Exercise and allow participants 10 minutes to review the fact pattern and answer the questions that follow.
- The trainer should instruct participants to consider possible defense theories, evidentiary challenges and experts that might be appropriate in the case as they read the fact pattern.
- The trainer should then use the Discussion Points in the Forensic Exercise to walk participants through each question in the exercise.
- If time permits, the trainer should instruct participants to spend 10 minutes drafting a competency *voir dire* of the youth witness from the fact pattern. The trainer should then request volunteers to conduct a *voir dire* with the trainer standing in as the youth witness. The trainer should use the Sample *Voir Dire* provided in the Discussion Points as a guide for the feedback to the participants.

JTIP Unit X: Special Challenges on the Juvenile Docket

Lesson 33, Drug Cases (2.5 Hours)

Overarching Goal

Juvenile defender will be able to effectively and creatively challenge a variety of alleged drug offenses.

Objectives

Juvenile defender will:

- Develop effective defense theories in a variety of common drug offense cases;
- Develop comprehensive discovery requests in drug cases;
- Learn to challenge government experts and identify experts to aid the defense in juvenile drug cases;
- Understand recent Supreme Court rulings, such as *Crawford*, *Melendez-Diaz* and *Bullcoming*;
- Review common grounds for moving to suppress drugs under the Fourth Amendment;
- Review common evidentiary issues in drug cases;
- Be able to identify common areas of testimony by experts in drug cases; and
- Learn different testing techniques and common human errors.

Training Materials:

- Forensic Exercise
- Bibliography

Supplemental Materials:

- Sample Initial Discovery Request Provided to Government at Initial Hearing
- Sample Formal Discovery Letter in Drug Case
- *Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527 (2009)
- *Bullcoming v. New Mexico*, 131 S. Ct. 2705 (2011)
- Local case law interpreting *Melendez-Diaz* & *Bullcoming* (trainer to provide)

Trainer's Overview

I. Common Drug Case Scenarios (10 minutes)

II. Discovery (25 minutes)

- A. Standard Drug Reports
- B. Discovery Requests Relating to Drug Lab Testing
- C. Informant Cases
- D. Constructive Possession Cases
- E. Observation Post Cases
- F. Undercover Buy Cases
- G. Search Warrant Cases
- H. Drug Sniffing Cases
- I. Motions to Compel

III. Police Forms, Procedures, Administrative Orders and Regulations (5 minutes)

- A. Police Forms
- B. Local Police Department Regulations

IV. Common Defenses in Drug Cases (10 minutes)

- A. Entrapment
- B. Fabrication/Plant/Frame by the Police
- C. Fabrication by an Informant
- D. Misidentification
- E. Absence of Corroboration and Other Defenses in Buy-Bust Cases
- F. Absence of Corroboration in Observation Post Cases

V. Suppressing the Drugs (10 minutes)

- A. Common Grounds for Suppressing Drug Evidence under the Fourth Amendment
- B. Common Challenges to Search Warrants
- C. Drug Detection Dogs
- D. Drugs as Fruit of a Coerced Statement

VI. Common Evidentiary and Procedural Issues in Drug Cases (15 minutes)

- A. Introduction of Drug Analysis Report
- B. Type of Controlled Substance Must Match the Petition
- C. Chain of Custody
- D. Field Test
- E. Fingerprint Evidence
- F. Anonymous Tip
- G. Measurable Amount

VII. Drug Experts (15 minutes)

- A. Common Areas of Testimony for Drug Experts
- B. Discovery Related to Drug Experts
- C. Challenging Admissibility of Drug Expert Testimony
- D. Cross-Examining the Drug Expert
- E. Using Government's Drug Expert to Defense Advantage

VIII. Forfeiture of Property Connected to Drugs (5 minutes)

- The trainer should provide an overview of how property connected with a drug case might be subject to forfeiture.

IX. Disposition in Drug Cases (10 minutes)

- A. Drug Treatment
- B. Juvenile Drug Courts

X. Forensic Exercise (45 minutes)

- The trainer should distribute the Forensic Exercise and allow 5 minutes for participants to read the fact pattern. The trainer should lead the participants in a 10-minute brainstorm of the key cross-examination points they might want to make with this witness. Once the main points are outlined, the trainer can either have the participants each take a key point and develop a line of cross on that specific issue, or (if time permits) have participants develop an entire cross-examination. Participants should be given 10-15 minutes to draft their crosses. The trainer should use the remaining time to have participants conduct their cross examinations (or portions thereof) and provide feedback.
- The Discussion Points contain a sample cross-examination. This is not a perfect cross-examination, but should give the trainer some ideas on what might be covered.

JTIP Unit X: Special Challenges on the Juvenile Docket

Lesson 34, Immigration Consequences (2 to 2.5 Hours)¹

Overarching Goal

Juvenile defenders will understand and be able to provide clients with basic information on the possible immigration consequences associated with delinquency adjudication as well as the possible immigration relief options to avoid deportation. The Juvenile defenders will understand that when immigration consequences are complicated, it is imperative to consult with an immigration lawyer who has specialized knowledge in this area.

Objectives

Juvenile defender will:

- Understand basic immigration terms and concepts;
- Remember to exercise cultural sensitivity when representing noncitizen youth;
- Understand the implications of pleas, admissions, and findings of delinquency on a youth's immigration status;
- Identify, learn to locate and develop professional contacts with lawyers, organizations, and networks who have an expertise in immigration consequences of delinquency;
- Be able to provide clients with basic information about possible immigration consequences of pleas, admissions, or findings of delinquency;
- Be able to conduct an initial screening to determine potential immigration relief options and opportunities for improving a client's immigration status (*e.g.*, parents' eligibility for citizenship, special immigrant juvenile status (SIJS) application), refer youth and/or their parents to an immigration lawyer who can provide guidance on the necessary steps to obtain relief, and help such lawyer attain any relief that could positively impact the client's delinquency case;
- Understand the importance of counseling the client on the right to privacy and advising the client not to volunteer information about his or her immigration status or immigration-related information.

Training Materials:

- Key Immigration Terms and Definitions
- Immigration Consequences of Juvenile Delinquency

¹ Depending on the time available, the Forensic Exercise can be 1 hour or can be abbreviated to 30 minutes.

- Forensic Exercise: Immigration Consequences
- Bibliography & Resource List

Supplemental Materials:

- Form I-693, Report of Medical Examination and Vaccination Record
- *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010)
- IMMIGRANT DEF. PROJECT, DUTY OF CRIMINAL DEFENSE COUNSEL REPRESENTING AN IMMIGRANT DEFENDANT AFTER *PADILLA V. KENTUCKY* (2010)
- IMMIGRATION LEGAL RES. CTR., STEPS TO ADVISING A NONCITIZEN DEFENDER UNDER *PADILLA* (2010)
- IMMIGRATION LEGAL RES. CTR., IMMIGRATION CONSEQUENCES OF JUVENILE DELINQUENCY (2010)
- Immigration Enforcement and the Deportation System Handout
- IMMIGRANT JUSTICE NETWORK, IMMIGRATION IN THE JUVENILE JUSTICE SYS.
- IMMIGRANT JUSTICE NETWORK, DEPORTATION SYSTEM (2007)
- IMMIGRATION LEGAL RES. CTR., IMMIGRATION OPTIONS FOR UNDOCUMENTED IMMIGRANT CHILDREN: A COLLECTION OF FACT SHEETS (2010)
- Memorandum from the Sec’y of Homeland Sec. on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012)

Trainer’s Overview

I. Immigration Terminology (10 minutes)

- The trainer should distribute the Key Immigration Terms and Definitions and take time to familiarize participants with terminology that may otherwise be unfamiliar (*e.g.*, the difference between “inadmissibility” and “deportability”). The trainer should encourage participants to consult the handout for reference during the training.

II. Immigration Consequences of Delinquency (25 minutes)

- The trainer should explain that while juvenile adjudications are not considered convictions triggering deportation, certain conduct alone may be grounds for inadmissibility and deportability. The trainer should highlight the importance of knowing the client’s immigration status and explain the adverse consequences of particular dispositions (*e.g.*, the severe consequences of drug trafficking).
 - A. Overview
 - B. Adverse Consequences of a Juvenile Adjudication
 - C. Conduct-Based Grounds for Inadmissibility and Deportability

III. Ethical Obligations (15 minutes)

- The trainer should explain the role and obligations of juvenile defense attorneys to advise clients of particular immigration consequences, highlighting relevant ethical rules and the duties that stem from the Supreme Court’s decision in *Padilla v. Kentucky*.
 - A. Model Rule of Professional Responsibility 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer
 - B. Supreme Court Case: *Padilla v. Kentucky*
 - C. Scope of Duty under *Padilla v. Kentucky*

IV. Immigration Enforcement and the Deportation System (20 minutes)

- The trainer should help participants understand what happens to their clients when immigration laws are enforced against them while in the juvenile justice system. The trainer should make clear that apprehension by immigration authorities and removal proceedings may occur at the same time as delinquency proceedings, which may affect the defender’s ability to provide effective representation in the delinquency case. The trainer should provide tips on how to effectively represent the client in these contexts, protecting against any harmful disclosures and strategizing around any potential involvement by immigration authorities.
 - A. Immigration Enforcement in the Juvenile Justice System
 - B. Immigration Detainers
 - C. Legal Parameters of Local Collaboration with Federal Immigration Authorities
 - D. Disparate Treatment of Noncitizen Youth During Juvenile Proceedings
 - E. Apprehension By Immigration Authorities
 - F. Detention
 - G. Release
 - H. Immigration Deportation Proceedings
 - I. Deportation

V. Types of Relief Available (20 minutes)

- The trainer should provide a basic overview of the types of immigration relief available.
 - A. Special Immigrant Juvenile Status (SIJS)
 - B. U Visa
 - C. Violence Against Women Act (VAWA)
 - D. Family Visa
 - E. Asylum

VI. Forensic Exercise: Immigration Consequences (30 minutes – 1 hour)

- The trainer should distribute the Fact Pattern and give participants a few minutes to read it and think about their responses to the questions posed. The trainer should then use the Discussion Points that follow to facilitate an interactive discussion with participants about those same questions.
- Depending on the time available and the depth of exploration desired, the exercise can last an hour or can be abbreviated to 30 minutes.

JTIP Unit XI: Disposition and Post-Disposition

Lesson 35, Disposition Advocacy (2.5 Hours)

Overarching Goal

Juvenile defender will understand the role and obligations of counsel at disposition and be able to advocate effectively for clients at the disposition hearing, consistent with the clients' stated interests.

Objectives

Juvenile defender will:

- Understand the ethical and professional obligations of counsel at the disposition hearing;
- Remember that continued client counseling and communication with the client is essential to ensure the dispositional plan is consistent with the client's interest;
- Understand that disposition planning starts at the beginning of the case;
- Understand statutory, common and constitutional law governing disposition;
- Understand the range of disposition options available in the local jurisdiction and learn to identify and develop creative disposition alternatives;
- Be able to discuss all available disposition options with the client from the beginning of the case;
- Learn to communicate effectively with the probation officer and other stakeholders in advance of the youth's disposition hearing;
- Be able to write effective and compelling disposition letters or memoranda in aid of disposition;
- Learn to identify potential witnesses for the disposition hearing and prepare the client for the hearing;
- Be able to respond effectively to victim impact evidence; and
- Be able to conduct evidentiary disposition hearings, including cross-examination of government witnesses and presentation of defense witnesses.

Training Materials:

- Sample Disposition Planning Chart
- Local disposition statutes and rules (trainer to provide)
- List of placements and rehabilitative resources for the local jurisdiction, including a list of community-based residential programs and services and/or mental health providers (trainer to provide)
- Citations or copies of any statutes, rules or case law regarding restitution in the local jurisdiction (trainer to provide)
- Forensic Exercise: Disposition Law and Advocacy

Supplemental Materials:

- Sample Alternative Disposition Recommendation
- Convincing the Court to See Things Your Way at Disposition: Sample Pre-Hearing Submissions to the Court

Trainer's Overview

I. Role of the Defender (5 minutes)

- The trainer should provide a brief overview of the role of the juvenile defender in disposition planning.
 - A. Ethical and Professional Obligations

II. Pre-Disposition Preparation (35 minutes)

- The trainer should discuss a framework that defenders can use to approach disposition planning and review the components of a disposition plan. The trainer should provide tips on how to counsel the client and parents/guardians, and offer strategies for how to approach probation officers. The trainer should also review the appropriateness of seeking a mental health evaluation, the importance of gathering documents and exhibits and the benefits to be gained by consulting social workers or other mitigation specialists.
 - A. Narrative
 - B. Components of the Disposition Plan
 - C. Counseling the Client
 - D. Discussing Disposition Options with Parents/Guardians
 - E. Talking to the Probation Officer

- F. Mental Health Interviews and Evaluations of Youth
- G. Document Gathering, Mitigation Witnesses, Letters of Support and Exhibits
- H. Defense Request for Psychological Evaluations
- I. Consulting with a Social Worker, Expert or Other Mitigation Specialist

III. Disposition Letter/Report (10 minutes)

- The trainer should review the purpose of a disposition letter, the different possibilities of formatting the letter and the major points the defender should cover in the content of the letter.
 - A. Purpose of a Disposition Letter/Report
 - B. Format of a Disposition Letter
 - C. Content of a Disposition Letter: A Developmental Perspective

IV. Timing of the Hearing (5 minutes)

- The trainer should discuss the possibilities and advantages/disadvantages for the timing of a disposition hearing.
 - A. Immediate Disposition
 - B. Detained Youth
 - C. Released Youth

V. Non-Evidentiary Disposition Hearings (10 minutes)

- The trainer should explain the nature of a non-evidentiary disposition hearing, describe what evidence/arguments the defender can submit and offer tips on advising the client and his or her parents/guardians on how to address the court during the hearing. The trainer should also review how to handle victim impact evidence.
 - A. Overview of Non-Evidentiary Disposition Hearings
 - B. Counseling Client About Speaking to the Court
 - C. Counseling Parents/Guardians About Speaking to the Court
 - D. Victim Impact Statements

VI. Evidentiary Disposition Hearings (10 minutes)

- The trainer should discuss the grounds upon which a defender can request an evidentiary hearing, the mechanics of the hearing, the possible reasons to waive the hearing and tips for conducting the hearing itself.
 - A. Right to an Evidentiary Hearing
 - B. Waiving the Right to an Evidentiary Hearing
 - C. Conducting an Evidentiary Hearing

VII. Forensic Exercise: Disposition Planning (1 hour 15 minutes)

- The trainer should distribute the Handout of the Forensic Exercise and give participants ten minutes to read it. The trainer should then facilitate a 25-minute discussion on disposition planning. The discussion should address the offense, the disposition options available to the judge, victim impact evidence, the youth's attitude towards the offense and the youth's prior history, education and home life.
- At the end of the exercise, the trainer should act as a disinterested judge and get the participants to stand up and make convincing arguments for their dispositional recommendation.

JTIP UNIT XI: Disposition and Post-Disposition

Lesson 36, Preserving the Record and Engaging in Appellate Advocacy (2 Hours)

Overarching Goal

Juvenile defender will understand the law and mechanics of interlocutory and final appeals.

Objectives

Juvenile defender will:

- Understand the importance of preserving the record at the trial phase;
- Understand the right to a transcript;
- Understand procedures and law for filing an appeal;
- Learn the importance of communicating with and counseling clients about the consequences of an adjudication, their right to appeal and their legal status pending their appeal; and
- Understand the use of and procedures for interlocutory appeals in the local jurisdiction.

Training Materials:

- Local statutes, case law, and court rules governing the procedure for appeal in the local jurisdiction (*e.g.*, timing, standard of review, formatting, etc.) (trainer to provide)
- Forensic Exercise: Preserving the Record and Engaging in Appellate Advocacy
- Bibliography

Supplemental Materials:

- Sample Appellate Memo Form (from trial lawyer to appellate lawyer summarizing procedural posture and possible issues for appeal)

Trainer's Overview

I. Introduction (10 minutes)

- The trainer should explain that defenders have a duty to advise youth of their right to appeal and indigent youth of their right to court-appointed counsel for their first appeal. The trainer should also highlight the various forms of appellate relief that may be available in a particular jurisdiction.
 - A. Right to Appeal
 - B. The Defender's Ethical Obligations
 - C. Other Appellate or Post-Disposition Alternatives

II. Preserving the Right to Appeal (10 minutes)

- The trainer should review applicable statutory requirements and procedures for preserving an appeal when appellate rules require specific findings of fact and conclusions of law, and should provide participants with local statutory requirements regarding the steps required to file an appeal within the appropriate time period.
 - General Principles
 - Initiating the Appeal on Time

III. Interlocutory Appeals (10 minutes) (Optional: teach only if the local jurisdiction allows interlocutory appeals)

- The trainer should explain interlocutory appeals, provide any statutory or procedural requirements for the local jurisdiction, give tips on how to strategize about whether or not to file an interlocutory appeal and then walk through the process a defender would take to file one.
 - A. Timing and Procedures for Interlocutory Appeals
 - B. Strategically Determining Whether to File an Interlocutory Appeal
 - C. General Steps for Filing Interlocutory Appeals

IV. Preparing for Appeal (15 minutes)

- The trainer should review issues to discuss with the client regarding the appeal and appeals process; explain local laws and court rules related to bond and/or stay of dispositional orders; and address how to obtain, preserve and – where necessary – supplement transcripts, records or other information.
 - A. Consulting with and Counseling the Client
 - B. Motion for Bond Pending Appeal/Stay of the Dispositional Order
 - C. Post-Disposition Motions
 - D. Obtain Transcripts and Court Records of Proceedings

- E. Preserving the Evidence
- F. Supplement with New Information

V. Filing an Appeal (15 minutes)

- The trainer should note examples of possible issues for appeal and then discuss local procedural rules related to the process of filing an appeal.
 - A. Potential Appellate Issues
 - B. Appellate Procedure

VI. The Basics of Litigating an Appeal (15 minutes)

- The trainer should detail the various steps that a defender will go through when litigating an appeal.
 - A. Preliminary Preparation
 - B. Writing the Brief
 - C. When and How to Solicit *Amici Curiae* Briefs
 - D. Writing the Reply Brief
 - E. Oral Arguments
 - F. The Opinion

VII. Forensic Exercise: Preserving the Record and Engaging in Appellate Advocacy (45 minutes)

- In this Exercise, participants will be asked to go through various stages in a case and answer questions relating to preserving the record for appeal and identifying appealable issues. **The trainer should hand out Part I first, withholding Part II.** The trainer should give the participants 10 minutes to review Part I and ask them to jot down answers to the questions. The trainer should then use the Discussion Points to lead the participants in a conversation structured around the questions in the lesson.
- After the participants have completed the discussion on Part I, the trainer should distribute Part II and again give the participants 10 minutes to review and jot down answers. The trainer should then use the Discussion Points to lead the participants in a conversation structured around the questions in the lesson. Time permitting, the trainer should have participants engage in a mock client meeting.

JTIP Unit XI: Disposition and Post-Disposition

Lesson 37, Post-Disposition Advocacy (2 Hours)

Overarching Goal

Juvenile defender will understand the continuing obligation of counsel to represent youth after disposition.

Objectives

Juvenile defender will:

- Understand the obligation to monitor the youth's conditions of confinement and ensure the youth's basic needs are met during placement after disposition, including, but not limited to: education, food, clothing, mental health, and access to family;
- Understand counsel's obligation to ensure the youth's right to safe and appropriate placement after disposition;
- Understand the need to preserve the youth's appellate rights after adjudication;
- Understand the importance of sealing and expunging the record of adjudication;
- Proactively seek modification hearings and communicate with the probation officer about filing pleadings for modification, where appropriate;
- Establish protocol for affirmatively checking on clients in placements;
- Maintain lines of communication with the youth's probation officer and/or case worker;
- Learn the law and develop techniques for advocating for youth in revocation of probation or parole;
- Understand that re-entry planning starts at the time of disposition; and
- Advocate for early release when possible.

Training Materials:

- State and Local Statutes and Rules, including relevant statutes and rules for sealing juvenile records (trainer to provide)
- Forensic Exercise: Probation Revocation
 - Part 1: Investigation and Case Planning

- Part 2: Preliminary Hearing
- Part 3: Revocation Hearing

Supplemental Materials:

- Handout: Juvenile Records Expungement Manuals
- Sample Alternative Disposition Recommendation Letter
- A Snapshot of Juvenile Sex Offender Registration

Trainer's Overview

I. Counseling the Client on the Right to Appellate Review After Adjudication (15 minutes)

- The trainer should provide background on the local law providing for appeal, explain how to advise clients about their appellate rights and make participants aware of steps in the appeal and review process.
 - A. Local Statutes and Rules for Appeal
 - B. Counseling the Client on Appellate Rights
 - C. Right to Appeal
 - D. Steps to Appeal
 - E. Collateral Review

II. Role of the Defender Post-Disposition (10 minutes)

- The trainer should explain the defender's role and obligations to the client after disposition.
 - A. Youths' Continued Need for Advocacy After Disposition
 - B. State/County Support for Post-Disposition Representation

III. Role of Juvenile Defender When the Youth is on Probation (10 minutes)

- The trainer should detail the types of advocacy and assistance the youth client may need while on probation or committed. Topics to be discussed include:
 - A. Advising Client on Conditions of Disposition and Maintaining Regular Contact with the Client
 - B. Enforcing the Dispositional Order
 - C. Review Hearings

IV. Revocation of Probation (20 minutes)

- The trainer should offer examples for which probation may be revoked and then explain the revocation process and due process rights that must be satisfied as part of that process.
 - A. Basis for Revocation
 - B. Revocation Process
 - C. Revocation Hearings

V. Commitment and Placement After Disposition (15 minutes)

- The trainer should explain the defender's role and obligations when a client is incarcerated or committed after disposition, highlighting the need to maintain contact and monitor treatment, no matter the placement or confinement.
 - A. Duties of the Defender
 - B. Revocation of Parole
 - C. Obtaining Release from, or Avoiding Extension of, Incarceration

VI. Sealing and Expungement of Juvenile Records (10 minutes)

- The trainer should explain how to assess whether and how juvenile records can be expunged or sealed in the local jurisdiction.

VII. Forensic Exercise: Probation Revocation (40 minutes)

- The Forensic Exercise may be done immediately after the section on Probation Revocation or may be left until the end of the Lesson, depending on the needs of the trainers. The Forensic Exercise has three parts:
 - Part 1: Investigation and Case Planning
 - Part 2: Preliminary Hearing
 - Part 3: Revocation Hearing
- The trainer should distribute the Handout for Parts 1 and 2 and give participants 7-10 minutes to read and jot down responses. The trainer will then lead discussions on the issues posed in Parts 1 and 2, using the Discussion Points that follow.
- After the group discussion on Parts 1 and 2, the trainer should distribute the Handout for Part 3, giving the participants 7-10 minutes to review and jot down responses. The trainer should use the Discussion Points that follow Part 3 to lead a discussion about that exercise.
- Time permitting, the trainer might ask the participants to develop and deliver a brief argument or cross-examination related to any of the three parts.

JTIP Unit XII: Holistic Juvenile Defense Advocacy

Lesson 38, Multi-Systemic Advocacy: Family, School and State Agencies (2 Hours)

Overarching Goal

Juvenile defender will understand the need for multi-systemic, multi-disciplinary representation of youth to address root causes of delinquency and begin creative planning to advance the strategic goals of the delinquency case and disposition.

Objectives

Juvenile defender will:

- Identify a range of issues and challenges that youth face outside of the juvenile justice system, including but not limited to: housing issues, educational issues, access to mental and medical health care and public benefits concerns;
- Become familiar with resources that will assist youth in addressing legal and social issues outside of the juvenile justice system and develop contacts with advocates who can represent youth in other systems;
- Understand the impact of multi-disciplinary advocacy on detention and disposition outcomes in juvenile delinquency cases;
- Learn to utilize the school system to ensure that youth receive needed treatment and services consistent with the youth's stated interests;
- Understand and advise youth on their basic rights to public housing and other public benefits, including the consequences of a juvenile adjudication on such benefits;
- Understand and advise youth on the procedures to seal juvenile records to reduce some of the long-term consequences associated with a juvenile adjudication;
- Be able to identify the key players involved in the local neglect or dependency system, understand the role of the *Guardian ad Litem* and become aware of procedures in the neglect and dependency system; and
- Understand and advise youth on special challenges that affect dual-jurisdiction youth, including the difficulty of protecting youth's confidentiality and due process rights in delinquency cases.

Training Materials:

- Statutes, case law, rules, policy manuals, and other jurisdiction specific materials related to multi-systemic advocacy (trainer to provide)
- Forensic Exercise: Multi-Systemic Advocacy
- Chart of Consequences of Juvenile Adjudications
- Bibliography

Trainer's Overview

I. Introduction to Multi-Systemic Advocacy (10 minutes)

- The trainer should facilitate an introductory discussion with participants regarding legal issues and systemic challenges youth face outside the juvenile justice system.
- The trainer should facilitate a discussion with participants on why multi-systemic advocacy could be important to the defense case.
 - A. Introduction
 - B. Identifying Multi-Systemic Issues
 - C. Multi-Systemic Advocacy and the Defense Case

II. School Disciplinary Advocacy (10 minutes)

- The trainer should review the law providing youth with the right to a disciplinary hearing.
- The trainer should discuss advantages such as opportunity for discovery, investigative leads, impeachment material, etc.
 - A. Right to Disciplinary Hearing
 - B. Advantages of Defender Advocacy at the School Disciplinary Hearing

III. Special Education Advocacy (10 minutes)

- The trainer should introduce the Individuals with Disabilities Education Act (IDEA) and explain what it takes to qualify for assistance under the Act.
- The trainer should explain and demonstrate how special education needs impact advocacy at every stage of a juvenile case – from arrest and intake to aftercare.
 - A. Overview
 - B. Implications of Special Education Advocacy in Juvenile Cases

IV. Entitlement to Public Benefits (20 minutes)

- The trainer should review each of the three assistance programs in this section, describing what each offers, what it takes to qualify for assistance and how defenders can assist their clients in receiving benefits.
 - A. Medicaid
 - B. Temporary Assistance for Needy Families (TANF)
 - C. Supplemental Security Income (SSI)

V. Public Housing Benefits (15 minutes)

- The trainer should explain what public housing is, what it takes to be eligible and how to apply.
- The trainer should review the different types of eviction notices and what, if anything, can be done to cure them.
 - A. Overview
 - B. Eviction

VI. Neglect and Dependency Proceedings (20 minutes)

- The trainer should review the goals and statutory framework for abuse and neglect cases.
- The defender should explain the process and steps involved in a typical abuse and neglect case.
- The trainer should review benefits in the situation where the youth is the parent and the situation where the youth is the subject of an abuse and neglect case.
- The trainer should emphasize that a *Guardian ad Litem* (GAL) advocates for the best interests of the child, whereas a defender advocates for the expressed interest of the child. These interests may not align.
 - A. Overview of the Neglect and Dependency System
 - B. Definition of Neglect
 - C. Key Players Involved
 - D. Neglect Proceedings
 - E. Benefits of Defender Involvement
 - F. Differences in the Role of the Defender and *Guardian ad Litem* (GAL)

VII. Forensic Exercise: Multi-Systemic Advocacy (35 minutes)

- The trainer should distribute the forensic exercise and instruct participants that they will have 15 minutes to review the fact pattern and answer the questions that follow.
- The trainer should then use the Discussion Points to lead an interactive discussion based on the questions posed.

JTIP Unit XII: Holistic Juvenile Defense Advocacy

Lesson 39, Advocacy in Special Education Cases

(2 Hours)

Overarching Goal

Juvenile defender will explore the link between special education and delinquency and learn to use education advocacy to produce better outcomes, consistent with the client's goals, in pending delinquency matters and to address educational needs that will reduce future referrals of the youth to juvenile court and detention.

Objectives

Juvenile defender will:

- Become familiar with basic Individuals with Disabilities Education Act (IDEA) principles related to the rights of students with disabilities to receive a Free and Appropriate Public Education (FAPE), an Individualized Education Program (IEP) with appropriate services, education in the least restrictive environment and special procedural protections for disabled students and their parents/guardians;
- Be able to identify clients who may have unmet or unidentified special education needs affecting their involvement in the juvenile justice system;
- Be able to understand terms and process information commonly found in IEPs, educational evaluations and other documents unique to special education;
- Learn about the various mechanisms that exist to resolve special education disputes and the remedies that are available for violations of special education rights;
- Understand the link between an inappropriate education plan and delinquency, and how education advocacy can generally be used to reduce juvenile court involvement and detention;
- Understand the strategies and advocacy techniques that may be required to secure important due process and other constitutional rights of a disabled client with special education needs at all phases of delinquency proceedings; and
- Understand the need to identify and develop professional contacts with special education advocates.

Training Materials:

- Copies of state special education statutes/regulations, as well as any local school district policies regarding the administration of special education programs (trainer to provide)
- List of Key Terms Used in Special Education Advocacy
- The trainer should locate, redact and distribute the following materials:
 - Sample IEP from the local school district
 - Sample special education evaluation report and referral forms from the local school district
- Forensic Exercise: Advocacy in Special Education Cases
- Bibliography

Trainer's Overview

- This training is meant to provide only a basic overview of Special Education Advocacy, as it is a complex field of law and specialized area of practice. The trainer should guide participants through the information in the sections below highlighting unique aspects of state special education laws and regulations as well as strategies for adapting to or challenging the practices of local school districts.
- The trainer should adjust the suggested time allotment and depth of coverage for each section based on the needs and experience level of the participants.
- In lieu of presenting Sections IV and V separately, the trainer may prefer to rely on the Forensic Exercise to cover that information by integrating the substantive material in Sections IV and V with the answers to the discussion questions that will be posed as part of the Forensic Exercise.
- Section VI may be eliminated entirely if Lesson 40 – Advocacy in School Disciplinary Cases will be offered as a separate session of the training program.

I. Role of the Juvenile Defender in Special Education Advocacy (5 minutes)

- A. What is Educational Advocacy?
- B. Role of the Juvenile Defender

II. The Individuals with Disabilities Education Act (IDEA) (15 minutes)

- The trainer should provide an overview of the history and basic substantive and procedural protections of the Individuals with Disabilities Education Act (IDEA) and introduce the corresponding state laws and regulations related to special education.
 - A. Overview of IDEA
 - B. Entitlements Under the IDEA

- C. Disabilities Identified
- D. Parental Rights Under the IDEA
- E. Other Sources of Special Education Law

III. Referral and Evaluation (10 minutes)

- The trainer should guide participants through the referral and evaluation process for determining special education eligibility as well as strategies for obtaining an accurate and thorough special education evaluation.
 - If available, the trainer should distribute redacted copies of an actual special education evaluation report and referral forms from a local school district as an aid for familiarizing participants with those documents.
- A. State Obligation
 - B. Evaluation
 - C. Eligibility for Special Education Services

IV. Development of an Individualized Education Program (IEP) (15 minutes)

- The trainer should provide an overview of the procedural protections, required contents, and overall process for developing an Individualized Education Plan (IEP).
 - The trainer should familiarize participants with the various mechanisms for resolving disputes arising from the IEP or evaluation process regarding the appropriate educational services, placement or classification of a disabled student, and the available remedies.
 - If available, the trainer should distribute redacted copies of an IEP from a local school district as an aid for familiarizing participants with the reading and understanding of an IEP.
- A. IEP Meeting
 - B. IEP Components
 - C. Placement
 - D. Dispute Resolution

V. First Steps in a Special Education Case (15 minutes)

- The trainer should facilitate a discussion regarding the ethical concerns of representing the parent/guardian of a delinquency client in special education matters as well as strategies for avoiding or dealing with conflicts of interest that may arise when engaging in such dual representation.
 - The trainer should guide participants through important first steps in engaging in special education advocacy, such as conducting a client interview, gathering school records and developing a chronology of schools and educational services.
- A. Preliminary Considerations
 - B. Client Interview

- C. Obtaining School Resources
- D. Chronology of Schools and Services

VI. Implications of the IDEA in a Delinquency Case (15 minutes)

- The trainer should guide participants through the potential implications of a client's educational disability on the rights of the client in each phase of delinquency proceedings, as well as the strategies and advocacy techniques that may be required to secure those rights and improve delinquency case outcomes.
 - A. Arrest and Intake
 - B. Detention
 - C. Pretrial Considerations
 - D. Trial
 - E. Disposition
 - F. Post-Disposition
 - G. Aftercare

VII. Special Education Students and School Disciplinary Action (15 minutes)

- The trainer should guide participants through effective strategies for using the special procedural protections of special education law to challenge the suspension and expulsion of disabled clients and to generally address the behavioral needs that are impacting their involvement in the juvenile justice system.
 - A. General Disciplinary Due Process Rights Applicable to All Students
 - B. Long-Term Suspensions and Expulsions of Special Education Students
 - C. Positive Behavioral Interventions and Supports (PBIS)

VIII. Forensic Exercise: Advocacy in Special Education Cases (30 minutes)

- The trainer should distribute the Forensic Exercise to participants and advise them that they have 10 minutes to read the fact pattern and jot down answers to the corresponding questions.
- The trainer should then guide participants through each of the discussion questions using the Discussion Points.

JTIP Unit XII: Holistic Juvenile Defense Advocacy

Lesson 40, Advocacy in School Discipline Cases

(1.5 Hours)

Overarching Goal

Juvenile defender will understand how school disciplinary proceedings impact the delinquency case and develop basic advocacy skills needed to represent youth at such proceedings, particularly when the delinquency and disciplinary proceedings arise out of the same alleged school-based conduct.

Objectives

Juvenile defender will:

- Become familiar with key cases and legal principles related to school discipline, including *Goss v. Lopez*;
- Develop the advocacy skills necessary to protect the due process rights of youth facing school disciplinary proceedings and reduce the likelihood of a long-term suspension or expulsion being imposed;
- Understand additional protections afforded to special education students facing discipline in school;
- Understand how school disciplinary proceedings may provide important discovery and investigatory leads, impeachment material and other advantages in a juvenile delinquency case arising out of the same alleged school-based conduct;
- Understand how success in a school disciplinary hearing can reduce pretrial detention and improve disposition options in a delinquency case; and
- Identify school policies and procedures that facilitate the school-to-prison pipeline.

Training Materials:

- Trainer should locate and distribute the following materials, which are usually available on the internet and should always be available at the local school or school board office:
 - Local school board regulations
 - Local school disciplinary handbook or code of conduct

- Local student rights and responsibilities or procedures for discipline
- List of local advocates who represent students in school disciplinary proceedings
- *Goss v. Lopez*, 419 U.S. 565 (1975) (trainer to provide)
- Forensic Exercise: Advocacy in School Discipline Cases
- Bibliography

Trainer's Overview

Note To Trainer



This training is most effective when taught in conjunction with Lesson 39 – Advocacy in Special Education Cases. If these lessons are taught during the same program, the trainer may eliminate Section IV of this lesson entirely, as the same material is covered in Advocacy in Special Education Cases.

I. Relevance of Disciplinary Hearings in the Delinquency Matter (15 minutes)

- The trainer should facilitate a discussion with participants on the importance and advantages of defender advocacy at school disciplinary hearings for alleged conduct that is also the basis of delinquency proceedings.
 - A. Overview
 - B. Advantages of Defender Advocacy at the School Disciplinary Hearing

II. Suspension or Expulsion of a General Education Student (15 minutes)

- The trainer should guide participants through the various constitutional due process protections established in *Goss v. Lopez* and its progeny that are afforded to students facing short- or long-term suspensions and expulsion. The trainer should highlight any heightened procedural protections established in state or local disciplinary statutes, regulations, school board policies or local case law, and distribute hard copies of any local manuals or handbooks containing these protections if available.
 - A. Right to Due Process
 - B. Short-Term Versus Long-Term Suspensions or Expulsion
 - C. Level of Due Process

III. Representing Youth at School Disciplinary Hearings (15 minutes)

- The trainer should familiarize participants with the format of school disciplinary hearings and discuss advocacy techniques and strategies that can be used to effectively prepare for and represent clients at such hearings.
 - A. Format of School Disciplinary Hearings
 - B. Preparing for School Disciplinary Hearings

C. Defense Strategies

D. Post-Decision Considerations

IV. Special Education Students and School Disciplinary Action (15 minutes)

- The trainer should guide participants through effective strategies for using the heightened procedural protections for special education students in school discipline proceedings to challenge the suspension or expulsion of disabled clients and to address the behavioral needs that led to their involvement in the juvenile justice system.

A. Overview of Special Education

B. Long-Term Suspensions and Expulsions of Special Education Students

C. Positive Behavior Interventions and Supports (PBIS)

V. Forensic Exercise: Advocacy in School Discipline Cases (30 minutes)

- The trainer should distribute the Fact Pattern and allow participants 5 minutes to read Part 1 of the exercise. The trainer should move through the questions in Part 1, one at a time, allowing the participants to answer out loud and interact with one another.
- The trainer should then allow participants an additional 5 minutes to read Part 2 of the exercise and follow the same process for discussing answers.

Developed over a five-year period by the National Juvenile Defender Center, the 40-lesson ***Juvenile Training Immersion Program (JTIP)*** is the first training program of its kind to provide integrated and comprehensive training on both skills and substance for juvenile defenders. While each Lesson is written with a national audience in mind, each is fully customizable to include local case law, rules, and statutes, so that the training is relevant to juvenile defenders in any given locality. We believe JTIP to be the gold standard in training for juvenile defenders. It is our hope that this curriculum will help inspire and equip defenders across the country to provide the highest level of advocacy for their clients.

The information in this guide is intended to provide Training Coordinators and Trainers with an overview of each of the JTIP Lessons along with various effective training techniques to help customize a training to fit their needs. This guide demonstrates what makes JTIP such a powerful training program. Whether you are creating an intensive new defender training camp, need to provide a refresher training on key practice skills or legal concepts, or are simply looking for a practical Lesson to supplement a meeting or conference, JTIP is the answer.

Inside, you will find overviews of each of the 40 Lessons, including:

- Lesson Goals and Target Outcomes
- Estimated Timeframes
- Handouts and Supplemental Materials
- Forensic Exercise descriptions

Anyone wanting to organize a JTIP training should contact the National Juvenile Defender Center at (202) 452-0010 to request training assistance. NJDC will help identify a Certified JTIP Trainer who can partner with you to bring the training to your jurisdiction.



National Juvenile Defender Center

1350 Connecticut Ave. NW, Suite 304
Washington, DC 20036
202.452.0010 (phone)
202.452.1205 (fax)
www.njdc.info