



NYSACDL

NEW YORK STATE ASSOCIATION
OF CRIMINAL DEFENSE LAWYERS

NEW YORK ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

Presents

CROSS TO KILL 2011

6 CLE CREDIT HOURS IN SKILLS

Friday April 15, 2011 9:30 a.m. – 4:30 p.m.

Registration Begins at 9:00 a.m.

St. Francis College, 180 Remsen Street, Brooklyn, New York

PROGRAM DESCRIPTION

Preparing for and conducting specific areas of cross examination including preparing the client for cross are the focus of this seminar specifically geared to criminal defense lawyers. Renowned criminal defense trial attorneys provide vital instruction which is equally applicable to state and federal practitioners.

AGENDA

9:00 a.m. REGISTRATION

9:30 – 10:20 Cross of the Arresting Officer in A DWI Case,

Peter Gerstenzang, Esq.

10:30 – 11:20 How to Approach a Cross Examination,

Peter Quijano, Esq.

11:20 -11:30 BREAK

11:30 -12:20 Cross Examination Based on Taped

Transcripts, Susan Necheles, Esq.

12:20 -1:30 LUNCH.

1: 30–2:20 Cross Examination of an Expert Witness, Gerald

Shargel, Esq.

2:30-3:20 Preparing Your Client to Testify: Anticipating

the Prosecution’s Cross Examination, James Benjamin,

Esq.

3:20 -3:30 BREAK

3:30 – 4:20 Know Your Enemy, Susan Kellman, Esq.

*THIS TRANSITIONAL PROGRAM IS APPROVED FOR
NEW LAWYERS*

PROGRAM FEES AND PAYMENT

NYSACDL is going **GREEN**. Program Materials in PDF format will be available to pre-paid registrants for download directly from our website approximately one week before the Program. Save \$15.00 by receiving materials as a PDF instead of printed materials.

Register & Pay Online: NYSACDL.org; fax this form with credit card payment: 888-239-4665; Mail your check payable to NYSACDL: NYSACDL, 2 Wall Street, Third Floor, NY, NY 10005.

Tuition: NYSACDL Members \$150 _____; Non-Members \$200 _____ (Non-members: Join now to register for the Seminar at the Member rate)

Printed Materials: \$15.00 _____

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NYSACDL has been approved by the New York State Continuing Legal Education Board as an approved provider. Tuition assistance will be provided to those attorneys who show need.



PROGRAM DETAILS

Cross Examination of the Arresting Officer in a DWI Case, Peter Gerstenzang, Esq. Cross-examination of the arresting officer will focus on breaking down the stop and the arrest procedures into discreet areas for inquiry. The lecture will focus on structuring the cross and the subjective factors that must be considered in conducting the examination.

How to Approach a Cross Examination, Peter Quijano, Esq., will focus on preparation and strategizing in anticipation of cross and the tactics implemented during cross examination. The 3-day, five-witness pretrial hearing in *U.S. v. Ahmed Khalfan Ghailani*, which resulted in the preclusion of the government's most important witness in the East African Embassy Bombing trial, will be used as a teaching vehicle.

Cross Examination Based on Taped Transcripts, Susan Necheles, Esq. This presentation will focus on using transcripts of recorded conversations or of computer instant messages to cross examine a witness. Cross-examination of an undercover police officer in an internet sting in which the undercover posed as a mother who convinced the defendant to travel from Connecticut to New York purportedly to have sex with her children will be used for demonstration. The transcripts contained graphic and explicit discussions but also contained material which could be used to establish the defense theory.

Cross Examination of an Expert Witness, Gerald Shargel, Esq. The tactics for approaching and confronting the expert witness on issues ranging from the witness' qualifications, to the area of expertise to the actual findings will be explored and demonstrated.

Preparing Your Client to Testify: Anticipating the Prosecution's Cross Examination, James Benjamin, Esq. This presentation will discuss

the considerations bearing on whether and under what circumstances a client should take the stand at his or her own trial. We will explore some of the prosecution's traditional approaches to cross-examination and go through effective witness preparation strategies so that your client is well-prepared if he or she testifies at trial.

Know Your Enemy, Susan Kellman, Esq. This presentation will demonstrate through a series of different cross examination styles and approaches how to use the information and "knowledge" about the witness gleaned from investigation can be used to crucial advantage in the questioning.

PROGRAM FACULTY

James Benjamin, Esq. James J. Benjamin Jr., a partner in the New York office of Akin Gump Strauss Hauer & Feld LLP, represents clients in a wide variety of government and regulatory investigations and litigation. Before joining Akin Gump in early 2001, Mr. Benjamin served for more than five years as a federal prosecutor in the U.S. Attorney's Office for the Southern District of New York. During his tenure there, he served as deputy chief appellate attorney and as a member of the Securities and Commodities Fraud Task Force. As an assistant U.S. attorney, he received an award for superior performance from Attorney General Janet Reno in 2000. Before joining the U.S. Attorney's Office, Mr. Benjamin served as a law clerk at the U.S. Supreme Court for Justices Lewis F. Powell Jr. and John Paul Stevens. Mr. Benjamin received his A.B. magna cum laude in 1987 from Dartmouth College, where he was a member of Phi Beta Kappa and was awarded the Colby Government Prize. He earned his J.D. in 1990 from the University of Virginia School of Law, where he was the research and projects editor of the *Virginia Law Review* and a member of the Order of the Coif. He is a member of the New York, Maryland and District of Columbia bars and is admitted to practice before numerous



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federal courts. Mr. Benjamin is the chair of the New York City Bar Association's Task Force on National Security and the Rule of Law and is a member of the New York Council of Defense Lawyers and the New York American Inn of Court. He was recognized in 2010 as a leading lawyer by *Chambers USA: America's Leading Lawyers for Business* in the areas of white collar crime and government investigations.

Peter Gerstenzang, Esq., is the senior partner in the Albany firm of Gerstenzang, O'Hern, Hickey, Sills & Gerstenzang where he focuses on Criminal Defense with an emphasis on DWI cases and Vehicular Crimes. He commenced his legal career as a prosecutor for the United States Army in the Republic of Vietnam. From 1972 to 1975, he was an Assistant District Attorney for the County of Albany. Certified as a breath test operator, he taught at the New York State Police Academy in their Breath Test Training Program for 12 years. He is the Co-Chair of the Traffic Safety Committee of the Criminal Justice Section of the New York State Bar Association. In addition, Mr. Gerstenzang is Board Certified by the National College for DUI Defense ("NCDD"), where he serves as a Regent. The NCDD is the only organization accredited by the American Bar Association to certify attorneys as specialists in DUI law.* His book, *Handling the DWI Case in New York*, published by West Group, is considered a standard reference in the field of Driving While Intoxicated cases. Peter Gerstenzang is a regular lecturer for the New York State Association of Criminal Defense Lawyers, the National Association of Criminal Defense Lawyers, the Office of Court Administration Judges Training Program, the New York State Bar Association, and the New York State Defenders Association. In addition, he lectures at the Zone 5 Police Academy and for various other law enforcement, defense and judicial organizations.

* *Disclaimer: The NCDD is not affiliated with any governmental authority. Certification is not a*

requirement for the practice of law in the State of New York and does not necessarily indicate greater competence than other attorneys experienced in this field of law. See Rules of Prof. Con., Rule 7.4(c)(1); Code of Prof. Resp., DR 2-05(C)(1).

Susan Kellman, Esq. Ms. Kellman's career as a criminal defense attorney has spanned over 30 years. She has tried more than 100 federal felony jury trials as defense counsel, including major organized crime prosecutions *United States v. Gotti*, and *United States v. Persico*. She is a Fellow of the American College of Trial Lawyers.

Susan Necheles, Esq. is a partner in the law firm Hafetz Necheles and Rocco. She has repeatedly been among the 5% of lawyers chosen by her peers for a listing in "New York Super Lawyers." She has tried dozens of cases as a defense attorney. From 2001 through 2006 Ms. Necheles headed the New York Women's Criminal Defense Lawyers' Group. She was elected to and served on the Board of New York Council of Defense Lawyers. She was a Master in the Federal Bar Council's Inn of Court and is a member of the Federal Bar Counsel, the National Association of Criminal Defense Lawyers, and the Association of the Bar of the City of New York. Ms. Necheles graduated from Yale Law School in 1983, where she was an Editor of the *Yale Law Journal*. *Ms. Necheles is married and has three children and two dogs.*

Peter Enrique Quijano, Esq. is a partner at QUIJANO & ENNIS, P.C. A litigator specializing in federal criminal defense and appeals, he is a member of the Criminal Justice Act Panels and the Capital Panels for the Southern and Eastern Districts of New York. Previously, he served in the Senior Trial Attorney Bureau of the Legal Aid Society of New York, Criminal Defense Division. Mr. Quijano has tried more than 120 felony cases to verdict, and has briefed and argued numerous cases before the United States Court of Appeals for the Second Circuit.



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He is the co-director and creator of the Southern District of New York's Mentoring Program (the 1st such program in the nation designed to prepare experienced state practitioners as viable candidates for the District's Criminal Justice Act Panel). He is member of the Merit Selection Panel for Magistrate Judges for the Southern District of New York. A frequent guest lecturer in trial advocacy courses conducted by the Association of the Bar for the City of New York, New York State Association of Criminal Defense Lawyers, The New York County Lawyer's Association, Columbia University Law School, Fordham University Law School and New York Law School. His federal trials include *U.S. v. Ahmed Khalfan Ghailani* (the first Guantanamo detainee brought to the United States for trial in a civilian court - charged with the 1998 al-Qaeda bombings of the United States Embassies in Tanzania and Kenya; and, *U.S. v. Lemrick Nelson - III* (the retrial of civil rights violation arising out of the Crown Heights riots and the attack on Yankel Rosenbaum). His loves include Opera, Baseball and Scottish Terriers (not necessarily in that order).

Gerald L. Shargel, a member of the New York Bar since 1969, limits his practice to the defense of serious criminal cases. Over the past several decades, Mr. Shargel has handled numerous high profile cases at both the trial and appellate level. Cases typically include a broad array of white collar and non-white collar crimes. Since 1981, Mr. Shargel has been profiled in local and national publications, including the New Yorker and the New York Times. Mr. Shargel has also contributed articles and opinion pieces to the New York Times, the Daily News, the Los Angeles Times and the online magazine Slate. In addition to his caseload, Mr. Shargel devotes considerable time to teaching and lecturing. He is currently the Practitioner-In-Residence at Brooklyn Law School, where he teaches Evidence and Criminal Procedure. Widely regarded as a master of cross examination, Mr.

Shargel recently contributed a chapter to *Take the Witness: The Experts Speak on Cross Examination*. In a 1994 New Yorker profile, Mr. Shargel was described as "one of the most brilliant criminal defense attorneys in America... quite possibly the finest of his generation." Mr. Shargel was recently honored by the New York State Association of Criminal Defense Lawyers, who presented him with the Thurgood Marshall Award for outstanding criminal law practitioner. Mr. Shargel graduated from Rutgers University in 1966 and Brooklyn Law School in 1969.