

This is a non-traditional, multi-media national CLE template for all attorneys when dealing with informants, perjury and prosecutorial misconduct.

This new interactive and provocative CLE program premiered Oct. 16, 2009 at the 4th Annual Public Defenders State Wide Meeting & Training Conference in Helena, MT

**The Lucasville Rebellion:
Informants, Perjury and the Search for Truth**
2.0 CLE credit hours including 1.0 for Ethics

Quote: John Connor, former Chief of Special Prosecutions, Office of Attorney General, State of Montana, a **panelist** at the Montana session, offers this description of the production values of the **Lucasville Rebellion CLE** *"It's rare to see anything this truly innovative in a CLE program. I thought the program was fun, interesting and challenging."*

Gary Anderson and Eric Olson, have created a *dynamic* and *provocative* Continuing Legal Education (CLE) program.

Mr. Olson has spent more than 30 years as a lawyer seeking justice for individual citizens in state and federal court systems. A recognized leader in the field of criminal defense in Montana, he currently serves as Training Coordinator for the Montana Office of the Public Defender.

Mr. Anderson is our country's nationally renowned and lauded portrayer of **Clarence Darrow** and CEO of the *Clarence Darrow Foundation*. He has previously created 3 nationally touring CLE programs.

The **Lucasville Rebellion CLE** was *recently* approved in Montana for **2.0 CLE credit hours including 1.0 for Ethics**. The presentation analyzes issues pertaining to informant witnesses and the use of perjured testimony by focusing on capital convictions resulting from the 1993 Ohio State Prison Riot. The source document for the educational program is Staughton Lynd's, *Napue Nightmares: Perjured Testimony in the Trials Following the 1993 Lucasville, Ohio, Prison Uprising*, 36 Capital University Law Review 559 (2008).

The **Lucasville Rebellion CLE** program uses your local lawyers, assisted and coached by one professional actor, to *re-enact* various scenes from Mr. Anderson's 2008 *Off Broadway* and nationally produced drama **Convict Race: Lucasville** also based on the *Lucasville* rebellion. Scenes are drawn from actual court documents, trial exhibits, interrogation transcripts, recantations, and witness testimony. A book containing copies of many of the actual documents are also provided for authenticity.

The **program package** includes the attorney/moderator, one professional actor, a CD containing the power point, video clips, sound effects, tech cue scripts, a CD containing the relevant legal resource material and **reading** scripts for the participants.

You will also have support **prior** to your event for both tech and legal questions by an attorney who was instrumental in creating the program, in addition to access to the playwright/actor for coaching by phone **and** in person for the participating attorneys who will help in the scene work.

You provide three legal panelists of some note and reputation and simply substitute *your* states laws, and related cases that tie in to the themes of the program for discussion.

The moderator guides the program and the attendees as it ties the multi-media elements together. The program features an expert *regional* legal panel of *your* choosing to tie in the related

substantive state law for *each* state using the *Lucasville* trials and convictions as an instructional model. The panel will address and discuss the legal issues, listed below, in and around *live* illustrative scenes, powerful video clips and a strong power point presentation.

Quote: Judge Virginia Cook Compton, City Judge, Dillon Montana and participant in the Montana session: ***“I had the great fortune of being a participant in the Lucasville CLE which premiered in Montana at the Public Defenders’ Annual Meeting. It was a remarkable experience! Innovations in continuing legal education do not come along very often – this was innovation at its best. Those attending were treated to a multimedia extravaganza. The combination of CLE and live theatre using local attorneys and professional actors was unique.”***

PART ONE: **Informants**

- (A) Discussion of - *your State’s* - law and history involving *Informant* Testimony
- (B) A discussion of the risks and benefits of informant testimony and practical tips for using and challenging informant witnesses

Quote: Dr. Thomas Bennett, M.D., Associate Medical Examiner for the State of Montana based in Billings and Yellowstone County, (who re-enacted the role of one of the state’s expert witnesses in the *Lucasville* CLE program): ***“It is shocking that these convictions are allowed to stand simply based on the trial transcripts alone. I found the program phenomenal. And it provided much food for discussion.”***

PART TWO: **Perjury**

- (A) What is perjury?
- (B) What remedies exist in your state for defendants prejudiced by perjured testimony?
- (C) A demonstration of the proper technique to be employed in the courtroom to impeach a witness through the use of prior inconsistent statements.

Quote: Judge Cook Compton again: ***“In this fast-paced, technology-driven society, this program is a welcome change to the talking heads equals nodding heads to which we have become accustomed in some CLE programs. I truly believe that the Lucasville CLE will become a national must-see at seminars and sessions across the country that are hungry for new, interactive and non-traditional training.”***

PART THREE: **The Search for Truth** or **What is truth?**

- (A) False evidence, prosecutors, and the duty to pursue justice
- (B) False evidence, defense counsel, and the duty of advocacy
- (C) Prosecutorial misconduct, including the remedies -- in *your State* -- for prosecutorial misconduct.

Quote: John Connor again: ***“If what has been presented in this CLE is true, then what the Prosecutors did in pursuit of these convictions was atrocious, absolutely atrocious, and they should be sent to jail!”*** ... and this from a prosecutor who used informant testimony to convict inmates for offenses committed during the 1991 Montana State Prison riot.

SAMPLE PAGES FROM THE PROGRAMS CONTENTS

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SCENE 5:

(Live – **LAWYER 1** as “Prosecutor”)

PROSECUTOR: Ladies and Gentlemen of the Jury, we are not going to bring in fingerprints. We don't have any. We're not going to bring in footprints. We don't have any. We're not going to bring you blood samples. There isn't any blood we were able to match. And you have heard our lead investigator, Sgt. Hudson, tell you that we were not able to match any victim to any suspect, any victim to any weapon or any weapon to any suspect.

%% TECH CUE: (Slide 13: “George Skatzes”)

SCENE 6:

(Live – **Gary Anderson** as “Skatzes”)

SKATZES: I'm George Skatzes, one of the so-called rebellion leaders. I've been on Death Row now for 15 years. I'm telling you ... (Pauses, then bursts with anger.) God damn it! The State had no physical evidence. No real proof. Just the word of these maggot snitches and their word alone that put us on death row. This is the truth my friends: None of us will ever know what that physical evidence might have shown. And why? Because, after cherry picking for what was good and useful to the prosecution, the authorities ordered it destroyed after the trials were over. I got two death sentences and a life sentence plus up to fifty years for kidnappings coming out of that riot.

%% TECH CUE: (Slide 14: Play cell door closing)

MODERATOR: Before we continue, I'd like to introduce the rest of our panelists.

- * **LAWYER / PANELIST (1)** you've met.
- * **FORMER PROSECUTOR / PANELIST (2)**
- * **DEFENSE COUNSEL / PANELIST (3)**

In the Lucasville setting we have a group of individuals who want to provide testimony but whose motives and credibility may be highly suspect.

I'd like to ask my fellow panelists what concerns you each have – as you approach a trial – about the possible presence of informant witnesses.

Let me start by asking our former prosecutor to comment on what you considered when you looked at a cast of witnesses that prominently featured informants.

FORMER PROSECUTOR PANELIST (2): Using Informants

Now, what about on the defense side? Suppose you receive a witness list from the prosecution and note that one or more of the key witnesses are informants. What process do you go through to get ready to handle those witnesses?

DEFENSE LAWYER PANELIST (3): Challenging Informants

MODERATOR: Under pressure from local public opinion, and in the absence of the physical evidence that normally undergirds a criminal proceeding, the Lucasville

(Live – LAWYER 3 as Prosecutor 1/ LAWYER 2 as Prosecutor 2
LAWYER 1 as Prosecutor 3 / LAWYER 4 as Dr. Buerger)

PROSECUTOR #1: Ladies and Gentlemen of the Jury, think about David Sommers, *Skatzes* killed David Sommers. He wielded a bat and literally beat the brains out of this man's head!

PROSECUTOR #2: Ladies and Gentlemen of the Jury, I think you will believe, yes, *Jefferson* in fact killed David Sommers; he in fact did beat his brains out. I don't think there's going to be a doubt at all in your mind, let alone a reasonable doubt.

MODERATOR: Let us bring on our expert, forensic pathologist, Dr. Leopold Buerger who did the autopsy on David Sommers' body. The Doctor testified in both cases. He was their *expert* and under Ohio law, no one can be convicted of a homicide without *expert* testimony. Because of Dr. Buerger's testimony the prosecution had to deal with an *unanticipated theory*.

PROSECUTOR #1: Dr. Buerger, you performed the autopsy on David Sommers, is that correct?

BUERGER: Yes.

PROSECUTOR #1: And Doctor, what would you conclude was the cause of death?

BUERGER: As my report indicated, Mr. Sommers died of a single massive blow to the head.

PROSECUTOR #1: Doctor, a single fatal blow? That is almost inconceivable when looking at the pictures?

BUERGER: Nevertheless, a single fatal blow – a single massive blow to the head, with a blunt instrument. This blow split the skull, separating the sutures and extending into the face and base of the skull, and causing lacerations of the brain with loss of part of the brain tissue.

PROSECUTOR #1: Could this have been the result of multiple blows?

BUERGER: No. Look at this picture of the head. One single blow hit the brain, fractured the base of the skull, and also damaged part of the face. There was evidence of multiple body trauma, but the cause of death was one blow. All of the underlying skull fractures I could correlate to just that one blow, including the front of the face.

MODERATOR: In the closing argument sentencing phase of his trial, Prosecutor #2 had to resort to impeaching his own medical examiner

PROSECUTOR #2: I know I called our expert, Dr. Buerger, a kind gentleman, to come in here and tell you that there was one blow to the head. I'm going to ask you to look at State's Exhibit Number 13.... Look at that picture and make up your own minds. He's an expert, that's true. The law requires no one can be convicted of a homicide under Ohio law without what's called expert testimony. Somebody must testify to a reasonable medical certainty as to what the cause of the death was. And I like Dr. Buerger and I'm not trying to in any way impugn his ability, but when you look at these pictures, and compare that with the actual findings ... then use your common sense and the testimony you heard. Everybody said, everybody who was there, all the testimony [was that] this man was beaten many, many, many times. It was not one just one single bat or blow to the head.

MODERATOR: And in another trial, yet another prosecutor -- arrogantly proud of his *'Let's Make a Deal'* abilities – expressed his cruel indifference to the execution of either of two men who were offered deals for their testimony.

PROSECUTOR #3: Ladies and Gentlemen of the Jury, as you know, we had no physical evidence to bring before you. None. But what we do have is Mr. Anthony Lavelle as our key witness. And Anthony Lavelle said, *"I'll tell you why I'm here; I was on my way to death row."* And yes, the State cut a deal with him, that's true. Mr. Skatzes had his opportunity to cut a deal and he chose not to take it. Had Mr. Skatzes taken it, assuming he would tell us the truth, Mr. Skatzes would be up there on the witness stand testifying against Mr. Lavelle. I make no apologies. By the very nature of the crime, the State is going to have to cut deals with people who have seen things, with people who have done things. It makes no difference to me which of these men goes to death row. Skatzes chose what seat he wanted to sit in. It's all about choice.

%% TECH CUE: *(Play FX Gavel pounding)*

MODERATOR: This pattern of prosecutorial misconduct not only violates Napue; it also violates the ethical standards that govern prosecutors.

FORMER PROSECUTOR PANELIST (2):

Discussion regarding false evidence, prosecutors, and the ethical duty to pursue justice

MODERATOR. So, it's pretty evident if you were a Lucasville prosecutor, you'd be up an ethical creek.

But what if you represented Kenneth Law, and when you sat down to talk with your client – or with one of the witnesses – you learned that he was going to testify falsely . . . either because he had his own ideas about how his defense should proceed or in order to live up to a deal he made with state prosecutors? How does that square with your ethical responsibility as an officer of the court?

DEFENSE COUNSEL PANELIST (3):

Discussion regarding false evidence, defense counsel, and the ethical duty of (zealous) advocacy

MODERATOR: We conclude with a scene based on Gary Anderson's actual visits and conversations with prisoner George Skatzes on Death Row as Mr. Skatzes relives the rebellion's days of bloodshed as well as gestures of compassion. This scene is presented with his permission.

%% TECH CUE: *(Slide 22: Skatzes)*

SCENE 13:

(Live – Gary Anderson as "Skatzes")

SKATZES: I just keep replaying every moment of every day of the riot in the VCR in my head. I lay here and I think about the very first time I seen Officer Darrold Clark. During the riot Darrold was laying on the floor. He was shaking. I'm talking about shaking real bad! I could see he was young. I asked myself, "What would I do if he were my son?" I got down on the floor and talked to him. One time he asked me, could I get him out of there so he could get some sleep? I told him I would see what I could do. Later I went back and told him, "Let's go. You are going into my block." He was freaking out on me. He thought I was gonna hurt him. Darrold said he ha