

## Tartan Forensic LLC

### Course Title: Challenging the Psychology of Prosecution Evidence

**Format:** 2 hour webcast | Advanced Trial Advocacy & Evidentiary Practice

#### Executive Summary

Prosecution cases are frequently anchored in psychological assumptions—from the supposed reliability of forensic behavioral profiles to the confidence of eyewitness memory and the narrative framing of police interrogations. Left unchallenged, these psychological components carry immense persuasive weight with juries.

This intensive 90-minute CLE webcast equips defense counsel with practical, tactical tools to audit, dismantle, and counter the prosecution's psychological evidence. Through two focused modules—**Dismantling Dubious Expert Testimony** and **Unmasking Obfuscation**—attendees will learn how to expose flawed expert methodologies under *Daubert/Frye* standards, cross-examine state experts on confirmation bias, and unmask subtle witness manipulation and memory contamination in police reports. Shifting from reactive objections to proactive evidentiary strategies, this course delivers actionable cross-examination frameworks and pre-trial motion strategies designed to neutralize the state's psychological narrative.

#### Course Learning Objectives

Upon completing this 90-minute course, participants will be able to:

1. **Audit Psychological Expert Methodologies for Admissibility:** Identify structural flaws, subjective analysis, and lack of empirical validation in state expert opinions to draft targeted pre-trial *Daubert/Frye* gatekeeping motions.
2. **Execute Cross-Examinations of State Experts:** Apply specialized cross-examination techniques that expose cognitive bias, overreached conclusions, and methodology gaps in state psychological and behavioral testimony.
3. **Deconstruct Coercive Interrogation and Memory Contamination:** Pinpoint suggestive questioning, cognitive overload, and post-event contamination in police interview records to challenge witness credibility and confession voluntariness.
4. **Identify and Counter Prosecution Narrative Obfuscation:** Analyze police reports and prosecution witness outlines for "narrative smoothing" and omitted inconsistencies, converting latent psychological flaws into affirmative defense evidence.

## Introduction & Conceptual Framework

The psychology of the courtroom: How cognitive biases shape prosecution theories and jury perception.

Shifting from defense reactivity to proactive evidentiary scrutiny.

### Module 1: Dismantling Dubious Expert Testimony

Forensic psychology, state expert witnesses, and subjective science.

Spotting junk forensic science and unvalidated psychological profiles.

Leveraging Daubert/Frye gatekeeping motions to exclude or limit state experts.

Cross-examination tactics: Exposing methodology flaws, confirmation bias, and lack of empirical support.

### Module 2: Unmasking Obfuscation

Eyewitness memory, police tactics, and prosecution narrative traps.

Identifying coercive interrogation techniques and false/suggestive memory cues.

Exposing prosecution "narrative smoothing"—how police reports hide inconsistencies.

Cross-examining lay witnesses on perception gaps, cognitive overload, and post-event contamination.

### Module 3: Strategic Integration & Q&A

Synthesizing expert and witness challenges into a unified theory of defense.

Live Q&A and practical takeaway checklists.

## Appendix A

### Applicable Rule(s) of Evidence, Constitutional Right, and/or Ethical Duty

#### Rules of Evidence

- **Federal Rule of Evidence 702 / State Counterparts (*Daubert* / *Frye* Standards):**  
Applies directly to Module 1 (*Dismantling Dubious Expert Testimony*).  
Governs the admissibility of expert testimony, requiring that the expert's scientific, technical, or specialized knowledge be based on sufficient facts/ data, reliable principles and methods, and a reliable application of those methods to the facts of the case.
- **Federal Rule of Evidence 403 (Exclusion of Relevant Evidence):**  
Applies to both modules. Allows defense counsel to exclude or limit psychological evidence, expert testimony, or prejudicial witness statements where the probative value is substantially outweighed by the danger of unfair prejudice, confusing the issues, or misleading the jury (e.g., the "aura of scientific infallibility").

- **Federal Rule of Evidence 611(b) & (c) (Mode and Order of Examining Witnesses):**  
Applies directly to Module 2 (*Unmasking Obfuscation*). Governs the scope of cross-examination and the use of leading questions to expose witness bias, memory contamination, and narrative inconsistencies.

## Constitutional Rights

- **Sixth Amendment – Confrontation Clause:**  
The bedrock right for defense counsel to confront and cross-examine state witnesses and experts. Applies to testing the reliability, memory, bias, and underlying data of prosecution witnesses and state experts under oath (*Crawford v. Washington*).
- **Fifth & Fourteenth Amendments – Due Process & Voluntariness:**  
Guarantees fundamental fairness in trial proceedings and excludes involuntary or unreliably coerced confessions/statements resulting from psychological pressure, coercive interrogation tactics, or police contamination (*Jackson v. Denno*).
- **Sixth Amendment – Effective Assistance of Counsel:**  
Requires defense counsel to independently investigate, audit, and challenge key prosecution evidence (*Strickland v. Washington*). Failing to investigate or challenge flawed psychological expert testimony or coercive police tactics can constitute ineffective assistance.

## Ethical Duties (ABA Model Rules of Professional Conduct)

- **Rule 1.1 (Competence):**  
Requires defense attorneys to possess the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. In this context, competence includes understanding forensic science, psychological evidence, and cross-examination techniques needed to audit state experts.
- **Rule 1.3 (Diligence) & Rule 3.1 (Meritorious Claims & Contentions):**  
Duty to zealously advocate for the client by raising legitimate evidentiary challenges, filing pre-trial *Daubert/Frye* gatekeeping motions, and holding the prosecution to its burden of proof.
- **Rule 3.4 (Fairness to Opposing Party and Counsel):**  
Governs the proper discovery, inspection, and handling of evidence, ensuring defense counsel systematically demands raw data, test protocol sheets, and unedited recordings while adhering to rules of court.