

Basic Course Workbook Series Student Materials

**Learning Domain 17
Presentation of Evidence
Version 5.3**

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Student Materials
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Presentation of Evidence
Version 5.3**

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THE ACADEMY TRAINING MISSION

The primary mission of basic training is to prepare students mentally, morally, and physically to advance into a field training program, assume the responsibilities, and execute the duties of a peace officer in society.

FOREWORD

The California Commission on Peace Officer Standards and Training sincerely appreciates the efforts of the many curriculum consultants, academy instructors, directors and coordinators who contributed to the development of this workbook. The Commission extends its thanks to California law enforcement agency executives who offered personnel to participate in the development of these training materials.

This student workbook is part of the POST Basic Course Training System. The workbook component of this system provides a self-study document for every learning domain in the Basic Course. Each workbook is intended to be a supplement to, not a substitute for, classroom instruction. The objective of the system is to improve academy student learning and information retention and ultimately a police officer dedicated to service and committed to safety.

The content of each workbook is organized into sequenced learning modules to meet requirements as prescribed both by California law and the POST Training and Testing Specifications for the Basic Course.

It is our hope that the collective wisdom and experience of all who contributed to this workbook will help you, the student, to successfully complete the Basic Course and to enjoy a safe and rewarding career as a peace officer serving the communities of California.

ROBERT A. STRESAK
Executive Director

LD 17: Presentation of Evidence

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Preface

Introduction

Student workbooks

The student workbooks are part of the POST Basic Course Instructional System. This system is designed to provide students with a self-study document to be used in preparation for classroom training.

Regular Basic Course training requirement

Completion of the Regular Basic Course is required, prior to exercising peace officer powers, as recognized in the California Penal Code and where the POST-required standard is the POST Regular Basic Course.

Student workbook elements

The following elements are included in each workbook:

- chapter contents, including a synopsis of key points,
 - supplementary material, and
 - a glossary of terms used in this workbook.
-

How to Use the Student Workbook

Introduction

This workbook identifies training requirements for this Learning Domain. You may use the workbook in several ways: for initial learning, for test preparation, and for remedial training.

Workbook format

To use the workbook most effectively, follow the steps listed below.

Step	Action
1	Begin by reading the: Preface and How to Use the Workbook, which provide an overview of how the workbook fits into the POST Instructional System and how it should be used.
2	Refer to the Chapter Synopsis section at the end of each chapter to review the key points that support the chapter objectives.
3	Read the text.
4	Complete the Workbook Learning Activities at the end of each chapter. These activities reinforce the material taught in the chapter.
5	Refer to the Glossary section for a definition of important terms. The terms appear throughout the text and are bolded and underlined the first time they appear (e.g., <u>term</u>).

Chapter 1

Rules of Evidence

Overview

Learning need Peace officers must know the rules of evidence as they pertain to relevancy, types of evidence, authentication and the chain of custody.

Learning objectives The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to...	E.O. Code
<ul style="list-style-type: none">• recognize relevance as it pertains to the admissibility of evidence.	17.01.EO8
<ul style="list-style-type: none">• identify four types of evidence:<ul style="list-style-type: none">- testimonial,- real,- demonstrative, and- circumstantial.	17.01.EO9
<ul style="list-style-type: none">• recognize the process of authentication of evidence.	17.01.EO10
<ul style="list-style-type: none">• understand what constitutes the legal chain of custody for evidence.	17.01.EO11

Overview, Continued

In this chapter This chapter focuses on identifying the criteria and rules governing the admission and exclusion of evidence in the criminal trial. It also covers the subpoena process required to obtain admissible evidence. Refer to the chart below for a specific topic.

Topic	See Page
Relevance	1-3
Types of Evidence	1-5
Authentication of Evidence	1-6
Chain of Custody	1-7
Chapter Synopsis	1-10
Workbook Learning Activities	1-11

Relevance

[17.01.EO8]

Introduction

Evidence that is admissible in court is subject to a set of rules designed to protect jurors from being misled, to protect constitutional rights, and to ensure a speedy trial. The rules of evidence help the court system operate in a fair and equitable manner.

Community policing

The right to present evidence to an impartial judge or jury in a court of law is a fundamental part of the American criminal justice system. It is a constitutionally guaranteed right for criminal defendants. The saying “to have your day in court” means that anyone accused of a crime has the right to present evidence on his/her behalf during a fair and impartial hearing. Laws of evidence restrictions are placed on government to guard against unwarranted intrusions into the private lives of community members. Some people say that these restrictions put too much constraint on the criminal justice system and often allow criminals to go free. Others say that this is part of the price we pay to ensure freedom. Regardless of your beliefs in this matter, these restrictions are the law of the land and you have a duty to abide by them.

Purpose of the rules of evidence

The main purpose of the rules of evidence is to protect the jury from seeing or hearing evidence that is irrelevant, unreliable, or unfairly prejudicial.

The court follows rules of evidence that establish a set of standards that evidence must meet. Compliance with these rules enhances the ability to enforce the law and achieve convictions.

Another purpose of the rules of evidence is to expedite a trial. The judge can decide to exclude evidence if its ability to provide proof is substantially outweighed by the undue consumption of time it will take to hear it (*Evidence Code Section 352*).

Continued on next page

Relevance, Continued

Definition

Relevant evidence means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. (*Evidence Code Section 210*)

Examples

Example: A defendant who is charged with murder used a gun in the commission of the crime. Evidence that a gun was used in the murder would be relevant because it tends to prove the way the crime was committed.

Example Mr. Smith was a defendant in a shooting case, the victim was shot one time with a 9mm bullet. No weapon was found during a search for evidence of Mr. Smith's residence. A receipt showing the purchase of 9 mm bullets, from a local sporting goods store, was found along with a Halloween mask at Mr. Smith's residence. This evidence was properly collected and maintained. The court later deemed the receipt admissible. This was based on the receipts relevance to the shooting. There were no prior indications or further information that a mask was used in the shooting. Therefore, the Halloween mask was not admissible because there was no relevance related to the shooting.

NOTE: Pursuant to California Evidence Code 210, the general rule is that all relevant evidence is admissible in court.

Types of Evidence

[17.01.E009]

Introduction

Evidence can be categorized in four different types.

Testimonial evidence

Testimonial evidence is an oral, written or recorded account received in court.

Example: Officer Jones witnessed a theft. The officer's testimony is evidence.

Real evidence

Real evidence is a physical object.

Example: A shell casing is an example of real evidence.

NOTE: Specific types of real evidence are fruits of the crime, instrumentalities of the crime and contraband.

Demonstrative evidence

Demonstrative evidence is evidence that illustrates a matter of importance in a case. (i.e., maps, models, re-enactments)

Circumstantial evidence

Circumstantial evidence is evidence that tends to prove a fact in the case based on an inference. This is distinguished from **direct evidence** which directly proves a fact in a case without inference.

Example: Mr. Jones sees a man enter an apartment with a gun in his hand. Mr. Jones hears a shot and sees the man immediately leave the apartment. Mr. Jones testimony to the shooting is circumstantial evidence of the shooting.

Example: Mrs. Wilson who was inside the apartment sees the man enter the apartment, shoot the victim and flee. Mrs. Wilson's testimony is direct evidence of the shooting.

Authentication of Evidence

[17.01.EO10]

Introduction

All real and demonstrated evidence must be authenticated. That is, it must be shown that it is what the officer claims it to be.

Definition

Authentication is the act of establishing that claims made about the item of evidence are true.

Examples

Example: Shell casings that are admitted in court are authenticated by an officer who recovered them at the scene of the crime.

Example: A re-enactment presented in court of the crime is authenticated by showing that it fairly and accurately depicts the actual crime.

Chain of Custody

[17.01.EO11]

Introduction

When evidence is collected in connection to a crime, a chain of custody of that evidence must be established and maintained throughout the custody of the evidence.

Definition

The chain of custody is a method of authentication. It requires every step in the process of handling of the evidence be accounted for. By every person since its recognition and collection, explain what they have done with it.

NOTE: Each person handling the evidence is a link in the chain of custody. Each link in the chain of custody must be documented.

Example

Example: During the course of his normal shift, Officer Smith arrested a man for driving under the influence (DUI). Incidental to the arrest Officer Smith searched the suspect. During the search, Officer Smith found three small bindles in the right front pocket of the man's pants. When Officer Smith opened the bindles he discovered a white powdery substance which he suspected to be cocaine. The officer placed the bindles in his right front pocket and kept them there until he arrived back at the station.

Continued on next page

Chain of Custody, Continued

Example
(continued)

Officer Smith transported the man to the station and booked him. Officer Smith performed a presumptive test on the substance in the bindle, it proved positive for cocaine. The officer then filled out a crime laboratory request form to have the substance analyzed. The officer marked each of the bindles with his initials and placed them in an evidence envelope. He signed, sealed and placed the crime report number on the outside of the envelope. The officer attached the request form to the envelope and placed it in the locked overnight evidence locker at the station. The officer documented in his official report, every step of how he handled the evidence, which he submitted before finishing his shift.

The following morning the property room supervisor, Sgt. Jones, took the envelope from the locked overnight evidence locker and logged it into the evidence room. He then placed the envelope into the locked narcotics evidence locker in the station's evidence/property room to which only Sgt. Jones has access.

Twenty days later, Officer Smith was subpoenaed to court. The subpoena directed him to bring the evidence to court with him. On the appointed date, Officer Smith went to the evidence/property room at the station. Officer Smith presented the subpoena to Sgt. Jones. Sgt. Jones recovered the appropriate evidence and logged it out of the evidence/property room to Officer Smith. Officer Smith signed, dated and time stamped the evidence envelope when Sgt. Jones gave it to him.

Continued on next page

Chain of Custody, Continued

Example
(continued)

Officer Smith took the evidence to court. Upon his arrival the officer was informed his case had been cancelled. Officer Smith immediately took the evidence back to the station where he had Sgt. Jones log it back into the evidence/property room. Officer Smith signed, dated and time stamped the envelope when he returned it to Sgt. Jones. Jones logged the evidence as before then placed it back into the locked narcotics locker in the evidence property room.

At no time while Officer Smith had the evidence during his court appearance did the evidence leave his possession or control. Thus far, in this case the **Chain of Custody** has been maintained by both Officer Smith and Sgt. Jones the evidence/property room supervisor.

Chapter Synopsis

Learning need Peace officers must know the rules of evidence as they pertain to relevancy, types of evidence, authentication and chain of custody.

Admissibility of evidence
[17.01.EO8] Evidence that is admissible in court is subject to a set of rules designed to protect jurors from being misled, to protect constitutional rights, and to ensure a speedy trial. The rules of evidence help the court system operate in a fair and equitable manner.

Types of evidence
[17.01.EO9] Evidence can be categorized in four different types.

Authentication of evidence
[17.01.EO10] All real and demonstrative evidence must be authenticated. That is, it must be shown that it is what the officer claims it to be.

Chain of custody
[17.01.EO11] When evidence is collected in connection to a crime, a chain of custody of that evidence must be established and maintained throughout the custody of the evidence.

Workbook Learning Activities

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity questions

1. Arriving on the scene of a shooting, a peace officer discovers a gun on the ground beside some nearby bushes. An eyewitness tells the officer that the shooter threw the gun toward the bushes before he ran away. Describe the actions that the peace officer should take to comply with the rules of evidence.

2. Define circumstantial evidence.

Continued on next page

Workbook Learning Activities, Continued

**Activity
questions**
(continued)

3. Peace officers arrive on the scene of a hit-and-run accident in which there is one eyewitness. The officer interviews the witness and takes his statement. The officer then diagrams the accident scene. According to the rules of evidence, categorize the evidence items obtain by the officer.

Chapter 2

Requirements and Exceptions for the Admissibility of Evidence

Overview

Learning need Peace officers must know the requirements and exceptions for the admissibility of evidence.

Learning objectives The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to...	E.O. Code
<ul style="list-style-type: none">recognize a peace officers role and responsibilities in ensuring the admissibility of evidence:<ul style="list-style-type: none">California Evidence Code 352,exclusionary rule,opinion and expert testimony,privilege, andcredibility of witnesses.	17.02.EO11 17.02.EO12 17.02.EO13 17.02.EO14 17.02.EO15
<ul style="list-style-type: none">recognize the requirements and exceptions for admitting hearsay evidence for:<ul style="list-style-type: none">spontaneous statements,admissions and confessions,dying declarations,records and officer testimony,hearsay testimony at preliminary hearings,<ul style="list-style-type: none">by active and honorably retired peace officers.	17.02.EO6 17.02.EO7 17.02.EO8 17.02.EO9 17.02.EO10

Continued on next page

Overview, Continued

In this chapter This chapter focuses on exceptions and privileges related to evidence. Refer to the chart below for a specific topic.

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Opinion and Expert Testimony	2-5
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Evidence Code 352

[17.02.EO11]

Introduction

Even though evidence may be relevant to prove or disprove a fact, the court may deem the evidence is too prejudicial to be admissible.

Evidence Code 352

California Evidence Code Section 352 states the court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.

Factors affecting probative prejudicial evidence

The following are the four basic policy considerations for determining whether evidence is probative or unduly prejudicial.

- Does the evidence tend to unduly influence the jury by arousing hostility or sympathy?
 - Will the evidence, and/or the evidence required to counter it, consume an undue amount of time?
 - Will the evidence create side issues that distract the jury from the main point of the case?
 - Will the evidence unfairly surprise the opponent (prosecution or defense) who, acting in good faith, may be unprepared to deal with this development?
-

Exclusionary Rule

[17.02.EO12]

Introduction

The **exclusionary rule** requires that evidence obtained by the government or its agents (including peace officers) in violation of a person's rights and privileges guaranteed by the U.S. Constitution be excluded at trial.

Reasons for excluding evidence

A great deal of **relevant evidence** is excluded from court. Some reasons for excluding otherwise pertinent **evidence** are to:

- reduce violations of constitutional protections,
 - avoid undue prejudice to the accused (e.g., previous convictions/arrests),
 - prohibit consideration of unreliable evidence (e.g., some hearsay), and
 - protect valued interests and relationships (e.g., attorney-client, clergy-penitent privilege).
-

Mapp vs. Ohio

The U.S. Supreme Court in **Mapp v. Ohio**, applied the Fourth, Fifth, and Sixth Amendments to the states. Today, the position of the courts is that illegally obtained information is generally not admissible in court. This result is known as the exclusionary rule.

Example: Evidence obtained during an illegal search of a suspect's home will generally be inadmissible. (Fruits of the poisonous tree)

Application of the exclusionary rule

The exclusionary rule's bar against the use of illegally obtained evidence applies to criminal prosecutions as well as other types of judicial proceedings.

In some types of judicial proceedings, illegally obtained evidence may be admissible. Examples of this are:

- Juvenile proceedings,
 - Narcotics commitment,
 - Parole and probation revocation hearings, and
 - Sentencing hearings.
-

Opinion and Expert Testimony

[17.02.EO13]

Introduction

The **opinion rule** requires that, generally, non-expert witnesses must confine their testimony to statements of fact, and should not include opinions or draw **inferences**.

Opinion rule

Under this rule, most opinions are not admissible, because they are considered unreliable.

Exceptions for nonexpert witnesses

While nonexpert “lay” witnesses are generally not allowed to offer opinions in court, exceptions may be made when the facts cannot otherwise be accurately established. (*Evidence Code Section 800*)

Under this exception, statements of “lay” opinion are generally admissible on such matters as:

- speed,
- distance,
- size,
- intoxication, or
- questions of sanity.

Example: If a witness at a trial is asked approximately how far away she was from a shooting she observed, it is most likely that her opinion or estimate of the distance would be admissible.

Expert witness exception

As opposed to non expert “lay” opinions, expert opinions by a qualified expert witness are admissible.

Expert witnesses are people who have training, education, or experience giving them greater expertise than the expertise of the general population.

Continued on next page

Opinion and Expert Testimony, Continued

Expert witness exception (continued)

While experts may exist for almost any field, expert testimony is often allowed in such areas as:

- fingerprints,
 - ballistics,
 - medicine,
 - psychiatry,
 - narcotics, and
 - gangs.
-

Expert witness qualifications

There are no set minimum requirements for expert witnesses in terms of training, education, or experience. It is up to the trial court to decide whether a person qualifies as an expert witness. The court may conduct a **voir dire examination** of the witness' qualifications.

If the court concludes that the person offered as an expert witness does not possess the necessary training or ability to give an opinion, it will find the testimony to be incompetent and will bar it. (*Evidence Code Sections 801, 802*)

Privilege

[17.02.EO14]

Introduction

The law considers certain interests and relationships sufficiently important to justify the exclusion of otherwise relevant information in order to protect those interests. In other words, protecting the relationship is more valuable to society than ascertainment of the truth.

Exclusion to protect valued interests

A **testimonial privilege** means that a witness will not be required to state the substance of a communication that takes place within a protected relationship. The *Evidence Code Section* lists the specific privileges allowed. The most commonly asserted privileges are described in the following table.

Evidence Code		
Description	Article	Code Section
Against self incrimination	2	940
Lawyer-Client	3	950-962
Not to testify against spouse	4	970-973
Confidential marital communications	5	980-987
Physician - Patient	6	990-1007
Psychotherapist - Patient	7	1010-1027
Clergy - Penitent	8	1030-1034

Exceptions to privileged relationships

All of these privileged relationships have exceptions and restrictions. From the standpoint of the peace officer, however, it is generally the best practice to obtain as much evidence as possible. Remember, a witness may choose to waive testimonial privilege.

Credibility of Witnesses

[17.02.EO15]

Introduction

Evidence Code Section 780 allows a court to consider of credibility of witness testimony.

Witness credibility

Determining the credibility of a witness(es) testimony to ensure its admissibility is based on:

- manner in which the witness testifies,
 - character of the testimony,
 - evidence affecting the witness' character for truth, honesty, or integrity,
 - demeanor of the witness,
 - witness' motives, or
 - contradictory evidence.
-

Character evidence

Character evidence generally concerns a party's predisposition toward a specific type of behavior, such as hostility, dishonesty, immorality, or peaceableness, sobriety, or morality (*Evidence Code Section 786*).

Specific considerations apply to the types of character evidence that may be presented at a trial. Evidence that is disallowed based on these issues is deemed irrelevant.

Credibility of children

There is no fixed age at which a child is allowed to testify. It is the responsibility of the trial judge to determine the legal admissibility of each child. A child's testimony will be considered admissible if the child:

- possesses the capacity to observe, recollect, and communicate events,
- has the ability to understand questions and to make intelligent answers, and
- understands the duty to speak the truth.

NOTE: A child is any person under the age of 18.

Continued on next page

Credibility of Witnesses, Continued

Peace officer's credibility

Peace officers play a key role in ensuring the admissibility of evidence. They have an obligation to ensure that:

- *all* evidence is legally obtained,
- *all* physical evidence has been properly prepared and safeguarded per recognized chain of custody procedures, and
- *all* available supporting evidence and witness statements are gathered and documented completely.

If evidence is illegally obtained, or if the recognized chain of custody is not followed, evidence may not be judged admissible.

Hearsay Rule

Introduction Evidence may be excluded if it is deemed by the court to be unreliable. One category of unreliable evidence is hearsay.

Definition **Hearsay evidence** is evidence of a statement that is made by someone other than the witness who is testifying in court and that is offered to prove the truth of the matter stated (*Evidence Code Section 1200*).

Example Example: Officer Johnson takes the statement of a victim of a burglary. The victim's statement to the officer is hearsay.

Exceptions to the hearsay rule Usually hearsay evidence consists of a statement made out of court by someone who was not under oath or subject to cross-examination at the time. While hearsay is generally inadmissible because it is not considered to be trustworthy, there are several exceptions to this rule.

Spontaneous Statements

[17.02.EO6]

Introduction

Spontaneous statements are statements made about some exciting or unnerving event, at or proximate to the event, while the person making the statement is still under the excitement or stress of that event.

Definitions

Spontaneous statements are admissible exceptions to the **hearsay rule** in both criminal and civil cases. Testimony can be offered by anyone overhearing the statement. (*Evidence Code Section 1240*)

Rationale

The rationale for this exception is that the spontaneous statement is trustworthy because the speaker had no opportunity to fabricate a story. If a statement is made after a substantial time lapse, the exception will likely not apply, since the statement lacks spontaneity and possibly truthfulness.

Examples

Example: After witnessing the shooting, a woman screamed “My God! Joe just shot my husband!” This spontaneous statement could be offered by anyone overhearing it, including a peace officer on the scene.

Example: A few minutes after the rape, the victim told a neighbor what had happened. At trial, the neighbor may repeat what she was told under the spontaneous statements exception to the hearsay rule.

Non-example: Several days after a fire investigator combed through a burned-out house for evidence of arson, the homeowner came into the fire investigator’s office and told him she believed her ex-boyfriend had firebombed her house. The statement does not qualify as a spontaneous statement exception to the hearsay rule.

Admissions and Confessions

[17.02.E07]

Introduction Confessions and admissions by a defendant are admissible as exceptions to the hearsay rule. (*Evidence Code Section 1220*)

Definitions An **admission** is a statement that is incriminating but falls short of a full acknowledgment of guilt. It only acknowledges some facts that tend to prove or imply guilt.

A **confession** is an express and complete acknowledgment of all elements of the offense.

Express admissions An **express admission** or confession is an out-of-court oral or written statement made by the defendant.

The rationale for accepting this type of hearsay (admissions and confessions) is that a person is not considered likely to make such a statement unless it is true.

Examples Example: At the scene of the shooting, a man admits that he was arguing with the victim on a street corner just before she was fatally shot. This is an express *admission*, since the suspect places himself in the area at the time of the shooting, but does not agree to all elements of the crime.

Example: At the scene of the shooting, a person admits that he got angry with a woman on the street corner, drew his gun and, intending to kill her, fatally shot her. This is an example of a confession to murder.

Continued on next page

Admissions and Confessions, Continued

Implied admissions

An **implied admission** consists of conduct that circumstantially establishes consciousness of guilt.

Since implied admissions do not involve statements, they are not subject to the hearsay objection. Rather, admission or exclusion of implied admissions is based on its ability to pass the relevancy test.

Examples

Example: Flight from the scene of the crime to prevent arrest.

Example: Attempted escape from custody.

Example: Attempt to intimidate a witness or suppress evidence.

Dying Declarations

[17.02.E08]

Introduction

Dying declarations are statements made by a dying person about the circumstances surrounding the person's impending death. The statement must be based on the speaker's personal knowledge and made under a sense of impending death. (*Evidence Code Section 1242*).

NOTE: Dying declarations concern the cause of, and circumstances surrounding, the death of the person making the statement (declarant). Statements by the declarant which pertain to other matters are not within the exception.

Admissibility

Under California law, the victim must actually die for the declaration to be admitted under this exception to the hearsay rule. Any person may be a witness to a dying declaration.

Traditionally, dying declarations have been limited to homicide cases where the person making the declaration (the declarant) was the victim of the homicide. The Evidence Code has been extended, however, to all civil and criminal cases, where the facts about a declarant's death are at issue.

Rationale

The rationale for this exception to the hearsay rule is the belief that people do not lie about the cause for their predicaments when they truly believe they are about to die.

NOTE: Victims have to have a sense of *immediate and impending death*, e.g., the doctor tells them they "won't make it."

Continued on next page

Dying Declarations, Continued

Examples

Example: An ambulance driver stated that a victim shot twice in the chest said, “I can’t believe that my own brother would shoot me.” The victim then died on the way to the hospital. The ambulance driver’s testimony about the words of the dead victim would likely be admissible.

Example: A highway patrol officer arrived at a scene where a fellow officer had been shot. The stricken officer gasped out the license plate number of the car the suspect was driving and then died. The living officer’s statement about the dead officer’s last words would likely be admissible.

Records and Officer Testimony

[17.02.EO9, 17.02.EO10]

Introduction

An exception to the hearsay rule exists for official and business records, as well as for past recollection recorded.

Definitions

Official records are written statements or records made by public officials with a duty to make them. Examples include a coroner's report, a fire marshal's inspection report, or a marriage certificate. (*Evidence Code Section 1280*)

Business records are written statements or records made by a business person who has the duty to know the facts as they relate to the business. Examples include payroll taxes, personnel records, etc. (*Evidence Code Section 1270*)

Past recollection recorded is writing that is read into evidence when an available witness has insufficient memory to allow full and accurate testimony, and the event or facts are accurately contained in that writing. (*Evidence Code Section 1237*)

Present memory refreshed refers to the use of personal notes, arrest reports, or crime reports as an aid to refresh the witness' memory during testimony.

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Records and Officer Testimony, Continued

Admissibility and rationale of records exceptions

The table below presents the considerations for admitting the various types of evidence under the records exception to the hearsay rule and presents the rationale for each.

Hearsay Exception	Admissibility	Rationale
Official Records	<p>The records are admissible as evidence of the facts recited in them.</p> <p>Admissibility is largely governed by statutes.</p> <p>Evidence may be admitted regardless of whether declarant is personally unavailable as a witness.</p>	<p>These records are generally considered to be trustworthy because of the declarant’s legal duty to make an accurate report.</p> <p>In accepting this evidence, courts have stressed the fact that public inspection of some official records will tend to reveal inaccuracies and cause them to be corrected.</p> <p>Need for this type of hearsay evidence is balanced with the inconvenience of requiring public officials to appear in court about statements that they are legally bound to document truthfully.</p>

Continued on next page

Records and Officer Testimony, Continued

Admissibility and rationale of records exceptions
(continued)

Hearsay Exception	Admissibility	Rationale
Business records	<p>These records are generally admissible if the entry was made in the regular course of business and by a person with a business duty to know the facts.</p> <p>The record entry must also have been made close to the time of the transaction in question.</p> <p>A supervisor or custodian may authenticate the record by testifying about its mode of preparation and that it was made in the regular course of business. The person making the entry need not testify. Participants in entries need not be shown to be unavailable as witnesses in the regular course of business.</p>	<p>The rationale for admitting business records is based on the unlikelihood that responsible parties would be able to remember the particulars of various transactions after any time has passed. Accuracy is assured by regular business practices.</p> <p>If records are properly maintained they will be regularly updated in the course of business.</p> <p>The reliability of the hearsay evidence depends on regular maintenance of records, not the independent recollection of the person making the entry.</p>

Continued on next page

Records and Officer Testimony, Continued

**Admissibility
and rationale
of records
exceptions
(continued)**

Hearsay Exception	Admissibility	Rationale
<p>Past recollection recorded</p>	<p>If an available witness has insufficient memory, and the event has been memorialized in writing, the writing may be read into evidence if the writing was made at the time the event occurred or when it was fresh in the witness' memory.</p> <p>The writing must have been made by the witness or at the direction of the witness.</p> <p>The witness must testify that the writing is a true statement.</p> <p>The writing must be "authenticated" or shown to be genuine.</p>	<p>If a witness testifying in court cannot remember an event, but can authenticate an accurate account of the event, this is acceptable hearsay evidence. A written account recorded at the time of the event will provide more accurate details than the witness can provide at the time of trial.</p>

Continued on next page

Records and Officer Testimony, Continued

Admissibility and rationale of records exceptions
(continued)

Hearsay Exception	Admissibility	Rationale
Present memory refreshed	If a witness cannot recall the details of an observation, he or she may use notes, reports, etc., to refresh his or her memory while testifying. The court must approve and the defense is entitled to examine any material used to refresh and to question the witness about it.	A witness may need written reminders to remain accurate in his or her testimony.

Examples

Example: At the trial of a person charged with driving 53 miles per hour in a 30 mile per hour zone, the state was required to demonstrate the existence of an engineering and traffic survey to justify the speed limit. A copy of the speed survey was admitted into evidence as an official record under the records exception to the hearsay rule because it was made within the scope of duty of a public employee.

Continued on next page

Records and Officer Testimony, Continued

Examples (continued)

Example:

The account ledgers for a business whose vice-president was on trial for embezzlement were introduced into evidence as business records under the records exception to the hearsay rule. They were admissible because they were made by an account clerk who had a business duty to record the transactions and who entered them at the time each transaction was made. The company comptroller authenticated the records.

Proposition 115

Proposition 115, the Crime Victims Justice Reform Act, was passed into law on June 5, 1990. The act amends the State Constitution regarding criminal and juvenile cases; affords the accused no greater Constitutional rights than the Federal Constitution; prohibits post-indictment preliminary hearings; establishes the People's right to due process and speedy public trials; provides reciprocal discovery; limits the presentation of defense witnesses, and allows hearsay evidence to be presented at preliminary hearings. The peace officers role is affected in three areas:

- Investigation
 - Reporting
 - Testifying in Court
-

Continued on next page

Records and Officer Testimony, Continued

Investigation Under Proposition 115, an officer can testify at a preliminary hearing on behalf of the witness or the investigating officer(s). The investigating officer must have complete knowledge of all the elements of the crime and document those elements in the report. Interviews, interrogations and statements must be more detailed.

The officer must be aware of the distinction between first-hand knowledge and speculation on the part of a victim or witness and must ensure that all statements reflect on the facts. The statements of victim(s) or witness(es) must be detailed and complete. The report must specify how the defendant was identified. When physical evidence is involved, documentation is required to prove the chain of custody and must be included in the report.

Reporting Instead of becoming a “memory refresher” for an officer familiar with the case, the report becomes a stand-alone document from which any other officer can testify. Statements of the victim(s), witness(es), Miranda warnings given to defendants(s), consent for search(es), etc., must all be included. The report must contain details regarding the way the suspect was identified. The chain of custody of any and all evidence must be well documented.

Penal code section *Penal Code Section 872 (b)* states; Notwithstanding Section 1200 of the Evidence Code, the finding of probable cause may be based in whole or in part upon the sworn testimony of a law enforcement officer or honorable retired law enforcement officer relating the statement of declarants made out of court offered for the truth of the matter asserted.

Continued on next page

Records and Officer Testimony, Continued

**Penal
code
section**
(continued)

An honorably retired law enforcement officer may only relate statements of declarants made out of court and offered for the truth of the matter asserted that were made when the honorably retired officer was an active law enforcement officer. Any law enforcement or honorably retired law enforcement officer testifying as to hearsay statements shall either have five years of law enforcement experience or have completed a training course certified by the Commission on Peace Officer Standards and Training that includes training in the investigation and reporting of cases and testifying at preliminary hearings.

Chapter Synopsis

Learning need

Peace officers must know the requirements and exceptions for the admissibility of evidence.

Peace officer's role and responsibility in ensuring admissibility of evidence [17.02.EO11, 17.02.EO12, 17.02.EO13, 17.02.EO14, 17.02.EO15]

Peace officers must be certain that:

- *all* evidence is legally obtained,
- *all* physical evidence has been properly prepared and safeguarded per recognized chain of custody procedures, and
- *all* available supporting evidence and witness statements are gathered and documented completely.

As described in the California Evidence Code.

Spontaneous statements [17.02.EO6]

Spontaneous statements are statements made about some exciting or unnerving event, made at or near the time of the event, while the person making the statement is still under the excitement or stress of that event.

Admissions and confessions [17.02.EO7]

An express admission or confession is an out-of-court oral or written statement made by the defendant.

An implied admission consists of conduct that circumstantially establishes consciousness of guilt.

Dying declarations [17.02.EO8]

Dying declarations are statements made by a dying person about the circumstances surrounding the person's impending death. The statement must be made based upon the speaker's personal knowledge and under a sense of impending death. For the statement to be admissible, the declarant must actually die.

Continued on next page

Chapter Synopsis, Continued

**Records
and officer
testimony**
[17.02.EO9]

The following exceptions to the hearsay rule exist for certain types of written records:

- official records,
 - business records,
 - past recollection recorded (written accounts that are read into evidence),
and
 - present memory refreshed (arrest and crime reports as an aid to refresh the officer's memory).
-

**Hearsay
evidence**
[17.02.EO10]

Proposition 115 was passed into law and amends the State Constitution regarding criminal and juvenile cases.

Workbook Learning Activities

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity questions

1. Name the five most important exceptions to the hearsay rule and provide an example of each.

2. Two weeks after a convenience store robbery and shooting, a woman appears at the police station saying she has information. She tells officers that two days ago her neighbor confessed to her that he had robbed the store and shot the clerk. She says she came to the police as soon as she could because she had a doctor's appointment yesterday. How should officers proceed? Is it likely that the woman's evidence will be admissible in court? Why or why not?

Continued on next page

Workbook Learning Activities, Continued

**Activity
questions**
(continued)

3. Explain the difference between an admission and a confession. What is the difference between an express admission and an implied admission? Provide an example of each.

4. Give an example of a spontaneous statement. Why is this type of statement often admitted in court as an exception to the hearsay rule?

Workbook Corrections

Suggested corrections to this workbook can be made by going to the POST website at: www.post.ca.gov

Chapter 3

Courtroom Testimony

Overview

Learning need For a peace officer's testimony to be given serious consideration by the court, it is essential that officers present themselves as professional, credible, and reliable witnesses.

Learning objectives The following table identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to...	E.O. Code
<ul style="list-style-type: none">• identify a peace officer's responsibilities regarding pretrial preparation.	17.03.EO10
<ul style="list-style-type: none">• identify aspects of a case that peace officers should review prior to giving testimony.	17.03.EO11
<ul style="list-style-type: none">• identify factors related to peace officer's personal appearance that can influence how an officer's testimony is received by the court.	17.03.EO12
<ul style="list-style-type: none">• identify appropriate peace officer responses while testifying as a witness.	17.03.EO13
<ul style="list-style-type: none">• identify appropriate responses when a peace officer is unsure of or does not know the answer to a question asked by an attorney.	17.03.EO14
<ul style="list-style-type: none">• identify appropriate responses when asked to give an opinion while testifying.	17.03.EO15

Continued on next page

Overview, Continued

Learning objectives
(continued)

After completing study of this chapter, the student will be able to...	E.O. Code
<ul style="list-style-type: none">recognize the importance of being a truthful peace officer while testifying in court.	17.03.EO16

In this chapter

This chapter focuses on trial preparation and evidence presentation as witnesses. Refer to the table below for a specific topic.

Topic	See Page
Preparing for Court Testimony	3-3
Testifying in Court	3-9
Chapter Synopsis	3-23
Workbook Learning Activities	3-25

Preparing for Court Testimony

[17.03.EO10, 17.03.EO11, 17.03.EO12]

Introduction

Peace officers should be accustomed to performing a wide range of duties under the scrutiny of the public eye. Possibly, no actions of officers will be scrutinized more closely, though, than their conduct and demeanor when presenting evidence as witnesses in court.

Leadership

An individual peace officer can influence only that part of the court proceedings that are the responsibility of law enforcement. This responsibility includes the professional presentation of lawfully gathered evidence and the factual, clear, concise, and complete support of that evidence based on a sound police report. Integrity in documenting and collecting evidence is one of the key elements of the job and should be a recurring theme throughout training.

Primary role

Peace officers who are called to testify on the behalf of the prosecution may consider their role is to “help” the prosecutor win the case. Although their intentions are not to deliberately lie or deceive the court, officers may attempt to exaggerate or try to fill in details to bolster the case against the defendant. This is not the officers role, once in the courtroom, setting the case is the prosecutor’s responsibility to present to the court.

Should the jury view the officer as biased and prejudiced against the defendant the officer’s credibility would be questionable.

Peace officers must recognize that their primary role as witnesses for the prosecution is to:

- tell the truth,
 - testify to only those facts which they know from personal knowledge, and
 - be unbiased witnesses for either side.
-

Continued on next page

Preparing for Court Testimony, Continued

Peace officers' responsibilities

Peace officers are primarily called as witnesses to testify concerning matters which occurred during the investigation after the crime was committed. Prior to appearing as a witness in court, peace officers are responsible for:

- reviewing their field notes and all reports related to the case,
 - meeting with the case prosecutor at a pretrial conference,
 - complying with the prosecutors' instructions and recommendations, and
 - obtaining all necessary evidence prior to the trial.
-

Peace officers' testimony

Peace officers are often called to testify regarding their actions during the case investigation. They are most likely to be questioned regarding their:

- notes and written reports,
 - pretrial preparation with the prosecuting attorney,
 - eyewitness or personal knowledge of certain events,
 - methods of handling evidence during an investigation,
 - thoroughness of the investigation,
 - interrogation, or
 - specific interactions with the defendant, and
 - education, training, experience (voir dire).
-

Case review

For officers' testimony to be precise and accurate, it is critical that the officers know the facts and are familiar with all phases of the case. Rather than depend on memory, officers should carefully review their field notes, all investigative reports, and any other summary reports or documentation related to the investigation.

Continued on next page

Preparing for Court Testimony, Continued

Case review (continued)

Review should include, but not be limited to:

- observations at the crime scene including information such as lighting, weather conditions, or surrounding environment,
- dates, times, and addresses related to the crime,
- physical evidence that was collected,
- methods used to protect, document, and collect the evidence,
- type, calibration, and maintenance routine of any equipment used,
- use of the equipment,
- statements made by victim(s), witness(es), and/or the defendant(s),
- identification an apprehension of the suspect,
- actions taken as part of any follow-up investigation, and
- procedures for protecting the chain of custody of all evidence.

NOTE: It is especially important that officers again review all details of the case before the trial or the hearing to refresh their memories.

Personal information

Officers should also be prepared to present information about themselves as part of their testimony. This may include but not be limited to:

- name, title, badge or identification number, assignment, and length of employment,
 - training and experience,
 - area(s) of specialized training or expertise,
 - number of similar cases handled,
 - number of times that officer has testified in court, and
 - methods that officer used to refresh memory prior to giving testimony (e.g., review of notes, reports, memory, etc.).
-

Continued on next page

Preparing for Court Testimony, Continued

Pretrial meeting with prosecutor

Meeting with the case prosecutor prior to the trial allows an officer to present and/or discuss evidence or information related to the case. It is critical that the prosecutor knows as much about the case as the investigating officer knows about the case. The officer should bring a copy of the arrest and crime report and any other notes or memoranda that may be useful during the meeting.

During this meeting, it is common for the prosecutor and officer to:

- identify possible weaknesses in the case,
 - discuss anticipated questions during both direct and cross-examination,
 - go over portions of the officer's anticipated testimony, and
 - strategize how to best answer certain questions.
-

Legality of pretrial meetings

Such meetings between the prosecution and witnesses are lawful as long as the prosecutor does not:

- solicit or encourage perjury,
- counsel evasiveness or distortion of the truth, or
- distort testimony to create misunderstanding or a false version of the facts.

NOTE: If asked by a defense attorney whether they discussed their testimony with the prosecuting attorney prior to giving testimony, officers should *not* be reluctant or hesitate to confirm that such discussions have taken place.

Continued on next page

Preparing for Court Testimony, Continued

Physical evidence

The testifying officer is responsible for making certain that any physical evidence related to that officer's testimony is available and will be present in court at the time of the testimony. The testifying officer is responsible for maintaining the chain of custody.

Courtroom appearance

Peace officers must realize that they are under scrutiny by the court not only while they are on the witness stand, but from the moment they enter the courtroom until the time they leave. The officers' dress and grooming can greatly affect their credibility.

All officers should prepare to give testimony with attention to personal detail. The following table identifies factors to be considered and general guidelines.

Factor	General Guidelines
Dress	<ul style="list-style-type: none">• Generally, on-duty officers testify in uniform; off-duty officers testify in civilian attire.• Clothes should be clean and well pressed.• Dress conservatively when wearing civilian attire.• Limit clothing accessories to essentials only (e.g., watch, tie pin, etc.).• Do not wear emblems, pins, flashy or distracting jewelry or sunglasses.• If in civilian attire, make sure firearms are concealed from view.

Continued on next page

Preparing for Court Testimony, Continued

**Courtroom
appearance
(continued)**

Factor	General Guidelines
Grooming	<ul style="list-style-type: none">• Be neat and clean.• Hands and fingernails should be well scrubbed.• Shoes should be shined.• Hair should be properly trimmed.

NOTE: Agency policy may dictate whether or not officers are required to wear their uniform when giving testimony in court.

NOTE: The court has the discretion to prohibit the wearing of firearms by peace officers who are present as witnesses.

Testifying in Court

[17.03.EO13, 17.03.EO14, 17.03.EO15]

Introduction

The *manner* in which evidence is presented can have as much of an effect on the opinions and attitudes of the members of the jury as the evidence itself. Peace officers whose testimony is presented in a candid, sincere, and professional manner will not only impress the court, but will also add respectability to their departments.

Witness credibility

Credibility is the degree to which an individual is believed. In a jury trial, the jury must ultimately decide on the credibility of each witness and, therefore, the believability of that person's testimony.

Factors that can affect a witness's credibility include the:

- witness's demeanor while testifying,
 - manner in which the witness answers questions,
 - extent to which a witness is able to perceive, recollect, or communicate any matter about which that individual is testifying,
 - perceived existence (or nonexistence) of any bias, interest, or altered motive,
 - consistency of statements made,
 - individual's projected attitude toward giving testimony, or
 - admission of past or present false or misleading statements.
-

Courtroom demeanor

Peace officers' demeanor in and around the courtroom is as important as their appearance and testimony. The credibility of officers giving testimony can be greatly influenced by their body language, attitude, manner of speaking, and behavior. If an officer behaves like a professional, the jurors will perceive those officers as professional.

Continued on next page

Testifying in Court, Continued

Courtroom demeanor (continued)

The following table presents a number of guidelines for officers to consider regarding their own courtroom demeanor.

	Guidelines
Body language	<ul style="list-style-type: none">• Present a professional appearance and bearing <i>at all times</i>.• Assume a relaxed position in the witness chair.• Sit up straight.• Refrain from fidgeting or excessive use of hands (hands can be folded if necessary).
Attitude	<ul style="list-style-type: none">• Be respectful.• Avoid sarcasm or flippant remarks.• Do not let emotions influence testimony.• Retain composure at all times.• Remain patient (even if frequently interrupted).• Do not become arrogant or try to impress the court.• Display a sincere interest in accuracy and the truth.• Avoid displaying an extraordinary interest in the case.

Continued on next page

Testifying in Court, Continued

**Courtroom
demeanor**
(continued)

	Guidelines
Manner of speaking	<ul style="list-style-type: none">• Speak up. (Jurors expect that peace officers are accustomed to speaking loudly and with authority.)• Speak clearly in a natural speaking voice, yet with authority.• Speak in a calm and professional tone.• Enunciate words distinctly.• Do not rush or hurry statements.• Do not use law enforcement “jargon” thinking that it will impress the court.• Use laymen’s language and explain further, if necessary.• Be brief in statements.• Be grammatically correct.• Avoid filling pauses with “um, ah” or “you know.”• Do not add unsolicited information.
Behavior	<ul style="list-style-type: none">• Take the oath in a dignified manner, right hand raised until the oath is completed.• Take the witness chair and face the questioning attorney.• Be cordial and polite at all times.• Remain silent and attentive when not answering questions.

Continued on next page

Testifying in Court, Continued

Demeanor outside the courtroom

Peace officers should maintain their professional demeanor at all times, even when they are not on the witness stand. This includes areas such as hallways during breaks, outside the courtroom while waiting to testify, elevators, restrooms, coffee shops, etc.

A flippant remark, laughing, joking, horseplay, or any other less than professional demeanor may be overheard or witnessed by jurors, attorneys, family members of involved parties, other witnesses, or the court bailiff. Individuals may think officers (or prosecution in general) do not take the case seriously and the officers' credibility may be damaged.

Receiving and responding to questions

Evidence is presented in the form of answers to questions posed by prosecuting and defense attorneys. The work that has gone into an investigation must not be lost during trial because of the witnesses' inability to effectively answer each attorney's questions.

Continued on next page

Testifying in Court, Continued

**Receiving
and
responding
to questions**
(continued)

The following table presents guidelines for both receiving and answering questions in a manner that will have the greatest impact on the court.

When...	officers should...
receiving a question	<ul style="list-style-type: none">• look directly at the attorney asking the question.• listen carefully to the entire question.• hesitate a few seconds before answering the question.• focus on the words as well as the meaning of the question. Concentrate on the question, not the person asking the question.• be sure to understand what is being asked before formulating an answer.• not answer any question that is not clearly understood. If necessary, officers should not hesitate to ask to have the question repeated or clarified.
answering a question	<ul style="list-style-type: none">• tell the truth.• answer only the question that has been asked. Officers should never attempt to go further, exaggerate, color, or embellish an answer.• respond promptly, but do not rush.• be direct and clear.• state each answer as simply as possible to get the desired meaning across.• keep to the point and not digress.• be brief, but answer the question completely.• testify only to what has been <i>seen, said, heard, or done</i>, not what “probably happened.”

Continued on next page

Testifying in Court, Continued

Receiving and responding to questions (continued)

When...	officers should...
answering a question (continued)	<ul style="list-style-type: none">• state only the facts that are known to be true (not hearsay).• relate conversations exactly as remembered, and use exact words and phrases, if possible.• describe incidents in chronological order.• answer only one question at a time. If a question has two parts, answer each separately.• do not offer unsolicited testimony.

References to the defendant

In the course of an investigation, within law enforcement reports, and when a criminal complaint is filed, the accused person is referred to as the “suspect” by peace officers.

During the court proceedings, officers should refer to the accused individual as the “defendant” or use the individual’s last name and not refer to the accused individual as the suspect. In cases where the defendant was arrested along with one or more other persons, all individuals should be referred to by last names.

It is preferable to refer to individuals by their proper name rather than use personal pronouns (e.g., “John Doe” rather than “he”). This is especially true when referring to the defendant.

NOTE: Testifying officers should never use the defendant’s first name.

Continued on next page

Testifying in Court, Continued

Addressing the court

When asking questions of the court, officers should always address the judge as “Your Honor.”

Physical evidence

Officers may be called upon to identify certain pieces of physical evidence in court, so that it may be admitted into evidence and shown to the jurors.

Sometimes it may be necessary for officers to draw and/or testify from demonstrative evidence (i.e., maps, diagrams, re-enactments, etc.) When doing so, officers should:

- stand so that they are not blocking the view of the judge or jury,
- point to the area they are talking about, and
- direct their descriptions/explanations/responses toward the jury.

If asked to draw a diagram, officers should not speak while drawing. Once finished, the witnesses can turn around, face the questioner, and respond to the question asked.

Hypothetical questions

A **hypothetical question** is a question framed in a manner that calls for an opinion from the witness, based on assumptions involving known facts. Officers should be cautious when asked hypothetical questions. Officers should not attempt to answer such questions or be drawn into theoretical discussions that go beyond what they know or observed.

Continued on next page

Testifying in Court, Continued

“Yes” or “no” questions

If a question can be answered with a simple “yes” or “no,” the testifying officer should do so. If the answer should require further clarification, the officer should say so.

If the questioning attorney insists on only a “yes” or “no” answer and the “yes” or “no” answer would be inadequate, the testifying officer should tell the attorney the question cannot be answered in this manner, or requires further explanation.

NOTE: An officer should not nod or shake the head or make any other gestures to indicate “yes” or “no.” Such responses cannot be properly recorded by the court stenographer.

Anger

Officers who are on the witness stand must control their tempers at all times. Anger may cause a witness to give unintended answers and can make a poor impression on the court.

Profanity

Profanity should never be used when answering questions as a witness.

When an officer is on the stand testifying to matters that involve profane language, that officer should tell the court that indecent words were used and ask if the court wishes to have them repeated exactly.

NOTE: Asking the court’s permission may have the effect of emphasizing the indecency of the defendant’s language and, therefore further discrediting the defendant in the eyes of the jury.

Continued on next page

Testifying in Court, Continued

Limits on one's knowledge

An officer should answer only the questions that officer is qualified to answer. If asked a question calling for details that the officer does not remember or does not know, that officer should never hesitate to answer with “I don’t know” or “I don’t remember” in a clear and confident manner.

“I don’t recall” *does not mean ignorance* on the part of the officer. It means the officer did not observe the facts directly and therefore is not qualified to answer the question.

“I don’t remember” only indicates that an officer is not positive about the extent of his or her knowledge. Such an answer may allow the attorney to rephrase the question in another manner that will help the officer focus.

If an officer can only partially answer a question, that officer’s answer should be qualified with a response such as “That is all I can recollect.”

NOTE: An officer should never attempt to “bluff,” “beat around the bush,” or “hedge” any answer in a manner that cannot be substantiated by fact. That officer’s testimony could be later attacked and weakened.

Continued on next page

Testifying in Court, Continued

Using notes

There may be questions that an officer cannot answer because that officer cannot recall specific details (e.g., exact measurements, direct quotes, etc.). Under such conditions, the officer may request permission of the court to refer to the notes, memoranda, or reports he or she brought to “refresh” his or her memory.

An officer is *not* permitted to answer a question by reading directly from the content of his or her notes. An officer can pause to review a document and then continue the testimony from that officer’s “refreshed” memory.

NOTE: The questioning attorney has the right to examine a witness’s notes to see what they contain and possibly read some excerpts aloud to the court.

Fairness

Because it was law enforcement officers who conducted the investigation and made the arrest, it is reasonable for the court to assume that any officer testifying believes the defendant is guilty of the crime.

The following table identifies a number of recommendations for remaining impartial and not appearing as the “enemy of the defendant.”

Recommendation	Additional Information
Do not be intolerant or opinionated.	<ul style="list-style-type: none">• The court must consider a person innocent until proven guilty beyond a reasonable doubt.• Do not make false accusations.• Testify only to the facts of the case.• Do not be influenced by the testimony given on the stand by other witnesses.

Continued on next page

Testifying in Court, Continued

Fairness (continued)

Recommendation	Additional Information
Avoid terms that are derogatory.	<ul style="list-style-type: none">• Phrase answers so they will not be offensive.• Avoid using prejudicial words or phrases.
Present the whole truth.	<ul style="list-style-type: none">• Give testimony in its entirety, even if some of the facts may put the defendant in a favorable light.• Let the facts speak for themselves and lead the jury to its own conclusions regarding guilt or innocence.• Include all points, major or minor, that will indicate that a thorough investigation was conducted.• Do not “stretch” or embellish the truth by altering peripheral (nonessential) facts in order to strengthen the prosecution’s case.

Excluding witnesses and disallowing testimony

The court may exclude officer(s) or witness(es) from being present during court proceedings; this would be called a motion to exclude witnesses. In addition, a court may order an officer or other witnesses to not testify as to events or observations that are not legally admissible.

Example: An officer arrests a suspect for a crime. The fact that the suspect was on parole at the time of the offense may not be admissible in court.

Continued on next page

Testifying in Court, Continued

Opinion evidence

An officer may be asked to give an opinion about some fact (e.g., speed, distance, size, etc.) related to a case before the court. The general rule is that a nonexpert witness may testify in the form of an opinion *only* if that opinion is:

- based on the witness's own observation of the facts, and
- is helpful to clarify a portion of the witness's testimony.

The following table identifies guidelines for giving an opinion while testifying.

Guideline	Additional Information
Base each opinion on known facts.	<ul style="list-style-type: none">• Base the opinion on the facts that have been presented to the court.• Identify for the court the factual elements that have led to the specific opinion.
Clearly differentiate between fact and opinion.	<ul style="list-style-type: none">• Clearly identify a statement as an opinion rather than a fact.• When giving factual testimony, do not add short opinions or explanations to embellish the facts.

Continued on next page

Testifying in Court, Continued

An officer as an expert witness

An expert witness is an individual who testifies before the court and who, by reason of education, specialized training, or experience, possesses superior knowledge regarding a particular area.

A peace officer may be qualified to give an opinion as an expert witness if:

- the officer has special knowledge on the subject,
 - the subject to which the officer's testimony relates is sufficiently beyond common experience, and
 - an expert opinion would be helpful in determining the facts.
-

Qualifying as an expert witness

The attorneys involved in a case may question an officer before the court regarding the training and experience which qualifies an officer as an expert. The court itself makes the final decision as to who is qualified to be an expert witness.

To qualify as an expert witness, an officer must:

- state that he or she is an expert in a particular area, (e.g., narcotics, ballistics, gangs, etc.), and
 - testify as to his or her qualifications to give expert opinions by giving statements as to:
 - background,
 - experience,
 - special training, etc.
-

Continued on next page

Testifying in Court, Continued

Expert testimony

When asked to give expert testimony, the peace officer should:

- give opinions only when specifically asked for and only on points pertaining to the offense,
 - state the facts on which the opinion is based,
 - give the reasoning by which an opinion was reached based on those facts, and
 - speak with confidence and assurance and stand by all opinions given.
-

Defendant confessions

A suspect's confession is valid only if it was voluntarily given as a free and independent act. Peace officers who were present at the time a confession was given may be called upon to substantiate that the writing and signing of the confession was lawful.

Officers may be asked to testify as to:

- the fact that Miranda admonishments were properly given before the confession was made.
 - the fact that the confession was made of the defendant's own free will.
 - the fact that no promises were made in exchange for the confession.
 - statements made by peace officers at the time of the confession.
 - the questions asked in order to bring about the confession.
 - the fact that the officer was present when the confession was made.
 - the circumstances under which the defendant read, corrected, and signed the finished statement.
 - the identity of witnesses who were present at the time the confession was signed.
-

Chapter Synopsis

Learning need For a peace officer's testimony to be given serious consideration by the court, it is essential that officers present themselves as professional, credible, and reliable witnesses.

Peace officer's responsibilities
[17.03.EO10] Prior to appearing as a witness in court, peace officers are responsible for:

- reviewing their field notes and all reports related to the case,
- meeting with the case prosecutor at a pretrial conference,
- complying with the prosecutor's instructions and recommendations, and
- obtaining all necessary evidence prior to the trial.

Case review
[17.03.EO11] Prior to giving testimony, officers should review:

- their field notes,
- all investigative reports, and
- any other summary reports or documentation related to the investigation.

Courtroom appearance
[17.03.EO12] Factors regarding personal appearance that peace officers should consider when appearing in court are dress and grooming.

Officer responses
[17.03.EO13] Aspects of courtroom demeanor that can affect officers' credibility include:

- attitude,
- body language,
- manner of speaking, and
- behavior.

Continued on next page

Chapter Synopsis, Continued

Receiving and responding to questions
[17.03.EO14]

Receiving and answering questions in a manner that will have the greatest impact on the court.

Opinion evidence
[17.03.EO15]

When asked to give an opinion about some fact, officers should:

- base each opinion on known facts, and
 - clearly differentiate between fact and opinion.
-

Truthful testimony of a peace officer
[17.03.EO16]

Peace officers must recognize that their primary role as witnesses for the prosecution is to:

- tell the truth,
 - testify to only those facts which they know from personal knowledge, and
 - be unbiased witnesses for either side.
-

Workbook Learning Activities

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity questions

1. Perform an honest assessment of your own personal prejudices. List at least two statements or tactics that a defense attorney might make that would cause you to lose your temper on the witness stand. How could such a reaction be used against you as testifying officer during cross-examination? What strategies could you use to remain in control?

Continued on next page

Workbook Learning Activities, Continued

**Activity
questions**
(continued)

4. Officer Jones was subpoenaed to testify in a case involving a robbery and assault with a deadly weapon. One week before the trial, Officer Jones met with the prosecuting attorney for a pretrial conference to review the details of the case and discuss possible questions she may be asked as a witness. During that meeting, Officer Jones also asked for the prosecutor's advice on how best to answer any questions regarding chain of custody. Later, during cross-examination at the actual trial, the defense attorney pointed out that it had been almost nine months from the time that Officer Jones was involved in the actual investigation and that it would be easy to forget details or confuse facts with other cases since that time. The attorney asked Officer Jones if anyone had helped her review her testimony and possibly "refresh" her memory regarding the facts of the case. How would you respond if you were Officer Jones? What exactly would you say? What if the defense attorney persists and implies that you had been inappropriately coached?

Continued on next page

Workbook Learning Activities, Continued

Activity questions (continued)

5. A jury's decision regarding a defendant's guilt or innocence is supposed to be made based upon the weight of the evidence presented during the trial. With this in mind, what bearing, if any, does the testifying officer's demeanor have on the case when that officer is *not* actually on the stand? (e.g., in the hall during a break, having coffee in the courthouse coffee room, etc.) What if the officer was present as a spectator and not as a witness?

6. During cross-examination, the defense attorney tried to elicit Officer Smith's opinion of the credibility of one of the other witnesses. In what way should Officer Smith respond to this line of questioning?

Continued on next page

Workbook Learning Activities, Continued

**Activity
questions**
(continued)

7. Assume you are the initial responding officer investigating an assault. You have taken all the proper steps to secure the scene, reassure the victim, and initiate preliminary investigation. When you determine that the victim has been raped, the case is turned over to the special rape investigation unit. Individuals within that unit are now responsible for gathering and handling all of the evidence. Some time later, you are called as a prosecution witness. During cross-examination you are asked questions regarding evidence collection methods and the chain of custody regarding certain pieces of physical evidence located at the crime scene. How might you respond?

Continued on next page

Workbook Learning Activities, Continued

Student notes

Glossary

Introduction **The following glossary terms apply to Learning Domain 17: Presentation of Evidence.**

admission A statement that is incriminating but falls short of a full acknowledgment of guilt. It only acknowledges some facts that tend to prove or imply guilt

business records Written statements or records made by a business person who has the duty to know the facts as they relate to the business

character evidence Generally concerns a party's predisposition toward a specific type of behavior

confession An express and complete acknowledgment of all elements of the offense

credibility The determination of whether the witness is being truthful

direct evidence Evidence that directly proves a fact in a case without inference

dying declarations Statements made by a dying person about the circumstances surrounding the person's impending death

evidence Any information allowed in court that is used to prove or help prove a point

exclusionary rule Any evidence obtained by the government or its agents (including peace officers) in violation of a person's rights and privileges guaranteed by the U.S. Constitution will be excluded at trial

Continued on next page

Glossary, Continued

expert witnesses People who have training, education, or experience giving them greater expertise than the expertise of the general population

express admission An out-of-court oral or written statement made by the defendant.

hearsay evidence Evidence of a statement that is made by someone other than the witness who is testifying in court and that is offered to prove the truth of the matter stated

hearsay rule Generally precludes the admission of statements as evidence made by anyone other than a witness giving first-hand information and testifying under oath at a hearing or trial

hypothetical question A question framed in a manner that calls for an opinion from the witness, based on assumptions involving known facts.

implied admission Conduct that circumstantially establishes consciousness of guilt.

inferences A conclusion drawn from a fact; similar to a presumption

official records Written statements or records made by public officials with a duty to make them

opinion rule Non-expert witnesses must confine their testimony to statements of fact and should not include opinions or draw inferences

Continued on next page

Glossary, Continued

**past
recollection
recorded**

Writing that is read into evidence when an available witness has insufficient memory to allow full and accurate testimony, and the event or facts are accurately contained in that writing

**present
memory
refreshed**

The use of personal notes, arrest reports, or crime reports as an aid to testimony regarding the particular facts of the crime by consulting them to refresh the witness' memory during testimony

relevance

The tendency to make the existence of any fact that is of consequence to the determination of the more or less probable than it would be without the evidence

**relevant
evidence**

Any evidence that tends to prove or disprove any disputed fact in a trial

**spontaneous
statements**

Statements made about some exciting or unnerving event, made at or near the time of the event, while the person making the statement is still under the excitement or stress of that event.

**testimonial
privilege**

A witness will not be required to state the substance of a communication that takes place within a protected relationship

**voir dire
examination**

The examination by the court or by the attorneys of the prospective jurors, to determine their qualification for jury service
