

Date Revised: 10/28/2019

Course Goal: To teach recruit officers the rules of evidence as they pertain to relevancy, types of evidence, authentication and chain of custody.

Learning Objective:

- Recognize relevance as it pertains to the admissibility of evidence [\[17.1.A\]](#)
- Identify four types of evidence:
 - Testimonial [\[17.1.B.1\]](#)
 - Real [\[17.1.B.2\]](#)
 - Demonstrative [\[17.1.B.3\]](#)
 - Circumstantial [\[17.1.B.4\]](#)
- Recognize the process of authentication of evidence [\[17.1.C\]](#)
- Understand what constitutes the legal chain of custody for evidence [\[17.1.D\]](#)
- Recognize a peace officer's role and responsibilities in ensuring the admissibility of evidence:
 - California Evidence Code 352 [\[17.2.A.1\]](#)
 - Exclusionary Rule [\[17.2.A.2\]](#)
 - Opinion and expert testimony [\[17.2.A.3\]](#)
 - Privilege [\[17.2.A.4\]](#)
 - Credibility of witnesses [\[17.2.A.5\]](#)
- Recognize the requirements and exceptions for admitting hearsay evidence for:
 - Spontaneous statements [\[17.2.B.1\]](#)
 - Admissions and confessions [\[17.2.B.2\]](#)
 - Dying declarations [\[17.2.B.3\]](#)
 - Records and officer testimony [\[17.2.B.4\]](#)
 - Hearsay testimony at preliminary hearings: By active and honorably retired peace officers [\[17.2.B.5\]](#)
- Identify a peace officer's responsibilities regarding pretrial preparation [\[17.3.A\]](#)
- Identify aspects of a case that peace officers should review prior to giving testimony [\[17.3.B\]](#)
- Identify factors related to a peace officer's personal appearance that can influence how an officer's testimony is received by the court [\[17.3.C\]](#)
- Identify appropriate peace officer responses while testifying as a witness [\[17.3.D\]](#)
- Identify appropriate responses when a peace officer is unsure of or does not know the answer to a question asked by an attorney [\[17.3.E\]](#)
- Identify appropriate responses when asked to give an opinion while testifying [\[17.3.F\]](#)
- Recognize the importance of being a truthful peace officer while testifying in court [\[17.3.G\]](#)

Learning Activity:

- Participate in a simulated criminal trial by either providing testimony or critiquing testimony provided by another person. The simulation shall incorporate a variety of questioning styles that peace officers are likely to encounter on the witness stand, including
 - Badgering/belligerent [17.5.A.1]
 - Offensive [17.5.A.2]
 - Friendly [17.5.A.3]
 - Condescending [17.5.A.4]
 - Hearsay questions and testimony at a preliminary hearing [17.5.A.5]
 - By active and honorary retired officers [17.5.A.5.a]

Session Time: 2 Hours

Resources:	
<ul style="list-style-type: none"> • Mock Trial Room 	
Session Summary: The instructor will lead a facilitated discussion accompanied with learning activities with the whole class.	
Outline	Instructor's Notes
<p>I. Rules of Evidence</p> <p>A. Relevance</p> <p>1. Purpose of Rules of Evidence</p> <p>a. Main purpose of the rules of evidence is to protect the jury from seeing or hearing evidence that is irrelevant, unreliable, or unfairly prejudicial</p> <p>b. Another purpose is to expedite a trial</p> <p>2. 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 [17.1.A]</p> <p>B. Four Types of Evidence</p> <p>1. Testimonial evidence is an oral, written or recorded account received in court [17.1.B.1]</p>	<p>Session 1 (2 Hours) Guest Speaker</p> <p><u>TTS 17.1.A - 17.3.G (All TTS) 2 Hours</u></p> <p>Run Learning Activity Courtroom Testimony 1 (Run by guest speaker) [LD 1 & 2 infused] or Facilitate discussion with below questions (If run by RBC instructor, otherwise, City Attorney's Office will conduct Learning Activity 1)</p> <p>Ask: What does it mean to have relevant evidence?</p> <p>Ask: What are the four types of evidence?</p>

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<p>influence the jury by arousing hostility or sympathy?</p> <ul style="list-style-type: none">b. Will the evidence, and/or the evidence required to counter it, consume an undue amount of time?c. Will the evidence create side issues that distract the jury from the main point of the case?d. Will the evidence unfairly surprise the opponent (prosecution or defense) who, acting in good faith, may be unprepared to deal with this development? <p>B. Exclusionary Rule [17.2.A.2]</p> <ul style="list-style-type: none">1. Reasons for excluding evidence<ul style="list-style-type: none">a. Reduce violations of constitutional protections,b. Avoid undue prejudice to the accused (e.g., previous convictions/arrests),c. Prohibit consideration of unreliable evidence (e.g., some hearsay), andd. Protect valued interests and relationships (e.g., attorney-client, clergy-penitent privilege)2. In some types of judicial proceedings, illegally obtained evidence may be admissible. Examples of this are:<ul style="list-style-type: none">a. Juvenile proceedings,b. Narcotics commitment,c. Parole and probation revocation hearings, andd. Sentencing hearings <p>C. Opinion and Expert Testimony [17.2.A.3]</p> <ul style="list-style-type: none">1. Opinion Rule: Most opinions are not admissible, because they are considered unreliable.2. Exceptions for nonexpert witnesses: "lay" opinion are generally admissible on such matters as<ul style="list-style-type: none">a. Speedb. Distancec. Size	<p>Ask or Read the exclusionary rule then</p> <p>Ask for examples of it.</p> <p>Ask: Are police officers' opinions admissible? IF so, when and / or how?</p>
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<ul style="list-style-type: none">d. Intoxicatione. Questions of sanity3. Expert Witness Exception<ul style="list-style-type: none">a. Expert witnesses are people who have training, education, or experience giving them greater expertise than the expertise of the general population.b. Expert testimony is often allowed in such areas as:<ul style="list-style-type: none">1) Fingerprints2) Ballistics3) Medicine4) Psychiatry5) Narcotics6) Gangs4. Expert Witness Qualification<ul style="list-style-type: none">a. No set minimum requirementb. Up to trial court to determine if person qualifiesc. Court may conduct a voir dire examination of the witness' qualificationsD. Privilege [17.2.A.4]<ul style="list-style-type: none">1. Exclusion to protect valued interests: Testimonial privilege means that a witness will not be required to state the substance of a communication that takes place within a protected relationship2. Protected Relationships<ul style="list-style-type: none">a. Against self incriminationb. Lawyer-Clientc. Not to testify against spoused. Confidential marital communicationse. Physician – Patientf. Psychotherapist – Patientg. Clergy – PenitentE. Credibility of Witnesses [17.2.A.5]<ul style="list-style-type: none">1. Determining the credibility of a witness(es) testimony to ensure its admissibility is based on:<ul style="list-style-type: none">a. Manner in which the witness testifies,b. Character of the testimony,	<p>Read what privilege is as it pertains to admissibility then?</p> <p>Ask for examples.</p> <p>Ask: How is a witnesses' credibility determined?</p>
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- c. Evidence affecting the witness' character for truth, honesty, or integrity,
- d. Demeanor of the witness,
- e. Witness' motives, or
- f. Contradictory evidence
- 2. Character evidence generally concerns a party's predisposition toward a specific type of behavior, such as hostility, dishonesty, immorality, or peaceableness, sobriety, or morality
- 3. A child's testimony will be considered admissible if the child:
 - a. Possesses the capacity to observe, recollect, and communicate events,
 - b. Has the ability to understand questions and to make intelligent answers, and
 - c. Understands the duty to speak the truth
- 4. Peace officers have an obligation to ensure that
 - a. All evidence is legally obtained,
 - b. All physical evidence has been properly prepared and safeguarded per recognized chain of custody procedures, and
 - c. All available supporting evidence and witness statements are gathered and documented completely
 - d. If evidence is illegally obtained, or if the recognized chain of custody is not followed, evidence may not be judged admissible
- F. 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
- G. Requirements and Exceptions to Hearsay
 - 1. Spontaneous Statements [\[17.2.B.1\]](#)
 - a. 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

Ask: What is spontaneous statements?

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<ul style="list-style-type: none">2. Peace Officer's Responsibilities<ul style="list-style-type: none">a. Reviewing their field notes and all reports related to the case,b. Meeting with the case prosecutor at a pretrial conference,c. Complying with the prosecutors' instructions and recommendations, andd. Obtaining all necessary evidence prior to the trial3. Peace officers will most likely be questioned about<ul style="list-style-type: none">a. Notes and written reports,b. Pretrial preparation with the prosecuting attorney,c. Eyewitness or personal knowledge of certain events,d. Methods of handling evidence during an investigation,e. Thoroughness of the investigation,f. Interrogation, org. Specific interactions with the defendant, andh. Education, training, experience (voir dire)4. Case review should include [17.3.B]<ul style="list-style-type: none">a. Observations at the crime scene including information such as lighting, weather conditions, or surrounding environment,b. Dates, times, and addresses related to the crime,c. Physical evidence that was collected,d. Methods used to protect, document, and collect the evidence,e. Type, calibration, and maintenance routine of any equipment used,f. Use of the equipment,g. Statements made by victim(s), witness(es), and/or the defendant(s),h. Identification and apprehension of the suspect,i. Actions taken as part of any follow-up investigation, and	<p>Ask: What should peace officers review prior to testifying?</p>
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<ul style="list-style-type: none">a. Based on the witness's own observation of the facts, andb. Is helpful to clarify a portion of the witness's testimony <p>5. Peace officers must recognize that their primary role as witnesses for the prosecution is to: 17.3.G</p> <ul style="list-style-type: none">a. Tell the truth,b. Testify to only those facts which they know from personal knowledge, andc. Be unbiased witnesses for either side	<p>when asked for an opinion while testifying?</p> <p>Ask: What is an officer's primary role as a witness for the prosecution?</p> <p>Session 3, Run Learning Activity 2, Mock Trial, 2 Hours</p>
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Learning Activity 1 - Courtroom Testimony

Purpose: To teach the recruits the rules of evidence as they pertain to relevancy, types of evidence, authentication and chain of custody. The recruits also must know the requirements and exceptions for the admissibility of evidence and the importance that officers present themselves as professional, credible, and reliable witnesses.

Description: Review LD 2 with below notes then continue with facilitated discussions on LD 17.

A. Review LD 2 / Roles of all people in the courtroom

1. Judge
 - a. Decides issues of law
 - b. Instructs the jury on law
2. Jury: Decides Issues of Fact
3. Prosecutor
 - a. Meets interests of justice
 - b. Ask for jail, fine, plea, dismiss, reject charges, etc. if that is what is appropriate
 - c. Represents the people and does what is right
 - d. Must prove case beyond a reasonable doubt
 - 1) Officer should have a well-written report including all reasonable suspicion, probable cause, and elements of the crime
 - 2) The prosecutor still may not have a case to take to a jury, even if there is sufficient probable cause
 - a.) EXAMPLE: Stolen Vehicle – Officer observes suspect driving a vehicle that goes through a stop sign. Officer runs plate and it comes back C-37 stolen. Need to prove intent to permanently or temporarily deprive
 - b.) EXAMPLE: Receiving Stolen Property – Officer stops person smoking marijuana and finds a stolen credit card on the person. Need proof the person knew the card was stolen and was not going to return the card.
4. Defense Attorney
 - a. Represents the defendant and protects defendant's Constitutional rights
 - b. Not necessarily concerned with the truth and not concerned with the victim or victim's family
 - c. Wants to create reasonable doubt in the mind of the jury
 - 1) Sloppy investigation
 - 2) Officers not being truthful
 - d. Does not necessarily want to know if client did the crime; wants to be able to present a good defense
5. Bailiff: Responsible for courtroom security
6. Clerk: In charge of the clerical parts of all court business, keeps records of all that transpires, enters judgments and orders
7. Court Reporter or Electronic Recording Monitor (ERM): Records verbatim report of all proceedings in the court

B. Process of a case

1. Officer makes arrest or is informed of a crime by a victim
2. Officer prepares report

3. Presented to prosecutor for filing consideration: **Discuss** the organization of the California court system, including positions commonly recognized as part of the judicial system. (2.3.B)
 - a. City Attorney
 - 1) Jurisdiction for City of Los Angeles
 - a.) Civil
 - b.) Criminal
 - i. Misdemeanors
 - ii. Felony kick downs
 - iii. Infractions
 - c.) Proprietary Units
 - i. Water/Power
 - ii. Airport
 - iii. Harbor
 - 2) Bifurcated office handling civil matters and serving as a prosecuting agency
 - 3) Prosecutes quality of life crimes
 - b. District Attorney
 - 1) Jurisdiction for County of Los Angeles
 - 2) Strictly prosecuting agency
 - 3) Attorney General
 - a.) Statewide jurisdiction
 - b.) Death penalty appeals
 - c.) Consumer fraud: Department of Corporations, Insurance, Labor, etc.
 - 4) United States Attorney's Office
 - a.) Jurisdiction of the United States
 - b.) Assistant United States Attorney (AUSA)
 - i. Prosecutes Federal crimes
 - ii. Federal Bureau of Investigations (FBI) works with and for the AUSA
 - 5) Filing Options
 - a.) Reject the charges
 - b.) Case is filed
 - i. Felony
 - ii. Misdemeanor (straight)
 - iii. Infraction
 - iv. Wobbler – felony/misdemeanor
 - (a) 17(b)(4) PC – When the Court has discretion to sentence the defendant to state prison or county jail, it is a misdemeanor “when the prosecuting attorney files in a court having jurisdiction over misdemeanor offenses a complaint specifying that the offense is a misdemeanor, unless the defendant at the time of his or her arraignment or plea objects to the offense being made a misdemeanor, in which event the complaint shall be amended to charge the felony and the case shall proceed on the felony complaint.”
 - (b) 17(b) (5) PC – at Preliminary Hearing, judge may kick case down from felony to misdemeanor
 - (c) Over 70% of cases get kicked down from felony to misdemeanor
 - v. Wobblette – misdemeanor/infraction
 - 6) Pre-filing deferral

C. **Discuss / Review** the judicial process in criminal cases: (2.3.C)

1. Arraignment
 - a. Brought before magistrate (judge / commissioner)
 - b. Advised of charges
 - c. Right to an attorney
 - d. How do you plead?
 - 1) Guilty – defendant admits to the crime. May be used against the person in civil court.
 - 2) Nolo contendere – defendant does not admit to crime but assumes responsibility for it
 - a.) Same as no contest
 - b.) Still goes down as a criminal conviction
 - c.) Criminal conviction cannot be used against the person in civil lawsuit
 - 3) Not Guilty
 - a.) Felony – Officer gets subpoena to Preliminary Hearing
 - i. Judge decides if there is probable cause to believe defendant has committed a felony
 - ii. If there is sufficient evidence, case goes forward to jury as a felony
 - b.) Misdemeanor – Trial or Pretrial, Officer gets a subpoena
 - i. Court order
 - ii. Misdemeanor to disobey
 - iii. Procedures to follow if on vacation
 - iv. Must appear subpoena requires officer's presence in court
 - v. On call subpoena requires ability to communicate by telephone and respond to court within a reasonably short time
 - vi. If subpoenaed by defense, show up to court and let prosecutor know (sometimes can get quashed)
 - vii. Not released from subpoena until case is dismissed or plea to a charge (If bench warrant is issued, case is still active but officer is released from this subpoena)
2. Officer and other witnesses come to court to testify: (1.2.B)
3. Courthouse behavior
 - a. Do not hang out in hallways.
 - b. Be careful what you say in the hallway
 - 1) Oct. 16, 1997 – LAPD Officer in hallway told jurors “guilty, guilty, guilty.” Judge had to declare a mistrial. Judge stated, “dumbest comment he ever heard.”
 - c. Never talk in the elevator. You cannot see juror badges
4. Courtroom attire: Identify factors related to peace officer's personal appearance that can influence how an officer's testimony is received (17.3.C)
 - a. Civilian clothes – human appearance to jury
 - b. Have weapon concealed
 - c. Talk to prosecutor about wearing uniform
 - d. Look sharper than defendant
 - e. Don't wear the same clothes several days in a row
5. Courtroom behavior
 - a. Do not chew gum
 - b. Be on time
 - 1) Know parking location

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- 2) Know time on subpoena
- c. Do not show bias or hostility toward defendant
6. Identify a peace officer's responsibilities regarding pretrial preparation (17.3.A)
7. Identify aspects of a case that peace officers should review prior to giving testimony. (17.3.B)
 - a. Testimony starts in the field with the report
 - b. Review report as many times as necessary prior to court
 - c. Discuss case with partner prior to court
 - d. Go to crime scene, if possible, to refresh memory
 - e. Review case with prosecutor
 - f. If defense attorney wants to talk to you, you have three choices:
 - 1) Talk – can burn you later
 - 2) Don't talk – hold it against you
 - 3) Best option – Inform defense attorney that you wish to consult prosecutor (who may wish to be present if you decide to talk to defense attorney)
 - g. Prosecution must make witnesses available but cannot force anyone to talk to the other side
8. Evidence: Officer is responsible to return evidence to where it was checked out or complete documentation if it is left with the Clerk
9. Identify appropriate responses while testifying as a witness (17.3.D) (1.2.A) (1.2.B)
 - a. Walk to the witness stand with no air of defiance. Be calm. Be yourself.
 - b. Recognize the importance of being a truthful peace officer while testifying in court (17.3.G)
 - c. Identify appropriate responses when a peace officer is unsure of or does not know the answer to a question asked by an attorney (17.3.E)
 - d. Answer "yes" or "no" if possible and stop. Do not volunteer information
 - e. Do not nod or say "uh-huh"
 - f. Listen carefully to question and make sure you understand before answering
 - g. Do not answer if there is an "objection"
 - 1) Wait for judge to rule
 - 2) Sustained – do not answer
 - 3) Overruled – answer
 - 4) Prosecutor may object – "Objection: Vague"
 - a.) Prosecutor is telegraphing the question is too broad or not understandable
 - b.) If the officer understands the question than he/she should answer
 - c.) If the officer does not understand the question, the judge will ask for it to be rephrased
 - h. Be careful with questions with double meanings or fact not yet testified to (assuming facts not in evidence)
 - i. Take your time – do not rush to answer
 - j. Do not repeat the question in your answer – it has the appearance of stalling for time to "make up an answer"
 - k. Speak loudly and clearly
 - l. When estimating time or distance, tell the court you are "estimating"
 - m. Do not answer a question with a question
 - n. Do not get into an argument with the defense attorney. You will not win.

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- o. Do not lose your temper or be condescending (e.g. "like I told you before...") [17.5.A.4]
 - p. If asked if you reviewed the report, discussed the case with your partner, discussed the case with the prosecutor, answer "Yes" if you did (Part of officer's responsibility)
 - q. Look at the person asking the question
 - r. Keep the same demeanor for both the prosecution and defense
 - s. Look at evidence carefully before talking about it
 - t. Do not give questioning looks to the prosecutor during cross-examination
 - u. Avoid police jargon. Speak so civilians can understand. Do not use offensive language. [17.5.A.2]
 - v. Do not display emotion but ok to appear friendly [17.5.A.3]
- D. **Discuss** Jury comes back with verdict
- 1. Guilty
 - 2. Not guilty
 - 3. Hangs
 - a. Dismissed by judge
 - b. Reset for trial/ Case is not over until there is a resolution
 - c. Disposition is reached
- E. **Discuss** Layout of the Courtroom
- 1. Judge: Sits in the center front usually at an elevated level
 - 2. Jury: Sits to side closest to the witness stand which is next to the judge
 - 3. Prosecutor: Sits closer to the jury 99% of the time
 - 4. Defense: Sits closer to lock-up 99% of the time
 - 5. Bailiff: Sits to side between lock-up and the defense table
 - 6. Clerk: Sits on opposite side of the witness stand. The judge is in the middle.
 - 7. Well
 - a. Area between judge and prosecution / defense tables
 - b. Do not walk in the well without permission of the Court
 - 8. Rail
 - a. Separates the above personnel from back 2/3 of courtroom
 - b. Seated behind the rail are witnesses, potential jurors, and the public
- F. **Discuss** Evidence
- 1. Recognize relevance as it pertains to the admissibility of evidence (17.1.A)
 - 2. Evidence Code 210: 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
 - 3. Four types of evidence (17.1.B)
 - a. Testimonial (17.1.B.1)
 - 1) Oral
 - 2) Written
 - 3) Recorded information
 - b. Real/ Physical (17.1.B.2)
 - c. Demonstrative (17.1.B.3)
 - 1) Map
 - 2) Model
 - d. Circumstantial (17.1.B.4)
 - 1) Tends to prove fact based on inference

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- 2) Distinguished from direct evidence which directly proves a fact in a case without inference
- 3) Example: See a person get shot=direct evidence. See bullet ricochet, then enter room and see a person down=circumstantial evidence. Both are equally admissible.
- e. The process of authentication of evidence (17.1.C)
 - 1) The act of establishing that claims made about the item of evidence are true
 - 2) It is what the officer says it is
- f. What constitutes the legal chain of custody for evidence (17.1.D)
 - 1) Form of authentication
 - 2) Taken from defendant, to an officer, booked by an officer, to court by another officer, testified to by another officer
 - 3) Every step accounted for
- g. Recognize a peace officer's role and responsibilities in ensuring the admissibility of Evidence: (17.2.A)
- h. California Evidence Code 352 (17.2.A.1)
 - 1) Judge excludes evidence
 - 2) Probative value outweighed by prejudice
- i. Exclusionary Rule (17.2.A.2)
 - 1) Evidence seized in violation of constitutional rights is excluded at trial
 - 2) Must protect constitutional rights
 - 3) Avoid undue prejudice to the accused
 - 4) Mapp v. Ohio: The US Supreme Court applied the 4th, 5th, and 6th Amendments to the states. The position of the courts is that illegally obtained information is generally not admissible in court.
 - 5) Exceptions
 - a.) Juvenile proceedings
 - b.) Narcotics commitment
 - c.) Parole and probation revocation hearings
 - d.) Sentencing hearings
- j. Opinion and expert testimony (17.2.A.3)
 - 1) Identify appropriate responses when asked to give an opinion while testifying. Opinion is not reliable except in the following cases: (17.3.F)
 - a.) Speed
 - b.) Distance
 - c.) Size
 - d.) Intoxication
 - 2) Expert testimony is admissible
- k. Privilege: Sometimes because society values certain relationships and interests, relevant information will be excluded to protect that interest (17.2.A.4)
 - 1) Self-Incrimination
 - 2) Lawyer / client
 - 3) Officers should obtain whatever evidence they can legally
- l. Credibility of witnesses (17.2.A.5)
 - 1) Determining the credibility of a witness' testimony to ensure its admissibility is based on the following:
 - a.) Manner in which the witness testifies
 - b.) Character of the testimony

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- c.) Evidence affecting the witness' character for truth, honesty, or integrity
 - d.) Demeanor of the witness
 - e.) Witness' motives
 - f.) Contradictory evidence
 - 2) As a general rule, prior bad acts cannot be introduced to show conduct on current occasion
- G. **Discuss** Recognize the requirements and exceptions for admitting hearsay evidence (17.2.B) [17.5.B.5]
- 1. Hearsay Evidence is an out of court statement asserted to prove the truth of the matter (Evidence Code Section 1200)
 - 2. Any statement, writing or communication: Example: A deaf mute can make store purchase with hand gestures and body language. No oral communication is necessary.
 - 3. As a general rule, hearsay is inadmissible because it is unreliable
 - a. Not said in court
 - b. Person not on witness stand
 - c. Cannot cross-examine
 - 4. Exceptions (not all inclusive)
 - a. Spontaneous statements (17.2.B.1)
 - 1) Excited utterance
 - 2) Inherently reliable
 - 3) Statement made at an exciting or unnerving event while the person making the statement is still under stress of the event
 - 4) Example: A lady with a purse is walking. A man comes from behind and grabs her purse. She never sees the man. Another person yells, "That guy (gives description) just took her purse." Police officer hears the statement and chases the suspect. The person who made the utterance disappears. The officer can testify to the statement even though the officer never saw the suspect snatch the purse.
 - b. Admission/confession (17.2.B.2)
 - 1) Inherently trustworthy
 - 2) Against own interest
 - c. Dying declaration: Generally, people do not lie when they are dying (17.2.B.3)
 - d. Statement made by a dying person about the circumstances surrounding their impending death
 - 1) Personal knowledge
 - 2) Sense of impending death
 - e. Person must die
 - f. Statement must be about the deceased
 - g. Records and Officer Testimony: Official and business records, as well as past recollection recorded (17.2.B.4)
 - 1) Official records
 - 2) Business records
 - 3) Past recollection recorded
 - 4) Present memory refreshed
- H. **Discuss** Proposition 115 – Hearsay testimony at preliminary hearings (17.2.B.5) [17.5.A.5.a]
- 1. Police officers can testify from a police report at a Preliminary Hearing (17.2.G.5.A)
 - a. Only applies to felonies at Preliminary Hearings

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- b. Must have 5 years on the Department or be Prop 115 trained (no certificate given or needed)
 - c. Must have prepared report personally or be personally familiar with the events described in the report
 - d. Retired officers can only testify to information from when they were working for the Department [17.5.A.5.a]
2. Passed into law on June 5, 1990
 3. Dramatic change in the law that we can use hearsay and limit presentation of witnesses by allowing an officer to testify to statements made out of court
 4. Reduces inconvenience to victims and witnesses and expedites the prosecution of evidence at Preliminary Hearings
 5. Restores Preliminary Hearings to their true purpose – determining whether there is probable cause to believe the defendant committed a felony.
 6. Prop 115 changes how evidence is presented at the Preliminary Hearing, not what needs to be proved
 7. Affects law enforcement's role in three areas:
 - a. Investigations
 - b. Reporting
 - c. Testifying in court
 8. Since hearsay evidence is now admissible, police officers need to be more thorough in their investigation, asking specific questions and taking detailed notes
 9. If physical evidence is involved, chain of custody must be fully documented in order to testify to the security of the evidence and validity of any tests
 10. Officer must have complete and thorough knowledge of the case
 11. Officer must be able to show the credibility and competence of the source for hearsay to be admitted at the Preliminary Hearing
 12. The officer may need to know specific information, such as the qualification of an expert or validity of the test used.
 13. The officer may identify the defendant at the Preliminary Hearing by:
 - a. Personal knowledge
 - b. Report of a live or photo line-up
 - c. Booking photo with a fingerprint or other identifying number and the case number to show that the person arrested is the person at the Preliminary Hearing
 - d. Fingerprints – those lifted by a qualified officer are the same as those compared by a qualified expert and where the prints were lifted
 14. The officer should ask specific questions (do not assume) and record answers in the police report. Witness statements do not need to be signed
 15. All testimony will be derived from the report. Be clear. Do not summarize. Use verbatim quotes where possible. List seized items by case and inventory number and specify where they were found and by whom. Avoid conclusionary statements. Be factual. Write legibly.
 16. Sometimes prosecutor may choose not to use Prop 115 with officers and instead use the live witness testimony
 - a. Witnesses may not be available later
 - b. Reluctant witnesses may back-out later
 - c. To have witnesses' credibility tested (see how well the witness holds up under defense examination)

SA05 - Preservation of Evidence
Session 01 - Courtroom Testimony
LD17 - Preservation of Evidence

17. Do not tell the witness that due to Prop 115 they do not have to come to court
 - a. Prop 115 only applies to felonies at the Preliminary Hearing stage
 - b. They may have to testify at trial
 18. Properly document Miranda
 - a. Write verbatim what was said or read
 - b. Read from Department form
 - c. Can read from Department form or report what exactly officer said
 19. Chain of custody is a foundational requirement that must be shown before physical evidence is admissible in court.
 - a. Must be a detailed report of where the evidence was found
 - b. Mark evidence with an identifier and inventory number connected to the report
 - c. If evidence will be analyzed, the same procedure must be followed especially with narcotics in a sealed container – transition to receiver
 20. Speak with the prosecutor prior to Preliminary Hearing to ensure information in the report is sufficient and all necessary items are brought to court (booking photo, etc.)
 21. Verbal Quiz – ask the students the following questions for review
 - a. Hearsay is...
 - b. Under Prop 115, witness statement needs to be signed (true or false)...False
 - c. A “statement” is...Anything expressed in any manner or any medium
 - d. What matters about Miranda Rights: How it was read, not just that it was given
 - e. In testifying about an expert analysis, officers may need to know...The qualifications of the expert
 - f. Officers can summarize their report (true or false)
 - g. What must the officer have to identify the defendant?
 - 1) Personal knowledge, or
 - 2) Fingerprints, or
 - 3) Photos
- I. **Review** Key Points for Review
1. The case is not over until it is over. Officers are not here to just “hook and book.”
 2. Write each report as if the case is going to trial
 3. This course certifies you as Prop 115 trained. Document this training in your Field Officers’ Notebooks.

ASSIGNMENT: Review both handouts and be prepared to discuss during Presentation of Evidence, Session 2. Bring handouts to Session 2.