

Date Revised: 10/29/2019

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: Same TTS as previous session. Review as necessary.

- 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 [\[17.3.G\]](#)

Session Time: 2 Hours

Resources: <ul style="list-style-type: none"> Classroom with tables 	
Session Summary: The instructor will lead a facilitated discussion accompanied with learning activities with the whole class.	
Outline	Instructor's Notes
<p>No new material. Review TTS</p> <p>I. Rules of Evidence</p> <p>A. Relevance</p> <ol style="list-style-type: none"> 1. Purpose of Rules of Evidence <ol style="list-style-type: none"> 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 b. Another purpose is to expedite a trial 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>B. Four Types of Evidence</p> <ol style="list-style-type: none"> 1. Testimonial evidence is an oral, written or recorded account received in court [17.1.B.1] 2. Real evidence is a physical object (contraband, fruits of crime, instrumentalities of crime) [17.1.B.2] 3. Demonstrative evidence is evidence that illustrates a matter of importance in a case. (i.e., maps, models, re-enactments) [17.1.B.3] 4. Circumstantial evidence is evidence that tends to prove a fact in the case based on an inference [17.1.B.4] <p>C. Authentication of Evidence: Authentication is the</p>	<p><u>Session 3 - No new material - Review TTS</u></p> <p>Facilitate discussion with below questions (If run by RBC instructor)</p> <p>Ask: What does it mean to have relevant evidence?</p> <p>Ask: What are the four types of evidence?</p> <p>Ask: What is authentication of evidence?</p>

act of establishing that claims made about the item of evidence are true. [\[17.1.C\]](#)

1. Shell casings that are admitted in court are authenticated by an officer who recovered them at the scene of the crime
2. A re-enactment presented in court of the crime is authenticated by showing that it fairly and accurately depicts the actual crime

D. Chain of Custody [\[17.1.D\]](#)

1. Chain of custody is a method of authentication.
2. Requires every step in the process of handling of the evidence be accounted for
3. By every person since its recognition and collection, explain what they have done with it

II. Requirements and Exceptions for the Admissibility of Evidence

A. Evidence Code 352 [\[17.2.A.1\]](#)

1. 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
2. Factors affecting probative prejudicial evidence
 - a. Does the evidence tend to unduly influence the jury by arousing hostility or sympathy?
 - 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,

Ask: What is chain of custody?

Read Evidence Code 352 then

Ask for an example based on factors affecting probative prejudicial evidence.

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Session 03 - TTS Review
LD17 - Preservation of Evidence

acting in good faith, may be unprepared to deal with this development?

B. Exclusionary Rule [\[17.2.A.2\]](#)

1. Reasons for excluding evidence
 - 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), and
 - d. 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:
 - a. Juvenile proceedings,
 - b. Narcotics commitment,
 - c. Parole and probation revocation hearings, and
 - d. Sentencing hearings

C. Opinion and Expert Testimony [\[17.2.A.3\]](#)

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
 - a. Speed
 - b. Distance
 - c. Size
 - d. Intoxication
 - e. Questions of sanity
3. Expert Witness Exception
 - 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:
 - 1) Fingerprints

Ask or Read the exclusionary rule then

Ask for examples of it.

Ask: Are police officers' opinions admissible? IF so, when and / or how?

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LD17 - Preservation of Evidence

<ul style="list-style-type: none">2) Ballistics3) Medicine4) Psychiatry5) Narcotics6) Gangs <p>4. Expert Witness Qualification</p> <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' qualifications <p>D. Privilege [17.2.A.4]</p> <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 - Penitent <p>E. Credibility of Witnesses [17.2.A.5]</p> <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,c. Evidence affecting the witness' character for truth, honesty, or integrity,d. Demeanor of the witness,e. Witness' motives, orf. Contradictory evidence2. Character evidence generally concerns a party's predisposition toward a specific type of behavior, such as hostility, dishonesty, immorality, or peaceableness, sobriety, or morality	<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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Session 03 - TTS Review
LD17 - Preservation of Evidence

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 stress of that event
 - b. Can be offered by anyone overhearing the statement
 - c. Statement is trustworthy because the speaker had no opportunity to fabricate a story
 2. Admissions and confessions [\[17.2.B.2\]](#)
 - a. Admission is a statement that is incriminating but falls short of a full acknowledgment of guilt.

Ask: What is spontaneous statements?

Ask: What is an admission or confession?

<ul style="list-style-type: none">b. Confession is an express and complete acknowledgment of all elements of the offense.c. An express admission or confession is an out-of-court oral or written statement made by the defendantd. An implied admission consists of conduct that circumstantially establishes consciousness of guilt <p>3. Dying Declarations [17.2.B.3]</p> <ul style="list-style-type: none">a. Statement must be based on the speaker’s personal knowledge and made under a sense of impending deathb. Victim must actually die for the declaration to be admittedc. 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 <p>4. Records and Officer Testimony [17.2.B.4]</p> <ul style="list-style-type: none">a. 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)b. 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)c. 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)d. Present memory refreshed refers to the	<p>Ask: What is a dying declaration?</p> <p>Ask: What is records and officer testimony in relation to exceptions to hearsay?</p>
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use of personal notes, arrest reports, or crime reports as an aid to refresh the witness' memory during testimony

5. Proposition 115 [\[17.2.B.5\]](#)
- a. Under Proposition 115, an officer can testify at a preliminary hearing on behalf of the witness or the investigating officer(s).
 - 1) Officer must have complete knowledge of all the elements of the crime and document those elements in the report.
 - 2) Interviews, interrogations and statements must be more detailed
 - b. Report becomes a stand-alone document from which any other officer can testify
 - c. 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 POST

III. Courtroom Testimony

- A. Preparing for Court Testimony [\[17.3.A\]](#)
- 1. Peace officers must recognize that their primary role as witnesses for the prosecution is to:
 - a. Tell the truth,
 - b. Testify to only those facts which they know from personal knowledge, and
 - c. Be unbiased witnesses for either side
 - 2. Peace Officer's Responsibilities
 - 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, and
 - d. Obtaining all necessary evidence prior to the trial
 - 3. Peace officers will most likely be questioned

Ask: What is Proposition 115 and how does it work in relation to exceptions to hearsay?

Ask: What are peace officers' responsibilities for pre-trial preparation?

<p>perceive, recollect, or communicate any matter about which that individual is testifying,</p> <ul style="list-style-type: none">d. Perceived existence (or nonexistence) of any bias, interest, or altered motive,e. Consistency of statements made,f. Individual's projected attitude toward giving testimony, org. Admission of past or present false or misleading statements <p>2. Receiving and responding to questions</p> <p>[17.3.D]</p> <ul style="list-style-type: none">a. Receiving a question<ul style="list-style-type: none">1) Look directly at the attorney asking the question.2) Listen carefully to the entire question.3) Hesitate a few seconds before answering the question.4) Focus on the words as well as the meaning of the question. Concentrate on the question, not the person asking the question.5) Be sure to understand what is being asked before formulating an answer.6) Not answer any question that is not clearly understood. If necessary, officers should not hesitate to ask to have the question repeated or clarified.b. Answering a question<ul style="list-style-type: none">1) Tell the truth.2) Answer only the question that has been asked. Officers should never attempt to go further, exaggerate, color, or embellish an answer.3) Respond promptly, but do not rush.4) Be direct and clear.5) State each answer as simply as possible to get the desired meaning across.	<p>Ask: What are appropriate ways to respond to questions while testifying?</p>
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- 6) Keep to the point and not digress.
 - 7) Be brief, but answer the question completely.
 - 8) Testify only to what has been seen, said, heard, or done, not what “probably happened.”
 - 9) State only the facts that are known to be true (not hearsay).
 - 10) Relate conversations exactly as remembered, and use exact words and phrases, if possible.
 - 11) Describe incidents in chronological order.
 - 12) Answer only one question at a time. If a question has two parts, answer each separately.
 - 13) Do not offer unsolicited testimony
3. Limit to one’s knowledge [\[17.3.E\]](#)
 - 1) Officers should answer only the questions they are qualified to answer.
 - 2) Never hesitate to answer with “I don’t know” or “I don’t remember” in a clear and confident manner
 - 3) Never attempt to “bluff,” “beat around the bush,” or “hedge” any answer in a manner that cannot be substantiated by fact
 4. Opinion evidence: The general rule is that a nonexpert witness may testify in the form of an opinion only if that opinion is: [\[17.3.F\]](#)
 - a. Based on the witness’s own observation of the facts, and
 - b. Is helpful to clarify a portion of the witness’s testimony
 5. Peace officers must recognize that their primary role as witnesses for the prosecution is to: [\[17.3.G\]](#)
 - a. Tell the truth,
 - b. Testify to only those facts which they know from personal knowledge, and

Ask: What should officers do when they don’t know the answer to a question while testifying?

Ask: What is an appropriate way to respond when asked for an opinion while testifying?

Ask: What is an officer’s primary role as a witness for the prosecution?

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c. Be unbiased witnesses for either side	
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