

Courtroom Testimony & Rules of Evidence

Facilitator Guide

Session Overview

Introduction & Learning Objectives	05m
Discussion – Preparation, Testimony & Dress	10m
Lecture/Discussion – Types of Evidence	35m
Break	10m
Lecture/Discussion – Types of Testimony	30m
Discussion – Privileged Communication	20m
Break	10m
Discussion – Exclusionary Rule	20m
Discussion – Fruit of Poisonous Tree	20m
Review	10m
End of Session / Break	10m

Learning Objectives:

- Identify the types of courtroom evidence
- Recognize what Hearsay is and the exceptions to Hearsay testimony
- Explain the Exclusionary Rule and “Fruit of the Poisonous Tree”

Total Session Time: 3 hours

Main Topics of Session:

- *Testimony Preparation*
- *Testifying*
- *Types of Courtroom Evidence*
- *Privileged Communication*
- *Hearsay and Exceptions*
- *Exclusionary Rule*
- *Fruit of the Poisonous Tree*

Facilitators Needed: 1 (CP)

Location: Classroom

Materials Needed:

- *PowerPoint -Courtroom Testimony & Rules of Evidence*

Students Should Already Have:

[THUMB DRIVE]

- *HANDOUT - Testifying in Court*
- *HANDOUT – Hearsay and Exceptions*
- *HANDOUT - Privileged Communication*
- *HANDOUT - Courtroom Evidence and Testimony*
- *HANDOUT - Pointers For Witnesses & Officers*



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Evidence for Court

- Testimony, Exceptions to Hearsay
 - Privileged Communications
 - The Rules of Evidence



SAY TO CLASS

When you're testifying in court, the jury, the judge, the prosecutor, the defense, the public—all eyes are on you. Your reputation and that of your department may be enhanced or destroyed by your courtroom presentation. Additionally, the quality of your work becomes painfully or pleasantly obvious.

Explain to recruits that court preparation starts as soon as an officer becomes involved in an incident. This includes taking accurate, complete, and legible notes/reports.

Do not discuss your testimony with others. In most criminal trials, one or both attorneys have invoked the "exclusionary rule" which if you remember from our previous session, excludes a witness from being in the courtroom and listening to the testimony of others.

At trial, as in all other matters, honesty is the best policy. If you tell the truth and tell it accurately, nobody can trip you up. Do not guess or make up an answer. When you are sure you don't know the correct answer to a questions, say so clearly and confidently.

- All eyes on you
- The quality of your work will show
- Court prep starts as soon as the call starts
- Do not discuss your testimony with others
- Honesty is key



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“The law deliberates not on the mode, by which it has come to the possession of the party, but on its value in establishing itself as satisfactory proof.”

U.S. Supreme Court Justice Story, 1822



SAY TO CLASS

When testifying, dress neatly and conservatively, after all, the way you dress and present yourself is a direct reflection on you. Dress for your court appearance with the same attention to detail you would in going before a promotion board. Peace officers should be in uniform, or in at least a sport coat and tie (men), or comparable attire (women).

- Avoid “Tactical” clothing or uniforms
- Make sure fingernails are clean, hair trimmed, clothes pressed, shoes shined
- Avoid items that jingle, jangle, flash, shine or otherwise distract
- Watch your equipment (some jurors are distracted by the sight of a witness in civilian clothes armed with a gun and carrying bullets, handcuffs, etc.)
- Turn off electronics and cell phones (unless you are assigned to an emergency squad)

- Dress Conservative & Professional
- Uniform or Suit



IMPORTANT POINT

Jurors hold peace officers to a higher standard than they do lay witnesses and they expect you to be able to take more abuse on the stand and still remain professional. This is not always easy to do.

Held to Higher Standard



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“ Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. If the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy.”

U.S. Supreme Court Justice Brandeis, 1928.

Lead by Example



NOTE TO FACILITATOR

Use the notes in the PowerPoint and following discussions to explain the different types of Courtroom Evidence.

Types of Evidence

- **Direct Evidence:**
 - “Evidence is direct and positive when the very act in dispute is communicated by witnesses who have actual knowledge of the facts by means of their senses”
 - In other words, *conclusive statements and observations made by a first party witness*
 - Proves a fact without the need for an inference.
- IE: “I saw Bob shoot Chuck with a gun”



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DISCUSSION - Direct Evidence

QTC: In court, what type of evidence can you testify to?

Direct Evidence

Direct Evidence is testimony or other proof which expressly or straight-forwardly proves the existence of a fact.

- a. "Evidence is direct and positive when the very act in dispute is communicated by witnesses who have actual knowledge of the facts by means of their senses".
- b. In other words, *conclusive statements and observations made by a first party witness*.
- c. Proves a fact without the need for an inference.

QTC: Can you give me an example of "direct" evidence.

AR: "I saw Bob shoot Chuck with a gun"
"I saw him punch her in the face"

Types of Evidence

- **Real Evidence:**
 - Those pieces of evidence that may be perceived by the senses.
 - In other words, *physical objects*.
 - Sometimes called demonstrative evidence.
- IE: the gun



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DISCUSSION - Real/Demonstrative Evidence

Real evidence (also known as Demonstrative evidence) is a type of physical evidence and consists of objects that were involved in a case or actually played a part in the incident or transaction in question. This type of evidence paints a picture for the jury by presenting both physical objects taken from the scene and your crime scene documentation.

QTC: What would be an example of “real” evidence?

AR: Written contract
The defective part
Murder weapon
Gloves used by an alleged murderer

Demonstrative evidence is evidence in the form of a representation of an object.

QTC: What are some example of demonstrative evidence?

AR: Photos
X-rays
Videotapes
Movies
Sound recordings
Drawings
Diagrams
Charts
Animation
Simulations
Models

Types of Evidence

- **Demonstrative Evidence:**
 - This also includes the following,
 - drawings
 - diagrams
 - charts
 - skeletons
 - models
 - etc.



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Examples of Circumstantial Evidence

- Circumstantial evidence of ability to commit a crime.
- Circumstantial evidence of intent.
- Circumstantial evidence of guilt.
- Character evidence



DISCUSSION - Circumstantial Evidence

Circumstantial evidence are facts that, when considered together, can be used to infer a conclusion about something unknown. Circumstantial evidence is usually a theory, supported by a significant quantity of corroborating evidence. It requires a jury to draw a conclusion from those facts.

QTC: What would be an example of circumstantial evidence?

AR: "I heard the gun shot. I went outside and saw Bob standing in the road. He was holding a gun. Chuck was lying on the ground and was bleeding."

QTC: What would be an example of circumstantial evidence?

AR: Circumstantial evidence of ability to commit a crime.
Circumstantial evidence of intent.
Circumstantial evidence of guilt.
Character evidence

Example: Ask the class if it's possible to get a murder conviction on circumstantial evidence alone? Scott Peterson case. Reported his wife missing. She was found with cement shoes on in the Bay. Cement used to weigh her down was consistent with cement found in the family home. Scott was picked up attempting to get into Mexico with a large amount of cash and altered his appearance. He was having an affair etc...Jury determined there was overwhelming circumstantial evidence and found him guilty.



BREAK



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SAY TO CLASS

Testimony is a form of evidence that is obtained from a witness who makes a solemn statement or declaration of fact. Testimony may be oral or written, and it is usually made by oath or affirmation under penalty of perjury.

Written or Spoken
Word

Types of Evidence Testimony

- **Hearsay testimony** is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
- Hearsay is inadmissible at trial *unless* it meets one of the exceptions
 - prior inconsistent statement rebuttal
 - Court Rule 803 exceptions to include:



STUDY

STUDY MATERIAL - HANDOUT - Hearsay and Exceptions [THUMB DRIVE]

Instructions: The info in this handout will be testable. Please make sure to read it and learn it.

Types of Evidence Testimony

- | | |
|---|--|
| <ul style="list-style-type: none"> ▪ Excited Utterance <ul style="list-style-type: none"> ▪ reliable as it is made while the declarant is acting under the stress of the event ▪ be careful to document why the declarant was under the stress of the event (IE: time proximity to crime, violence, etc.) ▪ all excited utterances should be in quotes in the police report. ▪ <u>Victim/suspect</u> | <ul style="list-style-type: none"> ▪ Present Sense Impression <ul style="list-style-type: none"> ▪ reliable as it is made while the declarant is actually perceiving the event ▪ is not an excited utterance, but has to be made during or immediately after the event ▪ should be in quotes in the police report. ▪ <u>911 caller witnessing the event</u> |
|---|--|

Hearsay Exceptions



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Types of Evidence Testimony

- **Dying Declaration**
 - presumes that the declarant does not have anything to gain by lying.
 - Declarant must believe death is imminent
 - relates to his death
 - he dies
 - admissible in homicide and civil cases only
- **Statement against self interest**
 - reliable as it presumes one would not implicate himself unless it were true
 - often used to impeach inconsistent testimony or statements
 - remember Corpus Delecti rule!
 - IE: confessions

Types of Evidence Testimony

- **Child Sexual Abuse Victim**
 - exclusive to Washington courts only
 - presumes the child to be innocent and thereby credible
 - the rule applies several conditions under which such testimony may be admissible
- Those rules include:
 - the statement must relate to the sexual attack
 - applies to children under the age of 10
 - the court must find the child to be capable of receiving only impressions of the facts and relating them truthfully



STUDY MATERIAL - HANDOUT - Privileged Communication [THUMB DRIVE]

Instructions: The info in this handout will be testable. Please make sure to read it and learn it.



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Types of Evidence Testimony

Privileged Communication:

- Covers communications made in a professional confidence, which are not open to disclosure or discovery
- The rationale in providing such a privilege is that will promote a more open and honest accounting between the declarant and the professional/spouse.

Rules of Evidence Testimony

- This testimony is inadmissible at a trial
- Two tests must be met:
 - 1) Communication must have been confidential.
 - 2) The appropriate relationship must exist.

Types of Evidence Testimony

- | | |
|---|--|
| <ul style="list-style-type: none"> ▪ <u>Attorney - Client</u> <ul style="list-style-type: none"> ▪ requires a formal relationship ▪ does not apply to future crimes ▪ <u>Church Clergy - Penitent</u> <ul style="list-style-type: none"> ▪ must be a bonifide religion ▪ All denominations ▪ no formal relationship between each | <ul style="list-style-type: none"> ▪ <u>Husband - Wife</u> <ul style="list-style-type: none"> ▪ does not apply when a crime is committed by one against <ul style="list-style-type: none"> ▪ the other spouse ▪ a common child ▪ does not protect communication made when marriage follows the filing of charges ▪ dissolution does not change the rules |
|---|--|



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Types of Evidence Testimony

- Physician / Nurse Surgeon - Patient
 - applies only to these named professionals
 - exceptions are legislated for acts of sexual or physical abuse, or for violent crime victims (details only the occurrence and location)
- Psychologist - Patient
 - exception exists wherein Doctor is made aware of child abuse situations (same limits as previously defined for medical care givers)
 - How about you pre-hire psychological...why was it disclosed?

Types of Evidence Testimony

- Police Officer - Sanctioned Peer Support
 - applies to Washington Courts only (no federal protection given)
 - must be a recognized peer support process
- Other protected classes include:
 - Counselors
 - Interpreters in legal matters
 - Journalists



BREAK



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SAY TO CLASS

Rules of evidence govern whether, when, how, and for what purpose proof of a case may be placed before a trier of fact for consideration. In the United States' judicial systems, the trier of fact may be a judge or a jury, depending on the purpose of the trial and the choices of the parties.

"Trier of Fact"

The Rules of Evidence

■ The Discovery Process

- a pre-trial process
- "the acquisition of notice or knowledge of given acts or facts" – Black's Law Dictionary
 - excludes "informant identification"
- applies to both sides of the case
- used to facilitate an effective trial process
- "Prosecutors have a positive duty to disclose the defendant evidence that tends to negate his/her guilt."

The Rules of Evidence

■ Examples of discoverable materials:

- police officer's reports
- police officer's notes and notebooks
- 911 communications on tape
- radio and mdt / mdc traffic
- personnel files
- internal affairs files



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The Rules of Evidence

- These rules apply to government officials and their agents!!!



This is what prevents the police from asking others to act on their behalf to collect evidence.

The Rules of Evidence

Exclusionary Rule:

- *simply stated*, "evidence obtained in violation of the Constitution is *inadmissible* in a subsequent trial"
- the rationale:
 - To deter unlawful searches and seizures by police.
 - To ensure judicial integrity.



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SAY TO CLASS

The Exclusionary Rule is a legal principle holding that evidence collected or analyzed in violation of the U.S. Constitution is **inadmissible** for a criminal prosecution in a court of law. Simply stated, "it is evidence that cannot be used in a criminal trial".

- a. The Exclusionary Rule is designed to provide a remedy and disincentive for prosecutors and police who illegally gather evidence in violation of the Fourth and Fifth Amendments, which provide for protection from unreasonable searches and seizure and compelled self-incrimination.
- b. The Exclusionary Rule judges the admissibility of evidence based on ethics. The courts are concerned with *how* evidence is acquired, rather than *what* the evidence proves. For this reason, in strict cases, when an illegal action is used by police/prosecution to gain any incriminating result, *all* evidence whose recovery stemmed from the illegal action can be thrown out from a jury (or be grounds for a mistrial). This evidence is known as "fruit of the poisonous tree"
- c. Exceptions to these rules occur when the state can show:
 - Inevitable discovery of evidence
 - Use for impeachment purposes
 - Civil cases
 - Searches by private persons

- Exclusionary Rule
- Keeps the Police & Prosecutor in Check
- How the Evidence was Obtained - Not what the Evidence Is
- Exceptions



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The Rules of Evidence

Fruit Of The Poisonous Tree:

Evidence Derived From An Illegal Or Unconstitutional Act Is Also Prohibited From Introduction At Trial

- Exceptions To These Rules Occur When The State Can Show:
- Inevitable Discovery Of Evidence
- Use For Impeachment Purposes
- Civil Cases
- Searches By Private Persons



What about ethics?

- In documenting excited utterances and present sense impressions?
- Dying declarations?
- Privilege communications?
- Exclusionary rule and fruit of the poisonous tree?



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DISCUSSION - Review

QTC: How should you prepare for court?

QTC: When testifying, what are some courtroom principles you can apply to be an effective witness for the prosecution?

QTC: Besides a criminal trial, when else will you be required to testify?

QTC: What are the types of courtroom evidence?

QTC: What is Hearsay?

QTC: What are the exceptions to the hearsay rule?

QTC: What is the Exclusionary Rule?

QTC: What does "Fruit of the Poisonous Tree" mean?



STUDY MATERIAL - HANDOUT - Courtroom Evidence and Testimony [THUMB DRIVE]
- HANDOUT - Pointers For Witnesses & Officers [THUMB DRIVE]
- HANDOUT - Testifying in Court [THUMB DRIVE]

Instructions: These handouts have common terms and definitions used in the courts, and tips for testifying. This information will be testable.



BREAK/END OF SESSION

