

Courtroom Evidence and Testimony

Session Materials

Evidence

Defined as anything that tends logically to prove or disprove a fact at issue in a judicial case or controversy.

Rules of Evidence

The rules of evidence are designed primarily to keep a jury from hearing or seeing improper evidence. The first rule of evidence is designed to set the parameters on the preceding definition of evidence.

Proof

A combination of all of the evidence in determining guilt or innocence.

Testimony

Evidence in oral form.

Admissibility

Decided by the judge outside of the jury.

Materiality

Importance of the item of evidence in question.

Competence of Evidence

Legal significance of evidence (must lay foundation).

Competence of Witnesses

Legally insane? Intoxicated at time of crime? Child? Mental capacity diminished?

Weight of Evidence

Once evidence admitted must be "weighed" by the jury.

Presumptions

- Conclusive- jury must follow without alternatives.
- Rebuttable- requires that a specific conclusion be drawn unless that conclusion has been dispelled or rebutted by evidence presented to the jury (i.e. innocent until proven guilty).

Inference

A permissible deduction that the jury may make.

Burden of Proof

Rests with the prosecution.

Prima Facie Case

More likely than not.



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Burden of Going Forward

The defense carries the burden of going forward with evidence to create a reasonable doubt.

Preponderance of Evidence

More likely than not (51%).

Order of Proof

The prosecutor must prove the existence of corpus delicti (elements of the crime) before showing the guilt of the defendant.

Judicial Notice

An evidentiary shortcut. Judicial notice may only be taken on a collateral or minor point. It may never be used to prove that a fact that the jury is supposed to decide.

3 situations:

- Judicial notice may be taken in matters of common knowledge without dispute.
- Judicial notice may be taken of laws.
- Judicial notice may be taken of matters that may be ascertained as true (i.e. medical facts, historical facts, meaning or words...etc.)

Direct Evidence

Testimony of witnesses that ties the defendant directly to commission of the crime. First hand knowledge.

Real Evidence

Physical evidence.

Demonstrative Evidence

Illustrative evidence (i.e. charts, diagrams, skeletons).

Circumstantial Evidence

Encompasses all evidence except direct evidence. Circumstantial evidence is inferred (totality of circumstances).

Opinion Evidence

Normally not permitted unless offered by an "expert witness".



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Hearsay

Derived from the word “heard said”. Considered inaccurate, unreliable, and untrustworthy. Sixth amendment right to confront witnesses. Also included- written statements. Exceptions-

- Out of court assertions (not to prove truth, just what was said)
- Reputation.

Confessions

Admission of guilt must apply to all the elements of the crime

- Judicial Confession- in court confession mad before the judge.
- Out of Court Confession-knowingly, intelligently, and voluntariness. Assumption that one would not make statements against self-interest unless true.

Admission

One that does not acknowledge all of the facts of the crime but does admit some. Guilt may be inferred.

Witnesses

- Subpoena- written order-commanding witness to appear.
- Subpoena Duces Tecum - commands witness to bring certain records or documents.

Contempt

Refusal to go to court with subpoena or answers questions (unless pleading the 5th amendment). People who possess 1st had knowledge have a duty to a right to appear in court.

Oath

Swearing to tell the truth on the basis of their sacred belief in a supreme being.

Affirmation

Witness understands and takes an obligation without swearing to a supreme being.

Jury’s Function

To weight he facts presented by the witnesses (all) and to interpret these facts, giving appropriate weight and credibility to the evidence and to the witnesses for the purpose of reaching a decision regarding the guilt or innocence of the defendant.

Credibility

Law enforcement not afforded more credibility than other witnesses. Law enforcement officers see so many crimes and appear in court so often that it may create difficulties in the presentation of testimony. Public expects perfection from officers....so officers credibility suffers if recall is less than perfect. Public is also critical of law enforcement and sometimes can suspect credibility issues. Law enforcement officers can overcome these issues with meticulous preparation for testimony and giving straightforward unemotional testimony.



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Characteristics of a Good Witness

- Adequate preparation.
- Familiarity with the rules of evidence.
- Familiarity with how juries think and react.
- Knowledge of the trial process.
- Maintenance of proper appearance and conduct.

Characteristics of a L.E. Witness

- Preparation- ensure complete investigation was conducted, all leads followed and avenues explored.
- Prime Responsibility- not to convict, but to ascertain facts objectively.
- Complete and accurate notes on information and evidence gathered.
- Review all notes. Recall on stand with minimal referral notes.
- Review all reports, evidence....so memory is complete.
- The investigator should review with the prosecutor.

Understanding the Jury

- Understanding the flexibility and fallibility.
- Psychological effects of good professionalism.

Appearance and Demeanor

- Neat and clean.
- Do not wear pins with handcuffs or guns.
- Make a good impression prior to trial (on way to and in court house).
- LE Officers should avoid talking to court clerks, witnesses, judge, etc. (prosecutor ok).

Taking the Witness Stand

- From moment officer walks in people are forming opinions.
- Do not frown at defendant.
- Hands comfortably in lap or on arms of chair.
- Make eye contact with jury when answering questions.

Answering Questions

- Answer without emotion or partiality.
- No sarcasm, witty remarks or attitude.
- Be positive.
- Never lie. If make a mistake admit it (even after incident to the prosecutor).
- Avoid....."I think", "I believe", or "I recall".
- Address the judge as "your honor".
- Do not use police slang.
- If need to explain ask the judge for permission.



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2 Methods of Answering Questions

- Narrative- for experienced officers who can testify.
- Question and Answer- request prosecutor to use this method if new officer. Allow pause before answering for prosecutor or defense to object.

Cross Examination

Purpose of cross is to ensure that testimony given under direct examination has been accurate and truthful.

Impeachment- process of discrediting or contradicting the testimony of the witness to show that the witness is unworthy of belief. Designed to weaken. Tests reliability.

5 Basic Methods for Attacking the Credibility of a Witness

1. Showing that the witness's previous statements, personal conduct or conduct of the investigation is inconsistent.
2. Show that the witness is biased or prejudiced against the state or defendant.
3. Attacking the character of the witness.
4. Showing that the witness did not have the capacity to observe, recollect or recount.
5. Showing that the witness is in error.

Cross Examination Tactics

- Browbeating or Belligerent- to provoke unprofessionalism.
- Friendly or condescending- lull witness into dropping guard.
- Questioning officer if he/she talked to anyone about the case (of course...answer yes... i.e. talked with the prosecutor about the incident regarding the facts and to answer truthfully, etc.)

Use of Notes On the Stand

It is permissible to re-fresh.

Two reasons to refer to notes or reports:

1. To remember a particular fact. If too much...not good shows in ability to recall event.
2. In the event that a witness cannot remember and solely uses notes or reports...prosecutor should dismiss officer as a witness and introduce notes or reports as evidence. This is called "Past recollection recorded".

Leaving the Witness Stand

- Leaving just as important as entering. All eyes are on the officer.
- A common tactic is...as officer is getting prepared to leave, the cross examiner asks a last minute question to "catch the witness off-guard".
- Witness should wait to be excused by the judge and should not smile, glare or speak to anyone.

