

126555

# BASIC COURSE UNIT GUIDE

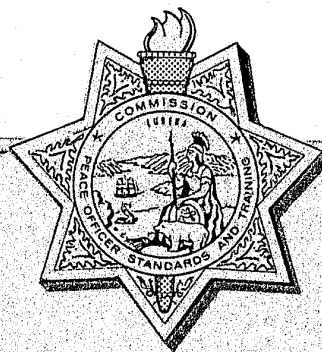
56

## COURTROOM DEMEANOR

This unit guide covers the following learning goals contained in the POST Basic Course performance objective document:

10.11.0 Courtroom Demeanor

Revised October 1990



THE COMMISSION  
ON PEACE OFFICER STANDARDS AND TRAINING  
STATE OF CALIFORNIA

U.S. Department of Justice  
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material in microfilm only has been granted by  
CA Comm. on Peace Officer  
Standards and Training

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

**This unit of instruction is designed as a *guideline* for Performance Objective-based law enforcement basic training. This unit is part of the POST Basic Course Guidelines system developed by the California Commission on Peace Officer Standards and Training with the assistance of the law enforcement training community.**

**This Guide is designed to assist the instructor in developing an appropriate lesson plan to cover the performance objectives, which are required as minimum content of the Basic Course.**

**Table of Contents**

Learning Goals and Performance Objectives i  
Materials/Equipment ii  
Unit Outline

I. Courtroom Demeanor (10.11.0) . . . . . 56- 1  
Supporting Materials and References. . . . . 56-29

## Learning Goals and Performance Objectives

### 10.11.0 COURTROOM DEMEANOR

Learning Goal: The student will learn to properly testify in court.

- 10.11.1 The student will identify the following benefits of appropriate behavior and dress in the courtroom:
- A. It enhances the credibility of the witness.
  - B. It shows respect for the court and the judicial process.
  - C. It reflects the professionalism of the witness and agency.
- 10.11.2 The student will identify the following areas in which an officer should prepare before appearing as a witness:
- A. Refreshing the memory of events related to testimony, by reviewing crime, arrest, and evidence reports.
  - B. Personal appearance (grooming and dress)
- 10.11.3 Given a description of a question asked under direct or cross-examination the student will select a response consistent with the following principles:
- A. Never answer a question until it is fully understood.
  - B. Answer as simply, briefly, and directly as possible.
  - C. Testify to only information derived from personal observation.
  - D. Do not distort or embellish testimony for any reason.
  - E. Don't offer an opinion unless testifying as a court qualified expert.
  - F. Don't react emotionally or defensively to aggressive cross-examination.
- 10.11.4 Given an exercise, the student will furnish or critique testimony in such a manner as to promote the development of professionalism and the administration of justice when faced with a variety of "attorney personalities."
- These personalities will include:
- A. Badgering/belligerent
  - B. Offensive
  - C. Friendly
  - D. Condescending

## Material/Equipment

Each training institution should develop its own list of equipment and materials for each unit. This list is dependent upon the instructional strategies methods/media considerations.

No special material or equipment needed.

**Learning Goal 10.11.0:** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>I. COURTROOM Demeanor</p> <p>A. Introduction To Courtroom Demeanor</p> <ol style="list-style-type: none"> <li>1. By the very nature of work, an officer should be accustomed to performing duties in an ever-critical eye. Of the many assignments, probably none will be scrutinized more closely than an officer's ability, appearance, and conduct as a witness in court.</li> <li>2. Officers must be prepared to relate to the court all the facts of which they are aware.             <ol style="list-style-type: none"> <li>a. Generally, their testimony will be carefully brought out by the prosecuting attorney who will establish the facts in the proper manner and sequence.</li> <li>b. Exception: Personal knowledge is not necessary at a preliminary hearing. P.C. 872(G) permits hearsay evidence at a preliminary hearing.</li> </ol> </li> <li>3. The primary task of the jury is to determine the facts by evaluating and giving weight to the testimony of each witness. Their verdict represents what they believe the actual facts to be.             <ol style="list-style-type: none"> <li>a. The credibility of each witness is always an issue. Credibility is the degree to which the witness is believed. The jury is the exclusive judge of the credibility of the witness.</li> <li>b. In determining the credibility of a witness, the jury may consider any matter that has a tendency to prove or disprove the truthfulness of a witness's testimony, including, but not limited to the following:                 <ol style="list-style-type: none"> <li>(1) The witness's demeanor while testifying.</li> <li>(2) The character of the witness's testimony.</li> <li>(3) The extent of the witness's capacity to perceive, to recollect, or to communicate any matter about which they testify.</li> </ol> </li> </ol> </li> </ol>	<p>10.11.1 The student will identify the following benefits of appropriate behavior and dress in the courtroom:</p> <ol style="list-style-type: none"> <li>A. It enhances the credibility of the witness</li> <li>B. It shows respect for the court and the judicial process</li> <li>C. It reflects the professionalism of the witness and the agency</li> </ol>

**Learning Goal 10.11.0 :** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<ul style="list-style-type: none"> <li>(4) The witness's character for honesty or veracity or their opposites.</li> <li>(5) The existence or non-existence of a bias, interest, or other motive.</li> <li>(6) Inconsistent statement with any part of testimony.</li> <li>(7) The existence or non-existence of any fact to which they testify.</li> <li>(8) Their attitude toward the action in which they testify or toward the giving of testimony.</li> <li>(9) The admission of falsehood.</li> <li>(10) The prior conviction of a felony.</li> <li>c. The credibility of an officer - Witness can be influenced by many things such as appearance, manner, directness, reasonableness, and decorum.</li> <li>d. Therefore, the officer should not only possess, but should outwardly reflect, a fair and impartial attitude. The officer should not:               <ul style="list-style-type: none"> <li>(1) "Stretch" the facts to make the case look good. (This has probably lost more cases than any single factor.)</li> <li>(2) Appear to be suppressing facts favorable to the defendant by attempting to evade questions. It is far better to state a fact favorable to the defendant.</li> </ul> </li> <li>c. A clear, concise, fair, and factual recital by an officer cannot help but favorably impress a jury.</li> </ul>	

**Learning Goal 10.11.0:** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>B. Witness Examination Procedure</p> <p>1. Prosecution's Case-in-Chief - the initial phase of the trial during which the prosecution presents evidence which demonstrates defendant's guilt.</p> <p>This is normally when the officer is first called to testify.</p> <p>a. Direct examination</p> <p>The prosecutor elicits facts from the officer during the direct examination.</p> <p>(1) When answering the prosecutor's questions during the direct examination, the officer should direct testimony to the jury.</p> <p>(2) In the event defense counsel objects to the prosecutor's question posed to the officer, the officer should remain silent and not answer until the court has ruled on the objection. The judge will rule on the objection in one of two ways: either "sustain" the objection or "overrule" it. If "sustained", the officer cannot answer the question objected to. If the judge "overrules" the objection, the officer may answer the question.</p> <p>b. Cross-examination</p> <p>The defense counsel will question a witness under cross-examination following the witness's direct examination by the prosecution.</p> <p>c. Re-direct examination</p> <p>Following cross-examination by the defense attorney, the prosecutor may question the witness to clarify statements or answers</p>	



**Learning Goal 10.11.0 :** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>given during cross-examination. This second questioning by the prosecutor is called re-direct examination.</p> <p>d. Re-cross examination</p> <p>A witness testifying under re-direct examination by the prosecution may then be further questioned by defense counsel under re-cross examination.</p> <p>C. Value Of Professional Courtroom Demeanor And Appearance</p> <p>1. The precautions taken at a crime scene, the meticulous handling of evidence, painstaking interviews, and detailed case preparation culminate in the trial.</p> <p>a. The value of evidence is dependent upon the manner of its presentation to a jury.</p> <p>b. The reputation of an individual and the department may be enhanced or diminished by the demeanor and appearance of the officer in court.</p> <p>c. The officer is subjected to the objective and critical eyes of the court and, at times, to the added outright animosity of defense counsel.</p> <p>d. The officer who has not prepared for court appearance and/or communicates poorly while testifying runs a high risk of personal humiliation.</p> <p>e. Any public appearance has the potential for a public relations impact. Many of our "public appearances" are not preplanned and some of those place law enforcement in a less than favorable position.</p>	

**Learning Goal 10.11.0:** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>f. An officer's appearance in court does not normally come as a surprise.</p> <p>g. The officer can preplan a court appearance to insure a "positive" outcome. A positive outcome is achieved when the appearance meets the trial objectives, public relations are improved, and the officer is self-satisfied.</p> <p>2. The manner in which a witness testifies is one of the criteria used to evaluate the weight as evidence to be given that witness's testimony.</p> <p>a. A witness whose appearance is neat, whose demeanor is calm, and whose testimony is direct and clear is likely to leave a favorable impression.</p> <p>b. Such testimony usually receives due consideration by a jury.</p> <p>c. Conversely, less credence is given testimony from a witness whose attitude in dress and conduct is casual, and who appears ill-at-ease on the witness stand.</p> <p>3. It is vital to every criminal prosecution that the officers involved in the case be prepared to present their testimony in an advantageous manner. With that in mind, the following suggestions are offered to peace officers desiring to improve themselves as witnesses.</p> <p>a. Most of us judge people by their appearance; jurors are no different.</p> <p>b. Individual agency policy will generally dictate the mode of dress to be worn by its officers while testifying in court.</p> <p>c. Generally speaking, on-duty officers testify in uniform and off-duty officers testify in civilian attire.</p>	

**Learning Goal 10.11.0:** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>d. In the absence of a judge's prohibition, officers in uniform or civilian attire are normally armed. However, officers in civilian attire should take great pains to insure their firearms are at all times concealed from view.</p> <p>e. Experience has shown that jurors are often offended and unfavorably impressed by the exposure of a witness's gun, bullets, handcuffs, and the like.</p> <p>f. An officer should <u>plan</u> a personal appearance in court in the same manner and with the same attention to detail exercised if planning an appearance before a promotional oral board.</p> <p>g. Officers must strive to avoid creation of animosity between the judge, jury, and themselves. We have all experienced immediate disrespect and animosity created when we are disgusted with the personal hygiene and appearance of another.</p> <p>D. Preparing For Courtroom Testimony</p> <p>1. Discuss the testimony with the prosecutor.</p> <p>a. This is a must and should be done several days before the trial appearance. The officer should bring a copy of the arrest report and any other notes or memoranda. The prosecutor and officer should not only review the basic facts of the case but the officer should determine exactly what the officer's testimony will be. The officer should never be reluctant to admit that such discussions have taken place. Avoid last minute interviews at all costs.</p>	<p>10.11.2 The student will identify the following areas in which an officer should prepare before appearing as a witness:</p> <p>A. Refreshing the memory of events related to testimony, by reviewing crime, arrest, and evidence reports</p> <p>B. Personal appearance (grooming and dress)</p>

**Learning Goal 10.11.0:** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>b. If physical evidence is involved in the officer's testimony, then the officer should make certain that the evidence is available and ensure its presence in court.</p> <p>c. Above all, the officer should be completely familiar with the facts of the case.</p> <p>d. If the officer is to testify to hearsay at a preliminary hearing, the officer must have all necessary witness statements, reports, and other material required for the hearing.</p> <p>2. Be present for court on time.</p> <p>a. During the pretrial briefing, find out when the prosecutor wishes the testifying officer to be present in court.</p> <p>b. Typically, a judge will not be as lenient with a tardy officer as with some other witness who is late.</p> <p>c. Tardiness might result in dismissal of charges.</p> <p>3. Aids to the prosecutor</p> <p>a. If the officer receives a subpoena to testify for the <u>defense</u>, it should be reported to the office of the prosecution without delay.</p> <p>b. When writing arrest reports, note in the report as clearly as possible which officers found each item of evidence, where it was found, and who booked it.</p> <p>NOTE: <u>This reinforces notetaking and report writing.</u></p> <p>This will enable the prosecutor to organize the case as to the necessity and sequence of testimony. It will also help to refresh an officer's recollection.</p>	

**Learning Goal 10.11.0 :** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>E. How To Testify</p> <ol style="list-style-type: none"> <li>1. There is nothing more impressive to a jury than a police officer whose testimony is presented in a candid and sincere manner.</li> <li>2. If the officer is awkward, uncertain, or amateurish on the witness stand, the defense attorney can make the individual look like a fool, and probably will. But if the officer can testify in a professional manner, the defense attorney can't ruffle the person. The public, represented by citizens in the courtroom, will have the feeling that their property, possessions and lives are being expertly protected by capable professionals. When on the witness stand, the agency is also on public display.</li> <li>3. Officer's impressions on others               <ol style="list-style-type: none"> <li>a. <u>How to dress.</u> The most obvious way to make a good courtroom impression on others is by the way one dresses.                   <ol style="list-style-type: none"> <li>(1) <u>Dress conservatively.</u> As a representative of the department, in court on department business, dress accordingly.</li> <li>(2) <u>Be neat and clean.</u> Appear well-scrubbed and exceptionally clean, hands and fingernails clean, hair trimmed. Have clothes cleaned and well-pressed. Have shoes shined.</li> <li>(3) <u>Subdue clothing accessories.</u> Keep nothing but the essentials in a coat. Do not have pencils protruding from outside pockets. Wear no emblems or pins. Do not wear loud, fancy, or distracting jewelry.</li> </ol> </li> </ol> </li> </ol>	

**Learning Goal 10.11.0 :** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>b. <u>How to present oneself in positive courtroom demeanor.</u> Conduct and attitude go a long way to create a favorable reception to the testimony given in court.</p> <p>(1) <u>Take the oath in a dignified manner.</u></p> <p>While taking the oath, look at the person who is administering it. Keep the right hand at shoulder level with fingers extended until the oath is completed.</p> <p>(2) <u>Be oneself.</u> Be natural on the witness stand. Speak as though talking to friends, as if simply describing an incident. Don't worry about the effect testimony will have on the audience. Don't wonder what the judge, jury, attorneys, and others are thinking. Relax and answer the questions in a direct manner.</p> <p>(3) <u>Remain calm.</u> Do not become angry or impatient because of interruptions by counsel. Never become arrogant or try to impress the court or jury with self importance. Testify as to the facts known.</p> <p>(4) <u>Refrain from making signs.</u> Do not make signs. Do not nod or shake your head or make signals for "yes" or "no". Such signs can't be properly recorded by the stenographer.</p>	

**Learning Goal 10.11.0:** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>4. Officer's speech</p> <p>a. <u>How to talk when on the witness stand.</u></p> <p>It is important that testimony convey competence as well as the full facts resulting from the investigation. The fruit of much tedious work must not be lost at the point of delivery on the witness stand due to ineffective speech or improper choice of words or manner.</p> <p>(b) <u>How to be properly heard.</u> The effectiveness of testimony depends upon the words being clearly understood in the entire courtroom and on the fact that the officer's voice creates a favorable impression. Here are some suggestions regarding courtroom voice.</p> <p>(1) <u>Make words heard clearly in the courtroom.</u> Speak loudly and enunciate distinctly. Do not run sentences together. Do not hurry. Respond to questions as promptly as possible, but do not rush. Keep in mind that all of the jurors must hear, and that the Court Reporter must take the testimony for the record, without the need for repetition. If a public address system is available, use it.</p> <p>(2) <u>Achieve a pleasing effect by means of voice.</u> Use a natural speaking voice, in conversational, steady tones. Do not yell or change the tone of voice except for inflections for emphasis. Speak in a calm and pleasant tone.</p>	

**Learning Goal 10.11.0 :** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>c. <u>How to achieve a good effect by language.</u></p> <p>To place thoughts clearly and correctly on the record, words and language must be well chosen.</p> <p>(1) <u>Make the meaning clear.</u> Select words carefully according to their proper meanings. Use layman's language and explain, if asked, any technical terms not understandable to the public. Avoid vague language.</p> <p>(2) <u>Avoid language faults and imperfections.</u></p> <p>Be grammatically correct. Do not use profanity and avoid "oh" and "ah" and "you know" to fill in the pauses.</p> <p>d. <u>Achieve a good effect on the courtroom personnel by means of attitude and audience contacts.</u></p> <p>(1) The proper attitude and behavior on the officer's part, as explained below, will give weight to the testimony.</p> <p>(a) <u>Be respectful.</u> Be polite and show proper respect to the court. Be confident and at ease and yet speak with authority. However, avoid acting and being dramatic. Speak with simple sincerity; refrain from sarcasm and clever remarks. When cross-examined, use the same tone and attitude as on direct examination. Answer questions with simplicity and firmness, without antagonism or resentment.</p>	



**Learning Goal 0.11.0 :** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>(b) <u>Address the judge or jury.</u> If it is a trial by the court, speak to the judge. If it is a trial by the jury, turn toward the jury. When talking at length, look at the judge, or the jury and the counsel table. Remember that the court reporter has to take down all the words.</p> <p>5. Officer's responses</p> <p>a. When asked a question by the defense attorney, before answering, pause long enough to allow for objection by prosecutor. Never answer a question until it is fully understood.</p> <p>b. How to answer the questions of the judge and attorneys:</p> <p>An officer's answers comprise testimony upon which the judge or jury base the verdict. The aim of the direct examination is to bring out clear-cut evidence from your presentation. The answers must be comprehensive but must consist of specific, objective facts within one's direct observation. Therefore, the responses must follow closely the questions of the attorney and be free of extraneous material not directly bearing on the case. With a calm and courteous delivery of the facts possessed, the cross questioning of the opposing attorney will not weaken or upset the testimony but rather it will strengthen it through the opportunity to restate parts of it.</p> <p>c. <u>How to receive the questions.</u> Be attentive at all times while on the witness stand. Focus on the words as well as the meaning of the question and establish its clarity. Never answer a question until it is fully understood. If a question is obscure, it should not be answered until clarified.</p>	<p>10.11.3 Given a description of a question asked under direct or cross examination, the student will select a response consistent with the following principles:</p> <p>A. Never answer a question until it is fully understood            B. Answer as simply, briefly, and directly as possible            C. Testify to only information derived from personal observation            D. Do not distort or embellish testimony for any reason            E. Don't offer an opinion unless testifying as a court qualified expert            F. Don't react emotionally or defensively to aggressive cross examination</p>

**Learning Goal 10.11.0:** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>The record of an officer's testimony should reflect concise statements clearly related to each question bearing on the case. The ability to understand the questions will promote such results.</p> <ol style="list-style-type: none"><li>(1) <u>Listen</u>. Be sure to understand the question, listen carefully. Be sure to know what the questioner is asking. Listen to the question in its entirety, and understand it thoroughly.</li><li>(2) <u>Don't answer until the meaning of the question is clear</u>. Before giving an answer, be sure to have the question clear. If it is poorly phrased, be certain to know what is being sought. Don't answer any questions not understood.</li><li>(3) <u>Ask to repeat or clarify</u>. If the officer does not understand the meaning of a question, ask to have it repeated or read from the record of the court reporter. If in doubt about the meaning of the question, ask for a clarification. Do not try to outguess the defense attorney; if the question carries a double meaning, ask for clarification on the issue.</li><li>(4) <u>Double questions</u>. Don't confuse the testimony by phrasing a single compound answer to both parts of a double question. When presented with a double question, answer both parts separately.</li><li>(5) <u>Hypothetical questions</u>. Beware of hypothetical questions. Do not testify to such questions, nor be drawn into theoretical discussions beyond direct facts and observations.</li></ol> <p>a. <u>How to give the right kind of answers</u>. It is important that an officer's testimony be free of vagueness and be built from direct and objective</p>	

**Learning Goal 10.11.0 :** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>statements. Answer as simply, briefly and directly as possible.</p> <ol style="list-style-type: none"> <li data-bbox="442 519 1207 810">(1) <u>Be direct.</u> State the answer as simply as possible to get the desired meaning across. Be responsive to the question. If the answer is known, give it directly and clearly. Talk to the point, and don't digress. Don't beat around the bush or hedge answers. If so, later cross-examination may attack and weaken your testimony.</li> <li data-bbox="442 842 1125 907">(2) <u>Be brief.</u> Make the answer brief, but complete.</li> <li data-bbox="442 940 1191 1166">(3) <u>Be objective.</u> Testify to facts and physical evidence derived from personal observation. State only what was seen, said, heard, and done. Be accurate as to what was perceived through the senses beyond any doubt. Do not report on what <u>probably</u> happened.</li> <li data-bbox="442 1198 1207 1662">(4) <u>Don't report hearsay.</u> State only facts that are personally known to be true. Don't quote others as having the same opinion. Relate conversations exactly as remembered, using the exact words and phrases spoken. Avoid hearsay, since it is not admissible as evidence. This does not apply to officers testifying at preliminary hearings under certain circumstances. When testifying to hearsay evidence at a preliminary hearing, state only facts which appear in the investigative reports and statements within personal knowledge.</li> <li data-bbox="442 1694 1191 1888">(5) <u>Be cautious about "yes" or "no" questions</u> If one can answer a question by "yes" or "no", do so. However, if a "yes" or "no" answer needs qualifying, say so. If an attorney insists on a "yes" or</li> </ol>	<p>NOTE: Refer to 872(G) of the Penal Code</p>

**Learning Goal** 10.11.0 : The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>"no" answer, either tell the attorney that the question cannot be answered in this manner or answer the attorney and then ask the judge if the answer can be qualified from a straight "yes" or "no."</p> <p>(6) <u>Don't say "he" did.</u> Say Mr. Jones did. Use the names of the persons to whom you refer rather than the personal pronouns, "he", "she", or "they".</p> <p>(7) <u>Answer completely.</u> Be as explicit as time and conditions allow. Be precise and complete with answers.</p> <p>a. <u>How to keep within the limits of what is known</u> Answer only the questions you are qualified to answer. Give only facts possessed. Don't be afraid to divulge the limits of personal knowledge or mistakes. Here are a few specific points along this line.</p> <p>(1) <u>Don't be afraid to say "I don't know".</u> When you are sure you don't know the correct answer, say: "I don't know". Do not be afraid to say this in a clear and confident manner. "I don't know" does not mean ignorance, only that you did not observe the facts directly. This may be especially true of testifying to hearsay at preliminary hearing. Under such circumstances you are only expected to know the information in the reports prepared in other offices.</p> <p>(2) <u>Say "I don't remember" when you are not positive that you don't know.</u> Keep in mind that your saying: "I don't know" closes examination on a point. Do not hesitate to say: "I don't remember" if such is actually the case. The attorney may need to ask about things you have forgotten. Don't say "that is all", rather say, "That is all I can recollect". This will not close further inquiry into the subject.</p>	

**Learning Goal 10.11.0 :** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>(3) <u>Qualify or limit answers.</u> If the positive and accurate answer is not known or cannot be substantiated, an officer must qualify the responses. Avoid positive answers when unsubstantiated detail is involved. Don't bluff an answer.</p> <p>(4) <u>Admit mistakes:</u> If one makes a mistake and it is called to attention, admit it.</p> <p>b. <u>How to cooperate with attorney.</u> Concentrate on the attorney's trend of thought and reasoning in posing questions. Wait for the complete question before attempting to formulate the answer. A simple mistake in testimony can lose the case. The pause necessary for framing the answer will also serve to allow time for raising objections according to court procedure. An officer must follow the line of questioning and avoid causing digressions.</p> <p>(1) <u>Address responses correctly.</u> In a court trial, direct answers to the judge. In a trial by jury, direct answers to the attorney and to the jury.</p> <p>(2) <u>Take all the time needed to assimilate the question and to give the proper response.</u> Think before answering and do not speak hastily. Organize thoughts. Know exactly what to say, and how to say it. There is no great rush. Give the answer without hesitancy as soon as reasonable.</p> <p>(3) <u>Allow time for objections.</u> Objections are to keep improper evidence out of the case. Attorneys object when rules are violated, or when they think so. Before answering questions, allow time</p>	

**Learning Goal 10.11.0:** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>for objections. When the opposing lawyer is examining, pause long enough to give the deputy district attorney time to interpose an objection. If an objection is made, withhold further testimony until the judge sustains or overrules the objection.</p> <p>(4) <u>Don't volunteer information.</u> Answer the question. Under cross-examination the questions will only relate to statements given under direct examination. Don't be talkative and open up other areas for cross-examination.</p> <p>c. <u>How to deal with the opposing attorney.</u> Remember that defense attorneys, as part of their jobs, must look for loopholes and contradictions in witness testimony, and for opportunities to challenge a witness. Therefore, officers must be courteous and exercise self-control during cross-questioning to avoid all emotional pitfalls. With a calm mind one is best able to remember facts testified to earlier. The following points will help one deal with the opposing attorney.</p> <p>(1) <u>Treat both attorneys alike.</u> Answer the defense attorney in the same courteous tone used to answer the prosecutor. Show the same respectful and unbiased attitude.</p> <p>(2) <u>Don't allow oneself to be irritated or angered.</u> Be as unemotional as possible. Stay with the facts known and don't become confused if the opposition tries unfairly to accuse and upset the witness. Beware of becoming angry or losing one's temper. Don't react emotionally or defensively to aggressive cross-examination.</p>	<p>10.11.4 Given an exercise, the student will furnish or critique testimony in such a manner as to promote the development of professionalism and the administration of justice when faced with a variety of "attorney personalities".</p> <p>These personalities will include:</p> <p>A. Badgering/ belligerent B. Offensive C. Friendly D. Condescending</p>

**Learning Goal 10.11.0:** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>(3) <u>Don't be led into an argument.</u> Remain calm and do not become argumentative.</p> <p>(4) <u>Don't be misled or trapped.</u> Be prepared for attempts by the defense attorney to distort an officer's statements or lead an officer into giving conflicting testimony.</p> <p>(5) <u>Don't be clever.</u> Be sincere and maintain a businesslike attitude at all times. Refrain from flippant, clever or sarcastic answers.</p> <p>(6) <u>Don't be timid.</u> Speak with a calm air of confidence and don't be timid as if not sure of the testimony.</p> <p>6. Officer's precision and accuracy</p> <p>a. <u>How to be exact and factual when you take the stand:</u></p> <p>(1) <u>Know the facts.</u> Before the trial an officer should be familiar with all phases of the case. Know <u>all</u> the facts one may be called upon to give. Be sure of all proper dates, addresses, times of day and night, etc., relating to the crime, the investigation, and conversations. Knowing the details of the case will help to insure accuracy in courtroom answers.</p> <p>(2) <u>Review testimony.</u> Study the case thoroughly before court by reviewing all the notes and facts. Make a list of the questions that may be asked, and the correct answers. Over-learn important facts by reviewing the reports will enable one to testify without hesitation. Review any conversations had prior to taking the stand.</p>	

**Learning Goal 10.11.0:** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>(3) <u>Get help from the district attorney and a partner in the preparation of the case.</u> Go over the case thoroughly with a partner in every detail several times. Prepare testimony with the help of the district attorney.</p> <p>(4) Don't offer an opinion unless testifying as a court-qualified expert.</p> <p>b. <u>How to improve the accuracy of answers while on the stand.</u> The choice of words is a very important part of giving testimony properly. Here are some ideas from those who have had experience in testifying.</p> <p>(1) <u>Do not distort or embellish testimony for any reason.</u> Stick to the truth and testify only to what is known to be true. A witness caught in a <u>lie</u> at any stage of the proceedings will be condemned as unworthy of belief by the judge and jury, and most if not all of that witness's testimony will be discredited.</p> <p>(2) <u>Don't exaggerate.</u> State the facts only as known. Don't attempt to color or exaggerate their significance.</p> <p>(3) <u>Don't guess.</u> Never guess at any answers nor at what an attorney wants for an answer. Tell only what is known.</p> <p>(4) <u>Qualify "yes" or "no" answers.</u> Ask permission of the court to qualify a "yes" or "no" answer and thoroughly explain it, if the answer warrants it.</p>	



**Learning Goal 10.11.0:** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>(5) <u>Select descriptive terms.</u> When giving opinion or testimony, try to select words that are descriptive. For example, if a man was nervous, say "His hands shook", "His speech was stumbling", "His forehead was covered with perspiration.", etc.</p> <p>(6) <u>Give testimony of the substance of a conversation.</u> An officer is not expected to remember the exact words that were said, but officers are expected to remember the substance of a conversation.</p> <p>c. <u>How to substantiate the accuracy of verbal testimony.</u> Here are some ideas that will help to refresh the memory on the witness stand, and enable one to check on details that might otherwise be forgotten.</p> <p>(1) <u>Refer to notes.</u> If it is necessary to refer to notes that were prepared beforehand to help substantiate the facts of the case, do so only after the judge's permission. When referring to notes, make certain beforehand that there are no embarrassing comments in the notebook, since the defense has a right to examine it and may possibly read some excerpts aloud.</p> <p>(2) <u>Exhibit other evidence.</u> Do not testify to matters without evidence to back it up. Use photographs whenever it is possible to describe subject matter. Mark all exhibits and evidence so that when asked to acknowledge them, one will be able to do so.</p>	

**Learning Goal 10.11.0:** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>7. <u>Fairness and justice</u></p> <p><u>How to achieve and display fairness.</u> To be and to seem fair are both very important. Having made an investigation, and having been convinced of guilt, an officer may enter the trial <u>prejudiced</u>; but the officer must still be fair.</p> <p>(a) <u>How to be fair.</u> Here are some ideas on how to testify without being an enemy of the defendant.</p> <ol style="list-style-type: none"><li>(1) <u>Don't be dogmatic.</u> A person is considered innocent until proven guilty beyond a reasonable doubt in criminal cases. Do not make false accusations. Give testimony just as it was seen or presented. Never let personal feelings enter into testimony.</li><li>(2) <u>Don't be influenced by other witnesses.</u> Don't be influenced by the testimony given on the stand by another witness. Stick to what is personal knowledge.</li><li>(3) <u>Don't let attorneys put words into the testimony.</u> Allow enough time to think over the question before answering. Don't allow either attorney to put into the response words not intended to say.</li><li>(4) <u>Avoid terms that are derogatory.</u> Do not refer to the defendant in a derogatory manner. Avoid references to race, color, etc. Try not to color a report; avoid using loaded words and phrases. Word answers so as not to offend anyone whenever possible. Show courtesy to the defense counsel, by addressing counsel by name, preceded by "Mister", Mrs., or "Miss", as appropriate.</li><li>(5) <u>Don't omit the whole truth.</u> Even though some of the facts may put the defendant in a favorable light, give evidence in its entirety. The facts will speak for themselves. Include all the points, both major and minor, that will indicate that a thorough investigation was conducted.</li></ol>	

**Learning Goal 0.11.0** : The student will gain the ability to properly testify in court

Unit Outline & Presentation	Objectives & Instructional Cues
<p>8. Opinion evidence</p> <p>a. An officer may be asked to give an opinion about some fact such as speed, distance, size, etc. The general rule is that a lay or non-expert witness may testify in the form of an opinion only if the opinion is based on the witness's own observation of the facts and is helpful to a clear understanding of the witness's testimony (when the witness cannot adequately describe observations without using opinion wording.)</p> <p>b. Less frequently, an officer may qualify as an expert witness and be asked to give an opinion as an expert on a particular subject. An officer will be qualified to give an expert opinion if the subject to which the officer's testimony relates is sufficiently beyond common experience, an expert opinion would be helpful in determining the facts, and the officer has special knowledge on that subject.</p> <p>The judge decides who is qualified as an expert witness. Unless the attorneys agree to the qualifications of the officer as an expert, the prosecution may question the officer regarding the training and experience which qualifies the officer as an expert. The officer is subject to cross-examination by defense counsel and judge. This is known as "voir dire."</p> <p>c. Whenever an officer is called to give an opinion, the following rules should be observed:</p> <p>(1) <u>Base each opinion on facts.</u> Tell the court the facts that form a certain opinion. Use the facts presented in court to reinforce the testimony. An opinion, absolutely necessary, can be submitted indirectly by describing every factual thing in connection with it.</p>	

**Learning Goal 10.11.0:** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>(2) <u>Clarify the point at which the facts end and opinion begins.</u> Do not add short opinions or explanations to the facts. If giving an opinion, say so. Be careful to keep opinion separate from fact. Give only facts as fact.</p> <p>d. <u>How to qualify as an expert, so that opinion will carry weight.</u> A few ideas will help to substantiate testimony to qualify as an expert in court.</p> <p>(1) <u>Establishing expert status.</u> An officer's opinion should only be given in court when called upon and qualified as an expert witness. With the aid of the trial deputy's questions, it is possible to classify as an expert in bookmaking, narcotics, etc.</p> <p>(2) <u>Give experience, qualifications, or proofs.</u> When classifying as an expert, give accurate statements as to background, experience, and preparation justifying the value of the expert opinion. The opinion as an expert witness must be entered into the records of the preliminary hearing. If there is an expert witness who is more qualified to answer a certain question, make this fact known.</p> <p>(3) When testifying to hearsay evidence at a preliminary hearing you may need to know the qualification of an expert about whose opinion you will be testifying. Example: criminalist, latent print examiner.</p>	

**Learning Goal 10.11.0:** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>e. <u>How to defend expert opinion on grounds other than recognized expertise.</u> Don't worry about defending opinions if they are based on sound facts, rather than on hypothetical ideas. Here are some ways to help substantiate them.</p> <ul style="list-style-type: none"><li>(1) <u>Give opinion only when asked.</u> The proper time to testify to opinion is when you are specifically asked for it on the points pertaining to the offense.</li><li>(2) <u>Stand by opinion.</u> Don't be afraid or ashamed of considered opinion. Stick with it. Speak confidently and with assurance. The opinion is based on the know-how of experience and is not a figment of someone's imagination.</li><li>(3) <u>Give the facts on which the opinion is based.</u></li><li>(4) <u>Give the reasoning by which the opinion was arrived at in working from the facts.</u></li></ul> <p>9. Confessions. How to testify regarding confessions made by the defendant. When the defendant signs a paper to the effect that the defendant actually committed a crime, a powerful weapon is placed at the disposal of the court. Officers must know how to handle this information in order to bring about a conviction.</p> <p>a. <u>To substantiate the writing and the signing of the confession.</u> A few rules are listed here that will help prove that a confession was actually made.</p> <ul style="list-style-type: none"><li>(1) <u>Testify to the writing of the confession.</u> If the actual writing of the confession was not done by the suspect, testify to the circumstances under which the suspect read, corrected, and signed the finished statement after it had been written by others.</li></ul>	

**Learning Goal 10.11.0:** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>(2) <u>Testify to the signing of the confession.</u></p> <p>(3) <u>Report the witnesses who were present at the time the confession was signed.</u></p> <p>(4) <u>Testify that the confession was made in officer's presence.</u></p> <p>(5) <u>Show the signature of the witness.</u></p> <p>(6) <u>Testify to the time and place of the confession.</u></p> <p>b. <u>How to prove the confession to have been a free and independent act.</u> The confession is valid only if it was voluntarily given. The strategy of proving that the defendant made the confession voluntarily is reported in the rules that follow.</p> <p>(1) <u>Repeat the statements made at the time of the confession.</u> Quote fully the question asked the defendant in order to bring out the confession.</p> <p>(2) <u>Testify to the fact that the confession was made of the defendant's own free will.</u> Establish that Miranda rights were properly given before confession was made.</p> <p>(3) <u>Testify that no promises were made.</u></p> <p>c. How to handle the confession document. Since both the confession instrument itself and the notes are important items of physical evidence, these documents must be handled in accordance with established procedures.</p> <p>10. <u>Testimony regarding profanity.</u> When the officer is on the stand testifying as to matters that involved profane language, that officer should tell the judge that indecent words were used, and ask if the court wishes to have them repeated exactly.</p>	

**Learning Goal 10.11.0:** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<ul style="list-style-type: none"> <li>a. This is most important in a jury trial involving jurors, and other proceedings where there are women or children present in the courtroom.</li> <li>b. When the officer asks the judge if the profanity should be repeated verbatim, it has the effect of emphasizing the indecency of the defendant's language.</li> <li>c. It should be remembered that whenever questions are asked of the judge, the judge should be addressed as "Your Honor".</li> </ul> <p>11. Exclusion of witnesses.</p> <ul style="list-style-type: none"> <li>a. If the court orders witnesses excluded from the courtroom, all officers who were subpoenaed to testify in the case should leave the courtroom and remain available when called.</li> <li>b. One officer may be designated by the prosecutor as the case investigator. That officer may be allowed to remain in the courtroom.</li> <li>c. Non-compliance with the exclusion order of the court may be grounds for the officer being held in contempt of court.</li> </ul> <p>F. Refreshing Memory And Use Of Notes</p> <ul style="list-style-type: none"> <li>1. The usual purpose of notes is to prepare reports. However, an officer should not lose sight of the fact that notes can be used in court on occasion as an aid in testifying.</li> </ul> <p>G. Attorney Personalities</p> <ul style="list-style-type: none"> <li>1. <u>Common tactics used in cross examination.</u> Many times the defense counsel realizes the prosecution has an extensive case against a client and the only logical defense for the client must be based on challenging the credibility of the prosecution's witnesses. What, then, are some of the tactics defense counsel may use in order to diminish your credibility in the eyes of the jury?</li> </ul>	

**Learning Goal 10.11.0:** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>a. Offensive - rapid fire questions. Defense counsel will ask one question after another with little time to answer, in an attempt to confuse the witness and to procure inconsistent answers. When faced with such a situation, take time to consider the question, be deliberate in answering, ask to have the question repeated, and above all, remain calm.</p> <p>b. Condescending counsel - Defense counsel's approach will be ultra-benevolent to the point of ridicule in an effort to give the impression that the witness is inept. When faced with such a situation, ask for the question to be repeated if it was improperly phrased and the answer in a firm and decisive manner.</p> <p>c. Friendly counsel. Defense counsel may be overly courteous in an effort to lull the witness into a false sense of security. When faced with this situation, stay alert and bear in mind that defense counsel is attempting to diminish the effect of your testimony.</p> <p>d. Badgering/belligerent. Defense counsel may do almost anything in order to provoke the witness to that point where the witness, through loss of emotional control, loses credibility with the jury. When faced with such a situation, ignore defense counsel's actions, stay calm, speak in a deliberate voice and give the prosecutor time to make the appropriate objections.</p> <p>2. How to react to the Personalities.</p> <p>a. <u>Do not argue.</u> Depend on the prosecutor to deal with cross-examination badgering.</p> <p>b. <u>Avoid displays of bias.</u> Treat the facts and defense counsel as if the case at bar was only one of hundreds worked on and display an interest in justice only.</p>	



**Learning Goal 10.11.0:** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>c. <u>Do not joke or laugh.</u> Avoid all temptations to be a courtroom comedian.</p> <p>d. <u>Be responsive.</u> Answer the question asked.</p> <p>e. The real test of law enforcement competence is in the courts. An officer is expected to perform like a professional witness.</p> <p>H. Review</p> <ol style="list-style-type: none"><li>1. Dress appropriately. Remember that testifying in a court of law the dress should be suitable for the occasion. Gaudy or unusual clothing should not be worn.</li><li>2. Do not engage in <u>any</u> discussion with jurors or prospective jurors. If one cannot avoid a chance contact with a juror, do not discuss the case or anything connected with it. Further, do not discuss the case with anyone while at the courthouse, especially when that conversation might be overheard by the jurors, the defendant or the defense attorney.</li><li>3. Try to keep calm. While this is easier said than done, make a conscious effort to avoid the appearance of undue anxiety and tension. Be polite and courteous regardless of how much you may be provoked by the question asked of you. <u>Don't get mad.</u></li><li>4. Speak so as to be heard by everyone in the courtroom. Sit up in the witness chair and do not cover the mouth with a hand or engage in other nervous movements. These are distracting to the judge and jurors and detract from the effectiveness of testimony.</li></ol>	

**Learning Goal 10.11.0:** The student will gain the ability to properly testify in court.

Unit Outline & Presentation	Objectives & Instructional Cues
<p>5. <u>Listen to the questions asked.</u> Make sure that what is asked is understood. Pause before answering and think about the question. This is especially important if a considerable length of time has elapsed since the events occurred. In such a case, if the question is answered too quickly, it may suggest that the answers have been memorized or perhaps are even contrived.</p> <p>6. Only answer the question asked. <u>Keep answers short.</u> Do not give a long, narrative statement unless specifically called for. Don't volunteer information.</p> <p>7. Testify from memory. <u>Don't attempt to memorize earlier statements.</u> If a mistake is made in an earlier statement, the officer has the right to change it. It is not perjury to change an earlier statement which was inadvertently inaccurate or mistaken (whether it was made under oath or not).</p>	

**SUPPORTING MATERIAL**

**AND**

**REFERENCES**

## FIFTEEN WAYS TO LOSE YOUR CASE

By Honorable Edward T. Wright, Mayor of Brentwood, Mo.

There must be at least a hundred ways for a police officer to lose his case in court. I have chosen the easiest fifteen ways, based on my observations during ten years as a city prosecutor, twelve years as a municipal judge and fifteen years as a defense lawyer.

1. WALK INTO COURT LOOKING LIKE A BUM. This will confuse the judge and jury, for they may think you are the defendant. There is no valid reason for a jury giving less weight to the testimony of a witness who makes a poor appearance, but they do.
2. IF YOUR CASE HAS A WEAK POINT, DON'T TELL YOUR LAWYER. Surprise your lawyer during trial. This always adds excitement and gives the defendant another chance to go free. Had you told your lawyer of the weakness, he might have prepared for it.
3. IF THE DEFENDANT PLEADS "NOT GUILTY", TAKE THIS PERSONALLY. How dare this ordinary civilian question your word! Let the judge and jury know that from this point it is a personal battle between you and the defendant and that you'll testify to whatever is necessary to obtain a conviction.
4. WHEN OPPOSING COUNSEL WANTS YOU TO BECOME ANGRY, COOPERATE. Answer "No" to his sly little question, "Didn't you really arrest the defendant because you don't like him?" After fifteen minutes of baiting by the attorney, get real mad and tell them what you really think of the lousy so-and-so you arrested.
5. DON'T WORRY ABOUT THE FACTS. Any misinformation you give on direct examination will be straightened out on cross-examination. The defendant's lawyer will be very happy to help the jury conclude that either you know nothing or you are covering up the truth.
6. BE ABSOLUTELY POSITIVE ABOUT EVERYTHING. Even if you don't know the exact distance, don't let the judge or jury think you're stupid. This will make a good impression, unless the defendant's lawyer takes the trouble to prove you are wrong.
7. IF YOU'RE POSITIVE THAT YOU DON'T KNOW, GUESS. Such testimony is not admissible as evidence but the judge might make an exception for you. If the judge won't even let you finish a sentence you started with "I guess . . .", just sit there and pout.
8. DON'T MAKE NOTES AT THE TIME OF THE ARREST. See how much fun it is to test your memory. In criminal cases you often are called upon to testify at more than one trial. Without notes you can break the monotony by giving a different version at each trial.

9. IF YOU DO MAKE NOTES, DON'T REVIEW THEM BEFORE THE TRIAL. The judge will be very patient with you while you try to figure out what you wrote and your confusion might elicit the jury's sympathy.
10. APPEAR TO BE VERY "COCKY". Some people expect police officers to throw their weight around and you mustn't disappoint them. Often a juror studies the officer on the witness stand in hopes of detecting a similarity with the bully who gave him a traffic ticket.
11. ACT AS THOUGH YOUR JOB DEPENDS UPON A CONVICTION. This will remove the unbiased atmosphere that often prevails when a professional person is testifying. Members of the jury will pay less attention to your testimony, but as taxpayers they will know you are trying.
12. GET ROUGH WITH THE DEFENDANT AT TIME OF ARREST. In traffic cases this will often cause the defendant to plead "not guilty", and at least open the door to making the officer look like the culprit. Being courteous to motorists reduces the number of times an officer gets involved in courtroom battles.
13. IGNORE THE LAW OF SEARCH AND SEIZURE. A motion to suppress may be sustained and you won't even have to testify at the trial. Why bother getting a search warrant just to satisfy some constitutional requirements?
14. TELL MORE THAN THE QUESTION CALLS FOR. The opposition may find out all sorts of things. If you ramble too far, the judge will keep reminding you to merely answer the question.
15. ARGUE WITH THE JUDGE AND OPPOSING COUNSEL. Why be bound by silly rules of evidence and courtroom procedure? If you fail to heed the judge's warning, he may hold you in contempt of court and the jury will think he's a sorehead. The jury dislikes an argumentative witness, but you can step down with all the glory of a martyr.

## PRINCIPLES OF EFFECTIVE TESTIMONY

Although the substance of an officer's testimony is of paramount importance, testimony is only part of the desired product. Great significance is also attached to the officer's conduct on the stand. A juror's "impressions" are strongly affected by the manner in which an officer informs the court of the facts discovered during the course of his/her investigation.

An officer is not expected to be proficient at giving testimony during his/her first appearance in court. He/she can, however, rapidly improve his/her proficiency by practicing the following elementary principles of "witnessmanship".

1. Honesty. When giving testimony an officer should present a modest demeanor and display a sincere interest in statements that are accurate and truthful. The threat of perjury need not be discussed among professional police officers.
2. Brevity. Most witnesses don't get flustered, confused, or embarrassed as long as they confine their statements to answering the question asked and are as brief and to the point as possible. Most witnesses get flustered and "in trouble" then they "volunteer" information, argue with counsel, or make spontaneous, unneeded comments.
3. Clarity. In giving testimony, a concerted attempt must be made to avoid errors, inconsistencies, and confusion which may undermine the officer's credibility with the jury.
4. Objectivity. Even though officers may view themselves in court as objective collectors and reporters of facts in an unprejudiced manner, others in court will look upon them as biased and interested parties ready to accuse the first persons of whom they are suspicious. The defense counsel will often endeavor to portray officers in their prejudicial roles. Thus, the testifying officers must portray themselves as impartial, conscientious public servants working for the interests of justice. Courtesy, direct answering, and poise are manifestations which will reinforce the impartial public servant image of the officer.
5. Emotional control. Emotional control is a paramount virtue in an officer-witnesses. They must learn to ignore insults, badgering, and innuendoes. A police officer witness who becomes angry loses credibility with the jury.

The principles, then, of effective testimony are: honesty, brevity, clarity, objectivity, and emotional control.