

Sacramento Police Department – 2320
COURTROOM TESTIMONY Course – 20510

Statement of Purpose: The purpose of this course is to provide the knowledge and skills to sworn law enforcement personnel who will be testifying as expert witnesses in preliminary and trial court cases, specifically in the field of narcotics investigations.

- I. Course Introduction
 - a. Instructor Introduction
 - b. Student Introduction
 - c. Course Introduction
 - d. Course Content
 - e. Instructional Methodology
 - f. Facility Layout
 - i. Lecture Facilities
 - ii. Locations for Practical Applications
 - g. **Learning Activity:** Students will participate in a pre-course exam, which will assist the student in gauging their preexisting knowledge of the courses' material. This is a not a pass / fail exercise.

- II. Qualifying as an Expert
 - a. Types of expert witnesses

 - b. Legal requirements of an expert witness

 - c. California Evidence Codes
 - i. Evidence Code 402
 - ii. Evidence Code 720(a)
 - iii. Evidence Code 801
 - iv. Evidence Code 1040 – 1042
 - v. Evidence Code 1107 & 1107.5

 - d. Expert Witness Qualifications
 - i. College Education
 - ii. Military experience, training, education
 - iii. Law Enforcement experience, training & education
 - iv. Special Assignments / Positions
 - v. Other experience (law enforcement and otherwise)

 - e. Case Law Overview
 - i. Brady v. Maryland (1963) 373 US 83
 - ii. People v. Smith (1967) 253 Cal.App.2d 711
 - iii. People v. Rodriguez (1969) 274 Cal.App.2d 770
 - iv. **Learning Activity:** Students will break into groups, discussing the implications of Brady v. Maryland and how it affects courtroom testimony; particularly that of an expert witness.

- III. Testimony Preparation
 - a. Building an Expert Witness Binder

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- i. Copies of current Curriculum Vitae (CV) or resume
 - ii. Copies of personal achievements and awards
 - iii. Copies of training certifications / qualifications, to include hours of instruction
 - iv. Updated narcotic pricing lists (i.e. HIDTA, local agency lists, etc.)
 - v. List of narcotic categories, to include descriptions of each
 - vi. Updated list of street names / slang
 - vii. Measurement / dosage unit list
 - viii. Track the number of times and reasons for previous expert qualifications
 - 1. State or federal court, preliminary hearings, trials, each drug type qualified, use or sales, weight, etc.
 - ix. Other
- b. How to build a CV / Resume
- i. Header (name, agency, current Assignment)
 - ii. Education / Certifications / Qualifications
 - iii. Current and past Memberships (CNOA, CGIA, etc.)
 - iv. Professional Experience
 - v. List of controlled substance training, to include the training organization's name, hours, and month/year of attendance
 - vi. Practical experience relating to narcotics (use approximate numbers)
 - 1. Probation / parole searches
 - 2. Search warrants
 - 3. Narcotic investigations & operations
 - 4. Court jurisdiction and year of expert qualification (if applicable)
 - a. Maintain a summarized list of cases where you provided expert testimony, to include docket number and date.
 - vii. Summary of controlled substance arrests
 - 1. Maintain a summarized list of controlled substance arrests, to include report number and date.
 - 2. An expert may be called upon to testify on a less than common narcotic; an expert should be prepared to explain why they have comparatively little personal experience with that drug, but why they can still be an expert on it.
 - viii. An expert witness must keep track of any written material used for courtroom preparation and testimony as the Defense can have it subpoenaed
- c. How to Improve Your Ability to Testify
- i. Most cases are live streamed on YouTube (Post COVID-19 era)
 - 1. Watch more senior officers/detectives testify
 - 2. Study the good and the bad taken from these cases
 - 3. Watching these cases may also help prepare an expert witness with questions that might be asked of them in the future
 - ii. Speak to oneself in the mirror or encourage others to critique your speaking ability in a public setting

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- iii. Attend and participate in community forums & events, allowing oneself to be subjected to honest criticism by the public

- d. Court Preparation
 - i. Identifying and contacting the assigned Deputy District Attorney (DDA)
 - ii. Review reports & relevant evidence
 - iii. Obtain the crime lab results from the DDA
 - iv. Understanding the distinction and differences between preliminary hearings and jury trial
 - v. Be prepared to discuss with “hypotheticals” and practice using these two phrases, but do not overuse:
 - 1. “Based upon my training and experience...”
 - 2. “In my opinion...”
 - vi. Maintain an informal “anecdote” of examples to use to formulate an expert opinion by using *personal experiences* gained through contacts with users & dealers
 - vii. Other

- e. Courtroom Testimony
 - i. Basic courtroom etiquettes
 - 1. Professionalism & arriving on time
 - 2. Courtroom attire (department policy, uniformed vs. plain clothes assignments, etc.)
 - 3. Jury fraternization
 - 4. Understanding “objections” and what to do
 - 5. Know the layout of the courtroom and know where the witness stand is located
 - 6. Sacramento Police Department Policy Overview
 - a. SPD General Order 240.01 (Court Appearance)
 - 7. Other

 - ii. Verbal Presentation
 - 1. Proper annunciations
 - 2. Calm and collective
 - 3. Use plain language; avoid law enforcement jargon
 - 4. Be confident, but not arrogant or rude. Hesitating and looking nervous is worse than a confident answer of “that is something I haven’t encountered before, please give me just a moment...”

 - iii. Body language and nonverbal cues
 - 1. Discuss body language and nonverbal cues

 - iv. Direct and cross examination by the attorneys
 - 1. Provide a sample of a direct examination
 - 2. Discuss various ways on how to implement one’s training & experience into their expert opinion

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- v. Typical Defense Attorney Tactics
 - 1. Provide a sample of a cross examination
 - 2. Discuss various tactics and how to tactfully respond
 - 3. Include a discussion of making concessions when asked questions on cross, such as:
 - a. “Yes, these 20 grams of meth COULD be for personal use, it certainly is possible, but in my opinion that is not what’s happening here because...”
 - b. *It is possible, but not probable...*
 - vi. Addressing and recognizing the jury when testifying
 - vii. Jury Issues
 - 1. Preconceived notions toward law enforcement (good or bad)
 - 2. Lack of public interest in narcotic cases
 - 3. A jury’s misunderstanding of law enforcement and criminal procedures
 - 4. Expert witnesses must explain everything in detail; never assume the jury understands the subject matter.
- IV. Possession v. Sales: How to Testify
- a. Primary Responsibility of an Expert Witness
 - i. Understanding Prop 47 and its effects of narcotic-related crimes
 - ii. Determine if the case is possession for use or possession for sales and discuss with the DDA for your reasoning
 - iii. Possess knowledge of various narcotic categories
 - iv. Possess working knowledge of how narcotics are consumed, sold, and manufactured
 - v. Understand measurements, weights, pricing and street slang
 - vi. An expert witness is the link to potentially making or breaking a case
 - vii. Testifying based on training and experience (if you do not know, then you do not know)
 - viii. Recognizing Brady issues
 - b. Possession Cases
 - i. Explain how narcotics are consumed
 - ii. Explain how narcotics are purchased
 - iii. Describe and explain narcotic paraphernalia
 - iv. Explain the physical and psychological effects of narcotics
 - v. Explain the nexus between narcotics consumption and crimes
 - vi. Possession of narcotic paraphernalia or lack thereof does not immediately disprove possession cases
 - c. Sales Cases
 - i. Various ways to sell narcotics (street corner, social media, etc.)

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- ii. Nexus between narcotic sales, gangs, and other crimes
 - iii. How to explain a sales case
 - iv. Sales indicia or lack thereof does not immediately disprove sales cases; consider the “totality of the circumstances”
 - v. Presence of user paraphernalia does not immediately disprove sales cases; explain the concept of dealers who use but deal to support their habit
 - vi. Understanding USEABLE amount, the legal term (for sales cases, you need a useable amount and for it to be possessed for sale)
 - vii. Understanding street slang and methods of sales
- V. **Final Assessment:** Students will participate in a mock trial scenario, with the assistance of a DDA and a Defense Attorney. Upon completion of the scenario, students will have the chance to also have an open Q & A with the attorneys.
- VI. Debrief/Critique
- i. 5 min max