

# COURTROOM TESTIMONY

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## Courtroom Testimony

### I. The "New Orleans" story

#### 1. Attorneys and the Rules of Ethics

#### 2. Understanding defense attorneys

- a) The client interview
- b) The police report determines the defense
- c) Paper the officer
- d) Make the offer the defendant (The Furman Factor)

II. Jurors generally vote for who they like

- The "Juvenile D.O.C. Case"

1. The advantage that police officers have

2. Your credibility is everything (The Franks Case)

How to prepare for your testimony:

1. Knowing your report in order to avoid the two types of impeachment:

a. Impeachment by inconsistent statement

b. Impeachment by omission

2. Review all prior transcripts

(Preliminary hearing, Grand Jury, Motion to Suppress, Franks Hearing, etc.)

3. Sit down with your prosecutor

- What am I going to be asked?
- What is the defense?
- What issue is in dispute at trial?

4. Anticipate cross examination

- The Charles Blair case

5. Review the physical evidence

- Know the "foundation" for its admission

6. Review the photographs/aerials

- Know the "foundation" for its admission

7. Review any diagrams that will be used

- Know the "foundation" for its admission

8. Review all electronic recordings

- Know the “foundation” for its admission

9. Re-visit the crime scene

10. Determine which visual aids will provide the greatest impact on your testimony

- People v. Peter Hommerson

11. Discuss with your prosecutor what evidence you may not testify to at trial

- Motions in Limine
- Defendant’s prior criminal history
- Defendant’s gang affiliation
- Portions of a defendant’s statement that may be inadmissible (The Ealy Case)

12. Testify as often as possible

Law School 1.0

What Lawyers are taught (and rarely follow) on how to question a Witness

1. Be brief – A Declaration with a Question Mark at the End
  
2. Use only non-leading questions on direct examination
  
3. Use only leading question on cross examination
  
4. On cross, never ask a question to which you do not know the answer
  
5. On cross, never permit a witness to explain anything
  
6. Never ask the one question too many
  - The Abraham Lincoln aggravated battery case
  
7. Save the ultimate point for closing argument

## How to Testify at Trial

1. Motion to exclude witnesses
  
2. Do not talk or socialize with anyone outside of court when waiting to testify
  
3. Appearance
  
4. Posture and delivery
  
5. Show respect and deference, not arrogance
  
6. Face the jury/the importance of eye contact
  
7. Plain words/simple sentences
  
8. Be factual. Never speculate
  - The Waukegan home invasion case

### Handling Cross-Examination

1. You're selling the jury, not the defense attorney
2. You set the pace
3. Never let the defense attorney "bait" you
4. The 90% correct question
5. If you can't answer the question

### Additional Tools That Can Aid You

1. Re-Direct Examination
2. Re-Freshing your Recollection
3. Past-Recollection Recorded



### What Not to Do

1. Do not refer to your notes without permission
2. Do not exaggerate or embellish
3. Do not “guess” or “suppose”
4. Do not volunteer information
5. Do not deny that you discussed your testimony with the prosecution
6. Do not lose your temper or argue with the defense
7. Do not accept anything the defense attorney says as true
8. Do not use profanity unless you’re quoting another individual (The John Madden case)
9. Do not give an opinion as to the defendant’s guilt

10. Do not refer to the defendant by name or personalize him/her

11. Once you testify, do not discuss it with any other witness who has not yet testified