

# Courtroom Preparation and Testimony for First Responders

CPTFR-Student Manual

*1st Edition, 3rd Printing-April 2002*



**Homeland  
Security**

DHS/USFEA/NFA  
CPTFR-SM  
April 2002  
1st Edition, 3rd Printing

*Courtroom Preparation and Testimony for  
First Responders*



**Homeland  
Security**

# Courtroom Preparation and Testimony for First Responders

CPTFR-Student Manual

*1st Edition, 3rd Printing-April 2002*



**Homeland  
Security**



**U.S. DEPARTMENT OF HOMELAND SECURITY**

**PREPAREDNESS DIRECTORATE**

**UNITED STATES FIRE ADMINISTRATION**

**NATIONAL FIRE ACADEMY**

**FOREWORD**

The U.S. Fire Administration (USFA), an important component of the Department of Homeland Security (DHS) Preparedness Directorate, serves the leadership of this Nation as the DHS's fire protection and emergency response expert. The USFA is located at the National Emergency Training Center (NETC) in Emmitsburg, Maryland, and includes the National Fire Academy (NFA), National Fire Data Center (NFDC), National Fire Programs (NFP), and the National Preparedness Network (PREPnet). The USFA also provides oversight and management of the Noble Training Center in Anniston, Alabama. The mission of the USFA is to save lives and reduce economic losses due to fire and related emergencies through training, research, data collection and analysis, public education, and coordination with other Federal agencies and fire protection and emergency service personnel.

The USFA's National Fire Academy offers a diverse course delivery system, combining resident courses, off-campus deliveries in cooperation with State training organizations, weekend instruction, and online courses. The USFA maintains a blended learning approach to its course selections and course development. Resident courses are delivered at both the Emmitsburg campus and its Noble facility. Off-campus courses are delivered in cooperation with State and local fire training organizations to ensure this Nation's firefighters are prepared for the hazards they face.



TABLE OF CONTENTS

	<b>PAGE</b>
Foreword .....	iii
Table of Contents .....	v
Course Schedule .....	vii
<b>UNIT 1: INTRODUCTION.....</b>	<b>SM 1-1</b>
<b>UNIT 2: DOCUMENTATION AND PRETRIAL PREPARATION.....</b>	<b>SM 2-1</b>
<b>UNIT 3: COURTROOM DEMEANOR.....</b>	<b>SM 3-1</b>
<b>UNIT 4: TESTIMONY .....</b>	<b>SM 4-1</b>





**COURSE SCHEDULE**

- Unit 1: Introduction
- Unit 2: Documentation and Pretrial Preparation
- Unit 3: Courtroom Demeanor
- Unit 4: Testimony



# ***UNIT 1: INTRODUCTION***

## **OBJECTIVE**

*The students will be able to identify the process to be taken upon receipt of a subpoena.*

---



## COURSE OVERVIEW

### Course Goal

The goal of this course is to provide the necessary tools for all emergency responders who may be called upon for depositions and/or courtroom testimony about facts witnessed on arrival at a scene as a first responder.

This course is a generic course and does not address local laws and procedures for your specific jurisdiction/locale.

### Course Purpose

You may be asking yourself one or more of the following questions:

- Why do I need to be here?
- How will this training benefit my department and me?
- What can I expect to learn?

Basically, this course is designed as a "finishing school," to teach you what you need to know in the event you are required to testify.

### Course Objectives

At the completion of this course, you will be able to:

- Identify the process to be taken upon receipt of a subpoena.
- Identify the various forms of documentation that can be used to assist you in reporting and recalling incidents for testifying in legal proceedings.
- Determine how to answer questions in a courtroom setting, including how to handle "trap" questions.
- Develop the skills necessary for appropriate courtroom demeanor.
- Review appropriate techniques for:
  - Direct.
  - Cross.
  - Re-direct.
  - Re-cross.

- Recognize the sequence for questioning in a legal proceeding.

### **Course Theme**

#### **"In Search of the Truth"**

This means that public service officials must search for the truth, regardless of whether it leads to prosecution. Each firefighter/officer must evaluate the facts of his/her cases.

As a public service official you must recognize your strengths and weaknesses. Only then, and using cooperative and synergistic efforts, can you ensure effective courtroom testimony.

### **How to Use the Student Manual**

- Instructional objectives are located before the text.
- Detailed narrative text includes all relevant material.
- "Fill in the blank" segments appear throughout the text in the form of activities. These pages are designed to be completed during instructor-initiated discussions/activities.
- A Bibliography is provided at the end of each unit.
- Some units also include Appendix materials.

### **Units of Instruction**

#### **Unit 1: Introduction**

Establishes the overall goal and theme for the course.

#### **Unit 2: Documentation and Pretrial Preparation**

Illustrates the importance of proper preparation with legal counsel. This is essential to positive legal proceedings.

### Unit 3: Courtroom Demeanor

Emphasizes the importance of preparing and delivering your testimony in a legal proceeding.

### Unit 4: Testimony

Focuses on the sequence of events in a legal proceeding and how to be an effective witness.

### **Student/Course Requirements**

Attendance is required for all classes.

Active participation during all class presentation is expected and required.

There are required reading assignments (including reading each unit before each class).

The Student Manual (SM) contains more material than is covered in the classroom. All material is important to the firefighter/Emergency Medical Services (EMS)/officer/chief involved in successful case management.

### Evaluation

Students will evaluate the course and instructors.

### Test

There is a multiple-choice test for this 2-day course.





**Activity 1.2**  
**Student Introductions**

**Purpose**

To allow you an opportunity to meet each other.

**Directions**

Each of you will give your:

1. Name, rank, and department.
2. Experience in fire/medical law.
3. Number of times testified in a legal proceeding.
4. Expectation of the course.



**BIBLIOGRAPHY**

Seidel, Gary E. "The Subpoena Process." Los Angeles City Fire Department. *Grapevine Magazine*, Apr. 1986.



***UNIT 2:  
DOCUMENTATION AND PRETRIAL  
PREPARATION***

**OBJECTIVE**

*The students will be able to identify the various forms of documentation that can be used to assist them in reporting and recalling incidents for testifying in legal proceedings.*

---



## PRETRIAL PREPARATION BEGINS WITH DOCUMENTATION

Pretrial preparation begins well before the first subpoena is issued, and even before the alarm sounds. Pretrial preparation begins with the observations and actions of the first responder and the documentation of those events and activities which may or may not be required in a legal proceeding. The documentation is in the form of records and reports. The first responder is responsible for completing various types of reports, such as fire incident, Emergency Medical Services (EMS), training, and, in some cases, fire inspections. He or she is held accountable for the documented information. In a legal proceeding, the first responder should not rely on his or her memory to recall important facts occurring several months or even years ago.

In legal proceedings there are several reasons that proper documentation by emergency personnel is crucial. Documentation provides an official record of proof or support that an activity or incident occurred. Within that record or report, factual support of a hypothesis proposed, such as an opinion of a fire's origin and cause, also can be provided. Accountability of personnel also can be accomplished by documenting activities and procedures that may be questioned by the courts.

In a courtroom, a witness's credibility is dependent upon his or her ability to communicate well. A well-written report helps in that communication and credibility. It reflects the person's education, competence, and professionalism.

## CHARACTERISTICS OF A WELL-WRITTEN DOCUMENT

The first responder should be aware of certain characteristics of a good document when completing a report. The report needs to be factual and accurate, complete, and clear. If it is lacking any one of those characteristics the report may not be accepted. Remember, the report is a direct reflection on the first responder's credibility.

### **Factual and Accurate**

A fact is a statement that can be proved. The report should include only information that can be verified, either through physical evidence, witness statements, or other reports. Proper names and addresses need to be accurate and correct. Misspelled names or incorrect addresses may show disinterest or a hastily completed report and can reflect on the first responder's credibility. Descriptions of the fire scene, smoke and fire, and the structure also need to be accurate. EMS reports need to contain accurate observations of the patient as well as accurate diagnostic information such as blood pressure and pulse.

### **Complete**

The report needs to contain all the facts, including the actions of personnel on the scene. It should not contain personal opinions.

### **Clear**

There should be only one interpretation of the report. Descriptions of observations and actions taken need to be written clearly. Two people should be able to pick up the same report, have the same mental picture, and reach the same conclusions.

## **USE OF DOCUMENTATION**

Documentation can be used in several ways:

- compiling statistical information;
- keeping supervisors informed;
- accountability of personnel;
- evaluation of personnel performance:
  - training, and
  - critiquing an incident; and
- preparing cases for court; providing courts the facts:
  - judges,
  - attorneys, and
  - jurors.

## **WHAT IS TO BE DOCUMENTED?**

As stated before, pretrial preparation begins with what emergency personnel saw and did. These actions and observations need to be documented along with any other information received. Documentation is not limited to emergency incidents, but includes daily activities such as training, inspections, and equipment maintenance that may be questioned in legal proceedings.

### **Emergency Incidents**

Documentation of emergency incidents such as fire and EMS begins with the alarm and continues throughout the incident. There needs to be documentation of actions, observations, and information received en route to the scene; upon arrival at the location; during suppression and overhaul



operations: and of the origin and cause determination. Actions entail what personnel did, and would include tactics, any forcible entry, rescue, and emergency care rendered. Observations made by personnel include smoke and fire conditions, the fire's location, and observations of the patient's condition when giving medical aid. Also, there needs to be documentation of any information received from other emergency personnel, victims, witnesses, or the occupants.

Documentation of an emergency incident usually is completed on a standardized departmental form. These forms generally are based upon the National Fire Incident Reporting System (NFIRS) or, for EMS, the National Highway Traffic Safety Administration (NHTSA) guidelines. These reports generally are factual in nature, containing names, addresses, and times of the incident. In a fire incident they also contain categories for suppression methods, smoke and fire damage, and the location and the cause of the fire. EMS reports would contain the patient's status, mechanism of injury, and vital signs. The problem with these reports is that they force the first responder to pigeonhole the information by making the information fit a category. This may imply that the first responder is an expert in a certain field when he or she is not. A narration space usually is included, and should be used to convey any information not mentioned before and to document the incident in a narrative form.

To assist in making the report accurate and factual, the first responder can use field notes. Field notes are a collection of pertinent information related to a specific incident. The first responder should make notes regarding the actions, observations, and information received as soon as possible because there may not be a second opportunity to view the scene. Notes also can be used in court to assist in testifying. Retention of field notes should follow department policy.

### **Fire Inspections**

In some jurisdictions first responders conduct fire inspections, and the resulting inspection reports may be used in civil or criminal proceedings. Fire inspections are based on codes that are adopted by the jurisdictions and generally are documented on departmental forms. These forms may be check-off type and can present the same problems as the incident reports. The report should contain the address of the inspection, the property representative, and the date and time of the inspection. The report also will contain the observations of the first responder concerning code violations. These violations need to be documented, as does the corrective action taken. That action may be issuing a summons that notes the violation and the time allotted for correction, or it may require the violation to be corrected immediately.

## **Training**

There is also a need to document any training of personnel. In a legal proceeding, training documents will show that the first responder was properly trained and qualified to handle a particular incident. This documentation shows that individuals received proper training in accepted methods and practices in their particular field, whether it is fire suppression, EMS, or inspections. It also would indicate that the training received is current. The department generally maintains these records.

The documentation should indicate the date of the training, what was taught, the individuals involved, and if it was evaluated. Individuals also should keep their own personal records of their training. This documentation should include the type and topic of the training, the dates it was taught, and any standards that it met. Individuals should document any certifications they have received. This training would be included in the individual's résumé or Curriculum Vita (CV). Properly documented training would enhance the individual's credibility in the legal proceedings.

## **Daily Activities**

Daily activities also need to be documented. Activities generally are documented in logs or journals, and could include duty rosters of personnel working, responses to emergency incidents, fire inspections conducted, and training. Maintenance that is performed on the vehicles or the equipment carried on the vehicles needs to be documented, and any repairs that are made or defects found need to be noted. If there are other reports that coincide with the log, such as fire incident or inspection reports, the times and dates and any other duplicate information need to be accurate.

## **DOCUMENTS THAT CAN BE USED IN LEGAL PROCEEDINGS**

Documents include fire and EMS reports, inspection and training reports, logs and journals, and personnel records. The fact that these documents are used in legal proceedings reinforces the need for a well-written document. The repercussion of not having the information documented is that the first responder's testimony in court may not be verifiable, and therefore may affect the person's credibility.

## LEGAL TERMINOLOGY

### Subpoenas

A subpoena is a command to appear at a certain time and place to provide testimony in a certain manner. There are many different types of subpoenas. Most investigators are familiar with a subpoena for a criminal proceeding that requires the witness to appear to give testimony.

A civil subpoena mandates that the witnesses appear at a civil proceeding. In most jurisdictions a civil subpoena must be served with a check for witness fees. A civil subpoena also can be used to compel your appearance at a deposition prior to the civil trial. As in a criminal case, a witness for a civil matter can be placed on call.

A subpoena duces tecum requires a witness to produce documents in his or her possession and control. In order to issue a subpoena duces tecum the party must show that the documents are relevant to the issues that will be litigated at a trial. Subpoenas duces tecum are issued in both civil and criminal proceedings. They can be very effective tools when documents are in the possession of a third party. A subpoena duces tecum cannot be used to obtain documents from defendants, because requiring them to produce the documents violates their Fifth Amendment right against self-incrimination.

In all jurisdictions, witnesses from outside the State may be subpoenaed to testify inside the State. This is done through an interstate compact for the attendance of witnesses. While a lengthy and time-consuming process, it is a very effective way to compel the attendance of material witnesses who are outside your jurisdiction. The interstate compact cannot be used in most States to compel the production of documents pursuant to a subpoena duces tecum.

In addition, there are many administrative agencies that have subpoena powers. In most jurisdictions the coroner, state fire marshal, and even the district attorney have the power to issue subpoenas for administrative proceedings. However, in many instances the information obtained pursuant to these subpoenas is inadmissible in a subsequent criminal proceeding. An investigator also could be subpoenaed by a local health or safety board or by a legislative body. No matter who issues a subpoena, the investigator still is compelled to attend.

### Pretrial Hearings

In a criminal proceeding there are numerous pretrial hearings that an investigator might need to attend. One of the first proceedings in a

criminal matter is the probable cause hearing. How a probable cause hearing is conducted varies widely from jurisdiction to jurisdiction. In some States the probable cause hearing is conducted only on the written reports, while in other States testimony is provided. In each instance the court decides whether there is probable cause to charge the defendant with a crime. In many jurisdictions there is a bail hearing conducted in conjunction with the probable cause hearing, and an investigator might need to be present to assist with the hearing.

In most States, a defendant either is held over for trial at a preliminary hearing, or he/she is indicted by the Grand Jury. In either case, it is the prosecution's first opportunity to present evidence. At this hearing a magistrate or the Grand Jury reviews the evidence presented and determines whether there is sufficient evidence to try the defendant for the crimes alleged. This hearing can be conducted with live witnesses or it may be done through hearsay from the investigating officer.

Another pretrial hearing that an investigator can expect is a suppression hearing. At this hearing the defendant will be asking the court to suppress evidence seized from him/her, or a statement taken from him/her. In either case the evidence that the defendant seeks to suppress usually will be significant to the case. In most suppression hearings the investigating officer will be called to testify concerning factual events surrounding the search and seizure or the taking of a statement.

While extremely rare in most jurisdictions, an investigator could be called to testify at a competency hearing. At this hearing the court is trying to determine whether the defendant is competent to stand trial. An investigator could be called at such a hearing to describe the defendant's behavior or mental state when the investigator met him or her. However, these hearings are usually battles between psychiatric experts.

In civil proceedings there usually will be only two hearings to which an investigator might be called as a witness. In a deposition an investigator would testify concerning the origin and cause and/or followup investigation. A deposition is an out-of-court proceeding that occurs during the discovery phase of a civil proceeding.

The second civil hearing that requires testimony is an arbitration hearing. Arbitration involves a panel of one to three arbitrators, usually lawyers or retired judges, who hear testimony and then rule on the case. Arbitration is like a trial although it is a nonjudicial proceeding.

## **Trial**

Trials are substantially similar in both criminal and civil proceedings. While jury trials are not always conducted in civil proceedings, the parties can elect to have a jury. The primary difference between a criminal and civil jury is that civil juries do not need to reach a unanimous verdict. A criminal trial requires a unanimous verdict. Depending on the nature of the crime charged, some criminal cases could be judged by a jury with as few as six members.

In both civil and criminal matters, the parties may agree to a court trial where the judge hears all of the evidence and issues a ruling. In a criminal matter it may be necessary to advise the defendant of his or her constitutional rights before there is a waiver of the right to a jury. Civil matters are handled routinely in front of a judge alone.

Whether the trial is before a judge or a jury, the parties still bear the same burden of proof. In a civil case the jury must be convinced by a preponderance of the evidence that the facts are as they are presented. (Preponderance of the evidence is evidence of a degree of proof that is more probable than not.) In a criminal case the jury must be convinced beyond a reasonable doubt that the defendant is guilty. Reasonable doubt is one of the more difficult legal terms to explain. Reasonable doubt means a doubt based on reason and arising from the evidence or lack of evidence.

In a criminal matter there also is the possibility that an investigator might be called to testify in juvenile proceedings. In some jurisdictions, juvenile cases are not even considered to be criminal matters. Juvenile proceedings are usually court trials, and the juvenile does not have the right to request a jury trial. All other aspects of a juvenile trial are identical to the proceedings in adult cases.

## **LEGAL ISSUES**

In any case presentation there are only two types of evidence, direct and circumstantial. However, within each of these two types of evidence there are many different ways to capture and present the evidence.

### **Direct Evidence**

Direct evidence is evidence that directly proves a fact, without an inference or presumption, and which, in itself, if true, conclusively establishes that fact.

## Circumstantial Evidence

Circumstantial evidence, sometimes referred to as indirect evidence, is evidence from which you can infer the existence of a fact.

Either type of evidence can take many different forms and appear in different ways.

## Spoliation

Spoliation literally means the destruction of evidence. Spoliation is viewed as the obstruction of justice. It occurs whenever there is a significant and meaningful alteration of the evidence. Spoliation of evidence has long been an issue in criminal cases. While the U.S. Supreme Court has limited the sanctions for spoliation in criminal cases severely, other courts have been expanding the civil ramifications of the destruction of evidence.

In *Brady v. Maryland*, (1963) 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215, the U.S. Supreme Court examined the question of what obligation the State had to disclose potentially exculpatory evidence to a defendant. In *Brady*, the prosecution had failed to disclose to the defendant that a second defendant had confessed to the crimes charged. In affirming the Maryland Court of Appeals reversal of the defendant's conviction, the court held that "suppression of evidence favorable to an accused violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." (*Brady* at 87). Subsequent to *Brady*, the courts have continued to hold that all evidence favorable to the defendant that might affect the guilt or punishment of the defendant must be disclosed by the prosecution. This obligation exists whether or not the defendant asks for the materials.

Based on the court's rulings in this area of law, the prosecutor is presumed to be aware of all evidence in the possession of the investigative agencies. If an investigator fails to disclose information to a prosecutor, and the defense later discovers the evidence, the conviction would be reversed if there were any possibility that the evidence might have assisted the defendant. Therefore, it is imperative that an investigator gather all information in the possession of his or her agency concerning the case and the credibility of any material witnesses, and discloses that information to the prosecutor.

Subsequent court rulings have examined the question of the intentional and unintentional destruction of evidence. In *California v. Trombetta*, (1984) 467 U.S. 479, 104 S.Ct. 2528, 81 L.Ed.2d 52, the U.S. Supreme

Court examined whether the Due Process Clause of the Fourteenth Amendment requires the State to preserve evidence within its possession. In *Trombetta* the defendant challenged the Government's failure to preserve his breath sample that was used to establish that he was driving under the influence. In denying the defendant's motion to suppress the evidence, the court noted that "the California authorities...did not destroy (defendant's) breath samples in a calculated effort to circumvent the disclosure requirements established by *Brady* versus *Maryland*, and its progeny. In failing to preserve the breath samples..., the officers were acting 'in good faith and in accord with their normal practice'" (*Trombetta* at 488.)

In *Trombetta*, the court makes it clear that, when a challenge to the Government's evidence preservation methods is made, the focus will be on the good faith of the Government. If the evidence possesses an exculpatory value that was apparent before the evidence was destroyed, then the Government is obligated to preserve the evidence. In the absence of clearly exculpatory value, the Government has no obligation to preserve evidence for the defendant; however, the court will evaluate the good or bad faith of the governmental action in determining whether the evidence had any exculpatory value.

In *Arizona v. Youngblood*, (1988) 488 U.S. 51, 109 S.Ct. 333, 102 L.Ed.2d 281, the court revisited the question of the destruction of evidence. In *Youngblood* the county sheriff had failed to preserve semen samples on the victim's clothing. In upholding the defendant's conviction the court held that the Due Process Clause of the Fourteenth Amendment does not require the State to preserve evidence even though the evidence might be useful to the defendant, unless the defendant can show bad faith on the part of the police. The court believed that this standard limits the extent of the police's obligation to those cases where it is clear that the evidence was potentially exonerating to the defendant and the police were aware of that potential.

Based on these three main cases in the area of spoliation of evidence, there are several propositions that the investigator should understand clearly. An investigator has an affirmative obligation to disclose to a defendant all information within the possession of the Government that is favorable evidence material to guilt or to punishment. An investigator is under an obligation to preserve evidence that has an exculpatory value that is apparent, and that is evidence that the defendant would be unable to obtain by other reasonably available means.

This second rule is particularly crucial when you are dealing with a fire scene and a known suspect. If you have a known suspect and your crime scene is still intact, you may want to give your suspect an opportunity to

examine the scene before it is destroyed. Finally, in the absence of bad faith, an investigator's failure to preserve potentially useful evidence does not constitute a denial of due process of law. One of the factors the court will look at in evaluating bad faith is whether the investigator understood the nature of the evidence at the time of its destruction.

In the civil realm, the issues surrounding the spoliation of evidence are much more complex. At present, not every jurisdiction has adopted the spoliation of evidence as a civil wrong, and some jurisdictions have rejected this expansion of liability specifically. Some jurisdictions require there to be an intentional spoliation of evidence, while other jurisdictions permit actions alleging both intentional and negligent spoliation of evidence. No matter what the burden of proof is, an investigator needs to be aware that any actions taken at a fire scene could affect the owner of the location, the insurer, and other third parties that might have liability for the fire. Therefore, since the trend in the law is toward the expansion of liability, all investigators should familiarize themselves with the law in their jurisdictions.

### **Fourth/Fifth/Sixth Amendment Issues**

For Fourth Amendment purposes, the seizure of the person occurs when a Government agent intentionally interferes in a substantial way with a citizen's freedom of movement. *Brower v. County of Inyo*, 486 U.S. 593 (1989). The courts have held that any Government employee or individual working as the agent of the Government may seize a person. "Interference with a person need not be accomplished by means of physical force but may result from a mere show of authority. Our cases show moreover that a police officer has seized a person...if that person believes that he or she has been seized and that belief is objectively reasonable. Finally our cases hold any examination into whether an encounter between a police officer and a citizen constitutes a seizure is necessarily a fact specific inquiry into the totality of the circumstances of the particular case." *State v. Juarez-Godinez*, 942 P.2d 772 (Or. 1997).

In *Terry v. Ohio*, 392 U.S. 1 (1968) the court authorized a limited purpose and duration seizure on a reasonable suspicion that a crime was planned or in progress.

When the actions of the police exceed the bounds of a reasonable suspicion stop then an arrest has occurred and the arrest must be supported by probable cause. *U.S. v. Robinson*, 949 F.2d 851 (6th Cir. 1991). Conduct which may convert a stop into an arrest includes physical restraint, detention in a police vehicle, or the use of handcuffs. *U.S. v. Sharpe*, 470 U.S. 675 (1985).



The Fifth Amendment to the United States Constitution states that "No person...shall be a witness against himself...." In order to protect this right the U.S. Supreme Court mandated that before a custodial suspect could be questioned the police needed to advise him/her of his/her constitutional rights.

In evaluating whether a suspect is in custody the court will look at the totality of the circumstances. The factors the courts traditionally have used include

1. Nature of interrogator.
  - a. What is he/she wearing?
  - b. Does he/she occupy a position of authority over the suspect?
  - c. Does he/she carry a visible weapon?
2. Suspect's susceptibility to intimidation.
  - a. Age of suspect.
  - b. Intelligence, sophistication.
3. Degree of inherent coerciveness of place of interrogation.
4. Time of interrogation.
5. Proximity of interrogation to the scene of the crime both in time and space.
6. Nature of interrogation.
  - a. Number of interrogators.
  - b. Length of interrogation.
  - c. Is the interrogation accusatory?
7. Has the investigation focused on one suspect or is it a general search for information?

After evaluating all of these factors the ultimate determination rests on whether the suspect is free to leave, and whether the indicia of arrest are present.



## Activity 2.1

### Facts to be Reported

#### Purpose

To determine the value of documentation in accurate reporting.

#### Directions

1. You will watch the 8-minute video "Emmitsburg Fire."
2. When the video is paused, write down significant facts you have seen. Note the details that you see, and what information you would record to ensure that you could remember if you were asked to appear in a legal proceeding.
3. As a large group, compare your notes and discuss the skills needed to report accurately on observed facts.



## Activity 2.2

### What do You do With a Subpoena?

#### **Purpose**

To allow you to discuss the subpoena process.

#### **Directions**

1. You will be divided into four groups.
2. In your assigned group, discuss the subpoena process.
3. Also discuss those departments that have procedures for service of a subpoena.
4. The instructor then will facilitate a whole-class discussion.



# **APPENDIX A**

# **FLOWCHART**





**ISSUANCE OF SUBPOENA**

The form contains the following shapes:

- One large vertical rectangle on the left side.
- Two horizontal rectangles stacked vertically in the upper left.
- Two vertical rectangles stacked vertically in the upper middle.
- One large vertical oval in the center.
- Two horizontal rectangles stacked vertically in the lower middle.
- Four vertical rectangles stacked vertically in the lower left.
- Two horizontal rectangles stacked vertically in the lower middle.
- Two vertical rectangles stacked vertically in the lower right.
- Three diamonds arranged vertically in the lower right.
- One trapezoid on the far right.



# **APPENDIX B**

# **SUBPOENA FORMS**



**DOCUMENTATION AND PRETRIAL PREPARATION**

---

OA088 (Rev. 1/94) Subpoena in a Civil Case

**Issued by the  
UNITED STATES DISTRICT COURT**

DISTRICT OF \_\_\_\_\_

**SUBPOENA IN A CIVIL CASE**

V.

\_\_\_\_\_ Case Number:<sup>1</sup>

TO:

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

---

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

---

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE

DATE AND TIME

---

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

---

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

---

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

**DOCUMENTATION AND PRETRIAL PREPARATION**

---

OAO88 (Rev. 1/94) Subpoena in a Civil Case

---

**PROOF OF SERVICE**

DATE

PLACE

**SERVED**

SERVED ON (PRINT NAME)

\_\_\_\_\_  
MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE  
\_\_\_\_\_

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER  
\_\_\_\_\_

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

**3) PROTECTION OF PERSONS SUBJECT TO**

**SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to comply production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend

trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or  
(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.





OAO89 (Rev. 7/95) Subpoena in a Criminal Case

UNITED STATES DISTRICT COURT

DISTRICT OF \_\_\_\_\_

V.

**SUBPOENA IN A  
CRIMINAL CASE**

Case Number:

TO:

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below, or any subsequent place, date and time set by the court, to testify in the above referenced case. This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

PLACE

COURTROOM

DATE AND TIME

---

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

U.S. MAGISTRATE JUDGE OR CLERK OF COURT

DATE

(By) Deputy Clerk

ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER: \_\_\_\_\_

**DOCUMENTATION AND PRETRIAL PREPARATION**

---

OAO89 (Rev. 7/95) Subpoena in a Criminal Case (Reverse)

PROOF OF SERVICE			
RECEIVED BY SERVER	DATE	PLACE	
SERVED	DATE	PLACE	
SERVED ON (PRINT NAME)	FEES AND MILEAGE TENDERED TO WITNESS		
		YES	NO
		YES	NO    AMOUNT \$ _____
SERVED BY (PRINT NAME)	TITLE		
_____			
DECLARATION OF SERVER			
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.			
Executed on	DATE	SIGNATURE OF SERVER	
		ADDRESS OF SERVER	
_____			
ADDITIONAL INFORMATION			

## **UNIT 3: COURTROOM DEMEANOR**

### **OBJECTIVES**

*The students will be able to:*

- 1. Determine how to answer questions in a courtroom setting, including how to handle "trap" questions.*
  - 2. Develop skills necessary for appropriate courtroom demeanor.*
-



## COURTROOM PROCEDURES

Every law enforcement officer should have an understanding of the procedure of the court. He/She should understand the functions of the judge, the court clerk, reporter, bailiff, jury, prosecuting attorney, and defense attorney. He/She should be familiar with various terms used in the courtroom and of the conduct of the court trial to enable him/her to understand each step in the trial as it is taking place.

### Procedures

The procedures in a criminal trial generally include the following:

- The case is called.
- Judge asks if both parties are ready for trial.
- Clerk calls and swears the jury panel.
- Voir dire examination of the jurors. (Judge and both attorneys question the jurors as to their fitness to hear the case.)
- Prosecutor and defense attorneys make their "strikes" from the jury panel.
- Alternate jurors are appointed, if needed.
- Clerk swears the selected petit jury.
- Prosecuting attorney makes his/her opening statement.
- Defense attorney makes or reserves his/her opening statement until their case starts.
- Prosecutor presents his/her case. Defense cross-examination.
- Judge rules on objections, motions, etc.
- Defense attorney may make a motion for judgment of acquittal.
- Unless a verdict of acquittal has been ordered, defense presents its evidence. Prosecutor cross-examines.
- Prosecutor makes his/her closing argument.

- Defense attorney makes his/her argument and summation.
- Prosecutor makes his/her rebuttal argument.
- Judge instructs the jury as to the law, etc.
- Jury deliberates.
- Judge receives the verdict. If either attorney so requests, judge instructs clerk to poll the jury.
- Defense may make a motion for acquittal.
- If a guilty verdict is returned, judge announces sentence or orders presentence investigation.

### **Separation of Witness (Sequestration)**

The court (on its own motion or on motion by either attorney) may exclude from the courtroom all witnesses except the one on the stand. The fact that some are Government officers makes no difference. This separation of witnesses is done to prevent witnesses from consulting each other and being influenced by the testimony of other witnesses either before or after testifying. This procedure is intended to ensure that each witness will testify according to his/her own independent knowledge of what happened and not be swayed by the testimony of other witnesses. The court may, in its discretion, disqualify any witness who knowingly disobeys the order of exclusion. However, when the sequestration rule has been invoked, the court usually will grant a request by the U.S. prosecutor for a Government agent to remain in the courtroom to assist in the trial.

### **Functions of the Judge**

It is the function of the judge to preside over the court, direct the proceedings before the court, conduct the initial voir dire examinations of the jury, instruct the jury, decide questions of law, receive the verdict of the jury, and impose sentence.

### **Functions of the Prosecuting Attorney (District/State/United States Attorney)**

It is the prosecutor's function to guide and direct the Government's case at the trial, to call the necessary Government witnesses, to see that the evidence necessary to prove the Government's case is introduced, to conduct direct and re-direct examinations of prosecution witnesses, to

make necessary motions, to cross-examine the defense witnesses, and to see that all the necessary facts are brought before the court.

Direct examination is defined as the examination in chief of a witness by the party who called him/her to the stand.

Re-direct examination is defined as the re-examination of a witness by the party who called him/her, after he/she has been cross-examined. Generally the party calling the witness has the right to re-examine him/her in order to explain answers given on cross-examination, and the witness's expressions and his/her motives for giving them.

The prosecutor's primary duty is not to convict but to see that justice is carried out.

### **Functions of the Defense Attorney**

The duty of the defense counsel is to conduct a proper defense for his or her client, call necessary defense witnesses, cross-examine Government witnesses, conduct direct and re-direct examinations of defense witnesses, and make the proper motions and objections for the defense.

### **Functions of the Clerk of the Court**

It is the function of the clerk of the court, who sits in the courtroom, to maintain a file of the proceedings in each case, keep track of the exhibits introduced by the Government and defense, number the exhibits, call the cases to be brought before the court, keep a list of the jurors and administer the oath to them, and administer the oath to each witness before he or she takes the witness stand.

### **Functions of the Bailiff**

It is the function of the Bailiff to call the court to order, maintain order in the courtroom, and assist the court in handling witnesses. To call the court to order, the Bailiff will ask for everyone in the courtroom to rise, and shout the following:

"Hear ye! Hear ye! Hear ye!"

The Honorable United States District Court, \_\_\_\_\_ District of \_\_\_\_\_ Honorable \_\_\_\_\_ presiding, is now in session.

All having business come forward and you shall be heard.

God save the United States and this honorable court."

### **Function of the Court Reporter**

It is the function of the court reporter to record the court proceedings throughout the trial.

### **Oath of Jurors**

The following is an example of the oath administered to the selected petit jury:

"Do you and each of you solemnly affirm that you will truly try the cause of the United States versus \_\_\_\_\_ and render a true verdict according to the evidence and the law?"

### **Oath of Witness**

The following is an example of the oath administered by the clerk to witnesses:

"Do you solemnly affirm that the testimony you will give in the case of the United States versus \_\_\_\_\_ will be the truth, the whole truth, and nothing but the truth?"

### **The Jury**

It is the function of the jury to decide the guilt or innocence of the accused based on the facts presented at the trial and to render a verdict (unanimous) to the judge in open court. The attorney for the Government or the defense may request that the jury be polled.

### **Jury Composition**

Trial shall be had by a jury consisting of 12, except in those cases where (a) the defendant waives trial by jury with the approval of the court and the consent of the Government, or (b) the parties stipulate in writing, with the consent of the court, that the jury shall consist of any number less than 12.



The court may direct that not more than six jurors, in addition to the regular jury, be called and impaneled to sit as alternate jurors. These alternates will replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. (A peremptory challenge is a challenge to proposed jurors which counsel may make as an absolute right.)

### The Voir Dire Examination of the Jury

Voir dire means to speak the truth. The voir dire examination conducted by the trial judge is a preliminary examination of a potential juror to determine his/her qualifications and competency to serve as a member of the trial jury. A voir dire examination of a potential juror also may be made by the prosecuting or defense attorney.

The following are examples of questions that may be asked to a potential juror on voir dire examination. These questions anticipate a "no" answer and the paneled jury often is instructed that if the answer to any of the questions is "no," they may remain seated or need not respond, but if their answer to any of the questions is "yes," they should raise their hands or rise and respond to the question. Examples include

- Do any of you know the defendant in this case?
- Have any of you heard or read anything about the facts of this case?
- Have any of you, or your close relatives or friends, ever been victims of a crime?
- Have any of you, or your close relatives or friends, ever served on a jury in a criminal case?
- Have any of you, or your close relatives or friends, ever been a witness in a criminal case?
- Have any of you, or your close relatives or friends, ever been employed by any law enforcement agency?
- Do any of you have any reservations about the rule of law which requires you to presume the defendant's innocence throughout the trial?
- Do any of you have reservations about the rule of law which requires the Government to prove its case beyond a reasonable doubt in order to justify a finding of guilt in criminal case?

- Do any of you feel that the fact that the defendant has been indicted indicates in any way that he/she is guilty of the crime charged in this case?
- Do any of you feel that a law enforcement officer's testimony is entitled to more weight than any other witness, merely because he/she is a law enforcement officer?
- Is there any reason why you cannot fully and impartially weigh the evidence in this case and render a verdict on that evidence, and that evidence alone?

### Instructions to the Jury

When the prosecution and defense have rested, the judge instructs the jury about the law involved in the case. Either party may file a written request with the court that specific instructions be given to the jury. The judge may give the instruction in the form requested or he/she may reject it. In any event, he/she will inform counsel of his/her proposed action before their arguments to the jury.

### Presumption of Innocence

The fact that an indictment was filed against the defendant does not raise a presumption of guilt against him/her. Under our system of government, the defendant enters upon the trial in a criminal case with the presumption of innocence in his/her favor. The presumption of innocence continues and remains with the defendant in his/her favor during the trial until it is overcome by evidence, and guilt is established to the satisfaction of the jury beyond a reasonable doubt.

The presumption of innocence alone is enough to acquit the defendant, unless the jury is satisfied beyond a reasonable doubt of the defendant's guilt from all the evidence in the case. If you can reconcile the evidence before you upon any reasonable theory consistent with the defendant's innocence, you should do so, and return a verdict of not guilty.

### Reasonable Doubt

This term is used in legal proceedings, but there is controversy over its definition. As an investigator you need to be familiar with the term and consult your district attorney over your court's definition.

### Elements of Offense

The defendant in a criminal case is not required to prove his/her innocence. The Government must prove every material element of this offense beyond a reasonable doubt.

### Testimony of Experts

While each expert's opinions are allowed to be given, it is entirely within the province of the jury to say what weight should be given to them. Jurors are not bound by the testimony of experts. Their testimony is to be canvassed and weighed as that of any other witness. The mere fact that a witness is called an expert and gives opinions upon a particular point does not necessarily obligate the jury to accept his/her opinion.

### Other Witnesses

The jury is the sole judge as to the credibility of any witness and shall decide the weight to be given to any testimony. The jury can accept a witness's testimony in part or in full.

### Prior Convictions

You must not consider evidence of other crimes in determining guilt or innocence of the crime currently charged against the defendant.

### Failure to Testify

A defendant, by his/her plea of not guilty, has denied, legally and effectively, every charge in the indictment, and he/she has put the Government to proof of all the elements of the crime charged. The failure of this defendant to take the witness stand and testify in his/her own behalf does not create any presumption against him/her, and the members of the jury must not permit that fact to weigh in the slightest degree against the defendant, nor should that fact ever enter into their discussions and deliberations in the jury room.

### Unanimous Verdict

The jury must reach a unanimous verdict regarding either the guilt or innocence of the defendant.

## FUNDAMENTALS OF BEING A GOOD WITNESS

The value of the evidence accumulated by the officer during his/her investigations depends a great deal upon the manner in which it is presented in court, and its effectiveness depends to a great extent on the impression the officer makes while testifying as a witness and while assisting the prosecutor.

The officer's courtroom performance affects his/her reputation as an investigator. Any deficiencies in his/her behavior will reflect upon his/her organization as well as on the Government, and may affect the fate of the defendant.

Since the courtroom is a place of dignity, the officer's conduct and demeanor in and around it should be compatible with his/her surroundings. If he/she appears on the witness stand he/she is expected to be the best witness in terms of conduct, demeanor, and in command of the facts within his/her knowledge.

### **Appearance**

The officer's dress when making a court appearance should be neat, well-fitting, and conservative. He or she should wear properly cut, conservative business attire, and men should wear a shirt and tie. Sports clothing of any nature is not acceptable. Pockets should not be bulging with voluminous notebooks, pens, pencils, or cigarette packages. It also is preferable not to wear any lodge or fraternity pins, political buttons, and the like, so that the jury will not get the impression that the officer is there to represent anyone but the Government. This is particularly true when the officer is testifying as a witness, because he or she is then the center of attention and the eyes of the jury are focused on him or her.

### **Punctuality**

If the officer is to appear as a witness, he or she should come to court before the time specified, regardless of whether he or she has received a subpoena or been notified informally by the prosecutor to appear. He or she should inform either the prosecuting attorney or the assisting officer immediately that he or she has arrived and ask where to wait. Since the sequence of witnesses usually is determined in advance, it is necessary that each witness be available to testify in the planned order. A most important reason for the officer to be on time is that the testimony of some other witnesses may not be admissible unless he or she has first taken the

stand to introduce certain documents or establish certain facts about which these other witnesses will testify.

If the officer cannot get to the courtroom on time, he or she should notify the prosecuting attorney as soon as possible. If the latter cannot change the sequence of witnesses, he or she may have to ask the court for a continuance until the officer arrives.

### **Waiting to Testify**

If the officer is asked to wait in the witness room or the hallway, he/she should not get involved in loud discussion.

If he or she is allowed to remain in the courtroom, he or she should avoid any whispering or other disturbing behavior.

There is a natural tendency to want to discuss the trial with fellow officers during recesses, but this should not be done. If such discussions are overheard, the officer may be confronted on cross-examination with things he or she has said during these discussions.

The officer should not discuss the case with any unauthorized person nor disclose to an unauthorized person anything about his or her testimony.

### **Entering the Courtroom**

Before entering the courtroom, the officer should be sure that his or her attire is in proper order.

If the officer is not assisting the prosecutor during the trial, he or she should not go within the enclosure where court personnel are located unless asked to do so.

The trial is a serious matter, and the officer should act accordingly. He or she should be quiet and serious and should not noisily greet or recognize anyone. He or she should enter with dignity, walking erect with head high and shoulders back, showing good posture. This gives a good first impression and indicates that he or she is confident and physically and mentally alert.

### **Taking the Oath**

The clerk will administer the oath. The officer should be serious and show respect while taking the oath. He or she should say, "I do" in a firm manner and in a clear voice that is loud enough to be heard throughout the courtroom. This will give the impression that the officer has a genuine desire to state the facts as he or she knows them.

When approaching the clerk to take the oath, the officer should face the clerk and look him or her straight in the eye with body erect and head high. He or she should immediately raise his right hand and extend it out from the shoulder with the upper arm parallel with the floor, the elbow at a right angle, and the forearm perpendicular to the floor. The wrist should be straight and the fingers and thumb extended with the palm of the hand facing the clerk.

### **Sitting in the Witness Chair**

After the officer has taken the oath, he or she will take the witness stand. He or she should sit comfortably but erect without slouching, preferably with both feet flat on the floor and hands folded in the lap. This good posture should be maintained whenever possible. The important thing is to appear natural and poised. He or she should not change the position of any part of his or her body too often because this not only indicates nervousness, but also detracts from the testimony. If the witness chair has arms, it is permissible to place the elbows on the arms of the chair with the hands folded in the lap.

In most courtrooms, the witness chair is behind an enclosed railing and the witness' body from the waist down is not visible. With this arrangement, the legs may be crossed, but the officer should be careful never to tip back in the chair or to lean over the rail.

### **Voice**

The officer should give testimony in an expressive voice. He/She should speak clearly, distinctly, and loudly enough so that he or she can be heard and understood throughout the courtroom.

It is essential that the judge, the jury, and the court reporter hear everything the witness says. Since court proceedings are recorded, the reporter must be able to hear every word spoken. The acoustics in many courtrooms are good enough for a witness to be heard when speaking in a normal tone of voice. If any witness is not speaking loudly enough, the

judge may tell him/her to raise his/her voice so he/she can be heard. However, the judge should not need to continually warn the witness.

### **Demeanor**

- The officer should show respect for the court and counsel by using the words, "yes, sir" or "no, ma'am" when answering questions, and "Your Honor" when addressing the judge.
- While on the witness stand, the officer must not demonstrate personal feelings. Even though he or she is amused, he or she should not laugh or smile; or, if displeased, he or she should not frown.
- When testifying, the officer must be objective. It is not his/her duty to decide the guilt or innocence of the defendant, but merely to state facts as he or she knows them. He or she should listen intently without any change in expression regardless of whether the prosecuting attorney or the defense attorney is asking the questions. He or she should direct his/her attention to counsel and show the same interest in the question in either situation.
- After months of continuous investigation on a case, it is easy for an officer to develop a "prosecution complex," i.e., show a definite interest in getting a conviction. This does not imply any withholding or distortion of facts, but merely a recognition that his or her expressions, his or her reaction to cross-examination, and his or her general attitude might create an impression that he or she wants the defendant convicted. If the officer projects this feeling on the witness stand, the jury may tend to disregard an important part of the testimony. It is quite likely that the defense attorney will try to accomplish that reaction from the jury.
- When speaking from the witness stand, the officer should use simple words that can be understood by the average person. He or she should never use a word that he or she cannot explain. The officer should avoid the use of slang, technical terms, profanity, or vulgarity. Expressions of that nature should be used only in those cases where it is necessary to give the actual words spoken by the defendant, the victim, or others. If it is necessary to use technical terms or stilted language, such terms should be defined to the jury.

- The witness stand is no place for the officer to give sarcastic, "smart," or "wise" remarks when answering questions. There are situations, particularly on cross-examination, when he or she may feel inclined to interject such remarks. This may be exactly what the defense attorney wants, because such answers show bias and disturb the decorum of the court. Never argue with the defense attorney.
  
- It is most important that the officer show confidence. He or she usually has no difficulty on direct examination because he or she is familiar with the questions to be asked and the answers to be given. However, maintaining confidence on cross-examination is difficult. The officer must guard against any showing of lack of confidence on cross-examination by thoroughly preparing for the testimony.
  
- When answering questions, the officer should look at the jury whenever practicable. When giving a succession of short answers such as "yes" or "no" it is impractical to look at the jury continually. In such cases, the witness should look at the counsel who is asking the questions. However, in all other situations, the eyes of the witness should be directed toward the jury when answering the questions, unless it is necessary to speak to the judge.

### **Preliminary Questions**

After the officer takes the stand, he or she will be asked certain preliminary questions by the prosecuting attorney. They are questions for the record. These will be the officer's first spoken words from the witness stand. It is important, therefore, to give a good impression by speaking slowly, clearly, and distinctly, giving his/her first name, middle initial, and last name, and directing the answer to the court reporter. If his or her name is difficult to pronounce or spell, he/she should pronounce or spell it slowly for the benefit of the reporter. Answering these questions usually will help the officer overcome initial nervousness.

The officer also may be asked if he/she knows the defendant in the case. If so, he/she should identify the defendant for the record by some means other than pointing, such as by describing the latter's location and clothing. Although questions about the identity of the defendant are primarily for the record, they also are used to indicate to the jury that the witness knows the defendant in the case, which may have some bearing on whether the jury believes the witness's testimony. The questions and answers relating



to the identity of the defendant usually follow a pattern such as the following:

Attorney: Do you know the defendant in this case?

Witness: Yes, sir.

Attorney: If the defendant is in the courtroom today, will you please identify him.

Witness: Yes, sir. He is the gentleman seated to the left of the defense counsel and is wearing a black coat, red tie, and white shirt.

Attorney: Let the record show that the witness has properly identified the defendant.

## **BEING A GOOD WITNESS**

The "Do's":

- be prepared;
- present a professional appearance;
- be alert;
- be on time;
- just answer the question;
- appear to be neutral even if you are biased;
- maintain formalities;
- be honest;
- think before you speak;
- be fair and frank;
- admit your mistakes and correct them;
- keep your temper;
- avoid mannerisms of speech, e.g., "I can truthfully say," "honestly," "honest to God";
- answer the question;
- keep your hands away from your mouth;
- watch your vocabulary; keep it simple;
- avoid guessing; and
- avoid fire slang or legal buzzwords without defining them.

The "Don'ts":

- Do not mishandle reports;
- If you don't remember or do not know, then say so;

- Do not be too anxious to please or eager to fight;
- Do not chew gum, candy, or tobacco;
- Do not memorize your testimony;
- Do not nod your head or make noises;
- Do not play with your mustache; and
- Do not bite your nails.

## HOW NONVERBAL COMMUNICATION AFFECTS A JURY

Jurors must rely on the testimony they hear and evidence presented to them to determine guilt or innocence. They are asked by the judge to review the credibility of all the evidence presented to them. This often is a difficult task. As a result of the enormous responsibility of determining proof beyond a reasonable doubt, jurors will look for any scintilla of evidence to help them make this decision. This includes the evaluation of the investigating officer's nonverbal communication. It is critical that an investigator understand the message he/she sends to the jury with his/her nonverbal communication.

Remember the judge, jurors, defense attorneys, and associates of the defendant also will be in and around the court. This puts them in a position outside the courtroom to listen to and watch the behavior of witnesses. What they see and hear will affect their opinion of the proceedings inside the court.

Any observation made by one of these people on anything a witness says or does outside of the courtroom is subject to cross-examination.

It is imperative you remain professional in appearance outside the courtroom. Any joking around or negative comments that are overheard will convey to the person making these observations that you are not to be taken seriously.

When entering the courtroom, all eyes will be on you. You will be judged on your attire, the way you walk, and any interactions you have with anyone on your way in.

**Posture:** Sit up straight. It conveys being professional. Slouching conveys being unprofessional or unsure of yourself.

**Hands:** Your hands should be folded across your lap, or used to illustrate a point. Using your hands to fiddle with your clothes sends a message you are nervous.

**Eyes:** Look at those asking you questions. You also can look directly at the jury when answering a question, to convey confidence and honesty. Failure to look people in the eye conveys being dishonest and hiding something.

**Voice:** A loud, clear voice conveys confidence and honesty. Mumbling or lowering your voice conveys uncertainty and deception.

**Mouth:** Covering your mouth, or frowning, or showing anger conveys that you are upset.

## **HANDLING "TRAP" QUESTIONS**

The following are examples of questions intended to lead the witness astray:

- "Did you ever discuss this with anyone?" Of course you did. You discussed it with fellow investigators, superiors, and lawyers.
- "Are you positive about your point?" Stop and think. Are you?
- "Do you want the jury to understand..." Listen closely to this question and the way it is about to be worded. Use this question to make it clear what you **do** want them to understand.
- Other questions that appear "tricky"
  - Have you ever made a mistake?
  - Do you drink?
  - Do you gamble?
  - Have you ever violated the law?

Remember to answer all questions honestly.

- Remember, these questions often are leading, compound, or looking for conflicts in your testimony.
- The keys to "trap" questions are to understand the question fully, answer it correctly, and ensure the answer is understood by the judge and jury.

### **Attorney's Tactics**

There will be two approaches, that of the prosecutor and that of the defense. The prosecutor will be your attorney who will solicit the facts of the case, your investigation, opinions, etc. The defense attorney may use a variety of tactics in an effort to discredit or diminish your testimony. Be careful of the defense attorney trying to make you an expert witness.

## Activity 3.1

### Handling Questions

#### Purpose

To develop the skills necessary for appropriate courtroom demeanor.

#### Directions

1. Pair off in your group. Each pair selects a scenario from one of the following six scenarios.
2. Use the information in the scenario to develop a set of questions that you could be asked to answer if you were a firefighter at this incident.
3. One pair at a time, question each other while the remainder of the group completes the feedback form.
4. Within the group, provide feedback on the demeanor and answers.
5. Instructor will monitor and facilitate all the groups.
6. The activity will conclude with a large group discussion.



### Activity 3.1 (cont'd)

#### Scenario 1

A construction worker comes home and finds his wife with another man. He goes into a jealous rage and pours gasoline in his bed and all through his house. The bed is set on fire with a propane torch. He has no criminal record and has no prior dealings with the law.

#### Fact Pattern

On January 12, 2002, at 1303 hours the Emmitsburgh Fire Department received a 9-1-1 call reporting fire at 123 Williams Way. Upon arrival at 1307, the first-arriving fire company's Engine 1 reported heaviest fire emanating from the second-floor "A" side of the building. Upon arrival, Chief \_\_\_\_\_ assumed command. Engine 1 made an interior attack, while Ladder 2 ventilated the building. Flames were described as bright orange with thick black smoke pouring from the two front second-floor windows. A second alarm was struck at 1308 and a third at 1310.

Arriving EMT's from Ambulance 5 treated a 30-year old white female and a 31-year old white male who appeared to be suffering from smoke inhalation. They were treated and released. A second white male identified as George R. was treated for burns to his hands and face. George was transported to Emmitsburgh General Hospital.

The Emmitsburgh Fire Investigation Unit responded to the scene and began an origin-and-cause investigation. An exterior examination of 123 Williams Way revealed heaviest fire damage to be emanating from the "A" side of the building on the second floor. An interior examination revealed all fire damage coming from the master bedroom on the second floor. Further examination revealed heaviest fire damage to be at a bed adjacent to the front windows. An accelerant detection dog was called to the scene and alerted to an area in the bed. Samples were taken and sent to the State crime lab for analysis.

123 Williams Way is a two-story, wood-frame dwelling, facing south on Williams Way. It has a full stone-and-mortar basement and is capped with an asphalt tar-and-gravel roof. The building is heated by oil and has a 100-amp electric service, which uses circuit breakers for overcurrent protection.

The origin of the fire has been determined to be in the second-floor master bedroom, on the bed. All accidental scenarios have been eliminated. The cause of the fire has been determined to be an open flame (torch) applied to existing combustible materials (bed clothes). The fire has been determined to be incendiary.

## Scenario 2

A gas station attendant who works the midnight shift has been taking between \$10 and \$20 from the register over a period of a couple of weeks. He learns that there will be an audit of the business the next day. He planned to pay the money back, but knows he will lose his job if it is learned he has been stealing from the business. He panics and sets the gas station on fire at closing time.

## Fact Pattern

On February 11, 2002, at 0100 hours the Emmitsburgh Fire Department received a 9-1-1 call; reporting fire at 1050 Gettysburgh Way, the site of the Emmitsburg Exxon Station. Upon arrival at 0103, the first-arriving fire company's Engine 1 reported heaviest fire emanating from the first-floor "A" side of the building. Upon arrival, Chief \_\_\_\_\_ assumed command. Engine 1 made an interior attack, while Ladder 2 ventilated the building. Flames were described as bright orange with thick black smoke pouring from the front first-floor office windows. A second alarm was struck at 0109.

Arriving EMT's from Ambulance 1 treated an 18-year old white male who appeared to be suffering from smoke inhalation. He was treated and released. The individual, identified as the gas station employee Frankie Welch, stated to an EMT, "As I was locking up a fire broke out in the office in a filing cabinet."

The Emmitsburgh Fire Investigation Unit responded to the scene and began an origin-and-cause investigation. An exterior examination of 1050 Gettysburgh Way revealed heaviest fire damage to be emanating from the "A" side of the building on the first floor. An interior examination revealed all fire damage coming from the gas station office. Further examination revealed heaviest fire damage to be at a filing cabinet behind the office desk. An accelerant detection dog, "Max," was called to the scene and alerted to an area in front of the filing cabinet. Samples were taken and sent to the State crime lab for analysis. Also located in the area was a can of lighter fluid.

The driver of E-1 observed Welch coming from the back of the building. He also was heard by a first-in firefighter say "the fire just sparked up in the filing cabinet."

1050 Gettysburgh Way is a one-story concrete-and-cinder-block building facing north on Gettysburgh Way. It sits on a concrete slab and is capped with a flat asphalt tar-and-gravel roof. The building is heated by oil and has a 100-amp electric service, which uses circuit breakers for overcurrent protection.

The origin of the fire has been determined to be in the office behind the office desk. All accidental scenarios have been eliminated. The cause of the fire has been determined to be an open flame (torch) applied to existing combustible materials (paper). The fire has been determined to be incendiary.



### Scenario 3

A businessman realizes his business is failing. He cannot make his mortgage payments and has overextended his credit. He is stuck with an inventory that is not moving. He cannot pay his employees. He removes the entire inventory from the business and pours lamp oil in the electric panel. A timing device is used to give him an alibi. He has collected on insurance losses in the past.

### Fact Pattern

On March 13, 2002, at 0330 hours the Emmitsburgh Fire Department received a call from Allied Security that they had an alarm tripped at Seidel Enterprises, a surfboard specialty shop. The alarm came in at 0327. Seidel Enterprises is located at 1342 Ocean Drive, Emmitsburgh. The Fire Department responded with Engine 1 and Ladder 2.

Upon arrival at 0337, the first-arriving fire company's Engine 1 reported heaviest fire emanating from the first-floor "C" side of the building. Upon arrival, Chief \_\_\_\_\_ assumed command. Engine 1 made an interior attack and described fire in the rear of the building near the electric panel and shooting through the roof. Ladder 2 attempted to ventilate the building; however fire was through the roof on arrival. Flames were described as bright orange with thick blackish-gray smoke pouring from the roof of the building. A second alarm was struck at 0339, and a third and fourth alarm at 0341.

First-arriving company driver stated he/she saw a black Jaguar leaving the scene at a high rate of speed as they approached. He/She remembered the license plate "SURFER." Ladder 1 first-in officers described finding all windows and doors locked on their arrival. The front door had to be forced to make entrance. They further described a strong odor of gasoline in the shop as they entered. Once the fire was suppressed, crews began overhaul and found there were no surfboards or stock in the business. One firefighter stated he/she could see fire coming out of the electric panel. Once the fire was extinguished, he/she shut the main breaker off.

During overhaul, members from Ladder 2 stated there were no personal items in the office and the place appeared to be cleaned out. A second firefighter was told by the owner of ABC Cleaning Service that Seidel told him it was time for the business "to go up in smoke." He/She also had seen a U-Haul trailer in front of the business earlier that day. Seidel was loading boxes on the truck.

The Emmitsburgh Fire Investigation Unit responded to the scene and began an origin-and-cause investigation. An exterior examination of 1342 Ocean Drive revealed heaviest fire damage to be emanating from the "C" side of the building on the first floor. An interior examination revealed all fire damage coming from the storage room in the rear of the store. Further examination revealed heaviest fire damage with lowest and deepest burn to be at an electric panel in the storage closet. An accelerant detection dog was called to the scene and alerted to the electric panel. The electric panel was photographed

and subsequently removed. Samples were taken and sent to the State crime lab for analysis. Investigators also found melted candle wax in the panel.

1342 Ocean Drive is a two-story, wood-frame building facing west on Ocean Drive. The building has a poured concrete basement and is capped with a pitched asphalt tar-and-gravel roof. The building is heated by solar power and has a 100-amp electric service, which uses circuit breakers for overcurrent protection.

The origin of the fire has been determined to be in the storage area in the "C" side of the building in the first floor. All accidental scenarios have been eliminated. The cause of the fire has been determined to be an open flame applied to ignitable liquid (lamp oil). The fire has been determined to be incendiary. The laboratory has confirmed that lamp oil was found in the electric panel. An electrical inspector has determined electricity was not the cause of the fire.

## Scenario 4

A serial firesetter has set several fires in a two-block area. All of these fires are set on weeknights between 0100 and 0300 hours. All fires were set using existing combustibles and a flare. The fires are exterior and set in trash or under porches. The firesetter reads all newspaper accounts of his/her fires and enjoys outsmarting the investigators. He/She has worked as a security guard in the past and his/her goal is to become a firefighter or a police officer.

## Fact Pattern

On June 7, 2002, at 0113 hours the Emmitsburgh Fire Department received a 9-1-1 call from an individual who identified himself as Mike Dorn an off-duty security officer, reporting fire at 2096 Ot House Drive. Upon arrival at 0119, the first-arriving fire company's Engine 1 reported heaviest fire emanating from the rear "C" side of the dwelling. Upon arrival, Chief \_\_\_\_\_ assumed command. Engine 1 made an exterior attack while Ladder 2 performed rescue operations. Flames were described as bright orange with gray smoke pouring from underneath a rear porch. A second alarm was struck at 0121.

The fire was extinguished quickly. The Emmitsburgh Fire Investigation Unit responded to the scene and began an origin-and-cause investigation. An exterior examination of 2096 Ot House Drive revealed heaviest fire damage to be at the "C" side of the building, under a porch. An interior examination revealed all fire damage came from the exterior of the building and worked its way into the dwelling. Further examination revealed heaviest fire damage to be coming from underneath the porch. All fire damage could be traced to this area in a manner consistent with the natural propagation of flame, which travels up and out. An accelerant detection dog, "Dennis," was called to the scene and had no alerts in the area under the porch.

2096 Ot House Drive is a 1-1/2-story wood-frame dwelling facing east on Ot House Drive. It has a full stone-and-mortar basement and is capped with a pitched asphalt tar-and-gravel roof. The building is heated by oil and has a 100-amp electric service, which uses circuit breakers for overcurrent protection.

The origin of the fire has been determined to be in the exterior of the building under the front porch. All accidental scenarios have been eliminated. The cause of the fire has been determined to be an open flame applied to existing combustible materials (newspapers). The fire has been determined to be incendiary.

An interview with the owner revealed there are no smokers in the house. The family has not used the porch in over a week. Mr. Smith, the owner, stated he went to bed at around 2200, and saw nothing unusual.

---

**COURTROOM DEMEANOR**

---

First-in firefighters observed an ACME Security car in front of the house when they arrived. Security Officer Dorn stated he had been driving home from his shift and smelled smoke and decided to check it out. He stated he saw the rear of the building on fire and could tell by the color of the smoke it had to be newspapers on fire. Dorn said he was convinced it was arson. EMT's who responded stated they saw stacks of newspapers in the rear of an ACME Security car.

## Scenario 5

A recovering alcoholic comes home from work drunk. His wife is upset at him and takes their children and goes to a friend's house. He cannot find his wife and children. He is enraged by their absence and burns the house down using gasoline from the lawnmower and a disposal lighter to start the fire.

## Fact Pattern

On July 21, 2002, at 1653 hours the Emmitsburgh Fire Department received a 9-1-1 call from an individual who identified herself as Hollis Jones, a resident of Tri-Data Farms #8, a gated community on the south side of Emmitsburgh. Ms. Jones told the Dispatcher she was watering her plants when she saw Bob Corey, her next-door neighbor running out his front door with smoke pouring out behind him. She told the Dispatcher, "I think he burnt the house down."

Upon arrival at 1657, the first-arriving fire company's Engine 1 reported seeing #10 Tri-Data Farms fully involved with fire. Black smoke and flames were pouring out of all windows and the roof had partially collapsed. Upon arrival, Chief \_\_\_\_\_ assumed command. Engine 1 made an exterior attack, while Ladder 2 was unable to perform rescue operations as a result of the magnitude of the fire. A second alarm was struck at 1657 upon arrival, a third at 1659. Ambulance crews were called to the scene also.

Upon arrival, first-in firefighters described a white male in his early 50's wearing a tank top, jeans, and cowboy boots sitting on a lawn chair in front of the house. The man appeared intoxicated. He had a bottle of Jack Daniels in one hand and a lighter in the other that he was flicking. He was singing "burn-baby-burn." Ambulance crews observed a lawnmower on the front yard and a red metal gas container in a tree on the front property.

A firefighter from Ladder 2 overheard the 50-year old white male say "She'll never leave me again."

The Emmitsburgh Fire Investigation Unit responded to the scene and began an origin-and-cause investigation. An exterior examination of #10 Tri-Data Farms revealed heaviest fire damage to be at the "B" side of the building. Heaviest burn was coming out two windows on the first floor. An interior examination revealed fire damage throughout the first floor. The entire second floor had been burnt off. The Fire Investigation Unit observed trailer patterns throughout the first floor. As a result of these unusual patterns, accelerant detection dog, "Dennis," was called to the scene. Dennis is a 4-year old black lab. Dennis had alerts in several rooms of the house. Samples were taken and sent to the crime lab for analysis.

#10 Tri-Data Farms is a 2-1/2-story wood-frame dwelling with a brick façade, facing north on Tri-Data Farms. It has a full basement made of poured concrete and is capped

with a pitched slate roof. The dwelling is heated by gas and has a 100-amp electric service, which uses circuit breakers for overcurrent protection.

The origin of the fire has been determined to be the entire first floor. All accidental scenarios have been eliminated. The cause of the fire has been determined to be an open flame applied to an ignitable liquid "most probably gasoline." Pending lab results, the fire has been determined to be incendiary.

## Scenario 6

A college student is upset with a grade he receives. He decides to exact revenge on his professor. He searches the Internet and finds the "Anarchists' Cookbook," a book he has looked at many times in the past. He discovers a recipe that involves mixing brake fluid and Brylcream® to cause spontaneous heating. He places these items in an envelope and puts them in the professor's desk after classes. A fire occurs, and the contents of the room are destroyed.

## Fact Pattern

On May 21, 2002, at 1130 hours the Emmitsburgh Fire Department received an alarm of fire from Emmitsburgh Community College, Russo Hall. Emmitsburgh Fire Department responds. Upon arrival at 1134, the first-arriving fire company's Engine 1 reports no fire showing from Russo Hall. A check of the interior of the building showed light smoke coming from the first floor, room 107. Room 107 is Ms. Robyn Osgood's office; the drama professor. Upon arrival firefighters observe the sprinkler system had been deployed and the damage to room 107 is confined to a metal desk. There are burnt papers inside the desk.

Upon arrival, Fire Chief \_\_\_\_\_ in Car 1 determined no further fire crews would be needed. The fire remained a working fire as crews assessed damage.

Upon arrival, first-in firefighters described seeing a white male in his early 20's wearing a T-shirt and shorts, with slicked-back hair. The young man identified only as "Anthony" was smiling and carrying a backpack. He told a firefighter he dropped off an extra credit paper and saw fire spark-up from Ms. Osgood's desk.

The Emmitsburgh Fire Investigation Unit responded to the scene and began an origin-and-cause investigation. An exterior examination revealed light sooting coming from a window on the "D" side of the building. A look inside the window showed room 107.

An interior examination revealed fire damage in room 107. Further examination revealed all fire damage to be coming from the center drawer in a metal desk in room 107. An examination of the contents of the drawer revealed some burnt paper. One of the pieces of paper appeared to be an envelope. The contents of the drawer were taken as samples, and were sent to the crime lab for analysis.

Russo Hall is of cinder-block construction. It is a one-story building, designed to house classrooms. It has a full basement of poured concrete and is capped with a flat asphalt-and-gravel roof. The building is heated by electricity and has 200-amp electric service, which uses circuit breakers for overcurrent protection.

The origin of the fire has been determined to be in Ms. Osgood's desk in room 107. All accidental scenarios have been eliminated. The cause of the fire has been determined to

be the result of mixing Brylcream<sup>®</sup> and brake fluid. The fire has been determined to be incendiary.

The fire chief remembers seeing "Anthony" drop something in a trash barrel across from room 107 as he arrived on scene. Fire investigators found a can of brake fluid in the trash barrel outside of room 107.



**Handling Questions Evaluation**  
**Comments on Other Students**

Name: \_\_\_\_\_

Just answered the question. Avoided guessing.

---

---

Appeared to be neutral.

---

---

Maintained formalities.

---

---

Appeared to be honest, fair, and frank.

---

---

Admitted mistakes and corrected them.

---

---

Avoided mannerisms of speech, e.g., "I can truthfully say," "honestly" and "honest to God."

---

---

Avoided fire slang or legal buzz words without defining them.

---

---



Nonverbal communication to jury.

---

---

**Handling Questions Evaluation**  
**Comments on Other Students**

Name: \_\_\_\_\_

Just answered the question. Avoided guessing.  
\_\_\_\_\_  
\_\_\_\_\_

Appeared to be neutral.  
\_\_\_\_\_  
\_\_\_\_\_

Maintained formalities.  
\_\_\_\_\_  
\_\_\_\_\_

Appeared to be honest, fair, and frank.  
\_\_\_\_\_  
\_\_\_\_\_

Admitted mistakes and corrected them.  
\_\_\_\_\_  
\_\_\_\_\_

Avoided mannerisms of speech, e.g., "I can truthfully say," "honestly" and "honest to God."  
\_\_\_\_\_  
\_\_\_\_\_

Avoided fire slang or legal buzz words without defining them.  
\_\_\_\_\_  
\_\_\_\_\_



Nonverbal communication to jury.

---

---

**Handling Questions Evaluation**  
**Comments on Other Students**

Name: \_\_\_\_\_

Just answered the question. Avoided guessing.

---

---

Appeared to be neutral.

---

---

Maintained formalities.

---

---

Appeared to be honest, fair, and frank.

---

---

Admitted mistakes and corrected them.

---

---

Avoided mannerisms of speech, e.g., "I can truthfully say," "honestly" and "honest to God."

---

---

Avoided fire slang or legal buzz words without defining them.

---

---



Nonverbal communication to jury.

---

---

**Handling Questions Evaluation**  
**Comments on Other Students**

Name: \_\_\_\_\_

Just answered the question. Avoided guessing.

---

---

Appeared to be neutral.

---

---

Maintained formalities.

---

---

Appeared to be honest, fair, and frank.

---

---

Admitted mistakes and corrected them.

---

---

Avoided mannerisms of speech, e.g., "I can truthfully say," "honestly" and "honest to God."

---

---

Avoided fire slang or legal buzz words without defining them.

---

---



Nonverbal communication to jury.

---

---



**Handling Questions Evaluation**  
**Comments on Other Students**

Name: \_\_\_\_\_

Just answered the question. Avoided guessing.  
\_\_\_\_\_  
\_\_\_\_\_

Appeared to be neutral.  
\_\_\_\_\_  
\_\_\_\_\_

Maintained formalities.  
\_\_\_\_\_  
\_\_\_\_\_

Appeared to be honest, fair, and frank.  
\_\_\_\_\_  
\_\_\_\_\_

Admitted mistakes and corrected them.  
\_\_\_\_\_  
\_\_\_\_\_

Avoided mannerisms of speech, e.g., "I can truthfully say," "honestly" and "honest to God."  
\_\_\_\_\_  
\_\_\_\_\_

Avoided fire slang or legal buzz words without defining them.  
\_\_\_\_\_  
\_\_\_\_\_



Nonverbal communication to jury.

---

---

**Handling Questions Evaluation**  
**Comments on Other Students**

Name: \_\_\_\_\_

Just answered the question. Avoided guessing.

---

---

Appeared to be neutral.

---

---

Maintained formalities.

---

---

Appeared to be honest, fair, and frank.

---

---

Admitted mistakes and corrected them.

---

---

Avoided mannerisms of speech, e.g., "I can truthfully say," "honestly" and "honest to God."

---

---

Avoided fire slang or legal buzz words without defining them.

---

---



Nonverbal communication to jury.

---

---

**BIBLIOGRAPHY**

Bureau of Alcohol, Tobacco and Firearms. *Advanced Arson for Profit Course*, 1987.

California District Attorney's Association. *Court Proceedings*, 1998.

California State Fire Marshal Fire Investigation II-B Course Manual. *Courtroom Setting and Procedures*, 1999.

Los Angeles City Fire Department. *Guide to Courtroom Demeanor and Testimony*, 1995.

\_\_\_\_\_. *Board of Rights Manual*, 1999.

National Fire Protection Association. NFPA 921, *Guidelines to Fire and Explosion Investigations*, 1998.

\_\_\_\_\_. NFPA 1033, *Standard for Professional Qualifications for Fire Investigator*, 1993.



# **UNIT 4: TESTIMONY**

## **OBJECTIVES**

*The students will be able to:*

1. *Review appropriate techniques for:*
    - a. *Direct.*
    - b. *Cross.*
    - c. *Re-direct.*
    - d. *Re-cross.*
  2. *Recognize the sequence for questioning in a legal proceeding.*
-





## KEY POINTS TO REMEMBER WHEN TESTIFYING

The procedure for examination of witnesses:

- direct testimony;
- cross-examination;
- re-direct examination;
- re-cross examination;
- objections (when needed);
- motions (when needed); and
- stipulations (when needed).

### Attorney's Tactics

There will be two approaches, that of the prosecutor and that of the defense. The prosecutor will be your attorney, who will be soliciting the facts of the case, etc. The defense attorney may use a variety of tactics in an effort to discredit or diminish your testimony. The following chart illustrates Common Defense Tactics:

**TESTIMONY**

<b>COMMON DEFENSE TACTICS</b>			
<b>Counsel's Tactics</b>	<b>Example</b>	<b>Purpose</b>	<b>Witness's Response</b>
Condescending	Benevolent in his/her approach, over-sympathetic in questions to the point of ridicule.	To give the impression that the witness is inept, lacks confidence, or may not be reliable.	Firm decisive answers. Ask for the question to be repeated, if improperly phrased.
Friendly counsel	Very courteous, polite; questions tend to make witness feel confident.	To lull the witness into a false sense of security, where he/she gives answers in favor of the defense.	Stay alert, bearing in mind that the purpose of defense is to discredit or diminish the effect of your testimony.
Badgering/Belligerent	Counsel staring witness right in the face, shouts, "That is so, isn't it, officer?"	To make the witness angry so that he/she loses his/her sense of logic and calmness; generally rapid questioning is included.	Stay calm, speak in a deliberate voice giving the prosecutor time to make appropriate objections.
Restrictive questioning	"Did you discuss this case with anyone?"	A "no" answer places the witness in a position of denying that he/she has had pretrial conference. A "yes" answer would be used to indicate the witness has been told how to testify.	"I have discussed the case with the prosecuting attorney and other officers working on the case."
Suggestive questioning/ Leading questions	"Was the color of the car blue?"	To suggest an answer to his/her question in an attempt to confuse or lead the witness.	Concentrate carefully on the facts, disregard the suggestion, answer the question.
Demanding questioning	"Did you strike the defendant with your club?"	To prevent all pertinent and mitigating details from being considered by the jury.	Explain the answer. If stopped by counsel demanding "yes or no," wait until the court instructs you to answer in your own words.
Reversing witness's words	Witness answer: "The accident occurred 27 feet from the intersection." Counsel says: "You say the accident occurred 72 feet from the intersection?"	To confuse the witness and demonstrate a lack of confidence in the witness.	Listen intently whenever counsel repeats something you have said. If he/she makes an error, correct it.
Repetitious questions	The same question asked several times slightly rephrased.	To obtain inconsistent or conflicting answers from the witness.	Listen carefully to the question and state, "I have just answered the question."
Conflicting answers	"But, Officer Smith, Detective Brown just said, etc...."	To show inconsistency in the investigation. This tactic is normally used on measurements, times, etc.	Remain calm. Conflicting statements have a tendency to make a witness extremely nervous. Be guarded in answers on measurements, times, etc. Unless you have exact knowledge, use the term "approximately" and refer to notes/reports.
Staring	After the witness has answered, counsel just stares as though there were more to come.	To have a long pause that one normally feels must be filled, thus saying more than necessary. To provoke the witness into offering more than the question called for.	Be patient, wait for the next question.

### **Direct Testimony**

Direct testimony sets the stage for witnesses on both sides. It establishes the foundation of the case through facts, evidence, and testimony. During direct testimony, the witness is questioned regarding his or her connection to the case, evidence, facts, knowledge, hypothetical situations, or merits of the case. The questioning is usually friendly and nonstressful and experts are allowed to offer opinions. Other witnesses must stick to the facts, although often witnesses may be allowed to tell their stories as they relate to the case. Remember that the longer it takes you to answer a question, the more likely it will be that the jurors' minds will begin to wander.

### **Cross-Examination**

Cross-examination is a method to test the credibility of a witness. It follows the direct testimony by the opposing legal counsel. The cross-examination usually consists of questions that point out inconsistencies or ask you to explain vague answers. These questions are limited to the facts already testified to, although questions relevant to the case are allowed. New facts should not be brought in at this stage. The defense attorney has a job to do: raise doubt anywhere, anyway, and anyhow! If he/she succeeds, it is due mainly to the officer testifying not being prepared. It is important not to change your demeanor during cross-examination. Don't be surprised if the judge gives the defense greater leeway than the prosecution. Judges will err on the side of the defense in order to reduce the risk of reversal on appeal.

### **Re-Direct**

The re-direct occurs after cross-examination. It is done by the legal counsel calling that same witness. The questions will pertain to those brought out in the cross-examination or to clarify those in direct testimony.

### **Re-Cross**

The re-cross occurs after re-direct examination. It is done by opposing legal counsel, who asks questions to clarify what already has been testified to. The introduction of new material is not allowed.

### **Objections**

An objection is a statement made to the court opposing the admission of some testimony, form or content of a question asked, evidence, or ruling. The judge shall either overrule or sustain the objection. Overruled means you can answer, and sustained means you don't answer.

### **Motions**

A motion is an application or proposal made to the court for a ruling, decision, instruction, or action appropriate to the proceedings. The judge grants or denies the motion.

### **Stipulations**

A stipulation is a statement of agreement to, or acceptance of, facts or circumstances made by either side in the case, often regarding matters not in controversy. All stipulations are done voluntarily by either side.

### **Completion of Testimony**

Once the attorneys have finished they will state whether they do or do not have any further questions for the witness. Once excused, leave the witness stand and walk directly towards the door, unless directed to wait somewhere else. Do not nod, wave, or express emotion to anyone. Do not discuss the case or your testimony with anyone except the attorneys in the case.

## Activity 4.1

### Testimony

#### Purpose

To develop skills necessary for appropriate courtroom demeanor and to communicate effectively in a legal proceeding.

#### Directions

1. The instructor will select four to five students, one at a time, depending on time.
2. Those selected will be assigned one of the following **Case Synopsis** sheets and allowed 10 minutes to become familiar with it.
3. Each student will come up to the front of the class, be sworn in, and asked the following questions:
  - a. What is your name?
  - b. Spell your name.
  - c. For whom do you work?
  - d. What is your title/rank?
  - e. How long have you been in that capacity?
  - f. How many fires have you fought?
  - g. For how many fires have you determined the origin and cause?
  - h. How many hours of firefighting education have you had?
  - i. Have you ever written an article regarding the fire service? If yes, what is it?
4. Then each student will be asked questions specific to his/her case synopsis.



**Activity 4.1 (cont'd)**

**Case Synopsis #1**

**Setting:** Utility room/Workshop  
Single-family dwelling

**Address:** 18044 Morgan Street

**Time of Alarm:** 1723 hours

**Building Owner:** James W. Hunter and Laura S. Hunter  
1255 Green Acres Place  
Memphis, Tennessee

**Occupant:** Laura S. Hunter

**Weather:** 80°F, cloudy

Background as reported by first responder:

Ms. Hunter reported that she had just moved into the dwelling less than a week ago. It was previously a rental property owned by the Hunters. Most of her furniture had not been delivered at the time of the fire. She further advised that her estranged spouse was the hold up on her receiving the furniture as they were in the midst of divorce proceedings.

Ms. Hunter advised that she had sent her two children out to play while she fixed sandwiches for them. A few minutes later, while doing laundry, one of her children started to cry and she went outside to check on the child. While out of the residence, she heard what she thought was an explosion. She looked toward her residence and saw flames issuing out of the door nearest the kitchen.

Fire department dispatch reported that the initial call was from a Leslie Dean, who lives next door, reporting what sounded like a small explosion coming from the house next door.

**Case Synopsis #2**

**Setting:** Shorthand and Associated  
Fire Codes/Ordinances Consultants

**Address:** 12639 Horizon Street

**Time of Alarm:** 2130 hours

**Building Owner:** Thomas R. Wilson  
10 Deep Powder Trail  
Montage, California

**Weather:** 85 °F, clear with light breeze

Background as reported by first responder:

A passing motorist reported fire via cellular phone to 9-1-1.

Mr. Wilson stated that he closed the office at approximately 1715 hours. His routine was to check all doors and windows. He set the security system that had been installed recently due to a rash of burglaries in the area. Mr. Wilson was alerted to the incident by the security firm with which he has a contract for this service.

Mr. Wilson stated that he had the petty cash box with him. He always removed the petty cash each day and made a night deposit daily. He could not give the first officer on the scene any information on how the fire may have started.



**Case Synopsis #3**

**Setting:** Living room  
Single-family dwelling

**Address:** 17255 Chestnut

**Time of Alarm:** 2130 hours

**Building Owner:** Paul A. Many and Donna Lee Many  
17255 Chestnut  
Middlebury, Vermont

**Occupant:** Owner

**Weather:** 7°F, clear

Background as reported by first responder:

Mrs. Many stated that she had left home at 1800 hours to visit with friends for the evening while her husband remained at home watching television after working a 12-hour shift.

A neighbor, Mr. Matt Martin, was outside walking his dog at about 2125 hours and witnessed fire issuing from the Many residence. Mr. Martin went to investigate and discovered Mr. Many delirious at the side of the house. Another neighbor called 9-1-1 and reported the fire.

Responding units arrived on the scene at the same time as Mrs. Many was returning home. She advised the first-arriving officer that Mr. Many was a heavy smoker. Mr. Martin advised the first officer that both occupants, while good people, were very sloppy and kept a very messy house.

**Case Synopsis #4**

**Setting:** Bar  
Located in business district

**Address:** 14237 Parker Street

**Time of Alarm:** 0416 hours

**Occupant:** The Tavern  
Fred Whitcomb--proprietor

**Building Owner:** Michael F. Piel  
1050 Harvard Street  
Fairfield, Maryland

**Weather:** 80 °F, cloudy

Background as reported by first responder:

No occupants were present at the time of discovery.

The paper carrier noticed fire issuing from the building during his daily rounds and dialed 9-1-1.

Mr. Whitcomb stated that he had closed the bar at 0100 hours as required by law. After cleaning the bar, he departed at about 0215 hours. All seemed normal when he left. All windows and doors were closed and locked. Mr. Whitcomb advised he arrived at his residence, which is about 20 minutes away, at 0245 hours.

Mr. Whitcomb reported that he thought the insurance on the bar and contents was \$200,000. Little stock was found in the bar area. When questioned, Mr. Whitcomb stated that except for open bottles, all stock was kept in a storeroom. All money was removed on a daily basis.

Mr. Whitcomb stated that one of his regular patrons had been ejected from the bar for drunk and disorderly conduct earlier in the evening. He was rather agitated, verbally abusive, and stated at one point that "I'll get you for this." His name is Mr. Frank Davis, address unknown to Mr. Whitcomb.

**BIBLIOGRAPHY**

California District Attorney's Association. *Court Proceedings*, 1998.

Federal Law Enforcement Training Center. *Courtroom Testimony*, 1990.

Los Angeles City Fire Department. *Guide to Courtroom Demeanor and Testimony*, 1995.

\_\_\_\_\_. *Board of Rights Manual*, 1999.

Los Angeles City Police Department. *Orientation to Courtroom Proceedings*, 1999.

National Fire Protection Association. NFPA 921, *Guide for Fire and Explosion Investigations*, 2001.

\_\_\_\_\_. NFPA 1033, *Standard for Professional Qualifications for Fire Investigator*, 1998.



**APPENDIX**  
**SUBPOENA FORMS**



**TESTIMONY**

---

OA088 (Rev. 1/94) Subpoena in a Civil Case

**Issued by the  
UNITED STATES DISTRICT COURT**

DISTRICT OF \_\_\_\_\_

**SUBPOENA IN A CIVIL CASE**

V.

\_\_\_\_\_ Case Number:<sup>1</sup>

TO:

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

---

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

---

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE

DATE AND TIME

---

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

---

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

**TESTIMONY**

---

OAO88 (Rev. 1/94) Subpoena in a Civil Case

---

**PROOF OF SERVICE**

DATE

PLACE

**SERVED**

SERVED ON (PRINT NAME)

\_\_\_\_\_  
MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE  
\_\_\_\_\_

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER  
\_\_\_\_\_



Rule 45, Federal Rules of Civil Procedure, Parts C & D:

**3) PROTECTION OF PERSONS SUBJECT TO**

**SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to comply production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend

trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in who behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.



**TESTIMONY**

---

OAO89 (Rev. 7/95) Subpoena in a Criminal Case

**UNITED STATES DISTRICT COURT**

DISTRICT OF \_\_\_\_\_

**V.**

**SUBPOENA IN A  
CRIMINAL CASE**

Case Number:

TO:

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below, or any subsequent place, date and time set by the court, to testify in the above referenced case. This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

PLACE

COURTROOM

DATE AND TIME

---

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

U.S. MAGISTRATE JUDGE OR CLERK OF COURT

DATE

(By) Deputy Clerk

ATTORNEY'S NAME, ADDRESS AND PHONE NUMBER: \_\_\_\_\_

**TESTIMONY**

---

OAO89 (Rev. 7/95) Subpoena in a Criminal Case (Reverse)

RECEIVED BY SERVER		DATE	PROOF OF SERVICE		PLACE
SERVED		DATE			PLACE
SERVED ON (PRINT NAME)			FEES AND MILEAGE TENDERED TO WITNESS		
			YES	NO	
			YES	NO	AMOUNT \$ _____
SERVED BY (PRINT NAME)			TITLE		
			_____		
<b>DECLARATION OF SERVER</b>					
I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.					
Executed on		DATE	SIGNATURE OF SERVER		
			ADDRESS OF SERVER		
			_____		
ADDITIONAL INFORMATION					