

"IN AND ABOUT THE COURTROOM"

This material was published and appeared as the feature article in Volume 3, No. 2 and No. 3 of the District Attorney Law Enforcement Quarterly.

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NCJRS

APR 02 1978

ACQUISITIONS

PREFACE

It is my sincere hope that the material contained in this information booklet, which I compiled, edited, and distributed as material for my courses taught at Grossmont College, will offer some direction to the inexperienced, serve as a quick reference for the experienced who are presently ready, willing and able and perhaps ignite the interest of all the uninterested in between.

FRANK R. COSTA

## TABLE OF CONTENTS

	Page
INTRODUCTION	
TESTIMONY	1
Definition of Testimony	1
Weight of Testimony and Witness Credibility	1
DUTIES OF OFFICER BEFORE TESTIFYING	2
Preparation of Testimony	2
Pre-Trial Consultation with Prosecuting Atty.	2
Promptness	3
Attire	3
Demeanor in the Courtroom	4
TESTIFYING IN COURT	5
Types of Examination	5
Manner of Response	5
COMMON TACTICS OF THE DEFENSE	7
Techniques of Defense Attorneys	7
Techniques of Questioning	7
SOME SPECIFIC SITUATIONS	9 - 22
SUGGESTIONS FOR UNIFORM FORMALITY OF COURTS AND COURTROOM ETIQUETTE	23 - 26
BIBLIOGRAPHY	26

### INTRODUCTION

Even though you are accustomed to working in full view of the public by the very nature of your work, none of your many tasks will subject you to closer scrutiny than your appearance, demeanor and testimony as a witness in court. Your primary responsibility as a witness is to relate objectively information which you may have pertaining to the case at trial.

The manner and thoroughness with which you present relevant information for consideration by the judge or jury is extremely important and can affect the outcome of the trial, the future of the defendant and the opinions of the public toward law enforcement.



## TESTIMONY

### Definition of Testimony

Testimony is defined as "evidence given by a competent witness under oath or affirmation." Evidence may be given orally during a trial by a witness or before the trial in the form of an extra-judicial affidavit or deposition. An affidavit is a written or printed declaration or statement of fact, made voluntarily and under oath or affirmation. A deposition is a declaration made by a witness in the presence of the parties to the action (not in court) with the rights to confront and cross-examine witnesses preserved. Other written documents such as statements, admissions, confessions and photographs are considered to be "exhibits" and the oral testimony which establishes their validity is extremely important. Physical evidence is the most valuable type of evidence, of course, but even it cannot speak for itself; it must be properly introduced and identified by oral testimony so that the judge or jury can determine how and where it was located and its materiality to the case.

Although oral testimony is considered the least authentic type of evidence, the vast majority of the evidence used to determine guilt or innocence of a person involves a presentation of oral testimony to the court by a police officer or other person.

### Weight of Testimony and Witness Credibility

The "weight" given any person's testimony is determined by the extent it is believed by those who are listening to it. Although every witness is required to swear or affirm the truth of the statements he is about to make as a witness, judges and jurors invariably consider many factors other than what they hear from the witness stand. In fact, the impression of credibility or truthfulness made by the witness upon the jurors is frequently a determining factor in the outcome of the trial. For instance, a juror may consider the lack of bias or prejudice, the impersonal attitude or even the physical appearance of a witness. Only when all the members of the jury are convinced that a witness has told the truth and related the facts as they existed can a witness' testimony be considered to have been credible.

The credibility of a witness also depends to a large extent on his attitude and sincerity in testifying before the court. Your authority and stature as a police officer within the community are often factors which affect your credibility and the weight of your testimony; the judge, jury and observing citizens tend to form opinions of all members of a police department based upon the manner in which a single officer testifies. For many jurors, their experience in court is their only contact with the police and uncorroborated testimony of one police officer, if it is of sufficiently high credibility, may be enough to offset the combined testimony of a number of defense witnesses.

## DUTIES OF THE OFFICER BEFORE TESTIFYING

You are aware that you may be asked to give testimony at the trial of any person whom you have arrested or with whom you have been officially involved as a witness or investigator. The prosecution phase of the criminal justice system is as important as is the arrest or investigation needed to bring the suspect before the court. You should, therefore, be cognizant of your future role as a witness, as early as the time you first receive notification of the commission of a crime. The actual preparation of a case for prosecution begins with the initial action taken by the first officer involved in the case. Therefore, all pertinent details of an offense should be recorded in the appropriate police report or in your notebook to minimize problems of recollection which might occur months or even years later when the case goes to trial.

### Preparation of Testimony

The feelings you experience when testifying in court can be roughly compared to those felt by an actor on the stage, in that you may justifiably feel that you are the center of attention, that all eyes are upon you and that the judge, jury and courtroom spectators are all judging your competence by the manner in which you perform while on the witness stand. For these reasons, many new officers suffer varying degrees of "stage-fright" while testifying.

Although only experience in testifying will relieve the tension that an officer may feel before and during his courtroom presentation, adherence to basic techniques will contribute to a calm and collected recital of the facts and will help to reduce the possibility of an improper verdict based upon consideration other than the evidence. For example, before testifying in court, you should refresh your memory of the incident about which you are to testify by becoming thoroughly familiar with all the notes and reports concerning the case. As complete a recollection of your part in a case as possible will prepare you to face the court and jury with more confidence and will enhance your ability to give logical answers to questions and to make intelligent explanations which will strengthen the prosecution's case.

### Pre-Trial Consultation with the Prosecuting Attorney

When you are subpoenaed as a witness in court, you should always attempt to contact the prosecuting attorney before the trial begins to advise him of the testimony you are prepared to give. Frequently, in serious cases or in jury trials, the memorandum of subpoena itself will contain a notation requesting such a conference. Although a pre-trial conference can consist of only a short conversation in the case of a minor traffic citation, it can also involve a long interview with the prosecuting attorney in which strategy of the prosecution is discussed. Some officers occasionally feel that they know more about the way a particular case should be handled in court than the prosecuting attorney because of their long experience as policemen, their intimate knowledge of the case or defendant or some other consideration. This sometimes results in non-responsive answers to the prosecuting attorney's questions or lengthy, unwanted explanations which can adversely affect the strategy of the prosecution. For this reason, you should never try to direct the activities of the prosecuting attorney either in the pre-trial consultation or during the courtroom presentation of the case.

You have the right to discuss the case and your prospective testimony with the prosecuting attorney before the trial and to assist in preparation of the case in conjunction with your appearance as a witness in court. The law has firmly established the right of an officer to refresh his recollection before testifying by reading written reports or notes pertaining to the case, provided that such written material was recorded by him or under his direction at a time when the incident was fresh in his memory and the notes or reports are a true recapitulation of the facts. Occasionally, however, some officers have found it embarrassing to admit in court that they have refreshed their memory of the incident by reading the police report. An attempt at evasion of a question by the defense attorney on this subject can raise suspicion of collusion between the officer and the prosecuting attorney and severely damage the officer's credibility. Do not hesitate to admit to having discussed the case with the prosecuting attorney. It is a well-established fact that no attorney would present a witness without first determining what the witness' testimony will be.

### Promptness

Following the pre-trial conference, the prosecuting attorney will formulate the strategy of his case, determine the sequence of the witnesses whose testimony he desires to use and inform you of the time he anticipates calling you as a witness. Your appearance in court at the appointed time is extremely important. In fact, it is possible that tardiness could cause the entire case to be delayed or dismissed, particularly if the testimony of other witnesses would be inadmissible until your testimony has been heard. For this reason, be prompt. If you are unavoidably delayed or cannot appear as directed by the prosecuting attorney, telephone him at his office before the trial begins or, if the trial has already started, notify the court clerk by telephoning the Criminal or Traffic Court Clerk's Office and requesting to speak with the clerk of the particular court.

### Attire

Adherence to a few simple rules concerning proper attire can improve and possibly affect the outcome of the trial. If you appear in uniform, make sure that it is clean and well-pressed, that your personal appearance is neat and that your leather equipment and shoes are shined. You should always wear your gunbelt when appearing in court in uniform, but should avoid all actions which would direct attention to your service revolver, since these can result in emotional accusations by the defense attorney that you are coercing or tainting the impartial atmosphere of the courtroom. Do not wear the gunbelt loose around your waist in the tradition of the western cowboy; remember that you are representing the entire Department to the jurors and spectators and that any sloppiness will reflect not only on your credibility but also on the reputation of the entire Department.

If you are planning to testify in civilian clothes, be sure your attire conforms with the conservative dress style required by the Department of Plainclothes Officers. Do not wear loud sport jackets or vests, bright colored or bold-striped dress shirts or the new, extreme "mod" fashions. The use of gaudy accessories such as heavy identification bracelets or watchbands and extremely large or colorful tie clips and cufflinks should also be avoided. Do not wear fraternal emblems in your coat lapel. Even though your motives and affiliations are completely honorable, the outcome of the case could conceivably be affected by the prejudice of a single juror toward your organization, or the thought

in a juror's mind that you are wearing the pin to gain sympathy from other persons on the jury who belong to the same organization. When attending court in civilian clothes, weapons, handcuffs and cartridge cases should be kept concealed as much as possible.

Finally, maintain a military bearing the entire time you are "on display." Outside the courtroom, avoid standing with your hands in your pockets, slouching, leaning on walls or wearing your hat cocked back on your head. When inside the courtroom, sit erect in your seat and remain attentive to the conduct of the trial. Do not chew gum, eat candy, or smoke inside the courtroom, even while court is not in session.

Although the above comments relate to policemen, the same principles and suggestions are applicable to policewomen.

Demeanor in the Courtroom

Consult with the prosecuting attorney if possible before entering the courtroom where the case is to be tried. It is conceivable that he does not wish you to be seen by the defense attorney or jury until a particular phase of the trial has been reached. In some cases, the strategy of the prosecution's case will be predicated upon your arrival as a surprise witness. Once inside the courtroom, be seated and limit your conversations with the prosecutor, since evident attempts to speak with him may disrupt his train of thought. Moreover, whispered conversations are extremely noticeable to both jurors and spectators and may give the impression that a conspiracy exists between you and the prosecuting attorney. If you feel it is necessary to communicate with the prosecuting attorney, write a short note and place it on his table at a time when it will not distract from the events of the trial.

Maintain your composure when blatant lies are related from the witness stand by the defendant or defense witnesses. Many cases have been lost because of grimaces, groans or audible sighs by officers present in the courtroom. A reverse reaction is also dangerous, and smiling or laughing at a fabricated story or ludicrous actions of the defendant may similarly result in a reversal of sympathy by the jury from the officer to the defendant.

If, before testifying, you are ordered by the judge to leave the courtroom because a motion to exclude witnesses has been granted, rise and briskly walk outside, without visible reaction of displeasure or annoyance. While you are waiting in the hallway outside the courtroom, conduct yourself as a professional police officer. Avoid taking part in noisy conversations and do not discuss the case with anyone, not even other officers. Remember that other persons in the hallway may possibly be defense witnesses and that it is not an uncommon defense tactic to ask officer-witnesses who have been waiting to testify outside the courtroom if they spent their time "getting their stories together" or rehearsing their testimony. Remain immediately available to the court and if you find it necessary to leave for a moment, notify the bailiff without entering the courtroom.

## TESTIFYING IN COURT

### Types of Examination

Your testimony in court usually consists of answers to questions directed to you by the prosecutor and defense attorney, for the purpose of bringing before the court and jury any knowledge you may have concerning the case at trial. Occasionally, you will be asked to give a narrative account of your observations or actions relating to the incident. You may be required to testify during any or all of four phases of examination discussed on the next page.

Direct Examination. For the officer-witness, this consists of responses to questions directed by the prosecuting attorney.

Cross-Examination. Following the direct examination of a witness, the opposing attorney is granted an opportunity to re-question the witness on all testimony he gave while under direct examination. In the case of an officer testifying for the prosecution, all cross-examination would be conducted by the defense attorney.

Redirect and Re-Cross Examination. Immediately following cross-examination, the prosecution has an opportunity to again question his own witness to clarify certain points brought out by his witness' testimony during cross-examination. Another opportunity is also provided to the defense attorney to question the witness further regarding his testimony during redirect examination. During the presentation of the prosecution's case, the defense attorney is always given the last opportunity to question a prosecution witness.

Rebuttal Evidence Examination. After the presentation of all evidence by both the prosecution and the defense, the prosecuting attorneys are given an opportunity to present witnesses to explain, repel, counteract or disprove facts which were given in evidence by the defense.

### Manner of Response

You should respond to all questions in a normal voice, loud enough to be heard by both opposing attorneys and the judge, jury and court reporter. You should direct your testimony to the trier of fact, that is, to the jury during a jury trial and to the judge in all other cases. Many officers have difficulty in this regard, since it seems somewhat unnatural to be asked a question by one person and to direct the answer to someone else. However, it should be remembered that the trier of fact bears the ultimate responsibility for the verdict and will therefore be the most interested in the testimony presented.

Probably because a policeman is already convinced of the defendant's guilt, there is occasionally a noticeable antipathy between an officer and the defense attorney. This sometimes results in grudgingly given answers to defense attorney's questions or in an attempt to evade testifying to anything which might be advantageous to the defendant's case. The natural response of the jury to such an attitude by the officer is to assume prejudice or bias on his part. You should, therefore, remain completely impartial in the manner in which you testify, even if you are baited by the defense attorney. Answer all questions courteously and address both attorneys as "sir" while you are on the witness stand. Avoid

brusqueness or an unfriendly attitude toward the questions asked by the opposing counsel. If an answer to a question will benefit the defendant, it should be given freely, for it tends to impress the jury with your honesty and impartiality and will improve the credibility of your other testimony.

In some cases, notably minor traffic violations and cases in which your pre-trial consultation has not been thorough, the prosecuting attorney will ask that you narrate a certain sequence of events. Usually, however, if you have correctly informed the prosecutor of all of the testimony you are prepared to give, he will have prepared, at least mentally, a list of questions designed to best elicit your testimony.

Do not make the mistake of second-guessing the prosecuting attorney, "helping" him by a non-responsive answer or allowing prejudicial information such as the defendant's criminal record to enter the record in order to damage the defense case. Although your remark might well have such a temporary effect upon the jury, you might easily ruin the prosecuting attorney's strategy or cause the case to be declared a mistrial. Answer the questions that are asked, but do not volunteer information. Do not engage in a battle of wits with the defense attorney by attempting to lead him towards a question, the answer of which would indicate the guilt of the defendant; this is the prosecutor's job.

All answers should be given in a simple and straightforward manner. Do not use slang, cumbersome or technical language or police radio codes which might confuse the judge or jury. If asked to repeat a particular profane or obscene comment made to you by the defendant, do not attempt to evade the request on the pretense of personal embarrassment. Although the jurors may be shocked by such language, they will certainly be unfavorably impressed by an officer who claims to be too embarrassed to repeat the epithet.

If questions are asked by the defense attorney which seem misleading, inappropriate or improper, pause for a moment before answering to give the prosecuting attorney time to object. If no objection or comment is made by the prosecuting attorney or judge, you must assume that the judge is in accord with the propriety of the question and must answer it.

Although you should take time to think before answering questions by either attorney, insure that your hesitation is not disproportionate for one's side. If your testimony is delivered rapidly during direct examination and hesitantly during cross-examination, an accusation may arise that you and the prosecuting attorney rehearsed your testimony from a script, or that your answers are fabricated.

Should you make an honest mistake in testifying while on the witness stand, readily admit it and make the necessary correction as soon as possible. If questions are asked which are unclear, confusing or complicated, ask that they be repeated until you are sure you understand. If you are asked a question and you don't know the answer, say so; don't equivocate or attempt to guess at the answer. Remember, your first duty when testifying in court is to be truthful.

Finally, leave when you are excused by the judge. You may be extremely interested in the outcome of the case, but remaining in court after you are no longer needed may convince the jury that you are personally involved in an attempt to convict the defendant or are attempting, by your presence to coerce the jury into finding the defendant guilty.

## COMMON TACTICS OF THE DEFENSE

### Techniques of Defense Attorneys

Techniques of defense attorneys may be classified within two major categories: the "friendly" approach and the "hostile" approach. The attorney who uses the friendly approach to opposition witnesses is usually more skillful and feels he does not need to resort to emotionalism or histrionics to win his case. He will compliment or praise the officer-witness for his powers of observation, investigative talent or bravery and will politely but thoroughly inquire into many small details which make up the officer's testimony. Then, at the conclusion of the testimony--frequently after the officer has been excused--he will painstakingly point out the many inconsistencies in testimony by the prosecution witnesses. He will attempt, by logical reasoning, to lessen the credibility of the prosecution witnesses and to establish in the minds of the jury the "reasonable doubt" which requires acquittal of the defendant.

The attorney who uses the "hostile" approach depends to a great extent on his acting ability to impress jurors and to berate or brow-beat witnesses. He may accuse an officer of bias or prejudice towards the defendant, brutality or a personal desire to see the defendant convicted. The hostile approach is frequently self-defeating and can result in swaying the sympathy of the jury from the defendant to the officer, especially if an officer remains calm and courteous in the face of shouting or other emotional outbursts displayed by the attorney.

Many variations or combinations of the hostile or friendly techniques are used with great success by defense attorneys. Some attorneys will attempt to gain juror sympathy by pretending to be inept or unfamiliar with the techniques of criminal trial. Some will begin questioning a witness very politely and then "explode" and attack the witness' veracity and make every effort to confuse him. An attorney who uses this technique is to avoid challenging minute portions of a witness' testimony while he is on the stand and then later make cynical or sarcastic remarks to the jury concerning the witness' "unshakable but patently false" testimony.

Since judges and jurors are but human beings like ourselves, it is obvious that the transparency of the above techniques will be noticed and considered along with the testimony and other evidence presented during the trial. However, the officer should be extremely careful not to prejudice the jury himself by responding in kind to the dramatics or emotionalism exhibited by a defense attorney.

### Techniques of Questioning by Defense Attorneys

The styles of questioning of witnesses by defense attorneys can also be categorized. Although most questioning by defense attorneys is designed solely at eliciting the truth of the witness' statements, some techniques of questioning are designed to cast doubt upon a witness' veracity, to reduce his credibility even when his testimony is unshakable or to provide the defense with additional factors which may aid the defendant.

For instance, a question previously asked and answered may be subtly rephrased and asked again and again until a response which conflicts with the first answer is received. Or, in an effort to shake the witness' confidence in his own observations, questions are asked which begin with "Isn't it possible..." The intent of such questioning is to confuse the witness and have his statements misinterpreted. In the latter case, remember that almost anything is possible and the jury is not interested in your interpretation of the facts but only in your recollection of them. However, if you can justify saying that the defense attorney's misinterpretation is impossible, do so but be prepared to defend your logic.

Occasionally, incomplete questions are asked in hope that the witness' answer will provide the defense attorney with information with which to impeach the witness' testimony or give the jury an incorrect understanding of the facts. "Staring" is also used by some defense attorneys to silently request elaboration of an answer by a witness, when in fact the question had been properly answered and no elaboration is necessary. Misleading or twisted questions are also asked of an officer-witness in an effort to incorrectly rephrase the officer's statements into a question. Such questions usually begin "Isn't it true that you said that...," and are intended to require the officer to repeat what he has previously said in the hope that inconsistencies will occur in his statement.

During cross-examination, a defense attorney is permitted to use "leading questions"; that is, questions which instruct the witness how to answer or put words into his mouth to be echoed back. Officers should be especially watchful for this technique and should carefully evaluate the question before responding.

In addition, questions may be asked in rapid succession or phrased so complexly that a simple answer is impossible. This type of questioning is sometimes followed by a demand by the defense attorney that you answer the question "Yes" or "No." When this occurs, inform the defense attorney that you do not understand the question or that you feel that it cannot be answered "Yes" or "No" and that you must explain your answer.

## CONCLUSION

Probably the most important guidelines you must remember concerning your appearance in court as a witness are that you stay alert, exhibit professionalism, impartiality and truthfulness in your testimony and maintain your composure regardless of provocation.

The defense attorney, unlike the police officer or judge, has no duty to be fair and impartial during the trial. His primary responsibility is to his client and he may employ trickery or any other device which is acceptable under the procedural framework of the criminal justice system. Although an officer may occasionally feel that he or the Department is on trial instead of the defendant, he must remember that, in the majority of cases, the defense attorney is simply trying to use all the means at his disposal to secure a favorable verdict for the defendant. The adversary system used in the criminal courts is designed to ensure that all trials are conducted with fairness to both the prosecution and the defense and that each defendant is afforded every opportunity to clear himself of the charge for which he is on trial.

In the interests of justice, virtually every personal liability of an officer-witness is considered fair game for attack by the defense attorney in his effort to free the defendant. Your length of police service, your ability to recall events as well as statements you have made, your impartiality toward the defendant and many other factors are all valid subjects of investigation by the defendant's attorney.

Only experience in testifying will provide you with the ability to testify smoothly and confidently on the witness stand, but an understanding and application of the principles of proper testifying in court will enable you to perform this important role completely and with credit to both yourself and the police service.



A witness has a right to expect courtesy and respectfulness. In turn, it would seem that the same attitudes should be manifested by the witness.

A. ON WITNESS STAND

1. Act Natural
  - a. Your first few times may be difficult but you will get over it.
  - b. Try to watch and copy officers that do well on the stand.
2. Look at the jury while answering some questions and during narrative.
  - a. But do not look at them to answer every question.
3. Answer questions with either: "yes," "no," "I don't know," "I don't remember" or in a narrative form, etc.
  - a. Don't be evasive or exaggerate.
  - b. Don't preface every answer with "as best I recall." This places doubt on your recollection.
4. While on the witness stand keep your hands on the table, not up by your face.
  - a. Sit erect.
5. Don't volunteer--it gets you into deep water and makes it easy for defense attorney to impeach you.
  - a. The attorney is often trying to get you to say certain things he and the jury know you don't recall. On argument he argues that you were caught fabricating which obviously substantially hurts the case.
  - b. Therefore, simply listen to the question and answer accordingly.
6. Be completely candid and honest.
7. Know your notes before trial.
  - a. But if you cannot recall certain aspects refer to them.
    - 1) The jury knows you cannot remember every detail so do NOT pretend you can.
8. Never show any anger or hostility against the defendant or his attorney.
9. Never comment on the admissibility of evidence.
  - a. Some officers are overly concerned with this and as a result comment on hearsay while on the stand. Simply answer the questions and let the prosecutor try the case.
10. Don't change your testimony.
  - a. Some officers get into a bind and change their testimony to suit the questions being asked.
    - 1) The ramifications here are obvious.
  - b. If you see an error in diagram, tell the prosecutor but do not volunteer the change in court unless circumstances necessitate such a course of action.
11. In jury cases particularly, your diagram of the scene should be completely accurate.
  - a. If you do not recall the area and the defendant does, this weakens your testimony and recollection.

- A. 11. b. It is best to have the diagram drawn prior to entering the courtroom.
12. Be able to change M.P.H. to feet per second.
13. Be able to do the coordination tests yourself.
14. Know the width of the courtrooms, length of average car, etc.
- a. Know how many feet in one-tenth of a mile.
  - b. At Counsel Table
    - 1) Don't joke with prosecutor.
      - a) Jurors get feeling no one is serious about the case therefore, they will not be either.
    - 2) Do not continually whisper to the prosecutor while testimony is being taken.
      - a) Use a note pad.
  - c. Outside Courtroom
    - 1) If it is not a good case, tell the prosecutor before trial.
      - a) Don't try to cover up a bad case. This will ruin a jury panel for subsequent trials if we go to trial on a bad case.
    - 2) If facts occurred (good or bad) that are not on the arrest or supplemental or "153," tell the prosecutor before trial.
    - 3) If another witness is absent or has not yet arrived etc., let the prosecutor know, but do not yell it out as the defense attorney may be standing there.
    - 4) Don't take saps or billies into courtroom and don't wear sunglasses.
  - d. In the Field
    - 1) Write out reports as soon as possible--accurate and complete.
      - a) Remember cases often do not go to court for one year.
      - b) Some officers have the same name, so include badge numbers of all officers involved.
        - (1) This includes arrest reports, supplemental and tickets.
        - (2) Relative to traffic violations--if time permits--draw a diagram on the back of the ticket at the time the ticket is given and write down important facts.
        - (3) Many officers feel that the job is complete after the arrest. This is grossly erroneous. The job is NOT completed until after the case is presented in court.

The purpose of a trial is to rebuild the facts of a criminal act so the accused can be judged.

#### Technical Language and Slang

Comments: Technical terms and slang are not always understood, hence, witnesses should use good English. A clear, firm "Yes Sir" or "No Sir" answer is generally desirable and convincing.

When asked, "Was he drunk?" an answer, "He was drunk." is more effective than, "He was 'stinking drunk.'"

If a technical term or slang was mentioned, the witness should explain what he meant by the term. It was considered better practice to avoid slang, terms of exaggeration, flip answers, sarcasm or wisecracks.

### Changing from Examination to Cross-Examination:

Comments: When the witness stays on the stand for cross-examination it indicates he knows his business. If he seems anxious to leave, the defense attorney may say (in a loud voice), "Just a minute \_\_\_\_\_, we have a right to cross-examine you." This is calculated to infer to the jury that the witness is trying to get away and not tell all of the story-- that he may have something to hide which may be favorable to the defense.

Generally, a well-trained or experienced witness gets much better treatment on cross-examination than one who has neither training nor experience. A good defense attorney often states "No questions," and not cross-examine the witness who is very sure of himself. The attorney knows that further questioning of a skilled police officer witness may do even more damage to his client. This has been particularly true when the witness has been qualified an expert witness on a particular subject.

The direct examination is usually very peaceful and routine. Immediately after the direct examination--the defense attorney cross-examines the witness. The purpose of the cross-examination is to weaken and disprove the case of the prosecution; therefore, the witness can expect a searching cross-examination and testing of his knowledge of the case.

When the questioning shifts from direct examination to cross-examination, the witness should not visibly brace himself for the anticipated onslaught.

Without realizing it themselves some veteran officers are eager and positive in their testimony when questioned by the prosecuting attorney and without knowing it will assume a hostile and belligerent attitude towards "the enemy" in the form of the defense attorney. Needless to say, this change of attitude implies prejudice to a court and jury.

### Creating Emotional Stress:

Comments: Persons who are angry or emotionally upset may not think as clearly as when they are calm. It is upon this premise that some attorneys proceed to needle, coerce, intimidate, accuse, harass and belabor a witness to produce emotional stress. The objective is to disprove previous testimony, confuse the witness, and to discredit him in the eyes of the judge or jury.

Calmness, composure and courtesy toward an offensive attorney is the thing he wants least of all, and it is a sure way to turn the tables on him. Meeting the badgering type of cross-examination with dignity and courteous answers often begets a dislike by the judge and jury for the discourteous, offensive attorney.

This also requires the witness to know his case and be wary not to become tricked into making unsure statements. Some of these "trick" questions will follow.

### Referring to Notes:

Comments: Necessary notes may be brought to the stand for reference. These may be examined by counsel.

## GENERAL PRINCIPLES OF TESTIMONIAL EVIDENCE (See Evidence Code for Exact Languages)

### Testimony confined to personal knowledge.

A witness can testify of those facts only which he knows of his own knowledge; that is which are derived from his own perception, except in those few express cases in which his opinions or inferences, or the declarations of others, are admissible.

### When witness may refresh memory from notes.

A witness is allowed to refresh his memory respecting a fact, by anything written by himself, or under his direction, at the time when the fact occurred, or immediately thereafter, or at any other time when the fact was fresh in his memory, and he knew that the same was correctly stated in the writing. But in such a case the writing must be produced, and may be seen by the adverse party, who may, if he chooses, cross-examine the witness upon it, and may read it to the jury. So, also, a witness may testify from such a writing, though he retain no recollection of the particular facts, but such evidence must be received with caution.

### Nonresponsive answer of witness may be stricken on motion.

When, in the trial of any suit, the answer of the witness is not responsive to the question, a motion to strike the answer may be made by either party.

### "Impression" or "Beliefs"

A witness may testify to his "impression" or "belief" provided in using these terms he means that he is testifying to an inferior quality of observation or memory. If he means by these terms, lack of original observation, then he may not so testify.

### Refreshed Recollection

A witness may revive his recollection by anything written by him, or under his direction, at the time when the event occurred, or immediately thereafter, or at any other time when the event was fresh in his memory.

### Transcript of Former Testimony

A transcript of the testimony given by a witness before a grand jury may be used to revive his recollection.

### Past Recollection Recorded

In order for a witness to testify to past recollection recorded, the memorandum must have been made at the time of the occurrence of an event, or immediately thereafter, or when the occurrence was fresh in his recollection.

### Admissibility of Written Memorandum

A written memorandum properly used to revive present recollection is not admissible in evidence in behalf of the party producing the witness.

## SPECIFIC SITUATIONS

### An Objection is made:

Comments: Stop talking. Witnesses are responsible only for answers to questions asked. When an objection is made to a question, it then becomes the judge's prerogative to rule on the propriety of the question. The witness must wait for the ruling of the court on all objections before answering.

If the witness completes his answer and the judge then rules that the question is improper, both the question and the answer are stricken from the record. The stigma which would attach to the question would then seem to apply to the answer.

### Testifying as to Time, Weights, Distances:

Use approximations.

### Ambiguous Questions:

Comment: It is proper to ask for clarification. If the question is not clear, the witness should state, in a courteous manner, that the question is not clear to him, or that he does not understand what is meant. This sometimes gives the defense attorney an opportunity to state, "Now, Officer, this is a simple question--." He is not belittling the witness, but he may also be downgrading the jury, some of whose members may also be wondering what was meant by the original question. Hence, it would seem better procedure to ask for clarification than to guess at what was meant. If the question was subject to two interpretations, the witness may have answered in accordance with his own concept and the defense attorney then could argue that the answer was in response to the attorney's meaning of the question.

### Q. Double and Triple Questions:

Comments: Wait for the prosecutor to object, i.e., compound question. If not objected to, then answer each question separately.

### Argumentative Questions:

Comments: Answer calmly, courteously.

### Q. "You haven't been an officer very long, have you?"

Comment: No explanations or apologies are necessary. Neither is it appropriate to make flip or caustic answers, such as, "I guess I know a drunk when I see one!"

Answer: "I have been an officer (Sheriff, Constable, Marshal, etc.) for \_\_\_\_\_."

### Q. "Why are you here today?"

Comment: This is an attempt to elicit an answer such as, "To convict the defendant," which would show that the witness is a "volunteer" witness and anxious to convict.

The witness should have the subpoena in his pocket--pull it out and display it, stating, "I am here by order of the court."

When relating a statement made by a defendant you may be asked---

Q. "Did you advise the defendant of his constitutional rights pursuant to Miranda/U.S. and California Cases?"

Comment: This is required. If requested, the person arresting must inform the arrestee what he is being arrested for. It takes a year in law school to discuss a person's constitutional rights.

Answer: In view of the Supreme Court's decision, an officer must inform the defendant of his right to remain silent and of his right to counsel etc., before any admission or confession is admissible in court. If an admission or confession is not really necessary, this phase of the arrest may be postponed until a more convenient time.

When requested by the defense attorney to answer "Yes" or "No."

Comments: This is not a legal requirement.

Analyze question first. It is usually best to answer "Yes Sir," or "No Sir," or in as few words as possible. There are many questions that cannot be properly answered, "Yes" or "No," such as, "When did you stop beating your wife?" Answering "Yes" or "No" admits that the witness is a wife beater.

But elaboration is possible if a shorter explanation will not answer the question.

It is quite proper for the witness to address himself to the judge by stating: "I cannot answer that question 'Yes' or 'No'--may I have the court's permission to explain?" It is not considered appropriate to make such a request to opposing counsel as this may tend to appear argumentative or evasive.

OR

Answer "Yes" or "No." The defense attorney may ask you a question and then say, "Answer yes or no." This is a favorite trick of the cross-examiner to try to force you to give a "Yes" or "No" answer to a question, to prevent you from qualifying your answer. Many times such questions cannot be answered correctly that way. If an attempt to do so is made, the succeeding questions will proceed to show how the "Yes" or "No" answer could not be true, and thus the witness becomes impeached.

This predicament can be avoided if the officer will say, "I cannot answer the question correctly by either 'yes' or 'no,' but I am willing to state the facts as I know them." The cross-examiner is then in the embarrassing position of apparently withholding the facts if he does not let the officer answer in narrative form. However, if the question can be answered properly by "Yes" or "No," a demand for such an answer may be reasonable. If the question is such that it cannot be answered fully by "Yes" or "No," the witness may ask the court if he must answer the question that way, explaining that neither would be the correct answer without further qualification. The court will probably say that the witness does not have to answer the question by "Yes" or "No" because there is no rule or law requiring a "Yes" or "No" answer. If he does require you to answer in that form, answer the question as best you can and let the prosecuting attorney bring out the full information later by questions on redirect examination.

Q. "Do you mean to say that-----etc?"

Comments: An attempt will be made to put a different interpretation on what you have just stated.

Q. "You're not sure are you?" OR "You're not POSITIVE are you?"

Comments: "To the best of my recollection, that's the way it happened." OR "That's what I observed, sir."

Q. "As a matter of fact, Officer, wasn't it this way-----etc?"

Comments: This will be followed by a statement just the opposite of your testimony. Sometimes the seemingly friendly attorney will attempt some quasi-ingratiating prefix to a false statement, such as, "May I suggest to you that it happened this way.....etc?" Or another attempt to mislead the jury would be, "I submit to you that the real facts were.....etc."

Q. "Did you enjoy watching (such and such event)?"

Comments: In sex and perversion cases the defense attorney may attempt to make the witness appear as a passive participant to the incident.

Answer: "No, I found it repulsive."

Q. "Why didn't you stop it?" (Referring to witnessing some lewd or perverted act.)

Comments: "My function in the judicial process is to secure sufficient evidence for presentation in court."

Answers: "The complaints I had were not for this act."....."I was watching for a felony to be committed."..... "I stopped it as soon as I could."

Q. "Have you discussed the facts of this case with anyone?"

Answer: "Yes sir, with witnesses, the prosecuting attorney, my superiors."

Comments: The defense attorney may shout at the witness, "Whom have you talked to about this case, and who told you to testify the way you have?" This question catches witnesses every day. It is asked in an accusing manner. An answer may be: "I have talked with my superior officer, with other officers, and with witnesses concerning this case, but no one has told me how to testify. I am here to tell the truth." It is really two questions in one: "To whom have you talked about this case?" AND "Who told you to testify the way you have?"

Sometimes, the question is put in another form: "To whom have you talked about this case?" shouted at the witness in an accusing manner as if it were wrong to speak of it. The witness may get the idea from the accusing way in which the question is asked that "I've talked to a number of people, and all the time, I should not have done so." This is an effort by the defense attorney to trick the witness into saying "NO" as if it were wrong to discuss the case with someone else.

If you answer that you have not talked this case over with the prosecuting attorney, you thus make it appear that you are lying. The best way to handle this question is to answer it by saying, "Yes, I discussed it with other people," and name them. It is not wrong to discuss a case with the proper persons. That is what a police officer has to do to prepare his case and to get evidence. The cross-examiner knows that the prosecuting attorney would probably not use you as a witness unless you had talked the case over with him beforehand, so that he would know what you can testify to.

If the defense attorney can trap a witness into telling a falsehood about a minor item, it tends to discredit all the testimony.

Q. "Didn't you and the prosecuting attorney (or your partner) get together and frame this whole thing?"

Comment: This is a typical shyster trick. Even with a complete denial, the implication is made to the jury that the witnesses are merely looking for a conviction.

This is really two questions in one. (1) "Did you get together?" (2) "Did you frame the whole thing?"

The witness should discern this and give two answers.

Answers: "Sir, you have asked me two questions. As to the first, we did meet to review this case from my original notes. As to the second question, did we frame this whole thing, we do not frame people--merely present facts for the judge and the jury to decide."

Q. "Didn't the prosecution tell you what to say?"

Answer: "He told me to tell exactly what happened."

Q. "Didn't he warn you about anything?"

Answer: "Yes, sir, he advised me to stick to the facts!"

Q. "Have you rehearsed your testimony before coming to court?"

Answer: "No sir, I have refreshed my memory by reviewing my notes--(or arrest reports, crime reports, or transcripts)."

Comments: It is a recommended procedure and the mark of a good officer to come to court prepared to relate known facts. This demands an examination of pertinent notes, documents and physical evidence before court presentation in order to refresh your memory.

Q. "You stated you smelled alcohol on his breath. Just what is the odor of alcohol?"

Comments: Pure alcohol has no odor.

Answer: "I smelled odors associated with drinking alcoholic beverages. He had an odor like drunks I have arrested." OR "He smelled like persons whom I have seen drinking alcoholic beverages."

Q. "What does Opium smell like?"

Answer: "OPIUM" (nothing else smells like opium).

Q. "What does Marijuana smell like?"

Answer: "MARIJUANA" (nothing else smells like marijuana).

Q. "You don't like people who drink do you?"

Comment: This would include over half of the people in the world.

Answer: "I don't mind social drinking--as long as it does not endanger or hurt people."

Q. "You want to see this defendant convicted, don't you?"

Comments: The cross-examiner may ask, "Do you want to see this defendant convicted?" By this question he is attempting to make you appear prejudiced in the eyes of the jury.

Proof of an impartial, but fair attitude on the part of the witness may be shown when the question asked would call for an answer favorable to the defendant. The witness should not hesitate or be reluctant to mention facts favorable to the defendant.

Answers: "If he is proven guilty, he should be convicted." Or, "I am here to testify as to the facts as I know them, and the decision rests with the jury (or court)."

Q. "Have you ever been drunk yourself?"

Comment: It is the duty of the prosecuting attorney to protect his witness from unfair questions, but most prosecutors are reluctant to interfere with the right of the defense to a complete cross-examination. This is why prosecutors are slow to defend their own witnesses. This question should be objected to on the basis that the officer is not on trial.

If an attorney becomes so offensive and unfair that the officer feels he is being abused, and the prosecuting attorney fails to object, then the officer should assert his right to appeal to the court.

Answer: "Your honor, do I have to answer such a question?" (The duty then arises in the court to protect the witness from objectionable, offensive, or unfair questions.)

If the questions stands --- answer it.

Q. "What is your arrest (or ticket) quota every month?"

Answer: "We do not have a quota. I can only arrest when I have evidence of a law violation."

Q. "You dislike my client, don't you?"

Answer: "I feel sorry for any man in trouble, but I have to tell the truth."

Q. "You say you know this person well. Just tell us where he lives."

Comments: The witness should know.

Q. "Isn't it true you arrested this man because you were mad at him?"

Answer: "No sir, I arrested him for breaking the law."

Q. "Now, Officer --- you have testified that. . .etc."

Comments: This is often followed by a misquote of your previous testimony. It is quite possible that the witness did not testify exactly as the cross-examiner quotes, that the cross-examiner may be misquoting the testimony, and that the witness by this question is being led into a contradiction.

Don't ever let a cross-examiner misquote you. Call it to his attention immediately if he does. You can do so by saying, "Sir, I am sorry I have not made myself clear to you. You seem to have misunderstood. The facts I have in my testimony are these . . ." Then repeat the true facts as you said them. By doing so, you bring the unfair tactics to the jury's attention, and, by repeating the true facts as you said them, you re-register them on the minds of the jurors. If you are stopped by the cross-examiner, the case of the prosecution may be strengthened because the jury may believe that the cross-examiner is afraid to have you again state the facts correctly..

Q. "What if I told you your partner said . . .?"

Comments: This type of question is usually a trap. The attorney does not say that your partner said anything.

One answer, "I didn't hear my partner's testimony. I can only tell you what I know myself."

Another: "I don't recall that he stated that."

Another, "I can only state what I saw (or heard) - not what my partner saw."

Q. "Did your partner tell the truth--or are you telling the truth?"

Answers: "What I have told you is the truth, and I'm sure Officer \_\_\_\_\_ told you the truth to the best of his knowledge."

"I can only relate the facts as I saw them--I'm sure Officer \_\_\_\_\_ did the same."

Q. "Doesn't your testimony (or statement) conflict with what has been testified to here in court?"

Answer: "To the best of my ability I'm relating what I observed and recall."

Comments: Officers are sometimes concerned that the testimony of each officer will not correspond with that of every other officer. Wide differences between the testimony of different witnesses would perhaps minimize the credit to be given to such testimony; but if testimony which from its nature is open to different explanations is too much the same, the danger is equally great.

Each officer should not try to state the facts which he knows in the identical way that every other officer does. Whether the evidence of each officer be alike or different, defense counsel is sure to criticize. If too identical, he can claim that the proof is manufactured. If too different, he can claim that the difference is proof of error. Therefore, if the officer keeps his mind on what the facts are as he knows them, without trying to be consistent with the statement of every other witness, he will avoid confusion.

Q. "You weren't too sure about this case a few days ago, were you?"

Comments: The cross-examiner may ask accusingly, "When you were called as a witness in this case, isn't it true you said to someone, 'I don't remember much about it.' and yet today in the courtroom you tell your story in detail. How do you explain that?"

It is possible that you did say something like that, but you can state that you have gone through the process known as "refreshing recollection." Perhaps, you revisited the scene of the crime, looked into your notebook to recall dates, or discussed the incident with other witnesses, all of which is perfectly proper. In fact, it is about the only way in which witnesses can recall details and make sure they are telling the truth.

Answer: "That's right, but since then I've reviewed my notes, read the confession, etc."

#### Unanswerable question:

Answers: "I can't answer that." "I don't know."

#### Making a mistake:

Comment: Correct it immediately, or as soon as remembered. An honest correction impresses the court and jury of the truthfulness of the witness.

Answer: "I have made a mistake, and I would like to correct it now. I do not remember whether it was raining or not at the time the accident was investigated."

Q. "You say you believe so-and-so; we are not interested in what you believe. We want you to relate what you know to be a fact."

Comments: Give no opinions or conclusions unless asked for them. These are usually when the witness qualifies as an expert witness or as an exception to the hearsay rule.

Q. "Have you read (or heard on the radio, or seen on TV) anything about this case?"

Comments: There is no law against learning about a case. Nor is it improper.

Hence, "Yes, sir, I read (heard or saw) about it in the newspaper," would be apt.

#### On Completion of Testifying:

Comments: After you have finished testifying, leave the courtroom unless you have been retained by the court or by counsel. Staying in the courtroom after the work of testifying is over and visiting with the other officers creates the impression that you are over-zealous and perhaps too much concerned with the outcome of the case.

It is permissible to respectfully ask the court, "Your honor, may I be excused?" If permission is granted, the witness may leave. If permission is not granted, he must remain in or near the courtroom until officially excused.

A witness who has been cross-examined should not try to testify to anything he may have forgotten. However, after leaving the stand it is possible to jot down on a piece of paper what was omitted and hand it to the prosecuting attorney. It is his job to evaluate evidence and he will request the judge to recall the witness if he deems it appropriate.

SUGGESTIONS  
FOR  
UNIFORM FORMALITY OF COURTS AND COURTROOM ETIQUETTE

SECTION 1      PURPOSE

These suggestions are made with the intent to foster a calm and dignified atmosphere in our courts. In all courts there is some formality and the need for courtesy on the part of participants and observers. These matters vary greatly and there should be an effort toward uniformity and a general guide whereby persons attending our courts may know what is correct courtroom behavior. It is recognized that because of great differences in local customs, thought, climatic conditions and courtroom facilities, complete agreement and uniformity of formality and etiquette may not be immediately obtainable. These suggestions are intended to set standards, which if followed, would be acceptable in any court in the state.

SECTION 2      OPENING OF COURT

A. Court should be formally opened each day at the commencement of the morning session.

B. The opening formalities and procedure should be: Approximately one minute before the scheduled time, the judge should notify the bailiff and other court officers by an electric buzzer signal. This should be the signal to court officers and attorneys to terminate conversations, go to their respective positions, discontinue arranging papers, dispense with cigarettes and in general be prepared. As the judge enters the courtroom, the bailiff should require all present to arise and stand. The bailiff should pause and wait until the judge is standing by the bench and facing the flag, and all persons are standing and quiet, and then shall say, in a clear and impressive tone, the following words:

"In the presence of the flag of our country, emblem of the Constitution, and remembering the principles for which it stands, (Municipal or Superior Court #8) is now in session. The Honorable John Doe, Judge, presiding."

The bailiff should then pause until the judge is on the bench and ready to be seated, whereupon he should rap with his gavel and state: "Please be seated." If a jury panel is present to be sworn, he may say: "Jurors remain standing for the oath; all others be seated."

C. After the noon recess, substantially the same formality shall be followed, except that the bailiff need only say: "Court is again in session. Please be seated."

D. Following other court recesses, upon opening court it should be sufficient for the bailiff simply to say: "Remain seated and come to order. Court is again in session."

SECTION 3

- A. Attorneys should arise and remain standing while addressing the court or a jury, except in the case of an objection or statement of only a few words.
- B. Attorneys should address the court from their position behind the counsel table or from a lectern.
- C. Attorneys should examine witnesses from their position behind the counsel table, and may properly, at their option, be seated or standing. Where a lectern is provided, counsel desiring to stand should stand at the lectern. With the court's permission, it is proper to approach witnesses who are hard of hearing or when handling exhibits, or to stand at the blackboard when questioning concerning a map or diagram. This suggestion should be observed in all proceedings, including default cases and probate matters.
- D. Attorneys should not, in addressing the jury, crowd the jury box nor address the jury in a loud voice or in an undignified manner. When a lectern is provided, attorneys should address the jury from the lectern.
- E. Attorneys during trial should not exhibit familiarity with witnesses, jurors, or opposing counsel, and the use of first names should be avoided. In jury arguments, no juror should ever be addressed individually or by name.
- F. Attorneys should be impersonal toward the court and should address the court in the third person, as "The Court will remember the testimony," not "You will remember." When the judge is on the bench, he may be addressed as "Your Honor," but he should never be addressed as "you" or "Judge." Counsel should invite, not "direct," the court's attention. The proper form of an opening statement or argument should be "May it please the court," not, "If the court please."
- G. The trial attorney should refrain from interrupting the court or opposing counsel until the statement being made is fully completed, except when absolutely necessary to protect his client's rights on the records, and should respectfully await the completion of the court's statement or opinion before undertaking to point out objectionable matters. When objection is made to a question asked by him, he should refrain from asking the witness another question until the court has had opportunity to rule upon the objection.
- H. All objections and arguments should be made to the court rather than to opposing counsel.
- I. When trial counsel completes his examination of a witness, he should so indicate to opposing counsel by stating, "You may inquire," instead of "That is all." (It is found that the latter expression results frequently in the witness leaving the stand before the examination is concluded.)
- J. Attorneys should not walk in front of the judge between the bench and the counsel table, unless the construction of the courtroom makes such procedure necessary.
- K. During the argument of opposing counsel, other counsel should remain seated at his position at the counsel table and listen respectfully. Counsel should never get up and walk about or make asides to others, so as to divert the attention of the court or jury, or express his feelings.

L. After a matter has been argued and submitted and the court has announced its decision, counsel should gracefully accept the decision and should not make further comment or argument, unless upon request the court reopens argument.

M. In criminal cases, the defendant shall stand with his attorney before the bench in waiving arraignment or entering plea, and at the time of passing sentence.

#### SECTION 4 BEHAVIOR IN GENERAL--DRESS, ETC.

A. When upon the bench, justices of the Supreme and Appellate and Superior Courts should wear judicial robes. Municipal judges should wear robes when upon the bench, except where the construction or facilities of the courtroom are such that a judicial gown would be incongruous with the surroundings.

B. Bailiffs should be in uniform. During the trial the bailiff should sit properly at his desk and should alertly observe the courtroom, so as to be ready at all times to be of assistance or deal with any situation which should require his attention.

C. Attorneys and other officers should wear conservative business suits, with coat and tie, and should never dispense with coat except in extremely warm weather, with the court's permission.

D. Jurors, witnesses and litigants should be attired in "dress-up" clothing, which, ordinarily in most communities, under most conditions would be in the case of gentlemen-business suit, with coat and tie. In the warm, rural communities where, by reason of climatic conditions, it is customary and considered good taste to wear sport or western clothing on "dress-up" occasions, such attire should be considered proper for court wear. A mechanic or other working persons who must come as witness directly to court from his work may properly appear in his working clothes. Women should never attend court dressed in shorts, slacks, riding pants, or other similar casual attire.

E. Judges and attorneys should avoid tardiness in court engagements. However, when unavoidably delayed, they should explain the reason for such delay.

F. Before entering a courtroom where court is in session, all persons should first remove overcoat, hat, cigar, etc., rather than do these things after entering the courtroom and thereby causing a diversion.

G. No person should in the courtroom, while court is in session, smoke, chew gum or tobacco, eat candy or other confections, read newspapers or magazines, knit, attend crying children, or converse or indulge in any other similar conduct which might be offensive or distracting to any other person.

H. No person should ever, by facial expression of incredulity, shaking of the head, or other conduct, show feeling concerning any testimony which is being given by a witness on the stand.

I. The judge should at all times endeavor to put witnesses, young attorneys, jurors and others appearing in the courts, at ease by kindly and friendly demeanor.

J. The side of the counsel table closest to the jury box should usually be taken by the plaintiff and the other side by the defendant.

K. The swearing of witnesses should be an impressive ceremony, and not a mere formality. They should be sworn individually, except in default cases.

L. The space behind the bar should be reserved for court attaches and attorneys insofar as possible. Clients and witnesses should not be inside the rail except when necessary to confer with counsel.

#### SECTION 5 JURORS

A. It should be remembered that jurors are making a great personal sacrifice to give their time to assist the court and the community; hence they are entitled to every consideration and courtesy.

B. The judge should be careful in reading instructions to read slowly and with proper emphasis, so as to make them as clear as possible.

C. The judge and attorneys and court attaches should make every effort to avoid discommoding a jury panel by having them called in, or not called off in the event a case scheduled is not to be tried.

D. At each recess, the jurors should be allowed to leave the courtroom before the spectators.

E. When a case is taken from the jury in the event of a non-suit or a settlement, the judge in dismissing the jury should briefly explain the procedure and why a verdict was unnecessary.

#### SECTION 6 IMPLEMENTATION

A. Attorneys should advise their clients and witnesses concerning court formalities and etiquette and explain that the reasons for such proper behavior are that they may avoid offense to others and by their conduct show respect for the Constitution and laws of the state and of the court as an institution.

B. Judges upon impanelling and qualifying new juries should mention and explain these suggestions, insofar as they apply to jurors.

C. Any infraction of these suggestions for courtesy, if deemed worthy of notice or admonition, should be dealt with in a kindly and diplomatic manner. If it is a matter for the bailiff, he should communicate with the person involved as privately as possible. (If it is a matter involving counsel, the court generally should speak to counsel in chambers rather than causing embarrassment in open court.)

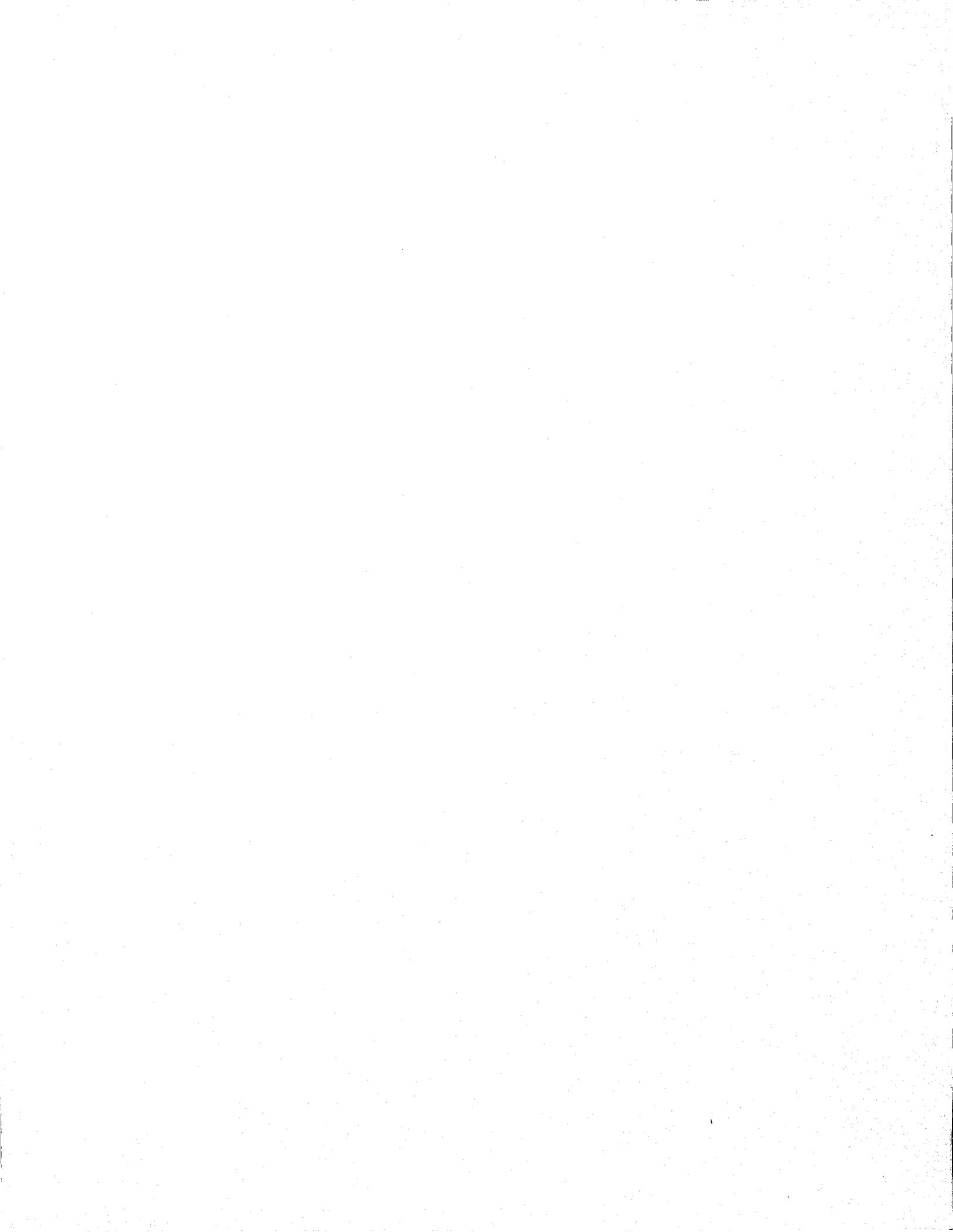
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