

# TESTIFYING IN COURT

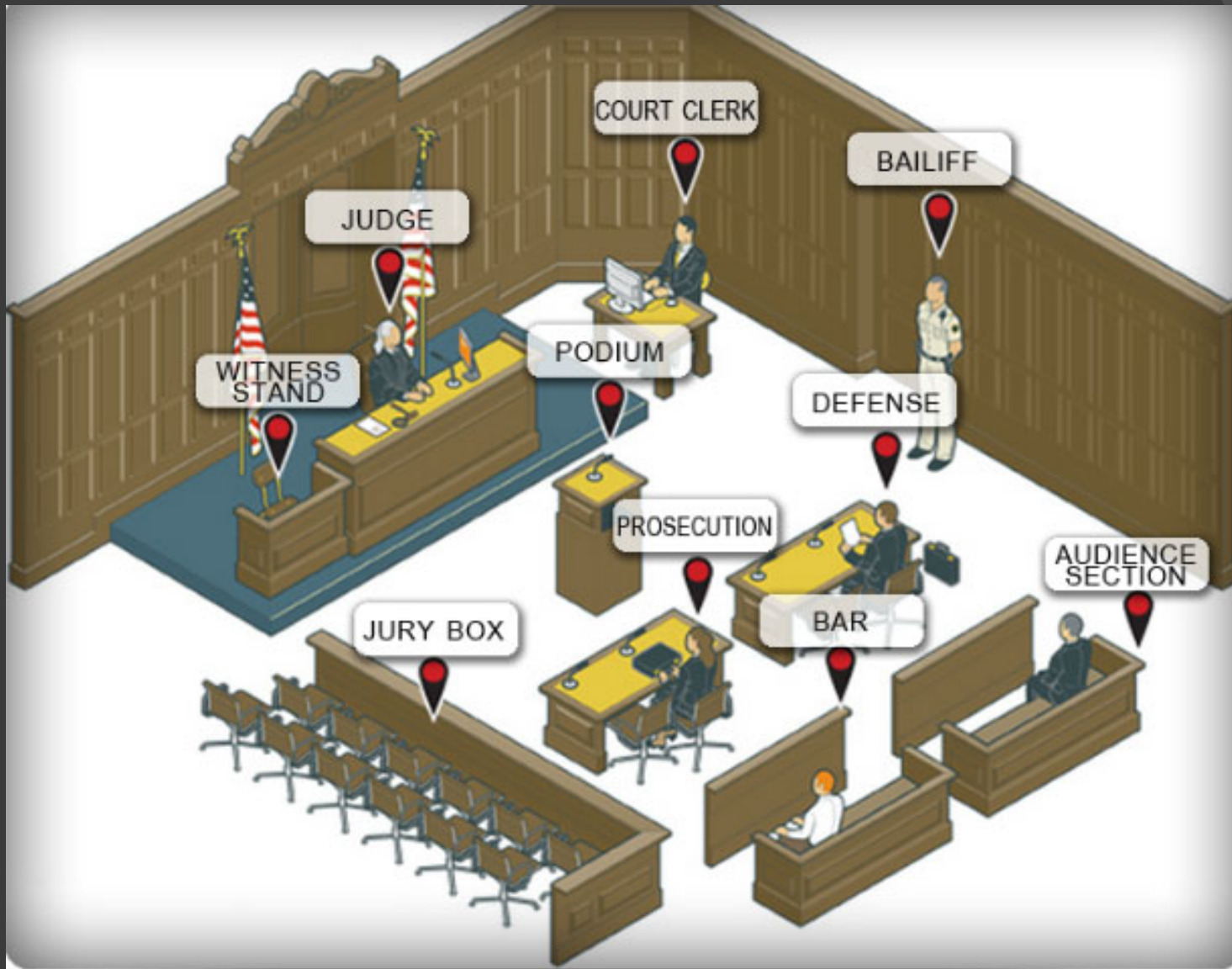


San Diego County Probation

# Key Figures

- ⦿ Judge
- ⦿ DA
- ⦿ Public Defender / Defense
- ⦿ Transcriber
- ⦿ Clerk
- ⦿ Sheriff / Bailiff
- ⦿ Probation Officer
- ⦿ Jury

# Courtroom



# Court Terminology

- ◎ **Chambers**- Office of the judge.
- ◎ **Clerk of the Court**- Oversees administrative functions.
- ◎ **Concurrent Sentencing**- Prison terms for two or more offenses to be served at the same time.
- ◎ **Consecutive Sentencing**- Prison terms for two or more offenses to be served one after the other.
- ◎ **Deposition**- An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial.
- ◎ **Discovery**- Procedures used to obtain disclosure of evidence before trial.

- ◎ **Disposition Hearing**- Juvenile phase of the sentencing process. Contested Disposition may also testify.
- ◎ **Fitness hearing**- A hearing in a juvenile court case to determine whether the case should be transferred to adult criminal court where the juvenile will be tried as an adult.
- ◎ **Grand jury**- A body of 16-23 citizens who listen to evidence of criminal allegations, which is presented by the prosecutors, and determine whether there is probable cause to believe an individual committed an offense. See also indictment and U.S. attorney.
- ◎ **Indictment**- The formal charge issued by a grand jury stating that there is enough evidence that the defendant committed the crime to justify having a trial; it is used primarily for felonies.

- ◎ **Standard of proof**- Degree of proof required. In criminal cases, prosecutors must prove a defendant's guilt "beyond a reasonable doubt." In an Evidentiary or Probation Revocation Hearing the required proof for proving a violation occurred is "by a preponderance of the evidence" (50 percent plus).
- ◎ **Subpoena**- A command, issued under a court's authority, to a witness to appear and give testimony.
- ◎ **Testimony**- Evidence presented orally by witnesses during trials or before grand juries.
- ◎ **Trail**- Pause the hearing or matter.

# Court Call/Oral Status Update



San Diego County Probation

- ⦿ Review Hearing- Update on probationer's progress in program/school/employment.
- ⦿ Custody credits
- ⦿ Victim restitution update
- ⦿ Providing sentencing updates or clarification to the Court.



# Disposition/Sentencing



San Diego County Probation

# Sentencing Hearing

- ⦿ Know your sentencing laws, i.e., don't split sentence if defendant has strike prior.
- ⦿ Know the conviction and mandatory probation conditions.
- ⦿ Be thorough with application of conditions...review offender's criminal history.
- ⦿ Verify custody credits are accurate...Court will look to you.
- ⦿ If you don't know....ask! We have all been there.

# Victim Impact Statement



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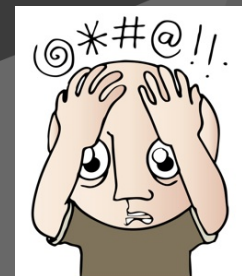
# Sentencing



San Diego County Probation

- ⦿ When should a supervision officer begin preparing to testify?

- ◉ The first day a probationer is assigned to you.
- ◉ Great testimony begins with proper questioning and detailed documentation.
- ◉ Specific answers made by probationer will help with testimony.
- ◉ Example- Drug use, curfew, leaving county without permission.
- ◉ Control your nerves by being organized and prepared.
- ◉ Thoroughly review contact notes and reports. Refresh your memory.



Why a Probation Officer may be called  
to appear or testify?

- ⦿ Being the victim of a crime.
- ⦿ Witness in a crime.
- ⦿ Firsthand knowledge of a conversation you overheard pertaining to a crime.
- ⦿ You have found evidence or have information about a crime.
- ⦿ Called as a character witness on behalf of prosecution or the defense.
- ⦿ You are in civil litigation and have been named in a civil suit.
- ⦿ Discovery/Evidentiary Hearing.
- ⦿ An expert witness is a witness who has knowledge beyond that of the ordinary lay person enabling him/her to give testimony regarding an issue that requires expertise to understand.



## Subpoena



- Really??? I received a subpoena on this case?
- Sheriff may serve you at the office?
- District Attorney (DA) may call you and notify your presence is needed.
- If there are questions if you are needed in Court, communicate with the DA.

# Before the Court date

- ⦿ Confirm that your appearance is required.
- ⦿ Find out why you are being called to testify.
- ⦿ Know the location of the hearing.
- ⦿ Review case material, reports, etc.
- ⦿ Don't discuss the case with the defense attorney, or other interested parties.
- ⦿ Be consistent with recommendation.

- ⦿ Defense requests your probation file prior to the hearing. What is your response?

Answer: County Counsel

# Day of Court Appearance

- Do I wear my uniform or a suit?
- Be early.
- Enter the courtroom.
- Check in with Deputy, Court Clerk and District Attorney- communicate to the Court your presence.
- Provide business card to Court Clerk.
- Bring evidence, reports (incident reports) .
- No need for entire file- subject to discovery.
- Wait for your name to be called.

# Being Sworn In

- Do you swear to tell the truth the whole truth and nothing but the truth so help you God?



# Tell the Truth

BRADY?

Brady v. Maryland

The Brady List is an integrity database.

The prosecutor must disclose evidence or information that would prove the innocence of the defendant or would enable the defense to more effectively impeach the credibility of government witnesses.



# Revocation Proceedings- Evidentiary

- ⦿ Know the recommendation and be consistent.
- ⦿ Be confident...voice your opinion in chambers.
- ⦿ “Anything additional from Probation?”  
“Yes”.....or “ I submit your honor” or  
“nothing further.”

# Know your authority as a Probation Officer, you are the expert.

## Probation Officer Authority:

**PC 830.5**, the following persons (Probation/Parole Officers) are peace officers whose authority extends to any place in the state while engaged in the performance of the duties of their respective employment and for the purposes of carrying out the primary function of their employment.

The authority of these parole or probation officers shall extend as follows:

1. To the condition of parole, probation, mandatory supervision or post release community supervision by any person in this state on parole, probation, mandatory supervision, or post release community supervision.
2. To the escape of any inmate or ward from a state or local institution.
3. To the transportation of persons on parole, probation, mandatory supervision or post release community supervision.
4. To violations of any penal provision of law which are discovered while performing the usual or authorized duties of employment.
5. To the rendering of mutual aid to any other law enforcement agency.



# California Peace Officers Standards and Training

- PC832– Every person described as a peace officer shall satisfactory complete an introductory course of training prescribed by the Commission on Peace Officer Standards and Training.

# 835(A) CALIFORNIA PENAL CODE

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# Classroom Exercise

- Group 1- Give examples of proper Courtroom demeanor and etiquette?
- Group 2- Provide possible outcomes for poor testimony in Court.
- Group 3- Give common questions asked while testifying?
- Group 4- Review and provide synopsis of People vs Gayton case.

# Testifying

- Tell the truth (Brady List)- Integrity database.
- DA must disclose to defense if you are on Brady List.
- Listen carefully to questions.
- Respond directly to questions, make the answers brief and honest.
- Do not speculate.
- Ask permission to clarify question if needed.
- Be prepared to say: “I don’t know.”
- Admit when you don’t remember.
- Avoid legal terminology; medical/psychological.
- Be aware of repetitive questions / contradictions.
- In a jury trial, never speak to the jury before, after or during a break. This could compromise a case. Isolate yourself if outside the courtroom.



# Courtroom Demeanor and Etiquette

- ◉ Address the judge: Your honor.
- ◉ Where do you sit?
- ◉ Rise when the judge enters the courtroom.
- ◉ Body language- good and bad.
- ◉ Department dress code.
- ◉ Address the question asked. Do not ramble or volunteer information.
- ◉ Listen carefully, be certain you understand the question before answering.
- ◉ If question is vague or unclear, ask for it to be repeated/clarified.

- ⦿ No matter how nice the attorney may seem on cross examination, your testimony is being questioned.
- ⦿ If your answer was not correctly stated, clarify it immediately.
- ⦿ Always be courteous, even if the lawyer is not. Do not argue or lose your composure.
- ⦿ Stop instantly if the judge interrupts or either attorney objects to a question.
- ⦿ Do not nod your head “yes or no.” Speak so the reporter can hear your answer.
- ⦿ If you refer to your notes, ask the attorney questioning you “can I refer to my notes.”

- Avoid hearsay
- Don't memorize testimony
- Claiming the privilege, Evidence Code (EC) 1040-1042, (d)  
When, in any such criminal proceeding, a party demands disclosure of the identity of the informant on the ground the informant is a material witness on the issue of guilt, the court shall conduct a hearing at which all parties may present evidence on the issue of disclosure. Such hearing shall be conducted outside the presence of the jury, if any. During the hearing, if the privilege provided for in EC [Section 1041](#) is claimed by a person authorized to do so or if a person who is authorized to claim such privilege refuses to answer any question on the ground that the answer would tend to disclose the identity of the informant, the prosecuting attorney may request that the court hold an in-camera hearing. If such a request is made, the court shall hold such a hearing outside the presence of the defendant and his counsel.

# Follow Courtroom Rules

- ⦿ Objections
- ⦿ Overrule
- ⦿ Sidebar
- ⦿ Direct Examination
- ⦿ Cross Examination
- ⦿ Do I stay in the Court?



- Consequences for poor performance in Court?

- ⦿ Creates doubt in your credibility.
- ⦿ Embarrassment and lack of confidence in officer and department.
- ⦿ May lessen the Judge and jury's confidence in your testimony.
- ⦿ Dismissal of charges/ Not in violation of probation.
- ⦿ Failure to report to Court may lead to contempt of court charge.
- ⦿ Disciplinary action against officer.
- ⦿ May decrease officer's confidence in their own abilities.

# Common Questions asked while testifying:

- Name?
- What is your current title?
- How many years on the job?
- How many years in current position?
- What are your duties as a Probation Officer?
- What type of training have you completed?

# People v. Gayton 2006

- A petition for relief from an order revoking defendant's probation and requiring him to serve a prison term was granted pursuant to a claim of ineffective assistance of counsel where his counsel failed to review his probation file and present it as evidence to impeach a probation officer's testimony.

# Contempt of Court

- Penal Code 166 punishes contempt of court. "Contempt of court" essentially refers to any behavior that is disrespectful to the court process. Examples include (but are not limited to):
- Being excessively loud or belligerent;
- Refusing to be sworn in as a witness and/or refusing to comply with the judge's requests during any court proceeding, and;
- Willfully disobeying a court order.

# Failure to Appear

- May result in contempt of court:  
Charges, fine, and or jail.  
(Misdemeanor)
- Disciplinary action against the officer by  
the department.

# Contempt Penalty

- For the most part, contempt of court (including violations of court orders) is a misdemeanor, punishable by up to six months in county jail and a maximum \$1,000 fine.

- ROLE PLAY SCENARIO- TESTIFYING IN COURT, DEMONSTRATE EXAMPLES OF GOOD COURTROOM ETIQUETTE, DEMEANOR AND TESTIFYING.



# Confidentiality Issues in Court

- Probation reports- Those who have the right and the need to know.
- Informant.
- Juvenile, paternity, adoption files.
- Victim or witness identifying information beyond their name.
- Social security/financial account numbers.
- Personal information regarding judge, attorneys, jurors, law enforcement or other court personnel.
- Initials are used for confidentiality purposes for juveniles who are sex crime victims.
- The only person who can review the “confidential folder” of an inmate is the judge.

Court may not always go your way.



# Speaking





# Media Cases



San Diego County Probation

⦿ Activity– Preparing yourself for court.