

◆ FREE DWI training ◆ Effective Courtroom Testimony for police and prosecutors

Texas District and County Attorneys Association (TDCAA) Statewide DWI Training
in cooperation with the Texas Department of Transportation

TDCAA is proud to offer 6 hours of TCOLE and CLE credit for peace officers and prosecutors to attend this free, high-quality training. Every defense lawyer who advises clients to refuse a breath test admits that officers are arresting for DWI only people that are intoxicated—yet DWI cases are very hard to win in front of juries. One reason is that prosecutors and officers are not conveying to jurors what the officer actually saw at the scene and knows from his training and experience. This course is dedicated to ethically and professionally presenting officer testimony in DWI cases. Well-crafted reports, effective direct examinations, clear demonstrations, and honest responses to less-than-honest defense tactics on cross will all be discussed, modeled, and practiced.

Today's schedule

8:15 a.m.	Registration
8:40 a.m.	The Role of Prosecutors and Police Witnesses in DWI Trials
9:40 a.m.	Break
9:50 a.m.	Trial Preparation & Presenting Cases to Prosecutors
10:50 a.m.	Break
11:00 a.m.	Effective Report Writing
Noon	Lunch
1:15 p.m.	10 Simple Rules of Direct Examination
2:05 p.m.	Break
2:15 p.m.	10 Simple Rules of Cross-Examination
3:15 p.m.	Break
3:25 p.m.	Beating the Defense: Direct Examinations that Minimize Cross
4:15 p.m.	Adjourn



In addition to this excellent free training, every attendee will receive two TDCAA publications: *DWI Investigation & Prosecution* and *Traffic Stops*. These books give attendees resources in many areas not covered by this seminar. Please be sure you've signed in and double-checked your Bar number or TCOLE number; the TCOLE Course number is [2057](#). If lunch is not provided, all afternoon times are delayed by 15 minutes.



Effective Courtroom Testimony

For police and prosecutors

Every defense lawyer who advises a client to refuse a breath test admits that officers almost never arrest someone who is *not* intoxicated for DWI. Yet DWI cases are very hard to win in front of juries. One reason is that prosecutors and officers are not conveying to the jury what officers actually see at the scene and what they know from their training and experience. This course is dedicated to ethically, professionally, and effectively presenting testimony in DWI cases. Understanding the roles of the players in court, proper preparation, well-crafted reports, effective direct examinations, clear demonstrations, and honest responses to less-than-honest defense tactics on cross-examination will all be discussed, modeled, and practiced.

This course is designed for both peace officers and prosecutors to attend together. In addition to the stated objectives, each course provides an opportunity for officers and prosecutors to see an investigation or case from the other side's perspective. A common reference and vocabulary should assist both groups in greater effectiveness in the investigation and trial of DWI offenses.

The Role of Prosecutors and Police Witnesses in DWI Trials (1 hour)

Effective courtroom testimony does not just happen. Both officers and prosecutors must prepare and plan for it. Both must be aware of their appearance and demeanor.

Learning Objectives

By the end of this session students will be able to:

1. Describe the role of effective courtroom testimony.
2. Compare and contrast the roles of prosecutors and witnesses.
3. Describe proper courtroom demeanor.
4. Explain how the reputation as a professional officer, witness, or prosecutor is created or lost.

Trial Preparation and Presenting Case to Prosecutors (1 hour)

Trial preparation includes being physically and mentally prepared to go to court. Pre-trial meetings are also essential to effective courtroom testimony and a model meeting is presented here. Failing to timely provide the defense exculpatory or mitigating evidence can result in losing cases and prosecutors losing a law license. This session explains the constitutional mandates of *Brady v Maryland* and the 5th amendment. Officers must provide prosecutors all evidence and information so they can in turn provide that information to the defense.

Learning Objectives

By the end of this session students will be able to:

1. *Describe how proper physical and mental preparation affect testimony*
2. *Conduct trial preparation as a prosecutor, and officer and create a plan for pre-trial meetings.*
3. *Explain the due process principle created by Brady v. Maryland and apply it to the role of both the prosecutor and an investigating officer as a witness.*

Effective Report Writing (1 hour)

Officers must write complete and detailed reports because a direct examination at trial is never better than the written report that supports it. Also, officers and prosecutors must meet and plan together; pre-trial conferences are a must, even if done under considerable time constraints.

Learning Objectives

By the end of this session students will be able to:

1. *Create an effective partial police report from a prepared video clip.*
2. *Identify common errors in report writing*

10 Simple Rules of Direct Examination (1 hour)

. Beginning with analysis of video clips of both good and bad testimony at trial, participants will identify both good and bad technique. Using this discussion as a launching point, 10 rules for effective Direct Examination survival of cross will be covered and modeled. Special emphasis on creating demonstrative evidence will be covered

Learning Objectives

By the end of this session students will be able to:

1. *List 10 rules of effective direct.*
2. *Analyze video clips of testimony for use of these rules.*
3. *Identify ways that demonstrations, demonstrative exhibits, and PowerPoint can be used in trial.*

10 Simple Rules of Cross Examination (1 hour)

Building on the analysis of video clips of both good and bad testimony at trial, participants will identify both good and bad technique. Using this discussion as a launching point, 10 rules for effective survival of cross will be covered and modeled.

Learning Objectives

By the end of this session students will be able to:

1. *List 10 rules for surviving cross.*
2. *Analyze video clips of testimony for use of these rules.*

Beating the Defense: Direct Examinations that Minimize Cross (1hour)

An effective direct examination anticipates and prevents the defense from scoring points on cross-examination. This session targets 7 areas that are traditionally unavoidably attacked on cross Faculty will demonstrate direct examination segments to counter these common issues. The session will also address 6 common defense attacks on cross that are avoidable, and faculty will

again demonstrate effective direct testimony to be given before the defense lawyer even begins to ask questions on cross.

Learning Objectives

By the end of this session students will be able to:

- 1. Prepare a direct examination to address 7 common deficiencies in direct examination.*
- 2. Prepare 6 simple direct examination segments to preemptively diminish common cross-examination attacks in DWI cases.*

The Role of Prosecutors and Police Witnesses in DWI Trials

- I. Role of Prosecutor
 - A. How prosecutors are different from Defense Counsel
 - B. Quasi-Judicial (To See Justice is Done)
 - C. Why Prosecutors Don't Object
 - D. Why Open Ended Questions

- II. Juror's Expectations of Prosecutors?
 - A. Good Guys
 - B. Fairness
 - C. Professional
 - D. Prepared
 - E. Who Made Them Be Here
 - 1. Reality Check

- III. Juror's Expectations of Defense Counsel?
 - A. Fighters
 - B. Real Presumption of Innocence
 - C. Would I Hire This Attorney if I Was in Trouble?

- IV. Role of Officer Witness
 - A. Enforcing the Law (Executive Function)
 - B. Truth, the Whole Truth and Nothing but the Truth
 - C. Facts
 - D. Opinions
 - E. Competence

V. Juror's Expectations of Officers?

- A. Professional Witnesses
- B. Tough and Impervious
- C. Confidence
- D. But this is the only environment where you are NOT in control.

VI. Reputation

- A. It takes a long time to make a good one....
- B. and only seconds to make a bad one,
- C. and they never go away.

Trial Preparation and Presenting a Case to Prosecutors

- VII. Why Will Officers Always be Attacked in DWI Cases?

- VIII. Appearance
 - A. When is the Jury Watching?
 - B. Dress
 - 1. Utility Belts
 - 2. Reports

- IX. Professional Shield
 - A. The Courtroom is the only environment where you are NOT in control
 - B. What do you control?
 - C. Personal Attacks
 - 1. Mispronouncing Officer's name or rank
 - 2. Quotas and Motivations to Arrest
 - 3. Using the SFST Student Manual
 - 4. ALR Hearings and Transcripts

- X. Officer Pre-trial Preparation
 - A. Read your report
 - B. Watch all videos.
 - C. Then read it again.
 - D. Read all other reports.
 - E. Then read it again.
 - F. Meet with prosecutor.
 - G. Read and watch it all again
 - H. Find and read SFST manual.

XI. Prosecutor Pre-trial Preparation

- A. Read File.
- B. Watch Videos.
- C. Listen to defense plea bargaining.
- D. Meet with Officers and Witnesses.
- E. Make all of your notices.
- F. Check Court's file.
- G. Imagine your close.
- H. Make sure you have everything to put into evidence to make that close.
- I. Remember trials never go as planned.

XII. Pretrial Conferences

- A. Paperwork Checklist
- B. Officers Let Prosecutor Know Everything
- C. Why Officers Should Tell Prosecutors Bad Stuff
- D. Prosecutors Tell Officers everything
- E. Practice Demonstrations and view Exhibits

XIII. Brady v. Maryland:

- A. "suppression by the prosecution of evidence favorable to an accused upon request violated due process where the evidence is material to either guilt or punishment..."
- B. The basic rule: Due process is violated when:
 - 1. The prosecutor fails to disclose evidence
 - 2. Which is favorable to the accused
 - 3. That is material.

XIV. Brady for Officers

- A. Send everything you have to prosecutor.

- B. Find everything you don't have.
- C. Put some fail-safes in system.
- D. Every omission put the prosecutor's license in jeopardy.
- E. Every omission puts your reputation in even greater jeopardy.
- F. "It takes less time to do a thing right than explain why you did it wrong."-Henry Wadsworth Longfellow

Effective Report Writing and Trial Preparation

XV. Report Writing Exercise

- A. Watch Video and take Notes
- B. Outline Report
- C. What essential clues need to go in report?
- D. How do you describe them.
- E. Group Work is allowed.

II. Watching the Video is Part of Report Writing

III. Why More is Better

IV. Detail v. Conclusion

- A. Conclusion
 - 1. "The defendant had slurred speech"
- B. Detail:
 - 1. "The defendant spoke very deliberately in short sentences or single word replies. They tended to extend vowel sounds and drop consonants"

V. Quotes v. Paraphrase

VI. Accuracy

VII. Elements

- A. In Lone Star County, Texas
- B. The defendant, Otis T Drunk
- C. On or about April 25th, 2009
- D. Operated
- E. A Motor Vehicle
- F. In a Public Place
- G. While Intoxicated

VIII. Problem Words with Special Meaning

- A. PC
- B. Reasonable Suspicion
- C. Arrest
- D. Detain
- A. Intoxication

10 Simple Rules for Direct

XVI. Exercise

- A. Watch Clip
- B. List Three Things the Officer Did Wrong.
- C. Why Was It Wrong?
- D. How Could It Be Fixed?

XVII. Exercise

- A. Watch Clip
- B. List Three Things the Officer Did Well.
- C. Why Was It Right?

D. How Could It Be Practiced?

XVIII. 10 Simple Rules on Direct

A. Tell a Story

1. Like You Would Tell It To Your Grandmother

B. Avoid Lawyer and Cop Speak

1. "Tell me more about that?"

C. Remember the Jury

1. What do you infer from a suspect that won't make eye contact?

D. Use Demonstrations and Exhibits

1. Drawing diagrams

a) *Do in advance, if you can*

2. Examples

a) *Maps*

b) *SFST Worksheet*

c) *BT Record*

d) *In-car Video*

e) *Book-in Photo*

f) *Book-in and Book-out Signatures*

g) *Empty Cans*

h) *Roadway Diagrams*

E. Watch Body Language

F. Words to Never Say

1. "I'm not sure, but"

2. "I suppose"

3. Probably

4. "If you say so"

5. "I believe"
 6. "I'm pretty certain"
 7. "I guess"
- G. How to Handle Objections
- H. Have Post Trial Meetings
- I. Watch Good Officers and Prosecutors

10 Simple Rules for Cross

- A. Avoid Mother In Law Factor
- J. Don't Wrestle with Pigs
- K. Its OK to say:
1. I Don't Know
 2. "I don't Remember"
 3. "I don't Understand the Question"
- L. Hypotheticals are Not in YOUR Personal Knowledge
1. Kill those Hypotheticals
 2. Three Stages of "I don't Know"
 - a) *"I don't Know"*
 - b) *"That is not within my personal knowledge"*
 - c) *"Would you like me to suppose or guess?"*
- M. Be Confident!
- N. Concede when Concession is Truthful
1. Just say yes or no, no ands, ifs or buts
- O. Defense Lawyers are Not your Friend:
1. How to Handle the "Nice" Defense Lawyer
- P. Hold for Redirect

1. Why Should or Shouldn't Prosecutors Redirect

Beating the Defense: Creating Direct Examinations that Minimize Cross.

XIX. Preparing Direct to Minimize Cross

- A. Don't wait for the defense to attack
- B. You already know everything they're going to do
- C. Shoot them in the head before they get a chance to hurt you
- D. Cross Your Officer First!!!

XX. here is what the defense talked about in plea bargaining, now design the direct. Issues we Can't Avoid.

- A. Total Refusal aka: Refusal to provide evidence
- B. Sympathetic Defendant
- C. One Car Accident, Officer Does not Observe Operation
- D. Defendant Looked Great on Video
- E. Low BAC Delayed Test, Retrograde Extrapolation
- F. What is the Defendant's "Normal Use
- G. **No Bad Driving**

XXI. So here is what the defense talked about in plea bargaining, now design the direct. Issues we can avoid.

- A. Poor Officer Performance on SFSTs
- B. FSTs done, Refusal to provide BAC, but no search warrant
- C. Officer requests breath, defendant offers blood
- D. Camera Malfunction or Low Quality
- E. Mistake in Report (Wrong Date)
- F. Camera Shows Officers not identified and who did not file a report.

XXII. Again...Strike First!!! If you are waiting until your case in chief to deal with these issues, you're already losing

- A. Commit the jury in voir dire
- B. Reinforce in your case in chief

XXIII. Who Cares???

- A. Misdemeanor DWI's are the most challenging cases you will ever try
- B. They are also among the most important
- C. So get CREATIVE and HAVE FUN!!!
- D. It takes years to make a good reputation, mere moments to make a bad one.

XXIV. A matter of life and death.

XXV. Please drop evaluations off at registration table. Be careful on the roads. Thanks for all you do.

Report Writing Exercise

- 1. Watch Video and take Notes**
- 2. Outline Report**
- 3. What essential clues need to go in report?**
- 4. How do you describe them.**
- 5. Group Work is allowed.**

Exercise Worksheet

- **Watch Clip**
- **List Three Things the Officer Did Wrong.**
- **Why Was It Wrong?**
- **How Could It Be Fixed?**

- **Watch Clip**
- **List Three Things the Officer Did Well.**
- **Why Was It Right?**
- **How Could It Be Practiced?**