

	Policy & Procedures				No. 1.11	
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	Testifying in Court					
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GENERAL CONSIDERATIONS AND GUIDELINES

The presentation of evidence in court is the final step taken by the police in a criminal case. The effectiveness of this presentation is, to a large degree, dependent upon the competence of the officer on the witness stand. All of the police efforts that precede the court appearance can be nullified by an inadequate, incomplete or unsatisfactory presentation of the facts by the testifying officer.

The court will consider not only the quality and quantity of the evidence itself, but also the manner in which it is presented. The officer's personal appearance, demeanor, attitude and ability to express him/herself in a convincing manner can greatly affect the weight given to his/her testimony and have a significant influence on the outcome of the trial.

It is only human for officers to take a personal interest in a criminal case in which they have been involved and to firmly believe that the offender is guilty and should be convicted. In their testimony, however, the officers must make every effort to present the facts fairly and impartially without understating or exaggerating any of the circumstances.

The legal technicalities involved in bringing a criminal investigation and subsequent prosecution to a successful conclusion requires a team approach. By working together, the prosecutor relies on the investigative skills of the police and the police rely on the skills of the prosecutor in handling the legal aspects.

Every court appearance should be a learning experience for a police officer. After every trial,

especially if the case is lost, the officer(s) should go over their testimony and the evidence with the prosecutor and any other officers that were involved to learn further about the strengths and weaknesses in the case so as to improve the prosecution of the next case. Any objections or points of law that were raised during the trial that the officer does not understand should be clarified.

I. PRIOR TO TRIAL

- A. When required, the primary officer in a criminal case should have all necessary witnesses present and prepared to testify, unless this was taken care of by the District Attorney's Office. The task of preparing the witnesses for testimony is generally performed by the Victim Witness Unit of the District Attorney's Office, however, if they fail to do so, the officer should inform all witnesses in advance of what they can expect when they take the witness stand. The officer should advise the witnesses not to offer personal opinions, conjecture or suppositions. The officer should advise the witnesses that they will be asked if they have discussed the case with the police. They should be advised to respond **truthfully** and to tell exactly what happened, to the best of their ability. The officer should show the witness a copy of their written statement, if one was prepared, so as to refresh their memory, because the defense attorney, who also has a copy of the statement, will probably question them about it. Where appropriate, the officer should advise the witness to discuss certain issues with the prosecutor, particularly if they involve legal questions or procedures. Lastly, the officer should be certain that he/she and the prosecutor know what the testimony of the witness is going to be. "Surprise testimony" can be detrimental to the case and professionally embarrassing.
- B. If there is a sequestration order applicable to the police and other witnesses, officers shall remain outside the courtroom until called to testify. Sometimes, the judge allows the primary officer to remain in the courtroom during the trial to assist the prosecutor. Once a sequestration is ordered, the officer(s) shall not discuss his/her testimony or the testimony of any other witness until the completion of the trial. A sequestration order generally requires that each witness testify separately and without discussing their testimony with other witnesses (including police officers), and without having overheard the testimony of any other witnesses in the courtroom. Violation of a sequestration order could result in the judge declaring a mistrial or even dismissing the case entirely. Any discussion with and amongst witnesses about the case prior to issuance of a sequestration order is not a violation of the order.
- C. The officer(s) should not discuss the case with the defendant or his/her attorney, or make any agreement with the defendant's attorney for recommendations as to the disposition of the case without the District Attorney's prosecutor being present.

- D. In pretrial conferences with the prosecutor, it is the responsibility of the police officer to provide all available information even though it may be beneficial to the defendant. No detail concerning the particular case should be considered too trivial to discuss. This will decrease the likelihood of any surprise developments during the trial.
- E. It is understandable that occasionally mistakes in testimony may be made, especially in lengthy cases. The officer should voluntarily correct any error as soon as possible. In addition, an officer may realize after he/she has left the witness stand, he/she or the prosecutor may have overlooked some particular point. If this happens, the officer should inform the prosecutor as soon as possible in a manner that is not distracting to the court, such as with a written note.

II. CONDUCT AS A WITNESS

- A. Every police officer testifying in any court proceeding should:
 - 1. Be punctual in reporting at the required time and place. Physical appearance, personal conduct, and professional manner should be aimed at making the best possible impression.
 - 2. Review in advance all aspects of the case and have all necessary witnesses and evidence present.
 - 3. Testify as to what he/she knows or believes to be the truth.
 - 4. Speak naturally and calmly in a clear and audible tone of voice, avoiding slang and overly-technical terms.
 - 5. Maintain self-control and personal composure even if the defense counsel attempts to berate, belittle or embarrass the officer or his/her efforts.
 - 6. Carefully listen to each question and respond accordingly. If asked to state the facts, state the facts known or believed to be true; if asked to state an opinion or conclusion, do so if the officer has formed an opinion or conclusion which he/she can articulate and support; and if an answer is unknown, state that it is unknown.
 - 7. Answer only the questions which are asked.
 - 8. Make every effort to avoid errors in his/her testimony or inconsistent statements which could undermine his/her credibility before the Judge and jury.
 - 9. Confine testimony to the particular case and do not volunteer information

or go beyond the scope of the question that was asked.

- B. First impressions can be important to the Judge and jury. When an officer is called to the witness stand, he/she should be aware of this. The officer should be alert, confident, and professional. He/she should speak clearly and loudly in order that all jurors are able to hear.
- C. When a question is asked, the testifying officer should look directly at the person asking the question and then provide a deliberate, courteous and well-considered answer. If the officer does not hear or clearly understand the question, he/she should request that the question be clarified or repeated.
- D. A brief pause prior to answering questions is recommended, as it allows time for the prosecutor to analyze the question, and make an objection to it if appropriate. When an objection is made, the officer should immediately stop his/her testimony, and await the judge's decision or instruction.
- E. In responding to questions, an officer should be as specific as possible, but in testifying as to times or distances he/she should provide approximations unless exact information is readily available.
- F. An officer should not volunteer information or answer any questions that have not been asked.
- G. At the request of the prosecutor or defense attorney, and with the permission of the Judge, an officer may refer to his/her notes or police report for the purpose of refreshing his/her memory on a given point. However, material taken to the witness stand for this purpose can be examined by the defense attorney. An officer's continual reliance on notes or a report may indicate to the jurors a lack of knowledge regarding the facts of the case. However, if the defense attorney has the officer's report and is asking questions directly from it, it is best that the officer review what is being referred to in order to insure that the question is not taken out of context or given a meaning other than what the officer had intended.
- H. Advance preparation will avoid dependence on notes and reports in most instances.
- I. In responding to questions, an officer should not guess or give an ambiguous answer. If he/she does not know or is uncertain of the answer, he/she should admit it, which is less damaging to the case than an inaccurate answer. Generally, personal opinions are not allowed into testimony by the Judge and should not be given unless asked.
- J. Pre-trial conferences with the prosecutor regarding an officer's proposed testimony are proper and legitimate, and the officer should answer **truthfully** if

asked by the defense counsel whether there was such a conference.

- K. If during or at the conclusion of the officer's direct testimony, and prior to cross-examination, the officer realizes that an important point has not been brought out or fully developed, he/she should bring it to the prosecutor's attention discreetly and as soon as possible. The prosecutor may not be able to recall the officer once he/she has been dismissed from the witness stand.

III. DEFENSE ATTORNEY TACTICS

- A. A defense attorney may resort to a variety of tactics in an effort to confuse or upset the testifying police officer or to discredit his/her testimony. This must be expected and it is permissible within ethical limits. An officer's ability to cope with these tactics improves with experience. As the Judge and jury will be closely observing the officer, he/she should never become argumentative or openly display anger or animosity towards the defense counsel. The officer should remain calm at all times despite any badgering tactics by the defense, and allow sufficient time to permit the prosecutor to make appropriate objections.
- B. Following are some common tactics used by a defense counsel in cross-examination:
 - 1. Asking questions in a rapid fire manner to confuse the witness.
 - 2. Intentionally mispronouncing the officer's name or calling him/her by the incorrect rank or title in order to affect his concentration.
 - 3. Being overly friendly, thus providing a false sense of security prior to attempting to lead the officer into inconsistent or conflicting answers.
 - 4. Being condescending to the point of ridicule to give the impression that the officer lacks experience or expertise.
 - 5. Asking repetitious questions or rephrasing questions in order to obtain inconsistent answers or answers which conflict with previous testimony by the witness.
 - 6. Asking questions which suggest a particular answer in order to lead the witness into responding.
 - 7. Continuing to stare directly at the witness after he/she has responded in order to provoke the witness into elaborating on his/her answer, thus providing more information than the question required.
 - 8. Demanding a "yes" or "no" answer to questions that obviously require

more explanation.

9. Suggesting or indicating that conflicting answers were given in earlier testimony.
10. Asking belligerent questions intended to anger and disconcert the witness.

An officer should remember that his/her testimony is usually heavily weighed by the Judge and jury in light of all evidence, and, therefore, it is the defense counsel's job to attempt to diminish or discredit the officer's testimony and the impact it has on their client's case.

IV. TESTIFYING IN CIVIL SUITS OR AS A DEFENSE WITNESS

- A. A police officer should not testify in any civil case which relates to his/her police duties unless he/she is a party to the law suit or is legally summoned to appear or unless permission has been obtained from the Chief of Police.
- B. A police officer should not testify for the defendant in any criminal case without being legally summoned to appear. As soon as the officer learns that he/she will be asked to testify, he/she **WILL** inform the Chief and the prosecutor of the nature of his/her testimony.

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