


<b>NORTHAMPTON POLICE DEPARTMENT</b>		
<b>Administration &amp; Operations Manual</b>		
<b>Policy: Testifying in Court</b>		<b>AOM: O-711</b>
Massachusetts Police Accreditation Standards Referenced:		Issuing Authority <hr/> Jody Kasper Chief of Police
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**I. Introductory Discussion**

The presentation of evidence in a court of competent jurisdiction 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 themselves in a convincing manner can greatly affect the weight given to their testimony and have significant influence on the outcome of the case.

It is only human for an officer to take a personal interest in a criminal case in which they have been deeply involved and to firmly believe that the offender is guilty and should be convicted. However, the defendant is innocent until proven guilty and conviction is based upon a finding of guilt beyond a reasonable doubt. Therefore, in

their testimony, the officer 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. They should evaluate their testimony objectively and constantly make every effort to improve their skills as a testifying officer. After a court proceeding has concluded, particularly if the case has been lost, they should review their testimony with the prosecutor to determine what improvements can be made to strengthen similar cases in the future.

## II. Rules of Evidence

To become skilled and effective in the task of testifying in court, a police officer should be familiar with the basic rules of evidence. See [AOM 0711.a Overview of Massachusetts Rules of Evidence](#).

## III. Prior to Trial

- A. If there is a sequestration order applicable to the police and other witnesses, officers shall remain outside the courtroom until called to testify. Also, they shall not discuss their testimony or the testimony of any other witness until the completion of the trial or other proceeding. A sequestration order generally requires that each witness testify separately and without having discussed their testimony with other witnesses and without having overheard the testimony of any other witness. Violation of a sequestration order could result in the judge declaring a mistrial or even dismissing the case.
- B. The officer shall not discuss the case with the defendant in the absence of their attorney, if they have one, or make any agreement with the defendant's attorney for recommendations as to the disposition of the case without the knowledge of and in the presence of the prosecutor and department Court Administrator.
- C. 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.
- D. It is understandable that occasionally mistakes in testimony may be made. An officer should voluntarily correct any error as soon as possible. In addition, an officer may realize after they have left the witness stand that they have overlooked some particular point. In such cases, they should inform the

prosecutor as soon as possible in a manner that is not distracting to the court. Writing a note and passing it to the prosecutor is an acceptable method to accomplish this purpose.

#### **IV. Conduct as A Witness**

- A. To ensure that their testimony will be given the full weight and credit to which it is entitled, every police officer testifying in court or at an administrative hearing should:
1. Be punctual in reporting at the time and place set for the hearing. Also, their physical appearance, personal conduct, and professional manner should be aimed at making the best possible impression.
  2. Review and prepare in advance all aspects of the case, have all necessary witnesses present, and have all physical evidence arranged for presentation.
  3. Testify to what they know from personal knowledge to be the truth and avoid any reference to evidence which is inadmissible hearsay.
  4. Speak naturally and calmly in a distinct and clearly audible tone of voice, describing in a straightforward manner the events of the case in the order in which they took place. Use plain, clearly understandable conversational language avoiding slang and unnecessary technical terms.
  5. Maintain a courteous attitude, self-control and personal composure at all times avoiding any impression of being contentious, biased or prejudiced, even if defense counsel attempts to berate, belittle, or embarrass the officer or their efforts.
  6. Listen carefully to each question and respond accordingly without hesitation or evasion. Answer only the questions which are asked.
    - a. If asked to state the facts, state the facts known or believed to be true;
    - b. If asked to state an opinion or conclusion, do so if the officer has formed an opinion or conclusion which they can articulate and support; and
    - c. If an answer is unknown, state that it is unknown.
  7. Make every effort to avoid errors or inconsistent statements which could undermine the confidence of the judge or jury in their credibility. If a mistake in testimony is made, the officer should voluntarily correct the error as soon as possible.
  8. Confine their testimony to the particular case and do not volunteer information or go beyond the scope of the question under discussion.
  9. Know their facts so thoroughly that they will not have to change their testimony even under rigorous cross-examination.
- B. As soon as they are called, the testifying officer should go directly to the witness stand in a dignified and alert manner, as it is at this point that the jury gains its first impression of the officer.

1. During the reading of the oath, the officer should maintain an attitude that reflects the seriousness of the proceedings.
  2. On the witness stand the officer should take a comfortable position that gives them a full view of the jury and the attorneys and should always maintain good posture and an alert appearance.
  3. They should avoid any movements or sounds that could be distracting to the judge or jury and which may divert their attention from their testimony.
- C. When a question is asked, the testifying officer should look directly at the person asking the question. If you do not hear or do not understand the question, request that it be repeated. Do not respond to any question that you do not clearly understand.
- D. An officer should pause briefly and consider every question before responding. This procedure has the following advantages:
1. It will assure the question is complete, preventing misinterpretation of the question;
  2. It gives an officer a chance to analyze and frame a complete and accurate answer;
  3. It gives the prosecutor the opportunity to make an appropriate objection to the question, if necessary.
- Note: The pause should not be too long as hesitation may be interpreted as indecision or uncertainty.*
- E. When an objection has been made, an officer should immediately cease testifying, look at the judge and await their decision.
- F. In responding to questions, an officer should be as specific as possible. However, figures for time and distance are usually given as approximations unless an officer has the exact information readily available.
- G. At the request of the prosecutor or defense attorney, and with the permission of the judge, an officer may refer to their notes or a police report to refresh their memory on a given point. However, continual reliance on notes will detract from what is being said and may also raise doubts as to the officer's knowledge. **Adequate preparation** will help to minimize the necessity of this type of aid.
- H. In responding to questions, an officer should not guess or give an ambiguous answer. If an officer does not remember or does not know a particular fact, They should say so as this will be less damaging to the case than an inaccurate reply or one that is confusing or misleading.
- I. Unless they are asked to do so, an officer on the witness stand should not volunteer their personal opinion on any matter, and they should avoid any statements such as "I think," "I believe," "In my judgement," "probably," "perhaps," or any other words indicating an opinion or conclusion.

- J. If an officer has discussed the case previously with the prosecutor, they will so state if asked. Such pre-trial discussion is entirely proper and legitimate.
- K. A testifying officer should rely on the prosecutor to ask the questions that they want answered and at the time and in the sequence that s/he wants answered.
- L. If during or at the conclusion of their direct testimony and before cross-examination, an officer realizes that an important point has not been brought out or fully developed by the prosecutor's questions, the officer, while still on the witness stand, may utilize a discreet signal to gain the prosecutor's attention. The prosecutor may then ask the judge for permission to confer with the officer. If that method is unavailable or unsuccessful, the officer may address the judge directly and request permission for a very brief conference with the prosecutor. A police witness should not wait until they have been excused from the witness stand to inform the prosecutor of important matters not brought out in their testimony. At that point, it may be difficult for the prosecutor to get the officer back on the stand, or even if they do so, to ask questions about matters not raised on direct examination. Naturally, these problems should be avoided by close cooperation in the preparation of a case between the police witness and the prosecutor.

## **V. 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 their testimony. This is permissible within ethical limits and should be expected. An officer's ability to cope with these tactics improves with experience. Since the judge and jury will be closely observing the officer, they should never become argumentative or display anger or animosity towards the defense counsel. They should remain calm and courteous at all times despite any badgering tactics by the defense and take sufficient time to permit the prosecutor to make appropriate objections.
- B. The following are some of the most common tactics used by a defense attorney in cross-examination:
  1. Asking questions in a rapid-fire manner to confuse the witness.
  2. Asking questions which suggest a particular answer in order to lead the witness into responding in a certain way.
  3. Indicating conflicting answers with earlier testimony.
  4. Demanding "yes" or "no" answers to questions that obviously require more explanation.
  5. Intentionally mispronouncing the officer's name or calling them by the wrong rank or title in order to affect their concentration.
  6. Being overly friendly to give the witness a false sense of security before attempting to lead them into inconsistent or conflicting answers.
  7. Being condescending to the point of ridicule to give the impression that the officer lacks experience or expertise.

8. Asking repetitive questions or rephrasing previous questions in order to obtain inconsistent answers or answers which conflict with previous testimony by the witness.
9. Continuing to stare directly at the witness after they have responded in order to provoke the witness into elaborating on their answer and providing more information than the question called for.
10. Belligerent questioning to anger and disconcert the witness.

*Note: All officers must acquire the ability to remain calm, deliberate and objective under such provocation and to understand that it is the purpose of the defense attorney to diminish or discredit that effect of their testimony on the judge or jury.*

## **VI. Testifying In Civil Suits or As a Defense Witness**

- A. A police officer shall not testify in any civil case which relates to their police duties without being legally summoned or unless permission has been granted by the Chief or designee.
- B. A police officer shall not testify for the defendant in any criminal case without being legally summoned. Before testifying in such case they shall inform the Chief of the nature of their testimony and shall also notify the prosecutor.