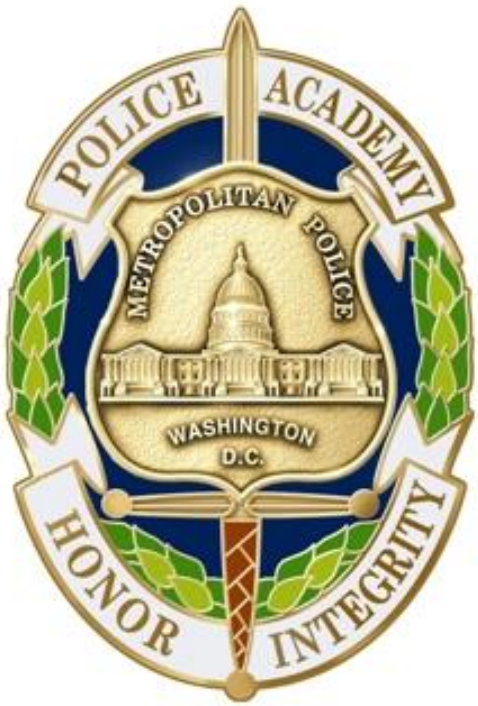
Metropolitan Police Academy



11.2 Court Procedures and Rules of Evidence

Introduction

Much of Metropolitan Police Department's work revolves around criminal cases and their adjudication in courts of law. This makes court procedures and the evidence presented of paramount importance. Rules of evidence govern when, how, and for what purpose proof of a legal case is put before the courts. The success of a criminal case may hinge on the manner in which evidence is presented during trial. It is with that understanding that MPD strives to have a mastery of the rules of evidence as they apply to DC courts.

11.2.1 Define key terms relating to evidence

Such terms include fact, evidence, relevant evidence, material evidence, probative evidence, and competent evidence. Law enforcement is responsible for ensuring that none of its actions result in recovered evidence being inadmissible, meaning unusable, at trial. First, we will learn about how a fact relates to the rules of evidence.

Fact
A fact is defined as something that actually exists; an aspect of reality (e.g., it is a fact that all people are mortal).

- A fact is an actual or alleged event or circumstance, as distinguished from its legal effect, consequence, or interpretation: <the jury made a finding of fact>.
- A fact can be an evil deed that results in a crime: <an accessory after the fact>.

For example, a robbery can be considered a fact and assisting the robber after the crime in eluding capture makes one an accessory after the fact.

Hence, facts for evidentiary purposes are necessary in order to arrive at a proper conclusion for an investigation. Such facts are evidence for the purposes of court procedure. It is important that any law enforcement officer has a firm grasp of evidence as it relates to court procedure.

Evidence
Evidence is defined as:

- Something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact (e.g., the bloody glove is the key piece of evidence for the prosecution).
- A fact that a tribunal considers in reaching a conclusion; a fact that has been admitted into evidence in a trial or hearing (a fact in evidence).
- The collective mass of things, especially testimony and exhibits, presented before a tribunal in a given dispute: <the evidence will show that the defendant breached the contract>.
- The body of law regulating the admissibility and relevance of what should be admitted into the record of a legal proceeding: <under the rules of evidence, the witness's statement is inadmissible hearsay that is not subject to any exception>.

For example, fingerprints on a crime scene will tend to prove or disprove the culpability of a suspect in a crime.

MPD provides all of its evidence to the US Attorney's Office (USAO) or the Office of the Attorney General (OAG). The amount of evidence can be substantial in certain criminal matters. However, not all of it will be considered to be relevant.

Relevant Evidence
Relevant evidence is evidence "is both probative and material and is admissible unless excluded by a specific statute or rule." It directly relates to the issues involved in the case.

Material Evidence
Material evidence is evidence that can have some impact on the consequential facts or the issues involved in a case, thereby impacting the case's outcome. For example, somebody's date of birth has no material value to a Possession of Heroin charge.

Probative Evidence
Probative evidence is evidence that tends to prove or actually proves a point in a case. If someone is on trial for Operating after Suspension, the date that his or her driver's permit was suspended is considered probative evidence.

Competent Evidence
All evidence is required to be competent. In order to be considered competent, evidence must meet criteria for being admissible. There are three general measures to determine if evidence is competent:

- Is the evidence generally unreliable? If so, the evidence is not competent. An example of unreliable evidence would be hearsay evidence. Hearsay evidence is unfairly prejudicial due to the fact that somebody is speaking for somebody else and therefore provides secondhand information during testimony.
- Evidence is not competent if it is unjustifiably disruptive. This could be evidence that is supplied without proper warning by one side to the other in a case, either the defense or prosecution. An example of this would be a witness introduced by either the prosecution or defense during trial although the person was not known during the course of the case as having witnessed the crime.
- Evidence cannot be considered competent if it is overwhelmingly prejudicial. For example, giving a flood of bloody photographs when one or two is sufficient, is considered overly prejudicial.

11.2.2 Differentiate the forms and types of evidence

Now that you understand the terms related to evidence, you can learn about the different types of evidence.

Direct Evidence
Direct evidence is:
- based on personal knowledge or observation and
- that, if true, proves a fact without inference or presumption. For example, someone observes a bank robbery or watches an explosion.

Indirect Evidence
Indirect evidence is evidence based that proves a fact but not the fact in question. Indirect evidence, in conjunction with other information or evidence, may lead to the discovery of the fact in question.

Indirect evidence is also called circumstantial evidence. For example, nobody saw a murder, but DNA evidence ties the suspect to it. More evidence than just the DNA would be needed to find the suspect is the one that committed the murder. Another example is an eyewitness who sees a man with a bloody knife running from the scene of a stabbing, although he did not witness the actual stabbing.

Now that you know the different types of evidence, you can learn about how they are presented in court. There are three different forms by which evidence is presented in courtrooms.

Testimonial Evidence
Testimonial evidence is a person's testimony offered to prove the truth of the matter asserted therein; it is evidence elicited from a witness. Testimonial evidence is also called communicative evidence and is used to establish a fact.

Tangible Evidence
Tangible evidence is evidence that is real or concrete; that is capable of being touched and possessed. Tangible evidence is physical evidence that one can see and inspect (such as a model or photograph).

Demonstrative Evidence
Demonstrative Evidence is evidence that, while of probative value and usually offered to clarify testimony, does not need testimony to admit because it can be seen by the judge and jury. It explains and illustrates a point.

Judicial Notice
When evidence falls into the category of reliable common knowledge, the courts accept it as fact during a legal proceeding. This is known as a court taking judicial notice of a fact. Judicial notice is a court's acceptance, for purposes of convenience and without requiring a party's proof, of a well-known and indisputable fact. For example, courts take judicial notice of such fact as there are twelve (12) inches in a foot.

11.2.3 Understand basic requirements for testifying about certain kinds of evidence

Opinion Evidence
Opinion testimony is based on one's belief or ideas or personal observations (when offered by a lay, non-expert witness) or on direct knowledge of the facts at issue interpreted using skills and expertise to draw a conclusion (when offered by an expert witness). Opinion testimony from either a lay witness or an expert witness *may* be allowed in evidence, but only under certain conditions.

Exceptions to the general rule preventing lay witnesses from giving opinion evidence:

- Sensory perception such as hearings/sounds, taste, and smell (e.g., it smelled like smoke).
- The appearance of another person's emotions (e.g., he seemed nervous).
- Vehicular speeds generally (when not specifically measured such as by RADAR). This testimony must be given as an opinion as to whether the driver was traveling slow or fast.
- Identification of someone's voice the witness has heard before (e.g., "It was Jim's voice on the phone.")
- The witness's intent (e.g., "I was going to cross the street.")

- Recognition of another's handwriting that the witness has seen before (e.g., that's my boss's handwriting)
- Appearance of intoxication (e.g., "he looked drunk.")
- Another's irrational conduct (e.g., "he was acting crazy.")

Distances
One of the more difficult ways to offer opinion evidence is through distances. You should be wary about stating distances that you have not formally measured using an instrument (such as a tape measure). If asked while testifying, be sure to clearly indicate that you are estimating the distance unless the distance was actually measured. You should say something like, "I believe the suspect was about twenty feet away. I am not sure of the distance, she seemed pretty close." If you were to say that the distance was twenty (20) feet and it was actually ten (10) feet or forty (40) feet (determined because the defense attorney measured it), that could harm your credibility with the judge or jury.

Another alternative is to use landmarks: "I was by this light pole and the defendant was directly across the street from me by the fire hydrant." You can also use objects in the courtroom as a reference point for distance since the jury/judge has the ability to view the same distance themselves: "the distance was from here (pointing to the witness stand) to the counsel table."

Evidence Garnered from Non-human Sources
This type of evidence includes but is not limited to: intoximeter results, drug field test results, RADAR or LIDAR readings, and police K-9 dog indications. This type of evidence is permitted because properly calibrated machines and trained animals lack a conscious motivation to lie. In order for an officer to testify about the results of a canine indication, intoximeter reading, radar gun reading, and the like, the officer must be certified to use the instrument in question. For a K-9 dog indication, the officer must be a certified K-9 handler.

11.2.4 Describe privileged communications as it pertains to police investigations

Just because someone is subpoenaed or requested to testify by either the prosecution or defense, it does not mean that he or she will be allowed to do so. There are a few categories of protections called privileges that can exempt a member from being required to testify.

According to Black's Law Dictionary, privileged communications are "[t]hose statements made by certain persons within a protected relationship … which the law protects from forced disclosure on the witness stand at the option of the witness. In this instance, a privilege is meant as an evidentiary rule that gives a witness the option to not disclose the fact asked for even though it might be relevant.

The District of Columbia recognizes different types of privilege:

- Attorney-Client Communication
- Doctor/Mental Health Professional-Patient Communication
- Spousal or Domestic Partner Communication (There is an exception to the spousal privilege typically allowed under DC law. Sections 22-3024 and 14-306 explicitly prevent a witness from using spousal/domestic partnership privilege when the crime involved is either a Sexual Abuse or Domestic Violence related offense.

- Clergy Communication
- Government's privilege to protect sources and classified information
- Reporter's privilege to protect sources

NOTE: There is no parent-child, intra-sibling, or boyfriend-girlfriend communications privilege.

Police should feel free to ask doctors, teachers, spouses, etc. the important questions that could help solve a case during an investigation. Privilege, however, also provides a valid basis for a witness not to answer questions or provide documentary evidence during a police investigation. Police cannot compel cooperation in such instances.

NOTE: Oftentimes, privileged communications learned during the course of investigation will not make it into courtroom testimony.

11.2.5 Acquire a basic understanding of the concept of hearsay

Hearsay is a form of testimonial evidence that is not allowed during trial. However, it is allowable during certain court proceedings (e.g., a preliminary hearing, a motion to suppress). It is important for law enforcement to know the rules regarding hearsay.

According to Black's Law Dictionary, hearsay is:

- "[T]estimony in court of a statement made out of the court, the statement being offered as an assertion to show the truth of matters asserted therein, and thus resting for its value upon the credibility of the out-of-court asserter."
- "Evidence not proceeding from the personal knowledge of the witness, but from the mere repetition of what he [or she] has heard others say." Therefore, the evidence is solely dependent on the credibility of someone other than the witness.

Such testimony is generally inadmissible under the rules of evidence. If a person testifies as to the statements of someone else, there is no way to evaluate the credibility of the person who told law enforcement what happened. Without the person who actually made the statement, the judge/jury would have no way to determine how the person learned the information contained in the statement. The prohibition against the use of hearsay evidence in court is called the Rule Against Hearsay. It prevents secondhand information from making it to trial.

Law enforcement strives to obtain as much evidence as possible that is not derived from hearsay. Doing so makes a court case stronger for the prosecution. However, hearsay evidence is still important in police investigations. While hearsay can be used to build a criminal case, hearsay cannot be presented by a police officer as testimonial evidence before a jury or bench trial.

Example of hearsay: Someone approaches a police officer and tells him or her that the robber waved his handgun during the robbery. The police officer's testimony about the waving of the handgun is inadmissible.

Double hearsay is a statement by one person that contains a statement made by yet another person. For example, Joe testifies that he heard Sarah say that Mark admitted to pulling the trigger.

Objections to Hearsay
There are two noted objections to hearsay:

- When the statements was made, the person making the statement was not under oath.
- The person making the original statement is not subject to a cross-examination to establish the clarity and veracity of it.

Risks of Hearsay
There are four risks of hearsay that a law enforcement officer should be mindful of in court:

- **Perception**: How did the actual witness come to observe the underlying event? This is an important issue the attorneys will want to explore in court.
- **Memory**: How clear is the memory of the witness of the actual event(s) that transpired?
- **Veracity**: What is the reasoning of the third party (the actual witness) in providing information to the person who testifies in court? The court must be able to evaluate if the third party is truthful.
- **Articulateness**: How did the third party (the actual witness) originally articulate the matter? Is there something lost in the translation or transmittal of the information? Without the third party available to be questioned in court, one cannot be sure of the true meaning of what was said during the articulation of the evidence.

Although law enforcement officers cannot avoid using hearsay as evidence, it is smart to minimize it for the purposes of testimonial evidence during trial.

11.2.6 Exceptions to hearsay important during police investigations

The courts recognize exceptions to the hearsay rule. The two most influential to law enforcement investigations are the **dying declaration** and the **spontaneous utterance**.

Dying Declaration
Under the Federal Rules of Evidence, a dying declaration is a statement made by a person who believes that his or her death is imminent, though the person does not need to die. The statement *must* be related to the cause or circumstances of their death.

Law enforcement must be very diligent in collecting evidence when there is a witness who is dying and a statement is being made relating to the cause of that death. Evidence of impending death is essential. The courts have ruled that statements that the witness (victim) believes that he or she is going to die, observations of the severity and nature of the injuries involved, and the behavior of the victim such as moaning, having difficulty breathing, and passing in and out of consciousness, can be used to establish the witness's belief of imminent death.

A dying declaration can lead to the conviction of the perpetrator when, for example, the victim suffers from a gunshot wound to the chest. It is important that law enforcement properly document in a notebook the entirety of the statement and the conditions in which the dying declaration was made. The nature of how the witness believed that there death was imminent is also important.

Excited or Spontaneous Utterance
Under the Federal Rules of Evidence, a statement relating to a startling event or condition, made while the person was under the stress of the excitement caused, is an excited or spontaneous utterance. For

example, a police officer is on the scene of a robbery and the arrested robbery suspect exclaims out of frustration, "I should have robbed the bank across the street!" The officer did not do anything to solicit such a statement an so it is considered to be an excited utterance.

Officers should be aware of and note the presence of whatever serious occurrence or startling event causes a witness, victim, or offender to experience a state of nervous excitement or physical shock. Officers should also look for the presence of circumstances that in their totality suggest the spontaneity and sincerity of the remark.

NOTE: The statement must have been made within a reasonably short time after the occurrence to ensure that the person has not reflected upon the event and possibly invented a statement.

11.2.7 Explain the Computer Assisted Notification System (CANS)

The Computer Assisted Notification System (CANS) was developed to assist the department, the US Attorney's Office (USAO), the Office of the Attorney General for the District of Columbia (OAG) and the District of Columbia court system in advising the employees of MPD of pending court dates. The DMV Bureau of Traffic Adjudication (BTA) also may initiate CANS for traffic court appearances. BTA CANS will be discussed in further traffic lessons.

CANS Notification
The CANS issues an official notice to a witness that must be complied with; it must be treated like a subpoena. A CANS cannot be refused by an MPD officer.

A CANS contains the officer's information, prosecuting attorney's information, case name, case number, and the date and time that the officer must appear. A CANS can be for a witness conference, trial, grand jury, or other type of proceeding.

Upon receiving a CANS notification, an MPD officer must sign the administrative copy and return it to the serving official or CANS coordinator.

Email CANS
The email CANS was developed to make the process of serving members more efficient. An email CANS is the preferred method of serving a notification. Members are required to check their email at least once during a shift. Upon receiving a CANS, a member must electronically acknowledge receipt of the CANS through a read receipt. If this is not done, a member can be disciplined for failing to check his or her email.

Although the email method is the preferred method of CANS service, if the email is not acknowledged by the member, MPD must then print a paper CANS.

Excusal
Once received, it is the responsibility of the member to call the prosecutor (AUSA or AAG) at the number provided on the CANS in order to be excused. Excusal is not always possible.

Emergency CANS
An emergency CANS request is a request by the prosecuting attorney for one or more employees to appear for a trial, grand jury proceeding, or witness conference in less than the regular CANS request time

frame of seven (7) calendar days.

11.2.8 Apply department policies governing court appearances

An officer must use the information the CANS contains in order to check into court. The court check-in process begins at 300 Indiana Ave. NW. Upon arrival with the court liaison, the MPD officer must complete a **Court Appearance Worksheet**. The officer must update the Court Appearance Worksheet as he or she completes the court cases written on it.

After checking in, officers must immediately report to the attorney or the courtroom listed on the CANS. However, if evidence is needed, it should be picked up from the court evidence office before reporting to the applicable attorney, courtroom, etc.

An officer must complete the sign-in sheet when responding to each applicable location. For example, when responding to the witness room.

Where multiple commitments conflict, employees will dispose of their commitments in accordance with the following priority schedule:

- Preliminary hearing pre-conferences
- Juvenile cases and papering
- Adult OAG for the District of Columbia cases (**Court Appearance Notifications - GO-PCA-701.06**)
- Adult US Attorney cases
- Any jury trials
- Non-jury trials in US District Court
- Juvenile trials
- Non-jury trials in Superior Court
- Hearings
- Matters not before the court, such as witness conferences

Administrative tasks such as Office of Police Complaints and Bureau of Traffic Adjudication Hearings are completed afterwards. An officer *must* obtain each applicable prosecuting attorney or agency representative authorization (signature) when completing each task on the Court Appearance Worksheet.

If an officer needs to be excused for a court proceeding, they must obtain the permission of the USAO, AAG, or equivalent and then call the court liaison. Officers should be prepared to give the specific case information, the person authorizing excusal, and the time of excusal during the phone call. If the excusal involves a domestic violence case at DC Superior Court, the officer must additionally obtain domestic violence log numbers from the prosecuting attorney. This information must be forwarded to the court liaison who then gives the requesting officer an excusal reference number. Excusal reference numbers must be recorded by the officer in case any issues arise out of the excusal.

Upon finishing court or other CANS-related matters, the officer must immediately report back to the court liaison to check out. After completing the Court Appearance Worksheet, the officer gives it to a court liaison employee who enters the officer into MPD's time and attendance program (TACIS).

The Court Appearance Worksheet is an official document and will account for the officer's time while checked into a court or witness proceeding. Any falsification of this document can lead to criminal prosecution and/or discipline up to and including termination.

Any failure to account for time between case responsibilities or not checking out immediately after being excused by the prosecuting attorney can result in disciplinary action upon the member.

If running late to any court-related or administrative commitment, the officer must inform a court liaison sergeant. If one is unavailable, an official at his or her element must be contacted. If the lateness is excused, the officer must be sure to record any applicable log number(s). If the lateness is unexcused, the officer is subject to departmental discipline.

NOTE: Failure to show up to court commitments subjects officers to administrative and/or criminal penalties.

Summary

In this lesson, we discussed court procedures and rules of evidence. This is particularly important when gathering evidence out in the field. Knowing the difference between types of evidence and the corresponding forms will help an officer when testifying in court. Officers should also understand the policies governing court appearances and why it is important that they be followed.

REFERENCES

GO 701.01	Courts and Hearings	12/31/2008
GO 701.06	Court Appearance Notifications	08/02/2005
Federal Rules of Evidence		February 2007
Black's Law Dictionary	Eleventh Edition	2019