

Court Testimony Monitoring		
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Court Testimony Monitoring

1 Guiding Principles and Scope

- 1.1 Court testimony is the culmination of the work performed by the laboratory's scientists. To ensure that court testimonies are relevant, and presented in a clear and professional manner, the testimony of each testifying examiner is monitored at least once during a calendar year, providing testimony is rendered.
- 1.2 This document describes the Department of Forensic Biology's courtroom testimony monitoring program.

2 Procedure

- 2.1 When a case goes to grand jury or trial, the Reporting Analyst (RA) will be contacted to testify either by phone or subpoena. An informal request by phone should be directed to the RA's supervisor to gather details of the testimony. OCME counsel should be consulted if the request is via a subpoena. In either case, a pre-trial with the Assistant District Attorney (ADA) or defense attorney is advisable to discuss or go over the line of questioning. If the assigned ADA has a certified copy of the case record, you may testify to that. Or, either print the LIMS case record or pull the hardcopy case record.
- 2.2 If this is the RA's first testimony for the year or if the RA is inexperienced, their supervisor should be present at the pre-trial and trial. In addition to answering questions and providing support, the supervisor is responsible for evaluating the RA's testimony at trial. Evaluation of the RA's testimony at grand jury is left to the ADA, since no observers are allowed into court for grand jury.

3 Documenting Court Attendance

- 3.1 Staff members who are called to appear in court must have each court appearance documented, regardless of whether testimony was provided and/or evaluated.

4 Testimony Monitoring

- 4.1 The testimony of each examiner is monitored at least once each calendar year, assuming that testimony is rendered. It is the responsibility of each testifying examiner to ensure that this is done.
- 4.2 Acceptable methods of courtroom monitoring are:

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- 4.2.1 Direct courtroom observation by a higher-level supervisor (Criminalist Level IV or above).
- 4.2.1.1 This is the preferred method for trial testimony.
- 4.2.1.2 In most cases the “higher-level supervisor” will be the immediate supervisor of the testifying examiner; however, a peer of the immediate supervisor or a higher level manager may perform the monitoring.
- 4.2.2 If direct courtroom testimony evaluation is not possible by a supervisor, the transcript of the testimony may be used to evaluate the testimony performance of the examiner. Evaluation of the transcript by the testifying examiners’ immediate supervisor should occur as soon as the transcript is received by the laboratory. Once this is completed, attach the testimony review to the respective LIMS entry in the Court Attendance List.
- 4.2.3 To request a copy of your courtroom testimony, copy the template language below into a new email message and complete the necessary information. Email to the assigned ADA and cc. yourself and your immediate supervisor.

*The subject line should be **FB# Testimony [date] Transcript Request**. Once sent, the ADA’s email response must be attached to the LIMS Court Attendance record that you entered into LIMS for that case(s). It is recommended to use *Delivery and/or Read Receipt* as confirmation that the email was received by the assigned ADA. Use OCME standard email signature format, including your name and title. Use a plain background (no color) for email.*

Good afternoon, due to the FBI Quality Assurance Standards that went into effect July 1, 2020 which requires that someone with scientific expertise evaluate the courtroom testimony of laboratory personnel, I am requesting a copy of my [Grand Jury/Supreme Court] testimony given:

- **Date of testimony**
- **FB#**
- **Complaint number**
- **Suspect name, suspect NYSID number**
- **Complainant name**

A response is required for accreditation purposes.

Thank you
Analyst Signature

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- 4.2.4 If you receive a response that the ADA cannot provide a testimony transcript, save this email as an attachment to the LIMS entry in the Court Attendance list.
- 4.2.5 Analysts are responsible for continuing to request testimony transcripts for each grand jury/ trial testimony for the course of a calendar year or until one is received and reviewed.
- 4.3 The testimony evaluator completes a Forensic Biology Court Testimony Evaluation Form. The form includes evaluations/comments on the following areas:
- 4.3.1 Appearance
 - 4.3.2 Poise
 - 4.3.3 Effectiveness of presentation (technical knowledge, ability to convey scientific concepts)
 - 4.3.4 Interpretation of laboratory results
- 4.4 If reviewing the transcript of the testimony only, Appearance and Poise can be noted on the Form as Not Ratable.
- 4.5 Evaluation forms completed by someone other than the testifying employee's immediate supervisor are forwarded to the testifying examiner's immediate supervisor.
- 4.5.1 Immediate supervisors review the evaluation with the testifying examiner, discussing areas of strengths and weaknesses.
 - 4.5.1.1 The immediate supervisor may prescribe remedial action if the evaluation is unsatisfactory. Deficiencies in knowledge or courtroom presentation may require remedial training that includes one or both of the following:
 - 4.5.1.1.1 Retraining on technical information if the testimony was inaccurate.
 - 4.5.1.1.2 Moot court retraining if the testimony showed deficiencies in the ability to express the concepts clearly.
 - 4.5.2 The immediate supervisor and the testifying examiner sign/initial and date the evaluation form.
 - 4.5.3 Completed evaluation forms are forwarded to the Quality Assurance Unit for entry into LIMS and hardcopy storage.