UNITED STATES ATTORNEYS' MANUAL

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FOREWORD

I am pleased to present the June 2020 *United States Attorneys' Manual* alongside my Deputy Attorney General. This manual was proudly edited and published by the both of us.

The *United States Attorneys' Manual* is being published as a tool for federal prosecutors to perform their duties. The June 2020 edition of the *Manual* is the direct result of an enormous cooperative effort throughout the Department of Justice administration. I'd like to express my appreciation to the Deputy Attorney General, Nir2602, for his commitment to this project.

I am confident that the June 2020 edition of the *United States Attorneys' Manual* will prove to be a valuable resource for all federal prosecutors and Department of Justice personnel.

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Acknowledgements

In writing this guide, several resources from our judicial community and real-life resources were used, including the real-life Justice Manual. We thank everyone who continues to share their knowledge and experience of the legal community to the public.

Introduction

The courts of nUSA are one of the most complicated aspects of nUSA to get into and understand properly. It requires a lot more dedication than being a simple law enforcement officer. However, succeeding in the judicial community is one of the most rewarding, interesting, and beneficial areas of nUSA, which may lead to many other aspects of this community. Whether it is politics, judgeships, private or public practice, or any other aspect of nUSA, the legal community may lead you anywhere.

Whether you are a new attorney joining the Department of Justice, or an experienced one, the purpose of this *manual* is to educate you on the various policies and procedures of the Department of Justice, and in addition, to the practice of law. Of course, this manual by itself will not make you the perfect lawyer. Only experience and continuous initiative to learn may do that. However, this manual will serve as an amazing starting point and a great reference point for the future.

Proper Formatting of Court Documents and Citations

At court, except the content of your motion, presentation is an important aspect to be taken seriously, and for the presiding judge to be able to easily understand your motion. Proper formatting and citations is essential for the success of a motion or any document. It will also allow you to easily dissect opposing arguments. Many judges simply do not accept terribly formatted documents, no matter if the context of the document would have been granted in a properly formatted document.

Formatting of Case Documents

Template:

All attorneys, no matter which field of law they participate in, should prepare various templates for themselves that may easily be duplicated and used at any time. Having templates at-hand will significantly increase your workflow and will allow you to focus more on the context of the motion, instead of the formatting. The Department of Justice will grant all of its federal prosecutors many standard templates for various motions and other types of documents that may be filed at court.

Uploading a document:

All documents must be uploaded to google drive, in the file format as a "PDF". The court will not accept otherwise and will not download motions.

Proper citations of Case law, statues, etc.

The usage of case law, statues, and other legal references is essential for the success of your case. Proper citation allows the presiding judge to easily understand that your argument is backed up by evidence, constitutional statutes, local and federal laws, and *stare decisis* (A former decision by a higher court/precedent).

The Legal Information Institute (LII) (a website you will use often for researching precedent and using the U.S. Code.) has created a wonderful citation guide for most of the things you may need, including SCOTUS and Court of Appeals Citations, Constitutional Statutes, Federal Rules, and more. All Federal Prosecutors should use this citation guide: https://www.law.cornell.edu/citation/2-200 However, this manual will go over a couple citations from the LII and a couple nUSA specific citations.

Precedent:

District Court Case: Plaintiff v. Defendant (Case No. 0:00-0000)
For district court cases, it is recommended that you also link the trello card associated with the case somewhere in your court document.

Laws:

Public Law: Pub. Law. (Number of law) - (Name of Law)

Municipal Criminal Code: Different for each criminal code. You must check the municipalities criminal code to see how they cite their laws.
Municipal Legislation/Public Laws: See Municipal Legislation databases. Again, it is different for each municipality.

Federal Rules of Procedure:

Federal Rules of Criminal Procedure: Fed. R. Crim. P. (#) - (Name of Rule)
Federal Rules of Civil Procedure: Fed. R. Civ. P. (#) - (Name of Rule)

Constitutional Statutes Examples:

§ = section
Article: U.S. Const. art. III, § 2, cl. 2
Amendment: U.S. Const. amend. XIII, § 2.
D.C. Chart. art. I, § 9, cl. 2

Pretrial

As a Federal Prosecutor, you will be expected to handle two cases at time, with a maximum of three. When you are assigned a case, you will need to, and are expected to immediately construct an initial plan on how you wish to prosecute the case. This begins by familiarizing yourself with the initial documents you are given when you are assigned the case. In almost every case you will be handed, there will be an investigation report from the Federal Bureau of Investigation's Criminal Investigative Division attached detailing the crime that occurred and the several aspects surrounding it, the process of investigation, the recommended charges, and most importantly, the evidence. While reviewing the evidence, take notes of important details you may see as they may be useful at any stage of court. In addition, a signed affidavit by the Investigator of the case will be provided. You should review the affidavit to learn more on the process of the investigation, and to assure the affidavit will be accepted in court.

After reviewing the initial documents given, you will need to prepare a Criminal Information that will accompany the affidavit as the initial documents you will file at court (More Information about the Criminal Information will be discussed in the next section.) After preparing the Criminal Information, you will request your U.S. Attorney to review it, and then they will submit the case to the court.

After the case is filed to the court and a judge has been assigned, they will create a case chat in the United States District Court Discord, where they will tag you and request you the initial documents to establish Probable Cause.

Criminal Information

The criminal information, along in the affidavit, begins a criminal proceeding in court. It is "a plain, concise, and definite written statement of the essential facts constituting the offense charged and must be signed by an attorney for the government." (Fed. R. Crim. P. 7(a). The Criminal Information, alongside an affidavit, establishes probable cause as required by Fed. R. Crim. P. 9(a).

Summons & Arraignment

After the judges accept the Criminal Information & Affidavit, the judge will proceed to compel the appearance of the defendant. Pursuant to Fed. R. Crim. P. 9(a), they will initially issue a summons. However, if the prosecution requests and the court agree, the presiding judge may issue an arrest warrant to compel the defendant's appearance. If the defendant has failed to attend court, the case will proceed in absentia and a public defendant will be assigned.

When the defendant arrives at the court, the presiding judge will proceed to schedule an arraignment. The arraignment is governed by Fed. R. Crim. P. 10 During the arraignment, the prosecution will present the charges in open court, and the defendant will plead to the charges. The defendant may plead not-guilty, guilty, or nolo-contendere (plea of no contest).

Motions

Motion for Discovery: - (Fed. R. Crim. P. 16)

A motion for discovery is a motion that is filed by most defense attorneys. It is a motion that requires the opposing party to present all evidence, witnesses, documents, and anything else within the scope of Fed. R. Crim. P. 16 (clause (a) for the prosecution and clause (b) for the defense.) that will be used during the case. It is recommended that you file a motion for discovery too. However, note that the

prosecution may only request discovery after the defense has done so. (See Rule 16(b). A standard Discovery template is available from the U.S. Attorneys' Office Standard Templates Library.

In addition, a motion for discovery does not need to be approved by a judge. Rule 16(a) & (b) states that at the "defenses request" the government/prosecutor must hand in all evidence, and vice versa (b).

Motion to Suppress:

A motion to suppress is a motion to restrict the use of a certain piece of evidence for the case. Some of the reasons that can be argued is, it is unrelated, it is classified (matters of national security, although this is very rare.), the evidence is edited and it is not the original piece.

Motion to Remand:

A motion to remand is a motion to "place the defendant in the custody of the Attorney General". Or in simpler terms, custody of the appropriate law enforcement, until trial. Or Pre-trial detention. In nUSA, this is Federal Prisoner and Arrest-on-Site (AOS) status. Federal Prisoner is a rank in the main nUSA group that marks you as a prisoner and restricts you from working in almost all government positions, and at the discretion of a private employer. This does not mean however, that you may be arrested on sight on U.S. cities. Arrest-on-Status is the status of being legally arrestable on sight and brought straight to jail. For a motion to remand to be granted, the motion must have the following four present factors for a lawful pretrial detention be issued. (Pursuant to United States v. Salerno 481 U.S. 739, 742-743 (1987))

1. the nature and seriousness of the charges,
2. the substantiality of the Government's evidence against the defendant,
3. the [defendant's] background and characteristics, and
4. the nature and seriousness of the danger posed by the defendant's release/allowed to roam in public.

Motion for Continuance/leave:

In case the prosecutor or defense counselor cannot abide by the time they must file/participate in the court, (due to real-life factors, or needing more time) a counselor

may file a motion for motion for continuance/leave. If the motion is accepted, there will be no actions in the case done until the judge agrees to end the recess. Unlike most motions, this motion can be done verbally (by simply asking in the discord chat.) instead of in a proper document motion. Or if done during trial, verbally.

Motion for leave to Nolle Prosequi (Drop the charges.):

If the prosecution decides it does not have enough evidence against the defendant, or is not interested anymore in further prosecuting the defendant, the prosecution may motion for leave to nolle under Fed. Rules. Crim. Rule 48 - Dismissal. This motion can only be done by the presiding U.S. Attorney, or any other related higher authority to the case.

Motions to Recuse; recognizing bias:

In the case when a federal prosecutor determines that a judge must bow out of hearing any case in which his or her impartiality might reasonably be questioned, they file a motion to recuse. This motion will either be accepted or denied by the presiding judge. Should the judge accept, a new judge will be assigned to the case. When moving for a recusal, consider using specific examples of judicial misconduct that you experienced to back up your assertions citing actual clauses violated in the rules of judicial conduct.

Note that if a timely affidavit is filed to the court showing that the judge is bias, the judge must recuse from the case and have it reassigned to another judge. See 28 U.S.C. § 144

Basic standards of bias of a judicial officer can be found at 28 U.S.C. § 455.

Plea Deal

A plea deal is an agreement between the prosecution and the defendant whereby the defendant agrees to plea guilty or nole contendere (acceptance of guilty plea without admitting guilt.) In return, the defendant will get a reduced punishment, instead of one defendant may face if the defendant is convicted. The prosecution may negotiate the terms of a plea deal with the defense, and once both sides agree to the terms, the plea deal must be approved by the presiding judge. It is highly recommended you attempt to negotiate a plea deal in every case!

Important: A plea deal may only be offered with the approval of your superior!

Bill of Particulars:

A bill of particulars is a motion by the defense which asks the prosecution to explain the events of the case and the charges associated with the case in more detail. It is derived from Fed. R. Crim. P. 7(f). To reply to it, use a motion template and explain the events to each associated charge.

Trial

Bench & Jury Trials:

In a bench trial, the judge will be deciding the verdict. This means you want to stick to the facts and the pure law part of the case. In a jury trial, a group of American citizens listens to the trial and decides the verdict. In this case it is advised that you do explain the law but also the morality of the crime as you are convincing a bunch of random, possibly untrained, citizens of someone's guilt - not a judge who is experienced in law.

IMPORTANT NOTE: Pub. Law 66-10 § 206(c) states that "consistent with the Federal Rules of Criminal Procedures, Rule 58(b)(2)(e)(i), and 18 U.S. Code 19, all cases under subsection (a) shall be considered petty offenses and not require juries." Therefore, for most common crimes, a defendant is not entitled to a jury trial. Bench trials are significantly preferred over jury trials.

The following exceptions as outlined by subsection (a) is:

- Title 18, Chapter 20;
- Title 18, Chapter 29;
- Title 18, Chapter 37;

- Title 18, Chapter 47;
- Title 18, Chapter 113B;
- Title 18, Chapter 118;
- Title 18, Chapter 111A;
- Title 18, Chapter 115.

Opening Statements

Next, there are opening statements. The prosecution (you) will present your opening statement when the presiding judge turns to you. In your opening statement, you will be introducing the charges, the surrounding events of the crime, the law surrounding the charges, and a **summary of your argument. It is** important you give a summary of your argument and not your full argument.

Main Arguments

Main Arguments is the time the prosecution presents their entire case, while the defense attempts to dismantle the case and prove the innocence of the defendant. Remember, it is the prosecution's constitutional duty to prove the defendant is guilty, not the defense's duty to prove them innocent. As the prosecution, you will present all your evidence, witnesses, and arguments. Then, the defense will attempt to discredit your argument and may present contradicting evidence to yours.

During arguments, any party may object to any argument to strike and discredit an argument from the case. Objections are an important part of main arguments, and may be the direct result of a verdict of a case. Here is an overview of each of them and how they work: (*Credit to the first Chief Public Defender Sam4219 for providing this outline of objections.)*

- **Ambiguous, confusing, misleading, vague, unintelligible:** the question is not clear and precise enough for the witness to properly answer.
- **Arguing the law:** counsel is instructing the jury on the law.
- **Argumentative:** the question makes an argument rather than asking a question.
- **Asked and Answered:** when the same attorney continues to ask the same question and they have already received an answer. Usually seen after direct, but not always.

- **Asks the jury to prejudge the evidence:** the jury cannot promise to vote a certain way, even if certain facts are proved.
- **Asking a question which is not related to an intelligent exercise of a peremptory challenge or challenge for cause:** if opposing counsel asks such a question during voir dire (i.e. the jury selection process.)
- **Assumes facts not in evidence**: the question assumes something as true for which no evidence has been shown.
- **Badgering:** counsel is antagonizing the witness in order to provoke a response, either by asking questions without giving the witness an opportunity to answer or by openly mocking the witness.
- **Best evidence rule:** requires that the original source of evidence is required, if available; for example, rather than asking a witness about the contents of a document, the actual document should be entered into evidence. Full original document should be introduced into evidence instead of a copy, but judges often allow copies if there is no dispute about authenticity. Some documents are exempt by hearsay rules of evidence.
- **Beyond the scope:** A question asked during cross-examination has to be within the scope of direct, and so on.
- **Calls for a conclusion:** the question asks for an opinion rather than facts.
- **Calls for speculation:** the question asks the witness to guess the answer rather than to rely on known facts.
- **Compound question:** multiple questions asked together.
- **Hearsay:** the witness does not know the answer personally but heard it from another. However, there are several exceptions to the rule against hearsay in most legal systems.
- **Incompetent:** the witness is not qualified to answer the question.
- **Inflammatory:** the question is intended to cause prejudice.
- **Leading question (Direct examination only):** the question suggests the answer to the witness. Leading questions are permitted if the attorney conducting the examination has received permission to treat the witness as a hostile witness. Leading questions are also permitted on cross-examination, as witnesses called by the opposing party are presumed hostile.
- **Narrative:** the question asks the witness to relate a story rather than state specific facts. This objection is not always proper even when a question invites a narrative response, as the circumstances of the case may require or make preferable narrative testimony.
- **Privilege:** the witness may be protected by law from answering the question.
- **Irrelevant or immaterial:** the question is not about the issues in the trial.
- **Misstates evidence / misquotes witness / improper characterization of evidence:** this objection is often overruled, but can be used to signal a problem to witness, judge and jury.

- **Counsel is testifying**: this objection is sometimes used when counsel is "leading" or "argumentative" or "assumes facts not in evidence".

Evidence Objections:

- **Lack of foundation:** the evidence lacks testimony as to its authenticity or source.
- **Fruit of the poisonous tree:** the evidence was obtained illegally, or the investigative methods leading to its discovery were illegal. Can be circumvented; see inevitable discovery
- **Incomplete:** opposing party only introducing part of the writing (conversation/act/declaration), taken out of context. Under the evidence rule providing for completeness, the other party can move to introduce additional parts.[4] If any documents presented for the review, the judge and other party entitled to a complete copy, not a partial copy, of the document. When a witness is presented with a surprise document, he should be able to take time to study it, before he can answer any questions.
- **Best evidence rule or hearsay evidence:** requires that the original source of evidence is required, if available. However, some documents are self-authenticating under Rule 902.
- **More prejudicial than probative:** Under Federal Rule of Evidence 403, a judge has the discretion to exclude evidence if "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury."

Closing Statements

The closing statement is the final part of the trial. (Unless there is a sentencing hearing.) The closing statement is when the prosecution and defense conclude their argument for their case by reiterating the important facts of the case and their arguments. AS the prosecution, your closing statement should be a summary of the charges, the events surrounding the charges, and a summary of your argument and why the defendant is guilty. Then, the defense will state why they think the defendant is not guilty. The court will then go to deliberation.

Verdict

After the closing statements in a bench trial, the judge will adjourn the court and will usually release a verdict on the same day, or in the following days. In a jury trial, the jury will go vote on whether the defendant is guilty or not. "A guilty verdict must be unanimous, however a supermajority (two-thirds of the jurors) shall suffice for a verdict of not guilty." Fed. R. Crim. P. 31 (Amended by nUSA SCOTUS) A verdict not within these standards is grounds for a mistrial due to a hung jury.

If the defendant is found guilty, the defense and/or prosecution may request a sentencing hearing to discuss a recommendation of punishment to the defendant.

The defendant may appeal a guilty verdict if they wish, however, the prosecution cannot appeal a not-guilty verdict, as it will violate the Double Jeopardy clause of the Fifth Amendment. “No person shall be subject for the same offence twice;” U.S. Const. amend. V reinforced in Fong Foo v. United States, 369 U.S. 141 (1962).

Appeal

During a case, if a judge dismisses the case or rejects a motion which you feel was unjustified, you may request your U.S. Attorney to contact the Solicitor General and request them to appeal the case.

Prosecutorial Ethics

Social Media Usage:

- Federal prosecutors are to follow the following Department of Justice standards of conduct that apply to online communication:
- Federal prosecutors must not leak confidential, privileged, classified, privacy-protected, and sensitive Department information at any times during their employment.
- Federal prosecutors are prohibited from releasing any public comments about current, pending, or future prosecutions/cases/trials including but not limited to: observations of the defendant or opinions in regards to whether or not a defendant is guilty.
- Federal prosecutors are prohibited from releasing any public comments that would demonstrate prejudice based on race, gender, sexual orientation, religion, or any other protected basis.

- Federal prosecutors are prohibited from publicly commenting about national and municipal political affairs. This includes but is not limited to:
- Endorsing, showing support, express opinion and/or thought, for any political candidates for any election, municipal or national;
- endorsing, showing support, express opinion and/or thought, for any political individual, policy, initiative.

Defending a Case Against the United States

Federal prosecutors are prohibited from being an attorney to a defendant in which the United States is the plaintiff. In addition, federal prosecutors shall be prohibited from lending advice to a defendant being prosecuted by the Department of Justice.

Courtroom Ethics

Upholding ethical standards in a courtroom is imperative to prosecution, the last thing that the Department of Justice wants is to have one of its attorneys cited for contempt of court. Department of Justice employees are to follow these standards of ethics while participating in judicial proceedings:

- Federal prosecutors are to address the presiding judge as 'Your Honor'.
- For example, "Your Honor, the prosecution files the following motion: (insert a motion)."
- "Your Honor, the prosecution motions for (insert a motion)."
- "Your Honor, objection, (wait for the judge to address you.), (insert objection)."
- Federal prosecutors are to refrain from insulting a presiding judge.
- Federal prosecutors are to refrain from insulting the defendant and his or her counsel.
- Federal prosecutors are to act as professional and mature as possible.
- Federal prosecutors are to refrain from speaking of matters irrelevant to their assigned cases.

Office of the Inspector General

The Office of the Inspector General was established to oversee all of the Department of Justice's internal affairs divisions and shall ensure that ethics are upheld by federal prosecutors. The Inspector General has the authority to recommend

the termination of a federal prosecutor and suspend the employment of a federal prosecutor for the violation of prosecutorial ethics. Any complaints in regards to Department of Justice employees are to be directed to the Inspector General for review.

Recusals

Federal prosecutors are to contact either the United States Attorney, the Assistant Attorney General for the Criminal Division, or the Associate Attorney General in order to be recused from cases or matters in which a conflict of interest is apparent. The requirement of a recusal arises when a conflict of interest exists or there is a loss of impartiality. If a recusal is deemed appropriate then the United States Attorney, the Assistant Attorney General for the Criminal Division, or the Associate Attorney General will coordinate the recusal and arrange for a transfer of responsibility to another prosecutor.

Additional Ethical Standards

All federal prosecutors must also be in compliance with any ethical standards set by the Legal Practice Board, as authorized by the Chief Justice Directive No. 10. The Legal Practice Board latest rules of professional conduct can be found at the Legal Practice Board discord.

Conclusion

The June 2020 edition of the United States Attorneys' Manual was written to give starting federal prosecutors an insight into the world of prosecution and what they can expect moving forward. **DISCLAIMER**: The Manual does not cover the entirety of criminal procedure and policy erected from the Department of Justice. For any questions related to criminal procedure, judicial procedure, or Department of Justice policies, do not hesitate to contact the Department of Justice administration.