Office of the Attorney General

Standardized Operational Handbook

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To: Members of the Justice Department
From: Attorney General Chrisiful

Introduction

The following is a set of fundamental, step-by-step processes you may encounter conducting legal work in the Department of Justice. This handbook touches on standard practices initiating the prosecution of crimes against the United States, and ensuring proceedings on behalf of the United States are resolved efficiently.

SECTION I - CONDUCTING CRIMINAL CHARGES

I. There are two ways the Department of Justice can commence a criminal prosecution: (1) by applying for an arrest warrant through a criminal complaint; and (2) by filing a formal charge against criminal defendants via information.

II. The criminal complaint is a document governed by Rule 3 of the Federal Rules of Criminal Procedure:

> ## Rule 3. The Complaint
>
> The complaint is a written statement of the essential facts constituting the offense charged. Except as provided in Rule 4.1 , it must be made under oath before a magistrate judge or, if none is reasonably available, before a state or local judicial officer.

III. It is not a formal charge against criminal defendants. The sole purpose of a criminal complaint is to ensure an arrest warrant is issued against a defendant – this is most often done in real-life to seize violent suspects or suspects that would likely flee by the time a formal charge can be presented. In nUSA, the concept of pre-trial seizures is largely debated, and it is for that reason why criminal complaints are generally disfavored. In recent cases, the absence of a criminal defendant upon filing of a complaint proved to delay the filing of formal criminal charges unnecessarily.

IV. The preferred method of prosecuting is through criminal information. The criminal information is governed by Rule 7 of the Federal Rules of Criminal Procedure:

Rule 7. The Indictment and the Information

(a) When Used.

(1) *Felony.* An offense (other than criminal contempt) must be prosecuted by an indictment if it is punishable:

(A) by death; or

(B) by imprisonment for more than one year.

(2) *Misdemeanor.* An offense punishable by imprisonment for one year or less may be prosecuted in accordance with Rule 58(b)(1) .

V. In real-life, a felony must be prosecuted via "indictment." An indictment is much like the criminal information, but it is filed after a prosecutor presents their case before a grand jury. Grand juries are a body made of 16-23 citizens who, reviewing the entirety of evidence presented by the prosecutor, decide whether there exists probable cause to suspect a crime has been committed.

VI. Probable cause is to be determined according to "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar v. United States*, 338 U.S. 160, 175 (1949). That means a grand juror can find probable cause without being an expert in criminal law – such jurors can use common sense and make logical conclusions as they would in their everyday life reviewing the government's evidence.

VII. But in nUSA, the use of grand juries is incredibly limited – as of this moment, the legal framework surrounding grand juries is being reworked. Prosecutors should consult with the Attorney General before attempting to set for a grand jury.

VIII. Instead, prosecutors should mainly use the criminal information. It is like an indictment, except it is written and filed by the prosecutor directly to the court. See Rule 7(c).

(c) Nature and Contents.

(1) *In General.* The indictment or information must be 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. It need not contain a formal introduction or conclusion. A count may incorporate by reference an allegation made in another count. A count may allege that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. For each count, the indictment or information must give the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated. For purposes of an indictment referred to in section 3282 of title 18, United

IX. The criminal information is a "plain, concise and definite written statement of the essential facts constituting the offense charged." It should be written in plain English, and it should be limited to describing facts necessary to "fairly inform[] the defendant of the charges against which he must defend[.]" *Hamling v. United States*, 418 U.S. 87, 117 (1974). Merely restating the elements of an offense is often insufficient – conclusory allegations can render an information defective.

X. Although there is no need for a formal introduction, many criminal informations can be split into two sections: the first introduces a factual background; and the second sets out the formal charges. The first section often includes facts that are not absolutely essential to a formal charge – this is done as a precaution to ensure there are no factual deficiencies the defendant can later challenge.

Overview

1. On or about July 4, 2025, Introux – a uniformed officer of the Metropolitan Police Department – deliberately, and premeditatedly murdered fizzyjack at the World War II Memorial plaza. Defendant did so by unlawfully shooting fizzyjack with a firearm, more specificially, an automatic M4A1 assault rifle.

2. When approached by an unnamed witness, Introux, after killing fizzyjack, justified shooting fizzyjack as necessary to prevent crime, identifying himself as "the police." Prior to the shooting, Introux observed fizzyjack collide with a bollard erected before the plaza in an automobile, and opened fire as Introux was exiting the vehicle, killing fizzyjack on the plaza. As a uniformed law enforcement officer, Introux was aware of objective circumstances justifying the use of lethal force –

XI. The second section is a list of all charges the prosecutor wishes to formally pursue against a criminal defendant. A charge can be split into legal elements – *i.e.*, different points by which prosecutors trace a defendant's conduct proving they committed a crime. Common elements include *actus reus* – an unlawful, conscious physical act (like a punch) – and *mens rea* – the defendant's culpable intention behind that act.

4. Defendant did, within the special maritime and territorial jurisdiction of the United States, unlawfully, deliberately, maliciously and premeditatedly, take the life of fizzyjack with malice aforethought, all in violation of 18 U.S. Code § 1111(a).

XII. A prosecutor has to spell out the elements of a crime in their information. Using the example above, 18 U.S. Code § 1111:

> **(a)** Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the

XIII. The information attached above alleges these elements. It further alleges the defendant "deliberately, maliciously and premeditatedly" took the life of a person – if these elements are met, an offense of murder in the first degree can be charged. First degree murder is a capital offense, and can be punished by the death penalty in real-life. In nUSA, the maximum sentence for murder – regardless of whether it was premeditated or not – is 20 days.

XIV. It frequently happens that one activity of a criminal nature will violate one or more laws or that one or more violations may be charged. For example, a person who abducts two people and holds them for ransom within the District of Columbia (which falls within the special maritime and territorial jurisdiction of the United States) (*see United States v. Cabot*, 10 U. S. 33, 65 (2020)) may be charged for two violations under 18 U.S. Code § 1201(a) – kidnapping two persons.

XV. It is also possible that, when criminal law contains one or more prohibitions for conduct arising out of a single transaction, multiple offenses can be charged. For example, a state law enforcement officer unlawfully shooting and killing a person in the District of Columbia may be charged for that killing in three counts: (1) for the unlawful killing of a human being with malice aforethought under 18 U.S. Code § 1111(a); (2) for the unlawful deprivation of a person's right against unreasonable searches and seizures under color of law, in violation of 18 U.S. Code § 242; and (3) for the unlawful possession and use of a firearm during a crime of violence under 18 U.S. Code § 924(j)(1).

XVI. Prosecutors should not charge defendants with an offense that is included in a previous offense charged. To illustrate this point, imagine a prosecution of someone under 18 U.S. Code § 1111(a) – that is, murder of a human being with malice aforethought. A prosecutor would not be able to also charge that person with manslaughter under 18 U.S. Code § 1112(a), because the offense of manslaughter (that is, the unlawful killing of a human being *without* malice aforethought) is both inconsistent with the previous charge of murder and is otherwise included in that previous charge.

XVII. In this example, a prosecutor would have to first establish that the killing was *with* malice aforethought (that is, point to evidence suggesting the defendant acted knowingly, rather than on impulse) to secure a conviction of murder; and then point to evidence suggesting that the same killing was committed absent such intent. This inconsistency may lead to sanctions against the prosecutor.

XVIII. Moreover, in the example shown, the offense of manslaughter is included in the previous murder charge. An offense is not included in a previous offense where each offense requires proof of an additional fact which the other does not. *Blockburger v. United States*, 284 U.S. 299, 304 (1932). Comparing the offenses of murder and manslaughter, a prosecutor will observe:

A. **Murder is the (1) unlawful killing of a human being; (2) with malice aforethought; and**
B. **Manslaughter is simply the (1) unlawful killing of a human being.**

XIX. Prosecuting an offense that is included in a previous offense is a violation of the Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution. *See e.g. United States v. Dixon*, 509 U.S. 688, 696 (1993). As a precaution, prosecutors are to seek guidance from their supervisor before filing formal criminal charges against a defendant.

SECTION II - COURTROOM PROCEDURE IN GENERAL

XX. Criminal cases are filed through the District Court's electronic filing system. A criminal information must be accompanied via supporting affidavit. Under Rule 9(a) of the Federal Rules of Criminal Procedure, the court must issue an arrest warrant against any defendant named in a criminal information if one or more of the accompanying affidavits establish *probable cause*.

Rule 9. Arrest Warrant or Summons on an Indictment or Information

(a) Issuance. The court must issue a warrant—or at the government's request, a summons—for each defendant named in an indictment or named in an information if one or more affidavits accompanying the information establish probable cause to believe that an offense has been committed and that the defendant committed it. The court may issue more than one warrant or

XXI. As previously discussed in the context of a grand juror evaluating criminal charges, the same legal basis applies for the court reviewing whether an affidavit sufficiently establishes probable cause. "[I]f the apparent facts set out in the affidavit are such that a reasonably discreet and prudent man would be led to believe that there was a commission of the offense charged, there is probable cause justifying the issuance of a warrant." *Dumbra v. United States*, 268 U.S. 435, 441 (1925). Courts generally do not review whether the facts set out in an affidavit are true at this stage – they are simply concerned with deciding whether, considering the apparent facts as true, those facts would justify the suspicion that a crime was committed by the defendant.

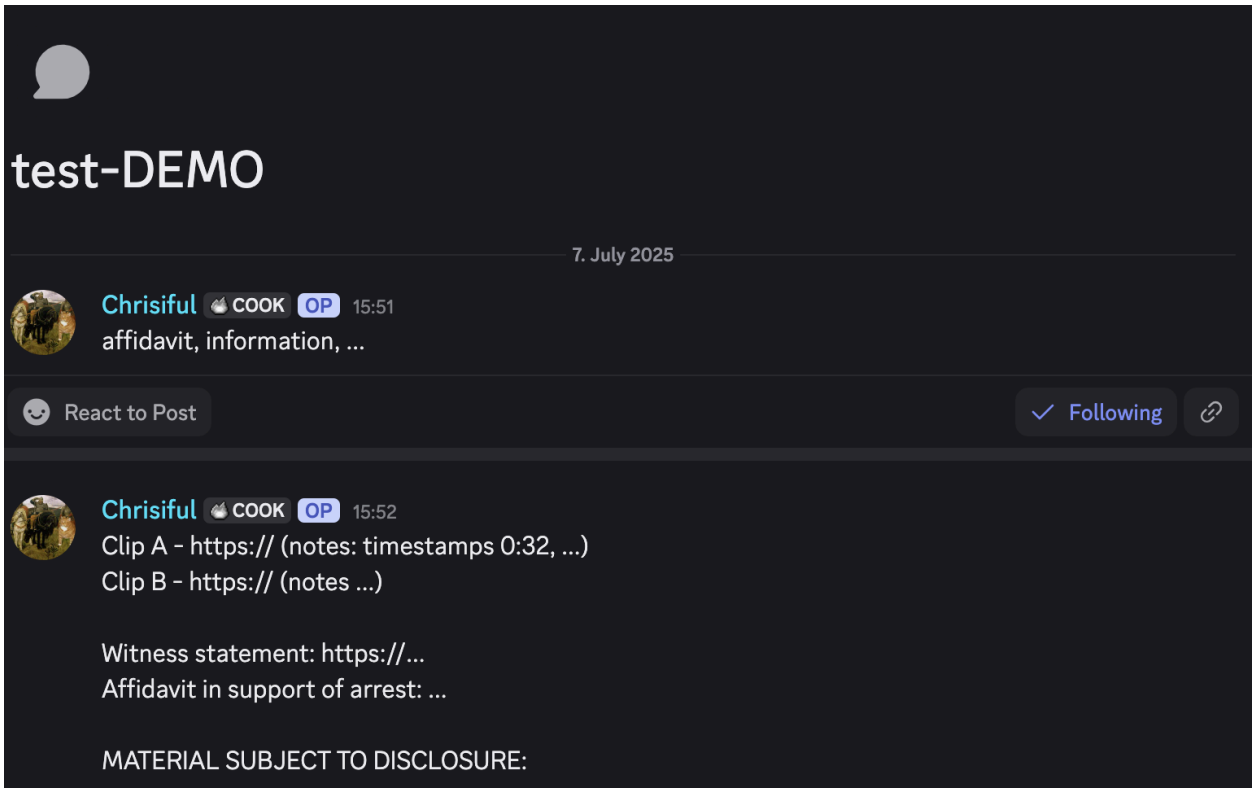
XXII. Courts review affidavits in a common sense manner. They may, by reference, in corporate video recordings attached to an affidavit and will not dismiss an affidavit on technical grounds. Intricate, poetic lines of philosophical reasoning are an impractical requirement – mostly because these affidavits "are normally drafted by nonlawyers in the midst and haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area." *United States v. Ventresca*, 380 U.S. 102, 108 (1965). See the following example of a sufficient statement of facts.

SUMMARY OF OFFENSE CONDUCT

4. On July 4, 2025, I witnessed Metropolitan Police Department Sergeant Introux utilize his weapon to execute an unarmed individual, fizzyjack, arriving by vehicle at the World War II Memorial around 23:10. Introux was on-duty for the Metropolitan Police Department and displayed in uniform. Upon arrival, fizzyjack exited his vehicle and began walking across the parking spaces where Introux then utilized his weapon to kill fizzyjack. fizzyjack did not attempt to defend himself.

XXIII. Courts have recently opted for a preference, issuing summons rather than arrest warrants. Prosecutors are instructed to seek an arrest warrant where the criminal defendant poses a risk for the safety of other persons, such as when the defendant is charged with numerous crimes of violence.

XXIV. After the appearance of a defendant in court, prosecutors are required to compile all evidence at their disposal into a readily-accessible document or message within the DoJ Discord case channel.



XXV. Prosecutors are encouraged to consult with the Criminal Disclosure Handbook deciding when to disclose what types of evidence. In general, prosecutors should reach out to the

defendant (or, when they are represented by an attorney, their attorney) and inform them of the timing of any disclosure the prosecutor will be making.

XXVI. Immediately after appearing, the criminal defendant is brought before the court. The court proceeds according to Rule 5 of the Federal Rules of Criminal Procedure – in nUSA, the procedure is largely identical in felony and misdemeanor cases.

(d) Procedure in a Felony Case.

(1) *Advice.* If the defendant is charged with a felony, the judge must inform the defendant of the following:

(A) the complaint against the defendant, and any affidavit filed with it;

(B) the defendant's right to retain counsel or to request that counsel be appointed if the defendant cannot obtain counsel;

(C) the circumstances, if any, under which the defendant may secure pretrial release;

(D) any right to a preliminary hearing; ~~and~~

(E) the defendant's right not to make a statement, and that any statement made may be used against the defendant; and

(F) that a defendant who is not a United States citizen may request that an attoreny for the government or a federal law enforcement official notify a counsular office from the defendant's country of nationality that the defendant has been arrest -- but that even without the defendant's request, a treaty or other international agreement may require consular notification

(2) *Consulting with Counsel.* The judge must allow the defendant reasonable opportunity to consult with counsel.

(3) *Detention or Release.* The judge must detain or release the defendant as provided by statute or these rules.

(4) *Plea.* A defendant may be asked to plead only under Rule 10 .

XXVII. The government can seek pretrial detention – that is, move the court to remand a defendant into federal custody – under 18 U.S. Code § 3142(f). The court can detain defendants under § 3142(e) if it finds that no conditional release will sufficiently ensure the safety of the community. A detention hearing must be held immediately upon appearance of the defendant unless continuance is granted.

(e) Detention.—

(1) If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial.

XXVIII. Prosecutors should consult with their supervisor before seeking pretrial detention. In evaluating whether pretrial release is warranted, there are specific sets of fact that warrant "rebuttable presumptions" against a defendant. For the sake of simplicity and applicability to nUSA, those are left out because they largely do not apply to the typical crimes the Department of Justice often pursues.

XXIX. Generally speaking, "[t]he issue in such a [detention] hearing is whether releasing a defendant would pose a danger to the community that would not exist were [the defendant] detained." *United States v. Rodriguez*, 897 F. Supp. 1461, 1463 (S.D. Fla. 1995) (citing *United States v. Phillips*, 732 F. Supp. 255, 267 (D.Mass. 1990)). The burden lies with the government to show by clear and convincing evidence detention is warranted. *United States v. Orta*, 760 F.2d 887 (8th Cir.1985).

XXX. In the past, detention hearings were rarely, if ever, conducted in nUSA. This handbook encourages holding these hearings under the supervision of a senior prosecuting attorney. The way a detention hearing is held is not directly covered in the Federal Rules of Criminal Procedure. During such a hearing, the Federal Rules of Evidence do not apply, however. Fed. R. Evid. 1101(d).

XXXI. Below is a schematic illustration of how a general hearing that is not the trial – including preliminary hearings, detention hearings and any hearings on a preliminary question before the district court (concerning the admissibility of evidence, a motion, etc.) – may look like:

A. The attorney advocating for the grant of some remedy (seeking detention, seeking a ruling in favor of their motion, …) presents his arguments and evidence; sometimes calling a witness to testify upon presentation;

B. The attorney opposing the grant of that remedy cross-examines any witnesses brought during presentation, and presents their case against granting that remedy;

C. The presiding officer frequently asks attorneys arguing before them to elaborate on arguments – expect questions at any stage of the hearing; and

D. The presiding officer rules on the remedy sought, granting or denying it.

XXXII. The following are standard templates prosecutors can use framing their opening arguments in multiple hearing situations before courts. Please note that you may not always be required to start a hearing presenting arguments :

A. Preliminary hearing. Good [morning, afternoon, evening], Your Honor! My name is [...], and I am appearing in this action as counsel for the federal government.

I anticipate that this Court will hear evidence showing there exists probable cause to suspect that Mr. [...] unlawfully [*e.g.*] conspired to detain Mr. Chexburger during a traffic stop, and subsequently to assault and murder Mr. Chexburger within the District of Columbia. I have not been informed of any outstanding motion at the hands of Defendant(s) in this matter, and, from the conversations prior, I assume Defendant will be waiving identity and stipulating that the recording indeed depicts the same Defendant. With that out of the way, we are ready to present our witnesses and would like to reserve additional time for a redirect on each witness should either Defendant elect to cross-examine.

XXXIII. Prosecutors are encouraged to negotiate plea deals with the criminal defendant's attorney. Any agreements to defer prosecution in exchange for community service, and plea agreements in general, must be negotiated under the supervision of a senior prosecuting attorney. During negotiations, prosecutors should at the very least consider: (1) the maximum statutory sentence for the offenses in question; (2) whether there exists a minimum sentencing requirement for the offenses; (3) the reliability of any alternatives to incarceration (such as community service); and (4) other public policy considerations as may be deemed proper by the prosecutor.

XXXIV. Defendants can waive their constitutional and statutory rights accepting plea agreements. *See e.g. United States v. Mezzanatto*, 115 S. Ct. 797, 801 (1995); *Tollett v. Henderson*, 411 U.S. 258, 267 (1973); *Blackledge v. Allison*, 431 U.S. 63, 71 (1977, *cert. denied*, 116 S. Ct. 548 (1995). This includes the defendant's right to a speedy trial, the right to confront adverse witnesses, the right to present evidence in their defense, and the right to challenge the sentence on appeal. But a criminal defendant does not waive the right to challenge sentencing on account of the fact he was sentenced based on race (*United States v. Jacobson*, 15 F.3d 19 (2d Cir. 1994)); that the sentence exceeds the statutory maximum (*United States v. Marin*, 961 F.2d 493, 496 (4th Cir. 1992)); and that he was denied the effective assistance of his counsel at sentencing (*United States v. Attar*, 38 F.3d 727, 731 (4th Cir. 1994)).

XXXV. As discussed previously, prosecutors have disclosure obligations that they must meet regardless of whether the defendant requests such disclosures during discovery (consult the disclosure handbook). A failure to disclose *Brady* material, for example, can lead to a mistrial even when the defendant does not explicitly request such material.

XXXVI. But prosecutors have discovery obligations outside of these minimal constitutional requirements as well. Discovery is a process governed by Rule 16 of the Federal Rules of Criminal Procedure – it is a process triggered at the defendant's request. In general, prosecutors must, upon request, disclose the following material:

A. Rule 16(a)(1)(A) and (B): any statements the criminal defendant has made during an interrogation while in custody (insofar as those statements are in possession of the government);
B. Rule 16(a)(1)(D): the defendant's prior criminal record (arrest record, convictions, etc.);
C. Rule 16(a)(1)(E): any tangible or electronically stored object or document (video recordings, etc.) that the government intends to use for its case, or if the item in question previously belonged to the defendant.
D. Rule 16(a)(1)(G): if the government intends to elicit opinions from an expert witness, it must disclose a list of the opinions it will elicit at trial, as well as the objective basis for such opinions. If the expert has previously testified in a case or

written any relevant paper (conducted a study, written a scientific journal article, etc.), the government must disclose those facts as well.

XXXVII. Prosecutors can, upon complying with these requests, request reciprocal discovery – meaning they can ask the defendant to turn over evidence the defendant intends to rely on. *See* Fed. R. Crim. P. 16(b)(1).

SECTION III – TRIAL ADVOCACY

XXXVIII. As of the most recent constitution, a criminal defendant has the right to be tried by a jury of his peers. Under Rule 24 of the Federal Rules of Criminal Procedure, the purpose of examining prospective jurors is to find 12 unbiased, impartial jurors. Both parties are allowed to challenge a juror upon showing (through questioning of said juror) that he or she cannot impartially discharge the duties of a juror (for example, where the juror has personal knowledge of the case; where the juror has a financial interest in the outcome of a case; or where the juror is personally related to either party. In a capital case, each side is entitled to 20 "peremptory challenges" – those are challenges against a juror for which the party does not need to show cause. In other felony cases, the government is entitled to 6 peremptory challenges; the defense is entitled to 10 peremptory challenges. Fed R. Crim. P. 24(b).

XXXIX. There is no uniform way to conduct arguments at trial – nor is there a way to scientifically map out the manner in which a prosecutor must present evidence. Practice with a senior prosecuting attorney is the most effective way to prepare for such arguments. However, a major aspect this handbook touches on is witness examination. The testimony of a credible witness is incredibly probative of an issue the prosecutor seeks to prove, and effective ways to obtain such testimony are necessary. The following guidelines on cross-examination are based on a bulletin release by the Executive Office for the U.S. Attorney's Office of Legal Education. Other guidelines surrounding trial advocacy are based on this manual.

XL. **Jury examinations**. Even in the digital world, jurors are mostly human. As previously mentioned, that means they can possess individual, often subjective qualities making them ineligible to serve on the jury. A prosecutor interviewing potential jurors should look beyond point-blank questions on whether the juror "thinks he can be fair to both parties," or whether they "agree to remain respectful inside the courtroom." The following scenarios can be used to frame a prosecutor's questions – they are often based on an element of surprise, and can be refined with a sense of humor:

A. Right to a fair trial? Most people know criminal defendants are entitled to a "fair trial." Less people know that the trial process is designed to be fair for the people represented by the United States, however.

Q. Everyone knows that the defendant has a right to a fair trial. Do you understand that the people of this community also have the right to a fair trial?

B. Can you follow the law? Not all laws are universally accepted by people on a moral basis. The personal moral compass of a juror may unconsciously prevent them from finding guilt for an offense they do not think should be outlawed.

> Q. Did you know that it is a federal crime to [*e.g.*] provide shelter to and employ an unlawful alien, shielding them from detection?
>
> Although you may disagree, as a juror, you have a special responsibility to follow the law.
>
> If you sat on the jury in a case where the defendant was knowingly employing an unlawful alien who was in the process of getting their visa, what would your verdict be?

C. Definitions Mayhem. It is not uncommon for jurors to enter a courtroom with fixed notions of what a legal definition is. "Murder is, in all cases, premeditated killing," but the juror is not aware that a killing without premeditation can be murder as well. Jurors may misunderstand legal terms lawyers take for granted.

> Q. Sometimes, the law defines things differently from what we might imagine. Let me show you an example!
>
> Can you name some deadly weapons? (usually, the juror will name guns, knives, etc.)
>
> Would it surprise you to know that the law sometimes considers this (hold up spray can, sign – whatever solid object you may have at your disposal, or if you do not have anything, simply name a "pen") a deadly weapon?
>
> Can you promise to remain open-minded and use the legal definitions the judge gives you?

D. Lack of evidence. Sometimes, jurors let defendants go because there "just wasn't enough evidence." This is especially true where your case involves few witnesses and video clips. Make sure the juror understands this is not a contest of quantity.

> Q. As the prosecutor, it is my duty to prove the defendant guilty beyond a reasonable doubt.
>
> Now, say I present you a case with two witnesses and a murder weapon. You listen to the testimony, you know my arguments. But you don't believe any of it. What is your verdict? (usually "not guilty")
>
> Now, how about I show you a hundred witnesses? Boxes of evidence. For lack of anything better to do, you take all the time in the world to review everything. What's your verdict? (usually "guilty!")
>
> Finally, what if I have just one witness? You know that witness is telling the truth – what is your verdict?

E. Pseudo-evidence. Defense attorneys can mislead jurors by suggesting facts when questioning a witness. Sometimes, that can catch jurors off-guard – avoid those jurors.

Q. You may have already been reminded that what a lawyer says is not always evidence. Can you tell me the difference between these two questions:

1. What color was the car?
2. Was the color blue?

After a juror explains that one question is phrased to get a yes-or-no answer, continue:

Q. Now, what if I ask the witness "Isn't it true that the car was blue?" and the witness answers "No. The car was red." What does the evidence show about the car's color?

How many here think there's a conflict in the evidence? (consider dismissing jurors who thinks so)

XLI. **The Golden Rule Argument.** Imagine you are making an opening statement. Should it be on point and short, because the evidence you present never comes across the way you expect? Should it be detailed, because most jurors make up their mind after hearing opening statements? The opening statement – the theme of your case – is something best left to practice. Never ask the jury to consider the case from a victim's standpoint. "Imagine you are a witness," or "imagine you were the victim here" are examples of the golden rule argument – and can lead to a mistrial. *See e.g. United States v. Palma*, 473 F.3d 899 (8th Cir. 2007).

XLII. **Direct examination**. The goal of a prosecutor's direct examination is to authenticate and introduce evidence fortifying the elements of an offense charged. But how do you prepare a witness? Any prior statement made by the witness that you are in possession of must be made available to the defendant upon examination of your witness – is it better not to talk to the witness before the trial? Prosecutors should not knowingly ignore unfavorable testimony – as a matter of legal ethics, prosecutors should inform witnesses that the statements they make during an interview will typically be forwarded to the defendant. But a witness should not fear getting questions wrong – a prepared witness is better than a panicked witness. Prosecutors can give the witness feedback on their overall tone and delivery, but they should not instruct a witness to leave out facts that might damage the case. Ideally at trial, the testimony will come off as a natural, conversational interview between the prosecutor and the witness. Before introducing evidence, a prosecutor must "produce evidence sufficient to support a finding that the item is what the [prosecutor] claims it is." Fed. R. Evid. 901(a). Having a witness recognize the item you want to introduce qualifies – the following is an example of how to authenticate evidence using testimony:

Q. Witness, I'm going to show you Exhibit A now. **Do you recognize** this exhibit?

A. Yes, I do!

Q. **What** is it?

A. It's a video clip showing the incident I was just talking about.
Q. **How** did you recognize the clip?
A. I took that clip myself and handed it over reporting the crime.

XLIII. Cross-examination. The defendant may present his or her own witnesses. You should cross-examine witnesses for two reasons: (1) to elicit testimony supporting your case; or (2) to discredit testimony unfavorable to your case. Typically, unless you believe cross-examination of a witness will achieve either of those goals, you should not cross-examine. Let us take a look at the following techniques:

A. Getting favorable testimony. Usually, witnesses presented by the defendant still have something to say which is favorable to your case. Picture the following scenario: *A defendant is being charged for trespassing onto White House grounds. A video tape shows the defendant flying over the front gate via helicopter, before landing on the lawn below. The defendant testifies at trial that she was formerly employed with the U.S. Secret Service, and was not aware at that time that her clearance to enter White House grounds had been revoked as part of her prior termination for gross misconduct. She was arrested by Secret Service officers as she made her way to the White House residence.*

Q. So, Ms. Defendant, do you admit that you landed your helicopter on a lawn outside of the White House?
A. Because I thought I could. I wasn't shot down by any anti-aircraft missiles.
Q. But you did in fact operate a helicopter on that day, didn't you?
A. Yes.
Q. And you did land that helicopter on the lawn outside of the White House, didn't you?
A. Yes I did.
Q. You headed to the White House residence after landing, didn't you?
A. But I didn't know that I wasn't allowed on those grounds.
Q. You did in fact head to the White House residence though, didn't you?
A. I guess I did.
Q. And you kept heading to the White House residence until you were approached by other Secret Service Officers, isn't that right?
A. Yes, that's right.
Q. Did you know at that time that you had been terminated from your Secret Service position?
A. But I didn't know that meant White House grounds were off-limits for me!
Q. You say you didn't know, but you were no longer employed with the Secret Service, were you?
A. I wasn't.
Q. In retrospect, do you know whether you had the necessary credentials to enter and remain on White House grounds?

A. I shouldn't have entered. But I didn't know at that time!
Q. No further questions.
>>> Trespassing onto restricted federal grounds is an offense under 18 U.S. Code § 1752. The elements of an offense under that section are: (1) knowingly (2) entering or remaining on; (3) restricted grounds; (4) without lawful authority to do so. The prosecutor's questions were phrased to lead the defendant into providing evidence for each of these elements. The prosecutor extracted admissions from the defendant to support every element except for knowledge, and has significantly damaged her lack-of-knowledge theory.

B. Discrediting testimony based on independent evidence. The safest questions on cross-examination are those that can be readily verified by independent, admissible evidence. Such evidence can take the form of an official record, or a different witness. If the evidence in question is a different witness' testimony, that witness should be of equal or greater credibility than the witness you are cross-examining. See the following illustration:
A former state law enforcement officer is on trial for unlawfully concealing and carrying a state-issued firearm onto federal property. There is an identity issue, and the former officer calls a senior officer to testify that, under the agency's protocol, firearms like the one found are reliably documented and returned promptly. You suspect that the state agency's firearm policies on returning agency-issued are inconsistent, as there were 37 instances last year where former agents had been arrested for unlawfully possessing similar official firearms.
Q. Mr. Senior Officer, is it your testimony that, under department protocol, firearms issued by your agency are documented as agents wield them?
A. Yes.
Q. And did you not testify that, when a firearm is to be returned to the agency, that firearm is promptly returned by officers upon leaving your agency?
A. That is correct.
Q. But in reality, Mr. Senior Officer, isn't it true your agency failed to ensure that officers leaving your force return their state-issued firearms last year?
A. I disagree. Our department is committed to transparent auditing. And while we continually improve our practices, we hold that mission in high regard.
Q. Mr. Senior Officer, the truth is that in the past year alone, 37 former agents were arrested for unlawfully possessing firearms issued by your agency that they failed to return, isn't it?
A. I do not recognize those numbers.
Q. And is it not true that your agency failed to document the return of those firearms?
A. No.

Q. Wouldn't you agree that 37 former agents keeping firearms issued by your department should have been documented as part of your protocol?
A. But I do not know of the incidents you are talking about.
Q. Well then, you don't really know whether those firearms were documented as missing, do you?
>>> Notice that it does not matter how the senior officer answers here. The prosecutor first locks down the witness' answers with incredibly pointed questions on the cross-examination. If the witness gives unfavorable answers, he will be refuted by the independent, admissible arrest records. If the witness had previously testified that he knew of the missing firearms, the prosecutor would have been able to refute his testimony by showing his prior inconsistent statement. These are relatively safe scenarios in which the prosecutor already possesses independent evidence to challenge any inconsistent testimony.

C. The value of normal, human experience. A relatively safe way to test a witness' credibility is by appealing to reasonable expectations of behavior. A mother testifying in favor of her son's law-abiding character under Fed. R. Evid. 404(a)(2)(A), for example, may be confronted with the bias jurors traditionally expect in a mother-child relationship. For example:
A man faces felony charges. The defense calls his mother to testify that her son was a good boy, and could never commit such a serious crime. The mother also testified that she would have known if her son were involved in criminal activity.
Q. Ms. Mother, the person on trial today is your son, isn't that true?
A. Yes. That is true.
Q. Ms. Mother, would you agree that you love your son?
A. I hope so.
Q. And that you have always done your best to support him throughout his life?
A. I have tried.
Q. Ms. Mother, do you know that your son is facing serious criminal charges?
A. Yes.
Q. And that he could be sentenced to go to jail for a long time?
A. Yes.

D. Dangerous questions. This handbook has previously addressed unfavorable answers that prosecutors were able to refute quite easily. There are, however, questions to which a prosecutor cannot refute undesirable answers (either by appealing to normal human experience or pointing to independent evidence.) If you do not see yourself using safe or relatively safe questions cross-examining, you should not cross-examine the witness.

E. When to risk it. Should you ever find that, unless you cross-examine a witness through dangerous questions, your case is absolutely insufficient, you can employ a versatile "closing technique." You can, in essence, take your closing statement

summarizing the essential, factual elements of your case, and break it into leading questions to rapidly confront the witness with. For example:

A defendant is on trial for conspiring to defraud the Center for Disease Control – an agency with the Department of Health and Human Services – with an accomplice medical doctor, who was his friend. There is evidence showing a fraudulent application to the agency for federal funding under the guise of a health awareness program – the accomplice medical doctor posing as a health communicator that would tour public schools and host workshops addressing the spread of infectious diseases. The application has been traced to the accomplice medical doctor, who testified that the defendant doctored the materials submitted in support of this application and instructed the accomplice to contact the CDC. At trial, the defendant denies involvement. Unfortunately, your witness' credibility is equal to that of the defendant at best.

Q. Mr. Defendant, the materials sent alongside the application were created by you, weren't they?

A. No.

Q. You submitted these materials so Mr. Accomplice could refer to those in his application, didn't you?

A. No.

Q. You gave those to him because you were working with him, weren't you?

A. I did not.

Q. He was supposed to contact the CDC to apply for federal funding, isn't that right?

A. I wouldn't know.

Q. You knew Mr. Accomplice was going to pose as a health communicator, didn't you?

A. No. That is false.

Q. In fact, you instructed him to pretend he was going to tour public schools, isn't that right?

A. Wrong.

Q. You did that because both of you arranged to receive funding from the CDC, yes?

A. No.

>>> Here, it once again does not matter how the defendant answers. The purpose of your rapid-succession questions is to illustrate your case's theory, forcing the jury to reconsider whether the defendant's denials actually hold up.

XLIV. Closing Arguments. Do not be tempted to violate the Golden Rule Argument again by asking the jury to "put themselves in the victim's shoes." Do not personalize your argument by emphasizing what you believe. The classic build of your arguments can be split into the following headers:

The Attention Step
Discussion of Legal Theory
Key Issue Statement
Argument
Rebuttal
Exit Line

XLV. Your closing statement can address the defense's case in chief directly. Avoid ritualistic starters like "I want to thank you…" or "This is my closing argument." If the defense misstates facts or evidence, you can start by challenging the most inaccurate statement. If the defense characterized the law inconsistent with legal standards, read the portion of law exactly how the judge will when instructing the jury. The Attention Step can be just a sentence long – it is your last opportunity to reach the jury.

XLVI. In federal courts, lawyers can discuss the law during closing arguments. You should not spin the portions of law favorable to your case – rather, focus on restating elements of the offenses charged in simple terms. Feel free to go over each element, and introduce the proof you have presented (name witnesses, etc.) in recap fashion.

XLVII. A Key Issue Statement can oftentimes be found in legal memos. It is a brief summary of the most touching legal questions for your arguments – it too can be just a few sentences long. You should not identify every possible issue raised: focus on the few that require special attention.

XLVIII. After you have identified the key issues, you can present your argument. A well crafted argument takes just a few crucial pieces of evidence and discusses how the jury might evaluate it. Use all tools available at your disposal – logical reasoning, deductions, and appeal to tools the jury has at its disposal. Remember: they are non-lawyers, and are equipped with the standard set of common sense and logic.

XLIX. Rebutting the defense's arguments is tricky. Refrain from arguing that the defense knowingly misled the jury – focus on finding the most important arguments raised. Feel free to read back on the law once more pointing out mistakes. At the very least, you should briefly address reasonable doubt – simple what-ifs not found in the evidence are insufficient. The defense sometimes argues that a failure to call particular witnesses or introduce specific evidence establishes a lack of evidence, and thus reasonable doubt. Let the jury know that if they believe the witnesses that have testified or the evidence produced beyond a reasonable doubt, there is no lack of evidence.

L. In theory, your exit line should empower jurors to do the "right" thing, while also urging them to convict. Remember the Golden Rule Argument and don't ask jurors to "send a message to the community!" Universal exit lines include:

A. "Charity is no substitute for justice withheld." (Saint Augustine (year unknown));
B. "I'll leave the rest to you now." (this sneaky humor may not fit a murder trial);
C. "... and it has been an honor making my case before you, members of the jury."

/s/ Chrisiful
U.S. Attorney General