



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

9.6.3

JULY 9, 2024

## EFFECTIVE DATE

(07-09-2024)

## PURPOSE

- (1) This transmits revised IRM 9.6.3, Pre-Trial Procedures.

## MATERIAL CHANGES

- (1) Added Internal Controls to be compliant with IRM 1.11.2.2.4, Address Management and Internal Controls and IRM 1.4.2, Resource Guide for Managers Monitoring and Improving Internal Controls.
- (2) Updated “Forensic Lab” to “Center for Science and Design” throughout the IRM.
- (3) Subsection 9.6.3.3(1) changed the word “aver” to “allege”.
- (4) Subsection 9.6.3.8(2)(c) updated to “Forensic Science Services”
- (5) Subsection 9.6.3.8(4) updated to “The SA should contact FinCEN to request and obtain certified BSA and BOI records (pursuant to the CTA) needed at trial. These records include Currency Transaction Reports, Suspicious Activity Reports, Forms 8300, and BOI registration. The procedures for requesting and obtaining certified BSA records from FinCEN can be found at the CI FinCin Liaison SharePoint site under Financial Crimes.”
- (6) Subsection 9.6.3.8.1(8) updated physical address.
- (7) Subsection 9.6.3.8.1(9) updated physical address.
- (8) Subsection 9.6.3.8.1(10) removed “Illustrator Unit” and added “and Design Services Team at the Center for Science and Design”.
- (9) Subsection 9.6.3.8.3.1(1) removed “for witnesses to appear” and added “witness subpoenas”.
- (10) Additional revisions, deletions, and grammatical changes were made throughout the section, that did not result in substantive changes but contributed to procedural clarity of the subject matter.

## EFFECT ON OTHER DOCUMENTS

This IRM supersedes IRM 9.6.3, dated May 17, 2021.

## AUDIENCE

Criminal Investigation (CI)

Shea C. Jones  
Acting Deputy Chief, Criminal Investigation  
for  
Guy A. Ficco  
Chief, Criminal Investigation



9.6.3  
Pre-Trial Procedures

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9.6.3.1  
(07-09-2024)  
**Program Scope and Objectives**

- (1) Purpose: Advise on proper pre-trial procedures including witness notifications, obtaining certified documents and requesting trial illustration services.
- (2) Audience: All CI employees.
- (3) Policy Owner: Director, Global Financial Crimes & Policy.
- (4) Program Owner: Director, Global Financial Crimes & Policy.
- (5) Primary Stakeholders: All Special Agents (SA) and Criminal Tax Counsel (CTC).
- (6) Contact Information: To recommend changes to this IRM email CIHQIRM@ci.irs.gov.
- (7) Goal: To provide proper information on pre-trial procedures.

9.6.3.1.1  
(07-09-2024)  
**Background**

- (1) The following topics, based on the Federal Rules of Criminal Procedure (Fed. R. Crim. P.), are discussed in this section:
  - Indictment and Information,
  - Complaint,
  - Initial Appearance,
  - Preliminary Hearing,
  - Arraignment,
  - Pleadings and Motions,
  - Pre-Trial Administrative Duties of the Special Agent.

9.6.3.1.2  
(07-09-2024)  
**Authority**

- (1) See IRM 9.1.2, Authority for the delegated authority relating to IRM 9.6.3, Pre-Trial Procedures.

9.6.3.1.3  
(07-09-2024)  
**Roles and Responsibilities**

- (1) The Director, Global Financial Crimes & Policy is responsible for developing, maintaining, and overseeing this IRM and ensuring compliance with current policies and procedures.

9.6.3.1.4  
(07-09-2024)  
**Program Management and Review**

- (1) The Director, Global Financial Crimes & Policy will:
  - a. Review the IRM annually.
  - b. Update the IRM when content is no longer accurate and reliable to ensure employees correctly complete their work assignments and for consistent administration of the tax laws.
  - c. Incorporate all permanent interim content into the next version of the IRM section prior to the expiration date.

9.6.3.1.5  
(07-09-2024)  
**Program Controls**

- (1) The Director, Global Financial Crimes & Policy will review the instructions and guidelines relating to pre-trial procedures and other IRS documents for procedural, operational, and editorial changes.

9.6.3.1.6  
(07-09-2024)

#### Terms and Acronyms

- (1) The following table lists the terms and acronyms used throughout this IRM section and their definitions

<b>Terms/ Acronyms</b>	<b>Definition</b>
AUSA	Assistant US Attorney
BOI	Beneficial Ownership Information
BSA	Bank Secrecy Act
CI	Criminal Investigations
CTA	Corporate Transparency Act
CT	Criminal Tax
DOJ	Department of Justice
MLEW	Money Laundering Expert Witness
RAC	Resident Agent in Charge
SA	Special Agent
SAC	Special Agent in Charge
SDC	Scheme Development Center
TIGTA	Treasure Inspector General for Tax Administration

9.6.3.1.7  
(07-09-2024)

#### Related Resources

- (1) CI FinCEN Liaison SharePoint site under Financial Crimes,
- (2) IRM 9.4.11, Investigative Services,
- (3) IRM 9.5.11, Other Investigations,
- (4) IRM 9.6.2, Plea Agreements and Sentencing Process,
- (5) IRM 11.3, Disclosure of Official Information,

9.6.3.2  
(07-09-2024)

#### Indictment and Information (Fed. R. Crim. P. R7)

- (1) The government's formal accusation charging a person or entity with the commission of a crime is made in the form of either an indictment or an information.

9.6.3.2.1  
(07-09-2024)

#### Indictment

- (1) An indictment is a written accusation from a grand jury charging a person or entity with a Federal crime, usually consisting of one or more felony counts. The indictment is presented to the court that impaneled the grand jury by the grand jury foreperson.
- (2) If there is sufficient evidence to indict, a True Bill is returned by the grand jury, which consists of 16 to 23 members summoned by order of the court. They serve until discharged by the court, but not longer than 18 months. Once the True Bill is signed by the US Attorney it becomes an indictment. An indictment may be found only upon concurrence of 12 or more jurors. Otherwise, a No

True Bill is returned. The court may direct that an indictment be kept secret until the defendant is in custody or has posted bail. In that event, the court clerk seals the indictment and no person may disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons, (see Fed. R. Crim. P. R6(e)).

- (3) Rule 6(e) codifies the traditional rule of grand jury secrecy by prohibiting members of the grand jury, attorneys for the government and their authorized assistants, and other grand jury personnel from disclosing matters occurring before the grand jury, except as otherwise authorized by the rule. Grand jury secrecy is vital to the investigative function of the grand jury. As the courts have pointed out, secrecy serves several distinct interests, primarily:
  - a. To encourage witnesses to come forward and testify freely and honestly,
  - b. To minimize the risks that prospective defendants will flee or use corrupt means to thwart investigations,
  - c. To safeguard the grand jurors themselves and the proceedings from extraneous pressures and influences,
  - d. To protect accused persons who are ultimately exonerated from unfavorable publicity.
- (4) While the grand jury is in session, the only persons who may be present in the grand jury room are attorneys for the government, the witness under examination, a stenographer or operator of a recording device, and interpreters when needed. An indictment may be dismissed upon a showing that an unauthorized person was present during the proceedings. No person other than the jurors may be present while the grand jury is deliberating or voting, (Fed. R. Crim. P. R6(d)).
- (5) Disclosure of matters occurring before the grand jury may be made to government personnel who are deemed necessary by government attorneys to assist in the performance of their duty to enforce Federal criminal law. With the consent of the government attorney, SAs may examine documents and records that are before the grand jury and inspect its transcripts. In addition, SAs may assist in the investigation of criminal tax violations with the approval of the DOJ, Tax Division.
- (6) Federal Rules of Criminal Procedures Rule 6(e) do not impose any obligation of secrecy upon witnesses of a grand jury that would preclude them from discussing their own testimony, although some Federal judicial districts require an oath of secrecy.
- (7) A grand jury is not obliged to grant a request from a prospective defendant to appear before it as a witness. However, DOJ procedures provide that where no burden upon the grand jury or delay of its proceedings is involved, reasonable requests of a prospective defendant to personally testify before the grand jury are to be given favorable consideration. This may occur only in the event that such witnesses explicitly waive their right against self-incrimination, are represented by counsel or voluntarily and knowingly appear without counsel, and consent to a full examination under oath.
- (8) After the grand jury's function has ended, a trial court may order disclosure of the grand jury transcript to the defendants if there is a particular need for disclosure to support an attack upon the indictment, to impeach a witness or refresh recollection, or in a perjury prosecution to inspect their own grand jury testimony.

- (9) After the grand jury's function has ended, a trial court may order disclosure of the grand jury transcript to the defendants if there is a particular need for disclosure to support an attack upon the indictment, to impeach a witness or refresh recollection, or in a perjury prosecution to inspect their own grand jury testimony.

9.6.3.2.2  
(07-09-2024)  
**Information (Fed. R. Crim. P. R7)**

- (1) An information is an accusation in writing against a person named therein for some criminal offense (only misdemeanors, unless the defendant expressly waives indictment in open court) and is filed with the court by competent officers, such as the US Attorney, on their oath of office.

9.6.3.3  
(07-09-2024)  
**Complaint (Fed. R. Crim. P. R3)**

- (1) A complaint is a sworn written statement made before a US Magistrate Judge (magistrate) or, if none is reasonably available, before a state or local judicial officer. It must set forth the essential facts constituting the offense charged and should be worded substantially in the statutory language of the offense. It must be sworn to positively; the complainant may not merely allege information and belief. It must also be based upon the complainant's personal knowledge or supported by other proof. In most instances, a SA will author the complaint with assistance from CT Counsel.
- (2) The filing of a complaint before a magistrate prior to the expiration of the statute of limitations for criminal tax prosecutions will extend the period nine months from the date the complaint is filed, (see 26 USC 6531). A complaint must show sufficient probable cause to extend the statutory period. It should directly indicate that the defendant committed the crime charged and disclose the source of the directly incriminating information.
- (3) Generally, a complaint is used only in unique circumstances. Typically, charges based on IRS investigations are brought through the grand jury process or by information(s) filed by a US Attorney's office. A complaint sworn by an IRS SA should only result from an unusual event that requires immediate action, such as may occur during a protection detail, or money laundering investigation. A complaint should be reviewed by CT Counsel and approved by the SAC.

9.6.3.3.1  
(07-09-2024)  
**Warrant or Summons Upon Complaint (Fed. R. Crim. P. R4)**

- (1) If there is probable cause to believe that a defendant has committed an offense, the magistrate will issue an arrest warrant or, upon the request of the attorney for the government, a court summons in lieu of a warrant requiring the defendant to appear before the magistrate at a stated time and place to answer the complaint. (If the defendant fails to appear in response to the summons, a warrant could be issued.) As with a complaint, it would be an unusual circumstance for an IRS SA to be involved in obtaining an arrest warrant based on the filing of a complaint. Further, as with any enforcement action, SAC approval is required.
- (2) More than one warrant or summons may be issued on the same complaint in order to facilitate service and return where several defendants are named in the same complaint. Physical delivery of the warrant to the arresting officer is not necessary. The officer need not have physical possession of the warrant to make a lawful arrest, but upon request must show it to the defendant as soon as possible. A warrant for arrest in a criminal investigation is valid anywhere in the United States.



## 9.6.3.4

(07-09-2024)

**Initial Appearance (Fed. R. Crim. P. R5 and R5.1)**

- (1) At the initial appearance of the arrested person, pursuant to a complaint or warrantless arrest, the judge or magistrate shall set a date for the preliminary hearing to determine whether there is probable cause to believe that an offense has been committed and that the arrested person has committed it. The hearing must be held within a reasonable time after the initial appearance, but in no event later than:
  - a. 14 days after the date of the initial appearance if the arrested person is held in custody without any provision for release, is held in custody for failure to meet the conditions of release imposed, or is released from custody only during specified hours of the day; or
  - b. 21 days after the initial appearance if the arrested person has otherwise been released from custody.
- (2) Usually, the magistrate will advise the defendant of the charges, his/her right to counsel, and about self-incriminating statements.

## 9.6.3.5

(07-09-2024)

**Preliminary Hearing (Fed. R. Crim. P. R5.1)**

- (1) No preliminary hearing is required, nor shall an arrested person be released if, at any time after the initial appearance before the judge or magistrate and prior to the date fixed for the preliminary hearing, an indictment is returned or, in appropriate investigations, an information is filed in a US court against such person.
- (2) At the preliminary hearing, the accused may cross-examine adverse witnesses and may introduce evidence. The accused is not required to plead at this time. If the magistrate concludes from the evidence that there is probable cause to believe the accused has committed an offense, or if the accused waives preliminary hearing, the magistrate shall forthwith hold the accused to answer in the district court; otherwise, the magistrate shall discharge them. This would not prevent subsequent indictment of the accused on the same charge.
- (3) As with a complaint, it would be unusual for an IRS SA to be involved in a preliminary hearing since the majority of IRS charges are obtained through an indictment or information. CT Counsel should be advised whenever testimony or a sworn statement is required to be taken from an IRS SA.

## 9.6.3.6

(07-09-2024)

**Arraignment (Fed. R. Crim. P. R10 and R11)**

- (1) An arraignment consists of calling the defendants before a judge, reading the indictment or information to them or informing them of the charges, and calling on them to enter their plea. The defendants are given a copy of the indictment or information before they are called upon to plead.
- (2) A defendant may plead not guilty, guilty, or, with the consent of the court, nolo contendere (no contest). The court may refuse to accept a plea of guilty and shall not accept such plea or a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with an understanding of the nature of the charge and the consequences of the plea. If a defendant refuses to plead, the court refuses to accept a plea of guilty, or defendant's corporation fails to appear, the court shall enter a plea of not guilty. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is factual basis for the plea.
- (3) If a not guilty plea is entered, the court proceeds by setting a date for trial.

- (4) If the defendant pleads guilty or nolo contendere at arraignment, the pretrial and trial procedures set forth in Fed. R. Crim. P. R12-31 do not apply and the court proceeds to hear the relevant facts prior to imposing sentence.
- (5) Many courts are informed of the facts by the investigating SA or other representative of CI. The role of the SA in this regard is especially important since his/her oral presentation of facts in open court forms the only supporting basis of the offenses charged in the information or indictment (see IRM 9.6.2, Plea Agreements and Sentencing Process).
- (6) A plea of nolo contendere subjects the defendant to the same punishment as a plea of guilty but does not admit the charges. It cannot be used as an admission in any civil suit for the same act.

9.6.3.7  
(07-09-2024)  
**Pleadings and Motions**  
**(Fed. R. Crim. P. R12)**

- (1) There are a variety of motions that are usually filed prior to trial. Motions filed by the defense, such as motions for a change of venue or to disqualify a judge, are routinely responded to by an attorney for the government with little involvement from the SA. Responding to other motions, such as those to return seized property or to suppress evidence, may require statements or other involvement by the SA. The primary discussion in this subsection deals with discovery and Henthorn requests.

9.6.3.7.1  
(07-09-2024)  
**Discovery (Fed. R. Crim. P. R16)**

- (1) Rule 16 affords pre-trial opportunities for the government and the defense to examine evidence in the opposing party's possession, custody, or control.
- (2) The government or a defendant can, by using a subpoena duces tecum, compel the pre-trial production of evidentiary material per Fed. R. Crim. P. R17(c).
- (3) Special agents should make certain that any request for such information is authorized for disclosure under 26 USC 6103. The SA should consult with field office CT Counsel and the attorney for the government for guidance.

9.6.3.7.1.1  
(07-09-2024)  
**Henthorn Requests**

- (1) The Supreme Court's rulings in **Brady and Giglio** impose an affirmative duty on AUSAs to disclose readily obtainable exculpatory information, including impeachment information, regardless of whether a defense motion has been filed. **Henthorn** is a more recent Ninth Circuit decision in the **Giglio** line and extends the **Giglio** principle to discovery. **Henthorn** searches for personnel records are made in response to a defense motion for discovery.
- (2) Impeachment material is generally that which calls into question a witness' honesty, integrity, or impartiality, but it can extend to anything which effects the credibility and veracity of the testimony offered. Depending upon the nature of the testimony, it can also include material that calls into question competence, ability, thoroughness, attention to detail, visual or auditory acuity, sobriety, reputation in the community, etc.
- (3) If impeachment material is serious enough, it could result in the attorney for the government refusing to allow a SA or other IRS employee to testify. Local US Attorneys' offices will track all impeachment material provided to courts, defense counsel, or disclosed to the public. Some IRS employees could possibly encounter additional barriers to testifying in some types of investigations.

- (4) Treasury Order 105-13 obligates each employee witness or affiant to inform the attorney for the government of such information. Usually, the more the prosecutor knows about any potential impeachment material, the better he/she will be able to overcome it.
- (5) Henthorn requests are forwarded from the attorney for the government to the SAC. The SAC or his/her designee (at least two levels above the employee witness) is the responsible official for determining the materiality of information contained in the personnel file of IRS "field level" employees. The SAC may also delegate the review to field office CT Counsel.
- (6) Upon receiving a **Henthorn** request, the SAC or his/her designee shall:
  - a. Notify the management of the other operating division in which the employee-witness works and request the employee's various personnel files as shown below; and
  - b. Examine the employee's personnel files for evidence affecting witness credibility or other exculpatory and/or impeachment material subject to discovery. If any uncertainty exists, the attorney for the government and CT Counsel should be contacted for guidance.
- (7) The SAC or his/her designee will then write a letter to the attorney for the government (see Henthorn Reply template in CI Unified Checklist) and include a declaration that the personnel files have been reviewed. The letter will contain one of the following statements:
  - a. No evidence of perjurious conduct or dishonesty, nor anything that might be considered as exculpatory or impeachment materials subject to discovery was detected.
  - b. The attached information, obtained from the files listed, may constitute material subject to discovery. Please examine this information to make a determination.
- (8) If the **Henthorn** request received by the SAC concerns a CT Counsel employee whose post of duty is in the field office, notification should be sent to the Area Counsel. For a CT Counsel employee whose post of duty is in Headquarters, notification should be sent to the Division Counsel/Associate Chief Counsel (Criminal Tax).
- (9) The following eight categories of files are relevant to a **Henthorn** request, and must be obtained and examined:
  - a. Official Personnel Files (OPFs),
  - b. Employee Performance files,
  - c. Drop files,
  - d. \*\*Employee Investigative files,
  - e. Disciplinary and Adverse Action Investigation files,
  - f. Grievance files,
  - g. Merit System Protection Board files,
  - h. Equal Employment Opportunity files.

**Note:** \*\* Treasury Inspector General for Tax Administration should be contacted concerning investigative files of grade 15 employees and executives. Because of the privacy interests of the employee-witness, TIGTA has expressed reservations regarding the release of certain Internal Security investigative files or reports of investigation to anyone in the supervisory chain of the employee-witness.

Therefore, TIGTA has the option of releasing such files directly to the attorney for the government, or to Area Counsel, who will examine such files separately and advise the attorney for the government as to their contents.

- (10) The SAC must comply with the Privacy Act Accounting of Disclosure requirements set forth at 5 USC 552a(c). See IRM 11.3, Disclosure of Official Information, for additional information.
- (11) If return information is to be disclosed, the material should be submitted in camera for the court to make a **Brady** relevance determination giving due consideration to the statutory proscriptions in 26 USC 6103. To the extent possible, taxpayer identifying information should be redacted.
- (12) All information disclosed must be accompanied by the following statement: The information concerning (name of employee-witness) was obtained from IRS personnel and/or investigative files. The information is being provided to you for official use only and remains the property of the IRS. Any further dissemination of this information should be coordinated with (name of CT Counsel) prior to disclosure. Once the need for this information has expired, the information should be returned or destroyed.
- (13) The information should be hand-delivered to the attorney for the government. If this is not possible, the information should be transmitted in a double envelope with the marking TO BE OPENED BY ADDRESSEE ONLY.

9.6.3.8  
(07-09-2024)

**Pre-Trial Administrative  
Duties of the Special  
Agent**

- (1) The SA should complete all administrative duties, as detailed below, as far in advance of the trial as possible.
- (2) The SA should notify government employees who will be witnesses, giving them as much advance notice as possible. These may include:
  - a. SDC or processing center witness,
  - b. Summary or expert witness,
  - c. Forensic Science Services witness, and/or
  - d. Trial Illustrators
- (3) The SA should secure documents in the custody and control of the IRS for use at trial. These include:
  - a. All available original income tax returns. The Disclosure Office should be contacted for procedures to obtain certified copies of the original tax returns.
  - b. Other original documents and correspondence filed by the defendant with the IRS.
  - c. Current certified transcripts of accounts, certificates of assessments and payments, or certificates of lack of record.
- (4) The SA should contact FinCEN to request and obtain certified BSA and BOI records (pursuant to the CTA) needed at trial. These records include Currency Transaction Reports, Suspicious Activity Reports, Forms 8300, and BOI registration. The procedures for requesting and obtaining certified BSA records from FinCEN can be found at the CI FinCin Liaison SharePoint site under Financial Crimes.

- (5) The SA should arrange to have any prisoners available for trial if they are needed as witnesses.
- (6) The SA should review all stipulations for accuracy.

9.6.3.8.1  
(07-09-2024)  
**Requesting IRS  
Witnesses**

- (1) The request for an SDC witness should be made by memorandum from the SSA to the Director, Refund Crimes. The request should include the following:
  - a. Trial Date,
  - b. Location,
  - c. Social Security or Employer Identification Number,
  - d. CIMIS Case Number and Pacer Docket Number,
  - e. Personal and Business Addresses,
  - f. Scheduled date and location of the trial,
  - g. Date witness needed,
  - h. Date of indictment,
  - i. Nature of testimony required,
  - j. Name and telephone number of the attorney for the government handling the investigation,
  - k. IRS documents and records to be entered into evidence,
  - l. Volume of certified documents needed,
  - m. Brief synopsis of case,
  - n. SA's name and telephone number.
- (2) In a tax trial, the government often uses the revenue agent as an expert witness to establish the computations of deficiencies as set forth in the indictment or information.
- (3) In a money laundering trial, the government may utilize a SA trained as a MLEW to explain financial transactions and establish the computation of laundered funds, as set forth in the indictment or information.
- (4) An expert witness is a person qualified by knowledge, skill, experience, training or education to provide testimony that may assist the jury in understanding evidence or determining a fact in issue (see Federal Rules of Evidence 702). The trial judge determines whether his/her qualifications are sufficient.
- (5) In tax investigations, expert witnesses may testify concerning various matters such as handwriting comparison, accounting and bookkeeping procedures, methods of operating a lottery, and computation of income tax liability.
- (6) In money laundering and BSA investigations, expert witnesses may be used to testify concerning money laundering transactions, the methods of money laundering, statutes, and computation of laundered funds. A request for a MLEW should be made in writing to the MLEW cadre for IRS CI and should include the following:
  - a. CIMIS investigation number,
  - b. type of money laundering investigation,
  - c. short synopsis of investigation,
  - d. estimated length of trial,
  - e. location of trial,
  - f. trial preparation dates,
  - g. anticipated trial date,
  - h. copy of indictment.

- (7) A request for a witness from the Center for Science and Design should be made in writing and include the following:
  - a. Defendant's name,
  - b. Investigation number,
  - c. SA's name and telephone number,
  - d. Government attorney's name and telephone number,
  - e. Anticipated trial date,
  - f. Brief synopsis of the investigation,
  - g. Return mailing address.
- (8) Requests for witnesses from the Center for Science and Design, other than trial illustrators, should be sent to:  
IRS Center for Science and Design  
525 W. Van Buren, Suite 400  
Chicago, IL 60607  
Tel: (312) 542-7900
- (9) Requests for the services of the trial illustrator (who reports to the Director, Center for Science and Design) should be submitted on IRS Center for Science and Design Request for Services, 45-60 days prior to the anticipated trial. The Form 13437 can be e-mailed or mailed directly to:  
IRS Center for Science and Design  
525 W. Van Buren  
Suite 400  
Chicago, IL 60607  
Tel: (859) 282-3830
- (10) The Trial and Design Services Team at the Center for Science and Design can provide information for use in cost of prosecution computations, including travel costs, materials and supplies, illustrator staff-hour costs, and shipping costs. See IRM 9.4.11, Investigative Services, for additional information.

9.6.3.8.2  
(07-09-2024)

**Preparing the  
Government Exhibit List**

- (1) The government exhibit list is used during trial to track exhibits that have been entered into evidence. Copies are provided to the court, defense counsel, and the summary or expert witness. The exhibits should be listed and numbered in order of anticipated introduction into evidence. All evidence to be introduced at trial is listed, including documents that will be admitted through stipulation.
- (2) The following information should be listed for each exhibit:
  - a. Exhibit number,
  - b. Description of the document,
  - c. Two spaces, one to indicate when the document was offered into evidence and the other to show if it was admitted,
  - d. Relevance of the document, identification of the witness who will be introducing the document, and other comments may also be included on the government's copy of the exhibit list.
- (3) The attorney for the government should be consulted for his/her particular preferences.



9.6.3.8.2.1  
(07-09-2024)

**Preparation of Witness  
Sheets and Folders**

- (1) The SA will frequently be asked to assist in the preparation of a trial brief or trial book. A sheet should be prepared for each witness showing:
  - a. Full name, address, and telephone number,
  - b. Business or occupation, business telephone number, and employer,
  - c. Summary of expected testimony,
  - d. List and description of documents, if any, which the witnesses will produce or identify,
  - e. Location of the evidence if not in the custody of the witness or the government,
  - f. Comments and data which reflect the witness' reliability or credibility, including criminal record and relationship to the defendant or other witnesses,
  - g. List of all documents such as question and answer statements, affidavits, or memoranda of interviews obtained from the witness or prepared by the SA.
- (2) The witness sheets may be placed in a loose-leaf notebook in order the witnesses are expected to testify. If many witnesses are involved, it is helpful for reference purposes to assign each a number and prepare a list of witnesses arranged and numbered in the same order as the witness sheets.
- (3) Usually a folder should be prepared for each witness, bearing the witness' name and number. The folder should contain:
  - a. Copy of the witness sheet,
  - b. Copy of the subpoena,
  - c. Documents, such as memoranda, affidavits, or question and answer statements relating to the witness,
  - d. Documents obtained from the witness prior to trial that will be offered as evidence and copies to be substituted when originals are withdrawn,
  - e. Charts, schedules, graphs, photographs, and other visual aids or evidence to be introduced by the witness.

9.6.3.8.3  
(07-09-2024)

**Witness Location,  
Protection, and  
Preparation**

- (1) In anticipation of trial, the attorney for the government may direct the SA to make certain that all government witnesses to be called at trial can be located, are prepared to testify, and, if necessary, are provided protection (see IRM 9.5.11, Other Investigations). Trial subpoenas are usually served on all witnesses who are not Federal employees.

9.6.3.8.3.1  
(07-09-2024)

**Preparing and Serving  
Subpoenas**

- (1) The government attorney will request the SA's assistance in the preparation and service of witness subpoenas. The SA should review each subpoena for accuracy and content.
- (2) Witnesses should be requested to appear in court in advance of testifying for purposes of reviewing their testimony and ascertaining whether the necessary documentary evidence is available. Witnesses should be given the maximum possible notice prior to their appearance so that the necessary travel arrangements can be made.
- (3) The SA should inform the attorney for the government as soon as possible of any circumstances that may affect the timely appearance of a witness or of any difficulty in locating or serving a witness.

- (4) In most instances, collateral requests should be used to serve subpoenas on witnesses located outside the field office.
- (5) The SA should maintain a list of all subpoenas to be served, the date each was received, the date each was served, and the date each was returned to the court. A copy of the served subpoena should be maintained in the witness folder.

9.6.3.8.3.2  
(07-09-2024)

**Pre-Trial Interviewing of Witnesses**

- (1) The SA should only re-interview witnesses with the approval of the attorney for the government. The SA should discuss with the attorney for the government what topics should be covered in the interviews. Often the attorney for the government will participate in the interview. Some of the areas that the attorney may suggest include whether the witness has brought subpoenaed documents or physical evidence, can recall his/her previous statements (it may be advisable for the witness to read transcripts of prior statements), and can identify the defendant and time and place of any pertinent event. The SA should report any anticipated difficulties with the witnesses to the attorney for the government.

9.6.3.8.3.3  
(07-09-2024)

**Preparation of Evidence for Discovery and Inspection By the Defendant**

- (1) The attorney for the government will normally require the assistance of the SA in complying with a court order for discovery. After the attorney for the government and the SA have determined which documents and statements are to be provided to defense counsel, the SA should make arrangements to have the material duplicated. If the records are voluminous and the attorney for the government agrees, it may be advisable to invite defense counsel to the office where the records are located to review them.
- (2) The SA should prepare an inventory for defense counsel that includes a description of the documents and the date provided. A copy should be given to the attorney for the government.
- (3) The SA should inform the attorney for the government of any evidence that should be considered under the **Brady** doctrine. Under the **Brady** doctrine, the defense is entitled to the production of any exculpatory evidence in the possession of the government.

9.6.3.8.4  
(07-09-2024)

**Pretrial Conference**

- (1) As soon as possible after the indictment has been returned or the information has been filed, the SA should make arrangements to meet with the attorney for the government handling the investigation for a pretrial conference.
- (2) The discussion should include the following:
  - a. Any discussions the attorney for the government has had with the defendant or defense counsel regarding motions filed, defenses presented, and plea offerings,
  - b. Any recent changes affecting government witnesses,
  - c. Anticipated direction of the trial, including the order of witnesses to be called and evidence to be introduced,
  - d. Use of protected witnesses and informants as government witnesses,
  - e. SA's testimony to be given at trial,
  - f. Evidence the parties will agree to have entered by stipulation,
  - g. illustrations, charts, graphs, or photographs to be used,
  - h. SA's duties and responsibilities in assisting the attorney for the government to prepare for the trial.