Role of the Federal Prosecutor

Fall 2014

Stuart 302
The George Washington University Law School (intersection of 20th and H Streets, N.W.)

Wednesdays, 6:00 - 8:00 P.M.

This course will explore the powers and responsibilities of the federal prosecutor. Class segments will focus on how decisions are made by federal prosecutors throughout different stages of the criminal justice system, in light of legal, policy, practical and ethical considerations. Using actual cases as well as federal statutes, guidelines, and other materials, the course will discuss the factors that influence the decisions and discretion of the federal prosecutor. The course will also examine the interaction between and among federal, state and foreign jurisdictions, in particular the interests of competing sovereigns in the investigation and prosecution of criminal activity.

Professors

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Text

The required text is *The Practice of Federal Criminal Law: Prosecution and Defense*, Harry Subin, Barry Berke and Eric Tirschwell. There will also be reading materials, referenced below in the weekly class assignments. We may make changes to the reading materials over the course of the semester, as needed.

Schedule and location

Class will meet Wednesdays, 6:00 to 8:00 p.m., in Stuart 302 at the George Washington University Law School, intersection of 20th and H. (This entrance can be entered without GW ID until 6:30 p.m.)

The first class will be held on August 27 and is required for American, Catholic, and GW students. The August 27 session is optional but recommended for Georgetown students, who will also be able to view a recording of the session. The last required class for American, Catholic, and GW law students will be held on November 19.

Georgetown students will have an additional required session on November 22. That session is optional but recommended for American, Catholic, and GW students. Attendance at all other sessions is required. For the class on November 22, it will be held at Georgetown Law Center, McDonough building, Room 220. Non-Georgetown students can access McDonough through the guarded entrance on 2nd Street, NW, which is on the same floor as
the classroom. Note that there is construction along 2nd Street which will likely still be there in November, but pedestrian access is still available.

Evaluation

Students will be evaluated based on an eight-hour take-home final exam and in-class participation. More concretely, a student's grade may be raised or lowered one step, e.g. from B to B+ or from B+ to B, based on participation.

Policies

Students must adhere to the attendance and integrity policies of their respective law schools. Students absent for religious reasons, family emergencies, and other authorized absences may request a recording of a session. Accommodations for students with disabilities will be provided per each school's policies.

Prerequisites

Students must have taken a criminal law and criminal procedure class. Constitutional law and evidence would also be helpful.

Readings

All readings other than the textbook listed below are hyperlinks that should redirect to Westlaw or to a publicly accessible site on the Internet.

1 8/27/ Introduction

Harry I. Sabin et al, The Practice of Federal Criminal Law, Ch. 1, Overview of the Federal Criminal Process; Ch. 2, U.S. v. Mario Long

Berger v. United States, 295 U.S. 78 (1935)

USAM 9-27.001 (Principles of Federal Prosecution - Preface)

USAM 9-27.220 (Grounds for Commencing or Declining Prosecution)

USAM 9-27.230 (Initiating and Declining Charges--Substantial Federal Interest)

USAM 9-27.260 (Initiating and Declining Charges--Impermissible Considerations)

2 9/3 Federal Cases

Harry I. Sabin et al, The Practice of Federal Criminal Law, Ch. 3, Proof in the Criminal Process

Bond v. United States, 134 S. Ct. 2077 (2014)


### 3 9/10 Initiating Investigations

Harry I. Sabin et al, The Practice of Federal Criminal Law, Ch. 4, The Initial Decision to Charge; Ch. 5, Proceedings on the Complaint

U.S. Const. amend. I

U.S. Const. amend. IV

U.S. Const. amend. V

U.S. Const. amend. VI

U.S. Const. amend. XIV


United States v. Allibhai, 939 F.2d 244, 244-250 (5th Cir. 1991)

United States v. Mosley, 965 F.2d 906 (10th Cir. 1992)

USAM 9-1.000 (Department of Justice Policy and Responsibilities)

USAM 9-2.001 (Introduction)

USAM 9-2.010 (Investigations)

USAM 9-2.020 (Declining Prosecutions)

### 4 9/17 Investigative Techniques

Harry I. Sabin et al, The Practice of Federal Criminal Law, Ch. 10, Pre-Indictment Investigations


United States v. Cotterman, 709 F.3d 952 (9th Cir. 2013)


Title 18, United States Code, Section 2518 (skim)

Title 18, United States Code, Section 3122 & 3123 (skim)

### 5 9/24 Covert Investigations

Harry I. Sabin et al, The Practice of Federal Criminal Law, Ch. 6, The Preliminary Hearing
Title 28, United States Code, Section 530B
28 C.F.R., Sections 77.1 - 77.5
ABA Rule 4.2 and comments
ABA Rule 8.4 and comments
United States v. Dailey, 759 F.2d 192 (1st Cir. 1985)
United States v. Hammad, 858 F.2d 834 (2nd Cir. 1988)
United States Attorneys' Manual 9-27.600, Principles of Federal Prosecution, Entering into Non-Prosecution Agreements in Return for Cooperation

6  10/1  Grand Jury

Harry I. Sabin et al, The Practice of Federal Criminal Law, Ch. 11, The Decision to Indict
Stirone v. United States, 361 U.S. 212 (1960)
United States v. Williams, 504 U.S. 36 (1992)
In re Horn, 976 F.2d 1314 (9th Cir. 1992)
Fed. R. Crim. P. 6 (The Grand Jury)
Fed. R. Crim. P. 7 (The Indictment and the Information)
USAM 9-11.141 (Fair Credit Reporting Act and Grand Jury Subpoenas)
USAM 9-11.150 (Principles of Federal Prosecution, Subpoenaing Targets of the Investigation)
USAM 9-11.151 (Advice of "Rights" of Grand Jury Witnesses)
USAM 9-11.231 (Motions to Dismiss Due to Illegally Obtained Evidence Before a Grand Jury)
USAM 9-11.232 (Use of Hearsay in a Grand Jury Proceeding)
USAM 9-11.233 (Presentation of Exculpatory Evidence)

7  10/8  Charging Decisions


United States v. Jones, 159 F.3d 969, 975-78 (6th Cir. 1998) (covering selective prosecution)

United States v. Robertson, 15 F.3d 862, 875-79 (9th Cir. 1994) (Reinhardt, J., concurring)

18 U.S.C. § 3282 (statute of limitations)

18 U.S.C. §§ 3231-38 (venue)

United States v. Blucher, 581 F.2d 244 (10th Cir. 1978)

United States v. Mathews, 168 F.3d 1234, 1246 (11th Cir. 1999)

United States v. Johnson, 171 F.3d 139 (2nd Cir. 1999)

United States v. Lanoue, 137 F.3d 656, 664-66 (1st Cir. 1998)


8 10/15 Pre-Trial

Harry I. Sabin et al, The Practice of Federal Criminal Law, Ch. 8, Plea Negotiation; Ch. 9, The Guilty Plea Proceeding; Ch. 13, Pre-trial Discovery; Ch. 14, Pretrial Motions


Fed. R. Crim. P. 16 (Discovery and Inspection)

Fed. R. Crim. P. 17 (Subpoena)


9 10/22 Trial 1

Harry I. Sabin et al, The Practice of Federal Criminal Law, Ch. 15, Preparation for Trial; Ch. 16, The Trial

United States v. Murrah, 888 F.2d 24 (5th Cir. 1989)

United States v. Somers, 496 F.2d 723 (3d Cir. 1974) (Section IV)

United States v. Christensen, 921 F.2D 281 (9th 1990) (unpublished)

1 10/29 Trial 2

United States v. Hooks, 848 F.2d 785 (7th Cir. 1988)

United States v. Mohney, 949 F.2d 1397 (6th Cir. 1991)

United States v. Silverstein, 737 F.2d 864 (10th Cir. 1984)
1 11/5  **Sentencing**


18 U.S.C.A. 3553 (Imposition of a sentence)


1 11/12  **International Investigations**


1 11/19  **Conclusion**

Connick v. Thompson, 131 S. Ct. 1350 (2011)


14 11/22  **Epilogue**