RULES OF CRIMINAL PROCEDURE

FOR THE

UNITED STATES DISTRICT COURTS

WITH FORMS

OCTOBER 1, 1977

Printed for the use
of
E COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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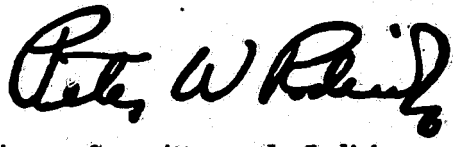
FOREWORD

This document contains the Rules of Criminal Procedure for the United States District Courts together with forms as amended to October 1, 1977. These rules and forms have been promulgated and amended by the United States Supreme Court pursuant to Title 18, United States Code, sections 3771 and 3772, and further amended by Public Law 94–64 (approved July 31, 1975, 89 Stat. 370) Public Law 94–149 (approved Dec. 12, 1975, 89 Stat. 806), Public Law 94–349 (approved July 8, 1976, 90 Stat. 822), and Public Law 95–78 (approved July 30, 1977, 91 Stat. 319). It has been prepared by the Committee in response to the need for an official up-to-date document containing the latest amendments.

For the convenience of the user, where a rule has been amended a reference to the date the amendment was promulgated and the date the amendment became effective follows the text of the rule.

The United States Supreme Court Advisory Committee on Rules of Criminal Procedure prepared extensive notes covering various aspects and provisions of the rules. These notes may be found in the Appendix to Title 18, United States Code, following the particular rule to which they relate.



Chairman, Committee on the Judiciary.

OCTOBER 1, 1977.

AUTHORITY FOR PROMULGATION OF RULES

Title 18, United States Code

§ 3771. Procedure to and including verdict.

The Supreme Court of the United States shall have the power to prescribe, from time to time, rules of pleading, practice, and procedure with respect to any or all proceedings prior to and including verdict, or finding of guilty or not guilty by the court if a jury has been waived, or plea of guilty, in criminal cases and proceedings to punish for criminal contempt of court in the United States district courts, in the district courts for the District of the Canal Zone and the Virgin Islands, in the Supreme Court of Puerto Rico, and in proceedings before United States magistrates. Such rules shall not take effect until they have been reported to Congress by the Chief Justice at or after the beginning of a regular session thereof but not later than the first day of May, and until the expiration of ninety days after they have been thus reported. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Nothing in this title, anything therein to the contrary notwithstanding, shall in any way limit, supersede, or repeal any such rules heretofore prescribed by the Supreme Court. (June 25, 1948, ch. 645, 62 Stat. 846; May 24, 1949, ch. 139, § 59, 63 Stat. 98; May 10, 1950, ch. 174, § 1, 64 Stat. 158; July 7, 1958, Pub. L. 85–508, § 12(k), 72 Stat. 348; Mar. 18, 1959, Pub. L. 86–3, § 14(g), 73 Stat. 11; Oct. 17, 1968, Pub. L. 90–578, title III. § 301(a) (2), 82 Stat. 1115.)

§ 3772. Procedure after verdict.

The Supreme Court of the United States shall have the power to prescribe, from time to time, rules of practice and procedure with respect to any or all proceedings after verdict, or finding of guilt by the court if a jury has been waived, or plea of guilty, in criminal cases and proceedings to punish for criminal contempt in the United States district courts, in the district courts for the District of the Canal Zone and the Virgin Islands, in the Supreme Court of Puerto Rico, in the United States courts of appeals, and in the Supreme Court of the United States. This section shall not give the Supreme Court power to abridge the right of the accused to apply for withdrawal of a plea of guilty, if such application be made within ten days after entry of such plea, and before sentence is imposed.

The right of appeal shall continue in those cases in which appeals are authorized by law, but the rules made as herein authorized may prescribe the times for and manner of taking appeals and applying for writs of certiorari and preparing records and bills of exceptions and the conditions on which supersedeas or bail may be allowed.

The Supreme Court may fix the dates when such rules shall take effect and the extent to which they shall apply to proceedings then pending, and after they become effective all laws in conflict therewith shall be of no further force.

Nothing in this title, anything therein to the contrary notwithstanding, shall in any way limit, supersede, or repeal any such rules heretofore prescribed by the Supreme Court. (June 25, 1948, ch. 645, 62 Stat. 846; May 24, 1949, ch. 139, § 60, 63 Stat. 98; July 7, 1958, Pub. L. 85–508, § 12(*l*), 72 Stat. 348; Mar. 18, 1959, Pub. L. 86–3, § 14(h), 73 Stat. 11.)

HISTORICAL NOTE

The Supreme Court promulgates rules of criminal procedure for the district courts pursuant to two sections of Title 18, United States Code. Section 3771 authorizes the Court to prescribe rules for all criminal proceedings prior to and including verdict, or finding of guilty or not guilty by the court, or plea of guilty. Section 3772 empowers the Court to prescribe rules with respect to all proceedings after verdict or finding of guilty by the court, or plea of guilty.

Proceedings Prior to and Including Verdict

By act of June 29, 1940, ch. 445, 54 Stat. 688 (subsequently 18 U.S. Code, § 3771), the Supreme Court was authorized to prescribe general rules of criminal procedures prior to and including verdict, finding of guilty or not guilty by the court, or plea of guilty, in criminal proceedings; which were not to take effect until (1) they had been first reported to the Congress by the Attorney General at the beginning of a regular session, and (2) after the close of that session.

By a 1949 amendment to 18 United States Code, § 3771, the Chief Justice of the United States, instead of the Attorney General, now reports the rules to Congress. In 1950, the section was further amended so that amendments to the rules may be reported to Congress not later than May 1 each year and become effective 90 days after being reported.

The original rules pursuant to that act were adopted by order of the Court on December 26, 1944, transmitted to the Congress by the Attorney General on January 3, 1945, and became effective on March 21, 1946 (327 U.S. 821; Cong. Rec., vol. 91, pt. 1, p. 17; Exec. Comm. 4; H. Doc. 12, 79th Cong.).

Amendments were adopted by order of the Court dated December 27, 1948, transmitted to the Congress by the Attorney General on January 3, 1949, and became effective October 20, 1949 (335 US. 949; Cong. Rec., vol. 95, pt. 1, p. 13; Exec. Comm. 16; H. Doc. 30, 81st Cong.). The amendments affected Rules 17(e)(2), 41(b)(3), 41(g), 54(a)(1), 54(b), 54(c), 55, 56, and 57(a) and Forms 1–27, inclusive.

Further amendments were adopted by order of the Court dated April 9, 1956, transmitted to the Congress by the Chief Justice on the same day, and became effective on July 8, 1956 (350 U.S. 1017; Cong. Rec., vol. 102, pt. 5, p. 5973; Exec. Comm. 16; H. Doc. 377, 84th Cong.). The amendments affected Rules 41(a), 46(a)(2), 54(a)(1), and 54(c).

Further amendments were adopted by order of the Court dated February 28, 1966, transmitted to the Congress by the Chief Justice on the same day, and became effective on July 1, 1966 (383 U.S. 1087; Cong. Rec., vol. 112, pt. 4, p. 4229; Exec. Comm. 2093; H. Doc. 390,

89th Cong.). The amendments affected Rules 4, 5, 6, 7, 11, 14, 16, 17, 18, 20, 21, 23, 24, 25, 28, 29, 30, 32, 33, 34, 35, 37, 38, 40, 44, 45, 46, 49, 54, 55, and 56, and Form 26, added new Rules 17.1 and 26.1, and rescinded Rules 19 and 45(c).

Further amendments were adopted by the Court by order dated December 4, 1967, transmitted to the Congress by the Chief Justice on January 15, 1968, and became effective July 1, 1968, together with the new Federal Rules of Appellate Procedure (389 U.S. 1125; Cong. Rec., vol. 114, pt. 1, p. 113; Exec. Comm. 1361; H. Doc. 204, 90th Cong.). The amendments affected Rules 45(b), 49(c), 56 and 57, and abrogated the chapter heading "VIII. Appeal", all of Rules 37 and 39, and subdivisions (b) and (c) of Rule 38, and Forms 26 and 27.

On March 1, 1971, the Court adopted additional amendments which were transmitted to the Congress by the Chief Justice on March 1, 1971. These amendments became effective July 1, 1971 (401 U.S. 1025; Cong. Rec., vol. 117, pt. 4, p. 4629; Exec. Comm. 341; H. Doc. 92–57). The amendments affected subdivision (a) of Rule 45 and all of Rule 56.

Additional amendments were adopted by the Court by order dated April 24, 1972, transmitted to the Congress by the Chief Justice, accompanied by his letter of transmittal dated April 24, 1972. These amendments became effective October 1, 1972 (406 U.S. 979; Cong. Rec., vol. 118, pt. 11, p. 14262; Exec. Comm. 1903; H. Doc. 92–285). The amendments affected Rules 1, 3, 4(b) and (c), 5, 5.1, 6(b), 7(c), 9(b), (c) and (d), 17(a) and (g), 31(e), 32(b), 38(a), 40, 41, 44, 46, 50, 54 and 55.

Additional amendments were adopted by the Court by order dated March 18, 1974, transmitted to the Congress by the Chief Justice on the same date. These amendments became effective July 1, 1974 (415 U.S. 1056; Cong. Rec., vol. 120, pt. 5, p. 7012; Exec. Comm. 2062; H. Doc. 93–241). The amendments affected Rules 41(a) and 50.

Further amendments were proposed by the Court in its order dated November 20, 1972, transmitted to the Congress by the Chief Justice on February 5, 1973 (409 U.S. 1132; Cong. Rec., vol. 119, pt. 3, p. 3247; Exec. Comm. 359; H. Doc. 93–46). Although these amendments were to have become effective July 1, 1973, Public Law 93–12 (approved March 30, 1973, 87 Stat. 9) provided that the proposed amendments "shall have no force or effect except to the extent, and with such amendments, as they may be expressly approved by Act of Congress." Section 3 of Public Law 93–595 (approved January 2, 1975, 88 Stat. 1949) approved the amendments proposed by the Court, to be effective July 1, 1975. The amendments affected Rules 26, 26.1 and 28.

In its order dated April 22, 1974, the Court proposed additional amendments which were transmitted to the Congress by the Chief Justice on the same day. The amendments were to have become effective August 1, 1974 (416 U.S. 1001; Cong. Rec., vol. 120, pt. 9, p. 11472; Exec. Comm. 2223; H. Doc. 93–292). The effective date of the proposed amendments was postponed until August 1, 1975, by Public Law 93–361 (approved July 30, 1974, 88 Stat. 397). Public Law 94–64 (approved July 31, 1975, 89 Stat. 370) approved the amendments proposed by the Court and further amended the rules, to be effective

December 1, 1975, except Rule 11(e)(6), to be effective August 1, 1975. The amendments affected Rules 4, 9(a), 11, 12, 15, 16, 17(f), 20, 32(a), (c) and (e) and 43, and added Rules 12.1, 12.2 and 29.1.

Technical amendments to Rules 9(b), 9(c), 16(a), and 16(b) were made by section 5 of Public Law 94–149 (approved Dec. 12, 1975, 89 Stat. 806).

Additional amendments were proposed by the Court by order dated April 26, 1976, were transmitted to the Congress by the Chief Justice on the same day (425 U.S. 1157; Cong. Rec., p. H3413, Daily Issue; Exec. Comm. 3084; H. Doc. 94–464), and were to be effective August 1, 1976. Public Law 94–349 (approved July 8, 1976, 90 Stat. 822) delayed the effective date of the amendments to Rules 6(e), 23, 24, 40.1, and 41(c)(2) until August 1, 1977, or until and to the extent approved by Act of Congress, whichever is earlier. Also, it approved the amendments to Rules 6(f), 41(a), and 50(b), to be effective August 1, 1976. Public Law 95–78 (approved July 30, 1977, 91 Stat. 319) disapproved amendments to Rules 24 and 40.1, approved amendments to Rule 23, and modified and approved amendments to Rules 6(e) and 41(c), to be effective October 1, 1977.

Proceedings After Verdict

By act of February 24, 1933, ch. 119, 47 Stat. 904, as amended (subsequently 18 U.S. Code, § 3772), the Supreme Court was authorized to prescribe general rules of criminal procedure with respect to proceedings after verdict or finding of guilty by the court, or plea of guilty, which became effective on dates fixed by the Court. These rules are not required to be submitted to Congress.

Rules 32 to 39, inclusive, were adopted by order of the Court on February 8, 1946, and became effective on March 21, 1946 (327 U.S. 825). Prior rules promulgated on May 7, 1934 (292 U.S. 659), were not specifically rescinded by that order but were superseded by these later rules.

Amendments to Rules 37(a)(1), 38(a)(3), 38(c), and 39(b)(2) were adopted by order of the Court dated December 27, 1948, and became effective on January 1, 1949 (335 U.S. 917).

Additional amendment to Rule 37 was adopted by order of the Court dated April 12, 1954, and became effective on July 1, 1954 (346 U.S. 941).

The Court adopted separate Federal Rules of Appellate Procedure by order dated December 4, 1967, transmitted to the Congress on January 15, 1968, effective July 1, 1968. As noted above, Rules 37, 38(b) and (c), and 39, and Forms 26 and 27, have been abrogated effective July 1, 1968, by that same order.

Advisory Committee Notes

The notes of the Advisory Committee appointed by the Supreme Court to assist it in preparing the original rules and amendments are set out in the Appendix to Title 18, United States Code, following the particular rule to which they relate. In addition, the rules and amendments, together with Advisory Committee notes, are set out in the House documents listed above.

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TABLE OF CONTENTS

94-283 O - 77 - 2

RULES OF CRIMINAL PROCEDURE

FOR THE

UNITED STATES DISTRICT COURTS[1]

Effective March 21, 1946, as amended to October 1, 1977

TITLE I. SCOPE, PURPOSE, AND CONSTRUCTION

Rule 1. Scope. These rules govern the procedure in all criminal proceedings in the courts of the United States, as defined in Rule 54(c); and, whenever specifically provided in one of the rules, to preliminary, supplementary, and special proceedings before United States magistrates and at proceedings before state and local judicial officers.

(As amended Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 2. Purpose and Construction. These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

TITLE II. PRELIMINARY PROCEEDINGS

Rule 3. The Complaint. The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a magistrate.

(As amended Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 4. Arrest Warrant or Summons Upon Complaint.

(a) ISSUANCE. If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. Upon the request of the attorney for the government a summons instead of a warrant shall issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) PROBABLE CAUSE. The finding of probable cause may be based upon hearsay evidence in whole or in part.

(c) FORM.

(1) *Warrant.* The warrant shall be signed by the magistrate and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified

[1] Title amended Dec. 27, 1948, effective Oct. 20, 1949.

with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before the nearest available magistrate.

(2) *Summons.* The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before a magistrate at a stated time and place.

(d) EXECUTION OR SERVICE; AND RETURN.

(1) *By Whom.* The warrant shall be executed by a marshal or by some other officer authorized by law. The summons may be served by any person authorized to serve a summons in a civil action.

(2) *Territorial Limits.* The warrant may be executed or the summons may be served at any place within the jurisdiction of the United States.

(3) *Manner.* The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request, he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein and by mailing a copy of the summons to the defendant's last known address.

(4) *Return.* The officer executing a warrant shall make return thereof to the magistrate or other officer before whom the defendant is brought pursuant to Rule 5. At the request of the attorney for the government any unexecuted warrant shall be returned to the magistrate by whom it was issued and shall be cancelled by him. On or before the return day the person to whom a summons was delivered for service shall make return thereof to the magistrate before whom the summons is returnable. At the request of the attorney for the government made at any time while the complaint is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the magistrate to the marshal or other authorized person for execution or service.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, eff. Dec. 1, 1975.)

Rule 5. Initial Appearance Before the Magistrate.

(a) IN GENERAL. An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available federal magistrate or, in the event that a federal magistrate is not reasonably available, before a state or local judicial officer authorized by 18 U.S.C. § 3041. If a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forthwith which shall comply with the requirements of Rule 4(a) with respect to the showing of probable cause. When a person, arrested

with or without a warrant or given a summons, appears initially before the magistrate, the magistrate shall proceed in accordance with the applicable subdivisions of this rule.

(b) MINOR OFFENSES. If the charge against the defendant is a minor offense triable by a United States magistrate under 18 U.S.C. § 3401, the United States magistrate shall proceed in accordance with the Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates.

(c) OFFENSES NOT TRIABLE BY THE UNITED STATES MAGISTRATE. If the charge against the defendant is not triable by the United States magistrate, the defendant shall not be called upon to plead. The magistrate shall inform the defendant of the complaint against him and of any affidavit filed therewith, of his right to retain counsel, of his right to request the assignment of counsel if he is unable to obtain counsel, and of the general circumstances under which he may secure pretrial release. He shall inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall also inform the defendant of his right to a preliminary examination. He shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided by statute or in these rules.

A defendant is entitled to a preliminary examination, unless waived, when charged with any offense, other than a petty offense, which is to be tried by a judge of the district court. If the defendant waives preliminary examination, the magistrate shall forthwith hold him to answer in the district court. If the defendant does not waive the preliminary examination, the magistrate shall schedule a preliminary examination. Such examination shall be held within a reasonable time but in any event not later than 10 days following the initial appearance if the defendant is in custody and no later than 20 days if he is not in custody, provided, however, that the preliminary examination shall not be held if the defendant is indicted or if an information against the defendant is filed in district court before the date set for the preliminary examination. With the consent of the defendant and upon a showing of good cause, taking into account the public interest in the prompt disposition of criminal cases, time limits specified in this subdivision may be extended one or more times by a federal magistrate. In the absence of such consent by the defendant, time limits may be extended by a judge of the United States only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 5.1. Preliminary Examination.

(a) PROBABLE CAUSE FINDING. If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the federal magistrate shall forthwith hold him to answer in district court. The finding of probable cause may be based upon hearsay evidence in whole or in part. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. Objections to evidence on the

ground that it was acquired by unlawful means are not properly made at the preliminary examination. Motions to suppress must be made to the trial court as provided in Rule 12.

(b) DISCHARGE OF DEFENDANT. If from the evidence it appears that there is no probable cause to believe that an offense has been committed or that the defendant committed it, the federal magistrate shall dismiss the complaint and discharge the defendant. The discharge of the defendant shall not preclude the government from instituting a subsequent prosecution for the same offense.

(c) RECORDS. After concluding the proceeding the federal magistrate shall transmit forthwith to the clerk of the district court all papers in the proceeding. The magistrate shall promptly make or cause to be made a record or summary of such proceeding.

(1) On timely application to a federal magistrate, the attorney for a defendant in a criminal case may be given the opportunity to have the recording of the hearing on preliminary examination made available for his information in connection with any further hearing or in connection with his preparation for trial. The court may, by local rule, appoint the place for and define the conditions under which such opportunity may be afforded counsel.

(2) On application of a defendant addressed to the court or any judge thereof, an order may issue that the federal magistrate make available a copy of the transcript, or of a portion thereof, to defense counsel. Such order shall provide for prepayment of costs of such transcript by the defendant unless the defendant makes a sufficient affidavit that he is unable to pay or to give security therefor, in which case the expense shall be paid by the Director of the Administrative Office of the United States Courts from available appropriated funds. Counsel for the government may move also that a copy of the transcript, in whole or in part, be made available to it, for good cause shown, and an order may be entered granting such motion in whole or in part, on appropriate terms, except that the government need not prepay costs nor furnish security therefor.

(As added Apr. 24, 1972, eff. Oct. 1, 1972.)

TITLE III. INDICTMENT AND INFORMATION

Rule 6. The Grand Jury.

(a) SUMMONING GRAND JURIES. The court shall order one or more grand juries to be summoned at such times as the public interest requires. The grand jury shall consist of not less than 16 nor more than 23 members. The court shall direct that a sufficient number of legally qualified persons be summoned to meet this requirement.

(b) OBJECTIONS TO GRAND JURY AND TO GRAND JURORS.

(1) *Challenges.* The attorney for the government or a defendant who has been held to answer in the district court may challenge the array of jurors on the ground that the grand jury was not selected, drawn or summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the court.

(2) *Motion To Dismiss.* A motion to dismiss the indictment may be based on objections to the array or on the lack of legal qualification of an individual juror, if not previously determined upon challenge. It shall be made in the manner prescribed in 28 U.S.C. § 1867(e) and shall be granted under the conditions prescribed in that statute. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to subdivision (c) of this rule that 12 or more jurors, after deducting the number not legally qualified, concurred in finding the indictment.

(c) FOREMAN AND DEPUTY FOREMAN. The court shall appoint one of the jurors to be foreman and another to be deputy foreman. The foreman shall have power to administer oaths and affirmations and shall sign all indictments. He or another juror designated by him shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of the court, but the record shall not be made public except on order of the court. During the absence of the foreman, the deputy foreman shall act as foreman.

(d) WHO MAY BE PRESENT. Attorneys for the government, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting.

(e) SECRECY OF PROCEEDINGS AND DISCLOSURE.

(1) *General Rule.* A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the Government, or any person to whom disclosure is made under paragraph (2)(A)(ii) of this subdivision shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules. No obligation of secrecy may be imposed on any person except in accordance with this rule. A knowing violation of rule 6 may be punished as a contempt of court.

(2) *Exceptions.*

(A) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to—

(i) an attorney for the government for use in the performance of such attorney's duty; and

(ii) such government personnel as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce Federal criminal law.

(B) Any person to whom matters are disclosed under subparagraph (A)(ii) of this paragraph shall not utilize that grand jury material for any purpose other than assisting the attorney for the government in the performance of such attorney's duty to enforce Federal criminal law. An attorney for the government shall promptly provide the district court, before which was impaneled the grand jury whose material

has been so disclosed, with the names of the persons to whom such disclosure has been made.

(C) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made—

(i) when so directed by a court preliminarily to or in connection with a judicial proceeding; or

(ii) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury.

(3) *Sealed Indictments.* The Federal magistrate to whom an indictment is returned may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial. Thereupon the clerk shall seal the indictment and no person shall disclose the return of the indictment except when necessary for the issuance and execution of a warrant or summons.

(f) FINDING AND RETURN OF INDICTMENT. An indictment may be found only upon the concurrence of 12 or more jurors. The indictment shall be returned by the grand jury to a federal magistrate in open court. If a complaint or information is pending against the defendant and 12 jurors do not concur in finding an indictment, the foreman shall so report to a federal magistrate in writing forthwith.

(g) DISCHARGE AND EXCUSE. A grand jury shall serve until discharged by the court but no grand jury may serve more than 18 months. The tenure and powers of a grand jury are not affected by the beginning or expiration of a term of court. At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

(As amended, Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; July 8, 1976, eff. Aug. 1, 1976; July 30, 1977, eff. Oct. 1, 1977.)

Rule 7. The Indictment and the Information.

(a) USE OF INDICTMENT OR INFORMATION. An offense which may be punished by death shall be prosecuted by indictment. An offense which may be punished by imprisonment for a term exceeding one year or at hard labor shall be prosecuted by indictment or, if indictment is waived, it may be prosecuted by information. Any other offense may be prosecuted by indictment or by information. An information may be filed without leave of court.

(b) WAIVER OF INDICTMENT. An offense which may be punished by imprisonment for a term exceeding one year or at hard labor may be prosecuted by information if the defendant, after he has been advised of the nature of the charge and of his rights, waives in open court prosecution by indictment.

(c) NATURE AND CONTENTS.

(1) *In General.* The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the attorney for the government. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are

unknown or that he committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated.

(2) *Criminal Forfeiture.* When an offense charged may result in a criminal forfeiture, the indictment or the information shall allege the extent of the interest or property subject to forfeiture.

(3) *Harmless Error.* Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice.

(d) SURPLUSAGE. The court on motion of the defendant may strike surplusage from the indictment or information.

(e) AMENDMENT OF INFORMATION. The court may permit an information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(f) BILL OF PARTICULARS. The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made before arraignment or within ten days after arraignment or at such later time as the court may permit. A bill of particulars may be amended at any time subject to such conditions as justice requires. (As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 8. Joinder of Offenses and of Defendants.

(a) JOINDER OF OFFENSES. Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offense charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) JOINDER OF DEFENDANTS. Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

Rule 9. Warrant or Summons Upon Indictment or Information.

(a) ISSUANCE. Upon the request of the attorney for the government the court shall issue a warrant for each defendant named in the information, if it is supported by oath, or in the indictment. The clerk shall issue a summons instead of a warrant upon the request of the attorney for the government or by direction of the court. Upon like request or direction he shall issue more than one warrant or summons for the same defendant. He shall deliver the warrant or summons to the marshal or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) FORM.

(1) *Warrant.* The form of the warrant shall be as provided in Rule 4(c) (1) except that it shall be signed by the clerk, it shall describe the offense charged in the indictment or information and

it shall command that the defendant be arrested and brought before the court or, if the information or indictment charges a minor offense, before a United States magistrate. The amount of bail may be fixed by the court and endorsed on the warrant.

(2) *Summons.* The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the court or, if the information or indictment charges a minor offense, before a United States magistrate at a stated time and place.

(c) EXECUTION OR SERVICE; AND RETURN.

(1) *Execution or Service.* The warrant shall be executed or the summons served as provided in Rule 4(d) (1), (2) and (3). A summons to a corporation shall be served by delivering a copy to an officer or to a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the corporation's last known address within the district or at its principal place of business elsewhere in the United States. The officer executing the warrant shall bring the arrested person promptly before the court or before a United States magistrate.

(2) *Return.* The officer executing a warrant shall make return thereof to the court or United States magistrate. At the request of the attorney for the government any unexecuted warrant shall be returned and cancelled. On or before the return day the person to whom a summons was delivered for service shall make return thereof. At the request of the attorney for the government made at any time while the indictment or information is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved or a duplicate thereof may be delivered by the clerk to the marshal or other authorized person for execution or service.

(d) REMAND TO UNITED STATES MAGISTRATE FOR TRIAL OF MINOR OFFENSES. If the information or indictment charges a minor offense and the return is to a judge of the district court, the case may be remanded to a United States magistrate for further proceedings in accordance with the Rules of Procedure for the Trial of Minor Offenses Before United States Magistrates.

(As amended Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, eff. Dec. 1, 1975; Dec. 12, 1975.)

TITLE IV. ARRAIGNMENT, AND PREPARATION FOR TRIAL

Rule 10. Arraignment. Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. He shall be given a copy of the indictment or information before he is called upon to plead.

Rule 11. Pleas.

(a) ALTERNATIVES. A defendant may plead not guilty, guilty, or nolo contendere. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(b) NOLO CONTENDERE. A defendant may plead nolo contendere only with the consent of the court. Such a plea shall be accepted by the court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

(c) ADVICE TO DEFENDANT. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and inform him of, and determine that he understands, the following:

(1) the nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law; and

(2) if the defendant is not represented by an attorney, that he has the right to be represented by an attorney at every stage of the proceeding against him and, if necessary, one will be appointed to represent him; and

(3) that he has the right to plead not guilty or to persist in that plea if it has already been made, and that he has the right to be tried by a jury and at that trial has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him, and the right not to be compelled to incriminate himself; and

(4) that if he pleads guilty or nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he waives the right to a trial; and

(5) that if he pleads guilty or nolo contendere, the court may ask him questions about the offense to which he has pleaded, and if he answers these questions under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or false statement.

(d) INSURING THAT THE PLEA IS VOLUNTARY. The court shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the attorney for the government and the defendant or his attorney.

(e) PLEA AGREEMENT PROCEDURE.

(1) *In General.* The attorney for the government and the attorney for the defendant or the defendant when acting pro se may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the attorney for the government will do any of the following:

(A) move for dismissal of other charges; or

(B) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court; or

(C) agree that a specific sentence is the appropriate disposition of the case.

The court shall not participate in any such discussions.

(2) *Notice of Such Agreement.* If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court or, on a showing of good

cause, in camera, at the time the plea is offered. Thereupon the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report.

(3) *Acceptance of a Plea Agreement.* If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) *Rejection of a Plea Agreement.* If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in camera, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea, and advise the defendant that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) *Time of Plea Agreement Procedure.* Except for good cause shown, notification to the court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the court.

(6) *Inadmissibility of Pleas, Offers of Pleas, and Related Statements.* Except as otherwise provided in this paragraph, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, a plea of nolo contendere, or an offer to plead guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

(f) Determining Accuracy of Plea. Notwithstanding the acceptance of a plea of guilty, the court should not enter a judgment upon such plea without making such inquiry as shall satisfy it that there is a factual basis for the plea.

(g) Record of Proceedings. A verbatim record of the proceedings at which the defendant enters a plea shall be made and, if there is a plea of guilty or nolo contendere, the record shall include, without limitation, the court's advice to the defendant, the inquiry into the voluntariness of the plea including any plea agreement, and the inquiry into the accuracy of a guilty plea.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, eff. Aug. 1 and Dec. 1, 1975.)

Rule 12. Pleadings and Motions Before Trial; Defenses and Objections.

(a) Pleadings and Motions. Pleadings in criminal proceedings shall be the indictment and the information, and the pleas of not

guilty, guilty and nolo contendere. All other pleas, and demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(b) PRETRIAL MOTIONS. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial:

(1) Defenses and objections based on defects in the institution of the prosecution; or

(2) Defenses and objections based on defects in the indictment or information (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceedings); or

(3) Motions to suppress evidence; or

(4) Requests for discovery under Rule 16; or

(5) Requests for a severance of charges or defendants under Rule 14.

(c) MOTION DATE. Unless otherwise provided by local rule, the court may, at the time of the arraignment or as soon thereafter as practicable, set a time for the making of pretrial motions or requests and, if required, a later date of hearing.

(d) NOTICE BY THE GOVERNMENT OF THE INTENTION TO USE EVIDENCE.

(1) *At the Discretion of the Government.* At the arraignment or as soon thereafter as is practicable, the government may give notice to the defendant of its intention to use specified evidence at trial in order to afford the defendant an opportunity to raise objections to such evidence prior to trial under subdivision (b) (3) of this rule.

(2) *At the Request of the Defendant.* At the arraignment or as soon thereafter as is practicable the defendant may, in order to afford an opportunity to move to suppress evidence under subdivision (b) (3) of this rule, request notice of the government's intention to use (in its evidence in chief at trial) any evidence which the defendant may be entitled to discover under Rule 16 subject to any relevant limitations prescribed in Rule 16.

(e) RULING ON MOTION. A motion made before trial shall be determined before trial unless the court, for good cause, orders that it be deferred for determination at the trial of the general issue or until after verdict, but no such determination shall be deferred if a party's right to appeal is adversely affected. Where factual issues are involved in determining a motion, the court shall state its essential findings on the record.

(f) EFFECT OF FAILURE TO RAISE DEFENSES OR OBJECTIONS. Failure by a party to raise defenses or objections or to make requests which must be made prior to trial, at the time set by the court pursuant to subdivision (c), or prior to any extension thereof made by the court, shall constitute waiver thereof, but the court for cause shown may grant relief from the waiver.

(g) RECORDS. A verbatim record shall be made of all proceedings at the hearing, including such findings of fact and conclusions of law as are made orally.

(h) EFFECT OF DETERMINATION. If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that the defendant be continued in custody or that his bail be continued for a specified time pending the filing of a new indictment or information. Nothing in this rule shall be deemed to affect the provisions of any Act of Congress relating to periods of limitations.

(As amended Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, Dec. 1, 1975.)

Rule 12.1. Notice of Alibi.

(a) NOTICE BY DEFENDANT. Upon written demand of the attorney for the government stating the time, date, and place at which the alleged offense was committed, the defendant shall serve within ten days, or at such different time as the court may direct, upon the attorney for the government a written notice of his intention to offer a defense of alibi. Such notice by the defendant shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

(b) DISCLOSURE OF INFORMATION AND WITNESS. Within ten days thereafter, but in no event less than ten days before trial, unless the court otherwise directs, the attorney for the government shall serve upon the defendant or his attorney a written notice stating the names and addresses of the witnesses upon whom the government intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.

(c) CONTINUING DUTY TO DISCLOSE. If prior to or during trial, a party learns of an additional witness whose identity, if known, should have been included in the information furnished under subdivision (a) or (b), the party shall promptly notify the other party or his attorney of the existence and identity of such additional witness.

(d) FAILURE TO COMPLY. Upon the failure of either party to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by such party as to the defendent's absence from or presence at, the scene of the alleged offense. This rule shall not limit the right of the defendant to testify in his own behalf.

(e) EXCEPTIONS. For good cause shown, the court may grant an exception to any of the requirements of subdivisions (a) through (d) of this rule.

(f) INADMISSIBILITY OF WITHDRAWN ALIBI. Evidence of an intention to rely upon an alibi defense, later withdrawn, or of statements made in connection with such intention, is not admissible in any civil or criminal proceeding against the person who gave notice of the intention.

(As added Apr. 22, 1974, eff. Dec. 1, 1975; and amended July 31, 1975, eff. Dec. 1, 1975.)

Rule 12.2. Notice of Defense Based Upon Mental Condition.

(a) DEFENSE OF INSANITY. If a defendant intends to rely upon the defense of insanity at the time of the alleged crime, he shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the attorney for the government in writing of such intention and file a copy of such notice with the clerk. If there is a failure to comply with the requirements of this subdivision, insanity may not be raised as a defense. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(b) MENTAL DISEASE OR DEFECT INCONSISTENT WITH THE MENTAL ELEMENT REQUIRED FOR THE OFFENSE CHARGED. If a defendant intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether he had the mental state required for the offense charged, he shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the attorney for the government in writing of such intention and file a copy of such notice with the clerk. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(c) PSYCHIATRIC EXAMINATION. In an appropriate case the court may, upon motion of the attorney for the government, order the defendant to submit to a psychiatric examination by a psychiatrist designated for this purpose in the order of the court. No statement made by the accused in the course of any examination provided for by this rule, whether the examination shall be with or without the consent of the accused, shall be admitted in evidence against the accused on the issue of guilt in any criminal proceeding.

(d) FAILURE TO COMPLY. If there is a failure to give notice when required by subdivision (b) of this rule or to submit to an examination when ordered under subdivision (c) of this rule, the court may exclude the testimony of any expert witness offered by the defendant on the issue of his mental state.

(As added Apr. 22, 1974, eff. Dec. 1, 1975; and amended July 31, 1975, eff. Dec. 1, 1975.)

Rule 13. Trial Together of Indictments or Informations. The court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.

Rule 14. Relief From Prejudicial Joinder. If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the government to deliver to the court for inspection in camera any statements or con-

fessions made by the defendants which the government intends to introduce in evidence at the trial.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 15. Depositions.

(a) WHEN TAKEN. Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness.

(b) NOTICE OF TAKING. The party at whose instance a deposition is to be taken shall give to every party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition. The officer having custody of a defendant shall be notified of the time and place set for the examination and shall, unless the defendant waives in writing the right to be present, produce him at the examination and keep him in the presence of the witness during the examination, unless, after being warned by the court that disruptive conduct will cause him to be removed from the place of the taking of the deposition, he persists in conduct which is such as to justify his being excluded from that place. A defendant not in custody shall have the right to be present at the examination upon request subject to such terms as may be fixed by the court, but his failure, absent good cause shown, to appear after notice and tender of expenses in accordance with subdivision (c) of this rule shall constitute a waiver of that right and of any objection to the taking and use of the deposition based upon that right.

(c) PAYMENT OF EXPENSES. Whenever a deposition is taken at the instance of the government, or whenever a deposition is taken at the instance of a defendant who is unable to bear the expenses of the taking of the deposition, the court may direct that the expense of travel and subsistence of the defendant and his attorney for attendance at the examination and the cost of the transcript of the deposition shall be paid by the government.

(d) HOW TAKEN. Subject to such additional conditions as the court shall provide, a deposition shall be taken and filed in the manner provided in civil actions except as otherwise provided in these rules, provided that (1) in no event shall a deposition be taken of a party defendant without his consent, and (2) the scope and manner of examination and cross-examination shall be such as would be allowed in the trial itself. The government shall make available to the defendant or his counsel for examination and use at the taking of the deposition any statement of the witness being deposed which is in the possession of the government and to which the defendant would be entitled at the trial.

(e) USE. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the witness is unavailable, as unavailability is defined in Rule 804(a) of the Federal Rules of Evidence, or the witness gives testimony at the trial or hearing inconsistent with his deposition. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(f) OBJECTIONS TO DEPOSITION TESTIMONY. Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition.

(g) DEPOSITION BY AGREEMENT NOT PRECLUDED. Nothing in this rule shall preclude the taking of a deposition, orally or upon written questions, or the use of a deposition, by agreement of the parties with the consent of the court.

(As amended Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, eff. Dec. 1, 1975.)

Rule 16. Discovery and Inspection.

(a) DISCLOSURE OF EVIDENCE BY THE GOVERNMENT.

(1) *Information Subject to Disclosure.*

(A) STATEMENT OF DEFENDANT. Upon request of a defendant the government shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government; the substance of any oral statement which the government intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a government agent; and recorded testimony of the defendant before a grand jury which relates to the offense charged. Where the defendant is a corporation, partnership, association or labor union, the court may grant the defendant, upon its motion, discovery of relevant recorded testimony of any witness before a grand jury who (1) was, at the time of his testimony, so situated as an officer or employee as to have been able legally to bind the defendant in respect to conduct constituting the offense, or (2) was, at the time of the offense, personally involved in the alleged conduct constituting the offense and so situated as an officer or employee as to have been able legally to bind the defendant in respect to that alleged conduct in which he was involved.

(B) DEFENDANT'S PRIOR RECORD. Upon request of the defendant, the government shall furnish to the defendant such copy of his prior criminal record, if any, as is within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government.

(C) DOCUMENTS AND TANGIBLE OBJECTS. Upon request of the defendant the government shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government, and which are material to the preparation of his defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.

(D) REPORTS OF EXAMINATIONS AND TESTS. Upon request of a defendant the government shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government, and which are material to the preparation of the defense or are intended for use by the government as evidence in chief at the trial.

(2) *Information Not Subject to Disclosure.* Except as provided in paragraphs (A), (B), and (D) of subdivision (a)(1), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal government documents made by the attorney for the government or other government agents in connection with the investigation or prosecution of the case, or of statements made by government witnesses or prospective government witnesses except as provided in 18 U.S.C. § 3500.

(3) *Grand Jury Transcripts.* Except as provided in Rule 6 and subdivision (a)(1)(A) of this rule, these rules do not relate to discovery or inspection of recorded proceedings of a grand jury.

[(4) *Failure to Call Witness.*] (Deleted, Dec. 12, 1975.)

(b) DISCLOSURE OF EVIDENCE BY THE DEFENDANT.

(1) *Information Subject to Disclosure.*

(A) DOCUMENTS AND TANGIBLE OBJECTS. If the defendant requests disclosure under subdivision (a)(1) (C) or (D) of this rule, upon compliance with such request by the government, the defendant, on request of the government, shall permit the government to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.

(B) REPORTS OF EXAMINATIONS AND TESTS. If the defendant requests disclosure under subdivision (a)(1) (C) or (D) of this rule, upon compliance with such request by the government, the defendant, on request of the government, shall permit the government to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to

call at the trial when the results or reports relate to his testimony.

(2) *Information Not Subject to Disclosure.* Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or his attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by government or defense witnesses, or by prospective government or defense witnesses, to the defendant, his agents or attorneys.

[(3) *Failure to Call Witness.*] (Deleted Dec. 12, 1975.)

(c) CONTINUING DUTY TO DISCLOSE. If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional evidence or material.

(d) REGULATION OF DISCOVERY.

(1) *Protective and Modifying Orders.* Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an *ex parte* showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(2) *Failure To Comply With a Request.* If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. The court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

(e) ALIBI WITNESSES. Discovery of alibi witnesses is governed by Rule 12.1.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, eff. Dec. 1, 1975; Dec. 12, 1975.)

Rule 17. Subpoena.

(a) FOR ATTENDANCE OF WITNESSES; FORM; ISSUANCE. A subpoena shall be issued by the clerk under the seal of the court. It shall state the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served. A subpoena shall be issued by a United States magistrate in a proceeding before him, but it need not be under the seal of the court.

(b) DEFENDANTS UNABLE TO PAY. The court shall order at any time that a subpoena be issued for service on a named witness upon an

ex parte application of a defendant upon a satisfactory showing that the defendant is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense. If the court orders the subpoena to be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the government.

(c) FOR PRODUCTION OF DOCUMENTARY EVIDENCE AND OF OBJECTS. A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

(d) SERVICE. A subpoena may be served by the marshal, by his deputy or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to him the fee for 1 day's attendance and the mileage allowed by law. Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof.

(e) PLACE OF SERVICE.

(1) *In United States.* A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the United States.

(2) *Abroad.* A subpoena directed to a witness in a foreign country shall issue under the circumstances and in the manner and be served as provided in Title 28, U.S.C. § 1783.

(f) FOR TAKING DEPOSITIONS; PLACE OF EXAMINATION.

(1) *Issuance.* An order to take a deposition authorizes the issuance by the clerk of the court for the district in which the deposition is to be taken of subpoenas for the persons named or described therein.

(2) *Place.* The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the trial court, taking into account the convenience of the witness and the parties.

(g) CONTEMPT. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued or of the court for the district in which it issued if it was issued by a United States magistrate.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, eff. Dec. 1, 1975.)

Rule 17.1. Pretrial Conference. At any time after the filing of the indictment or information the court upon motion of any party or upon its own motion may order one or more conferences to consider

such matters as will promote a fair and expeditious trial. At the conclusion of a conference the court shall prepare and file a memorandum of the matters agreed upon. No admissions made by the defendant or his attorney at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and his attorney. This rule shall not be invoked in the case of a defendant who is not represented by counsel.

(As added Feb. 28, 1966, eff. July 1, 1966.)

TITLE V. VENUE

Rule 18. Place of Prosecution and Trial. Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed. The court shall fix the place of trial within the district with due regard to the convenience of the defendant and the witnesses.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

[Rule 19. Transfer Within the District.] (Rescinded, Feb. 28, 1966, eff. July 1, 1966.)

Rule 20. Transfer From the District for Plea and Sentence. (a) INDICTMENT OR INFORMATION PENDING. A defendant arrested, held, or present in a district other than that in which an indictment or information is pending against him may state in writing that he wishes to plead guilty or nolo contendere, to waive trial in the district in which the indictment or information is pending, and to consent to disposition of the case in the district in which he was arrested, held, or present, subject to the approval of the United States attorney for each district. Upon receipt of the defendant's statement and of the written approval of the United States attorneys, the clerk of the court in which the indictment or information is pending shall transmit the papers in the proceeding or certified copies thereof to the clerk of the court for the district in which the defendant is arrested, held, or present, and the prosecution shall continue in that district.

(b) INDICTMENT OR INFORMATION NOT PENDING. A defendant arrested, held, or present in a district other than the district in which a complaint is pending against him may state in writing that he wishes to plead guilty or nolo contendere, to waive trial in the district in which the warrant was issued, and to consent to disposition of the case in the district in which he was arrested, held, or present subject to the approval of the United States attorney for each district. Upon receipt of the defendant's statement and of the written approval of the United States attorneys and upon the filing of an information or the return of an indictment, the clerk of the court for the district in which the warrant was issued shall transmit the papers in the proceeding or certified copies thereof to the clerk of the court for the district in which the defendant was arrested, held, or present, and the prosecution shall continue in that district. When the defendant is brought before the court to plead to an information filed in the district where the warrant was issued, he may at that time waive indictment as provided in Rule 7, and the prosecution may continue based upon the information originally filed.

94-283 O - 77 - 4

(c) EFFECT OF NOT GUILTY PLEA. If after the proceeding has been transferred pursuant to subdivision (a) or (b) of this rule the defendant pleads not guilty, the clerk shall return the papers to the court in which the prosecution was commenced, and the proceeding shall be restored to the docket of that court. The defendant's statement that he wishes to plead guilty or nolo contendere shall not be used against him.

(d) JUVENILES. A juvenile (as defined in 18 U.S.C. § 5031) who is arrested, held, or present in a district other than that in which he is alleged to have committed an act in violation of a law of the United States not punishable by death or life imprisonment may, after he has been advised by counsel and with the approval of the court and the United States attorney for each district, consent to be proceeded against as a juvenile delinquent in the district in which he is arrested, held, or present. The consent shall be given in writing before the court but only after the court has apprised the juvenile of his rights, including the right to be returned to the district in which he is alleged to have committed the act, and of the consequences of such consent.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, eff. Dec. 1, 1975.)

Rule 21. Transfer From the District for Trial.

(a) FOR PREJUDICE IN THE DISTRICT. The court upon motion of the defendant shall transfer the proceeding as to him to another district whether or not such district is specified in the defendant's motion if the court is satisfied that there exists in the district where the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial at any place fixed by law for holding court in that district.

(b) TRANSFER IN OTHER CASES. For the convenience of parties and witnesses, and in the interest of justice, the court upon motion of the defendant may transfer the proceeding as to him or any one or more of the counts thereof to another district.

(c) PROCEEDINGS ON TRANSFER. When a transfer is ordered the clerk shall transmit to the clerk of the court to which the proceeding is transferred all papers in the proceeding or duplicates thereof and any bail taken, and the prosecution shall continue in that district.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 22. Time of Motion To Transfer. A motion to transfer under these rules may be made at or before arraignment or at such other time as the court or these rules may prescribe.

TITLE VI. TRIAL

Rule 23. Trial by Jury or by the Court.

(a) TRIAL BY JURY. Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial in writing with the approval of the court and the consent of the government.

(b) JURY OF LESS THAN TWELVE. Juries shall be of 12 but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than 12 or that a valid verdict may be returned by a jury of less than

12 should the court find it necessary to excuse one or more jurors for any just cause after trial commences.

(c) TRIAL WITHOUT A JURY. In a case tried without a jury the court shall make a general finding and shall in addition, on request made before the general finding, find the facts specially. Such findings may be oral. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

(As amended Feb. 28, 1966, eff. July 1, 1966; July 30, 1977, eff. Oct. 1, 1977.)

Rule 24. Trial Jurors.

(a) EXAMINATION. The court may permit the defendant or his attorney and the attorney for the government to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event the court shall permit the defendant or his attorney and the attorney for the government to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions by the parties or their attorneys as it deems proper.

(b) PEREMPTORY CHALLENGES. If the offense charged is punishable by death, each side is entitled to 20 peremptory challenges. If the offense charged is punishable by imprisonment for more than one year, the government is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges. If the offense charged is punishable by imprisonment for not more than one year or by fine or both, each side is entitled to 3 peremptory challenges. If there is more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly.

(c) ALTERNATE JURORS. The court may direct that not more than 6 jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict. Each side is entitled to 1 peremptory challenge in addition to those otherwise allowed by law if 1 or 2 alternate jurors are to be impanelled, 2 peremptory challenges if 3 or 4 alternate jurors are to be impanelled, and 3 peremptory challenges if 5 or 6 alternate jurors are to be impanelled. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges allowed by these rules may not be used against an alternate juror.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 25. Judge; Disability.

(a) DURING TRIAL. If by reason of death, sickness or other disability the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge regularly sitting in or

assigned to the court, upon certifying that he has familiarized himself with the record of the trial, may proceed with and finish the trial.

(b) AFTER VERDICT OR FINDING OF GUILT. If by reason of absence, death, sickness or other disability the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge regularly sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 26. Taking of Testimony. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by an act of Congress or by these rules, the Federal Rules of Evidence, or other rules adopted by the Supreme Court.
(As amended Nov. 20, 1972, eff. July 1, 1975.)

Rule 26.1. Determination of Foreign Law. A party who intends to raise an issue concerning the law of a foreign country shall give reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

(As added Feb. 28, 1966, eff. July 1, 1966; and amended Nov. 20, 1972, eff. July 1, 1975.)

Rule 27. Proof of Official Record. An official record or an entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions.

Rule 28. Interpreters. The court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid out of funds provided by law or by the government, as the court may direct.

(As amended Feb. 28, 1966, eff. July 1, 1966; Nov. 20, 1972, eff. July 1, 1975.)

Rule 29. Motion for Judgment of Acquittal.

(a) MOTION BEFORE SUBMISSION TO JURY. Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the government is not granted, the defendant may offer evidence without having reserved the right.

(b) RESERVATION OF DECISION ON MOTION. If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

(c) MOTION AFTER DISCHARGE OF JURY. If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 7 days after the jury is discharged or within such further time as the court may fix during the 7-day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 29.1. Closing Argument. After the closing of evidence the prosecution shall open the argument. The defense shall be permitted to reply. The prosecution shall then be permitted to reply in rebuttal.
(As added Apr. 22, 1974, eff. Dec. 1, 1975.)

Rule 30. Instructions. At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury and, on request of any party, out of the presence of the jury.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 31. Verdict.

(a) RETURN. The verdict shall be unanimous. It shall be returned by the jury to the judge in open court.

(b) SEVERAL DEFENDANTS. If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(c) CONVICTION OF LESS OFFENSE. The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

(d) POLL OF JURY. When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(e) CRIMINAL FORFEITURE. If the indictment or the information alleges that an interest or property is subject to criminal forfeiture, a special verdict shall be returned as to the extent of the interest or property subject to forfeiture, if any.

(As amended Apr. 24, 1972, eff. Oct. 1, 1972.)

TITLE VII. JUDGMENT

Rule 32. Sentence and Judgment.

(a) SENTENCE.

(1) *Imposition of Sentence.* Sentence shall be imposed without unreasonable delay. Before imposing sentence the court shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment. The attorney for the government shall have an equivalent opportunity to speak to the court.

(2) *Notification of Right To Appeal.* After imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of his right to appeal and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis. There shall be no duty on the court to advise the defendant of any right of appeal after sentence is imposed following a plea of guilty or nolo contendere. If the defendant so requests, the clerk of the court shall prepare and file forthwith a notice of appeal on behalf of the defendant.

(b) JUDGMENT.

(1) *In General.* A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

(2) *Criminal Forfeiture.* When a verdict contains a finding of property subject to a criminal forfeiture, the judgment of criminal forfeiture shall authorize the Attorney General to seize the interest or property subject to forfeiture, fixing such terms and conditions as the court shall deem proper.

(c) PRESENTENCE INVESTIGATION.

(1) *When Made.* The probation service of the court shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation unless, with the permission of the court, the defendant waives a presentence investigation and report, or the court finds that there is in the record information sufficient to enable the meaningful exercise of sentencing discretion, and the court explains this finding on the record.

The report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere or has been found guilty, except that a judge may, with the written consent of the defendant, inspect a presentence report at any time.

(2) *Report.* The report of the presentence investigation shall contain any prior criminal record of the defendant and such information about his characteristics, his financial condition and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional

treatment of the defendant, and such other information as may be required by the court.

(3) *Disclosure.*

(A) Before imposing sentence the court shall upon request permit the defendant, or his counsel if he is so represented, to read the report of the presentence investigation exclusive of any recommendation as to sentence, but not to the extent that in the opinion of the court the report contains diagnostic opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons; and the court shall afford the defendant or his counsel an opportunity to comment thereon and, at the discretion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in the presentence report.

(B) If the court is of the view that there is information in the presentence report which should not be disclosed under subdivision (c)(3)(A) of this rule, the court in lieu of making the report or part thereof available shall state orally or in writing a summary of the factual information contained therein to be relied on in determining sentence, and shall give the defendant or his counsel an opportunity to comment thereon. The statement may be made to the parties in camera.

(C) Any material disclosed to the defendant or his counsel shall also be disclosed to the attorney for the government.

(D) Any copies of the presentence investigation report made available to the defendant or his counsel and the attorney for the government shall be returned to the probation officer immediately following the imposition of sentence or the granting of probation, unless the court, in its discretion otherwise directs.

(E) The reports of studies and recommendations contained therein made by the Director of the Bureau of Prisons or the Youth Correction Division of the Board of Parole pursuant to 18 U.S.C. §§ 4208(b), 4252, 5010(e), or 5034 shall be considered a presentence investigation within the meaning of subdivision (c)(3) of this rule.

(d) WITHDRAWAL OF PLEA OF GUILTY. A motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea.

(e) PROBATION. After conviction of an offense not punishable by death or by life imprisonment, the defendant may be placed on probation if permitted by law.

(f) REVOCATION OF PROBATION. The court shall not revoke probation except after a hearing at which the defendant shall be present and apprised of the grounds on which such action is proposed. The defendant may be admitted to bail pending such hearing.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, eff. Dec. 1, 1975.)

Rule 33. New Trial. The court on motion of a defendant may grant a new trial to him if required in the interest of justice. If trial was by the court without a jury the court on motion of a defendant for a new trial may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within 7 days after verdict or finding of guilty or within such further time as the court may fix during the 7-day period.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 34. Arrest of Judgment. The court on motion of a defendant shall arrest judgment if the indictment or information does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 7 days after verdict or finding of guilty, or after plea of guilty or nolo contendere, or within such further time as the court may fix during the 7-day period.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 35. Correction or Reduction of Sentence. The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence. The court may reduce a sentence within 120 days after the sentence is imposed, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction. The court may also reduce a sentence upon revocation of probation as provided by law.

(As amended Feb. 28, 1966, eff. July 1, 1966.)

Rule 36. Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

[TITLE VIII. APPEAL]

(Abrogated Dec. 4, 1967, eff. July 1, 1968)

[Rule 37. Taking Appeal; and Petition for Writ of Certiorari.]
(Abrogated Dec. 4, 1967, eff. July 1, 1968.)

Rule 38. Stay of Execution, and Relief Pending Review.

(a) STAY OF EXECUTION.

(1) *Death.* A sentence of death shall be stayed if an appeal is taken.

(2) *Imprisonment.* A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is released pending dis-

position of appeal pursuant to Rule 9(b) of the Federal Rules of Appellate Procedure. If not stayed, the court may recommend to the Attorney General that the defendant be retained at, or transferred to, a place of confinement near the place of trial or the place where his appeal is to be heard, for a period reasonably necessary to permit the defendant to assist in the preparation of his appeal to the court of appeals.

(3) *Fine.* A sentence to pay a fine or a fine and costs, if an appeal is taken, may be stayed by the district court or by the court of appeals upon such terms as the court deems proper. The court may require the defendant pending appeal to deposit the whole or any part of the fine and costs in the registry of the district court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating his assets.

(4) *Probation.* An order placing the defendant on probation may be stayed if an appeal is taken. If not stayed, the court shall specify when the term of probation shall commence. If the order is stayed the court shall fix the terms of the stay.

[(b) BAIL.] (Abrogated Dec. 4, 1967, eff. July 1, 1968.)

[(c) APPLICATION FOR RELIEF PENDING REVIEW.] (Abrogated Dec. 4, 1967, eff. July 1, 1968.)

(As amended Dec. 27, 1948, eff. Jan. 1, 1949; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Apr. 24, 1972, eff. Oct. 1, 1972.)

[Rule 39. Supervision of Appeal.] (Abrogated Dec. 4, 1967, eff. July 1, 1968.)

TITLE IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

Rule 40. Commitment to Another District; Removal.

(a) ARREST IN NEARBY DISTRICT. If a person is arrested on a warrant issued upon a complaint in a district other than the district of the arrest but in the same state, or on a warrant issued upon a complaint in another state but at a place less than 100 miles from the place of arrest, or without a warrant for an offense committed in another district in the same state or in another state but at a place less than 100 miles from the place of the arrest, he shall be taken without unnecessary delay before the nearest available federal magistrate; preliminary proceedings shall be conducted in accordance with Rules 5 and 5.1; and if held to answer, he shall be held to answer to the district court for the district in which the prosecution is pending, or if the arrest was without a warrant, for the district in which the offense was committed. If such an arrest is made on a warrant issued on an indictment or information, the person arrested shall be taken before the district court in which the prosecution is pending or, for the purpose of admission to bail, before a federal magistrate in the district of the arrest in accordance with provisions of Rule 9(c)(1).

(b) ARREST IN DISTANT DISTRICT.

(1) *Appearance Before Federal Magistrate.* If a person is arrested upon a warrant issued in another state at a place 100

miles or more from the place of arrest, or without a warrant for an offense committed in another state at a place 100 miles or more from the place of arrest, he shall be taken without unnecessary delay before the nearest available federal magistrate in the district in which the arrest was made.

(2) *Statement by Federal Magistrate.* The federal magistrate shall inform the defendant of the rights specified in Rule 5(c), of his right to have a hearing or to waive a hearing by signing a waiver before the federal magistrate, of the provisions of Rule 20, and shall authorize his release under the terms provided for by these rules and by 18 U.S.C. § 3146 and § 3148.

(3) *Hearing; Warrant of Removal or Discharge.* The defendant shall not be called upon to plead. If the defendant waives hearing, a judge of the United States shall issue a warrant of removal to the district where the prosecution is pending. If the defendant does not waive hearing, the federal magistrate shall hear the evidence. At the hearing the defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. If a United States magistrate hears the evidence he shall report his findings and recommendations to a judge of the United States. If it appears from the United States magistrate's report or from the evidence adduced before the judge of the United States that sufficient ground has been shown for ordering the removal of the defendant, the judge shall issue a warrant of removal to the district where the prosecution is pending. Otherwise he shall discharge the defendant. There is "sufficient grounds" for ordering removal under the following circumstances:

(A) If the prosecution is by indictment, a warrant of removal shall issue upon production of a certified copy of the indictment and upon proof that the defendant is the person named in the indictment.

(B) If the prosecution is by information or complaint, a warrant of removal shall issue upon the production of a certified copy of the information or complaint and upon proof that there is probable cause to believe that the defendant is guilty of the offense charged.

(C) If a person is arrested without a warrant, the hearing may be continued for a reasonable time, upon a showing of probable cause to believe that he is guilty of the offense charged; but he may not be removed as herein provided unless a warrant issued in the district in which the offense is alleged to have been committed is presented.

(4) *Bail.* If a warrant of removal is issued, the defendant shall be admitted to bail for appearance in the district in which the prosecution is pending under the terms provided for by these rules and by 18 U.S.C. § 3146 and § 3148. After a defendant is held for removal or is discharged, the papers in the proceeding and any bail taken shall be transmitted to the clerk of the district court in which the prosecution is pending.

(5) *Authority of United States Magistrate.* When authorized by a rule of the district court, adopted in accordance with 28 U.S.C. § 636(b), a United States magistrate may issue a warrant of removal under subdivision (b) (3) of this rule.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 41. Search and Seizure.

(a) AUTHORITY TO ISSUE WARRANT. A search warrant authorized by this rule may be issued by a federal magistrate or a judge of a state court of record within the district wherein the property sought is located, upon request of a federal law enforcement officer or an attorney for the government.

(b) PROPERTY WHICH MAY BE SEIZED WITH A WARRANT. A warrant may be issued under this rule to search for and seize any (1) property that constitutes evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) property designed or intended for use or which is or has been used as the means of committing a criminal offense.

(c) ISSUANCE AND CONTENTS.

(1) *Warrant Upon Affidavit.* A warrant other than a warrant upon oral testimony under paragraph (2) of this subdivision shall issue only on an affidavit or affidavits sworn to before the federal magistrate or state judge and establishing the grounds for issuing the warrant. If the federal magistrate or state judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based upon hearsay evidence in whole or in part. Before ruling on a request for a warrant the federal magistrate or state judge may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce, provided that such proceeding shall be taken down by a court reporter or recording equipment and made part of the affidavit. The warrant shall be directed to a civil officer of the United States authorized to enforce or assist in enforcing any law thereof or to a person so authorized by the President of the United States. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person or place named for the property specified. The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime. It shall designate a federal magistrate to whom it shall be returned.

(2) *Warrant Upon Oral Testimony.*

(A) GENERAL RULE. If the circumstances make it reasonable to dispense with a written affidavit, a Federal magistrate may issue a warrant based upon sworn oral testimony communicated by telephone or other appropriate means.

(B) APPLICATION. The person who is requesting the warrant shall prepare a document to be known as a duplicate original warrant and shall read such duplicate original warrant, verbatim, to the Federal magistrate. The Federal magistrate shall enter, verbatim, what is so read to such magistrate on a document to be known as the original war-

rant. The Federal magistrate may direct that the warrant be modified.

(C) ISSUANCE. If the Federal magistrate is satisfied that the circumstances are such as to make it reasonable to dispense with a written affidavit and that grounds for the application exist or that there is probable cause to believe that they exist, the Federal magistrate shall order the issuance of a warrant by directing the person requesting the warrant to sign the Federal magistrate's name on the duplicate original warrant. The Federal magistrate shall immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued. The finding of probable cause for a warrant upon oral testimony may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

(D) RECORDING AND CERTIFICATION OF TESTIMONY. When a caller informs the Federal magistrate that the purpose of the call is to request a warrant, the Federal magistrate shall immediately place under oath each person whose testimony forms a basis of the application and each person applying for that warrant. If a voice recording device is available, the Federal magistrate shall record by means of such device all of the call after the caller informs the Federal magistrate that the purpose of the call is to request a warrant. Otherwise a stenographic or longhand verbatim record shall be made. If a voice recording device is used or a stenographic record made, the Federal magistrate shall have the record transcribed, shall certify the accuracy of the transcription, and shall file a copy of the original record and the transcription with the court. If a longhand verbatim record is made, the Federal magistrate shall file a signed copy with the court.

(E) CONTENTS. The contents of a warrant upon oral testimony shall be the same as the contents of a warrant upon affidavit.

(F) ADDITIONAL RULE FOR EXECUTION. The person who executes the warrant shall enter the exact time of execution on the face of the duplicate original warrant.

(G) MOTION TO SUPPRESS PRECLUDED. Absent a finding of bad faith, evidence obtained pursuant to a warrant issued under this paragraph is not subject to a motion to suppress on the ground that the circumstances were not such as to make it reasonable to dispense with a written affidavit.

(d) EXECUTION AND RETURN WITH INVENTORY. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the prop-

erty was taken, and shall be verified by the officer. The federal magistrate shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) MOTION FOR RETURN OF PROPERTY. A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property on the ground that he is entitled to lawful possession of the property which was illegally seized. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored and it shall not be admissible in evidence at any hearing or trial. If a motion for return of property is made or comes on for hearing in the district of trial after an indictment or information is filed, it shall be treated also as a motion to suppress under Rule 12.

(f) MOTION TO SUPPRESS. A motion to suppress evidence may be made in the court of the district of trial as provided in Rule 12.

(g) RETURN OF PAPERS TO CLERK. The federal magistrate before whom the warrant is returned shall attach to the warrant a copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk of the district court for the district in which the property was seized.

(h) SCOPE AND DEFINITION. This rule does not modify any act, inconsistent with it, regulating search, seizure and the issuance and execution of search warrants in circumstances for which special provision is made. The term "property" is used in this rule to include documents, books, papers and any other tangible objects. The term "daytime" is used in this rule to mean the hours from 6:00 a.m. to 10:00 p.m. according to local time. The phrase "federal law enforcement officer" is used in this rule to mean any government agent, other than an attorney for the government as defined in Rule 54(c), who is engaged in the enforcement of the criminal laws and is within any category of officers authorized by the Attorney General to request the issuance of a search warrant.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Apr. 9, 1956, eff. July 8, 1956; Apr. 24, 1972, eff. Oct. 1, 1972; Mar. 18, 1974, eff. July 1, 1974; July 8, 1976, eff. Aug. 1, 1976; July 30, 1977, eff. Oct. 1, 1977.)

Rule 42. Criminal Contempt.

(a) SUMMARY DISPOSITION. A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The court of contempt shall recite the facts and shall be signed by the judge and entered of record.

(b) DISPOSITION UPON NOTICE AND HEARING. A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of

arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment.

TITLE X. GENERAL PROVISIONS

Rule 43. Presence of the Defendant.

(a) PRESENCE REQUIRED. The defendant shall be present at the arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule.

(b) CONTINUED PRESENCE NOT REQUIRED. The further progress of the trial to and including the return of the verdict shall not be prevented and the defendant shall be considered to have waived his right to be present whenever a defendant, initially present,

(1) voluntarily absents himself after the trial has commenced (whether or not he has been informed by the court of his obligation to remain during the trial), or

(2) after being warned by the court that disruptive conduct will cause him to be removed from the courtroom, persists in conduct which is such as to justify his being excluded from the courtroom.

(c) PRESENCE NOT REQUIRED. A defendant need not be present in the following situations:

(1) A corporation may appear by counsel for all purposes.

(2) In prosecutions for offenses punishable by fine or by imprisonment for not more than one year or both, the court, with the written consent of the defendant, may permit arraignment, plea, trial, and imposition of sentence in the defendant's absence.

(3) At a conference or argument upon a question of law.

(4) At a reduction of sentence under Rule 35.

(As amended Apr. 22, 1974, eff. Dec. 1, 1975; July 31, 1975, eff. Dec. 1, 1975.)

Rule 44. Right to and Assignment of Counsel.

(a) RIGHT TO ASSIGNED COUNSEL. Every defendant who is unable to obtain counsel shall be entitled to have counsel assigned to represent him at every stage of the proceedings from his initial appearance before the federal magistrate or the court through appeal, unless he waives such appointment.

(b) ASSIGNMENT PROCEDURE. The procedures for implementing the right set out in subdivision (a) shall be those provided by law and by local rules of court established pursuant thereto.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 45. Time.

(a) COMPUTATION. In computing any period of time the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed

shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When a period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the district court is held.

(b) ENLARGEMENT. When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done if the failure to act was the result of excusable neglect; but the court may not extend the time for taking any action under Rules 29, 33, 34 and 35, except to the extent and under the conditions stated in them.

[(c) UNAFFECTED BY EXPIRATION OF TERM.] (Rescinded, Feb. 28, 1966, eff. July 1, 1966.)

(d) FOR MOTIONS; AFFIDAVITS. A written motion, other than one which may be heard *ex parte*, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on *ex parte* application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not less than 1 day before the hearing unless the court permits them to be served at a later time.

(e) ADDITIONAL TIME AFTER SERVICE BY MAIL. Whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper upon him and the notice or other paper is served upon him by mail, 3 days shall be added to the prescribed period.

(As amended Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971.)

Rule 46. Release From Custody.

(a) RELEASE PRIOR TO TRIAL. Eligibility for release prior to trial shall be in accordance with 18 U.S.C. § 3146, § 3148, or § 3149.

(b) RELEASE DURING TRIAL. A person released before trial shall continue on release during trial under the same terms and conditions as were previously imposed unless the court determines that other terms and conditions or termination of release are necessary to assure his presence during the trial or to assure that his conduct will not obstruct the orderly and expeditious progress of the trial.

(c) PENDING SENTENCE AND NOTICE OF APPEAL. Eligibility for release pending sentence or pending notice of appeal or expiration of the time allowed for filing notice of appeal, shall be in accordance with 18 U.S.C. § 3148. The burden of establishing that the defendant

will not flee or pose a danger to any other person or to the community rests with the defendant.

(d) JUSTIFICATION OF SURETIES. Every surety, except a corporate surety which is approved as provided by law, shall justify by affidavit and may be required to describe in the affidavit the property by which he proposes to justify and the encumbrances thereon, the number and amount of other bonds and undertakings for bail entered into by him and remaining undischarged and all his other liabilities. No bond shall be approved unless the surety thereon appears to be qualified.

(e) FORFEITURE.

(1) *Declaration.* If there is a breach of condition of a bond, the district court shall declare a forfeiture of the bail.

(2) *Setting aside.* The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

(3) *Enforcement.* When a forfeiture has not been set aside, the court shall on motion enter a judgment of default and execution may issue thereon. By entering into a bond the obligors submit to the jurisdiction of the district court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the obligors to their last known addresses.

(4) *Remission.* After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision.

(f) EXONERATION. When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a deposit of cash in the amount of the bond or by a timely surrender of the defendant into custody.

(g) SUPERVISION OF DETENTION PENDING TRIAL. The court shall exercise supervision over the detention of defendants and witnesses within the district pending trial for the purpose of eliminating all unnecessary detention. The attorney for the government shall make a biweekly report to the court listing each defendant and witness who has been held in custody pending indictment, arraignment or trial for a period in excess of ten days. As to each witness so listed the attorney for the government shall make a statement of the reasons why such witness should not be released with or without the taking of his deposition pursuant to Rule 15(a). As to each defendant so listed the attorney for the government shall make a statement of the reasons why the defendant is still held in custody.

(As amended Apr. 9, 1956, eff. July 8, 1956; Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 47. Motions. An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit.

Rule 48. Dismissal.

(a) By Attorney for Government. The Attorney General or the United States attorney may by leave of court file a dismissal of an indictment, information or complaint and the prosecution shall thereupon terminate. Such a dismissal may not be filed during the trial without the consent of the defendant.

(b) By Court. If there is unnecessary delay in presenting the charge to a grand jury or in filing an information against a defendant who has been held to answer to the district court, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the indictment, information or complaint.

Rule 49. Service and Filing of Papers.

(a) Service: When Required. Written motions other than those which are heard *ex parte*, written notices, designations of record on appeal and similar papers shall be served upon each of the parties.

(b) Service: How Made. Whenever under these rules or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided in civil actions.

(c) Notice of Orders. Immediately upon the entry of an order made on a written motion subsequent to arraignment the clerk shall mail to each party a notice thereof and shall make a note in the docket of the mailing. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by Rule 4(b) of the Federal Rules of Appellate Procedure.

(d) Filing. Papers required to be served shall be filed with the court. Papers shall be filed in the manner provided in civil actions.

(As amended Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968.)

Rule 50. Calendars; Plans for Prompt Disposition.

(a) Calendars. The district courts may provide for placing criminal proceedings upon appropriate calendars. Preference shall be given to criminal proceedings as far as practicable.

(b) Plans for Achieving Prompt Disposition of Criminal Cases. To minimize undue delay and to further the prompt disposition of criminal cases, each district court shall conduct a continuing study of the administration of criminal justice in the district court and before United States magistrates of the district and shall prepare plans for the prompt disposition of criminal cases in accordance with the provisions of Chapter 208 of Title 18, United States Code.

(As amended Apr. 24, 1972, eff. Oct. 1, 1972; Mar. 18, 1974, eff. July 1, 1974; July 8, 1976, eff. Aug. 1, 1976.)

Rule 51. Exceptions Unnecessary. Exceptions to rulings or orders of the court are unnecessary and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court and the grounds therefor; but if a party

has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.

Rule 52. Harmless Error and Plain Error.

(a) HARMLESS ERROR. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) PLAIN ERROR. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

Rule 53. Regulation of Conduct in the Court Room. The taking of photographs in the court room during the progress of judicial proceedings or radio broadcasting of judicial proceedings from the court room shall not be permitted by the court.

Rule 54. Application and Exception.

(a) COURTS. These rules apply to all criminal proceedings in the United States District Courts; in the District Court of Guam; in the District Court of the Virgin Islands; and (except as otherwise provided in the Canal Zone Code) in the United States District Court for the District of the Canal Zone; in the United States Courts of Appeals; and in the Supreme Court of the United States; except that all offenses shall continue to be prosecuted in the District Court of Guam and in the District Court of the Virgin Islands by information as heretofore except such as may be required by local law to be prosecuted by indictment by grand jury.

(b) PROCEEDINGS.

(1) *Removed Proceedings.* These rules apply to criminal prosecutions removed to the United States district courts from state courts and govern all procedure after removal, except that dismissal by the attorney for the prosecution shall be governed by state law.

(2) *Offenses Outside a District or State.* These rules apply to proceedings for offenses committed upon the high seas or elsewhere out of the jurisdiction of any particular state or district, except that such proceedings may be had in any district authorized by Title 18, U.S.C. § 3238.

(3) *Peace Bonds.* These rules do not alter the power of judges of the United States or of United States magistrates to hold to security of the peace and for good behavior under Title 18, U.S.C. § 3043, and under Revised Statutes, § 4069, 50 U.S.C. § 23, but in such cases the procedure shall conform to these rules so far as they are applicable.

(4) *Proceedings Before United States Magistrates.* Proceedings involving minor offenses before United States magistrates, as defined in subdivision (c) of this rule, are governed by the Rules of Procedure for the Trial of Minor Offenses before United States Magistrates.

(5) *Other Proceedings.* These rules are not applicable to extradition and rendition of fugitives; civil forfeiture of property for violation of a statute of the United States; or the collection of fines and penalties. Except as provided in Rule 20(d) they do not apply to proceedings under Title 18, U.S.C., Chapter 403—Juvenile Delinquency—so far as they are inconsistent with that Chapter. They do not apply to summary trials for offenses against the

navigation laws under Revised Statutes §§ 4300—4305, 33 U.S.C. §§ 391—396, or to proceedings involving disputes between seamen under Revised Statutes, §§ 4079—4081, as amended, 22 U.S.C. §§ 256—258, or to proceedings for fishery offenses under the Act of June 28, 1937, ch. 392, 50 Stat. 325—327, 16 U.S.C. §§ 772—772i, or to proceedings against a witness in a foreign country under Title 28, U.S.C. § 1784.

(c) APPLICATION OF TERMS. As used in these rules the following terms have the designated meanings.

"Act of Congress" includes any act of Congress locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory or in an insular possession.

"Attorney for the government" means the Attorney General, an authorized assistant of the Attorney General, a United States Attorney, an authorized assistant of a United States Attorney and when applicable to cases arising under the laws of Guam means the Attorney General of Guam or such other person or persons as may be authorized by the laws of Guam to act therein.

"Civil action" refers to a civil action in a district court.

The words "demurrer," "motion to quash," "plea in abatement," "plea in bar" and "special plea in bar," or words to the same effect, in any act of Congress shall be construed to mean the motion raising a defense or objection provided in Rule 12.

"District court" includes all district courts named in subdivision (a) of this rule.

"Federal magistrate" means a United States magistrate as defined in 28 U.S.C. §§ 631–639, a judge of the United States or another judge or judicial officer specifically empowered by statute in force in any territory or possession, the Commonwealth of Puerto Rico, or the District of Columbia, to perform a function to which a particular rule relates.

"Judge of the United States" includes a judge of a district court, court of appeals, or the Supreme Court.

"Law" includes statutes and judicial decisions.

"Magistrate" includes a United States magistrate as defined in 28 U.S.C. §§ 631–639, a judge of the United States, another judge or judicial officer specifically empowered by statute in force in any territory or possession, the Commonwealth of Puerto Rico, or the District of Columbia, to perform a function to which a particular rule relates, and a state or local judicial officer, authorized by 18 U.S.C. § 3041 to perform the functions prescribed in Rules 3, 4, and 5.

"Minor offense" is defined in 18 U.S.C. § 3401.

"Oath" includes affirmations.

"Petty offense" is defined in 18 U.S.C. § 1(3).

"State" includes District of Columbia, Puerto Rico, territory and insular possession.

"United States magistrate" means the officer authorized by 28 U.S.C. §§ 631–639.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Apr. 9, 1956, eff. July 8, 1956; Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 55. Records. The clerk of the district court and each United States magistrate shall keep such records in criminal proceedings as the Director of the Administrative Office of the United States Courts,

with the approval of the Judicial Conference of the United States, may prescribe. Among the records required to be kept by the clerk shall be a book known as the "criminal docket" in which, among other things, shall be entered each order or judgment of the court. The entry of an order or judgment shall show the date the entry is made.

(As amended Dec. 27, 1948; eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972.)

Rule 56. Courts and Clerks. The district court shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but a court may provide by local rule or order that its clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Years Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971.)

Rule 57. Rules of Court.

(a) RULES BY DISTRICT COURTS. Rules made by district courts for the conduct of criminal proceedings shall not be inconsistent with these rules. Copies of all rules made by a district court shall upon their promulgation be furnished to the Administrative Office of the United States Courts. The clerk shall make appropriate arrangements, subject to the approval of the Director of the Administrative Office of the United States Courts, to the end that all rules made as provided herein be published promptly and that copies of them be available to the public.

(b) PROCEDURE NOT OTHERWISE SPECIFIED. If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these rules or with any applicable statute.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Dec. 4, 1967, eff. July 1, 1968.)

Rule 58. Forms. The forms contained in the Appendix of Forms are illustrative and not mandatory.

Rule 59. Effective Date. These rules take effect on the day which is 3 months subsequent to the adjournment of the first regular session of the 79th Congress, but if that day is prior to September 1, 1945, then they take effect on September 1, 1945. They govern all criminal proceedings thereafter commenced and so far as just and practicable all proceedings then pending. [Amendments are effective as indicated.]

Rule 60. Title. These rules may be known and cited as the Federal Rules of Criminal Procedure.

APPENDIX OF FORMS

(See Rule 58)

Form 1.—INDICTMENT FOR MURDER IN THE FIRST DEGREE OF FEDERAL OFFICER

In the United States District Court for the _____ District of _____, _____ Division

UNITED STATES OF AMERICA
v.
JOHN DOE
No. _____
(18 U.S.C. §§ 1111, 1114)

The grand jury charges:

On or about the _____ day of _____, 19__, in the _____ District of _____, John Doe with premeditation and by means of shooting murdered John Roe, who was then an officer of the Federal Bureau of Investigation of the Department of Justice engaged in the performance of his official duties.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 2.—INDICTMENT FOR MURDER IN THE FIRST DEGREE ON FEDERAL RESERVATION

In the United States District Court for the _____ District of _____, _____ Division

UNITED STATES OF AMERICA
v.
JOHN DOE
No. _____
(18 U.S.C. § 1111)

The grand jury charges:

On or about the _____ day of _____, 19__, in the _____ District of _____, and on lands acquired for the use of the United States and under the (exclusive) (concurrent) jurisdiction of the United States, John Doe with premeditation shot and murdered John Roe.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 3.—INDICTMENT FOR MAIL FRAUD

In the United States District Court for the _____ District of _____, _____ Division

UNITED STATES OF AMERICA
v.
JOHN DOE ET AL.

No. _____
(18 U.S.C. § 1341)

The grand jury charges:

1. Prior to the _____ day of _____, 19__, and continuing to the _____ day of _____, 19__,[1] the defendants John Doe, Richard Roe, John Stiles and Richard Miles devised and intended to devise a scheme and artifice to defraud purchasers of stock of XY Company, a California corporation, and to obtain money and property by means of the following false and fraudulent pretenses, representations and promises, well knowing at the time that the pretenses, representations and promises would be false when made: That the XY Company owned a mine at or near San Bernardino, California; that the mine was in actual operation; that gold ore was being obtained at the mine and sold at a profit; that the current earnings of the company would be sufficient to pay dividends on its stock at the rate of six percent per annum.

2. On the _____ day of _____, 19__, in the _____ District of _____, the defendants for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Mrs. Mary Brown, 110 Main Street, Stockton, California, to be sent or delivered by the Post Office Establishment of the United States.

Second Count

1. The Grand Jury realleges all of the allegations of the first count of this indictment, except those contained in the last paragraph thereof.

2. On the _____ day of _____, 19__, in the _____ District of _____, the defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Mr. John J. Jones, 220 First Street, Batavia, New York, to be sent or delivered by the Post Office Establishment of the United States.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

[1] Insert last mailing date alleged.

Form 4.—INDICTMENT FOR SABOTAGE

In the United States District Court for the _____ District of _____, _____ Division

UNITED STATES OF AMERICA *v.* JOHN DOE	No. _____ (18 U.S.C. § 2154)

The grand jury charges:

On or about the _____ day of _____, 19__, within the_____ _____ District of _____, while the United States was at war, John Doe, with reason to believe that his act might injure, interfere with or obstruct the United States in preparing for or carrying on the war, willfully made and caused to be made in a defective manner certain war material consisting of shells, in that he placed and caused to be placed certain material in a cavity of the shells so as to make them appear to be solid metal, whereas in fact the shells were hollow.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 5.—INDICTMENT FOR INTERNAL REVENUE VIOLATION

In the United States District Court for the _____ District of _____, _____ Division

UNITED STATES OF AMERICA *v.* JOHN DOE	No. _____ (26 U.S.C. § 2833)*

The grand jury charges:

On or about the ____ day of _____, 19__, in the _____ District of _____, John Doe carried on the business of a distiller without having given bond as required by law.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

*So in original. Now covered by 26 U.S.C. § 5601(a)(4).

Form 6.—INDICTMENT FOR INTERSTATE TRANSPORTATION OF STOLEN MOTOR VEHICLE

In the United States District Court for the _____ District of _____, _____ Division

UNITED STATES OF AMERICA *v.* JOHN DOE	No. _____ (18 U.S.C. § 2312)

The grand jury charges:

On or about the _____ day of _____, 19__, John Doe transported a stolen motor vehicle from _____, State of _____, to _____, State of _____, in _____ District of _____, and he then knew the motor vehicle to have been stolen.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 7.—INDICTMENT FOR RECEIVING STOLEN MOTOR VEHICLE

In the United States District Court for the _____ District of _____, _____ Division

UNITED STATES OF AMERICA *v.* JOHN DOE	No. _____ (18 U.S.C. § 2313)

The grand jury charges:

On or about the _____ day of _____, 19__, in the _____ District of _____, John Doe received and concealed a stolen motor vehicle, which was moving as interstate commerce, and he then knew the motor vehicle to have been stolen.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 8.—INDICTMENT FOR IMPERSONATION OF FEDERAL OFFICER

In the United States District Court for the _____ District of _____, _____ Division

UNITED STATES OF AMERICA
v.
JOHN DOE
No. _____
(18 U.S.C. § 912)

The grand jury charges:

On or about the _____ day of _____, 19__, in the _____ District of _____, John Doe with intent to defraud the United States and Mary Major falsely pretended to be an officer and employee acting under the authority of the United States, namely, an agent of the Federal Bureau of Investigation, and falsely took upon himself to act as such, in that he falsely stated that he was a special agent of the Federal Bureau of Investigation engaged in pursuit of a person charged with an offense against the United States.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 9.—INDICTMENT FOR OBTAINING MONEY BY IMPERSONATION OF FEDERAL OFFICER

In the United States District Court for the _____ District of _____, _____ Division

UNITED STATES OF AMERICA
v.
JOHN DOE
No. _____
(18 U.S.C. § 912)

The grand jury charges:

On or about the _____ day of _____, 19__, in the _____ District of _____, John Doe with intent to defraud the United States and Mary Major, falsely pretended to be an officer and employee acting under the authority of the United States, namely, an agent of the Alcohol Tax Unit of the Department of the Treasury, and in such pretended character demanded and obtained from Mary Major the sum of $100.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 10.—INDICTMENT FOR PRESENTING FRAUDULENT CLAIM AGAINST THE UNITED STATES

In the United States District Court for the _____ District of _____, _____ Division

UNITED STATES OF AMERICA
v.
JOHN DOE
No. _____
(18 U.S.C. § 287)

The grand jury charges:

On or about the _____ day of _____, 19__, in the _____ District of _____, John Doe presented to the War Department of the United States for payment a claim against the Government of the United States for having delivered to the Government 100,000 lineal feet of No. 1 white pine lumber, and he then knew the claim to be fraudulent in that he had not delivered the lumber to the Government.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 11.—INFORMATION FOR FOOD AND DRUG VIOLATION

In the United States District Court for the _____ District of _____, _____ Division

UNITED STATES OF AMERICA
v.
JOHN DOE
No. _____
(21 U.S.C. §§ 331, 333, 342)

The United States Attorney charges:

On or about the _____ day of _____, 19__, in the _____ District of _____, John Doe unlawfully caused to be introduced into interstate commerce by delivery for shipment from the city [1] of _____, _____ (State), to the city [1] of _____, _____ (State), a consignment of cans containing articles of food which were adulterated in that they consisted in whole or in part of decomposed vegetable substance.

_____,
United States Attorney.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

[1] Name of city is stated only to preclude a motion for a bill of particulars and not because such a statement is an essential fact to be alleged.

Form 12.—WARRANT FOR ARREST OF DEFENDANT

In the United States District Court for the _____ District of _____, _____ Division

UNITED STATES OF AMERICA
v.
JOHN DOE
} No. _____

To _____:[1]

You are hereby commanded to arrest John Doe and bring him forthwith before the District Court for the _____ District of _____ in the city of _____ to answer to an indictment charging him with robbery of property of the First National Bank of _____, in violation of 12 U.S.C. § 588b.*

_____,
Clerk.

By _____,
Deputy Clerk.

[1] Insert designation of officer to whom warrant is issued, e.g., "any United States Marshal or any other authorized officer"; or "United States Marshal for _____ District of _____"; or "any United States Marshall"; or "any Special Agent of the Federal Bureau of Investigation"; or "any United States Marshal or any Special Agent of the Bureau of Investigation"; or "any agent of the Alcohol Tax Unit."

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 13.—SUMMONS

In the United States District Court for the _____ District of _____, _____ Division

UNITED STATES OF AMERICA
v.
JOHN DOE
} No. _____

To JOHN DOE:

You are hereby summoned to appear before the District Court for the District of _____ at the Post Office Building in the city of _____ on the _____ day of _____, 19__, at 10 o'clock A.M. to answer to an information charging you with unlawful transportation of intoxicating liquor on which the internal revenue tax had not been paid.

_____,
Clerk.

By _____,
Deputy Clerk.

This summons was received by me at _____ on _____

_____,
Defendant.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

*So in original. Now covered by 18 U.S.C. § 2113.

Form 14.—WARRANT OF REMOVAL

In the United States District Court for the _____ District of _____, _____ Division

To _____:

The grand jury of the United States for the _____ District of _____ having indicted John Doe on a charge of murder in the first degree, and John Doe having been arrested in this District and, after (waiving) hearing, having been committed by a United States Commissioner* to your custody pending his removal to that district,

You are hereby commanded to remove John Doe forthwith to the _____ District of _____ and there deliver him to the United States Marshal for that District or to some other officer authorized to receive him.

_____,
United States District Judge.

Dated at _____ this _____ day of _____, 19__.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 15.—SEARCH WARRANT (UNDER RULE 41)

To _____:

Affidavit having been made before me by John Doe that he has reason to believe that on the premises known as _____ Street, in the city of _____, in the District of _____, there is now being concealed certain property, namely, certain dies, hubs, molds and plates, fitted and intended to be used for the manufacture of counterfeit coins of the United States, and as I am satisfied that there is probable cause to believe that the property so fitted and intended to be used is being concealed on the premises above described,

You are hereby commanded to search the place named for the property specified, serving this warrant and making the search in the daytime, and if the property be found there to seize it, prepare a written inventory of the property seized and bring the property before me.

Dated this _____ day of _____.

_____,
U.S. Commissioner for the _____ District of _____.*

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 16.—MOTION FOR THE RETURN OF SEIZED PROPERTY AND THE SUPPRESSION OF EVIDENCE

In the United States District Court for the _____ District of _____, _____ Division

No. _____

John Doe hereby moves this Court to direct that certain property of which he is the owner, a schedule of which is annexed hereto, and which on the night of _____, 19__, at the premises known as

*So in original. Now United States Magistrate.

_____ Street, in the city of _____, in the District of _____, was unlawfully seized and taken from him by two deputies of the United States Marshal for this District, whose true names are unknown to the petitioner, be returned to him and that it be suppressed as evidence against him in any criminal proceeding.

The petitioner further states that the property was seized against his will and without a search warrant.

_____,
Attorney for Petitioner.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 17.—APPEARANCE BOND

In the United States District Court for the _____ District of _____, _____ Division.

We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay to the United States of America the sum of _____ Dollars ($_____).

The condition of this bond is that the defendant _____ is to appear in the United States District Court [1] for the _____ District of _____ at _____ [2] in accordance with all orders and directions of the Court [3] relating to the appearance of the defendant before the Court [3] in the case of *United States* v. _____ _____, File number _____; and if the defendant appears as ordered, then this bond is to be void, but if the defendant fails to perform this condition payment of the amount of the bond shall be due forthwith. If the bond is forfeited and if the forfeiture is not set aside or remitted, judgment may be entered upon motion in the United States District Court for the _____ District of _____ against each debtor jointly and severally for the amount above stated together with interest and costs, and execution may be issued or payment secured as provided by the Federal Rules of Criminal Procedure and by other laws of the United States.

This bond is signed on this _____ day of _____, 19__, at _____.

_____,	_____,
Name of Defendant.	*Address.*
_____,	_____,
Name of Surety.	*Address.*
_____,	_____,
Name of Surety.	*Address.*

Signed and acknowledged before me this _____ day of _____, 19__.

_____.

Approved: _____.

[1] If appearance is to be before a commissioner [now Magistrate], change the words following "appear" to "before _____ _____, United States Commissioner [now United States Magistrate]".

[2] Insert place.

[3] Change "Court" to "Commissioner" [now Magistrate] if necessary. See Note 1.

Justification of Sureties

I, the undersigned surety, on oath say that I reside at _____; and that my net worth is the sum of _____ Dollars ($_____).
I further say that_____
_____ [4]

_____,
Surety.

Sworn to and subscribed before me this _____ day of _____, 19__, at _____.

_____.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 18.—WAIVER OF INDICTMENT

In the United States District Court for the _____ District of _____, _____ Division

UNITED STATES OF AMERICA
v.
JOHN DOE
No. _____
(18 U.S.C. § 408)*

John Doe, the above named defendant, who is accused of violating the National Motor Vehicle Theft Act, being advised of the nature of the charge and of his rights, hereby waives in open court prosecution by indictment and consents that the proceeding may be by information instead of by indictment.

_____,
Defendant.

_____,
Witness.

_____,
Counsel for Defendant.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 19.—MOTION BY DEFENDANT TO DISMISS THE INDICTMENT

In the United States District Court for the _____ District of _____, _____ Division

UNITED STATES OF AMERICA
v.
JOHN DOE
No. _____

The defendant moves that the indictment be dismissed on the following grounds:
1. The court is without jurisdiction because the offense if any is cognizable only in the _____ Division of the _____ District of _____.

[4] These lines are to provide for additional justification if the Commissioner [now Magistrate] or Court so directs.
* So in original. Now covered by 18 U.S.C. §§ 2312, 2313.

2. The indictment does not state facts sufficient to constitute an offense against the United States.

3. The defendant has been acquitted (convicted, in jeopardy of conviction) of the offense charged therein in the case of *United States* v. _____ in the District Court for the _____ District of _____, Case No. _____ terminated on _____.

4. The offense charged is the same offense for which the defendant was pardoned by the President of the United States on _____ day of _____, 19__.

5. The indictment was not found within three years next after the alleged offense was committed.

Signed: _____,

_____.

Address

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 20.—SUBPOENA TO TESTIFY

In the United States District Court for the _____ District of _____, _____ Division

To _____:

You are hereby commanded to appear in the United States District Court for the _____ District of _____ at the Courthouse, in the city of _____, on the _____ day of _____, 19—, at 10 o'clock A.M. to testify in the case of *United States* v. *John Doe.*

This subpoena is issued on application of the (United States) (defendant).

_____,
Clerk.

By _____,
Deputy Clerk.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 21.—SUBPOENA TO PRODUCE DOCUMENT OR OBJECT

In the United States District Court for the _____ District of _____, _____ Division

To _____:

You are hereby commanded to appear in the United States District Court for the _____ District of _____ at the Courthouse, in the city of _____, on the ____ day of _____, 19__, at 10 o'clock A.M. to testify in the case of *United States* v. *John Doe* and bring with you _____

_____

_____

_____

This subpoena is issued upon application of the (United States) (defendant).

_____,
Clerk.

By _____,
Deputy Clerk.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 22.—WARRANT FOR ARREST OF WITNESS

In the United States District Court for the _____ District of _____, _____ Division

_____ v. _____ No. _____

To _____:

You are hereby commanded to arrest John Doe and bring him forthwith before the District Court for the _____ District of _____ in the city of_____, for the reason that he willfully failed to appear after having been served with subpoena to appear at the trial of the case of *United States* v. *Roe* on the _____ day of _____, 19__.

You are further commanded to detain him in your custody until he is discharged by the Court.

Upon order of Honorable _____, United States District Judge at _____this _____ day of _____, 19__.

_____,
Clerk.

By _____,
Deputy Clerk.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 23.—MOTION FOR NEW TRIAL

In the United States District Court for the _____ District of _____, _____ Division

UNITED STATES OF AMERICA
v.
JOHN DOE
No. _____

The defendant moves the court to grant him a new trial for the following reasons:

1. The court erred in denying defendant's motion for acquittal made at the conclusion of the evidence.
2. The verdict is contrary to the weight of the evidence.
3. The verdict is not supported by substantial evidence.
4. The court erred in sustaining objections to questions addressed to the witness Richard Roe.
5. The court erred in admitting testimony of the witness Richard Roe to which objections were made.
6. The court erred in charging the jury and in refusing to charge the jury as requested.
7. The defendant was substantially prejudiced and deprived of a fair trial by reason of the following circumstances: the attorney for the government stated in his argument that the defendant had not taken the witness stand and that the defendant had been convicted of crime.
8. The court erred in denying the defendant's motion for a mistrial.

_____,
Attorney for Defendant.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 24.—MOTION IN ARREST OF JUDGMENT

In the United States District Court for the _____ District of _____, _____ Division

UNITED STATES OF AMERICA
v.
JOHN DOE
} No. _____

The defendant moves the court to arrest the judgment for the following reasons:

1. The indictment does not state facts sufficient to constitute an offense against the United States.

2. This court is without jurisdiction of the offense, in that the offense if any was not committed in this district.

_____,
Attorney for Defendant.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

Form 25.—JUDGMENT AND COMMITMENT

In the United States District Court for the _____ District of _____, _____ Division

UNITED STATES OF AMERICA
v.
_____
} No. _____

Judgment and Commitment

On this _____ day of _____, 19__, came the attorney for the government and the defendant appeared in person and [1]

_____

It is Adjudged that the defendant has been convicted upon his plea of [2] _____ of the offense of _____ as charged [3] _____; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is Adjudged that the defendant is guilty as charged and convicted.

It is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of [4] _____

_____

It is Adjudged that [5] _____

_____

[1] Insert "by counsel" or "without counsel: the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

[2] Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

[3] Insert "in count(s) number _____" if required.

[4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of fine or fine and costs, or until he is otherwise discharged as provided by law.

[5] Enter any order with respect to suspension and probation.

It is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

_____,
United States District Judge.

The Court recommends commitment to: [6]_____

_____

_____,
Clerk.

[Endorsement]

Return

I have executed the within Judgment and Commitment as follows:
Defendant delivered on _____ to _____
Defendant noted appeal on _____
Defendant released on _____
Defendant elected, on _____, not to commence service of the sentence.
Defendant's appeal determined on_____
Defendant delivered on _____ to _____
at _____, the institution designated by the Attorney General, with a certified copy of the within Judgment and Commitment.

_____,
United States Marshal.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949.)

[Form 26.—NOTICE OF APPEAL]
(Abrogated Dec. 4, 1967, eff. July 1, 1968.)

[Form 27.—STATEMENT OF DOCKET ENTRIES]
(Abrogated Dec. 4, 1967, eff. July 1, 1968.)

[6] For use of Court wishing to recommend a particular institution.

○

END