MINUTES OF THE SEPTEMBER 30-OCTOBER 1, 1968 MEETING OF THE ADVISORY COMMITTEE ON CRIMINAL RULES

The tenth meeting of the Advisory Committee on Criminal Rules convened in the Supreme Court Building on September 30, 1968, at 10:00 a.m. and adjourned at 5:30 p.m. on October 1, 1968. The following members of the Committee were present during all or part of the sessions:

John C. Pickett, Chairman
Joseph A. Ball
Edward L. Barrett, Jr.
George C. Edwards (absent on Tuesday)
Walter E. Hoffman
Robert W. Meserve
Maynard Pirsig
Barnabas F. Sears
Fred M. Vinson, Jr.
Alfonso J. Zirpoli
Frank J. Remington, Reporter

Mr. George R. Blue was unable to attend due to surgery. Others attending were Honorable Albert B. Maris, Chairman of the standing Committee on Rules of Practice and Procedure; Harold K. Koffsky, Chief of Legislation and Special Projects Section, Criminal Division, Department of Justice, Mr. William E. Foley, Secretary, Advisory Committees on Rules of Practice and Procedure, Mr. Carl H. Imlay, General Counsel, and Mrs. Diane Cole, general attorney, Administrative Offices of the United States Courts.

Judge Pickett called the meeting to order and welcomed the members and guests.

It was announced the Magistrates Bill was expected to be passed in the near future. The reporter stated he had drafted the proposed rules under this assumption; and that the "United States magistrate" would be used consistently throughout the rules in place of "commissioner".

RULE 4

The first item on the agenda was Rule 4. The reporter stated Rule 4 was related to the proposed Rules 41 and 41.1. He then suggested these three rules be discussed together.

The changes which provide that a warrant cannot issue on the basis of illegally obtained evidence reflects a suggestion from Judge Will who wrote the committee urging this change to make clear to commissioners that warrants should not issue on the basis of non-admissible, illegally obtained evidence.

Judge Hoffman stated that now, upon pretrial motion a decision that the evidence is inadmissible, would destroy the evidence but not the warrant. He felt under the proposed rule, the warrant would be invalid (and perhaps that a new complaint and warrant would have to be issued).

Dean Barrett questioned whether it is or is not a good idea for a magistrate to conduct a hearing to determine whether or not the evidence upon which he relies is obtained by unconstitutional methods. He felt it was not a good idea.

Professor Remington stated that if the warrant was for the protection of the citizen against an improper search, it seems inevitable that the judicial officer issue; the warrant must be concerned with the legality of the methods used to obtain the evidence being presented to him.

Judge Hoffman stated there would be attacks upon warrants issued in part upon admissible evidence but also was based in part upon non-admissible evidence which would strike down the entire warrant.

The Congress, Judge Hoffman added, had given the right of appeal to the government from a rule; by a district court that there was an illegal search but there would be no appeal from a decision by the magistrate refusing to issue a warrant.

Judge Edwards suggested the deletion of "but may not be based upon evidence which would be inadmissible at trial because obtained by methods which are unconstitutional." Whether or not the information was derived from an unconstitutional means would get the committee into the question of how far back the means can be. He also felt this phrase would invite more probing than was necessary.

Mr. Ball said any reliable commissioner would see at once if evidence was obtained unconstitutionally and would act accordingly and immediately. He felt this was not necessary to state this specifically in the rule. He then moved to strike the language as suggested by Judge Edwards. The motion was carried.

There was a motion to accept the first and third sentences of the first underlined portion of Rule 4(a) Issuance. The motion was carried.

On the subject of a summons, the reporter stated he drafted on the assumption that the current rule requires showing a probable cause for the summons. Judge Hoffman stated a summons is just a substitute warrant. He then asked if there had been any great difficulty with the present rule which states: "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."

Mr. Vinson stated he is not aware of any complaints that arrest warrants are being issued where a summons would really be more appropriate.

Dean Barrett asked whether the Magistrate should have authority when the United States Attorney asked for a warrant.

Judge Zirpoli felt the first alternate draft should be adequate. If the committee made it mandatory that a summons be used and then one arrest is made for a misdemeanor on someone who has a fantastic record for criminal activity, the summons would be a handicap.

Mr. Ball asked Mr. Vinson whether the Committee to Revise the Federal Criminal Laws, are going to consider giving the federal judge the discretion of making an offense a misdemeanor or a felony depending upon the sentence which he imposes. Mr. Vinson asnwered that there had been some talk to this effect.

Mr. Ball suggested "or a summons" be added in line 5 after "the defendant". It was then stated in the form of a motion. It was further moved "or a summons shall issue." be added to the end of the first sentence [line 6].

Mr. Meserve stated an amendment to the motion: "shall issue in lieu thereof." should be added to the end of the first sentence. His amendment was accepted by Mr. Ball.

Judge Maris then suggested "for the appearance of a defendant" should be added after "or a summons". There was no objection to his suggestion.

The original motion with amendment was put to a vote. The motion with amendment was carried.

Judge Zirpoli then moved that the balance of Rule 4 [the first draft] be adopted. His motion was seconded.

Dean Barrett stated that the approval of this rule says a magistrate shall issue a summons, but gives him no standards to regulate that discretion. He then stated that the draft of the ABA Committee suggested a listing of offenses because there are some offenses which carry minor penalties and also offenses in which there might be a reasonably highly likelihood of non-appearance.

Mr. Meserve suggested a reconstruction for the underlined portion of the rule beginning "To achieve the policy". He suggested "carry out" be in place of "achieve". He then stated his suggestion in the form of a motion: The magistrate may issue a summons instead of a warrant to carry out the policy against unnecessary detention of defendants prior to trial, and shall issue a summons instead of a warrant whenever requested to do so by the attorney for the government.

Judge Hoffman stated he saw no difference in the revision. He agreed "carry out" should be substituted for "achieve" but he could not otherwise support the revision suggested by Mr. Meserve.

Professor Pirsig turned to the last page [subsection (c)] and asked what other instances there were where a warrant should be issued besides the three stated in subsection (c).

Judge Zirpoli stated he felt the first draft should be used and then see what reaction the committee gets.

Judge Edwards suggested changing "shall" to "may" in the second line of subsection (c). He stated the trouble with "shall" is that the committee couldn't possibly think of all the possibilities where a warrant will be issued. He did not want to make it mandatory.

Judge Hoffman stated that the rule either points out what the magistrate shall do or the rule gives the magistrate discretion. He was in favor of giving the magistrate discretion.

The committee then voted to accept the first draft of Rule 4(a) rather than the alternative draft of Rule 4(a)(b)(c).

Rule 4 Warrant or Summons Upon Complaint, with amendments is to read:

(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.~~ or a summons for the appearance of a defendant shall issue in lieu thereof. The finding of probable cause may be based upon reliable hearsay. Before ruling on a request for a warrant the magistrate may require the complainant to appear personally and may examine under oath the complainant and any witnesses he may produce. The magistrate may issue a summons instead of a warrant. To carry out the policy against unnecessary detention of defendants prior to trial, the magistrate may issue a summons instead of a warrant and shall issue a summons instead of a warrant whenever requested to do so by the attorney for the government. 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.

Professor Remington then suggested turning to Rule 41. He stated on the first page of Rule 41 Search and Seizure there is the same language which was stricken from Rule 4. It was moved that the reporter conform Rule 41 to the changes made in Rule 4. The motion was carried. [This entails striking "but may not be based upon evidence which would be inadmissible at trial because obtained by methods which are unconstitutional" at the end of the first page of Rule 41.]

Mr. Meserve suggested changing "that" in subsection (b) to "which". His reason was that "which" was used in subdivision (2) of subsection (b). It was decided the change [either "which" to "that" in subdivision (3) or "that" to "which" in subdivision (2)] would be left to the reporter.

Professor Remington stated that the only other change to this rule was under subsection (e). In (e), the motion to suppress is taken care of by a cross reference to Rule 12 which deals specifically with all pretrial motions.

Dean Barrett asked if he understood the rule correctly: The rule is changed so that a person whose property was illegally seized can move the district court in the district where the property was seized or the district court in which the trial is to be held for the return of property. He further asked if the motion to return was needed as well as the motion to suppress. Judge Hoffman stated it was automatic unless its contraband material, which could not be gotten anyway.

A motion was made to add "or the district where the trial is to be held" to line 4 of subsection (e) following "seized". To be consistent with present rules, "to be held" was changed to "to be had". Mr. Vinson seconded the motion. It was carried.

The next item on the agenda was Rule 41.1. Professor Remington stated this was a new rule and he didn't know just how necessary it was, however, there may be need for prior judicial authorization of some law enforcement conduct now covered by United States v. Katz.

The Omnibus Crime Control and Safe Streets Act of 1968 deals with electronic and other wiretapping and no effort was made to deal with that in this rule.

Mr. Ball thought this rule was "too broad".

Judge Edwards asked if Rule 41.1 as drafted contained clear inconsistencies with the provisions of the crime control act. He felt it did not.

After discussion and differing views as to how this rule was to be interpreted, Mr. Sears moved to defer action on it.

Mr. Vinson stated he had no opposition to the deferment of this rule until a later date, but he wanted to bring up the point that this rule would have to be decided upon sooner or later.

Judge Zirpoli then stated the committee could decide further on this rule after more consideration had been given it.

As a motion, it was moved consideration of this rule be deferred until further study had been given. The motion was carried.

Judge Hoffman stated as a suggestion that the committee consider the "suppressing of confessions".

The reporter stated that suppression of confessions was covered in Rule 12. The committee then turned to Rule 12 for discussion.

The reporter stated he had tried to include Judge Zirpoli's suggestions from the previous meeting into this rule.

Discussion ensued from which the motion was made: that the problems with respect to the admissibility or non-admissibility of confessions at the pre trial stage may be the appropriate subject of study by this committee with the idea in mind to see whether or not there should be a rule which allows a defendant who fails to have his confession suppressed to plead guilty and then to appeal the refusal to suppress the confession. It was decided the reporter make further study and if he feels it appropriate to submit a suggestion for legislative change to Judge Edwards' Criminal Law Committee. The motion carried.

The reporter then directed the attention of the members to Rule 12(d). He stated subsection (d)(2)(iii) was based upon a discussion at a previous meeting.

Mr. Meserve asked the meaning of Rule 12(a). Professor Prisig stated if "pleas of guilty, not guilty, or nolo contendere" was put to the drafted rule, it would be the same as the original rule. Mr. Meserve then suggested leaving the drafted subsection (a) out or just leaving it as it appears in the original rules.

Dean Barrett then suggested changing the original rule to read: "(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." He suggested striking the remainder of the present original rule.

Under subsection (d)(2)(iii), Judge Hoffman said as he read it, this subsection would require any oral statement made by a defendant [to anyone] the name of the informant if the government was going to use that evidence in chief.

The reporter mentioned that under Rule 12, the defendant not only has the right of asking what evidence the government has, but also if the government intends to use it.

It was mentioned ", other than rebuttal action" be added to the first line on page 3 of Rule 12. Judge Edwards so moved. Judge Maris then suggested two insertions into line 1 so that the entire line would read: "its intention to use in its evidence in chief at trial, other than rebuttal action any of the follow-".

It was brought out that most of the questions relating to this rule were explained or "taken care of" in other rules. Mr. Meserve suggested leaving this rule until after the relevant rules had been discussed.

Everyone was in agreement. Mr. Meserve stated as a last remark with regard to this rule that the very last sentence in (d)(2)(iii) be made as a separate subdivision.

Rule 16. Disclosure of Evidence by the Government. Professor Remington introduced this rule by stating what it intends to accomplish. He stated it made disclosure mandatory rather than discretionary; added statements of a co-defendant; oral statements; a co-defendant's testimony before the Grand Jury; and makes clear who the defendant is in a case involving a corporate defendant.

Professor Remington suggested subdivision (i) be changed by adding "by the co-defendant if they are to be used against the co-defendant at trial". Mr. Ball disagreed because he felt that as soon as this situation arose the FBI would "go to work" to avoid it.

Mr. Ball moved the language on page 91 of the Standards of the ABA on Discovery [Part II. Discovery by Accused] 2.1(a)(ii) be substituted for the language of subsection (1) of Rule 16. On line 4 of subsection (1) the word "relevant" was to remain preceding the substituted subdivision.

Mr. Ball's motion included the striking of the drafted subdivision (i) beginning "within the possession, custody or control of the government, ..., to the attorney for the government;".

Dean Barrett summarized the three alternatives which the committee had to work with: "Any relevant written or recorded statements of the defendant; the summary of any relevant oral statement made by the defendant that the government intends to use at the trial; and, any written or recorded statements or summary of any oral statement by the co-defendant that the government intends to offer in evidence against the co-defendant."

Judge Edwards said he understood the ABA draft to say the government does not have to furnish any oral statement of a co-defendant except if it is to be used in evidence. Everyone was in agreement.

Mr. Ball stated that he had no objection to the rule requiring that a written or oral statement of a co-defendant be disclosed if it is to be used at trial. His objection was to qualifying disclosure of written and recorded statements of the defendant by the requirement that they be used at trial.

Professor Remington restated what he thought Mr. Ball was trying to put forth: "(i) any relevant written or recorded statement or substance of any oral statement made by the accused; (ii) any relevant written or recorded statement or substance of any oral statement made by a co-defendant which the government intends to offer in evidence at the trial." Mr. Ball stated that was what he had had in mind.

Judge Hoffman asked the reporter if his intention in this draft was to include the type of oral statement made during a more formal interrogation or to cover every utterance of any kind by a co-defendant. Professor Remington answered it was limited somewhat but not limited to a formal interrogation. He further stated the ABA Standards stated the substance of any oral statement made by anybody. Judge Zirpoli felt it should be limited to statements made to a government agent.

Mr. Sears questioned if the basic theory of discovery is to open the files and let the defendant know what the case is. In other words, give the defendant the opportunity of pleading guilty in light of the strong evidence the government has against him.

Judge Hoffman felt this would certainly be true in some cases, but not in cases where once the information is gotten then the information "gets away".

Judge Zirpoli asked the reporter if this rule was intended to cover statements made to a government agent. The reporter stated it was drafted as such. Judge Zirpoli then stated: if it is for statements made to a government agent, (i) any relevant written or recorded statement or substance of any oral statement made by the accused to a government agent, and (ii) any relevant written or recorded statement or substance of any oral statement made by a co-defendant to a government agent which the government intends to offer in evidence at the trial. He felt this would take care of co-conspirator cases because of the statements made to a government agent.

Judge Hoffman questioned if "government agent" included an informant or employee. Judge Zirpoli answered he felt it would.

Judge Edwards stated he felt there should be a preliminary hearing procedure where critical witnesses' testimony sought by the defendant was made available under a court situation with cross-examination available where possible and the testimony then became recorded at an early point in the whole criminal process with the provision that the testimony which has been discovered at the instance of the defendant subsequently could be entered by the government at the trial as evidence in chief without the witness being there or in rebuttal of the witnesses' own testimony if he in the meantime changes his mind.

Mr. Ball moved that (i) as stated by Judge Zirpoli be approved. Judge Edwards objected. He felt if the committee is going to make discovery mandatory, there should be some device for perpetuation of testimony under a situation of confrontation with cross-examination available and its subsequent admission in the trial of the case.

Mr. Vinson offered a compromise: "any relevant written or recorded statement made by the accused or the substance of any oral statement made by the accused to a government agent".

Mr. Ball stated discovery in the government system has been resisted since the rules were adopted. In other words, he stated the government only gives up what is absolutely mandatory.

Mr. Meserve suggested having two categories for statements made by the accused. One for statements made to government agents which warrant disclosure on a mandatory basis and another for statements which the government has which were made to third parties at the discretion of the court.

Judge Edwards stated he was going to submit a motion in rough form for submission to the reporter for study: Where a motion for a discovery of the statement, oral or written, a witness other than the defendant or co-defendant has been made by a defendant, the government may move the order to perpetuate such testimony in a preliminary hearing before the court or before a United States Magistrate. In this proceeding a defendant will have full right of cross-examination, a record of the statement and the examination and cross-examination will be made which will be admissible at trial for impeachment purposes or as part of the government's case in chief in the event the witness has become unavailable without fault of the government. He stated this motion is a right for the government to perpetuate the statement of the witness as it exists at the time when they turn that information over to the defendant and it is designed specifically to try to see to it that we eliminate both the murder of witnesses and the subordination of perjury which is a part of our present history and has been for some time.

Dean Barrett stated a suggestion of this type was put down by the standing committee approximately four years ago.

Judge Hoffman again moved the aforementioned rewriting be submitted to the reporter for study.

Judge Edwards then stated after going over what he had originally read he had a minor change: "will be admissible as part of the government's case in chief 'either if the witness disappears or has changed his story'".

Professor Remington stated there had to be a special section for the co-defendant.

Judge Hoffman moved the reporter redraft this rule for resubmission to the committee. Dean Barrett suggested separating "defendant" and "co-defendant". Judge Edwards stated he would not be present at the next day's meeting. He stated he was against subsection (5) Government Witnesses.

It was then suggested subdivision (iv) be deleted. Mr. Meserve "so moved". It was carried.

Judge Hoffman moved "as may then be available to the government" be added at the end of subsection (2). The motion was carried.

Subsection (3) was discussed. Mr. Sears suggested striking "buildings or places," because they are tangible objects (which is also open for inspection). Dean Barrett said "buildings or places," had been in the rules for so long, that the striking of the phrase might lead people to believe they are no longer open for inspection. Professor Pirsig stated his objection to the striking "upon a showing of materiality to the preparation of his defense" on the second page. He stated he had read the explanation by the ABA standards, but did not agree. Judge Hoffman suggested this portion of the rule be divided into subdivisions. Subdivision (a) would begin "if a showing of materiality . . ., (b) the government intends to use . . ., and an addition of subdivision (c) to read "which were obtained or belonged to the defendant."

[At this point the committee was dismissed until 9:00 a.m. on October 1, 1968.]

A revised draft of Rule 16 was distributed reflecting views of various members of the committee expressed during the previous day's meeting.

Judge Zirpoli moved "shall" in the second line of subsection (5) be changed to "may". He also moved "together with any record of prior felony convictions of such witness within the possession, custody or control of the government" be inserted. Along with the second motion he felt an Advisory Committee's Note should state that the rule should be liberally employed consistent with protection of persons, effective law enforcement, and the national security.

It was then suggested "possession" be changed to "knowledge". This was agreeable to Judge Zirpoli. It was decided the record could not be the "knowledge" of the government; therefore, Judge Zirpoli's original motion was changed to read: "such witness which is within the knowledge of the attorney for the government".

The motion was restated in full for approval.

Rule 16. Disclosure of Evidence by the Government

(a) Information Subject to Disclosure

(1) Statement of Defendant or Co-defendant. Upon motion of a defendant the court shall ~~may~~ order the attorney for the government to permit the defendant to inspect and copy or photograph: (i) 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; (ii) the substance of any oral statement made by the defendant to any government agent which the government intends to offer in evidence at the trial; (iii) any recorded testimony of the defendant before a grand jury.

(2) Defendant's Prior Record. Upon motion of the defendant, the court shall order the government to furnish to defendant such copy of his prior record as is then available to the government.

(3) Physical Evidence. Upon motion of the defendant the court ~~may~~ shall order the attorney for the government to 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, if (i) there is a showing of materiality to the preparation of his defense ~~and that the request is reasonable~~, (ii) the government intends to use the property as evidence at the trial or (iii) the property was obtained from or belongs to the defendant.

(4) Order to Inspect Building or Place. Upon motion of a defendant and a showing of materiality to the preparation of his defense and that the request is reasonable, the court may order the owner of a building or other place to allow defendant to make an inspection prescribing such conditions as the court deems appropriate.

(5) Reports of Examinations and Tests. Upon motion of a defendant the court shall order the attorney for the government to permit the defendant 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, 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.

(6) Government Witnesses. Upon motion of the defendant the court may order the attorney for the government to furnish to the defendant a written list of the names and addresses of all government witnesses which the attorney for the government intends to call at the trial together with any record of prior felony convictions of such witness which is within the knowledge of the attorney for the government.

With reference to subsection (c) Information Not Subject to Disclosure, Judge Zirpoli felt the judge should not have the discretion of disclosing where there is danger to some person. Mr. Vinson said the only two things that matter are personal danger and the possible detriment to some form of pending criminal investigation.

The motion in regard to Rule 16(5) was put to a vote. The motion includes the addition of "together with any record of prior felony convictions of such witness which is within the knowledge of the attorney for the Government." following "to call at the trial". The motion was carried.

Mr. Meserve made the suggestion that the rule of Brady v. Maryland should be left to the development of the case law and should not be in the rule. A note should be added to the effect the committee is not attempting to codify Brady v. Maryland at present. Judge Hoffman moved deletion of this section with an accompanying note. The motion was carried.

Mr. Meserve moved the deletion of the subdivision which provides that work product is not subject to discovery since this is adequately covered by 18 U.S.C. 3500.

Mr. Vinson suggested there be a tentative vote on Rule 16. He stated it was so important that more consideration should be given to it at another meeting.

Judge Maris stated there were funds enough for another meeting.

It was decided the next meeting would be January 6, 7, and 8, 1969.

Rule 16.1 Disclosure by the Defendant.

Judge Hoffman moved Rule 16.1 be conditioned on like requests by the defendant of the government. If the defense wants "physical evidence" then it should be granted. These subsections should be tied in only with respect to like requests from the defendant.

Mr. Sears was against the "condition".

Judge Hoffman moved that the committee revise proposed Rule 16.1 and condition each of the subheadings (1), (2), and (3) thereunder upon the court granting like relief to the defendant under Rule 16. Judge Pickett asked if this motion included the approval of Rule 16.1 with certain exceptions. Judge Hoffman stated if it contained the approval of Rule 16.1, he would also add the striking of the language [which was stricken in Rule 16] about "materiality".

Mr. Meserve seconded the motion. It was carried.

It was then moved that Rule 16.1 be made parallel with the changes and suggestions of Rule 16. The motion was carried.

Mr. Meserve then stated he felt any draft the reporter prepares in regard to the subject of Rule 16 and 16.1, should incorporate the suggestion that if the defendant is required to submit anything on the basis it is to be used at trial and his mind is changed, he should not be subject to any adverse comment. Everyone was in agreement with this.

Rule 32 (c) Disclosure

Judge Hoffman stated as Chairman of the Probation Committee he wanted to circularize again the district judges and ascertain to what extent if any they are disclosing reports.

Judge Hoffman then suggested leaving Rule 32(c) for the January meeting.

Rule 12. Motions Before Trial; Defenses or Objections

Professor Remington stated what had been done on this rule previously. Subsection (a) as drafted will be stricken and will remain as in present Rule 12. Under subsection (d)(2) "in chief" is added after "evidence" and the last line of subdivision (2) will be renumbered as "(iv)".

Dean Barrett moved the deletion of subsection (d)(2) through "under the circumstances." Mr. Ball stated this was coupled with Rule 16. He felt it was a good discovery device.

Mr. Ball stated this rule had a duel purpose: to inform the defendant of his rights and also make available to him pre-trial motions to obtain rules of advance on admissions of evidence. He felt it was a very good procedural provision in order to implement Rule 16.

The motion was restated. It was lost.

Judge Hoffman suggested under subdivision (iii) adding "informants and special employees" after "government agent". He then moved subsection (d)(2) be approved with addition of "in chief" to follow "evidence" and adding "informants and special employees" after "government agent" in (iii). Mr. Meserve suggested going to another rule, leaving Rule 12 to the reporter for the next meeting.

Rule 45. Time.

The purpose of this rule is to avoid a long period of time between arraignment and indictment.

Professor Pirsig stated the issue was whether or not one would give priority to criminal cases. He thought that was the policy.

Professor Remington stated in regard to extension to time that the defendant can get an extension just by showing good cause, the government can get an extension only with extraordinary circumstances.

Professor Remington informed the members what rules could be expected in the meeting booklets at the next meeting.

[The meeting was adjourned at 5:30 p.m. until Monday, January 6, 1969.]