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**From:** Patty Barksdale [REDACTED]  
**Sent:** Sunday, February 16, 2020 10:06 AM  
**To:** Julie Wilson [REDACTED]  
**Cc:** Jennie Allen [REDACTED]  
**Subject:** Suggested Correction Related to Fed. R. Crim. P. 41

Hello Ms. Wilson.

Jennie Allen in the Judicial Services Office provided your name as a contact for rule matters.

In considering revisions to the Federal Rules of Criminal Procedure, will you please consider a change to correct an error and add a helpful reference?

The error concerns the current reference to Fed. R. Civ. P. 41(a) in 18 U.S.C. § 981(b)(3). The intended reference, I believe, is Fed. R. Civ. P. 41(b).

Section 981(b)(3) concerns authority for issuing a seizure warrant relating to civil forfeiture, providing venue authority to a judicial officer in any district where a forfeiture action against the property may be filed. Section 981(b)(3) begins, "Notwithstanding the provisions of rule 41(a) of the Federal Rules of Criminal Procedure ..."

Rule 41 was substantially reorganized in 2002. Venue authority used to be in 41(a). Now it's in 41(b). The current reference to 41(a) does not make sense.

The old rule, current rule, and current statute are below.

**Suggested change:**

In 18 U.S.C. § 981(b)(3), strike "(a)" and replace it with "(b)" to reflect reorganization of Rule 41. The statute is intended to read more like this: "Notwithstanding the venue provisions of Ruel 41 ..."

In Advisory Committee Notes to Rule 41, consider referencing 18 U.S.C. § 981(b)(3) to point practitioners and judges to the appropriate venue authority when a civil and criminal seizure warrant are brought together in the investigating district for seizure of property in another district.

Thank you for your consideration.

**18 U.S.C. § 981(b)(3) (current)**

(3) Notwithstanding the provisions of rule 41(a) of the Federal Rules of Criminal Procedure, a seizure warrant may be issued pursuant to this subsection by a judicial officer in any district in which a forfeiture action against the property may be filed under section 1355(b) of title 28, and may be executed in any district in which the property is found, or transmitted to the central authority of any foreign state for service in accordance with any treaty or other international agreement. Any motion for the return of property seized under this section shall be filed in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

**Rule 41. Search and Seizure (Old Version, pre-2002)**

(a) Authority to Issue Warrant. Upon the request of a federal law enforcement officer or an attorney for the government, a search warrant authorized by this rule may be issued (1) by a federal magistrate judge, or a state court of record within the federal district, for a search of property or for a person within the district and (2) by a federal magistrate judge for a search of property or for a person either within or outside the district if the property or person is within the district when the warrant is sought but might move outside the district before the warrant is executed.

**Rule 41. Search and Seizure (Current Version)**

**(a) Scope and Definitions.**

(1) **Scope.** This rule does not modify any statute regulating search or seizure, or the issuance and execution of a search warrant in special circumstances.

(2) **Definitions.** The following definitions apply under this rule:

(A) "Property" includes documents, books, papers, any other tangible objects, and information.

(B) "Daytime" means the hours between 6:00 a.m. and 10:00 p.m. according to local time.

(C) "Federal law enforcement officer" means a government agent (other than an attorney for the government) who is engaged in enforcing the criminal laws and is within any category of officers authorized by the Attorney General to request a search warrant.

(D) "Domestic terrorism" and "international terrorism" have the meanings set out in [18 U.S.C. § 2331](#).

(E) "Tracking device" has the meaning set out in [18 U.S.C. § 3117\(b\)](#).

**(b) Venue for a Warrant Application.** At the request of a federal law enforcement officer or an attorney for the government:

(1) a magistrate judge with authority in the district -- or if none is reasonably available, a judge of a state court of record in the district -- has authority to issue a warrant to search for and seize a person or property located within the district;

(2) a magistrate judge with authority in the district has authority to issue a warrant for a person or property outside the district if the person or property is located within the district when the warrant is issued but might move or be moved outside the district before the warrant is executed;

(3) a magistrate judge--in an investigation of domestic terrorism or international terrorism--with authority in any district in which activities related to the terrorism may have occurred has authority to issue a warrant for a person or property within or outside that district;

(4) a magistrate judge with authority in the district has authority to issue a warrant to install within the district a tracking device; the warrant may authorize use of the device to track the movement of a person or property located within the district, outside the district, or both; and

(5) a magistrate judge having authority in any district where activities related to the crime may have occurred, or in the District of Columbia, may issue a warrant for property that is located outside the jurisdiction of any state or district, but within any of the following:

(A) a United States territory, possession, or commonwealth;

(B) the premises--no matter who owns them--of a United States diplomatic or consular mission in a foreign state, including any appurtenant building, part of a building, or land used for the mission's purposes; or

(C) a residence and any appurtenant land owned or leased by the United States and used by United States personnel assigned to a United States diplomatic or consular mission in a foreign state.

(6) a magistrate judge with authority in any district where activities related to a crime may have occurred has authority to issue a warrant to use remote access to search electronic storage media and to seize or copy electronically stored information located within or outside that district if:

(A) the district where the media or information is located has been concealed through technological means; or

(B) in an investigation of a violation of [18 U.S.C. § 1030\(a\)\(5\)](#), the media are protected computers that have been damaged without authorization and are located in five or more districts.

**Patricia D. Barksdale**

United States Magistrate Judge

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