

BOOK 10 -- FINAL REPORT 1943
TO SUPREME COURT

Not Adopted but further Revised
and Second Preliminary Draft
Followed.

November 1943

Memorandum for Next Meeting on Rules of Criminal Procedure- 3-10-1944

Rules 5(a), lines 10-13, compared with 57 (a) (2), lines 22-25.

There seems to be a slight discrepancy in that Rule 5 (a) requires a complaint to be filed on appearance of the prisoner before a commissioner "or other officer", which of course means a state officer acting as a federal magistrate; while Rule 57 (a)(2) is explicit that these rules do not apply to state officers as magistrates. Assuming that the complaint is jurisdictional, Rule 5 does to that extent apply to state officers. Let this be considered.

Rule 6 (e), line 64. "Only when directed by the court." Does this mean that only that court to which the indictment is returned may grant permission to disclose? Might there not be judicial proceedings in another court, federal or state, in which a disclosure would be proper? Do we want to change "the" to "a", and so enable any court with jurisdiction to call for a necessary disclosure?

George F. Longsdorf.

Notes for June 1, 1944 Meeting on Rules of Criminal Procedure.

Rule 5 (d) [add] The procedure before any state officer authorized by law to hold a preliminary examination shall suffice if it meets the substantial requirements of this rule, although in form and manner the procedure is peculiar to that of the state in which the officer acts. If, according to state procedure, the person arrested is called upon to plead, or to make any statement against his will, it shall be of no effect; and if testimony on the examination is reduced to writing, it shall not be used as the basis of conviction or as evidence against the defendant on trial.

Note: Unless such a provision as this is added here or is carried into the Rules of Court, examinations before state officers according to state usage and law may carry on the record or other what rule 5 essays to exclude. Rule 5 (a) (1) is explicit that these rules do not apply to state officers, and implicitly that they can only be done under state laws which are not in conflict with the Federal Rules.

Rule 5 (d), [add]

obj. unless the words "appear" belong or fit in connection with the preceding word, the words "appear" are redundant to the preceding word and the words "appear" are to be removed to the objectionable word.

Rule 5 (d)

obj. This rule does not explicitly provide for a procedure removed to Federal court under 28 U.S.C. 74, 75, and it is not in conflict with the state court procedure. If a state court procedure is removed, it is only if the state court procedure is removed to Federal court. If a state court procedure is removed to Federal court, it is only if the state court procedure is removed to Federal court.

Rule 5 (d)

obj. This rule does not explicitly provide for a procedure removed to Federal court under 28 U.S.C. 74, 75, and it is not in conflict with the state court procedure. If a state court procedure is removed, it is only if the state court procedure is removed to Federal court.

Rule 41 (a)

Note. Attention is called to Public Law 212, 78th Cong. 1st Session, adding a new section 5a to Judicial Code, and providing for official reporters. In course of debate there was inserted into this act --

"Sec. 3. Upon request of the appellant, the record on appeal, under rules 75 and 76 of the Federal Rules of Civil Procedure, shall be printed by a printer designated by the appellant."

This section 3 will apply in criminal cases also because Criminal Procedure Rule 41(b) makes those Civil Procedure rules applicable.

It should be noted that the appellant is given the right to "designate" the printer, but nothing is said of the supervision of and preparation of the record for printing, nor of the amount of printing expense taxable as costs of appeal. Our Rule 41 (a) reposes in ~~xxxxxx~~ the appellate court that supervision and control of the proceedings.

Careful scrutiny of the new act and of its probable pertinent effects is called for. Some changes in Rule 41 (a) and (b) may be necessary or advisable.

Rule 57 (c)(1), second sentence.

See note to Rule 5 (d) new], supra.

to be inserted as a new subrule (e), and present (e) and (f) to be renumbered (f) and (g) respectively.

(e) Transmission and Filing of Papers. The commissioner or judge to whom return of the warrant was made shall lodge ^{promptly} with the clerk of the court having cognizance of the crime charged the search warrant, affidavits, return to warrant, inventory if any, and a copy of his proceedings and evidence taken and based on the warrant and the execution thereof.

[(f) and (g) renumbered to follow]

COMMENT.

The purpose of this proposal is to bring into Fed. Rules Crim. Proc. 43 the provisions of 18 U. S. Code § 627, so far as they are procedural and not merely administrative. Just as it is required that preliminary examination papers shall be transmitted forthwith to the clerk, so should any search warrant and papers in its trail be sent to the clerk as soon as the commissioner or judge to whom the warrant was returned has completed his offices.

If the search warrant and its results are material to the preliminary examination it and the accompanying papers should go to the clerk with the papers of the preliminary examination, unless a motion to return seized property is pending before the commissioner which he must first determine. If the warrant was returnable before a district judge of a court other than that which has cognizance of the crime charged, then that judge should transmit the papers to the clerk of the court having cognizance of the crime charged, and do so as soon as he has completed his functions. If the returner is to a judge of the court having cognizance of the crime, the filings and papers will be lodged with the proper clerk as a matter of course.

It should be noted that Rule 43 (present [e]) provides for a motion to suppress evidence, which, I take it, can be made effectually only before the court having cognizance of the case or before a commissioner of that court or one of its officers. In determining such a motion all the papers of the search ought to be before that court.

The proposal to add this matter to rule 43 is not agreed to by some members of the Advisory Committee, to whose opinions respect is due. They regard 18 U.S.C. § 627 as administrative detail within the province of the Administrative Office of United States Courts to regulate. If that is correct, it is equally correct relative to the last sentence of Rule 5 (c) and to 18 U.S.C. § 91, second sentence. To make the proposal above in the course of study made in Revision of Title 18.

George F. Longstaff

February 1, 1944.

February 3, 1944

In printed Preliminary Draft p. 116, Rule 28, Evidence, "Note," it is stated that the conformity principle" (U.S. Code § 725) was "continued and expended" by acts prescribing competency of witnesses (28 U. S. Code § 631) and prescribing proof in equity and admiralty (28 U. S. Code § 724).

With due respect, I must say that I consider that statement to be incorrect, or at least misleading.

I think it was settled in *Erie R. Co. v. Tompkins*, 304 U. S. 64, that the Rule-of-Decision Statute (U. S. Code § 725; Jud. Act of 1789 § 34) was not an act of conformity so much as a statute of obligation under the Constitution. No federal law was conformed to state law, but state law was declared to be invariably the governing law wherever it might apply. There was no principle of conformity in it. When 28 U. S. Code § 631 was enacted in 1862 state laws were also made the governing law but in civil cases only. In a weak sense of conformity, Congress conformed to state laws by adopting them instead of making a uniform federal law. When the Conformity Practice Act of 1872 was passed (28 U. S. Code § 724) it authorized and commanded the courts to conform to state practice, but only in actions at law; and it expressly excepted admiralty and equity from the operation of that act. It was conformity in the true sense because the hitherto uniform federal practice was abandoned so far as might be to conform to state practice. Several other "conformity acts" may be mentioned: the Louisiana Conformity Practice Act of 1824 (long ago repealed), and the attachment and execution provisions (28 U. S. Code §§ 726, 727) now carried over into Fed. Civ. Proc. Rules 64, 69. And the 28 U. S. Code § 724 was entirely superseded by Fed. Civ. Proc. Rules, which established a uniform federal civil procedure.

The stark fact is that the principle of conformity has not been expended or continued; it has been progressively abandoned as a result of the disappointing experience with the Conformity Practice Act; and *Erie R. Co. v. Tompkins*, 304 U. S. 64 thrust back to the governance of state laws (where they belonged) all questions of state law. Remnants of conformity remain, but they are all of a nature where it would be inconvenient or unjust not to conform.

I recommend that the Note be altered enough to avert criticism.

George F. Longsdorf.

FEDERAL RULES OF
CRIMINAL PROCEDURE

—
With Notes and Forms

— *See Notes in Prelim Lft as
Printed*

Final Report *
of the
Advisory Committee on Rules of Criminal Procedure
Appointed by the
Supreme Court of the United States

** Not Reported to Congress
See Revised Final Report
to Come.*

—
November 1943

Advisory Committee on Rules of Criminal Procedure
Supreme Court of the United States
Washington, D. C.

November 19, 1943

Honorable Harlan F. Stone

Chief Justice of the United States.

My dear Mr. Chief Justice:

The Advisory Committee appointed by the Supreme Court to assist the Court in the preparation of rules of pleading, practice and procedure in criminal cases, herewith submits its report.

A Preliminary Draft of the proposed Rules was printed in July 1943 and generally distributed. On October 8, 1943 the Committee met consider suggestions which had been received from the bench and bar, and to revise the Preliminary Draft. As the result of these suggestions and of further study by the Committee, a number of changes have been made in the Preliminary Draft. Some of the changes relate to matters of substance, while the greater part of them were made for the purposes of clarification and stylistic improvement.

The Revised Draft is herewith submitted and its adoption and promulgation are recommended by the Committee. The Draft is accompanied by notes and a proposed set of forms, as well as by a memorandum indicating for facility of reference the specific changes made in the Preliminary Draft.

The Committee desires to call the attention of the Court to the fact that in determining the topics to be comprized in the Rules and the precise form of the Rules, it was necessarily influenced by the fact that terms and sessions of the district courts of the United States are held under varying conditions and in localities of different types. The conditions under which the courts operate in the few metropolitan centers, such as New York, Philadelphia, and Chicago, are necessarily different from those prevailing in many small towns where sessions of a district court are held possibly twice a year, lasting a few days at a time, and again from the situation presented in medium sized cities where a session of a district court may last for several weeks and occur two or four times a year. Necessarily the Rules must be sufficiently general and flexible to be adaptable to divergent conditions. This is especially true of time

limitations for the taking of different steps in the course of a proceeding. The Rules have been formulated in a manner thought to solve this problem.

Rule 57 (a) (1) which enumerates the courts to which the rules shall be applicable, tentatively lists the district court in each of the territories and insular possessions. Your attention is invited to the fact, however, that the authorities of the Canal Zone, including the Governor, District Judge, and the United States Attorney, have requested that the Rules relating to proceedings prior to verdict or finding of guilty, should not be applicable to the Canal Zone. They call attention to the fact that criminal procedure in the Canal Zone is governed by the Canal Zone Code and that, moreover, the procedure contemplated by these Rules would be inapplicable in view of the fact that there are no grand juries in the Canal Zone, and that all prosecutions are conducted by information. It is the understanding of the Committee that likewise in the Virgin Islands there are no grand juries and that prosecutions are conducted by information. In Alaska, Hawaii and Puerto Rico, grand juries are regularly empaneled and no reason is discernible why the proposed procedure should not be applicable in those territories.

In view of the foregoing considerations, the Court may reach the conclusion that the Rules in respect to proceedings prior to verdict or finding of guilt, should not be made applicable to the Canal Zone or the Virgin Islands. On the other hand, by order made on March 17, 1941 which was effective on July 1, 1941, the court extended the rules of practice and procedure after plea of guilty, verdict, or finding of guilt to the district courts of Alaska, Hawaii, Puerto Rico, Canal Zone and the Virgin Islands, and no reason appears for making any change in that respect.

Accordingly, in order to effectuate the foregoing suggestions, the Court may desire to change Rule 57 (a) (1) to read as follows:

"(1) Courts. These rules apply to all criminal proceedings in the district courts of the United States, which include the District Court of the United States for the District of Columbia, the District Court for the Territory of Alaska, the United States District Court for the Territory of Hawaii, and the District Court of the United States for Puerto Rico; in the United States circuit courts of appeals, which include the United States Court of Appeals for the District of Columbia; and in the Supreme Court of the United States. Insofar as these Rules relate to practice and procedure after plea of guilty, verdict or finding of guilt, they shall also apply to criminal proceedings in the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands."

Respectfully submitted,

Arthur T. Vanderbilt
Chairman.

Federal Rules of Criminal Procedure
Final Report, November 1943

FEDERAL RULES OF CRIMINAL PROCEDURE

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FEDERAL RULES OF CRIMINAL PROCEDURE

I. SCOPE, PURPOSE AND CONSTRUCTION

PR 1

- 1 Rule 1. Scope. These rules govern the procedure in
- 2 the courts of the United States and before United States
- 3 commissioners in all criminal proceedings, with the ex-
- 4 ceptions stated in Rule 57.

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PR 2

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

II. PRELIMINARY PROCEEDINGS

PP 3

1 Rule 3. The Complaint. The complaint is a written
2 statement of the essential facts constituting the offense
3 charged. It shall be made upon oath or affirmation before
4 a commissioner.

PR 4

1 Rule 4. Warrant or Summons upon Complaint.

2 (a) Issuance. If it appears from the complaint that
3 there is probable cause to believe that an offense has been
4 committed and that the defendant has committed it, a warrant
5 for the arrest of the defendant shall issue. The warrant
6 may be issued to any officer authorized by law to execute it.
7 Upon the request of the attorney for the government a summons
8 instead of a warrant shall issue. More than one warrant or
9 summons may issue on the same complaint. The warrant or
10 summons shall be delivered to the marshal or other person
11 authorized by law to execute or serve it. If a defendant
12 fails to appear in response to the summons, a warrant shall
13 issue.

14 (b) Form.

15 (1) Warrant. The warrant shall be signed by the
16 commissioner and shall contain the name of the defend-
17 ant or, if his name is unknown, any name or descrip-
18 tion by which he can be identified with reasonable
19 certainty. It shall describe the offense charged in
20 the complaint. It shall command that the defendant
21 be arrested and brought before the nearest available
22 commissioner.

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

Rule 4, Page 2

27 (c) Execution or Service; and Return.

28 (1) By Whom. The warrant shall be executed by a
29 marshal or by some other officer authorized by law.

30 The summons may be served by any person authorized to
31 serve a summons in a civil action.

32 (2) Territorial Limits. A warrant or a summons
33 may be executed or served anywhere within the juris-
34 diction of the United States.

35 (3) Manner. The warrant shall be executed by the
36 arrest of the defendant. The officer need not have the
37 warrant in his possession at the time of the arrest, but
38 upon request he shall show the warrant to the defendant
39 as soon as possible. If the officer does not have the
40 warrant in his possession, he shall inform the defendant,
41 at the time of the arrest, of the offense with which the
42 defendant is charged and of the fact that a warrant has
43 been issued. The summons shall be served upon a defend-
44 ant by delivering a copy to him personally, or by leaving
45 it at his dwelling house or usual place of abode with
46 some person of suitable age and discretion then residing
47 therein or by mailing it to the defendant's last known
48 address.

49 (4) Return. The officer executing a warrant shall
50 make return thereof to the commissioner or other officer
51 before whom the defendant is brought pursuant to Rule 5.

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Rule 4, Page 3

52 At the request of the attorney for the government any
53 unexecuted warrant shall be returned to the commissioner
54 by whom it was issued and shall be cancelled by him.
55 On or before the return day the person to whom a summons
56 was delivered for service shall make return thereof to
57 the commissioner before whom the summons is returnable.
58 At the request of the attorney for the government made
59 at any time while the complaint is pending, a warrant
60 returned unexecuted and not cancelled or a summons re-
61 turned unserved or a duplicate thereof may be delivered
62 by the commissioner to the marshal or other authorized
63 person for execution or service.

JIC says no go

5² The procedure before any state officer authorized by law to hold a preliminary examination shall suffice if it meets the substantial requirements of Rule 5, although in form and manner the procedure is agreeable to that of the state in which the officer acts unless the person arrested is prejudiced by following the state procedure. If he is called on to plead or to make any statement against his will, it shall be of no effect and ~~shall be held for naught~~; and if testimony ^{on the examination} is reduced to writing, it shall not be used as a deposition or as evidence against the defendant on trial.

Rule 5 (c). Incorporate 18 USC 602 in this rule, so that it it may be taken out of the statute. This statute refers to the mittimus and not to warrant for arrest.

WVB

Compare also Rule 9

Rule 5 (c) and Rule 9 (c)(2) are complemented by 18 USC 503,
which may stand in the statute, there being no real
redundancy or conflict.

1 Rule 5. Proceedings before the Commissioner. PR 5

2 (a) Appearance before the Commissioner. An officer
3 making an arrest under a warrant issued upon a complaint
4 or any person making an arrest without a warrant shall
5 take the arrested person without unnecessary delay before
6 the nearest available commissioner or before any other
7 nearby officer empowered to commit persons charged with
8 offenses against the laws of the United States. When a
9 person arrested without a warrant is brought before a
10 commissioner or other officer, a complaint shall be filed
11 forthwith.

12 (b) Statement by the Commissioner. The commissioner PR 6(a)
13 shall inform the defendant of the complaint against him,
14 of his right to retain counsel and of his right to have a
15 preliminary examination. He shall also inform the defend-
16 ant that he is not required to make a statement and that
17 any statement made by him may be used against him. The
18 commissioner shall allow the defendant reasonable time and
19 opportunity to consult counsel and shall admit the defendant
20 to bail as provided in these rules.

21 (c) Preliminary Examination. The defendant shall not PR 6(G)
22 be called upon to plead. If he waives preliminary examina-
23 tion, the commissioner shall forthwith hold him to answer in
24 the district court. If he does not waive examination, the
25 commissioner shall hear the evidence within a reasonable
26 time. The defendant may cross-examine the witnesses against

Rule 5, Page 2

27 him and may introduce evidence in his own behalf. If from
28 the evidence it appears to the commissioner that there is
29 probable cause to believe that an offense has been com-
30 mitted and that the defendant has committed it, the com-
31 missioner shall forthwith hold him to answer in the district
32 court; otherwise the commissioner shall discharge him. The
33 commissioner shall admit the defendant to bail as provided
34 in Rule 48. After concluding the proceeding the commissioner
35 shall transmit forthwith to the clerk of the district court
36 all papers in the proceeding and any bail taken by him.

III. INDICTMENT AND INFORMATION

1 Rule 6. The Grand Jury. PR 7

2 (a) Summoning Grand Juries. The court shall order one
3 or more grand juries to be summoned at such times as the
4 public interest requires. The grand jury shall consist of
5 not less than 16 nor more than 23 members. The court shall
6 direct that a sufficient number of legally qualified persons
7 be summoned to meet this requirement.

8 (b) Objections to Grand Jury and to Grand Jurors.

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

17 (2) Motion to Dismiss. A motion to dismiss the in-
18 dictment may be based on objections to the array or on
19 the lack of legal qualification of an individual juror,
20 if not previously determined upon challenge. An indict-
21 ment shall not be dismissed on the ground that one or
22 more members of the grand jury were not legally qualified
23 if it appears from the record kept pursuant to subdivision
24 (c) of this rule that 12 or more jurors, after deducting
25 the number not legally qualified, concurred in finding

Rule 6, Page 2

26 the indictment. The motion may not be made after trial
27 and its denial is not a ground for a new trial.

28 (c) Foreman and Deputy Foreman. The court shall appoint
29 one of the jurors to be foreman and another to be deputy fore-
30 man. The foreman shall have power to administer oaths and
31 affirmations and shall sign all indictments. He or another
32 juror designated by him shall keep a record of the number of
33 jurors concurring in the finding of every indictment and shall
34 file the record with the clerk of the court, but the record
35 shall not be made public except on order of the court. During
36 the absence of the foreman, the deputy foreman shall act as
37 foreman.

38 (d) Who May Be Present. Attorneys for the government,
39 the witness under examination, interpreters when needed and,
40 for the purpose of taking the evidence, a stenographer may be
41 present while the grand jury is in session, but no person
42 other than the jurors may be present while the grand jury is
43 deliberating or voting.

44 (e) Secrecy of Proceedings and Disclosure. Disclosure
45 of matters occurring before the grand jury other than its
46 deliberations and the vote of any juror may be made to the
47 attorneys for the government for use in the performance of
48 their duties. Otherwise a juror, attorney, interpreter or
49 stenographer may disclose matters occurring before the
50 grand jury only when so directed by the court preliminarily

Rule 6, Page 3

51 to or in connection with a judicial proceeding or when
52 permitted by the court at the request of the defendant
53 upon a showing that grounds may exist for a motion to dis-
54 miss the indictment because of matters occurring before
55 the grand jury. The court may direct that an indictment
56 shall be kept secret until the defendant is in custody or
57 has given bail, and in that event the clerk shall seal the
58 indictment and no person shall disclose the finding of the
59 indictment except when necessary for the issuance and exe-
60 cution of a warrant or summons.

61 (f) Finding and Return of Indictment. An indictment
62 may be found only upon the concurrence of 12 or more jurors.
63 The indictment shall be returned by the grand jury to a
64 judge in open court.

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

Rule 7(a), line 6. Delete "or at hard labor". These words should be stricken, since hard labor is no longer a punishment or a part of punishment. We have deleted it in the revision wherever it appears.

From WUE

An additional reason is that it does not appear in Vth Amendment or anywhere but in Wilson case and those in its train; and to put it into a rule would freeze it into law, whereas the Wilson case recognizes the possibility of change. Only Congress could make the change, unless the Rule were changed.

1 Rule 7. The Indictment and the Information.

PR 8(a)

2 (a) Use of Indictment or Information.

3 An offense which
4 may be punished by death shall be prosecuted by indictment.

5 An offense which may be punished by imprisonment for a term
6 exceeding one year or at hard labor shall be prosecuted by
7 indictment or, if indictment is waived, it may be prosecuted
8 by information. Any other offense may be prosecuted by in-
9 dictment or by information.

9 (b) Waiver of Indictment.

PR 8(b)

10 An offense not punishable by death may be prosecuted by information if the defendant, after
11 he has been advised of the nature of the charge and of his
12 rights, waives in open court prosecution by indictment.

8(c) 8

13 (c) Nature and Contents.

PR 8(d)

14 The indictment or the informa-
15 tion shall be a plain, concise and definite written statement
16 of the essential facts constituting the offense charged. It
17 shall be signed by the attorney for the government. It need
18 not contain a formal commencement, a formal conclusion or
19 any other matter not necessary to such statement. Allega-
20 tions made in one count may be incorporated by reference in
21 another count. It may be alleged in a single count that the
22 means by which the defendant committed the offense are unknown
23 or that he committed it in one or more specified ways. The
24 indictment or information shall state for each count the
25 official or customary citation of the statute, rule, regula-
26 tion or other provision of law which the defendant is alleged
 therein to have violated. Error in the citation or its

Rule 7, Page 2

27 omission shall not be ground for dismissal of the indictment
28 or information or for reversal of a conviction if the error
29 or omission did not mislead the defendant to his prejudice.

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

PP 8(e)

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

PP 8(f)

36 (f) Bill of Particulars. The court for cause may
37 direct the filing of a bill of particulars. A motion for a
38 bill of particulars may be made only within ten days after
39 arraignment or within a shorter time as prescribed by rule
40 or order. A bill of particulars may be amended at any time
41 subject to such conditions as justice requires.

(New)

1 Rule 8. Joinder of Offenses and of Defendants. OR 9

2 (a) Joinder of Offenses. Two or more offenses

3 may be charged in the same indictment or information
4 in a separate count for each offense if the offenses
5 charged, whether felonies or misdemeanors or both,
6 are of the same or similar character or are based on
7 the same act or transaction or on two or more acts
8 or transactions connected together or constituting
9 parts of a common scheme or plan.

10 (b) Joinder of Defendants. Two or more de-

11 fendants may be charged in the same indictment or
12 information if they are alleged to have participated
13 in the same act or transaction or in the same series
14 of acts or transactions constituting an offense or
15 offenses. Such defendants may be charged in one or
16 more counts together or separately and all of the
17 defendants need not be charged in each count.

Rule 9(a). Incorporate 18 USC 603 into this rule, so that it may be taken out of the statute.

WVB

By inserting at end of line 6 the following sentence, the requisite incorporation may be accomplished:

"If the prisoner or person accused is already in custody, an order of court or of the district attorney shall be sufficient to bring him into court; and a like order shall be sufficient to remand the prisoner or person into custody."

1 Rule 9. Warrant or Summons upon Indictment or Information. *PP 10*

2 (a) Issuance. When an indictment or an information is *(a)*
3 filed, a warrant for the arrest of each defendant shall be
4 issued by the clerk upon the request of the attorney for the
5 government. The clerk shall issue a summons instead of a
6 warrant upon the request of the attorney for the government
7 or by direction of the court. Upon like request or direction
8 he shall issue more than one warrant or summons for the same
9 defendant. He shall deliver the warrant or summons to the
10 marshal or other person authorized by law to execute or
11 serve it. If a defendant fails to appear in response to the
12 summons, a warrant shall issue.

13 (b) Form.

14 (1) Warrant. The form of the warrant shall be as *PP 10 (b)*
15 provided in Rule 4 (b) (1) except that it shall be signed
16 by the clerk, it shall describe the offense charged in
17 the indictment or information and it shall command
18 that the defendant be arrested and brought before
19 the court. The amount of bail may be fixed by the
20 court and endorsed on the warrant.

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

24 (c) Execution or Service; and Return. *PP 10 (c)*

25 (1) Execution or Service. The warrant shall be
26 executed or the summons served as provided in Rule 4
27 (c) (1), (2) and (3). A summons to a corporation

Rule 9, Page 2

28 shall be served by delivering a copy to an officer
29 or to a managing or general agent or to any other
30 agent authorized by appointment or by law to
31 receive service of process and, if the agent is one
32 authorized by statute to receive service and the
33 statute so requires, by also mailing a copy to the
34 corporation's last known address within the district
35 or at its principal place of business elsewhere in
36 the United States. The officer executing the warrant
37 shall bring the arrested person promptly before the
38 court or, for the purpose of admission to bail, before
39 a commissioner.

40 (2) Return. The officer executing a warrant
41 shall make return thereof to the court. At the
42 request of the attorney for the government any
43 unexecuted warrant shall be returned and cancelled.
44 On or before the return day the person to whom a
45 summons was delivered for service shall make return
46 thereof. At the request of the attorney for the
47 government made at any time while the indictment
48 or information is pending, a warrant returned un-
49 executed and not cancelled or a summons returned
50 unserved or a duplicate thereof may be delivered
51 by the clerk to the marshal or other authorized per-
52 son for execution or service.

IV. ARRAIGNMENT, AND PREPARATION FOR TRIAL

PR 11

1 Rule 10. Arraignment. Arraignment shall be conducted
2 in open court and shall consist of reading the indictment
3 or information to the defendant or stating to him the
4 substance of the charge and calling on him to plead
5 thereto. He shall be advised that he is entitled to a
6 copy of the indictment or information and if he requests
7 it a copy shall be given to him before he is called upon
8 to plead.

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1 Rule 11. Pleas. A defendant *may* plead not guilty, PR 12
2 guilty or, with the consent of the court, nolo contendere.
3 The court may refuse to accept a plea of guilty, and shall
4 not accept the plea without first determining that the
5 plea is made voluntarily with understanding of the nature
6 of the charge. If a defendant refuses to plead or if the
7 court refuses to accept a plea of guilty or if a defendant
8 corporation fails to appear, the court shall enter a plea
9 of not guilty.

1 Rule 12. Pleadings and Motions before Trial; PR 13
2 Defenses and Objections.

3 (a) Pleadings and Motions. Pleadings in
4 criminal proceedings shall be the indictment and
5 the information, and the pleas of not guilty,
6 guilty and nolo contendere. All other pleas,
7 and demurrers and motions to quash are abolished,
8 and defenses and objections raised before trial
9 which heretofore could have been raised by one or
10 more of them shall be raised only by motion to
11 dismiss or to grant appropriate relief, as pro-
12 vided in these rules.

13 (b) The Motion Raising Defenses and PR 13 (6)
14 Objections.

15 (1) Defenses and Objections which May
16 Be Raised. Any defense or objection which
17 is capable of determination without the
18 trial of the general issue may be raised
19 before trial by motion.

20 (2) Defenses and Objections which Must
21 Be Raised. Defenses and objections based on
22 defects in the institution of the prosecu-
23 tion or in the indictment or information
24 other than that it fails to show jurisdiction
25 in the court or to charge an offense may be
26 raised only by motion before trial. The

Rule 12, Page 2

27 motion shall include all such defenses and
28 objections then available to the defendant.
29 Failure to present any such defense or objec-
30 tion as herein provided constitutes a wai-
31 ver thereof, but the court for cause shown
32 may grant relief from such waiver. Lack of
33 jurisdiction or the failure of the indict-
34 ment or information to charge an offense
35 shall be noticed by the court at any time
36 during the pendency of the proceeding.

PR 13(6)

37 (3) Time of Making Motion. The motion
38 shall be made before the plea is entered,
39 or thereafter and within such reasonable time
40 before trial as the court may fix.

41 (4) Hearing on Motion. A motion before
42 trial raising defenses or objections shall
43 be determined before trial unless the court
44 orders that it be deferred for determination
45 at the trial of the general issue. An issue
46 of fact shall be tried by a jury if a jury
47 trial is required under the Constitution or an
48 act of Congress. All other issues of fact
49 shall be determined by the court with or
50 without a jury or on affidavits or in such
51 other manner as the court may direct.

52 (5) Effect of Determination. If a
53 motion is determined adversely to the defen-
54 dant he shall be permitted to plead if he
55 had not previously pleaded. A plea pre-
56 viously entered shall stand. If the court
57 grants a motion based on a defect in the
58 institution of the prosecution or in the
59 indictment or information, it may also order
60 that the defendant be held in custody or
61 that his bail be continued for a specified
62 time pending the filing of a new indict-
63 ment or information. Nothing in this rule
64 shall be deemed to affect the provisions
65 of any act of Congress relating to periods
66 of limitations.

PR 13 (e)
merged
in to
last sent.

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1 Rule 13. Relief from Prejudicial Joinder. If it appears *PR 14*
2 that a defendant or the government is prejudiced by a joinder
3 of offenses or of defendants in an indictment or information
4 or in a trial, whether by a multiplicity of counts or of
5 defendants or otherwise, the court may order an election or
6 separate trials of counts, grant a severance of defendants or
7 provide whatever other relief justice requires. A severance
8 of defendants may be granted only before trial.

1 Rule 14. Trial Together of Indictments or Informations. *pp 15*
2 The court may order two or more indictments or informations
3 or both to be tried together if the offenses, and the
4 defendants if there is more than one, could have been joined
5 in a single indictment or information. The procedure shall
6 be the same as if the prosecution were under such single
7 indictment or information.

PR 16

1 Rule 15. Pre-Trial Procedure. At any time after the
2 filing of the indictment or information the court may
3 invite the attorneys to appear before it for a conference,
4 at which the defendant shall have the right to be present,
5 to consider

6 (1) The simplification of the issues;

7 (2) The possibility of obtaining admissions
8 of fact and of documents which will avoid unnec-
9 essary proof;

10 (3) The number of expert witnesses or
11 character witnesses or other witnesses who are
12 to give testimony of a cumulative nature;

13 (4) Such other matters as may aid in
14 the disposition of the proceeding.

15 The court shall make an order which recites the agreements
16 made by the parties as to any of the matters considered. All
17 orders entered at the pre-trial conference control the subse-
18 quent course of the proceeding, unless modified at the trial to
19 prevent manifest injustice. This rule shall not be invoked in
20 case of any defendant who is not represented by counsel.

1 Rule 16. Notice of Alibi; Specifications of Time and Place. *Changed*
2 If a defendant intends to offer evidence that at the time alleged
3 in the indictment or information he was at a place other than the
4 place where the alleged offense was committed, he may make a motion
5 to require the attorney for the government to serve and file before
6 trial a specification stating with greater particularity than the
7 indictment or information the time and place at which the offense
8 is alleged by the government to have been committed. If the court
9 grants the motion, it shall fix the time within which the govern-
10 ment's specification is to be served. Upon service of the govern-
11 ment's specification the defendant shall serve and file a
12 specification of the place where he was at the time specified by
13 the government if he intends to offer evidence of alibi with
14 respect to the time and place specified by the government. If
15 the trial is not to begin within 5 days after service of the
16 government's specification, the defendant shall serve and file
17 his specification not less than 3 days before trial; otherwise
18 he shall serve and file his specification at any time before
19 trial. If a defendant fails to make the motion or the specifica-
20 tion but at the trial offers evidence of alibi, the court may
21 exclude the evidence unless it finds that the failure was
22 excusable or that the admission of the evidence would be in the
23 interest of justice. If the court admits the evidence it may
24 grant a request by the government for a recess, for permission
25 to reopen its case or for other appropriate relief. At the
26 trial each party is bound by its specification but the court
27 for cause shown may permit specifications to be amended.

1 Rule 17. Depositions.

PR 18

2 (a) When Taken. If it appears that a prospective
3 witness may be unable to attend or prevented from attend-
4 ing a trial or hearing, the court at any time after the
5 filing of an indictment or information may order that his
6 testimony be taken by deposition and that any designated
7 books, papers, documents or tangible objects, not privi-
8 leged, be produced at the same time and place. If a
9 witness is committed for failure to give bail to appear
10 to testify at a trial or hearing, the court on the application
11 of the witness may direct that his deposition be taken.
12 After the deposition has been subscribed the court may
13 discharge the witness.

14 (b) How Taken. The party at whose instance a deposition
15 tion is to be taken shall give to every other party reason-
16 able written notice of the time and place for taking the
17 deposition. The notice shall state the name and address
18 of each person to be examined if known, or if the name is
19 not known a description sufficient to identify him. On
20 motion of a party upon whom the notice is served, the court
21 for cause shown may extend or shorten the time. If a de-
22 fendant is without counsel the court shall advise him of
23 his right and assign counsel to represent him unless the
24 defendant elects to proceed without counsel or is able to
25 obtain counsel. If it appears that a defendant at whose
26 instance a deposition is to be taken cannot bear the expense
27 thereof, the court may direct that the reasonable expenses

18(6)



Rule 17, Page 2

28 of the defendant and his attorney in taking the deposition
29 be paid by the government. In that event the marshal shall
30 make payment accordingly. A deposition shall be taken in
31 the manner provided in civil actions.

32 (c) At Instance of the Government. The following / 8 (c)
33 additional requirements shall apply if the deposition is
34 taken at the instance of the government. The officer
35 having custody of a defendant shall be notified of the time
36 and place set for the examination, and shall produce him at
37 the examination and keep him in the presence of the witness
38 during the examination. A defendant not in custody shall be
39 given notice and shall have the right to be present at the
40 examination. The government shall pay in advance to the
41 defendant's attorney and to a defendant not in custody
42 expenses of travel and subsistence for attendance at the
43 examination. / 8 (c)

44 (d) Use. At the trial or upon any hearing, a part or
45 all of a deposition, so far as otherwise admissible under
46 the rules of evidence, may be used if it appears: That the
47 witness is dead; or that the witness is out of the United
48 States, unless it appears that the absence of the witness
49 was procured by the party offering the deposition; or that
50 the witness is unable to attend or testify because of
51 sickness or infirmity; or that the party offering the
52 deposition has been unable to procure the attendance of
53 the witness by subpoena. Any deposition may also be used

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Rule 17, Page 3

54 by any party for the purpose of contradicting or impeaching
55 the testimony of the deponent as a witness. If only a part
56 of a deposition is offered in evidence by a party, an ad-
57 verse party may require him to introduce all of it which is
58 relevant to the part introduced, and any party may introduce
59 other parts.

60 (e) Objections to Admissibility. Objections to receiv- 18(a)
61 ing in evidence a deposition or part thereof may be made as
62 provided in civil actions.

63 (f) Upon Written Interrogatories. If the deposition is 18(b)
64 taken at the instance of a defendant, the court may at his
65 request direct that it be taken on written interrogatories
66 in the manner provided in civil actions.

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1 Rule 18. Discovery and Inspection. Upon motion of
2 a defendant at any time after the filing of the in-
3 dictment or information and after he has been arraigned,
4 the court may order the attorney for the government to
5 permit the defendant to inspect and copy or photograph
6 designated books, papers, documents or tangible objects,
7 obtained from or belonging to the defendant or consti-
8 tuting evidence in the proceeding, upon a showing that the
9 items sought may be material to the preparation of his
10 defense and that the request is reasonable. The order
11 shall specify the time, place and manner of making the
12 inspection and of taking the copies or photographs and
13 may prescribe such terms and conditions as are just.

2919



1 Rule 19. Subpoena.

2 (a) For Attendance of Witnesses; Form; Issuance.

of 20(a)

3 A subpoena shall be issued by the clerk under the seal of the
4 court. It shall state the name of the court and the title,
5 if any, of the proceeding, and shall command each person to
6 whom it is directed to attend and give testimony at the time
7 and place specified therein. The clerk shall issue a
8 subpoena, signed and sealed but otherwise in blank to a party
9 requesting it, who shall fill in the blanks before it is
10 served. A subpoena shall be issued by a commissioner in a
11 proceeding before him, but it need not be under the seal
12 of the court.

13 (b) Indigent Defendants. The court or a judge thereof
14 may order at any time that a subpoena be issued upon motion
15 or request of an indigent defendant. The motion or request
16 shall be supported by affidavit in which the defendant shall
17 state the name and address of each witness and the testimony
18 which he is expected by the defendant to give if subpoenaed,
19 and shall show that the evidence of the witness is material
20 to the defense, that the defendant cannot safely go to trial
21 without the witness and that the defendant does not have
22 sufficient means and is actually unable to pay the fees of
23 the witness. If the court or judge orders the subpoena to
24 be issued the costs incurred by the process and the fees of
25 the witness so subpoenaed shall be paid in the same manner
26 in which similar costs and fees are paid in case of a witness

*NEW from
20(a)*



Rule 19, Page 2

27 subpoenaed in behalf of the government.

28 (c) For Production of Documentary Evidence and of *PR 20(b)*
29 Objects. A subpoena may also command the person to whom
30 it is directed to produce the books, papers, documents or
31 other objects designated therein. The court on motion made
32 promptly may quash or modify the subpoena if compliance
33 would be unreasonable or oppressive. The court may direct
34 that books, papers, documents or objects designated in the
35 subpoena be produced before the court at a time prior to
36 the trial or prior to the time when they are to be offered
37 in evidence and may upon their production permit the books,
38 papers, documents or objects or portions thereof to be in-
39 spected by the parties and their attorneys.

40 (d) Service. A subpoena may be served by the marshal, *PR 20(c)*
41 by his deputy or by any other person who is not a party and
42 who is not less than 18 years of age. Service of a sub-
43 poena shall be made by delivering a copy thereof to the
44 person named and by tendering to him the fee for 1 day's
45 attendance and the mileage allowed by law. When the sub-
46 poena is issued on behalf of the government or of an
47 indigent defendant fees and mileage need not be tendered.

48 (e) For Taking Deposition; Place of Examination. *PR 20(d)*

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

Rule 19, Page 3

53 (2) A resident of the district in which the
54 deposition is to be taken may be required to
55 attend an examination only in the county wherein
56 he resides or is employed or transacts his business
57 in person. A nonresident of the district may be
58 required to attend only in the county where he is
59 served with a subpoena or within 40 miles from the
60 place of service or at such other place as is fixed
61 by the court.

62 (f) For Hearing or Trial.

FR 20(e)

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

66 (2) A subpoena directed to a witness in a foreign
67 country shall issue under the circumstances and in
68 the manner and be served as provided in the Act of
69 July 3, 1926, c. 762, ss 2, 3, 4, 44 Stat. 835-836;
70 28 U. S. C. ss 712, 713, 714.

71 (g) Contempt. Failure by any person without adequate
72 excuse to obey a subpoena served upon him may be deemed a
73 contempt of the court from which the subpoena issued or
74 of the court for the district in which it issued if it
75 was issued by a commissioner.

FR 20(f)

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V. VENUE

PR 40 (a)

- 1 Rule 20. Proceedings in the District of the Offense.
- 2 All proceedings shall be had in a district and division
- 3 in which the offense was committed, except as otherwise
- 4 provided in these rules.

1 Rule 21. Transfer within the District. In a
2 district containing more than one division the
3 arraignment may be had, a plea entered, the trial
4 conducted or sentence imposed, if the defendant con-
5 sents, in any division and at any time.

PR 40 (b)

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J

PR 40 (C)
(1)

1 Rule 22. Transfer from the District ~~or Division~~ for Plea
2 and Sentence. A defendant arrested in a district other
3 than that in which the indictment or information is
4 pending against him may state in writing, after receiving
5 a copy of the indictment or information, that he wishes
6 to plead guilty or nolo contendere, to waive trial in
7 the district in which the indictment or information is
8 pending and to consent to disposition of the case in the
9 district in which he was arrested, subject to the ap-
10 proval of the United States attorney for each district.
11 Upon receipt of the defendant's statement and of the
12 written approval of the United States attorneys, the
13 clerk of the court in which the indictment or information
14 is pending shall transmit the papers in the proceeding
15 or certified copies thereof to the clerk of the court
16 for the district in which the defendant is held and the
17 prosecution shall continue in that district. If after
18 the proceeding has been transferred the defendant pleads
19 not guilty, the clerk shall return the papers to the
20 court in which the prosecution was commenced and the
21 proceeding shall be restored to the docket of that court.



1 Rule 23. Transfer from the District or Division
2 for Trial.

3 (a) For Prejudice in the District or Division.

4 The court upon motion of the defendant shall transfer
5 a proceeding to another district or division if the
6 court is satisfied that there exists in the district
7 or division where the prosecution is pending so great
8 a prejudice against the defendant that he cannot
9 obtain a fair and impartial trial in that district or
10 division.

11 (b) Offense Committed in Two or More Districts or
12 Divisions. The court upon motion of the defendant shall
13 transfer a proceeding to another district or division if
14 the indictment or information charges an offense com-
15 mitted in more than one district or division and if the
16 court is satisfied that in the interest of justice the
17 proceeding should be transferred to another district or
18 division in which the commission of the offense is charged.

19 (c) Proceedings on Transfer. When a transfer is
20 ordered the clerk shall transmit to the clerk of the
21 court to which the proceeding is transferred all papers
22 in the proceeding or duplicates thereof and any bail
23 taken, and the prosecution shall continue in that dis-
24 trict or division.

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1 Rule 24. Time of Motion to Transfer. A motion
2 to transfer under these rules may be made at or before
3 arraignment or at such other time as the court or these
4 rules may prescribe.

P. 40 (d)

VI. TRIAL

Page 21

1 Rule 25. Trial by Jury or by the Court.

2 (a) Trial by Jury. Cases required to be tried by jury
3 shall be so tried unless the defendant waives a jury trial
4 in writing with the approval of the court and the consent
5 of the government.

6 (b) Jury of Less than Twelve. Juries shall be of 12
7 but at any time before verdict the parties may stipulate
8 in writing with the approval of the court that the jury
9 shall consist of any number less than 12.

10 (c) Trial without a Jury. In a case tried without
11 a jury the court shall make a general finding and may in
12 addition find the facts specially.

1 Rule 26. Trial Jurors.

PR 22 (a)

2 (a) Examination. The court may permit the defendant
3 or his attorney and the attorney for the government to
4 conduct the examination of prospective jurors or may
5 itself conduct the examination. In the latter event the
6 court shall permit the defendant or his attorney and the
7 attorney for the government to supplement the examination
8 by such further inquiry as it deems proper or shall
9 itself submit to the prospective jurors such additional
10 questions by the parties or their attorneys as it deems
11 proper.

12 (b) Peremptory Challenges. If the offense charged
13 is punishable by death, each side is entitled to 20
14 peremptory challenges. If the offense charged is punish-
15 able by imprisonment for more than one year, each side is
16 entitled to 6 peremptory challenges, but if there is more
17 than one defendant the defendants jointly are entitled to
18 10 peremptory challenges. If the offense charged is
19 punishable by imprisonment for not more than one year
20 or by fine or both, each side is entitled to 3 peremptory
21 challenges, but if there is more than one defendant the
22 defendants jointly are entitled to 6 peremptory challenges.

22 (4)

23 (c) Alternate Jurors. The court may direct that not
24 more than 4 jurors in addition to the regular jury be
25 called and impanelled to sit as alternate jurors. Alter-
26 nate jurors in the order in which they are called shall

22 (c)



Rule 26, Page 2

27 replace jurors who, prior to the time the jury retires to
28 consider its verdict, become unable or disqualified to
29 perform their duties. Alternate jurors shall be drawn
30 in the same manner, shall have the same qualifications,
31 shall be subject to the same examination and challenges,
32 shall take the same oath and shall have the same functions,
33 powers, facilities and privileges as the regular jurors.
34 An alternate juror who does not replace a regular juror
35 shall be discharged after the jury retires to consider
36 its verdict. Each side is entitled to 1 peremptory chal-
37 lenge in addition to those otherwise allowed by law if 1
38 or 2 alternate jurors are to be impanelled, and 2 peremp-
39 tory challenges if 3 or 4 alternate jurors are to be
40 impanelled. The additional peremptory challenges may be
41 used against an alternate juror only, and the other per-
42 emptory challenges allowed by these rules may not be used
43 against an alternate juror.

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1 Rule 27. Judge; Disability. If by reason of absence
2 from the district, death, sickness or other disability the
3 judge before whom the defendant has been tried is unable to
4 perform the duties to be performed by the court after a
5 verdict or finding of guilt, any other judge regularly
6 sitting in or assigned to the court may perform those
7 duties; but if such other judge is satisfied that he cannot
8 perform those duties because he did not preside at the
9 trial or for any other reason, he may in his discretion
10 grant a new trial.

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1 Rule 28. Evidence. In all trials the testimony of
2 witnesses shall be taken orally in open court, unless
3 otherwise provided by an act of Congress or by these
4 rules. The admissibility of evidence and the competency
5 and privileges of witnesses shall be governed, except
6 when an act of Congress or these rules otherwise provide,
7 by the principles of the common law as they may be
8 interpreted by the courts of the United States in the
9 light of reason and experience.

PR 24

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1 Rule 29. Proof of Official Record. An official
2 record or an entry therein or the lack of such a record
3 or entry may be proved in the same manner as in civil
4 actions.

DR 25

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PR 26

1 Rule 30. Expert Witnesses. The court may order
2 the defendant or the government or both to show cause why
3 expert witnesses should not be appointed, and may request
4 the parties to submit nominations. The court may appoint
5 any expert witnesses agreed upon by the parties, and may
6 appoint witnesses of its own selection. An expert witness
7 shall not be appointed by the court unless he consents to
8 act. A witness so appointed shall be informed of his
9 duties by the court at a conference in which the parties
10 shall have opportunity to participate. A witness so
11 appointed shall advise the parties of his findings, if
12 any, and may thereafter be called to testify by the court
13 or by any party. He shall be subject to cross-examination
14 by each party. The court may determine the reasonable
15 compensation of such a witness and direct its payment out
16 of such funds as may be provided by law. The parties also
17 may call expert witnesses of their own selection.

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1 Rule 31. Motion for Acquittal.

FR 27 (a)

2 (a) Motion for Judgment of Acquittal. Motions
3 for directed verdict are abolished and motions for
4 judgment of acquittal shall be used in their place.
5 The court on motion of a defendant or of its own
6 motion shall order the entry of judgment of acquittal
7 of one or more offenses charged in the indictment or
8 information after the evidence on either side is closed
9 if the evidence is insufficient to sustain a conviction
10 of such offense or offenses. If a defendant's motion
11 for judgment of acquittal at the close of the evidence
12 offered by the government is not granted, the defendant
13 may offer evidence without having reserved the right.

14 (b) Reservation of Decision on Motion. If a
15 motion for judgment of acquittal is made at the close
16 of all the evidence, the court may reserve decision
17 on the motion, submit the case to the jury and decide
18 the motion either before the jury returns a verdict or
19 after it returns a verdict of guilty or is discharged
20 without having returned a verdict. If the motion is
21 denied and the case is submitted to the jury, the
22 motion may be renewed within 5 days after the jury is
23 discharged. The motion may include in the alternative
24 a motion for a new trial. If a verdict of guilty is
25 returned the court may on such motion set aside the

27 (b)

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- 26 verdict and order a new trial or enter judgment of
27 acquittal. If no verdict is returned the court may
28 order a new trial or enter judgment of acquittal.

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1 Rule 32. Instructions. At the close of the evidence
2 or at such earlier time during the trial as the court
3 reasonably directs, any party may file written requests
4 that the court instruct the jury on the law as set forth
5 in the requests. At the same time copies of such requests
6 shall be furnished to adverse parties. The court shall
7 inform counsel of its proposed action upon the requests
8 prior to their arguments to the jury, but the court shall
9 instruct the jury after the arguments are completed. No
10 party may assign as error any portion of the charge or
11 omission therefrom unless he objects thereto before the
12 jury retires to consider its verdict, stating distinctly
13 the matter to which he objects and the grounds of his
14 objection. Opportunity shall be given to make the objec-
15 tion out of the hearing of the jury.

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1 Rule 33. Verdict.

29 (a)

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

4 (b) Several Defendants. If there are two or more
5 defendants, the jury at any time during its deliberations
6 may return a verdict or verdicts with respect to a defend-
7 ant or defendants as to whom it has agreed; if the jury
8 cannot agree with respect to all, the defendant or defend-
9 ants as to whom it does not agree may be tried by another
10 jury.

29 (b)

11 (c) Conviction of Lesser Offense. The defendant may
12 be found guilty of an offense necessarily included in the
13 offense charged or of an attempt to commit either the
14 offense charged or an offense necessarily included therein
15 if the attempt is made an offense by statute.

29 (c)

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

29 (d)

VII. JUDGMENT

1 Rule 34. Sentence and Judgment.

2 (a) Sentence. Sentence shall be imposed without
3 unreasonable delay. Pending sentence the court may
4 commit the defendant or alter the bail. Before imposing
5 sentence the court shall afford the defendant an oppor-
6 tunity to make a statement in his own behalf and to
7 present any information in mitigation of punishment.

P. 30 (a)

8 (b) Judgment. A judgment of conviction shall set
9 forth the plea, the verdict or finding, and the adjudica-
10 tion and sentence. If the defendant is found not guilty
11 or for any other reason is entitled to be discharged,
12 judgment shall be entered accordingly. The judgment
13 shall be signed by the judge and entered by the clerk.

30 (b)

14 (c) Presentence Investigation.

30 (c)

15 (1) When Made. The probation service of the
16 court shall make a presentence investigation and
17 report to the court before the imposition of sentence
18 or the granting of probation unless the court other-
19 wise directs.

20 (2) Report. The report of the presentence in-
21 vestigation shall contain any prior criminal record
22 of the defendant and such information about his
23 characteristics, his financial condition and the
24 circumstances affecting his behavior as may be help-
25 ful in imposing sentence or in granting probation or

Rule 34, Page 2

26 in the correctional treatment of the defendant,
27 and such other information as may be required by
28 the court. After determination of the question
29 of guilt the report shall be available, upon such
30 conditions as the court may impose, to the attor-
31 neys for the parties and to such other persons
32 or agencies having a legitimate interest therein
33 as the court may designate.

34 (d) Withdrawal of Plea of Guilty. A motion to 30 (d)
35 withdraw a plea of guilty or of nolo contendere may be
36 made only before sentence is imposed or imposition of
37 sentence is suspended; but to correct manifest injustice
38 the court after sentence may set aside the judgment of
39 conviction and permit the defendant to withdraw his plea.

40 (e) Probation. After conviction of an offense not 30 (e)
41 punishable by death or by life imprisonment, the defend-
42 ant may be placed on probation as provided by law.

Rule 35 (new trial for newly discovered evidence or for deprivation of constitutional rights)

Vigorously criticized by WWB, especially as respects constitutional rights. He thinks it would open Pandora's Box. See his letter.

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F.R. 31(c)

1 Rule 35. New Trial. The court may grant a new trial
2 to a defendant if required in the interest of justice. If
3 trial was by the court without a jury the court may vacate
4 the judgment if entered, take additional testimony and
5 direct the entry of a new judgment. A motion for new trial
6 based on grounds other than newly discovered evidence may
7 be made within 5 days after verdict or finding of guilty or
8 within such further time as the court may fix during the 5-
9 day period. A motion for a new trial based on the ground
10 of newly discovered evidence or on the ground that the
11 defendant has been deprived of a constitutional right may
12 be made at any time before or after final judgment, but if
13 an appeal is pending the court may grant the motion only on
14 remand of the case.

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1 Rule 36. Arrest of Judgment. The court shall arrest
2 judgment if the indictment or information does not charge
3 an offense or if the court was without jurisdiction of the
4 offense charged. The motion in arrest of judgment shall
5 be made within 5 days after verdict or finding of guilty
6 or within such further time as the court may fix during the
7 5-day period.

pp 31 (d)

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- 1 Rule 37. Correction or Reduction of Sentence.
- 2 The court may correct an illegal sentence at any time.
- 3 The court may reduce a sentence within 60 days after
- 4 the sentence is imposed, or within 60 days after receipt
- 5 by the court of a mandate issued upon affirmance of the
- 6 judgment or dismissal of the appeal, or within 60 days
- 7 after receipt of an order of the Supreme Court denying
- 8 an application for a writ of certiorari.

PR 31 (6)

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1 Rule 38. Clerical Mistakes. Clerical mistakes in *PR 31(a)*
2 judgments, orders or other parts of the record and errors
3 in the record arising from oversight or omission may be
4 corrected by the court at any time and after such notice,
5 if any, as the court orders.

VIII. APPEAL

1 Rule 39. Taking Appeal; and Petition for Writ of Certiorari.

2 (a) Taking Appeal.

3 (1) Notice of Appeal. An appeal permitted by law from *35(a) 1*
4 a district court to the Supreme Court or to a circuit court
5 of appeals is taken by filing with the clerk of the district
6 court a notice of appeal in duplicate. Petitions for allow-
7 ance of appeal, citations and assignments of error in cases
8 governed by these rules are abolished. The notice of appeal
9 shall set forth the title of the case, the name and address
10 of the appellant and of appellant's attorney, a general
11 statement of the offense, a concise statement of the judgment
12 or order, giving its date and any sentence imposed, the place
13 of confinement if the defendant is in custody and a state-
14 ment that the appellant appeals from the judgment or order.
15 If the appeal is directly to the Supreme Court, the notice
16 shall be accompanied by a jurisdictional statement as pre-
17 scribed by the rules of the Supreme Court. The notice of
18 appeal shall be signed by the appellant or appellant's
19 attorney, or by the clerk if the notice is prepared by the
20 clerk as provided in paragraph (2) of this subdivision. The
21 duplicate notice of appeal and a statement of the docket
22 entries shall be forwarded immediately by the clerk of the
23 district court to the clerk of the appellate court.

24 (2) Time for Taking Appeal. An appeal by a defendant *35(a) 2*
25 may be taken within 10 days after entry of the judgment or
26 order appealed from, but if a motion for a new trial is

Rule 39, Page 2

27 then pending an appeal from a judgment of conviction may
28 be taken within 10 days after entry of the order denying
29 the motion. When a court after trial imposes sentence upon
30 a defendant not represented by counsel, the defendant shall
31 be advised of his right to appeal and if he so requests, the
32 clerk shall prepare and file forthwith on behalf of the
33 defendant a notice of appeal. An appeal by the government
34 may be taken within 30 days after entry of the judgment or
35 order appealed from.

36 (b) Petition for Review on Writ of Certiorari.

35 (6)

37 (1) Petition. Petition to the Supreme Court for writ
38 of certiorari shall be made as prescribed in its rules.

39 (2) Time of Making Petition. Petition for writ of
40 certiorari may be made within 30 days after entry of the
41 judgment or within such further time not exceeding 30 days
42 as the Court or a justice thereof for cause shown may fix
43 within the 30-day period following judgment. If the judg-
44 ment was entered in a district court in Alaska, Hawaii,
45 Puerto Rico, Canal Zone or Virgin Islands, the petition
46 shall be deemed in time if mailed under a postmark dated
47 within such 30-day period.

1 Rule 40. Stay of Execution, and Relief Pending Review. p. 36

2 (a) Stay of Execution.

3 (1) Death. A sentence of death shall be stayed if 36 (a) 1
4 an appeal is taken.

5 (2) Imprisonment. A sentence of imprisonment shall (a) 2
6 be stayed if an appeal is taken and the defendant elects
7 with the approval of the court to remain in detention
8 pending appeal or is admitted to bail.

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

19 (b) Bail. Admission to bail upon appeal or certiorari 36 (a)
20 shall be as provided in these rules.

21 (c) Application for Relief Pending Review. If appli- 36 (c)
22 cation is made to a circuit court of appeals or to a cir-
23 cuit judge or to a justice of the Supreme Court for bail
24 pending appeal or for an extension of time for docketing the
25 record on appeal or for any other relief which might have been
26 granted by the district court, the application shall be upon
27 notice and shall show that application to the district court

Rule 40, Page 2

28 is not practicable or that application has been made to the
29 district court and denied, with the reasons given by the
30 district court for the denial, or that the action of the
31 district court on the application did not afford the
32 relief to which the applicant considers himself to be
33 entitled.

Rule 41(b)(1). While this adopts and conforms to Fed. Rules Civ. Proc. 75, 76, an important new statute has been enacted since this rule was adopted by Adv. Comm. I refer to the new Official Reporter Act of 1944, and especially to section 3 of that act which entitles the appellant to "designate" the printer of the appeal record made according to said Rules 75, 76. Where the record is not printed, as in the Fourth Circuit, this confers no privilege; the appellant already has it. But in all circuits where the record is printed under supervision of the clerk of OCA, a change is effected whereby the printing may be done at a distance from the clerk which frustrates the proper supervision. Moreover, it may frustrate the printing of surplus copies pursuant to 28 USC 865, to be used in case of application for certiorari, since scattered local printers may not be advised to print more than twenty-five copies. It should be noted that in enacting this section Congress rejected that part of the bill which authorized the Supreme Court to make uniform appellate rules in this respect. Apparently the power of the Supreme Court under 18 USC 868 is left intact (original appeals). Consideration is required. GFL.

1 Rule 41. Supervision of Appeal.

DR 37

2 (a) Supervision in Appellate Court. The supervision and 37(a)
3 control of the proceedings on appeal shall be in the appellate
4 court from the time the notice of appeal is filed with its
5 clerk, except as otherwise provided in these rules. The appel-
6 late court may at any time entertain a motion to dismiss the
7 appeal, or for directions to the district court, or to modify
8 or vacate any order made by the district court or by any judge
9 in relation to the prosecution of the appeal, including any
10 order fixing or denying bail.

11 (b) The Record on Appeal.

37(4)

12 (1) Preparation and Form. The rules and practice
13 governing the preparation and form of the record on
14 appeal in civil actions shall apply to the record on
15 appeal in all criminal proceedings, except as otherwise
16 provided in these rules.

17 (2) Use of Typewritten Record. The circuit court of
18 appeals may dispense with the printing of the record on
19 appeal and review the proceedings on the typewritten record.

20 (c) Docketing of Appeal and Record on Appeal. The record 37(c)
21 on appeal shall be filed with the appellate court and the pro-
22 ceeding there docketed within 40 days from the date the notice
23 of appeal is filed in the district court, but if more than one
24 appeal is taken from the same judgment to the same appellate
25 court, the district court may prescribe the time for filing and
26 docketing, which in no event shall be less than 40 days from
27 the date the first notice of appeal is filed. In all cases

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28 the district court or the appellate court or, if the appellate
29 court is not in session, any judge thereof may for cause shown
30 extend the time for filing and docketing.

31 (d) Setting the Appeal for Argument. Unless good cause 37(e)
32 is shown for an earlier hearing, the appellate court shall
33 set the appeal for argument on a date not less than 30 days
34 after the filing in that court of the record on appeal and as
35 soon after the expiration of that period as the state of the
36 calendar will permit. Preference shall be given to appeals
37 in criminal cases over appeals in civil cases.

Rule 48 (b)(3), line 81.

Carry first sentence of ~~this~~ 18 USC 604 into this rule at
place indicated, and thus take it out of statutes.

WFB

IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

1 Rule 42. Commitment to Another District; Removal. Pf 32

2 (a) Arrest in Nearby District. If a person is
3 arrested on a warrant issued upon a complaint in a dis-
4 trict other than the district of the arrest but in the
5 same state, or on a warrant issued in another state but
6 at a place less than 100 miles from the place of arrest,
7 or without a warrant for an offense committed in another
8 district in the same state or in another state but at a
9 place less than 100 miles from the place of the arrest,
10 he shall be taken before the nearest available commis-
11 sioner or other nearby officer described in Rule 5(a);
12 preliminary proceedings shall be conducted in accordance
13 with Rule 5(b) and (c); and if held to answer, he shall
14 be held to answer to the district court for the district
15 in which the prosecution is pending, or if the arrest was
16 without a warrant, for the district in which the offense
17 was committed. If such an arrest is made on a warrant
18 issued on an indictment or information, the person
19 arrested shall be taken before the district court in
20 which the prosecution is pending or, for the purpose of
21 admission to bail, before a commissioner in the district
22 of the arrest in accordance with provisions of Rule 9
23 (c) (1).

24 (b) Arrest in Distant District.

25 (1) Appearance Before Commissioner or Judge. If
a person is arrested upon a warrant issued in another

Rule 42, Page 2

26 state and at a place 100 miles or more from the place of 32
27 of arrest, or without a warrant for an offense committed
28 in another state at a place more than 100 miles from
29 the place of the arrest, he shall be taken without un-
30 necessary delay before the nearest available commis-
31 sioner or a nearby judge of the United States in the
32 district in which the arrest was made.

33 (2) Statement by Commissioner or Judge. The com-
34 missioner or judge shall inform the defendant of the
35 charge against him, of his right to retain counsel and
36 of his right to have a hearing or to waive a hearing
37 by signing a waiver before the commissioner or judge.
38 The commissioner or judge shall also inform the de-
39 fendant that he is not required to make a statement
40 and that any statement made by him may be used
41 against him, shall allow him reasonable opportunity
42 to consult counsel and shall admit him to bail as
43 provided in these rules.

44 (3) Hearing; Warrant of Removal or Discharge.
45 The defendant shall not be called upon to plead.
46 If the defendant waives hearing, the judge shall
47 issue a warrant of removal to the district where
48 the prosecution is pending. If the defendant does
49 not waive hearing, the commissioner or judge shall
50 hear the evidence. If the commissioner hears the

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51 evidence he shall report his findings and recommenda-
52 tions to the judge. At the hearing the defendant may
53 *cross-examine witnesses against him and may introduce*
54 evidence in his own behalf. If it appears from the
55 commissioner's report or from the evidence adduced
56 before the judge that sufficient ground has been
57 shown for ordering the removal of the defendant, the
58 judge shall issue a warrant of removal to the district
59 where the prosecution is pending. Otherwise he shall
60 discharge the defendant. If the prosecution is by in-
61 dictment, a warrant of removal shall issue upon pro-
62 duction of a certified copy of the indictment and
63 upon proof that the defendant is the person named in the
64 indictment. If the prosecution is by information or
65 complaint, a warrant of removal shall issue upon the
66 production of a certified copy of the information or
67 complaint and upon proof that there is probable cause
68 to believe that the defendant is guilty of the offense
69 charged. If a warrant of removal is issued, the de-
70 fendant shall be admitted to bail for appearance in
71 the district in which the prosecution is pending in
72 accordance with Rule 48. After a defendant is held
73 for removal or is discharged, the papers in the pro-
74 ceeding and any bail taken shall be transmitted to

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75 the clerk of the district court in which the
76 prosecution is pending.

.29 32

77 (4) Hearing and Removal on Arrest without a
78 Warrant. If a person is arrested without a warrant,
79 the hearing may be continued for a reasonable time,
80 upon a showing of probable cause to believe that he
81 is guilty of the offense charged; but he may not be
82 removed as herein provided unless a warrant issued
83 in the district in which the offense was committed
84 is presented.

Rule 43, new (e)

Carry 18 USC 627 into a new subrule, in order to take the section out of the statute. The new part of the rule would thereby require papers necessary for the court's information to be returned into court, corresponding to a similar provision in Rule 5(c), lines 41-44, as regards preliminary examination papers. Besides, without these papers a motion to the court pursuant to Rule 43 old (e) might lack the necessary foundation.

WWS

Alex

Fed Crim Rule 43 (d) seems to supersede 18 USC 622, but in text of Rule 43(f), citing sections superseded we do not include 18 USC 622. Probably an oversight, or else Rule 43 (d) lines 43-47 are redundant to 18 USC 622. Please check this.

GFL.

1 Rule 43. Search and Seizure.

2 (a) Authority to Issue Warrant. A search warrant
3 authorized by this rule may be issued by a judge of the
4 United States or of a state or territorial court of record or
5 by a United States commissioner within the district wherein the
6 property sought is located.

7 (b) Grounds for Issuance. A warrant may be issued under
8 this rule to search for and seize any property

9 (1) Constituting the fruits of a violation of a law
10 of the United States; or

11 (2) Designed or intended for use or which is or has
12 been used as the means of committing a criminal offense;
13 or

14 (3) Possessed, controlled, or designed or intended
15 for use or which is or has been used in violation of the
16 Act of June 15, 1917, c. 30, title VIII, s 4, 40 Stat.
17 226, and title XI, s 22, 40 Stat. 230, as amended by the
18 Act of March 28, 1940, c. 72, s 8, 54 Stat. 80; 18 U. S. C.
19 s 98.

20 (c) Issuance and Contents. A warrant shall issue only
21 on affidavit sworn to before the judge or commissioner and
22 establishing the grounds for issuing the warrant. If the
23 judge or commissioner is satisfied that grounds for the ap-
24 plication exist or that there is probable cause to believe
25 that they exist, he shall issue a warrant identifying the
26 property and naming or describing the person or place to be
27 searched. The warrant shall be directed to a civil officer

Rule 43, Page 2

FF 33

28 of the United States authorized to enforce or assist in
29 enforcing any law thereof or to a person so authorized by
30 the President of the United States. It shall state the
31 grounds or probable cause for its issuance and the names
32 of the persons whose affidavits have been taken in support
33 thereof. It shall command the officer to search forthwith
34 the person or place named for the property specified.
35 The warrant shall direct that it be served in the daytime,
36 but if the affidavits are positive that the property is on
37 the person or in the place to be searched, the warrant may
38 direct that it be served at any time. It shall designate
39 the district judge or the commissioner to whom it shall
40 be returned.

41 (d) Execution and Return with Inventory. The warrant
42 may be executed and returned only within 10 days after its
43 date. The officer taking property under the warrant shall
44 give to the person from whom or from whose premises the prop-
45 erty was taken a copy of the warrant and a receipt for the
46 property taken or shall leave the copy and receipt at the
47 place from which the property was taken. The return shall
48 be made promptly and shall be accompanied by a written in-
49 ventory of any property taken. The inventory shall be made
50 in the presence of the applicant for the warrant and the
51 person from whose possession or premises the property was
52 taken, if they are present, or in the presence of at least
53 one credible person other than the applicant for the

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PR 33

54 warrant or the person from whose possession or premises
55 the property was taken, and shall be verified by the
56 officer. The judge or commissioner shall upon request
57 deliver a copy of the inventory to the person from whom or
58 from whose premises the property was taken and to the applicant
59 for the warrant.

60 (e) Motion for Return of Seized Property and to Suppress
61 Evidence. A person whose property has been seized under a
62 warrant may move for the return of the property or to suppress
63 the evidence obtained under the warrant on the ground that
64 (1) the warrant is insufficient on its face, or that (2) the
65 property seized is not that described in the warrant, or that
66 (3) there was not probable cause for believing the existence
67 of the grounds on which the warrant was issued, or that (4) the
68 warrant was executed illegally. If seizure was made illegally
69 without a warrant, the motion to return the property or to
70 suppress the evidence may be made on that ground. The judge or
71 commissioner shall take testimony unless the ground of the motion
72 is the insufficiency of the warrant. If the motion is granted,
73 the property shall be restored unless subject to confiscation and
74 it shall not be admissible in evidence at any hearing or trial
75 of the proceeding in connection with which the seizure occurred.
76 Within 10 days after the decision of any motion provided for in
77 this rule any person aggrieved by the decision may make a motion
78 in the district court for a review thereof. A motion to suppress
79 evidence shall be made before the trial or hearing, unless

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PR 33

80 opportunity therefor does not exist or the defendant is not
81 aware of the grounds for the motion, but the court in its
82 discretion may entertain the motion at the trial or hearing.

83 (f) Scope and Definition. This rule supersedes the Act
84 of June 15, 1917, c. 30, title XI, ss 1-6, 10, 11, 12-16, 40
85 Stat. 228, 229, 18 U. S. C. ss 611-616, 620, 621, 623-626,
86 and any other provision of chapter 30 of that Act inconsistent
87 with this rule. It does not modify any other act, inconsistent
88 with this rule, regulating search, seizure and the issuance and
89 execution of search warrants in circumstances for which special
90 provision is made. The term "property" is used in this rule
91 to include documents, books, papers and any other tangible
92 objects.

Is the recalcitrant clerk's refusal to furnish a certified copy of the record for removal of a cause, a criminal offense or a criminal contempt? It seems to be a criminal offense, judging by the punishment; but the body of section 82 speaks of "an order requiring the prosecutor in any such action or proceeding to enforce ~~forfeiture~~ or recover penalty, as aforesaid." The words "any such action" seem to refer to the proceeding for certiorari against the clerk, but are not very clear. Please examine 18 Stat. 472 for wording of the original act.

The prescribed penalty does not sound in terms of a coercive civil contempt proceeding to enforce the certiorari.

Let us find what it means. Does it involve Crim Rule 44?

GFL

Rules 44 and 37(b)(5)

Exclude from application

Contempts of Congress (2 USC 192-194) also

Contempts by witnesses abroad (18 USC 712 et seq.)

It would be impossible, at least extremely difficult, to conform either of these proceedings to Rule 44.

Rule 44. This rule, construed with Rule 57 (a)(1), does not apply to the Court of Claims; and that court by virtue of 28 USC 263 has power to "punish for contempt in the manner prescribed by the common law." Of course all claims in the Court of Claims are against the United States, and therefore they are not government suits by or for the United States within the saving provision of 28 USC 309.

The question is: Should Rule 44 be made applicable to the Court of Claims and to all courts of the United States? Or should there be a saving provision added to Rule 44 to exclude all courts but those named in Rule 57(a)(1)? Or what other means of dealing with the situation should be adopted?

GFL

1 Rule 44. Criminal Contempt.

2 (a) Summary Disposition. A criminal contempt may be
3 punished summarily without notice or hearing if the judge
4 certifies that he saw or heard the conduct constituting the
5 contempt and that it was committed in the actual presence
6 of the court. The order of contempt shall recite the facts
7 and shall be signed by the judge and entered of record.

8 (b) Disposition upon Notice. A criminal contempt
9 except as provided in subdivision (a) of this rule shall be
10 prosecuted on notice. The notice shall state the time and
11 place of hearing, allowing a reasonable time for the prepa-
12 ration of the defense, and shall state the essential facts
13 constituting the criminal contempt charged and describe it
14 as such. The notice shall be given orally by the judge in
15 open court in the presence of the defendant or, on applica-
16 tion of the United States attorney or of an attorney
17 appointed by the court for that purpose, by an order to
18 show cause or an order of arrest. The defendant is
19 entitled to a trial by jury in any case in which an act
20 of Congress so provides. He is entitled to admission
21 to bail as provided in these rules. If the contempt char-
22 ged consists of disrespect to or criticism of a judge,
23 that judge is disqualified from presiding at the trial or
24 hearing except with the defendant's consent. Upon a ver-
25 dict or finding of guilt the court shall enter an order
26 fixing the punishment.

X. GENERAL PROVISIONS

Pf 38

1 Rule 45. Presence of the Defendant. The de-
2 fendant has the right to be present at the arraign-
3 ment, at every stage of the trial including the im-
4 paneling of the jury and the return of the verdict,
5 and at the imposition of sentence. In cases not
6 punishable by death, the defendant's voluntary ab-
7 sence after the trial has been commenced in his
8 presence shall not prevent continuing the trial to
9 and including the return of the verdict. A corpo-
10 ration may appear by counsel for all purposes. In
11 cases punishable by fine or by imprisonment for not
12 more than one year or both, the court, with the
13 written consent of the defendant that counsel shall
14 act for him, may permit arraignment to be had and a
15 plea of not guilty to be entered or the trial to be
16 conducted in the absence of the defendant.



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1 Rule 46. Assignment of Counsel. If the de-
2 fendant appears in court without counsel, the court
3 shall advise him of his right to counsel and assign
4 counsel to represent him at every stage of the pro-
5 ceeding unless he elects to proceed without counsel
6 or is able to obtain counsel.

PR 39

1 Rule 47. Time.

2 (a) Computation. In computing any period of time
3 the day of the act or event after which the designated
4 period of time begins to run is not to be included.
5 The last day of the period so computed is to be in-
6 cluded, unless it is a Sunday or legal holiday, in
7 which event the period runs until the end of the next
8 day which is neither a Sunday nor a holiday. When a
9 period of time prescribed or allowed is less than 7
10 days, intermediate Sundays and holidays shall be ex-
11 cluded in the computation. A half holiday shall be
12 considered as other days and not as a holiday.

13 (b) Enlargement. When an act is required or
14 allowed to be done at or within a specified time,
15 the court for cause shown may at any time in its
16 discretion (1) with or without motion or notice,
17 order the period enlarged if application therefor is
18 made before the expiration of the period originally
19 prescribed or as extended by a previous order or (2)
20 upon motion permit the act to be done after the
21 expiration of the specified period if the failure to
22 act was the result of excusable neglect; but the court
23 may not enlarge the period for taking any action under
24 Rules 35, 36 and 37, except as otherwise provided in
25 those rules, or the period for taking an appeal, except
26 as otherwise provided in Rule 39 (a) (2).

Rule 47, Page 2

98 21

27 (c) Unaffected by Expiration of Term. The period
28 of time provided for the doing of any act or the taking
29 of any proceeding is not affected or limited by the
30 expiration of a term of court. The expiration of a
31 term of court in no way affects the power of a court
32 to do any act in a criminal proceeding.

33 (d) For Motions; Affidavits. A written motion,
34 other than one which may be heard ex parte, and notice
35 of the hearing thereof shall be served not later than
36 5 days before the time specified for the hearing unless
37 a different period is fixed by rule or order of the
38 court. For cause shown such an order may be made on
39 ex parte application. When a motion is supported by
40 affidavit, the affidavit shall be served with the
41 motion; and opposing affidavits may be served not less
42 than 1 day before the hearing unless the court permits
43 them to be served at a later time.

44 (e) Additional Time after Service by Mail. Whenever
45 a party has the right or is required to do an act within
46 a prescribed period after the service of a notice or
47 other paper upon him and the notice or other paper is
48 served upon him by mail, 3 days shall be added to the
49 prescribed period.

1 Rule 48. Bail. F 42

2 (a) Right to Bail.

3 (1) Before Conviction. A person arrested for
4 an offense not punishable by death shall be admitted
5 to bail. A person arrested for an offense punishable
6 by death may be admitted to bail by any court or judge
7 authorized by law to do so in the exercise of discretion,
8 giving due weight to the evidence and to the nature and
9 circumstances of the offense.

10 (2) Upon Review. Bail shall be allowed pending
11 appeal or certiorari only if it appears that the case
12 involves a substantial question which should be deter-
13 mined by the appellate court. Bail may be allowed by
14 the trial judge, or by the appellate court or, if it
15 is not in session, by any judge thereof, or by a justice
16 of the Supreme Court. The court or the judge or justice
17 allowing bail may at any time revoke the order admitting
18 the defendant to bail.

19 (b) Bail for Witness. If it appears by affidavit that
20 the testimony of a person is material in any criminal pro-
21 ceeding and if it is shown that it may become impracticable
22 to secure his presence by subpoena, the court or commissioner
23 may require him to give bail for his appearance as a witness,
24 in an amount fixed by the court or commissioner. If the person
25 fails to give bail the court or commissioner may commit him
26 to the custody of the marshal pending final disposition

Rule 48, Page 2

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27 of the proceeding in which the testimony is needed, may
28 order his release if he has been detained for an unreason-
29 able length of time, and may modify at any time the require-
30 ment as to bail.

31 (c) Amount. If the defendant is admitted to bail,
32 the amount thereof shall be such as in the judgment of
33 the commissioner or court or judge or justice will insure
34 the presence of the defendant, having regard to the nature
35 and circumstances of the offense charged, the weight of the
36 evidence against him, the financial ability of the defendant
37 to give bail and the character of the defendant.

38 (d) Form, and Place of Deposit. A person required or
39 permitted to give bail shall execute a bond for his appearance.
40 One or more sureties may be required, cash or bonds or notes
41 of the United States may be accepted and in proper cases no
42 security need be required. Bail given originally on appeal
43 shall be deposited in the registry of the district court
44 from which the appeal is taken.

45 (e) Justification of Sureties. Every surety, except
46 a corporate surety which is approved as provided by law,
47 shall justify by affidavit and may be required to describe
48 in the affidavit the property by which he proposes to
49 justify and the encumbrances thereon, the number and
50 amount of other bonds and undertakings for bail entered
51 into by him and remaining undischarged and all his other

52 liabilities. No bond shall be approved unless the surety
53 thereon appears to be qualified.

54 (f) Forfeiture.

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

58 (2) Setting Aside. The court may direct that a for-
59 feiture be set aside if it appears that there has been
60 no willful default by the defendant, that a trial can
61 be had and that justice does not require the enforcement
62 of the forfeiture.

63 (3) Enforcement. When a forfeiture has not been
64 set aside, the court shall on motion enter a judgment
65 of default and execution may issue thereon. By enter-
66 ing into a bond the obligors submit to the jurisdiction
67 of the district court and irrevocably appoint the clerk
68 of the court as their agent upon whom any papers affect-
69 ing their liability may be served. Their liability may
70 be enforced on motion without the necessity of an independ-
71 ent action. The motion and such notice of the motion as
72 the court prescribes may be served on the clerk of the
73 court, who shall forthwith mail copies to the obligors
74 to their last known addresses.

75 (4) Remission. After entry of such judgment, the
76 court may remit it in whole or in part under the condi-
77 tions applying to the setting aside of forfeiture in

Rule 48, Page 4

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78 Paragraph (2) of this subdivision.

79 (g) Exoneration. When the condition of the bond
80 has been satisfied or the forfeiture thereof has been
81 set aside or remitted, the court shall exonerate the
82 obligors and release any bail. A surety may be
83 exonerated by a deposit of cash in the amount of the
84 bond or by a timely surrender of the defendant into
85 custody.

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1 Rule 49. Motions. An application to the court for
2 an order shall be by motion. A motion other than one
3 made during a trial or hearing shall be in writing unless
4 the court permits it to be made orally. It shall state
5 the grounds upon which it is made and shall set forth the
6 relief or order sought. It may be supported by affidavit.

P.P. 43

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FR 44

1 Rule 50. Dismissal. The Attorney General or the
2 United States attorney may file a dismissal of the
3 indictment or information with a statement of the
4 reasons therefor and the prosecution shall thereupon
5 terminate. Such a dismissal may not be filed during
6 the trial without the consent of the defendant.



FR 25

1 Rule 51. Service and Filing of Papers.

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

6 (b) Service: How Made. Whenever under these rules
7 or by an order of the court service is required or per-
8 mitted to be made upon a party represented by an attorney,
9 the service shall be made upon the attorney unless service
10 upon the party himself is ordered by the court. Service
11 upon the attorney or upon a party shall be made in the
12 manner provided in civil actions.

13 (c) Notice of Orders. Immediately upon the entry of
14 an order the clerk shall mail to each party affected
15 thereby a notice thereof and shall make a note in the
16 docket of the mailing.

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

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1 Rule 52. Communications by Counsel to Judge,
2 Copies of all communications, memoranda and briefs sub-
3 mitted by counsel to a judge and relating to a proceed-
4 ing pending before him shall be delivered simultaneously
5 to counsel for adverse parties. Counsel shall not confer
6 with a judge regarding the merits of a proceeding pending
7 before him, except in the presence of or with the consent
8 of counsel for adverse parties.

New

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1 Rule 53. Calendars. The district courts may provide
2 for placing criminal proceedings upon appropriate calendars.
3 Preference shall be given to criminal proceedings as far as
4 practicable.

FR 46(a)

(6) 9

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PP 47

1 Rule 54. Exceptions Unnecessary. Exceptions to rulings
2 or orders of the court are unnecessary and for all purposes
3 for which an exception has heretofore been necessary it is
4 sufficient that a party, at the time the ruling or order of
5 the court is made or sought, makes known to the court the
6 action which he desires the court to take or his objection
7 to the action of the court and the grounds therefor; but
8 if a party has no opportunity to object to a ruling or order,
9 the absence of an objection does not thereafter prejudice him.

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DR 48

1 Rule 55. Harmless Error and Plain Error.

2 (a) Harmless Error. Any error, defect, irregularity
3 or variance which does not affect substantial rights
4 shall be disregarded.

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

258 + 9

- 1 Rule 56. Regulation of Conduct in the Court Room.
- 2 The taking of photographs in the court room during the
- 3 progress of judicial proceedings or radio broadcasting
- 4 of judicial proceedings shall not be permitted by the
- 5 court.

1 Rule 57. Application and Exception. 50

2 (a) Courts and Commissioners.

3 (1) Courts. These rules apply to all criminal
4 proceedings in the district courts of the United
5 States, which include the District Court of the United
6 States for the District of Columbia, the District Court
7 for the Territory of Alaska, the United States District
8 Court for the Territory of Hawaii, the District Court
9 of the United States for Puerto Rico, the United States
10 District Court for the District of the Canal Zone and
11 the District Court of the Virgin Islands; in the United
12 States circuit courts of appeals, which include the
13 United States Court of Appeals for the District of
14 Columbia; and in the Supreme Court of the United States.

15 (2) Commissioners. The rules applicable to criminal
16 proceedings before commissioners shall apply to similar
17 proceedings before judges of the United States or of the
18 District of Columbia. They do not apply to criminal pro-
19 ceedings before other officers empowered to commit persons
20 charged with offenses against the United States.

21 (b) Proceedings.

22 (1) Removed Proceedings. These rules apply to crim-
23 inal prosecutions removed to the district courts of the
24 United States from state courts and govern all procedure
25 after removal.

Rule 57, Page 2

26 (2) Offenses Outside a District or State. 59 50

27 These rules apply to proceedings for offenses
28 committed upon the high seas or elsewhere out of
29 the jurisdiction of any particular state or
30 district, except that such proceedings may be had
31 in any district authorized by the Act of March
32 3, 1911, c. 231, s 41, 36 Stat. 1100, Judicial
33 Code s 41, 28 U. S. C. s 102.

34 (3) Peace Bonds. These rules do not alter
35 the power of judges of the United States or of
36 United States commissioners to hold to security
37 of the peace and for good behavior under the
38 Act of March 3, 1911, c. 231, s 270, 36 Stat.
39 1163, Judicial Code s 270, 28 U. S. C. s 392,
40 and under Revised Statutes s 4069, 50 U. S. C.
41 s 23, but in such cases the procedure shall
42 conform to these rules so far as they are appli-
43 cable.

44 (4) Trials before Commissioners. These rules
45 do not apply to proceedings before United States
46 commissioners and in the district courts under
47 the Act of October 9, 1940, c. 785, 54 Stat.
48 1058-1059, 18 U. S. C. ss 576-576d, relating
49 to petty offenses on federal reservations.

Rule 57, Page 3

57.50

50 (5) Other Proceedings. These rules are not
51 applicable to extradition and rendition of fugi-
52 tives; forfeiture of property for violation of a
53 statute of the United States; or the collection
54 of fines and penalties. They do not apply to pro-
55 ceedings under the Federal Juvenile Delinquency
56 Act so far as they are inconsistent with that act.
57 They do not apply to summary trials for offenses
58 against the navigation laws under Revised Statutes
59 ss 4300-4305, 33 U. S. C. ss 391-396, or to pro-
60 ceedings involving disputes between seamen under
61 Revised Statutes ss 4079-4081, as amended, 22
62 U. S. C. ss 256-258, or to proceedings for fishery
63 offenses under the Act of June 28, 1937, c. 392,
64 50 Stat. 325-327, 16 U. S. C. ss 772-7721.

65 (c) Application of Terms. As used in these rules
66 the term "State" includes District of Columbia, ter-
67 ritory and insular possession. "Law" includes statutes
68 and judicial decisions. "Act of Congress" includes any
69 act of Congress locally applicable to and in force in
70 the District of Columbia, in a territory or in an in-
71 sular possession. "District court" includes all district
72 courts named in subdivision (a), paragraph (1) of this
73 rule. "Civil action" refers to a civil action in a

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Rule 57, Page 4

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74 district court. "Oath" includes affirmation. "District
75 judge" includes a justice of the District Court of the
76 United States for the District of Columbia. "Senior
77 district judge" includes the chief justice of the District
78 Court of the United States for the District of Columbia.
79 "Judge of a circuit court of appeals" includes a justice
80 of the United States Court of Appeals for the District of
81 Columbia. "Senior circuit judge" includes the chief
82 justice of the United States Court of Appeals for the
83 District of Columbia. "Attorney for the government" means
84 the attorney general, an authorized assistant of the
85 attorney general, a United States attorney and an auth-
86 orized assistant of a United States attorney. The words
87 "demurrer," "motion to quash," "plea in abatement," "plea
88 in bar" and "special plea in bar" in any act of Congress
89 shall be construed to mean the motion raising a defense
90 or objection provided in Rule 12.

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1 Rule 58. Records. The clerk of the district court
2 and each United States commissioner shall keep such
3 records in criminal proceedings as the Director of the
4 Administrative Office of the United States Courts, with
5 the approval of the Judicial Conference of Senior Circuit
6 Judges, may prescribe.

PA 51

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1 Rule 59. Courts and Clerks. The circuit court of F.R.C.P. 52
2 appeals and the district court shall be deemed always
3 open for the purpose of filing any proper paper, of
4 issuing and returning process and of making motions
5 and orders. The clerk's office with the clerk or a
6 deputy in attendance shall be open during business
7 hours on all days except Sundays and legal holidays.

1 Rule 60. Rules of Court.

FK 53

2 (a) Rules by District Courts and Circuit Courts
3 of Appeals. Rules made by district courts and circuit
4 courts of appeals for the conduct of criminal pro-
5 ceedings shall not be inconsistent with these rules.
6 Copies of all rules made by a district court or by a
7 circuit court of appeals shall upon their promulgation
8 be furnished to the Administrative Office of the United
9 States Courts. The clerk of each court shall make
10 appropriate arrangements, subject to the approval of
11 the Director of the Administrative Office of the
12 United States Courts, to the end that all rules made
13 as provided herein be published promptly and that
14 copies of them be available to the public.

15 (b) Procedure Not Otherwise Specified. If no
16 procedure is specifically prescribed by rule, the
17 court may proceed in any lawful manner not inconsistent
18 with these rules or with any applicable statute.

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- 1 Rule 61. Forms. The forms contained in the Appendix p. 54
- 2 of Forms are illustrative and not mandatory.

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PR 55

1 Rule 62. Effective Date. These rules take effect
2 on the day which is 3 months subsequent to the adjourn-
3 ment of the second regular session of the 78th Congress,
4 but if that day is prior to September 1, 1944, then they
5 take effect on September 1, 1944. They govern all
6 criminal proceedings thereafter commenced and so far as
7 just and practicable all proceedings then pending.

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- 1 Rule 63. Title. These rules may be known and
- 2 cited as the Federal Rules of Criminal Procedure.

Rf 56



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APPENDIX OF FORMS

Table of Forms

Form

1. Indictment for Murder in the First Degree of Federal Officer
2. Indictment for Murder in the First Degree on Federal Reservation
3. Indictment for Mail Fraud
4. Indictment for Sabotage
5. Indictment for Internal Revenue Violation
6. Information for Food and Drug Violation
7. Warrant for Arrest of Defendant
8. Summons
9. Warrant of Removal
10. Search Warrant
11. Motion for the Return of Seized Property and the
Suppression of Evidence
12. Appearance Bond
13. Waiver of Indictment
14. Motion by Defendant to Dismiss the Indictment
15. Subpoena to Testify
16. Subpoena to Produce Document or Object
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18. Motion for New Trial
19. Motion in Arrest of Judgment
20. Judgment and Commitment
21. Notice of Appeal
22. Statement of Docket Entries

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Form 1. Indictment for Murder in the First Degree
of Federal Officer

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,
_____ DIVISION

United States of America)
)
) No. _____
) (Criminal Code s 273,
John Doe) 18 U. S. C. ss 452, 253)

The grand jury charges:

On or about the _____ day of _____, 19____, in the
_____ District of _____, John Doe with premeditation
shot and 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.

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Form 2. Indictment for Murder in the First Degree
on Federal Reservation

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,
_____ DIVISION

United States of America)
)
) No. _____
) (18 U. S. C. ss 451, 452)
John Doe)

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.

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Form 3. Indictment for Mail Fraud

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE _____ DISTRICT OF _____,
_____ DIVISION

United States of America)
)
) No. _____
) (Criminal Code s 215,
John Doe et al.) 18 U. S. C. s 338)

The grand jury charges:

i. 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 said pretenses,
representations and promises would be false when made: That
the XY Company owned a mine at or near San Bernardino,
California; that the said mine was in actual operation; that
gold ore was being obtained at said 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 per cent 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.

1. Insert last mailing date alleged.

Form 4. Indictment for Sabotage

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,
_____ DIVISION

United States of America)
)
) No. _____
) (50 U. S. C. § 103)
)
John Doe)

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 intent to injure, interfere with
or obstruct the United States in carrying on the war, wilfully
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.

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Form 5. Indictment for Internal Revenue Violation

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,
_____ DIVISION

United States of America)
)
) No. _____
) (26 U. S. C. § 2833)
)
v.)
John Doe)

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.

Form 6. Information for Food and Drug Violation

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,
_____ DIVISION

United States of America)	No. _____
v.)	(21 U. S. C. ss 331, 333, 342)
John Doe)	

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 city¹ of _____, _____ (State),
to the city¹ 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.

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

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Form 8. Summons

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,

_____ DIVISION

United States of America)	No. _____
v.)	
)	
John Doe)	

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.

Deputy Clerk.

This summons was received by me at _____
on _____.

Defendant.

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Form 9. Warrant of Removal

IN THE DISTRICT COURT OF THE UNITED STATES

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 the said
John Doe forthwith to the said _____ District of
_____ and there deliver him to the United States
Marshal for that District or to some other officer author-
ized to receive him.

United States District Judge.

Dated at _____ this _____ day of _____ 19 ____

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Form 10. Search Warrant (Under 18 U. S. C. s 287)

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 _____.

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Form 11. Motion for the Return of Seized Property and the
Suppression of Evidence

IN THE DISTRICT COURT OF THE UNITED STATES

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 _____ 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.

Form 12. Appearance Bond

IN THE DISTRICT COURT OF THE UNITED STATES

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 _____¹ is to appear in the District Court of the United States for the _____ District of _____² at _____³ in accordance with all orders and directions of the Court relating to the appearance of the defendant before the Court in the case of United States v. _____,³ 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 District Court of the United States for the _____ District of _____ against each debtor jointly and severally for the amount above stated together

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

² Insert place.

³ Change "Court" to "Commissioner" if necessary. See Note 1.

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: _____.

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 _____

Surety.

Sworn to and subscribed before me this _____ day of

_____ 19__ at _____.

_____.

These lines are to provide for additional justification if
the Commissioner or Court so directs.

Federal Rules of Criminal Procedure
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Form 13. Waiver of Indictment

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,

_____ DIVISION

United States of America)

v.)

John Doe)

No. _____

(18 U. S. C. s 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.

Federal Rules of Criminal Procedure
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Form 14. Motion by Defendant to Dismiss the Indictment

IN THE DISTRICT COURT OF THE UNITED STATES

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 _____.
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: _____

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Form 15. Subpoena to Testify

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,
_____ DIVISION

To _____:

You are hereby commanded to appear in the District Court of
the United States 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.

Form 16. Subpoena to Produce Document
or Object

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,
_____ DIVISION

To _____:

You are hereby commanded to appear in the District Court of
the United States 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.

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Form 17. Warrant for Arrest of Witness

IN THE DISTRICT COURT OF THE UNITED STATES

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 after having been served with subpoena to appear at the trial of the case of United States v. Roe on the _____ day of _____, 19__, he wilfully failed to appear.

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

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

Clerk.

By _____
Deputy Clerk.

Form 18. Motion for New Trial

IN THE DISTRICT COURT OF THE UNITED STATES

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.

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Form 19. Motion in Arrest of Judgment

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,
_____ DIVISION

United States of America)	No. _____
v.)	
)	
John Doe)	

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.

Federal Rules of Criminal Procedure
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Form 20. Judgment and Commitment

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,
_____ DIVISION

United States of America)
)
) No. _____
)
_____)

JUDGMENT AND COMMITMENT

On this _____ day of _____, 19____, came the attorney for the
government and the defendant appeared in person and _____
_____.

It is by the Court Considered and Adjudged that the defendant has been
convicted upon his plea of _____
of the offense of _____
as charged _____;

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 by the Court Considered and Adjudged that the defendant is guilty
as charged and convicted.

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.

It is by the Court Ordered and 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 Further Ordered and Adjudged that _____⁵

It is Further 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 shall serve as the commitment of the defendant.

United States District Judge.

⁶
The Court recommends commitment to:

Clerk.

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.

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

(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 , to remain

in detention pending appeal.

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.

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Form 21. Notice of Appeal

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE _____ DISTRICT OF _____,

_____ DIVISION

United States of America)	No. _____
)	
v.)	
)	
John Doe)	

Name and address of appellant:

Name and address of appellant's attorney:

Offense:

Concise statement of judgment or order, giving date, and any sentence:

Name of institution where now confined, if not on bail:

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the _____ Circuit from the above-stated judgment.

Dated: _____
Appellant.¹

¹
Or "Appellant's Attorney" or "Clerk" as the case may be.

Note.--Compare Form of Notice of Appeal under Rule 3, Form No. 1, annexed to Rules of Criminal Procedure after Plea of Guilty, Verdict or Finding of Guilt, following 18 U. S. C. s 688. See Rule 39 (a) (1) (Taking Appeal; and Petition for Writ of Certiorari--Taking Appeal: Notice of Appeal) Federal Rules of Criminal Procedure.

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