

FEDERAL RULES OF CRIMINAL PROCEDURE

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FEDERAL RULES OF CRIMINAL PROCEDURE

I. SCOPE, PURPOSE, AND CONSTRUCTION.

RULE 1. SCOPE.

These rules govern the procedure in the courts of the United States and before United States commissioners in all criminal proceedings, with the exceptions stated in Rule 54.

RULE 2. PURPOSE AND CONSTRUCTION.

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

II. PRELIMINARY PROCEEDINGS.

RULE 3. THE COMPLAINT.

The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a commissioner or other officer empowered to commit persons charged with offenses against the United States.

RULE 4. WARRANT OR SUMMONS UPON COMPLAINT.

(a) ISSUANCE. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a

warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. Upon the request of the attorney for the government a summons instead of a warrant shall issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue.

(b) FORM.

(1) *Warrant*. The warrant shall be signed by the commissioner and shall contain the name of the defendant or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall describe the offense charged in the complaint. It shall command that the defendant be arrested and brought before the nearest available commissioner.

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

(c) EXECUTION OR SERVICE; AND RETURN.

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

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

(3) *Manner*. The warrant shall be executed by the arrest of the defendant. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the defendant as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall then inform the defendant of the offense charged and of the fact that a warrant has been issued. The summons shall be served upon a

defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by mailing it to the defendant's last known address.

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

RULE 5. PROCEEDINGS BEFORE THE COMMISSIONER.

(a) *APPEARANCE BEFORE THE COMMISSIONER.* An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith.

(b) *STATEMENT BY THE COMMISSIONER.* The commissioner shall inform the defendant of the complaint against him, of his right to retain counsel and of his right to have a preliminary examination. He shall also inform

the defendant that he is not required to make a statement and that any statement made by him may be used against him. The commissioner shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in these rules.

(c) **PRELIMINARY EXAMINATION.** The defendant shall not be called upon to plead. If the defendant waives preliminary examination, the commissioner shall forthwith hold him to answer in the district court. If the defendant does not waive examination, the commissioner shall hear the evidence within a reasonable time. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. If from the evidence it appears to the commissioner that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the commissioner shall forthwith hold him to answer in the district court; otherwise the commissioner shall discharge him. The commissioner shall admit the defendant to bail as provided in these rules. After concluding the proceeding the commissioner shall transmit forthwith to the clerk of the district court all papers in the proceeding and any bail taken by him.

III. INDICTMENT AND INFORMATION.

RULE 6. THE GRAND JURY.

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

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

(1) *Challenges.* The attorney for the government or a defendant who has been held to answer in the district court may challenge the array of jurors on the ground that the grand jury was not selected, drawn or

summoned in accordance with law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the court.

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

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

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

(e) **SECRECY OF PROCEEDINGS AND DISCLOSURE.** Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the attorneys for the government for use in the performance of their duties. Otherwise a juror, attorney, interpreter or stenographer may disclose matters occurring

before the grand jury only when so directed by the court preliminarily to or in connection with a judicial proceeding or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury. No obligation of secrecy may be imposed upon any person except in accordance with this rule. The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and in that event the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

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

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

RULE 7. THE INDICTMENT AND THE INFORMATION.

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

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

(c) **NATURE AND CONTENTS.** The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the attorney for the government. It need not contain a formal commencement, a formal conclusion or any other matter not necessary to such statement. Allegations made in one count may be incorporated by reference in another count. It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that he committed it by one or more specified means. The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice.

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

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

(f) **BILL OF PARTICULARS.** The court for cause may direct the filing of a bill of particulars. A motion for a bill of particulars may be made only within ten days after arraignment or at such other time before or after arraignment.

ment as may be prescribed by rule or order. A bill of particulars may be amended at any time subject to such conditions as justice requires.

RULE 8. JOINDER OF OFFENSES AND OF DEFENDANTS.

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

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

RULE 9. WARRANT OR SUMMONS UPON INDICTMENT OR INFORMATION.

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

(b) FORM.

(1) *Warrant.* The form of the warrant shall be as provided in Rule 4 (b) (1) except that it shall

be signed by the clerk, it shall describe the offense charged in the indictment or information and it shall command that the defendant be arrested and brought before the court. The amount of bail may be fixed by the court and endorsed on the warrant.

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

(c) EXECUTION OR SERVICE; AND RETURN.

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

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

IV. ARRAIGNMENT, AND PREPARATION FOR TRIAL.

RULE 10. ARRAIGNMENT.

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

RULE 11. PLEAS.

A defendant may plead not guilty, guilty or, with the consent of the court, *nolo contendere*. The court may refuse to accept a plea of guilty, and shall not accept the plea without first determining that the plea is made voluntarily with understanding of the nature of the charge. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

RULE 12. PLEADINGS AND MOTIONS BEFORE TRIAL; DEFENSES AND OBJECTIONS.

(a) PLEADINGS AND MOTIONS. Pleadings in criminal proceedings shall be the indictment and the information, and the pleas of not guilty, guilty and *nolo contendere*. All other pleas, and demurrers and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these rules.

(b) THE MOTION RAISING DEFENSES AND OBJECTIONS.

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

(2) *Defenses and Objections Which Must Be Raised.* Defenses and objections based on defects in

the institution of the prosecution or in the indictment or information other than that it fails to show jurisdiction in the court or to charge an offense may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment or information to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.

(3) *Time of Making Motion.* The motion shall be made before the plea is entered, but the court may permit it to be made within a reasonable time thereafter.

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

(5) *Effect of Determination.* If a motion is determined adversely to the defendant he shall be permitted to plead if he had not previously pleaded. A plea previously entered shall stand. If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new indictment or information. Nothing in this rule shall be deemed to affect the provisions of any act of Congress relating to periods of limitations.

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RULE 13. TRIAL TOGETHER OF INDICTMENTS OR INFORMATIONS.

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

RULE 14. RELIEF FROM PREJUDICIAL JOINDER.

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires.

RULE 15. DEPOSITIONS.

(a) WHEN TAKEN. If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing, that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court at any time after the filing of an indictment or information may upon motion of a defendant and notice to the parties order that his testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness.

(b) NOTICE OF TAKING. The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and

address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.

(c) DEFENDANT'S COUNSEL AND PAYMENT OF EXPENSES. If a defendant is without counsel the court shall advise him of his right and assign counsel to represent him unless the defendant elects to proceed without counsel or is able to obtain counsel. If it appears that a defendant at whose instance a deposition is to be taken cannot bear the expense thereof, the court may direct that the expenses of travel and subsistence of the defendant's attorney for attendance at the examination shall be paid by the government. In that event the marshal shall make payment accordingly.

(d) HOW TAKEN. A deposition shall be taken in the manner provided in civil actions. The court at the request of a defendant may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.

(e) USE. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears: That the witness is dead; or that the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(f) OBJECTIONS TO ADMISSIBILITY. Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

RULE 16. DISCOVERY AND INSPECTION.

Upon motion of a defendant at any time after the filing of the indictment or information, the court may order the attorney for the government to permit the defendant to inspect and copy or photograph designated books, papers, documents or tangible objects, obtained from or belonging to the defendant or obtained from others by seizure or by process, upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable. The order shall specify the time, place and manner of making the inspection and of taking the copies or photographs and may prescribe such terms and conditions as are just.

RULE 17. SUBPOENA.

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

(b) INDIGENT DEFENDANTS. The court or a judge thereof may order at any time that a subpoena be issued upon motion or request of an indigent defendant. The motion or request shall be supported by affidavit in which the defendant shall state the name and address of each witness and the testimony which he is expected by the defendant to give if subpoenaed, and shall show that the evidence of the witness is material to the defense, that the defendant cannot safely go to trial without the witness and that the defendant does not have sufficient means and is actually unable to pay the fees of the wit-

ness. If the court or judge orders the subpoena to be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the government.

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

(d) **SERVICE.** A subpoena may be served by the marshal, by his deputy or by any other person who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to him the fee for 1 day's attendance and the mileage allowed by law.

(e) **PLACE OF SERVICE.**

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

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

(f) **FOR TAKING DEPOSITION; PLACE OF EXAMINATION.**

(1) *Issuance.* An order to take a deposition authorizes the issuance by the clerk of the court for the

district in which the deposition is to be taken of subpoenas for the persons named or described therein.

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

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

V. VENUE.

RULE 18. DISTRICT AND DIVISION.

Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed, but if the district consists of two or more divisions the trial shall be had in a division in which the offense was committed.

RULE 19. TRANSFER WITHIN THE DISTRICT.

In a district consisting of two or more divisions the arraignment may be had, a plea entered, the trial conducted or sentence imposed, if the defendant consents, in any division and at any time.

RULE 20. TRANSFER FROM THE DISTRICT FOR PLEA AND SENTENCE.

A defendant arrested in a district other than that in which the indictment or information is pending against him may state in writing, after receiving a copy of the indictment or information, that he wishes to plead guilty or *nolo contendere*, to waive trial in the district in which

the indictment or information is pending and to consent to disposition of the case in the district in which he was arrested, subject to the approval of the United States attorney for each district. Upon receipt of the defendant's statement and of the written approval of the United States attorneys, the clerk of the court in which the indictment or information is pending shall transmit the papers in the proceeding or certified copies thereof to the clerk of the court for the district in which the defendant is held and the prosecution shall continue in that district. If after the proceeding has been transferred the defendant pleads not guilty, the clerk shall return the papers to the court in which the prosecution was commenced and the proceedings shall be restored to the docket of that court. The defendant's statement shall not be used against him unless he was represented by counsel when it was made.

RULE 21. TRANSFER FROM THE DISTRICT OR DIVISION FOR TRIAL.

(a) **FOR PREJUDICE IN THE DISTRICT OR DIVISION.** The court upon motion of the defendant shall transfer the proceeding as to him to another district or division if the court is satisfied that there exists in the district or division where the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial in that district or division.

(b) **OFFENSE COMMITTED IN TWO OR MORE DISTRICTS OR DIVISIONS.** The court upon motion of the defendant shall transfer the proceeding as to him to another district or division, if it appears from the indictment or information or from a bill of particulars that the offense was committed in more than one district or division and if the court is satisfied that in the interest of justice the proceeding should be transferred to another district or division in which the commission of the offense is charged.

(c) **PROCEEDINGS ON TRANSFER.** When a transfer is ordered the clerk shall transmit to the clerk of the court to

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which the proceeding is transferred all papers in the proceeding or duplicates thereof and any bail taken, and the prosecution shall continue in that district or division.

RULE 22. TIME OF MOTION TO TRANSFER.

A motion to transfer under these rules may be made at or before arraignment or at such other time as the court or these rules may prescribe.

VI. TRIAL.

RULE 23. TRIAL BY JURY OR BY THE COURT.

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

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

(c) TRIAL WITHOUT A JURY. In a case tried without a jury the court shall make a general finding and shall in addition on request find the facts specially.

RULE 24. TRIAL JURORS.

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

(b) PEREMPTORY CHALLENGES. If the offense charged is punishable by death, each side is entitled to 20 peremptory challenges. If the offense charged is punishable by

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

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

RULE 25. JUDGE; DISABILITY.

If by reason of absence from the district, death, sickness or other disability the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge regularly sitting in or assigned to the court may perform those duties; but if such other judge is satis-

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fied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

RULE 26. EVIDENCE.

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

RULE 27. PROOF OF OFFICIAL RECORD.

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

RULE 28. EXPERT WITNESSES.

The court may order the defendant or the government or both to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert witness shall not be appointed by the court unless he consents to act. A witness so appointed shall be informed of his duties by the court at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his findings, if any, and may thereafter be called to testify by the court or by any party. He shall be subject to cross-examination by each party. The court may determine the reasonable compensation of such a witness and direct its payment out of such funds as may be provided by law. The parties also may call expert witnesses of their own selection.

RULE 29. MOTION FOR ACQUITTAL.

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

(b) RESERVATION OF DECISION ON MOTION. If a motion for judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict. If the motion is denied and the case is submitted to the jury, the motion may be renewed within 5 days after the jury is discharged and may include in the alternative a motion for a new trial. If a verdict of guilty is returned the court may on such motion set aside the verdict and order a new trial or enter judgment of acquittal. If no verdict is returned the court may order a new trial or enter judgment of acquittal.

RULE 30. INSTRUCTIONS.

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed.

No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

RULE 31. VERDICT.

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

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

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

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

VII. JUDGMENT.

RULE 32. SENTENCE AND JUDGMENT.

(a) SENTENCE. Sentence shall be imposed without unreasonable delay. Pending sentence the court may commit the defendant or continue or alter the bail. Before imposing sentence the court shall afford the defendant an opportunity to make a statement in his own behalf and to present any information in mitigation of punishment.

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

(c) **PRESENTENCE INVESTIGATION.**

(1) *When Made.* The probation service of the court shall make a presentence investigation and report to the court before the imposition of sentence or the granting of probation unless the court otherwise directs. The report shall not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or has been found guilty.

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

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

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

RULE 33. NEW TRIAL.

The court may grant a new trial to a defendant if required in the interest of justice. If trial was by the court without a jury the court may vacate the judgment if

entered, take additional testimony and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within 5 days after verdict or finding of guilty or within such further time as the court may fix during the 5-day period.

RULE 34. ARREST OF JUDGMENT.

The court shall arrest judgment if the indictment or information does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 5 days after determination of guilt or within such further time as the court may fix during the 5-day period.

RULE 35. CORRECTION OR REDUCTION OF SENTENCE.

The court may correct an illegal sentence at any time. The court may reduce a sentence within 60 days after the sentence is imposed, or within 60 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 60 days after receipt of an order of the Supreme Court denying an application for a writ of certiorari.

RULE 36. CLERICAL MISTAKES.

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

VIII. APPEAL.

RULE 37. TAKING APPEAL; AND PETITION FOR WRIT OF CERTIORARI.

(a) TAKING APPEAL.

(1) *Notice of Appeal.* An appeal permitted by law from a district court to the Supreme Court or to a circuit court of appeals is taken by filing with the clerk of the district court a notice of appeal in duplicate. Petitions for allowance of appeal, citations and assignments of error in cases governed by these rules are abolished. The notice of appeal shall set forth the title of the case, the name and address of the appellant and of appellant's attorney, a general statement of the offense, a concise statement of the judgment or order, giving its date and any sentence imposed, the place of confinement if the defendant is in custody and a statement that the appellant appeals from the judgment or order. If the appeal is directly to the Supreme Court, the notice shall be accompanied by a jurisdictional statement as prescribed by the rules of the Supreme Court. The notice of appeal shall be signed by the appellant or appellant's attorney, or by the clerk if the notice is prepared by the clerk as provided in paragraph (2) of this subdivision. The duplicate notice of appeal and a statement of the docket entries shall be forwarded immediately by the clerk of the district court to the clerk of the appellate court. Notification of the filing of the notice of appeal shall be given by the clerk by mailing copies thereof to adverse parties, but his failure so to do does not affect the validity of the appeal.

(2) *Time for Taking Appeal.* An appeal by a defendant may be taken within 10 days after entry of the judgment or order appealed from, but if a motion for a new trial or in arrest of judgment has been made within the 10-day period an appeal from a judgment of conviction may be taken within 10

days after entry of the order denying the motion. When a court after trial imposes sentence upon a defendant not represented by counsel, the defendant shall be advised of his right to appeal and if he so requests, the clerk shall prepare and file forthwith a notice of appeal on behalf of the defendant. An appeal by the government when authorized by statute may be taken within 30 days after entry of the judgment or order appealed from.

(b) PETITION FOR REVIEW ON WRIT OF CERTIORARI.

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

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

RULE 38. STAY OF EXECUTION, AND RELIEF PENDING REVIEW.

(a) STAY OF EXECUTION.

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

(2) *Imprisonment.* A sentence of imprisonment shall be stayed if an appeal is taken and the defendant elects not to commence service of the sentence or is admitted to bail.

(3) *Fine.* A sentence to pay a fine or a fine and costs, if an appeal is taken, may be stayed by the district court or by the circuit court of appeals upon such terms as the court deems proper. The court

may require the defendant pending appeal to deposit the whole or any part of the fine and costs in the registry of the district court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make any appropriate order to restrain the defendant from dissipating his assets.

(4) *Probation.* An order placing the defendant on probation shall be stayed if an appeal is taken.

(b) BAIL. Admission to bail upon appeal or certiorari shall be as provided in these rules.

(c) APPLICATION FOR RELIEF PENDING REVIEW. If application is made to a circuit court of appeals or to a circuit judge or to a justice of the Supreme Court for bail pending appeal or for an extension of time for docketing the record on appeal or for any other relief which might have been granted by the district court, the application shall be upon notice and shall show that application to the court below or a judge thereof is not practicable or that application has been made and denied, with the reasons given for the denial, or that the action on the application did not afford the relief to which the applicant considers himself to be entitled.

RULE 39. SUPERVISION OF APPEAL.

(a) SUPERVISION IN APPELLATE COURT. The supervision and control of the proceedings on appeal shall be in the appellate court from the time the notice of appeal is filed with its clerk, except as otherwise provided in these rules. The appellate court may at any time entertain a motion to dismiss the appeal, or for directions to the district court, or to modify or vacate any order made by the district court or by any judge in relation to the prosecution of the appeal, including any order fixing or denying bail.

(b) THE RECORD ON APPEAL.

(1) *Preparation and Form.* The rules and practice governing the preparation and form of the record

on appeal in civil actions shall apply to the record on appeal in all criminal proceedings, except as otherwise provided in these rules.

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

(c) **DOCKETING OF APPEAL AND RECORD ON APPEAL.** The record on appeal shall be filed with the appellate court and the proceeding there docketed within 40 days from the date the notice of appeal is filed in the district court, but if more than one appeal is taken from the same judgment to the same appellate court, the district court may prescribe the time for filing and docketing, which in no event shall be less than 40 days from the date the first notice of appeal is filed. In all cases the district court or the appellate court or, if the appellate court is not in session, any judge thereof may for cause shown extend the time for filing and docketing.

(d) **SETTING THE APPEAL FOR ARGUMENT.** Unless good cause is shown for an earlier hearing, the appellate court shall set the appeal for argument on a date not less than 30 days after the filing in that court of the record on appeal and as soon after the expiration of that period as the state of the calendar will permit. Preference shall be given to appeals in criminal cases over appeals in civil cases.

IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS.

RULE 40. COMMITMENT TO ANOTHER DISTRICT; REMOVAL.

(a) **ARREST IN NEARBY DISTRICT.** If a person is arrested on a warrant issued upon a complaint in a district other than the district of the arrest but in the same state, or on a warrant issued upon a complaint in another state but at a place less than 100 miles from the place of arrest,

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

(b) ARREST IN DISTANT DISTRICT.

(1) *Appearance before Commissioner or Judge.*

If a person is arrested upon a warrant issued in another state at a place 100 miles or more from the place of arrest, or without a warrant for an offense committed in another state at a place 100 miles or more from the place of arrest, he shall be taken without unnecessary delay before the nearest available commissioner or a nearby judge of the United States in the district in which the arrest was made.

(2) *Statement by Commissioner or Judge.* The commissioner or judge shall inform the defendant of the charge against him, of his right to retain counsel and of his right to have a hearing or to waive a hearing by signing a waiver before the commissioner or judge. The commissioner or judge shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him, shall allow him reasonable opportunity to consult counsel and shall admit him to bail as provided in these rules.

(3) *Hearing; Warrant of Removal or Discharge.* The defendant shall not be called upon to plead. If the defendant waives hearing, the judge shall issue a warrant of removal to the district where the prosecution is pending. If the defendant does not waive hearing, the commissioner or judge shall hear the evidence. If the commissioner hears the evidence he shall report his findings and recommendations to the judge. At the hearing the defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. If it appears from the commissioner's report or from the evidence adduced before the judge that sufficient ground has been shown for ordering the removal of the defendant, the judge shall issue a warrant of removal to the district where the prosecution is pending. Otherwise he shall discharge the defendant. If the prosecution is by indictment, a warrant of removal shall issue upon production of a certified copy of the indictment and upon proof that the defendant is the person named in the indictment. If the prosecution is by information or complaint, a warrant of removal shall issue upon the production of a certified copy of the information or complaint and upon proof that there is probable cause to believe that the defendant is guilty of the offense charged. If a warrant of removal is issued, the defendant shall be admitted to bail for appearance in the district in which the prosecution is pending in accordance with Rule 46. After a defendant is held for removal or is discharged, the papers in the proceeding and any bail taken shall be transmitted to the clerk of the district court in which the prosecution is pending.

(4) *Hearing and Removal on Arrest without a Warrant.* If a person is arrested without a warrant, the hearing may be continued for a reasonable time, upon a showing of probable cause to believe that he is guilty of the offense charged; but he may not be

removed as herein provided unless a warrant issued in the district in which the offense was committed is presented.

RULE 41. SEARCH AND SEIZURE.

(a) AUTHORITY TO ISSUE WARRANT. A search warrant authorized by this rule may be issued by a judge of the United States or of a state or territorial court of record or by a United States commissioner within the district wherein the property sought is located.

(b) GROUNDS FOR ISSUANCE. A warrant may be issued under this rule to search for and seize any property

(1) Stolen or embezzled in violation of the laws of the United States; or

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

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

(c) ISSUANCE AND CONTENTS. A warrant shall issue only on affidavit sworn to before the judge or commissioner and establishing the grounds for issuing the warrant. If the judge or commissioner is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The warrant shall be directed to a civil officer of the United States authorized to enforce or assist in enforcing any law thereof or to a person so authorized by the President of the United States. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search forthwith the person or place named for the property specified. The

warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time. It shall designate the district judge or the commissioner to whom it shall be returned.

(d) EXECUTION AND RETURN WITH INVENTORY. The warrant may be executed and returned only within 10 days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge or commissioner shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) MOTION FOR RETURN OF PROPERTY AND TO SUPPRESS EVIDENCE. A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. The judge shall receive evidence on any issue of

fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the district where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.

(f) RETURN OF PAPERS TO CLERK. The judge or commissioner who has issued a search warrant shall attach to the warrant a copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk of the district court for the district in which the property was seized.

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

RULE 42. CRIMINAL CONTEMPT.

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

(b) DISPOSITION UPON NOTICE AND HEARING. A criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable

time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest. The defendant is entitled to a trial by jury in any case in which an act of Congress so provides. He is entitled to admission to bail as provided in these rules. If the contempt charged involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial or hearing except with the defendant's consent. Upon a verdict or finding of guilt the court shall enter an order fixing the punishment.

X. GENERAL PROVISIONS.

RULE 43. PRESENCE OF THE DEFENDANT.

The defendant shall be present at the arraignment, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by these rules. In prosecutions for offenses not punishable by death, the defendant's voluntary absence after the trial has been commenced in his presence shall not prevent continuing the trial to and including the return of the verdict. A corporation may appear by counsel for all purposes. In prosecutions for offenses punishable by fine or by imprisonment for not more than one year or both, the court, with the written consent of the defendant, may permit arraignment, plea, trial and imposition of sentence in the defendant's absence. The defendant's presence is not required at a reduction of sentence under Rule 35.

RULE 44. ASSIGNMENT OF COUNSEL.

If the defendant appears in court without counsel, the court shall advise him of his right to counsel and assign

counsel to represent him at every stage of the proceeding unless he elects to proceed without counsel or is able to obtain counsel.

RULE 45. TIME.

(a) COMPUTATION. In computing any period of time the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday. When a period of time prescribed or allowed is less than 7 days, intermediate Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

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

(c) UNAFFECTED BY EXPIRATION OF TERM. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the expiration of a term of court. The expiration of a term of court in no way affects the power of a court to do any act in a criminal proceeding.

(d) FOR MOTIONS; AFFIDAVITS. A written motion, other than one which may be heard *ex parte*, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing unless a different

period is fixed by rule or order of the court. For cause shown such an order may be made on *ex parte* application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not less than 1 day before the hearing unless the court permits them to be served at a later time.

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

RULE 46. BAIL.

(a) **RIGHT TO BAIL.**

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

(2) *Upon Review.* Bail may be allowed pending appeal or certiorari only if it appears that the case involves a substantial question which should be determined by the appellate court. Bail may be allowed by the trial judge or by the appellate court or by any judge thereof or by the circuit justice. The court or the judge or justice allowing bail may at any time revoke the order admitting the defendant to bail.

(b) **BAIL FOR WITNESS.** If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure his presence by subpoena, the court or commissioner may require him to give bail for his appearance as a witness, in an amount fixed by the court or commissioner. If the person fails to give bail the court or com-

missioner may commit him to the custody of the marshal pending final disposition of the proceeding in which the testimony is needed, may order his release if he has been detained for an unreasonable length of time and may modify at any time the requirement as to bail.

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

(d) **FORM, AND PLACE OF DEPOSIT.** A person required or permitted to give bail shall execute a bond for his appearance. One or more sureties may be required, cash or bonds or notes of the United States may be accepted and in proper cases no security need be required. Bail given originally on appeal shall be deposited in the registry of the district court from which the appeal is taken.

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

(f) **FORFEITURE.**

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

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

(3) *Enforcement.* When a forfeiture has not been set aside, the court shall on motion enter a

judgment of default and execution may issue thereon. By entering into a bond the obligors submit to the jurisdiction of the district court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the obligors to their last known addresses.

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

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

RULE 47. MOTIONS.

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

RULE 48. DISMISSAL.

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

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

RULE 49. SERVICE AND FILING OF PAPERS.

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

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

(c) **NOTICE OF ORDERS.** Immediately upon the entry of an order made on a written motion subsequent to arraignment the clerk shall mail to each party affected thereby a notice thereof and shall make a note in the docket of the mailing.

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

RULE 50. CALENDARS.

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

RULE 51. EXCEPTIONS UNNECESSARY.

Exceptions to rulings or orders of the court are unnecessary and for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought,

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makes known to the court the action which he desires the court to take or his objection to the action of the court and the grounds therefor; but if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.

RULE 52. HARMLESS ERROR AND PLAIN ERROR.

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

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

RULE 53. REGULATION OF CONDUCT IN THE COURT ROOM.

The taking of photographs in the court room during the progress of judicial proceedings or radio broadcasting of judicial proceedings from the court room shall not be permitted by the court.

RULE 54. APPLICATION AND EXCEPTION.

(a) COURTS AND COMMISSIONERS.

(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, the District Court of the United States for Puerto Rico and the District Court of the Virgin Islands; 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. The rules governing proceedings after verdict or finding of guilt or plea of guilty apply in the United States District Court for the District of the Canal Zone.

(2) *Commissioners.* The rules applicable to criminal proceedings before commissioners apply to sim-

ilar proceedings before judges of the United States or of the District of Columbia. They do not apply to criminal proceedings before other officers empowered to commit persons charged with offenses against the United States.

(b) PROCEEDINGS.

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

(2) *Offenses Outside a District or State.* These rules apply to proceedings for offenses committed upon the high seas or elsewhere out of the jurisdiction of any particular state or district, except that such proceedings may be had in any district authorized by the Act of March 3, 1911, c. 231, § 41, 36 Stat. 1100, Judicial Code § 41, 28 U. S. C. § 102.

(3) *Peace Bonds.* These rules do not alter the power of judges of the United States or of United States commissioners to hold to security of the peace and for good behavior under the Act of March 3, 1911, c. 231, § 270, 36 Stat. 1163, Judicial Code § 270, 28 U. S. C. § 392, and under Revised Statutes § 4069, 50 U. S. C. § 23, but in such cases the procedure shall conform to these rules so far as they are applicable.

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

(5) *Other Proceedings.* These rules are not applicable to extradition and rendition of fugitives; forfeiture of property for violation of a statute of the United States; or the collection of fines and penalties.

They do not apply to proceedings under the Federal Juvenile Delinquency Act so far as they are inconsistent with that Act. They do not apply to summary trials for offenses against the navigation laws under Revised Statutes §§ 4300-4305, 33 U. S. C. §§ 391-396, or to proceedings involving disputes between seamen under Revised Statutes §§ 4079-4081, as amended, 22 U. S. C. §§ 256-258, or to proceedings for fishery offenses under the Act of June 28, 1937, c. 392, 50 Stat. 325-327, 16 U. S. C. §§ 772-772i, or to proceedings against a witness in a foreign country under the Act of July 3, 1926, c. 762, 44 Stat. 835, 26 U. S. C. §§ 711-718.

(c) APPLICATION OF TERMS. As used in these rules the term "State" includes District of Columbia, territory and insular possession. "Law" includes statutes and judicial decisions. "Act of Congress" includes any act of Congress locally applicable to and in force in the District of Columbia, in a territory or in an insular possession. "District court" includes all district courts named in subdivision (a), paragraph (1) of this rule. "Civil action" refers to a civil action in a district court. "Oath" includes affirmations. "District judge" includes a justice of the District Court of the United States for the District of Columbia. "Judge of a circuit court of appeals" includes a justice of the United States Court of Appeals for the District of Columbia. "Senior circuit judge" includes the chief justice of the United States Court of Appeals for the District of Columbia. "Attorney for the government" means the attorney general, an authorized assistant of the attorney general, a United States attorney and an authorized assistant of a United States attorney. The words "demurrer," "motion to quash," "plea in abatement," "plea in bar" and "special plea in bar," or words to the same effect, in any act of Congress shall be construed to mean the motion raising a defense or objection provided in Rule 12.

RULE 55. RECORDS.

The clerk of the district court and each United States commissioner shall keep such records in criminal proceedings as the Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of Senior Circuit Judges, may prescribe.

RULE 56. COURTS AND CLERKS.

The circuit court of appeals and the district court shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Sundays and legal holidays.

RULE 57. RULES OF COURT.

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

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

RULE 58. FORMS.

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

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RULE 59. EFFECTIVE DATE.

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

RULE 60. TITLE.

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

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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.
<i>v.</i>		(18 U. S. C. §§ 452, 253)
JOHN DOE		

The grand jury charges:

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

A True Bill.

.....,

Foreman.

.....,
United States Attorney.

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.
<i>v.</i>		(18 U. S. C. §§ 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 (exclu-
sive) (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 § 215, 18 U. S. C. § 338)
v.	
JOHN DOE ET AL.	

The grand jury charges:

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

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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)
v.	
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 reason to believe that his act might injure, interfere with or obstruct the United States in preparing for or 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.

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.

RULES OF CRIMINAL PROCEDURE. 881

FORM 6. INDICTMENT FOR INTERSTATE TRANSPORTATION OF STOLEN MOTOR VEHICLE.

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

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

The grand jury charges:

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

A True Bill.

.....,

Foreman.

.....,
United States Attorney.

FORM 7. INDICTMENT FOR RECEIVING STOLEN MOTOR VEHICLE.

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

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

The grand jury charges:

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

A True Bill.

.....,

Foreman.

.....,
United States Attorney.

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FORM 8. INDICTMENT FOR IMPERSONATION OF FEDERAL OFFICER.

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

UNITED STATES OF AMERICA	} No. (18 U. S. C. § 76)
v.	
JOHN DOE	

The grand jury charges:

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

A True Bill.

.....,

Foreman.

.....,

United States Attorney.

FORM 9. INDICTMENT FOR OBTAINING MONEY BY IMPERSONATION OF FEDERAL OFFICER.

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

UNITED STATES OF AMERICA	} No. (18 U. S. C. § 76)
v.	
JOHN DOE	

The grand jury charges:

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

A True Bill.

.....,

Foreman.

.....,

United States Attorney.

RULES OF CRIMINAL PROCEDURE. 883

FORM 10. INDICTMENT FOR PRESENTING FRAUDULENT CLAIM AGAINST THE UNITED STATES.

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

UNITED STATES OF AMERICA	}	No.
v.		(18 U. S. C. § 80)
JOHN DOE		

The grand jury charges:

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

A True Bill.

.....,
Foreman.

.....,
United States Attorney.

FORM 11. 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. §§ 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 preclude a motion for a bill of particulars and not because such a statement is an essential fact to be alleged.

884 RULES OF CRIMINAL PROCEDURE.

FORM 12. WARRANT FOR ARREST OF DEFENDANT.

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

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

To: ¹

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

.....
Clerk.
By
Deputy Clerk.

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

FORM 13. SUMMONS.

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

UNITED STATES OF AMERICA }
v. } No.
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.
By
Deputy Clerk.

This summons was received by me at on
.....
Defendant.

RULES OF CRIMINAL PROCEDURE. 885

FORM 14. 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 John Doe forthwith to
 the District of and
 there deliver him to the United States Marshal for that District or
 to some other officer authorized to receive him.

.....,
United States District Judge.

Dated at this day of
 19.....

FORM 15. SEARCH WARRANT (UNDER 18 U. S. C. § 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 prop-
 erty, 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

886 RULES OF CRIMINAL PROCEDURE.

FORM 16. 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 17. 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 is to appear in the District Court of the United States¹ for the District of at² in accordance with all orders and directions of the Court³ relating to the appearance of the defendant before the Court³ in the case of *United States v.*, File number; and if the defendant appears as ordered, then this bond is to be void, but if the defendant fails to perform this condition payment of the amount of the bond shall be due forthwith. If the bond is forfeited and if the forfeiture is not set aside or remitted, judgment may be entered upon motion in the District Court of the United States for the District of

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.

RULES OF CRIMINAL PROCEDURE. 887

..... against each debtor jointly and severally for the amount above stated together with interest and costs, and execution may be issued or payment secured as provided by the Federal Rules of Criminal Procedure and by other laws of the United States.

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

.....,
Name of Defendant. *Address.*

.....,
Name of Surety. *Address.*

.....,
Name of Surety. *Address.*

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

.....

Approved:

JUSTIFICATION OF SURETIES

I, the undersigned surety, on oath say that I reside at; and that my net worth is the sum of Dollars (\$.....).

I further say that

⁴

.....,
Surety.

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

.....

⁴ These lines are to provide for additional justification if the Commissioner or Court so directs.

888 RULES OF CRIMINAL PROCEDURE.

FORM 18. WAIVER OF INDICTMENT.

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

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

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

.....,
Defendant.

Witness.

Counsel for Defendant.

FORM 19. 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. No.
 JOHN DOE

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 20. 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 21. 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.

890 RULES OF CRIMINAL PROCEDURE.

FORM 22. 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 he wilfully failed to appear after having been served with subpoena to appear at the trial of the case of *United States v. Roe* on the day of, 19....

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

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

.....,
Clerk.

By
Deputy Clerk.

RULES OF CRIMINAL PROCEDURE. 891

FORM 23. MOTION FOR NEW TRIAL.

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 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.

FORM 24. 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.

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FORM 25. JUDGMENT AND COMMITMENT.

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

UNITED STATES OF AMERICA }
v. } No.
..... }

JUDGMENT AND COMMITMENT

On this day of, 19...., came the attorney
for the government and the defendant appeared in person and ¹

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

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

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

It is Adjudged that ⁵

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

.....,
United States District Judge.

The Court recommends commitment to: ⁶

.....,
Clerk.

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

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

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

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

⁵ Enter any order with respect to suspension and probation.

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

RULES OF CRIMINAL PROCEDURE. 893

[Endorsement]

RETURN

I have executed the within Judgment and Commitment as follows:
 Defendant delivered on to
 Defendant noted appeal on
 Defendant released on
 Defendant elected, on, not to commence
 service of the sentence.

Defendant's appeal determined on
 Defendant delivered on to
 at, the institution designated by the Attor-
 ney General, with a certified copy of the within Judgment and
 Commitment.

.....,
United States Marshal.

FORM 26. 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. 688. See Rule 37 (a) (1) (Taking Appeal; and Petition for Writ of Certiorari—Taking Appeal: Notice of Appeal) *Federal Rules of Criminal Procedure*.

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FORM 27. STATEMENT OF DOCKET ENTRIES.

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

UNITED STATES OF AMERICA	} No.
v.	
JOHN DOE	

1. Indictment or information for
..... Filed, 19...
2. Arraignment 19...
3. Plea to indictment or information
....., 19...
4. Motion to withdraw plea of guilty denied
....., 19...
5. Trial by jury, or by court if jury waived
....., 19...
6. Verdict or finding of guilt
....., 19...
7. Judgment—(with terms of sentence) or order
..... Entered, 19...
8. Notice of appeal filed 19...
- Dated

Attest
Clerk.

NOTE.—Compare *Form of Clerk's Statement of Docket Entries to be Forwarded under Rule 4, Form No. 3* (to accompany duplicate notice of appeal to the United States Circuit Court of Appeals), annexed to *Rules of Criminal Procedure after Plea of Guilty, Verdict of Finding of Guilt*, following 18 U. S. C. § 688.