

AMENDMENTS TO
FEDERAL RULES OF CRIMINAL PROCEDURE*

Rule 6. The grand jury.

(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. For purposes of this subdivision, “attorneys for the government” includes those enumerated in Rule 54 (c); it also includes such other government personnel as are necessary to assist the attorneys for the government in the performance of their duties. Otherwise a juror, attorney, interpreter, stenographer, operator of a recording device, or any typist who transcribes recorded testimony 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 federal magistrate to whom an indictment is returned may direct that it shall be kept secret until the defendant is in custody or has been released pending trial. Thereupon the clerk shall seal the indictment and no person shall disclose the 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

*[REPORTER'S NOTE: See Caveat, *supra*, p. 1157.]

more jurors. The indictment shall be returned by the grand jury to a federal magistrate in open court. If a complaint or information is pending against the defendant and 12 jurors do not concur in finding an indictment, the foreman shall so report to a federal magistrate in writing forthwith.

Rule 23. Trial by jury or by the court.

(b) *Jury of less than twelve.*—Juries shall be of 12 but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than 12 or that a valid verdict may be returned by a jury of less than 12 should the court find it necessary to excuse one or more jurors for any just cause after trial commences.

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

Rule 24. Trial jurors.

(b) *Peremptory challenges.*

(1) *Number of challenges.*

(A) *Capital cases.*—If the offense charged is punishable by death, each side is entitled to 12 peremptory challenges.

(B) *Felony cases.*—If the offense charged is punishable by imprisonment for more than one year, each side is entitled to 5 peremptory challenges.

(C) *Misdemeanor cases.*—If the offense charged is punishable by imprisonment for not more than one year or by fine or both, each side is entitled to 2 peremptory challenges.

(2) *Relief from limitations.*

(A) *For cause.*—For good cause shown, the court may

grant such additional challenges as it, in its discretion, believes necessary and proper.

(B) *Multiple defendants.*—If there is more than one defendant the court may allow the parties additional challenges and permit them to be exercised separately or jointly.

(C) *Time for making motion.*—A motion for relief under (b)(2) shall be filed at least 1 week in advance of the first scheduled trial date or within such other time as may be provided by the rules of the district court.

Rule 40.1. Removal from state court.

(a) *Time for filing.*—A petition for removal of a criminal prosecution from a state court to a United States district court shall be filed in the district court for the federal judicial district in which the state prosecution is pending. Such petition shall be made not later than 10 days after the arraignment in state court except that for good cause shown the United States district court may enter an order granting the petitioner leave to file the petition at a later time.

(b) *Number of petitions.*—A petition for removal of a state criminal prosecution to a United States district court must include all grounds for such removal. A failure to state grounds which exist at the time of the filing of the petition shall constitute a waiver of such grounds, and a second petition may be filed only on grounds not existing at the time of the original petition. For good cause shown, the United States district court may grant relief from the limitation of this subdivision.

(c) *Proceedings.*—The filing of a petition for removal shall not prevent the state court in which prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the petition is first denied.

(1) The district court to which the petition is directed shall examine it promptly. If it clearly appears on the face of the petition and any exhibits annexed

thereto that the petition for removal should not be granted, the court shall make an order for its summary dismissal.

(2) If the district court does not order the summary dismissal of the petition, it shall order an evidentiary hearing to be held promptly and after such hearing shall make such disposition of the petition as justice shall require. If the district court determines that the petition shall be granted, it shall so notify the state court in which prosecution is pending, which shall proceed no further.

Rule 41. Search and seizure.

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

(c) *Issuance and contents.*

(1) *Warrant upon affidavit.*—A warrant shall issue only on an affidavit or affidavits sworn to before the federal magistrate or state judge and establishing the grounds for issuing the warrant. If the federal magistrate or state judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The finding of probable cause may be based upon hearsay evidence in whole or in part. Before ruling on a request for a warrant the federal magistrate or state judge may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce, provided that such proceeding shall be taken down by a court reporter or recording equipment and made part of the affidavit. The warrant shall be directed to a civil officer of the United

States authorized to enforce or assist in enforcing any law thereof or to a person so authorized by the President of the United States. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person or place named for the property specified. The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime. It shall designate a federal magistrate to whom it shall be returned.

(2) *Warrant upon oral testimony.*—When the circumstances make it reasonable to do so in the absence of a written affidavit, a search warrant may be issued upon sworn oral testimony of a person who is not in the physical presence of a federal magistrate provided the federal magistrate is satisfied that probable cause exists for the issuance of the warrant. The sworn oral testimony may be communicated to the magistrate by telephone or other appropriate means and shall be recorded and transcribed. After transcription the statement must be certified by the magistrate and filed with the court. This statement shall be deemed to be an affidavit for purposes of this rule.

(A) *Method of issuance.*—The grounds for issuance and the contents of the warrant shall be those required by subdivision (c)(1) of this rule. Prior to approval of the warrant, the magistrate shall require the federal law enforcement officer or the attorney for the government who is requesting the warrant to read to him, verbatim, the contents of the warrant. The magistrate may direct that specific modifications be made in the warrant. Upon approval, the magistrate shall direct the federal law enforcement officer or the attorney for the government who is requesting the warrant to sign the magistrate's name on the warrant. This warrant shall be called a duplicate original warrant and shall be deemed a warrant for purposes of this rule. In such cases, the magistrate shall cause to be made an original warrant.

The magistrate shall enter the exact time of issuance of the duplicate original warrant on the face of the original warrant.

(B) *Return.*—Return of the duplicate original warrant and the original warrant shall be in conformity with subdivision (d) of this rule. Upon return, the magistrate shall require the person who gave the sworn oral testimony establishing the grounds for issuance of the warrant, to sign a copy of it.

Rule 50. Calendars; plans for prompt disposition.

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