

**Federal Rules of
Criminal Procedure**

Report of the Advisory Committee

1944

Federal Rules of Criminal Procedure

Report of the
Advisory Committee on Rules of Criminal Procedure

Appointed by the
Supreme Court of the United States

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LETTER OF TRANSMITTAL

*To the Honorable, the Chief Justice of the United States
and the Associate Justices of the Supreme Court of the
United States:*

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

A preliminary draft of the proposed rules was printed in July, 1943, and generally distributed. This draft was revised by the Committee in the light of the suggestions received from the bench and bar and from other sources. A second preliminary draft was printed in November, 1943, and was distributed. In June, 1944, the Committee met to consider further suggestions and to revise the Second Preliminary Draft. As a result of these suggestions and of further study, a number of changes have been made in the Second Preliminary Draft. While a few of the changes relate to matters of substance, most of them were made for clarification and stylistic improvement.

We submit the final draft herewith. In addition we submit a proposed set of forms.

Respectfully submitted.

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JULY 1944.

FEDERAL RULES OF CRIMINAL PROCEDURE

TABLE OF CONTENTS

	Page
I. Scope, Purpose and Construction:	
Rule 1. Scope.....	1
Rule 2. Purpose and Construction.....	1
II. Preliminary Proceedings:	
Rule 3. The Complaint.....	2
Rule 4. Warrant or Summons upon Complaint:	
(a) Issuance.....	2
(b) Form:	
(1) Warrant.....	2
(2) Summons.....	3
(c) Execution or Service; and Return:	
(1) By Whom.....	3
(2) Territorial Limits.....	3
(3) Manner.....	3
(4) Return.....	3
Rule 5. Proceedings before the Commissioner:	
(a) Appearance before the Commissioner....	4
(b) Statement by the Commissioner.....	4
(c) Preliminary Examination.....	5
III. Indictment and Information:	
Rule 6. The Grand Jury:	
(a) Summoning Grand Juries.....	6
(b) Objections to Grand Jury and to Grand Jurors:	
(1) Challenges.....	6
(2) Motion to Dismiss.....	6
(c) Foreman and Deputy Foreman.....	7
(d) Who May Be Present.....	7
(e) Secrecy of Proceedings and Disclosure....	7
(f) Finding and Return of Indictment.....	8
(g) Discharge and Excuse.....	8
Rule 7. The Indictment and the Information:	
(a) Use of Indictment or Information.....	8
(b) Waiver of Indictment.....	9
(c) Nature and Contents.....	9
(d) Surplusage.....	10
(e) Amendment of Information.....	10
(f) Bill of Particulars.....	10
Rule 8. Joinder of Offenses and of Defendants:	
(a) Joinder of Offenses.....	10
(b) Joinder of Defendants.....	10

	Page
III. Indictment and Information—Continued.	
Rule 9. Warrant or Summons upon Indictment or Information:	
(a) Issuance.....	11
(b) Form:	
(1) Warrant.....	11
(2) Summons.....	11
(c) Execution or Service; and Return:	
(1) Execution or Service.....	12
(2) Return.....	12
IV. Arraignment, and Preparation for Trial:	
Rule 10. Arraignment.....	13
Rule 11. Pleas.....	13
Rule 12. Pleadings and Motions before Trial; Defenses and Objections:	
(a) Pleadings and Motions.....	13
(b) The Motion Raising Defenses and Objec- tions:	
(1) Defenses and Objections which May Be Raised.....	14
(2) Defenses and Objections which Must Be Raised.....	14
(3) Time of Making Motion.....	14
(4) Hearing on Motion.....	14
(5) Effect of Determination.....	15
Rule 13. Trial Together of Indictments or Informations.....	15
Rule 14. Relief from Prejudicial Joinder.....	15
Rule 15. Pre-Trial Procedure.....	16
Rule 16. Notice of Alibi; Specifications of Time and Place.....	16
Rule 17. Depositions:	
(a) When Taken.....	17
(b) Notice of Taking.....	18
(c) Defendant's Counsel and Payment of Ex- penses.....	18
(d) How Taken.....	19
(e) At Instance of the Government or of a Witness.....	19
(f) Use.....	19
(g) Objections to Admissibility.....	20
Rule 18. Discovery and Inspection.....	20
Rule 19. Subpoena:	
(a) For Attendance of Witnesses; Form; Issu- ance.....	20
(b) Indigent Defendants.....	21
(c) For Production of Documentary Evidence and of Objects.....	21
(d) Service.....	22
(e) Place of Service:	
(1) In United States.....	22
(2) Abroad.....	22

CONTENTS

VII

	Page
IV. Arraignment, and Preparation for Trial—Continued.	
Rule 19. Subpoena—Continued.	
(f) For Taking Depositions; Place of Examination:	
(1) Issuance.....	22
(2) Place.....	22
(g) Contempt.....	23
V. Venue:	
Rule 20. District and Division.....	24
Rule 21. Transfer within the District.....	24
Rule 22. Transfer from the District or Division for Plea and Sentence.....	24
Rule 23. Transfer from the District or Division for Trial:	
(a) For Prejudice in the District or Division.....	25
(b) Offense Committed in Two or More Districts or Divisions.....	25
(c) Proceedings on Transfer.....	25
Rule 24. Time of Motion to Transfer.....	26
VI. Trial:	
Rule 25. Trial by Jury or by the Court:	
(a) Trial by Jury.....	27
(b) Jury of Less than Twelve.....	27
(c) Trial without a Jury.....	27
Rule 26. Trial Jurors:	
(a) Examination.....	27
(b) Peremptory Challenges.....	27
(c) Alternate Jurors.....	28
Rule 27. Judge; Disability.....	29
Rule 28. Evidence.....	29
Rule 29. Proof of Official Record.....	29
Rule 30. Expert Witnesses.....	29
Rule 31. Motion for Acquittal:	
(a) Motion for Judgment of Acquittal.....	30
(b) Reservation of Decision on Motion.....	30
Rule 32. Instructions.....	31
Rule 33. Verdict:	
(a) Return.....	31
(b) Several Defendants.....	31
(c) Conviction of Less Offense.....	32
(d) Poll of Jury.....	32
VII. Judgment:	
Rule 34. Sentence and Judgment:	
(a) Sentence.....	33
(b) Judgment.....	33
(c) Presentence Investigation:	
(1) When Made.....	33
(2) Report.....	33
(d) Withdrawal of Plea of Guilty.....	34
(e) Probation.....	34

VIII

CONTENTS

	Page
VII. Judgment—Continued.	
Rule 35. New Trial.....	34
Rule 36. Arrest of Judgment.....	35
Rule 37. Correction or Reduction of Sentence.....	35
Rule 38. Clerical Mistakes.....	35
VIII. Appeal:	
Rule 39. Taking Appeal; and Petition for Writ of Certiorari:	
(a) Taking Appeal:	
(1) Notice of Appeal.....	36
(2) Time for Taking Appeal.....	37
(b) Petition for Review on Writ of Certiorari:	
(1) Petition.....	37
(2) Time of Making Petition.....	37
Rule 40. Stay of Execution, and Relief Pending Review:	
(a) Stay of Execution:	
(1) Death.....	38
(2) Imprisonment.....	38
(3) Fine.....	38
(4) Probation.....	38
(b) Bail.....	38
(c) Application for Relief Pending Review....	38
Rule 41. Supervision of Appeal:	
(a) Supervision in Appellate Court.....	39
(b) The Record on Appeal:	
(1) Preparation and Form.....	39
(2) Use of Typewritten Record.....	39
(c) Docketing of Appeal and Record on Appeal.....	40
(d) Setting the Appeal for Argument.....	40
IX. Supplementary and Special Proceedings:	
Rule 42. Commitment to Another District; Removal:	
(a) Arrest in Nearby District.....	41
(b) Arrest in Distant District:	
(1) Appearance before Commissioner or Judge.....	41
(2) Statement by Commissioner or Judge.....	42
(3) Hearing; Warrant of Removal or Discharge.....	42
(4) Hearing and Removal on Arrest without a Warrant.....	43
Rule 43. Search and Seizure:	
(a) Authority to Issue Warrant.....	44
(b) Grounds for Issuance.....	44
(c) Issuance and Contents.....	44
(d) Execution and Return with Inventory....	45

CONTENTS

IX

	Page
IX. Supplemental and Special Proceedings—Continued.	
Rule 43. Search and Seizure—Continued.	
(e) Motion for Return of Property and to Suppress Evidence.....	46
(f) Return of Papers to Clerk.....	47
(g) Scope and Definition.....	47
Rule 44. Criminal Contempt:	
(a) Summary Disposition.....	47
(b) Disposition upon Notice and Hearing...	47
X. General Provisions:	
Rule 45. Presence of the Defendant.....	49
Rule 46. Assignment of Counsel.....	49
Rule 47. Time:	
(a) Computation.....	49
(b) Enlargement.....	50
(c) Unaffected by Expiration of Term.....	50
(d) For Motions; Affidavits.....	50
(e) Additional Time after Service by Mail...	51
Rule 48. Bail:	
(a) Right to Bail:	
(1) Before Conviction.....	51
(2) Upon Review.....	51
(b) Bail for Witness.....	52
(c) Amount.....	52
(d) Form, and Place of Deposit.....	52
(e) Justification of Sureties.....	53
(f) Forfeiture:	
(1) Declaration.....	53
(2) Setting Aside.....	53
(3) Enforcement.....	53
(4) Remission.....	54
(g) Exoneration.....	54
Rule 49. Motions.....	54
Rule 50. Dismissal:	
(a) By Attorney for Government.....	54
(b) By Court.....	55
Rule 51. Service and Filing of Papers:	
(a) Service: When Required.....	55
(b) Service: How Made.....	55
(c) Notice of Orders.....	55
(d) Filing.....	55
Rule 52. Communications by Counsel to Judge.....	56
Rule 53. Calendars.....	56
Rule 54. Exceptions Unnecessary.....	56
Rule 55. Harmless Error and Plain Error:	
(a) Harmless Error.....	56
(b) Plain Error.....	56

	Page
X. General Provisions—Continued.	
Rule 56. Regulation of Conduct in the Court Room.....	57
Rule 57. Application and Exception:	
(a) Courts and Commissioners:	
(1) Courts.....	57
(2) Commissioners.....	57
(b) Proceedings:	
(1) Removed Proceedings.....	58
(2) Offenses Outside a District or State.....	58
(3) Peace Bonds.....	58
(4) Trials before Commissioners....	58
(5) Other Proceedings.....	59
(c) Application of Terms.....	59
Rule 58. Records.....	60
Rule 59. Courts and Clerks.....	60
Rule 60. Rules of Court:	
(a) Rules by District Courts and Circuit Courts of Appeals.....	61
(b) Procedure Not Otherwise Specified.....	61
Rule 61. Forms.....	61
Rule 62. Effective Date.....	61
Rule 63. Title.....	62
Appendix of Forms.....	63
Alternative Rule 16.....	89
Index.....	91

68
57

57
57

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FEDERAL RULES OF CRIMINAL PROCEDURE

I. SCOPE, PURPOSE AND CONSTRUCTION

1 **Rule 1. Scope.** These rules govern the procedure
2 in the courts of the United States and before
3 United States commissioners in all criminal pro-
4 ceedings, with the exceptions stated in Rule 57.

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

II. PRELIMINARY PROCEEDINGS

1 **Rule 3. The Complaint.** The complaint is a
2 written statement of the essential facts constitut-
3 ing the offense charged. It shall be made upon
4 oath before a commissioner or other officer em-
5 powered to commit persons charged with offenses
6 against the United States.

1 **Rule 4. Warrant or Summons upon Complaint.**

2 (a) **ISSUANCE.** If it appears from the com-
3 plaint that there is probable cause to believe that
4 an offense has been committed and that the de-
5 fendant has committed it, a warrant for the arrest
6 of the defendant shall issue to any officer author-
7 ized by law to execute it. Upon the request of
8 the attorney for the government a summons in-
9 stead of a warrant shall issue. More than one
10 warrant or summons may issue on the same com-
11 plaint. If a defendant fails to appear in re-
12 sponse to the summons, a warrant shall issue.

13 (b) **FORM.**

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

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

27 (c) EXECUTION OR SERVICE; AND RETURN.

28 (1) *By Whom.* The warrant shall be ex-
29 ecuted by a marshal or by some other officer
30 authorized by law. The summons may be
31 served by any person authorized to serve a
32 summons in a civil action.

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

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

54 (4) *Return.* The officer executing a war-
55 rant shall make return thereof to the com-
56 missioner or other officer before whom the

57 defendant is brought pursuant to Rule 5. At
58 the request of the attorney for the govern-
59 ment any unexecuted warrant shall be re-
60 turned to the commissioner by whom it was
61 issued and shall be cancelled by him. On or
62 before the return day the person to whom a
63 summons was delivered for service shall make
64 return thereof to the commissioner before
65 whom the summons is returnable. At the re-
66 quest of the attorney for the government made
67 at any time while the complaint is pending, a
68 warrant returned unexecuted and not can-
69 celled or a summons returned unserved or a
70 duplicate thereof may be delivered by the
71 commissioner to the marshal or other author-
72 ized person for execution or service.

Rule 5. Proceedings before the Commissioner.

1 (a) APPEARANCE BEFORE THE COMMISSIONER.

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

13 (b) STATEMENT BY THE COMMISSIONER. The
14 commissioner shall inform the defendant of the
15 complaint against him, of his right to retain coun-
16 sel and of his right to have a preliminary exami-

17 nation. He shall also inform the defendant that
18 he is not required to make a statement and that
19 any statement made by him may be used against
20 him. The commissioner shall allow the defend-
21 ant reasonable time and opportunity to consult
22 counsel and shall admit the defendant to bail as
23 provided in these rules.

24 (c) PRELIMINARY EXAMINATION. The defend-
25 ant shall not be called upon to plead. If the
26 defendant waives preliminary examination, the
27 commissioner shall forthwith hold him to answer
28 in the district court. If the defendant does not
29 waive examination, the commissioner shall hear
30 the evidence within a reasonable time. The de-
31 fendant may cross-examine witnesses against him
32 and may introduce evidence in his own behalf. If
33 from the evidence it appears to the commissioner
34 that there is probable cause to believe that an
35 offense has been committed and that the defendant
36 has committed it, the commissioner shall forth-
37 with hold him to answer in the district court;
38 otherwise the commissioner shall discharge him.
39 The commissioner shall admit the defendant to
40 bail as provided in these rules. After concluding
41 the proceeding the commissioner shall transmit
42 forthwith to the clerk of the district court all
43 papers in the proceeding and any bail taken by
44 him.

30 grand jury were not legally qualified if it
 31 appears from the record kept pursuant to
 32 subdivision (c) of this rule that 12 or more
 33 jurors, after deducting the number not legal-
 34 ly qualified, concurred in finding the indict-
 35 ment.

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

48 (d) WHO MAY BE PRESENT. Attorneys for the
 49 government, the witness under examination, inter-
 50 preters when needed and, for the purpose of tak-
 51 ing the evidence, a stenographer may be present
 52 while the grand jury is in session, but no person
 53 other than the jurors may be present while the
 54 grand jury is deliberating or voting.

55 (e) SECRECY OF PROCEEDINGS AND DISCLOSURE.
 56 Disclosure of matters occurring before the grand
 57 jury other than its deliberations and the vote of
 58 any juror may be made to the attorneys for the
 59 government for use in the performance of their
 60 duties. Otherwise a juror, attorney, interpreter
 61 or stenographer may disclose matters occurring
 62 before the grand jury only when so directed by the
 63 court preliminarily to or in connection with a

64 judicial proceeding or when permitted by the
65 court at the request of the defendant upon a show-
66 ing that grounds may exist for a motion to dismiss
67 the indictment because of matters occurring before
68 the grand jury. No obligation of secrecy may be
69 imposed upon any person except in accordance
70 with this rule. The court may direct that an in-
71 dictment shall be kept secret until the defendant
72 is in custody or has given bail, and in that event
73 the clerk shall seal the indictment and no person
74 shall disclose the finding of the indictment except
75 when necessary for the issuance and execution of
76 a warrant or summons.

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

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

1 **Rule 7. The Indictment and the Information.**

2 (a) USE OF INDICTMENT OR INFORMATION. An
3 offense which may be punished by death shall be

4 prosecuted by indictment. An offense which may
5 be punished by imprisonment for a term exceeding
6 one year or at hard labor shall be prosecuted by
7 indictment or, if indictment is waived, it may be
8 prosecuted by information. Any other offense
9 may be prosecuted by indictment or by informa-
10 tion. An information may be filed without leave
11 of court.

12 (b) WAIVER OF INDICTMENT. An offense which
13 may be punished by imprisonment for a term ex-
14 ceeding one year or at hard labor may be prose-
15 cuted by information if the defendant, after he
16 has been advised of the nature of the charge and
17 of his rights, waives in open court prosecution
18 by indictment.

19 (c) NATURE AND CONTENTS. The indictment or
20 the information shall be a plain, concise and
21 definite written statement of the essential facts
22 constituting the offense charged. It shall be
23 signed by the attorney for the government. It
24 need not contain a formal commencement, a
25 formal conclusion or any other matter not neces-
26 sary to such statement. Allegations made in one
27 count may be incorporated by reference in another
28 count. It may be alleged in a single count that
29 the means by which the defendant committed the
30 offense are unknown or that he committed it by
31 one or more specified means. The indictment or
32 information shall state for each count the official
33 or customary citation of the statute, rule, regula-
34 tion or other provision of law which the defendant
35 is alleged therein to have violated. Error in the
36 citation or its omission shall not be ground for
37 dismissal of the indictment or information or for

38 reversal of a conviction if the error or omission
39 did not mislead the defendant to his prejudice.

40 (d) SURPLUSAGE. The court on motion of the
41 defendant may strike surplusage from the indict-
42 ment or information.

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

48 (f) BILL OF PARTICULARS. The court for cause
49 may direct the filing of a bill of particulars. A
50 motion for a bill of particulars may be made only
51 within ten days after arraignment or at such other
52 time before or after arraignment as may be pre-
53 scribed by rule or order. A bill of particulars
54 may be amended at any time subject to such
55 conditions as justice requires.

1 **Rule 8. Joinder of Offenses and of Defendants.**

2 (a) JOINDER OF OFFENSES. Two or more of-
3 fenses may be charged in the same indictment or
4 information in a separate count for each offense
5 if the offenses charged, whether felonies or mis-
6 demeanors or both, are of the same or similar
7 character or are based on the same act or trans-
8 action or on two or more acts or transactions
9 connected together or constituting parts of a
10 common scheme or plan.

11 (b) JOINDER OF DEFENDANTS. Two or more de-
12 fendants may be charged in the same indictment
13 or information if they are alleged to have par-
14 ticipated in the same act or transaction or in the
15 same series of acts or transactions constituting
16 an offense or offenses. Such defendants may be

17 charged in one or more counts together or sep-
 18 arately and all of the defendants need not be
 19 charged in each count.

1 **Rule 9. Warrant or Summons upon Indictment**
 2 **or Information.**

3 (a) **ISSUANCE.** Upon the request of the attor-
 4 ney for the government the clerk shall issue a
 5 warrant for each defendant named in the in-
 6 formation, if it is supported by oath, or in the
 7 indictment. The clerk shall issue a summons in-
 8 stead of a warrant upon the request of the at-
 9 torney for the government or by direction of the
 10 court. Upon like request or direction he shall
 11 issue more than one warrant or summons for the
 12 same defendant. He shall deliver the warrant or
 13 summons to the marshal or other person author-
 14 ized by law to execute or serve it. If a defendant
 15 fails to appear in response to the summons, a
 16 warrant shall issue.

17 (b) **FORM.**

18 (1) *Warrant.* The form of the warrant
 19 shall be as provided in Rule 4 (b) (1) except
 20 that it shall be signed by the clerk, it shall
 21 describe the offense charged in the indict-
 22 ment or information and it shall command
 23 that the defendant be arrested and brought
 24 before the court. The amount of bail may
 25 be fixed by the court and endorsed on the
 26 warrant.

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

31 (c) EXECUTION OR SERVICE; AND RETURN.

32 (1) *Execution or Service.* The warrant
33 shall be executed or the summons served as
34 provided in Rule 4 (c) (1), (2) and (3).
35 A summons to a corporation shall be served
36 by delivering a copy to an officer or to a man-
37 aging or general agent or to any other agent
38 authorized by appointment or by law to re-
39 ceive service of process and, if the agent is
40 one authorized by statute to receive service
41 and the statute so requires, by also mailing
42 a copy to the corporation's last known ad-
43 dress within the district or at its principal
44 place of business elsewhere in the United
45 States. The officer executing the warrant
46 shall bring the arrested person promptly be-
47 fore the court or, for the purpose of admis-
48 sion to bail, before a commissioner.

49 (2) *Return.* The officer executing a war-
50 rant shall make return thereof to the court.
51 At the request of the attorney for the gov-
52 ernment any unexecuted warrant shall be
53 returned and cancelled. On or before the
54 return day the person to whom a summons
55 was delivered for service shall make return
56 thereof. At the request of the attorney for
57 the government made at any time while the
58 indictment or information is pending, a war-
59 rant returned unexecuted and not cancelled
60 or a summons returned unserved or a dupli-
61 cate thereof may be delivered by the clerk
62 to the marshal or other authorized person
63 for execution or service.

IV. ARRAIGNMENT, AND PREPARATION FOR TRIAL

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

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

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

3 (a) PLEADINGS AND MOTIONS. Pleadings in
4 criminal proceedings shall be the indictment and
5 the information, and the pleas of not guilty,
6 guilty and *nolo contendere*. All other pleas, and
7 demurrers and motions to quash are abolished,
8 and defenses and objections raised before trial
9 which heretofore could have been raised by one

10 or more of them shall be raised only by motion
11 to dismiss or to grant appropriate relief, as pro-
12 vided in these rules.

13 (b) THE MOTION RAISING DEFENSES AND OB-
14 JECTIONS.

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

20 (2) *Defenses and Objections Which Must*
21 *Be Raised.* Defenses and objections based on
22 defects in the institution of the prosecution
23 or in the indictment or information other
24 than that it fails to show jurisdiction in the
25 court or to charge an offense may be raised
26 only by motion before trial. The motion
27 shall include all such defenses and objections
28 then available to the defendant. Failure to
29 present any such defense or objection as
30 herein provided constitutes a waiver thereof,
31 but the court for cause shown may grant
32 relief from the waiver. Lack of jurisdiction
33 or the failure of the indictment or informa-
34 tion to charge an offense shall be noticed by
35 the court at any time during the pendency of
36 the proceeding.

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

41 (4) *Hearing on Motion.* A motion before
42 trial raising defenses or objections shall be
43 determined before trial unless the court orders

44 that it be deferred for determination at the
 45 trial of the general issue. An issue of fact
 46 shall be tried by a jury if a jury trial is re-
 47 quired under the Constitution or an act of
 48 Congress. All other issues of fact shall be
 49 determined by the court with or without a
 50 jury or on affidavits or in such other manner
 51 as the court may direct.

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

1 **Rule 13. Trial Together of Indictments or In-**
 2 **formations.** The court may order two or more
 3 indictments or informations or both to be tried
 4 together if the offenses, and the defendants if
 5 there is more than one, could have been joined in
 6 a single indictment or information. The proce-
 7 dure shall be the same as if the prosecution were
 8 under such single indictment or information.

1 **Rule 14. Relief from Prejudicial Joinder.** If
 2 it appears that a defendant or the government is
 3 prejudiced by a joinder of offenses or of de-

4 defendants in an indictment or information or by
5 such joinder for trial together, the court may
6 order an election or separate trials of counts,
7 grant a severance of defendants or provide what-
8 ever other relief justice requires.

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

- 6 (1) The simplification of the issues;
7 (2) The possibility of obtaining admissions
8 of fact and of documents which will avoid un-
9 necessary proof;
10 (3) The number of expert witnesses or
11 character witnesses or other witnesses who are
12 to give testimony of a cumulative nature;
13 (4) Such other matters as may aid in the
14 disposition of the proceeding.

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

1 **Rule 16. Notice of Alibi; Specifications of Time**
2 **and Place.** If a defendant intends to offer evidence
3 that at the time alleged in the indictment or infor-
4 mation he was at a place other than the place where
5 the alleged offense was committed, he may make a
6 motion to require the attorney for the govern-

7 ment to serve and file before trial a specification
8 stating with greater particularity than the in-
9 dictment or information the time and place at
10 which the offense is alleged by the government
11 to have been committed. If the court grants the
12 motion, it shall fix the time within which the gov-
13 ernment's specification is to be served. Upon
14 service of the government's specification the de-
15 fendant shall serve and file a specification of the
16 place where he was at the time specified by the
17 government if he intends to offer evidence of
18 alibi with respect to the time and place specified
19 by the government. If the trial is not to begin
20 within 5 days after service of the government's
21 specification, the defendant shall serve and file
22 his specification not less than 3 days before trial;
23 otherwise he shall serve and file his specification
24 at any time before trial. If a defendant fails
25 to make the motion or the specification but at the
26 trial offers evidence of alibi, the court may ex-
27 clude the evidence unless it finds that the failure
28 was excusable or that the admission of the evi-
29 dence would be in the interest of justice. If the
30 court admits the evidence it may grant a request
31 by the government for a recess, for permission to
32 reopen its case or for other appropriate relief.
33 At the trial each party is bound by its specifica-
34 tion but the court for cause shown may permit
35 specifications to be amended.

1 **Rule 17. Depositions.**

2 (a) **WHEN TAKEN.** If it appears that a pro-
3 spective witness may be unable to attend or
4 prevented from attending a trial or hearing, that
5 his testimony is material and that it is necessary

6 to take his deposition in order to prevent a failure
7 of justice, the court at any time after the filing of
8 an indictment or information may upon notice to
9 the parties order that his testimony be taken by
10 deposition and that any designated books, papers,
11 documents or tangible objects, not privileged, be
12 produced at the same time and place. If a wit-
13 ness is committed for failure to give bail to ap-
14 pear to testify at a trial or hearing, the court on
15 written motion of the witness and upon notice to
16 the parties may direct that his deposition be taken.
17 After the deposition has been subscribed the
18 court may discharge the witness.

19 (b) NOTICE OF TAKING. The party at whose in-
20 stance a deposition is to be taken shall give to
21 every other party reasonable written notice of the
22 time and place for taking the deposition. The
23 notice shall state the name and address of each
24 person to be examined. On motion of a party
25 upon whom the notice is served, the court for
26 cause shown may extend or shorten the time.

27 (c) DEFENDANT'S COUNSEL AND PAYMENT OF
28 EXPENSES. If a defendant is without counsel the
29 court shall advise him of his right and assign
30 counsel to represent him unless the defendant
31 elects to proceed without counsel or is able to ob-
32 tain counsel. If it appears that a defendant at
33 whose instance a deposition is to be taken cannot
34 bear the expense thereof, the court may direct that
35 the expenses of travel and subsistence of the de-
36 fendant's attorney for attendance at the examina-
37 tion shall be paid by the government. In that
38 event the marshal shall make payment accord-
39 ingly.

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40 (d) **HOW TAKEN.** A deposition shall be taken
41 in the manner provided in civil actions. If the
42 deposition is taken at the instance of a defendant,
43 the court may at his request direct that it be taken
44 on written interrogatories in the manner provided
45 in civil actions.

46 (e) **AT INSTANCE OF THE GOVERNMENT OR OF A**
47 **WITNESS.** The following additional requirements
48 shall apply if the deposition is taken at the in-
49 stance of the government or of a witness. The
50 officer having custody of a defendant shall be
51 notified of the time and place set for the examina-
52 tion, and shall produce him at the examination
53 and keep him in the presence of the witness dur-
54 ing the examination. A defendant not in custody
55 shall be given notice and shall have the right to
56 be present at the examination. The government
57 shall pay in advance to the defendant's attorney
58 and to a defendant not in custody expenses of
59 travel and subsistence for attendance at the
60 examination.

61 (f) **USE.** At the trial or upon any hearing, a
62 part or all of a deposition, so far as otherwise
63 admissible under the rules of evidence, may be
64 used if it appears: That the witness is dead; or
65 that the witness is out of the United States, un-
66 less it appears that the absence of the witness
67 was procured by the party offering the deposition;
68 or that the witness is unable to attend or testify
69 because of sickness or infirmity; or that the party
70 offering the deposition has been unable to procure
71 the attendance of the witness by subpoena. Any
72 deposition may also be used by any party for the
73 purpose of contradicting or impeaching the testi-

74 mony of the deponent as a witness. If only a
75 part of a deposition is offered in evidence by a
76 party, an adverse party may require him to offer
77 all of it which is relevant to the part offered and
78 any party may offer other parts.

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

82 **Rule 18. Discovery and Inspection.** Upon mo-
83 tion of a defendant at any time after the filing
84 of the indictment or information, the court may
85 order the attorney for the government to permit
86 the defendant to inspect and copy or photograph
87 designated books, papers, documents or tangible
88 objects, obtained from or belonging to the de-
89 fendant or obtained from others by seizure or by
90 process, upon a showing that the items sought may
91 be material to the preparation of his defense and
92 that the request is reasonable. The order shall
93 specify the time, place and manner of making the
94 inspection and of taking the copies or photo-
95 graphs and may prescribe such terms and condi-
96 tions as are just.

1 **Rule 19. Subpoena.**

2 (a) FOR ATTENDANCE OF WITNESSES; FORM; IS-
3 SUANCE. A subpoena shall be issued by the clerk
4 under the seal of the court. It shall state the name
5 of the court and the title, if any, of the proceeding,
6 and shall command each person to whom it is
7 directed to attend and give testimony at the time
8 and place specified therein. The clerk shall issue a
9 subpoena, signed and sealed but otherwise in blank
10 to a party requesting it, who shall fill in the

11 blanks before it is served. A subpoena shall be
12 issued by a commissioner in a proceeding before
13 him, but it need not be under the seal of the court.

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

33 (c) FOR PRODUCTION OF DOCUMENTARY EVI-
34 DENCE AND OF OBJECTS. A subpoena may also com-
35 mand the person to whom it is directed to pro-
36 duce the books, papers, documents or other ob-
37 jects designated therein. The court on motion
38 made promptly may quash or modify the sub-
39 poena if compliance would be unreasonable or
40 oppressive. The court may direct that books,
41 papers, documents or objects designated in the
42 subpoena be produced before the court at a time
43 prior to the trial or prior to the time when they
44 are to be offered in evidence and may upon their

45 production permit the books, papers, documents
 46 or objects or portions thereof to be inspected by
 47 the parties and their attorneys.

48 (d) SERVICE. A subpoena may be served by
 49 the marshal, by his deputy or by any other per-
 50 son who is not a party and who is not less than
 51 18 years of age. Service of a subpoena shall be
 52 made by delivering a copy thereof to the person
 53 named and by tendering to him the fee for 1 day's
 54 attendance and the mileage allowed by law.
 55 When the subpoena is issued on behalf of the
 56 government or of an indigent defendant fees and
 57 mileage need not be tendered.

58 (e) PLACE OF SERVICE.

59 (1) *In United States.* A subpoena requir-
 60 ing the attendance of a witness at a hearing
 61 or trial may be served at any place within
 62 the United States.

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

69 (f) FOR TAKING DEPOSITION; PLACE OF EXAM-
 70 INATION.

71 (1) *Issuance.* An order to take a deposi-
 72 tion authorizes the issuance by the clerk of
 73 the court for the district in which the deposi-
 74 tion is to be taken of subpoenas for the per-
 75 sons named or described therein.

76 (2) *Place.* A resident of the district in
 77 which the deposition is to be taken may be

78 required to attend an examination only in
79 the county wherein he resides or is employed
80 or transacts his business in person. A non-
81 resident of the district may be required to
82 attend only in the county where he is served
83 with a subpoena or within 40 miles from the
84 place of service or at such other place as is
85 fixed by the court.

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

V. VENUE

1 **Rule 20. District and Division.** Except as
2 otherwise permitted by statute or by these rules,
3 the prosecution shall be had in a district in which
4 the offense was committed, but if the district con-
5 sists of two or more divisions the trial shall be
6 had in a division in which the offense was
7 committed.

1 **Rule 21. Transfer Within the District.** In a
2 district consisting of two or more divisions the ar-
3 raignment may be had, a plea entered, the trial
4 conducted or sentence imposed, if the defendant
5 consents, in any division and at any time.

1 **Rule 22. Transfer from the District for Plea and**
2 **Sentence.** A defendant arrested in a district other
3 than that in which the indictment or information
4 is pending against him may state in writing, after
5 receiving a copy of the indictment or information,
6 that he wishes to plead guilty or *nolo contendere*,
7 to waive trial in the district in which the indictment
8 or information is pending and to consent to dispo-
9 sition of the case in the district in which he was
10 arrested, subject to the approval of the United
11 States attorney for each district. Upon receipt of
12 the defendant's statement and of the written ap-
13 proval of the United States attorneys, the clerk of
14 the court in which the indictment or information is
15 pending shall transmit the papers in the proceed-
16 ing or certified copies thereof to the clerk of the
17 court for the district in which the defendant is held

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18 and the prosecution shall continue in that district.
 19 If after the proceeding has been transferred the
 20 defendant pleads not guilty, the clerk shall re-
 21 turn the papers to the court in which the prose-
 22 cution was commenced and the proceeding shall
 23 be restored to the docket of that court. The de-
 24 fendant's statement shall not be used against
 25 him unless he was represented by counsel when
 26 it was made.

1 **Rule 23. Transfer From the District or Divi-**
 2 **sion for Trial.**

3 (a) **FOR PREJUDICE IN THE DISTRICT OR DIVISION.**

4 The court upon motion of the defendant shall
 5 transfer the proceeding as to him to another dis-
 6 trict or division if the court is satisfied that there
 7 exists in the district or division where the prose-
 8 cution is pending so great a prejudice against the
 9 defendant that he cannot obtain a fair and im-
 10 partial trial in that district or division.

11 (b) **OFFENSE COMMITTED IN TWO OR MORE DIS-**
 12 **TRICTS OR DIVISIONS.** The court upon motion of
 13 the defendant shall transfer the proceeding as to
 14 him to another district or division, if it appears
 15 from the indictment or information or from a bill
 16 of particulars that the offense was committed in
 17 more than one district or division and if the
 18 court is satisfied that in the interest of justice the
 19 proceeding should be transferred to another dis-
 20 trict or division in which the commission of the
 21 offense is charged.

22 (c) **PROCEEDINGS ON TRANSFER.** When a trans-
 23 fer is ordered the clerk shall transmit to the clerk
 24 of the court to which the proceeding is trans-

25 ferred all papers in the proceeding or duplicates
26 thereof and any bail taken, and the prosecution
27 shall continue in that district or division.

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

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VI. TRIAL

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

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

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

11 (c) **TRIAL WITHOUT A JURY.** In a case tried
12 without a jury the court shall make a general find-
13 ing and may in addition find the facts specially.

1 **Rule 26. Trial Jurors.**

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

13 (b) **PEREMPTORY CHALLENGES.** If the offense
14 charged is punishable by death, each side is en-
15 titled to 20 peremptory challenges. If the offense
16 charged is punishable by imprisonment for more

17 than one year, the government is entitled to 6
 18 peremptory challenges and the defendant or de-
 19 fendants jointly to 10 peremptory challenges. If
 20 the offense charged is punishable by imprison-
 21 ment for not more than one year or by fine or
 22 both, each side is entitled to 3 peremptory chal-
 23 lenges. If there is more than one defendant, the
 24 court may allow the defendants additional per-
 25 emptory challenges and permit them to be exer-
 26 cised separately or jointly.

27 (c) **ALTERNATE JURORS.** The court may direct
 28 that not more than 4 jurors in addition to the reg-
 29 ular jury be called and impanelled to sit as al-
 30 ternate jurors. Alternate jurors in the order in
 31 which they are called shall replace jurors who,
 32 prior to the time the jury retires to consider its
 33 verdict, become unable or disqualified to perform
 34 their duties. Alternate jurors shall be drawn in
 35 the same manner, shall have the same qualifica-
 36 tions, shall be subject to the same examination and
 37 challenges, shall take the same oath and shall have
 38 the same functions, powers, facilities and privi-
 39 leges as the regular jurors. An alternate juror
 40 who does not replace a regular juror shall be dis-
 41 charged after the jury retires to consider its ver-
 42 dict. Each side is entitled to 1 peremptory
 43 challenge in addition to those otherwise allowed
 44 by law if 1 or 2 alternate jurors are to be im-
 45 panelled, and 2 peremptory challenges if 3 or 4
 46 alternate jurors are to be impanelled. The addi-
 47 tional peremptory challenges may be used against
 48 an alternate juror only, and the other peremptory
 49 challenges allowed by these rules may not be used
 50 against an alternate juror.

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

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

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

1 **Rule 30. Expert Witnesses.** The court may
 2 order the defendant or the government or both to
 3 show cause why expert witnesses should not be
 4 appointed, and may request the parties to submit
 5 nominations. The court may appoint any expert
 6 witnesses agreed upon by the parties, and may
 7 appoint witnesses of its own selection. An ex-
 8 pert witness shall not be appointed by the court

9 unless he consents to act. A witness so appointed
10 shall be informed of his duties by the court at a
11 conference in which the parties shall have op-
12 portunity to participate. A witness so appointed
13 shall advise the parties of his findings, if any,
14 and may thereafter be called to testify by the
15 court or by any party. He shall be subject to
16 cross-examination by each party. The court may
17 determine the reasonable compensation of such a
18 witness and direct its payment out of such funds
19 as may be provided by law. The parties also
20 may call expert witnesses of their own selection.

1 **Rule 31. Motion for Acquittal.**

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

16 (b) RESERVATION OF DECISION ON MOTION. If
17 a motion for judgment of acquittal is made at
18 the close of all the evidence, the court may re-
19 serve decision on the motion, submit the case to
20 the jury and decide the motion either before the
21 jury returns a verdict or after it returns a ver-
22 dict of guilty or is discharged without having

23 returned a verdict. If the motion is denied and
 24 the case is submitted to the jury, the motion may
 25 be renewed within 5 days after the jury is dis-
 26 charged and may include in the alternative a
 27 motion for a new trial. If a verdict of guilty
 28 is returned the court may on such motion set
 29 aside the verdict and order a new trial or enter
 30 judgment of acquittal. If no verdict is returned
 31 the court may order a new trial or enter judgment
 32 of acquittal.

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

1 **Rule 33. Verdict.**

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

5 (b) SEVERAL DEFENDANTS. If there are two or
 6 more defendants, the jury at any time during its

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VII. JUDGMENT

1 **Rule 34. Sentence and Judgment.**

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

10 (b) JUDGMENT. A judgment of conviction shall
11 set forth the plea, the verdict or finding, and the
12 adjudication and sentence. If the defendant is
13 found not guilty or for any other reason is en-
14 titled to be discharged, judgment shall be entered
15 accordingly. The judgment shall be signed by
16 the judge and entered by the clerk.

17 (c) PRESENTENCE INVESTIGATION.

18 (1) *When Made.* The probation service
19 of the court shall make a presentence investi-
20 gation and report to the court before the im-
21 position of sentence or the granting of pro-
22 bation unless the court otherwise directs.
23 The report shall not be submitted to the court
24 or its contents disclosed to anyone unless the
25 defendant has pleaded guilty or has been
26 found guilty.

27 (2) *Report.* The report of the presen-
28 tence investigation shall contain any prior
29 criminal record of the defendant and such

30 information about his characteristics, his
31 financial condition and the circumstances af-
32 fecting his behavior as may be helpful in im-
33 posing sentence or in granting probation or
34 in the correctional treatment of the defend-
35 ant, and such other information as may be
36 required by the court. After determination
37 of the question of guilt the report shall be
38 available, upon such conditions as the court
39 may impose, to the attorneys for the parties
40 and to such other persons or agencies having
41 a legitimate interest therein as the court may
42 designate.

43 (d) WITHDRAWAL OF PLEA OF GUILTY. A mo-
44 tion to withdraw a plea of guilty or of *nolo con-*
45 *tendere* may be made only before sentence is im-
46 posed or imposition of sentence is suspended; but
47 to correct manifest injustice the court after sen-
48 tence may set aside the judgment of conviction
49 and permit the defendant to withdraw his plea.

50 (e) PROBATION. After conviction of an offense
51 not punishable by death or by life imprisonment,
52 the defendant may be placed on probation as pro-
53 vided by law.

1 **Rule 35. New Trial.** The court may grant a
2 new trial to a defendant if required in the interest
3 of justice. If trial was by the court without a
4 jury the court may vacate the judgment if entered,
5 take additional testimony and direct the entry of
6 a new judgment. A motion for a new trial based
7 on the ground of newly discovered evidence or on
8 the ground that the defendant has been deprived
9 of a constitutional right may be made at any time
10 before or after final judgment, but if an appeal is

11 pending the court may grant the motion only on
12 remand of the case. A motion for a new trial
13 based on any other grounds shall be made within
14 5 days after verdict or finding of guilty or within
15 such further time as the court may fix during the
16 5-day period.

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

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

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

VIII. APPEAL

1 **Rule 39. Taking Appeal; and Petition for** 2 **Writ of Certiorari.**

3 (a) **TAKING APPEAL.**

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

31 of the filing of the notice of appeal shall be
32 given by the clerk by mailing copies thereof
33 to adverse parties, but his failure so to do
34 does not affect the validity of the appeal.

35 (2) *Time for Taking Appeal.* An appeal
36 by a defendant may be taken within 10 days
37 after entry of the judgment or order ap-
38 pealed from, but if a motion for a new trial
39 or in arrest of judgment has been made
40 within the 10-day period an appeal from a
41 judgment of conviction may be taken within
42 10 days after entry of the order denying the
43 motion. When a court after trial imposes
44 sentence upon a defendant not represented
45 by counsel, the defendant shall be advised of
46 his right to appeal and if he so requests, the
47 clerk shall prepare and file forthwith a notice
48 of appeal on behalf of the defendant. An
49 appeal by the government may be taken with-
50 in 30 days after entry of the judgment or
51 order appealed from.

52 (b) PETITION FOR REVIEW ON WRIT OF CERTIORARI.

53 (1) *Petition.* Petition to the Supreme Court
54 for writ of certiorari shall be made as pre-
55 scribed in its rules.

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

65 time if mailed under a postmark dated within
66 such 30-day period.

1 **Rule 40. Stay of Execution, and Relief Pending**
2 **Review.**

3 (a) STAY OF EXECUTION.

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

6 (2) *Imprisonment.* A sentence of impris-
7 onment shall be stayed if an appeal is taken
8 and the defendant elects not to commence
9 service of the sentence or is admitted to bail.

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

22 (4) *Probation.* An order placing the de-
23 fendant on probation shall be stayed if an
24 appeal is taken.

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

27 (c) APPLICATION FOR RELIEF PENDING REVIEW.
28 If application is made to a circuit court of ap-
29 peals or to a circuit judge or to a justice of the
30 Supreme Court for bail pending appeal or for an
31 extension of time for docketing the record on ap-

32 peal or for any other relief which might have
 33 been granted by the district court, the application
 34 shall be upon notice and shall show that applica-
 35 tion to the court below or a judge thereof is not
 35 practicable or that application has been made and
 37 denied, with the reasons given for the denial,
 38 or that the action on the application did not afford
 39 the relief to which the applicant considers him-
 40 self to be entitled.

1 **Rule 41. Supervision of Appeal.**

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

13 (b) THE RECORD ON APPEAL.

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

20 (2) *Use of Typewritten Record.* The circuit
 21 court of appeals may dispense with the print-
 22 ing of the record on appeal and review the pro-
 23 ceedings on the typewritten record.

24 (c) DOCKETING OF APPEAL AND RECORD ON AP-
25 PEAL. The record on appeal shall be filed with the
26 appellate court and the proceeding there docketed
27 within 40 days from the date the notice of appeal is
28 filed in the district court, but if more than one
29 appeal is taken from the same judgment to the same
30 appellate court, the district court may prescribe
31 the time for filing and docketing, which in no event
32 shall be less than 40 days from the date the first
33 notice of appeal is filed. In all cases the district
34 court or the appellate court or, if the appellate
35 court is not in session, any judge thereof may for
36 cause shown extend the time for filing and dock-
37 eting.

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

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IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

1 **Rule 42. Commitment to Another District;** 2 **Removal.**

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

27 (b) **ARREST IN DISTANT DISTRICT.**

28 (1) *Appearance before Commissioner or*
29 *Judge.* If a person is arrested upon a war-

30 rant issued in another state at a place 100
 31 miles or more from the place of arrest, or
 32 without a warrant for an offense committed in
 33 another state at a place 100 miles or more
 34 from the place of arrest, he shall be taken
 35 without unnecessary delay before the nearest
 36 available commissioner or a nearby judge of
 37 the United States in the district in which the
 38 arrest was made.

39 (2) *Statement by Commissioner or Judge.*
 40 The commissioner or judge shall inform the
 41 defendant of the charge against him, of his
 42 right to retain counsel and of his right to
 43 have a hearing or to waive a hearing by sign-
 44 ing a waiver before the commissioner or
 45 judge. The commissioner or judge shall also
 46 inform the defendant that he is not required
 47 to make a statement and that any statement
 48 made by him may be used against him, shall
 49 allow him reasonable opportunity to consult
 50 counsel and shall admit him to bail as pro-
 51 vided in these rules.

52 (3) *Hearing; Warrant of Removal or Dis-*
 53 *charge.* The defendant shall not be called
 54 upon to plead. If the defendant waives hear-
 55 ing, the judge shall issue a warrant of removal
 56 to the district where the prosecution is pend-
 57 ing. If the defendant does not waive hear-
 58 ing, the commissioner or judge shall hear the
 59 evidence. If the commissioner hears the evi-
 60 dence he shall report his findings and recom-
 61 mendations to the judge. At the hearing the
 62 defendant may cross-examine witnesses against

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63 him and may introduce evidence in his own
64 behalf. If it appears from the commission-
65 er's report or from the evidence adduced be-
66 fore the judge that sufficient ground has
67 been shown for ordering the removal of the
68 defendant, the judge shall issue a warrant of
69 removal to the district where the prosecution
70 is pending. Otherwise he shall discharge
71 the defendant. If the prosecution is by in-
72 dictment, a warrant of removal shall issue
73 upon production of a certified copy of the
74 indictment and upon proof that the defend-
75 ant is the person named in the indictment.
76 If the prosecution is by information or com-
77 plaint, a warrant of removal shall issue upon
78 the production of a certified copy of the in-
79 formation or complaint and upon proof that
80 there is probable cause to believe that the de-
81 fendant is guilty of the offense charged. If
82 a warrant of removal is issued, the defendant
83 shall be admitted to bail for appearance in
84 the district in which the prosecution is pend-
85 ing in accordance with Rule 48. After a de-
86 fendant is held for removal or is discharged,
87 the papers in the proceeding and any bail
88 taken shall be transmitted to the clerk of the
89 district court in which the prosecution is
90 pending.

91 (4) *Hearing and Removal on Arrest with-*
92 *out a Warrant.* If a person is arrested with-
93 out a warrant, the hearing may be continued
94 for a reasonable time, upon a showing of prob-
95 able cause to believe that he is guilty of the

96 offense charged; but he may not be removed
97 as herein provided unless a warrant issued in
98 the district in which the offense was commit-
99 ted is presented.

1 **Rule 43. Search and Seizure.**

2 (a) **AUTHORITY TO ISSUE WARRANT.** A search
3 warrant authorized by this rule may be issued by
4 a judge of the United States or of a state or terri-
5 torial court of record or by a United States com-
6 missioner within the district wherein the property
7 sought is located.

8 (b) **GROUND FOR ISSUANCE.** A warrant may be
9 issued under this rule to search for and seize any
10 property

11 (1) Constituting the fruits of a violation of
12 a law of the United States; or

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

16 (3) Possessed, controlled, or designed or in-
17 tended for use or which is or has been used in
18 violation of the Act of June 15, 1917, c. 30,
19 title VIII, § 4, 40 Stat. 226, and title XI, §
20 22, 40 Stat. 230, as amended by the Act of
21 March 28, 1940, c. 72, § 8, 54 Stat. 80; 18
22 U. S. C. § 98.

23 (c) **ISSUANCE AND CONTENTS.** A warrant shall
24 issue only on affidavit sworn to before the judge or
25 commissioner and establishing the grounds for issu-
26 ing the warrant. If the judge or commissioner is
27 satisfied that grounds for the application exist or
28 that there is probable cause to believe that they

29 exist, he shall issue a warrant identifying the prop-
30 erty and naming or describing the person or place
31 to be searched. The warrant shall be directed to a
32 civil officer of the United States authorized to en-
33 force or assist in enforcing any law thereof or
34 to a person so authorized by the President of the
35 United States. It shall state the grounds or prob-
36 able cause for its issuance and the names of the
37 persons whose affidavits have been taken in support
38 thereof. It shall command the officer to search
39 forthwith the person or place named for the prop-
40 erty specified. The warrant shall direct that it be
41 served in the daytime, but if the affidavits are posi-
42 tive that the property is on the person or in the
43 place to be searched, the warrant may direct that
44 it be served at any time. It shall designate the
45 district judge or the commissioner to whom it
46 shall be returned.

47 (d) EXECUTION AND RETURN WITH INVENTORY.
48 The warrant may be executed and returned only
49 within 10 days after its date. The officer taking
50 property under the warrant shall give to the per-
51 son from whom or from whose premises the prop-
52 erty was taken a copy of the warrant and a
53 receipt for the property taken or shall leave the
54 copy and receipt at the place from which the
55 property was taken. The return shall be made
56 promptly and shall be accompanied by a written
57 inventory of any property taken. The inventory
58 shall be made in the presence of the applicant for
59 the warrant and the person from whose posses-
60 sion or premises the property was taken, if they
61 are present, or in the presence of at least one

62 credible person other than the applicant for the
63 warrant or the person from whose possession or
64 premises the property was taken, and shall be ver-
65 ified by the officer. The judge or commissioner
66 shall upon request deliver a copy of the inventory
67 to the person from whom or from whose premises
68 the property was taken and to the applicant for
69 the warrant.

70 (e) MOTION FOR RETURN OF PROPERTY AND TO
71 SUPPRESS EVIDENCE. A person aggrieved by an
72 unlawful search and seizure may move the district
73 court for the district in which the property was
74 seized for the return of the property and to sup-
75 press for use as evidence anything so obtained on
76 the ground that (1) the property was illegally
77 seized without warrant, or (2) the warrant is in-
78 sufficient on its face, or (3) the property seized
79 is not that described in the warrant, or (4) there
80 was not probable cause for believing the existence
81 of the grounds on which the warrant was issued,
82 or (5) the warrant was illegally executed. The
83 judge shall receive evidence on any issue of fact
84 necessary to the decision of the motion. If the
85 motion is granted the property shall be restored
86 unless otherwise subject to lawful detention and it
87 shall not be admissible in evidence at any hearing
88 or trial. The motion to suppress evidence may
89 also be made in the district where the trial is to
90 be had. The motion shall be made before trial
91 or hearing unless opportunity therefor did not
92 exist or the defendant was not aware of the
93 grounds for the motion, but the court in its discre-
94 tion may entertain the motion at the trial or
95 hearing.

96 (f) RETURN OF PAPERS TO CLERK. The judge or
97 commissioner who has issued a search warrant
98 shall attach to the warrant a copy of the return,
99 inventory and all other papers in connection there-
100 with and shall file them with the clerk of the dis-
101 trict court for the district in which the property
102 was seized.

103 (g) SCOPE AND DEFINITION. This rule super-
104 sedes the Act of June 15, 1917, c. 30, title XI,
105 §§ 1-6, 10, 11, 12-16, 40 Stat. 228, 229, 18 U. S. C.
106 §§ 611-616, 620, 621, 623-626, and any other pro-
107 vision of chapter 30 of that Act inconsistent with
108 this rule. It does not modify any other act, in-
109 consistent with this rule, regulating search, sei-
110 zure and the issuance and execution of search
111 warrants in circumstances for which special pro-
112 vision is made. The term "property" is used in
113 this rule to include documents, books, papers and
114 any other tangible objects.

1 Rule 44. Criminal Contempt.

2 (a) SUMMARY DISPOSITION. A criminal con-
3 tempt may be punished summarily if the judge
4 certifies that he saw or heard the conduct consti-
5 tuting the contempt and that it was committed in
6 the actual presence of the court. The order of
7 contempt shall recite the facts and shall be signed
8 by the judge and entered of record.

9 (b) DISPOSITION UPON NOTICE AND HEARING. A
10 criminal contempt except as provided in subdivi-
11 sion (a) of this rule shall be prosecuted on notice.
12 The notice shall state the time and place of hear-
13 ing, allowing a reasonable time for the prepara-
14 tion of the defense, and shall state the essential

15 facts constituting the criminal contempt charged
16 and describe it as such. The notice shall be given
17 orally by the judge in open court in the presence
18 of the defendant or, on application of the United
19 States attorney or of an attorney appointed by
20 the court for that purpose, by an order to show
21 cause or an order of arrest. The defendant is
22 entitled to a trial by jury in any case in which an
23 act of Congress so provides. He is entitled to
24 admission to bail as provided in these rules. If
25 the contempt charged involves disrespect to or
26 criticism of a judge, that judge is disqualified
27 from presiding at the trial or hearing except with
28 the defendant's consent. Upon a verdict or find-
29 ing of guilt the court shall enter an order fixing
30 the punishment.

X. GENERAL PROVISIONS

1 **Rule 45. Presence of the Defendant.** The de-
2 defendant shall be present at the arraignment, at
3 every stage of the trial including the impaneling
4 of the jury and the return of the verdict, and at
5 the imposition of sentence, except as otherwise
6 provided by these rules. In prosecutions for of-
7 fenses not punishable by death, the defendant's
8 voluntary absence after the trial has been com-
9 menced in his presence shall not prevent continu-
10 ing the trial to and including the return of the
11 verdict. A corporation may appear by counsel for
12 all purposes. In prosecutions for offenses punish-
13 able by fine or by imprisonment for not more than
14 one year or both, the court, with the written con-
15 sent of the defendant, may permit arraignment,
16 plea, trial and imposition of sentence in the de-
17 fendant's absence. The defendant's presence is
18 not required at a reduction of sentence under
19 Rule 37.

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

1 **Rule 47. Time.**

2 (a) **COMPUTATION.** In computing any period
3 of time the day of the act or event after which
4 the designated period of time begins to run is not

5 to be included. The last day of the period so com- 3
 6 puted is to be included, unless it is a Sunday or 4
 7 legal holiday, in which event the period runs un- 4
 8 til the end of the next day which is neither a Sun- 4
 9 day nor a holiday. When a period of time pre- 4
 10 scribed or allowed is less than 7 days, interme- 4
 11 diate Sundays and holidays shall be excluded in 4
 12 the computation. A half holiday shall be consid- 4
 13 ered as other days and not as a holiday. 4

14 (b) ENLARGEMENT. When an act is required or 4
 15 allowed to be done at or within a specified time, 4
 16 the court for cause shown may at any time in its 4
 17 discretion (1) with or without motion or notice, 5
 18 order the period enlarged if application therefor 5
 19 is made before the expiration of the period orig- 5
 20 inally prescribed or as extended by a previous 5
 21 order or (2) upon motion permit the act to be
 22 done after the expiration of the specified period
 23 if the failure to act was the result of excusable
 24 neglect; but the court may not enlarge the period
 25 for taking any action under Rules 35, 36 and 37,
 26 except as otherwise provided in those rules, or the
 27 period for taking an appeal.

28 (c) UNAFFECTED BY EXPIRATION OF TERM. The
 29 period of time provided for the doing of any act
 30 or the taking of any proceeding is not affected or
 31 limited by the expiration of a term of court. The
 32 expiration of a term of court in no way affects
 33 the power of a court to do any act in a criminal
 34 proceeding. 1
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35 (d) FOR MOTIONS; AFFIDAVITS. A written mo- 1
 36 tion, other than one which may be heard *ex parte*, 1
 37 and notice of the hearing thereof shall be served 1
 38 not later than 5 days before the time specified for 1

39 the hearing unless a different period is fixed by
 40 rule or order of the court. For cause shown such
 41 an order may be made on *ex parte* application.
 42 When a motion is supported by affidavit, the affi-
 43 davit shall be served with the motion; and op-
 44 posing affidavits may be served not less than 1 day
 45 before the hearing unless the court permits them
 46 to be served at a later time.

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

1 **Rule 48. Bail.**

2 (a) **RIGHT TO BAIL.**

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

11 (2) *Upon Review.* Bail shall be allowed
 12 pending appeal or certiorari only if it appears
 13 that the case involves a substantial question
 14 which should be determined by the appellate
 15 court. Bail may be allowed by the trial judge
 16 or by the appellate court or, if the appellate
 17 court is not in session, by any judge thereof
 18 or by the circuit justice. The court or the

19 judge or justice allowing bail may at any
20 time revoke the order admitting the defendant
21 to bail.

22 (b) BAIL FOR WITNESS. If it appears by affi-
23 davit that the testimony of a person is material
24 in any criminal proceeding and if it is shown
25 that it may become impracticable to secure his
26 presence by subpoena, the court or commissioner
27 may require him to give bail for his appearance as
28 a witness, in an amount fixed by the court or com-
29 missioner. If the person fails to give bail the
30 court or commissioner may commit him to the
31 custody of the marshal pending final disposition
32 of the proceeding in which the testimony is
33 needed, may order his release if he has been de-
34 tained for an unreasonable length of time and may
35 modify at any time the requirement as to bail.

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

44 (d) FORM, AND PLACE OF DEPOSIT. A person re-
45 quired or permitted to give bail shall execute a bond
46 for his appearance. One or more sureties may be
47 required, cash or bonds or notes of the United
48 States may be accepted and in proper cases no
49 security need be required. Bail given originally

50 on appeal shall be deposited in the registry of the
51 district court from which the appeal is taken.

52 (e) JUSTIFICATION OF SURETIES. Every surety,
53 except a corporate surety which is approved as pro-
54 vided by law, shall justify by affidavit and may be
55 required to describe in the affidavit the property by
56 which he proposes to justify and the encumbrances
57 thereon, the number and amount of other bonds and
58 undertakings for bail entered into by him and re-
59 maining undischarged and all his other liabilities.
60 No bond shall be approved unless the surety thereon
61 appears to be qualified.

62 (f) FORFEITURE.

63 (1) *Declaration.* If there is a breach of con-
64 dition of a bond, the district court shall declare
65 a forfeiture of the bail.

66 (2) *Setting Aside.* The court may direct
67 that a forfeiture be set aside, upon such
68 conditions as the court may impose, if it ap-
69 pears that justice does not require the
70 enforcement of the forfeiture.

71 (3) *Enforcement.* When a forfeiture has
72 not been set aside, the court shall on motion
73 enter a judgment of default and execution
74 may issue thereon. By entering into a bond
75 the obligors submit to the jurisdiction of the
76 district court and irrevocably appoint the
77 clerk of the court as their agent upon whom
78 any papers affecting their liability may be
79 served. Their liability may be enforced on
80 motion without the necessity of an independ-
81 ent action. The motion and such notice of

82 the motion as the court prescribes may be
83 served on the clerk of the court, who shall
84 forthwith mail copies to the obligors to their
85 last known addresses.

86 (4) *Remission.* After entry of such judg-
87 ment, the court may remit it in whole or in
88 part under the conditions applying to the set-
89 ting aside of forfeiture in paragraph (2) of
90 this subdivision.

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

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

1 **Rule 50. Dismissal.**

2 (a) **BY ATTORNEY FOR GOVERNMENT.** The At-
3 torney General or the United States attorney may
4 file a dismissal of an indictment, information or
5 complaint with a statement of the reasons there-
6 for and the prosecution shall thereupon terminate.

7 Such a dismissal may not be filed during the trial
8 without the consent of the defendant.

9 (b) BY COURT. If there is unnecessary delay
10 in presenting the charge to a grand jury or in
11 filing an information against a defendant who has
12 been held to answer to the district court, or if
13 there is unnecessary delay in bringing a defend-
14 ant to trial, the court may dismiss the indictment,
15 information or complaint.

1 Rule 51. Service and Filing of Papers.

2 (a) SERVICE: WHEN REQUIRED. Written mo-
3 tions other than those which are heard *ex parte*,
4 written notices, designations of record on appeal
5 and similar papers shall be served upon the ad-
6 verse parties.

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

15 (c) NOTICE OF ORDERS. Immediately upon the
16 entry of an order made on a written motion sub-
17 sequent to arraignment the clerk shall mail to
18 each party affected thereby a notice thereof and
19 shall make a note in the docket of the mailing.

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

1 **Rule 52. Communications by Counsel to Judge.**
2 Copies of all communications, memoranda and
3 briefs submitted by counsel to a judge and relat-
4 ing to a proceeding pending before him shall be
5 delivered simultaneously to counsel for adverse
6 parties. Counsel shall not confer with a judge
7 regarding the merits of a proceeding pending
8 before him, except in the presence of or with the
9 consent of counsel for adverse parties. This rule
10 shall not apply to applications for orders which
11 may be made *ex parte*.

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

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

1 **Rule 55. Harmless Error and Plain Error.**

2 (a) **HARMLESS ERROR.** Any error, defect, ir-
3 regularity or variance which does not affect sub-
4 stantial rights shall be disregarded.

5 (b) **PLAIN ERROR.** Plain errors or defects af-
6 fecting substantial rights may be noticed al-

7 though they were not brought to the attention of
8 the court.

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

1 **Rule 57. Application and Exception.**

2 (a) **COURTS AND COMMISSIONERS.**

3 (1) *Courts.* These rules apply to all crim-
4 inal proceedings in the district courts of the
5 United States, which include the District
6 Court of the United States for the District
7 of Columbia, the District Court for the Terri-
8 tory of Alaska, the United States District
9 Court for the Territory of Hawaii, the Dis-
10 trict Court of the United States for Puerto
11 Rico and the District Court of the Virgin
12 Islands; in the United States circuit courts
13 of appeals, which include the United States
14 Court of Appeals for the District of Colum-
15 bia; and in the Supreme Court of the United
16 States. The rules governing proceedings
17 after verdict or finding of guilt or plea of
18 guilty apply in the United States District
19 Court for the District of the Canal Zone.

20 (2) *Commissioners.* The rules applicable
21 to criminal proceedings before commissioners
22 apply to similar proceedings before judges of
23 the United States or of the District of Co-
24 lumbia. They do not apply to criminal
25 proceedings before other officers empowered

26 to commit persons charged with offenses
27 against the United States.

28 (b) PROCEEDINGS.

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

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

44 (3) *Peace Bonds.* These rules do not alter
45 the power of judges of the United States or
46 of United States commissioners to hold to
47 security of the peace and for good behavior
48 under the Act of March 3, 1911, c. 231, § 270,
49 36 Stat. 1163, Judicial Code § 270, 28 U. S. C.
50 § 392, and under Revised Statutes § 4069, 50
51 U. S. C. § 23, but in such cases the procedure
52 shall conform to these rules so far as they
53 are applicable.

54 (4) *Trials before Commissioners.* These
55 rules do not apply to proceedings before
56 United States commissioners and in the dis-
57 trict courts under the Act of October 9, 1940,
58 c. 785, 54 Stat. 1058-1059, 18 U. S. C. §§ 576-

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59 576d, relating to petty offenses on federal
60 reservations.

61 (5) *Other Proceedings.* These rules are
62 not applicable to extradition and rendition of
63 fugitives; forfeiture of property for viola-
64 tion of a statute of the United States; or the
65 collection of fines and penalties. They do not
66 apply to proceedings under the Federal Juve-
67 nile Delinquency Act so far as they are in-
68 consistent with that Act. They do not apply
69 to summary trials for offenses against the
70 navigation laws under Revised Statutes
71 §§ 4300-4305, 33 U. S. C. §§ 391-396, or to
72 proceedings involving disputes between sea-
73 men under Revised Statutes §§ 4079-4081,
74 as amended, 22 U. S. C. §§ 256-258, or to
75 proceedings for fishery offenses under the Act
76 of June 28, 1937, c. 392, 50 Stat. 325-327, 16
77 U. S. C. §§ 772-772i, or to proceedings against
78 a witness in a foreign country under the Act
79 of July 3, 1926, c. 762, 44 Stat. 835, 26 U. S. C.
80 §§ 711-718.

81 (c) APPLICATION OF TERMS. As used in these
82 rules the term "State" includes District of Colum-
83 bia, territory and insular possession. "Law" in-
84 cludes statutes and judicial decisions. "Act of
85 Congress" includes any act of Congress locally
86 applicable to and in force in the District of
87 Columbia, in a territory or in an insular posses-
88 sion. "District court" includes all district courts
89 named in subdivision (a), paragraph (1) of this
90 rule. "Civil action" refers to a civil action in a

91 district court. "Oath" includes affirmations. 6
 92 "District judge" includes a justice of the District 7
 93 Court of the United States for the District of 8
 94 Columbia. "Senior district judge" includes the 1
 95 chief justice of the District Court of the United 2
 96 States for the District of Columbia. "Judge of a 3
 97 circuit court of appeals" includes a justice of the 4
 98 United States Court of Appeals for the District 5
 99 of Columbia. "Senior circuit judge" includes the 6
 100 chief justice of the United States Court of Ap- 7
 101 peals for the District of Columbia. "Attorney for 8
 102 the government" means the attorney general, an 9
 103 authorized assistant of the attorney general, a 10
 104 United States attorney and an authorized assist- 11
 105 ant of a United States attorney. The words 12
 106 "demurrer," "motion to quash," "plea in abate- 13
 107 ment," "plea in bar" and "special plea in bar," 14
 108 or words to the same effect, in any act of Congress 15
 109 shall be construed to mean the motion raising a 16
 110 defense or objection provided in Rule 12. 17

Rule 58. Records. The clerk of the district 18
 1 court and each United States commissioner shall 19
 2 keep such records in criminal proceedings as the 20
 3 Director of the Administrative Office of the
 4 United States Courts, with the approval of the
 5 Judicial Conference of Senior Circuit Judges,
 6 may prescribe.
 7

Rule 59. Courts and Clerks. The circuit court
 2 of appeals and the district court shall be deemed
 3 always open for the purpose of filing any proper
 4 paper, of issuing and returning process and of
 5 making motions and orders. The clerk's office

6 with the clerk or a deputy in attendance shall be
 7 open during business hours on all days except
 8 Sundays and legal holidays.

1 **Rule 60. Rules of Court.**

2 (a) **RULES BY DISTRICT COURTS AND CIRCUIT**
 3 **COURTS OF APPEALS.** Rules made by district courts
 4 and circuit courts of appeals for the conduct of
 5 criminal proceedings shall not be inconsistent
 6 with these rules. Copies of all rules made by a
 7 district court or by a circuit court of appeals
 8 shall upon their promulgation be furnished to the
 9 Administrative Office of the United States
 10 Courts. The clerk of each court shall make ap-
 11 propriate arrangements, subject to the approval
 12 of the Director of the Administrative Office of
 13 the United States Courts, to the end that all rules
 14 made as provided herein be published promptly
 15 and that copies of them be available to the public.

16 (b) **PROCEDURE NOT OTHERWISE SPECIFIED.** If
 17 no procedure is specifically prescribed by rule, the
 18 court may proceed in any lawful manner not in-
 19 consistent with these rules or with any applicable
 20 statute.

1 **Rule 61. Forms.** The forms contained in the
 2 Appendix of Forms are illustrative and not
 3 mandatory.

1 **Rule 62. Effective Date.** These rules take ef-
 2 fect on the day which is 3 months subsequent to
 3 the adjournment of the ----- regular session
 4 of the --th Congress, but if that day is prior to
 5 -----, 1945, then they take effect on
 6 -----, 1945. They govern all criminal

7 proceedings thereafter commenced and so far as
8 just and practicable all proceedings then pending.

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

RULE 63

For
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APPENDIX OF FORMS

TABLE OF FORMS

Form.

1. Indictment for Murder in the First Degree of Federal Officer.
2. Indictment for Murder in the First Degree on Federal Reservation.
3. Indictment for Mail Fraud.
4. Indictment for Sabotage.
5. Indictment for Internal Revenue Violation.
6. Indictment for Interstate Transportation of Stolen Motor Vehicle.
7. Indictment for Receiving Stolen Motor Vehicle.
8. Indictment for Impersonation of Federal Officer.
9. Indictment for Obtaining Money by Impersonation of Federal Officer.
10. Indictment for Presenting Fraudulent Claim Against the United States.
11. Information for Food and Drug Violation.
12. Warrant for Arrest of Defendant.
13. Summons.
14. Warrant of Removal.
15. Search Warrant.
16. Motion for the Return of Seized Property and the Suppression of Evidence.
17. Appearance Bond.
18. Waiver of Indictment.
19. Motion by Defendant to Dismiss the Indictment.
20. Subpoena to Testify.
21. Subpoena to Produce Document or Object.
22. Warrant for Arrest of Witness.
23. Motion for New Trial.
24. Motion in Arrest of Judgment.
25. Judgment and Commitment.
26. Notice of Appeal.
27. Statement of Docket Entries.

**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 }
 v. } No. -----
 JOHN DOE } (18 U. S. C. §§ 452, 253)

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.

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**Form 2. INDICTMENT FOR MURDER IN THE FIRST DEGREE ON
FEDERAL RESERVATION**

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

UNITED STATES OF AMERICA }
 v. } No. -----
 JOHN DOE } (18 U. S. C. §§ 451, 452)

The grand jury charges:

On or about the ----- day of -----, 19--, in the
----- District of -----, and on lands ac-
quired for the use of the United States and under the (exclusive)
(concurrent) jurisdiction of the United States, John Doe with
premeditation shot and murdered John Roe.

A True Bill.

-----,
Foreman.

-----,
United State Attorney.

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.

Form 4. INDICTMENT FOR SABOTAGE

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

UNITED STATES OF AMERICA }
 v. } No. -----
 JOHN DOE } (50 U. S. C. § 103)

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 pre-
paring 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.

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Form 5. INDICTMENT FOR INTERNAL REVENUE VIOLATION

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

UNITED STATES OF AMERICA }
 v. } No. _____
 JOHN DOE } (26 U. S. C. § 2833)

The grand jury charges:

On or about the _____ day of _____, 19____, in the
_____ District of _____, John Doe
carried on the business of a distiller without having given bond
as required by law.

A True Bill.

_____,
Foreman.

_____,
United States Attorney.

**Form 6. 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.

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.

**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. ----- (18 U. S. C. § 80)
v.	
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.

Form 12. WARRANT FOR ARREST OF DEFENDANT

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

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

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 cus-
 tody 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 Dis-
 trict 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 property, namely, certain dies, hubs, molds and plates, fitted and intended to be used for the manufacture of counterfeit coins of the United States, and as I am satisfied that there is probable cause to believe that the property so fitted and intended to be used is being concealed on the premises above described,

You are hereby commanded to search the place named for the property specified, serving this warrant and making the search in the daytime, and if the property be found there to seize it, prepare a written inventory of the property seized and bring the property before me.

Dated this ----- day of -----.

-----,

U. S. Commissioner for the-----
District of-----

**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 prop-
erty 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 un-
lawfully 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 _____ at _____² 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 _____ 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.

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.

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

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

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

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

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

Approved: _____

JUSTIFICATION OF SURETIES

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

I further say that _____

_____.

_____,
Surety.

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

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

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	}	No. _____
v.		
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

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.

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.

Form 23. MOTION FOR NEW TRIAL

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

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

Form 25. JUDGMENT AND COMMITMENT

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

UNITED STATES OF AMERICA	} No. _____
v. _____	

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 _____

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.

It is Adjudged that ⁵ -----

It is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshall 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.

[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 Attorney General, with a certified copy of the within Judgment and Commitment.

-----,
United States Marshal.

⁵ Enter any order with respect to suspension and probation.

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

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 39 (a) (1) (Taking Appeal; and Petition for Writ of Certiorari—Taking Appeal: Notice of Appeal) *Federal Rules of Criminal Procedure*.

Form 27. STATEMENT OF DOCKET ENTRIES

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

UNITED STATES OF AMERICA

v.

No. _____

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.

ALTERNATIVE RULE 16 RECOMMENDED BY A MINORITY OF THE
ADVISORY COMMITTEE*

16. Notice of Alibi; Specifications of Time and Place. The attorney for the government may serve upon the defendant a reasonable time before the trial a notice specifying with reasonable certainty the contention of the government as to the time when and the place where the defendant committed the offense charged. In that event, the defendant, if he intends to introduce evidence that he was at a place other than that specified, shall within a reasonable time serve upon the attorney for the government a statement specifying the place where he claims to have been. Neither the attorney for the government nor the defendant shall be permitted at the trial to introduce evidence inconsistent with his specification, unless the court for good cause and upon just terms permits the specification to be amended. If a defendant fails to make the specification required by this rule, the court may exclude evidence in his behalf that he was at a place other than that specified by the government.

*Alternative Rule 16 is recommended by the following members of the Advisory Committee: John J. Burns, George H. Dession, Hugh D. McLellan, J. O. Seth, and Herbert Wechsler.

INDEX

A	Rule	Page
Acquittal, Motion for.....	31	30
Alibi, Notice of.....	16	16
Appeal:		
Record on.....	41 (b)	39
Supervision of.....	41	39
Taking.....	39	36
Application and Exception.....	57	57
Arraignment.....	10	13
Arrest:		
in Distant District.....	42 (b)	41
in Nearby District.....	42 (a)	41
Warrant of. <i>See</i> Warrant.		
Arrest of Judgment.....	36	35
B		
Bail.....	48	51
upon Appeal or Certiorari.....	40 (b)	38
for Witness.....	48 (b)	52
Bill of Particulars.....	7 (f)	10
C		
Calendars.....	53	56
Certiorari, Petition for Writ of.....	39 (b)	37
Challenges, Peremptory.....	26 (b)	27
Clerical Mistakes.....	38	35
Clerks, Courts and.....	59	60
Commitment to Another District Removal.....	42	41
Communications by Counsel to Judge.....	52	56
Complaint.....	3	2
Warrant or Summons upon.....	4	2
Conduct in the Court Room, Regulation of.....	56	57
Contempt:		
Criminal.....	44	47
for Failure to obey subpoena.....	19 (g)	23
Conviction of Less Offense.....	33 (c)	32
Counsel:		
Assignment of.....	46	49
Communications by, to Judge.....	52	56
Court Room, Regulation of Conduct in.....	56	57
Courts:		
and Clerks.....	59	60
Rules by.....	60	61
D		
Dates, Effective, of Rules.....	62	61
Defendant:		
Counsel for, Assignment of.....	46	49
Indigent, Subpoena upon request of.....	19 (b)	21
Presence of.....	45	49

	Rule	Page
Defendants:		
Joinder of.....	8 (b)	10
Verdicts with respect to several.....	33 (b)	31
Depositions.....	17	17
Subpoena for taking.....	19 (f)	22
Discovery and Inspection.....	18	20
Dismissal:		
by Attorney for Government.....	50 (a)	54
by Court.....	50 (b)	55

E

Effective Date of Rules.....	62	61
Error, Harmless, and Plain.....	55	56
Exception, Application and.....	57	57
Exceptions Unnecessary.....	54	56
Expert Witnesses.....	30	29
Evidence.....	28	29
Discovery and Inspection.....	18	20
Subpoena for production of documentary.....	19 (c)	21
to Suppress, Motion.....	43 (e)	46

F

Filing of Papers.....	51	55
Forms.....	61	61
Forms, Table of.....	—	63
Appearance Bond.....	Form 17	81
Indictment:		
for Impersonating Officer.....	Form 8	72
for Internal Revenue Violation.....	Form 5	69
for Interstate Transportation of Stolen Vehicle.....	Form 6	70
for Mail Fraud.....	Form 3	66
for Murder in the First Degree:		
of Federal Officer.....	Form 1	64
on Federal Reservation.....	Form 2	65
for Obtaining Money by Impersonating Officer.....	Form 9	73
for Presenting Fraudulent Claim.....	Form 10	74
for Receiving Stolen Vehicle.....	Form 7	71
for Sabotage.....	Form 4	68
Information for Food and Drug Violation.....	Form 11	75
Judgment and Commitment.....	Form 25	90
Motion:		
in Arrest of Judgment.....	Form 24	89
by Defendant to Dismiss.....	Form 19	84
for New Trial.....	Form 23	88
for Return of Seized Property.....	Form 16	80
Notice of Appeal.....	Form 26	92
Search Warrant.....	Form 15	79
Statement of Docket Entries.....	Form 27	93
Subpoena:		
to Produce Document or Object.....	Form 21	86
to Testify.....	Form 20	85
Summons.....	Form 13	77
Waiver of Indictment.....	Form 18	83
Warrant:		
for Arrest:		
of Defendant.....	Form 12	76
of Witness.....	Form 22	87
of Removal.....	Form 14	78
Search.....	Form 15	79

INDEX

G

	Rule	Page
Grand Jury-----	6	6

I

Indictment:		
Bill of Particulars-----	7 (f)	10
Dismissal of-----	50 (a, b)	54, 55
Motion to Dismiss-----	6 (b, 2), 12 (a)	6, 13
Summons upon-----	9	11
Surplusage-----	7 (d)	10
Trial Together of Indictments or Informa- tions-----	13	15
Waiver of-----	7 (b)	9
Warrant upon-----	9	11
Information, see Indictment		
Amendment of-----	7 (e)	10
Prosecution by-----	7 (a, b)	8, 9
Instructions to the Jury-----	32	31
Inspection, Discovery and-----	18	20
Investigation, Presentence-----	34 (c)	33

J

Joinder:		
of Defendants-----	8 (b)	10
of Offenses-----	8 (a)	10
Prejudicial, Relief from-----	14	15
Judge:		
Communications by Counsel to-----	52	56
Disability of-----	27	29
Judgment:		
of Acquittal, Motion for-----	31 (a)	30
Arrest of-----	36	35
of Conviction-----	34 (b)	33
Jurors:		
Alternate-----	26 (c)	28
Trial-----	26	27
Jury:		
Grand-----	6	6
Instructions to-----	32	31
of Less than Twelve-----	25 (b)	27
Poll of-----	33 (d)	32
Trial by-----	25 (a)	27
Trial without-----	25 (c)	27
Waiver of-----	25 (a)	27

M

Misjoinder, see Joinder, Prejudicial, Relief from		
Motion:		
for Acquittal-----	31	30
for Change of Venue, Time of-----	24	26
for Return of Property-----	43 (e)	46
Hearing on written, Time of service of notice of-----	47 (d)	50
Raising Defenses and Objections before Trial-----	12	14
to Transfer, Time of-----	24	26
Motions, Service of-----	51 (a, b, d)	55

	Rule	Page
N		
New Trial.....	35	34
Notice of Alibi.....	16	16
O		
Offense, Less, Conviction of.....	33 (c)	32
Orders, Notice of.....	51 (c)	55
P		
Papers, Service and Filing of.....	51	55
Plea of Guilty, Withdrawal of.....	34 (d)	34
Pleadings.....	12	13
Pleas.....	11	13
Poll of Jury.....	33 (d)	32
Presentence Investigation.....	34 (c)	33
Probation.....	34 (e)	34
Proceedings:		
Records in Criminal.....	58	60
Removal.....	42 (b)	41
on Transfer for Trial.....	23 (c)	25
Pre-Trial Procedure.....	15	16
Purpose of Rules.....	2	1
R		
Record:		
on Appeal.....	41 (b)	39
Proof of Official.....	29	29
Records in Criminal Proceedings.....	58	60
Relief from Prejudicial Joinder.....	14	15
Relief Pending Review.....	40	38
Removal.....	42 (b)	41
Review, Stay of Execution, and Relief Pending.....	40	38
Rules of Court.....	60	61
S		
Scope of Rules.....	1	1
Search and Seizure.....	43	44
Sentence and Judgment.....	34	33
Sentence, Correction or Reduction of.....	37	35
Service and Filing of Papers.....	51	55
Stay of Execution, and Relief Pending Review.....	40	38
Subpoena.....	19	20
Summons:		
upon Complaint.....	4	2
upon Indictment or Information.....	9	11
T		
Time.....	47	49
Appeal, for taking.....	39 (a, 2)	37
Additional, after Service by Mail.....	47 (e)	51
Certiorari, of Petition for Writ of.....	39 (b, 2)	37
Computation of.....	47 (a)	49
Hearing on written motion, of service of notice for.....	47 (d)	50
Venue, of Motion for Change of.....	24	26
Title of Rules.....	63	62
Trial Together of Indictments or Informations.....	13	15

INDEX

99

	Rule	Page
Trial:		
by Court.....	25	27
Jurors.....	26	27
by Jury.....	25	27
New.....	35	34
Subpoena for witness for attendance at.....	19 (e)	22
Waiver of Jury.....	25 (a)	27
Transfer. See Venue.		

V

Venue:		
District and Division.....	20	24
Transfer:		
from District or Division.....	22, 23	24, 25
within District.....	21	24
Motion for, Time of.....	24	26
for Plea.....	22	24
Proceedings on.....	23(c)	25
for Sentence.....	22	24
for Trial.....	23 (a, b)	25
Verdict.....	33	31

W

Warrant:		
Upon Complaint, of arrest.....	4	2
upon Indictment or Information, of arrest.....	9	11
Search.....	43(a, b, c, d)	44-47
Witness:		
Bail for appearance of.....	48 (b)	52
Expert.....	30	29
Subpoena for attendance of.....	19 (a, b, e)	20-23

