FOR RELEASE UPON DELIVERY



AN ADDRESS

BY

HONORABLE TOM C. CLARK

ATTORNEY GENERAL

OF THE

UNITED STATES

PREPARED FOR DELIVERY

BEFORE THE

RICCOBONO SEMINAR OF ROMAN LAW

CATHOLIC UNIVERSITY

WASHINGTON, D. C.

THURSDAY, MAY 16, 1946

8 P.M EST

The new Federal Rules of Criminal Procedure have now been the law in the federal courts for nearly two months.

I am very glad to be able to say that our experience with them has been most satisfactory.

Letters are pouring in from United States Attorneys all over the country expressing approval and enthusiasm regarding the new procedure.

The new Rules, which simplify the trial of criminal cases and do away with the influence of the widely varying state procedures in federal cases, are designed to provide — for the first time in our history — a streamlined and uniform system for all federal courts in the United States.

They make the work of lawyers less arduous.

Under the old practice criminal procedure varied so fundamentally in the several states that a lawyer from one state often found himself virtually unable to try a case in the federal court of another state.

The new Rules eliminate this problem and aid both the government and defense counsel.

To learn that they are accomplishing their objectives is most gratifying.

The first thing I notice about the new Rules is the added protection and new rights which they give the defendant in a criminal case.

It is not surprising to find that the rule which has received the most universal acclaim is Rule 7, dealing with the indictment and information.

This rule makes two innovations in criminal procedure — first, waiver of indictment in felony cases and, second, simplification of indictments.

Both are important, - the first to the defendant and the second to the prosecutor.

Subsection (b) of Rule 7 permits a defendant charged with felony to waive prosecution by indictment, and to consent to the filing of an information, in open court after being advised of the charge against him and of his rights.

By invoking this rule, any defendant can speed up the disposition of his case.

If he cannot make bail, he may often save himself a long period of confinement in jail waiting for the grand jury to convene and hear his case.

This is strikingly illustrated by two actual cases arising during the first week the new Rules were in effect.

In New Mexico, where the federal grand jury meets only twice a year, an indigent defendant was arrested on a felony charge immediately after the March grand jury adjourned.

He saved himself six months in jail, waiting for the September grand jury, by invoking this provision.

In another case in Massachusetts a felony case was completely disposed of in four and one-half hours.

In this brief time the defendant learned for the first time of his new right, - appeared in open court, - the information was drawn, - a plea of guilty was entered, and sentence was imposed.

However, no defendant need surrender any of his rights to fight the charges against him if he waives indictment.

He does not have to plead guilty, but may stand trial and defend himself the same as if he had waited for a grand jury to indict him.

Subsection (c) of Rule 7 makes a long overdue improvement in criminal procedure.

It says that the indictment or information shall be a concise and simple statement of the essential facts of the crime.

It contemplates that indictments will be drawn in modern English which a layman can understand instead of in the stilted phraseology of the Elizabethan period.

Repetitious, formal, meaningless and verbose statements — with which indictments were formerly replete — are eliminated.

Instead of the several paragraphs which were formerly required to describe which hand a murderer used to hold his pistol, the fact that the lethal bullet came from the pistol "then and there held in said right hand" of the murderer, and a dozen other similar monstrosities, a murder indictment now says only that at a stated time and place John Doe, with the premeditation, shot and murdered Richard Roe.

I am glad to be able to say that, in cases where the victim was not killed instantly, we need no longer charge that "of said wound the aforesaid John Doe did languish, and languishing did die".

Moreover, the federal courts try murder and many other cases only if the crime was committed on lands belonging to the United States.

It will be a welcome relief not to have to devote pages of the indictment to tracing title back to the days when the Dutch settlers purchased New Amsterdam from the Indians.

Instead, the prosecutor will merely allege that the crime occurred "on lands acquired for the use of the United States and under the exclusive (or concurrent) jurisdiction of the United States".

This rule affords the best opportunity prosecutors will ever have to lay at rest forever the ghost of the old common law rules of pleading.

We intend to make the most of this opportunity.

Returning now to the defendant, another highly beneficial rule — which is being invoked nearly every day all over the country — is Rule 20.

It permits a defendant arrested in a district other than that where he is wanted for trial to ask for a transfer of the case to the district where he is arrested.

This procedure saves the expense and inconvenience of removal proceedings.

It may also save the defendant the hardship of a trip back in handcuffs in the Marshal's custody, to the state where the crime was committed.

Where a defendant does not intend to fight the charges against him — and 85% of federal criminal prosecutions end in pleas of guilty — this rule permits the case to be simply, quickly and inexpensively disposed of in the jurisdiction where the fugitive is arrested.

However, this rule forces nothing upon either the government or the defendant.

No case can be transferred unless both United States Attorneys approve.

If the defendant changes his mind after indicating that he will plead guilty in the district of the arrest, he may withdraw his request and go back to the district where the crime was committed for a trial on the merits.

Moreover, the rule specifically says that if he does so, his statement that he desired to plead guilty shall not be used against him unless he was represented by counsel when it was made.

However, Rule 20 is not the only rule which relaxes the former strictness of federal law on the subject of venue to the defendant's advantage.

If he consents, any step of the proceeding may be had at any time in any division of the district.

But even more important, it is surprising even to lawyers to note that up until now federal criminal law has never given a defendant an effective opportunity to obtain a change of venue because of local conditions.

Rule 21 enables him, for the first time, to obtain a change of venue to a different judicial district, even outside the state in which the alleged offense was committed, if the court feels local prejudice may prevent a fair and impartial trial.

Even after the trial ends, the new Rules give new protection to defendants.

Rule 33 increases from 60 days to 2 years the time within which the defendant may move for a new trial on the ground of newly discovered evidence.

Rule 37 increases the time within which his appeal may be taken.

The new Rules give special added protection to the rights of poor defendants.

Under Rule 15 the court may allow any defendant to take depositions if they are necessary in order to prevent failure of justice.

However, in proper cases it may direct that the government pay the travel and subsistence expenses incurred by the attorney for an indigent defendant.

Under Rule 17 the court may now, at government expense, subpoena witnesses for a poor defendant anywhere in the United States instead of only within a hundred miles of the place of trial, as was the case under the old law.

Where a court after trial imposes sentence upon a defendant not represented by counsel, it must tell him that he has a right to appeal. If he requests, the clerk will prepare and file a notice of appeal for him.

Beyond this, Rule 39 empowers the appellate courts in any and all cases — whether or not the defendants are indigent — to dispense with the printing of the record on appeal and to review the case on the typewritten transcript.

The advantages of the new Rules, however, do not all inure to the defendant alone.

For example, Rule 12 will benefit both him and the government.

This rule abolishes the involved and technical "pleas in abatement", "demurrers", "motions to quash", and "pleas in bar", which are designed to attack the legality of an indictment.

It substitutes a simple motion asking for the desired relief.

This means that justice can now be done without compelling counsel for both sides to go back to the common law days to ascertain whether the correct heading was used on a particular pleading, and the outcome of the case will no longer depend upon the highly technical name which defense counsel utilized.

The case will be decided on the merits, not on which side was successful in a guessing contest.

From the government's standpoint, Rules 4 and 40 are highly advantageous.

Under Rule 4, warrants of arrest run throughout the United States instead of being limited to the district where they were issued.

Fugitive complaints, fugitive warrants and alias warrants are rendered unnecessary.

Rule 40 does away entirely with the need for removal proceedings in cases of arrest in a nearby district, which is either

(1) another district in the same state, or
(2) a district in another state if the

place where the defendant is arrested is less than 100 miles from the place where the warrant was issued or where the crime occurred.

This will bring to an end the serious delays which have all too frequently resulted when defendants charged with crime in New York City, for example, cross the Brooklyn Bridge into another judicial district of the same state or take the ferry across the river into New Jersey.

Conversely, however, Rule 40 preserves the right of defendants arrested in a distant district to have a removal hearing.

They cannot be taken any great distance to answer an alleged charge of crime without having a judicial proceeding at the outset to determine the existence of probable cause.

No great hardship is inflicted upon a defendant if he is taken to a town in the same state or to one in a different state but less than one hundred miles away, without a hearing, but a great hardship might be inflicted if he were taken half way across the continent with no hearing. That cannot happen under Rule 40.

However, the rule materially helps the government by providing that the production of a certified copy of the indictment, plus proof of identity, will, without anything more, require removal of a defendant from a distant district.

The defendant is not harmed since a grand jury has already passed upon his case and found that probable cause to put him on trial exists.

While the old law held that the indictment constituted prima facie evidence of the existence of probable cause to order removal to the demanding district, this doctrine was all too frequently ignored.

The new rule makes it plain that on removal, the judge or commissioner may not try the case on the merits if the defendant has already been indicted in the demanding district.

Moreover, proceedings need no longer abruptly come to an end with the close of the term of court.

Formerly, the session of the grand jury terminated at that time, with the exception that an express order of court could continue it to complete business begun but not finished.

Now, it may continue for all purposes up to 18 months, at great saving to the government and to the tax payer.

Time will not permit of further examples of the new procedure.

I can safely say, however, that the Rules are already proving one of the greatest advances in the history of our criminal procedure, and I am confident that the future will make this even more apparent.