

also, Orfield, 22 Texas L.R. 194, 221. As to the method of taking objections to instructions to the jury, see Rule 30.

2. Many States have abolished the use of exceptions in criminal and civil cases. See, e.g., Cal.Pen. Code (Deering, 1941), sec. 1259; Mich.Stat. Ann. (Henderson, 1938), secs. 28.1046, 28.1053; Ohio Gen Code Ann. (Page, 1938), secs. 11560, 13442-7; Oreg.Comp. Laws Ann. (1940), secs. 5-704, 26-1001.

NOTES OF ADVISORY COMMITTEE ON RULES—1987
AMENDMENT

The amendments are technical. No substantive change is intended.

Rule 52. Harmless Error and Plain Error

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

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

NOTES OF ADVISORY COMMITTEE ON RULES—1944

Note to Subdivision (a). This rule is a restatement of existing law, 28 U.S.C. [former] 391 (second sentence): "On the hearing of any appeal, certiorari, writ of error, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties"; 18 U.S.C. [former] 556; "No indictment found and presented by a grand jury in any district or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant, * * *." A similar provision is found in Rule 61 of the Federal Rules of Civil Procedure [28 U.S.C., Appendix].

Note to Subdivision (b). This rule is a restatement of existing law, *Wiborg v. United States*, 163 U.S. 632, 658; *Hemphill v. United States*, 112 F.2d 505 (C.C.A. 9th), reversed 312 U.S. 657. Rule 27 of the Rules of the Supreme Court [28 U.S.C., Appendix] provides that errors not specified will be disregarded, "save as the court, at its option, may notice a plain error not assigned or specified." Similar provisions are found in the rules of several circuit courts of appeals.

Rule 53. Regulation of Conduct in the Court Room

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

NOTES OF ADVISORY COMMITTEE ON RULES—1944

While the matter to which the rule refers has not been a problem in the Federal courts as it has been in some State tribunals, the rule was nevertheless included with a view to giving expression to a standard which should govern the conduct of judicial proceedings, Orfield, 22 Texas L.R. 194, 222-3; Robbins, 21 A.B.A.Jour. 301, 304. See, also, *Report of the Special Committee on Cooperation between Press, Radio and Bar, as to Publicity Interfering with Fair Trial of Judicial and Quasi-Judicial Proceedings* (1937), 62 A.B.A.Rep. 851, 862-865; (1932) 18 A.B.A.Jour. 762; (1926) 12 *Id.* 488; (1925) 11 *Id.* 64.

Rule 54. Application and Exception

(a) **COURTS.** These rules apply to all criminal proceedings in the United States District

Courts; in the District Court of Guam; in the District Court for the Northern Mariana Islands, except as otherwise provided in articles IV and V of the covenant provided by the Act of March 24, 1976 (90 Stat. 263); and in the District Court of the Virgin Islands; in the United States Courts of Appeals; and in the Supreme Court of the United States; except that the prosecution of offenses in the District Court of the Virgin Islands shall be by indictment or information as otherwise provided by law.

(b) **PROCEEDINGS.**

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

(2) *Offenses Outside a District or State.* These rules apply to proceedings for offenses committed upon the high seas or elsewhere out of the jurisdiction of any particular state or district, except that such proceedings may be had in any district authorized by 18 U.S.C. § 3238.

(3) *Peace Bonds.* These rules do not alter the power of judges of the United States or of United States magistrate judges to hold to security of the peace and for good behavior under Revised Statutes, § 4069, 50 U.S.C. § 23, but in such cases the procedure shall conform to these rules so far as they are applicable.

(4) *Proceedings Before United States Magistrate Judges.* Proceedings involving misdemeanors and other petty offenses are governed by Rule 58.

(5) *Other Proceedings.* These rules are not applicable to extradition and rendition of fugitives; civil forfeiture of property for violation of a statute of the United States; or the collection of fines and penalties. Except as provided in Rule 20(d) they do not apply to proceedings under 18 U.S.C., Chapter 403—Juvenile Delinquency—so far as they are inconsistent with that chapter. They do not apply to summary trials for offenses against the navigation laws under Revised Statutes §§ 4300-4305, 33 U.S.C. §§ 391-396, or to proceedings involving disputes between seamen under Revised Statutes, §§ 4079-4081, as amended, 22 U.S.C. §§ 256-258, or to proceedings for fishery offenses under the Act of June 28, 1937, c. 392, 50 Stat. 325-327, 16 U.S.C. §§ 772-772i, or to proceedings against a witness in a foreign country under 28 U.S.C. § 1784.

(c) **APPLICATION OF TERMS.** As used in these rules the following terms have the designated meanings.

"Act of Congress" includes any act of Congress locally applicable to and in force in the District of Columbia, in Puerto Rico, in a territory or in an insular possession.

"Attorney for the government" means the Attorney General, an authorized assistant of the Attorney General, a United States Attorney, an authorized assistant of a United States Attorney, when applicable to cases arising under the laws of Guam the Attorney General of Guam or such other person or persons as may be authorized by the laws of Guam to act therein, and when applicable to cases arising under the laws of the Northern Mariana Islands the Attorney

General of the Northern Mariana Islands or any other person or persons as may be authorized by the laws of the Northern Marianas to act therein.

“Civil action” refers to a civil action in a district court.

The words “demurrer,” “motion to quash,” “plea in abatement,” “plea in bar” and “special plea in bar,” or words to the same effect, in any act of Congress shall be construed to mean the motion raising a defense or objection provided in Rule 12.

“District court” includes all district courts named in subdivision (a) of this rule.

“Federal magistrate judge” means a United States magistrate judge as defined in 28 U.S.C. §§631–639, a judge of the United States or another judge or judicial officer specifically empowered by statute in force in any territory or possession, the Commonwealth of Puerto Rico, or the District of Columbia, to perform a function to which a particular rule relates.

“Judge of the United States” includes a judge of a district court, court of appeals, or the Supreme Court.

“Law” includes statutes and judicial decisions.

“Magistrate judge” includes a United States magistrate judge as defined in 28 U.S.C. §§631–639, a judge of the United States, another judge or judicial officer specifically empowered by statute in force in any territory or possession, the Commonwealth of Puerto Rico, or the District of Columbia, to perform a function to which a particular rule relates, and a state or local judicial officer, authorized by 18 U.S.C. §3041 to perform the functions prescribed in Rules 3, 4, and 5.

“Oath” includes affirmations.

“Petty offense” is defined in 18 U.S.C. §19.

“State” includes District of Columbia, Puerto Rico, territory and insular possession.

“United States magistrate judge” means the officer authorized by 28 U.S.C. §§631–639.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Apr. 9, 1956, eff. July 8, 1956; Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 28, 1982, eff. Aug. 1, 1982; Pub. L. 98–473, title II, §§209(e), 215(e), Oct. 12, 1984, 98 Stat. 1987, 2016; Pub. L. 100–690, title VII, §7089(c), Nov. 18, 1988, 102 Stat. 4409; May 1, 1990, eff. Dec. 1, 1990; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 26, 1999, eff. Dec. 1, 1999.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

Note to Subdivision (a)(1). 1. The Act of June 28, 1940 (54 Stat. 688; 18 U.S.C. 687 [see 3771]), authorizing the Supreme Court to prescribe rules of criminal procedure for the district courts of the United States in respect to proceedings prior to and including verdict or finding of guilty or not guilty or plea of guilty, is expressly applicable to the district courts of Alaska, Hawaii, Puerto Rico, Canal Zone, Virgin Islands, the Supreme Courts of Hawaii and Puerto Rico, and the United States Court for China. This is likewise true of the Act of February 24, 1933 (47 Stat. 904; 18 U.S.C. 688 [see 3772]), authorizing the Supreme Court to prescribe rules in respect to proceedings after verdict or finding or after plea of guilty. In this respect these two statutes differ from the Act of June 19, 1934 (48 Stat. 1064; 28 U.S.C. 723b, 723c [now 2072]), authorizing the Supreme Court to prescribe rules of civil procedure. The last-

mentioned Act comprises only district courts of the United States and the courts of the District of Columbia. The phrase “district courts of the United States” was held not to include district courts in the territories and insular possessions, *Mookini v. United States*, 303 U.S. 201. By subsequent legislation the Federal Rules of Civil Procedure were extended to the District Court of the United States for Hawaii and to appeals therefrom (Act of June 19, 1939; 53 Stat. 841; 48 U.S.C. 646) and to the District Court of the United States for Puerto Rico and to appeals therefrom (Act of February 12, 1940; 54 Stat. 22; 48 U.S.C. 873a).

2. While the specific reference in the rule to the District Court of the United States for the District of Columbia is probably superfluous, since that court has the same powers and exercises the same jurisdiction as other district courts of the United States in addition to such local powers and jurisdiction as have been conferred upon it by statute (D.C. Code, 1940, Title 11, §305), nevertheless it was listed in the rule in view of the fact that the Federal Rules of Civil Procedure [28 U.S.C., Appendix] contain a somewhat similar provision (Rule 81(d)).

3. The United States Court for China has been omitted from the rule in view of the fact that the court has recently been abolished with the abandonment by the United States of its extraterritorial jurisdiction in China.

4. Although, as indicated above, the rule-making power of the Supreme Court in respect to criminal cases extends to the Supreme Courts of Hawaii and Puerto Rico, the rules are not made applicable to those two courts, in view of the fact that they are purely local appellate courts having no appellate jurisdiction over the district courts of the United States in those territories. Alaska and Hawaii have dual systems of courts: local courts exercising purely local jurisdiction and United States district courts exercising Federal jurisdiction. The Supreme Court of each of the two territories hears appeals only from the local courts.

5. Alaska.—There is a district court for the Territory of Alaska consisting of four divisions, established on a territorial basis, 48 U.S.C. 101, 101a. As the only court in the Territory, it acts in a dual capacity: it has jurisdiction over cases arising under the laws of the United States as well as those arising under local laws. Although a legislative rather than a constitutional court, it is, nevertheless, deemed a court of the United States and has the jurisdiction of district courts of the United States, 48 U.S.C. 101, 101a; *Steamer Coquiltam v. United States*, 163 U.S. 346; *McAllister v. United States*, 141 U.S. 174, 179; *Ex parte Krause*, 228 F. 547, 549 (W.D.Wash.). Criminal procedure is now regulated by Acts of Congress, by the Alaska Code of Criminal Procedure (Alaska Comp. Laws, 1933, pp. 959–1018), and by rules promulgated by the district court.

6. Hawaii.—Hawaii has a dual system of courts. The United States District Court for the Territory of Hawaii, a legislative court, has the jurisdiction of district courts of the United States and proceeds therein “in the same manner as a district court,” 48 U.S.C. 641, 642. In addition, there are circuit courts having jurisdiction over cases arising under local laws. Appeals from the circuit courts run to the Supreme Court of the Territory, 48 U.S.C. 631. These rules are made applicable to the district court, but not to the local courts. The Federal Rules of Civil Procedure have been made applicable to the district court and to appeals therefrom, 48 U.S.C. 646.

7. Puerto Rico.—Puerto Rico has a dual system of courts. The District Court of the United States for Puerto Rico, a legislative court, has jurisdiction of all cases cognizable in the district courts of the United States and proceeds “In the same manner,” 48 U.S.C. 863.

In addition, there are local courts for the trial of cases arising under local law, appeals therefrom running to the Supreme Court of the Territory. These rules are made applicable to the district court, but not to the local courts. The Federal Rules of Civil Proce-

ture [28 U.S.C., Appendix] have been extended to the district court, 48 U.S.C. 873a.

8. Virgin Islands.—In the Virgin Islands there is a District Court of the Virgin Islands, a legislative court, consisting of two divisions and exercising both Federal and local jurisdiction, 48 U.S.C. 1405z, 1406. Heretofore the rules of practice and procedure have been prescribed “by law or ordinance or by rules and regulations of the district judge not inconsistent with law or ordinance,” 48 U.S.C. 1405z.

9. Canal Zone.—In the Canal Zone there is a United States District Court for the District of the Canal Zone, a legislative court, exercising both Federal and local jurisdiction, 48 U.S.C. 1344, 1345. Criminal procedure is regulated by the Code of Criminal Procedure of the Canal Zone (Canal Zone Code, Title 6; 48 Stat. 1122), and by rules of practice and procedure prescribed by the district judge, 48 U.S.C. 1344. There are no grand juries in the district, all prosecutions being instituted by information. In the light of these circumstances and because of the peculiar status of the Canal Zone and its quasi-military nature, these rules have been made applicable to its district court, only with respect to proceedings after verdict or finding of guilty or plea of guilty.

10. By order dated March 31, 1941, effective July 1, 1941, the Supreme Court extended the rules of practice and procedure after plea of guilty, verdict or finding of guilty, in criminal cases, to the district courts of Alaska, Hawaii, Puerto Rico, Canal Zone, and Virgin Islands, and all subsequent proceedings in such cases in the United States circuit courts of appeals and in the Supreme Court of the United States, 312 U.S. 721.

Note to Subdivision (a)(2). 1. Rules 3, 4, and 5, *supra*, relate to proceedings before United States commissioners.

2. Justices and judges of the United States, as well as United States commissioners, may issue warrants and conduct proceedings as committing magistrates, 18 U.S.C. 591 [now 3041] (Arrest and removal for trial); 9 Edmunds, *Cyclopedia of Federal Procedure*, 2d Ed., secs. 3800, 3819.

3. In the District of Columbia judges of the Municipal Court have authority to issue warrants and conduct proceedings as committing magistrates, D.C. Code, 1940, Title 11, secs. 602, 755. These proceedings are governed by these rules. The Municipal Court of the District of Columbia is also a local court for the trial of misdemeanors, but when so acting it is not a court of the United States. These rules, therefore, do not apply to such proceedings.

4. State and local judges and magistrates may issue warrants and act as committing magistrates in Federal cases, 18 U.S.C. 591 [now 3041]. Only a very small proportion of cases are brought before them, however, and then ordinarily only in an emergency. Since these judicial officers may not be familiar with Federal procedure, these rules have not been made applicable to such proceedings.

Note to Subdivision (b)(1). 1. Certain types of State criminal prosecutions, principally those in which defendant is an officer appointed under or acting by authority of a revenue law of the United States and is prosecuted on account of an act done under color of his office, are removable to a Federal court on defendant's motion, 28 U.S.C. 74 [now 1443, 1446, 1447] (Removal of suits from State courts; causes against persons denied civil rights); sec. 76 [now 1442, 1446, 1447] (Removal of suits from State courts; suits and prosecutions against revenue officers). In such cases the Federal court applies the substantive law of the State, but follows Federal procedure; *State of Tennessee v. Davis*, 100 U.S. 257; *Carter v. Tennessee*, 18 F.2d 850 (C.C.A. 6th); *Miller v. Kentucky*, 40 F.2d 820 (C.C.A. 6th). See also, *State of Maryland v. Soper*, 270 U.S. 9. The rule is, therefore, a restatement of existing law, except that it does not affect whatever power the State prosecutor may have as to dismissal.

2. The rule does not affect the mode of removing a case from a State to a Federal court and leaves undis-

turbed the statutes governing this matter, 28 U.S.C. 74-76 [now 1442, 1443, 1446, 1447].

Note to Subdivision (b)(2). This rule should be read in conjunction with Rule 18, which provides that “Except as otherwise permitted by statute or by these rules, the prosecution shall be held in a district in which the offense was committed * * *”.

Note to Subdivision (b)(4). United States commissioners specially designated for that purpose by the court by which they are appointed have trial jurisdiction over petty offenses committed on Federal reservations if the defendant waives his right to be tried in the district court and consents to be tried before the commissioner. Act of October 9, 1940, 54 Stat. 1058, 18 U.S.C. 576 [now 3401]. A petty offense is an offense the penalty for which does not exceed confinement in a common jail without hard labor for a period of six months or a fine of \$500, or both, 18 U.S.C. 541 [see 1]. Appeals from convictions by commissioners lie to the district court, 18 U.S.C. 576a [now 3402]. These rules do not apply to trials before United States commissioners in such cases, since rules of procedure and practice in such matters were specially prescribed by the Supreme Court on January 6, 1941, 311 U.S. 733 *et seq.* The substantive law applicable in such cases with respect to offenses other than so-called Federal offenses is governed by 18 U.S.C. 468 [now 13] (Laws of States adopted for punishing wrongful acts; effect of repeal). In addition, National Park commissioners have limited trial jurisdiction with respect to offenses committed in National Parks. Trials before commissioners in such cases are not governed by these rules, although when a National Park commissioner conducts a proceeding as a committing magistrate, these rules are applicable.

Among the statutes relating to jurisdiction of and proceedings before National Park commissioners are the following:

U.S.C., Title 16:

- Section 10 (Arrests by employees of park service for violation of laws and regulations)
- Section 10a (Arrests by employees for violation of regulations made under §9a)
- Section 27 (Yellowstone National Park; commissioner; jurisdiction and powers)
- Section 66 (Yosemite and Sequoia National Parks; commissioners; appointment; jurisdiction)
- Section 70 (Same; arrests by commissioners for certain offenses; holding persons arrested for trial; bail)
- Section 101 (Mount Rainier National Park; commissioner; arrest; bail)
- Section 102 (Same; commissioner; direction of process of; arrests by other officers)
- Section 117b (Mesa Verde National Park; application of Colorado laws to offenses)
- Section 117f (Same; criminal offenses not covered by section 117c; jurisdiction of commissioner)
- Section 117g (Same; process to whom issued; arrests without process)
- Section 129 (Crater Lake National Park; commissioner; appointment; powers and duties)
- Section 130 (Same; commissioner; arrests by; bail)
- Section 131 (Same; commissioner; direction of process; arrest without process)
- Section 172 (Glacier National Park; commissioner; jurisdiction; powers and duties)
- Section 173 (Same; commissioner; arrest of offenders, confinement, and bail)
- Section 174 (Same; commissioner; process directed to marshal; arrest without process)
- Section 198b (Rocky Mountain National Park; punishment of offenses; Colorado laws when followed)
- Section 198e (Same; United States Commissioner; appointment; jurisdiction; issuing process; appeals; rules of procedure)
- Section 198f (Same; United States Commissioner; arrest of persons for offenses not covered by section 198c; bail)
- Section 198g (Same; United States Commissioner; process to whom directed; arrest without process)

- Section 204b (Lassen Volcanic National Park; application of California laws to offenses)
- Section 204e (Same; United States Commissioner; appointment; jurisdiction of offenses; appeals; rules of procedure)
- Section 204f (Same; criminal offenses not covered by section 204c; jurisdiction of commissioner)
- Section 204g (Same; process to whom issued; arrests without process)
- Section 376 (Hot Springs National Park; prosecutions for violations of law or rules and regulations)
- Section 377 (Same; prosecutions for other offenses)
- Section 378 (Same; process directed to marshal; arrests by others)
- Section 381 (Same; execution of sentence on conviction)
- Section 382 (Same; imprisonment for nonpayment of fines or costs)
- Section 395b (Hawaii National Park; application of Hawaiian laws to offenses)
- Section 395e (Same; United States Commissioner; appointment; jurisdiction of offenses; appeals; rules of procedure; acting commissioners)
- Section 395f (Same; criminal offenses not covered by section 395c; jurisdiction of commissioner)
- Section 395g (Same; process to whom issued; arrests without process)
- Section 403c-1 (Shenandoah National Park and Great Smoky Mountains National Park; notice of assumption of police jurisdiction over Shenandoah Park by United States; exceptions)
- Section 403c-5 (Same; United States Commissioner; appointment; jurisdiction of offenses; appeals; rules of procedure)
- Section 403c-6 (Same; jurisdiction of other commissioners)
- Section 403c-7 (Same; commissioner's jurisdiction of offenses not covered by section 403c-2)
- Section 403c-8 (Same; process to whom directed, arrest without process)
- Section 415 (National Military Parks; arrest and prosecution of offenders)
- Note to Subdivision (b)(5).* 1. Foreign extradition proceedings are governed by the following statutes:
- U.S.C., Title 18:
- Section 651 [now 3184] (Fugitives from foreign country)
- Section 652 [now 3185] (Fugitives from country under control of United States)
- Section 653 [now 3186] (Surrender of fugitive)
- Section 654 [now 3188] (Time allowed for extradition)
- Section 655 [now 3190] (Evidence on hearing)
- Section 656 [now 3191] (Witnesses for indigent defendants)
- Section 657 [now 3189] (Place and character of hearing)
- Section 658 [now 3181] (Continuance of provisions limited)
- Section 659 [now 3192] (Protection of accused)
- Section 660 [now 3193] (Agent receiving offenders; powers)
- Interstate rendition or extradition proceedings are governed by the following statutes:
- U.S.C., Title 18:
- Section 662 [now 3182, 3195] (Fugitives from State or Territory)
- Section 662c [now 752, 3183, 3195] (Fugitives from State or Territory; arrest and removal)
- Section 662d [now 3187, 3195] (Fugitives from State or Territory; provisional arrest and detention)
2. Proceedings relating to forfeiture of property used in connection with a violation of a statute of the United States are governed by various statutes, among which are following:
- U.S.C., Title 16:
- Section 26 (Yellowstone Park; regulations for hunting and fishing in; punishment for violation; forfeitures)
- Section 65 (Yosemite and Sequoia National Parks; seizure and forfeiture of guns, traps, teams, horses, and so forth)
- Section 99 (Mount Rainier National Park; protection of game and fish; forfeitures of guns, traps, teams, and so forth)
- Section 117d (Mesa Verde National Park; forfeiture of property used for unlawful purpose)
- Section 128 (Crater Lake National Park; hunting and fishing; forfeitures or seizure of guns, traps, teams, etc., for violating regulations)
- Section 171 (Glacier National Park; hunting and fishing; forfeitures and seizures of guns, traps, teams, and so forth)
- Section 198d (Rocky Mountain National Park; forfeiture of property used in commission of offenses)
- Section 204d (Lassen Volcanic National Park; forfeiture of property used for unlawful purposes)
- Section 635 (Importing illegally taken skins; forfeiture)
- Section 706 (Arrests; search warrants)
- Section 727 (Upper Mississippi River Wild Life and Fish Refuge; powers of employees of Department of the Interior; searches and seizures)
- Section 772e (Penalties and forfeitures)
- U.S.C., Title 18:
- Section 286 [now 492] (Forfeiture of counterfeit obligations, etc.; failure to deliver)
- Section 645 [now 3611] (Confiscation of firearms possessed by convicted felons)
- Section 646 [now 3617] (Remission or mitigation of forfeitures under liquor laws; possession pending trial)
- Section 647 [see 3616] (Use of confiscated motor vehicles)
- U.S.C., Title 19:
- Section 483 [see 1595a] (Forfeitures; penalty for aiding unlawful importation)
- Section 1592 (Fraud; penalty against goods)
- Section 1602 (Seizure; report to collector)
- Section 1603 (Seizure; collector's reports)
- Section 1604 (Seizure; prosecution)
- Section 1605 (Seizure; custody)
- Section 1606 (Seizure; appraisalment)
- Section 1607 (Seizure; value \$1,000 or less)
- Section 1608 (Seizure; claims; judicial condemnation)
- Section 1609 (Seizure; summary of forfeiture and sale)
- Section 1610 (Seizure; value more than \$1,000)
- Section 1611 (Seizure; sale unlawful)
- Section 1612 (Seizure; summary sale)
- Section 1613 (Disposition of proceeds of forfeited property)
- Section 1614 (Release of seized property)
- Section 1615 (Burden of proof in forfeiture proceedings)
- Section 1703 (Seizure and forfeiture of vessels)
- Section 1705 (Destruction of forfeited vessel)
- U.S.C., Title 21:
- Section 334 (Seizure)
- Section 337 (Proceedings in name of United States; provision as to subpoenas)
- U.S.C., Title 22:
- Section 401 (Seizure of war materials intended for unlawful export generally; forfeiture)
- Section 402 (Seizure of war materials intended for unlawful export generally; warrant for detention of seized property)
- Section 403 (Seizure of war materials intended for unlawful export generally; petition for restoration of seized property)
- Section 404 (Seizure of war materials intended for unlawful export generally; libel and sale of seized property)
- Section 405 (Seizure of war materials intended for unlawful export generally; method of trial; bond for redelivery)
- Section 406 (Seizure of war materials intended for unlawful export generally; sections not to interfere with foreign trade)

U.S.C., Title 26:

Section 3116 [now 7302] (Forfeitures and seizures)

3. Collection of fines and penalties is accomplished in the same manner as the collection of a civil judgment. See Rule 69(a) of the Federal Rules of Civil Procedure [28 U.S.C., Appendix]. For mode of discharging indigent convicts imprisoned for non-payment of fine, see 18 U.S.C. 641 [now 3569].

4. The Federal Juvenile Delinquency Act, 18 U.S.C. 921-929 [now 5031-5037], authorizes prosecution of a juvenile delinquent on the charge of juvenile delinquency, if the juvenile consents to this procedure. In such cases the court may be convened at any time and place, in chambers or otherwise, and the trial is without a jury. The purpose of excepting proceedings under the act is to make inapplicable to them the requirement of an arraignment in open court (Rule 10) and other similar provisions.

5. As habeas corpus proceedings are regarded as civil proceedings, they are not governed by these rules. The procedure in such cases is prescribed by 28 U.S.C. 451-466 [now 2241-2243, 2251-2253]. Appeals in habeas corpus proceedings are governed by the Federal Rules of Civil Procedure (Rule 81(a)(2) of the Federal Rules of Civil Procedure [28 U.S.C., Appendix].

Note to Subdivision (c). 1. This rule is analogous to Rule 81(e) of the Federal Rules of Civil Procedure [28 U.S.C., Appendix].

2. 1 U.S.C. §§ 1-6, containing general rules of construction, should be read in conjunction with this rule.

3. In connection with the definition of "attorney for the Government", see the following statutes:

U.S.C., Title 5:

Section 291 [now 28 U.S.C. 501] (Establishment of Department)

Section 293 [now 28 U.S.C. 505] (Solicitor General)

Section 294 [now 28 U.S.C. 504] (Assistant to Attorney General)

Section 295 [now 28 U.S.C. 506] (Assistant Attorneys General)

Section 309 [now 28 U.S.C. 518] (Conduct and argument of cases by Attorney General and Solicitor General)

Section 310 [now 28 U.S.C. 515] (Conduct of legal proceedings)

Section 311 [former] (Performance of duty by officers of Department)

Section 312 [now 28 U.S.C. 543, 547, 548] (Counsel to aid district attorneys)

Section 315 [now 28 U.S.C. 515] (Appointment and oath of special attorneys or counsel)

U.S.C., Title 28:

Section 481 [now 541] (District attorneys)

Section 483 [now 542] (Assistant district attorneys)

Section 485 [now 547] (District attorneys; duties)

4. The last sentence of this rule has particular reference to 18 U.S.C. 682 [now 3731]. (Appeals; on behalf of the United States; rules of practice and procedure), which authorizes the United States to appeal in criminal cases from a decision on a motion to quash, a demurrer or a special plea in bar, if the defendant has not been placed in jeopardy. It is intended that the right of the Government to appeal in such cases should not be affected as the result of the substitution of a motion under Rule 12 for a demurrer, motion to quash and a special plea in bar. The rule is equally applicable to any other statute employing the same terminology.

NOTES OF ADVISORY COMMITTEE ON RULES—1948
AMENDMENT

Subdivision (a)(1).—To conform to the nomenclature of revised Title 28 with respect to district courts and courts of appeals (28 U.S.C. §§ 132(a), 43(a)); to eliminate special reference to the district courts for the District of Columbia, Hawaii and Puerto Rico which are now United States district courts for all purposes (28 U.S.C. §§ 88, 91, 119, 132, 133, 451), and to eliminate special ref-

erence to the court of appeals for the District of Columbia which is now a United States court of appeals for all purposes (28 U.S.C. §§ 41, 43).

Subdivision (b).—The amendment to paragraph (1) is to incorporate nomenclature of Revised Title 28 and in paragraphs (2), (3), (4), and (5) to insert proper reference to Title 18 and 28 in place of repealed acts.

Subdivision (c).—Under revised Title 28 the justices of the United States Court of Appeals and District Court for the District of Columbia become circuit and district judges (see 28 U.S.C. §§ 44, 133) and the use of the descriptive phrase "senior circuit judge" is abandoned in favor of the title "chief judge" in all circuits including the District of Columbia.

NOTES OF ADVISORY COMMITTEE ON RULES—1966
AMENDMENT

Subdivision (a).—The first change reflects the granting of statehood to Alaska. The second change conforms to Section 3501 of the Canal Zone Code.

Subdivision (b).—The change is made necessary by the new provision in Rule 20(d).

NOTES OF ADVISORY COMMITTEE ON RULES—1972
AMENDMENT

Subdivisions (a) and (b) are amended to delete the references to "commissioners" and to substitute, where appropriate, the phrase "United States magistrates."

Subdivision (a)(2) is deleted. In its old form it makes reference to "rules applicable to criminal proceedings before commissioners," which are now replaced by the Rules of Procedure for the Trial of Minor Offenses before United States Magistrates (1971). Rule 1 of the magistrates' rules provides that they are applicable to cases involving "minor offenses" as defined in 18 U.S.C. § 3401 "before United States magistrates." Cases involving "minor offenses" brought before a judge of the district court will be governed by the Rules of Criminal Procedure for the United States District Courts.

The last sentence of old subdivision (a)(2) is stricken for two reasons: (1) Whenever possible, cases should be brought before a United States magistrate rather than before a state or local judicial officer authorized by 18 U.S.C. § 3041. (2) When a state or local judicial officer is involved, he should conform to the federal rules.

Subdivision (b)(4) makes clear that minor offense cases before United States magistrates are governed by the Rules of Procedure for the Trial of Minor Offenses before United States Magistrates (1971). See rule 1 of the magistrates' rules.

In subdivision (b)(5) the word "civil" is added before the word "forfeiture" to make clear that the rules *do* apply to criminal forfeitures. This is clearly the intention of Congress. See Senate Report No. 91-617, 91st Cong., 1st Sess., Dec. 16, 1969, at 160:

Subsection (a) provides the remedy of criminal forfeiture. Forfeiture trials are to be governed by the Fed. R. Crim. P. But see Fed. R. Crim. P. 54(b)(5).

Subdivision (c) is amended to list the defined terms in alphabetical order to facilitate the use of the rule. There are added six new definitions.

"Federal magistrate" is a phrase to be used whenever the rule is intended to confer authority on any federal judicial officer including a United States magistrate.

"Judge of the United States" is a phrase defined to include district court, court of appeals, and supreme court judges. It is used in the rules to indicate that only a judge (not to include a United States magistrate) is authorized to act.

"Magistrate" is a term used when both federal and state judicial officers may be authorized to act. The scope of authority of state or local judicial officers is clarified by the enumeration of those rules (3, 4, and 5) under which they are authorized to act.

"United States magistrate" is a phrase which refers to the federal judicial officer created by the Federal Magistrates Act (28 U.S.C. §§ 631-639).

Also added are cross references to the statutory definitions of "minor offense" and "petty offense."

NOTES OF ADVISORY COMMITTEE ON RULES—1982
AMENDMENT

Note to Subdivision (a). The amendment of subdivision (a) conforms to 48 U.S.C. §1694(c), which provides that “the rules heretofore or hereafter promulgated and made effective by the Congress or the Supreme Court of the United States pursuant to Titles 11, 18, and 28 shall apply to the District Court for the Northern Mariana Islands and appeals therefrom where appropriate, except as otherwise provided in articles IV and V of the covenant provided by the Act of March 24, 1976 (90 Stat. 263).” The reference is to the “Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America.” Article IV of the covenant provides that except when exercising “the jurisdiction of a district court of the United States,” the District Court will be considered a court of the Northern Mariana Islands for the purposes of determining the requirements of indictment by grand jury or trial by jury.” Article V provides that “neither trial by jury nor indictment by grand jury shall be required in any civil action or criminal prosecution based on local law, except when required by local law.”

Note to Subdivision (b)(4). This change is necessitated by the recent amendment of 18 U.S.C. §3401 by the Federal Magistrate Act of 1979.

Note to Subdivision (c). The first amendment to subdivision (c) conforms to 48 U.S.C. §1694(c), which states: “The terms ‘attorney for the government’ and ‘United States Attorney’ as used in the Federal Rules of Criminal Procedure (Rule 54(c)) shall, when applicable to cases arising under the laws of the Northern Mariana Islands, include the attorney general of the Northern Mariana Islands or any other person or persons as may be authorized by the laws of the Northern Marianas to act therein.”

The second amendment to subdivision (c) eliminates any reference to minor offenses. By virtue of the recent amendment of 18 U.S.C. §3401 by the Federal Magistrate Act of 1979, the term “minor offense” is no longer utilized in the statute. It is likewise no longer used in these rules. See amendments to Rules 5(b) and 9(d).

NOTES OF ADVISORY COMMITTEE ON RULES—1990
AMENDMENT

Rule 54(b) is amended to conform the rule to Rule 58. Subsection (c) is technical. No substantive change is intended.

NOTES OF ADVISORY COMMITTEE ON RULES—1991
AMENDMENT

The amendment to 54(a) conforms the Rule to legislative changes affecting the prosecution of federal cases in Guam and the Virgin Islands by indictment or information. The “except” clause in Rule 54(a) addressing the availability of indictments by grand jury in Guam has been effectively repealed by Public Law 98-454 (1984), 48 U.S.C. §1424-4 which made the Federal Rules of Criminal Procedure (including Rule 7, relating to use of indictments) applicable in Guam notwithstanding Rule 54(a). That legislation apparently codified what had been the actual practice in Guam for a number of years. See 130 Cong. Rec., H25476 (daily ed. Sept. 14, 1984). With regard to the Virgin Islands, Public Law 98-454 (1984) also amended 48 U.S.C. §§1561 and 1614(b) to permit (but not require) use of indictments in the Virgin Islands.

NOTES OF ADVISORY COMMITTEE ON RULES—1993
AMENDMENT

The Rule is amended to conform to the Judicial Improvements Act of 1990 [P.L. 101-650, Title III, Section 321] which provides that each United States magistrate appointed under section 631 of title 28, United States Code, shall be known as a United States magistrate judge.

COMMITTEE NOTES—1999 AMENDMENT

The amendment to Rule 54(a) is a technical amendment removing the reference to the court in the Canal Zone, which no longer exists.

GAP Report—Rule 54. The Committee made no changes to the published draft.

REFERENCES IN TEXT

Act of March 24, 1976 (90 Stat. 263), referred to in subd. (a), is Pub. L. 94-241, Mar. 24, 1976, 90 Stat. 263, which is classified generally to subchapter I (§1801 et seq.) of chapter 17 of Title 48, Territories and Insular Possessions. The covenant provided by the Act is set out as a note under section 1801 of Title 48. For complete classification of this Act to the Code, see Tables.

AMENDMENT BY PUBLIC LAW

1988—Subd. (c). Pub. L. 100-690 substituted “has the meaning set forth in 18 U.S.C. 19” for “means a class B or C misdemeanor or an infraction” in definition of “Petty offense”.

1984—Subd. (b)(3). Pub. L. 98-473, §209(e), struck out “under 18 U.S.C. §3043, and” after “for good behavior”.

Subd. (c). Pub. L. 98-473, §215(e), in definition of “Petty offense” substituted “means a class B or C misdemeanor or an infraction” for “is defined in 18 U.S.C. §1(3).”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 215(e) of Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by Order of April 9, 1956, became effective 90 days thereafter.

TERMINATION OF UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the “transition period”, being the 30 month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96-70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

Rule 55. Records

The clerk of the district court and each United States magistrate judge shall keep records in criminal proceedings in such form as the Director of the Administrative Office of the United States Courts may prescribe. The clerk shall enter in the records each order or judgment of the court and the date such entry is made.

(As amended Dec. 27, 1948, eff. Oct. 20, 1949; Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 22, 1993, eff. Dec. 1, 1993.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

The Federal Rules of Civil Procedure Rule 79 [28 U.S.C., Appendix], prescribed in detail the books and records to be kept by the clerk in civil cases. Subsequently to the effective date of the civil rules, however, the Act establishing the Administrative Office of the United States Courts became law (Act of August 7, 1939; 53 Stat. 1223; 28 U.S.C. 444-450 [now 332-333, 456, 601-610]). One of the duties of the Director of that Office is to have charge, under the supervision and direction of the Conference of Senior Circuit Judges, of all administra-