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A preliminary draft of rules regulating criminal procedure in the federal courts was released on May 24, 1943, by the Advisory Committee appointed by the Supreme Court of the United States. It is to be circulated for criticisms and suggestions among the federal courts, committees of lawyers appointed for that purpose by every federal district court, bar associations, individual lawyers and other persons interested in the subject. After the draft has been studied by the various courts, bar committees, judicial conferences and interested parties generally, it will be revised in the light of criticisms and suggestions thus received and submitted to the Supreme Court of the United States in final form for its action.

This work was undertaken pursuant to the authority of an act of Congress of June 29, 1940, which authorized the Supreme Court of the United States to adopt and promulgate rules of criminal procedure for the federal courts. The purpose of this epoch-making action of the Congress was to empower the Supreme Court to provide a simple and uniform procedure for criminal cases for the federal courts throughout the country. The present criminal procedure in the federal courts has developed gradually and in many features varies from one district to another. Some matters are regulated by specific isolated acts of Congress passed at different times, while in respect to other matters not so dealt with, the federal courts are required to follow the procedure prevailing in the state courts of the state in which the federal court is sitting.

After passage of the 1940 act, the Supreme Court appointed an Advisory Committee to prepare a draft of rules for its consideration. This committee is composed of lawyers from various parts of the country representing various points of view. Among the members are outstanding leaders of the bar, former federal and state judges, former federal and state prosecutors, prominent defense counsel, and professors of law from several leading law schools of the country.

The membership of the committee is as follows: Arthur T. Vanderbilt of Newark, New Jersey, former president of the American Bar Association and of the American Judicature Society, chairman; James J. Robinson of Bloomington, Indiana, chairman of the Criminal Law Section of the American Bar Association and director of the Institute of Criminal Law Administration, Indiana University, Reporter; Alexander Holtzoff of Washington, D. C., Special Assistant to the Attorney General of the United States, secretary; George James Burke of Ann Arbor, Michigan, member of the Michigan bar and now General Counsel of the

Office of Price Administration; John J. Burns of Boston, Massachusetts, former judge of the superior court of Massachusetts and former General Counsel of the Securities and Exchange Commission, now engaged in private practice; Frederick E. Crane of New York City, former Chief Judge of the Court of Appeals of New York state; Gordon Dean of Washington, D. C., member of the bar of Washington, D. C., engaged in private practice; George H. Dession of New Haven, Connecticut, professor at Yale University School of Law; Sheldon Glueck of Cambridge, Massachusetts, professor at the Harvard Law School; George F. Longsdorf of Oakland, California, well-known writer of legal treatises, including one on federal procedure; George Z. Medalie of New York City, former United States Attorney for the southern district of New York, now in private practice; Hugh D. McLellan of Boston, Massachusetts, former United States district court judge for the district of Massachusetts, now engaged in private practice; Lester B. Orfield of Lincoln, Nebraska, professor at the University of Nebraska Law School; Murray Seanson of Cincinnati, Ohio, member of the Ohio bar and former mayor of Cincinnati; J. O. Seth of Santa Fe, New Mexico, member of the New Mexico bar, engaged in private practice; John B. Waite of Ann Arbor, Michigan, professor at the University of Michigan Law School; Herbert Wechsler of Washington, D. C., professor at Columbia Law School, now connected with the Department of Justice, and G. Aaron Youngquist of Minneapolis, Minnesota, former Assistant Attorney General of the United States and now engaged in private practice.

A similar revision of civil procedure in the federal courts was made by the Supreme Court several years ago, pursuant to an act of Congress which became law on June 19, 1934. The Federal Rules of Civil Procedure became effective on September 16, 1938, and are generally regarded as an outstanding landmark in judicial reform.

The proposed Rules of Criminal Procedure outline the entire procedure in a criminal case from arrest until final disposition of the case, including appeal. They would prescribe a uniform and simplified practice for all federal courts. Among the outstanding features is the elimination of preliminary technical proceedings known among lawyers as pleas in abatement, demurrers, and motions to quash. In their place the rules substitute a simple omnibus motion by which the defendant would be required to raise all preliminary objections at one time, if he has any. The rules substitute a simple form of indictment for the long prolix technical form of indictment which has come down through the centuries and which is still used by federal prosecutors. The rules would simplify the present technicalities which surround the proceeding to remove a defendant from one district to another, if he has been arrested in a district other than that in which he had been indicted. The rules

would introduce into the criminal courts opportunities for the use of pretrial procedure, which has been effectively used in civil cases, for the purpose of narrowing issues and stipulating facts. The rules would also eliminate some of the technical forms involved in criminal appeals.

On the other hand, the rules are careful to surround a defendant with necessary protection. They contain a provision for a prompt hearing after arrest; for making effective the right of counsel, and for according to him other rights which are traditionally accorded to defendants in criminal cases.

Colorado Bar Water Bill Becomes Law

Governor Vivian has signed Senate Bill 90, being the Water Procedural Code prepared by the Water Section of the Colorado Bar Association. No amendments were made either in the Senate or in the House, and the bill received the unanimous vote of both branches of the Legislature. This completes the first step in the codification of the water laws of Colorado.

The new code consists of twenty-five typewritten pages and contains twenty-four sections, as against forty-eight sections of the present statutes. Any proceeding now pending in court may be completed, at the election of the court, either under the new code or under the present statutes. The new code will, of course, be printed in the near future as part of the 1943 Session Laws.

The Colorado Bar Association, if desired, can now continue its work by considering the following:

- (a) Those procedural provisions which were omitted from the Water Procedural Code because controversial;
- (b) The administrative provisions which ought to be included in a Water Administration Code, and which are already under consideration by some of the water engineers of the state;
- (c) Those provisions concerning irrigation districts which could form a Water Organization Code;
- (d) The various provisions which might be combined into a Miscellaneous Water Code.

The controversial procedural questions, omitted from Senate Bill 90, include (1) conditional decrees, (2) double and multiple filling of reservoirs, (3) burden of proof in transfer cases, and (4) abandonment in case of five years non-use.

MALCOLM LINDSEY,
Chairman, Water Council.

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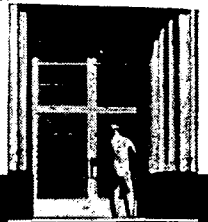
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