as the Attorney General and Director of Central Intelligence shall jointly issue.'.''

2001—Subd. (e)(3)(C). Pub. L. 107–56, §203(a)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made—

''(i) when so directed by a court preliminarily to or in connection with a judicial proceeding;

''(ii) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury;

''(iii) when the disclosure is made by an attorney for the government to another federal grand jury; or

''(iv) when permitted by a court at the request of an attorney for the government, upon a showing that such matters may disclose a violation of state criminal law, to an appropriate official of a state or subdivision of a state for the purpose of enforcing such law.

If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct.''

Subd. (e)(3)(D). Pub. L. 107–56, §203(a)(2), substituted ''subdivision (e)(3)(C)(i)(I)'' for ''subdivision (e)(3)(C)(i)''.

1984—Subd. (e)(3)(C)(iv). Pub. L. 98–473, eff. Nov. 1, 1987, added subcl. (iv), identical to subcl. (iv) which had been previously added by Order of the Supreme Court dated Apr. 29, 1985, eff. Aug. 1, 1985, thereby requiring no change in text.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by 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 1977 AMENDMENT

Amendment of this rule by order of the United States Supreme Court on Apr. 26, 1977, modified and approved by Pub. L. 95–78, effective Oct. 1, 1977, see section 4 of Pub. L. 95–78, set out as an Effective Date of Pub. L. 95–78 note under section 2074 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment of subd. (f) by the order of the United States Supreme Court of Apr. 26, 1976, effective Aug. 1, 1976, see section 1 of Pub. L. 94–349, July 8, 1976, 90 Stat. 822, set out as a note under section 2074 of Title 28, Judiciary and Judicial Procedure.

Rule 7. The Indictment and the Information

(a) WHEN USED.

(1) *Felony*. An offense (other than criminal contempt) must be prosecuted by an indictment if it is punishable:

(A) by death; or

(B) by imprisonment for more than one year.

(2) *Misdemeanor*. An offense punishable by imprisonment for one year or less may be prosecuted in accordance with Rule 58(b)(1).

(b) WAIVING INDICTMENT. An offense punishable by imprisonment for more than one year may be prosecuted by information if the defendant—in open court and after being advised of the nature of the charge and of the defendant's rights—waives prosecution by indictment.

(c) NATURE AND CONTENTS.

(1) *In General*. The indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and must be signed by an attorney for the government. It need not contain a formal introduction or conclusion. A count may incorporate by reference an allegation made in another count. A count may allege that the means by which the defendant committed the offense are unknown or that the defendant committed it by one or more specified means. For each count, the indictment or information must give the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated. For purposes of an indictment referred to in section 3282 of title 18, United States Code, for which the identity of the defendant is unknown, it shall be sufficient for the indictment to describe the defendant as an individual whose name is unknown, but who has a particular DNA profile, as that term is defined in that section 3282.

(2) *Citation Error*. Unless the defendant was misled and thereby prejudiced, neither an error in a citation nor a citation's omission is a ground to dismiss the indictment or information or to reverse a conviction.

(d) SURPLUSAGE. Upon the defendant's motion, the court may strike surplusage from the indictment or information.

(e) AMENDING AN INFORMATION. Unless an additional or different offense is charged or a substantial right of the defendant is prejudiced, the court may permit an information to be amended at any time before the verdict or finding.

(f) BILL OF PARTICULARS. The court may direct the government to file a bill of particulars. The defendant may move for a bill of particulars before or within 14 days after arraignment or at a later time if the court permits. The government may amend a bill of particulars subject to such conditions as justice requires.

(As amended Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Apr. 30, 1979, eff. Aug. 1, 1979; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 17, 2000, eff. Dec. 1, 2000; Apr. 29, 2002, eff. Dec. 1, 2002; Pub. L. 108–21, title VI, §610(b), Apr. 30, 2003, 117 Stat. 692; Mar. 26, 2009, eff. Dec. 1, 2009.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

Note to Subdivision (a). 1. This rule gives effect to the following provision of the Fifth Amendment to the Constitution of the United States: ''No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury * * *''. An infamous crime has been defined as a crime punishable by death or by imprisonment in a penitentiary or at hard labor, *Ex parte Wilson*, 114 U.S. 417, 427; *United States v. Moreland*, 258 U.S. 433. Any sentence of imprisonment for a term of over one year may be served in a penitentiary, if so directed by the Attorney General, 18 U.S.C. 753f [now 4082, 4083] (Commitment of persons by any court of the United States and the juvenile court of the District of Columbia; place of confinement; transfers). Consequently any offense punishable by imprisonment for a term of over one year is an infamous crime.

2. Petty offenses and misdemeanors for which no infamous punishment is prescribed may now be prosecuted by information, 18 U.S.C. 541 [see 1] (Felonies and misdemeanors); *Duke v. United States*, 301 U.S. 492.

3. For a discussion of the provision for waiver of indictment, see Note to Rule 7(b), *infra*.

4. Presentment is not included as an additional type of formal accusation, since presentments as a method of instituting prosecutions are obsolete, at least as concerns the Federal courts.

Note to Subdivision (b). 1. Opportunity to waive indictment and to consent to prosecution by information will be a substantial aid to defendants, especially those who, because of inability to give bail, are incarcerated pending action of the grand jury, but desire to plead guilty. This rule is particularly important in those districts in which considerable intervals occur between sessions of the grand jury. In many districts where the grand jury meets infrequently a defendant unable to give bail and desiring to plead guilty is compelled to spend many days, and sometimes many weeks, and even months, in jail before he can begin the service of his sentence, whatever it may be, awaiting the action of a grand jury. Homer Cummings, 29 A.B.A.Jour. 654–655; Vanderbilt, 29 A.B.A.Jour. 376, 377; Robinson, 27 Jour. of the Am. Judicature Soc. 38, 45; Medalie, 4 Lawyers Guild R. (3)1, 3. The rule contains safeguards against improvident waivers.

The Judicial Conference of Senior Circuit Judges, in September 1941, recommended that ''existing law or established procedure be so changed, that a defendant may waive indictment and plead guilty to an information filed by a United States attorney in all cases except capital felonies.'' *Report of the Judicial Conference of Senior Circuit Judges* (1941) 13. In September 1942 the Judicial Conference recommended that provision be made ''for waiver of indictment and jury trial, so that persons accused of crime may not be held in jail needlessly pending trial.'' *Id*. (1942) 8.

Attorneys General of the United States have from time to time recommended legislation to permit defendants to waive indictment and to consent to prosecution by information. See *Annual Report of the Attorney General of the United States* (Mitchell) (1931) 3; *Id*. (Mitchell) (1932) 6; *Id*. (Cummings) (1933) 1, (1936) 2, (1937) 11, (1938) 9; *Id*. (Murphy) (1939) 7.

The Federal Juvenile Delinquency Act [now 18 U.S.C. 5031–5037], now permits a juvenile charged with an offense not punishable by death or life imprisonment to consent to prosecution by information on a charge of juvenile delinquency, 18 U.S.C. 922 [now 5032, 5033].

2. On the constitutionality of this rule, see *United States v. Gill*, 55 F.2d 399 (D.N.M.), holding that the constitutional guaranty of indictment by grand jury may be waived by defendant. It has also been held that other constitutional guaranties may be waived by the defendant, e. g., *Patton v. United States*, 281 U.S. 276 (trial by jury); *Johnson v. Zerbst*, 304 U.S. 458, 465 (right of counsel); *Trono v. United States*, 199 U.S. 521, 534 (protection against double jeopardy); *United States v. Murdock*, 284 U.S. 141, 148 (privilege against self-incrimination); *Diaz v. United States*, 223 U.S. 442, 450 (right of confrontation).

Note to Subdivision (c). 1. This rule introduces a simple form of indictment, illustrated by Forms 1 to 11 in the Appendix of Forms. Cf. Rule 8(a) of the Federal Rules of Civil Procedure [28 U.S.C., Appendix]. For discussion of the effect of this rule and a comparison between the present form of indictment and the simple form introduced by this rule, see Vanderbilt, 29 A.B.A.Jour. 376, 377; Homer Cummings, 29 A.B.A.Jour. 654, 655; Holtzoff, 3 F.R.D. 445, 448–449; Holtzoff, 12 Geo. Washington L.R. 119, 123–126; Medalie, 4 Lawyers Guild R. (3)1, 3.

2. The provision contained in the fifth sentence that it may be alleged in a single count that the means by which the defendant committed the offense are unknown, or that he committed it by one or more specified means, is intended to eliminate the use of multiple counts for the purpose of alleging the commission of the offense by different means or in different ways. Cf. Federal Rules of Civil Procedure, Rule 8(e)(2) [28 U.S.C., Appendix].

3. The law at present regards citations to statutes or regulations as not a part of the indictment. A conviction may be sustained on the basis of a statute or regulation other than that cited. *Williams v. United States*, 168 U.S. 382, 389; *United States v. Hutcheson*, 312 U.S. 219, 229. The provision of the rule, in view of the many statutes and regulations, is for the benefit of the defendant and is not intended to cause a dismissal of the indictment, but simply to provide a means by which he can be properly informed without danger to the prosecution.

Note to Subdivision (d). This rule introduces a means of protecting the defendant against immaterial or irrelevant allegations in an indictment or information, which may, however, be prejudicial. The authority of the court to strike such surplusage is to be limited to doing so on defendant's motion, in the light of the rule that the guaranty of indictment by a grand jury implies that an indictment may not be amended, *Ex parte Bain*, 121 U.S. 1. By making such a motion, the defendant would, however, waive his rights in this respect.

Note to Subdivision (e). This rule continues the existing law that, unlike an indictment, an information may be amended, *Muncy v. United States*, 289 F. 780 (C.C.A. 4th).

Note to Subdivision (f). This rule is substantially a restatement of existing law on bills of particulars.

NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

The amendment to the first sentence eliminating the requirement of a showing of cause is designed to encourage a more liberal attitude by the courts toward bills of particulars without taking away the discretion which courts must have in dealing with such motions in individual cases. For an illustration of wise use of this discretion see the opinion by Justice Whittaker written when he was a district judge in *United States v. Smith*, 16 F.R.D. 372 (W.D.Mo. 1954).

The amendment to the second sentence gives discretion to the court to permit late filing of motions for bills of particulars in meritorious cases. Use of late motions for the purpose of delaying trial should not, of course, be permitted. The courts have not been agreed as to their power to accept late motions in the absence of a local rule or a previous order. See *United States v. Miller*, 217 F.Supp. 760 (E.D.Pa. 1963); *United States v. Taylor*, 25 F.R.D. 225 (E.D.N.Y. 1960); *United States v. Sterling*, 122 F.Supp. 81 (E.D.Pa. 1954) (all taking a limited view of the power of the court). But cf. *United States v. Brown*, 179 F.Supp. 893 (E.D.N.Y. 1959) (exercising discretion to permit an out of time motion).

NOTES OF ADVISORY COMMITTEE ON RULES—1972 AMENDMENT

Subdivision (c)(2) is new. It is intended to provide procedural implementation of the recently enacted criminal forfeiture provision of the Organized Crime Control Act of 1970, Title IX, §1963, and the Comprehensive Drug Abuse Prevention and Control Act of 1970, Title II, §408(a)(2).

The Congress viewed the provisions of the Organized Crime Control Act of 1970 as reestablishing a limited common law criminal forfeiture. S. Rep. No. 91–617, 91st Cong., 1st Sess. 79–80 (1969). The legislative history of the Comprehensive Drug Abuse Prevention and Control Act of 1970 indicates a congressional purpose to have similar procedures apply to the forfeiture of profits or interests under that act. H. Rep. No. 91–1444 (part I), 91st Cong., 2d Sess. 81–85 (1970).

Under the common law, in a criminal forfeiture proceeding the defendant was apparently entitled to notice, trial, and a special jury finding on the factual issues surrounding the declaration of forfeiture which followed his criminal conviction. Subdivision (c)(2) provides for notice. Changes in rules 31 and 32 provide for a special jury finding and for a judgment authorizing the Attorney General to seize the interest or property forfeited.

NOTES OF ADVISORY COMMITTEE ON RULES—1979 AMENDMENT

The amendment to rule 7(c)(2) is intended to clarify its meaning. Subdivision (c)(2) was added in 1972, and,

as noted in the Advisory Committee Note thereto, was ''intended to provide procedural implementation of the recently enacted criminal forfeiture provision of the Organized Crime Control Act of 1970, Title IX, §1963, and the Comprehensive Drug Abuse Prevention and Control Act of 1970, Title II, §408(a)(2).'' These provisions reestablished a limited common law criminal forfeiture, necessitating the addition of subdivision (c)(2) and corresponding changes in rules 31 and 32, for at common law the defendant in a criminal forfeiture proceeding was entitled to notice, trial, and a special jury finding on the factual issues surrounding the declaration of forfeiture which followed his criminal conviction.

Although there is some doubt as to what forfeitures should be characterized as ''punitive'' rather than ''remedial,'' see Note, 62 Cornell L.Rev. 768 (1977), subdivision (c)(2) is intended to apply to those forfeitures which are criminal in the sense that they result from a special verdict under rule 31(e) and a judgment under rule 32(b)(2), and not to those resulting from a separate in rem proceeding. Because some confusion in this regard has resulted from the present wording of subdivision (c)(2), *United States v. Hall*, 521 F.2d 406 (9th Cir. 1975), a clarifying amendment is in order.

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

COMMITTEE NOTES ON RULES—2000 AMENDMENT

The rule is amended to reflect new Rule 32.2, which now governs criminal forfeiture procedures.

GAP Report—Rule 7. The Committee initially made no changes to the published draft of the Rule 7 amendment. However, because of changes to Rule 32.2(a), discussed *infra*, the proposed language has been changed to reflect that the indictment must provide notice of an intent to seek forfeiture.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 7 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic.

The Committee has deleted the references to ''hard labor'' in the rule. This punishment is not found in current federal statutes.

The Committee added an exception for criminal contempt to the requirement in Rule 7(a)(1) that a prosecution for felony must be initiated by indictment. This is consistent with case law, *e.g.*, *United States v. Eichhorst*, 544 F.2d 1383 (7th Cir. 1976), which has sustained the use of the special procedures for instituting criminal contempt proceedings found in Rule 42. While indictment is not a required method of bringing felony criminal contempt charges, however, it is a permissible one. *See United States v. Williams*, 622 F.2d 830 (5th Cir. 1980). No change in practice is intended.

The title of Rule 7(c)(3) has been amended. The Committee believed that potential confusion could arise with the use of the term ''harmless error.'' Rule 52, which deals with the issues of harmless error and plain error, is sufficient to address the topic. Potentially, the topic of harmless error could arise with regard to any of the other rules and there is insufficient need to highlight the term in Rule 7. Rule 7(c)(3), on the other hand, focuses specifically on the effect of an error in the citation of authority in the indictment. That material remains but without any reference to harmless error.

COMMITTEE NOTES ON RULES—2009 AMENDMENT

The time set in the former rule at 10 days has been revised to 14 days. See the Committee Note to Rule 45(a).

Subdivision (c). The provision regarding forfeiture is obsolete. In 2000 the same language was repeated in subdivision (a) of Rule 32.2, which was intended to consolidate the rules dealing with forfeiture.

AMENDMENT BY PUBLIC LAW

2003—Subd. (c)(1). Pub. L. 108–21 inserted at end ''For purposes of an indictment referred to in section 3282 of title 18, United States Code, for which the identity of the defendant is unknown, it shall be sufficient for the indictment to describe the defendant as an individual whose name is unknown, but who has a particular DNA profile, as that term is defined in that section 3282.''

Rule 8. Joinder of Offenses or Defendants

(a) JOINDER OF OFFENSES. The indictment or information may charge a defendant in separate counts with 2 or more offenses if the offenses charged—whether felonies or misdemeanors or both—are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.

(b) JOINDER OF DEFENDANTS. The indictment or information may charge 2 or more defendants if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses. The defendants may be charged in one or more counts together or separately. All defendants need not be charged in each count.

(As amended Apr. 29, 2002, eff. Dec. 1, 2002.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

Note to Subdivision (a). This rule is substantially a restatement of existing law, 18 U.S.C. [former] 557 (Indictments and presentments; joinder of charges).

Note to Subdivision (b). The first sentence of the rule is substantially a restatement of existing law, 9 Edmunds, *Cyclopedia of Federal Procedure* (2d Ed.) 4116. The second sentence formulates a practice now approved in some circuits. *Caringella v. United States*, 78 F.2d 563, 567 (C.C.A. 7th).

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 8 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 9. Arrest Warrant or Summons on an Indictment or Information

(a) ISSUANCE. The court must issue a warrant—or at the government's request, a summons—for each defendant named in an indictment or named in an information if one or more affidavits accompanying the information establish probable cause to believe that an offense has been committed and that the defendant committed it. The court may issue more than one warrant or summons for the same defendant. If a defendant fails to appear in response to a summons, the court may, and upon request of an attorney for the government must, issue a warrant. The court must issue the arrest warrant to an officer authorized to execute it or the summons to a person authorized to serve it.

(b) FORM.

(1) *Warrant.* The warrant must conform to Rule 4(b)(1) except that it must be signed by the clerk and must describe the offense charged in the indictment or information.

(2) *Summons.* The summons must be in the same form as a warrant except that it must re-