designed to deal with filings in the ordinary course without regard to Section 452.

Subdivision (a)(5). New subdivision (a)(5) defines the ''next'' day for purposes of subdivisions (a)(1)(C) and (a)(2)(C). The Federal Rules of Criminal Procedure contain both forward-looking time periods and backward-looking time periods. A forward-looking time period requires something to be done within a period of time *after* an event. *See, e.g.*, Rule 35(a) (stating that a court may correct an arithmetic or technical error in a sentence ''[w]ithin 14 days after sentencing''). A backward-looking time period requires something to be done within a period of time *before* an event. *See, e.g.*, Rule 47(c) (stating that a party must serve a written motion ''at least 7 days before the hearing date''). In determining what is the ''next'' day for purposes of subdivisions (a)(1)(C) and (a)(2)(C), one should continue counting in the same direction—that is, forward when computing a forward-looking period and backward when computing a backward-looking period. If, for example, a filing is due within 10 days *after* an event, and the tenth day falls on Saturday, September 1, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, is Labor Day). But if a filing is due 10 days *before* an event, and the tenth day falls on Saturday, September 1, then the filing is due on Friday, August 31. If the clerk's office is inaccessible on August 31, then subdivision (a)(3) extends the filing deadline forward to the next accessible day that is not a Saturday, Sunday, or legal holiday—no earlier than Tuesday, September 4.

Subdivision (a)(6). New subdivision (a)(6) defines ''legal holiday'' for purposes of the Federal Rules of Criminal Procedure, including the time-computation provisions of subdivision (a). Subdivision (a)(6) continues to include within the definition of ''legal holiday'' days that are declared a holiday by the President or Congress.

For forward-counted periods—*i.e.*, periods that are measured after an event—subdivision (a)(6)(C) includes certain state holidays within the definition of legal holidays. However, state legal holidays are not recognized in computing backward-counted periods. For both forward- and backward-counted periods, the rule thus protects those who may be unsure of the effect of state holidays. For forward-counted deadlines, treating state holidays the same as federal holidays extends the deadline. Thus, someone who thought that the federal courts might be closed on a state holiday would be safeguarded against an inadvertent late filing. In contrast, for backward-counted deadlines, not giving state holidays the treatment of federal holidays allows filing on the state holiday itself rather than the day before. Take, for example, Monday, April 21, 2008 (Patriot's Day, a legal holiday in the relevant state). If a filing is due 14 days after an event, and the fourteenth day is April 21, then the filing is due on Tuesday, April 22 because Monday, April 21 counts as a legal holiday. But if a filing is due 14 days before an event, and the fourteenth day is April 21, the filing is due on Monday, April 21; the fact that April 21 is a state holiday does not make April 21 a legal holiday for purposes of computing this backward-counted deadline. But note that if the clerk's office is inaccessible on Monday, April 21, then subdivision (a)(3) extends the April 21 filing deadline forward to the next accessible day that is not a Saturday, Sunday or legal holiday—no earlier than Tuesday, April 22.

Changes Made to Proposed Amendment Released for Public Comment. The Standing Committee changed Rule 45(a)(6) to exclude state holidays from the definition of ''legal holiday'' for purposes of computing backward-counted periods; conforming changes were made to the Committee Note to subdivision (a)(6).

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subd. (c), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Rule 46. Release from Custody; Supervising Detention

(a) BEFORE TRIAL. The provisions of 18 U.S.C. §§ 3142 and 3144 govern pretrial release.

(b) DURING TRIAL. A person released before trial continues on release during trial under the same terms and conditions. But the court may order different terms and conditions or terminate the release if necessary to ensure that the person will be present during trial or that the person's conduct will not obstruct the orderly and expeditious progress of the trial.

(c) PENDING SENTENCING OR APPEAL. The provisions of 18 U.S.C. § 3143 govern release pending sentencing or appeal. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

(d) PENDING HEARING ON A VIOLATION OF PROBATION OR SUPERVISED RELEASE. Rule 32.1(a)(6) governs release pending a hearing on a violation of probation or supervised release.

(e) SURETY. The court must not approve a bond unless any surety appears to be qualified. Every surety, except a legally approved corporate surety, must demonstrate by affidavit that its assets are adequate. The court may require the affidavit to describe the following:

(1) the property that the surety proposes to use as security;

(2) any encumbrance on that property;

(3) the number and amount of any other undischarged bonds and bail undertakings the surety has issued; and

(4) any other liability of the surety.

(f) BAIL FORFEITURE.

(1) *Declaration.* The court must declare the bail forfeited if a condition of the bond is breached.

(2) *Setting Aside.* The court may set aside in whole or in part a bail forfeiture upon any condition the court may impose if:

(A) the surety later surrenders into custody the person released on the surety's appearance bond; or

(B) it appears that justice does not require bail forfeiture.

(3) *Enforcement.*

(A) *Default Judgment and Execution.* If it does not set aside a bail forfeiture, the court must, upon the government's motion, enter a default judgment.

(B) *Jurisdiction and Service.* By entering into a bond, each surety submits to the district court's jurisdiction and irrevocably appoints the district clerk as its agent to receive service of any filings affecting its liability.

(C) *Motion to Enforce.* The court may, upon the government's motion, enforce the surety's liability without an independent action. The government must serve any motion, and notice as the court prescribes, on the district clerk. If so served, the clerk must promptly mail a copy to the surety at its last known address.

(4) *Remission.* After entering a judgment under Rule 46(f)(3), the court may remit in whole or in part the judgment under the same conditions specified in Rule 46(f)(2).

(g) EXONERATION. The court must exonerate the surety and release any bail when a bond condition has been satisfied or when the court has set aside or remitted the forfeiture. The court must exonerate a surety who deposits cash in the amount of the bond or timely surrenders the defendant into custody.

(h) SUPERVISING DETENTION PENDING TRIAL.

(1) *In General.* To eliminate unnecessary detention, the court must supervise the detention within the district of any defendants awaiting trial and of any persons held as material witnesses.

(2) *Reports.* An attorney for the government must report biweekly to the court, listing each material witness held in custody for more than 10 days pending indictment, arraignment, or trial. For each material witness listed in the report, an attorney for the government must state why the witness should not be released with or without a deposition being taken under Rule 15(a).

(i) FORFEITURE OF PROPERTY. The court may dispose of a charged offense by ordering the forfeiture of 18 U.S.C. §3142(c)(1)(B)(xi) property under 18 U.S.C. §3146(d), if a fine in the amount of the property's value would be an appropriate sentence for the charged offense.

(j) PRODUCING A STATEMENT.

(1) *In General.* Rule 26.2(a)–(d) and (f) applies at a detention hearing under 18 U.S.C. §3142, unless the court for good cause rules otherwise.

(2) *Sanctions for Not Producing a Statement.* If a party disobeys a Rule 26.2 order to produce a witness's statement, the court must not consider that witness's testimony at the detention hearing.

(As amended Apr. 9, 1956, eff. July 8, 1956; Feb. 28, 1966, eff. July 1, 1966; Apr. 24, 1972, eff. Oct. 1, 1972; Pub. L. 98–473, title II, §209(d), Oct. 12, 1984, 98 Stat. 1987; Mar. 9, 1987, eff. Aug. 1, 1987; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Pub. L. 103–322, title XXXIII, §330003(h), Sept. 13, 1994, 108 Stat. 2141; Apr. 29, 2002, eff. Dec. 1, 2002.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

Note to Subdivision (a)(1). This rule is substantially a restatement of existing law, 18 U.S.C. 596, 597 [now 3141].

Note to Subdivision (a)(2). This rule is substantially a restatement of Rule 6 of Criminal Appeals Rules, with the addition of a reference to bail pending certiorari. This rule does not supersede 18 U.S.C. 682 [now 3731] (Appeals; on behalf of the United States; rules of practice and procedure), which provides for the admission of the defendant to bail on his own recognizance pending an appeal taken by the Government.

Note to Subdivision (b). This rule is substantially a restatement of existing law, 28 U.S.C. [former] 657.

Note to Subdivision (d). This rule is a restatement of existing practice, and is based in part on 6 U.S.C. 15 [now 31 U.S.C. 9103] (Bonds or notes of United States in lieu of recognizance, stipulation, bond, guaranty, or undertaking; place of deposit; return to depositor; contractors' bonds).

Note to Subdivision (e). This rule is similar to Sec. 79 of A.L.I. Code of Criminal Procedure introducing, however, an element of flexibility. Corporate sureties are regulated by 6 U.S.C. 6–14 [now 31 U.S.C. 9304–9308].

Note to Subdivision (f). 1. With the exception hereafter noted, this rule is substantially a restatement of existing law in somewhat greater detail than contained in 18 U.S.C. [former] 601 (Remission of penalty of recognizance).

2. Subdivision (f)(2) changes existing law in that it increases the discretion of the court to set aside a forfeiture. The present power of the court is limited to cases in which the defendant's default had not been willful.

3. The second sentence of paragraph (3) is similar to Rule 73(f) of the Federal Rules of Civil Procedure [28 U.S.C., Appendix]. This paragraph also substitutes simple motion procedure for enforcing forfeited bail bonds for the procedure by *scire facias*, which was abolished by Rule 81(b) of the Federal Rules of Civil Procedure.

Note to Subdivision (g). This rule is a restatement of existing law and practice. It is based in part on 18 U.S.C. 599 [now 3142] (Surrender by bail).

NOTES OF ADVISORY COMMITTEE ON RULES—1966 AMENDMENT

Subdivision (c).—The more inclusive word ''terms'' is substituted for ''amount'' in view of the amendment to subdivision (d) authorizing releases without security on such conditions as are necessary to insure the appearance of the defendant. The phrase added at the end of this subdivision is designed to encourage commissioners and judges to set the terms of bail so as to eliminate unnecessary detention. See *Stack v. Boyle*, 342 U.S. 1 (1951); *Bandy v. United States*, 81 S.Ct. 197 (1960); *Bandy v. United States*, 82 S.Ct. 11 (1961); *Carbo v. United States*, 82 S.Ct. 662 (1962); review den. 369 U.S. 868 (1962).

Subdivision (d).—The amendments are designed to make possible (and to encourage) the release on bail of a greater percentage of indigent defendants than now are released. To the extent that other considerations make it reasonably likely that the defendant will appear it is both good practice and good economics to release him on bail even though he cannot arrange for cash or bonds in even small amounts. In fact it has been suggested that it may be a denial of constitutional rights to hold indigent prisoners in custody for no other reason than their inability to raise the money for a bond. *Bandy v. United States*, 81 S.Ct. 197 (1960).

The first change authorizes the acceptance as security of a deposit of cash or government securities in an amount less than the face amount of the bond. Since a defendant typically purchases a bail bond for a cash payment of a certain percentage of the face of the bond, a direct deposit with the court of that amount (returnable to the defendant upon his appearance) will often be equally adequate as a deterrent to flight. Cf. Ill.CodeCrim.Proc. §110–7 (1963).

The second change authorizes the release of the defendant without financial security on his written agreement to appear when other deterrents appear reasonably adequate. See the discussion of such deterrents in *Bandy v. United States*, 81 S.Ct. 197 (1960). It also permits the imposition of nonfinancial conditions as the price of dispensing with security for the bond. Such conditions are commonly used in England. Devin, The Criminal Prosecution in England, 89 (1958). See the suggestion in Note, Bail: An Ancient Practice Reexamined, 70 Yale L.J. 966, 975 (1961) that such conditions ''* * * might include release in custody of a third party, such as the accused's employer, minister, attorney, or a private organization; release subject to a duty to report periodically to the court or other public official; or even release subject to a duty to return to jail each night.'' Willful failure to appear after forfeiture of bail is a separate criminal offense and hence an added deterrent to flight. 18 U.S.C. §3146.

For full discussion and general approval of the changes made here see Report of the Attorney General's Committee on Poverty and the Administration of Criminal Justice 58–89 (1963).

Subdivision (h).—The purpose of this new subdivision is to place upon the court in each district the responsibility for supervising the detention of defendants and witnesses and for eliminating all unnecessary detention. The device of the report by the attorney for the government is used because in many districts defend-

ants will be held in custody in places where the court sits only at infrequent intervals and hence they cannot be brought personally before the court without substantial delay. The magnitude of the problem is suggested by the facts that during the fiscal year ending June 30, 1960, there were 23,811 instances in which persons were held in custody pending trial and that the average length of detention prior to disposition (i.e., dismissal, acquittal, probation, sentence to imprisonment, or any other method of removing the case from the court docket) was 25.3 days. Federal Prisons 1960, table 22, p. 60. Since 27,645 of the 38,855 defendants whose cases were terminated during the fiscal year ending June 30, 1960, pleaded guilty (United States Attorneys Statistical Report, October 1960, p. 1 and table 2), it would appear that the greater part of the detention reported occurs prior to the initial appearance of the defendant before the court.

NOTES OF ADVISORY COMMITTEE ON RULES—1972 AMENDMENT

The amendments are intended primarily to bring rule 46 into general conformity with the Bail Reform Act of 1966 and to deal in the rule with some issues not now included within the rule.

Subdivision (a) makes explicit that the Bail Reform Act of 1966 controls release on bail prior to trial. 18 U.S.C. §3146 refers to release of a defendant. 18 U.S.C. §3149 refers to release of a material witness.

Subdivision (b) deals with an issue not dealt with by the Bail Reform Act of 1966 or explicitly in former rule 46, that is, the issue of bail during trial. The rule gives the trial judge discretion to continue the prior conditions of release or to impose such additional conditions as are adequate to insure presence at trial or to insure that his conduct will not obstruct the orderly and expeditious progress of the trial.

Subdivision (c) provides for release during the period between a conviction and sentencing and for the giving of a notice of appeal or of the expiration of the time allowed for filing notice of appeal. There are situations in which defense counsel may informally indicate an intention to appeal but not actually give notice of appeal for several days. To deal with this situation the rule makes clear that the district court has authority to release under the terms of 18 U.S.C. §3148 pending notice of appeal (*e.g.*, during the ten days after entry of judgment; see rule 4(b) of the Rules of Appellate Procedure). After the filing of notice of appeal, release by the district court shall be in accordance with the provisions of rule 9(b) of the Rules of Appellate Procedure. The burden of establishing that grounds for release exist is placed upon the defendant in the view that the fact of conviction justifies retention in custody in situations where doubt exists as to whether a defendant can be safely released pending either sentence or the giving of notice of appeal.

Subdivisions (d), (e), (f), and (g) remain unchanged. They were formerly lettered (e), (f), (g), and (h).

NOTES OF ADVISORY COMMITTEE ON RULES—1987 AMENDMENT

The amendments are technical. No substantive change is intended.

NOTES OF ADVISORY COMMITTEE ON RULES—1991 AMENDMENT

The amendment is technical. No substantive change is intended.

NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT

The addition of subdivision (i) is one of a series of similar amendments to Rules 26.2, 32, 32.1, and Rule 8 of the Rules Governing Proceedings Under 28 U.S.C. §2255 which extend Rule 26.2 to other proceedings and hearings. As pointed out in the Committee Note to the amendment to Rule 26.2, there is continuing and compelling need to assess the credibility and reliability of information relied upon by the court, whether the witness's testimony is being considered at a pretrial proceeding, at trial, or a post-trial proceeding. Production of a witness's prior statements directly furthers that goal.

The need for reliable information is no less crucial in a proceeding to determine whether a defendant should be released from custody. The issues decided at pretrial detention hearings are important to both a defendant and the community. For example, a defendant charged with criminal acts may be incarcerated prior to an adjudication of guilt without bail on grounds of future dangerousness which is not subject to proof beyond a reasonable doubt. Although the defendant clearly has an interest in remaining free prior to trial, the community has an equally compelling interest in being protected from potential criminal activity committed by persons awaiting trial.

In upholding the constitutionality of pretrial detention based upon dangerousness, the Supreme Court in *United States v. Salerno*, 481 U.S. 739 (1986), stressed the existence of procedural safeguards in the Bail Reform Act. The Act provides for the right to counsel and the right to cross-examine adverse witnesses. *See*, *e.g.*, 18 U.S.C. §3142(f) (right of defendant to cross-examine adverse witness). Those safeguards, said the Court, are ''specifically designed to further the accuracy of that determination.'' 481 U.S. at 751. The Committee believes that requiring the production of a witness's statement will further enhance the fact-finding process.

The Committee recognized that pretrial detention hearings are often held very early in a prosecution, and that a particular witness's statement may not yet be on file, or even known about. Thus, the amendment recognizes that in a particular case, the court may decide that good cause exists for not applying the rule.

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 46 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, except as noted below.

Although the general rule is that an appeal to a circuit court deprives the district court of jurisdiction, Rule 46(c) recognizes the apparent exception to that rule—that the district court retains jurisdiction to decide whether the defendant should be detained, even if a notice of appeal has been filed. *See, e.g., United States v. Meyers*, 95 F.3d 1475 (10th Cir. 1996), *cert. denied*, 522 U.S. 1006 (1997) (initial decision of whether to release defendant pending appeal is to be made by district court); *United States v. Affleck*, 765 F.2d 944 (10th Cir. 1985); *Jago v. United States District Court*, 570 F.2d 618 (6th Cir. 1978) (release of defendant pending appeal must first be sought in district court). *See also* Federal Rule of Appellate Procedure 9(b) and the accompanying Committee Note.

Revised Rule 46(h) deletes the requirement that the attorney for the government file bi-weekly reports with the court concerning the status of any defendants in pretrial detention. The Committee believed that the requirement was no longer necessary in light of the Speedy Trial Act provisions. 18 U.S.C. §§3161, et seq. On the other hand, the requirement that the attorney for the government file reports regarding detained material witnesses has been retained in the rule.

Rule 46(i) addresses the ability of a court to order forfeiture of property where a defendant has failed to appear as required by the court. The language in the current rule, Rule 46(h), was originally included by Congress. The new language has been restyled with no change in substance or practice intended. Under this provision, the court may only forfeit property as permitted under 18 U.S.C. §§3146(d) and 3142(c)(1)(B)(xi). The term ''appropriate sentence'' means a sentence that is consistent with the Sentencing Guidelines.

AMENDMENT BY PUBLIC LAW

1994—Subd. (i)(1). Pub. L. 103–322 substituted ''3142'' for ''3144''.

1984—Subd. (a). Pub. L. 98–473, §209(d)(1), substituted ''§§3142 and 3144'' for ''§3146, §3148, or §3149''.

Subd. (c). Pub. L. 98–473, §209(d)(2), substituted ''3143'' for ''3148''.

Subd. (e)(2). Pub. L. 98–473, §209(d)(3), substituted ''be set aside in whole or in part upon such conditions as the court may impose, if a person released upon execution of an appearance bond with a surety is subsequently surrendered by the surety into custody or if it otherwise appears that justice does not require the forfeiture'' for ''set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture''.

Subd. (h). Pub. L. 98–473, §209(d)(4), added subd. (h).

EFFECTIVE DATE OF 1956 AMENDMENT

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

Rule 47. Motions and Supporting Affidavits

(a) IN GENERAL. A party applying to the court for an order must do so by motion.

(b) FORM AND CONTENT OF A MOTION. A motion—except when made during a trial or hearing—must be in writing, unless the court permits the party to make the motion by other means. A motion must state the grounds on which it is based and the relief or order sought. A motion may be supported by affidavit.

(c) TIMING OF A MOTION. A party must serve a written motion—other than one that the court may hear ex parte—and any hearing notice at least 7 days before the hearing date, unless a rule or court order sets a different period. For good cause, the court may set a different period upon ex parte application.

(d) AFFIDAVIT SUPPORTING A MOTION. The moving party must serve any supporting affidavit with the motion. A responding party must serve any opposing affidavit at least one day before the hearing, unless the court permits later service.

(As amended Apr. 29, 2002, eff. Dec. 1, 2002; Mar. 26, 2009, eff. Dec. 1, 2009.)

NOTES OF ADVISORY COMMITTEE ON RULES—1944

1. This rule is substantially the same as the corresponding civil rule (first sentence of Rule 7(b)(1), Federal Rules of Civil Procedure) [28 U.S.C., Appendix], except that it authorizes the court to permit motions to be made orally and does not require that the grounds upon which a motion is made shall be stated ''with particularity,'' as is the case with the civil rule.

2. This rule is intended to state general requirements for all motions. For particular provisions applying to specific motions, see Rules 6(b)(2), 12, 14, 15, 16, 17(b) and (c), 21, 22, 29 and Rule 41(e). See also Rule 49.

3. The last sentence providing that a motion may be supported by affidavit is not intended to permit ''speaking motions'' (e.g. motion to dismiss an indictment for insufficiency supported by affidavits), but to authorize the use of affidavits when affidavits are appropriate to establish a fact (e.g. authority to take a deposition or former jeopardy).

COMMITTEE NOTES ON RULES—2002 AMENDMENT

The language of Rule 47 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, except as noted below.

In Rule 47(b), the word ''orally'' has been deleted. The Committee believed, first, that the term should not act as a limitation on those who are not able to speak orally and, second, a court may wish to entertain motions through electronic or other reliable means. Deletion of the term also comports with a similar change in Rule 26, regarding the taking of testimony during trial. In place of that word, the Committee substituted the broader phrase ''by other means.''

COMMITTEE NOTES ON RULES—2009 AMENDMENT

The time set in the former rule at 5 days, which excluded intermediate Saturdays, Sundays, and legal holidays, has been expanded to 7 days. See the Committee Note to Rule 45(a).

Rule 48. Dismissal

(a) BY THE GOVERNMENT. The government may, with leave of court, dismiss an indictment, information, or complaint. The government may not dismiss the prosecution during trial without the defendant's consent.

(b) BY THE COURT. The court may dismiss an indictment, information, or complaint if unnecessary delay occurs in:

(1) presenting a charge to a grand jury;

(2) filing an information against a defendant; or

(3) bringing a defendant to trial.

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

NOTES OF ADVISORY COMMITTEE ON RULES—1944

Note to Subdivision (a). 1. The first sentence of this rule will change existing law. The common-law rule that the public prosecutor may enter a *nolle prosequi* in his discretion, without any action by the court, prevails in the Federal courts, *Confiscation Cases*, 7 Wall. 454, 457; *United States v. Woody*, 2 F.2d 262 (D.Mont.). This provision will permit the filing of a nolle prosequi only by leave of court. This is similar to the rule now prevailing in many States. A.L.I. Code of Criminal Procedure, Commentaries, pp. 895–897.

2. The rule confers the power to file a dismissal by leave of court on the Attorney General, as well as on the United States attorney, since under existing law the Attorney General exercises ''general superintendence and direction'' over the United States attorneys ''as to the manner of discharging their respective duties,'' 5 U.S.C. 317 [now 28 U.S.C. 509, 547]. Moreover it is the administrative practice for the Attorney General to supervise the filing of a *nolle prosequi* by United States attorneys. Consequently it seemed appropriate that the Attorney General should have such power directly.

3. The rule permits the filing of a dismissal of an indictment, information or complaint. The word ''complaint'' was included in order to resolve a doubt prevailing in some districts as to whether the United States attorney may file a *nolle prosequi* between the time when the defendant is bound over by the United States commissioner and the finding of an indictment. It has been assumed in a few districts that the power does not exist and that the United States attorney must await action of the grand jury, even if he deems it proper to dismiss the prosecution. This situation is an unnecessary hardship to some defendants.

4. The second sentence is a restatement of existing law, *Confiscation Cases*, 7 Wall. 454–457; *United States v. Shoemaker*, 27 Fed. Cases No. 16, 279 (C.C.Ill.). If the trial has commenced, the defendant has a right to insist on a disposition on the merits and may properly object to the entry of a *nolle prosequi*.

Note to Subdivision (b). This rule is a restatement of the inherent power of the court to dismiss a case for want of prosecution. *Ex parte Altman*, 34 F.Supp. 106 (S.D.Cal.).