

Special Report to the Standing Committee on Rules

At its meeting on February 12, 1977, it was VOTED, that it is the sense of the Sub-Committee on Appellate Rules with respect to proposed Criminal Rule 35.1,

1. That any general provision for appellate review of sentences should be by legislation, rather than by rule.

2. That the committee does not care to make any substantive suggestions, but if legislation, or a rule, were to be adopted along the lines of presently proposed Rule 35.1, the committee sees appellate problems in the following areas,

a) Bifurcation, or duplication, of records, and of procedure, generally.

b) Timing, particularly with respect to finality of sentence appealed from, since under Criminal Rule 35 a sentence is not final for 120 days; possible conflict between Rule 35.1's expedition, and defendant's rights under Rule 35. For example, would immediate appeal waive right to make 120 day claim, and if so would that be desirable? Or should a sentence be reviewed when defendant still has right to seek its reduction from the district court?

c) Application of Bail Reform Act.

3. That Rule 35.1 would appear to call for a number of procedural rules, but that, unless especially requested, your committee feels that in the rule's present indeterminate state it would be premature of it to formulate any such, and it has not done so.

*Bailey Aldrich*

---

Chairman

February 15, 1977