

April 12, 2006

Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

I have the honor to submit to the Congress the amendments to the Federal Rules of Criminal Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying these rules are excerpts from the report of the Judicial Conference of the United States containing the Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,

/s/ John G. Roberts, Jr.

April 12, 2006

Honorable Dick Cheney
President, United States Senate
Washington, D.C. 20510

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April 12, 2006

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Criminal Procedure be, and they hereby are, amended by including therein amendments to Criminal Rules 5, 6, 32.1, 40, 41, and 58.

[See infra., pp. — — —.]

2. That the foregoing amendments to the Federal Rules of Criminal Procedure shall take effect on December 1, 2006, and shall govern in all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That the CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Criminal Procedure in accordance with the provisions of Section 2072 of Title 28, United States Code.

**AMENDMENTS TO THE FEDERAL
RULES OF CRIMINAL PROCEDURE**

Rule 5. Initial Appearance

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**(c) Place of Initial Appearance; Transfer to
Another District.**

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**(3) *Procedures in a District Other Than Where
the Offense Was Allegedly Committed.*** If the
initial appearance occurs in a district other than
where the offense was allegedly committed, the
following procedures apply:

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(C) the magistrate judge must conduct a
preliminary hearing if required by Rule 5.1;

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(D) the magistrate judge must transfer the defendant to the district where the offense was allegedly committed if:

- (i) the government produces the warrant, a certified copy of the warrant, or a reliable electronic form of either; and

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Rule 6. The Grand Jury

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(e) Recording and Disclosing the Proceedings.

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(3) *Exceptions.*

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(D) An attorney for the government may disclose any grand-jury matter involving foreign intelligence, counterintelligence (as defined in 50 U.S.C. § 401a), or foreign

intelligence information (as defined in Rule 6(e)(3)(D)(iii)) to any federal law enforcement, intelligence, protective, immigration, national defense, or national security official to assist the official receiving the information in the performance of that official's duties. An attorney for the government may also disclose any grand-jury matter involving, within the United States or elsewhere, a threat of attack or other grave hostile acts of a foreign power or its agent, a threat of domestic or international sabotage or terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by its agent, to any appropriate federal, state,

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state subdivision, Indian tribal, or foreign government official, for the purpose of preventing or responding to such threat or activities.

- (i) Any official who receives information under Rule 6(e)(3)(D) may use the information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information. Any state, state subdivision, Indian tribal, or foreign government official who receives information under Rule 6(e)(3)(D) may use the information only in a manner consistent with any guidelines issued

by the Attorney General and the
Director of National Intelligence.

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- (7) ***Contempt.*** A knowing violation of Rule 6, or of any guidelines jointly issued by the Attorney General and the Director of National Intelligence under Rule 6, may be punished as a contempt of court.

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Rule 32.1. Revoking or Modifying Probation or Supervised Release

(a) Initial Appearance.

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- (5) ***Appearance in a District Lacking Jurisdiction.*** If the person is arrested or appears in a district that does not have

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jurisdiction to conduct a revocation hearing, the magistrate judge must:

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(B) if the alleged violation did not occur in the district of arrest, transfer the person to the district that has jurisdiction if:

- (i) the government produces certified copies of the judgment, warrant, and warrant application, or produces copies of those certified documents by reliable electronic means; and
- (ii) the judge finds that the person is the same person named in the warrant.

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Rule 40. Arrest for Failing to Appear in Another District or for Violating Conditions of Release Set in Another District

(a) In General. A person must be taken without unnecessary delay before a magistrate judge in the district of arrest if the person has been arrested under a warrant issued in another district for:

- (i) failing to appear as required by the terms of that person's release under 18 U.S.C. §§ 3141-3156 or by a subpoena; or
- (ii) violating conditions of release set in another district.

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Rule 41. Search and Seizure

(a) Scope and Definitions.

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- (2) *Definitions.*** The following definitions apply under this rule:

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(D) “Domestic terrorism” and “international terrorism” have the meanings set out in 18 U.S.C. § 2331.

(E) “Tracking device” has the meaning set out in 18 U.S.C. § 3117(b).

(b) Authority to Issue a Warrant. At the request of a federal law enforcement officer or an attorney for the government:

(1) a magistrate judge with authority in the district — or if none is reasonably available, a judge of a state court of record in the district — has authority to issue a warrant to search for and seize a person or property located within the district;

(2) a magistrate judge with authority in the district has authority to issue a warrant for a person or

property outside the district if the person or property is located within the district when the warrant is issued but might move or be moved outside the district before the warrant is executed;

- (3)** a magistrate judge — in an investigation of domestic terrorism or international terrorism — with authority in any district in which activities related to the terrorism may have occurred has authority to issue a warrant for a person or property within or outside that district; and
- (4)** a magistrate judge with authority in the district has authority to issue a warrant to install within the district a tracking device; the warrant may authorize use of the device to track the movement of a person or property located within the district, outside the district, or both.

* * * * *

(d) Obtaining a Warrant.

- (1) *In General.* After receiving an affidavit or other information, a magistrate judge — or if authorized by Rule 41(b), a judge of a state court of record — must issue the warrant if there is probable cause to search for and seize a person or property or to install and use a tracking device.

* * * * *

(3) *Requesting a Warrant by Telephonic or Other Means.*

- (A) *In General.* A magistrate judge may issue a warrant based on information communicated by telephone or other reliable electronic means.

(B) *Recording Testimony.* Upon learning that

an applicant is requesting a warrant under

Rule 41(d)(3)(A), a magistrate judge must:

(i) place under oath the applicant and any

person on whose testimony the

application is based; and

(ii) make a verbatim record of the

conversation with a suitable recording

device, if available, or by a court

reporter, or in writing.

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(e) Issuing the Warrant.

(1) *In General.* The magistrate judge or a judge of

a state court of record must issue the warrant to

an officer authorized to execute it.

(2) *Contents of the Warrant.*

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(A) *Warrant to Search for and Seize a Person or*

Property. Except for a tracking-device warrant, the warrant must identify the person or property to be searched, identify any person or property to be seized, and designate the magistrate judge to whom it must be returned. The warrant must command the officer to:

- (i) execute the warrant within a specified time no longer than 10 days;
- (ii) execute the warrant during the daytime, unless the judge for good cause expressly authorizes execution at another time; and
- (iii) return the warrant to the magistrate judge designated in the warrant.

(B) *Warrant for a Tracking Device.* A tracking-

device warrant must identify the person or property to be tracked, designate the magistrate judge to whom it must be returned, and specify a reasonable length of time that the device may be used. The time must not exceed 45 days from the date the warrant was issued. The court may, for good cause, grant one or more extensions for a reasonable period not to exceed 45 days each. The warrant must command the officer to:

- (i) complete any installation authorized by the warrant within a specified time no longer than 10 calendar days;
- (ii) perform any installation authorized by the warrant during the daytime, unless the judge for good cause expressly

authorizes installation at another time;

and

(iii) return the warrant to the judge designated in the warrant.

(3) *Warrant by Telephonic or Other Means.* If a magistrate judge decides to proceed under Rule 41(d)(3)(A), the following additional procedures apply:

(A) *Preparing a Proposed Duplicate Original Warrant.* The applicant must prepare a “proposed duplicate original warrant” and must read or otherwise transmit the contents of that document verbatim to the magistrate judge.

(B) *Preparing an Original Warrant.* If the applicant reads the contents of the proposed duplicate original warrant, the magistrate

judge must enter those contents into an original warrant. If the applicant transmits the contents by reliable electronic means, that transmission may serve as the original warrant.

(C) *Modification.* The magistrate judge may modify the original warrant. The judge must transmit any modified warrant to the applicant by reliable electronic means under Rule 41(e)(3)(D) or direct the applicant to modify the proposed duplicate original warrant accordingly.

(D) *Signing the Warrant.* Upon determining to issue the warrant, the magistrate judge must immediately sign the original warrant, enter on its face the exact date and time it is issued, and transmit it by reliable electronic

means to the applicant or direct the applicant to sign the judge's name on the duplicate original warrant.

(f) Executing and Returning the Warrant.

(1) *Warrant to Search for and Seize a Person or Property.*

(A) *Noting the Time.* The officer executing the warrant must enter on it the exact date and time it was executed.

(B) *Inventory.* An officer present during the execution of the warrant must prepare and verify an inventory of any property seized. The officer must do so in the presence of another officer and the person from whom, or from whose premises, the property was taken. If either one is not present, the officer must prepare and verify the

inventory in the presence of at least one other credible person.

- (C) *Receipt.* The officer executing the warrant must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken or leave a copy of the warrant and receipt at the place where the officer took the property.
- (D) *Return.* The officer executing the warrant must promptly return it — together with a copy of the inventory — to the magistrate judge designated on the warrant. The judge must, on request, give a copy of the inventory to the person from whom, or from whose premises, the property was taken and to the applicant for the warrant.

(2) *Warrant for a Tracking Device.*

(A) *Noting the Time.* The officer executing a tracking-device warrant must enter on it the exact date and time the device was installed and the period during which it was used.

(B) *Return.* Within 10 calendar days after the use of the tracking device has ended, the officer executing the warrant must return it to the judge designated in the warrant.

(C) *Service.* Within 10 calendar days after the use of the tracking device has ended, the officer executing a tracking-device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked; or by leaving a

copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address. Upon request of the government, the judge may delay notice as provided in Rule 41(f)(3).

(3) *Delayed Notice.* Upon the government's request, a magistrate judge — or if authorized by Rule 41(b), a judge of a state court of record — may delay any notice required by this rule if the delay is authorized by statute.

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Rule 58. Petty Offenses and Other Misdemeanors

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(b) Pretrial Procedure.

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(2) *Initial Appearance.* At the defendant's initial appearance on a petty offense or other misdemeanor charge, the magistrate judge must inform the defendant of the following:

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(G) any right to a preliminary hearing under Rule 5.1, and the general circumstances, if any, under which the defendant may secure pretrial release.

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