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A View by the Defense

E. J. Herschler

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THE WYOMING RULES OF CRIMINAL PROCEDURE
A VIEW BY THE DEFENSE

*E. J. Herschler**

INASMUCH as these Rules have been effective for only a relatively short time, it would be presumptous of me to categorically declare that the Rules will or will not afford adequate justice to society as a whole in the field of criminal proceedings. However, it does seem to me, in my limited experience with them that the State and the Defendant in a criminal case will benefit materially by their application.

The intent of the Rules is succinctly stated in Rule 2, which provides:

> These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

The Rules, of course, cover every stage of the proceedings from the issuance of the complaint and warrant through appellate procedure. The first departure from our former procedure that is of great significance to an accused is found in Rules 5, 6 and 7, which deal with the first appearance before the Commissioner, the assignment of counsel and the Preliminary Examination. If these Rules are strictly adhered to, it seems to me that both the State and the accused

* Attorney at Law, Kemmerer, Wyoming. L.L.B., 1949, University of Wyoming; Member of Wyoming Bar Association (President 1968-1969), American Trial Lawyers Association; American Judicature Society and International Society of Barristers.

will benefit materially. Rule 5(a) provides that the accused upon his arrest shall be taken without unecessary delay before the nearest available Commissioner. This does not prohibit all delay but only unnecessary delay in presenting the accused to a Commissioner.[1] However, this Rule directing the arresting officer to take the accused person without unnecessary delay before the nearest available Commissioner is meant to prevent unnecessary delay during which time arresting officers may seek to elicit confessions or marshal evidence for presentation.[2]

Rule 5(b) sets forth the requirements that direct the Commissioner to advise the accused of his "rights." This Rule not only to satisfy Courts, juries and the public that coercion has not been used and that the Defendant knows his rights;[3] but also obviates the necessity for inquiries of truth as to duress claimed to have been exerted by the Police.[4]

Rule 6 provides the accused with the right to have a preliminary examination, which of course, is not a departure from our former procedure. It should be noted, however, that pleas before a Commissioner are excluded, as a plea of guilty at this stage has no legal status or function except to serve as a waiver of a Preliminary Examination. The Rule expressly provides for a waiver of examination, thereby eliminating any necessity for a provision as to a plea. A plea has been held inadmissible in evidence at the trial, if the Defendant was not represented by counsel when the plea was entered.[5]

One of the problems that is often encountered before a Commissioner (Justice of the Peace) is that he will insist that the accused enter a plea. As a result, a plea is often entered in order to avoid the necessity of incurring the displeasure of the Justice. However, this usually is of no ulti-

1. Wise v. United States, 388 F.2d 206 (D.C. Cir. 1967) *cert. denied*, 390 U.S. 964 (1968).
2. Gregory v. United States, 364 F.2d 210 (10th Cir. 1966) *cert. denied*, 385 U.S. 962 (1967).
3. United States v. Smith, 31 F.R.D. 553 (D.D.C. 1962).
4. United States v. Bellamy, 326 F.2d 389 (4th Cir. 1964).
5. Wood v. United States, 128 F.2d 264 (D.C. Cir. 1942).

mate benefit, as your client is invariably held to the District Court for trial.

The requirements of Rule 8 pertaining to Bail is, in theory, a departure from the practice before the adoption of the Rules. Unfortunately, however, the enlightened provisions of this rule are not, as a practical matter, universally observed by our Commissioners. The Rule (8(c)(2)), provides as follows.

> In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, taken into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residencec in the community, his record of convictions and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

One of the problems often encountered is that the Commissioner does, in many instances, rely solely on the recommendations of the County and Prosecuting Attorney to set bail. Experience dictates that the County and Prosecuting Attorney, on many occasions, takes the position that the accused would not have been arrested if he were not guilty, and thus it will be to the benefit of all concerned that bail be of such an amount that the Defendant might decide to remain in jail. In any event, it would not appear that the system was any worse than it was before the adoption of the Rules, and at least there is now a tool that can be used by our Commissioners.

It has long been one of the principles of criminal justice that a person should be admitted to bail. As has been pointed out, our law has unequivocally provided that a person arrested for non capital offenses shall be admitted to bail, since the traditional right of the accused to freedom before conviction permits unhampered preparation of defenses; serves to prevent infliction of punishment prior to conviction; and the presumption of innocence, secured only after

centuries of struggle, would lose its meaning unless such right to bail before trial were preserved.[6]

Rule 56 provides that certain Sections of the Wyoming Statutes, 1957, as amended, shall be superseded, and such Statutes and all other laws in conflict with the Rules shall be of no further force or effect. Among these Statutes, which were so superseded, are Sections 7-181 and 7-182, Wyoming Statutes, 1957. Section 7-181 provided, in part, that the Defendant in a criminal case shall not, without his assent, be arraigned or called to answer to any indictment for a felony until one day shall have elapsed after a copy has been served upon him. Section 7-182 provided that a Court shall allow the accused a reasonable time to examine the indictment and prepare exceptions thereto. Rule 14, which relates to the arraignment, provides that such shall be conducted in open Court at which time the indictment or information shall be read to the Defendant, or the Court shall state to him the substance of the charge, and then the Defendant is called upon to plead thereto· The Rule also requires that a copy of the indictment or information shall be given to the Defendant before he is called upon to plead. Rule 15 provides that if the Defendant refuses to plead or if the Court refuses to accept a plea of guilty, the Court shall enter a plea of not guilty.

Rules 14 and 15 do not specifically provide that the Defendant shall be given an opportunity to examine the indictment or information prior to his entering a plea, nor do the Rules require that 24 hours elapse following service of the copy of the information before requiring the Defendant to answer. It would seem to me that these requirements of the Rules can conceivably create an undue burden on the Defendant. Section 7-181, Wyoming Statutes, 1957, gave the Defendant the right to waive the 24 hour requirement and I believe that such a provision should be contained in the Rules. By the provisions of Rule 15, a Defendant may, in some cases, be limited to a "Not Guilty" plea, which could be detrimental to him. I presume, however, that such a plea might be withdrawn at a later time by the filing of a proper motion under the provisions of Rule 16, but on the other hand such a

motion might not be necessary if the Defendant were afforded additional time at the arraignment.

One other matter that concerns me is that Sections 7-119, 7-120, Wyoming Statutes, 1957, have been superseded by the Rules. This first Section provided that the County and Prosecuting Attorney must endorse the names of the State's witnesses on the information, and if he failed to do so, the latter Section gave the Defendant the right to move the Court for an Order requiring the endorsement of the names of the witnesses on the information prior to the time of trial. I find nothing in the Rules that gives the Defendant the right to secure this information from the State, and such information is usually vital in preparing an adequate defense for an accused. It may be that such can be obtained by the discovery and inspection provisions of Rule 18. However, such is not spelled out in the Rule, and I can find no authorities that would indicate such information should be provided thereunder.

It may be contemplated that the names of the witnesses might be secured by a bill of particulars as provided in Rule 9(d), but there does not appear to be any Wyoming authority on this particular subject. However, it would seem that the majority rule in the United States Courts is that the function of a bill of particulars is not to provide the names of Government witnesses to a Defendant.[7]

On the whole, I believe the Rules will promote and aid in the attainment of justice, both for the State and the accused. There are many new innovations, such as the use of Depositions (Rule 17), Discovery and Inspection (Rule 18), and Pretrial Conferences (Rule 19), that will assist the accused and his counsel to secure information so necessary to ascertain the facts so as to prepare an adequate defense. These procedures are not, of course, designed only to benefit the Defendant, and it is my opinion that they will be extreme-

6. Stack v. Boyle, 342 U.S. 1 (1951).
7. Yeargain v. United States, 314 F.2d 881 (9th Cir. 1963).
United States v. Burgio, 279 F. Supp. 843 (S.D. N.Y. 1968).
United States v. Bennett, 36 F.R.D. 103 (E.D. S.C. 1964).
United States v. Hasiwar, 299 F. Supp. 1053 (S.D. N.Y. 1969).

ly beneficial to the State in the prosecution of an accused. The Rules, if properly applied, should serve to promote justice by insuring a criminal Defendant that he will receive a fair trial. Under our concepts of freedom he is entitled to such and if he receives it neither he nor society should have reason to complain.