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FEDERAL RULES OF CRIMINAL PROCEDURE--THE VARIOUS DRAFTS

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EDITOR'S NOTE

FEDERAL RULES OF CRIMINAL PROCEDURE—THE VARIOUS DRAFTS—In February 1944 the REVIEW carried an article by Dean Harno of the University of Illinois entitled, "Proposed Rules of Criminal Procedure: Final Draft."¹ In a footnote the draft was referred to as "Final Report (1943)."² While that issue of the REVIEW was on the press the Advisory Committee distributed a draft of the rules entitled "Federal Rules of Criminal Procedure, Second Preliminary Draft." In July 1944 a third printing of the proposed rules was circulated. This printing, labeled "Report," is, according to Mr. Holtzhoff, secretary of the committee, "the Final Draft of the Rules."³ It thus appears that there have been two *final* "Reports" or "Drafts" of the proposed rules. To clear up the confusion caused by this apparent duplication, a brief history of the various drafts seems desirable.

¹ 42 MICH. L. REV. 623 (1944).

² Id. at 623, note 1.

³ Letter of Mr. Holtzhoff to the REVIEW, dated September 12, 1944.

(1). *Preliminary Draft, May 1943*. Mr. Holtzhoff states: "The first distribution of a draft of the Proposed Federal Rules of Criminal Procedure was made in May 1943. This draft is labeled 'Preliminary Draft.'"⁴ This draft was discussed by Wendell Berge in the December 1943 issue of the REVIEW.⁵

(2). *Final Report, November 1943*. On November 19, 1943, the Advisory Committee transmitted to the Supreme Court a mimeographed draft of the rules entitled "Final Report." This draft of the rules was discussed by Professor Waite, a member of the committee, in the December 1943 issue of the *Journal of the American Judicature Society*.⁶ In a footnote to this article the following appears: "Rule numbers mentioned in this article refer to the final form in which the Rules were submitted to the Supreme Court, and not to the preliminary draft published for comment and criticism last June."⁷ This same draft was discussed by Dean Harno in the February 1944 issue of this REVIEW.⁸

(3). *Second Preliminary Draft, February 1944*. Mr. Holtzhoff states: "The Second Preliminary Draft was printed and distributed in February 1944."⁹ The letter of transmittal which appears in the "Report" of July 1944 states: "A second preliminary draft was printed in November, 1943, and was distributed." The printed "Second Preliminary Draft" is dated "February 1944." The letter of transmittal is dated November 19, 1943. A comparison of the "Final Report" of November 1943 with the "Second Preliminary Draft" indicates that the "Final Report" of November 1943 was later circulated as the "Second Preliminary Draft." Why this was done is not explained.

(4). *Report of July 1944*. Mr. Holtzhoff states: "The Final Draft of the Rules was printed in July, 1944, and was submitted on August 9, 1944, to the Supreme Court for its consideration."¹⁰

The confusion referred to above arises out of the fact that for some reason the "Final Report" of November 1943 was not accepted by the Supreme Court, and was later printed and circulated as the Second Preliminary Draft.—*Ed.*

⁴ *Ibid.*

⁵ 42 MICH. L. REV. 353 (1943).

⁶ 27 J. AM. JUD. SOC. 101 (1943).

⁷ *Id.* at 101, Editor's Note.

⁸ 42 MICH. L. REV. 623 (1944).

⁹ Letter of Mr. Holtzhoff, cited *supra* note 3.

¹⁰ *Ibid.*