Minnesota Rules of Criminal Procedure--Introduction

Minn. L. Rev. Editorial Board

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Introduction*

With the promulgation of the Minnesota Rules of Criminal Procedure, effective July 1, 1975,¹ this state became one of the first to have adopted both a modern code of criminal procedure and a modern code of substantive criminal law.² Pursuant to a 1971 statute authorizing it to promulgate rules of criminal procedure with the assistance of an advisory committee,³ the Su-

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2. The substantive criminal law of Minnesota is codified at MINNESOTA STATUTES ch. 609. For a recent survey of developments in state criminal procedure codes, see Arn, Implementation of the ABA Standards for Criminal Justice: A Progress Report, 12 AM. CRIM. L. REV. 477 (1975).

3. Minn. Laws 1971, ch. 250, §§ 1-8 (codified at MINN. STAT. § 480.059 (1974)), provides in part:

Subd. 1. Rules and regulations. The Supreme Court shall have the power to regulate the pleadings, practice, procedure, and the form thereof in criminal actions in all courts of this state, by rules promulgated by it from time to time. Such
preme Court of Minnesota appointed a committee that spent nearly four years preparing draft proposals. Owing to the disorganized state of existing provisions for criminal procedure, the task of the advisory committee was a difficult one. Some existing provisions had been written piecemeal, and some had been modified by decisions of the United States and Minnesota supreme courts. Besides complicating criminal practice, this patchwork of statutes and case law failed to reflect new concepts in criminal procedure successfully implemented in other jurisdictions.

In drafting the new rules, the advisory committee relied primarily on existing Minnesota statutory law, state and federal

rules shall not abridge, enlarge, or modify the substantive rights of any person.

Subd. 2. Advisory Committee. Before any such rules are adopted the Supreme Court shall appoint an advisory committee consisting of eight lawyers licensed to practice law in the state and at least two judges of the district court and one judge of a court exercising municipal court jurisdiction to assist the court in considering and preparing such rules.

4. The members of the advisory committee are: Frank Claybourne, Chairman, Judge Charles E. Cashman, Henry H. Feikema, Professor David Graven, Judge Charles C. Johnson, C. Paul Jones, John E. MacGibbon, Henry W. McCarr, Jr., Ronald L. Meshbesher, Judge Donald C. Odden, Judge Chester C. Rosengren, and Judge Bruce C. Stone. Professor William B. Danforth served as reporter, Professor Maynard E. Pirig served as consultant, and Justice George M. Scott served as supreme court coordinator.


6. For example, Minnesota Statutes §§ 357.32, 388.05, 597.11, 611.06, and ch. 596 are all superseded to the extent inconsistent, by rule 22, dealing with subpoenas.

7. See, e.g., Harris v. New York, 401 U.S. 222 (1971) (use of defendant's inadmissible pretrial statements for credibility impeachment allowed); Simmons v. United States, 390 U.S. 377 (1968) (subsequent use at trial of defendant's testimony at "suppression" hearing disallowed); State v. Billstrom, 276 Minn. 174, 149 N.W.2d 281 (1967) (prosecutorial use at trial of evidence of similar illegal actions in the past allowed); State v. Grunau, 273 Minn. 315, 141 N.W.2d 815 (1966) (production by the police of some types of evidence and statements by witnesses for impeachment use by the defense required); State v. Thompson, 273 Minn. 1, 139 N.W.2d 490 (1966) (defense inspection of unprivileged pretrial statements of witnesses once they have testified allowed, applying Jencks v. United States, 353 U.S. 657 (1957)); State ex rel. Rasmussen v. Tahash, 272 Minn. 535, 141 N.W.2d 3 (1965) (evidentiary hearing on motions to suppress evidence gathered by the prosecution required); State v. Spreigl, 272 Minn. 498, 139 N.W.2d 167 (1966) (provision of prior written notice to defendant of his past crimes required).

8. See ABA Standards Relating to Discovery and Procedure Before Trial §§ 1-1, 5.1-5.3 (Approved Draft, 1970) [hereinafter cited as ABA Standards].
constitutional law, the American Bar Association (ABA) Minimum Standards of Criminal Justice Project, and numerous other existing and proposed rules of criminal procedure. Minnesota statutory law guided the advisory committee in formulating procedures respecting the raising of an alibi and the insanity defense. Other Minnesota statutes, however, failed to utilize new constitutional interpretations, such as those concerning discovery, and were replaced. In all, 157 statutory provisions were entirely, and 63 partially, superseded by the new rules. As a result, the new rules bear little resemblance to their predecessors.

The advisory committee also codified recent decisions of the United States and Minnesota supreme courts mandating procedures not reflected in the statutes. Examples of important case-law developments requiring incorporation in the new rules were requirements for prosecutorial disclosure of exculpatory evidence and hearings to determine whether the prosecution has obtained its evidence in a manner violative of the defendant's constitutional rights.

The advisory committee relied heavily in the drafting process on the American Bar Association's Minimum Standards of Criminal Justice Project. The ABA Project, like the Minnesota advisory committee, set out to adopt the best procedures from all jurisdictions and to make its own suggestions for new procedures


11. See, e.g., Minn. Stat. § 611.026 (1974) (defining competency to proceed at trial and sentencing, which is substantially incorporated in rule 20.01(1)).


14. See cases cited in note 7 supra.


to improve the functioning of the criminal process.\textsuperscript{17} To date, approximately 22 states have adopted much of the ABA Standards,\textsuperscript{18} while most of the remaining states have undertaken studies comparing the ABA Standards with their own law.\textsuperscript{19} The Minnesota advisory committee undertook its comparative study in 1971 and completed it before drafting the proposed rules.\textsuperscript{20} That the new rules implement a major portion of the ABA Standards\textsuperscript{21} is evident from their structure,\textsuperscript{22} the wording and substance of many of their provisions,\textsuperscript{23} and the advisory committee comments.\textsuperscript{24}

A number of other proposed and effective rules of criminal procedure aided the advisory committee in drafting the rules, including the Revised Uniform Code of Criminal Procedure, written by the National Association of Uniform Law Commissioners,\textsuperscript{25} and the Federal Rules of Criminal Procedure\textsuperscript{26} together with the proposed amendments thereto.\textsuperscript{27} These amend-

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\footnote{17. The stated purpose of the ABA Project was "to compile and formulate standards which [could] be recommended as a desirable minimum to be applied to the administration of criminal justice in all of the 50 states" and, when appropriate, throughout the jurisdiction of the federal government. Office of the Criminal Justice Project, Institute of Judicial Administration, American Bar Association Project on Minimum Standards for Criminal Justice, April 22, 1966. The underlying objectives were to promote effective law enforcement and adequate protection of the public and to safeguard and amplify the constitutional rights of those suspected of crime. \textit{Id.}}
\footnote{18. The following states have implemented or are in the process of implementing sections of the ABA Standards: Alabama, Arizona, Arkansas, Colorado, Florida, Illinois, Kansas, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Washington, and Wisconsin. \textit{Arn, supra} note 2, at 479-82.}
\footnote{19. \textit{Id.} at 479 nn.5 & 6.}
\footnote{20. \textit{See} Scott, \textit{An Overview of the Minnesota Rules of Criminal Procedure,} 60 Minn. L. Rev. 717 (1976).}
\footnote{21. \textit{See} Arn, \textit{supra} note 2, at 480.}
\footnote{22. \textit{Compare, e.g., ABA Standards, supra note 8, §§ 2.1, 3.1 with Minn. R. Crim. P. 9.01, 9.02.}}
\footnote{23. \textit{Compare, e.g., ABA Standards, supra note 8, § 4.1 with Minn. R. Crim. P. 9.03(1).}}
\footnote{24. \textit{See, e.g., Minn. R. Crim. P. 9, Comment.}}
\footnote{26. \textit{See} Fed. R. Crim. P. 9.01(3)(1)(b), Comments.}
\footnote{27. \textit{See, e.g., Preliminary Draft of Proposed Amendments to Fed. R.}}
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ments, for example, guided the committee in interpreting court decisions concerning pretrial discovery and the duty of the prosecutor to disclose exculpatory evidence to the defendant.\(^2\) Statutes, practices, and proposals from other states, such as those governing the procedure by which an insanity defense is raised, furnished additional assistance.\(^2\)

Drawing on these various sources, the advisory committee drafted procedures designed to provide effective law enforcement while preserving the constitutional rights of the accused. Quite naturally, the new rules reflect current attitudes toward apprehension, trial, and rehabilitation of criminals, but, at the same time, they remain largely faithful to past practices of criminal justice administration.

Perhaps the greatest potential for significant departures from previous Minnesota statutory and common-law procedures lies in the power of the courts to interpret the rules as either conferring new rights on the accused or denying rights the draftsmen intended to preserve. Although mandated by the legislature to regulate criminal pleadings, practice, and procedure, the supreme court is specifically prohibited from abridging, enlarging, or modifying the substantive rights of any person,\(^3\) and the legislature has reserved the right to modify or repeal any rule adopted by the supreme court.\(^3\) Thus, both the judicial interpretation and the language of the rules must be reviewed for consistency with the legislative mandate as well as with the state and federal constitutions.\(^3\)

The collection of Articles, Notes, and Comments that follow provides a critical analysis of certain features of the new Min-
nesota Rules of Criminal Procedure. Its purpose is to call to the attention of the supreme court and the legislature problems that may arise under certain applications of the rules, and arguments in support of and in opposition to the wisdom and constitutionality of those applications. Following an overview of the rules by Justice Scott of the Supreme Court of Minnesota is an article by Richard Allyn, the Solicitor General of Minnesota, which discusses and ultimately defends the constitutionality of the provisions allowing pretrial prosecutorial discovery. His views are answered by a student Note, which concludes that certain foreseeable applications of the prosecutorial discovery rules will violate the self-incrimination and due process clauses. That exchange is followed by two student Comments. The first criticizes a recent Minnesota decision that suggests that the court might interpret rule 26, pertaining to waiver by a defendant of his right to jury trial, to vest the trial court with broad discretion to deny a motion for waiver when the judge views a jury trial as in the defendant's best interests. The second criticizes a recent decision of the Minnesota supreme court holding that where a defendant fails at the omnibus hearing provided by rule 11 to produce witnesses whose testimony would, if believed, exonerate him, the court may find probable cause to bind the defendant over without conducting an adversary proceeding. It is to be hoped that this commentary will provide a useful perspective for the court and the advisory committee when they review the first year of operation of the rules.\textsuperscript{33}

\textsuperscript{33} In ordering the adoption of the rules, the supreme court also provided, "The Advisory Committee will continue to serve to monitor said Rules and to accept comments for suggested changes. A hearing shall be held by the court after one year of operation of these Rules." In re Proposed Rules of Criminal Procedure, Order of the Supreme Court of Minnesota, 299 Minn. (unnumbered page) (1974).