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AN INTRODUCTION TO FEDERAL COURT RULEMAKING PROCEDURE

by Thomas E. Baker*

Toward the end of September 1990 at a closed meeting in Washington, D.C., the Judicial Conference of the United States passed on a substantial set of proposed amendments to the rules of practice and procedure of the federal courts. The new appellate rules authorized local circuit rules on electronic filing,1 required a jurisdictional statement in the appellant's brief2 and eliminated some inconsistencies in the notice rules for admiralty appeals.3 The new civil rules related to pretrial scheduling orders,4 discovery in international litigation,5 claims of privilege,6 subpoenas of nonparties,7 alternate jurors,8 the standard for entry of judgment as a matter of law,9 procedures for special masters10 and substitution for a judge who is unable to continue.11 Most important, a completely redrafted Federal Rule of Civil Procedure 4: (1) authorized service as provided by the state in which a defendant is served, as well as the forum state; (2) permitted nationwide personal jurisdiction in federal question cases; (3) emphasized and encouraged waivers of actual service; and (4) clarified and economized service of process by and on the federal government.12

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5. See Fed. R. Civ. P. 26, 44.
12. See Fed. R. Civ. P. 4
ruptcy procedure, where the rules have been redrafted in wholesale. These reforms were made necessary, in large part, by far-reaching recent legislation: the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986\textsuperscript{13} and the Retiree Benefits Bankruptcy Protection Act of 1988.\textsuperscript{14} Even the Official Bankruptcy Forms have been redrafted.

As expected, these proposed amendments to the rules were adopted by the Supreme Court and not changed by Congress.\textsuperscript{15} Federal practitioners are now obliged to learn a good many new appellate, bankruptcy and civil rules of procedure. But this article is \textit{not} about the "substance" of these new procedures. It is too late for that discussion. What I want to explain here is the procedure by which federal rule changes, such as these, are promulgated. My hope is to demystify these procedures so that more members of the Bar might participate meaningfully in federal judicial rulemaking.

Federal practitioners are not to be criticized for not knowing how rules are begotten. I am an academic proceduralist who regularly teaches Federal Jurisdiction, and I had only a vague understanding of federal rulemaking before I was appointed to the Standing Committee on Rules and Procedures. Members of the Bar, obviously, have an important stake in changes in federal procedure and, necessarily, have a public responsibility to further the quixotic goal of Federal Rule of Civil Procedure 1: "to secure the just, speedy, and inexpensive determination of every action."\textsuperscript{16}

I. HISTORY

Modern federal judicial rulemaking dates from 1958. Nevertheless, a few paragraphs of history inform our understanding of current practice.\textsuperscript{17} The famous Judiciary Act of 1789 first authorized federal courts to fashion necessary rules of practice.\textsuperscript{18} However, a lesser

\textsuperscript{15} See Notice to Subscribers, 111 S. Ct. no. 5, at CV (1990).
\textsuperscript{16} FED. R. CIV. P. 1.
\textsuperscript{18} Act of Sept. 24, 1789, ch. 20, § 17, 1 Stat. 73, 83 (current version at 28 U.S.C. § 1652 (1988)).
known statute which passed less than a week later provided that in actions at law the federal procedure should be the same as in the state courts.\textsuperscript{19} This created a system which seems odd to us today: a separate federal procedure, independent from state procedure, for equity and admiralty and a static federal procedure for law that conformed to the procedure in each state as of September 1789, regardless of later state court changes. The system became more odd, or at least more uneven, in 1828 when Congress passed a statute that required federal courts in subsequently admitted states to conform to 1828 state procedures.\textsuperscript{20} The same statute provided that all federal courts were to follow 1828 state procedures for writs of execution and other enforcement proceedings with some discretion.\textsuperscript{21} This unsatisfactory system prevented the federal courts from following the lead of state procedural reform such as the New York Code of 1848 which merged law and equity and simplified pleading.\textsuperscript{22}

The next legislative improvement came in 1872 when Congress withdrew rulemaking authority from the federal courts and required that all actions in law conform with the corresponding state forum’s rules and procedures.\textsuperscript{23} As a practical consequence there was no uniformity in federal procedure because, as a result of the Conformity Act, there were as many different federal rules and procedures as there were states.\textsuperscript{24}

My reader can look elsewhere for the history of the Federal Rules of Civil Procedure “told in large part in terms of dedicated individuals who worked and campaigned to bring them into existence.”\textsuperscript{25} What bears emphasis in our historical world is that until 1938, that is, for the first 150 years of the 200 year history of federal

\begin{footnotesize}
\begin{enumerate}
\item Act of Sept. 29, 1789, ch. 21, § 2, 1 Stat. 93 (current version at 28 U.S.C. § 1652 (1988)).
\item Act of May 19, 1828, ch. 68, 4 Stat. 278.
\item \textit{Id.}
\item Act of June 1, 1872, ch. 255, 17 Stat. 197 (repealed 1934).
\item 4 C. Wright & A. Miller, \textsc{Federal Practice and Procedure} § 1002, at 14 (2d ed. 1987) ("[T]he procedural law continued to operate in an atmosphere of uncertainty and confusion, aggravated by the growing tendency of federal courts to develop their own rules of procedure under the licensing words of the 1872 Act that conformity was to be "as near as may be.")."
\item \textit{Id.} § 1004, at 21. \textit{See also} Goodman, \textit{supra} note 17, at 355 (explaining the roles of Charles E. Clark, James W. Moore and others in the original promulgation of the rules).
\end{enumerate}
\end{footnotesize}
courts, things were the reverse of what they are today. Before 1938, the federal courts followed state procedural law and federal substantive law, even in diversity cases. Of course, the substantive law of the forum state was recognized to be controlling in the famous diversity decision of *Erie Railroad Co. v. Tompkins*, overruling *Swift v. Tyson*. And in the same year, after more than two decades of effort, national rules of procedure were drafted by an ad hoc Advisory Committee appointed by the Supreme Court under the provision of the Rules Enabling Act of 1934. The new rules—which persist today through numerous subsequent amendments—established a uniform federal procedure, abolished the distinction between law and equity, created one form of action, provided for liberal joinder of claims and parties and authorized extensive discovery.

The Supreme Court's ad hoc Advisory Committee was comprised of distinguished lawyers and law professors. While the ad hoc Committee has been deservedly lionized for drafting the rules themselves, a more subtle but equally lasting achievement was to establish the tradition of federal procedural reform. Two features of that nascent experience have characterized federal judicial rulemaking ever since. First, the ad hoc Committee took care to elicit the thinking and the experience of the bench and bar by distributing drafts and soliciting comments with a pronounced willingness to reconsider and redraft its recommendations. Second, "the work of the Committee was viewed as intellectual, rather than a mere exercise in counting noses." The ad hoc Committee demonstrated the shared sense of responsibility to recommend to the Supreme Court the best and most workable rules rather than rules that might be supported most widely or might appease special interests. Although the rulemaking mechanism has been revised over the years since, these two traditions have endured.

26. 304 U.S. 64 (1938).
29. See generally 4 C. WRIGHT & A. MILLER, supra note 24, § 1005 (assessing the contributions of the Advisory Committee in establishing judicial rulemaking).
30. Id.
This positive early experience located rulemaking responsibility in the judicial branch, but the modern rulemaking process took a few more years to evolve. A year after the new rules went into effect, the Supreme Court called upon the ad hoc Advisory Committee to submit amendments which the Court accepted and sent to Congress and which became effective in 1941.\footnote{Order Requesting Amendments from the Advisory Committee, 308 U.S. 642 (1939).}

The next year, the Supreme Court designated the ad hoc Committee a continuing Advisory Committee which then periodically proposed amendments through the 1940s and early 1950s.\footnote{Continuance of Advisory Committee, 314 U.S. 720 (1941); see, e.g., Order Amending the Rules of Civil Procedure, 341 U.S. 962 (1951); Order Amending the Rules of Criminal Procedure, 335 U.S. 917 (1948); see also Clark, "Clarifying" Amendments to the Federal Rules?, 14 St. L.J. 241, 242 (1953) (discussing the frequency of amendments).} In 1955, the continuing Advisory Committee submitted an extensive report to the Supreme Court with numerous suggested amendments. The Court rather mysteriously took no action on the Report and instead ordered the Committee "discharged with thanks" and revoked the Committee's authority as a continuing body.\footnote{Order Discharging the Advisory Committee, 352 U.S. 803 (1956).}

The resulting void in rulemaking procedure was an object of concern expressed by the American Bar Association, the Judicial Conference and other groups.\footnote{See The Rule-Making Function and the Judicial Conference of the United States, 44 A.B.A. J. 42, 42 (1958) (conducting "[a] panel discussion of this important question").} At the time, there was no small controversy over whether the Court should designate a new standing committee and how the members might be selected. Dissatisfaction with the rulemaking role of the Supreme Court as a veritable rubber stamp of Advisory Committee recommendations had led several Justices to dissent publicly, from time to time complaining that the proposals were not actually the work of the Court.\footnote{See, e.g., Order Amending the Rules of Civil Procedure, 329 U.S. 843 (1946) (noting Justice Frankfurter's reliance on the judgment of the Advisory Committee); Order Amending the Rules of Civil Procedure, 308 U.S. 643 (1939) (noting Justice Black's disapproval); Order Adopting the Rules of Procedure for the District Courts of the United States, 302 U.S. 783 (1937) (noting Justice Brandeis' disapproval of the new federal rules). Even after the changes in the rulemaking procedure outlined infra at notes 37-47 and accompanying text, there were continued dissents regarding the method of promulgation. See, e.g., Order Amending the Rules of Civil Procedure, 374 U.S. 861 (1963) (opposing statements of Black, J. and Douglas, J.) ("[T]he rules have only our imprimatur. The only contribution that we actually make is an occasional exercise of a veto power."). But see infra note 45 and accompanying text.} Apparently, there were misgivings expressed behind the scenes about the tenure

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34. See The Rule-Making Function and the Judicial Conference of the United States, 44 A.B.A. J. 42, 42 (1958) (conducting "[a] panel discussion of this important question").
of the continuing Committee members, who served indeterminate terms until they resigned or died. All this subtle controversy took place along with the separation of powers tug-of-war between the courts and Congress over which institution should make rules, and how.

The replacement rulemaking procedures were designed by Chief Justice Earl Warren, Justice Tom C. Clark and Chief Judge John J. Parker, of the Fourth Circuit, during their cruise to attend the 1957 American Bar Association Convention. Later, Justice Clark recalled, "On our daily walks around the deck of the Queen Mary, we thrashed out the problem thoroughly, finally agreeing that the Chief Justice, as chairman of the Judicial Conference, should appoint the committees which would give them the tag of 'Chief Justice Committees.'"\textsuperscript{36} The "Queen Mary Compromise" led to a statutory amendment that assigned responsibility to the Judicial Conference for advising the Supreme Court regarding changes in the various rules—admiralty, appellate, bankruptcy, civil and criminal—which the Court had statutory authority to amend.\textsuperscript{37} The rulemaking process today follows the basic 1958 design.

II. RULEMAKING TODAY

The \textit{Procedures for the Conduct of Business by the Judicial Conference Committees on Rules of Practice and Procedure}\textsuperscript{38} describe simple procedures that have proven to be efficient and effective. The Judicial Conference of the United States consists of the Chief Justice of the United States, Chairman, the Chief Judge of the United States Court of Appeals for the Federal Circuit, the Chief Judge of the Court of International Trade, the chief judges of the other twelve United States courts of appeals and twelve district judges chosen for a term of three years by the judges of each circuit at an annual judicial conference of the circuit. The Judicial Conference meets twice every year to consider administrative problems and policy issues

\textsuperscript{36} Clark, \textit{Foreword} to 4 C. \textsc{Wright} \& A. \textsc{Miller}, \textit{supra} note 24, at ix.


affecting the federal judiciary and to make recommendations to Congress concerning legislation affecting the federal judicial system.\footnote{39}{See 28 U.S.C. § 331 (1988).}

The Judicial Conference created the Committee on Rules of Practice and Procedure (Standing Committee)\footnote{40}{See id. § 2073(b). The statute provides: “The Judicial Conference shall authorize the appointment of a \textit{standing committee on rules of practice, procedure, and evidence} . . . .” Id. (emphasis added). The convention has been to refer to this committee as the “Standing Committee on Rules of Practice and Procedure” or simply the “Standing Committee.”} and various Advisory Committees (currently one each on Appellate Rules, Bankruptcy, Civil Rules and Criminal Rules). All appointments to the committees are made by the Chief Justice of the United States for a three-year, once-renewable term. Members are federal and state judges, practicing attorneys and academics. A reporter, usually a professor of law, is appointed to serve each committee.

Each Advisory Committee is charged to carry out a “continuous study of the operation and effect of the general rules of practice and procedure” in its particular field.\footnote{41}{Id.} An Advisory Committee considers suggestions and recommendations received from any source, new statutes and court decisions affecting the rules and relevant legal commentary. Copies or summations of all written recommendations and suggestions that are received are forwarded to each member. The Advisory Committees meet at the call of the chairman, and each meeting is preceded by notice of the time and place, including publication in the Federal Register, and meetings are open to the public.\footnote{42}{See, e.g., Meeting Notice, 55 Fed. Reg. 38,589 (1990) (meeting of the Advisory Committee on Appellate Rules).} The Reporter, under the direction of the Advisory Committee or its chairman, prepares the initial drafts of rules changes and “Committee Notes” explaining their purpose or intent. The Advisory Committee then meets to consider and revise these drafts and submits them, along with an Advisory Committee Report which includes any minority or separate views, to the Standing Committee.

Once the Standing Committee approves the drafts for publication, the proposed rules changes are printed and circulated to the bench and bar, and to the public generally. Every effort is made to publish the proposed rules widely. A notice is published in the Federal Register and the proposed rules are included in the advance sheets of Supreme Court Reporter, Federal Reporter and Federal Supple-
ment. As a matter of routine, copies are provided to various legal publishing firms and to the chief justices of each state and, as is practicable, to all individuals and organizations who request them.

Unless there is a finding that the administration of justice requires expedition, the comment period runs six months from the Federal Register notice date. The Advisory Committee usually conducts public hearings on proposed rule changes, again preceded by notice. The hearings typically are held in several geographically diverse cities to allow for regional comment. Transcripts of the hearings are generally available.

At the conclusion of the comment period, the reporter prepares a summary of the written comments received and the testimony presented at public hearings. The Advisory Committee then may change the proposed rules in accordance with meritorious comments or suggestions. If there are substantial changes, there may be an additional period for public notice and comment. The Advisory Committee then submits the proposed rule changes and Committee Notes to the Standing Committee. Each submission is accompanied by a separate report of the comments received that explains any changes made subsequent to the original publication. The report also includes the minority views of Advisory Committee members who chose to have their separate views recorded.

The Standing Committee coordinates the work of the several Advisory Committees. Although sometimes the Standing Committee suggests proposals to be studied, its chief function is to review the proposed rule changes recommended by the Advisory Committees. Meetings of the Standing Committee are generally open to the public and are preceded by public notice in the Federal Register.

The Chairman and Reporter of the Advisory Committee attend the meetings of the Standing Committee to present the proposed rules changes and Committee Notes. The Standing Committee may accept, reject or modify a proposal. If a modification effects a substantial change, the proposal may be returned to the Advisory Committee with appropriate instructions. Next, the Standing Committee transmits the proposed rule changes and Committee Notes approved by it, together with the Advisory Committee report, to the Judicial Conference. The Standing Committee's report to the Judicial

43. See, e.g., 110 S. Ct. No. 15, at CLIX (June 1, 1990) (amendments to the Federal Rules of Criminal Procedure).
Conference includes its recommendations and explanations of any changes it has made.

The Judicial Conference, in turn, transmits those recommendations it approves to the Supreme Court. Formally, the Supreme Court retains the ultimate responsibility for the adoption of changes in the rules which are accomplished by an Order of the Court. The Supreme Court has played an active part, not infrequently refusing to adopt rules proposed to it and making changes in the text of rules. In the contemporary reality however, as suggested by this elaboration of these procedures, the Advisory Committees and the Standing Committees are the main engines for procedural reform. Under the enabling statutes, amendments to the rules may be reported by the Chief Justice to the Congress at or after the beginning of a regular session of Congress but not later than May 1. The amendments become effective no earlier than December 1 of the year of transmittal if Congress takes no adverse action.

III. SEPARATION OF POWERS

In the years since 1958, this rulemaking procedure has been followed regularly—almost biennially—for significant rule changes,
but not without occasional differences over separation of powers. The enabling statute declares that the judicial rulemaking may affect "practice and procedure" but may not "abridge, enlarge or modify any substantive rights." This distinction is not always easy to discern.

Indeed, a separation of powers showdown occurred over the Federal Rules of Evidence. An Advisory Committee on Rules of Evidence was created in 1965, and the rulemaking procedures described above were followed. Following extensive study, the Committee promulgated a set of proposed rules of evidence in 1972, but there was such political furor over the rules, particularly the rules having to do with evidentiary privileges, that Congress mandated that the rules would not take effect until expressly approved by statute. Congress then made many substantial revisions before making the Federal Rules of Evidence effective in 1975.

More recently, Congress amended the enabling act specifically to require notice and commentary periods and open meeting procedures in judicial rulemaking. The legislative veto provision that attached to all rules of evidence after the 1972 controversy was discarded, but section 2074(b) still provides that any revision of the rules governing evidentiary privileges shall have no force unless approved by Congress. Efforts that year in the House of Representatives (supported by the Department of Justice and Judicial Conference) to repeal the so-called "suppression clause" in federal rulemaking failed to garner Senate agreement. The clause purports to provide that rules promulgated by the Supreme Court may trump existing acts of Congress which "shall be of no further force or


effect after such rules have taken effect."56 Read against the principle of separation of powers, this obscure clause is unwise and most likely unconstitutional. It has resulted in little mischief over the years principally because of prudent self-restraint on the part of judicial rulemakers. Perhaps this explains the Senate's recent mysterious obstinacy in refusing to repeal the provision.

Although previously passive, during the last two decades Congress has taken a more active role to change proposed rules and to preempt altogether the judicial rulemaking procedure.57 The increased Congressional involvement makes for a more persistent separation of powers threat from the Congressional direction. This happens when Congress passes a statute to effect a rule change and thus execute a kind of "end run" around the established regular judicial rulemaking procedures.58

IV. THE FUTURE

1988 marked the fiftieth anniversary of the federal rules of civil procedure.59 Anniversaries are worthwhile for providing an occasion for retrospection and evaluation. As a novice rulemaker, I lack the vision to see very far into the crystal ball, but I have two preliminary observations, one about the rules and the other about the rulemaking process. First, consider what the rules have become. There is an

57. See C. WRIGHT, supra note 27, § 4, at 15-17. Professor Wright argued that, in light of the controversy surrounding the adoption of the Federal Rules of Evidence and increased Congressional involvement in the rulemaking process, proposals for reform in the process should be forthcoming from the legal profession, especially the Standing Committee and the Judicial Conference. See Wright, Book Review, 9 ST. MARY'S L.J. 652, 653-58 (1978) (reviewing J. WEINSTEIN, REFORM OF COURT RULE-MAKING PROCEDURES (1977)).
irony to be found between Rule 1's exhortation that the rules "secure
the just, speedy, and inexpensive determination of every action"60
and Rule 84's whistling hope that the forms will implement the
"simplicity and brevity"61 of the rules. Noting what the rules have
become, John P. Frank, a distinguished practitioner and legal his­
torian has responded to these claims succinctly and phonetically:
"Phui!"62 In fifty years, the rules have grown and multiplied to belie
such naivete. For example, the Wright, Miller and Cooper treatise
contains forty-six volumes of text devoted to the rules of federal
procedure.63 And has not everyone noticed that the remarkable growth
of Alternative Dispute Resolution, the nouveaux procedure, denies
Rule 2's edict that there be "one form of action?"64 Some of the
rule changes over the years since 1958 have been fribbling—changes
of nuance and obfuscation which have contributed needlessly to the
complexity and undue uncertainty of the rules. My unwillingness to
cite an example of this concern may be attributed to my sense of
collegiality as a new member of the Standing Committee. I do believe,
however, that every federal practitioner can point to a fribbling rule
change. Stated affirmatively, and more constructively, the funda­
mental tenet of rulemaking should be that no rules be changed unless
there is good reason and substantial need.

Second, with rare exceptions, rule changes seldom have been
based on empirical research. Instead, the rulemaking process pri­
marily relies on research by the reporters and on the informed
intuition of the members of the Advisory Committees and the Stand­
ing Committee. Over the years, the members have brought their
impressive intellects and varied elite professional experiences to bear
on the issues facing the Committee. Reactive commentary from the
legal community supplements these sources; indeed, there has been

60. FED. R. CIV. P. 1.
61. FED. R. CIV. P. 84.
no dearth of public and professional commentary, at least on controversial proposals. Deborah R. Hensler, Research Director of the Rand Corporation's Institute of Civil Justice has observed, "Over the last decade there has been a burgeoning of empirical research on civil justice issues."\(^{65}\) Much of this work has focused on issues of docket growth and delay, but there are few pioneering efforts at empirical research on the operation of specific rules. Studies of Rule 11 may be the proving exception to my observation.\(^{66}\) Judges have no time and lawyers have no economic incentive for empirical research. The law professoriate, as a whole, lacks the necessary training for empirical research and too often demonstrates something of an ennui toward the actual practice of law. Of course, we procedure teachers take part in the procedure debate over rule changes, legislation and case decisions. But our contributions are as anecdotal and normative as contributions of the judges and practitioners. Admittedly, some important work has been undertaken by a few entities such as the Rand Corporation and the Federal Judicial Center. My point simply is that more should be done to encourage and to utilize empirical work in judicial rulemaking.

I cannot help but agree with Judge Harry T. Edwards, a former law professor who sits on the United States Court of Appeals for the District of Columbia Circuit, who identified the research challenge of the law schools:

Legal scholars have an important role to play in helping to determine who, in the future, goes to court and who goes to some other forum; what kinds of cases will be decided by a judge, by someone else, or without any involvement of a 'neutral'; which cases will be appealed, and on what time track; and what kinds of issues will not be resolved by social institutions at all.\(^{67}\)

Until now this challenge to the academy has gone largely unmet. In the Final Report of the Federal Courts Study Committee, the group

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66. See, e.g., T. Weilging, The Rule 11 Sanctioning Process (1988). This is not to say that empirical work has not been used in the past, when available. See e.g., W. Glazer, Pretrial Discovery and the Adversary System 41-44 (1968); M. Rosenberg, The Pretrial Conference and Effective Justice 93-105 (1964). It played an important role in the 1970 amendments to the appellate rules. See 12 C. Wright & A. Miller, Federal Practice and Procedure 427-28 (2d ed. 1987).

created by Congress and appointed by the Chief Justice to plan for
the future of the federal judiciary, there are about a dozen calls for
various empirical studies. There needs to be a similar call for
empirical work in judicial rulemaking, and law schools need to
respond.

The Standing Committee has been criticized for a tendency to
assume that the sole objective of rulemaking is to work out better
solutions for specific problems under the present rules. At the same
time, other participants and observers of federal rulemaking view the
role and function of the Committee to be just that—to evaluate and
to recommend fine-tuning adjustments in the existing rules mecha­
nism. Recent indications from at least some members of the Standing
Committee suggest that they are no longer content to function merely
in a reactive mode. We will have to wait and see if a new attitude
develops for the members of the Committee to view procedural issues
more broadly, with an explicit orientation to consider whether federal
court practices and procedures serve larger societal goals. If this
attitude grows, we might expect the Standing Committee and the
various Advisory Committees to contemplate the general framework
of existing rules systemically towards a more basic reexamination of
rules of practice and procedure. Such efforts may more resemble the
approach of the original ad hoc Committee that designed the 1938
system of rules, rather than the approach of the last half-century
which has resulted in modifications and amendments to add layer
upon layer of rulemaking gloss.

Indeed, returning to the 1938 design principle of "just, speedy
and inexpensive" procedures which are characterized by "simplicity
and brevity" could engender reforms as dramatic as the 1938 rules.
Anyone who reads legal periodicals and law reviews is familiar with
the tenor of the current debate among members of the profession
over the problems of cost and delay and the central concern for
access to justice. Admittedly, there seems to be more of a consensus
about the problems than about their solutions. One thing is certain:
there is a great deal at stake and, therefore, this is an exciting time
to be involved in federal rulemaking.

68. See Report of the Federal Courts Study Committee 185 (1990); see also Mengler,
Burbank & Rowe, Recent Federal Court Legislation Made Some Noteworthy Changes, Nat’l
L.J., Dec. 31, 1990, at 20 (detailing which recommendations of the Federal Courts Study
Committee were enacted into law during 1990).
V. AN INVITATION

My last entreaty addressed to my lawyer-reader is to become involved in the rulemaking procedure. My principal reason for writing this article is to demystify the procedure so that attorneys will accept this invitation. Suggestions and recommendations on any of the federal rules may be sent to:

Mr. James E. Macklin, Jr.
Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
Washington, D.C. 20544

The standard procedure is to acknowledge in writing such suggestions and recommendations and to refer them to the appropriate Advisory Committee.

Lawyers should take the time to read, study and respond to the proposed rules during the commentary period. Urge the appropriate committee of your bar associations or take it upon yourself to appear and testify at the public hearings. Members of the bar, obviously, have an important stake in changes in federal procedure and, necessarily, bear a public responsibility to contribute their expertise.

In closing, I cannot improve on the exhortation of a young, somewhat hyperbolic procedure professor, who in 1954 was just beginning his own involvement in rulemaking: "If the careful work of the Committee is followed by real participation and informed comment from the bar, the amendments finally adopted should ensure that the Federal Rules of Civil Procedure will continue to be the outstanding system of procedure in the world." 69
