

บรรณานุกรม

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ภาคผนวก

ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

PART A

FEDERAL RULES OF CRIMINAL PROCEDURE

Rule 12.1 NOTICE OF ALIBI

(a) Notice by Defendant. Upon written demand of the attorney for the government stating the time, date, and place at which the alleged offense was committed, the defendant shall serve within ten days, or at such different time as the court may direct, upon the attorney for the government a written notice of his intention to offer a defense of alibi. Such notice by the defendant shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

(b) Disclosure of Information and Witnesses. Within ten days thereafter, but in no event less than ten days before trial, unless the court otherwise directs, the attorney for the government shall serve upon the defendant or his attorney a written notice stating the names and addresses of the witnesses upon whom the government intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.

(c) Continuing duty to disclose. If prior to or during trial, a party learns of an additional witness whose identity, if known, should have been included in the information furnished under subdivision (a) or (b), the party shall promptly notify the other party or his attorney of the existence and identity of such additional witness.

(d) Failure to comply. Upon the failure of either party to comply with the requirements of this rule, the court may exclude the testimony of any undisclosed witness offered by such party as to the defendant's absence from or presence at, the scene of the alleged offense. This rule shall not limit the right of the defendant to testify in his own behalf.

(e) Exceptions. For good cause shown, the court may grant an exception to any of the requirements of subdivision (a) through (d) of this rule.

(f) Inadmissibility of Withdrawn Alibi. Evidence of an intention to rely upon an alibi defense, later withdrawn, or of statements made in connection with such intention, is not in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

Rule 12.2 NOTICE OF DEFENSE BASED UPON MENTAL CONDITION

(a) Defense of Insanity. If a defendant intends to rely upon the defense of insanity at the time of the alleged offense, he shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the attorney for the government in writing of such intention and file a copy of such notice with the clerk. If there is a failure to comply with the requirements of this subdivision, insanity may not be raised as a defense. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(b) Expert Testimony of Defendant's Mental Condition. If a defendant intends to introduce expert testimony relating to a mental disease or defect or any other mental condition of the defendant bearing upon the issue of his guilt, he shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the attorney for the government in writing of such intention and file a copy of such notice with the clerk. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(c) Mental Examination of Defendant. In an appropriate case the court may, upon motion of the attorney for the government, order the defendant to submit to an examination pursuant to 18 U.S.C. 4242. No statement made by the defendant in the course of any examination provided for by this rule, whether the examination be with or without the consent of the defendant, no testimony by the expert based upon such statement, and no other fruits of the statement shall be admitted in evidence against the defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced testimony.

(d) Failure to comply. If there is a failure to give notice when required by subdivision (b) of this rule or to submit to an examination when ordered under subdivision (c) of this rule, the court may exclude the testimony of any expert witness offered by the defendant on the issue of his guilt.

(e) Inadmissibility of Withdrawn Intention. Evidence of an intention as to which notice was given under subdivision (a) or (b),

later withdrawn, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

Rule 16. DISCOVERY AND INSPECTION

(a) Disclosure of evidence by the government.

(1) Information subject to disclosure.

(A) Statement of defendant. Upon request of a defendant the government shall permit the defendant to inspect and copy or photograph: any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government; the substance of any oral statement which the government intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be a government agent; and recorded testimony of the defendant before a grand jury which relates to the offense charged. Where the defendant is corporation, partnership, association, or labor union, the court may grant the defendant, upon its motion, discovery of relevant recorded testimony of any witness before a grand jury who was, at the time either of the charged acts or of the grand jury proceedings, so situated as an officer or employee as to have been able legally to bind the defendant in respect to the activities involved in the charges.

(B) Defendant's prior record. Upon request of the defendant, the government shall furnish to the defendant such copy of his prior criminal record, if any, as is then available to the attorney for the government.

(C) Documents and tangible objects. Upon request of the defendant the government shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government, and which are material to the preparation of his defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.

(D) Reports of examinations and tests. Upon request of a defendant the government shall permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case or copies thereof, within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government.

(E) Government witnesses. Upon request of the defendant the government shall furnish to the defendant a written list of the names and addresses of all government witnesses which the attorney for the government intends to call in the presentation of the case in chief together with any record of prior felony convictions of any such witness which is within the knowledge of the attorney for the government. When a request for discovery of the names and addresses of witnesses has been made by a defendant, the government shall be allowed to perpetuate the testimony of such witnesses in accordance with the provisions of Rule 15.

(2) Information not subject to disclosure. Except as provided in paragraphs (A), (B) and (D) of subdivision (a) (1), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal government documents made by the attorney for the government or other government agents in connection with the investigation or prosecution of the case, or of statements made by government witnesses or prospective government witnesses except as provided in 18 U.S.C. 3500.

(3) Grand jury transcripts. Except as provided in Rule 6 and subdivision (a) (1) (A) of this rule these rules do not relate to discovery or inspection of recorded proceedings of a grand jury.

(b) Disclosure of evidence by the defendant.

(1) Information subject to disclosure.

(A) Documents and tangible objects. Upon request of the government, the defendant shall permit the government to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.

(B) Reports of examinations and tests. Upon request of the government, the defendant shall permit the government to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to his testimony.

(2) Information not subject to disclosure. Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or his attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by government or defense witnesses, or by prospective government or defense witnesses, to the defendant, his agents or attorneys.

(c) Continuing duty to disclose. If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional evidence or material.

(d) Regulation of discovery.

(1) Protective orders. Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon request by a party the court shall permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such a showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(2) Failure to comply with a request. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court

may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances. The court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

(e) Alibi witnesses. discovery of alibi witnesses is governed by Rule 12.1

Rule 26.2 PRODUCTION OF STATEMENTS OF WITNESSES

(a) Motion for production. After a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, shall order the attorney for the government or the defendant and his attorney, as the case may be, to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter concerning which the witness has testified.

(b) Production of entire statement. If the entire contents of the statement relate to the subject matter concerning which the witness has testified, the court shall order that the statement be delivered to the moving party.

(c) Production of excised statement. If the other party claims that the statement contains matter that does not relate to the subject matter concerning which, the witness has testified, the court shall order that it be delivered to the court in camera. Upon inspection, the court shall excise the portions of the statement that do not relate to the subject matter concerning which the witness has testified, and shall order that the statement, with such material

excised, be delivered to the moving party. Any portion of the statement that is withheld from the defendant over his objection shall be preserved by the attorney for the government, and, in the event of a conviction and an appeal by the defendant, shall be made available to the appellate court for the purpose of determining the correctness of the decision to excise the portion of the statement.

(d) Recess for examination of statement. Upon delivery of the statement to the moving party, the court, upon application of that party, may recess proceedings in the trial for the examination of such statement and for preparation for its use in the trial.

(e) Sanction for failure to produce statement. If the other party elects not to comply with an order to deliver a statement to the moving party, the court shall order that the testimony of the witness be stricken from the record and that the trial proceed, or, if it is the attorney for the government who elects not to comply, shall declare a mistrial if required by the interest of justice.

(f) Definition. As used in this rule, a "statement" of a witness means:

(1) a written statement made by the witness that is signed or otherwise adopted or approved by him;

(2) a substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and that is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof; or

(3) a statement, however taken or recorded, or a transcription thereof, made by the witness to a grand jury.

ภาคผนวก B

CRIMINAL JUSTICE ACT 1967

Section 11

On a trial on indictment evidence in support of an alibi cannot be adduced by the defendant without leave of the court unless he has given notice of particulars of the alibi before the end of 7 days after the close of committal proceedings. Nor can he without the court's leave call any other person to testify as to an alibi unless:

a) the above notice gives name and address of the witness, or, if this is not known, material information to assist in finding the witness;

b) if name and address is not in the notice, the accused (before and after notice) took all reasonable steps to ascertain the name and address;

c) if name and address is subsequently ascertained or further material information to help to find it is discovered by the accused, he forthwith gives notice of this;

d) if the accused is notified by the prosecutor that the witness has not been traced by the name or at the address given, he forthwith gives notice of such information as he then has or subsequently receives.

ประวัติผู้เขียน

นางสาวนฤมล ศิริวาณิชย์ เกิดเมื่อวันที่ 19 เมษายน พ.ศ.2508 จบการศึกษา
นิติศาสตร์บัณฑิต จุฬาลงกรณ์มหาวิทยาลัย เมื่อ พ.ศ.2530 ปัจจุบันรับราชการในตำแหน่งนิติกร
สำนักงานสรรพากรจังหวัดนครปฐม



ศูนย์วิทยทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย