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OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

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**To: Hon. Lee H. Rosenthal, Chair
Standing Committee on Rules of Practice and Procedure**

**From: Hon. Richard C. Tallman, Chair
Advisory Committee on Federal Rules of Criminal Procedure**

Subject: Report of the Advisory Committee on Criminal Rules

Date: May 12, 2008 (revised June 2009)

I. Introduction

The Advisory Committee on Federal Rules of Criminal Procedure (“the Committee”) met on April 27-28, 2008 in Washington, D.C., and took action on a number of proposed amendments to the Rules of Criminal Procedure. The Draft Minutes of that meeting are attached.

This report addresses a number of action items:

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(3) approval for publication and comment of proposed amendments to Rules 6, 15, and 32.1.

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III. Action Items—Recommendations to Publish Amendments to the Rules

A. ACTION ITEM—Rule 6

The proposed amendment to Rule 6(f) allows the court to receive the return of an indictment—which generally takes only a few minutes—by video teleconference in order to avoid unnecessary cost and delay.¹ In sparsely settled districts there may be no judicial officer present in the courthouse where the grand jury meets. The problem is particularly acute in several districts (Eastern California, Northern West Virginia, Southern Iowa, Southern Florida, Alaska, and Arizona), where judicial officers must travel from 145 to 260 miles each way between courthouses. In some cases, weather conditions can make this travel especially difficult and hazardous. The proposed amendment will conserve judicial resources and avoid the risks attendant to this travel. Avoiding delay is also a factor since the Speedy Trial Act, 18 U.S.C. § 3161(b), requires that an indictment be returned within thirty days of the arrest of an individual to avoid dismissal of the case.

The amendment retains the general requirement that the indictment be returned “in open court.” Under the amendment, the grand jury (or the foreperson) would appear in the court in the United States courthouse where the grand jury sits. Utilizing video teleconference, the judge could participate by video from a remote location, convene court, and take the return. Indictments could be transmitted in advance to the judge for review by reliable electronic means. This process accommodates the Speedy Trial Act, 18 U.S.C. § 3161(b), and preserves the judge’s time and safety.

There is of course no historical precedent for the use of video teleconferencing, but the Supreme Court has indicated that it does not regard the historical practice regarding the return of indictments at the time of the adoption of the Fifth Amendment as binding in all respects. When the grand jury clause was adopted, the entire grand jury was required to return the indictment in open court. This provided an opportunity for the individual grand jurors to be polled to determine whether a sufficient number supported each indictment, and also created a record that the defendant had been indicted. By 1912, however, the Supreme Court indicated that Congress need not be bound by this historical practice, and thus might choose to modify the requirement that the grand jury appear as

¹Although the present rule on its face requires the return to be made to “a magistrate judge,” any Article III or territorial judge may also receive the return. Rule 1(c) provides that “When these rules authorize a magistrate judge to act, any other federal judge may also act.” Under Rule 1(b)(3) the term “Federal judge” includes a magistrate judge, Article III judge, and territorial judge.

a body. *Breese v. United States*, 226 U.S. 1 (1912).² The present rules take advantage of this flexibility, allowing the grand jury foreperson or deputy foreperson to return the indictment. The Committee recommends that the rule be amended to authorize the use of modern technology of video teleconferencing when necessary to avoid excessive cost and delay. The Committee Note provides, however, that having the judge in the same courtroom remains the preferred practice, because it promotes the public's confidence in the integrity and solemnity of federal criminal proceedings.

The Committee voted to recommend that the proposed amendment to Rule 6(f) be published for notice and public comment.

Recommendation—The Advisory Committee recommends that the proposed amendment to Rule 6(f) be published for public comment.

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²The Court stated: “The reasons for the requirement, if they ever were very strong, have disappeared, at least in part, and we have no doubt that Congress, like the state of North Carolina, could have done away with it, if it had seen fit to do so instead of remaining silent.” *Breese*, 226 U.S. at 10.