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AMENDMENTS TO THE FEDERAL RULES OF CRIMINAL PROCEDURE

COMMUNICATION

FROM

THE CHIEF JUSTICE, THE SUPREME COURT OF THE UNITED STATES

TRANSMITTING

AMENDMENTS TO THE FEDERAL RULES OF CRIMINAL PROCEDURE ADOPTED BY THE COURT

APRIL 29, 1999.—Referred to the Committee on the Judiciary and ordered to be printed

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 26, 1999

Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

By direction of the Supreme Court of the United States, I have the honor to submit to the Congress the amendments to the Federal Rules of Criminal Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying these rules are excerpts from the report of the Judicial Conference of the United States containing the Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,

William H. Rehnquist

SUPREME COURT OF THE UNITED STATES

April 26, 1999

ORDERED:

1. That the Federal Rules of Criminal Procedure for the United States District Courts be, and they hereby are, amended by including therein amendments to Criminal Rules 6, 11, 24, and 54.

[See infra., pp. ___ ___ ___.]

2. That the foregoing amendments to the Federal Rules of Criminal Procedure shall take effect on December 1, 1999, and shall govern all proceedings in criminal cases thereafter commenced and, insofar as just and practicable, all proceedings in criminal cases then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Criminal Procedure in accordance with the provisions of Section 2072 of Title 28, United States Code.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF CRIMINAL PROCEDURE

Rule 6. The Grand Jury

* * * * *

(d) WHO MAY BE PRESENT.

(1) *While Grand Jury is in Session.* Attorneys for the government, the witness under examination, interpreters when needed and, for the purpose of taking the evidence, a stenographer or operator of a recording device may be present while the grand jury is in session.

(2) *During Deliberations and Voting.* No person other than the jurors, and any interpreter necessary to assist a juror who is hearing or speech impaired, may be present while the grand jury is deliberating or voting.

* * * * *

(f) FINDING AND RETURN OF INDICTMENT. A grand jury may indict only upon the concurrence of 12 or more jurors. The indictment shall be returned by the grand jury, or through the foreperson or deputy foreperson on its behalf, to a federal magistrate judge in open court. If a complaint or information is pending against the defendant and 12 jurors do not vote to indict, the foreperson shall so report to a federal magistrate judge in writing as soon as possible.

* * * * *

Rule 11. Pleas

(a) ALTERNATIVES.

(1) *In General.* A defendant may plead guilty, not guilty, or nolo contendere. If a defendant refuses to plead, or if a defendant organization, as defined in 18 U.S.C. § 18, fails

to appear, the court shall enter a plea of not guilty.

* * * * *

(c) ADVICE TO DEFENDANT. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

* * * * *

(5) if the court intends to question the defendant under oath, on the record, and in the presence of counsel about the offense to which the defendant has pleaded, that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement; and

(6) the terms of any provision in a plea agreement waiving the right to appeal or to collaterally attack the sentence.

* * * * *

(e) PLEA AGREEMENT PROCEDURE.

(1) *In General.* The attorney for the government and the attorney for the defendant — or the defendant when acting pro se — may agree that, upon the defendant's entering a plea of guilty or nolo contendere to a charged offense, or to a lesser or related offense, the attorney for the government will:

(A) move to dismiss other charges; or

(B) recommend, or agree not to oppose the defendant's request for a particular sentence or sentencing range,

or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor is or is not applicable to the case. Any such recommendation or request is not binding on the court; or

(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor is or is not applicable to the case. Such a plea agreement is binding on the court once it is accepted by the court.

The court shall not participate in any discussions between the parties concerning any such plea agreement.

* * * * *

Rule 24. Trial Jurors

* * * * *

(c) ALTERNATE JURORS.

(1) *In General.* The court may empanel no more than 6 jurors, in addition to the regular jury, to sit as alternate jurors. An alternate juror, in the order called, shall replace a juror who becomes or is found to be unable or disqualified to perform juror duties. Alternate jurors shall (i) be drawn in the same manner, (ii) have the same qualifications, (iii) be subject to the same examination and challenges, and (iv) take the same oath as

regular jurors. An alternate juror has the same functions, powers, facilities and privileges as a regular juror.

(2) *Peremptory Challenges.* In addition to challenges otherwise provided by law, each side is entitled to 1 additional peremptory challenge if 1 or 2 alternate jurors are empaneled, 2 additional peremptory challenges if 3 or 4 alternate jurors are empaneled, and 3 additional peremptory challenges if 5 or 6 alternate jurors are empaneled. The additional peremptory challenges may be used to remove an alternate juror only, and the other peremptory challenges allowed by these rules may not be used to remove an alternate juror.

(3) *Retention of Alternate Jurors.* When the jury retires to consider the verdict, the court in its discretion may retain the alternate jurors during deliberations. If the court decides to retain the alternate jurors, it shall ensure that they do not discuss the case with any other person unless and until they replace a regular juror during deliberations. If an alternate replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew.

Rule 54. Application and Exception

(a) COURTS. These rules apply to all criminal proceedings in the United States District Courts; in the District Court of Guam; in the District Court for the Northern Mariana Islands, except as otherwise provided in articles IV and V of the covenant

provided by the Act of March 24, 1976 (90 Stat. 263); and in the District Court of the Virgin Islands; in the United States Courts of Appeals; and in the Supreme Court of the United States; except that the prosecution of offenses in the District Court of the Virgin Islands shall be by indictment or information as otherwise provided by law.

* * * * *

Agenda F-18 (Appendix C)
Rules
September 1998

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

ALICEMARIE H. STOTLER
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SECRETARY

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W. EUGENE DAVIS
CRIMINAL RULES

FERN M. SMITH
EVIDENCE RULES

TO: Hon. Alicemarie H. Stotler, Chair
Standing Committee on Rules of Practice and Procedure

FROM: Hon. W. Eugene Davis, Chair
Advisory Committee on Federal Rules of Criminal Procedure

SUBJECT: Report of the Advisory Committee on Criminal Rules

DATE: May 15, 1998

I. Introduction

The Advisory Committee on the Rules of Criminal Procedure met on April 27 and 28, 1998 in Washington, D.C. and took action on a number of proposed amendments. The draft Minutes of that meeting are included at Attachment B. This report addresses matters discussed by the Committee at that meeting. First, the Committee considered public comments on proposed amendments to the following Rules:

- Rule 6. Grand Jury (Presence of Interpreters; Return of Indictment).

* * * * *

- Rule 11. Pleas (Acceptance of Pleas and Agreements, etc.).
- Rule 24(c). Alternate Jurors (Retention During Deliberations).

* * * * *

- Rule 54. Application and exception (Conforming Amendment).

As noted in the following discussion, the Advisory Committee proposes that these amendments be approved by the Committee and forwarded to the Judicial Conference.

* * * * *

II. Action Items — Recommendations to Forward Amendments to the Judicial Conference

A. Summary and Recommendations

At its June 1997 meeting, the Standing Committee approved the publication of proposed amendments to nine rules for public comment from the bench and bar. In response, the Advisory Committee received written comments from 24 persons or organizations commenting on all or some of the Committee's proposed amendments to the rules. In addition, the Committee heard the testimony of four witnesses on the proposed amendments to Rules 11 and 32.2.
The Committee has considered those comments and recommends that all of the proposed amendments be forwarded to the Judicial Conference for approval and transmittal to the Supreme Court.[1] The following discussion briefly summarizes the proposed amendments.

1. ACTION ITEM — Rule 6. Grand Jury.

The Committee has proposed two amendments to Rule 6. The first, in Rule 6(d) would make provision for interpreters in grand jury deliberations; under the current rule, no persons other than the jurors themselves may be present. As originally drafted by the Advisory Committee, the provision for interpreters would have been extended only to interpreters for deaf persons serving on a grand jury. The Standing Committee, however, believed that the limitation as to the kind of interpreter permitted to be present during grand jury deliberations should be removed in order to provide an opportunity for the widest range of public comment on all the issues raised by the presence of an interpreter during those deliberations. Thus, the published amendment extended to any interpreter who may be necessary to assist a grand juror. While some of those commenting on this proposed amendment believed it would be appropriate to include all interpreters, several commentators correctly noted that the amendment as written would be inconsistent with 28 U.S.C. § 1865(b) which requires that all petit and grand jurors must speak English.

The second amendment would change Rule 6(f) regarding the return of an indictment. Under current practice the entire grand jury is required to return the indictment in open court. The proposed change would permit the grand jury foreperson to return the indictment in open court — on behalf of the grand jury. Of the eleven commentators, only two opposed this change on the general view that it distances the grand jury from the court.

Upon further consideration of the amendments to Rule 6(d), the Committee decided to limit the presence of interpreters to those assisting hearing or speech impaired grand jurors.

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[1] The Committee on Rules of Practice and Procedure declined to approve new Rule 32.2. In light of the committee's action, conforming amendments to Rules 7, 31, 32, and 38, which were grounded in the proposed new Rule 32.2, were also withdrawn from further consideration.

Recommendation — The Committee recommends that the amendments to Rule 6, as modified following publication, be approved and forwarded to the Judicial Conference.

* * * * *

3. ACTION ITEM — Rule 11. Pleas.

The proposed amendments to Rule 11 reflect the Committee's discussion over the last year concerning the interplay between the sentencing guidelines and plea agreements and the ability of a defendant to waive any attacks on his or her sentence. Specifically, Rule 11(a) has been changed slightly to conform the definition of organizational defendants. Rule 11(c) would be amended to require the trial court to determine if the defendant understands any provision in the plea agreement waiving the right to appeal or to collaterally attack the sentence. A majority of the commentators, and one witness who testified before the Committee, opposed the change. Their general opposition rests on the argument that the Rule should not in any way reflect the Committee's support of such waivers until the Supreme Court has ruled on the question of whether such waivers are valid. The Committee believed that it was appropriate to recognize what is apparently already taking place in a number of jurisdictions and formally require trial judges in those jurisdictions to question the defendant about whether his or her waiver was made knowingly, voluntarily, and intelligently. The Committee did add a disclaimer to the Committee Note, as suggested by at least one commentator.

The proposed change in Rule 11(e)(1) is intended to distinguish clearly between (e)(1)(B) plea agreements — which are not binding on the court — and (e)(1)(C) agreements — which are binding. Other language has been added to those subdivisions to make it clear that a plea agreement may include an agreement as to a sentencing range, sentencing guideline, sentencing factor, or policy statement. The proposed language includes suggested changes by the Subcommittee on Style. The majority of the commentators supported this clarification.

Recommendation — The Committee recommends that the amendments to Rule 11 be approved as published and forwarded to the Judicial Conference.

4. ACTION ITEM — Rule 24(c). Alternate Jurors.

The proposed amendment to Rule 24(c) would permit the trial court to retain alternate jurors — who during the trial have not been selected as substitutes for regular jurors — during the deliberations in case any other regular juror becomes incapacitated and can no longer take part. Although Rule 23 makes provision for returning a verdict with 11 jurors, the Committee believed that the judge should have the discretion in a particular case to retain the alternates, a practice not provided for under the current rule. Most of those commenting on the proposed amendment, supported it. The NADCL and the ABA opposed the change; the former believes that there is no provision for the court to make any substitutions of jurors after deliberations begin. The ABA opposes the amendment because it believes that it will create an unnecessary risk that jurors will decide the case on something less than a thorough evaluation of

the evidence. On the other hand, the Magistrate Judges Association supports the change. After considering the comments, the Committee decided to forward the rule with no changes to the published version.

Recommendation — The Committee recommends that the amendment to Rule 24(c) be approved and forwarded to the Judicial Conference.

* * * * *

9. ACTION ITEM — Rule 54. Application and Exception.

The proposed amendment to Rule 54 is a minor change reflecting the fact that the Canal Zone court no longer exists. The Committee received only two comments on the amendment; both supported the change.

Recommendation — The Committee recommends that the amendment to Rule 54 be approved as published and forwarded to the Judicial Conference.

B. Text of Proposed Amendments, Summary of Comments and GAP Reports.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF CRIMINAL PROCEDURE*

Rule 6. The Grand Jury

1 * * * * *

2 (d) WHO MAY BE PRESENT.

3 (1) *While Grand Jury is in Session.* Attorneys
4 for the government, the witness under examination,
5 interpreters when needed and, for the purpose of
6 taking the evidence, a stenographer or operator of a
7 recording device may be present while the grand jury
8 is in session~~;~~ .

9 (2) *During Deliberations and Voting.* ~~but no~~
10 No person other than the jurors, and any interpreter
11 necessary to assist a juror who is hearing or speech
12 impaired, may be present while the grand jury is
13 deliberating or voting.

14 * * * * *

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* New material is underlined; matter to be omitted is lined through.

2 FEDERAL RULES OF CRIMINAL PROCEDURE

15 (f) FINDING AND RETURN OF INDICTMENT.

16 A grand jury may indict ~~An indictment may be found~~ only

17 upon the concurrence of 12 or more jurors. The indictment

18 shall be returned by the grand jury, or through the foreperson

19 or deputy foreperson on its behalf, to a federal magistrate

20 judge in open court. If a complaint or information is pending

21 against the defendant and 12 jurors do not vote to indict

22 ~~concur in finding an indictment~~, the foreperson shall so report

23 to a federal magistrate judge in writing as soon as possible

24 ~~forthwith~~.

25 * * * * *

COMMITTEE NOTE

Subdivision 6(d). As currently written, Rule 6(d) absolutely bars any person, other than the jurors themselves, from being present during the jury's deliberations and voting. Accordingly, interpreters are barred from attending the deliberations and voting by the grand jury, even though they may have been present during the taking of testimony. The amendment is intended to permit interpreters to assist persons who are speech or hearing impaired and are serving on a grand jury. Although the Committee believes that the need for secrecy of grand jury deliberations and voting is paramount, permitting

interpreters to assist hearing and speech impaired jurors in the process seems a reasonable accommodation. *See also United States v. Dempsey*, 830 F.2d 1084 (10th Cir. 1987) (constitutionally rooted prohibition of non-jurors being present during deliberations was not violated by interpreter for deaf petit jury member).

The subdivision has also been restyled and reorganized.

Subdivision 6(f). The amendment to Rule 6(f) is intended to avoid the problems associated with bringing the entire jury to the court for the purpose of returning an indictment. Although the practice is long-standing, in *Breese v. United States*, 226 U.S. 1 (1912), the Court rejected the argument that the requirement was rooted in the Constitution and observed that if there were ever any strong reasons for the requirement, "they have disappeared, at least in part." 226 U.S. at 9. The Court added that grand jury's presence at the time the indictment was presented was a defect, if at all, in form only. *Id.* at 11. Given the problems of space, in some jurisdictions the grand jury sits in a building completely separated from the courtrooms. In those cases, moving the entire jury to the courtroom for the simple process of presenting the indictment may prove difficult and time consuming. Even where the jury is in the same location, having all of the jurors present can be unnecessarily cumbersome in light of the fact that filing of the indictment requires a certification as to how the jurors voted.

The amendment provides that the indictment must be presented either by the jurors themselves, as currently provided for in the rule, or by the foreperson or the deputy foreperson, acting on behalf of the jurors. In an appropriate case, the court might require all of the jurors to be present if it had inquiries about the indictment.

GAP Report — Rule 6.

The Committee modified Rule 6(d) to permit only interpreters assisting hearing or speech impaired grand jurors to be present during deliberations and voting.

Rule 11. Pleas

1 (a) ALTERNATIVES.

2 (1) *In General.* A defendant may plead ~~not~~

3 guilty, not guilty, or nolo contendere. If a defendant

4 refuses to plead, or if a defendant ~~corporation~~

5 organization, as defined in 18 U.S.C. § 18, fails to

6 appear, the court shall enter a plea of not guilty.

7 * * * * *

8 (c) ADVICE TO DEFENDANT. Before accepting a

9 plea of guilty or nolo contendere, the court must address the

10 defendant personally in open court and inform the defendant

11 of, and determine that the defendant understands, the

12 following:

13 * * * * *

14 (5) if the court intends to question the
15 defendant under oath, on the record, and in the
16 presence of counsel about the offense to which the
17 defendant has pleaded, that the defendant's answers
18 may later be used against the defendant in a
19 prosecution for perjury or false statement; and~~.~~
20 (6) the terms of any provision in a plea
21 agreement waiving the right to appeal or to
22 collaterally attack the sentence.
23 * * * * *
24 (e) PLEA AGREEMENT PROCEDURE.
25 (1) *In General.* The attorney for the
26 government and the attorney for the defendant — or
27 the defendant when acting pro se — may agree ~~engage~~
28 ~~in discussions with a view toward reaching an~~
29 ~~agreement~~ that, upon the defendant's entering ~~of~~ a
30 plea of guilty or nolo contendere to a charged offense,

31 or to a lesser or related offense, the attorney for the
32 government will: ~~do any of the following:~~
33 (A) move to dismiss ~~for dismissal of~~
34 other charges; or
35 (B) recommend, ~~make a~~
36 ~~recommendation,~~ or agree not to oppose the
37 defendant's request; for a particular sentence~~,~~
38 or sentencing range, or that a particular
39 provision of the Sentencing Guidelines, or
40 policy statement, or sentencing factor is or is
41 not applicable to the case. Any such ~~with the~~
42 ~~understanding that such~~ recommendation or
43 request is ~~shall~~ not ~~be~~ binding on ~~upon~~ the
44 court; or
45 (C) agree that a specific sentence or
46 sentencing range is the appropriate disposition
47 of the case, or that a particular provision of the

48 Sentencing Guidelines, or policy statement, or
49 sentencing factor is or is not applicable to the
50 case. Such a plea agreement is binding on the
51 court once it is accepted by the court.
52 The court shall not participate in any
53 ~~such~~ discussions between the parties
54 concerning any such plea agreement.
55 * * * * *

COMMITTEE NOTE

Subdivision (a). The amendment deletes use of the term "corporation" and substitutes in its place the term "organization," with a reference to the definition of that term in 18 U.S.C. § 18.

Subdivision (c)(6). Rule 11(c) has been amended specifically to reflect the increasing practice of including provisions in plea agreements which require the defendant to waive certain appellate rights. The increased use of such provisions is due in part to the increasing number of direct appeals and collateral reviews challenging sentencing decisions. Given the increased use of such provisions, the Committee believed it was important to insure that first, a complete record exists regarding any waiver provisions, and second, that the waiver was voluntarily and knowingly made by the defendant. Although a number of federal courts have approved the ability of a defendant to enter into such waiver agreements, the

Committee takes no position on the underlying validity of such waivers.

Subdivision (e). Amendments have been made to Rule 11(e)(1)(B) and (C) to reflect the impact of the Sentencing Guidelines on guilty pleas. Although Rule 11 is generally silent on the subject, it has become clear that the courts have struggled with the subject of guideline sentencing vis a vis plea agreements, entry and timing of guilty pleas, and the ability of the defendant to withdraw a plea of guilty. The amendments are intended to address two specific issues.

First, both subdivisions (e)(1)(B) and (e)(1)(C) have been amended to recognize that a plea agreement may specifically address not only what amounts to an appropriate sentence, but also a sentencing guideline, a sentencing factor, or a policy statement accompanying a sentencing guideline or factor. Under an (e)(1)(B) agreement, the government, as before, simply agrees to make a recommendation to the court, or agrees not to oppose a defense request concerning a particular sentence or consideration of a sentencing guideline, factor, or policy statement. The amendment makes it clear that this type of agreement is not binding on the court. Second, under an (e)(1)(C) agreement, the government and defense have actually agreed on what amounts to an appropriate sentence or have agreed to one of the specified components. The amendment also makes it clear that this agreement is binding on the court once the court accepts it. As is the situation under the current Rule, the court retains absolute discretion whether to accept a plea agreement.

GAP Report — Rule 11.

The Committee made no changes to the published draft amendments to Rule 11. But it did add language to the Committee Note which reflects the view that the amendment is not intended to

signal its approval of the underlying practice of including waiver provisions in pretrial agreements.

Rule 24. Trial Jurors

1 * * * * *

2 (c) ALTERNATE JURORS.

3 (1) *In General.* The court may empanel no

4 ~~direct that not~~ more than 6 jurors, in addition to the

5 regular jury, ~~be called and impanelled~~ to sit as

6 alternate jurors. An alternate juror, ~~Alternate jurors~~ in

7 the order ~~in which they are~~ called, shall replace a juror

8 ~~jurors~~ who~~, prior to the time the jury retires to~~

9 ~~consider its verdict,~~ becomes or is found ~~become or~~

10 ~~are found~~ to be unable or disqualified to perform juror

11 ~~their~~ duties. Alternate jurors shall (i) be drawn in the

12 same manner, ~~shall~~ (ii) have the same qualifications,

13 ~~shall~~ (iii) be subject to the same examination and

14 challenges, and ~~shall~~ (iv) take the same oath as regular

15 jurors. An alternate juror has ~~and shall have~~ the same
16 functions, powers, facilities and privileges as a regular
17 juror. ~~the regular jurors. An alternate juror who does~~
18 ~~not replace a regular juror shall be discharged after the~~
19 ~~jury retires to consider its verdict.~~
20 (2) *Peremptory Challenges.* In addition to
21 challenges otherwise provided by law, each ~~Each~~ side
22 is entitled to 1 additional peremptory challenge ~~in~~
23 ~~addition to those otherwise allowed by law~~ if 1 or 2
24 alternate jurors are empaneled ~~to be impanelled~~, 2
25 additional peremptory challenges if 3 or 4 alternate
26 jurors are ~~to be~~ empaneled ~~impanelled~~, and 3
27 additional peremptory challenges if 5 or 6 alternate
28 jurors are empaneled ~~to be impanelled~~. The additional
29 peremptory challenges may be used to remove ~~against~~
30 an alternate juror only, and the other peremptory

31 challenges allowed by these rules may not be used to
32 remove ~~against~~ an alternate juror.
33 (3) *Retention of Alternate Jurors.* When the
34 jury retires to consider the verdict, the court in its
35 discretion may retain the alternate jurors during
36 deliberations. If the court decides to retain the
37 alternate jurors, it shall ensure that they do not discuss
38 the case with any other person unless and until they
39 replace a regular juror during deliberations. If an
40 alternate replaces a juror after deliberations have
41 begun, the court shall instruct the jury to begin its
42 deliberations anew.

COMMITTEE NOTE

As currently written, Rule 24(c) explicitly requires the court to discharge all of the alternate jurors — who have not been selected to replace other jurors — when the jury retires to deliberate. That requirement is grounded on the concern that after the case has been submitted to the jury, its deliberations must be private and inviolate. *United States v. Houlihan*, 92 F.3d 1271, 1285 (1st Cir. 1996), citing

United States v. Virginia Election Corp., 335 F.2d 868, 872 (4th Cir. 1964).

Rule 23(b) provides that in some circumstances a verdict may be returned by eleven jurors. In addition, there may be cases where it is better to retain the alternates when the jury retires, insulate them from the deliberation process, and have them available should one or more vacancies occur in the jury. That might be especially appropriate in a long, costly, and complicated case. To that end the Committee believed that the court should have the discretion to decide whether to retain or discharge the alternates at the time the jury retires to deliberate and to use Rule 23(b) to proceed with eleven jurors or to substitute a juror or jurors with alternate jurors who have not been discharged.

In order to protect the sanctity of the deliberative process, the rule requires the court to take appropriate steps to insulate the alternate jurors. That may be done, for example, by separating the alternates from the deliberating jurors and instructing the alternate jurors not to discuss the case with any other person until they replace a regular juror. *See, e.g., United States v. Olano*, 507 U.S. 725 (1993) (not plain error to permit alternate jurors to sit in during deliberations); *United States v. Houlihan*, 92 F.3d 1271, 1286-88 (1st Cir. 1996) (harmless error to retain alternate jurors in violation of Rule 24(c); in finding harmless error the court cited the steps taken by the trial judge to insulate the alternates). If alternates are used, the jurors must be instructed that they must begin their deliberations anew.

Finally, subsection (c) has been reorganized and restyled.

GAP Report — Rule 24(c).

The final sentence of Rule 24(c) was moved from the committee note to the rule to emphasize that if an alternate replaces a juror during deliberations, the court shall instruct the jury to begin its deliberations anew.

Rule 54. Application and Exception

1 (a) COURTS. These rules apply to all criminal
2 proceedings in the United States District Courts; in the
3 District Court of Guam; in the District Court for the Northern
4 Mariana Islands, except as otherwise provided in articles IV
5 and V of the covenant provided by the Act of March 24, 1976
6 (90 Stat. 263); and in the District Court of the Virgin Islands;
7 ~~and (except as otherwise provided in the Canal Zone) in the~~
8 ~~United States District Court for the District of the Canal~~
9 ~~Zone;~~ in the United States Courts of Appeals; and in the
10 Supreme Court of the United States; except that the
11 prosecution of offenses in the District Court of the Virgin

12 Islands shall be by indictment or information as otherwise

13 provided by law.

14 * * * * *

COMMITTEE NOTE

The amendment to Rule 54(a) is a technical amendment removing the reference to the court in the Canal Zone, which no longer exists.

GAP Report — Rule 54.

The Committee made no changes to the published draft.

○