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

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MEMORANDUM

To: **Hon. Mark R. Kravitz, Chair**
Standing Committee on Rules of Practice and Procedure

From: **Hon. Reena Raggi, Chair**
Advisory Committee on Federal Rules of Criminal Procedure

Subject: **Report of the Advisory Committee on Criminal Rules**

Date: **December 12, 2011**

I. Introduction

The Advisory Committee on the Federal Rules of Criminal Procedure ("the Committee") met on October 31, 2011, in St. Louis, Missouri, and took action on a number of proposals. The Draft Minutes are attached.

This report presents one action item: the Committee's recommendation that a proposed amendment to Rule 16 (discovery and inspection) be approved and transmitted to the Judicial Conference as a technical and conforming amendment. The report also discusses several information items, including the formation of a subcommittee to study a proposal to amend Rule 6(e) to provide for the disclosure of grand jury materials of historical interest.

II. Action Item—Rule 16

Earlier this year, Judge Lee Rosenthal brought the decision in *United States v. Rudolph*, 224 F.R.D. 503 (N.D. Ala. 2004), to the Committee's attention. The *Rudolph* court identified what it characterized as a "scrivener's error" in the restyling of Rule 16 concerning the protection afforded to government work product. The purpose of the proposed amendment is to clarify that the 2002 restyling of the rule made no change in the protection afforded to government work product.

Prior to restyling in 2002, Rule 16(a)(1)(C) required the government to allow the defendant to inspect and copy "books, papers, [and] documents" material to his defense. Rule 16(a)(2), however, stated that except as provided by certain enumerated subparagraphs–not including Rule 16(a)(1)(C)–Rule 16(a) did not authorize the discovery or inspection of reports, memoranda, or other internal government documents made by the attorney for the government. Reading these two provisions together, the Supreme Court concluded that "a defendant may examine documents material to his defense, but, under Rule 16(a)(2), he may not examine Government work product." *United States v. Armstrong*, 517 U.S. 456, 463 (1996).

With one exception not relevant here, the 2002 restyling of Rule 16 was intended to work no substantive change. Nevertheless, because restyled Rule 16(a)(2) eliminated the enumerated subparagraphs of its successor and contained no express exception for the materials previously covered by Rule 16(a)(1)(C) (redesignated as subparagraph (a)(1)(E)), some courts have been urged to construe the restyled rule as eliminating protection for government work product.

Courts have uniformly declined to construe the restyling changes to Rule 16(a)(2) to effect a substantive alteration in the scope of protection previously afforded to government work product by that Rule. Correctly recognizing that restyling was intended to effect no substantive change, courts have invoked the doctrine of the scrivener's error to excuse confusion caused by the elimination of the enumerated subparagraphs from the restyled rules. *See, e.g.*, *United States v. Rudolph*, 224 F.R.D. 503, 504-11 (N.D. Ala. 2004), and *United States v. Fort*, 472 F.3d 1106 (9th Cir. 2007) (adopting the *Rudolph* court's analysis).

Although the courts have employed the doctrine of the scrivener's error to read Rule 16 to avoid an unintended change in the protection afforded to work product, the Advisory Committee concluded that the Rule itself should be amended so that courts do not have to resort to a doctrine that is invoked only to correct drafting errors. By restoring the enumerated subparagraphs, the amendment makes it clear that a defendant's pretrial access to books, papers, and documents under Rule 16(a)(1)(E) remains subject to the limitations imposed by Rule 16(a)(2).

The Committee voted unanimously to approve the proposed amendment,[1] and agreed to review and vote on proposed note language by email. Note language proposed by the chair and reporters was subsequently approved by the Committee in an email vote.

The Committee discussed the question whether the proposed amendment could be treated as a technical and conforming change, which would not require publication for public comment. Members generally agreed that the expedited procedure for technical amendments would be appropriate because the change was of a technical nature, merely correcting what courts have correctly treated as a "scrivener's error." But one member expressed concern that without the opportunity for a full notice and comment period there might be a mistaken view that the change was depriving defendants of a right to disclosure under the present rule. Finally, members acknowledged that whether a rule change is technical and conforming, or sufficiently substantive to require a full public comment period, would be determined by the Standing Committee.

Recommendation–The Advisory Committee recommends that the proposed amendment to Rule 16 be approved as a technical and conforming amendment and submitted to the Judicial Conference.

III. Information Items

The Committee acknowledged the service of and said farewell to its former chair, Judge Richard C. Tallman, and it welcomed new member Carol Brook, Executive Director of the Illinois Federal Defender Program, new Standing Committee Liaison Judge Marilyn L. Huff, and new Clerk of Court Representative James N. Hatten of the Northern District of Georgia.

The Committee discussed a proposal from Attorney General Eric H. Holder, Jr. to amend Rule 6(e)'s provisions regarding grand jury secrecy to authorize the disclosure of historically significant grand jury materials after a suitable period of years, subject to various limitations and procedural protections. The Attorney General's letter called the Committee's attention to the recent decision granting access to President Richard Nixon's testimony before the Watergate grand jury, *In re Petition of Kutler*, No. 10-547, 2011 WL 3211516 (D. D.C. July 29, 2011), and to earlier decisions that granted access to grand jury materials in cases involving the espionage investigation of Alger Hiss, the espionage indictment of Julius and Ethel Rosenberg, and the jury-tampering indictment of Jimmy Hoffa. These decisions relied on the courts' inherent authority, rather than Rule 6(e), to authorize disclosure in special circumstances. In the Attorney General's view, however, the courts have no inherent authority to authorize disclosures not provided for under Rule 6. The proposed amendment is intended to recognize the public's interest in gaining access to records casting light on important historical events while continuing to protect grand jury secrecy.

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[1]Following the meeting, at the suggestion of the Advisory Committee's style consultant, Professor Kimble, the cross reference to "Rule 16(2)(1)(A), (B), (C), (D), (F), and (G)" was revised to read "Rule 16(2)(1)(A)-(D), (F), and (G)."

After discussion, the Committee concluded that the proposal warranted in depth consideration. Accordingly, Judge Raggi appointed a subcommittee, chaired by Judge John Keenan, to study the proposal and report at the April meeting.

The Advisory Committee also considered four proposals for amendments received from judges and members of the public. After discussion, the Committee decided not to move forward to full consideration of these proposals.

The Committee discussed a suggestion from Judge Robert Jones (D. Or.) to eliminate or reduce the number of peremptory challenges afforded by Rule 24(b). The number of peremptory challenges has remained unchanged for more than sixty-five years, and two previous efforts to reduce the number of peremptory challenges were controversial and ultimately unsuccessful. Committee members expressed the view that it was not clear that reducing the number of peremptory challenges would yield significant cost savings, and all agreed that any change would generate substantial controversy. In light of these concerns, the Committee voted unanimously to take no further action to pursue this suggestion.

The Committee also discussed a suggestion forwarded by the Administrative Office on behalf of the Forms Working Group, which is composed of judges and clerks of court. The Working Group suggested that the Advisory Committee consider amending Rule 17 to eliminate the requirement that criminal subpoenas include the seal of the court. Several committee members expressed the view that the presence of the seal on criminal subpoenas was very helpful, causing subpoenas to be taken more seriously and increasing the likelihood of compliance . Mr. Hatten, the Committee's clerk of court representative, stated that imposing the court's seal was neither time consuming nor costly. The Committee voted unanimously not to pursue the suggestion that the rule be amended to eliminate the court's seal.

The Committee also received, and decided not to pursue, two suggested amendments proposed by members of the public. Professor Carrie Leonetti proposed an amendment to allow the district courts to grant pretrial judgments of acquittal. Mr. Eric Deleon suggested that Rule 6 be amended to spell out the precise wording of the oath or affirmation to be administered by the grand jury foreperson. Neither of these proposals garnered support, and the Committee voted unanimously not to pursue them.

Judge Raggi informed the Committee that she had met with Judge Paul Friedman, Chair of the Judicial Conference's Benchbook Committee, to follow up on the Committee's suggestion that the *Brady*/*Giglio* decisions be addressed in some form of a "best practices section" of the benchbook. The meeting was constructive, and Judge Raggi has been invited to participate in additional conference calls and discussions.

Rule 16. Discovery and Inspection

(a) Government's Disclosure.

* * * * *

(2) Information Not Subject to Disclosure. Except as permitted by Rule 16(a)(1)(A)-(D), (F), and (G) ~~Except as Rule 16(a)(1) provides otherwise~~, this rule does not authorize the discovery or inspection of reports, memoranda, or other internal government documents made by an attorney for the government or other government agent in connection with investigating or prosecuting the case. Nor does this rule authorize the discovery or inspection of statements made by prospective government witnesses except as provided in 18 U.S.C. § 3500.

Committee Note

Subdivision (a). Paragraph (a)(2) is amended to clarify that the 2002 restyling of Rule 16 did not change the protection afforded to government work product.

Prior to restyling in 2002, Rule 16(a)(1)(C) required the government to allow the defendant to inspect and copy "books, papers, [and] documents" material to his defense. Rule 16(a)(2), however, stated that except as provided by certain enumerated subparagraphs–not including Rule 16(a)(1)(C)–Rule 16(a) did not authorize the discovery or inspection of reports, memoranda, or other internal government documents made by the attorney for the government. Reading these two provisions together, the Supreme Court concluded that "a defendant may examine documents material

to his defense, but, under Rule 16(a)(2), he may not examine Government work product." *United States v. Armstrong*, 517 U.S. 456, 463 (1996).

With one exception not relevant here, the 2002 restyling of Rule 16 was intended to work no substantive change. Nevertheless, because restyled Rule 16(a)(2) eliminated the enumerated subparagraphs of its successor and contained no express exception for the materials previously covered by Rule 16(a)(1)(C) (redesignated as subparagraph (a)(1)(E)), some courts have been urged to construe the restyled rule as eliminating protection for government work product.

Courts have uniformly declined to construe the restyling changes to Rule 16(a)(2) to effect a substantive alteration in the scope of protection previously afforded to government work product by that Rule. Correctly recognizing that restyling was intended to effect no substantive change, courts have invoked the doctrine of the scrivener's error to excuse confusion caused by the elimination of the enumerated subparagraphs from the restyled rules. *See, e.g.*, *United States v. Rudolph*, 224 F.R.D. 503, 504-11 (N.D. Ala. 2004), and *United States v. Fort*, 472 F.3d 1106, 1110 n. 2 (9th Cir. 2007) (adopting the *Rudolph* court's analysis).

By restoring the enumerated subparagraphs, the amendment makes it clear that a defendant's pretrial access to books, papers, and documents under Rule 16(a)(1)(E) remains subject to the limitations imposed by Rule 16(a)(2).

ADVISORY COMMITTEE ON CRIMINAL RULES
DRAFT MINUTES
October 31, 2011, St. Louis, Missouri

I. ATTENDANCE AND PRELIMINARY MATTERS

The Criminal Rules Advisory Committee ("Committee") met in St. Louis, Missouri on October 31, 2011. The following persons were in attendance:

Judge Reena Raggi, Chair
Judge Richard C. Tallman, Outgoing Chair
Rachel Brill, Esq.
Carol A. Brook, Esq.
Leo P. Cunningham, Esq.
Kathleen Felton, Esq.
Chief Justice David E. Gilbertson
James N. Hatten, Esq.
Judge John F. Keenan
Judge David M. Lawson
Professor Andrew D. Leipold
Judge Donald W. Molloy
Jonathan Wroblewski, Esq.
Judge James B. Zagel
Professor Sara Sun Beale, Reporter
Professor Nancy King, Reporter

Judge Mark R. Kravitz, Standing Committee Incoming Chair (by telephone)
Judge Marilyn L. Huff, Standing Committee Liaison

The following persons were absent:

Judge Morrison C. England, Jr.
Judge Timothy R. Rice
Assistant Attorney General Lanny A. Breuer

The following persons were present to support the Committee:

Andrea L. Kuperman, Esq. (by telephone)
Laural L. Hooper, Esq.
Peter G. McCabe, Esq.
Jonathan C. Rose, Esq.
Benjamin J. Robinson, Esq.

The following invited observer was present:

Peter Goldberger, Esq.
(on behalf of the National Association of Criminal Defense Lawyers).

II. REVIEW AND APPROVAL OF MINUTES OF APRIL 2011 MEETING

A motion to approve the minutes of the April 2011 Committee meeting in Portland, Oregon, having been moved and seconded,

The Committee unanimously approved the April 2011 meeting minutes by voice vote.

III. CHAIR'S REMARKS

Judge Raggi introduced (1) new member Carol Brook, the Executive Director of the Federal Defender Program for the Northern District of Illinois; (2) new Standing Committee liaison, Judge Marilyn Huff, of the Southern District of California; (3) new clerk representative, James Hatten, Clerk of Court for the Northern District of Georgia; and (4) invited observer Peter Goldberger, Esq., on behalf of the National Association of Criminal Defense Lawyers. Judge Raggi noted that, at the suggestion of Standing Committee Chair, Judge Lee Rosenthal, and following the practice of the Civil Rules Committee, the Committee had extended invitations to various criminal defense organizations to send observers to Committee meetings.

On behalf of the entire Committee, Judge Raggi thanked Judge Richard C. Tallman, the outgoing Chair, for his outstanding leadership over four years that had brought many challenging issues before the Committee requiring a number of amendments to the Criminal Rules.

Judge Raggi noted that Committee member, Judge Keenan, had recently been honored by the New York County Lawyers Association with the Edward Weinfeld Award for his outstanding service on the bench.

Judge Raggi reported on cost containment efforts by the Judicial Conference of the United States, noting that few affected the Committee, whose mandate did not involve making decisions about the expenditure of public monies.

Judge Raggi also reported on her communications with members of the Federal Judicial Center's Benchbook Committee, and particularly with Benchbook Committee Chair Judge Irma Gonzalez, and member, Judge Paul Friedman, regarding the Criminal Rules Committee's referral to the Benchbook Committee of the question of "best practices" regarding the government's *Brady/Giglio* disclosure obligations. Judge Raggi advised that the Benchbook Committee has invited her continued participation as it pursues the matter.

IV. CRIMINAL RULES ACTIONS

A. Proposed Amendments Approved by the Supreme Court for Transmittal to Congress

Judge Raggi reported that the following proposed amendments, approved by the Supreme Court and transmitted to Congress, will take effect on December 1, 2011, unless Congress acts to the contrary:

1. Rule 1. Scope: Definitions. Proposed amendment broadens the definition of telephone.

2. Rule 3. The Complaint. Proposed amendment allows complaint to be made by telephone or other reliable electronic means as provided by Rule 4.1.

3. Rule 4. Arrest Warrant or Summons on a Complaint. Proposed amendment adopting concept of "duplicate original," allowing submission of return by reliable electronic means, and authorizing issuance of arrest warrants by telephone or other reliable electronic means as provided by Rule 4.1.

4. Rule 4.1. Complaint, Warrant, or Summons by Telephone or Other Reliable Electronic Means. Proposed amendment provides comprehensive procedure for issuance of complaints, warrants, or summons.

5. Rule 6. The Grand Jury. Proposed amendment authorizing grand jury return to be taken by video teleconference.

6. Rule 9. Arrest Warrant or Summons. Proposed amendment authorizing issuance of warrant or summons by telephone or other reliable electronic means as provided by Rule 4.1.

7. Rule 32. Sentencing and Judgment. Proposed technical and conforming amendment concerning information in presentence report.

8. Rule 40. Arrest for Failing to Appear in Another District or for Violating Conditions of Release Set in Another District. Proposed amendment authorizing use of video teleconferencing.

9. Rule 41. Search and Seizure. Proposed amendment authorizing request for warrants to be made by telephone or other reliable electronic means as provided by Rule 4.1 and return of warrant and inventory by reliable electronic means, and proposed technical and conforming amendment deleting obsolescent references to calendar days.

10. Rule 43. Defendant's Presence. Proposed amendment authorizing defendant to participate in misdemeanor proceedings by video teleconference.

11. Rule 49. Serving and Filing Papers. Proposed amendment authorizing papers to be filed, signed, and verified by electronic means.

B. Proposed Amendments Approved by the Judicial Conference

Judge Raggi reported that the following amendments were approved by the Judicial Conference at its September 2011 meeting, and will be transmitted to the Supreme Court for review:

1. Rule 5. Initial Appearance. Proposed amendment providing that initial appearance for extradited defendants shall take place in the district in which defendant was charged, and that non-citizen defendants in U.S. custody shall be informed that upon request a consular official from the defendant's country of nationality will be notified, and that the government will make any other consular notification required by its international obligations.

2. Rule 58. Initial Appearance. Proposed amendment providing that in petty offense and misdemeanor cases non-citizen defendants in U.S. custody shall be informed that upon request a consular official from the defendant's country of nationality will be notified, and that the government will make any other consular notification required by its international obligations.

3. Rule 15. Depositions. Proposed amendment authorizing deposition in foreign countries when the defendant is not physically present if court makes case-specific findings regarding (1) the importance of the witness's testimony, (2) the likelihood that the witness's attendance at trial cannot be obtained, and (3) why it is not feasible to have face-to-face confrontation by either (a) bringing the witness to the United States for a deposition at which the defendant can be present or (b) transporting the defendant to the deposition outside the United States.

4. Rule 37, Indicative Rulings: Proposed amendment authorizing district court to make indicative rulings when it lacks authority to grant belief because appeal has been docketed.

With respect to Rule 15, Professor Beale reminded the Committee that, to the extent the Supreme Court's return of an earlier version of the amended rule without comment signaled possible Sixth Amendment concerns about the admissibility of evidence obtained under the rule, the amendment had been revised so that Subsection (f) now stated explicitly that an order authorizing a deposition to be taken under the rule does not determine its admissibility.

C. Proposed Amendments Approved by the Standing Committee for Publication in August 2011

Judge Raggi reported that the following proposed amendments had been approved by the Standing Committee for publication:

1. Rule 11. Advice re Immigration Consequences of Guilty Plea; Advice re Sex Offender Registration and Notification Consequences of Guilty Plea.

2. Rule 12(b). Clarifying Motions that Must Be Made Before Trial; Addresses Consequences of Motion; Provides Rule 52 Does Not Apply To Consideration Of Untimely Motion.

3. Rule 34, Arresting Judgment: Conforming Changes To Implement Amendment to Rule 12.

With respect to Rule 12(b), Judge Raggi advised that questions had been raised in the Standing Committee regarding the rule's treatment of double jeopardy claims and its possible diminution of district court discretion to entertain late motions before trial. The Standing Committee approved publication, concluding that it would be useful to learn whether such concerns were expressed in public comments.

V. NEW PROPOSALS FOR DISCUSSION

A. Rule 16(a)(2), Pretrial Disclosure of Government Work Product

Judge Raggi reported that Standing Committee Chair, Judge Lee Rosenthal, had called attention to *United States v. Rudolph*, 224 F.R.D. 503 (N.D. Ala. 2004), which identified "scrivener's error" in Rule 16(a)(2), in that restyled language could be construed to eliminate protection from discovery expressly provided to government work product under the predecessor rule. A report prepared by Professors Beale and King agreed with *Rudolph*'s assessment and noted that a total of four courts had now concluded that the revised rule contained a scrivener's error. The reporters provided the Committee with language for a possible amendment.

Judge Raggi invited discussion, noting that the matter did not require subcommittee consideration but could be addressed by the Committee as a whole. There was general agreement with one member's observation that the error "is an embarrassment to the Committee" and warranted prompt correction. A motion being made and seconded to correct the scrivener's error by amending the rule as recommended by the reporters,

The Committee unanimously voted to amend Rule 16(a)(2) by adopting the language suggested by the reporters and to transmit the matter to the Standing Committee.

Judge Raggi asked Professors Beale and King to draft a Committee Note to accompany the rule amendment, which Committee members would review by email. Mr. McCabe observed that because the proposed amendment only corrected scrivener's error, it could probably be reviewed under the Standing Committee's expedited procedures, which permit technical and conforming changes to rules to be adopted without a hearing period and public comment.

B. Rule 17, Seal of Court on Subpoenas

The Administrative Office's "Forms Working Group" asked the Committee to consider amending Rule 17(a) to eliminate the requirement that criminal subpoenas bear the seal of the issuing court. The Working Group noted the elimination of a parallel sealing requirement in the civil rules.

Judge Raggi and Judge Kravitz observed that there may be reasons for treating civil and criminal subpoenas differently to ensure compliance with the latter.

Judge Raggi asked Mr. Hatten to comment on the burden for clerks' offices in having to place seals on criminal subpoenas. Mr. Hatten stated that the seal requirement imposes no burden.

Discussion revealed the Committee's agreement that the seal of the court on a criminal subpoena served the useful purpose of ensuring compliance.

A motion having been made and seconded,

The Committee unanimously decided by voice vote not to amend Rule 17(a).

C. Rule 6, Grand Jury Oaths

A citizen request from Eric DeLeon asked the Committee to amend Rule 6(c) to state the oath required in grand jury proceedings or to provide a cross-reference to the text of that oath. Judge Raggi and the Committee reporters recommended no action but invited discussion. The Committee agreed that there was no problem requiring rule amendment. A motion having been made and seconded,

The Committee unanimously decided by voice vote not to pursue an amendment to Rule 6(c).

D. Rule 24(b), Peremptory Challenges

Judge Raggi reported that Judge Robert E. Jones of the District of Oregon suggested that an amendment to Rule 24(b) to eliminate or reduce peremptory challenges would reduce costs for the judiciary. Members generally agreed that any cost reduction from such an amendment would be minimal. Such a significant change in the jury selection process would, however, undoubtedly prompt strong opposition from the bar. No member of the Committee voicing support for the proposal, and a motion having been made and seconded,

The Committee unanimously decided by voice vote not to amend Rule 24(b).

E. Rule 29, Summary Judgment Prior to Trial

The Committee considered a proposal from Assistant Professor Carrie Leonetti of the University of Oregon School of Law to amend the criminal rules to authorize pre-trial awards of summary judgment to the defense. Upon review of a report prepared by Professor King that recommended against the proposal, no member of the Committee voiced support for an amendment. A motion having been made and seconded,

The Committee unanimously decided by voice vote not to amend Rule 29.

F. Rule 6(e), Historically Significant Grand Jury Materials

After the October agenda materials were distributed, the Committee received a proposal from Attorney General Eric H. Holder, Jr. to amend Rule 6(e) to establish procedures for the disclosure of historically significant grand jury materials, which some courts have done by invoking "inherent authority." At Judge Raggi's request, Kathleen Felton summarized the views expressed in the Attorney General's letter.

Judge Raggi formed a subcommittee to study the matter and report to the full Committee at its April meeting. Judge Keenan agreed to chair the subcommittee. Judges Malloy and Zagel, Professor Leipold, Ms. Brook, Ms. Felton, Mr. Wroblewski and Mr. Hatten will also serve, with Professors Beale and King providing legal support.

G. Rule 17.1, Pretrial Procedures

Judge Lawson noted that, at the Portland meeting, he had suggested that Rule 17.1 be amended to provide for certain matters, notably *Brady/Giglio* compliance, to be discussed at a pre-trial conference. He indicated that he had sent a draft proposal to Judge Tallman and wished to have the matter put on the next meeting agenda. In response to Judge Raggi's inquiry as to whether the content of pre-trial conferences should really be the subject of a rule (rather than best practices), Judge Lawson indicated that the Committee's recent *Brady/Giglio* discussions persuaded him that the matter was important enough to deserve a rule. Judge Raggi asked Professors Beale and King to secure a copy of Judge Lawson's proposal and to prepare a report for the Committee so that the matter could be discussed at the next meeting.

VI. INFORMATION ITEMS

A. Status Report on Legislation Affecting Criminal Rules

Mr. Rose reported that no legislation was anticipated that would affect the Criminal Rules.

B. Electronic Discovery

Judge Raggi observed that district courts were increasingly confronting questions about electronic discovery in criminal cases, a matter that might merit future Committee consideration. Because the Civil Rules Committee has already done considerable work in the area, Judge Raggi stated that she would discuss the subject with Judge Kravitz and Ed Cooper, the Civil Rules Committee reporter, to benefit from their experience.

Mr. Wroblewski advised that the Justice Department was working with Federal Defenders, the Administrative Office, and the Federal Judicial Center to develop protocols for discovery of electronically stored information and drafts were expected in six to eight months. Judge Raggi asked if these protocols might be shared with the Committee for possible discussion as an information item.

C. Inter-Committee Forms Subcommittee

Judge Lawson and Professor King, the Committee's representatives to the Inter-Committee Forms Subcommittee, reported that the Subcommittee was exploring the possibility of a unified approach to forms among the five advisory rules committees and, thus, sought information as to each advisory committee's practices.

Professor King advised that until 1983, Criminal Rule 58 encouraged the use of some 27 appended forms pertaining to complaints, indictments, informations, etc. In 1983, Rule 58 and the appended forms were abrogated, so that no mention of forms is made in the criminal rules. (There are, however, forms appended to the rules governing habeas procedures under 28 U.S.C. §§ 2254 and 2255.) Rather, a Forms Working Group in the Administrative Office develops forms for use in criminal proceedings. Judge Lawson asked whether this Forms Working Group should be added to the Inter-Committee Forms Subcommittee. Judge Raggi stated that, because there have been no complaints about forms produced by the AO's Forms Working Group, there appeared to be no reason for the Committee to seek to reassume a role in that area. Accordingly, Judge Lawson and Professor King will report to the Forms Subcommittee that the Criminal Rules Committee, in contrast to other advisory committees, has played little role in the process of developing and revising criminal forms and that the assignment of that responsibility to the AO Forms Working Group seems satisfactory.

VII. SUBCOMMITTEE ASSIGNMENTS

Judge Raggi identified the Committee's active subcommittees as follows:

A. Rule 12 Subcommittee

Judge England, Chair
Judge Lawson
Professor Leipold
Ms. Brook
Ms. Felton
Mr. Wroblewski

B. Rule 11 Subcommittee

Judge Rice, Chair
Judge Lawson
Judge Malloy
Professor Leipold
Mr. Cunningham
Ms. Felton
Mr. Wroblewski

C. Rule 6(e) Subcommittee

Judge Keenan, Chair
Judge Malloy

Judge Zagel
Professor Leipold
Ms. Brook
Ms. Felton
Mr. Wroblewski
Mr. Hatten

All other subcommittees having completed their work, Judge Raggi declared them dissolved.

VIII. FUTURE MEETINGS AND HEARINGS

Judge Raggi announced that the Committee will next meet on Monday and Tuesday, April 23-24, 2012, at the Federal Courthouse in San Francisco, California. The autumn 2012 meeting will be held on Thursday and Friday, October 18-19, 2012, at the Administrative Office in Washington, D.C.

Hearing dates on criminal rules published for public comment are scheduled for January 6, 2012, in Phoenix, Arizona, in conjunction with the Standing Committee meeting; and February 12, 2012, in Washington, D.C. Members will be advised in advance as to whether public comments are received necessitating one or both of these hearings.

Before the Committee adjourned, Judge Tallman expressed his thanks to all members and staff for the honor of serving as chair, congratulated Judge Raggi on her appointment, and promised his continued support for the work of the Committee.

All business being concluded, Judge Raggi adjourned the meeting.