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06 - CR - 004

October 17, 2006

Mr. Peter G. McCabe
Secretary, Committee on Rules
of Practice and Procedure of the
Judicial Conference of the United States
Washington, D.C. 20544

Re: Preliminary Draft of Proposed Amendments for the Federal Rules of
Practice and Procedure

Dear Mr. McCabe:

Thank you for your letter and summary of proposed amendments to the Federal Rules of Criminal Procedure. After serving as a law clerk for a judge on the old United States Court of Appeals for the Fifth Circuit, I have been practicing law for approximately 35 years. Federal criminal practice is a major part of what I do. I have also served as President of the Birmingham Bar Association and the Alabama State Bar Association.

I am particularly concerned about several aspects of the proposed amendments to the Federal Rules of Criminal Procedure. First, the proposed amendment to Rule 29. I strongly urge the Committee to eliminate that amendment. Statutes and court decisions have already watered down the constitutional protection intended by the Fifth Amendment. The Supreme Court of the United States has repeatedly held that when a judgment of acquittal is granted based upon the insufficiency of the evidence that a further prosecution is barred under the Double Jeopardy clause. I am concerned that we sometimes tend to forget that the Bill of Rights was passed to protect citizens from the power of government, not to protect the government or alleged victims. This amendment would be a further erosion of the Bill of Rights.

I am also concerned about including in the Rules of Criminal Procedure rules which provide for "victims rights." Again, there is nothing in the Constitution which

provides for the protection of "victims rights" during the trial of a case. Victims are protected through the power of the federal government to carry out all of its functions of investigation and prosecution. It is important to remember that the case is, the "United States of America v. John Doe." It is not a private action. Certainly victims should be considered and that should be a matter of policy by the Justice Department. However, specifically providing for "victims rights" within the Rules of Criminal Procedure would in my opinion be a serious mistake. It would have the effect of minimizing the very important protections intended by the Bill of Rights and the Rules of Criminal Procedure of individuals who are accused by the Government and who are subject to loss of their liberty. Many of the concerns apparently intended to be addressed by the rules could simply be handled by the Government objecting if a subpoena is submitted, or by refusing to provide, for example, a victim's address and telephone number. The defendant would then be forced seek relief from the court.

I appreciate very much the important challenge which the Committee faces. I urge you, however, to consider the importance of not infringing on the rights of the individual as guaranteed by the Bill of Rights.

Than you for your consideration.

Very truly yours,

REDDEN, MILLS & CLARK

A handwritten signature in cursive script, appearing to read "William N. Clark".

William N. Clark

WNC/rb