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September 25, 2008

Peter G. McCabe, Secretary  
Committee of Rules of Practice and Procedure  
of the Judicial Conference of the United States  
Thurgood Marshall Federal Judiciary Building  
Washington, D.C. 20544

08-CR-002

Re: Proposed amendments to the Federal Rules of Criminal Procedure

Dear Mr. McCabe:

I appreciate your invitation to comment on the proposed amendments. In my opinion, two of these proposals are both unnecessary and unwise.

## Rule 32.1

Under the existing rule, when a person on supervised release or probation is arrested for some infringement of the applicable conditions of his release, in order to be released from custody he has the burden of proving that he will not flee or pose a danger to anyone. The proposed amendment would raise the standard of proof in such situations to "clear and convincing evidence."

Federal judges already have full authority to incarcerate persons for violating the conditions of their probation or supervised release. Given that the existing rule creates a presumption that the person should be incarcerated, and requires him to prove a negative— an often impossible task no matter what the standard of proof— the effect of the change will be to set an impossibly high standard for release, resulting in imprisonment for virtually every infraction of release conditions no matter how minor.

I submit that there is no rational basis for the proposed change.

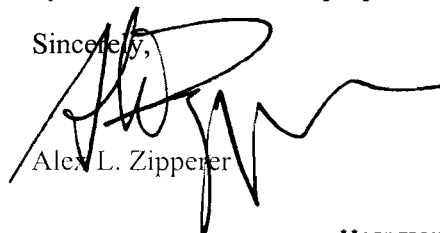
## Rule 21

The proposed change apparently seeks to subordinate the convenience of parties and witnesses to that of non-witness "victims." Since the persons to whom this change would apply are not witnesses, the amendment would authorize a court to change venue in order to make it more convenient for interested persons to attend the proceedings as observers. Often the public at large is considered to be the "victim" of certain federal offenses. The proposed amendment could therefore be construed to allow a federal judge to move the venue of a particular case in order to accommodate voluntary public attendance even if such a move required parties, witnesses and government lawyers to travel great distances and incur significant expenses.

Again, I suggest that there is no rational basis for the proposed amendment.

Thank you for allowing me the opportunity to comment on these proposals.

Sincerely,



Alex L. Zipperer