Notre Dame Law Review

Volume 43 | Issue 1 Article 6

1-1-1968

Federal Rule 60(B): Finality of Civil Judgments v. Self-Correction by District Court of Judicial Error of Law

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FEDERAL RULE 60(B): FINALITY OF CIVIL JUDGMENTS V. SELF-CORRECTION BY DISTRICT COURT OF JUDICIAL ERROR OF LAW

I. Introduction

An effective legal system demands a proper balance between finality of judgments and the rendering of justice to litigants. On the one hand, there must be some point at which litigation terminates; a judgment would indeed be illusory if it could be opened at any time. On the other hand, no judge is infallible. There are often instances in which an error of law on the part of the court seriously prejudices the rights of a litigant. In many such cases, it is desirable that the court be able to alter, amend, or even vacate its final judgment. Such relief is available in the federal judicial system under Federal Rules of Civil Procedure 52(b)[1] and 59.[2] Motions under these rules must be filed within ten days after the entry of final judgment.[3] This time limit is strictly observed.[4] If a litigant fails to move within the allotted time, his usual alternative for the correction of judicial error of law is the taking of a timely appeal.[5]

In addition to these ordinary forms of relief, Federal Rule 60(b)[6] provides that the district court may relieve a party from a final judgment on the ground of "mistake," and permits a motion for such relief to be made within a reasonable time, but not more than one year after entry of the judgment.[7] A disputed

1 FED. R. CIV. P. 52(b) provides in part:
> Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59.

2 FED. R. CIV. P. 59(a) provides in part:
> On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

3 FED. R. CIV. P. 52(b), 59(b), and 59(e). See FED. R. CIV. P. 6(b)(2).

4 Munich v. United States, 330 F.2d 774 (9th Cir. 1964); Tsai v. Rosenthal, 297 F.2d 614 (8th Cir. 1961); John E. Smith's Sons Co. v. Lattimer Foundry & Machine Co., 239 F.2d 815 (3d Cir. 1956); Safeway Stores, Inc. v. Coe, 136 F.2d 771 (D.C. Cir. 1943); Theiss v. Owens-Illinois Glass Co., 1 F.R.D. 175 (W.D. Pa. 1940); 5 MOORE, FEDERAL PRACTICE ¶ 52.11 [1], at 2679 (2d ed. 1964); 6A MOORE, *supra* ¶ 59.09 [1], at 3842; *cf.* Shotkin v. Weksler, 254 F.2d 596 (5th Cir. 1958). *But see* Whayne v. Glenn, 114 F. Supp. 784 (W.D. Ky. 1953), *rev'd on other grounds*, 222 F.2d 549 (6th Cir. 1955).

5 Swam v. United States, 327 F.2d 431 (7th Cir.), *cert. denied*, 379 U.S. 852 (1964); Hartman v. Lauchli, 304 F.2d 431 (8th Cir. 1962); Berryhill v. United States, 199 F.2d 217 (6th Cir. 1952).

6 FED. R. CIV. P. 60(b) provides in part:
> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

7 FED. R. CIV. P. 60(b) provides a one-year time limit for motions under provisions (1), (2), and (3) of the Rule. Otherwise, Rule 60(b) motions must be made within a "reasonable time."

question, which is the inquiry of this note, is whether Rule 60(b) should be used by the district court to correct ordinary judicial error when the motion is served later than ten days after entry of judgment. Some courts have allowed Rule 60(b) motions for the correction of all judicial error as long as the motion seeking relief is filed within 30 days after entry of judgment, the time during which an appeal could normally have been taken.[8] The major objection to this interpretation of Rule 60(b) is that it tends to circumvent the strict time limits imposed by Rules 52(b) and 59 and, as will be shown, to indirectly extend the time for appeal under Rule 73(a).[9]

An examination of the history of Rule 60(b) against the background of the common law and the equitable ancillary remedies from which it originated lends perspective to this problem. The federal system has historically attempted to strike a balance between finality in judgments and the rendering of justice in particular cases.[10] Before the Federal Rules of Civil Procedure were promulgated, the "term rule" served as a rule of repose.[11] Under this rule, the district courts retained control over their current judgments during the term of court;[12] this gave these courts the opportunity to remedy any incorrect judgments they had rendered during the current term. But, upon the expiration of the term, the district courts lost their inherent power to change their judgments and these decisions then became final.[13]

There were, however, exceptions to the term rule. The old equitable and common-law ancillary remedies and the independent action in equity served as means of attacking inequitable judgments after the term of court had expired.[14] These remedies covered a large number of problems, such as clerical errors, newly discovered evidence, and fraud.[15] One of these ancillary remedies, the bill of review, allowed a court of equity to remedy judicial error of law in a final decree rendered by it at a previous term of court.[16] The error, to be remediable, must have been such as to be apparent on the face of the record of the case.[17]

8 Gila River Ranch, Inc. v. United States, 368 F.2d 354 (9th Cir. 1966); Southern Fireproofing Co. v. R. F. Ball Constr. Co., 334 F.2d 122 (8th Cir. 1964) (dicta); McDowell v. Celebrezze, 310 F.2d 43 (5th Cir. 1962); Tarkington v. United States Lines Co., 222 F.2d 358 (2d Cir. 1955) (by implication); *cf.* Schildhaus v. Moe, 335 F.2d 529 (2d Cir. 1964); Shay v. Agricultural Stabilization and Conservation State Committee For Arizona, 299 F.2d 516 (9th Cir. 1962); Sleek v. J.C. Penney Co., 292 F.2d 256 (3d Cir. 1961).

9 Swam v. United States, 327 F.2d 431 (7th Cir.), *cert. denied*, 379 U.S. 852 (1964); *See* Hartman v. Lauchli, 304 F.2d 431 (8th Cir. 1962); Providential Development Co. v. United States Steel Co., 236 F.2d 277 (10th Cir. 1956); Edwards v. Velvac, Inc., 19 F.R.D. 504 (E.D. Wis. 1956).

10 For an excellent discussion of the historical background to Rule 60(b), see 7 MOORE, *supra* note 4, ¶ 60.09, at 6-10; Moore and Rogers, *Federal Relief from Civil Judgments*, 55 YALE L.J. 623 (1946).

11 United States v. Mayer, 235 U.S. 55 (1914); 7 MOORE, *supra* note 4, ¶ 60.09, at 6-10.

12 *Id.*

13 *Id.*

14 3 BARRON & HOLTZOFF, FEDERAL PRACTICE AND PROCEDURE § 1331 (Wright ed. 1958); 7 MOORE, *supra* note 4, ¶ 60.09, 60.12-.15, at 733-73; Moore and Rogers, *supra* note 10.

15 *Id.*

16 DOBIE, FEDERAL JURISDICTION AND PROCEDURE 762-63 (1928); 7 MOORE, *supra* note 4, ¶ 60.15 [1], [2], at 53-61.

17 "The only questions open for examination on a bill of review for error of law appearing on the face of the record are such as arise on the pleadings, proceedings, and decree, without reference to the evidence in the cause." Shelton v. Van Kleeck, 106 U.S. 532, 534 (1882). A bill of review could not be used for further examinations of fact. Scotten v. Littlefield, 235 U.S. 407, 411 (1914).

It is important to note that the bill could not be used to correct a judgment on the ground that the court had made erroneous deductions from the evidence.[18] This limited relief under the bill of review for judicial error was available only if sought during the time normally allowed for appeal.[19]

When the Federal Rules of Civil Procedure were promulgated in 1938, the term rule was expressly abolished.[20] In the interest of providing finality of judgments in the absence of the term rule, the Rules set ten-day limits for motions to alter or amend a judgment[21] and for motions for a new trial.[22] These short time limits severely circumscribed the power of the district courts to remedy judicial errors of law in their final judgments.

In contrast, the six-month time limit imposed by the original Rule 60(b) was quite liberal. This rule, however, was extremely narrow in scope.[23] It provided: "On motion the court . . . may relieve a party . . . from a judgment . . . taken against him through his mistake, inadvertence, surprise, or excusable neglect."[24] To compensate for this narrowness, most courts took the view that the ancillary remedies were still available as alternative forms of relief.[25] These ancillary remedies, however, were surrounded by "ancient lore and mystery,"[26] and no one was quite sure what their limits were.[27] To provide some certainty as to what relief was available, Rule 60(b) was amended in 1946. Some of the ancillary remedies were incorporated into the amended rule and, to the extent that such incorporation was not made, they were abolished.[28] Another significant change from the original provision was the deletion of the word "his" before the word "mistake." Since 1946, there have been no new amendments to Rule 60(b).

II. Correction of Judicial Error of Law under Rule 60(b)(1).

Professor Moore, in his authoritative treatise, has suggested that the deletion of the word "his" in the original provision of Rule 60(b) authorizes a district court to correct judicial error of law in its judgments if the motion were made during the time allowed for appeal. This proposition is based, in part,

18 7 MOORE, *supra* note 4, ¶ 60.15 [2], at 58-59.
19 7 MOORE, *supra* note 4, ¶ 60.15 [2], at 60.
20 FED. R. CIV. P. 6(c). This rule was repealed on July 1, 1966. Such repeal did not effect a reinstatement of the term rule. *Cf.* 7 MOORE, *supra* note 4, ¶ 60.16 [2], at 76; Moore and Rogers, *supra* note 10, at 628.
21 FED. R. CIV. P. 52(b), 59(e).
22 FED. R. CIV. P. 59(b).
23 It should be noted that the original Rule 60(b) did not provide relief from judicial error of law. Jusino v. Morales & Tio, 139 F.2d 946 (1st Cir. 1944); Nachod & United States Signal Co. v. Automatic Signal Corp., 32 F. Supp. 588 (D. Conn. 1940).
24 7 MOORE, *supra* note 4, ¶ 60.10 [4], at 13-14.
25 *Cf.* 7 MOORE, *supra* note 4, ¶ 60.16 [1], [3], at 75, 77.
26 Notes to Rule 60(b) of the Advisory Committee on Amendments to Rules, at 28 U.S.C.A. 123-24 (1960).
27 Justice Black, in Klapprott v. United States, 335 U.S. 601, 614 (1949), said "[F]ew courts ever have agreed as to what circumstances would justify relief under these old remedies."
28 FED. R. CIV. P. 60(b) reads in part:

> Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

on an analogy between the present procedure and the procedure under the bill of review.[29] Perhaps, the language of Rule 60(b)(1), if taken at face value, could be so construed. In fact, Professor Moore's interpretation of this provision has found substantial judicial support. Judge Friendly, of the Second Circuit, has called this interpretation "good sense."[30]

The Ninth Circuit recently accepted Professor Moore's proposal in *Gila River Ranch, Incorporated v. United States*.[31] In *Gila*, a jury verdict had been rendered against the United States. The counsel for the Government moved under Rule 59 for a new trial on the ground that the verdict was excessive. The district court denied this motion, but conditioned its denial upon the remittitur by Gila River Ranch of $125,000 from the judgment. Within the time allowed for appeal, the United States filed a Rule 60(b)(1) motion in the district court alleging that the court had mistakenly granted the remittitur from the judgment when it should have granted it from the verdict.[32] The district court allowed the motion and made the appropriate change in its order. On appeal, the decision of the district court was affirmed.

Quite clearly, the judicial mistake in *Gila* was not a fundamental error of law. In fact, it was very close to the type of clerical error which is correctable under Rule 60(a).[33] In a similar case, *Southern Fireproofing Company v. R. F. Ball Construction Company*,[34] the Eighth Circuit allowed the use of a Rule 60(b)(1) motion when the district court had overlooked a minor item of damages in entering its judgment. There is no doubt that such minor, almost clerical, mistakes should be correctable in the district court.[35]

The notion that judicial error is correctable under Rule 60(b)(1) has been carried even further than this by the Fifth Circuit in *McDowell v. Celebrezze*.[36] In this case, a claimant of Social Security benefits had received an adverse ruling from the Social Security Appeals Council. He appealed this ruling to the United States District Court for the Southern District of Georgia. On February 9, 1962, the district judge granted the claimant's motion for summary judgment and reversed the decision of the Appeals Council. On March 9, 1962, on his own motion, the district judge informed the parties that " 'after mature judgment and re-reading the record' he was apprehensive that he had 'made a mistake' in his judgment and for such reason he desired to have a

29 7 MOORE, *supra* note 4, ¶ 60.22 [3], at 235-38. Professor Moore would extend the coverage of Rule 60(b)(1) beyond the type of error correctable under the old bill of review. "[T]he word *mistake* as used in 60 (b)(1) is broader than the phrase *error of law apparent upon the record*, and hence the cases denying relief under the old bill of review may properly be regarded as inapplicable." *Id.* at 237. *See* 3 BARRON & HOLTZOFF, *supra* note 14, § 1325, at 407.

30 Schildhaus v. Moe, 335 F.2d 529, 531 (2d Cir. 1964).

31 368 F.2d 354 (9th Cir. 1966).

32 If the remittitur were granted from the verdict rather than from the judgment, the United States would save $28,125 on accrued interest. *Id.* at 356.

33 FED. R. CIV. P. 60(a) provides in part: "Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time . . . ." *See generally* 6A MOORE, *supra* note 4, ¶ 60.06, at 4042-43.

34 Southern Fireproofing Co. v. R. F. Ball Constr. Co., 334 F.2d 122 (8th Cir. 1964).

35 *Cf.* American Trucking Ass'ns, Inc. v. Frisco Transp. Co., 358 U.S. 133, 144-46 (1958); 6A MOORE, *supra* note 4, ¶ 60.03 [1], at 4016-19.

36 310 F.2d 43 (5th Cir. 1962).

re-hearing of the case."[37] On March 30, 1962, the rehearing was held and the district judge reversed his prior judgment. The Fifth Circuit, in affirming this judgment, suggested that "Overburdened courts, trial and appellate, should not have to squander precious time and resources in . . . artificial maneuvers where the Judge on his own and in time faces up to the error and corrects it by effective action."[38]

McDowell rests on the premise that the district court retains control over its judgments during the thirty-day period in which an appeal could normally be taken. During this period, the court presumably may correct any judicial errors of law. The validity of this proposition is doubtful.[39] The Federal Rules explicitly limit the time during which the court retains complete control over its judgments.[40] During the ten days allowed for Rule 52(b) and Rule 59 motions, the district court may properly correct its errors of law. By suggesting that a Rule 60(b)(1) motion, filed within thirty days of the final judgment, may be used to correct fundamental judicial error of law, *McDowell* circumvents the time limits imposed by Rules 52(b) and 59.[41] It is submitted that these Rules limit the time during which the district court may "change its mind."[42]

The Fifth Circuit, in *McDowell,* contended that this extension of Rule 60(b)(1) "does not circuitously extend the time for appeal."[43] The validity of this proposition is also doubtful.[44] An appeal could have been taken in *McDowell* within sixty days of the entry of the final judgment.[45] During that time, the unsuccessful litigant presumably could have filed in the district court a Rule 60(b) motion alleging judicial error of law. If the district court had denied this motion, the litigant would have had sixty days after the entry of the order denying the motion in which to appeal the denial. Conceivably, through this procedure, an appeal could have been taken on the merits four months after the entry of the original judgment. Thus, it would seem that a Rule 60(b) motion for fundamental judicial error could, in effect, circumvent the time limitation imposed by Rule 73(a) for the taking of an appeal.

Nevertheless, the Second Circuit also appears to have accepted the proposition that Rule 60(b) can be interpreted so as to include judicial error of law. In *Tarkington v. United States Line Company,*[46] this court, within the time normally permitted for appeal, allowed the use of a Rule 60(b)(1) motion alleging judicial mistake to overturn a final judgment on the ground that the

37 *Id.* at 44.
38 *Id.*
39 See note 9 *supra.*
40 FED. R. CIV. P. 6(b), 52(b), 59(b), 59(e).
41 Swam v. United States, 327 F.2d 431, 433 (7th Cir.), *cert. denied,* 379 U.S. 852 (1964).
42 *Id. See* Fine v. Paramount Pictures, Inc., 181 F.2d 300, 303 (7th Cir. 1950); 3 BARRON & HOLTZOFF, *supra* note 10, § 1304; 6A MOORE, *supra* note 4, ¶ 59.08 [2], 59.12 [1], at 3777, 3875.
43 McDowell v. Celebrezze, 310 F.2d 43, 44 (5th Cir. 1962).
44 "Yet if the Rule is construed to authorize a motion for relief from a judgment because of judicial error, then an appeal will subsequently lie from a final decision on the motion for relief, and appeal time will have been indirectly extended. . . ." 7 MOORE, *supra* note 4, ¶ 60.22 [3], at 237.
45 FED. R. CIV. P. 73(a).
46 222 F.2d 358 (2d Cir. 1955).

Supreme Court of the United States had subsequently changed the law on which the judgment was based. This decision received approval in *Schildhaus v. Moe* on the "very special facts" that the motion had been filed during the time normally allowed for appeal.[47]

The court in *McDowell* suggested that the Third Circuit had adopted a similar position in *Sleek v. J.C. Penney Company*.[48] In *Sleek*, the plaintiff had filed an ordinary Rule 60(b) motion alleging neglect of a party. More than ten days after the denial of this motion, the plaintiff filed a second Rule 60(b) motion to reconsider the denial of the first motion. This second motion alleged, in effect, judicial mistake in the denial of the first motion. The Third Circuit permitted this second motion during the time period in which the denial of the first motion could have been appealed.

Sleek is, in fact, a very narrow holding, standing only for the proposition that once a legitimate Rule 60(b) motion has been filed, a "special procedure" has begun.[49] *Sleek* does not appear to authorize a district court to reopen *any* final judgment on a Rule 60(b) motion alleging judicial error of law, but only applies to the reconsideration of the denial of a valid Rule 60(b) motion.[50]

In direct opposition to Professor Moore's proposal, some courts have unequivocally refused to extend Rule 60(b) to fundamental judicial error of law. In *Swam v. United States*,[51] the Seventh Circuit held that a Rule 60(b) motion could not be used to reopen an order of dismissal on the ground that the district court had "misconceived the character of the causes of action."[52] Judge Swygert, speaking for the court, stated:

> These averments do not constitute the kind of mistake or inadvertence that comes within the ambit of rule 60(b). If plaintiff believed the district court was mistaken as a matter of law in dismissing the original complaint, he should have appealed within sixty days after the dismissal or he might have filed a timely motion under rule 59 to vacate the judgment of dismissal and for leave to amend his complaint. He did neither.[53]

In *Hartman v. Lauchli*,[54] the Eighth Circuit indicated a similar reluctance to circumvent the usual means of correcting judicial error of law. In this bankruptcy action, the district court had mistakenly held that the United States was a creditor of the bankrupt. The bankrupt filed a Rule 60(b) motion to vacate this order on the ground that the court had made a mistake of law. In denying this motion, Judge Sanborn, of the Eighth Circuit, commented: "Rule 60(b) was not intended as a substitute for a direct appeal from an erroneous judg-

47 335 F.2d 529, 531 (2d Cir. 1964).
48 292 F.2d 256 (3d Cir. 1961).
49 *Id.* at 258.
50 The Third Circuit implies that Rule 59(e) is applicable to motions for rehearing on the denial of motions other than Rule 60(b) motions for the reconsideration of final judgments. Gainey v. Brotherhood of Railway and Steamship Clerks, 303 F.2d 716 (3d Cir. 1962); *cf.* Raughley v. Pennsylvania R.R. Co., 230 F.2d 387 (3d Cir. 1956).
51 327 F.2d 431 (7th Cir.), *cert. denied*, 379 U.S. 852 (1964).
52 *Id.* at 433.
53 *Id.*
54 304 F.2d 431 (8th Cir. 1962).

ment. The fact that the judgment is erroneous does not constitute a ground for relief under that Rule."[55]

Judicial error involving a fundamental misconception of the law should be distinguished from inadvertent judicial oversight such as that which prompted relief in *Gila* and in *Southern Fireproofing*. Such a distinction could well explain the conflicting results in *Southern Fireproofing* and in *Hartman,* both of which were Eighth Circuit decisions. There would seem to be much less reluctance to correct a minor oversight, such as the omission of damages, which in most cases would be perfectly obvious, than there would be to correct a fundamental error of law, which in many cases would not be as clear. Rule 60(a) provides very liberal relief for the correction of clerical error on the part of the court. Thus, use of Rule 60(b) to correct minor judicial inadvertence can be reconciled with the general scheme of the Rules.[56] However, use of Rule 60(b) to correct fundamental error of law is not only out of harmony with Rule 60, but is also in conflict with the timing structure of the Rules, as evidenced in Rules 52(b), 59, and 73(a).[57]

Those who favor the extension of Rule 60(b) to all judicial error have posed rather convincing arguments.[58] Many of these arguments rest on the premise that an appeal could be avoided in most cases by the use of a Rule 60(b) motion for judicial mistake. It would seem, however, that the party who was originally successful would, in most cases, appeal if the court later changed its mind on a point of law. If the point of law was so unclear that the court would decide one way at trial and then another way after the judgment has been rendered, an appeal from a successful Rule 60(b) motion would be probable in most cases. Thus, the avoidance of an appeal would be a benefit in relatively few instances: those cases in which a litigant had moved under Rule 60(b)(1) to correct a completely obvious error of law. The real policy question is whether these few cases warrant changing the timing structure of the present rules.

III. Correction of Judicial Error of Law Under Other Provisions of Rule 60(b)

Two other provisions of Rule 60(b) are pertinent to the discussion of relief under this Rule for judicial error of law. The first of these, Rule 60(b)(5), empowers the district court to relieve a litigant from a final judgment if "a prior judgment upon which it is based has been reversed or otherwise vacated." This provision has been rather narrowly interpreted. In most cases, the judgment must have been explicitly based on a subsequently overruled case; the mere fact that the law has changed since the entry of the judgment is not sufficient reason for a Rule 60(b)(5) motion.[59] Thus, in *Berryhill v. United States,*[60] the

55 *Id.* at 432.
56 See note 35 *supra.*
57 See note 42 *supra.*
58 7 MOORE, *supra* note 4, ¶ 60.22 [3], at 235-38; *see* Schildhaus v. Moe, 335 F.2d 529, 531 (2d Cir. 1964); McDowell v. Celebrezze, 310 F.2d 43, 44 (5th Cir. 1962).
59 Collins v. City of Wichita, 254 F.2d 837 (10th Cir. 1958); Berryhill v. United States, 199 F.2d 217 (6th Cir. 1952); Creedon v. Smith, 8 F.R.D. 162 (N.D. Ohio 1948); 7 MOORE, *supra* note 4, ¶ 60.26 [3], at 282; Comment, 44 IOWA L. REV. 574 (1959).
60 199 F.2d 217 (6th Cir. 1952).

Sixth Circuit interpreted this provision as applying only when the district court clearly *relied* on a subsequently overruled decision. Judge Miller stated:

> Certainly it was not the purpose of the rule to permit a final judgment to be set aside whenever thereafter any case from another jurisdiction involving the same question and decided the same way is later reversed by an Appellate Court. If such was the rule, so-called final judgments would lose most of their finality.[61]

Rule 60(b)(5) also provides that a party may have relief from a final judgment if "it is no longer equitable that the judgment should have prospective application." Typically, this provision has been used to give relief from the continuing effect of an injunction, although it is not limited to this function.[62] This provision has also been narrowly interpreted. It would appear that Rule 60(b)(5) cannot be used to remedy ordinary judicial error of law.[63]

Perhaps, the broadest provision of Rule 60(b) is (6). Rule 60(b)(6) gives a district court the power to relieve a litigant from a final judgment "for any other reason justifying relief." This catch-all provision of Rule 60(b) provides the court with a "grand reservoir of equitable power to do justice in a particular case."[64] Not only is the language of this provision open to broad interpretation, but the usual one-year time limit for Rule 60(b) motions does not apply. Litigants have not overlooked the possibility of using Rule 60(b)(6) to correct judicial error of law.[65] This provision, however, may be used only in cases involving "exceptional circumstances."[66]

The Supreme Court first considered the extent of Rule 60(b)(6) in *Klapprott v. United States*.[67] A denaturalization order had been entered against the petitioner who, at the time of its entry, was a federal prisoner, unable to attend the proceeding or to obtain counsel for his defense. Upon his release from prison, he moved under Rule 60(b)(6) to reopen the denaturalization proceeding. The Court, per Justice Black, held that the motion was allowable under the Rule:

> Furthermore, 60(b) strongly indicates on its face that courts no longer are to be hemmed in by the uncertain boundaries of these and other common law remedial tools. In simple English, the language of the "other reason" clause, for all reasons except the five particularly speci-

61 *Id.* at 219.

62 7 MOORE, *supra* note 4, ¶ 60.26 [4], at 291.

63 Schildhaus v. Moe, 335 F.2d 529, 530 (2d Cir. 1964); Collins v. City of Wichita, 254 F.2d 837 (10th Cir. 1958); Berryhill v. United States, 199 F.2d 217 (6th Cir. 1952); 7 MOORE, *supra* note 4, ¶ 60.26 [4], at 290.

64 Radack v. Norwegian Am. Line Agency, Inc., 318 F.2d 538, 542 (2d Cir. 1963); 7 Moore, *supra* note 4, ¶ 60.27 [2], at 308.

65 Wagner v. United States, 316 F.2d 871 (2d Cir. 1963); Elgin Nat'l Watch Co. v. Barrett, 213 F.2d 776 (5th Cir. 1954); Morse-Starrett Prod. Co. v. Steccone, 205 F.2d 244 (9th Cir. 1953); Loucke v. United States, 21 F.R.D. 305 (S.D.N.Y. 1957).

66 Wagner v. United States, 316 F.2d 871 (2d Cir. 1963); Elgin Nat'l Watch Co. v. Barrett, 213 F.2d 776 (5th Cir. 1954); United States v. Karahalias, 205 F.2d 331 (2d Cir. 1953); Morse-Starrett Prod. Co. v. Steccone, 205 F.2d 244 (9th Cir. 1953); 7 MOORE, *supra* note 4 ¶ 60.27 [2], at 300-8. *But see* Radack v. Norwegian Am. Line Agency, Inc., 318 F.2d 538 (2d Cir. 1963); Bridoux v. Eastern Air Lines, Inc., 214 F.2d 207 (D.C. Cir. 1954); Wham, *Federal District Court Rule 60(b): A Humane Rule Gone Wrong*, 49 A.B.A.J. 566 (1963). *See also* Wright, *Amendments to the Federal Rules: The Function of a Continuing Rules Committee*, 7 VAND. L. REV. 521, 548-49 (1954).

67 335 U.S. 601 (1949).

> fied, vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice.[68]

This broad interpretation of Rule 60(b)(6) was short-lived. Just one year later, in *Ackermann v. United States,*[69] the petitioner attempted, under Rule 60(b)(6), to reopen a proceeding which had resulted in a denaturalization order. His inability to defend himself at the proceeding could not be attributed to extreme conditions, as was the case in *Klapprott.* The Supreme Court held, with Justice Black dissenting, that relief was not available under Rule 60(b)(6). *Klapprott* was distinguished as involving "extraordinary circumstances."[70]

This strict interpretation of Rule 60(b)(6) has made a motion under this provision available only in extreme cases.[71] To this extent, it may serve as a safety valve for outrageous judicial error.[72] For the case involving ordinary judicial error of law, relief under Rule 60(b)(6) is usually not available.[73] In *Wagner v. United States,*[74] the government attempted to use a Rule 60(b)(6) motion on the ground that the "judgment was contrary to the law and contrary to the evidence."[75] The Second Circuit stated: "The catch-all clause of Rule 60(b)(6) . . . cannot be read to encompass a claim of error for which appeal is the proper remedy; such a reading would emasculate the provisions of Rule 73(a) . . . ."[76]

IV. Conclusion

With the exception of the limited relief available under Rule 60(b)(5), it would seem that Rule 60(b) was not intended to correct fundamental judicial error of law.[77] Ultimately, the decision on whether it should be so extended is one of policy. Allowing a district court to correct its own error of law could well be an advisable change in the present Rules. Until this change is formally made, however, the Federal Rules continue to prescribe strict time limits terminating a district court's inherent control over its judgments. If these limits are not to be rendered nugatory, Rule 60(b) should not be read to include fundamental judicial error of law. If there is to be any relaxation of finality in judgments, Rules 52(b) and 59(e) should be amended — not ignored.

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68 *Id.* at 614-15.
69 340 U.S. 193 (1950).
70 *Id.* at 199.
71 See note 66 *supra.*
72 *See* United States v. Cato Bros., Inc., 175 F. Supp. 811 (E.D. Va. 1959); Comment, 58 MICH. L. REV. 793 (1960).
73 See note 66 *supra.* "Litigation must end some time, and the fact that a court may have made a mistake in the law when entering judgment, or that there may have been a judicial change in the court's view of the law after its entry, does not justify setting it aside." Collins v. City of Wichita, 254 F.2d 837, 839 (10th Cir. 1958).
74 316 F.2d 871 (2d Cir. 1963).
75 *Id.* at 872.
76 *Id.*
77 See notes 42 and 65 *supra.*