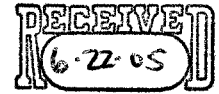


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May 23, 2005

Honorable Susan C. Bucklew, Chair, Advisory Committee on Criminal Rules
United States District Judge
United States District Court
United States Courthouse
801 North Florida Avenue, Suite 1403
Tampa, Florida 33602

05-CR-E

Professor David A. Schlueter, Reporter, Advisory Committee on Criminal Rules
St. Mary's University
School of Law
One Camino Santa Maria
San Antonio, TX 78228-602

Re: Proposed changes to Federal Rules of Criminal Procedure

Dear Judge Bucklew and Professor Schlueter:

I understand that the Advisory Committee on Federal Criminal Rules is currently considering how to incorporate crime victims' rights into the federal rules. I further understand that the Committee is considering a proposal by Judge Paul Cassell to amend Rule 17 to require notice to crime victims before their confidential records are subpoenaed. I am writing to support that proposal and provide information that might be useful to the Committee on this subject.

A recent case in Utah highlights the need for this change to the Federal Rules. In June 2002, fourteen-year-old Elizabeth Smart was kidnapped from her home in Salt Lake City, Utah. She was found nearly nine months later with a local transient and his wife, who were alleged to have taken Elizabeth at knifepoint. Charges were brought against the accused kidnapers, and local attorneys were appointed to represent them. Attorneys for the alleged kidnapper subpoenaed class records from Elizabeth's high school (class and teacher lists, reports cards, and disciplinary and attendance records) and medical records from her hospital. The school turned over the requested records without notice to Elizabeth's family or her attorney, while the hospital refused to disclose the requested records. Elizabeth's father learned of the subpoenas only after the school had disclosed Elizabeth's personal school records. As attorneys for Elizabeth, we filed a motion to have the records returned, and to quash the subpoena for the hospital records. Prosecutors on the case objected to the fact that they were not given the opportunity to file a motion to quash before the subpoenas were served and the school records produced, and filed a motion to quash both subpoenas. The matter is still pending.

Rule 17(a) of the Federal Rules of Criminal Procedure endorses the same "blank subpoena" procedure as does Rule 14 of the Utah Rules of Criminal Procedure, which led to the problem in the Elizabeth Smart case. Neither the Utah nor the federal rule require notice to the

victim that their private and/or confidential information is being subpoenaed, and neither rule gives the victim the opportunity to move to quash the subpoena. As happened in Utah, a victim's private and confidential information could easily be disclosed under a subpoena issued under Federal Rule 17(a), and the victim is then further victimized by the system. Rule 17, as it currently reads, allows only a witness to whom the subpoena is issued to move to quash the subpoena, while no provision is made for a victim to make a similar motion. This lack of protection for crime victims clearly violates the Crime Victims' Rights Act, 18 U.S.C. § 3771, which guarantees crime victims the right to be treated "with respect for the victim's dignity and privacy" as well as "with fairness." Instead, a crime victim's personal and confidential records are currently available to any party who simply takes the time to issue a subpoena.

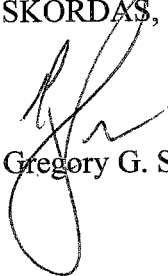
Because of this problem, Rule 17 should be amended. I have recently reviewed a law review article authored by Judge Paul Cassell, in which he advocates amending several federal rules to add further protection to crime victims. Specifically, he proposes amending Rule 17 to give victims notice before personal or confidential information is subpoenaed, and to allow victims to file a motion to quash such a subpoena. Such an amendment would not change the substantive rights of a party to obtain information, rather, it would change the procedure through which subpoenas are issued and information released, in an effort to more fully protect the victims of crime. I believe, along with Judge Cassell, that the rights of crime victims would be more adequately protected by adding the following language to Rule 17 of the Federal Rules of Criminal Procedure:

After indictment, no record or document containing personal or confidential information about a victim may be subpoenaed without a finding by the court that the information is relevant to trial and that compliance appears to be reasonable. If the court makes such a finding, notice shall then be given to the victim, through the attorney for the government or for the victim, before the subpoena is served. On motion made promptly by the victim, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive.

Amending Rule 17 to include this language would protect crime victims and ensure that their personal and confidential information is only disclosed after a finding by the court that such information is relevant and should be disclosed. Accordingly, I would ask that the Committee consider adding the above-proposed language, or other similar language, to Rule 17 in order to more fully protect the rights of crime victims. If I may be of any further assistance during your considerations, please feel free to contact me. I thank you for your time.

Very truly yours,

SKORDAS, CASTON & MORGAN


Gregory G. Skordas

cc: Judge Paul G. Cassell

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

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June 22, 2005

Mr. John Rabiej
Rules Committee Support Office
Admin. Office of the U.S. Courts
Thurgood Marshall Federal Judiciary Bldg
1 Columbus Circle, N.E. 417
Washington, D.C. 20002

(202) 502-1820

Re: Proposed Amendment to Rule 17 from Mr. Skordas

Mr. Rabiej:

Enclosed is a letter I received recently concerning proposed amendments to the Criminal Rules. It does not appear that the author forwarded a copy of his proposal to you or Peter, so I am sending this to you so that you can log it into your records.

Sincerely yours,


David A. Schlueter
Reporter, Criminal Rules Committee

Cc Judge Bucklew
Professor Beale