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June 22, 2001

Mr Carl E. Person
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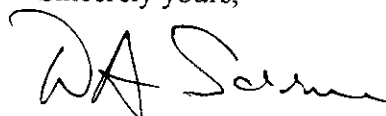
Re Rule 16—Discovery in Criminal Cases

Dear Mr Person

Thank you for your letter of June 16, 2001 I will forward a copy of your letter to the Rules Committee Support Office in the Administrative Office of the United States Courts so they can insure that it is logged into the system for future reference We will discuss your proposal at one of the upcoming meetings of the Advisory Committee

Thank you for your suggestion

Sincerely yours,



David A Schlueter
Professor of Law
Reporter, Criminal Rules Committee

Cc Mr John Rabiej

Carl E. Person
Attorney at Law
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June 16, 2001

Professor David Schlueter, Reporter
Criminal Rules Advisory Committee
St. Mary's University School of Law
One Camino Santa Maria
San Antonio, Texas 78228-8602
(210) 431-2212

Re Matter for Criminal Rules Advisory Committee

Dear Prof. Schlueter:

I met Kenneth J. Withers, Research Associate (Federal Judicial Center) on a BNA panel (relating to discovery costs of data processing discovery) and raised with him the problem which I see (as an antitrust litigator, and as someone trying to go through a 28 USC 2255 proceeding for an obviously wrongfully-convicted defendant).

I spend much of my time in civil litigation dealing with experts, and obtaining discovery relating to defendants' experts, including documents upon which their opinions were based, other cases in which they were involved, and pre-trial depositions of the opponents' experts to try to establish matters for use at trial to impeach or disqualify the expert for various reasons.

The problem I see is that this level of discovery **guided by adversarial requests (in document requests, interrogatories, requests to admit, and depositions)** is not available to persons whose lives or years are on the line as criminal defendants, but is available for civil litigants trying to ward off a \$10,000 liability.

I do not understand why the civil rules and practice relating to pre-trial discovery of experts is not granted to defendants

I believe Rule 16(a)(1)(E) and 16(a)(2) of the criminal rules should be changed to permit the same discovery of experts (see FRE 702, 703, 706) (including government experts) as is permitted under the civil rules and decisions thereunder, and not just limit the defendant as the limitations are set forth in Rule 16(a)(1)(E) / 16(a)(2).

Also, the defendant today should be getting the expert disclosure automatically, without requesting it, to enable the attorney and defendant to see the evidence and evaluate it. I'm sure many cases would have come out differently if full disclosure of this evidence was mandated. The requirement of automatic disclosure would assist counsel who subsequently prepare 2255 motions, to show where the original counsel was derelict. When the original counsel fails to request this expert information, it probably is not obtainable subsequently to help in making a 2255 motion.

Also, there should be no exemption for government-employee experts - see 16(a)(2). Anyway, I thought I would present this to you, for the purpose of trying to offset the huge

and growing advantage that the criminal prosecution has, which undoubtedly results in the high rate of pleas, and convictions when cases go to trial, and the incarceration and related disenfranchisement of the poor and middle class.

The injustice being permitted by the present criminal rule 16(1)(a)(E) -- from the viewpoint of someone who has litigated under the civil rules for 30 years -- is unconscionable and should be reviewed by your group.

Many thanks for listening to me

Carl E. Person
Member of the New York Bar



cc. <kwithers@fjc.gov <mailto:kwithers@fjc.gov>>
>

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July 5, 2001

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New York, New York 10036-3803

Dear Mr. Person:

Thank you for your suggestion to amend Criminal Rule 16. A copy of your letter was sent to the chair and reporter of the Advisory Committee on Criminal Rules for their consideration.

We welcome your suggestions and appreciate your interest in the rulemaking process

Sincerely,



Peter G. McCabe
Secretary

cc: Honorable W. Eugene Davis
Honorable Edward E. Carnes
Professor David A. Schlueter

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May 24, 2002

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RE: Action Taken by the Advisory Committee on Criminal Rules

Dear Mr. Person:

Thank you again for your proposed amendment to Rule 16 of the Federal Rules of Criminal Procedure. Your proposal was considered by the Advisory Committee on Criminal Rules at its April 25-26, 2002, meeting. After some discussion, the Committee declined to adopt your proposed amendment. The Committee felt that the current discovery procedures were adequate to protect the rights and interests of the parties involved.

We appreciate your interest in the federal rulemaking process and welcome any proposed amendments that you may have in the future.

Sincerely,



Peter G. McCabe
Secretary