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of Lewis & Clark College

06-CR-009
Testify
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December 21, 2006

Secretary of the Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
Washington, DC 20544

Dear Secretary:

I am Professor Douglas E. Beloof of Lewis & Clark Law School. I am requesting the opportunity to testify concerning criminal procedure rules that seek to implement the Crime Victims Rights Act (CVRA). I would like to testify on February 2, 2007 in San Francisco, California.

Please advise me of the site of this hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Beloof", written over a horizontal line.

Douglas E. Beloof
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Northwestern School of Law
of Lewis & Clark College

January 22, 2006

Testimony

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Judge Susan Bucklew,
Chair, Advisory Committee on Criminal Rules
Via email

Dear Judge Bucklew:

My name is Douglas Beloof and I am a law Professor at Lewis and Clark Law School and Executive Director of the National Crime Victim Law Institute (NCVLI). I have authored the only law school casebook on victim law in the criminal process, *Victims in Criminal Procedure*. NCVLI and I brief and argue victim law cases in appellate courts around the country. I have received an award from the United States Attorney General for Professional Innovation in Victims Services for my work to train and provide technical legal assistance to lawyers representing victims in criminal court. I have been cited by the United States Senate Judiciary Committee as a leading authority on crime victim law. I consulted with Senate members during the drafting of the CVRA. NCVLI is mentioned in the legislative history of the CVRA as providing legal services to victims that are worthy of emulating.

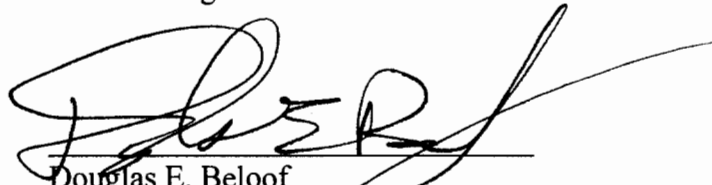
My formal written testimony will be submitted before the February deadline. In that testimony I will lay out more detail about the problems with the Committee's rules relative to the Crime Victims Rights Amendment (CVRA). This letter is in response to a request by the Chair of the Advisory Committee on the rules of Criminal Procedure to outline my views before the January hearing.

In general, my oral testimony in January 2007, will be supportive of Judge Cassell's Rule proposals and critical of the meager integration of the CVRA into the Rules by the Committee. I will discuss two issues. First are the three fundamental differences between Judge Cassell's proposals and the Committee's effort. Second, I will provide a conceptual boundary of the victims' right to fairness, a right that also supports Judge Cassell's Rule proposals. First, unlike Judge Cassell, the Committee has not relied on legislative history, a history that answers many of the issues the Committee leaves to litigation. I will urge the Committee to reference the Congressional legislative history of the CVRA.

Secondly, Judge Cassell's proposals exhibit an understanding of the values underlying victims' rights, while the Committee's effort does not. The values that are foundational to victims' rights include legitimization of the harm suffered by victims in the criminal act. Based on this harm are two fundamental interests of the victim, the interests in justice and in avoiding secondary victimization. Secondary victimization consists of adding insult, via criminal justice processes that exclude victim consideration, to the criminal injury. Because of these values, victims have rights under the CVRA. I will encourage the Committee to reference these values underlying crime victims' rights.

Third, the Committee misunderstands the relationship of prosecutorial and judicial discretion to victims rights under the CVRA. This misunderstanding contributes to the Committee's inadequate integration of the CVRA into the rules. I will explain that allowing victims' views to be heard and considered does not, in any way, alter the discretion of the prosecution or the court to make decisions. Instead, these decisions will simply be better informed under Judge Cassell's proposals.

The Committee is overly avoidant of the victims' right to fairness. I will testify to the boundaries of fairness. The boundaries include the defendant's constitutional rights and the properly understood discretion of prosecutors and courts. Once understood, it is hoped the committee will be less reluctant to embrace the right to fairness.

A handwritten signature in black ink, appearing to read 'Douglas E. Beloof', written over a horizontal line.

Douglas E. Beloof
Associate Professor of Law
Lewis & Clark Law School
Executive Director
National Crime Victim Law Institute