



06 - CR - 021

Judge Susan Bucklew
c/o Secretary of the Advisory Committee on The Federal Rules of Criminal Procedure
Administrative Office of the U.S. Courts
Washington, D.C. 20544

Dear Judge Bucklew,

I am the President of the National Alliance To End Sexual Violence (NAESV). Our organization's mission is to end sexual violence by strengthening national public policy related to sexual assault survivors and the issue of sexual assault. Our members are sexual assault coalitions, local rape crisis centers and others who are committed to this mission. We write to express deep concern over your decision not to adopt Judge Paul Cassell's Proposed Rules. Of particular concern to sexual assault victims are the Crime Victims' Rights Provisions for privacy and protection. (18 U.S.C. 3771(a) (1) a victim has the right to be "reasonably protected from the accused); 18 U.S.C. (a) (8) the victim's right to be treated with fairness and with respect for the victim's dignity and privacy").

It is a chronic problem in sexual assault case for victims' confidentiality interests to be violated. Two of Judge Cassell's rules attempt to adequately protect confidentiality. Judge Cassell's proposed Rules 12.1 and 12.3 and Victims addresses and phone numbers not to be disclosed for Alibi Public Authority Defense purposes, and Rule 17, to allow victims to adequately protect confidential records. In contrast the Committees proposed rules do not adequately protect victim confidentiality.

Rule 17. The Committee's Rule 17 change still leaves intact ex parte subpoenas of records, thus leaving the victim without information. This is no longer an acceptable approach to subpoenaing of victims' third party records. Instead victims should be informed and have the opportunity to oppose such intrusions into their confidentiality. Judge Cassell's most recent proposal is an excellent procedure. His suggestion is excellent because it takes into account that victims often cannot afford counsel. Thus, his rule provides for some judicial involvement before a subpoena can be issued. Moreover, it provides for notice to victims in all subpoenaing of their records. Judge Cassell's proposed rule 17s are the minimum changes needed to ensure the victims' right to protection, dignity and privacy, and we fully endorse them. On the other hand, the Committees proposed rule not only fails to adequately protect victims, it enshrines in the

rules, which have the force of law, a procedure whereby the defendant can, in the name of strategy seek an ex parte subpoena without notification to the victim. With due respect, we are long past the time when victims records can be subpoenaed without notice to the victim in order to preserve a defense strategy. Victims and especially victims of sexual assault whose records are almost always sought deserve better. We urge upon you the proposed rule of Judge Cassell, for the reasons set out in his written testimony.

Rules 12.1 and 12.3 withhold the victims name and address from the defendant. The Committee's proposed Rule provides a negligible standard for turning over this information, which may be vital to the protection and privacy of the sexual assault victim. Furthermore, the Committee's proposed hearing provisions do not even allow the victim to participate in the hearing. Surely such participation is in keeping with the "fairness" right in the CVRA. In fact, the victim's participation in that decision will typically obviate any need to disclose the address and phone number, because the victim may indicate they do not wish to speak to the defense. No law forces them to do so. We urge the committee to adopt Judge Cassell's proposed rule. If any hearing is to be conducted, the victim should be able to object to disclosure.

These confidentiality matters are of sufficient concern that, if confidentiality of crime victims remains inadequately valued and implemented by the Committee, we will urge Congress, as the ultimate implementing authority, to revisit the Committee's efforts. Thank you for your attention to this matter.

Sincerely,

Monika Johnson Hostler
President
NAESV