

February 8, 2007

06 - CR - 025

**NOVA**  
National Organization for Victim Assistance

Honorable Susan Bucklew, Chair  
c/o Secretary of the Advisory Committee on  
The Federal Rules of Criminal Procedure  
Administrative Office of the United States Courts  
Washington, DC 20544

Dear Judge Bucklew:

On behalf of the National Organization for Victim Assistance (NOVA), I write to urge you to reconsider the Advisory Committee's proposed amendments to the Federal Rules of Criminal Procedure regarding the implementation of the Crime Victims' Rights Act (18 USC §3771 et seq.).

In general, the Crime Victims' Rights Act (CVRA) affords victims of federal crime the ability to participate in all parts of the criminal process. In specific, the CVRA enumerates clearly defined and enforceable rights of victims, including the following:

- (1) The right to be reasonably protection from the accused;
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused;
- (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would e materially altered if the victim heard other testimony at that proceeding;
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding;
- (5) The reasonable right to confer with the attorney for the Government in the case;
- (6) The right to full and timely restitution as provided in law;
- (7) The right to proceedings free from unreasonable delay; and
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

18 USC §3771(a)

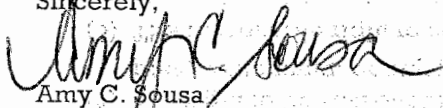
This bold approach to equitable jurisprudence was codified by near universal consent of Congress. As a consequence of enactment, the Advisory Committee on the Federal Rules of Criminal Procedure was tasked with developing procedural guidance for the implementation of the CVRA.

On October 24-25, 2005, the Advisory Committee approved proposed amendments to the Federal Rules of Criminal Procedure, which represent a myopic approach that understates both the intent and the black letter law of the CVRA. Specifically, the Committee did not incorporate victims' rights to speak in person at sentencing; to have notice of a subpoena seeking confidential record; or to participate in a hearing to determine if the victim's name and address should be released. In short, the proposed rules do not adequately operationalize the rights acknowledged in the CVRA.

NOVA is disheartened that the Advisory Committee did not seek to implement the CVRA in its entirety within the Federal Rules of Criminal Procedure, particularly when such comprehensive guidance was provided by Judge Paul G. Cassell in testimony and subsequently expressed in his law review article, "Treating Victims Fairly: Integrating Victims into the Federal Rules of Criminal Procedure".

While cautioned against expansive interpretations of law, the Advisory Committee is obligated to implement the black letter law of the CVRA through procedural guidance. This obligation has not yet been fulfilled. NOVA urges the Advisory Committee to reexamine the proposed rules in light of the precise language of the CVRA and with careful consideration and incorporation of Judge Cassell's analysis.

Sincerely,

  
Amy C. Sousa  
Executive Director