

April 23, 2008

Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Madam Speaker:

I have the honor to submit to the Congress the amendments to the Federal Rules of Criminal Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying these rules are excerpts from the report of the Judicial Conference of the United States containing the Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,

/s/ John G. Roberts, Jr.

April 23, 2008

Honorable Dick Cheney
President, United States Senate
Washington, D.C. 20510

Dear Mr. President:

I have the honor to submit to the Congress the amendments to the Federal Rules of Criminal Procedure that have been adopted by the Supreme Court of the United States pursuant to Section 2072 of Title 28, United States Code.

Accompanying these rules are excerpts from the report of the Judicial Conference of the United States containing the Committee Notes submitted to the Court for its consideration pursuant to Section 331 of Title 28, United States Code.

Sincerely,

/s/ John G. Roberts, Jr.

April 23, 2008

SUPREME COURT OF THE UNITED STATES

ORDERED:

1. That the Federal Rules of Criminal Procedure be, and they hereby are, amended by including therein amendments to Criminal Rules 1, 12.1, 17, 18, 32, 41, 45, 60, and new Rule 61.

[See infra., pp. — — —.]

2. That the foregoing amendments to the Federal Rules of Criminal Procedure shall take effect on December 1, 2008, and shall govern in all proceedings thereafter commenced and, insofar as just and practicable, all proceedings then pending.

3. That the CHIEF JUSTICE be, and hereby is, authorized to transmit to the Congress the foregoing amendments to the Federal Rules of Criminal Procedure in accordance with the provisions of Section 2072 of Title 28, United States Code.

**AMENDMENTS TO THE FEDERAL
RULES OF CRIMINAL PROCEDURE**

Rule 1. Scope; Definitions

* * * * *

(b) Definitions. The following definitions apply to these rules:

* * * * *

(11) “Victim” means a “crime victim” as defined in 18 U.S.C. § 3771(e).

* * * * *

Rule 12.1. Notice of an Alibi Defense

* * * * *

(b) Disclosing Government Witnesses.

(1) Disclosure.

(A) In General. If the defendant serves a Rule 12.1(a)(2) notice, an attorney for the

government must disclose in writing to the defendant or the defendant's attorney:

- (i) the name of each witness — and the address and telephone number of each witness other than a victim — that the government intends to rely on to establish that the defendant was present at the scene of the alleged offense; and
- (ii) each government rebuttal witness to the defendant's alibi defense.

(B) *Victim's Address and Telephone Number.* If the government intends to rely on a victim's testimony to establish that the defendant was present at the scene of the alleged offense and the defendant establishes a need

for the victim's address and telephone number, the court may:

- (i) order the government to provide the information in writing to the defendant or the defendant's attorney; or
- (ii) fashion a reasonable procedure that allows preparation of the defense and also protects the victim's interests.

(2) *Time to Disclose.* Unless the court directs otherwise, an attorney for the government must give its Rule 12.1(b)(1) disclosure within 10 days after the defendant serves notice of an intended alibi defense under Rule 12.1(a)(2), but no later than 10 days before trial.

(c) Continuing Duty to Disclose.

(1) *In General.* Both an attorney for the government and the defendant must promptly

disclose in writing to the other party the name of each additional witness — and the address and telephone number of each additional witness other than a victim — if:

- (A) the disclosing party learns of the witness before or during trial; and
- (B) the witness should have been disclosed under Rule 12.1(a) or (b) if the disclosing party had known of the witness earlier.

(2) *Address and Telephone Number of an Additional Victim Witness.* The address and telephone number of an additional victim witness must not be disclosed except as provided in Rule 12.1 (b)(1)(B).

* * * * *

Rule 17. Subpoena

* * * * *

(c) Producing Documents and Objects.

* * * * *

(3) *Subpoena for Personal or Confidential Information About a Victim.* After a complaint, indictment, or information is filed, a subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order. Before entering the order and unless there are exceptional circumstances, the court must require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object.

* * * * *

Rule 18. Place of Prosecution and Trial

Unless a statute or these rules permit otherwise, the government must prosecute an offense in a district where the offense was committed. The court must set the place of trial within the district with due regard for the convenience of the defendant, any victim, and the witnesses, and the prompt administration of justice.

Rule 32. Sentencing and Judgment

(a) [Reserved.]

* * * * *

(c) Presentence Investigation.

(1) *Required Investigation.*

* * * * *

(B) *Restitution.* If the law permits restitution, the probation officer must conduct an

investigation and submit a report that contains sufficient information for the court to order restitution.

* * * * *

(d) Presentence Report.

* * * * *

(2) *Additional Information.* The presentence report must also contain the following:

- (A) the defendant's history and characteristics, including:
- (i) any prior criminal record;
 - (ii) the defendant's financial condition; and
 - (iii) any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in correctional treatment;

(B) information that assesses any financial, social, psychological, and medical impact on any victim;

* * * * *

(i) Sentencing.

* * * * *

(4) *Opportunity to Speak.*

(A) *By a Party.* Before imposing sentence, the court must:

- (i) provide the defendant's attorney an opportunity to speak on the defendant's behalf;
- (ii) address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence; and

(iii) provide an attorney for the government an opportunity to speak equivalent to that of the defendant's attorney.

(B) *By a Victim.* Before imposing sentence, the court must address any victim of the crime who is present at sentencing and must permit the victim to be reasonably heard.

* * * * *

Rule 41. Search and Seizure

* * * * *

(b) Authority to Issue a Warrant. At the request of a federal law enforcement officer or an attorney for the government:

* * * * *

(3) a magistrate judge — in an investigation of domestic terrorism or international terrorism —

with authority in any district in which activities related to the terrorism may have occurred has authority to issue a warrant for a person or property within or outside that district;

- (4) a magistrate judge with authority in the district has authority to issue a warrant to install within the district a tracking device; the warrant may authorize use of the device to track the movement of a person or property located within the district, outside the district, or both; and
- (5) a magistrate judge having authority in any district where activities related to the crime may have occurred, or in the District of Columbia, may issue a warrant for property that is located outside the jurisdiction of any state or district, but within any of the following:

- (A) a United States territory, possession, or commonwealth;
- (B) the premises — no matter who owns them — of a United States diplomatic or consular mission in a foreign state, including any appurtenant building, part of a building, or land used for the mission’s purposes; or
- (C) a residence and any appurtenant land owned or leased by the United States and used by United States personnel assigned to a United States diplomatic or consular mission in a foreign state.

* * * * *

Rule 45. Computing and Extending Time

* * * * *

(c) Additional Time After Certain Kinds of Service.

Whenever a party must or may act within a specified period after service and service is made in the manner provided under Federal Rule of Civil Procedure 5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under subdivision (a).

Rule 60. Victim's Rights

(a) In General.

- (1) *Notice of a Proceeding.*** The government must use its best efforts to give the victim reasonable, accurate, and timely notice of any public court proceeding involving the crime.
- (2) *Attending the Proceeding.*** The court must not exclude a victim from a public court proceeding involving the crime, unless the court determines by clear and convincing evidence that

the victim's testimony would be materially altered if the victim heard other testimony at that proceeding. In determining whether to exclude a victim, the court must make every effort to permit the fullest attendance possible by the victim and must consider reasonable alternatives to exclusion. The reasons for any exclusion must be clearly stated on the record.

- (3) ***Right to Be Heard on Release, a Plea, or Sentencing.*** The court must permit a victim to be reasonably heard at any public proceeding in the district court concerning release, plea, or sentencing involving the crime.

(b) Enforcement and Limitations.

- (1) ***Time for Deciding a Motion.*** The court must promptly decide any motion asserting a victim's rights described in these rules.

- (2) ***Who May Assert the Rights.*** A victim's rights described in these rules may be asserted by the victim, the victim's lawful representative, the attorney for the government, or any other person as authorized by 18 U.S.C. § 3771(d) and (e).
- (3) ***Multiple Victims.*** If the court finds that the number of victims makes it impracticable to accord all of them their rights described in these rules, the court must fashion a reasonable procedure that gives effect to these rights without unduly complicating or prolonging the proceedings.
- (4) ***Where Rights May Be Asserted.*** A victim's rights described in these rules must be asserted in the district where a defendant is being prosecuted for the crime.

- (5) ***Limitations on Relief.*** A victim may move to reopen a plea or sentence only if:
- (A) the victim asked to be heard before or during the proceeding at issue, and the request was denied;
 - (B) the victim petitions the court of appeals for a writ of mandamus within 10 days after the denial, and the writ is granted; and
 - (C) in the case of a plea, the accused has not pleaded to the highest offense charged.
- (6) ***No New Trial.*** A failure to afford a victim any right described in these rules is not grounds for a new trial.

Rule 61. Title

These rules may be known and cited as the Federal Rules of Criminal Procedure.