

#2017-009

June 1, 2018

VIA EMAIL (rulescomment@courts.state.nh.us)

Advisory Committee on Rules
New Hampshire Supreme Court
One Charles Doe Drive
Concord, NH 03301

Re: 2017-009. Proposed Supreme Court Rule Addressing Identification of Crime Victims

Dear Chief Justice Lynn and the members of the Advisory Committee on Rules:

I will let the legal experts weigh in on why this proposed rule change is unconstitutional. I'm sending my two cents worth as a longtime reporter and New Hampshire citizen who values the public's right to know what all three branches of government are doing.

1. The proposed rule change is either fatuous or it's disingenuous. Since the victim names would only be disguised in New Hampshire Supreme Court records, they would be easy enough to find at the Superior Court level. I don't know why, however, anyone would be looking for victim names unless there had been a wrongful conviction that was discovered much later. I am hopeful that all state court records will be easily searchable online soon as they are in the federal system. Or the proposed rule is intended to be extended to all other courts, possibly down the road when no one is looking. Lots of changes start that way in New Hampshire, which would make it disingenuous, if not downright deceitful.
2. It has been an honor to cover the New Hampshire courts as a reporter for more than 30 years. I have always trusted that the courts will side with openness and the New Hampshire Constitution even if it is exempt from the state right-to-know law. Even if I disagree from time to time with its decisions, I believe the judges are motivated by their best instincts to make sure the process is as open as humanly possible.
3. Supreme Court Rule 12 is very clear that all records shall be available for public inspection unless otherwise ordered by the court. It cites specific exemptions such as juvenile records, termination of parental rights, guardianship cases and grand jury records. Rule 12 says: "The burden of proving that a case record or a portion of a case record should be confidential rests with the party or person seeking confidentiality." And it provides a procedure to request confidentiality of a record and a separate procedure to request confidentiality be lifted even if the one asking doesn't have standing in the case. Why mess with a good thing?
4. In a case filed by InDepthNH.org in which former Attorney General Joseph Foster redacted the names of the attorneys who complained against former Rockingham County Attorney Jim Reams in the first petition to remove him from office, Superior Court Judge Richard McNamara sided with unredacting the names after first giving people the opportunity to argue why their right to privacy was more important than the public's right to know. None of the people involved chose to make the argument

and the names were unredacted, although the unredacted version was never posted on the attorney general's website.

5. Who doesn't love the New Hampshire Constitution? It is far better than RSA 91a. I believe this committee will say no to this proposed rule because of these two articles: **[Art.] 8. [Accountability of Magistrates and Officers; Public's Right to Know.]** All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted.
June 2, 1784
Amended 1976 by providing right of access to governmental proceedings and records. **[Art.] 22. [Free Speech; Liberty of the Press.]** Free speech and Liberty of the press are essential to the security of Freedom in a State: They ought, therefore, to be inviolably preserved.
June 2, 1784
Amended 1968 to include free speech.
6. I remember many years ago a woman asked me not to print her name in the newspaper. If memory serves, and it doesn't sometimes, she had been stabbed many times and was worried that the man who attacked her would come after her. He already had. I remember the blood on the walls in the hallway of her apartment building. He knew where she lived because he was a former boyfriend who was on probation at the time. She was embarrassed by having been victimized. I told her we could only withhold her name if she had been sexually assaulted. I told her I was sorry, but I believed that telling the truth to the best of our ability protects us all. I hope she is OK. We were able to report that the government fell down on its job of protecting victims by not telling her he was on probation and working near her apartment.
7. Again, telling the whole truth to the best of our ability protects us all. It's a slippery slide when government wants more secrecy. It has been my experience over the years that it is usually not about protecting victims, but about protecting the image of bureaucracies.
8. While I have your attention, I think the public should be made aware of these public hearings via news releases from the court.

Thanks, Nancy West, New Hampshire Center for Public Interest Journalism, which publishes online the nonprofit news outlet InDepthNH.org

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