

Judges don't like defendant secrecy

Legislature urged to 'fix this statute'

Don't you love to say "I told you so!"? Two years ago, a crime victim bill was a major piece of legislation in the Missouri General Assembly. One of the key issues addressed by the bill was rape kits. Women's groups objected to victims being charged for the use of a rape kit, a key component required by law enforcement in the investigation of such matters.

The bill also included a procedure whereby the Missouri Secretary of State's Office would handle receipt and forwarding of mail for women who were seeking to keep their address confidential. For their protection, the women could use an address for the Secretary of State for their mail, and that office would forward the mail to the women.

Women's groups are a formidable opponent. Usually I stand with them, but I opposed this measure. One of the provisions provided that "any information contained in any court record ... that could be used to identify ... any victim of sexual assault, domestic assault, stalking, or forcible rape shall be closed and redacted from such record prior to disclosure to the public."

Newspapers usually don't print the names of rape victims. But prior to this law, those names were available in court records and were available to the media for cross-checking or other purposes.

Only in a few situations has the media used the name of a victim, and in many of those cases, it was because the victim chose to go public about the incident.

But Missouri Press Association has

always taken a position against secrecy involving court records of any kind, and whatever good motives might be behind such a bill, it was clear to the association that beginning the process of closing access to court information was not the path for our court systems.

We argued fervently that closing such information was not proper, and that it would potentially close access to even the perpetrator's information because it might "be used to identify ... any victim ..."

No one would listen to us. Gov. Matt Blunt signed the bill into law in 2007.

Meanwhile, in November 2006, a lawyer in Boone County got into an argument with his spouse. Police were called and the lawyer was arrested and charged with domestic assault. (According to Boone County Court records, which predate this new statute, his name is Michael Lee Selby, and he's no longer a member of The Missouri Bar.)

He was convicted and sentenced to three years in jail and a fine. He filed an appeal. The case was not ruled upon until October of this year, when the Court of Appeals upheld his conviction.

In the meantime, the new state statute had taken effect, so in the Court of Appeals, Selby is referred to only as M.L.S. because he filed a motion last spring seeking to protect his identity.

Because the defendant's motion was unopposed by the state, the Court was not in a position to balance the opposing arguments and rule on the issue of whether Section 566.226, R.S.Mo., was being properly interpreted by this



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defendant in asking for the protection of his identity.

Courts don't generally take up issues on their own volition and issue rulings on them. But what is extremely interesting is that the Court itself was not happy with this turn of events. The Hon. Thomas H. Newton, Chief Judge in the Western District Court of Appeals, commented in a footnote about this matter.

"We harbor some doubt as to whether Section 566.226 should be interpreted as broadly as Appellant contends," said Judge Newton.

That's not all. The Hon. Ron Holliger, who also heard this case as part of the three-judge panel, spoke more strongly. In considering the decision to allow the defendant to proceed using only his initials, Judge Holliger noted, "At first blush, this result seems appalling, and after more consideration remains so."

He hammers the Missouri legislature for the structure of the sentence that allows closure of "any information" and notes that it is defined by this statute to be that which "could be used to identify or locate the victim ...". Judge Holliger notes that, "If the purpose of the statute is to protect the identity of the victim, then it is questionable why domestic assault cases are included at all. By definition in a domestic assault case, the perpetrator knows the identity of the victim."

But wait — there's more! "*Moreover, it is worrisome anytime that in a criminal case the name of the defendant is concealed from the public. It is particularly so here because the defendant is a well-known member of the community and engaged in a profession that does not tolerate such criminal conduct. I strongly urge the legislature to fix this statute.*" (Emphasis added.)

Amen.

The Missouri Press Association's legislative committee will meet on Nov. 14 in Columbia to discuss issues for consideration in advance of next year's legislative session. I urge you to lend your support. If you'd like to participate, contact MPA executive director Doug Crews, (573) 449-4167 or dcrews@socket.net.

We'd welcome your support!