

# North Carolina Media Quash Subpoena in Federal

## Digital Media and Data Privacy Law Blog

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North Carolina media organizations won a significant victory in the U.S. District Court for the Middle District of North Carolina last week when a group of the state's media outlets convinced a federal judge to quash subpoenas that sought from the media nearly two years' worth of news coverage of the Eve Carson murder investigation and court proceedings.

Counsel for Demario James Atwater, the defendant in the federal criminal case, issued subpoenas to media organizations across the state generally seeking all publicly aired broadcasts or published news articles regarding the death of Eve Carson and the defendants, as well as all web articles and public comments posted to those web articles maintained by the news media. The defense counsel issued the subpoenas to the media to look for support for the defendant's request to change the location of the federal criminal trial from the Middle District of North Carolina to a federal court in Virginia. The defense has argued to the court that Atwater cannot obtain a fair trial before an impartial jury in the state of North Carolina due to the media coverage of the murder and the defendant.

Seventeen media outlets fought the defendant's subpoenas in court on March 10, 2010, rather than turn over the material willingly to the defense. Their oral argument mostly focused on Rule 17 (c) of the Federal Rules of Criminal Procedure and the standards set forth in *United States v. Nixon*, 418 U.S. 683, 699-700 (1974). Each of the companies argued to the court that the defendant's subpoenas were "overbroad," "unreasonable," and/or "unduly burdensome" because compliance would force the news media to cull through two years' worth of news coverage—at the media's expense. Complying with the request could take weeks or months and thousands of dollars in some cases, according to media attorneys.

The media attorneys also argued that the material sought by the defense was readily available on each company's website or, in the case of newspapers, in the public library. In other words, the defense counsel has a readily available alternate means of obtaining the information without requiring the media to take on the burden of finding and delivering the material.

During the hearing, the defense counsel could not identify any inflammatory news story that might prejudice the jury pool and jeopardize Atwater's federal criminal trial. The only specific news coverage the defense attorney could point to was repeated images of the defendant going and coming from legal proceedings in a prisoner's jumpsuit---all factual occurrences.

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After hearing from the attorneys representing the 17 media companies and the defense, Chief District Judge James A. Beaty, Jr. ruled from the bench that the media would not be compelled to produce the material sought. The judge would order the media to comply with the subpoena when the material sought could be obtained by the defense through publicly available sources, such as the internet and public library. During questioning, Judge Beaty seemed particularly concerned that honoring the subpoena would shift the defendant's burden to obtain material to support his case from the defendant to the media.

The victory in this case is important because complying with a subpoena—especially a very broad one that covers a long period of time—costs time and money. With news rooms stretched as thin as they are in these difficult economic times, the media simply do not have the resources to devote personnel to reviewing video footage or website postings to comply with a subpoena. Subpoenas issued to the media divert precious human resources from newsgathering activities. And, in a case, like this one, where the criminal defendant cannot identify a single news story that is inflammatory or prejudicial to the defense, requiring the news media to participate in a “fishing expedition” is especially unfounded.

The victory is also significant because the subpoenas were issued in a federal proceeding, which meant that North Carolina's reporter's shield statute was unavailable. We've reported on the halting process by which media interests have pushed to have Congress pass a federal shield statute, to date without success.

The only issue before the court on March 10 was whether or not the media would be required to comply with the subpoena and be forced to turn over documents and video. Judge Beaty will rule on the defendant's request to change venue of Atwater's federal trial at later date.

The Carson murder has garnered significant local and national media attention. This is at least the second time the news media has become involved in the legal proceedings against the two people accused of the crime. We covered the media's efforts to obtain access to sealed search warrants in the state court actions [here](#).