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## EDITORIAL:

# STATE V. DEFENDANT V. VICTIM: THE POTENTIAL PROBLEM WHEN VICTIMS ENTER AN APPEARANCE IN CRIMINAL CASES

Kendra Mullin\*

*"To ensure that victims of crime receive justice and are treated with dignity and compassion through comprehensive victims' rights and services."*

This is the mission statement for the Maryland Crime Victims' Resource Center, listed on the Center's homepage at [www.mdcrimevictims.org](http://www.mdcrimevictims.org). How could this mission possibly be a problem? What could be wrong with having a resource center that deals exclusively with victims' rights? When people are victims of crimes, they need help and support. They need counseling and therapy. And many are beginning to think they need a voice in the legal system as well – their own personal lawyer, separate from the defense or prosecution, to litigate their rights and their needs. The presence of victims' lawyers has grown steadily in Maryland courts in the past few years. Once a place where victims and their families could receive information and assistance, the Maryland Crime Victims' Resource Center is now providing lawyers who are entering their appearance in the victim's case. And this is where the problem occurs. For the prosecution and defense, a criminal case has always been a two-man show. When victims begin to hire lawyers, both the prosecution and defense have to answer to that lawyer in addition to each other.

Maryland's Constitution states that each state's attorney's office must have some kind of resource available to victims of crime. Most prosecutors' offices have a number of Victim-Witness Assistance Counselors (VWAC) whose main job is to develop a rapport with the victims and witnesses involved in criminal cases. As one prosecutor from Anne Arundel Circuit Court stated, "It is very important to form a bond with the victims. They need to be able to trust the VWAC and in turn, we have to be able to trust the victims." The victims' testimony and involvement in the case is extremely important to prosecutors' cases. This type of bond or rapport is much more difficult to develop when the prosecutor has to go through the victim's attorney. The lack of meaningful relationship that could be formed between the victims and the VWAC could severely damage a case. Furthermore, when a victim hires a lawyer from the Resource Center, the prosecutors and VWACs have to get permission from the lawyer in order to talk with this victim. This creates a problem in a number of ways. First, what if the lawyer for unexplained reasons doesn't want to grant this permission? Many cases could simply not be prosecuted without the help and testimony from victims. Another issue occurs when these attorneys do not specify which victim in a criminal case they are representing. In a recent Maryland Circuit Court case, a lawyer from the Resource Center entered his appearance "on behalf of the victims and their families."

This creates a substantial amount of confusion for the state's attorneys who do not know who they can talk to about the case and who they have to gain permission from first. With all of the complexities that come with prosecuting a criminal case, this disruption and interference is unnecessary and could critically

limit a state's attorney's ability to litigate a case. Second, a victim acts differently when questioned about a particularly troubling experience when there is someone else in the room. Even if the attorney sat in on the conference with the victim and state's attorney and never said a word, his or her presence can make a victim change his story, answer questions differently, or take cues from simple movements and noises that the attorney makes. This is especially true with children and could make it virtually impossible for prosecutors to gain the full true story from children victims when there is an added presence in the interview room.

Another problem with victims' lawyers entering appearances in criminal cases is their ability to file motions. For example, in a recent Maryland case, a victim's attorney filed a motion to prevent future postponements in the case. The attorney felt that the victim needed closure to the incident, and the postponements filed by the prosecution and defense were getting in the way of that. However, postponements in a case might be beneficial. The prosecutor might need time to gain the necessary evidence, talk with witnesses, and interview police officers. The defense attorney might need time to do his own investigation, talk with the defendant's family members, and interview witnesses. Therefore, when the victim's attorney files this type of motion, who is really benefiting? Neither the prosecution nor the defense benefits, and this type of motion could actually end up hindering both sides. An increase in motions filed by victims' attorneys can only lead to confusion and difficulty for both the prosecution and defense to litigate a case to the best of their abilities.

The goal of the Maryland Crime Victims' Resource Center is obviously not to hinder the prosecution of criminals. The goal is first and foremost to benefit the victims. And the Resource Center has helped many victims since its inception nearly twenty years ago. For example, the Center has made great strides in victims' rights legislation, particularly in the past ten years. However, talking with state's attorneys and VWACs is a much better way to accomplish this type of legislation than by interfering in criminal cases. At the moment, the Resource Center's attorneys have not entered into enough cases to make the situation dire. Nevertheless, a few Maryland state's attorney's offices have contemplated implementing a policy to ensure that prosecutors can fully and freely interview witnesses. The new policy would allow prosecutors and VWACs to conference with victims alone, regardless of whether they were represented by an attorney. Maryland state's attorneys do not want to have to take this next step, but many believe that three's a crowd when it comes to prosecuting criminal cases.

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