



October —
November 2003

New Mexico Victims' Rights Bulletin

VICTIMS' RIGHTS TAKE A BLOW TO THE HEART

January 25, 2003 two men were stabbed. The offender fled the scene in a vehicle stolen from the driveway of a neighbor. The offender was arrested and charged with two counts of aggravated battery with a deadly weapon and receiving and transferring a stolen vehicle. The offender told the police that he "didn't give a f___" about anything the officer had to say because his mother worked in the court and she would take care of everything. One of the stabbing victims consulted a private attorney. The attorney filed an entry of appearance to insure that the victim's rights would be protected. The Office of the District Attorney filed a motion to strike the entry. In the motion the prosecutor stated: "The District Attorney's Office conscientiously works to ensure that these rights are respected and enforced..." The judge was presented with ample evidence to the contrary but the judge still granted the state's motion and struck the entry. A motion for reconsideration was filed and was heard on 10/30/03.

Two reporters were present. One of them works for the Journal. Three days later an editorial appeared in the Journal which supported the judges decision and went on to state: "The judicial branch should not go beyond a simple reading of victim rights' law to impose more expense and a more cumbersome process on the criminal justice system."

Mary Martinez, a passionate advocate for victims' rights, wrote the following response:

Dear Editor,

I read your editorial, "Pushing the Envelope Of Victims Rights", and I agree completely with you. Add ANOTHER lawyer? I don't think so. In fact, let's take it a step further and do away with the state's lawyer and remove the defendant's attorneys too. The system is, just as you say, a "cumbersome" one. It would surely speed it up to have only the judge. The accused could come in and tell his story. The judge could decide. We don't need all these attorneys cluttering up the place. Do we?

The first victim rights statutes were called "Crime Victims' and Witnesses' Bill of Rights" and were enacted in 1987. I know because I was there. These rights were necessary because crime victims were treated as evidence. If your wife were murdered, we wouldn't tell you about the case. Not necessary. You would NOT be entitled to attend the trial. You would NOT be notified of a plea offer. You would NOT be told if there was a sentencing hearing. You had no right to attend or receive notice – of any kind. And when the killer was released? You had NO right to notice of parole. If the killer had threatened to kill you when he got out – you STILL had NO right to know he was being paroled. Same thing if your child was taken and raped. You – and your child – had NO rights. Crime victims were first victimized by the criminal – and then by the system itself. It was very painful.

After hundreds and hundreds – thousands – of victims were put through such painful treatment by this system of "justice" these people gathered together and secured new laws so that in the future victims of crime would be treated humanely and fairly. These laws were passed in 1987 and were the original victim rights statutes, which required such humanity as notification of hearings and parole. Simple humanity. Humanity, which had not been given to victims. It is important to note that it was humanity which had to be legislated and forced upon many judges, and prosecutors. Simple acts of decency that many judges and prosecutors had refused their victims. (And yes, I mean their victims. It was, after all, secondary victimization.)

After the first Victim of Crime Act was passed, some lawyers changed. Some lawyers in the judiciary and some in prosecution actually did provide victims with their statutory rights, but not all, certainly not all. Many victims continued to be treated inhumanely. Why? Because there was no enforcement for violation of these rights. If the DA had the funding and the staff to provide the rights – and just decided not to do it, what could the victim do? The answer was nothing. Absolutely nothing. After the statutory rights were ignored, it was decided victims needed to have these simple, basic human decency "rights" through the Constitution of the State of New Mexico. The statutory rights had been literally non-enforceable. Rights established by the Constitution of the State of New Mexico – Constitutional Rights – would be enforceable. So it was thought. And this was undertaken.

In 1992 the Constitution of the State of New Mexico was amended. Victims of violent, vicious crimes now had CONSTITUTIONAL RIGHTS. Rights imbedded in the Constitution. Were they functional? Nope. Not yet. First, statutes had to be enacted to spell out exactly what these "constitutional rights" entailed. And this was undertaken. Two years later, in 1994, these "enabling statutes" were passed. Now victims had legally binding rights. Or so we thought.

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Passionate advocate for victims' rights responds ...*(Cont'd from page 1)*

Judges are supposed to ensure that laws are followed in their courtrooms. District Attorneys are also supposed to secure the laws. But what if the victim is not notified of a sentencing hearing? What if the victim is denied their right to speak at sentencing? What happens then? Well, even after all these years the answer is: NOTHING happens. ABSOLUTELY NOTHING. Here are a couple of contemporary examples. A young man is murdered. The perpetrator is caught, and rather than face a long prison sentence or death, he decides to take a plea. From the beginning the family has told the District Attorney that they wanted to speak at sentencing. That would be the family's ONLY opportunity to be present and be heard. They had prepared and prepared. The District Attorney knew it. The family had even told the judge that they wanted to speak at sentencing. It was their legal right. It was their constitutional right. At the sentencing hearing, the judge and the district attorney both noted that the family didn't know about the hearing and had wanted to be present and speak. Nonetheless, both the judge and the district attorney went ahead with the hearing without the family in full violation of the family's rights. The defendant was sentenced. Later, through the media the family learned about hearing and the sentencing. They were devastated. As with most evidence that isn't needed in a case, the family had been ignored. Simple as that. When they requested a rehearing, a re-sentencing, they were told it couldn't be done. The defendant had the "right" to rely on the finality of sentencing. It wouldn't be "fair" to have another sentencing hearing. It wouldn't be "fair." Another case was a young girl, who was taken out and raped by three adult men. Then the little girl was murdered. All three men took plea agreements. Two turned state's evidence and got off easy. The third pled guilty to murder. He knew that his judge was against the death penalty. He expected he would receive a life sentence. And he knew he would probably get a death sentence if a jury heard what he had done to the little girl, so he waived the jury and went with the judge. He figured wrong. The judge, a judge who abhorred the death penalty, considered the crime so brutal and the victim so young, that he gave the killer a sentence of death. The killer appealed. The family knew nothing of the appeal. Since it was a plea, and since the killer had agreed to it, they thought the matter was over. It wasn't. The family was never told. Years later one family member saw that the killer had won his appeal, and had been released. Many hearings had been held. The family was never told of a single one. Their recourse? Nothing. Even with the "Victims of Crime Act", even with the Constitutional Amendment, even with the enabling statutes, the family had no recourse. They were never told that the case had continued on and on. Nor were they told of the release of the little girl's rapist and killer. You see, after the fact the victim has no real recourse.

If a victim is denied every single right he has, there is little a victim can do after the fact. Sue the District Attorney? Can't do. Sovereign immunity – you can't sue the District Attorney. Sue the court? Can't do. Sovereign immunity – you can't sue the court. Sue for a rehearing? Can't do for many hearings because double jeopardy attaches for the defendant. Sue for a re-sentencing? Can't do because the defendant has the right to rely on the finality of sentencing. And on and on and on...

Now you come along and chastise the victim for wanting representation BEFORE his rights are violated. That is, in fact, the only time that the rights can be protected – because AFTER the right is violated, it's too late to enforce it. Think about that. How would YOU restore the violated right of a victim? Maybe, just maybe, after ALMOST SEVENTEEN YEARS of having victim rights violated DAILY (Yes, it IS DAILY in the State of New Mexico) – maybe, just maybe, you would want some legal representation yourself. IF it were YOU having YOUR statutory and constitutional rights minced, shredded and ignored. And you were provided no recourse. But, then, since it ISN'T you, well, let's just not consider having another attorney in court. It's cumbersome. I agree. Cumbersome indeed. But if we're not going to have law abiding people represented, well, let's just do away with the State and the defense as well. Much less cumbersome.

WHO PROTECTS THE VICTIM IN COURT? So far, it's nobody.

Sincerely,

Mary Martinez

FOOTNOTE: Victims have a constitution and statutory right to the timely disposition of the case. The hearing before Judge Allen was 10/30/03. Ten months had passed and not only had the case not been adjudicated but the six-month rule was due to expire 11/14/03. This information was brought to the attention of the prosecutor on 10/30/03 and again the following the week and again on 11/12/03. It was not until Linda Atkinson spoke with Deputy District Attorney Todd Heisey did we get any positive response. Attorney Heisey checked into the matter and called us to assure us that the request for an extension would be filed in time.

**NEW MEXICO
VICTIMS' RIGHTS PROJECT**

The Victims Rights Project is a joint effort of the DWI Resource Center and other victim organizations.

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The New Mexico Victims Rights' Bulletin is published every other month by the New Mexico Victims' Rights Project. The goal in distributing information, news and updated legislation is to promote justice and healing for crime victims by sharing information and fostering sensitivity within the justice system. Question regarding content may be directed to Linda Atkinson, Executive Director at (505) 292-2838.

Crime Victim Resources (Bernalillo County)

Albuquerque Police Department	242-2677
Bernalillo County Sheriff's Dept.	798-7000
NM State Police, Albuquerque area	841-9256
District Attorney's Office	841-7100
District Attorney's Victim Impact	841-7020
NM Crime Victims' Reparations	841-9432
MADD	255-2955
DWI Resource Center	881-1084
UNM Crisis Center	277-3013
Rape Crisis Center	266-7711
Hopeline national suicide hotline	(800) 247-1121
Child Protective Services	841-7800
Adult Protective Services	841-4500
Survivors of Homicide	232-4099
Women Community Association	247-4219

For resources in your community visit our website at
www.nm-victimsrights.org