

THE VICTIM IMPACT STATEMENT AT SENTENCING A SUCCESSFUL JOURNEY

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In 1988 Richard "Dick" Kramer sat quietly in the courtroom as the killer of his daughter Betty Ann was about to be sentenced. At Dick's request, the prosecutor asked the judge to allow him to give a victim impact statement. The judge refused, and the words that the victim's father had emotionally struggled for several days to put down on paper were heard by no one. Soon thereafter, Dick became a major part of the victims' rights grassroots movement in New Jersey, and for many years he remained deeply hurt over the fact that not one of Betty Ann's survivors was permitted to speak about her at the sentencing, and in the presence, of the man who took her life.

In 1988, giving the victim's survivors the opportunity to speak at sentencing was within the judge's discretion. Some permitted it, and some did not. In March 1991, at the height of the victims' rights movement in New Jersey, the Crime Victims Bill of Rights was amended to give to victims the specific right to deliver an impact statement at sentencing.¹ Within less than one year the Victim's Rights Constitutional Amendment was adopted.² The purpose of the impact statement law was to afford the victim³ a sense of dignity and respect, and the chance to finally have a voice in this public process. Most judges understood this, some did not; and experiences like that of Dick Kramer and his family continued.⁴

Cases involving multiple victims can be difficult for the courts; nevertheless, in the sentencing of Charles Cullen in 2006 for killing 29 patients, Somerset County Judge Paul W. Armstrong did a masterful job in giving each of the victim survivors the opportunity to speak in court.⁵ Contrasted to this is a sentencing in another county that I attended earlier this year involving multiple victims. On more than one occasion the judge warned several of the nervous, highly emotional survivors that if their statements went in a certain direction, "I'll shut you down." In a case involving the death of a child earlier this year I experienced a first. Over my objection, the court permitted the defendant's attorneys to make editing changes to the impact statements of the victim's grandmother and younger brothers.⁶ I was advised that in the latter two cases, there was a concern in each that if the offenders became upset with the impact statements, they might withdraw their pleas. That is not, and should not be a factor.

Someone asked me once, "What would be your perfect victim's rights case?" I responded, "That's easy, it's the case where I have to do nothing; just sit back and watch the justice system work the way it was intended to work." That situation happened recently, and it is important that I talk about it.

When you assist crime victims in every county in New Jersey, as I have over the many years I have been a victims' rights attorney, you understand that some county prosecutor offices treat victims better than others. I believe that is primarily due to the attitude towards victims of the person in charge, the county prosecutor. Victims from Burlington County have been extremely fortunate with former prosecutor Steven Raymond and present prosecutor, Robert Bernardi.

In the spring of 2006 eleven year old Christopher Williams was walking down the sidewalk with his older brother Gregory and several other friends when a drunk driver in a rented truck jumped the curb and ran Christopher down, killing him. The driver had prior offenses and the senseless death shook up the small Burlington County town of Beverly. The personal and emotional ties to 36 year old Rachel Williams and her two sons appeared to be endless. Students, teachers, neighbors and Christopher's aunts, uncles and cousins were all devastated over the loss of this beautiful child.

The charges ultimately resulted in a plea bargain being reached. The defendant agreed to plead guilty to vehicular homicide. Under the circumstances the plea bargain was fair and reasonable on both sides, and the victim's family was spared the emotional trauma of the trial.

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For the criminal case of *State v. Ollivierre*, the sentencing was to be the final memorialization of the plea bargain. But for the victims, it was to be much more. It was the only chance for the loved ones of Christopher Williams to give him a face and a voice in this public judicial process. It was the opportunity for the people of the criminal justice system (the judge, the prosecutor and even the defense lawyer) to help define the constitutional rights of the victims to fairness, compassion and respect. And in this case, the response of the justice system was up to the mark.

There were over 30 of Christopher's friends and relatives present. When they arrived, the members of the prosecutor's victim-witness unit were there to find them a separate place and attend to them. The trial prosecutor in the case discussed with Rachel Williams her ability to deliver her victim impact statement, and he and his staff made arrangements to display the photos she brought of her son.⁷

Framed photos of Christopher and his mom and brother, his football Jersey and a photo collage made by his classmates were put on easels in the courtroom. Immediately before Judge John Almeida was about to formally call the case, he came down from the bench and took the time to stand in front of each image, and carefully look at it. A family member later commented to me that she was deeply moved over the serious consideration the judge demonstrated.

The court permitted Christopher's uncle and his teacher to give an impact statement. The defense attorney could have objected over the presence of the football jersey, size of the photos or the fact that Christopher's uncle and teacher did not technically fall under the legal definition of "victim." But that would have accomplished nothing more than create chaos and turmoil in the process, without benefiting his client. So the defense attorney, responsibly and professionally acknowledged the seriousness of the crime and the impact on the victims while focusing on the human side of his client. The prosecutor was passionate, gentle and carried the responsibility on behalf of his client, the State of New Jersey.

Rachel Williams, a spiritual and loving mother, visibly shaken and deeply affected by her loss, spoke of Christopher and the fact that "Two weeks after we buried him we had to celebrate his birthday without him." Christopher would have been 12 years old. As Rachel struggled to speak, Judge Almeida did something I have never seen a judge do before. He asked her if she wanted some water, and acknowledging her response, he then poured her a glass of water from the pitcher in front of him. When the court attendant reached up to the bench to take the glass to Mrs. Williams, the judge motioned him away. Judge Almeida then stood up, walked down to the prosecutor's table where Rachel was sitting and handed the water to her with a sense of empathy and compassion that seemed to freeze for a moment the courtroom and everyone in it. We had just witnessed the essence of what victims' rights is all about.

The defendant was sentenced to eleven and a half years in prison in accordance with the terms of the plea agreement. His rights were fully protected, and Christopher's family and friends began their first step to healing and surviving their loss.

As attorneys we tend to keep snapshots in our minds of those special times or events in which we were so proud to be a lawyer. February 2, 2007 will always be one of those days for me. On that day, all I had to do was just sit back and do nothing in that small courtroom in Burlington County, New Jersey as I observed and felt a remarkable moment of time when justice had truly shone brightly. ■

(Endnotes)

1 N.J.S.A. 52:4B-36 (n).

2 N.J. Const., Art. I, ¶. 22, 1991.

3 The word "victim" under the N.J. Constitution includes the "spouse, parent, legal guardian, grandparent, child or sibling of the decedent in the case of a criminal homicide." *Id.*

4 See, e.g., Victim Voice, Volume I, *A Faceless Stranger*, Richard Pompelio, 32 (Fall 2006).

5 See Victim Voice, Volume I, *Shattered Trust, Victim Impact of Mary Strenko*, 30 (Fall 2006).

6 While this process is a necessity in death penalty cases, it is not common practice otherwise.

7 The prosecutor's staff deserves special recognition; assistant prosecutor Thaddeus D. Drummond, victim advocates Christina Pressey and Sue Johnston.