



<http://www.baltimoresun.com/news/opinion/bal-op.witness25mar25,1,349758.story?coll=bal-pe-opinion>

Bill to protect witnesses misses mark

By Timothy S. Mitchell

March 25, 2005

BALTIMORE STATE'S Attorney Patricia C. Jessamy and Gov. Robert L. Ehrlich Jr. support legislation they contend would stop witness intimidation, but they have not explained how it would ensure that Maryland's citizens are safer if they become a witness in a criminal case. The short answer is they can't.

The proposed legislation is not concerned with the safety of witnesses but with a witness who already has been intimidated or harmed. In most cases, once the intimidation has occurred or the witness has been harmed, it is too late to be concerned.

So instead of advocating for legislation that focuses on the aftermath of intimidation, it would seem more prudent to support legislation that protects witnesses before they are harmed.

Instead of guaranteeing the safety of witnesses, the proposed legislation only permits the introduction of hearsay evidence from a witness who has been intimidated.

If the statements are used in court, the witness still may face later intimidation or retaliation because the statements were used in court against a defendant on trial.

Therefore, this proposed law is not concerned with a witness' safety but with getting a conviction by using hearsay evidence.

As with any legislation, witness protection costs money, and Mr. Ehrlich has not proposed additional spending this year to protect witnesses in Baltimore City or elsewhere in Maryland. Certainly, everyone wants to ensure that no other witnesses will be harmed, as seven members of the Dawson family tragically were in a 2002 fire that killed them and gutted their home.

So the important question is, why is no one asking for more money to protect witnesses? This question has yet to be answered by Ms. Jessamy and Governor Ehrlich.

Ms. Jessamy has accused criminal defense attorneys of getting in the way by opposing this legislation. She does not explain that criminal defense attorneys oppose this legislation because they believe that it will weaken the rights of citizens in criminal trials and possibly result in wrongful convictions. In addition, they are concerned that the safety of witnesses would not be guaranteed by the legislation.

The most serious concern that criminal defense attorneys have with this proposed law is that it could result in convictions of innocent people. If the law is passed and if witnesses are allowed to skip court appearances, prosecutors will be able to introduce statements of witnesses without the defendant being able to use what the Supreme Court has called the "greatest engine for the discovery of truth" - the right of cross-examination.

However, since no law can guarantee that a witness' statement will always be truthful, or that claims of intimidation will likewise be truthful, the opportunity to discover the truth will be severely jeopardized by this legislation without the witness being present in court for questioning.

Criminal defense attorneys oppose this legislation because they believe, as most Americans do, that we should all have the right to confront our accusers.

The Sixth Amendment was enacted to prevent fraud in criminal accusations and ensure the fairness of criminal trials. This amendment has protected the integrity of the trial process for more than 200 years and has ensured that the government is not given the sole power to determine guilt or innocence.

The legislation proposed by Governor Ehrlich would severely weaken the right to confrontation, would increase the potential for wrongful convictions and would not protect a witness' safety. That he and Ms. Jessamy would advocate for this type of legislation rather than push for more funding to ensure the safety of witnesses is questionable. Perhaps they are only concerned with convictions at the expense of witnesses' safety or the threat to the integrity of the criminal trial process. I believe that focus is substantially misplaced.

Timothy S. Mitchell is president of the Maryland Criminal Defense Attorneys' Association.

Columnist Clarence Page is on vacation.

Copyright © 2005, [The Baltimore Sun](#)