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DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

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No. 25812 State of West Virginia v. Mary Beth Davis

Starcher, Chief Justice, dissenting in part and concurring in part:

I concur in the majority opinion, with the exception of part E.2.

The reason that I do not join in part E.2 of the majority opinion is that I disapprove of the prosecutor's conduct in providing travel and lodging for the prosecution's expert witnesses.

Specifically, the prosecutor obtained a private donation of luxurious lodging at the Greenbrier Hotel in White Sulphur Springs for prosecution witnesses. The prosecutor also allowed a private businessperson to pay for a chartered airplane for a prosecution expert.

I recognize that the financial burden on a prosecutor's office from a case that needs experts is high, and the impulse to "save public funds" is commendable.

But there are at least two fatally improper aspects of such a practice.

First, it looks like a shakedown. Who can say "no" to a request by a prosecutor for assistance without at least a lingering fear that there may be bad consequences from reprisal?

Second, a prosecutor becomes officially indebted to a private party that may come into conflict with the law. This creates an appearance of impropriety that undermines public confidence in the judicial system.

This sort of conduct is a slippery slope. It should not re-occur in any of our state's criminal prosecutions.

Accordingly, I dissent in part and concur in part.