

Promoting Fairness by Minimizing Victim Trauma During a Sexual Assault Trial

Suggestions from Judges for Judges

“Justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is a filament. We are to keep the balance true.” – U.S. Supreme Court Justice Benjamin N. Cardozo, 1934

Since 1996 the National Judicial Education Program (NJEP) has presented its *Understanding Sexual Violence* programs for judges nationwide. After presentations on issues such as victim impact and the neurobiology of trauma, offender sentencing, and jury selection, the judges attending the programs discuss how they will use this information in the phases of a sexual assault trial and as leaders in the criminal justice system. Highlights of these judges' collected responses are below; the full set is available [here](#).

Throughout the Trial Process:

Treat both stranger and nonstranger rape as “real rape” throughout the trial process, from setting bail to sentencing.

- Set the tone in the courtroom for handling these cases.
- Communicate to court staff, prosecutors, defense attorneys, law enforcement, probation officers and medical personnel your expectation that they will take nonstranger and marital rape as seriously as you do.

Educate Yourself and Your Court Staff about the Trauma of Sexual Assault:

Without specific education, justice system professionals are as prone as the public to believe rape myths, such as “real rape” is perpetrated by strangers and “real victims” have genital injuries. These beliefs undermine fairness in the trial process.

- Educate yourself and your court staff about how the neurobiology of trauma shapes victim behavior during and after an assault and at trial.
- Recognize that many victim reactions may be counterintuitive, e.g., delayed reporting, post-assault contact with the offender, flat affect at trial.
- Understand the importance of expert witness testimony to explain victim behavior during and after the assault and during trial.

Minimize Continuances:

Sexual assault victims must psych themselves up tremendously for each court appearance. Repeated continuances cause victims to drop out of the trial process.

- Maintain one judge throughout the process when possible.

- Minimize complainants' court appearances.
- Set a firm, realistic schedule.
- Do not set hearings or trials on the anniversary date of the alleged assault.
- Require the prosecutor to consult with the complainant about continuances.

During the Trial:

Sexual assault trials in which victims must confront their assailants and describe the assault to a public courtroom are inherently and unavoidably traumatic for victims. How judges conduct these trials can exacerbate the trauma or minimize it while still preserving due process rights for the defendant.

- Provide separate waiting rooms for the complainant and the defendant.
- Allow the complainant's counselor or support person to remain in the courtroom.
- Do not leave complainants on the stand during lengthy sidebars or at recesses.
- Do not allow complainants to demonstrate on their own bodies how they were assaulted; utilize diagrams, dolls or mannequins.
- Enforce rape shield laws.
- Evaluate force from the complainant's perspective.
- Allow expert testimony on issues such as tonic immobility ("frozen fright"), dissociation, absence of physical injury, delayed reporting, flat affect in court.
- Control any effort to harass or intimidate the complainant, especially by a defendant appearing *pro se*.

At Sentencing:

How judges conduct sentencing hearings can either retraumatize victims or validate their courage in reporting and participating in the criminal justice system.

- Invite victims to be present at sentencing; schedule the hearing so the victim can attend and avoid continuances.
- Remind the prosecutor and corrections officers that you want the victim impact statement *before* the sentencing hearing.
- Review all pre-sentence reports and the victim impact statement prior to the hearing.
- Set sentences commensurate with the gravity of the crime and the harm to the victim; again, treat all rapes as "real rape."

This project is supported by Cooperative Agreement No 2014-TA-AX-K045 awarded by the Office of Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice.