

# **THE CHALLENGES OF ADULT VICTIM SEXUAL ASSAULT CASES**

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## ***Jury Selection and Decision Making in Adult Victim Sexual Assault Cases***

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\*A project of Legal Momentum in cooperation with the National Association of Women  
Judges

# **National Judicial Education Program\***

**Lynn Hecht Schafran, Esq.**  
**Director**

**Claudia J. Bayliff, Esq.**  
**Project Attorney**

**Jessica McCurdy**  
**Law Clerk**

*This project was supported by Grant No. 2008-TA-AX-K051, awarded by the Office on 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, Office on Violence Against Women.*

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**Jury Selection and Decision Making in  
Adult Victim Sexual Assault Cases**

**FACULTY MANUAL**

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## **Overview**

Sexual assault trials with adult victims present a great challenge for judges. Research has shown that jurors in sexual assault cases assess the evidence presented through the lens of commonly held misconceptions and myths about rape, rape victims and rapists. Jurors, as members of our communities, embrace stereotypes about what constitutes “real rape,” including expectations about gender roles and “appropriate” behavior by victims before, during and after a reported sexual assault.

This curriculum explores the research on how juries decide sexual assault cases in which the victim is an adult. It looks at research using actual jurors, as well as mock jury studies. It also explores public opinion data about sexual assault. After learning about the current research, the judges are asked to explore and discuss their role in selecting a fair jury, protecting juror’s privacy and minimizing jurors’ stress and trauma in these difficult cases.

This curriculum contains a three-hour and a two-hour version of the program, which can be adapted to suit the needs of each jurisdiction.

## **Learning Objectives**

- Participants will understand the existing research on how jurors decide sexual assault cases in which the victim is an adult
- Participants will become familiar with current research on opinions and attitudes about sexual assault
- Participants will explore the judge’s role in selecting a jury for a sexual assault case in which the victim is an adult, including:
  - The judge’s role in selecting fair jurors
  - The judge’s role in protecting jurors’ privacy
  - The judge’s role in minimizing jurors’ stress and trauma

### **Components of this Module**

This curriculum includes the following components:

- A PowerPoint presentation, with suggested commentary for the faculty and extensive references
- *Two sample agendas*
- Three interactive exercises
- A Resources CD which contains relevant articles about jury selection

### **Suggested Uses for this Module**

This module can either be used as a stand-alone program or judicial educators can integrate it into an existing judicial education program.

The following is a list of the types of programs into which this module can be integrated:

- A judicial conference
- A criminal law program
- A program on sexual assault
- A program about violence against women
- A program on jury selection

### **Planning the Program**

Judges and judicial educators wishing to present this *Jury Selection and Decision Making in Sexual Assault Cases* Topic Module or to integrate its subject matter into other judicial education programs should plan as follows:

- Determine the time available for conducting the program. This will determine which version of the program you will use (three-hour or two-hour versions) and which exercises to include.
  - If you decide to use the three-hour version, that includes all three interactive exercises.

- However, if you choose to use the two-hour module, you will need to select which of the three exercises you would like to use. You will also need to remove the placeholder slides from the PowerPoint presentation for the exercises you are not planning to use (see Sample Agendas for the slide numbers)
- Adapt the material to local law and practice (see section below)
- Select the presenter/moderator for the program
- Decide whether you will use small groups or a large group discussion for the exercise(s). This will depend on the size of your group. Two of the three exercises can be used in a small or large group, but if the group is larger than 30-40 judges, we recommend that you divide the group into smaller groups for the discussions
  - If you are going to use small groups, you need to decide whether you will choose small group discussion leaders in advance. If so, you need to identify them
  - If you are not going to choose your small group leaders in advance, the exercise directions give you a way to choose group leaders quickly, in order to save time
- Ensure that all faculty members are thoroughly familiar with the parts of the module they will present or the discussions they will lead

### **Sample Agendas**

There are two sample agendas for this module: a three-hour version and a two-hour version. The format includes a lecture portion and an interactive portion. The lecture portion for both programs is the same. The only difference is that the three-hour version incorporates all three interactive exercises. For the two-hour version, the faculty selects one of the three interactive exercises for the participant judges to discuss.

The following page contains sample agendas for each version.

**Three-Hour Program**

<b>Amount of Time</b>	<b>Activity</b>
45 minutes	Lecture (Slides 1-34)
15 minutes	“I’ve Got a Secret” Exercise (small group discussion) (Slide 35)
15 minutes	“I’ve Got a Secret” Exercise (report back) (Slide 35)
15 minutes	Lecture (Slides 36-47)
15 minutes	Break
10 minutes	Post-Trial Juror Disclosure Hearing Exercise (small group discussion) (Slide 48)
15 minutes	Post-Trial Juror Disclosure Hearing Exercise (report back) (Slide 48)
15 minutes	Lecture (Slides 49-55)
20 minutes	Jury Selection Exercise (small group discussion) (Slide 56)
25 minutes	Jury Selection Exercise (report back) (Slide 56)
5 minutes	Wrap up (Slide 57)

**Two-Hour Program**

<b>Amount of Time</b>	<b>Activity</b>
1 hour and 10 minutes	Lecture (Slides 1-56)
20 minutes	Exercise  (small group discussion)  Choose one of the three exercises provided:**  “I’ve Got a Secret” (Slide 35);  Post-Trial Juror Disclosure Hearing (Slide 48); or  Jury Selection (Slide 56).
25 minutes	Exercise  (report back)
5 minutes	Wrap up (Slide 57)

\*\*NOTE: Remove the placeholder slides for the exercises you will not be using for this program.

**Faculty**

**Presenter/Moderator:** This module is designed to be presented by one presenter/moderator, who delivers the lecture portion of the module, introduces the exercise(s), and moderates the report back. The presenter/moderator must be a skilled, experienced judge or judicial educator, who is well-versed in the jury selection process, criminal trials, and the unique challenges presented by a sexual assault case.

**Small Group Facilitators:** You can either select your small group facilitators ahead of time or choose them at the program.

**With Pre-Selected Small Group Facilitators:**

- If you pre-select the small group facilitators, meet with them before the program to review the exercises and discussion questions and be sure the exercises are adapted to your jurisdiction
  - Ask them to appoint the person to their immediate left to be the Reporter who takes notes and gives the Report Back for the group. This saves time
  - Review with them the key elements of leading a small group discussion, such as being sure that everyone speaks and no one person dominates

**Without Pre-Selected Small Group Facilitators:**

- The person at each table whose last name begins with the letter closest to the letter “A” will serve as the facilitator
- Assign the reporter role to whoever is sitting to the left of the facilitator

**Adapting the Module to Your State**

- Determine whether there are any relevant state statutes and whether you want to include them in your handouts. For example, some jurisdictions have a statute addressing how judges must handle post-trial issues about jury misconduct.
- Determine whether there is relevant case law in your jurisdiction that addresses the issues raised in this program.
- Be sure the slides and exercises use the terminology of your state. We have used the term “sexual assault” throughout this module to describe the wide range of sexual crimes. In a few instances, we have used the term “rape.” You may need to modify the terminology to fit your jurisdiction’s statutory scheme.

**Participant Materials**

Give participants the following items for use during the program:

- Faculty Biographies
- Agenda
- PowerPoint Slides, printed three to a page with room for note-taking
- Exercise(s) you are using
- Annotated Table of Contents for the Resources CD

- The Resources CD
- Your evaluation instrument

### **Preparing Participant Materials**

The handouts for the Participant’s Binder are available on the CD for this module and on the National Judicial Education Program (NJEP)’s website, [www.njep.org](http://www.njep.org). To access materials for this module as well as any of NJEP’s other resources, click on “Sexual Assault Resources.” On the Sexual Assault Resources page, click on the “Resources Available for Download” link which will direct you to the registration and login page for NJEP’s materials for in-person education, where you will find this module. Registration is free and will provide you with a username and password that you will need to gain access to this section of the website.

To print handouts from the CD or the NJEP website:

- Click on the link to the handout you want to print. Clicking the link will download the handout to your computer as a PDF
- Open the downloaded PDF files
- Print and copy the handouts

To print PowerPoint slides as handouts for note-taking:

- Navigate to the Print Menu
- From the Print Menu select the “Print What” pull-down menu and choose “Handouts”
- From the “Color/Grayscale” menu select “Pure Black and White”
- From the “Slides per page” pull down menu select “3”

### **Resources CD**

We have included a Resources CD with this Topic Module, as well as an annotated Table of Contents, which describes the materials included. On the CD, you will find pertinent articles about how juries decide sexual assault cases, protecting jurors’ privacy and minimizing their stress and trauma. We have taken care to select materials that are relevant for judges and have avoided including academic articles that have no practical application for judges.

We suggest that you provide a copy of the Resources CD Annotated Table of Contents as part of the material you hand out to the judges. We also recommend that you duplicate the CD and give it to the judges as well.

Prepare the Resources CD as explained below and burn a copy for each participant.

Preparing the Resources CD for Participants via the NJEP website:

- Download the Resources CD from the website
- Create a new folder titled “Jury Selection Resources CD”
- Move the downloaded Resources CD file into the new folder
- Insert a blank CD and when prompted burn the Jury Selection Resources CD folder to the CD

Preparing the Resources CD via the *Jury Selection and Decision Making* Module CD:

- Insert the *Jury Selection and Decision Making* Module CD. Navigate to the Resources CD page and download the Resources CD
- Remove *Jury Selection and Decision Making* Module CD
- Create a new folder titled “*Jury Selection and Decision Making* Resources CD”
- Move the downloaded Resources CD file into the new folder
- Insert a blank CD and when prompted burn the “*Jury Selection and Decision Making* Resources CD” folder to the CD

**Resources CD Label**

This module includes a folder called “Reproducing the *Jury Selection and Decision Making* CD and Copyright.” Within this folder there is a ready-to-print PDF called “CD Label.” This label is separate from the label for the Resources CD. It is intended to be affixed to the CD for the IPSA modules. To print, purchase Avery CD label paper at an office supply store or online at [http://www.avery.com/avery/en\\_us/](http://www.avery.com/avery/en_us/). Put the Avery paper into any regular printer, print the PDF onto it and affix to the CD. This allows you to distribute this CD in the exact format that you received it, with the appropriate label.

**Presenting the PowerPoint Presentation**

The lecture portion of this curriculum is contained in a PowerPoint presentation, with suggested commentary for the faculty included in the notes section of the slides. Sources

are included on the slides. The PowerPoint presentation is provided on the CD and the National Judicial Education Program's website, [www.njep.org](http://www.njep.org).

To present the PowerPoint, navigate to the View menu or tab and click "View Slideshow." The slide will fill the screen.

- To move to the next slide click your left mouse button, press "Enter" on the keyboard or use the forward arrow key on your keyboard
- To return to a previous slide, press "Backspace" on your key board or use the back arrow on your keyboard
- For more options use the right mouse button or for Mac users press the apple/control key and click your mouse button
- To exit the Slideshow mode press Escape (Esc) on the top left corner of your keyboard

How to Print PowerPoint Slides with Suggested Commentary for the Presenter:

- To print the slides with suggested commentary for guidance during the presentation follow these steps:
  - Navigate to the Print Menu
  - From the Print Menu navigate to the "Print What" pull-down menu and select "Notes Pages"
  - Select the "Color/Grayscale" pull-down menu and choose "Pure Black and White"

**Exercises**

This topic module includes the following three interactive exercises, with accompanying directions and discussion questions:

- "I've Got a Secret" Exercise and Discussion Questions
- Post-Trial Juror Disclosure Hearing Case Study Exercise and Discussion Questions
- Jury Selection Case Study Exercise and Discussion Questions

**"I've Got a Secret"**: This exercise gives the judges an opportunity to experience how difficult it is to elicit information from potential jurors about their biases or their past experience with sexual assault. For the exercise, participants get in small groups. One judge plays the role of the potential juror with a "secret." The other judges in the group must ask the potential juror questions to elicit the secret. The exercise contains eleven

“secrets,” as well as a short case synopsis that the juror reads to the other judges so they understand the type of case involved.

**Setting:** This exercise is geared toward small groups and does not work well as a large group discussion.

**Recommended Amount of Time:** At least 30 minutes. For small groups, allow 15 minutes for discussion and 15 minutes for reporting back.

**Post-Trial Juror Disclosure Hearing:** This exercise gives the judges an opportunity to apply the material, covered in the lecture, which raises the issue of how to handle post-trial allegations that a juror failed to disclose a pertinent experience or fact during *voir dire*. The case study fact patterns are both based on actual cases. In this exercise, the judges are asked to discuss how they would rule on a motion for a new trial, based on allegations that certain jurors did not truthfully answer questions posed during *voir dire*.

The exercise includes two scenarios, with related discussion questions.

**Setting:** This exercise can be conducted as a large group discussion or in small groups. If you are using small groups, you should divide the room in half and assign one scenario to the small groups in each half of the room.

**Recommended Amount of Time:** At least 30 minutes. For small groups, allow 15 minutes for discussion and 15 minutes for reporting back.

**Jury Selection:** This exercise gives the judges an opportunity to apply the material covered in the lecture portion of this program, including the research on how juries decide sexual assault cases and information about how to protect jurors’ privacy. The case study for this exercise, based on two actual marital rape cases, is more detailed and complex. For this exercise, the judges read the detailed case study and then answer the discussion questions posed.

**Setting:** This exercise can be conducted as a large group discussion or in small groups. If you are using small groups, you may want to divide the room and assign different discussion questions to different groups.

**Recommended Amount of Time:** At least 45 minutes. For small groups, allow 20 minutes for discussion and 25 minutes for reporting back.

### **Evaluation**

Evaluation is a critical component of any judicial education program. Because jurisdictions have their own standard evaluation instruments and procedures, we have not included a suggested evaluation form here.

### **Technical Support**

The National Judicial Education Program (NJEP) is available to provide technical assistance to judicial educators and judges who are planning programs using these materials. Please contact us if you need technical assistance or have any questions about using this module.

National Judicial Education Program  
Legal Momentum  
395 Hudson Street, 5<sup>th</sup> Floor  
New York, NY 10014  
(212) 925-6635 (telephone)  
(212) 226-1066 (fax)  
[njep@legalmomentum.org](mailto:njep@legalmomentum.org)  
[www.njep.org](http://www.njep.org)

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