

From the Attorney's Desk
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ICASA Trains Expert Witnesses

The prosecutor stands before the jury knowing that one particular facet of this case may be hard for the jury to understand. How can a prosecutor explain why the victim did not report the rape until weeks after it happened? Or why she did not fight back or resist the perpetrator? Or why the victim still speaks with the perpetrator when she sees him at work? These facts may be difficult for even the most sensitive prosecutor to understand. But a skilled expert witness can transform these facts from potential barriers into strong corroborative evidence in the courtroom.

Historically, rape victims have been viewed with skepticism, in and out of the courtroom. Myths about how a "real" rape victim would act impair the ability of jurors to objectively hear and evaluate evidence. Many people believe that someone who is raped would physically fight the attacker and be seriously injured, would report the crime right away, would do anything possible to stay away from the rapist after the assault, would always remember the rape and – even years down the road – would always tell *exactly* the same story about how it happened.

By contrast, rape crisis workers and academics in the field of sexual assault know that:

- Every victim reacts differently to the extreme trauma of rape.
- Many rape victims offer little or no physical resistance, due to a variety of social and psychological factors, including "frozen fright," and an overwhelming desire to simply survive the attack.
- More than 70% of rape victims suffer no physical injuries at all; 24% suffer only minor physical injuries, and only 4% report serious physical injuries.ⁱ
- Roughly 3/10 rapes are reported.ⁱⁱ Particularly in cases where the victim and the perpetrator know each other (i.e. the vast majority of cases), the victim often waits to report the rape.
- Victims want to put the rape behind them and may quickly resume normal routines. They may have to go to places where they might encounter the rapist, such as school or work.
- A victim may experience psychogenic amnesia, blocking some of the memory of the rape. She may also be intimidated by the criminal justice system or may be threatened by the perpetrator. Any of these can lead to recantations or incomplete statements about the assault.

The best way, and often the only way, for a prosecutor to disabuse the jury of these misconceptions is through the use of an expert witness.

In Illinois courts, an expert witness may testify if that person has specialized knowledge or experience beyond that of the average person, and that knowledge will help the factfinder make a determination in the case. Illinois law specifically provides that in a prosecution for a sex crime, expert testimony about post-traumatic stress syndrome is admissible.ⁱⁱⁱ The court must determine a witness that is qualified as an expert in a certain area before the witness may testify.

The many myths plaguing rape victims and the need of prosecutors to explain the sometimes unexpected behavior of rape victims has led to a need for more expert witnesses capable of testifying to the common responses to rape. Certainly, experts can be found in medical schools and in private practice. While certainly knowledgeable, these experts can be hard to find, expensive and disinterested in testifying. However, Illinois, and every state, has an untapped cache of potential expert witnesses right at its fingertips. Each person in this knowledgeable and dedicated group has worked with hundreds, or even thousands, of rape victims. Each can describe with convincing expertise the wide range of victim responses to rape that she has seen at the hospital, outside the police station and in counseling sessions. Each can provide a wealth of information otherwise out of reach to the average juror. These are the rape crisis center directors, advocates and counselors in your community.

Recently, ICASA brought together 12 of its most experienced rape crisis center employees. Each is a dedicated, long-term rape crisis center employee, with extensive experience working with victims. Some have academic credentials related to this work; others do not. A few have testified in court, usually as lay witnesses. But for most of them, the concept of testifying as an expert witness was foreign and frightening.

Through the skilled training and tutelage of Robert Gevers, J.D., each of these potential experts was given the opportunity to shape her resume, learn about the goals of expert testimony, discuss leading literature in the field, and most importantly, practice testifying. Each of these rape crisis centers employees has agreed to be called to testify in cases involving sexual assault.

Rape crisis center staff have tremendous expertise that can be parlayed into exactly the testimony prosecutors need to address prevalent rape myths in the courtroom. Training can bridge the gap between this expertise and a courtroom presentation. Testifying as expert witnesses is yet another way that rape crisis advocates can continue to seek justice for victims.

ⁱ Victims Research and Treatment Center, *Rape in America: A Report to the Nation* (1992) at 5.

ⁱⁱ Bureau of Justice Statistics

ⁱⁱⁱ 725 ILCS 5/115-7.2