INTRODUCTION:
Cassette 1

Charley: Rape, criminal sexual assault, sexual battery. These are all terms for a crime which many victims describe as "soul murder," a theft of autonomy and control which leaves profound emotional scars. Despite the significant legal reforms of the last decades rape trials are still distorted by the myriad stereotypes about this crime.

Hello, my name is Charles Reynard. For over 15 years I was the elected prosecutor in McLean County, Illinois. Prior to that I was in private practice for ten years and before that I was an assistant prosecutor in McLean County. I have handled sex crimes cases and other violent crimes from both sides of the aisle. Throughout my career as a prosecutor I was involved in prosecutor education and served for many years as chair of the Continuing Legal Education for Illinois Prosecutors Committee. A few months ago I became a judge. From this new vantage point I am persuaded more than ever that with respect to rape trials, the proper administration of justice cannot take place unless prosecutors deliver the victim's account with extraordinary fidelity.

Welcome to our program on direct examination of the victim in an adult rape case. This is the second videotape in our series: Understanding Sexual Violence: Prosecuting Adult Rape and Sexual Assault Cases. In this video our focus is how to effectively prepare the victim for the trial and conduct a direct examination that builds credibility for the victim, anticipates the cross-examination of the defense attorney and lays the foundation for a powerful closing argument.

Purpose:
Rape cases present unique challenges for prosecutors and victims. Because the false stereotypes about what rape is and who commits it are so widely believed, rape victims encounter a level of skepticism and victim blaming unlike that of any other crime victim. Indeed, these victims may well accept these stereotypes themselves. Additionally, victims must recount in public highly personal events. This kind of testimony is vastly different than telling a courtroom about a robbery, for example, and it makes tremendous demands on the victim.

The purpose of this video is to empower you to prosecute and win the kind of nonstranger rape cases that we all know present particular difficulties and to gain the victim's trust. Regardless of your level of experience as a sex crimes prosecutor, we hope to show you that not only should you bring these cases forward, but that you can secure justice for the victims of these crimes.
We will give you the tools to do this. We will teach you concrete ways to win these cases. When you know you can win a nonstranger rape trial, then you will feel more confident when you take the case to court. Once you have a model in your mind of how well a case can move forward, you will be much more self-assured in prosecuting these cases.

We will provide this model for you in this two-part video and in the additional materials on our website, [www.njep.org/directexam](http://www.njep.org/directexam).

**Terminology:**
Before we move forward let me explain some of the terminology in our video. First of all, we use the term "rape" throughout when referring to the crime you are prosecuting. That is the crime you would charge based upon the facts made out in our hypothetical case. However, every jurisdiction has its own legal definition of what constitutes rape. Please consider our information as relevant to all sexual assault cases. And do not use our substantive information as sufficient to make out any particular crime in your own jurisdiction.

We also use the term "Assistant District Attorney" to refer to prosecutors. And we use the term "victim" to refer to the complainant or complaining witness. Furthermore, we continually refer to rape victims as "she", but understand that men are also victims of sexual assaults. Please use the terms that make sense to you and that are most commonly used in your jurisdiction. We chose to use this language for the sake of clarity and brevity.

**Method:**

First, I will lead you through the entire video, which is divided into two parts:

1. Meeting and Preparing the Victim; and,
2. Direct Examination

Second, We will use various situations from a single case study. You will learn details of the case from a series of demonstrations in which you will watch an Assistant District Attorney prepare the victim and conduct direct examination. I will give you additional information as needed. Occasionally I will interrupt a demonstration to comment on an important point in the demonstration that teaches a significant lesson.

Third, each demonstration will be followed by a panel of seasoned prosecutors, representative of various types of offices across the nation. These prosecutors will comment on important points in each demonstration.

Fourth, we will also have several short interviews with experts on the impact of sexual assault to help us understand victim behavior before, during and after the assault, and its implications for preparation and trial.
PREPARING TO MEET THE VICTIM

CHARLEY: Good direct examination comes from thorough victim preparation. To effectively prepare the victim prosecutors must:

- Be sensitive to the victim's state of mind at the first and subsequent meetings;
- Understand how your words and behavior affect the victim's willingness and ability to go forward;
- Gather as many facts of the crime as possible before your first meeting with the victim;
- Build a rapport with the victim;
- Develop sensitive techniques to elicit favorable as well as unfavorable details from the victim.

With this insight, we can now move to how you, the prosecutor, should prepare for your first meeting with the victim. You must take the time to prepare your case BEFORE interviewing the victim if you are to learn everything that happened before, during and after the crime.

First, read all relevant police paperwork and medical records prior to meeting with the victim.

Second, actually speak with the police prior to speaking with the victim. There is usually a vast difference between a few sentences a police officer or detective puts in a police report and the information the officer actually learned when he or she picked up the case. It will be very helpful in both your crime victim interview and to your case to have that additional information ahead of time. The police officer's vivid memory only becomes less clear with the passage of time. Also pay heed here: some police feel that the majority of women simply make it up when they allege they have been raped. Do not allow this to color your view of the case.

Third, start to develop a theory of the case and a list of possible witnesses to help you prove your case before the initial meeting. Remember, the ideas, strategies and evidentiary themes that are evolved at each and every stage of the Assistant District Attorney's interaction with these cases are important for the entire case. Therefore, thinking ahead of time about what you'll need for the victim interview will be important to your summation - not to mention voir dire, opening statement, and so forth.

Fourth, never make a charging decision before you have met the victim. This might vary with jurisdiction. Try to follow this if at all possible, though it is sometimes not possible based upon individual office timelines for charging. At the very least, do not decline to prosecute any case without first speaking with the rape victim. And once a decision is made to charge, every effort should be made to speak with the victim as soon as possible if that meeting has not yet taken place.
**Fifth**, learn the victim's name before she comes into your office. If you are fortunate enough to have a witness aid unit, talk to the advocate and explore possible strategies that might help you in the interview.

**Finally**, keep in mind that you want your victim to be as comfortable as possible, so be sure to find a quiet office where you can talk with her.

Taking all of these steps will show the victim that you are prepared for her case, that you care about her case, and that you care about her as a person. This will lay the groundwork for building a rapport with the victim, and will ultimately enable you to create a successful direct examination.
INITIAL MEETING WITH THE VICTIM:
Introduction

Charley: Now that we have prepared ourselves to meet the victim, let's watch our first demonstration in which the prosecutor is meeting for the first time Amanda Brown, a rape victim.

Please keep in mind that this is only an excerpt of the actual interview -- we are not going to see a real interview from beginning to end -- so if, for example, you never hear the prosecutor allow the rape victim the opportunity to tell her story without interruption it is only because we are time-limited here and have chosen to only demonstrate the parts of the interview where the prosecutor is actually asking specific questions of the rape victim. It is still very important, however, when interviewing an actual rape victim to give her an opportunity to tell you what happened to her all the way through without interruption.
INITIAL MEETING WITH THE VICTIM:
Demonstration 1

,LOCATION: Prosecutor's Office

[Amanda Brown is somewhat uncomfortable (visibly) upon first entering the prosecutor's office and through the initial interview. She becomes much more agitated and uncomfortable when asked specifically about the rape itself. The prosecutor should be both supportive and firm. Some of the questions that must be asked (e.g. any prior arrest) will seem very harsh to the victim and must be asked in a way that will not make the victim want to drop the case.]

(P = Prosecutor A = Amanda Brown)

DEMONSTRATION 1(A)

P. Amanda Brown? How are you? My name is Carol Martin. I'm the Assistant District Attorney assigned to your case. You will not have any other prosecutor - I will handle your case through trial. May I call you Amanda?
A. (Amanda nods yes).
P. OK, so how are you doing today?
A. I'm okay.
P. So how'd you get here?
A. My mom brought me.
P. So is that her outside?
A. Uh... yeah.
P. (Easy, warm tone maintained throughout interview). Amanda, I'm glad that you're here. This is going to take some time. But don't worry—we'll take it slow, so take your time. Now these are pretty standard questions I'm going to ask you, but let me know if you don't understand anything. I'm here for you, ok? We're going to work together and get through this.
A. Okay.
P. Alright. Can I get you anything to drink?
A. No, I'm good.
P. Okay, now is there anything that you would like to know, like me to answer before we get started?
A. Um. Yeah. Actually... can you tell me - is he here? (Very concerned). Do I have to see him today?
P. No, he's not here. And you won't have to see him until we go to court.
A. But wait—do I have to testify in court?
P. Yes.
A. What?
P. But we'll discuss that more later. Now during the course of the interview I'm going to explain to you the court process and how it works. But don't worry, you don't have to testify against him today – this is just for us to talk. Okay? Do you understand?
A. Yeah. Okay.
P. Before we talk about what happened to you, I want to get some background information and get to know you a little better. First, I just want to make sure that I have the right phone numbers to reach you and the contact information. Now, I’m going to give you a form to fill out after we talk. It’s a standard form that we give to every witness. It’s going to ask you things like your date of birth, and your social security, and all your contact information. So please make sure that you fill out the form completely.

A. Okay.
P. Okay? Good. Now tell me, Amanda, how old are you?
A. I'm 19.
P. You're in school?
A. Yeah. I'm a sophomore at the State University campus here.
P. Uh-huh, so where do you live? On campus?
A. No, I live with my parents. It’s about a 30-minute drive to school.
P. Mm hmm. Tell me more about yourself—do you have any brothers or sisters?
A. I have one sister. She’s younger than me. She’s still in high school.
P. What do your parents do?
A. My father is in construction and my mom, she’s a secretary.
P. Have you lived here all your life?
A. Yeah. I grew up here.
P. What are you studying?
A. I'm a history major... I'm also pre-law.
INITIAL MEETING WITH THE VICTIM:
Demonstration 1 (Cont.)

(LOCATION: Prosecutor’s Office)

DEMONSTRATION 1(B)

P. Amanda, thank you for going over all this background information for me. I know that it isn't easy for you to be here. Now I'm going to have to ask you some detailed questions about what happened to you. Okay?
A. Okay.
P. Alright. I need you to tell me everything that happened. Don’t leave anything out. First um, let me ask you -- do you know anyone who has ever been the victim of any kind of sexual assault or rape?
A. (Amanda shakes her head) No.
P. What about any kind of crime?
A. No.
P. Have you ever been the victim of a crime before?
A. Not before this happened.
P. Okay. So how are you doing so far? (Pause). You okay? (Pause). You want anything, some water or anything?
A. No thank you. I'm fine.
P. Okay, now let’s talk about what happened to you. Is that okay?
A. Yeah.
P. First, why don't you tell me how you know Michael Cates?
A. He goes to my school. State has a pretty small campus, so I had seen him around. I had never really talked to him before he joined ACT—All Campus Theatre.
P. Okay... now, when did you first notice him?
A. Um... I think it was a little after school started, I think. Um...a few of us were in the main dining hall and it was really crowded... we couldn't find seats. He was getting up, and he gave us his table.
P. Now I don’t know much about your school. What sort of things do you do in theatre group, and how long have you been involved?
A. Well, I was in theatre in high school and I joined ACT as soon as I got to State and... there’s no drama department at State, so ACT puts on all the plays and the musicals on campus.
P. Have you been in any performances?
A. No, um -- I’m a member of the stage crew. I work on sets and stuff.
P. Is Michael Cates part of the stage crew too?
A. No, he’s an actor.
P. Have you ever dated anyone in your theatre group?
A. No – not at all.
P. And can you also tell me – are you dating anyone now?
A. No. (Slightly shocked by the question). I'm not dating anyone.
P. Have you dated anyone during the two years you have been at State?
A. Yeah. Well, when I first started here I was still with Josh— that was my boyfriend in high school. He and I were together all last year. Uh... we broke up over the summer. I went on a few dates— it was nothing serious.
P. Why did you choose this school?
A. I wanted to go out of state—um, I got a full scholarship here. Plus my parents wanted me close to home.
INITIAL MEETING WITH THE VICTIM:
Demonstration 1 (Cont.)

,LOCATION: Prosecutor’s Office

DEMONSTRATION 1(C)

P. Amanda, I think you took a huge step when you decided to report this crime—it takes a lot of courage to be able and willing to tell someone you don’t know all of these very personal things about your life.
A. I understand.
P. Okay. This is the difficult part, but now I need you to tell me what happened the evening of December 15th. Take your time, and just tell me everything, in your own words.
A. (Taking breath) I went up to his room with him ‘cause he said he needed to get his car keys. We had a beer and we kissed. And then um – I didn’t stop him. He pulled off all my clothes. (Sounding like she will cry). He ripped off my clothes and he forced me to have sex with him.
P. Okay. Amanda, look. I -- I know this is hard for you, all right? Why don’t I get you something to drink? You want some soda, some water? (Amanda shakes her head indicating that she doesn’t want anything to drink. She begins to cry.) All right. Now Amanda, this is going to be hard, but we’re going to take it slow, okay?
A. Yeah.
P. Now um, you want to take a break? You want to talk about something else?
A. No, I’m okay.
P. Are you sure?
A. Uh-huh. (Amanda nods okay).
P. Okay. Let's get back to why you said you went to his dorm room. Tell me about it.
A. Um, well, during rehearsal...
P. Mm hmm...
A. It was running kind of late... and I said that I was worried about missing my bus, and he told me not to worry—that he’d take me home.
P. So if he was giving you a ride home, why did you go up to his dorm room instead of to his car?
A. Well, as we were walking out of rehearsal he said that he had forgotten his car keys, and he had to swing by his room to get them.
P. When Michael Cates said he wanted to go up to his room, how did he seem?
A. I don't know...normal. I didn’t—I didn’t think anything was strange at the time.
P. Did you see his car when you walked out of the building? Did he give you any idea where his car was?
A. No, not until he finally drove me home. We went straight to his room.
P. When you walked out of the school with him - was he very friendly with you?
A. Yeah.
P. Did you think anything about it at that point?
A. No- I mean, we were both talking about how relieved we were for finals to be over, and what we were going to do on winter break.
P. Did anyone hear him offer you a ride home from the theatre?
A. I don't think so.  Everything was pretty hectic at rehearsal because it was our last meeting before break. No, I don't think anyone else heard.
P. Did anyone see the two of you walk out together?
A. Yeah.  Um, we saw his friend James, and we talked to him for a few minutes.
P. Was there anyone around when you walked into his dorm room?
A. Yes-- but it was no one that I knew.
P. And what were they doing? Did he say anything to them?
A. Uh-- they were outside smoking.  He said something to one of the guys, I think.  I don't—I don't really remember.
P. How were things between you two when you were walking to his room?
A. I don’t know, fine. We were just talking.  It was cool.
P. Did you feel comfortable with him?
A. Yeah.  I wouldn’t have gone to his room if I didn’t feel comfortable.
P. Okay. Well, let me ask you another question.  If Michael’s attorney were to ask James how the two of you were, how the two of you were acting on your walk over, how would James describe you?
A. I don’t know.  I— I guess he would say that we were having a good time.
   **Were you having a good time?**
A. Yeah.  I was a little nervous, but it was cool hanging out with him.
P. Mm hmm, and that continued when you walked into his room?
A. Yeah.
P. Okay. When you first got into his dorm room, what did he do?
A. He took off his jacket, and he said he needed to check his messages.
P. Why do you remember that?
A. Um...because...uh... the only message that he had was from his mom and I thought it was really cute.  She was asking him when he was planning on coming home.  (Quiet). It’s weird, I had forgotten about that until just now.  Anyways, um... he grabbed us both a beer.
P. Where did he get the beer from?
A. He had a mini-fridge beside his desk.
P. And what were you thinking when he did that?
A. When he did what?
P. When he gave you the beer.
A. I don't know.  (Uncomfortable). I-- I guess I was a little surprised.
P. So, uh-- what did you do then?
A. We were just hanging out... I don’t really remember--
P. That's okay. Let me take you back to when you first walked into his dorm room, what were you thinking when you first walked in?
A. What do you mean?
P. How did you feel going into his dorm room?
A. I felt fine.  Um-- I actually just thought we were going to get his keys, so it wasn’t a big deal.
P. Uh huh. Okay. What did he do when you first got into the room?
A. He took off his jacket, uh... checked his messages.
P. And what were you doing while he was doing this?
A. I was just standing in the doorway. Then he told me to sit down.
P. Did you have a coat on?
A. Yeah. Yeah, I did. It was really cold that night, I remember.
P. What kind of coat were you wearing?
A. A black pea coat.
P. Where did you put your coat?
A. Um, after he took his coat off, I took my coat off...
P. Mm hmm.
A. At first I had it on my lap, when I was sitting on the bed, then he sat down beside me, and I put it on the bed.
P. Wait a minute, you were sitting on the bed?
A. Yeah, well it’s a dorm room, so he was sitting at the desk, and the only other place for me to sit was on his bed. Why, I don’t-- is that wrong?
P. No, no- okay. Well, um-- why did he move onto the bed?
A. After we had been talking for a little, he grabbed a stack of pictures. He sat down beside me on the bed and he just started showing them to me.
INITIAL MEETING WITH VICTIM:
Demonstration 1 (Cont.)

,LOCATION: Prosecutor’s Office

DEMONSTRATION 1(D)

P. Amanda, I know from speaking with the detective assigned to this case -- and I see from the police report -- that this happened about two months ago. Tell me what life has been like for you since this happened.

A. Horrible-- I don’t sleep anymore. Whenever I try...I have horrible nightmares. I don't know. I just don't feel like doing much anymore.

P. Well how are you doing in school?
A. Well, I was a pretty good student.

P. What do you mean you WERE a pretty good student?
A. Well, before this happened - I pretty much had a 4.0. But since then I haven't been doing very well.

P. What do you mean?
A. Well, it just doesn't seem to matter anymore. Whenever I go to class, I can’t concentrate. I haven’t been keeping my grades up.

P. So how are your grades?
A. Well, I bombed all my midterms--I guess that’s when my friends started worrying, to tell you the truth.

P. So is that what convinced you to come here today?
A. I don’t know exactly. I mean I kept thinking that things would get easier and that as time went on, I would do better. But it’s-- they haven’t.

P. Okay, Amanda. I want to slow you down, and we’re going to talk about more details. But before we do, let me ask you about your support system. Who have you been talking to about this since this has happened to you? Do you have any friends or family who can come to court with you? I mean, have you ever had any counseling?
A. Um… the only person I’ve been talking to is my friend who actually convinced me to tell my parents and report everything to the police.

P. Well your mom came with you today. It’s great that she’s supporting you. Are you able to talk to your parents about any of this?
A. Well, they’re really upset. I know that they’re here for me, but I just-- I don’t feel comfortable talking to them about this.

P. Well, it’s important to have a support system to help you through this, and we’ll talk more about that. And before you leave today I want to make sure you have a referral for counseling. Okay?
A. (Amanda nods.)

P. And I want to thank you for going over all of this with me. I know this isn't easy, but you're doing a great job. Now let’s go back over some of the things you told me in more detail. I'm going to ask you a lot of detailed questions. Okay?

A. Okay.
P. Amanda, I want to also stress to you that you should never fill in any details that you don’t specifically remember. It’s okay for you to tell me that you don’t remember, but I never want you to tell me something that you think is PROBABLY true. Only tell me EXACTLY what you remember.
INITIAL MEETING WITH THE VICTIM:
Prosecutors Panel

Teresa: Hello. I am Teresa Scalzo. I am the Director of the Violence Against Women Program at the American Prosecutors Research Institute, which is the training and technical assistance affiliate of the National District Attorney’s Association. At APRI, in collaboration with the National Judicial Education Program, I have trained prosecutors across the country using NJEP’s curriculum, *Understanding Sexual Violence: Prosecuting Adult Rape and Sexual Assault Cases*. Before joining APRI I was an Assistant District Attorney in Northampton County, Pennsylvania, a medium sized jurisdiction, which is a mix of both rural and urban areas. I was the Chief of the Sexual Assault Unit and designed a protocol for investigating and handling sexual assault cases.

I will be the moderator of the Prosecutors Panel. My colleagues are: Irene Wakabayashi, Assistant Head Deputy, Sex Crimes Division, Los Angeles County District Attorney’s Office; Donald Linton, Chief Deputy Prosecutor, Cache County Attorney’s Office in Utah; Leemie Kahng, former Deputy Bureau Chief, Sex Crimes Unit, New York County District Attorney’s Office; Anne Munch, former Chief Deputy District Attorney, 7th Judicial District of Colorado.

In our demonstration you heard the prosecutor tell Amanda Brown that she will be the only prosecutor assigned to her case. Obviously our prosecutor works in an office that has a vertical prosecution system; that is, one in which the prosecutor is assigned to the case from the beginning until the end. Some jurisdictions follow the horizontal prosecution model, which is when one prosecutor makes the charging decision, a second handles the preliminary or grand jury hearing, and a third tries the case.

The vertical model is preferable. It is extremely hard for a victim to recount her experience to different prosecutors. It is also hard for a prosecutor to build rapport with someone who has just been handed off to him or her, with someone whom she has not been working since the case began. If your office is currently using a horizontal prosecution model, consider reorganizing to follow a vertical prosecution model in rape and sexual assault cases.

Now let's now go over some of the key points that we observed while watching that demonstration. After this brief initial interview with Amanda Brown, we know that there are several immediate challenges. Let's begin by discussing what we know about Amanda from the initial interview. What are some of the challenges the prosecutor will face in working with her?

1. *Amanda is uncomfortable with the setting, and she is also uncomfortable with telling this intimate story:* We know this because Amanda is shifting around in her seat. She also rushed through the actual account of the rape. It is likely that this is a natural manifestation of her initial discomfort in revealing what happened to her. It is also an understandable reluctance to share this information
without knowing how it will be received. How can the prosecutor minimize Amanda’s discomfort?

2. **Amanda is having difficulty accepting help:** Prior to meeting with Amanda, the prosecutor read through all of the police reports and spoke with all of the police witnesses. She knows that Amanda waited two months to report the crime, which is not uncommon. This information along with Amanda's demeanor makes clear that although Amanda is courageous in coming forward, she is not sure whether she is going to go through with the criminal justice system. What can the prosecutor do with this kind of victim?

3. **Amanda is suffering without support:** She has barely detailed how she has begun to implode since the attack and it is clear already that she is suffering. She is not going to class, her grades have dropped, and she is hardly going out. In short, she is no longer able to live her life the way she did prior to the attack. How can the prosecutor help Amanda?

Panelists, let’s talk about the prosecutor's role and strategies. How do we best approach an initial interview with a rape victim? Don?

➤ **Points for Discussion:**

1. **DON:** Well, the key to good direct examination is witness preparation, and the key to witness preparation in a case like this is the relationship between the prosecutor and the victim. That relationship begins in the very first interview between the victim and the prosecutor. But it can’t be based upon only one interview. The prosecutor needs to make time for multiple interviews with the victim in order to establish a relationship of trust. Without that relationship of trust, the process is likely to “re-victimize” the victim and it’s likely to be self-defeating for the prosecutor. I always make time for multiple meetings with my victims. And, generally, I won’t talk about the rape during the first interview. Gratefully the jurisdiction where I work allows me to do this before I even file charges. For example, last week I met a young woman—we talked about her life generally—we talked about school, but I didn’t discuss her rape. Instead, I decided to leave that for a later interview, and I probably won’t bring up the rape until the second or third interview with this young lady. This is typical for me.

2. **IRENE:** I agree, Don, that multiple meetings are essential. But the prosecutor has to tailor that process to his or her particular jurisdiction. For example, in Los Angeles County, we only have forty-eight hours to file charges from the time that the defendant is arrested. This forty-eight hours can be extended if there is an intervening weekend or holiday. But this makes it impossible for me to conduct multiple interviews before I decide to file charges. That means that my first interview has to be very thorough. Because I must know as much about the case, both its strengths and its weaknesses, as early as possible, I have to develop a relationship with the victim quickly. The key to developing a trust is for me to
make sure that the victim understands that honesty runs both ways between a prosecutor and a victim. I always explain in detail the critical significance of complete honesty.

3. **TERESA:** I have also found that sensitivity to a victim’s fears helps to establish trust. Victims of rape have experienced an enormous betrayal of trust by the rapist, usually someone that they know. I always try to create an environment where the victim feels safe and confident with me. It helps the victim to relax, and it also helps her to know that I am taking her and her case seriously. I noted that, in the demonstration, the prosecutor asked for permission to call the victim Amanda. This gives a bit of power and control back to someone who has had that taken away from her. Leemie, how do you handle the initial interview?

4. **LEEMIE:** Well, I always start by explaining the purpose of the interview, and asking the victim if she has any questions for me. I then move on to “pedigree,” or background questions. This allows me to get to know the victim, and it makes us both more comfortable. It also gives me a better understanding of what her life was like before the sexual assault. If you come to know the person she was, before the rape, it will give you a better understanding of her response or non-response to the rape, which is obviously important in terms of meeting the consent defense. After talking about her background for a while, I let the victim go through her account at least once with minimal interruption.

5. **DON:** Ask the victim to tell you about her life after the event. It’s important to develop these facts to get a sense about the victim, so that you can understand her as a person and follow the trauma in her life that’s developed after this event for your direct examination. Being subjected to non-consensual sexual intercourse is a very traumatic event, and the trauma frequently manifests itself in behavior changes. You need to learn to see these changes so that you can effectively use them as circumstantial evidence in your case.

6. **ANNE:** Along those same lines, victims react to this crime in a multitude of ways. Sometimes a victim may come off as having a totally flat affect. This does not signify that there was no rape. It may be the victim’s personal style or the only way that she can talk about the rape itself. Victims also may express anger and frustration with you or with the process. It’s important to not personalize these reactions that the victims may have. Instead, educate yourself about traumatic response so that you are better able to understand the victims that you will work with.

7. **TERESA:** I have found that when meeting with the victim, “hearing” what is not being said is critical. A victim who recounts multiple details in sequential order might be attempting to restore her power and control over events.

8. **ANNE:** We must also be alert to the way that cultural differences can affect a victim’s behavior and our assessment of that behavior. For example, there were
several parts in the demonstration where Amanda Brown did not look the prosecutor in the eye. In many Western cultures this lack of eye contact can signify dissembling or possibly embarrassment, but in other cultures it can signify respect. Given the power differential in this particular case, it’s not a surprising response.

9. LEEMIE: A related point is that many victims of color are reluctant to report crimes against them, especially if the perpetrator is also a person of color, for fear of how they and the perpetrator will be treated in the criminal justice system, or how they would be ostracized by people in their own group. We should look carefully at how cultural factors may be affecting the prosecution of the case, and respond specifically to each victim’s needs.

10. IRENE: Also, during the first meeting, the victim should be informed about the criminal justice process. As prosecutors, we should commit to keeping her informed of the progress of the case, our evaluation of the case, and any negotiations with defense counsel, as well as other information, as long as we are legally able to do so. The lines of communication should always be open. We should never make an offer to the defense unless we first talk about it with the victim. And always remember that it’s difficult to predict what will happen during a criminal prosecution and to never, never make a promise that we can’t keep.

Teresa: Now that you’ve heard this discussion, please consider replaying the demonstration to see how the prosecutor employed the principles and strategies we’ve just discussed. Please consider doing this after each of the prosecutors’ panels.
ELICITING TROUBLING DETAILS:
Introduction

Charley: An essential element of interviewing a victim is eliciting troubling details - facts that the victim is reluctant to tell you because she thinks they make her look bad or would cause you to judge her character. For example, if the victim was using drugs with the defendant, she might be scared to tell you because she thinks you will have her arrested. When and how you elicit these details is our next discussion topic.

To begin, let's talk about our approach. Rape victims are well aware of the stereotypes and myths about this crime because they have heard them all their lives. Indeed, it is likely that until they were raped, they may have believed these myths themselves. This makes them fearful of how the criminal justice system will treat them. Victims' fear of not being believed is compounded by their own self-blame, which makes it very difficult for them to offer unflattering or damaging information. Prosecutors need to understand that a rape victim withholding details of her attack is not the same as a robbery defendant unwilling to admit his crime to law enforcement. Most rape victims do not understand the damage they do to their believability by withholding facts they consider negative. They don't usually withhold this information out of any bad intentions. As a result, we must develop sensitive approaches to eliciting troubling details that get the information we need without playing into the rape myths and stereotypes.

You cannot expect to elicit all the troubling details at your first interview. You need to develop a rapport with the victim before you press, and you cannot do this in a single interview. Often prosecutors are stretched for time and feel they cannot devote time to multiple interviews with a victim. But effective preparation in a rape case demands that kind of attention.

During the initial interview, the importance of truthfulness must be emphasized to the victim. Revelations that the victim lied may be devastating to successfully obtaining a conviction. Also, statements made by the victim that are inconsistent with her trial testimony will chip away at her credibility. A victim needs to know all of this ahead of time. Thus, during the first interview, explain in great detail the critical significance of complete honesty. This should be done after spending some time getting to know your victim - that is, after asking background questions. Once you've established a foundation, launch into an explanation of the importance of honesty. Make sure that the rape victim understands your explanation.

Also, a rape victim must reveal anything that may be both hurtful and helpful to the prosecution of the case. For example, if she knows of ex-boyfriends or other friends who will say damaging things about her prior sexual behavior, she should reveal this information, notwithstanding that it is unlikely to be admissible in court. A prosecutor must always know any negative information before trial so that he or she can deal with it effectively.
Finally, a prosecutor's sensitivity to the rape victim's fears helps to establish a rape victim's trust. During the initial interview, the prosecutor should inquire about the victim's security concerns, privacy concerns, and so forth. The victim is entitled to certain rights and it is important to honor and respect those rights, and to do all you can to assist the victim through this very difficult process.

We now turn to a subsequent interview between our prosecutor and our rape victim, Amanda Brown. At this point the prosecutor will focus on eliciting difficult details. Please watch how our prosecutor manages to perform this in a manner that does not alienate the victim, but also does not allow the victim to omit or lie about details that she thinks cast her in a negative light. This is a difficult balance to achieve, but it is not impossible. More than anything, it takes practice.
ELICITING TROUBLING DETAILS:
Demonstration 2

,LOCATION: Prosecutor’s Office)
(Amanda is extremely uncomfortable revealing the full story of what she drank. The prosecutor must press but not be confrontational or hostile).

DEMONSTRATION 2(A)

P. Amanda, it’s good to see you again. Now, today we are going to go back over what you told me the last time. And I want to remind you that we are going to get through this together. All right? I need you to tell me exactly what happened and not hold anything back. You need to be completely honest with me. It’s okay that you went up to his room. Nothing gives him the right to force you to have sex with him. That’s rape. That’s why we’re here. But I need you to be 100% honest with me about everything, okay?
A. Um, okay.
P. The way jurors are and the way they think about things - they might think that if you are not being truthful about one point, what else aren’t you being truthful about? You understand?
A. Yeah-- I understand. Look this is just really hard.
P. I know. We’re going to take it step by step. Okay?
A. Yes.
P. All right. Do you need a break?
A. No.
P. Okay, well let’s go back to that night then. Before you told me that you had a beer with him. How many beers did you end up having with him?
A. Um...two.
P. You didn’t have more than that?
A. No. I only had two beers. (Amanda is looking away--having trouble maintaining eye contact).
ELICITING TROUBLING DETAILS:
Commentator Analysis (2A)

Charley: I told you earlier that I would interject when I had something from my own experience that I thought was valuable for this training. Since this is not an actual interview, we have the luxury of freezing it in the middle to discuss a few things. To begin with, as soon as a rape victim mentions alcohol - or as soon as you suspect alcohol is involved - a red flag should go up for you.

Experience has taught us that people being interviewed by law enforcement -- whether they are witnesses, crime victims or defendants -- often misrepresent the amount of alcohol they have consumed. This is particularly true if the circumstances of the interview are such that their alcohol intake will, in their mind, have an impact on how their case will be handled or on how they will be perceived.

Also, in this particular interview, we noticed that Amanda was unreasonably defensive when the prosecutor asked her about her drinking. At that point Amanda clearly had difficulty maintaining eye contact with the prosecutor. This can also be an indication that the victim has more information for the prosecutor than she is currently disclosing.
ELICITING TROUBLING DETAILS:
Demonstration (Cont.)

,LOCATION: Prosecutor’s Office

DEMONSTRATION 2(B)

P. Amanda, I'm going to be honest with you-I'm not sure that you are telling me the complete truth about what went on that night. I’m not sure what it is, but I need you to tell me, Amanda. I have confidence in my ability to handle these types of cases-- but I need for you to give me a chance to do my job, and I can only do my job once I have ALL the facts.
A. Uh huh, I understand.
P. Amanda, when I know what happened I can ask you about it during direct examination -- which is when I will be able to ask you questions – now it’s much better for the jury if they hear about it from me first, rather than from the defense.
A. Okay.
P. Now let's start again. I think that we have a better understanding now, right? (Amanda nods.) Okay. So how many drinks did you have with Michael Cates that night?
A. Two and half beers. But I wasn’t drunk. (Amanda is making eye contact and now looking like she is going to cry).
P. I understand that. You did not consent to having sex with Michael Cates -right?
A. No - I didn't.
P. Then what happened?
A. At first we were just hanging out having a couple of beers...and then we kissed. (Quiet).
P. Then what happened?
A. Well, we were kissing and then his phone started ringing. He didn’t pick it up at first, so his friend started to leave a message. And when he heard who it was he jumped up to get the phone. While he was on the phone... while he was on the phone he... (unsure what to say next)
P. He what Amanda?
A. Well, while he was on the phone he was rolling a joint. (Looking for a reaction from the prosecutor) And then after he got off the phone we smoked it. But that was it.
P. What happened next?
A. Well, we started kissing again, and at first it was cool, but then he wouldn't stop. I mean, he wouldn't – he wouldn’t listen to me. (Amanda looks really upset now). Okay, so I told him to stop. I kept telling him to stop. (Quietly) But he wouldn’t.
P. (Quietly in response) Amanda, I know he raped you. Okay? But I need to be sure that I understand everything else completely. So can you tell me now how many drinks you had before you started kissing him?
A. Well, I had two beers... he handed me a third. I had a few sips of the third. But not much of it.
P. Okay, and how much marijuana did you smoke with him?
A. It was just a few puffs. That’s it—I swear.
P. Did you have any other alcohol or drugs at all that night? Before going up to his room? After leaving his room? At any time?
P. All right. So, all that you had was two and a half beers and a few puffs on a joint. Are you sure Amanda?
A. Yes. That was it.
ELICITING TROUBLING DETAILS:
Commentator Analysis (2B)

Charley: Now that we've seen the prosecutor elicit some additional information from the victim, we know that Amanda changed what she originally said. She began by telling the prosecutor she had one beer and now we know that she had two and a half beers and shared marijuana with the defendant.

One important thing to remember is the motivation for Amanda to misrepresent this information. Is she downplaying her alcohol and drug consumption because she wasn’t raped? Or is she downplaying this because she was raped and now she is fearful that the prosecutor will not take her case as seriously if the prosecutor finds out that she had more to drink with the perpetrator? Is she afraid she will get in trouble for smoking marijuana?

From the interview with her to this point, you should feel comfortable with the information that Amanda was in fact raped. As to her not being truthful about her drug consumption - that is not at all unusual.

It is important for prosecutors to recognize that a victim who is afraid of not being believed, or who is overwhelmed by shame and self-blame, may change the details of her story in order to cast herself in a more favorable light. She is so eager to have us believe her that she does not want to make things look worse than she already thinks that they do. But how do we know that we have gotten the whole truth from her? How do we know that we can rely on her information?

As the prosecutor, you need to make certain that you get at the complete truth, not just about the alcohol, but about all of the facts. You need to be absolutely certain that you know exactly what happened sexually between the victim and the perpetrator. Be careful how you do this with respect to tone. You don't want the victim to feel threatened and decide to drop the case. You must be supportive at the same time that you are asking these searching questions. One way to do this is to interweave the relevant questions with other factual questions.

What do I mean? It is probably easier to demonstrate this technique than to further explain it. Also, remember that there is no ONE technique that is right for everyone, and no ONE technique will work all of the time. You have to find the manner that works for you. Always be sure, however, that when you are done interviewing your victim you have really gotten all of the information. Let's now return to Amanda and our prosecutor to see how this interview should be conducted.
ELICITING TROUBLING DETAILS:
Demonstration 2 (Cont.)

,LOCATION: Prosecutor’s Office

DEMONSTRATION 2(C)

P. Okay, let me see if I understand. You went up to his dorm room to get his car keys, and he invited you in to have a beer, is that it?
A. Yeah.
P. And then you drank two beers and part of a third beer?
A. Yes.
P. You are not drinking much of this third beer. He is on the chair. And what happened next, are you two talking?
A. Okay, um, so we were just hanging out talking - it was kind of weird at first, so when I finished my beer I told him I was ready to go. And he laughed and he told me it was too early for me to go home and went and got us both another beer.
P. Wait, now I'm confused - this is when you were drinking the second beer, when you said you wanted to go home and he handed you the third beer?
A. No. I was having the first beer when I said I was ready to go, and then he handed me the second beer.
P. So when he told you to relax and just have that second beer, that’s when you asked him about going home – now what were you thinking about then?
A. I don't know. I wanted to hang out, but I didn't want to get home too late. I knew – I knew that my dad wasn’t going to go to sleep until he knew I was home.
P. When he first kissed you - was that okay with you?
A. Yeah - it was at first.
P. So, just to be clear, you consented to the first initial contact – the part about kissing?
A. Yes.
P. So what happened next?
A. His phone rang. At first he kept kissing me but when some guy started leaving a message he jumped up and grabbed the phone. He was laughing about something. And while he was on the phone he started rolling a joint. Then he sat down next to me and...we smoked it.
P. You said before you were worried about getting home late. Were you still thinking about that when you started smoking marijuana?
A. I mean, I knew I should get home, but I was having a good time. And I don’t usually smoke pot, so you know, it felt good to be done with finals and finally relax.
P. What happened next?
A. Well, at first we were just kissing, but then he started unbuttoning my shirt. I tried to just move his hands away, and keep kissing him. I mean--at first I didn’t think it was a big deal, but then he started getting like... a lot more serious.
P. What exactly happened when he tried to take your clothing off?
A. I told him I liked him. But I told him to stop. (Quiet). He just ignored me and tore off my shirt. I just - I was really scared at that point.

P. What happened next?

A. I kept telling him to get off me, but he was completely ignoring me. I just kept telling him again and again – “I don’t want to do this -- you have to stop.”

P. Okay. Now I want to go over some of this again. And listen, Amanda - it is very important that you understand that you absolutely have to tell me the complete truth. I know it is hard to keep going over and over all of this, but it will help me understand exactly what happened. Now, about how long was it until he handed you the first beer?

A. It was right after we walked in. Maybe 5 minutes.

P. What exactly did he say to you?

A. He didn’t ask. He just took out two beers, opened them up, and then handed me one.

P. What kind of beer was it?

A. Rolling Rock.

P. Did you see the refrigerator that he took the beer out of?

A. Yeah, he had a mini-fridge beside his desk. It was pretty empty aside from a 6 pack.

P. So when he came over and sat down next to you, you had almost finished the first beer. Is that when you said you wanted to go home, and he handed you the second beer?

A. Yeah. He told me that it was too early for me to go home, and then he got me a second beer.

P. So you have another beer with him, start looking through some pictures, and then he starts kissing you, right?

A. Yeah. And then the phone rang and he answered it when some guy started leaving a message.

P. And then he reached onto his desk and started rolling a joint while he was on the phone?

A. Yes.

P. Do you smoke marijuana regularly?

A. No. I mean, I have a few times. My ex-boyfriend used to smoke, so I smoked with him a couple of times.

P. So what happened when you finished smoking the marijuana?

A. Well he was sitting next to me on the bed and he started kissing me again. And he started trying to take my clothes off and I just wanted him to stop and he wouldn’t. I told him that I wanted to go home, but he wouldn’t stop. (Quiet).
ELICITING TROUBLING DETAILS:
Commentator Analysis (2C)

Charley: At this point we can see that our prosecutor went over the issue of alcohol and drug consumption until she was satisfied that Amanda was giving her a complete account.

Our prosecutor has clarified the issue of alcohol and drugs, but what about the consensual sexual contact? How does our prosecutor handle that? We know that nonstranger sexual assaults are sometimes preceded by some consensual sexual contact. Assisting the victim in discussing this with you is imperative to understanding how she communicated lack of consent, and when.

So far we have learned that when it comes to some of the unflattering facts in this case, Amanda is reluctant to reveal them. But we also know that after a bit of prodding Amanda does reveal previously undisclosed facts. This is not at all unusual in rape cases. The fact that a victim is not immediately forthcoming with all the facts does not mean that you should not go forward with her case. Indeed, such reluctance is often a hallmark of authenticity. These are all things that the prosecutor will keep in mind as she interviews Amanda on the issue of consensual sexual contact. So let's return to Amanda and our prosecutor to see how the issue of consensual sexual conduct is handled.
ELICITING TROUBLING DETAILS:
Demonstration 2 (Cont.)

,LOCATION: Prosecutor's Office

**DEMONSTRATION 2(D)**

**P.** So when you were sitting on his bed, you didn't feel nervous about being in Michael Cates' dorm room alone with him? You didn't in any way feel threatened or unsafe?

**A.** No--well not then--not until later. I mean we were just talking. (Amanda is quiet). God, I should have known. (She is quiet again.)

**P.** Amanda, there is no way you could have known what was going to happen. And please don't think I'm criticizing you—I'm just trying to understand what happened. And I know it seems like I'm asking you the same questions over and over again, but I'm just trying to get a picture of what was going on here.

**A.** Yes, yes - I understand.

**P.** Okay, look. Amanda - I need to understand exactly what you agreed to do physically with him - what you consented to. These are very important details. I understand that he raped you. And I also understand why you were afraid to at first tell me that you smoked marijuana with him. I want to help you Amanda, but the only way I can do this is if you tell me all of the details. Do you understand?

**A.** Yes.

**P.** And do you see the kind of damage that can come when you withhold any facts?

**A.** I guess I do.

**P.** This is very important. When you told me that you only had one beer with Michael Cates, you weren't telling me the entire truth, were you?

**A.** Well, I was just afraid that if I told you everything, you wouldn't believe that he raped me. I was scared that you thought it was my fault.

**P.** Amanda, I do believe you. And by telling the truth we can push this case forward and punish the man that did this to you.

**A.** (Nodding)

**P.** So, when he first kissed you, was that okay with you?

**A.** Yes, we were just kissing each other. I was fine with it.

**P.** And what happened then?

**A.** One of his friends called so he got up to get the phone. Then he sat back down on the bed and we smoked a joint. We started kissing again. He had his arms around me. Then he started to unbutton my shirt and I told him to stop.

**P.** Okay - go on.

**A.** He didn’t listen to me though. (Crying.) All of a sudden I felt really uncomfortable. I told him to stop, but- he pushed me on my back, and then he yanked my shirt off. I told him to stop— I just wanted to go home. But it was like he didn’t even hear me. He just ignored me. I couldn't believe it, it was like — it was like he was a different person. I kept telling him to get off me. He really was
just pulling off my clothes. Then he told me not to fight and I started crying. I was really scared.

P. Amanda-
A. What?

P. I know - I know that this is really difficult for you. But I really need to know—what happened next?

A. He pinned down my arms over my head and forced me to have sex with him. It was awful. I kept trying to make him stop and I couldn't. I should never have gone up to his room.

P. Amanda, what he did to you is rape. It's okay that you consented to kissing him. But you told him to stop—and he had no right to force you to have sex. That is a crime. And I want you to know that I believe you and I blame him for what happened. Not you. Now this is going to be a long process, and I'm going to tell you what's going to happen next.
ELICITING TROUBLING DETAILS: Prosecutors Panel

**Teresa:** We just saw a demonstration of how important it is to be able to elicit troubling details from a victim, and to do so in an appropriate manner. When I started as a prosecutor I didn’t ask victims difficult questions because I didn’t want to embarrass them or make them think that I didn’t believe them. However, after trying several cases and being surprised in court by unpleasant facts, I learned how to build trust with the victim and to elicit troubling details. We must support rape victims, but we must find a way to let them know that they must give us every detail accurately no matter how embarrassing. You have to find a way to let your victim know that she has to tell you the truth or you cannot prosecute the case.

Don, what is your approach to building trust with a victim so that you can elicit troubling details?

> **Points for Discussion:**

1. **DON:** Well, building trust and rapport takes time, and a prosecutor needs to leave room for this process of disclosure. One way that I’ve found to elicit troubling details from the victim is to ask her to try and tell me what she thinks the defendant will tell his attorney about what happened on that night. She needs to understand that you need to be prepared, and being prepared means that you need to know everything that the defense attorney will know. For example, a few years ago I had a case that involved a young woman who was terrified that her parents would find out that she had invited a young man into her bedroom where he had raped her. She was so frightened that she created this elaborate scenario and told me that he had taken her in his car to a remote place where the rape had taken place. We went with this story right through the preliminary hearing where she, under oath, told the same story to the judge. And by then it was too late. Of course we couldn’t continue with the case, and I’ve always thought that if I could have developed the appropriate trust and rapport with this young girl, perhaps she would have told me the truth. Unfortunately that didn’t happen. As an aside, however, this young man sexually assaulted another girl shortly after this event and we were able to convict him on that case.

2. **IRENE:** This is one of the reasons that I find it is so crucial to begin to start talking about the importance of honesty at the beginning of the first interview with your victim. You must make the victim understand that her credibility depends upon her being honest about all the facts. For example, if a jury finds her to be untruthful about events that lead up to the assault, they may not be able to return a guilty verdict even if the assault occurred.

3. **TERESA:** It’s important to note the manner in which the prosecutor in the video treated the victim in this case. Just so there’s no room for mistake: be
firm but gentle, not abrasive, and make eye contact. We need to be alert to the different tones and approaches that work with different victims. For example: Is this someone who’s young and fragile? Is this a street-smart woman with whom we can be more direct? Is this a woman from a community that will harshly blame the rape victim, and therefore she needs even more support?

4. **ANNE:** It is important to remember that not all victims remember things sequentially, and not all victims remember everything that happened to them due to normal traumatic response. Not every victim can be interviewed in the same way, and it’s imperative that as prosecutors, we become educated about traumatic response in order to develop effective interview styles for the different victims we work with.

5. **IRENE:** Whenever I sense that the victim is not telling the whole story, I begin repeatedly asking her detailed questions. Details are difficult to fabricate--especially if you are asked to recall them several times.

6. **LEEMIE:** Even when unflattering details are difficult for the victim to reveal, the prosecutor must find a way to elicit them. I always try to ask questions that I can check, little test questions. For example, I’ll ask the victim, "What time was it when you left his room?" If she gives an exact time, ask her, "How do you remember what time it was?" This will help you get at whether she is just filling in the details or recalling the information from memory.

7. **ANNE:** One thing to keep in mind is that as prosecutors we are used to questioning defendants about things that they don’t want to tell us the truth about because they are hiding criminal activity. We must remember that a rape victim’s reluctance to reveal intimate details, information that might make her look blameworthy or foolish is not the same thing, for example, as a robbery suspect who is unwilling to admit his crime to law enforcement. So when you are trying to understand the events that took place, you want to make sure that you don’t do anything that might cause the victim to feel as though SHE is the one that is being interrogated. Let’s remember that this is a woman who very likely feels that her life was taken from her on the day of the crime and has suffered a catastrophic impact to her life and to her sense of self.

8. **TERESA:** I completely agree. One method we saw the prosecutor in the video use, which I also often employ, is to reassure the victim that you do believe that she was raped. It’s often easier for a victim to tell you the truth if she doesn’t feel as though she has to convince you to take her case.

9. **DON:** And once you elicit the complete truth, you need to use that in your direct and in your summation as evidence for the jury of the victim’s credibility. Why would this young lady tell you these negative facts about herself if she wasn’t telling the truth?
**Victims Advocates & Counselors:**

**Introduction**

*Charley:* We are still focusing on preparing our victim for direct examination at trial. Through each of the interviews the prosecutor has learned more about Amanda and how she is dealing - and not dealing - with the trauma that has happened to her. Each time we meet with a victim we need to keep in mind that the woman sitting in our office is not just a victim but she is someone's daughter, she may be someone's mother, and she is a complex person who was living her life with all of its ups and downs up until the day she was raped. She is still that same woman - and now she has suffered a severe trauma. How severe? Well, sex is perhaps the most intimate act in which two people can engage. And this woman had this act forced upon her against her will by someone she knew.

So in addition to all the other feelings that come from being raped this woman is also dealing with the feelings that are particularly acute in women who know their attackers. She will be dealing with a sense of betrayal of trust and, among other things, a terrible sense that she can no longer rely upon her own judgment. So we have to consider how we can help her deal with this severe trauma that she has suffered. This will help her work with you on the rape case; this will help her move forward in her life.

Toward this end, many prosecutors’ offices have a victim/witness aid unit. These advocates are individuals who have specialized training in working with victims of violent crime. At each stage of victim preparation, from the initial meeting to the trial, a victim/witness advocate or community-based rape crisis counselor can assist the prosecutor in working with the victim. While there are different relationships offered to a rape victim by a victim advocate who is working for the elected District Attorney and a community-based counselor, both types of services can offer valuable assistance to prosecutors and rape victims.

Making the victim advocate or rape crisis counselor a partner in witness preparation is part of a multidisciplinary team approach that will yield the most effective prosecution of the rapist.
Victims Advocates & Counselors: 
Roundtable Discussion

Charley: Joining us to explain the two different kinds of victim assistance programs are two highly experienced experts in this area. Jane Foley is the Co-Director of the Milwaukee County District Attorney’s Office Sensitive Crimes Unit, and she has been in that position since 1989. Jean McAllister is the former Chair of the Colorado Coalition Against Sexual Assault and she’s got twenty years’ experience as a therapist and advocate on behalf of rape victims.

Charley: Jane, what is the District Attorney's Sensitive Crimes Unit and how does it operate?

Jane: The Sensitive Crimes Unit is comprised of advocates and prosecutors who specialize in the prosecution of sexual assault, child sexual abuse, and physical abuse of children. Each case that comes in is assigned an advocate and a prosecutor, and they work as a team on the cases.

Charley: What is the role of counselors there?

Jane: There are no counselors, only advocates.

Charley: What are the roles of the advocates, then?

Jane: The advocate supports the victim through the review process, trial preparation and the trial itself. We provide crisis intervention, in-court support, and we make referrals out for long-term therapy or financial compensation. An in-house advocate can be doing that job, while a community-based advocate can be doing the job of long-term therapy, and other support services for the victim.

Charley: So in-house programs only have advocates, but community-based programs have advocates and counselors?

Jane: Right. We refer out for therapy. Which is why it’s so very important that prosecutors’ offices and their in-house advocates have really close working relationships with community-based advocacy groups. However, a critical point for prosecutors to know is that as an in-house advocate like myself-- or Jean, as a community-based advocate—it is not our job to deal with the victim’s trauma so that the prosecutor doesn’t have to. A prosecutor who does the job well will make sure that they understand the feelings of the sexual assault victim.

Charley: Jean, what about community-based programs? How do they operate?

Jean: Community-based programs’ primary difference are that they are fully independent of the criminal justice system. They provide counseling, crisis intervention,
and advocacy services. Additionally, many of the programs in the United States provide 24-hour rape crisis hotlines, which make services accessible to victims 24 hours a day, 7 days a week. And, they provide services both to victims who have reported to the criminal justice system, and to those who choose not to report to the system. They provide longer-term services so they can continue services even after the end of a trial or criminal justice process.

**Charley:** Explain about the role of community-based advocates.

**Jean:** First, I want to say that many community-based programs use the same staff to provide both advocacy services and counseling or therapy services. So, people need to know in their community whether they’re working with an advocate or a counselor or a person who serves both roles. Advocates typically make referrals to other kinds of requested services, assist victims through the reporting process, the criminal justice process and the forensic examination at times. They provide information and assistance about the criminal justice system—who to contact and how to access it, and they provide sometimes intervention with the system when there are problems or when a victim’s needs are not being adequately met.

**Charley:** Can you give us a thumbnail history of the two different kinds of programs? Jane, what is the history of the Milwaukee County Program?

**Jane:** The Milwaukee County advocacy unit was started in 1974 in response to the treatment of sexual assault victims in the criminal justice system. The Milwaukee Prosecutor felt that sexual assault victims would really, really benefit from specialized expertise in their advocates. He also recognized that it would probably bring about more successful prosecution of sexual assault cases and that’s really come to fruition. Now across the country there are units like mine in all sorts of prosecutors’ offices. But, it’s important to note that these units were really started because of the work of community-based programs, who felt and pushed for prosecutors and the police to really treat sexual assault victims with more sensitivity—as Jean will explain.

**Jean:** You’re exactly right, Jane. This actually happened throughout the United States in the early 70s. You had community-based programs being formed by sexual assault victims and people who knew and loved them, who had been having difficult experiences with the existing criminal justice system. And they were initially formed to provide supportive services to victims that didn’t exist anywhere else at the time. They added to that trying to assist the criminal justice system with developing more sensitivity to the needs of victims and to the problems they experienced, and also to work on changing laws and public policy that were victim-unfriendly at the time, rather profoundly, and to help those things change to be more effective in dealing with the realities of sexual assault rather than the myths. And as Jane said, one of the initial outcomes of those early community-based programs was the development of system-based programs in both prosecutors’ offices and law enforcement agencies.
Charley: Jane, do in-house advocates require special training in order to handle sexual assault cases?

Jane: Yes, they do. Often these advocates are part of the victim/witness unit in the prosecutor’s office. But it’s important that someone in that victim/witness unit has specialized training in sexual assault. If you don’t have that person it’s important for the prosecutor to go out to the community-based agency and get a person like that to come in and do the court support, instead of just using a generic victim/witness specialist.

Charley: Jane, what about confidentiality? It’s such an important subject.

Jane: Yes, it is. Obviously as members of the prosecution office, we do not have confidential conversation with the victims. And it’s so important that the victims know that. We feel it’s so important that we put it in writing. But they also can know, and we can tell them that they can have those confidential conversations with community-based advocates, which we refer them to.

Jean: Exactly, Jane. In many states, community-based advocates and almost all rape crisis counselors and therapists can offer the victim confidentiality if they have the appropriate training that’s required by law in their state. This means, essentially, that the victim’s communications with the counselor are privileged, and cannot be shared without the consent of the victim. This ability to provide that kind of confidentiality can make a real difference in communities where there have been difficulties with or distrust of the criminal justice system.

Charley: Jean, what is the prosecutor’s role in protecting the victim’s privileged communications?

Jean: I know this can be a controversial topic. It is absolutely crucial for the prosecutor to assert the privilege on behalf of the victim, rather than leaving that to the community-based program. However, it is also important for the community-based program and their advocates to be able to explain to the victim when it is useful to release the privilege and share information with the prosecutor’s office—because many times, sharing information can actually assist the victim, rather than harm her or in any way harm her privacy. Community-based programs need to be able to assist victims in learning to trust the system by modeling and demonstrating confidence in the system’s ability to make good decisions about what kind of information they need. And, we usually need to work closely with the system advocates and the prosecutors in making those decisions and communicating those things to the victim. In Colorado we had a recent example of this very issue about confidentiality. We had a young woman who was sexually assaulted who did not report to law enforcement for two days. However, she had called the rape crisis center the night that she was assaulted. And when we discussed with her the option of sharing that information, and that it would make the prosecutor’s job easier, she agreed to a release about the phone call to the rape crisis hotline. It corroborated her story that she had been sexually assaulted because she made an outcry to someone. It resulted in
the offender pleading guilty and a much less difficult situation for her and for the
prosecutor, and a much stronger outcome in the long run.

**Charley:** That was an excellent example. Jane, what are the advantages of in-house
advocates?

**Jane:** If the advocate and the prosecutor work cooperatively as a team it can really be to
the benefit of the victim. And, it can enhance her ability to really participate in the
prosecution. An in-house advocate has the advantage of close proximity to the system, to
the prosecutors, and familiarity with the judges, the bailiffs, and the court personnel. It
has been my experience that in-house advocates really have credibility with community-
based advocacy because of their knowledge of the system. But none of this works if the
advocate doesn't keep the victim at the forefront of the work that we’re doing. In-house
advocates may be considered part of the prosecution team, but that doesn’t mean that
they shy away from addressing victim issues with the police and with the prosecutors.

**Charley:** Jane, what are the disadvantages of in-house advocates?

**Jane:** Sometimes in-house advocates have difficulty in defining their role. Oftentimes,
you know, the prosecutor may treat them more like an aid, or they may feel more like an
aid to the prosecutor than an advocate to the victim. And that shouldn’t happen. Because
of the close working relationship and the feeling of having this power imbalance between
the prosecutor and the advocate, sometimes the advocate is not willing to take the chance
to have the hard discussion with the prosecutor about a difficult case. There’s also, I
think for victims sometimes they’re looking at this big system and they see the in-house
advocate as part of that system. And if they may have had bad treatment from one aspect
of that system, they come in to the in-house advocate thinking they’re part of that. And
also, the issue of confidentiality certainly changes the dynamic of the relationship
between the advocate and the victim.

**Charley:** Jean, what are the advantages of community-based programs?

**Jean:** The primary advantage is the independence of community-based programs. They
can provide victims with the feeling that there is really somebody who is entirely on the
victim’s side, who is not there to meet anyone else’s needs but is really primarily
responsible for supporting the victim. This is especially helpful if there are cases where
the victim has had a difficult time with some part of the system or lives in a community
that has had distrust with the criminal justice system in some way. It’s also especially
important in these cases to demonstrate good working relationships between the
community-based advocate, the in-house advocate, and the prosecutor, because that
models that you can learn to trust the system, there can be a positive relationship between
people outside and inside the system. And, community-based advocates can very freely
advocate on behalf of victims without any fear of reprisal, so they can sometimes take on
those difficult issues that Jane referred to in a stronger way than in-house advocates are
able to do.
**Charley:** So what are the disadvantages of such programs?

**Jean:** Community-based programs need to help their personnel really fully understand the workings of the criminal justice system. If they don’t understand the system- how it works and what the needs are in prosecuting rape cases- they can mistakenly see their role of one that’s supposed to be critical of everything the system does. This can damage the relationship between the victim, the system advocates, and the prosecutor, and sometimes be detrimental to the case. Also because community programs are housed separately and have a variety of different programs they need to offer- 24 crisis lines, counseling for victims and family members in the evenings and on the weekends, sometimes communication can be difficult because they’re not available at the same hours that the system advocates or the prosecutors are available, and talking to each other can be difficult, especially in small programs that are staffed with just a few people. Also, it’s really important when a victim chooses to assert her privilege, that the advocates in community-based programs are sophisticated enough to support her in that assertion, while not cutting off all communication and relationship with the system-based people, so that you don’t model splitting the case.

**Charley:** Jane, how can prosecutors best benefit from an in-house advocacy program?

**Jane:** I think it’s important that the prosecutor and the advocates define their goals. And that means they need to have healthy debates, not power struggles over cases. The prosecutor and the advocate, I’ve found, can really learn from each other, for example, learning about cultural competency issues from each other when they’re working on a case. We use our advocates to train our new prosecutors on victim issues. And we also have our prosecutors turning to the advocates for second opinions on those difficult cases where you’re making really hard decisions. In-house advocate can really become part of the prosecution team.

**Charley:** Jean, how can prosecutors benefit from community-based programs?

**Jean:** Well, when community based counselors are able to assist rape victims in dealing with their rape-related trauma, they really can better prepare victims to work with the prosecutor throughout the trial process. They are better able to discuss the details of the sexual assault, they are better able to face the offender in court without breaking down, and they are better able to cooperate with the system throughout the process. And because they work with the victims over time and on a broader array of issues than just what’s needed for the trial, they often have much more information about the impact of the crime, the victim’s trauma, their symptoms. And when they are able to either communicate that with the victim’s permission or encourage the victim to communicate those things herself to the prosecutor, they can really end up strengthening case and the prosecutor’s understanding of the victim’s experience.

Additionally, like Jane said, we can serve as people to assist in reviewing difficult cases. Community-based programs often provide expert testimony in cases to explain victim behavior, to debunk myths, and explain the realities of sexual assault. And the issue of
training is another one where sometimes when you don’t here as clearly from people in
your program – you may hear an external person who’s an expert and learn – so that we
can help train prosecutors and bring prosecutors to the community to train on issues
related to what the system needs.

And finally, because community-based programs also work with people who don’t report
their rapes, we can encourage reporting in groups of people that would typically not be
connected to the system, which is a real benefit when you think how under-reported and
under-prosecuted sexual assault cases are typically.

**Charley:** Jane, should a prosecutor always make certain that a victim gets a referral and
contact information for those kinds of external services?

**Jane:** You can never make a mistake by giving a sexual assault victim a referral for
counseling. Whether you have an in-house advocate or not, a rape victim should always
leave a prosecutor’s office with a referral for counseling. And it’s very important that
someone follow up on those referrals too, to check with that victim to see if that was a
referral that she or he used, or if they need further referrals.

**Jean:** I agree with Jane. I think it is always best to offer referrals for counseling or
therapy. And while we know that not every victim will use those referrals, we also know
that rape is one of the most devastating and traumatic things that can happen to anyone.
And giving those referrals does two things: it offers assistance to the victim whenever she
might need it and it demonstrates that the prosecutor really understands the harm that was
caused and the seriousness of the crime that was committed against her.

**Charley:** Thank you Jane Foley and Jean McAllister. It’s very important for prosecutors
to understand how these two types of victim assistance units work and how they can
support successful sexual assault prosecutions. Your insights have been very helpful.
Now let’s bring this discussion back to the Prosecutor Panel and see how our group of
experienced sex crime prosecutors think of what we have been discussing.
Victims Advocates & Counselors: Prosecutors Panel

TERESA: We just watched an in-house and a community-based victim advocate discuss how they can help prosecutors. I always used a victim advocate to help rape victims through the process. I found that even when a rape victim might say that she was okay, and perhaps even look okay, she was generally far from okay. As a prosecutor, you have to be so careful what you say to a rape victim. Therefore, it is always helpful to have a trained advocate or counselor help you and the rape victim through the process and explain to the victim what the criminal justice system can and cannot do for her. Panelists, what is your experience with using these types of services? Irene?

➢ Points for Discussion:

1. IRENE: One point that the victim/witness expert said that hit home for me is that we as prosecutors cannot pass the buck to the victim advocate in dealing with the hard emotional issues that we encounter in the cases that we try. Prosecutors are often stretched so thin - they are often in trial and have other cases that they are preparing for at the same time - that this is very tempting to do. However, we cannot ignore the victim’s emotional state. If we do so, we cannot be effective in our preparation or at trial.

2. DON: When it comes to preparing the victim to see the defendant, I can’t stress enough the importance of using a counseling center. I have had victims who are all over the place when it comes to being in the same room with the defendant. I know that in some jurisdictions they routinely use Grand Juries, where the victim will not have to see the defendant until trial, but in the state that I’m from, we use preliminary hearings. And so I have to start fairly early on in preparing my victim to see the defendant. I am grateful for an office that has the resources so that we can afford a victim’s advocate program. If you don’t have that kind of program, I suggest that you use your local rape-counseling center to assist in this manner.

3. LEEMIE: Sometimes we’re not conscious of the impact that the judicial process, as well as our own actions, have on the recovery process of the sexual assault victim and her ability to participate in the prosecution. I know that when I first started working with the witness aid unit in our office, I was really able to improve things. The first step is to make sure that the victim really understands the legal process, and what her role in it is. Although I always explain this to a sexual assault victim, I have found that it really helps to have this information also come from a trained counselor - someone who has an unusually reassuring nature; who can spend a lot of with the victim; and who can repeat all the information so that it really sinks in.

4. TERESA: Prosecutors should also keep in mind that either type of counselor could possibly be engaged as an expert witness. The counselor might be permitted to offer testimony, to a limited degree, regarding the shame and guilt that non-
stranger rape victims typically suffer and how this phenomenon is at odds with a full and accurate disclosure.

5. **ANNE:** I agree with the advocates in the roundtable discussion on the benefits of creating a partnership. When I work with a rape victim I try to make her feel as though she and I are working together towards a common goal – that being to convict the defendant of this terrible crime. We are on a team together, and on that team I always include the rape crisis counselor. Anyone on the team can call anyone else on the team anytime, day or night. That’s what part of a team, or being on a team is all about. We work together and keep the lines of communication open. We all know that cases are stronger, and the likelihood of conviction is greater, if the victim is made to feel that she is part of a team from the beginning of the process, and has the full support of both the prosecution and the in-house and community-based agencies. Even if a case does not result in a conviction, victims who are met with a positive and consistent response from this kind of multidisciplinary team are still glad that they came forward.
UNDERSTANDING VICTIM’S STATE OF MIND:
Introduction

CHARLEY: How the rape victim feels about her prosecutor and the judicial system has a tremendous impact on her ability to participate effectively in the prosecution. Prosecutors must be aware of the implications of the criminal justice process, and of their own actions. Awareness, compassion and a willingness and ability to understand the unique issues a victim will encounter in a nonstranger rape case are critical, not only for the sexual assault victim and her recovery process, but also for the case.

For example,

- How does it make the victim feel if she is asked to recount the sexual attack in explicit detail?
- Does this bring up moments where she feels she is reliving the actual assault? Does it make her feel like she is not safe?
- How can you get the information you need from her with a minimum amount of retraumatization?

Before you can effectively begin to prepare your case you must learn how to gain sensitivity to the victim's state of mind.
UNDERSTANDING VICTIM’S STATE OF MIND:  
Interview with Victim Impact Expert

CHARLEY: We are joined now by Dr. David Lisak, Associate Professor of Psychology at the University of Massachusetts in Boston. Dr. Lisak has conducted extensive research over 17 years concerning undetected rapists. He has been involved in educating prosecutors and judges concerning his research for many years, and he appears as an expert witness in rape cases. David, why is it so important to focus on nonstranger rape?

DAVID: Because they are the vast majority of rape victims. The 1992 Rape in America study --which is the most reliable national study of rape ever done – showed that 75% of the women were raped by someone they knew. Therefore, statistically, most rape prosecutions should involve nonstranger rape.

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<th>RAPE IN AMERICA STUDY*</th>
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<tr>
<td>Prevalence of Nonstranger Rape</td>
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<td>75% Raped by a Nonstranger</td>
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* See www.njep.org/directexam for citation and text

CHARLEY: Are there differences in the impact on the victim in nonstranger versus stranger rape?

DAVID: Yes, there are many differences, and many of them are actually counterintuitive. This is very important for prosecutors to understand when dealing for the first time with the victim of nonstranger rape. These victims tend to:

- Delay disclosure more frequently;
- They feel more guilty and often blame themselves more;
- They also feel less worthy of support and help;
- They have more difficulty trusting themselves and others following the rape;
- And they also tend to have a longer psychological recovery time.

CHARLEY: Why do these victims have a longer psychological recovery time?

DAVID: Because being raped by someone you know involves a betrayal of trust. This makes it hard for the victim to trust anyone, including herself.

CHARLEY: Juries expect rape victims to have suffered visible, physical injuries. Is this common for nonstranger rape victims?
DAVID: No. Nonstranger rape victims usually have little or no physical injury. One reason for this is that the vast majority of nonstranger rapists are serial rapists, and they’ve learned to use the minimum level of force and threats needed to terrorize and subdue their victim. They don’t need to inflict visible physical injuries.

CHARLEY: What is the relationship between physical injury and psychological harm?

DAVID: When working with victims of nonstranger rape, it’s important to understand that physical injury is not the measure of psychological harm. The brutality of the attack does not determine the severity of the emotional response. In fact, victims of nonstranger rape often suffer greater psychological trauma than victims of stranger rape. And while it is true that most rape victims do not suffer physical injury beyond the rape itself, many fear that they will be killed or seriously injured during the attack.

• Physical injury is not the measure of psychological harm
• The brutality of the attack does not determine the severity of the emotional response
• Victims of nonstranger rape often suffer greater psychological trauma than victims of stranger rape

For example, the Rape in America study found that while only 4% suffered serious physical injuries, 49% feared death or serious injury.

RAPE IN AMERICA STUDY
While only 4% of rape victims suffered serious physical injuries, 49% feared death or serious injury

Experiencing this level of fear is a life-altering event. Prosecutors should understand that it’s the subjective experience of the victim – the terror she experiences – that determines the psychological impact; and not the amount of physical injury she suffers.

CHARLEY: What should prosecutors expect when meeting a victim of nonstranger rape for the first time?

DAVID: The prosecutor is going to meet a woman who may have been in fear for her life, and who at the very least has been through a horrific experience. It is very likely that she will come into the prosecutor’s office convinced that the prosecutor will not believe her if she simply tells the complete truth about what happened to her. It will be very difficult for her to talk openly with a stranger about what happened without a great deal of help and reassurance. And all of this will be compounded by her guilt and self-blame.
CHARLEY: Why is there so much self-blame?

DAVID: She blames herself because she has internalized all of the cultural messages she has received that it is her fault. These messages are reinforced over and over again in our culture. She also blames herself to regain a sense of control.

CHARLEY: Can you explain that?

DAVID: Yes. Here’s an example: a nonstranger rape victim may tell a prosecutor that the rape was her fault because she went into the rapist’s room, she had some beers with him, she may have kissed him. She thinks that if she doesn’t do these things again in the future, she will be safe. She uses this defense mechanism to give herself a sense of control over a situation in which she had no control. She knew the defendant; she believes that she should have been able to judge his true nature. For her, it feels better to blame herself than to acknowledge what is actually the truth: that she is vulnerable in the world, and that she was powerless to prevent the rapist from harming her.

CHARLEY: What about the woman who cannot coherently explain what happened to her?

DAVID: A prosecutor might meet a victim who is still in an acute phase of her trauma and is just unable to explain what happened to her in a coherent, sequential fashion. This is particularly true if the first meeting occurs soon after the attack. By acute phase, I mean she may be experiencing dissociation, shock, nightmares, flashbacks, outbursts of anger and even suicidal thoughts and actions.

### ACUTE TRAUMATIC PHASE:

- Dissociation
- Shock
- Nightmares
- Flashbacks
- Outbursts of anger
- Suicidal thoughts and actions

CHARLEY: David, would you explain what you mean by dissociation?

DAVID: Dissociation is a mental state akin to shock. In a dissociated state, most victims become passive and unresponsive. It’s as though their minds and bodies have been separated to protect them from the overwhelming horror of the attack. So when a prosecutor asks a victim to describe what happened shortly after the attack, she may be incapable of responding because her mind is shutting down to protect her from reliving the traumatic event.
CHARLEY: David, are there other reasons a rape victim might have difficulty communicating with the prosecutor during the first interview?

DAVID: Some victims will have difficulty communicating a coherent account for reasons related to neurobiology. Trauma produces a powerful neurochemical reaction in the brain, and the victim’s brain is dramatically altered as a result. Trauma creates very different types of memories, and often what the victim remembers are vivid and very intense memory flashes that she has difficulty linking together into a sequential narrative.

CHARLEY: How should prosecutors deal with this?

DAVID: Prosecutors need to be careful, especially early on, not to push this kind of victim too hard to put her memories into sequential order. It is better simply to ask her to tell you everything that she remembers, and to worry about putting it all into the right order later, as you gather more information from the investigation.

CHARLEY: What about the victim who relates what happened to her, but doesn’t seem to have any emotional response at all?

DAVID: Women will vary greatly in the kinds of emotions they display while recounting their experience. Some women will break down. Others will appear emotionally flat and unaffected. It’s simply a matter of individual difference, and perhaps the length of time since the attack.
CHARLEY: Does this mean that an emotionally flat victim is less affected by the rape?

DAVID: No it does not. The emotionally flat victim is simply defending herself from the same overwhelming emotions that might be openly displayed by another victim. The fact that she is not outwardly displaying this strong emotional response does not mean that she’s not experiencing one. Quite the contrary, she is probably overwhelmed by the strength of her emotions and is shutting down as a coping mechanism. Relating what happened as though it happened to someone else may be the only way that the victim can talk about the assault.

The fact that a victim is not outwardly displaying a strong emotional response does not mean she is not experiencing one

CHARLEY: Many people assume that by the time a rape case comes to trial, so much time has elapsed that the rape victim will have fully recovered psychologically. David, is this true?

DAVID: No it is not. Furthermore, whatever recovery the victim may have made will be severely tested by the trial process. There is a lot of variability in the severity and the course of symptoms that rape victims experience, but we can make certain generalizations based on many years of research.

As I explained earlier, virtually all rape victims will experience acute trauma symptoms in the immediate aftermath of the attack. After about three months, these symptoms will have diminished considerably for many victims. For some, recovery will proceed relatively smoothly; their symptoms will continue to diminish over time. For others, however, the trauma symptoms will not diminish and the victims will develop chronic Posttraumatic Stress Disorder, or PTSD, where they continue to experience many of the same symptoms they did right after the rape. Once again, these symptoms include dissociation, disorientation, shock, flashbacks, nightmares, outbursts of anger and even suicidal thoughts and actions.
CHARLEY: How is the trial process likely to affect these symptoms?

DAVID: For all victims, the trial process – with its powerful reminders of the attack – will re-evoke terrible memories and almost invariably trigger renewed symptoms.

Because of this, it’s essential for the prosecutor to minimize as much as possible the traumatizing impact of the trial process. This is crucial for two reasons. First, for humanitarian reasons, you want to reduce the victim’s suffering as much as possible. Second, an acutely traumatized victim is likely to be an unpredictable witness. She is more likely to dissociate while on the witness stand, and this will make her look emotionally flat and indifferent to the jury, which can be a real problem.

WHY MINIMIZE TRAUMATIZING IMPACT OF TRIAL PROCESS

• Reduce victim’s suffering as much as possible
• An acutely traumatized victim is likely to be an unpredictable witness
• More likely to dissociate on witness stand and look emotionally flat and indifferent to the jury

CHARLEY: What can prosecutors do to minimize the negative impact of the trial on the victim?

DAVID: First and foremost, minimize the number of continuances that delay the trial process. The victim prepares herself psychologically and emotionally for the trial, or for any court appearance. So any delay causes a great deal of unnecessary trauma.

CHARLEY: Are there other scheduling issues that the prosecutor should attend to?

DAVID: Yes, avoid scheduling a court appearance on or near the anniversary of the attack. Anniversary dates are typically times of extreme psychological stress for a victim.
CHARLEY: David, do you have any final suggestions for prosecutors as they prepare the victim for trial?

DAVID: Yes, and this one is of utmost importance. The prosecutor must help the victim become prepared for the many traumatic triggers she will face in the courtroom. The prosecutor should ask the victim ahead of time what aspects of the attack will be most traumatic for her to recount in court. The prosecutor should also find out what pieces of evidence will be most triggering for her to see. Then the prosecutor should work with the victim to figure out the best way to approach these sensitive areas or pieces of evidence during the trial. If the victim knows ahead of time when she will have to recount the most sensitive parts of the assault, or identify the most triggering pieces of evidence, it gives her some sense of control. By preparing the victim ahead of time for these emotional triggers, the prosecutor minimizes the trauma to the victim, as well as the chance that the victim will dissociate while on the stand.

HOW TO MINIMIZE TRAUMATIZING IMPACT OF TRIAL PROCESS

- Minimize the number of continuances that delay the trial process
- Avoid scheduling a court appearance on or near anniversary of the attack
- Prepare victim for traumatic triggers she will face in the courtroom
- Ask victim ahead of time what aspects of the attack will be most traumatic for her to recount in court
- Find out what pieces of evidence will be most triggering for her to see
- Work with victim to figure out best way to approach these sensitive areas or pieces of evidence during trial

CHARLEY: Thank you, David. Prosecutors who understand these issues are much better able to support rape victims during the trial preparation and scheduling phase, which will make these victims better witnesses at trial.
CONCLUSION:  
Cassette 1

Charley: We've come to the end of our segment on preparing adult rape victims for Direct Examination. We hope our demonstrations, expert interviews and panels have provided you with new and helpful ideas for handling these difficult cases. Part II of our program moves to the courtroom and focuses on conducting a strong Direct Examination that lays the foundation for a powerful closing argument. Both parts of our video, taken together, provide the tools you need to obtain convictions in nonstranger rape cases.

Before we go on to Part II, I want to tell you about other resources you may find helpful and give you the relevant websites. As I noted at the start of this segment, additional material for this video is at www.njep.org/directexam.

For more extensive material on victim impact, see the National Judicial Education Program's video, Understanding Sexual Violence: The Judge's Role in Stranger and Nonstranger Rape and Sexual Assault Cases. For information about this video, which is also available on DVD, go to the website now on your screen.

Understanding Sexual Violence:  
The Judge’s Role in Stranger and Nonstranger Rape and Sexual Assault Cases

www.njep.org/usvjdvd

To learn more about the presentation of medical evidence in an adult victim rape trial, see the first video in NJEP's video series for prosecutors, Presenting Medical Evidence in an Adult Rape Trial. The website is: www.njep.org/medicalevidence.

Understanding Sexual Violence:  
Presenting Medical Evidence in an Adult Rape Trial

www.njep.org/medicalevidence

The medical evidence video also provides strategies for trying sexual assault cases when there is no medical evidence of the crime, which is quite common in nonstranger rape cases. Another valuable segment of that video shows an actual rape kit examination of a victim. Any prosecutor who has never seen this examination performed will greatly benefit from seeing the video. It is much easier to convey to a jury exactly how unpleasant the standard physical exam which rape victims must endure is when you understand it yourself.
Finally, an online version of NJEP's complete four-day curriculum for prosecutors, *Understanding Sexual Violence: Prosecuting Adult Rape and Sexual Assault Cases*, is available on the Department of Justice Office on Violence Against Women website now on your screen.

Now, please go to Part II of our video where we will move into the courtroom.
INTRODUCTION:
Cassette 2

Charley: Welcome to Part 2 of our Understanding Sexual Violence video on Direct Examination of the victim in an adult rape case. In Part 1 we considered what prosecutors need to know about preparing rape victims for Direct Examination. Part 2 deals with the trial itself. As I said in the introduction to Part 1, rape cases present unique challenges for prosecutors and victims. Because the false stereotypes about what rape is and who commits it are so widely believed, rape victims encounter a level of skepticism and victim blaming unlike that of any other crime victim. Indeed, these victims may well accept these false stereotypes themselves. Additionally, victims must recount in public highly personal events. This kind of testimony is vastly different than telling a courtroom about a robbery, for example, and makes tremendous demands on the victim.

The purpose of this video is to empower you to prosecute and win the kind of nonstranger rape cases that we all know present particular difficulties and to gain the victim's trust. Regardless of your level of experience as a sex crimes prosecutor, we hope to show you that not only should you bring these cases forward, but that you can win these cases in court. We will give you the tools to do this. We will teach you concrete ways to win these cases. When you know you can win a nonstranger rape trial, then you will feel more confident when you take the case to court. Once you have a model in mind of how well a case can move forward, you will be much more self-assured in prosecuting these cases.

We will provide this model for you in this two-part video and in the additional materials on our website, www.njep.org/directexam.

Please keep in mind while you watch each of our courtroom demonstrations that they are not intended to be actual courtroom scenes. There is no defendant, no defense counsel and therefore there are no objections. We are trying to illustrate particular points about direct examination throughout our courtroom demonstrations. These points are discussed by the expert prosecutors following each demonstration. Our purpose is to show you many different ways to enable your victim to tell, and then REPEAT her account of the attack for the jury, so that you can be certain what she says really sinks in.

You can adapt these techniques to your own cases, the requirements of your jurisdiction and your own particular style. We are well aware that not every judge will admit all of the evidence we are encouraging you to present. Some of this might be better addressed in your redirect. But please consider the techniques we recommend. Follow the steps we offer to you and you will present a powerful direct examination.
CLASSIC DIRECT EXAMINATION:
Introduction

Charley: There are several aspects to a strong direct examination. Before we explore them, let me give you an overview of the material. Keep in mind that this is a training video and that what you will see in the demonstrations is not meant to teach you what is required substantively in your state to prove a rape case. We only show a small segment of testimony so that you will get a feel for what we are talking about. In an actual trial much of the material would be further developed.

Direct Examination has two parts: Classic Direct Examination and Anticipating The Cross-Examination. Classic Direct Examination is what most folks think about as Direct Exam. It can be easily broken down into five elements.

1. Introducing The Victim
2. Victim's Uninterrupted Account
3. Double Direct
4. Triple Direct and
5. Follow The Trauma

Anticipating the Cross consists of just one element: Introduce every weakness in the case yourself.

Anticipating the Cross is just as important to a strong direct exam as is Classic Direct. But it is the only section that you should absolutely not put at the end of your direct examination - that would be giving an advantage to the defense attorney. So, Anticipating the Cross must be positioned somewhere within the five elements of Classic Direct.

When we are done going over this material you should be very comfortable that you will know how to do a strong direct examination in a rape case.
INTRODUCING THE VICTIM:
Introduction

CHARLEY: Now let's move into the courtroom. The first element of classic direct examination is introducing the victim to the jury. You want them to see her as a person, not just a statistic or the image of a lurid crime. The victim takes the stand - you don't ask her to launch into a narrative of the crime. First ask her questions about her background. Ask about her parents, her children, her job, her school, her volunteer work - If she is a prostitute - ask her to explain why she does that kind of work. How many questions do you ask? How long can you go on? As long as you can. When a defendant takes the stand, defense counsel covers defendant's background, personal life, and even upbringing at the beginning of the direct examination in order to humanize him. Prosecutors would be well served to follow this example.

The second benefit of humanizing the victim, having her talk first about her personal background rather than the crime, is that it gives her a chance to calm down, to become a little more at ease in the witness chair. She is talking about material with which she is comfortable and which she is used to telling to strangers. Calming her down at the beginning will make her a better witness as you go through your direct.

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INTRODUCING THE VICTIM:
Demonstration 3

,LOCATION: Courtroom

(Amanda is on the witness stand. Her first answers are very tentative. Soft voice. She’s very nervous. Grows visibly calmer as she answers these questions. Her voice picks up as the demo continues).

Demonstration 3

P. Ms. Brown, please state your full name for the record.
A. Amanda Elizabeth Brown.

P. How old are you?
A. I’m 19 years old.

P. What, if anything, do you do?
A. I’m a student.

P. Where do you study?
A. I’m a junior at State University.

Judge. Alright Ms. Brown, I’m going to have to ask you to speak in a nice, loud, clear voice so all members of the jury can hear you. Okay? It’s very important that everyone can hear you. Alright, you may continue.

P. Which State University campus do you attend?
A. The one right here.

P. What are you studying at State?
A. I’m a history major. I’m also pre-law.

P. Why did you choose State?
A. I got a full academic scholarship—and it’s close to home.

P. So do you live at home?
A. Yeah, I live with my parents. It’s only 30 minutes from school.

P. Do you have any brothers or sisters?
A. I have one sister—she’s 15.

P. Are you involved in any activities at school?
A. I used to be part of the theatre club on campus. Now I volunteer at a local elementary school.

P. What do you do there Ms. Brown?
A. I help out with an after school art program twice a week.

P. And do you also have a paying job?
A. Yes, I work at the campus library.

P. And what do you do there?
A. I work at the circulation desk—you know, I check books in and out.

P. Ms. Brown, you said that you used to be a part of a campus theatre group. Please tell us about that.
A. Well, there’s no drama department at State so...
INTRODUCING THE VICTIM: Prosecutors Panel

TERESA: We just watched the prosecutor carefully introduce the victim to the jury. Panelists, why is it so important to begin your direct in this way? Irene?

Points for Discussion:

1. IRENE: The beginning of direct MUST be the victim's background. Questions about her background, her family, her education and her employment let her get comfortable on the stand, and it acclimates her to the courtroom procedure. This is what’s going to humanize your victim for your jury, and that’s why defense attorneys do it all the time with their clients. Background questions let the victim catch her breath when she takes the stand and it gets her to start concentrating on your questions.

2. TERESA: I’ve found that prosecutors are generally not very good at introducing victims to juries whereas defense attorneys generally are very good at introducing their clients to their juries. We can learn from them. Due to many jurors’ beliefs in stereotypes and rape myths, we often fight an uphill battle in convincing a jury that a rape victim is credible, and we can overcome this by introducing the victim to the jury with sufficient background information.

3. DON: I agree. Presenting a victim’s background helps to establish who she was before the sexual assault occurred. I usually spend 5-10 minutes on background, before even discussing the date of the crime. You have to remember that you lead up to the sexual assault – you don’t start there.

4. ANNE: It was easy for the prosecutor to introduce and humanize the victim in this case because Amanda Brown is an appealing young woman. But what do you do when the victim is not so appealing—a homeless person or a substance abuser?

5. LEEMIE: Well, I think there is always something good to say about your victim and a way to humanize them. For example, we once had a victim who was young, but already a hardened, convicted criminal. She had a violent past and a conviction for selling drugs. But we were able to get her to tell her life story and to tell where she came from – the world in which she came from – one where she had no father, a crack addicted mother who was unreliable, younger siblings to care for and violent surroundings. So we were able to turn her from a very unsympathetic victim to a sympathetic one, and successfully portray her as a victim of her circumstances, and then of the rape.

6. TERESA: I do want to make one suggestion while we’re on the topic of introducing the victim to the jury. During trial, always refer to the victim by her proper name. In our demonstration, you heard the prosecutor call Amanda Brown
Ms. Brown. When I’m in the hallway outside of court speaking to another lawyer, I may refer to her as the victim or the complainant, but during trial you should always call her by her name. We want to make sure that we humanize the victim who has suffered so much at the hands of the defendant.
CHARLEY: The second element of CLASSIC DIRECT EXAMINATION is having the victim give the jury an uninterrupted account of what happened to her. After the victim has spent time going over her background information for the jury, we direct her attention to the date of the crime and ask her what if anything unusual happened to her on that date. Let her explain in reasonable detail but in her own words how she was raped by the defendant. This ensures that the victim is the highlight of the courtroom. All attention should be focused on her and on what she is now recounting for the jury. Since you have covered all this material with her in your office you know more or less what she will say. You know when to say “and then what happened” or “what happened next” to move her account of the rape along.

All the courage that this woman has summoned up to bring herself to this trial was really for this opportunity: to tell the jury what that man did to her. Let her do it. Practice making her direct examination appear seamless by knowing when to interject simple questions. Learn how to be quiet in the courtroom. Help the jury focus on what happened to your rape victim.

VICTIM’S UNINTERRUPTED ACCOUNT

- Let the victim explain in her own words how she was raped by the defendant
- Ensure that the victim is the highlight of the courtroom
VICTIM’S UNINTERRUPTED ACCOUNT:
Demonstration 4

,LOCATION: Courtroom, Rape victim is on the stand

Demonstration 4

P. Ms. Brown, now that you’ve told us a little about yourself and your family, please direct your attention to December 15th of last year. Please tell the members of this jury, what, if anything, unusual happened to you that evening?
A. I went up to Michael Cates’ dorm room with him so he could get his car keys to drive me home and he raped me.
P. Please describe for the jury how this happened.
A. I was in theatre group rehearsal and it was running really late and I was talking to my friend, saying I was worried about catching my bus home. Michael Cates—he’s a junior at school and one of the actors in theatre group—was standing right near us and he told me not to worry about catching my bus, and that he would give me a ride home.
P. Were you friendly with him?
A. You know, everyone in a show becomes like family. So, I got to know him about as well as I got to know anyone in the show. I mean, he seemed nice and I—you know, thought I had no reason not to trust him.
P. And then what happened?
A. When we were leaving rehearsal he said he’d forgotten his car keys, and we would have to stop at his dorm room to get them.
P. And would you please tell the jury what happened then?
A. I went to his dorm room with him. (pause). Then he said he had to check his messages and he told me to sit down. Then he handed me a beer. I don’t know - I thought we were just going to hang out a little bit and then he was going to drive me home. (Pause).
P. What happened after he handed you the beer?
A. Well we started listening to music and talking about the show we were putting on in theatre group. Then he handed me another beer, and we were looking at pictures and talking about things. And then he kissed me.
P. What happened after you began kissing?
A. The phone rang. At first he ignored it, and once one of his friends started leaving a message he answered it. And then he started rolling a joint, and we smoked it together.
P. What happened next?
A. We started kissing again. At first it was nice, but then he wouldn’t stop. He started unbuttoning my shirt, and I told him to stop. I asked him to take me home, but he wouldn’t listen to me. (Quiet) Then he pulled off all of my clothes and he forced me to have sex with him. I just wanted it to stop. I wanted him to stop. (Out of breath).
P. Would you like a glass of water?
A. No, I’m okay. (Looking very upset and obviously not okay).

**Judge:** Ms. Brown – If you would like to step down for a moment or have a glass of water that would be fine.

A. I’ll be all right.

**P.** Ms. Brown, you just said that the defendant forced you to have sex with him. I’m sorry but I must ask you to explain to us more specifically exactly what he did to you. Please tell the jury exactly what he did.
VICTIM’S UNINTERRUPTED ACCOUNT:
Prosecutors Panel

TERESA: After introducing the victim to the jury, the prosecutor should take the victim through an account of the rape with as little interruption as possible. We have just seen a demonstration of this technique. Panelists, how do you prepare a victim to give this kind of narrative account? Leemie?

Points for Discussion:

1. LEEMIE: The direct should be written down in some form. I prefer making a checklist of all the points I want to hit in an outline form. Then you can use this outline to prepare your victim for her testimony beforehand. This gives you an opportunity to listen to the answers in your office and see if there are differences or things implied as you go over it with her on more than one occasion. This preparation will be good for your victim. She will then be prepared for the questions you will ask at trial to move her narrative along.

2. IRENE: I do it somewhat differently. I personally don’t like to write too many questions. If I do this, I get bogged down in trying to remember what my next question should be, and I stop listening actively to what the victim is saying during the direct. So instead, I memorize the important points that I want to elicit from the victim, and I just jot down those notes in brief.

3. TERESA: Regardless of your technique, you must always listen to the victim’s answers and be prepared to be flexible. Trials can be unpredictable even with a prepped victim and you want to look conversational, not memorized.

4. ANNE: During the first direct, if your jurisdiction allows it, stand behind the last juror so that the victim will have to look at the jury. It’s difficult for a witness to look at the jury while talking about the intimate details of a sexual assault in court, and so you may have to help her make eye contact with them. Additionally, the prosecutor should alert the jury in both voir dire and opening statement to the discomfort of the individuals required to testify about the intimate details of their life. This way, if the victim does present as “uncomfortable,” it will help the jury to draw the right conclusions about the victim’s discomfort.

5. DON: I find tremendous value in allowing the victim to use her own voice at least one time through the narrative of what happened. This is simultaneously empowering for the victim, but it’s also easier for the jury to follow. I try to use non-intrusive questions so as not to become the highlight of the interaction; the victim should be the highlight. I also want to focus on the answers, not on the questions. This way the victim gets to give a complete narrative to the jury as to what happened.
6. **IRENE:** That’s true. However, you have to remember that you may get an objection to the initial direct – that objection being that the victim is testifying in the narrative form. If the judge sustains that objection, then you have to be prepared to ask more questions. But you want to ask more questions without getting into the sensory detail that you want to elicit during the double or triple direct. A simple way to avoid this objection is to ask questions such as, “what happened next,” or “what did you do then?”

7. **LEEMIE:** Also, you should keep in mind, in a nonstranger rape case, having the victim begin with a narrative account is especially important because it captures the events leading up to the rape. As we saw in the demonstration, Amanda Brown’s testimony will help the jury understand how the defendant really schemed to get her up to his room—how he used a friendly offer of a ride to disarm her. This will be essential information in closing arguments. You want the jury focused on his intentions and the actions he took to accomplish them.
DOUBLE DIRECT:  
Introduction

CHARLEY: The third element of classic direct examination is Double Direct. The term "double direct" refers to the second time that the prosecutor takes the victim through the account of the crime. This is a method of retelling the victim's story without repeating testimony exactly as it was just testified to, since this would be inadmissible. It is desirable to have the jury hear the victim tell what happened to her a second time, "double direct", and whenever possible a third time "triple direct." However, the purpose and perspective of each retelling is different.

To facilitate the victim retelling her account of how she was raped for the jury without allowing the testimony to be stopped by an objection of "asked & answered", we must create a vehicle to allow the testimony. Double direct allows the victim to tell it all again - but the second time around the questions are based on an exhibit. Whether it makes more sense to have a sketch, photograph or a videotape of the crime scene depends upon the case and individual office resources. Even where resources are tight, any prosecutor can afford a disposable camera and a few hours from a police officer to take some crime scene photos.

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<td>• Allows the victim to tell her account again</td>
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You explain to the Court that you need this testimony and this exhibit to aid the jury. Once the exhibit is in evidence you can have the victim point to different locations on the exhibit while she explains once again what happened to her. Just don't lose sight of the goal-the exhibit is a tool to enable the victim to recount the rape once again, but this time with the added visual dimension for the understanding of her testimony.

You will see that in this courtroom demonstration the prosecutor has Amanda Brown point out things for the jury using a sketch of the defendant's dorm room. Please note that since this demonstration is only intended to illustrate the technique of double direct, we have omitted the prosecutor indicating for the record the particular spots the witness indicates. Furthermore, given Amanda Brown's testimony, it might be more effective to show a brief videotape of the entire crime scene for the jury. However, we have chosen a sketch simply to illustrate the technique of double direct. When choosing an exhibit, consider what might work well given the facts of your case for your jury.
DOUBLE DIRECT:
Demonstration 5

(LOCATION: Courtroom)

Demonstration 5

P. Ms. Brown, you said that this drawing shows all of the furniture in the defendant’s room on the night in question. Is this the way the room looked?
A. Well it wasn’t neat like this. I couldn’t see his pillow. He had the comforter spread across the whole bed. And the chair wasn’t tucked under the desk like that. He pulled it out when he sat in it.
P. Did there come a time when he moved from the chair where he was sitting?
A. Yes—he sat next to me on the bed.
P. Please show the jury, Ms. Brown.
A. I was sitting here (indicating the bed) and he sat next to me here (indicating a point on the bed).
P. When did he do that?
A. After he handed me my second beer.
P. And then what happened?
A. He had this stack of pictures from his desk and he started showing them to me. When we were talking about the pictures that’s when he leaned over and kissed me.
P. How long did you kiss?
A. A few seconds.
P. Describe the kiss.
A. We just kissed with our mouths closed for a few seconds and then the phone rang.
P. What did he do then?
A. He didn’t do anything—the machine picked up. But after his friend started leaving a message he jumped up and grabbed the phone.
P. Can you please show us on the diagram where the phone was?
A. It was on the desk—over here (pointing to side of desk to the right of chair). He moved from the bed to the desk (pointing from bed to desk), and sat down and started laughing with his friend. Then I noticed he started rolling a joint.
P. Then what happened?
A. He sat down closer to me, closer this time, and we smoked the joint together.
P. When you say you smoked a joint, explain to the jury what a joint is.
A. It’s a cigarette filled with marijuana.
P. How much of it did you smoke?
A. Well, you know, I only had a few puffs.
P. Why?
A. I didn’t really know him that well – I thought smoking with him might make me feel more comfortable. But I’m not a big pot-smoker so I only had a little.
P. Ms. Brown you said that the defendant sat down closer to you—can you show us where that was?
A. I was sitting here (indicating BED on diagram) and now he was sitting here (showing spot closer to here)—closer to me.
P. What happened then?
A. He kissed me again and that’s when I told him I really needed to get home.
P. Why did you say that to him then?
A. When we were kissing it was – it was okay at first. And then he started unbuttoning my shirt, and I felt sort of uncomfortable and I moved away from him. I said it was getting late and that I should get home.
P. Show the jury where you moved to.
A. I had moved up here (indicating a point just below the pillow). But he came after me. He was right... right up against me.
P. What else did the defendant do then—if anything?
A. He got angry. He ripped open my shirt, and then he pushed me down on the bed right here. (Indicating again the point just below the pillow).
P. When you say that he ripped open your shirt could you please describe how he did that?
A. He took each of his hands and he grabbed each side of my shirt and he ripped it open (witness indicates with her hands). The buttons popped off.
P. Ms. Brown when he pushed you down, what, if anything, did the defendant say to you?
A. He told me to shut up. I kept asking him to please just take me home, but he told me to shut up and that he would take me home when he was ready.
P. What happened next?
DOUBLE DIRECT:
Prosecutors Panel

TERESA: We just watched the prosecutor demonstrate a double direct using an exhibit. This gives the rape victim a second opportunity to tell the jury the details of the crime. Leemie, do you use this technique?

Points for Discussion:

1. LEEMIE: Yes, absolutely. Presenting an exhibit is really an effective vehicle for having the victim retell the account of her attack without an evidentiary objection. It helps the victim to repeat her testimony in greater depth, but the prosecutor plays a more direct role in setting up the questions.

2. IRENE: I’ve found that when I use a crime scene sketch, photograph, or other visual aid to prepare the victim for testimony, it helps me to get a clearer vision of what took place. I can then use these as exhibits at trial to get the victim to walk the jury through the attack. This gives them a concrete sense of what actually happened.

3. ANNE: A crime scene diagram like the one used in the demonstration by this prosecutor is always a great way to nail down specific details that might otherwise be hard to explain or hard for the jury to picture. Here our jury got a real sense of just how small that dormitory room was, and, that as Amanda Brown testified when she was told to sit down, she had nowhere else to sit but on the defendant’s bed.

4. DON: Sometimes when I offer a double or a triple direct I am met by an aggressive defense attorney or unsympathetic judge. I keep in mind that I can have several objections sustained but I can still persist with that double or triple direct. Direct examination has to be aggressive. Prosecutors faced with an objection must persist and come back with even more information for the jury. You can’t let an objection deter you from completing a well-prepared question and answer series.

5. TERESA: Yes. You may only get part of the victim’s testimony to the jury, but even a partial retelling can strengthen your case.
TRIPLE DIRECT: Introduction

CHARLEY: The fourth element of classic direct examination is triple direct. Here you have the victim tell the jury what happened to her a third time. This time is devoted to adding still another dimension of the victim's authentic reality.

In triple direct the prosecutor takes the victim through her account in small steps, conveying the sensory details of the crime. Triple Direct is when you ask about the lighting conditions. It’s when you ask the victim what she heard, what she could smell, and what she was thinking. This creates for the jury a sense of what the victim experienced and builds the victim's credibility by presenting the kind of detail that is very difficult to fabricate.

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But remember to ask the questions in a manner that elicits the testimony of the rape. For example, "After the defendant pulled your clothes off and then his clothes - what if anything did you smell when he pushed you back onto his bed?" So that you ask about what she was smelling but you do it in a manner that gives you a chance to talk about the details of the rape for the jury. It gives the rape victim a chance to cover that ground again for them, with the authenticating sensory details.

In addition you need the sensory details to recreate the reality of the crime in your closing argument. Hopefully these details will allow the jury to more fully relate to the victim.

There is an exhaustive list of sensory detail questions on our website for this videotape www.njep.org/directexam.

Once again, please note that since the video does not depict a defendant or defense attorney we do not have any objections interrupting the flow of the direct examination throughout this videotape.

Furthermore, the judge we depict is very uninvolved in the case. We are not trying to depict an actual trial - we are only illustrating the particular points we discuss in the panels. Even if you are unable to conduct a triple direct in a particular case or in your jurisdiction, please consider some of these points for your redirect of your victim.
TRIPLE DIRECT:
Demonstration 6

,LOCATION: Courtroom

Demonstration 6

P. Ms. Brown, directing your attention to December 15th, what time was it when you got to the theatre group?
A. Seven that night. That was the time we always met.
P. And how were you feeling at that point?
A. I had just finished my finals, so I felt relieved to be done.
P. At that point in time, what was your impression of the defendant?
A. Just friendly. I thought he was cute. The first time I met him, we were at one of the dining halls, and he gave me and my friends the table he was sitting at. I thought he was nice. And then we met again in theater group and everyone in the group was friendly.
P. When the defendant invited you to come with him what were you thinking?
A. I thought it was nice of him to offer me a ride.
P. At that point, what was his demeanor?
A. He seemed normal. Um- we had been talking in rehearsal—we were, you know, just hanging out.
P. At the point he invited you into his dorm room, what were you thinking?
A. I don’t know. I didn’t think anything of it at first because I thought he was just going to get his keys. And I was surprised when he offered me a beer.
P. So once you were in his dorm room, what were you thinking?
A. I guess I was flattered that he wanted to hang out with me.
P. What, if anything, did you notice about his room when you first went into it?
A. When I first walked in I thought it was pretty small. And he had this funny comforter on his bed.
P. When you started kissing, how did he seem at that point?
A. Well, when we first started kissing he seemed really sweet. I just remember thinking what a nice guy he was.
P. Ms. Brown, when you told him “no,” that he couldn’t take your clothes off, but he did anyway—how did he seem?
A. At first he was just annoyed. But after I told him to stop, and that I wanted to go home, he started getting really angry.
P. What happened next?
A. After he tore off my shirt he forced me down on the bed, with my hands above my head.
P. Did he hurt you when he had you pinned down?
A. Yeah—he had a really tight grip on my wrists. And I was laying on top of my coat—it was all crumpled under my back and I could feel the buttons going into my skin. I was so scared.
P. What, if anything, did he say to you when he had you pinned down?
A. I was crying, and he kept telling me to quit crying. He told me to stop fighting him.
P. What exactly do you mean by “fighting him”?

68
A. At first I tried to kick him off, but he was just too heavy. I kept trying to squirm out of his grip, but I couldn’t. (quiet) I was so scared—after he pulled down my jeans, I couldn’t move anymore.

P. What do you remember feeling after he pulled down your jeans?
A. I was in shock—it was hard for me to breathe.

P. (softly) What happened next Ms. Brown?
A. He forced himself inside me. I couldn’t—I couldn’t believe what was happening. He was hurting me—but I couldn’t say anything. I just kept crying.

P. How was he hurting you?
A. The more I cried the harder he pushed inside me. I thought it would never end. I just— I kept staring up at the lights and waiting for it to be over.

P. What was the lighting like inside his dorm room?
A. The lights were bright. They were overhead fluorescent lights—you know, the kind you have in school. I couldn’t stop staring at them.

P. Ms. Brown, what if anything, do you remember hearing when he was forcing you to have sex with him?
A. At one point I heard some guys laughing in the hallway and I was praying someone would come in and stop him. But then I couldn’t hear anyone. I was so scared—I kept staring at his lights and just waiting for everything to stop.

P. Ms. Brown, did you call out when you heard these voices?
A. I couldn’t. I could barely breathe. I felt like I was frozen. I mean, I opened my mouth but nothing came out. I couldn’t make him stop—it was like he was a different person.

P. What do you mean by a different person?
A. It was like he wasn’t paying attention to me. I mean, he was looking at me, but it seemed like he was looking right through me. (Disgusted) He had this intense look on his face. (Quiet). I could have never imagined that he would look like that.

P. What, if anything, did you smell while the defendant was on top of you?
A. I could smell his comforter or maybe it was his sheets. They just smelled dirty. It made me feel really sick.

P. Ms. Brown, from the time he ripped your shirt off and pinned you down, til the time he got off the bed—how long was that?
A. I guess it was about 15 minutes.

P. How do you know?
A. I remember checking the time when we finished smoking and thinking I needed to get home because it was almost midnight. After I got dressed I looked down at my watch and it was 12:15.

P. Approximately how long were you in his dorm room from the time you walked in till the time you left?
A. It felt like forever, but it was probably two hours...
TRIPLE DIRECT:
Prosecutors Panel

TERESA: We just watched the prosecutor demonstrate a triple direct, highlighting the sensory details of the crime. Is it always worth trying to go through the account of the crime for a third time, and how important are the sensory details? Irene?

Points for Discussion:

1. IRENE: Whether or not you will be able to present this material a third time depends on your jurisdiction and your judge. However, every prosecutor should be prepared to do a triple direct, because it makes your case stronger. If you know from experience that you won’t be able to do a triple direct, you need to weave the sensory details into the other part of your direct. This enhances the credibility of your victim.

2. LEEMIE: Yes. That sensory detail is very important, because it makes the crime more vivid for the jury. Prosecutors should ask questions which focus on describing the sensory memories such as time, distance, sight, smell, touch and so forth. This level of detail also allows jurors to fully relate to the victim’s experience and feel a few "moments of truth," a moment at which a juror would say, upon hearing the testimony, that he or she knows that the rape victim is telling the truth, whether or not the juror can precisely articulate why that is.

3. ANNE: I once prosecuted a case where a victim was raped in the back of a taxicab by the taxicab driver. He claimed that it was a consensual encounter. Her response, much like Amanda’s, was to dissociate and concentrate on the door handle of the car until the rape was over. She could describe in detail the handle, the door, the color and texture of the materials in the cab, down to the number of lines in the door handle pattern. Clearly this negated the consent defense and added to her credibility. It also demonstrated how this victim responded to a traumatic situation with a normal psychological response.

4. TERESA: Prosecutors should keep in mind that a victim’s credibility can be greatly bolstered by doing a microscopic corroboration of the details of the case. For example, to underscore a victim’s specific memories, you can introduce photographs of things that the victim remembers. In the demonstration we just saw, the prosecutor can introduce photographs of the defendant’s comforter, or the overhead fluorescent lights. In doing this, the prosecutor would bring the jury into the room – into the scene of the crime and show that the victim remembered things accurately, and also make the victim more credible.
5. **IRENE:** This kind of inquiry should be directed at the victim’s description of the defendant’s body, and her experience of any changes in his features before, during and after the rape. For example, a victim who has been suddenly startled by the defendant who is looming over her body may experience the defendant’s size as larger than it actually is. With respect to facial features, remember how Amanda Brown testified to the startling change in the defendant’s face when she said no. She said, “I never imagined that he could look like that.”

6. **DON:** These kinds of details show what a con-man the defendant is. The victim trusted him and was taken in by "the nice guy" persona that the community saw, until she needed to go home, which is when the defendant turned into a monster. Because these details are inconsistent with how the community sees this man, the prosecutor must use sensory details to help the jury visualize as much as possible the "other side" of this defendant.
FOLLOW THE TRAUMA:  
Introduction

CHARLEY: The fifth element of classic direct examination is called Follow The Trauma. That is an easy way to remember what you want to accomplish for the jury in this part of the direct examination. You want the jury to understand the terrible impact this rape had on her life.

The rape victim explains what her life has been like from the time of the attack until present day. Make sure you cover this for the jury. When you were trying to get a feel for this case during your interviews with the victim, all of this information helped you understand the impact of this terrible event on this woman. Now you must make the jury understand it. Also, this testimony about significant trauma in the victim's life can often be corroborated. When a roommate, spouse or parent can testify that this woman wakes up nearly every night with nightmares, it is very persuasive evidence for the jury. And this information also makes the victim more sympathetic for the jury.

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<th>FOLLOW THE TRAUMA</th>
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<td>Enables jury to understand the terrible impact of the rape on the victim’s life</td>
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<td>Provides persuasive evidence for the jury that the victim did not consent</td>
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FOLLOW THE TRAUMA:
Demonstration 7

(LOCATION: Courtroom)

Demonstration 7

P. Ms. Brown, once again directing your attention to December 15th, what time was it when you got home that evening?
A. I walked into my house at 12:45 A.M.
P. How do you know?
A. I was scared to look up when he was driving me home. I kept looking at my watch. I was shaking. I was staring at the red lines on my wrist.
P. What were these lines from, Ms. Brown?
A. From him holding my wrists together. The next day I had a bruise from where he had pressed my watch into my wrist.
P. Did the defendant talk to you during the ride home?
A. No. No, we didn’t say anything. It seemed like the longest ride of my life. When we finally got to my house, I ran out of the car and went upstairs and took a shower... and my dad came upstairs to see what was going on.
P. And how were you feeling at that point?
A. I felt so dirty and disgusting. I couldn’t believe it. I was in shock. I kept replaying everything that had happened—I couldn’t believe he had raped me.
P. What, if anything, did you tell your father?
A. I told him to go to sleep. I told him I was okay.
P. Were you okay Ms. Brown?
A. No.
P. So why did you say that to your father?
A. I was in shock. I didn’t want to tell anyone. I just wanted it to go away.
P. Directing your attention to the next semester in school—how were your grades that spring?
A. Not very good.
P. What year are you in school? And what is your major again?
A. I’m a junior now. And I was a sophomore when all of this happened. I’m pre-law—and I’m a history major.
P. Well, what was your grade-point average up until spring semester?
A. I had a 3.9 GPA.
P. So that means you made almost straight A’s in every class, doesn’t it?
A. Pretty much. I was a good student.
P. You WERE a good student—past tense, right? What grades did you receive your spring semester—after December 15th?
A. I got one C and three D’s. My grades dropped so much that the school wants to take away my scholarship away.
P. Can you please explain to the jury why your grades dropped, Ms. Brown?
A. I couldn’t concentrate. It was hard for me to sit through class—it just didn’t seem important anymore.
P. Do you still see your friends?
A. Sometimes. I didn’t hang out with anyone for a long time, but I’m trying to go out now.

P. And when was the last time that you made a plan to go out with one of your male friends on a date?

A. Before I was raped.

P. Before December 15th of last year?

A. Yes. I just feel like I don’t know who I can trust anymore.

P. Ms. Brown, let me ask you now, what else, if anything, has changed for you since the day that the defendant raped you?

A. So many things. I hardly sleep at night anymore. I have horrible nightmares.

P. Anything else, Ms. Brown?

A. Well, I really don’t walk around alone if I can help it. I have a hard time being alone—I get really scared really easily. And sometimes I feel like I can’t breathe. And my doctor told me that these were panic attacks. I never had panic attacks, or any of these other things before he raped me.

P. Have you sought professional help for these problems?
FOLLOW THE TRAUMA:  
Prosecutors Panel

TERESA: We just watched the part of the direct examination where the prosecutor discusses with Amanda the impact that the rape has had on her life. Most of my cases didn’t come to trial for 8 months to a year after the time of the rape, so I always explored this area with the victim. Don, you coined the term, “Follow the Trauma.” Tell us about this technique.

Points for Discussion:

1. DON: It is crucial to tell the jury about how the victim’s life has fallen apart in the months since the crime to the day that she now sits in court. I have had victims testify to nightmares, to weight gain or loss, to drops in their grades, to changes in relationships with a current partner. This is very effective testimony to counter a consent defense.

2. LEE MIE: I agree. And I try to take my victim from the “end” of the rape, and begin to re-enter her life as it is now. I also try to focus on key dimensions, or aspects, of her victimization including loss of self, loss of control and relate them back to the rape. That way in closing argument you can always argue this sub-theme: that the rape didn’t end.

3. IRENE: I also believe that it’s important to educate the jury about how the victim’s life has changed since the rape. However, I think it’s important to point out that if you ask the victim certain personal questions, that may open up a whole line of inquiry for the defense. For example, if you ask the victim about her counseling, the defense may be able to obtain her psychiatric or counseling records. Also, if the victim testifies that she hasn’t dated since the rape, the defense may be able to ask her about certain aspects of her social life that would otherwise have been off-limits. The best way to deal with these issues is to deal with them up front, in a motion in limine.

4. ANNE: I have had good luck in this area using motions in limine. It’s imperative for the jury to hear that the rape so disrupted the victim’s life that it caused her to go into counseling and receive counseling, but her counseling records must be kept privileged and confidential. We have excellent case law in the area of privileged records in Colorado. As prosecutors we should both know the law in our own area and advocate for positive change when necessary.
ANTICIPATING THE CROSS-EXAMINATION
OF THE VICTIM:
Introduction

**Charley:** The next part of direct examination is anticipating the cross examination of the victim.

- **What is "anticipating the cross?"**
  "Anticipating the cross-examination" is a two-step process of finding out every potential weakness in your case and then introducing those weaknesses through direct examination testimony.

- **Why is anticipating the cross so important?**
  Defense counsel can do a lot of damage with the information that should not even be particularly troublesome to the jury just by eliciting the information himself and pointing out to the jury that the prosecution did not tell that fact to the jury. When the jury hears about any problem from you first, then they are not as shocked by the information as when they hear it first from the defense attorney. And as the prosecutor you can choose the way in which the information is presented - in an even-handed and gentle manner.

- **How do you anticipate the cross-examination?**
  No one knows this case better than you, the prosecutor. This is your case. This is your victim. You must draft a cross-examination yourself, based upon the close knowledge of the case, and then take your victim through it. As you work on your direct examination with the rape victim, every time you think to yourself “why did she do that?,” that is a question you need to include in your cross-examination. For example, when a rape victim tells you she went up to the defendant's apartment late one evening even though she didn't know him very well, and you hear yourself think "why did she do that?" that is a point to cover in your cross because that is a point the defense attorney's cross will focus on. Some prosecutors worry that cross-examining the victim themselves will destroy the rapport they have worked so hard to build. They prefer to have a colleague stand in as the defense attorney when they practice the cross with the victim. Others feel, however, that the best support they can give the victim is to prepare her themselves for what will be, for her, the hardest part of the trial and be the one to take her through a well-crafted cross-examination.

- **When during direct examination should you include this section?**
  Arguably, this segment can be put anywhere in the direct examination. However, it is important to realize that it probably shouldn't come first or last. How can you cover weaknesses in the case on the stand until you have introduced the victim to the jury? And you should always end your
direct examination on a strong note. If you put this section last, you are playing into the defense attorney's hand - he will stand up and continue where you left off.

Now let's turn to specific areas of material ripe for cross-examination that are particularly common to nonstranger rape cases. For example, there is often behavior that defense counsel will argue demonstrates that the victim implicitly (if not explicitly) consented to the sexual act that you are now calling rape. With our Amanda Brown, the defense attorney can argue consent was implied because she went to his room, drank with him and kissed him voluntarily. The best way to develop your direct is to think about how the defense attorney would cross Amanda Brown on this consensual behavior. So before presenting the direct on these points, here is how the cross-examination might go.
ANTICIPATING THE CROSS / PRACTICE CROSS:
Demonstration 8

(LOCATION: Prosecutor’s Office)
(Practice Cross-Exam with Prosecutor playing Defense)

Demonstration 8

**P.** Amanda—today I want to go over the cross-examination that we talked about. And as I explained already, I will pretend that I am a defense attorney and actually cross-examine you. Do you understand?

**A.** Yes.

**P.** I just want you to really understand that I am putting on the hat of a defense attorney. The defense attorney has a very different role in court than I do. The defense attorney is there to help the defendant—Michael Cates.

**A.** (Nodding)

**P.** Now, the defense attorney is not trying to get at the truth—just trying to help the defendant. Do you understand that?

**A.** Yeah, it makes sense. So does that mean that he’s going to try and make me look bad?

**P.** Well his job is to try and convince the jury that Michael Cates didn’t rape you—and that you aren’t telling the truth about what happened that night.

**A.** But I am telling the truth.

**P.** I know that Amanda, and I have faith in what we are doing, I just want to be sure that you are really prepared for this. Okay?

**A.** Okay. Let’s start. Stand up- just come over this way. Have a seat.

[Prosecutor gets up and gestures for Amanda to get up, then Amanda gets up. Prosecutor rearranges the chairs so that Amanda sits facing the camera and is standing with her notepad of questions in hand.]

**P as D.** Ms. Brown, on the night in question you went up to my client’s – Michael Cates’ – dorm room, correct?

**A.** Yes, yes I did.

**P as D.** Well, m’am, isn’t it true you voluntarily went up to Michael’s room?

**A.** Yes.

**P as D.** And it was just the two of you when you went off with him, correct?

**A.** Yes.

**P as D.** Isn’t it true you never so much as gone on a date with my client before you went to his room with him that night?

**A.** Yes.

**P as D.** And isn’t it true that you only knew Michael casually from school activities when you went up to his room with him?

**A.** Yes.

**P as D.** Isn’t it also true that you went up to his room with him at night?

**A.** Uh, yes.

**P as D.** I’m sorry -- what did you say?
A. Yes, that is true.

P as D. As a matter of fact, it was 10:30 at night when you voluntarily went up to his room, correct?
A. Yes.

P as D. And isn't it true that you finished two drinks that night with Michael?
A. That's true.

P as D. And isn't it also true that you started a third drink?
A. Yes.

P as D. And you went up to my client's room -- a man you did not know very well -- at 10:30 at night, isn't that what happened?
A. Well, yeah, I mean, that was the time, I think.

P as D. You think? Would you like me to call another witness who saw you in the lobby of the building to help you with the time?
A. No, it was 10:30 at night.

P as D. And you went up to Michael's dorm room -- which is pretty much just a room with a bed and a refrigerator filled with beer -- alone with him, right m'am?
A. Yes, we went up to his room alone.

P as D. And isn't it true that other people in your theatre group went home because it was a school night but you went straight to Michael's room and started drinking with my client, right m'am?
A. Yes, but I had finished my finals that day. I was done with classes—

P as D. That is a yes or no question m'am.
A. Yes, I went to his room, and we had a few drinks there.

P as D. And now after you've had sex with him and after all this drinking you are going to try to tell this jury that you didn't want to have sex with Michael?
A. Oh, I didn't have any intention--

P as D. That's a yes or no question m'am.
A. No...Yes...He raped me.

P as D. Isn't what really happened is that you found my client Michael attractive, went home with him, partied with him, had sex with him, and then after a few months, you realized that this was not going to be this relationship that you had hoped for -- then you decided that you were going to go after him and give him a hard time -- isn't that what this is really about?
A. No -- definitely not.

P as D. M'am didn't you start calling Michael a few days after the two of you had sex?
A. I called him once.

P as D. But that phone call was two days after you had sex with him, isn't that true?
A. Yes.

P as D. You went up to his room at night and started a night of drinking and drugs with him. After one drink the two of you then had another drink and then another, and then you smoked pot--isn't that true?
A. Yes, it's true.

P as D. And there were plenty of people on his dorm floor weren't there, m'am?
A. There were people around.
P as D. And not one of these people heard you cry out that you were being attacked, did they m’am – yes or no?”
A. No, they didn’t.

P as D. And that’s because you didn’t cry out, isn’t that true – yes or no?
A. Yes, that’s true.

P as D. You went up to his room at night, had a drink with him and then you kissed him, isn’t that true?
A. Yes, I kissed him.

P as D. You went to this good looking young man’s dorm room, you started drinking with him – one drink after another – smoked pot -- started fooling around with him – and later you start calling him up – and now you want these twelve good men and women to believe that you are not simply just angry at Michael because he didn’t start dating you?
A. No – he raped me.

P as D. You knew exactly what you wanted when you went up to Michael’s room, didn’t you?”
A. Yes, I did.

P as D. Nothing further of this witness.
EXPLAINING VICTIMS’ COUNTERINTUITIVE BEHAVIOR:

Introduction

Charley: Were this the actual cross-examination of Amanda Brown during trial, it could be devastating to both her and to your case. Instead, this is a prosecutor working on anticipating the cross-examination, so that this took place within the district attorney's office - and it was done by the prosecutor herself to help prepare the victim in her case. Here the prosecutor has clearly spent time thinking about what -given everything she knows about her case at this point - she would cross-examine this witness about. Now she understands what elements she has to bring out in her own direct examination to prevent defense counsel from being able to engage in such effective cross-examination.

The prosecutor in our demonstration obviously gave consideration to the implications for a consent defense since in our hypothetical case there is no physical injury and the victim delayed reporting to the police. Furthermore, although Amanda did offer some physical resistance, often in nonstranger rape cases we encounter victims who did not physically resist at all. All of this behavior and these factors - from not running immediately to the police to lack of medical records corroborating some sort of physical injury - are, supposedly, "weaknesses" in the hypothetical case.

There actually are no "good" or "bad" facts - there are only actual facts of the case we are handed. But some of these facts make it easier to convince a jury of what actually happened than others. These purported weaknesses in the case often consist of a very standard list of things that become familiar to prosecutors who handle many of these cases. To effectively prosecute nonstranger rape cases, you must learn what types of counterintuitive behavior and facts you should expect to encounter. Once you come to recognize and understand these, you will be better prepared to present your case to the jury and will feel comfortable that these are cases that can and should be brought to trial.

So, before exploring how to develop this information on direct, let's talk again with Professor David Lisak about how victims may behave during and after the assault.
EXPLAINING VICTIMS’ COUNTERINTUITIVE BEHAVIOR:  
Interview with Victim Impact Expert

CHARLEY: David, we are concerned about rape victim’s counterintuitive behavior that invokes false stereotypes about the crime and is exploited on cross-examination. A principal area of concern is resistance. Even though it hasn’t been an element of the crime for many years, many jurors still believe that resistance, resulting in physical injury, is required to show lack of consent. So, what are the reasons for rape victims’ lack of resistance?

DAVID: There are many reasons why a rape victim may offer little or no physical resistance to her attacker. Probably the main reason is biology. Human beings are genetically programmed to respond to a life-threatening situation with a massive physiological reaction known as the “freeze-flight-or-fight” response. The first and most likely reaction is to freeze, and is a biologically-based reaction. Obviously, a victim who is frozen in fright is not going to vigorously resist her attacker. This “freezing” response is precisely what we heard described in the courtroom demonstration when Amanda Brown said that she was too frozen to scream.

REASONS A RAPE VICTIM MAY NOT RESIST

- Frozen Fright
- Dissociation
- Strategic decision to avoid serious injury or death
- Victim trusts the nonstranger rapist until it is too late
- Women are socialized not to be aggressive

CHARLEY: Are there also psychological reasons for a victim’s lack of resistance?

DAVID: Yes, another reason is dissociation which, as I explained earlier, is a mental state akin to shock. In a dissociated state, most victims will become passive and will be incapable of resisting. A third reason is simply that the victim makes a strategic decision that, if she resists the assault, the attacker will become even more violent and she will be seriously injured, or even killed. Remember, in the Rape in America study I cited earlier, half of all nonstranger rape victims thought that they would be killed during the attack.

CHARLEY: David, are there other reasons?

DAVID: Yes. A fourth reason relates directly to the “nonstranger” aspect of these attacks. The assailant has deliberately used the victim’s trust in him as a weapon—to get her physically isolated -- perhaps to get her drunk – and by the time the victim realizes
that the assailant is a dangerous person, she is already compromised physically, and easy to subdue.

Finally, it’s important to remember that most women are socialized not to be aggressive. In the few seconds they have to perceive the imminent threat and respond physically, they must overcome years of socialization that aggression and violence are not appropriate behaviors for women.

**CHARLEY:** David, let’s shift our focus here to another difficult issue: delayed reporting. In our case, Amanda Brown waited two months to report her rape. Jurors often believe that anyone who was *really* raped would immediately report to law enforcement and they are quite suspicious of any delay in reporting. Help prosecutors understand what’s going on here.

**DAVID:** First of all, remember that the vast majority of rape victims never report the crime to the police at all. In the *Rape in America* study, 84% of the victims *never* reported. We know from other research that a very small minority of victims report immediately, and another small number report days, weeks, or even months after the rape.

**RAPE IN AMERICA STUDY***

84% of rape victims never reported to the police

* See [www.njep.org/directexam](http://www.njep.org/directexam) for citation and text

So, delayed reporting is a common phenomenon among rape victims, especially for victims of nonstranger rape.

**DELAYED REPORTING**

- Delayed reporting is a common phenomenon among rape victims
- Victims of nonstranger rape are especially likely to delay

**CHARLEY:** Why is the reporting rate so low?

**DAVID:** There are many reasons: Some victims are confused about the definition of rape. They may believe that if they knew their attacker, that what happened to them could not be rape.
Some victims also experience a powerful need to deny what has happened to them. This can be especially the case if the attacker is someone they know. It is just too terrifying to believe that someone you had trusted could do something so horrible to you.

CHARLEY: David, what are some of the other reasons?

DAVID: Many victims may fear retaliation from the assailant. The attacker may have threatened them directly, or implicitly. But even without any form of explicit threat, the rape itself is a clear enough threat that further violence is possible. Even if the victim is clear that she was raped, she may very well believe that no one else will believe her, most particularly the police or other criminal justice authorities.

Compounding this fear that no one will believe her is fear of loss of privacy and loss of control. Remember, we’re not talking about reporting a robbery here. Rape is still the most stigmatizing of crimes to report. This is true for women in general, but it can be an even stronger factor for women who come from very traditional religions, ethnic groups, or cultures.

CHARLEY: What about the court process itself?

DAVID: It’s an unfortunate reality that many rape victims have been both re-traumatized and re-victimized by their experiences in the criminal justice system. These negative experiences in turn influence the decisions of other victims, who fear that they, too, will suffer similar fates, and decide not to report as a result. For all of these reasons that we’ve been discussing, most rape victims do not report their assaults to the police, and for those who do report, delay in reporting is extremely common.

**REASONS FOR LOW REPORTING RATE OR DELAY**

- Some victims are confused about the definition of rape
- Victims may believe that if they knew their attacker, what happened could not be rape
- Victims’ need to deny what happened
- Fear of retaliation and further violence
- Fear of being disbelieved and blamed
- Fear of loss of privacy and control
- Fear of being stigmatized as a rape victim
- Religious, ethnic and cultural factors
- Fear of being re-traumatized and re-victimized by the criminal justice system

CHARLEY: David Lisak, thank you once again, for this important information. Prosecutors can use it to educate themselves, and they can use it to educate judges and jurors about issues that might otherwise keep them from being completely fair.
ANTICIPATING THE CROSS

Charley: Now that we have educated ourselves about some of the counterintuitive behavior that we can expect to see in nonstranger rape cases, let's see how the prosecutor deals with these issues in our case.

Amanda Brown has told what happened in her own words on the initial direct and again in the double and triple direct. Now the prosecutor can take her back to the critical points in her account which conflict with jurors' expectations about rape cases and which we can anticipate would otherwise be attacked by the defense on cross.

Remember, you want to end your direct examination on a strong note, so even though this segment is the last point in our video, it should not be your last point at trial. We suggest placing it before Follow the Trauma so that the last thing the jury will hear on direct is how this rape affected this woman's life.

Now let's hear our prosecutor conduct a direct examination that anticipates the cross.
ANTICIPATING THE CROSS IN DIRECT:
Demonstration 9

,LOCATION: Courtroom

Demonstration 9:

P. Ms. Brown, you said that you went up to the defendant’s dorm room for a ride home. Was there any other reason you went up to his room?
A. No. The only reason we went to his room was to get his car keys. He said that he had forgotten them in his room.
P. Is that it?
A. Yes. I knew him from being in theatre group together. I thought it was really nice of him to offer me a ride home. When we ended up hanging out in his dorm room, I didn’t think anything of it. I thought he was a nice guy. I certainly didn’t go to his room to have sex with him.
P. And you had two and a half beers with him—what, if anything, was that about?
A. It isn’t like there are a lot of places to hang out on campus. I mean, I live at home with my parents, but most of my friends live on campus, so I’m used to hanging out in the dorms. So I didn’t think anything of it when we went to his room. We had two beers, he offered me a third, I had a few sips of it, that’s it. We were just drinking and we were talking about the show that we were in.
P. And you also told the jury that you smoked marijuana with the defendant. Why did you do that?
A. I don’t know. He rolled a joint when he was on the phone, and I took a few puffs. I don’t usually smoke pot. I had my last final that day so at night I was glad to not to have to think about school for a change. Smoking the joint just didn’t feel like a big deal. And it certainly didn’t mean that I wanted to have sex with him.
P. And you also told us that you kissed the defendant. Please explain that.
A. After we were done smoking, he started kissing me, and I was okay with that. But I’m not here because he kissed me. I’m here because he raped me. I never gave him any idea that I wanted to have sex with him. I told him I didn’t want to.
P. During the time that you were sitting on the defendant’s bed, exactly how did you let him know that you did not want to have sex with him?
A. I told him to stop when he was unbuttoning my shirt. I tried to convince him to take me home, but he didn’t listen—he just pushed me down. He pinned me down on the bed. I fought with him. I begged him to stop, but he wouldn’t listen.
P. Ms. Brown, what do you mean by you “begged him to stop”?
A. I kept saying, “Please, no”, “Don’t do this to me,” “Please stop.” I told him that over and over again. I told him I just wanted to go home but he—he ignored me. But once I started crying he told me to “stop moving”— and “to quit crying.”
P. And what do you mean by “fought with him?”
A. I moved my body away from him as best as I could and I tried to kick him off. But he was pinning me down and he’s much bigger than me.
P. Ms. Brown, how tall are you, and how much do you weigh?
A. I’m 5’3” and I weigh 120 pounds.
P. Judge, I would ask the Court to ask the defendant to please stand at this point.
JUDGE. All right, Mr. Cates, would you kindly stand and face the jury for a moment please? (pause) Thank you. You may take your seat again.
P. Judge, I would like to note for the record that defense counsel and I previously stipulated that the arrest report indicates the defendant is 6’1” tall and weighs approximately 210 pounds.
JUDGE. All right.
P. Now let me ask you, Ms. Brown, you said that you did not give the defendant any indication that you wanted to have sex with him at any point. What if anything did you anticipate the defendant would understand from your going to his room, drinking and smoking marijuana with him and kissing him?
A. I didn’t think that it meant anything. I mean everyone hangs out in the dorms and drinks and smokes some pot. And I did kiss him. But kissing someone doesn’t mean you want to have sex with them.
P. Did you want to have sex with the defendant?
A. No. I didn’t. I never wanted to have sex with him.
P. You had two and a half beers and you smoked marijuana with the defendant. Are you sure you even remember whether or not you consented to have sex with him?
A. I remember. I’ll never, never forget anything about that night. He raped me. I remember telling him no and begging for him to stop. I didn’t consent to it.
P. You telephoned the defendant two days after the attack. Why did you do that?
A. I was so confused after everything happened. I just couldn’t believe that it was so real—so I called him so that he could apologize. I couldn’t believe that someone I knew could do that to me. Before this, I always thought that rape was when a stranger jumped out from behind a bush and pulled you into some dark alley. I never thought rape was when someone you knew—someone you thought was a nice guy pinned you down and hurt you. That’s why my life got so turned around.
P. What do you mean when you say your life got so turned around?
A. I mean if— if I had been raped by a stranger, I would be walking around wondering where the next stranger is going to come from. But now I’m afraid of all the men in my life. I called Michael Cates because I was confused and I wanted to hear him tell me how sorry he was for hurting me. But I didn’t even talk to him. I was confused and upset.
P. Ms. Brown, did your impression of the defendant change during the time you came to know him?
A. Yes. Now I understand that he was just being nice so that I’d go up to his room with him. He just wanted to get me into his room so that he could rape me. He was never a nice guy. He was just pretending to be nice so that I would trust him. He seems like a nice guy—but he isn’t (quietly).
P. Ms. Brown, you said that you went home the night in question and told your dad that you were fine. When did you finally tell someone what really happened to you?
A. For the first two months I didn’t tell anyone what happened to me. I tried to avoid seeing my friends. I barely went to class. I didn’t talk to my parents, which
was really hard because we’re really close and I knew that they knew something was wrong. I didn’t know how to tell my friends. I was scared. I didn’t want anyone to know—and I certainly didn’t want to tell the police.

**P.** Why didn’t you want to tell the police?

**A.** I blamed myself for not being a better judge of character at first. I felt like I should have known that this guy was a rapist. I was embarrassed that I put myself in this situation. If I had just caught the bus home like I normally did, none of this would have happened. I didn’t want anyone to know; I just wanted it to go away. I was scared and I was ashamed.

**P.** Why did you finally decide to tell the police?

**A.** In the beginning I thought that things would get better—but as time passed, the more depressed I got. I just felt worse and worse. My life was falling apart and I knew that I needed help. So I finally told my best friend, and she convinced me to go to the police.

**P.** What did it feel like to make a report?

**A.** It was horrible. I was so scared—I didn’t know what to expect. I could barely say what happened to me. I was really embarrassed, and I was so scared that no one would believe me. I had to keep telling what happened to me to different police officers. Oh God, it was horrible.

**P.** And what has happened since then?

**A.** After I told the police, I met with different people at the Prosecutor’s Office. I came down to the Prosecutor’s Office and I met you. And you introduced me to counselors in the Prosecutor’s Office who gave me numbers of therapists that deal with rape victims. I had never been to a counselor before this—but I can’t even—I can’t even begin to tell you what a huge difference seeing a counselor has made in my life. I feel like one day I may actually be able to stop feeling scared.

**P.** Thank you, Ms. Brown.
Charley: Would a rape victim be able to say all of this without objection at a trial? It depends on the court and the judge. What we're asking you to do here is push the envelope in order to educate the judge and the jury to what is truly relevant. If you get three-quarters of this material in front of the jury you are still ahead of the game.
ANTICIPATING THE CROSS:
Prosecutors Panel

TERESA: Anticipating the cross-examination in your direct is an essential part of the case. Just as our demonstration showed, by revealing potential weaknesses in direct examination, you can limit the damage the defense attorney can do. It also shows the jury that despite these weaknesses, the case is still strong. Irene, what has been your experience with bringing out this type of information on direct examination?

Points for Discussion:

1. IRENE: Oftentimes you can make the so-called “weaknesses” of your case into strengths. For example, when a young woman like Amanda tells me that she liked the defendant, that she kissed the defendant, I believe these can be strengths. Others may perceive these as “bad facts,” but why would she tell me these things if it weren’t true? It helps me to feel confident about everything else she said. After I bring out any unflattering facts in the direct, I then use them in summation. I say to the jury, why would she tell you this if it weren’t true? You know that you can rely on her testimony, because if she were going to make up a story about being raped, she wouldn’t tell you that she liked the defendant, she wouldn’t tell you that she kissed the defendant, she wouldn’t tell you anything that didn’t cast her in a good light.

2. ANNE: In anticipating the cross examination, you can’t overestimate the jurors’ expectations of strong physical resistance on the part of the victim. I once tried a case where the defendant was twice the size of the victim and still it was important for me to explain to the jury why the victim didn’t resist the assault. I liked the point in the demonstration where the Prosecutor had the defendant stand up to show the significant size differential between the defendant and the victim. If the defendant has changed his appearance since the time of his arrest; if, for example, he has lost weight or cleaned up, you should consider introducing an arrest photograph so that you can show what the defendant looked like at the time he committed the crime—or at least at the time of his arrest.

3. TERESA: I thought that the courtroom demonstration provided a very thorough review of all the ways that the victim communicated non-consent, both verbally and physically. I think that too many prosecutors forget to emphasize the lack of consent and that’s a critical error—especially when the defense is consent.

4. DON: It is so important that the Prosecutor discussed with Amanda why she didn’t cry out for help—especially since this rape took place in a dorm room where presumably help would have been available. That is definitely going to be an issue on cross-examination, and it’s going to be something that the jury is going to wonder about. It’s important that the victim be able to explain that she was so frightened she couldn’t move, or that she was so scared that she couldn’t
scream out for help. These are points that the jury will understand and that you can use in summation.

5. **ANNE:** Another challenge for prosecutors is how to reframe post-rape behavior that the defense attorney can claim shows the victim consented. In our case, Amanda Brown called the defendant two days after the assault, and the Prosecutor then had her explain why she did that.

6. **TERESA:** It’s important to elicit from the victim specifically why she didn’t report. We need to have a clear understanding of this in order to combat jurors’ biases with respect to delayed disclosure. Jurors often view delayed disclosure as “time to fabricate.” It’s the old notion that a prompt complaint is corroborative, and a delayed complaint shows time to fabricate. Whenever I have this type of case, I try to make the jury understand that delayed disclosure is normal. When a woman is raped by someone she knows she often thinks that no one will believe her. She often blames herself as well. Prosecutors should not view delayed disclosure as a “weakness”; rather, they should view it as indicative of authenticity.

7. **DON:** It’s also crucial to detail exactly what brought about the disclosure -- why the victim decided to report at this time. Why did she choose this moment? What was the trigger?

8. **LEEMIE:** And additionally, the process of reporting a rape is so difficult for a victim. It is important to explain this process clearly to a jury. If the victim underwent a rape kit exam, have her explain how difficult that was. How excruciatingly intrusive it was and how long it took. Break this down to minute steps so the jury can understand it clearly. By explaining the difficulty of reporting, you build credibility for your victim: why would she put herself through this if she wasn’t telling the truth? I find this testimony to be very empowering for the rape victim and an important summation point.

9. **IRENE:** Yes. The important point is to try to pre-empt the cross in direct. Make the victim’s explanation of why she didn’t physically resist and why she delayed in reporting so compelling that when the defense attorney badgers her on these points the jury will feel affronted.

10. **LEEMIE:** And, it is important for the prosecutor to come up with these questions very carefully. There is no way the victim could have articulated all of this on the stand had she not been well prepared beforehand. I think this demonstration is an excellent example of working with a victim to understand what she went through and using it to the prosecutor’s advantage. But this takes practice and a lot of careful planning.

11. **TERESA:** Remember that all of the important points made on direct examination can then be used in your closing argument. Once the information is in the record, you can then sum up on it. But if the information is not in the record, you can’t
hit it home in closing. This prosecutor now has a lot of great information to use in her closing argument.

Nonstranger rape cases are difficult to prosecute but they are so important. My colleagues and I hope that this video helps you in your pursuit of justice for victims and in holding these offenders accountable.
CONCLUSION:
Cassette 2

Charley: We have now come to the end of our program. We hope that the demonstrations, expert interviews and panels in these two videos have provided the tools you need to effectively try nonstranger rape cases. Before concluding, I want to tell you about other resources you may find helpful and give you the relevant websites. As I noted at the start of this segment, additional material for this video is at www.njep.org/directexam.

For more extensive material on victim impact, see the National Judicial Education Program's video, Understanding Sexual Violence: The Judge's Role in Stranger and Nonstranger Rape and Sexual Assault Cases. For information about this video, which is also available on DVD, go to the website now on your screen.

Understanding Sexual Violence: The Judge's Role in Stranger and Nonstranger Rape and Sexual Assault Cases
www.njep.org/usvjdvd

To learn more about the presentation of medical evidence in an adult victim rape trial, see the first video in NJEP's video series for prosecutors, Presenting Medical Evidence in an Adult Rape Trial. The website is http://www.njep.org/medicalevidence.

The medical evidence video also provides strategies for trying sexual assault cases when there is no medical evidence of the crime, which is quite common in nonstranger rape cases. Another valuable segment of that video shows an actual rape kit examination of a victim. Any prosecutor who has never seen this examination performed will greatly benefit from seeing the video. It is much easier to convey to a jury exactly how unpleasant the standard physical exam which rape victims must endure is when you understand it yourself.

Understanding Sexual Violence: Presenting Medical Evidence in an Adult Rape Trial
www.njep.org/medicalevidence

Finally, an online version of NJEP's complete four-day curriculum for prosecutors, Understanding Sexual Violence: Prosecuting Adult Rape and Sexual Assault Cases, is available on the Department of Justice Office on Violence Against Women website now on your screen.
We encourage you to continue to spend time with the material in these videos and on the related website. If you have any questions, feel free to contact anyone in the videos. If you have not already seen Part I of our program on preparing a rape victim for Direct Examination, we hope you will go on to view it as well.

Thank you for your commitment to trying sex crimes cases. The role of prosecutor is the gateway to securing justice for rape victims in the court process. A prosecutor who cares enough to reach out to rape victims and treat them with understanding and respect has a chance to restore the dignity and control stolen during the attack.