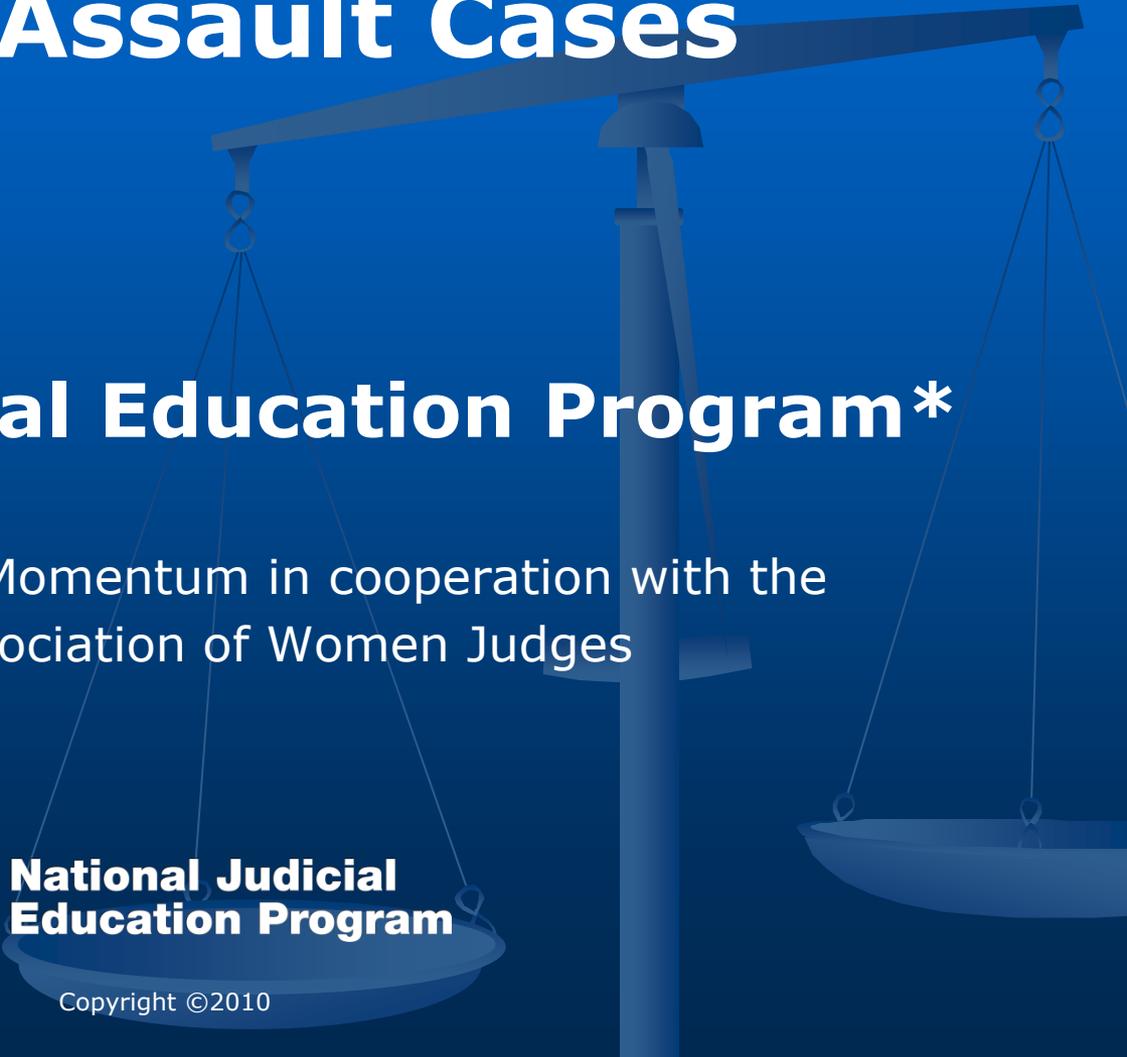


Interpreters in Adult Victim Sexual Assault Cases



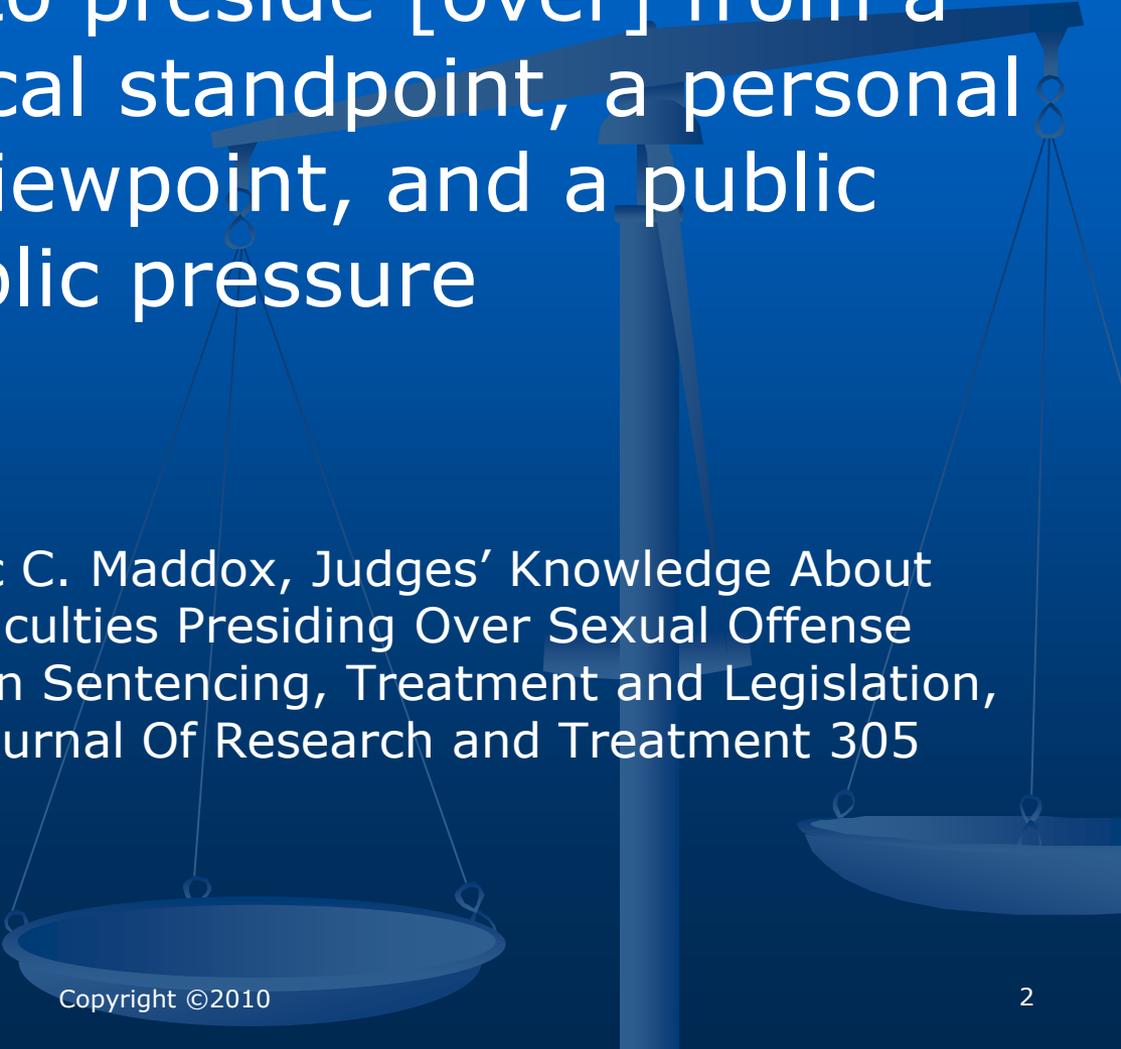
National Judicial Education Program*

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



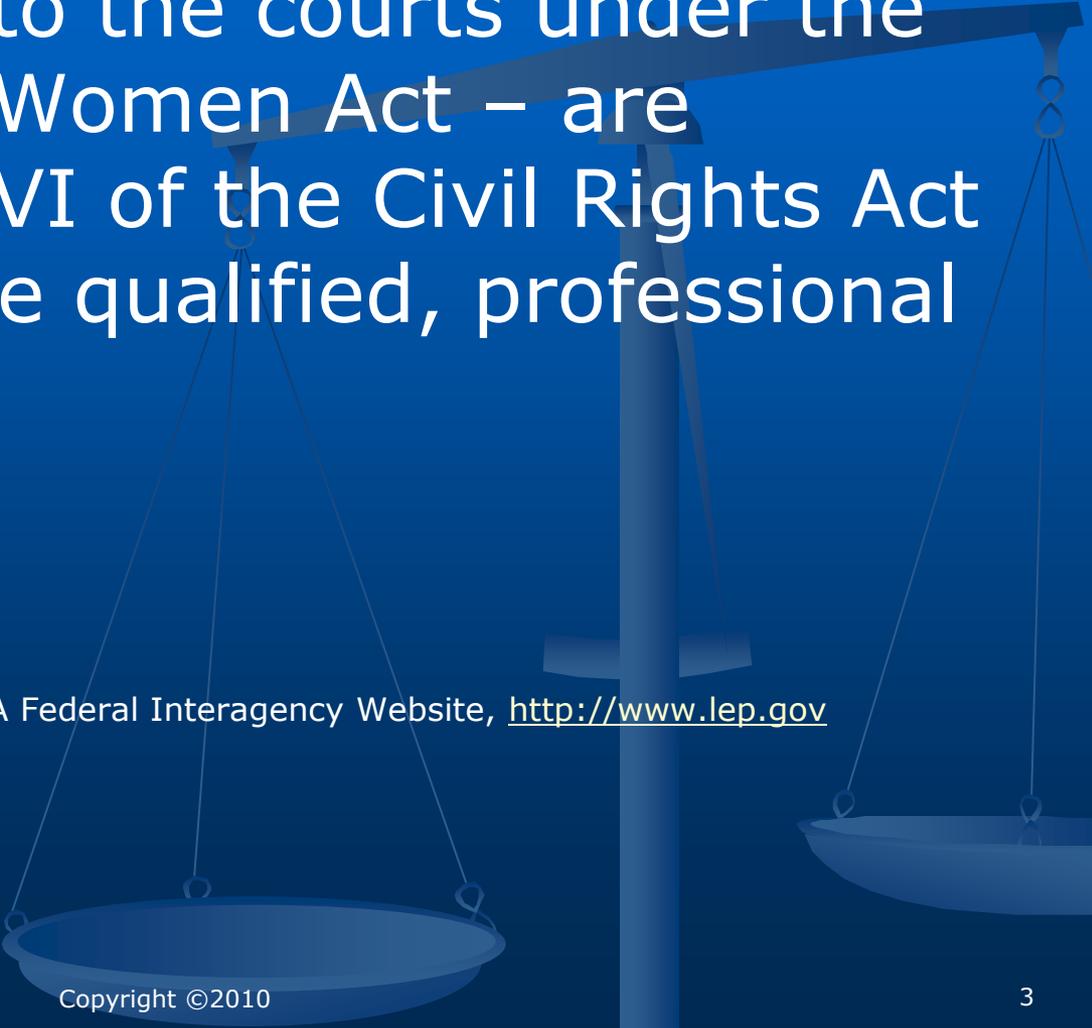
**National Judicial
Education Program**

Copyright ©2010



A survey of judges found that compared to other cases, sexual offense trials are “more difficult...to preside [over] from a legal and technical standpoint, a personal and emotional viewpoint, and a public scrutiny and public pressure perspective.”

- Kurt M. Bumby & Marc C. Maddox, *Judges’ Knowledge About Sexual Offenders, Difficulties Presiding Over Sexual Offense Cases, and Opinions on Sentencing, Treatment and Legislation*, 11 *Sexual Abuse: A Journal Of Research and Treatment* 305 (1999)



Courts that receive federal funding – such as the allocation to the courts under the Violence Against Women Act – are required by Title VI of the Civil Rights Act of 1964 to provide qualified, professional interpreters

Source: Limited English Proficiency: A Federal Interagency Website, <http://www.lep.gov>

Family/Community Interpreters:

- The vast majority of rapes are committed by someone known to the victim*
- Thus, there is a high likelihood that the defendant is from the victim's family or community
- Interpreters from the victim's family or community present particular problems

Source: *Dean Kilpatrick et al., *Drug-Facilitated, Incapacitated and Forcible Rape: A National Study* (2007) at 30, at <http://www.ncjrs.gov/pdffiles1/nij/grants/219181.pdf>

Family/Community Interpreters (cont'd):

The Executive Director of the California Coalition Against Sexual Assault recalled many non-English-speaking women victims of violence stating that their court interpreters had told them:

“Why are you doing this to your people, to our people, why are you doing this to your family.”

Source: California Administrative Office of the Courts, Forum on Sexual Assault Issues Transcript, Vol. I, July 15, 2004.

Family Members as Interpreters:

“A family member is the worst person you can use [as an interpreter]. They have their own side of the story, and they add and omit things.”

- Laura Abel, Brennan Center for Justice at New York University School of Law, LANGUAGE ACCESS IN STATE COURTS (2009) at 4, at http://brennan.3cdn.net/c611a37ee2b6eb199e_9bm6b3so4.pdf

Children as Interpreters:

“Parents who must use their young children to interpret have the added agony of knowing that the children are hearing the often shocking details of intimate abuse or other highly personal matters. To avoid exposing the loved one to such information, parties may omit key information out of a sense of privacy or decorum.”

- Laura Abel, Brennan Center for Justice at New York University School of Law, LANGUAGE ACCESS IN STATE COURTS (2009), at 20, at http://brennan.3cdn.net/c611a37ee2b6eb199e_9bm6b3so4.pdf

Non-professional interpreters may make serious errors, deliberate or inadvertent:

In a Massachusetts domestic violence case, a woman testified that her abuser said, "I want you dead." The nonprofessional interpreter stated that she had said "He scolded me."

- Nancy K. D. Lemon, *Access to Justice: Can Domestic Violence Courts Better Address the Needs of Non-English Speaking Victims of Domestic Violence?*, 21 BERKELEY J. GENDER L. & JUST. 38 (2006), at 46

Non-professional interpreters may not be aware of the profession's requirements:

“Interpreters who are unfamiliar with the ethics requirement that they remain neutral may try to persuade [the victim] to drop her request for an order of protection. A suggestion of this sort can carry an enormous amount of weight, since [the victim] may not understand whether the interpreter is transmitting his own opinion or a statement from the judge.”

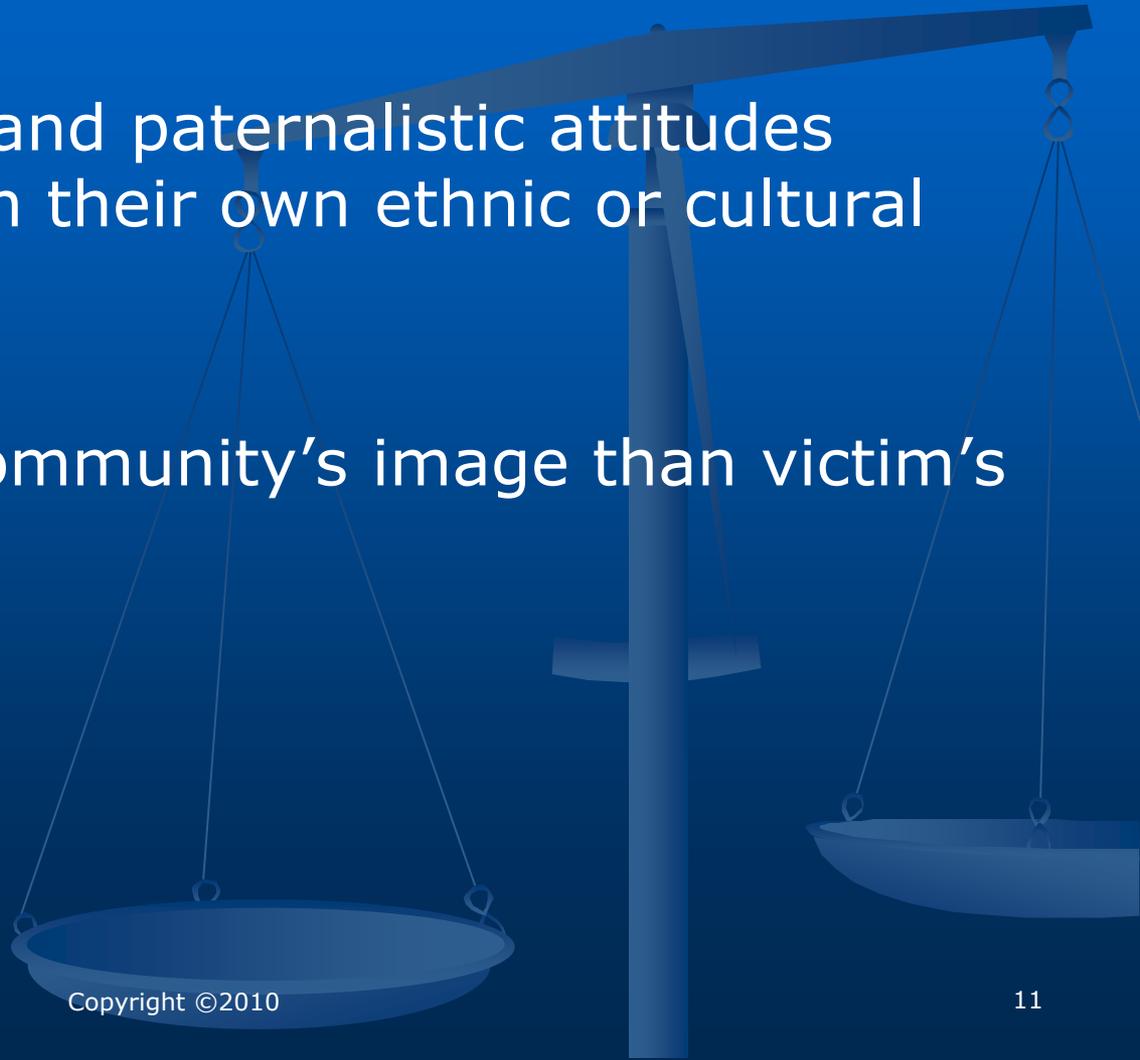
- Laura Abel, Brennan Center for Justice at New York University School of Law, LANGUAGE ACCESS IN STATE COURTS (2009), at 20, at http://brennan.3cdn.net/c611a37ee2b6eb199e_9bm6b3so4.pdf

The professional interpreters' code of ethics requires them to remain neutral, but interpreters from the victim's community:

- May not regard sexual abuse or marital rape as a crime
- May resist washing the community's dirty linen in public
- May urge victim to drop charges
- May deliberately mistranslate to minimize the violence

Some interpreters:

- Manifest biased and paternalistic attitudes toward women in their own ethnic or cultural group
- Care more for community's image than victim's safety



Interpreters need training on sexual assault, domestic violence and co-occurring sexual assault and domestic violence

- In a national survey of court interpreters for East Asian victims of domestic violence and sexual assault:
 - 70% had interpreted in civil and criminal order of protection hearings
 - Vast majority had no training in domestic violence, sexual assault or child abuse

Source: Sakhi for South Asian Women, Talking the Talk, A National Study of Court Interpreters (2007) at 3.

Interpreters may openly side with defendants from their own community

A Pennsylvania judge presided in a case in which two Korean men were charged with raping a Korean woman they met in a bar. Their defense was consent – a Korean woman in a bar was ipso facto consenting to sex. At trial a professional Korean court interpreter was seated at counsel table between the defendants. The judge noted that all three were making intimidating faces at the victim while she testified.

Some victims need female interpreters

- Some victims perceive male interpreters as insensitive to sexual assault or feel they cannot say the necessary words to a man and have the account of their assault voiced by a man
- Try to determine from the victim's counsel if this is an issue
- Female interpreters are not a panacea

Source: Telephone Interview with Maneechan Kelkar, Executive Director, Manavi (June 25, 2009).

Lack of access to interpreters for less commonly used languages is a significant barrier to justice for some victims

“A Montgomery County judge dismissed charges against Mahamu Kanneh, accused of sexually assaulting a 7-year-old girl, because a Vai interpreter could not be found in time to fulfill his right to a speedy trial.”

- Laura Abel, Brennan Center for Justice at New York University School of Law, LANGUAGE ACCESS IN STATE COURTS (2009), at 5, at http://brennan.3cdn.net/c611a37ee2b6eb199e_9bm6b3so4.pdf

Recommendations

- Be alert to interpreters' tone of speech and body language
- If your jurisdiction allows it, voir dire interpreters when they are used in the courtroom to determine their competency and awareness of their ethical obligations
- Explain the interpreter's role to the entire courtroom before the trial begins

Recommendations (cont'd)

- Judges can be key educators and leaders in their communities on interpreters
- Encourage training for new judges and new court employees on this issue
- Encourage collaboration with the Office of Interpreter Services to ensure that judges, court employees and interpreters themselves understand the issues facing non-English speaking victims of sexual assault
- Encourage your jurisdiction to incentivize continuing education for interpreters

Resources

Code of Ethics and Professional Responsibilities, from the National Association of Judiciary Interpreters and Translators, <http://www.najit.org/ethics.html>

Language Access in State Courts, an extensive study and guide to best practices for court interpreters from the Brennan Center for Justice at New York University School of Law (2009), http://brennan.3cdn.net/684c3cdaaa2bfc8ebc_6pm6iywsd.pdf

U.S. Department of Justice Guidance Letter, regarding interpreters and language access requirements for state courts receiving federal financial assistance (2010), http://www.lep.gov/final_courts_ltr_081610.pdf

Resources (cont'd)

Resource Guide for Advocates & Attorneys on Interpretation Services for Domestic Violence Victims, funded by the Office on Violence Against Women (August 2009),
<http://www.vawnet.org/category/Documents.php?docid=2355>

Court Interpretation in Protection Order Hearings, bench card from National Center for State Courts,
http://www.ncsconline.org/D_Research/Documents/LEP_AttachM_Benchcard-Final.pdf

National Association of Judiciary Interpreters and Translators (NAJIT), provides an online database of over 1,300 professional translators, www.najit.org

Resources (cont'd)

Bench cards on working with foreign language interpreters in the courts (all of which include sample voir dire questions) are available from:

New York State Unified Court System:

- <http://www.nycourts.gov/courtinterpreter/PDFs/JudBenchcard08.pdf>

Ohio Supreme Court:

- <http://www.supremecourt.ohio.gov/JCS/interpreterSvcs/benchcard.pdf>

Tennessee Administrative Office of the Courts:

- www.tsc.state.tn.us/geninfo/programs/interpreters/voirdire.doc

Resources (cont'd)

- Many states have their own professional codes of conduct for interpreters:
 - Examples:
 - Wisconsin:
<http://www.wicourts.gov/services/interpreter/ethics.htm>
 - Texas:
<http://www.license.state.tx.us/court/lcirules.htm#80100>
 - California:
<http://www.courtinfo.ca.gov/programs/courtinterpreters/documents/ethicsman.pdf>

Thank You

For More Information, Contact:
National Judicial Education Program,
Legal Momentum
(212) 413-7518
www.njep.org
njep@legalmomentum.org