

CARE IN THE COURTROOM: the use of special measures to reduce the secondary victimisation of rape survivors

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- “If one set out intentionally to design a system for provoking symptoms of posttraumatic stress disorder, it might look very much like a court of law.... **Victims [of violent crime] need social acknowledgement and support; the court requires them to endure a public challenge to their credibility.** Victims need to establish a sense of power and control over their lives; the court requires them to submit to a complex set of rules and procedures that they may not understand and over which they have no control. Victims need an opportunity to tell their stories in their own way, in a setting of their choice; the court requires them to respond to a set of yes-or-no questions that break down any personal attempt to construct a coherent and meaningful narrative. **Victims need to control or limit their exposure to specific reminders of the trauma; the court requires them to relive the experience by directly confronting the perpetrator.**” (Herman 2003)



What are special measures?

- Court-based interventions intended to:
 - prevent undue stress or suffering of complainants while testifying
 - assist vulnerable and intimidated witnesses give their best evidence in court.
- The Criminal Procedure Act 51 of 1977 (CPA) provides for four types of special measures in sexual offences matters:
 - *in camera* proceedings (s153),
 - Intermediaries (S170A),
 - closed circuit television (CCTV) (s158(2)(a)),
 - anatomical dolls (s161(2)).
- **Our question: how often are they provided to rape complainants?**



Study methods

- Retrospective, quantitative study of 186 trial transcripts for rapes reported in the province of Gauteng in 2003.
- Follow up to '*Tracking Justice*' (Vetten, et al 2008) which collected a random representative sample of 2 068 rape cases reported at 70 police stations in Gauteng in 2003.
- 358 (17.3%) of the 2 068 sampled cases went to trial. Tshwaranang was able to obtain 186 (52%) of these transcripts.
- Largest South African study yet of rape trial proceedings.

Age of our sample

- Age highly significant because law determines use of special measures along age lines.
- Median age 16 (n = 141)
- Girls 86 (61.0%)
 - Girls under 12: 30 (34.8%)
 - Girls 12 – 17: 56 (65.2%)
- Adult women 55 (39.0%)



Special measures overall

- 5 (2.6%) of the 186 complainants waived use of a special measure.
- Of remaining 181, 70.7% complainants utilised at least one special measure.
 - Girls under 12: 90.0% (n=30)
 - Girls 12 – 17: 87.5% (n=56)
 - Adults: 63.6% (n=55)



Special Measure 1: In camera proceedings

- Available to both adults and children where
 - there is the **likelihood of harm to the complainant**
 - **Where a matter involves a sexual offence**
 - in the **interests of the security of the State** or of **good order** or of **public morals** or of the **administration of justice**
- Utilised in 57.0% trials overall
 - Girls under 12: 44.8%
 - Girls 12 – 17: 76.4%
- Adults 64.8%



Special measure 2: CCTV

- Not dependent on age
- Granted where such facilities are readily available or obtainable; to prevent unreasonable delay; save costs; and be convenient; be in the interests of security of the state, public safety or in the interest of justice;
- Prevent prejudice or harm to witnesses
- Excluding its automatic use with intermediaries, only 3 complaints granted use of CCTV: 1 adult and 2 girls.



Special Measure 3: Intermediaries

- Available to any witness under the **biological** or **mental** age of eighteen who may suffer **undue mental stress or suffering** when testifying.
- Utilised in 48 (26.3%) trials
 - 25 (96.2%) girls under 12
 - 23 (50%) girls 12 – 17
- Most common reasons for its use: avoid undue stress (45 or 91.8%); age of witness (42 or 85.7%); or fear of accused (19 or 38.7%)
- Typical professional background: educator 28 (56.0%) or social worker 19 (38.0%)



Special Measure 4: **Anatomical dolls**

- Can only be provided to witnesses under the age of 18.
- Equipped with parts resembling genitalia and used to assist children to demonstrate any sexual abuse they have suffered.
- Utilised by 16 (53.3%) girls under 12.

An example of anatomical dolls





Conclusions

- The South African legal system has legislated measures to provide better care in the courtroom. But:
 - about one-third of complainants not offered any special measures
 - Only 1 adult offered CCTV
 - Where age-specific measures are applicable younger girls more likely to benefit than older girls. But all young girls do not get special measures either.
 - Very limited recognition of some complainants' need for emotional/moral support while testifying. During in camera proceedings only 11 complainants permitted to have a support person present (in some cases the complainant waved this right).



- Our study shows it is not enough to legislate – effective application is also required.
- Lack of application may be due to a lack of knowledge.
- But prosecutors’ selective application of the law may also be shaped by ideas around ‘deserving’ and ‘undeserving’ complainants. The next part of the study examines this.
- Court rooms remain unnecessarily lonely and hostile for some rape complainants.