

The North Dakota Council on Abused Women's Services is concerned that a recent ruling in a sexual assault case by Judge Sonna Anderson may have a chilling effect on other victims coming forward to report crimes of sexual assault. Sexual assault is already one of the most underreported crimes in the country. According to the Rape, Abuse, and Incest Network (RAINN), sixty percent of sexual assaults are not reported to law enforcement.

"The first concern of advocates is always the victims and how they may react to a perceived miscarriage of justice," said CAWS spokeswoman Janelle Moos.

False stereotypes about who rapists are and how they behave continue to hamper the criminal justice system. There is a widespread belief that rapists typically attack strangers, use weapons, and inflict extensive physical injuries. When a rape case arises outside of this stereotype, people find it hard to view it as a "real rape." "We always worry when these stereotypes appear to be reinforced, as in the ultimate outcome in this case, implying that "real rape" happens only when a stranger jumps out of the bushes and commits a violent sexual attack," said Ms. Moos.

Usually, the issues are not that clear cut, as was the situation in this case. Therefore, it is in cases like these in which we must count on the law and the system designed to implement it to dispense justice.

"What we know for certain is this: a victim had the courage to defend her own integrity by coming forward to participate in our justice system; prosecutors had enough evidence to bring this case forward and argue it intelligently and fervently; a jury deliberated in good faith and found the defendant guilty of a sexual assault; and the judge did what she felt compelled to do to abide by the constraints of the current law," said Ms. Moos.

"Are we happy with the ultimate outcome in this case? No," stated Moos "but it reminds us that we have work to do in other arenas. We have tried before to strengthen and clarify the part of our sexual assault statute which deals with drug and alcohol related sexual assault. This case points out the fact that it is probably time to try again."

A 2003 proposal, put forward by a bipartisan, politically diverse group of senators and representatives, literally from the four corners of the state, reflected the common sense of the jury: what Mr. Gross did was not right, and he should be punished. It would have allowed the introduction of evidence that went a step beyond defining consent as "Was she aware," and "Should he have known" to was she "mentally incapacitated," or "physically helpless" and therefore unable to consent. These are fine points of the law, but the wheels of justice grind exceedingly thin.

Ultimately, the legislature rejected the proposal, but here we are, seven years later, grappling with the same issue. Perhaps now we are ready to ask the hard questions of ourselves and pass a law similar to those in several other states. We need to ask ourselves "To what standards do we want to hold members of our communities?" "At what point does a boorish act become a crime?" "When are "private acts" our business as a society?" "What tools will we give to our juries, prosecutors and judges to fulfill their responsibilities in maintaining a fair and just society?" "How, as a society, do we want to promote values which promote mutuality in relationships and safe and healthy sexuality?"

We may not all agree on the answers, but we all have a responsibility to engage in asking the questions. We must keep chipping away at those attitudes which continue to empower some at the expense of others; attitudes that so easily move from disrespect to violating to violence. We invite everyone to join us because it will take all of us together to make a difference.