

SLEEPY JUSTICE

by Frank Roman MD JD



Lady Justice (Iustitia, the Roman goddess of justice) is the personification of the morals that underline the legal system in the United States and she symbolizes the fair and equal administration of law, without corruption, avarice, prejudice, or favor. As such, her modern image frequently adorns courthouses with a sword and scales wearing a blindfold. Although the origin of the blindfold has been debated, no one would argue that the blindfold is really a sleep eye mask for those occasions when justice is not blind but asleep.

In recent years, the field of sleep medicine has brought the attention of drowsy driving to the justice system. Noteworthy the New Jersey State Senate

passed a bill known as Maggie's Law on 6/23/03 that established fatigued driving as recklessness under the existing vehicular homicide statute. Maggie's Law was named after the 20-year-old college student, Maggie McDonnell, who was tragically killed in 1997 when a driver crossed three lanes of highway traffic and hit her car head on. This driver admitted that he had been awake 30 hours prior to the accident and had been using illicit drugs. Remarkably the judge did not allow the jury to consider the driver's sleep deprivation and his punishment consisted of a suspended jail sentence and a measly \$200 fine.

According to the National Sleep Foundation, New Jersey is the only jurisdiction worldwide that specifically lists drowsy driving as a criminal offense. Maggie's Law qualifies driving while fatigue as recklessness under the state's vehicular homicide law. It is punishable with up to ten years in prison and maximum of \$100,000 fine. Similar laws are being considered in New York, Michigan, Washington State, and Massachusetts. Although this is an important issue that the field of sleep medicine must continue to advocate, the field as a whole should also draw attention to the issue of sleepy justice. In other words, is the administration of justice fair and equal when a juror, attorney, or judge falls asleep during important parts of a trial? This is a difficult issue to research or investigate due to the lack of awareness and documentation.


Believe it or not, a juror falling asleep would be addressed under jury misconduct, consisting of a two part test: (1) Did the conduct alleged actually occur. (2) Was there prejudice. In other words, how long did the juror fall asleep. What type of testimony was being obtained at the time that he was asleep, and was it favorable or unfavorable to the party who raises the claim.

Sleep state misperception is very common in our field but may potentially have serious consequences in a court of law. It is difficult enough for our patients to admit falling asleep inappropriately but imagine the embarrassment and fear of admitting to the judge in a crowded courtroom that you fell asleep during important testimony. It is difficult to quantitate the prevalence of sleepy jurors but the few cases found demonstrate a common theme of denial, sometimes adamantly, despite direct observation of falling asleep and unfortunately a glossing over by the court rationalizing these episodes of inappropriate sleep as being only brief lapses of attention with no significant impact since the evidence is presented several times during a trial and


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testimony is commonly repetitive and overlapping. Interesting quotes found included the "the fact that a juror became drowsy for a short time is not of itself grounds for a new trial and juror boredom with counsel's argument is not grounds for a new trial.

In attempts to prevent sleepy jurors, the courts have used several strategies, most of them ineffective and somewhat comical if not for the potential impact on the trials. These have included:

1. Talking louder in an effort to keep the sleepy juror awake.
2. Having the whole jury get up and stretch.
3. Holding one juror responsible for keeping other jurors awake.
4. Having a sleepy juror hold a glass of water to stay awake.
5. A case where a continuance of 4 days was granted to allow a juror to catch up on his sleep in lieu of granting a mistrial.

Sleepy attorneys has also been of serious concern but documented less than sleepy jury members. When this issue is raised, it is usually under the Sixth Amendment, ineffective assistance of counsel argument.

One of the most striking examples in recent memory was the case of death row inmate, Calvin Gerold Burdine, who claimed that his court appointed lawyer would sleep up to 10 minutes at a time during his trial. The Supreme Court of the United States overturned his murder conviction and death sentence based on the incompetence of his lawyer. This could possibly be a prelude to the broad examination of the quality of legal help available to poor defendants facing the death penalty. Ironically state lawyers who were given a deadline of 120 days to retry Mr. Burdine apparently fell asleep, missing the deadline. I guess sometimes the blindfold can be a sleep mask.

Clinical Instructors... Continued from page 46

Students need to see clinical instructors demonstrate exactly what their expectations are. Good instructors, via their own modeling, show the student the finer points of actual practice.

(6) *Provides constructive feed-back on students' clinical performance.* In order to present a fair and accurate evaluation, instructors need to be objective and unbiased in identifying a student's strengths and weaknesses. Essential to this process is the use of a thoughtfully-constructed evaluation instrument, one which, as objectively as possible, rates the degree of success or failure in achieving the desired learning outcomes. Check-offs are fine, but the effective clinical instructor will also provide a written narrative assessment in support of a final rating.

(7) *Is a positive role model for students.* It's an oversimplification to say that clinical educators should be positive role models. With words unspoken, the instructor will demonstrate that the needs of the patients are always uppermost. The learning process includes a "sifting" of what is acceptable behavior and what is not. That's why the best instructors will always maintain an aura of "correctness" in behavior, appearance, and demeanor. Students are heavily influenced by the behavior, workstyle and skills of their teachers. Positive attributes and ethics rub off.

Clinical instructors are often oblivious to the vital role they play in allied health education and often underestimate their own importance. It's his or her characteristics and the respective clinical environment that they create that makes clinical a rewarding and productive experience for both the students and themselves. But in the bigger picture, they are the folks to whom we've entrusted the future of our workforce.