

OPINION



The First Day Of The Cosby Trial



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Day one of the Commonwealth of Pennsylvania v. William Henry Cosby, Jr trial lived up to its hype—if that is even an appropriate word to use when referring to the conduct for which this former icon stands accused. There were times that even I, an experienced trial lawyer, felt as if I were watching a television show. From the bulldog defense attorney to the learned judge to the calm and collected prosecutor to the emotional witness on the stand.

There has been a great deal of information swirling around for months (years, really) about this case so let's start with what exactly it's about. This case is the ONLY criminal case being brought against Cosby despite the fact that nearly 60 women have claimed that America's favorite dad drugged and sexually assaulted them. That is because in all of those other incidents the statute of limitations—the time period in which criminal charges can be brought—had run. In this case, Cosby stands accused of 3 counts of aggravated indecent assault, a second degree felony, punishable by up to ten years in prison.

What is aggravated indecent assault? It's when a defendant penetrates the genitals of another person with a part of his body without that person's consent. As it applies here, Cosby is accused of that as well as penetrating the genitals of another person while that person is unconscious as well as after substantially impairing that person's power to appraise or control her conduct by administering drugs, intoxicants or other means for the purpose of preventing resistance. Specifically, the allegations are that Cosby gave Andrea Constand pills which caused her vision to become blurry, to lose strength in her limbs, to feel dizzy, etc. While she was in this very compromised state, he lifted up her shirt and bra, touched her breasts, took her limp hand, placed it on his penis and masturbated himself; he then inserted his fingers into her vagina. This is not a case of penile penetration. The claim is of digital penetration.

Trial started out with Judge O'Neill reminding the jurors that they are not supposed to be influenced by outside sources, thanking them for their service, letting them know how important they are to the process, how valuable their contribution is and how he will do anything he can to make sure their "time here" is as pleasant as possible. He talked about that last point at great length and seemed genuinely concerned about the comfort of the jurors. He also pointed out that he had met with each juror individually that morning to ensure they hadn't been unduly influenced since their selection the week of May 22 and that they remained fair and impartial. The jury members are from the Pittsburgh area, more than 300 miles away from where the trial is and where they are being sequestered.

The case started in earnest with the prosecution's opening statement delivered cleanly and rather concisely by Assistant District Attorney Kristen Feden, a petite, African American female. She did exactly what is supposed to be done in an opening statement—she gave the jury a road map for what they can expect to see in terms of proof during the trial while also weaving a tale of the case, of Andrea Constand's victimization at the hands of an A-Lister. Feden made clear that the Cosby case is about trust, betrayal, and the inability to consent.

Next was lead defense counsel, Brian McMonagle's opening statement. McMonagle is fiery, aggressive, brash, loud at times, and then, at times, hard to hear. But he did what he was paid to do and despite his intensity was as cool as can be, resting his hand on a railing or in his pocket while he spoke. He made sure the jury knew he had been a prosecutor for many years, he referenced his wife, his kids, all attempts to humanize him in the eyes of the jurors. Most of his words focused on Constand's actions, how she continued a friendship with Cosby even after the incident (he said Cosby and Constand spoke 72 times after the incident and 53 of those times Constand initiated the call) and that it wasn't until after she had spoken with an attorney who specialized in sexual assault cases that Constand reported the incident to police.

The biggest moments of the day, however, came from the prosecution's first witness, Kelly Johnson. Ms. Johnson's testimony is critical to the prosecution's case and was admissible under a rule of evidence known as prior bad acts. Ms. Johnson is the only victim the judge has allowed to testify in this capacity. Despite all those other victims we've heard about, the jury will only hear from Constand and from Johnson (the prosecution sought to get the testimony in of 13 other women but the judge only allowed the one). Ms. Johnson, a somewhat soft spoken African American woman, was riveting on the stand, mostly because she spoke in great detail of the Hollywood machine, the reverence paid to A-listers, the power of celebrity. In the 1990s, Ms. Johnson was the assistant to Tom Illius, an agent at William Morris; Cosby was William Morris' biggest client. I had goose bumps when Ms. Johnson cried on the stand, her voice cracking as she explained how Cosby drugged her, took her hand, placed it on his penis while he masturbated and how when she came to the bottom of her dress was pulled up, the top of her dress pulled down, her breasts exposed, Cosby lying behind her on the bed. When she described her father's face, a former LAPD detective, when she told him about what Cosby had done to her, it was heart wrenching, mostly because Johnson and her family felt powerless, how could they going on this American icon?

McMonagle came out guns blazing against Ms. Johnson. He was talking over her, not letting her answer, trying hard to trip up what was very obviously a distraught woman and a very likable witness. I think he should've saved those histrionics for later in the trial—not sure how much the jury wants to see of that day in and day out. In the end, Johnson did very well. She was credible and didn't engage in battle with McMonagle, even when he nastily posed his final question on cross, "Did anyone tell you to get selective amnesia for this case?" Something to note, Cosby, whose chair was turned in a way as to be open and facing the jury while the judge gave his initial cautionary instructions and welcome to them, did not look at Johnson one time during her testimony. In fact, his chair was turned wholly in the other direction.

If day two of this trial is anything like day one, it is sure to be interesting.

Jill Stanley is an Attorney & Founder of "[PROOF with Jill Stanley](#)". "PROOF with Jill Stanley" gives you the celebrity legal news you crave in a way you haven't encountered before. Jill was an Assistant District Attorney in Queens, NY where she first honed her trial skills & also worked as a freelance reporter for the television show America's Most Wanted.

Tags: Bill Cosby, Jill Stanley, Sexual assault