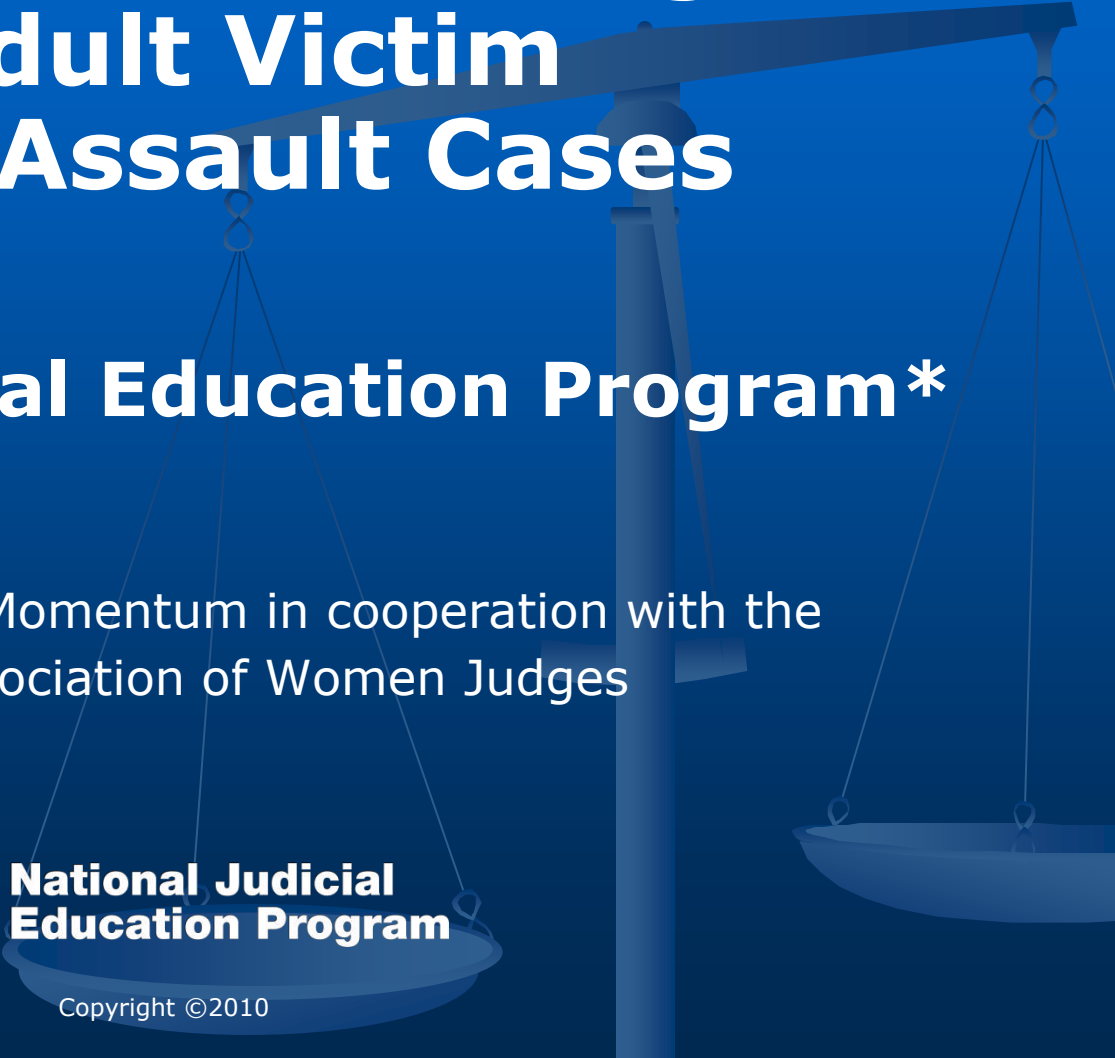


# **Jury Selection and Decision Making in Adult Victim Sexual Assault Cases**



## **National Judicial Education Program\***

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

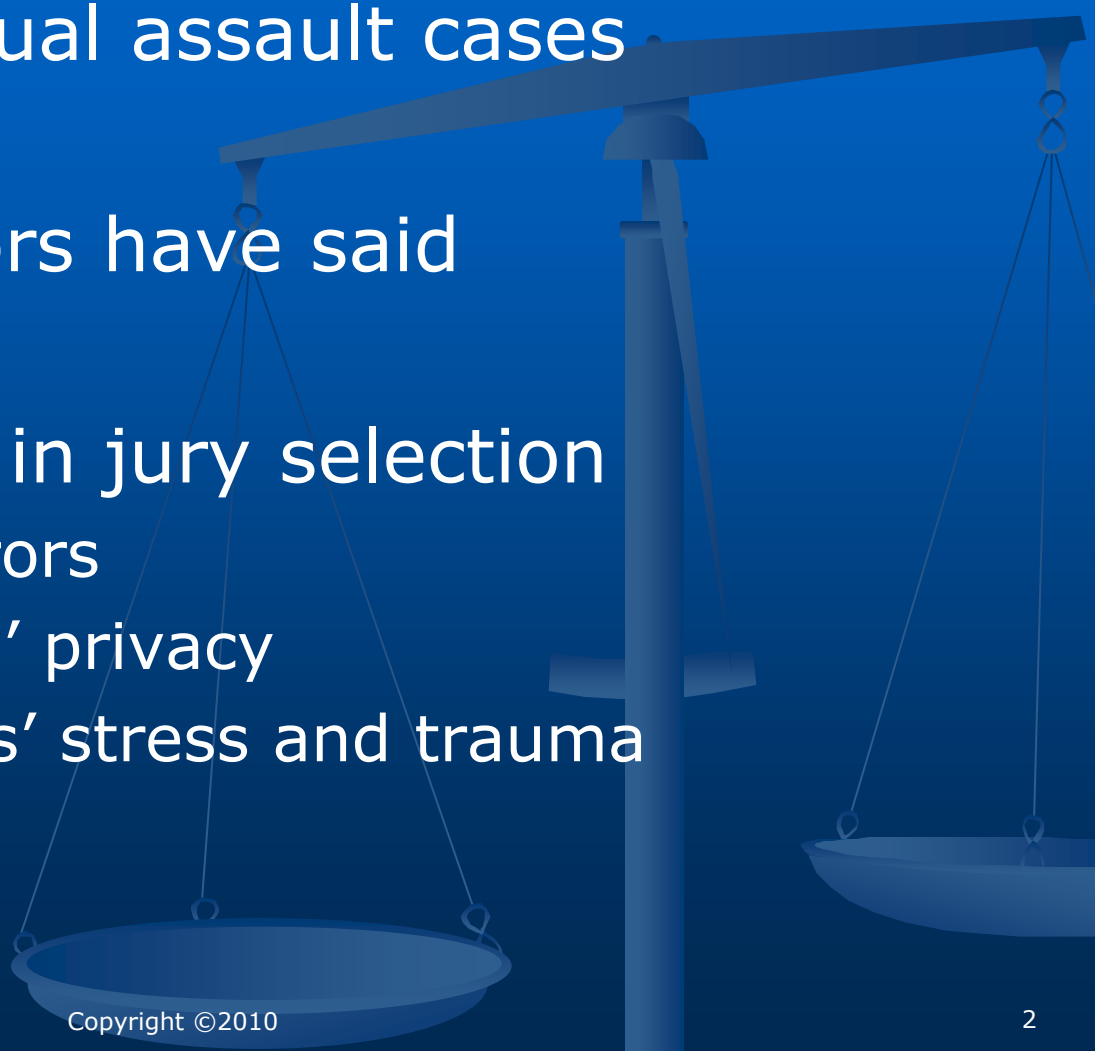


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Education Program**

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# Topics Covered

- What research shows about how juries decide adult sexual assault cases
- What actual jurors have said
- The judge's role in jury selection
  - Selecting fair jurors
  - Protecting jurors' privacy
  - Minimizing jurors' stress and trauma



# What the Research Shows



# Harry Kalven & Hans Zeisel, *The American Jury* (1966)

Jurors define rape  
in terms of the victim's  
"assumption of risk."



**Gary LaFree, Ph.D.,**  
***Rape and Criminal Justice:***  
***The Social Construction***  
***of Sexual Assault (1989)***

Jurors disregard evidence and decide rape cases based on their personal perceptions of the victims' character and lifestyle.

# LaFree, *Rape and Criminal Justice*

- 32% of jurors believed a woman's resistance was a critical factor in determining a rapist's culpability.
- 59% of jurors believed a woman should do everything she can to repel her attacker.

# Jurors' Beliefs in Rape Myths

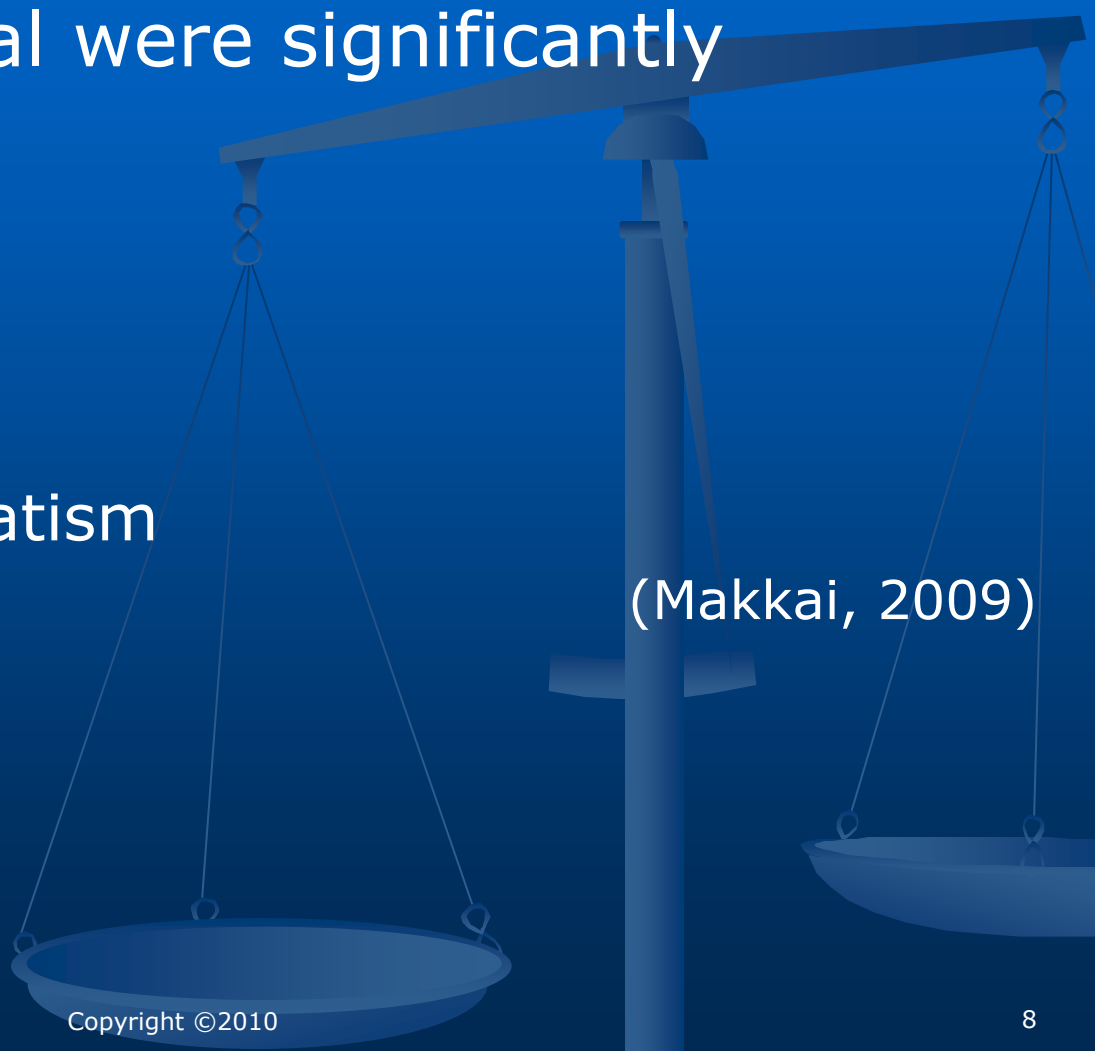
- “The more participants endorsed rape myths, the less credible...and more blameworthy...they found the [victim].”  
(Schuller, 2002)
- Jurors' beliefs in rape myths “significantly predict [their] evaluation of others who are involved in coercive sexual encounters.”  
(Wenger, 2006)

# Jurors' Beliefs in Rape Myths

Less favorable attitudes toward rape victims in general were significantly associated with:

- Being male
- Lower income
- Political conservatism

(Makkai, 2009)





# Jurors' Beliefs in Rape Myths

Stronger personal beliefs in guilt were significantly associated with:

- Higher levels of education
- Personal knowledge of sexual assault victims
- Positive attitudes toward rape victims in general
- Higher perceptions of [victim] credibility
- Low empathy with the defendant

(Makkai, 2009)

# Gender Role Stereotypes



- “Acceptance of traditional gender role norms for men and women influences tolerance of rape, and it is a significant predictor of acceptance of rape myths.”

(Ben-David, 2005)

- The more participants accept “benevolent sexism” the less they blamed the acquaintance rape perpetrator

(Viki, 2004)

# Gender Role Stereotypes

- Hostility toward women, subscribing to other oppressive belief systems, and being male are all strongly correlated to rape myth acceptance.

(Gadalla, forthcoming, 2010)

- Gender is correlated with acceptance of rape myths. Men are more likely to be accepting of rape myths.

(Sheperd, 2002)

# Times/CNN Poll (1991)

38% of men  
37% of women

said that a raped woman  
is partly to blame  
if she dresses provocatively

# Georgia Opinion Poll (1998) (Random sample: ages 18-49)

49% of men  
42% of women

believe women cry rape  
when it hasn't really happened

# Georgia Opinion Poll (1998) (Random sample: ages 18-49)

48% of men  
48% of women

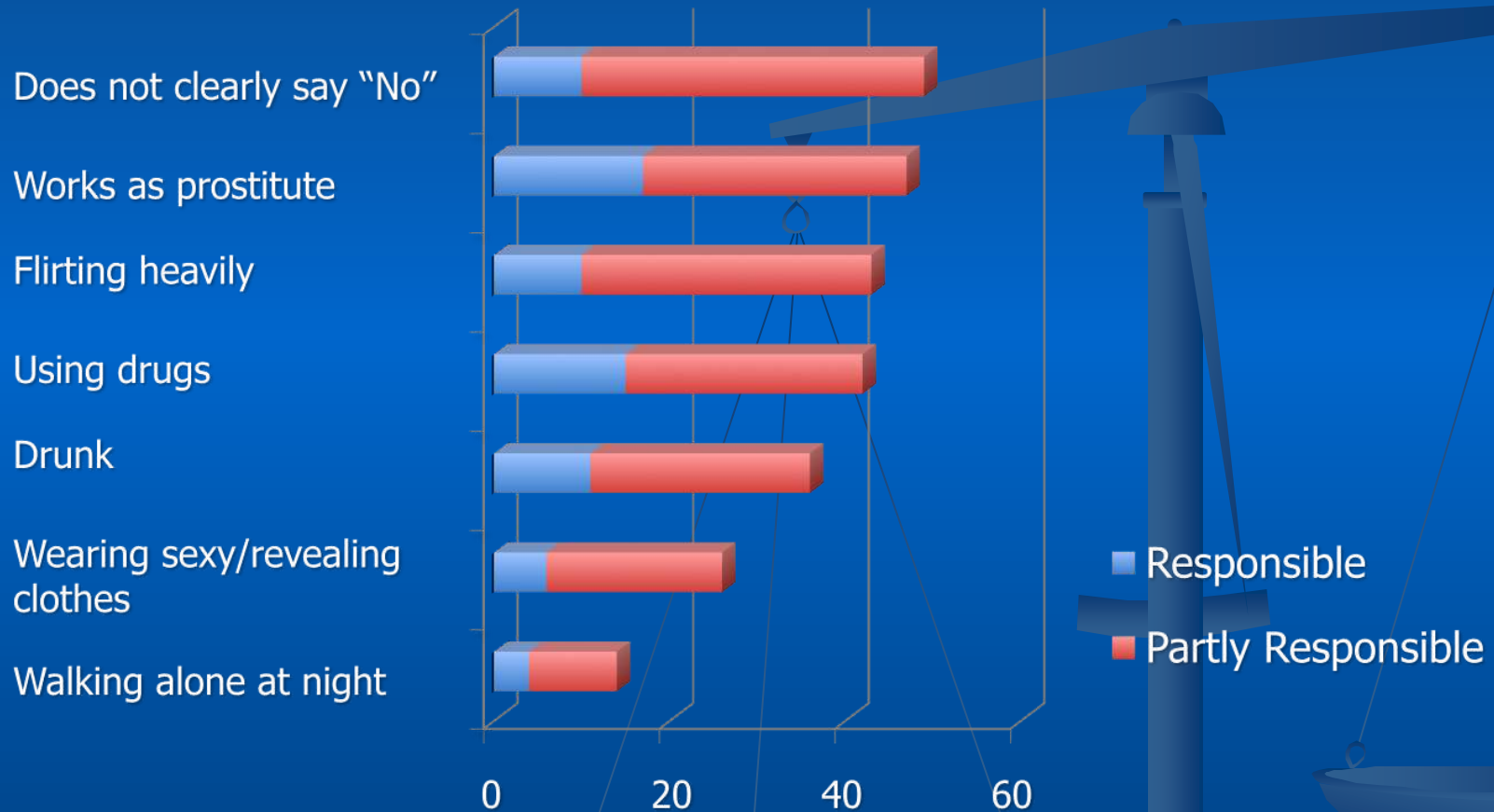
believe sexual assault  
necessarily includes  
the use of a gun or other weapon

# Georgia Opinion Poll (1998) (Random sample: ages 18-49)

20% of men  
9% of women

believe a woman has  
**no right** to say "no"  
to having sex with her husband

# Attitudes Towards Rape Responsibility England and Wales (2009)





# Rhode Island Dating Attitude Surveys (7th to 9th Grade Students)

A person on a date has a right to sexual intercourse against the date's consent if they have had intercourse before:

YEAR	% OF BOYS WHO SAID YES	% OF GIRLS WHO SAID YES
1988	70	54
1998	70	53

(Rhode Island, 1998)

# Rhode Island Dating Attitude Surveys (7th to 9th Grade Students)

A person on a date has a right to sexual intercourse against the date's consent if they dated a long time:

YEAR	% OF BOYS WHO SAID YES	% OF GIRLS WHO SAID YES
1988	65	47
1998	62	58

(Rhode Island, 1998)

# Rhode Island Dating Attitude Surveys (7th to 9th Grade Students)

A man has the right to sexual intercourse against the woman's consent if they are married:

YEAR	% OF BOYS WHO SAID YES	% OF GIRLS WHO SAID YES
1988	87	79
1998	73	78

(Rhode Island, 1998)

# Other Key Research



- The closer the acquaintance, the greater the minimization of the severity of the rape and the more responsibility attributed to the victim.  
(Ben-David, 2005)
- Prior sexual relationship: victim perceived as less credible, more blameworthy and more likely to have consented.  
(Schuller, 2002)
- Higher level of rape myth acceptance for marital rape than for acquaintance rape.  
(Cermele, 2008)

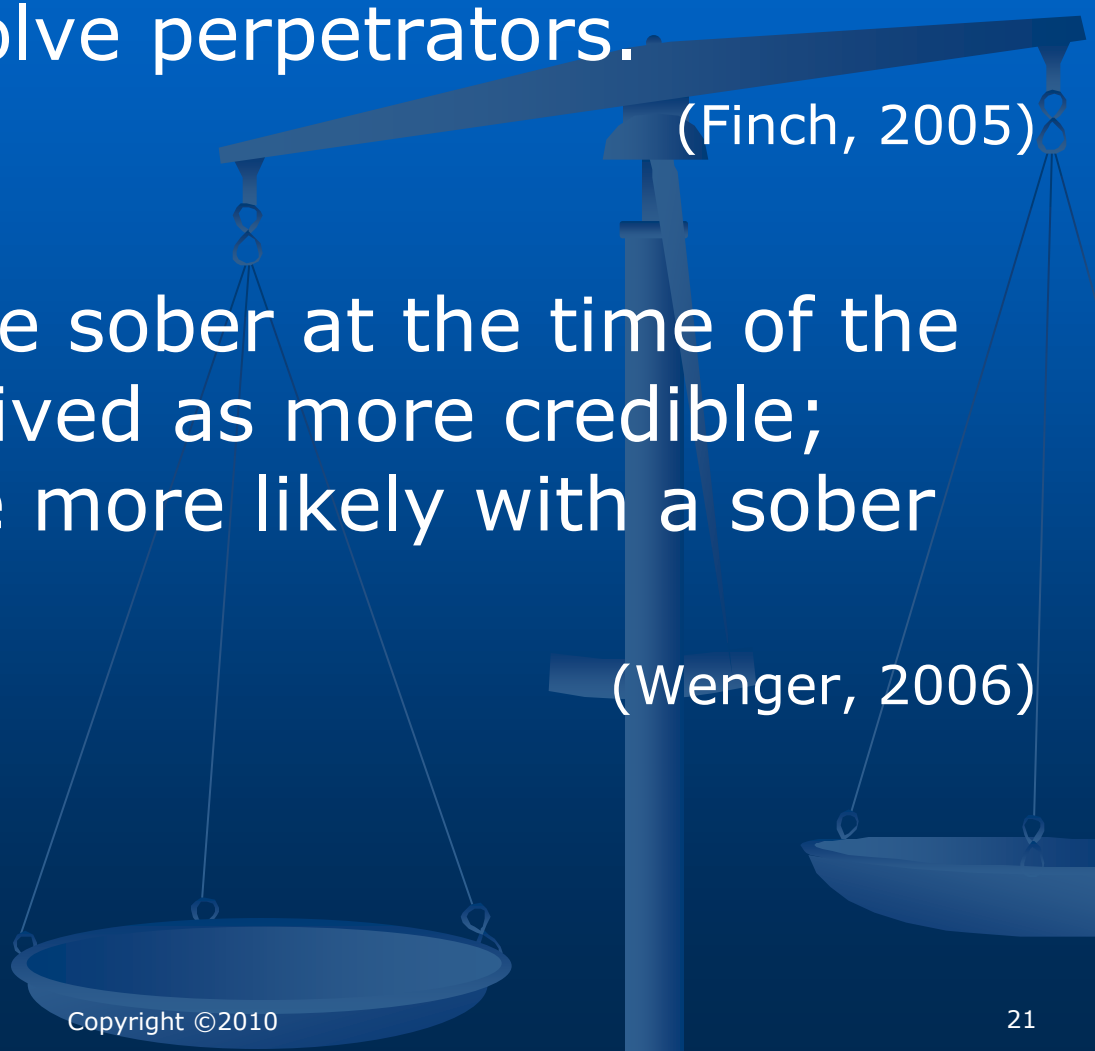
# Effect of Alcohol Use

- Mock jurors used intoxication to blame victims and absolve perpetrators.

(Finch, 2005)

- Victims who were sober at the time of the rape were perceived as more credible; convictions were more likely with a sober victim.

(Wenger, 2006)



# The Effect of Popular Culture



- The “CSI” Effect: Jurors expect to see scientific evidence in every case. Shows like this create the illusion of “unequivocal black-and-white crime solving.”

(TDCAA, 2007)

- Men and women who preferred films with sex and violence were more accepting of rape myths.

(Emmers-Sommer, 2006)

# The Effect of Popular Culture

- Women who watch more television were more likely to believe rape reports were false.

(Kahlor, 2007)

- Men who were exposed to highly sexual hip-hop videos express a higher level of rape myth acceptance. The result for women was mixed.

(Kistler, 2009)

# Women Jurors in Sexual Assault Cases

- The research shows:
  - Gender is one of the strongest predictors in mock juries; women tend to be more sympathetic to victims and harsher toward defendants.  
(Wenger, 2006), (Schuller, 2002), (Ben-David, 2005), (Shepherd, 2002)
- Many criminal justice professionals believe:
  - Women are terrible jurors in sexual assault cases.



# Women Jurors in Sexual Assault Cases: Possible Explanation

“[A]lthough individual female mock jurors consistently reached guilty verdicts in rape trials more often than individual male mock jurors did, this difference did not appear in deliberating juries until women comprised an overwhelming majority (i.e., 10-2) of the jury.”

(Wenger, 2006)

# What Actual Jurors Have Said

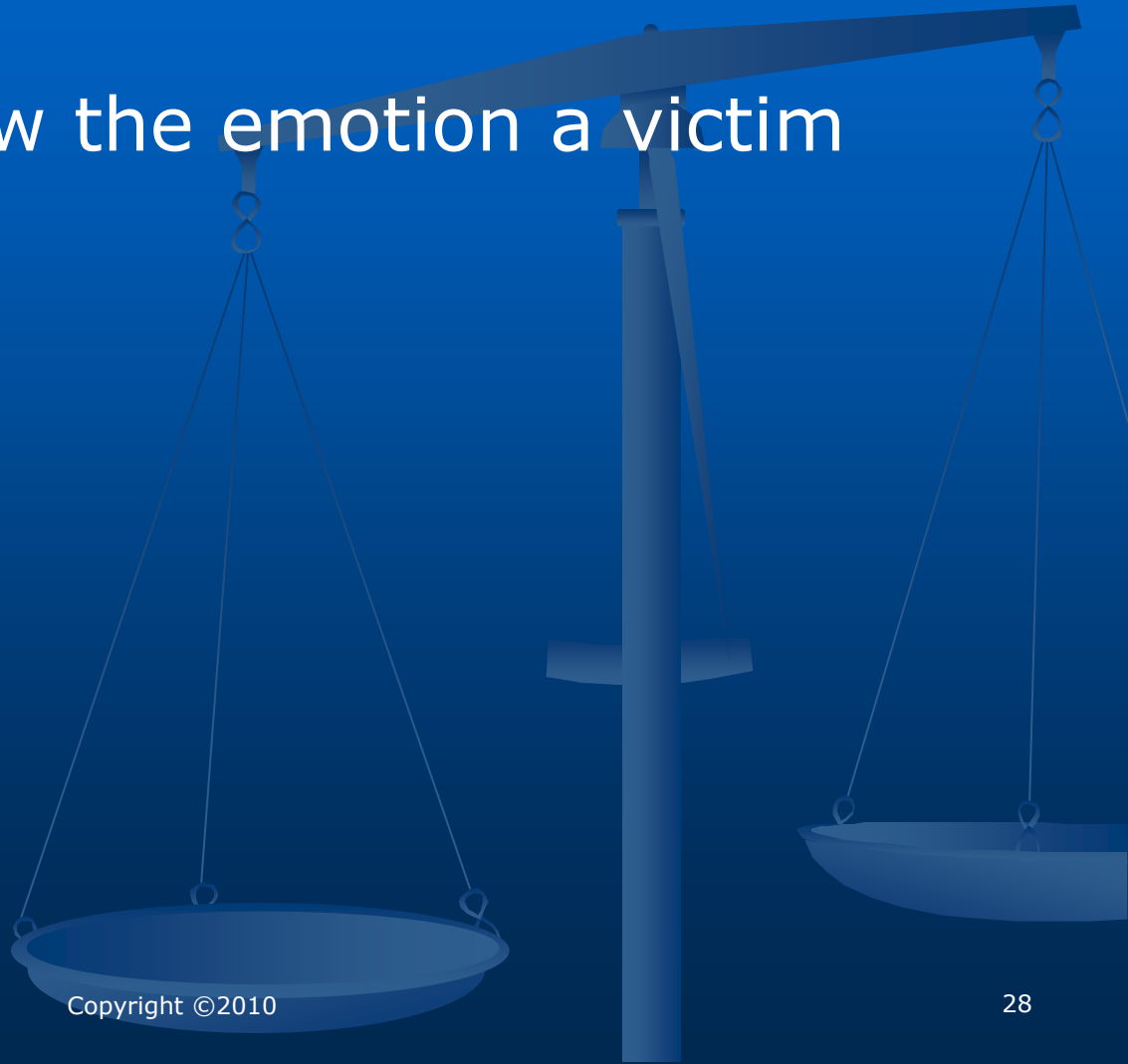


# New Mexico Juror

“All men have tried to force a woman to do something she didn’t want to do. I just hope I haven’t crossed the line. The defendant was simply a man trying to do the best he could. I think the victim and defendant had sex and it was bad for the victim.”

# Colorado Juror – Comment 1

“She did not show the emotion a victim should show.”

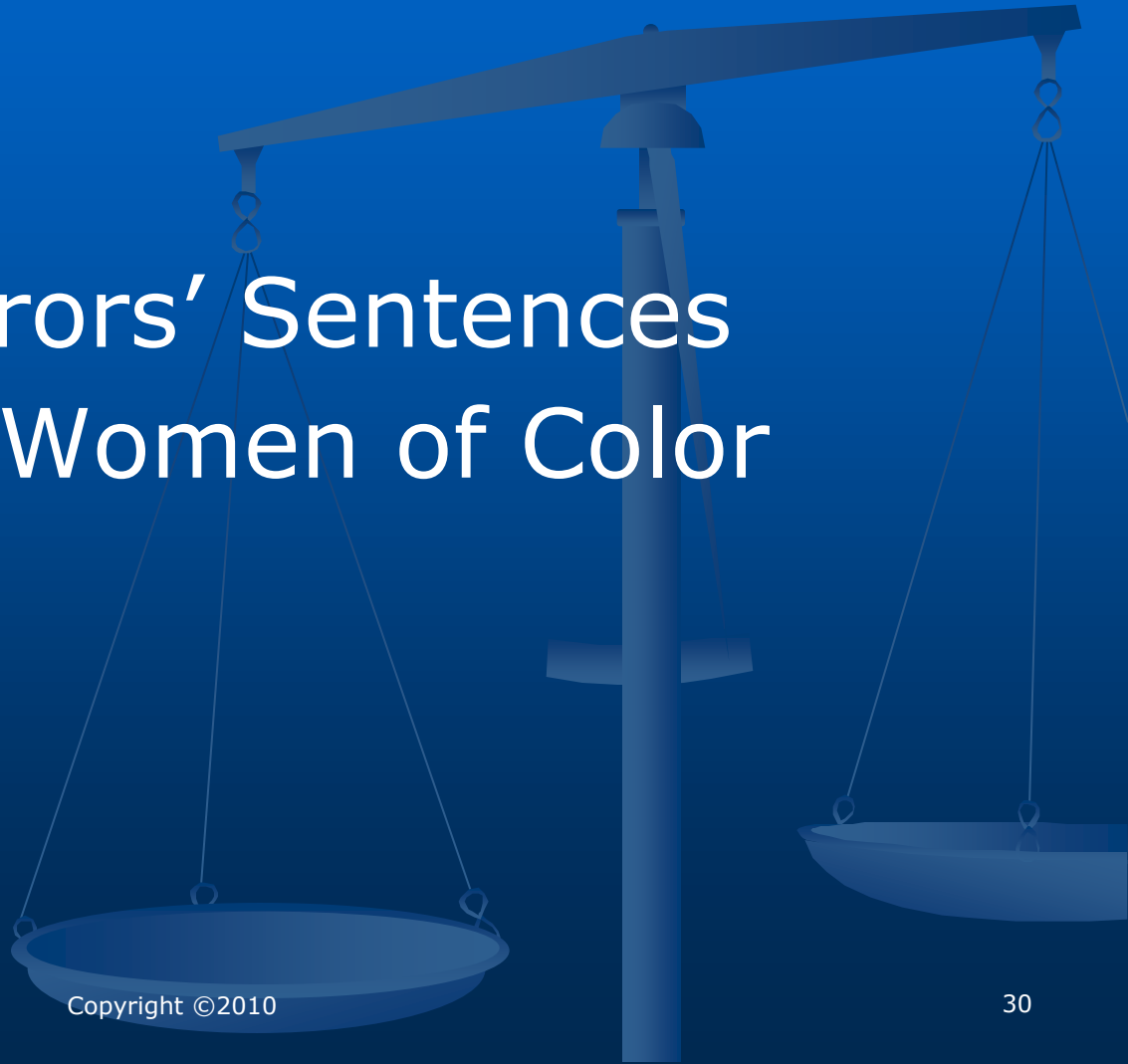


# Colorado Juror – Comment 2

“The fact that she testified that she was a lesbian who did not have sex with men was not relevant. She willingly consented to go to their apartment. Having placed herself in this situation, she [sic] was guilty of something.”

# Dallas Times Herald Race Tilts the Scales of Justice (1991)

Rape Jurors' Sentences  
Devalue Women of Color



# Dallas Times Herald (1991)

<b>Offender's Race</b>	<b>Victim's Race</b>	<b>Median Sentence</b>
Black	White	19 Years
White	Black	10 Years
White	White	5 Years
Hispanic	Hispanic	2.5 Years
Black	Black	1 Year

# Effectiveness of Limiting Instructions

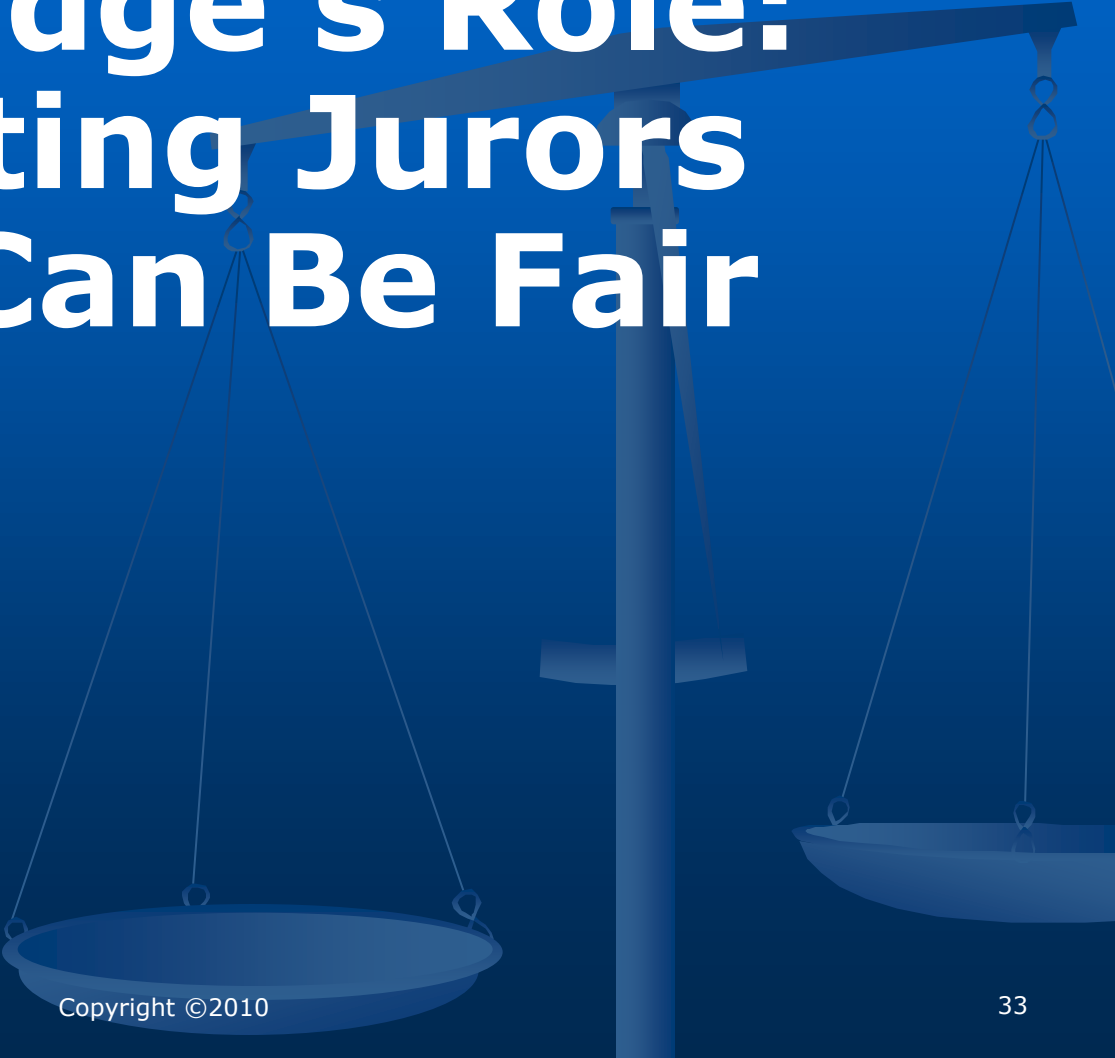
In studying the impact of a limiting instruction about the proper consideration of testimony about a victim's prior sexual history, researchers found:

- “[T]he proposed safeguard of providing jurors with limiting instructions may be ineffective in curbing the pernicious impact of [the victim’s] prior history evidence.”

(Schuller, 2002)

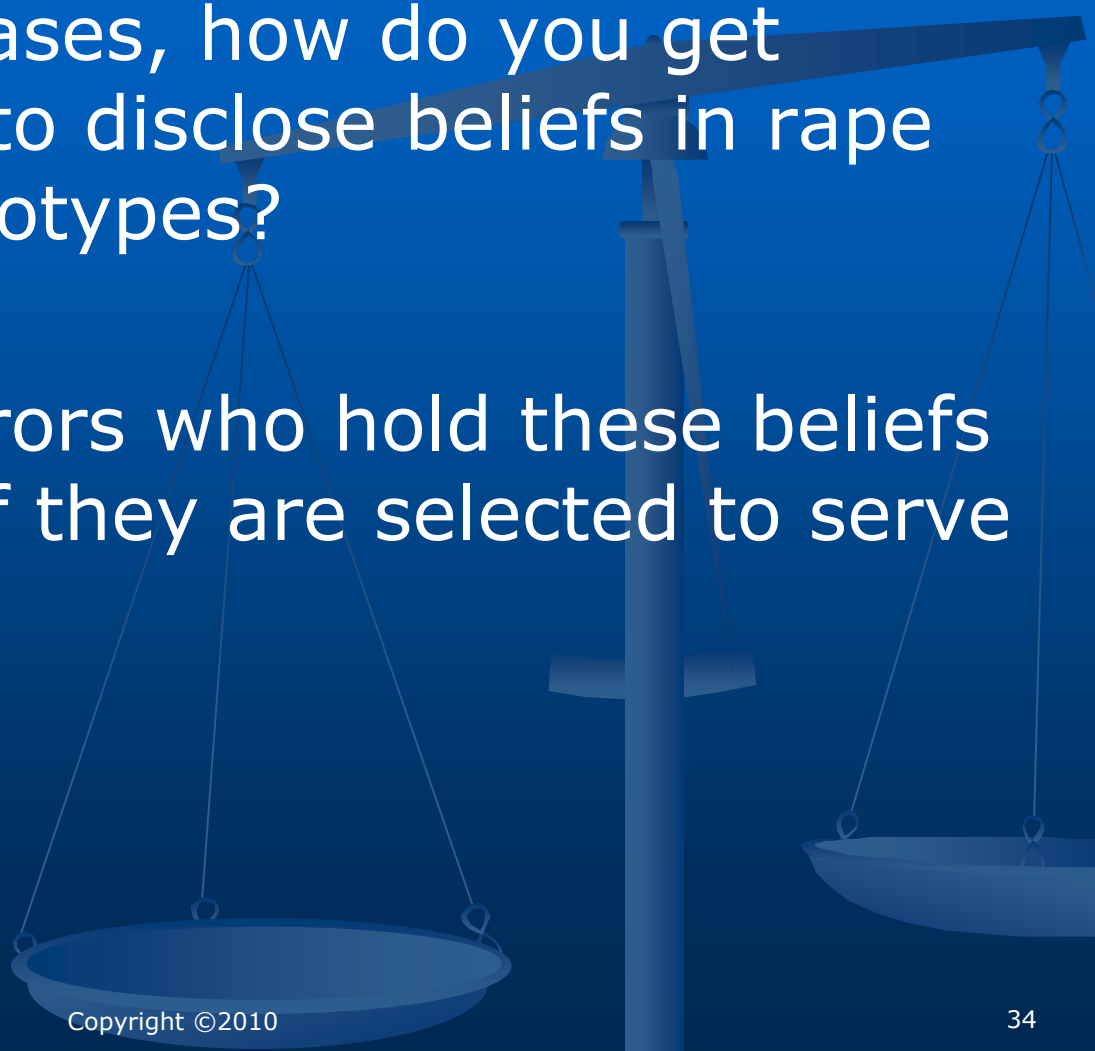


# The Judge's Role: Selecting Jurors Who Can Be Fair



# Key Questions

- Given the research about how jurors decide sexual assault cases, how do you get potential jurors to disclose beliefs in rape myths and stereotypes?
- Can potential jurors who hold these beliefs set them aside if they are selected to serve on a jury?



# Exercise: “I’ve Got a Secret”

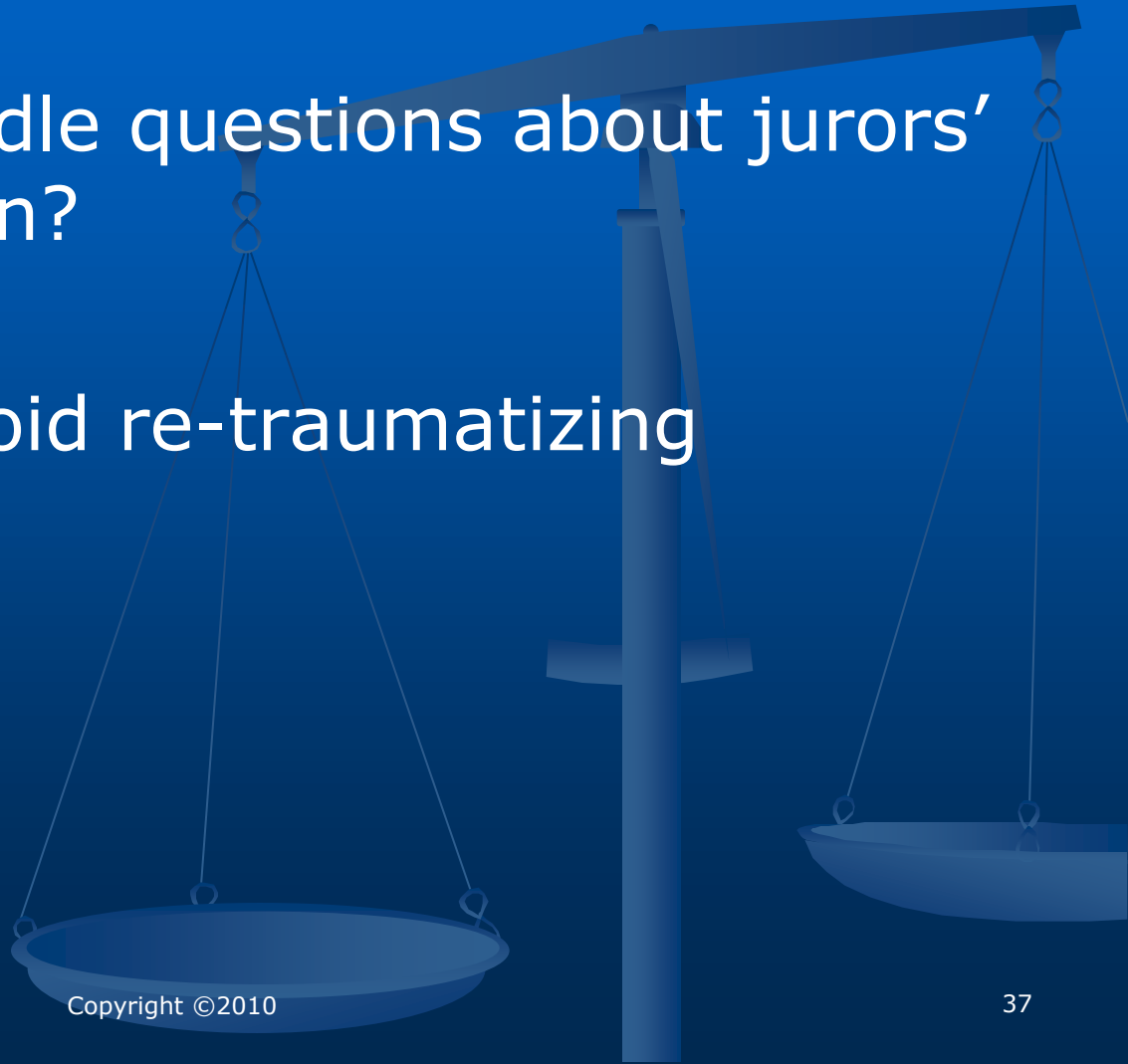


# The Judge's Role: Protecting Jurors' Privacy



# Key Questions

- How do you handle questions about jurors' past victimization?
- How can you avoid re-traumatizing potential jurors?

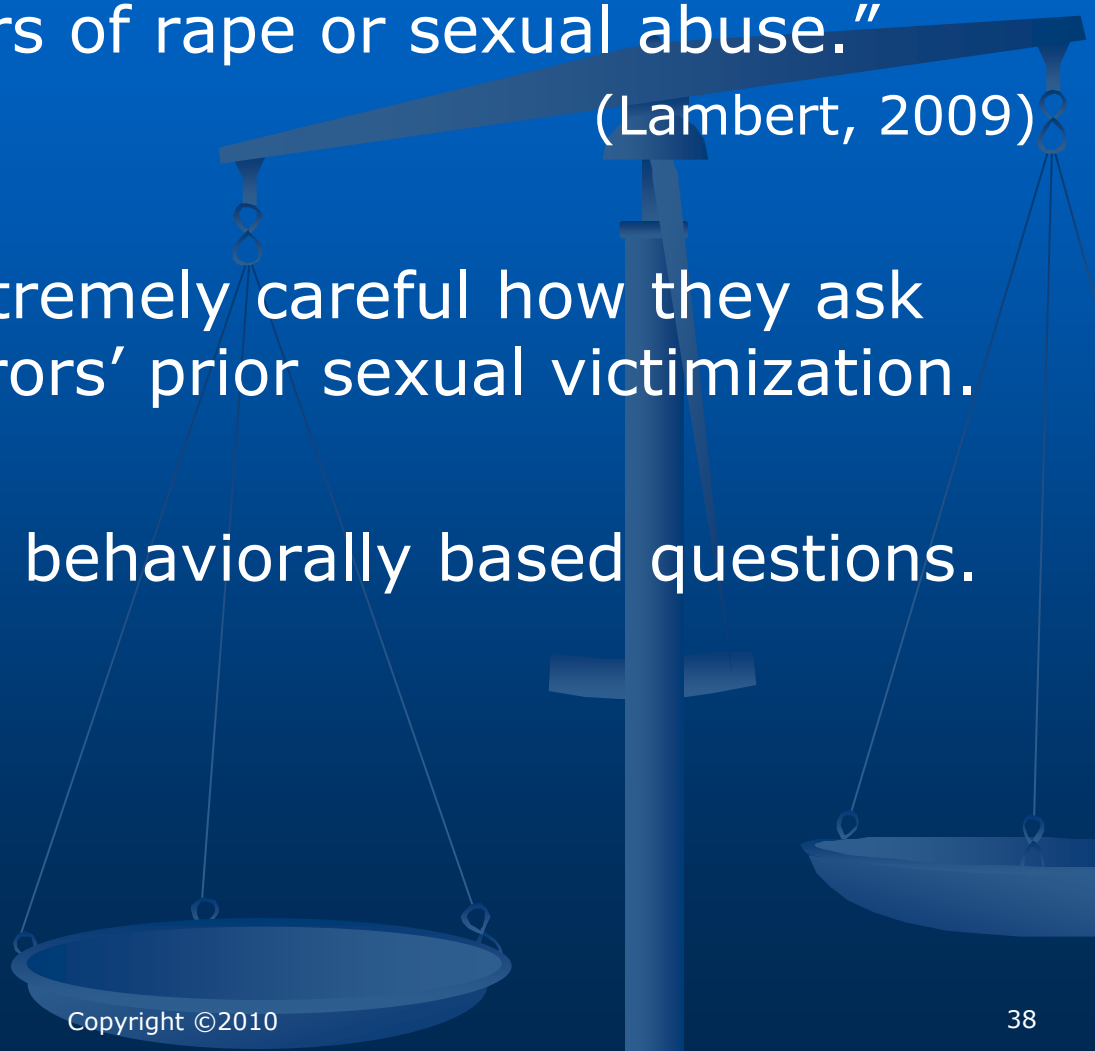


# Jurors' Past Victimization

- “Being summoned for jury duty can cause a lot of anxiety for survivors of rape or sexual abuse.”

(Lambert, 2009)

- Judges must be extremely careful how they ask questions about jurors' prior sexual victimization.
- Judges need to ask behaviorally based questions.



# Jurors' Past Victimization: A Cautionary Tale

- The Wisconsin example: Defendant appealed his conviction for sexual assault on a child, claiming that a juror failed to reveal that she had been sexually assaulted as a child.
- When asked whether she had been “a victim or witness to a crime,” she answered “no.” At the post-trial hearings, she later explained, “I was relating it to a crime being reported. I was not a victim of a crime. It was never reported.”  
*(State v. Delgado)*

# Jurors' Past Victimization: A Cautionary Tale (cont'd)

- After six years, two hearings and two appeals to the Court of Appeals, the Wisconsin Supreme Court reversed the conviction, holding that juror bias “may be inferred in this case....”

*(State v. Delgado)*



# Jurors' Past Experiences: Other Examples

- During deliberation, a juror disclosed that when she was 18, she had been violently penetrated by a date.
- On the jury questionnaire, she had answered "no" to the question of whether she had ever been a victim of a sexual assault. She told the trial court she did not consider herself a victim of a sexual assault.
- Trial court's decision to grant a new trial was reversed on appeal.

*(State v. Watts)*

# Jurors' Past Experiences: Other Examples

- A juror failed to disclose that she worked for Safe and Fear-Free Environment (SAFE) and had received specialized training about sexual assault.
- The trial court's conclusion that the juror did not consciously withhold the information was affirmed.

*(Manrique v. State)*

# Key Questions

- How do you handle questions about jurors' past perpetration?
- What, if any, areas of inquiry are not relevant or out-of-bounds?

# Jurors' Past Perpetration

- Difficult to elicit accurate information about this issue.
- Sample questions:
  - Have you or a close relative or friend ever been subjected to a charge of sexual abuse or sexual assault or been investigated for sexual abuse or sexual assault?
  - Have you or other family members ever been separated from one another due in whole or in part to sexual abuse or sexual assault or claims of sexual abuse or sexual assault?

*(State v. Watts)*

# Jurors' Past Perpetration



- Important to ask behaviorally based questions because of the misunderstanding of what constitutes “sexual assault” or “sexual abuse.”
- Because most sexual assaults are never reported, you need to ask about any claims, allegations or accusations.
- Even then, you may not elicit truthful responses.

# Jurors' Past Perpetration: California Example

- Defendant was charged with multiple counts of sexual assault on several children.
- During *voir dire*, potential jurors were asked whether “you or someone you know [have] been accused of having committed a sexual assault on a child or adult.”
- During deliberations, one juror refused to reach a verdict, stating, “I don’t care what the judge says, it’s not a felony.” While the judge was trying to resolve the jury issue, the police discovered that juror had previously been accused of, but not charged with, sexual assault.
- The trial court excused the juror during deliberations and replaced him with an alternate juror. Affirmed.

(*State v. Dominquez*)

# Acceptable Areas of Inquiry?

One example:

- Married man with children was convicted of sexually assaulting a younger man, who was a college student. The defense attorney wanted to question potential jurors about their views about homosexuality, male-on-male sexual assault, and men struggling with attraction to other men.

*(State v. Thornton)*

- What questions would you allow in this case?

# Acceptable Areas of Inquiry?

## The trial court's ruling:

- The trial court allowed general questions about homosexuality or male-on-male sexual assault, but prohibited the questions about men struggling with their attraction to other men.

*(State v. Thornton)*

## The appellate court's ruling:

- Affirmed. The questions about men struggling with their attraction to other men were unrelated to the issues in the case, were not based on undisputed facts and would have tested the jurors' views on certain facts.

*Id.*



# Jury Questionnaires

- Should you use specially-tailored questionnaires?
- One judge's experience in asking jurors about their prior sexual victimization.

# Judge William Hughes Hamilton Superior Court, IN

- Initially asked questions in open court, allowing jurors to approach the bench, if they wished
- Changed in the rules in Indiana
- Enhanced juror protection
- Questionnaires now confidential
- Change in response rate: 20.3% increase in jurors who disclosed prior victimization

# Exercise: Post-Trial Juror Disclosure Hearing

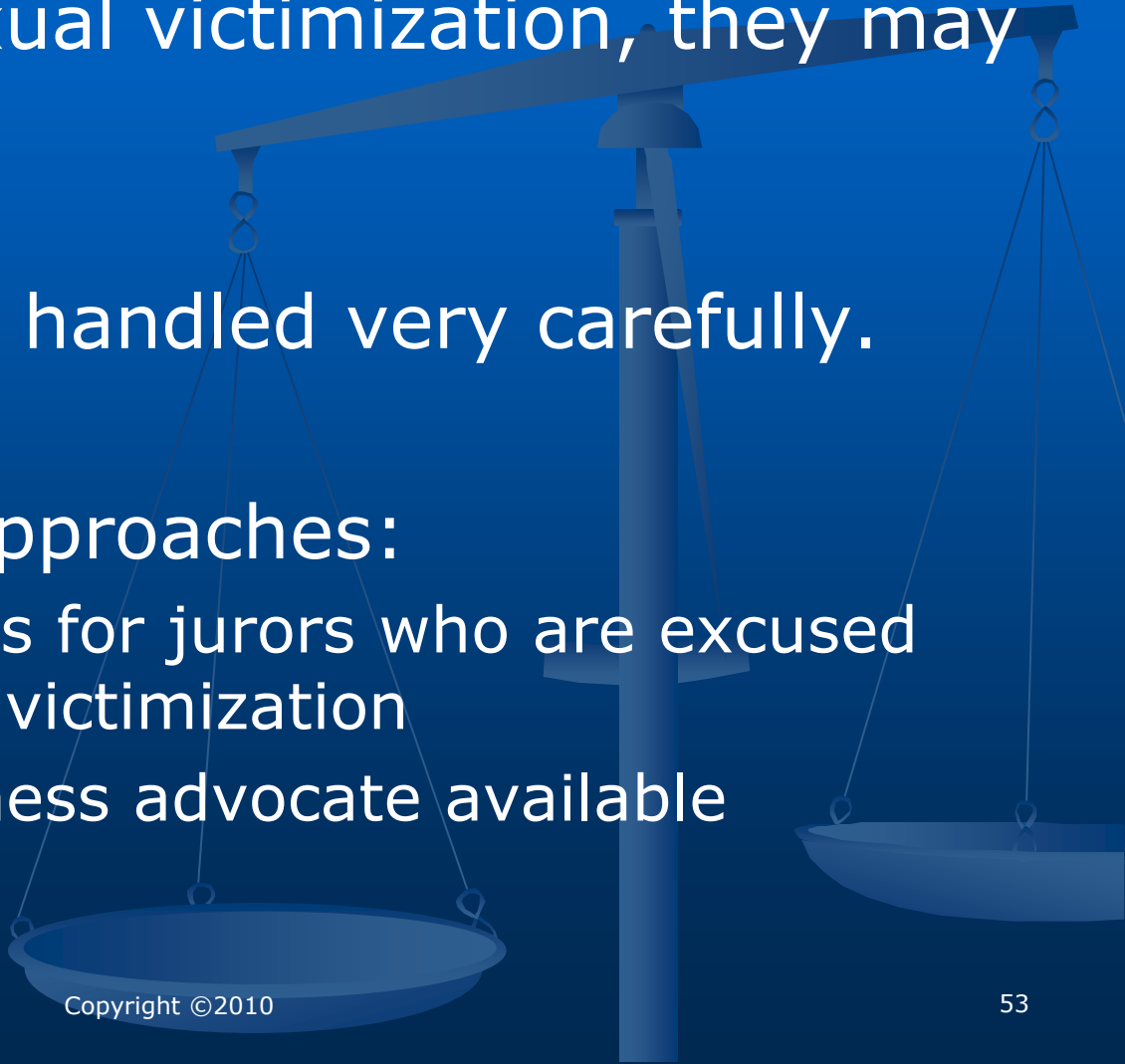


# The Judge's Role: Minimizing Jurors' Stress and Trauma



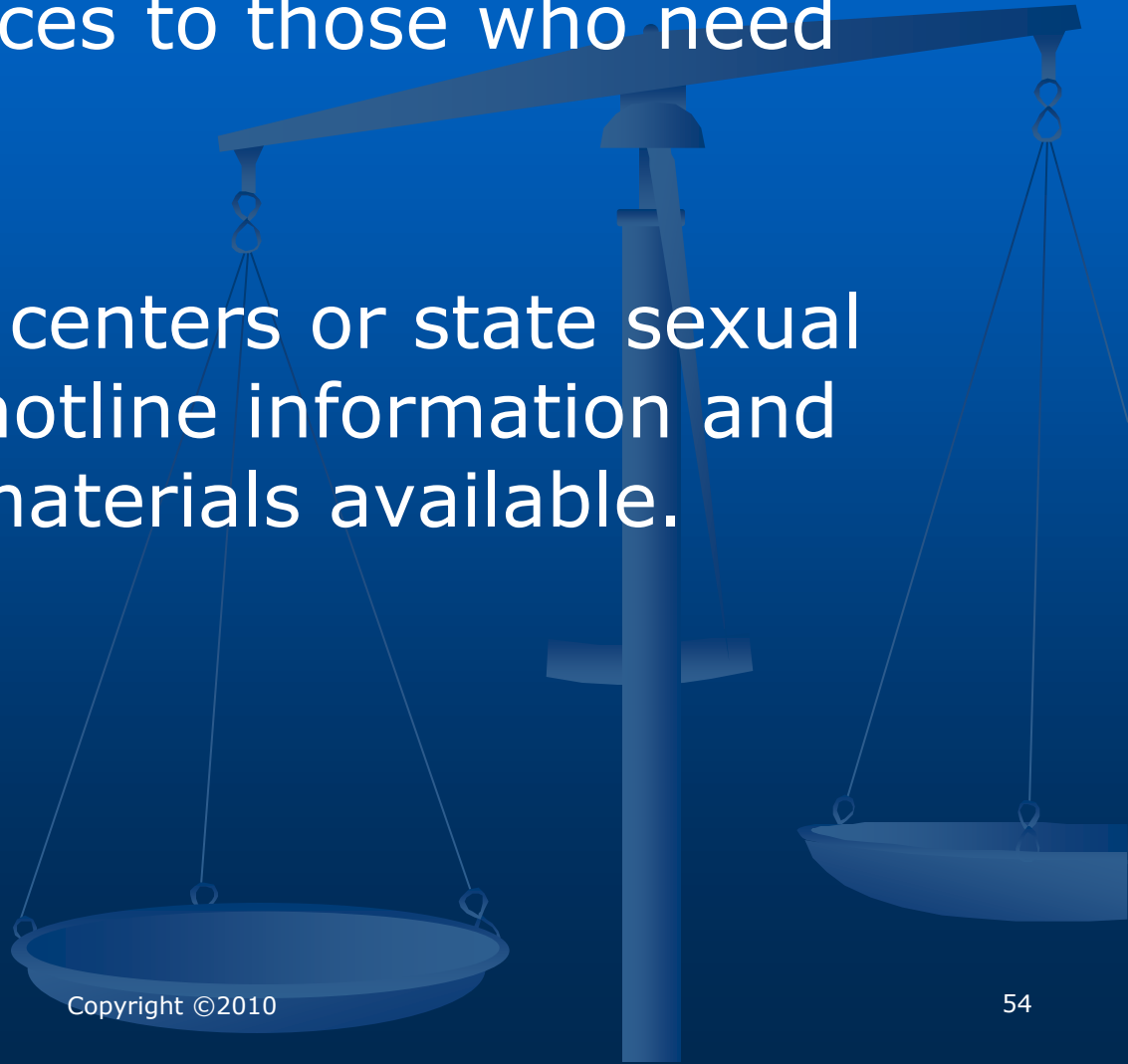
# Providing Support for Jurors

- When jurors are required to disclose or discuss prior sexual victimization, they may need support.
- This needs to be handled very carefully.
- Some possible approaches:
  - Provide resources for jurors who are excused because of prior victimization
  - Have victim/witness advocate available



# Providing Support for Jurors

- Consider de-briefing jurors after trial and providing resources to those who need them.
- Local rape crisis centers or state sexual coalitions have hotline information and other resource materials available.

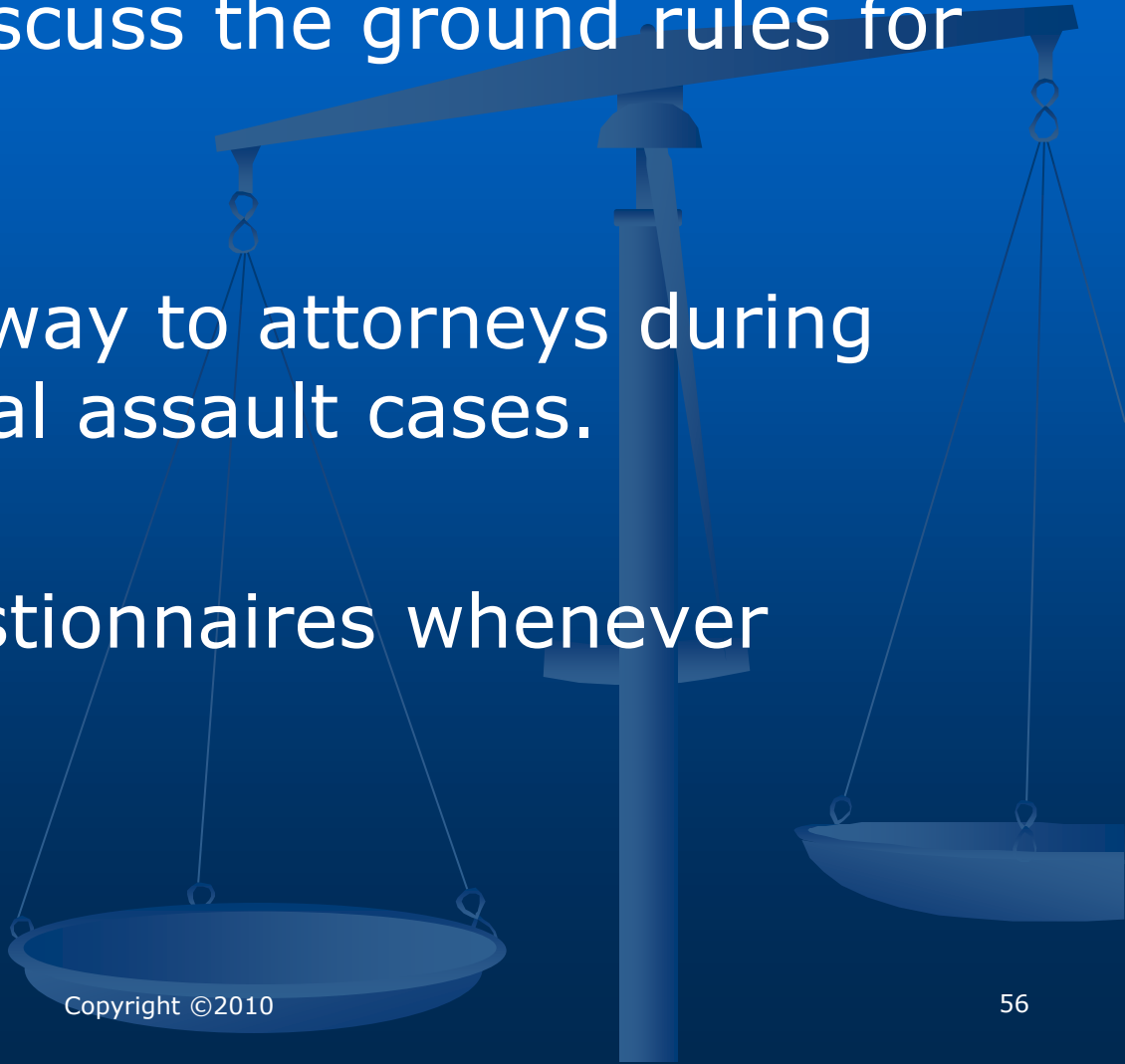


# Providing Support for Jurors

- Resources for judges include:
  - National Center for State Courts, *Through the Eyes of the Juror: A Manual for Addressing Juror Stress*, NCSC Publication Number R-209 (1998)
  - James E. Kelley, *Addressing Juror Stress: A Trial Judge's Perspective*, 43 *DRAKE L. REV.* 97 (1994)

# Recommendations

- Have a conference with the attorneys before trial to discuss the ground rules for *voir dire*.
- Give greater leeway to attorneys during *voir dire* in sexual assault cases.
- Use written questionnaires whenever possible.





# Recommendations

- Use written questionnaires and private *voir dire* when asking about previous victimization or perpetration.
- Consider using private *voir dire* when asking about other sensitive issues.
- Use care when asking about prior victimization or perpetration to ensure jurors understand what is being asked.

# Recommendations

- When asking about prior victimization or perpetration, use behaviorally-based questions and do not only ask about prior investigations, prosecutions or convictions.
- Provide support when potential jurors disclose.
- Consider de-briefing jury and providing resources for support post-trial.

# Exercise: Jury Selection



# Thank You

- We recommend that you read the articles contained in your Resources CD.
- Please be sure to complete your evaluations. Your feedback is important.

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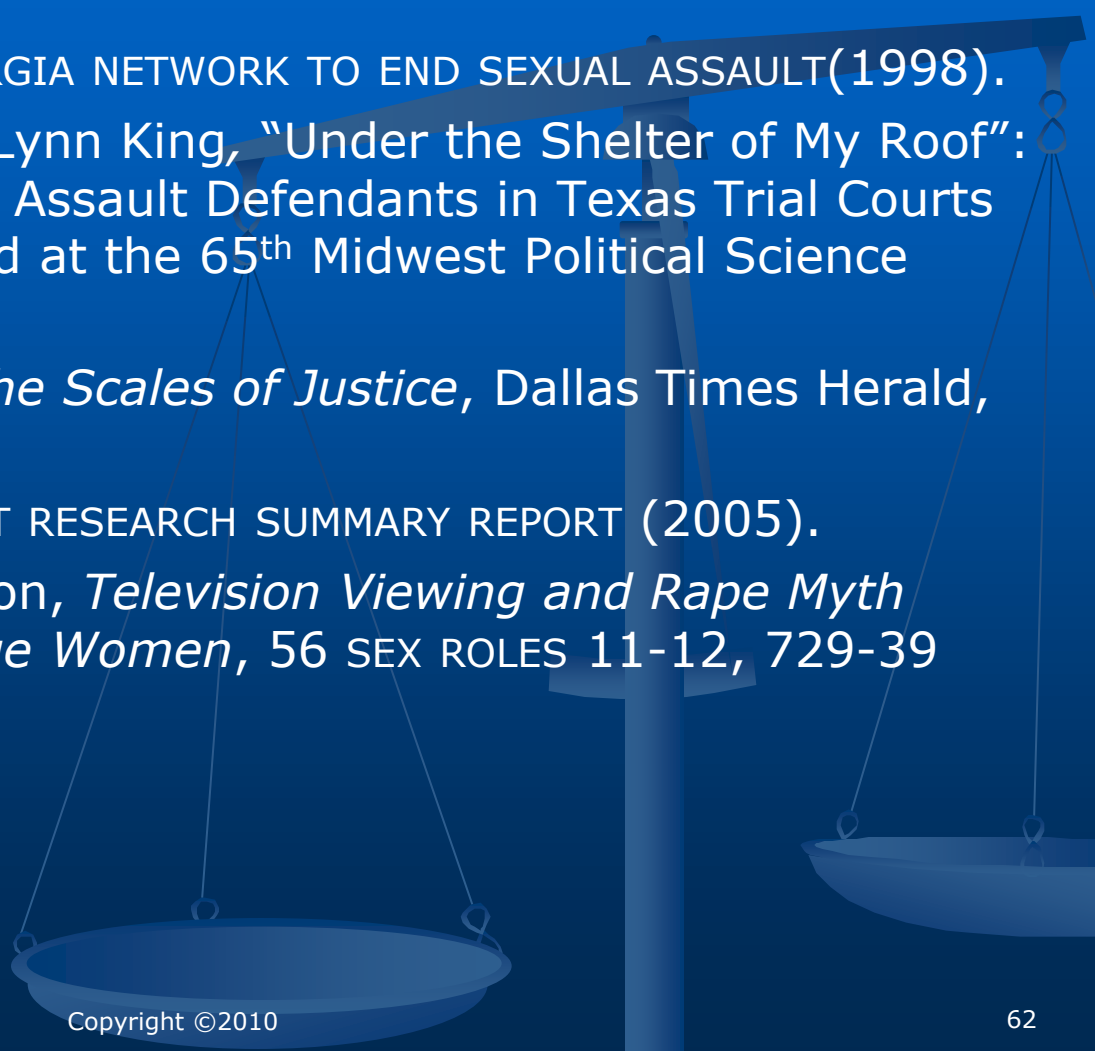
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