

The Challenges of Adult Victim Sexual Assault Cases

Introduction for New Judges

National Judicial Education Program*

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



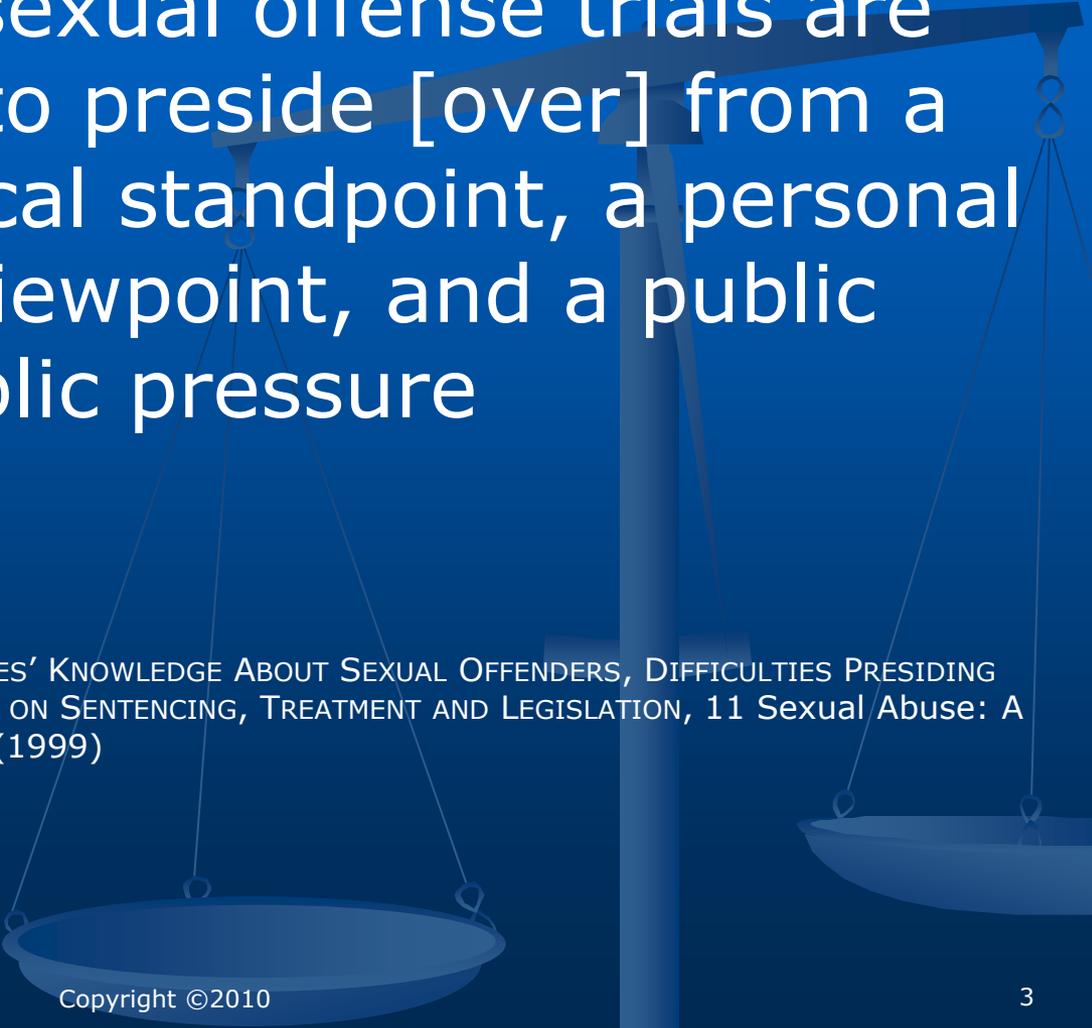
**National Judicial
Education Program**

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Sexual assault is...

“A crime like no other.”

-Hon. J. Richard Couzens & Hon. Tricia Sun Bigelow,
CALIFORNIA BENCHBOOK: THE ADJUDICATION OF SEX CRIMES
(2006).



A survey of judges found that compared to other cases, sexual offense trials are “more difficult...to preside [over] from a legal and technical standpoint, a personal and emotional viewpoint, and a public scrutiny and public pressure perspective.”

-Kurt M. Bumby & Marc C. Maddox, JUDGES' KNOWLEDGE ABOUT SEXUAL OFFENDERS, DIFFICULTIES PRESIDING OVER SEXUAL OFFENSE CASES, AND OPINIONS ON SENTENCING, TREATMENT AND LEGISLATION, 11 *Sexual Abuse: A Journal Of Research and Treatment* 305 (1999)

Resources CD

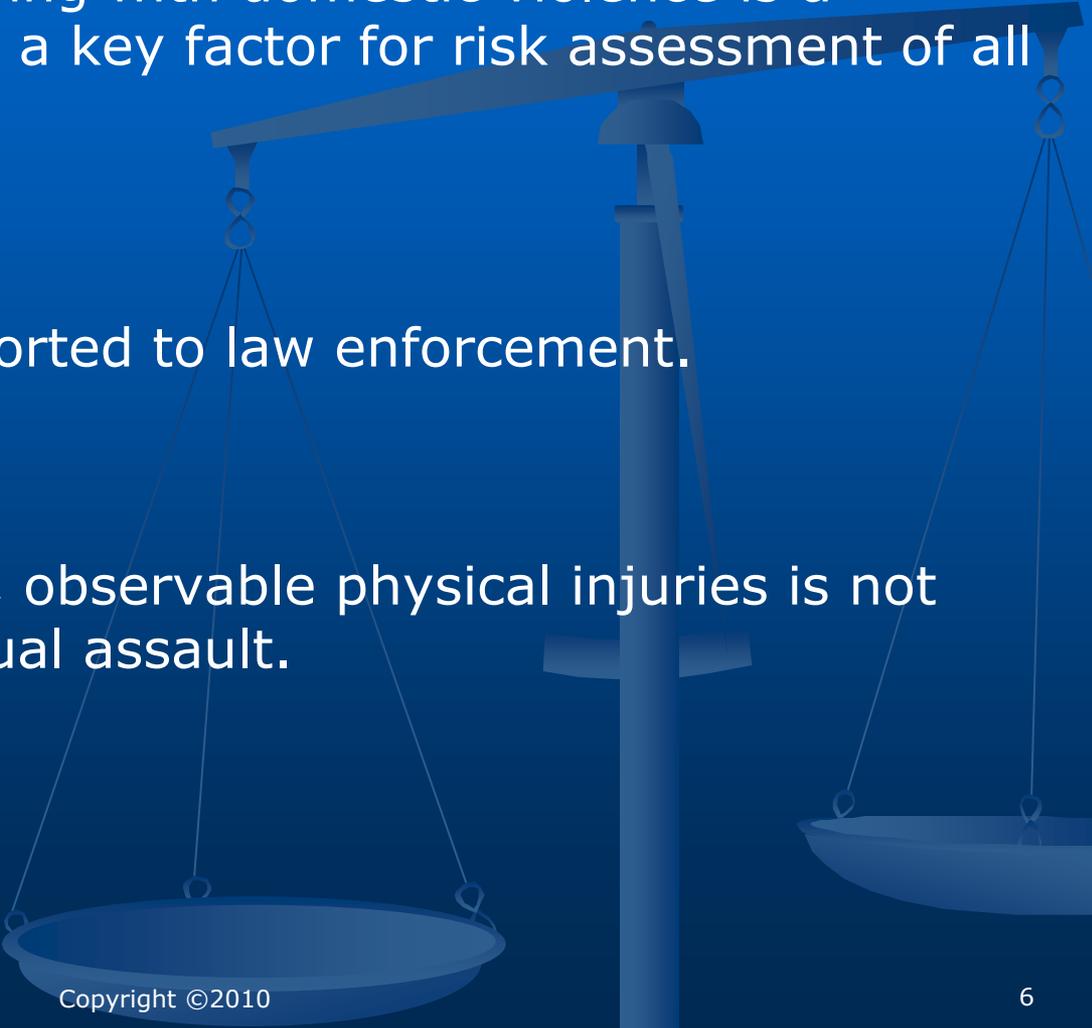
Judges Tell: What I Wish I Had Known Before I Presided in an Adult-Victim Sexual Assault Case

- A compendium of 25 key points from judges across the country with commentary and sources by the National Judicial Education Program

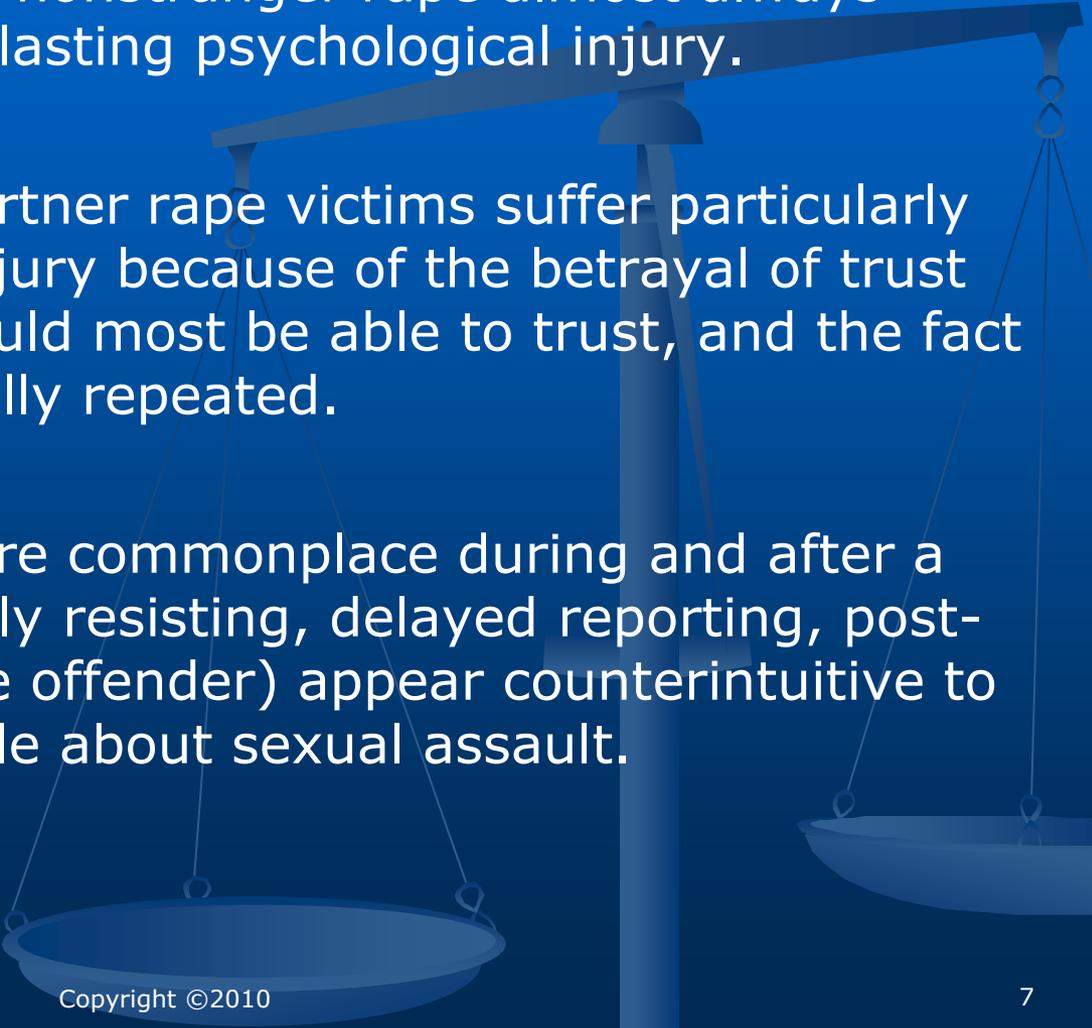
Judges Tell: What I Wish I Had Known Before I Presided in an Adult Victim Sexual Assault Case

1. The widespread misconception that rape is about sexual desire- rather than power and control – colors every aspect of the justice system’s response to sexual assault.
2. Sexual assault, including marital/intimate partner rape and male victim rape, is far more prevalent than the general public believes.
3. The vast majority of sexual assaults are committed by someone the victim knows.

Judges Tell

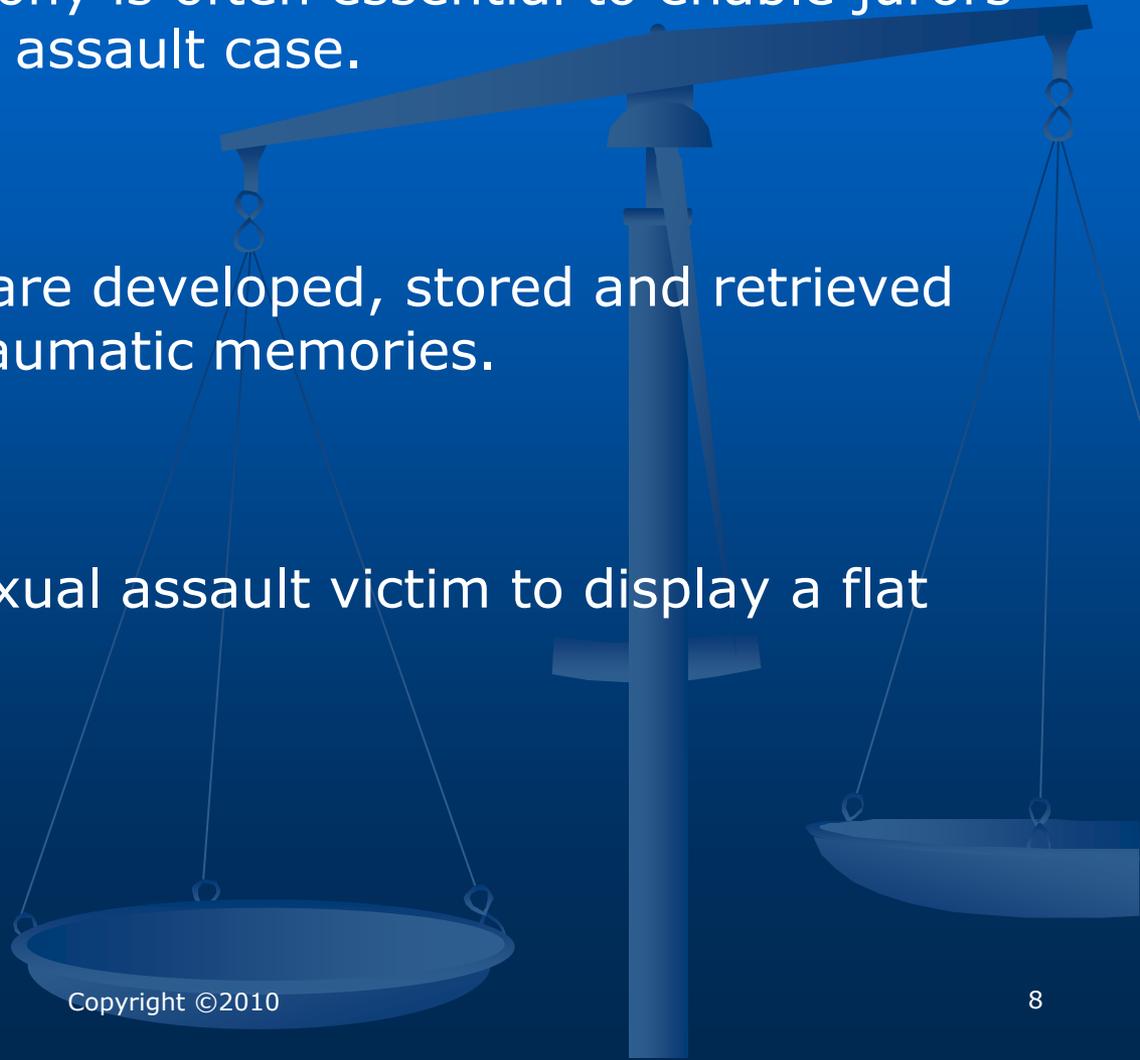
4. Sexual assault co-occurring with domestic violence is a significant problem and a key factor for risk assessment of all kinds.
 5. Few rapes are ever reported to law enforcement.
 6. The absence of serious, observable physical injuries is not inconsistent with a sexual assault.
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Judges Tell

7. Victims of stranger and nonstranger rape almost always sustain profound, long-lasting psychological injury.
 8. Marital and intimate partner rape victims suffer particularly severe psychological injury because of the betrayal of trust by the person they should most be able to trust, and the fact that the rapes are usually repeated.
 9. Victim behaviors that are commonplace during and after a rape (e.g., not physically resisting, delayed reporting, post-assault contact with the offender) appear counterintuitive to those not knowledgeable about sexual assault.
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Judges Tell

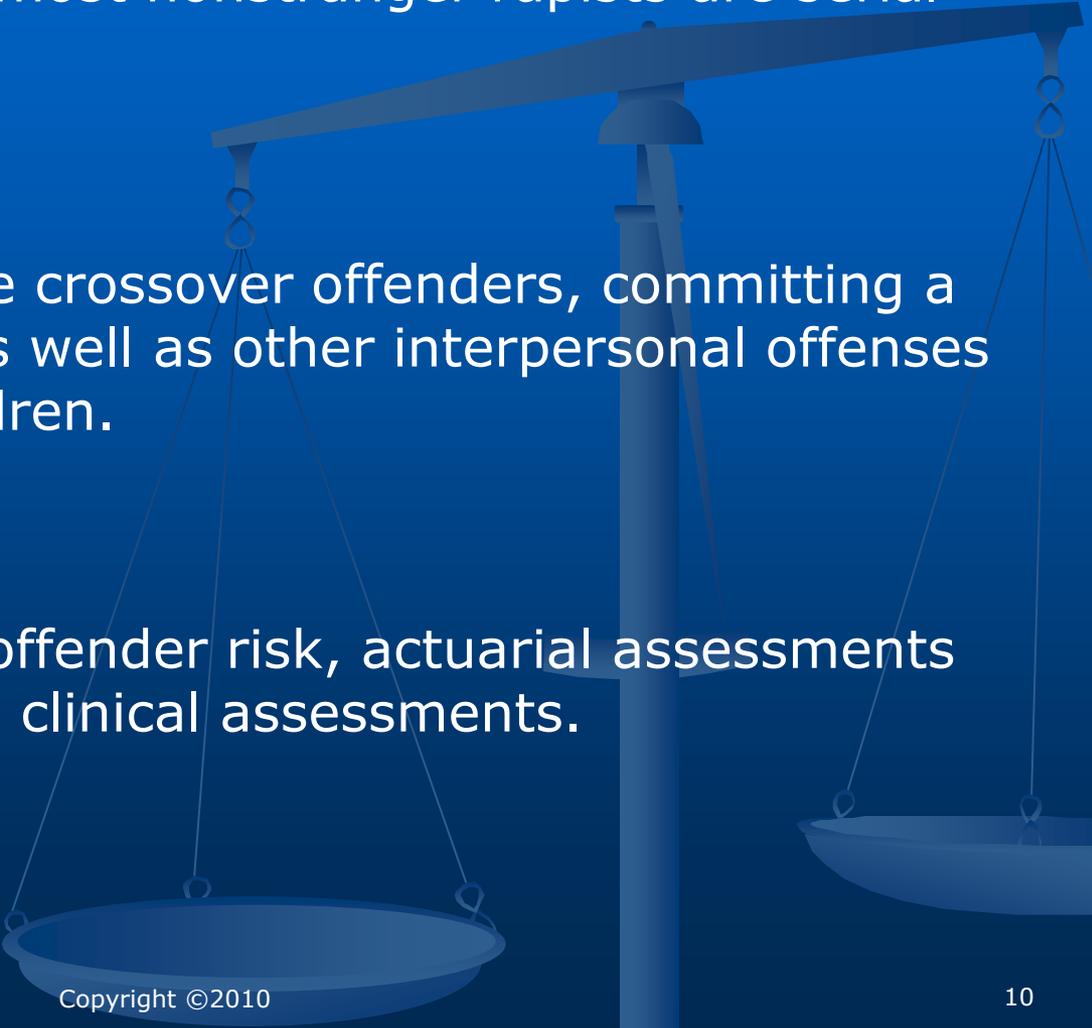
10. Expert witness testimony is often essential to enable jurors to understand a sexual assault case.
11. Traumatic memories are developed, stored and retrieved differently than non-traumatic memories.
12. It is common for a sexual assault victim to display a flat affect while testifying.



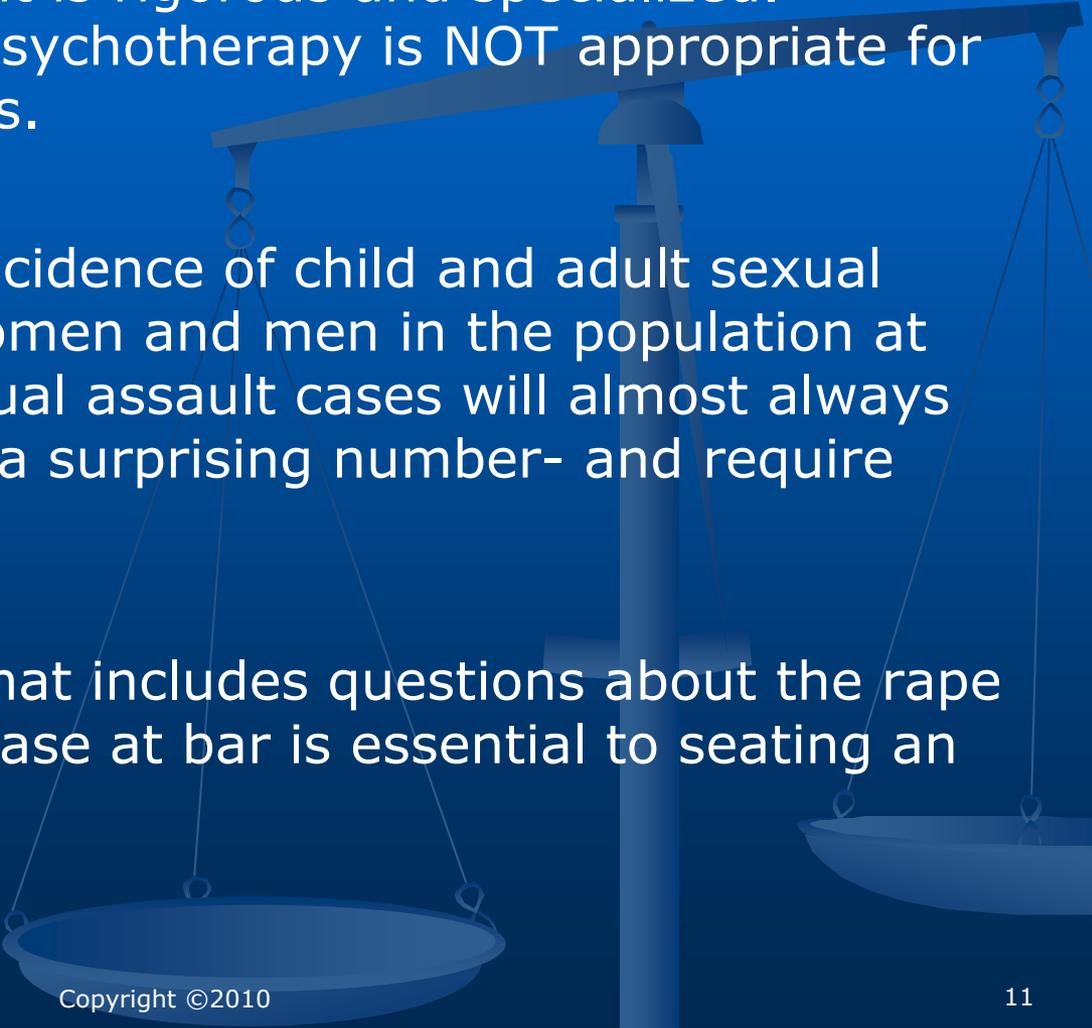
Judges Tell

13. It is not unusual for a sexual assault victim, female or male, to have a physical response during the attack, but this is not a sexual response in the sense of desire or mutuality.
14. The widespread belief in rampant false allegations of rape is erroneous.
15. The typical rapist is neither a brutal stranger nor a "good guy" who had a bit too much to drink one night. Rather, he knows his victims, pre-meditates and uses little overt violence.

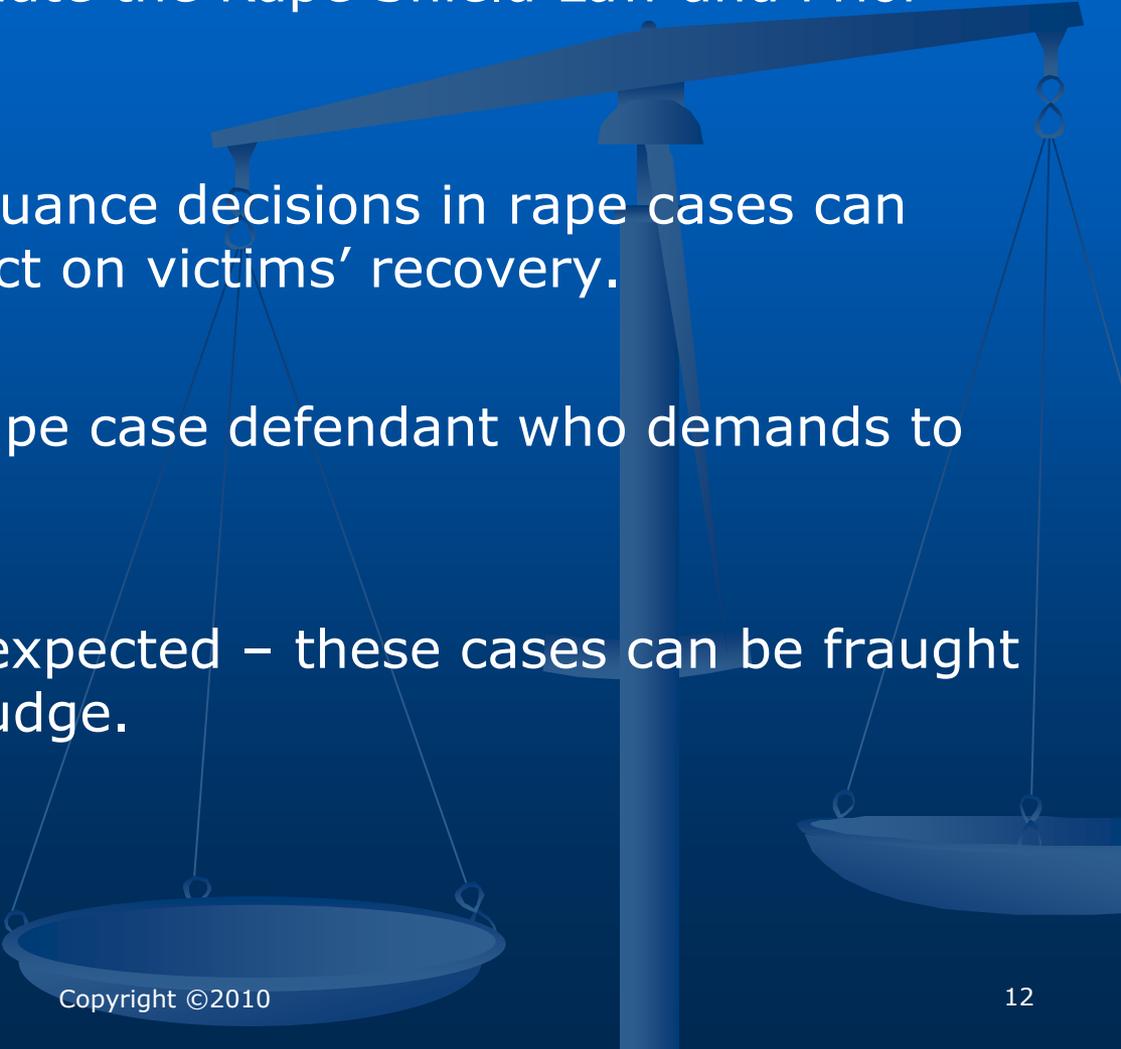
Judges Tell

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16. Like stranger rapists, most nonstranger rapists are serial offenders.
17. Most sex offenders are crossover offenders, committing a variety of sex crimes as well as other interpersonal offenses against adults and children.
18. When evaluating sex offender risk, actuarial assessments are more accurate than clinical assessments.

Judges Tell

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19. Sex offender treatment is rigorous and specialized. Traditional outpatient psychotherapy is NOT appropriate for these types of offenders.
20. Because of the high incidence of child and adult sexual victimization among women and men in the population at large, jury pools in sexual assault cases will almost always include victims – often a surprising number- and require special treatment.
21. A thorough *voir dire* that includes questions about the rape myths relevant to the case at bar is essential to seating an impartial jury.

Judges Tell

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22. Do not let counsel equate the Rape Shield Law and Prior Bad Acts evidence.
 23. Scheduling and continuance decisions in rape cases can have a significant impact on victims' recovery.
 24. Be prepared for the rape case defendant who demands to appear *pro se*.
 25. Always expect the unexpected – these cases can be fraught with peril for the trial judge.

Resources CD

The Challenges of Adult Victim Sexual Assault Cases: Background Resources for New Judges – Items 1-12

Resources CD

The Challenges of Adult Victim Sexual Assault Cases: Sexual Abuse and Assault in the Domestic Violence Context – Items 13-20