

FILED

January 6, 2000

DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED

January 7, 2000

DEBORAH L. McHENRY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Starcher, C. J., concurring:

I write separately to emphasize the consistent recognition by this Court that a trial court must give a defendant in a rape case every fair opportunity to fight the charges against him. Rape shield laws cannot under any circumstances be applied in such a way as to deny a defendant the full constitutional right to confront his accuser.

Why is the constitutional right to present a full defense so important?

One reason is that the criminal trial process is far from perfect. Factually guilty people are sometimes not convicted of a crime they actually committed. And sometimes innocent people are convicted of crimes they did not commit. Just this year, a West Virginian who had been in prison for over 15 years on a rape charge was freed because of newly discovered DNA evidence.

In the instant case, the trial court's ruling applying the rape shield law did not injure the defendant's right to a full defense. (Nevertheless, if I had been the trial court, I probably would have let the semen stain evidence in.) Trial courts must hold the defendant's need and right to present a full defense as sacrosanct, and must resolve all doubts in favor of that right.