



Enhancing Conviction Integrity through Forensics

Year Two Regional Training

Hosted by the SAKI TTA Team



Advancing Justice with Case Review in Cold and Current Violent Crimes

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Patricia D. Powers

Patti Powers joined AEquitas as the lead Attorney Advisor on the SAKI project after serving as a Senior Deputy Prosecuting Attorney in Washington State for 27 years. She supervised the Sexual Assault—Domestic Violence Unit, and prosecuted and tried a high volume of violent crimes—specializing in adult sexual assault, campus sexual assault, child sexual assault and abuse, sexual exploitation of minors, domestic violence, and related homicides (including complex litigation of high-profile, as well as cold and current cases). Patti served on the domestic violence and child fatality review committees and was a member of the Washington State Technical Assistance Committee for Child Death Review Guidelines. For five years, she was appointed as a Highly Qualified Expert for the United States Army, Criminal Investigation Division; in this role, she provided training for army criminal investigation agents and prosecutors at Fort Leonard Wood, Missouri, and in Germany.

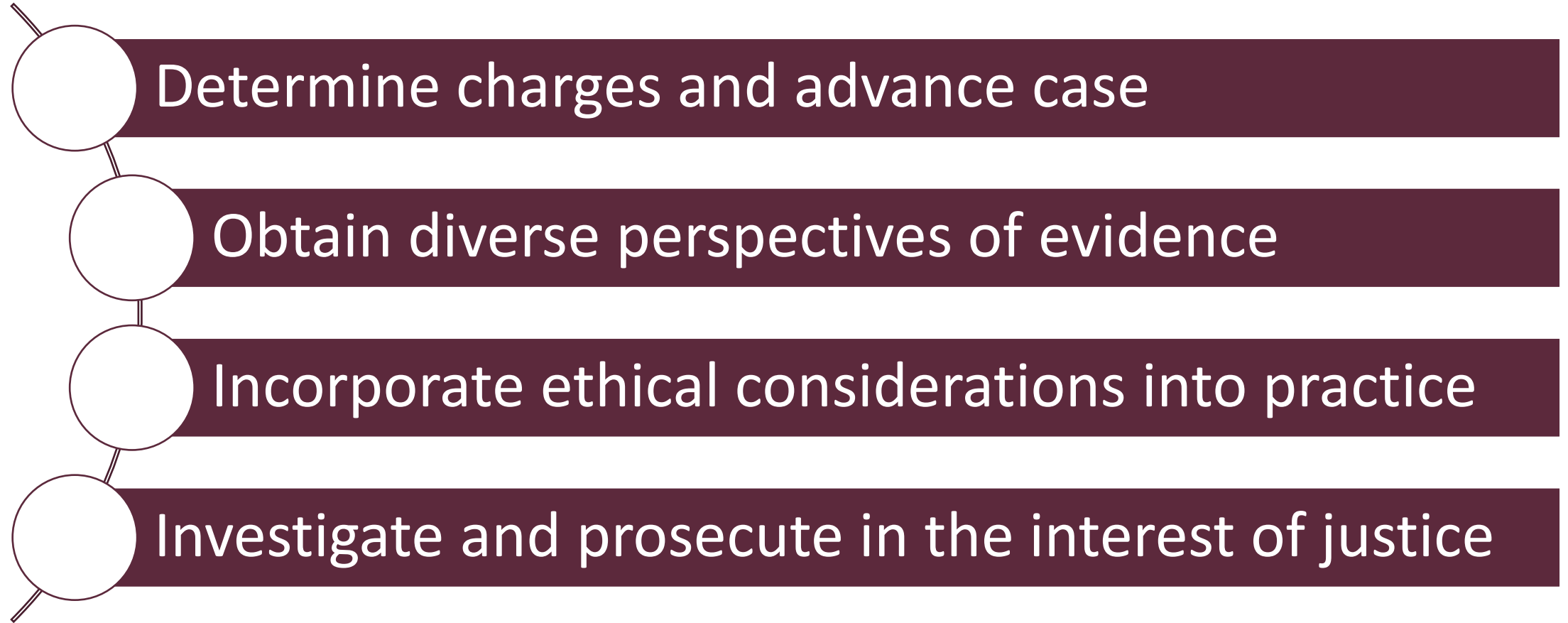


John F. Wilkinson

John F. Wilkinson, an Attorney Advisor with AEquitas, presents on trial strategy, legal analysis and policy, and ethical issues related to violence against women at the local, state, national and international levels. He conducts research; develops training materials, resources, and publications; and provides case consultation and technical assistance for prosecutors and allied professionals. John served as an Assistant Commonwealth's Attorney in Fredericksburg, VA prosecuting cases involving intimate partner violence and sexual assault, including cases of campus sexual assaults and domestic violence homicide. He also served on the Fredericksburg Area Sexual Assault Response Team and prosecuted child sexual and physical abuse and neglect cases and infant homicides.



Objectives

- 
- Determine charges and advance case
 - Obtain diverse perspectives of evidence
 - Incorporate ethical considerations into practice
 - Investigate and prosecute in the interest of justice

*“The [prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but **that justice shall be done....**”*

Berger v. U.S., 295 U.S. 78, 88 (1935)

Prosecutor Responsibilities

The prosecutor is an independent administrator of justice. The primary responsibility of a prosecutor is to seek justice, which can only be achieved by the representation and presentation of the truth. This responsibility includes, but is not limited to, ensuring that the guilty are held accountable, that the innocent are protected from unwarranted harm, and that the rights of all participants, particularly victims of crime, are respected.

NATIONAL PROSECUTION STANDARDS § 1-1.1
(NAT'L DIST. ATTORNEYS ASS'N, 3rd ed.)

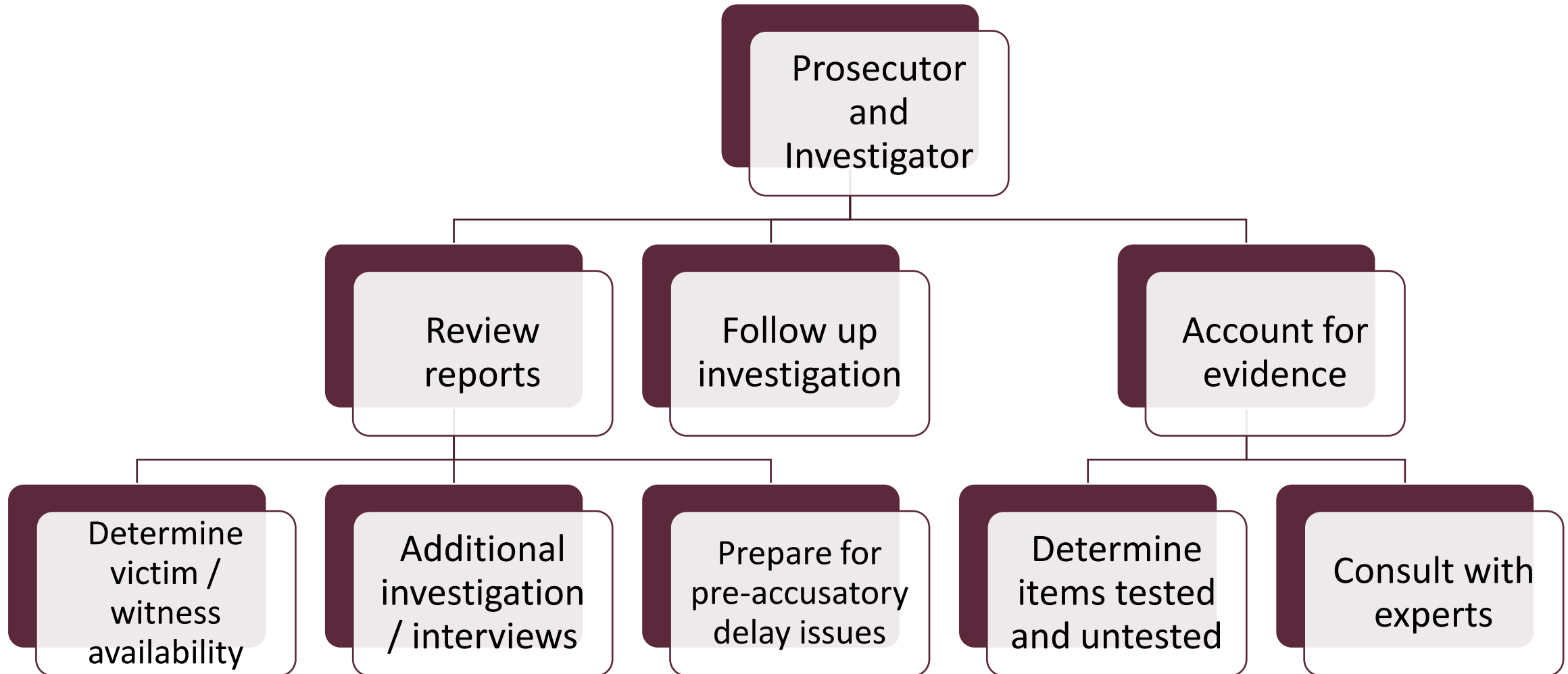


What are ethical considerations in investigation, review process, charging, discovery, plea negotiations, and trial?

A prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice.

CRIMINAL JUSTICE STANDARDS FOR THE PROSECUTION FUNCTION § 3-4.3(a) (Am. Bar Ass'n, 4th ed.)

Foundational Work: Assessing the Viability of Charges in Homicide and Sexual Assault Cold Cases



First Steps: Current Cases of Homicide and Sexual Assault

Review reports, identify evidence and chain, submit for testing

Crime scene documentation, video, photographs, measurements analysis

Consult with ballistics, blood spatter, fingerprint experts, DNA analysts

Homicide witness interviews, possible res gestae statements by victim, statements/admissions of suspect

Consider impact of trauma and need for expert

Consult with forensic pathologist / SANE

Determining potential defenses

Denial, alibi, self defense (homicide), consent (sexual assault)

Recognize Dangerousness of Sexual Assault: Consider Linkage

Suspect known
to victim

Suspect
unknown to
victim

Serial offenders

Cross-over
offenders

Commission of
other violent
crimes

Linkage between
sexual assault
and homicide

Research found that serial sex offending proves much more common than expected—approximately a third to a quarter of subjects identified as part of these SAK initiatives were serial offenders.

Rachel E. Lovell et. al, *Identifying Serial Sexual Offenders Through Cold Cases*, FBI LAW ENF'T BULL., May 7, 2020.

Broadened Perspective for Serial Offending

- Consider that a rapist possibly has done this before, will continue to do this in the future, or both.
- Serial sex offenders frequently assault both victims known and unknown to them and often exhibit intraserial variations in victim relationship, age, and even gender.
- Offenders do not necessarily follow substantially similar patterns across offenses.

Rachel Lovell et al., *Identifying Serial Sexual Offenders Through Cold Cases*, LAW ENF'T BULL., May 7, 2020

“Other Acts” Evidence

FRE 404(b)

Motive

Opportunity

Intent

Preparation

Plan

Knowledge

Identity

Absence of
Mistake / Lack
of Accident

Identifying Other Acts Evidence

- Review CODIS hits, ViCAP information, anecdotal information from the victim, social networks.
- Recognize that the FRE 404(b) list is not exhaustive and that this is a rule of inclusion.
- Other acts evidence provides investigatory intelligence for suspect interrogation and insight into commission of crime(s).
- Develop effective practices for presentation of FRE 404(b) in case in chief, intelligence for cross-examination or rebuttal.
- **Recognize that patterns or signs may be physical, behavioral, or both.**

Evidence Review: How SART Members and Experts Can Help



SART Considerations

Memorandum of Understanding

Composition of team

Brady disclosures

Confidentiality of discussions

Case Review: Probative Evidence

Brief on investigation and evidence

Identify and discuss evidence associated with and *linking* crime scene, victim, offender

Discuss theory of the case and insight from evidence: is serial perpetration or commission of other violent crimes a possibility?


Recognize evidence that may corroborate aspects of the victim's disclosure, testimony of witnesses, presence/ involvement of offender

Dive deeper—what old and new details are significant?

Consider physical, forensic, behavioral, testimonial evidence

Determining Admissibility of Evidence

Crawford, et al.: declarant availability or exception,
e.g., forfeiture by wrongdoing



Search and seizure issues: abandoned DNA /
surreptitiously obtained



Miranda: interrogation



Williams v. Illinois: unavailable witness



Relevant and material to elements of crime



Case Analysis Features

Complexity

Witness attrition

Vulnerability
of victim(s)

Challenging
circumstances

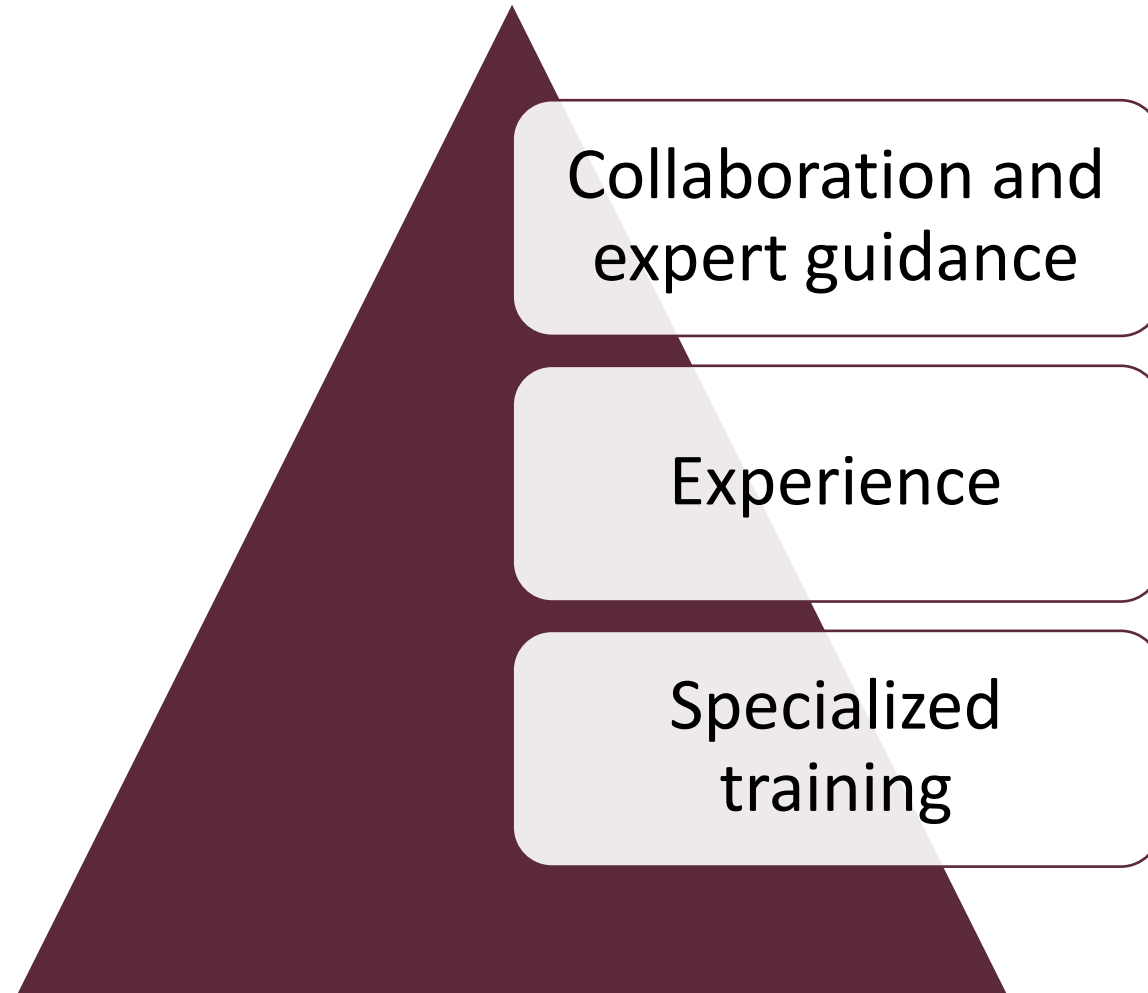
Impacted ability of
victim to disclose

Missing evidence

How have you overcome a particular complexity in a cold case?

Missing Witness(es) and/or Missing Evidence, Pre-Accusatory Delay, Consumption Issues with DNA?

However, complexity does not equal impossibility!



How has your work with a SART or experts helped you with trial preparation and trial?

Going Forward

Charge crimes based upon evidence and in best interests of justice

Utilize diverse professional expertise in case analysis

Focus on ethical obligations throughout investigation and prosecution

“Justice is truth
in action.”

Benjamin Disraeli



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We will now have a 5-minute break!

Please download or print the case scenarios linked in the chat if you have not done so already!





Multi-Disciplinary Case Review

The Importance of a Collaborative and Coordinated Effort

Case Review Session Participants

All participants in this [mock] case review session have agreed, by way of signed documentation or the obligations of their employment, to maintain confidentiality regarding the happenings, discussion, action items, and details of any cases discussed during this convening.

Case Review Moderator

Chris Williams – *RTI International*

Detective

Ret. Sgt. Jim Markey – *RTI International*

Prosecutors

Patricia (Patti) Powers – *AEquitas*

John Wilkinson – *AEquitas*

Systems-Based Advocate

Amy Durall – *International Association of Chiefs of Police*

Community-Based Advocate

Ryan Backmann – *Project: Cold Case*

Pre-Review Initial Case Assessment

Reviewing Detective: Jones
Date of Review: December 2021
Report No.: 2012-8675309
Date of Offense: May 2012
Victim: Sharon White
Original Case Agent: Duran

Reviewing Detective: Jones
Date of Review: December 2021
Report No.: 2014-4301109
Date of Offense: May 2014
Victim: Dalia Smith
Original Case Agent: Newhouse

CASE SYNOPSIS 1

Victim was seated on front porch smoking a cigarette when the suspect approached her and asked to use her cell phone. The victim knew the suspect from the neighborhood. The suspect made two phone calls and asked the victim if he could have a cigarette. She entered her house and was attacked by the suspect. He knocked her down, began to strangle her and sexually assaulted her. The suspect fled on foot. A medical exam was completed and SAK collected. Information from the victim's phone was retained. Contact with Sharon was lost. It was known at the time that the victim had minor developmental disabilities, was a drug user and last listed as a transient with no known address.

Case was closed in 2012 with NFI.

CASE SYNOPSIS 2

Victim accepted a ride from the suspect. As they drove around the suspect offered a joint. They parked in an unknown neighborhood behind an apartment complex. The victim's body was found behind a trash dumpster the next morning, she was partially clothed. The autopsy revealed she had numerous injuries to include open cut wounds and bruising. SANE kit was taken with signs of vaginal trauma.

It was also determined:
Cause of Death: Homicide
Manner of Death: Strangulation
Case was closed in 2015

We will now have a 5-minute break!





Advocacy Incorporation During Prosecution: *Ethical Practices for Enhanced Outcomes*

Patricia D. Powers, J.D. – AEquitas

Amy Durall – International Association of Chiefs of Police

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Presenters

Patti Powers – AEquitas



Amy Durall – IACP



Amy Durall

Amy Durall is currently a Project Manager for the International Association of Chiefs of Police and her portfolio includes work on the Sexual Assault Kit Initiative, Enhancing Law Enforcement Response to Victims, Law Enforcement-Based Victim Services, Documenting and Advancing Promising Practices in Law Enforcement Victim Support, and Research and Evaluation of Victims of Crime.

Prior to joining the IACP, Ms. Durall served as Victim Services Director for two separate law enforcement agencies with both agencies receiving national recognition for Victim Services during her tenure. Ms. Durall has served on local and national committees focused on multidisciplinary and collaborative response to victims, and as a consultant on projects aimed at criminal justice system intersections and enhanced victim response.

Ms. Durall has enjoyed over 30 years of social service experience with a variety of populations to include: youths and adults with developmental, emotional, and cognitive disorders, adults with mental health disorders, mentally ill offenders, protective services for children and adults, and those who have experienced physical violence, sexual violence, criminal victimization, and crisis circumstances.

Ms. Durall has a master's degree in Psychology and was accepted into the Psi Chi Honor Society. She has received specialized certification in the instruction of Victimology, Grantsmanship Essentials, and Crisis Intervention Training and routinely provides training to law enforcement personnel, community service agencies, and allied partners.



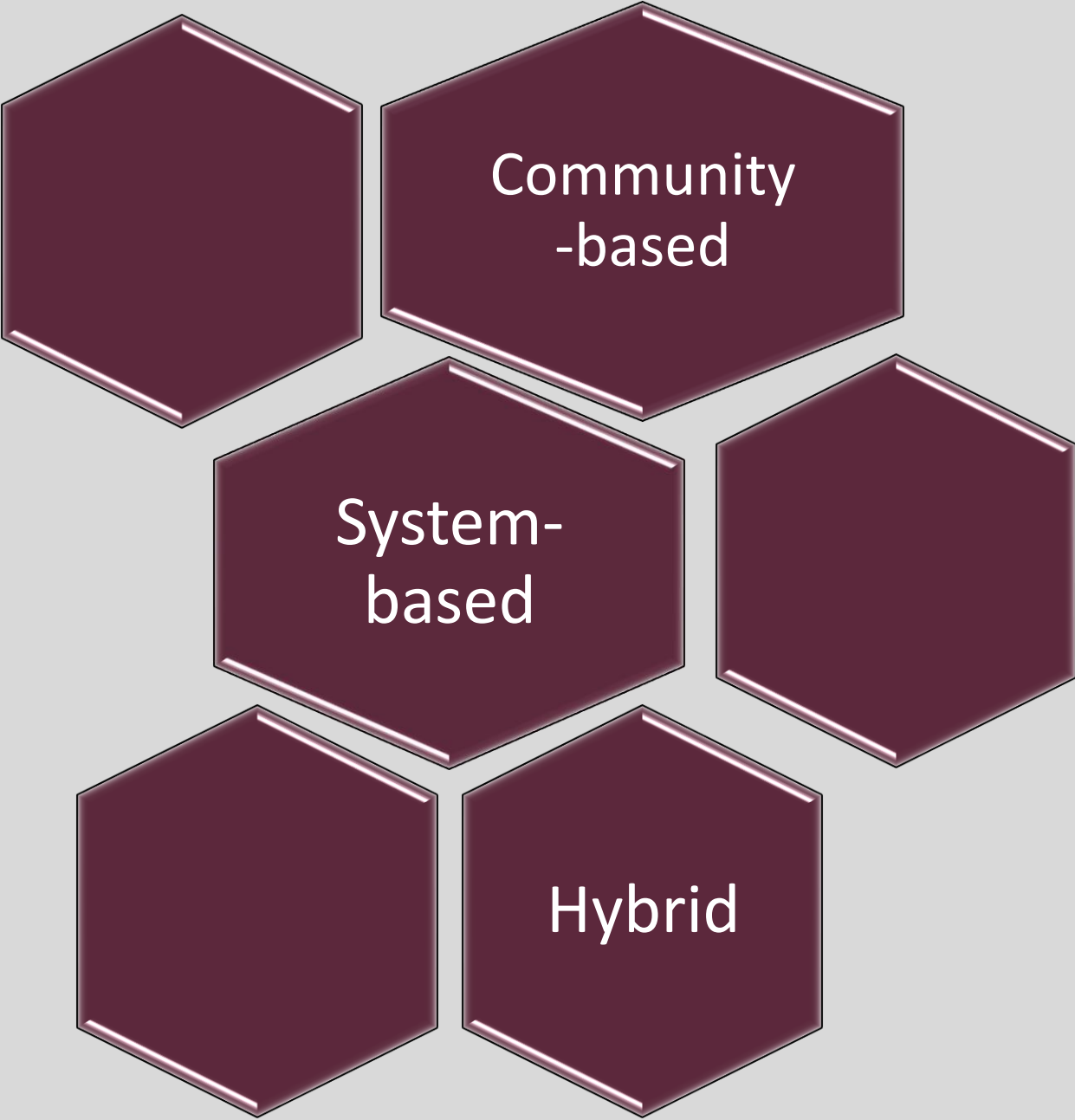
Advocacy Models:

Intersections with Information Exchange

POLL:



Advocacy Models



Victim Services and Information Exchange

Best practices in victim services includes:

- Facilitating victims' ability to meaningfully exercise rights
- Understanding legal and ethical obligations around privacy, confidentiality, and privilege – *protections belong to those we serve!*
- Adhering to role parameters

Brady Information:

Disclosure Obligations

Brady Information and Disclosures



Victim Testimony:

Impacts on Cases and Victim Well-Being

POLL:



Victim Testimony: Heartbeat of the Case

- Meetings, interviews, and testimony should be trauma-informed
- Preparation for testimony with victim and advocate is essential
- Proactively provide information about safety and security in the courtroom

Potential Prosecution Outcomes

Plea Agreement

Trial

Mistrial

Acquittal

Advocacy Incorporation:

Addressing critical needs, victims' rights, and effective responses

Critical Needs

Safety
Support
Information
Access
Continuity
Voice
Justice

Coordinated
Collaborative
Culturally Responsive
Multidisciplinary
Trauma-informed
Victim-centered

Responses

State Constitutions
State Statutes
Rules
Policies

Rights

Contact Information

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Thanks for joining us!