



Strategies for Successful Prosecution of Cold Case Rape



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Ms. Powers is an Attorney Advisor with AEquitas: The Prosecutors' Resource on Violence Against Women. Ms. Powers presents on trial strategy, legal analysis and policy, and ethical issues related to violence against women. She conducts research; develops training materials, resources, and publications; and provides case consultation and technical assistance for prosecutors. Before AEquitas she worked for 27 years as a Senior Deputy Prosecuting Attorney for Yakima County, Washington, where she handled primarily sexual assault, intimate partner violence and related homicides, including cold cases. Her background in trial practice includes over 200 felony jury trials litigated to verdict, as well as complex litigation. She was appointed as a Highly Qualified Expert (HQE) in Sexual Assault by the U.S. Army and participated as an expert in the National CSOM Symposium, Colorado National Sexual Assault Symposium, and the FBI Family Violence Symposium. Ms. Powers holds a bachelor's degree from Idaho State and a law degree from Gonzaga University School of Law.





INNOVATIVE

Sustaining effective practices
and promoting systemic
change

INFORMED

Training, resources, and
assistance supported by
research and experience

PRACTICAL

Customized strategies that
are accessible, responsive,
and easy to apply

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Objectives

- Collaborate on trauma-informed investigations that identify corroborating evidence.
- Identify and respond to pretrial issues, including victim protection and privacy and response to due process claims of pre-indictment/ pre-accusatorial delay.
- Re-create the reality and the urgency of the crime at trial, from jury selection through closing argument.



What makes cold cases
different?

- Passage of time and its impact
 - Evidence
 - Witnesses
- Pre-trial considerations
- Trial strategies to meet challenges in presentation of evidence

Rape Cases

- Suspect known to the victim
- Suspect unknown to the victim
- Serial offenders
- Cross-over offenders

The background features abstract teal and blue geometric shapes, including triangles and overlapping polygons, creating a modern and professional look. The shapes are layered, with some appearing more prominent than others, and they are set against a white background.

For Victims, There Are No Cold Cases

It Is Never Too Late for Justice

Be Prepared

- Triage strategy
 - Statute of limitations
 - Pre-indictment delay/ pre-accusatorial delay
- Victim notification protocol
- Renewed investigation policy
- Network of victim service providers
- Data entry
- Media relations

Keys to Success

- 1. Ensure a victim-centered response
- 2. Keep the focus on the offender
- 3. Introduce corroborative evidence and evidence of other acts
- 4. Educate the judge and jury
- 5. Recreate the reality of the crime at trial

Charging

Victim interview

Corroboration of
disclosure across
timeline

Prepare victim for
testimony; ensure
privacy and safety

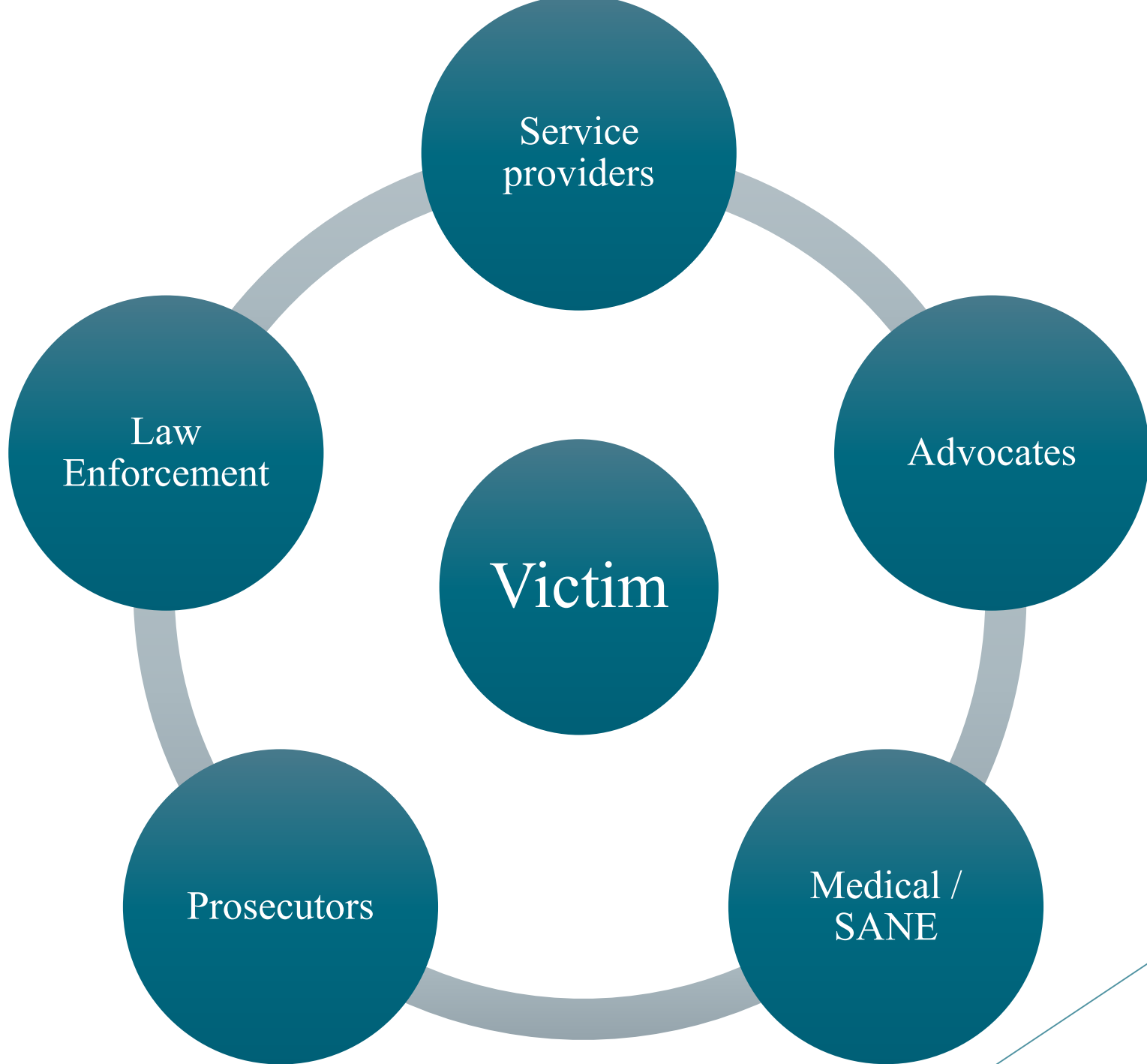
Identify and
consult with
experts

Trial strategies

Victim-Centered Collaboration

Multidisciplinary Response

Professionals working collaboratively to share expertise and provide specialized sexual assault intervention and response services to victims



Victim Notification

- Policy to practice
- Review charging considerations in advance
- Preserve the integrity of the case
- Work in concert with law enforcement and advocacy services
- Facilitate access to victim support services

“[These] are deeply traumatic crimes that can cause severe damage to survivors’ emotional, spiritual, and psychological well-being [F]ar too many survivors are harmed or retraumatized by insensitive, uninformed, or inadequate community and criminal justice system responses.”

Bea Hanson, Principal Deputy Director, U.S. Department of Justice,
Office on Violence Against Women, July 30, 2014



Trauma-informed
approach



Traumatization

CODIS Hits

- Case assessment
 - Status of suspect
 - Availability of victim and key witnesses, including analysts and technicians
- Pre-indictment / pre-accusatorial delay

Impact of Trauma

Trauma impacts the victim in the short and long term and can make a tremendous difference in how s/he will relate to the investigation and prosecution

Impact of Unresolved Case

- Fear of rapist's return
- Fear of another rape committed
- Unanswered questions
- Learning to live with silence

Trauma-Informed Interviewing

- Be aware of affects of trauma and passage of time on memory
- Allow victim to describe experience
- Ask for sensory details and attendant emotional and physical response

Trauma-Informed Interviewing

Cont'd

- Neurobiology of trauma
- Victim may be fearful and may wish to avoid repeated trauma
- Victim may fear public attention
- Victims frequently disclose in layers
- Different interviews for different purposes

Trauma-Informed Interviewing

Cont'd

- Inconsistencies may be due to trauma, what question is asked, or disclosure in layers
- Memory may not be expressed in chronological detail and may be fragmentary

Sensory,
emotional,
physiological

Connecting jury
with victim's
experience

Peripheral

DETAILS

Enhancing
credibility

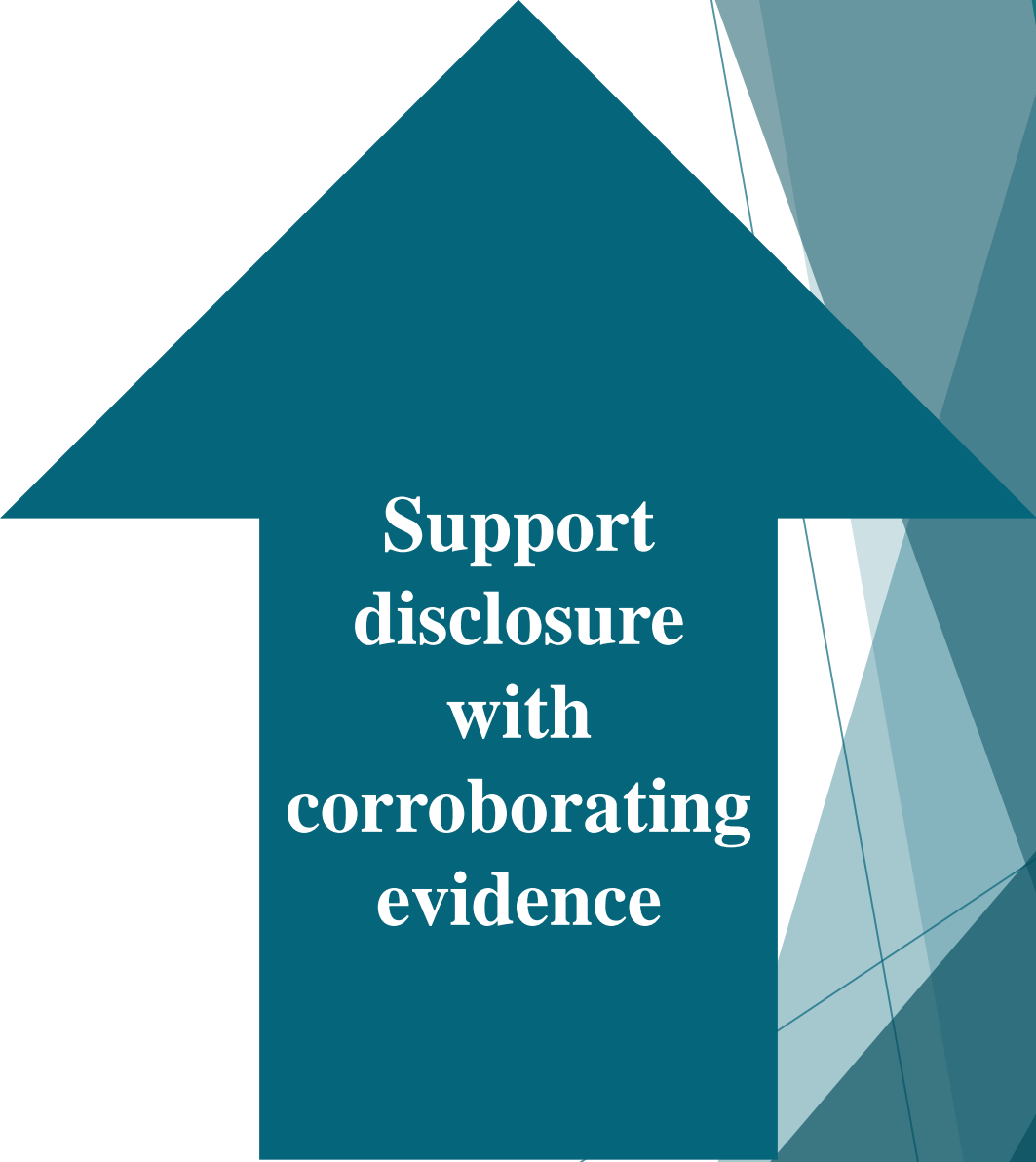
Impact

Investigation

Identifying and Collecting Evidence,
Then and Now



**Build strong
cases by
conducting
thorough
investigations**



**Support
disclosure
with
corroborating
evidence**

Forensic Evidence



**Eye and Ear witnesses
Other Victims**

Cyber Evidence



Victim Interview



Offender Statement



Medical Evidence

Expert Testimony



Common Defenses

Consent

Pre-accusatorial
/ pre-indictment
delay

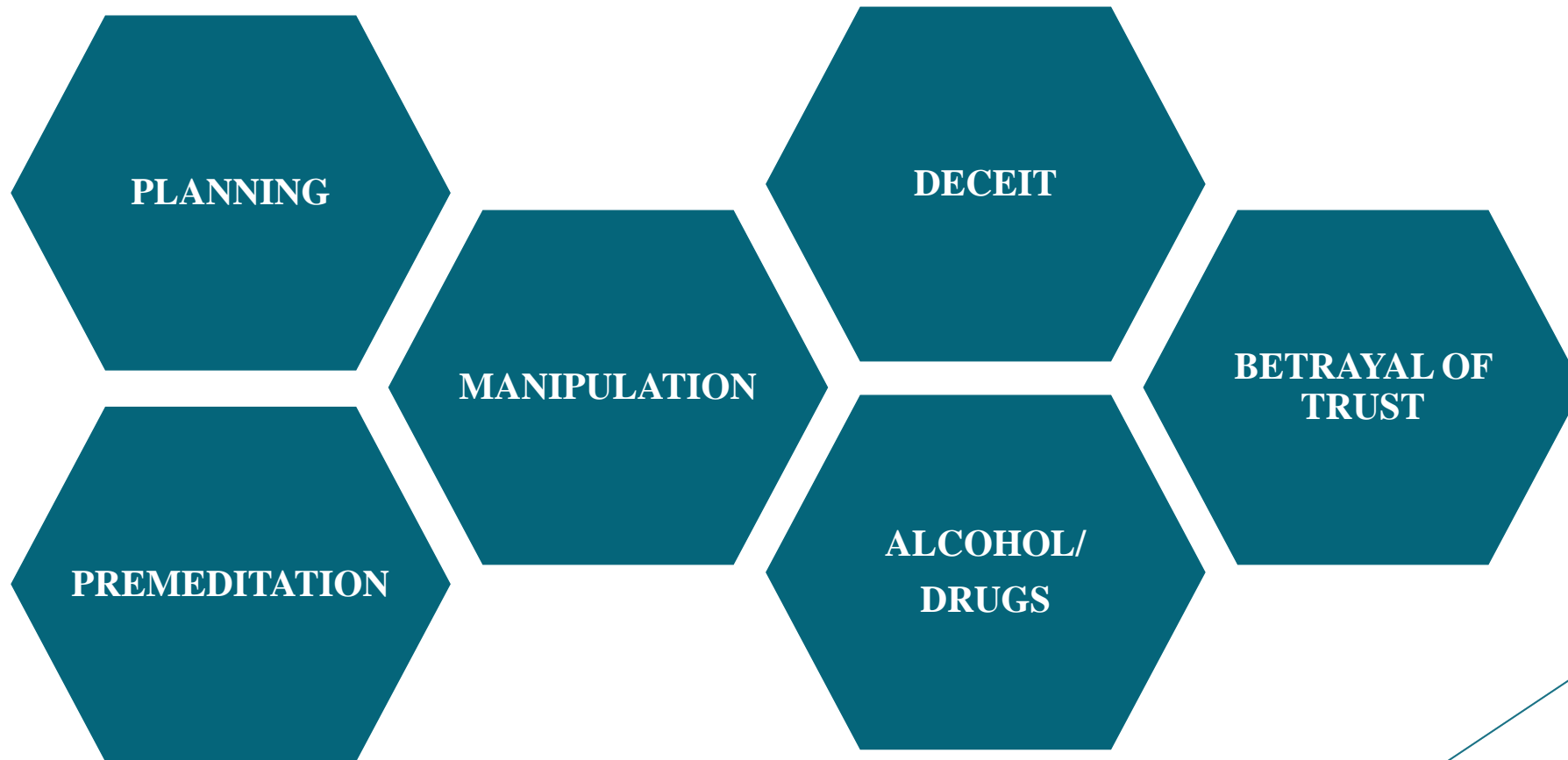
Credibility

Denial

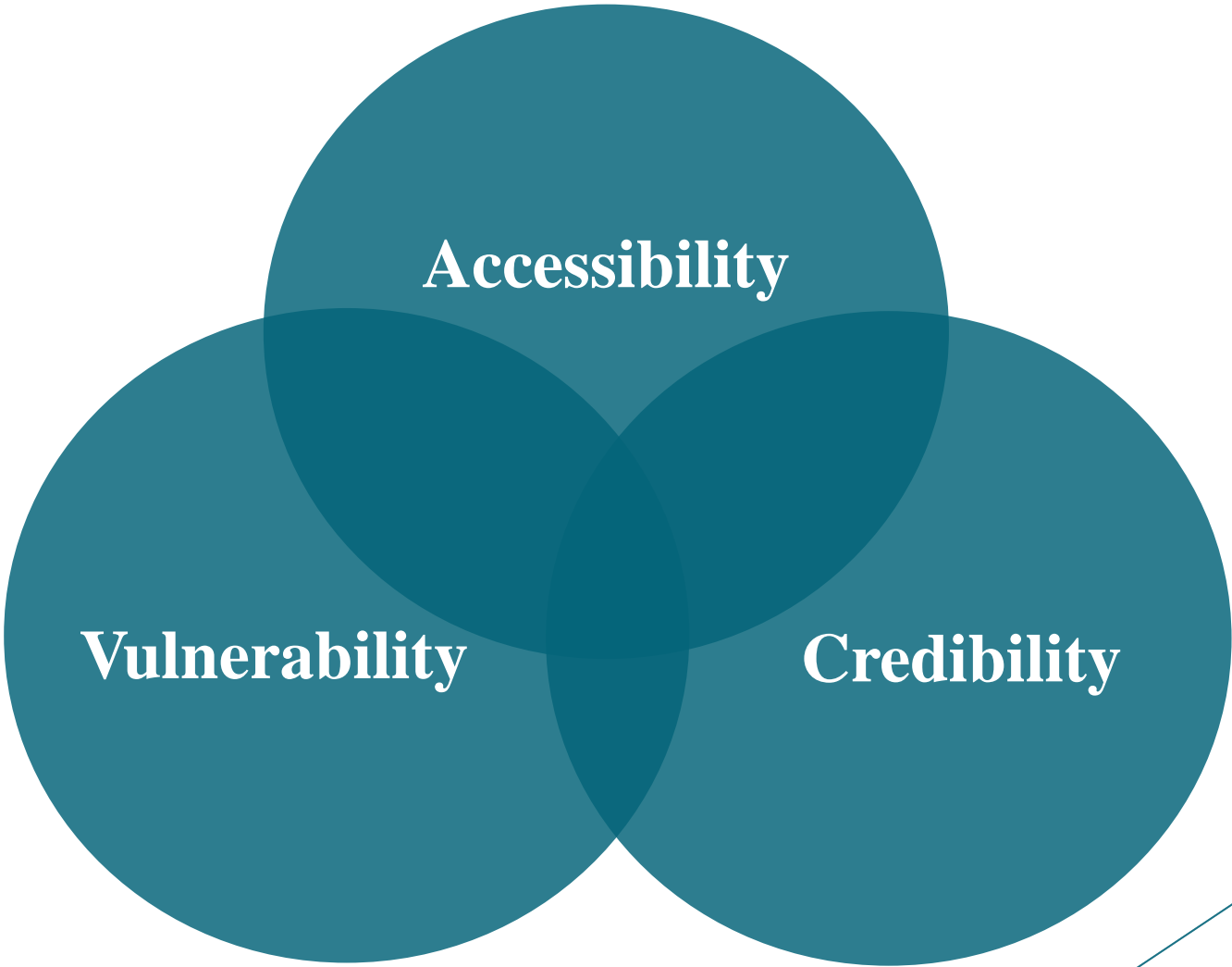
Character
attacks

Jury nullification
or compromise
verdicts

Predatory Behavior



Victimization



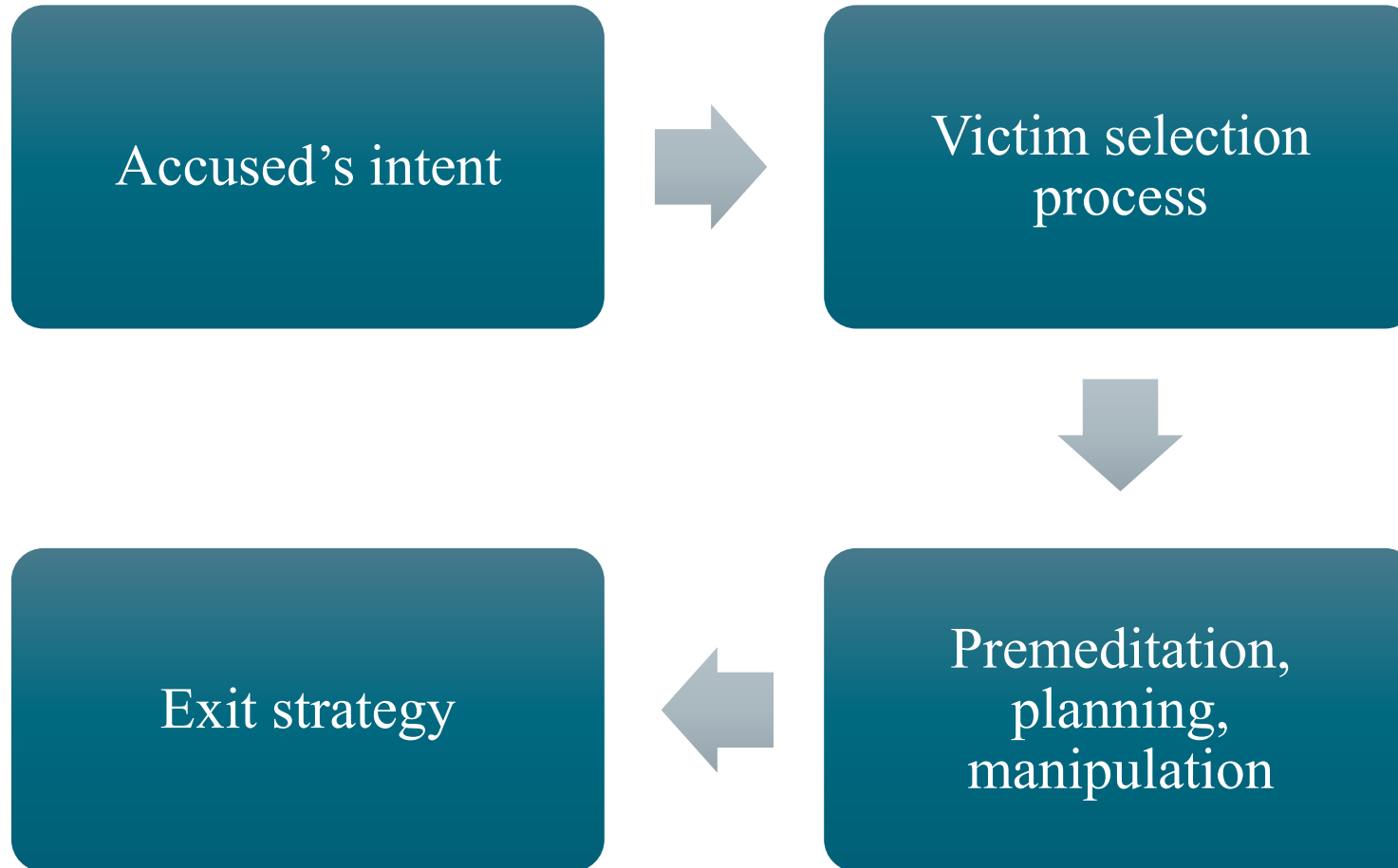
Vulnerability

- Predators exploit perceived vulnerability
- Offenders create symptoms and circumstances to destroy / diminish victim credibility
- Offenders believe / count on rape myths in assessing victim credibility

Deception by the Offender

- Garner trust
- Make suspicions uncomfortable
- Blame others
- Become the victim
- Deny
- Camouflage
- Relationships

Predatory Behavior



Evidence of Prior Crimes and Other Acts

- Untested rape kits
- CODIS hits
- Offender's social network
- Offender's current / former friends and relationships

Prior Crimes and Other Acts

Fed. R. Evid. 404(b)

- Link patterns of offender conduct, allowing the jury to experience the commonality
- Develop effective strategies for use of 404(b) evidence in case-in-chief, intelligence for cross-examination, rebuttal
- Maintain integrity of case by ensuring victims are not in contact with each other

Trial Prep

- Trace investigation through law enforcement testimony to establish diligence
- Consider impact of trauma on victim's ability to participate
- Overcome missing witness claims by defense; testimony of available witnesses

Responding to Due Process Claims

- Investigative efforts
- Case assessment was not trauma informed
- Availability of victim / potential expert testimony
- Efforts to contact suspect / witnesses
- Status of crime lab testing

DNA Evidence

- Review all laboratory records of evidence submission and results
- Request bench notes and review
- Discuss limitations and advances in testing
- Consider retesting with new samples provided by victim

DNA Evidence

Cont'd

- Review case with forensic scientist
- Prepare for unavailability of technicians and analysts that may impact presentation of evidence
- Establish chain of custody
- Carefully review chronology of CODIS hit
- Determine whether or what reference can be made to the database in your jurisdiction

DNA Evidence

Cont'd

- Lay foundation for expert testimony
- Present testimony of forensic scientist in detail
- Trace testing efforts over time or chronology of CODIS hit
- Testimony about requests made by law enforcement
- Chain of custody

Pre-trial Motions

PROTECT THE VICTIM

Rape shield

Motions to quash

OFFENDER-FOCUSED

404(b) motions

PREVIEW THE EVIDENCE

Motions *in limine* to admit or exclude evidence

Victim Privacy

Public Records Act and Freedom of Information Act requests

Media involvement

Bench-Bar press interaction

Victim Safety and Privacy

- Prevent / respond to intimidation
- Shield victims from harassment, invasion of privacy, and unfair prejudice
- Focus on offender causation and premeditation

Overcoming Juror Misperceptions

Introduce evidence and/or testimony to help jurors understand

- Reasons for delays
- Impact of trauma on the victim
- Victim behavior
- Witness availability

Provide context of
the crime and
experiential detail

Corroboration
through secondary
witnesses and
evidence

**Re-create
the reality**

Educate judge and
jury

Engage jury in
linking other acts
evidence

Offender-Focused Themes

Time did not
erase the
memory

For the victim,
this is not a
cold case

The victim
never forgot

“On that day”

Theme

- Subtly introduce theme in jury selection
- Weave theme through testimony at trial
- Emphasize theme in closing

Jury Selection

- Explore issues and educate jury
- Use experience-based questions and introduce expected evidence of trauma
- Determine openness to evaluating misconceptions and attitudes
- Build trust
- Introduce your theme

Opening

- Continue the theme introduced during jury selection
- Deal with challenging facts up front and lay foundation of explanation
- Instill empathy, commonality, and immediacy

Direct Examination

The Heartbeat of the Case

Prepare the Victim

- Work with advocate to support victim
- Confirm courthouse safety
- Visit courtroom and answer questions
- Review questions for direct examination
- Explain cross-examination and re-direct examination

Direct Examination of Victim

- Introduce victim across the years
- Describe experience of crime: sensory, emotional, physiological detail
- Double direct when appropriate
- Anticipate cross-examination
- Identification of defendant
- Prepare for identification issues with change of appearance

Describe Victim's Subsequent Experience

- Overcoming fear, threats, and disclosure
- Medical examination:
 - Process and time involved
 - History
- Law enforcement interviews
- Public testimony
- Years of waiting

Expert Testimony



Without an Expert

- Victim testimony
- Supplement victim's testimony with trauma-informed questioning of detective and SANE
- Reason for multiple interviews

Challenges?

- Delayed disclosure
 - Who caused it?
- Prior relationship
 - He knew her, but she didn't know him
- Voluntary intoxication
 - Who needs force when you have alcohol?

The image features a central graphic composed of two teal arrows pointing in opposite directions, one to the left and one to the right. The arrows are interlocked at their bases, creating a central rectangular area. The word "CHALLENGE" is written in white, bold, serif capital letters inside the left-pointing arrow, and the word "STRENGTH" is written in the same style inside the right-pointing arrow. The background is white with abstract teal geometric shapes in the corners, including triangles and overlapping polygons in various shades of teal and blue.

CHALLENGE

STRENGTH

Direct Examination of Detective

- Introduce detective and discuss credentials
- When did the investigation begin?
- What work was undertaken?
- Victim interview, describe demeanor
- Suspect interview
- Reasons for inactivity of investigation
- Beginning of renewed / new investigation

Direct Examination of Sexual Assault Nurse Examiner (SANE)

- History of complaint
- How the victim presented back in time
- Emotional demeanor
- Victim's experience of the rape
- Medical evaluation and findings
- Issues regarding chain of custody

Prove and Persuade

The Reality and Immediacy of Rape

Closing

- Follow through with established theme: the core reality of the rape
- Progress through proof of each element of the charged crime(s) with evidence
- Focus on predatory behavior and offender causation of victim's trauma
- Emphasize credibility at all points

Sentencing

- Offender accountability
- Opportunity for victim to be heard
- Restitution

Prevent Future Backlog

Test rape kits consistent with justice, victims' rights, and community protection

Going Forward

- Develop best practices for renewed investigation of cold cases
- Engage in trauma-informed prosecution, which is victim-centered and focuses on offender accountability
- View trial globally and recognize dynamics of presenting evidence to link jury with victim's experience
- Recreate the reality of cold cases of rape and the offender's accountability at trial



ÆQUITAS

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