



ENHANCING
CONVICTION
INTEGRITY

Achieving Justice: Investigating and Prosecuting Intimate Partner Homicide

Patricia D. Powers, JD, & John F. Wilkinson, JD.

AEquitas

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Patricia D. Powers

Patti Powers, Senior Attorney Advisor, 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 physical 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.



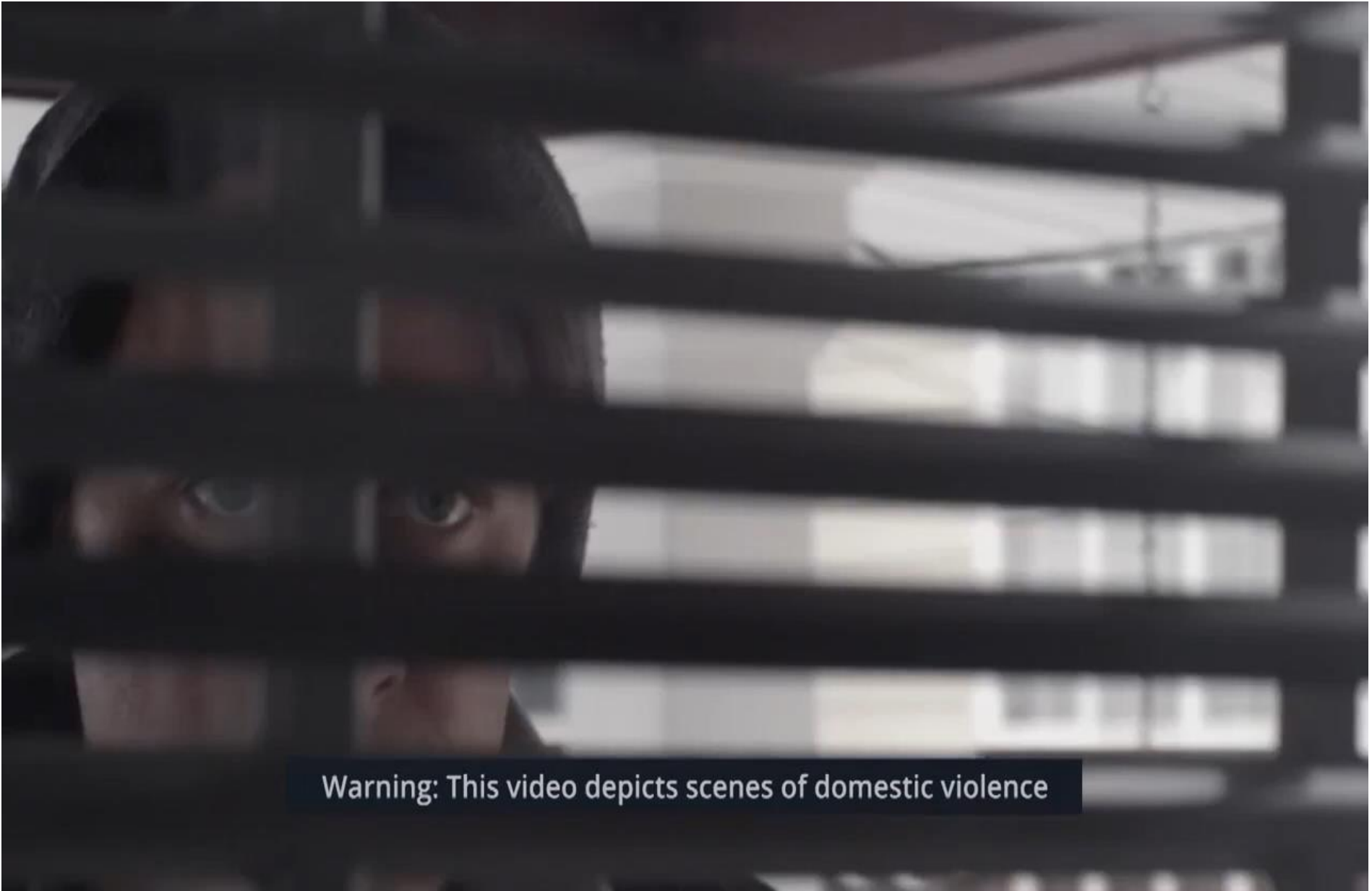
John F. Wilkinson

John F. Wilkinson, Senior 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

- 1. Recreate the reality of the deceased victim's experience of the crime
- 2. Develop the context of the crime while maintaining offender focus
- 3. Dispel defenses while building a strong case
- 4. Admit probative hearsay statements of deceased



Warning: This video depicts scenes of domestic violence

What was the victim's experience of the crime?

What evidentiary resources are there to center the victim's voice at trial?

Developing an Intimate Partner Homicide Case

- Review reports
- Identify testimonial, physical, and forensic evidence
- Review documentation

Developing an Intimate Partner Homicide Case

Identify physical, forensic, and medical evidence

- Documentation: video, digital photos, measurements
- DNA, bloodstain pattern, ballistics, fingerprints
- Autopsy and other medical evidence
- Digital evidence

Identify and review statements and conduct interviews

- Homicide witness interviews
- Res gestae victim statements
- Statements/admission of suspect

Determine potential defenses

- Denial, alibi, self defense

Crime Scene(s)

Where victim's
body was found

Where body was
moved from

Where assault
began or assault
leading to death
took place

Where physical or
trace evidence
connected with
crime is located

Direct/secondary
witnesses

Crime Scene Analysis



What forensic evidence does the crime scene(s) provide?



Is other physical evidence corroborative of an aspect of the case?



What contextual evidence is necessary?



Remember: Anything and everything may be or become of evidentiary value

Review Current / Potential Defenses

Denial defense

- Does the evidence establish identity?
 - Consider sources of DNA from semen, blood, other bodily fluid, touch DNA from strangulation
- Consider evidence from direct and secondary witnesses

Self-defense

- Consider presence of defense wounds as described in post-mortem
- Consider physical evidence establishing struggle; forensic evidence indicating placement of body and directional bloodstain pattern

Consent defense (for sexual assault homicides)

- Consider presence of defense wounds
- Consider incapacity to consent or use of force revealed by autopsy

Importance of Post-Mortem Evaluation

Cause of death

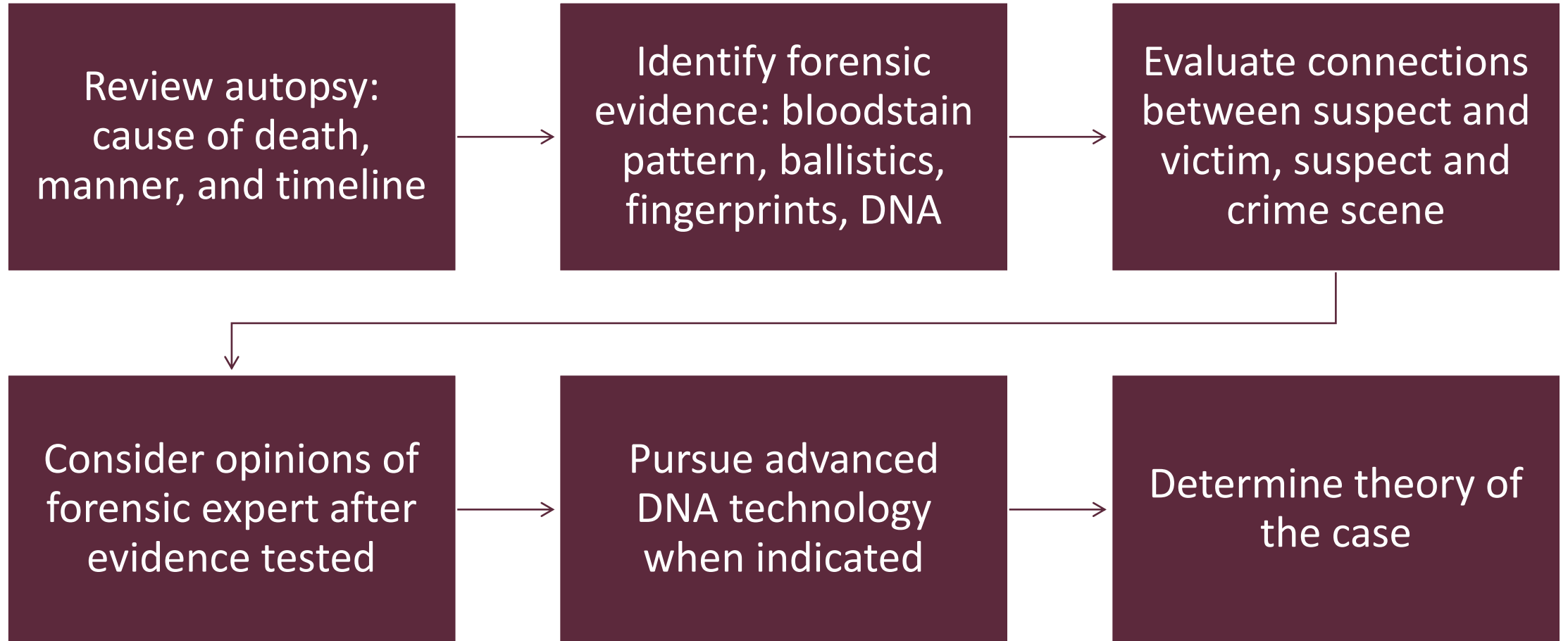
Manner of death

Identification of injuries

Causation of injuries

Potential timeline of death

Determining a Theory of the Case



Developing Context: How did this begin?

Determine what led to the crime scene: *res gestae*

Behavioral and/or physical evidence

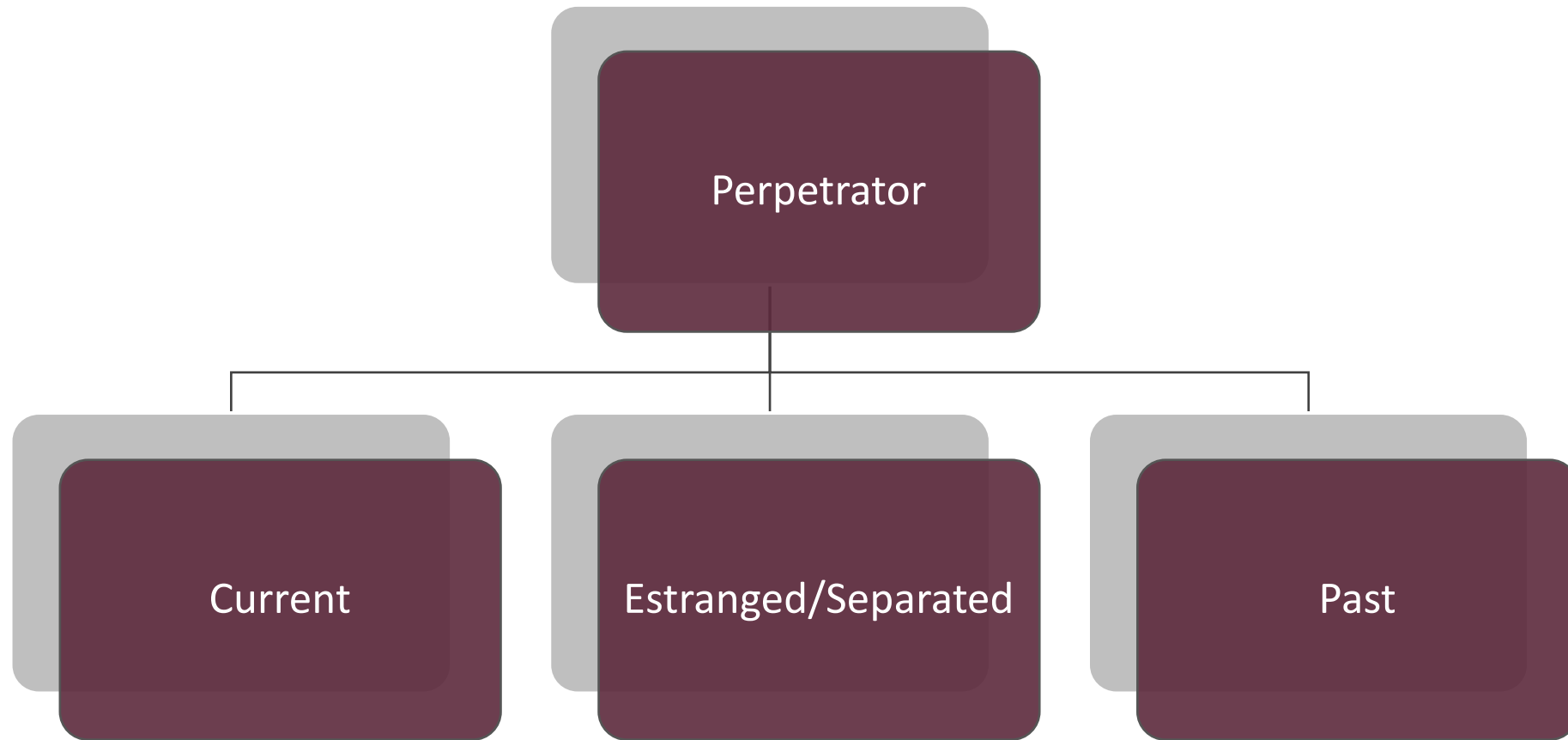
Establish availability of secondary witnesses for context

Develop timeline leading to the crime

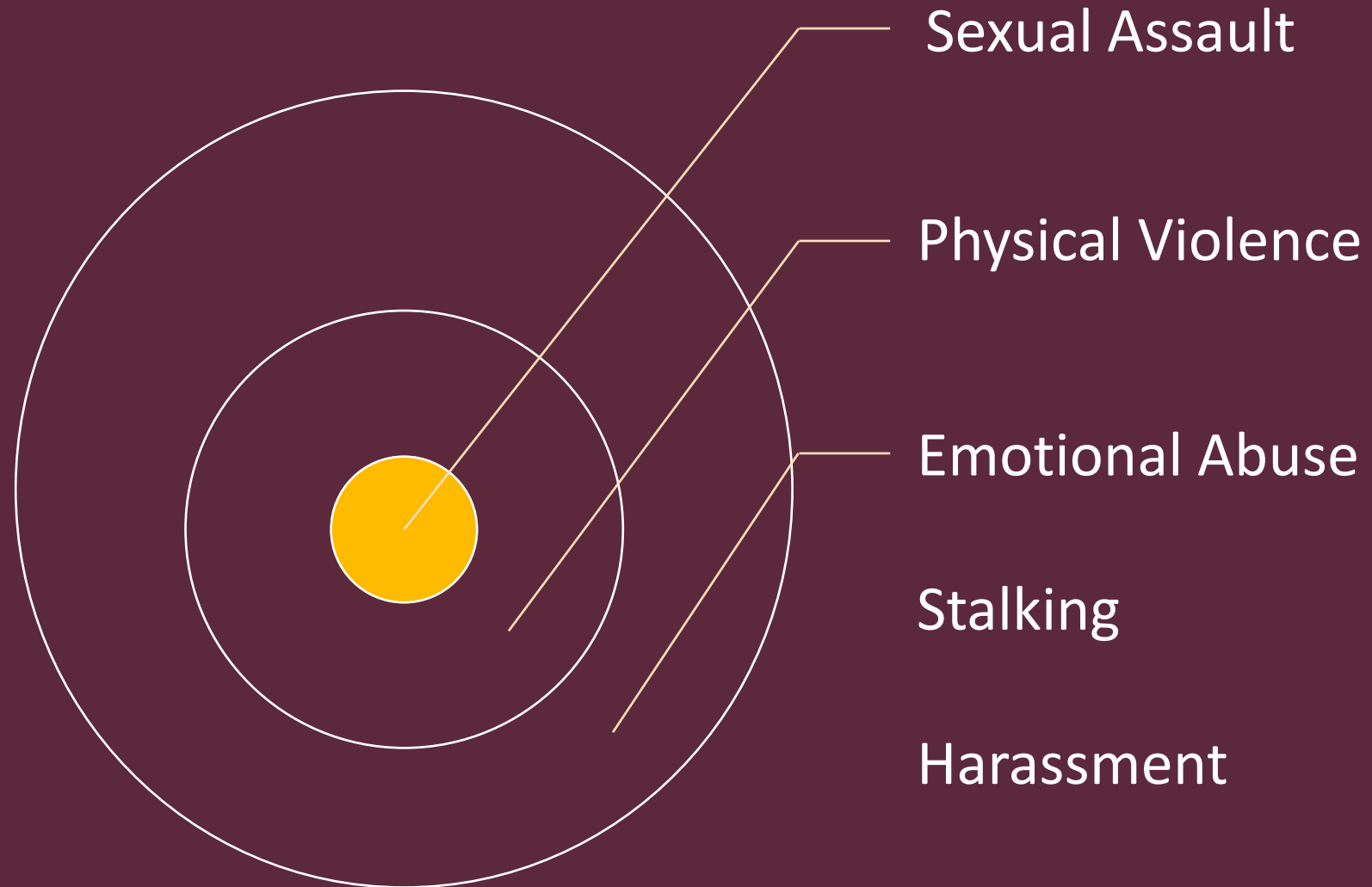
Identify other acts leading to the crime

Focus on premeditation and intent

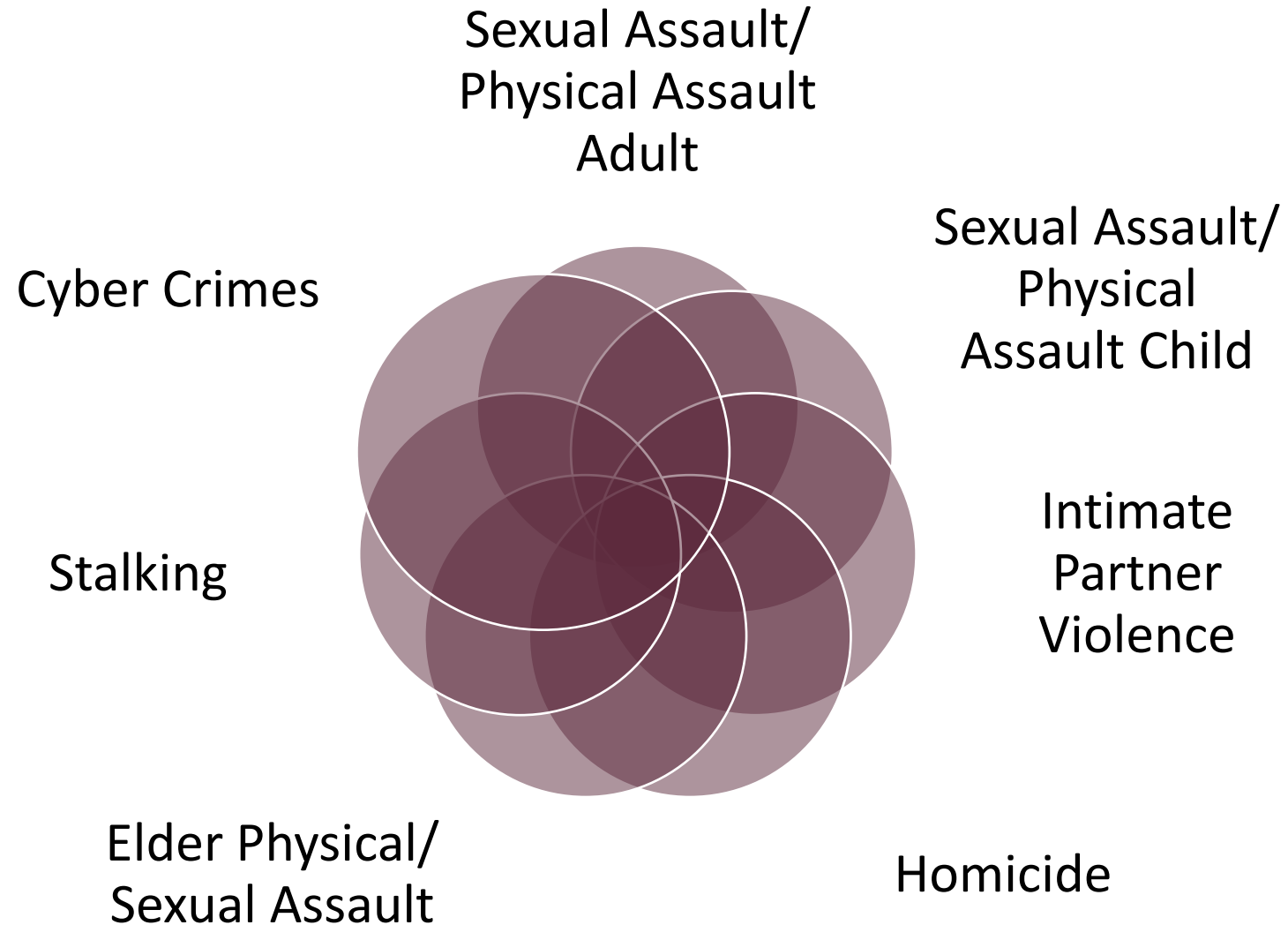
Perpetrators of Intimate Partner Homicide: Relationship with Victim



Intimate Partner Violence



Co-Occurring Crimes of Violence



Offender-Focused

Offenders target victims whom they believe they can successfully assault



Myths about sexual assault and domestic violence help offenders avoid accountability



Keeps the focus on the actions, behaviors, characteristics, and intent of the offender

How Offenders Target and Control Victims



Stepping Back.....

What does the evidence say?

What is the reality of the crime?

Does the evidence reveal culpability?

Is expert testimony necessary for a jury to understand the meaning and significance of evidence?

Offender Tactics

Intimidation

Emotional
abuse

Isolation

Minimizing,
denying,
blaming

Using children

Using privilege

Economic
abuse

Creating an
altered reality

Stalking

Immigration
abuse

Weapons Used in IPV

Premeditation

Making victims
question their
perception of
reality

Manipulation

Drugs / Alcohol

Betrayal
of Trust

Deceit

Defining the Issues

It's not:

What did the
victim do?



It is:

What did the
offender do?

Context of Intimate Partner Violence



Prior Incidents with Victim

Police reports

Applications for protection orders

911 calls

Photos: injuries, property damage, destroyed items

Medical records

Direct and Secondary Witnesses

Trial transcripts

Cell phone and computer data

Jail calls

Letters/writings

Force or Threat of Force

Context in history
of relationship is
critical

Past abuse, other
acts = force does
not need to be
overt

Other criminal
activity against
current or former
victims

Strangulation

A form of asphyxia characterized by closure of the blood vessels and air passages of the neck as a result of external pressure on the neck.

- Differentiate from “choke,” which means to have the trachea blocked partly or entirely by a foreign object (*i.e.*, food)

Presentation by Dr. Dean Hawley & Candace Heisler,
Strangulation and Suffocation (NAPSA Conference 2012)

History of Miscarriage?

4 of 38 women who had been strangled miscarried within 2 weeks of event. (Wilbur *et al.*)

Little information in literature about miscarriage and fetal demise with strangulation survivors.

“Strangulation is often one of the last abusive acts committed by a violent domestic partner before murder.”

A Matter of Life and Death:
The Domestic Fatality Review Team,
Hennepin County 6 (2004)

Potential for *delayed fatality* that is most concerning.

Arrhythmias, lack of blood flow and oxygen—
immediate death

Edema to neck within
24-48 hours

Damage to venous/arterial
systems resulting in stroke

Smith et al., *Frequency and relationship of reported symptomology in victims of intimate partner violence: The effect of multiple strangulation attacks*, 21 J. EMERGENCY MEDICINE 232-329 (2001)

“It is no coincidence that the best medical evidence of strangulation is derived from post mortem examination (autopsy) of the body, but even in living survivors of strangulation assaults it may be possible to recognize a pattern of injury distinctive for strangulation.”

Dean Hawley, MD

Stalking

76% of women murdered by an intimate partner were stalked first.

54% of **femicide victims reported stalking to the police** before they were killed by their stalkers.

www.ncadv.org

Building an Infrastructure with Evidence

Direct and Circumstantial Evidence

- Direct: establishes a fact and directly links a person to a crime
 - *E.g.*, eyewitness statements, confessions/ statements against interest, ballistics test showing weapon fired from a particular firearm, security footage
- Circumstantial: requires that a judge and/or jury make an indirect judgment, or inference, about what happened
 - *E.g.* suspect viewed in neighborhood during timeline of homicide, vehicle with muffler malfunction associated with suspect, heard by neighbors during timeline of homicide
- Lay opinion: witness testifies to opinion based upon observation
 - *e.g.* Sound of vehicle driving fast, sounds associated with shooting

Direct and Circumstantial Evidence

- The evidence that has been presented to you may be either direct or circumstantial. The term “direct evidence” refers to evidence that is given by a witness who has directly perceived something at issue in this case. The term “circumstantial evidence” refers to evidence from which, based on your common sense and experience, you may reasonably infer something that is at issue in this case.
- The law does not distinguish between direct and circumstantial evidence in terms of their weight or value in finding the facts in this case. One is not necessarily more or less valuable than the other.

Finding the Victim's Voice

Present Sense Impression

- FRE 803(1)

Excited Utterance

- FRE 803(2)

Then-Existing Mental, Emotional, or Physical Condition

- FRE 803(3)

Statement for Purpose of Medical Diagnosis or Treatment

- FRE 803(4)

Centering the Victim's Voice

Forfeiture by Wrongdoing

- FRE 804 (a) (5)

Statement under Belief of Impending Death

- FRE 804(2)

Effectively Present Direct and Circumstantial Evidence

1

Identify probative value of direct and circumstantial evidence derived from witness statements

2

Conduct interviews that give witness opportunity to give accurate information and allow CJS to assess viability of witness memory in connection with other evidence.

3

Effectively present testimonial evidence at trial by establishing a foundation for the witnesses' memories and the impact of event in context of other supporting evidence.

Direct and Secondary Witnesses

- **Direct witness:** describes sensory details of event (saw, heard, smelled, tasted, touched)
 - May be probative of identity or presence of the offender when connected with other evidence
 - *E.g.*, “I heard her scream and saw the lights go out. I saw someone outside but hidden by shadows.”
- **Secondary witness:** describes inference or foundation for inference from an observed fact
 - May be probative of victim’s hearsay statement and timeline when connected with other evidence.
 - *E.g.*, “When I saw her a few days before, she seemed different---her attire and demeanor had drastically changed. I knew something bad had happened to her or she was really worried about something.”

Elicit Description of Experiential Details

What did you
see hear, smell,
taste, touch

Sensory

How did you
feel?

Emotional

Physiological

Follow-up Questions

Did you discuss this experience with anyone?

Did you come forward with information after crime occurred?

Were you contacted by an investigator? When?

Have you thought about this incident since it occurred?

Have you learned of any additional information?

Ongoing Investigation

Social media

Follow-up with
family, friends, and
neighbors

Visitor logs and jail
phone calls

Evidence Collection from Past Acts

911 call

Statements

- Victim
- Witnesses
- Offender

Crime scene

- Damaged property
- Location of incident
- Interview of children at the scene

Photos of victim

- Injuries : special considerations for strangulation
- Clothing
- Demeanor

Photos of defendant

- Lack of injury
- Defensive wounds inflicted by victim
- Demeanor

Medical records

DNA
Bloodstain pattern
Prints
Ballistics

Medical Evidence,
Autopsy

Digital Evidence

Victim statements

Corroborate
elements of
crime

Offender Statement

Direct and Secondary Witnesses

Victim's
Experience
of Crime

Expert Testimony

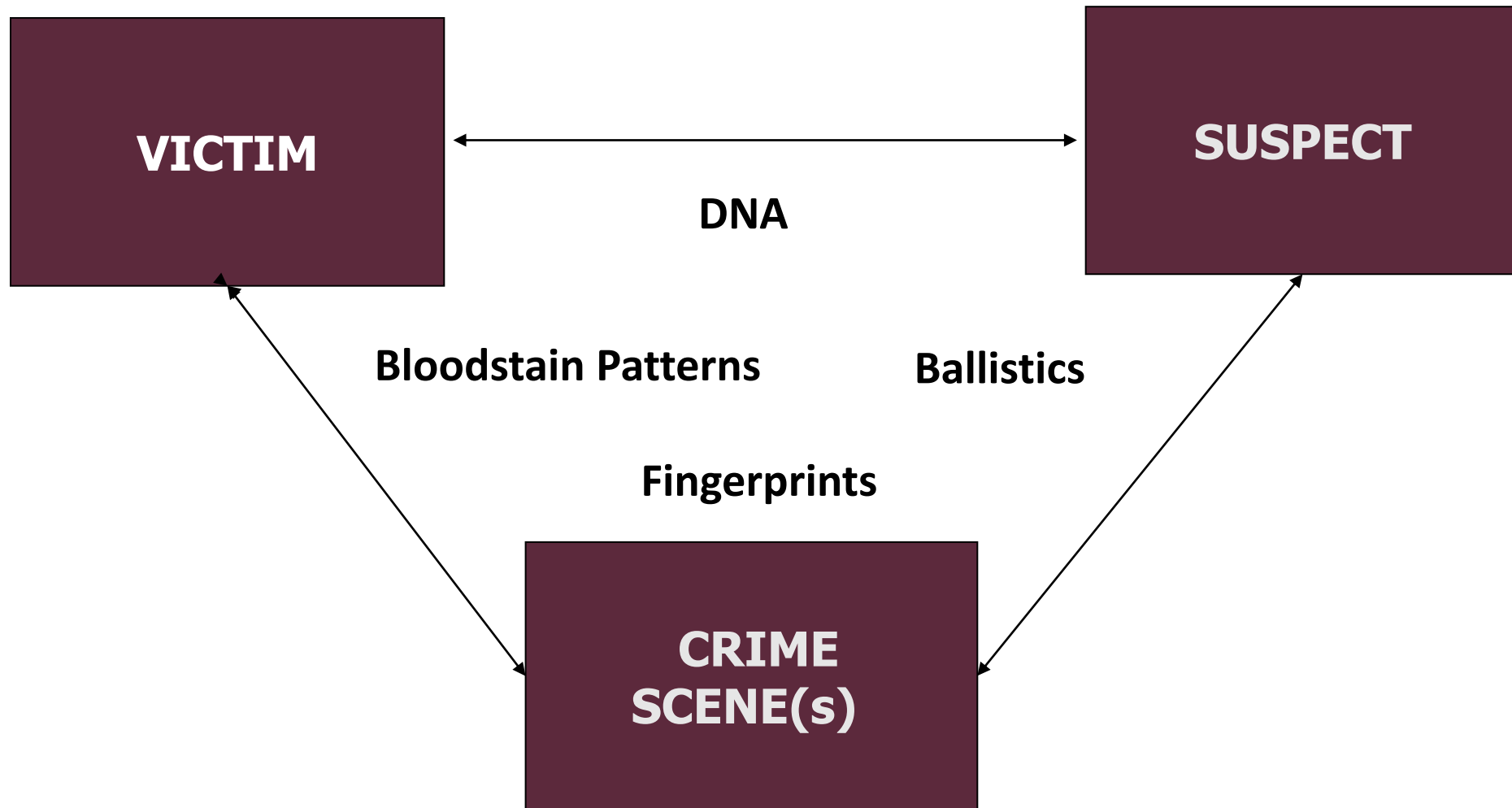
Other Victims / Other Bad
Acts



DNA: Potential Linkage of Suspect, Offender and Crime Scene

Power of Linkage

Reality of the Crime



Sources of DNA

From the Body

- Blood
- Semen
- Saliva
- Perspiration
- Bones and teeth
- Hair
- Urine, vomit

From Objects

- Cigarette butts
- Stamps and envelope flaps
- Drinking cups and bottles
- Caps
- Gum
- Ear plugs
- Cell phones

DNA: Y-STR

- Y-STR technology only reacts with STRs on Y-chromosome; doesn't react with female DNA.
- Failure to obtain male DNA profile using traditional STR technology/results are minimal or inconclusive, especially in presence of high levels of female DNA.
 - Current technology provides ratio that estimates amount of male DNA vs. total human DNA in a sample.
- Extended time between crime and evidence collection.

DNA: Y-STR, cont'd

Trace amounts of male DNA:

- Touch DNA from neck in strangulation cases
- Sexual assault involving digital penetration, sterile/vasectomized male perpetrators, or when there is no ejaculation.
- Fingernail scrapings from sexual assault victims.

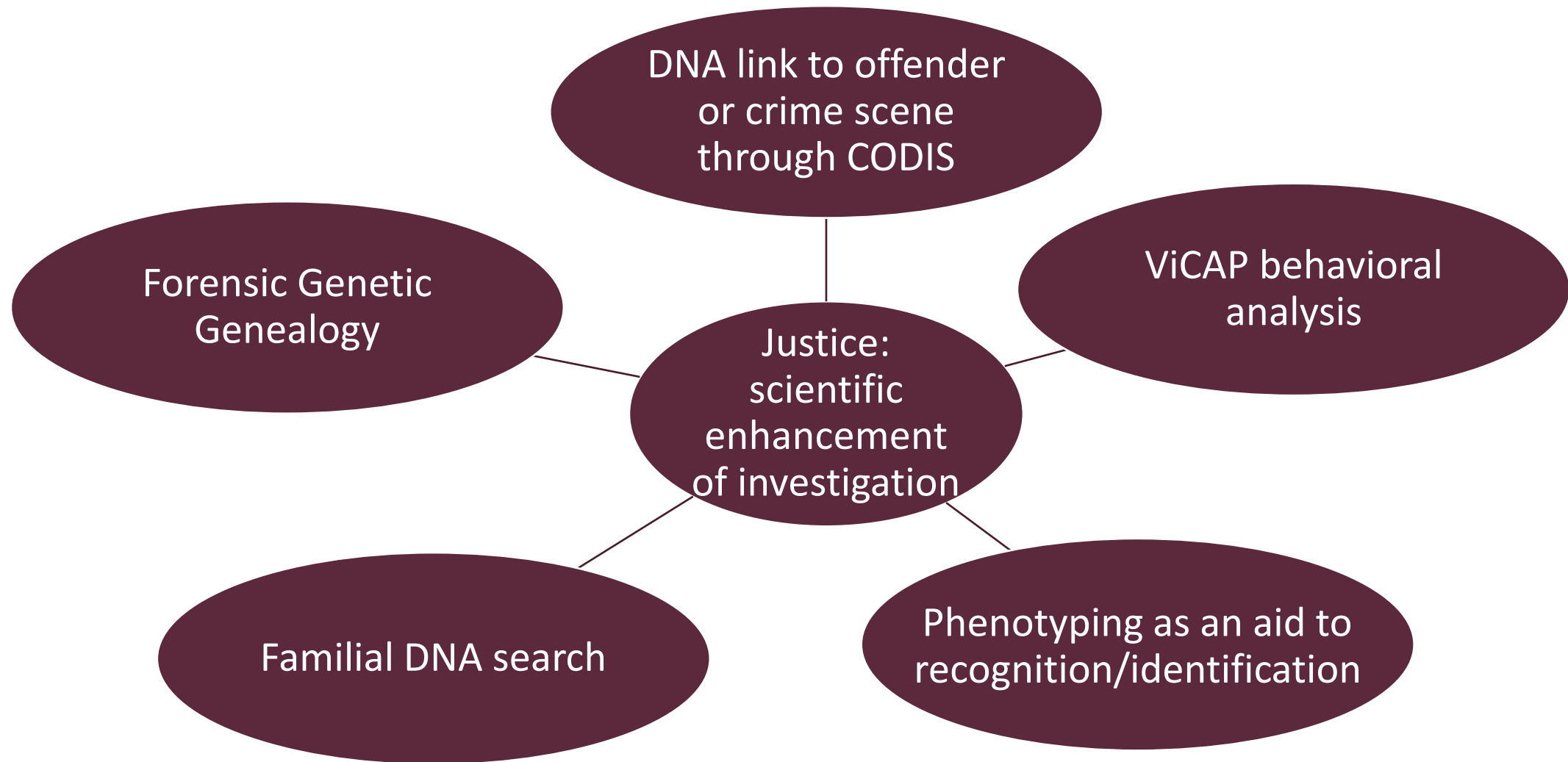
Detecting Serial Offenders: CODIS

- 
- Look for CODIS hits
 - Crime scene or offender

- 
- Carefully evaluate all reports from investigation of crimes against other victims

- 
- Review criminal history to determine time frames of activity as well as nature of offenses

Path to Justice: When Identity is at Issue and other victims



Knowing the Offender

Sexual Assault

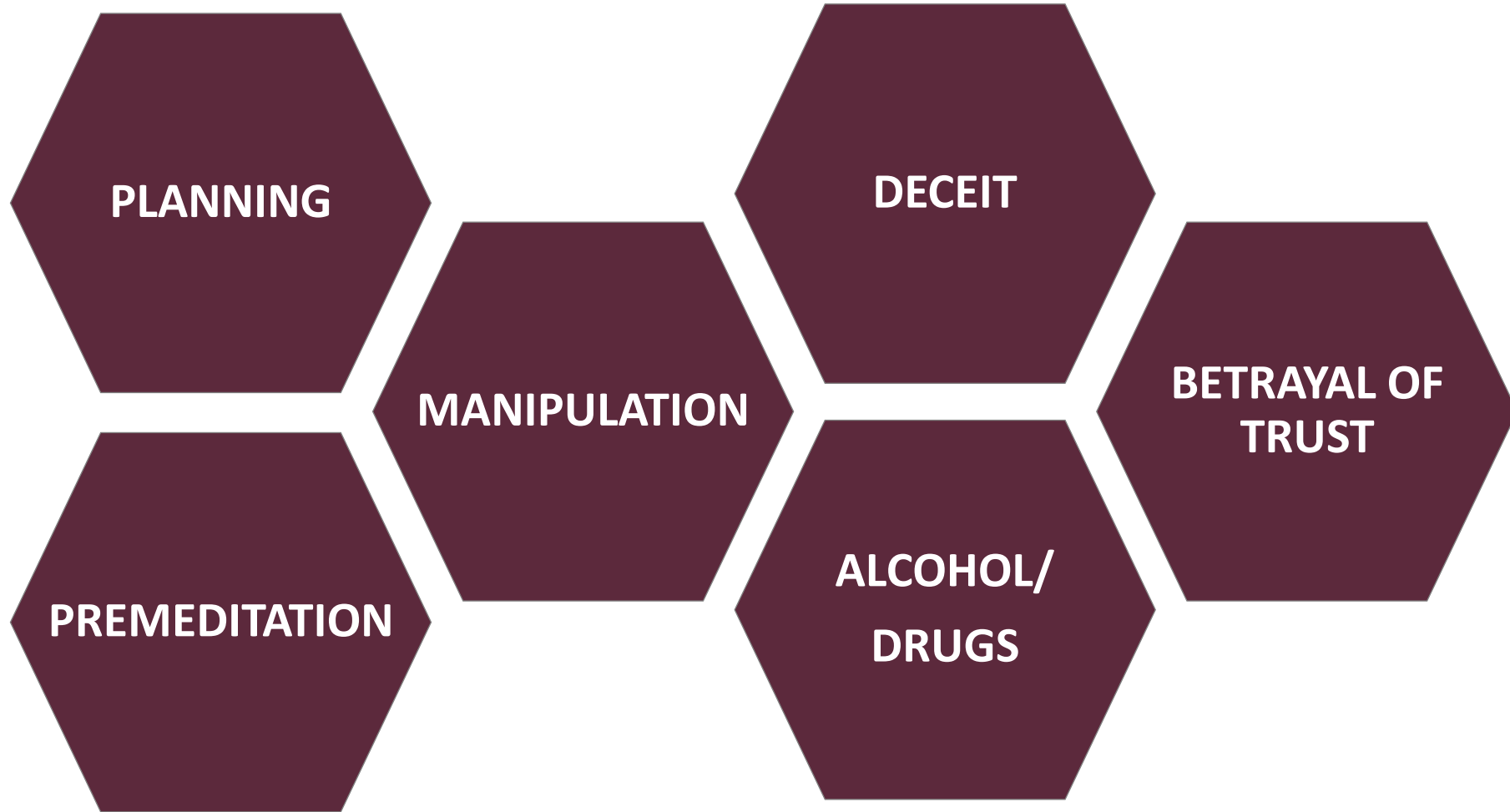
Stalking

Image Exploitation

Violation of Protection Orders

Witness Intimidation

Examine Predatory Behavior



Using the Theme Effectively



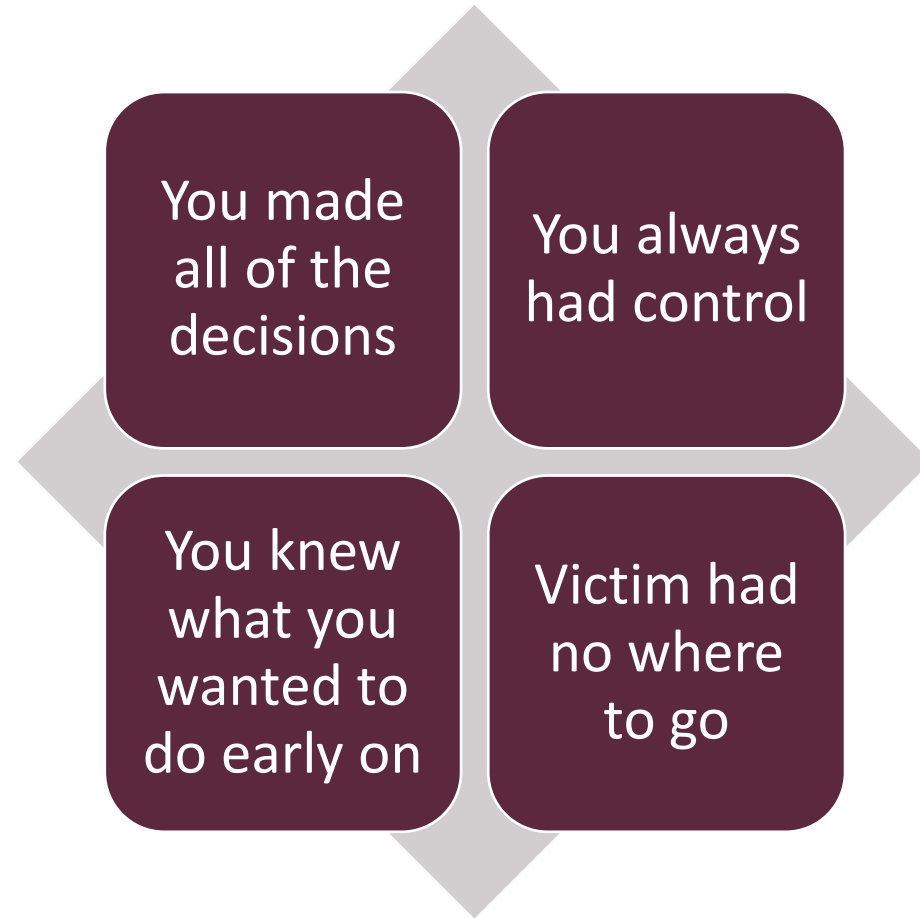
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Select the theme from evaluation of the evidence and theory

Be open to developing or modifying the theme during trial...or even during cross

Weave the theme through cross-exam in anticipation of closing

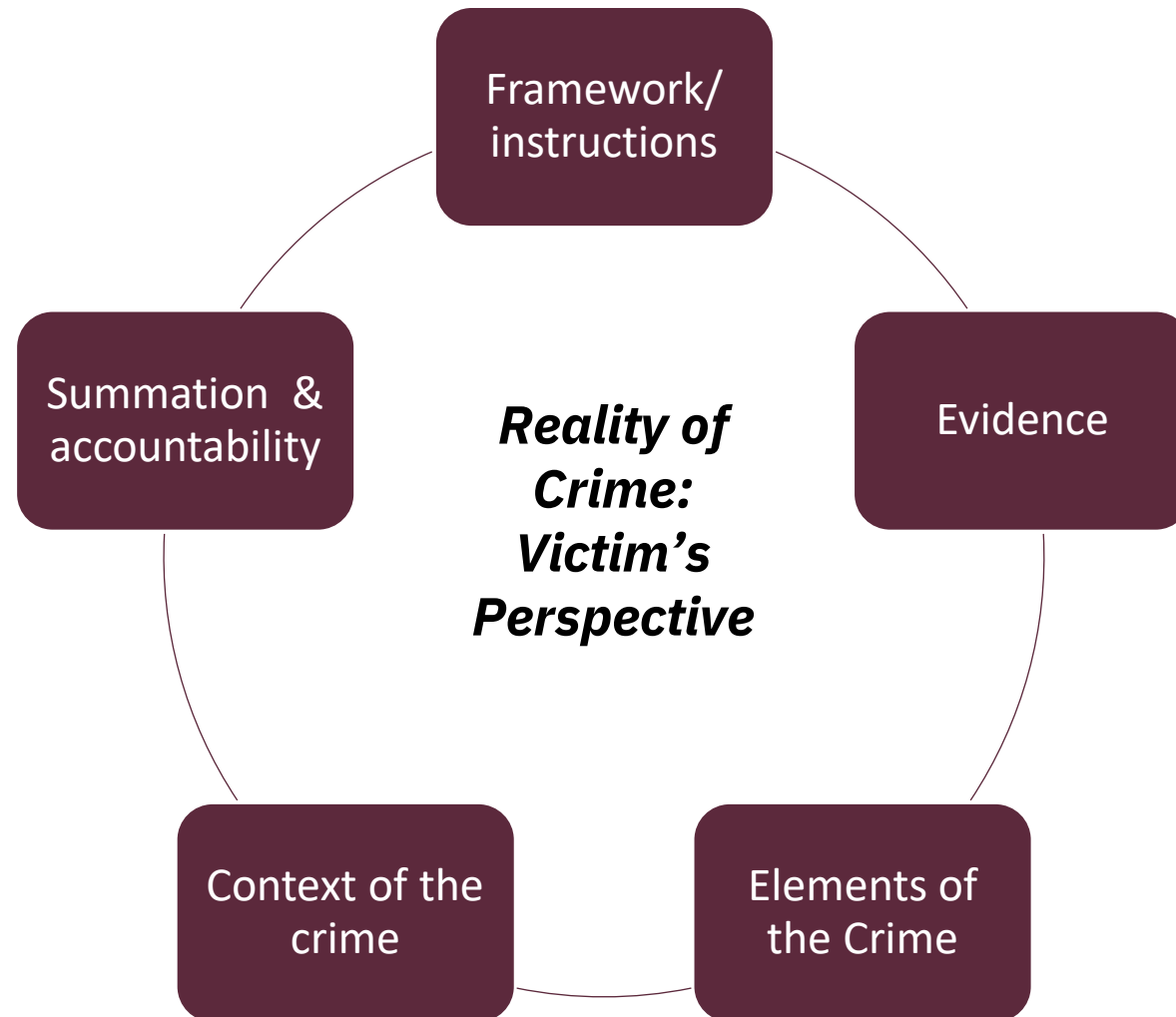
Themes for Cross-Examination and Closing



Summarizing the Evidence

- Corroborate the elements of the crime and surrounding context with forensic evidence, folding in exhibits
- Review testimony regarding identification and collection of evidence and relationship to the crime scene
- Recount expert testimony to inform the jury of the significance of the evidence
- Center offender accountability and the victim's experience of the crime with evidentiary support

Closing Argument: Ensuring the Victim's Voice is Heard



Best Practice Tips

- Always show how evidence is **connected** with other evidence and the crime.
- Use demonstrative evidence or software to demonstrate interrelationship, *e.g.*, bloodstain pattern associated with placement of victim's body, stippling indicating closeness of defendant to deceased.
- When presenting evidence, demonstrate through tone and demeanor the gravity of the evidence.
- In addition to necessary inquiry, ask the questions the jury will need to have answered.
- Anticipate alternative theories the defense will offer and ask questions in direct.

Closing Perspective of Intimate Partner Homicide

Victim's last day

- The victim was born on x day. During the victim's last day, these were her activities.

What happened before

- Context: history of assault, sexual assault, stalking, strangulation

Victim's words: prior statements

- Excited utterance, present sense impression, statement for purposes of medical diagnosis

End of victim's life

- How and when life ended; victim's experience of the crime

Physical, psychological, physiological details of crime

- Autopsy findings: defense wounds, multiple injuries
- Single shot and range

Going Forward

Recreate the reality of the deceased victim's experience of the crime

Develop the context of the crime while maintaining offender focus

Dispel defenses and center the victim's voice at trial

Contact Information



Patricia D. Powers

Attorney Advisor, AEquitas

(202) 596-4230

ppowers@aequitasresource.org

John F. Wilkinson

Attorney Advisor, AEquitas

(202) 596-4228

jwilkinson@aequitasresource.org