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# Advancing Justice: From the Crime Scene(s) to the Courtroom

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# Patricia D. Powers

Patti Powers joined AEquitas after serving as a Senior Deputy Prosecuting Attorney in Washington State for 27 years bringing extensive litigation expertise as a well respected trial attorney. She supervised the Sexual Assault—Domestic Violence Unit, and prosecuted and tried a high volume of violent crimes—specializing in adult 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. Patti is the lead Attorney Advisor on the SAKI project.

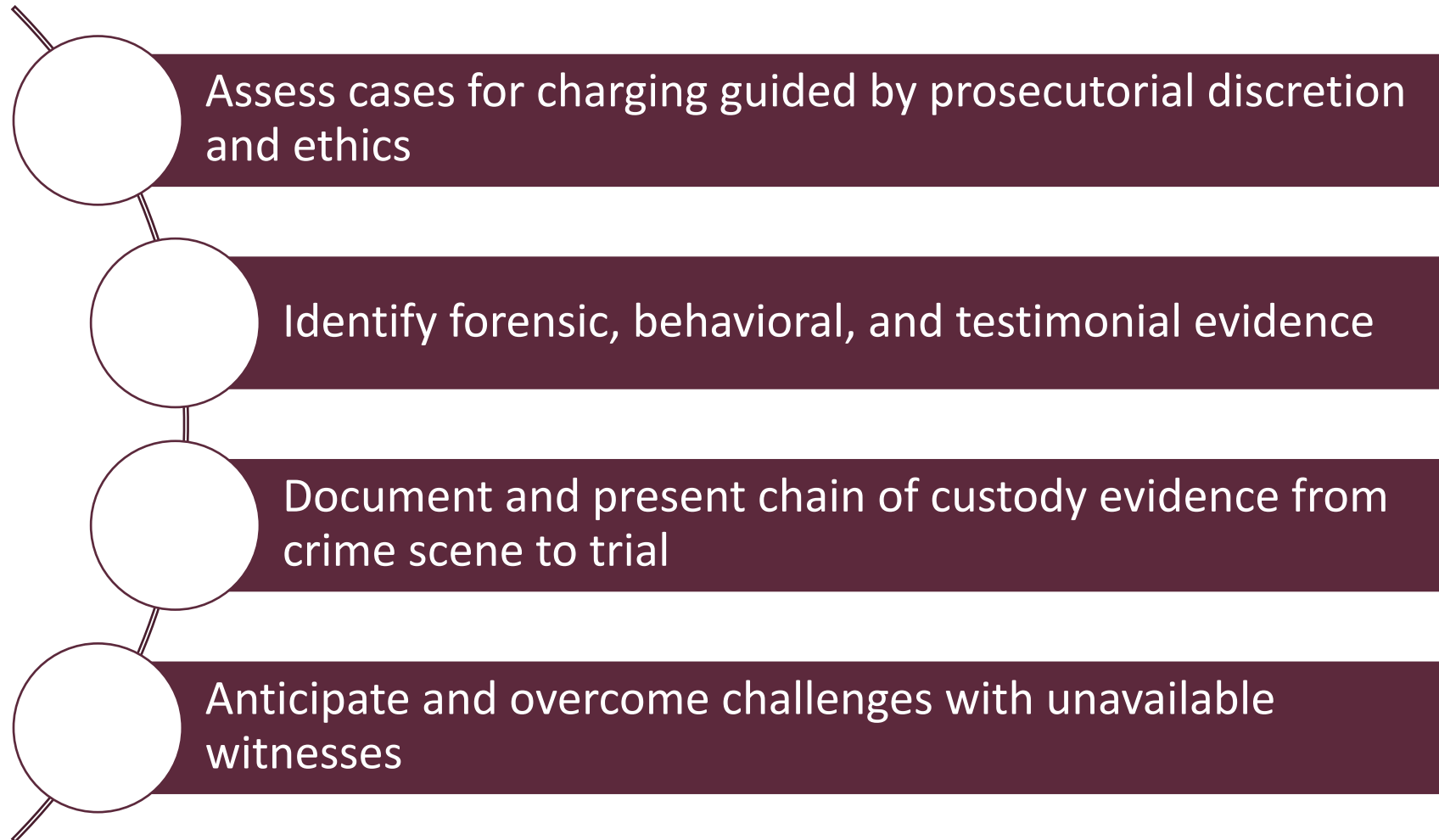


# John F. Wilkinson

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 level. 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



# Seeking Justice: the Highest Calling of a Prosecutor

## The Work of Justice Begins: Commencing Assessment

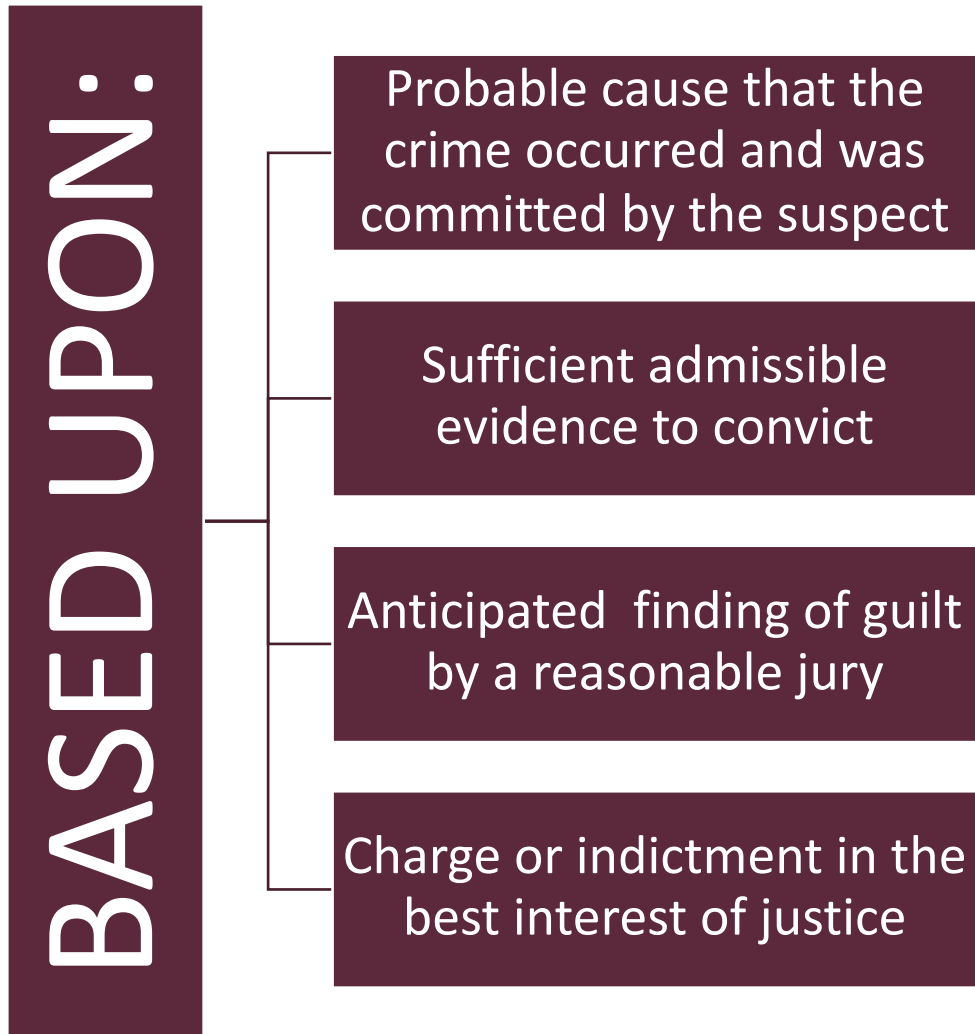
- ✓ Review all reports, statements, evidence sheets, evidentiary documentation
- ✓ Work closely with investigator on necessary follow-up
- ✓ View the crime scene and/or review all documentary evidence
- ✓ Direct timely laboratory submissions

## Opening the File: Commencing Assessment

- ✓ If origins of crime scene unknown, consult with forensic pathologist about time-line for death and other evidence
- ✓ If crime scene not processed, visit and obtain demonstrative evidence for reference.
- ✓ Maintain contact with victim(s) or surviving families



# Assessing Viability of Charges / Indictment



# Prosecution Insight

## What happened?

- Death, sexual assault

## How did offender commit the crime?

- Physical force, weapon, psychological coercion

## What is the res gestae of the crime?

- Context and circumstances of the crime

# Crime Scene(s)

Where 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

Vehicle used to  
transport body

# Broadening Perspective



# Case Analysis Features

Complexity

Lack of eyewitnesses

Vulnerability  
of victim(s)

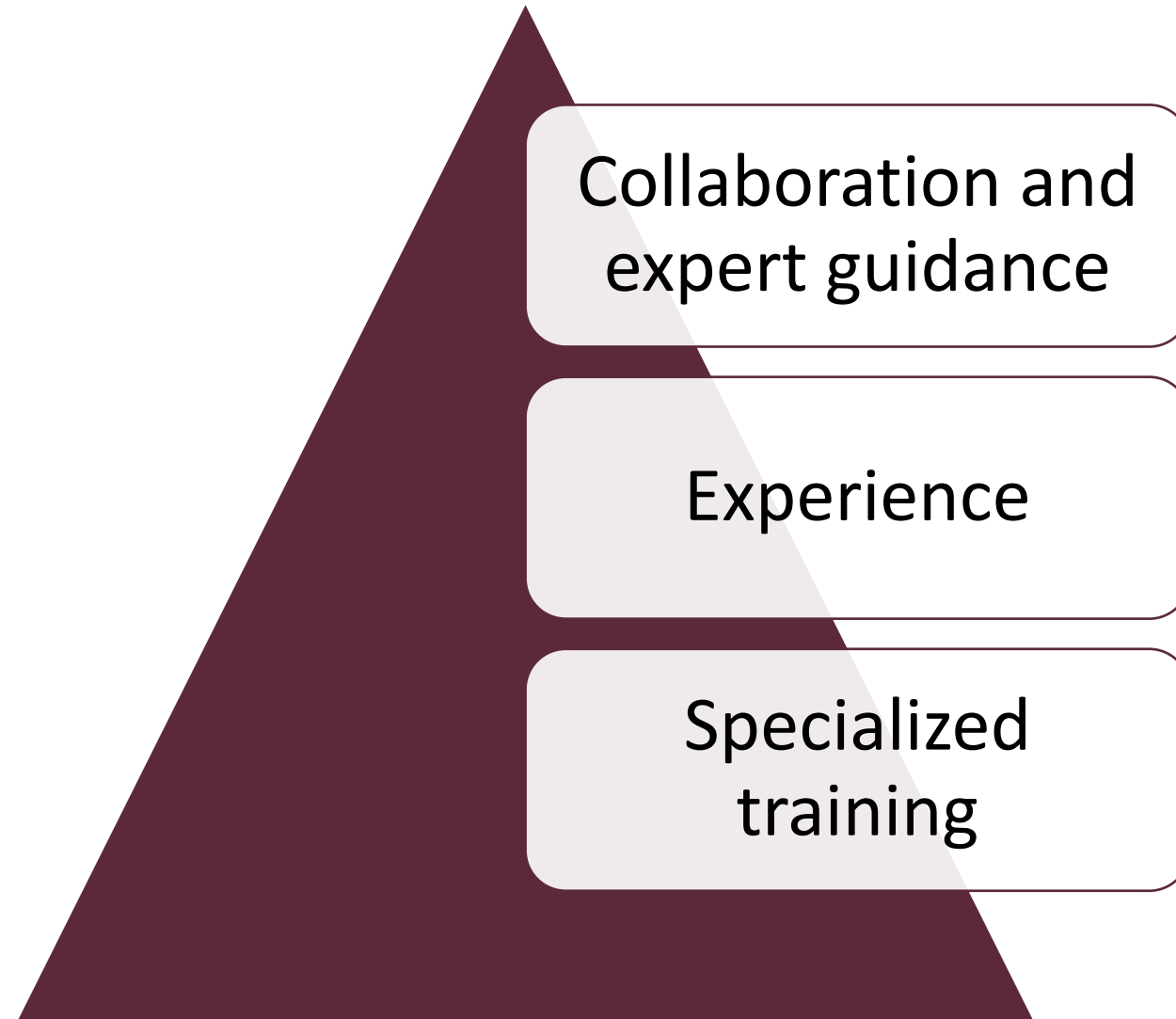
Challenging  
circumstances

Origins of crime  
scene unknown/  
crime scene not  
processed

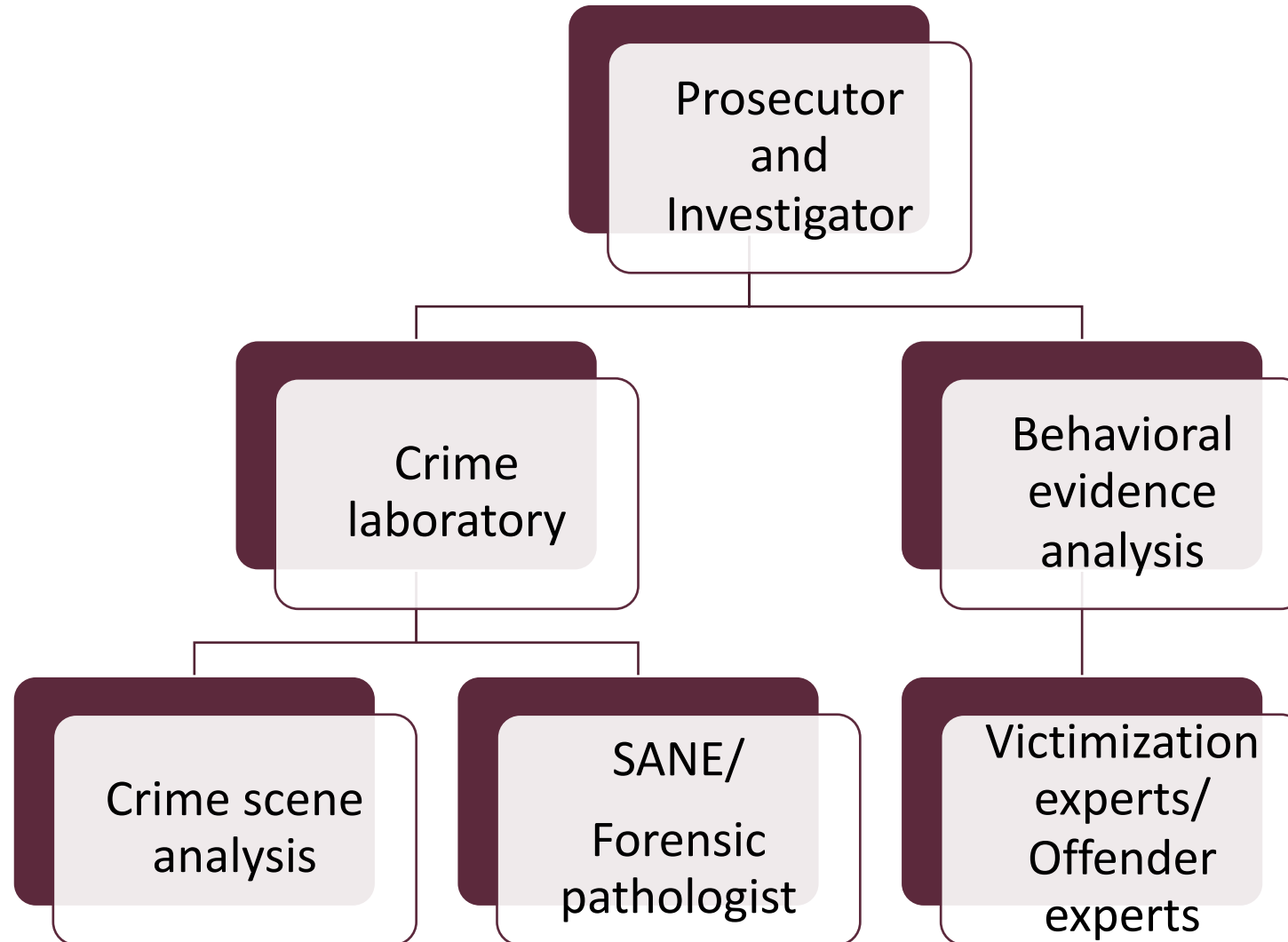
Impacted ability  
of victim to  
disclose

Victim/Witness  
attrition

However, complexity does not equal impossibility!



# Multidisciplinary Engagement



# True Collaboration

Demonstrates systemic engagement

Improves communication

Identifies gaps

Augments participation

Educates experts about each other's roles and expertise

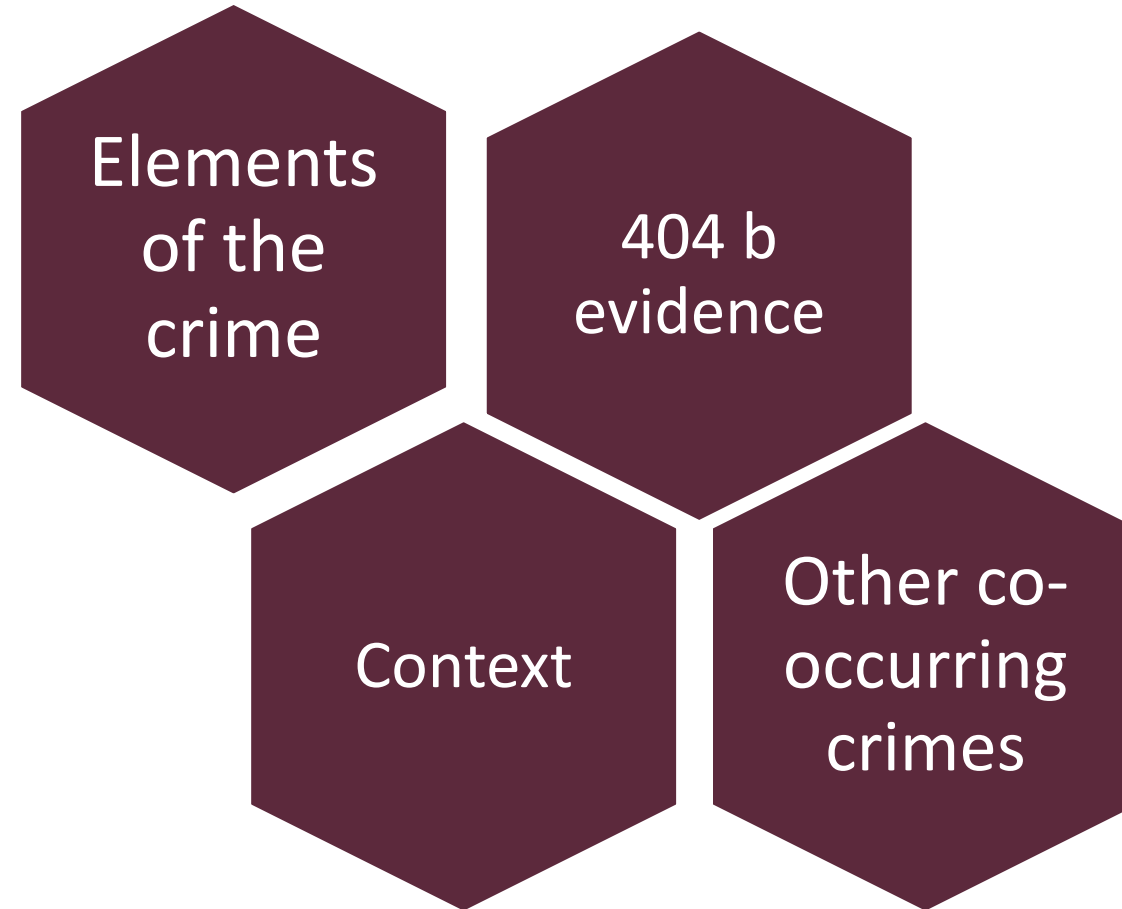
Encourages mutual respect

Enhances the pursuit of justice



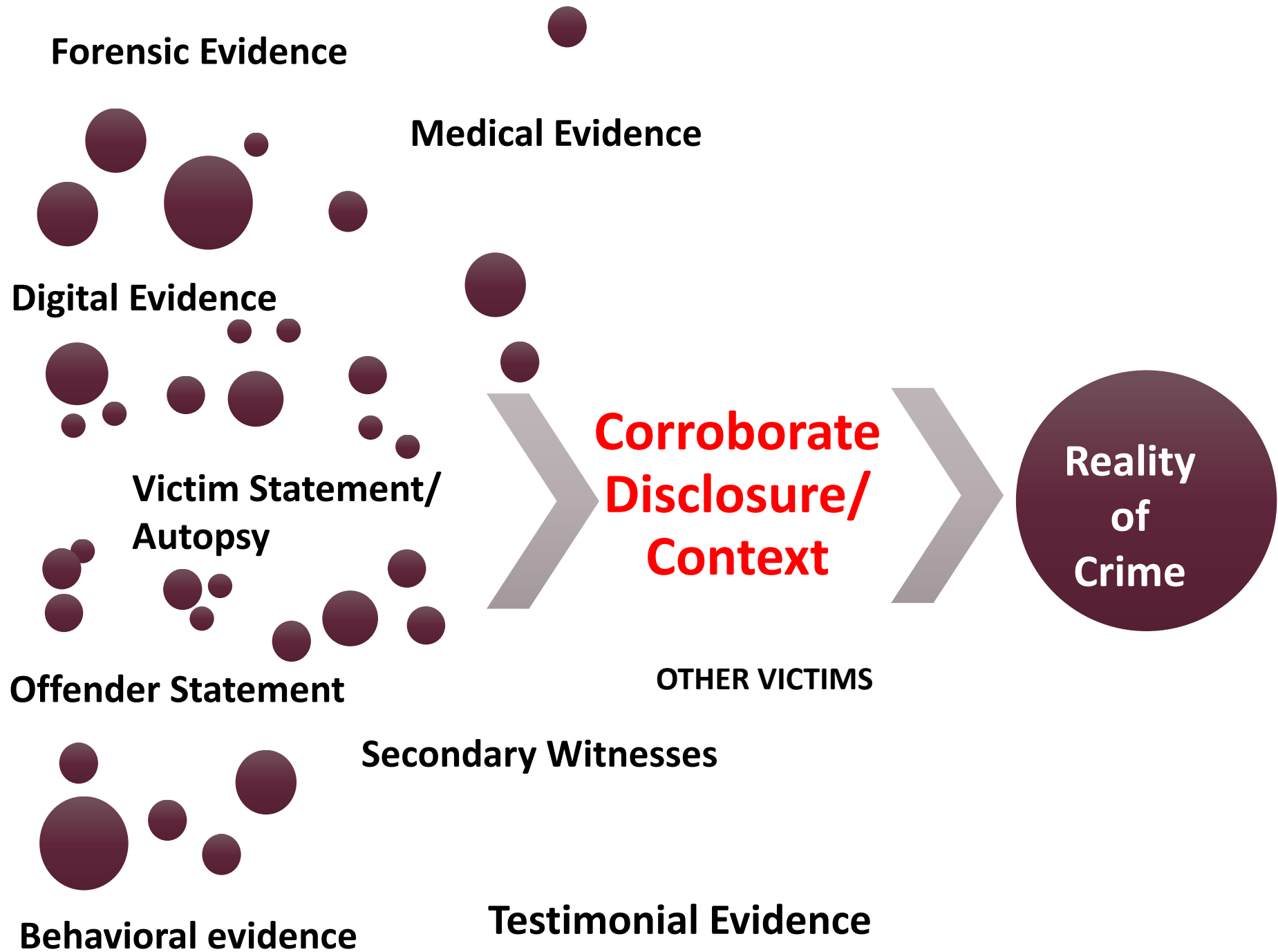
# Deeper Dive into Probative Evidence

# Establishing Proof



# Evidence: Remains of the Crime





# Crime Scene(s): Prosecution Perspective

What/ where is the crime scene?

What is the physical context of the crime scene? Are there multiple areas that must be considered?

Are there psychological dimensions of the crime scene?

In current cases, availability of digital photography/ video

In cold cases, availability of photography, documentation, measurements

Is evidence documented in context of the scene?

Appropriate distance considerations

If crime scene not processed, determine demonstrative evidence

# Prosecution Perspective

Cont'd

What evidence does the crime scene(s) provide?

When crime scene not processed, document area and any changes over time

What contextual evidence is necessary?

In cold cases when known crime scene not processed, determine relevant features and document any changes

# Current and Cold Case Considerations

- Law enforcement narratives regarding crime scene
- Identification of any involved eye witnesses and secondary witnesses
- Law enforcement divisions of responsibility
- Location of evidence, including video, photographs, measurements
- Proper collection techniques
- Documentation of chain of custody

# Physical Evidence:

No evidence is insignificant

## Consider

Clothing corroborated by secondary witnesses, with or without forensic import

Layout and visual/auditory perspective of victim and/or intruder

Any disruption of the scene or lack of disruption after known events

Any unfinished event, e.g. food prepared and partially consumed



# Applying New Technology in Cold Cases

What extant evidence could form basis for review or analysis?

- Photos, diagrams, measurements, untested evidence from sexual assault kit, other physical evidence

Recreating crime scene based upon prior documentation

Testing sexual assault kit with mixtures and determining donor

Obtaining DNA from physical evidence not previously tested due to insufficient quantity

# Recognize Enhanced Science and Technology

DNA:  
probabilistic  
genotyping,  
forensic  
genetic  
genealogy

Finger-  
prints:  
enhanced  
detection

Ballistics:  
enhanced  
imaging for  
bullets and  
cartridge  
casings

Blood  
spatter:  
predicting  
and  
interpreting  
patterns

# Developing Context

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

Behavioral and physical evidence

Establish availability of secondary witnesses for context

Develop timeline leading to the crime and subsequently

Identify other acts prior to and after the crime

Focus on premeditation and intent

# Forensic Evidence

DNA

Digital

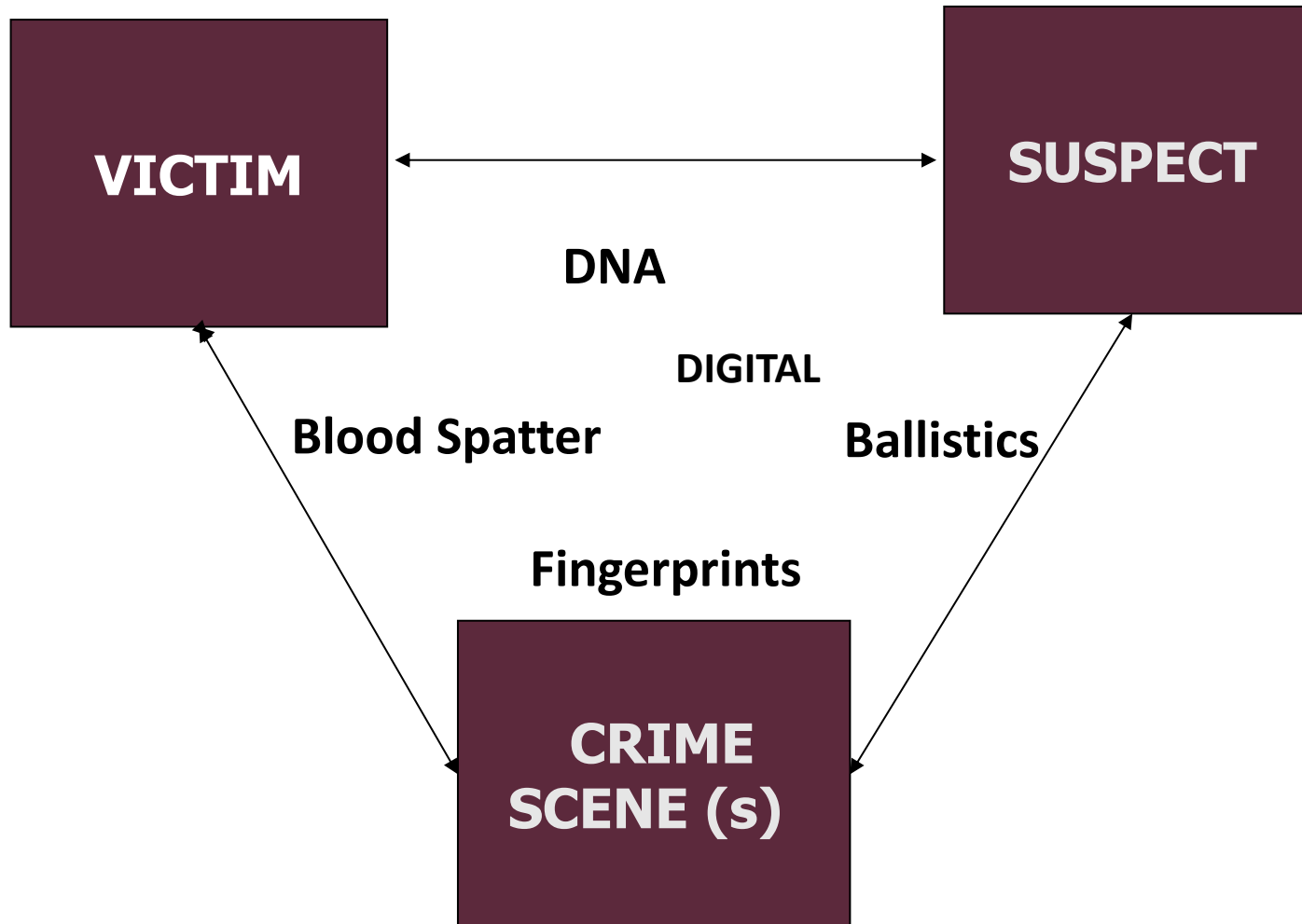
Ballistics

Fingerprints

Blood  
Spatter

# Power of Linkage

Reality of the Crime



# Obtain DNA from Untested Objects

Cigarette butts

Stamps and  
envelope flaps

Drinking cups  
and bottles

Caps

Gum

Ear plugs

Telephone  
receiver

# Testimonial Evidence

Victim

Eyewitness

Secondary  
Witnesses

Offender  
statement

Experts

Chain of  
custody  
witnesses

# Offender Behavioral Evidence



## Analyzing Offender Information

- Review file for earlier statements, interview contact or reference in other statements
- Determine whether offender fled jurisdiction after the crime
- Obtain photograph of offender during earlier time period in cold case
- Examine social networks (present and past)

## Serial Offender Considerations

- Carefully evaluate all reports including those from investigation of crimes against other victims
- Recognize offender may have escaped detection and employ strategy
- Develop an understanding of “gaps” in time with absence from jurisdiction
- Recognize any similarity in status of victim, vulnerability, environment, use of force and threats

# Offender Behavioral Evidence

Premeditation

Stalking

Flight

Control  
features

Consciousness  
of guilt

# Dimensions of Predatory Behavior

Planning/maneuvering

Manipulation

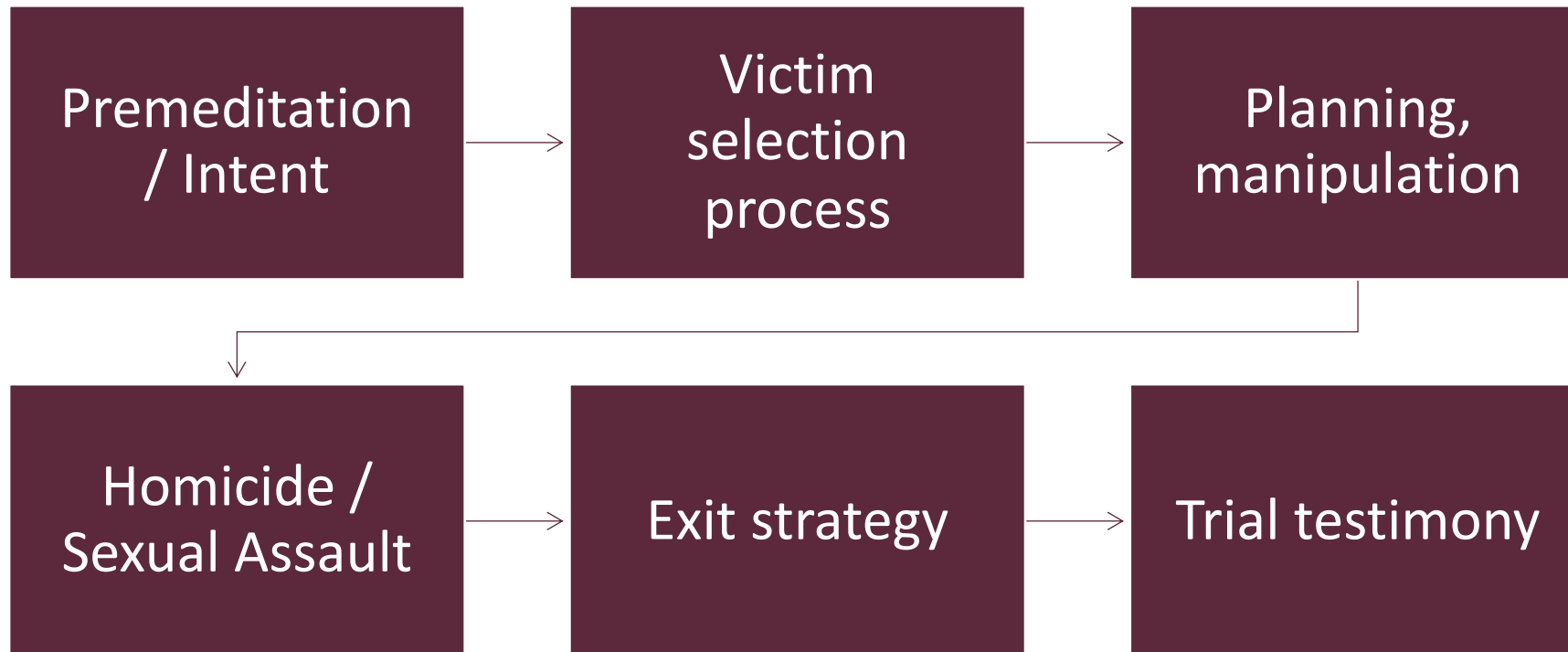
Premeditation

Deceit

Alcohol/drugs

Betrayal of trust

# Scrutinizing Offender Behavior



# Admissibility of Secondary Evidence

## Res gestae

- Events/statements inextricably related to crime

## FRE 404 (b)

- Evidence proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident and other bases

## Other elements of the crime

- Probative of date, evidence of commission of the crime

# Other Crimes, Wrongs, Acts

FRE 404(b)

**(1) *Prohibited Uses.*** Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

**(2) *Permitted Uses.*** This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

## Evidence of Other Crimes, Wrongs, Acts

- Consider evidence of threats, stalking, violence to establish motive, intent, plan, knowledge
- Introduce evidence of defendant's other acts resulting in forfeiture by wrongdoing
- Provide depth of insight into offender's behavior
- Establish key similarities in conduct
- When victim is unavailable, evidence may provide important context
- It is not necessary that the other acts evidence be derived from conduct for which the defendant was charged or convicted



# Offender Testimonial Evidence

# Defendant's Statement

- Establish admissibility of statement as knowingly, voluntarily and intelligently made
- Consider offering statement whether or not Defendant testifies
- Remember as evidence develops at trial statement may become more important

# Hearsay Exceptions; Declarant Unavailable

FRE 804(b)(3) – Statement Against Interest

A statement that:

- a) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and
- b) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

## Considerations for Offender Statements and Cross-Examination: Cold Case

- If Defendant claims inability to remember events / details, be prepared to refer to earlier statement / interview or contextual information
- Look for earlier denials that may change / modify after testing of untested sexual assault kit
- Be aware of timeline and other events
- Focus on recency of alibi if appropriate

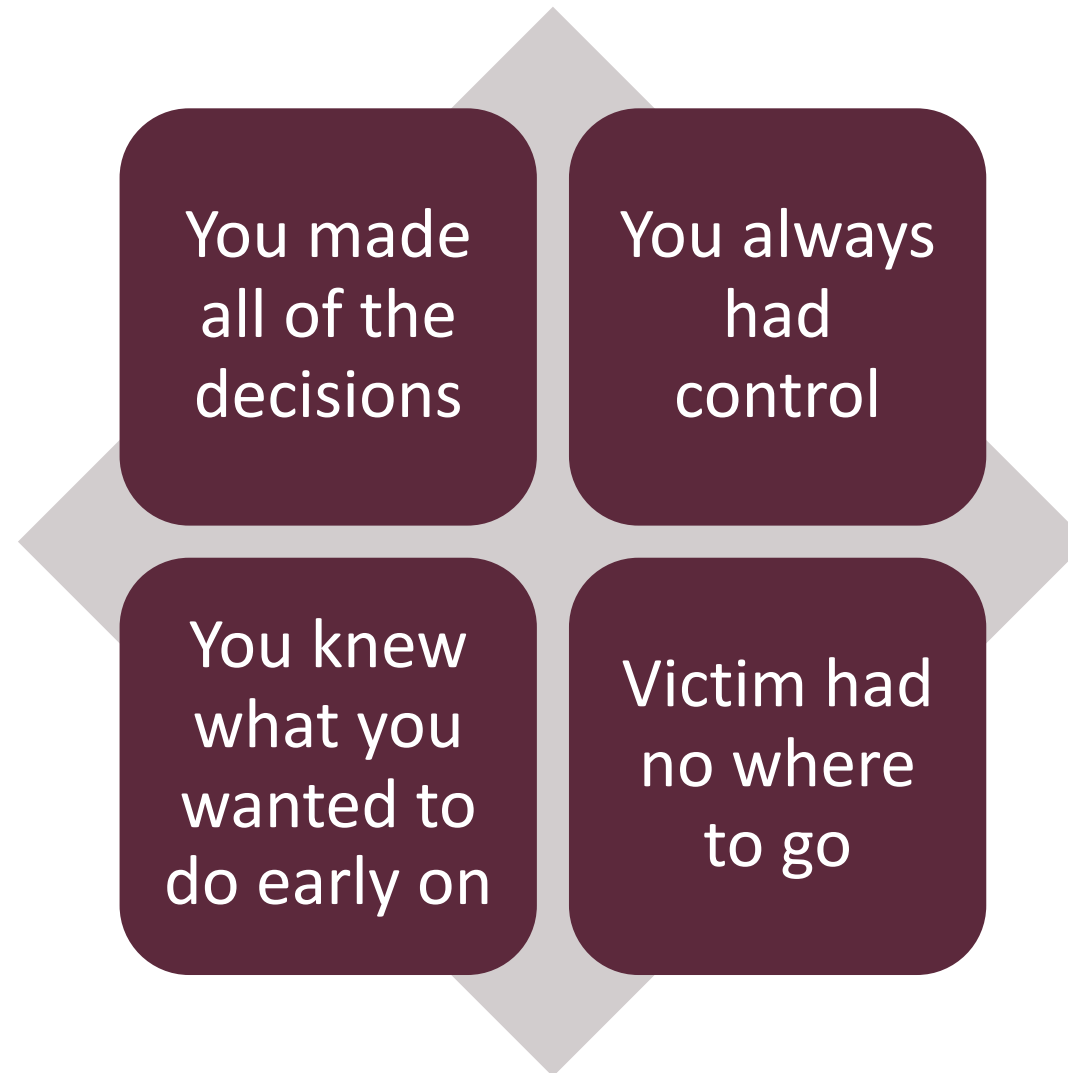
# Developing Cross Examination

Promote theme and theory of case through cross examination

Corroborate victim's testimony and other evidence

Focus on knowing and intentional behaviors throughout the context of the crime

# Evidence Based Themes for Cross-Examination



# When Defendant Doesn't Testify

- Consider that there is usually important information in defendant's statement
- If prosecution does not offer statement, defense may still refer to law enforcement taking a statement and bring it in
- The defense may choose not to offer the statement — *What is lost?*
- Balance these considerations with not offering statement and possible defendant testimony

# Evidence of Victim Responses to Trauma



## Impact of Trauma

- Traumatic memory varies from ordinary memory
- Chemical changes occur in the brain
- Memory loss can be natural survival skill and defense mechanism

# Trauma-Informed Analysis

## • Recognize

- Trauma affects victim perception and responses to events
- Trauma may impact victim participation
- Trauma influences victim memory
- Offender is responsible

## • Strategies

- Adapt practices to accommodate trauma and its effects
- Collaborate with allied professionals to ensure broad implementation of trauma-informed practices
- Provide individualized responses

# Trauma-Informed Questioning

*“What are you able to tell me about...?”*

*“Are you able to remember...?”*

*“Let me know what you are able to remember about...”*

- Communicates to victim you understand they may not remember everything
- Allows victim to say, “I don’t remember” or “I don’t know”
- Reduces likelihood victim fills in blanks for you

# Behavioral Evidence: Victim Responses to Trauma

Delayed  
disclosure

Minimization

Impacted  
chronology of  
events

Inability to  
testify

# Recognize Offender's Role in Victimization

## 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?

# Evidence-Based Prosecution

Building and presenting a case in which prosecutors can hold offenders accountable for their conduct with or without the victim's testimony.

# Anticipate Witness Challenges

- Recognize the possibility of victim/witness unavailability
- Evaluate compound/complex trauma
- Identify impact of pandemic on trauma and ability to maintain involvement
- Ensure witness list has necessary secondary witnesses
- Provides resources and support for victims and witnesses throughout litigation

# Complex / Compound Trauma

**This incident may not be the first or only traumatic event in the victim's life.**

Consider:

- COVID-19 pandemic and impact on trauma and resources
- Prior sexual abuse as child or adult
- Domestic violence
- Human trafficking
- Transgenerational or historical trauma



# Corroboration Evidence

Was anyone else present at any point?

- Pre-incident (restaurant, event location)
- Post-incident (victim's location or interactions after incident)
- Car rentals / rideshare drivers

What outside communication was there?

- Family & friends

Any photos of injuries or others involved?

Any locations where surveillance was used?

Social media communication

# Corroborate Disclosure and Victim's Testimony

## Excited Utterance

- FRE 803(2)

## Statement for Purpose of Medical Diagnosis or Treatment

- FRE 803(4)

## Recorded Recollection

- FRE 803(5)

# Hearsay Exception/Declarant Unavailable

FRE 804 (a)

Privilege

Refusal to testify

Testifies to not remembering

Can't be present due to death, infirmity/ physical or mental illness

Absent and unable to procure attendance

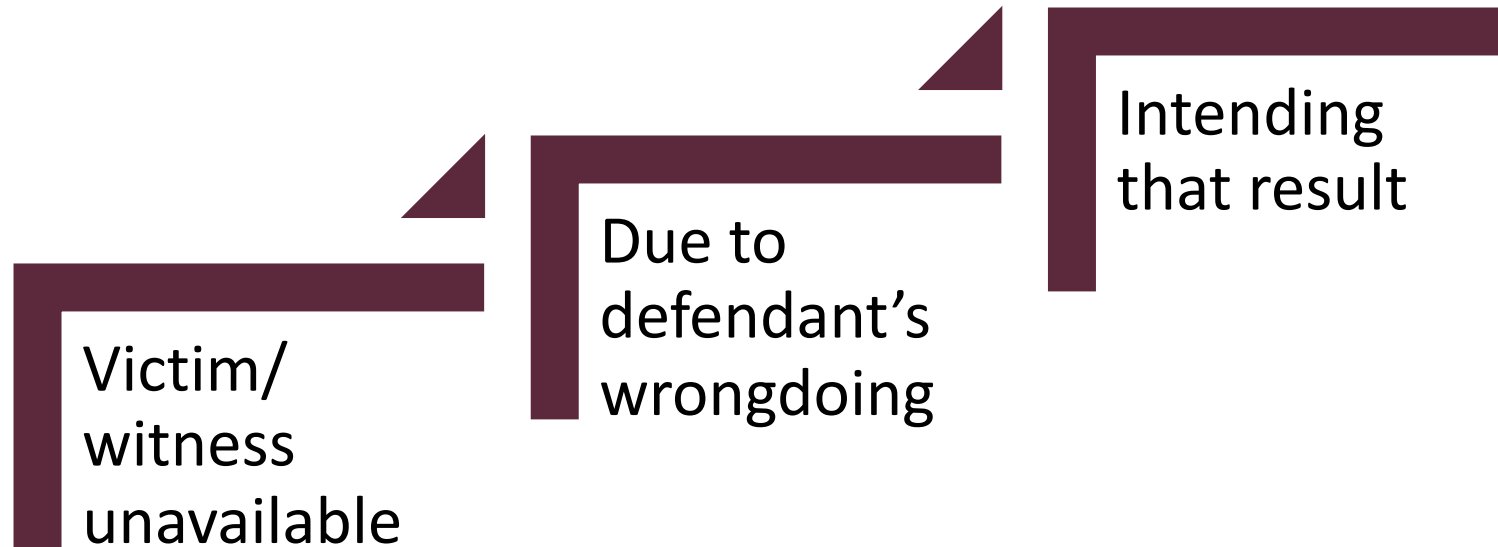
*Does not apply if statement's proponent wrongfully caused unavailability*

## Hearsay Exception: Forfeiture by Wrongdoing

FRE 804 (b)(6)

A statement offered against a party that wrongfully caused — or acquiesced in wrongfully causing — the declarant's unavailability as a witness, and did so intending that result.

# Admissibility of Witness' Statements



# Present Evidence of Forfeiture by Wrongdoing

- Raise issue of victim unavailability through experience-based questions in voir dire
- Introduce evidence of Defendant's wrongdoing in case in chief
- Evidence probative of reasons for victim/witness' absence from trial
- Evidence also relevant to motive and consciousness of guilt

# Going Forward

Assess cases for charging guided by prosecutorial discretion and ethics

Identify forensic, behavioral, and testimonial evidence

Document and present chain of custody evidence from crime scene to trial

Anticipate and overcome challenges with unavailable witnesses

“Justice is truth  
in action.”

- Benjamin Disraeli





## Contact Information

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