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In the Hot Seat Direct Examination of a Detective in a Cold Sexual Assault Case

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INNOVATIVE

Sustaining effective practices
and promoting systemic
change

INFORMED

Training, resources, and
assistance supported by
research and experience

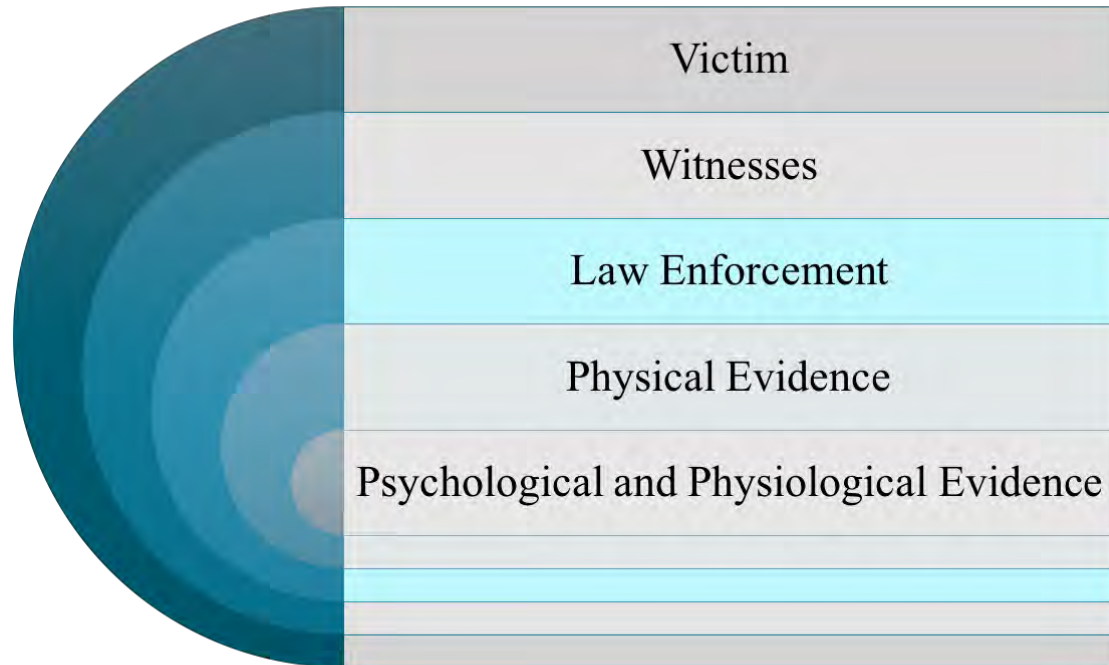
PRACTICAL

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

Objectives

- Work with detectives to prepare for direct and cross-examination at trial.
- Elicit testimony from detectives that provides insight into the impact of trauma on the victim.
- Provide the jury with a clear sense of how a cold case sexual assault is reinvestigated through a trauma-informed approach.

Recreating the Reality





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Working with Investigators

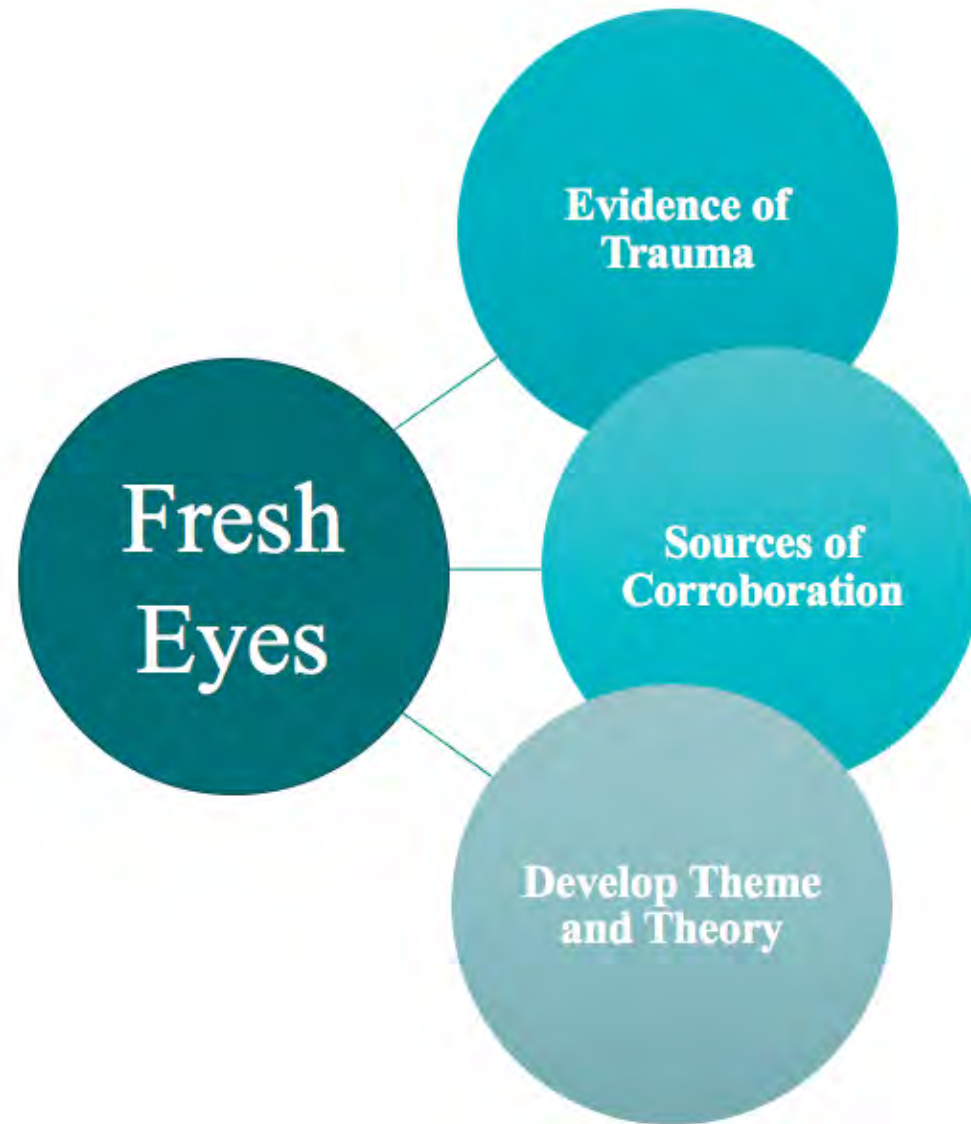
Coordination

- Review case file
 - Recorded statements
 - Police reports
 - Physical evidence
 - Case notes
 - Medical reports
- Discuss why the case went cold
 - Plan proactively to meet claim of pre-accusatorial delay
- Plan approach to renewed victim and witness contact and further evidence collection

Re-interview of Victim

- Trauma-informed approach to interviewing the victim
- Coordinate interview with allied professionals
- Elicit information about victim's experience, including physical, psychological and physiological detail
- Detail sensory, emotional, and traumatic memories
- Articulate victim's demeanor for report

Benefits



Theme and Theory

Case never
went cold for
the victim

Time did not
erase the
memory

The survivor
never forgot

Justice cannot
be delayed



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Prepare for Direct Examination

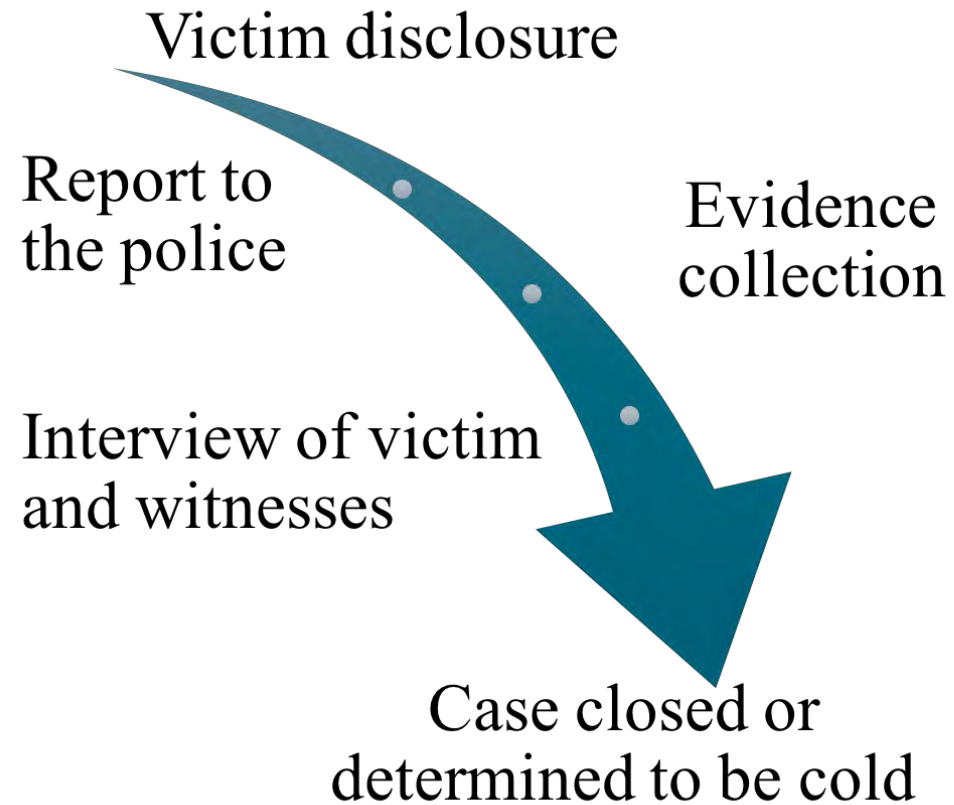
Key Information

- Detective's role in the investigation
- First investigation
- Commencement of cold case investigation
- Status of the offender during the entirety of the case
- Chain of custody

Detective's Role

- Original investigator
- Detective assigned when the case when cold
- Detective assigned to conduct additional investigation
- Detective assigned for purposes of cold case prosecution

First Investigation



Why do cases go cold?

Review cold cases with understanding of impact of trauma

The Reality

- We now know more about how trauma affects victim's of sexual assault
- Sexual assault investigations have improved over the years
- Connecting victims to services can improve the system's response to victims of sexual assault
- There have been new developments in science and technology that aid in sexual assault investigations

Commencement of Cold Case Investigation

- CODIS hit
- Newly discovered evidence or witness
 - Serial offender
- Victim-initiated case review
- Offender confession
- Review of cold case files

Status of the Offender

- Identified during initial investigation
- Suspected during initial investigation
- Arrested and released during the initial investigation
- Never identified until CODIS hit
 - Had a DNA profile, but did not have the offender's profile
 - Kit only tested recently
- Where offender is known to victim and kit not tested

Chain of Custody

- Evidence collected by detective
 - Search warrant post-CODIS hit
- Describe chain of custody
- Standard protocols
- Multiple labs
- Where evidence was collected by a non-testifying witness, focus on standard protocols and no evidence of tampering

Break in chain of custody will not necessarily lead to exclusion of evidence.

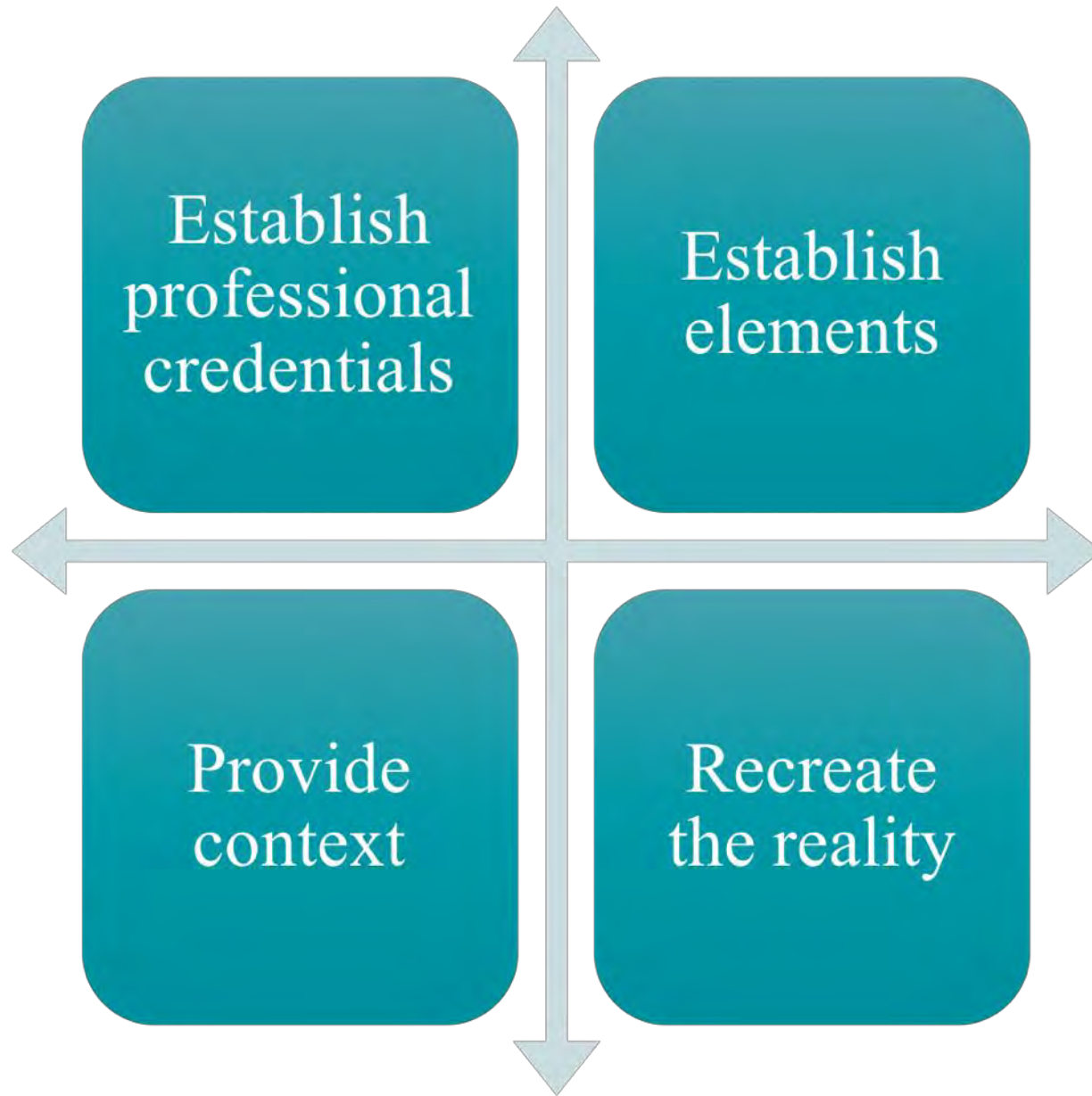
United States v. Grant, 967 F.2d 81, 83 (2d Cir. 1992)



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Direct Examination

What are the goals of
any direct examination?



Professional Credentials

- Establish career working on the behalf of victims and the community
- Acknowledge evolving policies and procedures
- Identify new research or practices
- Address prior systemic responses

Establish the Elements

- Identity of the defendant
- Collection of corroborating evidence
- Interviews of witnesses and victim
- Analysis of physical evidence
- Investigation of any defense claims, including alibi
- Evidence of trauma

Provide Context

- Tell the story of the investigation
- Establish timeline
- Describe cause and effect; e.g. “Based on X, what did you do?”
- Put the pieces of the evidence and witnesses together

Recreating the Reality

- Explain factors that affected the victim's experience
 - Assault and first investigation
 - Lack of investigation, arrest, or prosecution
 - Contact after the lapse in time
 - Re-initiation of investigation, including re-interview
- Highlight evidence of trauma
 - Emotional details

Use the Theme and Theory during Direct

Case never
went cold for
the victim

Time did not
erase the
memory

The survivor
never forgot

Justice cannot
be delayed

Experience and Training

- Highlight trauma-informed practices
- Contrast with prior practices, if appropriate
- Ask about interview techniques
- Describe service referral process
- Acknowledge and explain inconsistencies



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Detective as Expert

Expert Testimony

Fed. R. Evid. 702

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue...

Qualifying Expert

- Notice
- CV
- Expert Report
- Requisite training and experience
- Knowledge that will be helpful to the fact finder
- Best practice: pretrial determination

Areas of Expertise

- Victim reactions to trauma
- Victim behavior or demeanor
- Delayed disclosure
- Piecemeal disclosure
- Inability to participate
- Continued contact with offender
- Denial
- Minimization...



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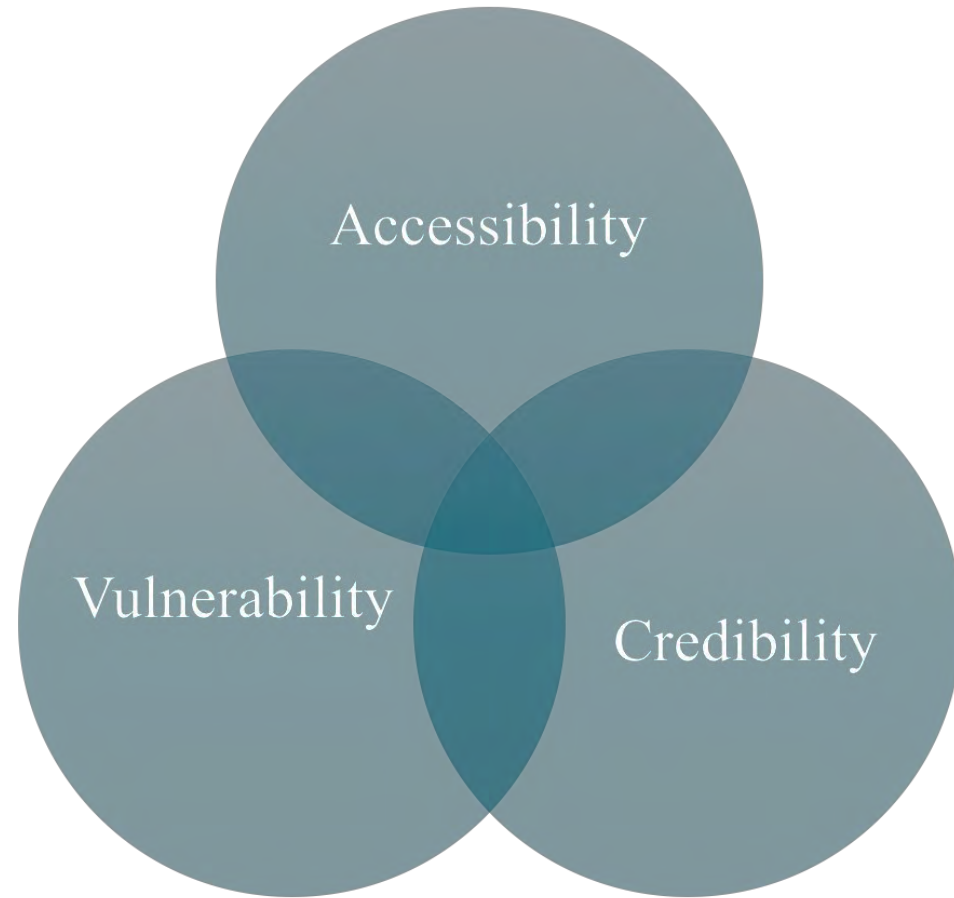
Offender Focus

Dangerousness

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

NOTE: Regardless of acquaintance or relationship, the offender was a stranger

Predatory Conduct



Going Forward

- Work with detectives from the earliest stages of a cold case investigation
- Prepare for direct examination highlighting your detective's training and experience in conducting trauma-informed investigations
- Ask questions which flow to a central theme
- Recreate the reality and urgency of the crime for the jury



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For Victims There Are No Cold Case Sexual Assaults

IT IS NEVER TOO LATE FOR JUSTICE



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