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# In the Hot Seat

## Direct Examination of a Victim in a Cold Case Sexual Assault

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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

- Coordinate with allied professionals to provide support and insight throughout the criminal justice process.
- Conduct a trauma-informed direct examination that maintains focus on the offender.
- Provide a powerful link between evidence of the victim's experience and the jury.
- Breathe life into a sexual assault cold case



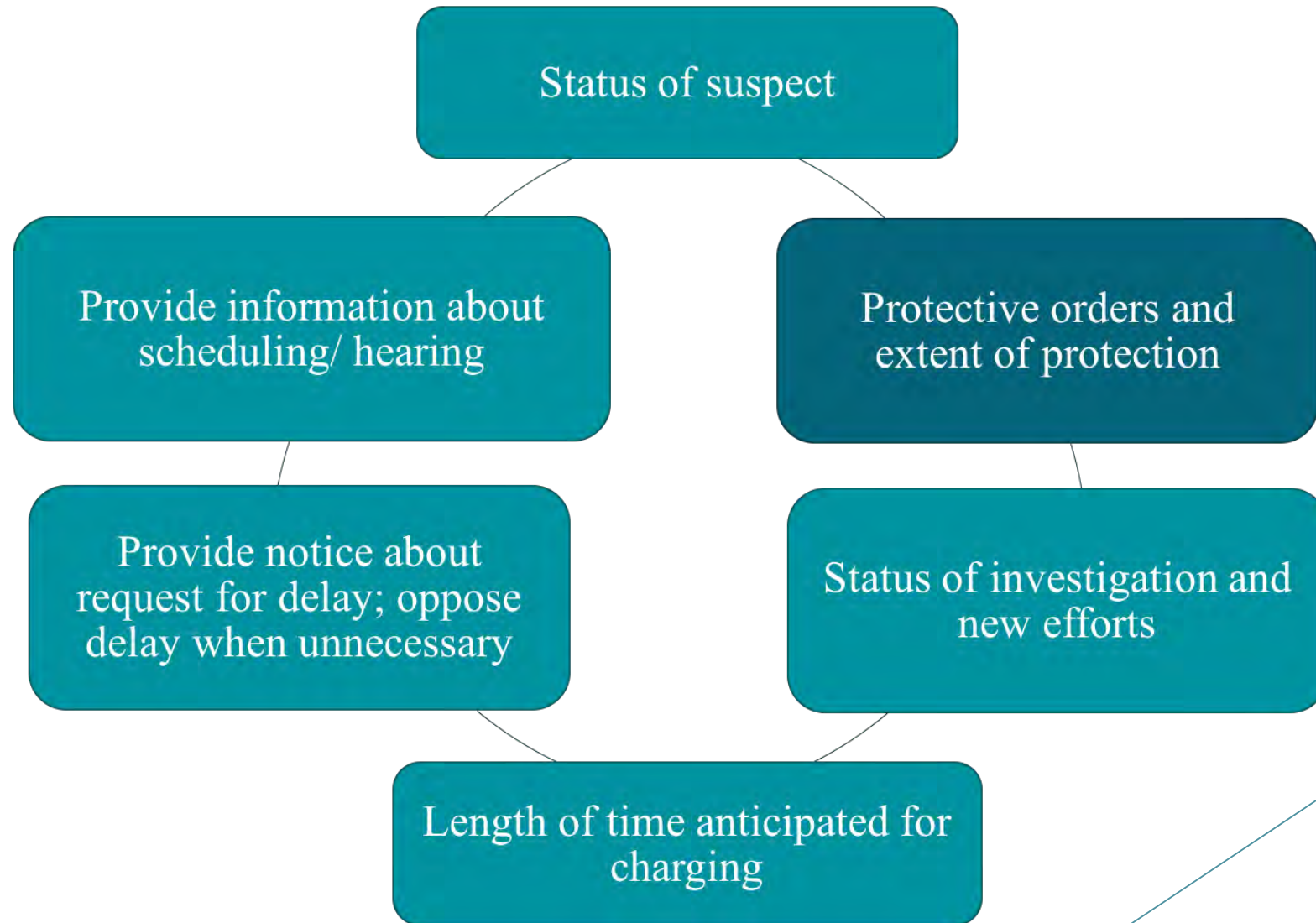
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# Prepare for Direct Examination

# Begin Preparation Early

- Collaborate with professionals from law enforcement and advocacy
- Build rapport and develop relationship with victim
- Relate to victim's experience and dimensions of victimization; provide for support
- Keep the focus on the offender
- Respect for years of waiting

# Key Information in Cold Cases




# Discuss Reason for Direct with Victim


- Although the years have passed, the crime continues to impact victim
- Fear of rapist's return
- Fear of another sexual assault committed
- Learning to live with silence
- Unanswered questions
- Looking toward victim's day in court




# Questions... and Answers




- Why did this take so long?




- Are there other victims?




- Will I have to see him again?



- What if I don't recognize him?



- What if I can't remember everything?



- After all this time, do we have a chance?



# Respond to Issues for Survivors

- Candid description of investigatory efforts
- Recognize that survivor's inability to participate earlier is part of victimization caused by offender
- Assure survivor that identification is supported through many dimensions of evidence
- Emphasize the value of residual memory
- Discuss criminal justice process in a victim-centered prosecution

# Approaching Direct Exam

- Cold case is anything but cold for a victim
- Fear of offender remains
- Passage of time increases concern for identification
- Delay over the years intensifies worry about memory

# Address Fundamentals

- Respect trauma and offer support before and throughout trial
- Photograph of offender from earlier time
- Strategize for refreshing memory and/or focus on residual memory
- Recognize that trauma impacts memory

# Courthouse Safety & Privacy

- Detail courthouse and courtroom security
- Plan for any additional resources
- Monitor any attempts by anyone in courtroom to impact survivor
- Be aware of cell recording or videos
- Address the Court immediately with any substantiated concerns
- Plan for effective response if any breach

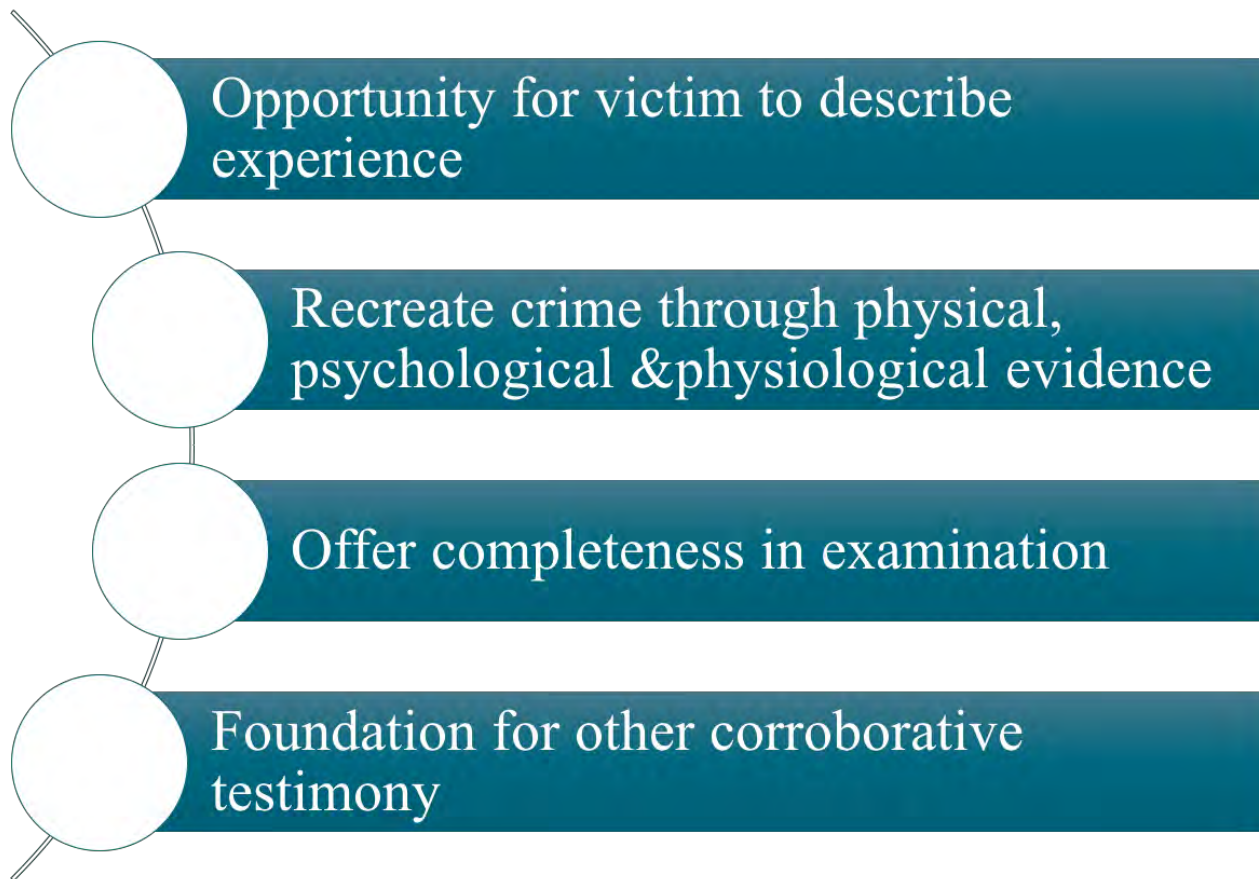


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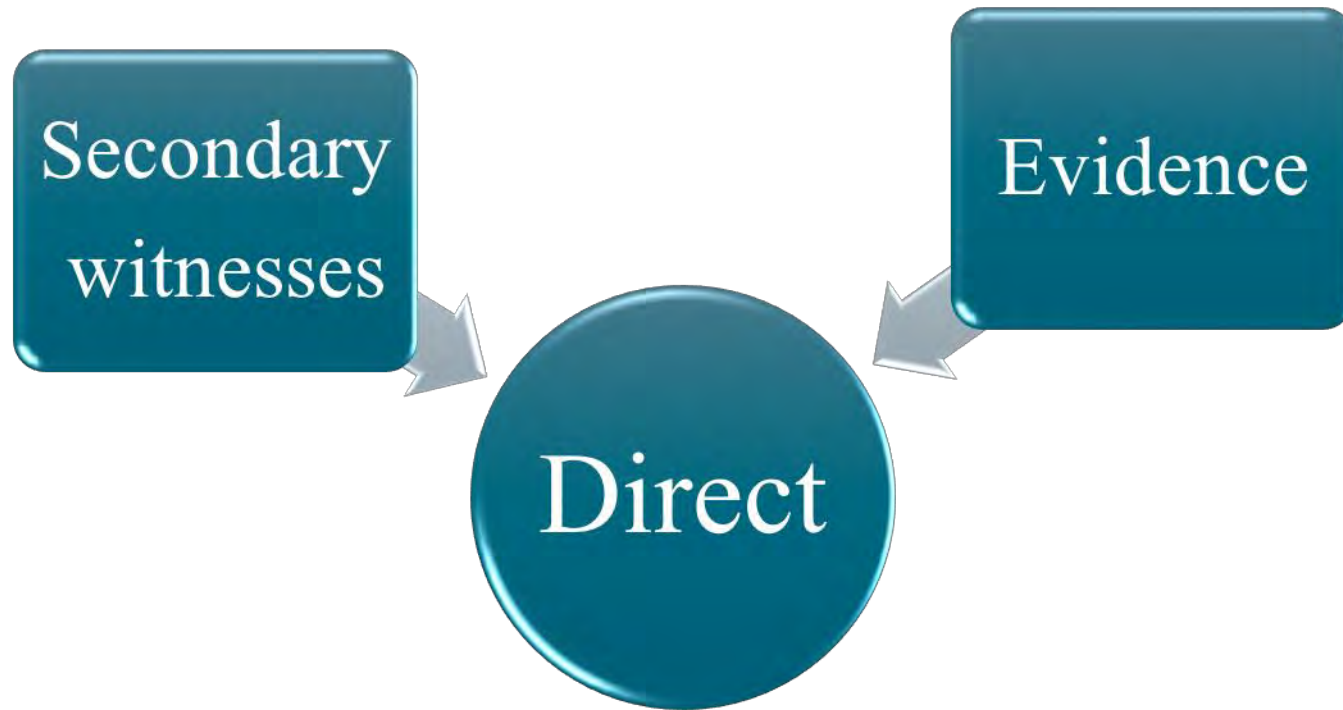
# Direct Examination

Recreate the Reality and Urgency of the Crime

# Goals of Direct Examination

- 
- Opportunity for victim to describe experience
  - Recreate crime through physical, psychological & physiological evidence
  - Offer completeness in examination
  - Foundation for other corroborative testimony

# Direct Examination is the Heartbeat of the Case





# Themes to Capture Essence of Direct Examination

Time did not  
erase the  
memory

For the  
survivor, this is  
not a cold case

The survivor  
never forgot

“On that day”

# How Themes Are Used in Direct

- Refer to date/ time frame of sexual assault in different manner than other questions
- Phrase questions with theme in mind
- Return to theme in closing argument

# Recognize Implication of Neurobiology of Trauma

- Victim may be fearful and need to avoid painful memories and further trauma
- Victims frequently disclose in layers ... and over time
- Memory may be impacted by trauma and be fragmentary
- Chronological recall of memory may not be possible

# Apply Neurobiology of Trauma

- Allow victim time to answer questions that are difficult and painful
- Thoroughly prepare to ask victim questions about information not initially disclosed
  - When she remembered
  - How she was impacted by memory
  - Whether she was asked for this information
- Ask questions following lead of victim and avoid inquiry calling for specific order

# Introduction to Trauma

- Are you able to tell us what happened on that day 20 years ago?
- Allow as much narrative as possible and appropriate
- Restate essence of answer as foundation for next question

# Introducing Victim

## Impact of Sexual Assault Across the Years

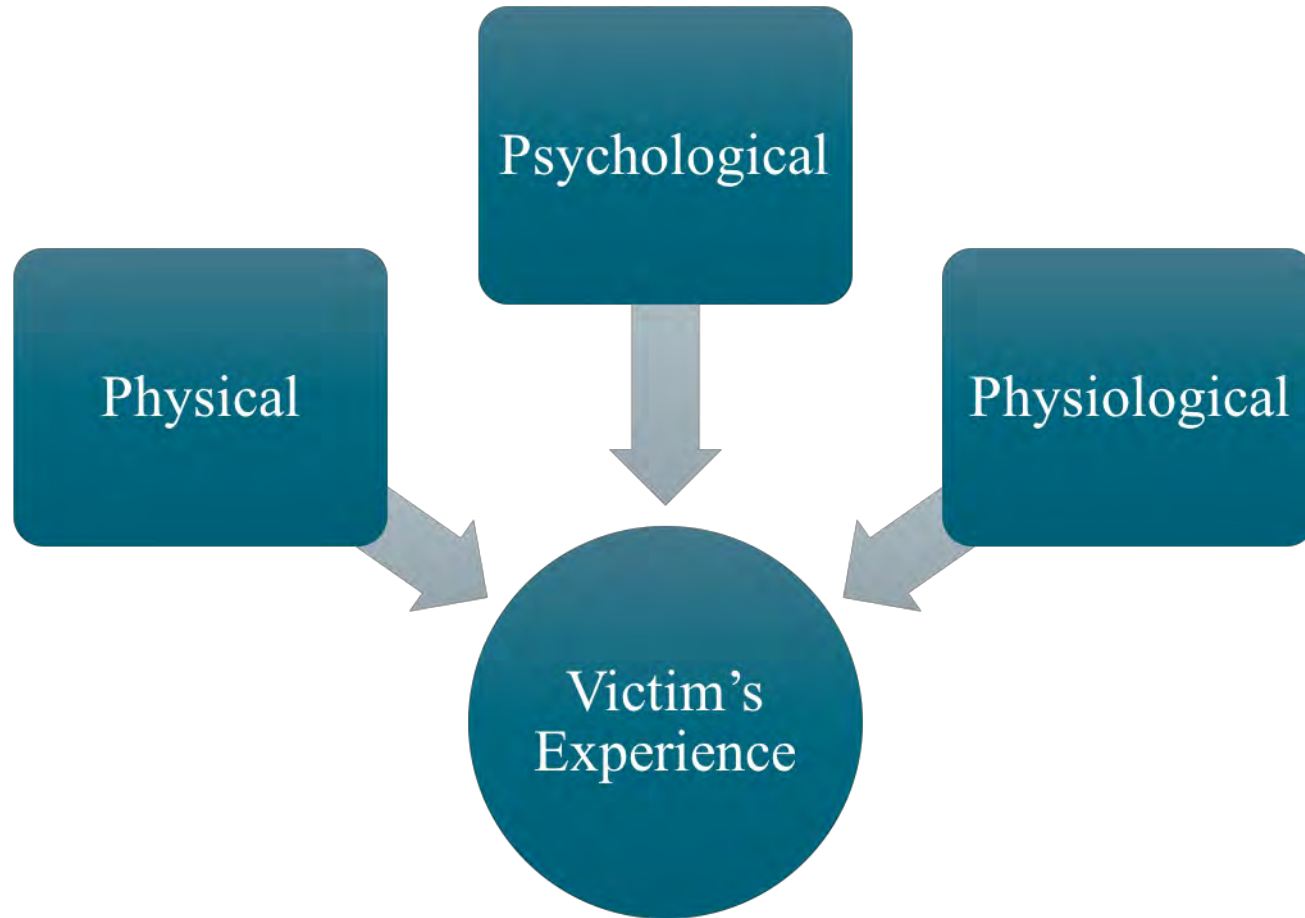
- Age at present; reference to age when crime occurred
- Identify photograph from earlier time
- Educational opportunity
- Length of time in community; inquire about absence following crime
- Occupation/ jobs and descriptions over the years, and at time of sexual assault
- Family status; any changes
- Where relevant, ask about changes after sexual assault

# Recreate the Reality of the Crime

- Questions about sensory, emotional, physiological detail of sexual assault
- Questions about memory of peripheral details, which may be corroborated by secondary witnesses
- Focus on conduct of the offender
- Follow the narrative of the victim



# Evidence



# Accessing Evidence

## Sensory details

Sight

Hearing

Touch

Taste

Smell

## Emotional response

How did you feel?

What did you think then?

## Physiological effects

How did that affect you?

# Questions about Identification

- Questions about identification are important whether or not there is DNA
- Offer montage if used by law enforcement earlier and there was an initialed identification
- Offer photograph of defendant if obtained/ authenticated by law enforcement
- If victim cannot identify, DNA provides ultimate identification
- Explain impact of trauma, physical changes from time

# Memory That Never Faded

- Offer evidence of notification to complete time line from sexual assault to present
- What information was provided to the victim?
- Previous case contact(s) with law enforcement
- Current case contacts with law enforcement, from notification to interview

# Strategic Introduction of Notification Evidence

- *Voir dire* questions about experience of waiting for news that did not come
- Part of timeline for survivor's experience of aftermath of sexual assault
- Law enforcement testimony regarding contact with survivor
- Aftermath of the sexual assault
  - Years of waiting
  - The day s/he was contacted
- Instill the urgency of a cold case through evidence of notification

# Connection With Jury



# Peripheral Detail

- Questions about memory of peripheral details
- Who was there?
- Time of day/ night
- Experience of passage of time/ time standing still
- Contextual sounds/ sights /smell
- Presence/ absence of peripheral detail may provide evidence of trauma



# After Disclosure...

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

# Questions About Subsequent Experience

Contact with criminal justice and other professionals including:

- Law enforcement, timing, follow-up, duration
- SANE or other medical personnel; lay foundation for SANE testimony
- If there are inconsistencies between earlier statements and current statements, these can be explained

# Initial Disclosure

- Who did s/he disclosed to?
- Approximately when? Does it seem like X years have passed by?
- Recollection of details of the contact
- Be prepared to explain inconsistency due to question(s) asked in earlier time/ trauma
- There may also be secondary corroboration

# Strategies for Clarifying Inconsistency

- Establish when interview took place
- Focus on timeline and context
- How did victim feel during this time?
- Review which questions were asked and not asked
- Questions should be asked of both law enforcement, if available, and victim



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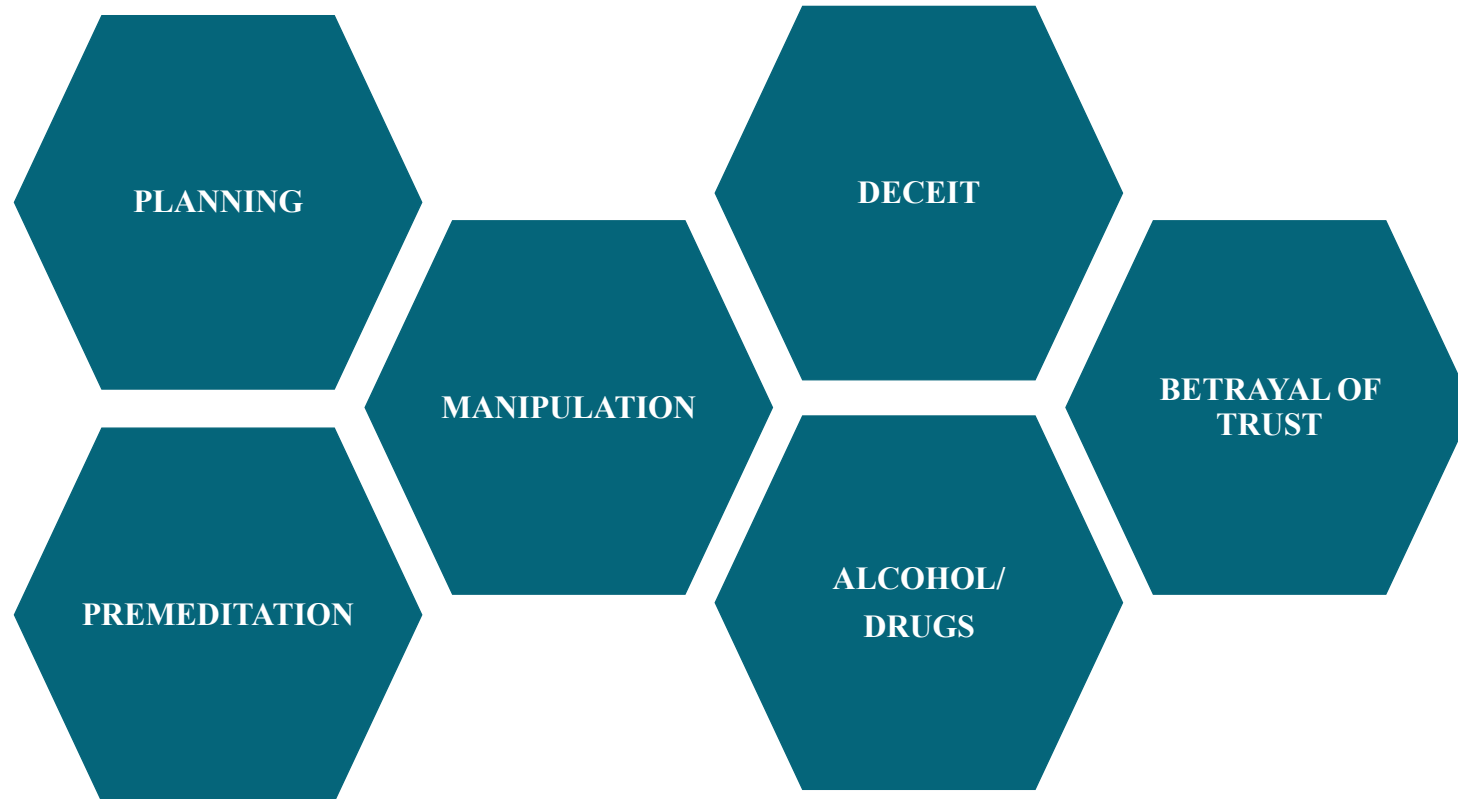
# Offender Focus

# Recognize Dangerousness

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

*Regardless of acquaintance or relationship, the offender was a stranger*

# Elicit Evidence of Predatory Behavior





# Planning and Premeditation

- Whose idea was it for you to ride home with the defendant?
- When was the plan first mentioned?
- Who decided on having another drink?
- How did he get your house key?
- Whose decision was it for you to leave the party?

# Remember

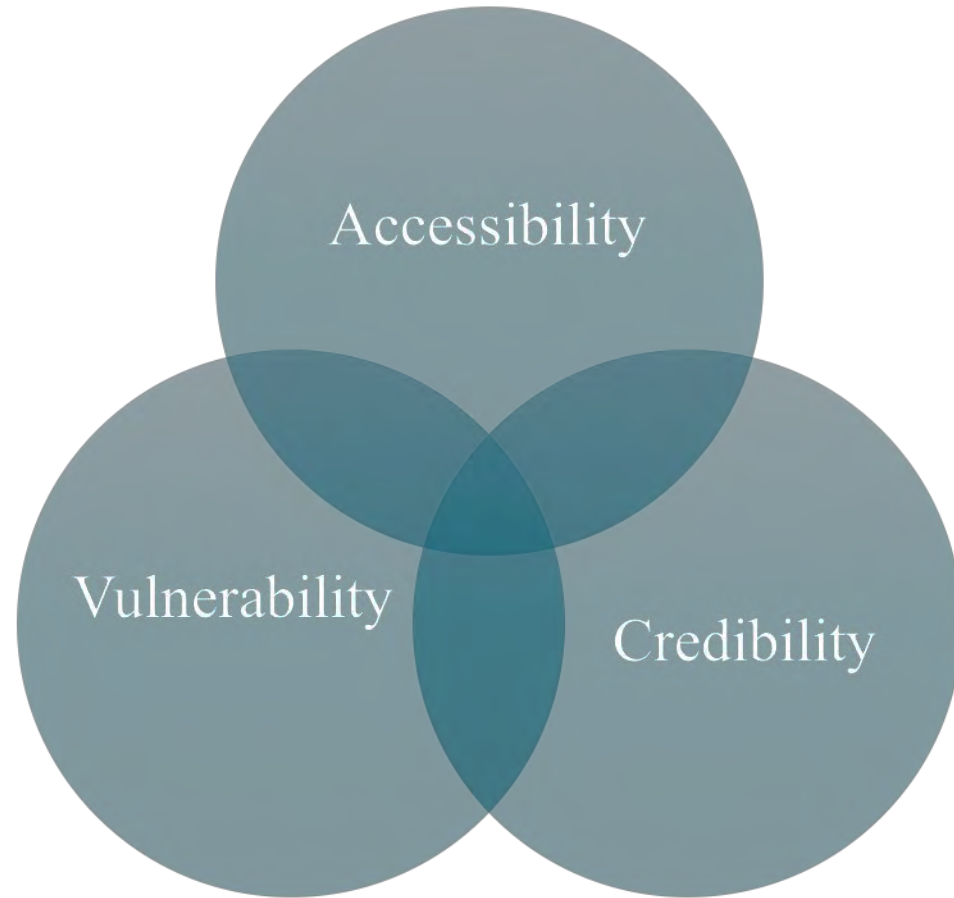
**Offenders' strategy** creates in victims the symptoms later used against them

- Deception
- Emotional instability
- Memory problems
- Substance abuse

# Overcoming Consent Defense

- Phrase questions with focus on offender's conduct/behavior
  - When he took your keys, how did you feel?
- Establish victim was without control in the circumstances
- Elicit information about trauma
  - What did you think when you saw him in your doorway?
- Even with alcohol on board, key memory of crime remains

# Predatory Conduct



# Synthesize Argument

- Victim was accessible to the defendant
- He had control
- He planned the scenario: isolation, coercion, use of alcohol
- Victim's vulnerability was clearly known to defendant
- Defendant used vulnerability to create issues of credibility
- Evidence clearly establishes the victim's accessibility, vulnerability, and credibility

# Return to Timeline

- Summarize evidence of earlier crime on that day
- Emphasize years of waiting
- Describe investigatory efforts
- Return to testimony on direct with detail of experience of victimization caused by defendant

# Direct Examination

For the Victim

- Victim's right to justice
- Victim's safety
- Community safety
- Value in leadership and doing the right thing

# Going Forward

- Develop relationship with victim and offer support from notification through trial
- Prepare for direct examination as long anticipated opportunity to secure accountability
- 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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THE PROSECUTORS' RESOURCE  
ON VIOLENCE AGAINST WOMEN

**Patricia Powers**  
Attorney Advisor

1100 H Street NW, Suite 310  
Washington, DC 20005

P: (202) 596-4230

F: (202) 393-1918

[ppowers@aequitasresource.org](mailto:ppowers@aequitasresource.org)

[www.AEquitasResource.org](http://www.AEquitasResource.org)