

What We Do	
 Resources Create, research, and curate publications, statutory and case law compilations, and other resources that strengthen prosecution practices	 Consultations Offer on-demand 24/7 consultations with our seasoned prosecutors to answer case-specific inquiries, discuss strategy, conduct research, and recommend data-driven solutions
 Training Events Develop curricula and facilitate a wide range of specialized in-person and web-based trainings designed to empower prosecutors and allied professionals	 Partnerships & Initiatives Provide long-term support in building frameworks for coordinated responses to gender-based violence including data collection and analysis, task force development, and training

Support

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Objectives

- Conduct an experience-based and impactful voir dire.
- Guide jury's response to evidence, from jury selection through closing argument.
- Identify issues which require expert testimony, and present this testimony effectively at trial.
- Employ themes that place evidence in the context of common experience.

"She didn't act like a victim."

"If she didn't bother to show up for the case how can I believe any of this happened?"

"Why would she stay in a relationship like that?"

"If someone did that to me, I'd call the police right away."

Encapsulate evidence in a theme and introduce it during jury selection


Turn common challenges into strengths

Keep the focus on the offender

Establish a connection between the jury and the evidence

The Basics

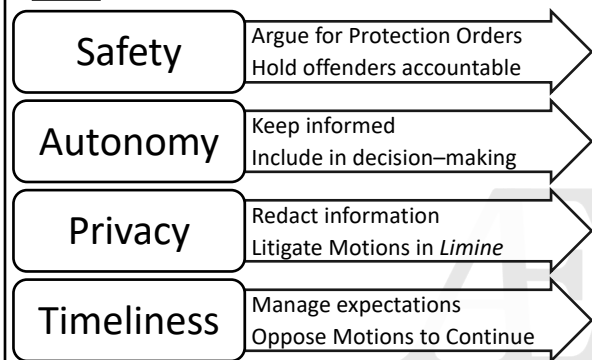
- Support the victim
- Collect evidence and get it into the trial



Victim-Centered

- Recognize trauma's impact on DV victims
- Acknowledge that our decisions deeply impact victims' lives
- Consider victims' rights, safety, privacy, and well-being as paramount throughout the investigation and prosecution
- Provide culturally appropriate, trauma-informed services independent of victim participation

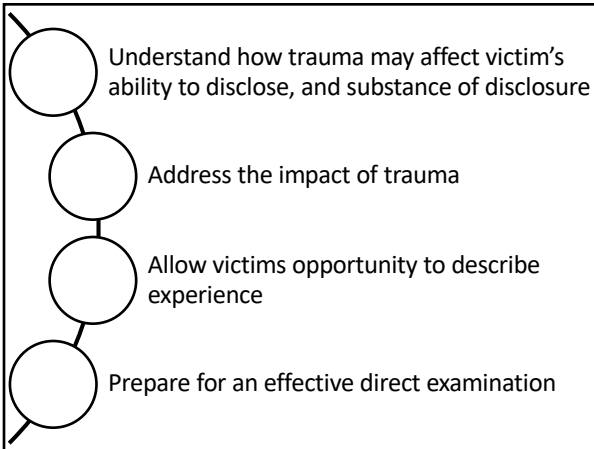
Support the Victim



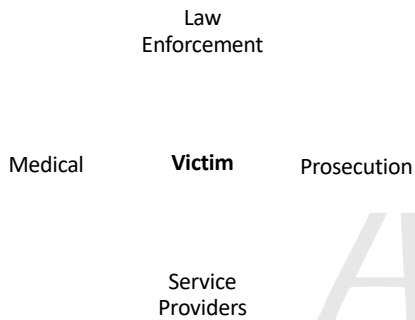
Beyond Prosecution



Trauma-informed Interview



Domestic Assault Response Teams



Building the Evidence-Based Case

Building and presenting a case in which prosecutors hold offenders accountable for their behavior with or without victim testimony.

Evidence Collection

911 Call Statements

- Victim
- Witnesses
- Offender

Crime Scene

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

Photos of Victim

- Injuries
- Clothing
- Demeanor

Photos of Defendant

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

Medical Records

Historical Evidence (404(b))

- Police reports
 - Offender
 - Victim
 - Location
- Criminal histories
- Child Protection Services
- Case files

- Medical records
- With permission, counselors or shelter workers
- Statements
 - Family
 - Friends
 - Co-workers
- Prior relationships

Proper Purposes Under 404(b)

Motive Showing history of possessiveness/ jealousy	Opportunity Access to weapon
Intent Circumstantial evidence of mens rea	Prep, Plan, Knowledge Efforts to isolate, groom victim vulnerabilities
Identity	Absence of Accident/ Mistake Prior acts showing current act didn't "get out of hand"

Ongoing Investigation

- Social media
- Consistent contact with victim and/or advocate
- Follow-up with family, friends, and neighbors
- Visitor logs and jail phone calls

"Nontestimonial" Hearsay

Whorton v. Bockting, 549 U.S. 406 (2007)

- Sixth Amendment Confrontation Clause does not come into play
- Admissibility depends solely on jurisdiction's hearsay rules

“Testimonial” Hearsay

Crawford, 541 U.S. 36

Admissible ONLY where:

- Declarant is available for cross-examination at trial, OR
- Prosecution shows that the declarant is unavailable AND defense had prior opportunity to cross-examine, OR
- Forfeiture by Wrongdoing

Hearsay Exceptions

Va. Sup. Ct. R. 2:803

- Excited Utterance
- Present Sense Impression
- Then-existing mental, emotional or physical condition
- Statements for purposes of medical treatment

Preserve Testimony with Opportunity for Cross-Examination

- Prior trial testimony
- Preliminary hearing testimony, provided opportunity for cross is sufficient
- Deposition, under rules permitting
- Grand jury proceedings do NOT afford opportunity for cross

To whom might the witness have spoken or confided?

- Friends/Family
- Employer / co-workers
- Landlord
- Neighbors
- Professionals (medical or others)
- 911 Call

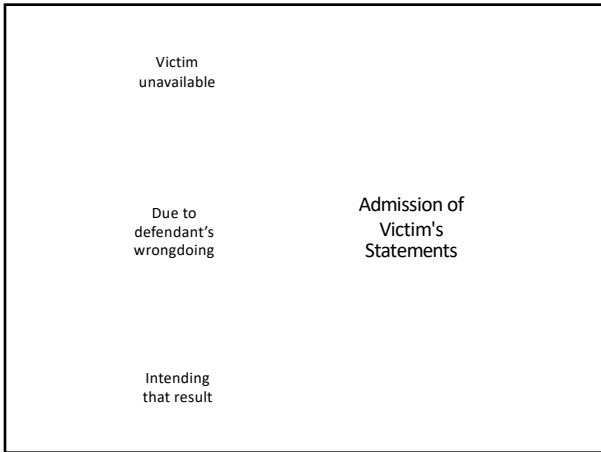
Officers, victim advocates, and prosecutors can ask:

“Have you talked to anyone else about this incident, either before or after you spoke to the police?”

Document evidence of an ongoing emergency

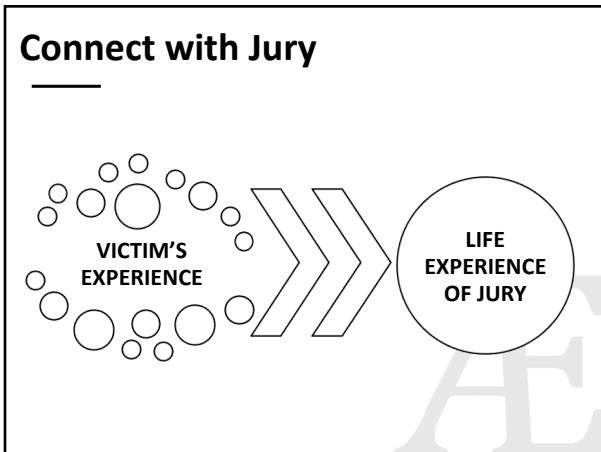
Forfeiture by Wrongdoing

- Defendant has the right to confront witnesses against him/her
- Right can be **forfeited** if the witness cannot be confronted due to the defendant’s intentional **wrongdoing**



Voir Dire
To speak the truth

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Juror Questionnaire

- Determine if allowed in jurisdiction
- Can save time and inform *voir dire*
- Vary in length
- May lead to agreed strikes of jurors, *e.g.* illness, pending surgery
- Defendant must be present if any panelist struck by court or by agreement

Juror Questionnaires

Key Information

Occupation
(in or outside
of home)

Professional
responsibilities

Family
status

Educational
background

Prior
jury
service

Community
involvement

Information
about case from
media, social
commentary

Defense Strategy

- Listen closely
- What is the defense theory and how are they advancing it?
- Do defense questions require subtle response?
- Incorporate additional questions, as needed

Primary Purposes

Uncover whether grounds for cause to challenge exists

Determine if the juror has expressed a definite opinion as to the guilt or innocence of the accused as to any offense charged

Determine if the juror could fairly follow the law and apply it to the facts of the case

Obtain information for the intelligent exercise of peremptory challenges

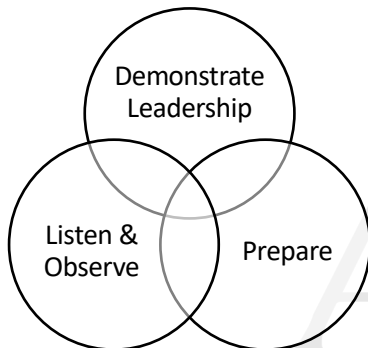
Secondary Purposes

Building rapport and credibility

Educating panel and defuse weaknesses

Establishing your theme and theory

Building Rapport



Juror Confidence

- Jurors may lack confidence in the criminal justice system
- Over 70% of jurors surveyed believed that a trial is a moral arena, in which it is more important to do the right thing than the legally correct thing

AM. BAR ASSN. & JAMES W. McELHANEY,
TRIAL NOTEBOOK, 45 (4th ed. 2006)

Forms of Questions

Entire Panel

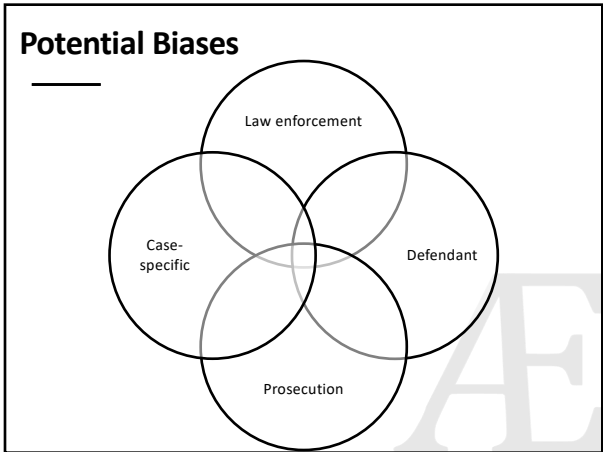
- Questions that can be answered "yes" or no"
- Follow up questions; e.g., "Does anyone think differently?"
- Use "we" and "us" if possible to demonstrate shared goals

Individual

- Leading v. Non-Leading
- Leading question can confirm basis for cause
- Avoid appearing to cross-examine jurors
- Open-ended questions can elicit more information, but be careful not to taint entire panel

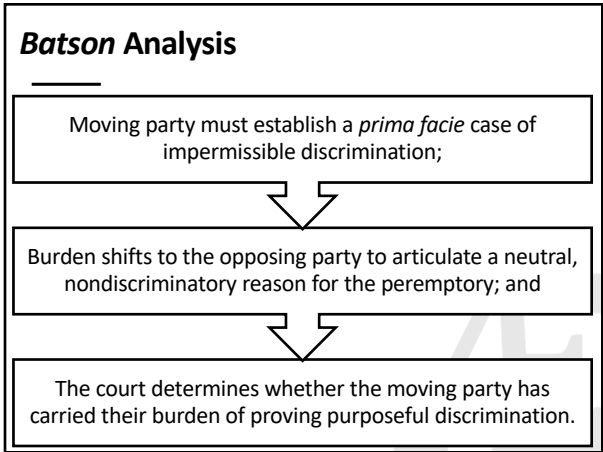
Individual Voir Dire

- Protect the privacy of jurors
- Request that personal questions be asked outside of presence of panel and in open court, as permitted
- Members of your panel will be survivors
- Consider making referrals available



Peremptory Challenges

- Each side entitled to peremptory challenges
- No explanation is necessary, but ...
- A peremptory challenge may not be used to impermissibly discriminate against a member based on race or gender
 - Race: *Batson v. Kentucky*, 476 U.S. 79 (1986)
 - Gender: *United States v. Witham*, 47 M.J. 297 (C.A.A.F. 1997)



Laying the Foundation for the Victim's Testimony

Experiential Questions

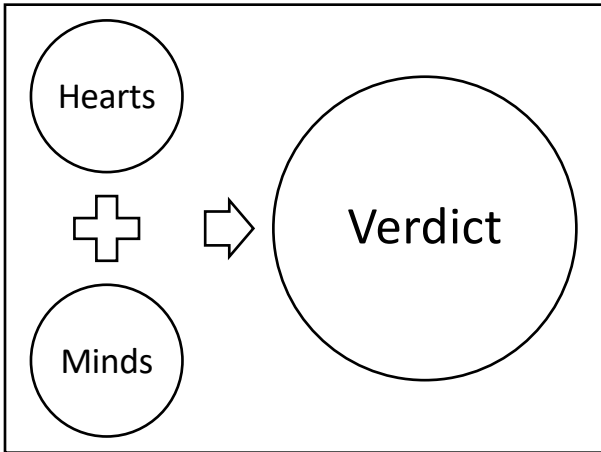
Ask about personal experience
(self, friends, family)

Get appropriate details

Establish if juror can be fair
and impartial

Potential Issues

- Adherence to myths
- Victim-blaming attitudes
- Criminal justice or law background
- Unrealistic expectations
- Similar family background
- Prior knowledge of the offense



Theory drives the case
Theme holds the case together

Prosecution Theory

- Develop a theory of the case after reviewing all evidence and speaking to all witnesses
- Be able to plainly explain theory to a jury
- Use colleagues and lay people as sounding boards

Themes

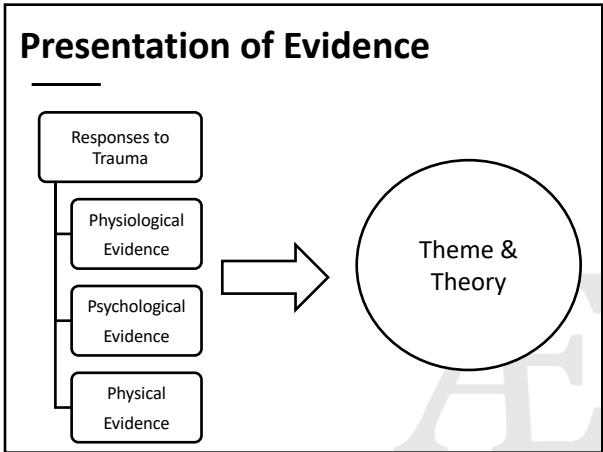
- Plan ahead
- Short, succinct and consistent with theory
- Be flexible
- Incorporate into voir dire by crafting questions using carefully selected words
- “This is a case about power and control.”

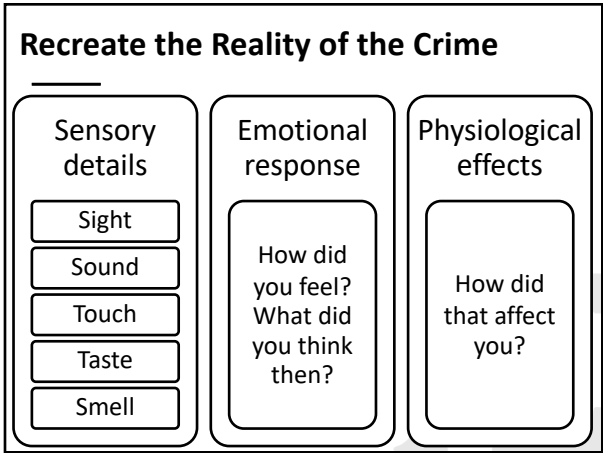
Opening Statement

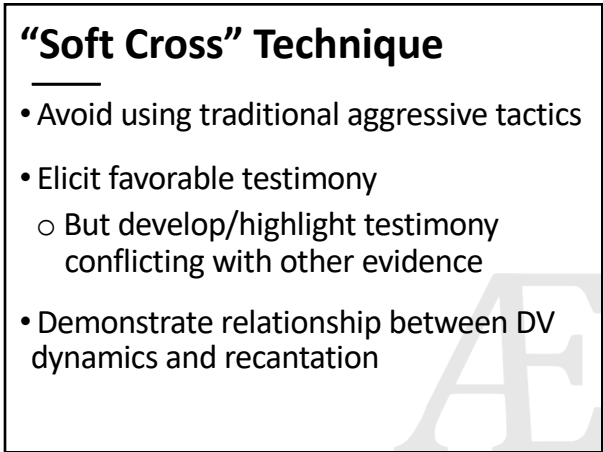
- Explain your theme and theory before the jury hears any other evidence
- Undercut the defense theory
- Create empathy for the victim
- Set the stage for your closing argument
- Explain the use of strong language

Start strong!

- Never read your opening
- Be a storyteller and speak in plain English
- Explain the essentials, but do not give excessive details
- Do not overstate your case or promise something you cannot deliver







Expert Testimony

Physical Evidence Effects of Trauma

Victim Responses



Proper Subject of Expert Testimony

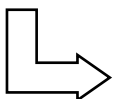
Beyond the common ken and understanding of the average juror

Reliable

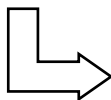
Assists the jury in understanding the evidence

Have Expert Describe Victim Reactions

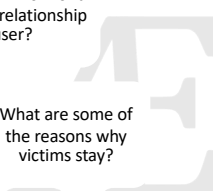
Are you familiar with victim responses to the trauma of intimate partner violence?



Is it common or uncommon for a victim to remain in a relationship with their abuser?



What are some of the reasons why victims stay?



Summation



Be Argumentative

- It's an argument!
- Final opportunity to convince the jury of that you have met the burden of proof
- Explain why the prosecution's theory of the case is correct and supported by the evidence

Closing

- Reference the most compelling evidence
- Structure your argument
 - Lead off with a story, present the facts, clarify law and verdict
- Review the jury instructions
- Be a story teller
- Use your voice, eye contact, and mannerisms to highlight your strengths

Content

- DO: Talk about reasonable doubt
 - You know the defense will
- DO: Explain credibility and how it is determined
- Refer to jury instructions where appropriate

Going Forward

Conduct an experience-based voir dire.



Guide jury's response to evidence, from jury selection through closing argument.


Identify issues which require expert testimony, and present this testimony effectively at trial.

Employ themes that place evidence in the context of common experience.

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