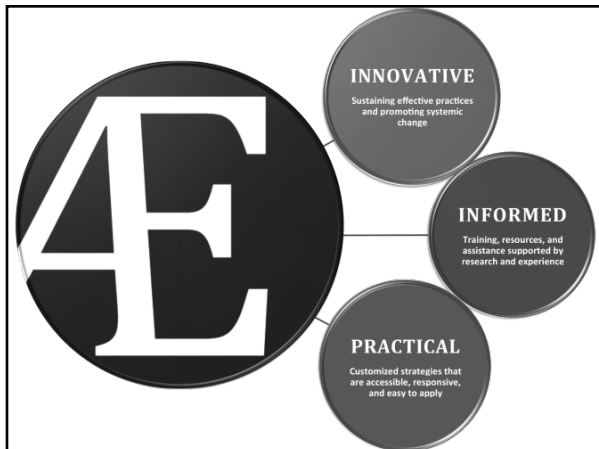


STRENGTHENING PROSECUTION

Improving Our Response to Domestic and Sexual Violence Cases

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN



AEQUITAS

AVAILABLE 24/7 VIA TELEPHONE AND/OR EMAIL

TECHNICAL ASSISTANCE

- Case consultation
- Policy review
- Legal research
- Motions prep
- Identification of experts
- Peer review

TRAINING

- Live
- Web-based

RESOURCES

- Recorded webinars
- Model briefs, motions, expert reports, etc.
- Sample Voir Dire questions, expert examinations, etc.

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

SUPPORT

This project was supported by Grant No. 2015-TA-AX-K051 awarded by the U.S. Department of Justice, Office on Violence Against Women (OVW). The opinions, findings, conclusions, and recommendations expressed in this presentation are those of the authors and do not necessarily reflect the views of the OVW.

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

FAIR USE

This presentation includes the creative work of others. This property is being used by permission or under claim of "fair use" (17 USC 107); further use or distribution is prohibited.

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

OBJECTIVES

- Collaborate to develop best practices for investigating and trying domestic and sexual violence cases
- Engage in trauma-informed investigation and prosecution
- Recreate the reality of the crime
- Educate judges and juries about victim behavior

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

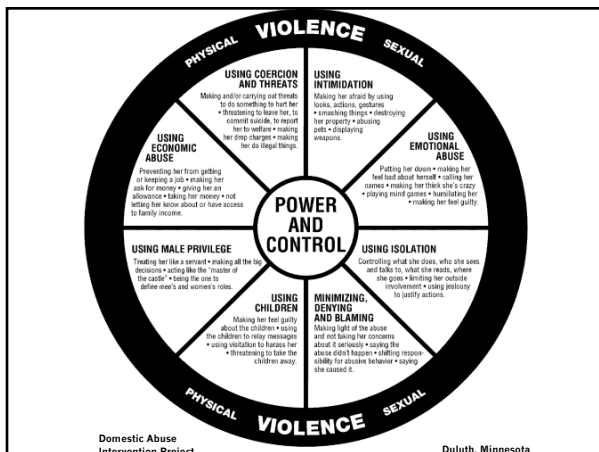
WHY ARE DOMESTIC AND SEXUAL VIOLENCE CASES DIFFERENT FROM OTHER CASES?

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

TRAUMA



AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN



911 CALL



AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

REACTION

- What challenges does the recording present?
- What advantages does the recording provide?

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

HOW DO WE OVERCOME THE CHALLENGES DOMESTIC AND SEXUAL VIOLENCE CASES PRESENT?

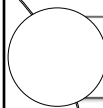
AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

WORKING COLLABORATIVELY

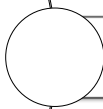
and Sharing Expertise

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

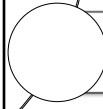
TRUE COLLABORATION



Provides victim with support, safety planning, and focus on privacy



Demonstrates systematic engagement and responsiveness



Encourages communication among professionals and input of expertise

PARTICIPATION

- Be present and open
- Listen
- Learn distinct roles
- Accept other opinions
- Identify gaps and challenges
- Analyze successes
- Educate others
- Encourage input
- Commit to sustainability

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

COLLABORATION HELPS BUILD STRONGER CASES

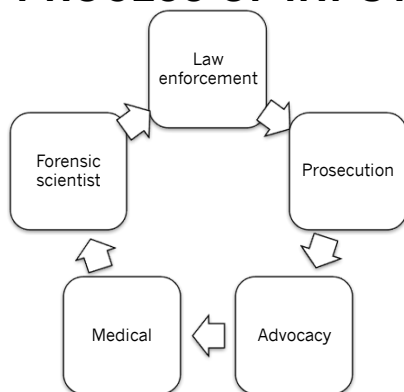
AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

UNDERSTANDING INDIVIDUAL ROLES

And what each
professional brings to the
team

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

PROCESS OF INPUT



ADVOCATES AND CONFIDENTIALITY

- Provide confidential crisis intervention, support, and referrals
- Exist solely to be survivor-centered and trauma-informed
 - Ensures access to resources
 - Increases participation of victims
 - More vigorous investigation and prosecution of cases

Confidentiality is critical to advocates' ability to serve victims

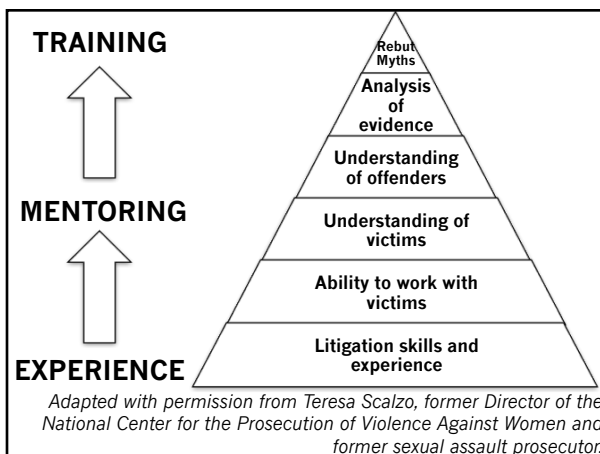
AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

PROSECUTORS: ETHICS

BRADY v. MARYLAND, 373 U.S. 83 (1963)

- Prosecutor discloses reports and evidence to the defense
- Prosecutor has duty to disclose information that may be material/exculpatory

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN



VICTIM-CENTERED

- Awareness of the central role victims/ survivors play in the process and consideration of their safety, privacy, and well-being throughout the process
- Ensures access to services and information

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

OFFENDER-FOCUSED

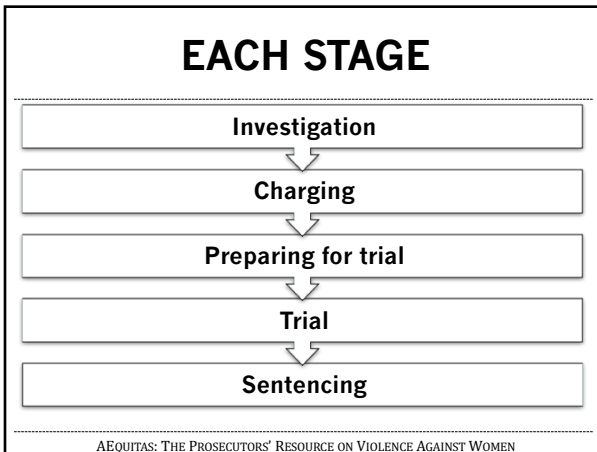
- Acknowledgment that offenders purposefully, knowingly, and intentionally target victims whom they believe they can successfully assault
- Keeps the focus on the actions, behaviors, characteristics, and intent of the offender

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

TRAUMA-INFORMED APPROACH

**Implementing Strategies
at Each Stage**

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN



“Trauma is an emotional response to a terrible event like an accident, rape, or natural disaster. Immediately after the event, shock and denial are typical. Longer term reactions include unpredictable emotions, flashbacks, strained relationships, and even physical symptoms like headaches or nausea.”

Trauma, AMERICAN PSYCHOLOGICAL ASSOCIATION,
<http://www.apa.org/topics/trauma/index.aspx> (last visited Aug. 13, 2014)

EFFECTS OF TRAUMA

- ◉ There is no “blue print” of how trauma impacts an individual
- ◉ Cognition and behavior are affected
- ◉ Recognizing *common* reactions to trauma can assist us in responding to victims of sexual assault and domestic violence

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

TRAUMATIC VICTIMIZATION MAY CAUSE

- Lack of physical resistance
- Crying, laughing, flat affect
- Calm or unemotional responses
- Inconsistent memories
- Delayed disclosure
- Piecemeal disclosure
- Self-blame
- Shame/ embarrassment

See, e.g., EDNA B. FOA AT AL., COMMON REACTIONS TO TRAUMA,
NATIONAL CENTER FOR POSTTRAUMATIC STRESS DISORDER

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

DOMESTIC VIOLENCE VICTIMS MAY

- Stay with abuser
- Minimize abuse
- Fail to appear in court
- Refuse to testify
- Recant original complaint
- Testify on behalf of abuser

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

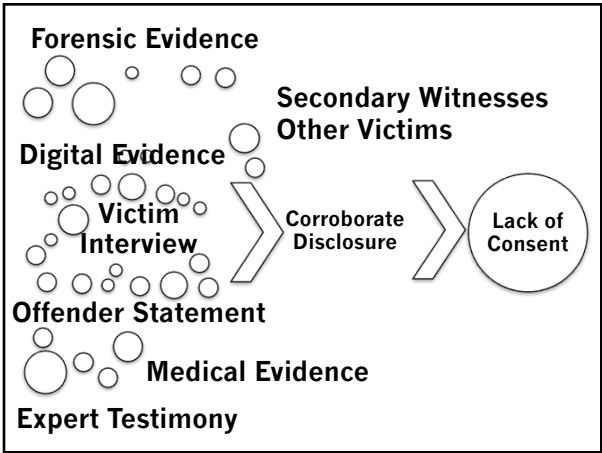
REMINDER

- Offender inflicted trauma on victim
- Offender is responsible for victim's reaction to that trauma; jury needs to understand this
- Determine if expert testimony is needed
- Develop strategies for presenting victimization to a jury

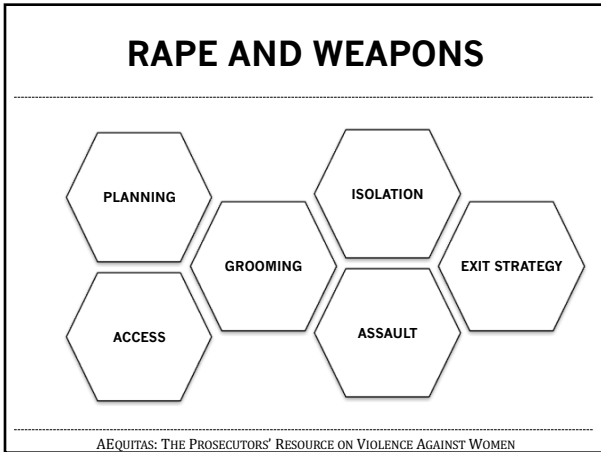
AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

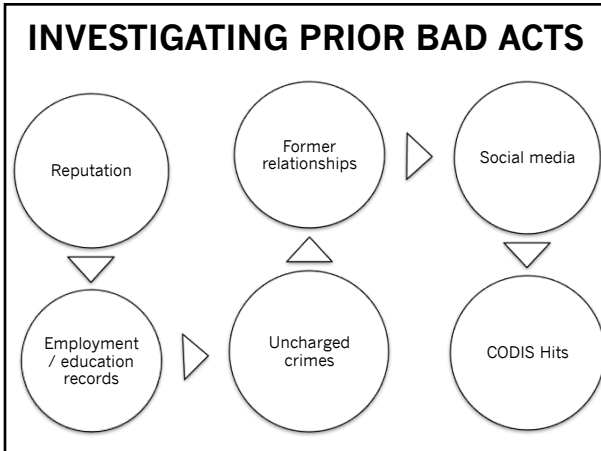
THOROUGH INVESTIGATION

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN



- Physical evidence
- 911 tapes
- Crime scene photographs, videos, or diagrams
- Documentation or photos of injuries
- Medical records (both victim's and defendant's)
- Witnesses (e.g. relatives, neighbors, children)
- Written/recorded statements
- Admissions/Jail calls
- Witness Statements
- Victim's Statements
- Social media
- Relationship History
- Prior relationships
- Prior convictions/acts
- Weapons/firearms
- Firearm surrender protocol
-





TRAUMA-INFORMED INTERVIEW

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

Understand how trauma may affect victim's ability to disclose, and substance of disclosure

Address the impact of trauma

Allow victims opportunity to describe experience

Prepare for an effective direct examination

VICTIM INTERVIEW

- Neurobiology of trauma
- May be fearful, embarrassed
- May fear public attention
- Frequently disclose in layers

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

EVIDENCE OF TRAUMA

- Sensory impressions
- Emotional/ physiological details
- Lack of consent/ inability to consent and circumstances
- Coerced by reason of mental disorder, drugs, alcohol
- Leads for corroborative evidence
- Connection with the jury

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

TRIAL CONSIDERATIONS

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

PRETRIAL MOTIONS AND COLLABORATION

PROTECT THE VICTIM

Rape shield

Motions to quash

REMAIN OFFENDER-FOCUSED

404(b) motions

PREVIEW THE EVIDENCE

Motions *in limine* to admit or exclude evidence

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

OFFENDER-FOCUSED THEMES

PREYING ON VULNERABILITY

POWER AND CONTROL

FRIEND BECOMES A STRANGER

ALCOHOL AS A WEAPON

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

THEME AND THEORY

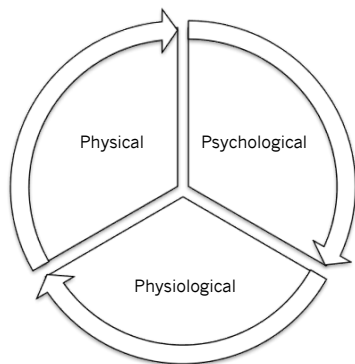
<input type="radio"/>	Voir Dire
<input type="radio"/>	Opening
<input type="radio"/>	Direct
<input type="radio"/>	Cross
<input type="radio"/>	Closing

RECREATE THE REALITY

When he held his hand to my throat, I could feel it on the other side. I thought I would die. I was sick before it went dark.

These questions may trigger traumatic memories

EVIDENCE



RECREATE THE REALITY

Sensory details

Sight

Hearing

Touch

Taste

Smell

Emotional response

How did you feel?

Physiological effects

How did that affect you?

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

EXPLAINING VICTIM BEHAVIOR

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

ADMISSIBILITY OF EXPERT TESTIMONY

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

TAYLOR v COM.

21 VA. APP. 557 (1996)

Licensed clinical social worker's expert testimony that alleged rape victim suffered from posttraumatic stress disorder was not impermissible comment on victim's credibility; social worker testified only as to history of victim's symptoms, clinical observations of victim, and diagnosis of victim's emotional disorder based upon symptoms

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

TAYLOR

21 VA.APP. 557

Social worker did not testify about any details of attack, give victim's version of offense, or testify that she believed victim was telling the truth, social worker merely testified that, based on her observations, victim was suffering from posttraumatic stress disorder caused by some traumatizing event

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

USE OF EXPERT TESTIMONY

VA RULE 2:702

(i) In a civil proceeding, if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

USE OF EXPERT TESTIMONY

VA RULE 2:702, CONT'D

(ii) In a criminal proceeding, expert testimony is admissible if the standards set forth in subdivision (a)(i) of this Rule are met and, in addition, the court finds that the subject matter is beyond the knowledge and experience of ordinary persons, such that the jury needs expert opinion in order to comprehend the subject matter, form an intelligent opinion, and draw its conclusions.

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

VICTIM BEHAVIOR

PEOPLE v. TAYLOR, 552 N.E. 2D 131, 136 (1990)

Because cultural myths still affect common understanding of rape victims and because experts have been studying the effects of rape on its victims since the 1970s, we believe that patterns of response among rape victims are not within the ordinary understanding of the lay juror."

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

THE DANGER ZONE

An expert CANNOT:

- Testify about a particular witness's credibility – cannot be a human lie detector
- Testify as to whether abuse did or did not happen

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

SEXUAL ASSAULT KITS

AND COLD CASES

- Passage of time and its impact
 - Evidence
 - Victim/ witnesses
- Pretrial due process claims
- Trial strategies to meet challenges in presentation of evidence

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

BE PREPARED

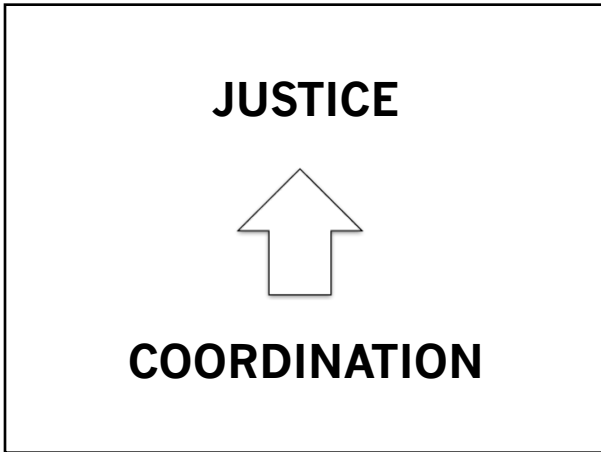
- Develop protocol for triage of incoming cases
- Understand danger of offenders known and unknown to victim
- Renewed investigation and collaboration
- Network of victim service providers
- Victim Notification

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN

OTHER ISSUES

- | | |
|---|---------------------------------|
| • Impact of body worn cameras | • Measuring success |
| • Image exploitation | • Sexual assault kit backlog |
| • Intimidation | • Technology-facilitated crimes |
| • Law enforcement officers as victims and offenders | • Victim privacy |
| • LGBTQ victims | • Victims with disabilities |

AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN





John Wilkinson
Attorney Advisor

1100 H Street NW, Suite 310
Washington, DC 20005

P: (202) 596-4229
F: (202) 393-1918

jwilkinson@aequitasresource.org
www.AEquitasResource.org
