

# Strategies for Successful Prosecutions and Case Studies



**Teresa L. Foster**  
Assistant Attorney General  
Office of Special Prosecutions and Appeals  
Teresa.Foster@alaska.gov  
907-451-2811

This project was supported by Grant No. 2005-WF-AX-0001 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this presentation are those of the author and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

---

---

---

---

---

---

---

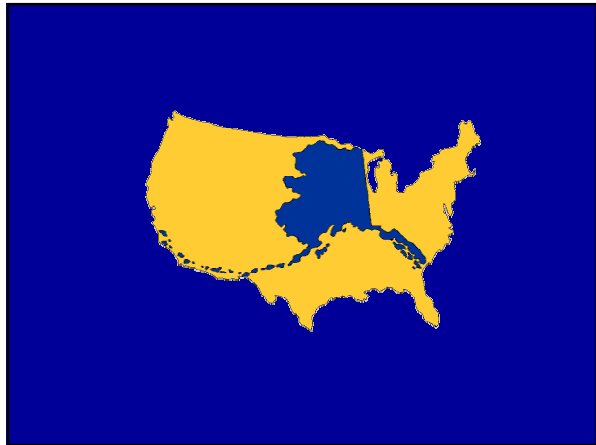
---

---

---

---

---




---

---

---

---

---

---

---

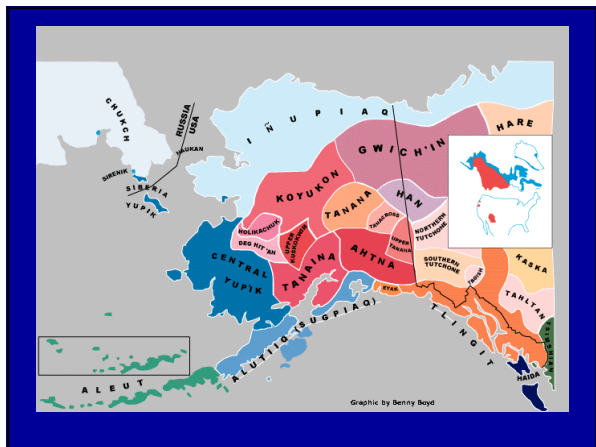
---

---

---

---

---




---

---

---

---

---

---

---

---

---

---

---

---



---

---

---

---

---

---

---

---



---

---

---

---

---

---

---

---



---

---

---

---

---

---

---

---

## OVERCOMING THE CHALLENGES IN SEX AND DV CASES



---

---

---

---

---

---

---

---

## TROUBLESOME CASES

- ❖ Alcohol
- ❖ Risky behaviors
- ❖ Rural locations
- ❖ Reluctant victims



---

---

---

---

---

---

---

---

## RURAL COMMUNITY CHALLENGES

- ❖ Limited staff
- ❖ Limited law enforcement
- ❖ Transportation
- ❖ Weather
- ❖ Increased involvement of alcohol
- ❖ Larger caseloads of sex offenses
- ❖ Language, culture, and community dynamics
- ❖ Fewer community resources for victims
- ❖ Family pressure



---

---

---

---

---

---

---

---

## INTOXICATED VICTIMS

- ❖ VAST majority of cases.
- ❖ High levels of alcohol use.
- ❖ More time consuming and uniquely challenging.
- ❖ Must be vigorously prosecuted, with extra effort in identifying evidence.



---

---

---

---

---

---

---

---

## THE SEX CRIME VICTIM HAS NO PRESUMPTION OF CREDIBILITY

- ❖ Polls show that about half the people generally believe women claim rape when it did not happen.



---

---

---

---

---

---

---

---

## WHERE DOES THE "CREDIBILITY PROBLEM" COME FROM?

- ❖ Juror expectations of who sexual assault victims are.
- ❖ Juror expectations of how sexual assault victims behave.
- ❖ Juror expectations of what leads to sexual assault.
- ❖ Juror expectations of who offenders are.

---

---

---

---

---

---

---

---

## WHICH VICTIMS HAVE CREDIBILITY PROBLEMS?

- ❖ Intoxicated
- ❖ Prostitutes
- ❖ Exotic Dancers/strippers
- ❖ Drug abusers
- ❖ Others?



---

---

---

---

---

---

---

---

## OTHERS WITH CREDIBILITY PROBLEMS



- ❖ Very young children.
- ❖ Elderly.
- ❖ Mentally or physically challenged/disabled.
- ❖ Cultural, ethnic, racial, religious minorities.
- ❖ Minority sexual orientation.
- ❖ Spouses, esp. if divorce and custody issues are pending or DV history.



---

---

---

---

---

---

---

---

## OTHERS?

- ❖ Teenagers.
- ❖ Acquaintances.
- ❖ Males.
- ❖ Poor, homeless.



---

---

---

---

---

---

---

---

## STILL MORE???

- ❖ Victim of high profile offender (athletes, public official, entertainment industry, wealthy, prominent – the “privileged”).



---

---

---

---

---

---

---

---

## REALITY:

- ❖ Although some victim groups have more credibility issues than others, with sex crimes it is the nature of the charge itself which carries the myths and prejudices.

---

---

---

---

---

---

---

---

## OVERCOMING THE CHALLENGES TO CREDIBILITY IN SEX CASES



---

---

---

---

---

---

---

---

## GOAL

- ❖ Victim credibility is crucial to successful prosecution of a sexual assault case. Everything you do should be directed towards helping the jury know the victim and demonstrating offender's responsibility and lack of credibility.



---

---

---

---

---

---

---

---

## **OFFENDER FOCUSED PROSECUTIONS**

- ❖ Begins with first response through closing argument.
- ❖ Balance or neutralize victim "problems."
- ❖ Why is victim "on trial?"
- ❖ Don't be put off by the factors that caused the offender to choose the victim.

---

---

---

---

---

---

---

---

## **OFFENDER FOCUSED PROSECUTIONS**

- ❖ Who decides the time and place of the crime?
- ❖ Who is responsible for the scene?



---

---

---

---

---

---

---

---

## WHOSE PLAN IS IT?

- ❖ Don't forget that the victim is responding to someone else's plan, not their own. She had no choice, no opportunity to "prepare" for being assaulted.



---

---

---

---

---

---

---

---

## WHOSE "RISKY" BEHAVIOR?

- ❖ Drinking
- ❖ Bar or party.
- ❖ Walking alone.
- ❖ Accepting a ride.
- ❖ Inviting a friend home.



---

---

---

---

---

---

---

---



- ❖ Note: It is only the offender's presence which creates the vulnerability in otherwise acceptable and harmless situations – keep it focused there.

---

---

---

---

---

---

---

---



## ONLY STRANGERS RAPE?

- ❖ One study indicates that almost 6 out of 10 Americans believe that women are more likely to be raped by someone they do NOT know.
- ❖ In fact, roughly 80% of rapes are perpetrated by someone known to the victim.
- ❖ Rural rates even higher.



---

---

---

---

---

---

---

---

Who needs force when you have alcohol?



---

---

---

---

---

---

---

---

## COMMON PERCEPTIONS

- ❖ If the victim was drinking, she put herself in the situation to get raped.
- ❖ Her lapse in judgment makes her responsible.
- ❖ Her drinking is more relevant than offender's drinking.

---

---

---

---

---

---

---

---

## CONCENTRATE ON THE DEFENDANT

Look for the defendant's attempts to:

- ❖ Give the victim intoxicants.
- ❖ Isolate the victim in any way.
- ❖ Target the victim b/c she was becoming intoxicated.
- ❖ Control the situation and overcome the victim's will.
- ❖ Did he brag to friends? Make jokes?

---

---

---

---

---

---

---

---

## OUTSIDE YOUR CONTROL

- ❖ Victim selection.
- ❖ Scene
- ❖ Evidence
- ❖ Witnesses
- ❖ Time and Place.



---

---

---

---

---

---

---

---

## IN YOUR CONTROL

- ❖ Charges.
- ❖ Follow-up investigation.
- ❖ Witness preparation.
- ❖ Corroboration
- ❖ Advocacy



---

---

---

---

---

---

---

---

## STRATEGIES - CORROBORATION

- ❖ Investigate and prosecute beyond the four corners of the crime.
- ❖ Corroborating facts and witnesses.
- ❖ Focus on everything leading up to the crime – how the offender set it up.
- ❖ Fill in the gaps – corroborate other details besides the crime.

---

---

---

---

---

---

---

---

## WHAT IS CORROBORATION?

- ❖ ANYTHING that supports ANY PART of a victim's statement.
- ❖ NOT limited to the elements of the offense.
- ❖ Things, circumstances, places, people.
- ❖ Victim behaviors:
  - ❖ PTSD
  - ❖ Accommodation syndromes

---

---

---

---

---

---

---

---

## WHY IS CORROBORATION CRITICAL IN CHILD CASES?

- Burden of proof – very high.
- Forensic evidence is the exception not the rule.
- Jurors expectations – very high.
- Jurors not predisposed to make decisions on the word of a child.
- Delayed reporting, lack of witnesses, memory loss.

---

---

---

---

---

---

---

---

## 6TH AMENDMENT



- In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him;

---

---

---

---

---

---

---

---



---

---

---

---

---

---

---

---

## **CHILD TESTIMONY IN CRIMINAL CASES**

- ❖ Defendant entitled to "confront his accuser," even if a child.
- ❖ Normal rules of evidence apply.
- ❖ Laws to minimize trauma for child.



---

---

---

---

---

---

---

---

## TRAINED FORENSIC INTERVIEWERS

- ❖ Need for specialized investigators.



---

---

---

---

---

---

---

---

## LEGAL AREAS OF CONCERN IN FORENSIC INTERVIEWS

- ❖ Forensic interviews that do not include details.
- ❖ Inexperienced interviewers.
- ❖ Confusion between CPS, Prosecution and Civil needs.

---

---

---

---

---

---

---

---

## CHILD FRIENDLY COURT EXPERIENCE

- ❖ Child friendly oaths.
- ❖ Special accommodations for children.



---

---

---

---

---

---

---

---

## PRETEXT CALLS

- ❖ Most powerful tool after a confession.
- ❖ Always consider it.
- ❖ Most valuable in "acquaintance" sexual assaults.



---

---

---

---

---

---

---

---

## CHARACTER EVIDENCE

- ❖ Generally not admissible to prove the defendant did the crime.



---

---

---

---

---

---

---

---

## FRE

- ❖ Other victims
- ❖ Other charges
- ❖ Other convictions
- ❖ Each jurisdiction is different.
- ❖ May be admissible.



---

---

---

---

---

---

---

---

## COMMON LIMITATIONS ON USE OF EVIDENCE OF OTHER ACTS OR CRIMES:

- ❖ Too prejudicial.
- ❖ Too much of it.
- ❖ Too dissimilar or remote in time.



---

---

---

---

---

---

---

---

## STRATEGIES - COLLATERAL WITNESSES

- ❖ Neighbors, family members, friends, bartenders, cab drivers, kids involved.
- ❖ People with no stake in the outcome of the case.
- ❖ Fill in the gaps – corroborate other details besides the crime.

---

---

---

---

---

---

---

---

## Follow-up Exams

- ❖ All agencies have a role.
- ❖ Paralegal assistance.
- ❖ Encourage victim and explain reasons.



---

---

---

---

---

---

---

---

## MDT Meetings

- ❖ Regular attendance
- ❖ Part of prosecutor's role.



---

---

---

---

---

---

---

---

## ANTICIPATE DEFENSES



---

---

---

---

---

---

---

---

## ANTICIPATE DEFENSES

- ❖ If you know what the common defenses are, you can pre-empt those issues.
- ❖ Follow-up investigation if necessary.



---

---

---

---

---

---

---

---



## Victim Safety



- ❖ All agencies have a role.
- ❖ Open communication.
- ❖ Office policy and protocol for safety planning.
- ❖ Follow-up contacts.



---

---

---

---

---

---

---

---

## PREPARE YOUR JUDGE

- ❖ Pre-trial motions to regulate evidence and educate the judge.



---

---

---

---

---

---

---

---

## Bail Hearings

- ❖ Critical stage.
- ❖ Victim input.
- ❖ Need offender background.



---

---

---

---

---

---

---

---

## CONTINUANCES

- ❖ ALMOST ALWAYS BAD FOR VICTIM AND CASE.



---

---

---

---

---

---

---

---

## JURY SELECTION - VOIR DIRE

- ❖ Prepare jury for likely lack of forensic evidence.
- ❖ Burden of proof – only beyond a reasonable doubt.
- ❖ Lay groundwork for sex assault reality.
- ❖ Balance questions on victim credibility issues with issues related to offender's troublesome behavior.



---

---

---

---

---

---

---

---

## AFTER THE VERDICT OR PLEA

- ❖ PREPARE FOR SENTENCING.



---

---

---

---

---

---

---

---

A world where every victim  
finds justice.



---

---

---

---

---

---

---

---



Questions?

---

---

---

---

---

---

---

---