

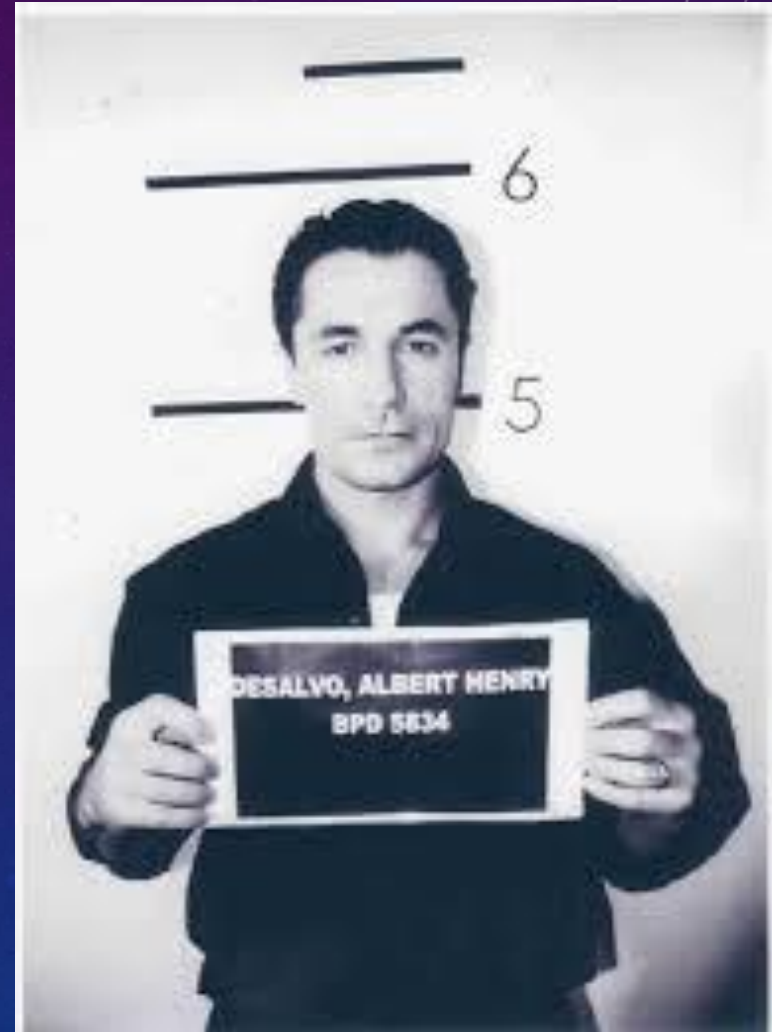
The background is a dark blue gradient with a subtle pattern of white dots. Overlaid on this are several white geometric elements: a large circular scale on the left with markings from 140 to 260, and several concentric circles of varying sizes, some with arrows indicating a clockwise direction.

COLD CASE PROSECUTIONS:

*THE QUEST TO BRING MORE BOSTON STRANGLERS
TO JUSTICE THROUGH APPLIED SCIENCE*

*DONNA KELLY, UTAH PROSECUTION COUNCIL
SEXUAL ASSAULT AND DOMESTIC VIOLENCE RESOURCE PROSECUTOR*

Albert Henry De Salvo confessed to strangling, raping and murdering 11 women in the Boston area in the 1960's. He later recanted this confession, claiming he was tricked by police. He was sent to prison on a life sentence for another rape case. He was stabbed to death in prison by other inmates, leaving the 11 murders unsolved. Until 2013.



SCIENCE TO THE RESCUE

- In 2013, Boston PD was given a grant to process cold cases using new DNA technology.
- One of the DeSalvo cases was reopened 50 years after the crime.
- Victim Mary Sullivan was found raped and murdered a few days after she moved to Boston in 1964. Her case investigation yielded swabs from her rape kit and a blanket she was found wrapped in.
- Detectives obtained a DNA swab from a nephew of DeSalvo. DNA testing and comparison between the swab and the Sullivan evidence revealed the suspect to be a male relative in the DeSalvo family.
- Detectives used this evidence to get a search warrant and exhumed the body of DeSalvo. DNA was obtained from DeSalvo's skeleton and was a match to the Sullivan evidence, proving that DeSalvo had indeed raped and murdered Mary Sullivan.



COMBINED DNA INDEX SYSTEM (CODIS)

TWO MAIN CRIMINAL DATA BASES:
CONVICTED OFFENDER INDEX AND EVIDENCE INDEX
(AND A MISSING PERSONS INDEX)

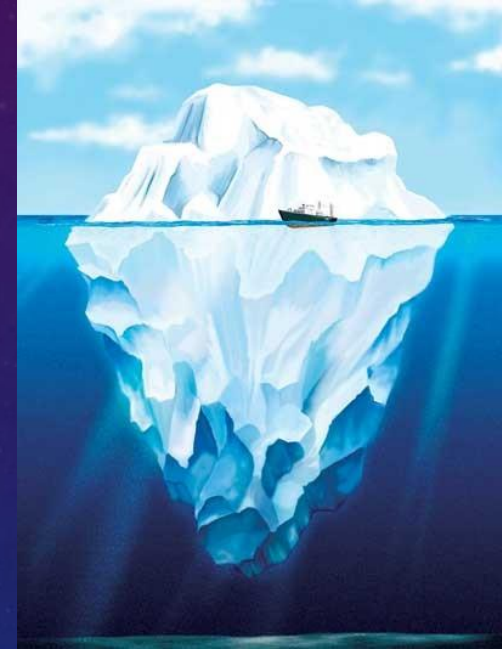
WHY PROSECUTE COLD CASES?



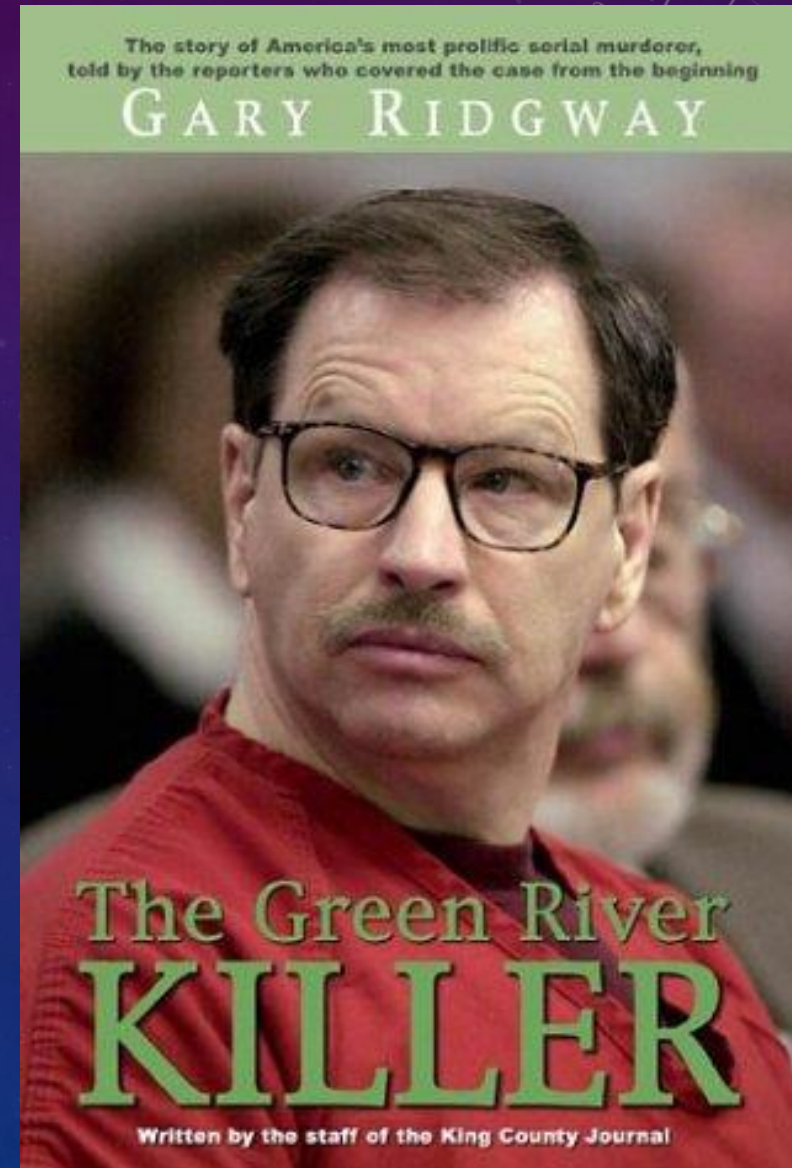
BRINGING SERIAL RAPISTS TO JUSTICE

The research with convicted sex offenders establishes that most have numerous victims, from 6 to 75 adult victims each.

In addition to other significant benefits, this work has a preventative component for our society.



1980's and 1990's the Green River Killer raped
and killed women in Oregon and Washington
Arrested in 2001 after DNA evidence matched
him to 11 rapes and murders
Convicted of 49 murders
Confessed to twice that many murders,
making him the most prolific serial killer in
American history





Greg Peterson case

5 victims reported to various LEA
2011 – 2012

Individually, cases “unfounded” or
“declined”

Salt Lake County DA filed 23 felony
sexual assault and kidnapping
charges after pattern connected



Azlen Marchet Case

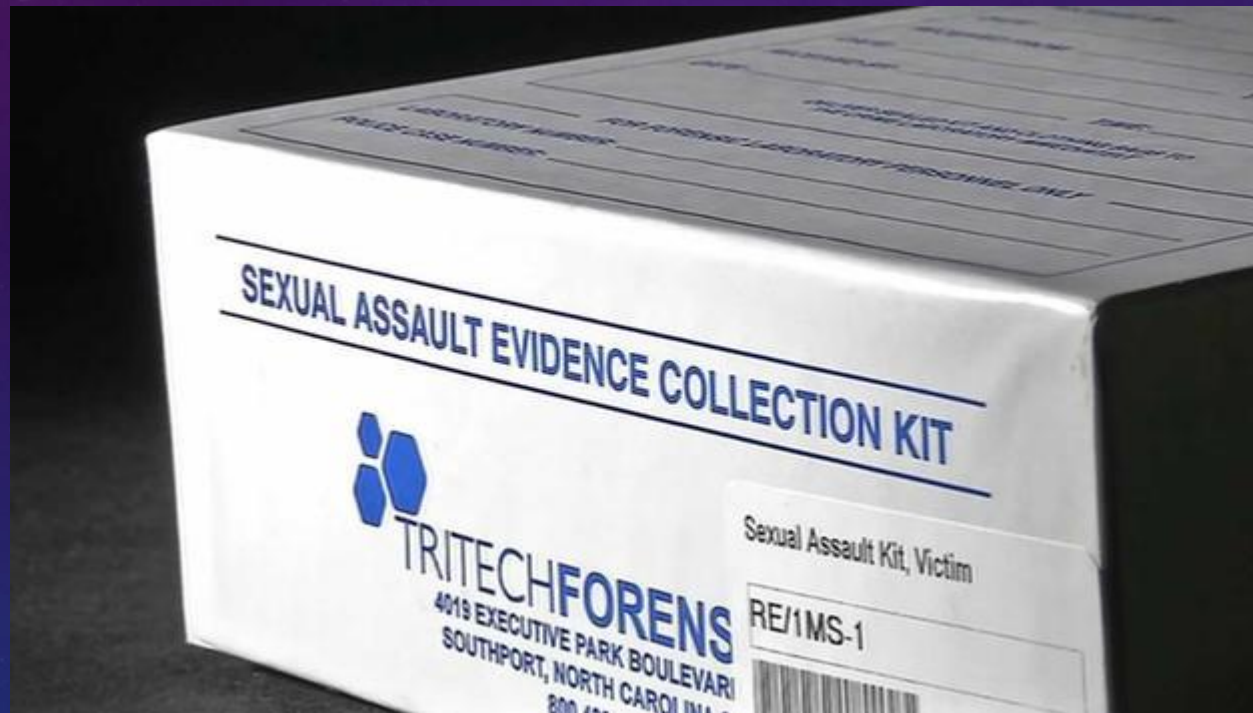
6 Utah rape victims reported

2003 case declined

2004 case filed – Not Guilty

2007 – 2010 Three more cases went to trial – Guilty Verdicts – multiple victims testified in each trial

SEXUAL ASSAULT KIT TESTING RESULTS – OGDEN CASE



DNA USED FOR EXONERATION

- US vs. Watson, Montana Federal Case July 2015
- Defendant convicted in 2006 for Attempted Rape
- 2004 federal Innocence Protection Act – allows reopening of case at any time if “newly discovered DNA evidence” is identified
- “DNA testing has unparalleled ability both to exonerate the wrongly convicted and to identify the guilty,” Watson opinion
- Biological material was resubmitted – Defendant was excluded as donor of the DNA sample
- Defendant’s motion for new trial granted

SEEKING JUSTICE FOR VICTIMS

Experience of Kellie Green, survivor of a stranger rape, founder of SOAR (Speaking Out Against Rape):

“I spent three years living in fear, studying faces at grocery stores, at work, driving down the road, both hoping and fearing that I would spot my rapist.”

After three years, the detective submitted the evidence in Kellie’s case for DNA analysis and a suspect was located and prosecuted, bringing closure to her case and healing to her life.

“For anyone who has felt isolated
and afraid, left out and left behind
as a result of a sexual crime, our
message is clear: we will not forget
you. We will never abandon you.
You are not alone.”

Mariska Hargitay,
Joyful Heart Foundation





“There is nothing more consequential than giving a woman back her life.”

Vice President Joe Biden

NEW GRANT FOR UTAH

- In September 2015, Manhattan District Attorney's Office and the Federal Government awarded Utah \$3.4 million to test, investigate and prosecute untested sexual assault kits in Utah
- Three-year time period
- Grant pays for investigator, prosecutor, victim advocate and researchers = \$2 million
- Also, law enforcement agencies can submit for reimbursement for additional investigation costs if leads result from testing
- Grant also pays for costs at crime lab to do testing = \$1.4 million

VICTIM NOTIFICATION PROTOCOL - HANDOUT



Victim Notification Recommended Protocol

Utah law now requires that law enforcement agencies investigating sexual offenses shall notify sexual assault victims about their cases under certain circumstances. *See attached code (U.C.A 77-37-3).*

When contacting and re-engaging a victim, particularly in sexual assault cases that have been inactive or closed, some victims may be pleased to learn that additional evidence has been obtained, while others may view the news as traumatic or unwelcome. Approach the victim with sensitivity and patience. Be prepared for a wide range of emotions and reactions.

DNA ADVANCEMENTS



UTAH CRIME LAB ADVANCEMENTS



- Every test done by Crime Lab must be repeatable by the defendant
- Only half of evidence is used by crime lab – to preserve samples for defendant testing
- 2/3 of crime lab cases are sexual assault cases
- Less biological material is needed today to do DNA testing
 - *At time of OJ Simpson trial – needed a bodily fluid sample the size of a quarter*
 - *Today, bodily fluid sample not even visible by human eye can be tested for DNA*

“TOUCH” DNA NOW WIDELY USED



Raymond Jesus Marquina convicted of Aggravated Robbery August 2015 – Salt Lake County DA's Office

DNA evidence found on a hat band, the only physical evidence left by the shooter at the scene, was a key to the conviction

Forcible sexual abuse cases – “groping” cases

DNA obtained from swabbing the clothing of the victim, something unheard of 10 years ago

Offender attacking co-eds at U of U campus was identified by swabbing the button, waistband and underwear of a U of U student



Y-STR DNA ADVANCEMENTS

- Advantages to Y-STR testing:
 - Previously, a low ratio of perpetrator sample in evidence swab meant testing could not be done
 - Typical ratio in a vaginal swab: 1 to 600 mixture, male to female
 - Y-STR technology captures only Y chromosome DNA, so much smaller sample needed
- Disadvantages of Y-STR testing:
 - Lower numbers in identifying single perpetrator
 - May only be able to identify male lineage. ie., father, male, son, brother
 - Testing is now so sensitive that many agencies are requiring male SANEs to wear masks while doing Sexual Assault Exams.

ADVANCEMENTS IN BODILY FLUIDS EVIDENCE

- DNA is found in the nucleated cells of our bodies: saliva, sweat, urine, fecal matter, etc.
- Epithelial (“skin”) cells – much more effective tools now
- Seminal fluid (not just sperm) can now yield DNA
- Bites marks are packed with DNA evidence
- Even where condoms are used by perpetrator, DNA can now be found from the victim rape kit swabs
- Windows of time much broader now than in the past

- Journal of Forensic Science (2008) test 120 hours from assault to collection
 - 70 hours from assault to collection of sample yielded DNA of male perpetrator. Victim had showered, found saliva on victim's neck
 - 240 hours from assault to collection of sample yielded DNA of male perpetrator on victim's cervix
 - 58 hours from assault to collection DNA found from vaginal swabs, even though victim bathed

DNA “SNAPSHOT” – EMERGING TECHNOLOGY



- Even where there is no CODIS hit identifying perpetrator, DNA profile is able to create a “sketch” similar to what sketch artists did in the past
- New company - Parabon Nano Labs – currently doing these “sketches”
- Skin color with 97.6 per cent accuracy
- Eye color with 97.8 per cent accuracy
- Heritage with 92 per cent accuracy (German, Spanish, African, Chilean, etc.)

DIS ADVANTAGES OF COLD CASE PROSECUTION

- Witnesses gone/dead/AWOL
- Witnesses lose memory
- Cases/investigations handled differently in past
- May be difficult to establish chain of custody
- Victim may be reluctant to revisit the case
- Jury may think staleness of case is not “fair” to Defendant
- Statute of limitations issues

STATUTES OF LIMITATIONS

- Complicated issue – See Cheat Sheet
- DNA Exception – UCA 76-1-302 (2)
 - Prosecution may be commenced at any time if the identity of the person who committed the crime is unknown but DNA evidence was collected that would likely identify the person at a later date.
 - Applies if the statute has not run on May 5, 2003
 - Prosecution must be commenced within one year of identification of the perpetrator

ADVANTAGES OF COLD CASE PROSECUTION

The “CSI” effect on jurors may work to our advantage in these cases

Juror research on “CSI” effect shows jurors view evidence through CSI lens –
2006 Study of

1,027 randomly selected jurors in Michigan

- 46 % of jurors expected scientific evidence in EVERY criminal case

- 22 % of jurors expect to see DNA evidence in EVERY criminal case

- 36 % of jurors expected to see fingerprint evidence in EVERY criminal case

“They should have DNA in every case.”

“They didn’t even dust for fingerprints.”

ADVANTAGES OF COLD CASE PROSECUTION

- More likely to be 404 (b) type evidence (other acts evidence)
- Human beings are creatures of habit, there may be repeat crimes
- There may be other CODIS hits
- Lapsed time may sometimes work in our favor
 - People change, mature and relationships change – sometimes to our advantage
- Jury pool is better educated on DV and Sexual Assault

