

Just Considerations for Older Survivors

Introduction [00:00:05] Now this is recording, RTI International Center for Forensic Science presents Just Science.

Voiceover [00:00:20] Welcome to Just Science, a podcast for justice professionals and anyone interested in learning more about forensic science, innovative technology, current research, and actionable strategies to improve the criminal justice system. In episode eight of our Research and Considerations for Sexual Assault Cases season, Just Science sat down with Patricia Powers to discuss considerations for sexual assault cases involving older victims. During her professional career as a prosecuting attorney, Patricia Powers specialized in cases involving sexual violence, domestic violence, child and adult abuse, and much more. Now, she works as an attorney advisor at AEquitas, developing and refining best practices for prosecuting sexual assault cases, including those with victims from marginalized and vulnerable populations. Listen along as she discusses considerations for the effective prosecution of sexual assault cases involving older victims in this episode of Just Science. This season is funded by the National Institute of Justice's Forensic Technology Center of Excellence. Some content in this podcast may be considered sensitive and may evoke emotional responses or may not be appropriate for younger audiences. Here's your host, Tyler Raible.

Tyler Raible [00:01:29] Hello, and welcome to Just Science. I'm your host, Tyler Raible with the Forensic Technology Center of Excellence, a program of the National Institute of Justice. Today, we'll be discussing older victims of sexual assault from a more legal perspective. And to help guide us in this conversation, I'm joined by Pattie Powers from AEquitas. Pattie, it's great to see you again. Welcome back.

Patricia Powers [00:01:47] Thank you so much, Tyler. I'm very excited to have this chance to be here again.

Tyler Raible [00:01:52] Pattie, you were on the podcast before, and last time we spoke, we discussed a little bit about your background as a prosecutor, trainer, and an expert in addressing sexual assault cases. So I want to know a little bit more about- about you. So how long were you a prosecutor, and what prompted your work with AEquitas?

Patricia Powers [00:02:09] I was a prosecutor for 27 years in Washington state and was dedicated to the prosecution of sexual assault, domestic violence, and related cases of homicide. I spent a great deal of my time in trial - although I was a supervisor of our unit on three different occasions - during this period of time, I also had the opportunity to do a significant amount of national training, and I did training with attorneys from AEquitas as well as with some other professionals. And that led me to a point to consider spending the totality of my time continuing my work as a prosecutor by training with my colleagues at AEquitas and being in a position to share the insight that I gained from the experience of being a trial attorney.

Tyler Raible [00:03:03] Through all of these years prosecuting sexual assault cases, were there any that stand out in your mind as particularly rewarding? Or maybe left a major impression on you?

Patricia Powers [00:03:13] You know, Tyler, I want to preface this by saying that every case of sexual assault that I was privileged to represent my jurisdiction on, whether that case went to trial or was resolved, was a privilege. I stand in absolute admiration of all

victims who are able to overcome so many barriers to step forward to disclose this crime, particularly in a public setting. And in thinking about all of the cases that I tried, and there really was a large number of them, the time that meant the most to me was after the jury returned with the verdict, and I was able to return to my office where the victims were usually waiting for me to hear the news. And it meant so much. And it always will mean a lot to me to have been able to deliver a verdict where the jury held the offender accountable for the conduct against the victim. There are so many cases, all of which stand out for different reasons - I'm reminded of one in particular at this point. It was a case of serial rape and the victim who had been offended by the defendant testified in this trial. I also was able to present the testimony of other victims of the defendant who have been victimized during earlier years. They were still able to come to court in a public setting, in the presence of the defendant, and talk about the sensory, the emotional, and the physiological details of those crimes. The courage that all of those victims demonstrated - it was an eloquent expression of really furthering the work of justice for themselves and for our community. And I'll always be appreciative of that.

Tyler Raible [00:04:57] The bravery that these survivors show in an instance like this, and countless instances across the country, is always just so impressive. It kind of leads a little bit into our conversation today. But before we begin, I do want to do a little preface for our audience that we're going to be using the terms, elderly and older adults in some cases interchangeably throughout the conversation. But this is a very, very broad population. I just want to make sure that for our audience, there's no confusion, and we'll be more specific as we as we carry on through here. So, Pattie, when we think about sexual assault cases and sexual assault victims, survivors, we often don't think about sexual assault against older adults. But in actuality, this elderly population is very broad and has varying levels of vulnerability, specifically when we're talking about sexual assault perpetrators. So why is that?

Patricia Powers [00:05:50] Well, I think, Tyler, to begin with, we need to be very clear that anyone can be a victim of sexual assault, regardless of their gender, their gender preference, and certainly regardless of their age. Offenders will typically offend using a pattern based upon the accessibility of the victim, the vulnerability of the victim - and it may be ostensible, it may be something that the offender perceives. It may be based on social myths and misperceptions, or the offender may actually create a vulnerability in a victim which the offender thinks is going to impact their credibility. So we need to be very clear that anyone can be a victim of sexual assault. And we're going to be talking today in some detail about older victims of sexual assault. And as we do, I think it's going to become all the clearer how many commonalities there are within our population, regardless of age.

Tyler Raible [00:06:53] That makes perfect sense and thank you for the clarification. So one thing that I'm interested in understanding a little more is how this broad population is targeted. So through your experience, can you talk about some of the circumstances that might lead to older people being targeted for victimization?

Patricia Powers [00:07:10] Well, and here's where we go into the commonalities that all victims have. The first thing that we'll take a look at is their accessibility to an offender. A person can be victimized by an offender whether they're living in their own home, with their spouse, or their partner. They can be victimized if they're residing alone. They can be victimized in any location that there is. But we have to look from the offender's point of view at the accessibility to the offender, and offenders, when they determine they're going to commit a crime, want to be able to succeed with that crime. So they're going to be looking at all of the components of accessibility, if you will. Next, the feature of vulnerability

becomes very important. When we talk about any victim or if we're talking specifically about older victims - is there a known or an easily perceived vulnerability? Or perhaps a victim who's in a relationship, who's confided in an offender, has spoken in terms of a vulnerability that the offender now has knowledge of? And then the third part of this that we really need to look at is the offender is part of society, is part of community. And if there are social myths and misperceptions impacting how the offender views perhaps an older person, that might be a source of vulnerability from the offender's point of view. If there's not a vulnerability, certainly offenders can create those symptoms, which they will later use against victims coming out, such as "you really think anyone is going to believe you" - you're perhaps impaired, and you're not able to articulate what's happened, or whatever the offender says. But again, going back to this formula for predation - it's accessibility, vulnerability, and how the offender tries to use that to create issues about credibility. And it's not us that thinks that way. I want to be very clear. This is how the offender views it.

Tyler Raible [00:09:19] I want to unpack a lot of- because I think there's so much interesting material in that accessibility, vulnerability. When we talk about vulnerable status, are we talking specifically just about physical limitations or mental impairment or is it broadened to just any sort of imbalance in a power dynamic?

Patricia Powers [00:09:38] Well, and that's an excellent question. And I want to approach it, first of all, talking about victimization in general, because there can be an ostensible impairment, either physical or perhaps mental due to emotional issues with any member of our population, with people of any age. So when we talk about vulnerability, that's going to be a function of the individual person. It's something that we can't really generalize. And when we talk about persons that are older, we need to look at our population. And people over the age of 65, for example, may be living with a spouse or a partner. They may be living alone - that might be the current circumstance in their life. They may be living with extended family. There is a potential, if there is a disability involved, that a person may have chosen assisted living or could be in specialized nursing care. So vulnerability is something that I don't think we can generalize. I think we need to look specifically at an individual's abilities. Now, is there an overlay of public myths and misperceptions? There may be. And we need to take a look at that as well.

Tyler Raible [00:10:52] And I think we definitely will. I do want to ask kind of a clarifying question for those at home. When we say older populations, when we say elderly victims, elderly survivors, can you give us a rough idea of maybe the age range of this population?

Patricia Powers [00:11:07] Right. There have been reference points to either over 60 or over 65. I believe that's been frequently used. So when we talk about someone that's older, a person would be in that part of the population, but again, we need to be very clear that they're going to be many commonalities in victimization impacting older as well as perhaps younger people just in terms of years.

Tyler Raible [00:11:33] Marvelous. Thank you for the clarification. I think that's going to be really helpful moving forward. So I know that the evidence suggests that sexual assault is an underreported violent crime. So do you think that cases associated with older victims of sexual assault are even further underreported?

Patricia Powers [00:11:49] Well, I think that all victims suffer trauma due to the infliction of sexual assault by the offender. And trauma is going to be experienced in different ways by different victims. Some victims are impacted by trauma to the point that they are unable to come forward and disclose. Other victims may choose not to, wanting to get on with their

life in terms of their own point of reference. If victims are in a situation where they have been sexually assaulted by a person who provides care or a family member, that could, in and of itself, be an inhibiting feature. It could- a person may not want to make a disclosure when it's someone they know or someone they have respected or someone they have a relationship with.

Tyler Raible [00:12:41] So in these instances where somebody may not choose to immediately come forward, this kind of delayed reporting scenario - do we see more of that with this broad population, especially if we're talking about if it's family member care who's the perpetrator? Or in the case of a facility, is there more delayed reporting circumstances with this population?

Patricia Powers [00:13:02] There certainly would be a significant incidence of that. But I think we also need to go back to the point that sexual assault is a vastly underreported crime, regardless of who the victim is. The cases that we're privileged to address in the criminal justice system represent a very small number compared to what is believed to be the actual occurrence of this crime. Within this population, certainly older persons would be impacted as well. If there is a situation where a person, for example, is limited and is unable to disclose, that certainly would be a reason. Trauma can also impact people and create a level of fear that makes it literally impossible to talk about a crime such as this or to seek help from allied professionals.

Tyler Raible [00:13:56] In these circumstances, if there is a delay or if they're unable to really testify or whatever part you need them to play in the courtroom - how do you address these concerns?

Patricia Powers [00:14:06] Delayed disclosure is a very frequent occurrence. Probably the majority of victims are unable to immediately convey the reality of that crime. And for many people, it may be months, it could be years. And for some people who are unable to disclose, it could be a lifetime. What's so important to convey to the community, and ultimately the jury when we go to trial on these cases, is the bottom line is that the offender causes victimization. It is the offender who inflicted trauma on the victim that made it not possible for them to proceed with the disclosure. And so that becomes very probative evidence that can be presented at trial. Oftentimes we'll ask a victim when they were first able to talk about what had happened. And victims will variously share information that in some cases it took a considerable period of time. And one of the features, one of the reasons for that is fear of the offender. An offender may directly threaten the victim. If you tell anyone I'm going to kill you or if you tell anyone I'm going to be watching and I'll be back. And for most victims of sexual assault that I was privileged to work with, in a certain sense, this was a crime that did not end - it went on and on. And so that level of fear is something that literally persists. And it can certainly be a feature in a delayed disclosure. And it becomes important to put this into the understanding, if you will, of the jury that it's the offender's responsibility. The offender is the one who inflicted this trauma on the victim.

Tyler Raible [00:15:54] I can't even begin to imagine the level of fear associated with it. On Just Science, we've talked about the impact of trauma before, so it's pervasive. So then I want to unpack some of the myths here, because we've danced around them a little bit, and I really want to dive into them. So the first one that immediately came to my mind is this assumption that the older victims are only female. That isn't correct, is it?

Patricia Powers [00:16:16] No. Victims can be male or female, any gender preference, and any age, as we've been discussing. So I think that's very important to bear in mind

because it takes us back to what we've been discussing, and that is that anyone can be a victim of sexual assault. I'm reminded of a situation when I was engaged in jury selection in a case that I was trying. And typically, what we would do during jury selection, we would use questionnaires or address questions to the panel. And we usually had members of the panel between 90 and 100 people, given which case I was working on. And one of the questions would be, have you or any close friend or family member been the victim of a sexual assault? And so many hands would go up in the courtroom. So many people had either been victims or had family members who were victimized or close friends who were victimized. And I'm reminded of one older member of the panel, a man who provided information to us during selection that he had been sexually assaulted much earlier in his life when he was in the military. And also, he let us know that he had never discussed that with anyone. The first time that he had ever made mention of that was in our public setting in court when he was truthfully answering that question. So this is something that can happen to anyone.

Tyler Raible [00:17:46] And I think that story really highlights the lifelong effect of an assault on anybody. I mean, if a young man in the military carries that with him his whole life, it's obviously a pervasive problem that's going to persist over the course of a survivor's lifetime, right?

Patricia Powers [00:18:00] It is. And, you know, we have resources, support resources that we make available to victims. Advocacy is critical. We always provide information about the availability of advocacy throughout the entirety of the process and other community resources that can be supportive. In this particular example that we were just discussing, this was a reality that this member of the panel had lived with for an appreciable period of time. And this was a crime that was not disclosed, that was never disclosed. But in his responsibility as a panelist, answering questions truthfully, he courageously provided that information to us.

Tyler Raible [00:18:44] So, Pattie, I want to talk a little bit about the connection of physical health and mental health and overall well-being of the survivor, because I think that we're getting there. So there's this connection between physical health and mental health. But is there a concern that an older victim of an assault might suffer additional physical ailments or maybe even see their health decline?

Patricia Powers [00:19:03] It depends upon the health status of the individual person, and it depends also upon the sexual assault and how that offender committed the crime. There can be physical injuries with older persons. There can be with younger persons as well. But it's really dependent upon how that crime is perpetrated. So we need to take that into consideration. Just to use an example, if a person is living alone, certainly that sexual assault is going to enhance their level of fear about living alone. Their safety has been taken away. This, in turn, can cause emotional responses that may even affect physical well-being. So you can really see how a sexual assault can cause injury on an emotional level. It also could potentially on a physical level as well.

Tyler Raible [00:20:00] So you bring up an interesting point, and I do want to talk about the issue of safety. What can prosecutors do to ensure the safety of older victims, especially if they're living alone or if the accused perpetrator is a caregiver or even if they're living in a health care facility?

Patricia Powers [00:20:15] This raises a number of issues - if a person is living alone, or even if they're in care or living within an extended family unit, if the case is being submitted

for prosecution and is charged, we can obtain, in most jurisdictions, a no-contact order or a protection order. That requires the offender to stay away from the victim. We all know that protection orders are important, but we also know that there are other safety concerns that victims have. And there is a sense that the offender is always present and threatening in that presence to the victim. And so advocacy support and other community resources is also critical. If this occurs within a home or a family setting, you know, then the offender in all likelihood would be removed or restricted from having any contact with the victim and likely that would involve being removed. And that's something that prosecutors and law enforcement take very seriously. We always, in my experience, spoke with victims and asked them to please let us know if they saw the offender within any ratio based upon their physical presence, if there were any phone calls, any kind of stalking attempts. We always ask them to notify us so that we could ask for a bench warrant, ask the court to consider that. So it's really important that that is effective and that we address any concerns that a victim has.

Tyler Raible [00:21:51] In these situations where the survivor's safety is compromised or they're suffering, you know, physical ailments - how do you address these kinds of difficulties in court? Is it more difficult to explain to the jury any additional negative effects of the assault, even if they might have already been living with some of these conditions?

Patricia Powers [00:22:10] It's very case specific. But if we have that medical evidence in a particular case - just to give an example to you, if the medical evaluation was done by a SANE or other medical professional, we can present that testimony, the statement, for purposes of diagnosis, together with any medical evidence or a description of why injury, for example, would not be anticipated given what the history is. We can get at it that way. There also are other experts available in the behavioral field that sometimes can help provide additional insight to a jury about a victim's responses to trauma. Many times, if a victim is able to articulate some of these responses to trauma, we can also explain it to the jury through a victim's testimony.

Tyler Raible [00:23:02] Excellent. Thank you. So I'm immediately drawn to some of these other additional challenges that you might face in the courtroom. So we've hinted at a couple of the sexual assault myths. Are there any that we might have missed so far in our discussion today?

Patricia Powers [00:23:16] I think what we really are focusing on in our conversation is that sexual assault is a crime that can happen to anyone. And I think we need to be very clear about that. When it comes to focusing on an older victim of sexual assault, every person should be considered as being the individual that they are. And I think we need to really emphasize that in our community. Within our population, there may be some individuals who are more vulnerable than others. There may be individuals within our population that have some ostensible disability, whether it's physical or maybe it's mental. The important thing is to consider people as individuals, which we do in every case.

Tyler Raible [00:24:04] I think you're really hitting the nail on the head there because this is such a broad and diverse population of people. I mean, when we think about the lower limit of this threshold being 60, 65, I mean, I think, you know, that's my parents. And I don't think of them as an older population. So it's- it makes perfect sense that that's one thing that we should really be focusing on. But you brought up something that I'm interested in kind of running down a little bit, and it's this concept of accessibility. So we mentioned, you know, some victims may not physically be able to get to the courtroom or to meet with their legal advisors or even in this virtual world that we are currently occupying, sometimes you

just can't get to places. So how do you prepare for these issues of accessibility? And then, you know, consequently, how do we address them in the courtroom?

Patricia Powers [00:24:48] That's another really great question. I know that prosecutors and law enforcement and advocates around the country are actively working to make court accessible for victims and for other witnesses as well. They can always provide transportation and assist in that process. But one of the interesting points, especially associated with the context that we're in now in the pandemic, is using virtual software during court. So what we want to do in that regard is to use it effectively and make sure that we're discussing the use of it with victims. For example, if the victim wishes to be present at a hearing involving the offender, we may be able to accommodate that request depending on the jurisdiction through Zoom, where a victim can hear and see the proceeding. This may be very beneficial to someone who may be more restricted by a disability or by a life circumstance. So we can look into these possibilities as well. Attorneys and law enforcement, as I know, always have been very amenable to speaking with victims in other settings outside of the courthouse - could go to their home if they wish to speak with us there. So there can be a lot of flexibility in this regard.

Tyler Raible [00:26:10] Are there considerations for these cases where if it's a repeated offense might be happening in the home itself? I immediately think of an older population wherein they might not be able to go stay with somebody. So other than these court orders to disengage or to not have contact, are there any other considerations for a population that might be stuck at home with an offender?

Patricia Powers [00:26:32] What's necessary in that regard is, is an ability to either become aware of features of sexual assault or sexual abuse or physical abuse. And many times, the first point of contact would be Adult Protective Services, which is in just about every jurisdiction that I'm familiar with. But it begins from a person's ability to identify some of the potentiators for abuse or assault, to discuss that with the person involved, with the victim, and to determine if this is something that should be reported to authorities, if there- if there's evidence of sexual abuse, physical abuse or sexual assault. The cases that become very challenging are if a person is unable to speak or unable to convey information. But I still, I still want to make it clear there still are things that we can do in that regard. We can still document evidence of abuse or assault. And sometimes we're able to build an evidence-based prosecution so that that case could proceed potentially without a victim who's able to articulate what's happened.

Tyler Raible [00:27:48] So in that same vein, I'm curious, you can build an evidence-based prosecution. Are there other services in place, like maybe access to a speech therapist, or is there anything like to help the survivor like meet you halfway, so to speak?

Patricia Powers [00:28:03] Well, it all depends on what disability we're talking about and what the level of that disability is. If a person has an ability to speak, certainly there are means of communication. And we've done that in a lot of cases through other experts fostering communication with the victim in the manner that they're able to communicate. So we can still do that. If a person is not able to communicate due to an illness or an impairment, that would be more of a situation where we would look to an evidence-based prosecution. But great, great question, Tyler, because in all of these cases, it is- it's the goal of every prosecutor and law enforcement professional and certainly our advocacy community to provide all of the resources that we can to support victims and their wellness in the best ways possible.

Tyler Raible [00:28:58] I think if we were to take a sound bite from this whole conversation, it would be taking care of the survivor in every way that we can. So I'm glad that you said that. That's marvelous. So, Pattie, is there a particular sexual assault case or maybe other violent case with an older victim that you'd like to tell us about?

Patricia Powers [00:29:13] You know, there is, and the one that comes to my mind is a cold case homicide that I went to trial on. And many years had passed since this crime was committed. It was a codefendant case, and we had spoken with two older victims who were much older than they were during this earlier period of time. And they had vestiges of information that was critical to establishing important parts of the case. I will never forget meeting with them and speaking with them and their ability and desire to come forward and testify in this trial. They demonstrated such clarity of memory that it was eloquent, and this was their ability to maintain these memories of certain events over a very long period of time and then be able to articulate them and testify to them in a public setting courageously, I think, stood out to all of us that worked on that case. How truly wonderful it was to see this kind of commitment to the work of justice from these witnesses, I will never forget that.

Tyler Raible [00:30:26] There's definitely something to be said about the mental acuity and being able to recall details with such clarity over what I imagine would be decades, right?

Patricia Powers [00:30:33] It was a very extended period of time, but the details were very clear. And we see this in many cases where a person is impacted by an event that they've witnessed and have sensory details for that. I think there's more of a possibility that that memory really is maintained intact. It clearly was in behalf of these witnesses.

Tyler Raible [00:30:56] So, Pattie, as far as supporting an older survivor of sexual assault, and we know that justice can mean different things to different people - so how do you align the perspective of justice for an older survivor and a prosecutor?

Patricia Powers [00:31:08] Well, you know, in terms of the privilege that I had in working with victims and speaking for other prosecutors around the country who are now prosecuting these cases, our belief is that we're doing the work of justice and working with victims gives us an opportunity to address what happened to them. Most victims that, that entrust us, if you will - and I think that word is really important - that entrust us with this disclosure that is so important in their lives want to have the offender held accountable for what the offender did. And this is what we're able to do, representing our victims and our communities as prosecutors. And this is the work of justice.

Tyler Raible [00:31:51] I think it's fascinating that you bring up trust. Before we wrap up, can you give us a little bit about what role trust plays in this whole situation?

Patricia Powers [00:32:02] And I'm so glad you're asking this question because it is an extremely important consideration. We need to be there for victims as prosecutors, as allied professionals, like we're doing in the podcasts that you're recording. We're reaching out, trying to provide additional information to let survivors know that they are supported, that they can trust us to do our very best with this very important information that they're providing us - they are not alone. We are there and we are there for them. And that, I think, is the heartbeat of trust.

Tyler Raible [00:32:40] It's wonderful to hear that. And unfortunately, we are nearing the end of our time together today. So are there any final thoughts you want to share with our listeners before we wrap up today?

Patricia Powers [00:32:49] What we really want to emphasize is that we're here to help. There are resources, and you can trust us. When we go into a trial situation, or even short of trial, we're there doing our best to represent the best interests of victims in our communities. We want to keep people safe. We want to prevent this crime from ever occurring again. And for every victim, every survivor that step forward, thank you is not enough. But we do want to let you know how much we appreciate the courage that you've demonstrated that has given us the privilege of doing the work that we're able to do.

Tyler Raible [00:33:27] Such an uplifting way to end the conversation. So first and foremost, Pattie, thank you so much for sitting down with with Just Science to discuss elderly victims of sexual assault, older victims of sexual assault, and just the broad spectrum in general. Your expertise is always just so welcome. So thank you so much for being here today.

Patricia Powers [00:33:43] Thank you, Tyler. It's always great to have this conversation with you.

Tyler Raible [00:33:47] And for those of you at home, if you enjoyed today's conversation, be sure to like and follow Just Science on your podcast platform of choice. For more information on today's topic and resources in the forensic field, visit ForensicCOE.org. I'm Tyler Raible, and this has been another episode of Just Science.

Voiceover [00:34:04] Next week, Just Science sits down with Marya Simmons to discuss advocacy for older victim cases. Opinions or points of views expressed in this podcast represent a consensus of the authors and do not necessarily represent the official position or policies of its funding.