



Practical Issues:

Preparing and Prosecuting Elder Sexual Assault Cases



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Providing legal services to elder victims of sexual violence is a unique challenge to a large number of professionals from various disciplines. The prosecution process involves a multi-disciplinary effort including prosecutors, rape crisis center staff, protective service workers, law enforcement officers, medical and nursing personnel. Issues involving competency, medical care and trauma, can arise in cases where the victim is over the age of 60 and are especially important when bringing such cases to court. To improve the chances for a successful prosecution, it is imperative that professionals recognize and act to minimize potential concerns inherent in the prosecution of cases involving elder victims of sexual assault. This booklet will explore obstacles to prosecution and offer practical solutions for professionals involved in cases of elder sexual abuse.

Note: Throughout this booklet, the authors refer to elder victims as female and their perpetrators as male because research shows most victims are female and most perpetrators male. This is not to say that elder men are not victims or women are not perpetrators of sexual violence.

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Underreporting

Initial Hurdle: Underreporting

The initial hurdle to bringing a case of elder sexual assault to court is the underreporting of the crime. Research clearly indicates that the majority of elder sexual assault cases are not reported. Older victims are highly unlikely to report the crime—much more so than younger victims. Only one out of four cases of elder abuse is reported, and sexual abuse is believed to be the least reported type of elder victimization.¹ Reasons for underreporting, include shame, fear, lack of knowledge, doubt and cognitive impairment. If an elder sexual abuse case is never brought to the attention of law enforcement, there can be no prosecution.

The Witness

The Reluctant Witness

When elder sexual abuse is reported, the reporter is often someone other than the victim: a friend or family member, a nurse who witnessed the abuse, or another health care professional who recognized the signs of rape through vaginal bleeding or other trauma. Victims may be apprehensive about pressing charges against the perpetrator. The elder victim may appear uncooperative because she does not trust the service provider. In the eyes of the elder victim the professional conducting the interview, whether it is the district attorney, advocate or police officer, is a stranger with whom she may feel uncomfortable discussing the details of sexual assault.

Building Rapport

Before discussing the facts of a particular case, it is important to build rapport with the victim. Staff needs to be prepared to understand that elder sexual crime victims may be suspicious, embarrassed, fearful and/or blame themselves. Every moment spent with an elder victim helps build that rapport, even if discussion involves the weather, favorite foods, hobbies, or other topics unrelated to the sexual assault. While time restraints are part of any victim service profession, spending a little more time with an elder victim will go a long way to establishing rapport. This will also aid in accurately measuring the strength of the case. Once that rapport is established, the victim will be more willing to discuss the details of the case and more forthcoming about events.

Frailty/Disabilities of Elder Victims

Be aware that the victim may be humiliated by her frailty. She may have wanted to fight back and may even have tried to with all her power, but her body was not strong enough to escape the attacker. It is common for many elderly people to say that while they have the body of an eighty-year-old, they feel as though they are only thirty years old. Not being able to fight off an attacker may force an elder victim to reluctantly admit that she is vulnerable.

Caregivers and Family Members as Perpetrator

In most elder sexual assault cases, the perpetrator is a caregiver or family member-representing a

unique betrayal of trust. The victim often has already experienced losses of power and control due to dependence on the caregiver for such routine activities of daily living such as feeding, clothing and bathing. When sexual abuse occurs in a care giving situation, the partially or fully dependent victim may feel she can not end or get away from the abuse because of the dependence for care.

Several elder sexual assault studies identify sons as the majority of perpetrators. This makes prosecution of the perpetrator even more difficult for victims. First, it can be emotionally dissonant for a mother to accept that her son could be sexually abusive. Second, most victims find it difficult to send their own child to jail. Third, the victim may blame herself for the abuse by questioning her parenting skills. Self-blame often occurs when the child was sexually or physically abused in the past by a relative or friend of the family and the mother feels that she could have done more to stop the abuse. Forth, the victim may feel her abuse is retaliatory for the prior abuse she or her spouse committed against the perpetrator.

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Differences

Generational Differences

As with each generation, there is a set of perceptions and social norms that accompany our elders. Professionals must have an understanding and sensitively about generational differences and be prepared to make the necessary adaptations to work effectively with an elder victim.

Beliefs About Sex

Generational differences about sex and discussing it publicly must be considered when working with an elder victim. While sex may be more openly discussed today, people born during an earlier generation were raised under very different circumstances. Sex and sexual acts were considered private matters. This is especially true with anal or oral sex, which were viewed as "deviant."

An elderly woman in Pennsylvania was forced to perform oral sex on her male perpetrator, something she had never done before. The woman told the police she had been raped, and was taken to the hospital for a sexual assault forensic exam. The woman was so ashamed of performing oral sex that she told no one that the rape had been oral. As can be expected, the exam showed no signs of vaginal penetration, and the police became suspicious of the woman's claim. Eventually, the woman's case was dropped. Months later, in the supportive setting of counseling, the woman disclosed that she had been raped orally. Prosecutors, victim witness staff and sexual violence advocates should ensure they ask about all the various sex acts that can occur during a sexual

assault, but do so using the utmost sensitivity. When interviewing the victim about details of the sexual assault, it is important to show through words and actions that the victim can trust those involved with the case.

Internalized Rape Myths

When discussing generational beliefs surrounding sex, the concept of forced sex further complicates the issue because sexual violence has generally been discussed as a problem of rape by strangers in the media. Thus, older women may not know the definition of rape or that intimate partners, friends, family members, or acquaintances can be perpetrators. Another generational assumption is that the male libido is uncontrollable and insatiable. Women, on the other hand, are expected to control their sexual urges and serve as the providers of the fulfillment of male sexual needs. In this line of thinking, if a woman is raped by someone she knows, it is her fault; she did not do enough to harness the male libido. Elder victims, some who are completely bedridden, have expressed self-blame for "seducing" their rapists.

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Victim's Fears

Preparing for Trial: Addressing Elder Victim's Fears

An elder victim may be anxious when first meeting with victim witness advocates and prosecutors, just as younger victims. Fears such as not being believed, reprisal by the perpetrator, the loss of autonomy and being alone may cause a victim to remain silent about sexual abuse. Of course, each victim is an individual with unique fears. If the abuse was long-standing, the victim may have made a coded or outright disclosure that was not believed by caregivers or family members. She may now be afraid of not being believed once again. Additionally, a victim may feel that the abuser will be able to talk his way out of trouble and not be held accountable.

Continued or Escalated Abuse

When she or another person reports sexual abuse, the victim often fears continued or escalated abuse. If the victim lives in a nursing home or other facility, she may also fear retaliation for involving the facility in a lawsuit or criminal prosecution. The victim may be afraid that the facility will restrict her privileges, that her care will deteriorate, or that she will be transferred to another facility.

Loss of Autonomy and Fear of Being Alone

A woman who lives alone in her own home and is sexually abused by a caregiver is often terrified that her relatives will put her in a nursing home. Her family may feel that the victim is incapable of living on her own since she was powerless to stop the abuse. This is especially true when the victim is not the one who reports the crime, but when the abuse is discovered through some other means. For

some victims, the idea of being forced into a nursing home may be perceived as worse than tolerating the sexual abuse.

Abusive caregivers often isolate victims from friends and family creating emotional and physical dependency on the caregiver. In these situations, the victim may see the caregiver as the only person who can provide care for her. She may be torn between her fear of being alone if she reports the abuse and wanting the abuse to stop. The victim may be willing to put up with the abuse because she needs the caregiver to look after her.

Apprehension Towards the Criminal Justice Process

A victim may disclose the abuse but still not want to participate in its prosecution. Elders frequently say that they only have a few years left to live and do not want to spend that time repeatedly making court appearances. Some victims worry about the stress associated with testifying at trial and do not want the stress to adversely affect their health.

At the other end of the spectrum are elder victims who view the prosecution process as a chance for interaction. These victims tend to live alone and/or do not have a strong support system; thus, those involved with the case may be viewed as friends. In some cases, the victim may call daily just to talk to someone. Some victims may ask those working on their case to run errands for them or find time for a visit. Being aware of these possible actions and reactions will prepare staff to work with elder victims.

Interviewing

Practical Factors: Interviewing*

**When the prosecutor is questioning the victim, there should be another witness (preferably a police officer) present so the prosecutor does not become a witness in his/her own case due to a victim's death, incapacitation or even credibility in court. If possible, the prosecutor should not conduct the initial interview for the same reason. This said, an advocate should also be present to provide emotional support to the victim.*

The most important part of interviewing an elder-as with any sexual assault victim-is maintaining the victim's personal needs and dignity as the top priority. Asking the victim how she would like to be addressed, what word choices she prefers and allowing the interview to move ahead or end at her command is essential to building the comfort level necessary to discuss the intimate and painful details of a sexual assault.

Open-ended Questions

Interviewing an elderly victim in many ways should be modeled after the interview given to a child after an alleged case of sexual abuse. If the elder victim has any memory loss or cognitive conditions, the interviewer needs to be extra careful not to suggest answers or ideas to the victim. Preferably, the interviewer should use non-leading, open-ended questions to ensure the victim is recounting what happened and not just trying to please the interviewer. Interviewers should also pay close attention to ensure that they do not use judgmental or victim-blaming language at any point during interaction with the victim. These techniques are used in interviewing any victim of sexual violence, but may be especially important with elders due to the high likelihood of embarrassment and internalized guilt associated with sexual abuse.

Avoid Interruptions

When interviewing an elder victim, it is important to let her tell the story without interruption. Often professionals involved in the prosecution will interject to clarify something the elder said or to ask a question to elicit further details.

If interrupted, some elder victims have difficulty remembering where they were in the sequence of events. If short-term memory loss exists and numerous interruptions can exacerbate their recall difficulty. Some elder victims may also become resentful if interruptions happen too frequently. Although it may take longer to elicit pertinent details from elder victims, interrupting to speed up the interview is likely to be retroactive.

Medication and Mental State

Many elder victims take a variety of medications. The medications a victim takes may affect her ability to recall the events and communicate the events to the interviewer. For most elder victims, mid-morning is the best time to discuss the case because medications are typically working at full strength. However, if a patient has severe arthritis, later in the afternoon is often better since it may take the arthritic victim most of the day to move from one location to another comfortably. Asking the victim or her caregiver when she would feel best can be the easiest way to know when to schedule an interview.

It may also be beneficial for the interviewer to develop an understanding of the victim's mental status at the time the crime occurred. It is not uncommon for an elder's mental state to fluctuate

during the day due to medication, sleeping and eating patterns, etc. An elder could be "lost" at one point, and at other times be completely competent. These stages and extremes may vary with each elder, but it is helpful for an interviewer to understand the effect of medication on the individual. It should also be noted that perpetrators could increase, decrease or withhold medication for the purpose of victimization.

Scheduling and Respect for Routine

Another consideration when preparing for the elder victim to appear in court or at the prosecutor's office is scheduling. Some elder victims rely on others for transportation and care. Older victims often have many medical appointments. Victims may be the primary caregiver for others, which may also require scheduling considerations. Talking to the victim weekly can solve this problem since doctor's appointments are generally set far enough in advance. Be aware that if someone has active medical issues, appointments, emergency room visits and hospitalizations may be necessary during emergencies.

Elders are often wedded to their routines: they may wake at a specific time, eat at certain times and need their medications at certain times. Many elders not only have a set routine, but prefer to stay in a localized area with which they are familiar. Asking victims to come to the rape crisis center, courthouse or the District Attorney's office can upset this routine, which in turn can upset their sense of safety and security. Removal from familiar

settings and routine patterns may explain in part, why some victims appear confused and disoriented when at an office. For this reason, it may be preferable to first meet with victims in their own home or another familiar place.

Scheduling the first meeting with a victim at a location where she feels safe and comfortable is paramount in establishing rapport. Not only will meeting with the elder victim in her own home or space make her feel comfortable when she eventually does appear at an office, but having the first meeting on her turf avoids other problems that can arise. For instance, there can be various physical impediments to meeting in an office. The lights in buildings are often fluorescent, which are extremely bright and detrimental to an elder victim's vision. If a victim has a hearing problem, noisy offices can pose a problem. A cooperative victim may appear unfocused or unresponsive when in fact it may be the result of not being able to hear questions asked of her. Of course, in-home visits should only be scheduled if the home is a safe environment for both the interviewer and the victim.

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Practical Factors: Court Advocacy

Rehearsal for Trial

If the case gets to the trial stage, the elder victim will eventually have to testify in the sterile and intimidating environment of a courtroom. Since this can be traumatizing to any victim, young or old, it is preferable to have the elder victim go through the questions that will be posed to her in a mock trial setting in the actual courtroom where she will testify. Having a few people sit in the jury-box and in the judge's chair in advance of the trial will help the victim understand how the process works, thereby giving her a sense of control over the surroundings and minimizing her stress. If this is not possible, having a relative or health care attendant whom the elder victim trusts present during the testimony may provide the victim moral support.

Transportation Considerations

Lack of transportation to court is one of the most overlooked problems with elder victims. With most witnesses, the prosecutor calls on the telephone and tells them to appear at a certain hour. However, if an elder victim is homebound and without means of transportation, this is not possible. A caregiver will need to provide transportation as well as help the victim out of the house and into a waiting vehicle. If the victim resides in a nursing home, there may not be staff available to help the victim to court, or a charge may be issued by the home for such services. If there are stairs at the courthouse, someone will have to help the elder victim

negotiate the stairs upon arrival. It may be necessary to arrange for an ambulance. Even if the victim is in relatively good health, it may still be hard for an elder person to get to and from the courthouse. Taxis or other car service arrangements can greatly reduce the amount of stress an elder victim faces, but these services cost money.

At the Courthouse

Once the elder victim arrives at the courthouse, there are many physical issues that must be addressed. When a victim of any age appears in court, she is often required to wait for hours before testifying. While many prosecutors try to arrange a specific time for a witness to testify, trials are unpredictable and delays often occur. While this is frustrating for all witnesses, it poses many additional problems for elder witnesses. For example, what will be done at lunchtime? Can the victim eat a sandwich, or does she have special dietary needs? Are bathrooms easily accessible? Are medications required, and what time must the victim take them? Some needs can be met by the victim witness or rape crisis center advocates if they accompany the victim, but many situations will necessitate having the victim's health care professional accompany her to court. Crime Victim Compensation through the Pennsylvania Commission on Crime and Delinquency may cover the cost of having a healthcare professional with the victim. See the list of resources at the end of this booklet for additional information.

Maintaining Pretrial Communication

In every case, regardless of the age of the victim,

the time between the occurrence of the crime and the time that it is reported and prosecuted is extremely crucial. Time is not a friend to justice. After an arrest is made, an average case takes six months to a year to get to trial. In a case involving an elder victim, the time delay between the crime and the trial may have catastrophic consequences. While a case is pending, an elder victims' memory may fade or she may get sick and even die. In cases where the elder victim is the only witness to the crime, her illness or death can mean the case will be dismissed. For this reason, it is important to maintain a relationship with the victim and to obtain progress reports on her health so the prosecutor will know if legal steps need to be taken to preserve the victim's testimony. If a victim in her eighties or nineties is in relatively good health, an illness can have a quick onset.

Pretrial Video Deposition

One way to preserve the victim's testimony in case of illness or death is to conduct a pretrial video deposition, or the videotaping of the victim's testimony. The judge, prosecutor and defense attorney must witness the videotaping of both the direct examination and cross-examination. Pretrial video depositions can only be done with the Court's permission and are allowed only under extreme circumstances. However, this method is favorable because if the victim is incompetent to testify at the time of trial or passes away in the interim, her testimony-via videotape-will still be seen by the jury. It also saves the victim from appearing in court. The downside to conducting a deposition is the chance that if the victim is competent to testify at the time of trial, she must do so. The videotape

will not be shown to the jury, but it will be turned over to the defense attorney during discovery. Thus, if the elder victim's testimony is inconsistent on any issue from how she testified on the videotape, the defense attorney will be able to cross-examine her about the inconsistencies.

Competency

One of the biggest problems prosecutors face when trying a case with an elder victim involves competency and related health issues. Each elder victim must be evaluated on a case-by-case basis to determine her competency to testify at trial. There is an extreme range of mental states among elder victims. An elder victim who has severe or terminal dementia may be totally incompetent to testify. One with Alzheimer's may or may not be competent to testify. With an Alzheimer's patient, determination of competency may vary from day to day or even hour to hour, depending on the state of the disease.

To determine if the victim is competent, refer to her doctor or another medical expert. Using the victim's doctor is ideal because she is most familiar with the victim's condition. It is ideal to have this individual testify about the victim's competency. The jury will respond better if a doctor is reporting a victim's competency, not just the prosecutor. Asking specific questions of the doctor, such as 'Would the victim remember a rape?' and 'How would the victim's condition affect her memory of the incident?' will help the jury understand the exact condition of the victim and how to best interpret the victim's ability to recall the events in question.

If the elder victim was incompetent at the time of the crime, DNA evidence and/or the presence of the perpetrator's semen will prove the case because the victim can not grant consent to sex. A defendant's admission is another way the prosecutor can prove the case without the victim, as long as there is some other evidence to corroborate the confession. Because there is often a delay before the sexual assault of an elder victim is reported, there is often little physical evidence to corroborate the victim's testimony. If the elder victim is the only witness to the crime, there is no admission by the defendant and no physical evidence to corroborate the crime, a prosecutor will not be able to prove the charges if the victim is legally incompetent to testify.

Yet, even if the elder victim does not have dementia, Alzheimer's or another illness that affects her competency, there is likely to be some degree of memory loss with an elder victim. Memory loss and more specifically, short-term memory loss, can be frustrating to everyone, including the victim. There is no easy answer for this problem except to record the events as soon as possible. The elder victim can then refer to the notes to try to remember what she said immediately after the crime.

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Conclusion

While elder victims, victim service professions and prosecutors often face an uphill battle in bringing criminal cases of sexual assault to court, practical steps can be taken to assuage that process and successfully prosecute perpetrators. In taking these steps, it is essential to recognize that all victims experience sexual violence as a uniquely devastating experience-shaped by their personal views, coping mechanisms and support systems. It is important for all professionals who are part of the prosecution process to approach each victim as an individual. Preconceived notions and stereotypes are painful to a relationship with someone at any age. A balance must be found between an awareness of and sensitivity to generational differences and barriers and a respect for the inherent dignity and individuality of the elder victim.

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¹ Pavlik, et al. 2001 Quantifying the problem of abuse and neglect in adults: Analysis of a statewide database.

Journal of the American Geriatrics Society 49:45-48

Additional Resources:

Pennsylvania Department of Aging

www.aging.state.pa.us

Pennsylvania Commission on Crime and Delinquency

www.pccd.state.pa.us

Pennsylvania Coalition Against Rape

www.pcar.org

Pennsylvania District Attorney's Association

www.pdaa.org

National Sexual Violence Resource Center

www.nsvrc.org

National Center on Elder Abuse

www.elderabusecenter.org

The National Committee for the Prevention of Elder Abuse

www.preventelderabuse.org

This brochure was produced with funds from the Pennsylvania Department of Aging and the Pennsylvania Commission on Crime and Delinquency.

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Pennsylvania Coalition Against Rape
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