

Just Best Practices in Maintaining Conviction Integrity

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

Voiceover [00:00:18] 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 four of Enhancing Conviction Integrity through Forensics mini season, Just Science sat down with Patti Powers and John Wilkinson, two Attorney Advisors with AEquitas, to discuss the application of best practices and maintaining the integrity of a conviction. Attorneys hold the responsibility of seeking justice for victims and their families and therefore must treat each case with an incredible level of care and discipline. The critical role of attorneys to drive a case forward reflects deeply on the need for maintaining victim care while holding offenders accountable. Listen along as Patti Powers and John Wilkinson dive deep into the ways that practitioners can seek training opportunities, rethink positive case outcomes, and implement key strategies and policies to enhance their response to violent crimes. This episode is funded by the Bureau of Justice Assistance. Here's your host, Chris Williams.

Chris Williams [00:01:16] Hello and welcome to Just Science. I'm your host, Chris Williams. Welcome to everyone listening in. This is the fourth and final episode of our series supporting Enhancing Conviction Integrity through Forensics funded by the Bureau of Justice Assistance. Today, our guests are Patricia Powers and John Wilkinson, both Attorney Advisors with AEquitas. Welcome, Patti and John, it's great to have you on.

John Wilkinson [00:01:38] Thanks, Chris.

Patricia Powers [00:01:39] Thanks, Chris. It's great to be here.

Chris Williams [00:01:41] Can you tell us a little bit about yourselves and how you became colleagues at AEquitas?

Patricia Powers [00:01:46] I love talking about it, Chris. I had the privilege of serving as a senior deputy prosecutor in Washington State for 27 years. I specialized primarily in cases involving sexual assault, domestic violence, crimes against children and related homicides, including both cold and current cases. Since about the year 2000, I became involved also in conducting national trainings, and during that period of time, I had the great pleasure of working with colleagues from AEquitas. It was an amazing organization, and I really appreciated the chance of working with John and other colleagues at AEquitas.

John Wilkinson [00:02:30] So I too was a prosecutor in Fredericksburg, Virginia, where we're assisting Commonwealth's attorneys, and I focused a lot on crimes involving violence against women so domestic violence, domestic violence homicide, stalking, sexual assault. And I was on our sexual assault response team, and it was sort of that experience that really opened my eyes to how these cases are a little different. And then I did a little bit of training in Fredericksburg and in Virginia, but then sort of got connected with national training and technical assistance providers and then ultimately got connected with AEquitas and was lucky enough to work with Patti because she is a wealth of knowledge. So my sort of learning experience never ended. It just continues on and you just learn more and more, and it's- and it's been a great experience.

Chris Williams [00:03:18] Yeah, that's awesome. I know through my years at RTI International, I've loved working with both of you, most specifically on the Sexual Assault Kit Initiative TTA project. How does the platform that AEquitas has provided you assist practitioners across the country and even some at an international level?

Patricia Powers [00:03:36] You know, we have the opportunity as Attorney Advisors at AEquitas to receive requests for technical assistance from prosecutors, law enforcement, medical professionals, advocates, and other members of the community. We respond to those requests on a 24/7 basis. It's like being on call at the prosecutor's office when John and I were serving in that capacity. In addition to that, we provide training basically local, regional, statewide, national, and international as well. So we really have an opportunity to apply research that we conduct as well as our collective knowledge and experience to issues that are surfacing in the field of prosecution. And it really is a wonderful chance to connect with other prosecutors and allied professionals to learn of the specific issues they're working with, and then to advance the work of justice for all of us by sharing that information even further in the field.

John Wilkinson [00:04:40] I would just add that being grant funded by the Office on Violence Against Women has been a huge help because they connect us with lots of folks not only in the field but other national training and technical assistance providers that we partner with regularly and come to rely on. RTI would be one example, but there's plenty of others out there that do this same sort of work and it's really helpful to connect with them. They bring another perspective to the work that we do. They inform us from their own perspective, and they add to our knowledge base and our ability to assist those in the field.

Chris Williams [00:05:11] Yeah, that's fantastic. I know a lot of the resources that you guys produce and trainings that you host have huge impacts truly all over the globe. Getting into the meat of our discussion today, we wanted to talk a little bit more about conviction integrity, so can both of you talk a little bit about what conviction integrity means to you?

Patricia Powers [00:05:31] Well, Chris, first of all, we need to put this in context. Prosecutors are quasi-judicial officers of the court. Prosecutors have the responsibility of ensuring that justice is done for the person charged with the crime, and even beyond that, also justice for victims and justice for communities. In that process, it's so important that cases are well prepared that we focus on the law and how the law applies to the case, and that we do all of this work within an ethical framework, always ensuring that we're meeting all of our responsibilities as prosecutors and also working with other professionals - systems-based advocates, for example - and making sure that they understand our ethical obligations as well, as well as law enforcement. So it really is a team approach, and it requires all of us knowing what our responsibilities are and ensuring that justice is done. And I think that really does lie at the heart of conviction integrity.

John Wilkinson [00:06:38] I agree. And I think you laid it out really well. I think every prosecutor, we're sort of our own individual conviction integrity unit. We follow these rules and we try and do what's right. We try and do the fair thing. But working in collaboration with our allied criminal justice professionals is a huge advantage because it makes us see broader case, the bigger picture and how the work we do impacts everybody in the criminal justice system. I think a really good guide to go by is just professionalism and respect toward all the parties that are involved in this system, from the accused to the victim, other attorneys involved in the process, to law enforcement, to advocates. When we work together in a professional fashion, it improves the process and ensures that we

do the work well and ensure that those convictions do have integrity. There's a lot of legal opinions that often refer to the prosecutor as the most powerful person in the criminal justice system. It doesn't always feel that way when you are a prosecutor, but you do have a lot of power, and with that power comes responsibility. So you do want to partner responsibly with folks so that you do wield that power in a responsible fashion.

Chris Williams [00:07:48] Thank you both. You both raised several very strong points. One that I specifically grabbed on to, John, was your referencing of a Conviction Integrity Unit, which I know is, is one way that folks can apply the concept of conviction integrity, which we've talked about throughout this podcast season, but can you explain a little bit on how attorneys can apply the conviction integrity concept?

John Wilkinson [00:08:11] Patti touched on a lot of this already. You want to make sure that you are following all the rules, that you're familiar with the rules of professional conduct put out by the American Bar Association. And there is a small number of rules that are specifically targeting the prosecution function. So it's easy to become familiar with those rules and to use those and incorporate them. It's not enough just to know you're trying to do the right thing all the time. There are rules in there that are there because some of these issues become tricky, and following those rules, connecting with folks who regularly opine on ethics, using case law and attorney general's opinions to guide you, standards that exist, that are out there, that guide you can really help us apply this conviction integrity to our everyday work. Partnering with others that do the same work and are guided by similar principles also helps us tremendously. I feel like no one person has all the answers. I have done this now for years. I regularly reach out to Patti for help on different issues, reach out to other prosecutors that we work with, and it's super helpful. So you don't have to know everything yourself. There are lots of resources out there and you want to take advantage of those resources. They're there for a reason and you want to look to those to help you in your work.

Patricia Powers [00:09:30] Just to add to John, that's such a great point to make because it really does require a team approach. As John said very eloquently, one person, one prosecutor may not have all of the answers, but other prosecutors may have had a similar experience and can provide their insight into a specific issue. It's so important that prosecutors really know well the rules of evidence, are keeping current with applicable case law to their particular case and are really focused again on that importance of ethical considerations. We want to ensure a solid judgment and verdict, and we want to ensure that our ethical responsibilities are met at all points during our work.

Chris Williams [00:10:17] What are some key elements that agencies and their allied professionals can implement to assist in the implementation of something like conviction integrity?

Patricia Powers [00:10:27] I think it's really important that prosecutors and law enforcement professionals and advocates have cross-training so that everyone is essentially on the same page about the ethical responsibilities that a prosecutor has. What happens when a systems-based advocate receives information from a victim or a witness? They have the responsibility of ensuring that the prosecutor has that information, and the prosecutor will in turn disclose that information in discovery. So knowing what the responsibilities of each other are can help us really do all of our work to the best of our ability. And for investigators, when they're conducting an investigation, it's in the best interests of justice that it's a complete investigation, looking into all possibilities so that we can ensure that we're presenting the totality of evidence to a jury for their consideration.

John Wilkinson [00:11:25] That's a great point, Patti, particularly about investigating the entire case, making sure a thorough investigation was done. It not only supports the fairness of the process and that we're being fair and completely open with the defense, it also protects your case so that you are not suddenly subject to an attack that you didn't even do much of an investigation. So these rules really help in every way possible. It helps me present a better case. It helps me present the case that will withstand scrutiny on appeal as well. And there, again, there's lots of tools out there to assist us in this process. And so we should take advantage of those tools. That partnership with those allied professionals is key. You know, we're deemed to know what the police have done and what the police know. And so the closer we partner with them, then we know that and we're comfortable with that and we can share it. Timeliness in sharing that information is also important. So, you know, eventually we're going to share everything with the defense, but we want to do it timely so they have an adequate opportunity to prepare and respond or investigate any of the information that we share with them. So we do need to do that thoroughly, and through those partnerships, we improve our ability to respond appropriately.

Patricia Powers [00:12:34] And I think that's such a great point. And when we think about what we've developed throughout the Conviction Integrity Series, we focus a lot on various aspects of forensic evidence - DNA, ballistics, blood pattern evidence, just to mention a few - and consulting with experts in these areas can really deepen and enrich a prosecutor's understanding of the evidence and law enforcement's understanding of the evidence and really is going to broaden and even make more effective the investigations that are being conducted.

John Wilkinson [00:13:06] I think that's such another great point and something I've learned from Patti, all those safeguards that say a DNA expert at the lab has to go through, being familiar with that really helps improve my ability to explain that process to a judge or a jury if it's challenged in some way. They have a ton of requirements that improve the integrity of their work. And so being familiar with that work is important to the work I do because I have to communicate that effectively to the fact finder.

Chris Williams [00:13:35] You both provided a fairly good segue into my next question, specifically talking about training and resources. John, your reference to tools that are available. Patti, your referencing to the greater Enhancing Conviction Integrity through Forensics Resource Series that we've worked on, but what other types of training and resources are truly out there for practitioners?

Patricia Powers [00:13:58] One of the resources that I wanted to mention, because I think it's so important for prosecutors, for law enforcement professionals, for advocates, medical professionals, and other members of our community is trauma-informed training. That's so important that our interactions with victims be trauma-informed, and by that I mean developing really an intense understanding that a victim has been impacted by trauma, that responses to trauma can be highly variable. Although we can identify some commonalities, we need to ensure that we're open to the victim's experience of trauma, that we can provide support that is necessary for the victim. So I think that's a critical aspect of training that underlies so much of what prosecutors, law enforcement professionals, advocates, and medical professionals do.

John Wilkinson [00:14:53] I just think how we do what we do is almost as important as doing it to begin with. And that point that Patti just made about being trauma-informed, you

know, you could go through a process and get a conviction in a serious crime, but if the process was horrendous for a victim because of how we did our job, you know, how much did we achieve there? Maybe we protected someone from a future crime, but boy, that victim went through the wringer. So that kind of training is really important. There's lots of resources out there for creating a Conviction Integrity Unit or if you're, say, not a large office, then a conviction integrity process so that you may not have the resources to staff an entire unit. There are webinars and written resources and then folks to talk to, you know, some of the work that Patti and I have talked about that we regularly do is technical assistance, which is where you basically can email or call in and just talk to one of us about whatever your issue might be. And for me, that's a huge advantage because you can always read something and then you think you understand it, but you may not completely understand it. And having that ability to talk to somebody about who's done this, who has experience with it, whether it's one particular model or they've done different things to create a process or a unit to make sure that there is some- something in place to review convictions when there is a question about the integrity of that conviction, whatever that might be. So we have some of those resources, the Prosecutor Center for Excellence, RTI. They exist, and you can reach out and read or talk to somebody about those things.

Patricia Powers [00:16:25] In addition to Conviction Integrity Units, we have part of the legal process being appellate work, and persons that are convicted of crimes have the opportunity to appeal those cases to a higher court, and again, we can learn from that. Prosecutors invariably are going to be on top of case law development that's come from litigation in the Court of Appeals. But at the heart of all of our discussion, Chris, I think we're talking about doing it right the first time, ensuring that our work meets the appropriate legal standards, is consistent with the rules of evidence, and is guided at all points in time by ethical considerations.

John Wilkinson [00:17:09] One additional thing that I would regularly do along those lines is every state bar association has an ethics hotline that you can call into anytime you have a question, and they'll talk to you about it, or they'll point you to opinions or case law or references that address that specific issue. And so I encourage people to always take advantage of those resources because they exist, they're free. Just talk to somebody about whatever your issue might be.

Chris Williams [00:17:34] That sounds like a fantastic opportunity, John, as well as everything else you all have mentioned so far. But taking it to that next step of knowing that what you're doing to implement this concept of conviction integrity, how can you kind of measure that success? And by that I mean, what are some outcomes that practitioners should be looking for when trying to enhance these processes?

John Wilkinson [00:17:58] Those things are important to follow through on, and you can look for outcomes in sort of how your work is going. I don't think the outcome is that you always get a conviction, right, but the outcome is that everyone in the process was treated fairly and that the experience wasn't a horrible experience for those that take advantage of the criminal justice system, say a victim, a survivor of some sort of crime or the family of that crime. So the end goal is that we're trying to achieve justice, and in justice, the process has to be fair or you're not going to achieve justice. So going throughout that process, I would look for those outcomes that you regularly get some feedback from the people that you are working with in the criminal justice field, so it wouldn't just be victims, it would include the courts, it would include the defense bar, it would include the law enforcement folks, but victims as well. You're checking in periodically to see how you're performing and getting quality feedback about that performance.

Patricia Powers [00:18:56] And I think that's a great point, and to follow up with what John is discussing, I think it's so important for prosecutors and allied professionals and even our communities to understand that there may not always be a conviction, but there can be justice in the process. And that's what I think is so critical. It is a trauma-informed approach to working with victims, allowing victims a full and fair opportunity to be heard. It's presenting evidence to the court or to the jury and allowing others, fact finders to make a reasonable decision based on the evidence. So the process, as well as the outcome, is of critical importance. And that's why I think prosecutors and allied professionals working together and understanding the nature of the work that we're doing and who it is we're serving. We're serving our jurisdictions, we're serving victims of crime. We're ensuring due process for offenders, and that's important as well. And we're striving for community protection, and that isn't always going to be a conviction, but it's the work leading up to that that can be so powerfully important.

Chris Williams [00:20:07] Those are great points, specifically thinking about the outcomes and knowing how what you're doing is working, but in the instance of something not potentially working, I want to talk about wrongful convictions for a second. Can the two of you touch on how implementing a Conviction Integrity Unit or multidisciplinary case review process can hope to prevent wrongful convictions from occurring?

Patricia Powers [00:20:31] Well, I think it takes us back to our discussion about the necessary components for a verdict, for a judgment with integrity, and that's getting it right the first time, it's following the law. It's knowing the rules of evidence and applying those rules of evidence. And taking that a step further, I think that case review can be a very important process, obtaining the viewpoints from other professionals to look at these areas and ensuring that we are consistently following the applicable law.

John Wilkinson [00:21:04] Yeah, I agree. The case review process really is prevention of wrongful convictions because you do get everyone weighing in, reviewing the evidence from their different perspectives, making sure decisions are evidence-based and that you only go forward in those cases that it's appropriate to go forward in. So getting those perspectives is hugely helpful. When I've worked closely with law enforcement and advocates on, say, sexual assault cases on our sexual assault response team, their perspective helped me improve my strategy in the case because they had experience and they had seen these cases over and over again. They could anticipate defenses when I was newer that I didn't have on my radar, and so they specifically would help me with that. They also, I just had time and time again, detectives give me a theme for my case because they highlight a particular piece of evidence that was extremely powerful or that was extremely important to making a connection between this crime and maybe another crime. And so those sorts of things I think really do help us prevent wrongful convictions. The conviction integrity process is important to review those things, to make sure that those wrongful convictions don't occur. Mistakes happen, or we get bad evidence sometimes. The key to that is to be completely upfront and open and make sure that we alert the defense when those things happen right away. Sometimes mistakes happen before a case goes to trial. Got to let the defense know, and we got to let them know timely. Sometimes we might have victim safety considerations, and so we want to do safety planning before we turn over information. That's fine, but you're going to turn that information over as soon as is practical. We don't wait for deadlines that might be statutory or a court order deadline. Give them the information as soon as you can.

Patricia Powers [00:22:49] And I think that's really a vitally important point, John. You know, I think diligence really does require an immediacy about our work. If we learn of any additional evidence, that needs to be disclosed immediately to the defense so that they can ensure that they're doing work that's appropriate. And we also have the duty of candor to the tribunal. And that means also making the disclosure on the record so that the court is duly informed when that is necessary as well. So when we look at it, we really are guided by ethical considerations throughout our work, throughout the investigation, the charging process, the trial process, and knowing those ethical considerations, as John has said, it really is fundamental to doing the right thing as all prosecutors and allied professionals are committed to.

John Wilkinson [00:23:41] I also just would add that when you do the things that Patti just laid out, you build your reputation in your community as an ethical prosecutor and that's invaluable with the courts, with opposing counsel, with law enforcement, with victims, with defendants. And just when you operate that way, you really do build your reputation, and that really helps when you're dealing with folks. You're just much more comfortable sharing information with the other individuals and they know that they can rely on what you're sharing with them.

Patricia Powers [00:24:10] Right. And that's great, John, because ultimately what we're doing, we're ensuring that the public sees the integrity of our work. And that means so much because ultimately these members of the public may also be on our jury. So it's- it's extremely important work that we're describing.

Chris Williams [00:24:28] I certainly appreciate the thoughts that you guys are raising. They're very important ones, for sure. One of the themes that has surfaced throughout this podcast series, but also multiple times today, I love the term that you both use - allied professionals - talking about law enforcement, prosecution, victim advocates, you know, everyone that's potentially encountering a victim or a survivor throughout this process. And I think that's potentially one of the answers to my next question, but in your professional opinion, what do you two view as a strong first step for an agency to implement some of these best practices we've discussed today? What does that truly look like?

John Wilkinson [00:25:05] I think that's the key. I used to think, oh, that's the key to crimes involving violence against women. It's key to all crimes to work collaboratively with the others that are working on these same crimes who bring their own experience and own perspective and their own knowledge about these crimes. That is tremendously helpful, and that's how we build stronger cases that we can rely on the conviction when it comes, because we've gotten all of that perspective. We've worked closely with those individuals. Those individuals will point out issues with cases that I might not see. I point out issues with cases that they may not see. And there's opportunities when we identify those issues to do further investigative work, to do further work to figure out what is the next appropriate step for me to do legal research on a particular issue, whether it's related to a search warrant or some collection of evidence or something along those lines. So working collaboratively to me is the first step. If you're not already doing that, it doesn't even have to be that formal, but if you regularly meet with and communicate with those allied professionals who do this work regularly, and the key folks are the law enforcement, the advocates, the prosecutors, and medical are the ones that we want, at least at a base, to be working regularly with one another and going over these cases. That's going to really improve your ability to bring good, solid cases to court that are going to withstand scrutiny on appeal.

Patricia Powers [00:26:37] And I think it really begins with a commitment to the work of justice. And that kind of commitment that we bring to the work of justice requires our communication. That means prosecutors talking with investigators about ongoing efforts to investigate. It means learning from other professionals, medical professionals, professionals in the advocacy community, enriching the understanding that we have about every aspect of our case. And the bottom line is, it really does take a team. The crimes that we're committed to work on, they don't just have the dimensions of legal issues or law enforcement challenges or responses to trauma, but it's all of these components and more. And so when we look at it, it takes all of us doing our best possible work, but doing it as a team. That's how we advance cases to justice.

John Wilkinson [00:27:30] Just to add to what Patti said, you know, some education about what other allied criminal professionals are doing comes just from working closely with them, but there's also the opportunity to specifically have education sessions and to talk about the different duties and obligations that you have. I work closely with police all the time and I thought I knew everything that they do, but when I attended a cross training with the police officer and we were paired specifically with police officers, I learned some more things that I thought I knew, but I didn't know. So having those opportunities to engage in education of your team, where each participant in the team is able to talk about what they do, what their responsibilities are, what they see in these crimes, what they can share and what they cannot share is super helpful and it just advances the whole process.

Chris Williams [00:28:20] Very well said points that you two are making. Just wanted to know what's next for each of you - is there anything specific coming up that you're excited about, any future projects, events, or resources that you guys are working on?

Patricia Powers [00:28:33] I'll start off because I really am excited. I'm excited about the forthcoming webinars that we have in our Conviction Integrity Series - coming up is going to be achieving justice at trial, direct examination of witnesses to violent crimes, we're going to include a discussion about 404b witnesses as well, which is so important to serial rape prosecutions. We're working on some other resources having to do with blood pattern evidence as well as crime scene analysis. And so potentially that could really be beneficial to prosecutors and other professionals. One other thing that I would add is every day at AEquitas is an amazing opportunity to communicate with other professionals, to learn from them, and to apply our collective experience and research to issues that are coming from the field. It's all good.

John Wilkinson [00:29:29] That's great. And so things I'm excited about, pretty soon we'll be doing a presentation on preparing with an expert on fingerprint evidence to be ready to go on those cases. Fingerprint evidence, I think a lot of people think, "Oh, that's old school, that's been around for a long time." There's new challenges all the time, and preparing closely with those experts is going to be invaluable. I'm also working a lot on digital evidence, and through another project here at AEquitas, we look at a prosecutor's duty to collect, preserve, and introduce digital evidence in their cases and how we can do that safely and continue to improve the body of law surrounding digital evidence, which means educating your judge about digital evidence in a way that makes sure that the judge's opinions are sound when it comes to digital evidence. So that's another aspect that is involved in virtually every case that we have now - there's something on a cell phone, there's something in an email, something like that, so digital evidence is a, is another one that I'm excited to focus on.

Chris Williams [00:30:28] We're running near the end of our time together, though, but I wanted to offer one more opportunity for each of you to provide final thoughts. Anything you'd like to share with our listeners before we wrap up the episode today?

John Wilkinson [00:30:40] This was a great opportunity to talk about conviction integrity and the Conviction Integrity Series. I think it's so important to know the topics that are going to be involved in the case that you're presenting. Know, as Patti often talks about, the ethical structure or framework within which these cases move forward, to just be familiar with those things. We're all typically trying to do the right thing. We're all trying to achieve a sound conviction, but those rules really matter. And being familiar with them and being familiar with your partner's work and how they do what they do is super important to this work. And those things will lead to sound convictions in our criminal justice system.

Patricia Powers [00:31:19] And conviction integrity really does lie at the heart of the work that we're all privileged to do as prosecutors and allied professionals. It speaks to who we are and what we do and how important it is to advance justice for persons accused of crime, for victims, and for our communities as well. In that process, our communication and our collaboration is so important, and we at AEquitas and also those of us working with the Sexual Assault Kit Initiative and the Conviction Integrity Series would be honored to support your efforts in any way that we can. We're very hopeful of your contact with us, and we look forward to communicating from our perspective to help enrich the work that you're doing for victims in our community.

Chris Williams [00:32:08] Very well said, Patti. We really appreciate your contributions to the conversation today. Patti and John, I wanted to thank you both for sitting down with the Just Science podcast to discuss the application of conviction integrity and how practitioners can enhance their processes. Thank you both so much.

John Wilkinson [00:32:25] Thanks, Chris.

Patricia Powers [00:32:26] Thank you, Chris.

Chris Williams [00:32:27] 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 on enhancing conviction integrity through forensics, visit SAKITTA.org. That's S-A-K-I-T-T-A dot org. I'm Chris Williams, and this has been another episode of Just Science.

Voiceover [00:32:49] This episode concludes our Enhancing Conviction Integrity through Forensics mini season. Stay tuned for future episodes of Just Science. This project was supported by Grant No. 2019-MU-BX-K011 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the U.S. Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.