

## Advocates and Law Enforcement: Oil and Water?

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While traveling and training for law enforcement, we are often questioned – and even challenged – about the role of victim advocates when responding to crimes of sexual violence. For example, just last month Joanne provided training in a state where the county prosecutor stood up and stated quite strongly that his office did not want advocates participating in any part of the law enforcement interview. This was particularly disappointing because we were talking at the time about best practices for the multidisciplinary response. Rather than discussing the current policy and its underlying rationale, however, the prosecutor simply declared that their policy was not to include advocates. Not surprisingly, this shut down any further discussion of the issue.

On another occasion, we were hosting a conference in San Diego. Joanne ended up talking to a group of officers who had attended a session she presented earlier in the day. They asked if they could talk to her about “those advocates.” They went on to say that the advocates and officers in their community were like “oil and water.” Apparently, there had been a feud many years ago and – although no one could remember what the feud was about – they still couldn’t seem to get along. To help both groups understand at least some of the source of the tension, Joanne asked them to think about their organizational histories. For example, although there are more women in law enforcement today than when Joanne first joined the San Diego Police Department in April 1980, police departments are still generally male-dominated, paramilitary organizations. On the other hand, most sexual assault coalitions and community-based rape crisis centers were created as a result of the feminist movement, when women gathered together to demand better treatment for rape victims. It’s easy to see that these two perspectives might clash at times. In order to understand each other, it is therefore important for both groups to appreciate the unique history, experiences, roles, and responsibilities of each.

So, to start answering the question in the title of this article – whether advocates and law enforcement are like “oil and water” – we would like to ask each one of you reading this article whether you would like to see more sex offenders held accountable for their crimes. We assume the answer is “YES.” If so, research and experience tells us that **we must provide all victims of sexual violence (as well as their loved ones) with as much support as possible.** Typically, the best way to do this is to provide advocacy services as early and as often as needed throughout the criminal justice process. This is often the only way that victims will be able to draw together the emotional resources they need to participate in the investigation and prosecution of their sexual assault. We have all seen how difficult this process can be for victims, especially given the attitudes of doubt and blame that are seen in our society when it comes to sexual assault. This is why at least one expert has described the process of advocating for victims within the criminal justice system as holding their hand on a walk through hell (Weisz, 1999; cited in Koss, 2006).  
**[read more]**

## **Role of Advocates in the Criminal Justice System**

Clearly, we believe that best practice is to notify an advocate any time a forensic examination or preliminary investigation is going to be conducted with a victim of sexual assault. This means that law enforcement agencies and forensic exam facilities must have written policies documenting their responsibility to notify victim advocates as soon as possible and specifying exactly how this will be done. **If this type of written policy is not yet in place in your community, this may be the most important place to begin working.** (To help with this task, we have provided some good examples of community-wide protocols in the Resources section.)

However, even when such basic policies regarding notification are in place, there is still a considerable amount of work to do to figure out exactly what advocates should DO once they respond during a forensic examination or law enforcement interview. Many training materials for advocates – including our own – do not typically offer concrete, detailed, realistic guidance. Worse, training for advocates is not standardized, and thus the content and quality varies dramatically across the country. In some communities, this means that advocates have problems with overstepping the appropriate boundaries for their role within the criminal justice system.

On the other hand, we are concerned that many advocates have limited their role within the criminal justice system to the point where they may as well not be involved. To illustrate, an advocate in one of Kim's training workshops said that she always sat behind the victim during a law enforcement interview, so she wouldn't interfere with the investigation. Of course, she's right -- this will minimize the likelihood of interfering with the investigation. However, the cost of this practice is that it makes it virtually impossible for her to fulfill her role as an advocate, which is to provide meaningful information, assistance, and emotional support for victims.

In this Promising Practices article, our goal is to discuss in some detail the advocate's role during the criminal justice process, with particular focus on their involvement during forensic exams or interviews. We will also spend some time describing how the roles and responsibilities differ for the two basic types of victim advocates (community-based and system-based). Next, we will address the fact that many law enforcement officers, forensic examiners, and other community professionals are reluctant to involve advocates in these ways, so we conclude by discussing some of the common factors underlying this reluctance and offer strategies to resolve them.

### ***Two types of victim advocates***

Up until now, we have discussed advocates as if there were only one type. So at this point we need to describe the two basic types of advocates who work with victims of sexual assault:

- (1) Community-based advocates; and**
- (2) System-based advocates.**

Your community may have neither, one, or both of these types of victim advocates. However, in order to understand the role of victim advocates within the criminal justice system it is essential to discuss differences between these two basic types. We will first discuss the many aspects of victim advocacy that the two types have in common, and then highlight some differences.

### *Common roles for both types of advocates*

**Both types of victim advocates will typically provide direct services for individual victims – and push for reforms in community systems that serve the needs of all victims.** Services are typically provided for adult and adolescent victims of sexual assault, regardless of their gender. However, child victims may either be provided with services or referral to another appropriate agency if these services are not provided by the advocacy organization. The services most advocacy organizations offer can be summarized as follows:

- Providing crisis intervention and emotional support;
- Facilitating the victim's decision making process;
- Accompanying or staying with the victim;
- Serving as a liaison for the victim with other agencies;
- Helping to access services for victims with a physical or mental disability;
- Helping to access interpretive service for non-English speakers;
- Developing a safety plan with victims;
- Providing victims and support people with written resource materials; and
- Helping victims to deal with the media.

The primary focus of victim advocacy is thus on protecting the physical safety, health, emotional well-being, and legal rights of sexual assault victims. This includes making sure that victims have all the information they need in order to make decisions and that they receive all the services to which they are entitled. To fulfill this role, advocates often work not only with the victim, but also with the victim's family, friends, and other support people. Advocacy also typically requires working with the other professionals who provide services for the victim. We now turn our attention to some of the aspects of each type of victim advocacy that are unique.

### *Community-based advocates*

When we use the term community-based advocacy, we are referring to those victim advocates who work for **a private, autonomous, often non-profit agency within the community.**

- The most common example would be a rape crisis center, but other community-based advocates work for a local YWCA, hospital, legal services agency, SANE program, or other social service agency. They may also work for a dual agency serving victims of sexual assault and domestic violence.
- Alternatively, they may work for an organization that serves the needs of specific victims (e.g., elderly, disabled, cultural groups).
- They may even be employed by a campus unit within a college or university, or provide services for a Native American tribe.

Community-based advocates may be volunteers or paid staff, and they may describe themselves as rape crisis counselors, rape crisis advocates, victim advocates, or other similar terms. While

community-based advocacy organizations typically provide all of the services that have been already described, they will also generally offer the following services that may be unique:

- A 24-hour hotline with immediate access to trained counselors/advocates;
- Short-term or even longer-term counseling for victims of sexual assault; and
- Support groups for victims of sexual assault or even their support people.

These services are offered for all self-identified victims of sexual assault (and support people), even if the sexual assault happened a long time ago or it was never reported to law enforcement.

### *System-based advocates*

System-based advocates are employed by a **public agency such as a law enforcement agency, office of the prosecuting attorney, or some other entity within the city, county, state, or federal government.** Their roles and responsibilities will vary based on their host or governing agency, as will the specific term they use to describe themselves. For example, these professionals may describe themselves as victim advocates, victim witness assistance coordinators, or other similar terms.

- This definition could include advocates working within the Victim Services Unit of a police department, Victim-Witness Assistance unit within a prosecuting attorney's office, or a county, state, or federal correctional setting.
- It also includes advocates working in dedicated positions with federal agencies such as the U.S. Attorney's Office or the Federal Bureau of Investigations (FBI).
- It even includes professionals who provide advocacy services as a collateral duty within federal agencies such as the U.S. Postal Inspector, Internal Revenue Service (IRS), the federal prison system, the Secret Service, and the Bureau of Alcohol, Tobacco, and Firearms (ATF).
- Although there are some unique aspects of their role, the definition of a system-based advocate also includes those who work in the military, often under the supervision of a Sexual Assault Resource Coordinator (or SARC).

Because of their status as government employees, system-based advocates are often better able to access information regarding the criminal justice processing of the victim's case. This means that system-based advocates may offer some services that are unique to their role, such as:

- Assisting victims in scheduling appointments with criminal justice personnel (e.g., detectives, prosecutors);
- Assisting the law enforcement investigator or prosecutor during victim interviews, by framing the issues, crafting the questions, or helping with communication;

- Offering victims transportation in a government vehicle if they need it, to participate in a forensic examination, interview with the law enforcement investigator or prosecutor, other investigative procedures, or court dates;

System-based advocacy agencies may also be somewhat more likely than community-based advocacy agencies to offer services to children; however, this varies by community.

*Communications with a system-based advocate are not typically privileged*

Perhaps the most important difference between the two types of victim advocates, however, relates to the question of confidentiality and privileged communications. Specifically:

**System-based advocates typically never qualify for counseling privilege, so their private communications with victims – and their written records documenting services – can never be guaranteed to remain confidential.**

If a system-based advocate is asked by a police officer or prosecutor about a case, information will need to be shared, even if it was learned during a private conversation with the victim. This information will then be shared with the defense. The same is true for anything the system-based advocate observes or learns about the victim or case, not just what the victim says in their private communications. This is because system-based advocates are employees of the government (if they work within the law enforcement agency, prosecutor's office, or other governmental unit).

*Varying levels of counseling privilege for community-based advocates*

On the other hand, **community-based advocates across the country have varying levels of legal protection for the confidentiality of information that is learned during their communications with victims or documented in their written records.**

- In some states, victims enjoy “**absolute privilege,**” which means that community-based advocates can provide the assurance that anything the two discuss in private can be kept confidential.
- In others, they have “**semi-absolute privilege,**” so community-based advocates can reassure victims that most things they discuss privately will remain confidential, except in a few situations (e.g., mandated reporting).
- In still others, victims have “**qualified privilege,**” which means that community-based advocates cannot guarantee that their private communications will remain confidential, because the decisions are made by judges on a case-by-case basis.

Obviously, advocates and other professionals must be familiar with the specific situation in their community, so they can provide victims with accurate information to be used when deciding what information to share with whom. One important source of confusion, however, is that:

**Privilege never extends to communications that take place in the presence of a health care provider, law enforcement officer, or other third party.**

This includes anything that is said, observed, or learned while the advocate is present during a law enforcement interview, forensic medical examination, or other investigative procedure such as a line-up or pretext phone call. In other words, anything that a community-based advocate sees or hears from the victim while a third party is present cannot be considered confidential.

**When victims want to discuss something confidentially with a community-based advocate (in states where this confidentiality is legally protected), this must therefore be done outside the presence of a law enforcement officer, forensic examiner, or other third party.**

## Specific Roles and Responsibilities

As we noted in the introduction, we believe that best practice is to notify and involve an advocate as early as possible once a sexual assault has been disclosed. However, there are two challenges that communities often face that we want to note at the outset. First, most SARTs only involve an advocate when there is a forensic examination. The problem with this is that only a small minority of victims disclose their sexual assault during the time period where a forensic examination is warranted. Therefore, it is important for communities to establish protocols and resources to provide advocacy for victims who do not have a forensic examination.

A second challenge stems from the fact that most community-based advocacy programs do not typically allow their advocates to respond to a field situation (e.g., the victim's home). Again, this limits the number of sexual assault victims who can receive advocacy at the earliest opportunity. Some communities do have advocates (whether community-based and/or system-based) who can accompany law enforcement officers when responding in the field. If not, this is another area where community professionals may need to work together to

In Colorado, most police departments have victim advocates who work closely with law enforcement to guarantee that all crime victims, including sexual assault victims, are provided with services to protect their rights as a crime victim. Advocates thus work collaboratively with law enforcement to make sure that crime victims and their families are given the opportunity to heal and restore balance to their lives. Because they are system-based advocates, they cannot guarantee confidentiality in their private communications with victims and their support people. However, this limitation is outweighed by the fact that all crime victims receive advocacy services – as early as possible and throughout the criminal justice process.

coordinate their multidisciplinary response – so advocacy services are offered to victims as early and as often as possible.

### *Specific responsibilities of advocates*

So let's talk more about what victim advocates actually DO when they respond during the criminal justice process. Perhaps the most obvious situation arises when an advocate accompanies a victim during the forensic exam or law enforcement interview. In this situation, advocates can provide emotional support for victims, answer any questions that victims direct to the advocate, and ensure that the victim's rights are protected. In general, the advocate's role during an exam or interview will be non-verbal, by providing comfort and reassurance with their

physical presence. However, depending on the situation, the advocate may need to speak to victims, forensic examiners, law enforcement investigators, or other community professionals.

In some situations, **advocates may decide that they need to speak with victims during an exam or interview, in order to check in with their emotional state, provide reassurance and validation, and ask if they need to take a break.** In general, these verbal communications will be addressed directly to the victim – not to the other professionals involved.

- To illustrate, questions that might be appropriate for an advocate to ask a victim during an interview might include: “Are you doing okay?” “Would you like to take a break?”
- In addition, it is both common and appropriate for advocates to provide verbal support and encouragement during an interview, with statements such as: “You’re doing great” or “We’re almost done now, hang in there.”
- Advocates also frequently help victims to utilize techniques for relaxation, such as releasing muscle tension, breathing deeply, or focusing on an object or image.

Typically, this type of communication is not likely to create any concern or tension among the other professionals involved. However, other types of communications might do so, even if they are within the appropriate role for a victim advocate. For example, part of the advocate’s role is to monitor the victim’s verbal and nonverbal responses for signs of distress. In many cases, this distress is inevitable, due to the difficulties of disclosing a sexual assault and participating in a forensic examination and/or law enforcement investigation. Often the best response is to suggest taking a break and then addressing the victim’s questions or concerns in private. In other situations, however, **it may be appropriate for advocates to provide a prompt for the victim to clarify communication with the forensic examiner or law enforcement investigator.**

- For example, if it is clear to the advocate that the victim has misunderstood or misinterpreted something that the forensic examiner or law enforcement investigator has said, the advocate may provide the victim with a neutral prompt to help clarify, such as: “Would you like the nurse/officer to explain that again?”
- This type of situation often arises when a forensic examiner or law enforcement investigator asks a question that is necessary but sounds judgmental to the victim. For example, it is appropriate for forensic examiners to ask about recent consensual sexual contact and for law enforcement investigators to ask about the clothes the victim was wearing prior to the sexual assault. Both of these questions have a legitimate purpose, but may sound to victims as if the professional asking the question doesn’t believe them or blames them for the sexual assault. It might therefore be appropriate in this situation for the advocate to ask the professional if he/she would mind explaining the reason for the question, because “sometimes it helps people to answer if they know why you are asking a question.”

It is important to note that such verbal prompts are neutral, designed only to assist the victim and the examiner or investigator in communicating clearly. It is NOT part of the role for victim advocates to ask any substantive questions or to provide any factual information about the sexual assault. It is also worth noting that such prompts should generally be used sparingly by advocates, and only in situations where they believe that there is a risk of serious miscommunication or victim distress arising from a particular question or procedure.

### *The advocate role when conflict arises*

A more difficult situation arises, however, when the advocate determines that some intervention is needed to address distress that is being caused by the forensic examiner, law enforcement investigator, or other community professional. Again, some of this distress is inevitable, given the difficulty of reporting a sexual assault and participating in an exam or interview. No matter how competent and compassionate community professionals are, victims will typically experience distress during these procedures. However, victims often forget that they actually have rights during the process – and that they are the ones in charge of making important decisions. Often, victims feel that the process has a life of its own, and they are simply being swept along without any control or decision making ability. Therefore, **it is appropriate for advocates to remind victims of their rights throughout the process.**

- For example, it is appropriate to remind victims at some point during the forensic examination that they have a right to refuse procedures or terminate the examination completely. It is easy to forget that consent is an ongoing process.
- Many victims also want a summary of the findings from the forensic exam, and this can be gently prompted by the advocate – either to the victim or the examiner. In fact, many victims are anxious after the forensic exam to get a statement from the examiner about whether they “found anything.” There are obviously limits on what the examiner can say in that situation, but it is important to provide victims with as much information as possible. It is the victim’s body, after all.
- Similarly, during the law enforcement interview, it is appropriate to remind victims that they can take a break or ask questions whenever they want.

There is clearly a difficult balancing act that is required – to intervene as needed to make sure that a victim’s rights and interests are being protected – but not disrupt the process unnecessarily or discourage victims from participating in certain aspects of the forensic exam or law enforcement interview. As with the previous example, the best response is often to suggest taking a break and then privately discussing with the victim, law enforcement investigator, or forensic examiner any issues that are causing particular concern.

### *The importance of taking breaks*

We’ve suggested that breaks are important for advocates to address many of these issues privately with victims. When discussing the role of advocates within the criminal justice process, therefore, community professionals can also explore ways of responding to the needs of

victims who may need a break during the forensic examination or law enforcement interview. In some situations, directly asking victims if they need to take a break may not be the best strategy, because they will often decline simply to be polite and cooperative. Rather, community professionals can discuss alternatives such as having advocates take the initiative to request a restroom break when they sense that the victim is tiring or having difficulty. It is sometimes difficult for forensic examiners and law enforcement investigators to sense when victims need a break, because they are attending to so many complex demands at the same time. Because advocates are focused only on the emotional well-being of victims, they may be better able than the other professionals to monitor nonverbal cues that victims may exhibit.

In some situations, it may be possible for professionals in the community who respond to sexual assault victims (e.g., members of the Sexual Assault Response and Resource Team or SARRT) to establish a means for communicating (perhaps with a code word, or nonverbal signal) when they need to discuss something that has happened that is not appropriate or needs correcting. Using this code word or nonverbal signal, community professionals can indicate that they want to take a break to discuss an issue privately.

### *When the conflict isn't easily resolved*

By far, the most difficult situation is when the behavior of another community professional violates or threatens to violate the victim's rights as a crime victim. While the short-term response to this situation is the same as the others – the advocate can suggest taking a break to discuss the issues privately with the victim – the longer-term response is different because it requires addressing the issue with the professional and possibly contacting the person's supervisor or other appropriate agency representative. However, it is important to remember that advocacy does not have to be adversarial or confrontational in order to be effective.

Often, responding to this type of situation requires separating out the issues of the immediate response to the conflict and the longer-term approach to resolution. In general, when advocates encounter conflict with other community professionals while working with a specific sexual assault victim, their approach will include advocating for the interests of this particular victim, regardless of the longer-term implications for community systems, agencies, or relationships between professionals. **While advocates certainly strive to protect their relationships with other community professionals, it must be clear that their role requires them to work on behalf of the victim's stated wishes, even when this causes the advocate to come into conflict with the other professionals within the community who respond to sexual assault.**

On the other hand, it is best for advocates to try to fulfill this aspect of their professional mission without expressing conflict with other community professionals in front of victims. Clearly, victims are typically experiencing a great deal of trauma and disorganization after reporting a sexual assault, and the last thing they need is to witness conflict between professionals in the community who are there to respond. Wherever possible, any immediate conflicts between community professionals should be addressed outside the room where the victim or support persons might be present. We will discuss some specific examples of this in the next section.

## Overcoming Reluctance to Integrate Advocacy Services

As we discuss the role of advocates in the criminal justice system, it is important to recognize that some community professionals are extremely reluctant to involve advocates in the process of the forensic examination, law enforcement investigation, or court proceedings. This reluctance stems from a variety of sources.

- This reluctance is often based in part on the differences in personality and philosophy that were described earlier. The type of person who becomes a law enforcement professional or prosecutor is sometimes very different from the type of person who becomes an advocate, and this can make it difficult to achieve the level of trust, respect, and comfort that is required to work together productively.
- However, the reluctance is also sometimes based on conflicts that arose between the disciplines in the past – perhaps as a result of a misunderstanding, lack of mutual respect, insufficient cross-training, or outright hostility.
- If the reluctance is not based on actual past conflicts, however, it is often based on the expectation that such conflicts will arise if advocates are “allowed” to work with sexual assault victims within the criminal justice system.

In general, criminal justice professionals often fear that advocates (but especially community-based advocates) will talk victims out of reporting the sexual assault to law enforcement, disrupt their interviews, or otherwise interfere with their investigation and prosecution of the crime.

- To illustrate, we have heard of examples where advocates respond to the exam facility before an officer arrives. Then, because victims do not understand the different roles of the responding professionals, they immediately begin to provide a detailed history of their assault to the advocate. When the officer does arrive, however, victims are understandably frustrated when the law enforcement interview begins and they have to start all over again. In this case, victim advocates should receive training to clearly identify their role, describe the services they can provide, and gently explain to victims that they need to wait until the forensic examiner and the officer arrive to go into the details of the assault.
- Other problems arise when advocates take notes or write a report following the law enforcement interview. Not only does this violate the fundamental role of the advocate, but it also raises serious concerns regarding confidentiality and increases the likelihood that there will be inconsistencies in the documentation of the case. Such inconsistencies will then be used against the victim if the case ever proceeds to trial.
- In other situations, officers have told us that advocates have interrupted their interview without cause or that they have answered questions for the victim rather than allowing the victim to respond. Again, these behaviors clearly violate the proper role for advocates.

- We also hear about problems that arise when advocates unknowingly become part of the chain of evidence. This can happen anytime advocates even temporarily have possession of evidence in the case (e.g., the victim’s clothing or personal items) or when they have the potential to come into physical contact with forensic evidence. This could happen, for example, if the forensic examiner asks the victim to hold something or otherwise assist with the process of collecting, storing, or documenting forensic evidence.

All of these concerns can be addressed with cross-training between the various professional disciplines involved in sexual assault response. It can also be addressed by increasing, improving, and standardizing the training that advocates receive on the criminal justice system. While many excellent training materials exist for advocates, they typically provide few details on exactly how advocates should fulfill their role within the criminal justice context. Guidance is usually provided in general terms, without recommendations for the nitty gritty reality of how to do the work effectively – especially how to manage the complex inter-relationships of the different professionals who are involved. This work is HARD, both professionally and interpersonally, and we are currently working on developing two training modules within the On-Line Training Institute to provide more detailed instruction. One module is designed for victim advocates, to provide recommendations for working effectively within the criminal justice system. The second module is for criminal justice professionals to better understand the role of victim advocates.

The On-Line Training Institute (OLTI) was developed with funding from the Office on Violence Against Women (OVW), and is available at the website for End Violence Against Women (EVAW) International at [www.evawintl.org](http://www.evawintl.org).

### ***Concern that the advocate will become a witness***

Another concern that is often expressed is that advocates will become a witness in the criminal investigation if they are present during the law enforcement interview. The reality is, however, that if the advocate responds and is involved in any part of the forensic examination and investigation, the advocate already IS a potential witness in the case. Therefore, agencies need to have policies in place that will reduce any risks associated with responding. For example, advocates should not handle evidence, take notes, or collect information about the sexual assault beyond basic service documentation (e.g., date of service, location, specific services provided). With such documentation, advocates who are later subpoenaed would only be able to provide extremely limited information. Moreover, this type of documentation reflects the reality of the advocate role. When advocates respond to a call, their role is not to be concerned with the details of the sexual assault or the investigation. Their attention and focus must remain centered on the emotional needs of the victim; the specific details of the assault do not matter for this purpose.

### ***Concern that advocates serve as “watchdogs”***

Criminal justice professionals are often reluctant to involve victim advocates in the criminal justice process, because they are afraid that the advocates will serve as “watchdogs,” always ready to turn into “attack dogs” if they make one small mistake or say something wrong. It is important to recognize that this fear is understandable. None of us would leap at the prospect of

having someone outside our field watch our every move while we do our work, criticizing us when we make a mistake and even contacting our superiors when we do something that they perceive is wrong. This would be particularly true if we believed that this outsider did not have sufficient training in our job to really understand what we were doing and why. Simply understanding this source of reluctance can go a long way toward helping to address it.

## **Strategies for Overcoming Reluctance and Addressing Conflict**

It should be clear by now that the reluctance to involve advocates in the criminal justice process stems from a variety of sources. To overcome this reluctance therefore takes a number of steps.

### ***Recognize differences in personality and philosophy***

First, it is important to recognize the differences in personality and philosophy and strive to emphasize the shared values that underlie the work of all the community professionals who respond to sexual assault. These include an action orientation and a common mission of seeking justice when someone in the community has been wronged. It is often helpful to remind ourselves and others of these commonalities, to help forge trust and respect and to guide the resolution of any disagreements that will inevitably arise.

As the New York State Coalition Against Sexual Assault (NYSCASA) *Legal Advocate Manual* recommends, any strategies for conflict resolution can involve conveying “the problems from the survivor’s point of view” (Chapter 3, p. 56):

*“You should always stress your positive intentions which will benefit the immediate survivor as well as keep the door open for future survivors rather than denouncing or discrediting the detective or agency. You can become more comfortable with questioning, negotiating, and even confrontation as you build your advocacy skills and knowledge of systems. As the advocate, you are seeking accountability and justice from critical actors in significant social and legal systems. This need not come from a place of hostility, disrespect, or distrust. You can re-frame the situation so that it becomes an ethical identification of problems or injustices”* (NYSCASA, Chapter 3, pp. 56-7).

### ***Address the issue of past conflict***

Second, the issue of any past conflicts must be addressed head-on. Wherever possible, the conflict must be analyzed not only by the professional disciplines that were involved but also by others who may have important insight into what went wrong, why, and how to fix it. In many cases, the solution is training – particularly cross-training between the professional disciplines that were involved in the conflict. For example, if a conflict arose as a result of a misunderstanding or misinformation, it is critical that the professionals involved clearly understand the roles and boundaries of the other disciplines. This will include recognition of those points where their professional objectives overlap, and when they do not.

### ***Address the expectation of future conflict***

Yet even when there have not been specific conflicts in the past, one reason that criminal justice professionals are often reluctant to work with advocates is because they anticipate such conflict in the future. It is therefore critical to air these concerns, address them directly, and seek to prevent them. Again, this will often involve cross-training between the professional disciplines, but it may also involve multidisciplinary collaboration when developing policies for any of the various agencies involved in responding to sexual assault within the community. It may even require working together to develop a community-wide protocol outlining the roles and responsibilities of each of the professional disciplines. (Remember, we have provided some good examples of community-based protocols in the Resources at the end of this article.)

### ***Address the concern that advocates will talk victims out of reporting***

As we already mentioned, one common concern of criminal justice professionals is the belief that community-based advocates will try to talk victims out of reporting the sexual assault or participating in the process of the investigation and prosecution. (Given their status within the criminal justice system, this is not typically a concern for system-based victim advocates.) In some cases, this issue can be addressed by having community-based advocates explain their role as assisting victims in making their own decisions, by providing them with the information they need and supporting them in whatever decision they make – even when the advocate personally disagrees with it. While this is clearly the role of a community-based advocate, it differs from the role of criminal justice professionals (including system-based advocates) whose job is to facilitate the victim’s participation in the criminal justice process. As a result, they will not always agree with each other, but they will hopefully understand and respect that this is because of the differences in their professional roles and not a personal disagreement.

However, we also need to recognize that in some communities, community-based victim advocates might actually believe that the local law enforcement agencies will NOT respond appropriately. As a result, the information that they provide to victims may serve to discourage them from reporting or participating in the investigation. In this case, the Sexual Assault Response and Resource Team should be working collaboratively so that all the involved agencies can be provided with the resources and training to do their job effectively. It does not serve the interests of victims to respond to problems by trying to “work around” one of the core disciplines involved in the criminal justice and community response system.

### ***Address the concern that advocates serve as “watchdogs”***

We also stated that a primary source of concern stems from the fact that advocates do in fact serve as “watchdogs” in a way, because part of their professional role clearly includes ensuring that the victim’s rights and interests are protected at all times. Therefore, it is a proper part of an advocate’s role to seek redress when they believe the rights or interests of a victim have been violated. However, there are certainly more and less effective ways of fulfilling this role, and the various community professionals who respond to sexual assault can discuss ahead of time how best to do so. For example, criminal justice professionals and advocates can describe some possible scenarios and determine which type of remedies are available – both in the immediate

situation and afterward. Advocates can also specify for the other community professionals what the procedure is for them to raise concerns regarding the professional behavior of an advocate, when it is the advocate who has made a mistake, acted inappropriately, or otherwise stepped outside the bounds of their properly defined role.

No one is going to deny that these issues are extremely difficult for all of the professionals involved. This is perhaps one of the most important arguments for establishing a collaborative body such as a Sexual Assault Response and Resource Team (SARRT). This type of entity provides a much-needed forum for addressing challenges and conflicts as they arise. In fact, such challenges and conflicts are inevitable, and they are best resolved in an environment of mutual trust and respect. Therefore, whether or not a community establishes a SARRT, it is always a good idea to work proactively to establish personal and professional bonds between those who respond to sexual assault. Whether this includes a formal recognition dinner or a backyard barbecue, it is critical to establish these personal relationships so the groundwork is laid for the trust and respect that will be required to face the challenges and conflicts ahead.

### ***Address the concern that advocates withhold important information***

We also mentioned that another common concern of criminal justice professionals is the belief that advocates will withhold information that would be important for the investigation and prosecution of the sexual assault. There is often a perception that victims tell advocates “everything,” but advocates choose not to disclose this information to criminal justice professionals for ideological reasons or simply out of spite. It is important to note at the outset that this situation does not arise as often as some criminal justice professionals believe.

In fact, advocates often have LESS information about the sexual assault than criminal justice professionals do, because it is not part of their role to ask the victim any questions about what happened. Rather, the advocate’s role is to focus on the victim’s physical and psychological well-being, and respond by providing crisis intervention, emotional support, and various forms of assistance. Much more typical is the situation where the forensic examiner and law enforcement investigator know a great deal more about the sexual assault than the advocate does.

Nonetheless, it certainly happens in some situations that an advocate learns some information that the victim has not shared with criminal justice professionals – and the advocate knows that this information could be important for those professionals to assist in the investigation and prosecution of the sexual assault. How advocates respond in this situation will vary, depending on a number of factors, including the legal protections they have (or do not have) regarding the confidentiality of their communications with victims.

For **system-based advocates**, this particular concern is not as relevant, because they do not typically have legal privilege to protect the confidentiality of their private communications with victims. This concern can thus often be addressed by simply clarifying that it would violate their role to withhold important information regarding the case and victim. If they are asked directly about the case by a police investigator or prosecutor, most system-based advocates are required to divulge what they know, even if the information was learned during a private conversation with the victim. If they are not asked directly about the case, however, the question of whether

or not to provide the information proactively is realistically left in the hands of the system-based advocate. They must personally decide how to respond based on their understanding of their professional role and legal

In some communities, system-based advocates may be housed in a community-based organization, they might have a policy of confidentiality and/or they may have even completed the same training as a community-based rape crisis advocate counselor. Although these are all promising practices, it is important to remember that the system-based advocate is still a government employee and therefore there is no privileged communication and any information they have is discoverable.

obligations regarding whether or not to provide the information. This is yet another issue that should be addressed in policies and cross-training, so everyone is clear about what to expect in such a situation.

For **community-based advocates**, however, it must be clear to everyone involved in the community response system that they CANNOT share confidential information, because it violates their professional role and mission. (Whether they may ultimately have to divulge the information if they are served with a subpoena to testify is a more complicated question, and depends on the specific laws and court decisions in their state.) When a community-based advocate has information that they know could be important for the investigation and prosecution of the sexual assault, the most appropriate response is therefore to explain this fact to victims – privately – and provide victims with the information they need to make their own decisions regarding what to do. For example, if the victim has decided to report the sexual assault and participate in the investigative process, an advocate can point out that the information in question would be useful for the law enforcement investigator and/or prosecutor handling the case. This would be an appropriate role for advocates, because it helps victims to follow through on a decision they have already made. On the other hand, if the victim decides not to share the information with criminal justice professionals, community-based advocates just have to accept that fact as one of the more difficult parts of their professional role.

Because this concern is often prominent in the minds of criminal justice professionals, it certainly should be addressed directly in any cross-training with advocates, so both professionals have a clear understanding of each other’s role, responsibilities, obligations, and boundaries.

### ***Address the concern that advocates aren’t really part of the “team”***

When discussing these types of concerns (i.e., that advocates talk victims out of reporting, or withhold important information), the underlying sense among many criminal justice professionals is that advocates aren’t really part of the same “team.” Yet reviewing the history of SARTs can be helpful in this regard. For example, the name alone – Sexual Assault Response TEAM, – leads many criminal justice professionals to believe that if all the members are on the same team, they must all have the same goals. There is a part of this sentiment that is clearly true, but another part is not quite right. On the one hand, almost all of us who are professionals involved in this work can agree that we need to provide effective victim services in order to hold offenders accountable. On the other hand, our professional missions are not exactly the same across disciplines – and in fact they can sometimes be in direct conflict with each other.

The situations described in this article provide examples of this type of conflict in professional missions. For example, it is clearly consistent with the professional mission of criminal justice professionals (and system-based advocates) to encourage victims to report the crime to law enforcement and to provide information to criminal justice professionals that would assist in the investigation and prosecution of the case. However, it violates the professional mission of a community-based advocate to do either of these things. Their role is to support victims in the process of making their own decisions, and it would violate their role to divulge confidential information. This is exactly the same type of violation that would occur if a doctor or attorney were asked to divulge confidential information without the consent of their patient or client.

***An extended example: When the facts “just don’t add up”***

Beyond these generalities, it is impossible to say what the immediate response to conflict will be on the part of an advocate, because it will depend on too many factors to list. It will of course depend on the nature of the conflict, but also the facts of the case, the demeanor of the victim, the relationship between the professionals, the location of the interaction, and a million other factors. To provide an illustration, we will explore one common conflict that arises between advocates and law enforcement professionals: when the investigator does not appear to believe the victim and/or begins to switch to an “interrogation mode” because the facts “just don’t add up.”

The issue underlying this conflict is that law enforcement professionals often begin to suspect that a victim of sexual assault is filing a false report or she just isn’t telling the truth. This is a suspicion that is often shared by other professionals in the community, as well as friends, family members, and other people in the victim’s life. All too often, victims are faced with skepticism or outright disbelief when they disclose that they have been sexually assaulted. Yet when this suspicion is expressed by a law enforcement investigator, it often involves questioning victims in a way that feels more like an interrogation of a suspect than an interview with a victim.

In this type of situation, the immediate response of an advocate will depend on a number of factors, as already described. However, it may involve stepping outside with the law enforcement investigator and asking where they are going with the interview. Often, the investigator will express the concern that the report is false, in which case the advocate can ask if the victim is now a suspect. If so, a suspect of what? Is an arrest planned? In some situations, this is enough to call attention to the fact that the sexual assault is no longer being investigated, and cause the investigator to at least think about the purpose of the interview being conducted. Whether or not the investigation is conducted appropriately beyond that point, at least the “interrogation mode” of the interview has not gone unquestioned and the advocate can advise the victim of what is happening and what the possible implications are. The victim can then make an informed decision regarding their ongoing participation in the law enforcement investigation.

However, in some cases an advocate can help law enforcement investigators by acknowledging the gut reaction that we all have when we suspect someone is lying to us, and remind them that their professional obligation is to investigate through that gut reaction. They can be reminded of the many reasons why victims often provide information that is inaccurate or inconsistent and challenged to think about the consequences of being wrong. That is, if the investigator does not believe the victim and the suspect walks away, he may very well go on to assault someone else.

Investigators can also be reminded that a determination about the facts cannot be made solely on the basis of a victim interview; the victim interview is only one piece of an investigation, which also includes collecting and documenting

For more information on this topic, please see our previous Promising Practices article from March 2007, entitled: [\*Incomplete, inconsistent, and untrue statements made by victims: Understanding the causes and overcoming the challenges.\*](#)

evidence and conducting interviews with the suspect and witnesses to events before, during, and after the sexual assault. Only after a thorough investigation has been conducted will there be enough facts to make the determination in a case.

If the investigator states that charges might be pursued against the victim for filing a false report, this obviously indicates a dramatic turn of events in the investigation. At this point, the advocate will obviously need to explain this situation to victims and inform them of their rights, including the right to legal representation of their own. It is a tragedy when a proper law enforcement investigation is not conducted when a sexual assault is reported, but when it does happen, the role of an advocate is to provide the victim with the information, emotional support, and community resources they need to make informed decisions and to assist them in implementing those decisions. Any longer-term strategies for problem solving must wait.

### ***Longer-term strategies for resolving this particular conflict***

Continuing with the example of a law enforcement interview with a sexual assault victim being conducted as if it were an interrogation, it is also possible to discuss the type of strategies that can be used for resolving conflict over the longer term. Many of these have already been discussed in general terms, but can now be illustrated in the context of this specific example.

To address this particular conflict over the longer-term, advocates and other members of the SARRT might therefore consider:

- ❖ Asking individual victims to write down their account of the sexual assault, either to help them prepare for the law enforcement interview or to provide information in an alternative form if the interview is unsuccessful and/or conducted as an interrogation.
- ❖ Providing training to law enforcement and other community professionals involved in sexual assault response on the realistic dynamics of sexual assault, and challenging the misconception that false reporting is common.
- ❖ Inviting law enforcement professionals to provide training for advocates on the purpose and specific steps involved in an investigation. In some cases, the conflict may actually be the result of a misunderstanding on the part of the advocate. If not, the training may provide the opportunity for dialogue about the nature of the conflict and ways to resolve it in future cases, including a clear explanation of the role of victim advocates and law enforcement investigators.

- ❖ Regularly scheduling formal or informal meetings to discuss specific cases, or hosting meetings any time there is a change in the agency’s staff or administration. This will help to maintain ongoing relationships and ensure continuity in the community response system
- ❖ Contacting a trusted person within the law enforcement agency whenever questions arise regarding the criminal justice process or an advocate’s response. This type of consultation can help to build trust, and it communicates that their input is valued. If there are concerns regarding the confidentiality of discussing a particular case, the question can often be presented as a hypothetical scenario (NYSCASA *Legal Advocate Manual*).
- ❖ Surveying victims regarding their experiences with all of the various professionals in the community who responded to their sexual assault and provided them with services. This information can be used to help all of the professionals within the community to respond more effectively to sexual assault cases and victims.

To illustrate, San Diego County provides victims of sexual assault with a SART Questionnaire to evaluate the services that they received and provide other types of information to improve the community-wide response system.. Many professionals working in this field are surprised by the pattern of responses that are received. In 2000-2001, for example, sexual assault victims rated the services provided by law enforcement as favorably (on average) as those provided by advocates. In fact, out of 138 surveys, 96.5 % of the responding victims said that the services provided by the officer/detective were either “excellent” or “good.” Regarding advocates, there were 186 responses by sexual assault victims, and 87% of them said the services they provided were either “excellent” or “good.”

- ❖ Establishing a structure for ongoing communication and problem-solving among community professionals, such as a Sexual Assault Response and Resource Team (SARRT). As we’ve already stated, this type of structure provides a forum not only for resolving conflicts, but also increasing the level of mutual understanding and respect that are necessary to be successful. It may also involve coordinated effort to undertake a particular project that will help in some specific way to address the source of conflict within the community.
- ❖ Working to develop interagency agreements and community-wide protocols, spelling out the roles and responsibilities of the various professionals involved in responding to sexual assault. (Yet again, see the resource for sample protocols.)
- ❖ Clearly outlining the responsibility of law enforcement professionals to withhold judgment until a thorough investigation has been completed. By articulating this standard of care, it provides the basis for providing training to personnel within the law enforcement agency and holding the agency accountable for fulfilling this responsibility.

- ❖ Advocating for a delay in the comprehensive interview of many victims of sexual assault after the initial disclosure and community response, so they can rest, recuperate, and get support from their friends and family members. Of course, this requires balancing a number of other factors, but whenever possible it can help victims to provide better information and participate in a more productive way during the law enforcement interview.
- ❖ Gathering local data on the realistic dynamics of sexual assault, to compare to known patterns from larger-scale national studies. This type of local data can be invaluable for use in both professional training and community education programs on what sexual assault really looks like and to challenge the myth that false reporting is common.
- ❖ Focusing on one conflict at a time, if possible. While there may be a number of conflicts that are seen between community professionals, it may be helpful to think strategically, in order to choose the one that is the most urgent, important, and/or attainable. It is often tempting to tackle a number of challenges simultaneously, but this may not be the most effective strategy – especially if it involves conflict between community professionals.
- ❖ Remaining patient, optimistic, and tireless in the pursuit of positive reform. Often these conflicts are not addressed with a single effort, but with persistent work over time. Sometimes it requires a change of agency administration or other aspects of the political climate, as long as the conflict isn't simply pushed aside in the hopes that such a positive change in the landscape of community agencies will be seen.
- ❖ Providing positive reinforcement and recognition whenever possible. Advocates can help encourage positive reform in this context by sending thank you notes, or notes of commendation for investigators and officers that conduct a competent and compassionate victim interview, or even for positive aspects of an interview that might not have otherwise been exemplary. Successful interviewers can also be recognized by the agency in any number of informal and/or formal ways, including letters, awards, recognition events, and even small tokens of appreciation (e.g., a mug with agency logo). Anytime such recognition is provided for a community professional, it is also a good idea to send a copy to that person's supervisor or chief to ensure that others in their chain of command know that they are doing a good job in this area (NYSCASA *Legal Advocate Manual*).

Finally, we can all strive to find ways to structure the dialogue regarding conflicts such as this one in a way that does not pit advocates against law enforcement professionals – or against other professionals within the community – but rather involves all of the community professionals in an effort to address some external demand. For example, law enforcement personnel and advocates can team up to provide presentations together at community education programs, basic academy training or continuing education for advanced officers.

### ***Remind community professionals of the benefits of working with an advocate***

A final strategy for overcoming the reluctance of community professionals to working with advocates is to remind them of the many benefits of doing so – not just benefits for the victim but also the benefits to themselves as professionals. These can be summarized as providing victims with crisis intervention, emotional support, information, and various forms of concrete assistance. These benefits for the victim also work to the advantage of the other professionals within a community who respond to sexual assault. This is true because the services that advocates provide ease the burden on other professionals by relieving them of these responsibilities. Yet advocates also assist the other professionals within the community who respond to sexual assault, by providing the support and assistance that victims need to participate constructively in the forensic examination, law enforcement investigation, and criminal prosecution of their sexual assault.

## **Conclusion**

Assuming that all of the professionals involved in responding to sexual assault cases want to see more perpetrators held accountable for their crimes, it is clear that we can't respond to problems with one of the disciplines or agencies involved in our community response systems by excluding them. How can we expect to achieve justice for victims, if advocates try to “work around” law enforcement? How can we expect victims to have the support they need to participate in the law enforcement investigation if officers “don't allow” advocates to become involved in the process? Ultimately it isn't fair to victims to let our personal and professional challenges get in the way of meeting their needs – for justice AND healing. Clearly, we will only achieve the goal of holding more perpetrators accountable for their crimes if we can: (1) Work together so the criminal justice system functions effectively; and (2) Ensure that advocacy services are available for every victim, in every case, every time those services are wanted.

## **Resources: Sample Community-Wide Protocols**

One very good model for a standardized, community-wide protocol can be found in **San Diego County**, where their Sexual Assault Response Team (SART) developed detailed standards of practice for the many agencies representing law enforcement, health care, crisis care, victim advocacy, crime laboratories, prosecution, and the judiciary. A similar protocol was also developed for children who are victims or witnesses of crime; although not focused on sexual assault, it nonetheless provides an excellent model for a community-wide protocol, with supporting interagency agreements and MOU's.

<p>The San Diego County <i>SART Standards of Practice</i> and the protocol for children who are victims or witness of crime can be downloaded for free at the website for Sexual Assault Training and Investigations (SATI), Inc. (at <a href="http://www.mysati.com/SART.htm">http://www.mysati.com/SART.htm</a>).</p>
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Another good example can be found in the statewide *Standards for Providing Services to Victims of Sexual Assault*, a protocol that was developed by the Office of the Attorney General in **New Jersey**. These statewide standards were developed collaboratively by professionals from a variety of disciplines and designed to “serve as a foundation for establishing county policies and procedures” (2004, p. i), so they could be easily adapted by SARRTS in any community.

The New Jersey State Standards are available on the internet free of charge (at <http://www.state.nj.us/lps/dcj/stand.htm>).

The **North Dakota** Sexual Assault Evidence Collection Protocol is another good model for developing a community-wide protocol based on multidisciplinary collaboration, although it focuses primarily on the issues of forensic evidence collection. It was developed by the North Dakota Council on Abused Women’s Services and the Coalition Against Sexual Assault in North Dakota. It is also supported by an excellent document outlining the standards of care for patients participating in a sexual assault medical forensic examination.

The North Dakota protocol and standards of care are available (at <http://www.ndcaws.org/assault/resources.asp>).

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