One of our most popular articles addresses the collaboration between law enforcement and victim advocates, with the title Oil and Water? This article was first written years ago, but it remains just as timely today. We are therefore providing the information in a series of Training Bulletins.

In this first installment, we begin with a historical perspective and explore the role of victim advocates within the context of the criminal justice system. In the second bulletin, we describe why some professionals are reluctant to integrate victim advocacy in their work and identify strategies for overcoming that reluctance. Then in the final installment, we walk through an example of how advocates might address one particular challenge: When the law enforcement investigator feels like the facts “don’t add up.”

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Introduction

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, Joanne once 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, 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, Joanne talked to a group of officers who attended a conference workshop 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 some of the source of the tension, Joanne asked them to think about their organizational histories. 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; as of 2013, only 13% of police officers were female (US Department of Justice, 2013), and only 219 women could be found in top leadership positions among 14,000 police agencies (Moraff, 2015).

In contrast, 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 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 bulletin – whether advocates and law enforcement are like “oil and water” – we would like to ask each one of you reading this whether you would like to see more sex offenders held accountable for their crimes. We assume the answer is “YES.” Yet we can only accomplish this when victims are able to participate in the criminal justice process, and this can only happen when victims are supported by friends, family members, advocates, and other professionals. In other words, to hold more offenders accountable we must provide victims of sexual violence (and their loved ones) with as much support as we can.

Often, the best way to do this is to offer advocacy services as early as possible, and as often as needed. This can help victims draw the emotional resources they need to participate in the process of an investigation and prosecution. We have seen how difficult this process can be for victims, especially given the attitudes of doubt and blame in our society when it comes to sexual assault. This is why one expert described the process of advocating for sexual assault victims within the criminal justice system as “holding their hand on a walk through hell” (Weisz, 1999; cited in Koss, 2006).

In this Training Bulletin, our goal is to describe the advocate’s role during the criminal justice process, with particular focus on their involvement during the medical forensic exam and law enforcement interview.

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

We believe it is best practice to notify an advocate any time a medical forensic examination or preliminary investigation is going to be conducted with a victim of sexual assault. This requires law enforcement agencies and forensic exam facilities to have written policies documenting this responsibility and specifying exactly how it will be accomplished. **If this type of written policy is not yet in place in your community, this may be the most important place to begin working.** In addition, a Memorandum of Understanding (MOU) may be useful, to outline each agency’s role and procedures for coordinating the notification process and ensuring that it works smoothly.

**Resource: Memorandum of Understanding (MOU)**

One good example of a Memorandum of Understanding (MOU) is drawn from the California SART Manual published by the California Clinical Forensic Medical Training Center (CCFMTC). Another example is available in the SART Handbook developed by the Sexual Assault Task Force of the Oregon Attorney General’s Office.
Even when there are basic policies in place for notifying an advocate, there is still a considerable amount of work to do to figure out exactly what advocates should do once they respond to a medical forensic exam or law enforcement interview. Many training materials for advocates do not offer concrete, detailed, and realistic guidance for their role. Moreover, training for advocates is not standardized, so the content and quality varies across the country. In some communities, this means that advocates have overstepped the appropriate boundaries for their role within the criminal justice system.

On the other hand, some advocates have under-stepped their role, by limiting their participation in the criminal justice process 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 interference. But this will also make it difficult if not impossible to fulfill her role as an advocate, which is to provide meaningful information, assistance, and emotional support for victims.

**Two Types of Victim Advocates**

Up until now, we have discussed advocates as if there were only one type. Yet there are two types of advocates who work with victims: (1) community-based advocates and (2) system-based advocates. A community may have neither, one, or both types.

Both types of advocates will typically provide direct services for individual victims – and push for reforms in community systems that serve the needs of all victims. However, to understand the role, it is essential to discuss differences between these two basic types.

When we use the term *community-based advocacy*, we are referring to advocates who work for a private, autonomous, often nonprofit agency within the community. Community-based advocates may be volunteers or paid staff, and they may describe themselves as rape crisis counselors, sexual assault victim advocates, or other similar terms. These services are typically offered for all self-identified victims of sexual assault (and their support people), even if the sexual assault happened a long time ago and/or it was never reported to law enforcement. They can also provide a wide range of services that extend well beyond criminal justice participation to other areas of the victim’s life.

On the other hand, *system-based advocates* are employed by a public agency such as a law enforcement agency, office of the prosecuting attorney, or other entity within city, county, state, or federal government. Their roles and responsibilities will vary based on their governing agency, as will the term they use to describe themselves. Because of their status as government employees, system-based advocates often have better access to information regarding the criminal justice processing of the victim’s case.
Types of Victim Advocates

For more information on the different types of advocates, including how their role interfaces with the criminal justice system, see our OnLine Training Institute course, Breaking Barriers: The Role of Community-Based and System-Based Advocates.

Differences in Privileged Communications

One of the most important differences between the two types of advocates relates to the question of confidentiality and privileged communications. Specifically:

**System-based advocates typically do not qualify for counseling privilege, so their private communications with victims – and the written records documenting their services – typically cannot be guaranteed to remain confidential.**

In other words, if a system-based advocate is asked for information by a police officer or prosecutor, it will typically need to be shared, even if it was learned during a private conversation with the victim. This information will then potentially 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 takes place 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 entity).

On the other hand, **community-based advocates have varying levels of protection for the confidentiality of their communications with victims and written records.**

- In some states, victims enjoy **absolute privilege**, so 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 some states, victims have **qualified privilege**, which means that community-based advocates cannot guarantee that their private communications will remain confidential, because these decisions are made by judges on a case-by-case basis.
Resource: Confidentiality Laws

The American Bar Association (2014) has developed a state-by-state chart of Domestic Violence/Sexual Assault Confidentiality Laws. While this chart provides a great deal of useful information, it is important to check for any updates to your state laws.

Advocates and other professionals should be familiar with the specific situation in their community, so they can provide victims with accurate information regarding what information to share with whom. One important source of confusion, however, is that:

Privilege never extends to communications taking place in the presence of a third party.

This includes anything that is said, observed, or learned by an advocate during the medical forensic exam, law enforcement interview, 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, even in a state with absolute privilege.

When victims want to discuss something confidentially with a community-based advocate, this must be done outside the presence of a law enforcement officer, forensic examiner, or other third party.

Challenges in Advocate Notification

As previously noted, 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 in this regard. First, many communities only involve an advocate when there is a medical forensic exam. Yet most sexual assault victims do not have a medical forensic exam. Estimates range from 19-40% for the percentage of victims who seek medical care following their sexual assault (Campbell, 2008; Kilpatrick et al., 2007; Zinzow et al., 2012). Of those who report their sexual assault to law enforcement, approximately half (44-55%) have a medical forensic exam (McEwan, 2011; Peterson et al., 2010). Therefore, it is important to establish protocols to offer advocacy services for victims who do not have a medical forensic exam.

A second challenge stems from the fact that most community-based advocacy agencies do not 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 coordinate their multidisciplinary response – so advocacy services are offered to victims as early, as often, and as conveniently for the victim as possible.

**Responsibilities of Victim Advocates**

At this point, we want to talk more about what victim advocates do during the criminal justice process. However, it is important to note that the following recommendations constitute our personal and professional opinions on what constitutes best practice. There are many well-trained professionals who would disagree with some of these recommendations. In particular, many professionals would argue that we go too far in suggesting active involvement for victim advocates in the criminal justice process.

Over time, defense attorneys have become increasingly aggressive in seeking access to written records and information from private conversations between sexual assault victims and advocates. This provides cause for concern, and some advocacy agencies have responded by enhancing their practices to protect the confidentiality of victims. On the other hand, some advocates feel inhibited from providing the services they know victims need, because they are afraid of “interfering” with the criminal justice process and jeopardizing the confidentiality of records and communications. This is also cause for concern, because only a very small percentage of sexual assault cases will ever be prosecuted; most estimates are less than 5% (Lonsway & Archambault, 2012). Therefore, it is important to balance the need to advocate effectively for all victims of sexual assault, by implementing practices that will protect the 5% who will see a prosecution of their case, without sacrificing the needs of the 95% who will not.

With this in mind, we describe some specific responsibilities for advocates working effectively within the criminal justice context. Perhaps the most obvious situation arises when an advocate accompanies a victim during the medical 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 help ensure that the victim’s rights are protected. In general, the advocate's role will be nonverbal, offering comfort and reassurance with their physical presence. However, depending on the situation, the advocate might certainly need to speak to victims, forensic examiners, law enforcement investigators, or others during the exam or interview process.

In some situations, advocates may feel they need to speak with victims during an exam or interview, to check in with their emotional state, provide reassurance or validation, and ask if they need to take a break. In general, these 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 can also help victims utilize relaxation techniques, by 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. Some level of distress is inevitable, due to the difficulties of disclosing a sexual assault and participating in a medical forensic exam and/or police investigation. The best response is often to suggest taking a break and address 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 seems that the victim has misunderstood or misinterpreted something the forensic examiner or 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 can arise when a question is asked that may be 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 it may sound to victims as if the professional doesn’t believe them or blames them for the sexual assault. It might therefore be appropriate for the advocate to ask the victim if they would like to know the reason for the question, saying: “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 advocate’s role to ask substantive questions or to provide 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.

Research suggests that both police officers and medical personnel underestimate the degree of distress that rape survivors report as a result of interviews and forensic medical exams. For example, in one study police underestimated by about half the number of survivors who felt depressed, nervous or anxious, or violated after talking with law enforcement (Campbell, 2005). Advocates can help victims and professionals alike, by remaining focused on monitoring and protecting the victim’s emotional state.

The Advocate Role When Conflict Arises

A more difficult situation arises when the advocate believes that intervention is needed to address distress being caused by the police officer, forensic examiner, or other professional. Again, some distress is inevitable, given the difficulty of the process. No matter how competent and compassionate the responding 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. It can feel like the process has a life of its own, and victims are simply being swept along without any control or decision making ability. It is appropriate for advocates to remind victims of their rights during the process.

• For example, advocates can remind victims at some point during the medical forensic exam that they have a right to refuse procedures or to terminate the exam completely. It is easy to forget that consent is an ongoing process.

• Similarly, during the law enforcement interview, it is appropriate to remind victims that they can take a break or ask questions whenever they want.

• Many victims also want a summary of the findings from the medical 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 medical 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.

There is definitely a balancing act required to make sure that a victim’s rights and interests are being protected, without disrupting the process unnecessarily or discouraging victims from participating in certain aspects of the medical 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 any issues that are causing concern with the victim, forensic examiner, and/or law enforcement officer.

In some situations, however, directly asking victims if they need to take a break may not be the best strategy, because they may decline simply to be polite and cooperative. Responding 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. Advocates may be better able to monitor the victim’s nonverbal cues, because they are focused only on the emotional well-being of victims.

When the Conflict Isn’t Easily Resolved

The most difficult situation arises when the behavior of another professional violates or threatens to violate the victim’s rights. While the short-term response is often the same as the other issues we have discussed – the advocate can suggest taking a break to discuss the issues privately with the victim and/or professional – the longer-term response is different because it requires addressing the issue with the professional and possibly their supervisor or other agency representative. Nonetheless, it is important to remember that advocacy does not have to be adversarial or confrontational in order to be effective. Advocates often worry that challenging another professional might result in them not contacting an advocate the next time they respond to a sexual assault victim. This is painful for advocates who struggle with the balance between advocating strongly for this victim while protecting the next victim’s right to have an advocate called.

While advocates certainly strive to protect relationships with other professionals, their role requires them to work on behalf of each victim’s stated wishes.

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. 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 the professionals who are there to respond. Wherever possible, any immediate conflicts between professionals should be addressed outside the room where the victim or support people might be present. We will offer some specific examples of this type of situation in the next installment in this Training Bulletin series.

Resources

Community-Wide Protocols

One model for a community-wide protocol is found in San Diego County, where the Sexual Assault Response Team (SART) developed Standards of Practice for the many
agencies representing law enforcement, health care, crisis intervention, victim advocacy, crime laboratories, prosecution, and the judiciary.

The North Dakota Sexual Assault Evidence Collection Protocol offers another good model for developing a community-wide protocol based on multidisciplinary collaboration, although it focuses primarily on the issues of forensic evidence collection.


Confidentiality Across Disciplines

In a webinar sponsored by the Battered Women’s Justice Project, presenter Alicia Aiken of the Confidentiality Institute offers information on Negotiating Successfully with Allies Around Confidentiality. The webinar addresses strategies for allies to “break down barriers, protect confidentiality and achieve community-level goals.” The focus is on maintaining positive relationships with allies, while protecting confidentiality.

The Battered Women’s Justice Project also offers a document written by Sandra Tibbetts Murphy, entitled Advocacy Challenges in a CCR: Protecting Confidentiality While Promoting a Coordinated Response.

FAQ’s on Survivor Confidentiality Releases are offered by the Confidentiality Institute and The Safety Net Project at the National Network to End Domestic Violence. See especially pages 4-7, addressing Confidentiality and Partnership Questions.

A 2-part series of training bulletins is available from AEquitas: The Prosecutors’ Resource on Violence Against Women. Written by Viktoria Kristiansson, the series is titled Walking a Tightrope: Balancing Victim Privacy and Offender Accountability in Domestic Violence and Sexual Assault Prosecutions. The bulletins are archived separately as Part 1 and Part 2

References


**For More Information**

Please see the full article, *Advocates and Law Enforcement: Oil and Water*.

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