This is the second installment in our series of Training Bulletins on the collaboration between law enforcement victim advocates, entitled Oil and Water? This article was first written years ago, but we are sending out an updated version with this series.

In the first installment, we began with a historical perspective and explored the role of victim advocates in the context of the criminal justice system. In this 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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Reluctance to Involve Advocates in the Criminal Justice Process

As we discuss the role of victim advocates in the criminal justice system, it is important to recognize that some professionals are reluctant to involve them in the process of a medical forensic exam, law enforcement investigation, or court proceedings. This reluctance may stem from a variety of sources.

- It may be based on the differences in personality and philosophy described earlier. The type of person who becomes a police officer 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, it 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 past conflicts, it may stem from 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 or prosecution of the crime.
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To illustrate, when advocates respond to the exam facility before an officer arrives, victims sometimes begin providing a detailed history of their assault, because they do not understand the different roles of responding professionals. Then when the officer arrives, victims can become frustrated, because they have to start all over again when the interview begins. In this scenario, advocates should begin by clearly defining their role, describing the services they offer, and gently explaining to victims that they need to wait until the forensic examiner and the officer arrive to go into the details of the assault. Meanwhile the advocate can attend to the victim’s immediate needs and emotional well-being.

Other problems arise when advocates take notes or write a report following the exam or 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 may be used against the victim if the case ever proceeds to trial.

Some officers have told us that advocates interrupted their interview without cause, or that they 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 advocate 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 professional disciplines involved in sexual assault response. They 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 victim advocates, they typically provide few details on how they should fulfill their role in concrete terms. Guidance is often 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 it requires proper preparation.
Training for Victim Advocates

Two modules in the OnLine Training Institute offer practical support for integrating victim advocacy with the criminal justice process. The first, Effective Victim Advocacy Within the Criminal Justice System, is designed for victim advocates (both system-based and community-based), and it offers specific strategies for successful work on behalf of sexual assault victims. The course Breaking Barriers: The Role of Community-Based and System-Based Victim Advocates is designed for criminal justice professionals and other disciplines to help them better understand the role of victim advocates.

Concern That the Advocate Will Become a Witness

Another concern is that advocates will be called as witness at trial if they are present during the law enforcement interview. The reality is, however, that if the advocate is involved in any part of the medical forensic exam or law enforcement investigation, they are already 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 could only 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.

Fear of Advocates as “Watchdogs”

Criminal justice professionals are also sometimes 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. To get the rest of the way, other strategies will be required, such as the ones described in this Training Bulletin series.
Strategies for Overcoming Reluctance and Addressing Conflict

The reluctance to involve advocates in the criminal justice process stems from a variety of sources. Therefore, overcoming this reluctance will also require a number of steps.

Recognize Differences in Personality and Philosophy

First, it is important to recognize the differences in personality and philosophy that are seen in various disciplines, and to emphasize the shared values that underlie all of our work. These shared values 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.

It can also be helpful to remind ourselves of the survivor’s point of view:

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 (New York State Coalition Against Sexual Assault, 1994, pp. 56-7).

Explore Past Conflicts

Second, the issue of past conflicts must be addressed head-on. Wherever possible, the conflict must be analyzed not only by the disciplines that were involved, but also by other professionals who may have important insight into what went wrong, why, and how to fix it. In many cases, the solution is training.

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 where they do not.
Prepare for 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.

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.

Do Advocates Really “Talk Victims Out of Reporting?”

As noted, one common source of concern is the belief that community-based advocates will try to talk victims out of reporting their sexual assault or participating in the criminal justice process. (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. This differs from the role of criminal justice professionals (and system-based advocates), because their job is to facilitate the victim’s participation within the criminal justice process. As a result of this fundamental difference in role, advocates and criminal justice professionals 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.

We do need to recognize, however, that some community-based advocates may believe that law enforcement agency will not respond appropriately to sexual assault victims. In some cases, this might be a reasonable belief, based on past experiences. As a result, the information they provide to victims may serve to discourage them from reporting to police or participating in the investigation. In this type of scenario, the various disciplines must work together collaboratively, so all the involved agencies can access the resources and training they need 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 Fear of “Watchdogs”

We also noted that concern can stem from the fact that advocates do in fact serve as “watchdogs,” because part of their professional role 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 these rights or interests have been violated. Nonetheless, there are more and less effective ways of fulfilling this role, and the various 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 remedies are available – both in the immediate situation and afterward. Advocates can also explain to the other professionals what the procedure is for them to raise concerns about the advocate’s performance, 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 can be 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 Team (SART), which typically involves the first responders in a community: police officers, prosecutors, forensic examiners, and advocates. Other communities have even expanded the SART concept to include other agencies that serve as resources beyond the first response (e.g., mental health, public health, substance abuse treatment, and other social services). These are sometimes referred to as a Sexual Assault Response and Resource Team (or SARRT). Either way, this type of entity provides a much-needed forum for addressing challenges and conflicts as they arise.

Yet regardless of whether a community establishes a SART (or 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.

Do Advocates Withhold Important Information?

We also mentioned that a commonly expressed concern is 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. This is rarely the reality of the situation.

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 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, an advocate does sometimes learn information that the victim has not shared with criminal justice professionals – and the advocate may know that this information could be important for the investigation and prosecution of the case. How advocates respond in this situation will vary, depending on a number of factors, including any legal protections they have regarding the confidentiality of their communications with victims.

For system-based advocates, this concern is not as relevant, because they do not typically have legal privilege to protect the confidentiality of their private communications with victims. The issue can therefore be addressed by 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 an 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, the question of whether to provide the information proactively is realistically left in the hands of the system-based advocate. They must decide how to respond, based on their understanding of their professional role and any legal obligation to provide the information. This is yet another issue that should be addressed in policies, cross-training, and communication with victims, 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 jurisdiction.)

When a community-based advocate has information they know could be important for the investigation and prosecution of a sexual assault, the most appropriate response is therefore to explain this to victims – privately – and provide victims with the information they need to make their own decisions. For example, if the victim has decided to report the sexual assault and participate in the investigative process, an advocate can point out that this information could be useful for the investigator or prosecutor assigned to the case. This is 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 simply have to accept that fact, as a difficult part 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 – both community-based and system-based – so all the various professionals have a clear understanding of each other’s role, responsibilities, obligations, and boundaries.

**Victim Advocates: Some Unique Circumstances**

In some communities, system-based advocates may be housed in a community-based organization. They may have even a confidentiality policy, and they may have completed the same training as a community-based advocate. Although these can be very effective practices, it is important to remember that system-based advocates are still government employees, and they typically have no legal privilege protecting their private communications with victims. Any information they have is discoverable.

Conversely, community-based advocates may be provided space to meet with victims at the courthouse, or in another setting that is part of the criminal justice system. This does not change their role, however, with respect to legal privilege and obligations. This must be clearly communicated to victims and colleagues from other disciplines.

**Advocates as “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 Training Bulletin offer 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 provide information to criminal justice professionals that would assist in the investigation and prosecution of the case. However, it violates the professional mission of community-based advocates to do either of these things. Their role is to support victims in the process of making their own decisions, and to protect the privacy of confidential communications. If they shared
private information, it would be the same type of violation as a doctor or attorney who divulged confidential information without the consent of their patient or client.

Reference


For More Information

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

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