



End Violence Against Women International  
(EVAWI)

# Advocates and Law Enforcement: Oil and Water?

## Part 1: Role of Advocates in the Criminal Justice System

Kimberly A. Lonsway, PhD  
Sergeant Joanne Archambault (Ret.)

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## Authors

**Dr. Kimberly A. Lonsway** has served as the Director of Research for EVAWI since 2004. Her research focuses on sexual violence and the criminal justice and community response system. She has written over 60 published articles, book chapters, technical reports, government reports, and commissioned documents – in addition to numerous training modules, bulletins, and other resources. She has volunteered for over fifteen years as a victim advocate and in 2012, she was awarded the first – ever Volunteer of the Decade Award from the Sexual Assault Recovery and Prevention (SARP) Center in San Luis Obispo, CA. She earned her PhD in the Department of Psychology at the University of Illinois, Urbana – Champaign.



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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.”

*Adapted from an article originally appearing in Sexual Assault Report, Volume 11, Number 6, 2008, published by Civic Research Institute. All rights reserved.*

## 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 interview 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.

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### **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.

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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.

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### 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*.

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## 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.

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### 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.

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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.

The National Sexual Violence Resource Center maintains a listing of [Protocols and Guidelines for Sexual Assault Response Teams](#) on their website.

### 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](#).

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Kimberly A. Lonsway, PhD  
Sergeant Joanne Archambault (Ret.)

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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.

- 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.

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### 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.

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## **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.

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### **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.

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### **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

New York State Coalition Against Sexual Assault (1994). [\*Legal Advocate Manual\*](#).



End Violence Against Women International  
(EVAWI)

# Advocates and Law Enforcement: Oil and Water?

## Part 3: Overcoming Common Challenges

Kimberly A. Lonsway, PhD  
Sergeant Joanne Archambault (Ret.)

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## **Authors**

**Dr. Kimberly A. Lonsway** has served as the Director of Research for EVAWI since 2004. Her research focuses on sexual violence and the criminal justice and community response system. She has written over 60 published articles, book chapters, technical reports, government reports, and commissioned documents – in addition to numerous training modules, bulletins, and other resources. She has volunteered for over fifteen years as a victim advocate and in 2012, she was awarded the first – ever Volunteer of the Decade Award from the Sexual Assault Recovery and Prevention (SARP) Center in San Luis Obispo, CA. She earned her PhD in the Department of Psychology at the University of Illinois, Urbana – Champaign.



**Sgt. Joanne Archambault** (Retired, San Diego Police Department) is the Chief Executive Officer for EVAWI. In 2003 prior to founding EVAWI, Sgt. Archambault worked for the San Diego Police Department for almost 23 years, in a wide variety of assignments. During the last 10 years of her service, she supervised the Sex Crimes Unit, which had 13 detectives and was responsible for investigating approximately 1,000 felony sexual assaults each year. Sgt. Archambault has provided training for tens of thousands of practitioners, policymakers and others – both across the country and around the world. She has been instrumental in creating system – level change through individual contacts, as well as policy initiatives and recommendations for best practice.



This is the final 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 the second bulletin, we described why some professionals are reluctant to integrate victim advocacy in their work and identified strategies for overcoming that reluctance. However, beyond the general strategies described in this bulletin, it is impossible to say what the best response to a 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 victim's stated wishes, the relationship between the professionals, the location of the interaction, and countless other factors. To provide an illustration, we will explore one common conflict that often 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."

*Adapted from an article originally appearing in Sexual Assault Report, Volume 11, Number 6, 2008, published by Civic Research Institute. All rights reserved.*

## **When the Facts "Just Don't Add Up"**

Beyond the general strategies described here, it is impossible to say what the best response to a 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 victim's stated wishes, the relationship between the professionals, the location of the interaction, and countless other factors. To provide an illustration, we will explore one common conflict that often 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."

## **False Reports**

The underlying issue is that officers and investigators sometimes begin to question whether a sexual assault victim is filing a false report or isn't telling the truth about what happened. 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 law enforcement, it may lead to questioning the victim in a way that feels more like an interrogation of a suspect, rather than an interview with a victim of crime.

In this situation, the immediate response of an advocate will depend on a number of factors, as already described. However, it may require stepping outside the room 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. Victims can then make an informed decision regarding their ongoing participation in the law enforcement investigation.

However, in some cases an advocate can help the investigator 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, that suspect may 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 component of a thorough law enforcement investigation, which also includes collecting and documenting evidence, and conducting interviews with the suspect and witnesses regarding events before, during, and after the assault. Only after a thorough investigation has been conducted will there be enough facts to make a determination in the case.

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### Raped Then Jailed

For more information on situations where victims summon the courage to report a sexual assault, only to be disbelieved, mistreated, and later charged (often erroneously) with false reporting, please see the Training Bulletin [Raped Then Jailed: The Risks of Prosecution for Falsely Reporting Sexual Assault](#).

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### Prosecuting the Victim

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. At this point, the advocate will 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, but when this happens, the role of an advocate is to provide the victim with the information, emotional support, and resources they need to make informed decisions – and to assist them in implementing those decisions. Any longer-term strategies for problem-solving must wait for the moment.

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### **More Information on False Reports**

For more information, please see the [OnLine Training Institute](#) module *False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault*.

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### **Longer-Term Strategies**

Continuing with this example, many of the previously described strategies can be used for resolving the issue longer-term. For example, advocates or others might consider:

- Asking individual victims to write down their account of the sexual assault, to help them prepare for the law enforcement interview and offer information in an alternative form, just in case the interview is unsuccessful and/or conducted as an interrogation.
- Providing training for law enforcement and other professionals on the realistic dynamics of sexual assault and trauma-informed responses, and challenging the misconception that false reporting is common.
- Inviting law enforcement professionals to provide training for advocates on the 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 how to resolve the issue in future cases, and clearly explaining the role of law enforcement and victim advocates.
- Providing training for other responding professionals on victim advocacy, so they understand the unique mission, roles, and responsibilities. Again, this can help prevent misunderstandings and open up dialogue.
- Regularly scheduling formal or informal meetings to discuss issues that could potentially arise, or hosting meetings anytime 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 the person's 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 (New York State Coalition Against Sexual Assault, 1994).



- Surveying victims about their experiences with various professionals who responded to their sexual assault and provided them with services. This information can be used to help all the professionals in the community to respond more effectively to sexual assault cases and victims. To help with this task, several sample tools are provided in the resource box
- Establishing a structure for ongoing communication and problem-solving among community professionals, such as a Sexual Assault Response and Resource Team (SARRT). As previously noted, this type of structure provides a forum for resolving conflicts, but also for increasing the level of mutual understanding and respect that are necessary to be successful. One particular strategy for establishing a SARRT is to undertake a specific project (e.g., developing a grant proposal, hosting a fund raising event) that will help in some way to address the 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. (See the [Resources](#) section for examples.)
- Clearly stating the responsibility of law enforcement to withhold judgment until a thorough investigation has been completed. By articulating this standard of care, it provides the basis for providing training to law enforcement personnel and holding the agency accountable for fulfilling this responsibility.
- Advocating for a delay in the detailed, follow-up interview of many victims, so they can rest, recuperate, and get support from friends and family members following the initial report. 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. This issue is discussed in detail in our archived Training Bulletin entitled: [When to Conduct an Exam or Interview](#).
- Gathering local data on the realistic dynamics of sexual assault, to compare with known patterns from larger-scale national studies. This type of local data can be invaluable, both for training professionals and educating the community on what sexual assault really looks like. It can also help to challenge the myth that false reporting is common.
- Focusing on one conflict at a time. While there may be a number of conflicts between professionals, it may be helpful to think strategically, to choose the one that is the most urgent, important, and/or attainable. It is often tempting to attack a number of challenges simultaneously, but this may not be the most effective strategy – especially if it involves conflict between 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 it will resolve when a particular person leaves or agency leadership changes.
- Providing positive reinforcement and recognition whenever possible. Advocates can send thank-you notes, or notes of commendation for officers and investigators who conduct a competent and compassionate victim interview. They can even be sent to recognize positive aspects of an interview that might not have otherwise been exemplary. Successful interviewers can also be recognized within their own agency, with letters, awards, recognition events, and even tokens of appreciation (e.g., a mug with agency logo). Anytime such recognition is provided, it is also good to notify the person's supervisor or chief to ensure that others know they are doing a good job in this area (New York State Coalition Against Sexual Assault, 1994). Statewide sexual assault coalitions also frequently welcome recommendations for "champions" in allied professions who can be recognized with commendations or awards. In addition, EVAWI offers a program to nominate [Champions of Change](#). Such strategies recognize good work and encourage it to continue.

Finally, we can strive to structure the dialogue in a way that does not pit advocates against law enforcement professionals – or other professionals in the community – but rather involves all the various professionals in a shared effort. For example, advocates and law enforcement can team up to provide community education, academy training, or training for other professionals who respond to sexual assault in the community.

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### Victim Satisfaction Surveys

The [San Diego County Sexual Assault Response Team](#), created a victim satisfaction survey that provides a way for victims to evaluate the performance of various professionals (including forensic examiners, police officers and detectives, as well as rape crisis advocates). Some of the findings may be surprising to many professionals. 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, 97% of the responding victims said that the services provided by the officer/detective were either "good" or "excellent." This is even higher than the 87% who rated the services of victim advocates as "good" or "excellent."

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## Highlight the Benefits of Working with an Advocate

A final strategy is to highlight the many benefits of working with advocates – not just the benefits for victims but also for themselves as professionals. These can be summarized as providing victims with crisis intervention, emotional support, information, and various forms of concrete assistance. Benefits for victims also work to the advantage of other professionals, because they ease their burden of meeting these responsibilities.

Yet advocates also assist other responding professionals by helping victims to successfully participate in a medical forensic exam, law enforcement investigation, and criminal prosecution of their sexual assault. As criminal justice professionals and others increase their understanding of trauma, and the benefits of trauma-informed approaches, they may develop a better understanding of how advocacy services can help victims sustain the strength and focus needed to withstand this process.

## Research on Officers and Advocates: Oil and Water?

While there is a great deal of anecdotal feedback on the professional interactions of officers and advocates, research has lagged behind. Rich and Seffrin (2013) sought to fill this gap with a study of 429 police officers, which yielded some interesting results. They found that both personal and professional variables were related to the quality of their collaboration with victim advocates, but professional variables were especially important and much more amenable to change through training and policy revisions.

Key findings of the study were as follows:

- Police officers with the best victim interviewing skills worked more collaboratively with advocates. Those with more time on the job were also more appreciative of the advocacy role.
- Officers with the most training in sexual assault response were more likely to include victim advocates in their responses. The authors speculated that this may be because the training debunked stereotypes, created a shared vocabulary and sense of mission, and forged personal connections.
- Skillful and experienced officers were more likely to include advocates in their work, even if they held outdated beliefs about sexual assault (called *rape myths*). This is important because advocates could then serve a protective function for victims, in case the beliefs had any negative repercussions.
- Officers who knew rape victims personally were more likely to collaborate with advocates.
- Female officers included advocates more frequently in their work, but this was outweighed by the factors of interviewing skill, job experience, and training.

Finally, the study identified two major barriers to collaboration: a “lack of clarity about the role of advocates” and the “desire for exclusive control of interviews” (p. 692).

These findings support our recommendation for more extensive cross-training, which may help to address concerns that advocates are biased against law enforcement or that they do not understand the criminal justice process. The researchers also suggest that law enforcement leadership could increase collaboration by encouraging teamwork

rather than the need to work cases single-handedly. They conclude that the most effective interviewers support both the victim and the advocate, “thereby eliciting the best quality evidence and sustained cooperation” (Rich & Seffrin, 2013, p. 692): *These will presumably result in more successful convictions* (p. 692).

## Conclusion

Assuming that we all want to see more sexual assault perpetrators held accountable for their crimes, it is clear that we can't respond to problems with one of the disciplines or agencies by excluding them. How can we expect to achieve justice for victims, if we “work around” law enforcement? How can we expect victims to participate in the process, if they don't have the support they need? Ultimately it isn't fair to let our personal and professional challenges get in the way of meeting victims' needs – for justice and healing. We will only achieve our goal if we can work together and provide advocacy services for every victim, in every case, every time they are wanted.



## 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.

The National Sexual Violence Resource Center maintains a listing of [Protocols and Guidelines for Sexual Assault Response Teams](#) on their website.

### EVAWI Resources

For more information on these and other topics related to the criminal justice and community response to sexual assault, please see our [OnLine Training Institute \(OLTI\)](#), [archived webinars](#), [Training Bulletins](#), [Best Practice Resources](#), and [Resource Library](#).

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