



August/September 2005

In Brief:

MNCASA/SVJI has a new address as of September 1, 2005: Kelly Inn, 161 Saint Anthony Ave., Suite 1001, St. Paul, MN 55103.

Phone: 651-209-9993 or 800-964-8847; Fax: 651-209-0899. You are invited to an open house to see our new space on September 29, 4 PM—7 PM.

MNCASA will be hosting the Annual Meeting on September 30, 2005 at the Millennium Hotel in downtown Minneapolis. The Keynote speaker will be Judith Levine, author of the book, *Harmful to Minors*. Workshop topics will be varied and will address topics such as men's work in the prevention movement, online counseling, collaboration, and heterosexism.

The SVJI will be presenting at the MN Sex Crime Investigators Association Conference being held from October 5-7, 2005 at Madden's Resort.

Who Needs Force or Coercion When You Have Alcohol

*Kaarin Long
SVJI Staff Attorney*

According to one report, there are 70,000 sexual assaults associated with alcohol use on college campuses every year. Yet, as with most forms of sexual assault, these go largely unreported and, perhaps, under investigated or prosecuted as well. The drinking or drugged victim of sexual assault walks in the investigator's door with unique – but not insurmountable – problems. This article will discuss understanding and overcoming the problems to hold the offenders accountable.

Understanding the Problem

Offenders pick their victims for sexual assault for a number of reasons, but the most common denominator is vulnerability. The offenders committing the most sexual assaults are not looking for a sadistic thrill from inflicting extreme fear, harm, or death on their victims – although those guys get all the press!¹ The common sex offender seeks an opportunity and a vulnerable victim to gain power, control, and sexual gratification with the least resistance or risk to himself. It's a cowardly act, really.

This is why children, the mentally disabled, and the frail elderly are often chosen as victims. This is why an offender will choose a prostitute on the street over the mayor of the city, or a teenaged runaway over a police officer – they are easier prey every time. The coward chooses the most vulnerable person, with the least ability to resist or to later hold him accountable.

Is it really such a leap, then, to see why an offender would choose a drunk or drugged woman to sexually dominate without consequences? Doesn't that common thread of vulnerability run from young children, to the physically disabled, to an adult who is intoxicated? At a party or bar, the sex offender is not looking for love – a capable, alert equal. He is looking for the easy target – the woman whose judgment is impaired, whose physical motor skills are reduced, and who "needs" his "help."

In fact, the offender will take action to prey on his target. He will often order

(Continued on page 2)

¹ *This article will use the male gender for the offender, and the female gender as the victim for efficiency only. We recognize that any combination of genders can occur in cases of sexual violence, and support holding any offender accountable for assaulting any victim.*

Alcohol and Sexual Assault, cont.

a drink at the bar, even for the woman who indicates she has had enough to drink. He will perhaps order a double, unbeknownst to the target. We all have heard of “slipping her a Mickey” – just another way for the predator to weaken his prey, or perhaps he will encourage her to do one more line or hit on the bong, with the drugs that he provided.

Even when his target voluntarily consumed the alcohol or drugs, the predator will pounce on that circumstance to take advantage of the inability of his target to perceive that she is in trouble or to protect herself when it is too late. Often, it is the offender’s idea and prompting that separates the target from the crowd – it is his manipulation that creates the situation where he is in control and the victim is at risk.

Those who investigate and prosecute these types of cases know that, compared with the innocence of children or the frailty of an elderly woman, the college student who got “wasted” and then reported being sexually assaulted will curry less sympathy with a jury or judge, and will have to overcome a consent defense not applicable in other cases. But these assaults *do* happen, the offender *is* a predator, and with the right attitude and knowledge of what to look for, investigators and prosecutors *can* (and do) hold these offenders accountable.

Overcoming the Problem

The first step, of course, to overcoming any problem is to identify it – and often, talented and experienced professionals bring an attitude of defeat to these cases before they even get off the ground. That can be a problem – any time one starts a case by saying “there is no way we can prove this case,” they will be right: if you say you can’t, you can’t.

Hopefully this article will help the next time one of these cases walk in the door –for tools to start the case with the attitude that it can and should be

investigated and charged.

Some basic ideas to get started:

- ◆ ***Advocacy*** – victims of sexual assault are often ashamed and humiliated, especially when they believe their own behavior may have played a part in the assault. Encourage the victim to get support through advocacy, and keep the victim’s emotional state in mind when dealing with her – she will need to know you don’t judge her for her behavior.
- ◆ ***Medical evidence*** – the BCA now recommends that *anyone* having a forensic medical exam (within about 72 hours of the assault) should give a UA and blood sample, in case law enforcement wants to test it for drugs or the BAC. Even without a sample, the victim and witnesses can estimate the number of drinks consumed, and a toxicologist can extrapolate to a BAC, or testify as to the symptoms of drug use.
- ◆ ***Predation*** – from the discussion above, start looking long before the victim and offender were alone. Look for signs that the predator chose this victim for her intoxication level, or helped her intoxication get worse. Watch out for the “white knight” who “gallantly” escorts the victim to his car when she is too drunk to drive, but actually fails to see her “safely home.”
- ◆ ***Video*** – does the bar or campus have surveillance video, or did anyone at the party take pictures – especially cohorts who might film the assault itself? These might show just how “wasted” this victim was.
- ◆ ***Footwork*** – bar tenders or waiters, party-goers, friends – who saw this victim and could describe her intoxication? If they knew she was “wasted,” so did the offender.
- ◆ ***The target*** – with the victim, try to recreate the scene to the best she is able to recall. How were her judgment, motor skills, perception and memory affected before, during, and after the assault? Interview initially, but perhaps in more detail later if the victim is still groggy at first – her memory may improve. What did she say or do that indicated lack of consent, or her

See next page

Alcohol and Sexual Assault, Cont.

intoxication? How were drugs and/or alcohol ingested – who bought, provided, offered them?

- ◆ ***Give him the rope*** – attempt to interview the suspect, *perhaps* under the guise that he could clear up this silly allegation. Remember that these offenders are arrogant and will often believe this was just drunk sex – because they were immune to the fear or the stupor of their victim. In MN, so long as the elements of the crime are met, the offender’s subjective interpretation of a sexual assault is irrelevant. Find out how much he observed about her drinking/drug use, her intoxication, who purchased and served the alcohol, what he perceived as her consent.
- ◆ ***Focus the jury on the defendant*** – use the above information to portray the defendant’s premeditation, make the case and themes about *his* actions – not the victim’s. Choose a jury who has some experience with drinking and bars and will not judge that – should everyone who gets drunk this weekend be available for sexual assault? Be upfront and honest from jury selection on about the case – the alcohol use is *not* a negative if it explains the victim’s vulnerability to the jury! Use the JIG’s - in MN, failing to resist is *not* consent. Show the jury who the victim perceived the defendant to be, how she was helpless/incapacitated in his presence, and how different the defendant turned out to be from her belief.

SVJI Suggests Bench Book Additions

The Criminal Bench Book is a resource used by judges across the state. Though it does not include details of every criminal act, sections include the statute, current case, and some pertinent information for many crimes, especially those which may be confusing. This summer SVJI had the opportunity to review and suggest changes and additions to the Criminal Bench Book.

The most significant suggestion made by SVJI was to add a chapter devoted to criminal sexual conduct (adult). The Bench Book already includes chapters specific to domestic violence and child sexual abuse. Secondly, we suggested the addition of a section discussing victim’s rights. Although the Bench Book does address victim’s rights in several areas, there is not a cohesive overview of Chapter 611A. Finally, there were several areas in which we recommended changes to cases and statutes in order to update the book to match the current law. Whether the committee will incorporate our suggestions remains to be seen, but we appreciate their openness to our input.

SVJI Happenings

- ◆ The team site coordinators are invited to a TA meeting on Monday, September 12 from 11 AM to 2 PM at Davanni’s Restaurant in Edina. The meeting focus will be on public and community relations—how to affect the juror pool!
- ◆ The SVJI is organizing a task force of representatives from each SMART site to focus on the issue of alcohol/drug use and abuse in sexual assault cases. The task force will recommend best practices for the investigation and prosecution of these cases. Training needs and strategies for raising the issue in communities will be identified. Using intoxication of the victim to describe vulnerability, not to blame will be the starting point for the discussion.
- ◆ The SVJI website continues to grow with new resources. See the materials at www.mncasa.org. Click the SVJI button. For access to the legal resources, please contact Kaarin Long at kaarin@mncasa.org or call the office. Also ask Kaarin about joining the legal resources list serve!
- ◆ The legislative agenda for next session is beginning to take shape. Several issues have been brought to our attention and are being discussed. Let Kaarin know if you want to be part of that work.

Q: I just learned from our hospital that they will not do an evidentiary exam on a rape victim if the victim appears at the ER beyond 72 hours from the assault. They say they set that limit because the sheriff's office has said they will not pay for any exam conducted after 72 hours. Is this true? *An Advocate*

A: This is a multifaceted question with a complicated answer!

The state statute that addresses payment for the evidentiary exam (609.35) does not establish a time limit for conducting those exams. The key is that to justify public payment, the exam would have to be conducted for the purpose of gathering evidence. And, the MN Bureau of Criminal Apprehension has indicated that little physical evidence is retrievable after 72 hours.

But, there are circumstances that would warrant a full or partial exam even after 72 hours. For example, if the victim had not been allowed to wash, change clothes or otherwise care for him/herself, it might be very likely that evidence could still be gathered. An exam might still identify injuries consistent with sexual assault. A good forensic nurse or other hospital staff should be able to make the educated call about whether or not an exam is warranted given the victim's account of the event and the time that has elapsed. Additionally, the statute does allow for STD/STI and pregnancy testing to determine the status at the time of the assault. That can still occur outside of the 72 hour time limit.

Most importantly, this should be a decision that the prosecutor, law enforcement, medical and advocacy representatives have together to determine the most victim-centered and effective method of determining the proper response. We once heard a story of a victim that was about to be turned away from an ER because the assault had happened 1 week prior. An attending physician disagreed and encouraged the staff to do the exam. During the pelvic examination, a condom that had come off during the assault was recovered! We think that each case should be evaluated separately and that the 72 hour suggestion be just that, a suggestion.

The Ramsey County Sexual Assault Protocol Team and Sexual Offense Services of Ramsey County are collaborating to provide "Transgender Competency Training" on Thursday, September 8, Noon—4 PM at the Maplewood Community Center, 2100 White Bear Avenue. Space is limited. Contact Nichole Albaugh ASAP to register at 651-241-5864 or email her at nalbaugh@Partnersforviolenceprevention.org

Winning the Consent Defense Case

The SVJI will repeat the well received "Winning the Consent Defense Case" a training geared to prosecutors and law enforcement officers on the most difficult of cases: the acquaintance sexual assault with a consent defense. Assistant Olmsted County Attorney Lisa Swenson and Sgt. Eli Umpierre from the Rochester Police Department along with Kaarin Long, SVJI staff attorney presented the day long workshop.

The agenda has been reworked and will be presented in northwestern Minnesota in October and in the Twin Cities area in late November/early December. Cost for the training will be nominal. POST Board credits and CLEs will be available.

Protocol Site Updates

CARVER COUNTY SAIC

Tara Keehr, Site Coordinator

The Carver County SAIC is revitalized and forging ahead with the second go-around in the 8 step process, and work is almost completed on the IES and VES. In addition, the group will be having a booth at the Carver County Fair August 10th through the 14th. We will be handing out brochures about SAIC, copies of our resource poster and printed emery boards (of which we have ordered 20,000!) We expect to follow up with more public relations pieces, as we will seek to keep the community updated on our mission and our work.

This fall I plan on meeting with the heads of the various member agencies to update them on our work and to ascertain any problems or unmet needs. I will also seek to make a presentation to the Carver County Board to update them on the workings of the group.



ISANTI COUNTY SAIC

Brenda Skogman, Site Coordinator

Isanti County SAIC had a booth at the local Isanti County Fair in July. We have had an overload of sexual assaults lately. We currently are at nine new sexual assaults within seven weeks — an unusually high number for our county. Not all of the assaults are reported to law enforcement but at least victims are seeking medical and advocacy care. Isanti County's next meeting is at Five County Mental Health Center. We are now meeting monthly and are rotating the meeting sites so that each agency can introduce team members to their facilities. The hosting agency will talk about the implementation of the protocol in their agency. The protocols have been revised and are currently being distributed among the team members and members of the different agencies.



WINONA COUNTY SAIC

Valerie Williams, Site Coordinator

Fiscal Year 2006 has brought further collaboration to our team. Our advocacy program, The Women's Resource Center, is providing the site coordinator for the team, while Winona County remains the grant agency. This adjustment allows the County and County Attorney's Office to continue its leadership and support for the project but utilizes the perspective and the volume of volunteers that an advocacy program can access. The result is a strong message that sexual assault is a prosecutable crime and the Winona County SAIC is most interested in centering on the victim's needs.

The first meeting under the new arrangement was a renewal of commitment. Attendance was double that of the average summer meeting. Whether this was due to the personal invitations, the promise of refreshments, or the excitement of a new year, we're not sure, but the energy was flowing! The County Attorney, Chuck McLean, began by thanking everyone for continuing this process that began nine years ago. The group did a "where are we now?" review of the eight steps lead by our partner from the SVJI. Interagency agreements were rewritten stating that both the agency representative and the agency director saw the importance of the time spent working together on sexual assault crimes. Finally, the group began discussing goals for the new year. With this meeting as the springboard, the collaborative is ready to grab hold and push forward.



OLMSTED COUNTY SAIC

Joann Holt Angerman

The majority of the Olmsted County SAIC's energy has been focused on completing Volume II of the Community Needs Assessment (CNA). Volume II served as an update of the original CNA, while also focusing on responding to adolescent sexual assault.

Site Updates, Cont.

The CNA allowed the team to gather information from various sources and synthesis it to identify the needs of Olmsted County and make recommendations for addressing those needs. The information from the CNA will also serve as a foundation for the next step in the cycle: Guideline revising and writing.

Some of the highlights from the CNA were:

- ◆ Overall, there was a great deal of progress made in addressing needs that were identified in the original CNA.
- ◆ While services for immigrants and refugees have improved since 1999, Olmsted County is rapidly growing more diverse and services will need to keep up with the growth.
- ◆ A large proportion of sexual assault cases in the criminal justice system involve adolescents, but many adolescents are misinformed and mistrustful of professionals who respond to sexual assault.
- ◆ More complete sexual assault data and information could be gathered if agencies developed a uniform statistical database and individual cases could be tracked through the criminal justice system.

Some team members provided training for the Winona County SAIC regarding System Consultation. Olmsted County SAIC's monthly System Consultation provides a forum for dealing with problems that arise within the criminal justice system. Its value was recently highlighted when a team member asked after one discussion, "If the SAIC wasn't here, who would I have talked to about this?" Additionally, in the ongoing effort to gather meaningful feedback from victims, the team reviewed the Victim Experience Survey and made some minor changes.



RAMSEY COUNTY SAPT

Nicole Albaugh, Site Coordinator

The Ramsey County Sexual Assault Protocol Team continues to meet on a monthly basis. Currently, the team is collecting Victim Experience Surveys (VES) to gain feedback from victims about their experience with the various systems they came in contact with. The team now has two versions of the VES being handed out. The VES I is provided to victims in a packet when they go in for the evidentiary exam at the hospital. Community advocates are the primary means through which the VES I is distributed, however all team members are encouraged to remind victims to complete the forms. This VES captures the victim's experience with community advocacy, law enforcement, and medical staff. The VES II will be sent out with a letter from a victim witness advocate informing the victim of when the court case will take place. The VES II is meant to capture the victim's experience with each of the five disciplines – adding prosecution and corrections. Victims who complete and return the forms will be offered a \$10 gift card for their feedback.

The team has also developed a draft of what they would like their focus areas to be for FY2006. The primary focus areas will include trainings on the protocol and other cross-cutting issues for team members and partnering agencies, monitoring and evaluation, and recruiting new team members (specifically those from diverse populations and colleges and universities). The team is also considering expanding the protocol to include victims 12 and older.

The team has also been working with Sexual Offense Services of Ramsey County to sponsor a Transgender Competency Training on September 8th. Please see the box on page 4 for details.



Site Updates, Cont.

SOUTHERN ST. LOUIS COUNTY SMART

Sue Marks, Site Coordinator

The Southern St. Louis County SMART Team held a press conference in February to announce the adoption of the multi-disciplinary protocols by the advocacy, medical, law enforcement and prosecution agencies in the area. In March, the full team then held a half-day retreat to review the protocols and to begin planning for the next phase of SMART. In April, the team had its first conference, titled "A Community Response to Sexual Assault: Academic, Legal and Victim Service Perspectives." The conference featured keynote speaker Stephen Thompson from Central Michigan University, as well as local and regional experts presenting in nine separate break-out sessions. Representatives from many different disciplines and from throughout Minnesota and Wisconsin attended.

In the next several months, the SMART team will be working on the implementation, monitoring and evaluation of the protocols, a series of trainings on cultural competency for the SMART team and staff members of participating agencies, cultural competency trainings for the community, presenting the protocols to social services professionals at a local human services conference, planning a conference on cultural competency for April 2006, and on consulting on cases in the monthly team meetings. Finally, the team has been working for over a year, and will continue to work towards, starting a community-based Sexual Assault Nurse Examiner (SANE) program in coordination with the two local hospitals, local law enforcement, and social services. Funding is currently the stumbling block that is preventing the start of the program.



Rice County SMART

Melanie Matson, Site Coordinator

The SMART from Rice County celebrated and recognized our team's accomplishments at a gathering in March. While there have been challenges, there have been many positives as well. Most importantly, we celebrated that we are working together as a

team to respond to sexual assault.

Our community is beginning to see some of the team's accomplishments. For example, there were a high number of sexual assaults reported in April. Many agencies used their SMART contacts to work together to respond to sexual assault victims. We created our Inventory of Existing Services and noted our strengths and weaknesses. We were especially pleased to receive input through our Victim Experience Survey that we will use to guide us through the rest of the 8-step protocol process.

Currently, we are working on the Community Needs Assessment. So far, we have been gathering sexual assault statistics and planning focus groups, a public forum and additional means of gathering community input. We surveyed team representatives regarding the IES and VES results which led us to develop an Interagency Information Guide and Questionnaire. SMART representatives will be conducting this activity with their respective agencies. Through this effort, the SMART hopes to connect with additional agency staff, such as advocates, medical professionals, probation officers, county attorneys and law enforcement officers beyond the SMART representative. We hope to share information and ask for their input and feedback on the response to sexual assault.

The team was rejuvenated by attending the SVJI All Team Gathering. It was an honor for us to learn from more experienced teams, network with other representatives and hear Andy Weisberg speak on the nature of teams. We were very excited to win the Most Creative Team Introduction Award for our SMART rendition of Extreme Makeover. We will definitely return next year to defend our title.

The Rice County SMART is grateful for the opportunity to work together on our response to sexual assault and looks forward to continuing this important effort.



Our thanks to all of these teams for taking this work to the next dimension!

Sexual Violence Justice
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Thank You, Lindsay!

We were fortunate to have a law clerk spend the summer with us, but she returns to school in August. Lindsay Brice, a second year student from Hamline U. Law School has been with us since June. She has been invaluable, drafting memos on consent and the discovery of victim medical records which are on our website. Lindsay has also provided background research on issues as we develop our policy ideas, worked on summarizing new sex offender legislation, and brings a helpful perspective from her background as a sexual assault advocate. The best part is that she says she will continue to volunteer with us while she goes to school! Thanks for a HUGE impact this summer, Lindsay, and good luck in your second year!

Thanks also to the Minnesota Justice Foundation and Equal Justice Works for sponsoring Lindsay's clerkship with SVJI.