



April, 2006

When Sexual Assault Victims Complain **Crime Victim Justice Unit**

By Suzanne Elwell, Investigator, Office of Justice Programs

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In Minnesota, when crime victims have a complaint about the actions of police, prosecutors, probation officers, or advocates, they have someone they can call. The Crime Victim Justice Unit investigates complaints from victims of crime who feel that they have been mistreated or their statutory rights have not been upheld. The CVJU has the ability to investigate these complaints, identify problem areas or statutory rights violations, and make recommendations to improve the response to crime victims.

From OCVO to CVJU

Although it has been 3 years since the reorganization that created the CVJU, the unit continues to face lingering confusion about its role. When we explain to criminal justice professionals that the CVJU is the organization *formerly known as* the Office of Crime Victim Ombudsman, we typically get an "ah-ha" reaction followed, sometimes, by "oh-oh." The Office of Crime Victim Ombudsman (OCVO) was created in 1985 and continued on until 2003, when its responsibilities were assumed by the Crime Victim Justice Unit (CVJU).

Responding to CSC cases

A great number of the calls to the CVJU and the cases that are investi-

gated deal with criminal sexual conduct crimes. The victims seek our help with a wide range of problems including difficulty getting information about a case, rude or inappropriate treatment by criminal justice professionals, delays, charging decisions, and the failure to provide statutorily required notices. Many victims just want basic information about the criminal justice process and how to get connected to the right person in their county. More often, victims seek the help of the CVJU when they feel that the criminal justice system has failed them. For those victims who raise concerns that cannot be resolved quickly over the telephone or handled by referring them to appropriate resources, a formal case is opened.

Questioning the law enforcement investigation

Victims often complain about the manner in which the criminal investigation was conducted. Frequently, they feel that too little or no action was taken by law enforcement, or they question the steps that were chosen by the investigator. An inquiry by the CVJU may result in a number of different outcomes. Sometimes the CVJU investigator finds that the law enforcement agency did a good, or even exemplary, job and concludes the complaint is not justified. Other times, the

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CVJU investigator finds that the criminal investigation was problematic, yet adequate, and within the discretion of the law enforcement agency. Less frequently, and greatly troubling, are those cases where the CVJU finds that the investigation, or parts of the investigation, were inadequate or improper.

One example of a complaint was when a mother complained to our office about the manner in which her 11-year-old daughter was interviewed by an investigator regarding a sexual assault. The investigator repeatedly asked the daughter why she was lying, why she didn't try to get away when she had the chance, what she thought her mother would do when she found out she was lying, and that she could be charged for lying to the police. The CVJU found that the questioning by the investigator was so inappropriate as to constitute victim mistreatment.

It depends on the county

The CVJU examines cases from all over the state and as a result sees firsthand the great differences in how differently county attorneys' offices deal with their caseload. For example, the CVJU investigated two cases from different counties in which adult women (both in their 20s) were charged with criminal sexual conduct for having sex with minor boys, both under the age of 16. In one case, the county attorney's office vigorously and properly pursued prosecution of the offender and obtained a conviction on criminal sexual conduct in the second degree, despite the victim's wishes that the case be dropped.

In the other county, the prosecutor expressed deep concern that she would not be able to convince a jury that what occurred was a crime, despite strong evidence which included an independent eye witness. In that case, the charge was pled down to criminal sexual conduct in the fifth degree. Although all cases have their individual sets of facts, the CVJU routinely sees great differences in the willingness to pursue CSC cases, the amount of evidence required before a prosecutor will file charges, and the willingness of the prosecutor to plead down to a lesser charge.

Waiting, waiting, waiting . . .

One of the more common complaints the CVJU receives related to sexual assault cases is the time—the time it takes police to investigate the case, the time it takes the prosecutor to make a charging decision, and the time it takes for the case to work its way through the criminal prosecution process.

A great number of the calls to the CVJU and the cases that are investigated deal with criminal sexual conduct crimes.

CVJU staff members routinely talk to victims

about the fact that sexual assault cases can take a long time to process from beginning to end, especially compared to other types of crimes. In a recent call, a victim was reassured to hear that the 8-month time frame from the date of the crime to the jury trial was actually fairly quick.

Victims are especially frustrated during the time when the case is under review by the prosecutor. For those CSC cases that are not "slam dunks," the charging decision can be extremely difficult. And, as some prosecutors have readily admitted, these case files tend to migrate to the special pile on their desk designated for work that is going to take some extra thought or time to complete. Often it is because of complicating factors that the decision is difficult, and sometimes these files remain in "under review" status because the prosecutor knows the victim is going to be upset. Whatever the reason, the file may sit in that special pile for weeks or months, waiting for the time when the prosecutor can give it the consideration it needs. All the while, a victim may be living in a state of prolonged uncertainty, trauma, or fear.

Notice of decision to decline prosecution

Perhaps one of the more common complaints we have received over the past few years is that the victim was not notified by anyone that the prosecutor had decided not to file charges against the offender. Victims may wait weeks or months waiting for someone to let them know what is going on, only to find that a decision had been made early on not to prosecute.

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New Coercion Definition Helps Olmsted County Secure Two Convictions

In 2005, the Sexual Violence Justice Institute, a program area of the Minnesota Coalition Against Sexual Assault, received suggestions that the statutory definition of the term "coercion" as it applies in criminal sexual conduct cases should be modified to help prosecutors convey the meaning to juries. Prosecutors felt the definition was too similar to the definition of "force," and also failed to convey the true nature of many common sexual assault cases: that one individual intimidates the other with size and strength. Based on this input, the SVJI worked with our Legal Resources Team to propose a change in the definition. The resulting language added the phrase "the use by the actor of . . . superior size or strength" to the previous definition of "coercion."

From Lisa Swenson, Senior Assistant Olmsted County Attorney:

Last month I had a chance to use the new definition of coercion in a trial where a boyfriend was charged with sexually assaulting his girlfriend of seven years. The victim initially fought back, but then testified that she

"gave up" against her boyfriend's weight and size. This type of case is always difficult, but I found my ability to argue that the defendant used his "superior strength and size" to get the victim to submit made arguing the force/coercion piece much easier. I was pleasantly surprised when the jury only took an hour to find the defendant guilty of Criminal Sexual Conduct in the Third Degree. (He was also convicted of False Imprisonment and Burglary in the 1st Degree). My co-worker Karen Arthurs also had a court trial where a juvenile football player was charged with Criminal Sexual Conduct in the 3rd Degree – force & coercion where the victim willingly went into the bedroom with the juvenile, but then tried to stop short of intercourse and was overcome by the juvenile's size. Karen felt that the new definition of coercion was critical in convincing the court of the juvenile's guilt.

Thanks, again to the professionals who worked with SVJI to draft and implement this new language!

Crime Victims Justice Unit—continued

Notification practices vary across the state. In some jurisdictions, prosecutors take the responsibility of notifying victims in these situations; in others, the police notify the victim. Unfortunately, in many jurisdictions, there is no clear understanding of who will take this responsibility with the result that the victim never gets notified. This year, legislation will be introduced that will require prosecutors to provide this notice to victims of sexual assault.



identifying victim mistreatment and statutory rights violations, the CVJU makes recommendations for change. The CVJU encourages criminal justice professionals to adopt and maintain procedures that are designed to ensure compliance with statutory victim rights as well as provide victims with respectful, considerate, and thoughtful treatment.

Our thanks to Suzanne Elwell for her contribution!

The end goal

In the end, the CVJU strives to improve the response by criminal justice professionals to victims. Along with

Top Ten—More or Less!

It is not unusual for other systems professionals in a community to misunderstand the role of advocates. Sexual Assault program advocates can enhance their interagency relationships by following these tips for reaching out to area collaborators:

1. Host an open house and invite other service providers.

Often, advocates are only viewed as an individual who offers support to victims at the hospital or during the interview process with law enforcement. Take time to “show off” all the services you provide throughout the community by hosting an open house. Have displays of your work throughout the meeting space such as brochures, community education information, and your contact information along with information regarding your services. Be sure to include your volunteer advocates as well as staff so other service providers/professionals have an opportunity to put a name with a face. Individuals to consider inviting include but are not limited to: medical personnel, law enforcement, county attorney personnel, corrections, city council members, legislators and any other professionals you have contact with in the community. Provide treats and have fun!

2. Monthly Recognition Awards for professionals.

Recognize professionals that have provided outstanding service to victims by presenting them with an “Outstanding Service Award.” Perhaps you have had the opportunity to work with another professional that has made a difference with the victim. Convey your appreciation through an award. Be creative and watch the difference it can make!

3. Open up your advocacy training to other professionals.

Advocacy programs invite professionals from other systems to train the volunteer advocates on their role/job within the system. Why not open up this training to allow other service providers/professionals a chance to experience the in depth training that is offered to your volunteer advocates? Send out invitations along with an RSVP in advance to announce an upcoming volunteer training along with a schedule of the topics to be presented. This may create new alliances for future trainings as well as allowing the other professionals an opportunity to meet the volunteers and gain insight into their training.

4. Invite professionals to help you recognize the good work of volunteer advocates.

Volunteer advocates are essential to the survival of advocacy programs. Let the recognition for their outstanding work and commitment go beyond your program. Invite service providers/professionals that the volunteers have had contact with (law enforcement, medical providers, county attorneys, corrections) to join with you in a volunteer recognition event to celebrate and acknowledge all their contributions.

5. Letters of Acknowledgment.

When another professional does outstanding work and shows their commitment to victims, your program in general, or perhaps their input on a committee you have formed, make sure this work is acknowledged. Write a letter to that individual stating your appreciation and also a separate letter to their supervisor. This gesture will assist in creating an on going commitment from that individual as well as that agency.

SVJI Legislative Agenda for 2006

Thanks to the dedicated work of a few prosecutors and law enforcement, we have developed some good ideas into legislative proposals for this year's session. These are very brief descriptions - for more specifics, contact SVJI.

- *Advocate Privilege* – this would make the confidentiality provision for sexual assault advocates/counselors match that of other professionals within the same statute.
- *Personal Body and Cosmetic Services* – this proposal would create a third and fourth degree level criminal sexual conduct for nonconsensual touching or penetration by one providing such services as massage therapy or tattooing.
- *Felony Enhancement of 5th Degree CSC* – would apply after certain prior convictions involving not only minors as with current language, but also adults.
- *Mentally Incapacitated Minors* – regardless of whether the minor has “agreeably” become under the influence of alcohol or drugs, this would make it unlawful to engage in sexual conduct with such a minor.
- *Mistake of Age Defense Limited* – with this change, those persons more than 15 years older than the teenager with whom they engage in sexual conduct would be unable to claim that they mistakenly believed the teenager to be of the age of consent, and a reasonableness requirement is placed on those who can still use the defense.

MNCASA Executive Director Pursues Interests Elsewhere

After almost ten years with MNCASA, Executive Director Carla Ferrucci has left to pursue other interests. Ms. Ferrucci has been involved with anti-sexual assault work for over ten years, and leaves a legacy of passion and commitment to end sexual violence in the lives of all Minnesotans.

The Board of Directors of MNCASA has named Donna Dunn as Interim Executive Director of MNCASA effective April 8, 2006. The Board wishes Ms. Ferrucci much future success, and will begin to focus on the transition into new leadership.



Non-profits Need Attorneys, Too!

Sexual Assault programs are business entities, just as with any for profit organization. They just happen to be organized for a non-profit purpose. For this reason, they are accountable for following established requirements regarding funding, recordkeeping, duties to employees, and other business duties.

It is therefore important for any non-profit organization to establish an ongoing relationship with an attorney in the area. This attorney can review employment practices, organizational by-laws, and record-keeping practices to ensure that they comply with state and federal requirements. This attorney can also be available in the event that an urgent need arises – such as a subpoena for client records being served on a program. If an attorney has already worked with the program, she can be familiar enough that she will feel comfortable representing the program in the event of an urgent request.

Thus, we encourage all programs to develop a relationship with a local attorney *immediately*. The Minnesota State Bar Association has developed a program called "Legal Corps," which works to connect



The SVJI would like to give a "high five" to the Duke University President for the clear response he offered upon report of sexual assault by the University lacrosse team. The University suspended all future games until there is resolution of the situation. Such a definitive response puts all students on notice that Duke takes the issue of alleged sexual assault seriously. Kudos!

non-profits with attorneys who are willing to provide free or reduced price services. Check out their website www.mnbar.org today!

SVJI Happenings

☑ SVJI has conducted three presentations to students of law enforcement with an outstanding result. The four hour trainings consisted of discussing common myths and stereotypes of sexual violence, along with techniques to conduct an in depth and informative interview with the victim as well as tactics to assist with the suspect interview. SVJI would like to thank the local advocacy programs, Investigator Monte Nelson from Northfield Police Department and Sergeant Mike Schlitz (retired), Duluth Police Department for making these trainings a success. SVJI plans to continue to offer these trainings throughout Minnesota, so if you have an academy in your area, please contact Michelle Knudson at SVJI to schedule training.

☑ SVJI has met several times with a talented, multi-disciplinary group to develop best practices relating to sexual assault cases involving alcohol. Watch for more news on this work.

☑ The Legal Advocacy Manual became available April 1, 2006 and was sent out to member programs. If you would like a copy contact Shellae at SVJI.

☑ The Drunk or Drugged Victim of Sexual Assault – Trial Skills for Prosecutors. This training, previously scheduled for April 20, 2006 is being CANCELED due to insufficient registrations. SVJI continues to work at providing training opportunities that draw sufficient participants to justify the cost. We are always open to suggestions!

Protocol Site Updates: For a new perspective, we asked team prosecutors to give the update.

ISANTI COUNTY SAIC

Brenda Skogman, Site Coordinator

Isanti County Smart is currently working on the monitoring and evaluation portion. Public Health is calling victims who have consented to speak with us to evaluate the program. We have received gift cards from Applebees in Cambridge to give to victims who complete the evaluation. Public Health is also contacting members of the different agencies that are involved in the SMART Team to monitor how the protocol is being used by the different agencies and if it is being followed. We continue to have monthly meetings which are going very well and the team is having great systems consultations at these meetings. We continue to update the protocol as needed and continue to add agencies and resources to the team. We are also currently checking into having the Eden Group perform a cultural diversity training which would be open to the public as well as other professionals.

Jeffrey R. Edblad, Isanti County Attorney



WINONA COUNTY SAIC

Valerie Williams, Site Coordinator

The Winona County team continues to meet regularly with steady attendance. Our team is getting better at drifting from meeting dates and is spending more time on conversations regarding cases pending or problems with cases that were not charged. Just a few of the improvements are: the hospital staff and responding law enforcement are able to better monitor cases not reported; law enforcement and prosecution are working on cases together prior to the case being sent over for charging; and the group is recognizing and appreciating what difficult jobs each member of the team has. We also have a new investigator from the police department who is very energetic and a positive attribute to the team.

Carmaine Sturino, Prosecutor, Winona County

OLMSTED COUNTY SAIC

Joann Holt Angerrman

While the Olmsted County SAIC is currently busy with many projects, our primary focus continues to be the creation of Guidelines for Adolescent Sexual Assault victims and the revision of existing Guidelines for Adult Victims. At our monthly meetings, agencies present a draft of their Guidelines to the group for feedback and questions. This process has been valuable not only in creating the end product, but also in promoting understanding across disciplines. The give and take of the discussion provides a deeper understanding of the roles of each profession and the rationale behind particular procedures.

Our membership continues to expand. A patrol officer from the Rochester Police Department and a representative from Planned Parenthood joined our team. As the guidelines affect such a large number of patrol officers, SAIC team members thought it would be valuable to representation from that group. Also, with the current focus on adolescents, it was seen as vital to have representation from the local agency so many adolescents contact regarding sexuality issues.

The Executive Summary of the Community Needs Assessment has been completed and published. The SAIC will be distributing copies during the month of April. We hope to use Sexual Assault Awareness month to highlight the information learned from the Community Needs Assessment and the work of the SAIC.



RAMSEY COUNTY SAPT

Nicole Albaugh, Site Coordinator

The Ramsey County team is planning a second county-wide sex crimes investigator training to be held in early May. Some of the topics being considered include: what makes sex crime investigations different from other crimes, pretext phone calls, use of predatory offender data-

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Site Updates, Cont.

base as an investigative tool, update on failure to register law and investigation, use of the media in sex crime investigations, cyberspace child exploitation investigations, interviewing suspects in sex cases, evidence retention in sex cases, Ramsey County sex trafficking grant program and Hmong Runaway Intervention Project (a medical-law enforcement model for identifying and preventing child sexual exploitation). The subcommittee will complete the agenda and have a flyer available in early April. The training is expected to be about 3 hours in length and POST credits will be applied for.

The team continues to work on evaluation and monitoring of the protocol. While it has been challenging getting feedback from victims about their experiences, we are hopeful that advocates from Sexual Offense Services will have some luck getting victims to participate in the victim experience survey by asking a couple extra questions during the follow up phone call. We will reevaluate this process in a couple months to see if there is an increase in data. In regards to monitoring the implementation of the protocol, the team continues to bring cases to the team meetings to discuss during the systems consultation portion of the meetings. This provides a venue for team members to discuss successes and or issues that arise during sexual assault cases. If problems do arise, team members can work together to resolve the issues so that it is less likely to be a problem in the future.

Finally, the team was informed a couple months ago that beginning May 1st, Sexual Offense Services (SOS) will only provide on-site advocacy to Regions Hospital. SOS has agreed however, to provide a follow-up call to all victims seen at United, Children's, St. Joseph's, St. John's and Woodwinds Hospitals. A medical-advocacy subcommittee has been set up to address how this will affect the protocol at the other hospitals and to work on ways to provide victims with support they need during the evidentiary exam.

Jeanne Schleh, Prosecutor, Ramsey County

SOUTHERN ST. LOUIS COUNTY SMART

Brook Holmberg, Site Coordinator

Thanks to the SMART initiative, we now have a demanding protocol that will assist our efforts in responding to victims of sexual assault in a competent, consistent and compassionate way. Our prosecutors are also benefiting from the responses of the participants in the focus groups. Even though many of us have been doing this for a long time, it is invaluable and essential that we are continually reminded of the reality of what victims go through. We will be more responsive as a result.

SMART has also been instrumental in the development and implementation of a new form and policy for the payment of medical exam services from providers that do not require the victim's signature.

Lastly, we are poised to benefit as a community as SMART representatives, along with leadership from PAVSA, begin work on the implementation of a sexual assault nurse examiner SANE in Duluth.

Mark Rubin, Prosecutor, St. Louis County



Rice County SMART

Melanie Matson, Site Coordinator

The Rice County SMART passed several milestones this winter. We reached the conclusion of the community needs assessment process. Carleton College kindly created DVDs of our recent community forum, which was broadcast on local cable television and distributed to each team agency. Through the hard work of our CNA subcommittee and site coordinator, we assembled the information we gathered into our comprehensive CNA report. We are now finalizing decisions on how to distribute this helpful report to the community.

We are now turning the corner toward the protocol development stage. To help us begin, SVJI came down in February and conducted two days of training. We celebrated our accomplishments, learned about protocol development, monitoring, training, and evaluation, and welcomed some new members to the team.

Continued on next page

Site Updates, Cont.

The team continues to meet twice a month in Fari-bault and Northfield, and we are now beginning the exciting process of mapping out a strategy to write the protocol. We are looking forward to the challenges that lie ahead of us as we work as a team toward this exciting goal.

Nate Reitz

Prosecutor

Rice County Attorney's Office

CARVER COUNTY SAIC

Tara Keehr, Site Coordinator

The Carver County SAIC has been concentrating on preparing to host 3 focus groups (Hispanic, Professionals, 18-24 year olds) in preparation for the completion of our CNA. Most of the focus groups will be held in May. In addition, the group is helping to promote the Sexual Violence Center's Candlelight Vigil to be held in Chaska on April 19th.

Legal Resources Program Survey Results

At the end of 2005, a number of Sexual Assault Cases List-serv participants filled out a survey evaluating SVJI. Here are some of the results.

- Respondents were 10% law enforcement; 80% prosecutors; and 10% other.
- They first learned of SVJI through a training – 40%; a co-worker – 30%; other 20%; or a SMART team – 10%.
- For trainings they attended in any year, respondents would recommend an SVJI training to others "absolutely" – 70%. 30% N/A since have not been to an SVJI training.
- 100% of respondents belonged to the sexual assault cases list-serv.
- Of those, 70% would "absolutely" recommend it to another, and 30% would "probably" do so.
- Listserv responses were "very helpful" – 80%, or "somewhat helpful" – 20%
- The MNCASA/SVJI website (www.mncasa.org) was not used by 70% of respondents for information, brief bank or other resources, was used by 20%, and 10% never heard of it. (Note: check it out – we continue to add good stuff there!)
- In 2006, respondents would use the MNCASA website if: "I had known about it," "it had specific issues on sexual assaults where I need a brief", "if I had more time." (Note: it is intended to save you time!)
- SVJI newsletter articles were requested on meth and sexual assault; and recantation
- SVJI works on legislative issues every year and 80% of folks knew that, 20% did not.
- General comments: "everything seems to be working just fine;" "you guys are great – thank you."



We certainly hope to be clear that we are always open to comments, ideas, and frustrations – especially from our law enforcement colleagues, since we have no former law enforcement officers here at SVJI to guide us! Whatever we can add to the website, discuss on the listserv, create as a resource – we will try to provide it for you once we get the input! Thank you for your responses, and we look forward to hearing from you.

**Sexual Violence Justice
Institute**

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