



End Violence Against Women International
(EVAWI)

Interviews with Victims vs. Suspects: Start by Believing and the Question of Bias

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Introduction

Sexual assault victims have long faced unwarranted skepticism from friends and family members, as well as responding professionals. In this Training Bulletin, we document examples of this historical bias and examine a few measures that have been taken to help ameliorate it. In particular, we focus on the Start by Believing philosophy and examine its relevance for victim and suspect interviews. Our goal is to inform criminal justice professionals and others about what this philosophy does – and does not – say about how to approach sexual assault cases, including interviews with victims, suspects, and witnesses. Ultimately, we emphasize that Start by Believing is an approach to conducting thorough, professional, and *unbiased* investigations.

Historical Bias

Sexual assault victims have often faced reactions of doubt and blame when they report the crime or reach out for help. This is not simply the result of individual attitudes. A skeptical orientation has long been reflected in policies and training on sexual assault response. To illustrate, in 1970, O'Hara published a widely-used textbook called *Fundamentals of Criminal Investigation*, which advised the following:

Where a vigorous woman alleges ravishment, it is to be expected that signs of violence such as wounds, bruises and scratches will be present, and their absence should induce a moderate degree of skepticism unless the girl avers that she fainted from fear, became panic stricken or was otherwise rendered incapable of physical resistance. The acts and demeanor of the female immediately after the alleged commission should be subjected to very critical investigation in these cases (p. 283).

Unfortunately, this skeptical orientation was not simply a product of the 1970's. The following excerpt appeared in the 1995 *Model Policy for Investigating Sexual Assaults* published by the International Association of Chiefs of Police (IACP):

Generally, the actions and the appearance of a legitimate rape victim leave little doubt that a crime has been committed. Under such circumstances, the victim is highly agitated, emotionally distraught, often in a state of hysteria and may have sustained injuries, cuts, bruises or wounds. The victim's clothing is often ripped or torn off as evidence that it was forcibly removed and if the rape occurred outdoors, the victim is generally thrown to the ground and her outer garments stained or soiled. Questions may reasonably be raised concerning the validity of rape charges in which none or only a few of the above manifestations exist.

The IACP has since completely re-worked their Model Policy – so this excerpt does not reflect their current stance. However, it goes to show how recently this type of thinking held sway, even among internationally recognized leaders in law enforcement policy.

In fact, this type of thinking didn't end in the 1990's. In 2014, The Reid Institute¹ published a textbook on interviewing and interrogation which included a chapter on *Establishing the Truthfulness of a Sexual Assault Victim: Factual Analysis*. In it, investigators are cautioned to "keep in mind possible motives which could prompt a victim to lie" and advised to look for "precipitators which may have motivated a false allegation (STD, rejection, discipline, pregnancy)" (Jayne & Buckley, 2014, p. 319). This edition remains the current version of this textbook, so it still contains this information.



For a lighthearted reflection of this historical bias against sexual assault victims, please see the video entitled, [If a Robbery Report was Treated Like a Rape Report](#). The video is useful for training on this topic, because it makes the points effectively with humor.

Department of Justice Guidance

These are examples of the type of bias the US Department of Justice (DOJ) sought to eliminate with their 2015 guidance, entitled: [Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence](#). The purpose of this guidance is to "help state, local, and tribal authorities more fairly and effectively address allegations of domestic violence and sexual assault."² This clearly requires reducing the deep-seated skepticism of sexual assault victims, both male and female:



Officers should not make statements or engage in acts that indicate to the victim that they doubt the victim's credibility, or that otherwise exhibit any bias towards the victim based on gender. Such statements and judgments could include: stereotyped assumptions about the truth of a reported assault (e.g., that women are likely to report 'regretted sex' as rape, that transgender women and men are unlikely to be raped, that people engaged in prostitution cannot be raped, or that certain ethnicities or races are more 'promiscuous'); automatically believing the alleged assailant's claim that the sex was consensual; or subtly, or even blatantly, coercing the victim to recant the allegation of sexual assault by blaming the victim for being assaulted or for making unwise or dangerous choices (p. 14).

¹ The Reid Institute is often seen as "the gold standard" for law enforcement training in interviewing and interrogation. As they state on their [website](#): "More than 500,000 professionals in law enforcement and security fields have attended their training programs since they were first offered in 1974."

² Attorney General Loretta E. Lynch, in a press release by the US Department of Justice, Office of Public Affairs on Tuesday, December 15, 2015, entitled: [Justice Department Issues Guidance on Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence](#).

Start by Believing

One strategy for countering such bias is to adopt a philosophy of Start by Believing. In April 2011, EVAWI launched the [Start by Believing campaign](#), which has now been adopted by more than 360 communities in the US and globally.³ The campaign is changing the way professionals and loved ones respond when a victim utters those terrible words: “I was sexually assaulted.” Equally encouraging are the reforms enacted to improve responses of agencies and systems. For example, many law enforcement agencies are implementing alternative reporting options and other trauma-informed approaches to interviewing victims of sexual assault. By improving the policies, practices, training, and collaboration of responding professionals, the goal is to increase access for sexual assault victims, so they can report the crime and reach out for help.

As the philosophy takes root, however, both professionals and the public have asked important questions. For example, is Start by Believing just another form of bias? Does it replace the historic bias against *victims* with a new bias against *suspects*? This Training Bulletin is dedicated to tackling such questions, with particular focus on criminal justice professionals, especially sexual assault investigators.⁴

Start by Believing



Always Believe? Believe Everything?

First, it is important to address a simple question that can cause a great degree of confusion about the Start by Believing philosophy. When it comes to victim interviews, does *Start by Believing* mean that we *Always Believe*? Or that we *Believe Everything*? The answer is: No. That’s why the word *Start* is in *Start by Believing*.

Unfortunately, the Start by Believing philosophy is sometimes mischaracterized in this way. Yet for criminal justice professionals, participation in Start by Believing does not mean that they cast aside their responsibility to conduct a full and thorough investigation, or to ignore evidence that contradicts a victim’s report or statements made by witnesses and suspects. It does not require believing everything a victim says.

³ We know there are many more campaigns and activities that EVAWI is not aware of, because we typically only learn about them when information is submitted through the [Start by Believing website](#).

⁴ We use the term *investigator* to refer to law enforcement personnel who have responsibility for conducting sexual assault investigations. In smaller agencies, this may be a patrol officer, whereas larger agencies may have detectives assigned to a General Investigations Unit, or a Specialized Sex Crimes Unit or Special Victims Unit. We also recognize that agencies use different terms for their sworn personnel, including *officer*, *deputy*, *trooper*, etc. However, we will use the term *investigator* in a general way, to refer to sworn law enforcement personnel who investigate sexual assault reports.

In fact, nothing in the Start by Believing philosophy lessens an investigator's responsibility to meet the evidentiary standard of probable cause, or a prosecutor's burden of proof beyond a reasonable doubt. Rather, this approach is designed to improve the quality of a sexual assault investigation, because it allows victims to develop trust with the investigator. Without this orientation, victims are often faced with a skeptical mindset or a "convince me" attitude, which can feel like an interrogation. This, in turn, can diminish a victim's ability to participate effectively in the investigation, and may even lead them to recant or withdraw. As many as one-third to one-half of all sexual assault victims withdraw their participation from an investigation at some point,⁵ and this should come as no surprise. Victims know when they are not being believed. Chief Lee W. Russo of the West Valley City (Utah) Police Department explains:

Taking part in the Start by Believing campaign allows us to set an example in our community that says when someone is sexually assaulted ... we will start by believing the victim, and you should too. This message does not change the perspective of objectivity required to be a credible professional, nor does our involvement change our intention to conduct a thorough investigation.

We know, however, that when victims are approached from the perspective where they are initially challenged, accused of lying, or their behavior is questioned as contributing to the event, they will often be unable – or unwilling – to provide the type of information needed for law enforcement to successfully investigate the case. A thorough investigation therefore must ensure that the person is treated with compassion and respect, and that the report is handled professionally – instead of communicating the message (either explicitly or implicitly) that I don't believe you.

Referring to Victims

Some have also questioned whether the term *victim* is actually an expression of bias against *suspects*. Does the use of this term presuppose the outcome of the investigation? Isn't it the jury's role to decide who is a victim, depending on their verdict?

Again, no. The word *victim* is a term of art used at every stage of the criminal justice process. Federal victims' rights and services laws,⁶ and many state laws and victims' rights constitutional amendments, confer *victim* status on a person at the time a crime is reported or charged. It is also the word used in crime report forms, to label the person reporting the crime. This is similar to the way *witnesses* and *suspects* might be identified at the point that a report is made, a preliminary investigation is conducted, and a crime report is being completed. The use of this term is therefore consistent with criminal justice practices at the federal, state, tribal, and local agency level.

⁵ Victims are especially likely to withdraw from the law enforcement investigation when the suspect is someone they know (Frazier et al., 1994; Spohn, Rodriguez & Koss, 2008; Tellis & Spohn, 2008).

⁶ See, for example, the Crime Victims' Rights Act of 2004, 18 U.S.C. § 3771 and the Victims' Rights and Restitution Act, 34 U.S.C. § 20141 (formerly codified at 42 U.S.C. § 10607 (2006)).

In addition, law enforcement professionals are the ones responsible for evaluating and determining offense classifications for crime reports, once the elements of a crime have been satisfied. These classifications are recorded in law enforcement documentation and reported to the FBI through the Uniform Crime Report (UCR) or National Incident Based Reporting System (NIBRS). If a suspect is identified, and probable cause established to make an arrest, law enforcement also determines the specific charge(s) for the arrest. They are not required to change these classifications as a result of a prosecutor's decision to charge (or not) and a jury's decision to convict (or not).

Finally, law enforcement determines when to *unfound* a case (either because it is false or baseless), and investigators are not required to change this determination based on the findings of a judge or jury. This is because a "not guilty" verdict does not necessarily indicate that the crime did not occur, or that it was a false report; it only indicates that the judge or jury was not convinced beyond a reasonable doubt that the defendant committed the crime. Even then, investigators are not required to change their case determination, or the terminology used in their reports. It is therefore appropriate, and consistent with convention, to use the term *victim* in a criminal justice context – just as it is appropriate to refer to a *suspect*, *witness*, and a reported *sexual assault*.

Start by Believing Suspects?

Yet another question relates to Start by Believing and suspect interviews. Specifically, should we be training law enforcement investigators to Start by Believing when they interview a suspect in a sexual assault case? If that is what we teach for victims, shouldn't we do the same for suspects?

This question is more complicated. To answer it, we must delve into the fundamental differences between suspect and victim interviews in a sexual assault case. Many of these differences stem from the timing of the two interviews, as well as procedural requirements, and constitutional protections for suspects during a criminal investigation.

Timing of Interviews

When someone reports a sexual assault, it is typically a "cold contact," meaning the responding officer has little or no background about the victim, the suspect, or the circumstances of the crime. In fact, often the only information at this point is the victim's own words: This is the basis for writing a crime report and starting an investigation.

By contrast, a suspect is typically interviewed later in the investigative process. At that point, the investigator has usually gathered and reviewed background information and evidence, including criminal history checks, crime scene diagrams, photographs, security tapes, etc. The investigator has therefore formulated a preliminary assessment of that evidence – and interviewed any available witnesses – before formally interviewing the suspect.

In other words, investigators typically have some reason to believe the suspect committed the crime by the time this person is formally interviewed. Or perhaps they do not believe the person committed the crime, but they need a statement to clarify a key issue. Or, the person may no longer be considered a suspect, but may be a possible witness. Regardless, the investigator's job is to attempt to interview the person, to see how the statements that are provided align with the evidence and statements provided by the victim, any other suspects, and additional witnesses.

Even then, investigators are encouraged to approach suspects with an open mind, listening carefully and documenting any statements made. This is because the next step is to investigate every aspect of the suspect's statements, just as it is with statements made by the victim and any witnesses. If the investigation shows that the suspect's statements are inconsistent with statements and other evidence provided by the victim and witnesses, the investigator might then begin using interrogation strategies. All of this is true for sexual assault, as well as every other type of criminal investigation.

Constitutional Protections for Suspects

Other differences stem from the protections available to sexual assault victims versus suspects. When suspects are interviewed during any criminal investigation, the investigator is required by law to provide due process and other constitutional protections. For example, if the initial contact is non-custodial (the suspect is not under arrest), it must be clear that they are speaking with the investigator voluntarily, and they are free to leave or stop cooperating at any time. Suspects do not have to answer any questions at all, or they can pick and choose the questions they want to answer.

For suspects who are taken into custody (arrested) before the interview, the investigator is legally required to read them their *Miranda* rights. At this point, suspects are not free to leave, but they do have the right to consult with an attorney, and they are still not required to talk to the investigator or answer any questions. This is a critical difference between victim and suspect interviews. Victims are often unaware that they may be entitled to such protections, especially when the focus of the investigation has changed, and they are now considered a suspect for crimes associated with false reporting.

When Victims Become Suspects

When victims report their sexual assault to law enforcement, this is typically done in the hope that the crime will be investigated and potentially prosecuted.⁷ To assist in this process, victims provide law enforcement with a great deal of information and evidence, and this sometimes includes information about embarrassing or even illegal behavior. Despite this fact, there is no requirement for investigators to advise victims they can end the interview at any time, consult with an attorney, or refuse to answer any questions.

⁷ Of course, some sexual assaults are reported by someone other than the victim (e.g., family members, teachers, coaches). However, in this Training Bulletin, we are talking about victims who choose to report their own sexual assault to law enforcement.

Victims also often unknowingly waive protections against improper search and seizure that may become relevant during the investigation, without being advised of what their rights could be in certain situations. For example, victims often consent to have their property collected as evidence, and records released from their medical forensic examination. These records can include laboratory results with sensitive information pertaining to pregnancy, sexually transmitted infections, or drug and alcohol use.

Any of this information and evidence could be used against them. For example, it can raise doubt in the minds of investigators and prosecutors about the legitimacy of the report. Or, they may not personally question the report, but question whether they can overcome challenges to the victim's credibility and successfully pursue the case. Either way, this can lead to the investigation being dropped by law enforcement, and charges being declined or dismissed by prosecutors. It can even lead to the victim being arrested for illegal behavior such as underage drinking, recreational drug use, or involvement in the sex trade.⁸ If the sexual assault is prosecuted, this information will almost certainly be used by the defense to impugn a victim's character and motives.

The information could even be used as the basis for charging the victim with misdemeanor or felony crimes associated with false reporting (e.g., filing a false report, obstruction of justice, tampering with evidence). In far too many cases, victims of sexual assault have summoned the courage to report to law enforcement, only to be disbelieved, mistreated, and later charged (erroneously) with criminal offenses associated with false reporting. We will address this topic in a future Training Bulletin.

However, this discussion highlights the importance of having advocates accompany survivors during any non-emergency law enforcement interview of a sexual assault victim (where this reflects the victim's wishes).⁹ The advocate's role is to provide information and support for the victim, but also to monitor for any potential abuses, and take steps to ensure the victim is protected. Hopefully, an advocate would call for a

⁸ When victims report a sexual assault, and they are arrested for misdemeanor crimes associated with the event, or arrested on an outstanding misdemeanor warrant, this will likely eliminate any chance of investigating or prosecuting the felony sexual assault. It is therefore important to distinguish between felony and misdemeanor criminal activity, and the impact each has on the safety of a community. If the victim has committed a felony or has an outstanding felony warrant, it is understandable that this will most likely need to be processed despite the fact that a sexual assault was reported. Yet for misdemeanor offenses, consideration should be given to evaluating different possible responses (e.g., conferring with the prosecuting attorney, or appearing in front of a judge to ask that the victim be released on her/his own recognizance pending a hearing). Regardless of how a misdemeanor violation or a warrant is handled, it is important that the sexual assault report not be disregarded, just because of a victim's tangential or unrelated criminal activity or criminal history. For more information on this topic, see our OLTI training module entitled: [Interviewing the Victim: Techniques Based on the Realistic Dynamics of Sexual Assault](#).

⁹ All victims of sexual assault should be offered the option to have an advocate accompany them during a non-emergency interview conducted by law enforcement, to provide information, support, and other forms of assistance. However, the victim must be the one to make the final decision regarding whether or not the advocate will be present. As of March 2013, only eight states had enacted legislation stating that victims have a legal right to have an advocate present during a medical forensic examination and/or law enforcement interview. For more information, please see the [Summary of State Laws](#) compiled by AEquitas: The Prosecutors' Resource on Violence Against Women.

break if an interview switches into interrogation mode, to discuss this development with the victim and evaluate his or her options, including seeking the advice of an attorney.

Conclusion

To conclude, bias does not exist in a sexual assault investigation simply because a law enforcement investigator adopts a philosophy of Start by Believing. The question is whether this philosophy led an investigator to curtail an investigation to support a pre-existing conclusion. Were necessary investigative steps not taken? Leads not followed? Other suspects not questioned? Constitutional and other legal protections not provided?

The best prevention of bias, in any form, is a professional, thorough, and evidence-based investigation. In fact, this is the only way to exclude suspects and exonerate the wrongly convicted – just as it is the only way to support criminal prosecution when the facts and evidence warrant. Without a thorough investigation, a crime report with a named suspect will linger unresolved, meaning a lack of closure for both victim and suspect, and the real possibility that a sexual assault perpetrator will go on to commit additional crimes. Our Start by Believing campaign and philosophy – like all our training and technical assistance materials – have been designed to advance these goals.

For More Information

EVAWI offers a wealth of training and technical assistance resources to assist law enforcement in sexual assault response and investigation. This includes the following.

Training Bulletins:

[Start by Believing to Improve Responses to Sexual Assault and Prevent Gender Bias \(August 2017\)](#)

[Start by Believing: Participation of Criminal Justice Professionals \(September 2016\)](#)

[Start by Believing: Evaluating the Impact of Public Awareness Campaign Designed to Change the Community Response to Sexual Assault \(July 2013\)](#)

OnLine Training Institute (OLTI) Modules:

[Interviewing the Victim: Techniques Based on the Realistic Dynamics of Sexual Assault \(January 2017\)](#)

[False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Nonstranger Sexual Assault \(May 2007\)](#)



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