



End Violence Against Women International
(EVAWI)

Impression Management for Investigating Officers

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Introduction

Jurors and judges are far more receptive to witnesses they respect, trust, and like. Impression management techniques are critical for the star witness that ties together so many important aspects of a sexual assault case: The investigating officer (IO).

The investigator is one of the most important witnesses in a sexual assault trial. The IO is often the one who sits at counsel table as the investigating officer and ties all the evidence together at the end. The investigator may testify several times if necessary – often during the prosecution’s case in chief and again in rebuttal.

Impression management is therefore a critical component of the IO’s testimony. From attire, to voice, to preparation, the investigator must look and act the part. The investigator should present as knowledgeable, credible, and likable. The IO should be able to detail their training and experience from memory, explain their role in the instant case, and use practical analogies to explain complicated facts. The investigator should do all of this while maintaining eye contact with jurors, and a pleasant, respectful tone of voice – even on cross-examination.

The IO can also exude professionalism by upholding all rules of courtroom decorum. This includes everything from asking the judge for permission to show evidence to the jury, to standing when the jury comes in and out of the courtroom.

In addition, the IO should be *personally* appealing to the jurors by coming across as both likable and relatable. Jurors will bond with an IO whom they perceive as having traits in common. This perception may help counteract any negative stereotypes jurors hold, consciously or unconsciously, about law enforcement.

Image Management: Countering Cultural Climate Change

In criminal trials, jurors base their verdicts on not only what law enforcement witnesses say, but on how they present themselves in court. In examining both content and context, jurors consider the alleged actions of the accused, and the actions of the law enforcement officers involved (Ouziel, 2016). This emphasis on both content and credibility, demonstrates the importance of solid investigations as well as impression management.

Impression management is particularly relevant in an era where a significant segment of the population harbors or has been exposed to negative sentiments about law enforcement. As a result of officer-involved shootings, in-custody deaths, and subsequent criminal charges (or lack thereof), protests and riots have erupted around the country, sometimes with deadly consequences.



Whether individuals with anti-police viewpoints end up in the jury box or not, it is a safe bet that most of the panel has been exposed to such sentiments through friends, acquaintances, or news broadcasts. And because of social media, jurors do not need to live in areas directly affected by protests or civil unrest to have a bird's eye view of the destruction.

Effective impression management allows IOs to distinguish themselves as the upstanding law enforcement professionals they are, thus counteracting negative stereotypes. Through the way they conduct themselves in court and relate to the jury, investigators can overcome negative bias, and evoke trust and positive emotions.

Law Enforcement Stereotypes

Some jurors hold prejudicial, preconceived ideas about law enforcement. Although some negativity stems from highly publicized cases, there are other sources of stereotypes. Some jurors grew up with certain biases and prejudices against law enforcement, either stemming from personal experience or community sentiment. Some hold preconceived notions about law enforcement professionals from watching Hollywood courtroom dramas, some of which portray overzealous prosecutors and detectives colluding to break legal and ethical rules or pursuing innocent defendants.

Some jurors will be biased against the prosecutor and IO simply because they distrust the court system, the criminal justice process, or the government. *Voir dire* is the opportunity for the prosecutor to detect these negative stereotypes harbored by prospective jurors. Yet inevitably, a few slip under the radar into the jury box. Some of these jurors are selected because they were not forthcoming about their anti-law enforcement feelings, trying hard to be perceived as "fair," and often believing they could be.

Nonetheless, even when they end up on the jury, an IO who displays qualities such as humility and fairness, and treats everyone with respect, stands a good chance of overcoming a presumption of distrust. The investigator can even cause jurors with anti-law enforcement sentiments to re-examine their views.

The IO is a Foundational and Expert Witness

In a sexual assault case, victim testimony is front and center. The IO, however, is the witness who holds the case together. The investigator provides the background facts and information necessary to put the victim's testimony in context. They describe the crime scene, often verbally and through photographs, and explain the mechanics of everything that occurred after the crime, from evidence collection to interviews. They also provide the rationale for the way the investigation was conducted, to prevent jurors from being suspicious of the motivation behind the methods used.

The IO as an Expert Witness

In addition, assuming the proper foundation is laid, the IO can also testify as an expert. (For more information on this topic, see the Training Bulletin, [*The Investigating Officer's Direct Exam: Strategic and Tactical Considerations to Take Advantage of the IO's Expertise.*](#)) By virtue of their training and years on the job, they can draw upon their personal experiences working with sexual assault victims to provide insight into victim-perpetrator dynamics and common victim reactions to sexual assault. Although such testimony is often within the purview of a psychiatrist or psychologist, confident and competent IOs can prompt a judge to rule that they are qualified to testify as an expert, over defense objection.

A judge may qualify this ruling by explaining that any shortcomings in the IO's qualifications go to the weight of the evidence presented, not its admissibility.

Qualifying an IO as an expert witness does not preclude the prosecution from also calling a psychiatrist or other mental health professional to discuss the trauma and behavior of sexual assault victims, or other emotional responses to sexual assault. The IO can use their own training and experience in providing testimony from a law enforcement perspective that may shed light on why the victim in this case behaved as they did after the crime. This type of testimony, if admissible, corroborates the victim's credibility, and educates the jury about an unfamiliar area of trauma response.

The Experience Behind the Expertise

An IO will only be qualified to testify as an expert if they have the training and experience that can lay the foundation for their testimony. Therefore, an IO should have a current curriculum vitae, (CV) and have it memorized. An impressive CV gives the IO credibility and believability. The ability to explain dates and details of their qualifications and background on cross-examination demonstrates mastery of the foundational training and experience upon which the investigator can explain the facts of the case. This adds credibility to credentials.

Techniques of Impression Management

First impressions are formed within seconds, and they are hard to change. This means that impression management strategy needs to begin well before an IO walks into the courtroom. Once a judge or jury lays eyes on the IO, who will be one of the star witnesses in a sexual assault case, the groundwork has been laid upon which the IO can build a credible case.

In large part, first impressions are made visually – which means that IOs need to look and dress like the professionals they are.

Judging a Book by Its Cover

Jurors, like the rest of us, know they should not judge a book by its cover. Yet they are human beings first. Even when they try to be impartial, they are influenced both by what they hear and what they see. What they should see when an IO is on the stand, is a polished, prepared, professional – because image matters.

The halo effect describes the phenomenon where perception of one characteristic (positive or negative) influences the overall impression of a person. Thus, attractive people are viewed in a better light than their less-attractive counterparts (Langlois et al., 2000). People regard others who are good-looking as honest, intelligent, talented, and kind (Cialdini & Sagarin, 2005).

Although it can have a powerful impact on a jury, the halo effect is a perceptual bias (Burgoon, Guerrero, & Floyd, 2010). People may attribute positive qualities to good-looking people and negative qualities to people who are unattractive, even though these stereotypes are not accurate (Schneider, Gruman, & Coutts, 2005).

Suiting up for Success

No matter how strong the case is factually, the IO has to look the part in order to win over the jury. What should the investigator wear? The IO should dress as would be expected given their position in the case.

Although a patrol officer might be expected to show up in court wearing a uniform, having come to court directly from the field, a seasoned case detective conducts behind-the-scenes follow-up investigations. Accordingly, it is perfectly acceptable for an IO to show up in a business suit.

Also consider that modern jurors are influenced by media, movies, and television. They might expect an IO to walk through the door looking like one of the Hollywood actors in their favorite forensic crime drama. The good news is that cultivating a conservative, professional look is always a winning image. Looking the part is a significant part of the equation.

Also, know the psychology behind wardrobe selection. There is widespread agreement that dark colored or navy-blue suits are always appropriate. The color red, however, is somewhat in a class of its own. It has been equated with everything from anger and dominance, to sexuality (Elliot & Maier, 2014). An IO on a sexual assault case might not want to show up in a bright red suit for a variety of reasons!

After a trial, jurors sometimes admit that they viewed expert witnesses who wore sweaters when they testified as less credible than experts who wore business suits. They explain that even when an expert is well-spoken and well-credentialed, wearing a sweater makes them

appear older, less knowledgeable, and less competent. Some admit they equate the look with retirement or academia more than with active fieldwork.

As these examples indicate, jurors who are distracted by the IO's failure to "look the part" might view their testimony as less credible.

Witness Stand Props

The IO's notes should be brought to the stand in a briefcase, notebook, or binder, and should be organized and ready to go beforehand. Shuffling through papers on the witness stand to look for answers detracts from the IO's perceived credibility.

Although not advised to use notes as a crutch, many IOs benefit from just knowing the information is at their fingertips if they need it. It should be organized chronologically, with tabs making it easy to find anything they need – because optics matter too. Extensively leafing through papers to find an answer to a question during an awkward silence will be memorable to a jury.

Humanizing the Investigating Officer

Jurors should be reminded that cops are people too. Consequently, an IO should engage in an appropriate amount of self-disclosure. This does not mean revealing private, personal details. But sharing background information through pre-planned, structured questions on direct examination will complement an IO's credibility with relatability.

Some jurors view law enforcement professionals (including prosecutors) as arrogant, egotistical, and self-righteous. The media often does the law enforcement community no favors in this respect; nor do negative portrayals of law enforcement in the movies and on television, including legal commentary on news programs where many of the speakers are highly argumentative and opinionated.

Testimony is an opportunity for IOs to distinguish themselves from such negative stereotypes by projecting an image that is credible as well as trustworthy. An IO who is not afraid to admit what they *don't* know, as might be the case on cross-examination, may be more believable to jurors.

Direct examination is the opportunity for the IO to become qualified to testify as an expert through their accomplishments and experience. Yet the IO must be careful to avoid boastful displays of information that have nothing to do with the case. This will most certainly draw objection from the defense. And even if such an objection is overruled by the judge, gratuitous self-aggrandizement will engender resentment and mistrust from the jurors. Even jurors who are accomplished themselves do not appreciate expert witnesses who engage in unnecessary horn-blowing when it has no relevance to the case.



Born to Bond: The Comfort of Similarity

We like and identify more with people similar to us. Jurors will like and identify more with an investigator with whom they perceive as having traits in common. In general, we attribute more positive qualities to others who dress like us, talk like us, and even exhibit similar nonverbal behaviors. Although jurors come from all walks of life and bring a variety of background traits into the courtroom, there are still many ways in which an IO can establish shared common ground with the jurors. One way is through demonstrating shared values.

Community Safety

Regardless of demographics and backgrounds, jurors and IOs typically share a concern for community safety. The IO's goal is to keep the streets safe for the jurors and their families—to allow jurors to walk their dogs and take their children to the park without being assaulted by criminals and predators.

Community safety concerns can be included in the description of the IO's training and experience, as many assignments have a component of participation in community events. Some IOs might have volunteered to staff events as part of community partnerships. Others have participated in "Shop with a Cop" type fundraisers, or marathons designed to raise money for community organizations.

Such participation humanizes the investigator in a unique way, not reflected when describing the number of hours spent in the police academy, assignments, and years on the force. An IO who has gone over and above the call of duty to bond with the community they protect and serve establishes important common ground with the jury.

Respect for the Law

Another value the IO often shares with the jury is respect for law and order. Laws are designed to protect communities, as well as the individual rights of citizens. It is for this reason we often see a wall of police officers standing in front of a protest, to protect the constitutional right to air grievances.

Yet there are other constitutional rights that IOs are sworn to uphold. In a sexual assault case, the rights that are front and center after an arrest has been made, are the rights of the accused. During direct examination, IOs can be questioned about the commitment to uphold these rights, regardless of personal opinions or beliefs. Drawing out how the IO took steps to uphold the constitutional rights of the defendant will enhance their credibility in the eyes of the jury.

An example of how this can be accomplished is as follows:

Prosecutor: What did you do after you arrested the suspect?

IO: I read him his Miranda rights.

Prosecutor: Before I ask you to tell the jury exactly what you read to him, where did you read him his rights?

IO: At the police station.

Prosecutor: How long after you arrived at the station did you read the defendant his rights?

IO: About 30 minutes.

Prosecutor: Why the delay?

IO: The defendant had been outside in the cold during the arrest, which took longer than expected. He was freezing, wet, and thirsty. When we got to the station, we gave him some dry clothes and some water, and allowed him some time to recover from the elements. Once we were satisfied he was comfortable physically, we started the conversation about the crime we were investigating.

Including these details in laying the foundation for Mirandizing a suspect – regardless of whether the suspect ended up giving a statement – demonstrates a commitment to respecting the rights of all individuals, regardless of their relationship to the case. Jurors can identify with and respect an IO who is committed to treating all people equally.

The Kitchen Table Test

Relating to a jury means connecting with them on issues that matter to them, issues they discuss around the kitchen table during dinner. These include values and priorities such as health care, education, military service, or other life experience. Assuming one or more of these areas are relevant either to an IO's background, training, and experience, or to the facts of the case, a discussion of shared values is a good way of connecting with a jury who might otherwise not have anything in common with the IO.

When shared values are discussed during the preliminary portion of the IO's testimony, a defense objection is unlikely to be sustained because the testimony is part of laying a foundation for the IO's expertise and qualifications. In addition, most judges will allow a questioning lawyer to humanize each witness before launching into the heart of the testimony.

Also note that an IO whose foundational background is challenged on cross-examination may be rehabilitated on redirect. Once that door is opened, eliciting further information is now fair game – even if it was beyond the scope on direct examination.

Nonverbals Speak Volumes

Posture is noticed on a subconscious level and will affect jurors' impression of the IO from the moment the investigator walks into the courtroom. Good posture is associated with capability and confidence. Bad posture can convey incompetence and general lack of interest. The IO must remember to sit up straight on the witness stand because there is a tendency to slump over when speaking into the microphone. One tip for the IO is to adjust the microphone as soon as they sit down in order to avoid interrupting testimony.

The difference between open and closed body language is also important. The IO should not cross their arms or have a briefcase or other object between them and the jurors, in order to express openness and transparency. Even in a cold courtroom, where it can be tempting to cross our arms to keep warm, the IO must maintain open posture (and layer clothing accordingly).

Passion and Professionalism

Jurors can detect an IO's level of enthusiasm for the work they do. Just as it is important for the prosecutor to select jurors who are interested in the case, the IO must portray interest in the investigation as well. This can be done through tone of voice, body positioning and movements, and facial expressions. If an IO appears bored with the facts, the jury will be too, and will be less interested in achieving justice in the case, even if they find the victim's testimony credible.

The IO's enthusiasm will also make the facts more memorable for the jury. In the same fashion that an exciting story can be forgettable when delivered in a monotone voice with a blank expression, even dry but important technical information can be brought to life through enthusiasm.

Words Matter: Use of Language

When answering questions, an IO should be cognizant of the words they use. Through their use of language, the investigator can ingratiate or alienate the triers of fact. The IO should proactively consider and strategize the best way to explain complicated technical evidence, as well as foundational evidence such as the relationship of other witnesses to the victim and the defendant.

If a jury cannot follow the evidence, they will not be able to effectively judge the case. The IO can provide an easy to follow roadmap of the evidence in the case, using



straightforward language – ideally mirroring the language used by the prosecutor in opening statement, which should be equally easy to follow.

Expertise v. “Expert-Ese”

An IO who has sufficient years of experience to testify as an expert also has the experience to know not to speak in cop-talk or expert-ese. The IO must consciously perform a mindset change from the station to the witness stand, trading the terms-of-the-trade for every day, common language. Even basic law enforcement terms such as arresting a suspect “without incident” or “clearing” a crime scene need to be explained for the jury.

Selecting appropriate language includes creating practical analogies and terminology to break down complicated medical or forensic concepts. Although the jurors will likely hear separately from medical or psychological professionals who treated the victim, or criminalists who secured the crime scene or tested evidence, the IO will likely refer to such exams or forensic work in connection with providing a chronology of background information about the case.

Therefore, the IO should be familiar with the way such exams and forensic tests are conducted, including the medical and forensic terminology the jurors are likely to hear from other expert witnesses. The IO’s mastery of such factual and evidentiary foundational issues will bolster their credibility in the eyes of the jury and allow them to bridge the gap between complicated expert testimony and the factual issues the jury is being called upon to decide. In this fashion, the IO becomes a trustworthy source of information to help jurors understand the facts of the case, and how they fit together.

Finally, an IO should watch their use of “legalese.” Although the investigator is not a lawyer, they are well versed in the law. Many IOs have criminal justice degrees and have spent their entire career learning and enforcing the law. As a result, they may use legal terminology that rolls out naturally as a function of habit. Jurors may find this language patronizing and hard to understand. If they are turned off by legal terminology they do not understand, they may lose interest in the testimony.

Highbrow Language

Some expert witnesses come in and attempt to impress the jury with their vast knowledge of case-relevant (and often case-irrelevant facts). The IO should avoid such displays of knowledge – unless it will help the jury understand and analyze the facts of the case.

For example, the IO should avoid trivia or quoting little-known facts with no relevance to the case, because such unnecessary additions may be viewed as attempts to impress the jury by appearing to be smarter and more knowledgeable. Some jurors might be left feeling inadequate and will resent the IO for making them feel that way.



Similarly, the IO should refrain from using obscure vocabulary and complicated terminology. On an even more basic level, the IO should consider limiting the use of terms like “collateral,” “subsequent,” “consequent,” and similar language. Most jurors do not talk that way, and an IO who does runs the risk of alienating the panel.

Appropriate Use of Humor

Obviously, IOs know the witness stand is not an “open mic”, or a forum to practice their jokes. An expert witness is not a comedian. A criminal trial is a serious proceeding where the goal is to provide evidence to a fair and impartial panel of upstanding citizens who will decide the fate of the criminal defendant who is charged.

With this serious goal in mind, an IO should refrain from joking with the jurors – at least about the evidence. Telling jokes can backfire and leave jurors feeling as if the IO does not take the case seriously, so why should they? The caveat to this rule is that some humorous analogies can illustrate points and concepts effectively.

For example, an expert psychologist witness I used frequently in sexually violent predator civil commitment cases used an analogy that always brought a smile to the jurors’ faces, even in the middle of very serious testimony. The analogy was designed to explain why sexual predators must be diligent about avoiding exposure to children. The expert’s testimony always incorporated some version of the following story:

One of my colleagues puts a bowl of fresh baked chocolate chip cookies on her desk from time to time. I try to avoid them since I am always on a diet. I can only walk past her office once, without taking a cookie. But not twice.

The point the expert was trying to make is that most people have a hard time resisting temptation. In the same fashion that someone on a diet has to avoid exposure to tempting foods, recovering sex offenders have to avoid exposure to children.

The example is practical, yet powerful to the jurors – who always nodded when they heard it. They could all relate to the point the expert was making. Humorous practical examples and analogies are excellent methods of expressing the rationale behind certain types of behavior and allowing the IO to bond with the jury through examples of shared humanity.

Stages of the Case

The IO plays a major role in the sexual assault case, often sitting at counsel table as the investigating officer for the duration of the trial. Yet the investigator’s credibility is on full display when on the witness stand, during direct and cross-examination. Although direct examination presents an excellent opportunity to make a great impression on the jury in a “friendlier” atmosphere because the prosecutor is asking the questions, cross-examination can offer an opportunity to make a good impression as well, particularly when the IO is able to remain cool-headed in the hot seat.

Direct Examination

Direct examination of an IO, although not the most dramatic part of a trial, is one of the most important. This is the opportunity for the IO to lay out all the facts and circumstances necessary to establish a solid foundation and framework for the rest of the evidence, including the testimony of the victim.

The IO can corroborate both history and details relayed by a victim through investigation after the crime. Their testimony regarding time, place, and witnesses to events before and after the assault can corroborate the victim's testimony – but only if the jury believes and trusts the IO.

Far from being a rubber stamp for a victim's account of events, a credible IO delivers an objective, unbiased account of what they learned through their own investigation into the facts as relayed by the victim. When an IO is able to corroborate a victim's details about collateral facts and circumstances, jurors are more likely to believe a victim's testimony about the critical facts of the assault.

In order to ensure a full and fair investigation, IOs frequently interview the defendant. Here too, an IO's role is to relay an objective account of the defendant's statement, as well as evidence that either corroborates or fails to corroborate the defendant's version of events. An IO who comes across as fair to both sides will earn a jury's trust.

Preparation

In the eyes of many jurors, there is nothing worse than an IO who is unprepared for court. They often comment after the trial about the time an IO spent constantly referring to their report, flipping through pages to hunt down dates, times, and other facts not committed to memory. This time-consuming exercise is frustrating to jurors who have put their lives on hold to perform their civic duty. Judges will also comment, usually out of the presence of the jury, on the amount of court time an IO is taking on the witness stand because they could not find the information needed.

Perception of the Prosecutor/IO Dynamic

Jurors also notice the relationships between the witnesses and the questioning lawyers. IOs should have an observably positive relationship with the prosecutor. Jurors can tell when the prosecutor and IO hardly know each other or have not worked together before; such unfamiliarity adversely impacts the credibility of both parties. And of course, negative relationships are obvious – particularly during direct examination, which is expected to be friendly and smooth.

Prosecutors are often visibly frustrated when IOs are unprepared, particularly when they have reminded the IO to study their report. Conversely, an IO might be frustrated with a



prosecutor who is unprepared or failed to take the time to meet with the IO before court and go over the type and scope of testimony sought. Regardless of which party is at fault, this frustration will be evident to the jury, and will diminish the effectiveness of the prosecution's case.

On the other hand, advance planning, preparation, and a good working relationship between a prosecutor and an investigator can make a direct examination look like an interesting conversation between colleagues that will hold a juror's attention and interest. Attentive jurors are far more likely to absorb the important information they need in order to come to a verdict.

Cross-Examination

When responding to questions on cross-examination, unlike the combative answers portrayed in Hollywood courtroom dramas, IOs who make the best impression in front of a jury are those who are the politest. The IO is not a welcome mat but welcomes hard questions—because they are able to answer them fully and respectfully.

Staying Cool in the Hot Seat

When answering questions on cross-examination, body language is key. Some witnesses engage in obvious signs of discomfort when the judge turns the case over to the defense for cross-examination. Even seasoned experts often shift positions, visibly stiffen up in the chair, drink water, or engage in other signs of nervous behavior. Much of this activity is subconscious, yet it is memorable for a jury – and not fondly.

An IO who is polished and prepared displays none of these nervous behaviors. Whether as a result of having become a seasoned witness, or practicing mock cross-examinations out of court, an IO who is comfortable anticipating cross-examination will calmly look toward the defense table, perhaps even with a pleasant smile, awaiting the first question. The investigator is there to help everyone in the courtroom understand the evidence. Such relaxed posture does not come naturally; it needs to be deliberate and practiced.

The IO's ability to remain calm and collected during cross-examination is one of the observations commonly relayed by jurors after the trial as impacting their perception of credibility. Jurors often view IOs who take the high road, even when a cross-examiner takes the low road, as particularly professional and trustworthy, interpreting their unwillingness to "take the bait" as evidence of their fairness and objectivity.

Hardball Cross-Examination: Anticipating the Objection

Seasoned investigators are familiar with unfair, argumentative, or otherwise inappropriate questions from the defense attorney on cross-examination. Jurors do not like such questions, nor do judges. IOs should pause before beginning to answer argumentative,



unfair, or hostile questions on cross-examination to give the prosecutor time to object, and the judge time to rule on the objection.

Remembering to wait before beginning an answer under these circumstances will prevent inadmissible evidence from being presented to the jurors, many of whom will be unable to “unring the bell” even after a judge tells them to disregard the answer that was blurted out before an objection could be sustained.

Questions from the Court

In some cases, the judge will have questions for the IO, often relating to their background and foundational expertise qualifying them to answer the lawyers’ questions. Professional IOs should answer questions from the judge not only respectfully, but *directly*. They will be called out when they do not.

This is because questions directly from the judge are very different in both purpose and content than questions from the lawyers trying the case. The judge has listened to the evidence throughout the case and if a judge intervenes in the proceedings, it will be to ask narrow, pointed questions about specific areas relevant to the issues in the case.

In jury trials, most judges do not like to inject themselves into the process of questioning witnesses and do so only when absolutely necessary to clarify a point of contention. However, in bench trials, judges do not run the risk of asking a question which might prejudice the jury and are therefore more comfortable and thus more likely to question an IO while on the stand.

Out of Court Behavior: The IO is Always “On the Stand”

Although only testimony from the witness stand is “evidence,” jurors watch the IO all the time – particularly if they sit at the prosecutor’s table as the designated IO in the case. The investigator’s actions are scrutinized in the hallway, in the restroom, and on the street (that means no jaywalking). With this in mind, the IO should be on their best behavior from the moment they leave home or driving to court – because they might be driving behind a juror, or even the judge.

Rude, insensitive, or thoughtless behavior outside the courtroom will be observed and remembered by jurors and discussed in the jury room – even after a judge instructs them not to consider any extraneous information in the case. This is because although it is not evidence, bad behavior reflects upon witness likeability, trustworthiness, and credibility. An IO’s out of court behavior also includes social media use. Although jurors are instructed not to do so, many jurors research IOs online. Some of them find negative posts, photos, or other information that undermines the IO’s credibility. If such jury misconduct is reported, the judge will deal with the situation on the record. If unreported, an IO’s social media profile might adversely impact a case without anyone on the prosecution team becoming aware of the improper effect on a verdict.

Conclusion

Sexual assault trials are challenging and emotional for all parties involved. That often includes the jurors. The IO is the witness that holds such cases together and provides the factual background and evidentiary foundation for the testimony of the victim. Impression management techniques can make or break the way an investigator is perceived by the jury – a perception that will determine the weight they will assign to their testimony.

Proactively strategizing both content and context will allow IOs and prosecution teams to present the evidence in a sexual assault case in a fashion that is expeditious, easy to follow, and effective.

References

Burgoon, J.K., Guerrero, L.K., & Floyd, K. (2010). *Nonverbal communication*. Boston, MA: Allyn and Bacon.

Cialdini, R.B., & Sagarin, B.J. (2005). Principles of interpersonal influence. In T.C. Brock & M.C. Green (Eds.), *Persuasion: Psychological insights and perspectives* (2nd ed.) (pp. 143-169). Thousand Oaks, CA: SAGE.

Elliot, A.J., & Maier, M.A. (2014). Color psychology: Effects of perceiving color on psychological functioning in humans. *Annual Review of Psychology*, 65, 95-120.

Langlois, J.H., Kalakanis, L., Rubenstein, A.J., Larson, A., Hallam, M., & Smoot, N. (2000). Maxims or myths of beauty? A meta-analytic and theoretical review. *Psychological Bulletin*, 126(3), 390-423.

Ouziel, L.M. (2016). Beyond law and fact: Jury evaluation of law enforcement. *Notre Dame Law Review*, 92, 691.

Schneider, F.W., Gruman, J.A., & Coutts, L.M. (20015) *Applied social psychology: Understanding and addressing social and practical problems*. Thousand Oaks, CA: SAGE.

