The following questions were submitted by participants in a webinar entitled “Reading” Victims and Judging Credibility: Best Practices in Promoting Victim-Centered Investigations and Prosecutions. The presentation was given by Wendy Patrick, JD, PhD. The questions were adapted for a more general audience, and responses were written by Dr. Wendy Patrick. Additional information and resources were contributed by EVAWI staff.

**How do you avoid victims/survivors being treated as "evidence" in these processes?**

**Wendy Patrick:** Victim testimony is legally considered evidence in court. What I think this question brings up in a larger sense is that victims feel like they are the ones “on trial.” They feel this way because credibility is relevant in every case, and courts permit evidence by the defense, including vigorous cross examination designed to test the victim’s credibility. This gives the defense ammunition to argue in closing that the jury should not believe the victim’s testimony, or at least that the victim’s testimony has been rendered suspect enough to not find the defendant guilty beyond a reasonable doubt.

Although we are unable to completely avoid the legal process playing out as described above, we can bring motions in limine designed to restrict the amount/types of evidence the defense is allowed to use against the victim in trial. Such motions are commonly brought in cases where victims have a prior criminal record, have experienced prior sexual assault, or were under the influence of drugs or alcohol at the time of the sexual assault in this case. While we are not always successful, victims typically appreciate us making every effort to control the information that comes into evidence, as much as we legally can.

Once we know what areas the defense will be permitted to delve into during cross examination, we are permitted – if we choose – to ask the victim about it first, during our own direct examination. This can help to “draw the sting,” by avoiding having the defense bring it up on cross examination for the first time. Direct examination is generally a more comfortable situation for the victim than being questioned by the defense attorney during cross examination.

Not all defense attorneys use cross examination to “destroy” sexual assault victims on the stand; to the contrary some are very gracious, preferring instead to focus on what the victim does not remember. Yet the fear of a hostile cross examination (as seen on television) understandably causes many victims a great deal of anxiety.

**EVAWI:** When sexual assault victims feel like they are being treated as “evidence,” this is often because criminal justice professionals (and others) are not treating them with simple human compassion – and they are not following recommendations for best practices, such as establishing meaningful rapport and respecting them as collaborative partners in the process.

Our training materials offer guidance on how to successfully interact with sexual assault victims and conduct thorough and professional investigations. Just to highlight a few:
OnLine Training Institute (OLTI) modules:

**Victim Impact: How Victims are Affected by Sexual Assault and How Law Enforcement Can Respond**

**Interviewing the Victim: Techniques Based on the Realistic Dynamics of Sexual Assault**

**Sustaining a Coordinated Community Response: Sexual Assault Response and Resource Teams (SARRT)**

Recorded Webinars:

**Effective Victim Interviewing**

**Forensic Experiential Trauma Interview: A Trauma Informed Experience:** [Part 1, Part 2]

*How can you reduce trauma response with multiple exposures? (e.g., having the victim tell the story of what happened over and over).*

**Wendy Patrick:** We explain to victims early in the process that they are going to have to re-describe the event – but we also explain why. Bonding with victims early in the process is one way we attempt to reduce trauma; another is doing everything we can to avoid unnecessary interviews. In other words, we consolidate interviews when appropriate, legal and ethical.

**EVAWI:** Many jurisdictions have pursued a goal of reducing the number of unnecessary professional contacts with sexual assault victims. This can help to reduce trauma and frustration, for example, when the victim explains what happened in detail to the responding patrol officer, only to be asked to start over again when the detective shows up. Or when victims are asked to explain what happened to people who really don’t need to know (e.g., the hospital clerk, teacher, or the principal of a school, before law enforcement is called). Victims should not be asked to repeat themselves, simply because people want to know what happened or because the victim is being “handed off” due to a shift change, job rotation, etc. On the other hand, this does not mean that investigators should be reluctant to conduct follow-up interviews during the course of the investigation, as additional evidence and information is uncovered. In fact, such follow-up interviews are necessary to conduct a comprehensive investigation.

In addition, some communities have implemented a policy of having the responding law enforcement officer or investigator and the Sexual Assault Forensic Examiner (physician, SANE, or other nurse) conduct their preliminary interview together. This type of joint interview can improve communications between the professionals involved and it can potentially reduce the number of redundant questions asked of the victim. It also reinforces the team concept and can help the victim to feel that the various professionals are working together to provide the best and most coordinated services possible.
When such a joint preliminary interview is conducted, however, it must be clear to everyone (including the victim) that detailed interviews will still need to be conducted separately by each of the different professionals. This is because the detailed interviews conducted by the investigator and SAFE have a different purpose.

For example, the purpose of a medical interview is to:

- Obtain information about what sexual acts were committed to perform a comprehensive medical forensic examination and to collect biological evidence samples;
- Obtain information about physical injuries to document use of physical force and for medical examination and treatment purposes; and
- Determine whether the medical forensic findings are consistent with the history, and to provide this information to law enforcement officers.

The purpose of an investigative interview is to:

- Obtain the sexual assault history; and
- Obtain a detailed description of the events (e.g., who, when, what, where, and how).

Quoted verbatim from the California SART Manual published by the California Clinical Forensic Medical Training Center (2001, p. 43).

For more information, please see the OLTI module on Interviewing the Victim: Techniques Based on the Realistic Dynamics of Sexual Assault.

As a law enforcement investigator, every time a victim gives me additional information (for example, if they remember something new), do I have to provide that to the prosecution?

Wendy Patrick: Disclosure requirements depend on your role in the criminal proceedings. Law enforcement has to provide the prosecution all information they receive from victims. Other players in the process must refer to the appropriate legal sections that govern their obligations, including any privileges that may apply.

EVAWI: When new evidence or information are revealed during the course of the investigation, law enforcement is required to write a supplemental report, and this is clearly discoverable. It will need to be handed over to the prosecution, and then the defense, as appropriate. However, not every contact with a victim will yield new evidence or substantive information. Many such contacts are simply to check in with the victim, update the status of the investigation, etc. These do not need to be documented with a supplemental report. If there is any question, it is always a good idea for investigators to consult with a prosecutor.

What is your take on recording victims in a sexual assault interview?

EVAWI: While preparing for an interview with a sexual assault victim, one of the critical decisions to be made is whether or not to record it (using either audiotape or videotape). This
is a controversial issue, and law enforcement agencies must weigh the advantages and disadvantages before implementing any policy. However, it is worth noting that interviews with child victims have been predominantly video-taped for years, and law enforcement professionals typically recognize the important advantages of this practice. Many of the same advantages also exist for adult and adolescent victims.

The primary advantage of recording a victim interview is that it provides a more reliable method of documentation than written notes. In other words, it provides the “best record” of the interview. Recorded interviews also document more details than those summarized in a police report, which increases the amount of information documented and can often reduce any redundancy in follow-up interviews. Investigators are also much better able to listen carefully to the victim because they are not trying to take notes and/or write a report at the same time. When the interview is recorded, the investigator can simply listen to the victim's narrative and jot down questions to ask later when the narrative is complete. Recording the interview can also document the victim's more immediate response to trauma, which can be an important benefit for the prosecution.

On the other hand, the primary disadvantage of recorded interviews is that it can sometimes be used against victims, when a victim's behavior is scrutinized. For example, if the victim's demeanor does not fit the stereotype of “real rape,” this can be used to undermine the victim's credibility or even raise suspicion that it is a false report. Victims also often make statements in the immediate aftermath of a sexual assault that can be used later to challenge their credibility.

For those law enforcement agencies that do implement a policy of recording victim interviews, it is critically important that victims are always advised of this fact beforehand. It is also best practice to offer all victims the services of an advocate to provide them with information and support during the interview process. The advocate can also discuss with the victim any issues or concerns that arise as a result of recording or not recording a statement. For more information, please see the OLTI module on Interviewing the Victim: Techniques Based on the Realistic Dynamics of Sexual Assault.

As an advocate, how much is "too much" to tell a client to expect or be prepared for? Having worked closely with law enforcement, I always worry about tainting someone's statement (e.g., "They might ask you ___, and it's not to blame you, it's because ___").

Wendy Patrick: Explaining the process is different than telling the victim what other players are likely to say. Explaining the steps in the criminal justice process can be very helpful for victims who only know what they see on television, regarding how a trial proceeds. These victims are often very grateful to hear about the true chronology of events in the life cycle of a case. It can also be very helpful to involve the prosecutor who will be handling the case, so he/she can describe the legal process and what to expect, and also explain whether there will be any discussion regarding case resolution, etc.

Could you provide reference information for the ‘Rose-Colored Glasses’ book?

Wendy Patrick: This is my latest book:
I mentioned that it is about trading “rose colored glasses” for “reading glasses.”

**How can these strategies be implemented into voir dire and jury instructions? (like mistaking nervousness for dishonesty)?**

**Wendy Patrick:** Jurors can be questioned about their ability to assess credibility. Once they give you their predictable answers (“Of course I can read people … I have three kids!”), we can ask them more specific questions. For example, we can ask whether they have testified before, and whether they would automatically disbelieve a witness who was having trouble remembering details about an event (if the judge lets the attorneys get into this level of detail). Some judges allow these types of questions if they are necessary to pre-screen jurors regarding their fitness to serve, given the unique issues in a particular case. It is a fine line, however, because we cannot “remind” jurors that what looks like dishonesty might just be nervousness.

**During voir dire, are jurors asked questions about their personal stereotypes of sexual perpetrators and sexual assault?**

**Wendy Patrick:** Yes. They are often asked about preconceived notions regarding sexual predators, and in fact, the defense will frequently bring this up to see if anyone looking at their client has already made up their mind that he or she is guilty. Sometimes jurors speak up, to say that they have preconceived notions as to what a sexual predator looks like. Such stereotypical beliefs are important for both sides to know before a trial begins, although a defendant is not technically considered “evidence” unless he or she testifies. Jurors can still be affected by the defendant’s appearance in court, even though legally they are not permitted to consider it in reaching a verdict.

Jurors are also asked if they have any personal experience or knowledge about sexual assault. If they do not, their lack of information might mean they will not understand a victim’s response or behavior in your case. If they have no idea how a sexual assault victim might react or behave, they may nonetheless be receptive to expert testimony describing sexual assault and its aftermath.

**Have you ever heard of a Public Service Announcement (PSA) geared toward citizens to educate them if they sit on a jury in a rape case? We have found that TV is ruining juries, and rapists are being found not guilty, even when there's DNA evidence and eyewitnesses.**

**Wendy Patrick:** Jurors are usually only educated when they reach the courtroom and sit through an actual trial. In voir dire, we (the attorneys, and often the judge as well) will often ask them if they watch forensic crime dramas such as CSI or Special Victim’s Unit, and then ask them if that is what they expect to see in this case. We cannot describe the evidence or
arguments in the case during voir dire, but many judges allow us to explore jurors’ forensic crime knowledge while stating (often with appropriate humor) that they should not expect to find DNA on every single surface like they do on television.

Voir dire is also the way to explore jurors’ experience with sexual assault, including whether they know anyone who has been assaulted. If they do not personally know a sexual assault victim, they will not have any idea as to how they would behave. Even when they do know victims who have been assaulted, they still can benefit from expert testimony explaining the range of reactions that such victims display, and that there is no one size fits all response to sexual assault.

**What was your slide about the "Red Flags After 5?"**

**Wendy Patrick:** I discussed “Red Flags After Five” within the context of how to “read” a person’s lifestyle (this is the “L” in my FLAG acronym). It refers to what people do after they get off work (i.e., “after 5”) that often reveals their true personality. For example, do they go to the gym, to the bar, to the mall? Do they play tennis, golf, or bridge?

In other words, you can really only know someone when you know more about them than what you observe during a short period of time (e.g., the time you spend with them at work, or during occasional interactions with neighbors. People reveal their true personalities during their free time, when they are able to pursue hobbies, interests, and unfortunately, less acceptable pursuits. These “off the clock” activities are most revealing, because actions speak louder than words.

**What do you mean by "bad decision?"**

**Wendy Patrick:** Everyone makes bad decisions and exercises bad judgment from time to time – in terms of relationships, substance abuse, and many other areas. For example, many jurors will admit to having had one too many drinks before. In addition, there are behaviors that jurors might perceive as a bad decision and consider the cause of the sexual assault (e.g., going to the defendant’s bedroom/dorm room, engaging in some level of consensual sexual activity).

The point is that many jurors will be able to understand the victim’s behavior immediately preceding the sexual assault if it is presented in a fashion the jury can understand. A narrative that explains the progression of events through the course of the evening is a logical way to present a case, because jurors are better able to understand and relate to why a victim behaved the way he or she did: (e.g., a victim explaining the reason he or she agreed to accept the defendant’s offer of a ride home was because they had been talking for the last two hours, the defendant claimed to be trustworthy, had a nice car, looked clean cut, etc.).
Can you point out some particular takeaways that college administrators can focus on regarding the credibility of survivors involved in campus investigations (i.e., acquaintance rape)?

Wendy Patrick: Campuses can be an intimidating environment when it comes to reporting sexual assault. Peer pressure can compound the victim’s reluctance to report, as can factors such as having classes, attending clubs, or sharing a residence hall with the perpetrator or witnesses. Sexual assaults that occur in a college environment also frequently involve friendships in common, leading many victims to be reluctant to “rock the boat” by disclosing the assault.

Establishing survivor credibility involves exploring these areas of reluctance early in the process, so victims can recount their thoughts, feelings, and beliefs about what was going to happen, before they came forward to report the assault.

Many victims are especially unlikely to report being assaulted by a star athlete or other popular student. The Bill Cosby case presents an excellent example of this dynamic, and it illustrates how intimidating it can be to have been victimized by someone with “star power” and credibility granted by virtue of some particular talent (athletics, for example).

Although sexual assaults that occur on college campuses are similar in many respects to those that occur elsewhere, one of the things that makes them unique is the way campus sexual assault impacts the victim – because she or he will typically be returning to the campus environment, sometimes the very next day after the assault.

Some victims assaulted on campus or at a campus-sponsored event may encounter their assailant, witnesses to the event, or both, due to the fact that everyone attends the same school. Sometimes victims have their assailants in one or more of their classes.

These victims are understandably reluctant to resume normal campus activities, which could adversely affect their academic progress in one or more classes. This could in turn delay their anticipated graduation date. Any reluctance to return to campus life should be explored with victims who were assaulted within a campus environment, in order to consider any available options the school may provide for students who have suffered a traumatic event.

EVAWI: While there are certainly unique aspects of campus responses to sexual assault, many of the fundamentals are the same. For example, the essential dynamics of sexual assault perpetration are the same, as are the impacts of victimization. Appropriate responses must be based on compassion and respect, and the investigative process will need to overcome challenges to the victim’s credibility based on common myths and misconceptions.

Because of these fundamental similarities, campus personnel will benefit from many of EVAWI's training resources that provide guidance for criminal justice professionals, such as:
In your presentation, you seemed to suggest that victims can choose whether or not to dissociate. But dissociation is not a voluntary response, and although we certainly don’t want to be insensitive in our treatment of victims, and trigger a dissociative response, it can be hard to not trigger someone who dissociates. The person may not even be aware of their own triggers. Can you clarify your point(s) on this topic?

Wendy Patrick: Dissociation is explained in EVAWI’s OnLine Training Institute (OLTI) module entitled, Victim Impact: How Victims Are Affected by Sexual Assault (last updated July 2017). Beginning on page 6, this module provides guidance on how the process works, from the perspective of experts in the field, and as described by victims.

My point was to recognize that dissociation occurs, as described by victims, many of whom describe feeling a sense of paralysis during the sexual assault (page 6). Others describe experiencing a state of detachment during the assault (page 7). It is therefore important for law enforcement and other professionals who come into contact with the survivor to understand how and why sexual assault often requires very little physical violence to accomplish on the part of the suspect, and also why victims often do not resist.

Because judges, juries, and even members of the prosecution team may not be familiar with dissociation and how it occurs, I wanted to highlight it is the importance of understanding the victim’s feelings and thought processes during the assault, in order to put the event in to context and understand the victim’s response.

Reference

California Clinical Forensic Medical Training Center (2001). California Sexual Assault Response Team (SART) Manual. Published by the California Clinical Forensic Medical Training Center (http://www.ccfmtc.org/california-sart-manual/).