End Violence Against Women International
(EVAWI)

False Reports: Moving Beyond the Issues to Successfully Investigate and Prosecute Non-Stranger Sexual Assault

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Online Training Institute

This module is part of EVAWI's Online Training Institute (OLTI), which includes review exercises, practical applications, and an end-of-course test. Participants can also download a personalized certificate of completion to use for continuing education or other purposes. For more information, please see the EVAWI website.

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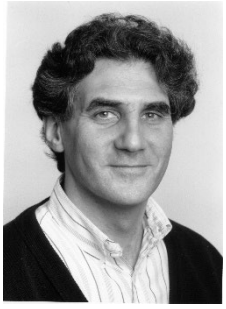
Sgt. Joanne Archambault (Retired, San Diego Police Department) is the Founder and Chief Executive Officer for End Violence Against Women International (EVAWI). Prior to founding EVAWI, Sgt. Archambault worked for the San Diego Police Department for over 22 years, in a wide variety of assignments. During the last 10 years of her service, she supervised the Sex Crimes Unit, which investigated approximately 1,000 felony sexual assaults each year. Under her leadership, the San Diego Police Department's Sex Crimes Unit was recognized for pioneering research, groundbreaking victim-centered practices, and multidisciplinary collaboration that changed law enforcement responses to sexual assault across the nation. She also established and operated a highly successful for-profit training and consulting business for 22 years, providing expert guidance to hundreds of police departments and allied agencies, and training tens of thousands of practitioners.

In 2003, Sgt. Archambault founded EVAWI, a nonprofit organization dedicated to improving criminal justice responses to sexual assault and other forms of gender-based violence. Starting from scratch, she has grown EVAWI into the premier training organization on sexual assault investigations, providing superior training and resources, influencing national policy, and mentoring a new generation of leaders. In 2011, she achieved a dream first envisioned while working in the San Diego Police Department's Child Abuse Unit in 1985 – the launch of Start by Believing, a public awareness campaign designed to transform the way society responds to victims of sexual violence. With campaigns in all 50 US states, several US territories and protectorates, and numerous countries, this vision is now becoming a reality, changing the world for victims, one response at a time.



Dr. Alan Berkowitz is a highly regarded expert in sexual assault prevention and education, with a focus on men's responsibility for preventing sexual assault. He frequently consults for the federal government and professional organizations, is a frequent keynote speaker for sexual assault coalitions and national meetings and is well-known for his scholarship, innovative programs, and professional development workshops. Dr. Berkowitz edited one of the first books focusing on men's responsibility for preventing sexual assault (Men and Rape: Theory Research and Prevention Programs in Higher Education, Jossey Bass, 1994) has developed model rape prevention programs for men is a co-founder of the social norms approach, one of the most promising media approaches to sexual assault prevention. He received the PhD in Psychology from Cornell University in 1981 and is the recipient of numerous national awards for his scholarship, programming, and advocacy.

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Lt. Sue Welch (Ret.), of Coeur d'Alene, Idaho developed the graphics used in the module.

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Course Objectives

At the end of this training module, the learner will be able to:

- Identify the “red flags” that raise suspicion of a sexual assault report.
- Recognize our gut reaction to these “red flags.”
- Recognize that these “red flags” are based on cultural stereotypes of “real rape.”
- Define a false report.
- Recognize that some information provided by the victim may not be accurate, but this does not necessarily mean it is a false report.
- Recognize how law enforcement professionals can create a “false report.”
- Reverse the cycle of suspicion that creates a “false report.”
- Identify how many sexual assault reports are actually false.
- Effectively handle the frustrating reality of “real” false reports.

Introduction

The issue of false reporting may be one of the most important barriers to successfully investigating sexual assault, especially with cases involving non-strangers. To illustrate, consider the following scenario from a traditional law enforcement training program:

> *Instructors provide training on how to successfully investigate sexual assault cases while police officers and investigators listen attentively and take notes. The training covers such subjects as: victim sensitivity, suspect profiles, and evidence collection procedures.*
>
> *All the while, everyone in the room secretly shares the view that the training material is only relevant for the "real rape" cases that are reported. Everyone "knows" that the training material is not going to be useful in the majority of cases they handle – cases involving a victim and perpetrator who know each other, that do not involve a weapon, physical violence, or evidence of injury. All those cases are probably just false reports, anyway, they think to themselves.*
>
> *The training thus fails to challenge participants to examine the distinction between the stereotype of "real rape" and the vast majority of their cases – which are of course "real" but unfairly suspected of being false. These cases have a number of "red flags" that are actually the realistic dynamics of sexual assault.*

Clearly, one of the most important challenges for law enforcement training in sexual assault investigation is the idea that many – or even most – reports are false. As long as this belief is accepted by participants, the training program will have only a very limited impact because they will assume that it only relates to "real rape" cases and not the majority of cases they see on a daily basis. Yet, these "red flags" that typically raise suspicion, are actually the realistic dynamics of sexual assault. Difficult cases that law enforcement professionals see every day are real rapes; that is, sexual assault as it happens in the real world and not in criminal justice textbooks.

Confronting the Issue of False Reporting

This module is designed to directly confront this issue of false reporting. The material provided throughout this module will attempt to answer these questions that have historically created a bigger hurdle for sexual assault victims than any lack of training or experience on the part of law enforcement professionals. These questions include:

- What are the "red flags" that raise suspicion of a sexual assault report?
- What is our gut reaction to these "red flags?"
- How are these "red flags" based on cultural stereotypes of "real rape?"
- What is the actual definition of a false report?

- But what if part of the report is false?
- How can law enforcement investigators create a "false report?"
- How many sexual assault reports are actually false?
- How should law enforcement handle the frustrating reality of "real" false reports?
- How can investigators reverse this cycle of suspicion?

Ironically, the needs of sexual assault victims are better served by a poorly trained investigator who believes the victim and takes the case seriously than one who is well-trained but believes that most reports are false. If there is one goal for this module, it is therefore to recognize that the training throughout this curriculum is relevant for every single sexual assault case reported to law enforcement, no matter how murky, ambiguous, or just plain difficult. These cases may be difficult to investigate, but it does not mean they aren't "real rape."

Resource: Expert Interview

In this video interview, Sergeant Elizabeth Donegan describes what happens when law enforcement officers assume a sexual assault report is false.

The documentary *Second Assault* follows Jillian, a survivor who was sexually assaulted the first month of her freshmen year of college. In this film, Jillian shares how she felt about the law enforcement response to her report, and documents an exchange between Jillian and the responding officer ten years after the assault.

"Red Flags" that Trigger Suspicion

Please list some of the factors that might initially cause you to doubt a victim's account of a sexual assault incident. In other words, what are some of the "red flags" that cause you to suspect that a report may be false? In reality, all of us have our own personal "red flags" that raise suspicion – not just law enforcement professionals, but also medical professionals, prosecutors, and victim advocates. Please take a moment and list at least five of your own personal "red flags," and be as honest as you can. This is the only way to learn and grow as an investigator.

Factors that Cause Me to Doubt the Validity of a Sexual Assault Report are:

1.
2.
3.
4.
5.

Now compare your list with some of the factors that are commonly given by law enforcement personnel and others:

- The victim and suspect know each other.
- The victim and suspect have had sex before.
- The victim is an adolescent.
- No weapon was used.
- No physical violence was reported.
- There is no sign of physical injury.
- The victim is calm.
- The victim didn't report to law enforcement for days, weeks, or even months.
- The victim first disclosed the sexual assault to someone other than law enforcement.
- The victim is difficult to locate.
- There is little or no physical evidence to corroborate the allegation.
- The victim does not follow through or participate with the investigation.
- The victim changes his or her account of what happened.
- The victim is uncertain or vague about the details of the sexual assault.
- The victim recants.
- The victim later recalls additional information.
- Details in the victim's account are provably false.
- The victim is not seen as credible.
- The victim is elderly, disabled, or unattractive.
- The victim is a person of color.
- The victim is working class, poor, and/or on welfare.
- The victim has multiple sexual partners.
- The victim is male.
- The victim is seen as having exercised poor judgment and thus played a part in the crime.
- The victim was drunk and/or voluntarily used drugs at the time of the assault.
- The victim is suspected of being a prostitute or drug addict.
- The victim is thought to be involved in previous criminal behavior.

- The victim is belligerent.
- The victim is homeless.
- The victim has a physical or mental impairment.
- The victim refuses or fails a polygraph examination.
- The victim has reported sexual assault(s) in the past.
- No suspect can be identified.
- The suspect seems sincerely upset and confused by the allegations.
- The suspect seems respectable, credible, or even likeable.
- The suspect is white.
- The suspect is from the middle class or even upper class of society.
- The suspect is attractive and has an active, consensual sex life.

Perhaps your “red flags” match those on the list, or perhaps they are different. Yet regardless of what our personal “red flags” are, they typically spark a similar gut reaction.

Please note that the term “sexual assault” will generally be used throughout this module, because it covers a broader range of behaviors than “rape” (which is typically used to describe felony-level crimes involving penetration). However, the term “rape” will be used in some instances, either because it appears in a direct quote from another source, or to refer to cultural notions of “real rape.”

Our Gut Reaction to the “Red Flags”

Think for a moment about how you react when these “red flags” are present in a sexual assault case. Then in the space below, please describe the gut reaction you have when you suspect that someone is lying to you about having been sexually assaulted. Please be as honest as you can.

When I Suspect that Someone is Lying to me About Having Been Sexually Assaulted, My Gut Reaction is:

If you are like other law enforcement professionals, your gut reaction is probably frustration and/or anger. You may also feel like the person filing the false report has taken advantage of you, “wasted your time,” “taken you for a ride,” and perhaps even undermined your credibility or made you look foolish. This same gut reaction is often seen among prosecutors, medical professionals, even victim advocates, and even friends and family members of victims.

The reality is, no one likes to feel lied to or taken advantage of, so it is natural that we would experience anger or frustration when we suspect that someone has filed a false report of sexual assault. Yet this type of gut reaction can obviously interfere with how we might view a victim. Thus, while the anger or frustration that law enforcement

professionals feel may be completely understandable, it may in fact be unwarranted, and it will certainly harm both the victim and the investigation. This occurs in three primary ways.

First, the suspicion is often misplaced. Officers and investigators all too often suspect that a sexual assault report is false based on the "red flags" listed above. If they do, they are probably wrong. In fact, the "red flags" actually represent the realistic dynamics of a typical sexual assault. Just to illustrate, individuals with a physical or mental impairment are among the most vulnerable to sexual assault. Yet, they are often suspected of filing a false report. As with other "red flags," these victims are capable of providing quality information and serving as a credible witness, as long as the investigation and interview is conducted appropriately. As with other "red flags," individuals with a mental and physical impairment deserve to have their sexual assault investigated thoroughly and from the assumption that it is legitimate. The same is true for every one of the "red flag" characteristics included on our list.

Second, **this suspicion interferes with a thorough investigation.** Law enforcement professionals typically know that they are not supposed to let their own gut reactions get in the way of doing their job. Of course, this is easier said than done, but it is critically important that officers and investigators not let their suspicion interfere with a thorough investigation of any sexual assault report. The determination that a sexual assault report is false can only be made if the evidence establishes that no crime was completed or attempted. This evidence will only be available after a thorough investigation, not after only a preliminary investigation or initial interview with the victim.

Third, **this suspicion is based on inappropriate personal assumptions.** To truly understand the issue of false reporting requires that we change our own personal beliefs about sexual assault, and therefore our own personal assumptions about those who sexually assault (primarily men) and those who are victimized (primarily women). For men, this can be especially challenging because it requires a re-definition of men who rape to include individuals who may seem respectable and credible, even likeable. Many sexual assault cases involve men who are like ourselves in many respects. Others involve a suspect who is known and respected in the community, such as a prominent citizen, celebrity, politician, or an athlete on a university campus or professional sports team.

This module will explore how law enforcement professionals can respond when these "red flags" are present in a sexual assault case. It is important to understand the role that these red flags play in creating unwarranted suspicion of sexual assault victims. Yet it is important to acknowledge the gut reaction that goes along with this suspicion. This is necessary to truly confront the issue of false reporting and appreciate how the "red flags" are actually based on our cultural stereotypes of "real rape."

Stereotypes of "Real Rape"

Many of these "red flags" are actually based on our cultural stereotypes of what constitutes "real rape" (sometimes referred to as "righteous rape"). Law enforcement professionals are often reluctant to believe that they share these stereotypes, but the reality is that everyone

in our society is exposed to the same cultural messages about sexual assault, and they inevitably influence how we think about it. These cultural stereotypes are deeply rooted in societal sexism and strongly affected by racism. They are therefore the product of our culture's ideas about women's rights and roles, stereotypes about women of color, and the myth of the black male rapist. Because these are societal stereotypes, they impact not only law enforcement, but also advocates, prosecutors, juries, and even friends and family members of victims.

Whether or not we believe in the stereotype, we can all describe what our society considers to be a "real rape." So, at this point, please take a moment and describe the stereotype that our society has for what constitutes "real rape." If you asked many of the people you know to describe what rape is like, how would they describe the victim, suspect, and the assault itself?

First, the victim. Use 5 words or phrases to describe the kind of person that is seen by our society as "real" rape victim.

1.
2.
3.
4.
5.

Next, the suspect. Use 5 words or phrases to describe the kind of person that is seen by our society as a "real" sexual assault perpetrator.

1.
2.
3.
4.
5.

Finally, the sexual assault itself. Use 5 words or phrases to describe what constitutes a "real rape" in the minds of most people.

1.
2.
3.
4.
5.

Chances are, your description of the societal stereotype is similar to that provided by others. In fact, if we look back at our list of "red flags" we can see that the stereotypic characteristics of "real rape" are exactly the opposite as the "red flags" that we listed before. Take a look:

- The victim and suspect do not know each other – they are strangers.
- The victim and suspect have not had sex before – again, they are strangers.
- The victim is a responsible adult, not an adolescent.
- A weapon was used.
- Physical violence was reported.
- There are signs of physical injury.
- The victim is hysterical, not calm.
- The victim reports to law enforcement immediately.
- The victim reports the sexual assault to law enforcement first, not to someone else.
- The victim is easy to locate.
- There is a great deal of physical evidence to corroborate the allegation.
- The victim does follow through and actively participate with the investigation.
- The victim does not change his or her account of what happened.
- The victim is absolutely certain about the details of the sexual assault.
- The victim does not recant.
- The victim does not recall additional information later – it is all recalled immediately.
- Not a single detail in the victim's account is provably false.
- The victim is seen as credible.
- The victim is young, able-bodied, and attractive – not elderly, disabled, or unattractive.
- The victim is white, not a person of color.
- The victim is from the middle class or even upper class of society.
- The victim is female.
- The victim is a virgin, abstains from sex, or is sexually monogamous.
- The victim did not exercise bad judgment at the time of the sexual assault.
- The victim was completely sober at the time of the assault – not drunk or using drugs, unless those drugs were administered without the victim's knowledge.
- The victim is not suspected of being a prostitute or drug addict.
- The victim is not thought to be involved in previous criminal behavior.

- The victim is compliant and cooperative – not belligerent.
- The victim is a respected citizen – not homeless.
- The victim does not have a physical or mental impairment.
- The victim takes and passes a polygraph examination.
- The victim has never reported a sexual assault in the past.
- The suspect does not appear to be upset or confused by the allegations.
- The suspect is seen as sick, crazy, or deranged – not respectable, credible, or likeable.
- The suspect is a person of color – not white.
- The suspect is poor or working class.
- The suspect is not attractive and does not have an active, consensual sex life.

Next, compare this description to <u>your</u> sexual assault caseload. How many of the sexual assault cases that <u>you</u> handle resemble this stereotype of "real rape?"

- **Fewer than 25%**
- **25% to 50%**
- **50% to 75%**
- **More than 75%**

If you asked a room full of law enforcement professionals how many of their cases resemble this stereotype, most would say that only a very small percentage of their cases do. In fact, the research[1] is clear that these stereotypic characteristics of "real rape" are actually quite rare.

Resource: Expert Interview

In this video interview, Detective Carl Hershman shares his insight on the common perception that many, if not most, sexual assault reports are false.

In reality, most sexual assaults are perpetrated by someone known to the victim, without a weapon, physical violence, or signs of physical injury. Very few victims report immediately to law enforcement, but if they do report to law enforcement, it is often after a delay of days, weeks, months, or even years. Many victims have a number of factors that limit their perceived credibility: they are often young, homeless, have a mental or physical

[1] Extensive research documents the characteristics of sexual assault victims, perpetrators, and incident. For example, see: Bachman & Saltzman, 1995; Bohmer & Parrot, 1993; Brenner, McMahon, Warren & Douglas, 1999; Fisher, Cullen & Turner, 2000; Humphrey & Kahn, 2000; Koss, 1988; Koss & Cook, 1993; Koss, Gidycz & Wisnewski, 1987; Merrill et al., 1998; National Victim Center, 1992; Tjaden & Thoennes, 1998.

impairment, belligerent, and/or abusing alcohol or controlled substances. Victims often omit, exaggerate or fabricate parts of their account, and they may even recant altogether. They are not typically hysterical when interviewed by medical professionals, law enforcement professionals, prosecutors, or others. Finally, suspects often do not fit our stereotype of a "rapist." For example, despite the stereotypic image of black men as criminals, most sexual assaults are intra-racial, committed between people of the same racial/ethnic group. In many cases, the suspect is a respected person with status and position in the community.

In short, most sexual assault reports involve at least some of the "red flags" listed above. So, whether or not we want to admit it, these "red flags" are in fact the realistic characteristics of sexual assault in the real world and not in criminal justice textbooks or the movies. Yet despite this fact, sexual assault reports that are different from this stereotype of "real rape" are all too often viewed with suspicion, not only by law enforcement but also by everyone else in society.

How the Stereotype of "Real Rape" Affects the Law Enforcement Investigation

How might this stereotypic notion of "real rape" affect the law enforcement investigation that is conducted when a sexual assault is reported?

> **First, how might this stereotype of "real rape" affect our response to victims who don't look or act anything like they are "supposed" to?**
>
> The stereotype makes us less likely to believe these victims, and more likely to suspect that they are lying about having been sexually assaulted.
>
> **Second, how might this stereotype affect our view of a suspect who seems like a "nice guy" and doesn't look like the societal image of a rapist?**
>
> The stereotype makes us more sympathetic to suspects, and more likely to believe their statements, including the claim that the victim consented to sexual activity.
>
> **Finally, how might this stereotype affect our estimate for how many sexual assault reports are false? Will the stereotype lead us to overestimate or underestimate the percentage of sexual assault reports that are false?**
>
> If we suspect that cases with "red flags" (i.e., the realistic dynamics of sexual assault) are actually false reports, we may dramatically overestimate the percentage of sexual assault reports that are false.

Resource: Expert Interview

In this video interview, Sergeant Elizabeth Donegan responds to the perception that sexual assault cases are just "he said, she said."

If we believe the stereotype of "real rape," this will lead us to doubt the claims of victims whose cases don't look like the stereotype. However, since the realistic dynamics of sexual assault are actually the opposite of the stereotypic characteristics, this suspicion is likely to be misplaced. It also makes it unlikely that a thorough law enforcement investigation will ever be conducted, and it makes successful prosecution even less likely.

How the Stereotypes Make Successful Prosecution Less Likely

Of course, prosecutors are also exposed to the same societal messages about what constitutes a "real rape," so they share the same "red flags" for suspecting that a sexual assault report is false. This doesn't necessarily mean that prosecutors personally believe in the stereotypes of "real rape." They may or may not. Often, prosecutors understand the realistic dynamics of sexual assault, but know that this stereotype will be prominent in the minds of judges and jurors as they make decisions regarding a sexual assault case. Prosecutors therefore believe that they cannot ethically charge a defendant in cases that depart too much from the stereotype of "real rape," because a jury would not be likely to convict. All of this makes cases with "red flags" more difficult to investigate and prosecute – despite the fact that at least some of these "red flags" are actually seen in the vast majority of sexual assault cases.

How to Confront the Issue of False Reporting

To confront this issue of false reporting, it is important to first recognize the serious damage that is done to the reputation and credibility of a law enforcement agency when sexual assaults are incorrectly labeled as false. As with the rest of society, law enforcement professionals must think carefully about these "red flags" and come to terms with the fact that they are based on the cultural stereotype of "real rape" and not the realistic dynamics sexual assault. Only then can we truly confront the issue of false reporting as the primary barrier to successful sexual assault investigation and prosecution.

- First, we must all acknowledge that we share the same cultural stereotype of "real rape" and recognize that it causes us to view reports with suspicion if they depart from this stereotype and actually exhibit some of the "red flags" discussed above.

- Second, we need to own up to the fact that all of us are likely to feel anger and/or frustration when we suspect that someone is filing a false report of sexual assault.

- Third, we must re-examine our own personal assumptions about what constitutes a "sexual assault" and who is likely to be a victim or a perpetrator.

By recognizing that the "red flags" actually represent the typical dynamics of sexual assault in the real world, we can recognize that training in sexual assault investigation does in fact apply to all of those difficult cases that law enforcement professionals handle, day in and day out – and not just cases that look like the stereotype of "real rape" or "righteous rape."

Resource: Expert Interview

In this video interview, Detective Carl Hershman (Ret.) discusses the impact when law enforcement officers assume a sexual assault report is false.

Resource: Article on False Reporting

"An Unbelievable Story of Rape" is a Pulitzer Prize winning article written by T. Christian Miller of Pro Publica and Ken Armstrong with The Marshall Project that powerfully shows the impact of misconceptions regarding false reporting. The authors later developed this article into a book, entitled: *A False Report: A True Story of Rape in America.* Additionally, this article inspired the Netflix Series *Unbelievable*.

The authors recount events involving a young woman who was sexually assaulted in Lynwood, Washington. She had grown up in foster care, with a lifetime of "adult caregivers and professionals coming in and then out of her life, some distressing or abusive experiences, and a general lack of permanency." When she disclosed her sexual assault to the two women who loved and cared about her the most –two former foster mothers – both questioned her story. One even contacted the police to let them know she believed it was a false allegation.

At the same time, the authors describe the hunt for a serial rapist who attacked several women in Colorado. He was eventually identified as the same man who raped the young woman in Lynwood.

This story provides a stark contrast between the failure to respond appropriately to one woman – while diligently searching to identify the serial rapist of several others. Ultimately, the difference in response came down to a question of belief. One was not believed, while the others were, and as a result, the cases took radically different paths. The story also highlights the fact that disbelief is not just an issue for law enforcement. The initial report from the young woman in Lynwood was originally questioned by the victim's own foster mother, who called the police to let them know she thought it was dubious. Once this happened, the case took a disastrous turn.

Cases that May Seem to be "Unbelievable"

Of course, there are also plenty of examples of sexual assault reports that seemed to be unbelievable – and were suspected of being a false report – when they were 100% true.

- For example, one case in the Boston area involved a woman who claimed to have been sexually assaulted by a man she had dated briefly. He denied the charge and provided evidence that he was thousands of miles away at the time of the sexual assault. At this point, many people would suspect a false report, but a dedicated investigator remained open-minded enough to question the suspect again – only to discover that he had an identical twin brother who was unknown to the victim. The twin brother ultimately pled guilty to the sexual assault.[2]

- In another case, sex crimes investigators in Philadelphia doubted the report of a woman who said she was sexually assaulted by a stranger who gained entry to her apartment through a seven-inch gap in the security bars of her window. Within days, the case was classified as inactive, even though a neighbor reportedly saw a man drag a trash bin under the window and try to squeeze through the bars – and at least one other woman in the community reported being sexually assaulted by a man who entered through an opening approximately the same size. DNA evidence eventually linked the same man to a total of six separate sexual assaults. He is currently imprisoned in Colorado, facing life sentences in both Pennsylvania and Colorado.[3]

Obviously, these cases would raise "red flags," even among the most reasonable of people. Such cases therefore challenge all of us to remain open-minded about sexual assault reports, no matter how many "red flags" they raise or how unbelievable they may seem. The reality is that all sexual assault reports must be taken at face value and investigated thoroughly, fairly, and with sensitivity.

Only a thorough, evidence-based investigation can be used to make judgments about a sexual assault case, not assumptions – even when those assumptions may seem to be reasonable on the basis of the initial facts of the case. It is therefore critically important to follow all the evidence that the investigation reveals, and not just the evidence that supports an initial judgment about a case. As any experienced investigator will tell you, the evidence may reveal that this initial judgment was wrong.

What is the Actual Definition of a False Report?

Law enforcement professionals and others clearly have a variety of different ideas about what exactly constitutes a false report, but the most reasonable definition is that:

> **A false report is a report of a sexual assault that did not happen (it was not completed or attempted).**

While we might all agree with this simplistic definition of a false report, people have different ideas about exactly when they can decide that the sexual assault did not actually happen. For example, law enforcement professionals and others all too often

[2] Joan Zorza (personal communication, May 29, 2005). Joan Zorza is the editor of *Sexual Assault Report* and *Domestic Violence Report* and the book, *Violence Against Women* (Civic Research Institute).
[3] Serial rape investigation widens to a sixth attack. By Clea Benson, Mark Fazlollah, Michael Matza, and Craig R. McCoy. *The Philadelphia Inquirer,* October 7, 1999.

decide that a sexual assault did not happen based simply on their own views of the victim, the suspect, and their credibility. This is an unacceptable practice.

In reality, law enforcement investigators cannot determine that the sexual assault did not happen, simply because they suspect that the report is false, view it with suspicion, or because the victim changes his or her account of what happened. Investigators certainly cannot determine that the sexual assault did not happen because the victim lacks credibility – perhaps because the victim is young, drunk, taking drugs, belligerent, or suspected of being a prostitute. Similarly, investigators cannot determine that the sexual assault did not happen because: they sympathize with the suspect, he seems sincerely outraged and upset by the charges, he has a credible story, or he appears to be a responsible citizen who does not meet our personal assumptions about who is likely to be a "rapist." In other words, investigators cannot determine that the sexual assault did not happen just because any of the "red flags" are present in a sexual assault case.

In many cases, these stereotypes create a bias that we may not be aware of but nonetheless causes us to both: (a) doubt or discount the victim's allegations, and (b) sympathize with the suspect or lend credence to his version of events. Rather, law enforcement professionals must base all final judgments of a sexual assault report on the findings from a thorough, evidence-based investigation. **The determination that a report is false can then only be made when there is sufficient evidence to establish that the sexual assault did not happen (was not completed or attempted).**

This does not mean that the investigation failed to prove that the sexual assault happened – in that case the investigation would simply be inconclusive or unsubstantiated. It also does not mean that the suspect was unable to successfully complete the sexual assault – this would be an attempted sexual assault and/or some other sexual offense.

This definition is consistent with guidance provided by the FBI Uniform Crime Report (UCR) on methods for clearing cases. Specifically, the UCR Handbook states that a case can only be unfounded if it is "determined through investigation to be false or baseless. In other words, no crime occurred" (p.77). That's pretty clear, because a case cannot be "determined through investigation to be false or baseless" if no investigation was conducted or if it yielded insufficient evidence.

While this is the actual definition of a false report for law enforcement purposes, it does not typically reflect the way officers, investigators, and even supervisors tend to think of their sexual assault investigations. This calls to mind the terminology of "factually innocent" which the courts use to dismiss cases where it can be established that the suspect did not in fact commit the crime. To illustrate, the California appellate court has defined someone as "factually innocent" when:

> "The person did not commit a crime. It does not mean a lack of proof of guilt beyond a reasonable doubt or even a preponderance of the evidence, nor does the term encompass those situations where an accusatory pleading is not issued for technical reasons such as search and seizure issues."

In fact, at virtually every training on this topic, we hear from law enforcement professionals who routinely unfound cases either because they do not believe the victim's account, or they failed to prove it conclusively.

So, although the actual definition of a false report should be the same for every law enforcement agency, it is clear that the practices that are really used vary dramatically. This is why the percentage of sexual assault reports that are unfounded by various law enforcement agencies are so different; many are labeling sexual assault reports false without any evidence to establish that they did not occur.

Resource: Clearance Methods

For more information on how to clear or otherwise close sexual assault cases, please see the OLTI module entitled: *Clearance Methods for Sexual Assault Cases.*

For a concise discussion of the issues surrounding false allegations, case unfounding, and victim recantation, a helpful 4-page document is available from the Oregon Attorney General's Sexual Assault Task Force.

But What if Part of the Report is False?

While a report can only be deemed false if there is evidence indicating that it did not happen, investigators often face the situation where parts of the victim's account are false, omitted, exaggerated, or inconsistent with other information that is given. In other words, investigators face the question of, "How false does a false report need to be?" "Does the whole report have to be false to constitute a false report of sexual assault?"

This issue is discussed extensively in the OLTI module entitled: *Effective Victim Interviewing: Helping Victims Retrieve and Disclose Memories of Sexual Assault* but it also requires attention here. That is, many victims will give inconsistent or untrue information as part of their statement, but this must never be confused with a false report.

To illustrate this point, please think for a moment about situations in which victims may omit, exaggerate, or even fabricate certain information in their report. What are some of the reasons they might omit facts from their account of the sexual assault? What aspects of the victim's account might be exaggerated or even made up?

Please take a moment and list at least 5 situations in which a sexual assault victim might provide information that is incomplete, inconsistent, or even untrue.

1.
2.
3.
4.
5.

For most law enforcement professionals, it is not difficult to come up with reasons why sexual assault victims might omit, exaggerate, or even fabricate aspects of their report.

For example, victims might give inconsistent or untrue information out of **trauma or disorganization**. When we are traumatized, we do not always think clearly and cannot necessarily provide information that is 100% complete and accurate. This is especially true for victims who have been **sexually assaulted more than once**, because aspects of the prior sexual assault may be confused with the current one. Victims may also have memory impairment due to **alcohol or drug use.**

Victims might also give incomplete, inconsistent, or untrue information because **they are uncomfortable relaying details of the sexual assault**. This may be particularly likely for details regarding the sexual acts involved. For example, it is quite common for sexual assault victims to describe the incident as involving only penile-vaginal penetration because they are uncomfortable reporting other crimes such as oral copulation or anal penetration.

Many victims give information that is incomplete, inconsistent, or untrue because they are **afraid that they won't be believed** or that **they will be blamed for the sexual assault.** To illustrate, victims may omit details that will undermine their credibility, such as drug or alcohol use, prostitution, or other unflattering or even illegal behavior. Of course, victims may also omit details about their own unlawful activity out of the **fear of being arrested.**

Victims also sometimes minimize what happened or change the details in order to **protect the perpetrator.** This can occur when the two have a relationship, when the victim depends on the perpetrator for financial or emotional support or is afraid of getting the perpetrator "into trouble." As a result, victims may give incorrect or confusing information about what actually occurred.

Victims also may give information that is incomplete, inconsistent or inaccurate because of their **immigration status** (or assumed status). Many victims have learned from experiences in their country of origin that authority figures are not to be trusted, particularly law enforcement officers. In addition, suspects often use immigration status against victims, threatening to report them to immigration authorities or to have them deported if they tell anyone about the sexual assault.

There can also be **cultural reasons** for exaggerating or minimizing the facts of a sexual assault report. For victims from another culture, beliefs about what is acceptable to tell a stranger and taboos about sexuality and sexual activity may influence their description of what happened. This problem can be especially pronounced when the (female) victim is from a minority culture and the (male) law enforcement professional is from the dominant culture of the United States.

Victims from a **minority cultural group** may be particularly reluctant to report a sexual assault against another member of their cultural group, because it is sometimes seen as a betrayal of the victim's cultural group. This reluctance may be heightened when there

is a perception that the cultural group is treated unfairly by law enforcement (e.g., African-Americans, Americans of Arab descent).

Resource: Trauma-Informed

EVAWI offers a number of resources to support law enforcement in conducting victim interviews that are truly "trauma-informed." First, EVAWI offer an Online Training Institute (OLTI) module entitled: *Effective Victim Interviewing: Helping Victims Retrieve and Disclose Memories of Sexual Assault.*

EVAWI also offers several training bulletins on this topic, including:

A three-part series entitled: *Important Things to Get Right about the Neurobiology of Trauma:*

Part 1: Benefits of Understanding the Science

Part 2: Victim Responses During the Assault

Part 3: Memory Processes

Understanding the Neurobiology of Trauma and Implication for Interviewing Victims.

Becoming Trauma Informed: Learning and Appropriately Applying the Neurobiology of Trauma to Victim Interviews.

Trauma-Informed Interviewing and the criminal Sexual Assault Case: Where Investigative Technique Meets Evidentiary Value.

The following webinars on the neurobiology of trauma and trauma-informed interviews are available:

- A two-part series on the *Neurobiology of Sexual Assault* presented by Dr. Jim Hopper of Harvard University. In Part 1, Dr. Hopper focuses on the topic of Experience and Behavior, while Part 2 emphasizes Experience and Memory.

- Finally, we offer an archived 2-part webinar on *Effective Victim Interviewing: Helping Victims Retrieve and Disclose Memories.* Part 1 includes clips from videotaped interviews with sexual assault victims, conducted by an investigator following best practices, including accompaniment by a victim advocate. Part 2 focused on examining the concrete strategies and techniques involved in: (a) conducting an initial interview and preliminary investigation, (b) planning, preparing, and conducting an in-depth interview, (c) documenting victim statements and other investigative findings, and (d) following up with additional interviews and an evolving investigation.

Additionally, The Florida Council Against Sexual Violence (FCASV) created this introductory training video for patrol officers on trauma-informed responses to sexual violence. This video reviews the importance of this type of response, with a basic overview of the effects of trauma and key aspects of a trauma-informed response.

One of the most common reasons why victims alter or exaggerate the details of what happened is to **create a case that seems more believable.** This can be due to guilt, shame, or a fear of not being believed. Just like everyone else in society, sexual assault victims know the stereotype of a "real rape" – that it is perpetrated by a stranger with a weapon or physical violence, that it is reported to law enforcement immediately, and that the victim is emotionally hysterical. In an effort to be believed, therefore, victims may change aspects of the reported incident to make it sound more like this stereotype.

- For example, victims may report that they were assaulted by a stranger when they really knew the suspect, and perhaps even had a prior sexual relationship together.

- Victims may also report that the suspect used a weapon when this is not really true or describe threats of physical violence that were not really made. Remember that victims also struggle with the same societal stereotypes as well.

When we think about these dynamics, it makes sense why victims might provide inconsistent, incomplete, or even untrue statements. Yet many investigators and others have seen this as evidence of a "false report." In fact, none of these situations meets the actual criteria for a false report – because even if aspects of the victim's account of the incident are missing, exaggerated, or false, this does not necessarily mean that the sexual assault did not happen.

A Few Examples

Now, let's look at a few examples. Please read the following scenarios and indicate whether they meet the actual criteria for a false report or whether they represent a legitimate sexual assault with details in the victim's account that are omitted, exaggerated, or untrue.

> Patti is a drug addict who will do almost anything to support her habit. One night, she made arrangements to buy some crack from her dealer. She met him at the appointed time and place, but during the course of the transaction, there was a disagreement over the terms of the sale. The dealer physically assaulted Patti dragged her behind a vacant house and raped her. Patti reported the sexual assault to the police, completely omitting the details of the drug deal.[4]

[4] This scenario was adapted from Aiken, 1993, p.19. Two of the other scenarios were also inspired by Aiken's article, but the facts have been revised substantially.

Maria lived alone and was sexually assaulted by a neighbor that she always thought was creepy. He threatened to tell everyone that they were having an affair if she told anyone what happened. Therefore, when she reported the sexual assault to the police, she described her assailant as a masked stranger instead of someone she knew.

Gita is from a culture that frowns upon sexual activity before marriage. If she were to acknowledge having any pre-marital sexual activity, this would bring shame upon her parents and family. Thus, when she is sexually assaulted by her boyfriend, Gita claimed that he used a knife to threaten her, when he only had to use his size and strength to restrain her. In fact, she was so surprised, confused, and betrayed by his behavior that she "froze" when he pinned her to the ground and forced his penis into her vagina.

Susan is a cadet at a military academy. She is romantically involved with an upper-class cadet. One evening she drank alcohol with him in his room, and he sexually assaulted her. Although Susan reported the sexual assault to her sergeant, she did not mention that she was romantically involved with the cadet or that they had been drinking together on the night of the incident.

Toni was asleep at home when she was awakened by her abusive ex-husband, banging on her apartment door. Knowing how violent he could be, Toni let him in, hoping that she could calm him down and talk him into leaving peacefully. Instead, he shoved her on the bed, swearing at her because he thought that she was sexually active with her new boyfriend. Then he held her down with his body, and sexually assaulted her, forcing his penis into her vagina and anus. After he left, Toni immediately called the police. In her statement, she described the sexual assault as only involving penile-vaginal penetration because she felt shame and guilt about the anal penetration.

In fact, none of these scenarios are false reports, according to the actual definition. Instead, these scenarios describe situations in which the victim omitted or distorted information about the assault, but this does not negate the reality that the sexual assault actually happened.

- In the first scenario, Patti omitted details of her own drug use in order to bolster her perceived credibility.

- In the second, Maria failed to provide the identity of her assailant because of fear and shame.

- In the third, Gita said that a weapon was used, to make the sexual assault sound more like "real rape" and minimize the shame brought upon her family.

- Fourth, Susan did not mention that she had a relationship with the upper-class cadet or that they had been drinking together in her room. The female cadet was afraid that she would be sanctioned for violations of the alcohol policy and the policy against fraternization at her academy.

- Finally, Toni omitted details of certain sexual acts out of shame, humiliation, and embarrassment.

The bottom line is that while these types of cases can be extremely difficult to investigate when the victim provides partial or distorted information, they cannot be considered false reports unless there is evidence to support that determination.

How Investigators Can Create a "False Report"

Another factor to consider is the ways in which law enforcement professionals can create a "false report" out of one that is actually legitimate. As described by Latts and Geiselman (1991), this process begins with the suspicion held by many officers and investigators that a large percentage of sexual assault victims are lying.

> *If the police do not believe the victim, they may directly or indirectly make this known to her, perhaps by excessive questioning that focuses on an absence of obvious injury or some delay in reporting the incident. The victim, in turn, may become upset and withdraw her cooperation. Though the woman may have been an actual survivor of rape, her lack of cooperation is itself considered sufficient grounds for marking a case as unfounded in most jurisdictions* (Latts & Geiselman, 1991, p.8)

Investigators also sometimes use information from the suspect to aggressively question the victim. For example, they may interview suspects who claim that the act was consensual and offer facts to support that claim (e.g., how the victim was dressed, what the victim was doing, etc.). Then, the investigators question the victim repeatedly about these claims, until he or she finally gives up and recants.

In this type of situation, no real investigation is even conducted. Rather, the "investigation" stops in the initial stages of the interview with the victim. Or in this case, it sounds like an interrogation was actually conducted of the victim, which is of course totally inappropriate.

Resource: Video

The Canadian Globe and Mail produced a 9-minute video depicting a college student being interviewed by a detective with a predetermined theory about what happened, based on a flawed understanding of human behavior and memory. Although the student was not prosecuted for filing a false report, her report was unfounded, and the video powerfully illustrates how such biases can derail a victim interview.

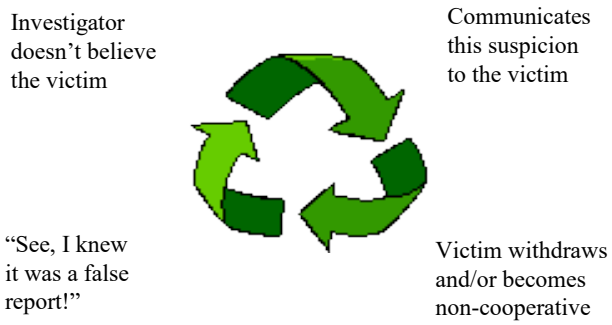
The "Cycle of Suspicion" Against Victims

This process is known as the "cycle of suspicion" against victims. When law enforcement professionals do not believe the victim, and communicate this (misplaced) suspicion, either directly or indirectly, they can lead victims to become non-cooperative when they would not otherwise have been. Worse, by "creating" non-cooperative victims in this way, investigators further fuel the myth that most victims will not participate in a law enforcement investigation and most sexual assault reports are false. This mistrust is then heightened and carried over into the next case. "The result is a never-ending spiral of suspicion and pain," for both victims and investigators (McDowell & Hibler, 1987, p.275).

Resource: Expert Interview

In this video interview, Layne Howard discusses the impact of victim who reports a sexual assault and is not believed.

The Cycle of Suspicion



In the short-term, this "cycle of suspicion" compromises individual investigations. In the long-term, however, it undermines community trust and respect for the law enforcement agency itself. This problem is seen in the kind of headlines provided before, and in quotes like this one from a Police Chief on a Florida university campus, which was cited in a newspaper article with the headline: **FAU police had hunch sex assault claim untrue:**

> "*People were saying the school wasn't safe, that there weren't enough qualified police officers, that we weren't police officers, we were security guards...I wanted so badly to say we don't believe this happened*."[5]

Without detailed information from the investigation, it is impossible to determine from this newspaper article whether or not the report of sexual assault was false. However, quotes like this from a police chief clearly send a damaging message to the community that reports of sexual assault may be viewed with suspicion and investigated with the motive of proving them false.

[5] FAU Police had hunch sexual assault claim untrue. S. Slater. *Palm Beach Post,* April 4, 2006.

The "Cycle of Sympathy" for Suspects

A parallel cycle can also occur when investigators sympathize with the suspect in a sexual assault investigation. This is described as a "cycle of sympathy," to distinguish it from the "cycle of suspicion" that involves sexual assault victims.

This cycle takes place when an investigator meets a suspect, and the suspect appears to be credible, respectable, or even likeable. In other words, the investigator feels that the suspect does not "look like a rapist" or seem like someone who would commit a sexual assault. The suspect may even have a plausible story to explain what happened and may truly believe that he had permission from the victim to engage in sexual activity. This leaves the suspect feeling upset, outraged, and disoriented by the charges.

As with the cycle of (misplaced) suspicion involving victims, this cycle of (misplaced) sympathy for suspects is communicated by the investigator – to both suspects and victims – through the type of investigation that is conducted, the particular questions asked, and the statements made to the suspect, victim, and others. Of course, victims pick up on this attitude of sympathy toward the suspect, and often react by feeling that their statements have been discounted or not believed.

Where the "Cycle of Suspicion" and "Cycle of Sympathy" Converge

So, this is where the cycle of misplaced suspicion and sympathy converge. By communicating an attitude of suspicion to the victim and sympathy to the suspect, the investigator inevitably begins to lend credence to statements made by the suspect and discounts statements made by the victim. In other words, the victim starts to feel like a suspect, and the suspect starts to feel like a victim.

- Then as the suspect gains confidence that the investigation is either "going his way" – or "going nowhere" – the victim is likely to withdraw from active participation in the investigation or even become non-cooperative.

- This heightens the investigator's suspicion that the victim was not trustworthy or reliable and increases the attitude of sympathy toward the suspect.

- So, the cycle repeats. This suspicion of sexual assault victims is carried over to the next case – and so is the sympathy for the suspect who seems like "a nice guy" and not at all like the stereotype of a rapist.

In a nutshell, these cultural stereotypes about victims and perpetrators of sexual assault influence the way law enforcement professionals and others view real cases – by increasing the likelihood that the suspect's statement will be seen as true and the victim's statement will be seen as false.

Resource: Gender Bias in Sexual Assault Response and Investigation

Gender bias can fuel the widely-held belief that sexual assault reports are often false. This belief, in turn, can affect the responses of professionals both inside and outside the criminal justice system. Responding professionals will inevitably make unconscious determinations about the veracity of a report – but if these judgments are wrong, they can fail to take appropriate action or draw inaccurate conclusions.

EVAWI has created a Training Bulletin series on gender bias that is designed to explore the phenomenon of gender bias, both explicit (conscious) and implicit (unconscious), and the resulting stereotypes and attitudes that can influence the professional response to, and investigation of, sexual assault.

Signed Release Waivers and Other Similar Tactics

Yet another way to create a "false report" is to pressure victims into releasing the law enforcement agency from the responsibility for investigating their sexual assault. In some agencies, this is done using a written release waiver that victims sign. In other agencies, this is simply done verbally. However, the evidence is clear that law enforcement agencies across the country all too often present such a decision to sexual assault victims at some point during the preliminary investigation or even in the initial interview. This is patently unfair to victims.

For one thing, this type of practice sidesteps a law enforcement agency's responsibility for investigating the report. Consider the following excerpt from the Maryland Gazette:[6]

> *Just a few hours after she reported to police that she had been gang-raped, Amber sat in the cold, fluorescent glare of the emergency room – scared, shaken, and still slightly drunk. While her friend waited outside, a nurse did a basic examination. A Montgomery County detective arrived and began asking her questions. Amber told her story. Again.*
>
> *At some point, she said she asked what would happen if she didn't want to prosecute. Someone said it was her duty to go forward. With her head swimming and her eyes bleary from crying, Amber said she just wanted the whole thing to go away. "I was so scared. I felt like it would ruin everybody's life if I pressed charges," the 20-year-old said. "You don't know the embarrassment, the shame that goes along with it."*
>
> *She said the detective told her that if she didn't want to press charges, she needed to sign a form. Amber signed it. The paper she signed is called a 208 form. It releases the police from responsibility for investigating charges and pledges the signer not to pursue the matter.*

[6] A question of rape. A. Blum. *Maryland Gazette.,* By A. Blum. February 11, 2004.

> *So, the police did not question the men she said had raped her. They did not go to the scene of the alleged attack. Hospital personnel did not use a rape kit to examine her body for forensic evidence.*
>
> *Amber's case is not unique. Montgomery County Police said complainants signed a 208 form in more than a quarter of their rape investigations last year.*

Of course, this practice is not unique to Montgomery County. By asking victims in an initial interview whether they want to prosecute and then presenting them with a form to release the department from responsibility for investigating the crime, the agency can effectively "shut down" any meaningful inquiry into the matter. And again, this tactic does not even necessarily require a written form. In many agencies, victims are simply asked during their initial interview whether they want to prosecute – or they are actively discouraged from prosecuting – and the victim's reluctance or uncertainty is then used as an excuse for conducting no further inquiries.

In their defense, many law enforcement agencies would state that they use such a release waiver only as a last resort, when the victim is unable to participate in an investigation and it is being suspended. In fact, it is a recommended practice to have such a form that the victim can sign, to document the fact that the investigation is being suspended, until or unless additional information requires reopening it. However, in Montgomery County the language of the form was more extreme in its wording. Here is the exact language of the "208" form for that agency.

> *"I affirm that I will not pursue this matter further, nor will I initiate any criminal prosecution against any persons involved in or responsible for this offense. I will make no further inquiries as to any subsequent investigation conducted by the Montgomery County Department of Police, nor will I voluntarily appear as a witness in any potential criminal prosecution resulting from this complaint."*[7]

Such a form goes well beyond suspending an investigation to actually preventing the victim from making any further inquiries or cooperating with any future investigation and/or prosecution. Clearly, it shuts down the investigation and fuels suspicion that the report was false in the first place. When used over time, this type of form will even damage the reputation and credibility of the law enforcement agency and allow perpetrators to remain free to re-offend. Yet this type of practice is seen in law enforcement agencies across the country. Therefore, best practice is to implement the type of provision seen in the Model Policy (1999) developed in Florida as a result of a statewide, multidisciplinary task force:

> *"The responding officer should not even raise the possibility of, much less have the victim sign, a waiver of prosecution form. Such a waiver may result in the victim's loss of benefits otherwise available to him/her through the Victim Compensation Program. Similarly, the responding officers should*

[7] "Release Authorization" for Montgomery County Department of Police, Maryland.

> *refuse to accept a complaint withdrawal from a victim or suggest in any way that the officer thinks that the victim might not want to prosecute" (p.12).*

Polygraphs, Voice Stress Analysis, and Other Methods for "Lie Detection"

Similar to the signed release waivers, other methods can also create a "false report" by intimidating victims into withdrawing their cooperation or even recanting their report. These methods can include the use – or threat of using – polygraph examinations, voice stress analysis, handwriting analysis, statement validity analysis, and other means to determine whether the victim is telling the truth. Unfortunately, such methods are routinely used with sexual assault victims in some areas of the country, to screen cases so police do not "waste their time" doing an investigation of a report they suspect is false. These screening methods are particularly likely to be used with cases that raise some of the "red flags" described at the beginning of the module.

Yet such methods are widely viewed as inappropriate – both because they are ineffective for this purpose and because they destroy any trust the victim has with law enforcement. This loss of trust will then reduce the likelihood of successful investigation and prosecution, even if the facts and evidence support the charges.

Imagine the following scenario:

> A woman is sexually assaulted and experiences emotional trauma as a result. She then decides to report the sexual assault to the local police department, which increases her anxiety level. The police officer then uses (or threatens to use) some method to determine whether or not she is lying (e.g., a polygraph examination, voice stress analysis, handwriting analysis, statement validity analysis). She interprets this as evidence that the police do not believe her.
>
> This again increases her stress level, which in turn increases the likelihood that the examination or analysis will detect a "lie." On this basis, the police investigator determines that the woman has filed a false report and may even threaten her with prosecution or try to make her pay for the forensic examination that was conducted in her case. The woman is devastated, and either withdraws her cooperation or recants her story. The investigator walks away from the situation, further convinced that most sexual assault reports are false.

Concerns Regarding the Polygraph

In fact, the polygraph is known to be unreliable when used with people experiencing crisis and many argue that they are therefore inappropriate for use with sexual assault victims (e.g., Jordan, 1996; Sloan, 1995). Even J.E. Reid, the developer of the modern polygraph examination offered a long list of factors that can influence the validity of the test results, such as:

- Extreme emotional tension or nervousness
- Overanxiety
- Anger
- Concern over neglect of duty or responsibility that made possible the commission of the offense by someone else
- Involvement in other similar acts or offenses
- Physical discomfort during test
- Adrenal exhaustion
- Physiological and mental abnormalities (Reid & Inbau, 1977)

Many of these factors are extremely likely to be seen with sexual assault victims, rendering the validity of the polygraph examination rather questionable. Yet other factors may be introduced by the examiner that further limit the validity of the polygraph examination, including:

- Excessive interrogation prior to test
- Excessive number of test questions
- Inadequate question phraseology
- Inadequate control questions (Reid & Inbau, 1977)

Because so many of these factors are likely to be seen in a sexual assault investigation, they suggest that polygraph examinations are simply inappropriate for use with sexual assault victims. Based on these concerns, polygraph results are inadmissible in most situations.

Resource: Polygraph

For more information on the polygraph, the National Sexual Violence Resource Center (NSVRC) has published an excellent resource entitled, *The Use of Truth Telling Devices in Sexual Assault Investigations*. They also provide a list of individual state legislation regarding polygraph use.

Prohibition in Federal Law Known as VAWA 2005

Congress originally passed the Violence Against Women Act in 1994, and has reauthorized it several times since, most recently in 2013. One important provision of that federal law is that states will no longer be eligible to receive STOP Violence Against Women Formula Grants unless they can certify that their laws, policies, or practices will ensure that victims of sexual assault are not asked or required to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of such an offense. This provision applies to law enforcement officers,

prosecuting officers or other government officials. In addition, the victim's refusal to submit to such an examination cannot prevent the investigation, charging, or prosecution of the offense. The prohibition applies to adult, youth, and child victims. States had until January 5, 2009 to comply with the law, and it has remained in effect in subsequent VAWA reauthorizations.

Similar Limitations with Other Techniques

Because new technologies such as computerized voice stress analysis (CVSA) operate on similar principles as the polygraph examination, the same advisories apply. In fact, there is currently no technology available to truly "detect lies." Rather, the polygraph examination and computerized voice stress analysis are designed to detect physiological reactions of stress, which may be associated with lying, or may be caused by fear and guilt associated with sexual assault victimization. It is therefore recommended that the polygraph examination or other techniques for lie detection should never be used with victims of sexual assault during the course of the investigation – even if the victim requests it. A competent, evidence-based investigation will most likely reveal the truth much more effectively than these interrogation tactics.

Resource: Polygraph Examinations

There are some states and jurisdictions where the polygraph examination is used strategically with sexual assault victims during the courtroom proceedings, however, this is only after a thorough investigation has been completed and documented. The use of the polygraph examination in this very specific situation is discussed in the IACP Concepts and Issues Paper on sexual assault investigation.

So How Many Sexual Assault Reports Really are False?

Please take a moment to write down what you think is the percentage of sexual assault reports that are actually false. No one will see this estimate, so please be as honest as you can.

> **I believe that approximately _____ % of all sexual assault reports are false.**

In the research literature, estimates for the percentage of sexual assault reports that are false have varied widely, virtually across the entire possible spectrum. This is not surprising given variations in law enforcement practices for determining a complaint to be false and recording it as such: "variations, so diverse, in fact, that some police agencies cannot find a single rape complaint with merit, while others cannot find a single rape complaint without merit" (Kanin, 1994, p.89, emphasis added).

Prior "Research" The Kanin Study

In the most frequently cited study on this topic, Professor Eugene Kanin (1994) reported that **41%** of the 109 sexual assault reports made to one midwestern police agency were deemed to be false over a 9-year time period. However, the determination that the charges were false was made solely by the detectives; this evaluation was not reviewed substantively by the researcher or anyone else. As Dr. David Lisak (2007) describes in his review of the study:

> *"Kanin describes no effort to systemize his own 'evaluation' of the police reports – for example, by listing details or facts that he used to evaluate the criteria used by the police to draw their conclusions. Nor does Kanin describe any effort to compare his evaluation of those reports to that of a second, independent research – providing a 'reliability' analysis. This violates a cardinal rule of science, a rule designed to ensure that observations are not simply the reflection of the bias of the observer"* (Lisak, 2007, p.2).

In other words, there is no way to explore whether the classification of these cases as false was simply made as a result of the detectives' own perceptions and biases, without any real investigation being conducted.

This concern is compounded by the fact that the practice of this particular police department was to make a "serious offer to polygraph" all rape complainants and suspects (Kanin, 1994, p.82). As described previously, this practice "has been rejected and, in many cases, outlawed because of its intimidating impact on victims" (Lisak, 2007, p.6). The reason is because many victims will recant when faced with apparent skepticism on the part of the investigator and the intimidating prospect of having to take a polygraph examination. Yet such a recantation does not necessarily mean that the original report was false. In fact, there is no way that an investigator can make an appropriate determination about the legitimacy of a sexual assault report when no real investigation has been conducted – and the victim is intimidated by the department's policy of making a "serious offer to polygraph" all rape complainants. The determination that a report is false can only be made on the basis of findings from a thorough, evidence-based investigation.

As a result of these and other serious problems with the "research," Lisak concluded in his review that Kanin's (1994) article "is a provocative opinion piece, but it is not a scientific study of the issue of false reporting of rape. It certainly should never be used to assert a scientific foundation for the frequency of false allegations" (Lisak, 2007, p.1).

Methodologically Rigorous Research Finds 2-8%

In contrast, when more methodologically rigorous research has been conducted, estimates for the percentage of false reports begin to converge around 2-8%.

- For example, Dr. David Lisak and colleagues analyzed sexual assaults reported to a major Northeastern university over a 10-year period to determine the rate of false

reporting. Of the 136 reports taken during that period of time, 8 reports, or **5.9%** were found to be false (Lisak, Gardinier, Nicksa, & Cote, 2010).

- In a study of sexual assault cases reported to the Los Angeles Police Department (LAPD) in 2008, researchers found that rate of false reports was **4.5%** (Spohn, White, & Tellis, 2014).

- In a multi-site study of 8 US communities involved in the "Making a Difference" (or "MAD") Project, data were collected by law enforcement agencies for all sexual assault reports received in an 18-24 month period. Of the 2,059 cases that were included in the study, **140 (7%) were classified as false.**

- Interestingly, these statistics even appear to converge internationally. In an analysis of 2,643 sexual assault cases reported to British police where the outcome was known, **8%** were classified by the police department as false reports. Yet when researchers applied the official criteria for establishing a false allegation, this figure dropped to **2%.** These criteria specified that there must be either "a clear and credible admission by the complainant" or "strong evidential grounds" (Kelly, Lovett, & Regan, 2005).

In reality, no one knows – and in fact no one can possibly know – exactly how many sexual assault reports are false. However, estimates narrow to the range of 2-8% when they are based on more rigorous research of case classifications using specific criteria and incorporating various protections of the reliability and validity of the research – so the "study" does not simply codify the opinion of one detective who may believe a variety of myths regarding false reporting.

Of course, this realistic and evidence-based estimate of 2-8% suggests that the American public dramatically overestimates the percentage of sexual assault reports that are false. It's probably not hard to imagine why. For example, we have all seen how victims are portrayed in the media accounts of rape accusations made against popular sports and cultural figures. These media accounts show us just how easy it is for us as a society to believe the suspect's statements (a respected cultural icon) and both discount the victim's statements and disparage her character.

This tendency to overestimate the percentage of false reports can obviously introduce bias into the law enforcement investigation because it causes us to give less credibility to victims and more credibility to suspects. This is especially true if the victim's behavior is seen as risky or problematic and if the suspect seems like a "nice guy" who doesn't look like a stereotypic rapist.

How to Handle the Frustrating Reality of "Real" False Reports

Of course, having demonstrated that the percentage of false sexual assault reports is not as high as many people think, this does not deny their terrible reality. Obviously, false reports do really exist, and they are incredibly damaging both to law enforcement personnel and to the countless victims of sexual assault whose credibility they undermine.

Potential Indicators of a False Report

Sex crimes investigators may already be familiar with some of the training materials that are widely available to describe "indicators" of a false report. Unfortunately, some of these indicators are based on research that is extremely limited and/or inappropriate for this purpose. For example, many were developed on the basis of FBI experience with false reports of stranger sexual assaults. These may not be appropriate, however, with the vast majority of sexual assault reports involving a perpetrator who is known to the victim. Regardless, these training materials typically suggest that the potential indicators of a false report are actually the same stereotypic characteristics of "real rape" described previously. This is not a coincidence.

Consider this: If you were going to file a false report of sexual assault, would you describe the realistic dynamics of sexual assault? Would you really say that you were assaulted by someone you knew, perhaps someone with whom you have had a relationship or even had sex? Would you really say that you were drinking at the time, or perhaps even taking drugs, or engaging in other risky behavior?

Probably not. By describing this type of realistic sexual assault, you might not get the kind of reaction you were looking for, because people might respond to you in the same way they respond to victims of sexual assaults in the real world. That is, you might not be believed, or you might be blamed for the sexual assault yourself. Therefore, if you were going to file a false report of sexual assault, you would probably describe a sexual assault that looks like the stereotype of "real rape" that has been discussed throughout this module.

For this reason, it is not surprising that the potential indicators of a false report are actually the same as the stereotypic characteristics of "real rape." To summarize material developed by McDowell and Hibler (1987), realistic indicators of a false report could potentially include:

> **A perpetrator who is either a stranger or a vaguely described acquaintance who is not identified by name.** As previously discussed, most sexual assault perpetrators are actually known to their victims. Identifying the suspect is therefore not typically a problem. However, victims who fabricate a sexual assault report may not want anyone to actually be arrested for the fictional crime. Therefore, they may say that they were sexually assaulted by a stranger or an acquaintance who is only vaguely described and not identified by name.
>
> **Victim claims of having physically resisted to the utmost.** In fact, many victims do not physically resist during a sexual assault. There are a number of reasons for this. Many victims are simply too surprised or confused to resist, because they are assaulted by someone they know and trust. Often, they do not resist during the sexual assault because they are simply trying to make sense of what is happening. Other victims do not physically resist because they don't trust their own perceptions of what is

happening, or blame themselves for the situation. Of course, physical resistance is not likely among victims who experience dissociation or frozen fright, and those who have been drinking and/or taking drugs. Still other victims do not physically resist because they are too frightened and may even fear that resistance will anger their assailant and increase their risk of injury or death. Therefore, although many sexual assault victims do not physically resist, a false report may include a description by the victim as having resisted vigorously.

Use of a weapon, serious physical violence, and/or signs of injury. Most sexual assaults do not actually involve a weapon, physical violence, or evidence of physical injury. Yet fabricated claims may be more likely to resemble the stereotype of "real rape" in this regard. In some cases, individuals who falsely report a sexual assault may even inflict physical injuries upon themselves to bolster the credibility of their report. These can sometimes be identified by their nature and placement, which suggest that they were self-inflicted and are generally superficial.

An assault involving only penile-vaginal penetration. While other sexual acts are commonly experienced by sexual assault victims, fabricated claims typically include only this "classic" form of rape (i.e., penile-vaginal penetration).

Still other indicators may be based on the lifestyle or history of the reporting party, such as:

- Escalating problems in life or personal relationships.
- A documented history of mental or emotional problems.
- Characteristics of the allegation that "copycat" a highly publicized crime.

While these indicators may therefore raise suspicion that a report of sexual assault may be false, none of them should be considered significant when observed in isolation. In fact, some of these factors are particularly challenging because they are associated both with an increased risk of actually being sexually assaulted and with an increased likelihood of filing a false report. Examples include "escalating problems in life or personal relationship" and "a documented history of mental or emotional problems."

- On the one hand, these factors make an individual more vulnerable to actually being sexually assaulted.

- Yet these same factors may also indicate emotional instability that could potentially lead an individual to file a false report of sexual assault.

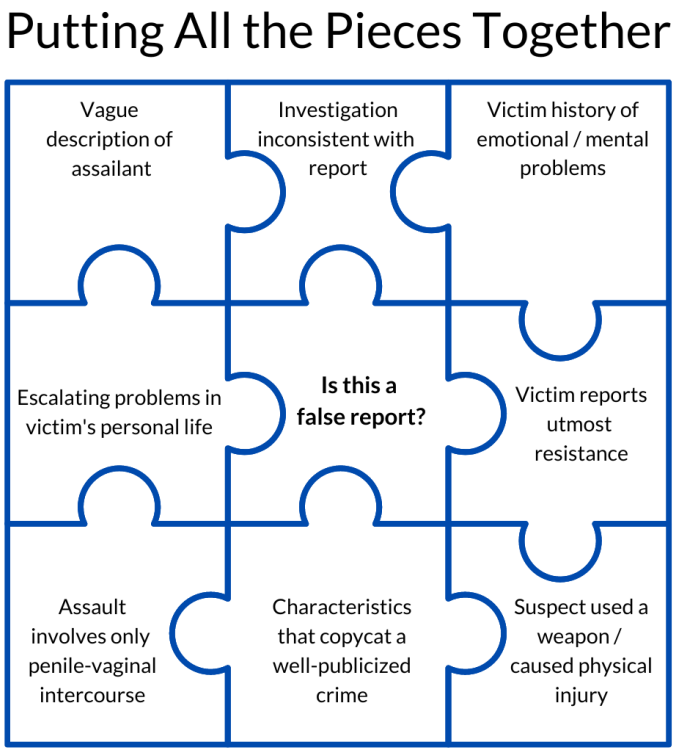
Therefore, a report should only be considered suspect when a number of these indicators are present. The decision that a sexual assault report is false should never be made solely on the presence of one of these indicators. Then the report can only be determined to be false when the investigative facts directly contradict the victim's

account of events. In fact, the best way to identify a false report is to uncover evidence that actually contradicts the victim's account of events or makes it impossible for the sexual assault to have taken place as described.

- For example, there might be no sign of a physical struggle or injury when there logically should be.

- Or perhaps the victim states that she was "hit over the head with a bat and knocked unconscious" or "cut with a knife" yet there is no evidence of such an injury.

There might even be evidence that the victim purchased materials used in the sexual assault or wrote a note or letter that is attributed to the suspect (McDowell & Hibler, 1987). Therefore, the determination that a report is false is the result of "putting all the pieces together."



Responding to a Suspected False Report

Law enforcement professionals should only act upon their suspicion that a sexual assault report is false if these concerns are very serious and they are based on the evidence uncovered during the investigation. As McDowell and Hibler (1987) describe, any effort to challenge the validity of a sexual assault report could be devastating if the suspicion is misplaced and the victim really was assaulted. Such a challenge would certainly destroy the trusting relationship that must develop between law enforcement professionals and victims for the investigation and prosecution to be successful.

- It is therefore recommended that the tone of any challenge be supportive and based on the information provided by the victim.

- This decreases the likelihood of defensiveness and allows for the continued investigation of the report, in case the sexual assault was legitimate, but the information provided by the victim was incomplete, inconsistent, or inaccurate.

When the validity of a sexual assault claim is challenged, the person reporting the crime may react with anything ranging from relief to outrage.

To Prosecute or Not to Prosecute?

If a report of sexual assault is determined on the basis of the investigative findings to be false, investigators must then make the decision regarding whether or not to charge the individual with filing a false report. However, this decision must be made carefully, with consideration of a number of factors. Law enforcement professionals are thus advised to discuss the advantages and disadvantages of prosecution with other professionals involved in the multi-disciplinary response to sexual assault victims (e.g., prosecutors, victim advocates, forensic examiners). For example, some of the **advantages** of pursuing such a charge would include the importance of conducting a thorough investigation and exonerating anyone who is innocent.

- Prosecuting someone for filing a false report may therefore be most appropriate in cases where an innocent person was arrested, booked, and perhaps even subjected to a forensic examination. The failure of law enforcement to pursue charges for filing a false report could create the appearance of bias, by turning a blind eye toward this criminal act.

- Prosecution may also be appropriate in those rare cases that are very high profile and/or involve hundreds of hours of investigative effort. In such cases, some law enforcement agencies have even sought restitution from the person filing the false report for personnel hours consumed during an investigation and even expenses associated with forensic examinations, DNA analysis, and searches of crime scenes and suspects.

- Finally, prosecution may help law enforcement professionals to deal with the negative impact on their own personal and professional well-being. In the view of the person who investigated the case, this is often the most compelling reason to prosecute the individual who filed the false report.

On the other hand, there are also a number of important **disadvantages** to charging someone with filing a false report, even if it is justified.

- For one thing, such a charge is likely to be publicized by the media and this can create problems with future jurors who use it as evidence to confirm their suspicion that many or most sexual assault reports are false.

- Even more important, such media coverage can serve as a serious deterrent for victims of sexual assault who might consider reporting the crime to law enforcement but fear that they will not be believed.

Given the size of the caseload that most sex crimes investigators handle, it seems difficult to justify the inordinate time that would be involved in investigating and prosecuting someone for filing a false report – given that it is typically only a misdemeanor offense.

While it is understandable that investigators might want to prove that the report is false out of a sense of frustration and a determination to get to the truth, this is probably not the best use of limited resources. Rather, the decision regarding whether to charge someone with filing a false report should simply be based on the investigative findings already documented in the case file.

It is also important to keep in mind that most false reports of sexual assault are typically the result of personal and emotional problems, rather than vengeful motives.

- Despite the stereotype, false reports of sexual assault are not typically filed by women trying to "get back at a boyfriend" or cover up a pregnancy, affair, or other misbehavior.

- While there are examples of this kind of false report, the vast majority are actually filed by people with serious psychological and emotional problems.

In these situations, the person files a false report for the attention and sympathy that they receive. This explains why many "real" false reports do not involve a named suspect, because the intention is not to get someone in trouble with the police. Rather, many "real" false reports involve only a vaguely described stranger, so the victim can receive the caring attention of law enforcement officials and social service providers without the fear that someone will be arrested. Clearly, these cases can be extremely frustrating for law enforcement professionals, but they are probably best handled with appropriate referrals for social services rather than prosecution for filing a false report.

Resource: Training Bulletin

In EVAWI's training bulletin *Raped then Jailed*, we focus on the scenario where victims summon the courage to report a sexual assault, only to be disbelieved, mistreated, and later charged (often erroneously) with false reporting or associated crimes such as obstruction of justice, interfering with law enforcement, or providing false statements. Some have even been charged with a felony crime of evidence tampering, for obtaining a medical forensic examination. In other words, the evidence they are accused of tampering with is *their very own body*.

The article explains how these scenarios unfold, highlighting factors that distinguish an interview conducted with a victim versus a suspect in a criminal investigation, and documents how this can result in a coerced recantation or false confession. We then conclude with a discussion of how these injustices can be prevented.

The Importance of Stress Management

It is critical to remind officers and investigators that one very important tool for handling the difficult reality of false reports is to take very good care of yourself. It is critically important for law enforcement personnel to follow widely accepted recommendations for maintaining physical and psychological well-being and reducing the negative effects of stress.

- Law enforcement professionals must be aware of the psychological toll demanded by their jobs and respond promptly when they feel the negative effects of burnout.

- By responding appropriately, law enforcement personnel will be better able to cope with the very difficult challenges of investigating sexual assault cases and handling the frustrating reality of "real" false reports.

Use Caution with Media Portrayals and "War Stories"

It is perhaps especially difficult to maintain an open mind about sexual assault, because the stories about false reports are often highlighted in the media and featured in "war stories" that are told by people both within and outside the criminal justice system. Unfortunately, this causes a problem for three reasons. **First, it is often difficult to tell from the media account or "war story" whether the sexual assault report actually was false.** Typically, there are not enough facts to make this determination.

Just for Supervisors

First-line supervisors play a critical role in ensuring that officers and investigators conduct thorough and competent investigations. They must therefore demonstrate a detailed understanding of sexual assault dynamics, common victim reactions, and proper law enforcement response by subordinates. For example, supervisors need to:

- **Respond to assist officers and investigators with all felony sexual assaults.** These are complex, sensitive, and challenging investigations and supervisors must do all that they can to support the appropriate professional response of their subordinates.

- **Exhibit sensitivity to victims and ensure that they are dealt with properly by all subordinates.** In particular, this will require clarifying their expectations of the appropriate role and responsibilities for law enforcement professionals, and ensuring that subordinates receive the sufficient training, resources, and support to successfully fulfill those expectations.

- **Assist officers and investigators in locating the resources they need to effectively investigate sexual assaults.** If the current resources, training and support are not sufficient to meet this objective, supervisors have the responsibility to assist their subordinates in increasing them.

- **Encourage problem solving partnerships** to enhance cooperation between the law enforcement agency and other community organizations such as rape crisis centers and forensic examination programs using a victim centered approach.

- **Include information on victim services regularly at roll call training.** This type of information is perhaps best provided by a representative from the agency providing those services, such as a rape crisis center or other victim advocacy organization or social service agency. Cross-training can then be enhanced by sending a law enforcement representative to provide information for staff and volunteers at these victim service agencies on the criminal justice response.

- **Develop and encourage community partnerships to reduce the risk of sexual assault.** In addition to improving the community response to individual victims, it is also important for supervisors to work collaboratively to try to reduce the likelihood of future sexual assaults. Community education is best informed by local statistics and information gathered by the various agencies involved.

- **Create opportunities for on-going training to improve the skill level of subordinates for investigating sexual assault.** This may require reviewing and/or revamping the training curriculum for subordinates or helping them to access external training to develop the specialized skills that are needed.

- **Work to increase inter-agency communication between the law enforcement agency and prosecutor's office,** to ease the transition for sexual assault victims moving from the investigation phase to prosecution.

- **Incorporate victim service issues into the evaluations of officers and investigators.** This is a critically important aspect of their performance, and it must be reflected in the system for evaluations, commendations, and discipline.

- **Recognize and reward officers and investigators for providing effective victim services.** Commendations are all too often given only for high profile arrests and heroism in situations of great physical danger. To communicate the value placed on victim service, however, it is important to make sure that recognition is also given for this particular type of heroism on the job.

By reviewing this list, it should be clear that supervisors can do a great deal to create an environment that recognizes and rewards individuals for conducting thorough, evidence-based investigations. Supervisors must set the tone for valuing such investigations, even for the most difficult or murky cases, and never convey the message that they are a waste of time or resources. By debriefing their personnel, supervisors can ensure that their hard work is recognized and that they feel valued for their efforts, regardless of the outcome of the case.

Resource: Expert Interview

In this video interview, Sergeant Elizabeth Donegan explains the role supervisors can play in changing the culture of a unit that may not understand the dynamics of non-stranger sexual assault.

When the Report Really is False

When the investigation does establish that a report of sexual assault is actually false, the officer or investigator often ends up feeling betrayed. Police supervisors and administrators are encouraged to recognize and reward their personnel for conducting thorough investigations that are based on the evidence and support the conclusions and outcomes – even when they are false.

If a suspect was identified and perhaps arrested for an allegation that was later determined to be false, the results of a competent investigation can exonerate a suspect rather than leave doubt in the minds of others. This must therefore be viewed as an investigative success, not a failure, and the officer conducting the investigation should be recognized for his or her efforts.

Establish a Multi-Disciplinary Review Panel

Finally, supervisors should also consider setting up a multi-disciplinary review panel, to discuss cases and investigations with input from other members in the coordinated community response to sexual assault. For example, a review panel might consist of victim advocates, forensic examiners, prosecutors, and others (including representatives from the crime laboratory, sex offender treatment program, and probation/parole). The purpose is not only to review the sexual assault reports that were unfounded within a specified time frame, but also to discuss and review other cases to determine the most appropriate response for victims whose cases are not likely to result in successful prosecution.

Start by Believing Campaign

In 2011, EVAWI launched the Start by Believing campaign to change the way society responds to sexual assault. It is based on decades of research, as described in this module, documenting that disclosures by sexual assault victims often elicit responses of doubt and blame, rather than compassion and support. As this module has discussed, these negative reactions have a number of detrimental effects on victims, and their harmful impact compounds as the number of negative reactions increases (Campbell, 2008 & Ullman, 2010). Indeed, research documents that negative reactions are worse than no reaction at all, in terms of their impact on sexual assault victims (Campbell, Ahrens, Sefl, Wasco, & Barnes, 2001). They can even increase a survivor's risk of sexual assault revictimization in the future (Mason, Ullman, Long, Long, & Starzynski, 2009).

Negative reactions also decrease the likelihood that victims will report their sexual assault to police or access other community services (Ahrens, 2006, Campbell, 2005, & Campbell, Bybee, Ford, & Patterson 2009). One of the primary reasons for this is because victims fear how others will respond (Kilpatrick, Edmunds, & Seymour, 1992), and this fear is very well grounded, as professionals as well as loved ones often do react in harmful ways (Campbell, 2005; Campbell & Raja, 2005; Greeson, Campbell, Fehler-Cabral, 2016; Patterson, 2011).

Even when sexual assault victims report to law enforcement, one-third to one-half will withdraw from the criminal justice process at some point (Frazier, Candell, Arikian, & Tofteland, 1994). This helps to explain why less than 2% of forcible rapes result in an investigation, prosecution, conviction, and incarceration (Lonsway & Archambault, 2012). Clearly, negative reactions – and the fear of negative reactions – help to create the striking pattern of attrition currently seen for sexual assault cases within the criminal justice system. This is why EVAWI launched the Start by Believing campaign.

Resource: Expert Interview

In this video interview, Chief Jerald Monahan discusses how the Start by Believing campaign is impacting law enforcement investigations.

The Campaign and Criminal Justice Professionals

While the campaign has now been adopted by hundreds of communities, across the country and around the world, questions have been raised regarding its appropriateness for criminal justice agencies. Some have questioned whether participation in the campaign might compromise the ability of police and prosecutors to remain objective, potentially opening them up to attacks by defense counsel and/or losing cases at trial.

These are legitimate questions, stemming from our shared concern that sexual assault cases must be investigated and prosecuted based on the evidence.

Resource: Expert Interview

In this video interview, Chief Jerald Monahan shares how the community of Prescott has reached to the Start by Believing campaign.

It is therefore critical to emphasize that our goal with this campaign is not to “railroad” suspects, by encouraging preordained conclusions, or investigations conducted only to confirm an initial hypothesis. Confirmation bias is a real phenomenon, where human beings – including criminal justice professionals – tend to seek evidence that confirms pre-existing ideas and avoids or discredits evidence challenging these ideas (Nickerson, 1998).

Yet the reality is this: When it comes to sexual assault, confirmation bias has long influenced the response of criminal justice professionals in the opposite direction. This

is often described as "implicit bias," and ample evidence suggests that it affects the investigation and prosecution of crime just as it influences responses by the public (Gove, 2011).

Implicit Bias and Criminal Justice Responses

The profound impact of implicit bias is highlighted in new guidance published by the US Department of Justice (DOJ) in 2015 entitled, *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence*. This new DOJ guidance clearly calls on law enforcement agencies to eliminate such bias:

> *In recent years, the criminal justice community has begun to examine compelling social science research that suggests 'implicit biases are predilections held by all [people] that operate largely outside of one's awareness.' A collaboration of researchers at several major universities has found that implicit biases are pervasive, people are often unaware of their implicit biases and implicit biases can predict behavior.*
>
> *It is important for law enforcement to recognize the prevalence of implicit bias and to consider how both explicit and implicit bias might impact the law enforcement response to crimes involving sexual assault and domestic violence.*[8]

Decades of research support this conclusion, by demonstrating that sexual assault reports are often doubted and victims are often blamed for "bringing it on themselves" (Burt, 1980). And while confirmation bias suggests that criminal justice professionals may only seek evidence to support this judgment, most cases never even make it that far. Instead, skepticism of the report is all too often "confirmed" with responses and behaviors of victims, which are seen as evidence that they are lying. This is implicit bias in action.

Implicit bias may therefore help to explain the pattern of criminal justice outcomes described as the "justice gap," where 5 - 20% of forcible rapes are reported to law enforcement, 0.4 - 5.4% are prosecuted, 0.2 - 2.8% yield a conviction, and 0.1 - 1.9% result in incarceration (Lonsway & Archambault, 2012). It may also explain why city after city has come under fire for having hundreds if not thousands of sexual assault evidence kits piled up in police property rooms, never submitted for testing and never used to advance an investigation, prosecution, or exoneration.[9] In fact, the primary problem has

[8] US Department of Justice (2015, December). Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence (p.8).
[9] Reilly, S. (2015, July 16). Tens of thousands of rape kits go untested across USA: Exclusive nationwide count by USA Today reveals abandoned rape evidence. USA Today.
Amnesty International (2007). Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA. New York: Amnesty International.
Dissell, R. (2009, November 16). Cleveland woman says she fought, fled Anthony Sowell in 2008 attack but authorities didn't believe her. The Plain Dealer, Cleveland, OH.
Human Rights Watch (2009). Testing Justice: The Rape Kit Backlog in Los Angeles City and County. New York, NY: Human Rights Watch.

never been that sexual assault evidence kits are not being tested – the more significant problem is that sexual assault cases are not even investigated, primarily because victims are not believed.

This is why the message of Start by Believing is appropriate for criminal justice agencies, just as it is for the public – because case outcomes will only change when police and prosecutors start from the presumption that a sexual assault report has merit, and then follow the evidence through the course of a fair, impartial, and thorough investigation. This does not mean they believe everything victims say, or that they pursue corroborative evidence more vigorously than exculpatory evidence. It does not mean, "Always believe victims." It simply reflects the basic logic of why we refer it as a "crime report" and why we collect information and evidence from "victims" and "witnesses." If there was no starting presumption that a crime report had merit, no investigation would be conducted at all.

Resource: Expert Interview

In this video interview, Sergeant Joanne Archambault (Ret.) answers the question: "How can I say that I believe victims? Don't I need to remain objective?"

Thorough Investigation as Due Process

In fact, a thorough investigation is the only way to achieve due process, because it is the only way to include or exclude suspects, hold perpetrators accountable, and exonerate the wrongfully convicted. If no investigation is conducted, the report simply remains a question mark, with no basis for a legitimate conclusion. EVAWI is against bias of any kind during the criminal justice process, and we believe that the position of Start by Believing is not different in any fundamental way from any other crime. Only the explicit statement is new, signaling that the old way of doing business is no more.

This starting orientation also reflects the unique dynamics of sexual assault, and the growing recognition that trauma significantly impacts victim behavior and memory. Specifically, victim interviews are more likely to be successful when they are conducted with an expression of genuine empathy and an awareness that memories may not "make sense" at first. The process of piecing together a coherent recollection of sexual assault takes a great deal of time, patience, compassion, and support.

Human Rights Watch (2010). "I Used to Think the Law Would Protect Me:" Illinois' Failure to Test Rape Kits. New York, NY: Human Rights Watch. Human Rights Watch (2013). Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia. New York, NY: Human Rights Watch.
Krakauer, J.R. (2015). Missoula: Rape and the Justice System in a College Town. New York: Doubleday.
Senate Judiciary Committee (2010). Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases. Subcommittee on Crime and Drugs, September 14, 2010.
Stevick, E. & Hefley, D. (2011, November 4). Rape wasn't a lie Lynnwood Police now say. Everett, WA: The Herald.
Walters, J., (2012, December 15). Sara Reedy, the rape victim accused of lying and jailed by US police, wins $1.5m payout. New York: The Guardian.

Resource: Expert Interview

In this video interview, Chief Jerald Monahan shares the way he responds when he is questioned on whether law enforcement officers can Start by Believing and be objective.

As documented in research conducted by Dr. Rebecca Campbell and colleagues, two elements must come together for a sexual assault case to have a chance for criminal prosecution. First, there has to be a thorough, evidence-based investigation. Second, the victim has to be willing and able to participate in the criminal justice process:

> *Our interviews with both survivors and police revealed that victims can give more detailed statements to law enforcement, remember more information, and can otherwise engage more fully with the investigation when they are not so traumatized and have adequate support (Campbell, Bybee, Ford, & Patterson, 2009).*

This may be especially true for adolescent victims, because the support of responding professionals, as well as friends and family members, largely determines whether they will become engaged, and remain engaged, with the criminal justice system *(Campbell, Greeson, Bybee, Kennedy, & Patterson, 2011).*

When victims are approached from the perspective that they are lying, they will often be unable – or unwilling – to provide the type of information needed for law enforcement to successfully investigate the case. Even a "neutral" stance will often be insufficient to establish the trust and rapport victims need to share memories that are confusing, painful, or humiliating. The DOJ guidance thus illustrates how investigators might set the stage to ask victims difficult questions, for example about their drug or alcohol use:

> *I know that this question is difficult to answer and I want you to know I am only asking you this question to get a clear picture of what you've experienced. I am very sorry about what has happened to you and I do not think that you are responsible for what happened. Any questions I may ask about alcohol or drug use by you or the offender I'm only asking to understand what happened (US Department of Justice, 2015).*

Existing Policy Guidance

None of these arguments are new. In fact, they have been reflected in policy and training materials for decades. To illustrate, the *Sexual Assault Response Policy and Training Content Guidelines* published by the International Association of Chiefs of Police states that, "No officer or investigator should ever assume that a complaint is false," and that officers should begin by expressing "sympathy and an interest in the victim's well-being" as well as supplying victims with contact information for resources such as victim advocacy. The interview should then proceed by asking victims "what they are able to report or remember about their experience," including how they "felt

during the incident (IACP, 2015)." These are standard interviewing practices for law enforcement, but they clearly operate from a starting presumption that the report has merit. Officers are not advised to express sympathy only after the report has been corroborated, or to ask victims what they remember experiencing, if the incident really happened. In other words, national policy guidance implicitly states that officers should Start by Believing.

This presumption is even more explicit in the new DOJ guidance. When it was released in 2015, US Attorney General Loretta Lynch stated that the new guidance is designed to "help state, local, and tribal authorities more fairly and effectively address allegations of domestic violence and sexual assault."[10] The guidance itself then explains:

> *Explicit and implicit biases, including stereotypes about gender roles, sexual assault, and domestic violence, are embedded in our culture and can affect people in all different professions. With respect to policing, these biases may affect law enforcement officers' perceptions of sexual assault and domestic violence incidents and prevent them from effectively handling allegations of these crimes (US Department of Justice, 2015).*

The guidance goes on to describe specific practices that could constitute bias:

> *Gender bias, whether explicit or implicit, conscious or unconscious, may include police officers misclassifying or underreporting sexual assault or domestic violence cases, or inappropriately concluding that sexual assault cases are unfounded; failing to test sexual assault kits; [and] interrogating rather than interviewing victims and witnesses.*
>
> *In the sexual assault and domestic violence context, if gender bias influences the initial response to, or investigation of the alleged crime, it may compromise law enforcement's ability to ascertain the facts, determine whether the incident is a crime, and develop a case that supports effective prosecution and holds the perpetrator accountable (US Department of Justice, 2015).*

Case examples are then provided to illustrate how this might play out in reality:

> *A woman who has been known to engage in prostitution flags down a police officer who frequently patrols her neighborhood. She reports to the officer that she was just raped. The police officer on duty writes down her statement, but, when he returns to the police station, he immediately classifies the complaint as 'unfounded,' and takes no further action, because of the woman's sexual and criminal history (US Department of Justice, 2015).*

[10] Comments by Attorney General Loretta E. Lynch in a press release issued 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.*

> *A tall man, in good physical condition and with no visible injuries, goes to the local police precinct and reports that his boyfriend, with whom he lives, has been sending him threatening text and voice messages over the past several weeks, and that, the night before, his boyfriend had assaulted him. The responding officer looks at the man skeptically and tells him that he's not sure that he can take a report based on the situation. The officer tells the man to think carefully about whether he has a crime to report and to come back another day if he still believes he needs assistance (US Department of Justice, 2015).*

Eliminating gender bias is central to increasing reporting rates, holding more offenders accountable, and preventing additional crimes. The bulk of the DOJ guidance thus translates this principle into law enforcement practices such as the following:

> *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 judgements 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, causing the victim to recant the allegation of sexual assault by blaming the victim for being assaulted or for making unwise or dangerous choices (US Department of Justice, 2015).*

In other words, to avoid expressing gender bias during the course of a sexual assault investigation, law enforcement officers and investigators should Start by Believing.

Not Necessarily "I Believe You"

The intention of the campaign is to encourage individuals to start from an orientation of believing, but this does not necessarily mean saying the exact words, "I believe you." For criminal justice professionals, it could simply mean using phrases like, "I'm sorry this happened to you." The important issue is not the exact words that are used, but the fact that victims are treated with compassion and respect, and their reports are handled professionally and fairly – instead of communicating the message (either explicitly or implicitly) that they are not believed, and their report will not be taken seriously.

This is a common sense argument, but it is also supported with research. In a 2011 study, Dr. Debra Patterson demonstrated that the way law enforcement investigators interview victims can have an impact – not only on the way victims feel – but also on the quality of information gained, and even the likelihood of prosecution. Based on in-depth interviews with 20 female sexual assault victims, analysis revealed that cases were more likely to be prosecuted when the detective took time to build rapport with the victim,

making sure she felt safe in the interview and then asking questions at a pace that was comfortable for the victim and responsive to her distress.[11]

In fact, many of the women in the study whose cases were prosecuted described the style of questioning by detectives "as gentle by encouraging them to 'tell more,' instead of 'demanding' answers (Patterson, 2011)." Victims also described positive reactions to the feeling that they were believed by the detective interviewing them, either because the detective explicitly said so or because it was clear from the level of investigative effort being expended. As one victim described:

> *The detectives, they believed me; they never said, I believe you. But just their work ethic and how they handled themselves and how they talked to me and treated me is you can tell… they just made me feel so good and that I was doing the right thing, and I mean to me there was no doubt that they ever thought for a minute that I was lying, never for a minute* (Patterson, 2011).

Resource: Expert Interview

In this video interview, Dr. Wendy Patrick discusses whether a jury will be influenced when a prosecutor believes the victim.

Medical Forensic Examiners

This leads to the separate but related question of whether Start by Believing is an appropriate message for health care providers, particularly those who conduct medical forensic examinations. Not only is the message equally appropriate for these professionals, it is the way they do business in every patient encounter. When a patient tells her doctor that her stomach hurts, the doctor will begin from that assumption – while remaining open to alternative possibilities. Similarly, when a patient says he was sexually assaulted, treatment and services will begin from that starting presumption.

In fact, it is not the role of a health care provider to make a determination regarding whether or not a patient has been sexually assaulted. That is a legal question. The health care provider's role is simply to provide testing, treatment and services, which can include forensic evidence collection when requested. If the health care provider is later called to testify in court, their conclusion will simply be to determine whether that evidence is or is not "consistent" or "congruent" with the history given by the patient.

Focus on the "Bigger Picture"

Before concluding, it is worth returning to the bigger picture, to understand concerns relating to the possibility that an officer, investigator or prosecutor may be challenged in court – or a case may be lost – based on their participation in a Start by Believing

[11] While this study was conducted with only female victims, it is reasonable to believe that the conclusions would also apply for male victims as well. The question remains for future research.

campaign. First, although we have been told that detectives have been challenged and cases have been impacted by a law enforcement agency's participation in the campaign, no one has yet provided us with information on any such case. If you know of a case like this, please contact us so we can obtain a copy of the trial transcript. We can only respond appropriately when we can actually evaluate the case materials.

Second, just because this allegation is made does not mean it is true. It is not sufficient to simply offer a sweeping statement that someone is biased because they participated in a Start by Believing campaign. Can the claim be supported with any actual evidence of concrete steps that were taken – or not taken – as a result? Were there specific leads that an officer failed to pursue? Was a potential witness not interviewed? Was an evidence sample not collected? Was a particular piece of information or evidence ignored by the investigator, or withheld from the defense by a prosecutor? The response to any such claim of bias will involve demonstrating that the investigation or prosecution was conducted following best practices. Police and prosecutors should stand their ground, explaining the procedures followed during the investigation and prosecution, and showing how these reflect their professional obligations and ethics.

Rising to the Challenge

Allegations of bias are not new, and they are not unique to this campaign. Investigators and prosecutors have long had to defend against claims of bias, even for actions as benign as saying to a sexual assault victim: "I'm sorry this happened to you." Just as we have learned how to explain the rationale for such simple expressions of human compassion, so too can we can explain this campaign so jurors can understand it.

This is why EVAWI will continue to work to provide criminal justice professionals with the strategies and tools they need to defend against such challenges of bias. In other words, we believe that police and prosecutors do not need to "throw up their hands," just because a defense attorney raises a challenge based on the Start by Believing campaign, or any other aspect of a sexual assault investigation or prosecution. That is their job, and in fact their ethical responsibility. It does not mean they will win the argument. In fact, we believe this is a debate worth having, because people can take different stands on this campaign, while working toward the same goal of improving our response to sexual assault.

Creating Real Change

We do need to remember, however, that this concern pertains to the tiny fraction of sexual assault cases that actually make it to trial. The purpose of this campaign is to open the doors for the vast majority of sexual assault victims who are too afraid to report the crime and participate in the criminal justice process. They know the defense attacks they face might delve into the deepest and darkest corners of their lives, potentially revealing some of their most intimate, painful, and humiliating experiences. Start by Believing is for them.

Victims of sexual assault have long feared that their report will be viewed with suspicion and they will be treated as liars. Those fears are unfortunately very well grounded. All too often the responses of professionals and the public have been based on common myths and misconceptions, rather than the realistic dynamics of sexual assault. All too often victims have been interrogated rather than interviewed. It is time to do things differently. As the old saying goes, "You have to see it to believe it." Yet the opposite can also be true. When it comes to sexual assault, "You have to believe it to see it."

Resource: Expert Interview

In this video interview, Detective Justin Boardman discusses his opinion on whether he believes victims see the Start by Believing campaign as supportive.

Conclusion

One of the most important challenges for successfully investigating and prosecuting cases of non-stranger sexual assault is the idea that many – or even most – reports are false. As long as this belief is accepted by law enforcement professionals, prosecutors, jurors, and others, our efforts to improve the criminal justice response to sexual assault will have only limited impact. Only those cases that look like our societal stereotype of "real rape" will be successfully investigated and prosecuted.

To move beyond this issue of false reporting, one of the most important steps we can take is therefore to recognize that the "red flags" that raise suspicion in the minds of most people actually represent the typical dynamics of sexual assault in the real world. Once we accept this reality, we can begin to move beyond this issue to more successfully investigate and prosecute sexual assault cases, especially those involving non-strangers.

Directly confronting this issue of false reporting answers those questions that have historically created a bigger hurdle for sexual assault victims than any lack of training or experience on the part of law enforcement professionals. If there is one goal for this module, it is to accept that the training throughout this entire curriculum is relevant for every single sexual assault case reported to law enforcement, no matter how murky, ambiguous, or just plain difficult. Perhaps no one articulates this goal more clearly than Chief Paul Cell, President of the International Association of Chiefs of Police (IACP). We therefore conclude this module with his powerful and eloquent words.

Resource: Video

In this interview, Chief Paul Cell highlights the steps law enforcement can take when responding to a sexual assault case to ensure that all victims are treated "like family."

For More Information

A number of helpful tools have been developed by the International Association of Chiefs of Police (IACP), as part of their Police Response to Violence Against Women Project. These tools include a *Model Policy on Investigating Sexual Assaults,* a supporting *Concepts and Issues Paper,* a *Supplemental Report Form,* and a *Sexual Assault Report Review Checklist* for sexual assault that includes helpful guidelines for case documentation, effective techniques for victim and perpetrator interviews, and a pocket "tip" card for officers. There is also a training video that can be used along with the corresponding discussion guide.

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