



End Violence Against Women International  
(EVAWI)

# Effective Report Writing: Using the Language of Non- Consensual Sex

Sergeant Joanne Archambault (Ret.)  
Kimberly A. Lonsway, PhD

With contributions by Detective Scott Keenan (Ret.)

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## **OnLine Training Institute**

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## Authors

**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. Kimberly A. Lonsway** earned her PhD in the Department of Psychology at the University of Illinois, Urbana-Champaign. Her research career has focused on sexual violence and the criminal justice and community response systems, and she has written one book and over 100 training modules, bulletins, research articles, book chapters, and government reports on related topics. She has also trained thousands of professionals around the world, testified as an expert witness in criminal and civil court cases, and volunteered for over 15 years as a victim advocate. In 2012, she was awarded the first-ever Volunteer of the Decade Award from the Sexual Assault Recovery and Prevention (SARP) Center in San Luis Obispo, California. In 2003, Dr. Lonsway was invited to serve as a Founding Director for End Violence Against Women International (EVAWI), a fledgling nonprofit dedicated to improving criminal justice responses to sexual assault and other forms of gender-based violence. In 2004, she assumed the role as Director of Research, and she has since helped grow EVAWI into the premiere criminal justice training organization on sexual assault investigations, providing superior training and resources, influencing national policy, and mentoring a new generation of leaders.



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- Joan Zorza, Editor of Domestic Violence Report and Founding Editor of Sexual Assault Report, Washington, DC

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## Course Objectives

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

- Recognize the purposes of police reports in sexual assault cases
- Utilize report writing techniques that successfully support the prosecution of sexual assault cases, including:
  - Summarize all of the evidence uncovered during the course of the investigation
  - Recreate the reality of the sexual assault from the victim's perspective
  - Record witness statements, especially those that corroborate the victim's account
  - Document suspect statements, especially those that corroborate the victim's account or provide an implausible or even absurd version of reality
  - Tape interviews with victims, witnesses, and suspects
  - Effectively document other evidence in the case
- Utilize report writing techniques that successfully overcome the three primary strategies used by the defense in sexual assault, including:
  - Impeachment by omission
  - Impeachment by contradiction
  - Motions to suppress



## Introduction

Training for law enforcement often focuses on investigating sexual assault cases with an eye toward successful prosecution. Yet we know that many sexual assault cases do not result in formal charges, and even those cases that go to trial often end up in an acquittal. Why is this?

- In television dramas, the prosecution often loses its case because the defense produces evidence or a witness that was missed by the police investigation. This often happens at the last minute, with a dramatic conclusion that the defendant is actually innocent.
- In real life, however, defense attorneys rarely uncover evidence or witnesses that were missed during the law enforcement investigation. Rather, defense attorneys often win these cases because they attack the credibility of the victim (based on societal myths and misunderstandings as discussed in other modules) or because they attack the credibility of the investigation itself. Unfortunately, this attack is all too often based on ammunition that comes from the investigator's own reports.

In other words, although there are many reasons why sexual assault cases often do not result in formal charges or guilty verdicts, one factor is that police reports are all too often poorly written.

This is particularly unfortunate when the law enforcement investigation was done well, but the investigator's written report fails to communicate effectively to prosecutors, judges, and jurors.

The truth is that no matter how good a law enforcement investigation is – no matter how thoroughly the crime scene evidence was processed, how well the victim was interviewed, or how good the suspect's statement was for prosecution – sexual assault cases will not result in formal charges or guilty verdicts if the investigator's report is poorly written or is missing important information.

Clearly, law enforcement professionals must conduct a thorough investigation and provide the prosecutor with the type of thorough, written report that is needed to support the charges filed. Yet very few have been provided the training in how to do this effectively, especially in the area of sexual assault. This module is designed to address this problem.

Of course, these issues of effective report writing are relevant for any type of investigation. However, they are especially critical for sexual assault cases because of the many societal myths and misunderstandings that surround this particular crime. The report prepared by a law enforcement investigator must therefore confront these myths and misunderstandings.

### Resource: Expert Interview

In this [video interview](#), Dr. Wendy Patrick explains the reasons why investigating sexual assault crimes is different than other crimes.

This module is designed to help investigators write a report that will support successful prosecution. The module thus begins by outlining the many purposes of an investigator's report. We will then describe various techniques for effective report writing, such as:

- Summarize all of the evidence uncovered during the course of the investigation
- Recreate the reality of the sexual assault from the victim's perspective
- Record witness statements, especially those that corroborate the victim's account
- Document suspect statements, especially those that corroborate the victim's account or provide an implausible or even absurd version of reality
- Tape interviews with victims, witnesses, and suspects
- Effectively document other evidence in the case

The module will then conclude with a discussion of how to successfully overcome the three primary strategies used by the defense in a sexual assault case. These include:

- Defense strategy #1: Impeachment by omission
- Defense strategy #2: Impeachment by contradiction
- Defense strategy #3: Motions to suppress

## The Many Purposes of Sexual Assault Documentation

Report writing may not be the most interesting or glamorous part of a law enforcement investigation, but it is arguably one of the most important. In fact, the written report of a sexual assault case serves a number of key purposes, including:

- Recording and transmitting information regarding the case
- Providing a written narrative of the facts and findings from an investigation
- Providing the foundation upon which a prosecutor will build a case, and
- Becoming the official memory of the department for use in trials, appeals, and civil suits

Given these many different purposes, it is clear that effective documentation of any sexual assault case must (1) summarize all of the evidence uncovered during the course of the investigation, (2) recreate the entire reality of the sexual assault from the perspective of the victim, and (3) document critical statements by the suspect(s) and witness(es).

## Techniques for Effective Report Writing

### Summarize All of the Evidence from the Investigation

Because sexual assaults rarely involve eyewitnesses, the evidence documented with a thorough law enforcement investigation typically serves as the primary “witness” in the case. The written report prepared by the law enforcement investigator must therefore include a detailed summary of all of the evidence gathered during the course of a sexual assault investigation. This will even include a summary of the findings and conclusions made by other members of the Sexual Assault Response Team, such as forensic examiners and criminalists (crime laboratory personnel).

- Investigators must never rely on the ability of the reader to “put the pieces of the puzzle together” or “connect the dots” with information from the many stages of the investigation and the different professionals involved.
- Too many sexual assault cases are declined for prosecution or end up with a verdict of not guilty simply because the police report did not effectively summarize all of the evidence uncovered during the course of the investigation.

A brief summary or synopsis of the entire investigation is going to be ineffective to show its evolution across time. Perhaps most important, it will not highlight the changing statements made by the suspect over the course of the investigation. Always remember that the investigator’s report is the only place where all of the evidence can be summarized and placed in the entire context of the law enforcement investigation as it unfolded over time.

By summarizing all of the evidence uncovered during the investigation – including evidence from the crime scene(s), forensic examinations of the victim and suspect, and statements provided by the victim, suspect, witnesses, and others – the police report can in fact “put all of the pieces of the puzzle together” and “connect all the dots.”

### Recreate the Reality of the Sexual Assault from the Victim’s Perspective

It is not only important to summarize all of the evidence uncovered during the course of a sexual assault investigation, it is equally important to recreate the entire reality of the sexual assault from the perspective of the victim.

While the role of law enforcement is as an unbiased fact finder, a key component of this process is to document and seek to corroborate every aspect possible from the victim's account of events. Of course, this same effort will also be made to investigate the facts provided to law enforcement by suspects and witnesses as well. The bottom line is that investigators must be neutral fact finders and that any decisions and conclusions should be evidence-based.

There are a number of invaluable techniques investigators can utilize to recreate the entire reality of the sexual assault. In this section, we will review some of these techniques in depth, and then we will apply them using a case scenario taken from a real case involving an 18-year old female victim who was sexually assaulted by several college-aged men. This case resulted in an acquittal, and review of the case documentation suggests that it was not due to failures in the investigation so much as problems with the written reports. It therefore provides a helpful illustration of many of the points to be made in this module, as we review the actual case documentation and imagine how it might have been prepared to more effectively support the goal of successful prosecution.

### Resource: Expert Interview

In this [video interview](#), Detective Carlton Hershman (Ret.) describes the most important things a patrol officer should keep in mind when responding to a sexual assault.

### Preserve the Exact Words Used by the Victim

Unfortunately, law enforcement investigators have all too often failed to achieve this technique by “sanitizing” the statements of those interviewed during a sexual assault investigation. This is most often done with victim statements, when investigators and/or prosecutors replace the victim's slang or street language with terms from medicine or law enforcement (Renner, 2002). The reasons for this practice include:

- Officers may attempt to make the report more “presentable,” sometimes at the direction of their supervisors.
- Prosecuting attorneys may also support this practice, because they fear that victims who use coarse language, slang, or street language will be seen as less credible, less sympathetic, and less “innocent” in the minds of judges and jurors.

However, we believe that this is a big mistake. The real words used by victims, suspects, and others are actually critical to truly reconstruct the sexual assault as experienced by the victim. They must therefore be preserved in the report written by the investigator.

Let's begin with the case scenario by reviewing an example of how the exact wording of the victim (and suspect) can better recreate the reality of a sexual assault. Here is a sample of what a sexual assault report might look like, where statements of the victim have been “sanitized:”

*The suspect tried to have anal sex with her when he first turned her face down. She told him not to and then reached back and grabbed him. The victim said it was very painful and although she told the suspect to stop, he had anal sex with her anyway.*

Now let's see how the exact wording from the victim and suspect can better recreate the reality of the event, particularly from the perspective of the victim. (Please note, some of this alternative wording is based on information that was "made up" for this training module, to fill in gaps of information that are not available to us based on the review of the existing materials).

*The suspect tried to force his penis into her rectum. She yelled at him, "Don't!" and she tried to grab him to stop him. The victim described the sexual assault as very painful, and she pleaded with the suspect to "stop it," "it hurts," and "you're scaring me!" Although she repeatedly begged the suspect to stop, he forced his penis into her rectum anyway. He said, "you know you like it."*

As you can see, preserving the exact wording used by the victim (and suspect) in the investigator's report can help to reconstruct the entire reality of the sexual assault as experienced by the victim.

### **Describe What the Victim Was Thinking and Feeling**

Another strategy for effective report writing is to include details about what the victim was thinking and feeling – before, during, and after the sexual assault. Again, this serves to recreate the entire reality of the sexual assault and helps prosecutors, judges, and jurors to understand the victim's behavior. This can be especially helpful for others to see why the victim might have acted in ways that seem counter-intuitive. In fact, sexual assault victims often respond in ways that may not initially make sense, but are understandable with an explanation of what the victim was thinking and feeling at the time. This is perhaps particularly true for victims who experienced dissociation or "frozen fright" at the time of the sexual assault. So, let's see what this might look like. Again, we'll use a sample statement from the case scenario, which is typical of the kind of statement that might be included in a report written on a sexual assault case:

*She took her clothes off. She said they each took their clothes off by themselves.*

When the investigator states that "they each took their clothes off by themselves" this creates a certain image in the mind of the reader. This is described as a "word picture" by Professor Ed Renner (2002), when the language that is used communicates a certain image – which may be totally different from the reality of the situation. In this example, the "word picture" involves two people voluntarily taking their clothes off, and it implies that this act was consensual. Yet this is a very different picture than the event that was experienced by the victim.

By describing the events in more detail, and including information about what the victim was thinking and feeling at the time, a very different “word picture” will likely emerge. To see what we mean, let’s review this alternative summary of the same event:

*He threw her on the bed, took his shirt off, and ordered her to take her clothes off. She said she didn’t want to, but she explained that she did it because she didn’t know what else to do, and she was feeling terrified of what he might do if she didn’t. The suspect kept demanding that she take her clothes off and she said she was feeling extremely frightened.*

It is easy to see how this type of report writing can better support prosecution, because it creates a very different “word picture” for prosecutors and jurors. Of course, documenting what the victim is thinking and feeling requires that investigators actually ask victims about this during their interview. As discussed in the module on Victim Interviewing, this is best done with open-ended prompts asking victims what they were thinking and feeling at various points before, during, and after the sexual assault. This information can then be included in the written report, in order to recreate the entire reality of the sexual assault from the victim’s perspective.

### **Use Descriptive Wording When Accurate and Appropriate**

Using descriptive wording is another way to construct a “word picture” that more accurately describes what happened to the victim. For example, one strategy is to simply replace neutral words such as “said,” “told,” or “asked” with any term that is more accurate and descriptive – based on the victim’s statement and other evidence uncovered during the investigation.

- If the investigator’s report states that “the victim told the suspect to stop,” it might be more accurate in some cases to state that the victim “begged” or “pleaded with” the suspect to stop.
- If the report states that the suspect told the victim to take off her clothes, this might be more accurately described as “ordering,” “insisting,” or “demanding.”

Another easy technique is to describe other actions of the victim and suspect that were taking place at the same time, to create a complete picture of what was happening.

- If the victim was crying or shaking her head over and over again while she said “no,” this is obviously an important detail to include in the written report.
- If the suspect had the victim pinned down on the bed while he ordered her to take off her clothes, this would similarly be important to record.

These simple changes in wording can go a long way toward recreating the reality of the sexual assault from the victim’s perspective, and providing a context for understanding what the victim was thinking and feeling at the time.



## Document the Entire Context of Force, Threat, or Fear

Another important component of effective report writing includes documenting the entire context of force, threat, or fear that the suspect used to commit the crime. This would include describing all of the elements that contributed to the victim's experience of force, threat, or fear, such as: the suspect's relative size or strength; prior history of physical or sexual abuse; physical isolation; the victim's mental incapacitation due to drugs, alcohol, or a cognitive disability; the victim's experience of dissociation or "frozen fright;" or factors increasing the victim's vulnerability, such as youth, inexperience, subordinate position, or immigration status.

Let's look at an example of this from the case scenario:

*When the suspect got in front of her he told her, "Dome me," which is a slang term for oral sex. She just looked at him. He said, "You have to do it." He had his hand on the back of her head but didn't force her head down. I asked her why she did it, if he didn't physically force her.*

As described in the module on Victim Interviewing, it is easy to see how a sexual assault victim might feel doubted or blamed with a question about "*why she did it, if he didn't physically force her.*" While investigators may ask such a question with the best of intentions – to assist the victim in articulating the context of force, threat or fear in the situation – it is clear that a more open-ended prompt will often be more effective. In this situation, the victim's thoughts and feelings would have explained "*why she did it*" given the extreme level of fear she was experiencing. To illustrate, the victim's statement in this case included the following detail, which should have been included in the investigator's report:

*At one point, the victim believed the suspects were going to kill her.*

This type of information goes a long way toward answering the question of "*why she did it, if he didn't physically force her.*" In this case, it was included in the victim's statement yet not highlighted in the investigator's report. Such a statement is critical, as it corroborates the use of force, threat, and fear.

Worse, by recording such a question in the written report ("*why she did it, if he didn't physically force her.*") the investigator has inadvertently conveyed a sense of doubt and blame in the report.

A better response for investigators would therefore be to provide an open-ended prompt for victims to explain the entire context of force, threat, or fear that was used to commit the sexual assault. For example, investigators can ask victims open-ended questions such as the following:

- *What thoughts did you have at that point?*
- *What were you feeling when he demanded that you do that?*

- *What were you feeling when he did that?*

Or, if the victim has already described the context of force, threat, or fear present in the situation, the investigator can respond simply by asking questions such as:

- *How were you feeling then?*
- *Compared to before, were you feeling more or less scared, or about the same?*
- *Were you feeling scared for the same reasons as before?*

These questions will help the victim to articulate the basis for the force, threat, or fear that the suspect used to commit the sexual assault. These details must always be highlighted in the investigator's written report, because they will help to overcome the consent defense that is virtually inevitable in such cases.

As a side note, the investigator in this case also could have asked the victim whether or not she knew what the term "dome me" meant at the time of the sexual assault. If she did know what it meant, this is information to record in the report. If she did not know what it meant, however, this fact is especially critical because it helps to explain her reaction (thereby reconstructing the reality of the sexual assault from her perspective) and may make her appear more "innocent" in the eyes of prosecutors, judges, and jurors.

Other questions can also be specifically used to help articulate the context of force, threat, or fear that was present in the situation – in order to overcome the consent defense that should be expected in cases of non-stranger sexual assault. To illustrate, consider the following statement, in the case scenario:

*When describing the sodomy, on a scale of 1 to 10 the victim said she placed the pain at a "10", the worst pain possible.*

With this question, the investigator has done an excellent job of helping the victim to articulate what she was experiencing, and it shows the type of detailed information that can be elicited during a successful victim interview. It is therefore a particularly good prompt for investigator's to use in a victim interview. However, it is critical to record both the question and victim's response in the written report.

This context of force, threat, or fear can also be documented effectively using descriptions provided by other suspects or witnesses. To illustrate, let's look at another statement found in the same real case:

*One of the co-defendants said he saw a suspect with his hands around the victim's head ramming her head down onto his penis. While the first guy was behind her, he kept pushing her down on her back. He also kept slapping her butt on the right side, where she now has a red mark. Suspect said he would quit when he was done.*

This summary creates a vivid “word picture” of a sexual assault that involves a great deal of force, threat, and fear. This type of witness statement (actually made by a co-defendant) can serve three different purposes: (1) supporting the element of force, threat, or fear that is necessary to establish the sexual assault crime in this case, (2) recreating the entire reality of the crime from the perspective of the victim, (3) and corroborating the victim’s description of events.

### Use the Language of Non-Consensual Sex

Another crucial strategy is to always use the language of non-consensual sex when writing a sexual assault report. One of the most common mistakes that is made in case documentation may be that the acts involved in a sexual assault are described in terms that convey a “word picture” of consensual sex (Bavelas & Coates, 2001; Renner, 2002). This language fails to convey the reality of the event, and therefore makes successful prosecution extremely unlikely.

- For example, police reports all too often include terms that convey positive, mutual interactions such as “sexual intercourse,” “oral sex,” “fellatio,” or “cunnilingus.”
- Or they include inappropriate terms of affection, such as “fondling” or “caressing.”
- Perhaps worst of all, police reports often describe the victim as “performing” or “engaging in” sexual acts, portraying the victim as either a mutual participant or possibly even the primary actor in the situation.

To remedy this situation, law enforcement investigators need to use two primary strategies. Both rely on the language of non-consensual sex to create a totally different word picture of events. For example, instead of using terms such as “sexual intercourse,” “oral sex,” “fellatio,” or “cunnilingus,” law enforcement investigators can do one of two things.

- Depending on the context, it is sometimes appropriate to use terminology from the penal code, such as “rape” or “sexual assault.”
- Alternatively, the best strategy is often to simply describe the parts of the body and the things the victim was forced to do with those parts of the body.

This is perhaps best illustrated using some practice exercises, so let’s turn to the same case, to see a common type of description used by investigators:

*He ripped her nylons open between her legs and then started going down on her. I asked her if she meant oral sex and she agreed. She then told him no and asked him not to do that. However, he continued to perform oral sex on her.*

At first glance, this seems to be an appropriate summary of the victim's statement. In fact, the investigator applied several of the techniques discussed in the module on Victim Interviewing.

- First, the investigator preserved the victim's exact wording by stating that the suspect "started going down on her."
- Then, the investigator responded to the victim's slang term by clarifying what she meant. When the victim said that he "started going down on her" the investigator sought to clarify what the victim meant by asking if this meant "oral sex."

Both of these are good techniques, but they fail to describe an act that is nonconsensual by describing it as "oral sex." In our society, "oral sex" is typically used to refer to consensual sexual activity, and it therefore conveys a "word picture" of positive, reciprocal sexuality. A better strategy is to use the language of non-consensual sex to describe the parts of the body, and what the victim was forced to do with those parts of the body.

To see what this looks like, let's use a better version of the previous example:

*He ripped her nylons open between her legs and then she said that he "started going down on me." I asked her to describe what he did, and she said he "kept pushing his tongue inside of me." I asked her if she meant inside her vagina, and she said "yes." She then said that she begged the suspect to stop, repeatedly saying "no," "stop," and "I don't want to do this," but he kept forcing his tongue inside her vagina anyway.*

Doesn't this create a different "word picture?" Rather than describing the act as "oral sex," the investigator has clearly described the parts of the body and what the victim was forced to do with those parts of the body. That is, the suspect "forced his mouth on her vagina." If we think of the investigator's report as creating "word pictures" for prosecutors and jurors, it is important to make sure that they do not look like a consensual sexual experience. To recreate the reality of the sexual assault from the victim's perspective, "word pictures" in a written report must rely on the language of non-consensual sex.

Research also suggests that that language focused on the perpetrator of a sexual assault, rather than the victim, can decrease the perception of victim responsibility and blame. This shift in language use additionally increase the recognition of force used to commit the sexual assault (Niemi & Young, 2016). Another recommendation is therefore to use such language focused on the suspect, not the victim.

Now, let's look at another example, and demonstrate how to revise the statement to clarify what happened by using the language of non-consensual sex to convey a more appropriate "word picture." For these examples, it may require "filling in" some missing information. Here is another sample from the same investigator's report:

*She then said, "He got on top of me and tried to fuck me." She told him "no," but he continued. She thought he was going to do it anyway, so she asked him to use a condom.*

*He performed oral sex on her again. He then got on top of her and had sexual intercourse with her.*

While there are many ways to improve this statement, one possibility would be the following:

*The victim explained that the suspect got on top of her and tried to "fuck" her. I asked her if she was saying that he was trying to force his penis into her vagina. She agreed that this is what happened. She then said that she begged the suspect to "please don't do it" and "stop," but when she realized he was going to rape her, she asked him to use a condom because she was afraid that he would give her a disease or get her pregnant. The suspect forced his penis in the victim's mouth again and then he raped her, forcing his penis into her vagina. He did not use a condom, despite her pleading that he do so. The victim then said that she was "terrified" during the sexual assault, and responded by "totally shutting down, just praying it would all be over soon and she could go home." The victim cried during the interview and said that "this is the worst thing that has ever happened to me. It has totally ruined my life, and I don't know what to do now."*

While the revision will look different, based on the "missing information" that is filled into the report, it is still quite striking to see how changes in the details and language can create such an entirely different "word picture." Just imagine how powerful report writing can be to recreate the reality of the sexual assault for prosecutors, judges, jurors, and others.

A similar problem with language is also seen in domestic violence situations, which often include sexual assault. All too often, law enforcement professionals and others describe these situations as a "fight" or a "disagreement," which implies a mutual reciprocity that may not characterize what actually happened. As with sexual assault, it is often best to describe what happened in these situations with more concrete terms, using the actions and body parts involved. For example, if the suspect "pulled the victim's hair," "slapped the victim's face," "threw a chair across the room," "kicked the dog in the side," "pushed the victim into the wall," or "shoved the victim onto the bed," these concrete descriptions create more accurate word pictures than simply describing the suspect and victim as "having a fight." Also the term "choke" should not be used unless this is the exact wording used by the victim. More accurate is to describe the behavior as "strangling" or "attempting to strangle" the victim. Of course, it would then be especially important to note if the victim became unconscious as a result.



## **Document Unique Factors that Affect the Victim's Experience, Perspective, and Response**

Another thing to keep in mind when conducting an investigation and preparing a written report is to consider unique factors that affected the victim's experience, perspective, and response. These factors could include the victim's age, race, disability, immigration status, etc. When recreating the reality of the sexual assault from the victim's perspective, it will be powerfully influenced by such factors. These factors will also contribute to the level of fear that victims experience, which may not be immediately understood by someone who does not share this same perspective. It is therefore important for investigators to explore the role that such factors played in the victim's perspective and experience of the sexual assault, and record them in the written report.

To illustrate, victims who are young, inexperienced, or cognitively impaired (either as a result of a disability or the use of drugs or alcohol) may not have understood some of the things that the suspect said or did during the sexual assault. In many cases, these words or actions would have been understood by someone who was older, more experienced, or not cognitively impaired. This factor would therefore contribute to a heightened sense of confusion and fear among these victims, and an increased difficulty making sense of what happened.

Similarly, victims who are from particular cultural groups may have experienced revulsion at things that the suspect said or did, based on their cultural norms for behavior or taboos regarding sexuality. Again, this would add to the victim's sense of confusion, fear, betrayal, and humiliation.

A number of additional factors could also contribute to a heightened sense of fear experienced by victims, if the suspect is in a position of power over the victim. This would include:

- Situations where the suspect was older, bigger, and/or stronger than the victim.
- Situations where the victim is in a vulnerable position due to immigration status, or where the suspect has a position of power over the victim at work or in some other professional role (e.g., doctor, therapist, clergy, teacher, coach).
- Situations where the suspect has been physically abusive with the victim or the victim's children as in a situation of domestic violence.

In any of these situations, the victim may be more fearful than it appears the situation warrants. It is therefore up to the investigator to explore the basis of the victim's fear, and carefully document this basis in the written report.

## **Address the Victim's Use of Drugs or Alcohol**

Another common factor that must be addressed is the victim's use of drugs or alcohol prior (or even after) the sexual assault. As discussed throughout this curriculum, alcohol

or drug use is a frequent element in cases of non-stranger sexual assault, and one that must be dealt with carefully both in the victim interview and the investigator's written report. As with the victim's use of coarse language or involvement in unflattering or even illegal behavior, no effort should be made by the investigator to "sanitize" this aspect of the sexual assault. Rather, the victim's use of drugs or alcohol must be documented in a straightforward way, the circumstances of this use explained, and the impact on the victim's perspective and experience during the sexual assault explored. For example, it is important to document whether the victim used drugs or alcohol before (or after) the sexual assault, and describe what the circumstances were.

- For drugs, this must include an explanation of whether ingestion was completely voluntary, completely involuntary (i.e., the suspect "slipped" a drug into the victim's drink covertly), or if the victim took the drug voluntarily but was misled by the suspect about what drug was taken or what its effects might be.
- For alcohol, it is similarly important to note the role that the suspect played in the victim's drinking (if any). To illustrate, if the victim states that "*he kept bringing me drinks and I didn't know what they were,*" it would be critical to preserve this exact wording from the victim's statement in the investigator's written report.

Regardless of whether the victim consumed drugs or alcohol, and the circumstances of this ingestion, investigators must also carefully describe the extent of the victim intoxication at the time of the sexual assault. This information is a critical factor in recreating the reality of the sexual assault from the perspective of the victim, and documenting the context of force, threat, or fear that was present in the situation. It is particularly useful to help prosecutors, judges, and jurors to understand why the victim acted in ways that may not make immediate sense without taking this factor into consideration. For example, victims who are severely intoxicated will be limited in their ability to perceive danger cues from the suspect, understand what is happening in the situation, and resist the sexual assault effectively. Therefore, the victim's intoxication is an important piece of the puzzle in understanding how the suspect perpetrated the sexual assault.

In particular, the victim's intoxication often goes a long way toward explaining why suspects often use a very limited degree of physical force or violence to commit a sexual assault. As Teresa Scalzo, Attorney, Department of the Navy, says, "*Who needs force, when you have alcohol?*"

In order to demonstrate the degree of intoxication, it is important to document the number of drinks the victim had or the amount of drugs taken. However, additional factors should also be noted, including the length of time during which the drugs or alcohol were consumed, the victim's body size, tolerance level, and amount of food consumed during the day. All of these will help to provide a sense of the victim's level of intoxication.

- If the victim vomited, this is also important to note, both because it helps to demonstrate the victim's level of intoxication and because the vomit can be a source of valuable evidence.



- It is also obviously important to note if the victim blacked out or passed out at any point before, during, or after the sexual assault.

Interviews with witnesses and even the suspect will also provide important information about the level of the victim's intoxication. By documenting the victim's behavior, these statements can help prosecutors, judges, and jurors to understand the degree of cognitive impairment that the victim was experiencing at the time of the sexual assault.

Keep in mind that most state penal codes recognize that a person who is severely cognitively impaired cannot legally consent to sexual activity. Thus, evidence of the victim's mental incapacitation constitutes an element of the sexual assault offense in many cases. In other words, if the victim is legally unable to consent to sexual activity, then force does not have to be present to establish the elements of a sexual assault offense. On the other hand, the victim's mental incapacitation due to drugs or alcohol may also contribute toward the context of force, threat, or fear that the victim experienced; it would therefore provide evidence to establish the element of force for this type of a sexual assault offense.

### **Resource: Gender Bias and Sexual Assault Response and Investigation**

Perpetrators often look for the best opportunity to successfully commit a crime. A key element of that process involves victim or target selection. This is especially true for sexual assault cases, meaning the perpetrator is likely to identify whether a particular situation is conducive to successfully committing a sexual assault – and getting away with it. EVAWI offers a Training Bulletin that explores how victim selection is affected by vulnerability factors such as: alcohol or drug use, physical or cognitive disabilities, and/or undocumented individual or immigrant. It is part of a series of Training Bulletins entitled, [\*Gender Bias and Sexual Assault Response and Investigation\*](#), which examines the phenomenon of gender bias, both explicit (conscious) and implicit (unconscious), and explores how it affects victim selection, victim blaming, victim recantation, and false reports.

## **Record Critical Witness Statements**

As previously stated, most sexual assaults do not involve eyewitnesses, but there are often individuals who have witnessed important events taking place either before or after the sexual assault that can provide critically important corroborative evidence. These witness statements must be recorded in the investigator's report, in the summary of all available evidence, using the same principles outlined previously.

## **Describe the Victim's Response to the Sexual Assault**

For example, some witness statements provide crucial evidence about the victim's behavior in the immediate aftermath of the sexual assault. This type of description provides important corroboration of the victim's statement, and it can be the key to successful prosecution. When describing how the victim responded, it is important to

preserve as much of the exact wording provided by witnesses as possible. Let's look at some examples, drawn from the same case:

*The victim got a ride with a male witness, who asked her if she was alright. She said no and started crying. The witness told the victim what they did was wrong and to call the cops because it wasn't her fault.*

*The witness said the victim was "hysterical, very hysterical." "It was hard to understand her because she was crying." All he could make out was that some guys violated her and that's wrong.*

*The girl was hysterical, crying and could hardly breathe. He asked the girl if she needed to go to the hospital. He asked her what was wrong. He told her she had been raped. She said she went with him to use the phone.*

*The female witness saw a girl come out bawling. She had never seen the girl before. The way she was crying was weird.*

Witness statements such as these can be critically important for successful prosecution, because they portray the victim's response to the situation in a way that provides corroboration for the victim's description of events. Given that most suspects claim that the victim consented to the sexual acts, witness statements such as these provide a very powerful "word picture" of the victim, which is obviously more consistent with someone who was recently sexually assaulted than someone who recently engaged in consensual sexual activity. As with victim statements, critical witness statements such as these must therefore be included in the investigator's report and preserved in their original wording.

### **Corroborate the Use of Force, Threat, or Fear**

Witness statements can also be important for documenting the behavior of the suspect(s) following the sexual assault. Again, this provides important corroborative evidence that the events took place as the victim described and that it involved considerable force, threat or fear. This can be particularly powerful when described using the exact words used by the witnesses.

Let's look at some more examples from the case scenario. Because this case involved multiple suspects, there were in fact several eyewitnesses to the sexual assault and its aftermath. The statements provided by these eyewitnesses (many of whom were actually co-defendants), are critical to highlight in the investigator's report, with their original wording preserved. To illustrate:

*The suspect looked spooked. I asked him what was wrong. He said, "Some people were messing with a girl."*

*"Two guys were messing with the girl at the same time and the girl was crying. They said she wasn't saying no, then she started crying."*

*“The girl was crying when he was having sex with her but then she stopped and just went along with it. The girl had her eyes closed. The guys who did this should get bad punishment.”*

*The officer asked why the witness/suspect thought force was used. “Just the way he had her head with his two hands and was kind of...just kind of pushing it down...it didn’t look right.” The woman was on all fours, bent over face down. It appeared that he was pushing his hands down.*

It is easy to see how these witness statements could provide critical evidence in this case, because they corroborate the victim’s description of events, including the use of force, threat, and fear. Such important statements must therefore be included in the investigator’s report, with their original wording preserved. These statements will then be even more effective when the investigator places these statements in the context of corresponding statements made by the victim. For example, consider the victim’s description of the same events in this case:

*The victim closed her eyes so she wouldn’t have to watch anymore. She told the first suspect no, but didn’t specifically address it to the second suspect. After that she stopped telling them no because it was not working and she thought if she just kept quiet it would be over sooner. She thought they would kill her.*

When this victim statement is provided in the investigator’s report along with those of the witnesses (including some of the co-defendants), a consistent picture begins to emerge. Taken together, these statements clearly portray an act that is not consensual sex, but sexual assault committed using force, threat, and extreme fear on the part of the victim. This type of “word picture” will obviously be very powerful in assisting prosecutors to counter the inevitable claim that the victim consented to the sexual acts in question.

### **Probe for Additional Information**

Sometimes a witness statement requires further exploration, because it provides important additional information about the case, even if the significance is unclear. For example, in the same case we have been reviewing, one of the witnesses (actually a co-defendant) stated that:

*“The girl was like on drugs.”*

The investigator did not explore the statement further, but this type of description should not have been allowed to drop without further probing. What did the co-defendant mean by that statement? For a law enforcement investigator anticipating a consent defense, it is reasonable to expect that the suspects might later claim that the victim was in fact “on drugs.” Yet there was no evidence of drug use by anyone, so this type of statement should have been pursued further.

In fact, by probing such a critical witness statement, investigators can elicit a detailed description of the victim's behavior, which provides clues about what the victim was experiencing. This is especially important when the description matches up with the victim's account of events, including everything that the victim was thinking and feeling at the time.

- In this example, the witness' description that "the girl was like on drugs" corresponds with the victim's description that she "closed her eyes so she didn't have to watch anymore" and "kept quiet" so it would be "over sooner."
- An investigator can therefore write an effective report by highlighting such consistencies. In other words, what looked to this witness like the victim being "on drugs" was actually more likely to be the victim's experience of shock, exhaustion, terror, dissociation, etc.

In this way, the statement of the witness (or co-defendant) corroborates the victim's statement. Therefore, it must be included, in the exact wording, in the investigator's report.

## Document Suspect Statements

Now that we have described how critical witness statements are best documented, we can apply many of the same principles when documenting critical statements made by the suspect(s) in a sexual assault case.

As with critical statements provided by victims and witnesses, critical statements provided by suspects must also be summarized in the investigator's report and preserved in their exact wording. Many of these critical witness statements will then serve to corroborate the victim's description of what happened. Others will highlight implausible, absurd, and/or changing explanations provided by the suspect regarding what happened.

## Corroborate the Victim's Description of Events

To illustrate, let's look at some statements made by the suspects in the case scenario. Some of the suspect statements in that case provide important corroboration to the victim's account of events. To illustrate:

*The suspect said at one point she was shook up.*

As described previously, this type of statement should probably be probed further to clarify exactly what the suspect means when he says that the victim was "shook up." His description of the victim's behavior will likely corroborate the type of behaviors described both by the victim herself and by other witnesses (including co-defendants). It corroborates the victim's description of her own behavior, which would be perceived by any reasonable person as being "shook up."

## Highlight Implausible or Even Absurd Explanations

Other times, the suspect will describe the victim's behavior in a way that implies consent. However, when these statements are examined from a common sense perspective they often appear either implausible or downright absurd. They also typically change as new information is uncovered during the course of the investigation. In this situation, investigators must obviously highlight the fact that the suspect's statement changed as additional evidence became available. This is particularly true when the change in the suspect's statement conveniently counteracts some new piece of information revealed by the investigation. To illustrate, let's look at a suspect statement from the same case we have been reviewing throughout this module:

*When asked about her pantyhose, the suspect said they already had a hole in them and she told him to rip them off.*

As seen in this example, suspects often describe the victim's behavior in a way that suggests consent, but these statements become implausible or even absurd when they are considered in the context of the other evidence in the case. In this statement, it is unlikely that the victim told the suspect to rip off her pantyhose given the extreme levels of force and fear that the victim described experiencing, as corroborated in the descriptions of witnesses and other suspects.

Suspects also frequently portray the victim as consenting, but their description of the victim's "consent" is clearly based only on their own self-serving ideas and not a realistic understanding of how people really behave. Let's look at these three examples from the same case:

*He said there was no intimidation and that she wanted it or she wouldn't have been there.*

*She really wanted him, so he did.*

*Just from her body language, "she wanted me, she even took off my shirt."*

When the investigator records such statements made by the suspect, their implausibility will often become readily apparent based on the contrast with the "word pictures" provided by the victim and other witnesses. However, such statements can also provide a basis for probing the suspect further to clarify how he "knew" she really wanted him. For example, as suspects describe the "body language" that victims supposedly use to convey consent to sexual activity, it will often become clear that these indicators of consent exist only in the mind of the suspect and not in reality. Again, this is especially true when the suspect's description of the victim's behavior is contrasted with the descriptions provided by the victim and other witnesses.

## Use the Polygraph Examination with Suspects

We want to conclude this section on suspect statements by exploring how to best document the results of a polygraph examination with the suspect. First, consider the following question, which is typical of a polygraph examination conducted with a suspect in a sexual assault case:

*Did you have sex with [the victim]?*

Based on our previous discussion of the language of non-consensual sex, it should be clear that this is not ideal wording – either for the polygraph examination or for the investigator’s report.

This is because the way this question is phrased, it does not address the issue of consent.

- In most sexual assault cases, suspects will not deny the sexual activity took place.
- Rather, they will claim that the victim consented to the sexual activity in question.

Therefore, the goal for a successful polygraph examination is not to confirm that the sexual activity took place but to establish the presence of force and the lack of consent in the situation.

With this goal in mind, better questions for a polygraph examination would include the following:

- *Did the victim say no?*
- *Did you hear the victim crying?*
- *Did you force your penis into the victim’s mouth?*
- *Did you attempt to force your penis into the victim’s rectum?*

The answers to these questions will better address the use of force, threat or fear in the situation and the lack of consent. As a result, these questions are likely to better assist in preparing the case for successful prosecution.

It should go without saying that the responses to the questions, as well as a detailed summary of the report prepared by the polygraph examiner, should be included in the investigator’s report. Remember, that the investigator’s report should not rely on the reader’s ability to “put all the pieces of the puzzle together” or “connect the dots.” Therefore, the questions used and the conclusions drawn by the polygraph examiner must be summarized in the written report prepared by the investigator – not just in the report submitted by the polygraph examiner.

## Tape Interviews

To assist with successful report writing, one of the most effective strategies is to audio or video tape interviews with victims, witnesses, and suspects. As discussed in the module on Victim Interviewing, this is a controversial issue, and law enforcement agencies must weigh the advantages and disadvantages before implementing any policy. However, it is worth repeating them, because they are directly related to the strategies for effective report writing that are discussed in this module.

### Advantages of Taping

The primary advantage of taping an investigative interview (whether audiotaping or videotaping) is that it provides a more reliable method of documentation than written notes. In other words, it provides the “best record” of the interview, whether it is with a victim, witness, or suspect. Several other advantages are also discussed in the module on Victim Interviewing, but again they are worth repeating here:

- Taping records more details than those summarized in an investigator’s report, which increases the amount of information recorded and can often reduce any redundancy in follow-up interviews.
- Investigators are better able to listen carefully during the interview because they are not also trying to take notes and/or write a report at the same time. When the interview is taped, the officer or investigator can simply listen to the responses of the person being interviewed and jot down questions to ask later when their narrative is complete.
- In addition, tapes of an interview make it possible to determine the source of any inconsistency. In many cases when an inconsistency arises, the tape reveals that the person responsible is not the person being interviewed but the investigator who documented a fact incorrectly. This is critically important to recognize because such inconsistencies can seriously damage the credibility of victims, witnesses, and suspects.
- Because taping more accurately records all of the details of an interview, it can help investigators to synopsise statements, which may be especially important for those cases that do not move forward through prosecution. If additional victims are uncovered or the victim later wants the investigation reopened, the tapes are available for review and can be used as evidence for the reactivated investigation.
- Taping can have the additional benefit of protecting the interviewer if a complaint or misunderstanding should arise as a result of what was said.
- Tapes can also be reviewed for training or supervisory purposes, to improve the quality of interviews conducted by the law enforcement agency.



- Finally, taping can better convey to prosecutors and jurors the immediate response of victims to sexual assault.

This last advantage is discussed at length in the module on Victim Interviewing, because responding officers and deputies often have the unique opportunity to talk with victims of sexual assault while their emotions are still raw. By recording these emotions in a taped interview, they can be used to convey the actual response of victims and often bolster their credibility.

### Disadvantages of Taping Interviews

One primary disadvantage of taping is that it can sometimes be used against victims, if their behavior does not fit the stereotype of how “real rape victims” respond or if they make statements blaming themselves for the situation. Of course, law enforcement professionals also fear that taped interviews will record forever any mistakes that they made – which will then be used by the defense. We would be lying if we said these wouldn’t happen. Yet any problems that a taped interview poses for the investigation and prosecution must simply be dealt with, as investigators uncover the whole truth of what happened during the sexual assault.

We believe the many important advantages of taping interviews far outweigh the disadvantages. The bottom line is that taped interviews can do more to assist effective report writing than most other tools.

### Implement a Policy

As discussed in the module on Victim Interviews, investigators must first inform victims if their interview is going to be taped. In fact, victims should never be taped without their knowledge or permission because this constitutes a severe betrayal of trust.

- Victims must also be offered the services of a rape crisis counselor or advocate to provide information and support during the interview process. The advocate can then discuss with the victim any issues or concerns that arise as a result of taping.
- However, in those agencies where interviews are routinely taped, most victims do not have a problem with it as long as the investigator explains to them that this will provide the best record of the interview.

As you may already know, interviews with child victims have been taped routinely for years, and law enforcement professionals and others recognize the important advantages of this practice. Many of these same advantages exist for adult and adolescent victims of sexual assault, although this is not often recognized. In fact, taping interviews with victims, witnesses, and suspects can be one of the most effective tools in increasing the likelihood of successful prosecution. This is because the taped interview captures the kind of details that are needed for the various objectives outlined in this module for effective report writing.

## Document Other Evidence in a Sexual Assault Case

Once all of the statements have been recorded from the victim, suspect, and any witnesses, they can be integrated with other evidence collected throughout the investigation. Although the many different types of evidence are described in other modules, it is crucial that the investigator summarize all of these different types of evidence in a single, detailed chronological case report.

Therefore, even though the evidence might appear in a report prepared by someone else (e.g., Sexual Assault Forensic Examiner, crime scene technician, criminalist, forensic scientist) the investigator must summarize the findings in his or her own report to provide the entire context of the sexual assault investigation. This evidence may include any or all of the following:

- Photographs of injuries (whether taken with a Polaroid, 35mm camera, or colposcope).
- Findings from the forensic examination of the victim and suspect(s).
- Documentation of any clothing collected from the victim or suspect(s).
- Summary of the 911 tape, including both the content and the caller's demeanor.
- Audiotape/videotape of interviews with the victim, suspect, and witnesses.
- Statements of the suspect from both non-custodial interview(s) and custodial interview(s).
- Statements of the suspect in any pretext phone call(s).
- Statements by the victim and other witnesses.
- DNA profiles, based on any evidence collected in the case.
- Toxicology results, from any samples collected during the victim's forensic examination.
- Results from any polygraph examination(s) of the suspect.
- Statements from any prior victims who were sexually assaulted by the same suspect.

To best support successful prosecution, the investigator's report must summarize each of these pieces of evidence, and then integrate them to reconstruct the entire reality of the sexual assault. For example, the investigator can note whether any of these types of evidence corroborate the account of events provided by the victim and/or the suspect.



In many cases this will help to establish the elements of the crime. However, this type of notation should be made even if the issue isn't central to establishing an element of the offense, because any corroboration of the victim's account of events will help to overcome common challenges to the victim's credibility.

To illustrate, if the victim states that the suspect licked her breast before committing the sexual assault, laboratory analysis of the victim's forensic examination kit may confirm the presence of saliva on her breast. This may not establish an element of the offense, but it corroborates the victim's account of events. The suspect may even corroborate the same event in his statement. It is therefore worth noting this in the investigator's report. In the case scenario, you may recall that both the victim and suspect stated that he tore her nylons. Because the nylons were impounded in the case, the investigator should note whether or not they were in fact torn. Again, this may help to document the presence of force, threat, or fear in the situation, if this was described as significant by the victim. However, it may also simply corroborate the account of events provided by the victim and/or suspect.

All of the techniques discussed in this section will help to recreate the entire reality of the sexual assault, and assist the prosecutor in conveying effective "word pictures" for judges and jurors.

## Common Defense Strategies

Effective documentation of a sexual assault investigation needs to do more than simply summarize the facts of the case. Rather, an effective report must be prepared by the investigator in anticipation of potential defense strategies. By anticipating strategies the defense is likely to use, law enforcement investigators can ensure that the written report includes the information necessary to undermine them. For example, we have already discussed at length how investigators can prepare the written report to successfully counter the consent defense that is virtually inevitable in sexual assault cases.

Yet there are other defense strategies worth considering, particularly those based on deficiencies in the investigator's report itself. The rest of this module will address three of the most common defense strategies based on the written report: (1) Impeachment by Omission; (2) Impeachment by Contradiction; and (3) Motions to Suppress (either the defendant's arrest or the defendant's statement, or both). First, we will address impeachment by omission.

### Defense Strategy #1: Impeachment by Omission

Even rookie officers know that a case may not be successfully prosecuted because of information that is included in the police report, whether it constitutes an error, a misstatement, or simply a damaging fact in the case. However, it sometimes takes officers and investigators a while to appreciate that a case may also fail to be successfully prosecuted because of what was not included in the report. This is the problem of impeachment by omission.

**Impeachment by omission** is achieved when the defense undermines the credibility of the prosecution's case by pointing out that some fact was provided in a statement by the victim, witness, or suspect (or other evidence), but it was not documented in the police report.

How damaging is impeachment by omission? In one sense, it would not seem to be particularly damaging because omissions are committed in every single police report ever written. Obviously, no investigator can include every fact uncovered during an investigation into the written report. It is also impossible for an investigator to anticipate every single question that will be asked by both the prosecutor and the defense attorney. As a result, the testimony that is provided in court by an officer or investigator will inevitably include some information that was not included in their written report. Judges and juries generally understand this and are willing to overlook the occasional fact that has not been included in the report. However there are two situations in which impeachment by omission can be particularly damaging:

- The first situation is when the fact to which an investigator is testifying is central to the prosecution's case.
- The second is when the investigator's testimony includes many undocumented facts.

For example, some investigators have actually testified that they forgot to write in their report that the suspect admitted to committing the crime. It is easy to imagine that these investigators would be seen by the judge or jury as less credible than they would have been if this important fact had been documented appropriately.

As a general rule, testimony regarding facts that are not documented in the written report is likely to be seen by judges and jurors as less reliable than testimony regarding facts that are substantiated in the report.

Therefore, as much as possible, investigators should try to anticipate potential defense strategies and include the evidence and information necessary to counter these strategies.

### How to Prevent Impeachment by Omission

To prevent the problem of impeachment by omission, investigators should anticipate potential defense strategies as much as possible, and include the information necessary to counter them.

One way for investigators to do this is to ask themselves the following questions:

- What are the elements of the offense I am trying to prove?
- What type of defense will likely be raised at trial?

By asking these questions, investigators can ensure that their reports include all of the evidence required to prove the elements of the offense and refute the likely defense, which in most sexual assault cases is going to be consent. However, this does not mean that the investigator's report should always be long and include every minute detail – because long, detailed reports increase the risk of impeachment by contradiction. This is the second defense strategy we'll discuss.

### **Avoid Short, Vaguely Written Reports**

Impeachment by omission is also more of a problem for those investigators who write short, vague reports and then provide detailed testimony in court about a complex investigation.

- Defense attorneys are likely to attack this kind of testimony by showing the investigator the report and asking him or her to locate the information to which they have testified.
- When the investigator admits that the information is not included in the report, the defense can then depict the investigator as untruthful or incompetent.

As previously stated, a single instance of impeachment by omission may not be fatal to a case, but repeated instances may undermine successful prosecution. Therefore, a second strategy for preventing impeachment by omission is to avoid writing short, vaguely worded reports. Using the strategies outlined in this module, an effective report should summarize all of the evidence in the case – “putting all of the pieces of the puzzle together” and “connecting all the dots.”

### **Include Information on Other Suspects or Investigative Leads**

A third way to prevent impeachment by omission is to make sure that information is included in the report regarding all other suspects or investigative leads. Whenever another suspect or investigative lead is mentioned in the report, there will need to be corresponding information about how and why they were eliminated from consideration.

This prevents the defense from placing blame on law enforcement for inappropriately targeting the defendant, and it reduces the likelihood that any other investigative leads will be used to raise doubt in the minds of jurors.

## **Defense Strategy #2: Impeachment by Contradiction**

The second common defense strategy that is based on the investigator's written report is impeachment by contradiction.

**Impeachment by contradiction** occurs when a witness testifies to facts at the trial that are different from the facts recorded in their case documentation.

This kind of impeachment is generally more damaging than impeachment by omission, because it gives the defense attorney an opportunity to characterize the testimony as a lie.

- Of course, sometimes a contradiction between the investigator's testimony and recorded facts can be excused due to a memory problem.
- Judges and juries typically understand that very few people relate their account of an event in exactly the same way every time.

Nonetheless, investigators must do what they can to avoid the problem. As with the problem of impeachment by omission, judges and juries may be willing to forgive a small number of contradictions but repeated instances may prove fatal to successful prosecution of the case.

### How to Prevent Impeachment by Contradiction

The most important thing that an investigator can do to prevent this type of impeachment is to listen carefully during all interviews and accurately record the statement of the victim, suspect, and any witnesses. However, other techniques can also be used to minimize the risk of contradiction. One of these is to reduce the number of reports prepared by investigators.

- For example, if more than one investigator conducts a joint interview, only one report should be written to record the statement of the victim, suspect, or witness.
- Similarly, when a task force or multidisciplinary team is created to investigate a case, the team should produce one report that is used by all of the agencies, rather than having each member of the group produce a separate report.

On the other hand, this does not mean that only one report should be prepared by the investigator, if the case is handled initially by a responding officer or deputy and then assigned to a detective or specialized investigator. In these situations, both individuals must write their own report for effective case documentation.

- Responding officers and deputies must always write a report to document what they learned and observed during the preliminary investigation, including everything they said and did. This report is needed from responding officers to capture critical information about this initial contact with the victim.
- Then the investigator will summarize the report by the responding officer or deputy when preparing the case documentation, as previously discussed.

This also does not mean that a single report will be submitted by all of the different members of a Sexual Assault Response Team, for those communities with a coordinated response. A separate report must be written by professionals from the different disciplines involved in a Sexual Assault Response Team, such as medical professionals conducting a forensic examination. These reports are prepared for

different purposes, and must be written independently. However, best practice is for law enforcement professionals to consult with medical professionals to compare the information that was available before and after the forensic examination. Please see the modules on the Forensic Examination and Coordinated Community Response for more information.

### **Avoid Repeating a Detailed Account of Interview Statements**

Another strategy for reducing the risk of contradiction is to avoid repeating a detailed recording of the statement provided by the victim, suspect, or witness. Many times, the victim, suspect, or witness in a sexual assault case must be interviewed more than once because they have remembered additional facts or because the investigator has additional questions as the investigation develops. Rather than recording the witness statement every time, however, the investigator can broadly summarize the facts that are repeated each time and then record in detail only the new information. To illustrate, an effective report might state the following:

*On January 15th, the reporting investigator re-interviewed Ms. Sylvia Dayton, who accompanied the victim to O'Grady's bar on January 10th. Ms. Dayton repeated the account of the incident that has been previously recorded in the report dated January 11th. She then provided the following new information...*

By broadly summarizing the facts that are repeated, and then recording only the new information an investigator can minimize the risk of contradictions regarding statements made by the victim, suspect, and any witnesses.

### **Document and Explain Changes in Interview Statements**

While it is not necessary to record in detail those facts that are repeated in multiple interviews, it is very important to record any changes that the victim, suspect, or witnesses make in their account of the event. This technique is used to make sure that their statement is accurately recorded and prevent later errors.

- We have already mentioned the importance of highlighting changes in the suspect's statement, over the course of the investigation.
- The same is true for the victim and witnesses, so changes in the information provided can be recorded accurately and the reasons for the change explored.

In other modules, we describe a number of reasons why victims recall additional details or revise information that was previously provided (e.g., memory impairment, omitting details about unflattering or even illegal behavior, providing inaccurate information so the sexual assault will sound more like "real rape"). Therefore, when the victim, witness, or suspect revises the information provided to the investigator, the reasons for this change must be explored in the interview and documented in the written report.

## **Avoid Writing a Detailed Report for any Witness Already Providing a Detailed Report**

Finally, investigators can minimize the risk of contradiction by not writing a detailed report for any victim or witness who has already provided a detailed, written summary of events. This situation is perhaps most frequently encountered with medical witnesses. An investigator may interview a nurse or physician about the results of a forensic examination and then write a report summarizing the information provided. However, the forensic examiner (nurse or physician) will also write a detailed report, and any differences between the two may be used by the defense attorney to impeach the testimony of the forensic examiner, police investigator, or both.

In this type of situation, we have already discussed how investigators should include a summary of the findings from other professionals, as well as summarize the findings and conclusions from these other professionals (such as forensic examiners) in their own written report. However, this does not mean that the investigator's summary should be long and detailed, thereby duplicating the report prepared by the other professional. This also does not mean that the summary should be based on the investigator's discussion with the other professional. Rather, the summary should be based on the written report prepared by the other professional.

In this type of situation, it is best for the investigator to obtain a copy of the written statement provided by the witness (such as the forensic examiner) and include it in the case file. Then the investigator can summarize this report, by highlighting the significant findings and conclusions of the witness (in this case, a forensic examiner). While this situation may arise most frequently with medical professionals such as forensic examiners, it is also relevant for reports submitted by toxicologists, crime scene technicians, forensic scientists, etc.

## **Defense Strategy #3: Motions to Suppress**

Besides impeachment strategies, another way that defense attorneys use police reports is to support various motions to suppress. Therefore, effective reports must be written to anticipate countering such motions. As many experienced investigators know, motion hearings set the stage for trial and many cases are lost because an arrest or a confession was suppressed. Therefore, it is important that case documentation be prepared by investigators in preparation for potential motion hearings. While motion procedures differ from state to state, the motions themselves are fundamentally the same. This section will therefore discuss the two most common motions heard: motions to suppress an arrest and motions to suppress a confession.

### **Motions to Suppress an Arrest**

To win a motion to suppress an arrest, investigators must show that there was probable cause to make the arrest and that the defendant's constitutional rights were not violated in the process. Investigators must therefore ensure that the exact basis for probable cause is clearly spelled out in the written report.

When defense attorneys file a motion to suppress an arrest, they typically use one of several strategies in order to challenge the basis for probable cause. The most common defense strategy is to question what led the officer or investigator to believe that the suspect (now defendant) was the one who committed the crime. In anticipation of this challenge, investigators must therefore clearly state what factors were considered. For example:

- Was the defendant identified by witnesses?
- Is there any physical evidence that links the defendant to the scene (e.g., fingerprints, DNA evidence, clothing of the defendant's that fits the victim's description, or items in the defendant's possession that the victim says he took or had with him at the time of the assault)?
- Did the defendant admit committing the crime?

The second common defense strategy used by defense attorneys in a motion to suppress an arrest is to argue that the defendant's constitutional rights were violated. To counter this argument, the investigator will therefore need to clearly describe the various protections of the defendant's constitutional rights and explain any factors that might appear to have violated those rights.

- If there was a warrant for his arrest, this will be sufficient explanation to counter the motion to suppress an arrest.
- On the other hand, if the defendant was arrested at 3:00 AM in his own home, the investigator will have to explain at trial why this was lawful.

Even when there was no warrant, the arrest may still have been legal (and withstand the defense attorney's motion to suppress) if the investigator can explain the exigent circumstances that made an arrest necessary. To illustrate, the investigator should answer questions such as the following:

- Was the arrest made to prevent flight?
- Was it done to prevent further violence?
- Was the arrest accomplished without violence?
- What was the seriousness of the offense?

Whatever factors were used to make the decision to arrest, they must be carefully detailed in the investigator's written report. This is the best way to prepare the report to undermine any such motion that might be filed by the defense seeking to suppress the arrest.

## **Motions to Suppress a Confession**

The other common defense strategy based on the investigator's written report is filing a motion to suppress a confession. Here again, investigators can write their report in anticipation of such a motion, by providing the type of information that will defeat common defense arguments.

The two issues that are most commonly raised in a motion to suppress a confession involve the defendant's Miranda rights and the voluntariness of his confession. Each of these issues is very complex, and it is impossible to describe all of the potential problems in this module. In general, investigators should address the Miranda issue as recommended by the local prosecutor's office.

As for the claim that a defendant's statement was not voluntarily made, it is equally important for investigators to record details in the report regarding the circumstances of the interview and treatment of the defendant. The investigator's report should therefore include details regarding:

- Exactly when the interview began and ended
- The exact timing and length of any breaks
- Whether the defendant was offered food and water
- Whether he was allowed to make a phone call
- Whether he was allowed to sleep
- Whether he was allowed to use the bathroom
- Whether he was handcuffed during the interview

If the investigator's report documents the fact that the defendant was well treated during his interview (e.g., offered food and water, allowed to make a phone call and to sleep, freed from handcuffs), this will go a long way toward demonstrating that the interview was not coercive and that any resulting statement was voluntary. However, another very important issue to address when evaluating the voluntary nature of a defendant's statement is the length of the interview.

When interviews are short, people tend to view them as less coerced. So, if the interview of the defendant was short, this should be recorded in the written report. Yet defendants will often do things to slow the interview process, like giving a false alibi that needs to be checked out. In this case, the investigator should record that the defendant stated that he was somewhere else when the crime occurred, and it was necessary to spend time (e.g., 3 hours) checking out the alibi, only to discover that it was untrue.

By recording these details, the prosecutor is able to argue that it was not the investigator but the defendant who prolonged the interview. All of this information can therefore be included in the investigator's report, in anticipation of motions to suppress that might be filed by the defense.



## Conclusion

Experienced investigators know how important their written reports are for successfully prosecuting sexual assault cases. In addition, investigators must always keep in mind how many people will be reviewing the report and for what possible purposes. For example, the written report prepared by law enforcement might be used:

- By prosecutors to determine which charges to file
- By defense attorneys to strategize a defense
- By victims, defendants, or other parties in civil proceedings
- By attorneys handling an appeal, perhaps as far as the United States Supreme Court

The investigator's report should therefore be written with the idea in mind that it may end up being used by any of these professionals for any of these purposes. By writing the report to recreate the reality of the sexual assault and refute potential defense strategies, investigators can greatly increase the likelihood that charges will be filed in the case and it will result in a conviction. They may even help to make this process faster, smoother, and easier for the victim than it would otherwise be. As one experienced prosecutor summarized, "a well-written report can make a jury trial into a bench trial and a bench trial into a guilty plea."

### Resource: Start by Believing

All too often, victims of sexual assault are met with doubt and blame, rather than belief and support, when they report what happened to them. This doubt interferes with the ability of the responding officer to effectively write a sexual assault report, which inevitably leads to a decreased likelihood that the case will be thoroughly investigated or successfully prosecuted.

Start by Believing is the global campaign developed by EVAWI to transform responses to sexual assault and overcome the common belief that victims are only fabricating reports out of revenge, a desire for attention, or as an excuse for their own questionable behavior. It "flips the script" on the message victims have historically received from professionals and support people, which is: "How do I know you're not lying?"

When investigators approach each sexual assault report with a Start by Believing philosophy, they are better able to conduct thorough, evidence-based investigations; this is key to achieving due process and holding offenders accountable.

For more information, please visit the [Start by Believing website](#).

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## 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.

## References

- Bavelas, J. & Coates, L. (2001). Is it sex or assault; Erotic versus violent language in sexual assault trial judgments. *Journal of Social Distress and the Homeless*, 10(1), 29-38.
- Niemi, L. & Young, L. (2016). When and why we see victims as responsible: The impact of ideology on attitudes toward victims. *Personality and Social Psychology Bulletin*. Advance online publication. doi: 10.1177/0146167216653933.
- Renner, K.E. (2002). Re-conceptualizing sexual assault: From an intractable social problem to a manageable process of social change. In J. Hodgson & D. Kelley (Eds.). *Sexual Violence; Policies, Practices, and Challenges in the United States and Canada*. Westport: Praeger.

