End Violence Against Women International
(EVAWI)

Effective Victim Interviewing: Helping Victims Retrieve and Disclose Memories of 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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Organizational Features

- Research studies and case examples
- Innovative and promising practices
- Resources and tools
- Instructional video clips
- Information to note
- Questions for participants
- Interactive exercises
- Policy recommendations

Throughout the module, we feature quotes (in **blue**) from interviews with law enforcement investigators and supervisors (see "Research on Trauma-Informed Interviewing").

Excerpts from law enforcement reports are presented in **gray boxes** like this.

Quotes in **green** are from sexual assault survivors describing their experiences.

Purple boxes are used to summarize and highlight key points.

Authors

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.

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.

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- Brianna Sivy, Survivor, Former Student, Ohio University, Athens, OH
- Matthew Stegner, Senior Investigator, Campus Sexual Assault Victims Unit, New York State Police Department; Cadre of Experts, EVAWI, Mount Morris, NY
- Tom Tremblay, Chief (Ret.) Advisor and Trainer, Thomas Tremblay Consulting & Training, Fort Myers, FL

Mock Interviews

We are extremely grateful to the New York State Police, College at Brockport, State University of New York, and Restore Sexual Assault Services for their support and collaboration. We also want to recognize the following individuals for their work to create, record and edit the mock interviews incorporated into this training module:

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Research on Trauma-Informed Interviewing

While developing this module, EVAWI conducted informal research to learn how law enforcement practitioners are applying their knowledge of neurobiology and the impact of trauma in their interviews with sexual assault victims. Specifically, we **interviewed sex crimes investigators, supervisors, and policy leaders** about their interviews and related practices. All individuals had participated in at least two full days of trauma-informed sexual assault training including specific instruction on victim interviewing.

In addition, several **victim advocates and supervisors** were interviewed about their experiences and observations of these victim interviews. All the advocates also participated in the same type of training or were otherwise familiar with the concepts.

Finally, EVAWI staff members reviewed **sex crimes reports and audio- or video-recorded interviews** with sexual assault victims to gauge the level of information yielded by these new practices. This module draws on the findings from this research and includes quotes (in blue) from interviews with these professionals. EVAWI is profoundly grateful to the individuals and agencies who contributed to this effort:

- Mathew Austin, Special Agent, Ohio Bureau of Criminal Investigation; Former Detective, Ohio University Police Department, Athens, OH
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Objectives

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

- Define trauma and describe what it means to be *trauma-informed,* including a commitment to not re-traumatizing victims and a recognition of how this strategy benefits victims, communities, and the criminal justice system as a whole.
- Identify the two primary purposes of a law enforcement interview with a sexual assault victim: helping victims *recall* and *share* memories of their sexual assault.
- Recognize the importance of effective victim interviewing in the larger context of thorough, multifaceted, and evolving sexual assault investigations and prosecutions.
- Describe the historical law enforcement approach to interviewing victims of sexual assault ("who, what, when, where, and why") and explain why this needs to change.
- Summarize key research findings on the impact of trauma on victim behaviors and memories, and apply this knowledge to improve victim interviewing techniques.
- Identify unique sociocultural dynamics of sexual assault and explore their impact on victim interviews and investigations.
- Reduce stress and burnout among law enforcement personnel by (a) adjusting expectations for the type of information victims will be able to provide during interviews, and (b) simply "meeting victims where they are."
- Recognize the potential lasting effects on the physical, psychological, and emotional well-being of officers and investigators who conduct sexual assault interviews and investigations, and utilize techniques to enhance self-care, wellness, and resiliency.
- Discuss how law enforcement agencies can support resiliency and wellness among personnel who respond to and assist with sexual assault investigations, including allocating sufficient time, training, resources, and support for handling these cases.
- Describe key steps in the initial response and preliminary investigation of a sexual assault report, and how they differ for *acute* versus *non-acute* sexual assault reports.
- Explain the need for at least two law enforcement interviews with each sexual assault victim and the difference between a preliminary and detailed interview.
- Highlight the importance of building trust through victim empowerment and choice, as well as demonstrating physical, psychological, and emotional safety to help victims recall their experiences and disclose memories of their sexual assault.
- Give control and credit to victims for the courage to come forward and seek help.

- Describe the benefits of victim advocacy and response protocols that ensure victims have access to an advocate regardless of which reporting option they might choose.
- Analyze and be prepared to explain possible reporting options available for victims.
- Utilize best practice recommendations, strategies, and tools when interviewing victims of sexual assault and other forms of gender-based violence.
- Determine an appropriate interview location and who should be present.
- Explain how to secure interpreting services and any accommodations victims might need to fully participate in the law enforcement interview and investigation.
- Analyze how interviews may be affected by various sociocultural characteristics of the victim (e.g., racial, ethnic, or cultural identification, LGBTQIA identity) and list ways to increase victim comfort, safety, and trust with these characteristics in mind.
- Outline critical steps involved in preparing for a detailed, follow-up interview.
- Explain the benefits of recording victim interviews (either audio or videorecording).
- Describe strategies for effectively prompting victim recall and disclosure.
- Discuss steps that can be taken to address victim concerns regarding safety and privacy, and explain the rights afforded to victims of sexual assault.
- Ensure that victim statements are documented accurately using the victim's language even when it is sexually explicit, graphic, or includes profanity,
- Describe special considerations for interviewing victims of drug- or alcohol-facilitated sexual assault, and assaults committed by an acquaintance or intimate partner.
- Conclude the interview by leaving a positive last impression on victims and ensuring that victims have multiple options for accessing services (“opening doors”).
- Reassure victims that they may recall additional details over time, and explain how they can record this information and contact the investigator to share it.
- Work collaboratively with advocates to ensure that victims remain informed of the status of their investigation and any final outcomes.

Introduction

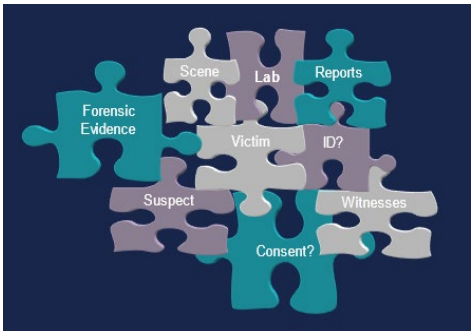
What is the purpose of an investigative interview with a sexual assault victim?[1] Is it just to gather the facts of "who, what, when, where, and why?" Or is there a larger purpose?

At the risk of oversimplification, the purpose of an interview can be summarized as helping victims to: (a) *retrieve* memories of their sexual assault, and (b) *disclose* those memories to investigators. Two key questions can be used to guide this process:

- **Memory Retrieval:** What can I do to facilitate and support victims during the difficult process of *recalling* detailed memories of their sexual assault?

- **Victim Disclosure:** What can I do to create an environment where victims feel comfortable and safe enough to *share* these detailed and often painful memories?

After conducting an effective interview, the investigator's role is then to *document* the information provided by the victim, and *evaluate* it within the larger context of the investigation. In this way, a victim interview is not all that different from a crime scene.



Crime scenes inevitably include elements that are clearly probative to the investigation, as well as aspects that are irrelevant, unclear, or even contradictory. In other words, crime scenes do not present facts in a linear or logical way – nor do they outline how the information and evidence might fit together to corroborate the elements of a criminal offense. Rather, investigators collect and document evidence from the crime scene, and then through analysis, evaluation, and further investigative steps, they piece together an understanding of what happened.

The same is true for victim interviews. After helping victims to recall and share details about their sexual assault, the investigator pieces these details together with other information and evidence, to compile a linear and evidence-based account of the crime.

Overview of Module

The module is divided into several different sections. First, we offer a brief overview of the scientific research on stress, trauma, and memory, as well as the unique dynamics of sexual assault. Subsequent sections apply this information to the practical tasks involved in the initial response to a sexual assault report, follow-up interviews, and documentation. We also address the impact of interviews *on investigators themselves*.

[1] In general, we use "victim" as the term of art for the criminal justice system, referring to someone who was sexually assaulted. However, many individuals and agencies use the term "survivor," so the terms are used interchangeably throughout this module. The module also frequently uses "they" in the singular form for inclusivity, as both victims/survivors and perpetrators of sexual assault can be of any gender.

Importance of Victim Interviews

A detailed interview with a sexual assault victim may be one of the most critical components in an effective sexual assault investigation. It directs the investigator where to collect evidence, identifies possible witnesses and suspects to interview, and it generates corroborative information. The interview also communicates to victims whether law enforcement is taking their report seriously. When victims are treated with respect, this will help them to remain engaged and participate in the investigation.

Historical Approach

Yet sexual assault victims are often asked to recount their memories of the experience in ways that are inconsistent with (a) how these memories were originally encoded and stored in their brains, (b) how they are likely to be retrieved, and (c) the reality that the stress of an investigative interview can impair memory retrieval. For example:

- Victims are typically asked to provide their narrative **chronologically,** with a logical timeline of events that start at the beginning and proceed (in order) to the end.
- Interviews rely heavily on **"who, what, when, where, and why"** questions, often asked in a closed-ended format that discourages victims from elaborating further.
- Investigators often project a **tone and demeanor** that doesn't help victims retrieve and share their experience, but rather focus narrowly on "Just the facts, ma'am."
- Questions are **inappropriately sequenced**, often asked in the order they appear on the report form, rather than the order in which information is stored in the victim's memory.[2]

Completing the boxes in a form is not the same as conducting an interview.

- Questions are also frequently asked in **"lagging order,"** addressing a detail or issue that the victim covered in a previous response, rather than the current one.
- Finally, investigators often **wrongly assume that victims remember "everything"** about their sexual assault, or at least particularly *important* details (i.e., details that are important to the law enforcement investigation and possible prosecution).

Some victims might be able to recall information in this way, but many will not. This is because memory does not operate like a videotape under the best of circumstances, and certainly not during stressful or traumatic events like a sexual assault. Moreover, even if victims *could* recall this information, they may not feel safe enough to share it with an investigator.

Remember, the purpose of a victim interview is to facilitate a process of memory **retrieval** and **disclosure**.

[2] Please note: Purple boxes are used throughout the module to summarize and highlight key points.

Research on Police Interviewing

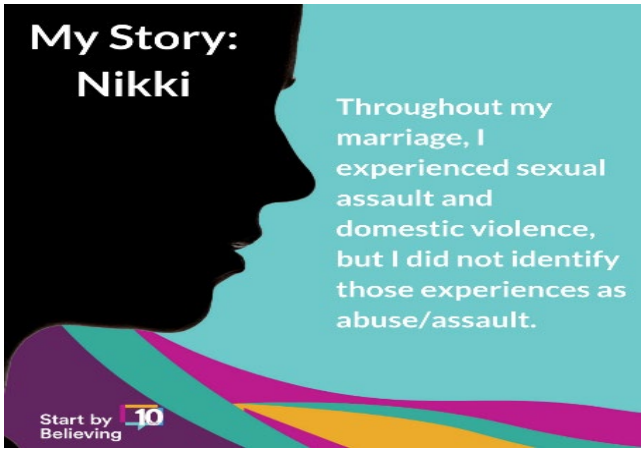
In 1995, Dr. Ronald Fisher published a study of law enforcement interviews with victims and witnesses of crime. Results indicated that:

- The typical interview involved asking 3 open-ended questions, and 26 short, closed-ended questions, delivered "in a staccato, rapid-fire style" with less than 1 second between each response and the next question.
- Questions were typically asked in the order of the officer's report form.
- Responses were interrupted after an average of 7.5 seconds, with an average of 4 interruptions per response. *In none of the interviews was the witness permitted to complete his or her narration without being interrupted*.
- Follow-up questions were frequently asked when detectives realized they wanted the victim to elaborate on a previous point. However, these often appeared "in the middle of the witness's description of another component of the crime, so that the follow-up question interrupted the witness's train of thought and cut short any possible elaboration on the current topic."[3]

Sexual Assault Dynamics

The dynamics of sexual assault also influence how victims experience and remember the event, as well as their willingness to share detailed memories with others. These dynamics can be seen as operating on several different levels. Consider the following:

Internal Influences: Victims often feel extremely embarrassed, ashamed, or uncertain about what happened to them, including not knowing if the abuse is even a crime. They frequently blame themselves, particularly if they engaged in some consensual sexual acts, consumed alcohol or drugs, etc. Victims also fear they will not be believed, or they will be blamed for contributing to their own assault.



External Influences: Victims are frequently pressured by family, friends, or others to report (or not report) their assault, or to hide certain behaviors (like drug use, sexual history, etc.). Disclosures are often met

[3] Fisher, R.P. (1995). Interviewing Victims and Witnesses of Crime. *Psychology, Public Policy, and Law, 1 (4)*, 732-764 (quotes appear on pages 735 and 746).

with disbelief or blame for "bringing the sexual assault upon themselves." Victims may attempt to smooth out these social relations, by expressing self-blame, minimizing the difficult experiences, or distorting the details of the assault. These fears are then compounded by the daunting prospect of how many people will hear the details of their assault if their case is reported, investigated, and possibly prosecuted.

System Influences: When victims do report their sexual assault, they often recant or withdraw their participation from the investigation at some point, due to factors such as delays, lack of communication, or negative interactions with law enforcement. Victims are often left with real concerns about whether they will be believed and protected.

Sociocultural Influences: Depending on which sociocultural groups a victim belongs to, they may be especially uncomfortable about specific acts involved in the assault (e.g., oral copulation, sodomy). They may be shunned or ostracized by their community, particularly if the offender is well-liked and respected in that community. Many victims are extremely reluctant to report their assault based on a history of negative interactions between law enforcement and members of their own community (e.g., people of color, LGBTQIA individuals, undocumented immigrants, people involved in sex work, etc.).[4]

"Trauma-Informed" Interviewing

Advocates say the difference between jurisdictions that are committed to trauma-informed interviewing, and those that are not, is like ***night and day.***

When investigators are informed by (a) the scientific research on trauma and memory, and (b) the unique dynamics of sexual assault, they can create an environment where victims feel comfortable and safe enough to *retrieve* and *disclose* memories of their sexual assault. Investigators can then listen more perceptively and ask questions in a way which is more consistent with how those memories were likely encoded and stored in the victim's brain. All this can help elicit more detailed information, supporting more thorough evidence-based investigations.

What Do We Mean by "Trauma?"[5]

When we talk about the research on trauma and its impact on sexual assault victims, we are generally referring to a science-based understanding of: (1) How brains and bodies respond to acutely stressful and traumatic events such as a sexual assault, *as they are happening*, and (2) How these experiences of extreme stress are encoded, stored, and potentially retrieved from memory.

[4] This discussion is drawn from EVAWI's 4-part training bulletin series entitled, *Gender Bias in Sexual Assault Response and Investigation.* More detailed information can be found in this series.
[5] As defined by the International Society for Traumatic Stress Studies (ISTSS),"Traumatic events are shocking and emotionally overwhelming situations that may involve actual or threatened death, serious injury, or threat to physical integrity." Similarly, the American Psychiatric Association (APA) defines trauma as "Exposure to actual or threatened death, serious injury or sexual violence" (*Diagnostic and Statistical Manual of Mental Disorders, 5th edition).*

A **trauma-informed interview** will therefore include the following elements:

- Sincere efforts to establish safety, trust, rapport, and comfort for victims.
- Encouraging victims to relay all the information they are able to *at the time.*
- Use of non-leading questions and other open-ended prompts.
- Encouragement of narrative responses and active generation of information by victims, not just passive responses to investigator questions.
- Pauses to allow victims time to digest a question and think about how to respond, without being rushed or interrupted.
- Focus on what victims can recall thinking and feeling throughout the experience.
- Consistent expressions of patience, empathy, and understanding.
- No necessity for information to be provided in a sequential or "logical" order.
- Instruction not to guess at any answers, and to say "I don't know" or "I don't remember" when needed.
- Not asking victims "why" questions, but replacing and reframing these questions to help understand the victim's experiences and responses.
- Acknowledging that the victim may recall additional information as time passes.

What is **"trauma informed?"**

(a) Commit to not re-traumatizing victims.

(b) Recognize the impact of trauma on victims.

(b) Apply this knowledge to guide effective responses.

Most of these techniques are not new. For example, we have long known the importance of establishing rapport during interviews (and even interrogations).Other techniques with documented effectiveness include: (a) encouraging active participation, (b) asking simple, open-ended, and non-leading questions, (c) prompting emotional and sensory details, and (d) permitting "I don't know" responses.[6] Many good investigators were using these techniques long before they were labelled "trauma-informed." Now, science can help investigators better understand why they work so well for victims.

[6] Abbe, A. & Brandon, S.E. (2014). Building and Maintaining Rapport in Investigative Interviews. *Police Practice and Research, 15 (3),* 207-220; Brandon, S.E. & Wells, S. (2018). *Science-Based Interviewing.* Published by authors; Fisher, R.P. & Geiselman, R.E. (2010). The Cognitive Interview Method of Conducting Police Interviews: Eliciting Extensive Information and Promoting Therapeutic Jurisprudence. *International Journal of Law and Psychiatry, 33 (5-6),* 321-328; Hershkowitz, I., Lamb, M.E., & Katz, C. (2014). Allegation Rates in Forensic Child Abuse Investigations: Comparing the Revised and Standard NICHD Protocols. *Psychology, Public Policy, and Law, 20 (3),* 336-344; Meissner, C.A., Surmon-Böhr, F., Oleszkiewicz, S., & Alison, L.J. (2017). Developing an Evidence-Based Perspective on Interrogation: A Review of the U.S. Government's High-Value Detainee Interrogation Group Research Program. *Psychology, Public Policy, and Law, 23* (4), 438-457; Vrij, A., Meissner, C.A., Fisher, R.P., Kassin, S.M., Morgan, C.A., & Kleinman, S.M. (2017). Psychological Perspectives on Interrogation. *Perspectives on Psychological Science, 12 (6),* 927-955; Wells, S. & Brandon, S.E. (2019). Interviewing in Criminal and Intelligence-Gathering Contexts: Applying Science. *International Journal of Forensic Mental Health, 18, (1),* 50-65.

This module includes video segments from mock interviews conducted with sexual assault victims, as portrayed by actors. In this first segment, Senior Investigator Matthew Stegner of the New York State Police Department's Campus Sexual Assault Victims Unit provides a brief introduction to the mock interviews, highlighting how law enforcement practitioners can apply their understanding of trauma to improve interviews in real-life scenarios.

To keep the mock interviews brief, their focus is on the *investigator's trauma-informed approach* rather than the information a victim might provide. This means the investigator talks more than the victim in these mock interviews; in a real interview, the goal is for the investigator to talk less and listen more. In all three mock interviews, a victim advocate is present during the process.

Trauma 101: Victim Responses and Memories[7]

So, what does the research tell us about the trauma of sexual assault, and the impact on victims' experiences, responses, and memories? The process begins when the brain's *defense circuitry*[8] detects a threat and takes over the dominant role in brain functioning. Within seconds of the defense circuitry kicking in, the rational part of the brain (the *prefrontal cortex*) may then become impaired in fundamental ways, affecting rational thinking, planning effective responses, and remembering important information (e.g., that there are people nearby who might hear a scream). This shift results in a reliance on **survival reflex responses** that are hard-wired into our brains,[9] and **self-protection habits** that can be rapidly and automatically executed by the brain.[10]

Reflexes and Habits: Not "Fight or Flight"

Although the saying has been around for a long time, most professionals realize that people do not typically engage in *fight or flight* when they are sexually assaulted. This is especially true when the perpetrator is someone they know and trust. Moreover, even when they *do* fight or flee, those behaviors are usually either the result of reflexes or habits (e.g., from military, or martial arts training).

[7] This section is adapted from several EVAWI training bulletins, including: (1) *Understanding the Neurobiology of Trauma and Implications for Interviewing Victims*; (2) *Becoming Trauma Informed: Learning and Appropriately Applying the Neurobiology of Trauma to Victim Interviews*; and (3) *Important Things to Get Right about the 'Neurobiology of Trauma' (3-part series)*.
[8] The term "circuitry" refers to a collection of brain areas that work together to perform certain functions.
[9] Arnsten, A.F.T. (2009). Stress Signalling Pathways that Impair Prefrontal Cortex Structure and Function. *Nature Reviews Neuroscience, 10,* 410-422; Arnsten, A.F.T. (2015). Stress Weakens Prefrontal Networks: Molecular Insults to Higher Cognition. *Nature Neuroscience, 18,* 1376-1385; Hagenaars, M.A., Oitzl, M., & Roelofs, K. (2014). Update Freeze: Aligning Animal and Human Research. *Neuroscience and Biobehavioral Review, 47,* 165-176; Kozlowska, K., Walker, P., McLean, L., & Carrive, P. (2015). Fear and the Defense Cascade. *Harvard Review of Psychiatry,* 23 (4), 263-287.
[10] Schwabe, L. (2017). Memory Under Stress: From Single Systems to Network Changes. *European Journal of Neuroscience, 45,* 478-489.

The phrase *reflexes and habits* is therefore more accurate, and more helpful, for understanding responses to events like sexual assault.[11]

Reflex Responses

Reflexes may include a brief freeze response when a threat is detected, during which movement ceases and the brain quickly and automatically assesses the threat and possible escape options.[12] At some point following this initial "freeze," the victim's body may go rigid, and they may not be able to move or speak (*tonic immobility*). Or their body may go limp; they may feel faint or even pass out (*collapsed immobility*). The victim's brain may also cope with the trauma by disconnecting from the physical and emotional sensations associated with the assault (*dissociation*); this disconnection is often associated with victims operating on "autopilot" or with extreme passivity. Again, these are automatic reflex responses for survival that are hard-wired into our brains.

Habit Responses

In addition to reflexes, humans who experience severe stress and trauma also frequently revert to habit responses that have been learned over time for the purpose of self-protection. These habits can be rooted in: (a) social conditioning (including how girls and women are socialized to respond to males in "nice," polite, face-saving ways), (b) habitual ways of dealing with aggressive and dominant people (which we all have learned during the course of our lives), and (c) habits learned to cope with past abuses (including abuse in childhood).[13] For example, one victim might respond to an assault with verbal protests that are simple, habitual, passive, and ineffective ("It's late," "Someone will hear us," "You have a girlfriend," "I have to go"). Another may respond to an assault in adulthood the same way they did to sexual abuse experienced during childhood ─ by submitting to the assault and complying with the perpetrator's demands. Like survival reflexes, the purpose of these habit responses is to protect the individual.

Central vs. Peripheral Details

Trauma also affects *whether* and *how* experiences are encoded and stored in memory. No one can remember everything about any experience, but particularly stressful or traumatic experiences such as sexual assault. Some people will remember more than others, and each person will recall different details based on what their brain tuned into at the time. Yet there will always be some information, including potentially important information, that simply does not get encoded or stored in memory.

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[11] Hopper, J. (2021). *'Reflexes and Habits' is Much Better Than 'Fight or Flight.'* Sexual Assault and the Brain (Blog), *Psychology Today*.
[12] Hopper, J. (2018). *Freezing During Sexual Assault and Harassment.* Sexual Assault and the Brain (Blog), *Psychology Today*.
[13] Schwabe, *Memory Under Stress*; Yin, H.Y & Knowlton, B.J. (2006). The Role of the Basal Ganglia in Habit Formation. *Nature Reviews Neuroscience, 7*, 464-476.

During a traumatic or stressful event, those parts of an experience that are given attention and emotional significance by the brain are called *central details;* these are often strongly encoded and likely to be retained in memory.[14] In contrast, *peripheral details* receive little or no attention or emotional significance during the event. Peripheral details are likely to be remembered poorly, if at all, or inconsistently over time.[15]

We don't get to decide which details will be central versus peripheral in our memories, because we don't usually get to choose where to focus our attention during a stressful or traumatic event. **This determination is made unconsciously and automatically by our brains, based on what is deemed relevant for survival or coping at the time.**

Any officer who has investigated a traffic accident has seen this when witnesses give **very different accounts** of what happened. This is because their brains encoded and stored different details of the event.

It is therefore impossible to predict which details will be central versus peripheral in the memory of a sexual assault victim. One victim might focus on the menacing look in the perpetrator's eyes, and totally miss the fact that he had a large tattoo spread across his chest. Another may experience dissociation, and not focus on anything related to the assault. A classic example is the victim who fixates on something irrelevant while they are being assaulted – and can describe it in great detail later – but they can recall little else about the incident. In fact, central details *will often consist of sensory memories,* which can be too easily dismissed by investigators focused only on establishing the "facts" of the assault.[16]

Some victims can tell you everything about the ceiling tiles but can't remember what happened to them. Knowing how the brain works can explain why they do this.

[14] Central details can be distorted by external interference (such as repeated leading questions by an interviewer) and strong internal (but not necessarily conscious) motivations. However, they are much less susceptible to distortion than peripheral details. See: Van Damme, I. & Smets, K. (2014). The Power of Emotion Versus the Power of Suggestion: Memory for Emotional Events in the Misinformation Paradigm. *Emotion, 14,* 310-320.

[15] For review, see Hopper, J. (2018). *Why Incomplete Sexual Assault Memories Can Be Very Reliable*. Sexual Assault and the Brain (Blog), *Psychology Today*. Also: Clewett, D.V., Huano, R., Velesco, R., & Mather, M. (2018). Locus Coeruleus Activity Strengthens Prioritized Memories Under Arousal. *Journal of Neuroscience, 38,* 1558-1574; Cohen, N., Pell, L., Edelson, M.G., Ben-Yakov, A., Pine, A., & Dudai, Y. (2014). Peri-Encoding Predictors of Memory Encoding and Consolidation. *Neuroscience & Biobehavioral Reviews, 50,* 128-142; Levine, L. & Edelstein, R. (2009). Emotion and Memory Narrowing: A Review and Goal-Relevance Approach. *Cognition and Emotion,* 23, 833-875; Mather, M. & Sutherland, M. (2011). Arousal-Biased Competition in Perception and Memory. *Perspectives in Psychological Science*, 6 (2), 114-133; McGaugh, J.L. (2015). Consolidating Memories. *Annual Review of Psychology, 66,* 1-24.

[16] All quotes in blue are drawn from original research conducted by EVAWI staff, based on interviews with investigators, advocates, and supervisors, as well as reviews of case materials. For more information, please see the page on "Research on Trauma-Informed Interviewing" at the beginning of the module.

Time Sequence and Context

Sexual assault victims are often unable to provide a **step-by-step account** of their sexual assault.

Other memory processes also come into play when people are experiencing stressful or traumatic events. For example, *time-sequence information* (like the order of events) will often be poorly encoded or stored, as will *context information* (like the physical layout of a room). Even in non-stressful and non-traumatic situations, the brain doesn't always encode and store such context or time sequencing details very well, and this deficit can be even greater during stressful and traumatic experiences.

Officers in High Speed Pursuits

Any police officer in a high-speed pursuit can imagine how they might respond if their Sergeant asked them immediately afterward about such time sequence or context details: "How long did it take you to get from 7th Avenue to 19th?" "Where was your left hand when you passed through the intersection of 9th and Elm?" "What was your speed at that point?" "What did the billboard on your left say?"

Most officers would consider the Sergeant crazy for asking such questions, or wonder if they were "out to get them" for violating department policies. The same is true for victims. Questions about time sequence or context details (e.g., the order and length of time for each sexual act, the positioning of specific body parts at a specified moment) set victims up for failure, because they are difficult if not impossible to answer. The information may simply not be available in memory.

Encoding Modes

Interestingly, experiences are often well encoded when a threat is first detected (when "the fear kicks in"). At that point the *hippocampus* (a specific brain structure involved in memory formation) can temporarily go into a *super-encoding mode.* This is why victims often remember many more details from the beginning of a sexual assault versus later. Memories encoded at the onset of the threat may also include more information about time sequence and context (e.g., physical layout), compared with "normal" memories.

At a later point (which can range from 3 to 20 minutes, depending on many different factors) the hippocampus can then switch to a *minimal-encoding mode.*[17] This shift protects the hippocampus from negative consequences that could result from staying

[17] For review, see Hopper, J. (2018). *Why Christine Blasey-Ford Can't Remember How She Got Home*. Sexual Assault and the Brain (Blog), *Psychology Today*. Also: Diamond, D., Campbell, A., Park, C., Halonen, J., & Zoladz, P. (2007). The Temporal Dynamics Model of Emotional Memory Processing: A Synthesis on the Neurobiological Basis of Stress-Induced Amnesia, Flashbulb and Traumatic Memories, and the Yerkes-Dodson Law. *Neural Plasticity,* 60803, 1-33; Schwabe, *Memory Under Stress.*

too long in the super-encoding mode.[18] The hippocampus also dedicates resources during this phase to storing information captured in the initial super-encoding phase.

All these factors contribute to the *fragmented memories* that are often seen among sexual assault victims and others experiencing extremely stressful or traumatic events.

Benefits of Understanding Science

When we understand the basics of how people commonly respond to sexual assault, and how stress and trauma can alter memory processes, we benefit in many ways.

More Realistic Expectations

One primary benefit of understanding this science is that it **creates more realistic expectations of how people might respond during a sexual assault, and how they encode and store memories of that event.** To illustrate, if investigators do not know anything about common brain-based responses to sexual assault (such as freezing, dissociation, tonic immobility, or collapsed immobility), they might wonder why a victim did not resist the assault – and question whether this means the sexual contact was consensual. Similarly, if they don't understand the distinction between central versus peripheral details, they might question why the victim can't remember what seems (to the investigator) to be basic or crucial information about the assault, but the victim *can* recall details of the event that seem to be insignificant (again, to the investigator).

Similarly, if investigators don't understand that the brain can go into a minimal-encoding mode after an initial super-encoding mode, it won't make sense when a victim is able to recall a great deal about the early moments of the sexual assault, but very little about later details. This all too often can lead investigators to believe that a victim is being selective or deceitful about the information they are providing during an interview.

In this brief interview, Russell Strand explains why it is worth changing the way investigators interview victims: "Now we know there's a better way." In a second segment, he goes on to describe why a trauma-informed approach is needed to interview sexual assault victims and understand their experiences.

More Perceptive Listening

A second benefit is to listen more perceptively to victim responses. For example, if investigators know the different types of freeze responses people might have, they can recognize this might be what victims are describing when they say: "Suddenly I froze," "My mind was blank," or "All I could think was…" If investigators understand that stress

[18] Potential negative consequences include cell death that could result from the sustained influx of calcium in this phase. See: Slemmer, J.E., De Zeeuw, C.I., & Weber, J.T. (2005). Don't Get Too Excited: Mechanisms of Glutamate-Medicated Purkinje Cell Death. *Progress in Brain Research, 148,* 367-390.

and trauma can impair decision making by the rational brain and shift a person toward reflexes and habits, they can recognize these behaviors as survival and self-protection responses, not someone responding in ways that are "illogical" or make no sense.

Investigators must keep listening to the victim's account, without assumptions or bias, so they are less likely to miss or misunderstand valuable information.

In this interview, Olga Trujillo, a sexual assault survivor, author, and training consultant, explains why it is important for criminal justice professionals to understand the wide-ranging trauma impacts that result from sexual assault, to avoid misinterpreting trauma responses as signs that the victim is lying.

More Effective Information-Gathering

A third benefit is to improve the effectiveness of information-gathering. With an accurate understanding of the science, investigators are better equipped to collect detailed information about impaired reasoning capacities, possible freezing responses, habit behaviors, and survival reflexes – the very types of responses that have long been unrecognized and misunderstood, even misinterpreted as evidence that no assault happened, or that the sexual acts were consensual rather than forced or coerced.

The safer and more comfortable victims feel with an investigator, the less stressed they will be, and the more detailed memories they will be able to **recall** and **share.**

For example, investigators can focus on asking open-ended, non-leading questions about central details in the victim's memory, a strategy which often elicits remarkable and unexpected information and may corroborate other evidence. At the same time, investigators can avoid pushing for peripheral details which may never have been encoded in the victim's memory at the time of the assault (or may have rapidly faded from memory), thereby reducing additional stress and trauma for the victim, as well as inaccuracies and inconsistencies that could be weaponized later.[19] Investigators can also be more careful when seeking information about context, chronology, or time sequencing of events, especially later in the sexual assault, when the victim's brain may not have had the capacity to encode detailed memories about how events unfolded.

With trauma-informed interviewing, victims can:

(a) Provide better information

(b) Participate more effectively

(c) Enhance their well-being

[19] Inconsistencies are quite common when recalling any type of memories, particularly with multiple re-tellings of an event for different audiences and for different purposes. Yet even the most minor discrepancies are often used very effectively to undermine the credibility of sexual assault victims' entire statements. See: Ellison, L. (2005). Closing the Credibility Gap: The Prosecutorial Use of Expert Witness Testimony in Sexual Assault Cases. *The International Journal of Evidence & Proof, 9,* 239-268.

Plus … It's Better for Victims!

But the most important benefit of trauma-informed interviewing is that *it is better for victims.* Remember, sexual assaults and disclosures never happen in a vacuum. They take place in people's real, complex, and multifaceted lives, and this includes a unique social and cultural context that influences how victims experience, recall, and share memories with law enforcement and others. If the purpose of a victim interview is to facilitate *memory retrieval* and *disclosure,* then it is important for investigators to recognize these individual dynamics and take steps to reduce the stress victims are experiencing, both as a result of the sexual assault and during the interview itself.

Cautions and Limits of the Science

These benefits can be game changers for investigators, prosecutors, and other professionals who work with sexual assault survivors. But **there is a risk if people take unwarranted leaps from general scientific understanding to specific assumptions about any particular survivor's responses to being assaulted, or their memories of what happened during the experience.**

For example, one shouldn't assume that a person froze during their sexual assault, because not everyone does. Similarly, one should not assume that all victims have lost their rational thinking capacities, nor that the only habit behaviors a victim engaged in were passive and ineffective. We should not leap to the conclusion that someone experienced tonic or collapsed immobility when they say something like, "I felt like I couldn't move." Instead, we must keep our minds open and engage in careful listening (using open-ended, non-leading prompts), to avoid imposing any assumptions, old or new, on survivors.

It is also worth remembering that **some of the most important insights into common victim responses are not based on scientific research.** For example, there are plenty of sociocultural reasons why victims don't physically resist during a sexual assault, why it often takes a while to tell someone about the assault, and why many survivors maintain a relationship with a perpetrator. Practitioners in the field recognized these common behaviors, and many responded appropriately, long before they knew anything about this science.

Finally, there is a concern that some practitioners – and even survivors – have come to view this scientific research as a panacea for proving sexual assault cases. This notion has been expressed by professionals and laypeople alike, placing disproportionate faith in its ability to overcome all the challenges that might come up during a sexual assault investigation and prosecution. Yet this level of confidence is misplaced, and potentially damaging. **It is unrealistic to think that any single technique or evidence type – whether the scientific findings on trauma or anything else – is sufficient proof on its own.**

The University of Texas at Austin created a series of training videos to help police, prosecutors, and advocates respond to sexual assault. The first is a 13-minute segment on *Neurobiology of Trauma in Sexual Assault Cases.*

EVAWI also offers resources on the impact of trauma and implications for interviewing, including cautions regarding the application of scientific findings. This includes training bulletins, webinars, and other resources on our website.

Impact on Investigators: Agency Support

Listening to a detailed account of sexual assault during a trauma-informed interview is different than collecting "just the facts." It requires genuine engagement between the victim and the investigator, with the investigator essentially asking the victim to re-experience the assault, and thus re-experience their trauma.

Conducting this type of interview will likely:

- Take longer than a traditional interview.
- Expose the investigator to more intense details of the victim's sensory experiences, emotional memories, and detailed thought process during a sexual assault, and
- Increase the personal and professional investment of investigators in these cases.

They're exhausting for detectives. With the nature of what you're asking, you get more emotionally invested than traditional interviews. They're more draining. You're asking someone to re-experience something horrible.

All this may make it more difficult for investigators to protect themselves from the personal toll of these cases, and more painful when investigations and prosecutions are unable to move forward. Ultimately, there is very little investigators can promise to any victim of sexual assault. They do not have the final say in case outcomes, and they are limited in their ability to provide specific forms of assistance, other than referrals for advocacy and other services. Feeling so limited in the face of another person's pain can be a significant stress factor for investigators as well as other responding professionals.

The Professional Quality of Life Scale is the most commonly used measure of negative and positive effects on those who help others who are experiencing trauma and suffering. It is free, and can guide self-evaluation and resiliency planning. The tool is available in English and several other languages.

Signs of Secondary Trauma

Vicarious or *secondary trauma* refers to stress or trauma symptoms that result from working with others who have experienced trauma or suffering. This can occur over time, or as a result of one intense interaction. Some of the many physical, behavioral, and emotional changes that can signal a stress response to secondary trauma include:

'What is the hardest thing to forget?' 'What's been the most difficult thing?' You're asking them to think of the worst thing of a terrible thing.

- **Physical Exhaustion:** Constant tiredness, even after sleep, body soreness and tension, headaches, back pain or wrist pain, insomnia or hypersomnia, and getting sick the moment you have time to rest (on the weekend, on vacation, etc.).

- **Emotional Shifts:** Increased levels of anger, irritability, resentment or cynicism, feeling helpless/powerless about your work or the future, feeling guilty for having safety, security, or resources, and feeling more emotional or sensitive than usual.

- **Thought Patterns:** Difficulty seeing or understanding other people's perspectives or available options, jumping to conclusions, rigid thinking or difficulty being thoughtful or deliberate, minimizing the suffering of others in comparison to the most severe cases, and intrusive thoughts and imagery related to traumatic exposure.

- **Behavioral Shifts:** Avoidance of work (absenteeism) or other responsibilities and relationships, dread of activities that used to be positive (or neutral), distraction or escape behaviors like television, eating, alcohol/drugs, shopping, and sex.

- **Relationship Changes:** Not separating personal and professional time, viewing people who don't work in the same profession as less important, difficulty relating to the day-to-day experiences of other people, lack of a personal life outside work, hypervigilance about the safety of loved ones, and isolation from other people.

Many child abuse and sex crimes investigators experience such negative impacts on their personal well-being and intimate relationships. This can be particularly true for those assigned to investigative units like Internet Crimes Against Children (ICAC) who may be required to view graphic pornographic images of child abuse day after day.

One excellent resource is SHIFT Wellness (Supporting Heroes in Mental Health Foundational Training). The primary purpose of the organization is to support professionals who are exposed to child sexual exploitation and abuse materials, but much of the information is likely to be valuable for anyone involved in responding to sexual assault victims and investigating cases. For example, they offer a series of webinars on topics such as *Trauma and Brain Science, Maintaining Your Balance,* and *Wellness Program Implementation.* They also offer a *Unit Commander Guide: Best Practices Recommendations for Supervisors of Individuals Working with Child Pornography Images.*

Burnout

Burnout can also occur as a result of work-related stress. Burnout is a state of emotional, physical, and mental exhaustion caused by excessive and prolonged stress. It occurs when an individual feels overwhelmed, emotionally drained, and unable to meet constant demands. Because it occurs as a result of *workplace stress*, rather than exposure to another person's trauma, it develops over a period of time.

Good victim interviews require considerable time, energy, and focus. Over a prolonged period, investigators could develop the feeling that they are unable to meet these demands, and as a result be at risk of burnout.

Investigators can reduce stress and burnout by:

(a) Adjusting expectations about the information victims will be able to provide during interviews.

(b) Simply "meeting victims where they are."

Self-Care, Wellness, and Resiliency

While mental health support or intervention may be needed in some instances, research suggests that healthy behaviors can be extremely helpful in mitigating the negative impact of stress, burnout, and other effects of secondary trauma. These include:

- Developing **good physical health habits** like exercising, eating a healthy diet, and limiting consumption of alcohol or drugs.
- Practicing **mindfulness** (paying attention to thoughts and feelings and how they might affect you), **meditation** (taking time to empty and rest the mind from thoughts and feelings), or participating in **religious/spiritual practice**.
- Cultivating **personal activities** outside of work, including relationships with friends and family, and recreational activities like sports, music, arts, or hobbies.

I think part of the problem is that investigators feel responsible for the outcome of their cases, but really, they can only do the best job possible and let the evidence fall where it falls.

Ultimately, this attitude will relieve the pressure of case outcomes, and produce better interviews and investigations, helping investigators continue the work without burning out.

- Sgt. Joanne Archambault (Ret.)

- Reframing a **personal outlook** by listing three things you are grateful for each day. This strategy can also include not "doom scrolling" (excessively reading negative or pessimistic news stories and social media). Also consider avoiding entertainment focused on fictional or non-fictional representations of violence or tragedy, to step away from work, conflict, and violence, and find things that bring you joy.

Of course, any of these "healthy behaviors" could be applied in an unhealthy way. For example, people can become overly compulsive about their diet, exercise, sports, or hobbies. It is therefore important to remain open to seeking help from a medical or mental health professional if these signs of stress and trauma persist.

Agency Support

Law enforcement organizations can do a great deal to support investigators and other personnel exposed to stress and secondary trauma as a result of their work. This includes:

> *The challenge has to do with priorities because it takes a lot of time, and some people don't have the patience for it. Either chain of command doesn't understand, or wants the case wrapped up. [My Lieutenant] understood, so I didn't have that problem, but I can see it as a problem for other units.*

- **Providing the training, resources and time** needed by investigators and supervisors, to support high quality victim interviews and thorough sexual assault investigations.
- **Offering investigators debriefings** after conducting a victim interview or experiencing other instances of exposure to stress or secondary trauma.
- **Managing workload and overtime practices,** to ensure investigators have adequate rest and recovery following exposure to stress and secondary trauma.
- **Normalizing healthy behaviors** that mitigate the negative effects of stress and secondary trauma, and de-stigmatizing the need for self-care. This can include in-service training, outreach, and other materials that provide information and referrals.
- **Training supervisors and managers** to recognize indicators of stress, burnout, and secondary trauma among investigators and other support staff.
- **Providing access to confidential consultation and supportive services** for personnel experiencing stress or secondary trauma, *without repercussions.*

Consistent application of such practices clearly requires commitment and "buy in" from the very top of the law enforcement organization. Changes in leadership can lead to backsliding, and pressure to clear cases quickly based on staffing shortages. To ensure these practices for interviewing and self-care remain, they must be written into policy.

Initial Response: Preliminary Investigation

In the first section of this module, we briefly reviewed the scientific research on stress, trauma, and memory, as well as the unique dynamics of sexual assault. This provides a foundation for the general approach and techniques covered in the rest of the module. We also described the impact of secondary trauma on investigators, and steps that law enforcement agencies can take to support their personnel and enhance resiliency. We

now turn our attention to applying this evidence base to the various stages of an initial response and preliminary investigation, as well as the investigative follow-up. This process will unfold somewhat differently in *acute* versus *non-acute* reporting situations.

Acute vs. Non-Acute Reports

The terms *acute* and *non-acute* are used in health care, to triage the need for emergency medical treatment. Officers are often familiar with this terminology from their experiences in emergency rooms. The terms are also used to differentiate child abuse reports, since there are important implications for medical forensic exams and other aspects of the investigative response in acute vs. non-acute reporting scenarios.

These same differences apply to sexual assault reports by adult and adolescent victims. However, the same terminology is not typically used. Unfortunately, the terms that are often used for adolescent and adult victims are *prompt* versus *delayed* reports, which clearly infer that prompt reports are better and delays are problematic. We will not use this terminology in the current module. Instead, we will use the terms *acute* and *non-acute* to describe the two types of reports and differentiate appropriate responses.

911 Calls

When someone calls 911, the call-taker will need to ask a number of questions to determine what type of incident is being reported, identify the caller's location, and categorize the call based on whether an emergency or acute response is needed. Yet these 911 systems are not standardized across the country, or even among local jurisdictions. This means there may be significant differences in the ways that calls are categorized and prioritized across agencies.

The National Emergency Number Association (NENA) recommends that the following information – at a minimum – should be gathered by all call-takers to help determine the category or priority of the call:

- Address or exact location of the incident
- Call-back number
- Type of emergency
- Time of occurrence
- Any known hazards
- Identities of people involved and their location[20]

Applying this to the current context, when someone calls 911 to report a sexual assault, the call-taker will ask when the sexual assault happened and whether the victim is injured. This will help determine whether emergency medical care might be needed, and whether a medical forensic examination might be

[20] Neusteter, S.R., Mapolski, M., Khogali, M., & O'Toole, M. (2019). *The 911 Call Processing System: A Review of the Literature as it Relates to Policing.* New York, NY: Vera Institute of Justice.

warranted. The call-taker will also ask questions to evaluate whether the suspect might pose an immediate threat to the victim, responding officers, or others.

- If the victim is in danger or in need of emergency medical attention, this is an *acute report,* and communications should dispatch both a high-priority law enforcement response and emergency medical assistance.

- If there is no immediate threat or need for emergency medical assistance, it is a *non-acute report.* The call should still be assigned a high priority for response, given the seriousness and sensitivity of the call. However, emergency or life-threatening calls will be assigned a higher priority.

If the call-taker determines that the incident does not require an emergency response, many 911 calls will be transferred to a non-emergency number. Alternatively, victims may call the non-emergency police communications number on their own. Either way, many of the same questions will be asked by the call-taker based on the agency's recognition that sexual assault calls should be given a high priority even when they don't require an emergency response.

Acute Response

With an acute report of sexual assault, key priorities of responding officers include:

- Determining whether the location is safe, and taking steps to secure the safety of victims, officers, and others who might be responding to that location.

- Obtaining emergency medical care for the victim, if needed.

- Evaluating the need for a medical forensic examination of the victim, and making the necessary arrangements (including transportation) to obtain one when warranted.

- Identifying and securing the crime scene(s).

- Identifying and interviewing any witnesses.

Victim and officer safety are the first priorities when responding to any sexual assault report.

- Eliciting identifying information about the suspect(s) and their possible location.

In this brief interview, Dr. Wendy Patrick explains how the initial interactions with first responders are critical to the investigation of a sexual assault report.

Separate Victims, Witnesses, and Suspects

When the suspect or any witnesses are at the scene when responding officers arrive, it is important to separate them as soon as possible. However, this is not just an issue of physical separation; officers need to make sure *they are not visible to each other.*

Body language can be just as menacing as words, and any threat that is communicated to the victim nonverbally will likely interfere with their ability to *retrieve,* and their willingness to *share,* detailed memories with law enforcement. Also, for victims who communicate using sign language, anyone who understands that language will know exactly what they are saying if they can see them. By keeping all parties out of each other's line of sight, officers will be better able to gather the information they need.

★ **Body Worn Cameras**

Another issue to consider is the use of body worn cameras by responding officers. In their *Executive Guidebook: Practical Approaches for Strengthening Law Enforcement's Responses to Sexual Assault*, the Police Executive Research Forum (PERF) addresses the use of body worn cameras which can "present privacy concerns for victims of sexual assault and other sensitive crimes." Recommendations include reviewing state privacy laws to determine whether officers can turn off body cameras when responding to sexual assault and requiring that officers obtain consent before recording victim interviews.

PERF cites an example of the Salt Lake City Police Department which "added language to its body camera policy to allow officers to turn off the camera when responding to victims of sensitive crimes," including in situations where:

> *(1) The individual who is the subject of the recording requests that the officer deactivate the officer's body camera, and*
>
> *(2) The officer believes that the value of the information outweighs the value of the potential recording and records the request by the individual to deactivate the body camera.*[21]

For more information, please see PERF's guidance on *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned.* Also helpful is *Police Body Worn Cameras: A Policy Scorecard,* a resource published in 2015 by Upturn and the Leadership Conference on Civil and Human Rights.

[21] Police Executive Research Forum (2018). *Executive Guidebook: Practical Approaches for Strengthening Law Enforcement's Responses to Sexual Assault*. Washington, DC: Police Executive Research Forum (excerpts appear on p. 69).

Victim Self-Care Activities

When victims call 911 to report a sexual assault, call-takers should ask whether they have showered, bathed, douched, or urinated since the assault. If this information is not available from a call-taker, responding officers, will need to ask the same question. *If the victim has already taken any of these self-care measures,* they should be reassured that this does not mean that a thorough investigation isn't possible, and evidence may still be found from a medical forensic examination as well as numerous other potential sources.

If they have not taken such steps, however, victims should be advised against doing so (if possible), until critical evidence has been collected. For example, if they need to urinate, victims can be asked to use a clean jar to collect the urine as evidence. Or, if a medical forensic exam will be conducted, responding officers can ask health care providers to collect any mouth swabs as soon as possible, so victims can feel free to eat, drink, or smoke before undertaking the rest of the exam process. (These issues are addressed in more detail later, in the section on Medical Forensic Examinations.)

Coordinating Multiple Locations

During an acute response, responding officers may need to coordinate multiple responses at several different locations, including (a) the location where the sexual assault took place, (b) the current location of the victim and/or suspect(s), and (c) any location where the victim or suspect(s) may have been before or after the assault. Crimes may also involve more than one jurisdiction, so coordination may be complex.

Coordinate with Social Service Agencies

Another aspect of coordination is Child Protective Services (CPS) when the victim is a minor or Adult Protective Services (APS) when the victim is a dependent adult (based on advanced age and/or severe disability). Following departmental policy and protocol, responding officers will often arrange with these service providers to respond together and make a determination whether immediate actions should be taken to protect the victim from additional harm.

- For **minor victims** who may be at risk of harm from a parent or other family member, responding officers will need to coordinate with Child Protective Services (CPS) to take the minor into protective custody and place them in a receiving home, pending the results of a comprehensive investigation.

- If the victim is a **dependent adult,** living with a family member or caregiver who might pose a threat, responding officers will need to coordinate with Adult Protective Services (APS) to place them in alternative housing. Unfortunately, many shelters do not have the resources to care for dependent adults, so the best solution may be to find another trusted friend or family member they can stay with. However, these can be challenging scenarios.

Alternatively, the victim (either a minor or dependent adult) may be living in a **residential facility.** In that scenario, responding officers will need to work with staff at the residential facility to identify steps that can be taken to ensure that the victim is safe, and protected from any contact with the suspect, while a thorough investigation is being completed. These are complex scenarios which involve coordination with many other criminal justice and social service professionals.

Non-Acute Responses

Most sexual assaults are reported after some period of time, whether it is days, weeks, months, or even years. While the typical law enforcement response to sexual assault is therefore not an emergency, *these non-acute calls should still be assigned a high priority by communications personnel.* No matter how much time has passed, victims who contact law enforcement to report a sexual assault are likely to be experiencing a great deal of stress or trauma. Also, evidence can deteriorate over time and may be intentionally destroyed by the suspect or others. There is therefore a need for law enforcement to respond as promptly as possible, even in non-acute scenarios.[22]

Statute of Limitations

When I finally decided to report my abuse (after many years), the Detective that took my case believed me from the first interview. And even though the case did not result in charges being filed, due to the statute of limitations, he supported me throughout the case. His advocacy is something I will be forever grateful for.

Some victims are not able to report their sexual assault for many years. As long as the report is made within the statute of limitations, it can be investigated and potentially prosecuted (where the facts and evidence warrant). It is certainly more difficult to investigate a report of sexual assault that was committed long ago, but it is not impossible, and dedicated law enforcement professionals across the country do it every day. Particularly in cases of child sexual assault, investigators frequently corroborate reports of abuse that took place years ago, even without physical evidence or eyewitnesses to the crime. Other types of evidence and testimony can often be documented even decades after the assault

In fact, an investigation may even be warranted in some cases where the statute of limitations has expired, because prosecutors can use the victim's statements or other evidence to corroborate another offense that is within the statute of limitations. This is often referred to as evidence of "prior bad acts").

[22] All quotes in green are from sexual assault survivors who spoke with EVAWI about their experiences.

Responding to Victim's Location

Some non-acute calls come in directly as a sexual assault report. Others are the result of a mandated report from a health care provider, caregiver, or someone else who suspects abuse.[23] Alternatively, patrol officers may have been called to respond to some other type of crime (not a sexual assault), but while talking to the victim they observe something or have a sense that raises this possibility. Regardless of how the call comes in, *responding officers will typically respond to the victim's location* in a non-acute reporting scenario. This is often the victim's home, or the home of a friend or loved one. The initial interview with the victim will then typically occur at that location.

Begin Preliminary Investigation

Regardless of whether a sexual assault report is acute or non-acute, responding officers will need to take a number of steps to begin a preliminary investigation:

- Ensure that the victim is safe, and *feels* safe.
- Establish trust, rapport, and comfort for the victim.
- Request any accommodations or interpreting services that might be needed.
- Determine whether anyone else needs to be present during the initial interview with the victim (e.g., parent, caregiver, support person).
- If there is reason to suspect that the victim has a disability affecting cognition or communication, begin evaluating the victim's general capabilities.[24]
- Conduct a brief interview with the victim, to collect basic information and allow continued investigation, not to capture a detailed or in-depth statement.
- Identify potential sources of evidence (including any 911 call recordings, clothing, bedding, condoms, tissues, towels, etc.), and arrange for their collection.
- If a suspect has been identified, consider investigative strategies for gathering additional evidence (forensic examination of the suspect, phone interviews, personal contacts, pretext or one-party consent calls, search warrants, etc.).[25]

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[23] All US states have mandated reporting laws requiring certain professionals (e.g., law enforcement personnel, health care professionals, teachers, caregivers, and others) to report suspected abuse committed against children and vulnerable adults. For more information and to find out about the laws in your jurisdiction, see the website for RAINN (Rape Abuse and Incest National Network).
[24] For detailed information on this topic, please see the section titled "Evaluating Capacity to Consent" in the OLTI module *Successfully Investigating Sexual Assault Against Victims with Disabilities.*
[25] For more information on suspect exams, please see the OLTI module, *Forensic Examinations of Sexual Assault Victims and Suspects: Role of the Examination in Sex Crimes Investigations (Part 1: Type and Purposes of Evidence*). For other investigative steps, see (1) *Preliminary Investigation: Guidelines for First Responders,* (2) *Law and Investigative Strategy: What Kind of Sexual Assault is This?* (3) *Crime Scene Processing and the Recovery of Physical Evidence from Sexual Assault Scenes,* and (4) *Laboratory Analysis of Biological Evidence and the Role of DNA in Sexual Assault Investigations*.

Does Officer Gender Matter?

In the past, some agencies have had a policy or practice of assigning female officers to sex crimes cases, assuming that victims will feel more secure and that women officers would "naturally" or intuitively respond better to these cases.

At a time where I was scared and intimidated to be around men, the officer made sure I felt safe and comfortable. He never pushed me out of my comfort zone, but he did encourage me; and to this day I appreciate that.

Yet the best responder is one who demonstrates a commitment to taking each report seriously, an ability to establish rapport and trust with victims, and a dedication to careful listening, documentation, and follow-up investigation. When these qualities are present, the gender of the officer is less important. In other words, *the best approach is to invest in quality training for all officers regardless of gender,* and to set high expectations for anyone who interviews sexual assault victims.[26]

Supporting Patrol Response

In most law enforcement agencies, the preliminary investigation is conducted by a patrol officer. However, some agencies assign a detective to respond during this initial stage. When this is the case, it's best if the detective focuses on *supporting the patrol response* with resources and supervision. There are many reasons for this.

For one, victims have likely bonded with the patrol officer at this point, and they have already provided at least basic information about the sexual assault. It is the patrol officer's job to document this information, and hand it off for investigative follow-up. This is not the right time for a detective to conduct an in-depth interview with the victim or begin drawing conclusions about the case. If a detective *does* respond to the call, the patrol officer can simply introduce the victim to the detective, and explain that the detective will be the one contacting the victim later for investigative follow-up.

Report on Preliminary Investigation

Even when the case is assigned to a detective for follow-up, responding officers must still write a report documenting what they learned and observed during the initial contact, including as much detail as possible about *what they said and did themselves.* This initial report plays a critical role in the larger investigation.

[26] This information is drawn from EVAWI's training bulletin entitled *Should Sexual Assault Victims be Interviewed by Female Officers and Detectives?* More information can be found in this bulletin.

Access Interpreting Services

When responding to a call for service, officers must evaluate what type of crime is being reported and identify potential crime scenes, suspects, and witnesses. This can be challenging when the victim has limited English or other barriers to communication. Sometimes there may be a bilingual officer or volunteer who can respond to the scene, to take over the investigation or assist with interpreting. In other scenarios, responding officers can use a cell phone app to help interpret during the initial response. However, in some situations responding officers may need to ask family members, caregivers, or other support people for help with interpreting. In that case, officers should take precautions to avoid harming the victim, the person doing the interpreting, and the case.

For example, children should not be asked to interpret or assist with communication, unless the situation is an emergency and their short-term assistance is used to locate an appropriate adult.[27] It should hopefully go without saying that a spouse or intimate partner should not be used to interpret for the victim if they are suspected of being an abuser. However, other family members and support people are also likely to be emotionally involved with the victim, and this can have a significant influence on what the victim says or does. It is therefore best to transition to a neutral interpreter as soon as possible, to ensure accurate communication and information gathering. Law enforcement agencies can work with their Sexual Assault Response and Resource Team (SARRT), to begin identifying interpreting resources before they are needed.

LanguageLine is one example of a telephone service that law enforcement agencies can use for interpretation. The US Census Bureau also offers "I Speak" identification cards in 38 language, to help determine what language a person speaks, so responding officers can begin locating an interpreter.

To locate a qualified interpreter for American Sign Language, the place to start is the national Registry of Interpreters for the Deaf (RID). For victims who use another sign language or home signs (not a formalized sign language), a Certified Deaf Interpreter can be used. More information is available from the National Consortium of Interpreter Education Centers.

Address Disabilities and Accommodations

Once immediate safety needs are met, responding officers can begin gathering basic information about any disabilities the victim may have and accommodations that might be needed to effectively communicate and provide support. In 1990, the Americans with Disabilities Act (ADA) was enacted to prohibit discrimination against people with disabilities (as well as their caregivers), by requiring government agencies to make

[27] Office for Victims of Crime (2008). *First Response to Victims of Crime: A Guidebook for Law Enforcement Officers*. Washington, DC: Office for Victims of Crime, Office of Justice Programs, US Department of Justice (NCJ 217272).

reasonable accommodations in their policies and procedures to avoid excluding these individuals from accessing their programs, services, and activities. This means that when someone with a disability (or a caregiver) requests a reasonable accommodation for equal access to programs, services, or effective communication, it is generally incumbent upon public entities such as law enforcement agencies to provide it.[28]

Sometimes an accommodation that would help a particular victim is well-known to that person and their caregiver(s). In that case, it can often be quickly identified and mobilized for the initial interview. In other situations, however, family members and caregivers may have adapted their mode of communication with the victim for so long they are not even aware of what they are doing anymore. By observing victims while they communicate with family members or caregivers, it is often possible for officers to gather a great deal of information about how to best communicate with them.

Informational Form or Card

One place to start is by asking family members or caregivers whether they have a card or form that provides basic information about the victim's disability, including medical considerations or the need for certain accommodations. In many cases, the family will not have such an informational form or card, but the use of such a tool can be promoted by law enforcement agencies to assist responding officers in an emergency situation.

EVAWI has two examples of an information form or card that families can use for loved ones with disabilities. They are provided in the OLTI module entitled, *Successfully Investigating Sexual Assault Against Victims with Disabilities.* The module also includes detailed information about what is required for law enforcement agencies to comply with ADA requirements and ensure access.

Collaboration with Agency Partners

Collaboration with community partners is critical to ensure the accommodation needs of victims and others are met. This is yet another task ideally undertaken by a Sexual Assault Response and Resource Team (SARRT), which can identify a "roster of support agencies and individuals who may be contacted on a 24-hour-per-day basis to provide support in situations involving people with disabilities."[29] Law enforcement agencies can work to establish a Memorandum of Understanding (MOU) with these agency partners, spelling out the roles, responsibilities, and notification procedures, to ensure that all victims of crime have equal access to high quality police services.

[28] US Department of Justice (2012). *Questions and Answers: The Americans with Disabilities Act and Persons with HIV/AIDs*. Washington, DC: Civil Rights Division, Disability Rights Section, US Department of Justice; US Department of Justice (2014). *ADA Requirements: Effective Communication.* Washington, DC: Civil Rights Division, Disability Rights Section, US Department of Justice.
[29] Police Executive Research Forum (1992). *Model Policy Americans with Disabilities Act*. Washington, DC: Police Executive Research Forum (quote appears on p. 10).

The Vera Institute offers a Toolkit to Help Law Enforcement Personnel Meet the Needs of Crime Victims with Disabilities as part of their Accessing Safety Initiative. The toolkit includes a palm card outlining four steps to ask about and provide accommodations, as well as sample questions to ask. It also includes a Quick Reference Guide with more detailed information on the four steps, to serve as a companion to the palm card, an Agency Readiness Guide to ensure agencies are prepared to provide accommodations, a tip sheet with examples of common accommodations, and a demonstration video to instruct law enforcement personnel on how to ask about accommodations.

Collect Basic Information

We do a bare bones interview. Is there something we need to do right now? Then we do a long interview later.

After meeting immediate needs for interpreting and accommodations, responding officers can begin collecting information for a preliminary investigation. During this initial response, responding officers only need to gather basic information that a sexual assault is being reported. This is not the time to obtain a detailed account of the incident. Nor is it the time to challenge any perceptions about inconsistencies in the victim's initial statement. It is certainly not the time to ask victims to provide a *written* statement. In fact, responding officers and investigators should *never* ask victims to provide a written statement about their sexual assault.[30] Victims should be advised that a more detailed interview will need to be conducted, but this will be scheduled for later.

In this second segment of the mock interviews, Investigator Stegner interviews a victim who was sexually assaulted by her live-in boyfriend. In the video, Investigator Stegner explains to the victim that this initial interview will be more detailed than it might otherwise be, because of immediate concerns for the victim's safety and the possible need for an order of protection.

Not the Time for an In-Depth Interview

Particularly during an acute response, victims are often subjected to an in-depth interview when they haven't eaten or slept for a long time, are under the influence of alcohol or drugs, or are worrying about essential concerns such as children, pets, or other responsibilities for family, work, or school. Victims are often exhausted, confused, and struggling just to absorb what happened to them. They may not be getting the support they need from friends and family, especially victims who do not have an advocate helping them. All this will interfere with their ability to *recall* and *share* detailed memories.

[30] New Hampshire Governor's Commission on Domestic and Sexual Violence (2018). *A Model Protocol for Response to Adult Sexual Assault Cases*. New Hampshire Office of the Attorney General (p. 19).

Also, when investigators conduct an in-depth interview at this point, they are "putting the whole case on the victim." They have not yet begun taking critical investigative steps to obtain the information and evidence which will allow them to draw proper conclusions about the credibility of the victim and the likelihood of successful prosecution. This is why *EVAWI cautions against conducting an in-depth interview during the initial response to a sexual assault report, particularly in an acute reporting scenario.*

The appropriate time for an in-depth interview with the victim is later, during the follow-up investigation. At that point, any information provided by the victim can be considered in the context of other information and evidence obtained during the course of a thorough investigation (e.g., from the victim's medical forensic exam, suspect forensic exam, crime scene documentation, photographs, witness statements, criminal histories, etc.). The investigator will then be able to piece together the various types of information and evidence available, to compile a linear and evidence-based account of the crime.

Establish Safety and Trust

Since the initial contact is critically important to the entire investigation, a primary goal for responding officers must work to *ensure that the victim feels safe,* and *establish a relationship of trust.* Yet this can be difficult, because sexual assault victims have had their trust violated in such a profound way.

During the initial response to a sexual assault report, victims are often in a hypervigilant state, experiencing a host of conflicting feelings, including fear, shame, anger, embarrassment, and uncertainty. They likely have a heightened awareness of the reactions and cues they perceive coming from responding officers, and anyone else who is present. These perceptions may profoundly affect their feelings and responses.

With this in mind, the best way for responding officers to enhance the victim's safety and a trusting relationship is to consistently demonstrate empathy, patience, and understanding – beginning with their first contact and extending throughout all subsequent interactions.

Whether meeting for the first time, the second time, or the tenth time, **safety and trust are crucial** for maintaining the victim's confidence and eliciting the best information.

In this brief interview, Dr. Wendy Patrick explains the importance of establishing a bond of trust between victims and first responders. In another short segment, she highlights how this bond can affect not only the victim's well-being but also case outcomes all the way through a potential jury trial.

Officers Not Called Away

There are many strategies for responding officers to establish safety, trust and rapport for victims, but one is to *ensure they are not called away during the initial response,* leaving victims to deal with multiple officers simply because of a shift change or other reason. In addition to interfering with the relationship of safety, trust, and rapport, such handoffs also create unnecessary challenges for the investigation and report writing. Instead, **law enforcement agencies should place a high priority on their sexual assault calls**, by specifying in their policies and procedures that responding officers will not be called away, and supporting officers with the resources and the potential overtime they need to complete a high-quality initial response and preliminary investigation.

Reassurance of Safety

In an otherwise horrible situation, having someone you feel safe going to makes a world of difference.

Regardless of how long it has been since their sexual assault, victims are likely to feel confused and frightened when a report is first made to law enforcement. In addition, some victims *will not perceive responding officers as safe,* based on their experiences and attitudes toward law enforcement, and the possibility of a negative history of interactions within their community.

For officers responding to an acute report, where victims may still be in an emergency situation, they can be reassured with statements like the following:

- *I am here now. You are safe now.*
- *We have officers in the area now, and you are safe.*

The word "now" can be especially helpful, because it brings victims back to the reality of the situation that the assault has ended. Officers can also reassure victims by explaining that a major part of their job is to provide assistance and protection.

With a non-acute report, victims may not be in an emergency or life-threatening situation, but it is still likely to be a very stressful and even potentially traumatic. Officers can reassure these victims of their safety, with statements like the following:

- *Your health, safety, and wellness are a priority.*
- *I can talk with you about any concerns you have for your safety and well-being.*

Express Genuine Empathy

Another way to build trust and rapport with victims is to *express genuine empathy.* While law enforcement's role is an unbiased fact finder, it is perfectly appropriate for responding officers to express care and concern for victims with a statement like:

- *I'm sorry you're going through this.*
- *I'm sorry we have to meet under these circumstances.*
- *I recognize this is difficult. I really appreciate the courage it took to call us.*

The important issue is not the exact words used, but the fact that victims are treated with compassion and respect, and their reports are handled professionally, rather than communicating (either explicitly or implicitly) that they are not being believed or taken seriously. An empathetic statement can foster victim healing and lay the foundation of mutual cooperation and respect upon which a successful investigation can be built.

The first thing [the officer] said to me when he walked in was, 'So, what happened here?'… as if I was a party to something, that this was somehow something that I invited.

Empowerment and Choice

When someone is sexually assaulted, one profoundly disturbing aspect of the experience is a total loss of control. It is therefore important to help victims regain as much control as possible, by posing simple choices for how the interview will proceed.

For example, investigators can ask victims:

- Whether they would like to have an advocate or other support person present.
- Where they would like to sit.
- What they would like to be called.

Investigators are giving survivors as many choices as possible, even in small ways, like, 'Where would you like to sit?' 'Is it okay if I sit here?' They are really trying to create a different environment.

- Whether there is anything that can be done to make them feel safer and more comfortable, like a beverage, tissue, or snack.[31]

These are just a few examples. The possibilities are endless, yet the goal is the same: To help victims regain control, supporting both their well-being and participation during the interview.

In this expert interview, Dr. Jim Hopper describes how important it is for investigators to establish empathy, connection, and respect with victims, and offering victims whatever options are possible in the context of an interview.

Offer Resources for Victims

Responding officers must be prepared to offer at least a basic explanation of the services available to sexual assault victims in the community. However, *more detailed information will need to be provided in written materials,* because victims will not be able to process everything they are told verbally. If they are provided written materials, victims can read them later when they have more time and capacity to focus.

Ideally, these informational materials will cover topics such as:

- Basic sexual assault definitions and dynamics
- Process of recovery from sexual assault
- Available counseling and support services
- Health care and medical forensic exams
- Advocacy for survivors and support people
- Alternative reporting options
- Criminal justice procedures
- Crime victims' rights and compensation
- Safety planning guidance

I refer to this as 'Ask, not tell.' Find a way to ask the victim instead of telling the victim information. 'Would it be helpful to you if I provide some information and resources to consider?'

- Chief Tom Tremblay (Ret.)

Informational materials will also need to be translated for victims who do not speak English, and offered in accessible formats for victims who are blind or have low vision.[32]

[31] Again, the only caution is for victims who will be having a medical forensic exam. If the exam has not yet been completed, it may be best to have the victim wait (if possible) to eat, drink, smoke, or use the restroom until certain evidence has been collected (e.g., urine specimen, oral swabs). Many forensic examiners will collect this evidence as soon as possible, so victims can take these measures right away..

[32] As noted previously, the Americans with Disabilities Act (ADA) requires government agencies to make reasonable accommodations to avoid excluding people with disabilities from their programs, services, and activities. This can include making sure that written resources are available in alternative formats, such as Large Print, Braille, CD, or screen readers. Guidance is offered in a 2014 publication by the US Department of Justice, *ADA Requirements: Effective Communication.*

Then when they are handed to victims, it is important to ask *whether informational materials might compromise the victim's safety or privacy,* based on who might see them. This issue is one among many that will need to be addressed in a more comprehensive approach to safety planning for the victim.

One excellent example of an informational brochure for victims is found in New Hampshire: A Booklet for New Hampshire Sexual Assault Survivors.

Notify Victim Advocacy

One key resource that should be offered to all sexual assault victims is victim advocacy. Advocates are able to provide sexual assault victims crisis intervention and emotional support, as well as information and other forms of assistance. Research consistently shows that victims who receive this type of supportive response have lower rates of post-traumatic stress, and are less reluctant to seek further help.[33] Advocates can also provide support for any loved ones who might be present during the initial response to a sexual assault report. By helping them deal with the difficult emotions raised by the sexual assault, they will be better prepared to respond supportively to the survivor.

Assist with Notification

Sometimes, victims ask for help notifying family members, friends, or others (schools, employers, etc.) about their sexual assault. Responding officers can support victims by asking if there is anyone who should be called or notified, and then make this contact. However, this is another area where victim advocates can also be very helpful. Advocates are well positioned to address questions and concerns these individuals might raise about sexual assault and its impact on victims, both during the initial response as well as the longer-term aftermath.

Two Types of Victim Advocates

There are two basic types of victim advocates, as described in *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*:

> *Advocates can be **system-based,** meaning they are employed by law enforcement or by prosecutors' offices, or **community-based,** meaning they are employees or trained volunteers with a nongovernmental community organization that provides services to victims.*

[33] Campbell, *Rape Survivors' Experiences;* Wasco et al, *Rape Crisis Centers*.

Not all jurisdictions have both system-based and community-based advocates, but including advocacy is important as early in the process as possible.[34]

While their fundamental roles are similar, one common difference between the two types of advocates is the level of confidentiality in their conversations with victims.

- **Community-based advocates** often have legal protections for the confidentiality of their private communications with victims. This means they cannot provide any information about the victim or case to law enforcement or prosecutors, unless the victim has signed a release waiver specifically authorizing them to do so.

- In contrast, **system-based advocates** typically *do not* have legally protected confidentiality, so they can be asked by law enforcement or prosecutors to provide any information they learn or observe during their private conversations with victims. In fact, for system-based advocates, this extends to anything they observe or learn about the victim or case, not just what takes place in their private communications.[35]

Advocates must clearly explain the level of confidentiality they have to victims, so this is understood before victims begin sharing any information.

For more information, EVAWI offers two OLTI modules on the topic of victim advocacy: (1) *Effective Victim Advocacy in the Criminal Justice System: A Training Course for Victim Advocates* and (2) *Breaking Barriers: The Role of Community-Based and System-Based Victim Advocates*.

Advocacy Response Protocol

To ensure all sexual assault victims have access to advocacy services, there are several possible options for response protocols. One scenario is when law enforcement responds to a sexual assault call in the field (e.g., victim's home). Some advocates are allowed to respond to that type of location, based on their agency's policies. (This is more common for system-based advocates than community-based advocates.) When this is allowed, advocates can work with law enforcement to develop specific protocols for doing so safely. For example, the officer and the advocate might meet near the victim's home and proceed together to meet with the victim.

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[34] National Institute of Justice (2017). *National Best Practices For Sexual Assault Kits: A Multidisciplinary Approach*. Washington, DC: National Institute of Justice, US Department of Justice (quote is on p. 9-10).
[35] One notable exception is the state of Arizona, which offers privileged communications between "crime victim advocate and victim" (A.R.S. 13-4330). A crime victim advocate is defined as "a person who is employed or authorized by a public entity or a private entity that receives public funding primarily to provide counseling, treatment or other supportive assistance to crime victims" (A.R.S. 13-4401). This definition clearly includes system-based advocates. For more information, see *Confidentiality: FAQ* published by the Arizona Coalition Against Domestic Violence.

However, many advocacy agencies have policies prohibiting their staff and volunteers from responding to a field location like the victim's home. When these prohibitions are in place, law enforcement agencies may need to explore alternative ways of providing services for victims in a field location, perhaps by involving their crisis intervention program if they have one, or creating one if they don't. Alternatively, interviews could be conducted in a neutral location where advocates can safely respond. This could include, for example, a police department, hospital, or other designated location where an advocate can be present.

★ **Crisis Intervention Teams**

Many law enforcement agencies have professional crisis intervention teams that help officers respond in the field, like DVERT (Domestic Violence Enhanced Response Teams) or PERT (Psychiatric Emergency Response Teams). These teams provide invaluable support for law enforcement in crisis situations.

Yet other programs consist of volunteers. For example, the San Diego Police Department has a program for crisis intervention volunteers who assist police by responding to assist residents who have been affected by a crime or other critical incidents. This can include sexual assault, but also homicides, suicides, domestic violence, and other types of assault. Like professionals, crisis intervention volunteers offer emotional support and practical assistance, as well as resources and referrals. For more information, see the San Diego Police Department.

Routine Advocacy Callout

When advocacy services are available, community protocols should specify that notification and response by an advocate are a matter of routine practice (i.e., the default). These are the type of procedures that are best spelled out in a written protocol, created by a multidisciplinary Sexual Assault Response and Resource Team (SARRT).

Most sexual assault victims are unfamiliar with what advocates do, so if they are asked whether they want an advocate called out, they may decline without understanding how this service might benefit them. With routine notification and advocacy callout, victims can still decline advocacy services, but this is less likely after they have made personal contact and better understand how this might help them and their loved ones. If the victim *does* decline services, they should be given written referrals to take home, so they know how to contact an advocacy agency if they decide to later.

EVAWI offers two OLTI modules on community protocols, including advocacy notification: (1) *Sexual Assault Response and Resource Teams (SARRT): A Guide for Rural and Remote Communities* and (2) *Sustaining a Coordinated Community Response: Sexual Assault Response and Resource Teams*.

Medical Forensic Examination

Medical forensic exams are important for **evidence collection** and prioritizing the victim's **health, safety, and wellness.**

If a medical forensic exam is warranted based on the facts of the victim's preliminary statement, it will be important for responding officers to give victims a basic explanation of what such an exam is, why it is valuable, and what the process looks like. Especially important is the point that the exam itself is free of charge, and victims can have one without having to immediately decide whether they are able to participate in a law enforcement investigation or potential prosecution. As noted previously, victims can be reassured that valuable evidence may still be found during the exam, even if they have engaged in self-care measures like showering, bathing, eating, drinking, smoking, etc.

Depending on community protocols, either the forensic examiner or the responding officer should notify the advocacy agency when a medical forensic exam will be conducted. This type of collaborative response is critical; it t is best to notify victim advocacy as soon as possible, so they can respond promptly. Victims should also be advised to *bring an entire change of clothes with them to the exam* (including underwear and a bra, if they wear one), because the clothes they are wearing will generally be collected as evidence.[36]

Transportation for Exams

During a field response, law enforcement will typically be the ones to transport victims to the hospital or other exam facility (after completing the initial response steps outlined previously). *Victims should not be advised to drive themselves for a medical forensic exam, or to find someone else to drive them.* This transportation is an important part of the law enforcement role, and it allows responding officers a unique opportunity to continue building trust and rapport with the victim. Plus, this is an unfair burden to place on victims, and it increases the chance that they won't go to get an exam at all, and the opportunity to collect valuable evidence will be lost. This law enforcement role and responsibility should be viewed as an important step in a sexual assault investigation.

Policies on Transporting Victims

Because law enforcement will typically have responsibility for transporting victims to the hospital or other facility for a medical forensic exam, agencies should have a policy for how this will be achieved. For example, will victims be required to sit in the back seat of a patrol car, or can they ride in the front passenger seat? Alternatively, will they be transported using an unmarked car (without a cage)?

[36] While forensic examiners will typically collect the clothes that a victim was wearing during and/or immediately after the sexual assault, victims can always say "no" to a specific item being collected. For example, "a patient may own only the clothing that is being collected" (*National Protocol for Sexual Assault Medical Forensic Examinations*, p. 100). Other items are unlikely to have significant evidentiary value (e.g., winter coat, shoes). Investigators and forensic examiners can work with victims to balance the objectives of maximizing evidence collection and minimizing grief and loss experienced by the victim.

When responding officers are working in a two-person unit, sexual assault victims will need to ride in the back seat of the patrol car if they are transported, but they should be reassured that they are not in trouble and not under arrest. It's helpful if officers explain that it's not unusual for civilians to ride in the back seat of police cars (for ride-alongs, politicians, journalists, etc.). Once they are reassured that they aren't in trouble, most victims understand the situation.

Exam Protocol for Advocacy

In other scenarios, the victim may make their initial contact with an advocacy agency rather than law enforcement. In that case, the advocacy agency may play a role in notifying law enforcement or the hospital/exam facility that an exam is being requested. Advocates may also be able to help the victim with transportation to and from the exam, if the victim doesn't want law enforcement notified or involved in the initial response.

Some advocacy agencies have policies prohibiting their staff from personally transporting victims, but they may be able to offer victims gas cards, bus tokens, or prepaid services with ride-sharing programs like Uber or Lyft. Again, advocates should advise the victim to bring an entire change of clothes with them to the exam.

Victim Presents to Exam Facility

Yet another possibility is that the victim presents directly to the hospital or exam facility. In that scenario, law enforcement may be notified that a sexual assault victim has presented for a medical forensic exam, and the initial response will take place at that facility.

Once again, forensic examiners or responding officers will need to notify the advocacy agency that a victim is in need of services, following procedures spelled out in a multidisciplinary protocol. Then when they arrive, responding officers will need to find a room that is private, quiet, and conveys a sense of professional care, to conduct their initial interview with the victim. If such a room does not exist, creating one could be an objective for a multidisciplinary Sexual Assault Response and Resource Team (SARRT).

Joint Interviews

Some communities have a policy or practice of conducting joint interviews, with responding officers and forensic examiners both in the room. This may help to improve communications between professionals, and it can potentially reduce the number of redundant questions asked of the victim. It also reinforces the team concept and may help victims feel the professionals are working together to provide the best and most coordinated services possible. However, there are some cautions and limitations to be considered with this type of protocol.

For example, when joint interviews are conducted, it must be clear to everyone involved **that more detailed interviews will still need to be conducted by each professional separately.** This is because they have different purposes.

The purpose of an interview *by a forensic examiner,* such as a sexual assault nurse examiner (SANE) or sexual assault forensic examiner (SAFE), is to:

- Obtain information about the sexual act(s) committed, to guide a comprehensive medical forensic exam and collect biological samples.
- Elicit information about any physical injuries or discomfort, both for forensic documentation as well as medical evaluation and treatment.
- Determine whether the exam findings are consistent with the history of the sexual assault, as provided by the victim.

In contrast, the purpose of a *law enforcement interview* is to:

- Obtain a detailed account of the victim's experiences before, during, and after the sexual assault.
- Determine whether legal elements are met for one or more criminal offenses.
- Identify additional sources of information and potential evidence.

Because of their different purposes, many professionals believe that the two interviews are best conducted separately. This allows health care professionals to focus on their mission of patient care, which will likely elicit different information from the law enforcement interview. It's also important for victims to be able to address any concerns they may have about their medical history and treatment options confidentially. This information is typically not relevant or even appropriate to include in the law enforcement investigation.

The law enforcement interview is likely to be longer because it covers a wider range of topics related to the assault (e.g., events before, during and after the incident; information about the suspect, victim, and any witnesses; location of all crime-related scenes, and any potential evidence that could be recovered).

The primary danger with joint interviews is that the roles of law enforcement and health care will become muddled, and the SAFE/SANE will be drawn too far into the criminal investigation and the law enforcement function. This can leave SAFEs/SANEs vulnerable to charges of bias when they testify at trial, which may weaken their testimony on scientific and medical matters.

The bottom line is this: If any part of the victim interview will be conducted jointly by law enforcement and forensic examiners, it must *focus narrowly* on topics that meet the purpose of both interviews. Then *separate interviews will need to be conducted* by each professional, and clearly differentiated from one another.

Consult Before and After Exam

To best coordinate professional communication and thorough investigations, responding officers should consult with health care providers both *before* and *after* a medical forensic exam is conducted. A key purpose is to compare information, determining what was known *before the exam*, and what was observed or learned *during the exam*.

As one example, sexual assault victims sometimes share particularly sensitive information with health care providers that they had not initially told law enforcement. Perhaps they tell police about penile-vaginal penetration, but inform the nurse that there was oral or anal penetration as well. There are many reasons why victims might do this, including to avoid re-experiencing trauma. In the post-exam briefing, the nurse can relay that information to the responding officer who can follow up with the victim to (gently) clarify, and then add that information to the preliminary report.

Health care providers should also alert law enforcement about (a) any visible forensic findings, such as physical injuries documented on the victim, (b) hairs, carpet fibers, or other debris that might be connected to the crime scene, and (c) the location of other potentially valuable evidence, like clothing items that might not have been previously known to the officer. These findings will need to be included in the officer's report. They will also help responding officers evaluate whether there are any immediate investigative steps that need to be taken (e.g., evidence that needs to be collected).

For more information on medical forensic examinations, please see the OLTI module, *Forensic Examinations of Sexual Assault Victims and Suspects: Role of the Examination in Sex Crimes Investigations (Part 1: Type and Purposes of Evidence*), as well as other pertinent resources on EVAWI's website.

Identify Potential Evidence

There are many types of evidence that can potentially be identified during a preliminary investigation, and it may be critical to collect them as soon as possible since evidence can deteriorate over time, disappear altogether, or be tampered with either intentionally or unintentionally. Victims should therefore be asked during their initial interview about the crime scene and any other location they went to, so law enforcement can begin determining whether there might be any surveillance video available. Also, does the victim have the clothing they wore during or immediately after the assault? Where are they? What about bedding, carpet, or furniture upholstery where the assault took place? Anything the suspect used during the assault (condom, lubricant, object)? How about anything the victim or suspect used to clean up afterward (like tissues or towels)?

Victims should also be asked whether any photos or videos might have been taken of the sexual assault, and who might have them. Did the victim communicate with the suspect or others about the sexual assault? Were there any phone calls or texts related to the assault? Any social media posts, by the victim, suspect, or anyone else?

Responding officers may need to take steps to notify and then coordinate with investigators or other personnel to begin securing or collecting this evidence.

Too often, the preliminary investigation consists solely of documenting victim statements. But law enforcement should never put the whole case on the victim. Victim statements are a critical part of a sexual assault investigation, but not the entire case. When responding officers take steps early on to identify other types of potential evidence, they can help avoid what people often refer to as "he said-she said" cases (or "he said-he said," "she said-she said, or any other "word versus word" cases). In other words, they can avoid relying solely on victim and suspect statements, and uncover other types of evidence that might corroborate or challenge those statements.

In this brief interview, Detective Carl Hershman (Retired) acknowledges that sexual assault cases often begin by documenting what "he said" and what "she said." But then they go on to determine *what the evidence says.*

For more information on the responsibilities of responding officers, see the OLTI module on *Preliminary Investigations: Guidelines for First Responders.*

Opening Doors: Alternative Reporting Options

As part of the initial response to sexual assault, responding officers will need to explain any *alternative reporting options* that are available to victims in the community. These are non-traditional pathways for victims to provide information to law enforcement and/or third-party entities, often without identifying information and without initiating an investigative process. Possibilities include *anonymous, non-investigative, third-party,* and *online reporting;* such options can help support **"**one investigative step at a time."

With such options, victims may provide as much or little information as they choose about their sexual assault, and have that information documented by law enforcement, while they take time to consider next steps. Victims may also have evidence collected and documented to the extent they choose. This could include a medical forensic exam, or other evidence victims might provide to law enforcement (clothing, bedding, condom, tissue, etc.). Victims can then be assured that critical evidence has been preserved by law enforcement, in case they decide to participate in an investigation later.

A clear written protocol (and ongoing training will be needed to ensure that all responding professionals have the same information about any alternative reporting options that are available to sexual assault victims, and a realistic understanding of how they work. For example, minor victims may not be able to access some alternative reporting options, because the responding professionals are legally required to report suspected abuse. Similarly, victims of intimate partner violence may not have access to all options, if there are mandated reporting laws requiring a law enforcement response.

Alternative reporting options are grounded in a victim-centered and trauma-informed philosophy, encapsulated in the concepts of *one step at a time* and *opening doors.* For more information and detailed guidance, please see the OLTI module, *Opening Doors: Alternative Reporting Options for Sexual Assault Victims.* Additional resources are also available on our website.

Support Reporting Options

I'll provide you all the information I can, and explain what a police investigation would look like, and then you can decide – when you're ready – if that is something you are interested in doing.

After explaining any reporting options that are available to sexual assault victims, responding officers must then be prepared to support victims while they make a decision about how they want to proceed.

Remember, the goal is to encourage reporting using whatever pathway feels comfortable and safe for victims, not to discourage victims from a traditional report (e.g., Officer: "This will be a tough case to prove, so we should just record it as a non-investigative report. Victim: "Okay.")

Instead, officers should begin by commending victims for their courage in coming forward, establish an environment of trust and safety, and ensure that victims have access to services and support. These steps will empower victims to successfully engage with the criminal justice process if, when, and however they are able to.

In the third segment of the mock interviews, Investigator Stegner simply meets with a victim of alcohol-facilitated sexual assault to explain her reporting options and explore what the investigative process might look like. No decision is made at this point regarding whether to formally report the sexual assault to law enforcement or engage with the criminal justice process.

Not Pressuring Victims

I am not a banker – you're not signing a 30-year mortgage with me – we are just here having a conversation. You do not need to make your mind up today; we can move at your pace.

Regardless of which reporting option a victim might choose, a key feature of an alternative reporting philosophy is that they are not pressured to participate in an investigation and possible prosecution. Unfortunately, victims frequently receive such pressure, from loved ones as well as responding professionals (forensic examiners, school administrators, etc.). Often this pressure is exerted by suggesting to victims that they might be able to prevent the suspect from assaulting someone else. *This is an unfair and inappropriate burden to put on victims.*

Not About "Pressing Charges"

> Victims should **never be asked** during the initial response whether they want to "press charges."

A non-coercive approach continues by not asking victims whether they want to "press charges." Most victims have a very limited understanding about what prosecution involves, let alone the steps that are needed to get to that point. This question is also technically incorrect – prosecutors, not victims, make charging decisions. Finally, and most important, this question again places an unfair and inappropriate burden on victims. This is particularly true during the early stages of an investigation, before any risks for the victim might be evaluated and whether an investigator even knows if there is evidence required to establish probable cause and present a case to the prosecutor.

The appropriate time for law enforcement to ask victims about their ability to participate in a criminal prosecution is at the end of a thorough, evidence-based investigation. Only then will investigators know whether they have sufficient evidence collected and documented to make an arrest or refer the case for prosecution.

No Release Waivers

When victims are asked if they want to press charges, and they say "no," or simply express reluctance at the prospect, some law enforcement agencies have a policy or practice of presenting a form (often referred to as a *release waiver*) to document the victim's "request" to terminate or unfound the investigation. A few release waivers go even further by preventing victims from making any further inquiries or cooperating with any future investigation or possible prosecution. Some agencies erroneously believe this type of waiver protects them from liability for failing to pursue an investigation.

Yet these waivers place unfair and inappropriate pressure on victims to make an immediate decision about participating in an investigation and possible prosecution, and they sidestep law enforcement's responsibility by shutting down the investigation. A better approach is for officers to courteously inform victims about alternative reporting options, and then document their decision in the written report**.** In their conversations with victims, responding officers can clearly convey that the door to an investigation remains open, if victims later decide that they *are* able to participate in the process.

There is typically no need for any type of form when officers explain to victims what their options are for reporting and participating in an investigation. Victim interviews and preferences should simply be documented in the officer's narrative report, along with other information collected and documented. However, if a form is going to be used, it could look like the Victim Preference Statement developed by the Naval Criminal Investigative Service (NCIS). This form begins by confirming that victims have had an opportunity to consult with a victim advocate or counselor, and that they have been informed of their rights as a crime victim.

The form then documents: "At this time, I have decided not to provide additional information or participate in the investigation and prosecution of the suspect." By

signing the NCIS preference statement, victims explicitly acknowledge that "I may change my mind and provide information for this investigation at a later time."

When Victims are Unable to Participate

If they're making the decision to drop out, it's usually about other things in the survivor's life.

While it is important for law enforcement to respond to sexual assault victims in ways that are competent and compassionate, there is no guarantee that traumatized victims will be able to process or recognize the effort, or that it will meaningfully contribute to their healing. This can be difficult, but professionals must accept the fact that despite all good intentions and efforts, deciding *not* to participate in an investigation and prosecution may be in the best interest of many sexual assault victims. After all, the crime didn't happen to any of the responding professionals; it happened to the victim. The victim is therefore the only person who can properly weigh the consequences of this decision.

This means victims should never be recorded in a report as "uncooperative," "hostile," or "declining prosecution." Rather, reports should simply reflect the fact that victims are either reluctant or unable to participate in the investigation and possible prosecution *at this time.* That may change in the future, and the victim may decide they *are* able to participate. As long as steps have been taken to try to address the victim's reluctance and support their continued participation, the report should then be suspended or inactivated. It should not be unfounded, unless there is evidence to establish that the report is false or baseless, according to Uniform Crime Report (UCR) guidelines.[37]

Courtesy Reports

Before leaving the topic of *Opening Doors,* it is worth mentioning one often-overlooked tool for increasing victims' access to the criminal justice system: *courtesy reports.*

When someone is sexually assaulted while they are away from home (on vacation, at college, on a work trip, etc.), they often wait until they return home to report the crime. This makes sense for victims, but it means the law enforcement agency receiving the report will not have jurisdiction over the crime. Far too often, victims in this situation are told to drive across town, or the state – even fly across the country – to report their sexual assault to the law enforcement agency in the jurisdiction where it occurred.

Instead, the law enforcement agency receiving the report may be able to assist the agency with jurisdiction, by conducting a preliminary victim interview and documenting the information obtained. This practice is clearly aligned with the principles outlined in this module, and it reflects the professional courtesy that is so valued within police

[37] Federal Bureau of Investigations (2103). *Summary Reporting System (SRS) User Manual.* Criminal Justice Information Services (CJIS) Division, Uniform Crime Reporting (UCR) Program.

culture. It is also consistent with the common practice of agencies assisting each other to locate and interview suspects and witnesses who reside in another jurisdiction.

For more information on this topic, please see EVAWI's training bulletin on *Responding to Victims Reporting from Another Jurisdiction.*

Concluding the Preliminary Investigation

As the preliminary investigation comes to an end, responding officers will need to *explain next steps* to the victim, and often any support people who are present. For example, if the case will be transferred to an investigator for follow-up, they can explain this and let the victim know who might be assigned to the follow-up investigation in their case (or the Unit that will be handling it).

Both victims and their support people should then be asked if they have any questions. Support people can be critical for enhancing the victim's emotional well-being and helping them to participate in the criminal justice process, so it is important they have their questions addressed as well as the victim's. Only then can they adequately support the victim throughout the investigation and serve as an ally during the process.

From the first day, [the Officer] made sure that I knew he was on my side, from the very start he believed me! That was so important, especially when you're going through one of the hardest times of your life, knowing you have someone there who believes you and is fighting for you gives you a boost of strength and confidence you didn't know you could have.

EVAWI's website offers detailed information for survivors and their support people in Explore Your Options. Topics include the impact of sexual assault victimization and options for responding, including obtaining health care or a medical forensic examination, victim advocacy, and reporting to police. A special section is dedicated to helping loved ones to respond supportively.

Ensure the Victim's Safety

Responding officers will need to evaluate whether they are leaving the victim in a safe environment. We have already described scenarios that require coordination with Child Protective Services (CPS) or Adult Protective Services (APS), to place minors or dependent adults in alternative housing if they are at risk of harm in their current living situation. If the victim is a competent adult, who is at risk of harm from someone in their home (e.g., spouse, partner, other family member), other options may include helping the victim re-locate to a temporary shelter or advising them to stay with a trusted friend or family member while they consider their next steps. Investigators can also work with victims, and ideally advocates, to develop a comprehensive safety plan for the victim, including the possibility of obtaining an order of protection when appropriate.

Leave Positive Impression

Finally, responding officers should strive to *leave the victim with a positive last impression,* because this image will stay with them and can affect both their well-being and future participation in the criminal justice process. Even those victims who are initially reluctant or unable to participate may be more likely to reconsider if they have established a relationship of trust and rapport with responding officers.

It's really hitting home the connection between how people are treated by law enforcement, and whether they go through the process or not.

Returning to the mock interviews, the fourth segment shows the victim of alcohol-facilitated sexual assault formally reporting the incident. (Please note: Investigator Stegner refers to this case as a "past tense" or "historical" report. However, EVAWI refers to this as a *non-acute* report or response.)

In this fourth scenario, Investigator Stegner conducts a preliminary interview, but remember, the purpose is to demonstrate trauma-informed responses, not to depict all the information a victim would likely provide. At the end of the interview, Investigator Stegner explains that he will use the information provided to begin his investigation, and he will schedule a time for a more detailed, follow-up interview after he takes some additional steps.

Determine Whether to Make an Immediate Arrest

At some point during the initial response to a sexual assault report, responding officers (and supervisors) will need to decide whether to make an immediate arrest of the suspect. This decision will be based on two key determinations: (1) The evidence is sufficient to establish probable cause for the arrest, and (2) Investigators determine that an immediate arrest is necessary to protect the victim or community from additional harm, as well as the integrity of any potential evidence, such as the suspect's body.

Suspect Forensic Exams

First, investigators will need to consider whether a forensic examination of the suspect is warranted based on the facts of the case. This decision will impact whether a suspect should be contacted sooner than later. Suspects can always consent to a forensic examination if they choose, but absent consent, an arrest or a warrant for a suspect examination should be sought by investigators, if probable cause has been established.

Legal Authority for Suspect Exams

There are typically three ways that a suspect exam (or DNA reference standard) can be authorized, depending upon state laws and department policies:

- The suspect **consents** to a forensic exam
- A suspect exam is conducted **incident to arrest**, or
- A **search warrant** or **court order** is obtained to collect evidence from the body and clothing of the suspect.

In some jurisdictions (like California), people who have been placed under arrest do not have the right to refuse a forensic examination for the collection of physical evidence. Case law defining a "search incident to arrest" permits the search of an arrested person for evidence relevant to the crime for which they are suspected. If the suspect is in custody and is unwilling to consent to the examination, evidence such as dried secretions, foreign materials, swabs of the hands for gunshot residue, and blood samples for alcohol analysis can be collected from the person without a search warrant, and without the person's consent, if the law enforcement officer believes the delay necessary to obtain a court order would result in the possible loss or destruction of evidence.

As a result of this case law, law enforcement agencies in California have been routinely facilitating suspect forensic exams for decades, and most communities have protocols in place to obtain a suspect forensic exam.[38] In most other states, however, a search warrant is required to conduct a forensic examination of the suspect, if the suspect does not consent.

For more information, please see the OLTI module, *Forensic Examinations of Sexual Assault Victims and Suspects: Role of the Examination in Sex Crimes Investigations (Part 1: Type and Purposes of Evidence*).

No Rush to Make an Arrest

Unfortunately, some officers have made the mistake of rushing to make an arrest after concluding the preliminary investigation and initial interview with the victim. In many states this means the prosecutor is required to appear in court and charge the suspect within 24-72 hours of the arrest (depending on the jurisdiction). At that point, they will not typically have sufficient evidence to believe the suspect could be convicted, since the evidence only meets the standard of *probable cause* and not *proof beyond a reasonable doubt.*

Officers should be discouraged from making an immediate arrest in most cases, unless there is a specific reason to believe that the suspect may **flee the jurisdiction**, **destroy evidence**, or **pose a danger** to the victim or other community members.

Most sexual assault investigations take weeks if not months to complete, depending on the specific investigative steps taken and the evidence uncovered (e.g., interviews, criminal histories, laboratory work, analysis of digital evidence). By waiting to make an

[38] State of California, Office of Emergency Services, OCJP 950 Form, Instructions and Protocol.

arrest of the suspect, investigators are more likely to have the time they need to gather evidence that meets the higher standard of proof for criminal prosecution.

These realities may need to be explained to victims and their support people (and even some veteran law enforcement supervisors). Sometimes, victims and their loved ones want to see the suspect arrested immediately, but investigators can explain that this will not guarantee the victim's safety, especially if it compromises the ability to conduct a thorough investigation that could potentially support successful prosecution. Also, even *with* an immediate arrest, the suspect may be released on bond shortly afterward. After explaining this to victims and others, investigators can work with them, as well as an advocate, to develop a safety plan that will protect the victim's physical and emotional well-being at every stage of the process.

When to Contact the Suspect

A related question that is commonly asked by law enforcement is when to contact the suspect during a sexual assault investigation. Some investigators believe it is best to interview the suspect as soon as possible; there are even instances of victim and suspect interviews being conducted simultaneously. Yet this means investigators are conducting the initial suspect interview *blind,* or at least without the benefit of all the information and evidence they may have at their disposal if they slow the process down, and interview the suspect later.

Investigators must evaluate the best strategy given the unique circumstances in every case. However, EVAWI's general recommendation is to *conduct the initial contact with a suspect in a non-custodial, non-threatening way,* even by phone, for suspects who are not likely to flee or destroy evidence. Phone interviews are often much less threatening than in-person contacts, and no Miranda warning is required. The goal of this initial contact is not to conduct a detailed interview or interrogation, but to obtain a statement – any statement – during the earliest stages of an investigation. Then as the investigation proceeds, additional information and evidence will arise that may corroborate or challenge the initial statements made by the victim, suspect(s), or any witnesses.

Of course, phone interviews should never be used just to take shortcuts in the investigation. In almost every circumstance, a much more detailed suspect interview will be needed. However, that detailed interview with the suspect is better conducted once the investigator has pieced together what happened, and has a general sense of which version of events is corroborated by the evidence.

For more information, please see EVAWI's training bulletin on *Interviews with Victims vs. Suspect: Start by Believing and the Question of Bias*.

Preparing for Detailed, Follow-Up Interview

After the initial response is complete, at least one detailed interview will typically be conducted with the victim as part of a thorough sexual assault investigation. The purpose of this interview is to fill in the (often substantial) gaps in the information gathered during the initial victim interview and the preliminary investigation, and also to direct any future investigative steps. Yet these objectives will only be achieved if the interview actually facilitates memory *retrieval* and *disclosure* for victims. Again, these twin goals should guide each step of planning and preparing for a detailed interview.

Review the Information Available

The best place to start is by reviewing all the information and evidence already collected during the preliminary investigation. This could include: (a) statements from the victim, suspect(s), and any witnesses, (b) various types of evidence that might be collected and impounded, including any digital evidence or surveillance videos, (c) reports from crime scene technicians and/or the medical forensic examination (including any photographs, diagrams, etc.), and (d) criminal background checks on everyone involved.

Consider Victim Identity

Based on the information available, investigators can begin identifying any sociocultural characteristics that might affect the victim's experience and understanding of what happened to them, as well as the risks involved in criminal justice participation. For example, victims may have religious or cultural beliefs that will affect their interactions with law enforcement. They may be part of a community with certain fears, experiences, or a history of negative interactions with law enforcement (people of color, those who identify with the LGBTQIA community, undocumented immigrants, etc.).

Whatever sociocultural groups a victim might come from or identify as, investigators will need to explain what an investigation might entail, and address questions regarding privacy and safety, as well as the likely impact on the victim and the victim's loved ones. Advocates can be essential in helping to address these concerns.

- For example, undocumented immigrants will likely be very concerned about being reported to immigration authorities as a result of any contact with law enforcement. Investigators will need to be upfront about their agency's policies on undocumented immigrants, and recognize that the experiences, beliefs, communication styles, and attitudes toward law enforcement will vary dramatically in different communities.

- Native communities also face particular challenges that can affect their participation in a law enforcement interview and investigation. Investigators must be prepared to address any questions about jurisdiction and the intersection of state, federal, and tribal law. There is also extremely wide variation in the language, culture, religion, and customs of Native communities. The time for investigators to familiarize

themselves with Native communities in their jurisdiction is before a specific crime is reported so investigators are prepared to offer effective services.

Investigators can verify their approach by continually asking: What can I do to help *this individual* feel safe enough to retrieve painful memories, and then share them with me?

When communities have a history of past negative interactions with law enforcement, this can dramatically affect survivors' decisions to report their sexual assault or participate in an investigation. The Vera Institute offers guidance to help build trust and work with diverse communities, including *Police Perspectives Guidebook Series: Building Trust in a Diverse Nation*.

LGBTQIA Victims[39]

People who identify as LGBTQIA (lesbian, gay, bisexual, transgender, queer and/or questioning, intersex, asexual and/or an ally) often have special considerations for reporting a sexual assault and participating in an interview.

- For example, members of the LGBTQIA community will often be extremely reluctant to report their sexual assault, both because they fear negative responses, and also to protect their community from negative scrutiny.

- Confidentiality is particularly critical for LGBTQIA victims. They may not be "out" to many people in their lives, including family members, friends, and employers, so the possibility of an investigation can be very threatening.

- For victims who are transgender, it may be very difficult to talk about parts of their body and explain specific transgender health care and body issues to people unfamiliar with transgender people. Transgender victims often have to "educate" others about the realities of their lives and bodies, including details that are irrelevant for the purpose at hand (health care, police report, etc.), but asked simply out of the other person's curiosity. This can be difficult under normal circumstances, but especially in the aftermath of a sexual assault. It is important for responding professionals to focus only on information that is relevant for the purpose at hand, and explain why questions are being asked.

- For some LGBTQIA people, particularly transgender people, their legal name and documentation may not align with their self-identified gender. Yet respectful interactions will involve using the correct name and pronoun for how that person identifies. Investigators can begin by explaining in a respectful way that they need to know the person's legal name for legal purposes and documentation. They can then show respect by asking what

[39] Thanks to Chai Jindasurat (National Coalition of Anti-Violence Programs Coordinator, New York, NY) for his contributions to this material.

pronoun and name the victim uses for themselves, and use that pronoun and name when addressing or referring to the victim, including in written reports.

- Finally, keep in mind there are often fewer services for LGBTQIA people. For example, many shelters do not have LGBTQIA-inclusive policies, so it can be extremely difficult for gay men and transgender people to access safe shelter.

For an example of how to formalize such practices, please see the San Diego Police Department's policy on Police Interaction with Transgender and Gender Non-Binary Individuals. This new policy was publicly released in 2021. By carefully outlining definitions of related terms, and procedures for department personnel, the policy goes a long way toward addressing these complex issues.

Identify Necessary Accommodations

For many sexual assault victims, an appropriate accommodation might mean the difference between being able to participate in a successful investigation and prosecution versus failing to provide victims with equal access to justice. This means that if the victim uses an assistive communication aid or device, it will be necessary to identify what it is and learn how it works *before using it during an interview.* If a sign language interpreter, personal assistant, or other service is needed, a qualified person will need to be located as soon as possible, so the victim can communicate effectively.

In this brief interview, Shirley Paceley describes three things law enforcement should know about working with people with disabilities. In another short segment, she explains how important accommodations are when investigating a sexual assault committed against a person with a disability.

Types of Accommodations

Depending on the disability, accommodations can take many different forms:

- A physical device (wheelchair, hearing aid, grabber, etc.)
- An adaptation (computer application that reads documents aloud, etc.)
- A service (sign language interpreter, in-home care provider, etc.)
- A communication method (handwritten notes, gestures, communication board that enables the person to point to pictures, words, or symbols, etc.)
- An approach (speaking calmly, avoiding sudden movements, scheduling the interview for a time that is best for the victim's daily patterns or medications, etc.)

Some of these accommodations are essentially no-cost, while others are minimal cost, and still others are quite expensive. Some are also easier to utilize than others. This list

simply provides an idea of what might be needed, to ensure people with disabilities have equal access to information, services, and support throughout the investigation.

Law Enforcement Responsibilities

The US Department of Justice advises that law enforcement agencies cannot charge for the cost of providing these accommodations or services. Nor can victims be required to provide them personally (e.g., bringing their own interpreter with them). In some situations, people with disabilities will provide their own communication aid or support, but the legal obligation is not on them; it is on the law enforcement agency.[40]

EVAWI offers an OLTI module and recorded webinar, both titled *Successfully Investigating Sexual Assault Against Victims with Disabilities.* These resources provide extensive guidance and concrete tools for investigators. For example, they explain how to begin formulating an investigative strategy for sexual assaults committed against someone with a disability and how to evaluate the victim's general capabilities to determine whether the criminal offense might be based on their inability to legally consent to sexual acts. The module also provides detailed information on a variety of specific disability types, including physical, intellectual, and communication disabilities.

Secure Interpreting Services

For victims with limited English, or who use sign language to communicate, interpreting services will be needed for them to communicate effectively during a detailed interview. An interpreter may even be appropriate when the victim speaks *some* English, because they will likely feel safer and more comfortable using their primary language. It is also possible that they may not know the English words for certain parts of the body or sexual acts, which they will need to accurately describe what happened to them.

As with so many other issues, it is best to develop a protocol for interpreting services *before they are needed.* This is another task that can be undertaken with a local Sexual Assault Response and Resource Team (SARRT). The protocol can identify what resources are available in the community and detail how to access them. For example:

- Many agencies have bilingual officers who can conduct interviews with victims or witnesses, while others recruit and train community volunteers to assist in this area.
- Some law enforcement agencies also have their own contracted interpreters, and/or agreements to share interpreting services across multiple agencies.
- In some situations, a national phone service like LanguageLine can be used, but this should primarily be for languages that are relatively uncommon in the community.

[40] US Department of Justice, *Questions and Answers: The Americans with Disabilities Act*.

Confidentiality of Communications

Depending on who ends up interpreting, victims often have concerns about the confidentiality of these sensitive communications. This is especially true when the interpreter is a volunteer from a small or close-knit cultural or linguistic group. Victims may fear that the interpreter will share their information in the community, so friends, family members, and others will find out what happened to them. A written protocol for utilizing interpreters is needed to address these complex and challenging issues.

Tips for Effective Communication

Finally, there are some general strategies to increase the effectiveness of interpreting:

- Make sure interpreters understand that the investigator needs the most *accurate* translation, which may not necessarily be a *direct* translation and should never be a "cleaned up" version of what the victim is saying.

- Also, always look at the victim when speaking, not the interpreter – even when the interpreter is translating what the victim said. The focus of attention should consistently remain on the victim, just as it would be without an interpreter.

The Vera Institute offers many resources for law enforcement as part of their Translating Justice Initiative, including a publication on *Overcoming Language Barriers: Solutions for Law Enforcement.* They also offer a promising practices guide for law enforcement called, *Bridging the Language Divide;* it includes an Appendix with sample documents that can be adapted for local use, such as a General Order on Managing Communication Barriers, Standard Operating Procedures, Unit Activity Report for a Bilingual Unit, and Job Descriptions for Community Service Officers as well as Interpreters.

Forensic Interviewing Specialists

Another possibility is to use a *forensic interviewing specialist.* These professionals are typically social workers or other child abuse professionals who are trained to use specific techniques for interviewing young children or people with disabilities affecting cognition or communication. For example, they will avoid leading questions and ask questions using concrete language. They will also typically be trained to use tools such as drawings and anatomically correct dolls, if this will help the victim communicate more effectively. Forensic interviewing specialists should therefore be used when this will best serve the needs of victims (e.g., young children and those with severe cognitive disabilities). *However, EVAWI recommends against using forensic interviewing specialists with adolescent or adult victims who do not meet these specified criteria.*

There are several reasons for this. First, law enforcement is excluded from the interview process when a forensic interviewing specialist is used. This inhibits the development of trust and rapport that is needed between victims and investigators during the course of

an ongoing investigation. This exclusion can also prevent law enforcement from meeting critical, time-sensitive objectives in the early stages of an investigation, like determining what crime is being reported, identifying who the suspect(s) might be, establishing the location of the crime scene(s), identifying potential evidence, and evaluating whether there are any witnesses who need to be contacted for interviews.

Schedule the Follow-Up Interview

In general, EVAWI recommends that the detailed interview with a sexual assault victim be scheduled to take place *2-3 days after the initial response,* especially in an acute reporting scenario. This allows time for investigators to review all the available information, and arrange for any interpreting services or other accommodations that might be needed for the detailed interview. This may also allow enough time for the victim's acute stress levels to subside, through rest, recovery, and the support of loved ones and/or advocates. But there is no universal timeframe for achieving these goals; each victim should be approached as a unique person, with individual needs.

For example, some victims in a non-acute response may not want or need to wait for the detailed interview. If they have finally worked up the courage to contact law enforcement after some period of time, they may be ready and able to share a lot more detailed information than basic facts. In this scenario, it's possible that the reporting officer will conduct a more in-depth interview during the initial response to a non-acute report. However, even in this scenario, a second interview will still be needed once the investigation begins to evolve, and additional questions or clarification are needed.

Either way, investigators should work with victims to select a time for the detailed interview that best meets their needs and convenience**,** as well as any constraints regarding childcare, family responsibilities, work obligations, transportation, privacy, safety, etc. *It is very important to avoid creating any unnecessary stress or hassle for victims, or increasing any threat of losing a job, childcare, or other critical arrangements.* Once these considerations are addressed, the interview should then be scheduled as soon as practically possible. This is done to prevent memory loss on the part of the victim, and also to reduce external influences that may impact the victim's statement (e.g., family members, caregivers, or other professionals involved in the case).

Not the "Next Day" for Victims

When victims are sexually assaulted late at night and report the assault to law enforcement within a few hours, the initial response (and the medical forensic exam, if one is conducted) will often last into the early morning hours. Yet investigators often call the victim just a few hours later – when they are assigned the case the next morning – to schedule a follow-up interview.

The investigator thinks of this as *the next day*, but it's still *the same day* for victims who have been awake most of the night, going through a difficult, exhausting, and sometimes painful process. By scheduling the follow-up

interview for 2-3 days after the initial response, victims will have more time to rest and recover, so they are better equipped to participate in the detailed interview.

Select an Appropriate Location

Interview *location* is just as important as *timing*, in terms of helping victims to recall and share memories. For example, interview and interrogation rooms in police departments are generally cold and sterile places, which makes them a poor choice for interviewing victims. Instead, investigators can work with victims to select a location that is safe, comfortable, welcoming, and private. It must also be quiet and free from distractions.

Often the best place to conduct a detailed interview is *the victim's home,* as long as it meets these conditions of safety, privacy, etc. Investigators can work with victims (and possibly caregivers) in advance, to ensure victims will have any accommodations and other services they need to be interviewed in their home (advocate, interpreter, etc.). Investigators can also make arrangements to have any equipment they might need for videotaping the interview, conducting a pretext/monitored phone call, etc.\

Alternatively, the interview could be conducted in another location that is convenient, neutral, and accessible for the victim, as long as it feels safe and comfortable. Interviews have been successfully conducted in the back of a restaurant or car, on a bench in a public park, and in a private room in the public library. Law enforcement agencies can provide investigators with mobile recording equipment (like body worn cameras or GoPro cameras), to videorecord interviews in virtually any location.

★ **"Soft" Interview Rooms**

Victims should not be interviewed in a room that was originally designed for suspect interrogations, even if it is set up for videorecording. Instead, some law enforcement agencies have created "soft" interview rooms to use with victims and witnesses. These rooms are designed to be warm and welcoming, with comfortable furniture, art, and other amenities like snacks and beverages. They can also be equipped to meet the victim's needs for accessibility and support, and the investigator's requirement for videorecording and other equipment.

Prepare for Recording

When discussing schedule and location, it was noted that investigators should prepare to record their interviews with sexual assault victims (either videorecording, or at least audiorecording). Interviews with child victims have been taped for years, with obvious benefits; many of the same advantages exist for adult and adolescent victims.

Benefits of Recording

> *What you're reporting is a priority of our department, and what you say is important to me. It's helpful for me to record your statement, so I can focus on what you're saying. Would it be okay if I record, so I don't have to focus on writing notes?*

- The primary advantage of recording a victim interview (whether audiotaping or videotaping) is that it provides a **more reliable method of documentation** than written notes. In other words, it yields the "best record" of the interview.

- Investigators are also able to **listen more carefully to victims** when their interview is being recorded, because they are not trying to take notes or write a report at the same time. They aren't even necessarily piecing together events in a chronological timeline. This can be accomplished later. The investigator can simply *listen* to the victim's narrative and jot down questions to ask later when the narrative is complete.

- Recorded interviews also communicate to the victim that the investigator is focused on the victim's statements and is **taking the case seriously.**

- Recording **preserves the victim's own words and statements.** This is important because statements are often synopsized, and during that process they can be misinterpreted, or conclusions can be drawn about a statement that are inaccurate.

- In addition, recordings make it possible to **determine the source of any inconsistent information.** In many cases, a recording will reveal that the person responsible for an inconsistency is not the victim, but the investigator or other professional who documented a fact incorrectly, or simply misunderstood or misinterpreted something the victim said.

- Recordings can have the additional benefit of **protecting the investigator** if a complaint or misunderstanding should arise because of what was said.

- Finally, recordings can be reviewed for **training and supervisory purposes,** to improve the quality of interviews conducted by agency personnel.

Learning from Interview Recordings

One Detective described how she watches her videotaped interviews with sexual assault victims to help write reports, and she often ends up adding a great deal more detail, both from the victim's account and the reactions she observes.

The recording also frequently helps her to piece together the chronology of events or highlight corroborative evidence. Perhaps most important, she says that watching the interviews has helped her improve her own skills: "I never realized how much I talked during the interview. Now I remind myself to *listen*."

Preparing Victims for Recording

When developing a policy for recording victim interviews, it is critically important to *advise victims that their interview will be recorded* and *offer them the services of an advocate.* Investigators and advocates can then discuss any questions or concerns the victim may have. However, law enforcement professionals who routinely record their interviews find that most victims do not have a problem with it, as long as investigators advise victims of this fact, and explain that this will allow them to listen to the victim more carefully during the interview, and document information more accurately.

For more information and policy recommendations in this area, EVAWI offers a training bulletin specifically on the topic of *Recording Victim Interviews.*

Videorecording, Not Two Investigators

In many law enforcement agencies, investigators have been taught to conduct their interviews with a second investigator present. The rationale is that one investigator can ask questions while the second investigator takes notes and listens for inconsistencies or questions their partner might not have thought to ask. While this is not necessarily the intent, *this can be very intimidating for victims.* It is therefore inconsistent with the safe and comfortable environment needed to help traumatized victims recall and share painful memories.

This is especially true if the victim does not have an advocate or other support person accompanying them. Being isolated and outnumbered by two law enforcement investigators would feel threatening for most people, but this may be especially pronounced for sexual assault victims, and particularly for sexual assault victims who are members of vulnerable or marginalized groups.

A better strategy is to record interviews (whether audio or video). If it is videorecorded, a second investigator can monitor the livestream from another location to address any questions or concerns not asked. This eliminates any need for a second investigator to be present in the same interviewing room.[41]

[41] Any investigator who has worked child abuse cases is familiar with the type of interviews conducted by forensic interviewing specialists: Children are interviewed by a forensic interviewer in a child-friendly environment, often with investigators, prosecutors, and Child Protective Services (CPS) observing through a one-way glass window. Observing professionals can write down any questions they want the forensic interviewer to ask that might not have been addressed. Then, before concluding the interview, the forensic interviewer steps outside to check in with the observing professionals to see if they have any additional questions they would like asked of the child. *These same practices can easily be applied with adult and adolescent victims, to create the environment necessary for effective victim interviews.*

Remote Interviews

Another option is to interview sexual assault victims remotely using virtual meeting software (like Zoom or another similar program). This can be an excellent option for victims who might be hesitant or fearful about engaging the criminal justice system or those who were sexually assaulted while away from home (on vacation, at school, or while travelling for work). This way, the victim can be interviewed in the comfort of their own home or another location of their choice. Advocates can also be present on the call, to provide services for the victim remotely. However, victims should be advised that a remote interview will not be sufficient if the case moves forward. At some point, the investigator, and possibly the prosecutor, will need to interview them in person.

For more information, see EVAWI's training bulletin and archived webinar on the use of virtual meeting software to conduct remote interviews with victims.

Coordinate with Advocacy Services

Victims who are well-supported are better able to **retrieve** and **share** memories.

Talking about sexual assault can be stressful for victims in any circumstances, but particularly in the high-stakes context of a detailed law enforcement interview. Sharing memories of the sexual assault may even trigger physiological responses (racing heart, disorganized thinking, impairment of the prefrontal cortex) similar to what they experienced during the sexual assault. Then if the interview is not guided by an understanding of trauma and the unique dynamics of sexual assault, victims may end up feeling very much like they did, both during and after the assault: violated, overwhelmed, and unsafe. If they don't have support, victims will have to face all these challenges while feeling disconnected and alone.

For all these reasons, investigators should ensure that *advocacy services are available to all victims for their detailed interview.* As with the initial response, advocacy notification should be a matter of routine practice (the default), so victims have the support they need to feel safe and fully participate in the interview.

Some victims will already be connected with advocacy, so their advocate can be with them during the interview. If not, investigators should work with the advocacy agency to schedule a time for the interview that will work for the victim, advocate, and investigator. This works best when advocacy agencies offer "vertical case management," so the same advocate provides services for the victim throughout the criminal justice process.

Some investigators and prosecutors have expressed reluctance at the prospect of advocates accompanying victims during investigative interviews. To explore this challenge and strategies to overcome it, please see EVAWI's training bulletin series, *Advocates and Law Enforcement: Oil and Water.*

Right to a Victim Advocate

In some states, sexual assault victims have a legal right to have an advocate present during an investigative interview by law enforcement or prosecutors.[43] This is based on the recognition that *victims can benefit significantly* by having an advocate present during such an interview, which means *interviews can benefit significantly* as well. In other states, it might not be law, but many agencies include advocates in their victim interviews as a matter of best practice.

Presence of Support People

Everyone has parents, and I'm going to talk to them. But moving forward this is your show. As much as you want them involved or not involved, I want to let you know that's fine with us. You can tell them everything or nothing, that's up to you. I work for you, not them. You're basically in charge. You get to make those calls.

Beyond advocates, it can sometimes be helpful for victims to have a personal support person in the room so they can *recall* and *share* more information. For example, this support person could be a friend or family member (if they aren't a witness who still needs to be interviewed). As long as this person is not disruptive and does not actively participate in the interview, the benefit to the victim is often worth the presence of an additional person. However, it is critical to NOT ask the victim about the presence of a support person *while that person is present.* There are plenty of situations where victims do not want a particular person present (e.g., parent, spouse), but they do not feel comfortable or safe saying so in front of that person. Investigators should create an opportunity to *ask victims privately about the presence of support people,* and then take responsibility for excluding that person from the interview room.

When to Exclude Support People

There are several additional scenarios where investigators will need to exclude support people from the detailed interview, regardless of what the victim wants.

- One is when the person interferes with the interview, for example by insisting on telling the investigator what happened, rather than having the victim do so.
- Another is when they express doubt or blame about aspects of the victim's account.
- A third is when support people have antagonistic feelings toward the investigator.

[43] There is no legal compilation specifically focused on this right, but it is addressed in the 2011 publication by AEquitas, *Statutory Compilation: Presence of Victim Advocate in Sexual Assault Exam.*

Antagonistic feelings can arise for many reasons. One is that support people often know how difficult it is for the victim to share painful details of the assault, so they can begin seeing the investigator as "the enemy" for worsening the survivor's trauma in the interview. Investigators can respond to this concern by expressing empathy for support people, but also gently explaining that this is not helpful for the victim and may undermine the victim's decision to participate in a law enforcement investigation.

Compromising Testimony

Investigators will also need to exclude support people if they potentially compromise the victim's interview, and any resulting testimony if the case goes to trial.

- First, there is the scenario where the investigator determines that the presence of a certain person may compromise the credibility of *the victim's testimony.* Jurors will not always see the victim's statement as equally reliable if a family member or friend was present during the interview. They may question whether the victim might have omitted or distorted certain information because the person was present.

- A second scenario is when the support person is a potential witness in the case. In that situation, their presence during the victim's interview might taint the credibility of *their own testimony*. For example, a friend who brings the victim to the hospital or police department may be the first person the victim told about the sexual assault. In that case, the friend is a very important witness who will need to be interviewed. To protect the credibility of the friend's testimony as a key outcry witness, as well as the victim's own testimony, they should not be present during the victim's interview.

As with other situations where a support person needs to be excluded, it is critical that the *investigator* is the one who assumes responsibility for that decision. They can explain this decision by highlighting how this benefits the victim and the investigation.

Explain Role of Support People

Advocates should have a good understanding of the investigative process, and their role during the victim's interview, based on cross-training with law enforcement. However, other support people will not have this information, and they will be most helpful to victims if they have a clear understanding of their role during the interview.

- For example, it must be very clear to support people that their primary role is to **provide emotional support** for the victim during the interview.

- They are ***not* there to ask or answer questions,** and

- They should ***not* take notes or write anything** to document the interview.

Advocates, Confidentiality, and Documentation

This last note raises a very important point concerning advocacy and confidentiality, particularly related to a law enforcement interview. Specifically, advocates *also* should not take detailed notes or write anything to document the law enforcement interview.

For one thing, any advocate who takes detailed notes about the assault may record information that is inconsistent with the documentation of other professionals. Any such inconsistencies may then be used against the victim if the case ever proceeds to trial. However, recording this information may also put the advocacy agency at risk of having to hand over their records, *not just for this victim, but for all other victims who received services from the agency.* This point is so important, it deserves unpacking.

Advocacy Documentation

As part of their professional role, most advocates (both community-based and system-based) will document their contact with victims. This is done to track agency services, and also to collect data for grant reporting and other purposes. However, these records should be very basic. They might include the date and time of contact, the type of services provided, and any demographic or contact information required for agency records. The advocate should also document whether the victim consents to follow-up contact, and how contact should be made to protect the victim's safety and privacy. However, *advocates should not record detailed information about the assault, victim statements, or any observations or conclusions about the victim or case.*

One reason is because this type of documentation does not reflect an advocate's professional role. When advocates respond to a call, their focus is on the physical and emotional needs of the victim. Specific details of the assault do not matter for this purpose. In fact, advocates often have limited information about the assault, because it is not part of their role to ask the victim questions about what happened.

But another reason to keep records basic is because they might need to be turned over to law enforcement, prosecutors, and ultimately the defense, if the case goes to trial.

- Remember, system-based advocates typically do not have legal privilege protecting the confidentiality of their private communications with victims; this also extends to their written records. This means they will likely be accessible to law enforcement and prosecutors, and therefore the defense, if the case goes to trial. In fact, for system-based advocates, this is true not just for things they learn during private conversations with victims, but anything they observe or learn about the victim or case; these will need to be shared with law enforcement and prosecutors if asked.

- In contrast, community-based advocates often have some level of legal privilege protecting the confidentiality of their private communications with victims, as well as their written records. However, the level of confidentiality varies across jurisdictions.

Yet regardless of any legal privilege, *advocacy organizations can always be subpoenaed to hand over their records or other documentation.* In that scenario, the agency will need to respond to the subpoena and argue that the information is privileged and therefore confidential. A key factor will be demonstrating that they operated within their appropriate professional role, and did not – for example – stray over into activities that could be viewed as investigative, like taking detailed notes.

Communications with a Third Party Present

A related point is that *confidentiality never extends to communications taking place in the presence of a third party (e.g., police officer or investigator).* In other words, nothing is legally protected as confidential if it is said, observed, or learned by an advocate during a medical forensic exam, any law enforcement interview, or other investigative procedures (such as a line-up or pretext phone call). Because a third party will always be present during these procedures, they are not confidential, even for advocates who have legal privilege. This means anytime victims want to discuss something with an advocate and keep it confidential, it must be discussed *outside* the presence of any law enforcement officer, forensic examiner, or other third party.

Providing Meaningful Advocacy

Taking detailed notes is one way advocates might *overstep* their professional role. However, there are also scenarios where advocates *under-step* their role, by limiting their participation in the criminal justice process system to the point where they may as well not be involved. One advocate in a training workshop years ago described how she always sat *behind the victim* during a law enforcement interview, so she wouldn't interfere with the investigation. Of course, she's right – this will minimize interference. But it also makes it difficult, if not impossible, to fulfill her proper role as an advocate, which is to provide meaningful information, assistance, and emotional support for victims.

Can Advocates Be Called as a Witness?

All this raises the question of whether advocates can ever be called to testify in court, to provide information about a sexual assault victim or case with which they were involved. The short answer is *yes,* any time an advocate is involved in any part of a medical forensic exam or law enforcement investigation (including the victim interview), they already are a witness in the case. Advocacy agencies must therefore have policies to reduce any risks associated with responding to a subpoena.

As noted above, one way advocates can protect themselves against having to testify in response to a subpoena is ensuring they remain within their appropriate professional roles, and do not participate in activities that could be viewed as investigative, like handling evidence, taking detailed notes, or collecting information about the sexual assault beyond basic service documentation (e.g., date of service, location, specific

services provided). Also, by keeping their documentation basic, any advocate who does end up testifying will only be able to provide extremely limited information.

For more information, please see the OLTI module *Effective Victim Advocacy Within the Criminal Justice System*. Also: *Beyond the Criminal Justice System: Using the Law to Help Restore the Lives of Sexual Assault Victims, A Practical Guide for Attorneys and Advocates* by the Victim Rights Law Center.

Beginning the Interview: Laying Groundwork

Clearly, there are many steps that need to be taken to prepare for a detailed interview. Once these preparations are complete, investigators will then need to focus on engaging with victims in a way that facilitates memory *recall* and *disclosure*. This begins by establishing safety and trust, but it also involves being transparent and forthcoming.

For example, investigators will need to explain to victims what is likely to happen, without making promises that may not be met. Success also depends on investigators demonstrating *a true capacity to listen.* This isn't about being "nice" to victims – or rather, it's not *just* about being nice. It is the key to conducting an effective interview.

Capacity to Listen[44]

People speak more freely and fully:

- When they feel they are being listened to.
- When they feel the listener can tolerate what they have to say, and
- When the listener can understand what they have to say.

The capacity to hear about trauma does not come easily, or all at once. This capacity must be proactively developed, and this requires both a willingness to experience – and the skills to tolerate – emotional pain and vulnerability. And of course, it requires a whole lot of *practice.* Appendix A and B provide some materials investigators can use to guide themselves through this practice.

Express Empathy

The first step – and cornerstone – of any good interview is *an expression of genuine empathy for the victim.* This begins by acknowledging the trauma and pain of the victim's experience, which may be communicated with statements like the following:

[44] This is adapted from a presentation given by Russell Strand at EVAWI's 2015 annual conference in New Orleans, LA: *Forensic Experiential Trauma Interviews: A Trauma Informed Experience*.

- *Thank you for speaking with me today.*
- *I am sorry we are meeting under these conditions.*
- *I really appreciate you being here.*

Hey, I know you've been through a lot. Thanks for coming in today.

Practitioners have long recognized the importance of establishing rapport when interviewing sexual assault victims. However, many common strategies for building rapport (such as engaging in "small talk" or identifying irrelevant commonalities) can feel distracting, patronizing, or trivializing, if they are not accompanied by genuine empathy. Victims may even think the investigator is uncomfortable or avoiding the subject of the interview. This can prevent victims from feeling safe enough to share often painful memories of their sexual assault.

Statements such as these can help investigators build true rapport with victims, and reduce their anxiety levels, increasing their ability to *retrieve* and *disclose* memories.

In a very brief video, Corporal Jon Rappa explains how a simple expression of empathy can help transform law enforcement interactions with victims, witnesses, and even suspects during a police interview. "You suddenly morph into someone who cares, someone who truly wants to hear what they have to say. … You'll be amazed at the sudden demeanor change of most people."

Address Questions and Concerns

I want to put you in the best position moving forward and help in any way that I can. Do you have any questions?

Another step is to ask victims if they have any pressing questions or concerns that need to be addressed, so they can be fully "present" during the interview. For example, if the victim has children, it is absolutely essential that they are safely cared for during the interview. Other possible concerns include the fear of becoming pregnant or contracting an STI, notifying loved ones about the assault, or addressing urgent needs regarding work, school, childcare, etc.

Investigators can identify such pressing concerns by asking victims directly:

- *What are you most worried about right now? Is there anything we need to take care of before we talk about what happened?*
- *Do you have any questions? If there's something I can't answer, I'll do my best to get an answer for you as soon as I can.*

Investigators can then take action to help address any questions or concerns to the extent possible. Advocates can also be extremely helpful assisting in this process, as can other partners in a local Sexual Assault Response and Resource Team (SARRT).

Campus or Military Violations

For victims who are students or in the US military, a key concern is often the possibility of being sanctioned for any violations of *campus misconduct policies* (if the victim is a student) or the *Uniform Code of Military Justice* (if the victim is serving in the military). The chilling effect this can have on reporting in the military, was highlighted in a 2015 report by Human Rights Watch, *Embattled: Retaliation Against Sexual Assault Survivors in the US Military.*

Some college campuses have policies that offer immunity for student misconduct like underage drinking or illegal drug use, if it only comes to light because someone reported being sexually assaulted. This is not the case in the US military, but sexual assault victims do have access to independent Special Victims Counsel (SVC) / Victims Legal Counsel (VLC) who provide free legal advice and representation including "discussing the legal ramifications of making a report of sexual assault" and "legal advice related to any possible collateral misconduct such as underage drinking, fraternization, or orders violations."[45]

All sexual assault victims should be provided referrals for services that might help them weigh any risks involved in reporting. However, law enforcement investigators must also be honest about possible sanctions for misconduct. The goal is to do so in a way that is non-judgmental and retains priority on the investigation of the sexual assault report, not minor or collateral misconduct.

Not Arresting Victims

A related concern that many victims have is whether they could be arrested for illegal behavior they might have engaged in at the time of the sexual assault, like underage drinking, recreational drug use, driving under the influence, sex work, or immigration violations. Victims may even have an outstanding warrant for their arrest. Once again, these fears may be especially pronounced for victims from traditionally marginalized communities, and communities with specific fears associated with law enforcement or a history of negative encounters with the criminal justice system.

The success of any interview depends on the victim's level of comfort and trust. Investigators should therefore reassure victims that they will not be arrested for any such behavior (as long as that's true), and law enforcement agencies should have a policy of not arresting in such instances, unless it is absolutely necessary.

[45] US Navy Judge Advocate General's Corps, Navy Victims' Legal Counsel Program FAQ. For more information, US service members can contact the Department of Defense SafeHelpLine.

- **If the victim has committed a felony or has an outstanding felony warrant,** this will typically need to be processed. But the sexual assault remains a priority. The best response may be for the investigator to talk directly with a judge or prosecutor to discuss whether the victim could surrender to the court without booking them on any felony charges at the time. This helps keep the focus on the sexual assault, but it may not be possible if (a) the felony charge or warrant involves a violent crime, or if (b) the victim poses a threat to the community, (c) has a history of failing to appear in court, or (d) has a bench warrant issued by a judge for failing to appear in court.

I worked street gangs in the mid 1980's, and almost all gang crimes included victims and witnesses who were engaged in criminal activity or who had extensive criminal histories, including violent crimes, weapons charges, and homicides. Not once did a prosecutor question granting these victims immunity when prosecuting gang crimes.

Yet when it comes to sexual assault, people often question overlooking minor criminal activity like underage drinking or illegal drug use, misdemeanor crimes typically committed outside an officer's presence. I think we have to ask ourselves why sexual assaults are viewed and handled so differently than other crimes.

- Sgt. Joanne Archambault (Ret.)

- **It is much more common for sexual assault victims to be involved in misdemeanor offenses** like underage drinking or recreational drug use. In many scenarios, these misdemeanors can be disregarded. Just as people who have overdosed on illegal drugs are treated for their medical emergency and not arrested, the priority in sexual assault cases must remain on responding to the sexual assault, and treating the victim with compassion, not focusing on minor illegal activity.

★ **California Law Offers Victims Immunity**

In 2020, California passed a law designed to encourage sexual assault victims (and witnesses) to testify in court, by offering immunity when their testimony about underage drinking or illegal drug use might expose them to criminal liability. This innovative legislation removes one barrier that could discourage victims from reporting their sexual assault or participating in prosecution.[46]

[46] See Governor Signs AB 1927, Legislation Sponsored by DA Nancy O'Malley, posted by the Office of the Alameda County District Attorney on September 29, 2020. The text of the bill can be found here.

No Promises of Prosecution

I learned that the hard way, like many cops, that promises just bite you later or foster a sense of institutional betrayal when they don't come true.

As previously noted, investigators should not ask victims about "pressing charges," or participating in a possible prosecution, until a thorough investigation has been completed. Yet some victims may have urgent concerns regarding prosecution that need to be addressed at the time of the detailed interview. For example, some victims may feel that their participation in the interview means they are responsible for the suspect being arrested and sent to prison. Most victims will also be concerned about the impact of prosecution on their own lives, including any repercussions in their own families and communities.

Investigators can respond to these concerns by explaining the process of an investigation and prosecution, and connecting victims with services to help navigate that process. If any evidence was collected (for example, in a medical forensic exam) victims can also be assured that this will be available later if they decide to participation in an investigation and possible prosecution of their sexual assault. *This does not necessarily mean the case will be prosecuted, but it leaves that door open for the time being.*

On the other hand, investigators must be honest with victims, and not promise anything they cannot deliver in terms of prosecution. For example, victims should NOT be told: "Don't worry, we'll have the suspect in custody before you know it, and they'll go to prison for a long time." Instead, victims should be provided with honest information about the process and possible outcomes. No one can foresee what path an investigation will ultimately take, and what information and evidence will be uncovered. Similarly, no one can promise that someone will be arrested, prosecuted, and convicted, no matter how well investigators and prosecutors perform their jobs.

What NOT to Say: "I Know How You Are Feeling"

Below are a few examples of things that are NOT recommended for investigators to say to a sexual assault victim, at any point during the investigative process:

- *I know how you are feeling.*
- *Everything is going to be all right*
- *At least you're not injured.*
- *You must get on with your life.*
- *Don't cry.*
- *It could have been worse.*
- *You shouldn't feel that way.*
- *Time heals all wounds.*

Although well intentioned, *these sentiments are typically not helpful for victims and can interfere with rapport.* But keep in mind that empathy is communicated not only by what we say, but by what we do. If an investigator acts in a way that is compassionate and professional, this communicates that they are taking the report seriously and care about its impact on the victim. This can go a long way toward protecting rapport even when investigators make a misstep or "say the wrong thing," as we all inevitably do.

Eliciting Memories of Sexual Assault

With a traditional approach to interviewing, investigators might ask sexual assault victims to describe "everything" that happened during the incident, from beginning to end, without leaving anything out. Or, they might read the patrol report to the victim and ask if it is accurate. The investigator might then focus on details that are assumed to be crucial to answer questions of "who, what, when, where, and why." For example:

- *What time did the sexual assault occur? How long did it last? When did it end?*
- *How tall was the suspect? What was he wearing? What color was his shirt?*
- *Why didn't you scream? Fight? Run away? Call someone?*
- *How many times did each suspect penetrate you? Did any of them use a condom?*
- *Where was the suspect's left hand, while she held you down with her right hand?*

When investigators focus on such details – which might be significant for the case, but are not strongly encoded (or encoded at all) in the victim's memory – the victim may be unable to answer. Then, if the investigator continues this line of inquiry, the victim is likely to feel increasingly anxious, frustrated, and defeated. They may even feel ashamed, because they believe they "should" know the answers: *The questions must be important, because otherwise why would the investigator be asking them?*

> *When you ask victims questions they don't know the answer to, you get no answers and a lot of frustration. The victim thinks, 'You don't believe me,' and they stop participating. When you try to get memories from a part they can't access, they get frustrated and walk away.*

At some point, victims may simply give up, shutting down and withdrawing any meaningful participation in the interview. Or they may try to come up with an answer by reasoning through *what was most likely to have happened*. This is not necessarily an act of deception; victims are often just trying to make sense of their experience and answer the questions being asked. Unfortunately, this can introduce inconsistencies and inaccuracies as a result of stress, not the victim's truthfulness.

Creating Inaccuracies

Consider this example: A male victim reports that he has no memory of returning home after being sexually assaulted at a party. When pressed on the issue, he says his roommates *must have driven him home*, because they were at the party, too. When the roommates are interviewed, however, they both say that the victim returned in a taxi with an unknown male. This discrepancy certainly raises questions about the credibility of the victim's statement regarding how he got home – which may raise additional questions about the credibility of all his other statements, including whether he was even sexually assaulted. Yet *the*

inconsistency only arose when the investigator pressured the victim to answer questions about information that wasn't stored in his memory.

Alternative Approach

The interview approach described in this module requires investigators to abandon the traditional paradigm that victim interviews are conducted to determine "who, what, when, where, and why." This shift is based on findings from scientific research indicating that trauma victims do not always encode such information as key details in their memory. It is also grounded in an understanding of sexual assault dynamics.

In its place, investigators are encouraged to draw out details that actually *were* central to the victim's experience, and therefore encoded more strongly in their memories. Investigators may then use these central details as a means of exploring what peripheral details might also be retrievable, while recognizing that they may not be. This alternative approach also helps victims feel safe enough to disclose whatever memories they are able to recall.

I used to tell survivors, 'Start at the beginning and tell me everything that happened in chronological order.' It doesn't work. Now I say, 'Start where you want to start.' It's better, and I remind myself not to have preconceived ideas of what they'll tell me.

In other words, investigators should continue to be guided by the two key questions introduced at the beginning of this module:

- What am I doing to facilitate and support victims during the difficult process of *recalling* memories of their sexual assault?
- And what am I doing to create an environment where victims feel comfortable and safe enough to *share* these detailed memories?

Impact of Training

One supervisor said his police agency had no particular interviewing style before being trained in trauma-informed techniques. Most detectives were trained in Cognitive Interviewing,[47] but they didn't have any techniques specific to sexual assault victims. In other words, they asked a person who had been in an auto crash the same kinds of questions they asked a rape victim.

Another supervisor said similar things about her sex crimes unit. When she assumed leadership, there was no guidance on how trauma might impact victims and affect their reactions: "We had good people, but they didn't have training." When the agency provided training and leadership on trauma-

[47] Fisher and Geiselman, *The Cognitive Interview Method.*

informed principles for patrol and investigations, as well as command staff, she says it made "a huge difference" in the quality of their interactions with victims.

What Victims Are Able to Remember[48]

Wherever it makes sense to start, what are you able to tell me about your recent assault?

After expressing genuine empathy for the victim, investigators can dive into the substantive part of the interview with a general, open-ended prompt like:

- ***What are you able to remember about what happened?***

  OR

- ***What are you able to tell me about what happened?***

Such phrases provide victims a sense of control and empowerment, and enable them to begin sharing their experience from whatever point they choose. The word able, in particular, acknowledges that *victims may not be able to remember certain aspects of their experience, and in some cases, many aspects.* This could be because the details were not encoded (or poorly encoded) in their memory at the time of the assault, or it could be due to sociocultural dynamics, alcohol or drug use, or other factors.

- In contrast, the more common word "can" (as in "What *can* you tell me?") may be seen as implying that victims *could* remember anything they wanted to, if only they tried hard enough and were being honest about what actually happened.

- The word "able" (as in "What are you *able* to tell me?") helps reduce the unrealistic expectation that victims will remember "everything" about their assault. Then, by lessening feelings of pressure or inadequacy, this increases the likelihood that victims will be able to *recall* and *share* more detailed memories of their experience.

As an additional benefit, the word "able" leaves the door open, so victims can add new details that emerge over time and/or clarify information they have already shared.

Reduced Frustration

As noted, this approach can help alleviate anxiety for victims, making it clear they are not expected to remember "everything" about their sexual assault.

[48] Some information in the next few sections was adapted from a 2016 EVAWI webinar presentation given by Russell Strand, entitled *Forensic Experiential Trauma Interviews (FETI): A Trauma Informed Experience.* The recorded webinar and corresponding handout are available in EVAWI's webinar archive. However, some of these concepts were presented in training long before being incorporated into the FETI approach. As one example, prosecution expert Patti Powers has trained for decades on the importance of communicating to victims that they are not expected to remember everything about their sexual assault. As Powers has long emphasized, investigators and prosecutors can provide reassurance to victims and set the expectation that they will simply provide whatever information they are able to retrieve from their memory and share *at the time,* with questions like "What are you able to remember…"

However, it can also reduce the frustration that *investigators* experience, by recognizing that brain-based processes determine whether a victim's memories will be encoded and stored and thus available for recall. As one Sergeant said, interviews "aren't as frustrating now, when the victim can't remember something." She understands that "they may or may not remember."

Ask, Then Wait

After presenting the victim with a general prompt, the next step is to *wait.* Victims need time to digest the question and think about how to describe what happened, in their own words and at their own pace. **This can be one of the hardest parts for investigators.** But it is critical for helping victims *recall* and *share* details about their sexual assault.

Provide a starting point. Then let them go, go, go.

Active Listening

Then, while victims offer their free-flowing narrative, investigators can engage in active listening (visual attention, nodding, etc.). The responses victims provide to this general opening question will often be extremely rich in details, and investigators can make notes of these details to "give back" to the victim later, as cues for additional recall.

Follow-Up Prompts: "Give Back" Details

After the victim has relayed what they are able to in a free-flowing narrative, investigators can follow up with additional prompts that "give back" details to the victim, repeating words or phrases they have already used by the victim to describe events. To illustrate, investigators can prompt victims with questions like:

- ***Can you tell me more about [that detail]?***
- ***What are you able to tell me about [that detail]?***

It's stunning how the details come out. If the investigator still needs answers to some questions, they can get more details by asking questions like, 'What are you able to tell me about the hair color?'

Such prompts enable victims to *retrieve* and *disclose* information based on how their memories are encoded and stored. This also helps investigators avoid assumptions about what information might be "important," because it isn't always clear during the early stages of an investigation what details will become important later.

Of course, after asking such a follow-up prompt, **investigators will again need to wait, and return to active listening.** There are likely to be long pauses throughout the interview, as victims collect their thoughts, explore their memories, and take steps to maintain their composure, so they can continue providing narrative responses to open-ended prompts, without feeling rushed or being interrupted.

Avoid Leading Questions

While most investigators know not to ask leading questions, this can sometimes be easier said than done. It can be tempting to ask victims questions like:

- *Was he bigger than you?*
- *Did she hold you down?*
- *Were you intimidated by the fact that there were three of them?*
- *Did you fight back when they were doing that?*

Before learning about trauma-informed interviewing, I used a ton of closed-ended questions. I wasn't coming from a bad place then, I just didn't really know any better and perhaps even thought that by giving options of answers, I was making it easier.

Beyond limiting victims in the amount of information they might provide to investigators, such closed-ended questions also imply what the "right" answer is, which can influence the responses and even memories of victims. With conscious effort and practice, investigators can avoid such questions and use open-ended prompts instead.

Capture Multidimensional Experience

A well-conducted interview is designed to yield a *multidimensional picture* of the victim's experiences before, during, and after the sexual assault. By carefully eliciting and documenting detailed information about the victim's **sensory experiences, emotional memories,** and **thought processes,** this can help investigators, prosecutors, and ultimately judges and jurors better understand the victim's perspective and more fully grasp what the entire experience was truly like for them.

You're asking them to report what happened to them as the victim rather than a witness to their own crime. It makes it more relatable to someone reviewing it later.

Investigators often talk with victims while their emotions are still raw and the impact of trauma is fresh. What they say, and how they behave, is critical for understanding their response to the sexual assault. Frequently, victims act very differently later; if the case goes to trial, they may not engage with prosecutors or encounter jurors for months or even years later. This will also likely be after numerous re-tellings of the victim's account, and perhaps after the benefit of counseling. If their full multidimensional experiences are not captured during the detailed interview, it may be difficult if not impossible to accurately relay later.[49]

[49] This is the same reason why it is important to preserve the recording of any 911 call the victim may have made in the aftermath of the assault.

This same strategy can also help to prevent minimizing or sanitizing of the victim's account. Too often, victims' experiences are described in factual language and technical terms that utterly fail to capture their terror, pain, confusion, and shame. This is not necessarily done deliberately; investigators and prosecutors often "clean up" the victim's language to make the statement more palatable for others. In doing so, however, they also make the statement *less accurate* in documenting the victim's experience.

Sensory Experiences

One dimension of the victim's multidimensional experience consists of *sensory memories.* Sensory prompts are a key tool for drawing out memories associated with the five traditional senses of sight, sound, smell, taste, and touch, or the sensations felt in the body:

- *What are you able to remember **seeing?***
- *What are you able to remember **hearing?***
- *What are you able to remember **smelling?***
- *What are you able to remember **tasting?***
- *What are you able to remember **feeling?***

It is amazing to watch and hear how many details about an experience can come pouring out asking just sensory questions.

Prompts like these encourage victims to explore a variety of sensory experiences that may also cue additional memories that would otherwise not be accessed or reported. Sometimes these sensory memories may not, upon first hearing, seem "relevant" to the investigation. However, they are necessary to develop a complete picture of the victim's multidimensional experience. They can also be critical for triggering *other* memories, and they may be relevant for establishing corroboration as the investigation unfolds.

As previously described, the investigator can then use follow-up prompts to "give back" any details associated with sensory memories the victim has already shared. For example, if a victim says that a suspect held them down, an investigator might ask:

- *What, if anything, are you able to remember smelling [seeing, hearing, or feeling] when they held you down?*

"You Have to Be All In"

Asking sensory questions can be awkward for investigators and feel odd to victims. If the investigator isn't genuinely empathetic or is callous in their approach, there is a potential to do more damage than good. Victims can also have very emotional reactions to sensory prompts, so it is important to acknowledge this. Investigators can explain to victims that sensory questions can often be particularly helpful for retrieving and sharing detailed memories of the assault – as well as developing a full, multidimensional picture of the victim's experience.

This discussion again highlights the importance of providing advocacy services for victims, before, during, and after their detailed interview with law enforcement. When interviews are conducted following the type of guidance offered in this module, it will likely be a very intense experience for survivors. Asking the victim to re-experience the assault is akin to asking them to take off all their clothes during the interview, leaving them exposed and vulnerable. Victims need support to withstand this process and preserve their well-being, following the mantra of "do no (additional) harm."[50]

If you're using the technique, develop the trust. Sensory questions are valuable if done the right way, for the right reasons. You have to be all in or all out. If you do it partially, that's when you have problems.

"I Don't Know What I Can Remember"

The value of sensory questions can be particularly important for victims who don't think they can remember very much about their assault. Investigators say that sensory questions can uncover little details that might not have surfaced any other way. For example, if the victim doesn't know where they were when they were assaulted, the investigator can ask, "What did you smell?" or "What did you see?" The victim may then be able recall smelling a dumpster or trash in a kitchen. By combining these sensory details with other information and evidence collected during the investigation, it may be possible to determine where the assault occurred.

They'll say 'I don't know what I can remember,' and hours later they're still remembering more.

Case Example: Sensory Memories

One reason to focus on sensory details is because they can frequently cue other memories and disclosures about the sexual assault. This is illustrated in a powerful 30-minute documentary produced by Ohio University. The video features Brie Sivy, a victim of alcohol-facilitated sexual assault, and Detective Mathew Austin of the Ohio University Police Department, who interviewed her.

During the assault, Brie went in and out of consciousness, so she didn't have a full memory of what occurred. At one point, Detective Austin asked her:

> *Are you able to remember the feeling of where your hands were?*

Brie was quiet and then started sobbing.

The worst part is trying to say it out loud. I can see it in my head, but it doesn't want to form words.

- Brie

[50] Thanks to Beya Thayer for introducing this concept. Ms. Thayer serves on EVAWI's Board of Directors and is the Executive Director for Yavapai Justice and Mental Health Coalition in Yavapai County, AZ.

Eventually, she described the suspect forcing her hand onto his penis; this sensory prompt helped Brie remember and disclose an additional criminal act. This information may not have been revealed with a more traditional approach, yet it had a significant impact on the investigation and prosecution, because it established the elements of an additional criminal offense and could potentially be used to inform evidence collection during a medical forensic exam.

Emotional Memories

A second dimension of the victim's experience involves *emotional memories.* An investigator might initially probe a victim's emotional memories by asking:

- *What are you able to remember feeling during [that part of the experience]?*

The victim might respond, "I felt dirty, like I would never feel clean again," or "I was afraid, I felt so trapped and helpless," or "I felt frozen in place," or "I felt blank … like I left my body while it happened." Such statements about emotional experiences are important for investigators to document – in the victim's exact words – even if their significance is not clear at the time.

The interview may be more upsetting. They may remember something they didn't remember and be shocked that they remember it.

As with sensory experiences, emotional memories may be uncomfortable to address, both for victims and investigators. Some investigators may shy away from following up on emotional memories, in part because they are afraid of re-traumatizing the victim. Yet, in many cases the emotions described by victims are crucial to understanding the context and impact of their experience. They may also corroborate legal elements of the crime (such as force, threat, fear, incapacitation, or a lack of consent). Therefore, emotional experiences should not be discounted, but rather viewed as an integral part of the interview process to be explored and documented. Yet again, this highlights the need for advocacy services to be provided for victims before, during, and after the interview to protect their well-being.

Thought Processes

Thought processes are a third component of the victim's multidimensional experience; they can be particularly helpful for understanding both the full impact of the event on the survivor and illuminating their decisions and actions at different points. For example:

- *What was your thought process during [that part of the experience]?*
- *What was going through your mind at that point?*
- *What were you thinking when…?*
- *What were your thoughts when…?*

Once again, the victim's responses to such questions can be "given back" and used as follow-up prompts for additional detail about their thought processes during the assault. To illustrate, a victim who says they felt "frozen" during the assault could be asked:

- *What were you thinking while you were frozen?*

The victim might respond: "I couldn't figure out what was happening, and it freaked me out. It's like my brain was stuck. I couldn't figure out why I couldn't move, or scream, or push him off." By specifically inquiring into the victim's thought processes before, during, or after the assault, this can help reveal aspects that were central to their experience.

Case Example: Thought Processes

One Sergeant described a case of aggravated assault where a man pointed a gun in a woman's face. This was in a neighborhood with a lot of crime, where people feel they need tough posturing to protect themselves. This Sergeant tells her officers, "Don't ask them if they were afraid, because they'll say they weren't." Instead, she asked this woman, "When he pulled that gun, what was going on in your head?" The victim replied tellingly, "I thought he was going to kill me."

Avoid "Why" Questions

Another benefit of asking victims about their multidimensional experiences before, during, and after the sexual assault is that it can help investigators avoid asking "why" questions. These questions are dangerous, because they can make victims feel as if the investigator is blaming them for the sexual assault, or for responding in a way that was "wrong." ("Why did you let him into your apartment?" "Why didn't you resist?" "Why did it take you so long to report?" "Why is there no sign of forced entry?")

[Why questions] imply blame or an accusation and make people defensive. What if your boss came up to you and asked, 'Why did you wear that shirt today?' It would probably make you think you'd made a bad wardrobe choice.

"Why" Questions are Often Unanswerable

While there are many reasons to avoid asking "why" questions, one is because they are often *unanswerable for victims.* To illustrate, one sexual assault victim was asked why her latent prints were not recovered from an object she said she touched at the suspect's home. Another was asked why semen was not recovered when he said the suspect ejaculated without wearing a condom. Many victims of sexual assault are asked why they don't have signs of physical injuries. Yet these are questions that victims can't answer. Almost every law enforcement professional has experience working a case where crime scene evidence doesn't match up with the information available, even when it is later proven to be true.

In fact, victims, witnesses, and suspects often provide information that leads an investigator (or forensic examiner, crime scene technician, or laboratory personnel) to expect to find corroborating evidence in a particular location (e.g., physical injuries, signs of forced entry, fingerprints, trace evidence, or biological evidence such as blood and semen). Yet sometimes this evidence is not found. There are many reasons why this might happen, including (a) time between the assault and reporting, (b) post-assault hygiene activities, (c) use of condoms or gloves, (d) varying evidence collection procedures, (e) environmental factors, (f) people believing something to be true ("all our windows and doors were locked!"), (f) misinterpreting information the victim provided, or (g) making assumptions about what is and is not possible, etc.). But it is critical for investigators to recognize that *the absence of something rarely proves anything on its own.* Only a thorough investigation that explores all possibilities, and considers all case facts, can lead to a substantiated conclusion and a final case determination.

Reframing "Why" Questions

This doesn't mean the investigator can't get answers to some "why" questions. It just means they need to identify the best strategy to answer those questions. Often, this can be accomplished by replacing the "why" question with a prompt for what the victim was thinking, feeling, or experiencing at that point.

To illustrate, instead of asking, "Why did you get into the suspect's car?" an investigator might prompt the victim with something like:

- *Are you able to remember what you were thinking when you got into the car?*
- *Are you able to talk about the thoughts you were having as you were getting into the car?*

Investigators always have to answer the question 'why' – it's how you get there that's important.

In this way, the investigator conveys genuine interest in understanding what may have led the victim to engage ─ or not engage ─ in certain behaviors, without implying judgment or questioning the victim's credibility.

Case Example: Answering "Why" Questions

Skilled interviewers can reveal the reasons for victims' behaviors without having to ask "why." To illustrate, in his interview with Brie, Detective Mathew Austin of Ohio University does this adeptly in the following exchange:

> Austin: *Are you able to tell me about the feeling of him being on top of you?*
>
> Brie: *It felt like someone hovering over me, not on me. I felt some of his weight.*

Austin: *Are you able to tell me more about that feeling of weight?*

Brie: *I remember I was on my right side because I was next to the wall, which is why I think I couldn't move away because when I tried to move, I think I hit the wall. There was nowhere for me to move away from him.*

Prosecutors, judges, or jurors might have initially heard Brie's statement and wondered, "Why didn't you just get up and run away?" The technique Detective Austin used answers that question without ever asking it directly.

Circling Back

Clarification questions are to deal with the complexities of the law and questions we [the police] anticipate being asked by the prosecutor.

In any interview, there typically comes a point where investigators need to "circle back" to revisit key topics and clarify or expand certain details. Specifically, questions may be necessary to:

- **Elicit information that may be missing** from a victim's initial disclosure, or
- **Clarify information or statements** that appear inconsistent or unclear.

Sometimes, when information appears inconsistent or unclear, it may be that the investigator misheard or misunderstood what the victim was saying. This can often be clarified with a straightforward follow-up question. Or the victim may have skipped over certain topic areas or specific details during the initial account of events, because it was too difficult, painful, or for some other reason. When this happens, victims are typically providing information in a way that is most comfortable for them, and investigators should not respond by delving into the issue immediately. Instead, they can simply make a note to follow up with a prompt later, to fill in the missing information.

Explain Questions Asked

How I broach it is, why it's important, and I give you control over if you want to answer that.

While circling back for clarification, it can often be helpful for investigators to *explain the questions asked.* Victims often do not understand what is happening or why, both during the interview as well as the larger investigation. They are also frequently in a hypervigilant state, with heightened awareness to questions that might sound blaming, shaming, or judgmental. To help victims feel safer, more comfortable, and empowered during the interview, investigators can explain why they are asking certain questions.

To illustrate, instead of simply asking the victim, "What were you wearing?" an investigator might begin with an explanation:

> *Sometimes we can get valuable evidence from the clothes you were wearing, even if you've washed them. We would like to collect the clothes you were wearing at the time of the assault as evidence. Can we meet with you to pick up those items?*

Another example involves drug or alcohol use. Instead of asking the victim, "Were you drinking or taking drugs?" the investigator might frame the question like this:

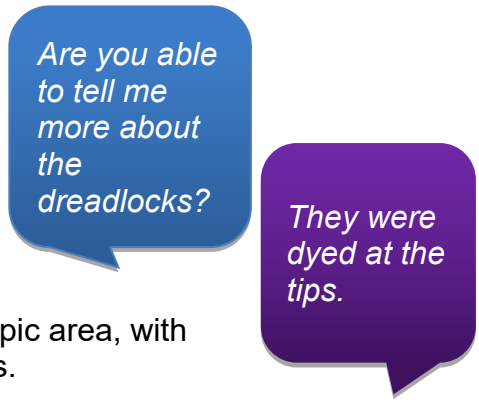
> *Based on what I know so far, it sounds like you were drinking or taking drugs at the time of the assault. But I want you know that we are not investigating your drinking or drug use. We are concerned for your safety, and about what happened to you. By asking about any drinking or drug use, this helps us get a better picture of what was happening at the time. It might even help establish an element of the crime.*[51]

This approach may be especially important when asking victims about behaviors that were high risk or even unlawful, such as underage drinking, drug use, or sex work. By explaining the reason for such sensitive questions, victims can understand where the investigator is coming from, and may feel safer and more comfortable answering.

Establish Trust First

Practitioners emphasize how important it is to establish a relationship of trust with victims before asking particularly sensitive follow-up questions. Otherwise, they might convey to victims that they are being doubted or blamed for their assault. To illustrate, one Sergeant says she might need to ask a victim questions like: "Who were you with?" or "Is there anyone else that might help me establish a timeline?" or "Can you tell me who I could talk to that would back up what you told me?" When she has to ask questions like this, which might sound like she's looking for someone to vouch for the victim's credibility, she makes sure they understand why the information might be important, and she also waits until they have established a strong base of safety and trust.

Narrowing Focus



When investigators are circling back to add or clarify information, they may follow a strategy of *narrowing focus.* This general strategy is no different than the rest of the interview; open-ended prompts are used to facilitate recall about a particular aspect of the victim's memory, and then specific details shared by the victim are "given back" as cues for additional recall within that topic area, with the goal of eliciting details toward an ever-narrowing focus.

[51] These examples are adapted from a handout on *Successful Trauma Informed Victim Interviewing*, produced in June 2020 by the International Association of Chiefs of Police (IACP).

Depending on how the victim responds, the interviewer can continue to explore details, until it appears that the victim has disclosed whatever they are able to remember about that series of details. This will help investigators elicit additional detail without reverting to traditional narrative/sequence questions, yes/no questions, or leading questions.

Illustration: Narrowing Focus

To illustrate the technique, open ended questions can be used to elicit information about the physical characteristics of the suspect. Instead of asking specific questions, like "How tall was he?" "What was he wearing? Was he skinny or fat?" investigators can use open-ended prompts like the following:

Q: Tell me more about the guy.

A: Well, he was a white guy, and he was wearing a hat.

Q: Tell me more about the hat? … OR
Q: Tell me more about the man?

A. He was really skinny. He had really thin arms and a scar on his hand.

Q: Tell me more about his arms? … OR
Q: Tell me more about the scar? … OR
Q: What was going through your mind when you saw the scar? … OR
Q: What were you thinking when you saw his arms?

A: I was thinking, how can he be so skinny and so strong?

Rephrasing Questions

There are many strategies to circle back on a topic, and narrow focus by "giving back" cues to the victim using open-ended prompts. Often, traditional questions can simply be rephrased to better facilitate memory *retrieval* and *disclosure*:

- Traditional*: What was the woman wearing?*
- Rephrased: ***Are you able to remember anything more about the woman?***

- Traditional: *Why didn't you scream or fight back?*
- Rephrased: ***Are you able to remember what was going through your mind when…?***

- Traditional: *Did he penetrate you?*
- Rephrased: ***Are you able to remember any physical feelings or sensations?***

With the new techniques, interviews can go for a while. I've had them go for three to four hours with a break. The survivor might have a cigarette, then we keep going if they're up for it. My interviews are longer than they used to be – with the old way, they never went past an hour or hour and a half.

- Traditional: *Was there anyone else?*
- Rephrased: ***Are you able to remember anything about other people nearby?***

- Traditional: *Why did you wait so long to report it?*
- Rephrased: ***Are you able to tell me about what has been going on in your life since the experience?***[52]

These are just a few examples; there are countless others, depending on the details to be added, clarified, or expanded while circling back to key topic areas. The general rule for rephrasing is to keep questions open-ended and use simple cues such as:

- *Are you able to remember more about [that]?*
- *Are you able to tell me more about [that]?*

Always remember that certain information may not have been encoded in the victim's memory, or it may have been encoded poorly, which means it may be unavailable later. Investigators should never expect victims to recall details that were peripheral to their brains at the time, or assume that other information was encoded such as chronology, time-sequencing, and contextual factors like physical layout or spatial relations.

Reflect and Summarize

Throughout the interview, open-ended prompts are used to elicit details of the victim's multidimensional experience, including sensory memories, emotional experiences, and thought processes. Then as they process their experience during the interview, more memories may naturally emerge. Then when they do, investigators can encourage continued elaboration through *reflective comments.* This strategy is illustrated below:

> Victim: *I saw him at a few parties, but I didn't really know him.*
>
> Investigator: *So, he was someone you talked to before?*
>
> Victim: *Yeah, he must have been friends with some of my friends, because we would see each other at all the same parties, and we would say 'hi,' but we really didn't know each other at all.*

In this example, the investigator has reflected back to the victim the essence of what was said, to narrow focus and encourage further elaboration.

Investigators can also *summarize* what they heard from a victim after they finish telling a segment of their narrative. However, investigators should *not interrupt* the victim to do this. Instead, when the victim pauses after completing a segment of their narrative, the investigator can use this opportunity to summarize that segment with questions like:

[52] These examples were adapted from a 2016 EVAWI webinar presented by Russell Strand, entitled *Forensic Experiential Trauma Interviews: A Trauma Informed Experience.* The recorded webinar and corresponding handout are available in EVAWI's webinar archive.

- *Do I have that part right?*
- *Is this the way it happened?"*

This process ensures that the investigator has understood what the victim said, and offers victims the opportunity to confirm or clarify the investigator's understanding.

Avoid "This or That" Questions

One Detective said that an important lesson she has learned from the new approach is not to use "this-or-that" questions, like, "Were they wearing pants or shorts?" "They may have been wearing a toga, and you're not going to know it if you ask that question. If you give someone two options, they'll pick one."

When she analyzed her own recorded interviews, she realized how much she phrased her questions in terms of binary choices. Now she uses, "Tell me more," or "Help me understand more about..." With this change, the Detective finds she gets much more useful information from victims in her interviews.

"Listen for Language Clues, Then Drill Down"[53]

In a webinar entitled *Domestic and Sexual Violence: Trauma Informed Victim Contact and Interviewing,* Neva Fernandez of the Travis County District Attorney's Office summarizes an important interviewing strategy as: "Listen for language clues, then drill down." This strategy is important because victims of physical and sexual violence often respond to interview questions in ways that could easily be misconstrued, without clarification.

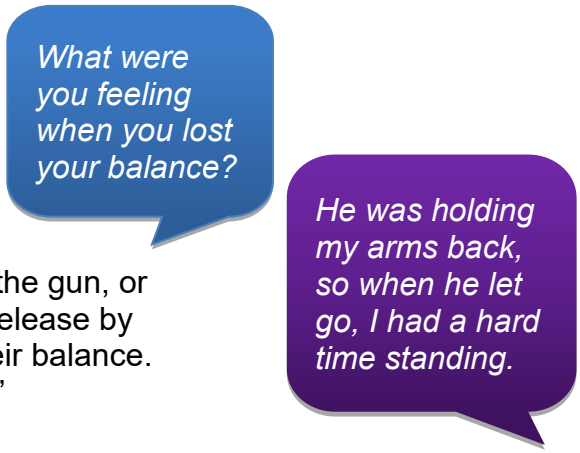
For example, victims often *minimize* what happened, and they frequently *qualify* actions or events – especially when they know the person who assaulted them. In fact, the closer the relationship is between the victim and suspect, the more likely victims are to minimize or qualify events. Whether consciously or not, victims are frequently seeking to protect the person who assaulted them, and preserve their relationship. This also helps people to avoid thinking of themselves as a victim, and the event as a crime.

Minimizing or Qualifying

To illustrate, an investigator might ask the victim, "Did he hit you?" and the victim might answer, "Not really." Or they might ask "Could you breathe?" and the victim might say, "Sort of." "Did you feel much pain?" "Not much." "Do you have any injuries?" "Barely." Investigators would do a great disservice to the victim (and the case) if these responses were recorded as simply "yes" or "no." Instead, such responses should prompt the investigator to ask for additional information to clarify what the victim experienced.

[53] This section is based on material presented by Neva Fernandez in an EVAWI webinar titled, *Domestic and Sexual Violence: Trauma Informed Victim Contact and Interviewing,* Ms Fernandez serves as Victim Services Manager for the Travis County District Attorney's Office in Austin TX.

Obscuring the "Doer"



Other things to listen for are the use of *passive voice* or *"I" language* that obscures who the actual "doer" was. For example, the victim may say "The gun went off" or "I lost my balance and fell." With additional prompts, it may become clear that the perpetrator is the person who fired the gun, or physically restrained the victim, and the sudden release by the assailant is what caused the victim to lose their balance. Again, "Listen for language clues, and drill down."

Exploring Gaps

Similarly, Fernandez recommends listening for memories that reflect jumps from one moment to the other. These can be identified with changes in: (a) physical location, (b) body position, or (c) gaps in time. For example, the victim might say "She was shaking me, and I hit my head on the refrigerator," then, "I fell by the couch" (change in physical location). Or the victim might say, "I was lying on the bed and he came over and punched me," and then, "He kept kicking me while I was on the floor" (change in body position). Or, "That morning he accused me of cheating, and wouldn't let me go to work. There was all this yelling and name calling. I was scared. I was just begging him to let me pick up the kids from school. That's when it finally ended" (gap in time).

The way to explore such gaps is the same as narrowing focus: non-leading, open-ended questions. "What were you thinking (or feeling) when you went from the kitchen to the living room?" "Are you able to remember anything about moving from the bed to the floor?" "Tell me more about being scared. What are you able to remember?"

"Things That Make You Go Hmmmmmm…"

Finally, Fernandez provides examples of statements that a victim might make which should prompt an investigator to find out more:

- *I ran to the door when we were arguing, but I didn't have the key for the last lock…*
- *It's hard to entertain kids in one room all day long…*

Again, the strategies are the same. Listen carefully. Prompt for additional details. Document carefully. And always, express empathy, compassion, and non-judgment.

Two Key Questions

When you think about this incident, what can't you get out of your mind?

As the detailed interview is coming to a conclusion, there are two key questions to ask victims:

- ***What, if anything, can't you forget about the incident?***
- ***What was the most difficult part of this for you?*** [54]

These two questions may prompt victims to disclose information they had not already shared, even in a well-conducted, trauma-informed interview. Responses often demonstrate the gravity of what the victim experienced, and highlight the difference between consensual versus non-consensual acts. For example, survivors have described how difficult it was to be hurt by someone they loved and trusted, or to be doubted and blamed by loved ones. Others have described nightmares they have had since the assault, and the inability to go out and simply be around other people.

Investigators can then prompt victims for more information using the same phrase:

- *Are you able to tell me more about [that]?*

Investigators say this line of inquiry often yields the most revealing information, both in terms of the impact of sexual assault on the victim and potential corroborative evidence.

Case Example: Corroborative Evidence

A young woman reported being raped repeatedly by her stepbrother as a girl. When she initially told the family as a child, they took his side. Five years later she reported it to police. During her interview, the investigator asked her:

What plays over in your mind when you think about what happened?

The survivor said she remembers waiting up at night to hear the click of the lock on her bedroom door. The lock didn't work, so she shoved playdough in the door jamb to keep him from coming in. The investigator obtained a search warrant for the house, and found playdough in the door jamb.

General Interviewing Techniques

Throughout the interview, as investigators help victims *recall* and *share* details about their sexual assault, there are some general techniques that can be very valuable.

[54] Information about these two key questions was drawn from a 2016 EVAWI webinar presented by Russell Strand, entitled *Forensic Experiential Trauma Interviews: A Trauma Informed Experience.* The recorded webinar and corresponding handout are available in EVAWI's webinar archive.

Avoid Interrupting

One of the most important techniques is simply allowing victims to provide their own narrative account of what their experience *without being interrupted.* Remember that the two goals of a successful interview are to help victims *retrieve* detailed memories of their sexual assault, and *share* them with the investigator. Interrupting disrupts both processes, reducing the victim's comfort and trust, and therefore the effectiveness of the interview.

I see a lot of other investigators or responders interrupting in a way I used to – with the false thinking that I had what I needed, knew what happened, or wanted to move on to the rest of the investigation.

Sometimes investigators interrupt victims because they lack patience or compassion, but often it is exactly the opposite – investigators interrupt precisely *because* they have compassion for victims, which creates a sense of urgency during the interview. Investigators want to get all the information they need to pursue justice for the victim and stop a perpetrator from hurting someone else. Or, they may feel like they already have the information they need, and they want to move forward with the investigation.

Interruptions can also happen when investigators are trying to take notes. It is frankly impossible to keep up with documenting all the details shared by victims during a detailed interview, and investigators sometimes interrupt to add or clarify information because they are afraid they will forget it otherwise. This reiterates the key advantage of recording victim interviews; it allows investigators to carefully listen to the victim, and jot down notes or questions that need to be addressed *after* victims have completed their free-flowing narrative.

I went to a training that teaches and practices the concept of ZERO interruptions. We did drills where the interviewer could only write their questions down on paper and give them to the interviewee after they were done talking. It really helped draw attention to your desire to blurt out a question and interrupt; it forced us to go slow and focus on listening instead.

Victims Can Interrupt

Given that the purpose of the interview is to help victims *recall* and *share* as much information as possible, they should be empowered as a partner in the investigative process. Part of this is encouraging victims to speak freely, and actively generate information throughout the interview – rather than waiting passively and simply answering specific questions that are asked by the investigator. Another aspect of empowerment is advising victims that can *and should* interrupt the investigator at any time, to ask a question, add a detail, clarify information, or correct a mistake.

Taking Breaks

You can be done any time. You can have a bathroom break or a water break whenever you need – it's all okay.

Victims should also be encouraged to speak up when they need to take a break, or even *stop the interview completely.* Often, directly asking victims if they need to take a break may not be the best strategy, because victims may decline simply to be polite and cooperative.

Advocates can frequently be helpful with this; they can request a break at certain intervals during the interview, or based on their sense of how the victim is doing. Investigators can also suggest a break based on the amount of time that has elapsed or their perception of how the victim is doing. This has the added value of demonstrating that taking a break is perfectly acceptable *from the investigator's perspective*, not just the advocate's.

Okay to Say "I Don't Know"

If there are parts you don't remember or are missing or blurry or fuzzy, that's okay. It may come back in a week or never; it's fine. Don't try to force guesses or answers if you don't have them. ***'I don't remember,' is a great answer.***

During any law enforcement interview, most crime victims will probably be asked some questions they can't answer. However, sexual assault victims may react uniquely to this situation, because they are concerned that the investigator is doubting or blaming them.

To address this issue, investigators should specifically advise victims that – not only is it *appropriate* for them to say, "I don't know," or "I don't remember" – it is *expected*. Victims should be clearly advised not to guess with any of their responses, nor to provide information that they may have learned from others, but do not recall themselves. This can happen in any sexual assault case, but it is particularly common in cases of alcohol- or drug-facilitated sexual assault where victims have limited memories of the event. In these scenarios, victims often rely on information that they have learned from others, or even from the internet, to fill in gaps and better understand what happened.

Use Effective Body Language

Victims will inevitably be influenced by the body language of investigators, particularly in response to sensitive disclosures. It is critical for investigators to ensure their body language and tone are always appropriate. Suggestions include the following:

- If possible, sit with victims in a relaxed manner, turned toward the victim.
- Position victims (if possible) in a physically higher position than the investigator.
- Express active listening with visual attention, nodding, etc.
- Use smooth movements that express calmness and support.

- Maintain a calm and reassuring voice throughout the interview.

Investigators will also need to take steps to ensure they will not be interrupted by other personnel. Cell phones should be silenced or turned off, and barring an emergency, investigators should not check for or respond to any text messages. The investigator's focus and attention must remain on the victim during the entire interview.

Maintain Eye Contact

One particularly important aspect of body language is *appropriate eye contact.* In general, investigators should look at the person they are interviewing, even if that person is unable to return the eye contact. This communicates that the investigator is comfortable with the victim and the information being relayed. However, this does not mean staring or holding eye contact in an unnatural manner. A natural level of eye contact will include general focus, with occasional breaks. Other considerations include:

- When an interpreter is being used, make regular eye contact with – and speak directly to – the person from whom you are obtaining the information, not the interpreter. This can be hard to do, because we are accustomed to making eye contact with the person we are actually speaking to. However, it is important to remember that the interpreter is not the person you are actually speaking to.

- Also keep in mind that *eye contact can be very uncomfortable for some people,* based on their cultural background or other factors. A lack of eye contact should therefore never be assumed to mean that the victim is being deceptive; the research is clear that it doesn't usually have anything to do with whether a person is lying.

Can We Tell When Someone is Lying?

All too often, investigators (and others) have mistakenly interpreted sexual assault victims' body language, emotional expression, or lack of eye contact as signs of dishonesty or deception. This can be due to a lack of understanding of the impact of trauma on behavior and memory. But when this is combined with a historical skepticism of sexual assault disclosures, it can lead to mistaken judgments: "I could tell the victim was lying right away because of her body language, and besides, she didn't fight or scream during the assault, then she didn't report it right away, and now she can't seem to get her story straight."[55]

The research is clear on this point: **Nonverbal behaviors are not reliable indicators of deception:**

> *Meta-analyses summarizing the findings of over more than 100 separate research studies conclude that nonverbal cues to deceit, particularly those*

[55] Thanks to Chief Tom Tremblay (Ret.) for this example. Chief Tremblay is an Advisor and Trainer with Thomas Tremblay Consulting & Training in Fort Myers, FL.

promoted in interrogation training manuals (e.g., gaze aversion, shifting position, and fidgeting) are faint and unreliable.[56]

In fact, research suggests that a person's ability to detect deception is, at best, in the range of 50-60% accuracy.[57] (Of course, 50% is just chance level.) This poor level of detection is true even for professional investigators, "though they are more likely to display high confidence in their deception detection skills and are more likely to ascribe people as lying even when they are truthful."[58]

Monitor Body Language

You're doing a great job. This is super difficult. We can be done for the day whenever you want. Don't push yourself. But you're doing great.

While the victim's body language should not be monitored for signs of deception, it can provide helpful information about their comfort level throughout the interview.

- When the victim's body language suggests they are uncomfortable or upset, it may be appropriate to ask if they would like to take a break and check in privately with a victim advocate. Victims can also be allowed to skip certain questions if they are too difficult, and come back to them later.

- Keep in mind, however, that *people express discomfort in many different ways.* This could include responses that are traditionally expected, like crying, crossing arms, slouching, looking away, or being unable to speak. However, it could also include laughing, anger, irritability, "spacing out," or countless other possibilities.

Because it is impossible to know what any particular reaction might mean, investigators and advocates can check in frequently with victims, to see how they are doing. This may be especially important when significant *changes* in behavior are observed.

Sometimes it is obvious, both from their words as well as their body language, that victims are struggling to remain truly present during the interview. For example, some victims may be disconnecting from their physical and emotional experience, while others may be spiraling into anxiety or fear. In these situations, it can sometimes be helpful to guide the victim through a brief grounding exercise, like the one described in *Psychology Today.* In just a few minutes, investigators can ask victims to relax, sitting in a comfortable position with their feet planted on the ground. Then they can be guided to focus on their senses, thinking of something they can hear, feel, and smell. While not complicated or difficult, this can help return victims to the present.

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[56] Vrij et al., *Psychological Perspectives on Interrogation* (quote appears on p. 928).
[57] Bond, C.F. & DePaulo, B.M. (2006). Accuracy of Deception Judgements. *Personality and Social Psychology Review, 10,* 214-234.
[58] Meissner et al., *Developing an Evidence-Based Perspective* (quote appears on p. 443).

Avoid Physical Contact

Investigators should generally *refrain from touching the victim* – even though this can be difficult for people whose natural instinct is to respond empathetically through touch.

- Empathy is often expressed by touching someone on the shoulder or back, or reaching out for their hand. However, the risk of violating a victim's personal space outweighs the potential benefit of physical touch by an investigator.

- This can also protect investigators from any potential misinterpretation, misperception, or complaints that may arise as a result of physical contact.

Any physical reassurance should be offered by support people, not investigators.

Defining Sexual Terms

One particular area where specific guidance is often needed is the language victims use to describe their experience, including *terms for body parts and sexual acts.*

- Sexual assault victims often feel like they are in a double bind, trying to relay their memories without using words that feel uncomfortable or inappropriate.

- Investigators are often similarly unsure what terminology to use. Too often they rely on police jargon, like "digital penetration" or "oral copulation." Yet very few laypeople will use such terms, so they should not typically be used in a victim interview.

General Strategy

As a general strategy, investigators can *begin by using simple anatomical terms* (e.g., penis, vagina, anus). Then, if the victim uses other words or phrases, these can be repeated in open-ended questions to prompt for additional information.

- To illustrate, a victim might say, "He went down on me." Because those are the victim's words, they should be **documented verbatim in the investigator's report,** not replaced with formal terms like "oral copulation," "cunnilingus," or "fellatio."

- However, investigators also need to **clarify what victims mean.** So, the investigator might say: "I just want to make sure we're on the same page. You said, 'He went down on me,' Can you tell me more about that? I think I know what you mean, but I need to be sure. Can you tell me what part of his body touched your body part?"

Addressing Discomfort

While they are describing certain body parts or sexual acts, or any other aspect of the sexual assault, victims must never be corrected when they use slang or street language, as if those words or phrases are somehow *wrong.* It is also critical for

investigators to avoid appearing shocked or embarrassed by the language victims might use. This conveys a sense of discomfort and judgment by the investigator, which can erode the victim's comfort and trust and make the interview even more difficult for victims.

- When victims appear uncomfortable with sexual language and details, it may be helpful for investigators to reassure them that they have heard these things before, and then reiterate the importance of victims sharing anything they can remember.

- However, investigators must ensure they are comfortable *themselves* using sexual language and talking about sexual acts. This may require practice, but it shouldn't be gained at the expense of victims; this should be done outside the interview context.

★ **Establishing Common Language**

Another possible strategy is for investigators to begin by asking victims to describe the intimate parts of the male and female body and evaluate their knowledge of different types of sexual activity. Once this has been established, victims often experience relief in having a common language to communicate the details of their sexual assault to the investigator. While the wording will vary, this is an example of what this process might look like:

> *Because we don't often talk with strangers about body parts or sexual acts, this type of interview can be very uncomfortable. However, it is very important for me to understand exactly what happened.*
>
> *In other interviews, I have found it helpful to start by having you identify the intimate parts of a woman's body, using terms you are familiar and comfortable with. Then we'll do the same for the intimate parts of a man's body. Then, I'll ask you to tell me what words you use to describe different types of sexual activity. That way, we'll make sure we understand each other when you describe what happened.*

When an investigator uses this strategy, it is not uncommon for victims to describe terms they use for penile-vaginal penetration, but not other forms of sexual penetration such as oral or anal penetration. When this happens, the investigator can ask victims if they are familiar with sexual acts of this type. If they are, this provides a prompt for asking what term the victim would use to describe this sexual act. If they are *not* familiar with this type of sexual act, this provides information that may potentially be relevant for the investigation.

- Some people worry that this strategy may sound like the investigator is treating an adult or adolescent victim like a child, and care must be taken to avoid using a tone that might sound patronizing.

- However, it is equally important that we not act as if everyone has the same background, experience, understanding, and language for specific body

parts and sexual acts. This strategy may not be appropriate for everyone, but it is a structured approach that can be helpful in many situations.

After working through this exercise together, victims and investigators often feel that they are better able to move forward with the interview, knowing that they are using common language and a shared frame of reference.

Avoid "Labeling" People and Acts[59]

Yet sexual language is not the only area that can be challenging during an interview. Another question is how to refer to physical actions, events, and the people involved.

- For victims of physical and sexual assault by an intimate partner, it is usually best for investigators to avoid labelling the actions or events ("rape," "beat," "punch," "strangle") as well as the person who assaulted them ("attacker," "rapist," "offender").

- A better strategy is to use neutral language to describe the people involved ("boyfriend," "ex-girlfriend," "your children's father," "roommate"), or simply to call the person by name ("José," "Tanya").

- Or, if the victim doesn't know a person by name, investigators can use whatever language the victim uses ("the guy with the mustache," "the girl in the white t-shirt").

A similar strategy applies to physical and sexual acts; it is best to begin by using neutral terms for body parts and actions, and then follow the victim's lead in the language they use. For example, instead of "Did he strangle you?" an investigator could ask, "Are you able to remember any time when he put his hands on your neck?" Instead of "Has she ever beaten or punched you?" it could be, "Tell me about a time she hurt or scared you."

Later, when officers and investigators are writing their reports, they will use police and legal terminology for the people involved ("victim," "witness," "suspect #1," "suspect #2") as well as the acts ("strangled," "raped," etc.). But during their interview with the victim, investigators should begin using neutral language and then follow the victim's lead.

Concluding the Interview

Proper closure is essential to any interview, both for promoting a victim's well-being, but also for facilitating their continued participation in the investigative process. However, this may be especially true for interviews following the approach outlined in this module, given the intensity of the shared experience, with victims recalling and sharing – and interviewers empathetically receiving – information that may be extremely intimate,

[59] Some of the material in this section is drawn from an EVAWI webinar presented by Neva Fernandez entitled, *Domestic and Sexual Violence: Trauma Informed Victim Contact and Interviewing,* Ms Fernandez serves as Advocacy Manager for the Texas Legal Services Center – Crime Victims Program, and Co-Chair of the Austin Travis County SARRT (Sexual Assault Response and Resource Team) in Austin TX.

painful, and/or humiliating. As described previously, the intense vulnerability that victims experience during this type of interview can be seen as akin to being asked to strip naked. *It is the investigator's responsibility to make sure the victim is fully clothed before ending the interview.* In other words, investigators must provide victims the time and respect they need to restore themselves to a normal state before leaving.[60]

As interviews come to an end, victims frequently look to the investigator to evaluate their reactions and perceived assessment. The investigator can take this opportunity to reassure victims, by stating that the sexual assault was not their fault, commending their courage, and thanking them for their vital participation in the investigation. This approach will help maintain the trust and rapport established in the interview, to continue throughout the rest of the investigation and possible prosecution.

★ **Debriefing with Advocates**

At the Gainesville (Florida) Police Department, investigators make the soft interview room available for victims and advocates after the interview is over (and the recording equipment is turned off). Advocates say this can be a quick "You good?" "I'm good." But sometimes a survivor needs a little more time, and it's helpful to have a safe, comfortable space in which to have the conversation.

Explain Future Procedures

Although investigators deal with investigative procedures on a daily basis, this may be the first time victims have ever had meaningful contact with law enforcement. Investigators must therefore take the time to *explain steps in the investigative process* to victims, including when they will be needed and for what.

This is another point where advocates can be helpful, by taking the time to address any questions or concerns the victim may have, as well as their support people. However, investigators are often the best people to address questions or concerns specifically regarding what *is* and *is not* part of the investigative process.

- For example, some victims may be concerned about the fact that **their criminal history will be checked.** Investigators can reassure victims that everyone who comes into contact with law enforcement is checked for a criminal history; this does not mean their report is being doubted, or they are being blamed for the assault.

- Other victims are concerned that **they are being fingerprinted**, for example, if they were assaulted by a stranger who broke into their home or apartment. Investigators can explain that they are obtaining elimination prints and describe how these are used to rule out prints from the victim (and any other residents, or guests) when looking for those of the suspect.

[60] Again, thanks to Beya Thayer for this conceptualization (EVAWI Board of Directors and Executive Director for Yavapai Justice and Mental Health Coalition, Yavapai County, AZ).

- Victims can also be informed that the investigator will **interview the suspect** at some point, and some information (or misinformation) may come back to the victim through the suspect's friends or family. Victims can contact the investigator to address any questions or concerns that might arise as a result of this contact.

- The investigator can also explain **what the results of a medical forensic examination and/or DNA testing may or may not realistically reveal.** For example, many victims believe the exam will confirm whether or not they were raped or that the samples collected will somehow "solve" or "prove" the case. It is always best to provide accurate information about these investigative processes.

- Finally, investigators can describe the process for **releasing any of the victim's property** that may have been taken as evidence.

Additional Photographs

Another future step that may be needed is additional photographs. It is not uncommon for bruises or other signs of injury to appear on the victim, after the initial response (and medical forensic exam, if one was conducted) are concluded. When this happens, the investigator will want to make sure that additional photographs are taken.

Sometimes, victims will have a follow-up appointment already scheduled with a health care provider. In that case, the health care provider can take the additional photographs (and/or body diagrams). Investigators can then arrange to obtain these photographs or other documentation from the health care provider. However, this is not typically the case. Most victims will not have a follow-up appointment, so they will need to let the investigator know if any additional bruises or other signs of injury develop. The investigator can then coordinate to have photographs taken to document these injuries.

No Polygraph or "Lie Detection"

One of the investigative procedures t*hat should not be used* with sexual assault victims is a polygraph examination or any other technique for 'lie detection." This includes computerized voice stress analysis (CVSA), handwriting analysis, statement validity analysis (e.g., Scientific Content Analysis), or other techniques.

Many states have laws *prohibiting* law enforcement from offering or requiring a polygraph examination for sexual assault victims, or from using the results of such an examination to determine whether criminal charges will be filed. In addition, the Violence Against Women Act (VAWA) requires all US states, territories, and tribes that receive federal STOP grant funds to *prohibit using polygraphs or other truth telling devices with sexual assault victims* as a condition for proceeding with an investigation.

State and federal prohibitions are based on the lack of scientific evidence establishing the validity of the polygraph and other techniques for lie detection. In their review of the existing research, the National Academies of Science

concluded that the evidence for the validity of the polygraph is "scanty and scientifically weak."[61] Prohibitions also recognize the negative impact a polygraph exam can have on the trust, rapport, and well-being of sexual assault victims.

Protect Victim Privacy

Because privacy is such a central concern for most sexual assault victims, it is important to explain any legal protections for confidentiality and privacy, and to make every effort allowed by law and policy to protect victims. To start, responding officers can offer a basic explanation of the victim's legal rights and privacy protections. For example, victims may be worried about information from the investigation that may be released to the public, or covered in the media. investigators can explain what records the public has access to, and what is confidential. A more detailed explanation should then be given to the victim in *written* informational materials.

★ **Use of a Pseudonym**

One strategy for protecting victim privacy is the use of a pseudonym (fictitious name). Some states have laws to provide victims the option of using a pseudonym on public records for reported offenses, including police reports, press releases, and records of judicial proceedings. One example is Texas.

The Texas Association Against Sexual Assault (TAASA) explains the law and procedures for pseudonyms in their *Sexual Assault Advocate Training Manual (2016)*. More detailed information is also provided in the OLTI module entitled, *Opening Doors: Alternative Reporting Options for Sexual Assault Victims.*

Inform Victims of Their Rights

All crime victims have rights specified in state law, which vary but may include:

- The right to have their name withheld from public record.
- The right to notification of any criminal justice proceedings.
- The right to be present and to make a statement at any court proceedings.
- The right to apply for crime victim compensation.
- The right to apply for an emergency protection order.

Victims also have the right to be free from harassment and intimidation by the suspect. If victims face an emergency situation, investigators should advise them to *call 911,* not the

[61] National Research Council (2003). *The Polygraph and Lie Detection.* Washington, DC: The National Academies Press (quote appears on p. 212).

investigator, because the investigator is not available 24 hours a day, like 911 is.

In this brief interview, Commander Cathryn Masters describes some important things first responders need to know about crime victim rights.

For more information, EVAWI offers a 3-part training bulletin series on *Crime Victims' Rights.* The Victim Rights Law Center (VRLC) provides an in-depth exploration of the full range of legal rights afforded to sexual assault victims, both within and beyond the criminal justice system, in areas such as privacy, safety, education, employment, and housing: *Beyond the Criminal Justice System: Using the Law to Help Restore the Lives of Sexual Assault Victims.*

Victims, Not Suspects

One situation where victims' rights can be seriously jeopardized is when investigators shift from seeing them as a *victim* of crime, and begin viewing them as a *suspect.* There are many documented instances where victims have summoned the courage to report their sexual assault to law enforcement, only to be disbelieved, mistreated, and later charged with false reporting or associated crimes such as obstruction of justice, interfering with law enforcement, or providing false statements. These victims are placed in a heartbreaking double bind. The only way to have their sexual assault investigated is to engage with the criminal justice process and provide investigators information and evidence – including information about their own behavior that may be embarrassing or even illegal. Yet these factors can sometimes lead investigators to question the victim's credibility, and begin doubting the legitimacy of the report.

Even when victims feel increasingly uncomfortable, they will often continue to participate in the interview, and investigators will continue to collect information as if they are still investigating the sexual assault. Yet unbeknownst to victims, the investigator may have begun investigating *them* for a criminal offense. In other words, *the victim is now a suspect,* but they are often not aware of this, and not typically advised of their Miranda rights or other constitutional protections.

EVAWI examines these difficult issues in *Raped Then Jailed: The Risks of Prosecution for Falsely Reporting Sexual Assault.* The document also addresses the question of whether it is ever appropriate to prosecute someone for falsely reporting sexual assault, and how to weigh the public interest and risks involved.

Address Safety Concerns

Before a detailed interview is concluded, investigators should explore any safety concerns with the victim, and help formulate a plan for maintaining their physical and emotional well-being. Again, this is an area where advocates can play a vital role.

- Given that most victims know the person who assaulted them, they will often have concerns about what will happen when the suspect is contacted by law enforcement, and how this might pose a threat to the victim and their loved ones. Investigators can explore the possibility of obtaining an order of protection when appropriate.

- When the suspect is a stranger, victims will also have concerns, especially if the suspect remains at large and poses an ongoing threat to them and their loved ones.

Either way, investigators can work with advocates to develop a safety plan with victims. But keep in mind that victims' personal situations and safety needs can change from one meeting to another. It is important to check in with survivors during each interaction to address any safety concerns, and connect them with advocacy and other resources.

The Victim Rights Law Center created a guide for advocates and attorneys to use when safety planning with sexual assault victims. They also offer a safety planning resource specifically for survivors of non-intimate partner sexual assault. In addition, the National Network to End Domestic Violence compiles numerous helpful resources on safety with respect to technology.

Encourage Future Disclosures

Research clearly demonstrates that memory *retrieval* and *disclosure* is an ongoing process, not a one-time event. With this in mind, investigators should ask victims if they have any additional information they would like to offer, as their interview comes to a close. Sometimes details come to mind during the course of the interview that the victim can be invited to share before concluding. The investigator should then *encourage victims to share any information or details they might recall after leaving the interview.*

> *It is not uncommon for people to think of something else after I leave or have something new come to mind. I would encourage you to write these things down in a safe place. Call me if something like this happens, it is not a problem.*

As noted earlier, peripheral details often fade from memory quickly, and even some central details can be lost over time. But some memories *can actually improve over time.* That's because retrieval conditions can improve, and when they do, there's no scientific basis for assuming that the person's later (and more complete) memories are less reliable or credible than their earlier (and less complete) memories. This is one way that a basic understanding of memory process can be applied to improving investigative techniques, and countering unwarranted attacks on victim credibility.

★ **Provide Victims with a Blank Notebook**

One strategy for encouraging future disclosures is to ask victims to write down any new memories or impacts of the assault that arise. If so, this is best done in

a blank notebook specifically designated for this purpose, not in the victim's personal journal or diary (the entirety of which they would likely have to turn over to investigators, prosecutors, and ultimately the defense if the case goes to trial). Instead, investigators can provide victims with a blank notebook to record this information, and make sure the victim understands that if they share this information with the investigator, it will be considered evidence in the case.

Exchange Contact Information

Leave contact information and make sure the victim knows a line of communication is open if additional details are recalled (this is not 'one and done').

Most investigators leave victims with a business card or other information about who to contact if they have questions or recall additional details. This should include the investigator's name, badge or identification number, and the victim's case number. However, there are also situations where it is better to leave victims with a business card that doesn't state the name of the Unit for safety and confidentiality reasons (e.g., Sex Crimes Unit). In other words, it is recommended that sex crimes investigators have *two sets of business cards handy.*

Investigators will also need a way to contact victims. It is important to get the address and phone number where the survivor will *actually* be staying, not just where they live. In fact, it can be helpful to get information for an emergency contact person, in case the investigator has difficulty contacting the victim initially. Victims may also be in touch with their advocate; if the victim has signed a release waiver allowing the advocate to communicate with law enforcement on their behalf, the advocate can help maintain a line of communication between the victim and investigator, or act as a liaison.

Follow-Up Contact

Before parting ways, investigators should let the victim know that – as the investigation evolves – they will most likely need to call or schedule a follow-up meeting to relay developments in the case, discuss any new information that may have come up, and address any barriers to the victim's continued participation in the criminal justice system.

Additional follow-up contacts may also be needed, either in person or on the phone, to check in with victims as the investigation unfolds. Often these contacts will be rather brief; they do not require a great deal of effort for either the victim or investigator. When handled appropriately, these follow-up contacts are not typically experienced as traumatic by victims. Rather, they are seen as a sign that the investigator is taking the report seriously and conducting a thorough investigation.

Multiple Interviews Needed

One Detective described working primarily with human trafficking survivors,

who have typically been assaulted over a period of years by multiple offenders. These cases often require numerous follow-up interviews, with a relationship of trust and rapport building over time. The Detective explained how she tries to focus earlier interviews on relatively less traumatic aspects of the victim's experience, so the most traumatic aspects can be handled in later interviews when the trust level between the victim and Detective has been solidified.

Sworn Statements?

A final question is whether investigators should get a sworn statement from victims at the conclusion of their interview. The short answer is *no.* Sworn statements aren't needed for sexual assault victims, or any other victim or witness of crime.

Some law enforcement agencies and prosecutor's offices have a policy or practice of getting sworn statements from sexual assault victims, but there is no legal requirement for it and no obvious advantage in terms of a successful investigation and possible prosecution. The reality is that cases are prosecuted based *on the strength of the evidence*. If the investigative findings establish a body of evidence to corroborate the victim's statement, this will be far more powerful and persuasive than any signature on a form. Conversely, the victim's sworn statement alone will not be sufficient to prosecute a sexual assault case, if it lacks corroborative evidence collected and documented during a solid investigation.

There is therefore no clear advantage, but there are many critical *disadvantages:*

- First, requiring victims to sign a sworn statement typically means the investigator must complete the statement, type it up, and get the victim to sign it before they leave. **This seriously limits their ability to conduct an effective interview,** following practices outlined in this module. If investigators are expected to take notes and write a report during the interview, they cannot take the time needed to focus on listening and asking good follow-up questions – let alone digesting, processing, analyzing, and compiling the information, then producing a well-written report. A better strategy is to allow investigators the time they need to conduct the best possible interview, and document the statements thoroughly and accurately *later.*

- Second, requiring a sworn statement **negatively affects the rapport that is key to a successful interview.** The practice communicates a fundamental distrust of the victim's information, and it is frankly frightening to most victims. This is especially true when the statement includes a perjury clause, requiring the victim to sign a statement affirming that the written information is accurate *under penalty of perjury.*

- Then there is concern that **the investigator might have recorded something incorrectly,** and the victim didn't catch it before signing the sworn statement. In fact, the likelihood of inaccuracies will only be increased with this practice, because obtaining a sworn statement makes the interview process longer and more difficult for both victim and investigator. In other words, this practice creates a situation that

virtually guarantees inaccuracies in the victim's statement, then requires victims to sign a statement under penalty of perjury that it *is* accurate.

- The practice also implies that the victim was able to recall "everything" during the interview, making it **more difficult to add new information** when the victim recalls additional details, or when the investigator conducts follow-up interviews as part of an evolving investigation. With a sworn statement, it can look as if this natural process of recalling additional information raises questions about the accuracy or credibility of the initial statement. Victims are also placed in fear of a perjury charge if they revise or contradict something they previously said to the investigator.

> *I had a memory return about two weeks after my assault. I never told the detective about it because I didn't want to be told I didn't give a full account to him in my initial interview.*

- Finally, this practice makes it more **difficult to correct inaccuracies.** Without a sworn statement, it is a rather straightforward matter to follow-up with the victim to clarify any inaccuracies. However, once the victim has signed a sworn statement, they are faced with two bad choices: (a) continuing with information they know is inaccurate, or (b) correcting it and facing the possibility of a perjury charge.

How does any of this help meet the goal of successfully interviewing victims and investigating sexual assault reports? It doesn't. In fact, it makes this goal more difficult to achieve, by creating barriers and solidifying fears that keep many victims from reporting their sexual assault and engaging the criminal justice system in the first place.

For more information, see EVAWI's training bulletin on *Sworn Statements.*

After the Interview

Keep the Victim Updated

One of the most frustrating dynamics that many sexual assault victims describe is a lack of contact from investigators and prosecutors, with limited or no response to their requests for information. By keeping victims updated on the status of their case, investigators can avoid this frustration and support victims' recovery. It will also help sustain the trust and rapport that encourages their continued participation in the criminal justice process.

> *[The Officer] always made sure to check up on me and keep in contact - the rapport that was built between us is something I will forever appreciate and respect immensely.*

Here again is another opportunity to capitalize on advocacy resources. Advocates can help to keep victims informed about the status of the case, as long as they have a

signed release from the victim stating the advocate can contact law enforcement or prosecutors to discuss the case on the victim's behalf.

Sometimes investigators and prosecutors can be tempted to withhold information from victims, to protect them from unpleasant news. However, victims typically want to be kept informed of what is happening with their case, regardless of whether it is good or bad. Especially if the prosecutor has declined to file charges, or their case is being closed or inactivated by the investigator, victims should be notified of this fact so they can at least achieve some sense of closure and move on with their lives.

When a sexual assault perpetrator is arrested or found (or pleads) guilty, victims and their loved ones have an important tool to stay updated: VINE (Victim Information and Notification Everyday). With VINE, victims of crime call a toll-free number, visit www.vinelink.com, or use the VINELink mobile app to anonymously check on the offender's custody status. Victims can also get automated notifications about changes in that status via phone, email, text, or through the in-app method. To increase accessibility, TTY (hearing impaired) service is also available. This service is offered free of charge to registrants, is completely confidential, and features multiple language support.

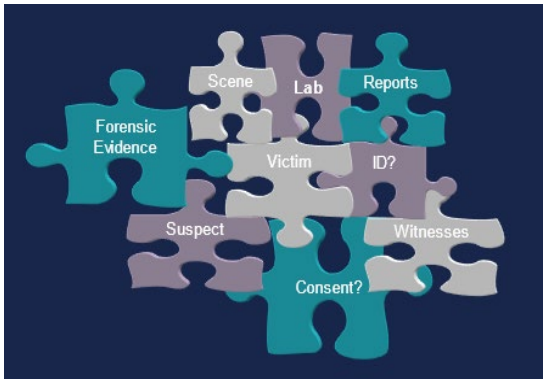
Just a Starting Point

In this module, we outline recommended techniques for interviewing victims in a way that maintains their dignity and increases their ability to participate in the criminal justice process. This also helps maximize the information and evidence gained, to reach appropriate case determinations.

A quality interview gives little details of things to follow up on – things you can corroborate or not. For example, if the survivor says, 'We sat in this parking lot,' you go to the store and ask for the video surveillance. You look to see if the car was in this parking lot around that time. You look through phone records and talk to the people they talked to. It bolsters the account.

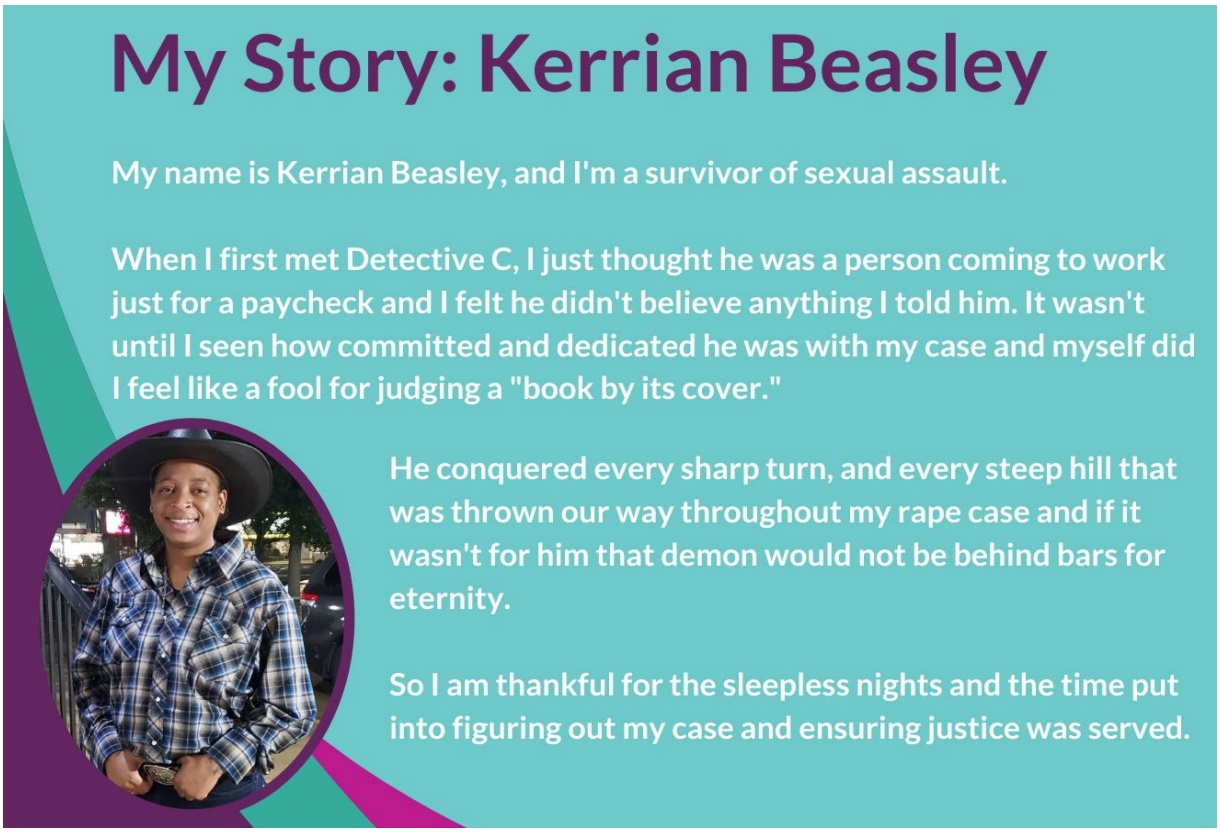
But victim interviews are not the only step in a sexual assault investigation; they are just the starting point. A *thorough investigation should include many additional steps,* which can potentially yield a wide variety of possible evidence:

- Criminal history checks
- Crime scene evidence, diagrams, or photographs
- 911 call recordings
- Other phone calls
- Text messages
- Computer files
- Photographs
- Security tapes
- Reports (preliminary investigation, arrest report, medical forensic exam, toxicology analysis, etc.)
- Evidence collected with a search warrant (residential, suspect exam, cell phone records, etc.)
- Analysis of potential evidence (clothing from victim/suspect, forensic exam of victim/suspect, urine/blood samples taken, condoms, bedding, etc.)



Investigators will also need to interview the suspect(s) and any witnesses, and then seek evidence that will corroborate – or challenge – details in these statements.

Remember, victim interviews are not unlike crime scenes in that they include elements that are clearly probative to the investigation, as well as aspects that are irrelevant, unclear, or even contradictory. Crime scenes and interviews do not present facts in a linear or logical way – nor do they outline how the information and evidence fit together to corroborate the elements of a criminal offense. Rather, investigators collect and document evidence from all available sources, and then through analysis, evaluation, and further investigative steps, they piece together an understanding of what happened.



As repeatedly noted, sexual assault victims may withhold certain information, or they may minimize or avoid talking about particular aspects of the event. This can happen for many different reasons. They may be, either consciously or unconsciously, seeking to avoid re-experiencing the trauma of their assault. They may also be feeling embarrassed or ashamed, afraid of not being believed, or concerned about serious negative consequences such as being arrested, sanctioned, or deported. They may have already received negative responses from professionals or loved ones. As the investigation unfolds, evidence may then be uncovered that appears to challenge or contradict the victim's statements, or produce other perceived inconsistencies.

- For example, victims may omit certain information (like particularly embarrassing or humiliating sexual acts like sodomy or oral copulation, or illegal activity like drug use). Or they may provide false information, for example, about the nature of their contact with the suspect, or the level of force used during the sexual assault (for example, if they feel ashamed they didn't "fight hard enough" to resist the assault).

- Victims may even deny using drugs or alcohol, or engaging in sex work, but the investigation may uncover evidence of drugs or alcohol or prostitution (in text messages, phone records, surveillance videos, or crime scene evidence, etc.).

- Alternatively, victims may not offer information about things they said or did, including phone calls they made, or text messages they sent, that could make the sexual acts appear to be consensual. Perhaps they don't want to say that they got into the suspect's car willingly, or that they went to a location with the suspect voluntarily and engaged in consensual sexual activity before the assault.

When such challenges arise, investigators can let victims know that it's normal to not want to disclose such information, but in the end, this can be more harmful than sharing it. If a genuine atmosphere of trust has been established, this should not sound threatening to victims, and more likely to elicit additional *recall* and *disclosures.*

Victims can then be offered an opportunity to provide additional detail with prompts like:

- *Can you tell me more about the text messages between you and [the suspect]?*
- *What was your thought process when you texted those messages?*
- *How did you feel when you got those text messages from [the suspect]?*

Once again, this approach is designed to create an environment where victims can *recall* and *share* as much detail as possible. It also leaves the door open to continue following up with victims, to address statements made by others (for example, if the suspect states that the victim went to the suspect's house to buy drugs). These developments should then be documented in the investigator's report in a factual tone, *without* language that labels the victim as "inconsistent," "withholding," or "lying."

Start by Believing

When victims omit information during their interview, or provide information that is misleading or inaccurate, this can lead investigators to doubt the legitimacy of their report. Yet this is only one factor that leads people to question whether a sexual assault report is legitimate. Others include:

- Reporting the sexual assault after some time has passed
- Prior relationship (especially a sexual relationship) between victim/suspect
- Drug or alcohol use by one or both parties
- Lack of physical violence or weapon use by the suspect, and
- Lack of physical resistance or visible injuries.

Start by Believing is a public awareness campaign that transforms responses of professionals and loved ones, and challenges the idea that victims are frequently lying when they say they were sexually assaulted. The philosophy is outlined in several training bulletins for criminal justice professionals:

Start by Believing: Participation of Criminal Justice Professionals

Start by Believing to Improve Responses to Sexual Assault and Prevent Gender Bias

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

When investigators approach a report with a Start by Believing philosophy, they are better able to listen to victim disclosures with an open mind and avoid making unwarranted assumptions or leaping to premature conclusions. This helps to advance thorough, evidence-based investigations, which are the key to achieving due process, by eliminating suspects when appropriate, and holding offenders accountable when the evidence supports prosecution.

For more information, please see www.StartByBelieving.org.

Documenting Victim Interviews

There's so much more to put in the reports now. It's not drudgery to write them, because it's such better stuff!

As highlighted throughout this module, good victim interviews focus on creating an environment that facilities memory *retrieval* and *disclosure*, rather than asking "who, what, when, where, and why." The goal is to produce a multidimensional picture of the victim's experience of the sexual assault, including sensory experiences, emotional memories, and thought processes. It is then the investigator's job to put these details into some kind of meaningful order, by analyzing and compiling them with other information and evidence that documents the totality of the circumstances. This includes noting the pieces that help meet the legal elements of one or more criminal offenses. (For more information on what types of evidence *can* and *cannot* be drawn from an interview, see Appendix C.)

In this section of the module, **we will feature excerpts from investigators' reports that illustrate how these objectives can be met.** They are highlighted in gray boxes.

Writing this type of report is a time-consuming, labor-intensive process. When the interview is recorded, it may therefore be tempting to write a brief summary and simply refer to the recording for more information. However, recommended practice is to put all the relevant information in the report, because not everyone involved in the case will end up watching or listening to the recording, but they *will* read the report. If the case goes to trial, the report will also be extremely helpful to prepare everyone involved for court testimony, including the investigating officers.

The International Association of Chiefs of Police (IACP) offers a Sexual Assault Supplemental Report Form that can be used to document information and evidence as part of a comprehensive sexual assault investigation.

For more information, see the OLTI module on *Effective Report Writing: Using the Language of Non-Consensual Sex.* Also relevant is EVAWI's training bulletin on *Suggested Guidelines on Language Use for Sexual Assault.*

Establish Sexual Acts

One of the key tasks in any sexual assault investigation is establishing the sexual act(s) that may have been committed. Much of this information will come from the victim's detailed interview, particularly during their free-flowing narrative, without investigators having to ask direct questions. However, when investigators do need more details, this can be addressed *after the victim has completed their free-flowing narrative.*

The process has already been described: First, investigators begin by **documenting the exact words victims use to describe body parts and sexual acts.** Then investigators **clarify what victims mean** by these terms, and document this in the report. Only later will these acts be situated within a legal-criminal framework.

Asking About Sexual Acts

It can sometimes be difficult for investigators to ask about specific sexual acts without providing some context first. One investigator takes the state penal code book to victim interviews. After asking a series of open-ended questions, if there is a need for more information, he points to the book and says:

> *So, the state penal code, which contains all the sexual assault laws, is very detailed and sometimes confusing. Different acts by the attacker count as different crimes that we are going to investigate. Please don't read into these questions too much – I just want to make sure I have all the*

information about everything that occurred. Do you have any questions?

He then looks to the advocate to ensure that the survivor is ready for these questions, and begins asking about specific sex acts listed in the penal code.

Suspect Actions and Statements

As part of establishing the sexual acts that may have been committed, investigators will also need to explore and document any details related to the suspect's statements and actions. For example, investigators might prompt victims with questions like:

- *What are you able to remember about whether he used a condom?*
- *You said you knew he was done – are you able to tell me more about that?*
- *What are you able to remember about what she did after she got off the bed?*

By carefully documenting the victim's responses to such prompts, investigators can help fill in a more detailed picture of the suspect's statements and actions, including what sexual acts were committed. The victim's responses may also help identify where evidence might be located, and provide context for how such evidence might potentially advance the investigation (e.g., by meeting legal elements, providing corroboration).

Force, Threat, or Fear (or Incapacitation)

In addition to establishing any sexual acts that may have been committed, investigators must also establish the circumstances that made those acts a crime. In most cases, this will be circumstances that constitute (a) **force, threat, or fear.** Alternatively, the evidence may establish that the victim was (b) **unable to legally consent** to sexual acts, due to factors such as age, severe cognitive disability, lack of consciousness, or incapacitation due to drugs, alcohol, or other causes. Sensory memories, emotional experiences, and thought processes are key to uncovering this type of information:

- Whether physical force, intimidation, or restraint was used[62]

[The victim] is asked if she recalls hearing anything during the incident. She continues to cry as she speaks. She stated she remembers [the suspect] telling her how he carries a gun. [The victim] stated she 'just shut down.' She stated, 'The only thought I had in my head was being able to go back home to my kids.'

[62] Excerpts from investigators' reports are featured in gray boxes like these. For more information, please see the description of "Research on Trauma-Informed Interviewing" at the beginning of the module.

- Whether real or simulated weapons were used
- What the physical positioning of the suspect was in relation to the victim
- Whether threats were made
- The relative size and strength of the suspect, as compared to the victim
- Circumstances that made the victim feel threatened, including isolation

> *[The victim] recalled thinking why she wasn't pushing him off her or screaming. She then thought to herself that she didn't know him very well and didn't want to die. After [the suspect] put his hand on her throat, [she] didn't know what could be next.*

- Whether the victim was incapacitated or otherwise vulnerable
- How the victim responded, including any verbal or physical resistance
- What the victim was thinking and feeling at the time of the assault

Remember, *these questions are not asked directly* (e.g., "Did she have a weapon?" "Did you resist?"). Such questions can communicate to victims that the assault wasn't serious if a weapon was not used, or they did not physically resist. This also assumes that the same words or concepts will mean the same things to different people, when they often do not. Rather, investigators will need to listen carefully to the victim's narrative for details regarding (a) force, threat, or fear, or (b) incapacitation, and give them back in open-ended prompts to elicit additional memories from the victim.

To illustrate, in response to details provided by the victim, investigators may ask:

- *Tell me more about how the pressure of his body felt?*
- *What are you able to remember thinking while she held you down?*

Investigators must also recall that force, threat, or fear experienced by victims is likely to result from the *totality of the circumstances.* It may not be a single element that created a threatening environment, but a combination of factors that can be established during an interview that captures the victim's multidimensional experience.

Documenting Victim Responses

Often, the key to understanding whether the legal elements of (a) force, threat, or fear, or (b) incapacitation are met is by understanding the victim's multidimensional experience before, during, and after the sexual assault.

For example, victims might say to investigators that they:

- *Froze*
- *Couldn't move all of a sudden*
- *Collapsed like a rag doll*
- *Spaced out*
- *Felt numb*
- *Felt like I left my body*
- *Felt like I was watching the whole thing from the ceiling*
- *Felt like I was in a dream*
- *Felt like I was going in and out of the scene like a movie*
- *Couldn't see anything but the knife he was holding in his hand*
- *Focused on this one painting on the wall*
- *Just kept saying (or thinking) the same thing over and over again*
- *Passed out*
- *Went back to sleep*
- *Felt sick, like I was going to throw up*

With a basic understanding of the scientific research reviewed earlier, investigators might recognize that victims are describing brain-based impacts of trauma, including (a) automatic survival reflexes (like dissociation, tonic immobility, and collapsed immobility) and/or (b) self-protection habits developed based on social conditioning or a prior abuse history. The victim's exact words should therefore be documented by the investigator, and then used in follow-up prompts to explore additional memories.

To illustrate, when victims say they "froze" during the sexual assault (which they often do), investigators may respond with prompts like the following:

- *Tell me more about when you 'froze.'*
- *What if anything do you remember seeing at that point?*
- *What if anything do you remember hearing?*
- *What were you feeling?*
- *What was going through your mind when you 'froze?'*

By documenting the totality of circumstances surrounding these thoughts, feelings, and sensations, investigators can record the victim's multidimensional experience reflected in the phrase, "I froze" and possibly help to establish legal elements.

What "No" Looked Like

Another task is to document what "no" looked like for the victim, to help establish the victim's non-consent to any sexual acts committed. Sexual assault laws do not require victims to say "no," or otherwise *verbally* express their non-consent, but many victims do and this is critically important to document. For example, when victims express "no" verbally, then *the exact words should be recorded,* along with any associated details (like sensory, emotional, and thought processes connected with this aspect of the victim's experience).

To illustrate:

> *Are you able to remember saying anything?*

Investigators should also listen for, and ask about, words or phrases used by the suspect, including any responses to the victim's expression of non-consent.

> *What are you able to remember about what [the suspect] said?*
>
> *Are you able to remember anything about how [the suspect] reacted to that?*

> *Why didn't she say no? She has never had a choice before. Why didn't she say no? She thought she knew him, but he was a stranger and she was afraid.*
>
> *- Patti Powers, JD*

The suspect's words will often indicate that they heard the victim's verbal expression of "no." For example, if the victim says "no" and the suspect says "C'mon, you know you want it," this can show that the "no" was in fact heard and understood by the suspect.

A -10-minute video created by the University of Texas at Austin explores the question of *Sexual Assault and Consent* for responding professionals.

Non-Verbal Expressions

Other victims will express their lack of consent *non-verbally.* For example, most victims do not respond to a sexual assault with physical resistance, but some do, in which case these actions should be carefully documented. This is how they said "no" to the suspect. Still others may describe how they shook their head "no" throughout the assault, or how they looked away and focused on

> *I asked [the victim] what her thought process was during her experience. [She] stated that when she opened the door, she did not know what to do. She couldn't move or think or even shut the door. She stated that she 'could hear her heartbeat through her ears.' [She] stated that she felt 'paralyzed.'*

something else. Keep in mind the scientific research reviewed at the beginning of this module on the shift to *survival reflexes* and *self-protection habits.* Often these will be reflected in non-verbal (or even verbal) responses to the sexual assault that are expressions of non-consent, even if they are not particularly direct, assertive, or effective. Documenting what the victim can remember saying, doing, thinking, and feeling during the assault, will help re-create the reality of the sexual assault through the eyes and experience of the victim, while helping to convey what "no" looked like for this particular individual.

- This may be particularly important when the victim consented to *some initial sexual activity,* but did not consent to other sexual acts.

- In these situations, it is essential to show – not only what "no" looked like – but also to document *when* it was expressed, so the incident can be mapped in terms of what actions were consensual and which were not.

> *[The victim]'s emotional reaction to this experience was that she just wanted it to be over and wanted to get through it. [The victim] advised once she got through it and left, she knew she could fall apart then. [She] stated she knew she couldn't lose control because it would make things worse. Afterwards, [the victim] stated she fell apart. [She] stated she couldn't even call the cops and her friend had to. [The victim] stated she felt like she was still in shock.*

Later, prosecutors may be able to use these details to reconstruct the victim's experience of the sexual assault, including any expressions of non-consent, and contrast this with common sense notions of how someone acts during consensual sex. As prosecution expert Patti Powers describes, jurors must ultimately understand "Why was the victim's voice silenced? Why didn't they get to say no? Why couldn't they say no? Why didn't they get to change their mind? Why wasn't no good enough?"[63]

Submission vs. Consent

When documenting the victim's detailed memories, it is important to distinguish between experiences of *submission* (giving-in) vs. *consent* (free participation).

- Some victims describe an entire situation as involving force, threat, or fear, in which case all sexual acts can be understood as taking place in that context. In other words, the victim may have *submitted* to these sexual acts, but truly voluntary participation is precluded by the presence of force, threat, or fear.

[63] This quote is from an article by Patti Powers, entitled *Trial of a Non-Stranger Sexual Assault Case: Overcoming the Consent Defense.* While Ms. Powers has trained on this topic for decades, this quote was drawn from a handout for the 2002 End Violence Against Women International conference held in San Diego. The original pronoun "she" was revised to "they," for the purpose of inclusivity in this module.

- On the other hand, some victims consent to certain acts (such as kissing or fondling), but not others (like vaginal or anal penetration). The key to differentiating these acts will be through open-ended prompts, like "What are you able to remember thinking/feeling when …?" Victim responses will need to be carefully documented, to distinguish the context for various acts.

Drug- or Alcohol-Facilitated Sexual Assault

Among other aspects of the victim's experience, investigators need to carefully document any details the victim can provide regarding drugs or alcohol use. For victims who were incapacitated at the time of the sexual assault, their level of drug or alcohol consumption will be needed to establish the lack of legal capacity to consent. For victims who were *not incapacitated,* however, a lower level of drug or alcohol use may still contribute to an environment of force, threat, or fear. Either way, it is important to document, but this can be challenging because drugs and alcohol impair memory processes, exacerbating difficulties with memory *retrieval* and *disclosure* for victims.

Victims who were involved in drug or alcohol use may also be particularly anxious about this during their interview, especially if their behavior was unlawful (underage drinking, illegal drug use, etc.). Once again, victims should be reassured that they will not be arrested for this behavior, *assuming this is true* (please see earlier discussion).

A 4-part video series produced by the US Department of Justice provides valuable insight into the problem of alcohol-facilitated sexual assault in Indian Country. Also available is a 9-minute training video created by the University of Texas at Austin on *Alcohol and Drugs in Sexual Assault Cases.*

Gathering Information

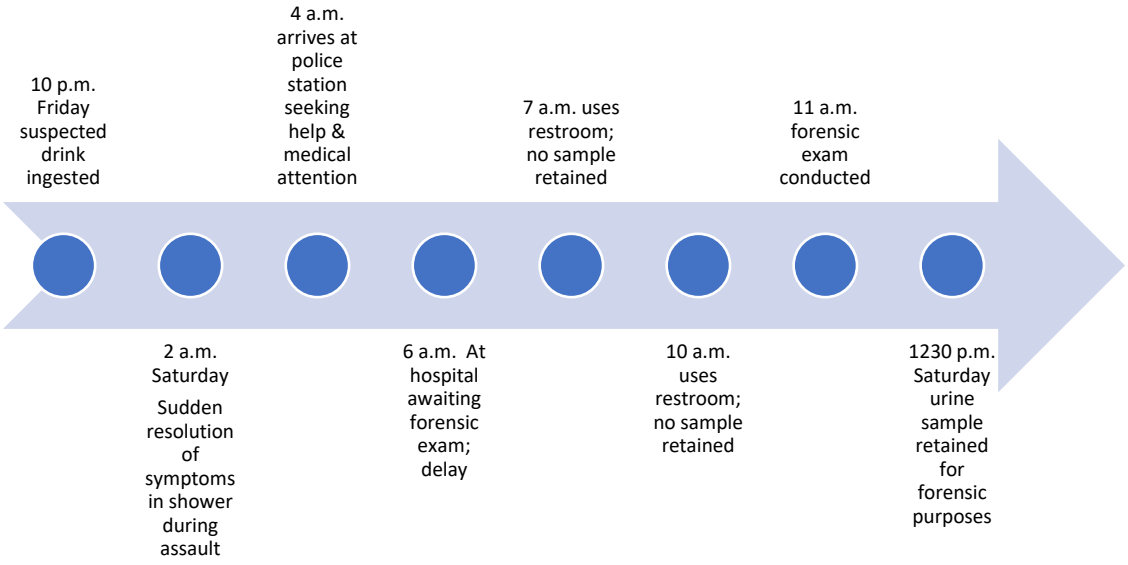
If the victim has a medical forensic exam, it may be possible to identify the presence of drugs or alcohol from blood and urine samples collected by the examiner. However, the majority of victims *do not* have a medical forensic exam, and even if they do, it is often too late to detect drugs or alcohol in their system. In addition, if the samples are tested at the medical facility, the detection limits are often too high for a positive result.

For more information on toxicology analysis and detection limits, see the Fact Sheet on Drug-Facilitated Sexual Assaults or the Recommended Minimum Performance Limits for Common Drug-Facilitated Crimes published by the Drug-Facilitated Crimes Committee of the Society of Forensic Toxicologists (SOFT).

Most information will therefore be gathered from other sources, including interviews with the victim, as well as any witnesses, and the suspect(s). Also helpful is any digital evidence gathered from mobile phones and surveillance videos, if available. The types of indicators that investigators are looking for from these sources include signs of:

- Dizziness
- Confusion
- Drowsiness
- Slurred speech
- Vomiting
- Impaired motor skills
- Impaired judgment
- Reduced inhibition

After all the information is gathered from available sources, investigators may be able to piece together a timeline of the victim's activities including suspected drug and/or alcohol use. An example of a timeline follows:



Total time elapsed: 14 ½ hours

Symptoms indicated: GHB likely

Detection time in urine: 12 hours

Toxicology results: Negative

Two sample forms are available to assist in documenting the objective symptoms of drug and alcohol use, the exact time blood and urine samples are collected, and requests for toxicology analysis. One is used by health care providers to document a 120-hour drug history based on information provided by the patient as well as any observable signs or symptoms. A second is used by law enforcement to submit a request for toxicology analysis of blood and/or urine samples collected from the victim. The form also documents information about drug history provided by the victim as well as observable signs and symptoms.

Importance of Sensory Memories

Even when investigators suspect that victims were incapacitated by drugs or alcohol, it is still important to focus on *what they are able to remember about their experience.* This will help to avoid victims "filling in the gaps" with information they don't personally remember but may have learned from others. For example, if the victim lost consciousness at some point, it will be critical to explore the thoughts, feelings, and sensations they had before and after losing consciousness. Sensory questions can be particularly revealing, because they don't need to be linked sequentially or logically with other information.

Case Example: Importance of Sensory Memories

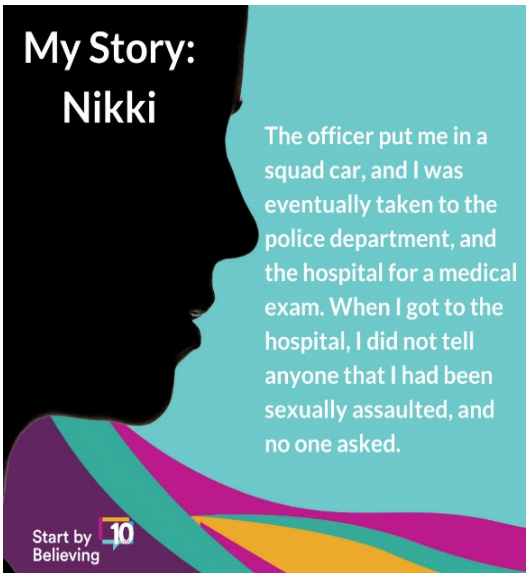
One Sergeant recounts an interview with a male victim of alcohol-facilitated sexual assault that yielded significant corroborative evidence. The survivor had been assaulted in a hotel, but he didn't know which room. The Sergeant asked him if he remembered smelling anything. The survivor said he remembered a pervasive smell of stale cigarettes. The police got a search warrant for the hotel and opened the door to a room with an overwhelming smell of cigarettes.

With additional evidence, they were able to identify that room as the location of the sexual assault. The smell of the room corroborated the survivor's account, and they wouldn't have obtained that detail without sensory questions.

Sexual Assault by Intimate Partners

Sexual assault is often committed in the context of intimate partner violence. Yet when victims talk with law enforcement, they often describe the acts of *physical violence* that were committed but leave out any mention of the *sexual violence* that also took place.

Whenever law enforcement is investigating a report of physical violence committed by a current or former intimate partner, it should therefore be standard practice to *ask victims if any acts of sexual violence were also committed.* However, this must be done using plain language – not labeling it as sexual *violence* or *assault* – because it may have been going on for so long the victim just sees it as part of their life and relationship, and not as a crime. For example, investigators can ask the victim:



- *Are you able to tell me if your partner ever had sex with you when you didn't want to?*

If they say yes, then the interview can proceed from there to facilitate *recall* and *disclosure* of the victim's multidimensional experience associated with this response.

A 9-minute training video created by the University of Texas at Austin addresses the issues of *Intimate Partner Violence and Sexual Assault.*

Victim Behaviors During the Interview

In addition to the *content* of a victim's statement, investigators should also document how the survivor *appears or behaves* during an interview. This includes observations of the victim's general demeanor, as well as the type of reactions that most people would expect from someone who was sexually assaulted, like crying, trembling, handwringing, staring vacantly, slumping in the chair, etc.

> *We had to stop several times to take breaks so she could calm down, she was unable to make eye contact with me, was fidgeting and pacing around, and cried through most of our interview.*

However, other victims will respond in ways that most people *would not expect.* For example, they may be quiet and non-responsive during the interview. Or they may describe the sexual assault in a matter-of-fact way, without any visible display of emotion. These behaviors are equally important to document because they may line up with victim statements about their thoughts, feelings, and sensations experienced at the time. For example, the victim may describe feeling hopeless or depressed, or disconnected from reality. Or they may say that they "compartmentalized" the assault in an attempt to maintain their composure and equilibrium.

In any of these scenarios, the investigator's job is simply to *document these behaviors, not label, "diagnose," or explain them.* To illustrate, investigators should never state in their report that the victim "experienced dissociation" or "went into a dissociative state." Rather, investigators should simply document their observations of victim behaviors with concrete and objective wording that is free of interpretation: The victim "did not make eye contact," "stared at the wall throughout the interview," or "spoke without any emotional expression." Besides being the most appropriate way of documenting victim behaviors, this also helps to avoid the scenario where an investigator is called into court to defend their "diagnosis" based on scientific research they might not be able to explain.

'Help me understand more about [that],' 'Explain more about [that].' Don't put your own spin or interpretation on it.

Impact of the Assault

It can also be valuable to document the impact of the assault on victims, through their comprehensive multidimensional experiences. For instance, victims may describe experiencing intense emotional feelings in the aftermath of a sexual assault, such as fear, shock, anger, rage, sadness, etc. They may also experience physiological reactions including increased heart rate, shortness of breath, dilated pupils, muscle rigidity, muscle pain, headache, light-headedness, nausea, or headache. Consensual sex, by and large, does not induce these types of experiences.

I asked [her] what has been the most difficult part of this experience. [The victim] explained that ever since this happened to her, she has not been able to have a 'sound mind.' I asked if she could help me understand that. [She] advised that she is constantly 'paranoid,' she can't sleep, and that 'nighttime' really freaks her out.

Some impacts may even extend to changes of behavior or lifestyle. For example, one victim who used to be social and outgoing may now be withdrawn and fearful. Another who was typically shy and homebound may now frequently go out drinking and socializing with strangers. By reconstructing *who the victim was before the assault,* and contrasting this with *who the victim became afterward,* investigators are better positioned to capture the multidimensional impact of the sexual assault on this individual.

[She] advised all she does is sleep. [She] said she is sad and angry.

> *I asked what the most difficult part about this incident is for her. She said she feels like the perpetrator took a part of her that she's not going to get back. She states, 'I loved my job, and now I hate it.' She begins to cry again and says, 'I can't have sex with my husband, and it is hard just sleeping in bed next to him.'*

It is also possible that these impacts may be corroborated by friends, family members, classmates, co-workers, etc. This type of corroboration can be especially critical for victims who do not have many memories of the assault (due to drug or alcohol use, etc.), and for victims who cannot verbally articulate their memories or reactions themselves (as a result of age, or disability affecting their cognition or communication, etc.). If the case goes to trial, prosecutors can then engage an expert witness such as a psychologist, social worker, or victim advocate, to point out the consistency of the victim's responses with responses that are commonly observed among victims of sexual assault.

Assault Characteristics

We have already explored how details of the victim's multidimensional experience can help meet legal elements and other key objectives during a sexual assault investigation. Some of the other aspects of a sexual assault that will need to be documented include:

- The victim's activities or other relevant events before and after the sexual assault.
- Any relationship or contact between the victim and suspect, both before and after the sexual assault.
- Any witnesses with relevant information about the assault, the victim, or the suspect.

Witnesses could include anyone who may have seen or heard anything before, during, or after the assault. It could also include someone with relevant information about the suspect, or any prior assaults. However, it is especially important to determine who the victim *first* told of the assault (sometimes referred to as "outcry witnesses") because these individuals can often provide critical information regarding the victim's appearance, demeanor, behavior, and spontaneous statements following the assault.

Listen, Listen, Listen: The Example of "Stranger"

When victims are describing assault characteristics, it is important to listen to what they are actually saying and not jump to conclusions based on assumptions or differences in the way language is used. One example is the word "stranger."

Who is a stranger? The determination is not always simple or straightforward, given the complexity of real-world interactions. For example, many sexual assaults are committed by someone the victim has known for less than 24 hours. In EVAWI training materials, these are described as "brief encounters."

From the perspective of most victims, this type of person is a stranger, because they didn't share any relationship prior to the assault. But from a law enforcement perspective, this is *not* a stranger, since the person is an identified individual. It would be easy to misunderstand the level of relationship based on differences in language use, or to offend victims by suggesting they have a relationship with this person. The key is to *listen* and *document,* not impose assumptions or interpretations based on the investigator's expectations or use of terminology.

Exploring When and Why Victims Disclose or Report

As noted throughout this module, most victims do not report their sexual assault to law enforcement, and when they do, it is often after a period of days, weeks, or even months. During the detailed interview, open-ended prompts can be used to help victims describe their sensory experiences, emotional memories, and thought processes connected with their decision to report. This can help answer the inevitable question of *why they didn't report right away* without framing the question in a way that makes them feel like they did something wrong, or that their case won't be taken seriously.

For example, maybe it took the victim some time to make sense of what happened to them. Chances are they struggled with fears about contacting law enforcement and participating in an investigation and possible prosecution. Like most victims, they probably reached out to friends or family members to help them through this process.[64]

While many people assume that victims will receive support from loved ones when they say they were sexually assaulted, this is unfortunately not true in many cases. Far too many victims receive negative responses from loved ones – and sometimes *extremely* negative responses – and this affects what they do and who else they tell. For example, if they tell a family member about the assault, and the response is negative, this may mean they won't report or tell anyone else – or if they do, they might minimize or omit certain

[64] Campbell, R., Greeson, M., Fehler-Cabral, G., & Kennedy, A. (2015). Pathways to Help: Adolescent Sexual Assault Victims' Disclosure and Help-Seeking Experiences. *Violence Against Women, 21 (7)*, 824-847; Patterson, D. & Campbell, R. (2010). Why Rape Survivors Participate in the Criminal Justice System. *Journal of Community Psychology, 38,* 191-205; Paul, L.A., Zinzow, H.M., McCaugly, J.L., Kilpatrick, D.G., & Resnick, H.S. (2014). Does Encouragement by Others Increase Rape Reporting? Findings From a National Sample of Women. *Psychology of Women Quarterly, 38 (2)*, 222-232.

details, or exaggerate or even fabricate others. They might think: "If my family blamed me because I did X, Y, or Z, I just won't tell anyone else."

In fact, research documents that *sexual assault victims typically receive more negative reactions from friends and family members than they do from law enforcement or community-based service providers*.[65] They also receive less helpful information and tangible aid from support people than professionals. Tragically, this type of negative reaction from loved ones compounds the harm done by the person who sexually assaulted them. It also decreases the likelihood that they will contact law enforcement or seek other forms of assistance. Or, if they do, it may take longer to work up the courage to do so.

However it unfolds, the victim's decision-making and support-seeking process can often be *corroborated by witnesses.* When investigators and prosecutors (as well as judges and jurors, if the case goes to trial) are given all the information about a victim's multidimensional experience, they can better understand why it took some period of time for the victim to report their sexual assault, and to appreciate how that process unfolded.

Suspect Description

Although most victims are sexually assaulted by someone they know, those who are assaulted by a stranger may provide investigators with information to help identify the suspect(s). One way to begin is:

- *What are you able to tell me about the person who did this?*

Note that this opening prompt uses neutral language to refer to the person who assaulted them, rather than calling them a "suspect," "offender," "attacker," etc.

Open-ended prompts can then be used to follow-up for more information about:

- Clothing
- Jewelry
- Earrings or other piercings
- Glasses
- Tattoos or other marks
- Accent
- Distinctive gait or other habits
- Body and facial hair
- Sensory descriptions
- Body odor
- Circumcision
- Scars
- Masks, gloves, etc.
- Weapons or items

[65] DePrince, A.P., Dmitrieva, J., Gagnon, K.L., Labus, J., Srinivas, T. & Wright, N. (2018). *Study Finds Agencies Can React More Supportively Than Family and Friends to Victims' Disclosures of Sexual Assault.* Washington, DC: National Institute of Justice, US Department of Justice.

As with other topic areas, the victim's responses to such prompts should be carefully documented verbatim, in their exact words. Then, if more information is needed, additional open-ended prompts will often yield useful elaboration. For example:

- *What are you able to remember about what they were wearing?*
- *What are you able to remember about how their body smelled?*
- *Are you able to tell me more about their hair?*

If you're able to remember, can you tell me more about the shirt?

If the suspect was unknown to the victim, investigators can supplement typical descriptive information by asking victims whether the suspect *reminded them of anyone.* If so, who and why? They can also be asked if there was anything unusual about the suspect's appearance, mannerisms, or speech – and again, victims should be reminded not to edit their statement but to provide any details no matter how small or trivial they might seem.

Identification Procedures

Investigators will then need to evaluate whether the victim could potentially identify an unknown suspect or assist in constructing a composite or artist's sketch. However, this should never be done by *directly asking victims* whether they can identify the suspect.

- If the victim says that believe they can identify the suspect, but then fails to do so, this will almost certainly be used to attack the survivor's credibility.

- Similarly, if the victim suggests they *cannot* identify the suspect, or they are *unsure* whether they could, it limits the potential utility of any future identification.

A better strategy is for investigators to begin by first evaluating any factors affecting the victim's ability to identify the suspect, including the length of contact, lighting, or presence of any other obstacles to viewing the suspect (e.g., if the suspect was wearing a mask during the assault). If it seems reasonable that the victim might be able to identify the suspect based on an evaluation of these factors, the victim can then be asked to participate in a procedure such as a curbside show-up, photo line-up, or live line-up.

If the victim did not have sufficient opportunity to observe the suspect, however, *they should not be asked to participate in any such identification procedures.* This would include, for example, victims of stranger sexual assault who were attacked from behind, awakened in a dark room, or if their eyes were covered by the suspect. It would be impossible for such a victim to positively identify the suspect in a line-up or show-up, and therefore unreasonable to ask them to try. It might even lead victims to identify the wrong suspect, and misidentification is a leading cause of wrongful convictions.[66]

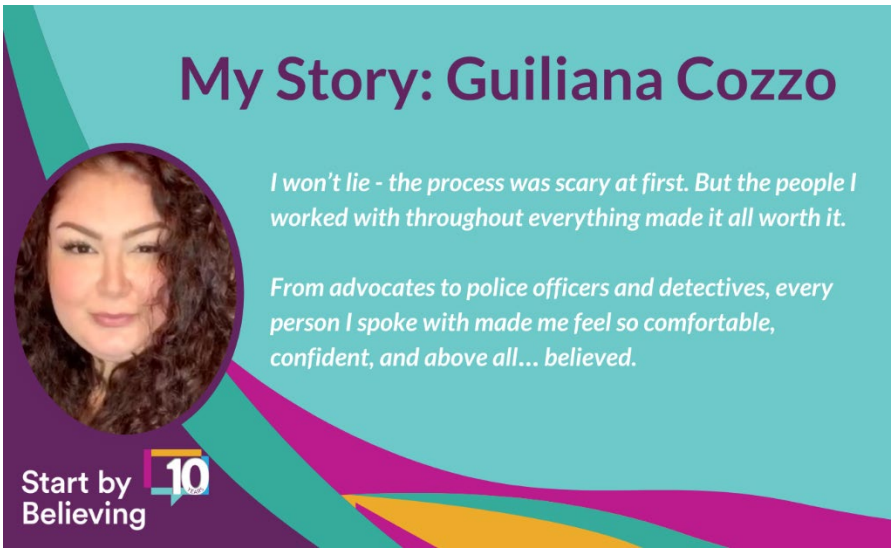
[66] Zalman, M. & Carrano, J. (2014). *Wrongful Conviction and Criminal Justice Reform.* New York, NY: Routeledge.

Conclusion

As the public has increased their attention on the low rates of reporting, prosecution, and conviction for sexual assault, it has become increasingly clear that we need to improve how sexual assault victims are interviewed. Better interviews result in more thorough investigations which can effectively (a) exclude suspects when appropriate, (b) gather evidence to establish probable cause when a viable suspect is identified, and (c) support prosecution referrals with a better chance of holding offenders accountable. In other words, any effort to improve the quality of victim interviews will be central to the larger goal of improving sexual assault response and investigation by law enforcement.

At its core, investigators should take a nonjudgmental orientation toward interviewing, focused on *carefully listening* to victims and *documenting* what they say and do, without making assumptions or leaping to premature conclusions and judgments. This includes:

- Supporting victims through the difficult process of **recalling detailed memories,** following evidence-based interviewing techniques described here.
- Creating an environment where **victims feel comfortable and safe** sharing those memories, by establishing empathy, trust, and respect.



- And finally, **documenting, compiling, and analyzing** details provided by the victim with other information and evidence, to create a linear, evidence-based narrative.

Perhaps most important, the approach outlined here can help reduce the likelihood of re-traumatizing victims, and supporting victims in their recovery and well-being.

For more information, please see EVAWI's website, in the section dedicated to Best Practices. There are numerous resources provided under the topic of Interviewing, including OnLine Training Institute (OLTI) modules, training bulletins, webinars, and additional resources from other organizations.

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Appendix A
Practice Exercises to Improve Interviewing Skills[67]

1. Listen to 20 minutes of a recorded interview you conducted in the past.

- Identify how many times you used closed-ended questions vs. open-ended prompts.
- Count the number of times you interrupted the person being interviewed.
- Identify how many times you asked a "why" question
- Practice reframing "why" questions with questions using "thinking, feeling, or experiencing" prompts (e.g., instead of saying "Why did you go to his apartment?" try reframing the question as "Can you tell me about your thought feelings/process about going to his apartment?" "What are you able to tell me about what you were experiencing prior to going to the apartment?")

2. Conduct a 10-minute interview with a friend, family member, or colleague about a favorite memory.

- Before the interview, write down a number of open-ended prompts (e.g., "Are you able to tell me more about that?" or "What else are you able to remember about that?" or "What were your thoughts when that happened?").
- Use ONLY those written questions during the interview, and see how much information you're able to elicit.

3. Conduct a 10-minute interview with a friend, family member, or colleague about a favorite memory using only open-ended <u>sensory prompts</u> to help retrieve details they might not otherwise recall (e.g., "*What are you able to remember about what you **smelled?**" or **"**What are you able to remember about what you **heard?**")*

- After asking your sensory prompt, simply listen to your colleague's response – without interrupting – until they are done talking.
- If you want to ask a question about something you heard, jot down a brief note to remind yourself about it. Then, AFTER your colleague has finished their complete response to the sensory prompt, ask your question using another open-ended prompt, to clarify or expand on the information shared (e.g., *"Are you able to tell me more about … [that]?"*).

[67] Thanks to Chief Tom Tremblay (Ret.), Special Agent Matthew Austin, Senior Investigator Matthew Stegner, and Heather Huhtanen for their valuable contributions to these practice exercises.

4. In your next conversation with a friend, family member, or colleague, make a point to ask at least *one open-ended question.*

- While they answer, listen silently and look at them attentively.
- Notice if you interrupt. Consider what prompted you to interrupt – be mindful of what triggers you to consciously avoid interrupting in the future.

Appendix B
Best Practice Victim Interviews: At-A-Glance[68]

Make sure the victim feels safe, and is safe.

Commend the victim for reporting, and thank them for trusting you with their information.

Acknowledge the victim's trauma and pain.
- *You've been through a terrible experience. I'm sorry we're meeting under these circumstances.*
- *I'm sorry this happened to you. I'm going to do everything I can to help.*

Support empowerment and choice.
- *Your health, safety, and wellness are a priority.*
- *How can we best support you through the interview process?*

Ask, don't tell: Find a way to ask the victim, not tell them, whenever possible.
- *Can I share something with you?*
- *May I share some initial information with you?*

Work with advocates to help meet the victim's physical and emotional needs.

Tell victims they can take a break any time they need.

Advise victims to say "I don't know" or "I don't remember" whenever that is true.

Never ask "WHY?"

Manage expectations: Don't expect or demand a chronological narrative.

Start the interview with an open-ended prompt using "able."
- *What are you able to remember about what happened, and where would you like to begin?*
- *Are you able to tell me more about…?*

Ask about thought processes.
- *What was going through your mind when…?*
- *What was your thought process when…?*

[68] Thanks to Chief Tom Tremblay (Ret.), Special Agent Matthew Austin, Senior Investigator Matthew Stegner, and Heather Huhtanen for their valuable contributions to these summary recommendations.

Ask about sensory memories, and explore sensory details.

- *What are you able to remember about what you **smelled?***
- *What are you able to remember about what you were **looking at (saw)?***
- *What are you able to remember about what you **touched** (how ___ **felt**)?*
- *What are you able to remember about what you **tasted?***
- *What are you able to remember about what you **heard?***

Ask about emotional memories.

- *Are you able to tell me what you were feeling [how you felt] when/during/about…?*
- *What are you able to tell me about what you may have been experiencing when…?*
- *Are you able to tell me about your emotional reactions when/after this happened?*
- *Are you able to tell me about any physical reactions to the assault that you might have experienced? After it happened?*
- *What if anything has changed for you since this happened?*

Use open-ended, follow-up prompts.

- *You said … Can you tell me more about that?*
- *Are you able to tell me more about the clothes?*
- *What else are you able to remember about the person?*
- *What, if anything, do you remember about where they went?*
- *Are you able to tell me about what has been going on in your life since the experience?*

Always ask before concluding:

- *What was the most difficult part of this for you?*
- *What can't you forget about what happened?*[69]

Conclude by coming to an agreement with the victim (and advocate) about safety planning, next steps, timeline, updates, contact information.

- *How would you like me to keep you informed, and how often*?

Encourage future disclosures.

- *It is common to remember more details in the next days or weeks. Can I ask you to please write them down and give me a call?*

[69] These two key questions are drawn from a 2016 EVAWI webinar presented by Russell Strand, entitled *Forensic Experiential Trauma Interviews: A Trauma Informed Experience.*

Appendix C
Interviewing and Evidence: What's the Connection?[70]

There is no question that victim interviews can yield evidence in a sexual assault case. That is one of the main goals. But *what kind of evidence can these interviews produce?* The answer is three-fold: They can yield: (a) victim statements, (b) investigator observations of victim behaviors, and (c) additional corroborative evidence (often identified based on victim statements).

Victim Statements

Perhaps the most obvious conclusion is that effective interviews produce **victim statements,** which may ultimately be admitted at trial as testimonial evidence. For example, in a case involving force, threat, or fear, the victim may testify regarding the factors that created this environment, including the defendant's use of any weapons, the defendant's size and strength, physical isolation, history of prior violence, etc. Or, in a drug- or alcohol-facilitated case, the victim may testify about the specific drugs or alcohol consumed, the level of incapacitation they experienced, and the defendant's role in creating, encouraging, or otherwise facilitating the victim's incapacitation.

Victim testimony could then be offered as *direct evidence* to establish one or more of these legal elements, with the prosecutor arguing that these experiences are more consistent with force or incapacitation than consensual sex. Some of these details make compelling testimony, because they are so unique or unusual, they have the true ring of authenticity (as in, "you can't make this stuff up"). However, the defense will most likely respond by challenging the credibility of the victim, and thus victim statements, and arguing that the victim consented to the sexual acts in question.

Investigator Observations

Closely related to what the victim *says,* are observations documented by the investigator of **how the victim appears or behaves during the interview.** This includes both the victim's general demeanor, and specific reactions, like crying, trembling, handwringing, staring vacantly, slumping in the chair, etc. The investigator's observations of these behaviors are the second type of evidence that can be produced from an effective victim interview. But they will only be introduced as evidence if they are relevant to the case, admissible in court, and probative in terms of proving a legal element. For example, the prosecutor might call the investigator to testify about such victim behaviors during the interview, as *circumstantial evidence* that the person was sexually assaulted.

[70] The material in this section is drawn from EVAWI's training bulletin, *Trauma-Informed Interviewing and the Criminal Sexual Assault Case: Where Investigative Technique Meets Evidentiary Value*.

If the investigator testifies that the victim was "crying," "shaking," or "tearing a tissue to shreds" while describing sexual acts, the prosecutor may argue that this demonstrates the victim was visibly frightened and upset, and this corroborates the non-consensual nature of the act (i.e., that it was committed by the defendant using force, threat, or fear, or while the victim was incapacitated). Alternatively, the investigator might document that the victim "did not make eye contact," "stared at the wall throughout the interview," "spoke without any emotional expression," etc. This is illustrated in a hypothetical exchange between a prosecutor and investigator during a sexual assault trial.

Case Example: Courtroom Exchange

In this case example, the investigator is testifying about a detailed interview with a sexual assault victim. The investigator makes behavioral observations about the victim, which the prosecutor inquires about:

Prosecutor: *While you were asking these questions, what was the complainant, Mr. Garcia's, demeanor?*

Investigator: *He was actually very calm, and almost conversational when he was describing what happened to him.*

Prosecutor: *Did that reaction strike you as odd?*

Investigator: *Me? No, Not at all.*

Prosecutor: *Why not, Detective?*

Investigator: *Well, because I've interviewed hundreds of sexual assault victims throughout my career. I've seen everything. The fact is, victims react in many different ways. It's not unusual to see crying, or obvious signs of fear on the part of a victim while giving details about the sexual assault. But it's also not unusual to see nervous reactions like laughter, or no emotional expression at all. It just runs the gamut.*[71]

Identifying Corroborative Evidence

Victim interviews can also lead investigators to evidence that might either **corroborate or challenge statements made by the victim, suspect, or witnesses.** For example, imagine a scenario where the victim describes a specific pattern of wallpaper at the suspect's home, where the sexual assault took place. Armed with a search warrant,

[71] This is one of several hypothetical courtroom exchanges featured in EVAWI's training bulletin on *Trauma-Informed Interviewing and the Criminal Sexual Assault Case: Where Investigative Technique Meets Evidentiary Value*. The purpose is to explore what the evidence produced from a "trauma-informed" interview of a sexual assault victim can (and cannot) accomplish within the US legal system, and how this evidence should (and should not) be used. Other relevant training bulletins from EVAWI include: (1) *Impression Management for Investigating Officers*, and (2) *The Investigating Officer's Direct Exam: Strategic and Tactical Considerations to Take Advantage of the IO's Expertise.*

investigators can follow up on this detail by verifying and documenting the wallpaper pattern with a photograph. This is a new piece of evidence generated as a result of the victim's interview. It corroborates that the victim was in the defendant's home at some point. However, it does not provide direct evidence of a sexual act, or the factors that made that act a crime (force, incapacitation, etc.). Instead, it provides one piece of circumstantial evidence that will contribute to putting the puzzle of an entire sexual assault investigation together, piece-by-piece.

Victim interviews can also help investigators piece together aspects of the event. For example, sensory questions might prompt victims to recall hearing something like the sprinklers coming on, or a TV show broadcasting, or the suspect's phone ringing, and this might help investigators build a timeline and place events in chronological order.

She described rancid breath and horrible teeth. I thought she was going to be sick in the interview just thinking about it. We couldn't figure out who he was. When they found him, he had horrible teeth – it validated what she said.

Finally, corroboration can help overcome common challenges with sexual assault investigations, by bolstering the credibility of statements made by the victim or another party, including the suspect. Some investigators refer to this process as "micro-corroboration." The theory is that if 30 things from a person's statement can be corroborated with evidence identified by investigators, then people are also more likely to believe the 31st.

For more information on the role of corroboration in a sexual assault investigation (including the theory of micro-corroboration), please see the webinar offered by Sergeant Richard Mankewich entitled, *After the Interview – Now the Work Begins: Corroborating Evidence and Case Review.*