End Violence Against Women International
(EVAWI)

Gender Bias in Sexual Assault Response and Investigation

Part 1: Implicit Gender Bias

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Introduction

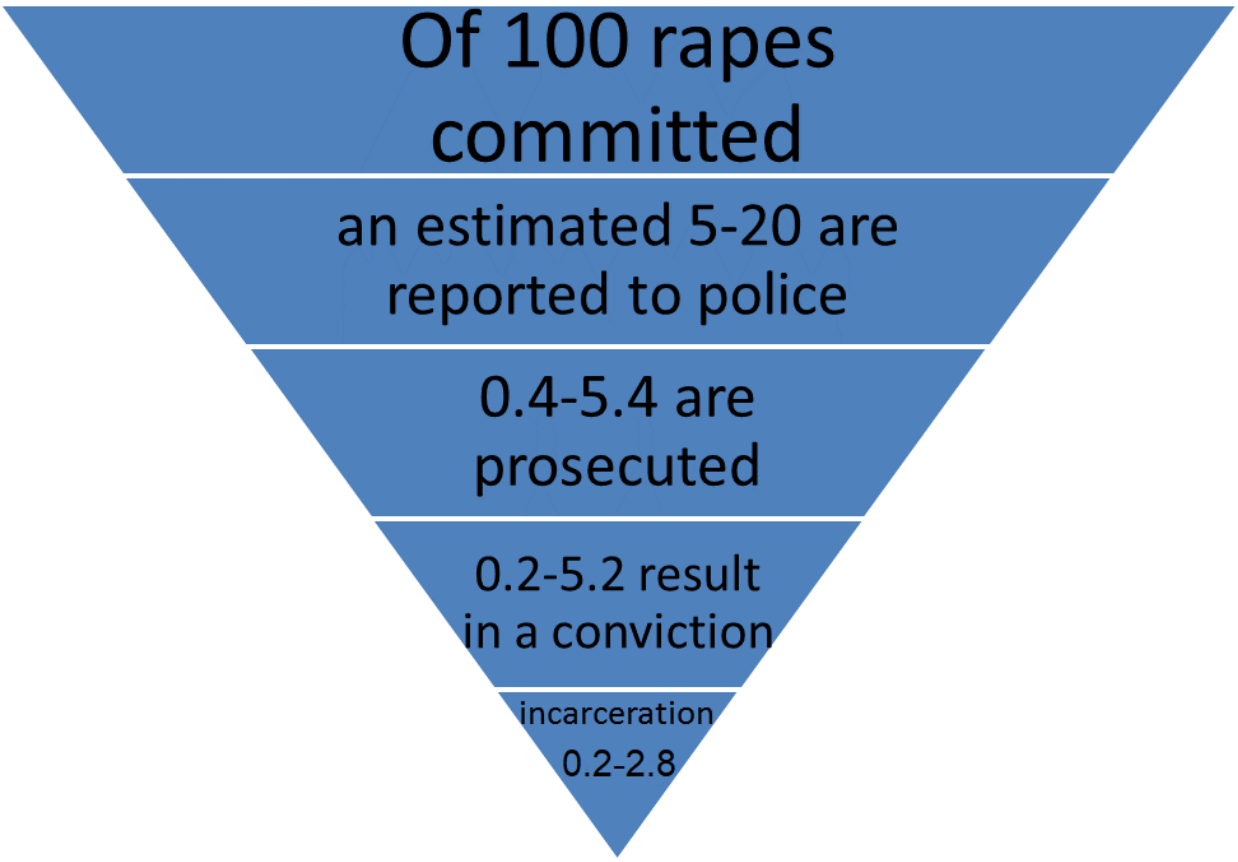
This Training Bulletin is the first in a series designed to explore the phenomenon of gender bias, both explicit (conscious) and implicit (unconscious), and the resulting stereotypes and attitudes that can influence the professional response to, and investigation of, sexual assault.

In this first installment, we introduce the concept of *implicit bias* and briefly review the decades of neurobiological and social scientific research that document its existence and impact. We begin by reviewing the concept of gender, and then defining gender bias, both implicit and explicit. In subsequent bulletins, we will explore strategies that can be used to identify the presence of implicit gender bias and mitigate its influence. We will also address key questions about how implicit gender bias can disadvantage (or advantage) either the victim and/or suspect.

Sexual Assault Response and Investigation: Our Starting Place

Before introducing the concept of gender bias, it is important to establish our starting place with a focus on sexual assault response and investigation. This is now widely recognized as a criminal justice function that requires specific skills, knowledge, and practices – for law enforcement, prosecutors, health care providers, victim advocates, and allied professionals. This is evidenced by the existence of government entities such as the Office on Violence against Women within the US Department of Justice, which administers funds for training and technical assistance allocated by the federal Violence against Women Act (VAWA), and other specialized training and capacity-building programs for criminal justice professionals, both at the state and national level.

Moreover, we know from decades of social scientific research and the FBI's Uniform Crime Report (UCR) that reporting rates for sexual assault are among the lowest for all violent crimes. At the same time, attrition rates for sexual assault are high. In fact, the pattern of attrition for sexual assault cases within the criminal justice is often described as a "justice gap," with research indicating that only 5-20% of sexual assaults are reported, 0.4 to 5.4% are prosecuted, and 0.2 to 5.2% result in a conviction of any kind.



Lonsway, K.A. & Archambault, J. (2012). The "justice gap" for sexual assault cases: Future directions for research and reform. *Violence Against Women, 18(2)* 145-168.

In sum, sexual assault perpetrators are not typically held accountable within the American justice system, and the same is true in other countries as well.[1] This may be because of the difficulty of proving the legal elements beyond a reasonable doubt, in addition to other challenges. One of these is the existence of implicit gender bias.

Implicit Bias

Implicit bias refers to the automatic and unconscious process of assigning a stereotype and/or linking negative or positive attitudes to a particular group, or to an individual associated with a group (Kang, 2009). We also automatically and unconsciously identify, categorize, differentiate and label the world around us, in a process referred to as *implicit cognition*. This means we don't have to think about the difference between a stool and a coffee table, or how to use a spoon versus a fork – we automatically identify and differentiate such objects thousands of times a day, to function effectively in the world. This is not a bad thing; it is an example of the efficiency of the human brain. However, when we use these processes to unconsciously identify and differentiate

[1] In fact, the term "justice gap" was coined by researchers Jennifer Temkin and Barbara Krahé, to describe the pattern of criminal justice outcomes in the UK and Europe. See Temkin, J. & Krahé, B. (2008). *Sexual Assault and the Justice Gap*. Oxford: Hart Publishing.

people in social categories, such as age, gender, and race, this can create problems (Kang, 2009). In fact, decades of neuroscientific, cognitive, and social psychological research demonstrate that the assignment of people into such categories is generally consistent with prevailing *social hierarchies* (Kang, 2009). These social hierarchies include, for example, the group of men over women, white over black, young over old, straight over gay. Research clearly demonstrates the connection between implicit bias and attitudes, which can translate into actual discriminatory behavior.

> *Implicit … attitudes and stereotypes operate automatically, without awareness, intent, or conscious control. Because they are automatic, working behind-the-scenes, they can influence or bias decisions and behaviors, both positively and negatively, without an individual's awareness. This phenomenon leaves open the possibility that even those dedicated to the principles of a fair justice system may, at times, unknowingly make crucial decisions and act in ways that are unintentionally unfair* (Casey et al., 2012, p. 2)

Most processes associated with automatically and unconsciously categorizing, assigning and differentiating the world around us do not result in discrimination. However, where people are concerned, scientific evidence tells us that it is nearly impossible for human beings to avoid drawing on stereotypes and attitudes toward individuals and groups that can and do result in real-world discrimination.

How Bias Develops

The other challenging factor is that implicit bias operates at the unconscious level, so "people may not even be consciously aware that they hold biased attitudes" (Casey et al., 2012, Appendix B1). Indeed:

> *Implicit biases may oppose a person's adopted worldview, but because they are not consciously controlled, they may nonetheless be reflected in their behavior – including in the professional realm* (Halilović & Huhtanen, 2014, p. 33).

This happens because the development of implicit bias begins early in life, during childhood, when we absorb information about the world around us, from family, friends, school, and socio-cultural messaging (e.g., TV, movies, music, social media). During this process, children learn to "ascribe certain characteristics to members of distinct ethnic and social groups" and with age, these stereotypes become more ingrained, and they remain largely unchanged – and thus become implicit (Levinson & Young, 2010, p. 6). For example, research has shown that children in the US learn that men are "competent, rational, assertive, independent, objective and self-confident," while women are "emotional, submissive, dependent, tactful and gentle" (Bridge, 1997, p. 604). One study summed it up like this: Men and boys are "really really smart" while women and girls are "really really nice" (Bian et al., 2017, p. 1).

Testing Implicit Bias

In 1998, researchers from three American universities began a collaborative effort called "Project Implicit" to identify the gap between intention and reality when it comes to implicit bias. Together, they designed the Implicit Association Test (IAT), which assesses beliefs and attitudes that people may be unable or unwilling to report.

The IAT is computer-based, and it measures response times between "typical" and "atypical" associations. In other words, it evaluates response times for associations that are either consistent or inconsistent with common socio-cultural stereotypes. This means that people taking the test cannot control the outcome, even if they provide the same answer to typical and atypical associations. For example, someone may not explicitly link the concepts such as "women" and "family" – but they may be slower to link alternative concepts such as "women" and "career" (Halilović et al., 2017, p 27).

The test is based on the principle that:

- A fast response = an easy answer is consistent with an implicit association; and
- A slow response = a more difficult answer is inconsistent with implicit associations.

Check it out for yourself! The IAT is publicly available on a variety of topics, including gender, race, age, and ability.

An Illustration

Let's use a simple example to get a feel for how the test works – and see how readily the mind makes associations that take time and effort to consciously overcome.

Below is a Stroop test, which provides the *words for various colors, printed in various colors* (Stroop, 1935). The test is intended to identify, or measure directed attention, the cognitive process that allows an individual to manage our thoughts by inhibiting one response in order to say or do something else. For each column, your task is to say the color of the word – not the word itself – as quickly as you can.

#1	#2	#3
WHITE	GREEN	WHITE
RED	PINK	PINK
BLUE	GREEN	RED
WHITE	RED	BLUE

That chart should have been easy. In fact, it was probably so easy, you might have wondered if you misunderstood the instructions. For most of us, you were probably able to say the color of the word very quickly, because it also happened to be the same as the word for that color.

Below is another chart with the words for various colors, but this time they are printed in different colors. Again, your task is to say the color of the word – not the word itself – as quickly as you can.

#1	#2	#3
PINK	BLUE	YELLOW
YELLOW	RED	BLUE
WHITE	BLUE	WHITE
RED	WHITE	PINK

This time the exercise was probably harder because the word for each color did not match the color of the word. That means that your brain had to ignore the word itself, and identify only the color, in spite of the fact that the words were all words for colors.

This is an example of *typica*l versus *atypical* association. The exercise also illustrates the difference between automatic and implicit associations made by the brain – versus conscious associations that require thinking and awareness. In other words, the exercise demonstrates how our brains can override automatic and implicit associations, but it takes more time and effort than simply going along with a typical association.

Sex, Gender, and Stereotypic Characteristics

Now we can begin applying the concept of implicit bias specifically to gender. *Gender bias* refers to the inclination toward, or prejudice against, one gender versus the other(s). But what do we mean by gender? We routinely see it confused with the term *sex,* and while there is an essential connection between sex and gender, they are nonetheless distinct concepts that refer to different physical and social characteristics.

At birth, **infants are assigned a sex,** usually based on their external anatomy. This is what is written on the birth certificate. A person's sex, however, is actually a combination of bodily characteristics including: chromosomes, hormones, internal and external reproductive organs, and secondary sex characteristics (such as muscle mass and facial hair). The terms "**male," "female," and "intersex"** (being born with both male and female reproductive organs) all refer to the concept of sex assigned at birth.

On the other hand, **gender is learned.** The term refers to the different roles, characteristics, and behaviors that are taught and assigned to boys versus girls, men versus women. This includes associating women and girls with certain physical markers (like dresses and skirts, jewelry and other adornments) and behavioral markers (such as being nurturing, emotional, and polite). It also includes associating men and boys with physical markers (like suits, short hair, and physical fitness) and behavioral markers (such as assertiveness, leadership, and bravery). Gender is NOT fixed – gender roles are changeable over time, and they vary both within and across cultures. The terms **"masculine," "feminine," "man," "woman," "transgender," "queer," and "non-binary"** all refer to the concept of gender.

Perhaps what is most notable about gender – and this is borne out by research from across the world – is the extent to which masculinity and femininity are defined in contrast or opposition to each other (UN Women Training Center, 2016). Consider for a moment, what it means to "be a man" or "be a woman" in our society. For each concept, you can identify for one gender, try to identify the corresponding role, behavior or characteristic for the other gender. Make a quick list.

After you have made your own list of 3-4 gender characteristics associated with men versus women, compare your list to the table below.

Associated with Masculinity	Associated with Femininity
Take care of the family's financial needs (breadwinner)	Take care of the family's physical and emotional needs (caregiver)
Being "naturally" good at certain tasks (such as driving, mechanics, technology)	Being "naturally" good at other tasks (e.g., cooking, child care, decorating)
Being a leader, assertive, tough	Being a support person, passive, sensitive
Getting what one wants	Providing what others want
Hiding emotions associated with vulnerability (sadness, fear, anxiety)	Showing emotions associated with vulnerability (sadness, fear, anxiety)
Being sexually interested in, and sexually active with women, including promiscuity	Being sexually available to men, but not promiscuous
Being virile	Being fertile
Being a perpetrator, but not a victim of violence	Being a victim, but not a perpetrator of violence
Aggression/violence can be acceptable and even expected	Aggression/violence generally not acceptable or expected
Strong/protector	Vulnerable/protected

Chart adapted from the UN Women Training Center (2016). *Self-Learning Booklet: Understanding Masculinities and Violence against Women and Girls,* p. 11.

While not everything on this list applies to all women or all men, there is clearly a social expectation for men and women to at least generally conform with these characteristics. For example, when men or women behave differently from their gender role, they can

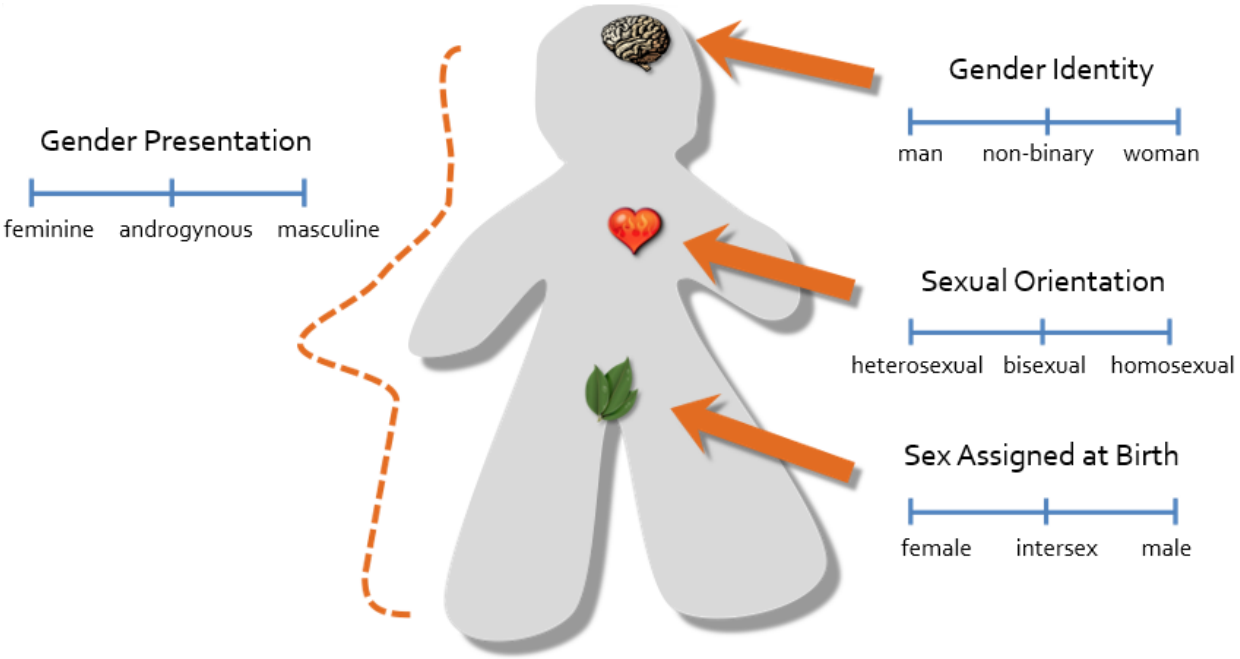
often become the subject of jokes, hostility, abuse, and even violence. Take, for example, men who cry, or men who elect to stay home and raise their children while their wife works – these men might be referred to as "whipped" or called something even more pejorative like "pussy." In other words, men who do not behave "like men" can be at risk of being called a woman or gay – both of which are intended as an insult.

Again, there are men and women who do not conform to these characteristics, and there are men and women who do not participate in "policing"' gender roles by teasing, insulting, or attacking those who do not conform. Nonetheless, a quick analysis of the news, TV programs and contemporary movies will reveal the extent to which gender roles define how men and women (and boys and girls) are expected to behave and operate in the world. This is important because it relates directly to the stereotypes or attitudes that we consciously endorse, as well as those that operate without our awareness (unconscious). Then, returning to the topic of this bulletin, these stereotypes and attitudes can interfere with our assessment of a sexual assault case, the evaluation of victim and suspect credibility, and ultimately our determination about whether a crime was even committed.

This interference can result from either or both explicit and/or implicit biases. For example, explicit bias might be seen with a patrol officer who assumes that a woman could not have been sexually assaulted, because she works in the sex trade, and therefore fails to write a report or conduct an investigation. In this scenario, the officer is consciously applying a stereotyped judgment, rather than the law. Implicit biases operate in the same way, but without conscious awareness – often in split-second assessments based on the same stereotypes and attitudes that form conscious biases. While explicit biases reflect our consciously held worldview, implicit biases stem from prevailing socio-cultural attitudes, stereotypes, and norms. None of us are immune from the influence of our socio-cultural context (e.g. American society).[2]

[2] Banaji and Greenwald, in their pioneer work on implicit bias, have found that regardless of our race, gender or other social identity markers, people hold unconscious stereotypes and attitudes consistent with prevailing social hierarchies. In other words, women, like men, will unconsciously be biased favorably for men and career, and unfavorably for women and career; and African-Americans, like White-Americans, will be unfavorably biased toward African-Americans and criminality and favorably biased toward White-Americans and non-criminality (Banaji and Greenwald, 2013).

The "Genderbread Person"



This discussion is framed around implicit bias based on messages we have received about gender roles. As we have just seen, gender roles are based on expected roles, characteristics and behaviors for men and boys, women and girls. In reality, men and boys, women and girls, as well as those who do not identify as men or women, can present and identify along a continuum. To help us understand that continuum, and all of the factors that can inform the identify of an individual, we will use the "Genderbread Person." This image is meant to illustrate how gender identity and presentation, sexual orientation, and sex are distinct but interconnected concepts.

- **Gender Identity:** This is all about how you think about yourself. Do you think about yourself as a man, as a woman, or as non-binary? What pronouns do you use for yourself?

- **Sexual Orientation:** This is about who you are physically, spiritually, and emotionally attracted to.

- **Sex Assigned at Birth:** Again, this is typically assigned by a medical professional based on external anatomy, although sex is actually a combination of bodily characteristics such as chromosomes, hormones, reproductive organs, and secondary sex characteristics. It may or may not have a relationship to your gender identity and gender presentation. For example, you have the anatomy of a male, but identify as a woman, and present to the world as a woman.

- **Gender Presentation:** This is about how you present to the world. How do you act, dress, behave, and interact (whether intentional or not)? This presentation will most often be understood using the prevailing model of gender – men and women – and the roles, behaviors, and characteristics that go with this model.

For example, a typical association between these concepts would be to see someone who presents as a man, identifies as a man, has male anatomy, and is heterosexual – this is a typical association – and we can do the same thing with a woman and female. Yet, there are also individuals who will not fit into our typical association between these concepts. It is important to remember that we cannot make assumptions about someone's gender identity, biological sex, or sexual orientation based on how they present to the world – what they wear, how they behave, what job they perform, etc.

Why does this matter in relation to sexual assault? Unfortunately, crime data shows that those who do not conform to society's expectations for how to present, how to behave or even who to have sex with, are often at a higher risk for violence, abuse and discrimination. For example, we know that transgender people are at a dramatically higher risk of being sexually assaulted – but it is not their body parts, or hormones, or clothing that create that – but rather, other people's discomfort with their difference and lack of conformity.[3]

Gender Bias in Operation

By understanding the meaning and relevance of gender, this can help us to understand how both explicit and implicit gender bias works in practice within the criminal justice system. Lynn Hecht-Schafran, Director of the National Judicial Education Program (NJEP), identified three practices that can result in gender bias, particularly with respect to criminal justice processes (Hecht-Schafran, 1993, p. 397-8):

1. ***Stereotyped thinking about the true nature and roles of women and men.***

   "Many implicit assumptions about the innate nature of women and men are based on stereotypes that lack any scientific foundation" (Halilović et al., 2017, p. 13). These assumptions extend to how women and men should behave, including within the sexual realm. They define behaviors that are seen as acceptable and appropriate for women, in contrast to those that are acceptable and appropriate for men. For example, why do we so often accept heavy drinking as an excuse for bad (or even criminal) behavior by men, while heavy drinking by women is viewed as culpability for their own victimization? In this case, the same behavior may be evaluated completely differently, depending on the gender of the person.

[3] For more information: *Violence against the Transgender Community in 2019*, Human Rights Campaign.

2. ***Perceptions about the relative worth of women and men, based on a given society's view of what constitutes "women's work" and "men's work"***.

   "Paid work, which is more frequently performed by men, tends to be given a higher value [in American society] than unpaid caregiving, which is predominantly performed by women and often taken for granted" (Halilović et al., 2017, p. 13). In cases of sexual assault, this can translate into discussions about how a guilty verdict will "ruin" the defendant's career or future, with less consideration given to the low-skilled or unpaid work performed by the victim, and little concern about the impact the assault may have on the victim's ability to earn a living and support a family.

3. ***Myths and misconceptions about the social and economic realities of women's and men's lives***.

Social and economic realities can directly inform whether victims will report their sexual assault and whether they will stay engaged throughout the process of an investigation. Victims can suffer intensive scrutiny, not only by responding professionals, but also from their friends, family, and surrounding community. Sometimes victims simply try to put the assault behind them, in order to avoid being socially alienated. In a workplace setting, victims may fear losing their job if they report, and they may continue to suffer ongoing harassment and abuse in order to stay employed. Women and girls also frequently assess their physical risk differently than men and boys do – they may believe they are less capable of defending themselves or fighting back, and as a result, they may "freeze" or comply with the perpetrator's demands, in the hopes of avoiding physical harm in addition to the sexual assault. Finally, as a result of socialization and gender roles, women and girls may prioritize the feelings and interests of others over their own. They may accept behaviors that make them uncomfortable, or are harmful, simply to avoid embarrassing someone else or hurting their feelings (including a perpetrator). While these responses may not always seem rational to outsiders, it is important to bear in mind that women and men experience different social and economic realities, even in our modern world.

Gender Bias in the Courts

These phenomena have been well documented in US court systems by the National Judicial Education Program (NJEP) – a project initiated to address gender bias within the courts. With support from the NJEP, State, and Federal court systems initiated gender bias task forces to investigate the existence and impact of gender bias on court operations and judicial decision-making. Notably, all US gender bias task forces found evidence of gender bias at the procedural level (interactions between and among legal professionals and court users), the structural level (functional accommodation or lack thereof) and substantive level (evidentiary findings, adjudication, and sentencing). For example, the New York Task Force on Women in the Courts (1986) concluded that:

> *Gender bias against women…is a pervasive problem with grave consequences…Cultural stereotypes of women's role in marriage and society…distort courts' application of substantive law [on a daily basis]. Women uniquely, disproportionately, and with unacceptable frequency, must endure a climate of condescension, indifference, and hostility* (p. 17-8).

Gender bias task forces also found that female victims of domestic and sexual violence were often subject to scrutiny, blame, and/or outright disbelief. For example, the Maryland Special Joint Committee on Gender Bias in the Courts (1989) found that:

> *…too often judges and court employees deny the victim's experiences, accuse the victim of lying about her injuries, treat the cases as trivial and unimportant, blame the victim for getting beaten, and badger the victim for not leaving the batterer* (p. v).

While this particular quote refers to domestic violence, gender bias task forces across the US also routinely found that victims of rape and sexual assault were judged harshly on their appearance, demeanor, lifestyle, and reputation (for review, see Kearney & Sellers, 1996). Indeed, Koss (2006) concluded on the basis of decades of research that a rape report is most likely to be taken seriously by society if the victim:

> *Has little-to-no relationship to the offender, is virtuous and going about legitimate business, was above reproach in behavior prior to the rape, reports a single occurrence, was raped by an unambiguously bad offender, has demographic characteristics that signal power, influence, or sympathy, shows visible, appropriate expressions of trauma, and [is] open to help* (p. 212).

Identifying and Preventing Bias: DOJ Guidance

While criminal justice professionals are responsible for safeguarding a fair and impartial process, it is problematic to assume that they are inherently objective, either as individuals or as a collective system. The evidence is clear that conscious gender bias, and implicit gender-based stereotypes and attitudes, abound in our society.

This is why the US Department of Justice (DOJ) published groundbreaking new guidance for law enforcement in 2015, entitled, *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence.* This DOJ guidance calls on law enforcement to acknowledge the presence of gender bias and introduce specific practices during the initial response and investigation process, to mitigate its impact.

> *Gender bias in policing practices is a form of discrimination that may result in LEAs [law enforcement agencies] providing less protection to certain victims on the basis of gender, failing to respond to crimes that*

> *disproportionately harm people of a particular gender, or offering reduced or less robust services due to a reliance on gender stereotypes.*
>
> *Gender bias, whether explicit or implicit, conscious or unconscious, may include police officers misclassifying or underreporting sexual assault or domestic violence cases, or inappropriately concluding that sexual assault cases are unfounded; failing to test sexual assault kits; interrogating rather than interviewing victims and witnesses; treating domestic violence as a family matter rather than a crime; failing to enforce protection orders; or failing to treat same-sex domestic violence as a crime.*
>
> *In the sexual assault and domestic violence context, if gender bias influences the initial response to or investigation of the alleged crime, it may compromise law enforcement's ability to ascertain the facts, determine whether the incident is a crime, and develop a case that supports effective prosecution and holds the perpetrator accountable* (US Department of Justice, 2015, p. 3).

This Training Bulletin series is one of the many efforts sponsored by the Department of Justice to help law enforcement agencies eliminate such manifestations of bias.

Conclusion: Implicit Gender Bias

In our first Training Bulletin in this series, we defined the concept of implicit bias, as documented by cognitive, neurobiological, and social scientific methods. We also documented the presence of conscious, open, and widely held stereotypes and attitudes regarding the expected roles and behaviors of men and women, boys, and girls. What we can learn from consciously held stereotypes and attitudes is that they directly relate to types of implicit and automatic stereotypes and attitudes that we all hold, and are therefore likely to act on – without even being aware of them. This has implications for all of us working to improve criminal justice responses to sexual assault.

Up Next

In our next installment, we will address the relationship between gender bias, victim selection, and victim blaming in sexual assault cases. This will include analyzing why victims are specifically targeted and exploring the extent to which victim selection is based on gender bias – or prevailing gender-based stereotypes and attitudes.

References

Banaji, M.R. & Greenwald, A. (2013). *Blindspot: Hidden Biases of Good People.* New York, NY: Delacorte Press.

Bian, L., Leslie, S. & Cimpian, A. (2017). Gender stereotypes about intellectual ability emerge early and influence children's interests. *Science,* 355, 389–391.

Bridge, D.L. (1997). The glass ceiling and sexual stereotyping: Historical and legal perspectives of women in the workplace. *Virginia Journal of Social Policy and the Law, 4(1),* 604.

Casey, P., Warren, R., Cheeseman, F. & Elek, J. (2012). *Helping Courts Address Implicit Bias: Resources for Education.* Williamsburg, VA: National Center for State Courts.

Halivović, M., Huhtanen, H. (2014). Gender and the Judiciary: The Implications of Gender within the Judiciary of Bosnia and Herzegovina. Sarajevo: DCAF, 113.

Halilović, M., Watson, C., Huhtanen, H. and Socque-Juglard, M. (2017). *Gender Bias and the Law: legal frameworks and practice from Bosnia and Herzegovina and beyond.* Sarajevo: AI/DCAF, 228.

Hecht-Schafran, L. (1993). Is the law male: Let me count the ways. *Chicago-Kent Law Review*, 69(2), 397-411.

Kang, J. (2009). *Implicit Bias: A Primer for Courts.* Williamsburg, VA: National Center for State Courts, Race and Ethnic Fairness in the Courts.

Kearney, R.C. & Sellers, H. (1996). Sex on the docket: Reports of state task forces on gender bias review. *Public Administration Review, 56(6),* 587-592.

Koss, M. (2006). Restoring rape survivors: Justice, advocacy and a call to action. *Annals of the New York Academy of Sciences,* 1087*,* 205-234*.*

Levinson, D. & Young, D. (2010). Implicit gender bias in the legal profession: An empirical study. *Duke Journal of Gender, Law and Policy, 18(1),* 1-41.

Lonsway, K.A. & Archambault, J. (2012). The 'justice gap' for sexual assault cases: Future directions for research and reform. *Violence against Women, 18*(2), 145-168.

Maryland Special Joint Committee on Gender Bias and the Courts (1989). *Report of the Special Joint Committee on Gender Bias in the Courts,* Baltimore, MD.

New York Task Force on Women in the Courts (1986). Report of the New York Task Force on Women in the Courts. *Fordham Urban Law Journal,* 15(1), 15-198.

Project Implicit (2011). *Take a Test*. Retrieved from the Project Implicit website.

Stroop, J.R. (1935). Studies of interference in serial verbal reactions. *Journal of Experimental Psychology*, 18, 643-662.

UN Women Training Center (2016). *Self-Learning Booklet: Understanding Masculinities and Violence Against Women and Girls*. Santo Domingo, Dominican Republic: UN Women Training Centre.

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Part 2: Victim Blaming and Selection

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Introduction

This is the second installment in our series exploring gender bias in sexual assault response and investigation. In the previous installment, we provided an overview of implicit and explicit gender bias and explored how they can potentially influence professional responses. In this bulletin, we examine the relationship between gender bias and victim selection at the time of the assault, as well as victim blaming afterward.

Quick Review: Gender Bias

We discussed in the previous bulletin how prevailing socio-cultural stereotypes and attitudes about gender are reflected unconsciously (or implicitly) by all of us – this phenomenon is called *implicit gender bias*. While unconscious or implicit bias may be consistent with prevailing socio-cultural stereotypes and attitudes, they do not necessarily match an individual's consciously held worldview. In other words, a police officer, prosecutor, or judge can genuinely believe in the fair and equal dispensation of justice, regardless of gender, race or other social factors – but nonetheless be subject to the influence of implicit bias. Similarly, a health care provider or victim advocate may reject gender and racial stereotypes, yet bias may still influence their assumptions and judgments about survivors. This is documented with research:

> *[A]n exponentially increasing number of empirical studies demonstrates a relationship between measures of implicit bias and real-world discriminatory behavior* (National Center for State Courts, 2012, p. 15).

While gender-based stereotypes may sometimes hold a "kernel of truth" (e.g., many men are in fact breadwinners, and many women are unpaid caregivers), they can create problems if they are used as the basis for generalized assumptions or judgments in a particular sexual assault case. For example, it is within the range of possibility that a woman who is having an extramarital affair might try to "cover it up" by telling a lie, but it is quite another to assume that this generally means that women are inclined to lie about consensual sex and make false reports of rape and sexual assault.

Thus, our starting point with this discussion is to recognize the influence of prevailing socio-cultural stereotypes and acknowledge the extent to which they inform our response to sexual assault victims and suspects. While we may not consciously hold gender biased beliefs and attitudes, our thinking, judgments, and decision-making can nonetheless be powerfully influenced by them without our awareness.

Victim Selection

Those working within the criminal justice system have long understood that individual crimes – from the pettiest crimes to the most serious – are often practiced, planned and purposeful. In other words, perpetrators often look for the very best opportunity to successfully commit a crime. A key element involves victim or target selection.

This is also true for sexual assault. Even in cases of "opportunistic" sexual offending, the perpetrator is likely to identify whether a particular situation or opportunity is conducive to successfully committing a sexual assault – and not being held accountable for it.

While anyone can be sexually assaulted, victim selection can provide a useful framework for understanding, in a given context, who is more or less likely to be perceived by a perpetrator as a "good target." Perpetrators select victims on the basis of whether they are perceived as vulnerable, accessible, and/or lacking in credibility. Perhaps not surprisingly, this perception has a great deal to do with prevailing stereotypes and attitudes held by the perpetrator, as well as the society at large.

Vulnerability

Vulnerability is not a general state of being, but rather the result of circumstances and context. In other words, the concept of vulnerability is shaped and informed both by objective facts (e.g., whether someone is unconscious), as well as more subjective assessments of a particular situation (e.g., whether someone who is unconscious would be seen as a capable or credible witness).

Of course, vulnerability to sexual assault is first and foremost the result of being around someone who is motivated, or at least willing, to commit sexual assault. However, there must also be a perception by the perpetrator that the situation is somehow conducive to successfully committing a sexual assault, and not being held accountable for it.

By examining some of the factors commonly associated with vulnerability we can identify how gender-based stereotypes and other attitudes actually create and reinforce perceptions of vulnerability, and how these perceptions can be used by perpetrators to plan and commit their crimes. Afterward, these same beliefs and attitudes are also frequently used to justify the perpetrator's actions and create doubt in the minds of others, both about what happened as well as who is to blame for it.

1. Alcohol or drug use

Victims of sexual assault who used drugs or alcohol at the time of the assault, or who have a history of using drugs and alcohol, have historically been doubted, blamed, and/or not taken seriously when they report the crime. They have also frequently been viewed as unable to give an accurate account of what happened, and there is truth in this perception because drugs and alcohol do interfere with memory encoding and recall. However, judgments of female victims can be particularly punitive, because the attitude toward women who use drugs or alcohol is often: "She should have known better," or "What did she think would happen?" Other stereotypes associate women who drink or use drugs with being "loose" or promiscuous – meaning, they are generally ready and willing to engage in sexual relations. These types of stereotypes can color our decision-making, particularly with respect to initial decisions (e.g., whether to initiate an investigation, whether to conduct an exam, whether to call a victim advocate).

2. Physical or cognitive disabilities

Another common stereotype is that individuals with physical or cognitive disabilities are not sexual beings; they are often seen as not being interested in sex, and not sexually active (McNutt, 2004; Quarmby, 2015). In fact, the idea that someone with a disability would respond positively to a sexual advance is antithetical to many people's assumptions about people with disabilities. These stereotypes and attitudes can interfere with our ability to take a report of sexual assault seriously, even if they remain outside our conscious awareness.

We also have stereotypes about who a perpetrator would choose to sexually assault, and we may (again unconsciously) apply our own standard of what we find sexually attractive, rather than viewing an incident from the perspective of someone committing a sexual assault. Remember that the perception of vulnerability is one of the primary elements that a sexual assault perpetrator is looking for in a target.

Finally, people with physical and cognitive disabilities are often seen as less accurate and truthful in their statements. This stereotype can interfere with the objective interpretation of information and evidence, and lead investigators astray in terms of the hypotheses and investigative leads they pursue.

3. Undocumented individual or immigrant

Undocumented and immigrant victims may be seen as ineligible or unworthy for services, including basic security and justice, and/or they may be seen as trying to manipulate the criminal justice system in order to gain access to benefits and services. These kinds of stereotypes can lead to a denial of services and/or the imposition of an evidentiary standard that does not exist for other similar cases – or for other victims of the same crime. Such attitudes, whether explicit or implicit, can also increase their vulnerability to sexual violence. Remember that the perception of vulnerability is one of the primary elements that sexual assault perpetrators are looking for in a target. What better target could there be than someone who is seen as ineligible or unworthy of security and justice services?

In sum, by examining the concept of vulnerability as a product of both context and circumstance, we are better able to:

1. Identify how and why an individual might be perceived as a "good target," and
2. Identify what stereotypes and attitudes might influence our thinking, judgments, and decision-making.

These dynamics are clearly at play with the three groups of victims described above.

Accessibility

While often defined as an objective concept, accessibility is also influenced by the socio-cultural context, most notably the subjective dynamics of power and position. Objective accessibility can be defined as simply the legitimate contact with, or access, to another person. This could include a taxi driver and client, doctor and patient, teacher and student, etc. Yet, these relationships of access can also be influenced by the subjective power or position of the individuals involved, and these are deeply informed by socio-cultural stereotypes and attitudes.

One example to illustrate this point is the Kobe Bryant case. At the mountain resort where Bryant was staying, he had objective access to hotel staff; in other words, he had a legitimate reason to contact staff, to call on them for assistance, even to have them in his room. Yet, it was the relative (subjective) position and power of the two parties that shaped the case, both in the courtroom and society at large. Recall that the victim had thumbprint bruising on her neck and tearing to her vagina. The suspect also had the victim's blood on his clothing. While Bryant stated that the two had consensual sex (initiated by the victim), the victim said that force was used to commit the act.

The physical evidence was generally consistent with the hypothesis of force. In fact, many would view this as a "strong" case for criminal prosecution. Yet, due to the subjective power and position held by the suspect, a different narrative prevailed. In both the courtroom and the "court of public opinion," it was argued that the victim was a gold-digger who claimed she was raped for material gain. It was also argued that the suspect, who was attractive, wealthy, and married to a beautiful woman, would never have sexually assaulted such a plain-looking, small-town girl – he could have anyone he wanted, so why her? Somehow that story went even further, with some suggesting that the suspect had actually done the victim a favor by entertaining her advance.

In this case, subjective access was paramount. With *punitive* attitudes toward the victim, and *protective* attitudes toward the suspect, total access to the victim was granted through their relative power and position. At the same time, credibility was conferred upon the suspect, with the adoration heaped upon star athletes, while it was denied to the victim. This case is therefore a perfect example of a "good target." The victim was accessible both objectively and socially, and as we will see in the following section, she was also perceived as lacking in credibility, by Bryant and our society at large. This was in spite of significant physical evidence consistent with the use of force.

Credibility

Credibility is defined by Merriam-Webster as the *quality or power of inspiring belief*. It is an opinion, not a fact. As a result, credibility is powerfully influenced by prevailing stereotypes and attitudes, including those regarding gender, race, and age.

In cases of sexual assault, gender-based stereotypes and attitudes often become particularly relevant to the determination of credibility, when evaluating who is

believable and why. For example, early research demonstrated that the credibility of a female victim will be called into question if she operated outside of accepted gender role norms, by hitchhiking, drinking alcohol, going to a bar alone, engaging in sex outside of marriage, accepting a ride from the suspect, going to the suspect's home, etc. (LaFree 1981). This finding has remained consistent for decades, with more recent research showing that "victim behavior [or risk taking] at the time of victimization and victim moral character [are] important factors when evaluating victim credibility" and moreover, are decisive considerations in cases without corroborating evidence (Campbell et al, 2015, p. 29). In fact, research documents that arrest and prosecution decisions are heavily influenced by factors such as: "voluntary victim intoxication," "inconsistent statements," "mental deficiencies," "previous sexual relationship with the suspect," "inability to recall details of the assault," "delayed reporting of the assault," and "engaging in prostitution."[1]

Credibility is central to sexual assault cases. This is because they often have no witnesses other than the victim and suspect. It is also why sexual assault cases are often characterized as "he-said, she-said" (even though this frequently indicates that no investigation was conducted beyond interviewing the victim and suspect). As a result, the perceived credibility of both victim and suspect serves as the lens through which most cases are viewed and evaluated. This lens informs how the response is undertaken, and whether there will be any meaningful investigation conducted.

A quote from a veteran detective illustrates this point. "Steve" is a detective with 15 years of experience, and he was involved in the Making a Difference (MAD) project conducted by EVAWI over the course of several years. As part of a research study conducted with MAD participants, Steve was interviewed, and he shared the following:

> *Last year this woman was arrested for criminal trespass at a park. She was totally intoxicated, even the following day. After she was arrested, she claimed all she remembered was walking into the park and being raped by a stranger. I authorized a sexual assault medical forensic exam and sure enough, the swabs came back with the DNA of a serial rapist we'd been looking for. You just can't discount any reports no matter how incredible they seem* (Huhtanen, 2009, p. 46).

While Steve pursued the case described in this anecdote, it is nonetheless clear that he did not initially perceive the victim as credible. The victim's drunkenness, in combination with her gender, the intimation that she is homeless, and her violation of the criminal trespass law, all played into the stereotype of a poor, uneducated woman, who is publicly drunk, and caught violating the law – and *who then claims she was raped*. Yet,

[1] "Decisions to arrest and prosecute may rely heavily on the presence of extralegal variables" including "voluntary victim intoxication (Beichner & Spohn, 2012; Kerstetter, 1990; Lonsway, Welch, & Fitzgerald, 2001; Schuller & Stewart, 2000), inconsistent statements (Alderden & Ullman, 2012; Frohmann, 1991), mental deficiencies (Jordan, 2004; Kerstetter, 1990), previous sexual relationship with the suspect (Spohn & Tellis, 2014; Stanko, 1981-82), inability to recall details of the assault (Beichner & Spohn, 2012), delayed reporting of the assault (Beichner & Spohn, 2012; Kerstetter, 1990; Rose & Randall, 1982), and engaging in prostitution" (Kerstetter, 1990)" (Campbell et al, 2015, p. 30-1).

Steve was able to confront his explicit and implicit biases – his stereotypes and attitudes about this victim – by using a thorough, professional and methodical approach to the case. Steve followed best practices rather than his "gut." But how many cases like this do not make it past the initial report, as a result of prevailing gender-based stereotypes and other attitudes that lead us to doubt victim credibility?

Putting It All Together

In sum, perceptions of vulnerability, accessibility, and credibility are all elements involved in victim selection for sexual assault, because they are central to how society, and thus the criminal justice system, will view the victim, the suspect, and ultimately the case. In other words, perceptions of vulnerability, accessibility and credibility shape whether or not an individual in a particular context is seen as a "good target" by the perpetrator and a "bad victim" by society. As we saw in the examples above, gender-based stereotypes and attitudes are largely responsible for informing our perceptions of vulnerability, accessibility, and credibility. In turn, these stereotypes and attitudes result in explicit and implicit biases, and those biases can result in tangible differences in how cases are handled. However, by identifying and confronting these biases, they are much less likely to influence our decision-making. Think back to the example in the previous Training Bulletin – with the words for colors, and the colors for words. This simple exercise shows that we *can* override our implicit cognitions, it just requires conscious awareness and deliberate thinking to do so.

Overcoming the Influence of Implicit Gender Bias

Let's illustrate this process with two similar case scenarios. Below you will find a basic fact pattern for a hypothetical sexual assault case. Following the basic facts, you will be presented with a variety of different social factors for the victim and suspect. After reading the first scenario, please make a list of reasons why this particular victim might be perceived as vulnerable, accessible, or lacking in credibility. Also note reasons why the suspect might be perceived as credible or lacking in credibility.

Then move to the second scenario and do the same. List reasons why the victim might be perceived as vulnerable, accessible, or lacking in credibility – and why the suspect might be seen as credible, or not. Finally, consider how differences in social factors between the two scenarios might influence perceptions of the case – and as a result, affect how this case might be handled by criminal justice professionals and others.

Basic Fact Pattern*: A woman is sexually assaulted by a male supervisor, at the convenience store where she works. Her supervisor asked her to stay late, to help stock the shelves. When she said she could not work late because public transportation would not be available at that time, her supervisor offered to give her a ride home. The woman agreed to stay late and accepted the offered ride. She then reported that her supervisor raped her in the car, after driving her to an isolated area.*

Scenario 1	
- The victim is a college student, originally from a rural community - She lives quite far away from the University, in affordable housing. - She has to work as much as possible, to pay for her education and living costs while at school. - She is doing well in school and has no criminal history. - The suspect has a criminal history on various charges, including drug possession and petty theft. - His name also comes up in association with a report of domestic violence, although he was never charged for the offense. - He has been employed at the store for less than a year.	Why might the victim be perceived as vulnerable, accessible, and/or lacking in credibility? Why might the suspect be seen as credible – or lacking in credibility?
Scenario 2	
- The victim is in her mid-40, and she has had her children taken away from her for neglect. - She has a criminal history which includes check fraud, and she needs income to pay off her fine. - She has to prove that she is working steadily, and not using drugs or alcohol, in order to get custody of her children back. - The suspect is the store manager, and he has been recognized as Employee of the Month several months in a row. - He has been working at the store for more than three years. - He is married with three kids, and an active member of his church.	Why might the victim be perceived as vulnerable, accessible, and/or lacking in credibility? Why might the suspect be seen as credible – or lacking in credibility?

The example above is meant to illustrate the extent to which social factors influence the subjective assessment of credibility – which in turn influence the objective reality of vulnerability and accessibility. In the first scenario, we may feel compelled by a victim who fits our gender-based stereotype of a “good girl,” (and a “real victim”) while the suspect meets our expectation for a “bad guy” (and a “real sex offender”). In the second case, the opposite is true – the victim now fits our socio-cultural image of a “bad girl/victim” (someone of questionable credibility) while the suspect seems to be a “good guy” and therefore not a potential sex offender. Which case scenario are we more likely

to believe? Which case scenario reflects a "good target"? Are the case scenarios the same – or different – and why?

Rather than falling prey to the explicit and implicit biases that are always present in our socio-cultural environment, we need to understand how a perpetrator might view the context and circumstances, particularly the perceived vulnerability, accessibility, and credibility of a potential victim. In other words, did the context, circumstances and victim profile make for a "good target"? It is not enough for law enforcement to conduct a thorough and methodical investigation. As professionals responding to sexual assault, we must also remain alert to potential areas of explicit and implicit biases and avoid making decisions on the basis of our "gut" or instincts.

For example, credibility is not an objective or factual standard; it is an opinion, value, and attitude, and as such, it can significantly misinform and misguide investigative practice. Moreover, those who commit sexual assault, just like those who burglarize homes, will be aware of the contexts, circumstances, and victim profiles that make for the most conducive and successful conditions to commit a crime. Thus, criminal justice professionals and others would be well advised to think less in terms of victim credibility, or a "good victim," and more in terms of what would make someone a "good target".

As in Steve's anecdote above, these examples illustrate that we *can* explicitly overcome gender-based stereotypes and attitudes, or at least suspend our disbelief long enough to make an evidence-based assessment, by not allowing our preconceived notions of credibility to determine whether we proceed with a case. But this effort must be explicit – it must be *conscious* – and it must include identifying the stereotypes and attitudes that are present within the case, so we can consciously override their influence. When we fail to identify, and confront such gender-based stereotypes and attitudes, we run the risk of allowing implicit biases to influence our decision-making without our awareness.

Victim-Blaming and "Bad Victim" Behaviors

> *For me it [credibility] starts with their activity at the time of the incident. Were they drinking heavily, using drugs, engaging in prostitution? Would a reasonable person think that something bad would happen if they engaged in this activity?* (Campbell et al, 2015, p. 34)

This is an example of victim blaming and it is a closely related topic to victim selection. This is because victim-blaming relies on the argument that a person would not have been sexually assaulted if they had not made a particular choice, engaged in a particular activity, or acted in a particular way. In other words, the sexual assault is the victim's fault – or at least they bear some level of responsibility for it.

This argument is problematic for several reasons. First, there is no particular activity, choice, or behavior for which sexual assault is a natural – or even a typical – consequence. Second, victim blaming is often based on unrealistic notions of who is a

"good victim." Third, the only common denominator in every sexual assault is a perpetrator who is motivated, or at least willing, to commit a sexual assault.

But let's dive deeper. What actions, choices, or behaviors *do* "naturally" or "typically" result in sexual assault? If asked, many people would offer the same types of behaviors identified in Dr. LaFree's early research:

- Hitchhiking
- Drinking alcohol
- Going to a bar alone
- Engaging in sex outside of marriage
- Accepting a ride from the suspect
- Going to the suspect's home

We can easily add to this list:

- Dressing or behaving "provocatively"
- Engaging in consensual sexual activity with the suspect
- Being involved in criminal activity (e.g., recreational drugs, sex trade)

However, if we analyze this list two things become immediately clear:

(1) Not every instance of the behavior, action or choice – or even the majority of instances – result in a sexual assault; and

(2) This list is nothing more than a reflection of common gender-based stereotypes and attitudes about how women should, or more importantly should not, behave.

For example, while it may be true that many sexual assault victims (particularly college-aged women) had consumed alcohol at the time of the sexual assault (e.g., Kilpatrick, et al., 2007), this is only a small percentage of the total number of women (and men) who consume, or even abuse alcohol (Substance Abuse and Mental Health Services Administration, 2015).[2] In other words, although drug and alcohol use is often

[2] The 2015 National Survey on Drug Use and Health (NSDUH), conducted by the Substance Abuse and Mental Health Services Administration (SAMHSA), found that 26.9% of people ages 18 or older reported that they engaged in binge drinking in the past month; and 7.0% reported that they engaged in heavy alcohol use in the past month. Both studies reflect the total population size, and while the second study does not disaggregate based on sex, the numbers are nonetheless significantly higher than those reflected within the population of women who have been victims of drug- or alcohol-facilitated rape.

associated with sexual assault, the decision to consume drugs or alcohol does not have a direct, causal relationship to being sexually assaulted.

Let's take a more concrete example to clarify this point. Imagine that you are at a party. You are drinking alcohol – as are others at the party – in fact, some are drinking heavily. At some point in the evening, you go looking for the bathroom, but end up in a bedroom where a scantily clad young woman is drunk and passed out. What do you do?

- Leave in search of the restroom
- Cover the young woman with a blanket
- Notify the host that someone is passed out
- Commit sexual assault

Obviously, the first three choices are all reasonable, and there are no doubt additional reasonable options. The fact that the young woman is drunk and passed out does not cause someone entering the bedroom to sexually assault her. In fact, for most of us, the idea is abhorrent. That is because the cause of sexual assault is not drinking or even drunkenness, but the choice of one person to sexually assault another.

Risk vs. Cause

Here it is worthwhile to understand the concept of *risk* – and how it is distinct from *cause*. In this context, risk refers to the increased chance that a potential perpetrator will perceive a person as a "good" or "easy" target. Thus, risk reduction (sometimes referred to as *crime prevention* within the criminal justice field) is aimed at reducing an individual's risk of being victimized. However, risk reduction does not prevent crime – it just deters or displaces crime on an individual basis.

In contrast, prevention requires addressing the root cause of a crime. In the case of sexual assault, primary prevention efforts seek to confront and address the gender-based attitudes and stereotypes that position girls and women as unequal to boys and men, while also addressing masculine norms that endorse and/or reward dominance, aggression, and sexual conquest among men and boys.

Let's use an example from another crime category to clarify the distinction between cause and risk. To illustrate, if someone is going to burglarize a home, are they likely to choose a home that is situated close to neighbors, with good visibility from the street, which has both a dog and an alarm? Or will the burglar choose the home without all these factors? Obviously, a potential burglar would probably prefer to target the home without the dog or alarm, far away from the neighbors, and not visible from the street. Yet, how often do we blame homeowners who do not have dogs, alarms, or good visibility, if their homes are burglarized? Do we conclude that the homeowner is to blame, whether all or in part, because they did not take these risk reduction measures? No, we do not – and that is because we concretely understand that even while some

risk factors may have been present for the homeowner, they bear no culpability whatsoever in relation to another individual breaking into their home and stealing their property.

It is also important to recognize that the burglar might bypass the home with a dog and alarm, only to target the house next door, without them. In this way, we can see that crime was not prevented – it was simply displaced (or shifted) from one victim to another. The same is true for sexual assault.

"Bad Victim" – "Good Target"

We can see how victim selection is based on an individual's perceived vulnerability, accessibility, and lack of credibility; this is used by perpetrators as a means of identifying a "good target." Victim blaming then uses these same factors, based on gender-based stereotypes and attitudes, to assign responsibility to victims for their own victimization. While this may seem obvious, the prevailing notions of sexual assault – including the stereotype of a "real rape" or "good victim" – includes a victim profile and a set of circumstances that are actually the opposite of what makes someone a "good target." For example, in our previous Training Bulletin, we quoted the description of a "good" sexual assault victim as being a woman who:

> *Has little-to-no relationship to the offender, is virtuous and going about legitimate business, was above reproach in behavior prior to the rape, reports a single occurrence, was raped by an unambiguously bad offender, has demographic characteristics that signal power, influence, or sympathy, shows visible, appropriate expressions of trauma, and are open to help* (Koss, 2006 p. 212).

Indeed, when it comes to sexual assault, the prevailing socio-cultural image of a "good victim" is in direct opposition to what can make someone a "good target." While anyone can potentially be sexually assaulted, victims are most often selected on the basis of their perceived vulnerability, accessibility, and lack of credibility. These factors are powerfully informed by prevailing gender-based stereotypes and attitudes, which also results in explicit and implicit gender biases. This can mean that our social expectations for a "good victim" in a case of "real rape", and our criminal justice standards for a "strong case", are generally not consistent with who would make a "good target".

As with other gender-based stereotypes and attitudes, overcoming this type of bias requires a willingness to confront the possibility that we have an unconscious inclination to evaluate cases of sexual assault against a "good victim" and "real rape" standard. The challenge lies in the fact that we can hold a conscious view that anyone can be a victim of sexual assault – yet still be influenced by implicit stereotypes and attitudes. This is why consciously identifying stereotypes and attitudes becomes so important.

Conclusion: Victim Selection and Victim Blaming

Reports of sexual assault must be treated with the same level of professionalism, thoroughness, and impartiality as other types of crime. It is therefore critical that gender-based stereotypes and attitudes, which define what is appropriate or "lady-like" behavior for women and girls, are not used as a filter to evaluate victim credibility or assign responsibility for the sexual assault. Otherwise, we may fall prey to the many myths and misconceptions surrounding the topic of sexual assault; most notably, the notion that most reports are actually false allegations.

Up Next

The next Training Bulletin in this series will tackle the relationship between gender bias and false reports. This will include examining the definition of a false report, and the appropriate criteria for law enforcement to make this determination in a sexual assault case. We will then explore how gender-based stereotypes and attitudes can lead an individual to make unwarranted assumptions about the veracity of a report and discuss how this is often exacerbated by our inaccurate beliefs about how to detect deception.

References

Alderden, M.A. & Ullman, S.E. (2012). Creating a more complete and current picture: Examining police and prosecutor decision-making when processing sexual assault cases. *Violence Against Women*, 18, 525-551.

Beichner, D. & Spohn, C. (2012). Modeling the effects of victim behavior and moral character on prosecutors' charging decisions in sexual assault cases. *Violence and Victims*, 27, 3-24.

Campbell, B.A., Menaker, T.A. & King, W.R. (2015). The determination of victim credibility by adult and juvenile sexual assault investigators. *Journal of Criminal Justice, 43,* 29-39.

Frohmann, L. (1991). Discrediting victims' allegations of sexual assault: Prosecutorial accounts of case rejections. *Social Problems*, 38, 213-226.

Huhtanen, H. (2009). *Situated at the Crossroad: A Sociological Exploration of Law Enforcement Decision Making on the Subject of Rape and Sexual Violence.* Unpublished Masters Research Paper, Erasmus University, International Institute of Social Studies, The Hague, the Netherlands.

Jordan, J. (2004). Beyond belief? Police, rape and women's credibility. *Criminal Justice*, *4,* 29-59.

Kerstetter, W.A. (1990). Gateway to justice: Police and prosecutorial response to sexual assaults against women. *Journal of Criminal Law and Criminology*, 81, 267-313.

Koss, M. (2006). Restoring rape survivors: Justice, advocacy and a call to action. *Annals of the New York Academy of Sciences, 1087,* 205-234.

LaFree, G. (1981). Official reactions to social problems: Police decisions in sexual assault cases. *Social Problems, 28(5),* 582-594.

Lonsway, K.A., Welch, S. & Fitzgerald, L.F. (2001). Police training in sexual assault response: Process, outcomes, and elements of change. *Criminal Justice and Behavior*, *28,* 695-730.

McNutt, H. (2004, October 13). Hidden pleasures. *The Guardian* (online).

National Center for State Courts (2012). *Helping Courts Address Implicit Bias.* A "Frequently Asked Questions" document summarizing the National Center for State Courts' project on implicit bias and judicial education. See Casey, Warren, Cheesman & Elek (2012) for the full report on the project.

Quarmby, K. (2015, March 11). Disabled and fighting for a sex life: How misperceptions about disability can prevent people with physical and cognitive impairments from being able to express their sexuality. *The Atlantic.*

Rose, V.M. & Randall, S.C. (1982). The impact of investigator perceptions of victim legitimacy on the processing of rape/sexual assault cases. *Symbolic Interaction, 5,* 23-36.

Schuller, R.A. & Stewart, A. (2000). Police responses to sexual assault complaints: The role of perpetrator/complainant intoxication. *Law and Human Behavior*, *24,* 535-551.

Spohn, C., White, C. & Tellis, K. (2014). Unfounding sexual assault: Examining the decision to unfound and identifying false reports. *Law & Society Review, 48(1),* 161-192.

Spohn, C. & Tellis, K. (2014). *Policing and Prosecuting Sexual Assault: Inside the Criminal Justice System.* Boulder, CO: Lynne Rienner Publishers, Inc.

Stanko, E.A. (1981-82). The impact of victim assessment on prosecutors' screening decisions: The case of the New York County District Attorney's Office. *Law & Society Review, 16,* 225-238.

Substance Abuse and Mental Health Services Administration (2015). *National Survey on Drug Use and Health (NSDUH).UK Table 2.46B – Alcohol Use, Binge Alcohol Use, and Heavy Alcohol Use in Past Month among Persons Aged 12 or Older, by Demographic Characteristics: Percentages, 2014 and 2015.*

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(EVAWI)

Gender Bias in Sexual Assault Response and Investigation

Part 3: False Reports

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Introduction

This is the third installment in our series exploring gender bias in sexual assault response and investigation. In the previous Training Bulletin, we looked at how implicit gender bias, based on gender-based stereotypes and attitudes, can influence victim selection and victim blaming. In this bulletin, we explore the relationship between gender bias and the designation of false reports in cases of sexual assault and rape.

The Stakes are High: The Case of "Marie"

First, let's consider the following case, which took place in Lynnwood, Washington.

> *In 2008, an intruder entered the house of Marie [not her real name], an 18-year-old woman recently emancipated from foster care and living on her own for the first time. The intruder covered his face with a black scarf, wore gloves, tied Marie's wrists with shoelaces from her own shoes, put her own underpants in her mouth as a gag, held a knife to her throat, raped her and then took photos of her bound and gagged with her learner's permit on her chest. The medical forensic exam identified abrasions on both her wrists, about 2.5 inches each, as well as abrasions to her vagina. Scuff-marks on her patio fence were consistent with someone scaling the fence and entering through the sliding glass door, which was unlocked at the time.*
>
> *Despite the presence of physical and corroborative evidence, the detectives assigned to the case were skeptical and believed Marie's account had inconsistencies suggesting she was lying. For example, Marie initially reported that after unbinding herself she called a friend – but she later reported that she called her friend while still bound with shoelaces. In addition, the detectives received a call from one of Marie's previous foster parents who relayed that she was concerned that Marie was seeking attention and possibly made up the story. The foster parent expressed her doubts about Marie's report, noting that her behavior was not how she would expect a rape victim to behave. Thereafter, the detectives asked Marie to come to the police station for another interview According to the detectives' notes, once Marie was in the conference room at the police station they immediately confronted her, telling her there were inconsistencies between her statements and accounts from other witnesses. The detectives noted that based on her answers and body language, it was clear she was lying. The detectives insisted that Marie write a new statement even though she repeatedly stated she believed she had been raped. She initially wrote that she may have dreamt that she was raped, because it seemed real to her, but the detectives refused to accept this, and insisted that she admit to making up the story. Marie conceded and wrote another statement indicating that she made up the story.*

> *However, after returning home, she contacted the police department and insisted that she wished to recant her recantation – in other words, she returned to her original report of being raped at knife point by a stranger. Nonetheless, the detectives ultimately unfounded the case and classified it as a false report. They then forwarded the case to the prosecutor's office and Marie was prosecuted in 2009 for filing a false police report. She accepted a plea deal based on the advice of her public defender.*
>
> *In 2010, the man who raped Marie was identified by detectives from two different police departments in Colorado. These two detectives teamed up when they realized there had been a string of rapes in different communities (and police jurisdictions) with the same modus operandi. Marie was only identified as a victim in this series of sexual assaults after one of the Colorado police detectives found a picture of her, along with other the victims, on the perpetrator's computer. The photo showed Marie on her bed, bound and gagged with her learner's permit on her chest.*
>
> *In 2011, Marc O'Leary was convicted of 28 counts of rape and other associated felonies, including the attack on Marie. He is now serving a 327 ½ year prison sentence, the longest allowable in Colorado*.

What does it mean for the integrity of law enforcement, and the criminal justice system, when the victim of a violent crime is wrongly accused of making a false report, and then prosecuted for it? This is not just a failure or a mistake, but an abhorrent miscarriage of justice with far-reaching consequences. Because the charges against Marie, for filing a false police report, were widely reported in the media, this only helped to reinforce the stereotype that women often lie about rape within the criminal justice system.

A Pulitzer-prize winning article and book have been written about Marie's case,[1] which Netflix adapted into a hard-hitting series called *Unbelievable.* The series launched in September 2019 and is available on the Netflix streaming service.

Unfortunately, Marie's is not the only case. Another similar case was highlighted by the U Senate Judiciary Committee in 2010, in their hearing entitled, *Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases.*[2] At that hearing, Sara Reedy recounted how she was sexually assaulted and robbed while working at a convenience store in Pennsylvania. Joanne Archambault served as an expert witness in that case.

[1] This case was documented in a Pulitzer-prize winning article written by T. Christian Miller and Ken Armstrong (2015), called *An Unbelievable Story of Rape.* It was later developed into a book, called *A False Report: A True Story of Rape in America* (Miller & Armstrong, 2018), and Netflix is now producing a television series called *Unbelievable* that is scheduled to air later this year.
[2] Rape in the United States: The Chronic Failure to Report and Investigate Rape Cases (2011). Hearing before the Subcommittee on Crime and Drugs of the Committee on the Judiciary, 111th Congress, Serial No. J–111–107, 1-276.

Sara Reedy Case

In 2004, 19-year Sara Reedy was working at a convenience store, where she was robbed and sexually assaulted at gunpoint. After the assault, she ran to a neighboring business, and an employee called 911. Reedy had a medical forensic examination, even though the doctor said he believed she was lying about the rape. Her clothing was also collected as evidence, but it was clear that both the responding officers, and the investigator assigned to the case, believed she stole the cash herself and fabricated the sexual assault and robbery to cover for the theft. In his interview, the detective told Reedy that "things would go a lot easier" if she confessed, and that her ''tears would not save [her]."

In fact, the detective never investigated Reedy's sexual assault and robbery, even when he was assigned another case with a very similar fact pattern three months later. These two assaults were the only two rapes reported in the jurisdiction that year. Instead, in January 2005, a warrant for Sara Reedy was issued for theft, receipt of stolen property, and filing a false report, all misdemeanors in the state of Pennsylvania.

Reedy turned herself in when she learned that a warrant had been issued. She had cooperated with the investigator for months (other than refusing to confess to filing a false report). Nonetheless, the detective appeared at her arraignment and argued, contrary to the evidence and facts, that Reedy was a flight risk. He had no known address for her at the time of the hearing, and said she had no job and no ties to the community. As a result of the detective's testimony, Reedy spent five days in jail, despite the fact that she was five months pregnant at the time.

If the evidence in this case had been analyzed, it might have identified the perpetrator before he went on to assault numerous other women. The only evidence tested was the blood and urine sample taken from Reedy, which indicated the presence of THC and Diazepam. These toxicology findings were then used to discredit her.

Finally, in August 2005, seven months after her arrest, Wilbur Cyrus Brown was arrested when he attacked another convenience store clerk. This assault took place just a little more than a year after Reedy's. In this case, the victim managed to sound an alarm during the sexual assault. Brown had tied her up, doused her with lighter fluid, and threatened to set her on fire before police arrived and took him into custody.[3]

After his arrest, Brown confessed to 11 attacks across the state, including Reedy's. Only then were the charges against her dropped. She sued the detective and won a $1.5 million settlement. Yet it is worth noting that there were many other failures in the response system as well, including medical personnel and, according to the victim, the local rape crisis center, which denied her services based on her "false report."

[3] "Serial rapist gets jail and chilling lecture." *Lancaster Online.* Posted April 27, 2007. Updated September 11, 2013.

Identifying False Reports of Sexual Assault

While law enforcement professionals and others may have various ideas about what constitutes a false report of sexual assault, the most accurate definition is this: A false report is a report of a sexual assault that did not happen (i.e., it was not completed or attempted). More complicated is the question of when someone can appropriately decide that a report is false. for example, this decision is all too often made on the basis of certain characteristics of the victim, suspect, or the assault. However, this is not the proper basis for such a decision. Instead, law enforcement should base any such judgment on a thorough, methodical, and evidence-based investigation that shows clear evidence that the sexual assault was neither completed or attempted. In other words, the determination that a report is false should only be made when there is sufficient evidence to establish that the sexual assault did not happen.

Just as a report of sexual assault does not prove that a sexual assault took place, a recantation does not prove that the report was false. Indeed, the standard of evidence for a false report should be the same as referring a case for prosecution. Either there is evidence to support any such determination, or the determination should not be made.

Resources: False Reports of Sexual Assault

For more information on the topic of false reports, EVAWI offers a training module entitled, *False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault.* EVAWI also offers a Training Bulletin entitled *Raped then Jailed: The Risks of Prosecution for Falsely Reporting Sexual Assault.*

Despite this clearly articulated threshold, research in the US and UK consistently reveals that law enforcement professionals often hold an exaggerated belief about the number of false reports of sexual assault that are made (Jordan, 2004; Rumney, 2006; Lisak et al., 2010; Rumney et al., 2013). For example, a survey of 891 police officers found that over half (53%) believed that up to 50% of all victims lie about being raped (Page, 2008). Another survey revealed that on average, patrol officers believed that one-third (32.7%) of all reported cases of rape were false allegations (Schwartz, 2010).

Of course, false reports of sexual assault do occur, just as they do for other crimes. However, evidence-based estimates fall in the range of 2-8% for sexual assault (Lisak et al., 2010; Lonsway, Archambault & Lisak, 2009). This level of false reporting does not indicate a need for special measures designed to identify and address false reports; indeed, there is no indication that there is an increased risk of false reports in cases of sexual assault versus other types of crime. However, there is a risk that an exaggerated fear of false reporting can lead to the improper over-classification of false reports. In fact, the data indicates that there is a far greater risk of a sexual assault report being wrongly classified as false, as compared to an actual false report.

After reviewing 164 rape cases in one research study, Jordan (2004) concluded that:

> *While false complaints do occur, approximately three-quarters of the incidents concluded by the police to be false appeared to have been judged, to some extent at least, on the basis of stereotypes regarding the complainant's behavior, attitude, demeanor, or possible motive. Suspicious file comments were made by the detectives regarding a woman who laughed while being interviewed, others … were seen as 'attention seeking,' and some … were said to be 'crying rape' for revenge or guilt motives* (p. 48).

This quote illustrates the real risk of responding based on gender-based stereotypes and implicit biases – rather than a thorough, methodical, and evidence-based investigation. Indeed, explicit and implicit gender biases, including the exaggerated fear of false reporting, can significantly influence law enforcement investigations and deter investigators from following best practices, or even initiating the investigation at all.

Gender Bias and False Reports

As discussed throughout this series of Training Bulletins, gender bias – whether implicit (unconscious) or explicit (conscious) – is shaped and informed by gender-based stereotypes and attitudes that assign various characteristics, roles, and behaviors to men versus women – and this includes sexual roles and behaviors. While many of us hold attitudes and values in support of gender equality, as well as equal, impartial and fair access to justice, implicit gender bias can nonetheless remain a significant barrier to both. That is because implicit biases operate at an unconscious level. Our judgments can be made in a matter of seconds, without any conscious awareness. Even more important, they can and do often contradict our consciously held beliefs and values.

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

What happens if law enforcement does not believe a victim is credible? What happens if law enforcement does not believe a victim to be worthy of the expenditure of police resources or a thorough, methodical and evidence-based investigation?

The US Department of Justice (DOJ) sheds light on the answer, by outlining what happens – or rather, what doesn't happen – in many such cases. Specifically, DOJ's 2016 investigation of the Baltimore Police Department (BPD) found that "gender bias may be affecting the BPD's handling of sexual assault cases" (USDOJ, 2016, p. 11).

> *We found indications that officers fail to meaningfully investigate reports of sexual assault, particularly for assaults involving women with additional vulnerabilities, such as those who are involved in the sex trade. Detectives*

> *fail to develop and resolve preliminary investigations; fail to identify and collect evidence to corroborate victims' accounts; inadequately document their investigative steps; fail to collect and assess data, and report and classify reports of sexual assault, and lack supervisory review. We also have concerns that officers' interactions with women victims of sexual assault and with transgender individuals display unlawful gender bias* (USDOJ, 2016, p. 11).

Following this report, DOJ published groundbreaking new guidance for law enforcement on identifying and preventing gender bias in sexual assault and domestic violence investigations. This guidance came in response to a series of investigations into the practices of municipal and university police departments when responding to sexual assault. Notably, the DOJ investigations documented problematic practices such as:

> *Police officers misclassifying or underreporting sexual assault; inappropriately concluding that sexual assault cases are unfounded; failing to test sexual assault kits; [and] interrogating rather than interviewing victims and witnesses* (USDOJ, 2016, p. 3).

To summarize, gender bias has been documented in both research studies and DOJ investigations as a common barrier to thorough, professional, and evidence-based investigations. Thus, our challenge is to understand how gender bias operates in this context; and then to identify how to prevent its harmful influence.

Resources: Gender Bias in Law Enforcement Responses

For more information and recommendations for practice, please see the US Department of Justice (2015, December) guidance entitled, *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence*.

Gender Bias and Victim Credibility

Let's consider Marie's case from the beginning of this Training Bulletin. Notably, her case met all of the standard criteria for a stereotypical "real rape" – a stranger broke into her home, tied her up, raped her at knife point, and then disappeared into the night. Yet, Marie was apparently not seen as credible by the detectives, especially after her foster parent raised the specter of doubt. Was this because Marie was young (only 18 years old), and/or because she grew up in foster care and had a history of abuse? Or was it because of the doubt raised by her foster parent? Was it a combination of these factors, along with Marie's demeanor and (minor) inconsistencies in her account? While we cannot know for certain, what we do know is that the detectives chose to interrogate the victim until she agreed to recant – rather than conduct a thorough, methodical, and evidence-based investigation. This was in spite of compelling physical and corroborative evidence. This example illustrates the powerful role that victim credibility plays in the police response to rape and sexual assault, and the extent to which gender-based stereotypes influence perceptions of credibility.

Then there is Sara Reedy's case in Pennsylvania. Joanne Archambault was asked to serve as an expert witness in Reedy's lawsuit. In that role, she reviewed the case files, supporting documentation and numerous depositions. Archambault found numerous failures during the course of the investigation, which centered exclusively on Reedy, and not the suspect. As just one of the many problems identified, two of the patrol officers who responded to the radio call, and the case detective, all noted that Reedy's "fake crying" was seen as a cause for suspicion, and indeed, evidence that she was lying. In his deposition, the detective stated that he had never attended training on sexual assault response or investigation, but he had received "some training on fake crying."[4]

Research conducted with 45 sexual assault investigators from the Houston Police Department similarly revealed that "investigators reported assessing the sincerity of victims' emotions, looking for 'real' versus 'fake' tears" (Campbell, 2015, p. 34).

> *Although most investigators agreed that displays of emotion enhance victim credibility, some looked for 'flat affect' and interpreted 'excessive' emotionality with caution* (Campbell, 2015, p. 34).

In other words, investigators seemed to agree that victim behavior is relevant to identifying credibility and truthfulness. What they did not agree on was the type of behavior that would identify deception. In recent years, training has increasingly focused on neurobiological research illustrating that there is no "typical" response to sexual assault, or any traumatic event for that matter (Campbell, 2012; Wilson, Lonsway & Archambault, 2017). There is therefore no set of behaviors that necessarily indicate deception, rather than traumatic impact. Assessing truthfulness on the basis of any victim behavior, whether "fake crying" or a "flat affect," is not an evidence-based evaluation, but an opinion-based judgment that is profoundly informed by stereotypes about how victims should behave in the aftermath of a sexual assault.

As noted in the previous bulletin in this series, there are a number of common stereotypes and attitudes that have been shown to influence criminal justice responses to sexual assault. These are often based on victim characteristics or behaviors, such as "voluntary victim intoxication," "inconsistent statements," "mental deficiencies," "previous sexual relationship with the suspect," "inability to recall details of the assault," "delayed reporting of the assault," and "engaging in prostitution" (Campbell et al., 2015, p. 30-1). These findings show a pattern of gender-based stereotypes regarding appropriate behavior for women, and attitudes that shape who is viewed as having intrinsic value or credibility. That is, women who behave outside of the realm of what is considered appropriate run the risk of being viewed as unworthy of society's protection, culpable for their own sexual victimization, and not believable in their report. Their motivation may be seen as hiding consensual sexual activity, gaining attention, or enacting revenge on a man. As a result, law enforcement investigators and others may justify their actions –

[4] This quote is taken from the case materials in *Reedy v. Evanson*, 615 F.3d 197, 203–04 (3d Cir. 2010).

or the lack thereof – by stating that the victim was not credible, and therefore the case was not legitimate.

Indeed, research has shown that perceived inconsistencies in the victim's account, like in Marie's case, are often used to justify curtailing an investigation, frequently before it has even begun (Avalos, 2016). Investigations are also cut short when victims are perceived as being "uncooperative" or even belligerent with officers.[5] This type of behavior may simply be a response to trauma, or it may be the result of how they were treated by criminal justice professionals, health care providers, or others. When sexual assault victims receive poor treatment, whether it is blatant skepticism, hostile interrogation tactics, or other forms of mistreatment, it is not surprising that they frequently respond by withdrawing their participation or even becoming angry and "uncooperative." Some even recant.

Yet again, these patterns speak to the gender-based stereotypes and attitudes that fuel a widespread belief that women routinely lie about sexual assault.

> *Officers continue to exhibit an unjustified skepticism of rape complainants, while others interpret such things as a lack of evidence or complaint withdrawal as "proof" of a false [report]* (Rumney, 2006, p. 142).

In other words, when criminal justice professionals and others believe they have identified inconsistencies in the victim's account, they often use this finding to confirm their belief that the victim is lying, and has filed a false report. This highlights the degree to which implicit bias can influence our assessments, our opinions, and even our behaviors. Ultimately, it speaks to the concrete need for each of us to identify and confront our own gender-based stereotypes and attitudes, to ensure that we don't participate in a miscarriage of justice, like in Marie's and Sara Reedy's case.

Prosecutions for Filing a False Report

These issues are articulated in a study conducted by the English Crown Prosecution Service (CPS) in 2013, to examine cases involving "allegedly false allegations of rape or domestic violence, or both" (p. 2). In that study, a total of 121 rape cases were examined where prosecution was considered for filing a false report.[6] Yet analysis revealed that many of those cases did not appear to be false reports – or even if they were false, they were not made with deliberate intent.

- For example, just over half (51%) of the cases involved young people, many of whom "showed a clear failure to think about (or even awareness of) the seriousness of making an allegation of rape" (p 26).

[5] For discussion of victim cooperation in sexual assault cases, see Kaiser, O'Neal & Spohn (2016).
[6] These 121 cases constituted all of the rape cases considered for prosecution by the Crown Prosecution Service during a 17-month period. Of these, 35 were ultimately charged with the felony crime of "perverting the course of justice," whereas 10 were charged with the misdemeanor offense of "wasting police time." The report begins by contrasting these numbers with the 5,651 prosecutions for rape in the same time frame.

- Almost one in five (19%) of these individuals had "mental health difficulties." In some of these cases, it was clear that the person "did not understand the legal definition of consent" (p. 31).

- Almost half (46%) of the cases were initially reported by a third party (more than half of which also involved a victim who was under 18 years old). In many of these cases, the person "later reported that the whole thing had spiraled out of control and he or she felt unable to stop the investigation" (p. 14).

- Alcohol and drug use were particularly common in these cases, including those where the person "might have been raped, but could not recall because s/he had drunk alcohol or taken drugs" (p. 32).

In fact, many of the cases included in the CPS study involved no clear allegation of rape at all. This was particularly true when the person was young, where drugs or alcohol were involved, and/or when the report was made by a third party.

- In some cases, the person "had undoubtedly been the victim of some kind of offence, even if not the one which he or she had reported (p. 4).

- In other cases, analysis revealed that there was no evidence to support the charge of a false allegation: "On close examination … there was nothing to show that what she was saying was untrue" (p. 31).

As described by the researchers, some of these victims called police to report that they might have been raped, but they could not recall any details because of their drug or alcohol use. Given the facts described, it is hard to understand what evidence was used to support the probable cause needed to support an arrest and prosecution. The decision to pursue charges was likely based on gender-biased stereotypes and attitudes that fuel an unwarranted skepticism of sexual assault victims.

Misperceptions about Lie Detection

Another explanation for our skepticism of sexual assault reports has to do with our beliefs and stereotypes about what lying looks like – not just *who* lies, but also for what *purpose*. The ability to detect lies is often seen as a skill set or area of expertise for law enforcement. Yet, research suggests that a person's ability to detect deception is, at best, in the range of 50-60% accuracy (Bond & DePaulo, 2006). Of course, 50% is the level of chance. This 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" (Meissner et al., 2017, p. 443).

Why are we so bad at detecting lies? The first answer is perhaps the most simple – we all lie, and so to that extent, we are all practiced liars. Of course, lies can be nominal and unimportant, or significant and consequential. Take, for example, research documenting that approximately 15-18% of ever-married people in the US have had an

extramarital affair (Laumann et al., 1994). Infidelity is a lie of significance and consequence, but clearly, it is common and routinely goes undetected.

The second answer is that we tend to use well-known, yet entirely inaccurate stereotypes about *what lying looks like.* The two most commonly associated behaviors are gaze aversion and being fidgety (Salter, 2006), but these are not effective indicators of deception.

> *Even the guilty liar probably will not avert his gaze much, since liars know that everyone expects to be able to detect deception in this way … Amazingly, people continue to be misled by liars who are skillful enough to not avert their gaze* (Ekman, 1992, p. 141).

As a result, this framework is useless for detecting deception, and it has the potential to trip up victims of sexual assault, rather than perpetrators. For example, consider the feelings associated with lying, versus a traumatic experience – particularly when the traumatic experience includes an element of shame or secrecy (Salter, 2003):

Deception – Lying	Traumatic Victimization
Guilt about lying	Self-blame
Fear of being caught	Fear of not being believed
Excitement about lying successfully	Shame about what happened

As this comparison illustrates, a liar may feel guilt and fear, but they may also be more aware of these emotional reactions and better able to control them. Thus, a person who has committed a sexual assault, and is being interviewed by law enforcement, will know that the stakes are high, and also know that they need to appear truthful. This gives them an advantage for controlling their responses and demeanor, to avoid the appearance of deception. Also, prior research has shown that many sexual assault perpetrators are serial offenders (e.g., Lisak & Miller, 2002; McWhorter et. al., 2009), so they may be well-practiced at planning and executing an assault, and then subsequently lying about it.

In contrast, victims do not have a plan nor are they practiced, and they typically feel confused, ashamed, and uncertain about how to respond. They may fear that police officers, family members, friends, and other members of their community will doubt or blame them. As a result, they do not generally approach an interview with a goal of appearing believable. Rather, they exhibit manifestations of their fear and uncertainty, and this is layered on top of the guilt and shame that are often associated with sexual assault.

Nonetheless, research has identified that law enforcement professionals feel more confident in their ability to detect deception (Eckman, 1991), and they routinely evaluate victim behaviors and characteristics to determine truthfulness. For example, 29% of Juvenile Sex Crimes investigators interviewed expressed the belief that a victim allegation is false when inconsistencies in statements are present (Campbell et al, 2015). According to one investigator, “willing victims are honest” and have the "ability to

describe the mechanics of what happened," while another suggested that a "true" victim report "does not lack details" (Campbell et al, 2015, p. 33). Perhaps even more relevant, the same interviews revealed that investigators place high importance on "evaluating whether victims' emotional presentations were genuine, noting that contrived displays of emotion were a strong indicator of false reporting" (Campbell et al, 2015, p. 34).

One investigator went so far as describing a method to identify genuine crying, saying that, “the person who is truly upset and crying will have a runny nose along with the tears” (Campbell et al., 2015, p. 34). Crying was not the only identified emotional indicator of truthfulness (or the lack thereof), but there was a general attitude among the investigators that there were certain features to look for on how victims should present.

> *Eye contact, facial expressions . . . the other thing we look for is overdramatization. True victims have a very flat affect, whereas someone that is trying to cover for her own sexual activity will put on a show. Sobbing, yelling and covering their face. That’s a problem* (Campbell et al, 2015, p. 34).

In sum, gender bias, whether explicit or implicit, can fuel the belief that women routinely lie about sexual assault, and this can be reinforced with inaccurate stereotypes about what lying looks like (e.g., someone who does not make eye contact and is physically uncomfortable). When this is coupled with the fact that trauma impairs a person’s ability to record and retrieve memory (for review, see Wilson, Lonsway & Archambault, 2016), the result can be a self-fulfilling cycle of bias reinforcement.

All of this underscores the need to conduct thorough, professional, and evidence-based investigations – rather than drawing on gender-based stereotypes and attitudes, whether explicit or implicit. The responsibilities of law enforcement are summarized in a Concepts and Issues Paper on Investigating Sexual Assaults by the International Association of Chiefs of Police (IACP, 2005). The IACP notes that there are a number of victim behaviors that can be misinterpreted by police – and that these behaviors should not be used as the basis for labeling a report false. This includes (p. 13):

- Victim’s delayed report
- Lack of corroborating evidence
- Lack of cooperation by the victim or witnesses
- Discrepancies in the victim’s story
- Wrong address was given by the victim
- Victim’s drunkenness
- Victim’s drug use
- Victim’s being thought of as a prostitute
- Victim’s sexual history

- Victim's uncertainty of events
- Victim's belligerence
- Victim's failure to follow through with the investigation and prosecution
- Recantation by the victim

The IACP paper goes on to say that, "[e]ven if aspects of the victim's account of the incident are missing, exaggerated, or false, this does not automatically imply that the sexual assault did not occur" (IACP, 2005, p. 13).

Resources: Sexual Assault Response and Investigation

Detailed guidance is available in EVAWI's broad portfolio of training and technical assistance resources. The OnLine Training Institute (OLTI) offers comprehensive modules on topics such as: the preliminary investigation of sexual assault, law and investigative strategy, effective victim interviewing, false reports, and the role of DNA in a sexual assault investigation, among other topics. Also available are recorded Webinars and Training Bulletins, which are archived in our online Resource Library.

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

Eliminating "Red Flags" – Eliminating Gender Bias

In order to overcome the harmful consequences of gender bias in sexual assault response and investigation, we must be willing and able to confront our individual stereotypes and attitudes. That includes eliminating the notion that there are legitimate "red flags" for determining that a report of sexual assault is false. In fact, there are no such "red flags" – there is only evidence, or a lack thereof. A "red flag" is a feeling – and as such, it is likely to produce logical leaps, unfair assessments, poor judgments, and bad decisions. This is perfectly illustrated in Marie's case.

In contrast, to successfully investigate cases of sexual assault we must be willing to suspend our disbelief – to recognize and confront our biases and stereotypes – and then conduct a thorough, methodical, and evidence-based investigation.

Let's put this model in practice with a short, problem-based scenario. In this scenario, your job is to read the case summary and then identify possible explanations and next investigative steps, with the goal of corroborating both victim and suspect statements.

Case Summary:

A woman reported waking up in the middle of the night, shocked to find that she was being raped by a man she had dated briefly. They had not seen each other for several months, but even in the dark, she recognized his voice, his body, and the silhouette of his face.

The woman showered thoroughly and then went to the hospital for a medical forensic examination. Although biological evidence was collected by the nurse, and it was submitted to the laboratory for analysis, no foreign DNA was detected. The nurse also took photographs of some genital abrasions.

There was no sign of forced entry into the home, but there was an unlocked sliding glass door in the dining room that could have been used by the suspect. Fingerprint evidence was collected during the crime scene investigation, but the prints recovered all matched to known individuals. In other words, none of the prints belonged to an unknown individual who might have been the suspect.

Law enforcement contacted the man identified by the victim and learned that he was thousands of miles away at the time of the assault. This was corroborated with airline tickets and hotel records from his trip. Nonetheless, the woman was adamant in stating that she was raped by this man, and she pleaded with the police to continue investigating her report.

Possible Explanations:

Next Investigative Steps:

This case is meant to challenge your instincts and any “red flags” that might be triggered by this scenario. Clearly, the woman, in this case, could be lying, to exact revenge on the man after their relationship ended. There is no conclusive evidence of a rape or home invasion, and the primary suspect has a solid alibi. For many people, this case would appear to be a dead end, at least as far as the suspect who was named by the victim. But what if the woman was telling the truth? What if she was in fact raped by someone – someone who looked and sounded like the man she dated? What would it mean for our concepts of security and access to justice if this woman was afforded no protection or recourse? What would it mean for our society if the perpetrator went undetected and remained free to commit additional crimes?

In fact, this scenario is based on a real case – a case that was solved by a dedicated and open-minded detective who was willing to look beyond the “red flags” and pursue

an investigation, even though it seemed like a dead end. What the detective found was that the man had a twin brother – and that brother, after being confronted, admitted to committing the sexual assault (Benson et al., 1999).[7] Perhaps no case demonstrates more clearly the need for confronting our biases, identifying 'red flags,' and then suspending our disbelief in order to conduct a thorough, methodical and evidence-based investigation.

Conclusion: Gender Bias and False Reports

Research documents many cases where women have wrongly been accused, charged, and even prosecuted for filing a false report, when in fact no real investigation was ever conducted (Avalos, 2016). This reinforces the need to follow recommendations for best practice, as summarized by the IACP and explained in detail in EVAWI's training resources. With such concrete guidance, and extensive tips and tools, responding professionals can avoid being influenced by their "red flags" and gender-based stereotypes, and law enforcement can follow the necessary steps for conducting a thorough, methodical, and evidence-based investigation of every sexual assault report.

Up Next

This concludes the third Training Bulletin in our series on gender bias and sexual assault. The next installment will explore the relationship between gender bias and victim recantations. This includes exploring why victims recant and determining whether criminal justice professionals, knowingly or not, might play a role in encouraging this unfortunate outcome.

[7] Some details were added to this case in order to provide the necessary substance for a case analysis. However, the basic fact pattern that a woman was raped in the middle of the night by someone she previously dated but who turned out to be the twin brother of the man she dated, is true.

References

Alderden, M.A. & Ullman, S.E. (2012). Creating a more complete and current picture: Examining police and prosecutor decision-making when processing sexual assault cases. *Violence Against Women*, 18, 525–551.

Avalos, L. (2016). Prosecuting rape victims while rapists run free: The consequences of police failure to investigate sex crimes in Britain and the United States. *Michigan Journal of Gender & Law, 23(1),* 1-64.

Beichner, D. & Spohn, C. (2012). Modeling the effects of victim behavior and moral character on prosecutors' charging decisions in sexual assault cases. *Violence and Victims*, 27, 3–24.

Benson, C., Fazlollah, M., Matza, M. & McCoy, C.R. (1999, October 7). Serial rape investigation widens to a sixth attack. *The Philadelphia Inquirer.*

Bond, C.F. & DePaulo, B.M. (2006). Accuracy of deception judgements. *Personality and Social Psychology Review, 10,* 214-234.

Campbell, B.A., Menaker, T.A. & King, W.R. (2015). The determination of victim credibility by adult and juvenile sexual assault investigators. *Journal of Criminal Justice, 43,* 29–39.

Campbell, R. (2012, December 3). *The Neurobiology of Sexual Assault: Implications for First Responders in Law Enforcement, Prosecution, and Victim Advocacy*. Recorded webinar for the National Institute of Justice, "Research for the Real World" Seminar.

Crown Prosecution Service Equality and Diversity Unit (2013). Charging Perverting the Course of Justice and Wasting Police Time in Cases Involving Allegedly False Rape and Domestic Violence Allegations. Joint report to the Director of Public Prosecutions.

Page, A.D. (2008). Gateway to reform? Policy implications of police officers' attitudes toward rape. *American Journal of Criminal Justice*, *33,* 44-58.

Ekman, P. (1992). An argument for basic emotions. *Cognition and Emotion,* 6(3-4), 169-200.

Frohmann, L. (1991). Discrediting victims' allegations of sexual assault: Prosecutorial accounts of case rejections. *Social Problems, 38,* 213–226.

International Association of Chiefs of Police (2005, July). *Investigating Sexual Assaults: Concepts and Issues Paper*. IACP National Law Enforcement Policy Center.

Jordan, J. (2004). Beyond belief: Police, rape and women's credibility. *Criminal Justice 4(1),* 29-59.

Kerstetter, W.A. (1990). Gateway to justice: Police and prosecutorial response to sexual assaults against women. *Journal of Criminal Law and Criminology*, *81,* 267–313.

Laumann E.O., Gagnon J.H., Michael, R.T. & Michaels, S. (1994). *The Social Organization of Sexuality: Sexual Practices in the United States.* Chicago: University of Chicago Press.

Lisak, D., Gardinier, L., Nicksa, S.C. & Cote, A.M. (2010). False allegations of sexual assault: An analysis of ten years of cases. *Violence Against Women, 16(2),* 1318-1334.

Lisak, D. & Miller, P.M. (2002). Repeat rape and multiple offending among undetected rapists. *Violence and Victims, 17(1),* 73-84.

Lonsway, K.A., Archambault, J. & Lisak, D. (2009). False reports: Moving beyond the issue to successfully investigate and prosecute non-stranger sexual assault. *The Voice, 3(1),* 1-11. Newsletter for the National Center for the Prosecution of Violence Against Women at the National District Attorneys Association. Reprinted in *The Prosecutor,* 42(4), November/December (2008). National District Attorneys Association.

Lonsway, K.A., Welch, S. & Fitzgerald, L.F. (2001). Police training in sexual assault response: Process, outcomes, and elements of change. *Criminal Justice and Behavior*, *28,* 695–730.

McWhorter, S.K., Stander, V.A., Merrill, L.L., Thomsen, C.J. & Milner, J.S. (2009). Reports of rape reperpetration by newly enlisted male Navy personnel. *Violence and Victims, 24(2),* 204-218.

Meissner C.A., Surmon-Böhr, F., Oleszkiewicz, S., & Alison, L.J. (2017). Developing an evidence-based perspective on interrogation: A review of the US government's high-value detainee interrogation group research program. *Psychology, Public Policy, and Law, 23 (4),* 438-457.

Miller, C. & Armstrong, K. (2015). *An Unbelievable Story of Rape.* ProPublica and The Marshall Project.

Rumney, P. (2006). False allegations of rape. *Cambridge Law Journal, 65(1),* 128-158.

Rumney, P. & Fenton, R.A. (2013). Rape defendant anonymity and evidence-based policy making. *Modern Law Review, 76(1),* 109–133.

Salter, A. (2003). *Predators, Pedophiles, Rapists, and Other Sex Offenders*. New York, NY: Basic Books.

Schwartz, M.D. (2010). *National Institute of Justice Visiting Fellowship: Police Investigations of Rape – Roadblocks and Solutions*, Doc. No. 232667, 1-77.

Schuller, R.A. & Stewart, A. (2000). Police responses to sexual assault complaints: The role of perpetrator/complainant intoxication. *Law and Human Behavior, 24,* 535–551.

Spohn, C., White, C. & Tellis, K. (2014). Unfounding sexual assault: Examining the decision to unfound and identifying false reports. *Law & Society Review*, *48(1),* 161–192.

United States Department of Justice (2015, December). *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence.*

United States Department of Justice, Civil Rights Division (2016, August). *Investigation of the Baltimore City Police Department.*

Wilson, C., Lonsway, K.A. & Archambault, J. (2016, November). *Understanding the Neurobiology of Trauma and Implications for Interviewing Victims.* Training Bulletin, End Violence Against Women International.

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Gender Bias in Sexual Assault Response and Investigation

Part 4: Victim Recantations

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Introduction

This is the fourth installment in our series exploring gender bias in sexual assault response and investigation. In the previous installment we looked at how implicit bias, based on gender-based stereotypes and attitudes, can influence the criminal justice and community assessment of a perceived false allegation. In this Training Bulletin, we explore the relationship between gender bias and victim recantations in cases of sexual assault.[1]

Victim Recantations and Implicit Bias

In the context of a reported sexual assault, a recantation is a retraction of that report, when the victim says that the sexual assault didn't actually happen. However, this might or might not truly indicate that the report is false. In fact, there are many reasons why victims might recant a legitimate report, some of which stem from the influence of implicit gender bias.

"Implicit gender bias" refers to the unconscious use of gender-based stereotypes and attitudes that shape our expectations about men and women. They are present for all of us, and they can influence our thoughts and behavior despite a consciously held world-view to the contrary. Victims, like criminal justice personnel and other responding professionals – even friends and family members – all hold implicit biases and gender-based stereotypes that inform their assessment of a sexual assault. These biases and stereotypes can shape perceptions of what constitutes a sexual assault, who is a credible victim, and whether a report merits the time and attention of criminal justice professionals.

When victims recant, understanding the reasons will therefore require identifying their critical points of influence. The following framework is adapted from a position paper published by the Oregon Attorney General's Sexual Assault Task Force entitled, *False Allegations, Case Unfounding and Victim Recantations in the Context of Sexual Assault*. It identifies numerous sources of influence that can cause victims not to report or to recant.

> **Internal Influences:** Victims may feel embarrassed, ashamed and even uncertain about what happened to them. Victims may believe they are partly responsible for the assault, particularly if they engaged in prior consensual sex or the use of alcohol or drugs. Victims may also fear they will not be believed if they report, especially if their assault does not match society's perception of a stereotypical violent sexual assault.
>
> **External Influences:** Victims may feel pressure from their friends, family or community to report or not report. Victims may feel pressure to hide information

[1] Because this Training Bulletin series explores the influence of implicit bias, it focuses on traditional gender stereotypes and attitudes regarding male perpetrators and female victims. The implications are different for other gender combinations, including female perpetrators, male victims, and same-sex assaults.

about certain behaviors (e.g., drug use, sexual history) or their personal history (e.g., medical records). This pressure could also come from friends and family members, particularly if they were involved in the behaviors as well. In addition, victims may fear losing the support and/or care of a family member or other care provider, as a result of the report.

System Influences: Victims may withdraw their participation, or recant their report, due to lengthy investigative delays, slow court dockets, or other setbacks in the process. Victims may also experience doubt, blame, or other forms of non-support by professionals working inside or outside the justice system, leaving them with tangible concerns about their protection and perceived credibility.

Socio-Cultural Influences: Besides not being believed, victims may feel very uncomfortable about specific acts involved in the assault (e.g., oral copulation, sodomy). Victims may also be subject to isolation from their community (e.g., high school peer group, cultural or ethnic group), particularly if the offender is well liked and respected within that community. Victims may experience disapproval from family, co-workers, and other typical support groups (e.g., the faith community). Victims from certain cultural or ethnic groups (e.g., African-American, Latino, Native American) may be especially reluctant to participate in the criminal justice process, if they believe their community has historically experienced mistreatment or injustice from that system.

For victims who are undocumented immigrants, or might be perceived as being undocumented immigrants, there might be additional fear that they will be viewed as less credible or likely to become subject to inquiries related to their immigration status. Finally, victims who have a criminal history or who engage in work or activities that are criminalized (e.g., prostitution) may be reluctant to participate in the process, out of fear that they will be doubted, blamed, mistreated, or even penalized by the legal system.

Implicit gender biases can affect any of these critical influence points. For example, any sexual assault victim who engages in behaviors like drinking, drug use, or consensual sexual activity might experience shame and fear of consequences as a result of reporting, but this might be particularly pronounced for female victims, since these behaviors are especially frowned upon for girls and women. Similarly, any victim might experience blame and shame as a result of perceived lack of credibility or worth, but this might be particularly pronounced for female victims, particularly women of color, especially in contrast with male offenders who have privilege based on their gender, race, status, or other characteristics. In addition, trauma could interfere with the process of memory retrieval, limiting the victim's ability to participate in the legal process. This has gender implications, because it plays into the stereotype of women as unreliable or untruthful.

The Influence of Trauma

Research on the neurobiology of stress and trauma helps us to understand how traumatic memories are generally recorded and retrieved. This research clearly

indicates that traumatic experiences can be incompletely recorded and are often not retrieved in a manner that is linear or otherwise appears logical to those listening. For example, traumatic memories can primarily consist of sensory details, lacking the scaffolding of a step-by-step account of the assault. Yet this is the very thing investigators want when taking a victim statement. This can be further complicated by the way stress can impair memory retrieval. Fear and anxiety can block the retrieval process as a protection mechanism, exacerbating already fragmented and sometimes out-of-order memories.

Memory retrieval can be shaped by self-concepts, so the process of retrieving a traumatic memory can be filtered through implicit gender-based stereotypes and other implicit biases. This means that recall of a traumatic sexual assault experience could be shaped and informed by that individual's implicit biases regarding what "real rape is," who is a legitimate victim, and who is likely to be a perpetrator. Victims may also feel like they are to blame at an unconscious or implicit level – and this in turn will influence both their behaviors and how they recount their memory of the assault.

Stepping Off the Train

Another primary reason why victims recant is to bring the criminal justice process to a halt, whether that includes a law enforcement investigation, medical forensic exam, or criminal prosecution of their case. When someone reports a sexual assault to law enforcement, this can trigger a process that feels like a freight train running through their lives. Recanting may feel like the only way to "step off the train."

In an article entitled, *Why do Victims "Lie"?* the National Council of Juvenile and Family Court Judges (NCJFCJ) note that victims often recant as a result of distrust in the criminal justice system, or fear of the potential consequences of engaging with the system. These consequences include the fear of not being believed, fear of being mistreated, fear of the report going public, and fear of potential reprisal by the suspect or his friends and family.

> *Victims who report… do so because they believe they will be safer. If that safety does not materialize, or if, in fact, the report and ensuing proceedings worsen the danger, the victim no longer has any motivation to pursue court-based remedies, and a victim who encounters disbelief and skepticism (i.e., victim-blaming) when attempting to make a report will have no reason to report future [incidents]. A victim's lack of belief in the justice system's ability to provide safety should be of grave concern to all involved.*[2]

This quote highlights the importance of the criminal justice and community response in determining whether victims will continue to participate in the process – or recant and withdraw. Indeed, there is a growing body of evidence linking victim recantations in

[2] *Why do Victims "Lie"?* Amanda Kay and Ryan L. Gonda, National Council of Juvenile and Family Court Judges, Victim Series 7, April 21, 2015.

sexual assault cases to the response they encounter by law enforcement and other responders.

Coerced Recantations and Failure to Investigate

Unfortunately, there are examples both in the US and abroad, of investigators who go as far as using coercion and threats to compel victims to recant and "admit" to filing a false report. Consider the case of Marie [not her real name], which was described in a previous Training Bulletin in this series. Marie was prosecuted for filing a false report despite compelling physical evidence that she had been bound, gagged, and raped by a stranger who broke into her home. Following a call from Marie's foster mother suggesting that the report might be false, Marie was extensively interrogated by detectives. Eventually, Marie gave in and wrote a statement indicating that she made up the story. She was fined $500, sent to counseling for lying, and placed on supervised probation. Her name was only cleared after the rapist was captured for a series of sexual assaults in another state.

Another case followed a similar pattern. A visually impaired woman named Patty was raped and sodomized at knifepoint, also by a stranger who broke into her home. Again, there was compelling evidence of the sexual assault, including significant physical injuries, yet when Patty reported the crime, it was clear the detective did not believe her. She was subjected to a grueling interrogation, where she was provided false (indeed, nonsensical) information about her case, and she eventually "confessed" to filing a false report. To defend against this charge, Patty was appointed an attorney who requested that the untested evidence in her case be submitted to the state crime laboratory for analysis. When the results came back with a foreign DNA profile from biological material found on her bedsheet, the charge against Patty was dropped. However, her report of sexual assault was still not investigated. Finally, in 2001 – almost four years after her rape – the DNA profile obtained from the sheet matched with a convicted sex offender named Joseph Bong, who was convicted and sentenced to 50 years imprisonment.

Although it is not possible to say how often sexual assault victims are pressured to recant as Marie and Patty were, there is some evidence that this occurs more often than we would expect. Consider the following:

- An investigation conducted by the US Department of Justice (DOJ), Civil Rights Division, into the policies and practices of the New Orleans Police Department, found that their response and investigation of many sexual assault reports "clearly reflected a focus on and effort to, from the outset, 'prove an allegation is false'" (DOJ, 2011, p. 46).

Similarly, a Human Rights Watch (HRW) report from 2013 concluded that the response of the Metropolitan Police Department (MPD) to rape reports in Washington, DC did not consistently include a thorough investigation. Some investigations were reportedly

carried out with the specific aim of undermining the victim's credibility, rather than investigating the allegation (HRW, 2013).

- In the UK, a study conducted by the British Home Office determined that the culture of skepticism surrounding reports of rape and sexual assault often led police to look for ways to prove that a complaint was false (Kelly, Lovett & Regan, 2005).

In several cases reviewed in the US and Britain, sexual assault victims were invited to the police station under a false pretense (e.g., to answer further questions or to drop off evidence), but then accused of filing a false report. In some of these cases, the victims were not allowed to leave until they admitted to lying, and in others they were threatened with criminal charges that were subsequently pursued (Avalos, 2016, 2017).

Motivations for Professionals and Public

Why would police officers attempt to compel or coerce a victim to recant? Likely for many of the same reasons family members and other loved ones do the same. In Marie's case, two women – both former foster mothers who loved and cared about her – questioned Marie's story, and one contacted the police to say she believed Marie was lying. Stereotypes about what sexual assault looks like and how a victim should respond can produce implicit biases against victims and then influence, on a conscious and unconscious level, how people respond to victims and how cases are handled.

Indeed, confronting the reality of sexual assault is difficult for many people. Many people would rather believe that sexual assault does not happen – that victims are lying or at least exaggerating their claims – to avoid feeling that they or their loved ones are at risk.

Yet it is particularly troubling that some law enforcement personnel approach sexual assault investigations by trying to prove that a complaint is false from the outset. Part of the problem is an inflated sense of how many reports of sexual assault are actually false.

The research literature consistently documents that many police officers significantly overestimate the percentage of false rape reports. One study of 428 police officers found that they believed approximately one in three sexual assault reports (on average) were false (Schwartz, 2010). Another study with 891 police officers found that over half believed up to 50% of victims lied about being raped; an additional 10% thought that 51-100% were lying (Page, 2008). These figures are quite a bit higher than the actual rate of false reports, which is estimated to fall in the range of 2-8% (Lisak et al., 2010; Spohn, White & Tellis, 2014; Kelly, Lovett & Regan, 2005; Lonsway, Archambault & Lisak, 2009).

Another possible motivation is to avoid investigating reports that are believed to have no merit, thereby saving limited resources to respond to "real rapes." Historically, this has been easy, because common victim behaviors were often seen as signs of deception.

In the short term, this practice can reduce workloads for individual investigators or an investigative unit; if they can classify a rape complaint as false, they do not have to investigate it. However, this strategy will inevitably fail over the long term. Any failure to thoroughly investigate sexual assault reports – whether on the part of individual investigators or because commanding officers understaff units that investigate sexual assault, thinking these reports are not a priority – will unfortunately find that such practices are ultimately counter-productive. When perpetrators remain free to re-offend, more sexual assaults are committed, and more cases reported, until they are eventually held accountable. The way to stop this cycle is to thoroughly investigate each and every report of sexual assault. **In other words, a victim recantation is not a benefit to an investigator's workload, or an agency's clearance rate; rather, it is a potential failure to fully engage with a victim, and a lost opportunity to stop a sexual assault perpetrator from re-offending.**

Resources: Caseload for Sexual Assault Investigators

What is the standard caseload for sexual assault investigators? While there is no official industry standard, some informal guidance is available on EVAWI's website.

Recantation Does Not (Necessarily) = False Report

Another part of the problem is the assumption that a victim recantation equals a false report. Yet this is not necessarily the case. The International Association of Chiefs of Police (IACP) emphasizes this point in their Model Policy on Investigating Sexual Assaults:

> *Understand that recantation of any or all aspects of the initial disclosure is not necessarily indicative of a false report. Victims who recant or decline participation in the investigation should not be asked to sign a non-prosecution statement. In addition, the facts of the case, as provided by the victim may change over time. Officers should understand that this does not indicate deception* (IACP, 2017, p. 2).

This is why a recantation alone should not be used as the basis for charging a sexual assault victim with filing a false report or obstruction of justice. The determination that a report is false can only be made when the evidence from a thorough investigation establishes that no sexual assault occurred. Yet even this does not necessarily mean the victim fabricated the claim. Often, incidents are reported that do not meet the legal elements of a sexual assault offense. Victims and their support people are not expected to be legal experts. There are also situations where someone believes they were sexually assaulted, or wonders if they might have been, because they were incapacitated by drugs or alcohol. This is not the same thing as fabricating a claim or filing a false report.
The IACP Model Policy goes on to advise law enforcement agencies to "ensure that polygraph examinations are never conducted on sexual assault victims" (p. 2). This is because polygraphs, and other methods for "lie detection" such as voice stress analyzers and handwriting analysis, actually measure indicators of anxiety and discomfort. As a

result, they are not valid for use with sexual assault victims. This is why VAWA 2005 prohibits the use of the polygraph with sexual assault victims. Failure to comply with this prohibition can jeopardize an entire state's access to critical federal funding.

Resources: Polygraph and Sexual Assault Investigation

For more information please see the EVAWI Training Bulletin entitled, *VAWA 2005 Restricts the Use of Polygraphs with Victims of Sexual Assault*. Also helpful is a research report published by the National Sexual Violence Resource Center (NSVRC), entitled *The Use of Truth-Telling Devices in Sexual Assault Investigations.* In addition, NSVRC posts a list of state laws regulating polygraph use in the US.

False Reports and the Media

When someone is prosecuted for falsely reporting a sexual assault, this will often generate significant media coverage. This is seen both in the US[3] and the UK,[4] where several highly publicized jury trials involved prosecution of a rape complainant for "perverting the course of justice" (the British charge for filing a false report to law enforcement.) One such complainant committed suicide three days before her trial in 2014,[5] and another received a ten-year prison sentence in August 2017.[6]

In addition to the trauma such media coverage inflicts on disbelieved victims, this type of publicity also potentially undermines the willingness of other sexual assault victims to trust the police, thereby reducing the likelihood that they will come forward to report or even seek community services such as medical care and advocacy. It also reinforces, in the eyes of the public, the gender-based stereotype that women routinely lie about being sexually assaulted.

As previously noted, a minority of rape reports are estimated to be false (2-8%). Yet as many as 80-95% of sexual assaults go unreported (for review, see Lonsway & Archambault, 2012). This means that, statistically speaking, the more significant problem with sexual assault is under-reporting, not falsely reporting. The solution is therefore to

[3] See, for example: "Cranberry woman to stand trial on charges of falsely reporting sexual assault," Shelly Bradbury, *Pittsburgh Post-Gazette*, September 29, 2017; "False sexual assault reports impact real victims," Zuzanna Sitek and Dillon Thomas, *5News Online*, March 9, 2015; "Denison teen indicted for false claim that she was kidnapped, raped," Michael Hutchins, *Herald Democrat*, July 26, 2017; "University of Alabama student lied about weekend rape, now under arrest, authorities say," Carol Robinson, *The Birmingham News,* November 18, 2016. Also see: "When sexual assault victims are charged with lying," Ken Armstrong and T. Christian Miller, *New York Times,* November 24, 2017.
[4] See, for example: "Layla's story: Jailed after reporting a sexual assault," by Simon Hattenstone and Afua Hirsch, *The Guardian*, August 12, 2011; "Woman gets two years for false rape claims," Steven Morris, *The Guardian*, March 4, 2010; "Trainee barrister jailed for false rape claims," Steven Morris, *The Guardian*, June 26, 2014; "Rape victim falsely accused of lying by police wins £20,000 payout," Sandra Laville, *The Guardian*, May 22, 2015.
[5] "Eleanor De Freitas 'killed herself ahead of rape claim trial,'" *BBC News*, March 17, 2015.
[6] "Woman jailed for 10 years for making series of false rape claims," Press Association, *The Guardian*, August 24, 2017.

create a safe and supportive environment for victims to come forward with disclosures of sexual assault, not a harsh and punitive environment based on the possibility that they are false reports. The reality is that a thorough, evidence-based investigation is the best way to uncover false reports, just as it is the best way to successfully investigate and prosecute sexual assault cases, when the facts and evidence warrant.

Confronting Implicit Biases

Unfortunately, judgments about sexual assault are often made based on a foundation of biases and stereotypes, rather than the facts or evidence in the actual case, or a broader knowledge about sexual assault. And while criminal justice and community responders have improved their awareness of *consciously held* stereotypes and biases, less work has been done to understand the impact of *unconscious* biases and stereotypes.

Tackling unconscious stereotypes and biases requires acknowledging that they exist, despite a consciously held world-view with beliefs and values that are in opposition to them. The next step is to engage in a conscious process that limits the influence of both consciously and unconsciously held biases and stereotypes. Indeed, the only sure way to mitigate the negative effects of implicit bias is to use a systematic and thorough investigative process that does not rely on intuition, opinion, or other "gut" instincts.

The Starting Place

Start by Believing is a global awareness campaign developed by EVAWI to overcome a primary source of bias in sexual assault cases – the belief that victims fabricate reports out of revenge, a desire for attention, or as an excuse for their own questionable behavior. Although victims do often lie about specific aspects of the sexual assault, obscure facts and circumstances, or fail to disclose all the details of the events before, during, and after the assault, this is not necessarily evidence that the report of sexual assault is false.

The Start by Believing campaign recommends that all reports of sexual assault should be approached from the position that they have merit – and then thorough, professional and evidence-based investigations should be undertaken to make a final case determination. The facts and evidence may support a determination that the elements of a sexual assault offense have been met and the case should be referred for prosecution, or that the elements have not been met and the case should be unfounded either as false or baseless. Or, the facts and evidence may be insufficient to make a determination, in which case the investigation should be suspended or inactivated, not unfounded.

Yet, implicit bias research shows that our brains can influence our decision-making by automatically shaping how we understand and assess the world around us. That means that even if investigators approach a sexual assault report from an orientation of Start by Believing, it is still possible that subtle (and sometimes not so subtle) behaviors by the victim, statements by the offender or witnesses, or the evidence itself, might influence our judgments in ways that are not actually aligned with the facts in the case.

This is why it is too important to systematize our response to sexual assault. Overriding unconscious bias requires the use of a systematic, step-by-step process that can facilitate a more objective and impartial response. Standardized guidance and procedures can support more consistent and improved practices at the individual and institutional level.

Resources: Guidance for Sexual Assault Investigations

The International Association of Chiefs of Police (IACP) has developed several resources to assist law enforcement agencies in their response to sexual assault. This includes a Supplemental Report Form and Investigative Guidelines with guidance for preliminary response, follow-up investigation, interviews, and case documentation. There is also a training video that can be used with the corresponding discussion guide

In addition, EVAWI has numerous modules in the OnLine Training Institute (OLTI) that offer detailed recommendations for a thorough, evidence based investigation of a sexual assault report. One is the OLTI module: *Crime Scene Processing and Recovery of Physical Evidence from Sexual Assault Scenes*. This particular module describes the systematic, meticulous, and scientific process that law enforcement investigators should employ in every major criminal investigation. This process can be used to:

- Document and preserve a location where criminal activity is known or suspected to have occurred;
- Facilitate the location and recovery of physical evidence which can help prove the elements of an offense;
- Generate individual investigative steps and an overall investigative plan; and
- Facilitate the identification of participants, such as witnesses and suspects.

This process is the foundation on which the entire investigation is built. It therefore helps to prevent bias, by combating a natural inclination to form premature conclusions.

Recommended Policies and Procedures

Policies and procedures can help to prevent the influence of implicit biases, by assisting law enforcement professionals to conduct thorough, evidence-based investigations of sexual assault. Some of these recommended policies and practices are detailed below.

1. **A thorough investigation is required in response to every report of sexual assault, where this reflects the victim's wishes.**[7] This cannot be successfully accomplished while working from an orientation that sexual assault reports are "false until proven true." Instead, all competing hypothesis must be investigated, so inappropriate assumptions and premature conclusions are not based on biases or unwarranted assumptions about whether a report is legitimate. When victims recant, the possible reasons and motivations for recantation should be explored.

2. **Investigators should never pressure victims to recant or threaten to arrest them if they don't "confess" to filing a false report.** Investigators should also be alert to the possibility that friends and family members may be pressuring victims to recant. Law enforcement can help to address this concern, and ensure that victims have the support they need to remain engaged with the criminal justice process. Victim advocates play a critical role in providing this support for victims.

3. **Investigators are prohibited from using polygraphs or other truth telling devices such as voice stress or handwriting analysis, to attempt to determine the validity of a sexual assault complaint**. Because such methods actually measure indicators of anxiety and discomfort, they are not valid for use with sexual assault victims. The polygraph is prohibited for use with sexual assault victims by VAWA, and a failure to comply can jeopardize a state's access to federal funding.

4. **A recantation alone should not be used as the basis for charging a sexual assault victim with filing a false report or obstruction of justice.** The determination that a report is false can only be made when a thorough, evidence-based investigation establishes that no sexual assault occurred.

5. **Supervisors should review clearance rates of individual investigators and investigative units, particularly with respect to "unfounded" reports.** An unusually high (or frankly low) percentage of unfounded reports could be a sign that investigators are not conducting systematic, thorough, and professional sexual assault investigations. Direct supervisors and managers should also routinely evaluate case dispositions to understand the dynamics of case attrition. How many cases are "falling out" of the criminal justice process (and at which stage)? What are the characteristics of those cases? This analysis can then be

[7] There is a welcome national trend toward implementing alternative reporting options for sexual assault, allowing victims a variety of ways to engage with law enforcement. This includes non-investigative reporting, where victims can provide law enforcement with as much, or as little, information about their sexual assault as they choose, without triggering a full investigative process. For detailed information on the philosophy and implementation, please see our OLTI module on *Opening Doors: Alternative Reporting Options for Sexual Assault Victims.*

used to improve law enforcement investigations and outcomes for sexual assault cases.

Resource: Clearance Methods

For detailed guidance on how to properly clear or otherwise close sexual assault cases, please see the OLTI module: *Clearance Methods for Sexual Assault Cases*. A more concise discussion of the issues surrounding clearance methods and supervision can be found in this training bulletin.

Conclusion

This concludes our series of Training Bulletins on *Implicit Gender Bias and Sexual Assault Response and Investigation*. It also highlights the importance of our broad portfolio of training materials on law enforcement response and investigation of sexual assault Research on implicit bias underscores the need for thorough, professional, and evidence-based investigations. A systematic and impartial investigation will seek to avoid drawing on gender-based stereotypes and attitudes at every step of the process. Indeed, threatening to charge complainants with filing a false report unless they retract, using victim recantations as the basis of false reporting charges, and approaching sexual assault investigations by trying to prove that an allegation is false, are all unacceptable practices based on implicit and explicit biases – and contrary to evidence-based research.

A quality professional response to sexual assault includes using this guidance on gender bias, as well as other training resources, to ensure that law enforcement professionals (1) understand their obligation to fully investigate each report of sexual assault and (2) are equipped to encourage victim participation and disclosure through the use of best practices. Moreover, following best practices can minimize the risk that victims will disengage with the criminal justice system by retracting their complaints. This, in turn increases the opportunities to identify, arrest, prosecute, and hold offenders accountable.

References

Avalos, L. (2016). Prosecuting rape victims while rapists run free: The consequences of police failure to investigate sex crimes in Britain and the United States. *Michigan Journal of Gender & Law, 23(1),* 1-64.

Avalos, L. (2017). Policing rape complainants: When reporting rape becomes a crime. *Journal of Gender, Race and Justice*, 20, 459-508.

Human Rights Watch (2013). *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia.* Washington, DC: Human Rights Watch.

International Association of Chiefs of Police (2017, October). *Model Policy: Investigating Sexual Assaults.* Alexandria, VA: IACP National Law Enforcement Policy Center.

Kelly, L., Lovett, J. & Regan, L. (2005). *A Gap or a Chasm? Attrition in Reported Rape Cases.* Home Office Research Study 293. London, UK: Home Office Research, Development and Statistics Directorate.

Lisak, D., Gardinier, L., Nicksa, S.C. & Cote, A.M. (2010). False allegations of sexual assault: An analysis of ten years of cases. *Violence Against Women, 16(2),* 1318-1334.

Lonsway, K.A. & Archambault, J. (2012). The "justice gap" for sexual assault cases: Future directions for research and reform. *Violence Against Women, 18(2),* 145-168.

Lonsway, K.A., Archambault, J. & Lisak, D. (2009). False reports: Moving beyond the issue to successfully investigate and prosecute non-stranger sexual assault. *The Voice, 3(1),* 1-11. Newsletter for the National Center for the Prosecution of Violence Against Women at the National District Attorneys Association. Reprinted in *The Prosecutor,* 42(4), November/December (2008). National District Attorneys Association.

Page, A.D. (2008). Gateway to reform? Policy implications of police officers' attitudes toward rape. *American Journal of Criminal Justice*, *33,* 44-58.

Schwartz, M.D. (2010). *National Institute of Justice Visiting Fellowship: Police Investigation of Rape – Roadblocks and Solutions*. National Institute of Justice, Office of Justice Programs, US Department of Justice (NCF 2322667).

Spohn, C., White, C. & Tellis, K. (2014). Unfounding sexual assault: Examining the decision to unfound and identifying false reports. *Law & Society Review, 48 (1),* 161-192.

US Department of Justice (2011, March 16). *Investigation of the New Orleans Police Department*. US Department of Justice, Civil Rights Division.