



# EVAWI

End Violence Against Women International

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Start by  
Believing

## Detailed Response to False Claims About Start by Believing May 4, 2018

This document was written to refute points made in a [letter](#) sent by the Center for Prosecutor Integrity (CPI) to the Office of the Inspector General (OIG) of the United States Department of Justice. CPI's letter was dated February 2, 2018, and it came to our attention because someone posted it on our Start by Believing website. In that letter, CPI accuses our organization of abusing federal grant funds through content provided in our training materials for law enforcement and our Start by Believing campaign. This accusation is demonstrably false and malicious, as we document in the pages to follow. It is therefore not surprising that this accusation went nowhere.

To the contrary, EVAWI has faithfully fulfilled the goals of each award and met our grant objectives. Our stewardship of federal grant money has been characterized by honesty, integrity and transparency, as confirmed with a successful audit conducted each year. Furthermore, the Start by Believing campaign is not supported with federal funds, as we will explain below. EVAWI has used our own discretionary funds to develop campaign materials and disseminate them with funding from non-federal sources.

Perhaps most important, EVAWI's training materials, publications, and campaigns consistently support the concepts of fair and unbiased investigations and due process for victims and suspects. In other words, they do not abuse the public trust. Rather, they promote greater trust between law enforcement and the public to ensure that sexual assault cases will be investigated thoroughly and handled correctly.

Before responding to CPI's false claims in detail, it is important to understand who they are, and what their mission is. As stated on their website, CPI is "working to strengthen prosecutorial ethics, promote due process, and end wrongful convictions." They also note that they partner with two additional organizations: Stop Abusive and Violent Environments (SAVE)<sup>1</sup> and the Coalition to End Domestic Violence.<sup>2</sup> In fact, this is more than a partnership; there is such extensive overlap in the people and publications from these organizations, they can be seen as largely interchangeable.

### "Partner" Organizations

As one example of the interchangeability of these organizations, there is a report posted on the SAVE website, entitled *'Believe the Victim: The Transformation of Justice'*. It was reportedly written by Christopher Perry with editorial assistance by Nasheia Conway.

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<sup>1</sup> The website for [Stop Abusive and Violence Environments \(SAVE\)](#) states that they are "working for policy reform to protect all victims, support due process, and stop false allegations."

<sup>2</sup> According to its website, the [Coalition to End Domestic Violence](#) advocates reforming VAWA "to address the causes of domestic violence, become responsive to the wishes of victims, support families, end over-criminalization, and respect constitutional protections."

These two individuals are also listed as the first two staff people on the CPI website, and a virtually identical report is posted on their website with CPI's logo replacing SAVE's. Much of the same language is also included in their letter to the OIG.

It is therefore worth noting that the Southern Poverty Law Center (SPLC) designated SAVE as a [misogynist website](#) in the Spring 2012 issue of their *Intelligence Report*. These websites were described as “dedicated to savaging feminists in particular and women, very typically American women, in general.” As the SPLC noted, the tagline for SAVE is: “Protecting victims, stopping false allegations, ending abuse.” Yet, as the SPLC pointed out, SAVE's practice is different:

*In practice, that means lobbying to roll back services for victims of domestic abuse and penalties for their tormentors, while working to return the focus to the “true victims of abuse” – the falsely accused.*

For CPI, the mission appears to be similar, but the focus is on sexual assault. In fact, CPI particularly focuses on campus sexual assault, although they frequently conflate arguments about the criminal justice system with campus disciplinary procedures.

### **CPI's Letter to the OIG**

CPI's letter to the OIG dated February 1, 2018 accuses EVAWI of abusing federal funds because our training materials and programs “challenge “the notion of accurate and truthful investigations” and espouse “investigative concepts and methods” that undermine investigative neutrality.” In a sweeping statement, CPI also contends that EVAWI's “investigative methods and materials ... vitiate fundamental ethical principles of investigators, undermine citizens' right to a fair and neutral investigation, threaten the integrity of judicial determinations and make wrongful convictions more likely.”

We disagree in the strongest possible terms, as we will explain in the following pages. However, it is critical to address this issue of federal funding, because the accusation continues to be repeated in various sources, including an article dated March 20, 2019 on [The College Fix](#) website, indicating that SAVE was publishing a Change.org petition “to convince U.S. Attorney General William Barr to revoke Justice Department funding to ‘Start by Believing’ programs, which have thus far received nearly \$9 million in federal grants.” The article goes on to say that, “Just last fall, DOJ's Office of [sic] Violence Against Women awarded a \$400,000 grant to such programs.” Neither claim is true.

The statement about \$9 million was linked to EVAWI's [Grants page](#) where we list the public *and private* grants we have received to date. None of these grants were awarded to support the Start by Believing campaign, including the \$400,000 grant we received from the Office on Violence Against Women (OVW) in October 2018. It is yet another example of the blatantly false statements made by this unethical organization.

### **Start by Believing Campaign Not Supported with Federal Funds**

First, we must state in the clearest possible terms that the Start by Believing campaign is not supported with federal funds. It was originally developed with our own discretionary

funds, and campaign materials continue to be printed and disseminated with funding from non-federal sources (discretionary funds, donations, and in-kind contributions). Non-federal funds are also used to support individual campaigns, to promote the campaign nationally through our email communications, and to design, update, and maintain our Start by Believing website.

*Since 2010, EVAWI has spent more than \$660,000 of our own discretionary funds to develop, promote, and sustain the Start by Believing campaign.*

However, Start by Believing is more than just a campaign. It is a philosophy designed to improve public reactions to sexual assault and enhance professional responses both inside and outside the criminal justice system. A key objective is to promote system-level reforms within law enforcement agencies, to ensure sexual assault reports are investigated thoroughly and professionally. Because this is also a key objective for our grant awards, we *have* used federal funding to support project activities that mention, include, or incorporate the Start by Believing philosophy.

To provide an example of the distinction, EVAWI published a Training Bulletin in August 2017 with the title, [Start by Believing to Improve Responses to Sexual Assault and Prevent Gender Bias](#). It was written primarily for investigating officers who might be challenged on the stand during a sexual assault trial to defend against an allegation of bias resulting from their participation in a Start by Believing campaign or initiative. This Training Bulletin was supported with federal funding, which was awarded to EVAWI for the purpose of improving law enforcement responses to sexual assault and preventing gender bias.<sup>3</sup> Throughout the Training Bulletin, readers are reminded that this is not an issue that is limited to the Start by Believing campaign or philosophy. Investigating officers must be prepared to defend against allegations of bias resulting from their association with any initiative that is “victim-centered” or “trauma-informed.”

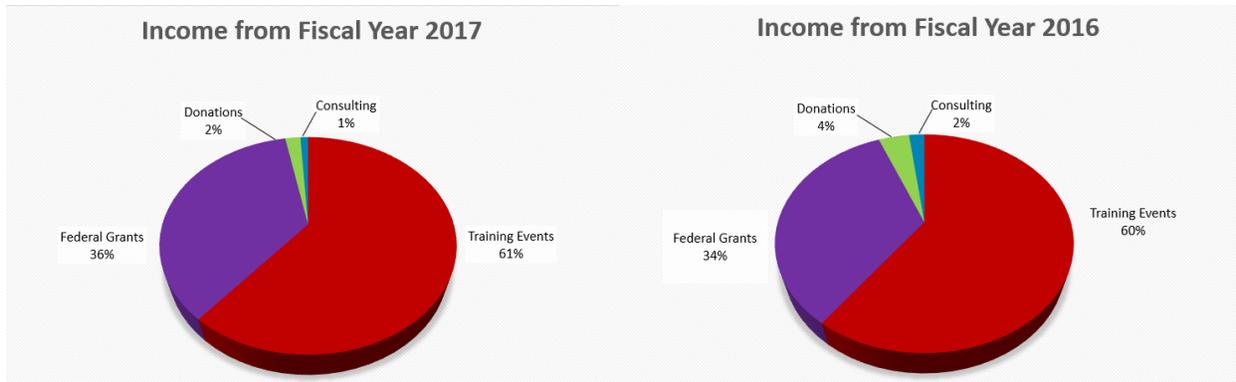
### **Most of EVAWI’s Funding from Non-Federal Sources**

We also want to make it clear that most of EVAWI’s funding comes from sources other than federal grants. As the graphs below illustrate, only 36% of our funding in 2017 came from federal grants.<sup>4</sup> Our own training events, supported with registration fees, accounted for 61% of our income, 2% came from donations, and 1% came from consulting fees. A similar pattern was seen in 2016. In that year, 60% of our funding came from our own training events, 34% from federal grants, 4% from donations, and 2% from consulting fees.

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<sup>3</sup> OVW Grant No. 2016-TA-AX-K010 was awarded to EVAWI in October 2016, with the stated purpose of providing *Comprehensive Training and Technical Assistance for Law Enforcement on Sexual Assault to Prevent Gender Bias*.

<sup>4</sup> We present financial information from 2017, because our 2018 audit report is not yet available.



EVAWI has completed a successful independent audit every year since our founding in 2003, even though it was not required by law or by the federal grant requirements of the U.S. Department of Justice until 2018 when EVAWI met the single audit threshold.

### Larger Strategy of Intimidation

We believe the behaviors of CPI and SAVE are part of a larger strategy to intimidate those working to address the rampant problem of sexual assault in this country, as well as survivors and their support people who speak out about their personal experiences.

For more than two years, CPI and SAVE have been sharing social media posts from EVAWI and Start by Believing, with comments based on a mischaracterization of what the post or campaign actually says. These posts often include, and then generate, derogatory and violent comments targeted at specific individuals and organizations, including survivors, their loved ones, and organizations involved in Start by Believing. It is one thing to attack EVAWI and Start by Believing, but it is quite another to attack survivors and their loved ones who have the courage to speak out about their experiences. CPI and SAVE have repeatedly done both on our social media sites.

We learned recently that CPI has stepped up efforts to disparage EVAWI's vital work by sending letters [such as these](#) directly to police departments and prosecutor's offices, repeating false information and mischaracterizations of our training materials for law enforcement and the Start by Believing campaign, suggesting that the messages contained in these materials violate standards of professional integrity. EVAWI will no longer stand by silently and tolerate this hostility, harassment, and attempts to interfere with our charitable mission by casting aspersions on our philosophy and programs.

We believe the true purpose is to derail the progress that has been made in promoting victim-centered and trauma-informed approaches to sexual assault investigations. If we do not Start by Believing the accounts of survivors, as a first step to conducting thorough, fair, and professional evidence-based investigations, perpetrators will remain free to abuse others. This violence can continue unchecked for decades, as so painfully demonstrated in the cases of Dr. Larry Nassar, Bill Cosby, and perpetrators within the Catholic Church. As one of the women assaulted by Nassar said, as she stood with others at the 2018 ESPY Awards, "If just one adult had listened, believed, and acted, the people standing before you on this stage would have never met him."

## Constitutional Protections

We also challenge the idea that a Start by Believing philosophy means law enforcement investigations are biased against the suspect. When someone reports that they were sexually assaulted, the best approach for gathering information is to Start by Believing. For a crime as intensely personal and humiliating as sexual assault, victims will only be able to provide the necessary information within a safe and trusting environment.

This does not mean the investigator assumes that a crime was committed, that the elements of an offense have been met, or that the suspect is guilty of committing any crime. It isn't a simple matter of "one or the other." Questions such as these can only be answered with a thorough and professional evidence-based investigation. EVAWI's training materials are designed to help law enforcement accomplish that goal by improving their knowledge and skills in effective investigative strategies and techniques.

To that extent, EVAWI's position is squarely aligned with Constitutionally-protected due process rights for those identified as suspects or defendants during a criminal investigation or prosecution. We reject any implication from CPI or SAVE that our programs and training materials erode these long-existing legal protections.

## Fair, Unbiased, and Evidence-Based Investigations

EVAWI clearly understands the critical importance of ensuring suspects receive due process and other constitutional protections. Our materials consistently emphasize the importance of conducting thorough, unbiased investigations, and we highlight that this is the only way to exclude suspects and exonerate the wrongly convicted – just as it is the only way to support a successful criminal prosecution when the facts and evidence warrant. Without a thorough investigation, a crime report with a named suspect will linger unresolved, meaning a lack of closure for both victim and suspect, and the real possibility that a sexual assault perpetrator will go on to commit more crimes.

Below, we provide just a few quotes from EVAWI training materials that make this point:

OnLine Training Institute (OLTI) module, [Interviewing the Victim: Techniques Based on the Realistic Dynamics of Sexual Assault](#) (May 2007)

- *In other words, investigators must focus their efforts – from the initial response to court testimony – on corroborating every possible aspect of the victim's report. Of course, this same effort will also be made to investigate the facts provided by suspects and witnesses. The bottom line is that investigators must be neutral fact-finders and that any decisions and conclusions should be evidence-based (p. 12).*

OLTI module, [False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault](#) (May 2007)

- *In fact, a thorough investigation is the only way to achieve due process, because it is the only way to include or exclude suspects, hold perpetrators accountable, and*

*exonerate the wrongfully convicted. If no investigation is conducted, the report simply remains a question mark, with no basis for a legitimate conclusion (p. 47).*

OLTI module, [Crime Scene Processing and Recovery of Physical Evidence from Sexual Assault Scenes](#) (September 2017)

- *These questions, and the exploration of their answers, will help identify evidence to advance the investigation. This includes excluding suspects when identity is in question, establishing probable cause once a suspect is identified, and corroborating aspects of statements made by the victim, suspect(s), or any witnesses (p. 50).*
- *The recovery of physical evidence can therefore help us to hold sex offenders accountable for their crimes and prevent future re-perpetration. It can also exclude suspects where appropriate and exonerate the wrongfully accused. All of these are vital functions of law enforcement – and well within our power to achieve (p. 100).*

OLTI module, [Laboratory Analysis of Biological Evidence and the Role of DNA in Sexual Assault Investigations](#) (March 2018)

- *Suspect reference standards are collected at this point as part of an investigator's casework, in the hopes of identifying, confirming, or excluding a suspect (p. 19).*
- *It is quite common for CODIS searches to reveal a suspect that had been previously overlooked by investigators – or to exclude someone who was originally thought to be involved in the crime (p. 61).*

OLTI module, [Untested Evidence and the Investigation of Cold Sexual Assault Cases](#) (May 2017)

- *DNA testing also helps to exclude suspects during an investigation and exonerate defendants who have been wrongfully convicted (p. 12).*
- *There is value in testing available evidence, to potentially exonerate the wrongfully convicted. According to the Innocence Project, there have been 350 post-conviction exonerations in the U.S. as a result of DNA testing, as of June 2017. However, legal screening requires more than just DNA testing. It also requires reviewing all the information and evidence available in a case, to determine whether new testing could potentially support an exoneration (p. 45).*

Training Bulletin, [Impression Management for Investigating Officers](#) (March 2018)

- *In order to ensure a full and fair investigation, IOs [Investigating Officers] frequently interview the defendant. Here, too an IO's role is to relay an objective account of the defendant's statement, as well as evidence that either corroborates or fails to corroborate the defendant's version of events. An IO who comes across as fair to both sides will earn a jury's trust (p. 14).*

Training Bulletin, [Understanding the Neurobiology of Trauma and Implications for Interviewing Victims](#) (November 2016)

- *Better interviews will result in more thorough investigations that can effectively exclude suspects, and support referrals for prosecution with a better chance to hold more offenders accountable (p. 3).*

These are just a few examples of such quotes. There are countless others in EVAWI's training materials, which include 19 OLTi modules (representing approximately 2,050 pages of training content), as well as numerous Training Bulletins, webinars, PowerPoint presentations, and extensive web content. In fact, this point is especially prominent in our newer materials, following a conference call we had with CPI staff in October 2016. During that call, we listened carefully and took into consideration the concerns voiced by CPI. As a result, we began making a concerted effort to more frequently remind readers that many of our recommendations for best practices refer not only to victims, but witnesses and suspects as well. In addition, much of our training is available online, so we are constantly in the process of reviewing and revising existing training material. While we do this, we are also adding similar reminders where appropriate. Given their increasingly acrimonious attacks on EVAWI and Start by Believing, it does not appear CPI made any reciprocal effort to incorporate our suggestions into their publications or materials.

### **EVAWI's Effective Report Writing Module**

Returning to their letter, CPI supports their argument primarily with quotes drawn from our OLTi module on [Effective Report Writing: Using the Language of Non-Consensual Sex](#). Specifically, they claim that the module endorses the following "controversial concepts:"

1. *The investigator is not an independent fact-finder, but rather is an agent of the prosecution.*
2. *All allegations are assumed to be true and the complainant should be regarded as a 'victim.'*
3. *The investigator should discount the possibility of a false allegation.*
4. *Inconsistencies in the complainant's statements occur rarely, and when they do, they should not be interpreted as evidence of a false claim.*
5. *Exculpatory statements provided by the suspect should have little bearing on the findings of the investigative report.*

Yet many of the quotes they draw from our training module to support their argument on this point are altered, blatantly misrepresented, taken out of context, and/or missing key text needed to understand their true meaning.

### **Inconsistencies in Victim Statements**

As one example, they suggest that the module advises the following:

*Should there be inconsistencies in witness or defendant statements, investigators should highlight only those that ‘corroborate the victim’s statement.’*

As the quotation marks indicate, the only phrase that is directly taken from our training module is “corroborate the victim’s statement.” The rest of the characterization is theirs.

In fact, there is only one paragraph in the entire module that explicitly addresses the question of inconsistencies in victim statements, and it recommends that investigators audiotape or videotape *all interviews*, to ensure the accuracy of *all statements*:

*In addition, tapes of an interview make it possible to determine the source of any inconsistency. In many cases when an inconsistency arises, the tape reveals that the person responsible is not the person being interviewed but the investigator who documented a fact incorrectly. This is critically important to recognize because such inconsistencies can seriously damage the credibility of victims, witnesses, and suspects (p. 23).*

Inconsistencies and errors can easily arise when interviews are not taped, either because statements are recorded inaccurately or interpreted incorrectly, or because they are sanitized or abbreviated misleadingly. Yet many law enforcement agencies have a policy of taping interviews with suspects, but not victims or witnesses.

In fact, there has been a great deal of reluctance to record interviews with victims – on the part of law enforcement, but especially prosecutors – because victims often say or do things that make a case more challenging. However, our module emphasizes that taping is the only way to ensure that the victim’s statements are accurately recorded.

*Any problems that a taped interview poses for the investigation and prosecution must simply be dealt with, as investigators uncover the whole truth of what happened during the sexual assault (p. 24, emphasis added).*

### **Impeachment by Contradiction**

The module also provides extensive guidance on how to prevent “impeachment by contradiction,” which is a defense strategy raised “when a witness testifies to facts at the trial that are different from the facts recorded in their case documentation.” Yet again, the recommended strategy is simply to increase the accuracy of documentation:

*The most important thing that an investigator can do to prevent this type of impeachment is to listen carefully during all interviews and accurately record the statement of the victim, suspect, and any witnesses (p. 29).*

In other words, our OLT module on *Effective Report Writing*, like all EVAWI’s training materials, does not suggest that investigators do anything other than conduct a full, complete, and unbiased investigation. This is evident in the recommendation that investigators audiotape or videotape interviews conducted with victims, suspects, and witnesses, even though some agencies have typically only done so for suspects.

## Corroborating Victim Statements

At several points, the module states that it is “especially” important to record statements by the suspect or witnesses that corroborate the *victim’s account*, but this is because this module was written to overcome specific failures in documentation. To understand the context of this statement, it is necessary to understand the purpose of the module.

This module was explicitly written to prevent the scenario where law enforcement has referred a case for prosecution (i.e., the legal elements are met, and law enforcement has determined that the evidence meets the threshold of probable cause for arrest) – AND prosecutors have filed charges (based on a good faith determination that the evidence meets the threshold of ‘beyond a reasonable doubt’) – AND no conviction is obtained, because the reports fail to accurately capture the reality of what happened.

This isn’t theoretical; the module is based on an extended case study where this exact scenario played out. The case involved an 18-year-old female victim who was visiting a college campus to consider possible enrollment. She was lured to a dorm room by a single defendant who promised to let her use the phone and take her on a tour of the campus. Once she was there, however, she was gang raped by numerous members of one of the college’s sports teams. The District Attorney tried the suspect who lured the victim to the dorm room, but he was acquitted at trial. In preparing for the trial of the other defendants, the Detective and District Attorney assigned to the case diligently sought to overcome missteps in the investigation that had made the first trial so difficult. Nonetheless, the victim was devastated by the process and verdict of the first trial, and she refused to participate in any additional investigation and prosecution.

The Detective reached out to ask Sergeant Joanne Archambault to review the entire case file to determine how the case could have been handled differently. After reviewing all the reports, property tags, lab reports, and the medical forensic examiner’s report, it was her opinion that this tragic result was not due to failures in the investigative steps taken. Rather, it was because of significant problems with the tactics employed when interviewing the victim, witnesses, and suspects, as well as the documentation of these interviews in the written reports. There were also a number of factors that contributed to a sense of chaos at the scene(s).

In this environment, the suspects provided some statements that defied logic regarding the victim’s behavior, and later proved inconsistent with statements provided by the victim and numerous witnesses, as well as the significant physical injuries documented during the victim’s medical forensic examination. If the interviews had been conducted following recommendations for best practices, and key details had been included in the documentation, this would have contradicted the suspects’ characterization of a consensual encounter and most likely helped to produce a guilty verdict.

## Development of the Module

As a detective and a sergeant, Joanne Archambault had seen the type of problems reflected in this case repeatedly throughout her law enforcement career. She also knew

that virtually no training was available for officers and investigators to improve their report writing when investigating and documenting sexual assault.

The module was thus developed to improve the accuracy of police report writing, using this specific case study where the facts and evidence were sufficient to support a prosecutor's decision to take the case to trial. The goal was to more accurately document what the victim, witnesses and suspect said and did, along with the steps taken during the investigation, and the findings from these investigative steps. Yet the module particularly focuses on the interview of the *victim* – again, because law enforcement agencies typically have policies requiring that suspect interviews be taped, but the same practice does not generally apply to victims and witnesses.

As with all EVAWI's training modules, it is understood that the training is designed for criminal justice professionals who acutely appreciate the importance of ensuring that suspects are provided due process and other constitutional protections.

### **Training on False Reports**

Other claims by CPI are similarly supported with quotes drawn from EVAWI's training materials that blatantly ignore context, deliberately missing the forest for the trees. For example, CPI states that the *Effective Report Writing* module "discount[s] the possibility of a false allegation," and that it includes "no mention of the possibility of misleading, exaggerated, or false statements made by a complainant or other witness." As noted in the previous section, this is partly explained by the nature of the specific case example. The facts and evidence in that case were deemed sufficient to take the case to trial.

However, the claim also ignores the fact that we have numerous materials on the topics they cite as missing in this particular module. Obviously, we cannot address every single topic in every single publication. The argument is simply a red herring.

*Effective Report Writing* is only one of 19 modules in the OLT, and it is actually our shortest module, with only 35 pages of the approximately 2,200 pages of training content included in the entire OLT. Beyond this, we also have hundreds of pages of material in our Training Bulletins, PowerPoint presentations, webinars, web content, etc.

Within this broad portfolio, we offer one comprehensive OLT module, several Training Bulletins, and a frequently-used PowerPoint presentation specifically on the topic of false reports. These materials include a discussion on "How to Handle the Frustrating Reality of 'Real' False Reports" and guidance on whether and when prosecution might be appropriate for filing a false report or obstruction of justice. As one illustration, this paragraph appears in our OLT module on *False Reports*:

*If a report of sexual assault is determined on the basis of the investigative findings to be false, investigators must then make the decision regarding whether or not to charge the individual with filing a false report. However, this decision must be made carefully, with consideration of a number of factors. Law enforcement professionals are thus advised to discuss the advantages and disadvantages of prosecution with*

*other professionals involved in the multi-disciplinary response to sexual assault victims (e.g., prosecutors, victim advocates, forensic examiners) (p. 39-40).*

Several advantages and disadvantages of prosecution are then examined in detail, and this material was adapted for a Training Bulletin that we sent out in December 2014.

### **Training on Inconsistent Statements**

Similarly, our Training Bulletin on [Gender Bias in Sexual Assault Response and Investigation](#) (specifically, #3 in a 4-part series) addresses both the reality of false reports as well as the standard of proof required for prosecution in such cases:

*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 (p. 6).*

Another Training Bulletin (one of our most popular) addresses the issue of [Incomplete, Inconsistent, and Untrue Statements Made by Victims: Understanding the Causes and Overcoming the Challenges](#). This topic is also addressed in our OLT module, [Interviewing the Victim: Techniques Based on the Realistic Dynamics of Sexual Assault](#). In this module, we begin by explaining why this is a common dynamic that can be anticipated in many sexual assault cases. Then a number of strategies are offered for overcoming these challenges, including our very frequently mentioned recommendation that victim interviews be taped:

*Inconsistencies in the victim's statement often arise because the investigator failed to record the information accurately. This is perhaps the best argument there is for recording victim interviews (whether audiotaping or videotaping) (p. 34).*

The module then goes on to explain this recommendation in detail. However, even beyond the materials that *specifically* focus on false reports or inconsistent, incomplete, and untrue statements made by victims, the topics are addressed in others as well.

In other words, for CPI to argue that EVAWI “discounts the possibility of a false allegation,” that “all allegations are assumed to be true,” or that we include “no mention of the possibility of misleading, exaggerated, or false statements made by a complainant or other witness,” they must cherry-pick quotes and then remove them – both from the context of the document where they appear, as well as the thousands of other pages of training material EVAWI has produced on the topic of sexual assault.

### **Terminology Used**

CPI also argues that EVAWI’s “pro-conviction” bias is evident in the use of the word “victim” rather than “alleged,” “complainant,” or “accuser.”

Yet the word “victim” is a term of art used at every stage of the law enforcement and criminal justice process. Federal victims’ rights and services laws (such as the Crime Victims’ Rights Act of 2004, 18 U.S.C. § 3771 and the Victims’ Rights and Restitution Act, 42 U.S.C. § 10607 (2006)) and many state laws and victims’ rights constitutional amendments confer “victim” status on a person at the time a crime is reported or charged. It is also the word used in crime report forms, to label the person reporting that a crime was committed. EVAWI’s use of the word is therefore consistent with criminal justice practice at the federal, state, tribal, and local agency level.

In addition, law enforcement has the authority to evaluate and determine appropriate criminal offense classifications for crime reports and arrest charges. Officers and investigators identify victims, suspects, and witnesses during their investigations, and they are reported as such to the FBI Uniform Crime Report program (UCR), when the elements of a crime have been satisfied. Law enforcement also determines when a case is unfounded (either because it is false or baseless), and the findings of a jury do not require them to change any case determination. Even a “not guilty” finding by a jury does not necessarily indicate that the crime did not occur; it only indicates that the jury was not convinced beyond a reasonable doubt. Law enforcement is still not required to change a case determination or terminology used. Therefore, it is consistent with convention and perfectly appropriate for EVAWI to use terms such as “victim” and “suspect” in training materials we develop for law enforcement and allied professionals.

### **Start by Believing**

Having critiqued only 35 of the several thousand pages of training material EVAWI has produced on the topic of sexual assault response and investigation, CPI then moves on to attack Start by Believing. Not surprisingly, they pull examples from only two documents: the 6-page Law Enforcement Action Kit and the 13-page Training Bulletin entitled, [Start by Believing: Participation of Criminal Justice Professionals](#).<sup>5</sup> First, they open with a quote designed to illustrate the campaign’s “guilt-presuming recommendations” for law enforcement:

*I am a criminal investigator ... When someone tells me they were raped or sexually assaulted, I Start by Believing.*

Quotes like this are submitted voluntarily by people who type them into the Start by Believing website, to signify their commitment to the philosophy and make a personal pledge. Some of these quotes are then posted on the website and included in materials such as our Action Kits. Yet in this case, CPI deleted the critical text needed to understand its meaning. What the investigator actually wrote is this:

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<sup>5</sup> We offer several Action Kits on the Start by Believing website, for individuals, communities, and professionals – in a variety of disciplines (victim advocacy, health care, law enforcement, prosecution, policymaking) and settings (campus, military). These Action Kits include background information on the Start by Believing philosophy, sample pledges, examples of campaign activities, links to campaign materials, and strategies for launching, promoting, or sustaining a campaign or related initiatives.

*My name is Denise. I am a criminal investigator who has heard one too many stories of victims not wanting to report because of issues like this. Breaks my heart. When someone tells me they were raped or sexually assaulted, I Start by Believing.*

In other words, this is yet another example of CPI cherry-picking a quote, deleting critical text, and failing to interpret it in the totality of EVAWI's entire body of work.

## **Investigator Bias**

CPI then goes on to argue that the Training Bulletin, and presumably the entire Start by Believing campaign, "openly endorses investigator bias, utilizes guilt-presuming terminology, and contains false claims." This echoes their criticism that the Law Enforcement Action Kit offers "guilt-presuming recommendations." To support their argument, they provide a quote from the Training Bulletin that sexual assault investigators should "operate from a starting presumption that the report has merit" (p. 7). Yet this quote can only be properly understood in the context of earlier text that introduces key concepts. For example, this excerpt appears earlier, on page 4:

*This is why the message of Start by Believing is appropriate for criminal justice agencies, just as it is for the public – because case outcomes will only change when police and prosecutors start from the presumption that a sexual assault report has merit, and then follow the evidence through the course of a fair, impartial, and thorough investigation (p. 4, emphasis added).*

Another quote they provide as an example is this:

*Even a 'neutral' stance will be insufficient to establish the trust and rapport victims need to share memories that are confusing, painful, or humiliating.*

It is as if CPI cannot stop themselves from omitting essential text from our training material. The actual quote in our Training Bulletin includes the word "often," reflecting the fact that variability is needed in the response to individual sexual assault victims:

*Even a 'neutral' stance will often be insufficient to establish the trust and rapport victims need to share memories that are confusing, painful, or humiliating [emphasis added] (p. 6).*

It is important to note the blatant disregard for accuracy in CPI's letter. Nonetheless, we accept the fact that these quotes capture the essence of the Start by Believing philosophy. We do in fact advise investigators to start from a presumption that a report of sexual assault has merit, and we believe that a "neutral" stance will often be insufficient to establish the trust and rapport victims need to effectively participate in an interview conducted by law enforcement. As we note in that Training Bulletin:

*If there was no starting presumption that a crime report had merit, no investigation would be conducted at all (p. 4).*

To fully appreciate the meaning of this particular quote, however, it is necessary to include the rest of the paragraph, which clarifies that “Start by Believing” is not the same thing as “Always Believe” or “Believe Everything.”

*This does not mean they believe everything victims say, or that they pursue corroborative evidence more vigorously than exculpatory evidence. It does not mean, ‘Always believe victims.’ It simply reflects the basic logic of why we refer to it as a ‘crime report’ and why we collect information and evidence from ‘victims’ and ‘witnesses’ (p. 4).*

This is an extremely important point, because CPI often mischaracterizes the Start by Believing philosophy as “Always Believe” or “Believe Everything.” We welcome constructive discussion and debate on the Start by Believing concept, but only when based on an accurate representation of what Start by Believing is, and is not.

Participation in Start by Believing does not mean that law enforcement casts aside their responsibility to conduct a full and thorough investigation or ignore evidence that contradicts a victim’s report of sexual assault. Nor does it mean believing everything the victim says. Nothing in Start by Believing lessens an investigator’s responsibility to meet the evidentiary standard of probable cause, or a prosecutor’s burden of proof beyond a reasonable doubt. Rather, Start by Believing can lead to better investigations, because officers can approach victims with an attitude of trust versus suspicion. The purpose of Start by Believing is to foster a new orientation – one that starts from a presumption of merit – recognizing that if this does not occur, victims will perceive this doubt and this will diminish their ability to participate effectively in the investigation.

In the words of a Utah Police Chief who implemented Start by Believing in his agency:

*Taking part in the Start by Believing campaign allows us to set an example in our community that says when someone is sexually assaulted in our community, we will start by believing the victim, and you should too. This message does not change the perspective of objectivity required to be a credible professional, nor does our involvement change our intention to conduct a thorough investigation. We know, however, that when victims are approached from the perspective where they are initially challenged, accused of lying, or their behavior is questioned as contributing to the event, they will often be unable - or unwilling - to provide the type of information needed for law enforcement to successfully investigate the case. A thorough investigation therefore must ensure that the person is treated with compassion and respect, and that the report is handled professionally - instead of communicating the message (either explicitly or implicitly) that I don’t believe you.*

As this Chief so eloquently expresses, Start by Believing is the approach needed to effectively interview victims, because it creates an environment of trust and rapport so victims can feel comfortable sharing painful details about their sexual assault. When it comes to sexual assault, the reality is that victims have frequently been subject to these same interrogation techniques, because they are viewed more like suspects who are filing a false report, not victims of a sexual assault.

## Interviews of Victims and Suspects

Indeed, while suspects have numerous due process protections during the process of a criminal investigation, there are no counterpart protections for victims reporting a sexual assault. This can have real and often tragic consequences for victims, and communities.

When a victim of sexual assault initially reports the crime to law enforcement, it is essentially a “cold” contact, with the officer having no background information whatsoever about the victim or the circumstances of the crime. Often, the only evidence of a crime at this point is the victim’s own words: This is used as the basis for writing a crime report and starting an investigation.

Yet the investigator’s reaction to the victim’s initial report is critically important in determining what happens next. If a law enforcement investigator interrogates the victim and/or conveys a belief that the report has no merit and the victim is lying, there is a strong likelihood that the victim will drop out of the process. If so, law enforcement will never know whether a sexual assault perpetrator was allowed to walk free, ready to attack again. Obviously this harms the victim, limits their access to supportive services, and leaves the community vulnerable to continued violence. Even if the victim does try to remain engaged, the investigation will be hampered by the investigator’s suspicion and the damaged rapport and trust experienced by the victim, which research demonstrates is key to a successful law enforcement investigation of sexual assault.

In fact, victims in this scenario are placed in a heartbreaking double bind: The only way to have their sexual assault investigated is to remain engaged with the process and continue to provide information to the investigator, even when faced with skepticism, derision, or hostility, and even when this information will ultimately be used against them.

This is because any interview – or interrogation – of a sexual assault victim will typically be conducted without the due process protections afforded to suspects during a criminal investigation. As illustrated in the examples provided earlier, too many victims have summoned the courage to report a sexual assault, only to be interrogated and later charged (erroneously) with filing a false report or obstruction of justice. These victims, who have now become suspects without their knowledge, are not typically notified of this fact, nor are they read their Miranda rights, provided legal representation, or informed of their right against self-incrimination.

By reporting their sexual assault, in the hope that it will be investigated and potentially prosecuted, victims often provide law enforcement with a great deal of self-incriminating information and evidence. For example, they often tell investigators about a range of ill-advised, unflattering, high risk, and even illegal behavior. They also waive protections against improper search and seizure, by consenting to have their property collected as evidence and records released from their medical forensic examination and laboratory results, such as toxicology testing. Any of this information and evidence can potentially be used against them. In fact, it could lead to a victim’s arrest for illegal behavior such as underage drinking, recreational drug use, or prostitution. It could also be used to undermine their credibility and support criminal charges for filing a false report or obstruction of justice. Even if the sexual assault is effectively investigated and

prosecuted, this information will almost certainly be used by the defense to impugn a victim's character and motives, in an attempt to acquit the defendant.

By contrast, an investigator who interviews a suspect in a sexual assault investigation is required by law to provide due process and other constitutional protections. If the initial contact is non-custodial, it must be clear to the suspect that they are speaking with the investigator voluntarily and they are free to leave or cease cooperating at any time. They don't have to answer any questions if they choose not to, or they can pick and choose the ones they want to answer. If the suspect is taken into custody before the interview (i.e., arrested), the investigator will read them their Miranda rights, and although they will not be free to leave, they still do not have to talk to the investigator or answer any questions. This is one important difference between the starting point for an interview with a victim vs. a suspect.

Yet another is the information investigators bring to the interview. Prior to the initial contact with the suspect, the investigator will have, at the very least, obtained some preliminary information about the crime reported and the evidence that initially points to this person as a suspect in the case. As the investigation progresses, the investigator will gather background information and evidence, formulate a preliminary assessment of that evidence, and likely interview additional witnesses – all before formally interviewing the suspect. In other words, the investigator will have some basis to believe that the suspect could potentially be involved in the crime. Even then, investigators are encouraged to approach suspects with an open mind, listening and documenting any statements obtained, because the next step is to investigate every aspect of the suspect's statements, as well as the victim's and any witnesses'. If the investigation shows that the suspect's statement is inconsistent with the evidence and other statements by the victim and witnesses, the investigator will then generally switch to using interrogation tactics.

All of this goes to show how different the starting point is for an interview with a sexual assault victim and suspect. Without an initial orientation of belief for the victim, there is no crime report and no investigation, because at that point the victim's statement is often the only information available. This is true in sexual assault, as in every other type of criminal investigation. Yet the suspect interview is typically conducted much later in the process, at which point the investigator has accumulated additional information, evidence, and witness statements. At that point, the investigator starts by listening, documenting, and continuing the investigation.

### **Confirmation Bias**

In a related vein, CPI decries as inaccurate EVAWI's statement that "confirmation bias has long influenced the response of criminal justice professionals in the opposite direction" (which CPI clarifies: "i.e., in such a manner to disbelieve the claimant").

Instead, they state that "many of [sic] wrongful convictions of sexual assault and other crimes have been traced to detective bias favoring the complainant." To support this point, they cite a law review article that examined both social scientific and legal literatures, and concluded on this basis that police investigators typically "focus on the

suspect, select and filter the evidence that will ‘build a case’ for conviction, while ignoring or suppressing evidence that points away from guilt.”<sup>6</sup>

There are far too many examples of nightmare scenarios where someone is wrongfully convicted, only to be exonerated after serving years, even decades, in prison. Some have even been exonerated after their deaths. These scenarios are tragic beyond words, and we are committed to doing everything in our power to prevent them, with the training we provide to criminal justice professionals.

The causes of wrongful conviction are many, including natural patterns of human thought and behavior, as well as institutional policies, practices, and pressures.<sup>7</sup> Yet most of this research and discussion focuses on convictions that are wrongful *because the wrong person was prosecuted – not because the crime wasn’t committed*.

For example, the single most frequent cause of wrongful conviction is mistaken eyewitness identification.<sup>8</sup> This is true for sexual assault as well as other crimes.<sup>9</sup> To solve this problem, a number of reforms have been proposed to improve police identification procedures and the analysis and interpretation of biological evidence. Yet the vast majority of sexual assaults are perpetrated by someone who is known to the victim, so the question of eyewitness identification simply doesn’t apply. In most sexual assault cases, the question isn’t the identity of the suspect, nor is it whether the sexual act in question was committed. In most cases, the question is whether the sexual act was *consensual*. The evidence needed to prove a sexual assault thus speaks to the victim’s (non)consent and the suspect’s use of force, threat, fear, or incapacitation in order to commit the sexual act. These questions are often far more difficult to prove than suspect identity, because they usually rest on the totality of the circumstances, rather than a single piece of evidence.

To the extent that this type of evidence or testimony could lead to a wrongful conviction, the solution lies in law enforcement conducting a thorough and unbiased investigation. In a sexual assault case, this typically begins with a detailed victim interview, and we argue that this is best achieved from an orientation of Start by Believing. From that starting point, however, the investigator must then *follow the evidence*. A thorough evidence-based investigation is the best defense to any allegation of bias. It is not enough to simply claim that bias might exist. The question is whether this led an investigator to curtail an investigation to support a pre-existing conclusion. Were there investigative steps not taken? Leads not followed? Other suspects not questioned? These would be the types of factors that could potentially lead to a wrongful conviction.

Beyond mistaken eyewitness identification, the other leading causes of wrongful conviction are, in decreasing order, according to the National Registry of Exonerations: perjury or false accusation, official misconduct, false or misleading forensic evidence, and false confessions. However, without examining the detailed information in these cases, it

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<sup>6</sup> The CPI letter cites this quote to Findley & Scott (2006), but these authors indicate that the quotes come from Martin, 2002, p. 848.

<sup>7</sup> Findley & Scott, 2006

<sup>8</sup> Findley & Scott, 2006

<sup>9</sup> NRE data

is impossible to make conclusions about how these factors play out, particularly in a sexual assault case involving a consent defense.<sup>10</sup> Again, the best prevention is a thorough investigation.

### **Bias Against Sexual Assault Victims**

However, the critical point ignored by CPI is that sexual assault victims have suffered, and in many instances continue to suffer, unwarranted skepticism from law enforcement, as well as other professionals in the criminal justice and community response system, and society in general. As reviewed earlier, decades of social scientific research document the negative attitudes of doubt and blame directed against sexual assault victims. There is simply no parallel for victims of any other type of crime.

This is reflected in policies and training offered to law enforcement on the topic of sexual assault. To illustrate, a widely-used criminal investigations textbook from the 1970s advised the following with respect to a report of sexual assault:

*Where a vigorous woman alleges ravishment it is to be expected that signs of violence such as wounds, bruises and scratches will be present and their absence should induce a moderate degree of skepticism unless the girl avers that she fainted from fear, became panic stricken or was otherwise rendered incapable of physical resistance. The acts and demeanor of the female immediately after the alleged commission should be subjected to very critical investigation in these cases.<sup>11</sup>*

The same sentiment was later reflected in a 1995 version of the International Association of Chiefs of Police (IACP's) Model Policy for Sexual Assault Investigation:

*Generally, the actions and the appearance of a legitimate rape victim leave little doubt that a crime has been committed. Under such circumstances, the victim is highly agitated, emotionally distraught, often in a state of hysteria and may have sustained injuries, cuts, bruises or wounds. The victim's clothing is often ripped or torn off as evidence that it was forcibly removed and if the rape occurred outdoors, the victim is generally thrown to the ground and her outer garments stained or soiled. Questions may reasonably be raised concerning the validity of rape charges in which none or only a few of the above manifestations exist.*

Unfortunately, this type of thinking is not relegated to the past. In the Reid Institute's widely used textbook on law enforcement investigations and interrogations, a chapter entitled, "*Establishing the Truthfulness of a Sexual Assault Victim: Factual Analysis*," cautions as follows: "When evaluating a victim's account, the investigator should keep in mind possible motives which could prompt a victim to lie" and advises them to look "for

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<sup>10</sup> The NRE data does indicate that mistaken identification and false or misleading forensic evidence are more significant factors in sexual assault exonerations, as compared to other types of crime, and this is consistent with the reality that exonerations in sexual assault cases are more likely to be based on suspect identity, as determined through eyewitness identification or biological evidence (DNA).

<sup>11</sup> O'Hara, 1970

precipitators which may have motivated a false allegation (STD, rejection, discipline, pregnancy).”<sup>12</sup> The current edition of this textbook was published in 2014.

Therefore, while confirmation bias is a very real phenomenon, there is an empirical basis to suggest that it operates in the opposite direction in sexual assault cases. Moreover, it is telling that CPI styles itself as an advocate for those who are wrongly accused, yet never acknowledges the tragic fact that many sexual assault victims are falsely accused, charged, and sometimes convicted of filing a false report or obstruction of justice, when there is little or no evidence to support this determination.<sup>13</sup>

## Gender Bias in Sexual Assault Investigations

This is exactly the type of bias the U.S. Department of Justice sought to eliminate with their groundbreaking 2015 guidance, *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence*. In their letter, CPI challenges the statement that female victims of sexual assault experience gender bias in law enforcement response, by citing evidence that male victims of sexual assault are less likely to have positive experiences with law enforcement than female victims are. Yet this is not the point we are making about gender bias, nor is it the problem the DOJ *Guidance* intended to ameliorate.

The argument about gender bias is based on the fact that sexual assault is a crime disproportionately targeted against female victims.<sup>14</sup> Therefore, any failures in police response and accountability will have a profoundly negative impact on women and girls. This is not to deny the tragic reality of male victimization, or the mistreatment male victims all too often experience at the hands of professionals, as well as loved ones, when disclosing a sexual assault.

Rather, this is the type of analysis conducted in cases alleging sex and gender-based discrimination. For example, in claims against police departments and cities for failing to investigate sexual assault and test evidence kits, plaintiffs have asserted claims of class-based discrimination based on gender, alleging that these failed policies provide less protections to sexual assault victims (who are predominately female), than to other victims of assault. As a result, they argue, women are treated disparately as compared to similarly situated males. As the plaintiff in the Houston case argued, “Houston’s policy is sex and gender-based and its adverse effect reflects invidious sex and gender-based discrimination” and “has both an adverse impact and a discriminatory purpose.”<sup>15</sup>

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<sup>12</sup> Jayne & Buckley, 2014

<sup>13</sup> For example, the three cases cited earlier in this document; also a review by Avalos (2017)

<sup>14</sup> For example, the National Violence Against Women Study (NVAWS) found that 85% of the victims of either completed or attempted sexual assault were female (Tjaden & Thoennes, 2000). More recently, the National Intimate Partner and Sexual Violence Survey (NISVS) similarly documented that 93% of rapes are committed against female victims (Black et al., 2011).

<sup>15</sup> *DeJenay Beckwith on her Own Behalf and Others Similarly Situated v. City of Houston et al.*, Case No. 4:17-cv-02859, 90, 92. Filed in SDTX, 9/24/2017.

In other words, the question is whether the alleged failures have a disproportionate impact on women as a group. Are crimes committed primarily against women treated with the same seriousness and urgency as those committed against men? Are the responses to female victims influenced by attitudes and assumptions that are rooted in ideas about gender?

DOJ's *Guidance* notes that "gender bias – both explicit and implicit – exists throughout society, and as a result, it can arise in various aspects of the criminal justice system."<sup>16</sup> Therefore, "addressing gender bias on the part of prosecutors, judges and juries in their consideration of sexual assault and domestic violence cases is critical to ensuring that justice is served."<sup>17</sup> This includes failures such as those outlined here.

*Gender bias, whether explicit or implicit, conscious or unconscious, may include police officers misclassifying or underreporting sexual assault or domestic violence cases, or inappropriately concluding that sexual assault cases are unfounded; failing to test sexual assault kits; [and] interrogating rather than interviewing victims and witnesses.*

*In the sexual assault and domestic violence context, if gender bias influences the initial response to, or investigation of the alleged crime, it may compromise law enforcement's ability to ascertain the facts, determine whether the incident is a crime, and develop a case that supports effective prosecution and holds the perpetrator accountable (p. 3).*

The purpose of the guidance is therefore to "help state, local, and tribal authorities more fairly and effectively address allegations of domestic violence and sexual assault."<sup>18</sup>

### **Criticism of Others**

Finally, CPI offers criticism of the Start by Believing concept that has been expressed by others. This includes an "expert panel" CPI itself convened,<sup>19</sup> an opinion piece written by a UCLA law professor, a blog post from a criminal defense attorney, an article in a prison newsletter, and a quote from a book written about campus disciplinary procedures. They

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<sup>16</sup> U.S. Department of Justice, 2015, p. 3

<sup>17</sup> U.S. Department of Justice, 2015, p. 3

<sup>18</sup> Comments by Attorney General Loretta E. Lynch in a press release issued by the U.S. Department of Justice, Office of Public Affairs on Tuesday, December 15, 2015, entitled: *Justice Department Issues Guidance on Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence.*

<sup>19</sup> CPI's "Expert Panel" consisted of individuals specifically convened during a telephone conference, to present their criticisms of victim-centered investigations. The panel did not include a diverse range of disciplines or views. Many of the panelists had a criminal defense background, worked with criminal defendants, or appeared to be primarily focused on the rights of the accused in either campus Title IX proceedings or in criminal cases. Several of the panelists advocated primarily for campus sexual assault investigation reforms, including a college student who claims he was falsely accused and expelled from a university without due process. Although CPI alleges that this panel "concluded" that the investigative methods based on Start by Believing violate requirements for impartial investigations and "give rise to wrongful convictions and determinations of guilt," they cite no investigations or cases in which an individual's participation in Start by Believing or other victim-centered initiative resulted in a wrongful conviction or determination of guilt.

also quote two judges in foreign jurisdictions, but several of these sources again mischaracterize the message of Start by Believing.

For example, the author of the *Prison Legal News* article incorrectly describes Start by Believing as a requirement that law enforcement officials “believe’ any person reporting any particular crime,”<sup>20</sup> when this is not at all what Start by Believing advocates. And the foreign cases cited by CPI are not relevant. In the Canadian case, the judge stated that the slogan “Believe the Victim’... has no place in a criminal trial” and expressed concern about approaching a trial “with the assumption that a complainant is telling the truth.” By contrast, and as explained previously, “Start by Believing” does not advocate this approach, and instead emphasizes the importance of conducting a thorough investigation to ensure due process, *prior* to the point of a case being brought to trial. Similarly unpersuasive is CPI’s citation to a former British High Court Judge’s criticism of a British Policy requiring police to “automatically” believe victims. As explained above, “Start by Believing” does not suggest that police “automatically” believe victims, but rather asks that they *start* with an orientation of belief while also conducting a thorough investigation before reaching a case determination.

Nowhere does CPI indicate whether these individuals have reviewed all of EVAWI’s training materials on Start by Believing to reach their conclusions; indeed had they done so, they would have seen that EVAWI consistently emphasizes the importance of conducting thorough, evidence-based investigations and does not advocate believing the victim “absolutely,” or “no matter what” (i.e., regardless of the evidence).

### **Arizona Governor’s Commission**

Yet CPI states that the “strongest criticism of Start by Believing” has come from the Arizona Governor’s Commission to Prevent Violence Against Women (“Commission”). This Commission authored a [letter dated November 16, 2016](#), which “strongly cautioned” law enforcement agencies and other organizations co-located in advocacy centers against adopting Start by Believing.

Although the Commission cited the concept of “confirmation bias” as a basis for its concern about the Start by Believing campaign, it provided no examples from Arizona or elsewhere in which this was demonstrated to have an impact on a criminal investigation or case. Instead, the Commission suggested that defense counsel could claim that investigators ignored “alternative versions of the crime” or made other errors during the investigation due to the “confirmation bias” created by the “belief element” of Start by Believing. The Commission also expressed concern that detectives were not sufficiently trained to defend Start by Believing in court, but similarly cited no examples of such instances in actual cases.

In fact, the only evidence the Commission offered in its letter was a case in Iowa. Specifically, the Commission suggested that a detective in Iowa testified that the Start by Believing campaign *required* him to believe the victim, “no matter what.” The letter also

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<sup>20</sup> Clarke (2018)

claimed the prosecutor in that case stated that the Start by Believing “verbiage is what is killing everybody in court.” Neither of these statements is true.

To the contrary, both the detective and prosecutor in the Iowa case have informed EVAWI that the statements and information attributed to them in the letter are false. On March 6, 2018, EVAWI sent a [letter to the Arizona Governor](#) respectfully asking him to issue a correction of the erroneous information in the Commission’s letter and to revisit the guidance issued by the Commission.<sup>21</sup> As of March 21, 2019, EVAWI has not received a response to this letter.

In short, the Commission’s letter cites no legitimate evidence of any problems arising from Start by Believing in Arizona. EVAWI is not aware of any problems arising from criminal justice professionals’ involvement in Start by Believing anywhere in the country, despite repeatedly issuing national calls for such information.<sup>22</sup> CPI and the commentators who cite the Commission’s letter similarly fail to identify any instance or case in which a criminal justice professional’s participation in Start by Believing has resulted in problems, such as specific leads not being pursued, witnesses not interviewed, or evidence not submitted for forensic testing.

Moreover, many professionals in Arizona continue to support Start by Believing. On March 18, 2018, members of the Arizona Senate issued a Senate proclamation in recognition of the value of the Start by Believing campaign and proclaiming Arizona to be a Start by Believing state, thus encouraging the people of Arizona to provide support to survivors of rape during Sexual Assault Awareness Month. On March 7, 2019, the Arizona Governor tweeted his support after Senator Martha McSally disclosed being sexually assaulted by a superior officer while serving in the military but chose not to disclose because she didn’t trust the system.



<sup>21</sup> Additionally, EVAWI’s letter expressed its concerns that the Commission’s November 16, 2016 letter was written and published without a vote from the Commission and over the objections of some of its long-standing members.

<sup>22</sup> Even though EVAWI has learned of no evidence of problems arising from criminal justice professionals’ involvement with Start by Believing, we developed several training materials specifically designed to help respond to any such questions. As described earlier, one Training Bulletin provides detailed guidance for investigating officers on how to provide courtroom testimony explaining their participation in a Start by Believing campaign or other initiatives designed to implement this philosophy in their communities.

Unfortunately, the Arizona letter from Governor Ducey's office continues to be used by CPI to support their false claims, and EVAWI is again reaching out to the Governor to request that the letter be retracted.

### **Criminal Justice vs. Campus Discipline**

Before concluding this response, it is important to point out a consistent source of confusion in CPI's written materials: The deliberate conflation of criminal justice and campus disciplinary procedures. Several of the commentators cited by CPI, as well as members of its "Expert Panel," have expressed strong opposition to the way higher education institutions investigate Title IX sexual assault and misconduct claims. Yet the structure, process, and potential consequences of a Title IX investigation are fundamentally different from a criminal investigation; they should in no way be conflated.

In recent years, there has been vigorous debate among professors, commentators, lawyers, students, parents and others regarding the campus Title IX investigation and adjudication process. Many have expressed concern that higher education institutions fail to provide adequate due process protections for students accused of sexual misconduct during Title IX investigation and adjudication proceedings. Due process protections under the law are different for collegiate administrative processes than they are for criminal law procedures. However, despite the controversy over Title IX in higher education, the staff that conduct these investigations are required to receive annual training and have policies that are equitable, fair, and impartial for reporters and respondents.

Another difference includes the standard of proof used in criminal versus campus discipline proceedings. Unlike the preponderance of the evidence standard of proof that is most common in Title IX hearings, the exacting "proof beyond a reasonable doubt" standard applies in criminal cases. Further, best practices in higher education investigations are beginning to show that investigation models that emphasize co-investigation and cooperation with law enforcement and Title IX administrators satisfy both legal obligations for due process in criminal procedures and obligations for campus administration under Title IX. These models use law enforcement officers who are trained extensively in constitutional rights and due process. They are trained extensively in how to conduct interviews, gather evidence, and make case determinations, including preparing a case for prosecution.

While EVAWI designed its training materials primarily for an audience of law enforcement, prosecutors, and allied professionals, we encourage Title IX officers, higher education administrators, and especially campus law enforcement officers and anti-violence initiatives offices to utilize our Start by Believing campaign and other training materials in a way that best fits within their institutional practices. We trust that higher education administrators will still uphold the standards required through VAWA by remaining prompt, fair, and impartial to all involved through all investigative and adjudicative processes.

## **Conclusion**

We always welcome feedback and suggestions that will help us produce materials that are as accurate and useful as possible for law enforcement and allied professionals. However, we object to tactics that are unethical and not intended to foster constructive dialogue or better ways to address the rampant problem of sexual violence. These are exactly the type of bullying and intimidation tactics used by CPI and SAVE.

Whether someone is engaged in a Start by Believing campaign or not, we hope you will stand in solidarity with EVAWI to make sure that these bullying and intimidation tactics are recognized for what they are, and help to ensure that the many advances we have made regarding victim-centered and trauma-informed initiatives - so vital to our country's progress in responding to sexual violence - are understood and supported.