



End Violence Against Women International  
(EVAWI)

Training Bulletin Series: Part 4

# Victim Recantations: Addressing Gender Bias in Sexual Assault Response and Investigation

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## Part 4: 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.<sup>1</sup>

### 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 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

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<sup>1</sup> 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.

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.<sup>2</sup>*

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

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<sup>2</sup> [Why do Victims "Lie"?](#) Amanda Kay and Ryan L. Gonda, National Council of Juvenile and Family Court Judges, Victim Series 7, April 21, 2015.

## 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.**

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### 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](#).

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### 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 that 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.

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### 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.

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### 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<sup>3</sup> and the UK,<sup>4</sup> 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,<sup>5</sup> and another received a ten-year prison sentence in August 2017.<sup>6</sup>

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.

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<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> [“Eleanor De Freitas ‘killed herself ahead of rape claim trial.’”](#) BBC News, March 17, 2015.

<sup>6</sup> [“Woman jailed for 10 years for making series of false rape claims.”](#) Press Association, *The Guardian*, August 24, 2017.

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 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.

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### 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 OLT 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.

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### 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.**<sup>7</sup> 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 used to improve law enforcement investigations and outcomes for sexual assault cases.

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<sup>7</sup> 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 OLT module on [Reporting Methods for Sexual Assault Cases](#).

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### Resource: Clearance Methods

For detailed guidance on how to properly clear or otherwise close sexual assault cases, please see the OLT module: [Clearance Methods for Sexual Assault Cases](#). A more concise discussion of the issues surrounding clearance methods and supervision can be found in [Training Bulletin #7](#) in the series on clearance methods for sexual assault.

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### 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.

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