



**End Violence Against Women International
(EVAWI)**

Interviewing the Victim

*Part I: Interviewing Techniques Based on
the Realistic Dynamics of Sexual Assault*

*Part II: Strategies for Conducting an
Effective Victim Interview*

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Course Objectives

Interviewing the Victim: Techniques Based on the Real Dynamics of Sexual Assault

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

1. Recognize the importance of effective victim interviewing in the successful investigation and prosecution of sexual assault cases
2. Identify common barriers to effectively interviewing sexual assault victims, which include:
 - The mistaken orientation that interviewing simply consists of asking “who, what, when, where and why”
 - Some aspects of the police personality
 - The tough exterior exhibited by some law enforcement professionals
 - The training in interview and interrogation typically presented to law enforcement
 - The fact that most law enforcement professionals learn their skills working in patrol
3. Identify and overcome the fundamental challenges faced by law enforcement professionals conducting a victim interview, including the facts that:
 - Most victims do not physically resist a sexual assault
 - Most victims only report their sexual assault to law enforcement after a delay of some kind
 - Most victims provide some information in their interview that is incomplete, inconsistent, or even untrue
4. Recognize various policy questions and “best practices” for law enforcement
 - Determine when to audiotape or videotape a victim interview
 - Consider the gender of the officer or investigator who will conduct the interview
 - Increase victim reporting options, such as blind (anonymous) reporting, third party reporting, and victim pseudonyms
 - Utilize signed release waivers with the victim only when appropriate
5. Conduct an effective preliminary interview with a victim of sexual assault
 - Respond effectively to an assault that occurred recently
 - Utilize effective techniques during the initial interview with a sexual assault victim
 - Obtain the information for the preliminary investigation
 - Determine whether or not to make an immediate arrest
 - Make appropriate decisions prior to the follow-up interview
6. Conduct an effective follow-up interview with a victim of sexual assault
 - Conduct the first stage (victims’ narrative) of the follow-up interview
 - Conduct the second stage (follow-up questions) of the follow-up interview
 - Apply cognitive interviewing techniques when appropriate
 - Identify the information needed to be obtained during the follow-up interview
 - Conclude the follow-up interview



Introduction

Imagine for a moment that your house has been broken into, your furnishings and belongings disturbed and tossed about, and your family photos and heirlooms have been stolen. Try to imagine the trauma, confusion, and disorientation you must be experiencing. Now imagine that you decide to report the crime to the authorities, but when you arrive at your local police department – instead of talking to an officer or detective – you are given a form to fill out, in order to describe what happened. Now read the following instructions, which were taken from an actual form that was used by a law enforcement agency for victims of sexual assault:

We would like you to read the following instructions very carefully before you start answering the questions. We would like you to realize that every word is important and each one might be checked later on. This is not a draft, and you only have one chance to write down the answers. So, before you write, we would like you to think as to how you are going to phrase your answers.

- *Please write your answers as detailed as you can to enable us to understand your involvement in this matter.*
- *Use only a pen while writing (no pencils). No typing is allowed.*
- *Write in clear handwriting in order to enable reading.*

You are not to make any corrections on the questionnaire. If you feel like you would like to change your answers, please do it in the space provided for that purpose, or put the mistaken sentence within parentheses and continue on. Your correction will be taken into consideration.

Please write IN DETAIL anything you would like us to know in regard to your complaint/allegation. How would you explain this? Please write in detail your ideas that would account for this.

- *If you were going to conduct this investigation, how would you do it?*
- *List the 5 most important causes that would have created the situation.*

Before you answer the following questions, we would like to inform you that each word of your answer will be evaluated. We would like you to take your time and think before each answer.

What would your gut reaction be, if you were presented with such a form?

Like most people, you would probably feel a variety of emotions. You might feel confused and uncertain regarding how – or even whether – to begin writing your response. You might feel frustrated or angry with the language and tone of the form. You certainly might feel that the police department is – at best, unsympathetic to your situation, and – at worst, downright skeptical that you are telling the truth. Now imagine how much worse the situation would be if you had trouble reading and/or writing, especially because you know that your own credibility and the believability of your case depends on you writing a detailed account of the crime.



At that point, you might react by filling out the form as best you can, or you might first consult with your friends, family, or other support people regarding how to proceed. Or you might just give up, and hand the form back to the police officer or desk clerk.

For the purposes of this exercise, however, imagine that you managed to fill out the form, by describing your home invasion... in detail, ... in ink, ... in clear handwriting, ... and without any corrections. Imagine that you even came up with suggestions for the police department on how to investigate your case and listed the five most important “causes that would have created the situation” (i.e., your home invasion). Now imagine that at the conclusion of the form you were asked the following questions:

- *Did you lie in any of the information you provided earlier on this form?*
- *Did you fabricate your allegations against the suspect?*
- *Did you withhold any significant information you provided on this form?*
- *Should we believe your answers to the questions?*
- *If the answer to the last question was “Yes,” give us one reason why.*
- *What would you say if it was later determined that you lied on this form?*

Again, this language is taken directly from a real form used by a law enforcement agency with sexual assault victims. Can you even imagine how you might feel, if faced with such obvious doubt that you are telling the truth? Keep this feeling in mind as we work through this module.

Clearly, filling out such a questionnaire is not the way to conduct an effective victim interview. We will spend a great deal of time in this module walking through the stages and techniques for successfully interviewing the victim of a sexual assault. However, the bottom line is that the attitude conveyed by the law enforcement professional is the single most important factor in determining the success of the victim interview – and therefore the entire investigation.

- You probably recognized this while reading that form a moment ago. It is clear that the attitude conveyed by those instructions was one of suspicion that the victim might be lying, and an apparent lack of concern for the fact that the victim was sexually assaulted.
- Yet this type of form is not the only way to communicate such a skeptical attitude to victims. Unfortunately, the same underlying attitude is all too often conveyed to victims of sexual assault by law enforcement professionals – either through inappropriate questions or tone, or perhaps by conducting an “interview” that consists only of filling in the boxes of a standard form for reporting a crime.

While some law enforcement professionals get tired of hearing about “victim sensitivity,” it is true that being compassionate toward victims isn’t just about being “nice.” It is actually the key to conducting a successful victim interview and hence an effective law enforcement investigation and prosecution. Therefore, we will provide detailed guidance in this module for communicating an attitude of competence and compassion during a successful victim interview. Part I focuses

on the Interviewing Techniques Based on the Realistic Dynamics of Sexual Assault, and Part II focuses on the Strategies for Conducting an Effective Victim Interview.

PART I: Interviewing Techniques Based on the Realistic Dynamics of Sexual Assault

In the two parts of this module, we will provide very detailed instructions for how to conduct a successful interview with a victim of sexual assault, with particular emphasis on sexual assaults committed by someone known to the victim (i.e., a non-stranger). As we've said already, the victim interview is one of the most important components of a sexual assault investigation, but it can also be one of the most challenging and exhausting tasks faced by a criminal investigator.

Therefore, we will begin Part I with a brief discussion of the underlying philosophy and common barriers to effectively interviewing sexual assault victims. Then we will go on to explore three of the fundamental challenges faced by law enforcement professionals conducting a victim interview. These challenges stem from the fact that:

- Most victims do not physically resist a sexual assault;
- Most victims only report their sexual assault to law enforcement after a delay of some kind; and
- Most victims provide some information in their interview that is incomplete, inconsistent, or even untrue.

These realistic dynamics of sexual assault have been discussed in other modules, but they are also relevant here, because they pose challenges when conducting a victim interview. We will then conclude Part I with a brief discussion of various policy questions and “best practices” for law enforcement, such as blind (anonymous) reporting and third party reporting. Next, Part II provides detailed guidelines for every stage of the victim interview, including guidance on how to use specific techniques for conducting a “cognitive interview.” So let's begin.

The Importance of Victim Interviews

As previously stated, the victim interview is perhaps the most important element of a sexual assault investigation, and it is absolutely essential for successful prosecution. Therefore, when law enforcement professionals first began to receive training on how to conduct victim-sensitive interviews in the 1970's, the recurring theme and underlying message was simple: *Law enforcement professionals should not treat victims like pieces of evidence.*

- This early message helped law enforcement professionals to recognize that their actions and communications with victims were important, and that inappropriate treatment could result in additional trauma for the victim and a poor investigation.
- Unfortunately, what may have been lost in that early training message was the fact that the victim is in fact "evidence" – actually, the best evidence if



approached with the right interviewing techniques, treated with competence and compassion, and provided with appropriate information and referrals.

Of course, this means that the opposite is also true. Given the importance of the victim as evidence, any mistake made during an interview can have a disastrous effect on the victim's credibility and cooperation. This in turn reduces the likelihood that the case will be successfully investigated and prosecuted. One of the primary mistakes that is often seen is treating victims not only like evidence, but in fact, like suspects. Remember, an interview is not an interrogation.

Barriers to effective interviewing

Because victim interviews are the key for conducting a successful investigation of sexual assault, it is especially discouraging that law enforcement professionals typically receive very little training in how to interview victims and witnesses (Fischer, 1995).

As one detective stated to a researcher, "Basically, you just ask them who, what, when, where, and why" (Fischer, 1995, p.734). As we'll see, this is quite inaccurate – there is a great deal more to interviewing crime victims than simply asking them "who, what, when, where, and why."

Clearly, this mistaken orientation constitutes one barrier to effective interviewing. One of the worst ways to conduct a victim interview may be to simply ask: "who, what, when, where and why." However, there are also other important barriers to conducting effective interviews.

- For example, some have suggested that some aspects of the **police personality** make it difficult to conduct successful interviews with the sexual assault victim. Law enforcement professionals are typically action oriented people, yet sexual assault cases require patience for a long, detailed, and emotionally difficult interview (Latts & Geiselman, 1991).
- An additional barrier is the **tough exterior** that many law enforcement professionals assume because they are nervous and uncomfortable when responding to sexual assault cases. They sometimes try to remain detached from cases that involve difficult emotions such as sexual assault, because they are unsure of how to respond effectively to victims (Latts & Geiselman, 1991).
- Ironically, another barrier to effective victim interviewing is the **training** that many law enforcement professionals have received in interviewing and interrogation. Although this type of training is often referred to as addressing both "interview and interrogation," the content is typically focused only on interrogation and not effective strategies for interviewing victims and witnesses.
- Such interrogation techniques are not only ineffective with victims of sexual assault, they can actually sabotage the entire investigation by creating an environment that is hostile for victims and causes them to decide that they do not want to take part in the criminal justice system.

- Yet another barrier to effective interviewing stems from the fact that officers and deputies typically **learn their skills on patrol**. Most learn about interviewing in the worst imaginable circumstances, in chaos or confusion with a great deal of noise, anxiety, and time pressure. There is also very little incentive for officers and deputies doing a thorough investigation, because they need to file their reports quickly and get back on the streets to prepare for the next call (Fischer, 1995). As a result, patrol officers “learn” how to conduct interviews by directing a number of rapid-fire questions at witnesses to establish basic information.
- A further barrier to victim interviewing may be a lack of familiarity with and cultural competency in working with victims from culturally specific communities such as non-English speaking victims, victims from racial minorities, victims with disabilities, immigrant victims, and victims who identify as lesbian, gay, bisexual, transgender¹, or queer (LGBTQ)².

In contrast, the interview with a sexual assault victim must be conducted using a more relaxed style, in order to establish rapport and elicit a greater level of detail about the incident. However, nothing from the experience on patrol has prepared an investigator for this type of interview. For this reason, it is understandable that many investigators have not yet developed the philosophy and skill required for successful sexual assault interviews. Yet, most sexual assault investigations do not provide overwhelming positive medical findings and most suspects do not confess. This means that all of the skills as an investigator will be required to thoroughly investigate the case, corroborate the victim’s account, and support the victim’s credibility as a potential witness. We will provide detailed guidelines in how to do this throughout this module.

Let’s begin with the bad news

A study was conducted in the late 1990’s to determine the factors that influence a prosecutor’s decision to charge in a sexual assault case. Before presenting the results, we’d like to ask you what you think these factors are. In other words, what do you think are the most important factors that determine whether or not a prosecutor is going to issue charges in a sexual assault case? Please list up to three factors that you think might have been found in this research.

- 1.
- 2.
- 3.

¹ Transgender is a term for those whose gender identity does not align with their gender assigned at birth. Transgender is preferable to the term “transvestite.” Although “transgendered” is also frequently used, many prefer “transgender” because it does not imply that something has been “done” to a person (e.g., a verb) rather than an identity.

² Q can stand for queer (someone who self-identifies as non-heterosexual) or questioning (someone who is questioning their sexual orientation or gender identity). Members of LGBTQ populations can sometimes be fearful of accessing law enforcement due to historical distrust and/or negative past experiences.

If you said that that the charging decisions of prosecutors are primarily determined by the characteristics of the victim, you are right. Specifically, the results of this study revealed that:

- Prosecutors were over 5 times more likely to file charges if there were no questions about the victim's moral character.
- They were also nearly 2 ½ times more likely to file charges if the victim did not engage in any risky behavior at the time of the assault.
- Finally, prosecutors were almost 4 times as likely to file charges if the victim reported the sexual assault to police within one hour (Spears & Spohn, 1997).

Clearly, prosecutors – like other members of the criminal justice system and the rest of society – base their judgments of sexual assault victims and cases on the stereotypes of “real rape” that have been discussed in previous modules.

This doesn't necessarily mean that prosecutors personally believe in the stereotypes of “real rape.” They may or may not.

- Often, prosecutors understand the realistic dynamics of sexual assault, but know that this stereotype will be prominent in the minds of judges and jurors as they make decisions in a sexual assault case.
- Many prosecutors therefore believe that they cannot ethically charge a defendant in cases that depart too much from the stereotype of “real rape,” because a judge or jury will not be likely to convict.

In other words, the judgment of a sexual assault case rests on the victim rather than the offender, based on the victim's background and reputation, the victim's relationship to the accused, and the victim's behavior at the time of the incident. In this particular study, none of the evidence factors or other measures of case seriousness affected the prosecutor's decision to charge or not. The sad result is that most sexual assault victims are unlikely to see their cases successfully prosecuted, because they did not behave “perfectly” before, during, or after the assault.

So what's the good news?

Of course we could conclude on this basis that law enforcement professionals should just give up on thoroughly investigating sexual assault cases – or focus only on those cases that fit the stereotype of “real rape,” where the victim behaved “perfectly” at the time of the assault. However, we think the opposite is actually true. We think this study shows the importance of good investigation and the crucial role that law enforcement investigators play in corroborating a sexual assault victim's allegations.

How so?

If the decision to charge in a sexual assault case depends on the victim's character and behavior – essentially the victim's credibility – then we think it is the job of law enforcement to focus their investigative efforts on overcoming challenges to the victim's credibility.

- 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.

By overcoming challenges to the credibility of victims and corroborating every possible aspect of their report, law enforcement investigators can make even the most difficult sexual assault cases “prosecutable,” while at the same time facilitating victim rapport, cooperation, and even successful emotional recovery. To assist in this process, this module will first address some of these common challenges to victim credibility and explore how law enforcement professionals can overcome them by conducting a competent and compassionate victim interview.

Credibility Challenge #1: Lack of Physical Resistance

In other modules, we describe how the stereotype of “real rape” suggests that genuine victims will resist their assailant to their utmost. Because of this stereotype, victims who report little or no physical resistance are often viewed by police and society with suspicion. After all, “If sexual assault victims don't resist, maybe they really wanted it.” Right? Wrong. As you certainly know by now – both from other modules and from your own professional experience – most sexual assault victims exhibit little or no physical resistance. This is true for a variety of reasons.

- Many victims do not physically resist during a sexual assault because they are too surprised or confused to do so. Remember that most sexual assaults are committed by someone known to the victim, and that most do not involve a weapon or even physical force beyond physical restraint. In fact, many sexual assault victims are so confused, surprised, and betrayed by the suspect's behavior, it is not a natural response for them to physically resist. Often, they are simply trying to make sense of what is happening.
- Of course, physical resistance is made even less likely by the fact that sexual assault victims often doubt their own perceptions and behaviors, or blame themselves for being in the situation in the first place.
- Physical resistance is also not very likely by victims who experience dissociation or frozen fright during the sexual assault, as well as those who are under the influence of drugs and/or alcohol.
- Still other victims do not physically resist because the perpetrator's greater size and strength are sufficiently threatening to induce compliance – even in the absence of actual force or threats.



- For some victims, the primary fear is retaliation. This is particularly common for immigrant women, who often fear being deported if their status is not legally resolved and the suspect has threatened to report them if they don't comply. This fear may also be present for LGBTQ victims who are threatened that they will be "outed" by their perpetrator.
- Finally, some victims do not resist because they fear resistance will anger their assailant and increase their risk of injury or death.

These reasons have been discussed in other modules, as common reactions to sexual assault victimization. However, they are relevant here because these reactions often serve to undermine the credibility of victims who do not physically resist during a sexual assault.

The role of gender socialization

In addition to these typical responses to sexual assault, there is another reason why many victims (namely, women) do not physically resist their assailant – based on a lifetime of female gender socialization. Although many men have a difficult time understanding this aspect, it is true that many female victims do not resist someone who is sexually assaulting them because they are afraid of embarrassing themselves or their assailant. This is of course particularly true in cases of non-stranger sexual assault, where the victim knows the assailant – perhaps even intimately. Since birth, girls and women are socialized to be polite, to not offend people, and to never say "no" because that could hurt someone's feelings. The following scenario illustrates this point.

Think for a moment about the movie, *The Silence of the Lambs*. In one memorable scene, a woman walks past a man with his arm in a cast, who is struggling by himself to load a couch into a moving van. As the audience, we can certainly identify with the ambivalent feelings of this woman. She is clearly trying to balance her concern and suspicion of the man against the desire to help someone who is obviously in need. For those who have seen the movie, you know that the woman decides to help the man by climbing into the moving van and helping to pull in the couch as the man uses his one good arm to push. Yet when she is in the back of the van, he closes and locks the door, thereby trapping her, in order to abduct and torture her. It is a terrifying scene, and one that women in particular can often identify with, because of the terrible decision women must make regarding whom to trust.

Although people will of course react differently to any situation, the fact is that many women would help the man in this scene to load the couch into the moving van. Is this unwise? Perhaps. Yet it would also be extremely difficult for many of us to pass by the situation without offering some assistance. Furthermore, there is a sense in which women in particular are trained their entire lives to help out this man with the cast – or to accept a ride from someone they don't trust completely, or go on a date with someone they don't know very well. In most cultures, girls and women are socialized to be polite and cooperative, to trust people, and to never say "no" or otherwise hurt someone else's feelings. Women are also often afraid of misjudging a situation, overreacting, and ending up either looking ridiculous and/or hurting the man's feelings.

- Most men – especially law enforcement professionals – cannot understand this dilemma because men have been socialized to think and act differently.
- However, assuming that this dilemma is experienced very similarly by most women, imagine how much more powerful this discomfort and confusion must be when the situation is sexual and the man is someone that the woman knows well.

Messages about how men and women are supposed to conform to society's notions of gender can also impact LGBTQ victims of sexual assault. LGBTQ victims may blame themselves for the assault or think they deserve it due to negative cultural messages about LGBTQ people.

Gender socialization may also impact the response of men who are sexually assaulted. Men may feel increased shame in reporting that they were assaulted due to traditional roles of masculinity and the idea that men are supposed to be able to defend themselves from attacks.

Many of us would like to believe that if we were ever in a sexual assault situation, we would fight back against our attacker, perhaps by scratching at his eyes, or kicking him in the groin, or breaking into “kung fu” tactics like in the movies. It's easy to understand why we want to believe this, because it helps to make us feel safe from the threat of sexual assault victimization.

However, the reality of sexual assault is quite different from this movie script. As we have already discussed, most sexual assaults are committed by someone known to the victim, so the most common response is not physical resistance but rather confusion, disorientation, betrayal, shame, and even self-blame. Yet despite the fact that most sexual assault victims do not physically resist, this factor is nonetheless used to challenge their credibility as well as the validity of their report. Therefore, one of the key objectives of a successful victim interview is to collect the type of information needed to overcome this common credibility challenge.

Overcoming Credibility Challenge #1: Lack of Physical Resistance

To overcome Credibility Challenge #1, the very first thing law enforcement investigators must do is face the possibility that they may personally believe in the stereotypic dynamics of rape rather than the realistic dynamics of sexual assault.

Law enforcement professionals must first and foremost acknowledge the reality that most sexual assault victims do not physically resist, regardless of what the societal stereotype and other anecdotal evidence may suggest.

Then, investigators must carefully elicit from victims during an interview exactly how they responded to the situation and what they were thinking and feeling at the time. When doing so, it is critically important to use open-ended questions that allow victims to describe the experience in their own words. For example, investigators should never ask the victim questions like these:

- *Did you fight the suspect?*
- *Did you scream for help?*
- *Why didn't you try to run or escape?*

Questions like this imply to the victim that there is a correct response to sexual assault. Yet for the majority of victims who demonstrate little or no physical resistance, this type of question can



make them feel that they are being judged and/or that their report is viewed with suspicion. Also, remember that victims do not typically have any expertise in the area of sexual assault, and at the time they report the incident to law enforcement they often have not had time to make any sense of what happened to them. Therefore, many victims do not understand their own reactions to the sexual assault and they have difficulty explaining their reactions to the law enforcement investigator. Investigators should therefore provide the victim with open-ended prompts such as:

- *What did you do next?*
- *Tell me what you were thinking at that point.*
- *Tell me what you were feeling when he did that.*

This type of questioning will provide victims with the opportunity to talk about their thoughts, feelings, and experiences during the sexual assault. It will often reveal strategies that the victim used to survive and cope during the sexual assault, such as dissociation, self-talk, deciding what to do next, and even deciding not to physically resist. These strategies often go a long way toward explaining how victims “resist” internally instead of externally and/or physically.

In fact, law enforcement investigators are often surprised by the information that victims provide in response to such open-ended prompts, with details that would not have been elicited if the question had been posed differently.

For example, a district attorney noticed in an interview with an 18-year old victim that she had unusually long fingernails. So, the D.A. asked the victim why she didn't use her fingernails to scratch the 225-pound university football player accused of raping her. The victim could not respond. How could she? Later, when asked how she felt during the attack, she said that although she continually cried and said “no,” she thought that the suspect would kill her and that she would never get to go home if she made “too big a deal” out of the incident.

Document sensory and peripheral details of the assault

When victims have the opportunity to describe all of their thoughts and feelings during a sexual assault, investigators can begin to reconstruct the entire reality of the experience. This can be very powerful in getting prosecutors, judges, and jurors to understand why victims respond the way they do – including why they do not often physically resist. But in order to recreate the entire reality of the sexual assault, investigators must ask victims to provide **all of the sensory and peripheral details** they can recall. These details might include any of the following.

Smells, including the smells of:

- the suspect (e.g., body odor, deodorant, cologne, aftershave, shampoo)
- the suspect's ejaculate

- the suspect's breath (e.g., foul or sweet odors, alcohol, smoke, garlic)
- the environment

What things felt like, such as:

- the floor
- the bed
- the ground against the victim's body
- the suspect's body

How various body parts were placed during the assault, such as:

- the victim's arms, legs, torso, hands, feet, head
- the suspect's arms, legs, torso, hands, feet, head
- the suspect's use of body parts to restrain or strike the victim³

Sensory details will also include all of the other sights and sounds that the victim can recall, to describe the incident so others can imagine what the victim was thinking and feeling at the time of the sexual assault. What does this look like? Let's look at an example from a sexual assault victim's written statement, used as part of a real law enforcement investigation.

He pulled into the alley and shut off his car. He turned to look at me and I thought, he's going to try to kiss me! Why does this always happen to me? He grabbed the back of my head, and forced me down to suck his penis. I resisted and the more I tried to get away, the rougher and more violent he became.

Threats of biting off his dick didn't stop him. His intensity and power grew, and my neck began to hurt so badly that I hardly had the strength to pull away. As I grew weaker, he grew stronger.

I looked at a blurred vision of myself in the mirror, a mixture of tears and alcohol. Looking at myself, I said, "it's okay, you are just going to go home now and take a shower. He said, 'Come on, let's go.' I was so glad that I was going home. He didn't take me home. He stopped the car in the same alley. FUCK, FUCK, FUCK.

I started panicking. Everything happened so fast from there. He kept coming at me. It suddenly hit me what was happening. "Oh my gosh, I am being raped!" I felt completely frozen. Inert. Weak. Like I couldn't do anything at all. He had a power and force over me that I can't even describe.

³ These examples were taken from a document entitled "Witness Preparation" by Roberta Maria Baldini of the Office of the Bronx District Attorney. This document appears in the *Trial Training Manual*, assembled by Byranne Hamill, and it was made available by the author.

My body felt like it was made of lead. I knew how violent he was. He had shown me that only minutes before, when I didn't cooperate with him. I was scared. So scared that I was paralyzed, unable to think or react. So scared, that all I could do is scream inside my head. But, I showed a helpless, empty, nothingness on the outside.

Amazingly, this victim was only 15 years old, yet her description shows how powerful a written statement can be when it includes details about what a sexual assault victim was thinking and feeling at the time, along with all of the sensory and peripheral details the victim can recall.

Document exactly what “no” looked like for the victim

Another important strategy for overcoming Credibility Challenge #1 is to document exactly what “no” looked like for the victim of a sexual assault (Munch, 2005). Again, this is a critical aspect of recreating the entire reality of the sexual assault, as experienced by the victim. It also helps to explain why victims do not physically resist, by showing the many different ways that they say “no” using words and/or actions.

- Sexual assault laws do not require victims to say “no” verbally, but many victims do use words to express their non-consent. If so, these words must be recorded exactly, along with the tone used by the victim – for example, whether the words were whispered or shouted.
- Investigators should also ask about any words used by the suspect, because these often indicate that the suspect heard and understood the way the victim said “no.” For example, if the victim says “no” and the suspect says “c’mon, you know you want it” this shows that the “no” was in fact heard and understood by the suspect.
- Of course, if the victim did physically resist (for example, if the victim pushed the suspect or otherwise fought back) these actions must also be fully documented. For these victims, this was one of the ways they said “no” to the suspect.
- If the victim did not say “no” with words or physical resistance, however, the investigators must document what “no” looked like. For some victims, this could be shaking their head “no” throughout the assault. For other victims, it could be looking away and focusing on something else during the assault.

By documenting everything that the victim said and did during the assault, this can be used to describe what “no” looked like for this particular victim.

- This may be particularly important when the victim consented to some initial sexual activity and then did not consent to other sexual acts with the suspect.
- In these situations, it is essential to show what “no” looked like, and document exactly when it was expressed, so the entire incident can be mapped out in chronological order (Munch, 2005).

Later, a prosecutor can use all of these details to reconstruct the victim’s experience of the sexual assault in all of its detail, and then contrast it with common sense notions of how someone acts

when involved in consensual sex (Munch, 2005). Let's see what this looks like, using another example from the same victim's written statement that was excerpted before:

I couldn't look at him or his face, so I looked out the windshield window at a tree. I stared at its leaves in a total stupor. Disassociating myself from my body, like a daze. I was in shock.

This victim did not say “no” or physically resist, but her “no” was expressed by not looking the suspect in the face, focusing on a tree outside the car, and dissociating from her body – among other things. A prosecutor can use this type of description to reconstruct the reality of the sexual assault and contrast it with the type of behavior seen by someone engaged in consensual sex.

Document post-assault behaviors

An important part of overcoming Credibility Challenge #1 (lack of physical resistance) is therefore to describe everything that the victim recalled thinking, feeling, saying, and doing – both before and during the sexual assault. However, it is also important to keep in mind that most of the evidence in a sexual assault case actually develops after the sexual assault.

- Thus, victim interviews can be used to describe who the victim is now, and how this is different from who the victim was before the sexual assault.
- A description of how the victim changed after the sexual assault can also include information provided by friends, family members, and co-workers. This type of description is particularly important for victims who cannot verbally articulate these changes themselves, either because they are deceased, incapacitated, unavailable, or have a disability limiting their cognitive ability or communication.
- It will also include statements from “outcry witnesses,” those people that the victim told about the sexual assault, either in the immediate aftermath or later.

By reconstructing who the victim was before, during, and after the assault, prosecutors can later convey to the judge or jury the entire context of the victim's behavior. Prosecutors can even utilize an expert witness such as a psychologist or victim advocate, to help demonstrate the similarity of these behaviors with other common reactions to sexual assault – and to contrast these reactions with the behavior of someone who has engaged in consensual sexual activity.

Let's see what this looks like in an example, taken from the same victim's written statement:

Nothing could stop the pain and humiliation that I held inside. I couldn't even call my friends to get support. I couldn't even bring myself to walk down two houses to talk to my best friend. I didn't want them to know. I wouldn't let myself visualize any of the day. I didn't know what to do. The next day at school, the reality was settling in. I knew the seriousness of the situation. I am a rape victim. I was raped.

This victim has described who she was after the sexual assault, and this can be corroborated with the descriptions provided by friends, family members, teachers, and others. These descriptions of who the victim was after the sexual assault can also be contrasted with descriptions provided

by the victim and corroborated by others regarding who she was before the sexual assault. Post-assault behaviors of the victim can therefore be used to corroborate the victim's account of what happened, and overcome credibility challenges based on the lack of physical resistance.

Credibility Challenge #2: Delayed Reporting

Another common challenge to the credibility of sexual assault victims is that they typically do not report the crime to law enforcement, and if they do report it, they typically only do so after some delay. It could be days, weeks, months, or even years after the sexual assault took place. As discussed in other modules, there are many reasons why victims delay reporting a sexual assault, but this typical reaction is nonetheless seen as cause for suspicion.

- After all, the stereotype tells us that victims of “real rape” report the crime immediately to authorities, right?
- Again, you certainly know from your own experience that this is wrong. In fact, delayed reporting should never be seen as a cause for suspicion, because most sexual assault victims who report only do so after some delay.

This is true for a number of reasons. First, we have already discussed how victims who are sexually assaulted by someone they know are often surprised and confused by the perpetrator's behavior, frozen with fear during the incident, paralyzed by the concern that they are to blame for the sexual assault, and confused by the friendship, love, or trust that they feel for the offender. As a result, they do not typically report the incident to law enforcement immediately.

Immediately afterward, victims have not had time to process what happened to them, let alone label it as a “sexual assault” or a crime.

Another reason that victims do not immediately identify what happened to them as a “sexual assault” is because they also believe the societal stereotypes of what constitutes “real rape.”

- Obviously, law enforcement professionals are not the only ones to believe in these stereotypes about “real rape.” They are shared by everyone in society.
- It is therefore not surprising that victims themselves often believe the stereotypes, thinking that sexual assault can only happen between strangers, and that it must involve physical force, weapons, and injury.
- In addition to stereotypes about the physical actions that constitute “real rape,” stereotypes of who can be a victim and who can be a perpetrator may cause victims who are men and victims who were assaulted by women to not believe that what happened to them was “as serious.”
- So, if their own sexual assault does not look like the stereotype of “real rape,” victims often do not recognize what happened to them as a crime and do not immediately report it to law enforcement.

It is also common for victims to have contact or even a continued relationship with the suspect after their sexual assault. This happens for all of the reasons we've discussed so far, and because

many victims do not want to believe that what happened to them was such a serious violation. They may initially try to think of the incident as simply constituting "bad sex" instead of sexual assault, because this does not require them to think of themselves as victims or take any action that will totally disrupt their lives such as reporting the incident to law enforcement.

- Some victims continue to think of their sexual assault as simply "bad sex" for the rest of their lives.
- However, other victims eventually come to think of the incident as a sexual assault, after processing what happened to them emotionally and discussing it with friends, family members, counselors, or others. Victims often receive assistance from support people in identifying what happened to them as a sexual assault and encouraging them to consider reporting it to law enforcement.
- In other situations, victims later identify the incident as sexual assault when the suspect is again violent or abusive, or when the traumatic impact of the incident overwhelms them so they are no longer able to deny or minimize what happened.

If they decide to report the sexual assault at that point, it would obviously be a delayed report. This scenario is not uncommon, and it makes sense when you think about the realistic dynamics of sexual assault that we have discussed in this module.

Another reason that sexual assault victims often take a while to report the crime to law enforcement is because **they are afraid**. There are many things to be afraid of when reporting a sexual assault to law enforcement, and all of these fears are well grounded.

- For example, victims of sexual assault are often afraid that no one will believe them or that they will be blamed for what happened. These fears may be especially pronounced among those victims who are sexually assaulted by someone they know.
- Victims of non-stranger sexual assault are also afraid that family members and friends will side with the offender rather than themselves, they are afraid of what will happen to the offender if the assault is reported, and they are afraid of what will happen to their own lives after disclosing such a secret.

Imagine a woman who is sexually assaulted by her boyfriend in her own apartment, versus a stranger in a deserted parking lot. The woman who is assaulted by the stranger is probably much more likely to run and tell someone about the incident as soon as she is able to get away. However, the woman who is sexually assaulted by her boyfriend will often suffer in secret, for days, weeks, months, or even years before telling someone about the incident. Some victims may never tell anyone at all about the sexual assault, let alone report it to law enforcement authorities.

Delayed reporting is therefore something that often differs between victims of stranger and non-stranger sexual assault. It is perhaps easier to understand this difference by considering how a female victim might react to an assault by a stranger versus non-stranger. For all of these

reasons, it is understandable that most victims of sexual assault – but especially those who know the offender – will not report the crime to law enforcement or will do so only after some delay. This is one of the realistic dynamics of sexual assault victimization, even though it isn't similar to the stereotypic “real rape” that most people in society believe.

Overcoming Credibility Challenge #2: Delayed Reporting

To overcome Credibility Challenge #2 (delayed reporting), investigators must:

- Face the possibility that they may personally accept the stereotype that most victims of sexual assault immediately report to law enforcement. Law enforcement professionals and others must simply accept the reality that most sexual assault victims do not report the crime immediately to law enforcement.
- Reassure victims that delayed reporting is common and understandable given the realistic circumstances of sexual assault victimization.
- Provide victims with open-ended prompts and perhaps even use the cognitive interviewing techniques to be described later. These techniques will help to elicit the victim's thoughts and actions before, during, and after the sexual assault. For example, victims can describe how it took them some time to make sense of what happened to them, to talk with friends and family members for support, and to struggle with their fears about reporting the sexual assault to law enforcement.
- Document these thoughts and actions very thoroughly in a written report, preserving the words used by victims themselves whenever possible. Effective report writing can communicate the entire reality of the experience described by victims to prosecutors, judges, and jurors, so they are better able to understand why victims often take a while to report their sexual assault to law enforcement.

Interview anyone that the victim told about the sexual assault, especially the first person(s) told. These individuals are referred to as “outcry witnesses,” and they are particularly important to interview because they can describe the victim's behavior and demeanor after the incident. The statements of outcry witnesses can often go a long way toward explaining why victims do not immediately report their sexual assault to law enforcement.

- For example, outcry witnesses can describe how the victim initially disclosed the sexual assault, and explain the fears, doubts, and other reasons why the victim hesitated to go to the police immediately.
- Unfortunately, victims are often given unrealistic or inappropriate advice by friends and family members, who may watch too many television crime dramas.
- Support people also frequently respond by doubting or blaming victims, which makes it less likely that they will report immediately to the authorities.

Often when prosecutors, judges, and jurors are given all of the information about how victims actually responded to the sexual assault – including all of their thoughts, feelings, and fears – it becomes clear why it often takes them a while to report the incident to law enforcement.



Credibility Challenge #3: Incomplete, Inconsistent, and Untrue Statements

Another fundamental challenge to the credibility of sexual assault victims is that many – if not most – make statements to the law enforcement investigator or others that are incomplete, inconsistent, or just plain untrue. There are a number of reasons for this.

Trauma and disorganization

First, sexual assault victims often make statements that are incomplete, inconsistent, or even untrue out of trauma and disorganization.

- This should not come as a surprise to law enforcement professionals, who recognize that people in trauma often have disorganized and disoriented thinking.
- In fact, decades of research have documented that trauma decreases our ability to provide information that is complete, consistent, and 100% accurate.

To illustrate, let's turn our attention away from the topic of sexual assault to one that is perhaps more familiar to law enforcement professionals – the experience of officers involved in a critical incident. There is a wealth of research on the experiences of law enforcement professionals involved in traumatic events, documenting the negative effects of that trauma on their physical and psychological processes. As one example, these negative effects were summarized in a publication by PPCT Management Systems, Inc. (1989). These effects were described as including: perceptual narrowing, loss of cognitive and motor skills, and critical incident amnesia. It is not hard to see how many of these effects would decrease the likelihood that someone would accurately perceive, store, and recall information.

First, **perceptual narrowing** occurs when an individual “tunes into” the input from one of the five senses and excludes the others. For example, many officers and deputies involved in shooting incidents describe “auditory exclusion” where they do not hear a weapon firing, even if it is their own. Other examples include tunnel vision or other partial loss of visual processing, such as the “weapon focus effect,” where individuals faced with a firearm can often provide a very detailed description of the gun but almost no information about the person holding it. Obviously, the ability of an individual to accurately recall a traumatic incident is limited if their sensory input is not fully processed in the first place.

Another common effect of trauma is a **loss of cognitive and motor skills**. For law enforcement professionals experiencing a traumatic event, this could be seen in a decreased ability to concentrate or in seemingly irrational decision-making. It is not hard to see the parallel between these effects seen among sexual assault victims and law enforcement professionals who are involved in a critical incident. Both may exhibit thoughts and actions that do not “make sense” to someone else, either during the event or afterward.

Perhaps most relevant for the present purposes, the publication by PPCT Management Systems describes “**critical incident amnesia**” that is experienced by law enforcement professionals in

trauma. According to that publication: “This temporary amnesia will affect both the officer’s memory and the officer’s ability to write an incident report” (p. 1-6).

This characterization is certainly consistent with the research on trauma and memory (for a review, see Koss, Tromp, and Tharan, 1995). Research suggests that memories of traumatic events are generally accurate, because emotional experience heightens memory. However, the traumatic nature of the experience tends to focus a person’s memories on central rather than peripheral details. The research also suggests that the amount of accurate information a person can recall may actually increase over a limited time, because of the short-term memory impairment that is caused by the trauma (Koss et al., 1995). Memory of the event may also be facilitated when the person has had some time to rest and recover; it is important to keep in mind the restorative power of sleep on memory and well-being in the aftermath of any traumatic event.

Applying this to the context of critical incidents, the PPCT Management Systems publication recommends that the first version of a critical incident report should be verbal and titled as a “preliminary” report. The “supplemental” report should then be completed after the officer’s first sleep cycle, and the final report prepared after the officer has had a second full sleep cycle.

Given these recommendations for law enforcement officers, it is not hard to see the implications for interviewing a victim of sexual assault. Specifically, law enforcement investigators and others must recognize that victims of sexual assault will experience a variety of negative effects on their physical and psychological processing, and that all of these will in turn influence their ability to provide complete and accurate information about the sexual assault. For example, the research reveals that memories of sexual assault – as compared with other types of memories are:

“less clear and vivid, less visually detailed, less likely to occur in a meaningful order, less well-remembered, less talked about, and less frequently recalled either voluntarily or involuntarily; with less sensory components including sound, smell, touch, and taste; and containing slightly less reexperiencing of the physical sensations, emotions, and thoughts than were present in the original incident”
(Koss, Figueredo, Bell, Tharan, & Tromp, 1996).

These findings also suggest that victims might recall accurate information about the assault after one or even two full sleep cycles. As Lord and Rassel (2000) recommend on the basis of their review of the law enforcement response to sexual assault in nine North Carolina counties:

“It is particularly important to give the victim a day to rest before conducting an in-depth interview” (p. 72).

While it may not be realistic – or even desirable – to wait 2-3 days before interviewing a sexual assault victim, it is helpful to remind law enforcement professionals that a short postponement of the interview is not necessarily a bad thing. All too often, there is a sense that the interview must be conducted immediately, as if it were a question of “now or never.” Rather, the decision can be made to conduct the interview now or later, based on consideration of a number of factors.

- There are certainly some sexual assault victims who may be difficult to locate at a later point. In that case, it probably is best to conduct the interview immediately.



- For other victims, however, it may be a good thing to postpone the interview until at least the next day. This would be the case if the victim is likely to be easily located and able to make arrangements to talk in more detail with the investigator.
- Postponing the victim interview may be particularly appropriate in cases where the victim is exhausted and/or still under the influence of drugs or alcohol.

All too often, law enforcement professionals and others have been suspicious of sexual assault victims when they provide information that is disorganized or inconsistent – or when they recall additional information days, weeks, or even months after the sexual assault. Rather than being a cause for suspicion, however, such behavior should be seen as the natural result of trauma. Therefore, law enforcement professionals can greatly benefit their investigative skills, not only by keeping in mind the effects of trauma on memory, but also realizing that postponing an interview may sometimes help victims to more clearly think, remember, and communicate.

Discomfort with sexual (or other) details

A second reason why sexual assault victims often make incomplete, inconsistent, or even untrue statements is because they are uncomfortable in the law enforcement interview. Even when the investigator responds competently and compassionately, this interview is likely to be difficult for victims because they must tell a stranger – often one who is dressed in a uniform and armed with a gun – about the details of their sexual assault.

To understand this response, officers should imagine being asked by a stranger to tell about their most recent sexual experience – in very specific detail. Most of us would be too shocked to respond, or if we did respond it would be to tell the person asking “where to go!” Depending on the situation and the amount of pressure, we might respond but omit certain information or tell partial truths just to make the questioning stop.

Law enforcement professionals should try to remember this discomfort each and every time they interview a sexual assault victim. This factor alone goes a long way toward explaining why victims of sexual assault often provide information that is partial, inconsistent, or even untrue.

This discomfort may be experienced by victims, not only when relaying sexual details but also details of the sexual assault that were particularly humiliating. For example, victims may be especially reluctant to tell law enforcement professionals how the suspect degraded them, either with cruel comments or debasing acts such as urinating on them. It isn't difficult to imagine why victims might want to omit this information from their account of the sexual assault.

Many disclosures, many different people

It is also important to keep in mind that once a person discloses that they have been the victim of a sexual assault, they may have to describe what happened – not only to law enforcement – but also to friends, family members, rape crisis counselors, victim advocates, medical professionals,

and others providing various social services. Of course, many victims of sexual assault tell no one about what happened.

However, for those who report the sexual assault to law enforcement, they may need to describe what happened to a number of people, including:

- a communications operator who sends a patrol officer or deputy to respond
- a patrol officer or deputy, who may request assistance from a supervisor
- a victim advocate, contacted either by the victim or law enforcement agency
- one or more interpreters, if the victim does not speak English or requires assistance with communications due to a disability

Then if a forensic medical examination is conducted, the victim will need to disclose to:

- a hospital clerk or nurse on duty, and
- at least one physician and/or nurse

If the law enforcement agency is a large one, the case may then be referred to:

- a detective or other specialized investigator, and/or
- reviewed by a supervisor

If the case is referred for prosecution, the victim may be interviewed by:

- the prosecuting attorney,
- an investigator within the prosecutor's office, and
- a victim-witness specialist

Of course, if the suspect is charged, the victim may be required to describe what happened in the courtroom, in the presence of:

- a judge,
- a bailiff,
- a court reporter,
- a court clerk,
- the defendant,
- defense counsel,
- members of the jury,
- and any citizens who might be curious enough to attend a sexual assault trial.

None of this even begins to estimate the number of people who will become aware of the event if it is reported in the media. It also doesn't take into account the friends, family members,



counselors, and other support people who will inevitably find out about the sexual assault and want an explanation from the victim if the case is investigated and prosecuted.

Given the number of people who might eventually be told about the sexual assault, it is no wonder that victims often make statements that are inconsistent or distorted in some way. They are often just trying to protect themselves from the judgments of all of those people listed above.

Even if the victim does not ultimately have to tell all those people about the sexual assault, the prospect of doing so can be terrifying. Many victims envision having to tell all of these people what happened; this is often enough for victims to omit or distort certain aspects in their description of the sexual assault.

Fear of doubt and blame

Another reason that victims often make statements that are incomplete, inconsistent, or even untrue is because they are afraid they will be doubted or blamed for the sexual assault. It is critically important for law enforcement professionals and others to recognize that these fears are very well grounded.

- One of the most common frustrations that law enforcement professionals express is the fact that many victims of sexual assault are unable to move forward with the investigation and prosecution of their case. This frustration is understandable.
- Yet we must all recognize that many victims decide that they are unable to participate in the investigation and prosecution because doing so would totally disrupt their life. Victims are often particularly concerned about how their friends, family members, and others will react if they find out about the assault.
- As we've already discussed at length, the reality is that victims are often not believed and/or blamed for their own sexual assault – even by the people who love them. It is therefore quite reasonable for victims to fear this kind of response, both from their own friends and family members, and other professionals such as police officers, nurses, doctors, and victim advocates.

But of course victims want to be believed, and they don't want to be blamed for their sexual assault. Therefore, victims often make statements that are not 100% complete or accurate. Sometimes, victims do this to omit certain behaviors that were particularly risky or even illegal. Other times, victims alter their description to make their experience sound more like "real rape."

To illustrate, imagine that a young woman meets a man at a club and enjoys dancing and drinking with him. As the club gets noisier during the evening, the man asks the young woman to come out to his car so they can talk and get to know each other better. She is flattered by the attention and joins him in the car where he sexually assaults her, using his body weight as a restraint. She is drunk, confused, and frightened, and as a result she does not physically resist during the assault. Later when reporting the crime to police, she says that the man pulled a knife on her in the car.

Another example can be seen by a young man who was raped by a group of men, because he identifies as gay. When the young man told his family what happened, they asked him, “How could you be raped if you are gay, aren’t you supposed to like that kind of thing?” The young man then decides to be very cautious about telling anyone what happened and decides not to contact law enforcement to report being sexually assaulted.

In this kind of case, it is important for law enforcement professionals to reassure victims that nothing they did could have given someone permission to sexually assault them. By making the environment safe and nonjudgmental, this will alleviate the concern victims often have that their behavior will be used to judge the seriousness of the incident or the validity of their claim.

- Law enforcement investigators can also state that they are not there to judge the victim’s behavior but to find out exactly what happened.
- A sentiment that is commonly expressed by victim advocates is that anything a victim did to survive is okay, and since the victim did survive, he or she must have made good choices.
- Open-ended prompts can then be used to elicit the whole story – including those behaviors by the victim that might be seen as risky, unflattering, or even illegal.
- Of course, victims can also be reminded that anything they do not disclose now about their own behavior may be used to discredit them later, so it is better to tell everything to show that nothing has been hidden and to allow the victim to describe what happened from his or her own perspective, not the suspect’s.

Investigators can gently explain to victims that they must tell the truth or their credibility will be later be questioned. While this should never be phrased in a way that sounds threatening or intimidating, investigators can help victims to understand that being truthful is much more important than trying to make the sexual assault sound more like the stereotype of “real rape.”

Fear of being arrested

Another particularly serious challenge to the victim’s credibility is any illegal behavior that he or she may have been involved in at the time of the assault. As many law enforcement professionals know, when victims have engaged in illegal drug use, underage drinking, or sex work, they are likely to omit this information or even lie about it when they are talking with an investigator. Victims of sexual assault who are from traditionally marginalized communities may also fear being arrested or experiencing negative encounters with law enforcement such as undocumented victims, people of color, low income victims, and victims who are LGBTQ. In particular, transgender people face very high rates of unemployment and homelessness⁴ due to discrimination which can lead them to engage in sex work for survival.⁵ This can put

⁴ National Center for Transgender Equality and National Gay and Lesbian Task Force, *Injustice at Every Turn*, 2011. http://endtransdiscrimination.org/PDFs/NTDS_Exec_Summary.pdf

⁵ National Center for Transgender Equality and National Gay and Lesbian Task Force, *Injustice at Every Turn*, 2011. http://endtransdiscrimination.org/PDFs/NTDS_Exec_Summary.pdf



transgender women at increased risk of sexual violence and also creates barriers to reporting this violence.

- This reaction makes sense, because victims often fear being doubted, blamed, or even arrested for their unlawful behavior.
- However, it is important for law enforcement professionals to reassure victims that they will not be arrested for such behavior, and it is critical that departments have a policy of not arresting in such instances, unless it is absolutely necessary given the seriousness of the offense.

Just as people who have overdosed on illegal drugs are treated for their medical emergency and not arrested, the priority in sexual assault cases must remain on investigating the crime and treating the victim with compassion. Arresting the victim will likely damage any trust that has been established with law enforcement, eliminate any chance that the victim will cooperate with the investigation, interfere with the victim's emotional recovery, and perhaps even deter future additional victims from reporting. Only when absolutely necessary should law enforcement personnel consider arresting the victim of a sexual assault. When crafting a policy for law enforcement agencies, it is therefore important to make a distinction in the policy for responding to felonies versus misdemeanors that may have been committed by the victim.

If the victim has committed a felony or has an outstanding felony warrant, this will of course need to be processed. However, even in this type of situation it is important that the sexual assault crime not be disregarded, just because of the victim's criminal activity or history. The best response may therefore be to talk directly with the judge or prosecutor to discuss whether the victim could surrender to the court without booking the victim on the felony charge(s) at the time of the reported sexual assault. Of course, this may not be possible if the felony charge or warrant involves a violent crime or the victim poses a threat to the community.

It is much more common for sexual assault victims to be involved in misdemeanor crimes, however, such as driving under the influence, underage drinking, prostitution, and substance abuse, or to have illegal immigration status. In this type of situation, it is important for the law enforcement organization to prioritize the response to the felony sexual assault crime committed against the victim and carefully consider how to best respond to any misdemeanor crimes committed by the victim. Clearly, an immediate arrest of the victim on a misdemeanor offense will probably eliminate any chance of successfully investigating or prosecuting the felony sexual assault. The best response may be to book and release the victim on the misdemeanor charge(s) or write a notice to appear in court, rather than making an arrest.

Law enforcement agencies must carefully consider their response to illegal behavior by sexual assault victims, taking into account the important difference between felony and misdemeanor activity. Any policy response must also take into account the fact that an immediate arrest of the victim will make successful prosecution of the felony sexual assault extremely unlikely. Of course, immigrant victims also typically have a fear of being arrested or deported because of their immigrant status. It is important to discuss these difficult issues with victims before moving forward with the investigation. This can also be true for any witnesses in the case.

It is critical that law enforcement professionals discuss with prosecutors the issue of how to respond when sexual assault victims commit crimes, in order to reduce the likelihood of any confusion or problems arising between the two agencies.

Inconsistencies due to the method of documentation

Finally, a major reason for potential inconsistencies in the victim's statement is the method of documentation used by the law enforcement investigator(s).

- 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 taping victim interviews (whether audiotaping or videotaping).
- If the investigator uses a tape recorder or video camera to record the interview with the victim, this allows the investigator to ensure that the written report is entirely consistent with statements made in the actual interview.
- Taping also communicates that the investigator takes the report seriously and wants to get all the details correct.

This issue will be discussed in more detail later, with guidance for investigators deciding whether or not to tape the interview with a sexual assault victim. However, it is mentioned here because it is a common source of inconsistencies in the written report of the victim's statement.

In general, the more people who interview a victim, the more likely it is that errors and inconsistencies will arise. If an error or inconsistency arises, it could therefore be due to what the interviewer heard, what the interviewer asked or didn't ask, or what the interviewer was able to document. All of these are possible, but any such problems will be used to discredit the victim. Therefore, if the interview with the victim is not taped, it is imperative that documentation by the investigator be meticulous – not done by taking notes in the margins of the exam form, but with detailed notes written carefully in a notebook used for this purpose.

A second issue arising from the method of documentation is that victims often provide information in a format that doesn't correspond with the nice, neat, chronological timeline that law enforcement investigators are attempting to create. Instead, the victim may provide information in a way that feels like various "snapshots" of the event to them, perhaps leaping from some part of the sexual assault that was particularly significant to them, and then bouncing around in time from things that happened at the beginning of the event, and then the end, etc.

- Obviously, this can be difficult for investigators to follow, and their training doesn't always prepare them well for this type of situation.
- Rather, investigators will often provide the victim with prompts such as: "Then what happened?" or "What happened next?"

Yet this type of chronology may not correspond to the way events are stored in the victim's memory, so investigators who ask questions in this way may risk interrupting the victim's

narrative account and frustrating the victim's attempts to provide information to the best of their ability. Then, if the investigator tries to write the narrative summary of the interview as if the victim had provided information in chronological order, it is likely to contain errors, gaps, inconsistencies, and other problems. Clearly, such problems can hinder the effectiveness of an investigation.

This can even lead to challenges to the victim's credibility, because errors, gaps, and inconsistencies in the victim's statement are all too often seen as evidence that the victim is lying and/or the sexual assault report is false. It is therefore critical that law enforcement investigators are clear – both with themselves and with victims – that victims are only being asked to relay the information during the interview that they can recall at the moment. Investigators must communicate to victims that they may very well have information that is missing from their memory of the sexual assault, and they should feel free to contact the investigator to provide that information when it emerges in their memory at some later time.

Of course, this also highlights the advantage of taping the victim interview, so the investigator doesn't have to piece together the chronology of the sexual assault while the victim is talking. However, even if the interview is not taped, the investigator does not necessarily have to piece together all of the details of the chronology during the victim interview. The process of piecing together the chronology can take place while the investigator is writing a report, and the victim can be contacted later if the investigator has questions regarding the timeline or missing details.

Overcoming Credibility Challenge #3: Inconsistent, Incomplete, or Untrue Statements

For all of these reasons, it is understandable that victims often give information in their statement that is incomplete, inconsistent or even untrue. Nonetheless, these issues can destroy the victim's credibility if they are not handled appropriately by the law enforcement investigator.

As a first step in overcoming this challenge, law enforcement professionals must recognize that these omissions, inconsistencies, and even untrue statements are understandable and should never be confused with a "false report." This is so significant that it bears repeating.

It is critically important that law enforcement professionals realize that these omissions, inconsistencies, or even untrue statements are understandable and should never be confused with a "false report."

As you'll recall from the module on False Reports, the determination that a sexual assault report is false can only be made when there is sufficient evidence to establish that the sexual assault was not completed or attempted. In other words, a report is only false when the sexual assault never happened. What we are talking about here, however, is a much more common situation – where the sexual assault really happened, but the victim reports it with some information that is missing, inconsistent, or even untrue. When this happens, the investigator must address these issues by exploring them gently and nonjudgmentally with the victim.

- The most important objective is to create a safe and nonjudgmental environment that encourages honesty even for unflattering or illegal behavior.



- Then when an omission, inconsistency, or untrue statement is suspected, the investigator can respond by pointing out the issue to the victim and asking for clarification. It is entirely possible that the victim simply made a mistake or the investigator misheard or misunderstood what the victim was saying.
- As we will note later, the appropriate time for this type of clarification is after the victim has completed his or her description of what happened – not immediately when the issue arises, because this will interrupt the victim’s narrative account.
- It is also important to fully explain to victims the negative impact of such omissions, inconsistencies, or untrue statements on their credibility during the law enforcement investigation. By doing so, investigators can emphasize the importance of complete truthfulness.

If the issue remains, the investigator can explain that conflicting information has arisen and ask for the victim’s help to make sense of it. For example, an officer could say: *“I need to ask these questions because I have to write a report on this, and I want to get every detail correct.”*

- Or, the investigator can explain that others will be reading the report or hearing the facts, and it is important that these issues are clarified so they can have an accurate understanding of what happened.
- If the problem seems to result from the victim’s attempt to make the sexual assault sound more like “real rape,” the investigator can address the underlying fear of being doubted or blamed, by reassuring victims that sexual assault is serious and that they did nothing to deserve it.
- On the other hand, if the victim is concerned about his or her own illegal behavior (such as underage drinking or drug use), investigators can respond by reassuring victims that they will not be arrested – but this promise must only be made if it can be guaranteed to be true.

As we have already discussed, law enforcement agencies should have a policy of not arresting victims for misdemeanor criminal activity, given the priority that must be placed on the felony sexual assault crime.

Seeking corroboration for details in the victim’s statement

There are clearly a number of strategies that investigators can use to clarify inconsistencies, omissions, or untruths in the victim’s description of what happened. However, as important as it is to seek clarification of such inconsistencies or omissions, it is equally important to highlight the accuracy of other details in the victim’s statement. Thus, a primary goal of any sexual assault investigation will be seeking corroboration for details in the victim’s account of events, regardless of whether or not they are relevant for establishing an element of the offense.

- We have already discussed the importance of reconstructing the entire context of the sexual assault, including everything that the victim can recall saying, doing, thinking, and feeling. We discussed this in the context of overcoming challenges

to the victim's credibility based on a lack of physical resistance (Credibility Challenge #1). The same strategy is useful in describing why a sexual assault victim might delay reporting to law enforcement (Credibility Challenge #2).

- However, this strategy is also particularly helpful in overcoming Credibility Challenge #3 (inconsistencies, omissions, or untruths in the victim's statement). By documenting details in the victim's account of what happened, investigators can corroborate the details and bolster the credibility of the victim.
- For example, if the victim describes exactly how a particular environment looked, smelled, and sounded, the investigator can corroborate details in that description – both to reconstruct the entire reality of the sexual assault and to bolster the credibility of the victim and the victim's account of what happened.

When addressing this third credibility challenge, it is also important to keep in mind the real-world timeline for a law enforcement investigation. At the time a sexual assault victim describes the details of what happened, that person does not know that these details will later be corroborated with physical and scientific evidence. Therefore, by corroborating every possible detail in the victim's account of the sexual assault, it bolsters the credibility both of the victim and the victim's description of what happened (Munch, 2005).

This particular technique is well illustrated in a case cited by prosecutor Anne Munch. In that case, a female victim who was sexually assaulted in the suspect's car described how she dissociated herself from her body by focusing on the handle of the car door. In her interview, this victim could describe in exquisite detail the unique features of the car's door handle and this detailed description was corroborated by an examination of the suspect's car. This evidence was then used both to reconstruct the victim's experience of the sexual assault for jurors, and also to demonstrate how the victim's behavior was inconsistent with the reactions of someone engaged in consensual sex. Although the suspect claimed consent, jurors were able to recognize from this evidence that someone who is engaged in consensual sex is not likely to behave in such a manner (Munch, 2005).

Reducing the number of unnecessary professional contacts

Problems such as inconsistent statements from the victim can also be decreased by reducing the number of unnecessary professional contacts. This is often a goal for communities that implement a coordinated Sexual Assault Response and Resource Team (SARRT).

- This does not mean that investigators should be reluctant to conduct follow-up interviews during the course of the investigation, as additional evidence and information is uncovered. In fact, such follow-up interviews are necessary to conduct a comprehensive investigation.
- Rather, the goal is to reduce the number of unnecessary professional contacts that take place, either because the case is being screened or the victim is being "handed off" to another professional due to a shift change, job rotation, etc. The

purpose of any follow-up interviews should therefore be to gather additional information and clarify any questions, not to go over the same information again.

Because it takes time to develop rapport and trust with sexual assault victims, law enforcement agencies should never allow officers to “hand off” a sexual assault investigation in mid-stream, if there is any way to avoid it. This is a frequent cause of inconsistencies in the victim’s statement, and it creates serious difficulties in establishing rapport and trust with the investigating officer.

- The bottom line is that sexual assault victims should not have to deal with multiple officers or deputies handling their case, just because of a shift change within the law enforcement organization.
- Rather, law enforcement agencies should have policies in place that provide their personnel with the resources needed to complete thorough sexual assault investigations. To illustrate, all law enforcement agencies should place a priority on their sexual assault calls to avoid having responding officers called away.

As another way of reducing the number of unnecessary professional contacts, some jurisdictions have implemented a policy of having the responding officer or deputy and the forensic examiner (physician, SANE, or other nurse) conduct a joint preliminary interview.

- Again, this is sometimes a goal for communities implementing a Sexual Assault Response and Resource Team (SARRT), because this type of joint interview can improve communications between the professionals involved and it can potentially reduce the number of redundant questions asked of the victim. It also reinforces the team concept and can help the victim to feel that the various professionals are working together to provide the best and most coordinated services possible.
- When such a joint preliminary interview is conducted, however, it must be clear to everyone (including the victim) that detailed interviews will still need to be conducted separately by each of the different professionals (law enforcement investigator and forensic examiner). It should be obvious that the detailed interview conducted by the forensic examiner and law enforcement investigator have a different focus and purpose, but it is worth clarifying nonetheless.
- Another way that some jurisdictions have sought to reduce the number of unnecessary professional contacts is to have a prosecutor available to conduct follow-up interviews along with the law enforcement investigator.
- Again, this is a goal for some communities with a Sexual Assault Response and Resource Team (SARRT), because it can benefit both the quality of the investigation and the well-being of victims.
- Of course, this practice can also reduce the likelihood of inconsistencies in the victim’s statement, because the same information is covered once in the joint interview and not repeated in separate interviews with the officer and prosecutor.



The purpose of a medical interview is to:

- obtain information about what sexual acts were committed to perform a comprehensive medical forensic examination and to collect biological evidence samples;
- obtain information about physical injuries to document use of physical force and for medical examination and treatment purposes; and
- determine whether the medical forensic findings are consistent with the history, and to provide this information to law enforcement officers.

The purpose of an investigative interview is to:

- obtain the sexual assault history; and
- obtain a detailed description of the events (e.g. who, when, what, where, and how).

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Given the advantages of reducing the number of unnecessary professional contacts, some communities have also implemented a policy of "vertical prosecution" in sexual assault cases. This strategy allows victims to work with the same prosecutor throughout their case processing, which can be especially valuable in larger jurisdictions where cases are typically initiated by one prosecutor and "handed off" to another. All of these strategies represent "Best Practices" for the investigation and prosecution of sexual assault.

How NOT to respond: The polygraph or other techniques for "lie detection"

As discussed in the module on False Reports, some law enforcement professionals might suggest that one strategy for responding to suspected omissions, inconsistencies, or untrue statements would be to ask (or even require) a victim to submit to a polygraph examination or other technique for "lie detection." These could include computerized voice stress analysis (CVSA), handwriting analysis, statement validity analysis, or other techniques. Yet such techniques are clearly inappropriate with sexual assault victims – both because they are ineffective for the purpose of "lie detection" and because they will certainly destroy any trust the victim has with law enforcement. Of course, this in turn reduces the likelihood of successful prosecution.

- As discussed in the module on False Reports, the polygraph is known to be unreliable when used with individuals who are experiencing crisis.
- Even J.E. Reid, the developer of the modern polygraph examination noted a variety of factors that influence the validity of the test results, such as "extreme emotional tension," "overanxiety," "anger," and "physical discomfort," among others. These factors are extremely likely with sexual assault victims.
- Moreover, because new technologies such as computerized voice stress analysis (CVSA) operate on similar principles, the same advisories apply.



In fact, there is currently no technology available to truly “detect lies.” Rather, the polygraph and other techniques such as computerized voice stress analysis (CVSA) are designed to detect physiological reactions of stress, which may be associated with lying, or may be caused by victim’s emotional reaction to the sexual assault (e.g., trauma, confusion, anxiety, shame).

Based on these concerns, polygraph results are inadmissible in most situations, and several states have enacted laws to prohibit law enforcement from offering or requiring a polygraph examination for sexual assault victims or from using the results of a polygraph examination to determine whether criminal charges will be filed. (These states include California, Colorado, Connecticut, Illinois, Iowa, Michigan, New York, Oregon, Tennessee, Texas, and Wisconsin). Other states have a law that limits the use of the polygraph with sexual assault victims to very specific circumstances (i.e., Kentucky), a written Memorandum of Understanding the involved parties (i.e., Pennsylvania), or a statute requiring that victims receive written notice that polygraphs are voluntary, results are inadmissible as evidence, and that their agreement to take the polygraph should not be the only condition for initiating or continuing an investigation (i.e., Virginia). For more information on laws and policies restricting the use of the polygraph with sexual assault victims, contact the National Sexual Violence Resource Center at www.nsvrc.org.

Prohibition in federal law known as VAWA 2005

In 2005, Congress reauthorized the Violence Against Women Act of 1994 in legislation commonly referred to as VAWA 2005. One important provision of that federal law is that states will no longer be eligible to receive STOP Violence Against Women Formula Grants unless they can certify that their laws, policies, or practices will ensure that victims of sexual assault are not asked or required to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of such an offense. This provision applies to law enforcement officers, prosecuting officers or other government officials. In addition, the victim’s refusal to submit to such an examination cannot prevent the investigation, charging, or prosecution of the offense. The prohibition applies to adult, youth, and child victims. States have until January 5, 2009 to comply with the law.

This new federal law thus requires states to ensure that law enforcement agencies throughout the state are in compliance with this prohibition on the use of polygraph examinations or other truth telling devices, in order to remain eligible to receive federal STOP Grant funds. One way to accomplish this objective would be for a state to pass legislation prohibiting the use of polygraph examinations or other truth telling devices during the investigation of any sexual assault offense. Another way would be for all of the agencies in the state to implement written policies and protocols prohibiting this practice, with the information disseminated in training for officers, detectives, and prosecutors. It also provides an excellent opportunity to work cooperatively with victim advocacy organizations in order to craft appropriate protocols, conduct cross-disciplinary training, and design a structure for responding to any potential violations. For more information, please see the module on False Reports.

Preparing to Conduct a Successful Victim Interview: Two Policy Questions

Now we have discussed several of the barriers to effective victim interviewing, and some of the fundamental challenges to victim credibility that must be overcome. We are now almost ready to walk through the various stages of the actual interview. First, however, we need to address two important policy questions: (1) whether or not to tape the interview and (2) whether or not to assign female officers or deputies to these cases.

Policy Question #1: To Tape or Not To Tape?

While preparing for an interview with a sexual assault victim, one of the critical decisions to be made is whether or not to tape it (using either audiotape or videotape). This is a controversial issue, and law enforcement agencies must weigh the advantages and disadvantages before implementing any policy. However, it is worth noting that interviews with child victims have often been taped for years, and law enforcement professionals typically recognize the important advantages of this practice. Many of the same advantages also exist for adult victims, as we'll see in a moment.

Advantages of taping

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

- Taping also **records more details** than those summarized in a police report, which increases the amount of information recorded and can often reduce any redundancy in follow-up interviews.
- Investigators are also much **better able to listen carefully to the victim** because they are not also trying to take notes and/or write a report at the same time. When the interview is taped, the investigator can simply listen to the victim's narrative and jot down questions to ask later when the narrative is complete.
- Taping also **communicates to the victim** that the investigator is taking the case seriously and investigating it thoroughly. It conveys to the victim that the investigator wants to make sure that all of the details are recorded accurately.
- In addition, tapes of an interview make it possible to **determine the source of any inconsistent information**. In many cases, the tape reveals that the person responsible for the inconsistency is not the victim but the investigator who documented a fact incorrectly or simply misunderstood something the victim said. This can be a tremendous help for successful prosecution, because such inconsistencies can otherwise seriously damage the victim's credibility.
- Because taping more accurately records all of the details of an interview, it can also **help investigators to synopsise statements**, and this may be especially important for cases that do not move forward for prosecution. With these cases, the victim may later want the investigation re-activated or additional victims may



be identified, and it is easy to review the taped interview from the previous investigation and use it as evidence for the reactivated investigation.

- Taping can have the additional benefit of **protecting the investigator** if a complaint or misunderstanding should arise as a result of what was said.
- Tapes can also be reviewed for **training or supervisory purposes**, to improve the quality of interviews conducted by the law enforcement agency.
- Finally, taping can **better convey to prosecutors, judges, and jurors** the immediate response of victims to sexual assault.

Law enforcement professionals have the unique opportunity to talk with victims of sexual assault while their emotions are still raw. Their words and demeanor – whether angry, withdrawn, in shock, etc. – can be important in conveying the actual response of victims and bolstering their credibility. Victims often act very differently later, when they encounter prosecutors or jurors – months after the assault and perhaps after the benefit of counseling. Taping can therefore **document the immediate response** of the victim to trauma, which can be an important benefit for the prosecution. This last advantage also suggests the importance of preserving the tape of the 911 call that the victim made regarding the assault, if there is one.

Disadvantages of taping

On the other hand, the primary disadvantage of taping is that it can sometimes be **used against victims**.

- For example, if the victim’s demeanor does not fit the stereotype of “real rape,” this can be used to undermine the victim’s credibility or even raise suspicion that it is a false report.
- Victims also often make statements in the immediate aftermath of a sexual assault that can be used later to challenge their credibility. To illustrate, the victim might omit important information or provide partial truths in order to make the sexual assault sound more like “real rape.” Victims also sometimes make a statement that they caused or somehow deserved the sexual assault, because they have internalized the societal myths that blame victims rather than perpetrators.

In these cases, it rests with law enforcement to help prosecutors, judges, and jurors understand the victim’s behavior as typical of how people really respond to the experience of being sexually assaulted. In fact, investigators and prosecutors make a serious mistake when they try to “package” the victim or dress victims up as someone they really are not. This will include failing to document any “damaging” facts or statements, cleaning up the victim’s use of slang or street language, and using sanitized, professional terms to describe what happened.

- Just like the rest of us, jurors do not like feeling that they are being fooled – as they are when victims are “packaged,” with their word and actions “cleaned up.”
- Jurors are likely to see through the effort anyway, so investigators are better off presenting a realistic picture of victims as they really are, and helping prosecutors,

judges, and jurors understand that many of these same words and actions are commonly seen among victims, given the realistic dynamics of sexual assault.

Of course, law enforcement professionals also often fear that if they tape their interviews, any mistakes that they made will be memorialized forever and used by the defense. We would be lying if we said that this wasn't going to happen. Yet this is simply the reality of the situation.

- As with victims, investigators will make mistakes during the interview, just like any other human being conducting a very difficult, complex, and sensitive task.
- And as with victims, these mistakes made by the investigator will in fact be recorded on the tape and perhaps used by the defense. Yet this disadvantage does not outweigh the many advantages of taping victim interviews.

In fact, it raises concern that without a tape of the victim interview, investigators are able to document only certain pieces of information and not others. Clearly, best practice is to document all of the information from the victim interview, and the only way to do so is to tape it. Any problems that this may pose for the investigation and prosecution must simply be dealt with, as investigators uncover the whole truth of what happened during the sexual assault.

Investigators and prosecutors can also help judges and jurors to understand that the mistake was simply the result of human error and does not negate the fact that the sexual assault was committed against the victim.

Implementing a policy

For those law enforcement agencies that do implement a policy of taping victim interviews, it is critically important that victims are always advised of this fact and offered the services of an advocate to provide them with information and support during the interview process. The advocate can also discuss with the victim any issues or concerns that arise as a result of taping. This first point is so important that it bears repeating:

- **Sexual assault victims should never be taped without their awareness or permission**, as this constitutes a severe betrayal of trust that can negatively affect the investigation and the victim's emotional recovery.
- However, in those agencies where interviews are routinely taped, most victims do not have a problem with it as long as the investigator explains to them that this will provide the best record of the interview.

In fact, when victims are advised of the policy and the reasons for it, taped interviews can be one of the most effective tools in increasing the likelihood of successful prosecution of these cases.

Taped interviews and the Crawford ruling

While we are discussing the issue of taping victim interviews, it is important to address some of the misconceptions surrounding the impact of the United States Supreme Court decision in the case of *Crawford v. Washington*. For those not familiar with this decision, it was based on an



attempted murder case where a woman's husband stabbed a neighbor that she had accused of attempting to rape her. The wife's statement was used in court, over the defendant's objections invoking marital privilege. At the trial court level, the judge admitted the statement under the exception that is made for statements against penal interest. In other words, the trial court found that the wife's statement was in fact reliable testimony and therefore allowed it into evidence, and this decision was upheld by the Washington State Supreme Court. However, the defendant appealed the case all the way to the United States Supreme Court, which ultimately overturned the decision of the trial court and State Supreme Court. In their decision, the Supreme Court held that defendants have a 6th Amendment right to confront (and cross-examine) any witnesses who are testifying against them, so these witnesses will have to testify in person if they are available (e.g., not deceased). A taped statement from such witnesses cannot be used in lieu of actual testimony.

While the facts of the case may be a bit complicated, we want to focus here on what the decision means for the investigation and prosecution of sexual assault cases. Specifically, in the wake of this decision, some officers and prosecutors have argued that victim interviews should not be taped because the tape cannot be used in court in lieu of the victim's testimony. However, we want to point out that we have not argued in this module that victim interviews should be taped so they can be used at trial in lieu of the victim's testimony. We have argued that victim interviews should be taped because they constitute the best record of the interview and they can assist law enforcement professionals in conducting a thorough investigation and preparing accurate written documentation. Because the victim interview is not taped for use in trial, there is no *Crawford* issue involved. Thus, we still argue that best practice is to tape victim interviews, for all of the reasons we have already outlined. For more information on this complicated issue, please see the module on the Forensic Examination.

Policy Question #2: Should the Interview be Conducted by a Female Officer?

Based on the gendered nature of sexual assault, some law enforcement agencies have also faced the policy question of whether or not to routinely assign female officers to handle these cases.

- The concern is legitimate – that because the vast majority of sexual assaults are committed by men, some people believe that the presence of a male officer (especially one that is uniformed and armed) may be upsetting for some victims.
- On the other hand, some victims have said that they felt safer and calmer in the presence of a male officer. Other victims have said that it was important to come into contact with a compassionate man in the aftermath of the sexual assault. Also, by assuming that all victims of sexual assault will be more comfortable with a female officer, this minimizes the experiences of victims who were sexually assaulted by women.
- Therefore, there is no clear answer regarding whether male or female officers (or deputies, or detectives) have an automatic advantage in this situation.

What is absolutely clear is that an officer's competence and compassion are far more important than gender in determining their effectiveness at interviewing sexual assault victims (O'Reilly,

1984). Clearly, both male and female officers can be successful, and best practice is for law enforcement agencies to provide training for all officers in interviewing sexual assault victims.

- In fact, it isn't clear that many law enforcement agencies could realistically implement such a policy of assigning only female officers or deputies, even if they wanted to. Many agencies simply do not have enough female investigators to routinely assign them to sexual assault cases, and even if they did, the reality is that a female officer or deputy would not always be available to take the call.
- There is also concern that some administrators may believe that by assigning a female officer or deputy this will automatically mean that victims of sexual assault are receiving a competent and compassionate law enforcement response. Yet without effective training, there is no reason to believe that female officers will be any more successful than male officers in investigating sexual assault.
- It is therefore important not to assume that women will do a better job responding to sexual assault simply because they are women. In most cases, victims are able to feel when investigators are listening carefully and responding appropriately, regardless of their gender. Male and female officers can be equally effective.
- The same is true for other professions. Just by assigning a female prosecutor, nurse, physician, or advocate to work, this does not ensure that victims are receiving appropriate response by a community's Sexual Assault Response and Resource Team (SARRT). Victims will respond best to professionals who demonstrate competence and compassion, whatever their gender.

To help both male and female officers to do their job effectively, law enforcement agencies must ensure that all officers receive training in sexual assault investigation. Part of this training, however, may address the unique issues that officers face on the basis of their own gender.

For male officers, deputies, and investigators

For male officers, deputies, and investigators, we have already discussed how they may possess some immediate advantages in responding to a sexual assault victim – some victims feel safer and calmer in the presence of a male officer, and others feel it is important to come into contact with a compassionate man in the aftermath of the sexual assault. However, it is also important to recognize the unique challenges that male officers might face. For example, male officers can sometimes find it very difficult to identify with victims of sexual assault (who are typically female) because women's reality and behavior are often so different from men's.

- For example, it can be particularly challenging for men to make sense of victim behavior such as not resisting or reporting immediately, because women and men have very different scripts for socially acceptable behavior in sexual situations.
- Some male officers may even fear being falsely accused of rape, or at least identify with the threatening possibility. This may influence how they respond to sexual assault victims and cases.

For all of these reasons, male officers face unique challenges when responding to sexual assault cases involving female victims. Yet successful investigation requires that interviewing officers take the perspective of victims when seeking to understand the situation and their responses. This is ultimately much more important than the investigator's gender in determining success.

Another issue for men may arise when a male victim reports a sexual assault. Some male victims may prefer working with female professionals (such as a female police officer, nurse, doctor, advocate, etc.), because they might feel that they do not have to "prove" their masculinity as much as they might with a male professional. Therefore, if a male officer is interviewing a male victim of sexual assault, this is another factor to consider while working to build rapport, and communicate compassion. Male officers may have to work harder than their female counterparts to establish the necessary comfort level with male victims.

It is also important to keep in mind that most victim advocates are female, and their presence during the law enforcement interview can help to balance some of the challenges faced by male officers, deputies, and investigators.

For female officers, deputies, and investigators

As with their male colleagues, female officers have some immediate advantages when responding to a sexual assault victim (again, typically a female). For one thing, women are often more accustomed to talking about personal things with other women. This can make the interview easier, at least initially, but it also means that victims sometimes tolerate tougher questioning from female officers than male officers. As with male officers, however, this initial advantage will disappear if the female officer demonstrates that she is in fact judgmental toward the victim or doubts the validity of the report. In fact, female officers often share with their male counterparts a serious challenge in understanding the behavior of sexual assault victims.

- For example, female officers often have a heightened motivation to distance themselves from the threat of sexual victimization. As a result, women sometimes focus on reasons to blame the victim for the sexual assault. In other words, if women can convince themselves this victim somehow brought on the sexual assault by something she said or did, they can convince themselves that avoiding such behavior will guarantee that they will never be similarly assaulted.
- Another potential barrier for female officers exists for those who have personally experienced sexual assault. By comparing other experiences with their own, female officers who have a history of sexual assault or abuse may sometimes perceive that a case does not represent a "real rape" like their own. Alternatively, female officers may not have been believed when they were sexually assaulted, or blamed for it, and again this may affect their reaction to victims.



Female officers must be aware of this motivation to distance themselves from sexual assault victimization and ensure that they communicate effectively and empathetically with victims. Again, competence and compassion are more important than gender in determining success.

What to do about investigator gender

As a matter of policy, any victim who requests a female officer should be accommodated whenever possible. While this doesn't happen very often, it would be significant if the victim made such a request – so the best response would be to assign a female officer if possible.

- However, victims who do not spontaneously request a female officer, deputy, or investigator should not be explicitly presented with that option.
- When a male officer asks a victim if he or she would prefer a female officer, this can be seen as rejection or an attempt to avoid handling the case. (In fact, this question is sometimes used by male officers to avoid investigating these cases.)

The bottom line is that male and female officers must both be trained to conduct a successful sexual assault investigation, based on best practice guidelines and their basic human compassion. Furthermore, most victim advocates are female, so this can serve to offset some of the negative effects of officer gender and maximize the unique advantages of male and female officers.

Best Practices: Blind Reporting, Third Party Reporting, Victim Pseudonyms

Before we conclude Part I of the module on victim interviewing, we want to mention a set of best practices that law enforcement agencies are advised to implement, including: blind reporting, third party reporting, and the use of pseudonyms for victims of sexual assault. These issues are discussed at greater length in the module on Reporting Methods, but they also deserve mention here because they are based in the dynamics and techniques for interviewing victims.

- As described in the module on Reporting Methods, law enforcement organizations are well advised to implement a policy of accepting **blind reports** of sexual assault – that is, taking a police report from victims without recording their names or other identifying information. This is an example of a “best practice,” because even though the report will not result in criminal prosecution, it still provides valuable information to law enforcement about the realistic prevalence and dynamics of sexual assault within the community.
- Some departments even allow victims to **report sexual assault through a third party** such as a rape crisis center instead of law enforcement personnel. Detailed information on this practice is available in the module on Reporting Methods.
- In addition, some states have enacted laws to explicitly provide victims the option of **using a pseudonym** (i.e., false name) on all legal and medical documents associated with the sexual assault. Advantages and disadvantages of this practice are discussed in the module on Reporting Methods, along with issues of policy implementation that must be addressed.

All three of these (blind reporting, third party reporting, and the use of pseudonyms) clearly represent “best practices” for victims of sexual assault that can be discussed during the interview. By taking into account the realistic dynamics of sexual assault, they allow a range of ways in which victims can provide information to law enforcement that they would not otherwise have.

If the Victim is Unable to Participate in the Investigation

While it is important for law enforcement to respond to sexual assault victims in a way that is sensitive and competent, there is no guarantee that victims will appreciate the effort or that it will meaningfully contribute to their healing. This can be difficult, of course, but we all need to accept the fact that despite all of our good intentions and efforts, deciding not to participate in the law enforcement investigation and prosecution is in fact in the best interest of many victims. No matter how hard we work on these cases, or how much pride we take in our work, the reality is that the crime didn't happen to us – it happened to the victim. Therefore, the victim is the only one who can decide whether or not to participate in the investigation. For victims who decide they cannot do so at the time of the initial report, this does not mean that they are uncooperative or hostile.

- For example, many victims decide that they cannot participate because of fears for their own confidentiality, safety, and emotional well-being. As we have stated repeatedly throughout this module and others, these fears are very realistic. By participating in a law enforcement investigation and criminal prosecution, victims do place their own confidentiality, safety, and emotional well-being at great risk.
- Other victims decide that they cannot withstand the stress of participating in the criminal justice process. Again, this concern is realistic, because the process will take a considerable toll on victims and their support people.

If the law enforcement professional has followed the guidelines throughout this module – and conducted a thorough, victim-sensitive, and evidence-based investigation – but the victim decides that he or she is unable to participate in the investigation, it is important to (typically) respect that decision. In most situations, the appropriate response is simply to offer information and referrals to the victim, and clearly communicate that the door remains open if the victim later decides that he or she is in fact able to participate.

- It is important to remember that law enforcement can re-activate an investigation at any time in the future, as long as the crime is still within the applicable statute of limitation. Therefore, the evidence in any sexual assault case should be retained throughout the statute of limitations in case it is later re-activated.
- In some cases, an investigation may be warranted even if the statute of limitations has expired – since a prosecutor could use the victim's statements concerning the suspect's prior acts to corroborate another offense within the statute of limitation.

While legally a prosecutor can try to go forward with a sexual assault case where the victim does not want to participate, this isn't very likely in the real world. Technically, sexual assault is a crime against the state, so it is possible to try to force prosecution in a sexual assault case without

a cooperative victim. However, there is no victim that feels that their sexual assault was actually committed against the state. The reality is that without a cooperative victim, there will rarely be an investigation or prosecution of a sexual assault crime. Most sexual assaults do not have eyewitnesses or sufficient evidence to proceed without the victim's testimony. Therefore, most sexual assault cases can only be successfully investigated and prosecuted if the victim is able to participate in the process. This highlights the importance of this module, which is designed to provide concrete guidance for conducting a successful victim interview, in order to obtain the very best evidence available in a sexual assault case.

Use signed release waivers only when an investigation is being suspended

We want to conclude this discussion of how to respond when victims are unable to participate in the investigation with the question of release waivers – when they are and are not appropriate. As discussed in the module on False Reports, there is evidence that many law enforcement professionals prematurely address the issue of prosecution with sexual assault victims, asking them in their initial interview whether they “want to prosecute” the suspect and then pressuring them into signing a release waiver if they say they do not want to or they are unsure. This practice is patently unfair to victims, because it sidesteps the police department's responsibility for investigating the report. It certainly “shuts down” any meaningful inquiry into the matter.

- In their defense, many law enforcement agencies would state that they use such a release waiver only as a last resort, when the victim is unable to participate in an investigation and the investigation is suspended.
- In fact, it is a recommended practice to have such a form that the victim can sign, to document the fact that the investigation is in fact being suspended, until or unless additional information requires reopening it.

However, best practice is to use such a form only in cases where victims ask to have the investigation of their case suspended or decline prosecution. It should not be used when officers simply decide not to conduct an investigation, perhaps because they do not believe the victim or do not think that the case is worth pursuing. This form typically has no place whatsoever in the preliminary investigation, except in extreme circumstances where victims proactively insist that they will not participate in any law enforcement investigation or possible prosecution.

In cases where the victim asks to have the investigation of their case suspended, the victim should sign an affidavit of suspension whenever possible.

- When investigators are unable to meet with a sexual assault victim to obtain a signature on the affidavit, they should document at least three attempts to contact the victim before concluding the investigation.
- In unusual cases, investigators should even go one step further to send the affidavit of suspension via certified mail. This would include situations where the suspect in a sexual assault case is a law enforcement professional, or cases where there is a potential conflict of interest or where potential bias exists for the officer.

In the False Reports module, a poor example of such a form was provided, with extreme wording that went well beyond suspending an investigation to actually preventing the victim from making any further inquiries or cooperating with any future investigation and/or prosecution. This wording follows, as an example for what not to say on such a form:

“I affirm that I will not pursue this matter further, nor will I initiate any criminal prosecution against any persons involved in or responsible for this offense. I will make no further inquiries as to any subsequent investigation conducted by the [law enforcement agency], nor will I voluntarily appear as a witness in any potential criminal prosecution resulting from this complaint.”⁶

Clearly, this type of form will shut down the investigation of the report and fuel suspicion that it is false. Better language is seen in the “Victim Preference Statement” used by the Naval Criminal Investigative Service (NCIS). We have provided the full text of this form, as yet another example of a “best practice” for effectively interviewing victims of sexual assault.

SAMPLE FORM:
Victim Preference Statement
Naval Criminal Investigative Service (NCIS)

I have had the opportunity to consult with a victim advocate, counselor, or other person(s) of my choosing before making the following decision (circle one):

YES NO

initials

I have been informed of my rights as a crime victim under the Victim/Witness Assistance Program, including my right to consult a counselor or victim advocate. I am aware that a counselor or victim advocate will provide me information that may assist me in deciding whether to participate in the criminal investigation.

At this time, I have decided not to provide additional information or participate in the investigation and prosecution of the suspect. I understand that the investigation may be closed. If the investigation continues, the chances that the suspect will be brought to justice are greatly reduced without my assistance.

I further understand that I may change my mind and provide information for this investigation at a later time. In that event, however, I understand that the delay may affect the investigative findings and the successful prosecution of the suspect.

I make this decision freely and voluntarily.

Victim's Signature	Witnessed by:
Victim's Printed Name	Title/Date:



PART II: Strategies for Conducting an Effective Victim Interview

Initial Response: Conducting a Preliminary Interview

Now that we have discussed some of the factors to consider when preparing to conduct a successful victim interview, it is time to get into the nitty-gritty details of how this is done. We will first begin with a brief discussion of how to conduct a preliminary interview, and then go on to describe what to do before, during, and after a more detailed follow-up interview. Of course, it should go without saying that the very first responsibilities of any responding officer are to ensure the safety of the victim and law enforcement personnel responding to the scene. As described in the module on The Preliminary Investigation, the first priorities of any responding officer will be to determine whether the location is safe, obtain emergency medical care for the victim if needed, request assistance, including translation if the victim speaks another language, identify and secure the crime scene(s), identify and interview witnesses and begin a search for the suspect when appropriate.

Responding to an assault that occurred recently

As mentioned repeatedly throughout this training curriculum, most sexual assaults are only reported to law enforcement authorities after some delay. However, there will of course be instances where the victim of a sexual assault contacts the authorities immediately. When responding to these calls it is important to begin by reassuring victims of their immediate safety.

- Victims are often confused and frightened immediately following a sexual assault, and they may not become aware of the fact that they are safe even after a law enforcement officer or deputy has arrived on the scene. Other victims will not perceive the officer or deputy as “safe,” based on their perceptions of law enforcement and the history of interactions with members of their community.
- Therefore, responding officers and deputies can reassure victims of their current safety by stating, “I am here now. You are safe now,” or “The police are here now. We have officers in the area now, and you are safe.” The use of the word “now” can be helpful because it brings victims back to the current reality of the situation, by reassuring them that the assault is over and they are safe.

Contact a victim advocate

Responding officers and deputies must also promptly notify a victim advocate to provide the victim with information and emotional support throughout the investigative process.

As soon as possible, responding officers and deputies should notify a victim advocate to provide the victim with information, assistance, and emotional support throughout the process of the forensic examination. Of course, the definition of “as soon as possible” will vary depending on the specific circumstances. For system-based advocates working within a police department, this notification may be almost immediate, with an advocate called out along with responding

officers when a report is received. For community-based advocates, this notification may take place after immediate needs are met:

“When a crime has just occurred, or if the suspect still poses a danger to the survivor, the request for a sexual assault victim advocate may be less urgent than other responsibilities for the first responding officers. In such cases, the sexual assault victim advocate is not likely to arrive before much of the initial questioning ... has been completed” (CALCASA, 1999, p. 334).

In other words, advocates do not need to be notified by law enforcement immediately when someone calls 911 or reports a sexual assault. After a responding officer has addressed immediate safety issues and conducted an initial assessment to determine that the incident being reported does indeed meet the elements of a criminal sexual assault offense – then the advocate can be contacted to either respond to the field or meet the victim and officer at the hospital, exam facility, police department, or other designated location.

- ❖ If the initial response is going to take place in the field (e.g., the victim’s home), this can pose a problem, because **many advocacy agencies have policies prohibiting their staff and volunteers from responding to that type of location.** (This type of prohibition is more common for community-based advocacy agencies than system-based agencies.) If this is the case, the law enforcement and advocacy agencies must work together to explore alternative ways of providing crisis intervention and advocacy for sexual assault victims who are interviewed in the field – because the victim’s home is often a good location for conducting a successful and compassionate interview.
- ❖ On the other hand, **some victim advocates are allowed by their own agency’s policy to respond in the field,** and they can work with the law enforcement agencies in their area to design policies for doing so safely. (This is typically the case for system-based advocates, but also many community-based advocates as well.) To illustrate, some victim advocates are allowed by their agency’s policy to respond in the field (i.e., the victim’s home) as long as they are accompanied by law enforcement. The two professionals might meet near the home and proceed together to meet with the victim. This may be especially helpful in situations if children were involved in the sexual assault (either as victims or witnesses). Such protocols must be developed carefully and thoughtfully with coordination between law enforcement agencies and victim advocacy organizations.

Even in those communities where victim advocates cannot respond to the field, they can typically accompany victims to a forensic examination, follow-up law enforcement interviews, and interviews with the prosecutor, along with other criminal justice proceedings.

The law enforcement professional can briefly explain the role of the victim advocate and the services that are available, before introducing the victim to the advocate who responds.

- After the introduction to advocacy services, many victims will at least talk with the victim advocate before deciding whether to accept or decline their services.
- However, victims can of course decline the services of an advocate at any point before or during the forensic examination, investigation, and criminal prosecution.

These issues are described in greater details in the modules on the Role of the Victim Advocate and Coordinated Community Response (SARRT).

Establish trust and rapport with the victim

The initial contact with the victim of a sexual assault is extremely important to the entire course of the investigation. This is particularly true in those departments where patrol officers or deputies conduct only the preliminary interview with the victim, and then hand it off to a detective.

- Among such officers and deputies, there is a tendency to minimize the importance of this initial contact, especially when justifying mistakes that were made, by saying that "the detectives can deal with it later."
- However, as one detective remarked, "A patrol officer can bungle that 5-minute interview so badly that it takes me weeks to pick up the pieces with the victim."

Therefore, it is critically important for responding officers and deputies to realize that even though the interview may be preliminary, it still needs to be conducted in a compassionate and caring manner or the case may be irreparably damaged by the loss of victim trust and rapport. In fact, a primary goal for responding officers and deputies must always be to establish trust and rapport with the victim, so that even when the investigation is assigned to someone else, the responding officer or deputy can ease this transition for the victim.

- For example, the responding officer or deputy can explain the reasons for this re-assignment to the victim and introduce the victim to the new investigator.
- Even when the case is assigned to an investigator, responding officers and deputies must still write a report documenting everything they learned and observed during the initial contact with a sexual assault victim, including everything they said and did themselves. This initial response plays a critical role in the sexual assault investigation.

Begin the preliminary interview

For sexual assaults that are reported immediately, the responding officer or deputy can begin the preliminary interview as soon as the scene is secured and the victim is made as comfortable as possible. For the majority of cases where the sexual assault is reported after some delay, this is the point where the preliminary investigation will begin.

- Opening remarks can be used to gain the victim's confidence and let the victim know that a major part of the officer's job is to provide assistance and protection.

- Although law enforcement personnel are charged with the responsibility of being an unbiased fact finder and historian, it is helpful and appropriate for officers and deputies to tell the victim that they are sorry this happened and to express an interest in the victim's well-being. By doing this, officers can contribute to the immediate and long-term emotional health of the victim and lay the foundation of mutual cooperation and respect upon which a successful interview is built.

The officer or deputy can also explain that other members of the Sexual Assault Response and Resource Team (SARRT) will most likely talk with the victim as well, including the forensic examiner, victim advocate, etc.

Obtain the information for a preliminary investigation

Once any emergency needs are met by the responding officer or deputy, a preliminary victim interview must be conducted in order to meet the following objectives:

1. Establish that the elements of a sexual assault are met.
2. Evaluate the need for a forensic medical examination
3. Identify the crime scene and any related evidence, witnesses, and the suspect(s).
4. Establish the identity of the suspect, and contact information if known.

It is important to note that the preliminary interview is not the time to establish the number of counts or to obtain an extremely detailed account of the assault. After collecting enough information to achieve these four goals, the preliminary investigation will then proceed in one of two ways, depending on whether or not a forensic medical examination is going to be conducted.

- If no forensic examination is going to be conducted, then the investigation will proceed based on the information that has been provided by the victim, as well as information from additional interviews, and other evidence that may be identified and collected (e.g., clothing, photographs).
- If a forensic examination is going to be conducted, however, the responding officer or deputy will typically be the one to transport the victim to the hospital or other medical facility that will be conducting the forensic examination. If someone else will transport the victim to the forensic examination facility, the responding officer or deputy can then meet them there once they arrive.

This responding officer or deputy should also be sure that the victim has a change of clothing available if the clothes currently worn by the victim are collected as evidence. This issue is discussed in detail in the module on Coordinated Community Response (SARRT).

Not the time to ask about prosecution

Perhaps one of the most common errors made during a preliminary interview with sexual assault victims is asking the victim whether or not they want to participate in criminal prosecution.

- This type of question should never be asked during a preliminary investigation – in fact, it shouldn't even be asked during a follow-up interview with a sexual assault victim. Rather, the time to ask a sexual assault victim about participating in a criminal prosecution is at the end of a thorough, evidence-based investigation.
- An exception would be in the case of an emergency response that results in an immediate arrest. In these cases, the prosecuting attorney may have as little as 24-48 hours to present sufficient evidence to charge the suspect. The victim's statement is therefore likely to be critical in presenting this case, and this must be discussed with the victim.

In other words, before discussing the issue of criminal prosecution with a sexual assault victim, law enforcement professionals must do their job first. An important part of this job is to explain the purpose of the law enforcement interview to sexual assault victims, describe the role of other members in the Sexual Assault Response and Resource Team (SARRT), and address the victim's initial concerns regarding criminal prosecution. Then, the next step is to conduct a thorough investigation to identify any evidence that can be used to corroborate the victim's allegations. Only at that point can the decision be made about prosecuting any criminal offenses that have been committed.

Determine whether or not to make an immediate arrest

At this point in the preliminary investigation, responding officers and deputies need to decide whether or not to make an immediate arrest of the suspect. This decision will need to be made, based on factors such as probable cause and whether or not an immediate arrest is necessary to protect the community from further threat. However, one of the most common mistakes that law enforcement professionals make in sexual assault investigations (especially those involving non-strangers) is that they all too often rush to make an arrest, before a thorough victim interview has even been conducted.

- While it is often relatively easy to make such an arrest – on the basis of probable cause developed during the preliminary investigation – in many states this means that the prosecutor is required to appear in court and charge the defendant within 24-72 hours of the arrest (depending on the jurisdiction).
- At that time, prosecutors typically do not have sufficient evidence to believe that the defendant could be convicted, because the evidence only meets the standard of probable cause and not proof “beyond a reasonable doubt.” Obviously there is a big difference between evidence that is sufficient to establish probable cause and evidence that will meet the standard of proof beyond a reasonable doubt.

In most sexual assaults, it is almost impossible to conduct the kind of evidence-based investigation that is necessary to support an arrest and successful prosecution within 24-72 hours of the crime being reported to law enforcement. Most sexual assault investigations will actually take weeks if not months to complete, depending on the course of the investigation and the laboratory work that is requested. By waiting to make an arrest of the suspect(s), law enforcement investigators can often gather the type of evidence that will meet the higher

standard of proof that is needed for successful prosecution – evidence that meets the standard of “beyond a reasonable doubt” rather than just establishing probable cause.

- In other words, while it would seem that an immediate arrest of the suspect would best protect the community; this is often not the case.
- In fact, the best way to protect the community is often to slow down the process and conduct the kind of comprehensive investigation that will ultimately support the arrest with successful prosecution of the suspect.

Officers and deputies should therefore be discouraged from making an immediate arrest in non-stranger sexual assaults, unless there is a specific reason to believe that the suspect may flee the jurisdiction, destroy evidence, or pose a danger to the victim or other members of the community. This allows time to locate and interview potential witnesses and to use such investigative techniques as pretext phone calls (where allowed by law). It also allows time to conduct a thorough investigation, evaluate the evidence, and obtain laboratory results.

These realities should be explained to the victim as well as any other support people present. For victims who might want the suspect arrested immediately, the investigator can explain that an arrest is not a guarantee of the victim’s safety, especially if it compromises the ability to conduct a thorough investigation that will be needed to support successful prosecution. Furthermore, even with an immediate arrest, the suspect may be released on bond shortly after arrest. Therefore, investigators must explain the investigative process to victims and work with them to develop a safety plan to protect their physical and emotional well-being.

Conducting a Follow-Up Victim Interview

After the preliminary interview is complete, at least one follow-up interview will typically be conducted as part of a thorough sexual assault investigation. For this interview to be successful, the investigator must address a number of important issues even before the victim is contacted.

Contact a victim advocate

At this point, a victim advocate must be contacted if this has not already happened. Of course, victims can always decline the services of the victim advocate, in which case it is especially important that they are provided with written referral information for community organizations. Even victims who initially decline the services of a victim advocate may decide to obtain services later. Therefore, law enforcement agencies must have policies in place regarding when and how to notify a victim advocate, and document these policies in a detailed Memorandum of Understanding with the victim advocacy organization. Again, these issues are discussed in greater detail in the modules on the Role of the Victim Advocate and Coordinated Community Response (SARRT).

Decide whether to postpone the interview

Next, the decision must be made regarding whether or not to postpone the follow-up interview. With victims who report their sexual assault to law enforcement after some delay, this decision is

often easier, because the detailed victim interview is typically conducted immediately after receiving the (delayed) report. However, even with delayed reports this may depend on unique circumstances, such as whether or not the victim will have a forensic medical examination.

When victims report their sexual assault immediately, they are more likely to have a forensic medical examination, so the follow-up interview would either be conducted afterward or postponed for a day or two. There may be a number of reasons why it makes sense to postpone this more detailed follow-up interview. One primary reason is to give the victim a chance to rest and take care of personal needs (such as changing clothes, bathing, and getting something to eat).

- Especially when a sexual assault is reported immediately, victims are likely to be **exhausted** after the preliminary interview and forensic medical examination, and may still be **under the influence of drugs or alcohol**.
- Also, recall the information about **physical and cognitive impairment** due to traumatic stress reviewed earlier. If the experts recommend that officers who have experienced a traumatic incident should not be interviewed until after they have had one full sleep cycle, and then again after they have had a second full sleep cycle – it makes sense that victims will need to rest before they participate in a more detailed follow-up interview as well.
- In addition, most victims **need some time to process what has happened**. In many cases, victims who are initially unable to participate in a law enforcement investigation may be able to do so after receiving support from friends, family members, and possibly even a rape crisis counselor or other victim advocate.
- Postponing the follow-up interview also allows the victim to **make any necessary arrangements**, such as transportation or child care. An advocate can also arrange to be available at that time, to accompany the victim and provide both information and emotional support during the follow-up interview.

There may also be additional reasons for postponing the interview, to accommodate to some extent the convenience of the victim and/or law enforcement investigator. Actually, several follow-up interviews may be needed following different parts of the investigation, such as interviews with witnesses, review of reports, results of the forensic examination, suspect statements, laboratory analysis, etc. All of these investigative steps take time, and will raise additional issues to address with the victim.

Find out as much as possible about the case

It is also recommended that law enforcement professionals try to find out as much as possible about the case before making contact with the victim. For example, if the victim has been transported to the hospital for a forensic medical examination, the investigator is advised to first consult with others who have made contact with the victim in a professional capacity, including other law enforcement and medical personnel. This allows all of the professionals involved to maximize their knowledge of the case and promotes comprehensive evidence collection based on

the victim's account of events. It also communicates to the victim that the team is coordinated and working in a collaborative manner to provide the best services possible.

The one exception to this is the **community-based victim advocate** (an advocate working for a rape crisis center or other community-based organization). Because of the protected confidentiality of communications between sexual assault victims and community-based advocates, they should never be asked by law enforcement personnel to provide information on the case or victim, unless the victim has signed a release waiver specifically for this purpose. In contrast, **system-based advocates** do not typically have privileged communications with the victim and can be asked by law enforcement investigators to provide information on the victim or case. System-based advocates are those employed by the police department, prosecutor's office or other governmental agency (e.g., Victim Services Unit, Victim-Witness Assistance).

To best facilitate coordinated communication, the law enforcement investigator can meet with the forensic examiner (nurse or physician) before the forensic medical examination. At that point, the investigator can describe to the nurse or physician the facts of the sexual assault, as they are known at the time. Then again after the forensic medical examination, the investigator can meet a second time with the same nurse or physician to compare what was known before the examination and what was observed or learned during the examination.

Because victims are concerned about their physical well-being, they are sometimes more likely to disclose sensitive information about the sexual assault to nurses or doctors rather than law enforcement. For example, victims might report only penile-vaginal penetration to law enforcement, but then inform the nurse that oral copulation or sodomy was also involved in the assault. People often view medical professionals as more objective, they are also accustomed to discussing personal information with medical personnel (especially nurses). Many people also view medical professionals as more objective than law enforcement, so they may be more comfortable discussing "personal" information with medical personnel as compared with law enforcement investigators.

- If a discrepancy is found between the details given to law enforcement and medical personnel, these must be clarified with the victim (in a gentle and nonjudgmental way). Such discrepancies are best clarified immediately.
- For example, the investigator can explain to victims that their embarrassment is certainly understandable, as is their hesitation in disclosing the sexual acts involved. However, all of the facts must be identified so that a thorough investigation can be completed.

In their briefing, the forensic examiner can also alert law enforcement of visible forensic findings such as carpet fibers or other debris that might be connected to the crime scene. These findings must then be summarized in the investigator's preliminary report, specifically noting any significant information or injury based on the written report from the forensic examiner.

Anticipate a defense strategy

As a general rule, it is never too early to begin anticipating a defense strategy to conduct an investigation that will effectively counter false claims by the defendant.

- For example, if the suspect was a stranger to the victim, the defense strategy is likely to center on identification. This means that the victim interview and subsequent investigation should focus on establishing the identity of the suspect and corroborating the victim's credibility as an eyewitness.
- If the assault was committed by someone the victim knows, however, the focus of a defense strategy is likely to be on consent. Identification evidence should still be collected, in case the suspect tries to claim that the police have "got the wrong guy." However, overcoming the consent defense will require a thorough, evidence-based investigation to document the lack of consent to sexual activity.

Even at this preliminary stage of the investigation, it is critically important that the officer or deputy understand what type of offense has been committed because this will influence every aspect of the investigation. By recognizing the type of offense, officers can tailor their interview with the victim to document the elements and begin accumulating evidence to counter a likely defense strategy. (See the module on Law and Investigative strategy for further discussion.)

Beginning the Follow-Up Interview

Once all of these preliminary issues have been addressed and the officer or deputy conducting the investigation knows as much as possible about the sexual assault incident being reported, it is time to focus on beginning the follow-up interview. This process begins by selecting an appropriate location, determining who will be present, and initiating the interview itself.

Select an appropriate location

Investigators should conduct the interview in a neutral location that is convenient and accessible for the victim, where the victim will feel safe and comfortable.

- The location must be quiet, private, and free from distractions. Obviously, it is best to try to avoid interviewing the victim in the hospital examining room or any public area of the police department.
- If the victim is interviewed in a hospital or other medical facility, the investigator must find a room that is private and conveys a sense of professional care. This is needed to instill confidence on the part of the victim. Identifying or even creating such a facility is the shared responsibility of all of the members of a community Sexual Assault Response and Resource Team (SARRT), including doctors, nurses, law enforcement professionals, prosecutors, victim advocates, etc.

Victims can also be consulted in this decision, as they may have preferences based on privacy concerns, or issues of transportation, child care, or convenience. To illustrate, many victims feel that they would be most comfortable being interviewed in their home, and this can therefore be



the best place to conduct the interview with some victims. On the other hand, this raises some issues, and victims must have the information they need to weigh the advantages and disadvantages of conducting the interview in their home. For example, victims can consider whether the location will be private enough from other household members, whether the police car (even unmarked) that is parked in front of their home will draw attention, and whether investigators have access to all of the equipment they will need (e.g., for videotaping, pretext phone calls, photo line-ups). It may be that an initial interview in the home will need to be supplemented with an office appointment to conduct follow-up investigative procedures.

- Wherever the follow-up interview is going to be conducted, investigators and advocates may need to assist the victim with transportation. In some cases, law enforcement personnel can provide transportation. In others, the advocacy agency can assist; although some advocacy agencies have policies against transporting victims, they may be able to provide bus tokens, or provide some other assistance.
- Investigators should always ensure that the environment not only feels safe for victims – but that it actually is safe. There are certainly examples of suspects showing up at the hospital while a victim is being examined or treated, and this is especially likely with suspects who are boyfriends or husbands of the victim.
- Also, if the victim has children it is absolutely essential that they are cared for in a safe environment during the follow-up interview, and any other stage of the investigation where the victim is involved. If the victim has not been able to make child care arrangements, this must be resolved before any follow-up interview can take place. Otherwise, the victim may not be able to be “present” during the interview, and focus on actively participating in the investigation.

In general, investigators should strive to provide the victim with small comforts, such as a beverage or tissues whenever possible. The only caution is for victims who are going to participate in a medical forensic examination. If the examination has not yet been completed, it may be best to have the victim wait to eat, drink, smoke, or use the restroom until after certain evidence has been collected (e.g., urine specimen, and evidence collection from the victim’s mouth). This issue is discussed in detail, in the module on the medical forensic examination.

Determine who will be present: Victim advocates

After selecting the appropriate location, investigators should talk with the victim privately to determine who should be included or excluded from the interview. This will include offering victims the option of having a victim advocate or other support person present during the interview. When it comes to advocates, the victim must be the one to make the final decision regarding whether or not they will be present during the law enforcement interview.

- In many states, the victim advocate can be present during the law enforcement interview, if this is what the victim wants.
- In fact, some states have enacted legislation stating that victims have a legal right to have an advocate present during the law enforcement interview.

- In other states, victim advocates are required to sign a written waiver of confidentiality before they can accompany a sexual assault victim to a law enforcement interview.

Investigators and advocates both need to be aware of state and local procedures governing the presence of advocates during law enforcement interviews. It is also important to consider the many benefits of advocacy services for victims, as described in the module on The Role of the Victim Advocate. To illustrate, victim advocates can provide the information, emotional support, and assistance that enables victims to become full participants in the law enforcement investigation. However, for victim advocates who are not present during the law enforcement interview, they can still remain on-site and be available to provide information and emotional support to the victim – both before and after the interview. Of course, this is also true for family members, friends, and other support people who can remain on-site to provide support for the victim before and after the interview, even when they are not present during the interview.

This also raises the question again regarding where the law enforcement interview will take place and how to ensure that victim advocates can be present. As previously stated, advocates can typically respond to the police department or medical facility in order to accompany a sexual assault victim for the law enforcement interview and/or forensic medical examination. However, many advocacy agencies have a policy against responding to the field, such as the victim's home. Yet this is often seen as one of the best places to conduct a victim-sensitive interview.

- Again, this is an issue that must be addressed by a community's Sexual Assault Response and Resource Team (SARRT), to ensure that every sexual assault victim can access the services of a victim advocate. It may mean establishing policies for victim advocates to respond to the field safely, or identifying alternative sources of advocacy services such as trained crisis interventionists employed by the law enforcement agency.
- If no advocacy services are available for victims in the field, however, this may mean that interviews are best conducted in a safe location such as the police department, medical facility, or advocacy agency. For example, the victim's home is often seen as a good location for conducting an interview, but it may be better to interview the victim in a comfortable room within the police department, hospital, or advocacy agency if this means that an advocate can be present.

Determine who will be present: Other support people

Beyond victim advocates, decisions may also need to be made regarding the presence of any other support people during the law enforcement interview. Sometimes having a support person, such as a friend or family member, in the room can help a victim provide better information during a law enforcement interview. In at least one state, the victim's right to have a support person (other than a victim advocate) present during a law enforcement interview is even protected by law, as long as this person is not disruptive.

However, if an advocate or other support person is going to be present during the law enforcement interview, their role must be very clearly explained – both to the victim and to the advocate or other support people themselves.

- For example, it must be very clear that advocates and support people are there to provide **emotional support** to the victim during the law enforcement interview.
- Advocates and other support people are not there to **ask or answer questions** during the interview.
- They should not **take notes or write reports** to document any part of the investigation or victim interview.

To summarize, the decision regarding who will be present during a law enforcement interview should be left up to the victim. For victims who request that a victim advocate or support person be present, this request should be accommodated whenever possible. As long as the person is not disruptive and does not actively participate in the interview process, the benefit in victim cooperation by having them included is usually well worth the presence of an additional person.

It is important to keep in mind, however, that while advocates should have a good understanding of the investigative process due to cross-training with law enforcement professionals in their community, other support people will not have this information or training. Therefore, both the advocate and law enforcement investigator should ask any family members, friends, or other support people who accompany the victim whether they have any questions about the process. These support people are very important for the victim's emotional well-being and ability to participate in the law enforcement investigation, so it is critical that they also have their questions and concerns addressed as well. Only then can they adequately support the victim throughout the investigation and serve as an ally during the process.

When support people should be excluded from the interview

On the other hand, there are often situations, where sexual assault victims do not want a support person present during the interview, but they do not feel comfortable saying so in front of that person. Therefore, investigators must be very careful to avoid asking the victim about whether or not to include a support person while that person is present. Investigators must find a moment to ask victims privately whether or not they want a particular person included in the interview.

- For example, there are situations where support people such as husbands, boyfriends, girlfriends, partners, or fathers want to be present because they doubt some part of the victim's story and they want to see what will develop in the law enforcement interview. In such a situation, the support person should be excluded.
- Support people should also be excluded from the interview if they are likely to become disruptive. For example, they sometimes want to tell the investigator what happened, rather than having the victim do so (Latts & Geiselman, 1991).

- Support people must be excluded from an interview if they appear to develop antagonistic feelings toward the investigator conducting the interview. This can happen because the support person might know how difficult it is for the victim to relay painful details of the assault, and they can begin to think of the investigator as the enemy for worsening the victim's trauma (Latts & Geiselman, 1991).

This reaction is certainly understandable on the part of support people, but investigators can gently explain that it is not helpful for the victim and that it can actually undermine the victim's decision to participate in the law enforcement investigation.

Investigators must also keep in mind that anyone who could potentially serve as a witness in the case should be excluded from the law enforcement interview. There are two reasons for this.

- This situation **compromises the credibility of the victim's testimony**, because jurors do not always view a victim's statement as equally reliable when family members or friends are present. There is a sense that victims may omit or distort certain information about the sexual assault because the support person is there.
- The second reason is that the support person is likely to be an important witness in the case, and their presence in the victim interview **taints the credibility of their own testimony**. To illustrate, a friend who brings the victim to the police department may be the first person that the victim told about the sexual assault. In that situation, the friend is a very important witness who will need to be interviewed. Therefore, to protect the credibility of the friends' testimony as a key outcry witness, they should not be present during the victim's interview.

In any of these situations, when a support person is going to be excluded from the interview, it is critically important that the investigator be the one who assumes responsibility for the decision by asking the person to leave and explaining how this benefits the victim and the investigation.

A few words about confidentiality for victim advocates

While we mentioned previously that advocates and other support people should not take notes or write reports, we want to clarify that some victim advocates do record basic information for their rape crisis center or other advocacy agency.

- For example, some victim advocates record only basic information in their paperwork, to be summarized in the aggregate. This would include information such as the day and time of the contact, and demographic characteristics of the victim. This type of information is used to track agency services, and to help when writing grants and seeking other sources of agency funding.
- Other victim advocates record the victim's name and contact information in their paperwork, in order to create a file and track ongoing services provided to that individual victim. Either of these record-keeping strategies is appropriate.

What is not appropriate, however, is for victim advocates to record detailed information on the victim's statement and/or the findings of the forensic examination. Because victim advocates can potentially be called as a witness in any sexual assault case, they must strictly limit the information that they record on the basis of any law enforcement interview or forensic examination – because this information is available to be subpoenaed by the defense at trial. While this isn't typically an issue for most victim advocates, it is worth highlighting especially as defense attorneys have become more aggressive in seeking access to the information recorded by community-based victim advocates.

This issue is a source of confusion for law enforcement and victim advocacy alike. While many people do not view the victim advocate as a potential witness in a sexual assault case, the reality is that advocates can potentially be called to testify as a witness regarding any information that is not protected by law as privileged communications.

- For example, some states offer **no privilege** for communications between victims and advocates. In these states, the victim advocate can clearly be called to testify about any information exchanged with the victim or others about the case.
- Other states have laws to protect the confidentiality of communications between the victim and advocate, but this privilege never extends to communications that take place **in the presence of a law enforcement officer or other third party.** This would obviously include anything that was said, observed, or learned while the advocate was present during a law enforcement interview, forensic medical examination, or other investigative activity such as a live or photo line-up.

For this reason, advocates should only record the kind of basic information described above, either to track agency resources and/or to create a client file – but never to summarize the facts of the assault, the statement of the victim, or the findings of the forensic examination. If victims want to discuss something confidentially with an advocate, this must be done outside the presence of a law enforcement officer, forensic examiner, or other third party.

Acknowledge the victim's ordeal and address any self-blame that is expressed

After dealing with the question of who will be present during the interview, it is generally best for investigators to begin the interview by introducing themselves and acknowledging the ordeal that the victim has endured.

- Although investigators need to remain unbiased in their presentation, they can effectively relay sympathy by stating: "I'm sorry that this happened to you."
- By acknowledging the victim's trauma in this way, investigators establish sympathy and create an open and nonjudgmental demeanor.

As a result, it is likely that the victim will provide better information to enhance the investigation. This is also an appropriate time to address any self-blame expressed by the victim. For victims who appear to be blaming themselves for the situation, investigators can stress that the incident was serious and that the victim did nothing to deserve the assault (Mills, 1989).



Communicate empathy and allow victims to vent

Empathy is crucial to communicate during a sexual assault interview, because it establishes rapport with the victim, facilitates cooperation, and ultimately creates an environment that will yield the most information for the law enforcement investigation (Latts & Geiselman, 1991; Mills, 1989; Olsen & Wells, 1991; O'Reilly, 1984). Empathy can even be a powerful force in assisting the victim's recovery. Therefore, perhaps the single most important thing an investigator can do to communicate empathy is to simply ask the victim how she is doing and REALLY LISTEN to the answer (Olsen & Wells, 1991).

When victims express emotions in an interview, it is appropriate to use "psychological first aid" that allows them to vent that emotion while validating that these emotions are both normal and appropriate (Olsen & Wells, 1991). As retired NYPD detective Harry O'Reilly describes:

The victim should be allowed to ventilate her feelings, these have got to come out, and she needs a caring environment in which to express them. Let her ventilate her anger, and whatever you do, don't interrupt it by saying she's going too fast for you to get it all down in your notebook. Let her purge herself, there is a need for her to bring herself back to reality by getting some of this stuff off her chest. Let her talk and then later start taking notes (O'Reilly, 1984, p.101)

Then, using a calm and reassuring voice, investigators can continue the interview by using "you" statements and questions. Examples of this include:

- *How are you feeling?*
- *I'm sorry this happened to you.*
- *May I call you by your first name, or do you prefer that I use your last name?*
- *Where would you like to do this interview?*
- *Do you have any questions?*

When investigators ask this type of empowering question, they focus on the well-being of victims which helps them to relax and establish a trusting relationship.

- However, once the investigator moves into the content of the interview it is best to avoid questions like this that are unrelated to the investigation.
- When these unrelated questions are asked during the actual interview – even if they are generally supportive and compassionate – it can appear that the investigator is side-tracked or distracted and not taking the investigation seriously.

On the other hand, investigators should NOT attempt to communicate empathy by saying to the victim, "I know how you feel" (Latts & Geiselman, 1991). This may make victims angry or withdraw, thinking that the investigator cannot possibly have any idea how they feel. Even if the investigator has personally experienced sexual assault victimization, it is usually best to simply

communicate empathy by taking the victim's response seriously and responding with compassion and competent professionalism.

Other things NOT TO SAY to the victim to communicate empathy include:

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

Even though these sentiments might be well intentioned, they are not helpful for victims and can interfere with rapport. In general, empathy is communicated not only by what is said but how the investigator acts toward the victim. If the investigator acts in a way that is compassionate and professional, this communicates that the investigator takes the crime seriously and cares about its impact on the victim. Again, Detective Harry O'Reilly describes:

Let's say I've got this kid lying in the street. He was knocked off his bicycle and got a compound fracture with a bone sticking out of his leg. I'm going to pick up that kid and hold him close and maybe pat his face or even give him a little peck on the cheek. I might even cry a bit and not be ashamed, because it's OK to be tender here.

When I'm making a death notification to a mother that her daughter has been killed in a car accident, I know intuitively that it's right to be soft and gentle with this woman. When I get someone who has been physically injured, they're bleeding all over the place and scared out of their wits, I know to be gentle and reassuring and speak quietly and softly.

Now I must learn to include the rape victim, who may not have visible scars, but who has some horrible slashes all over her psyche. The first step towards helping this woman is to open up and be understanding, gentle, reassuring to her, just as I have been able to with these other people (O'Reilly, 1984, p. 98-99).

Build rapport

By acknowledging the victim's ordeal and communicating empathy, investigators will have gone a long way toward building rapport and a trusting relationship for the law enforcement interview.

- Although some have suggested that rapport may be established by seeking some area of common interest between the investigator and the victim, others caution that this can offend adult victims by appearing to focus on trivialities.
- We agree, and generally advise against such an approach.

Better ways to build rapport include the strategies we have already discussed, such as communicating empathy, allowing victims to vent, acknowledging the victim's ordeal,

countering any self-blame, being honest about the process of investigation and the possibility of criminal prosecution, and generally treating the victim as a partner in the investigative process.

This type of rapport forms the basis for a trusting relationship between victims and law enforcement investigators, which can help to protect the victim and the investigation from the mistakes that are inevitably going to be made by even the best sexual assault investigators.

- While investigators should always strive to conduct a “perfect” interview with sexual assault victims, the reality is that any human being is going to make mistakes with such a demanding task.
- Therefore, by conveying a compassionate attitude and a clear sense that the case is being taken seriously, victims will often be rather forgiving of investigators occasionally “saying the wrong thing” or otherwise making minor mistakes.

Help victims regain control

While crime victims typically experience some loss of control as a result, this is particularly pronounced for victims of sexual assault. In fact, the profound loss of control that sexual assault victims experience is one of the factors that can lead to Post Traumatic Stress Disorder (PTSD). Therefore, another important part of establishing rapport is to help victims regain some sense of control over their environment.

One way to do this is to pose simple choices for how the interview will proceed. For example, investigators can ask victims where they would like to sit, and whether they would like to have an advocate or other support person present.

- Investigators can also ask whether they can make a call for the victim or contact a friend to bring clothes if the victim is transported to the hospital. Alternatively, the investigator can assist in asking a victim advocate to help in these areas.

Another important part of helping victims to regain control is to address any immediate worries that they have, so they can be truly “present” during the interview. For example, victims will not typically be able to fully participate in the interview if they are worried about a cat that hasn’t been fed, a dog that hasn’t been let out, or a child who needs to be picked up from school.

Establish the victim’s role as a team member in the investigation

While all of these measures discussed so far can help to establish rapport, perhaps the most important factor in ensuring success is to establish the victim’s role as a central team member in the investigative process. This is accomplished in a number of ways; one way is to provide the victim with information at every stage of the investigative process.

When describing the interview process, it is therefore helpful to keep the victim informed with “we” statements, such as the following:

- *We are going to talk about the incident*



- *We need to review this information together.*

Use of the word “we” provides victims with a sense that this is a team effort, that they have a vital role to play in the investigation, and that they have a sense of control. When requesting the assistance of the victim, however, it is best to use “I” statements and questions. For example:

- *I am going to write this report, and then I would like for you to review it for accuracy.*
- *I am going to talk with your friend who saw the two of you leave the bar together.*
- *I have talked to many victims who have the same concerns that you do.*

By focusing on the investigator’s experience and role, this can help victims to know that their report is being taken seriously and handled professionally. Such techniques establish the victim’s role as a central part of the team, while at the same time clearly communicating the role of the police officer, deputy, or detective in investigating the sexual assault.

Advise victims that they can interrupt the interview and/or take a break

At the beginning of the interview, victims should also be told that they can feel free to stop the interview at any time to take a break or ask a question. Because the purpose of the interview is to get all the facts of what happened, victims should be encouraged to interrupt at any time to ask about a particular question, include a fact, or correct a mistake.

In fact, one of the goals of a coordinated Sexual Assault Response and Resource Team (SARRT) can be to establish communications between the various professionals (e.g., law enforcement, advocacy, forensic medicine), for situations where the victim either needs a break or team members need to discuss something that has happened that is not appropriate or needs correcting.

- For example, directly asking victims if they need to take a break may not be the best strategy, because they will often decline simply to be polite and cooperative. Rather, members of the Sexual Assault Response and Resource Team (SARRT) can discuss alternatives such as having advocates take the initiative to request a restroom break when they sense that the victim is tiring or having difficulty.
- Investigators, advocates, forensic examiners, and other members of the Sexual Assault Response and Resource Team (SARRT) can also establish a means for communicating (perhaps with a code word, or nonverbal signal) when they need to discuss something that has happened that is not appropriate or needs correcting. Using this code word or nonverbal signal, team members can indicate that they want to take a break to discuss an issue privately.

Address questions the victim can’t answer

In the course of any law enforcement interview, all crime victims will probably be asked some questions that they cannot answer. However, sexual assault victims often react uniquely to this situation, because they are concerned that the investigator might doubt or blame them.



- To address this issue, investigators can inform sexual assault victims at the beginning of the interview that they may be asked some questions that they don't know how to answer. Victims should be clearly advised that it is appropriate for them to say, "I don't know," or "I don't remember."
- At the same time, victims must be cautioned against guessing. Investigators can reassure victims that they might not know the answers to all of the questions, but remind them that the purpose of the law enforcement interview is to obtain as much accurate information as possible. Guessing can interfere with that goal.

During the course of the interview, investigators can also strive to avoid asking several questions in a row that the victim doesn't know how to answer. If the victim doesn't know the answer to two consecutive questions, for example, investigators can ask a third question that the victim will know how to answer.

Address concerns regarding prosecution

As previously stated, investigators must explain to victims the purpose of the law enforcement interview and their role in it. For many victims, this will mean addressing any concerns that they express upfront about participating in a criminal prosecution.

- Of course, the primary purpose of a law enforcement interview is to collect as much information as possible to determine exactly what happened.
- This leaves the door open to pursue whatever course of action the victim chooses, including participation in a law enforcement investigation and prosecution.

As we have already said, one of the most common mistakes that law enforcement investigators make is to prematurely ask sexual assault victims whether they want to participate in a criminal prosecution. However, the time for this question is not during the law enforcement interview, but rather at the end of a thorough, evidence-based investigation – at which point the investigator knows what evidence is available and whether the case can in fact be forwarded for prosecution.

Of course, even if law enforcement investigators do not ask the victim about criminal prosecution, it is likely to be one of the victim's primary concerns. Therefore, law enforcement investigators will often have to address the victim's concerns about criminal prosecution and their initial reluctance to participate in a law enforcement investigation. For example, many victims are concerned that talking with law enforcement means that they will be responsible for the offender being arrested and put in prison. When victims are uncertain about their participation in the investigation, investigators can therefore respond by explaining the importance of a thorough law enforcement investigation and highlighting the fact that evidence must be identified and collected as quickly as possible. Again, this does not necessarily mean that the case will be prosecuted, but it leaves that door open for the time being.

- When addressing issues of prosecution, investigators must also be completely honest with victims, and not promise anything they cannot deliver. For example,

investigators should never promise victims that the suspect will be arrested, prosecuted, and convicted. Investigators cannot know that with 100% certainty.

- Victims should never be pressured into cooperating with the law enforcement investigation and prosecution. For example, investigators must never tell victims that they should participate with prosecution to prevent the suspect from sexually assaulting anyone else. This puts an inappropriate burden upon the victim for behavior that is clearly the suspect's responsibility.

Ultimately, the decision regarding whether or how much to participate with investigation and prosecution is the victim's and the reasons for this decision must be respected. As Mills (1989) wrote in the *Police Chief*:

The victim, of course, is the main concern and the investigator should not try to cajole her into pursuing legal action against the identified offender. Arrest and prosecution are major goals during rape investigation, but pursuing these goals should not take precedence over the psychological welfare of victims (Mills, 1989, p. 119)

Consider Cultural Issues

When establishing rapport with a sexual assault victim, it is important to consider whether there are any cultural issues that may affect the victim's reactions. Some aspects of the victim's response may be misinterpreted if they are not properly understood as being culturally based.⁷

- For example, a victim who does not maintain eye contact is not necessarily lying, but may be showing a culturally determined sign of respect for the investigator, experiencing enormous shame as a result of cultural beliefs regarding sexual assault, or having difficulty talking about sexual matters based on cultural taboos. The victim may also be carefully considering whether or not to report to law enforcement but concerned about what will happen to themselves or other members of their cultural group if they do.
- Many cultures have a particular distrust of law enforcement, including immigrants from countries where police are brutally repressive. Some minority cultural groups may also have a sense that they are targeted for investigation by the police, based on societal stereotypes that they are more likely to be involved in criminal activity (e.g., people of African or Arab descent). Some cultural groups have a history of negative interactions and distrust of law enforcement such as LGBTQ communities and people of color; this can create additional barriers.

Members of minority cultural groups may also feel reluctant to participate in a law enforcement investigation when they have been sexually assaulted, because they want to protect their cultural group from negative public scrutiny. By reporting "one of their own" to law enforcement,

⁷ Some of the material in this section was contributed by Beverly Brakeman Colbath of the Connecticut Sexual Assault Crisis Services, Inc.



victims of sexual assault often feel that they have betrayed their cultural group and “aired their dirty laundry in public.” As a result, victims may experience backlash from other members of their cultural group – at a time when they most need their support and understanding.

It is always possible that someone who is the victim of a sexual assault may be the victim of human trafficking. For basic information, including some questions to ask to evaluate whether someone might be a trafficked person, a video for victim service providers is available from the Office for Victims of Crime at <http://www.ojp.usdoj.gov/ovc/publications/infores/other.htm>. A resource guide is posted on-line to accompany the video, at: <http://www.ojp.usdoj.gov/ovc/publications/infores/pdftxt/TraffickingVideoResourceGuide.pdf>.

Language issues

Of course, language barriers also exist and the victim interview cannot be effective unless these are successfully addressed. This may require obtaining the services of an interpreter, requesting the assistance of another officer, deputy, or detective from the same cultural background, and conducting the interview in a location where the victim will feel most safe and comfortable.

- An interpreter may even be appropriate in situations where the victim speaks some English, because even for victims who are able to speak some English, this may not be the language that they are most comfortable using in a time of crisis. Also remember that even for victims who speak English, words that they use may have different meanings than they usually do, based on their cultural background.
- Victims also may not know the English words for some parts of the body or sexual acts that they will need to use to describe what happened during the sexual assault. Other languages may not even have words for some concepts such as sexual assault, or certain sexual acts that are part of the sexual assault.

Unless it is an absolute emergency, it is not appropriate to use a family member, friend, or other interested party to translate or interpret for the victim. Victim advocates also should not be used as translators, because this places them in the inappropriate position of assisting with the law enforcement investigation rather than focusing on their role of providing victim support. Therefore, it is critical that law enforcement agencies work with victim advocacy organizations and others to explore ways to provide comprehensive services for special populations, including the hearing impaired and those who do not speak English.

- For example, some law enforcement organizations have recruited and trained community volunteers to assist law enforcement. Others utilize bilingual officers to conduct sexual assault investigations when they speak the same language as the victim. Another alternative is for multiple agencies in the community to share the services of an interpreter. This helps to decrease the expense involved, but of course there will always be times when a translator is not readily available to law enforcement and other options may need to be considered.



There may also be a second advocate who is available to respond to provide emotional support, allowing the first advocate to translate. In some situations, a medical practitioner who speaks the victim's language may even be available.

- Obviously, it is best to make these arrangements as soon as possible when an interpreter is required, and to do so in advance for any interview conducted after the immediate response. This will require developing a protocol for accessing translation resources in the community, before they are actually required, so interpreters can be accessed as quickly as possible when they are needed.

Unfortunately, the question of privilege in communications with an interpreter has not been adequately addressed in most states and law enforcement agencies may need to develop policies to address this gap. The victim's comfort and the most effective team approach should be considered priorities when evaluating possible responses and best practice. Some more helpful information is provided in the following excerpt from the *Oregon Advocacy Manual*.

This section is taken from the *Advocacy Manual, 2006* (p. 96-97) and is reprinted with permission of the Oregon Attorney General's Sexual Assault Task Force with all rights reserved.

Shared language is critical to effective communication. Although it is possible to express basic concepts, needs, or feelings with someone who does not share our language, it is a challenge to exchange more detailed information effectively. In situations where you do not share the same language with another person, or where you share limited language with another person, it is recommended to use an interpreter in order to ensure accuracy and effectiveness, and to protect the dignity of the other person.

Tips on using interpreters:

- Make sure the interpreter is appropriate in terms of culture, gender and age.
- Ensure that the selection of the interpreter maintains the victim's privacy and confidentiality.
- If at all possible, never use family members as interpreters.
- Spend time with the interpreter first. Ask prospective interpreters several screening questions that are relevant to the situation (e.g., do you have any relationship to the victim? Have you ever been a victim of a person crime? How do you think that experience or lack of experience might influence your ability to interpret for this situation?)
- Review interpreter roles/procedures and provide in-service training ahead of time.
- Avoid colloquialisms, idioms, slang and similes.
- Encourage the interpreter to translate literally rather than paraphrase, although sometimes paraphrasing is necessary for cultural understanding.
- Look and speak directly to the victim, not the interpreter, even though the victim does not understand.
- Listen, even though you may not understand the language.



- Watch for non-verbal cues.
- Have the interpreter ask the victim to repeat the information communicated, to see if there are any gaps in understanding.
- Using an interpreter is not easy for any of the parties involved. Be patient and take all the time that is needed.

The Oregon Attorney General's Sexual Assault Task Force's *Advocacy Manual* is available at: <http://www.oregonsatf.org/SATI/advocacy.html>.

Victims with a mental or physical disability

Victims from other populations and communities may also have special needs that must be considered before conducting a successful interview. To address this issue, the most important factor is to train first responders such as patrol officers, deputies, communications operators, or hotline workers to assess for the presence of a disability so the appropriate resources can be dispatched or found as early as possible. This does not mean that first responders need to determine exactly which mental or physical disability is present, or have a detailed understanding of all the possible disabilities that could be seen, but rather to identify when a victim might have a disability and bring in the appropriate resources.

To illustrate, victims with physical disabilities may need special accommodations, both in terms of physical equipment and/or advocacy.

- If victims with a physical disability have lost any mobility as a result of the sexual assault, this must be corrected before any follow-up interview can be conducted.
- Investigators may also need to be very creative in asking questions and seeking evidence when victims have a physical disability. For example, the investigator will need to ask a sexual assault victim who is blind certain questions and seek evidence that take into account the person's inability to see, relying on other sensory information such as smells, sounds, and physical touch.

If someone has a disability – whether it is physical or mental – it is critically important to keep in mind that this often makes them an ideal target for someone seeking to commit a sex offense.

For basic information on victims with specific types of disabilities, including those with various physical and mental disabilities, a video and companion guidebook entitled “*First Response to Victims of Crime*” are available from the Office for Victims of Crime at <http://www.ojp.usdoj.gov/ovc/publications/infores/other.htm>. Detailed guidance for conducting forensic interviews with victims who have a disability can also be found in a video and companion guidebook available from the Office for Victims of Crime at: <http://www.ojp.usdoj.gov/ovc/publications/infores/other.htm>.



Victims from the LGBTQ community

Victims of sexual assault who are lesbian, gay, bisexual, transsexual, transgender, or queer (LGBTQ) will also have special considerations in order to conduct a successful law enforcement interview.

- As with other minority groups, members of the LGBTQ community will often be reluctant to report their sexual assault to law enforcement, possibly because they want to protect the image of the community from public scrutiny.
- LGBTQ victims might also fear a negative reaction from law enforcement, based on their own experience or perceptions that law enforcement officers are homophobic, biphobic⁸, transphobic⁹ or biased about same-gender sexual assault and rape.
- For victims who are transgender, it may be very difficult to talk about parts of their body and explain specific transgender health care and body issues to people unfamiliar with transgender communities. Transgender victims often have to “educate” SAFE/SANE examiners and law enforcement about their bodies.
- For some LGBTQ people, particularly transgender people, their legal name and documentation do not align with how they identify their name and gender. It is very important to the investigation to have a respectful interaction with transgender victims of sexual assault including using the correct name and pronoun for how that person identifies. Law enforcement personnel can explain in a respectful way that they need to know a person’s legal name for legal and documentation purposes, but that they respect someone’s self-identified gender. Law enforcement can then proceed to use the language the victim uses to describe themselves.
- Like other minority groups, issues of confidentiality will be critically important for LGBTQ victims. Because they may not be “out” to many of their friends, family members, employers, and other acquaintances, the possibility of a law enforcement investigation can be extremely threatening. Victims often fear that others might find out about their sexual orientation or gender identity if an investigation is initiated.
- In working with LGBTQ victims, keep in mind that there are fewer resources and options for services available. For example, many shelters do not have LGBTQ-inclusive policies and for gay men and transgender people, accessing safe shelter can be extremely difficult.

In sum, whatever cultural group or special population a sexual assault victim comes from, investigators must carefully explain the process of a law enforcement investigation – with special focus on the issues of confidentiality. Facilitating contact with a victim advocate is absolutely

⁸ Biphobia is the oppression, bias, fear, discrimination and negative treatment of people who identify as bisexual.

⁹ Transphobia is the oppression, bias, fear, discrimination and negative treatment of people who identify as transgender.



essential, because victims from minority cultural groups will often be in particular need of accurate information, emotional support, and other forms of assistance during the process of the law enforcement investigation.

First Stage: The Victim's Narrative

So far, we have talked about the initial response to sexual assault victims, and some of the issues to consider when conducting a preliminary interview and more detailed follow-up interview(s). Now we'd like to talk more about the specific techniques to be used throughout this more detailed follow-up interview. Then we'll conclude by describing specific techniques from the "Cognitive Interview" and issues pertaining to cases involving alcohol and/or drugs.

In the first stage of the interview, the investigator should begin by asking victims to describe what happened in their own words and at their own pace.

- Although we know it is a common practice, we do not recommend beginning a follow-up interview by having the victim read the preliminary report prepared by the responding officer or deputy and asking if the information in it is correct.
- While this strategy may save time, it prevents the investigator from obtaining critically important information that is not documented in the preliminary report.

Avoid interrupting

When conducting an interview with a victim or witness of a crime, some of the most common errors that law enforcement investigators make are that they interrupt too often and ask too many questions in a "rapid fire" format (Fischer, 1995; also Olsen & Wells, 1991). Not only do these errors disconcert the victim, thereby disrupting rapport, but they can also decrease the amount and accuracy of information obtained during the interview.

To illustrate, in a research study conducted by Fischer (1995), some police detectives stated that they were aware that constantly interrupting a victim or witness was a common interviewing mistake – but they denied that they personally did so. Only after listening to an audiotape of their own interviewing technique did these detectives realize how often they interrupted victims and witnesses and then become motivated to correct this error.

In this first stage of the victim interview, it is therefore important that victims are allowed to provide their own narrative account of what happened, without interruptions by the investigator.

Use open-ended prompts

To elicit the victim's narrative in this first stage of the interview, it is helpful to use non-judgmental, open-ended prompts and then allow sufficient time for victims to digest the question and think about how to describe what happened in their own words and at their own pace. During this process, the investigator should avoid interrupting and ask questions only to clarify

details or to prompt further narrative. For example, the investigator can ask open-ended questions such as:

- *And then what happened?*
- *Tell me more about that.*
- *Tell me what you were thinking at that point.*
- *Tell me what you were feeling when he did that.*

Remember that such open-ended prompts are much better at eliciting information than closed-ended questions. Also recall that investigators should never ask the victim questions like these:

- *Did you fight the suspect?*
- *Why didn't you try to run or escape?*
- *Did you scream for help?*

Questions like this imply to the victim that there is a “right answer,” and a correct response to sexual assault. Such questions often make victims feel that they are being blamed or judged, or that they are not being believed.

- While investigators know that they will need to have such questions answered as part of the investigation (because these questions will also be in the minds of prosecutors, judges, and jurors), they should not be asked directly in this way.
- Rather, the answer to these “why” questions are typically better elicited using open-ended prompts that allow victims to describe what happened and how they were thinking and feeling at the time of the sexual assault.

During this first stage of the interview, investigators must listen carefully to the victim's responses and take accurate notes for written documentation. Investigators should also be prepared for long pauses by sexual assault victims, as they collect their thoughts and regain their composure to continue the narrative (Olsen & Wells, 1991). Although it is difficult for investigators – and in fact just about anyone dealing with sexual assault victims – to wait patiently during such pauses, is important to allow victims these silent pauses and not leap in with a question. Rather, victims should be allowed to complete their narrative account before moving into the second stage of the interview where such follow-up questions are appropriate.

Allow the victim control

Because it is the victim rather than the investigator who has the most vital information about the sexual assault, the victim should be the one with primary control during the interview – especially during this first stage.

- Unfortunately, the reverse is typically true, as the investigator assumes control of the process and the victim waits passively for the next question.



- Instead, investigators should induce the victim to take a more active role in the interview “by explicitly requesting them to do so, asking open-ended questions, permitting them to engage in tangential narration, and not interrupting their narrative answers” (Fischer, 1995, p.747; also Olsen & Wells, 1991).

In fact, most errors in witness recall are due to external influence rather than failure to accurately remember events. In a law enforcement interview, this means that the vast majority of details produced by a victim or witness will be accurate unless the investigator disrupts this process by encouraging the victim to guess or asking leading questions (Fischer, 1995). Investigators can avoid this temptation by allowing victims considerable control over this first stage of the interview, and providing them with the opportunity to recount events in their own words and at their own pace.

Avoid leading questions

People in crisis are especially susceptible to the influence of others, so it is important that investigators avoid leading questions in their interview with sexual assault victims (Olsen & Wells, 1991). For example, investigators should NOT ask victims questions like:

- *Did he use physical force to restrain you?*
- *Was he bigger than you?*
- *Did you resist?*

Questions like this imply to victims what the answer is – or should be. This is especially critical for victims whose sexual assault does not resemble the stereotype of “real rape,” for example if the assault did not involve physical force, the victim was incapacitated by drugs or alcohol, etc.

In contrast, the single best way to avoid leading questions is to use open-ended prompts of the type that have already been described. Better options to elicit this type of information include:

- *What did he do?*
- *How tall was he? How much did he weigh?*
- *What did you do or say?*

Throughout the Interview

Explain the questions asked

One of the complaints that sexual assault victims express most frequently about law enforcement investigators is that they did not provide enough information about the investigative process – what was happening and why.

- It is important that victims feel like “partners” during the law enforcement investigation, and one of the best ways of doing this is by keeping them informed.

- Throughout the interview, investigators should therefore explain some of the questions that are asked, especially those dealing with sensitive information such as sexual acts or high risk activity on the part of the victim.

For example, it is sometimes helpful to briefly explain the legal requirements of a sexual assault offense when asking victims about the specific details of sexual acts. This can be useful in some situations because it illustrates why certain information is necessary (Latts & Geiselman, 1991).

- To illustrate, if the investigator needs to establish whether penetration or contact occurred between the suspect's penis and victim's vagina, this question can be preceded with an explanation of how the law treats these instances differently.
- Another example is when separate counts of sexual assault can be charged every time the offender removes and reinserts his penis into the victim's vagina. Investigators can explain this fact before asking whether the suspect penetrated the victim more than once (Latts & Geiselman, 1991).

Another area where this principle can be helpful is when the investigator needs to ask about high risk behavior on the part of the victim, such as drug use or prostitution. When the investigator asks about such behaviors, this can be seen by victims as evidence that the investigator doubts their report or blames them for what happened.

- It is therefore helpful for investigators to explain the need for such information and to reassure the victim that the questions are not asked out of doubt or blame nor will the victim be prosecuted for any minor illegal conduct (if indeed this is the policy of the department).
- Rather, the role of law enforcement is to collect all of the facts of what happened, and seek corroboration for statements provided by the victim, witness, suspect, and other evidence. The investigator can therefore explain what the defense will likely say about any high risk behavior on the part of the victim, and emphasize how important it is to have the behavior explained from the victim's perspective.

This is also a helpful time for investigators to reassure the victim that they did not deserve the assault, because victims often blame themselves and look to the investigator for signs that he or she also blames the victim for the sexual assault. As Latts and Geiselman (1991) summarize:

The detective will explain to the victim that whether she was drunk, a prostitute, or on drugs, it does not matter. It does not negate the fact that she was raped. The responsibility for the rape lies with the rapist, the person who used force. Hence whatever the victim was doing before or during the crime does not matter as long as the investigator knows about it (Latts & Geiselman, 1991, p. 12).

Finally, investigators may sometimes want to explain to victims that the truth will eventually come out – especially if the victim was engaging in any high risk or illegal behavior – and that it is important for this to come out immediately from the victim rather than someone else.

- It can be very damaging to the victim's credibility for information regarding high risk or illegal behavior to come out later during the investigation. It is therefore typically in the victim's best interest to provide this type of information up front.
- In many cases, the information can even be used to strengthen rather than diminish the victim's credibility. For example, when victims have used drugs or engaged in other high risk or illegal activity, this can go a long way toward explaining why they were vulnerable to being sexually assaulted.
- Disclosing such unflattering or even illegal activity can also boost the credibility of victims, because they are seen as providing information that they certainly have a reason to hide. By disclosing such information, it is understood that victims expose themselves to blame, judgment, and possibly ridicule. This may therefore make the rest of the information in their statement more credible, because they were forthcoming about information that was embarrassing and even damaging.

For the victim to be completely honest, however, the investigator obviously needs to create an environment that is safe and comfortable for disclosing even unflattering or illegal behavior.

Use effective body language

Citizens are always influenced by the appearance and demeanor of police officers and deputies, but for sexual assault victims this can be especially pronounced. It is easy to imagine how the appearance of an officer or deputy in uniform can be intimidating. Fortunately, there are a variety of techniques officers can use to create a comfortable environment to encourage victim cooperation. These include the following.

- It is generally best to interview victims in plain clothes, because a full uniform can be intimidating. However, this is not typically an option for patrol officers and deputies, who must pay attention to other aspects of their body language to ensure that they convey a non-threatening attitude despite the uniform.
- Whenever possible, investigators should sit down with victims, rather than standing over them. It is best to sit in a relaxed manner, turned toward the victim.
- In fact, the victim should be allowed to sit in a position that is physically higher than the investigator's whenever possible. Steps provide a perfect opportunity for this technique, but it can also be accomplished by having the investigator sit in a chair while the victim is sitting on the hospital examining table, etc.

While we generally recommend that the investigator sit down with victims and communicate in a relaxed manner, we realize that this can pose a problem for officers and deputies responding in full leather gear, perhaps even with a full front and back panel vest.

- While these officers and deputies may want to communicate a relaxed manner to victims, it is sometimes too difficult to sit in the type of stuffed chair or couch that might be offered to them in the victim's home or other similar setting.

- In such a situation, the best approach is probably to explain this situation to victims (and victim advocates, if they are present).
- Then the investigator can try to find a dining room chair or other hard surface that will be comfortable but still communicate a relaxed manner to victims.

Although some people think that officers and deputies always stand in order to be intimidating, few recognize that this is often the only comfortable position for someone with 15 to 25 pounds of gear around their waist as well as front and back panel vests!

If sitting down is inappropriate in the situation, the law enforcement investigator should stand close enough to the victim to express concern yet remain far back enough to avoid being threatening. One to two arms' lengths is probably a good rule. In general, when standing near the victim, the investigator is best advised to retain an informal demeanor to make the victim feel as comfortable as possible.

- Regardless of whether the investigator is sitting or standing, attention and interest can be expressed with the investigator's body language, by nodding or otherwise indicating that he/she is following what the victim is saying.
- Investigators can also use smooth movements and speech style, thereby expressing patience, friendliness, and support.
- Investigators must take care to ensure that their voice remains calm and reassuring throughout the interview.

However, it is always a good idea to avoid feedback that might be interpreted as being evaluative (e.g., "good," or "right").

Maintain eye contact

Another important aspect of effective body language is maintaining appropriate eye contact. In general, law enforcement investigators should look directly at the person they are interviewing, even if that individual is unable to return the eye contact. This is also true for sexual assault victims and communicates that the investigator is comfortable with the victim and the information being relayed.

- Of course, investigators should avoid staring, peering, or glaring, but try through open and comfortable eye contact to communicate that they are "there" in a strong yet relatively stable manner.
- An exception might be made for those victims who come from a cultural background that teaches avoidance of direct eye contact, as discussed previously.

Avoid physically touching the victim

In general, we recommend against physically touching the victim – even though this is sometimes difficult for investigators whose natural instinct is to respond with empathy.

- We believe that the risk for violating the victim’s personal space outweighs the potential benefit of physical touch by the investigator.
- Avoiding physical contact can also protect the investigator from any potential for misperception or complaints that may arise as a result.

This is perhaps especially true for male investigators working with female victims, and it is yet another reason to ensure that victims have access to an advocate or other support person. Comforting the victim with physical touch is a role that is clearly more appropriate for a victim’s friends, family members, and other support people, than the investigator.

Monitor the victim’s body language

As for the victim’s body language, investigators can also watch this as an additional source of information about the victim’s level of comfort during the interview.

- When victims communicate with their body language that they are uncomfortable or upset, it may be an appropriate time to ask if they would like to take a break.
- The victim can also be allowed to skip certain questions if they become too difficult, and return to them later when the victim appears to be more comfortable.

When the body language of victims communicates that they are experiencing particular difficulty, investigators can take the opportunity to reassure them how important their cooperation is and how vital their role is in the law enforcement investigation.

Clarify sexual terminology

As with body language, it is crucial that the investigator use verbal expression that communicates effectively with sexual assault victims. This can be especially challenging when it comes to using sexual terminology, which is often difficult for investigators and victims alike.

- On the one hand, sexual assault victims often feel as if they are in a double bind when they do not have the correct language to describe the assault – without using words that are uncomfortable and/or seem inappropriate.
- Yet law enforcement investigators are often similarly unsure about what terminology to use, whether to use terms from medicine, law enforcement, or victims themselves.

With this in mind, it is often helpful for the investigator to begin by asking victims to describe the intimate parts of the male and female body, and evaluate their knowledge of different types of sexual activity. Once this has been established, victims often experience relief in having a common language to communicate the details of their sexual assault to the investigator. People

often have a hard time picturing what this might look like, so we'll give you an example of the words that a law enforcement investigator might use to apply this technique:

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

When a law enforcement investigator uses this type of strategy, it is not uncommon for victims to describe the terms they use for sexual intercourse, but not to talk about oral copulation or anal penetration. When this happens, it is best to ask victims if they are familiar with sexual activity of this type. If they are, this provides a prompt for asking victims about the terms they would use to describe the activities. If they are not familiar with this type of activity, this provides information that may later be relevant for the investigation.

- Some people worry that this will sound like the investigator is treating an adult or adolescent victim like a child, and care must be taken to avoid using a tone that might sound patronizing.
- However, it is equally important that we not act as if everyone has the same background, experience, and orientation when it comes to sex and culture.
- After working through this exercise together, victims and investigators often feel that they are better able to move forward with the interview, knowing that they are using common language and a frame of reference.

The investigator can then ask the victim about the sexual assault by referring to the parts of the body and the specific sexual acts that the victim was forced to perform. However, as described in the module on effective report writing, it is important to avoid using the terminology of consensual sex while doing so.

To illustrate, let's assume that the victim uses the term "pussy" for vagina, "dick" for penis, and "sex" for penile-vaginal intercourse. If the victim describes a sexual assault involving penile-vaginal penetration, the investigator will need to establish whether the suspect "forced his dick into her pussy." This focuses on the parts of the body and the acts that the victim was forced to perform with those parts of the body. This is better than asking the victim if she and the suspect "had sex," because this type of phrasing has the connotation of mutual, consensual activity that is not appropriate for describing a sexual assault.

Use sexual language appropriately

Other recommendations for appropriate wording of the interview and the resulting report include the following:

- Throughout the interview with the victim, every effort should be made to use simple terminology and to avoid police, medical, or legal jargon. Words should be used that are appropriate to the victim's age, sophistication and intelligence.
- It is particularly important to avoid using law enforcement terminology with the victim. Very few sexual assault victims will use terms like "digital penetration" or "oral copulation," so they have no place in the victim interview. Even more important, such terms have no place in the victim's documented statement, unless they actually do represent the terminology used by the victim. This issue is discussed in greater detail in the module on Effective Report Writing.
- When talking with the victim, it is best for law enforcement personnel to begin by using medical terminology (e.g., penis, vagina, anus). Then, if the victim uses other terms, these should also be used by the investigator – because they will be words and phrases with which the victim is most familiar. In other words, if a victim uses the term "pussy" instead of vagina, the investigator should follow this lead and use the same term. However, it is important to clarify exactly what the victim means with any such term. In this example, the investigator will need to clarify that pussy in fact means vagina. Victims must never be corrected when they use slang or street language to describe body parts or sexual acts.
- When establishing the words and phrases to use when describing sexual acts, these terms can be used in open-ended prompts to encourage victims to continue their response. To illustrate: "So he stuck his finger in your vagina. What happened next?"

These same principles for sexual language then apply to the written report as well.

- When victims do use a word or phrase to describe a particular act, their exact language must be preserved in the written report. Investigators should never sanitize the victim's statement, or replace it with law enforcement terminology. To illustrate, if the victim states that "he made me give him head," the investigator should document these exact words in the report and not change the phrase to something else (such as "fellatio," "oral sex," or "oral copulation").
- However, investigators must also clarify in their written report what victims mean when they use a particular term or phrase. In this example, when the victim states that "he made me give him head," the investigator should respond by asking if this means that the suspect forced her to put her mouth on his penis. The report should then document that the investigator asked questions to clarify the specific act(s) described.



Although it may be difficult, investigators must not appear shocked or embarrassed by the language a victim uses to describe a particular act. This will immediately convey to victims that the investigator is uncomfortable and make the situation even more difficult.

- If the victim appears to be uncomfortable with sexual language and details, it is sometimes helpful for investigators to reassure the victim that they have heard these things before and to reiterate the importance of obtaining all the information about the assault.
- However, investigators must make equally sure that they are comfortable using graphic sexual language. This may require practice, if necessary. It may seem silly, but an investigator's discomfort with sexual language will be clearly communicated to the victim and will likely make the victim feel both less comfortable and less willing to participate with the law enforcement investigation.

Engage in active listening

When interviewing a sexual assault victim, investigators must demonstrate active listening at all times. This is especially important at the beginning of the interview when victims should be given the opportunity to tell their account of events in their own words and at their own pace.

- By allowing victims to take the lead in describing what happened and not interrupting them while they do so, investigators increase the amount of information obtained to assist in their investigation (Olsen & Wells, 1991).
- Silence often allows victims a moment to collect their thoughts, which is especially important for anyone experiencing trauma. As Olsen and Wells (1991) describe in the *Police Chief*, investigators should allow the victim to focus on one topic “until the mental picture becomes clear and the retrieved information complete” (p. 31).

Use reflective comments

Investigators can also use reflective comments during the interview to encourage continued disclosures by the victim. These comments can be used by investigators to reflect back to victims some of what they said, in summary form. This will encourage the victim to keep talking, as long as it is conveyed in a tone that clearly expects continued narrative rather than a closed-ended response. The following scenario illustrates this strategy:

Victim: “*So I had met him at a few parties, but I didn't really know his name.*”

Investigator: “*He was someone you knew casually?*”

Victim: “*Yeah, he must have been friends with some of my friends because we would see each other at all of the same parties even though we never really met, you know, officially.*”

In this example, the investigator has reflected back to the victim the essence of what she said, in order to focus attention and encourage her to elaborate upon the point.

Clarify and summarize

To make sure the investigator is following the victim's account of events, clarifications and occasional summaries can be used during pauses in the narrative.

- Investigators can clarify and summarize what they have heard from victims after they have finished telling a segment of their narrative. Investigators should not interrupt the victim to clarify points, but when the victim pauses after completing a segment of their narrative the investigator can use this opportunity to clarify a particular issue or summarize the events and facts in that segment. To do this successfully, investigators must make notes of their questions while listening.
- After summarizing the victim's account, the investigator can also ask a question to invite clarification or elaboration by the victim. For example, the investigator's summary of events could be followed with a question like, "Do I have that part right?" or "Is that the way it happened?" This process ensures that the investigator understands the victim's account and allows victims the opportunity to make sure that they are communicating clearly.

However, detailed follow-up questions should not be used until the next stage of the interview, after victims have described what happened in their own words and at their own pace.

Taking breaks

In most instances, the actual decision to take a break should be left to the victim.

- If the investigator suspects that a break might be useful, it is certainly appropriate to ask the victim if he or she would like to take a break.
- However, if a victim advocate or other support person is present during the interview, they can also help monitor the victim's demeanor to determine when it might be helpful to take a break.

Victims might want to take a break after particularly difficult sections of the interview, for example, after describing the details of the sexual acts involved in the assault. Breaks at this point are often useful for victims to regain their composure and prepare them for the remaining questions. They can also be used to help the victim regain control in the interview environment.

Second Stage: Follow-Up Questions

After allowing victims to describe what happened in their own words and without interruptions during the first stage of the interview, it is then appropriate to move into the second stage where the investigator uses follow-up questions to elicit additional information.

Continue using open-ended prompts and avoid interrupting

Even in this second stage of the interview, it is still important for investigators to use open-ended questions and to allow the victim to answer fully before asking the next question. Investigators

should also continue to avoid interrupting and never follow one question with another before providing enough time for the victim to respond (Olsen & Wells, 1991). In the same study of police interviewing that was previously mentioned, it was reported that the typical interview contained only 3 open-ended questions and 26 short, closed-ended questions. Worse, “these direct questions were asked in a staccato, rapid-fire style” with less than one second of pause between the response and the next question (Fischer, 1995, p.735; also Olsen & Wells, 1991).

- Detectives were found to interrupt the response to an open-ended question after only 7.5 seconds; this was an average of four interruptions per response.
- “In none of the interviews was the witness permitted to complete his or her narration without being interrupted” (Fischer, 1995, p.735).

To improve their interviewing style, investigators can imagine being interrupted every 7.5 seconds and never allowed to complete a response. It is easy to see how this would be difficult for any crime victim, but perhaps particularly for victims of sexual assault.

Many of these interruptions are due to the fact that investigators try to take notes during the interview, but cannot keep up with the victim’s narrative, so they fire a question at the victim at an inappropriate time – because they are afraid they will forget it otherwise. This brings us back to the issue of taping interviews that was addressed earlier. One of the advantages of taping a victim interview (whether audiotaping or videotaping) is that it allows investigators to pay closer attention to simply listening to the victim and writing down only those questions that need to be addressed after they have their narrative account. In fact, taping is probably one of the single best tools for improving the listening skills of investigators, so they do not need to do two difficult and complex things at the same time (i.e., listening to the victim and taking notes).

Avoid inappropriate sequencing

Turning again to the study on police interviewing by Fischer (1995), another error that was almost universally committed by detectives was the inappropriate sequencing of questions.

- The research revealed that the detectives involved in the study typically asked questions in the order in which they appeared on their form for reporting criminal offenses. Obviously, this may not represent the order in which information is stored in the victim’s memory – or the order in which events happened.
- The detectives also generally asked questions in a “lagging order,” addressing something that the victim stated in a previous response rather than the current one. This probably happens when detectives lag behind in their note taking or when they want the victim to elaborate on a previous point.
- However, these questions too frequently “appeared in the middle of the witness’s description of another component of the crime, so that the follow-up question

interrupted the witness's train of thought and cut short any possible elaboration on the current topic" (Fischer, 1995, p.735).

To correct these errors, follow-up questions should be asked in a way that reflects the victim's memory of events, not the order of the boxes on an incident report form (Olsen & Wells, 1991). For example, victims should generally be allowed to describe what happened in their own words and in the order that makes the most sense to them. Then, when follow-up questions are necessary, the investigator can ask them in a way that is grouped together conceptually. To illustrate, all of the follow-up questions about the suspect could be asked together, rather than interspersed throughout the rest of the interview.

- When victims do skip over sexual details in their initial account of events, the investigator can simply make a note of this and follow up with questions to fill in the missing information later.
- In this situation, victims are providing information in a way that is most comfortable for them, and investigators should not respond by delving into these issues immediately but returning to them at a later time.

In other words, "interviewers may have to defer questions they are currently thinking about to another time, when they are more appropriate for the witness" (Fischer, 1995, p.746). This type of approach doesn't necessarily come naturally to investigators – and it takes both extra mental effort and resources – but the payoff can be great in victim comfort and rapport as well as the amount and accuracy of information obtained.

- This again raises the issue of whether or not to tape the victim interview. As previously discussed, one of the primary advantages of taping victim interviews (whether audiotaping or videotaping) is that it allows investigators to focus on really listening to the victim and taking notes only on the follow-up questions that need to be asked – rather than recording everything in the victim's statement. The reality is most investigators cannot type or write as fast as a human being can talk. Therefore, if the interview is not taped, the investigator often has to interrupt the victim to successfully document what is being said. It is actually impossible to actively listen to victims while at the same time taking notes to record both the victim's statement and the follow-up questions that still need to be asked.
- Another suggestion for avoiding inappropriate sequencing is to use video monitoring during the interview with a sexual assault victim, so that a second investigator or prosecutor can observe the interview and help to identify information that needs to be clarified or otherwise addressed. As with taping, this allows the investigator to focus on really listening to the victim and only taking notes on follow-up questions that need to be asked, with the knowledge that an observer is making similar notes of issues that need to be addressed. Of course, any such video monitoring should only be conducted with the victim's knowledge and consent – as with any other form of videotaping or audiotaping.

Observation can also provide supervisors with an opportunity to evaluate their investigator's work as well as provide an important training opportunity for newly assigned investigators and others seeking to learn the techniques for successfully interviewing the victim of a sexual assault.

Cognitive Interviewing Techniques

Throughout the victim interview, it may be appropriate to utilize some techniques from the "Cognitive Interview," developed by Geiselman and Fisher. It consists of four general methods for jogging memory – along with a host of additional specific techniques. These techniques are summarized below, based on a publication by the National Institute of Justice (Geiselman & Fisher, 1985). Some of the techniques can be used in the first stage of the interview, when victims are relaying their account of events in their own words. Others are more appropriate during the second stage of the interview when the investigator asks follow-up questions. It is probably rare that an interview would actually involve all of the techniques, but they are helpful tools that investigators can consider using during victim interviews when they seem appropriate.

A note of caution

As you will see in a moment, the use of cognitive interview techniques with sexual assault victims requires them to relive the experience to some extent, and law enforcement investigators need to be aware that using this method may be extremely difficult for victims.

- Some have even suggested that cognitive interviewing techniques are inappropriate for sexual assault victims, because they create unnecessary trauma.
- However, it is important to keep in mind that the cognitive interview is based on psychological principles and designed to elicit as much information as possible.
- In addition, all law enforcement interviews require that the victim relive the crime to some extent, so this concern is not unique to any particular technique.

Ultimately, each law enforcement investigator must decide when cognitive interviewing techniques are appropriate, based on the circumstances of the sexual assault, the victim's personality, and the victim's individual response style to trauma.

- For example, some have suggested that cognitive interviewing techniques may be most appropriate for cases of stranger sexual assault, rather than non-stranger sexual assault, since many of the techniques focus on identification of the suspect.
- However, we believe that the techniques may be equally appropriate for cases of non-stranger sexual assault because the goal of any effective investigation is to recreate the entire reality of the sexual assault, from the perspective of the victim. This will include everything that the victim was thinking and feeling at the time, and cognitive interviewing techniques can be helpful for eliciting this type of detail.

Of course, some of the concerns regarding cognitive interviewing techniques can be addressed by ensuring that an advocate be available to accompany all victims of sexual assault. Advocates

can typically be available for the victim before, during, and after the interview, in order to provide information and address both emotional needs and other concerns that arise.

Technique #1: Reconstruct the circumstances

During the first stage of the interview with a sexual assault victim, cognitive interview techniques include setting the stage for recall by asking the victim to reconstruct all of the circumstances of the assault, including the environment, location of furniture, lighting, people or objects, etc. Victims are then asked to reconstruct how they felt at the time of the assault and describe their reactions. The goal of this first technique is to see and feel what the victim saw and felt at the time of the sexual assault. This kind of reconstruction has been shown to be very powerful in assisting memory (Geiselman, 1987). Suggested wording for this is as follows:

Try to reconstruct in your mind the context that surrounded the incident. Think about what the surrounding environment looked like at the scene, such as rooms, the lighting, the weather, any smells, any nearby people or objects. Also think about how you were feeling at the time and think about your reactions to the incident. Mentally, put yourself back there at the time this happened (Geiselman, 1987, p.19).

It is easy to see how this technique can assist with the goal of reconstructing the victim's experience during the interview, as discussed throughout this module. By prompting victims in this way, their interview is more likely to provide the type of detail that is needed to thoroughly document the victim's experience, explain the victim's reactions to the situation, and overcome any challenges to the victim's credibility.

Technique #2: Be complete

As the research study with police detectives revealed, law enforcement investigators all too often interrupt victims and allow only brief responses to closed-ended questions. By doing so, they convey to victims that they should provide only minimal information during the interview.

- Of course, this is exactly the opposite of the real goal for the law enforcement interview – which is to obtain as much information as possible.
- In addition, this interviewing style communicates to victims that they should edit themselves and provide only that information that they believe might be relevant for the law enforcement investigation.

Yet the truth is most victims have no idea what may be considered relevant for the law enforcement investigation. It should therefore be the investigator's role to edit the information and decide what is significant – not the victim's.

Keeping this in mind, the second cognitive interviewing technique is to advise victims to provide as much information as possible, and not to hold back anything no matter how trivial or irrelevant it might seem. This type of technique has been shown to yield more information during law enforcement interviews – not only because victims provide information without

editing but also because they sometimes remember an important detail only when thinking about something that is not relevant (Geiselman, 1987). Suggested wording for this is as follows:

Some people hold back information because they are not quite sure that the information is important. Please do not edit anything out of your report, even things you think may not be important (Geiselman, 1987, p.19).

Technique #3: Recalling in reverse order

After victims have completed relaying their account of events, the third cognitive interviewing technique is to ask victims to recall the events of the sexual assault in a different order.

- Since most victims will describe the events in **chronological order** during their first telling, the investigator should ask the victim to recall them in **reverse order**, from the last thing that happened backward to the first.
- This process of recalling events backwards in time requires victims to examine their actual memory of the event, rather than relying on a narrative that may have already become somewhat rote after telling it to several individuals.

When events are recalled in chronological order, we all have a tendency to reconstruct in our minds what must have happened based on prior knowledge or assumptions. This can lead to incomplete or inaccurate reports. By reporting events in a different order, it is sometimes possible to elicit more details from the actual memory. Suggested wording for this is as follows:

It is natural to go through the incident from beginning to end. However, you also should try to go through the events in reverse order. Alternatively, try starting with the thing that impressed you the most in the incident and then go from there, going both forward in time and backward (Geiselman, 1987, p.19).

Technique #4: Change perspectives

The fourth cognitive interviewing technique is to ask victims to recall the event chronologically, but from a different perspective.

- For example, if the victim was assaulted in a car, the investigator could ask for a description of the events as they might have appeared from outside the car.
- If the victim was assaulted on a bed, the investigator could ask what might have been observed from the perspective of the ceiling.

This can be especially useful for victims who dissociate or experience frozen fright, because it sometimes feels to them as if they truly did observe the assault from that external perspective.

Suggested wording for this technique is as follows:

Try to recall the incident from different perspectives that you may have had, or adopt the perspective of others who were present during [parts of] the incident.

For example, try to place yourself in the role of a prominent character in the incident and think about what he or she must have seen (Geiselman, 1987, p.19).

Another related strategy is to ask victims what the suspect heard and saw during the sexual assault. In response to such a question, many victims recall something significant that they had not already reported, such as screaming, scratching the suspect, or saying “no.”

Additional techniques for eliciting information

In addition to these four specific techniques, there are also a variety of additional strategies for enhancing recall that are described as part of the cognitive interviewing approach. These are described below, as quoted or adapted from Geiselman (1987). Some of these techniques are particularly relevant for cases of stranger sexual assault, as they can help the victim to provide identifying information on the suspect. However, others are equally relevant for cases involving non-strangers, because they can help the victim to recall details that will recreate the entire reality of the sexual assault from the victim’s perspective. Five techniques will be described.

(1) Suspect descriptions:

If the suspect was unknown to the victim, investigators can supplement typical descriptive information by asking victims whether the suspect reminded them of anyone. If so, who and why? Victims can also be asked if there was anything unusual about the suspect’s physical appearance or clothing – and again, victims should be reminded not to edit their statement but to provide any details no matter how silly or trivial they might seem.

(2) Remembering names:

If the victim is trying to come up with a name that was spoken or other verbal information, investigators can ask the victim to try to think of the first letter by going through the alphabet. Then the investigator can ask the victim to try to think of the number of syllables to see if this elicits additional information.

(3) Remembering numbers:

If the victim is trying to come up with a number, perhaps from a license plate or other written material, investigators can ask the victim:

- *Was the number high or low?*
- *How many digits were in the number?*
- *Were there any letters in the sequence?*

(4) Recalling speech characteristics:

If an investigator is trying to elicit additional information about the speech characteristics of the suspect, the victim can be asked:

- *Did the voice remind you of someone else’s voice? (e.g., movie or TV star)*

- *If so, who and why?*
- *Was there anything unusual about the voice?*

(5) Recalling conversational details:

When trying to generate details about any conversation that took place between the victim and suspect, investigators can ask the victim to think not only of what was said but also how the victim or others present reacted to what was said. It is also helpful to ask whether any unusual words or phrases were used.

Benefits of the cognitive interview

Many investigators have been using some of these techniques for years. However, research has demonstrated that using all of the techniques together can effectively enhance the memory of victims and other eyewitnesses (Geiselman & Fischer, 1985).

- A large number of studies have demonstrated that cognitive interviewing techniques can enhance the amount of information recalled by victims and witnesses of crime, without similar costs in accuracy.
- Specifically, studies demonstrate a **25-70% increase** in the amount of correct information obtained using cognitive interviewing rather than standard law enforcement techniques (Fischer, 1995; Geiselman, 1987).
- There is also substantial evidence that cognitive interviewing techniques do not produce any increases in the suggestibility or confidence of witnesses, which greatly increases the reliability of their testimony.

The primary cost of using cognitive interviewing techniques is that they take longer and require greater mental effort and flexibility on the part of the investigator, as well as the victim. However, given the payoffs – not only in the information obtained but also the rapport and trust established with the victim – this extended time is often well spent in sexual assault cases.

A note on hypnosis

In this context, a note about hypnosis is justified – as compared with cognitive interviewing. Some have noted that hypnosis can increase the amount of information recalled by victims and witnesses of crime, and there is some research evidence to support the idea. However, there are also a number of documented problems with memories that are recalled while under hypnosis.

- For example, although victims and witnesses sometimes recall more information after hypnosis, more of the information is likely to be inaccurate, as compared with standard interviewing techniques.
- Furthermore, the heightened suggestibility experienced during hypnosis causes victims and witnesses to be more influenced by leading questions, and they report greater confidence in their memories – even when they are incorrect (Geiselman, Fisher, MacKinnon, & Holland, 1985).



For all of these reasons, American courts generally exclude testimony that is either produced during hypnosis or resulting from any interview following the use of hypnosis. However, cognitive interviewing techniques share many of the advantages of hypnosis without these important disadvantages.

Information to Obtain During the Follow-Up Interview(s)

In the detailed follow-up interview(s) with a sexual assault victim, investigators will need to obtain a wide range of information. The purpose of such an interview is not just to fill in gaps from the preliminary interview or to clarify any facts that remain unclear, but also to interview the victim about any additional leads that have developed during the course of the investigation.

- The reality is that a thorough investigation unfolds in various stages, as investigators collect various types of evidence and interview statements from witnesses, the suspect, and others.
- Each of these stages produce new information that must be pursued and probed, and this will often require additional interviews with the victim.

Throughout the course of the investigation, the following information will need to be obtained.

Describing the victim's behavior and relationship with the suspect

The investigator must ask victims about their behavior and relationship with the suspect. These questions should address:

- The victim's activity prior to the assault
- Any past relationship or contact with the suspect
- How the victim and suspect initially came into contact
- When the victim last had consensual sexual intercourse, and with whom (after explaining that this information is important because of the potential impact on forensic evidence that may be recovered)
- Who the victim first told about the assault, and what was said
- Any witnesses with information about the assault, the suspect, or prior assaults

When asking the victim about other potential witnesses, the investigator should assess who the victim told, what the victim told the person, and when this took place.

- It is important to get information on anyone who may have seen or heard anything before, during, or after the assault.
- It is especially important to determine who the victim first told of the assault (these individuals are sometimes referred to as "outcry witnesses") because these people can provide critical information regarding the victim's appearance, demeanor, behavior, and spontaneous statements following the assault.



When describing the behavior of the victim during the assault, it is important for investigators to distinguish between the victim's submission (giving-in) and consent (freely participating).

- For example, victims who submit out of fear should be asked about their thoughts and feelings during the assault so their behavior is clearly characterized as submitting or giving in rather than consenting.
- In other cases, a victim may have consented to certain acts such as kissing or fondling but not consented to other acts such as sexual intercourse.

It is obviously important to ask victims about what they said and did during the assault, especially with respect to their lack of consent and how they communicated it. However, when victims clearly describe a sexual assault that is forced and that included no consent, they do not need to be asked about every single act involved in the assault (and possibly every single defendant). When victims are asked whether or not they consented to each and every sexual act, this type of repeated questioning can leave victims feeling hammered – like they have not been heard or believed when they said they did not consent. Worse, the written documentation of such an interview may even create the impression to anyone reading the report that the investigator was skeptical about the victim's lack of consent.

- When victims have described an entire situation as involving force, threat, or fear, common sense dictates that all sexual acts conducted in that situation took place in that context of force, threat or fear – and were therefore non-consensual.
- If the written report clearly documents the presence of force, threat, and fear in the situation, this is sufficient to explain that all of the sexual acts committed in that situation were not consensual.

Describing the suspect's behavior

Regarding the suspect's behavior, the investigator should establish:

- How the suspect entered and exited the crime scene
- Whether the suspect brought anything or left anything at the scene
- Whether the suspect touched or moved anything
- Whether the suspect took any pictures or videos
- Whether the suspect showed any videos or magazines to the victim
- Whether the suspect used any objects during the assault
- Whether the suspect moved or transported the victim
- Whether the suspect made any threats to the victim, and the specific language used
- Whether the suspect committed any other crimes in connection with the sexual assault (e.g., whether the suspect took or damaged anything belonging to the victim)

Documenting the specific acts committed

To determine which specific sexual acts were committed, the investigator will need to assess whether each of the following occurred:

- Penile-vaginal penetration (typically requires only “contact however slight”)
- Sodomy (penetration of the anus, however slight)
- Oral copulation (contact between the mouth and penis, vagina, or anus)
- Digital penetration of the genitals
- Other foreign penetration of the genitals
- Sexual contact other than penetration

In addition to determining which specific acts were committed, it is also important to document their sequence and whether any acts were repeated. As previously stated, this information will only be obtained in the detailed follow-up interview, not in any preliminary interview.

Investigators will therefore need to make sure that the information they collect will allow them to determine whether the sexual acts involved meet the elements of the offense in their state.

It is important to keep in mind that acts of sexual assault are often committed in the context of domestic violence. Yet when victims of domestic violence talk with a law enforcement officer, they often describe the acts of physical violence that were committed but leave out any mention of the sexual violence that also took place. In other words, the shame of sexual assault is often so great that victims of domestic violence will describe how they were physically abused but not how they were sexually abused. Therefore, whenever law enforcement professionals investigate a report of domestic violence it should be standard practice to ask if any acts of sexual violence were also committed. However, this must be done using very simple language, because any sexual violence committed in this situation may have been going on for so long it is simply seen as part of the victim’s life and relationship and not viewed as a crime. For example, officers can ask a wife whether her husband has ever had sex with her when she didn’t want to. If she says yes, then the interview can proceed from there to determine what happened.

Describing the suspect’s sexual behavior

With respect to the suspect’s sexual behavior, it is also important to ask the victim:

- Whether a condom was used
- What type of condom was used, or a description of the packaging
- Whether the condom was provided by the victim or suspect
- Where the used condom might now be located

- Whether a lubricant was used
- Whether the suspect ejaculated, and if so, where (explain that this is not an element of the offense but indicative of where evidence might be located)
- Whether the suspect wiped his genitals with a tissue, sheet, or item of clothing (this item can then be collected as evidence)

Establishing the element of force, threat, or fear

To establish the elements of the offense in a case of forcible sexual assault, the investigator needs to document not only the details of the sexual acts but also the circumstances of force, threat, or fear that were present in the situation. Given that the majority of sexual assaults are committed by known offenders, the issue in most investigations is going to be consent rather than identity. It is therefore crucial that the investigation uncover any information that conveys the force, threat, or fear that was used to commit the sexual act(s) without the victim's consent.

For example, the investigator should find out from the victim:

- Whether physical force was used (understanding that force means different things to different people, so victims must be asked to articulate what force was used)
- Whether any real or simulated weapons were used
- Whether the suspect used his body to restrain or intimidate the victim
- What the physical positioning of the suspect was in relation to the victim
- Whether threats were made (which again must be described clearly and in detail)
- Information regarding the size and strength of the suspect, relative to the victim
- Circumstances that made the victim feel threatened, including isolation (again, this will be very different for different people, so these circumstances must be recorded in the victim's own words)
- Whether the victim was incapacitated or otherwise vulnerable
- What the victim was thinking and feeling at the time of the assault
- How the victim responded, including any verbal or physical resistance

Investigators must remember not to ask these questions directly (e.g., “Did he use a weapon?” or “Did you resist?”) because this can communicate to victims that the assault wasn't serious if a weapon was not used or they did not physically resist. Rather, investigators should listen to the victim's narrative for the details, and ask open-ended prompts to elicit information about the victim's and suspect's behavior and the victim's thoughts and feelings during the assault.

Investigators must also recall that the force, threat, or fear experienced by victims is likely to result from the totality of the circumstances during the assault. It may not be a single element that created a threatening environment, but a combination of elements that must be established during a comprehensive and victim-sensitive interview.

Obtaining a description of suspects

For victims who do not know the identity of their assailant (stranger sexual assault), investigators will need to get a detailed description of the suspect, including information pertaining to:

- Clothing
- Jewelry
- Earrings or other piercings
- Glasses (type)
- Tattoos
- Accents
- Body and facial hair
- Body odor
- Circumcision
- Scars
- Masks
- Gloves
- Items or weapons carried

Investigators must then evaluate whether the victim could potentially identify the suspect or assist in constructing a composite or artist's sketch of the suspect. However, this should NEVER be done by directly asking victims whether they can identify the suspect.

- If the victim says that he or she is able to identify the suspect and later fails to do so successfully, this may be used by the defense to erode the victim's credibility.
- Similarly, if the victim suggests that he or she cannot identify the suspect or is unsure about this ability, it limits the potential utility of any future identification.

The investigator should then document anything relevant to the victim's ability to identify the suspect, including the length of contact, lighting, or presence of any other obstacles to viewing the suspect (e.g., if the suspect was wearing a mask during the assault). These factors must be taken into account when evaluating the victim's ability to provide identifying information about the suspect or to identify the suspect in a line-up or show-up.

Rather than asking victims whether or not they could potentially identify the suspect, a better approach is to simply ask victims of stranger sexual assault to participate in an identification procedure such as a curbside show-up, photo line-up, or live line-up. However, it is critically important to note that victims of stranger sexual assault should only be asked to participate in an identification procedure if they have had sufficient opportunity to observe the suspect. Victims who have not had sufficient opportunity to observe the suspect should NEVER be asked to participate in an identification procedure such as a photo line-up, live line-up, or curbside show-up. This would include victims of stranger sexual assault who are attacked from behind, awakened in a dark room, or who have had their eyes covered by the suspect as part of the sexual assault. It would be impossible for such a victim to positively identify the suspect, and therefore unreasonable to ask them to try.

- On the other hand, while these victims should never be asked to participate in an identification procedure, they could potentially be asked to assist law enforcement in developing a composite or artist's sketch of the suspect, if they feel they are able to do so.

- Such a sketch is not used as an identification procedure, but rather as an investigative tool that can be developed further through forensic evidence, witness interviews, and criminal history of the suspect.

Establishing a modus operandi or signature pattern of behavior

To determine whether a modus operandi or signature pattern of behavior can be established for the suspect, investigators should also assess:

- Whether the suspect had an erection or had difficulty maintaining an erection
- Any statements or words used by the suspect
- Any specific threats made by the suspect
- Any weapons or other items used by the suspect
- Any contact with the suspect before or after the assault
- Property taken or left by the suspect

Drug Facilitated Sexual Assault

While we are discussing the information that must be obtained in the victim interview(s), it is necessary to address the issue of drug facilitated sexual assault, because these types of crimes are very common. And of course the most common drug used to facilitate sexual assault is alcohol.

- Sexual assaults have long been linked to the abuse of drugs and alcohol, because these substances can be used to decrease the victim's inhibitions and render the victim incapacitated or even unconscious.
- Sexual assault victims should therefore be asked and evaluated for indicators that drugs and/or alcohol may have been used to facilitate the sexual assault.
- This may include the presence of any of the following symptoms: memory loss, dizziness, confusion, drowsiness, slurred speech, impaired motor skills, impaired judgment, reduced inhibition or a variety of other symptoms. The victim may even appear to be intoxicated or "hung-over."

Of course, the use of drugs and alcohol can be one important factor in increasing the victim's vulnerability to being sexually assaulted. However, it also poses many serious challenges for any law enforcement investigation. Because many of these drugs have sedative properties, sexual assault victims who are under the influence of drugs or alcohol may have no memory of the incident, only a vague awareness or sense that they were violated.¹⁰ Many of these victims therefore have a very hard time describing what happened, and their account of events may have large gaps in time. Victims who are under the influence of drugs or alcohol may also be

¹⁰ National Drug Intelligence Center and Sexual Assault Services Office (2003, May). *Drug Facilitated Sexual Assault Resource Guide*. Published by George Mason University and available for order by calling NDIC at (703) 362-6044 or George Mason University at (703) 993-4364.



extremely anxious during the course of the law enforcement interview, especially if they were drinking underage and/or voluntarily taking illegal drugs.

- Although the media tends to portray drug facilitated sexual assault as involving substances given covertly to the victim by the suspect, it is actually much more common for victims to voluntarily take the drug(s) in question.
- Some victims voluntarily ingest drugs with full knowledge of their effects. Others take the drug voluntarily, but with misinformation provided by the suspect or someone else.
- In some cases, the suspect may even offer the victim an unidentified “date rape drug” to get high – but of course the victim does not believe that this will result in actually being sexually assaulted.

In any of these situations, where the victim has been drinking underage and/or taking illegal drugs voluntarily, law enforcement investigators must remain particularly patient and maintain an open mind while listening to the events as the victim recalls them.

Investigators must also clearly communicate to the victim that underage drinking and/or voluntary drug use never justifies being sexually assaulted. It may be especially important in these situations to have an advocate present, because the victim may be experiencing a great deal of shame and self-blame.

It is also important for investigators to remember that victims who are under the influence of drugs or alcohol may try to “fill in the blanks” in their memory of events. This may happen unconsciously, without the victim’s conscious awareness. Or it may be a conscious process – but innocently intended – as victims simply try to make sense of what happened and fill in missing information in their memory. It is therefore especially important to avoid asking any leading or suggestive questions during the interview in cases involving drug and/or alcohol use.

For victims who lost consciousness, it is very important to have them describe exactly how they felt or what they had been doing prior to losing consciousness. However, it is equally crucial to interview any witnesses who might have seen the victim or spoken with the victim, either before, during or after the assault. Often, these witnesses can help to describe the victim’s behavior, establish time frames, provide critical facts, and even identify potential sources of information.

Investigators must also emphasize to victims the importance of being truthful about the use of alcohol and/or any drugs, so it will not be used by the defense to undermine their credibility. However, this information must not be used by law enforcement investigators to discredit the victim’s report of the sexual assault.

- For example, investigators must not necessarily assume that victims are lying if they state they did not engage in recreational drug abuse but test positive for a drug like cocaine or methamphetamine. Some offenders have administered drugs

to victims surreptitiously or by force, to mask another drug or to discredit victims who may decide to report to authorities.

- There have even been cases where the offender applies cocaine or some other drug to the victim's anus or vagina or to his own penis before sexually assaulting the victim, knowing that a positive test result will be used to discredit the victim's account of what happened.

Concluding the Interview

Hang in there, we're almost finished! Just a few more suggestions for successfully concluding the interview with a sexual assault victim.

When concluding the interview, it is always important to ask victims if they have any additional information they would like to offer. Sometimes details come to mind during the course of the interview that the victim can be invited to share before concluding.

Victims are also likely to look to the investigator at this point for a reaction to their narrative or the investigator's assessment of their credibility. The investigator can therefore take this opportunity to reassure victims, by stating that the assault was not their fault, by praising them for their courage and thanking them for their vital cooperation with the investigation.

Explain future procedures

As we have already described, it is critically important to explain to victims the procedures involved in a law enforcement investigation. All too often investigators forget that victims have no realistic awareness of police procedures and the reasons underlying them.

- Although the investigators deal with these procedures on a daily basis, this may be the first time victims have ever had meaningful contact with law enforcement.
- Investigators must therefore take the time to explain the various steps in the law enforcement investigation, and the reasons underlying these procedures.

This is another point at which victim advocates can be enormously helpful, because they can take the time to explain these procedures to the victim – perhaps more than once, as the victim struggles to understand them. Advocates can also answer the victim's questions and address any concerns. However, law enforcement investigators are often the best people to address questions or concerns that the victim has about what is and is not part of the investigative process.

- For example, some victims are very concerned about the fact that their own criminal history is being checked. In this case, victims can be reassured that everyone who comes into contact with law enforcement is checked for a criminal history and that this does not in any way represent that their report is seen as questionable or that they are being blamed for the assault.
- Other victims are concerned when they are fingerprinted, for example, after reporting a sexual assault by a stranger who broke into their home or apartment.



In this type of case, investigators can explain to victims that they are providing elimination prints and describe how these are used to rule out prints from the victim when looking for those of the suspect.

- Victims can also be informed that the investigator will interview the suspect, and that information from this interview may come back to the victim through the suspect's friends, family members, or others. The victim can be warned when the suspect interview will likely take place, and encouraged to raise any questions or concerns about the investigation directly with the investigator.
- The investigator can also explain the crime laboratory procedures and the process for releasing any of the victim's property that was taken as evidence.

When explaining the police procedures, it is important to avoid false assurances or unrealistic expectations for the process.

- For example, victims should not be told: "Don't worry, we'll have the suspect in custody before you know it and he'll go to prison for a long time."
- Instead, victims should be provided with honest information about the process and likely outcomes.

At this point, the investigator can also remind the victim that additional bruises and other visible evidence of injury may appear later, and if this occurs the victim should contact the investigator to arrange for additional photographs or other documentation. The victim should always be encouraged to contact the investigator with any new information or evidence that arises after the interview is completed.

Inform victims of their rights

Because privacy is such a central concern for most sexual assault victims, it is important to explain confidentiality issues to the victim and make every effort allowed by law and policy to protect the victim's information. An explanation of the victim's rights should be given to the victim both orally and in writing. Community resources available to the victim should also be included in this written document, which can be provided by the advocate or forensic examiner, but the law enforcement investigator also has the responsibility to make sure that it has been given to the victim.

- For example, investigators can explain to the victim which information from the investigation will be made public and which information will be kept confidential.
- Investigators should obtain written permission from the victim before releasing any case information to other non-law enforcement organizations or to the public.

Investigators must also notify victims of their rights under state law, which vary but may include:

- The right to have their name withheld from public record
- The right to notification of any criminal justice proceedings
- The right to be present and to make a statement at any court proceedings

- The right to apply for crime victim compensation
- The right to apply for an emergency protection order

Of course, the victim also has the right to be free from harassment and intimidation by the suspect, and the investigator can explain that the victim should call 911 in such an emergency. More detailed information on crime rights is provided in the module on *Victim Advocacy within the Criminal Justice System*. This is important because research documents that victims who are provided more information about their rights are more likely to exercise them. Moreover, victims who participate in the criminal justice process are more satisfied with both the outcomes of their case and the professionals with whom they interacted (Kilpatrick, Beatty, & Smith Howley, 1998).

Victims may not understand that the best response in an emergency situation is not to show up at the police station or call the detective's desk number, especially if it is after hours or on the weekend, but rather to **call 911 immediately**.

Address safety concerns

At the conclusion of the interview, investigators can also explore safety concerns with victims and help them to formulate a plan for maintaining their physical well-being.

- Given that most victims know the person who sexually assaulted them, they understandably have concerns about what will happen when the suspect is contacted by law enforcement to question him about the sexual assault.
- In cases where the suspect is a stranger, victims are also concerned that the suspect remains at large and poses a threat to them and their family members.

It is therefore important for investigators to explore a safety plan with victims, and explain the procedures for obtaining an order of protection if appropriate. To develop a safety plan for sexual assault victims, the following guidelines are provided in the National Protocol for Sexual Assault Medical Forensic Examinations (the following section is quoted verbatim).

“Screen for domestic and dating violence and other forms of abuse. Assist patients in considering things such as:

- Where are they going after being discharged? With whom? Will these individuals provide them with adequate support? Is there anyone else they would like to contact? (Provide information about available community resources for obtaining support and help in making the contact if needed.)
- Will their living arrangements expose them to the threat of continued violence or harassment? Is there a need for emergency shelter or alternative housing options? (Provide options and help obtain if needed.)

- Are they eligible for protection orders? (Provide information and help obtain if desired.)
- Is there a need for enhanced security measures? (Discuss options and help obtain if desired.)
- If they feel unsafe, what will they do to get help? (Discuss options and help them develop a plan.)

Planning must take into account the needs and concerns of specific populations. For example, if patients with physical disabilities require shelter, the shelter must be accessible and staff able to meet their needs for personal assistance with activities of daily living. If patients living in institutional settings have been assaulted by another resident, a staff person, or person who has easy access to residents, the institution should offer alternative living arrangements and reduce the likelihood that patients have to come into contact with the assailant again. It should also ensure them access to services designed to promote their recovery” (National Protocol for Sexual Assault Medical Forensic Examinations, 2004, p. 114).

Acknowledge that disclosure is a process

It is said that disclosure of sexual assault is a process rather than an event, and investigators must keep this in mind themselves as well as passing it along to victims. In other words, victims often remember additional details or feel comfortable disclosing them only at some point after the initial law enforcement interview.

- Investigators must therefore provide victims with information about who to contact if they have any questions or recall any additional information. Victims may also want to contact someone to clarify details in their statement.
- To make sure that victims can actually get in contact with the officer or deputy who responded to their case, investigators should provide victims with their name, badge or identification number, and the victim's case number.

If an investigator has a business card, this can be provided to victims with information about who to contact for any questions or concerns that may arise.

Obtain contact information for the victim

Because victims are often reluctant to stay at their own home after a sexual assault (especially if the assault took place there), it is important to get the address and phone number where the victim will actually be staying. In addition, it is advisable to get the name, address, and phone number for another contact person in case the investigator has difficulty locating the victim.

Keep the victim updated

After the interview, investigators must stay in touch with victims to keep them apprised of the status of the case. Even though investigators often withhold information to protect the victim from unpleasant news, victims typically want to be kept informed of what is happening with their case. Especially if their case is being closed or inactivated, victims need to be notified of this fact, in order to achieve some closure in their own lives.



- Because it can sometimes be difficult for law enforcement to keep in contact with victims as often as victims would like, advocates can play an important role in keeping the victim informed regarding the law enforcement investigation.
- However, this will require having a release waiver signed by victims, indicating that the advocate can contact law enforcement to discuss the status of their case.

One of the most frustrating dynamics that victims describe is a lack of contact from the law enforcement investigator and lack of response to their requests for information and updates on the status of their case. Therefore, one of the best ways to develop rapport and trust with victims is to keep them apprised of what is happening. This is good not only for their emotional recovery, but also facilitates their active participation in the investigative process. Again, research documents that victims who are provided with more information are more likely to participate in the criminal justice process and to be satisfied with both the outcomes of their case and the professionals who assisted them (Kilpatrick, Beatty, & Smith Howley, 1998).

Assist with notification if possible

Although it is not always possible, it can be extremely helpful for victims to receive assistance in the immediate notification of family, friends, or employers regarding the sexual assault. This is another area where victim advocates can be of assistance for victims, thereby relieving investigators of the duty of such notifications.

Of course, notification of friends and family members regarding a sexual assault can be challenging, because many will respond with anger and a desire for revenge. In that situation, they can be reminded that – although this reaction is understandable – it does not help victims and in fact it often creates yet another source of anxiety for them.

- Unfortunately, some support people also respond by blaming victims for any high risk behavior they may have exhibited. Again, this is very destructive for victims and should be discouraged in no uncertain terms.
- The investigator can emphasize to these support people how important it is that they be just that – support – for the victim during the experience of crisis. Whatever the victim did prior to the assault, nothing justifies being sexually assaulted, and the focus needs to remain on the victim's recovery (O'Reilly, 1984).

This is yet another area where advocates can be of great assistance, because any support provided to friends and family members will help the victim to gain or maintain the strength that is necessary to endure the investigative process.

- Support people can also be provided with the same information and referrals as the victim, in order to address their own questions and concerns regarding the sexual assault.
- For example, many rape crisis centers now offer various services for friends and family members who are affected by the sexual assault of a loved one.

Advocates can address the questions and concerns of support people, both during the immediate response to a sexual assault (e.g., at the hospital or police department) and in the longer-term aftermath and the process of the victim's recovery.

Provide referral information in writing

Victims must also be provided with written referrals and information about community resources that work with survivors of sexual assault and their significant others. Investigators must either provide these materials personally, or ensure that the victim has received a copy from the advocate or someone else from the Sexual Assault Response Team. Advocates may also provide victims with more detailed informational materials addressing topics such as the process of recovery from sexual assault, medical issues, crime victims' rights, and what to expect during the legal process.

Before walking away

Before a law enforcement investigator walks away from a victim of sexual assault, it is critically important to make sure that he or she has both support people and transportation home. Investigators should always strive to leave the victim with a positive last impression, because this image will stay with the victim and increase the likelihood of future participation in the process of the law enforcement investigation and prosecution.

Turning one last time to retired NYPD detective Harry O'Reilly:

You might be wondering, if you are police officers reading this, 'Why should we be doing all of this? We aren't social workers.' This is one of the most common comments made to me in this training job. I say that we most certainly are social workers. We are in the people business, and we must learn how to deal with and relate to all kinds of people. We should be relating with a much greater degree of sensitivity than in the past.

If you cannot be moved by the humanity of the argument, then maybe you can relate to the practical advantage of it – if we want the victim's cooperation in the prosecution we have to treat her with the same dignity we afford any other victim of crime. Only we should treat her much more sensitively (O'Reilly, 1984, p.102-3).



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