

September 9, 2016

Re: Victim-Centered Investigations Deny Basic Human Rights to Defendants

Kenneth Roth
Executive Director
Human Rights Watch
350 Fifth Avenue, 34th floor
New York, NY 10118

Dear Mr. Roth,

Human Rights Watch (HRW) has published a report titled *Improving Police Response to Sexual Assault*. While the stated goal of improving police response is laudable, the report's recommendations run contrary to Human Rights Watch's mission of protecting and advancing the human rights of all persons.

The report recommends that law enforcement detectives utilize a so-called "victim-centered" approach when conducting sexual assault investigations. According to the report, a "victim-centered" investigation assumes "that all sexual assault cases are valid unless established otherwise by investigative findings." (Page 23) As explained in this letter, this approach represents a disturbing and profound miscarriage of justice.

To understand the flaws of "victim-centered" investigations, we need to consider the codes of ethics of leading investigator organizations, which emphasize the need for impartiality, integrity, and honesty of criminal investigations:

- International Association of Chiefs of Police: "The law enforcement officer shall be concerned equally in the prosecution of the wrong-doer and the defense of the innocent. He shall ascertain what constitutes evidence and shall present such evidence impartially and without malice."
- Criminal Defense Investigation Training Council: "The fundamental philosophical assumption upon which all CDITC policies are predicated is that the criminal defense investigator must be an impartial and objective seeker of truth."
- World Association of Detectives: "We will be faithful and diligent in carrying out assignments entrusted to us, and to determine the true facts and render honest, unbiased reports in reference thereto."
- National Council of Investigation and Security Services: "A member shall observe, and adhere to the precepts of honesty, integrity, and truthfulness."
- National Association of Legal Investigators: The investigator "Will make all reporting based upon truth and fact and will only express honest opinions based thereon"

The Center for Prosecutor Integrity notes that the report does contain a number of useful recommendations:

1. Police should use language at the initial interview to reassure the complainant that he or she will "not be judged" and will be "taken seriously." (Page 5)
2. The complainant should only deal with one detective. (Page 5)

3. Complainants should be updated in a timely fashion about the progress of their case. (Page 11)
4. Advocates or counselors should be available to assist complainants through the investigation process. (Page 12)
5. All reported incidents of alleged sexual assault should be documented (in writing) and followed up on. (Page 26)
6. A "Follow the Evidence" approach is recommended. (Page 37)

But the other approaches recommended in *Improving Police Response to Sexual Assault* are fundamentally flawed, for five reasons:

Biased Language: The HRW report uses the word “victim” 350 times. Unfortunately, the use of neutral descriptors such as “alleged,” “complainant,” or “accuser” do not appear even once. This reveals an unmistakable, even intentional bias because it presumes a crime has occurred even before the investigation begins. In a recent ruling, United States District Court Judge F. Dennis Saylor wrote, “Whether someone is a ‘victim’ is a conclusion to be reached at the end of a fair process, not an assumption to be made at the beginning.”^[1]

Questioning Methods: Traditionally, detectives ask targeted questions to test the merits of an allegation or identify areas that could lead to the collection of additional evidence. Policies that mandate the wording of questions or limit investigators’ ability to gather and evaluate all pertinent information impede the fair and impartial determination of the truth.

While investigators should be reasonably expected to exhibit professionalism and tact, they cannot be deterred from seeking the truth by instructing them to not ask about subjects, facts, or circumstances that may be distressing to the complainant.

Inconsistent Statements: The Report asserts that inconsistencies are not evidence of a false report: “Training in the effects of trauma on memory can help officers understand that these are not causes for suspicion and that inconsistencies should not be confused with a false report.” (Page 20) But instead of presuming trauma, the report should urge investigators to rely upon their experience, resources, and training to reach valid conclusions.

Mental Health Diagnosis: The report encourages investigators to explain Post Traumatic Stress Disorder (PTSD) to complainants, implying that the person is likely suffering from PTSD. (Page 7) But police officers are not qualified to make a determination as to the complainant’s mental state. Furthermore, informing a complainant about PTSD symptoms to justify inconsistencies may make false allegations harder to detect.

Role Conflict: The report recommends making reassuring statements to the complainant such as "I believe you" or “something” surely happened. (Page 5) While such statements may be appropriate for a counselor to make, investigators are ethically obligated to start from a neutral position. Police cannot be effective when they are tasked with being both an investigator and therapist.

In conclusion, victim-centered investigations:

^[1] John Doe v. Brandeis University, Memorandum and Order on Defendant’s Motion to Dismiss, J. Saylor (March 31, 2016).

- Remove the presumption of innocence from defendants and strip them of their fundamental constitutional and due process rights.
- Flip the burden of proof onto the accused to prove their innocence, thus vitiating the notion of the presumption of innocence and a fair criminal justice system.
- Render unfounded and false accusations more difficult to detect, which harms the credibility of future sexual assault victims.
- Harm the reputation and standing of the investigative profession, which has long sought to be viewed by the public as impartial, fair, and honest.
- Place investigators and police departments at risk of costly lawsuits that allege they failed to act in accordance with accepted codes of conduct.
- Threaten to worsen race-based disparities in the criminal justice system because low-income defendants have less ability to mount a vigorous legal defense.
- Exacerbate the problems of over-criminalization and wrongful convictions.
- Threaten the admissibility and credibility of the evidence presented in criminal prosecutions because investigators are expected to seek out and disclose evidence of innocence as well as evidence of guilt.

Victim-centered investigations represent a repudiation of the presumption of innocence, a negation of the most basic notions of fairness, and an affront to the cause of advancing human rights. The Center for Prosecutor Integrity urges you to promptly modify the problematic statements delineated in this letter in order to assure the human rights of all defendants of sexual assault allegations are protected.

Feel free to call me at (610) 733-0247 to discuss. We, the undersigned members of the CPI Executive Committee, look forward to hearing from you.

Sincerely,

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