

## SENT BY FAX AND ONLINE SUBMISSION FORM

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February 1, 2018

U.S. Department of Justice  
Office of the Inspector General  
Attention: Grantee Reporting  
1425 New York Avenue, NW, Suite 7100  
Washington, DC 20530

### **RE: Abusive Use of Grant Monies by End Violence Against Women International**

The Center for Prosecutor Integrity (CPI) is a non-profit, 501(c)(3) organization that seeks to strengthen prosecutorial ethics, promote due process, and end wrongful convictions.

The right to due process is a constitutionally guaranteed right afforded to American citizens. Investigations that are neutral, fair, and honest are one of the hallmarks of due process. Professional ethical codes call on investigators to approach their work in an impartial,<sup>1</sup> unbiased,<sup>2</sup> and honest<sup>3</sup> manner, demonstrating respect and avoiding a judgmental or blaming attitude towards the complainant.

But the notion of accurate and truthful investigations is being challenged. Much of the pressure comes from a recipient of numerous grants from the Department of Justice. Over the years, End Violence Against Women International (EVAWI) has received at least 18 grants from the Department of Justice totalling millions of dollars.<sup>4</sup>

By means of its DOJ-supported publications, conferences, and online training, EVAWI is promoting the following concepts and investigative methods that undermine investigative neutrality:

#### **1. Effective Report Writing: Using the Language of Non-Consensual Sex**

EVAWI has published a manual titled *Effective Report Writing: Using the Language of Non-Consensual Sex*.<sup>5</sup> Development of this manual was supported by DOJ grants #2004-WT-AX-K066 and #2008-TA-AX-K040. This manual is a featured component of EVAWI's OnLine Training Institute, which was supported by a Department of Justice grant awarded to EVAWI on June 1, 2011.

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<sup>1</sup> International Association of Chiefs of Police, *Article 10 of the Canons of Police Ethics* (1957) <http://ethics.iit.edu/ecodes/node/3352>.

<sup>2</sup> World Association of Detectives, *Code of Ethics* <http://www.wad.net/code-of-ethics>.

<sup>3</sup> Council of International Investigators, *Code of Ethics* <http://www.cii2.org/code-of-ethics>.

<sup>4</sup> End Violence Against Women International, <http://www.evawintl.org/grants.aspx>.

<sup>5</sup> EVAWI, *Effective Report Writing: Using the Language of Nonconsensual Sex*, (2004). <http://olti.evawintl.org/images/docs/REPORT%20WRITING%205-15-12.pdf>

The *Effective Report Writing* document endorses five controversial concepts:

*1. The investigator is not an independent fact-finder, but rather is an agent of the prosecutor.*

The stated purpose of *Effective Report Writing* is to achieve the goal of a “successful prosecution”<sup>6</sup> – “successful” is understood to mean a conviction is reached. The manual openly instructs investigators that the findings of the investigative report needs to “support the charges filed.”<sup>7</sup> In addition, the investigative report should also include “the information necessary to undermine” “potential defense strategies.”<sup>8</sup>

*2. All allegations are assumed to be true and the complainant should be regarded as a “victim.”*

The pro-conviction bias of *Effective Report Writing* is evident in EVAWI’s choice of terminology: the words “alleged,” “complainant,” or “accuser” never appear in the document. In contrast, “victim” appears literally *hundreds* of times in its 34-page manual.

*3. The investigator should discount the possibility of a false allegation.*

The *Effective Report Writing* manual instructs investigators to focus on witness statements “that corroborate the victim’s account.”<sup>9</sup> The investigator is urged to document statements from the accused that “corroborate the victim’s account or provide an implausible or even absurd version of reality.”<sup>10</sup> The DOJ-supported document includes no mention of the possibility of misleading, exaggerated, or false statements made by a complainant or other witnesses.

*4. Inconsistencies in the complainant’s statements occur rarely, and when they do, they should not be interpreted as evidence of a false claim.*

*Effective Report Writing* advises that “investigators can minimize the risk of contradiction by not writing a detailed report for any victim or witness who has already provided a detailed, written summary of events.”<sup>11</sup> Should there be inconsistencies in witness or defendant statements, investigators should highlight only those that “corroborate the victim’s statement.”<sup>12</sup>

*5. Exculpatory statements provided by the suspect should have little bearing on the findings of the investigative report.*

*Effective Report Writing* focuses on methods by which a suspect’s defenses may be undermined. For example, much attention is devoted to counteracting any evidence that supports the defendant’s “virtually inevitable” consent defense,<sup>13</sup> prejudicially claiming that a suspect’s descriptions of how a complainant may have manifested consent are “clearly

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<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *Id.* at 4, 26.

<sup>9</sup> *Id.* at 3, 19.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.* at 30.

<sup>12</sup> *Id.* at 20.

<sup>13</sup> *Id.* at 11,19.

based only on their own self-serving ideas and not a realistic understanding of how people really behave.”<sup>14</sup> The manual even suggests “making sure” the incident does “not look like a consensual sexual experience,”<sup>15</sup> by making the complainant “appear more innocent,” or by including details about the complainant’s feelings during the incident, as though the complainant’s innocent appearance or subjective feelings should be relevant to the existence of consent.<sup>16</sup>

## 2. Start by Believing Law Enforcement Action Kit

In 2011, EVAWI launched a campaign dubbed *Start by Believing*, describing itself as a “global campaign transforming the way we respond to sexual assault.”<sup>17</sup> This campaign was supported under DOJ Grant No. 2013-TA-AX-K045.<sup>18</sup> The *Start by Believing* campaign has developed a six-page Law Enforcement Action Kit.<sup>19</sup> The Kit makes these guilt-presuming recommendations to criminal investigators and other law enforcement personnel:

- “I am a criminal investigator...When someone tells me they were raped or sexually assaulted, I Start by Believing” (page 1)
- “This is why the message of Start by Believing is so vital – outcomes will only change when sexual assault reports are investigated from an initial presumption of merit.” (page 2)
- “Start by Believing...is the starting point for a fair and thorough investigation.” (page 2)
- “I pledge to Start by Believing when someone tell me about their sexual assault.” (page 2)

Relying on Department of Justice Grant No. 2016-TA-AX-K010, the *Start by Believing* concepts currently are being disseminated to law enforcement professionals throughout the country by means of publications such as *Start by Believing to Improve Responses to Sexual Assault and Prevent Gender Bias*.<sup>20</sup>

## 3. Training Bulletin: Start by Believing

The above-cited Law Enforcement Action Kit links to a 13-page Training Bulletin: Start by Believing.<sup>21</sup> The Training Bulletin openly endorses investigator bias, utilizes guilt-presuming terminology, and contains false claims.

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<sup>14</sup> *Id.* at 21.

<sup>15</sup> *Id.* at 14.

<sup>16</sup> *Id.* at 11.

<sup>17</sup> EVAWI, <http://www.startbybelieving.org/home>.

<sup>18</sup> EVAWI, <http://www.evawintl.org/PAGEID27/Forensic-Compliance/Resources/Start-by-Believing>.

<sup>19</sup> EVAWI, *Law Enforcement Action Kit*

[https://cdn2.hubspot.net/hubfs/2783343/Action%20Kits/Law%20Enforcement%20Action%20Kit.pdf?\\_hssc=208957901.1.1515281138132&\\_hstc=208957901.2f8e67d4ca94ec3c1160b77087500628.1513640607524.15148641141.56.1515281138132.4&\\_hsfp=3618093011&hsCtaTracking=5209b095-d328-4252-b9ad-24ccbabe61e5%7Ccfb2bd7b-ae66-460a-9a76-9aef9212a5fd](https://cdn2.hubspot.net/hubfs/2783343/Action%20Kits/Law%20Enforcement%20Action%20Kit.pdf?_hssc=208957901.1.1515281138132&_hstc=208957901.2f8e67d4ca94ec3c1160b77087500628.1513640607524.15148641141.56.1515281138132.4&_hsfp=3618093011&hsCtaTracking=5209b095-d328-4252-b9ad-24ccbabe61e5%7Ccfb2bd7b-ae66-460a-9a76-9aef9212a5fd)

<sup>20</sup> EVAWI, <https://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=919>.

<sup>21</sup> *Id.*

## *Investigator Bias*

The Training Bulletin repeatedly instructs the investigator to “Start by Believing,” meaning the investigator should “operate from a starting presumption that the report has merit.”<sup>22</sup> The Bulletin goes so far as to reject the foundational notion of investigator neutrality: “Even a ‘neutral’ stance will be insufficient to establish the trust and rapport victims need to share memories that are confusing, painful, or humiliating.”<sup>23</sup>

## *Guilt-Presuming Terminology*

In sexual assault cases, questions of innocence or guilt often revolve around complex determinations of consent, which can only be reached during the adjudication process. But the Training Bulletin never uses the words “complainant” or “accuser” – only “victim.” Referring to the complainant as a “victim” before the investigation is completed serves to presume the guilt of the accused. In one notable decision, District Court Judge F. Dennis Saylor scolded an investigating party for its careless use of the word “victim:” “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.”<sup>24</sup>

## *False Claims*

The Training Bulletin makes the claim that “confirmation bias has long influenced the response of criminal justice professionals in the opposite direction,” i.e., in such a manner to disbelieve the claimant.<sup>25</sup> This unsupported claim is not accurate. Many of wrongful convictions of sexual assault and other crimes have been traced to detective bias favoring the complainant.<sup>26</sup> Directly contradicting the claim of the Training Bulletin, one law review concluded that police investigators typically “focus on the suspect, select and filter the evidence that will ‘build a case’ for conviction, while ignoring or suppressing evidence that points away from guilt.”<sup>27</sup>

The Training Bulletin also makes numerous claims about “gender bias” and “implicit bias.” The Bulletin does not cite any specific research that demonstrates such “bias;” it only references a 2015 publication, *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence*. But a careful review of this publication does not reveal any scientific research supporting the claim of sex bias against women.

Indeed, any claim of police bias against women is repudiated by the *National Intimate Partner and Sexual Violence Survey*,<sup>28</sup> which found that male victims of partner violence, sexual assault,

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<sup>22</sup> EVAWI *supra* note 19, Page 7.

<sup>23</sup> EVAWI *supra* note 19, Page 6.

<sup>24</sup> John Doe v. Brandeis University, *Memorandum and Order on Defendant’s Motion to Dismiss* (March 31, 2016).

<sup>25</sup> EVAWI *supra* note 19, Page 2.

<sup>26</sup> M. Zalman, *The Detective and Wrongful Convictions*. In Zalman and Carrano, *Wrongful Conviction and Criminal Justice Reform* (2014).

<sup>27</sup> Findley KA and Scott MS, *The multiple dimensions of tunnel vision in criminal cases*, Wisconsin Law Review (2006).

<sup>28</sup> National Intimate Partner and Sexual Violence Survey, [https://www.cdc.gov/violenceprevention/pdf/cdc\\_nisvs\\_ipv\\_report\\_2013\\_v17\\_single\\_a.pdf](https://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_ipv_report_2013_v17_single_a.pdf).

or stalking are substantially *less* likely to have positive experiences in their dealings with police, compared to female victims:

<b>Table 7.2</b> <b>Degree of Helpfulness of Various Sources among those Who Disclosed Lifetime Rape, Physical Violence, or Stalking by an Intimate Partner — NISVS 2010</b>				
	<b>Very (%)</b>	<b>Somewhat (%)</b>	<b>A little (%)</b>	<b>Not at all (%)</b>
<b>Women</b>				
Police	36.5	22.2	14.2	33.7
<b>Men</b>				
Police	21.0	17.8	13.1	52.0

## Criticisms by Others

The *Start by Believing* philosophy has faced strong criticism from individuals and groups, both in the United States and elsewhere.

Professors and leading commentators have expressed concerns about Start by Believing:

- UCLA law professor Eugene Volokh: “In cases that proceed to trial, defense counsel likely could impugn investigators and claim that alternative versions of the crime were ignored and/or errors were made during the investigation as a result of confirmation bias created by the “belief” element of the *Start By Believing* campaign.”<sup>29</sup>
- Scott Greenfield, Simple Justice blog: “Cops have no business believing or disbelieving. Crimes aren’t a matter of what one believes, but what the facts reveal.”<sup>30</sup>
- KC Johnson and Stuart Taylor: “Middlebury College’s training, for instance, urges adjudicators to “start by believing” the accuser...The college further orders that in order to be “objective,” investigation reports must not use the word “alleged” before “victim” or “sexual assault” and must avoid passages such as “the victim’s account of the incident is not believable or credible to officers given her actions during and after the encounter with the suspect” or the “victim has inconsistencies with her story.”<sup>31</sup>

Three groups have come out in opposition to Start by Believing, as well:

An expert panel consisting of investigators, attorneys, and others analyzed investigative methods such as those endorsed by Start by Believing, and concluded these approaches “violate ethical

<sup>29</sup> Eugene Volokh, *Don't 'start by believing'* (Dec. 2016). [https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/12/15/dont-start-by-believing/?utm\\_term=.0b2517d7b160](https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/12/15/dont-start-by-believing/?utm_term=.0b2517d7b160).

<sup>30</sup> Scott Greenfield, *Believe Victims Or Evidence: When You Can't Do Both* <https://blog.simplejustice.us/2016/12/17/believe-victims-or-evidence-when-you-cant-do-both/>.

<sup>31</sup> K.C Johnson and Stuart Taylor, *Why Campus Rape Tribunals Hand Down So Many 'Guilty' Verdicts* <http://www.weeklystandard.com/why-campus-rape-tribunals-hand-down-so-many-guilty-verdicts/article/2010401>.

requirements for impartial and honest investigations, are inconsistent with basic notions of fairness and justice, and give rise to wrongful convictions and determinations of guilt.”<sup>32</sup>

Prison Legal News recently noted, “However, one must question whether it is appropriate to adopt a requirement that law enforcement officials “believe” any person reporting any particular crime, rather than accepting allegations with an open mind in order to determine the truth.”<sup>33</sup>

The strongest criticism of Start by Believing has come from the Arizona Governor’s Commission to Prevent Violence Against Women, which issued a letter highlighting how *Start by Believing* “creates the possibility of real or perceived confirmation bias.”<sup>34</sup> The governor’s letter cited a case in Iowa where a detective testified the *Start by Believing* campaign required him to believe the victim, “no matter what.”<sup>35</sup> The prosecutor in the case later explained that the *Start by Believing* verbiage “is what’s killing everybody in court.”<sup>36</sup> The Commission concluded:

While investigations and interviews with victims should always be done in a respectful and trauma-informed manner, law enforcement agencies, and other agencies co-located in advocacy centers, are strongly cautioned against adopting *Start By Believing*.<sup>37</sup>

Criticisms have been voiced in the international arena:

In England, Ex-High Court judge, Sir Richard Henrique ordered police to cease the practice of believing complainants automatically: “The obligation to believe all complainants at the start, and automatically treat them as victims, handicaps police disclosure officers in their duty to disclose evidence that assists defendants or undermines the prosecution case.”<sup>38</sup>

In Canada, following the acquittal of three police officers, Justice Anne Molloy wrote in her 45-page ruling, “Although the slogan ‘Believe the victim’ has become popularized of late, it has no place in a criminal trial.”<sup>39</sup>

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<sup>32</sup> Center for Prosecutor Integrity, Victim-Centered Investigations Undermine the Presumption of Innocence and Victimize the Innocent: Report of an Expert Panel (2016). <http://www.prosecutorintegrity.org/wrongful-conviction-day/victim-centered-investigations-undermine-the-presumption-of-innocence-and-victimize-the-innocent-report-of-an-expert-panel/>

<sup>33</sup> Matte Clarke, “*Start by Believing*” Initiative Creates Controversy (Jan. 2018) <https://www.prisonlegalnews.org/news/2018/jan/8/start-believing-initiative-creates-controversy/>.

<sup>34</sup> Ray Stern, Ducey’s Faith Office Assails ‘*Start by Believing*’ Advocacy Program for Rape Victims, Phoenix New Times (Dec. 15, 2016) <http://www.phoenixnewtimes.com/news/duceys-faith-office-assails-start-by-believing-advocacy-program-for-rape-victims-8896373>.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* The Commission’s letter is embedded in the article.

<sup>38</sup> Police must stop training officers to believe rape complainants automatically says ex-High Court judge, <http://www.dailymail.co.uk/news/article-5209897/Police-stop-believing-rape-complainants-automatically.html#ixzz54DAwInhD>.

<sup>39</sup> ‘Believe the victim’ has no place in courts, judge says in sexual assault ruling, <https://www.theglobeandmail.com/news/toronto/decision-expected-in-trial-of-three-toronto-officers-accused-of-sexual-assault/article35918734/>.

## Abusive Use of Federal Grant Monies

Three decades ago, a veritable hysteria engulfed the United States, driven by claims of satanic child abuse practices in child care centers.<sup>40</sup> Investigators were instructed to “believe the children” without scrutiny, engendering investigative methods that have been described as suggestive, coercive, and even harmful. Eventually, about 190 child care workers and parents were formally charged with sex crimes, and more than 80 were eventually convicted.<sup>41</sup> Among these, 58 have now been exonerated, according to the National Registry of Exonerations.<sup>42</sup>

Ironically, we are now witnessing a revival of the same investigative dogma, this time in the name of *Start by Believing*. The investigative concepts and methods espoused by End Violence Against Women International vitiate fundamental ethical principles of investigators, undermine citizens’ right to a fair and neutral investigation, threaten the integrity of judicial determinations, and make wrongful convictions more likely.

*These concepts and investigative methods abuse the mission of the Department of Justice, which states in part, “...to ensure fair and impartial administration of justice for all Americans.” Termed a “multimillion dollar threat to justice,”<sup>43</sup> they abuse the purpose and intent of Congressional appropriations. And they abuse the public trust, which is critical to the effective functioning of our criminal justice system.*

The Center for Prosecutor Integrity is requesting the Office of the Inspector General to conduct a prompt and thorough investigation into the abusive use of federal grant monies by End Violence Against Women International.

Feel free to contact me with any questions at [nconway@prosecutorintegrity.org](mailto:nconway@prosecutorintegrity.org).

Sincerely,

*Nasheia Conway*

Nasheia Conway, Esq.  
Program Director for Civil Rights

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<sup>40</sup> Maureen Casey, *How the daycare child abuse hysteria of the 1980s became a witch hunt*, The Washington Post, (July 31, 2015) [https://www.washingtonpost.com/opinions/a-modern-witch-hunt/2015/07/31/057effd8-2f1a-11e5-8353-1215475949f4\\_story.html?utm\\_term=.34045a13ae52](https://www.washingtonpost.com/opinions/a-modern-witch-hunt/2015/07/31/057effd8-2f1a-11e5-8353-1215475949f4_story.html?utm_term=.34045a13ae52)

<sup>41</sup> Richard Beck, *We Believe the Children* (2015). Page 53.

<sup>42</sup> As of January 1, 2018. <http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View=/FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7&FilterField1=Group&FilterValue1=CSH>

<sup>43</sup> Christopher Perry, ‘*Start-By-Believing*’ Investigations Are A Multimillion Dollar Threat To Justice. (Jan. 13, 2018). <http://dailycaller.com/2018/01/13/start-by-believing-investigations-are-a-multimillion-dollar-threat-to-justice/>