

Sent by Mail, Fax, and Email

September 27, 2016

Re: “Start by Believing” Investigations Weaken Presumption of Innocence, Deny Justice to the Accused

Joanne Archambault
Executive Director
Start by Believing
P.O. Box 33
Addy, WA 99101-0033

Dear Ms. Archambault:

Earlier this month the Brooklyn District Attorney appeared in court to recommend that all charges against Wayne Martin be dismissed. Martin had been wrongfully convicted in 2005 on a double homicide charge. The police detectives had interviewed two witnesses who both identified another person as the perpetrator. But someone in law enforcement decided to blank out this information from the reports, so this critical evidence was never seen by the jury, resulting in a wrongful conviction and a life-sentence. http://www.nytimes.com/2016/09/09/nyregion/a-false-conviction-is-overturned-but-the-system-that-allowed-it-remains.html?emc=edit_th_20160909&nl=todaysheadlines&nid=58186502&r=1

Unfortunately, wrongful convictions may become more commonplace if law enforcement professionals follow some of the recommendations found on your website.

Following are the ethics codes of leading law enforcement and investigators’ organizations, which emphasize the necessity for investigators to be impartial, neutral, and objective:

- [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”

- Council of International Investigators: Members agree to “conduct myself in my profession with honesty, sincerity, integrity, fidelity, morality and good conscience in all dealings with my clients.”

The Center for Prosecutor Integrity endorses and supports your organization’s efforts to encourage investigators to communicate with complainants in a respectful, non-judgement manner. But the Center for Prosecutor Integrity believes that *the concept of “Start by Believing,” rather than removing bias, may serve to substitute one preconception for another.*

The Center for Prosecutor Integrity is particularly concerned by several statements that appear on your “Can I really say that?” page: <http://startbybelieving.org/CanIReallySayThat.aspx> . We present the wording from your page, with CPI’s comments interspersed in capital letters:

How can I say that “I believe” victims? As a professional, don’t I need to remain objective?

The first time people hear the *Start by Believing* message, they may wonder if this compromises the perspective of objectivity required to be a credible professional. This may be particularly concerning for those who work in the criminal justice system, such as police and prosecutors, who may say: “Whatever happened to ‘innocent until proven guilty?’” Or: “It’s not our job to believe victims. It’s our job to find out the facts and determine what really happened.”

These questions are important, and we have three primary responses. First, the campaign simply asks criminal justice professionals and others to start by believing. BELIEVING IN THE NEED TO GATHER ALL THE RELEVANT FACTS AND ASCERTAIN THE TRUTH? After a thorough investigation has been completed, an appropriate case determination can be made. THIS IS CORRECT. This is fundamentally the same as any other crime report. “Innocent until proven guilty” is a critical foundation of our legal system, but it is not the starting point for a successful investigation.

ACCORDING TO THE SIX ORGANIZATIONS LISTED ABOVE, THE FOCUS OF A SUCCESSFUL INVESTIGATION IS TO “PRESENT SUCH EVIDENCE IMPARTIALLY AND WITHOUT MALICE,” “BE AN IMPARTIAL AND OBJECTIVE SEEKER OF TRUTH,” “RENDER HONEST, UNBIASED REPORTS,” “ADHERE TO THE PRECEPTS OF HONESTY, INTEGRITY, AND TRUTHFULNESS,” “MAKE ALL REPORTING BASED UPON TRUTH AND FACT,” AND TO “CONDUCT MYSELF IN MY PROFESSION WITH HONESTY, SINCERITY, INTEGRITY, FIDELITY, MORALITY AND GOOD CONSCIENCE.”

Second, when we are talking about sexual assault victims, the only way to “find out the facts and determine what really happened” is to first establish rapport and gather essential information from victims. THE WORD “VICTIMS” PRESUMES A CRIME HAS OCCURRED BEFORE THE INVESTIGATION BEGINS. THIS SERVES TO BIAS THE INVESTIGATION. Once a sexual assault is recorded, then the investigation proceeds with various steps such as interviewing suspects and witnesses, collecting evidence, etc. This is the only way to gather the evidence and information that is needed to support a well-founded decision - either for prosecutors to file charges or for investigators to clear a suspect of a reported crime. A thorough investigation must therefore begin from a position of *Start by Believing*. When victims (A MORE ACCURATE AND NEUTRAL TERM IS “COMPLAINANTS” OR “REPORTING PARTIES”) are approached from the perspective that they are lying, they will often be unable - or unwilling - to

provide the type of information needed for law enforcement to successfully investigate the case.

THIS IS CORRECT. LIKEWISE, APPROACHING THE INVESTIGATION BY PRESUMING THE COMPLAINANT IS AUTOMATICALLY TELLING THE TRUTH REMOVES THE POSSIBILITY OF A NEUTRAL AND FAIR INVESTIGATION.

IN CASES WHERE THE INITIAL REPORTING OF THE CRIME IS TO A FIRST RESPONDER, IT IS IMPORTANT THAT THE FIRST RESPONDER MAKE A REASONABLE DETERMINATION THAT A CRIME HAS BEEN COMMITTED, AND BROADCAST A POTENTIAL SUSPECT DESCRIPTION TO OTHER OFFICERS TO BEGIN LOOKING FOR THE SUSPECT, IN ORDER TO PREVENT ADDITIONAL CRIMES.

Third, the intention of the campaign is to start from an orientation of believing, and that does not necessarily mean saying the exact words, "I believe you." The same purpose can be accomplished with alternative phrases like, "I'm sorry this happened to you." IT IS INAPPROPRIATE FOR A NEUTRAL INVESTIGATOR TO SAY ANYTHING THAT PRESUMES A CRIME HAS OCCURRED. The important issue is not the exact words that are used, but that the person is treated with compassion and respect, and the report is handled professionally –instead of communicating the message (either explicitly or implicitly) that I *don't* believe you. THIS STATEMENT IS CORRECT. Unfortunately, this is exactly the message that is all too often communicated by friends and family members, as well as responding professionals.

You may be aware that Wrongful Conviction Day will be observed on October 4, 2016, and numerous organizations around the country will be holding events. The Center for Prosecutor Integrity will be hosting a telephonic Forum featuring leading investigators, attorneys, and others.

We are hopeful we can resolve these concerns in advance of Wrongful Conviction Day, and we would like to set up a teleconference to discuss these matters this coming Friday, September 30, at 2:00pm Eastern time, 11:00am Pacific time. Please contact me at your earliest convenience to confirm this date and time.

We look forward to working with you to assure sexual assault investigations are conducted in an impartial, neutral, and fair manner.

Sincerely,

Christopher J. Perry, Esq.
Program Director, CPI

Jerry Rogoff, M.D.
Forensic Psychiatrist
CPI – Executive Committee

Claudia Whitman
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