

SENT BY EXPRESS MAIL

RE: Dishonest DOJ-Funded ‘Start By Believing’ Campaign Seeks to Undermine the Foundation of Our Nation’s Criminal Justice System

April 3, 2019

Attorney General William P. Barr
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Barr:

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 a hallmark of due process and the foundation to the integrity of our criminal justice system. Professional ethics codes call on investigators to approach their work in an impartial,¹ unbiased,² and honest³ manner, demonstrating respect and avoiding a blaming attitude towards the complainant.

But as a result of numerous grants awarded by the Department of Justice, the notion of reliable and truthful investigations is being challenged.

Effective Report Writing

Since 2004, End Violence Against Women International (EVAWI) has received 22 grants from the U.S. Department of Justice totalling millions of dollars (Exhibit A).⁴ The initial grants were devoted to legitimate purposes: Providing technical assistance to law enforcement personnel in rural areas, holding conferences, and developing an OnLine Training Institute.

In 2006, EVAWI published a controversial report titled *Effective Report Writing: Using the Language of Non-Consensual Sex* (see selected pages in Exhibit B). The Orwellian slant of *Effective Report Writing* is evident in its choice of terminology: the words “alleged,” “complainant,” or “accuser” never appear in the document. In contrast, “victim” appears literally *hundreds* of times in the 34-page manual. Indeed, the title, *Using the Language of Non-Consensual Sex*, exposes the report’s open endorsement of investigator bias.

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

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

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

⁴ EVAWI, <http://www.evawintl.org/grants.aspx>.

Signaling a sharp departure from long-recognized investigative approaches, *Effective Report Writing* espouses a number of unconventional investigative concepts and methods:

1. *The purpose of the investigation is to achieve a successful prosecution.*

The stated purpose of *Effective Report Writing* is to achieve the goal of a “successful prosecution”⁵ – “successful” being understood to mean a conviction is reached. In addition, the investigative report should also include information necessary to undermine “potential defense strategies.” (page 29)

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

The *Effective Report Writing* manual instructs investigators to document statements from the accused that “corroborate the victim’s account or provide an implausible or even absurd version of reality.” (page 7) The DOJ-supported document includes no mention of the possibility of misleading, exaggerated, or false statements made by a complainant.

3. *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.” (page 34)

4. *Exculpatory statements provided by the defendant 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, the manual dismisses the credibility of the defendant’s testimony because it is “clearly based only on their own self-serving ideas and not a realistic understanding of how people really behave.” (page 24) Consistent with its title, the manual urges that the investigator make sure the incident does “not look like a consensual sexual experience.” (pages 15-16)

Advent of Start By Believing

In 2011, EVAWI launched a campaign based on the dubious precepts enumerated in the *Effective Report Writing* document. Dubbed *Start by Believing*, the campaign describes itself as a “global campaign transforming the way we respond to sexual assault.”⁶

The Start By Believing campaign has been supported by numerous DOJ grants. Among others, the EVAWI publication, “Start by Believing to Improve Responses to Sexual Assault and Prevent Gender Bias” was developed under DOJ Grant No. 2016-TA-AX-K010.⁷ “Start by Believing: Participation of Criminal Justice Professionals” was supported by DOJ Grant No.

⁵ <https://www.evawintl.org/library/Documents.aspx?StaticCategory=true&CategoryID=319> at 6 and other pages.

⁶ EVAWI, <http://www.startbybelieving.org/home>.

⁷ <https://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=919>

2013–TA–AX–K045.⁸ The DOJ continues to provide funding for conferences at which Start By Believing concepts and methods are taught.⁹

In 2016, Start By Believing endorsed the use of controversial “trauma-informed” methods,¹⁰ an approach that scientists have criticized as lacking a sound scientific basis.^{11,12} These dubious concepts currently are being disseminated to thousands of criminal justice professionals throughout the country by means of conferences, online training, and technical assistance efforts.

Sharp Criticisms

The aggressive marketing of *Start by Believing* to criminal justice personnel and campus investigators in recent years has triggered expressions of concern by various parties. These are summarized in chronological order, below.

U.S. Air Force Office of Special Investigations

In 2015, the Air Force Office of Special Investigations issued a Report on the Use of the Forensic Experiential Trauma Interview (FETI) Technique Within the Department of the Air Force (see Executive Summary in Exhibit C). Described as “a technique that utilizes the latest information about the parts of the brain that experience trauma,” FETI embodies a “trauma-informed” approach.

The Air Force report concluded:¹³

“Given the lack of empirical evidence on FETI’s effectiveness, and the large number of investigative, professional and scientific concerns regarding FETI and FETI training, the Air Force does not consider FETI as a viable option for investigative interviewing. We believe it would be inappropriate and irresponsible to discontinue the use of a robust, well-studied, effective, and empirically-validated interviewing method that is supported by the latest scientific research (the Cognitive Interview), in favor of an interviewing method that is loosely constructed, is based on flawed science, makes unfounded claims about its effectiveness, and has never once been tested, studied, researched or validated.”

Expert Panel

In 2016, CPI convened an expert panel consisting of investigators, attorneys, and others to analyze investigative methods such as those endorsed by Start by Believing. The panel concluded these approaches,

⁸ <https://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=789>

⁹ <https://myemail.constantcontact.com/Start-by-Believing-Day-at-Conference.html?soid=1101938584617&aid=Eq3cBIFntTc>

¹⁰ <https://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=842>

¹¹ <https://www.theatlantic.com/education/archive/2017/09/the-bad-science-behind-campus-response-to-sexual-assault/539211/>

¹² <http://www.prosecutorintegrity.org/wp-content/uploads/2019/03/AIR-FORCE-FETI-STUDY.pdf> , Attachments 1, 2, and 3.

¹³ <http://www.prosecutorintegrity.org/wp-content/uploads/2019/03/AIR-FORCE-FETI-STUDY.pdf>

“violate ethical 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.”¹⁴

Arizona Governor’s Commission

In late 2016, the Arizona Governor’s Commission to Prevent Violence Against Women issued a letter highlighting how *Start by Believing* “creates the possibility of real or perceived confirmation bias.”¹⁵ The Commission concluded (see relevant excerpts in Exhibit D):

“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*.”¹⁶

Report: ‘Believe the Victim:’ The Transformation of Justice

In early 2018 the Center for Prosecutor Integrity published its White Paper, *‘Believe the Victim:’ The Transformation of Justice*, which probed the unethical investigative concepts espoused by *Start By Believing* and related “believe the victim” methodologies. The report highlighted a judicial opinion rendered by Superior Court Justice Anne Malloy:¹⁷

“Although the slogan ‘Believe the victim’ has become popularized of late, it has no place in a criminal trial. To approach a trial with the assumption that the complainant is telling the truth is the equivalent of imposing a presumption of guilt on the person accused of sexual assault and then placing a burden on him to prove his innocence. That is antithetical to the fundamental principles of justice enshrined in our Constitution and the values underlying our free and democratic society.”

Open Letter Regarding Inequitable Victim-Centered Practices

In July 2018, nearly 160 scholars and legal experts endorsed an Open Letter Regarding Inequitable Victim-Centered Practices (Exhibit E). The Open Letter concluded with this call:¹⁸

¹⁴ <http://www.prosecutorintegrity.org/wrongful-conviction-day/victim-centered-investigations-undermine-the-presumption-of-innocence-and-victimize-the-innocent-report-of-an-expert-panel/>

¹⁵ 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>.

¹⁶ *Id.* The Commission’s letter is embedded in the article.

¹⁷ R v. Nyznik, et.al, Superior Court of Justice, Ontario (Decided Aug. 9, 2017) <https://www.thestar.com/news/gta/2017/08/09/the-acquittal-of-three-cops-accused-of-sexually-assaulting-another-is-a-victory-for-victims-dimanno.html>

¹⁸ <http://www.saveservices.org/wp-content/uploads/VCI-Open-Letter-7.20.18.pdf>

“The undersigned professors and criminal justice experts hereby call upon lawmakers, federal agencies, criminal justice officials, and college administrators to promptly discontinue the use of victim-centered, trauma-informed, and believe the victim practices that threaten to subvert the objective collection and presentation of evidence in administrative, civil, and criminal sexual assault proceedings.”

Due Process Statement

In November 2018, nearly 300 law professors, other legal experts, and scholars signed a Statement in Support of Due Process in Campus Disciplinary Proceedings (Exhibit F).¹⁹ The Statement noted,

“Whereas investigations that are balanced, objective, and fair are an essential element of due process... Therefore, the undersigned law professors, other legal experts, and scholars urge members of Congress to speak out in support of constitutionally rooted due process rights on campus.”

Online Petition

In early 2019 an online petition was initiated that highlights the plight of student Matt Rolph. He was subjected to biased victim-centered investigative methods, resulting in his expulsion from college. A federal judge later ruled in favor of the student. The petition concludes,²⁰

“Matt Rolph is just one of the many thousands of Americans who have been victimized by ‘victim-centered’ investigations. Amazingly, the U.S. Department of Justice has spent millions of taxpayer dollars to support ‘Start By Believing programs’ around the country.”

To date, the petition has been signed by over 1,000 persons.

Other Criticisms

Other organizations have criticized the use of victim-centered investigations in university settings:

- The Federalist Society warned, “Many of the professors and campus officials who adjudicate campus sexual assault claims are ‘trained’ to believe accusers and disbelieve accused students, and barely feign impartiality.”²¹
- The Heritage Foundation cautioned, “Extreme care must be taken to avoid having either investigators or members of a tribunal with preconceived biases or conflicts of interest.”²²

¹⁹ <http://www.saveservices.org/wp-content/uploads/Due-Process-Statement-11.29.2018.pdf>

²⁰ <https://www.change.org/p/congress-stop-sham-start-by-believing-investigations>

²¹ <https://regproject.org/wp-content/uploads/RTP-Race-Sex-Working-Group-Paper.pdf>

²² <https://www.heritage.org/crime-and-justice/report/campus-sexual-assault-understanding-the-problem-and-how-fix-it>

Since 2015, dozens of editorials and articles have been published that are strongly critical of Start By Believing and other victim-centered investigative methods (Exhibit G).

Suspend DOJ Support

On February 1, 2018 the Center for Prosecutor Integrity sent a seven-page complaint to the DOJ Office of the Inspector General (Exhibit H).²³ On May 18, 2018 the Office of the Inspector General responded:

“After reviewing your complaint, we have determined that the matters you have raised are more appropriate for review by another office within the DOJ. Therefore, we have forwarded your correspondence to: U.S. Department of Justice Office of Violence Against Women.”

The Office of Violence Against Women is the same DOJ component that has provided much of the funding for Start By Believing. To date, the OVW has not responded to the CPI letter. The 14-month delay to our February, 2018 complaint is cause for concern.

It is appropriate for counselors and mental health professionals to use Start By Believing concepts and methods. But investigators are not mental health professionals; their job is to uncover the truth of the allegation in an impartial and honest manner.

The Start By Believing concepts and methods contradict the mission of the Department of Justice that states in part, “...to ensure fair and impartial administration of justice for all Americans.” Termed a “multimillion dollar threat to justice,”²⁴ Start By Believing abuses the purpose and intent of Congressional appropriations. This in turn undermines the public trust, which is essential to the effective functioning of our criminal justice system.

The Center for Prosecutor Integrity hereby requests your office to promptly initiate steps to suspend funding for all grants designed to promote Start By Believing, or the use of any “victim-centered” or “trauma-informed” investigative methods.

We look forward to your response. You can contact me at mvalois@prosecutorintegrity.org .

Sincerely,

Margaret Valois, Esq.

Civil Rights Director

Attachments: Exhibits A-F

Cc: Members of Congress

²³ <http://www.prosecutorintegrity.org/wp-content/uploads/2018/02/OIG-complaint-Start-by-Believing.pdf>

²⁴ <http://dailycaller.com/2018/01/13/start-by-believing-investigations-are-a-multimillion-dollar-threat-to-justice/>