How do I know You’re Not Lying?  
*Gender Bias, Sexual Assault Response and Start by Believing*

Wendy Patrick, Deputy District Attorney, San Diego, California  
Jerald Monahan, Chief of Police, Yavapai College, Prescott, Arizona

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Learning Objectives

- Define implicit bias and explore how it can affect responses to sexual assault
- Examine gender bias and victim selection, victim blaming, and victim recantation
- Describe policies and practices to avoid gender bias and improve sexual assault response, investigation, and prosecution

Of 100 rapes committed

- an estimated 5-20 are reported to police
- 0.4-5.4 are prosecuted
- 0.2-5.2 result in a conviction
- 0.2-2.8 result in incarceration

I think something happened to the compl [complainant], however, whether she was raped, or if the deal went bad is yet to be known. This case should be closed if she doesn't make any contact w/us. She did have scratches on her neck and throat area...

Rec case, compl and her mother came to sex crimes. Compl gave a false statement about being raped, she says she was abducted by two black males then taken to a vacat burned out dwelling and then was forced to lie down and sexually assaulted. The compl while at sex crimes, never had changed her clothes. Her clothes were very clean for being in a burned out dwelling laying down. The compl also says she was tied up after the rape but set herself free after perps left. Compl has no rope marks on her wrists. Compl was supposed to be home at 7:00p but didn't arrive until 8:30p. This case is closed Mjuteec.
Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence

U.S. Department of Justice (2015)

DOJ Gender Bias Guidance

“Gender bias in policing practices is a form of discrimination that may result in LEAs [law enforcement agencies] providing less protection to certain victims on the basis of gender, failing to respond to crimes that disproportionately harm people of a particular gender, or offering reduced or less robust services due to a reliance on gender stereotypes” (p.3).

DOJ Gender Bias Guidance

“Gender bias, whether explicit or implicit, conscious or unconscious, may include police officers misclassifying or underreporting sexual assault or domestic violence cases, or inappropriately concluding that sexual assault cases are unfounded; failing to test sexual assault kits; interrogating rather than interviewing victims and witnesses; treating domestic violence as a family matter rather than a crime; failing to enforce protection orders; or failing to treat same-sex domestic violence as a crime” (p.3).
Bias: 101

Implicit Bias

- Automatic and unconscious process
- Assigning a stereotype and/or linking negative or positive attitudes to a group
- Necessary for efficient cognition
- Can be a problem with groups of people

“Even those dedicated to the principles of a fair justice system may, at times, unknowingly make crucial decisions and act in ways that are unintentionally unfair.”

How Bias Develops

- Begins in childhood, when we absorb information about the world
- Ascribe characteristics to groups of people
  - Men: strong, assertive, rational, independent
  - Women: emotional, submissive, dependent

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Non-Traditional Victims

Non-Traditional Victims
Debriefing

The pairing test you just took is called the Implicit Association Test (IAT). You categorized Male and Female words with Career and Family.

Here is your result:
Your data suggest a slight automatic association for Male with Career and Female with Family.

You result is described as an "Automatic association for Male with Career and Female with Family." You were faster responding when Career and Male are associated than when Career and Female are associated with Family. Your score is described as an "Automatic association for Male with Career and Female with Family."

Your automatic preference may be described as "slight", "moderate", "strong", or "very strong." This indicates the strength of your automatic preference.

The "IAT" reflects patterns of correct responses in order to get results. To make a correct answer, you completing the test and you get the feedback that these have been used since it is not a test.

Note that your IAT result is based only on the categorization task and not on the questions that you answered.

https://implicit.harvard.edu/implicit/takeast.html

- Gender - Career
- Gender - Science
- Age (young - old)
- Sexuality (gay - straight)
- Weapons (White - Black faces)
- Weight (fat - thin)
- Arab-Muslim - Others
- Native American - White
- Disabled - Abled
- Asian - European American
- Religion
- Skin Tone (light - dark)
- President (Trump - others)
Gender Bias

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Sex vs. Gender

Sex is biological

Gender is learned

Photo credit: dreamstime.com

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Associated with Masculinity

<table>
<thead>
<tr>
<th>Associated with Masculinity</th>
<th>Associated with Femininity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Take care of the family's financial needs (breadwinner)</td>
<td>Take care of the family's physical and emotional needs (caregiver)</td>
</tr>
<tr>
<td>Being “naturally” good at certain tasks (such as driving, mechanics, technology)</td>
<td>Being “naturally” good at other tasks (e.g., cooking, child care, decorating)</td>
</tr>
<tr>
<td>Being a leader, assertive, tough</td>
<td>Being a support person, passive, sensitive</td>
</tr>
<tr>
<td>Getting what one wants</td>
<td>Providing what others want</td>
</tr>
<tr>
<td>Hiding emotions associated with vulnerability (sadness, fear, anxiety)</td>
<td>Showing emotions associated with vulnerability (sadness, fear, anxiety)</td>
</tr>
<tr>
<td>Being sexually interested in, and sexually active with women, including promiscuity</td>
<td>Being sexually available to men, but not promiscuous</td>
</tr>
<tr>
<td>Being virile</td>
<td>Being fertile</td>
</tr>
<tr>
<td>Being a perpetrator, but not a victim of violence</td>
<td>Being a victim, but not a perpetrator of violence</td>
</tr>
<tr>
<td>Aggression/violence can be acceptable and even expected</td>
<td>Aggression/violence generally not acceptable or expected</td>
</tr>
<tr>
<td>Strong/protector</td>
<td>Vulnerable/protected</td>
</tr>
</tbody>
</table>

Chart adapted from the UN Women Training Center (2016), Self-Learning Toolkit: Understanding Masculinity and Violence against Women and Girls, p. 11.
“An exponentially increasing number of empirical studies demonstrate a relationship between measures of implicit bias and real-world discriminatory behavior”


Gender Bias in Operation

- Stereotyped thinking about men’s vs. women’s roles
  - Misconceptions about social and economic realities
- Perceptions of women’s and men’s relative worth

Gender Bias and Sexual Assault

- Can influence:
  - Victim selection
  - Victim blaming
  - Ideas about false reporting
  - Victim recantation
Victim Selection

Vulnerability: Situation, Not State

- Identify who might be a “good target”
- What stereotypes might influence our judgments

Vulnerability: Situation, Not State

- Alcohol or drug use
- Physical or cognitive disabilities
- Undocumented individual or immigrant
**Victim Selection**

- **Accessibility**
  - Objective vs. subjective
  - Influenced by position, power, stereotypes, attitudes

- **Credibility**
  - Inspiring belief
  - Influenced by stereotypes (gender, race, age, etc.)

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“Last year this woman was arrested for criminal trespass at a park. She was totally intoxicated, even the following day. After she was arrested, she claimed all she remembered was walking into the park and being raped by a stranger. I authorized a sexual assault medical forensic exam and sure enough, the swabs came back with the DNA of a serial rapist we’d been looking for. You just can’t discount any reports no matter how incredible they seem.”


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**Victim Selection: In Sum**

- Influenced by:
  - Perceived vulnerability, accessibility, credibility
  - All influenced by gender stereotypes, attitudes
Case Scenarios

- Present basic fact pattern
  - List reasons why victim might be seen as vulnerable, accessible, or lacking credibility
  - Then evaluate factors in suspect credibility
  - Finally, compare 2 case scenarios

Basic Fact Pattern

A woman is sexually assaulted by a male supervisor, at the convenience store where she works. Her supervisor asked her to stay late, to help stock the shelves. When she said she could not work late because public transportation would not be available at that time, her supervisor offered to give her a ride home. The woman agreed to stay late and accepted the offered ride. She then reported that her supervisor raped her in the car, after driving her to an isolated area.

Scenario #1

Female victim:
- College student
- From rural community
- In affordable housing
- Works a lot of hours
- Doing well in school
- No criminal history

Male suspect:
- Criminal history
- Report of DV
- Employed < 1 year
**Scenario #2**

**Female victim:**
- In mid-40’s
- Children taken away
- Criminal history
- Needs $ to pay fine
- Trying to get kids back

**Male suspect:**
- Store manager
- Employee of Month
- At store > 3 years
- Married with 3 kids
- Active in church

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**Difference in 2 Scenarios?**

- Credibility is not objective, it’s an opinion
- “Bad victim” makes a “good target”
- Can override, but must be conscious

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**Victim Blaming**
“For me [credibility] starts with their activity at the time of the incident. Were they drinking heavily, using drugs, engaging in prostitution? Would a reasonable person think that something bad would happen if they engaged in this activity?”


Victim Behaviors

- Hitchhiking
- Drinking alcohol
- Going to a bar alone
- Engaging in sex outside of marriage
- Accepting a ride from the suspect
- Going to the suspect’s home (LaFree, 1980)
- Dressing or behaving “provocatively”
- Having sex with the suspect
- Being involved in criminal activity (illegal drugs, sex trade)
Quiz Time!

a) Leave in search of the restroom
b) Cover the young woman with a blanket
c) Notify the host that someone is passed out
d) Commit sexual assault

Risk vs. Cause

Risk = Increased chance perpetrator will identify person as “good target”
Prevention = Decreased likelihood that a crime will be committed

Prevention vs. Displacement
**Victim Selection / Victim Blaming**

- Victim selection based on perceived vulnerability, accessibility, credibility
  - Influenced by gender stereotypes, attitudes
  - “Good target”
- Same factors used to blame victims
  - “Bad victim”
  - Gender bias affects victim selection and blame

**False Reports**

**When was this written?**
"Where a vigorous woman alleges ravishment it is to be expected that signs of violence such as wounds, bruises and scratches will be present and their absence should induce a moderate degree of skepticism unless the girl averts that she fainted from fear, became panic stricken or was otherwise rendered incapable of physical resistance. The acts and demeanor of the female immediately after the alleged commission should be subjected to very critical investigation in these cases."

**1970 Book**

_Sources and Methods of Criminal Investigation_  
By Charles O'Hara

**When was this written?**
“Generally, the actions and the appearance of a legitimate rape victim leave little doubt that a crime has been committed. Under such circumstances, the victim is highly agitated, emotionally distraught, often in a state of hysterics and may have sustained injuries, cuts, bruises or wounds. The victim’s clothing is often ripped or torn off as evidence that it was forcibly removed and if the rape occurred outdoors, the victim is generally thrown to the ground and her outer garments stained or soiled. Questions may reasonably be raised concerning the validity of rape charges in which none or only a few of the above manifestations exist.”

1995 Model Policy

International Association of Chiefs of Police
Model Policy for Sexual Assault Investigation
- They have since completely re-worked policy
- This does not represent their current position!
- Just goes to show how recent ideas held sway

IACP Materials Available
- Police Response to Violence Against Women Project
- National Law Enforcement Leadership Initiative
- Trauma Informed Sexual Assault Investigation Training
- Identifying and Preventing Gender Bias in LE Response to Sexual Assault and Domestic Violence

For more information, contact Michael Rizzo at rizzo@theiacp.org or 800-843-4227 ext. 818
The Reid Institute
Textbook published in 2014

Establishing the Truthfulness of a Sexual Assault Victim: Factual Analysis

“When evaluating a victim’s account, the investigator should keep in mind possible motives which could prompt a victim to lie.”

• "An assault that is reported immediately is more likely to be truthful than one which is delayed."
• "Look for inconsistencies in the victim’s description of the assailant and the assault."
• "Look for precipitators which may have motivated a false allegation (STD, rejection, discipline, pregnancy)."
Ideas about False Reporting

- Report of sexual assault that did not happen
  - Estimated 2-8% of sexual assault reports are false
  - When to make the determination?

- Examples of sexual assault victims who are not believed, report is later proven true
  - Greater risk of report wrongly classified as false

Identifying a False Report

- People believe victim behavior is relevant to identifying credibility and truthfulness
- No agreement on which behaviors
“Eye contact, facial expressions . . .
the other thing we look for is
overdramatization. True victims have
a very flat affect, whereas someone
that is trying to cover for her own
sexual activity will put on a show.
Sobbing, yelling and covering their
face. That’s a problem.”

determination of victim credibility by adult and
juvenile sexual assault investigators. Journal of Criminal
Justice, 43, 29-39 (p.34).

“The person who is truly upset
and crying will have a runny
nose along with the tears.”

determination of victim credibility by adult and
juvenile sexual assault investigators. Journal of Criminal
Justice, 43, 29-39 (p.34).

Presumed Signs of Deception

- Voluntary intoxication or drug use
- Inconsistent statements
- ‘Mental deficiencies’
- Prior sexual relationship with suspect
- Inability to recall details, chronology
- Illegal behaviors (drinking, drugs, sex trade)
- Delayed reporting
- Too much, or too little, emotional expression
Detecting Deception

- We all think we know what lying looks like
- But average accuracy is about 60%
  - Chance level is 50%

The Interview Stage: Performance Expectations

Make it a Double (Standard)
Emotion Increases Credibility

Sad and Exposed, Angry and Resilient?

- Male V - Stronger Perceived Need for Support when expressing sadness not anger.

Ekman & O'Sullivan (1999)

- Police Investigators
- Psychiatrists
- Judges
- U.S. Secret Service
- Federal polygraphers

Importance of Investigations

- There are no legitimate “red flags”
  - These are based on feelings
  - Subject to logical leaps, unfair assessments
- There is only evidence, or a lack thereof

Case Scenario

- Read the case summary
  - Identify possible explanations
  - Next investigative steps
  - Corroborating victim / suspect statements

Case Summary

A woman reported waking up in the middle of the night, shocked to find that she was being raped by a man she had dated briefly. They had not seen each other for several months, but even in the dark, she recognized his voice, his body, and the silhouette of his face.
Case Summary (continued)

The woman showered thoroughly and then went to the hospital for a medical forensic examination. Although biological evidence was collected by the nurse, and it was submitted to the laboratory for analysis, no foreign DNA was detected. The nurse also took photographs of some genital abrasions.

Case Summary (continued)

There was no sign of forced entry into the home, but there was an unlocked sliding glass door in the dining room that could have been used by the suspect. Fingerprint evidence was collected during the crime scene investigation, but the prints recovered all matched to known individuals. In other words, none of the prints belonged to an unknown individual who might have been the suspect.

Case Summary (continued)

Law enforcement contacted the man identified by the victim and learned that he was thousands of miles away at the time of the assault. This was corroborated with airline tickets and hotel records from his trip. Nonetheless, the woman was adamant in stating that she was raped by this man, and she pleaded with the police to continue investigating her report.
Case Scenario

- Possible explanations?
- Next investigative steps?

Victim Recantation

- Retraction of a report, when victim says sexual assault did not happen
  - Might or might not mean it is false
  - Many reasons why victims recant
Reasons for Recanting

- Internal influences
- External influences
- System influences
- Socio-cultural influences
- Gender bias can influence any of these

Reasons for Recanting

- Impact of trauma
- “Stepping off the train”

Victims who report... do so because they believe they will be safer. If that safety does not materialize, or if, in fact, the report and ensuing proceedings worsen the danger, the victim no longer has any motivation to pursue court-based remedies, and a victim who encounters disbelief and skepticism (i.e., victim-blaming) when attempting to make a report will have no reason to report future incidents. A victim’s lack of belief in the justice system’s ability to provide safety should be of grave concern to all involved.

National Council of Juvenile and Family Court Judges (2015)
Coerced Recantations

- Examples in media, research, investigations
- Victims prosecuted for filing a false report, obstruction of justice, even evidence tampering (for medical forensic exam).

Why Coerce Recantation?

- Exaggerated belief in false reports
- Close investigations, save resources
- Based on “red flags” of suspicion
- Can be influenced by gender bias

Coerced Recantation

- Short term: appear to reduce workload, conserves energy for cases “with a chance”
- Ineffective over long term
  - Offenders allowed to keep offending
  - Law enforcement fails to increase safety of the communities they serve
- Of course, also fails victims
Recantation ≠ False Report

- At least, not necessarily

IACP Model Policy on Sexual Assault Investigation

"Understand that recantation of any or all aspects of the initial disclosure is not necessarily indicative of a false report. Victims who recant or decline participation in the investigation should not be asked to sign a non-prosecution statement. In addition, the facts of the case, as provided by the victim may change over time. Officers should understand that this does not indicate deception" (2017, p. 2)
1) All reports should be thoroughly investigated
   - When this reflects the victim’s wishes

2) Never pressure victims to recant
   - Or threaten to arrest if they don’t “confess” to a false report

3) No “lie detection” with victims
   - Polygraph, voice stress, handwriting analysis

4) Recantation alone does not establish probable cause to file charges for filing a false report, obstruction of justice

5) Supervisors must review clearance rates
   - Of individual investigators, and Units
Conclusion

- Best way to prevent gender bias?
- Start by Believing, then...
- Thorough, evidence-based investigations
- Looking for help? EVAWI has it!

www.startbybelieving.org
www.seekthenspeak.org