

# **Incomplete, Inconsistent, and Untrue Statements Made by Victims:**

## *Understanding the causes and overcoming the challenges*

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One of the fundamental challenges to the credibility of sexual assault victims is that many – if not most – make statements to the law enforcement investigator or others that are incomplete, inconsistent, or just plain untrue. There are a number of reasons for this. In this *Promising Practices* article, we explore the causes of such problems with victim statements and identify ways to overcome the challenges that they pose for a sexual assault investigation.

### ***Trauma and disorganization***

First, sexual assault victims often make statements that are incomplete, inconsistent, or even untrue out of trauma and disorganization.

- This should not come as a surprise to law enforcement professionals, who recognize that people in trauma often have disorganized and disoriented thinking.
- In fact, decades of research have documented that trauma decreases our ability to provide information that is complete, consistent, and 100% accurate.

To illustrate, let's turn our attention away from the topic of sexual assault to one that is perhaps more familiar to law enforcement professionals – the experience of officers involved in a critical incident. There is a wealth of research on the experiences of law enforcement professionals involved in traumatic events, documenting the negative effects of that trauma on their physical and psychological processes. As one example, these negative effects were summarized in a publication by PPCT Management Systems, Inc. (1989). These effects were described as including: perceptual narrowing, loss of cognitive and motor skills, and critical incident amnesia. It is not hard to see how many of these effects would decrease the likelihood that someone would accurately perceive, store, and recall information about a traumatic event.

First, **perceptual narrowing** occurs when an individual “tunes into” the input from one of the five senses and excludes the others. For example, many officers and deputies involved in shooting incidents describe “auditory exclusion” where they do not hear a weapon firing, even if it is their own. Other examples include tunnel vision or other partial loss of visual processing, such as the “weapon focus effect,” where individuals faced with a firearm can often provide a very detailed description of the gun but almost no information about the person holding it. Obviously, the ability of an individual to accurately recall a traumatic incident is limited if their sensory input is not fully processed in the first place.

Another common effect of trauma is a **loss of cognitive and motor skills**. For law enforcement professionals experiencing a traumatic event, this could be seen in a decreased ability to concentrate or in seemingly irrational decision-making. It is not hard to see the parallel between these effects seen among sexual assault

victims and law enforcement professionals who are involved in a critical incident. Both may exhibit thoughts and actions that do not “make sense” to someone else, either during the event or afterward.

Perhaps most relevant for the present purposes, the publication by PPCT Management Systems describes “**critical incident amnesia**” that is experienced by law enforcement professionals in trauma. According to that publication: “This temporary amnesia will affect both the officer’s memory and the officer’s ability to write an incident report” (p. 1-6).

*Because this form of amnesia is temporary, considerations should be made as to the time table necessary to recover the memory, including the effects that sleep has on this process. Before the first sleep period, a person will only be able to recall general characteristics of the incident. After the first sleep period, a person’s ability to remember will increase by 50% to 90%. A person’s ability to completely remember will not occur until after the second sleep period (p. 1-7).*

On this basis, the publication states that the first version of a critical incident report should therefore be verbal and titled as a “preliminary” report. The “supplemental” report should then be completed after the officer’s first sleep cycle, and the final report prepared after the officer has had a second full sleep cycle. Given these recommendations for law enforcement officers, it is not hard to see the implications for interviewing a victim of sexual assault.

Specifically, law enforcement investigators and others must recognize that victims of sexual assault will experience a variety of negative effects on their physical and psychological processing, and that all of these will in turn influence their ability to provide complete and accurate information about the sexual assault. For example, the research reveals that memories of sexual assault – as compared with other types of memories are:

*“less clear and vivid, less visually detailed, less likely to occur in a meaningful order, less well-remembered, less talked about, and less frequently recalled either voluntarily or involuntarily; with less sensory components including sound, smell, touch, and taste; and containing slightly less reexperiencing of the physical sensations, emotions, and thoughts than were present in the original incident”* (Koss, Figueredo, Bell, Tharan, & Tromp, 1996).

These findings also suggest that victims might often recall accurate information about the sexual assault after one or even two full sleep cycles. As Lord and Rassel (2000) recommend on the basis of their review of the law enforcement response to sexual assault in nine North Carolina counties:

*“It is particularly important to give the victim a day to rest before conducting an in-depth interview”* (p. 72).

While it may not be realistic – or even desirable – to wait 2-3 days before interviewing a sexual assault victim, it is helpful to remind law enforcement professionals that a short postponement of the interview is not necessarily a bad thing. All too often, there is a sense that the interview must

be conducted immediately, as if it were a question of “now or never.” Rather, the decision can be made to conduct the interview now or later, based on consideration of a number of factors.

- For example, there are certainly some sexual assault victims who may be difficult to locate at a later point. In that case, it probably is best to conduct the interview immediately.
- For other victims, however, it may be a good thing to postpone the interview until at least the next day. This would be the case if the victim is likely to be easily located and able to make arrangements to talk in more detail with the investigator.
- Postponing the victim interview may be particularly appropriate in cases where the victim is exhausted and/or still under the influence of drugs or alcohol.

All too often, law enforcement professionals and others have been suspicious of sexual assault victims when they provide information that is disorganized or inconsistent – or when they recall additional information days, weeks, or even months after the sexual assault. Rather than being a cause for suspicion, however, such behavior should be seen as the natural result of trauma. Therefore, law enforcement professionals can greatly benefit their investigative skills, not only by keeping in mind the effects of trauma on memory, but also realizing that postponing an interview may sometimes help victims to more clearly think, remember, and communicate.

### ***Discomfort with sexual (or other) details***

A second reason why sexual assault victims often make incomplete, inconsistent, or even untrue statements is because they are uncomfortable in the law enforcement interview. Even when the investigator responds competently and compassionately, this interview is likely to be difficult for victims because they must tell a stranger – often one who is dressed in a uniform and armed with a gun – about the details of their sexual assault.

### ***Many disclosures, many different people***

It is also important to keep in mind that once a person discloses that they have been the victim of a sexual assault, they may have to describe what happened – not only to law enforcement – but also to friends, family members, rape crisis counselors, victim advocates, medical professionals, and others providing various social services. Even if the victim does not ultimately have to tell all those people about the sexual assault, the prospect of doing so can be terrifying. Many victims envision having to tell all of these people what happened; this is often enough for victims to omit or distort certain aspects in their description of the sexual assault.

### ***Fear of doubt and blame***

Another reason that victims often make statements that are incomplete, inconsistent, or even untrue is because they are afraid they will be doubted or blamed for the sexual assault. It is critically important for law enforcement professionals and others to recognize that these fears are very well grounded. But of course victims want to be believed, and they don't want to be

blamed for their sexual assault. Therefore, victims often make statements that are not 100% complete or accurate. Sometimes, victims do this to omit certain behaviors that were particularly risky or even illegal. Other times, victims alter their description to make their experience sound more like “real rape.”

In this kind of case, it is important for law enforcement professionals to reassure victims that nothing they did could have given someone permission to sexually assault them. By making the environment safe and nonjudgmental, this will alleviate the concern victims often have that their behavior will be used to judge the seriousness of the incident or the validity of their claim.

### ***Fear of being arrested***

Another particularly serious challenge to the victim’s credibility is any illegal behavior that he or she may have been involved in at the time of the assault. As many law enforcement professionals know, when victims have engaged in illegal drug use or underage drinking, they are likely to omit this information or even lie about it when they are talking with an investigator.

This reaction makes sense, because victims often fear being doubted, blamed, or even arrested for their unlawful behavior. However, it is important for law enforcement professionals to reassure victims that they will not be arrested for such behavior, and it is critical that departments have a policy of not arresting in such instances, unless it is absolutely necessary given the seriousness of the offense.

Just as people who have overdosed on illegal drugs are treated for their medical emergency and not arrested, the priority in sexual assault cases must remain on investigating the crime and treating the victim with compassion. Arresting the victim will likely damage any trust that has been established with law enforcement, eliminate any chance that the victim will cooperate with the investigation, interfere with the victim’s emotional recovery, and perhaps even deter future additional victims from reporting. Only when absolutely necessary should law enforcement personnel consider arresting the victim of a sexual assault. When crafting a policy for law enforcement agencies, it is therefore important to make a distinction in the policy for responding to felonies versus misdemeanors that may have been committed by the victim.

### ***Inconsistencies due to the method of documentation***

Finally, a major reason for potential inconsistencies in the victim's statement is the method of documentation used by the law enforcement investigator(s). Inconsistencies in the victim’s statement often arise because the investigator failed to record the information accurately. This is perhaps the best argument there is for taping victim interviews (whether audiotaping or videotaping). If the investigator uses a tape recorder or video camera to record the interview with the victim, this allows the investigator to ensure that the written report is entirely consistent with statements made in the actual interview. Taping also communicates that the investigator takes the report seriously and wants to get all the details correct.

A second issue arising from the method of documentation is that victims often provide information in a format that doesn’t correspond with the nice, neat, chronological timeline that

law enforcement investigators are attempting to create. Instead, the victim may provide information in a way that feels like various “snapshots” of the event to them, perhaps leaping from some part of the sexual assault that was particularly significant to them, and then bouncing around in time from things that happened at the beginning of the event, and then the end, etc. Obviously, this can be difficult for investigators to follow, and their training doesn’t always prepare them well for this type of situation. Rather, investigators will often provide the victim with prompts such as: “Then what happened?” or “What happened next?” Yet this type of chronology may not correspond to the way events are stored in the victim’s memory, so investigators who ask questions in this way may risk interrupting the victim’s narrative account and frustrating the victim’s attempts to provide information to the best of their ability. Then, if the investigator tries to write the narrative summary of the interview as if the victim had provided information in chronological order, it is likely to contain errors, gaps, inconsistencies, and other problems. Clearly, such problems can hinder the effectiveness of an investigation.

This can even lead to challenges to the victim’s credibility, because errors, gaps, and inconsistencies in the victim’s statement are all too often seen as evidence that the victim is lying and/or the sexual assault report is false. It is therefore critical that law enforcement investigators are clear – both with themselves and with victims – that victims are only being asked to relay the information during the interview that they can recall at the moment. Investigators must communicate to victims that they may very well have information that is missing from their memory of the sexual assault, and they should feel free to contact the investigator to provide that information when it emerges in their memory at some later time.

Of course, this also highlights the advantage of taping the victim interview, so the investigator doesn’t have to piece together the chronology of the sexual assault while the victim is talking. However, even if the interview is not taped, the investigator does not necessarily have to piece together all of the details of the chronology during the victim interview. The process of piecing together the chronology can take place while the investigator is writing a report, and the victim can be contacted later if the investigator has questions regarding the timeline or missing details. This is especially true during the victim interview that is conducted as part of a preliminary investigation. At that point, the interview with the victim only needs to provide enough information to meet the following objectives:

1. Establish that the elements of a sexual assault are met.
2. Evaluate the need for a forensic examination.
3. Identify the crime scene and any related evidence, witnesses, and the suspect(s).
4. Establish the identity of the suspect, and contact information if known.

This preliminary interview will typically be conducted as soon as possible with the victim, after any emergency medical or other immediate needs have been met. It is important to note that the preliminary interview is not the time to establish the number of counts or to obtain an extremely detailed account of the assault. After collecting enough information to achieve these four goals, the preliminary investigation will then proceed either by obtaining a forensic examination of the victim or by pursuing leads that have been provided by the victim or from other sources of information (e.g., other interviews, or evidence that has been identified such as clothing or photographs). A preliminary investigation should never be used as the basis for making a final

determination in a sexual assault case (e.g., unfounded, exceptional clearance). At that point, there simply isn't enough information to make such a determination, based on the preliminary interview with a victim who is in trauma. That type of determination can only be made on the basis of the evidence that is identified and collected during a thorough investigation.

It is worth noting that this preliminary investigation may look a bit different when it is conducted by a patrol officer versus a detective who rolls out to respond. However, in both situations, their goals should be the same – to coordinate the investigation and provide support for the victim, while meeting those four fundamental objectives of a preliminary investigation. Even for those agencies that roll out a detective to respond to every sexual assault call, it is critically important to keep in mind that the initial response is not the time to conduct a comprehensive interview with the victim. Rather, the preliminary interview should be conducted to meet those four basic objectives, and a more comprehensive interview should be scheduled for a time after the victim has had a chance to eat, sleep, and reach out for support to begin the process of recovery.

## **Overcoming this Challenge**

For all of the reasons provided above, it is understandable that victims often give information in their statement that is incomplete, inconsistent or even untrue. Nonetheless, these issues can destroy the victim's credibility if they are not handled appropriately by the law enforcement investigator. As a first step in overcoming this challenge, law enforcement professionals must recognize that these omissions, inconsistencies, and even untrue statements are understandable and should never be confused with a "false report." This is so significant that it bears repeating.

**It is critically important that law enforcement professionals realize that these omissions, inconsistencies, or even untrue statements are understandable and should never be confused with a "false report."**

The determination that a sexual assault report is false can only be made when there is sufficient evidence to establish that the sexual assault was not completed or attempted. In other words, a report is only false when the sexual assault never happened. What we are talking about here, however, is a much more common situation – where the sexual assault really happened, but the victim reports it with some information that is missing, inconsistent, or even untrue. When this happens, the investigator must address these issues by exploring them gently and nonjudgmentally with the victim.

- The most important objective is to create a safe and nonjudgmental environment that encourages honesty even for unflattering or illegal behavior.
- Then when an omission, inconsistency, or untrue statement is suspected, the investigator can respond by pointing out the issue to the victim and asking for clarification. It is entirely possible that the victim simply made a mistake or the investigator misheard or misunderstood what the victim was saying.

- As we will note later, the appropriate time for this type of clarification is after the victim has completed his or her description of what happened – not immediately when the issue arises, because this will interrupt the victim’s narrative account.
- It is also important to fully explain to victims the negative impact of such omissions, inconsistencies, or untrue statements on their credibility during the law enforcement investigation. By doing so, investigators can emphasize the importance of complete truthfulness.

If the issue remains, the investigator can explain that conflicting information has arisen and ask for the victim’s help to make sense of it. For example, an officer could say: *“I need to ask these questions because I have to write a report on this, and I want to get every detail correct.”*

### ***Reduce the number of unnecessary professional contacts***

Problems such as inconsistent statements from the victim can also be decreased by reducing the number of unnecessary professional contacts. This is often a goal for communities that implement a coordinated Sexual Assault Response and Resource Team (SARRT).

- This does not mean that investigators should be reluctant to conduct follow-up interviews during the course of the investigation, as additional evidence and information is uncovered. In fact, such follow-up interviews are necessary to conduct a comprehensive investigation.
- Rather, the goal is to reduce the number of unnecessary professional contacts that take place, either because the case is being screened or the victim is being “handed off” to another professional due to a shift change, job rotation, etc. The purpose of any follow-up interviews should therefore be to gather additional information and clarify any questions, not to go over the same information again.

Because it takes time to develop rapport and trust with sexual assault victims, law enforcement agencies should never allow officers to “hand off” a sexual assault investigation in mid-stream, if there is any way to avoid it. This is a frequent cause of inconsistencies in the victim’s statement, and it creates serious difficulties in establishing rapport and trust with the investigating officer.

- The bottom line is that sexual assault victims should not have to deal with multiple officers or deputies handling their case, just because of a shift change within the law enforcement organization.
- Rather, law enforcement agencies should have policies in place that provide their personnel with the resources needed to complete thorough sexual assault investigations. To illustrate, all law enforcement agencies should place a priority on their sexual assault calls to avoid having responding officers called away.

As another way of reducing the number of unnecessary professional contacts, some jurisdictions have implemented a policy of having the responding officer or deputy and the forensic examiner (physician, SANE, or other nurse) conduct a joint preliminary interview.

- Again, this is sometimes a goal for communities implementing a Sexual Assault Response and Resource Team (SARRT), because this type of joint interview can improve communications between the professionals involved and it can potentially reduce the number of redundant questions asked of the victim. It also reinforces the team concept and can help the victim to feel that the various professionals are working together to provide the best and most coordinated services possible.
- When such a joint preliminary interview is conducted, however, it must be clear to everyone (including the victim) that detailed interviews will still need to be conducted separately by each of the different professionals (law enforcement investigator and forensic examiner). It should be obvious that the detailed interview conducted by the forensic examiner and law enforcement investigator have a different focus and purpose, but it is worth clarifying nonetheless..

The purpose of a medical interview is to:

- obtain information about what sexual acts were committed to perform a comprehensive medical forensic examination and to collect biological evidence samples;
- obtain information about physical injuries to document use of physical force and for medical examination and treatment purposes; and
- determine whether the medical forensic findings are consistent with the history, and to provide this information to law enforcement officers.

The purpose of an investigative interview are to:

- obtain the sexual assault history; and
- obtain a detailed description of the events (e.g. who, when, what, where, and how).

Quoted verbatim from the SART Manual developed by the California Coalition Against Sexual Assault (CALCASA, 2001, p. 43).

- Another way that some jurisdictions have sought to reduce the number of unnecessary professional contacts is to have a prosecutor available to conduct follow-up interviews along with the law enforcement investigator.

- Again, this is a goal for some communities with a Sexual Assault Response and Resource Team (SARRT), because it can benefit both the quality of the investigation and the well-being of victims.
- Of course, this practice can also reduce the likelihood of inconsistencies in the victim's statement, because the same information is covered once in the joint interview and not repeated in separate interviews with the officer and prosecutor.

Given the advantages of reducing the number of unnecessary professional contacts, some communities have also implemented a policy of "vertical prosecution" in sexual assault cases. This strategy allows victims to work with the same prosecutor throughout their case processing, which can be especially valuable in larger jurisdictions where cases are typically initiated by one prosecutor and "handed off" to another. All of these strategies represent "Best Practices" for the investigation and prosecution of sexual assault.

### *Decide whether to postpone the comprehensive victim interview*

Next, the decision must be made regarding whether or not to postpone the follow-up interview. Of course, this will partly depend on the protocol of the law enforcement agency, whether the preliminary investigation of a sexual assault case is conducted by a patrol officer or a detective.

When victims report their sexual assault immediately, they may have a forensic medical examination, so the detailed interview could possibly be conducted afterward -- if a detective rolls out on the case or the responding officer is the one handling the entire investigation. However, a better idea is often to postpone the comprehensive interview for a day or two. There may be a number of reasons why it makes sense to postpone this more detailed follow-up interview. One primary reason is to give the victim a chance to rest and take care of personal needs (such as changing clothes, bathing, and getting something to eat).

- Especially when a sexual assault is reported immediately, victims are likely to be **exhausted** after the preliminary interview and forensic medical examination, and may still be **under the influence of drugs or alcohol**.
- Also, recall the information about **physical and cognitive impairment** due to traumatic stress reviewed earlier. If the experts recommend that officers who have experienced a traumatic incident should not be interviewed until after they have had one full sleep cycle, and then again after they have had a second full sleep cycle – it makes sense that victims will need to rest before they participate in a more detailed follow-up interview as well.
- In addition, most victims **need some time to process what has happened**. In many cases, victims who are initially unable to participate in a law enforcement investigation may be able to do so after receiving support from friends, family members, and possibly even a rape crisis counselor or other victim advocate.

- Postponing the follow-up interview also allows the victim to **make any necessary arrangements**, such as transportation or child care. An advocate can also arrange to be available at that time, to accompany the victim and provide both information and emotional support during the follow-up interview.

There may also be additional reasons for postponing the interview, to accommodate to some extent the convenience of the victim and/or law enforcement investigator. In fact, even for victims who report their sexual assault to law enforcement after some delay, it may still make sense to delay the comprehensive interview for a day or two. In many cases, even victims who report their sexual assault after a lengthy delay may be in crisis at the time of the report, because of some event or experience that triggered their decision to contact law enforcement.

Actually, several follow-up interviews may be needed following different parts of the investigation, such as interviews with witnesses, a review of reports, evaluating the results of the forensic examination, suspect statements, laboratory analysis, etc. All of these investigative steps take time, and will most likely raise additional issues to address with the victim. Therefore, investigators do not ever need to feel that they have to get every single piece of information or every single question answered by the victim during a single interview. While every effort should be made to optimize the efficiency of the interviews, follow-up contact is often best for the success of the investigation and even the recovery of the victim who is more likely to feel that the case is being taken seriously and pursued vigorously.

### *Seek corroboration for details in the victim's statement*

There are clearly a number of strategies that investigators can use to clarify inconsistencies, omissions, or untruths in the victim's description of what happened. However, as important as it is to seek clarification of such inconsistencies or omissions, it is equally important to highlight the accuracy of other details in the victim's statement. Thus, a primary goal of any sexual assault investigation will be seeking corroboration for details in the victim's account of events, regardless of whether or not they are relevant for establishing an element of the offense.

## **Conclusion**

An effective interview is a critical step in building a case and it also helps establish a trusting relationship with the sexual assault victim. But the trauma of the assault and other unique factors often make it difficult for victims to clearly recall the incident -- and for investigators to record the details accurately in a written statement. It is therefore critically important for law enforcement professionals and others involved in the community response system to recognize these factors and seek to address them. For example, some ideas for "best practices" include:

- Reducing the number of unnecessary professional contacts with the victim;
- Delaying the comprehensive interview if the victim has not had adequate sleep;
- Creating a safe and non-judgmental environment for the victim interview;
- Tape recording interviews with sexual assault victims;
- Gently clarifying any inconsistencies that arise;

- Seeking to corroborate all possible details in the victim's statement;
- Developing a policy of not arresting victims unless absolutely necessary;

## **For More Information**

The EAW International **On-Line Training Institute** offers a comprehensive module on this subject, entitled: *Interviewing the Victim: Techniques Based on the Real Dynamics of Sexual Assault*. For more information on this modules or others within the On-Line Training Institute, please see: <http://www.evawintl.org/evaw%5Fcourseware/courseinfo.aspx?courseid=6>]