



End Violence Against Women International  
(EVAWI)

Training Bulletin Series: Part 2

# Gender Bias in Sexual Assault Response and Investigation

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## Part 2: Introduction

This is the second installment in our series exploring gender bias in sexual assault response and investigation. In the previous installment, we provided an overview of implicit and explicit gender bias and explored how they can potentially influence professional responses. In this bulletin, we examine the relationship between gender bias and victim selection at the time of the assault, as well as victim blaming afterward.

### Quick Review: Gender Bias

We discussed in the previous bulletin how prevailing socio-cultural stereotypes and attitudes about gender are reflected unconsciously (or implicitly) by all of us – this phenomenon is called *implicit gender bias*. While unconscious or implicit bias may be consistent with prevailing socio-cultural stereotypes and attitudes, they do not necessarily match an individual’s consciously held worldview. In other words, a police officer, prosecutor, or judge can genuinely believe in the fair and equal dispensation of justice, regardless of gender, race or other social factors – but nonetheless be subject to the influence of implicit bias. Similarly, a health care provider or victim advocate may reject gender and racial stereotypes, yet bias may still influence their assumptions and judgments about survivors. This is documented with research:

*[A]n exponentially increasing number of empirical studies demonstrates a relationship between measures of implicit bias and real-world discriminatory behavior* (National Center for State Courts, 2012, p. 15).

While gender-based stereotypes may sometimes hold a “kernel of truth” (e.g., many men are in fact breadwinners, and many women are unpaid caregivers), they can create problems if they are used as the basis for generalized assumptions or judgments in a particular sexual assault case. For example, it is within the range of possibility that a woman who is having an extramarital affair might try to “cover it up” by telling a lie, but it is quite another to assume that this generally means that women are inclined to lie about consensual sex and make false reports of rape and sexual assault.

Thus, our starting point with this discussion is to recognize the influence of prevailing socio-cultural stereotypes and acknowledge the extent to which they inform our response to sexual assault victims and suspects. While we may not consciously hold gender biased beliefs and attitudes, our thinking, judgments, and decision-making can nonetheless be powerfully influenced by them without our awareness.

### Victim Selection

Those working within the criminal justice system have long understood that individual crimes – from the pettiest crimes to the most serious – are often practiced, planned and purposeful. In other words, perpetrators often look for the very best opportunity to successfully commit a crime. A key element involves victim or target selection.

This is also true for sexual assault. Even in cases of “opportunistic” sexual offending, the perpetrator is likely to identify whether a particular situation or opportunity is conducive to successfully committing a sexual assault – and not being held accountable for it.

While anyone can be sexually assaulted, victim selection can provide a useful framework for understanding, in a given context, who is more or less likely to be perceived by a perpetrator as a “good target.” Perpetrators select victims on the basis of whether they are perceived as vulnerable, accessible, and/or lacking in credibility. Perhaps not surprisingly, this perception has a great deal to do with prevailing stereotypes and attitudes held by the perpetrator, as well as the society at large.

## Vulnerability

Vulnerability is not a general state of being, but rather the result of circumstances and context. In other words, the concept of vulnerability is shaped and informed both by objective facts (e.g., whether someone is unconscious), as well as more subjective assessments of a particular situation (e.g., whether someone who is unconscious would be seen as a capable or credible witness).

Of course, vulnerability to sexual assault is first and foremost the result of being around someone who is motivated, or at least willing, to commit sexual assault. However, there must also be a perception by the perpetrator that the situation is somehow conducive to successfully committing a sexual assault, and not being held accountable for it.

By examining some of the factors commonly associated with vulnerability we can identify how gender-based stereotypes and other attitudes actually create and reinforce perceptions of vulnerability, and how these perceptions can be used by perpetrators to plan and commit their crimes. Afterward, these same beliefs and attitudes are also frequently used to justify the perpetrator’s actions and create doubt in the minds of others, both about what happened as well as who is to blame for it.

### 1. Alcohol or drug use

Victims of sexual assault who used drugs or alcohol at the time of the assault, or who have a history of using drugs and alcohol, have historically been doubted, blamed, and/or not taken seriously when they report the crime. They have also frequently been viewed as unable to give an accurate account of what happened, and there is truth in this perception because drugs and alcohol do interfere with memory encoding and recall. However, judgments of female victims can be particularly punitive, because the attitude toward women who use drugs or alcohol is often: “She should have known better,” or “What did she think would happen?” Other stereotypes associate women who drink or use drugs with being “loose” or promiscuous – meaning, they are generally ready and willing to engage in sexual relations. These types of stereotypes can color our decision-making, particularly with respect to initial decisions (e.g., whether to initiate an investigation, whether to conduct an exam, whether to call a victim advocate).

## 2. Physical or cognitive disabilities

Another common stereotype is that individuals with physical or cognitive disabilities are not sexual beings; they are often seen as not being interested in sex, and not sexually active (McNutt, 2004; Quarmby, 2015). In fact, the idea that someone with a disability would respond positively to a sexual advance is antithetical to many people's assumptions about people with disabilities. These stereotypes and attitudes can interfere with our ability to take a report of sexual assault seriously, even if they remain outside our conscious awareness.

We also have stereotypes about who a perpetrator would choose to sexually assault, and we may (again unconsciously) apply our own standard of what we find sexually attractive, rather than viewing an incident from the perspective of someone committing a sexual assault. Remember that the perception of vulnerability is one of the primary elements that a sexual assault perpetrator is looking for in a target.

Finally, people with physical and cognitive disabilities are often seen as less accurate and truthful in their statements. This stereotype can interfere with the objective interpretation of information and evidence, and lead investigators astray in terms of the hypotheses and investigative leads they pursue.

## 3. Undocumented individual or immigrant

Undocumented and immigrant victims may be seen as ineligible or unworthy for services, including basic security and justice, and/or they may be seen as trying to manipulate the criminal justice system in order to gain access to benefits and services. These kinds of stereotypes can lead to a denial of services and/or the imposition of an evidentiary standard that does not exist for other similar cases – or for other victims of the same crime. Such attitudes, whether explicit or implicit, can also increase their vulnerability to sexual violence. Remember that the perception of vulnerability is one of the primary elements that sexual assault perpetrators are looking for in a target. What better target could there be than someone who is seen as ineligible or unworthy of security and justice services?

In sum, by examining the concept of vulnerability as a product of both context and circumstance, we are better able to:

1. Identify how and why an individual might be perceived as a “good target,” and
2. Identify what stereotypes and attitudes might influence our thinking, judgments, and decision-making.

These dynamics are clearly at play with the three groups of victims described above.

## Accessibility

While often defined as an objective concept, accessibility is also influenced by the socio-cultural context, most notably the subjective dynamics of power and position. Objective accessibility can be defined as simply the legitimate contact with, or access, to another person. This could include a taxi driver and client, doctor and patient, teacher and student, etc. Yet, these relationships of access can also be influenced by the subjective power or position of the individuals involved, and these are deeply informed by socio-cultural stereotypes and attitudes.

One example to illustrate this point is the Kobe Bryant case. At the mountain resort where Bryant was staying, he had objective access to hotel staff; in other words, he had a legitimate reason to contact staff, to call on them for assistance, even to have them in his room. Yet, it was the relative (subjective) position and power of the two parties that shaped the case, both in the courtroom and society at large. Recall that the victim had thumbprint bruising on her neck and tearing to her vagina. The suspect also had the victim's blood on his clothing. While Bryant stated that the two had consensual sex (initiated by the victim), the victim said that force was used to commit the act.

The physical evidence was generally consistent with the hypothesis of force. In fact, many would view this as a “strong” case for criminal prosecution. Yet, due to the subjective power and position held by the suspect, a different narrative prevailed. In both the courtroom and the “court of public opinion,” it was argued that the victim was a gold-digger who claimed she was raped for material gain. It was also argued that the suspect, who was attractive, wealthy, and married to a beautiful woman, would never have sexually assaulted such a plain-looking, small-town girl – he could have anyone he wanted, so why her? Somehow that story went even further, with some suggesting that the suspect had actually done the victim a favor by entertaining her advance.

In this case, subjective access was paramount. With *punitive* attitudes toward the victim, and *protective* attitudes toward the suspect, total access to the victim was granted through their relative power and position. At the same time, credibility was conferred upon the suspect, with the adoration heaped upon star athletes, while it was denied to the victim. This case is therefore a perfect example of a “good target.” The victim was accessible both objectively and socially, and as we will see in the following section, she was also perceived as lacking in credibility, by Bryant and our society at large. This was in spite of significant physical evidence consistent with the use of force.

## Credibility

Credibility is defined by Merriam-Webster as the *quality or power of inspiring belief*. It is an opinion, not a fact. As a result, credibility is powerfully influenced by prevailing stereotypes and attitudes, including those regarding gender, race, and age.

In cases of sexual assault, gender-based stereotypes and attitudes often become particularly relevant to the determination of credibility, when evaluating who is believable and why. For example, early research demonstrated that the credibility of a female victim will be called into question if she operated outside of accepted gender role norms, by 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, etc. (LaFree 1981). This finding has remained consistent for decades, with more recent research showing that "victim behavior [or risk taking] at the time of victimization and victim moral character [are] important factors when evaluating victim credibility" and moreover, are decisive considerations in cases without corroborating evidence (Campbell et al, 2015, p. 29). In fact, research documents that arrest and prosecution decisions are heavily influenced by factors such as: "voluntary victim intoxication," "inconsistent statements," "mental deficiencies," "previous sexual relationship with the suspect," "inability to recall details of the assault," "delayed reporting of the assault," and "engaging in prostitution."<sup>1</sup>

Credibility is central to sexual assault cases. This is because they often have no witnesses other than the victim and suspect. It is also why sexual assault cases are often characterized as "he-said, she-said" (even though this frequently indicates that no investigation was conducted beyond interviewing the victim and suspect). As a result, the perceived credibility of both victim and suspect serves as the lens through which most cases are viewed and evaluated. This lens informs how the response is undertaken, and whether there will be any meaningful investigation conducted.

A quote from a veteran detective illustrates this point. "Steve" is a detective with 15 years of experience, and he was involved in the Making a Difference (MAD) project conducted by EVAWI over the course of several years. As part of a research study conducted with MAD participants, Steve was interviewed, and he shared the following:

*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*

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<sup>1</sup> "Decisions to arrest and prosecute may rely heavily on the presence of extralegal variables" including "voluntary victim intoxication (Beichner & Spohn, 2012; Kerstetter, 1990; Lonsway, Welch, & Fitzgerald, 2001; Schuller & Stewart, 2000), inconsistent statements (Alderden & Ullman, 2012; Frohmann, 1991), mental deficiencies (Jordan, 2004; Kerstetter, 1990), previous sexual relationship with the suspect (Spohn & Tellis, 2014; Stanko, 1981-82), inability to recall details of the assault (Beichner & Spohn, 2012), delayed reporting of the assault (Beichner & Spohn, 2012; Kerstetter, 1990; Rose & Randall, 1982), and engaging in prostitution" (Kerstetter, 1990)" (Campbell et al, 2015, p. 30-1).

*looking for. You just can't discount any reports no matter how incredible they seem* (Huhtanen, 2009, p. 46).

While Steve pursued the case described in this anecdote, it is nonetheless clear that he did not initially perceive the victim as credible. The victim's drunkenness, in combination with her gender, the intimation that she is homeless, and her violation of the criminal trespass law, all played into the stereotype of a poor, uneducated woman, who is publicly drunk, and caught violating the law – and *who then claims she was raped*. Yet, Steve was able to confront his explicit and implicit biases – his stereotypes and attitudes about this victim – by using a thorough, professional and methodical approach to the case. Steve followed best practices rather than his “gut.” But how many cases like this do not make it past the initial report, as a result of prevailing gender-based stereotypes and other attitudes that lead us to doubt victim credibility?

## Putting It All Together

In sum, perceptions of vulnerability, accessibility, and credibility are all elements involved in victim selection for sexual assault, because they are central to how society, and thus the criminal justice system, will view the victim, the suspect, and ultimately the case. In other words, perceptions of vulnerability, accessibility and credibility shape whether or not an individual in a particular context is seen as a “good target” by the perpetrator and a “bad victim” by society. As we saw in the examples above, gender-based stereotypes and attitudes are largely responsible for informing our perceptions of vulnerability, accessibility, and credibility. In turn, these stereotypes and attitudes result in explicit and implicit biases, and those biases can result in tangible differences in how cases are handled. However, by identifying and confronting these biases, they are much less likely to influence our decision-making. Think back to the example in the previous Training Bulletin – with the words for colors, and the colors for words. This simple exercise shows that we *can* override our implicit cognitions, it just requires conscious awareness and deliberate thinking to do so.

## Overcoming the Influence of Implicit Gender Bias

Let's illustrate this process with two similar case scenarios. Below you will find a basic fact pattern for a hypothetical sexual assault case. Following the basic facts, you will be presented with a variety of different social factors for the victim and suspect. After reading the first scenario, please make a list of reasons why this particular victim might be perceived as vulnerable, accessible, or lacking in credibility. Also note reasons why the suspect might be perceived as credible or lacking in credibility.

Then move to the second scenario and do the same. List reasons why the victim might be perceived as vulnerable, accessible, or lacking in credibility – and why the suspect might be seen as credible, or not. Finally, consider how differences in social factors between the two scenarios might influence perceptions of the case – and as a result, affect how this case might be handled by criminal justice professionals and others.

**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**

- The victim is a college student, originally from a rural community
- She lives quite far away from the University, in affordable housing.
- She has to work as much as possible, to pay for her education and living costs while at school.
- She is doing well in school and has no criminal history.
- The suspect has a criminal history on various charges, including drug possession and petty theft.
- His name also comes up in association with a report of domestic violence, although he was never charged for the offense.
- He has been employed at the store for less than a year.

Why might the victim be perceived as vulnerable, accessible, and/or lacking in credibility?

Why might the suspect be seen as credible – or lacking in credibility?

**Scenario 2**

- The victim is in her mid-40, and she has had her children taken away from her for neglect.
- She has a criminal history which includes check fraud, and she needs income to pay off her fine.
- She has to prove that she is working steadily, and not using drugs or alcohol, in order to get custody of her children back.
- The suspect is the store manager, and he has been recognized as Employee of the Month several months in a row.
- He has been working at the store for more than three years.
- He is married with three kids, and an active member of his church.

Why might the victim be perceived as vulnerable, accessible, and/or lacking in credibility?

Why might the suspect be seen as credible – or lacking in credibility?

The example above is meant to illustrate the extent to which social factors influence the subjective assessment of credibility – which in turn influence the objective reality of vulnerability and accessibility. In the first scenario, we may feel compelled by a victim who fits our gender-based stereotype of a “good girl,” (and a “real victim”) while the suspect meets our expectation for a “bad guy” (and a “real sex offender”). In the second case, the opposite is true – the victim now fits our socio-cultural image of a “bad girl/victim” (someone of questionable credibility) while the suspect seems to be a “good guy” and therefore not a potential sex offender. Which case scenario are we more likely to believe? Which case scenario reflects a “good target”? Are the case scenarios the same – or different – and why?

Rather than falling prey to the explicit and implicit biases that are always present in our socio-cultural environment, we need to understand how a perpetrator might view the context and circumstances, particularly the perceived vulnerability, accessibility, and credibility of a potential victim. In other words, did the context, circumstances and victim profile make for a “good target”? It is not enough for law enforcement to conduct a thorough and methodical investigation. As all of the professionals responding to sexual assault, we must also remain alert to potential areas of explicit and implicit biases and avoid making decisions on the basis of our “gut” or instincts.

For example, credibility is not an objective or factual standard; it is an opinion, value, and attitude, and as such, it can significantly misinform and misguide investigative practice. Moreover, those who commit sexual assault, just like those who burglarize homes, will be aware of the contexts, circumstances, and victim profiles that make for the most conducive and successful conditions to commit a crime. Thus, criminal justice professionals and others would be well advised to think less in terms of victim credibility, or a “good victim,” and more in terms of what would make someone a “good target”.

As in Steve’s anecdote above, these examples illustrate that we *can* explicitly overcome gender-based stereotypes and attitudes, or at least suspend our disbelief long enough to make an evidence-based assessment, by not allowing our preconceived notions of credibility to determine whether we proceed with a case. But this effort must be explicit – it must be *conscious* – and it must include identifying the stereotypes and attitudes that are present within the case, so we can consciously override their influence. When we fail to identify, and confront such gender-based stereotypes and attitudes, we run the risk of allowing implicit biases to influence our decision-making without our awareness.

## Victim-Blaming and “Bad Victim” Behaviors

*For me it [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? (Campbell et al, 2015, p. 34)*

This is an example of victim blaming and it is a closely related topic to victim selection. This is because victim-blaming relies on the argument that a person would not have

been sexually assaulted if they had not made a particular choice, engaged in a particular activity, or acted in a particular way. In other words, the sexual assault is the victim's fault – or at least they bear some level of responsibility for it.

This argument is problematic for several reasons. First, there is no particular activity, choice, or behavior for which sexual assault is a natural – or even a typical – consequence. Second, victim blaming is often based on unrealistic notions of who is a “good victim.” Third, the only common denominator in every sexual assault is a perpetrator who is motivated, or at least willing, to commit a sexual assault.

But let's dive deeper. What actions, choices, or behaviors *do* “naturally” or “typically” result in sexual assault? If asked, many people would offer the same types of behaviors identified in Dr. LaFree's early research:

- 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

We can easily add to this list:

- Dressing or behaving “provocatively”
- Engaging in consensual sexual activity with the suspect
- Being involved in criminal activity (e.g., recreational drugs, sex trade)

However, if we analyze this list two things become immediately clear:

(1) Not every instance of the behavior, action or choice – or even the majority of instances – result in a sexual assault; and

(2) This list is nothing more than a reflection of common gender-based stereotypes and attitudes about how women should, or more importantly should not, behave.

For example, while it may be true that many sexual assault victims (particularly college-aged women) had consumed alcohol at the time of the sexual assault (e.g., Kilpatrick, et al., 2007), this is only a small percentage of the total number of women (and men) who consume, or even abuse alcohol (Substance Abuse and Mental Health Services Administration, 2015).<sup>2</sup> In other words, although drug and alcohol use is often

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<sup>2</sup> The 2015 National Survey on Drug Use and Health (NSDUH), conducted by the Substance Abuse and Mental Health Services Administration (SAMHSA), found that 26.9% of people ages 18 or older reported that they engaged in binge drinking in the past month; and 7.0% reported that they engaged in heavy

associated with sexual assault, the decision to consume drugs or alcohol does not have a direct, causal relationship to being sexually assaulted.

Let's take a more concrete example to clarify this point. Imagine that you are at a party. You are drinking alcohol – as are others at the party – in fact, some are drinking heavily. At some point in the evening, you go looking for the bathroom, but end up in a bedroom where a scantily clad young woman is drunk and passed out. What do you do?

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

Obviously, the first three choices are all reasonable, and there are no doubt additional reasonable options. The fact that the young woman is drunk and passed out does not cause someone entering the bedroom to sexually assault her. In fact, for most of us, the idea is abhorrent. That is because the cause of sexual assault is not drinking or even drunkenness, but the choice of one person to sexually assault another.

## Risk vs. Cause

Here it is worthwhile to understand the concept of *risk* – and how it is distinct from *cause*. In this context, risk refers to the increased chance that a potential perpetrator will perceive a person as a “good” or “easy” target. Thus, risk reduction (sometimes referred to as *crime prevention* within the criminal justice field) is aimed at reducing an individual's risk of being victimized. However, risk reduction does not prevent crime – it just deters or displaces crime on an individual basis.

In contrast, prevention requires addressing the root cause of a crime. In the case of sexual assault, primary prevention efforts seek to confront and address the gender-based attitudes and stereotypes that position girls and women as unequal to boys and men, while also addressing masculine norms that endorse and/or reward dominance, aggression, and sexual conquest among men and boys.

Let's use an example from another crime category to clarify the distinction between cause and risk. To illustrate, if someone is going to burglarize a home, are they likely to choose a home that is situated close to neighbors, with good visibility from the street, which has both a dog and an alarm? Or will the burglar choose the home without all these factors? Obviously, a potential burglar would probably prefer to target the home without the dog or alarm, far away from the neighbors, and not visible from the street. Yet, how often do we blame homeowners who do not have dogs, alarms, or good visibility, if their homes are burglarized? Do we conclude that the homeowner is to

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alcohol use in the past month. Both studies reflect the total population size, and while the second study does not disaggregate based on sex, the numbers are nonetheless significantly higher than those reflected within the population of women who have been victims of drug- or alcohol-facilitated rape.

blame, whether all or in part, because they did not take these risk reduction measures? No, we do not – and that is because we concretely understand that even while some risk factors may have been present for the homeowner, they bear no culpability whatsoever in relation to another individual breaking into their home and stealing their property.

It is also important to recognize that the burglar might bypass the home with a dog and alarm, only to target the house next door, without them. In this way, we can see that crime was not prevented – it was simply displaced (or shifted) from one victim to another. The same is true for sexual assault.

### “Bad Victim” – “Good Target”

We can see how victim selection is based on an individual’s perceived vulnerability, accessibility, and lack of credibility; this is used by perpetrators as a means of identifying a “good target.” Victim blaming then uses these same factors, based on gender-based stereotypes and attitudes, to assign responsibility to victims for their own victimization. While this may seem obvious, the prevailing notions of sexual assault – including the stereotype of a “real rape” or “good victim” – includes a victim profile and a set of circumstances that are actually the opposite of what makes someone a “good target.” For example, in our previous Training Bulletin, we quoted the description of a “good” sexual assault victim as being a woman who:

*Has little-to-no relationship to the offender, is virtuous and going about legitimate business, was above reproach in behavior prior to the rape, reports a single occurrence, was raped by an unambiguously bad offender, has demographic characteristics that signal power, influence, or sympathy, shows visible, appropriate expressions of trauma, and are open to help (Koss, 2006 p. 212).*

Indeed, when it comes to sexual assault, the prevailing socio-cultural image of a “good victim” is in direct opposition to what can make someone a “good target.” While anyone can potentially be sexually assaulted, victims are most often selected on the basis of their perceived vulnerability, accessibility, and lack of credibility. These factors are powerfully informed by prevailing gender-based stereotypes and attitudes, which also results in explicit and implicit gender biases. This can mean that our social expectations for a “good victim” in a case of “real rape”, and our criminal justice standards for a “strong case”, are generally not consistent with who would make a “good target”.

As with other gender-based stereotypes and attitudes, overcoming this type of bias requires a willingness to confront the possibility that we have an unconscious inclination to evaluate cases of sexual assault against a “good victim” and “real rape” standard. The challenge lies in the fact that we can hold a conscious view that anyone can be a victim of sexual assault – yet still be influenced by implicit stereotypes and attitudes. This is why consciously identifying stereotypes and attitudes becomes so important.

## Conclusion: Victim Selection and Victim Blaming

Reports of sexual assault must be treated with the same level of professionalism, thoroughness, and impartiality as other types of crime. It is therefore critical that gender-based stereotypes and attitudes, which define what is appropriate or “lady-like” behavior for women and girls, are not used as a filter to evaluate victim credibility or assign responsibility for the sexual assault. Otherwise, we may fall prey to the many myths and misconceptions surrounding the topic of sexual assault; most notably, the notion that most reports are actually false allegations.

## Up Next

The next Training Bulletin in this series will tackle the relationship between gender bias and false reports. This will include examining the definition of a false report, and the appropriate criteria for law enforcement to make this determination in a sexual assault case. We will then explore how gender-based stereotypes and attitudes can lead an individual to make unwarranted assumptions about the veracity of a report and discuss how this is often exacerbated by our inaccurate beliefs about how to detect deception.

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