



Center for Prosecutor Integrity

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Re: Reject 'Start By Believing'; Call on State Prosecutors to Assure Impartial and Fair Investigations

January 3, 2017

Office of Governor Nikki R. Haley
1205 Pendleton Street
Columbia, SC 29201

Dear Governor Haley,

The Center for Prosecutor Integrity (CPI) is writing to urge you to reject victim-centered investigation methods by law enforcement authorities in your state. Victim-centered investigations, sometimes known as *Start By Believing*, are one-sided procedures that violate traditional notions of fairness and due process.

On November 16, 2016, Arizona Governor Douglas Ducey, through his Office of Youth, Faith and Family, issued a guidance letter (attached) to all Arizona law enforcement agencies advising them to not adopt *Start By Believing*. The letter noted that the campaign's methods create the "possibility of real or perceived confirmation bias" by investigators.

The *Start By Believing* campaign was created by End Violence Against Women International as a "public awareness campaign focused on cultivating an orientation of belief when responding to sexual assault."⁽¹⁾ However, use of such means by law enforcement injects an unmistakable bias into the investigation that weakens, if not eliminates, the presumption of innocence. The Center for Prosecutor Integrity has previously communicated concerns to End Violence Against Women International, noting that "*Start By Believing*, rather than removing bias, only serves to substitute one preconception for another."⁽²⁾

Start By Believing can also undermine prosecutions as legal challenges to biased investigations are raised by defense counsel. The Arizona Governor's letter cited this example:

"During a recent case in Iowa, a detective testified that the campaign required him to believe the victim, 'no matter what.' The prosecutor in the case explained, "...the [*Start By Believing*] verbiage is what's killing everybody in court."

On October 4, an Expert Panel consisting of investigators, attorneys, and advocates analyzed *Start By Believing* and other victim-centered investigative approaches. The Panel concluded that victim-centered investigations "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." ⁽³⁾

The *Start By Believing* approach may have harmful consequences for rape victims, as well. Harvard Law Professor Jeannie Suk Gersen contends, “The imperative to act as though every accusation must be true—when we all know some number will not be—harms the over-all credibility of sexual assault claims.” (4)

When investigating allegations of sexual assault, authorities need to be respectful of complainants and harbor no preconceptions of the people involved. To reduce the potential for biased investigations for or against either party, CPI recommends that investigators follow “justice-centered” procedures, which conform to their ethical requirements for impartiality and an honest search for the truth. In so doing, investigators should be encouraged to:

- Discharge duties with objectivity and fairness.
- Make reasonable efforts to contact all potential witnesses, not just those recommended by the complainant or accused.
- Gather and disclose both inculpatory and exculpatory evidence.
- Thoroughly document and/or videotape all communications with the complainant and accused, as well as with potential witnesses, evidence collected, and interviews conducted, which shall be made available to the complainant and accused prior to appearing in court or before a disciplinary panel.
- Evaluate evidence in an impartial manner before rendering an opinion.

As such, we ask that you (1) advise prosecutors in your state to **avoid** “victim-centered” investigations such as *Start By Believing*, and reiterate the need for sexual assault allegations to be investigated in an unbiased, honest, and fair manner; and (2) refrain from signing any proclamations or legislation promoting *Start By Believing* or any other biased investigation methods.

Feel free to contact me with any questions.

Sincerely,

Christopher J. Perry, Esq.

Program Director - CPI

Enclosures (2):

Encl. 1 – Arizona Governor’s Guidance Letter – Nov. 16

Encl. 2 – Eugene Volokh – Don’t ‘start by believing’ – Dec. 15

(1) <http://images.phoenixnewtimes.com/media/pdf/moak-sbb-guidance.pdf>

(2) <http://www.prosecutorintegrity.org/wp-content/uploads/2016/09/Start-by-Believing-Ltr.pdf>

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

(4) http://www.newyorker.com/news/news_desk/argument-sexual-assault-race-harvard-law-school



DOUGLAS A. DUCEY
GOVERNOR

STATE OF ARIZONA
OFFICE OF THE GOVERNOR

DEBBIE MOAK
DIRECTOR

November 16, 2016

Guidance: Start By Believing
Governor's Commission to Prevent Violence Against Women

Sexual assault is a violent crime with devastating safety and health implications for every person in Arizona, be they a victim, a survivor or family member, loved one, friend, neighbor, or co-worker. One in five women and one in 71 men will be raped at some point in their lives.¹ Among undergraduate college students the statistics are even more abhorrent; nearly one out of every four women and one out of 20 men have experienced rape or sexual assault through physical force, violence, or incapacitation.² Offenders often target victims whom they perceive will not be believed; and unfortunately, law enforcement, friends, and family often focus on the victim's character, behavior, or credibility rather than the offender's actions. This attitude has permeated society, and as a result victims fear that they will not be believed and do not come forward after an assault. It is estimated that at least 65% of rape or sexual assault victimizations go unreported to law enforcement.³

In November of 2014, the Governor's Commission to Prevent Violence Against Women adopted the *Start By Believing* campaign offered by End Violence Against Women International and began encouraging communities and organizations around the State of Arizona to participate. *Start By Believing* is a public awareness campaign focused on cultivating an orientation of belief when responding to sexual assault. This approach encourages friends, loved ones, or law enforcement to treat victims with compassion and respect and communicate a message of belief and understanding. This approach creates an atmosphere in which victims feel more comfortable and willing to report an assault and provide law enforcement the information necessary to investigate the case. Appropriate response to sexual assault is critical; a negative response can worsen the trauma and foster an environment where perpetrators face zero consequences for their crimes.⁴

Recently, several serious concerns have surfaced regarding the *Start By Believing* campaign and whether it is appropriate for criminal justice agencies and others involved in the criminal justice

¹ Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M.R. The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (2011)

² David Cantor, Bonnie Fisher, Susan Chihball, Reanna Townsend, et. al. Association of American Universities (AAU). Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct (September 21, 2015)

³ Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, National Crime Victimization Survey, 2010-2014 (2015)

⁴ Start by Believing, <http://www.startbybelieving.org/TheMessage.aspx> (June, 2016).

process to participate. The concern is that the interjection of “belief” into the law enforcement investigation creates the possibility of real or perceived confirmation bias. Confirmation bias is the tendency to search for, interpret, favor, and recall information in a way that confirms one's preexisting beliefs or hypotheses, while giving disproportionately less consideration to alternative possibilities. In cases that proceed to trial, defense counsel likely could impugn investigators and claim that alternative versions of the crime were ignored and/or errors were made during the investigation as a result of confirmation bias created by the “belief” element of the *Start By Believing* campaign. Additionally, many detectives have not been adequately trained to effectively defend the *Start By Believing* campaign on the witness stand. During a recent case in Iowa, a detective testified that the campaign required him to believe the victim, “no matter what”. The prosecutor in the case explained, “...the [*Start By Believing*] verbiage is what's killing everybody in court”.

Recognizing the veracity of these concerns, the Governor's Office of Youth, Faith and Family and the Governor's Commission to Prevent Violence Against Women convened a *Start By Believing* Workgroup (Workgroup) to examine these differing viewpoints and work collaboratively to develop overarching guidance for the State. The Workgroup was comprised of a broad array of stakeholders that included county attorneys, prosecutors, law enforcement, forensic nurses, a defense attorney, advocacy centers, policy makers, and advocates. Based on a series of meetings, the Workgroup recommends the following:

- The *Start By Believing* campaign is most appropriate for non-criminal justice agencies and others not involved in the criminal justice system. 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*. Should a law enforcement agency have interest in adopting *Start By Believing*, we strongly encourage that agency to consult and work in close collaboration with their county attorney. The discussions should include weighing the high possibility of challenges during criminal legal proceedings based on actual or perceived confirmation bias. If the county attorney has even the slightest concern with the potential legal challenges associated with the *Start By Believing* campaign, it should not be adopted by law enforcement within that jurisdiction.
- Sexual assault allegations should be investigated in accordance with a codified sexual assault coordinated response protocol. This protocol should be developed with appropriate community partners, ideally a Sexual Assault Response Team (SART), and outline the following elements:
 - Victim-centered, trauma informed, collaborative response;
 - Sexual assault team development and sustainability;
 - Advocacy response;
 - Law enforcement response;
 - Medical response/sexual assault forensic medical examinations;
 - Forensic lab response/sexual assault kit testing; and
 - Prosecutor response.

- The Governor's Office of Youth, Faith and Family and the Governor's Commission to Prevent Violence Against Women will create an Arizona-specific sexual violence awareness campaign. The Arizona campaign will convey to sexual assault victims, and the general public, that law enforcement will be respectful, listen, and conduct a comprehensive and un-biased investigation of allegations of sexual assault.
- The Governor's Office of Youth, Faith and Family and the Governor's Commission to Prevent Violence Against Women will create a statewide system for ongoing sexual assault investigation trainings. This may include regular inter-agency presentations, trainings from local, state or national experts, and development of state sexual assault conferences. These trainings will include, but are not limited, to the following:
 - Basic Investigation of Adult Sexual Assault;
 - Advanced Sexual Assault Investigations;
 - First Responder Training for Sexual Assault Cases;
 - Medical Forensic Response in Sexual Assaults;
 - One Party Consent Calls;
 - Cold Case Investigations in Sexual Assault Cases;
 - Multi-disciplinary Team/ Protocol Development;
 - Interviewing Sexual Assaults Victims and the Neurobiology of Trauma;
 - Courtroom Testimony and Presenting the Sexual Assault Case at Trial;
 - Interviewing the Sexual Assault Suspect;
 - Sexual Assault Offender Behavior;
 - Sexual Assault Cases in Indian County; and
 - Sex Trafficking Investigation.

Research has demonstrated that victims of sexual assault who experience a supportive and compassionate response, regardless of the criminal justice system outcome, have lower rates of post-traumatic stress than victims who experience secondary trauma in the form of disbelief and blame.⁵ Regardless of the strategy that an agency adopts, it is important that victims are treated with fairness, respect, and dignity and allegations are investigated in a fair, balanced, and thorough manner.

The Governor's Office of Youth, Faith and Family and the Governor's Commission to Prevent Violence Against Women is committed to addressing sexual assault and the devastating impact on Arizona's citizens. We look forward to continued collaboration with agencies, organizations, and citizens to end sexual violence in Arizona.



Debbie Moak
Director, Governor's Office of Youth,
Faith and Family

⁵ Rebecca Campbell, Tracy Self, Holly Barnes, Courtney Ahrens, Sharon Wasco and Yolanda Zaragoza-Diesfeld, "Community Services for Rape Survivors: Enhancing Psychological Well-Being or Increasing Trauma," *Journal of Consulting and Clinical Psychology* Vol 67, No 6, (1999).



Don't 'start by believing'

By Eugene Volokh December 15

The Phoenix New Times (Ray Stern) reports on this November letter by Debbie Moak, director of the Arizona Governor's Office of Youth, Faith and Family (some paragraph breaks added):

In November of 2014, the Governor's Commission to Prevent Violence Against Women adopted the *Start By Believing* campaign offered by End Violence Against Women International and began encouraging communities and organizations around the State of Arizona to participate. *Start By Believing* is a public awareness campaign focused on cultivating an orientation of belief when responding to sexual assault. This approach encourages friends, loved ones, or law enforcement to treat victims with compassion and respect and communicate a message of belief and understanding.

This approach creates an atmosphere in which victims feel more comfortable and willing to report an assault and provide law enforcement the information necessary to investigate the case. Appropriate response to sexual assault is critical; a negative response can worsen the trauma and foster an environment where perpetrators face zero consequences for their crimes.

Recently, several serious concerns have surfaced regarding the *Start By Believing* campaign and whether it is appropriate for criminal justice agencies and others involved in the criminal justice process to participate. The concern is that the interjection of "belief" into the law enforcement investigation creates the possibility of real or perceived confirmation bias. Confirmation bias is the tendency to search for, interpret, favor, and recall information in a way that confirms one's preexisting beliefs or hypotheses, while giving disproportionately less consideration to alternative possibilities.

In cases that proceed to trial, defense counsel likely could impugn investigators and claim that alternative versions of the crime were ignored and/or errors were made during the investigation as a result of confirmation bias created by the "belief" element of the *Start By Believing* campaign. Additionally, many detectives have not been adequately trained to effectively defend the *Start By Believing* campaign on the witness stand. During a recent case in Iowa, a detective testified that the campaign required him to believe the victim, "no matter what". The prosecutor in the case explained, "... the [*Start By Believing*] verbiage is what's killing everybody in court".

Recognizing the veracity of these concerns, the Governor's Office of Youth, Faith and Family and the Governor's Commission to Prevent Violence Against Women convened a *Start By Believing* Workgroup (Workgroup) to examine these differing viewpoints and work collaboratively to develop overarching guidance for the State. The Workgroup was comprised of a broad array of stakeholders that included county attorneys, prosecutors, law enforcement, forensic nurses, a defense attorney, advocacy centers, policy makers, and advocates. Based on a series of meetings, the Workgroup recommends [that, among other things]:

The *Start By Believing* campaign is most appropriate for non-criminal justice agencies and others not involved in the criminal justice system. 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*. Should a law enforcement agency have interest in adopting *Start By Believing*, we strongly encourage that agency to consult and work in close collaboration with their county attorney.

The discussions should include weighing the high possibility of challenges during criminal legal proceedings based on actual or perceived confirmation bias. If the county attorney has even the slightest concern with the potential legal challenges associated with the *Start By Believing* campaign, it should not be adopted by law enforcement within that jurisdiction....

Research has demonstrated that victims of sexual assault who experience a supportive and compassionate response, regardless of the criminal justice system outcome, have lower rates of post-traumatic stress than victims who experience secondary trauma in the form of disbelief and blame. Regardless of the strategy that an agency adopts, it is important that victims are treated with fairness, respect, and dignity and allegations are investigated in a fair, balanced, and thorough manner.

This puts me in mind of Kipling's line from "Sons of Martha":

To these from birth is Belief forbidden; from these till death is Relief afar.
They are concerned with matters hidden — under the earthline their altars are.

He is speaking of infrastructure engineers; but, setting aside the altars under earthline, the same sentiment can apply to many other jobs, including journalists, scholars, lawyers and investigators.

Eugene Volokh teaches free speech law, religious freedom law, church-state relations law, a First Amendment Amicus Brief Clinic, and tort law, at UCLA School of Law, where he has also often taught copyright law, criminal law, and a seminar on firearms regulation policy. 🐦 Follow @volokhc