

ENDING GENDER BIAS IN THE LAW ENFORCEMENT RESPONSE TO SEXUAL ASSAULT AND DOMESTIC VIOLENCE

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Report on the
OVW
Roundtable
August 2016



Acknowledgements

Funding for this roundtable was provided by the Office on Violence Against Women (OVW), United States Department of Justice (DOJ). Many thanks to Bea Hanson, Principal Deputy Director; Rosie Hidalgo, Deputy Director of Policy; and other OVW staff who assisted in identifying invitees and developing the agenda.

Special thanks to the skilled facilitators who helped shape the agenda and expertly guided the discussions of the day: Tom Tremblay, Police Chief, Burlington, VT, ret., consultant with Tremblay Consulting; and Gretta Gardner, Policy Director for the DC Coalition Against Domestic Violence.

Additionally, the following people gave their time and expertise to develop presentations that added invaluable context and depth to the conversation:

- Becky Monroe, Senior Counsel to the Assistant Attorney General, and Jennifer Mondino, Senior Trial Attorney, Civil Rights Division, DOJ
- Katherine McQuay, Acting Chief of Staff, Office of Community Oriented Policing Services (COPS), DOJ
- Julie Goldscheid, Professor, City University of New York Law School
- Jessica Shaw, Assistant Professor, Boston College School of Social Work
- Carrie Hull, Detective, Ashland Police Department, Oregon
- Carol Tracy, Executive Director, Women's Law Project, Philadelphia, Pennsylvania
- Andrea Ritchie, Senior Soros Justice Fellow, New York City
- Aviva Kurash, Senior Program Manager, International Association of Chiefs of Police (IACP)

Lastly, our sincere thanks to all the roundtable participants who volunteered their time and talents to collectively advance the dialogue on how law enforcement leadership, policy, supervision, and training can more effectively identify and prevent gender bias in responses to sexual assault and domestic violence.

This project was supported by Grant No. 2015-TA-AX-K027 awarded by OVW. The opinions, findings, conclusions, and recommendations expressed in this document are those of the authors and do not necessarily reflect the views of OVW.

December, 2016

Ending Gender Bias in the Law Enforcement Response to Sexual Assault and Domestic Violence

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Roundtable Proceedings - August 3-4, 2016

Introduction

Under a cooperative agreement with OVW, the Battered Women's Justice Project (BWJP) was asked to organize a roundtable to continue the national discussion on how to implement guiding principles issued by DOJ on the identification and prevention of gender bias in the law enforcement response to sexual assault and domestic violence.

National experts, technical assistance providers, law enforcement representatives, advocates, researchers, and educators were invited to participate in the discussion, which was held August 3-4, 2016, in Washington, DC.

The following goals were set for the roundtable:

- Develop recommendations on methods to identify and prevent both implicit and explicit gender bias in the law enforcement response to sexual and domestic violence.
- Identify strategies to integrate and implement DOJ's guiding principles into law enforcement practice in order to improve responses to victims and more effectively hold offenders accountable.
- Discuss concrete recommendations on the ways in which domestic violence and sexual assault advocates could use the analysis of gender bias to promote systemic changes in the law enforcement response to these crimes.

This report describes the roundtable, summarizes the themes that emerged as well as areas in which opinions varied, and recommends next steps toward implementation of the guidelines.

The Roundtable Begins: Welcoming Remarks

Bea Hanson, OVW Principal Deputy Director, set the stage by reviewing DOJ's achievements over the past year in collaborating with law enforcement and advocates to address gender bias in policing. Feedback was gathered from law enforcement officers and victim advocates to assist in the development of DOJ guidance to help law enforcement agencies identify and prevent gender bias in their response to sexual assault and domestic violence.¹ On December 15, 2015, Attorney General

¹ In August 2015, DOJ's Office of Community Oriented Police Services (COPS) and the Police Executive Research Forum (PERF) hosted a roundtable in partnership with DOJ's Civil Rights Division and OVW. It provided an opportunity for stakeholders to share feedback on the DOJ Guidance. For more information, see the report *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence: A Roundtable Discussion* at <http://ric-zai-inc.com/ric.php?page=detail&id=COPS-W0796>. It serves as a companion to the DOJ Guidance and provides recommendations from law enforcement officers and executives, victim advocates, academics, and subject matter experts, and shared insights on improving the law enforcement response to victims

Loretta Lynch announced the new guidance from DOJ, entitled *Identifying and Preventing Gender Bias in the Law Enforcement Response to Sexual Assault and Domestic Violence* (DOJ Guidance). The DOJ Guidance highlights the need for clear policies, robust training, and responsive accountability systems, and was based on the following eight Guiding Principles:²

Principle 1: Recognize and Address Biases, Assumptions and Stereotypes about Victims

Principle 2: Treat All Victims with Respect and Employ Interviewing Tactics that Encourage a Victim to Participate and Provide Facts about the Incident

Principle 3: Investigate Sexual Assault or Domestic Violence Complaints Thoroughly and Effectively

Principle 4: Appropriately Classify Reports of Sexual Assault or Domestic Violence

Principle 5: Refer Victims to Appropriate Services

Principle 6: Properly Identify the Assailant in Domestic Violence Incidents

Principle 7: Hold Officers Who Commit Sexual Assault or Domestic Violence Accountable

Principle 8: Maintain, Review, and Act upon Data Regarding Sexual Assault and Domestic Violence

Bea discussed how OVW had been working to promote the DOJ Guidance within its grant programs. The *Improving Criminal Justice Responses to Sexual Assault, Domestic Violence, Dating Violence, and Stalking* program FY16 grant solicitation included a new purpose area of integrating the DOJ Guidance into policies, training, and supervision protocols and systems of accountability.³ It was anticipated that up to five communities would receive grant awards to implement projects under this purpose area. OVW also was planning to award a total of more than \$1.6 million to various technical assistance providers to assist these and other communities around the country to implement the DOJ Guidance. Additionally, DOJ's Office for Victims of Crime (OVC) anticipated making an award of up to \$5 million to fund a demonstration initiative in which up to six demonstration sites will be selected to receive funding, training and technical assistance to effectively implement the DOJ Guidance and improve the police response to domestic violence and sexual assault.⁴ This grant initiative will also include a special emphasis on underserved populations.⁵

Bea concluded her remarks by discussing how the guidance cannot stand on its own. She emphasized the need to continue working together to build trust between communities and law enforcement and highlighted how the OVW grant initiatives are part of ongoing efforts to support building that trust. Bea told participants that the point of the roundtable was to identify and discuss challenges faced in implementing the guidance, how to overcome those challenges, and how local law enforcement and

of sexual assault and domestic violence, particularly amongst vulnerable populations such as lesbian, gay, bisexual and transgender communities; racial, cultural and religious minorities; and immigrants.

² See *Justice Department Issues Guidelines on Identifying and Preventing Gender Bias in the Law Enforcement Response to Sexual Assault and Domestic Violence* at: <https://www.justice.gov/opa/pr/justice-department-issues-guidance-identifying-and-preventing-gender-bias-law-enforcement>

³ See the solicitation *OVW Fiscal Year 2016 Improving Criminal Justice Responses to Sexual Assault, Domestic Violence, Dating Violence, and Stalking Grant Program (also known as the Grants to Encourage Arrest and Enforcement of Protection Orders Program)* at: <https://www.justice.gov/ovw/file/811611/download>

⁴ DOJ subsequently issued a press release on October 5, 2016, announcing \$9.85 million in grant awards to identify and prevent gender bias in policing. Additional information about these grant awards can be found here:

<https://www.justice.gov/opa/pr/department-justice-awards-985-million-identify-and-prevent-gender-bias-policing>

⁵ See the OVC solicitation *FY 2016 Identifying and Preventing Gender Bias in Law Enforcement Response to Victims Demonstration Initiative* at: <http://ojp.gov/ovc/grants/pdf/Gender-Bias-508.pdf>.

sexual assault and domestic violence victim advocates can use the guidance to work together to promote systemic changes in communities. Her hope is that the conversation would provide concrete recommendations and best practices that could be used in communities across the country.

Next, Carrie Bettinger-Lopez, White House Advisor on Violence Against Women, Office of the Vice President, underscored the importance of the roundtable as she delivered a thank-you on behalf of Vice President Biden, who was meeting that day with law enforcement officials. Carrie emphasized how, since 1994, the Violence Against Women Act (VAWA) and other federal laws and programs have helped build criminal justice capacity and expertise, trained thousands of officers, and resulted in a more effective law enforcement response to domestic violence and sexual assault.

Carrie also noted how reports periodically surface of law enforcement agencies failing to properly investigate or adequately respond to domestic and sexual violence and highlighted the need to continue to work collaboratively to improve the law enforcement response. She noted that her office hosted an event at the White House in 2015 for Domestic Violence Awareness Month entitled “Domestic and Sexual Violence and the Criminal Justice System.” Various presentations at that event highlighted research and data-gathering on the law enforcement response to sexual assault and domestic violence. For example, in 2015, the National Domestic Violence Hotline (the Hotline), with the help of TK Logan, Ph.D., conducted a survey about law enforcement responses to intimate partner abuse with survivors who used the Hotline’s services.⁶ Some reported that they did not feel safe calling police, some did not feel believed or did not think they would be believed, and some reported being discriminated against based on gender or race or immigration status. Carrie acknowledged that while the results of that survey are not reflective of the experiences of all victims, they point to the need to continue to enhance law enforcement training, protocols and supervision.

An example of such an effort is the Police Data Initiative,⁷ which was developed as a response to the recommendations of the President’s Task Force on 21st Century Policing.⁸ The Police Data Initiative is a community of practice that includes leading law enforcement agencies, technologists, and researchers committed to improving the relationship between citizens and police through uses of data that increase transparency, build community trust, and strengthen accountability. Carrie highlighted the importance of data to help improve the law enforcement response to domestic violence and sexual assault, which she noted is also addressed in Principle 8 of the DOJ Guidance. Public data is important and anecdotes are not enough. However, she also stressed the importance of protecting victim privacy and confidentiality when releasing data. At the time of the Roundtable, 61 jurisdictions had committed to the Initiative, resulting in over 150 data sets that were made available online.⁹

Carrie pointed out that it is not only law enforcement’s job to improve society’s collective response to domestic violence and sexual assault. She emphasized that everyone – and especially those in leadership

⁶ TK Logan and Roberta Valente, *Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses*, NATIONAL DOMESTIC VIOLENCE HOTLINE: WASHINGTON, DC (2015), at: <http://www.thehotline.org/wp-content/uploads/2015/09/NDVH-2015-Law-Enforcement-Survey-Report.pdf>

⁷ For more information, see *Fact Sheet: White House Police Data Initiative Highlights New Commitments* at: <https://www.whitehouse.gov/the-press-office/2016/04/22/fact-sheet-white-house-police-data-initiative-highlights-new-commitments>

⁸ In December 2014, President Obama signed an Executive Order establishing the President’s Task Force on 21st Century Policing. The Task Force submitted an initial report to the President in March 2015 and released the final report in May 2015, at: https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁹ See the Police Foundation’s Public Safety Open Data Portal: <https://publicsafetydataportal.org/>

positions – has a role in changing the culture in this country. An example she cited is the ongoing effort to encourage college presidents to use their unique leadership positions to build robust prevention and education programs, provide trauma-informed support services for survivors, robustly enforce civil rights protections, and send a message that their institutions will not tolerate sexual violence on campus. It entails holding both individuals and institutions accountable for complying with the laws and spurring a larger shift in our culture. This includes taking a hard look at where stereotypes and biases lie in our system, and developing legal and social frameworks that focus not only on individual culpability, but also on systemic reform. Such initiatives must address root causes, challenge stereotypes of victims of gender violence, curb victim blaming, make improvements in prevention efforts, and bring to the center those survivors who have traditionally been placed at the margins – women of color, individuals with disabilities, LGBTQ individuals, immigrants, and older adults. Carrie emphasized how the DOJ Guidance is an important document that seeks to advance those efforts and stated that it is a “living document” that can help bring about significant improvements through its implementation in different jurisdictions.

Following these introductory remarks, the roundtable facilitators - Gretta Gardner and Tom Tremblay - described how the DOJ Guidance and roundtable goals would serve as the structure for discussing these topics: incorporating attention to potential gender bias in a coordinated community response (CCR) to sexual assault and domestic violence, getting buy-in from leaders and CCR partners, working together to bring change and transformation, and handling conflict respectfully.

Background on Development of the Guiding Principles

Becky Monroe, Senior Counsel to the Assistant Attorney General, and Jennifer Mondino, Senior Trial Attorney, both of DOJ’s Civil Rights Division, provided the context and background of the development of the DOJ Guidance.

Becky Monroe gave examples of problems found during the Civil Rights Division’s investigations¹⁰ of police departments: misclassification of sexual assaults, refusal to investigate sexual assaults, inability to communicate with sexual assault or domestic violence victims who are limited English-proficient, and failure to investigate reports of domestic violence. To make improvements in law enforcement practice, Division investigators and attorneys then engage the community via strategies such as law enforcement partnerships and communicating with victims to get feedback and suggestions. Any guidance the Division provides is also reviewed by national law enforcement organizations such as the IACP, DOJ’s COPS office, and the Police Executive Research Forum (PERF). The Civil Rights Division recognizes that its investigators and attorneys will leave the community, that solutions have to be owned by community, and that the community may have already been seeking solutions prior to any Division investigation. The Division is committed to this future leadership which reflects partnership not only with local law enforcement, but also with victim advocates and with survivors of sexual assault and domestic violence.

¹⁰ The Civil Rights Division of DOJ works to uphold the civil and constitutional rights of all Americans, particularly some of the most vulnerable. The Division conducts investigations and enforces federal statutes prohibiting discrimination on the basis of race, color, sex, disability, religion, familial status, and national origin. In its investigations of law enforcement agencies, the Division has looked at bias based on race, ethnicity, national origin, gender, and sexual orientation.

Jennifer Mondino pointed out that the DOJ Guidance described above not only outlines better policy or practice, but also reflects lessons learned. Among various discriminatory practices by police, gender discrimination recently has become a priority of the Civil Rights Division. Jennifer observed that while the Division is contacted proactively by law enforcement leaders who want to avoid becoming the next headline, gender bias investigations have often begun after an occurrence of intersectionality (e.g., investigating claims of racial discrimination in the police response and then also finding gender bias) or after a high profile event such as gang rape by football players. She identified several investigations of police jurisdictions that resulted in settlements. Using one recent investigation as an example, Jennifer described a holistic approach to claims of law enforcement mishandling reports of sexual assault. Division investigators talked to city police, campus police, prosecutors, victims, and victim advocates; ultimately made findings; and subsequently oversaw the implementation of recommendations and agreements. Law enforcement and prosecutors worked to put into practice and carry out the solutions identified in the agreement. They implemented better policies and improved standard operating procedures, including not only more but also specialized training, such as improving communication with victims. Additionally, implementation of the agreements included external oversight, progress measurements, a safety and accountability audit, and an external review panel. The latter – the external review panel - looked at closed sexual assault cases not only for investigation issues, but also for indications of gender bias. The strongest influence on positive change was leadership – for example, Jennifer described a terrific law enforcement leader who worked hard to make a safety and accountability audit happen. The biggest factors in changing individual attitudes were law enforcement training from national law enforcement trainers, and information from victims (surveys, interviews, etc.) that included not only information about problems, but also positive feedback.

Katherine McQuay, Acting Chief of Staff, COPS, provided background from the 21st Century Policing Task Force, and the August 2015 convening - *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence*. Relationships proved foundational in building consensus among the diverse Task Force members. After seven public listening sessions, testimony from over 100 witnesses, and over 100 written statements, the result was 59 recommendations organized around six task force pillars: building trust and legitimacy, policy and oversight, technology and social media, community policing and crime reduction, education and training, and officer wellness and safety.¹¹

Police are part of the community they serve and must protect it from within. Themes within the Task Force recommendations included building positive interaction between police and communities, improved training, policies that prioritize de-escalation, and policies that de-prioritize provocative tactics. A recommendation relevant to gender bias was an admonishment to avoid profiling. Katherine pointed out that implicit bias can be just as damaging as the type of explicit bias¹² exemplified by profiling. Mitigating both types of bias should be part of training that helps officers address potential biases and prejudices. Other federal enforcement officials, such as Immigration and Customs Enforcement officers, should also be required to undergo explicit and implicit bias training.

In July 2016, COPS hosted the forum *Gender, Sexuality, and 21st Century Policing: Protecting the Rights of the LGBTQ + People*. Police executives, subject matter experts, and advocates from across the country discussed specific strategies and best practices for collaboration between law enforcement and the

¹¹ For more information see: <http://www.cops.usdoj.gov/policingtaskforce>

¹² Implicit bias refers to attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. Explicit bias refers to attitudes and beliefs about a person or group held on a conscious level.

LGBTQ + communities, as well as the barriers and challenges related to interaction with law enforcement and issues of explicit bias and implicit bias.

A roundtable participant commented that currently women policing organizations were not represented on the Task Force and that, in fact, we need more women in policing overall. Women are 51% of our population, but only 14% of our police forces. We make efforts to **recruit** women in policing, but don't make efforts to **keep** women in policing. Another participant pointed out that we shouldn't assume – nor give the appearance that we are assuming - that just because a law enforcement officer is a woman, she will be more sensitive to sexual assault or domestic violence cases, or should be assigned to positions specialized to those kinds of cases.

How Does One Recognize Gender Bias in Operation?

The focus in this session:

Principle 1: Recognize and Address Biases, Assumptions, and Stereotypes about Victims

Principle 8: Maintain, Review, and Act upon Data Regarding Sexual Assault and Domestic Violence

Presentation: Julie Goldscheid, Professor, City University of New York Law School, on gender bias in policing

Professor Goldscheid noted that progress has been made in recognizing and responding to gender bias, which permeates all aspects of society, including law enforcement's responses to domestic and sexual violence. She underscored the Guidance's importance and value by reviewing examples of how law enforcement responses can reflect be present or perpetuate gender bias, and by describing recent studies highlighting the need for continued efforts to eliminate gender bias law enforcement's responses to domestic and sexual violence.

Gender bias and outdated stereotypes about survivors may be reflected in law enforcement's responses in a variety of ways. For example, law enforcement may inquire about how a domestic or sexual violence victim should look or behave. A survivor may be asked about whether she was intoxicated, where she was and what time she was there, what she was wearing, whether she had a criminal history or a history of engaging in sex work. She may be asked about her sexual orientation or gender identity, her relative size compared to the perpetrator, or whether she had a history of mental health issues. She may be questioned about her lack of resistance, or about any lack of obvious signs of physical harm. Stereotypes about survivors may also be reflected in questions about any delays in reporting, any history of making similar reports, or about the survivor's sexual history,

Responses to gender violence may reflect multiple forms of bias that compound the challenges survivors face and may make them less likely to seek help. For example, African-American women may be seen as "more aggressive" than white survivors. Reports may be distorted if appropriate translators are not made available. Trans and gender-nonconforming survivors may be met with skeptical, if not openly hostile, reactions.

Gender bias translates into practice in many ways:

- Failure to properly investigate
- Failure to provide interpreters

- Misclassifications of cases (e.g. categorizing something as a “disturbance” instead of domestic violence)
- Downgrading complaints (e.g., sexual assault treated as less severe because it was committed by acquaintance)
- Penalizing victims for repeat calls
- Reliance on characterizations rather than on victims’ own account
- Failure to question suspects
- Stereotyped comments (e.g., “I didn’t blame the husband because of the way she was carrying on . . .”)
- data indicating had harassment of transgender or gender-non conforming people
- Failure to hold abusive or violent officers accountable

Historically, non-intervention was an accepted practice. Domestic violence was seen as a private matter, and sexual assault was seen as a matter of one person’s word against another’s. Lawsuits and other policy initiatives called for accountability, and advances in protocols and practices and collaboration followed.

Recent surveys have confirmed the ways gender bias continues to impact survivors. For example, the National Domestic Violence Hotline survey¹³ previously referenced in this report surveyed six-hundred-thirty-seven (637) women with experiences of partner abuse who had contacted the Hotline and who agreed to participate. Over half (328) reported that they had not interacted with police about their partner abuse experiences. Participants were an average of 30 years old and mostly white (56%), Hispanic (15%), and African-American (11%).

Both the women who had called the police and the women who hadn’t called the police shared a strong reluctance to turning to law enforcement for help. Those women who had experienced abuse but had not contacted the police expressed the following fears: 70% stated that they feared that calling the police would make things worse (offender would get only a slap on the wrist, or calling would have negative consequences for them); 59% feared police would not believe them or would do nothing; 45% feared police would be rude to the offender or that calling the police would have negative consequences for the offender’s life; 17% feared police would be violent or would threaten to arrest or actually arrest them. Of those women who had experienced abuse and who had called police, only one in five reported feeling safer, one half the victims felt that there was no difference in their safety, and one third felt less safe.

A significant percentage of survivors (two out of three) who reported contacting police said they were somewhat or extremely afraid to call the police again in the future. Eighty percent feared the police would not believe them or would do nothing; 51% feared calling would make things worse; 28% feared police would be violent or would threaten to arrest or actually arrest them; 22% feared police would be rude to the offender or that calling the police would have negative consequences for the offender’s life. Approximately one in four women (24%) reported that they had been arrested or threatened with arrest during a partner abuse incident or while reporting a sexual assault incident to the police.

¹³ TK Logan and Roberta Valente, *Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses*, NATIONAL DOMESTIC VIOLENCE HOTLINE: WASHINGTON, DC (2015), at: <http://www.thehotline.org/wp-content/uploads/2015/09/NDVH-2015-Law-Enforcement-Survey-Report.pdf>

Additionally, 43% of women who called police felt discriminated against:

- 53% for not being a “perfect” victim (income, reputation, disability, sexual identity).
- 46% because of gender (men side with men and won’t believe me).
- 24% because of police lack of understanding about partner abuse and sexual assault.
- 22% because of race/ethnicity or immigration status.
- 20% because of politics or a connection with the offender.

Both those who contacted and who did not contact the police reported having to overcome significant barriers before calling them for help. Survivors feared nuisance laws that allow a landlord to evict a survivor for calling the police too many times. Others reported fears that they would be arrested rather than the offender. They reported fearing retaliation from their abusive partner, fear of not being believed, and embarrassment and concern for the offender and for her children.

Similar results were reported in a recent survey of 900 service providers. Advocates, service providers, attorneys, and people working in membership-based organizations shared stories, concerns and recommendations regarding policing and domestic violence and sexual assault in response to a nationwide survey conducted over a one-month period in April and May 2015.¹⁴ Eighty-eight percent (88%) reported police sometimes or often don’t believe victims or blamed victims for the violence. Eighty-three percent (83%) reported police sometimes or often don’t take allegations of sexual violence seriously.

Like the survivors who called the hotline, service providers reported concerns that police bias against marginalized communities affects responses to domestic and sexual violence:

- 55% said police bias or discrimination against particular groups was a problem in their community.
- 80% said police relations with marginalized communities influenced their clients’ or members’ willingness to call the police.
- 69% perceived police were sometimes or often biased against women.
- 54% perceived police were sometimes or often biased against immigrants.
- 58% perceived police were sometimes or often biased against LGBT people.
- 66% perceived police were sometimes or often biased against poor people.
- 53% said failure to use interpreters was sometimes or often a problem.

Many feared police involvement will sometimes or always trigger collateral consequences:

- 89% feared child protective services involvement.
- 61% feared criminal charges that could trigger immigration or deportation proceedings.
- 70% feared loss of housing, employment, or welfare benefits of either the victim or the abuser.

Finally, the study found a mixed awareness of oversight mechanisms. 70% said regular meetings with police were sometimes or very helpful. However, 72% did not know of oversight mechanisms, and 61% did not know about DOJ’s ability to investigate police departments.

¹⁴ University of Miami School of Law, American Civil Liberties Union, and City University of New York School of Law, *Responses from the Field: Sexual Assault, Domestic Violence, and Policing*, AMERICAN CIVIL LIBERTIES UNION: NEW YORK, NY (2015). https://www.aclu.org/sites/default/files/field_document/2015.10.20_report_-_responses_from_the_field.pdf

These studies serve as a reminder that despite many innovations and the progress that has been made in law enforcement's response to domestic and sexual violence, work remains to be done to implement the Guidance's commitment to eliminating all forms of bias. Continued work is needed to help survivors get the full range of assistance and services they need.

Presentation: Jessica Shaw, Assistant Professor, Boston College School of Social Work, on how gender bias is exhibited in law enforcement "explanations" for lack of response to sexual assault

Professor Shaw began her presentation with a reminder that gender bias is a form of discrimination. She then summarized key findings from research undertaken for her doctoral dissertation¹⁵ on gender bias in the police response to sexual assault. Police records corresponding to 248 sexual assault kits (SAKs), a representative sample of a larger number of unsubmitted SAKs in a police property storage facility, were examined to understand common investigation practices and police decision-making in sexual assault cases. Her findings included the following:

The police response suggested gender bias.

- Most cases (65%) were never referred to the prosecutor by police.
- Of 10 investigative steps that could have been completed on each case, police completed 3.4 steps on average.
- However, as more steps were completed, the case was more likely to be referred to the prosecutor, and to have an associated arrest.

Police provided 3 types of explanations for lack of investigation and not moving forward on a case.

- Type 1 – It didn't look like a 'real' rape (e.g., victim not injured, victim not upset enough)
- Type 2 – This victim couldn't really be raped (e.g., sex workers, victims who had or were perceived to have a mental illness)
- Type 3 – We couldn't investigate because of the victim (e.g., uncooperative, no phone)

The explanation provided, and corresponding police response, differed across cases.

- Black victims were more likely to be blamed for a poor investigation (Type 3).
- Cases with underage victims were more likely seen as not 'real' rape (Type 1).
- Victims over the age of consent were more likely to be blamed for a poor investigation (Type 3).
- Victims assaulted by multiple perpetrators were more likely considered a victim who couldn't be raped (Type 2).

What these findings mean for policy and practice:

- Increasing the number of investigative steps that must be completed by investigating officers could increase the likelihood of referral to the prosecutor, and an arrest.

¹⁵ Jessica Shaw, *Justifying Injustice: How the Criminal Justice System Explains Its Response to Sexual Assault*, unpublished doctoral dissertation, Michigan State University: East Lansing, MI (2014). <http://etd.lib.msu.edu/islandora/object/etd%3A2954/datastream/OBJ/view>. See also J. Shaw, R. Campbell, D. Cain, and H. Feeney 2016, *Beyond Surveys and Scales: How Rape Myths Manifest in Sexual Assault Police Records*, PSYCHOLOGY OF VIOLENCE (2016 Advance Online Publication, DOI: 10.1037/vio0000072); and J. Shaw, R. Campbell, and D. Cain, 2016, *The View from Inside the System: How Police Explain Their Response to Sexual Assault*, AMERICAN JOURNAL OF COMMUNITY PSYCHOLOGY (2016 Advance Online Publication, DOI: 10.1002/ajcp.12096).

- Disallowing police to close cases because victims were not injured, mentally ill, or uncooperative, for example, could increase the numbers of investigative steps completed and therefore, the likelihood of a referral to the prosecutor and an arrest.
- Strategies to address gender bias can and should target, and attempt to change, rape myth endorsement (explanation types 1 and 2) and means of accountability (explanation type 3).

Large Group Discussion: What have you seen as indicators of gender bias in the law enforcement response to sexual assault and domestic violence?

Female law enforcement participants described being sent to respond to reports of sexual assault – “a woman sent to deal with a woman’s issue” – and did not feel that has changed much in 2016. This minimizes the crime – that is, a sexual assault is a “woman’s issue” instead of a crime. Several male law enforcement participants added that the male officer who “gets it” is also sent to respond to sexual assault cases. This lets other male officers off the hook by “making their jobs easier” and reinforcing their reluctance to participate in training on sexual assault, much less on gender bias.

Good quality training on both implicit and explicit bias is important, and is helpful and successful in addressing gender bias. Several female law enforcement participants agreed that everyone in the community – not just law enforcement officers – should have an understanding of implicit bias.

Participants of all professions in the room talked about female victims not being viewed as credible. A female officer gave the example of being assigned to investigate a sexual assault where the male responding officer opined, “She didn’t look like a victim.”

A victim advocate wondered what makes a credible victim. Assumptions are made based on looks or behaviors. Female victims of sexual assault and domestic violence are often seen as witnesses that are not going to be able to tell their stories, and are not going to testify in court. A prosecutor added that these are biases not only of criminal justice professionals but also of jurors – these biases are what society as a whole brings to the table.

Still others pointed out that gender bias operates in how cases are prioritized. For example, resources may be obtained for law enforcement to respond to domestic violence, but get re-prioritized within the department to domestic violence homicides. This gives the message that lack of force means less harm, or that not all domestic violence and sexual assault cases are important. A researcher reminded the participants that when thinking about gender bias broadly in the culture, we have to remember the historical roots of this thinking: rape was a property crime – a theft of reproductive rights – committed by males against the male owners of their wives, sisters or daughters.¹⁶

Finally, a law enforcement officer wondered, where are the national headlines regarding the statistics shared from the National Domestic Violence Hotline survey? The lack of media attention is also indicative of gender bias. Sexual assault kit backlog projects¹⁷ are demonstrating that serial rapists went

¹⁶ See, e.g., Michelle Anderson, *Marital Immunity, Intimate Relationships, and Improper Inferences: A New Law on Sexual Offenses by Intimates*, 54 HASTINGS L.J. 1465, 1478 (2003).

¹⁷ In 2011, the National Institute of Justice published a special report in response to the discoveries of thousands of untested SAKs in police evidence rooms nationwide - *The Road Ahead: Unanalyzed Evidence in Sexual Assault Cases*, <https://www.ncjrs.gov/pdffiles1/nij/233279.pdf>. Many jurisdictions across the country began looking at the

on to perpetrate other rapes for years. Police trainings should include this information as an example of what deliberate indifference produces. As per the research presented today, if high percentages of women don't feel safe calling police, it's a national disgrace. Presidents of national police organizations should be on national television responding to this.

Large Group Discussion: What do we do when people are questioning whether to even call police?

A male law enforcement officer indicated that men are an important part of improving the law enforcement response to sexual assault and domestic violence, and that we need to bring more men into the conversation to work for solutions. Training is key, as is leadership support. We also need to incorporate campus law enforcement into any discussion about law enforcement.

Another law enforcement officer said we must stop setting special units (sexual assault and domestic violence units) up for failure. These units are typically staffed less than property crimes units, with newer detectives and with higher caseloads that are more work intensive. This contributes to newer detectives' lower morale and giving up. These detectives are less likely to get promoted. What does all that communicate about the importance of these cases within the agency?

Other law enforcement officers agreed, saying these detectives are punished with transfers and lack of promotions. They are labelled "advocates" and "more advocate than cop," so that "advocate" and "victim-centered" become dirty words. The culture must change – awards are given for drug arrests but what about sexual assault and domestic violence arrests? Patrol officers and investigators doing this work today are going to be the leaders tomorrow. Leadership is key in addressing this culture. We need to hold people accountable for "boys will be boys" statements. It can't just be victim advocates – police leaders and police organizations need to make public statements holding people accountable for such statements.

Police are paramilitary organizations; officers have to wear a uniform and do what they're told. They also have to write a report that is reviewed by a supervisor, and a report should be reviewed in a meaningful way. Accountability is needed at every level. This could be facilitated by teamwork, so one person isn't making a decision whether a report is credible enough to go forward, or whether a victim is uncooperative. Victims can be uncooperative or reluctant to share information but there are reasons for that. Training is important. We need more hours of academy training and better field training officer (FTO) training. Being an FTO should be viewed as important job – a career - for which one is paid more.

A coordinated community response to violence against women is also important. Social services need to work with law enforcement so we are all on the same page.

How Can We Improve Efforts to Reduce Bias in Current Practice?

The focus in this session:

Principle 2: Treat All Victims with Respect and Employ Interviewing Tactics that Encourage a Victim to

issue of sexual assault evidence that was not submitted to a crime lab for testing, resulting in projects to clear the SAK backlog, such as re-prioritizing kits sent to the crime lab, reprioritizing crime lab work, increased evidence technician and crime lab staffing and hours, and special funding.

Participate and Provide Facts about the Incident

Principle 3: Investigate Sexual Assault or Domestic Violence Complaints Thoroughly and Effectively

Principle 4: Appropriately Classify Reports of Sexual Assault or Domestic Violence

Principle 5: Refer Victims to Appropriate Services

Principle 6: Properly Identify the Assailant in Domestic Violence Incidents

Presentation: Detective Carrie Hull, Ashland Police Department, OR, on changing practice within law enforcement - the You Have Options Program (YHOP)

Detective Hull recalled that when she was a female patrol officer, she began receiving all the sexual assault cases from her male colleagues. An environment of disbelief had been created. Survivors didn't even come forward themselves – police were often notified of sexual assaults by third party reports. During police interviews, survivors often withheld some information to maintain some control; for example, by not identifying a known perpetrator and saying instead that it was a stranger. In 2010, Detective Hull began talking to victims and victim advocates, going to meetings, and building bridges. In 2013, she began asking them what they wanted law enforcement to do. The answers she received turned into the 20 elements of a victim-centered and offender-focused *You Have Options* program:¹⁸

- Element 1:* A victim of sexual assault is offered three options for reporting: Information Only, Partial Investigation and Complete Investigation.
- Element 2:* A victim or other reporting party may remain anonymous and still have the information they provide documented by a law enforcement agency.
- Element 3:* A victim or other reporting party may have questions answered regarding their options for reporting and/or a criminal investigation prior to providing any identifying or incident information to law enforcement.
- Element 4:* A clear explanation of the reporting process and/or investigative procedures will be provided by a law enforcement officer if requested by the victim.
- Element 5:* When making a report there is no requirement to meet in person with a law enforcement officer. For example, a victim or other reporting party may report using an online form or a victim may choose to have a sexual assault advocate report on her/his behalf.
- Element 6:* Reasonable efforts will be made to allow the victim or other reporting party control over the location, time and date where their initial report is made to law enforcement.
- Element 7:* A victim or other reporting party may provide as much, or as little, information as they choose with no time limitations or restrictions on when the information is given to law enforcement. For example, information obtained on an incident outside the current statute of limitations will be documented and used as the law allows to assist in other investigations.
- Element 8:* Law enforcement officers will offer every person reporting assistance in locating sexual assault advocacy services.
- Element 9:* A victim may be accompanied by a sexual assault advocate or other appropriate support person during all phases of the reporting process and criminal investigation.
- Element 10:* A victim, or other reporting party, may end an interview with law enforcement at any time without having to provide a reason.

¹⁸ For more information on the You Have Options program: <http://www.reportingoptions.org/>.

- Element 11:* After making a report, a victim or other reporting party will not be pressured to participate in a criminal investigation.
- Element 12:* Reasonable efforts will be made to meet the needs of the victim and address any barriers the victim faces in providing information to law enforcement during the reporting process.
- Element 13:* Law enforcement officers will conduct victim interviews in a trauma-informed manner.
- Element 14:* Reasonable efforts will be made to meet the needs of the victim and address any barriers the victim faces in providing information to law enforcement during the investigation.
- Element 15:* A victim's right to keep their assault confidential will be respected. If legally permissible, no person (outside of a law enforcement agency) will be notified the victim has reported without the victim's consent. This includes the interviewing of identified witnesses and perpetrators.
- Element 16:* Investigators will utilize strategies to identify and document serial sexual perpetration, such as the Inquiry into Serial Sexual Assault (ISSA).
- Element 17:* Investigators will collaborate with victims during the investigative process and respect a victim's right to request certain investigative steps not be conducted. Criminal investigations will be conducted at a pace set by the victim, not the law enforcement officer. Victims will be informed that no case can proceed to arrest or referral to an office of prosecution until the investigative process is complete.
- Element 18:* A victim may disengage from a criminal investigation at any time prior to an arrest being made or the case being referred to an office of prosecution. There is no requirement that an explanation be given by the victim to law enforcement.
- Element 19:* If legally permissible and probable cause exists for a crime, no arrest or referral to an office of prosecution will occur without the consent of the victim. All You Have Options Law Enforcement Agencies respect the choice of every victim who reports a sexual assault and understand that justice is not the same for every person who is victimized.
- Element 20:* Criminal investigations that do not result in arrest or referral to an office of prosecution will be classified as "inactive" unless found baseless or false, allowing for the investigation to be re-opened in the future at a victim's request and/or if additional information is discovered.

The program's vision is a criminal justice system where victims of sexual violence view law enforcement as a viable route to justice. The program's mission is a law enforcement-led program providing uniformity and accountability through training and technical assistance to a nationwide body of sworn law enforcement agencies committed to the highest standards of response to victims of sexual violence. Program goals are to: (1) increase the number of victims reporting sexual assault to law enforcement; (2) increase identification and investigation of sexual offenders; and (3) provide a law enforcement response to sexual violence that is beneficial to both victims and the criminal justice system.

YHOP is growing into a national program and now three law enforcement agencies in Oregon, Colorado, and Washington have a fully-implemented YHOP. Five more (in Virginia, Missouri, New Hampshire, Oregon, and Colorado) are in the implementation phase; and six more (in Washington, Nevada, New York, Missouri, Louisiana, and Oregon) are in the pre-implementation phase.

Detective Hull said that implementing YHOP shifts the focus from "She/He came forward and didn't give us everything," to being grateful she/he came forward and gave us anything. She quoted a sexual assault victim as reporting "I wouldn't have continued working with police without this program." Finally, Detective Hull emphasized that there must be not only change, but sustainable change. Any change in the way law enforcement responds and investigates sexual violence needs to be beneficial to both law enforcement and the victim to be successful.

Discussants broke into small groups and responded to a series of questions that were posed by the facilitators. Below are the questions and responses from the groups from the report back session at the conclusion of the small group session.

Small Group Discussion: How do we create buy-in and support?

- Mandate training on a trauma-informed response.
- Build in accountability to training, programs, etc.
- Be prepared to talk about:
 - A frank assessment of where a community is at and where a law enforcement agency is at in addressing gender bias.
 - How addressing gender bias includes not only actual response and investigation, but also public perception/misperception and public trust about the extent to which sexual assault and domestic violence is investigated.
 - How not addressing gender bias is a “pay now or pay later” kind of issue.
- To be successful, engage all levels of law enforcement.
- Make sexual assault and domestic violence a focus in national law enforcement forums.
- Have patience. Change does not happen quickly.
- To help get buy-in and support from leaders, try to use existing dollars for implementation, as opposed to requiring additional funds (e.g., look at training budgets or diverting funds from elsewhere).

Small Group Discussion: How do we hold officers accountable for changes we make in policy?

- To hold individual officers accountable, first we need to hold law enforcement agencies accountable.
- The top has to buy-in, or the bottom can't succeed.
- State policies need to support efforts, as well as local agencies and individuals.
- We need to provide officers with knowledge.
 - We can't “keep officers hostage” during training – we need their buy-in.
 - We may not be able to change their attitude, but we can change their behavior through effective supervision.
 - Cross-train with local prosecutors, advocates, etc. to show that officers will be supported in making changes.
- We need to create motivation – unfortunately now officers often need to pass up promotions to continue doing this work.
- We need to understand what liability looks like and how that affects the agency.
- Training individuals alone does not make them accountable. Quality assurance strategies need to be adopted as well.
- Accountability needs to be an agency value.
 - Agency leaders must provide a clear-cut expectation of what needs to happen.
 - Agency leaders must clearly articulate what the indicators of accountability are.
 - Officers must have the well-founded belief that there will be consequences for lack of accountability.
 - Supervisors must model and mentor – not bully – regarding issues of gender equality and gender bias.

Small Group Discussion: What measurement tools could inform the community of practice change?

- A safety audit with dissemination of findings.
- Law enforcement models that include mechanisms to routinely check with victims about “how we did,” with the information going to the police chief.
 - Models should produce data that can show whether response has improved.
 - Could also gather qualitative information, such as surveys related to how victims felt supported.
- Transparency - data on reports of sexual assault and domestic violence, cases referred, specific outcomes.
- Agency self-assessment strategies:
 - Climate survey - how do officers feel about violence against women and law enforcement roles in response? Could also be used as follow-up after policy changes or training.
 - Routine checks with officers regarding their knowledge about and consistent application of policy and training.
 - Knock and talk – the day after an arrest, go back and check with the victim, as well as provide support and information.
 - Tracking what happens once a sexual assault or domestic violence report has been made and any lethality assessment conducted; i.e., police follow-up, advocate follow-up, and what the survivor did as a result.

Small Group Discussion: How does burnout impact gender bias? How do we address it?

- When officers see the same people over and over, with no positive outcome, they give up hope of a positive outcome.
- Law enforcement officers are often called to respond to something that is not a violation of a law, but rather a mental health issue, which is not in their wheelhouse.
- Prosecutors may not understand these cases; investigators bring cases to prosecutors, who may not prosecute the cases, leading to more officer burnout.
- There is a lack of leadership in addressing burnout.
- Society doesn’t prioritize the issue of gender bias, which causes those working on it to feel burned out.
- Helplessness creates burnout.
- To address burnout, we need:
 - Guidance that is translated into something concrete.
 - Community interventions.
 - Community support.

Small Group Discussion: How do we create a climate and culture around preventing and identifying gender bias within law enforcement?

- Have the value of gender equality “at the top,” include presentations on gender bias in trainings, and create conversations among law enforcement officers.
- Create training exercises that allow law enforcement officers to recognize their own privilege and bias, and where it comes from.

- Use leaders to place importance on the issue of gender bias.
- Talk more about the explicit bias that surrounds sexual assault and domestic violence.
- Officers need to support and believe victims who speak up (including on college campuses).
- Supervisors need to be knowledgeable about gender bias.
- Leaders should commit to holding others accountable (e.g., calling out officers who make derogatory comments).

Large Group Discussion: Where do “mandate” and “buy-in” converge?

A participant replied that leaders should be able to say or explain the policy without referring to notes. One can mandate people to do something, but if they don’t believe in it, it’s not going to work. In that situation, sometimes it’s what hits the news that gets the focus and becomes the mandate.

A law enforcement officer offered a constructive suggestion, describing a community where community-based advocates and law enforcement officers had a problem working together. Instead of **starting** with a mandate to officers, which may have exacerbated already-existing friction, the two groups created a memorandum of understanding (MOU) describing how each would work with one another. A protocol removed friction, could be reviewed annually, and at least started the conversation. After the officers and advocates developed the protocol together, adherence was **then** mandated by leadership, requiring that officers follow the protocol.

Another officer suggested that a new protocol or potential mandate could first be pilot-tested within a department and eventually get expanded to the entire department. She also suggested better messaging to officers. Officers have mothers, daughters, and sisters who deserve unbiased treatment should they call for assistance. A new protocol or mandate shouldn’t be “us against them.”

A prosecutor reported how domestic violence crimes are analyzed by the New York Police Department (NYPD) during weekly meetings to review all crimes occurring in the city, referred to as Compstat.¹⁹ Analysis is conducted to identify if trends or patterns can be determined in the occurrence of particular kinds of crimes, such as intimate partner violence. In addition to reviewing data, specific cases are reviewed to identify possible gaps in police procedures that can be addressed. Monthly meetings are also conducted by the NYPD Domestic Violence Unit, referred to as Domstat, where a full analysis is done on a particular patrol borough. During these meetings, cases and training issues are discussed, as well as any successful initiatives that enhance NYPD’s response to domestic violence crime. The prosecutor said if a borough isn’t doing what it should be doing, it’s going to get called out – the rest of the group holds it accountable for following protocols and mandates.

¹⁹ CompStat (short for Computer Statistics) is a performance management system used to reduce crime and achieve other police department goals. It emphasizes information-sharing, responsibility and accountability, and improving effectiveness. A typical scenario would be that a veteran officer would use Compstat to analyze crime information (e.g., crime statistics, crime mapping, police records), identify trends in crime and disorder, quickly deploy follow-up resources on identified problems, and evaluate problem-solving tactics for effectiveness. He/she would present findings at a meeting of department commanders who analyze the crime statistics, strategize how to resolve problems, give updates, and describe progress on tactics being used.

Turning to the issue of burnout, a law enforcement officer observed there is a downstream orientation to burnout. For example, a prosecutor unable to get a conviction on a drug-facilitated rape because the investigator wouldn't do the type of investigation needed may feel helpless. Helplessness creates burnout. The sense that "nobody is going to do anything" snowballs.

Another participant responded that law enforcement should look at cases as though they will go forward without victims' participation. We train on the philosophy of going forward without victims' participation, but is it the kind of training people want to attend? The components of training need to be checked periodically. Additionally, if an officer or prosecutor is beginning to feel helpless or burned out about cases, officers and prosecutors could try to make sure they are on the same page – e.g., have conversations about victims at high risk and identifying the signs of high risk. Finally, officers often don't find out what happened with the prosecution of a case. Are we doing enough to improve officers' "job satisfaction?"

Presentation: Carol Tracy, Executive Director, Women's Law Project, Philadelphia, PA, on reforming police practice in sexual assault cases

Carol Tracy described the Women's Law Project's (WLP) leadership in reforming Philadelphia police practice in sexual assault cases in 1999,²⁰ after the *Philadelphia Inquirer* published a series of articles revealing that Philadelphia police had buried almost one third of all sex crime reports²¹ as "Investigation of Person" – a non-criminal code. Over almost two decades, thousands of cases of rape and other sex crimes were not investigated, because no crime code meant no investigation. The articles included specific examples of cases not investigated:

- *Serial rape*

Women in the same neighborhood had been raped and not believed – strangulation marks ignored – and the cases were classified as "Investigation of Person." A woman was murdered by a serial rapist during this time period.

- *Known offenders*

A child was kidnapped, raped, and subsequently identified the rapist. The officer left a card at the rapist's home with no further follow-up.

Girls were raped by their babysitter's boyfriend. Despite strong evidence and good forensics, no further action was taken.

- *Easily found offender*

In at least one instance, *Philadelphia Inquirer* staff contacted and found a rapist themselves.

In collaboration with Philadelphia's rape crisis agency, Women Organized Against Rape (WOAR), WLP requested that Philadelphia's City Council hold hearings to investigate the *Inquirer's* allegations. WLP staff testified at those hearings. Meetings with the police commissioner and his staff were organized to

²⁰ For more information, see Women's Law Project, *Advocacy to Improve Response to Sex Crimes*, WOMEN'S LAW PROJECT: PHILADELPHIA, PA (2013), at: http://www.womenslawproject.org/resources/Policy_Brief_Improving_Police_Response_to_Sexual_Assault_Feb2013_FINAL.pdf

²¹ For more information, see coverage of downgrading crimes at: <http://inquirer.philly.com/packages/crime/news.asp>

discuss departmental reform, and demand reinvestigation of misclassified cases. The Commissioner agreed to conduct an audit to evaluate coding of sex crime complaints placed in non-crime codes for the previous five years, which was the statute of limitations at that time for such crimes. WLP also responded to and encouraged ongoing news coverage.

The outcome of the reinvestigation was alarmingly revealing. Out of 3,119 complaints reviewed, 681 had been coded with the non-criminal code “Investigation of Person” that instead should have been classified and investigated as rape—a first degree felony. In total, 58% of the 3,119 cases originally coded “Investigation of Person” were re-coded as crimes and determined to be founded. In addition to the 681 recoded as founded rape crimes, 1,141 were recoded as crimes other than rape, including other sex crimes.

Following the *Inquirer’s* revelations and WLP’s public comment in the newspapers, victims whose cases had not been investigated contacted WLP and told WLP attorneys how officer bias affected the handling of their complaints:

- Conducting victim interrogations instead of victim interviews
- Presuming victims were not credible
- Focusing on the victim’s behavior instead of that of the accused
- Threatening to polygraph the victim
- Threatening to charge or actually charging victims with crimes

These victims gave WLP examples of comments from officers that were indicative of bias:

- “Are you sure you didn’t initiate it?”
- “Are you sure you didn’t have too much to drink?”
- “One of you is lying. I’m giving you a polygraph. One of you is going to jail.”
- “If I find out you’re lying, you’re going to jail. Long road ahead of you.”
- “Do you ever fantasize? Exaggerate?”
- “Sometimes women just make up stuff to get back at men.”
- [to boyfriend]: “Is she known to be a liar?”

“Why did this happen?” Carol outlined several reasons. First, gender bias was supported by rape myths and stereotypes, many of which blame victims for the sexual assault.²² Second, there was lack of leadership, poor supervision, and pressure to keep crime data low. Next, and the main factor according to Carol, the narrow definition of rape in the Uniform Crime Reporting (UCR) system influenced the coding of cases, and as a result, excluded many acts included in state statutes. Finally, there was also the impact of the vicarious trauma on rape squad officers, which may have been exacerbated by the fact that the squad had been overburdened and understaffed - training, guidance, and supervision were inadequate. She explained each of these issues and the actions taken to correct them.

The police commissioner responded to the results of the evaluation of case coding not only by reinforcing the correct coding of crimes regardless of impact on statistics, but also by reorganizing the Special Victims Unit (SVU) by appointing a new captain of the SVU, increasing supervision and

²² These myths wrongly blame the victim, assume the victim’s untruthfulness, trivialize the seriousness of sexual assault, and excuse the assailant’s behavior. Women’s Law Project, *Advocacy to Improve Response to Sex Crimes*, WOMEN’S LAW PROJECT: PHILADELPHIA, PA (2013).
http://www.womenslawproject.org/resources/Policy_Brief_Improving_Police_Response_to_Sexual_Assault_Feb2013_FINAL.pdf

accountability for this unit, improving training, and assigning detectives to the unit for the first time. New policies were put in place, requiring captain review of all unfounded files and supervisory review of all files before they are closed. At the invitation of the Philadelphia Police Department, WLP also reviewed and provided extensive written and in-person comment on a revision of the Incident Classification Manual prepared by the department. The manual now accurately and specifically describes the nature of the crimes under each code.

Understanding the crisis in public confidence caused by this scandal, the commissioner, in an unprecedented move, invited advocates to audit sexual crime files. Carol believes this invitation to a citizen's group to review sexual assault police files is unique, and as such, has received considerable attention. Thus, in 2000, WLP commenced what would become an annual review of sex crimes files with colleagues from WOAR as well as the Support Center for Child Advocates, which provides representation to child victims of abuse, and the Philadelphia Children's Alliance, Philadelphia's primary intervention organization for child sexual abuse victims which coordinates multi-agency forensic interviews.

Each organization participating in the review entered into a confidentiality agreement with the police department, agreeing not to reveal information learned from the file review, which was not a limited review but rather a review of the entire police file on each case. In the first year of the case review, advocates reviewed all cases unfounded by the SVU for the years 1999 and 2000 as well as 100 randomly selected cases from all open sex crimes from the year 2000. After the first year, organizational representatives have returned annually to review approximately 400 cases each year, and follow up with police leadership on their findings. When new commissioners come on board, WLP briefed them on the review process and why it is important. Each commissioner has supported the review and agreed to its continuation. Carol recalled that before the reviewing of files, rapes were not publicized. Now a stranger rape is on the news immediately.

The reviews have resulted in significant improvement in the thoroughness and documentation of investigations and coding of crimes, and led to the reopening of some cases that had been unfounded. During the review, which takes place over several days, advocates read hundreds of files with the following objectives in mind:

Was the investigation thorough?

- Were all witnesses interviewed?
- Was the evidence collection thorough?
- Were sexual assault kit results and other forensic tests in the file?

Was there bias?

- Were questions blaming the victim, or elevating the interests of the accused over the victim?
- Was the victim accused of lying? If not directly accused of lying, was it implied?
- Were interviews proper – that is, not interrogation?
- If the victim recanted, was it coerced?

Was the case classified correctly?

- As a crime?
- As the correct crime?

Was the case properly cleared?

- If the investigation supported an arrest, was it made?
- If exceptionally cleared, was exceptional clearance proper (i.e., was an arrest warranted by evidence and the perpetrator identified and at a known location, but reasons outside law enforcement control prevented the arrest from being made?)

Was the case properly unfounded?

- If a case was unfounded, was it proper to do so?
- Did the investigation demonstrate that no crime had occurred?
- Did a supervisor review and approve each decision to unfound a case?

Carol said that the advocates reviewing files had competency in understanding and analyzing data. They had a working knowledge of classification systems (national and local) and of academic research.

The lessons learned focused on the categories of leadership, management, and accountability, highlighting the importance of:

- Clear messages from the top down, making it clear that the law enforcement response should be victim-centered, and no sex crimes should be down-graded.
- Being victim-centered applies not only to the philosophy, but also to the physical environment of the SVU. When the reviewing of files began, the SVU was located in an industrial park that was formerly an arsenal. Surrounded by barbed wire, the SVU building was small and overcrowded, with victims and perpetrators passing each other in the halls. This facility was inappropriate for working with victims of sex crimes and child abuse, which requires a high degree of sensitivity. WLP's advocacy led to the relocation of the SVU in 2003 to a more appropriate facility located on a hospital campus, which doubled the size of its previous space. Victims and perpetrators were separated, there were comfortable waiting rooms for adult and child victims, and private interview space was available. Appropriate work stations and interrogation rooms, as well as phone lines and internet access, permit officers to conduct adequate investigations. A library and training room were also added.
- Training, which should not be a substitute for poor supervision
- Quality assurance review
- External audit and feedback
- Community engagement
- Transparency
- Vicarious trauma
- Importance of data

Carol noted that Philadelphia was not alone in exhibiting gender bias in the law enforcement response to sexual assault. Journalists from Cleveland, Baltimore, St. Louis, New Orleans, New York City, Milwaukee, and Nashville have reported on similar problems. The fact that misclassifying, unfounding, and downgrading sex crimes is a national problem positioned WLP to lead a national effort to change the definition of rape in the UCR to reflect more accurately societal and legal definitions of serious sexual assault.

During WLP's work with the Philadelphia Police Department, it was apparent that the UCR definition of rape, and not Pennsylvania's criminal sexual assault statutes, drove police perception and response to sex crimes. The UCR was developed in 1929 as a framework for gathering and publishing crime data.

Unchanged until 2012, the UCR defined rape as "carnal knowledge of a female, forcibly and against her will." This definition included only forcible male penile penetration of a female. Omitted from this UCR definition of rape were oral and anal intercourse, penetration of the vagina and anus with an object or body part other than the penis, rape of males, rape of females by females, incest, statutory rape, and non-forcible rape. Consequently, police did not perceive sex crime complaints that did not meet the UCR definition of rape as serious or credible crimes and did not code them as crimes and/or investigate them appropriately. Moreover, WLP learned that the FBI only issued public announcements relating to the number of complaints that fit within the narrow sub-set of sex crimes in the FBI's forcible rape definition. As a result, the FBI was leaving the public in the dark about the incidence of equally serious sex crimes.

In a letter sent to the FBI director in 2001, WLP outlined the deleterious impact of the UCR's definition of rape on public knowledge about serious sex crimes and on reporting and handling of sexual assault complaints. Over 80 organizations throughout the nation involved in advocacy on behalf of victims of sexual assault signed this letter in support of its argument that the UCR's definition of rape should be updated immediately. The letter received no response. The drive to change the UCR definition of rape gained momentum in 2010, after hearings before the U.S. Senate Judiciary Sub-Committee on Crime and Drugs on the mishandling of rape cases by police departments. At these hearings, Carol testified that sexual stereotypes are a root cause of police mishandling of sex crimes and made it clear that the way the UCR defined, analyzed, and publicized the incidence of sex crimes was also a major factor. Further advocacy led to the creation of a new definition, which went into effect in 2013, and defines rape as "Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim." This effort was supported by OVW.

The WLP's work in Philadelphia led to WLP's participation in a number of national initiatives on improving police response to sexual assault, including: testifying before the U.S. Senate Judiciary Subcommittee on Crime on "Chronic and Systemic Failure of Police to Investigate Sex Crimes" (2010); participating in the Police Executive Research Critical Issues Forum "Improving Police Response to Sex Crimes" (2011); serving as Advisor to and presenting its paper *Rape and Sexual Assault in the Legal System* to the Committee on National Statistics of the National Academies Expert Panel on Measuring Rape and Sexual Assault in Bureau of Justice Statistics Household (2011-12); serving as an Adviser to American Law Institute Project to Revise the *Model Penal Code Sexual Assault and Related Offenses* (2012 and continuing); participating in a roundtable on Gender Bias in Policing sponsored by COPS and PERF (2015); consulting with DOJ on the Philadelphia audit which DOJ adapted as a remedy included in its consent decrees; and consulting with PERF on investigating police response to sex crimes in five cities.

Presentation: Andrea Ritchie, Senior Soros Justice Fellow, New York, NY, on gender bias against LGBTQ People

Andrea Ritchie began her remarks by pointing out that gender bias in policing isn't only expressed in the manner in which police respond to violence, it also takes the form of profiling, unlawful searches, and perpetrating physical or sexual violence against women and LGBTQ people. These actions are relevant to this discussion, because how police engage with these survivors and their communities affects police responses to family, intimate partner, sexual, homophobic, or transphobic violence. Andrea gave an example of profiling - when black women are perceived in ways that frame them not as victims but as

threats, as aggressive, as non-compliant, or as “not victims” - in some cases resulting in their being killed or beaten, rather than receiving protection. Andrea also described an unlawful search (a domestic violence victim being strip searched) and of sexual violence (a domestic violence victim being extorted for sex). Finally, she noted that gender bias is also indicated when sexual assault is not taken seriously by law enforcement when reported by a particular kind of victim, such as women involved in the sex trade or LGBTQ people.

Gender bias in policing includes police responses to transgender and gender nonconforming people. The 2015 LGBT Health and Human Services Needs Assessment conducted in New York State²³ found one in five transgender respondents (21%) had been unfairly arrested, harassed, or physically harmed, with higher rates for transgender people of color (31%). A survey of transgender people in the District of Columbia²⁴ found 15% of those who had interacted with police were physically assaulted by an officer, and 5% sexually assaulted, with trans-persons of color assaulted in higher numbers than white trans-persons. Among Latina transgender women in Los Angeles County, two-thirds report they have been verbally harassed by law enforcement, 21% report being physically assaulted by law enforcement, and 24% report being sexually assaulted by law enforcement.²⁵ BreakOUT’s survey of LGBTQ youth in New Orleans²⁶ found that 59% of transgender youth surveyed had been asked for a sexual favor by the police in New Orleans, along with 12% of non-transgender LGBQ youth.

This sort of bias extends beyond the transgender and gender nonconforming people to the entire LGBT community. A national survey of LGBT people²⁷ found that 73% of LGBT people and people living with HIV reported face-to-face contact with law enforcement in the past five years. One fifth of them experienced at least one type of misconduct or harassment, including profiling, false arrests, verbal or physical assault, or sexual harassment or assault. LGBT people of color, LGBT people under 30, low-income LGBT people, and transgender respondents were much more likely to report police misconduct or harassment. LGBT people of color were 5 times more likely to be asked about their immigration status by law enforcement officers.

Gender bias may also be indicated by arrests of domestic violence victims, or arrests of both parties in domestic violence calls. A 2014 report from the National Coalition of Anti-Violence Programs²⁸ found that 57% of LGBT survivors of intimate partner violence who called the police experienced police

²³ Somjen Frazer, *LGBT Health and Human Services Needs in New York State*, EMPIRE STATE PRIDE AGENDA FOUNDATION; AND NEW YORK STATE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER HEALTH AND HUMAN SERVICES NETWORK: NEW YORK, NEW YORK (2015). <https://gaycenter.org/file/docs/network/LGBT-HHS-Needs.pdf>

²⁴ E. Edelman, R. Corado, E. Lumby, R. Hills, J. Elwell, J. Terry, and J. Dyer, *Access Denied: Washington, DC Trans Needs Assessment Report*, DC TRANS COALITION: WASHINGTON, DC (2015). <https://dctranscoalition.files.wordpress.com/2015/11/dctc-access-denied-final.pdf>

²⁵ Frank Galvan and Mohsen Bazargen, *Interactions of Latina Transgender Women with Law Enforcement*, BIENESTAR: LOS ANGELES, CALIFORNIA (2012), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Galvan-BazargenInteractions-April-2012.pdf>.

²⁶ BreakOUT, with support by the National Council on Crime and Delinquency, *We Deserve Better: A Report on Policing in New Orleans for Queer and Trans Youth of Color*, BREAKOUT: NEW ORLEANS, LA (2014). <http://www.equityprojects.org/wp-content/uploads/2014/12/WE-DESERVE-BETTER-REPORT.pdf>

²⁷ *Protected and Served?*, LAMBDA LEGAL: NEW YORK, NEW YORK (2012). <http://www.lambdalegal.org/protected-and-served>

²⁸ Osman Ahmed and Chai Jindasurat, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-affected Hate Violence in 2014*, NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS: NEW YORK, NEW YORK (2015). http://www.avp.org/storage/documents/Reports/2014_HV_Report-Final.pdf

misconduct. LGBT survivors of domestic violence are frequently arrested along with their abusive partners if they reach out to the police for help. Gender bias may also be indicated when arrest is used as retaliation for making a complaint. Tiawanda Moore, a survivor of domestic violence, was physically and sexually assaulted by officers responding to a domestic violence incident, discouraged from pursuing a complaint by officers who brought up her job as an exotic dancer, and then prosecuted for recording her conversation with officers.²⁹ Although charges against her were eventually dismissed, the message was sent that if you complain, you will be the person put on trial, not the officer who violated you.

Additionally, information about gender bias can be gathered from data on police discipline. For example, an Associated Press investigation³⁰ reviewed the law enforcement decertification records in 41 states and found that 1000 officers lost licenses for sexual misconduct over a six-year period, from 2009 to 2014. Two 2001 studies of law enforcement license revocations in Missouri and Florida³¹ found that sexual misconduct was the basis for revocations in almost 25% of cases. A 2003 survey of law enforcement officials in the St. Louis, MO, metropolitan area³² concluded that officers report sexual misconduct to be common, yet criminal justice officials have done little to control the problem. In 2006 the Salt Lake City Tribune quoted the Utah Peace Officer Standards and Training Director as estimating that as many as 30% of the sexual misconduct cases his agency investigates are not criminally prosecuted. The investigation also revealed that where prosecutions do take place, they are for misdemeanors.³³

Andrea used her knowledge of gender bias research to incorporate this focus into the New York Police Department's Patrol Guide.³⁴ She helped research the best policies in the country, and participated in an 18 month negotiation process to write new sections of the policy and facilitate their adoption. Challenges in this process included: giving examples of what gender bias looks like and of unequal responses to violence, addressing how gender is determined at every stage of the process, pronoun use, what identification is accepted and how to record names, how to treat gender for the purpose of arrest processing, who conducts searches and making it clear that gender is not a legal basis for a search, confidentiality, and medical treatment. All these items related to interactions with survivors, so staying the course in developing policy and examples enabled Andrea and her colleagues to help develop training memos that guided implementation of the new policies.³⁵

²⁹ See, e.g., Jason Meisner and Ryan Haggerty, *Woman Who Recorded Cops Acquitted of Felony Eavesdropping Charges*, CHICAGO TRIBUNE: CHICAGO, ILLINOIS, August 25, 2011. http://articles.chicagotribune.com/2011-08-25/news/ct-met-eavesdropping-trial-0825-20110825_1_eavesdropping-law-police-officers-law-enforcement

³⁰ Matt Sedensky and Nomaan Merchant, *Betrayed by the Badge*, ASSOCIATED PRESS: NEW YORK, NEW YORK (2015). <http://interactives.ap.org/2015/betrayed-by-the-badge/?SITEID=apmobile>

³¹ Roger Goldman and Steven Puro, *Revocation of Police Officer Certification*, 45 St. Louis L. J. 541, 563, n.142 (2001).

³² Timothy Maher, *Police Sexual Misconduct: Officers' Perceptions of its Extent and Causality*, CRIMINAL JUSTICE REVIEW, Autumn 2003, vol. 28 no. 2.

³³ L. Rosetta and N. Carlisle, *Sexual Misconduct by Officers: A Third Might Go Unprosecuted*, SALT LAKE CITY TRIBUNE: SALT LAKE CITY, UTAH, October 29, 2006.

³⁴ The *NYPD Patrol Guide* can be found at the NYPD Patrol Guide page of New York City Government's website at <https://www1.nyc.gov/site/ccrb/investigations/nypd-patrol-guide.page>.

³⁵ See, e.g., *New York City Police Academy Training Memo #37-12 – Department Policy Regarding Gender Identity*, October 2012.

Based on this experience, Andrea went on to develop model policies in partnership with the Federal LGBT Criminal Justice Working Group³⁶ with the hope that DOJ will issue them as tools to assist law enforcement agencies in implementing guidance to their officers. Based on best practices from across the country, the model policies were developed with advocates, survivors, and service providers, and can serve as a foundation for other communities across the country seeking to adopt similar policies. Andrea asked roundtable participants if law enforcement agencies in their communities have a policy specifically addressing sexual misconduct by police officers against members of the public. She gave examples of law enforcement agencies that do have such a policy:

Cleveland, TN Cleveland Police Department employees shall refrain from any behavior or communication likely construed as lewd, lascivious or otherwise sexually inappropriate.

- A. Employees shall not misuse their position with Cleveland Police Department to coerce, persuade, force or initiate sexual contact or penetration with anyone.
- B. While on duty, employees shall not engage in any form of sexual activity or penetration or participate in sexually motivated behaviors for the purpose of self-gratification.
- C. Employees shall not use any city facility, vehicle, and property or information system to initiate or participate in a sexual act with another or engage in voyeuristic behavior that is sexually motivated.
- D. Unless the employee can demonstrate a legitimate departmental interest in such conduct, such as a recognized policy investigation into criminal activity or employee misconduct, employees shall refrain from any communications of sexually inappropriate material, electronic or otherwise, while on duty.
- E. Officers shall not conduct any stop or investigation that is personally or sexually motivated and falsely veiled as a legal and warranted action within policy. Furthermore, all employees shall avoid inappropriate or unnecessary searches, frisks or pat-downs. (Violation of this policy is a Class A violation).

Montgomery County, MD

. . . sexual harassment includes, but is not limited to: requests for sexual favors; use of threats or force to obtain sexual favors; sexual propositions or innuendo; suggestive comments; sexually-oriented teasing or joking; jokes about gender-specific traits; unwelcome or uninvited touching, patting, pinching or brushing against another's body; obscene spoken or written language; obscene gestures; and display of offensive or obscene printed or visual material.

County employees must not subject other employees, contractors, consultants, citizens, applicants, customers or clients to sexual harassment. An employee found to have engaged in sexual harassment will be subject to appropriate disciplinary action, which may include dismissal.

Large Group Discussion: What have you seen in the way of best or promising practices?

One participant observed that ride-alongs and other similar experiences where victim advocates can see what it is like for law enforcement officers to respond to a domestic violence or sexual assault case are helpful in providing shared experience, knowledge, and understanding.

³⁶ *Sample Policy on Sexual Harassment and Misconduct by Law Enforcement against Members of the Public, and Sample Policy for Law Enforcement Interactions with LGBT Individuals*; draft documents on file with Andrea Ritchie.

Several other participants pointed to small law enforcement agencies' lack of knowledge of or lack of access to training and technical assistance. While acknowledging the obvious local political objections and obstacles, these participants identified potential pros and cons of consolidating smaller departments. On one hand, consolidation pools not only police jurisdictions but also the resources within those jurisdictions, as well as access to training. On the other hand, we shouldn't make assumptions that bigger departments will be more experienced. There are more departments with fewer than 50 staff members in our country than there are larger departments. One of the facilitators, Tom Tremblay, pointed out there are smaller kinds of consolidation that are helpful, such as the consolidation of special units. In his community, consolidation of special units was carried out successfully and did pool specialized knowledge, training, and skills related to sensitive crimes/special victims that had previously been separate.

Large Group Discussion: How do we raise these issues of gender bias in the law enforcement response to sexual assault and domestic violence?

Before answering the facilitators' question, several participants identified caveats to consider before raising these issues with law enforcement officers, with participants at trainings, with criminal justice partners, and with community groups. A law enforcement officer reported the awkwardness and sensitivity around bringing up these issues in a jurisdiction where there were rumors about an officer committing sexual assaults. This officer also reminded other participants that male officers can be victims of police-initiated assault, too, and gave examples of several who came forward about being sexually assaulted by another officer who was still on the force. An advocate mentioned the potential for vicarious trauma³⁷ experienced by working with victims of gender-biased law enforcement responses, and gave an example of how that issue was raised unexpectedly at a training. One of the facilitators said continuing advocacy and activism is important in all arenas - not just law enforcement - and gave an example of a gender-biased comment about a homicide victim at a fatality review meeting.

Additionally, participants said it would first be helpful to gather particular types of information:

- Any local assessments or data related to gender equity
- The impact of race or class (how one looks or whether one has money or legal representation, etc.)
- Identification of where best to invest one's time in raising these issues
- Knowledge of these issues from the perspective of victim advocates
- Identification of what victim advocates should do when raising these issues

Large Group Discussion: Does anyone have any final thoughts about this session that they would like to share?

A law enforcement official responded that lack of resources is not an excuse for shoddy work, but it is an issue. The official reported that his state laid off many state workers last year; and he avoided laying off staff only by slashing overtime, and now sees detectives working after hours but without asking for pay. He appreciates the detectives working after hours without asking for pay, but knows it's not sustainable.

³⁷ Vicarious trauma is the emotional residue of exposure that responders have from working with people as they are hearing their trauma stories and become witnesses to the pain, fear, and terror that trauma survivors have endured.

An advocate pointed out there are so many more resources connected to drug trafficking than human trafficking, which shows overarching priorities. She gave the example of the existence of a special unit on sexual assault within a law enforcement agency that gave the appearance of resource support to sexual assault cases, but that in actuality showed a lack of investigative activity. A prosecutor agreed, saying that after hearing the data from the National Domestic Violence Hotline survey about why victims wouldn't call police, we should talk about how we should redirect or reprioritize resources.

Another participant stated that up until now, roundtable participants' talk has been about bad apples, and then we stop talking. She has been talking with her son about what to do if stopped by police officers, as he won't know what kind of officer he is going to get – a good apple or a bad apple. We need to acknowledge what is not acceptable and act to get rid of bad apples. A law enforcement officer agreed, saying one aspect of this is addressing persistent rumors. The officer gave examples of several high-ranking officers rumored to be pedophiles and nothing was investigated for years – all have now finally been caught and convicted of crimes, but many victims and many years later. Another aspect is leadership willingness to make an unpopular decision, such as taking a physically assaultive officer off the street who may be otherwise popular with fellow officers or the community. The participant who provided the bad apple analogy replied that people who already think that police are biased are not going to complain to police about it. We have been talking more about individual officers and less about the agency itself. We must think creatively about leadership and about supervision mechanisms, such as spot checks and GPS on police vehicles, as opposed to relying on people experiencing violence or bias to come forward. The community also has to exert that kind of control, through choice of leadership. A law enforcement officer expressed disappointment in positions like ombudspersons –who get complaints and go to the right people to tell them what's wrong, but can't make them do anything, so it's a difficult position. Often when a budget crunch comes, those positions are eliminated.

Another law enforcement officer said that training plays a role, in that it often addresses basic or new information. The officer would like to see more nuanced training or training that will build critical thinking skills that will “push” those officers who are silent, those officers who stand by and say nothing when homophobic remarks are made, etc.

Additional final thoughts offered by participants:

- We should stop “normalizing” the need for victim resources in our society. Where instead is real outrage about domestic/sexual violence so that we stop it?
- We need to learn more about the pros and cons of bias testing (similar to psychological testing that already exists).
- Improvement should be acknowledged, such as when arrests of officers who commit SA and DV increase in a jurisdiction.
- It is helpful to review internal affairs records to see what was missed on officers arrested for misconduct.
- Research on officers arrested for misconduct³⁸ indicates discretion without supervision – need to look for places in the structure to intervene.

³⁸ P. Stinson Sr., S. Brewer Jr., B. Mathna, J. Liederbach, and C. Englebrecht, *Police Sexual Misconduct: Arrested Officers and Their Victims*, VICTIMS & OFFENDERS, VOL. 10 , ISS. 2, 2015

Addressing Officer-involved Sexual Assault and Domestic Violence

The focus in this session:

Principle 7: Hold Officers Who Commit Sexual Assault or Domestic Violence Accountable

Presentation: Aviva Kurash, Senior Program Manager, International Association of Chiefs of Police (IACP), on law enforcement sexual misconduct.

Aviva Kurash began her presentation by noting that *IACP's Leadership Institutes on Violence Against Women*³⁹ all begin with participants taking the Law Enforcement Oath of Honor:⁴⁰ "On my honor, I will never betray my badge, my integrity, my character, or the public trust. I will always have the courage to hold myself and others accountable for our actions. I will always uphold the Constitution, the community, and the agency I serve, so help me God."

The institutes include a module on police-perpetrated domestic violence and sexual misconduct. Staff and faculty sit down and talk with participants about their policy, and if they don't have one, why they should. The institutes also provide policy-making tools, and guide participants into identifying action items and creating checklists to make policy creation concrete. IACP has also developed a four-day training for first line supervisors, who are the ones who should be seeing any red flags.

During one of the institutes, IACP hosted a roundtable on sexual assault and sexual misconduct by law enforcement officers. Discussion from the roundtable provided the foundation for IACP's publication, *Addressing Sexual Offenses and Misconduct by Law Enforcement: An Executive Guide*.⁴¹ The guide covers not only criminal behavior, but also actions that are inappropriate and/or could be acted upon administratively (e.g., unnecessary calls to victims, traffic stops to look at a woman, looking in windows, sexting, and sexual harassment). Aviva highlighted portions of the guide, which introduces the issue of sexual offenses and misconduct by emphasizing to law enforcement executives that the problem warrants the full attention of law enforcement leadership, because it represents a grave abuse of authority and violation of the civil rights of those victimized.⁴²

³⁹ IACP's Leadership Institutes on Violence Against Women promote an enhanced commitment to violence against women crimes among sworn U.S. law enforcement executives and assist these leaders in developing proactive strategies for their agencies to address violence against women. IACP developed the institutes in collaboration with OVW. This initiative reflects partnership and shared commitment of IACP and OVW in the efforts to bring crimes of violence against women to the forefront of policing. For more information on these institutes, see the Leadership Institute on Violence Against Women page of IACP's website at <http://www.iacp.org/Leadership-Institute-on-Violence-Against-Women>.

⁴⁰ IACP strongly recommends all agencies adopt the Law Enforcement Oath of Honor. Having officers take an oath reconfirms the significance of integrity in the agency and brings the profession together to show the vast majority of officers not only are good, decent individuals, but also will step forward to stop unethical acts by any members of the profession. For more information on the oath, see <http://www.iacp.org/What-is-the-Law-Enforcement-Oath-of-Honor>.

⁴¹ *Addressing Sexual Offenses & Misconduct by Law Enforcement: An Executive Guide* at: <http://www.theiacp.org/Portals/0/pdfs/AddressingSexualOffensesandMisconductbyLawEnforcementExecutiveGuide.pdf>.

⁴² According to 18 U.S.C. § 241, it is unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate another person in the free exercise of any right or privilege provided to another by the Constitution or laws of the United States. Similarly, 18 U.S.C. § 242 makes it a crime for a person who is acting under the color of law to willfully deprive another person of any right or privilege provided to another by the Constitution or laws of the United States. Under § 242, acts performed under the "color of law" include those conducted by federal, state,

The guide defines law enforcement sexual misconduct as any behavior by an officer that takes advantage of the officer's position to misuse authority and power in order to commit a sexual act, initiate sexual contact with another person, or respond to a perceived sexually motivated cue from another person. It also includes any communication or behavior that would likely be construed as lewd, lascivious, inappropriate, or conduct unbecoming an officer and violates general principles of acceptable conduct common to law enforcement.

In addition to defining sexual misconduct by law enforcement and the potential liability for such misconduct, the guide also lays out leadership actions to prevent sexual misconduct:

- Putting into place a sexual misconduct policy that clearly states there will be no sexual harassment, no on-duty sexual activity or behavior of any kind (even when initiated by a citizen), and no sexual activity or behavior with anyone the officer has exercised authority over.
- Exploring department climate and culture, implementing the policy, and conducting training on the policy.
- Implementing hiring and promotional screening that incorporates checking background for intimate partner violence, sexual deviance, gender bias, etc.

Finally, Aviva noted additional IACP products that could aid law enforcement leadership:

- Model policies on the law enforcement response to sexual assault, domestic violence, and stalking.⁴³
- A sexual assault supplemental report form recommended for reporting, recording, and investigating.⁴⁴
- Supervisor checklists for reviewing patrol reports of sexual assault, domestic violence, strangulation, violation of protection orders, and stalking.⁴⁵

Aviva explained that a **guide** for addressing sexual offenses and misconduct by law enforcement officers was written instead of a **model policy** because the producers of the guide were trying to think more broadly than a specific policy to get more traction. A guide gets people thinking. Facilitator Tom Tremblay reported that the guide was more helpful than a policy in guiding conversation in his community.

However, another participant wondered about the seeming disconnect in local departments with leadership who are familiar with the IACP model policies, but don't actually have these policies in place. Aviva pointed out that police culture reflects our society – we've been turning a blind eye to gender bias in the law enforcement response and to sexual misconduct by law enforcement officers. How important are we making this issue in our agencies and in our communities?

and local law enforcement officials within their lawful authority and any act conducted while the official is pretending to act in accordance with his or her official duties. Types of misconduct covered by these laws include: excessive force, sexual assault, intentional false arrest, and intentional fabrication of evidence resulting in loss of liberty to another. Enforcing these provisions does not require that any racial, religious, or other discriminatory motive exists.

⁴³ See the Model Policies page at <http://www.iacp.org/Model-Policies-Alphabetical-Order>.

⁴⁴ The *Sexual Assault Supplemental Report Form* can be found at <http://www.theiacp.org/Portals/0/pdfs/SexualAssaultSupplementalReportForm.pdf>.

⁴⁵ The checklists can be found by using the search box on the E-Library page of IACP's website at <http://www.iacp.org/ELibrary>.

Another participant asked how to incorporate attention to victim safety and victim advocacy into law enforcement policy, with law enforcement unions in the mix of agencies that impact law enforcement policy. Aviva said that during IACP's *Leadership Institutes on Violence Against Women*, staff and faculty have participants act through that scenario – not just what should be in policy, but how to implement it, how to utilize victim advocates, and so on. A law enforcement participant and member of the Institute faculty felt that the IACP institutes are transformative. He has seen participants inspired, and has received calls from community members reporting positive developments in law enforcement leadership after participation in the institutes. In addition to training, another participant suggested that we could learn from sexual harassment policies and relationships with unions in settings other than law enforcement.

Discussants broke into small groups and responded to a series of questions that were posed by the facilitators. Below are the questions and responses from the groups from the report back session at the conclusion of the small group session.

Small Group Discussion: What are the conditions of the law enforcement job that might inadvertently create opportunities for sexual misconduct/assault, domestic violence and/or stalking?

- Access to vulnerable populations.
 - Undocumented immigrants, including those in contact with border control
 - Non-English speakers
 - Youth of color
 - LGBTQ people
 - Sex workers
 - People with cognitive or physical disabilities
 - People with mental health issues
 - Poor women
- Access to victims' personal information.
- Inherent ability to use force combined with solo nature of the job.
- Police culture.
 - Male-dominated culture - boys will be boys – a fraternity - “choirboy”⁴⁶ culture.
 - Law enforcement agencies are often “closed societies” – issues get pushed under the rug – honor code – secrecy.
 - Police rely on each other to stay safe - a life and death bond.
 - Training on how to use force.
 - Inherent ability to “put hands on” someone, and tools to restrain.
 - Uneven power dynamic between police and civilians.

⁴⁶ *The Choirboys* is a controversial 1975 work of fiction written by police-officer-turned-novelist Joseph Wambaugh about effects of urban police work on young officers seen through exploits of night shift officers who conduct end-of-shift get-togethers they euphemistically call “choir practices.” The choir practices involve heavy drinking, complaints about superior officers, and war stories. Wambaugh's officer portrayals are stereotypes of varied types found in police departments. *The Choirboys* is considered an indictment of police hierarchy, in the choirboys' dislike and distrust of command officers, and in many of their superiors' apathetic attitudes about pressures officers deal with.

- Lack of leadership.
 - How many chiefs know what happens after 5:00 p.m.? A leader should lead through all shifts.
 - Leaders have to go beyond signing policies. Leaders have to open the policy, read the policy, know the policy, and enforce the policy.
- Union bargaining has weakened accountability efforts.
- Double standard between high ranking and line officers hurts accountability efforts.
- Minimal supervision.
- Ineffective means of rooting out problem officers at the front end.
- Lack of policies regarding non-police officers riding in police vehicles.

Small Group Discussion: What accountability measures can agencies put in place to minimize the potential for misconduct?

- Address the culture, not just the individual.
- Leadership versus management – proactively leading on the issues instead of retroactively managing problems.
- Prioritization of sexual assault and domestic violence within the agency.
- Need a policy that:
 - Must be enforced
 - Must design progressive discipline.
- Increase training of supervisors on what to pay attention to as signs of police-involved misconduct and to intervene immediately if bias or misconduct is detected.
- Train supervisors to recognize bias in reports. If bias is detected, immediate supervision should be initiated. The first step is to ask/determine what’s going on (difficult case, bias, burnout)?
- GPS tracking and other technology (body cameras - not a panacea but one tool) to monitor policy activity of police cars.
- Checks:
 - Spot checks by supervisors
 - Stings set by police departments to instill a sense of accountability
 - Audits
 - Incident reviews
 - Incidents often happen multiple times at the same place – allocate appropriate resources effectively within departments. Leadership needs to set the tone to create buy-in.
- Train officers to recognize what abuse of power looks like.
- Using body camera or squad car video footage as teachable moments.
- Add UCR requirement to report officer-involved misconduct. Will justify spot checks, and other supervisory actions in response to officer-involved sexual assault and domestic violence.

Small Group Discussion: What support, policy components, and/or protocols can be implemented to support law enforcement agency members who are victims of sexual assault or domestic violence by another agency member? What procedures can be implemented to create safe spaces for victims internally? What information should be presented to members in policy regarding members who’ve been victimized or who’ve perpetrated?

- Reactive measures:
 - Allow officer who has been victimized to have shift changes.

- Complaint procedure visible to the public.
- Family members don't want an officer/perpetrator to lose pension - a whistleblower statute may be needed to protect the pension for the victim.
- Spot checks by supervisors.
- Civilian review board for oversight.
- Victim surveys.
- Officers often don't ask for help.
 - Not asking for help makes it difficult to come up with an answer.
 - We can't give them the same brochure we hand out to "regular" victims.
- Proactive measures:
 - Address lack of community interest.
 - Zero tolerance policies for sexual harassment and assault, both within law enforcement and the larger community.
 - Add attention to these issues to union negotiation.
 - Address apathy, lack of knowledge, and lack of training at top levels.
 - Expand supervision – there currently is often a lack of supervision of these issues.
 - Ensure staff is informed of and adhering to policies both when coming on board and on an annual basis.
 - Require new staff to sign after reading policy.
 - When conducting a background check of potential new hires, conduct further investigation for those who've left other departments.⁴⁷
 - Provide officers with specific guidance regarding victim vulnerability.
 - Ask questions about sexual harassment on promotional exams.
 - Seek victim or community input, such as focus groups or surveys.

Large Group Discussion: What pushback do you anticipate in addressing gender bias in the law enforcement response to sexual assault and domestic violence? How do we incorporate attention to gender bias in the law enforcement response into the hiring and promotional processes?

Several participants immediately responded that they anticipate pushback from police unions and professional guilds about any punishment of officers. When unions have nothing to negotiate for wages, they negotiate how officers are held accountable. We need to educate police chiefs how to deal with these situations with unions, and get buy-in from mid-level supervisors such as sergeants and FTO's.

Participants stated that national, or industry, standards are needed for background checks to prevent the law enforcement job-hopping that has been seen in some of the recent DOJ and national news outlet investigations into police violations of civil rights.

⁴⁷ Law enforcement officers accused of sexual misconduct have jumped from job to job — and at times faced fresh allegations that include raping women — because of a tattered network of laws and lax screening that allowed them to stay on the job. A yearlong Associated Press investigation into sex abuse by police officers, jail officers, sheriff's deputies, and state law enforcement officials uncovered a broken system for policing bad officers, with significant flaws in how agencies deal with those suspected of sexual misconduct and glaring warning signs that go unreported or get overlooked. Nomaan Merchant, *Broken System Lets Problem Officers Job-hop*, HERALD-DISPATCH: HUNTINGTON, WV, November 2, 2015. http://www.herald-dispatch.com/news/ap-broken-system-lets-problem-officers-job-hop/article_f99e6a90-81e5-11e5-8fb6-9b619b3cc3fc.html

Several cautioned that we have to remember differences between large and small agencies. Large agencies have assessment centers; small agencies don't. Firing a couple of officers may not have a big impact on large agencies, but in small agencies a couple officers may be 25% of a department.

Large group discussion: What about diversity in hiring panels, promotional panels, or civilian review panels?

Participants said that diversity in race and gender makes a difference in how these panels operate. When a facilitator asked a follow-up question about professional diversity (such as including victim advocates), participants responded that that would be helpful, but those included should have an understanding of law enforcement and a goal of improving law enforcement.

Conclusion

Facilitators wrapped up the roundtable by highlighting themes from participant discussions. It is evident that we need to improve and pay continuing attention to how the law enforcement response to communities of color, LGBTQ communities and other communities that have not been served well intersects with gender bias. We need to address police culture and its role in compromising the response to sexual assault and domestic violence. Of significance is the unique access law enforcement has to vulnerable populations, which must be effectively monitored. Law enforcement supervisors must be trained to spot gender bias and respond quickly to early warning signs, and should be alert to ways to utilize technology and data analysis in these efforts. Finally, we should pay attention to the voices of female officers, and would do well to work to retain them and encourage an increase in their ranks.

OVW Principal Deputy Director Bea Hanson closed by acknowledging that a next step in collaboration between advocates and law enforcement is building on relationships already formed, as neither can successfully address these issues alone. It is historic to meet to talk about gender bias in this collaborative manner. OVW will use the information from this roundtable to articulate technical assistance priorities to implement the DOJ Guidance, and OVC will be funding work in this area as well. This is the beginning of long-term work together.

Appendix 1: Roundtable Participants

Carol Adams

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Joanne Archambault

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Addy, WA

Barbara Arnwine

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Margaret Bassett

Asst. Prof., and Director of Expert Witness Prog.
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Irene Burks

Assistant Inspector General
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Palmer Park, MD

Joe Carter

Lieutenant, and Operations Commander
City of Falls Church Police Department
Falls Church, VA

Anthony Craig

Corporal
Putnam County Sheriff's Department
Winfield, WV

Alaric Fox

Colonel
Connecticut State Police
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Gretta Gardner

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DC Coalition against Domestic Violence,
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Julie Goldscheid

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Laura Goodman

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Grace Huang

Director
Asian Pacific Institute on Gender Based Violence
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Carrie Hull

Detective, and Program Director
Ashland Police Department
You Have Options Program
Medford, OR

Lisalyn Jacobs

Chief Executive Officer
Just Solutions
Arlington, VA

Hermina Kramp

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Anne Menard

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Kelly Miller

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ID Coalition Against Sexual & Domestic Violence
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St. Thomas Aquinas College
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Heidi Notario

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Resource Sharing Project
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Thad Pool

Sergeant
Winona Minnesota Police Department
Winona, MN

Qudsia Raja

Policy Director
National Domestic Violence Hotline
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Andrea Ritchie

Senior Soros Justice Fellow
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Jessica Shaw

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Chestnut Hill, MA

Cynthia Totten

Senior Program Director
Just Detention International
Washington, DC

Carol Tracy

Executive Director
Women's Law Project
Philadelphia, PA

Tom Tremblay

Consultant
Tom Tremblay Consulting & Training
Ft. Meyers, FL

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