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‘Trauma Informed’ Represents a Threat to Law Enforcement, and to the Entire Criminal Justice System

January 25, 2021

Dear Police Chief Neal:

My name is Edward Bartlett. I am the president of the Coalition to End Domestic Violence, a non-profit, non-partisan group working to reform domestic violence policies so they are based on best practices, evidence, and science.

Last November, we sent you a letter warning about state domestic violence coalitions that have endorsed the “defund the police” movement. In the letter, we also highlighted how “trauma informed” methods are threatening the conduct of impartial police investigations.

“Trauma-informed” methods serve to bias the investigation, and subsequent criminal justice responses, in three ways:¹

1. The complainant is presumed, without verification, to have experienced a serious, life-threatening assault.
2. Any gaps or inconsistencies in the complainant’s testimony are automatically ascribed to the “trauma” of the incident.
3. The investigator is discouraged from considering the possibility of mental illness, a false allegation, or alcohol/drug impairment.

In this letter, I want to explain the six reasons why the “trauma informed” investigative method is a serious threat to the integrity of law enforcement, and to our overall system of justice....

¹ Wendy McElroy. The metastasizing cancer of trauma-informed justice.
http://www.ifeminists.com/e107_plugins/content/content.php?content.1488

1. Flatly Dishonest

Numerous scientific studies show that persons who experience traumatic events such as sexual assault usually have an *accurate* recollection of the incident:

- Harvard University psychology professor Richard McNally: “Extreme stress enhances memory for the central aspects of an overwhelming emotional experience.”²
- Neuroscientists Sujeeta Bhatt and Susan Brandon: “There is some evidence that fear memories are richer in sensory details.”³
- Daniel Reisberg, Professor of Psychology at Reed College: “These data suggest that traumatic events are likely to be well remembered.”⁴

But a widely circulated training document on trauma-informed investigations for police officers says the opposite:⁵

“Trauma victims often omit, exaggerate, or make up information when trying to make sense of what happened to them or to fill gaps in memory.”

Similar statements are often made at presentations about the conduct of sexual assault investigations.^{6,7} Such claims are flatly dishonest.

2. ‘Junk Science’

Numerous groups and scientists have criticized trauma-informed theory. For example, a report by the United States Air Force Office of Special Investigations summarized its concerns with “trauma-informed” methods:⁹

“We believe it would be inappropriate and irresponsible to discontinue the use of a robust, well-studied, effective, and empirically-validated interviewing method that is supported by the latest scientific research (the Cognitive Interview), in favor of an interviewing method that is loosely-constructed, is based on flawed science, makes unfounded claims about its effectiveness, and has never once been tested, studied, researched or validated.”

² Richard McNally. *Remembering Trauma*, 2003.

³ Sujeeta Bhatt and Susan Brandon. *A Review of ‘Understanding the Neurobiology of Trauma and Implications for Interviewing Victims.’* 2019. <http://www.prosecutorintegrity.org/wp-content/uploads/2020/03/Review-of-Neurobiology-of-Trauma-3.20.2020.pdf>

⁴ Daniel Reisberg. *Emotion’s (Varied) Impact on Memory for Sexual Misconduct*, page 22. 2020. https://www.researchgate.net/publication/341027751_Emotion's_Varied_Impact_on_Memory_for_Sexual_Misconduct

⁵ Busch-Armendariz, N.B., Sulley, C., & Hill, K. *Blueprint for Campus Police: Responding to Sexual Assault*, 2016, page 90 https://sites.utexas.edu/idvsa/files/2019/03/Blueprint_February-2016_FINAL_2-3.pdf

⁶ Sexual Assault Kit Initiative. *The Neurobiology of Trauma: Webinar Series.* <https://sakitta.org/toolkit/index.cfm?fuseaction=tool&tool=48>

⁷ National Institute of Justice. *The Neurobiology of Sexual Assault: Implications for Law Enforcement, Prosecution, and Victim Advocacy.* 2012. <https://nij.ojp.gov/media/video/24056>

⁸ Center for Prosecutor Integrity. *Trauma Informed: Junk Science.* <http://www.prosecutorintegrity.org/sa/trauma-informed/>

⁹ United States Air Force. *Report on the Use of the Forensic Experiential Trauma Interview (FETI) Technique.* 2015. <http://www.prosecutorintegrity.org/wp-content/uploads/2019/03/AIR-FORCE-FETI-STUDY.pdf>

Journalist Emily Yoffe likewise concludes:¹⁰

“The result is not only a system in which some men are wrongfully accused and wrongfully punished....University professors and administrators should understand this. And they, of all people, should identify and call out *junk science*.”

3. Ethics Codes

Trauma informed methods worsen the problems of investigative “tunnel vision” and confirmation bias. One Attorney General report explains,

“Tunnel vision often originates during the investigative stage. As later processes in the criminal justice system feed off the information generated at this stage, investigative tunnel vision will often set off a chain reaction that reverberates throughout the system.”¹¹

The need for investigative impartiality and honesty is so critical that it is emphasized in law enforcement ethics codes:

- International Association of Chiefs of Police: “The law enforcement officer shall be concerned equally in the prosecution of the wrong-doer and the defense of the innocent. He shall ascertain what constitutes evidence and shall present such evidence impartially and without malice.”¹²
- National Association of Legal Investigators: The investigator “Will make all reporting based upon truth and fact and will only express honest opinions based thereon”¹³
- Local standards such as the California Law Enforcement Code of Ethics: “I will enforce the law courteously and appropriately without fear or favor, malice or ill will...”¹⁴

4. Prosecutor Relationships

Wrongful convictions are a stain on our criminal justice system. To date, the National Registry of Exonerations has documented over 2,700 wrongful convictions.¹⁵ A recent report revealed that prosecutor misconduct was implicated in 30% of these wrongful convictions.¹⁶ The withholding of relevant evidence, often referred to as “Brady” information, was reported to be a common type of prosecutor misconduct.

¹⁰ Emily Yoffe. The Bad Science Behind Campus Response to Sexual Assault. The Atlantic, Sept. 8, 2017. <https://www.theatlantic.com/education/archive/2017/09/the-bad-science-behind-campus-response-to-sexual-assault/539211/>

¹¹ Bruce MacFarlane. Wrongful Convictions: The Effect of Tunnel Vision and Predisposing Circumstances in the Criminal Justice System. Page 45. https://www.attorneygeneral.jus.gov.on.ca/inquiries/goudge/policy_research/pdf/Macfarlane_Wrongful-Convictions.pdf

¹² <http://www.iacp.org/>

¹³ <http://nalionline.org/become-a-member/code-of-ethics/>

¹⁴ https://post.ca.gov/Portals/0/post_docs/regulationnotices/2018/2018-32_TPRA.pdf

¹⁵ National Registry of Exonerations. <https://www.law.umich.edu/special/exoneration/Pages/about.aspx>

¹⁶ National Registry of Exonerations. Government Misconduct and Convicting the Innocent. Sept. 1, 2020. http://www.law.umich.edu/special/exoneration/Documents/Government_Misconduct_and_Convicting_the_Innocent.pdf

In order to discourage this type of malfeasance, law enforcement investigators should conduct all investigations in an unbiased manner. Investigators should present cases to prosecutors that include all evidence, including evidence that points to innocence, before a criminal filing or indictment is sought.

But trauma-informed training classes may pressure investigators to become *de facto* agents for the prosecution. Such classes often use phrases such as achieving a “successful prosecution,” an expression that means the suspect is convicted of the crime, even if the person is innocent.

One Department of Justice program endorses the concept of “conviction-oriented” investigations.¹⁷ Taking the lack of logic one step further, the organization, End Violence Against Women International instructs law enforcement to conduct investigations with the aim of assisting the prosecutor to counter “potential defense strategies.”

5. Lawsuits

Biased investigations invite lawsuits by aggrieved citizens. Here are two examples....

- In South Carolina, the City of Charleston settled a lawsuit with a man who had been wrongfully arrested and charged with rape. The suit claimed the investigator had evidence contradicting the complainant’s statement, and the investigative report lacked sufficient evidence to back up the rape allegation. A jury acquitted the man after a four-day trial. The man was awarded \$85,000.¹⁹
- In New York, a man was accused of non-consensual sexual assault. He later filed a lawsuit against Chantelle Cleary, who had conducted the investigation, alleging bias. In the decision in favor of the accused man, Judge Molly Reynolds Fitzgerald strongly criticized the investigator who “admittedly altered the facts as reported to her.” The judge concluded, “An impartial investigation performed by bias-free investigators is the substantive foundation” of a legal proceeding.²⁰

6. Gateway to ‘Start by Believing’

Use of trauma-informed methods can pave the way to the use of other investigative methods that are even more biased, such as “Start by Believing.”

¹⁷ Office for Victims of Crime Training and Technical Assistance Center. Law Enforcement Response: Approaching Your Work with a Trauma-Informed Lens. May 29, 2019.

https://www.ovcttac.gov/ovcttac_assets/eblast/ExpertQA-Eblast-May-2019.HTML

¹⁸ EVAWI Training Bulletin: Start by Believing; Participation of Criminal Justice Professionals, 2016, <http://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=789>

¹⁹ City of Charleston pays \$85K to settle false arrest suit. February 21, 2019. <https://www.live5news.com/2019/02/21/city-charleston-pays-k-settle-false-arrest-suit/?outputType=amp>

²⁰ Alexander M. v. Chantelle Cleary. State of New York Supreme Court, Appellate Division. Decided November 25, 2020. <http://decisions.courts.state.ny.us/ad3/Decisions/2020/528959.pdf>

The leading proponent of “Start by Believing” is a group known as End Violence Against Women International (EVAWI). Using Orwellian language, EVAWI insists that Start by Believing “is the starting point for a fair and thorough investigation.”²¹ EVAWI also instructs investigators to write their reports using the “language of non-consensual sex.”²² Such advice obviously serves to undermine impartial and fair investigations.

The Arizona Governor’s Commission to Prevent Violence Against Women took a stand against this type of investigation. The Commission issued a letter advising Arizona’s criminal justice agencies to reject “Start by Believing” methods.²³ The letter explains,

“Recently, several serious concerns have surfaced regarding the Start By Believing campaign and whether it is appropriate for criminal justice agencies and others involved in the criminal justice process to participate. The concern is that the interjection of “belief” into the law enforcement investigation creates the possibility of real or perceived confirmation bias.”

The letter then highlights how use of “Start By Believing” methods could backfire during the trial:

“In cases that proceed to trial, defense counsel likely could impugn investigators and claim that alternative versions of the crime were ignored and/or errors were made during the investigation....The prosecutor in the case explained, “the [Start By Believing] verbiage is what’s killing everybody in court.”

The directive concludes:

“Law enforcement agencies, and other agencies co-located in advocacy centers, are strong cautioned against adopting Start By Believing.”

Because of its importance, relevant excerpts from the Arizona directive are attached to this letter.

Radical Transformation

Trauma-informed ideology seeks to redefine the role of the investigator from an impartial seeker of evidence, into an unquestioning advocate for the complainant and a handmaiden of the prosecution. In the words of due process expert Wendy McElroy, trauma-informed ideology “converts the police into social workers or therapists and erases the due process upon which traditional Western justice hinges.”

²¹ EVAWI, Law Enforcement Action Kit.

<https://www.startbybelieving.org/wp-content/uploads/2020/08/Law-Enforcement-Action-Kit.pdf>

²² EVAWI, Effective Report Writing: Using the Language of Non-Consensual Sex, 2019. Page 15.

<http://olti.evawintl.org/images/docs/REPORT%20WRITING%205-15-12.pdf>

²³ <http://www.prosecutorintegrity.org/wp-content/uploads/2019/10/AZ-Governors-Commission-on-SBB.pdf>

America's criminal justice system now stands at a crossroads. Either we return to the constitutionally rooted principles of due process, impartial investigations, and the presumption of innocence. Or we agree to a social justice ideology that insists an accusation should be tantamount to a conviction.

Because trauma-informed investigations represent a threat to our entire criminal justice system, the Coalition to End Domestic Violence urges you to share this pledge with officers in your department and other criminal justice professionals that you work with:

I PLEDGE TO:

1. Take all allegations seriously, and treat both complainants and suspects with dignity and respect.
2. Work to assure that all investigations conducted by my department are impartial, fair, and unbiased.
3. Not implement any investigative philosophies or methods that make prior assumptions whether or not the complainant has been "traumatized."

If you would like to be included in our email list of interested law enforcement professionals, feel free to send a request to me at info@EndToDV.org

Sincerely,

Edward E. Bartlett, PhD

President

Enclosures:

1. Wendy McElroy. The metastasizing cancer of trauma-informed justice.
2. State of Arizona Office of the Governor. Guidance on Start By Believing

The Metastasizing Cancer of Trauma-Informed Justice

by Wendy McElroy

January 10, 2021

“Trauma-informed Justice” has percolated in academia and activism for decades. It is now knocking on the door of local police departments to demand changes that could upend the basics of how people relate to law enforcement. The approach converts the police into social workers or therapists and erases the due process upon which traditional Western justice hinges. It also increases the odds of wrongful convictions.

Trauma-informed justice—sometimes called “victim-centered” justice—involves an interview methodology in which the police prioritize empathy for an accuser who is automatically considered to be a victim. Rooted in trauma-informed feminist therapy of the 1960s, the methodology is especially favored for allegations of sexual abuse, such as domestic violence, where the accusers who come forward are overwhelmingly female.

According to trauma-informed trainers, the police should conduct investigations according to three broad principles:

1. The accuser is automatically assumed to be a victim even before any verification process occurs; the accused is automatically assumed to be guilty based on nothing more than an allegation. This dynamic reflects a core belief of the #MeToo movement: “Believe All Women.” The leading proponent of the trauma-informed approach is the End Violence Against Women International (EVAWI) group which argues that “believing” accusers “is the starting point for a fair and thorough investigation.” If EVAWI is taken literally, however, then further investigation seems to be unnecessary. An accusation is proof of guilt is grounds for conviction. Why investigate?
2. Contradictions, memory gaps, and inconsistencies in an accuser’s testimony are symptoms of deep trauma and should not be seen as disprobative. A much-quoted guide to trauma-informed justice states, “Trauma victims often omit, exaggerate, or make up information when trying to make sense of what happened to them or to fill gaps in memory.” The true flaw in the process is said to be the police department’s approach which depends on what is called “peripheral information” -- for example, a suspect’s description and the time or place of an alleged attack. Instead, the police should focus on eliciting non-linear information from the accuser by establishing trust and interpreting her memories.
3. Factors that cast doubt on the allegation, such as an accuser’s history of false allegations or drug use, are not to be considered. This creates an enormous problem if the case goes to trial, of course. The Arizona Governor’s Commission to Prevent Violence Against Women issued a letter to Arizona’s criminal justice agencies to explain, “In cases that proceed to trial, defense counsel likely could impugn investigators and claim that alternative versions of the crime were ignored and/or errors were made during the investigation as a result of confirmation bias created by the ‘belief’ element of the Start By Believing campaign.”

Trauma-informed advocates abandon the ethical code of conduct spelled out by the International Association of Chiefs of Police. Article 10, Presentation of Evidence states, "The law enforcement officer shall be concerned equally in the prosecution of the wrong-doer and the defense of the innocent. He shall ascertain what constitutes evidence and shall present such evidence impartially and without malice." By this standard, everyone and their testimonies are to be treated equally.

Trauma-informed justice destroys the due process upon which Western criminal justice rests. The central principle of due process: an accused is innocent until proven guilty either by a standard of "clear and convincing evidence" or "beyond a reasonable doubt." There must be proof before there is guilt and, as a matter of logic if not of justice, the accuser bears the burden of proof because she is the one making an affirmative statement. Start by Believing inverts this principle and logic, eliminating Western justice in the process.

Unfortunately, the trauma-informed approach is gaining momentum with training courses for law enforcement seeming to spring up everywhere. Most are held at universities where trauma-informed procedures have dominated Title IX investigations for the last decade; these investigations address allegations of sexual misconduct on campus and a "believe the women" ideology dominates. The spread of FETI is yet another instance of social-justice policies spilling from campuses out onto Main Street.

Other factors contribute to the spread. A revolution in how law enforcement is perceived has occurred, with "Defund the Police!" being one of the loudest aspects. A righteous indignation at police brutality and immunity is fueling a rebellion against the status quo of law enforcement. Trauma-informed justice also grows because it is still grassroots; activists go directly to law enforcement agencies. This makes it largely invisible in the media and to the public from which it encounters little resistance....

Social workers and therapists may need to Start By Believing the person they seek to heal. But the police are not mental health workers; they deal in cold, hard facts that have no gender or race. Investigators need to discern what is true or false about a situation rather than respond emotionally to it. In the process, some officers make mistakes and some act with malice; officers are human beings with all the flaws of shared humanity. The incompetence or malfeasance of individuals must be remedied but neither one is an indictment of the principles of Western justice. Turning accusations into convictions only makes prisoners of innocent people.

Source: http://www.ifeminists.com/e107_plugins/content/content.php?content.1488



STATE OF ARIZONA
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY
GOVERNOR

DEBBIE MOAK
DIRECTOR

November 16, 2016

Guidance: *Start By Believing*

Governor's Commission to Prevent Violence Against Women

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

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

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

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

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

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

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

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

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

- The *Start By Believing* campaign is most appropriate for non-criminal justice agencies and others not involved in the criminal justice system. While investigations and interviews with victims should always be done in a respectful and trauma-informed manner, law enforcement agencies, and other agencies co-located in advocacy centers, are strongly cautioned against adopting *Start By Believing*. Should a law enforcement agency have interest in adopting *Start By Believing*, we strongly encourage that agency to consult and work in close collaboration with their county attorney. The discussions should include weighing the high possibility of challenges during criminal legal proceedings based on actual or perceived confirmation bias. If the county attorney has even the slightest concern with the potential legal challenges associated with the *Start By Believing* campaign, it should not be adopted by law enforcement within that jurisdiction.



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