

**SPECIAL REPORT**

**Defending Against ‘Victim-Centered’ Proceedings:  
Guide for Criminal Defense Attorneys**





## SAVE

Controversial “victim-centered” methods are being promoted throughout the criminal justice system. Victim-centered approaches also go by names such as “trauma-informed” and “Start By Believing.”

Trauma-informed methods, sometimes referred to as “Forensic Experiential Trauma Interviews,”<sup>1</sup> rely on the belief that victims of sexual assault and other abusive incidents are so traumatized that it impairs their ability to resist the assault. Psychologist David Baldwin claims, for example:

“The fear-induced psychophysical states that impact a victim’s ability to react at the onset of or during a sexual assault are not unique to any one type of victim. They are seen in situations of extreme fear and (perceived) inescapable danger ranging from rape to combat... These psychophysical states are automatic, uncontrollable responses, the purpose of which is self-preservation.”<sup>2</sup>

“Start By Believing” takes the concept one step further, telling investigators that a presumption of guilt “is the starting point for a fair and thorough investigation,”<sup>3</sup> and even urging investigators to alter the investigative report so the incident does “not look like a consensual sexual experience”<sup>4</sup>

Such victim-centered methods are inherently unjust because they presume the existence of a “victim,” serve to negate the presumption of innocence, and increase the likelihood of a wrongful conviction.

### *Police Officers, Prosecutors, and Judges*

Victim-centered philosophy is being embraced by growing numbers of police officers, prosecutors, and even judges.

For police officers, “victim-centered” methods bias the conduct of criminal investigations in a number of ways:

- “Cherry-pick” the evidence in order to increase the likelihood of a guilty verdict
- Reflexively attribute inconsistencies in the complainant’s statements to life-threatening trauma
- Avoid asking probing or detailed questions in order to not “retraumatize the victim”

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<sup>1</sup> Forensic Experiential Trauma Interviews. [www.certifiedfeti.com](http://www.certifiedfeti.com)

<sup>2</sup> David Baldwin, *Primitive mechanisms of trauma response: An evolutionary perspective on trauma-related disorders*, Neuroscience and Biobehavioral Reviews. (2013). <https://pubmed.ncbi.nlm.nih.gov/23792048/>

<sup>3</sup> End Violence Against Women International. *Start By Believing: Law Enforcement Action Kit*. Page 2. (2006) <http://www.prosecutorintegrity.org/wp-content/uploads/2021/02/EVAWI-Effective-Report-Writing-2006.pdf>

<sup>4</sup> End Violence Against International. *Effective Report Writing: Using the Language of Non-Consensual Sex*. Pages 15-16. (2006). <http://www.prosecutorintegrity.org/wp-content/uploads/2021/02/EVAWI-Effective-Report-Writing-2006.pdf>

Biased, “victim-centered” police investigations have been found to contribute to 35% of all wrongful convictions.<sup>5</sup> In one Connecticut case, police misconduct cost Scott Lewis more than 18 years of his life and the City of New Haven at least \$9.5 million.<sup>6</sup> Not surprisingly, such travesties have become the focus of media attention.<sup>7</sup>

Prosecutors increasingly are relying on victim-centered theories. One of the common claims in such cases is the complainant experienced “tonic immobility,” or otherwise was unable to resist the impending assault. The National Association of Criminal Defense Lawyers has refuted the notion that sexual assault victims routinely “freeze” and are unable to accurately recall the details of the assault:

“The alleged neuro-biological explanation for the reaction is merely a false veneer designed to distract the reader and suggest this is some new science or that it is a frequent occurrence. It is not.”<sup>8</sup>

Judges are being urged to adopt victim-centered methods, as well:

- The National Child Traumatic Stress Network has issued a “Bench Card for the Trauma-Informed Judge.”<sup>9</sup>
- The National Center for State Courts lists several trauma-informed resources on its website, such as, “Essential Components of Trauma-informed Judicial Practice: What Every Judge Needs to Know about Trauma.”<sup>10</sup>

The National Council of Juvenile and Family Court Judges has advanced trauma-informed concepts even farther. In 2015 the NCJFCJ passed a Resolution on the topic.<sup>11</sup> The organization’s website states,

<sup>5</sup> National Registry of Exonerations. *Government Misconduct and Convicting the Innocent*, (2020). [https://www.law.umich.edu/special/exoneration/Documents/Government\\_Misconduct\\_and\\_Convicting\\_the\\_Innocent.pdf](https://www.law.umich.edu/special/exoneration/Documents/Government_Misconduct_and_Convicting_the_Innocent.pdf)

<sup>6</sup> Connecticut ACLU. *Brady Lists Track Police with Credibility Issues*. (Sept. 18, 2020). <https://www.acluct.org/en/news/brady-lists-track-police-credibility-issues-were-requesting-lists#:~:text=Across%20the%20country%2C%20Brady%20lists,%2C%20blatant%20racism%2C%20and%20more.&text=Many%2C%20though%20not%20all%2C%20involved%20police%20misconduct>

<sup>7</sup> Mark Nichols and Steve Reilly. *Hundreds of police officers have been labeled liars. Some still help send people to prison*. USA Today. (October 15, 2019). <https://www.usatoday.com/story/news/2019/10/15/brady-lists-police-officers-dishonest-corrupt-still-testify-investigation-database/3986273002/>

<sup>8</sup> National Association of Criminal Defense Lawyers. *NACDL Opposes Affirmative Consent: Resolution ABA Resolution 114*. (July 25, 2019). <https://www.nacdl.org/getattachment/7e0ec516-a34a-487a-a7fc-51d4e54a48c9/nacdl-position-on-aba-resolution-114.pdf>

<sup>9</sup> National Child Traumatic Stress Network, *Bench Card for the Trauma-Informed Judge*. (2013). <https://www.nctsn.org/resources/nctsn-bench-cards-trauma-informed-judge>

<sup>10</sup> SAMHSA. *Essential Components of Trauma-informed Judicial Practice: What Every Judge Needs to Know about Trauma* (2013). [https://www.nasmhpd.org/sites/default/files/DRAFT\\_Essential\\_Components\\_of\\_Trauma\\_Informed\\_Judicial\\_Practice.pdf](https://www.nasmhpd.org/sites/default/files/DRAFT_Essential_Components_of_Trauma_Informed_Judicial_Practice.pdf)

<sup>11</sup> National Council of Juvenile and Family Court Judges. *NCJFCJ Resolution Regarding Trauma-Informed Juvenile and Family Courts*. (2015) <https://onlinelibrary.wiley.com/doi/full/10.1111/jfcj.12054>

“The NCJFCJ’s work with courts is informed by a focus on trauma using a universal precautions approach that *assumes* children and families involved in the court system have experienced some form of trauma that may be mitigated through court-based interventions.”<sup>12</sup> [emphasis added]

Such statements serve to weaken the presumption of innocence for the accused and impair judicial impartiality.

### AUTHORITATIVE STATEMENTS

Numerous statements by government bodies and experts refute the tenets of victim-centered philosophy. These are a few of many examples:

- Arizona Governor’s Commission to Prevent Violence Against Women:<sup>13</sup>
  - “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.”
- Open Letter Signed by 158 Professors and Legal Experts Regarding Victim-Centered Practices:<sup>14</sup>
  - “The undersigned professors and criminal justice experts hereby call upon lawmakers, federal agencies, criminal justice officials, and college administrators to promptly discontinue the use of victim-centered, trauma-informed, and believe the victim practices that threaten to subvert the objective collection and presentation of evidence in administrative, civil, and criminal sexual assault proceedings.”
- Sujeeta Bhatt and Susan Brandon: A Review of ‘Understanding the Neurobiology of Trauma and Implications for Interviewing Victims:’ Are We Trading One Prejudice for Another?<sup>15</sup>
  - “The impacts of trauma on memories and recall are widely variable. The stress accompanying and resulting from trauma may produce strong memories, impair memories, have no effect on memories, or increase the possibility of false memories.”

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<sup>12</sup> National Council of Juvenile and Family Court Judges. *Trauma-Informed Courts*.

<https://www.ncjfcj.org/child-welfare-and-juvenile-law/trauma-informed-courts/>

<sup>13</sup> Governor’s Commission to Prevent Violence Against Women. *Guidance: Start By Believing*. (November 16, 2016). <http://www.prosecutorintegrity.org/wp-content/uploads/2019/10/AZ-Governors-Commission-on-SBB.pdf>

<sup>14</sup> *Open Letter Signed by 158 Professors and Legal Experts Regarding Victim-Centered Practices* (2018) <http://www.saveservices.org/wp-content/uploads/VCI-Open-Letter-7.20.18.pdf>

<sup>15</sup> Sujeeta Bhatt and Susan Brandon. *Review of ‘Understanding the Neurobiology of Trauma and Implications for Interviewing Victims:’ Are We Trading One Prejudice for Another?* (2019) <http://www.prosecutorintegrity.org/wp-content/uploads/2019/09/Review-of-Neurobiology-of-Trauma-9.1.2019.docx>

- Air Force Office of Special Investigations: Report on the Use of the Forensic Experiential Trauma Interview (FETI) Technique within the Department of the Air Force:<sup>16</sup>
  - “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.”
- Ontario Superior Court Justice Anne Malloy:<sup>17</sup>
  - “Although the slogan “Believe the victim” has become popularized of late, it has no place in a criminal trial. To approach a trial with the assumption that the complainant is telling the truth is the equivalent of imposing a presumption of guilt on the person accused of sexual assault and then placing a burden on him to prove his innocence. That is antithetical to the fundamental principles of justice enshrined in our Constitution and the values underlying our free and democratic society.”

Other authoritative statements can be found in several expert reports.<sup>18</sup>

This Special Report, written for use by criminal defense attorneys, outlines strategies how to identify and counter a legal proceeding driven by victim-centered philosophy. The Report is organized into the following sections:

- Initial Fact-Finding
- Voir Dire
- Opening Statement
- Cross Examination: Complainant
- Cross Examination: Investigator
- Cross Examination: Prosecution Expert Witness
- Closing Argument
- Defending Against Victim-Centered Methods on Campus

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<sup>16</sup> Letter to Sen. John McCain, (October 13, 2015). <https://drive.google.com/file/d/10wN-5j23K3vNolsOjcc5iyW-LEUHLrYL/view>

<sup>17</sup> R v. Nyznik, et.al, Superior Court of Justice, Ontario (Decided Aug. 9, 2017) <https://www.thestar.com/news/gta/2017/08/09/the-acquittal-of-three-cops-accused-of-sexually-assaulting-another-isa-victory-for-victims-dimanno.html>

<sup>18</sup> See: SAVE: ‘Believe the Victim:’ *The Transformation of Justice* (2018) <http://www.saveservices.org/wp-content/uploads/SAVE-Believe-the-Victim.pdf> ; ATIXA: *Position Statement on Trauma-Informed Training and the Neurobiology of Trauma* (2019) <https://cdn.atixa.org/website-media/atixa.org/wp-content/uploads/2019/08/20123741/2019-ATIXA-Trauma-Position-Statement-Final-Version.pdf> ; and C. Garrett: *Trauma-Informed Theories Disguised as Evidence* (2019) <https://www.facecampusequality.org/s/Trauma-Informed-Theories-Disguised-as-Evidence-5-2.pdf> .

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Much of this Report consists of verbatim questions and statements to make both before and during the trial. These statements need to be adapted to the facts of the case, local legal standards, and receptivity of jurors to the arguments.

### DEFENSE STRATEGIES

#### Initial Fact-Finding

The first step is to undertake fact-finding to identify possible investigative biases:

- Do an open-records request to ascertain whether the investigator subscribes to an ethics code that prescribes the use of impartial and fair investigative methods:<sup>19</sup>
  - o International Association of Chiefs of Police: ““As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to *protect the innocent against deception*, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.” [emphasis added].”<sup>20</sup>
  - o Ethics code of the local police department or state law enforcement agency.
- Do an internet search on the terms, “victim-centered,” “trauma-informed,” and “Start By Believing” to identify any training programs held in your state. Find out if any state agencies or law enforcement organizations have issued any proclamations or policies on “victim-centered” methods.
- Do an open-records request to identify whether the investigator has attended a victim-centered training program or made a “Start By Believing” pledge. If so, file a pre-trial motion to exclude the investigator’s report.
- If the interrogations were recorded, compare the questioning methods of the accuser compared to the accused. Did the investigator actively seek to clarify gaps or resolve inconsistencies in the statements of both the accuser and accused?

#### Voir Dire

The *voir dire* process not only allows for the selection of qualified jurors, it also affords an opportunity to educate potential jurors about fundamental due process principles:

- “How many of you tend to believe someone who cries when they tell you their story only to find out later that they lied?”
- “How many of you know someone who went through a divorce and had their spouse make up claims against the other to achieve their goals?”

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<sup>19</sup> Center for Prosecutor Integrity. *Investigator Ethics Codes*. <http://www.prosecutorintegrity.org/sa/ethics-codes/>

<sup>20</sup> International Association of Chiefs of Police. *Law Enforcement Code of Ethics*. <https://www.theiacp.org/resources/law-enforcement-code-of-ethics>

- “How many of you believe that the police are independent investigators searching for ‘the truth’? The evidence in this case will be that Detective X approached this investigation with the preconceived notion that the accuser ‘is telling the truth.’”

### **Opening Statement**

During the opening statement, the defense attorney summarizes the case and lays out the theme of the defense:

- Highlight the broad problem of police misconduct, and how this problem is making news headlines.
- “Investigators are ethically required to conduct their investigation in an open, impartial manner without preconception or bias. They are supposed to ‘follow the evidence’ and avoid tunnel vision.”
- “But in this case, we will see how the investigator, from the very beginning, assumed the complainant was ‘traumatized, how the investigator accepted the complainant’s statements without question, and how the investigator used a double-standard in the questioning of the accuser and the accused.”

### **Cross Examination: Complainant**

1. Look for words that suggest the complainant has been “coached” to use trauma-informed buzzwords:
  - “Frozen”
  - “Traumatized”
  - “Stressed out”
  - “Deer in the headlights”
2. Confirm as many details about the alleged incident that the complainant can remember about the time, place, specific actions by the complainant and defendant, thoughts, feelings, and presence of witnesses.
3. Identify the precise point in time when the complainant became “frozen” and “unfrozen.”
  - a. “So you became frozen when he began to remove your clothes?”
  - b. “You became unfrozen when he left the room?”
4. Clarify what the complainant means by “frozen:”
  - a. “When you say you were ‘frozen,’ exactly what does that mean?”
  - b. “Does that mean you couldn’t think anything, hear anything, say anything, do anything, or remember anything?”



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5. Identify any contradictions among the previous responses and initial statements to the police:
  - a. If the complainant told the police she tried to push the defendant away, and now says “frozen” means she couldn’t do anything.
  - b. If the complainant told the police she called her friend right after the incident, but now says she was “frozen” for a whole day.
  - c. If the complainant says she became “frozen” when the defendant entered to room, and then says being frozen means she couldn’t remember anything, then how did she know she was assaulted?
6. Find out if the complainant views the incident as life threatening:
  - a. “Was the incident life-threatening?”
  - b. “Did you think he was going to kill you?”
7. If the complainant says the incident was life-threatening, clarify the specifics:
  - a. “He threatened you with a weapon?”
  - b. “He attempted to strangle you?”
  - c. “He said he was going to kill you?”
8. Refer to the accuser as the “reporting party” or “complainant,” not the “victim.”

### **Cross Examination: Investigator**

If the defense attorney has reason to believe the investigation was biased, ask these questions:

1. “Did you ever attend a training program on victim-centered concepts, trauma-informed, or Start By Believing or participate in similar online education programs?”
2. “Aren’t these principles contrary to presumption of innocence?”
3. “You view yourself as working for a ‘successful prosecution’? Not an independent investigator looking for ‘the truth’?”
4. “Our system of laws embodies a presumption of innocence. You took an oath to uphold the constitution?”
5. “You took steps to corroborate the complaining witness’ report, but you didn’t take steps to refute his/her statements?”
6. “You will agree that when you start your investigation by believing the complaining witness, that necessarily means that you’ve made a pre-judgment about the guilt of the accused?”

7. “The story given by the complaining witness is inconsistent and full of holes. You will agree that believing this story requires ignoring the inconsistencies and filling in the holes with speculation or conjecture?”

*Questions Specific to ‘Start By Believing’ Investigations*

1. “Did you ever take a pledge to “Start by Believing? If so, you pledged to:
  - Start by Believing when someone tells me about their sexual assault;
  - To help survivors on the road to justice and healing; and
  - To write the investigative report using the ‘Language of Nonconsensual Sex’”
2. “If you Start By Believing, what has to happen to make you *stop* believing the purported ‘victim’?”
3. “You’ve seen investigations resulting from false allegations? If you Start by Believing, you might never discover those false allegations?”
4. “Do you understand that if you Start by Believing, you feed into whatever ulterior motive a false accuser has?”
5. “Were you aware that the State of Arizona Governor’s Commission to Prevent Violence Against Women has recommended, ‘law enforcement agencies, and other agencies co-located in advocacy centers, are strongly cautioned against adopting Start By Believing.’”<sup>21</sup>

**Cross Examination: Prosecution Expert Witness**

1. Locate published articles or videotapes with statements of the expert witness. This claim by psychologist David Baldwin was highlighted on the first page of this Report:
  - “The fear-induced psychophysical states that impact a victim’s ability to react at the onset of or during a sexual assault are not unique to any one type of victim. They are seen in situations of extreme fear and (perceived) inescapable danger ranging from rape to combat... These psychophysical states are automatic, uncontrollable responses, the purpose of which is self-preservation. They have been repeatedly studied, described, and discussed in the professional literature, and are fully accepted in the field as required by the Frye test.”<sup>22</sup>
2. Analyze the claim for logical and scientific fallacies. Here’s an example how to refute the above statement – the Rebuttal is indicated in bold:

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<sup>21</sup> Governor’s Commission to Prevent Violence Against Women. *Guidance: Start By Believing*. (November 16, 2016). <http://www.prosecutorintegrity.org/wp-content/uploads/2019/10/AZ-Governors-Commission-on-SBB.pdf>

<sup>22</sup> David Baldwin, *Primitive mechanisms of trauma response: An evolutionary perspective on trauma-related disorders*, Neuroscience and Biobehavioral Reviews. (2013). <https://pubmed.ncbi.nlm.nih.gov/23792048/>

- “The fear-induced psychophysical states that impact a victim’s ability to react at the onset of or during a sexual assault are not unique to any one type of victim. **REBUTTAL: “By referring to the complainant as a ‘victim,’ aren’t you biasing the investigation from the very beginning?”** They are seen in situations of extreme fear and (perceived) inescapable danger ranging from rape to combat. **REBUTTAL: “But the complainant herself has testified that the accused did not use a weapon, did not attempt to strangle her, and did not threaten her. Objectively, this was not a ‘life-threatening’ situation. The issue was whether the sex was mutually consented, not whether force was used. So how can you compare a combat situation to the present case?”**...These psychophysical states are automatic, uncontrollable responses, the purpose of which is self-preservation. **REBUTTAL: “According to an expert report by the Center for Prosecutor Integrity, ‘SAMHSA [Substance Abuse and Mental Health Services Administration] (2014) reports that most individuals are resilient despite experiencing traumatic stress, an aspect of trauma that investigators should be aware of, lest they make unwise assumptions about the status of the victim. Genetic, biological, psychological, and historical factors influence each individual’s resilience to trauma.”** So are you claiming that every single person who experiences what the complainant has described has these ‘automatic, uncontrollable responses?’”<sup>23</sup> They have been repeatedly studied, described, and discussed in the professional literature, and are fully accepted in the field as required by the Frye test.” **REBUTTAL: The expert report by the Center for Prosecutor Integrity contains over 100 citations that cast serious doubt on your statements. So how can you claim that trauma-informed theories are “fully accepted” in the criminal justice system?”**

## Closing Argument

The purpose of the closing argument is to summarize the facts of the case, consistent with the theme that has been established:

- The investigation was flawed and biased from the very beginning.
- Due process includes an impartial and objective investigation.
- Point out the fundamental unfairness of the investigative methods that were used.
- Remind the jury of the importance of the presumption of innocence.

## DEFENDING AGAINST VICTIM-CENTERED METHODS ON CAMPUS

Some criminal defense attorneys have also accepted cases involving students accused of misconduct on campus. Such cases fall under Title IX and its implementing regulations. 34 CFR 106, for example requires the use of “impartial” investigations to resolve campus cases. But ironically, victim-centered concepts have become widespread in the campus setting.

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<sup>23</sup> Sujeeta Bhatt and Susan Brandon. *Review of ‘Understanding the Neurobiology of Trauma and Implications for Interviewing Victims:’ Are We Trading One Prejudice for Another?* Page 4 (2019) <http://www.prosecutorintegrity.org/wp-content/uploads/2019/09/Review-of-Neurobiology-of-Trauma-9.1.2019.docx>,

The University of Texas School of Social Work published a “Blueprint for Campus Police” based on the victim-centered model.<sup>24</sup> The Blueprint openly recommends that investigators should seek to anticipate and counter defense strategies (Table 7.4) and presume the veracity of the accuser:

- "The victim’s trauma response may make them appear less credible due to fragmented or lost memories and their attempts to make sense of what happened. Whereas, the alleged perpetrator knows what happened and therefore, appears to make more sense, which can be mistaken for credibility." (p. 97)
- "Victims often self-blame and feel bad about what happened, while alleged perpetrators often don’t feel badly about it, except for being caught." (p. 97)
- "Studies have consistently shown that detecting deception is difficult, so officers may not realize when a perpetrator is lying." (p. 97)

But the scientific basis for such claims is dubious. Iowa State University professors Christian Meissner and Adrienne Lyles undertook a detailed analysis of the use of trauma-informed methods in Title IX investigations and concluded:<sup>25</sup>

“A search of the available research literature yielded no published, peer-reviewed studies on the efficacy or effectiveness of FETI.... We know of no scientific studies that support this contention of neurobiological response differences between perpetrators and victims.”

Likewise, the Association of Title IX Administrators (ATIXA) issued a Position Statement that doubted the scientific validity of trauma-informed methods:

- “The truth is that we understand perhaps 1/100<sup>th</sup> of 1% of what we need to know and may someday understand about how the brain responds to trauma. With such a nascent body of knowledge, most conclusions are premature. It is irresponsible to attribute much about how we interpret evidence to existing neuroscientific understandings of trauma, except to correlate scrambled memory encoding and retrieval with life-threatening incidents, and to see that flight/fright/freeze may be common reactions to such incidents .... You need to assess whether you can afford to have a non-empirical, biased training on your resume in this age of litigation.”<sup>26</sup>

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<sup>24</sup> University of Texas School of Social Work, *Blueprint for Campus Police*. (2016) <https://utexas.app.box.com/blueprintforcampuspolice>

<sup>25</sup> Christian Meissner and Adrienne Lyles. *Training for Title IX Investigators Lacks Tested, Effective Techniques*. *Journal of Applied Research in Memory and Cognition* (2019).

<sup>26</sup> Association of Title IX Administrators Position Statement. *Trauma-Informed Training and the Neurobiology of Trauma*. (August 16, 2019). <https://cdn.atixa.org/website-media/atixa.org/wp-content/uploads/2019/08/20123741/2019-ATIXA-Trauma-Position-Statement-Final-Version.pdf>

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Numerous lawsuits have been filed against universities alleging biased investigative methods.<sup>27</sup> Appendix A lists the lawsuits in which a biased investigation was a significant allegation of fact and the judge ruled in favor of the student.

### ‘JUNK SCIENCE’

In the 1990s, activists began to call for “swift and unquestioning judgments about the facts of harassment without standard evidentiary procedures with the chant ‘always believe the victim.’”<sup>28</sup> At the beginning, law enforcement personnel were urged to institute reasonable, common-sense changes such as taking the complaint seriously and speaking to the complainant in a respectful manner.

But then the victim-centered movement began to call for policies that violate the ethical duties of police officers, prosecutors, and judges; infringe on the constitutional rights of the accused; and compromise the fundamental mission of the criminal justice system.

As a result, many are voicing criticisms of the victim-centered movement.<sup>29</sup> Commenting on the widespread use of such guilt-presuming methods on college campuses, journalist Emily Yoffee reveals:<sup>30</sup>

“The result is not only a system in which some men are wrongly accused and wrongly punished. It is a system vulnerable to substantial backlash. University professors and administrators should understand this. And they, of all people, should identify and call out *junk science*.” [emphasis added]

Defense attorney Scott Greenfield tartly concludes:<sup>31</sup>

“The ‘trauma informed’ approach is not to ask, not to question, but to believe....Who is the victim would seem to be a critical question, but ‘trauma informed’ policing says it’s the woman and should it be the falsely accused man, too bad, so sad. Take a bullet for the cause, guy.”

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<sup>27</sup> SAVE. *Victim-Centered Investigations: New Liability Risk for Colleges and Universities*. (2016).

<http://www.saveservices.org/wp-content/uploads/Victim-Centered-Investigations-and-Liability-Risk.pdf>

<sup>28</sup> Patricia Sharpe and Frances E. Mascia-Lees Source, “Always Believe the Victim,” “Innocent Until Proven Guilty,” “There Is No Truth”: The Competing Claims of Feminism, Humanism, and Postmodernism in Interpreting Charges of Harassment in the Academy, *Anthropological Quarterly*, Vol. 66, No. 2, Constructing Meaningful Dialogue on Difference: Feminism and Postmodernism in Anthropology and the Academy. Part 1 (1993), pp. 88.

<sup>29</sup> Center for Prosecutor Integrity. *Editorials*. <http://www.prosecutorintegrity.org/sa/editorials/>

<sup>30</sup> Emily Yoffee. *The Bad Science Behind Campus Response to Sexual Assault*. The Atlantic. (2017). <https://www.theatlantic.com/education/archive/2017/09/the-bad-science-behind-campus-response-to-sexual-assault/539211/>

<sup>31</sup> Scott Greenfield. *Short Take: Fight Or Flight Or . . . Whatever*. (Aug. 22, 2019) <https://blog.simplejustice.us/2019/08/22/short-take-fight-or-flight-or-whatever/#more-41334>

### **Judicial Decisions Favorable to Accused Students Involving the Use of Biased Investigative Methods**

These lawsuits can be classified by whether victim-centered methods were employed, the investigator did not interview a key witness for the complainant, or the investigative report was biased:

#### VICTIM-CENTERED METHODS:<sup>32</sup>

1. John Doe v. Regents of the University of California (UCSB)
2. John Doe v. Syracuse University
3. William Norris v. University of Colorado
4. John Doe v. Johnson & Wales University
5. John Doe v. University of Oregon, et al.
6. John Doe v. Rider University

#### UNIVERSITY DID NOT INTERVIEW KEY WITNESSES OF THE ACCUSED STUDENT:<sup>33</sup>

1. John Doe v. Loyola University of Chicago
2. John Doe v. Quinnipiac University, et al.
3. John Doe v. Regents of the University of California (UCSB)
4. David Jia v. University of Miami, et al.
5. John Doe v. George Washington University
6. John Doe v. University of Southern California
7. John Doe v. George Washington University
8. John Doe v. Johnson & Wales University
9. John Doe v. Columbia University
10. John Doe v. Brown University
11. John Doe v. Washington and Lee University
12. Benjamin King v. DePauw University

#### BIASED INVESTIGATIVE REPORT:<sup>34</sup>

1. John Doe v. Loyola University of Chicago
2. John Doe v. Purdue University, et al.
3. Jack Montague v. Yale University
4. John Doe v. Rollins College
5. Jason Schaumleffel v. Muskingum University, et al.
6. John Doe v. The Pennsylvania State University

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<sup>32</sup> Benjamin North: *Interactive Spreadsheet of Lawsuits Against Universities*, Column BP. <http://www.saveservices.org/sexual-assault/complaints-and-lawsuits/lawsuit-analysis/>

<sup>33</sup> Benjamin North: *Interactive Spreadsheet of Lawsuits Against Universities*, Column CG.

<sup>34</sup> Benjamin North: *Interactive Spreadsheet of Lawsuits Against Universities*, Column BI.

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7. John Doe v. Regents of the University of California
8. John Doe v. The Trustees of the University of Pennsylvania
9. Frank Gulyas v. Appalachian State, et al.
10. Grant Neal v. Colorado State University-Pueblo
11. John Doe v. Brown University
12. John Doe v. Columbia University
13. Vito Prasad v. Cornell University
14. John Doe v. Brown University
15. Drew Sterrett v. Heather Cowan, et al.

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