

#aiTIXAdvInvestigator



Advanced Title IX Investigator Training and Certification

June 24 - 26, 2020



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#aiTIXAdvInvestigator

ADVANCED TITLE IX INVESTIGATOR TRAINING AND CERTIFICATION

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June 24 - 26, 2020



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NEW REGULATIONS AND THE TITLE IX INVESTIGATION PROCESS



3

AGENDA

Review of the new Title IX regulations regarding investigation process

Address gaps in the new law that could impact the way investigations are facilitated



4

NEW REGS

TITLE IX

- Overarching summary - a neutrally trained investigator must gather relevant evidence, including exculpatory and inculpatory (but not privileged material unless consent), and fairly summarize the case in a report
- Investigator training [*§106.45(b)(1)(3)*]
- Conflict of interest and bias [*§106.45(b)(1)(iii)*]
- “Not Responsible” Presumption [*§106.45(b)(1)(iv)*]
- Medical records [*§106.45(b)(5)(i)*]

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NEW REGS

TITLE IX

- Focus is “equity” for both parties.
- Advisor of choice [*§106.45(b)(3)(iv)*]
- Equal opportunity to present witnesses and offer information inculpatory and exculpatory info [*§106.45(b)(5)(ii)*]
- No gag orders on parties; ability to gather and present relevant information [*§106.45(b)(5)(iii)*]
- Legal privileges; waiver [*§106.45(b)(1)(x)*]
- Right to inspect, review, access, and respond to information [*§106.45(b)(3)(vi)*]

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NEW REGS

TITLE IX

➤ **Written** communication will also be required throughout:

➤ (v) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate

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NEW REGS

Inspection of Evidence (vi):

WHAT - Equal opportunity to inspect and review any evidence

- inculpatory or exculpatory evidence whether obtained from a party or other source

WHY - Each party can meaningfully respond to the evidence prior to conclusion of the investigation.

WHEN - Prior to completion of the investigative report...the parties must have at least 10 days to submit a written response

WHO – Send evidence to each party and advisor, if any

HOW – electronic or hard copy

PURPOSE - the investigator will consider prior to completion of the investigative report

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THE INVESTIGATIVE REPORT [*§106.45(b)(3)(vii)*]

- Must fairly summarize relevant info
- AGAIN - Must be sent to both parties and advisors at least 10 days prior to scheduled hearing or time of determination regarding responsibility
- AGAIN - Must be in electronic format or hard copy
- AGAIN - Allows for both parties to review and/or provide written response

9

Case law DOE v. USC - 2018



No fair hearing because 3 key witnesses not interviewed



No ability to assess credibility



University's procedures for hearing weren't followed



Failed to request tangible, available evidence

10

CASE LAW DISCUSSED IN THE NEW REGULATIONS

DOE v. U of Cinn – 6th Cir.
2017

“In the case of competing narratives, ‘cross-examination has always been considered a most effective way to ascertain truth.’”



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CASE LAW DISCUSSED IN THE NEW REGULATIONS



DOE v. Baum – 6th Cir. 2018



“...where university Title IX sexual misconduct proceeding turned on credibility of parties, the university must provide a hearing with opportunity for parties to cross-examine each other.”



12

REASONABLE PERSON



...a fictional person with an ordinary degree of reason, prudence, care, foresight, or intelligence whose conduct, conclusion, or expectation in relation to a particular circumstance or fact is used as an objective standard by which to measure or determine something (as the existence of negligence) (m-w.com)

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CHAT

What gaps have you found in the new regulations regarding investigations?

14



RESOURCE

Office for Civil Rights

<https://www2.ed.gov/about/offices/list/ocr/newsroom.html>

- [Title IX Regulations Addressing Sexual Harassment](#) (unofficial copy)
- [Title IX Regulations Addressing Sexual Harassment](#) (Federal Register)
- [Title IX: Fact Sheet: Final Title IX Regulations](#)
- [Title IX: U.S. Department of Education Title IX Final Rule Overview](#)
- [Title IX: Summary of Major Provisions of the Department of Education's Title IX Final Rule](#)
- [OCR Blog](#)



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QUESTIONS



16

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10-STEP INVESTIGATION MODEL INTRODUCTION



1

AGENDA

- I. The Complex Scenario
- II. Qualities of an Investigator
- III. Where to Start - Shell
 - i. Pre-Flight
- IV. Step by Step Approach - 10 Steps
- V. Approaches to Specific Types of Cases (Session 3)
- VI. Harvard IAT - Check Your Own Biases (Session 3)



2

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Complaint, Counter-Complaint, Retaliation

THE SCENARIO



3



ACTIVITY

To: Title IX Office

I need to report another student who is stalking me. Eliza Darcy has been following me around campus, lurking around my dorm and my classrooms, sneaking up on me in the dining hall, and yelling at me when I told her to stop. I told my RA today, and we called the police and told them about it. I wanted to also tell the Title IX office. I can't learn on a campus where I don't feel safe. Something has to happen; she has to leave me alone.

Sincerely,
Jane Bingley



4



CHAT

What are you thinking now?

What's your game plan?

5

QUALITIES OF AN INVESTIGATOR

Open-
minded

Courageous

Culturally
conscious

Aware of
own biases

Organized

Detailed-
oriented

6

KEY TO APPROACH

“Of all the ploys and techniques, the most important and, sadly, the most usually neglected is good organization. While this principle is the oldest and most widely recognized, it is the one that is most frequently violated.”

- McElhaney, Trial Notebook, *An Introduction to Cross-Examination*, 2 Litig 37, 48 (Spring 1976).

7

WHERE TO BEGIN?

start

- Investigate one time or separate investigations?
- OUTLINE your approach – deliberate, methodical; set expectations for time to completion
- Send out new notices of investigation for each complaint with specificity

8

■ WHERE TO BEGIN?

- Frame the beginning by what you'll need at the end
- A report that sets forth each complaint (e.g., harassment, stalking, sexual contact)
- The elements of each
- The evidence that addresses each

9

■ 10-Step Investigation Model



1. Identify Violations and Elements
2. Gather Information
3. Determine Interview Logistics
4. Review and Outline
5. Developing Questions
6. Using Documents
7. Starting the Interview
8. Questioning
9. Wrapping It Up
10. Specific Techniques/Situations

10

STEP 1: Identify Violations and Elements

Example: Stalking

1. repeated following, watching, or harassing
2. of a specific person
3. that would cause a reasonable person to
 - a. fear for their safety or the safety of others, or
 - b. suffer substantial emotional distress

You will **target questions** to these elements and will frame your report around the elements.



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STEP 2: Gather Information

Information gathering.

- Documents **BEFORE** interviews
- Student files, class schedules, activities
- Identify the location of the incident – surveillance camera (eyewitnesses identified from these)
- Cultural issues
- Documents **FROM** interviews
 - Social media and chat logs; IPs?
 - Photos/videos
 - Gather as much prior interactions between the parties as possible
 - Ask to read/copy their text messages
- Note re: “privileged materials”



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STEP 3: Determine Interview Logistics

- Order of interviews
 - Usually going to be complainant/respondent first
 - CP then her witnesses?
- Try not to schedule interviews for more than 2-hour sessions
- Neutral place* (digital world?)



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STEP 4: Review and Outline

- REVIEW all the documents/evidence **BEFORE** your first interview
- START chronology
- OUTLINE your interview
 - Outline should start with what you think you know and be designed to help you figure out:
 - What you don't know
 - Whether what you think you know is correct (confirming or refuting what you do "know")
- BRAINSTORM your outline
- ELEMENTS and source of them (policy)



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STEP 5: Developing Questions



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STEP 6: Using Documents

Using Documents

- Organize documents by witness
- Two sets: one with your notes about what you want to ask, the other clean for use with the witness
- If it is to or from that witness, lay groundwork BEFORE you show them the document
 - Emails, texts, photos, videos, chat logs, social media

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STEP 6: Using Documents

Organizing them

- On your copy, mark (for example: 1) in big marker on the first page. Have a folder marked “1” for the associated document, clean copy, for your witness.
- Put your own copy in whatever order makes sense to you
- When you get to the document in your outline, just find the folder with the same number, pull it out, and go!
- You and/or your interview partner in taking notes can refer to the document as #1 instead of “showed email of 9/4/2019,” “showed doc #1.”
- Keep an index of the documents so you can be sure what you were asking about later.

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ACTIVITY

Prepare a Document

18



QUESTIONS

REVISING INTERVIEW TECHNIQUES

1

■ AGENDA

- I. Continuation of Interview Steps – IN THE INTERVIEW ROOM
- II. Approaches to Specific Types of Cases
 - DV or IPV
 - Stalking
 - Cultural
- III. Expert Witness
- IV. Demo and Practice

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STEP 7: Starting the Interview



The interview

- Interview in pairs
- Record the interview*?
- Don't dive right in
 - Establish rapport
 - Establish ground rules
 - Video interview rapport (later)

3

STEP 7: Starting the Interview

The interview

- Consider techniques for survivor interview/traumatized people:
 - Avoid judgmental attitudes
 - Recognize that events do not need to be extreme to be traumatic
 - Concurrent crises can occur
 - Make referrals to proper resources
 - Recognize resilience
 - Provide clear guidance on process

4

STEP 7: Starting the Interview

Pre-flight

- Create a habit of establishing neutrality
- Follow your checklist of what you say to each party/witness

I am a neutral investigator in an adjudicative process – that means I do not take sides, and I am here to do my job. I collect facts and treat everyone with respect and fairness. I will be friendly, but I am not your advisor; if you need one, I can connect you with one. We cannot require people to not discuss their experience with others. University policy prohibits retaliation against anyone involved in an investigation. We know how sensitive this investigation is, and we take great care with personal privacy during the investigation. However, the regulations require a release of my investigation to all parties before the report is finalized. What questions do you have?

Complainant - these are legal terms, not the plain English

Respondent

Neither the complainant nor the respondent is required to prove anything one way or another. It is the [institution's] responsibility to investigate and determine the facts.



5

5

STEP 7: Starting the Interview



Pre-flight

- Create a habit of establishing neutrality
- Follow your checklist of what you say to each party/witness

- *neutral investigator*
 - *Don't take sides*
 - *Collect facts*
 - *Everyone gets respect/fairness*
 - *Friendly but not your advisor (do you need/want, let's make it happen)*
- *Sensitive and handled as such by [institution]*
 - *But can't require people not to talk*
 - *Retaliation – caution!*
 - *We are careful with your private info – need to know*
 - *Release to parties in advance of final report*
- *What does complainant/respondent mean?*
- **Role of advisor (ask for input at end)**
- *Questions*



6

6

STEP 7: Starting the Interview

Ground Rules - use same with everyone

- What they know v. what they know about
- Find out everything you can
- Explain the various levels of credibility of evidence
- Always hard to be a witness, but is there any particular reason they aren't able to give their best recollection today?
- Don't expect they'll have answers to every question - normal

Ensure case management is happening, so the care and feeding of parties and witnesses is robust.

7

STEP 8: Questioning

- Start at the beginning. People can follow a chronology.
- **GOAL:** Breadth, or open phase (“What happened?” “And, what next?”)
- **GOAL:** Depth, or clarification phase
 - Where were you when that happened?
 - How did you know that happened?
 - Will you draw me a map of the room and where everyone was?
- **GOAL:** Closing off
 - Did anything else happen?
 - Anything else?
 - Yes, great. Anything else?

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STEP 8: Questioning



GOAL: Additional evidence gathering

Corroboration phase

- Did you document that?
- Texts?
- Other people there?
- Who?
- Who else knows about this?
- Where else can I find documentation of this?

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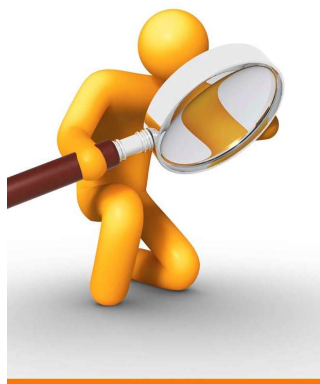
STEP 9: Wrapping It Up

Wrapping up

- Check things off your outline as you go or during breaks.
- Take your time. Take breaks. If too emotional, then reschedule. Ensure lucidity. Bring tissues.
- BEFORE YOU FINISH, take a break and go over your outline with your interview partner. What did and didn't remember to ask?
- Ask before you leave: What else do you think I need to know? What have I forgotten to ask?

10

STEP 9: Wrapping It Up



Wrapping up

- Ask for evidence
- Note evidence you can get without witness participation/consent
- Physical evidence (must have a plan for maintenance)
- Access to phone/computer
 - Forensics on computers/phones/etc.

11

STEP 9: Wrapping It Up

Ending

- Thank them for their time.
- Acknowledge the difficulty of the situation.
- Invite them to contact you with additional information as it comes back to them.
- Provide a list of documents/evidence you discussed that they have indicated they might have. Let them know next steps.
- Check on crunch times coming up (or vacations or whatever) that would make it difficult to re-interview.
- Advise them; likely you'll need to conduct some follow up with them.

12

STEP 9: Wrapping It Up

Ending

- Log all evidence acquired
- Follow up checklist
 - Who did they suggest you interview and why?
 - What evidence did they suggest you get and why?
 - What interviews and evidence have you identified that you might want?
- Note all witness interview specifics
- Draft memorandum of interview (if not recorded) within 24 hours
- Resource (Investigation Tracking)

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STEP 10: Specific Techniques/Situations



Specific Approaches: Dating/Domestic Violence

- Delicate with trauma
- Photos of injuries
 - Medical records too (consent)?
- Texts of apologies/texts of threats if disclosed/texts of cover-up requests
- Disclosure to confidants
- Behavior consistent with covering up physical injuries
- Behavior consistent with making excuses for partner's behavior
- Alcohol problems of partner?

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STEP 10:
Specific Techniques/Situations



Specific Approaches: Stalking

- Follow the popcorn trail of evidence
 - Text messages
 - Social media and other on-line platforms
 - Phone calls/emails
 - Stalker reaching out to friends/family of complainant
 - Check RS's phone for evidence - consent first
 - Notes/letters/gifts/cards/offers of the same
- Observed in complainant's spaces: e.g., dorms, dining halls, common spaces
- Behavior consistent with obsession with/compulsion



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STEP 10:
Specific Techniques/Situations



Specific Approaches: Cultural Issues

- Language issues, e.g., idioms, translations
- Cultural differences – what's allowed in country of origin
- The WAY the opposite sex intersects
- LGBTQ issues in home country
 - Family norms and what's acceptable
- Religion

*****Check your own implicit bias*****



16

EXPERT WITNESSES



SAMPLE QUESTIONS:

- What are your qualifications?
- Have you worked primarily for complainants or respondents (or people in their general shoes)?
- What evidence or information did you rely on in coming to your opinions?
- What are your opinions?



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10-STEP INVESTIGATION MODEL



1. Identify Violations and Elements
2. Gather Information
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8. Questioning
9. Wrapping It Up
10. Specific Techniques/Situations



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CHAT

In breakout rooms, please take a moment to discuss your current interview strategy and identify opportunities for revision or modification based on the information provided in this session.

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QUESTIONS

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IMPLICIT BIAS AND APPLYING NEW- FOUND INTERVIEW TECHNIQUES TO AN EXISTING CASE

 ACADEMIC
IMPRESSIONS ¹

1



RESOURCE

*Any volunteers want to share what
they learned about themselves
after taking the test?*

Implicit Bias Test

<https://implicit.harvard.edu/implicit/takeatest.html>

 ACADEMIC
IMPRESSIONS ²

2

Understanding Bias - Project Implicit



Project Implicit®

LOG IN TAKE A TEST ABOUT US EDUCATION BLOG HELP CONTACT US DONATE

About Us

Project Implicit is a non-profit organization and international collaboration between researchers who are interested in implicit social cognition - thoughts and feelings outside of conscious awareness and control. The goal of the organization is to educate the public about hidden biases and to provide a "virtual laboratory" for collecting data on the Internet.

Project Implicit was founded in 1998 by three scientists – [Tony Greenwald](#) (University of Washington), [Mahzarin Banaji](#) (Harvard University), and [Brian Nosek](#) (University of Virginia). Project Implicit Mental Health launched in 2011, led by [Bethany Teachman](#) (University of Virginia) and [Matt Nock](#) (Harvard University). Project Implicit also provides consulting services, lectures, and workshops on implicit bias, diversity and inclusion, leadership, applying science to practice, and innovation. If you are interested in finding out more about these services, visit <https://www.projectimplicit.net>.

The Project Implicit Executive Committee consists of the following individuals:

- [Kate Ratliff](#), Executive Director, University of Florida
- [Emily Umansky](#), Project Manager
- [Yoav Bar-Anan](#), Director of Technology, Ben Gurion University
- [Calvin Lai](#), Director of Research, Washington University in St. Louis
- [Colin Tucker Smith](#), Director of Education, University of Florida
- [Carlee Beth Hawkins](#), Director of Training, University of Illinois at Springfield
- [Brian Nosek](#), Board of Directors, University of Virginia
- [Tony Greenwald](#), Board of Directors, University of Washington

For more information about the Project Implicit research group, see <https://www.projectimplicit.net>.

3

3



ACTIVITY

Time to Practice Case Study Introduction

ai ACADEMIC
IMPRESSIONS 4

4

COMPLAINT

To: Title IX Office

I need to report another student who is stalking me. Eliza Darcy has been following me around campus, lurking around my dorm and my classrooms, sneaking up on me in the dining hall, and yelling at me when I told her to stop. I told my RA today, and we called the police and told them about it. I wanted to also tell the Title IX office. I can't learn on a campus where I don't feel safe. Something has to happen; she has to leave me alone.

Sincerely,
Jane Bingley

5

CHAT



Rapport Building

6



CHAT



Volunteer A: Plays CP
Volunteer B: Plays Investigator



7



CHAT



Add New Volunteer: Difficult Witness
Use Digital Environment to Your Advantage



8



ACTIVITY

Large Group Debrief



9



QUESTIONS


10

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VIRTUAL NETWORKING RECEPTION




11

 **CHAT**


*Favorite lesson from yesterday?
Or, what you're most looking forward to today?*

CONNECTING YOUR MICROPHONE
To connect your microphone, identify the Microphone icon at the top of the screen and click on the drop-down menu. Once you connected, the icon should turn green. Please keep your mic muted at all times, unless you are speaking.



CONNECTING YOUR WEBCAM
To connect your webcam, identify the Camera icon at the top of the screen and click on the drop-down menu. Once you connected, the icon should turn green. Please keep your webcam turned off at all times, unless you wish to have it on while speaking.


RAISING YOUR HAND TO SPEAK TO THE GROUP
If at any time during the event you'd like to say something using your mic, please raise your hand and the speaker will call on you. To raise your hand, identify the icon at the top of the screen that looks like someone raising their hand. You can click on this same icon to lower your hand. In the same drop-down box, you can "agree," "disagree," "step away" too.

 **ACADEMIC IMPRESSIONS** ¹


1

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**UNDERSTANDING WITNESS TESTIMONY
CHALLENGES**

 **ACADEMIC IMPRESSIONS** ²

2

 **CHAT**


What are some of your challenges related to analyzing witness testimony?

 ³

3

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FILLING THE GAPS: ANALYZING INCOMPLETE TESTIMONY

 ⁴

4

■ AGENDA

- I. Overarching Principles
- II. Do You HAVE to Confront? What Does Confrontation Mean?
- III. What Type of Witness Do You Have?
- IV. Witness Type Techniques
- V. Demonstration (Time Allowing)

5

■ OVERARCHING PRINCIPLES

- You don't have a bet on this race.
- You don't have to "win" the interview.
- You don't have to make the witness defensive.

6

MUST YOU CONFRONT?

- Is the inconsistency or contradiction relevant?
 - If it's a "lie," then lies and motives to lie are usually relevant.
- Are "rape shield" questions allowable? Ask, are they relevant?
- But what about fact you have to share investigation before final?

7

WHO IS YOUR WITNESS?

- Hostile
- Clearly lying/grossly inconsistent
- Traumatized
- Drama Monarch
- Trickle Witness

8

■ WHAT ASPECT OF CREDIBILITY?

- Oath – How seriously are they taking their role in investigation?
- Perception
- Recollection
- Communication
- Bias/Interest/Motive
- External Credibility Issues

9

■ HOSTILE WITNESS

- Likely bias/interest issue
- “I get the sense that you don’t want to participate. I get it. These situations are never anyone’s first choice. Can you help me understand your reluctance?”
- Make clear the stakes, that non-participation doesn’t help who they’re aligned with.

10

CLEARLY LYING

- Once you understand someone is likely lying, start pinning down surrounding details – no confrontation yet.
- Key is you **MUST** know the evidence you prepared to review with that witness so you can do this.

11

CLEARLY LYING

BEFORE YOU CONFRONT

- Nail down all surrounding details.
- They should commit to the details of the “story.”
- It’s hard to maintain a lie with a lot of details.

12

CLEARLY LYING

- Make them commit to details of narrative.
 - So, this happened first?
 - This never happened?
 - Sam was(n't) there at all that night.
 - Avery was there.
 - No one had anything to drink.
 - No one touched anyone.

13

CLEARLY LYING

Confronting - Style

Reasonable Person Alert!!!

- Start from a place of confusion
- “I’m struggling with [X piece of evidence], can you help me understand how it fits with what you’ve said?”
- “I think most people looking at this would think it showed Y, would you agree? Why/why not?”
- “Can you give me your perspective on why you wrote this?”

14

CLEARLY LYING

Confronting – Substance

- Have you ever said X to someone?
 - Yes? GREAT! Dig in.
 - No? Maybe confront.
- If someone said Y about that, how would you respond?
- Break it down: “You told me one. Then you told me three. Right? Doesn’t it seem like there’s something missing in the middle?”

15

CLEARLY LYING

Confronting – Substance

- Video/audio/photo contradiction
 - Review their version of events.
 - “I’ve reviewed this video, and it appears to me that [Sam was right there]. Can you help me understand why the video shows that, but your statement contradicts it?”

16

CLEARLY LYING

- Don't sweat the response, just record it
- Can remind them of the importance of the process and being truthful

17

CLEARLY LYING

What happens if you're not prepared enough to confront?

**THEY WHO FIGHT
AND RUNS AWAY
LIVES TO FIGHT
ANOTHER DAY**

18

■ TRICKLE OR RELUCTANT WITNESS

- E.g., person will provide one-word answers, shrug, or not remember
- Take breaks – give them time and be patient
- Ask questions they **do** know to get them warmed up – first, get them talking about subjects they like/know better
- Gently ask them what is going on with them that they are reluctant to talk (with empathy/compassion)
- Another day is better? – unknown if something is going on in their life



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■ TRAUMATIZED

- Give them time and space
- Make them comfortable
- Ask rapport building questions
- Offer services for support
- Offer to reschedule
- Offer non-verbal methods where you can (pen/paper to draw)
- Recognize that you may not be the right interviewer for this witness
- FETI
- Don't get a pass - job is to gather relevant evidence!



20



QUESTIONS

Jill and Jean will respond to the challenges that you brought up related to witnesses.

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MOCK INTERVIEW WITH A DIFFICULT WITNESS



1



ACTIVITY

We need one volunteer!

This volunteer will play the role of being a “difficult” witness while Jill plays the role of the investigator.

**volunteer will need to have their mic/webcam on please.*



2

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EXAMINING CORROBORATION AND CONTRADICTION IN EVIDENCE



3



LEARNING OUTCOME

After participating...

... you will be able to more effectively and efficiently make sense of consistent and inconsistent information gathered during the interview process for the final investigation report.



4

■ CREDIBILITY OF NON-WITNESS EVIDENCE

- Primary evidence
 - Authentic, relevant tangible evidence
 - Firsthand, uninvolved, unimpaired witness reports
 - Surveillance video
- Secondary or tertiary
 - Secondhand reports (rumors)
 - Relevant, tangible evidence that can't be authenticated
- “Anti-evidence”
 - Fabricated or tainted evidence

5

■ MUST HAVE STRUCTURE

Where do you get a disciplined approach to determining whether the information you're getting is accurate?

6

■ EVERY COURT SYSTEM HAS A CREDIBILITY INSTRUCTION

The trick is to apply the structure consistently.

Every time.

To all evidence.

Without bias.

And to look to how issues are illuminated by the contradictions and corroborations of all evidence obtained.



7

■ WITNESS CREDIBILITY: LYING or WRONG?

- Human nature to have imperfect or inconsistent recall
- Just because it doesn't make sense to you does not mean the person saying it is lying
- Just because someone is inconsistent (or flat wrong) doesn't mean they're a liar



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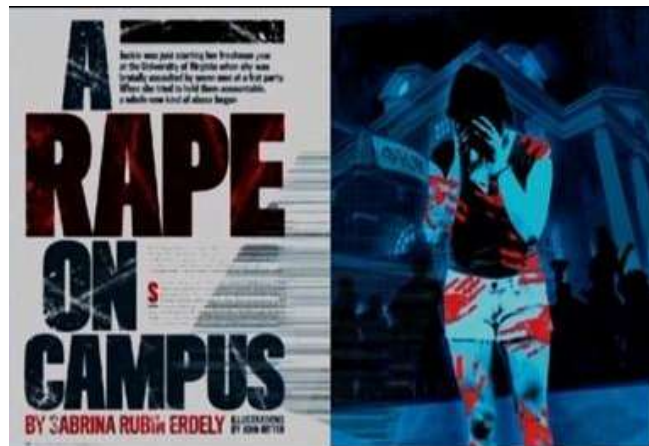
BIASES

- General biases need to be left at the door
- Bias/concern about false rape reports
- Biases about how sexual assault victims “should” react should be left at the door, too
- Biases about how men behave

9

FALSE REPORTING HAPPENS

BUT NOT
VERY
OFTEN



10

■ FALSE REPORTING DEFINED

- “Unfounded”
 - Does not meet the legal definition of sexual assault
 - False
- Rates of False Reports

11

■ BIASES RE: COMPLAINANTS

[“Anatomy of Doubt”](#) (Podcast)

[“An Unbelievable Story of Rape”](#) (Written)

[“Unbelievable”](#) (Netflix series)

12

BIASES RE: COMPLAINANTS

- Common for victims of sexual violence to delay reporting.
- Common for victims of sexual violence to remember some things very clearly and some things not at all.

"Indelible in the hippocampus is the laughter. The uproarious laughter between the two. They're having fun at my expense. They were laughing with each other...I was underneath one of them, while the two laughed...Two friends having a really good time with one another."

- Dr. Christine Blasey-Ford



13

BIASES RE: COMPLAINANTS

- DO consider all standard factors in evaluating credibility in a sexual assault case.
- DO recognize the difference between a lack of credibility and your own biases about how a sexual assault victim “should” behave.



14

BIASES RE: ALL PARTIES & WITNESSES

- Race?
- Economic background?
- Religion?
- Culture?
- Disability?
- Membership in a particular group?
- What else?

15

OTHER ACTS

- Area is fraught with danger
- If you are aware of other incidents of behavior that you believe reflect on the strength or weakness of a particular allegation, consult with counsel before considering it.
- General principle:
Similar incidents can be considered NOT FOR GUILT but for similar motive, opportunity, lack of mistake, intent, *modus operandi*.

16



POLL

Is Circumstantial Evidence Less Credible than Direct Evidence?



17

CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.



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■ PUTTING IT TOGETHER

Factual Issue:

1. What did person 1 say about the issue?
 - a. Assess person 1's testimony with evidence received from that person over time.
 - b. Assess person 1's testimony with testimony from others (consistent/inconsistent?).
 - c. Assess person 1's testimony with evidence received from others (e.g., video, documents, etc.).
2. Repeat with all witnesses or parties who addressed the issue.

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QUESTIONS

20

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FINAL INVESTIGATION REPORT



1

AGENDA

- I. Overall discussion of concept for format/elements
- II. Focus on structure of analysis
- III. Point by point format



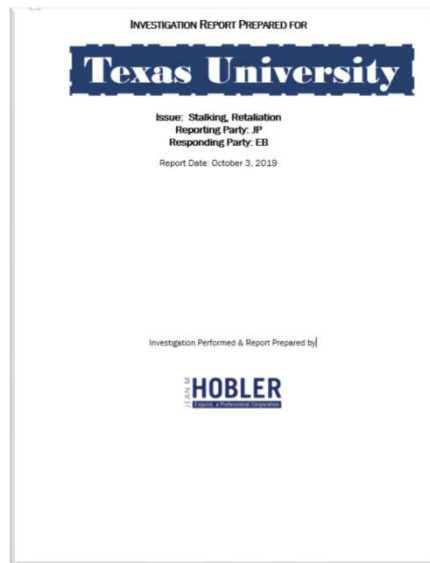
2

CONCEPT



3

REPORT FORMAT



4



POLL

**What is the longest report
(page length) you've ever
written on an investigation?**

5

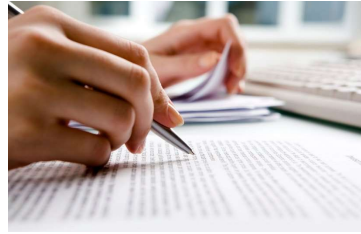
REPORT FORMAT

- Table of Contents
 - Include all the usual report headings
 - ALSO INCLUDE: contested issues and all corroborating and conflicting information about it
 - Will show you a sample at the end, after we've discussed
 - Easy to create a TOC when you use Styles in Microsoft Word

6

REPORT FORMAT

- Executive Summary
- Background
 - General Background
 - Complaint
 - Investigation
 - Evidence Collection
- Evidence
 - Subheadings depend on events in your case
- Analysis
- Report Conclusion*



7

REPORT FORMAT

- **Executive Summary**
- Background
 - General Background
 - Complaint
 - Investigation
 - Evidence Collection
- Evidence
 - Subheadings depend on events in your case
- Analysis

Executive Summary: Example

JH is a female first year student who filed a reporting indicating that SC, a male third year student, made deliberate sexual contact with her without her consent on three occasions. As reported, the first was in JH's dorm room, the second was in a hallway in the STEM building, and the third was at a party in the middle of a group of dancers.

8

REPORT FORMAT

- **Executive Summary**
- Background
 - General Background
 - Complaint
 - Investigation
 - Evidence Collection
- Evidence
 - Subheadings depend on events in your case
- Analysis

Executive Summary: Example

JH and SC are tenure track professors in the underwater basket-weaving department, which currently has no tenured professors due to faculty retirements. SC is a year ahead of JH in tenure track and is the department chair. JH alleged that SC removed responsibilities from him and changed department policies to his disadvantage in retaliation for a prior report by JH that SC engaged in unprofessional conduct, an allegation that was substantiated in a prior investigation.

9

REPORT FORMAT

- Executive Summary
- **Background**
 - **General Background**
 - **Complaint**
 - Investigation
 - Evidence Collection
- Evidence
 - Subheadings depend on events in your case
- Analysis

- Background
 - General Background
 - Who's who in re: the complaint itself (major players, not all witnesses)
 - Complaint
 - Summarize what the complaint said
 - Summarize any related complaints
 - Include timing
 - Investigation (detail coming up)
 - Evidence Collection (detail coming up)

10

REPORT FORMAT

- Executive Summary
- **Background**
 - General Background
 - Complaint
 - **Investigation**
 - Evidence Collection
- Evidence
 - Subheadings depend on events in your case
- Analysis

- Background
 - General Background (covered)
 - Complaint (covered)
 - Investigation
 - Who was interviewed, when, who they are, if they haven't already been introduced
 - Did they provide you any hard evidence (e.g., video, emails, text messages, etc.)?
 - Were interviews recorded? Transcribed?
 - Evidence Collection (detail coming up)

11

REPORT FORMAT

- Executive Summary
- **Background**
 - General Background
 - Complaint
 - Investigation
 - **Evidence Collection**
- Evidence
 - Subheadings depend on events in your case
- Analysis

- Background
 - General Background/Complaint/Investigation (covered)
 - Evidence Collections and References
 - Where is the evidence obtained from different sources?
 - How is it organized?
 - How is it referenced in the report?
 - Audio: (JH [date of interview], 1:41)
 - Memo (JH Memo, at p. 2)
 - Memo (JH Memo, at ¶ 3)
 - Is there a transcript of any recorded audio?
 - Are there memoranda of interviews and, if so, where do they live? When and how were they produced?

12



POLL

Where do you put your interview summaries?

13

REPORT FORMAT

- Executive Summary
- Background
 - General Background
 - Complaint
 - Investigation
 - Evidence Collection
- Evidence
 - Subheadings depend on events in your case
- Analysis
- Evidence [and Factual Findings]
 - Introductory Material: “Unless otherwise noted, the facts stated herein were reported in material ways consistently among the witnesses and by reference to the evidence. Where, however, a material fact was presented differently by different witnesses, I provide an overview of the evidence obtained, both corroborative of and contradictory to the underlying allegation.”

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REPORT FORMAT

- Executive Summary
- Background
 - General Background
 - Complaint
 - Investigation
 - Evidence Collection
- Evidence
 - Subheadings depend on events in your case
- Analysis
- Report Conclusion

- Evidence
 - Start from the beginning
 - Chronology or Chronological?
 - Can start with some background if that is relevant.
 - “JH and SC have a shared, 150-person class, but otherwise did not know each other before the first incident reported.”
 - Use subheadings to guide the reader through the events
 - Pre-incident Interactions Between JH and SC
 - The First Reported Incident: Unwanted Touching on X Date



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REPORT FORMAT

- Executive Summary
- Background
 - General Background
 - Complaint
 - Investigation
 - Evidence Collection
- Evidence
 - Subheadings depend on events in your case
- Analysis
- Report Conclusion

- Evidence
 - Set forth in neutral, narrative form
 - Acknowledge conflicts in the varying accounts
 - “JH stated that she and SC had never met before the first incident.”
 - “By contrast, SC indicates he and JH sat next to each other in their shared class and regularly chatted before and after class. On one occasion a week before the reported incident, SC said he and JH got coffee at Insight Roasters.”



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REPORT FORMAT

- Executive Summary
- Background
 - General Background
 - Complaint
 - Investigation
 - Evidence Collection
- Evidence
 - Subheadings depend on events in your case
- Analysis
- Report Conclusion

• Analysis

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WRITE LIKE A LAWYER

- Executive Summary
- Background
 - General Background
 - Complaint
 - Investigation
 - Evidence Collection
- Evidence
 - Subheadings depend on events in your case
- Analysis

- IRAC (law school)
- IRF (Title IX Investigation Report)
 - Issue
 - Rule
 - Facts relating to Issue & Specific Rule by Element
 - Where all versions of events materially agree, NBD
 - Where they diverge, address contradictory and corroborative evidence

18

WRITE LIKE A LAWYER

- Executive Summary
 - Background
 - General Background
 - Complaint
 - Investigation
 - Evidence Collection
 - Evidence
 - Subheadings depend on events in your case
 - Analysis
- What is the Issue in this case?
 - Did JB stalk EB?

19

WRITE LIKE A LAWYER

- Executive Summary
 - Background
 - General Background
 - Complaint
 - Investigation
 - Evidence Collection
 - Evidence
 - Subheadings depend on events in your case
 - Analysis
- What is the rule in this case?
 - Stalking is the repeated following, watching or harassing of a specific person that would cause a reasonable person to (a) fear for their safety or the safety of others, or (b) suffer substantial emotional distress. [Cite to policy.]

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WRITE LIKE A LAWYER

- Executive Summary
- Background
 - General Background
 - Complaint
 - Investigation
 - Evidence Collection
- Evidence
 - Subheadings depend on events in your case
- Analysis

- How do the facts in this case relate to the rule in this case?
 - Stalking is the repeated following, watching or harassing of a specific person...
 - Facts supporting or contradicting this, with references to evidence
 - ...that would cause a reasonable person to (a) fear for their safety or the safety of others, or (b) suffer substantial emotional distress.
 - Facts supporting or contradicting this

21

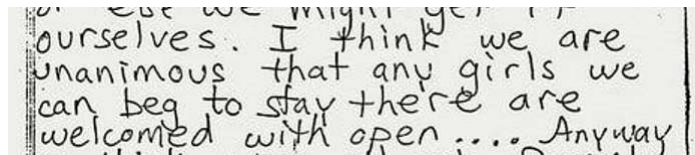
SIDE NOTE

Don't make your reader search out key information. If a piece of tangible evidence is key, put it right in the report.

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EXAMPLE

Bart stated that he had a great deal of respect for women and would never have engaged with, or even spoken about, a woman in a disrespectful manner. A witness provided a handwritten note from Bart, which states:



... ourselves. I think we are unanimous that any girls we can beg to stay there are welcomed with open ... Anyway

23

EXAMPLE

Jane alleged that Eliza doctored a photograph taken while on vacation to make Jane appear haggard and unwell, using that photograph on social media to malign Jane. A copy of the social media post photograph provided by a witness is on the left, below, and the original photograph, retrieved from Jane's phone is on the right, below.



(cite to evidence.)

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REPORT FORMAT

- Executive Summary
- Background
 - General Background
 - Complaint
 - Investigation
 - Evidence Collection
- Evidence
 - Subheadings depend on events in your case
- Analysis
 - Analysis Structure in Report
 - Issue (e.g., stalking)
 - Rule overview
 - Rule, first element
 - » Facts relating to Rule, first element
 - Rule, second element
 - » Facts relating to Rule, second element

25



RESOURCE

Mock Incident Report

26



QUESTIONS

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TECHNOLOGY IN THE NEW ERA



1

AGENDA

- I. Remote Investigations
- II. Technology at Your School
 - a. At Your House?
 - b. Office?
- III. Technology for Your Witnesses
- IV. Special Challenges
- V. Developing Rapport



2

Remote Investigations

“School districts and postsecondary schools have significant latitude and authority to take necessary actions to protect the health, safety, and welfare of students and school staff. School officials have discretion to make educational decisions based on local health needs and concerns, and OCR recognizes this decision-making authority.”

<https://www2.ed.gov/about/offices/list/ocr/docs/ocr-coronavirus-fact-sheet.pdf>



3

CHAT

What are the conversations at your institution about remote investigations? Any idea how long they'll last?



4

PROBLEMS WITH REMOTE INVESTIGATIONS

- Technological challenges
 - School
 - Home
 - Student/Witness
- Privacy
 - Secure technology?
 - Ability to speak freely?
- Students or witnesses who require
 - Disability accommodations
 - Interpreters
- Developing Rapport Over Video



5

SCHOOL TECHNOLOGY CONSIDERATIONS

- What is your video conferencing software?
- Are you engaging in video interviews from school or home?
- How secure is your internet?
- How secure is your workspace?
- What equipment are you using for video, audio, and lighting?
- What is the environment you're showing your witness?

6

SCHOOL TECHNOLOGY: SOME TIPS

- Connections
- Hardware
- Software
- Cameras
- Lighting
- Audio
- Environment
- Distractions
- Evidence Receipt/Review



7

WITNESS TECHNOLOGY CONSIDERATIONS

- What computers/tablets do they have?
 - What about their advisor?
- What internet access/support?
- What privacy?
- What accommodations?
- Interpreters
- Should your school set up technological interview rooms?
With sanitization protocols?
 - What if the student can't get there?

8

RAPPORT OVER VIDEO



Present your best,
most communicative
self

- Clothing
- Make-up as a tool
- Background
- Framing/Gestures
- Face Touching
(generally avoid)
- Fidgeting



9

RAPPORT OVER VIDEO



Final Prep:

- Take 30 minutes before the call to:
 - check your bandwidth
 - check your space for minimized distractions
 - check yourself on video: remove distractions
 - turn off your cell phone/other noisemakers



10

RAPPORT OVER VIDEO

- Final Prep:
 - Have all the evidence you want to use/show open before the call starts.
 - Make sure they're all clearly named so that you can tell what's what.
 - Make sure you have the right one selected before screen sharing.

11

RAPPORT OVER VIDEO

Tech Issues:

- Leaning on your table/desk
- Look into camera, gives you eye contact (recognize that lack of eye contact is likely from witness as result of video....)
- Take 30 minutes before the call to:
 - check your bandwidth
 - get your evidence open and unnecessary programs/documents closed
 - check your space for minimized distractions
 - check yourself on video: remove distractions
 - turn off your cell phone/other noisemakers

12

SECOND INTERVIEWER CONSIDERATIONS



Rapport



Over Video



13

RAPPORT OVER VIDEO



“Best Practices for Video Interviews”
communication?



Pre-interview call to address concerns?



Set expectations/protocols at the beginning of the
interview



14



CHAT

Share with us!

What thoughts or suggestions do you have when it comes to technology and online interview techniques?

15



QUESTIONS

16

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CLOSING ACTIVITY



17



ACTIVITY

Any volunteer(s) wish to have their current working space or home office critiqued by Jean/Jill?



18



QUESTIONS

19



EVALUATION

Thank you!

Please remember to complete the event evaluation.
Your comments will help us continually improve the
quality of our programs.



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