

Understanding Trauma Training

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Agenda

1. What is Trauma?
2. Trauma-Informed Approach to Investigations
3. Sexual Assault: Incapacitation & Consent Factors
4. Trauma & Credibility Analysis
5. Case Study

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Basis for a “Trauma-Informed” Approach

- A. Encourages all participants to share what they are able to recall about their experience without demanding chronological recall; and
- B. Facilitates the gathering of information in a balanced manner from all individuals

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Key Pillars: Title IX Process

Impartiality

Respect

Fairness

Equity

For all of the participants
in the process:

Complainants

Respondents

Witnesses

Third-party Reporters



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Serving Impartially in Your Role

- Must avoid **prejudgment** of the facts at issue
- Must avoid **conflicts of interest**
- Must avoid **bias**



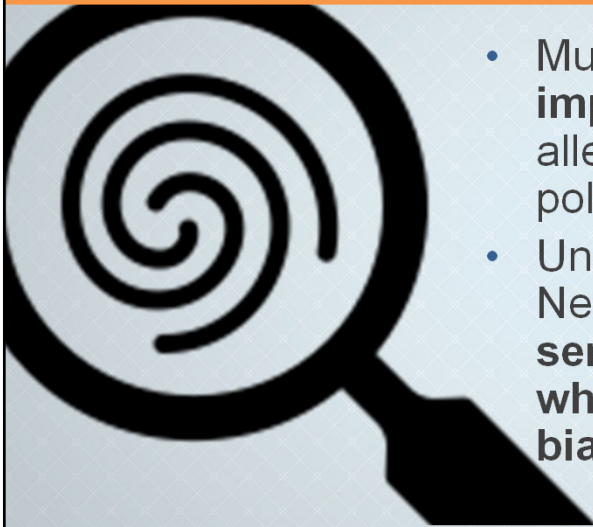
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Source: Title IX Regulations (2020)

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Principles for Title IX Process



- Must maintain **complete neutrality & impartiality at all times** in investigating alleged conduct violations of institutional policies.
- Understanding bias & whether it exists: Need to take an “**objective, common sense approach to evaluating whether a person serving in a role is biased.**” (*Title IX Preamble (2020)*)...



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Avoiding Bias

- Must **not** treat a party differently:
 - On the basis of the person's **sex**;
 - On **stereotypes** about how men or women behave with respect to sexual violence; and/or
 - On the basis of the person's **characteristics**: sex, race, ethnicity, sexual orientation, gender identity, disability, immigration status, financial ability, socioeconomic status, or other characteristic.



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Source: Title IX Preamble (2020)

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What is Trauma?

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What is Trauma?

- **Exposure** to an event or situation that creates a **real or perceived threat to safety, survival, or sense of well-being**.
- Trauma can result from different situations, such as: natural disasters, war, or severely distressing events, etc.
- The **brain** releases hormones or chemicals in the body to **help react** to the perceived threat (e.g. “survival” in the moment).
- The brain may be reacting to the **immediate situation** and/or **prior traumatic experiences** too.



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Trauma & Memory

- **Memory** occurs:
 1. **Encoding** (organizing sensory information)
 2. **Consolidation** (grouping memories & storing)
- **Traumatic events** can **interfere** with the memory process:
 - Can create fragmented or scattered memories
 - **Recall** can be slower and/or more difficult
 - **Substances** (alcohol, drugs) can affect memory
 - **Sensory information** may still be intact and accessible though

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Emotional & Behavioral Reactions to Trauma

- Flat affect (no emotional signs)
- Giggling or laughing demeanor
- Impaired rational thoughts
- Hyper or jumbled thoughts



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Signs of Post-Traumatic Stress

- Shock, denial, irritability, anger
- Difficulty trusting others
- Social withdrawal
- Depression
- Suicidal ideation
- Emotional numbness (apathetic)
- Difficulty concentrating
- Guilt, shame, embarrassment
- Increased substance use (coping mechanism)

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Interview & Questioning Approaches (Review)

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Before an Interview

- Develop a **safe space** for a person's physical & emotional well-being
- Have **handouts & resources** readily available



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Pre-Interview: Rapport-Building Prompts

- **“Help me understand** how you are feeling right now.”
- **“What, if anything,** can I explain to you about this process **before we get started?”**

Note: Consider possible **barriers** or **concerns** to building trust with a participant.

- How can you minimize or eliminate these factors?

Source:

Forensic Experimental Trauma Interview (FETI)

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Pre-Interview: Explain the Process

“Before we begin, would it be okay if I talked about information that I am required to share with you?”

What to expect of the process

Applicable policies; amnesty for alcohol/drug use; prohibition of retaliation

Rights of the parties

Purpose for the interview

Options for decision-making

Resources & supportive measures available

Title IX Coordinator & investigator(s) contact information

Follow-up & next steps

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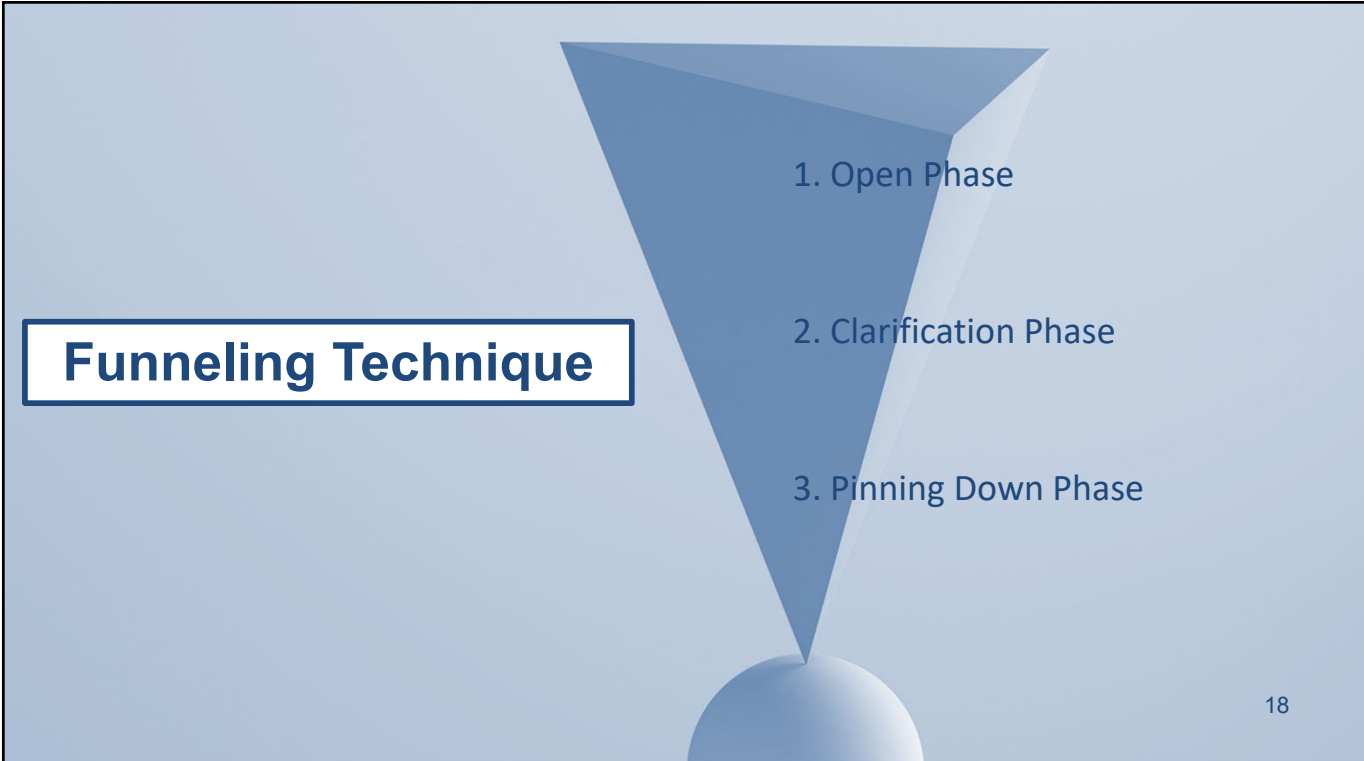


Body Language & Nonverbal Cues

- **Small** head nods (periodic, not overly animated)
- **Eye contact** (be attentive, soften eyes)
- **Facial expressions** (show genuine interest, avoid emotional movements/reactions)
- **Open** body language (limit crossed arms or legs)
- Focus on your **breathing** (mental mindfulness)
- Take **pauses** between questions/cues (pace yourself)
- Listen with your **eyes and ears**
- **Check-in** (when appropriate):
 - *“Help me understand how you are feeling right now.”*

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Funneling Technique

1. Open Phase
2. Clarification Phase
3. Pinning Down Phase

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Interview Start (Open Phase)

- Allow the person to provide their account of the incident **in their own words & at their own pace**:
 - **“What are you able to tell me about your experience?”**
 - Allow time for the person to respond.
 - Do **not** ask a lot of questions at first.
- Be patient & respectful.
- Be comfortable with **silence**.
- **Nodding** or **“Mmm”** are ok (shows interest).
- Follow-up (if a general prompt is necessary):
 - **What, if anything, do you remember once you...[insert last part]...?**

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Clarification & Follow-ups (Clarification Phase)

Attempt to clarify from **all** parties. Examples...

- **“Tell me more about [blank]...”**
- **“When you said [blank]...help me understand what you meant...”**
- **What, if anything, do you remember once you...[insert last part]...?**
- **Instead of asking “Why or why not...?”...**
Say **“Help me understand your thought process for [insert the clarifying part]...”**
- **“What did you mean by [blank]...?”**
- **“How do you know about [blank]...?”**
- **“There are differences in your account vs. [blank]...[insert specifics] ...help me understand the reason(s) or rationale for this different account...”**



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Sensory Recall (Clarification Phase)

*“What, if anything, are you able to **remember** about...”*

Taste

Smell

Feel/Touch

Hear

See

Pain

Body
Position

Pressure

Temperature

Source:
Forensic Experimental Trauma Interview (FETI)

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Recall (Cont.)

- **Instead of asking “Why or why not...?”**
Ask “What was your **thought process**...?”
 - ...**During** [blank]?”
 - ...**Before** [blank]?”
 - ...**After** [blank]?”
- “What, if anything, are you able to **remember** about...?”
- “What were your **reactions** to...?”
 - Emotional response?
 - Physical response?
- “What was the **most difficult** part of [blank]?”
- “What, if anything, **can’t you forget about**... [before/after]...?”

Source:
Forensic Experimental Trauma Interview (FETI)

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Statement Gaps or Ambiguities (Pinning Down Phase)

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Type	Example Statements		Interview Approaches
Text Bridges	<ul style="list-style-type: none"> • <i>After that...</i> • <i>The next thing I knew...</i> • <i>Later on...</i> 	<ul style="list-style-type: none"> • <i>Afterwards...</i> • <i>Besides...</i> • <i>And then...</i> • <i>Finally...</i> 	Clarification prompt
Ambiguous Responses	<ul style="list-style-type: none"> • <i>Kind of...</i> • <i>I think...</i> • <i>Sort of...</i> • <i>I believe...</i> 	<ul style="list-style-type: none"> • <i>To the best of my knowledge...</i> • <i>I may have...</i> • <i>Maybe...</i> 	Clarification or recall prompt
Broad Statements	<ul style="list-style-type: none"> • <i>Always...</i> 	<ul style="list-style-type: none"> • <i>Everyone...</i> 	Clarification prompt; specific examples?
Hearsay	<ul style="list-style-type: none"> • <i>I heard from Person X that...</i> 		Clarification prompt; personal knowledge or first-hand experience?

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Misc. Interview Prompts (Pinning Down Phase)

Example Interview Prompts	Purpose of the Prompt
<i>"Let me give you this information so that you can respond..."</i>	Provides an opportunity to respond to other testimony, statements, or evidence.
<i>"It's been reported that you said X, Y, and Z."</i>	Responding to a denial; corroboration.
<i>"What's the reason that Person X said/did [blank] with this specificity, if you didn't?"</i>	Responding to a denial; corroboration.
<i>"Others have reported you said [blank]. What's the reason (or rationale) for considering that you didn't?"</i>	Responding to "I don't recall"; corroboration; credibility
<i>"Is there anything else that you'd like to add to this statement?"</i>	Provides an opportunity to respond; gather information not explicitly asked about.



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Interview Documentation

Document the **psychological & physical responses** of the experience (if applicable):

Nausea

Flashbacks

Trembling

Muscle Rigidity

Terror

Memory Gaps

Sensory Recall

Injuries



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Interview Documentation (Cont.)

Document these additional **elements** (if applicable):

Force

Threats

Coercion

Intimidation

Fear

Note: *These elements may not be based on weapon use or actual physical threat for it to be perceived as real*



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Interview Documentation (Cont.)

Document any **defensive strategies** (if applicable):

Forceful Physical Resistance (Fight)

Verbal Resistance

Attempt to Get Away (Flight)

Bargain (Appease)

Tonic Immobility (Freeze)

Non-Stranger Sexual Assault Cases (Review)

Consent Definition

A **voluntary, mutually understandable agreement** that clearly indicates a willingness to engage in each instance of sexual activity. Consent to one act does not imply consent to another. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent can be withdrawn at any time. Any expression of an unwillingness to engage in any instance of sexual activity establishes a presumptive lack of consent.

Consent is not effective if it results from: (a) the use of physical force, (b) a threat of physical force, (c) intimidation, (d) coercion, (e) incapacitation or (f) any other factor that would eliminate an individual's ability to exercise his or her own free will to choose whether or not to have sexual activity.

A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be a voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity.



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Source:

UT System Model Policy for Sexual Misconduct

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Consent (Example Questions/Considerations)

- Refer to the definition of **“consent”** based on the **institution’s policy**.
- What was the nature, timing, & scope of the **relationship** btwn the parties?
- What were each party’s **expectations** (e.g. perceived, communicated), about the **nature of the contact** on the date of the alleged incident?
- What was the manner of communication **before, during, & after** the alleged incident (e.g. words & actions) btwn the parties?
- What were the circumstances of the **CP’s disclosure (of a possible sexual assault)** & the **RP’s reaction** to the disclosure?
- Who **initiated** the sexual activity (that is at issue in the allegation(s))? How so, or in what way?
- What was the **impact** of alcohol or other drug use in relation to the **ability to give consent**?
- Are there any reported or demonstrated **predatory behaviors**?
- **For RP** (if applicable): What **words or actions** by CP indicated consent to sexual activity?



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First...Establishing Consent

Consent is not effective if:

- Physical force;
- Threat of physical force;
- Intimidation;
- Coercion; or
- **Incapacitation**
- Other factors?



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Incapacitation Definition

Incapacitation is the **inability, temporarily or permanently, to give consent** because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. An individual may be incapacitated if they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in a sexual interaction.

When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence or impaired by use of the drug. Alcohol and other drugs impact each individual differently, and determining whether an individual is incapacitated requires an individualized determination.



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Source:

UT System Model Policy for Sexual Misconduct

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Intoxication:

- Slurred, mumbled or slow speech
- Weaving or stumbling while walking
- Falling down or loss of balance
- Exaggerated emotions
- Difficulty picking up objects
- Spilling food or drinks
- Delayed responses to questions
- Trouble counting numbers
- Excessively quiet, sullen

Incapacitation*:

- Mentally or physically helpless
- Unconscious
- Asleep
- Unaware of the sexual activity occurring
- Unaware of time, place, or how they became engaged in a sexual act
- A state beyond drunkenness or intoxication



* Using a "reasonable person" standard

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Incapacitation Definition (Cont.)

After establishing that a person is in fact incapacitated,
the University asks:

1. Did the **person initiating sexual activity** know that the other party was incapacitated? And if not...
2. Should a **sober, reasonable person in the same situation** have known that the other party was incapacitated?

If the answer to either of these questions is "YES," consent was absent and the conduct is likely a violation of this Policy.

Note: A Respondent will be found to have violated policy only if the **Respondent** knew or should have known that the person was incapacitated.



Source:

UT System Model Policy for Sexual Misconduct

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Incapacitation (Example Questions/Considerations)

- What were each person's **pre-incident** behavior?
- **Quantity & quality** of alcohol & other drug use:
 - What was the nature of the **event & setting**?
 - Was there any respective **power or control** of either party?
 - Who **supplied** the alcohol or other drug(s) to either party?
- What were each person's **expectations & mindset**?
- How did each person **reasonably know** the level of intoxication of the other party?



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Incapacitation (Cont.) (Example Questions/Considerations)

- How did each person know, if at all, **where** they were going, **how** they got there, **what** they were doing (actions/words), and/or **what was going on around them** (understanding the environment)?
- How was **consent** given or communicated?
- Is there any information from **witnesses, video footage**, etc. as to the level of incapacitation?
- What were each person's **post-incident** behavior?



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Trauma & Credibility

Trauma may explain elements that can typically negatively impact an individual's **credibility**, such as:

- Statement inconsistencies
- Lack of a linear account
- Memory gaps about the alleged incident
- Demeanor or affect
- Brief answers or answers lacking in detail



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Trauma & Credibility

- Understanding the impacts of trauma can provide insight into the reasons there may be deficits in credibility.
- However, understanding trauma-related impacts should not affect a credibility assessment.
- Trauma may assist in explaining elements or issues that impact an individual's credibility, but it typically does not excuse those elements or issues.

Credibility assessments should address the following factors:

- The reliability, consistency, and believability of an individual



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Tips for Evaluating Witnesses: Credibility Considerations

- Are there inconsistencies? Is an explanation plausible?
- What did the witness do? What did they not do?
- Are there motives for the witness to be less than truthful?
- Are there motives for the witness to frame the event in a way more favorable to themselves? Are they lying to themselves?
- Is there an opportunity for a good faith mistake?

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Breakdown the Elements of the Possible Policy Violation at Issue

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Look at the Provision(s) at Issue:

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

For the purposes of this definition:

- **Course of conduct** means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.
- **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.



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Look at the Provision(s) at Issue:

Engaging in a (1) **course of conduct** (2) **directed at a specific person** that would (3) **cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.**

For the purposes of this definition:

- **Course of conduct** means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
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Burden of Proof on the Institution

Preponderance of the Evidence Standard

Whether the greater weight of the credible evidence establishes that the Respondent engaged in the alleged policy violation.

Note: The Respondent is presumed **not responsible.**



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Relevant Evidence



Evidence is **relevant** if:

- The evidence has any tendency to make a **fact** more or less probable than it would be without the evidence; **and**
- The **fact** is of consequence in determining the action.



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Relevant Evidence

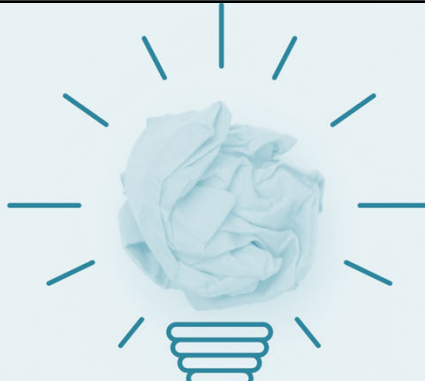


Another way to frame it:

- **Exculpatory evidence:** Evidence tending to excuse, justify, or absolve the person of the alleged conduct.
- **Inculpatory evidence:** Evidence that places responsibility on the person of the alleged conduct.

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In Making Your Decision, or Developing Your Analysis:

- Assess witness credibility:
 - Ex: Demeanor, personal knowledge, bias
- Consider the strength of the relevant evidence:
 - **Credibility** of the relevant evidence
 - **Weight** of each exhibit
 - **Persuasiveness** of the evidence

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Case Study

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CP's Account

Complainant and Respondent meet at a party. They each drink 5-7 drinks throughout the evening. CP's friends state that CP was acting "*drunk*" and was "*loud*" and "*laughing a lot*" at the party. CP thought that RP was "*cute*" and they danced together at the party, which she said she enjoyed. CP later had a couple of shots of vodka after dancing. CP didn't feel well at that point, and went to the bathroom to throw up. Then went outside, still feeling sick and very tired, and stumbled into sitting on the porch. RP offered to walk CP home.

CP then remembers waking up the next day, no clothes on, and a condom in the trashcan. CP wasn't sure what happened after walking home with RP. CP was scared and started to cry. CP called RP to ask what happened. CP said that RP told her on the phone that they had sex the night before. RP assured CP that RP wore a condom. RP asked CP if CP would like to hangout again soon. CP felt disgusted by RP's gesture, and then decided to report to the Title IX Office, concerned it was a sexual assault.



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RP's Account

RP confirmed consuming alcohol at the party. RP introduced himself to CP and they started dancing together. RP got CP a few shots of vodka, but didn't have any himself at that point in the evening since RP was feeling "*buzzed*." RP saw CP go to the bathroom, but then lost touch. As RP was leaving the party, RP saw CP on the porch stoop. RP said that CP insisted walking CP home, so they took off together. RP helped CP inside CP's apartment, since CP was having trouble walking on her own.

RP said that CP asked for some juice or water, or something like that. Later on, CP asked RP to "*snuggle, just for a moment*." CP started kissing RP, but then laid back down.



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RP's Account (Cont.)

The next thing RP knew, CP was kissing RP again, CP was naked, and CP asked if RP wanted to have sex. RP said "yes" and then CP "gave me oral." RP asked if CP had any condoms, and CP nodded head toward the dresser. RP got a condom from the dresser drawer. Then, CP got on top of RP and put the condom on RP, and they had "some wild sex". RP doesn't remember when leaving CP's apartment, but it seemed like the early morning. CP looked asleep at that time.

RP got a call from CP the next morning before a class. CP asked about the night before and what happened. RP confirmed for CP that they "had sex" the night before. CP seemed "hysterical" on the phone, "not sure why though." RP tried to reassure CP that RP wore a condom and really liked CP, saying "I really want to hangout again."



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Tips for Evaluating Witnesses: Credibility Considerations

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- Is there an opportunity for a good faith mistake?

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CP's Follow-up Statement

CP lives about two blocks from the party, and *“had a really difficult time walking without stumbling or falling.”* CP remembers having to lean on the RP the entire way home, and still fell a couple of times. CP's hands and knees had small scrapes the next morning, and some dirt on CP's jeans at the knees.

Also, CP has been having *“dreams”* about that night. The parts of the *dreams* that CP recalls: Looking up and seeing the ceiling fan turning, CP's heavy eyelids, listening to the buzz of the AC unit. *“These “dreams” feel like flashbacks to me. I can envision a shadow of some kind. It has to be the RP. I seemed really out of it, just wasted. The room felt like it was moving, so I'd close my eyes. I just feel so sick to my stomach thinking about all of this.”*



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Tips for Evaluating Witnesses: Credibility Considerations

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A slide titled "Q & A" featuring five colorful speech bubbles (red, orange, blue, teal) containing white question marks. The background is a light gray grid pattern. In the bottom left corner is the University of Texas System logo and text: "THE UNIVERSITY of TEXAS SYSTEM THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES." In the bottom right corner is the number "55".

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Contact Information

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A slide titled "Contact Information" with a light gray grid background. It features a table with contact details for Krista Anderson. In the bottom left corner is the University of Texas System logo and text: "THE UNIVERSITY of TEXAS SYSTEM THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES." In the bottom right corner is the number "56".

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