



D. STAFFORD
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Advanced Investigations Course

Investigations of Sexual Misconduct

2020 Course

D. Stafford & Associates, LLC, PO 179 Rehoboth Avenue, #1121, Rehoboth Beach, DE 19971
202-438-5929

Adrienne Meador Murray, Lead Instructor and
Executive Director, Equity Compliance and Civil Rights Services

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Dolores Stafford, President & CEO

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www.dstaffordandassociates.com



Have you joined NACCOP yet? If not, go to www.naccop.org to become a member of this professional association supporting Clergy Compliance Officers.

Once an institution is a member, individual membership is \$50.00. You can sign up your entire Clergy Compliance Committee for membership!

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Advanced Investigations Course:
Conducting Trauma Informed Investigations
Designed for Campus Police/Public Safety/Title IX & Conduct Officers

June 1-5, 2020 (Virtual Course)

Overview of Course Schedule

All Classes will run from 9:00am to 5:00pm with a lunch break from 11:45am to 1:00pm.

Fifteen-minute breaks will also be given at 10:15am, 2:15pm, and 3:30pm each day.

Day 1 **Investigating and Managing Sexual Misconduct Cases from A to Z**

- Introductions and Overview
- The 2020 Title IX Regulations
- The Clery Act for Title IX Professionals
- Stress, Trauma and Memory
- Addressing Immediate Reports
- The Intake Process for Formal Complaints
- Informal Resolution
- Law Enforcement Investigations

Case Studies

Day 2 **Using Technology to Investigate Sexual Misconduct**

- Computer Basics
- Internet Basics
- Security Risks
- Communication Platforms
- Social Media Ecology
- Social Media: Use and Effect
- Problematic Social Media Behaviors
- Popular Social Media APPs: What They Are and How to Use Them In Investigations
- Other Investigation Tools and Considerations
- New Title IX Regulations - Technology Related Issues



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Day 3

Statement Analysis

- Introduction
- Indicators of Veracity
- Deception through Equivocations
- Statement Balance
- Extraneous Information and Deception
- Pronouns
- Practice

Day 4

Advanced Interviewing Techniques

- Interviewing Techniques
- Investigating Sexual Misconduct
 - Sexual Harassment
 - Sexual Violence
 - Intimate Partner Violence
 - Stalking
- Special Considerations
 - Consent
 - Incapacitation
 - Bias
 - Multiple Offenders

Case Study—Practice Interviews

Day 5

Closing the Case

- Report Writing
- Credibility
- Outcomes and resolutions

Case Study--Conclusion



Adrienne Meador Murray
Director of Training and Compliance Activities



Adrienne Meador Murray is a 17 year law enforcement veteran. She began her career with the City of Richmond Police Department in Richmond, VA. Hired by the University of Richmond, she worked her way up through the ranks from night shift patrol officer to the Operations Lieutenant at the University. Murray's role in this last command position involved her oversight of sworn officers assigned to patrol, crime prevention and criminal investigations. Adrienne most recently served as the Chief of Police at Trinity Washington University (in DC) where she was responsible

for the oversight of sworn law enforcement officers, parking, emergency management and transportation services. She formerly served as the Chief of Police at Davidson College in North Carolina. In January 2014, Murray took a full time position with the National Association of Clergy Compliance Officers & Professionals and D. Stafford & Associates, as the Director of Training and Compliance Activities, after having served as a part time associate for two years.

For fifteen years, Chief Murray has been the point person on several campuses for institutional response and compliance with regard to incidents of rape, sexual assault, stalking and intimate partner violence. She is trained both as a criminal investigator as well as a civil rights investigator and specializes in assisting colleges and universities with coming into compliance with Title IX and the VAWA amendments to the Clergy Act. Adrienne has conducted numerous audits of campus compliance with federal law and regulatory guidance in addition to presenting across the country on



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the Sexual Victimization of College Women, Dealing with the Reluctant Victim, and Responding to Sexual Assault on Campus: Clery Act and Title IX Implications, to name a few.

Adrienne is the lead instructor and author of the D, Stafford & Associates training programs related to the investigation of sexual assault, dating violence, domestic violence, and stalking and is one of only a handful of instructors in the nation who works to specifically teach campus police officers how to conduct trauma-informed investigations into sexual assault while complying with the many nuanced and complex institutional requirements of the Clery Act and Title IX. She also works to help college and university administrators understand how to conduct administrative investigations in compliance with Title IX and the Clery Act in concert with law enforcement agencies.

Adrienne is a graduate of the University of Richmond, where she received her Bachelor's Degree in Applied Studies in Human Resource Management and is graduate of the 235th session of the prestigious FBI National Academy. She also holds a Master of Science degree in Campus Public Safety Administration.



Ann Todd
Consultant and Senior Investigator



Ann Todd, Esq is a seasoned civil rights investigator in higher education for D. Stafford & Associates (DSA). Ms. Todd is a graduate of Davidson College with a degree in psychology and holds a JD from the University of Nebraska. Prior to joining DSA, she practiced law in Charlotte, NC, specializing in employment and civil rights and worked for a number of non-profit organizations. She returned to her alma mater (Davidson College) in 2008 and worked there through March of 2016 serving as the Assistant Director of Human Resources with the responsibility of managing employee relations and the learning and development function.

Ms. Todd joined the DSA in 2015 and currently serves as the Consultant, Equity Compliance and Civil Rights Investigations. She is the Senior Investigator for the DSA Title IX Investigation Team. She conducts external investigations on behalf of colleges and universities, specializing in investigating student allegations of sex discrimination, sexual assault, intimate partner violence, and stalking. Additionally, she brings a strong Human Resources background to investigating a range of employee misconduct—from performance issues to discrimination.

In addition to conducting investigations, Ms. Todd is a frequent speaker and consultant on Title IX investigations, conducting 20-30 courses every year on best practices for investigating sex discrimination and sex crimes on campus. She works with schools to draft policies and processes that provide equity and fairness to all parties involved and is adept at facilitating discussions with institutions to ensure the end product represents the values of the campus community.



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Ms. Todd is a member of the NC Bar and a Certified Clery Compliance Officer through the National Association of Clery Compliance Officers and Professionals (NACCOP). She is also a certified 360 facilitator through the Center for Creative Leadership. She lives in Davidson, NC where she volunteers on a number of local and town boards.



Beth Devonshire, Consultant **Equity Compliance and** **Title IX/Civil Rights Training**



Beth Devonshire, Esq., has been an Associate with DSA since 2012 and she became a full-time consultant in August of 2018. She was the Associate Dean of Students at UMass Boston from November 2016 to July 2018. In that role, Beth administered the student conduct system, chaired the CARE and BIT Teams, served as the Deputy Title IX Coordinator, oversaw the U-Access (an office dedicated to assisting students who are dealing with a multitude of issues such as food insecurity, homelessness, emancipation from foster care, and chronic poverty), and acted as a liaison with the various constituencies around the University. Additionally, Beth was responsible drafting the policies and procedures related to students. Prior to that, Beth was the Director of Student Conduct at Bridgewater State University and the Director of Community Standards Stonehill College. Before beginning her career in Higher Education, Beth served as a clerk for the Justices of the Superior

Court, and in various positions for the Massachusetts House of Representatives. Beth has also presented extensively on Title IX including presentations to Colleges, State Wide Organizations, Regional Conferences, and at the OCR Title IX Conference in March of 2011.

Additionally, Beth has given multiple presentations on other legislation and legal issues effecting higher education, including FERPA, Clery and Alcohol and Other Drug Prevention. Beth is the former National Knowledge Community Public Policy Liaison for NASPA, and also the former Massachusetts Public Policy Liaison for MA NASPA. Beth also served as the Director of the Legislative Committee for The Association for Student Conduct Administrators (ASCA) for two years. In those roles, Beth was charged with keeping abreast of proposed and passed legislation and cases impacting higher education and communicating those changes to the membership.

Before beginning her career in Higher Education, Beth served as a clerk for the Justices of the Superior Court from 2006-2007. Prior to that, Beth worked at the Massachusetts State House as Deputy Attorney for House Ways and Means, Chief of Staff for the Committee on Election Laws and as a Researcher for the Committee on Local Affairs.



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Devonshire currently serves as an Associate for D. Stafford & Associates, a highly reputable consulting firm specializing in delivering on organizational, physical security, vulnerability and arming assessments; Clery Act compliance audits; assessments of Title IX compliance; Behavioral Intervention Team and Student Conduct Assessments and Training; and a host of other services related to security, safety and compliance for institutions of higher education.



Catherine Cocks, M.A.
Consultant, Student Affairs, Title IX, and
Equity Compliance Services



Ms. Cocks has been a higher education professional for over thirty years. Her work with D. Stafford & Associates focuses on Title IX investigations and training; assessment of student affairs policies, practices and services; and behavioral threat assessment. Cathy was the Director of Community Standards for the University of Connecticut for 14 years where managed the student conduct process, which included managing all Title IX cases involving student respondents and chaired the University's student threat assessment team. Prior to that, she held several positions within Residential Life at the University of Connecticut and Roger Williams University.

She is a faculty member for the Association for Student Conduct Administration's (ASCA) Donald D. Gehring Academy teaching on subjects such as ethics, governance, threat assessment, media relations, and higher education trends. She was an affiliated faculty

member for many years in the University of Connecticut's Higher Education and Student Affairs Master's program teaching "The Law, Ethics, and Decision-Making in Student Affairs."

Cathy has co-authored the "Philosophy of Student Conduct" chapter in the 2nd edition of "Student Conduct Practice" (2020) and was a member of the writing team for CAS Standards' Cross-functional Framework for Identifying and Responding to Behavioral Concerns.

Cathy is a Past President of ASCA. She has also served as a Circuit representative, co-chair of the Public Policy and Legislative Issues Committee, and as a member of the ASCA Expectations of Members Task Force. Cathy has served in a variety of leadership roles in NASPA Region I.

She was the 2015 recipient of ASCA's Donald D. Gehring Award. She is a past recipient of the NASPA Region I Mid-Level Student Affairs Professional Award and the NASPA Region I Continuous Service Award.

She earned her Master's degree in Higher Education Administration from the University of Connecticut and Bachelor's degree in Communications/Media from Fitchburg State University.

Stan Burke was an FBI agent for 23 years, serving as a field agent in the FBI's Phoenix, Dallas and Albuquerque Divisions, and as a supervisor and chief at FBI Headquarters and the FBI Academy.

While assigned to the FBI Academy, he taught investigative statement analysis; interviewing and interrogation; and law enforcement ethics, for which he was certified as a subject matter expert. As a University of Virginia faculty member, he taught both graduate and undergraduate courses to law-enforcement managers and investigators throughout the world.

In 2008, he was appointed unit chief of the FBI's Law Enforcement Communication Resources Unit. Under his management the LECRU joined forces with the FBI's Behavioral Sciences Unit and founded the FBI's Joint Communication Exploitation Research Team. Through his efforts, the JCERT analyzed statements submitted by law enforcement agencies worldwide and became an invaluable investigative resource. In 2010 he was awarded the prestigious FBI Director's Award for these efforts.

In 2010, he was given section chief responsibilities over the FBI's Law Enforcement Programs Section and was responsible for the management of all aspects the FBI's national and international training programs.

Stan retired from the FBI in 2011 and is currently the president of Precision Intelligence Consulting, which provides investigative statement analysis services and instruction to clients throughout the world.

He grew up near Washington, DC, and graduated from the University of Maryland's College of Business Management and Midwestern State University's graduate political science program.

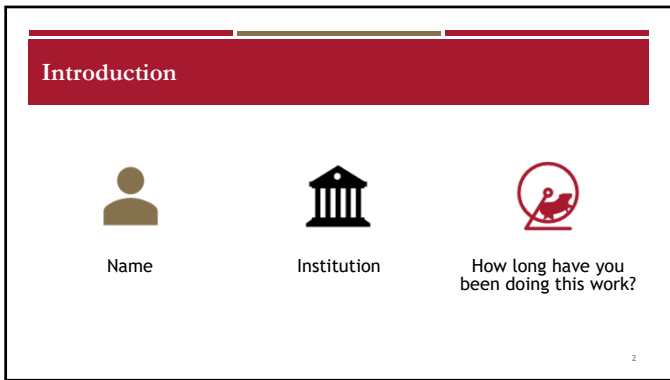
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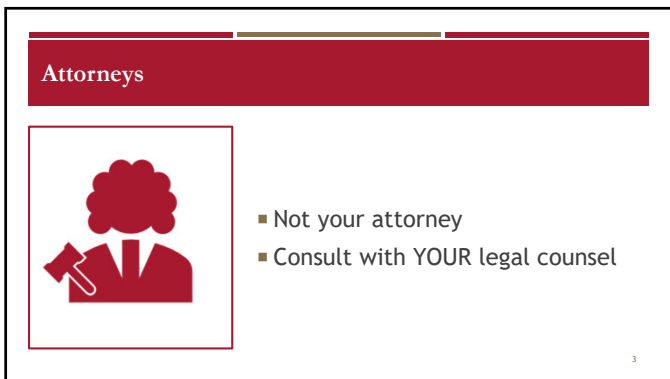
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Agenda

- 1.
- 2.
- 3.



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The Laws

- **Title VII** of the Civil Rights Act of 1964
- **Jeanne Clery** Disclosure of Campus Security Policy and Campus Crime Statistics Act (1990)
 - Violence Against Women Reauthorization Act of 2013
- **Title IX** of the Education Amendments of 1972

5

Language

- **Civil Rights**
 - Complainant vs. respondent
 - Accuser vs. accused
 - Reporting party vs. responding party
- **Criminal** (for purposes of concurrent investigations)
 - Victim vs. suspect/perpetrator

6

Parties

- **Complainant**
 - A individual who is alleged to be the victim of conduct that could constitute sexual harassment
- **Respondent**
 - An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- **Witness**
 - Any individual who has direct knowledge of an incident

7

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Outcomes

- **Findings**
 - "Responsible" or "Not Responsible"
 - "In Violation" or "Not In Violation"
 - "Substantiated" or "Unsubstantiated"
 - "Founded" or "Unfounded"
- **Criminal Findings**
 - "Guilty" or "Not Guilty" (Innocent)

A False Report/False Allegation is not the same thing as a finding of "Not Responsible."

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Standard of Proof

- **Preponderance of the Evidence**

Level used in most civil cases. Based on the evidence presented, it is more likely than not that the student is responsible.
- **Clear & Convincing Evidence**

Level used in some civil cases. Based on the evidence presented, it is highly probable that the student is responsible.
- **Evidence Beyond a Reasonable Doubt**

Highest level of proof. Level used in criminal cases.

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Umbrella Terms

- **Sexual harassment** is a form of sex discrimination prohibited by Title IX
- **Sexual assault** means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting program. Defined under the Clery Act
- **Sexual misconduct** is a term often used in school policies to adequately describe the spectrum of unwanted behaviors

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Terminology

NCAA Office of Inclusion (2011) NCAA
Inclusion of Transgender Student Athletes

- Biological Sex** • Internal and external genitalia and reproductive organs
- Gender** • Not inherently connected to biology
- Gender Identity** • How gender is labeled
- Gender Expression** • External display of gender

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Terminology

NCAA Office of Inclusion (2011) NCAA
Inclusion of Transgender Student Athletes

- Transgender** • Umbrella term for outside sex assigned at birth
- Sexual orientation** • Romantically or sexually attracted to specific gender
- Genderqueer** • Don't identify with binary definitions
- Gender nonconforming** • Outside behaviors assigned to gender at birth
- Gender fluidity** • Range of gender expression

12

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Terminology NCAA Office of Inclusion (2011) NCAA
Inclusion of Transgender Student Athletes

- Intersex** • Sexual characteristics of both genders
- Transition** • Process of asserting sex corresponds to gender
- Transphobia** • Discrimination directed at those who are trans

13

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Terminology

- Cisgender** • Sex assigned at birth corresponds in "expected" way
- Pansexual** • Attracted to members of all gender identities
- LGBTQ+** • Umbrella term representing sexual orientations

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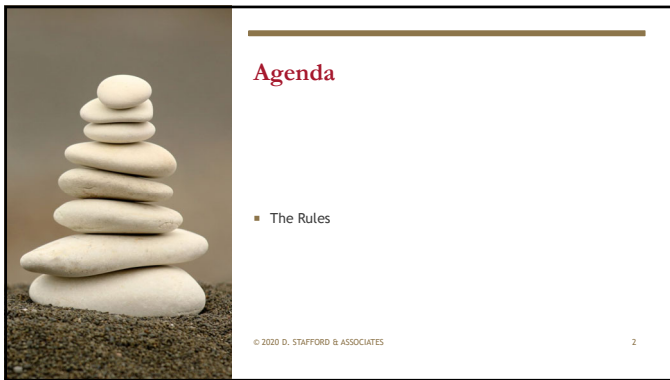
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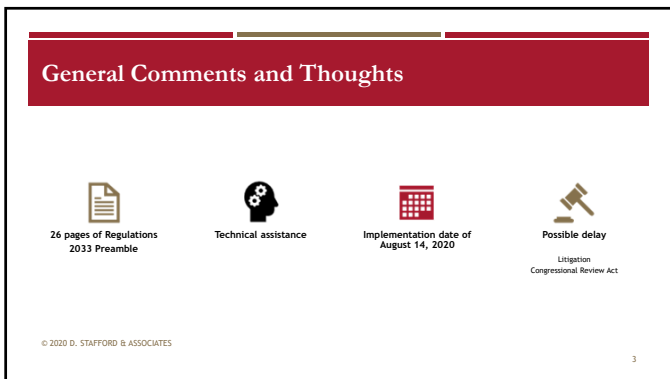
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Preamble Highlights

- Codifying what was done as Guidance
- Brings into alignment with SCOTUS
- Victim and survivor mean there was a responsible finding
- Schools are not like workplaces
- Do not believe Rules will reduce reporting or investigations
- Focus is on sexual misconduct, not other Title IX aspects
- Use informal resolution for educational process
- Status of advisors should not impact school's compliance
- Training will combat prejudice we see in criminal justice system
- We DO have the authority (1311)
- "Many people" support changes

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§106.3 – Remedial Action



FIX IT



NO MONETARY
DAMAGES

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§106.6 – Effect of Other Requirements and Preservation of Rights

Constitutional
Rights

FERPA

Title VII

Parents and
guardians

State and
local laws

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§106.8(a) Designation of Coordinator

Title IX Coordinator Notification of parties Contact information Reporting information

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§106.8(b) Dissemination of Policy

NOTIFICATION DO NOT DISCRIMINATE TITLE IX COORDINATOR CONTACT INFORMATION GRIEVANCE PROCEDURE UNITED STATES

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§106.8(C) Adoption of Grievance Procedure

PROMPT AND EQUITABLE REPORTS AND COMPLAINTS RESPONSE EDUCATIONAL MATERIALS

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Only applies to US

Use other policy

No Clery conflicts

§106.8(d)
Application
Outside of the
United States

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Submit in writing

Specific tenant

Not required


Raise any time


§106.12 –
Religious
Institutions


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§106.30 Definitions – Actual Knowledge

 Title IX Coordinator

 Corrective measures

 K-12

 Designation

 CSA

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Complainant

Consent

Respondent

§106.30
Definitions –
Complainant,
Consent,
Respondent

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§106.30 Definitions – Formal Complaint

Signed formal complaint

Title IX Coordinator

Third parties

Anonymous reports

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§106.30
Definitions –
Sexual
Harassment

Employee . . . conditioning aid, benefit, or service

Unwelcome conduct determined to be severe, pervasive, and objectively offensive . . . effectively denies equal access

Clery

Sexual assault
IPV
Stalking

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Sexual Harassment under Title IX


Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

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PRONG 1: Quid Quo Pro


 "This for That" Harassment


 When favorable professional or educational treatment is conditioned on a sexual activity


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PRONG 2: The Davis Standard

 Hostile Environment +

 First Amendment protections

 Not a "zero tolerance" standard

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PRONG 3: The VAWA Crimes

- Sexual Assault**
 - Rape
 - Sexual Assault
 - Statutory Rape
 - Incest
- Intimate Partner Violence**
 - Dating Violence
 - Domestic Violence
- Stalking**

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§106.30 Definitions – Supportive Measures

- Non-disciplinary**
- Both parties**
- Academic, housing and athletic impact**
- No contact orders**

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Schools

- Elementary and secondary**
- Postsecondary**

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§106.44 Recipient's Response to Sexual Harassment; (a) General Response to Sexual Harassment

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§106.44 Recipient's Response to Sexual Harassment; (b) Response, (c) Emergency Removal; (d) Administrative Leave

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§106.45 Grievance Process for Formal Complaints of Sexual Harassment (a) Discrimination, (b) Grievance Process

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§106.45 Grievance Process for Formal Complaints of Sexual Harassment, (b) Grievance Process(1) Basic Requirement

Equity Objective Evaluations Impartiality and Training

Presumption of Not Responsible Prompt Time Frames

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§106.45 Grievance Process for Formal Complaints of Sexual Harassment, (b) Grievance Process, (1) Basic Requirements

Range of Sanctions and Remedies Standard of Evidence Appeal

Supportive Measures Respect Privilege

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§106.45 Grievance Process for Formal Complaints of Sexual Harassment, (b) Grievance Process, (2) Notice

NOTICE REQUIREMENTS **ADDITIONAL ALLEGATIONS** **CLARIFICATIONS**

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27

§106.45(b)(3) Dismissal of a Formal Complaint

Must dismiss:

- Behavior does not constitute sexual harassment
- Did not occur in educational program or activity, not in the United States
- Notification
- The Department notes that recipients retain the flexibility to employ supportive measures i and appeal

May dismiss:

- Complainant withdraws formal complaint
- Respondent no longer enrolled/employed
- Insufficient evidence

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§106.45(b)(4) Consolidation of Formal Complaints

Multiple respondents

More than one complainant against one or more respondent

One party against other party

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11
29

29

Burden of proof

Witnesses and facts

“Gag orders”

Advisor

Notice

Inspect evidence

Investigative report


§106.45
Grievance
Process for
Formal
Complaints of
Sexual
Harassment,
(b) Grievance
Process, (5)
Investigation

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30

30

§106.45(b)(6) Hearings



Live hearing



Cross-examination

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§106.45(b)(6) Hearings

- Advisor
- Relevancy
- Participation consequences
- "Physically present"

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32

- Allegations
- Procedural steps
- Findings of fact
- Conclusion/application
- Rationale
- Appeal procedures

§106.45(b)(7) Determination Regarding Responsibility

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33

Sanctions and Remedies



SANCTIONS



REMEDIES

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34

§106.45(b)(8) Appeals

MUST HAVE

- + PROCEDURE
- + NEW EVIDENCE
- + CONFLICT OR BIAS
- + THAT IMPACTED OUTCOME

ADDITIONAL GROUNDS PERMITTED

NO OTHER ROLE

REASONABLY PROMPT TIME FRAME

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§106.45(b)(8) Appeals

NOTIFICATION OF APPEAL

NO CONFLICTS


EQUAL OPPORTUNITY TO RESPOND

WRITTEN OUTCOME - RATIONALE


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36


§106.45(b)(9) Informal Resolution



Notice



Voluntary



Not allowed for Employee/student

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37

§106.45(b)(10) Recordkeeping - Investigations



7 years




Investigation
Determination
Recordings
Sanctions and remedies



Appeal



Informal resolution



Training materials

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38

38

Intimidation, threats, coercions, discrimination

May use same grievance procedure

1st Amendment

False reports

**§106.71
Retaliation
Prohibited**

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39

39

1. Application to elementary and secondary schools

2. Application based on type or age of parties

5. Individuals with Disabilities

Executive orders and other requirements


Clery Act

Conflicting standards

Directed Questions and Other Miscellaneous Items

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The Clery Act

FOR TITLE IX PRACTITIONERS

1




Key Requirements of the Clery Act

-  Collect, Classify, and Count Crime Reports/Statistics
-  Issue Campus Alerts
-  Publish Annual Security Report
-  Submit Crime Statistics to the Department

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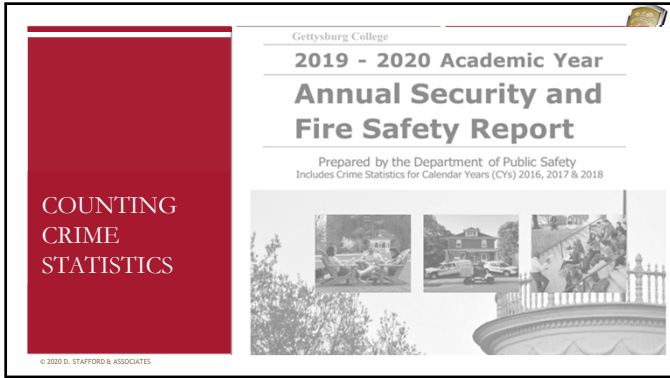
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Key Requirements (part 2)

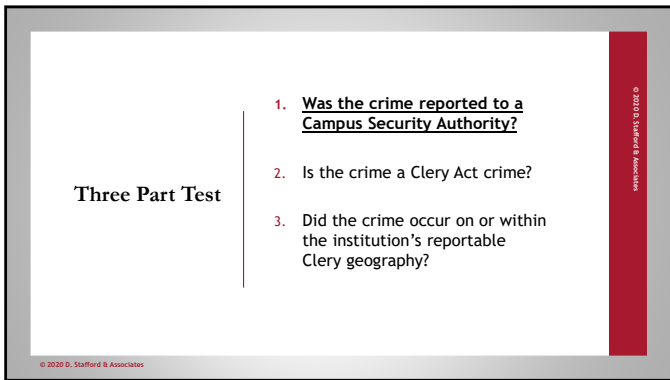
-  Provide Educational Programs and Campaigns on Dating/Domestic Violence, Sexual Assault & Stalking
-  Have Procedures for Institutional Disciplinary Action for DV/DV/SA/S
-  If you have campus police or security department: Publish Daily Crime Log
-  If you have residential facilities: Fire log, Fire Safety Report, Missing Persons Procedures

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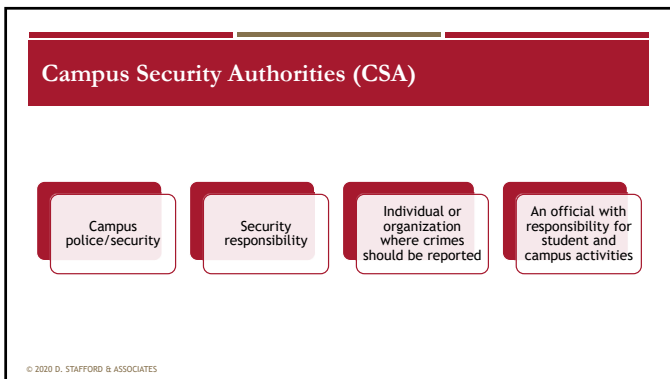
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Reporting Comparisons

Clery CSA

- Campus Law Enforcement and Public Safety
- RA's, RAs, other Housing officials
- Dean of Students Office
- ADs and Coaches (including Assistant ADs and Coaches)
- Faculty or Staff Advisors to Student Orgs
- Access Monitors/Contract/Event Security Officers
- Safety escorts on campus (including students)
- Student Union/Student Activities Staff
- Greek Affairs staff
- Administrators at Branch/Satellite/Separate Campuses
- Study Abroad Coordinators
- Title IX Coordinators
- Director of the Student Health Center

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Title IX Responsible Employee

- Title IX Coordinator
- Others as deemed "official of the recipient who has authority to institute corrective measures on behalf of the recipient."

7

Who may not be a CSA?

- Faculty members who are not advisors of student groups (i.e., no responsibility for student or campus activities beyond the classroom)

▪ Most support staff

- Clerical
 - Secretaries
 - Receptionists
- Facilities Staff
 - Plumbers
 - Electricians
- Food Service Workers
 - Cashiers
 - Cooks

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Who is never a CSA?



Professional Counselors

Includes individuals who are unlicensed and uncertified but acting under the supervision of an exempt counselor, e.g., a graduate student doing an internship.



Pastoral Counselors

NOTE: These positions are exempt only when acting within the scope of their duties as a counselor or trainee.

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REPORT

CSA FUNCTION

A CSA'S FUNCTION IS TO REPORT ALLEGATIONS OF CLERY ACT CRIMES MADE IN GOOD FAITH.

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CSA Reporting Recommendations

- CSA crime reports should include sufficient detail, such as dates and locations, and, where appropriate, personally identifying information, including name and contact information if available.
- This is important for law enforcement purposes to ensure that all crimes are counted and to avoid double counting crimes.

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Reporting Crimes

CSAs are responsible for reporting allegations of *Clery Act* crimes that are reported to them in their capacity as a CSA.

This means that CSAs are **not** responsible for investigating or reporting incidents:

- they overhear students talking about in a hallway conversation
- that a classmate or student mentions during an in-class discussion
- that a victim mentions during a speech, workshop, or any other form of group presentation
- that the CSA otherwise learns about in an indirect manner

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Counting Clery Crimes

If a crime is reported (and otherwise meets the three-part test) it is counted.

- Includes attempts,
- Includes cases a DA would reject
- Includes cases of "not responsible"
- Does NOT include every conduct code violation

It is not the word used but the facts of the case that determine how it gets counted

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Clery Crime Categories

-  Primary Crimes
-  Hate Crimes
-  Arrests and Referrals for Drug, Liquor and Weapon Violations
-  Dating Violence, Domestic Violence and Stalking Incidents (VAWA Crimes)

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Rape

Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This definition includes any gender of victim or respondent.

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Fondling

The touching of the private body parts of another person for the purpose of sexual gratification without consent of the victim, including instances where the victim is incapable of giving consent b/c of his/her age or temporary or permanent mental or physical incapacity.

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CONSENT

- The Clery Act does not require any particular definition of consent
- ASR must include definition of consent as defined by jurisdiction (state law)
- Institution should have a definition in their institutional sexual misconduct policy



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“Non-Forcible” Sex Offenses

INCEST

Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

STAUTORY RAPE

Non-forcible sexual intercourse with a person who is under the statutory age of consent

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Date Rape Drugs

A case where it is determined, through investigation, to have involved the administration of a date-rape drug in an unsuccessful attempt to incapacitate and sexually assault the victim (and the perpetrator's intent was to commit a sex offense)—the incident should be classified as a **Sexual Assault**.

A case in which there is no knowledge of the "intent" of the perpetrator should be classified as **Aggravated Assault**.

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Unfounded Crimes

An institution may not withhold, or subsequently remove, a reported crime from its crime statistics based on a decision by a court, coroner, jury, prosecutor, or other similar non-campus official.

An institution may withhold, or subsequently remove, a reported crime from its crime statistics in the rare situation where:

sworn or commissioned law enforcement personnel have fully investigated the reported crime and,

based on the results of this full investigation and evidence, have made a formal determination that the crime report is false or baseless and therefore "unfounded."

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Three Part Test

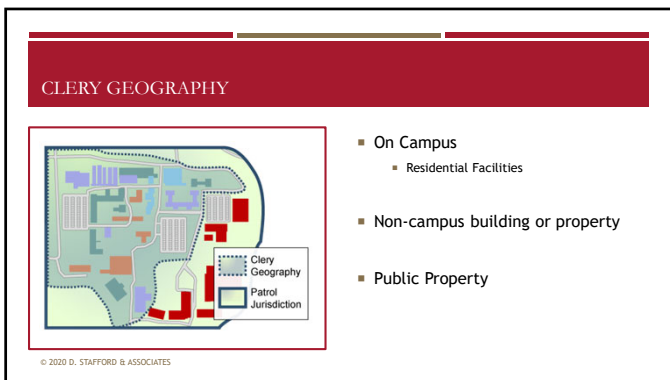
1. Was the crime reported to a Campus Security Authority?
2. Is the crime a Clery Act crime?
3. Did the crime occur on or within the institution's reportable Clery geography?

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27

Clery Reporting Obligations

- Daily Crime Log
- Annual Security Report
- Emergency Notifications/Timely Warnings

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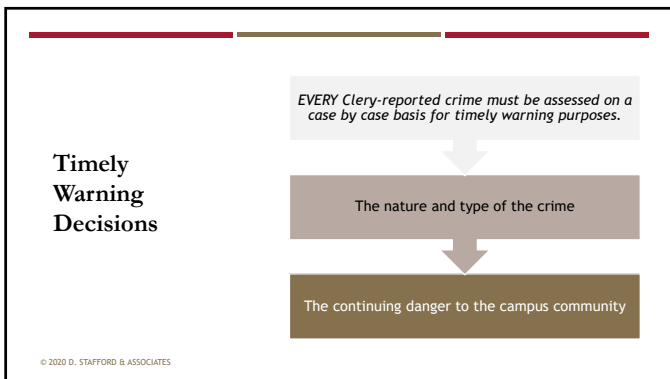
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Timely Warning/Emergency Notification

| | TIMELY WARNING (TWN) | EMERGENCY NOTIFICATION (EN) |
|------------------------|--|--|
| Legal Standard: | Serious or continuing threat | Immediate threat to health and safety |
| Circumstance: | Clery-reportable crimes that have been reported (occurred in past) | Clery-reportable crimes as well as other types of emergencies (happening right now or about to happen) |
| Audience: | Community-wide | Can send to a segment of the community, if appropriate |
| When Issued: | As soon as pertinent information is available | Upon confirmation of emergency (when possible) |
| Follow-Up: | Not Required | Required |

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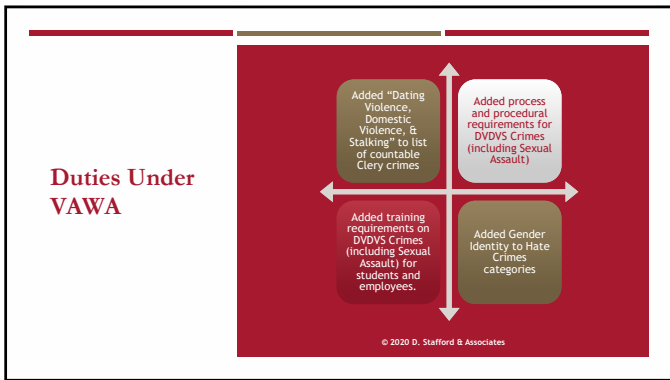
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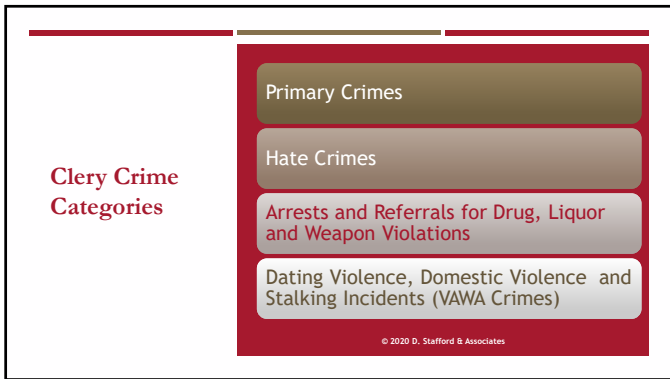
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31



32



33

Domestic Violence



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- A felony or misdemeanor crime of violence committed by:
- a) a current or former spouse or intimate partner of the victim
 - b) by a person with whom the victim shares a child in common
 - c) by a person who is cohabitating with, or has cohabitated with the victim as a spouse or intimate partner
 - d) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred OR
 - e) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred

34

Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

- i. The existence of such a relationship shall be based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- ii. For the purposes of this definition—
 - A. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - B. Dating violence does not include acts covered under the definition of domestic violence.

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Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- a) Fear for the person's safety or the safety of others; or
- b) Suffer substantial emotional distress.

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Stalking



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- a) **Course of conduct** means two or more acts, including, but not limited to, acts 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.
- b) **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.
- c) **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

37

What's Missing?

- There are behaviors that may be policy violations (or crimes) that are not covered in Clery:
 - Sexual exploitation
 - Psychological or emotional harm
 - Sexual harassment (Title IX but not Clery)
 - Gender-based harassment (Title IX but not Clery)

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VAWA Procedural Requirements

39

Process Requirements under VAWA

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Procedures victims should follow if a crime or dating violence, domestic violence, sexual assault or stalking has occurred


AND

procedures your institution will follow in the case of alleged dating violence, domestic violence, sexual assault or stalking.

and make sure it is all in WRITING.

40

“Information about the importance of preserving evidence that may assist...”



- Evidence to prove the alleged criminal offense occurred
- Evidence that may be helpful in obtaining a protective order
- Includes digital evidence as well (Social media, cell phone, etc.)
- Not required, but ideal:
 - Where to obtain forensic exams
 - Specific contact information
 - Info that completing forensic exam does not require police report
 - Can have exam now, decide later

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“How and to whom the alleged offense should be reported”

- List any person or organization that can assist the victim
- Include institutional resources as well as community organizations.
- Include specific contact information
 - Rape crisis centers
 - Coalitions against domestic violence

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42

"OPTIONS ABOUT THE INVOLVEMENT OF LAW ENFORCEMENT AND CAMPUS AUTHORITIES"

Notification of the victim's option to

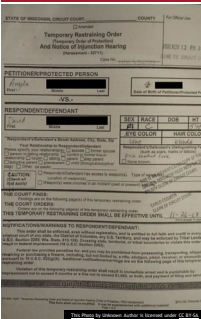
- Notify proper law enforcement authorities, including on-campus and local police;
- Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
- Decline to notify such authorities"



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"Rights of victims for orders of protection, 'no contact' orders or similar lawful orders..."



- Do you issue them on campus?
- What options in your jurisdiction?
- How do you file (at your institution or externally)?
- What is your responsibility to comply with/enforce orders?

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"How the institution will protect the confidentiality of victims and other necessary parties"



- Publicly available recordkeeping has no personally identifying information about the victim. (not required for respondent but best practice in most cases)
- Accommodations and protective measures are confidential (to the extent they can be without impairing the ability to provide them)

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“Existing services available for victims, both within the institution and in the community”

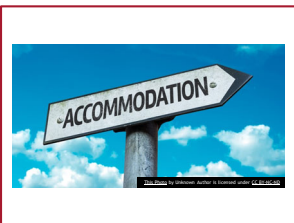
- Counseling
- Health
- Mental Health
- Victim Advocacy
- Legal Assistance
- Visa and Immigration Assistance
- Student Financial Aid
- Other services available for victims

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“Options and how to request changes to accommodation and protective measures”



- Academic, Living, Transportation, Working
- Must make them if requested and reasonably available
- Regardless of whether the victim chooses to report

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PROVIDING SUPPORT FOR THE ACCUSED

ED Clarification in Federal Register
 Allegations (whether police or school conduct) may be stressful for the accused as well as the accuser.

“Therefore, institutions should consider providing the accused with information about existing counseling, health, mental health...”

“Although we encourage institutions to provide written notification of this sort to an accused student or employee, the statute does not refer to or support requiring it.”



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“Describe each type of disciplinary proceeding”



- Anticipated timelines
- Decision-making process
- How and options for filing a school complaint (with contact info)
- How school determines which process to use
- Who makes decisions
- Include employee procedures
- Use procedures regardless of Clery geography

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“State the standard of evidence, all possible sanctions, and range of protective measures”

- Can use any standard but must then use in all cases
- Must list all sanctions for each offense and be specific
- Not required to list all protective measures
 - Orders of protection (all types)
 - Transportation help or escorts
 - Modification to class or schedule
 - Changes in living/working situations



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“Completed within reasonably prompt timeframes designated by the institution’s policy”



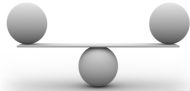
- Allow for the extension of timeframes
 - for good cause;
 - with written notice to the accuser and the accused of the delay and the reason for the delay;
- Policy must have timeframes for different steps.

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“fair, and impartial proceeding...”



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Grievance Procedure

- Is transparent and consistent with policy
- Timely notice of meetings
- Timely and equal access to parties and officials any information that will be used during disciplinary meetings and hearings.
- Conducted by officials without conflict of interest or bias

52

Requirements for Officials



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“Conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused”

“Be conducted by officials who, at a minimum, receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability”

53

Requirements for Officials

- Training must be described in ASR
- Updated annually
- Should include (at a minimum):
 - Relevant evidence and how it should be used
 - Proper interview techniques
 - Basic procedural rules for conducting a proceeding
 - Avoiding actual/perceived conflicts
- Can be in person or electronic (webinar or video)

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"Provide the accuser and the accused with the same opportunities to have others present ... including the opportunity to be accompanied ... by the advisor of their choice"



Advisor Requirement

- Advisor - individual who provides support, guidance, or advice
- Do not limit the choice of advisor
- May restrict participation if apply equally
- Provide timely notice of meetings
- May form a pool of people
- Can remove a disruptive advisor
- Could allow them to serve as a proxy
- Don't have to delay for them (but encouraged to be reasonable)

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"SIMULTANEOUS NOTIFICATION, IN WRITING...OF THE RESULTS"

- Results = initial, interim, and final decisions by any official
- Results must include Sanctions and Rationale
 - How weighted evidence
 - How evidence supported results and sanctions
- Notice must include
 - Appeals procedures if available
 - Change to the result
 - When the result becomes final



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VAWA Education Requirements

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Education and Prevention


- Annual training for conducting "officials" (Investigators, Adjudicators, Appeals)
- Primary Prevention and Awareness Programs for all incoming students and new employees
- Ongoing Prevention and Awareness Campaigns for ALL students and employees
- CSA Training and "Super" CSA Training

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Primary Prevention & Awareness

"The institution's primary prevention and awareness programs for all incoming students and new employees, which must include--"



- Statement prohibiting dating violence, domestic ...
- Definitions of dating violence...
- Definition of consent
- safe and positive options for bystander intervention;
- Information on risk reduction

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Primary Prevention Best Practices

"Programming, initiatives, and strategies intended to stop dating violence...stalking... before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in a health and safe directions."

- Not required that all students take or attend (but mandate encouraged)
- Must show "good faith effort" to reach them with "active notification."
- Format and timeframe encouraging maximum attendance

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Ongoing Prevention & Awareness

"Ongoing prevention and awareness campaigns for students and employees...must provide the same information as the primary awareness and prevention programs"



- Deeper dives
- Sustained over time
- Promote services
- Range of strategies\audiences
 - Social media, email, posters, ads
 - Take Back the Night
 - Sports teams, Greek, dorms
 - Student fairs or campus events
 - DV program for supervisors

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CSA TRAINING (RECOMMENDATIONS, NOT REQUIREMENTS)

- Role of a CSA
- Provide Reporting materials
 - map of Clery geography
 - list of Clery crimes
 - forms for documenting
- Importance of documentation
- Need for timely reporting
- "Super CSAs?" Do in person



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62



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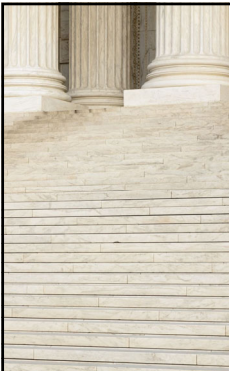
SLIP

SHEET



The Clery Act Implications of the 2020 Title IX Regulations

1



VAWA Final Rule (79 Fed. Reg. 35422)

“VAWA amended the Clery Act, but it did not affect in any way title IX of the Education Amendments of 1972 (Title IX), its implementing regulations, or associated guidance issued by the Department’s Office for Civil Rights (OCR). While the Clery Act and Title IX overlap in some areas relating to requirements for an institution’s response to reported incidents of sexual violence, the two statutes and their implementing regulations and interpretations are separate and distinct.”

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2

Proposed Regs on Clery and Title IX



- Although the Clery Act focuses on crimes that may also meet the definition of “sexual harassment” . . . such crimes do not always necessarily meet that definition (for example, where an incident of stalking is not “based on sex” . . .)
- The proposed regulations set forth definitions and obligations that further the purpose of Title IX with the goal of ensuring that institutions of higher education can also comply with their Clery Act obligations without conflict or inconsistency.
SECTION 106.44(A) GENERAL; SECTION 106.30


Do the proposed regulations meet that goal?
Do the final regulations meet that goal?

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3

Broad Brush Strokes of the *New* Title IX Regulations

- Reporting Considerations: Actual Notice (Constructive Notice Gone)
- Definition of Sexual Harassment for Title IX Purposes
- Jurisdiction
- Accessible Reporting to Title IX Coordinator
- School's Mandatory Response Obligations
 - Education Program or Activity and only within the U.S.
 - Deliberate Indifference Standard
 - Investigating a Formal Complaint
 - Defining *Complainant, Respondent, Formal Complaint, and Supportive Measures*
 - Live Hearing and Cross Examination Requirements
 - Rape Shield Protections
 - Standard of Evidence
 - Appeals
 - Informal Resolution
 - Retaliation
 - Clarification of protections under 1st Amendment, 5th Amendment, and 14th Amendment



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Reporting Considerations

2020 Title IX Regulations

- "Actual Notice"
 - Formal report to Title IX Coordinator or "official who can institute corrective measures on behalf of the school"
 - Removes full list of Responsible Employees (RE). Schools need to identify who the employees are who are able to institute corrective measures (won't be apples to apples across institutions.)

Clery Act

- Report to Campus Security Authority (CSA)
Campus police department; responsible for security; individuals to whom crimes should be reported; officials with significant responsibility for student and campus activities



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What Forms of Sexual Misconduct are Covered?


2020 Title IX Regulations

Sexual harassment means conduct on the basis of sex that satisfies one of the following:

- A school employee conditioning education benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
- Unwelcome conduct that a reasonable person would determine is so severe, pervasive, *and** objectively offensive that it effectively denies a person equal access to ...education program or activity; or
- Sexual assault (as defined in the Clery Act), dating violence, domestic violence or stalking as defined in the Violence Against Women Act (VAWA).

Clery Act

- Sexual assault (rape, fondling, incest, or statutory rape)
- Dating violence
- Domestic violence
- Stalking



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What does this mean?



- Sexual assault (as defined in the Clery Act), dating violence, domestic violence or stalking as defined in the Violence Against Women Act (VAWA).

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Sexual Assault

Sexual assault means an offense that meets the definition of Rape, Fondling, Incest, or Statutory Rape as used in the FBI's UCR program and included in Appendix A of this subpart.

Sexual assault, a.k.a. Sex Offenses, involves "any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent."

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Rape

Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This definition includes any gender of victim or perpetrator.

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Rape

This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol).

Physical resistance is not required on the part of the victim to demonstrate lack of consent.

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FONDLING

The touching of the private body parts of another person for the purpose of sexual gratification

without consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or temporary or permanent mental or physical incapacity.

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INCEST

- Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

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STATUTORY RAPE

Sexual intercourse with a person who is under the statutory age of consent

State specific

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VAWA Offenses

VAWA Offenses—Any incidents of Domestic Violence, Dating Violence and Stalking.

Note that Sexual Assault is also a VAWA Offense but was already defined in the Criminal Offenses category for *Clery Act* reporting purposes.

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Domestic Violence

A felony or misdemeanor crime of violence committed by:

- a current or former spouse or intimate partner of the victim,
- by a person with whom the victim shares a child in common,
- by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner,
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred OR
- by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

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Domestic Violence

- A felony or misdemeanor crime of violence committed by:
 - a) a current or former spouse or intimate partner of the victim,
 - b) by a person with whom the victim shares a child in common,
 - c) by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner,
 - d) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred OR
 - e) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

ASSESSMENT OF JURISDICTIONAL DEFINITIONS OF WHO IS PROTECTED

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What is a “Crime of Violence?”

- According to Section 16 of title 18 of the United States Code, the term “crime of violence” means–
 - a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
 - b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

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So where can we find out what offenses constitute those described on the previous slide?

FERPA

§99.39 What definitions apply to the nonconsensual disclosure of records by postsecondary educational institutions in connection with disciplinary proceedings concerning crimes of violence or non-forcible sex offenses? (FERPA)

As used in this part:
Alleged perpetrator of a crime of violence is a student who is alleged to have committed acts that would, if proven, constitute any of the following offenses or attempts to commit the following offenses that are defined in appendix A to this part:

- Arson
- Assault offenses
- Burglary
- Criminal homicide—manslaughter by negligence
- Criminal homicide—murder and nonnegligent manslaughter
- Destruction/damage/vandalism of property
- Kidnapping/abduction
- Robbery
- Forcible sex offenses.

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Crime of Violence

Crime of Violence + Meets Relationship as Described as Definition of Domestic Violence+ Jurisdiction= Covered Offense under Title IX





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Stalking

- i. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
 - A. Fear for the person's safety or the safety of others; or
 - B. Suffer substantial emotional distress.
- ii. For the purposes of this definition—
 - A. *Course of conduct* means two or more acts, including, but not limited to, acts 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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Stalking

- B. *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.
- C. *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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Impact of Location & Party

"The only specific geographic limitation that these final regulations respect is a limitation...imposed in Title IX by requiring the sex discrimination to be against a person in the United States." (p. 1793)

- 2020 Title IX Regulations
 - Conduct that occurs within its 'education program or activity' . . .
 - Against a person within the United States
 - School must have exercised substantial control over both the respondent and the context in which the sexual harassment occurs
 - Also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution
- Clery Act
 - On campus; on public property within or immediately adjacent to and accessible from the campus; in or on non-campus buildings or property that your institution (or a recognized student organization) owns/controls
 - May include some study abroad programs
 - For VAWA crimes, must use processes even if occurs off-campus

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Response to Formal Complaint

- 2020 Title IX Regulations
 - Complaint made or by the Title IX Coordinator
 - Title IX Coordinator acts as gatekeeper, supportive measure coordinator, and complainant
- Clery Act
 - A student or employee who reports DVDSAS, whether the offense occurred on or off campus, shall be provided with a written explanation of the student or employee's rights and options including:
 - procedures to follow;
 - information about confidentiality;
 - existing: counseling, mental health, victim advocacy, legal assistance, visa and immigration assistance, financial aid, services in and outside community;
 - Access to law enforcement;
 - changes to academic, living, transportation and working situations, institutional procedures

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Response if NO Formal Complaint

- 2020 Title IX Regulations
 - Implement supportive measures
 - Must refer to the party as a "complainant"
- Clery Act
 - A student or employee who reports DVDSAS, whether the offense occurred on or off campus, shall be provided with a written explanation of the student or employee's rights and options including:
 - procedures to follow;
 - information about confidentiality;
 - existing: counseling, mental health, victim advocacy, legal assistance, visa and immigration assistance, financial aid, services in and outside community;
 - Access to law enforcement;
 - changes to academic, living, transportation and working situations, institutional procedures

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2020 Title IX Regulations

- Can offer, but may not require
- Not allowed for employee on student sexual harassment
- Party may withdraw at any time

Clery Act

- Written information about procedures will follow for any VAWA incident (does not differentiate formal vs informal)

Informal Resolutions

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Formal

| 2020 Title IX Regulations | Clery Act |
|---|---|
| <ul style="list-style-type: none"> • Live Hearing; Cross Examination (and must create a record) • Treat equitably with goal to restore/preserve access to education; due process for respondent; • Annual training • Include presumption of not responsible; reasonably prompt time-frames; describe the range of sanctions; describes the standard of evidence; appeal procedures; supportive measures | <ul style="list-style-type: none"> • Prompt, fair and impartial investigation and resolution • Conducted by officials who receive annual training • Advisor present • Anticipated timeframes • List all possible sanctions |

Formal Resolutions

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Formal (Notice)

- 2020 Title IX Regulations
 - Written notice prior to an investigation
- Clery Act
 - Evaluation of Timely Warning Notice

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Formal (Live Hearing)



| | |
|--|---|
| <p>2020 Title IX Regulations</p> <p>Requires Live Hearing with cross examination by advisor</p> | <p>Clery Act</p> <p>Clery is silent regarding live hearing</p> |
|--|---|

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Standard of Evidence

- 2020 Title IX Regulations
 - Either the preponderance of the evidence standard or the clear and convincing standard . . .
- Clery Act
 - Any standard of evidence . . . just must include in policy
 - Would not prohibit using different standards for different groups



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Written Determination

- Clery Act
 - Written, simultaneous notification to both parties including:
 - Result (include any sanctions and rationale for results and sanction)
 - Appeals procedures
 - Any change to the result;
 - When such results become final.

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Appeals

- **2020 Title IX Regulations**
 - Must offer both parties an appeal-based on specific grounds only
- **Clery Act**
 - Not required (but must provide notice if allowed along with appeal procedures)
 - Simultaneous written decision describing result, sanction, any changes to the result, when becomes final

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Recordkeeping

- **2020 Title IX Regulations**
 - 7 years
- **Clery Act**
 - Retain all records used in compiling ASR for three years from the latest publication of the report to which they apply (in effect 7 years)

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Retaliation

Title IX Proposed Regulations

Prohibited
No double jeopardy
1st Amendment

Clery Act

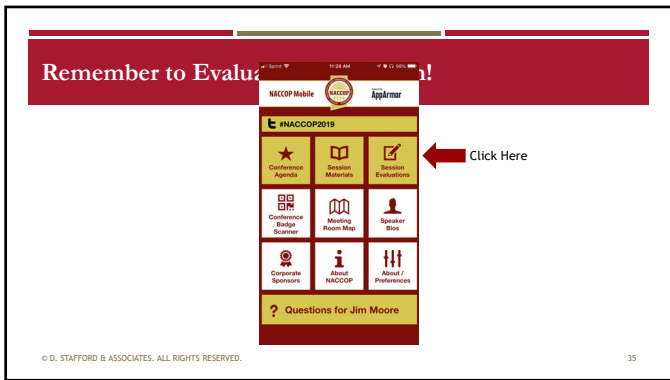
No officer, employee, or agent of an institution participating in any program under this title shall retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual exercising their rights or responsibilities under any provision of this subsection

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SLIP

SHEET



1




2



3

Data

The Title IX Regulations
 Unofficial Version Published on the U.S.
 Department of Education Website on May 6, 2020



HIGH SCHOOL


- 51% girls and 26% peer-on-peer assault
- 1 in 4 women experience assault before age 18
- 56% of girls and 40% boys experience sexual harassment or assault
- Middle school verbal victimization higher
- Same-sex violence prevalent
- 36% girls and 24% of boys experience on-line harassment

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Data

The Title IX Regulations
 Unofficial Version Published on the U.S.
 Department of Education Website on May 6, 2020



COLLEGE


- 1 in 5 college women and 1 in 16 men experience attempted or completed sexual assault in college
- 20% women and 5% of men
- 62% of women and 61% of men experience sexual harassment during college
- 50% August-December
- 7 out of 10 rapes known by the complainant
- 58% of female faculty and staff at US Colleges and universities

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The Title IX Regulations
 Unofficial Version Published on the U.S.
 Department of Education Website on May 6, 2020



IMPACT


- 87% negative effect (not going to school)
- 50% LGBTQ+ missed school
- 16% transgender students left school
- 89% emotional and physical consequences
- Career earnings
- Student debt

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Data

The Title IX Regulations
 Unofficial Version Published on the U.S.
 Department of Education Website on May
 6, 2020



WOMEN


- 84% of sexual assault and rape victims are women
- 42.9% of college-aged females killed by an intimate partner
- 1 out of 6 victim of rape or attempted rape in lifetime
- Lower for college students than non-college students

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Data

The Title IX Regulations
 Unofficial Version Published on the U.S.
 Department of Education Website on May
 6, 2020



MEN

- 1 in 6 men
- 16% by the age of 18
- 1 in 33 in lifetime
- College-aged male victims account for 17%

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The Title IX Regulations
 Unofficial Version Published on the U.S.
 Department of Education Website on May
 6, 2020



LGBTQ+


- 47% transgender people sexually assaulted during lifetime
- Students face higher rates of sexual assault and harassment
- LGB higher rates of non-consensual sexual contact

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The Title IX Regulations
 Unofficial Version Published on the U.S.
 Department of Education Website on May
 6, 2020



PERSONS OF COLOR


- Women with intersecting identities at higher risk
- 36% of women of color raped in college
- 60% of black women sexually harassed before age of 18

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Data

The Title IX Regulations
 Unofficial Version Published on the U.S.
 Department of Education Website on May
 6, 2020




INDIVIDUALS WITH DISABILITIES

- 2.9% more likely to be sexually assaulted
- 22% experienced abuse in the last year
- 62% physical or sexual abuse before age 17
- 40% had little or no knowledge of resources


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Other Considerations



INTERSECTIONALITY



GEOGRAPHY



UNDER REPORTING

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12

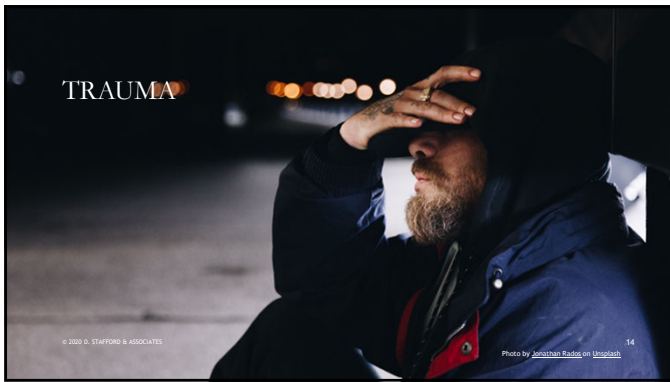
Risk Factors

National Institute of Justice, "Factors That Increase Sexual Assault Risk," September 30, 2008, <https://nij.ojp.gov/topics/articles/factors-increase-sexual-assault-risk>

- Alcohol
- Sorority membership
- Multiple sexual partners
- Freshman or sophomore
- Day of the week
- Off-campus party

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14

Keep in Mind

- EVERYONE IS DIFFERENT
- DO NOT ASSESS CREDIBILITY ON EMOTIONAL STATE
- POOR RECALL IS COMMON
- BEHAVIORS ARE NOT PROOF
- NEGATIVE COPING MECHANISM

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Common Responses

- Defense circuitry
- Prefrontal cortex
- Reflect Responses
- Habit responses

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Impact on Memory

-  Details
-  Time and Context

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-  Fight
-  Flight
-  Freeze

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19



20



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Comparison of Adults and Juveniles SOMAPI - Sex Offender Management Assessment and Planning Initiative. (2017, April)



AGE



DEVELOPMENTAL DIFFERENCES



JUSTICE SYSTEM

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Remember!

Much of the research focuses on rape. Sexual violence includes rape, attempted rape, sexual assault, stalking, sexual coercion, and unwanted sexual contact.

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Image by k-images from Pixabay

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Who? Rapisarda, S. S., Shields, R. T., & Tabachnick, J. (2020). A new perspective on college sexual misconduct: Effective interventions for students causing harm. Easthampton, MA: MASOC.





Photo by Mathias Seidel on Unsplash

- Multiple assaults
- No premeditation
- One time or limited
- Communication or developmental disabilities

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Situational



CIRCUMSTANCES NEEDS MOTIVATIONS INHIBITIONS

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Broader Concept

“When the question focuses on the broader concept of sexual misconduct, the results range from 19% to 47% (Abbey & McAuslan, 2004; Koss et al., 1987; Loh, Gidycz, Lobo & Luthra, 2005; Mills & Granoff, 1992; Strang, Peterson, Hill & Heiman, 2013; White & Smith, 2004).” ATSA Statement

“Rates of sexual coercion perpetration, involving the use of verbal manipulation and pressure to obtain unwanted sex, have been reported by 22% to 69% of males across several studies, with most estimates near 30% and fairly consistent findings for college and community men (DeGue & DiLillo, 2004).” NSVRC

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2015 Washington Post/Kaiser Family Foundation Poll of 1000 College Students: “Does the following behavior establish consent for more sexual activity?”

Does this establish consent for more sexual activity?

- Nods in agreement (51% of women, 58% of men)
- Takes off their own clothes(44% of women, 50% of men)
- Gets a condom (38% of women, 43% of men)
- Engages in foreplay (15% of women, 30% of men)
- Does not say no (16% of women, 20% of men)

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2015 Washington Post/Kaiser Family Foundation Poll of 1000 College Students: "Does the following behavior establish consent for more sexual activity?"

- Do you think this is or is not sexual assault or is it unclear?
- Sexual activity when one person is incapacitated or passed out
 - 96% Yes
 - 1% No
 - 3% Unclear
 - Sexual activity when both people have not given clear agreement
 - 47% Yes
 - 6% No
 - 46% Unclear
 - Sexual activity when both people are under the influence of alcohol or drugs
 - 21% Yes
 - 19% No
 - 59% Unclear

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BROADER CONCEPT

- "...Zinzow and Thompson (2015) found high rates of repeated perpetration when the full range of sexually violent behaviors – unwanted sexual contact to completed rape – were analyzed together, meaning that many men (68% of offenders) consistently use coercive sexual tactics over time, but only 12.22% of repeat offenders perpetrated rape at each time point, meaning that repeat offenders perpetrated other forms of sexual violence over time and periodically perpetrated rape. Of note, these findings are based upon the same data set Swartout and colleagues (2015) used to fit their confirmatory model, providing further evidence that behavior other than rape constituted much of the repeated sexual violence." NSVRC
- "...these extreme and narrow characterizations obscure the fact that a substantial proportion of college and community men – more than one in three in most studies (DeGue & Dilillo, 2004) – will self-report some form of sexual violence by the end of young adulthood." NSVRC

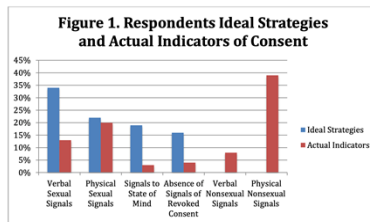
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CONSENT

Meaning and Eye Contact: College Men's Negotiations of Sexual Consent in Theory and in Practice (Bedara, 2017)



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Distinguishing Behaviors

John D. Foubert et al (2019). Is Campus Rape Primarily a Serial or One-Time Problem? Evidence From a Multicampus Study

- CONSUMING ALCOHOL 2 OR MORE TIMES A WEEK
- PEER SUPPORT FOR BEHAVIOR IN AN EMOTIONALLY VIOLENT MANNER TOWARD WOMEN
- PEER SUPPORT FOR BEING PHYSICALLY AND SEXUALLY VIOLENT TOWARD WOMEN

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RISK FACTORS – INDIVIDUAL

National Center for Injury Prevention and Control, Division of Violence Prevention
<https://www.cdc.gov/violenceprevention/sexualviolence/risk-protectivefactors.html>

- PREFERENCE FOR IMPERSONAL SEX AND SEXUAL-RISK TAKING
- EXPOSURE TO SEXUALLY EXPLICIT MEDIA
- HOSTILITY TOWARDS WOMEN
- ADHERENCE TO TRADITIONAL GENDER ROLE NORMS
- HYPER-MASCULINITY
- SUICIDAL BEHAVIORS
- PRIOR SEXUAL VICTIMIZATION OR PERPETRATION

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Additional Risk Factors

- Porn
- Fraternities
- Athletics

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Risk Factors - Individual

National Center for Injury Prevention and Control, Division of Violence Prevention
<https://www.cdc.gov/violenceprevention/sexualviolence/riskprotectivefactors.html>

| | | |
|---|-------------------------|---------------------------|
| ALCOHOL AND DRUG USE | DELINQUENCY | LACK OF EMPATHY |
| GENERAL AGGRESSIVENESS AND ACCEPTANCE OF VIOLENCE | EARLY SEXUAL INITIATION | COERCIVE SEXUAL FANTASIES |

34

Substance Use (All Genders)

SAMHSA, Center for Behavioral Health Statistics and Quality, National Survey on Drug Use and Health, 2018

| | | |
|---|--|--|
| 51.5% have used marijuana (Aged 18 to 25) | 11.4% have used cocaine (Aged 18 to 25) | 16.4% have used hallucinogens (Aged 18 to 25) |
| 51% have used alcohol (Aged 12 or older) | 24.5% have binged alcohol use (Aged 12 or older) | 6.1% have heavy alcohol use (Aged 12 or older) |

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Risk Factors - Relationship

National Center for Injury Prevention and Control, Division of Violence Prevention
<https://www.cdc.gov/violenceprevention/sexualviolence/riskprotectivefactors.html>

| | | |
|--|--|---|
| Family environment characterized by physical violence and conflict | Childhood history of physical, sexual, or emotional abuse | Emotionally unsupportive family environment |
| Poor parent-child relationships, particularly with fathers | Association with sexually aggressive, hypermasculine, and delinquent peers | Involvement in a violent or abusive intimate relationship |

© 2020 D. Stafford & Associates National Center for Injury Prevention and Control, Division of Violence Prevention 36

36

RISK FACTORS – COMMUNITY

National Center for Injury Prevention and Control, Division of Violence Prevention
<https://www.cdc.gov/violenceprevention/sexualviolence/riskprotectivefactors.html>

- Poverty
- Lack of employment opportunities
- Lack of institutional support from police and judicial system
- General tolerance of sexual violence within the community
- Weak community sanctions against sexual violence perpetrators

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Risk Factors – Societal

National Center for Injury Prevention and Control, Division of Violence Prevention
<https://www.cdc.gov/violenceprevention/sexualviolence/riskprotectivefactors.html>

- SOCIETAL NORMS THAT SUPPORT SEXUAL VIOLENCE
- SOCIETAL NORMS THAT SUPPORT MALE SUPERIORITY AND SEXUAL ENTITLEMENT
- SOCIETAL NORMS THAT MAINTAIN WOMEN'S INFERIORITY AND SEXUAL SUBMISSIVENESS
- WEAK LAWS AND POLICIES RELATED TO SEXUAL VIOLENCE AND GENDER EQUITY
- HIGH LEVELS OF CRIME AND OTHER FORMS OF VIOLENCE

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Protective Factors


National Center for Injury Prevention and Control, Division of Violence Prevention
<https://www.cdc.gov/violenceprevention/sexualviolence/riskprotectivefactors.html>

- PARENTAL USE OF REASONING TO RESOLVE FAMILY CONFLICT
- EMOTIONAL HEALTH AND CONNECTEDNESS
- ACADEMIC ACHIEVEMENT
- EMPATHY AND CONCERN FOR HOW ONE'S ACTIONS AFFECT OTHERS
- PROSOCIAL PEERS

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Interactions



How effective are our assessments regarding any of the parties involved?

What impacts our credibility assessments?

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Post-Decision



■ Understanding "Offenders"


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Etiology

SOMAPI - Sex Offender Management Assessment and Planning Initiative, (2017, April).



PREVENTION MANAGEMENT TREATMENT POLICY

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Etiology SOMAPI - Sex Offender Management Assessment and Planning Initiative. (2017, April).



Adults

- Negative conditions
- Learned behavior
- Cognitive distortion
- Pornography
- Self-regulation
- Sexual coercion
- Other




Juveniles


- Past victimization
- Family background
- Criminality
- Pornography
- Mental health


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Recidivism SOMAPI - Sex Offender Management Assessment and Planning Initiative. (2017, April).


LOW REPORTING


DEFINITIONS


FOLLOW-UP PERIOD


POPULATION STUDIED


METHODS USED

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Recidivism SOMAPI - Sex Offender Management Assessment and Planning Initiative. (2017, April).



Adults

- Typology is a factor
- Higher rates of general recidivism than sexual recidivism
- Lower rate for females



Juveniles

- Lower rates than adults
- Higher rates of general recidivism than sexual recidivism

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“Although the ultimate goal is to prevent sexual misconduct before anyone is harmed, when sexual abuse or misconduct is perpetrated, it is just as integral to provide relevant and individualized interventions for the individuals who have been harmed as it is for those who committed sexual harm. The Centers for Disease Control and Prevention (CDC) in the United States has argued for the importance of this lens, stating that ‘a decrease in the number of actual and potential perpetrators in the population is necessary to achieve measurable reductions in the prevalence of sexual violence’ (DeGue, Simon, Basile, Yee, Lan, & Spivak, 2012; DeGue, Valle, Holt, Massetti, Matjasko & Tharp, 2014).”

ATSA Public Policy Recommendation May 2019

<https://www.atsa.com/pdfs/Policy/Addressing%20Campus%20Sexual%20Misconduct%20FINAL.pdf>

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46

46

Recommendations

Rapisarda, S. S., Shields, R. T., & Tabachnick, J. (2020). A new perspective on college sexual misconduct: Effective interventions for students causing harm. Easthampton, MA: MASOC.

Focus on perpetration prevention

Services for students

Individualized response

Treatment and educational interventions

Community reentry

Restorative justice

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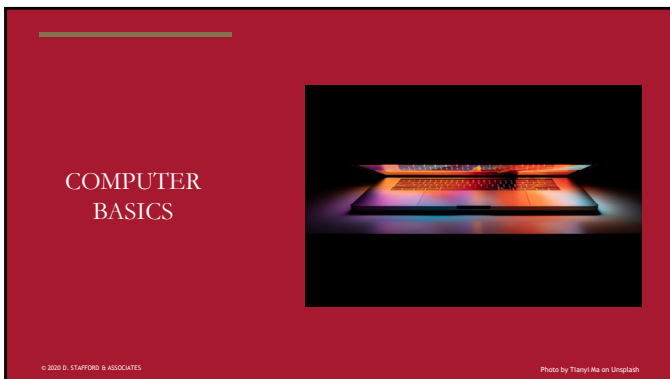
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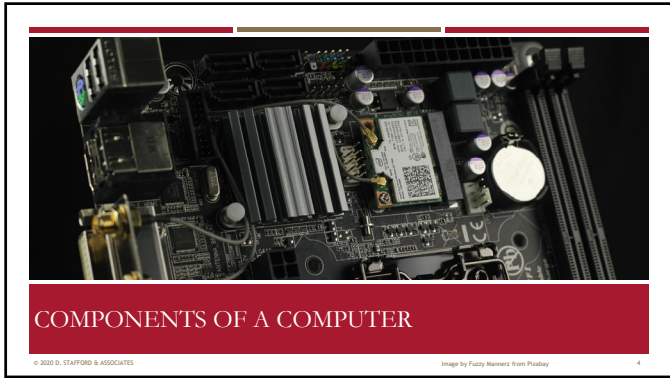
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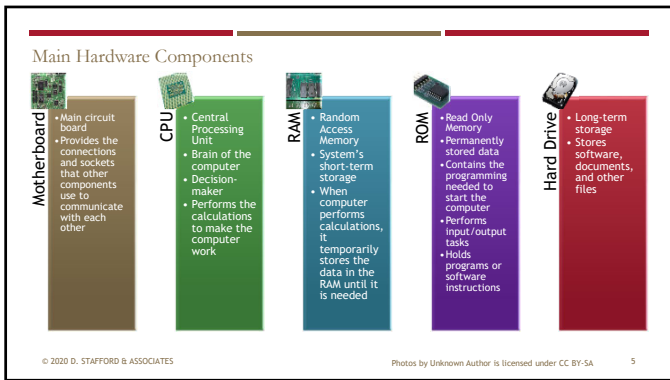
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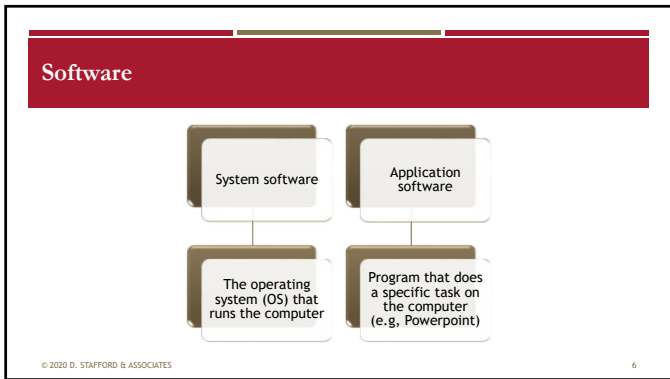
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6


External Storage Examples




EXTERNAL
HARD DRIVE




FLASH DRIVE




SD CARD



COMPACT
DISC



TAPE DRIVE






CLOUD

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7


Cloud

| | |
|---|--|
|  File storage | Stores files and emails Examples: Dropbox, Google Drive, iCloud |
|  File sharing | Share files with others at the same time Examples: iCloud Photos, Flickr, Google Docs, OneDrive |
|  Data backup | Copy of files on computer, phone, and other devices Examples: iCloud, Samsung |

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
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INTERNET BASICS



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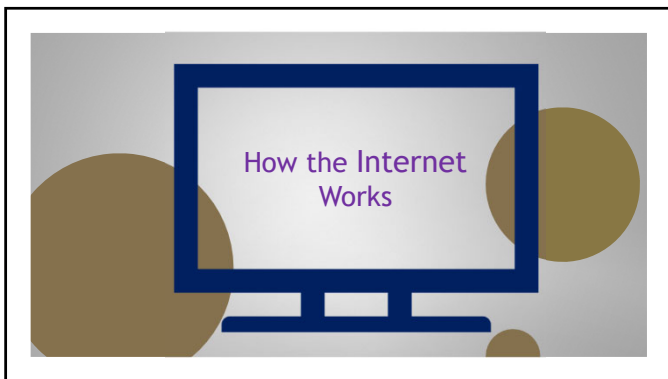
| Terms | |
|---|--|
|  Internet Service Provider (ISP) | Provides the internet to you (e.g., Comcast) |
|  Internet Protocol (IP) Address | ISP assigns device a unique number |
|  Domain Name System (DNS) | Directory of server addresses |
|  Router | Determine the best route for the code to take |
|  Packets | File broken into many, many pieces |
|  Transmission Control Protocol | Make sure the packets arrive & put them together |

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11



12

American Registry for Internet Numbers (ARIN)

- ARIN manages and distributes IP addresses in the United States, Canada, and many Caribbean and North Atlantic islands.
- ARIN helps you find the domain owner:
 - <https://search.arin.net>

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IP Addresses

- Your IP address is assigned by the ISP
 - If you're home, your ISP assigns
 - If you're at Starbucks, their ISP assigns
- IP addresses can be found looking at "full headers" on email addresses
- There are public ways to find the general location of an IP address (search "find IP address")
 - Their accuracy fluctuates

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IP Lookup Accuracy

Geolocation data from IP2Location (Product: DB5, updated on 2020-5-1)

| IP Address | Country | Region | City |
|------------|--------------------------|---------------|----------|
| | United States of America | Massachusetts | Brockton |

| ISP | Organization | Latitude | Longitude |
|-----|----------------------------------|---------------|------------------|
| | Comcast Cable Communications LLC | Not Available | 42.0834 -71.0184 |

Geolocation data from ipinfo.io (Product: API, real-time)

| IP Address | Country | Region | City |
|------------|---------------|-------------|-----------|
| | United States | Connecticut | Rockville |

| ISP | Organization | Latitude | Longitude |
|-----|-----------------------------------|---|------------------|
| | Comcast Cable Communications, LLC | Comcast IP Services, L.L.C. (comcast.com) | 41.8668 -72.4495 |

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VPNs

- Virtual Private Networks encrypt users' web traffic and masks their IP addresses
- It prevents ISPs from tracking your browsing history
- Many employers require a VPN if working from home so your work is encrypted

| | | | |
|--------------|--------------------------|--------------|------------------|
| IP Address | - | IP Address | - |
| City | Jersey City | City | Secaucus |
| State/Region | New Jersey | State/Region | New Jersey |
| Country Code | United States of America | Country Code | US |
| Postal Code | 07097 | Postal Code | 07094 |
| ISP | Syndes Networks B.V. | ISP | - |
| Time Zone | -04:00 | Time Zone | America/New_York |

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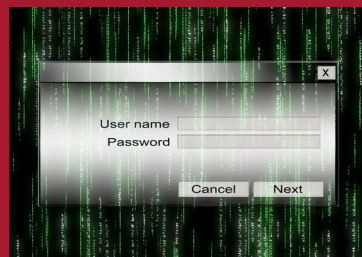
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16



17

SECURITY RISKS




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Social Engineering




The use of deception to manipulate individuals into divulging confidential or personal information that may be used for fraudulent purposes.


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Types of Social Engineering




Baiting




Phishing




Email hacking & contact spamming



Pretexting



Quid pro quo




Vishing

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20


Why Do Hackers Hack?




STEAL AND USE YOUR USERNAMES AND PASSWORDS




ACCESS CREDIT CARD AND BANK ACCOUNTS



REQUEST NEW ACCOUNT NUMBERS




MAKE PURCHASES



MAKE AN AUTHORIZED USER



OBTAIN CASH ADVANCES



USE AND ABUSE YOUR SSN





SELL YOUR INFORMATION


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<https://www.webroot.com/us/en/resources/tips-articles/computer-security-threats-hackers>


21


Malicious Software (Malware)



Worms


Viruses


Trojans


Spyware



Adware



Rootkits


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22

How Malware Gets on Computers


Download from a webpage


Email attachment


As a file on an infected removable device (e.g., flash drive)

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Passwords


| Ways a Partner/Friend Can Easily Obtain a Password | 2019's Most Common Passwords |
|---|---|
| <ul style="list-style-type: none"> ■ Password is shared ■ Password is written down ■ Password is easy to guess | <ul style="list-style-type: none"> ■ 123456 (23.2m) ■ 123456789 (7.7m) ■ qwerty (3.8m) ■ password (3.6m) ■ 111111 (3.1m) |

Source: UK's National Cyber Security Centre

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Webcams



- Trojans: Emails with attachments or links to websites, freeware (Is anything really free?)
- Roommates or partners may install on the target's computer
- Roommates or partners may turn on their own webcams

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Keystroke Logging (Keylogging)

Can be in the form of software, malware, or hardware

Tracks or logs the keys struck on the keyboard without the knowledge of the user

Track unsuspecting user's locations, record phone calls, read text messages and emails, pry into locally-stored photos and videos, and see web-browsing history

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PRIVACY

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Tyler Clementi



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Privacy

| | |
|-----------------------------|--|
| Fourth Amendment | "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." |
| Third Party Doctrine | "...a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties." (Smith v. Maryland, 1979) |

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30

Electronic Communications Privacy Act of 1986 (ECPA)

- “The ECPA, as amended, protects wire, oral, and electronic communications while those communications are being made, are in transit, and when they are stored on computers. The Act applies to email, telephone conversations, and data stored electronically.”
- Title I - Wiretap Act
- Title II - Stored Communications Act (SCA) ←
- Title III - Addresses pen register and trap and trace

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31

31

ECPA Title II – Stored Communications Act (SCA)

- Governs the disclosure of electronic communications stored with technology providers
 - Electronic communication service (ECS) - customers send or receive wire or electronic communications
 - Remote computing service (RCS) - provides storage or processing services by means of an electronic communication system
- Limits third parties’ ability to access without authorization
- Does not apply to personal users
- Provides a framework for law enforcement requests

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32

32

ECPA Title II – Stored Communications Act (SCA)

- Law enforcement may access electronic communications that have been stored for 180 days or less only pursuant to a warrant.
- Law enforcement may obtain access to the content of electronic communications (such as email) that have been stored for more than 180 days without providing notice to the subscriber or customer if the state prosecutor has obtained a warrant, administrative subpoena, grand jury or trial subpoena.

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International Association of Chiefs of Police:
<https://www.iacpcybercenter.org>

33

33

ECPA Title II – Stored Communications Act (SCA)

- Law enforcement may obtain specific records about electronic communications of a subscriber or customer with an administrative, grand jury, or trial subpoena. Although the content of the electronic communications cannot be obtained, law enforcement may obtain name, address, records of sessions, including times and duration, local and long distance connection records, length of service and types of services utilized, telephone and instrument number or other subscriber number or identity, including any temporarily assigned network address, and the means and source of payment, including credit card or bank account number.
- Law enforcement may only obtain historic Cell Site Location Information (CSLI) of a subscriber or customer with a traditional search warrant.

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International Association of Chiefs of Police:
<https://www.iacpycenter.org>

34

34

Privacy

Carpenter
v. United
States
(2018)

Ruled the government must get a warrant before accessing a person's sensitive cellphone location data because there is a "reasonable expectation of privacy in the whole of their physical movements." Access to historical cell site records is a "sweeping mode of surveillance" that gives the government the power of "near perfect surveillance, as if it had attached an ankle monitor to the phone's user."

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35

35

Creating Fake Accounts and Profiles

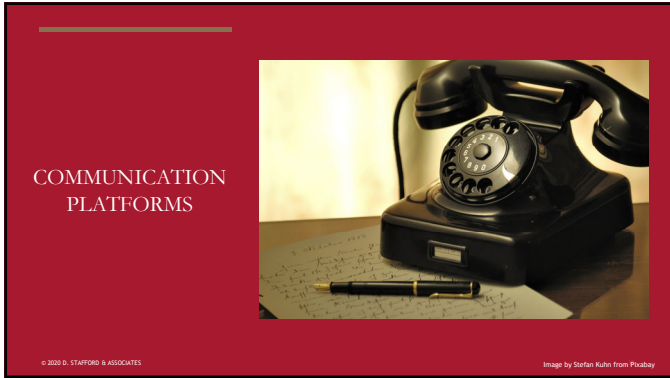


- Law enforcement can legally create fake accounts for the purpose of conducting a criminal investigation.
- Institutional investigators should not create fake accounts.

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36

36



37



Cell Phone Providers Data Retention

| | |
|---|---|
|  <p>Calls and cell tower records</p> <p>AT&T - 5-7 years Sprint - 18-24 months T-Mobile - 5 years (calls), 4-6 months (towers) Verizon - 1 year</p> |  <p>Text messages details</p> <p>AT&T - 5-7 years (no message content) Sprint - Up to 18 months (no message content) T-Mobile - 5 years (no message content) Verizon - up to 1 year (retain message content for 3-5 days)</p> |
|---|---|

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38

Cell Phone Providers Data Retention

| | |
|---|--|
|  <p>Internet Destination</p> <p>AT&T - up to 72 hours Sprint - up to 60 days T-Mobile - not retained Verizon - up to 90 days</p> |  <p>Internet Session Information</p> <p>AT&T - up to 72 hours Sprint - up to 60 days T-Mobile - not retained Verizon - up to 1 year</p> |
|---|--|

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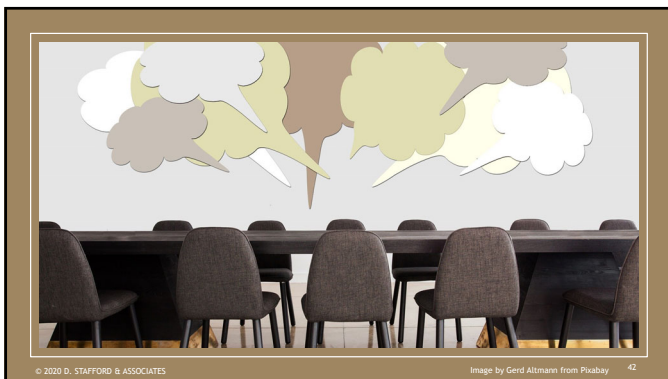
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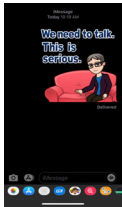
42

About Texting

Short Message Service (SMS) -
Text only




Multimedia Message Service (MMS) -
Texts, videos, photos, gifs, etc.




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43


Texting Features




MAIN METHOD OF COMMUNICATION




HIGH READ RATES



HIGH RESPONSE RATES



IF ONE PERSON DELETES A TEXT, THE OTHER RETAINS IT UNTIL THEY DELETE IT



ABILITY TO SEND MESSAGES TO LARGE GROUPS

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44

Groupme and Whatsapp

- GroupMe: Mobile messaging app (owned by Microsoft)
 - Syncs with contacts
 - User can make groups up to 500 people, popular as a tool for staff groups
- WhatsApp: Text messages, group chats, voice calls (owned by Facebook)
 - Messages are not retained by WhatsApp once they are delivered
 - End to end encryption does not allow WhatsApp to see the content

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45

Texting and Investigations



- Often the issue is not a lack of texts but thousands of text.
- Parties can be selective in the texts that are provided - carefully examine dates, times, and flow of the messages.
- Utilize programs such as iMazing to extract texts from phone.

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46

46

Exporting Texts

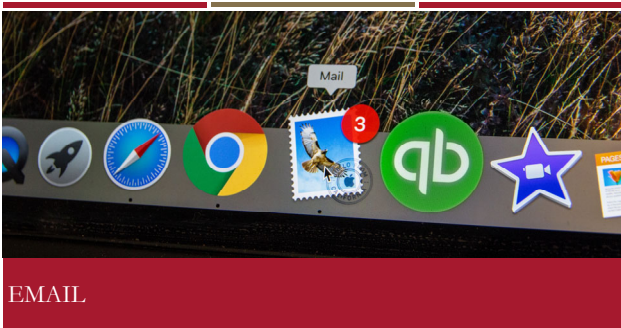


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47

47

EMAIL




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Photo by Webber on Unsplash


48

48


Problematic Behaviors




MONITORING OF
EMAILS BY PARTNER



CREATING EMAIL
ACCOUNT WITH
DIFFERENT NAME TO
HARASS, STALK, OR
THREATEN



PHISHING




SPOOFING

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49

Email and Investigations



- Emails can be an excellent source for information regarding sexual harassment cases involving faculty and staff (timelines, decisions, communication approach)
- Providers will typically not share account information without a court order

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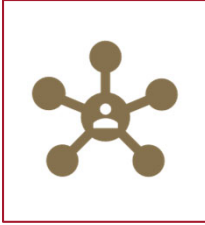
SOCIAL MEDIA ECOLOGY



© 2020 D. STAFFORD & ASSOCIATES Image by Gerd Altmann from Pixabay

51

What is Social Media?



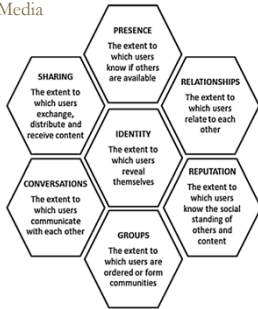
- “Social media are web-based communication tools that enable people to interact with each other by sharing and consuming information.” (Lifewire.com)
- One-to-many broadcast tools (e.g., Facebook)

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52

52

Honeycomb of Social Media



Kieritzmann, Jan & Hermkens, Kristopher & McCarthy, Ian & Silvestre, Bruno. (2011). Social Media: Get Serious! Understanding the Functional Building Blocks of Social Media. Business Horizons, 54, 241-251. 10.1016/j.bushor.2011.07.005.

Social Media Functionality

53

53

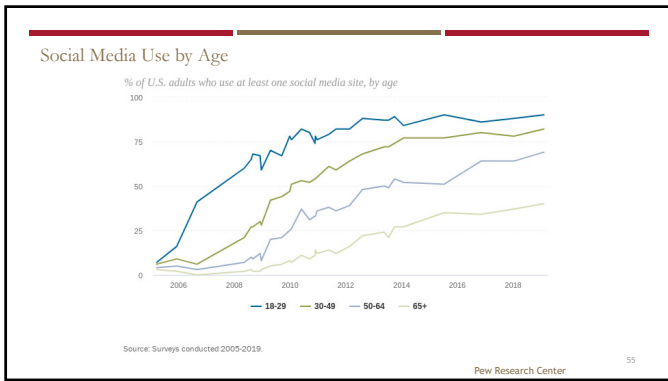
SOCIAL MEDIA: USE AND EFFECT



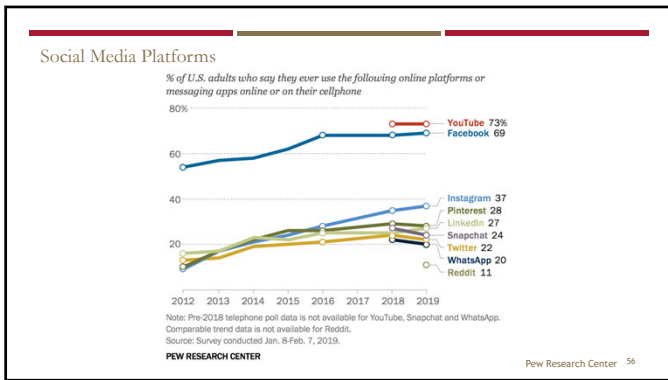
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Image by ijmaki from Pixabay

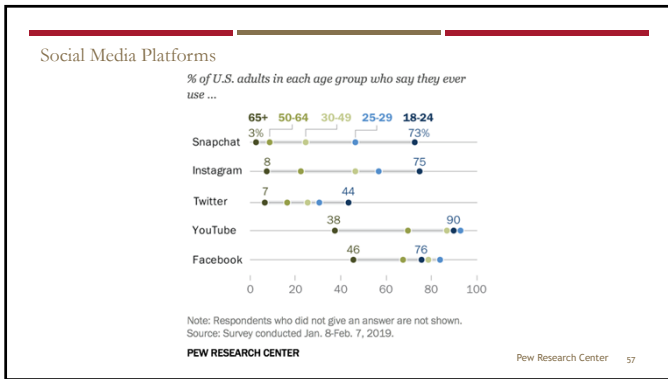
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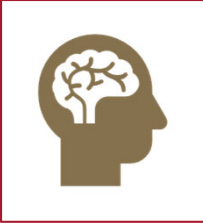


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57

Social Media and Mental Health



“People who negatively compared themselves to other social media users were highly vulnerable to depression. Friendships with former partners and envy were correlated with an increased risk of depression. Frequent Facebook posts also increased the risks, possibly because these posts enabled users to ruminate on negative emotions.”

Baker, D. A., & Algorta, G. P. (2016). The relationship between online social networking and depression: A systematic review of quantitative studies. *Cyberpsychology, Behavior, and Social Networking*, 19(11), 638-648. doi:10.1089/cyber.2016.0206

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Social Media and Mental Health



Passive



Active

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Personal Image



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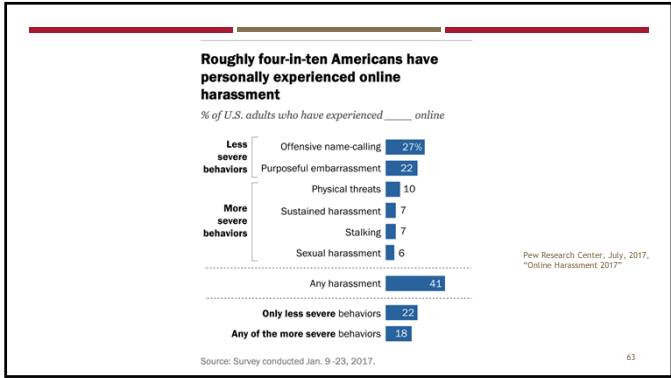
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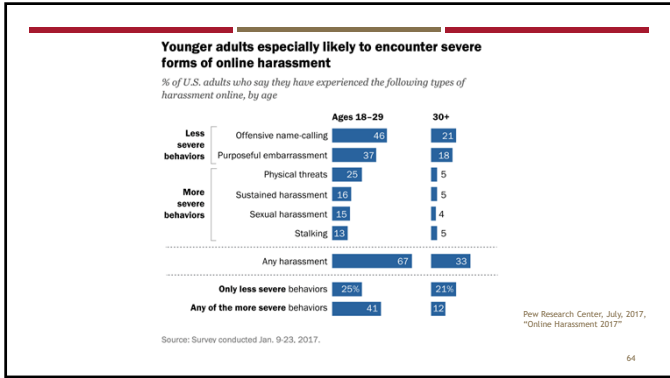
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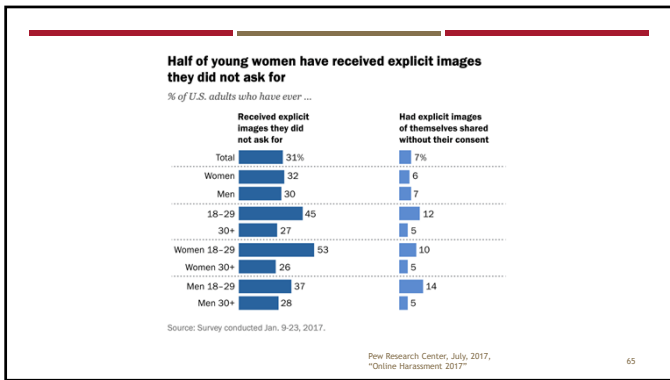
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65

Gender and Online Harassment

"Any woman who has an opinion online is bound to get men who through anonymity feel the need to threaten and assault them. I had a friend who got a stalker from posting a political Facebook post."

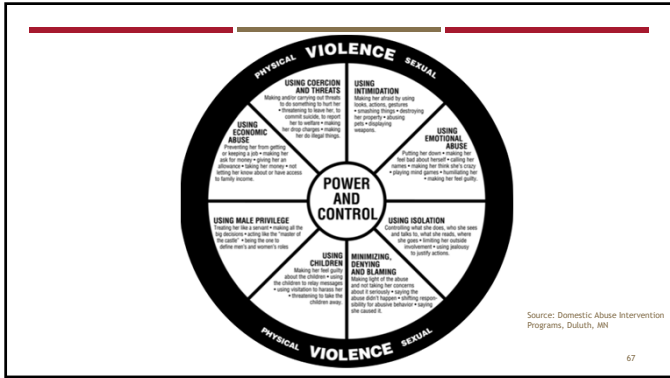
"Usually men harassing or threatening females for posting any provocative pictures or an opinion different from his own."

"I have friends in atheism, feminism and social justice. All have been trolled or harassed to varying extents. There's usually more of a sexual component when the targets are women, like rape threats and such, but I've seen men threatened with physical violence, too. I've also seen the harassment flow the other direction, like outraged feminists doxing or otherwise harassing men they've decided deserve it."

"Mostly on dating websites my friends have had experiences where once turned down, men threaten to beat and rape them, murder them, call them names, threaten to ruin their reputation, etc. I have never used a dating website because of what I have seen."

Pew Research Center, July 2017, "Online Harassment 2017"

66



67

Problematic Behaviors

- Image Exploitation (Revenge Porn)**
Sexual media of an individual (e.g. nude photo or video) posted online as a means of humiliating the individual
- Catfishing**
A fake or stolen online identity created or used for the purpose of beginning a deceptive relationship
- Impersonation of Target**
Creating profiles pretending to be the target and posting disturbing content using their identity
- Cyberstalking**
Stalking or harassment via social media, internet forums, or emails

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68

68

Problematic Behaviors

- Doxing**
Publishing someone's sensitive personal information online attempting to harass, intimidate, extort, stalk, or steal the identity of a target
- Gaslighting**
Persistent manipulation and brainwashing that causes the target to doubt themselves, and ultimately lose their own sense of perception, identity, and self-worth
- Ghosting**
Ceasing all communications with an individual and not responding to attempts to communicate with that individual
- Video Recording**
Using devices to record, without permission, sexual activity

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69

69

Problematic Behaviors

| | |
|--------------------------|--|
| Password Access | Using the target's passwords to access social media accounts and emails to monitor behaviors |
| Financial Control | Providing financial support for the target's phone and exerting control over access |
| Location Apps | Tracking the target's location |

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70

POPULAR SOCIAL MEDIA APPS: WHAT THEY ARE AND HOW TO USE THEM IN INVESTIGATIONS

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Image by Gerd Altmann from Pixabay

71

Terms

- **Extra:** To be unnecessarily dramatic and over the top
- **Periodt:** Meant to add emphasis to a point that has been made; a more extreme or intense version of "period"
- **Snatched:** To be wearing something that is very fashionable or has a look that looks really good; the process of supporting an insult against someone who has lost an argument
- **Big Yikes:** More intense version of the word "yikes"; something that is so very embarrassing that another, much larger "yikes" is needed

<https://www.businessinsider.com/stang-words-terms-teens-current-2019-8#extra-to-be-extra-is-to-be-unecessarily-dramatic-and-over-the-top-1> 72

72

Terms

- **Cap/No Cap:** To “cap” is to lie about something, whereas “no cap” means to tell the truth
- **Shade:** Refer to a situation where someone illustrated sneaky actions toward someone or something
- **Flex:** To knowingly flaunt and show off; to refer to the thing being shown off
- **Lit:** When something is amazing, exciting, high-energy, or otherwise great; intoxicated or drunk

<https://www.businessinsider.com/slang-words-terms-teens-current-2019-8#extra-to-be-extra-is-to-be-unnecessarily-dramatic-and-over-the-top-1> 73

73

Terms

- **Salty:** To be annoyed, upset, or bitter, usually about something minor
- **Slay:** To do really well or succeed at something
- **Shook:** To be affected by something, usually negatively and very emotionally; to be shocked, surprised, or scared
- **Stan:** An overzealous and obsessive fan or to be that kind of fan
- **Tea:** Gossip; “spilling the tea” is the act of gossiping
- **Thirsty:** Overly eager and desperate, usually for attention, approval, or compliments

<https://www.businessinsider.com/slang-words-terms-teens-current-2019-8#extra-to-be-extra-is-to-be-unnecessarily-dramatic-and-over-the-top-1> 74

74

Emojis


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75

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Usernames




Most people use the same username across their accounts and often it is the first part of their email address




Some college admissions applications ask for usernames



People like to use birthdates, jersey numbers from sports



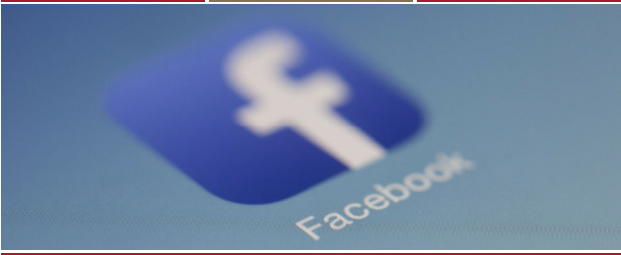
Instead of FirstName LastName, more are using FirstName MiddleName



Witnesses know usernames!

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76



FACEBOOK

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77

About Facebook

- Facebook’s popularity is declining with teens and young adults though some still have accounts despite a lack of use.
- Tech rumors are that Facebook is working on a new feature called “Campus” to address their declining numbers with college students.
- Some have accounts because the institution or department has a group page.
- Informal groups like “Buy or sell” or “Barstool Sports” often lead to angry posts about the institution or attack people whose posts they don’t agree with.

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Facebook Features



CREATE A USER PROFILE



HAVE "FRIENDS"



CAN POST PHOTOS, THOUGHTS, STATUS UPDATES



SHARE ARTICLES



LIKE/DISLIKE POSTS




CAN LIKE PAGES AND GROUPS

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79

Facebook and Investigations



- Username: Try variations of the person's name.
 - Shortened names ("Bill" for "William")
 - First name/middle name ("Thomas Daniel")
- Utilize filters.
- Searching "friends" accounts can sometimes give you access to additional information.
- Users can download their data through Privacy and Settings.

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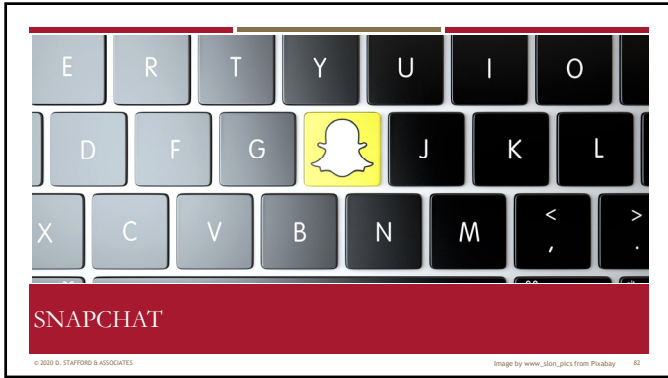
80

Facebook and Investigations

- Facebook has received pressure to "crack down" on law enforcement creating fake profiles.
- "We disclose account records solely in accordance with our terms of service and applicable law, including the federal Stored Communications Act ("SCA"), 18 U.S.C. Sections 2701-2712."
- Additional information is available on Facebook's website.

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81



82








About Snapchat

- Snapchat is enjoying increasing popularity with 18 to 24-year olds.
- Snapchat was first known for the increased popularity in sexting (sending sexually explicit media).
- Posts are recent and therefore, more timely.
- Part of its popularity is the immediate deletion of the posts (more on this later) .

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83

Snapchat Features

| | | | | | | |
|---|---|---|---|---|---|---|
|  |  |  |  |  |  |  |
| USERNAME AND VANITY NAME | UPLOAD CONTACTS OR SEARCH FOR FRIENDS | SNAP | CHAT | STORIES | SNAP MAP | MEMORIES |

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84

Stories

Private Stories

- Only the user can add Snaps to their Private Story and they can choose which friends can view the story. Only friends with access to the Private Story are notified when something is added.

Custom Stories

- Custom Stories are for the user and their friends. The user and their friends can view and add Snaps to a Custom Story

Geo Stories

- Geo Stories are for the user and nearby Snapchatters. Snapchatters must be near the location the User chooses to view and add to the Story.
- Other Snapchatter's who are a part of that Story will know the user's location.

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85

Snapchat Deletion Procedures - Snaps

```

graph LR
    A[Servers automatically delete all Snaps after they've been viewed by all recipients] --> B[Servers automatically delete all unopened Snaps after 30 days]
    B --> C[Servers automatically delete unopened Snaps sent to a Group Chat after 24 hours]
  
```

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86

Snapchat Deletion Procedures - Chats

```

graph TD
    A[Servers delete messages sent in one-on-one Chat after both Users have opened and left the Chat] --> B[Messages can be set to delete after 24 hours by changing the erase rules in Chat Settings]
    B --> C[Servers delete all unopened Chats after 30 days]
    D[Users can save a Chat by pressing-and-holding on it] --> E[Users can also delete chats by pressing-and-holding on the message, then tapping 'Delete']
    E --> F[Servers delete messages sent in Group Chat after 24 hours, even if they haven't been viewed yet]
  
```

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87

Snapchat Deletion Procedures - Stories

Snapchat servers delete Snaps added to the User's Story 24 hours after they are added

→

The User can delete a Snap from My Story at any time

→

Servers delete Snaps added to a Custom Story 24 hours after they are added

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88

Snapchat Deletion Procedures - Memories

Memories keeps the Snaps and Stories and are backed up by Snapchat

→

Servers erase a deleted Snap as soon as possible

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89

Snapchat and Investigations

- People infatuated or obsessed with one another are more likely to use memories - ask specifically if they have saved any memories.
- Snapchat informs users to seek law enforcement's assistance for the recovery of Snaps - they will not retrieve for a user.
- Avoid asking an involved party or witness to "screenshot" an image because the sender is sent a notification - use another phone to take a photo of the screen.

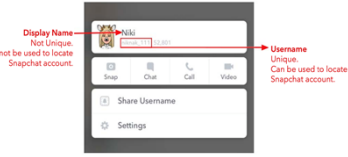
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90

Snapchat and Investigations

- Before sending a legal request, law enforcement must know the username (not the vanity name).
- Snapchat has policies allowing for preservation and emergency requests.
- A handbook is available on Snapchat's website.
- Be aware of the deletion timeline so requests can be submitted prior to deletion.

Example of Snapchat username and display name:



(The image above is a popup in Snapchat that can be accessed by pressing and holding on a user found within Search or a Chat screen.)

91



INSTAGRAM

92

About Instagram

- Launched in 2010 and within two months had 1 million registered users
- Had 1 billion registered users in 2019
- A means to chronicle life events - big and small
- Curates an "image" or "brand" of a person
- Owned by Facebook

93

“Finsta”

- Users have a second account beyond their “Real” account.
- The “Real” account shows a carefully created life of friends, looks, and leading a great life (account parents/family see).
- “Finsta” is the account for friends.
 - Uses a name not known to parents and a different email or phone number so it can't be connected
 - Displays more of “real life” - imperfect photos, struggles, memes, etc.
 - Place to make fun of others
 - “People crying over their privilege” (- incoming first-year college student)

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94

94

Instagram Features



DIFFERENT NAMES FOR REAL AND FINSTA ACCOUNTS



SEARCH FOR FRIENDS, NEED USERNAME FOR FINSTA



UPLOAD PHOTOS, USE FILTERS



STORY (DISAPPEARS AFTER 24 HOURS)



“LIKE” AND COMMENT



DIRECT MESSAGE

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95

Instagram and Investigations



- Instagram does not notify the image poster when another user takes a screenshot.
- Users can view “Access Data” which provides all usernames used, accounts blocked, search history, logins (Security settings).
- Users can request a copy of everything they have shared on Instagram.

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96

96

Instagram and Investigations

- Instagram has the same policy as Facebook regarding law enforcement.
- They do not require email or phone verification of the user.
- They do not require users to use real names or identities.
- Need the username for the date range you are seeking information.

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97



TWITTER

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98

About Twitter


- Microblogging and social networking service
- Twitter is a very public forum
- People can be vicious

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99

99


Twitter Features




REGISTERED USERS
CAN TWEET, RETWEET,
COMMENT, AND
MESSAGE



UNREGISTERED USERS
CAN SEE TWEETS



TAG USERS



HASHTAGS

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100


Subtweets

- Username begins with the “@” symbol.
- A tweet that mentions a Twitter member without using the “@” symbol does not appear on that individual’s timeline.
- Examples
 - Tweet: @bettyaubuchon is an excellent presenter
 - Subtweet: Cathy Cocks is the worst presenter ever
 - Subtweet: bettyaubuchon is the worst presenter ever

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101

Twitter and Investigations



- Users can block all non-followers from seeing their Tweets.
- Users can block some accounts from seeing their Tweets.
- Users can download their data. The point of Twitter is for people to see them so you can find most Tweets BUT you need to be quick as parties may change their account to Private if they know they are being investigated.

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102

Twitter and Investigations

- Twitter does not require real name use, email verification, or identity authentication.
- There is a “brief period of time” they keep information from a deleted account.
- Access to records is similar to other sites.

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103

103



ONLINE DATING

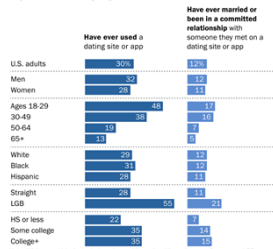
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104

Online dating and finding a partner through these platforms are more common among adults who are younger or lesbian, gay or bisexual

% of U.S. adults who say they ...

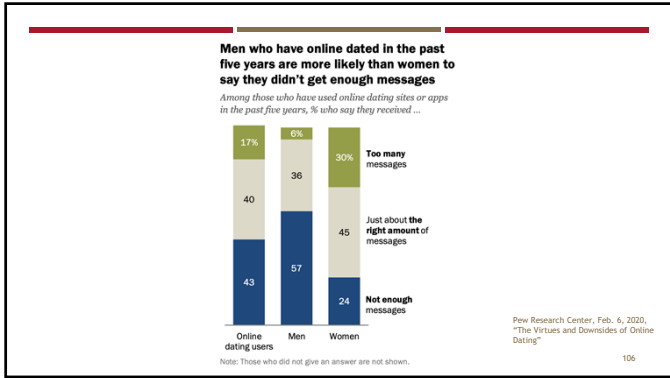


Note: Whites and blacks include only non-Hispanics. Hispanics are of any race. LGB indicates those who identify as lesbian, gay or bisexual. Those who did not give an answer are not shown.

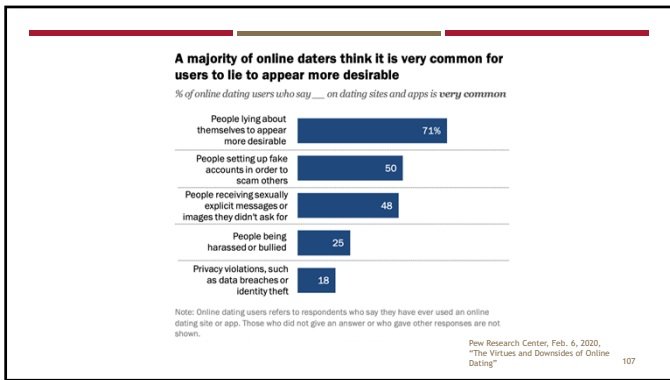
Pew Research Center, Feb. 6, 2020, "The Virtues and Downsides of Online Dating"

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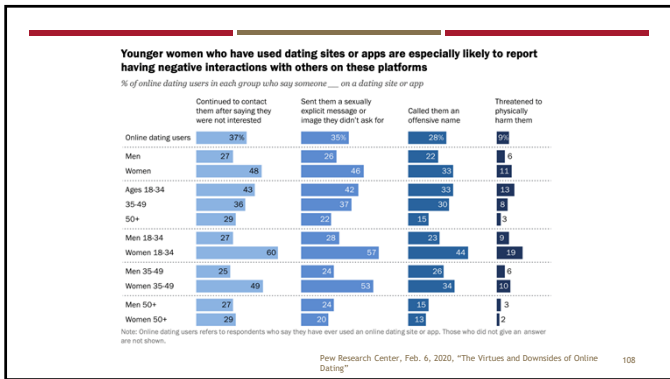
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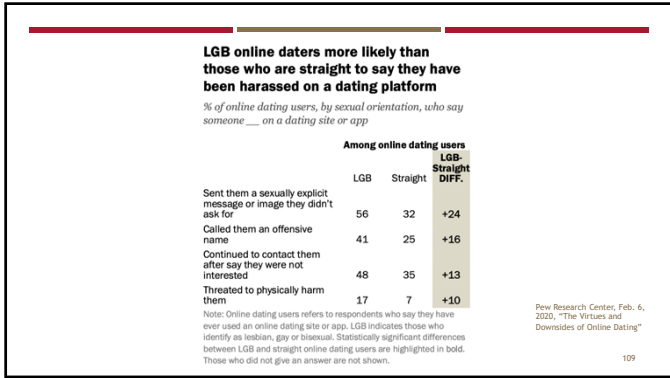
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107



108



109


- ### Popular Dating Sites
- Tinder - owned by Match
 - Grindr
 - Coffee and Bagels
 - Facebook Dating (not available everywhere)
 - eHarmony
 - Match
 - OkCupid (anyone can message another person) - owned by Match
 - Ship (user's friends weigh in)
 - Tastebuds (based on music preferences)
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110


- ### About Tinder and Grindr
- May be considered more "hook up" apps than dating apps
 - Tinder U: a version exclusive to college students
 - Must use .edu address
 - Other students from the same institution are shown first
 - Grindr: Exclusively built for LGBTQ community
 - Most popular dating app for LGBTQ college students
 - Easy to create "impersonation" profiles
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111


Tinder and Grindr Features




CREATE PROFILE



BOTH UTILIZE LOCATION BASED MATCHING



GRINDR UTILIZES TILE VIEWS AND "TAPS" TO INDICATE INTEREST




TINDER USES CARD STACK VIEW AND SWIPES RIGHT IF INTERESTED, LEFT IF NOT

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112

Dating Apps and Investigations



- It is very easy to impersonate someone else.
- Individuals may be embarrassed to share with investigators photos and messages.
- Investigators need to be comfortable discussing these apps and refrain from judgement or disapproval.
- If the individual has a parent/family member as a support person, that may add a dynamic that needs to be worked through.

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Tinder and Investigations

- Tinder retains a user's data three months after an account is deleted or after two years of inactivity.
 - Active users can download their data
- No user verification
- "Response to Reports of Assault:
 - Tinder users can easily report instances of abuse or assault in-app or online. We strongly encourage any user who believes they have been a victim of a crime to report it to law enforcement. Our team works to promptly investigate reported crimes, assess and take appropriate action, and fully cooperates with law enforcement in any investigation.
 - When a user reports an assault to Tinder, we attempt to identify the alleged perpetrator and block the associated account. The incident is then reported to Match Group's centralized safety repository and checked across our various brands to see if the user has other accounts on other platforms. If any are found, they are blocked as well." (Tinder policies)

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Grindr and Investigations

- Once a message has been delivered to a recipient, Grindr deletes the data within 24 hours.
- Profile and location information of a deactivated user is deleted within seven days unless retained for a legal purpose.
- Chat images, user activity, and other Personal Data is deleted within 120 days of an account deletion.
- Public information regarding interactions with law enforcement is limited to a request via an email address.

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115

115

| | | | |
|---|---|--|--|
| Co-Star Creates your astrological chart and compares it to your friends | Discord Chat for gamers | Find My Apple app that allows you to find your devices but also track friends' locations | LinkedIn Professional networking |
| Pinterest Share images on pinboards | TikTok Short dance, lip sync, comedy, and talent videos | Twitch Live video game website | YouTube Video sharing |

OTHER POPULAR SHARING APPS

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116

116

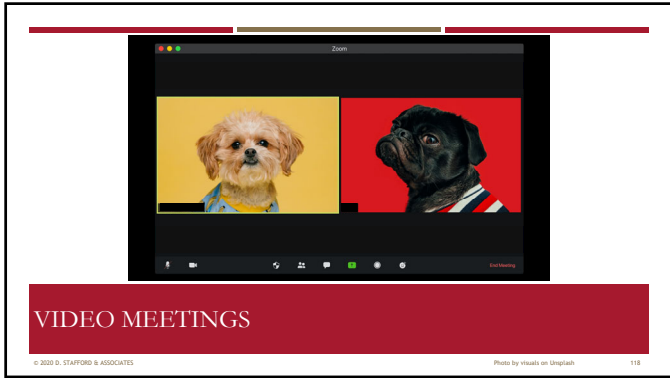
OTHER INVESTIGATION TOOLS AND CONSIDERATIONS



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119



120

Considerations for Video Interviews



Equity

Same opportunity for involved parties
Access
Privacy



Advisors

Providing space for private conversations
Expectations

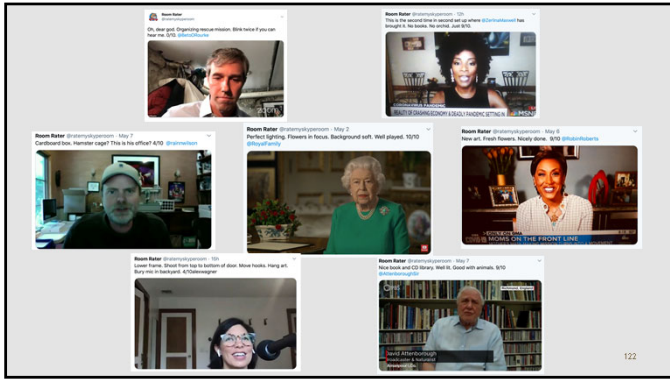


Physical layout

Background
Lighting
Distraction-free
Room Rater


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121



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122




CAMERAS


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Surveillance Cameras




RESIDENCE
HALLS



DINING HALLS



LICENSE PLATES




BUSINESSES


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Surveillance Cameras and Investigations




Behaviors



Context clues



Timelines



Witnesses

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ACCESSING RECORDS

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Education Records and FERPA



Judicial Order



School Officials




Another school where the student seeks to enroll or transfer


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Education Records and FERPA - Internal

 Who is the data custodian for the records?

Example: A residence hall director may know a student's conduct history, but they are not the data custodian for a student's conduct history. That is likely the director of student conduct.

 If you have access to a record for another aspect of your position, you don't necessarily have access for an investigation.

Example: You also sit on the institution's threat assessment team and have access to records to conduct threat assessments. You cannot access those records beyond that scope without permission.

 You need to make a specific request and explain why you have a legitimate educational interest.

The data custodian will need to document the request and response.

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FERPA and Personal Observations

“FERPA does not prohibit a school official from releasing information about a student that was obtained through the school official's personal knowledge or observation unless that knowledge is obtained through his or her official role in making a determination maintained in an education record about the student.”

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129

Search Engines

- Search engines like Google can be like finding a pot of gold...or a needle in a haystack.
- The right combination of terms, phrases, and creativity is the key to an effective search.

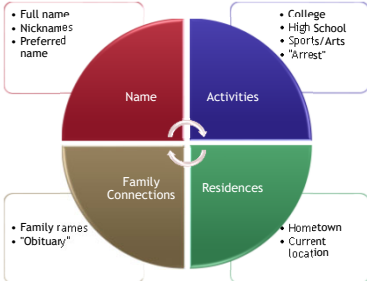


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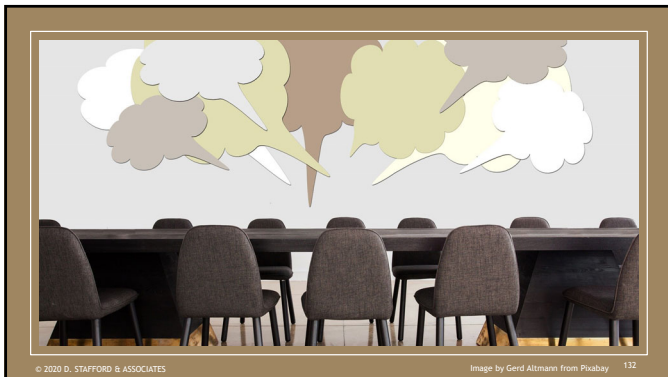
Search Terms



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131

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Criminal and Court Records

- Law enforcement likely has access to criminal records.
- Some records may be sealed, or it may be more difficult to obtain if it is an active case.
- There are ways to obtain records without going through your police department.

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Public Access to Court Electronic Records (PACER)

- Access United States federal court documents and obtain case and docket information from the United States district courts, United States courts of appeals, and United States bankruptcy courts
- There is a per page fee that is enacted once a user exceeds \$30 in a month
- “But if PACER seemed mind-blowing in the early 1990s, it now seems as archaic as a barrister’s wig.” (*Tear Down this Paywall*, Reason, June 2012)
- <https://pcl.uscourts.gov/pcl/index.jsf>

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RECAP Project

- An extension on Chrome and Firefox
- Users can access documents that have been downloaded from PACER without any cost.
- <https://free.law/recap/>

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135


NEW TITLE IX REGULATIONS – TECHNOLOGY RELATED



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136

§ 106.8 Designation of coordinator, dissemination of policy, and adoption of grievance procedures




- “Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail...or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report.”
- *What are your methods of reporting?*

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§ 106.30 Definitions – “Formal complaint”



- Can be an electronic submission such as email or an online portal “provided for this purpose by the recipient”
- “...contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.”
- A “report” and “formal complaint” are not the same.
- *What would a “formal complaint” process look like?*

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138

§ 106.45 Grievance process for formal complaints



- (b)(1)(iii) - Decision-makers must “receive training on any technology...”
- *Who is responsible for the technology?*
- *Who can train?*
- *Will there be a “gatekeeper” to manage the hearing?*

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§ 106.45 Grievance process for formal complaints



- (b)(5)(vi) - “Prior to the completion of the investigative report, the recipient must send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy...”
- *What platform?*
- *Do you allow downloads?*
- *What are the FERPA implications to provide direct access to the other party’s advisor?*

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§ 106.45 Grievance process for formal complaints



- “...all such evidence subject to the parties’ inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for cross-examination...”
- *Do you provide hard copies at the hearing?*
- *Do you screen share or use projection?*

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§ 106.45 Grievance process for formal complaints



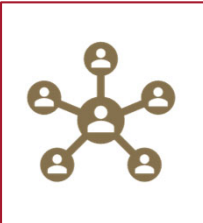
- (b)(5)(vii) - The investigative report must be sent to each party, and the party's advisor, either in an electronic format or a hard copy.
- *What platform? Do you email?*
- *Do you allow downloads?*
- *What are the FERPA implications to provide direct access to the other party's advisor?*

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§ 106.45 Grievance process for formal complaints



- (b)(6)(i) - Either party can request for the hearing to be in separate rooms.
- *Can you have one party in with the hearing body or do you need three tech-enabled rooms?*
- Decision-maker(s) and parties must be able to simultaneously see and hear the party or the witness.
- *Do you have the facilities for this?*

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§ 106.45 Grievance process for formal complaints




- (b)(6)(i) - Must create either an audio or audiovisual recording or transcript and make available
- *What are the advantages/disadvantages to recordings and transcripts?*
- *How do you maintain?*

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§ 106.45 Grievance process for formal complaints




- (b)(10)(i) - Must maintain the following for seven years
 - Each sexual harassment investigation including determination, recording or transcript, sanctions imposed, and remedies
 - Appeal
 - Any informal resolution

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§ 106.45 Grievance process for formal complaints




- (b)(10)(i) - Must maintain the following for seven years
 - All materials used to train ("publicly available on its website or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public")
 - *What are the implications for posting training materials online?*

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§ 106.45 Grievance process for formal complaints



- (b)(10)(ii) - Must create and maintain the following for seven years
 - Records of any actions taken in response to a report or formal complaint
 - Document "basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity."
 - *How do you organize and maintain this information, especially if different offices have different roles?*

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§ 106.45 Grievance process for formal complaints



- (b)(10)(ii) - Must create and maintain the following for seven years
- If no supportive measures are provided, it must be documented as to why “such a response was not clearly unreasonable in light of the known circumstances.”
- *What kind of justification does this look like?*

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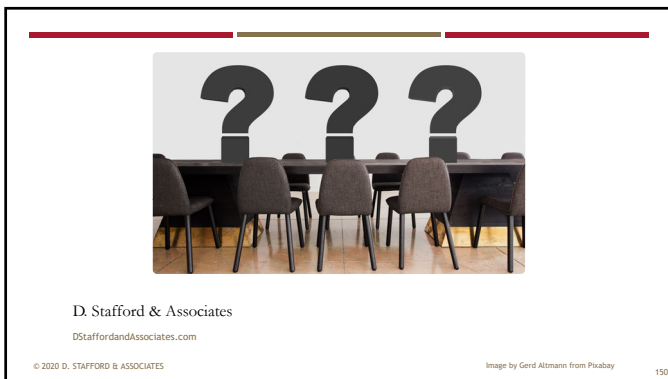
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150

150

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SLIP

SHEET

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SHEET

PRECISION INTELLIGENCE CONSULTING, LLC
STATEMENT ANALYSIS COURSE OUTLINE

I. Introduction (9:00 – 9:30)

- A. Opening remarks
- B. Description of course
- C. Introduction of students
- D. Definition of Statement Analysis
- E. Effective methods for eliciting statements

II. Indicators of Veracity (9:30 – 10:15)

- A. Discussion of veracity and its relationship to social tension
- B. Introduction to unique sensory details
- C. Locating and classifying unique sensory details
- D. Statement analysis exercise

III. Break (10:15 – 10:30)

IV. Deception through Equivocations (10:30 – 11:45)

- A. Defining equivocations and negations
- B. Locating equivocations and negations
- C. Classifying equivocations and negations
- D. Statement analysis exercise

V. Lunch Break (11:45 – 1:00)

VI. Statement Balance (1:00 – 2:15)

- A. Defining the statement's event
- B. Locating the statement's event
- C. Analyzing the statement's event
- D. Statement analysis exercise

VII. Extraneous Information and Deception Part I (2:15 – 3:00)

- A. Defining extraneous information
- B. Locating extraneous information in statements
- C. Classifying extraneous information
- D. Statement analysis exercise

VIII. Break (3:00 – 3:15)

IX. Extraneous Information and Deception Part II (3:15 – 4:00)

- A. Statement analysis exercise

- X. Pronouns (4:00 – 4:45)
 - A. Defining pronouns
 - B. Interpreting pronouns
 - C. Locating pronouns
 - D. Classifying pronouns
 - E. Statement analysis exercise

- XI. Conclusion of Class (4:45 – 5:00)
 - A. Review of techniques
 - B. Question and answer session

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Interviewing Strategies Through Statement Analysis

1

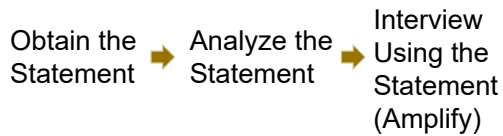
Interviewing Strategies Through Statement Analysis

A tool to help you conduct a more thorough interview by examining a person's verbatim words. This process looks for areas of insight and possible deception.

Technique understood by fewer than 1 percent of law enforcement personnel.

2

Statement Analysis: The Big Picture



A tool for uncovering the truth.

3

**Introduction:
Statement Analysis**

Aug. 17, 1998 —
During President Clinton's grand jury testimony he stated:


"I swore an oath to tell the truth, and I believed I was bound to be truthful and I tried to be."

4

Obtaining a Statement

Have the subject write his or her own verbatim narrative. This helps establish the writer's perception of the priorities surrounding the event.

What do you ask of the subject?



5

Guidelines for Obtaining a Written Statement

- Use 8½ x 11-inch lined paper with margins.
- Use a pen — Not a pencil.
- Give him or her adequate time to write.
- Minimize the importance of the process.
- Ask the subject an open-ended question to elicit the narrative.

6

Oral Statements



- Audio or video record the statement; then transcribe verbatim.
- Ask an open-ended question such as:
 “Tell me what happened.”
- Don’t interrupt.
- Let the subject do the talking.
- Don’t edit what he or she says.

7

Dictated Statements



Same format as a written statement.

As you write the narrative:

- Sit next to the subject so he can read it as you write.
- Write verbatim, **every word**.
- If he stops talking, leave a space.
- Don’t interrupt.
- Don’t edit.

8

It Involves Examining ...



If the question was answered:

- What words were chosen?
- Why did they choose those words?
- Are the words designed to convince or to convey a message?
- Can I create an interrogation strategy from the words chosen?

9

Missing Child Investigation



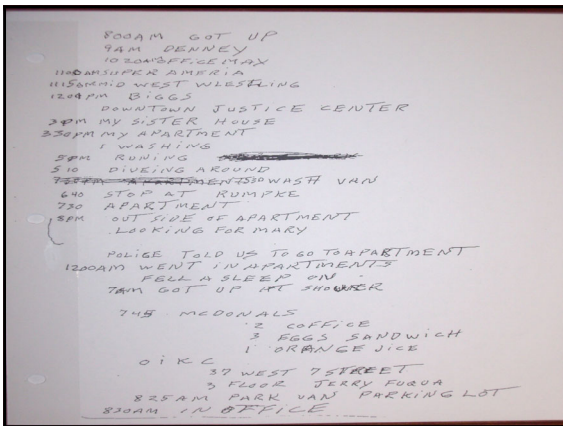
MISSING CHILD CASE

Mary, 4-year-old girl

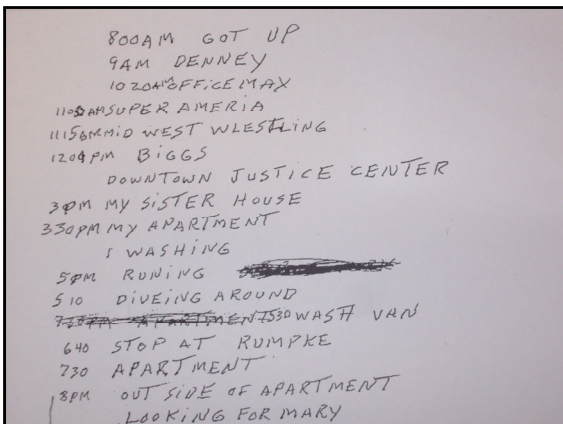
Prompt:

“Write down everything you did from the time you woke up until the time you went to sleep.”

10



11



12

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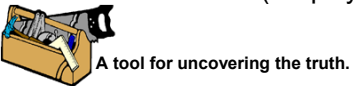
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Statement Analysis The Big Picture

1

Statement Analysis The Big Picture


Obtain the Statement → Analyze the Statement → Interview Using the Statement (Amplify)




A tool for uncovering the truth.

2

Acquiring Tools



3


Statement Analysis 

Think back to a traumatic childhood event.

What happened?

Write your response.


4

Undeutsch Hypothesis 

“A statement based on reality will be different from one based on imagination.”


— Udo Undeutsch, University of Cologne, West Germany, 1952

5

Statement Analysis 

Look & Listen
for
Indicators of Veracity


6

Indicators of Veracity 

In studies comparing experienced and constructed memories, the truthful memories contained more sensory information than did the fabricated, constructed memories.

M.K. Johnson, M.A. Foley, A.G. Suengas & C.L. Raye, "Phenomenal characteristics of memories for perceived & imagined autobiographical events." *Journal of Experimental Psychology*, 1988, 117(4)


7

Indicators of Veracity 

In studies of oral statements, researchers found that truthful accounts contained more details than deceptive accounts.

A. Parker & J. Brown, "Detection of Deception: Statement Validity as a Means of Determining the Truthfulness or Falsity of Rape Allegations." *Legal & Criminological Psychology*, 2000, 5, 237-259

8

Indicators of Veracity
Look & Listen 

DETAILS


Unique sensory details (Underline in Pink)

- Sight
- Sound
- Touch
- Smell
- Taste

Spatial Details (Underline in Pink)

Emotions (Highlight in Pink)

9

Indicators of Veracity 

LOOK & LISTEN FOR UNIQUE SENSORY DETAILS

Sight: "I looked back and saw flames shooting up around the car..."


Sound: "It sounded like a loud cherry bomb went off."

Touch/feel: "I could feel searing heat on my cheeks & forehead."

Smell: "He smelled like he hadn't showered in a month was a disgusting odor."

Taste: "The milk tasted sour..."

10

Indicators of Veracity 


True memory generally includes unique sensory details.

"I believe he had a knife."

vs.


"The handle of the knife was wrapped with black electrical tape. I could feel the rough edge when he rubbed it against my throat."

11

Indicators of Veracity 


True memory generally includes unique sensory details.

"To the best of my knowledge, the car was red."

vs. 


"The car was candy-apple red. I could hear the gears grinding when he shifted. The exhaust smelled like burnt oil."

12


Indicators of Veracity 

True memory may also include spatial details (specific locations & spaces)

"I hid behind some M packing boxes in the the staircase."




13

Indicators of Veracity 

Studies reveal that the recall of experienced events includes more affective information — such as emotional reactions — than does recall of fictional events.

M.K. Johnson, M.A. Foley, A.G. Suengas & C.J. Raye, "Phenomenal characteristics of memories for perceived & imagined autobiographical events." *Journal of Experimental Psychology*, 1988, 117(4)

14

Indicators of Veracity 

LOOK and LISTEN for emotion
(highlight in pink)

| | |
|---------------|----------|
| Fear | Surprise |
| Anger | Disgust |
| Sadness | Shame |
| Enjoyment | |
| Embarrassment | |
| Love | |

15


Emotion

Guilty people can back-stop their “story” and practice their lie ... but they usually forget to add emotion.

Note: Crying, screaming, and other similar actions are reactions to emotions ... Do not highlight.

16

**Signs of Veracity
in Sexual Assault Narrative**



Articulation of fear & other emotions

Specific details in describing the assault

Sensory detail

17

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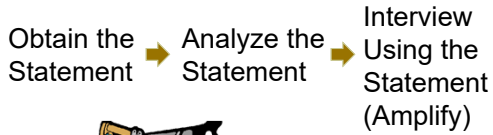
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Statement Analysis The Big Picture

1

Statement Analysis The Big Picture



A tool for uncovering the truth.

2

Statement Analysis Exercise

**YOU ARE A
WORLD-FAMOUS
ATHLETE!**

3

**Statement Analysis
Equivocation**

“Lack of conviction is a modifying or equivocating term. Such terms allow the speaker to evade the risk of commitment. The speaker is undermining his/her own assertion, which may indicate some difficulty with committing to what is being said.”

— Don Rabon, *Investigative Discourse Analysis* (Durham, NC: Carolina Academic Press, 1994), 20.

4

**Statement Analysis
Equivocations**

(Highlight with a green marker)

| | |
|-----------|-----------------------|
| •Maybe | •Sort of |
| •Probably | •Maybe |
| •Think | •Basically |
| •Believe | •Around |
| •Assume | •Probably |
| •Guess | •I may have |
| •Kind of | •To the best of my... |

5

**Statement Analysis
Equivocations**

Equivocations indicate that the person is unwilling or unable to provide further information.

They should be able to articulate why they cannot provide more information!

6

**Statement Analysis
Negations**

LACK OF KNOWLEDGE OR MEMORY

NO, NOT or a contraction of **NOT** such as **DIDN'T** or **WOULDN'T**

"I'm not sure."
"I don't remember."
"I don't recall."
"I don't know."

Note: The subject is usually telling us about something they don't remember or didn't do.

7

**Statement Analysis
Negations**

Offer insight into areas that may become important later in the statement.

"There weren't any lights on."
"I didn't notice the door was open."
"I couldn't see that well."

8

**Statement Analysis
Indicators of Deception**

The **best indicator** of deception in response to an open-ended question is **equivocation and/or negation.**

9

**Statement Analysis
Extraneous Information**

Anything that does not answer the question is extraneous information:

- Used to justify the speaker's or writer's actions.
- Used to fill space or buy time.

Highlight with yellow marker!

10

**Statement Analysis
Extraneous Information**

IF THERE IS EXTRANEIOUS INFORMATION,
the investigator should be asking the question:

"Did the subject come
to CONVINCE or
to CONVEY?"

11

**Statement Analysis
Bi-Polar Question**

"Did you do it?"

↓ ↓

YES NO

12

Statement Analysis
“Did You Do It?”

“I wouldn’t have done that.”
“How could I have done it?”
“I’ve never done anything like that.”
“Why would I do something like that?”

vs.

NO, I DIDN’T DO IT!

13

Statement Analysis
Extraneous Information

Michael Jackson

Sawyer: Why did you settle the case then?
Jackson: The whole thing is a lie.
Sawyer: Why did you settle the case? And it looks to everyone as if you paid a huge amount of money.
Jackson: That’s...that’s, most of that’s folklore. I talked to my lawyers, and I said, ‘Can you guarantee me that justice will prevail?’ And they said, ‘Michael we can not guarantee you that a judge or a jury will do anything.’ And with that I was catatonic. I was outraged.

14



Statement Analysis
Extraneous Information

Michael Jackson

Sawyer: How much money?
Jackson: Totally outrageous. So, I said...I have to do something to get out from under this nightmare. All these lies and all these people coming forth to get paid and all these tabloid shows, just lies, lies, lies, lies. So what I did, we got together again with my advisors and they advised me. It was hands down unanimous decisions — resolve the case. This could be something that could go on for seven years.

15

**Statement Analysis
Extraneous Information**





Gary Condit

Connie Chung (ABC News): Congressman Condit, do you know what happened to Chandra Levy?

Condit: No, I do not.

16

**Statement Analysis
Extraneous Information**





Gary Condit

Chung: Did you have anything to do with her disappearance?

Condit: No, I didn't.

17

**Statement Analysis
Extraneous Information**




Gary Condit


Chung: Did you say anything or do anything that could have caused her to drop out of sight?

Condit: You know, Chandra and I never had a cross word.

18

**Statement Analysis
The Big Picture**






Gary Condit

Chung: Did you cause anyone to harm her?

Condit: No

19

**Statement Analysis
Extraneous Information**



Woody Allen


Kroft: The allegations are that you took Dylan into an attic or crawl space.

Allen: Mm-hmmm

Kroft: Is there any truth to that at all?

20

**Statement Analysis:
The Big Picture**



Woody Allen

Allen: Well, be-be logical about this. I'm...Isn't it illogical that I'm going to, at the height of a very bitter, acrimonious custody fight, drive-up to Connecticut where nobody likes me in a house — I'm in a house full of enemies, I mean Mia was so enraged at me and-and she had gotten all the kids to-to be angry at me, that I'm going to drive up there and suddenly, on visitation, pick this moment in my life to become a child molester. It's just-just incredible. I could have — if I wanted to be a child molester, I had many opportunities.

21

**Statement Analysis
Principles Per Linguists**



Shortest is best

Simplest is best

*"To give a reason for anything is to breed doubt of it."
— William Hazlitt, 1826*

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Interviewing Strategies Through Statement Analysis

NOUNS

1

Statement Analysis Analyzing Nouns

A nouns is a word used to name a person, place, thing or idea.

Underline all proper nouns the first time they are used and list them in the left hand margin.

Examine order of importance.

2

Statement Analysis Order of Importance

Note the order in which **names** are mentioned in the narrative. Generally, there is a reason why a certain order is followed.

People often place who or what is more important in order of importance or who can help them the most.

3

**Statement Analysis
Order of Importance**

Example: Christmas Cards

Love, Michelle, Chris, Mike

4

**Statement Analysis
Order of Importance**

Example: Christmas Cards

Love, Michelle, Chris, Mike
Love, Michelle, Mike, Chris

5

**Statement Analysis
Order of Importance**

Example – Christmas Cards


Love, Michelle, Chris, Mike
Love, Michelle, Mike, Chris
Love, Michelle, Mike

Generally there is a reason why a certain order is followed. People place who or what is more important to them in the order they appear.

6

Statement Analysis
Darlie Lynn Routier

Rowlett, Texas — Two children (Damon & Devon) were stabbed to death in their home.



7

Statement Analysis
Analyzing Nouns

Routier 911 Call

"Somebody came in and they've broke in. They just stabbed me and my children."

8

Statement Analysis
Pronouns

PERSONAL PRONOUNS

I, me, he, she, we, you, they, it

Circle (all pronouns) in black ink.

I = commitment to what is written.

If the personal pronoun disappears, it could indicate tension at that point in the narrative.

"I drove to Tom's. ___ Stopped for gas. I got a burger."

9

**Statement Analysis
Pronouns**

David Westerfield
(San Diego, 2002, Kidnapping of Danielle Van Dam)

He told investigators that he was traveling alone in his recreational vehicle the weekend that 7-year-old Danielle Van Dam disappeared from her bedroom.

10

**Statement Analysis
Pronouns**

David Westerfield
(San Diego, 2002, Kidnapping of Danielle Van Dam)

When interviewed, he stated that he was traveling alone in his RV in Northern California. However, during questioning he used the word "we" on two occasions to describe his travels.

11

**Statement Analysis
Pronouns**

WE

A **STRONG** word that means **TOGETHER**

12

**Statement Analysis
Pronouns**

WE should never be used by a victim when describing a violent assault.

"He forced me into the woods."
vs.
"We went into the woods."

"He raped me"
vs.
"We had intercourse."

13

**Statement Analysis
Pronouns**

The investigator should ask **two questions**:

- 1) ***Did the victim know the suspect?***
- 2) ***Did the crime actually occur as claimed?***

14

BLANK

SLIP

SHEET

1. I was at Bonnie Lake movie theater and halfway through the movie I got up to go
2. to the restroom and I walked into the restroom and went to the end stall and was
3. about to turn around and shut the door when a man about 19 or 20 turned me
4. around and slammed me into the wall and locked the door. I was about to yell and
5. he put his hand over my mouth and said "don't talk or I will beat the shit out of
6. you." I still tried to scream but he slapped me in the face and said not to make a
7. noise or he'd beat the shit out me, grabbing me by shirt and shoulders too. He
8. then undid my pants (struggling) I tried to not let him but he got them off of one
9. leg. The he undid his pants and took them down only a little ways. He had a
10. condom on already and it was orange. He braced his right arm up against the
11. wall and put his penis in me. I was against the wall straddling the toilet and he
12. was doing the same facing me. His left hand was behind my right leg and he had
13. sex with me. It wasn't for very long and when he was done he pulled up his
14. pants and I was crying and he pushed me and left the restroom. I was in shock
15. shock and I just sat there. I didn't know what to do. He had a white shirt on with a logo
16. on the front. Blue jeans too. He had a crooked tooth, short dirty blond spiked
17. hair and was shorter than me (5'9"). He had a dark leather bracelet on one hand.
18. I was wearing Express jeans, flipflops, and a tee shirt. I didn't tell anyone except
19. Sophia Yost.

1 I worked at my office, City hall on & off
2 all day. I went to Duaras to eat supper at the Catfish
3 Kitchen at around 6 or 7. I think I came home after
4 that. I may have went up to City hall later I'm not
5 sure. but if I did it will be on the Police Log. I
6 remember watching T.V. A.E.T.N. Later, then the News
7 and the last thing I remember watching was David
8 Leterman show.

9 I was real tired I cut the T.V. off at around 12:00
10 or 12:30 I'm not sure. I cut the Lights off and sat in
11 the hall way floor for maybe 15 or 20 min. I got up
12 and went to my bed room closed the door I layed down.
13 the next thing I remember something woke me up, I not
14 I'm not sure what it was I think it was the smoke
15 alarm. I not to sure of the rest but I think I could
16 not see real good and I could not breath get my breath
17 very good I went for the window and after that I'm not to
18 sure. the next thing I remember for sure was people
19 talking to me.

The below statement was taken from a white female, 49 years of age:

1 - On Sunday evening Dec 18th at approximately 09:00 pm or so, I went up
2 - to husbands bedroom to ask for the keys to my home in Pine Bush and for
3 - my garage door opener to be returned to me. (Minor correction) I had
4 - been trying to move back out to my house when I discovered they were
5 - missing. He refused my request several times. I told him if he would not
6 - give them back I would find them myself. I went down to the garage to
7 - his vehicle. I knew he kept all the keys in there. The door was locked. I
8 - took a screwdriver that I found in the garage (approx 14' long) tried to get
9 - the lock up through the open (cracked apx 2") window. I was not
10 - damaging anything, I only wanted to open the door. Bob came through
11 - the basement door, and when he saw me with my arm down his window,
12 - he became very angry, and began yelling. He grabbed me and pulled me
13 - by my left arm and then grabbed my right arm and pulled the screwdriver
14 - out of my hand. I saw the screwdriver coming at my head + tried to pull
15 - away, but he hit me over the right eye. I fell back and fell down as it hurt
16 - terribly. I sat there for several minutes (crossed out "however") It took me
17 - a while to gather myself. I grabbed a bottle of water to put over my eye. I
18 - felt sick to my stomach and saw spots. I began to get a terrible headache.
19 - I also felt very afraid as my daughter was upstairs in bed and I was afraid
20 - for both of our safety. I just knew I needed to get out of that house no
21 - matter what. I felt despair because I also didn't know how to get help.

Jeffrey MacDonald Statement

1 Let's see. Monday night my wife went to bed, and I was
2 reading. And I went to bed about--somewheres around
3 2:00. I really don't know; I was reading on the couch,
4 and my little girl Kristy had gone into bed with my
5 wife. And I went in to go to bed, and the bed was wet.
6 She had wet the bed on my side, so I brought her in her
7 own room. And I don't remember if I changed her or not;
8 gave her a bottle and went out to the couch 'cause my
9 bed was wet. And I went to sleep on the couch. And
10 then the next thing I know I heard some screaming, at
11 least my wife; but I thought I heard Kimmie, my older
12 daughter, screaming also. And I sat up. The kitchen
13 light was on, and I saw some people at the foot of the
14 bed. So I don't know if I really said anything or I
15 was getting ready to say something. This happened real
16 fast. You know, when you talk about it, it sounds like
17 it took forever; but it didn't take forever. And so, I
18 sat up, and at first I thought I was--I just could see
19 three people, and don't know if I--if I heard the girl
20 first--or I think I saw her first. I think two of the
21 men separated sort of at the end of my couch, and I
22 keep--all I saw was some people really. And this guy
23 started walking down between the coffee table and the
24 couch, and he raised something over his head and he just
25 sort of then--sort of all together--I just got a
26 glance of this girl with kind of a light on her face. I

27 don't know if it was a flashlight or a candle, but it
28 looked to me like she was holding something. And I just
29 remember that my instinctive thought was that "She's
30 holding a candle. What the hell is she holding a candle
31 for?" But she said, before I was hit the first time,
32 "Kill the pigs. Acid's groovy." Now, that's all--
33 that's all I think I heard before I was hit the first
34 time, and the guy hit me in the head. So I was knocked
35 back on the couch, and then I started struggling to get
36 up, and I could hear it all then--now I could--maybe
37 it's really, you know--I don't know if I was repeating
38 to myself what she just said or if I kept hearing it,
39 but I kept--I heard; you know, "Acid is groovy. Kill
40 the pigs." And I started to struggle up; and I noticed
41 three men now; and I think the girl was kind of behind
42 them, either on the stairs or at the foot of the couch
43 behind them. And the guy on my left was a colored man,
44 and he hit me again; but at the same time, you know, was
45 kind of struggling. And these two men, I thought, were
46 punching me at the same time. Then I--I remember
47 thinking to myself that--see, I work out with the
48 boxing gloves sometimes. I was then--and I kept--
49 "Geeze, that guy throws a hell of a punch," because he
50 punched me in the chest, and I got this terrific pain in
51 my chest. And so, I was struggling, and I got hit on
52 the shoulder or the side of the head again, and so I
53 turned and I--and I grabbed this guy's whatever it

54 was. I thought it was a baseball bat at the time. And
55 I had--I was holding it. I was kind of working up it
56 to hold onto it. Meanwhile, both these guys were kind of
57 hitting me, and all this time I was hearing screams.
58 That's what I can't figure out, so--let's see, I was
59 holding--so, I was the--and all I got a glimpse was,
60 was some stripes. I told you I think they were E6
61 stripes. There was one bottom rocker and it was an army
62 jacket, and that was a colored man, and the two men,
63 other men, were white. And I didn't really notice too
64 much about them. And so I kind of struggled, and I was
65 kind of off balance, 'cause I was still half way on the
66 couch and half off, and I was holding onto this. And I
67 kept getting this pain, either in--you know, like sort
68 of in my stomach, and he kept hitting me in the chest.
69 And so, I let go of the club; and I was grabbing with
70 him and I was holding his hand in my hand. And I saw,
71 you know, a blade. I didn't know what it was; I just
72 saw something that looked like a blade at the time. And
73 so, then I concentrated on him. We were kind of
74 struggling in the hallway right there at the end of the
75 couch; and then really the next distinctive thing, I
76 thought that--I thought that I noticed that--I saw the
77 top of some boots. And I thought that I saw knees as I
78 was falling. But it wasn't what was in the papers that
79 I saw white boots. I never saw white, muddy boots. I
80 saw--saw some knees on the top of the boots, and I

81 told, I think, the investigators, I thought they were
82 brown, as a matter of fact. And the next thing I
83 remember though, was lying on the hallway--at the end
84 of the hallway floor, and I was freezing cold and it was
85 very quiet. And my teeth were chattering, and I went
86 down and--to the bedroom. And I had this--I was
87 dizzy, you know. I wasn't really--real alert; and
88 I--my wife was lying on the--the floor next to the
89 bed. And there were--there was a knife in her upper
90 chest. So, I took that out; and I tried to give her
91 artificial respiration but the air was coming out of her
92 chest. So, I went and checked the kids; and--just a
93 minute--and they were--had a lot of--there was a lot
94 of blood around. So, I went back into the bedroom; and
95 I--this time I was finding it real hard to breathe, and
96 I was dizzy. So I picked up the phone and I told the
97 asshole operator that it was--my name was Captain
98 MacDonald and I was at 544 Castle Drive and I needed the
99 M.P.'s and a doctor and an ambulance. And she said, "Is
100 this on post or off post?"--Something like that. And I
101 started yelling at her. I said--finally, I told her it
102 was on post, and she said, "Well, you'll have to call
103 the M.P.'s" So, I dropped the phone and went back
104 and I checked my wife again, and now I was--I don't
105 know. I assume I was hoping I hadn't seen what I had
106 seen or I'd--or I was starting to think more like a
107 doctor. So, I went back and I checked for pulses. You

108 know, carotid pulses and stuff; and I--there was no
109 pulse on my wife, and I was--I felt I was getting sick
110 to my stomach and I was short of breath, and I was dizzy
111 and my teeth were chattering 'cause I was cold. And so
112 I didn't know if I was going--I assume I was going into
113 shock because I was so cold. That's one of the symptoms
114 of shock; you start getting shaking chills. So, I got
115 down on all fours; and I was breathing for a while.
116 Then I had realized I had talked to the operator and
117 nothing had really happened with her. But in any case,
118 when I came back to check my wife, I then went to check
119 the kids. And a couple of times I had to--thinking
120 that I was going into shock and not being able to
121 breathe. Now I--you know, when I look back, of course,
122 it's merely a symptom, that shortness of breath. It
123 isn't--you weren't really that bad, but that's what
124 happens when you get a pneumothorax. You--you think
125 you can't breathe. And I had to get down on my hands
126 and knees and breathe for a while, and then I went in
127 and checked the kids and checked their pulses and stuff.
128 And--I don't remember if it was the first time I checked
129 them or the second time. I checked them, to tell you
130 the truth, but I had all--you know, blood on my hands
131 and I had little cuts in here and in here (pointing to
132 his mid-section), and my head hurt. So, when I reached
133 up to feel my head, you know, my hand was bloody. And
134 so I--I think it was the second circuit 'cause it--by

135 that time, I was--thinking better, I thought.
136 And I went into that--I went into the bathroom right
137 there and I looked in the mirror and didn't--nothing
138 looked wrong. I mean there wasn't even a cut or
139 anything. So, I--then I went out in the hall. I
140 couldn't breathe, so I was on my hands and knees in the
141 hall, and I--and it kept hitting me that really nothing
142 had been solved when I called the operator. And so I
143 went in and--this was in the--you know, in the middle
144 of the hallway there. And I went the other way. I went
145 into the kitchen, picked up that phone and the operator
146 was on the line. My other phone had never been hung up.
147 And she was still on the line, and she said, "Is this
148 Captain MacDonald?" I said, "Yes, it is." And she said,
149 "Just a minute." And there was some dial tones and stuff
150 and then the sergeant came on. And he said, "Can I help
151 you?" So, I told him that I needed a doctor and an
152 ambulance and that some people had been stabbed, and
153 that I thought I was going to die. And he said,
154 "They'll be right there." so I left the phone; and I
155 remember going back to look again. And the next thing I
156 knew, an M.P. was giving me mouth-to-mouth respiration
157 next to--next to my wife. Now, I remember I saw--I
158 don't know if it was the first or second trip into the
159 bedroom to see my wife--but I saw that the back door
160 was open; but that's immaterial, I guess. That's it.

Extraneous Statements

Let me tell you why that woman was in our car. I was sitting at the bar having a beer and watching the game on TV. The Skins were playing great and I was hoping they would win one for a change. They were alternating quarterbacks and I think that is stupid. They need to pick one and go with him. The crowd at Joe's Bar was in a crazy mood; people were yelling, singing, and having a grand time. The bartender told me it's the best business he had done in years. He was changing kegs constantly throughout the night. I really had to watch myself because of the atmosphere; it would have been easy to get carried away and drink too much. I was careful and paced myself pretty well. I never had more than two beers in any hour. When the game was over, the woman who was sitting beside me at the bar asked me if I would drop her off on the way home. So I did.

The Guardian's Interview of Edward Snowden

Q: Edward, there is rampant speculation, outpacing facts, that you have or will provide classified U.S. information to the Chinese or other governments in exchange for asylum. Have/will you?

A: This is a predictable smear that I anticipated before going public, as the US media has a knee-jerk "RED CHINA!" reaction to anything involving HK or the PRC, and is intended to distract from the issue of US government misconduct. Ask yourself: if I were a Chinese spy, why wouldn't I have flown directly into Beijing? I could be living in a palace petting a phoenix by now.

Extraneous Statements

I am making this statement voluntarily. I understand I have the right to remain silent and that anything I say can and will be used against me in a court of law. I have the right to talk to a lawyer and have him present with me while I am being questioned. If I cannot afford to hire a lawyer, one will be appointed to represent me free of charge before any questioning, if I wish. I can decide at any time to exercise these rights and not answer any questions or make any statements.

Statement: I arrived at PNC Bank on 12-17-07 to do my daily deposit as I do each time I work. As I pulled in my parking space, I closed the tv in my car, opened the door and as I reached to turn off my car. A black African American male, wearing a Black leather jacket and red hat approached me. He had a gun in his hand half way out his pocket, ordering me to get out my car. His exact words was (I'm taking your car, so move.) I got out the car and backed up I politely said please don't and he pulled off. I immediately panicked especially since my deposit was under my passenger seat of my car. I asked the bank tellers to please call the cops, someone took my car. ~~They~~ They called the cops and I told dispatch what happened they sent a cop car over. I explained to them also. In about 10-20 minutes they found my car a block away from the bank, money bag was missing so now they think I had something to do with it even though I explained to them over and over again that I didn't have nothing to do with it. But I guess they will have to wait till Thursday to absolutely believe me. I wish this never happened to me.

At @ 5:15 pm I entered the whirlpool at the YMCA and began a conversation with another member. Noticing a person with an arthritic condition similar to my own and upon identifying with the value of heat and water as values in treating arthritis, I asked if the person was in pain. I spoke of the healing properties of heat & water and I asked if he hurt at this time. Person said yes. I asked if person wanted his knee massaged and he said yes. I massaged person's knee. This was inappropriate behavior on my part. At no time did person say anything! My behavior was compulsive and should not have taken place. This was inappropriate for my position in life. I would be willing to participate in a 12th step program for compulsive behavior. Sex and Love Addicts Anonymous has a wonderful history for helping people with compulsive behavior. I have been active member for 24 yrs. thank you!

Time - Balance

1. When the wake-up call came at 6AM, I was already up because
2. I don't sleep well in motels. I had been watching the early
3. news; they were talking about the terrible airline crash; they are
4. still finding body parts. I then took a shower (it was a quick
5. one because the water was not very hot), got dressed and went to
6. the lobby for their continental breakfast. I had a donut (greasy
7. but good) and a cup of coffee. I then went back to my room,
8. checked to make sure I had packed everything, got my bags, and
9. put them in the trunk of the car. I then went back to the lobby
10. to check out. I got another cup of coffee while I was there. I
11. then used my Visa card to pay for the room, but the system was
12. down and it took some time to verify it. I then walked to my car
13. and as I was putting my key in the lock a man poked something in
14. my back and told me not to move. He took my keys and my wallet
15. and told me to get in the car and lie face down and not move. I
16. did as I was told until I was sure he was gone. I then went back
17. to the lobby and had them call 911 and waited for you to get
18. here.

1. Saturday morning I got up at about 7:30 am.
2. After fixing breakfast for my family, I decided to work on
3. the backyard. I drove to Home Depot in Fredericksburg
4. and went inside.
5. I purchased lumber and materials to make a swing set and
6. play area. I walked out of Home Depot with my purchases
7. and walked through the parking lot to my car.
8. I was loading my stuff into my car when I saw a man
9. walking up to me. The man approached me and asked me
10. if I had the time. As I started to look at my watch to tell
11. him the time, he hit me on the left side of my head with a
12. pipe. I fell to the ground.
13. The man took my wallet from my back left pocket and ran
14. out of the parking lot.
15. I got up and got my cell phone out of my car. I called 911
16. as I walked back into Home Depot. Once inside Home
17. Depot, an employee named Becky helped
18. get some bandages. I waited with her until the police and
19. the ambulance arrived.

“Tell us what you know about the robbery.”

1. I work the 12m to 8a shift at the warehouse. I am the only guard on duty
2. during that shift. I like to arrive at work a few minutes early, usually 10-15
3. minutes. This gives me time to talk to the guard I relieve.
4. On the night of the break-in, I arrived at 11:50pm. Don Smith, the 4p-
5. 12m guard, and I had a conversation about the ball game being interrupted by
6. the earthquake. It was a terrible thing to happen, especially for serious
7. baseball fans. We talked about my being a Reds fan and him being a fan of
8. the Dodgers. We also talked about the weather here locally and the problems
9. with the economy. Dan left at 11:55pm since he knows I like to start my
10. rounds at exactly 12:00 midnight.
11. I began to suspect something was wrong about 3:00am when I noticed
12. the back gate was unlocked. A few minutes later, I was convinced that
13. something was wrong when I found the payroll office door unlocked and the
14. safe open.
15. I recalled reading a story last year about money being taken from
16. another warehouse. The guy who took the money wasn't caught.
17. My first reaction was to call the boss. The boss has instructed us to call
18. him in any emergency. He was pretty upset when I woke him at 4:00am.
19. At no time did I see any strangers in the warehouse that night. My boss
20. suggested that we add another guard to the night shift. I told him that I
21. believe this is a good idea since it might help prevent future thefts.
22. That's basically what happened that night.

What insight do you gain from analyzing the pronouns?

What do you think happened?

Is this a truthful account?

Jed came over and started to massage my shoulders. He then asked me if I wanted to see the house. I said ok so we went inside. We went through the kitchen and den down the hall to the foyer to a room that had a piano. We stayed in that room for about 15 minutes. We talked and I played the piano. He said do you want to see the upstairs so I said alright. We went upstairs and then he took me to Stan's bedroom. He then started kissing me. While we were kissing we made our way to the bed and laid down. We kissed for a couple of minutes and he started to unbutton my blouse. Then he pulled my blouse off, undid my bra and took it off. He then undid my pants. I started feeling uncomfortable and tried to button them back up. I said I would like to go back to the party. I started to sit up and he said no the party is here. My heart was pounding and I kept trying to get up and he kept pushing me down. I said no, no, I want to go. He then started to finger me and I went limp. He said so that's the way you're going to be now. He got off me and I got up and got dressed. I went to the door, opened it to leave and he shut the light off and then grabbed me around the neck and pulled me back on the bed. I pulled away and screamed loud. He pushed my head into the bed so I couldn't scream. He twisted my neck. He said, "I swear to God I'll break your fucking neck", now take your pants off. I said no. He said I'll kill you, drop you in a body bag in Philly and no one would ever know. He pulled my pants off. I was just crying and saying no, please don't hurt me. He punched me about four times. I told him I couldn't breath. Then he rolled me on my back and I felt him push his penis against me. Then he put it in me and I started crying, oh God, oh God.

"Tell me what happened?"

1 My dad dropped me off at library around 4:00 p.m. I went inside went to the
2 computer typed the name of the book I was looking for in and saw it was in
3 and asked the librarian where I could find it and she told me. I went upstairs
4 where she said it would be and looked but couldn't find it. This is when I
5 started to realize that someone had been following me. I found the book and I
6 worked on a report that was due at school the next day. I had to go to the
7 bathroom so I went downstairs to the bathroom and when I went down I
8 realized I forgot something and went back upstairs and got it. I thought I saw
9 some of my friends outside by the door and went outside to see them. But I
10 didn't know anyone but they talked to me. I wanted to go see the river and
11 went to go over and someone pulled on my arm and pulled me away from the
12 corner and by the wall and we some how got to the ground and he held onto
13 my arms then he had a hold of my arms with one hand and I tried to move and
14 he put both hands back down then he managed to get my pants and underwear
15 down, then when he lifted his shirt up his button and zipper were already
16 undone and then he got his pants down and we had intercourse
17 for a few minutes and when he stopped he got up really quick and when he
18 was walking off he fixed his pants. I went back inside and asked to use the
19 phone they told me there was a pay phone downstairs then I went outside
20 to wait for my dad.

Statement of Raquel Ford

What Happened?

Me and my brother Dmitri walked to my cousins house to watch tv and play video games.

We went to Uncle Mikes bedroom and played with my cousins. While we played the games my uncle grabbed my arm and took me to my cousin's bedroom. He shut the door and then tickled my stomach. He also lifted my shirt and touched my chest with his hand. I got scared and fell on the floor. He then kissed me. I pushed him away and told him no and then he said he was sorry. He tickled me some more and then put one of his hands down my pants. He stuck one of his fingers inside my privates. I screamed and then he took his hand out. I went to the back of the closet and cried. I said I wanted to go home and he said I couldn't leave until I stopped crying. He left and when he came back he had a rifle. He told me that if I told anyone what happened he would kill himself. He put the rifle between his legs and placed the end of it into his mouth to show me how he would do it. He took the rifle away and told me that I could leave when I stopped crying. He then let me leave and I went home. When I got home I told my mom what happened to me.

WHAT HAPPENED?

I, Kimberly, went out for a walk on 12/27/08 at 9:00pm. I power walked for a while. As I reached the state line marker at 149th St (in front of the 7-11) I heard the loud footsteps someone running up behind me. I turned around to look and that was when the man reached around my waist and grabbed my left hand and placed his right hand in my mouth and drug me behind a trailer and told me he wanted sex that he had just gotten out of jail and needed sex. He told me not to scream or he would hurt me. He told me to take off my pants. The drawstring in my pants was tangled up in a large ball knot so he just ripped them down and took off his pants. He then forcefully stuck himself in me. He asked how old I was and asked how it felt to have a 25 year-old inside me and how he felt inside me. I was scared and begged him not to hurt me. He was in me about 5 minutes. He seemed to want to please me more than himself. I was afraid and begged him to let me go. He got what he wanted and finally let me go. He then brushed dirt off of my clothes and fixed my hair. He helped with the zipper on the top of my jogging suit and then said he wanted it one more time. He unzipped my shirt and licked my vagina. He did not have a full erection so he was putting his fingers of his right hand in me to help put it in. Then there were voices on the street and he let me up and told me not to go to the street or he would kill me, but to go to the parking garage. I went to the parking garage and when he was gone I ran to the restaurant and phoned 911.

We are investigating the event you report happened on Friday at the Courthouse. Please describe the incident in detail.

1. After arriving back to work from my lunch, I came (walked) up to the "back door" of
2. the Justice Center. Sgt. Franklin was sitting on the table w/ Sgt. Garrison. I spoke to
3. both of them. Sgt. Franklin opened the door and let me in. Judge Sperry came up in
4. the car with Linda, her assistant and Roxanne Moore. Judge Sperry showed me her
5. dolls from her happy meal. (This struck me oddly, as I had just been to the
6. McDonald's on exit 66. I didn't remember seeing anyone's car I thought I might
7. know as I went around to the drive-through.) I also spoke with the custodian. I went
8. upstairs thinking about all the work the afternoon required. I walked past the baliff's
9. post and noticed a man in a dark navy or black shirt sitting there. I think that he was
10. on the phone. I gave a curtsey nod to this person, not wanting to interrupt. *only
11. people who are authorized can be there. I thought he was an officer. I needed to
12. go to the restroom. I did not have a key so I walked into the Jury room's Ladies
13. room. I have done this in many times past, having worked there in the bldg some
14. years before. I washed my hands, urinated and washed my hands again. I flushed
15. the toilet be using my foot on the lever. I washed my hands again. Then I opened the
16. door to the restroom, holding the paper towel I had just used. As I was fixing to go
17. outside, there was a tall man standing in the doorway of the restroom. His arms were
18. positioned on either side of the door frame. I first noticed how large this man was
19. then I noticed that he had a gun in his hand. I knew what he was planning to do to
20. me. He grabbed me in a bear hug holding both arms beside me and bore me down to
21. the floor. I wimped out and did not fight him. I could see only thing he would hit me

22. with his gun. He held both my hands over my head and put the gun out of my reach.
23. He then placed his left arm over my sternum and held me there while he unfastened
24. my pants and pulled them down. The left leg was sort of inside out over my shoe
25. (left) the right was down to my knee. He pulled my panties to the side and inserted
26. his penis and ejaculated. I guess he caught his breath a second and then got off and
27. got his gun, his belt and pulled up his pants. Leaving with his belt in his hand.
28. At this point I felt humiliated, disgusted and sick. I get up, clean myself up and tell
29. myself "act normal." I dried out the sink, checked the floor for spots. I did not want
30. someone else to step in my mess. I am beginning to feel some anger so I walked
31. around the building to see if I would see him. I sort of thought about turning him in.
32. It is my belief that without any witnesses who would believe me. I did not see him
33. again. So I went back into my office and started back to work.

Tell me what happened to you

My mom drove me to work o Saturday April 18, at 5:00pm to start my shift that ended at 1:00am. All throughout the night Cody touched me inappropriately. Around 12:30am I called my mom to let her know that I would be staying to help Matt and Cody close because we were fairly busy. Also, around 12:30am Jessi stopped by with beer that Cody asked her to bring. We started drinking, but Matt didn't drink, Cody had me and Matt contact her to let her know to bring beer. After we closed and everything was cleaned up, Jessi and Matt left. I was smoking a cigarette waiting for Cody to finish up his paperwork so we could leave. Then he told me to sit on his lap and I started to back up then he pulled me onto him then I said no, we can't do this. But he kept saying it was okay. He started touching me and took my shirt off and my bra. Then he got up and sat me in the chair he then grabbed my head and forced me to give him oral. After a minute he threw me onto the desk and forced my legs up and performed oral on me. I still said no, we can't do this. Then he got up and had sex with me on the desk. I was scared and was shaken up I couldn't yell. After he was done he made me get dressed and said "You're seventeen, right? I'm going to jail." Sort of jokingly. Then I was quiet on the way home and when I walked in the door my dad asked me why I was late because I came home at 3:18am. I went to take my contacts out then went to sleep. Also the whole time he was having sex I had my hands on his chest trying to push him away but he had my hips restrained. I couldn't move but still said no, we can't do this. I was scared. I had tears in my eyes when I was trying to push him off of me. He obviously knew I didn't consent to this.

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Quick Reference Guide – Statement Analysis

Nouns

A person, place or thing
 Examples: building, mother, book, classroom, road

Pronouns

Replaces one or more nouns.
 Examples: he, she, it, him, her

Verbs

An action or a state of being or occurrence
 Linking: be, is, am, are, was, were, has

Adjectives

Describe or modify nouns and pronouns.

Examples: **tall** man, **red** car, **this** case, **that** gun

Adverbs

Modify verbs, adjectives or adverbs. Answer the questions: When? Where? How?
 To what extent?

Verb modifier: **Quickly** ran. Adjective modifier: **Unusually** loud. Adverb modifier: **Always** patiently.

| | Indicator of ... | Description | Hints | Examples/Comments |
|--|------------------|--|---|---|
| Unique Sensory Details Underline in PINK | Veracity | Sensations of the author | | sight, sound, touch, smell, taste |
| Spatial Details Underline in PINK | Veracity | Specific locations | | "I hid in the closet beneath the stairs leading to the second floor." |
| Emotions Highlight in PINK | Veracity | fear, anger, shock vs. actions | | happy, sad, angry, afraid, contempt, disgust, surprise |
| Equivocation Highlight in GREEN | Deception | Ambiguity Vagueness | | maybe, probably, think, believe, assume, guess, kind of, might |
| Negation Underline in GREEN | Deception | What did not happen vs What did happen | | no, not, wouldn't, didn't |
| Extraneous Highlight in YELLOW | Insight | Information that does not answer the question | Often predominant in prologue | Important to author? Used to justify or fill space? |
| Verbs, tense Highlight in BLUE | Insight | | Liars use more present tense because of they are actively composing | Caution: If past tense is used in a missing person case — is the missing person alive or is the author fabricating? |
| Verbs, unexpected Highlight in BLUE | Insight | Verb choice, uncompleted verbs, passive voice, communication verbs | Lack of urgency? Control issues between offender and victim | Choice: hurt vs. killed (minimize) Uncompleted: I started to ..., began, intended, planned (action indicates interruption) Passive: He was shot by someone. Communication: decided, talked, argued |

| | | | | |
|---|-------------------------------|---|--|---|
| Nouns, persons Underline & write in left margin the first time the name appears | Insight | Order of appearance | Often people list names in the order of importance to them — there is a reason for the order | |
| Nouns, changes in Underline in BLUE | Insight | | Ask, "Why change this noun?" | Healthy relationship: clear introduction, name & relationship "lady" changes to "woman" |
| Nouns, unexpected Underline in BLUE | Insight | Person, place thing | Lack of urgency? Lack of description? | the guy, the maniac, the sick man vs. the killer, the robber The weapon vs. the gun |
| Pronouns, personal Circle | Insight (deception) | Replace names | Normal: first person, singular, past tense | I, me, we, us, they, you Watch for blanks such as: "I drove to Tom's. _____ Stopped for gas." |
| Pronouns, possessive Circle | Insight | | Look for changes and distancing | my, our, your, theirs "my gun" to "the gun" |
| Adjectives, unexpected Circle in BLUE | Veracity | Denotes ownership, closeness | The shift between definite "the" and indefinite "a" | Definite article: the Indefinite article: a, an |
| Adverbs, intensifying Highlight in ORANGE | Insight (deception) | Intensifying | End in "ly" or "y" Attempt to convince | really, honestly, truthfully, "I honestly didn't see her." |
| Adverbs, minimizing Highlight in ORANGE | Insight (deception) | Minimizing | End in "ly" or "y" Why is this minimized? | only, just, simply, merely "I simply walked her dog." |
| Adverbs, editing Highlight in ORANGE | Insight (deception) | Indicate missing information | Missing information | later, after, next, then, so "Later, I put the dog in the cage." |
| Time, missing Underline & list in right margin | Insight (deception) | | | |
| Time, pace change | Insight | | Explore pace changes | |
| Incident/Event, balance of statement Box in ORANGE | Veracity = Balanced Statement | Where is the author's focus, on the incident or somewhere else? | Extraneous prologue = deceit | Count the lines before, during and after the significant event and calculate the percentage of each |

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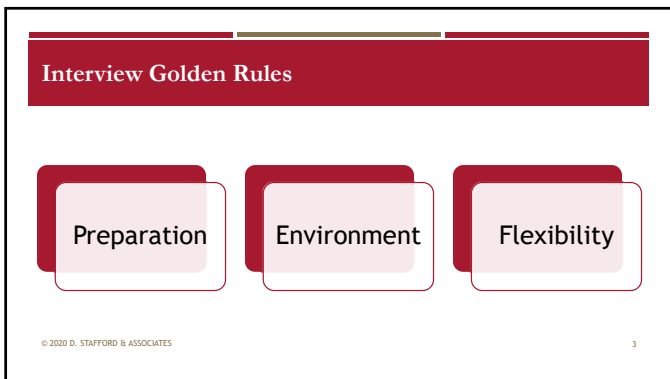
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2



3

Confirmation
 Dates
 Location
 Witnesses
 Respondent

Evidence Collection
 What can you get?
 What should you get?
 What more do you need?

Policy refresh
 Elements
 Process
 Report
 Rights

Pre-draft Questions

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CREATING THE ENVIRONMENT

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Creating the Environment

Opportunities for Power?

- Seating
- Location
- Investigator

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Creating the Environment—The Investigator's Role

Due process

Trauma Informed

- Use moderate tones
- Show empathy
- Non-judgmental
- Avoid directives

Ask the necessary questions

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Interviewing Flexibility

- I pledge to...
 - Be open-minded
 - Consider different theories of a case
 - Roll with the surprises
 - Adapt to the room

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Discussion: Do you audio or video interviews? What are the pros and cons?

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Who is in the room?



- Investigator(s)
- Parties
- Advisor
- Support Person
- Interpreter
- General Counsel

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THE INTERVIEW

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The DSA Interview Outline

- Preliminaries
- Background
- Narrative
- Clarification
- Case Questions
- Closing

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PRELIMINARIES: You do the talking



- Role of the investigator
- Confidentiality vs. Privacy
- Retaliation
- School policy

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BACKGROUND: Build the Rapport



- Icebreaker
- Safe topics
- Common ground
- Pre-Draft
- NOT BACKGROUND ON THE CASE

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NARRATIVE: The big question



- Introduce the question
- Let the interviewee talk
 - No interruptions
 - No rush
 - No interruptions
 - Allow for silence

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CLARIFICATION: Filling in the holes



- What questions came up from the Narrative?
- Ask chronology questions
- Verify statements, words, people
- Ask for corroborating evidence where expected
- Dates/Times/Locations

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CASE QUESTIONS: The pre-drafted must asks



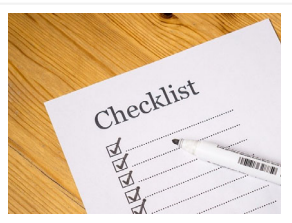
- Case-specific Questions
- Close-ended Questions
- Confirmations
- Contradictions
- Defenses/Alternative Theories

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CLOSING: Loose ends



- Final thoughts from interviewee
- Final questions from investigator
- Reiterate policy issues
- Next Steps
- Complainant/Respondent
 - Questions for other parties
 - Additional witnesses
 - Interim measures/resources

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Question Format

 **Tone**  **Phrasing**  **Open-ended**  **Safe**  **Judgment-free**

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 **RECREATE THE SCENE**

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Physical Space

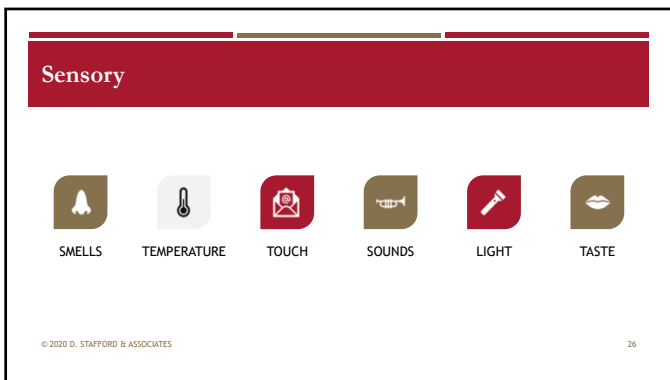


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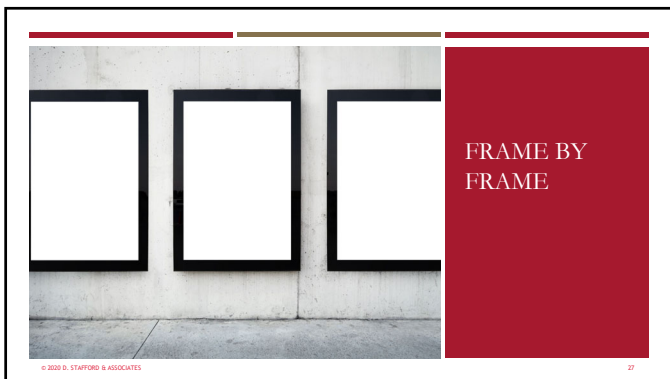
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26



27

Frame by Frame



- I woke up this morning in my dorm
 - What time?
 - What woke you up?
 - Who was in the room?
- And left for class
 - What time did you leave?
 - How do you know?
 - Who did you see?
 - Do you normally leave at this time?
 - Where was your class?
 - What was your exact route?
 - Did you stop anywhere on the way?

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COGNITIVE

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Memory Recall Techniques

Change perspectives: Report the incident from different perspectives (what others might have seen)

Recalling in reverse order: Recounting in a different narrative order

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31

YOUR Interview Technique

- Planning—what do you need to know?
- Pros and Cons to each technique—study them
- Practice, Practice, Practice
- Be nimble—may need to change formats mid-interview
- GOAL--Control the interview

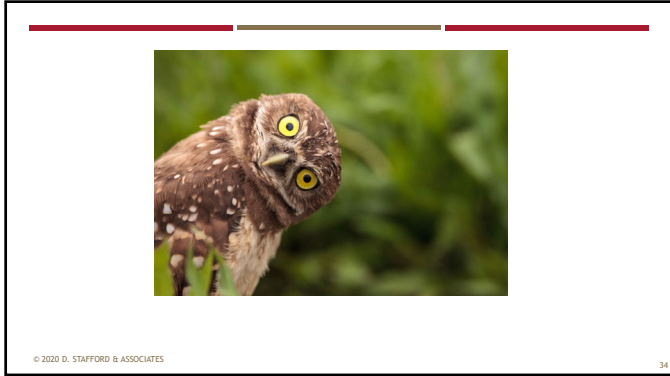
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YOUR Interview Technique

- Review/watch/listen to your interviews when you are finished
 - Look for bad habits
 - Look for good habits
 - Work with a trusted colleague—ASK FOR FEEDBACK

33



34

Case: _____

Party/Witness Name: _____

Date: _____

Advisor Name: _____

Time: _____

Advisor Title/Relationship: _____

Interview Number: _____

PRELIMINARIES

- *Permission/Notification of recording if needed*
- *Introductions and Role of the Investigators*
 - *Draft and ask questions of all interviewed witnesses*
 - *Collect other available evidence directly related to the allegation*
 - *Create a summary of the relevant evidence*
- *Confidentiality vs. Privacy*
- *Retaliation*
- *Rights of the parties*
 - *Right to submit witnesses and evidence*
 - *Right to submit questions for us to ask of witnesses and parties*
 - *Right to review evidence collected that is directly related to the allegation and respond (Prelim Report)*
 - *Right to review the summary and respond prior to a hearing (Final Report)*
- *School-specific rights (amnesty, report, next steps)*
- *Review Advisor Policy (if an advisor has attended)*

Case-Specific Preliminary Topics: _____

PRELIMINARIES NOTES:

BACKGROUND

Background: _____

BACKGROUND NOTES:

NARRATIVE

- *"We are now going to talk about the specifics of the case. (May read the allegation to outline scope)*
- *"We'd like you to tell us what happened. We are looking for your memories and not the memories of others. If you learned something from someone else—just share it and let us know how you know it." Avoid guessing—if you don't know something that is ok."*
- *"Don't rush—take all the time you need."*
- *"Start wherever you'd like."*

NARRATIVE NOTES:

Clarifications

- *Refer to Narrative for specific questions*
- *Ask chronology questions*
- *Verify statements, words, people*
- *Ask for possible corroborating evidence*
- *Dates/Times/Locations*

CLARIFICATIONS:

Case Questions/Close-ended Questions/Confirmations/Contradictions

- *Elements of the policy violation*
- *Consent/Incapacitation*
- *Defenses/alternative theories*
- *“A witness said you...”*
- *“Did you...”*
- _____

QUESTIONS and RESPONSES:

-

Closing

- *“Are there questions you thought we would ask/other information you think is important for us to know?”*
- *“Do you have any questions for us?”*
- *Is there any evidence you want to provide (now or following the interview)*
- *Reiterate retaliation and confidentiality*
- *Complainant/Respondent: “Are there any questions you want to make sure we ask of the other party?”*
- *Complainant/Respondent: “Are there any other witnesses you want us to talk to?”*
- *Complainant/Respondent: Discuss interim measures or resources, next steps*
- _____

FINAL NOTES:

FOLLOW UP NEXT STEPS:

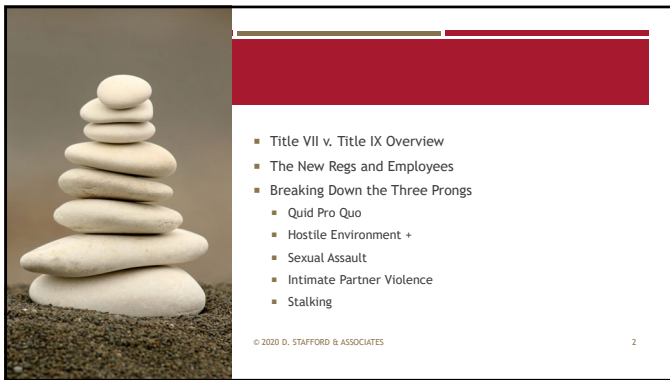
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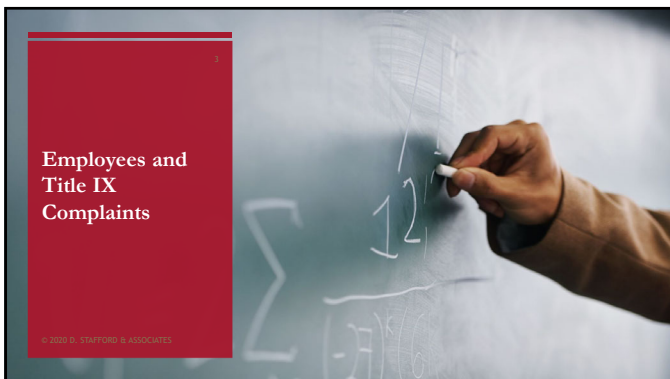
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Statutory Review



Title VII



Title IX

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Title VII of the Civil Rights Act of 1964

Title VII prohibits employment discrimination based on race, color, religion, sex and national origin


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Title VII of the Civil Rights Act of 1964

EMPLOYMENT PRACTICES

- Fail or refuse to hire
- Discharge
- Discrimination with respect to compensation, terms, conditions, or privileges of employment



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Title VII of the Civil Rights Act of 1964

INCLUDES

- **Hostile Environment**
 - Non-"economic" or "tangible" injury
- **Disparate Impact**
 - Indirect action that affects whole groups
- 3rd party harassment
- Retaliation
- Pregnancy
 - Accommodations



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Title IX of the Educational Amendments of 1972

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

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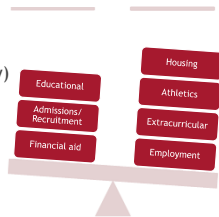
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Title VII of the Civil Rights Act of 1964

EDUCATION AND EMPLOYMENT PRACTICES

- Excluded from participation (eligibility)
- Provide different benefits or aid
- Discrimination within program (different rules, treatment)



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Title IX of the Educational Amendments of 1972

INCLUDES

- **Hostile Environment**
 - Non-"economic" or "tangible" injury
 - Sexual Harassment
- **Disparate Impact**
 - Indirect action that affects whole groups
- **3rd party harassment**
- **Retaliation**
- **Pregnancy**
- **Accommodations**



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10

| | Title IX | Title VII |
|---------------------------|--|--|
| Protected Class | Sex | Sex, race, color, religion, national origin...age, or disability |
| Activities Covered | Academic opportunities and activities | Employment |
| Retaliation? | Prohibition on retaliation | Prohibition on retaliation |
| LGBTQ? | No protection for gender identity and sexual orientation | Protections for gender identity and sexual orientation |
| Enforcement | OCR | EEOC and/or state agency |
| Training? | Training requirements | No training requirements |
| Standard | Preponderance/clear and convincing | Probable cause/Preponderance |
| Notice? | Notice requirements | No notice requirements |

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11

Hedrick v. Univ. of Ark. for Med. Scis. (E.D. Ark., 2019)

Q: Do complainants have a private right of action under Title IX for a claim of employment-related sex discrimination and retaliation?

A: Well, it depends...

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12



13

§106.6(f)



"Title VII of the Civil Rights Act of 1964. Nothing in this part may be read in derogation of any individual's rights under title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. or any regulations promulgated thereunder."

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Commentary Clarification

- Applies to all employees (all levels) and volunteers
 - Requires all notice and rights
 - Requires hearings with cross examination
- Title VII and Title IX have different definitions
 - Can consider behaviors outside the scope of Title IX under Title VII (separate policy).
- Intersectionality (race, disability) will trigger additional policy
- Medical centers are not post-secondary institutions

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The Final Rule Impact on Employees

Respondent status

Standard of evidence

Prohibited Conduct/Definitions

Training requirements

Notice requirements

Adjudication requirements

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Title IX and Title VII Definitions

| | |
|---|---|
| <p>Title IX</p> <p><i>Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:</i></p> <ol style="list-style-type: none"> 1) <i>An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;</i> 2) <i>Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;</i> 3) <i>(3) "Sexual assault", "dating violence "domestic violence" or "stalking"</i> | <p>Title VII</p> <p><i>Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when</i></p> <ol style="list-style-type: none"> 1) <i>submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,</i> 2) <i>submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (</i> 3) <i>such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.</i> |
|---|---|

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CHECK-IN

- Comments
- Clarifications
- Questions

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The “Elements”

- What evidence **MUST** be collected to show the definition was met?
- How do we get that evidence?

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Elements of Sexual Harassment

- A. Is it conduct on the basis of sex?
- B. Was it unwelcome?
- C. Was it Sexual Harassment?
 1. Quid Pro Quo
 2. Hostile Environment
 - Severe and
 - Pervasive and
 - Objectively Offensive (Reasonable person)
 - Effectively denies equal access
 3. Sexual Assault, Dating Violence, Domestic Violence or Stalking

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Sexual Harassment under Title IX


Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).


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Sexual Harassment Under Title IX



PRONG 1: QUID PRO QUO



PRONG 2: HOSTILE ENVIRONMENT+



PRONG 3: VAWA CRIMES

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All Title IX—MUST Be Sex-Based


"Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:"

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PRONG 1: Quid Quo Pro




 "This for That" Harassment

 When favorable professional or educational treatment is conditioned on a sexual activity

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Power Dynamics

-  Faculty/student
-  Supervisor/supervisee
-  Athlete/Non-athlete

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PRONG 1: Quid Pro Quo

- An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
 - MUST be an employee (not volunteer, visitor, captain, student-body president—but could be prong 2 or 3).
 - "even a single instance of quid pro quo harassment... enough to jeopardize equal educational access"
 - Interpreted "broadly to encompass situations where the quid pro quo nature of the incident is implied from the circumstances"
 - "Unwelcome" ... is a subjective element." Different between submission and consent.

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Quid Pro Quo

- **“Employee”**
 - If not an employee, where does it go?
- **“conditioning”**
 - Perceived power of the Respondent?
 - Does the respondent have said power?
- **“aid, benefit or service”**
 - What did happen that impacted aid, benefit, service
 - What was the threat?
 - What was the fear?

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Quid Pro Quo

- **“Participation”**
 - If not an employee, where does it go?
- **“Unwelcome”**
 - Perceived power of the Respondent?
 - Does the respondent have said power?
- **“Sexual conduct”**
 - What did happen that impacted aid, benefit, service
 - What was the threat?
 - What was the fear?

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Prong 1: Discussion

If an employee is also a student, does that change the process or the analysis?

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Prong 1 Case Study

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Michael reports that he engaged in sexual activity with his soccer coach Bob.

An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;

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PRONG 2: The *Davis* Standard

Hostile Environment +

First Amendment protections

Not a "zero tolerance" standard

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PRONG 2: the *Davis* Standard

Davis v. Monroe County Board of Education, 526 U.S. 629 (1999).

Holding that "funding recipients are properly held liable in damages only where they are deliberately indifferent to sexual harassment, of which they have actual knowledge, that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school."

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PRONG 2: Hostile Environment +

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;

- The "Davis" Standard
- Not the same as Title VII "hostile environment" or 2001 Guidance "hostile environment"
- Hostile Environment +
 - Adds the "and"
 - Adds "equal access"

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PRONG 2: Hostile Environment +

▪ FIRST AMENDMENT ISSUES

- Not speech protected by First Amendment "subjecting speech and expression to the chilling effect"
- "Does not punish verbal conduct in a manner that chills and restricts speech and academic freedom, and that recipients are not held responsible for controlling every stray, offensive remark" that occurs.
- "requiring recipients to respond even to verbal conduct so serious that it loses First Amendment protection and denies equal access to the recipient's educational benefits."

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PRONG 2: Hostile Environment +

▪ NOT ALL UNWELCOME SEXUAL CONDUCT COUNTS

- Not a "zero tolerance" policy banning sexual harassment"
- "captures physical and verbal conduct serious enough to warrant the label "abuse,"
- school children regularly engage in "insults, banter, teasing, shoving, pushing, and gender-specific conduct that is upsetting to the students subjected to it" yet a school is liable under Title IX for responding to such behavior only when the conduct is "so severe, pervasive, and objectively offensive . . .
- "Elements of severity, pervasiveness, and objective offensiveness must be evaluated in light of the known circumstances and depend on the facts of each situation"

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Hostile Environment+

- **“SEVERE”**
 - severity is a necessary element to balance protection from sexual harassment with protection of freedom of speech and expression.
 - “evaluation of whether harassment is “severe” appropriately takes into account the circumstances facing a particular complainant, such as the complainant’s age, disability status, sex, and other characteristics.”
 - “whether the described occurrence was severe from the perspective of a reasonable person in the complainant’s position.”

37

Hostile Environment +

- **“PERVASIVE”**
 - “recipients retain discretion to provide supportive measures to any complainant even where the harassment is not pervasive.”
 - Can consider other conduct codes (disciplinary) or programming requirements (non-disciplinary response).
 - Disseminating “revenge porn,” or conspiring to sexually harass people (such as fraternity members telling new pledges to “score”), or other unwelcome conduct that harms and humiliates a person on the basis of sex may meet the elements of the Davis standard including pervasiveness, particularly where the unwelcome sex-based conduct involves widespread dissemination of offensive material or multiple people agreeing to potentially victimize others and taking steps in furtherance of the agreement.

38

Hostile Environment +

- **“OBJECTIVELY OFFENSIVE”**
 - “whether, standing in the shoes of the complainant, the conduct would be offensive.”
 - It would be inappropriate for a Title IX Coordinator to evaluate conduct for objective offensiveness by shrugging off unwelcome conduct as simply “boys being boys” or make similar assumptions based on bias or prejudice.”
 - whether harassment is actionable turns on both subjectivity (i.e., whether the conduct is unwelcome, according to the complainant) and objectivity (i.e., “objectively offensive”) with the Davis elements determined under a reasonable person standard, thereby retaining a similar “both subjective and objective” analytic approach.”
 - “The fact-specific nature of evaluating sexual harassment does mean that different people may reach different conclusions about similar conduct, but this is not unreasonable because the specific facts and circumstances of each incident and the parties involved may require different conclusions.”

39

Hostile Environment +

NO INTENT REQUIREMENT

- "The Davis standard does not require an "intent" element; unwelcome conduct so severe, pervasive, and objectively offensive that it denies a person equal educational opportunity is actionable sexual harassment regardless of the respondent's intent to cause harm."
- "By not imposing an "intent" element into the sexual harassment definition, § 106.30 517 makes clear that sexual harassment under any part of the § 106.30 definition cannot be excused by trying to blame the victim or rationalize the perpetrator's behavior, tactics pointed to by commenters (and supported by research) as common reasons why victims (particularly women) have often faced dismissiveness, shame, or ridicule when reporting sex-based violence to authorities."

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Hostile Environment +

"EFFECTIVELY DENIES ... EQUAL ACCESS TO THE RECIPIENT'S EDUCATION PROGRAM OR ACTIVITY;

- does not require that a complainant has already suffered loss of education before being able to report sexual harassment or require "
- the sexual harassment "so undermines and detracts from the victims' educational experience, that the victim-students are effectively denied equal access to an institution's resources and opportunities."
- Individuals react to sexual harassment in a wide variety of ways...does not require certain manifestations of trauma or a "constructive expulsion."
- No specific type of reaction is necessary--can't turn away a complainant who is "high-functioning," "not showing particular symptoms following a sexual harassment incident, or "not traumatized enough."
- Neither Title VII nor Title IX requires "tangible adverse action or psychological harm"

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Hostile Environment +

"EFFECTIVELY DENIES ... (CONT.)

- May include
 - skipping class to avoid a harasser
 - a decline in a student's grade point average
 - difficulty concentrating in class
 - dropped out of school
 - failed a class
 - had a panic attack
 - reached a "breaking point"
- however, no concrete injury is required

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Gender-based Harassment

- Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, but not involving conduct of a sexual nature.
- From the regs: "includes unwelcome conduct devoid of sexual content that targets a particular sex. The final regulations use the phrase "sexual harassment" to encompass both unwelcome conduct of a sexual nature, and other forms of unwelcome conduct "on the basis of sex."

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**Prong 2:
Discussion**

The behavior must be MORE than juvenile or annoying but may be LESS than psychological harm. *Should our policy allow us to discipline for the juvenile or annoying?*

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**Prong 2:
Case Study**



Pat reports feeling uncomfortable in class because of sexually harassing comments and behaviors of other students.

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;

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**PRONG 3:
The VAWA
Crimes**

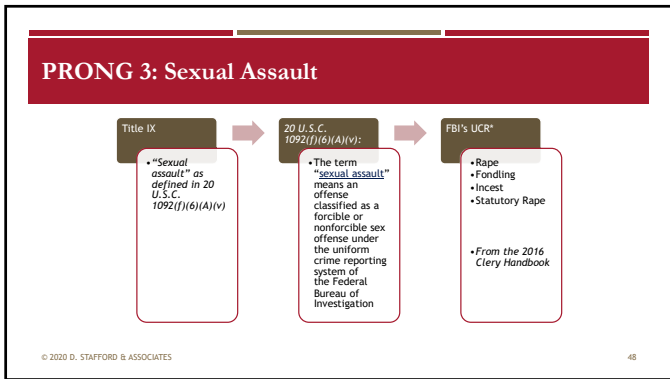
| | |
|--|--|
|  Sexual Assault | Rape Sexual Assault Statutory Rape Incest |
|  Intimate Partner Violence | Dating Violence Domestic Violence |
|  Stalking | |

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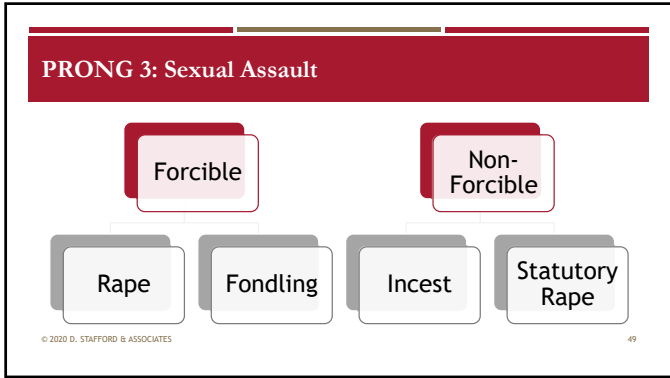
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47



48



49

PRONG 2 v. PRONG 3

“Because Federal courts applying the Davis standard have reached different conclusions about whether a single rape has constituted “severe and pervasive” sexual harassment sufficient to be covered under Title IX, we are including single instances of sexual assault as actionable under the § 106.30 definition. We believe that sexual assault inherently creates the kind of serious, sex-based impediment to equal access to education that Title IX is designed to prohibit, and decline to require “denial of equal access” as a separate element of sexual assault.”

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50

Sexual Assault--Rape

- Rape is the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- “With respect to an attempted rape, we define “sexual assault” in § 106.30 by reference to the Clery Act, which in turn defines sexual assault by reference to the FBI UCR,778 and the FBI has stated that the offense of rape includes attempts to commit rape.”
- “the Department intentionally leaves recipients flexibility and discretion to craft their own definitions of consent (and related terms often used to describe the absence or negation of consent, such as coercion).”
- The Department believes that a recipient should select a definition of sexual consent that best serves the unique needs, values, and environment of the recipient’s own educational community. So long as a recipient is required to respond to sexual assault (including offenses such as rape, statutory rape, and fondling, which depend on lack of the victim’s consent), the Department believes that recipients should retain flexibility in this regard. The Department has revised the final regulations to state that it will not require recipients to adopt a particular definition of consent. 780 With respect to the commenter’s point regarding a lack of certainty about what constitutes rape, the Department believes that including sexual assault in these Title IX regulations will contribute to greater societal understanding of what sexual assault is and why every person should be protected against it.

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51

Sexual Assault--Consent

- “the Department intentionally leaves recipients flexibility and discretion to craft their own definitions of consent (and related terms often used to describe the absence or negation of consent, such as coercion).”
- “The Department believes that a recipient should select a definition of sexual consent that best serves the unique needs, values, and environment of the recipient’s own educational community.”
- “So long as a recipient is required to respond to sexual assault (including offenses such as rape, statutory rape, and fondling, which depend on lack of the victim’s consent), the Department believes that recipients should retain flexibility in this regard.”
- “The final regulations appropriately capture a broad range of sex offenses ... while leaving recipients the discretion to select particular definitions of consent (and what constitutes a lack of consent) that best reflect each recipient’s values and community standards.”

52

Sexual Assault-Fondling

- *Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim*
- From the Clery Handbook: “Fondling is recognized as an element of the other sex offenses. Therefore, count Fondling only if it is the only sex offense.”
 - If you aren’t sure if penetration occurred (or if enough to support an “attempt”) may need to be in habit of charging with both.
- The Department allows recipients “to adopt a broader or narrower definition of, e.g., fondling by specifying which body parts are considered “private” or whether the touching must occur underneath or over a victim’s clothing.”

53

Sexual Assault-Fondling

- **“Sexual Gratification”**
- “This “purpose” requirement separates the sex offense of fondling from the touching described by commenters as “children playing doctor” or inadvertent contact with a person’s buttocks due to jostling in a crowded elevator, and so forth.”
- “Where the touching of a person’s private body part occurs for the purpose of sexual gratification, that offense warrants inclusion as a sexual assault, and if the “butt slaps” described by one commenter as occurring frequently in elementary and secondary schools do constitute fondling, then those elementary and secondary schools must respond to knowledge of those sex offenses for the protection of students.”
- “The definition of fondling, properly understood, appropriately guides schools, colleges, and universities to consider fondling as a sex offense under Title IX, while distinguishing touching that does not involve the requisite “purpose of sexual gratification” element, which still may be addressed by a recipient outside a Title IX process.”
- “with respect to juveniles, a sexualized purpose should not be ascribed to a respondent without examining the circumstances of the incident (such as the age and maturity of the parties).”

54

Non-Forcible Sex Offenses

- c) Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- d) Statutory Rape is sexual intercourse with a person who is under the statutory age of consent.
 - From the Clery Handbook: "if force was used or threatened, or the victim was incapable of giving consent because of his/her age or temporary or permanent mental impairment, the offense is Rape, not Statutory Rape"
 - We recommend that you consult your state's statutes to determine the statutory age of consent.

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55

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Incest and Statutory Rape

- Department declines to exclude incest and statutory rape from the definition of sexual assault. The Department understands commenters' concerns, but will not override the established circumstances under which consent cannot legally be given (e.g., where a party is under the age of majority) or under which sexual activity is prohibited based on familial connectedness (e.g., incest).
- The Department notes that where sexual activity is not unwelcome, but still meets a definition of sexual assault in § 106.30, the final regulations provide flexibility for how such situations may be handled under Title IX.
 - For instance, not every such situation will result in a formal complaint requiring the recipient to investigate and adjudicate the incident;
 - the recipient has the discretion to facilitate an informal resolution after a formal complaint is filed;
 - the final regulations remove the NPRM's previous mandate that a Title IX Coordinator must file a formal complaint upon receipt of multiple reports against the same respondent;
 - the final regulations allow a recipient to dismiss a formal complaint where the complainant informs the Title IX Coordinator in writing that the complainant wishes to withdraw the formal complaint;
 - and the final regulations do not require or prescribe disciplinary sanctions.
- Thus, the final regulations provide numerous avenues to avoid situations where a recipient is placed in a position of feeling compelled to drag parties through a grievance process where no party found the underlying incident unwelcome, offensive, or impeding access to education, and recipients should not feel incentivized by the final regulations to become repressive monitors of youth sexuality.

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Intimate Partner Violence

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PRONG 3: Intimate Partner Violence

- “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8)
- “The FBI’s Uniform Crime Reporting system similarly does not exclude from sexual assault perpetration by a person known to the victim (whether as an acquaintance, romantic date, or intimate partner relationship), and the final regulations’ express inclusion of dating violence and domestic violence reinforces the reality that sex-based violence is often perpetrated by persons known to the victim rather than by strangers.”

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58

Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

The existence of such a relationship shall be based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition—

- A. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- B. Dating violence does not include acts covered under the definition of domestic violence.

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Domestic Violence

A felony or misdemeanor crime of violence committed by:

- a) a current or former spouse or intimate partner of the victim
- b) by a person with whom the victim shares a child in common
- c) by a person who is cohabitating with, or has cohabitated with the victim as a spouse or intimate partner
- d) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred OR
- e) by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred

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61

PRONG 3: Stalking

- or "stalking" as defined in 34 U.S.C. 12291(a)(30).
- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.
 - "Stalking may not always be "on the basis of sex" (for example when a student stalks an athlete due to celebrity worship rather than sex), but when stalking is "on the basis of sex" (for example, when the stalker desires to date the victim) stalking constitutes "sexual harassment" under § 106.30. Stalking that does not constitute sexual harassment because it is not "on the basis of sex" may be prohibited and addressed under a recipient's non-Title IX codes of conduct"
 - "dating violence and domestic violence may fail to meet the Davis standard because although a single instance is severe it may not be pervasive, while a course of conduct constituting stalking could fail to meet the Davis standard because the behaviors, while pervasive, may not independently seem severe."

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62

Prong 3: Discussion

How does Prong 2 (Hostile Environment+) compare and contrast to Stalking and what are the takeaways for us as practioners?

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**Prong 3:
Case Study**

Earl reports that his roommate and his roommate's boyfriend are in an abusive relationship.

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BLANK

SLIP

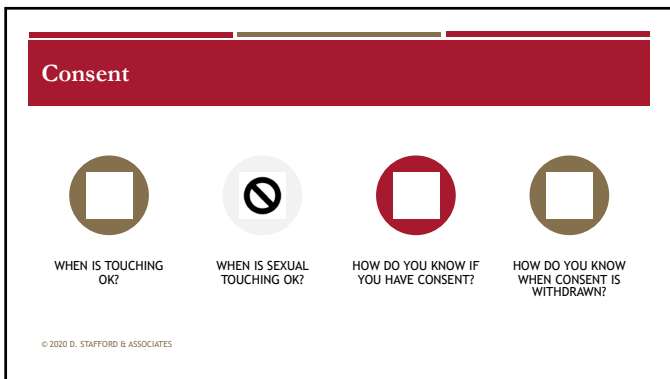
SHEET



1



2



3

Consent

Sexual permission Verbal Non-verbal Policy

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GOT CONSENT?

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§106.30 Definitions – Consent

“The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault . . .”

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Consent

Consent is an understandable exchange of affirmative words or actions, which indicate a willingness to participate in a mutually agreed upon sexual activity at a mutually agreed upon time. Consent must be informed, freely and actively given. It is the responsibility of the initiator to obtain clear and affirmative responses at each stage of sexual involvement.

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Consent

Whether an individual has taken advantage of a position of influence over an alleged victim may be a factor in determining consent. For example, a position of influence could include supervisory or disciplinary authority. Silence, previous sexual relationships or experiences, and/or a current relationship may not, in themselves, be taken to imply consent. While nonverbal consent is possible (through active participation), it is best to obtain verbal consent.

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Consent

Similarly, consent to one form of sexual activity does not imply consent to other forms of sexual activity. An individual who is incapacitated cannot give consent. Consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly.

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Consent

Force

- Physical
- Coercion
- Intimidation
- Threats

Incapacitation

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Physical Force

Holding down


Forced to touch


How much?

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Intimidation

 **PHYSICAL**

 **VERBAL**

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Threats

Physical harm

Reputational harm

Veiled threats

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COERCION IS AN UNREASONABLE AMOUNT OF PRESSURE TO ENGAGE IN SEXUAL ACTIVITY.

| Frequency + | Intensity + | Duration + | Isolation |
|-------------|-------------|------------|-----------|
| ? | Now | 5 minutes? | Library |
| Twice | ? | ? | Bar |
| Fifty times | ? | 2 days? | ? |

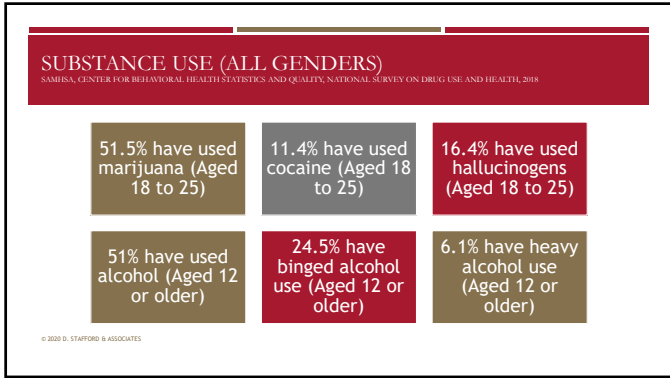
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14

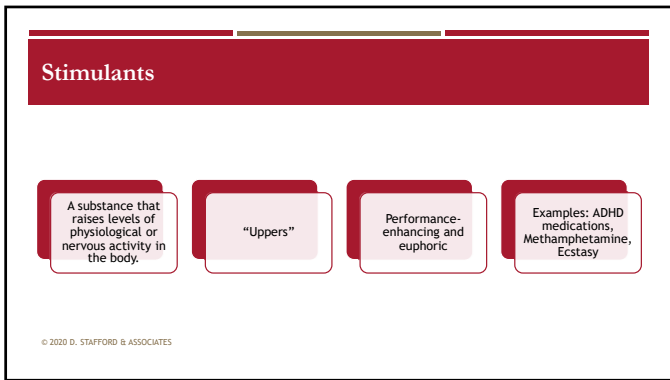
DRUGS, ALCOHOL, AND INCAPACITATION

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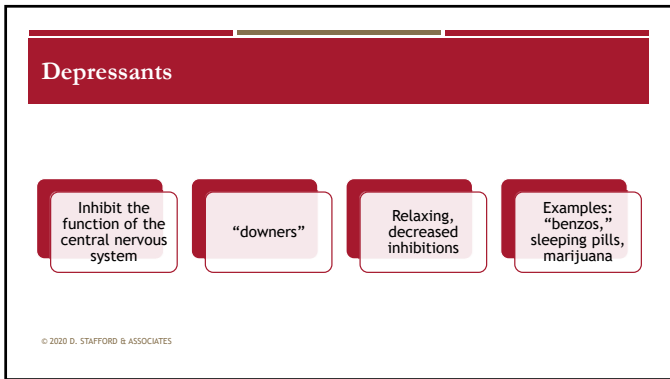
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16



17



18

Other Drugs



Hallucinogens



Opioids

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What is a Drink?



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What is a Drink in College?



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Impact of Alcohol Consumption Levels

Cognition (new brain)

- * judgment
- * inhibition
- * personality
- * intellect
- * emotion

Psychomotor functions

- * muscular coordination
- * balance
- * eye focus
- * speech

Involuntary functions

- * vomiting
- * blackout
- * pass out
- * respiration

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Levels of Consumption


Impairment

Intoxication

Incapacitation

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Impairment

The state of being diminished or weakened due to the consumption of alcohol.

- Alcohol is nervous system depressant.
- Impairment begins as soon as alcohol enters the bloodstream.
- Impairment increases with consumption of alcohol.

Question: Can two initially IMPAIRED people legally have sexual intercourse?

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Intoxication



An act or instance of inebriation; drunkenness.

- Intoxication is legally met when an individual's blood alcohol level reaches .08 or greater.

Question: Can two INTOXICATED people legally have sexual intercourse?

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HOW DO WE DETERMINE INCAPACITATION



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Incapacitation

Incapacitation is the physical and/or mental inability, whether temporary or permanent, of an individual to make rational, reasonable decisions, or judgments regarding one's well-being or welfare. States of incapacitation include, but are not limited to unconsciousness, sleep, and blackouts.

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Incapacitation – Not Alcohol Related



PHYSICAL




MENTAL


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Incapacitation



Unconscious



Sleep



Blackout

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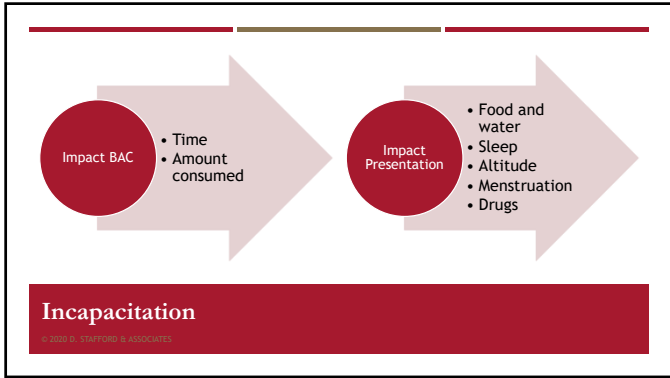
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Incapacitation

- Were any parties or witnesses **INCAPACITATED**?
- Were any parties or witnesses **IMPAIRED** to a degree that it would impact memory and actions?
- Were any parties impaired during the interview to a degree that it would impact recall and judgement?

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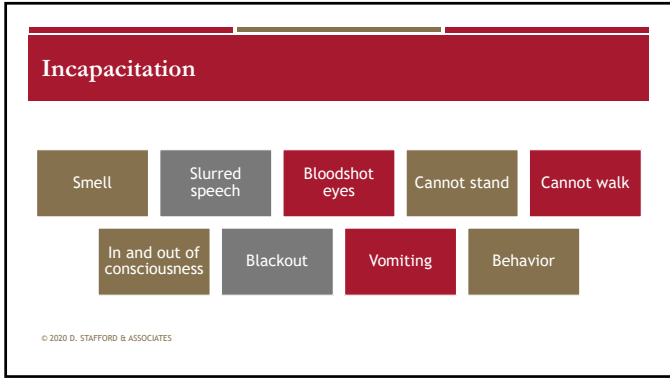
Estimating BAC

| Number of Drinks | | BLOOD ALCOHOL CONTENT (BAC) Table for Male (M) / Female (F) | | | | | | | | Driving Condition |
|------------------|---|--|-----|-----|-----|-----|-----|-----|-----|-------------------------|
| | | Body Weight in Pounds | | | | | | | | |
| | | 100 | 120 | 140 | 160 | 180 | 200 | 220 | 240 | |
| 0 | M | .00 | .00 | .00 | .00 | .00 | .00 | .00 | .00 | Only Safe |
| | F | .00 | .00 | .00 | .00 | .00 | .00 | .00 | .00 | Driving Limit |
| 1 | M | .06 | .05 | .04 | .04 | .03 | .03 | .03 | .02 | Driving Skills Impaired |
| | F | .07 | .06 | .05 | .04 | .04 | .03 | .03 | .03 | |
| 2 | M | .12 | .10 | .09 | .07 | .07 | .06 | .05 | .05 | |
| | F | .13 | .11 | .09 | .08 | .07 | .07 | .06 | .06 | |
| 3 | M | .18 | .15 | .13 | .11 | .10 | .09 | .08 | .07 | Legally Intoxicated |
| | F | .20 | .17 | .14 | .12 | .11 | .10 | .09 | .08 | |
| 4 | M | .24 | .20 | .17 | .15 | .13 | .12 | .11 | .10 | |
| | F | .26 | .22 | .19 | .17 | .15 | .13 | .12 | .11 | |
| 5 | M | .30 | .25 | .21 | .19 | .17 | .15 | .14 | .12 | |
| | F | .33 | .28 | .24 | .21 | .18 | .17 | .15 | .14 | |

Subtract .01% for each 40 minutes of drinking.
1 drink = 1.5 oz. 80 proof liquor, 12 oz. 5% beer, or 5 oz. 12% wine.
Fewer than 5 persons out of 100 will exceed these values.

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Incapacitation

- Lack the ability to determine:
 - Who is having sex with them?
 - When are they having sex?
 - Where are they having sex?
 - What is the sexual act?

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Two-Step Determination

- Incapacitation
- Respondent or reasonable person knew incapacitated

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Blackout v. Pass Out

- Fragmentary blackout
- En Bloc blackout
- Pass out

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Incapacitation Specific Questions

- Who was drinking
- What were they drinking
- How much were they drinking
- Other?

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Let's Practice




- SS came into your office and stated that she thinks she what happened between her and her roommate (RR), who also serves as SS's personal care attendant. Specifically, while showering, RR inappropriately touched SS while helping her shower. S is paralyzed from the neck down and requires the assistance of someone for all daily life activates, including using the restroom and taking a shower. RR denies that anything inappropriate happened between them, and that she was only helping SS shower.
- Who do you need to talk with?
- What do you need to ask?

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Let's Practice




- During an intake interview, DM (complainant) stated that he did not know if he had sex with ER (Respondent), as he was in a "blackout." DM stated that he had been drinking and also ate a gummy earlier in the evening. DM stated that he assumed he had sex with ER as he woke up the next morning naked and found a used condom in the trash. DM stated that he was with two other people that night - TT and YY
- Who do you need to talk with?
- What questions do you need to ask?

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39

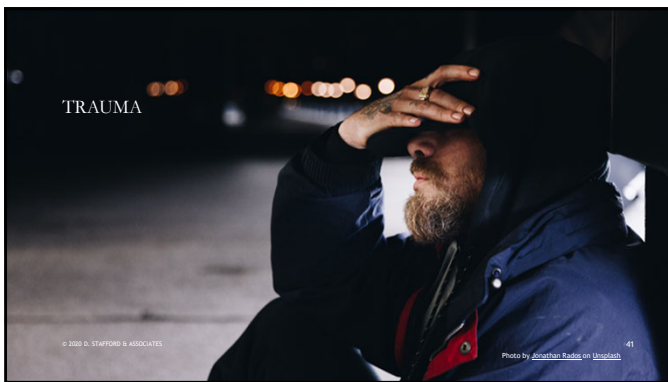
Let's Practice



- When speaking with ER, he states that he too has no memory of the evening. ER states that he believes he was assaulted by DM, not the other way around.
- Who do you need to talk with?
- What questions do you need to ask?

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TRAUMA

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41


Keep in Mind




EVERYONE IS DIFFERENT




DO NOT ASSESS CREDIBILITY ON EMOTIONAL STATE



POOR RECALL IS COMMON



BEHAVIORS ARE NOT PROOF



NEGATIVE COPING MECHANISM

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Common Responses

Defense circuitry Prefrontal cortex Reflect Responses Habit responses

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Impact on Memory

Details Time and Context

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44


  

Fight Flight Freeze

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Check-in



- How does this impact your investigation?
- If a party cannot remember specific details, how can you assist?
- How might this information impact hearings?

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What does due process look like when due process doesn't look like me

Melissa Harris-Perry

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Statistics

Race and ethnicity Sexual orientation Disabilities

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Stereotypes

Racial Stereotypes Perceptions Internalized biases

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Reporting

Race Sexual Orientation Disabilities

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Barriers to Reporting

Invisible Accessibility Access

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52






Response

Race Sexual Orientation Disability

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53

Respondents - Race

 Percentages  Stereotypes  Lack of resources  Racial biases  Credibility

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Respondents – Disability

- Data
- Asperger
- Accessibility

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Recommendations - Race

- CHECK YOUR BAGS
- PREVENTION AND EDUCATION EFFORTS
- INCLUSIVE PRACTICES
- TRAINING
- POLICIES

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56


Recommendations – Disabilities

- Awareness
- Accessibility resource offices
- Visibility
- Trainings
- Accommodations
- Policies and agreements with local agencies

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57

Check-in



- How does this impact your process?
- How?
- Are there any changes that you might make moving forward?
- If so, what are they?

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58


MULTIPLE PARTY RAPE



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59

Vanderbilt



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60

The Assault

- June 22-23, 2013
- Brandon Vanderburg and victim go to off-campus bar
- Return to campus
 - Corey Batey
 - "Tip" McKenzie
 - Brandon Banks
 - Others
- Assault takes place
 - 45 second video clip
- Pictures and videos sent

61

The Aftermath



- Police review vandalism footage
- Investigation begins
- Indictments August 9, 2013
- First trial in 2015 - mistrial
- 3 years and 2 trials later
 - Batey 15 years
 - McKenzie Probation
 - Banks 15 years
 - Vanderburg 17 years

62

Multiple Perpetrator Rape (MPR)

Definition

Occurrence

Characteristics

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MULTIPLE PERPETRATOR RAPE (MPR) - COMMON PATTERN

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64

Risk Factors



INDIVIDUAL



SOCIOCULTURAL




SITUATIONAL


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65


Why?




GROUP DYNAMIC/INFLUENCE OF OTHERS




LACK OF INSIGHT



VICTIM BLAMING



NORMALIZED SEXUAL VIOLENCE




ALCOHOL/DRUGS


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Role of the Leader



Influence on group violence



Model and direction




Reinforce leader


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Investigation Considerations




Reporting



Identification difficulties



Characteristics



Group dynamic

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68

Special Considerations

Fraternities


Athletics

LGBTQ


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69

Special Considerations




Female



War

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70




Victimization


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71


Interviewing



Bias



“Bad guys”




“Good guys”


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72


Interviewing




CONFLICTING
POLICIES AND LAWS



ROLES



PREJUDICE




CONVICTION AND
SENTENCING

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73


Check-in



- Have you had experience with this situation on your campus?
- If so, what were the unique challenges?
- How might this information assist you moving forward?
- Are there any changes that you might make?
- What are they?

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75

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76

76

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1


Considerations in Drafting

| | | |
|---|--|--|
|  Institutional Policy Preliminary vs. Final Process for comment Mandated sections |  Who views General Counsel Title IX Human Resources/Dean of Students Complainant and Respondent Advisors Decision-Maker |  How shared Electronic format Hard copy |
|---|--|--|

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2

Report Writing Golden Rule



*What does your policy say and **FOLLOW YOUR POLICY!***

(oh, yeah, and make sure your policy is compliant)

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Report Writing Goals

- Compilation of Evidence
- Summary of Facts
- Documentation of Process

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4



REVIEW OF THE REGULATIONS

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5

Complaint

“Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.”

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6

**Notice:
Allegations,
Investigation
etc.**

“Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in § 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.”
(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;

7

Temporary Delay

“A process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;”

8

Keeping Track of the Dates



- Complaint
- Notice of allegation/investigation
 - One week minimum (best practice)
- Temporary delays
- Preliminary report and Evidence
 - Minimum 10 days (regs)
- Final report and evidence
 - Minimum 10 days (regs)
- Hearing

9

No conflict of interest or bias

“Require that any individual designated ... investigator...not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.”

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10

Conflict of Interest and Bias



INVESTIGATOR BACKGROUND



TRAINING



ACKNOWLEDGE ANY RELATIONSHIP TO PARTIES



OPPORTUNITY TO REQUEST NEW INVESTIGATOR

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11

“Training”

- “[I]nvestigators ... receive training on the definition of sexual harassment ... how to conduct an investigation, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias...”
- “A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.”
- “Any materials used to train ... must not rely on sex stereotypes and must promote impartial investigations ...of formal complaints of sexual

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12

Training



**EVIDENCE
GATHERING**



**EVIDENCE
ASSESSMENT**



**EQUITABLE
PROCESS**

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13

**Gather Evidence/
Present Evidence**

“burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the recipient”

“equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence”

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14


**Obtained
Evidence**

“[A]ny evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.”

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15

Preliminary Report



Methodology

Investigative Process
Policy/Law Application



Information Gathered

Interview Summaries
Documentary Evidence

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16


Consolidation of formal complaints

“A recipient may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.”

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17

Consolidation



- **“May consolidate”**
 - Report
 - Hearing
- **“Where the allegations arise out of the same facts or circumstances.”**
 - Date
 - Behavior
 - Location

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18

Party Evidence


“Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.”

“Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.”

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19

Party Evidence



WITNESS LIST



EVIDENCE SUBMISSION



EXPERT TESTIMONY

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20

Written Determination

- (ii) The written determination must include—
 - (A) Identification of the allegations potentially constituting sexual harassment as defined in § 106.30; 2027 (B) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - (C) Findings of fact supporting the determination;

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21

Written Determination

(A) Allegations potentially constituting sexual harassment

(B) Description of the procedural steps taken from the receipt of the formal complaint through the determination,

- Notifications to the parties,
- interviews with parties and witnesses,
- site visits,
- methods used to gather other evidence, and
- hearings held;

(C) Findings of fact supporting the determination;

(D) Conclusions regarding the application of the recipient's code of conduct to the facts;

(E) A statement of, and rationale for, the result as to each allegation

- determination regarding responsibility,
- disciplinary sanctions on the respondent,
- remedies to the complainant

(F) The recipient's procedures and permissible bases for the complainant and respondent to appeal.

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22

Versions of the Report

| | | |
|---|---|--|
|  Preliminary Report: Scope Methodology Evidence Obtained |  Final Report: Scope Methodology (edited) Evidence Obtained Summary of Evidence |  Written Determination: Scope Methodology (edited), Summary of Evidence (edited), Results (including rationale, sanctions, remedies) |
|---|---|--|

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23



THE
BALANCING
GAME

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24

Neutral language





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25





CONVEY THE MESSAGE

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26

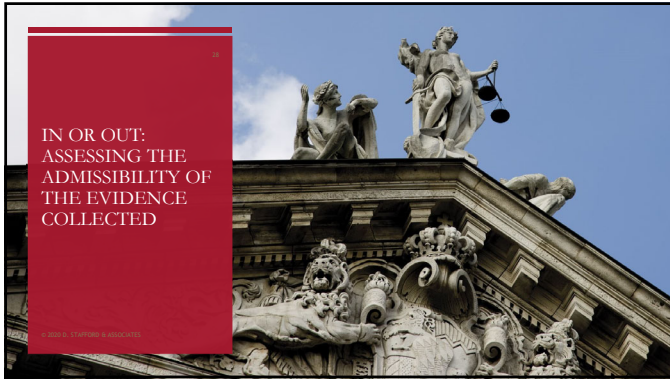
Use quotations



It's **"whole chicken heaven"** at this acclaimed Flatiron offshoot of a Paris standout where **"French country-style"** dishes featuring responsibly farmed birds (including hens, duck and squab) are **"seriously delicious"** (as are the egg starters); tabs run **"pricey"**, but **"lovely"** service is another reason this place is **"taking off."**

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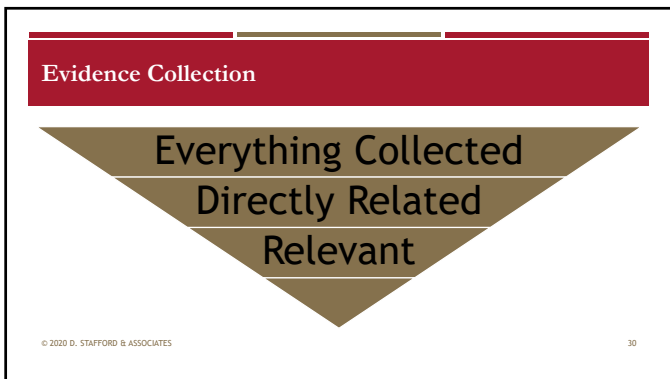
27



28



29



30

Everything BUT...

- Complainant's sexual predisposition or prior sexual behavior unless...
 - offered to prove that someone other than the respondent committed the conduct alleged or
 - complainant's prior sexual behavior with respect to the respondent and are offered to prove consent."
- Physician, psychiatrist, psychologist in connection with the provision of treatment to the party
 - unless voluntary, written consent

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31

31

"Directly Related": in the comments

- "interpreted using their plain and ordinary meaning"
- We note that "directly related" in § 106.45(b)(5)(vi) aligns with requirements in FERPA, 20 U.S.C. 1232g(a)(4)(A)(i). ("information directly related to a student.")
- "directly related" may sometimes encompass a broader universe of evidence than evidence that is "relevant."

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32

32

"Relevant" in the Comments

- "The parties should have the opportunity to argue that evidence directly related to the allegations is in fact relevant"
- "The investigator would then consider the parties' viewpoints ... and on that basis decide whether to summarize that evidence in the investigative report."
- "A party who believes the investigator reached the wrong conclusion about the relevance of the evidence may argue again to the decision-maker (i.e., as part of the party's response to the investigative report, and/or at a live hearing) about whether the evidence is actually relevant."

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33

33



34

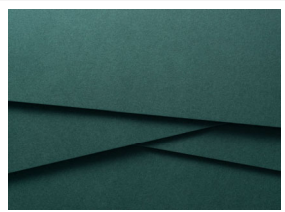
Formatting

- PAGE NUMBERS
- LINE NUMBERS
- FOOTNOTES
- CAPITALIZATION
- PUNCTUATION
- TITLES
- REDACTING
- DISCLAIMERS/ LEGALESE

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35

Cover Page: What this is

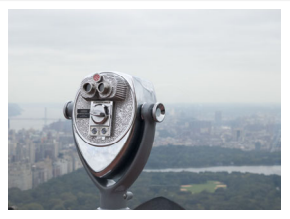


- Case Identifier
- Title
- Drafter
- Reviewer
- Date

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36

Scope: Why did we do it



- Allegation
- Policy
- Notice Timeline (or Summary)

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37

Methodology: How did we do it




- How the investigation was conducted
 - Safety and security of evidence (including people)
 - Investigators (bias, background, training)
- Steps taken
 - Evidence collected, viewed
 - Persons interviewed
 - Places visited
- Report Versioning

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38

Summary of Relevant Evidence: What we learned



The regs: "fairly summarizes relevant evidence."

How do you organize?

- Facts in agreement/Facts in dispute
- Disputed and Undisputed facts
- Exculpatory and Inculpatory evidence
- Factual summary
- Timeline

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39

Evidence Obtained: Just about everything



FROM THE REGS...

- "Any evidence obtained
 - directly related to the allegations
 - including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and
 - inculpatory or exculpatory evidence whether obtained from a party or other source
- So that a party can meaningfully respond

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40

Evidence Obtained



- Testimonial
- Documentary
- Demonstrative
- Real

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41

Testimonial: Interviews

How do you capture the interview in the report?

Verbatim Record


Question/Answer format

Reorganization for clarity

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42

Expert Witnesses




“Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses”


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Other Evidence



Incorporated



Attached



Available

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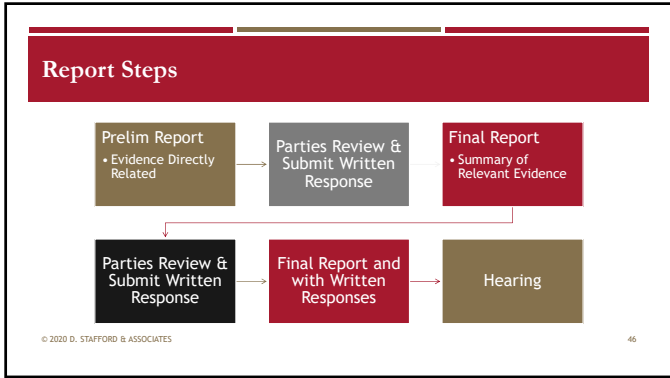
44

Recommended Finding?

“The Department does not wish to prohibit the investigator from including recommended findings or conclusions in the investigative report. However, the decision-maker is under an independent obligation to objectively evaluate relevant evidence, and thus cannot simply defer to recommendations made by the investigator in the investigative report.”

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45



46



47

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Case: 20200812 ML/JT

Final Report of Investigation

**Ann Todd and Cathy Cocks,
D. Stafford & Associates**

Reviewed by: Adrienne Murray, DSA Associate

April 6, 2020

This Document may not be downloaded, duplicated or distributed without written permission from ABC.

Case Identifier

Use the name from your policy. Will also identify WHICH report if your policy references two different reports (one pre-party review and one post with or without findings).

Do you have a review stage in process or policy.

If distributed, consider a disclaimer—include on each page. Also consider a watermark—do different watermark (and therefore different version) for Complainant and Respondent

Table of Contents

Scope and Methodology.....2
Scope.....2
Policy.....2
Notice Timeline.....2
Methodology.....3
Persons Interviewed.....3
Questions Submitted by Parties.....3
Documents Received and Referenced.....4
Information Regarding the Final Report of Investigation.....4
Investigators’ Comments to Written Response from the Parties ...5
Summary of Relevant Evidence.....5
Case Summary.....5
Timeline.....6
Evidence Obtained.....6
Interview Summaries.....6
Complainant.....6
Witness 1.....6
Exhibits.....6
Exhibit A-Text messages to Complainant from Witness 1.....6

Not always necessary but helpful when a complex case or multiple witnesses.

Sections can have different names and/or be split into different sections. But capture this content SOMEWHERE.

Scope and Methodology

Scope

On February 25, 2020, the ABC University (hereinafter “ABC” or “University”) began an investigation into a report that the Respondent violated the ABC Student Conduct Code.¹ Specifically, per the notice letter is it alleged that:

“On or about August 26, 2019, the Respondent engaged in nonconsensual sexual touching with the Complainant in the Smith Residence Hall...”

Policy

ABC’s Title IX Policy (hereinafter “Policy”) prohibits Discriminatory Harassment, Sexual Harassment, Sexual Assault and all other forms of sexual violence, Dating Violence, Domestic Violence, and Stalking. This Policy applies to all members of the ABC community (all students, faculty and staff) as well as to individuals not directly affiliated with ABC (e.g., contractors, vendors, and visitors). The Policy likewise applies to online behavior and social media that may affect the educational or employment experience. The full policy may be found at www.abc.edu/titleixpolicy.

The specific definitions to this allegation are as follows:

Sexual Assault: *Sexual Assault is any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Sexual Assault may include any of the following:...*

Consent: *Sexual activity requires consent, which is defined for purposes of this Policy as clear, unambiguous, and voluntary agreement between the participants to engage in specific sexual activity....*

The standard of evidence used to determine responsibility is...

Notice Timeline

Feb. 22, 2020: Complainant completes and signs *Title IX Complaint*

Feb. 25, 2020: *Notice of Allegations* and *Title IX Rights and Responsibilities* sent to both parties

Feb. 28, 2020: *Title IX Communication: Interview Date* sent to parties

Mar. 12, 2020: *Notice of Allegation (Amended)* sent to both parties.

Mar. 20, 2020: Investigators complete *Preliminary Report of Investigation*

Mar. 20, 2020: *Title IX Communication: Preliminary Report Complete; Invitation to Review* sent to both parties.

SCOPE: Keeps the Investigators focused on the specific charge. Could also include a copy of the notice of investigation or charge letter. At a minimum, the “triggering” report.

Quote directly from Notice of Allegation: parties, conduct, date, location. If anything changed during investigation, the scope should indicate the adjustment.

POLICY: Include jurisdiction sections of the policy (location, timing, persons)

Include the specific definitions for all conduct charged and other applicable definitions such as consent and incapacitation.

Should also include here the standard of evidence

NOTICE TIMELINE: This can be a good way to capture the communications (particularly if parties come back later and allege rights violated)

Demonstrate parties were given time to prepare before interviews (and time to review report.

Methodology

DSA Associates Ann Todd and Cathy Cocks (hereinafter “Investigators”) were assigned to conduct the investigation. Todd is the Director of Compliance Activities and Senior Investigator for DSA and a licensed attorney (NC Bar #25717) and private investigator in North Carolina. Cocks is an Associate for DSA and higher education professional specializing in investigating and assessing behavioral matters.

Todd and Cocks are trained on issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation that protects the safety of all parties and promotes accountability as required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, as amended by the Violence Against Women Reauthorization Act of 2013. They have also received training on the definition of sexual harassment, how to conduct an investigation, including issues of relevance, and how to serve impartially, including avoiding prejudice of the facts at issue, conflicts of interest and bias, all as required by Title IX of the Education Amendments of 1972 (Title IX).

The Investigators did not know or have had previous contact with the Complainants or Respondent, prior to conducting the investigation and have no known conflict of interest or bias for or against either party. Both parties were given the opportunity to request an alternative Investigator and declined to do so as outlined per the policy.

The Investigators were on-site March 11-12, 2020. While at ABC, the Investigators toured Smith Residential Hall and the Dining Hall.

The Investigators conducted the interviews in a secure workspace on campus and all evidence collected was in the exclusive possession of the Investigators until submitted with the report. The interviews were scheduled to provide for safety and privacy for all participants. Follow up interviews following the on-site visit were conducted using a secure pro account on the Zoom video conferencing platform.

Interviews were recorded when possible to aid the Investigators in report-writing. The interviews were summarized, rather than a full transcription, to improve information sharing. Recordings are maintained by the University for three years.

In addition to the interviews, the Investigators reviewed school policies and evidence provided by the University and the parties. Information pertinent to the investigation is incorporated into the body of the report or included as part of the attached exhibits.

No one interfered with or attempted to influence the work of the Investigators or this report. The timely assistance and cooperation of all parties has led to an investigative process that has produced a fair, objective, and comprehensive report that fairly summarizes relevant evidence.

Persons Interviewed

- John Doe (hereinafter “Complainant”) - ABC student. (3/5/20)
- Jane Roe (hereinafter “Respondent”) - ABC student. (3/17/20)
- Ray Johnson (hereinafter “Student Witness 1”) – ABC student. (3/6/20)

METHODOLOGY:

Background of Investigators and if internal or external

Training of Investigators (can also include specific date of any training) per the regs

Lack of bias per the regs

Site visits

Location and scheduling considerations—focusing on safety and security.

If recording, include information (would have been shared in the interview). If no recording may want to say that as well.

Evidence collection and what else the Investigators reviewed

Per the regs

INTERVIEW LIST:

To ease in redacting names for FERPA purposes, all students are identified by name ONLY in this section.

| | |
|--|---|
| <ul style="list-style-type: none"> • Randall Jones—Resident Director, Smith Residence Hall (3/5/20) <p>Persons Not Interviewed</p> <ul style="list-style-type: none"> • Lou Knight (hereinafter “Witness 2”) - Friend of the Complainant. (Did not respond to multiple outreach attempts from Title IX office via email and voicemail) <p>Questions Submitted by Parties Neither party submitted questions.</p> <p>Documents Received and Referenced</p> <ul style="list-style-type: none"> • Exhibit A: Text messages to Complainant from Witness 1, 8/25/19 (provided by the Complainant) • Exhibit B: Card swipe access for Complainant and Respondent 8/25/19-8/26/19 (provided by ABC) • Exhibit C: Video still and Analysis of video from Smith Residence Dining Hall, 8/26/19 (provided by ABC) <i>Full video available in Title IX.</i> • Exhibit E: Floor plan information for Smith Hall (ABC website) <p><i>The Investigators also reviewed the following:</i></p> <ul style="list-style-type: none"> • Notice Documents: Notice documents provided to the Complainant and the Respondent (provided by ABC and referenced above) • Images of Respondent Family: The Respondent provided images to document dates she was off-campus for family vacation. The Investigators reviewed the images but for privacy purpose have not included here. <i>Images are available for inspection in the Title IX office..</i> | <p>Employees and non-students can listed by name and/or title.</p> <p>Provide rationale for anyone not interviewed (policy, availability, outside the scope etc.)</p> <p>Include questions submitted and why not asked or how rephrased by investigator.</p> <p>Include date(s) for document if known and who provided. May also include a description and/or additional details about it.</p> <p>If a document is not included but provided by a party, explain why (exclude medical etc.)</p> <p>Don’t include notice documents (only excerpts) b/c they may contain accommodation language. Easier to reference or footnote. May also exclude medical etc.</p> |
| <p>Information Regarding the Final Report of Investigation</p> <p>According to the process at ABC, both parties are given the opportunity to review the <i>Preliminary Report of Investigation</i>, which includes all evidence obtained that is directly related to the allegations. The parties are then given ten (10) day to submit a written response to the University. This <i>Final Report of Investigation</i> incorporates and/or edit the report based on the written response of the parties following the review period.</p> <p>The Investigators edited/added the following for this <i>Final Report of Investigation</i>:</p> <ul style="list-style-type: none"> • Added this section, “Information Regarding the Final Report...” • Added the parties’ comments as an exhibit, added the section, “Investigator’s Comments to Written Response from the Parties,” and made corrections as outlined in the above section. • Added the section, “Summary of Relevant Evidence” • Removed line numbering | <p>Section added for the final report as it will change following feedback and corrections from the parties. (Could also include mention of recommendations or findings if currently at step in the policy).</p> |

| | |
|---|--|
| <p><u>Investigators’ Comments to Written Response from the Parties</u></p> <p>Both parties received an opportunity to review the <i>Preliminary Report of Investigation (hereinafter “PRI”)</i>. The Complainant did not submit a written response to the Preliminary Report. ABC received the Respondent’s submitted written response on March 23, 2020. The Respondent’s response is included...</p> <p>According to the Policy, “the Investigator has the discretion to determine what evidence is directly related to the allegation and the degree to which evidence is relevant.” The policy excludes evidence about the complainant’s sexual predisposition or prior sexual behavior unless offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the evidence concerns the respondent and is offered to prove consent.</p> <ul style="list-style-type: none"> • PRI line 330 - The Investigators have edited the report to state that the Respondent left a friend’s room, rather than the common room before going to the party. • PRI line 530 – The Investigators agree that the witness’ statement was opinion but decline to make any change. | <p>Sometimes the changes or comments result in no change to the report and this section is unnecessary. But if the comments call into question the accuracy of the investigation (or result in things that should be changed b/c of a typo) this type of section can be useful. It may require quoting of policy to explain why something was or was not included (“past sexual history” or medical records for example).</p> <p>Why line numbers can be beneficial on preliminary version.</p> |
| <p><u>Summary of Relevant Evidence</u></p> <p><u>Case Summary</u></p> <p><i>The summary is based on the interview statements and all available exhibits and notice documents. The primary bullets attempt to capture distinct events and/or facts. The secondary bullets provide additional context and or disputed accounts. Unless otherwise indicated, the information is from interview statements.</i></p> <p><i>Quoted items are written as provided and therefore, grammatical and typographical errors were not corrected.</i></p> <ul style="list-style-type: none"> • Complainant is a first-year student at ABC and lives in Smith Residence Hall on the 3rd floor. • The Respondent is first-year student at ABC and lives in Smith Residence Hall on the 4th floor. • The Complainant and the Respondent met during orientation. <ul style="list-style-type: none"> ○ The Respondent stated that they met through mutual friends. ○ The Complainant stated that they met when the Respondent came up to his group of friends and invited them to party with beer in the woods behind the baseball field. ○ In a text message to Witness 1, the Complainant texted at 11:43pm, “yo jus invited to a party PERIOD” (Exhibit A). ○ Witness 1 stated that... | <p>Pro and con to creating a summary but you have to do it at some point because required in written determination.</p> <p>May need section headers if lengthy.</p> <p>Use direct quotes where possible.</p> <p>Organize in bullet form to capture pertinent facts and distinct events.</p> <p>Use of secondary bullets varies depending on whether the parties participated and the number of perspectives.</p> <p>Focus in writing on making the first bullet an uncontested fact. The fact can also be that they disagree. PRIMARY BULLET: The Respondent stated that the touching was consensual; the Complainant stated it was not. SUB: The Respondent stated that she asked the ...</p> |

Timeline

The timeline is based on card swipe information, video, and interview statements.

| Date | Time | Action | Source |
|------|---------|------------------------------|-------------------------|
| 8/25 | ≈9:30pm | Complainant leaves for party | Complainant's statement |
| 8/25 | ≈9:45pm | Complainant returns | Complainant's statement |
| 8/26 | 1:22am | Complainant accesses Smith | Exhibit B: Card Swipe.. |
| 8/26 | 1:57am | Complainant at dining hall | Appendix C: Security... |

TIMELINE: A timeline can be helpful in a number of cases. For example, DV cases (where the relationship is long and incidents occurred over a span of time) Incapacitation determinations (when did drinking occur and over what time frame) and denials (could it have happened based on the timeline).

Evidence Obtained

Interview Summaries

Complainant

The Complainant is an ABC student. She was accompanied to the meeting by a support person. (Interviewed 3/5/20).

At the beginning of the interview, the Investigators discussed the role of the advisor, as outlined in the *Title IX Advisor* brochure.⁵ The Investigators also confirmed that the Complainant received the *Title IX Rights and Responsibilities* document.⁶

The Complainant is a first-year student living in Smith Residence Hall. He rushed a fraternity, Alpha Beta, in the spring semester. He is also a member of the football team; he is the kicker and mostly was a scrimmage player this year. Because of football, he arrived on campus early, moving in to the residence hall of August 8. . . .

Witness 1

Witness 1 is an ABC student. He is roommates with the Complainant and a member of the football team. (Interviewed 3/6/20).

The Complainant is a first-year student living in Smith Residence Hall. He rushed a fraternity, Alpha Beta, in the spring semester. He is also a member of the football team; he is the kicker and mostly was a scrimmage player this year. Because of football, he arrived on campus early, moving in to the residence hall of August 8. . . .

Exhibits

Exhibit A: Text messages to Complainant from Witness 1, 8/25/19 (provided by the Complainant).

INTERVIEW SUMMARIES: Include mention of advisor (but don't need to name).

Include any statements or rights reviewed (another way to state that it occurred). May also include retaliation conversation here.

Ok to include background and icebreaker info, particularly if related to how parties met, timing etc.

Can be helpful to include a brief summary of the witness (which can be repeated in witness list above) if will help the decision-maker.

EXHIBITS: Can put the exhibits in a separate document (b/c all PDFs). Include language here: *For formatting purposes, the exhibits are included as a separate supplement to this report.*

Audio and Video: Add transcription where possible (and identify who transcribed). Video can be described (although be as neutral as possible). Originals available to parties.

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SLIP

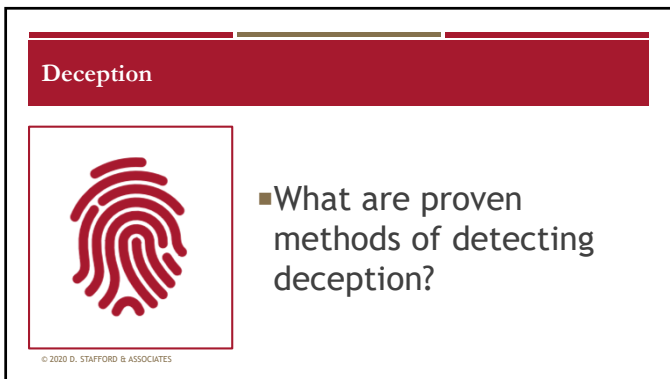
SHEET



1



2



3



4

Deception Detection


- We are really bad at it
- There are no methods that will help detect deception
- Why are they being deceptive?
- What impacts?

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Deception Detection

- There are methods that will help detect deception.
- Even if you suspect deception, you don't know why they are being deceptive.
- Identities, cultural norms, power differentials, and your lens all impact how people respond to you and how you assess those responses.



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WHAT ELSE IMPACTS OUR PERCEPTIONS?

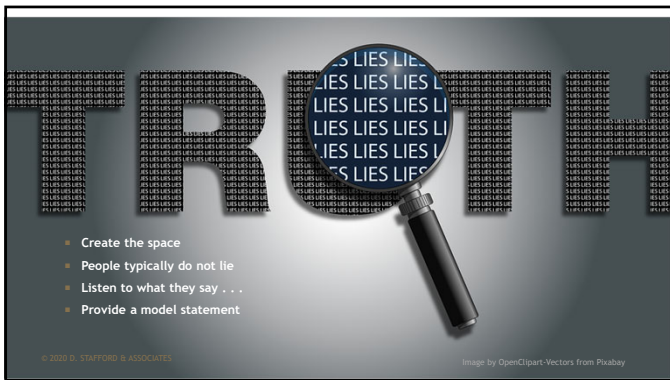
- Convictions
- Truth Default



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- Create the space
- People typically do not lie
- Listen to what they say . . .
- Provide a model statement

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What Do They Say?




- Verbal Statements
 - Emphasis
 - Avoidance
 - Hesitation
- Written Statements
 - Language
 - Consistency

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Other Factors that Impact Credibility



MEMORY AND TRAUMA



BIAS




CROSS-CULTURAL ISSUES


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Memory and Trauma



Memory is not a video of an incident that a person can replay over and over.

 Trauma, depression, and PTSD are associated with impaired memory performance.

- Blocked and softened memories
- Poor encoding and organization of memories
- Minimal focus on peripheral details
- Poor communication under stress

 Counter to standard memories - trauma victim memories often improve over time.

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Credibility Checklist

| | | | | |
|---------------------|----------------|---------------------------|------------------------|---------------------|
| Truthfulness | Past behaviors | Post-assaultive behaviors | Corroborating evidence | Ability to perceive |
| Ability to remember | Plausibility | Demeanor | Motivation | Bias |

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Truthfulness

Omission Embellishment

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Truthfulness

 Repeat v. Reconstruct  Get them to talk  Consistency  Details

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How to Detect?

Ask for verifiable details Ask unanticipated questions


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Past and Post Behaviors



Past behaviors
Records
Sexual history?



Post assaultive
Response
Interactions

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Corroborating Evidence


Physical


Contemporaneous documentation


Personal documents


Admissions


Eyewitness


Outcry


Other?

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Ability to Perceive

Distance

Knowledge


Credentials

Competence


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Ability to Remember




PASSAGE OF TIME




ALCOHOL



BLACKOUT



PERIPHERAL DETAILS



HISTORY OF MEMORY

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Plausibility


Believable
or likely

Impacts on
perspective


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Demeanor




BASELINE




DISCOMFORT




EMOTIONS




SHAME



ANGER



DEFENSIVE



FEAR

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Motivation

To lie


Pressure

Past relationships


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Bias



Personal preference



Impartiality



Internal Biases

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Bias

| | |
|-------------------|---|
| Confirmation Bias | Confirmed preconceived opinion |
| Availability Bias | Most important to the memory immediately recalled |
| Hindsight Bias | See things as more predictable than they were |
| Foresight Bias | Ability to predict future events |
| Gender Bias | More likely to believe one gender over another |
| Race | More likely to believe one race over another |

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BLANK

SLIP

SHEET



1



2



3

Different Options



Informal Resolution



Formal Resolution

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§106.45(b)(9) – Informal Resolution

However, at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication

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Notice:

- Allegations
- Precludes the parties from resuming a formal complaint arising from the same allegations
- Right to withdraw from formal and resume the grievance process
- Consequences including the records that will be maintained or could be shared

Written consent

Not allowed for allegations where employee sexually harassed a student.

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**§106.45(b)(9) –
Informal
Resolution**

6

Informal Resolution Considerations

Subpoena

Change to format process

Incomplete requirements

Discipline file

Record keeping

"virtual" RJ meetings

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Informal Resolution Considerations

- Mediation
- Restorative Justice
- Educational efforts
- Other

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Formal Complaint – Conferences?

TIMING

ACCEPTANCE OF RESPONSIBILITY

SANCTIONS?

APPEAL

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Let's Practice



- You receive an email from WW stating that her professor PP is sending her harassing text messages; specifically asking if WW would like to have coffee and "get to know one another better." WW has asked RR to stop, but the text messages continue, including a recent picture of his penis. You meet with WW who states that she does not want to sign a formal complaint, she only wants you to tell PP to stop and to move her out of his class.
- What are your next steps?
- Is informal resolution allowed?

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Let's Practice



- You receive a report from NN stating that he was sexually assaulted by RR at BAD, the local fraternity owned and operated by the University. NN provides you an email sent by RR the next day in which RR states "I am so sorry I did that to you. I thought you were into it." During your meeting with RR to explain the grievance process, RR states, "I am so sorry. I admit that I did not have his consent. What can I do to make this right?"
- What are your next steps?
- What is allowed and not allowed?
- What if RR admits to the behavior, but not the proposed sanction?

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SINGLE ADJUDICATOR

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Formal Resolution – Considerations

- Scheduling
- Decision maker(s)
- Advisors
- In person or virtual

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LIVE HEARINGS




For postsecondary institutions, the recipient's grievance process must provide for a live hearing . . . At the request of either party, the recipient must provide for a live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions . . . Must create an audio recording or transcript and make available.

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ADVISOR




If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

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CROSS EXAMINATION




At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally

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RELEVANCY




Only relevant cross- examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant

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Relevancy



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PARTICIPATION




If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility


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19


Check-in




How do you envision live hearing?
In person
Virtual
Decision maker(s)



How do you envision advisors
Who are they?
Do you have people on campus?




How will you manage cross-examination
What formal rules will you establish?



Who will determine relevancy?
One decision maker
In real time?

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Let's Review

- CC (complainant) and RR (respondent) have requested that their hearing take place virtually. During the hearing, RR internet stops working, resulting in RR only being able to call in. What do you do?
- At the hearing CC does not like the way that their advisor is asking questions. CC then states that CC is going to be asking the questions and dismisses her advisor. What do you do?

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Let's Review

- At the hearing RR's advisor poses the following question to CC, "during our relationship, we had an agreement that I could penetrate you digitally while you slept, which is what occurred that night. Is that true?" What do you do?
- At the hearing, CC states that the report accurately captured her statements, including the text messages that appear in the report. CC refuses to answer any other questions. What do you do?

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MAKING A FINDING

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Making a Finding



Policy language



Specific behaviors



Key issues and behaviors



Weigh evidence presented
Relevant
Certain
Credibility
Inferences




Standard of evidence

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Let's Practice



- The investigative report and information provided at the hearing provided the following details:
 - CC (complainant) had alleged that they were sexually harassed by RR (respondent). Specifically, RR continuously sent CC nude photographs, despite CC asking that RR texting RR to stop these behaviors. CC stated that they began experiencing anxiety whenever their phone would receive a message, in fear that it was from RR. Additionally, CC has stated that they avoid RR, which is difficult as they ate in the same class. This has resulted in CC missing a majority of the classes in which they have together.
 - RR stated that CC was open to the pictures and that CC is making this claim because CC is jealous of RR.

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Making a Finding



- Sexual harassment?
 - What form?
 - What does the policy say?
 - Specific elements (unwelcome, consent, reasonable person)
- Specific behaviors
- Key issues - severe, persistent, objectionably offensive
- Weigh the evidence
- Apply the standard

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Determining Disciplinary Sanctions and Remedies



WHAT SANCTIONS SHOULD WE CONSIDER?



WHAT PROCESS IS USED TO DETERMINE SANCTIONS?



WHAT PROCESS DO WE USE TO DETERMINE REMEDIES?

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Determining Disciplinary Sanctions

A recipient may impose disciplinary sanctions upon a respondent after a grievance process that complies with § 106.45.

The Department does not prescribe whether disciplinary sanctions must be imposed, nor restrict recipient's discretion in that regard. As the Supreme Court noted, Federal courts should not second guess schools' disciplinary decision, and the Department likewise believes that disciplinary decisions are best left to the sound discretion of recipients

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Traditional

- Expulsion, separation, probation

Prevention

- Protective measures, restrictions, separation

Educational

- Assessment

Determining Disciplinary Sanctions

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Formal Resolution – Disciplinary Sanctions

Aggravating factors

Mitigating factors

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Past decisions Positions of power Special circumstances Minors

Remorse Demeanor Your gut?

Determining Disciplinary Sanction

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Determining Remedies

✓ ✉ 📍 ⚠

MAKE PERMANENT SUPPORTIVE MEASURES ONE-SIDED NO CONTACT ORDERS RESTRICTIONS FROM LOCATIONS RESTRICTIONS FROM ACTIVITIES

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Allegations

Procedural steps

Findings of fact

Conclusion/application

Rationale

Appeal procedures

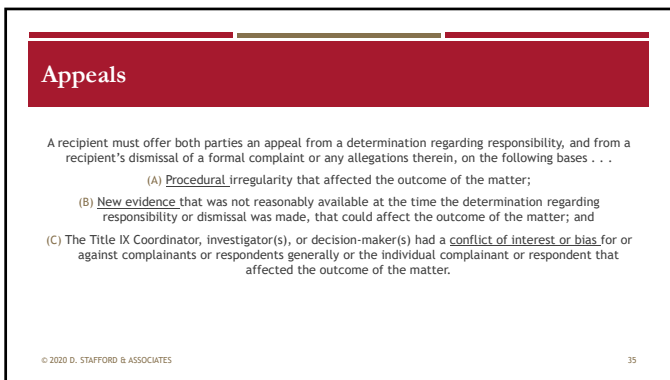
Written Outcome

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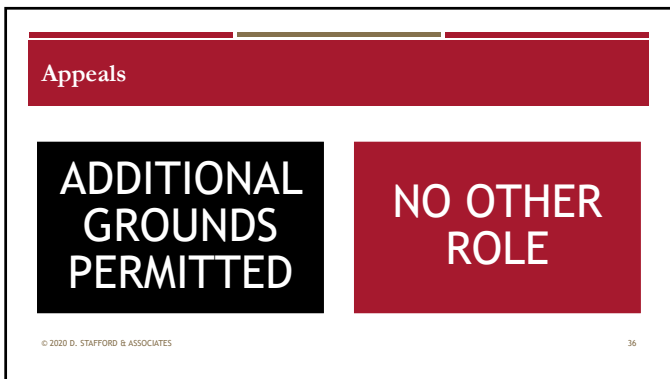
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36

Appeals

NOTIFICATION OF APPEAL

NO CONFLICTS


EQUAL OPPORTUNITY TO RESPOND

WRITTEN OUTCOME - RATIONALE

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Appeals




- How do the parties appeal and to whom?
- Appellate board or one person?
- New hearing?
- Do you share the appeal statement with the other party? How?
- Do you allow a chance to respond to the statement?

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Let's Practice




- RR is found responsible. In their appeal information, they provide a text message from CC which states "Thanks for the pic..."
- Does this qualify for an appeal?
- What questions do you need to ask?
- Why?

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