



The 5 Stages of Preparing Your Title IX Investigative Report | October 5, 2020

Training Evaluation:

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Faculty: Jean Hobler, J.D. – jmh@hobleresq.com

Academic Impressions Staff: Rabia Khan Harvey – rabia@academicimpressions.com

Zoom Chat Transcript:

Rabia Khan Harvey: The Value of Relevance During Cross-Examination virtual training is available On-Demand, facilitated by Jill Thomas, for purchase on our website or free to members.

Rabia Khan Harvey: Don't forget to submit any questions for Jean in the Chat.

Hannah Belleau: 2- I would have like to see screen shots of the text messages since they are referenced. The report also seems one-sided and like we don't have much information directly from Eliza.

Rabia Khan Harvey: You should be looking at this report then responding to any of these questions in the chat

Jean M. Hobler: Who will be the first to tell me what's wrong with this report?

Jamie Brennan: 3 - report fairly easy to follow. Slightly complex sentence structure. Could be simplified for cleaner. However, chronologically flows nice.

Katharine McKinney: 2. Witness interviews, interviews/reports with police who responded, appendices including screenshots of texts and other physical evidence...

Brian Houze (he/him): 2. The actual policy language should be included, along with an analysis of the facts as they pertain to the elements of the policy.

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Lori Larsen: The investigator is making a determination which should be left up to by the hearing panel.

Jenny Lenehan: 2. to indicate they were from the same area in Virginia did not seem relevant

Jamie Brennan: 6 - no analysis.

Earlye Julien: Some headings would be helpful

Jamie Brennan: LOL

Katharine McKinney: 2. There aren't really dates - there should be specific dates/times of different interactions for better chronology

Rabia Khan Harvey: Great responses everyone!!

Earlye Julien: like in the morning

Leslie: No other witnesses have been talked with

Tim Love (he/him): No citations to exhibits/specific evidence

Jamie Brennan: Loves headings too!

Marcie Batschelett: A well-written appendix including the note written, the text messages, and interview summaries would be helpful

Earlye Julien: Yes, I love headings!!

Nona Johnson: The evidence is typically what boost the number of pages.

Rabia Khan Harvey: 68% put summaries in the report and 30% in a separate memo. Only 3% don't write summaries.

Tim Love (he/him): for us, in the report = in an appendix to the report. Moving to transcriptions though, so... which will also be in appendix

Jean M. Hobler: Nice Tim. Like that approach

S. Thompson: did Eliza stalk Jane?

Mary Collins: Whether Respondent violated that University's stalking policy.

Nona Johnson: I like this format

Marcie Batschelett: Great information!

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Rabia Khan Harvey: 62% not less credible; 30% less credible than direct evidence - thanks for participating in the poll!

Tim Love (he/him): Thanks for all of this great content, Jean! A question (and we might be getting to this later...): Do we ever cross the threshold into "Party A said X and Y..." (and X/Y are not true), and therefore we deem Party A as "not credible" with respect to Z (or just generally)? Or do we always hedge and just say "less credible... diminished credibility..." etc.? Additionally, how to present this in the report?

Tim Love (he/him): Sounds good, thank you. Whether the determination is made by hearing or by investigator, I'm still interested in whether credibility should ALWAYS be contextual (i.e. credible/not credible with respect to fact A based on yada yada), versus credible/not credible generally (as applied to facts A, B, C... etc.). Thanks again!

Rabia Khan Harvey: **Rooms 1, 4, & 7 = Scenario 1**

Possible sexual assault and consent; all facts are relevant as presented in the case; lots of interesting credibility questions – do they even know each other? Sorority affiliation, alcohol consumption and impact on memory; who provides the letter from Bart (spring break trip and making statements about being very drunk – not most respectful of women letter and signed “FFF” and it is very offensive “Find them, F Them and Forget them”); interview with Bart – is he answering the questions? Who else was at the party? Witnesses? When was the actual party – Bart wasn’t back from Ireland – Bart’s credibility wasn’t strong. “Prolific pukers” vs. “drink but don’t get drunk” conflicting info. Was he even there? Would have liked to interview Kathy – would there be jurisdiction (this was an off-campus event) under new regs? Issues with his credibility but need more time with Bart.

Scenario is based off of Brett Kavanaugh situation – actual letter that he wrote in Spring Break

Leslie: We believed it was based on the Kavanaugh case!

Rabia Khan Harvey: You were right! @Leslie

Rabia Khan Harvey: **Rooms 2, 5, & 8 = Scenario 2**

Sexual harassment at minimum – perhaps another policy violation based on student code of conduct. Need more information regarding timeline – what are the other “unspeakable things?” that she told others and not relevant that it took her two months to report it. When did he start “avoiding her?” Would also want to interview the roommate(s) who heard her crying. We’d want to try to obtain medical documents (need her consent) and date of exam. Contradictory information from Jane so would need to flush that out – (i.e., area of penetration, bleeding, etc.). Time stamp of texts and day after initial incident would be helpful. Assumed that it happened within our jurisdiction. – Non-

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consensual sexual penetration and contact – additional policy violations. The only named witnesses were those who could hear things. Possibility that their demeanor in the interviews would not be relevant for the actual report – Jean challenged this point – 9th circuit ruling that their demeanor could affect their credibility determination. Need to establish a timeline – need text messages.

What about a cross-complaint in this scenario? Some kind of defamation or in regard to that (per Jean). It weighs on credibility – those who are attacked are attacked back (very often). Think about it very carefully – timing issues. Consider retaliation.

Rabia Khan Harvey: Rooms 3, 6, & 9 = Scenario 3

Sexual harassment policy – we have a video but need to establish a timeline. She was possibly incapacitated and remained unconscious after the assault (could be due to the assault and/or alcohol) – we have one witness, Lisa. She saw that Emily was unconscious therefore she couldn't give consent. Tony was identified by Lisa because she knows him. We have a timeline and we know how much was consumed by the party. Tony decides that he wanted to have sex but Emily did not consent – interesting fact. He thought she was “into it” but what does that mean? Would be interested in the police report and responding officer and look at the video and additional witnesses present at the time of Tony's arrival – and Tony and Emily's departure. What did Matt see? Emily's friends said “she was very out of it” what does that exactly mean – what was her behavior and/or demeanors? Important to unpack that language. What camera footage do we have to establish a timeline? Do a walk by of the incident to see if there are any camera footage available. Do private businesses have an security footage but rape in public is not as common? You can ask but they may say no and record it in your report.

Rabia Khan Harvey: Thanks everyone for reporting out - I added the notes for your convenience since you'll get a copy of the transcript.

Nona Johnson: Without policy language we also toyed with incapacitation...if you are incapacitated you cannot give consent.

Rabia Khan Harvey: Great point @Nona!

Jamie Brennan: immediately.

Brian Houze (he/him): Step 2

Raquel Sosa: at the end

Barbara Hetzel: Up front before any of this

K.Moothart - IA Wesleyan University: immediately

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Leslie: Usually at the end

barbara sanders: 1

Carlin Conway: Step 1

Kathryn Ponce: at the very beginning

Katharine McKinney: Start immediately, continually edit/add. Continually revise and tweak.

Claire L: near the end

Priscilla Rose: After gathering information

Mayra Mendez: while gathering the information

Chris Bowser: We like to build a template that has categories for all required data and begin plugging in right away.

Nona Johnson: What do you think about an investigation plan Jean

Jamie Brennan: That was my Q! (should investigators actively seek out credibility of the parties from witnesses especially if one witness shared credibility of either party?)

Priscilla Rose: The third person only is more concise and to the point

Nona Johnson: I look at it as if we are telling a story with the third person...

Katharine McKinney: Is it appropriate to say something like - "Ruth was asked to provide that text and said she would do so that day. However, this text has never been received, despite the Investigator sending a follow-up request several days later."

Nona Johnson: What about the investigator requested...

Nona Johnson: Makes sense

Camille Cartwright: 2

Jamie Brennan: 1

Camille Cartwright: Sentences can be combined

Jamie Brennan: @Camille — yes, please!

Camille Cartwright: I also hate reports that overuse "that"

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Jamie Brennan: @Camille is my spirit investigator!

Camille Cartwright: administrator

Camille Cartwright: Reporting party always needs to be clarified

Camille Cartwright: @ Jamie lol!

Rabia Khan Harvey: Attached here in case the font is too small on your physical slides.

Rabia Khan Harvey: Thanks for all of this great content, Jean! A question (and we might be getting to this later...): Do we ever cross the threshold into "Party A said X and Y..." (and X/Y are not true), and therefore we deem Party A as "not credible" with respect to Z (or just generally)? Or do we always hedge and just say "less credible... diminished credibility..." etc.? Additionally, how to present this in the report? Sounds good, thank you. Whether the determination is made by hearing or by investigator, I'm still interested in whether credibility should ALWAYS be contextual (i.e. credible/not credible with respect to fact A based on yada yada), versus credible/not credible generally (as applied to facts A, B, C... etc.). Thanks again! (Tim's question from earlier)

Tim Love (he/him): I can work with "it depends" - no worries! Thanks for your response; still very helpful.

Jamie Brennan: It IS weird how that happens only on paper too!

Rabia Khan Harvey: This is really neat to see Jean! Thank you to the person who submitted this paragraph!

Leslie: I like that

Nona Johnson: You can also protect the pdf so no one can edit the report you send.

Nona Johnson: That is how we do it Rabia

Nona Johnson: The lead is the author and the co-lead reviews the report at our institution.

Rabia Khan Harvey: I'm so glad this resonates @Nona!

Rabia Khan Harvey: I have some closing remarks but in case you want to start working on the evaluation, we really value your feedback:

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Rabia Khan Harvey: EVALUATION LINK:

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Jamie Brennan: TYVM for the line number suggestion! I found them in Word. Will be sooo helpful for parties' comments!

Priscilla Rose: I still feel confused about the first part of the report

Rabia Khan Harvey: @Priscilla, I'll get to your question too.

Maria Doucettperry: Any chance that we can get an example of what this looks like? Maybe a little bonus content sent in an email? Please?

Maria Doucettperry: THANKS!!!

Rabia Khan Harvey: THANK YOU ALL SO MUCH FOR YOUR ACTIVE PARTICIPATION TODAY!!

Maria Doucettperry: Understood

Camille Cartwright: Thank you so much Jean and Rabia!

Alba.Gonzalez: Thank you. Great information.

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