VICTIM RIGHTS LAW CENTER

FUNDAMENTALS OF QUESTIONING IN A CAMPUS SEXUAL ASSAULT INVESTIGATION

FACILITATOR GUIDE

This Guide is intended to provide the facilitator with guidelines and suggestions in preparation for facilitating the Fundamentals of Questioning Training. This Guide and the accompanying video are resources provided to recipients of the U.S. Department of Justice, Office on Violence Against Women (OVW).

BACKGROUND AND CONTEXT

TRAINING OBJECTIVES

The objective of this session is to develop and enhance participants' questioning techniques through an interactive and collaborative video module. Individuals will have the opportunity to practice questioning skills and participate in critical dialogue regarding the use of questioning in the resolution process. In some cases, questioning will be conducted in an investigation into potential violations of your Title IX policy. In other cases, questioning will be conducted for cases that fall outside of the purview of Title IX, but are potential violations of another policy. Where applicable and relevant, the Title IX regulations are noted. While the video depicts an investigator interviewing the reporting and responding parties, the discussion points and activities are applicable for all officials involved in a resolution process, including hearing panelists and decision-makers.

Please note that this Guide and accompanying video contain detailed descriptions of sexual assault. The facilitator should provide a content warning at the outset of the training and encourage participants to take care of themselves however they see fit.

TRAINING ATTENDEES

Individuals attending should be campus officials directly involved with any domestic violence, dating violence, sexual assault, or stalking complaint including full or part-time investigators, student conduct administrators, hearing panel members or boards or any others involved in questioning parties or witnesses (i.e. appeal decision-makers).

TRAINING LENGTH

The video is approximately 45 minutes long. The activities and discussions in this Guide have corresponding estimated times, but can be extended or shortened as needed. It is important that the facilitator familiarizes themselves with the activity options so that they can decide how to structure the training within the timeframe allotted. There are optional materials noted for an extended training. See "Training Guide Glossary" below to learn more about how to use this Guide and prepare for an effective training.

FACILITATOR ROLE

The role of the facilitator is to be the guide for the participants. You should make sure participants understand what the activities are and how to effectively participate. You should be a manager of the time and conversation to allow for application of the skills in an accessible and inclusive space.

As you facilitate the program, try to elicit comments and participation from individuals who have not been heard. As the facilitator, you will need to be aware of when to give feedback and when to solicit feedback.

This Guide gives opportunity for critical dialogue regarding some of the most difficult aspects of the resolution process. When asked direct questions, look for opportunities to pose the question back to the group – "What are other people's thoughts about that?" This is also possible when someone proposes a questionable response during the activity portion of the Guide. Remind participants that this is a space for learning and that there will be appropriate times to ask questions as they come up.

Within each section is a list of materials needed, a suggested timeframe, goals for the session, how participants should be divided up for each activity, suggested talking points, and facilitation tips. This Guide works best when you are familiar with its content and take ownership over the content.

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PREPARING FOR THE TRAINING

MATERIALS REQUIRED

- Reporting Party Statement
- Responding Party Statement
- Questioning Video
- Copies of your university's applicable policy/Student Code of Conduct/etc.
- Paper or notebook
- Writing utensils
- Flipchart/whiteboard
- Post-it notes
- Markers/dry erase markers

PREPARATION CHECKLIST FOR THE FACILITATOR

- Read all materials
- Watch the accompanying video

Circulate the complaint and response statements in advance of the training and request that all participants review them before the training.

- Create a training space that allows all participants to see a screen showing the training video as well as encourages dialogue among the group. If conducting the training virtually, ensure that participants have access to the video as well as your screen, when necessary, via screen share.

TRAINING GUIDE GLOSSARY

Boxed-in text indicates suggested script language for the facilitator. This is information that should be communicated verbatim to the participants to help them understand how to best participate in the activity.

Text not boxed-in indicates ideas and instructions that the facilitator can put in their own words or directions about what to do with the video or during a certain activity. Directly under each activity name there are instructions on dividing up the participants for that activity. Please note that many of the activities require working in pairs, so it may be helpful to assign pairs at the beginning of the training for participants to work with throughout. For trainings conducted virtually, working in pairs will require the use of breakout rooms or another equivalent way of creating space for the participants to work in smaller groups.

"ACTIVITY SETUP" provides instructions on specific materials or tools that need to be set up or distributed prior to beginning the activity. Some activities will require writing down/typing up categories and questions in advance.

Text marked with an asterisk* signals optional activities to add time to the training. Currently, the training is approximately two hours long, but will vary depending on the facilitator, the number of participants, and the level of engagement. There are additional opportunities to increase the overall training length to a full day training of the facilitator chooses.

SECTION 1: INTRODUCTION

pre-video

SECTION GOALS:

1. Welcome participants
2. Explain what the participants can expect during the training, including that the content contains detailed descriptions of sexual assault
3. Overview of the video and overall expectations
4. *Optional: Gauge participant needs in terms of areas of improvement

WELCOME PARTICIPANTS

Thank everyone for their service, especially those volunteering.

Walk through the outline for the day, five major areas:

- Introduction to the Training
- Starting an Interview
- Conducting an Initial Interview
- The Three Guiding Questions
- Identifying Follow-up

Explain the video, what it will cover:

- How to Approach Interviewing & Interviewing Techniques
- Reporting Party Interview
- Responding Party Interview
- Follow-up Reporting Party Interview

ACTIVITY: OVERALL EXPECTATIONS (10 MINUTES)

FULL GROUP ACTIVITY

*OPTIONAL MATERIAL INCLUDED

ACTIVITY SETUP:

Flipchart paper/whiteboard/chalkboard with the questions will be required for this activity. Give each participant several post-it notes for the first few activities, then ensure they can access additional post-it notes if need be. If conducting the training virtually, consider sharing your screen, utilizing the chat function, or using a shared working document. Tape up four pieces of flipchart paper in different areas of the room OR have participants write on a large whiteboard/chalkboard. If conducting the training virtually, have the participants utilize a platform for sharing their responses to the prompts. The following prompts should be written on the flipchart paper/whiteboard/virtual platform or screenshare:

- Which of the topics are you most eager to learn about?
- What specific aspect of sexual misconduct investigation or adjudication do you hope we cover – like, how to ask a good question, how to determine credibility, etc.?
- What are you most concerned about when thinking about this process?
- What skill do you think will come easiest?

FACILITATOR:

Now that you know today's goals and what we'll be discussing, let's start by talking about what you'd like to make sure you take away from today's training. You will see there are four questions on display. Let's go over them together.

- Which of the topics you are most eager to learn about?
- What specific aspect of sexual misconduct investigation or adjudication do you hope we cover – like, how to ask a good question, how to determine credibility, etc.?
- What are you most concerned about when thinking about this process?
- What skill do you think will come easiest?

Take a minute to write down your answers.

When you are done, share your responses by placing them in the corresponding category.

- After everyone has finished, go to each paper and read the Post-its (or whatever method you are having participants respond through). See if there is any overlap and remark on that. Note that even if one person wrote it down, it's likely that someone else is thinking it.
- If something is brought up that the training is not outlined to cover, make a note that you and the author can meet to talk more about this issue or concern.
- *To extend time or if you have extra time, ask for volunteers to expand on what they wrote or to comment on someone else's thought.

FACILITATOR:

We are now going to watch a video that will simulate questioning both reporting and responding parties. At certain points we will pause the video for discussions and activities. As we start the video, feel free to take notes if something jumps out to you. This includes questions that you would like to ask if you were in the interviewer's place. Also note that there will be points in the video where we will stop for activities and discussion.

START VIDEO

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SECTION 2: PREPARING FOR THE INTERVIEW

Pause the video at timestamp 9:07

SECTION GOALS:

1. Identify initial questioning issues
2. Discuss note-taking and recording devices

INITIAL REFLECTIONS (5 MINUTES)

FULL GROUP

FACILITATOR:

Before we begin the interview itself, let's consider ways to prepare for an interview. Why is the physical space where questioning takes place so important?

- It can disarm the participant and allow them to open up about their perspective. If you can modify your space, do so. If you cannot, be mindful of it. How do you feel about your current spaces? Discuss how you could modify your space/be mindful of your space's limitations.
- Discuss the ways the space speaks to identity, both your own and those parties who you may be speaking to. If interviews are done in an employee's office, consider the artwork and personal pictures in the room. What messages are you presenting both implicitly and explicitly? How might these be perceived by others?
- Encourage interviewers/board members to look at the questioning space from the point-of-view of those participating. Literally sit where they will be sitting and determine if the view from that perspective is conducive to a welcoming interview experience. If you feel nervous or uncomfortable, imagine how the participants feel in that moment.
- Encourage participants to share what is and is not working in their current interview/hearing/meeting spaces. If needed, you may share suggestions about how to cultivate a more comfortable interview space, such as providing water and tissues to the interviewee, sitting at a table versus a desk, allowing interviewees to choose their seating in the space, offering to turn on a sound machine.

FACILITATOR:

Was there anything else shared in the video about preparation for an interview that seemed notable to you?

- Be open to questions if asked.

NOTE-TAKING AND RECORDING DEVICES

Facilitator note: The following topic on note-taking and recording devices may not be necessary if the participants do not have discretion around what method they use. That is, if the institution requires a certain method, you should feel free to note that and skip this section.

FACILITATOR:

We are now going to discuss note-taking and recording interviews and hearings. When setting up your space, you also want to consider how you will be recording the information that participants share with you. There are several ways to maintain a record of the interview or hearing.

ACTIVITY: HOW TO RECORD (5 MINUTES)

FULL GROUP

Ask participants what different methods of note-taking and recording information are common:

- Handwriting notes
- Typing notes
- Typing a transcription of the participant's information
- Professional court reporter or designated note-taker/recorder
- An audio recording
- An audio recording plus note-taking, either by hand or computer

What are the benefits and drawbacks of each method?

- What will you use for investigation leading to a report? Investigators can use any method of note-taking but in cases that fall under Title IX investigators will need to retain their notes for seven years per the 2020 Department of Education regulations. Are you making a direct transcription of the conversation or are you summarizing the information?
- Any hearing must have an audio or audiovisual recording that can be provided to parties in the event they wish to appeal. This is a requirement in Title IX and a promising practice in all domestic violence, dating violence, sexual assault, and stalking cases.

FACILITATOR:

We are now going to move into the beginning of the interview and preparing for introductions. Please take notes throughout the video to use during the group discussions.

DO NOT RESTART THE VIDEO

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SECTION 3: STARTING THE INTERVIEW

SECTION GOALS:

1. Create interview introductions
2. Use your policy as a guide to gather information

INTERVIEW INTRODUCTION

FACILITATOR:

We are now going to spend some time creating a script that we will use to introduce ourselves to parties and witnesses during an interview or hearing. This introduction must provide information to the party or witness, make them feel comfortable, and build a rapport for the questioning to come.

ACTIVITY: BUILDING RAPPORT (10-15 MINUTES)

FULL GROUP AND PAIRS

In this activity participants will create a script for how they will introduce themselves and give an overview of their process to all those who participate (reporting parties, responding parties, witnesses). Emphasize the importance of consistency in this information between the parties.

Begin with the full group identifying what elements they will need in an introduction that all questioners can use with participants. Keep a list of the answers on a whiteboard/virtual platform so participants can refer to them as they proceed to the next part of the exercise.

An example list could be:

- A greeting and offer of water, coffee, etc.
- Thank you for participating.
- Asking the participant their pronouns and sharing your own.
- A reminder of their rights (the right to have an advisor, right to review their statement, etc. Explain what these rights mean).
- Amnesty information:
    - Reminder: The school's amnesty policy was first raised by the interviewer.
    - Explain and emphasize the amnesty policy for participants.
    - Ask the training participants why an amnesty policy is so important? (Answer: Because it encourages reporting and information sharing).
- Explanation of how the questioning will proceed and why you are asking certain questions of the participant.
- Encouragement to ask for clarification or rephrasing if a question is confusing.
- "I don't know" and "I don't remember" are acceptable answers.

- Asking for breaks is ok.
- What happens after this interview? What outreach will the participant receive next about reviewing a statement and follow-up questioning? What happens with the information that is shared and who will it be shared with after the interview?
- Reminder that the policy requires all participants to be truthful.
- Asking if the participant has any questions about the information or process before beginning.

Give participants five to ten minutes to independently draft an opening statement.

Break participants up into their pairs to practice an introduction.

- Have participants share their lists and compile one list for the group. Consider the order of statements and any necessary statements that could be institution-specific or culturally relevant.

Return to the large group and have a few volunteers share their introductions. Open to group feedback and amendments to settle on an introduction for the institution.

RESTART THE VIDEO

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SECTION 4: PREPARING FOR THE REPORTING PARTY'S INTERVIEW VIDEO

Pause the video at timestamp 14:00

SECTION GOALS:

1. Develop guiding questions for interviews
2. Reflect on initial narrative
3. Prepare interview questions
4. Create an investigation outline

GUIDING QUESTIONS FOR INTERVIEWS

FACILITATOR:

Now that we have had an opportunity to hear how the Reporting Party responded to the initial prompt, we are going to look at what follow-up questions we need to ask. We will use our four guiding questions as a basis for our work today:

1. What needs to be known in order to determine whether there was a policy violation?
2. Why does it need to be known?
3. When is the best time to ask the question?
4. What is the best way to ask or word the question?

Facilitator note: Ensure that these questions are visible to participants. If training in person, you can write these up on a tablet or chalkboard. If training virtually, have them typed up and available in the chat or via screen share.

ACTIVITY: UNIVERSITY POLICY REVIEW (5-10 MINUTES)

FULL GROUP

ACTIVITY SETUP:

For this activity participants will need to have a copy of their Policy or Code of Conduct.

FACILITATOR:

It is important at all times to have a copy of your Policy or Code of Conduct with you to be able to refer back to it as needed. For any form of misconduct, we let our Policy or Code of Conduct guide our work. At the end, you need to make a determination about whether you have sufficient information to find that the Responding Party's behavior violated the policy.

Today's case will involve our definitions of sexual assault and consent, so let's find those.

- Pull out the policy and find the relevant parts for today's case; have the participants highlight or circle to better find it.
- Read it out loud.
- Identify the different elements of the sexual assault and consent definitions and note the elements of each. For example, if the policy specifies that sexual assault is "nonconsensual contact with a person's intimate body area(s)," the process needs to seek information to address the following elements:
    - Whether there was contact.

- What qualifies as an intimate body area.
- If there was contact, if that contact was with an intimate body area.
- Whether that contact with an intimate body area was consensual.

- To address the last element, consult the institution's definition of consent and note its elements, including what behaviors render consent ineffective.

FACILITATOR:

When investigating and adjudicating, you have to ask two questions:

- Do we have enough information to make a determination applying the standard of evidence?
  - If not, what other information do we need to make a determination?
- And if we do, does it violate our policy?

All of your questions should be relevant to determining whether there is sufficient information, based on the standard of evidence, that a policy violation occurred. The next activity is going to delve more deeply into these questions applied to the video scenario.

Facilitator note: When discussing the standard of evidence above, be certain to note that it depends on the institution.

PREPARING INTERVIEW QUESTIONS

Below is a recap of some information from the video about asking questions to keep in mind as you lead the following activity:

- There are two types of questions: open-ended and closed.
- "What" questions typically generate details, specifics, or work to clarify information.
- "How" questions generally elicit emotion and can also clarify a sequence of events.
- Typically stay away from "why" questions.
- Some of the most effective prompts start with "Help me understand," "Tell me about," and "Tell me more about."
- Ask one question at a time.
- Avoid putting possible answers to your question in the question.
- Be clear and concise with your questions.
- Be aware of naming emotions for participants.

QUESTIONING ACTIVITY: (30 MINUTES)

INDIVIDUALLY, THEN IN PAIRS, THEN FULL GROUP [VIRTUAL: SEND PARTICIPANTS INTO BREAK-OUT ROOMS FOR INDIVIDUAL AND PAIR WORK, BRING BACK FOR REPORTING]

ACTIVITY SETUP:

Participants will need to have access to the complaint and response.

Distribute the complaint and response.

FACILITATOR:

For the next several minutes, I want you to work individually to review the complaint and response and brainstorm answers to the first guiding question: What do we need to know from Jane?

- Give participants the allotted time to work individually. Once time is up, break participants up into groups of two or have participants find a partner to work with.

FACILITATOR:

Please turn to your partner and spend five minutes making a list and then we will share with the group.

- At this point, you can walk around the room and see if anyone needs assistance or has questions.
- After the time is up, regather the group.

FACILITATOR:

OK, let's share. What is something that we need to know?

- Lead a discussion on what information participants want to gather.
- Chart the information in a place where everyone can see. This information will be used in the next section of the facilitation.
- As participants say what they would need to know, ask them why they feel they need to know that information.
- As part of the facilitation, there will be the opportunity to guide discussion about what information participants want and why.
- There may be the need to appropriately challenge thoughts from participants.

- Note: Encourage participants to mark questions that they may have for other witnesses. That will come up later, so just take note of those questions for now and save until we move to witness questions.

Facilitator note: If the participants are struggling to come up with questions, the following questions can help stir conversation and ideas:

- *How much alcohol did you consume at the pregame? At the party?*
- *What clothing came off upon getting to the room? Who took what off?*
- *More details about what happened when she was penetrated the first time with his fingers. What was said, what were the positions of your bodies, what was his reaction to "hold on?"*
- *How did you turn away? Can you describe that motion?*
- *During the anal intercourse, could John see your face? Did you turn towards him at any point? Did you say anything during?*

FACILITATOR:

Now we are going to think about the best way to ask questions to get this information. As we do this, we want to know from the video which prompts solicited information more readily and use this to inform how we craft questions. It's not as important to be "right" at this point, as it is to practice. We will do this as a team and work to craft the most effective questions possible.

- During this section, you will take your cue from the information charted during the previous discussion. Take one item at a time from the list generated and work to create a question for the Reporting Party. Possible ways to do this include:
    - "How would we ask a question to gather this information?"
    - "What is the best way to phrase a question to get this information?"
    - "What prompt would best help the Reporting Party to give us this information?"
- Participants may be hesitant to pitch questions to the group. Make sure to emphasize that they are in a place where it is acceptable to make mistakes. Reassure participants they are not being judged and they should feel free to challenge one another and/or assist one another.
- There may be the need to appropriately challenge proposed questions from participants. As this is a learning opportunity try not to shut anyone down.

Once you have gathered sufficient questions, break participants into pairs or breakout rooms.

FACILITATOR:

Please get back into your assigned pairs. With your partner you will create an outline of what you want to be sure that you cover with the Reporting Party based on this initial information. Keep in mind you want to start an interview by allowing the Reporting Party to recount their story, and not with the planned questions.

- Participants should take away the knowledge that this outline serves two purposes. One, to ensure that the questions are needed to answer the elements of the policy and missing information from the complaint; and two, leave flexibility to respond to new information gained during the interview.
- Ask participants to make notes on their outline during the next segment of the video when they feel like the interviewer has gathered information on that area.

RESTART THE VIDEO

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SECTION 5: THE REPORTING PARTY'S INTERVIEW, PART I

Pause the video at timestamp 25:06

SECTION GOALS:

1. Understand mindful interviewing of reporting parties
2. Understand and develop framing questions to avoid victim-blaming
3. How to ask questions about alcohol

REVIEW THE INVESTIGATION OUTLINE

ACTIVITY: INVESTIGATION OUTLINE (10 MINUTES)

PARTICIPANTS SHOULD WORK IN PAIRS [VIRTUAL: SEND PAIRS INTO BREAKOUT ROOMS]

FACILITATOR:

In your pairs, take 5 minutes to review your investigation outline. Did the interview gather information on everything you needed to know?

- Once you give participants enough time to review their outlines, regather the group.

FACILITATOR:

Let's get together as a large group and reflect. After this interview, what do we still need to know?

- Lead a discussion on what information participants feel they have and what they still want to gather.
    - Examples of some things to further unpack: What does "inside me" mean? How long was he penetrating her? What positions were they in?
- Chart the information in a place where everyone can see. This information will be used in the next section of the facilitation.
    - As participants say what they would need to know, ask them why they feel they need to know that information.
    - Be sure to address how the Reporting Party shared information about potential witnesses. Who are they and what do you want to know specifically from them?
    - Begin considering the external information that you want to gather based on the interview, including relevant text messages, pictures, and/or videos.

FACILITATOR:

In your pairs, take a few minutes to update your investigation outlines with what information you hope to gather as the investigation continues.

MINDFUL INTERVIEWING, STRUCTURING CLARIFYING QUESTIONS, COMFORT WITH LANGUAGE AND SILENCE (10-15 MINUTES)

FULL GROUP DISCUSSION

FACILITATOR:

Going back to our previous discussion on making participants in our process feel comfortable and building rapport, what moments during the interview stood out to you in how the interviewer treated the Reporting Party?

Facilitator note: Potential areas for discussion are:

- *Interviewer remarked that it must be difficult to discuss.*
- *Interviewer asked how the Reporting Party was doing.*
- *Interviewer explained why it was necessary to ask a difficult question regarding why the Reporting Party sat on the bed.*

STRUCTURING CLARIFYING QUESTIONS

FACILITATOR:

It is important for the interviewer to ask questions about alcohol since it speaks directly to questions about consent. What did you notice about how the interviewer approached this subject?

- Listen to participants' initial thoughts.
- Ask the group how the student described alcohol:
  - Asking for clarification for "feeling good," "buzzed," etc.
- Discuss how this raises a challenge for investigators to make sure they are getting as precise as information as possible: how did the interviewer achieve this?
  - By not bundling questions but asking one at a time.
  - By not adding answers into the questions (i.e. What did you drink alcohol out of? A pint glass? Red plastic cup?).
- Practice asking questions that get specific information about alcohol usage.

COMFORT WITH LANGUAGE AND SILENCE

FACILITATOR:

As interviewers, we have to remind ourselves that our students may use terms we don't recognize, and we may use terms they do not understand. The video talks about becoming comfortable with silence and asking if you can help them to provide an answer.

Additionally, be sure that when you "mimic" the terms the party or witness is using, watch your body language and facial reactions. If you react shocked or embarrassed by their language it can immediately change the rapport you worked to create. At the same time, if you do not understand a term, it's critical that you ask to clarify so you understand exactly what is being referred to. Do you recall an example of this from the video?

- This is referencing where the investigator used the words "digitally penetrated."
- This may also arise in situations where parties reference technological platforms that an investigator may not be familiar with and need to know more about its features to fully understand the information provided.

MINDFUL INTERVIEWING

FACILITATOR:

We are now going to spend some time discussing this specific statement by the investigator from the video: "I am asking this question because I am anticipating that it will be raised by the Responding Party when I speak with him. It is not intended to sound like I am suggesting you did anything wrong, but I am here to try to gather all of the information I can about this night. With that in mind, what made you decide to go to the bed in that moment?"

Why do you think the question was framed like this?

(Answer: without this framing, the question can suggest that the victim bears some of the blame for the violence that occurred. When asking a question that may have similar connotations, it is important to give context and explanation for why you are asking it to avoid victim blaming).

Facilitator note: The following questions may be used as follow-up to the prompt:

- *Why is this important?*
- *What other questions could you anticipate requiring a preface like this?*

Ask if participants had any other moments that they noticed that showed a mindfulness of the participant's experience being interviewed.

*Extended Training Opportunity: Let's talk about what we did.

The debrief gives an opportunity for people to talk about their experience with the activity. Below are some prompts that can guide the conversation. You should feel free to guide the conversation to where you think it needs to go based on what you observed during the activity.

- What was most challenging?
- What concerns do you have about preparing questions?
- How did you feel watching the investigator asking questions?

RESTART THE VIDEO

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SECTION 6: THE REPORTING PARTY'S INTERVIEW, PART II

Pause the video at timestamp 28:35

SECTION GOALS:

1. Review information
2. Develop follow-up questions
3. Begin movement mapping

INVESTIGATION OUTLINE

ACTIVITY: INVESTIGATION OUTLINE (5 MINUTES)

PARTICIPANTS SHOULD WORK IN PAIRS [VIRTUAL: SEND PAIRS INTO BREAKOUT ROOMS]

FACILITATOR:

Take 5 minutes with your partner to review your investigation outline. Did the interview gather information on everything you needed to know?

At this point, do you think you have all the information you could gather from the Reporting Party?

- What areas need to be unpacked further? How could those questions be asked?
- Note the follow-up needed for the substance use (how much was consumed, if it was similar/different to previous drinking – if there were previous times, were there any other prescribed or illegal medication/drugs, etc.).
- Why would it be necessary to do a follow-up interview with the Reporting Party?
    - Because you realize the need for additional questions upon review or information from the Responding Party that raises additional issues. Be sure to inform the Reporting Party that you likely will need to come back with additional questions so they are not surprised when you do.

ACTIVITY: MOVEMENT MAP (15 MINUTES)

PARTICIPANTS SHOULD WORK IN PAIRS

FACILITATOR:

> Based on the Reporting Party's interview, let's begin to pull together a "movement map," or the movement and chronology of actions, from the Reporting Party's perspective. Work with your groups to determine a detailed timeline of the movements. Doing this will help us assess more critically the elements of consent and sexual assault. Create a new page for this movement map. Draw a line down the middle of the page to create 2 columns, one for the Reporting Party's perspective and one for the Responding Party. We will return to this chart once we've seen the Responding Party's interview. For now, take 5 minutes to determine a chronology and then we will report out to create a group chronology.

Here is a general chronology from the video that you can use to help guide conversation. Feel free to replay the video to help remind participants of Jane's statement.

- *John began kissing Jane.*
- *Both Jane and John began taking clothes off, both shirts, then her skirt and the rest of his clothes.*
- *After John took off Jane's skirt, he put his hand down her underwear and digitally penetrated her.*
- *Jane moved to bed to stop the digital penetration.*
- *Continued kissing and John was "on top" and took off Jane's underwear. She told him to hold on, but then Jane felt John's penis inside her vagina.*
- *Jane began crying and she believes it made him stop for a moment.*
- *Jane stated she was not on birth control and then asked if he was wearing a condom. John stops vaginal intercourse to get a condom.*
- *Jane rolls over facing the wall.*
- *John anally penetrates Jane.*
- *John goes to bathroom.*

RESTART THE VIDEO

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SECTION 5: THE REPORTING PARTY'S INTERVIEW, PART III

Pause the video at timestamp 32:12

SECTION GOALS:

1. Develop follow-up questions and update movement map
2. Understand how to ask questions about previous sexual history
3. Prepare Responding Party investigation outline

INVESTIGATION OUTLINE

ACTIVITY: INVESTIGATION OUTLINE (5-10 MINUTES)

PARTICIPANTS SHOULD WORK IN PAIRS

FACILITATOR:

Take 5 minutes with your partner to review your investigation outline. Did the interview gather information on everything you needed to know?

At this point, do you think you have all the information you could gather from the Reporting Party?

Reconvene participants to let them "report" back on their conversation.

UPDATE MOVEMENT MAPPING (5 MINUTES)

FULL GROUP DISCUSSION

FACILITATOR:

The Reporting Party provided some additional details in this segment. Let's update our movement map to make sure we've captured all the details.

Facilitator note: The bolded information below signifies the new details added in this segment.

- *John began kissing Jane.*
- *Both Jane and John began taking clothes off, both shirts, then her skirt and the rest of his clothes.*
- *After John took off Jane's skirt, he put his hand down her underwear and digitally penetrated her.*
- *Jane moved to bed to stop the digital penetration.*
- *Continued kissing and John was "on top" and took off Jane's underwear. She told him to wait, which he did but then Jane felt John's penis inside her vagina.*
- *Jane began crying and she believes it made him stop for a moment.*

- *Jane stated she was not on birth control and then asked if he was wearing a condom. John stops vaginal intercourse to get a condom.*
- ***Jane rolls over facing the wall with her back to John.***
- ***John pulled her waist towards him similar to "spooning" and Jane moved her knees up to her chest. Feels John put his hand on his penis.***
- *John anally penetrates Jane.*
- *John goes to bathroom.* ***Jane notices she is bleeding and grabs clothes on floor and wipes herself. Jane curls up closely to the wall.***
- *John leaves bathroom and* ***comments to Jane that he thought she would "take more of the lead" and "too bad Rachel isn't here."***

MINDFUL INTERVIEWING AND PAST SEXUAL HISTORY QUESTIONS (5 MINUTES)

FULL GROUP DISCUSSION

FACILITATOR:

I want to reflect on a few things the interviewer did here: Do you recall the questions about her past sexual history with Rachel? Why do you think the interviewer asked those? Thinking about our concerns of victim-blaming, how did you feel that went?

Ask if participants had any other moments that they noticed that showed a mindfulness of the participant's experience being interviewed.

- Note the final questions the investigator asked to gather more information beyond her questions about behavior and the incident.
- Note how the interviewer told Jane about the next steps in the investigation process. Why is this important?

PREPARING FOR RESPONDING PARTY INTERVIEW

QUESTIONING ACTIVITY (30 MINUTES)

PARTICIPANTS SHOULD WORK IN PAIRS, THEN INDIVIDUALLY, AND THEN CALLED BACK TO GROUP

FACILITATOR:

For the next several minutes, I want you to work in pairs to review your investigation outline with the information and brainstorm answers to the first guiding question: What do we need to know from John?

Turn to your partner and spend five minutes making a list and then we will share with the group.

- At this point, you can walk around the room and see if anyone needs assistance or has questions.

FACILITATOR:

OK, let's share. What is something that we need to know?

- Lead a discussion on what information participants want to gather.
- Chart the information in a place where everyone can see. This information will be used in the next section of the facilitation.
- As participants say what they would need to know, ask them why they feel they need to know that information. Remind them to consult their policy definitions.
- As part of the facilitation, there will be the opportunity to guide discussion about what information participants want and why.
- There may be the need to appropriately challenge thoughts from participants.
- Note: Encourage participants to mark questions that they may have for other witnesses. That will come up later, so just take note of those questions for now and save until we move to witness questions.

FACILITATOR:

As we did when we were working with the Reporting Party, we are going to think about the best way to ask the questions to get this information. As we do this, we want to remember how the framing of questions in the video impacted the responses provided and how to effectively word questions. It's not as important to be "right" at this point as it is to practice. We will do this as a team and work to craft the most effective questions possible.

Before we begin, it is important to remember to have a copy of your Policy or Code of Conduct with you to be able to refer back to it as needed. For any form of misconduct, we let our Policy or Code of Conduct guide our work. At the end, you need to make a determination about whether you have sufficient information to find that the Responding Party's behavior violated the policy.

- During this section, you will take your cue from the information charted during the previous discussion. Take one item at a time from the list generated and work to create a question for the Responding Party. Possible ways to do this include:
  - "How would we ask a question to gather this information?"
  - "What is the best way to phrase a question to get this information?"
  - "What prompt would best help the Responding Party to give us this information?"
- Participants may be hesitant to pitch questions to the group. Make sure to emphasize that they are in a place where it is acceptable to make mistakes. Reassure participants they are not being judged and they should feel free to challenge one another and/or assist one another.
- There may be the need to appropriately challenge proposed questions from participants. As this is a learning opportunity try not to shut down anyone.

FACILITATOR:

Once you have gathered sufficient questions, break into pairs to create an outline of what you want to be sure that you cover with the Responding Party based on this initial information. Note that you want to start an interview by allowing the Responding Party to recount their story first in a narrative fashion, not with the planned questions.

- Participants should take away the knowledge that this outline is to ensure that they are asking questions that they need to address the elements of the policy. Questions should focus on the initial areas of information needed from the complaint and response. Questions should be flexible enough to respond to and to formulate follow-up questions based on new information gained during the interview.
- Ask participants to use a new page for the notes the participants will take on the Responding Party's information during the next segment of video when they feel like the interviewer has gathered information on each particular area.

RESTART THE VIDEO

SECTION 8: THE RESPONDING PARTY'S INTERVIEW, PART I

Pause the video at timestamp 34:48

SECTION GOALS:

1. Compare interview information from parties
2. Understand confirmation bias

INVESTIGATION OUTLINE

GATHERING ADDITIONAL INFORMATION ACTIVITY (30 MINUTES)

PARTICIPANTS SHOULD BE IN PAIRS

ACTIVITY SETUP:

For this activity and subsequent related activities, the facilitator will need to make a key with the relevant symbols for participants to see while participating.

FACILITATOR:

We're going to change it up a little this time. Instead of adding directly to the list of what we know, take a new piece of paper and put it beside the one with all of the Reporting Party's information, like you are creating a comparison chart. Take 5 minutes with your partner to build up your list of what you know (and why you would need to know that particular information). Then take an additional 10 minutes to compare what we learned from the Reporting Party and what we learned from the Responding Party. Do the following:

- If the two agree, put a plus sign by the information on both pages.
- If the two mostly agree but there's a slight difference (for instance, she says she had Budweiser, he says she had MGD), put a check mark by the information. If you think it is mostly similar but think the disagreement is significant, make it a check-minus.
- If they disagree in any substantial way, put a minus by the information.
- If one person shares information that the other does not, mark it with an asterisk.

After the time elapses, ask at least one pair to share on each topic (if you have more than four pairs, feel free to have multiple groups share. ***If you want to extend time, have multiple groups share for each item. If you have less than four pairs, this could be converted to a full-group discussion).**

Record what they share:

- The first pair shares what they put a plus sign by; open it up to any additions or comments from the group.
- The second pair shares what they put a check or check minus. Ask if there is any disagreement on what was characterized as checks here or if there is anything that participants would change to a plus or to a minus.
- The third pair shares what they put a minus beside; open discussion up to any additions, comments, or disagreements.
- The fourth pair shares what they put an asterisk by. Similar open discussion to conclude.

FACILITATOR:

Now we have a good sense of the information we do and don't have, and the areas of dispute are coming into focus. Before we turn these into questions, let's pause to consider what more we need to know from John.

- Lead a discussion on what information participants want to gather.
- Chart the information in a place where everyone can see. This information will be used in the next section of the facilitation.
- As participants say what they would need to know, ask them why they feel they need to know that information.
- As part of the facilitation, there will be an opportunity to guide discussion about what information participants want and why.
- There may be the need to appropriately challenge thoughts from participants.
- Note: Encourage participants to mark questions that they may have for other witnesses. That will come up later, so just take note of those questions for now and save until we move to witness questions.

FACILITATOR:

Time to turn these into questions: take five minutes on your own to brainstorm at least three questions to ask John for follow-up.

Ask participants to write their questions on a post-it note. When time is up, have participants put up the post-its on a designated space so that all questions are visible to participants. If conducting this training virtually, consider utilizing a google doc to share questions, or have participants post their questions in the chat section. Next, review the questions as a full group.

FACILITATOR:

Now let's go over what you are thinking.

- Group any similar questions together before you start discussion.
- You might need to ask a person to clarify a question, so be sure to stay encouraging to solicit the most participation.
- There may be the need to appropriately challenge proposed questions from participants. As this is a learning opportunity try not to shut down anyone.

MINDFUL INTERVIEWING (10 MINS)

FACILITATOR:

Ensuring a comfortable environment and building a rapport with the Responding Party is just as important as with the Reporting Party. What moments in the interview reflected the investigator's mindfulness of these things?

- Examples: Stated that they could take a break at any time, asked how he was doing.
- Note that when John admitted that this was a stressful process, the interviewer could have taken the opportunity to make sure he knew about supportive resources on campus available for him.

FACILITATOR:

Something to also be aware of during questioning is confirmation bias, which is the tendency to favor information that confirms existing beliefs or hypotheses. What does that term mean to you? How could that play out in an investigation?

- Lead discussion to have participants identify how to be mindful of not drawing conclusions based solely on the Reporting Party's information but instead to be open to wherever the information may lead.
- Discuss ways that investigators and decision-makers can stay aware of confirmation bias and strategies that can be used (for example, following the investigation outline to the point where you have gathered all of the information you need to know before making any conclusions; discussing and evaluating the information with trained colleagues).

RESTART THE VIDEO

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SECTION 9: THE RESPONDING PARTY'S INTERVIEW, PART II

Pause the video at timestamp 36:30

SECTION GOALS:

1. Compare interview information from parties
2. Consider consent

INVESTIGATION OUTLINE

COMPARING ADDITIONAL INFORMATION ACTIVITY (5 MINUTES)

PARTICIPANTS SHOULD WORK IN PAIRS

ACTIVITY SETUP:

Make sure you have the symbol key readily available for this activity.

FACILITATOR:

Let's work to update our comparison chart. What new information did we learn from the Responding Party? Take 5 minutes with your partner to compare what we learned from the Reporting Party and what we learned from the Responding Party. Use our existing key to identify information:

- If the two agree, put a plus sign by the information on both pages.
- If the two mostly agree but there's a slight difference, put a check mark by the information. If you think it is mostly similar but think the disagreement is significant, make it a check-minus.
- If they disagree in any substantial way, put a minus by the information.
- If one person shares information that the other does not, mark it with an asterisk.

CONSIDERING CONSENT ACTIVITY (20 MINUTES)

PARTICIPANTS SHOULD WORK IN PAIRS

Note to Facilitator:

It is recommended that the questions be written down prior to this activity or written simultaneously for the group to refer to throughout the activity.

FACILITATOR:

The investigator asked John several questions about statements he made about the Reporting Party being bisexual. Let's discuss the information learned from the Responding Party and how it impacts the investigation. Take 5 minutes with your partner to discuss the exchange and discuss the following:

- What statements were made by the Responding Party about his knowledge of the Reporting Party prior to the incident?
- Does the Reporting Party's sexuality provide additional relevant information that leads to consent?
- Does the information Thomas gave the Responding Party make a difference to how the Responding Party believed there was consent?
- Does sexuality impact the elements of the violation?

REPORT OUT (15 MIN):

Ask the pairs to report out on each question asked above and discuss the impact that sexuality may have on the investigation. Reassure participants that this discussion is a space to learn and gently correct where necessary to reflect the policy and misconceptions.

RESTART THE VIDEO

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SECTION 10: THE RESPONDING PARTY'S INTERVIEW, PART III

Pause the video at timestamp 42:56

SECTION GOALS:

1. Gather additional information
2. Update movement mapping

INVESTIGATION OUTLINE

COMPARING ADDITIONAL INFORMATION ACTIVITY (30 MINUTES)

PARTICIPANTS SHOULD BE IN PAIRS

FACILITATOR:

Let's update our comparison chart. Take 5 minutes with your partner to build up your list of what you know (and why you would need to know that particular information). Then take an additional 10 minutes to compare the information learned from the Reporting Party and what we learned from the Responding Party. Do the following:

- If the two agree, put a plus sign by the information on both pages.
- If the two mostly agree but there's a slight difference (like, she says she had Budweiser, he says she had MGD), put a check mark by the information. If you think it is mostly similar but think the disagreement is significant, make it a check-minus.
- If they disagree in any substantial way, put a minus by the information.
- If one person shares information that the other does not, mark it with an asterisk.

After the time elapses, ask at least one pair to share on each topic (if you have more than four pairs, feel free to have multiple groups share. ***If you want to extend time, have multiple groups share for each item.*** If you have less than four pairs, this could be converted to a full-group discussion). Record what they share.

UPDATE MOVEMENT MAPPING (5 MIN):

FACILITATOR:

The Responding Party provided some additional details that relate to his perspective on the movement in the room. Let's take 5 minutes to update our movement map from the Reporting Party to make sure we've captured the details and/or differences from the Responding Party's interview.

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Facilitator Note: The following is a general chronology from the Responding Party's perspective. Feel free to rewind this segment of the video to help participants capture all the details.

- *Flirting on the walk back to Jane's room, arms around each other.*
- *Jane walked in the room and left the door open behind her. John walked in.*
- *John said "maybe I should go?" and Jane said "No, you don't have to go."*
- *Kissing started.*
- *Jane had her hands on his chest and penis.*
- *John took off Jane's shirt, pants and bra.*
- *Jane took off his shirt.*
- *John took off his pants.*
- *John puts his hands in Jane's underwear and begins digital penetration.*
- *Jane moves to bed.*
- *Jane takes off her underwear and vaginal intercourse begins.*
- *Jane asks if John is wearing a condom and says that she is not on birth control.*
- *John gets up to find a condom.*
- *Jane rolls over to face the wall, her butt up.*
- *As John approaches she pulls her knees to her chest still facing the wall.*
- *John begins anal intercourse.*
- *John believes Jane is having fun due to noises.*
- *John believes Jane has an orgasm and then he does.*
- *John goes to bathroom.*
- *After the bathroom, John returns to bed and talks to Jane. Says they should see each other again.*
- *John leaves room.*

RESTART THE VIDEO

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SECTION 11: THE RESPONDING PARTY'S INTERVIEW, PART IV

Pause the video at timestamp 46:45

SECTION GOALS:

1. Consider consent activity
2. Determine uncontested vs contested information
3. Identify follow-up questions

INVESTIGATION OUTLINE

CONSIDERING CONSENT ACTIVITY (25 MINUTES)

PARTICIPANTS SHOULD BE IN PAIRS

FACILITATOR:

The investigator detailed each element of sexual contact between the Reporting Party and the Responding Party and asked how the Responding Party knew there was consent for each stage. Let's break down those answers and determine what additional questions we have.

Spend 10 min discussing with your partner the following 4 questions for each activity: Touching, Digital Penetration, Vaginal Intercourse and Anal Intercourse.

1. Based on our comparison chart, what information is consistent for each activity?
2. Based on our comparison chart, what information is contested for each activity?
3. What additional questions do we have for the Reporting Party?
4. What additional questions do we have for the Responding Party?

Touching

- Based on our movement map comparison chart, what information is consistent and/or contested about consent related to the touching?
    - John says Jane started the kissing and they were both touching each other.
    - Jane says kissing just started and did not discuss touching.

Digital Penetration

- Based on our comparison chart, what information is consistent and/or contested about consent related the fingering?
    - John stated that the fingering was a "natural next step" since Jane had touched his penis.
    - Jane was surprised that it had moved so quickly and moved to the bed to get away from John.

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Vaginal Intercourse

- Based on our comparison chart, what information is consistent and/or contested about consent related to the vaginal intercourse?
    - John said that moving to the bed showed agreement that they both wanted to move to vaginal sex, Jane said moving to the bed was her way to distance herself from John.
    - Both agree that Jane asked if he was wearing a condom and that she stated she was not on birth control.
    - John stated this implied he should get a condom.

Anal Intercourse

- Based on our comparison chart, what information is consistent and/or contested about consent related to the anal intercourse?
    - John said that while he left to get a condom from his pants, Jane rolled on her stomach and pushed her butt in the air and drew her knees to her chest. He stated that this movement suggested she wanted to move to anal sex.
    - Jane stated that rolling over and pulling her knees to her chest was her way of showing she did not wish to proceed.

REPORT OUT (15 MIN):

Ask the pairs to report out on each question asked above and discuss what is uncontested and what additional questions there are about whether consent was present. Take down additional questions to review after the Reporting Party's follow-up interview.

DETERMINING UNCONTESTED VS CONTESTED INFORMATION

UNCONTESTED VS CONTESTED ACTIVITY (30 MINUTES)

FULL GROUP ACTIVITY

FACILITATOR:

> Now we have a good sense of the information we do and don't have, and the areas of dispute are coming into focus. Let's identify areas that are uncontested first. Based on your comparison charts, what pieces of information are the same?

Record the answers and discuss any areas that participants do not agree are uncontested and why. See if the group can come to consensus on what is considered uncontested.

FACILITATOR:

> Based on what we believe to be uncontested, what additional questions could we ask the parties or witnesses to help us learn more about the contested areas and whether consent was present?

- More questions of the Responding Party, to unpack answers, to clarify, to get more detail?
- More questions of the Reporting Party, to respond to the information the Responding Party has shared?
- Questions for witnesses, to give their stories as well as respond to information shared by either or both parties?
- While the group discusses, mark on the paper with an REP or a RES to indicate if these are Reporting Party or Responding Party questions.
- Revisit the notes regarding witness questions and include them in the list, if warranted. Mark a W for witness questions. Do you have any additional witness questions to ask?

RESTART THE VIDEO

SECTION 12: REPORTING PARTY SECOND INTERVIEW

Pause the video at timestamp 50:06

SECTION GOALS:

1. Final information review
2. Identify further areas to investigate

GATHERING ADDITIONAL INFORMATION ACTIVITY (30 MINUTES)

PARTICIPANTS SHOULD WORK IN PAIRS

FACILITATOR:

Take 5 minutes with your partner to build up your list of what you know (and why you would need to know that particular information). Then take an additional 10 minutes to compare what we learned from the follow-up interview with the Reporting Party and complete your comparison chart. As a reminder:

- If the two agree, put a plus sign by the information on both pages.
- If the two mostly agree but there's a slight difference (like, she says she had Budweiser, he says she had MGD), put a check mark by the information. If you think it is mostly similar but think the disagreement is significant, make it a check-minus.
- If they disagree in any substantial way, put a minus by the information.
- If one person shares information that the other does not, mark it with an asterisk.

Finally, before we end, let's go back to our guiding questions:

1. What do we know?
2. What needs to be known?
3. Why does it need to be known?

At this point, do you feel like you have enough information to answer:

1. What do we know about what occurred that night?
2. What needs to be known in order to make a decision about what occurred, based on our institution's standard of evidence (i.e. preponderance of the evidence or clear and convincing and policy definitions)?
3. Why is this information needed to make a decision?

Why or why not?

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Information gathering doesn't stop with just the Responding Party and Reporting Party. Let's start to think about what other information we want to gather next—through interviews, through documents, through electronic messages, etc.

- Encourage participants to revisit the notes they have taken on what they would like to know from witnesses and share with the group.
- List what witnesses you would want to speak to next: Thomas, Rachel, Sara.
- List what documents you might be able to obtain: Any phone records, messages, social media? How could you ask the parties for that at the end of an interview to encourage them to find this information?

FACILITATOR:

To wrap up, let's talk about what we did.

- The debrief gives an opportunity for people to talk about their experience with the activity. Below are some prompts that can guide the conversation. You should feel free to guide the conversation to where you think it needs to go based on what you observed during the activity.
    - How do you feel moving forward as a questioner/interviewer?
    - Are there skill areas where you feel most confident? Where you think you need growth?

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