



# TITLE IX INVESTIGATORS TRAINING

September 13, 2023

**DAN SCHORR, LLC**

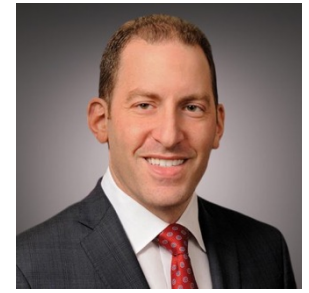
# OUR SERVICES

- Title IX, Civil Rights, and Misconduct Investigations
- Decision Makers and Hearing Officers
- Hearing and Process Advisors
- Trainings
- Policy and Program Reviews
- Interim Title IX Coordinator Coverage
- Expert Witness Testimony

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# DAN SCHORR

President  
New York



Dan Schorr is a former criminal prosecutor and municipal inspector general with more than 25 years of legal and investigative experience. He manages a variety of complex assignments, including investigations into sexual misconduct, Civil Rights, and fraud allegations at educational institutions, corporations, and government entities. In addition to specializing in Title IX investigations, Dan assists higher education and K-12 schools by conducting policy and program reviews, training personnel on all aspects of Title IX and Civil Rights compliance, and serving in hearing officer and decision maker roles. Dan is a pre-approved Sexual Misconduct Investigator for the United Educators ProResponse Expert Services Benefit.

# ALYSSA-RAE MCGINN

Vice President  
Boston



Alyssa-Rae McGinn has extensive experience leading a variety of complex investigations, with particular expertise in conducting investigations at educational institutions and corporations into allegations of sexual misconduct and identity-based harassment involving students, faculty, staff, and corporate leadership. Alyssa-Rae was previously a Senior Associate at Ankura, where she and Dan established the firm's Title IX and Civil Rights Investigations practice and grew it to assist institutions nationwide. Prior to Ankura, Alyssa-Rae was an Associate Director in Kroll's Business Investigations & Intelligence practice.

# TODAY'S TRAINING

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# LET'S INTRODUCE OURSELVES!

- Your name, institution, and role
- Something you're looking forward to this fall

# WHAT WE'LL LEARN

- Relevant law and policies
- Orienting your approach
- Initiating the investigation
- Conducting interviews
- Collecting evidence
- Documenting the investigation
- Assessing credibility
- Hearings

# THINGS TO KEEP IN MIND

- Content warning
- No judgment zone
- Respect for one another
- Different levels of experience
- Engage, speak up, ask questions

# RELEVANT LAW AND POLICIES

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# TITLE IX

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.

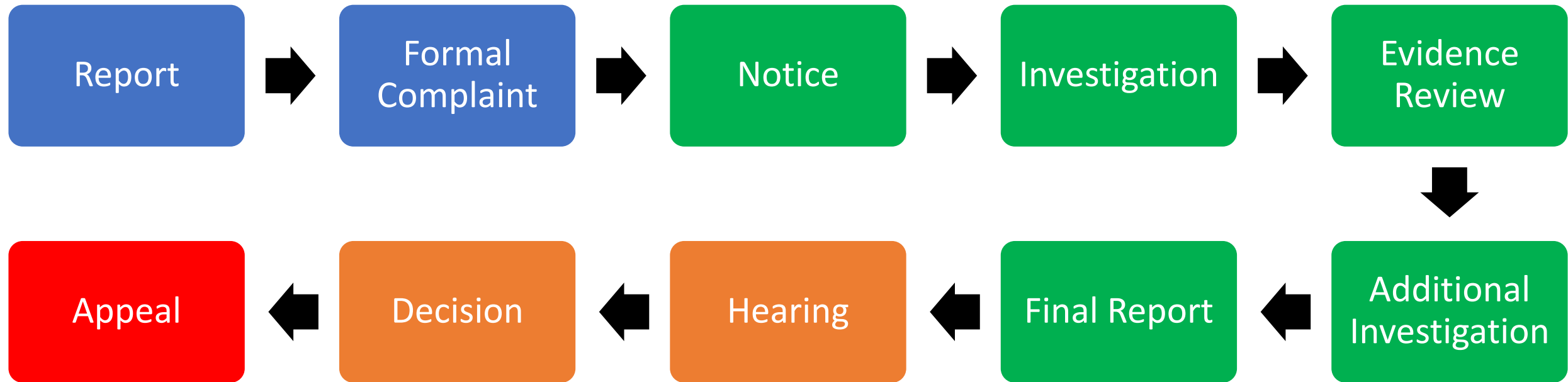
# VAWA AMENDMENTS TO CLERY ACT

- Institutions must have a policy statement that addresses the jurisdiction of security personnel
- Colleges and universities must provide data regarding incidents of sexual assault, dating violence, domestic violence, and stalking
- Institutions must have policies outlining the procedures they will follow after an incident of sexual assault, dating violence, domestic violence, or stalking, and identify rights and options available to survivors
- Institutions must put into place prevention programs that aim to stop sexual violence
- Gender identity and national origin must be categories of bias institutions reflect within their reported Clery statistics

# TITLE IX DEFINITIONS

- Title IX regulations require higher education institutions to implement a policy and process addressing certain forms and instances of sexual harassment that occur in the College's education program or activity. **Title IX Sexual Harassment** is conduct on the basis of sex that satisfies one or more of the following:
  - A College employee conditioning the provision of an aid, benefit, or service on another employee's or student's participation in unwelcome sexual conduct ("quid pro quo" harassment by an employee); or
  - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a College education program or activity; or
  - Any instance of sexual assault (as defined in the Cleary Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).
    - **Sexual Assault:** Rape, sodomy (oral or anal intercourse), sexual assault with an object, fondling, incest, and statutory rape
    - **Dating Violence:** Violence committed by a person who is or has been in a romantic or intimate relationship with the victim
    - **Domestic Violence:** Violence by a spouse, former spouse, intimate partner, person with whom the victim shares a child, person cohabitating with the victim as a spouse or intimate partner, or person in a role similar to a spouse
    - **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their own safety or that of others or suffer substantial emotional distress

# THE TITLE IX PROCESS



# NON-TITLE IX DEFINITIONS

- Sexual harassment reports may fall outside the scope of Title IX, in which case they may be handled through the Title IX process or another process
- May include:
  - Off-campus sexual assault or harassment
  - Sexual assault or harassment outside the U.S.
  - Sexual assault or harassment by someone not affiliated with the institution
  - Sexual harassment that is not severe, pervasive, and objectively offensive
  - Other sexual misconduct, such as sexual exploitation

# ORIENTING YOUR APPROACH

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# GENERAL GUIDANCE

- Be fair and objective
- Avoid conflicts of interest (including the *appearance* of a conflict)
- Maintain independence
- Stay professional
- Do not discuss opinions or conclusions
- Words matter
- Listen, listen, listen!
- Protect confidentiality
- Be prompt, but take the needed time
- Clearly, consistently, and thoroughly explain process, rights, and retaliation policies
- Treat all parties equally
- Follow policy and local, state, and federal law

# BEWARE OF BIAS

- Recognize the privilege and power positions you bring into the room
- Assess where you might have unconscious bias toward or against someone
- Watch out for moments when unconscious bias surfaces in microaggressions
- Be aware of stereotypes
- Cannot evaluate through “that wouldn’t bother me” – remember your experience is not universal
- Becoming aware of your own biases can help you better recognize demonstrations of bias from others, including in your investigations
- Your social media, office decorations, and even clothing can be cited as evidence of bias



# BEWARE OF BIAS ABOUT SEXUAL MISCONDUCT

- Beware of sexual assault myths
- There is not one way to respond to experiencing sexual assault
- It is not unusual for a complainant to:
  - Appear numb, detached, or unaffected
  - Delay reporting
  - Blame themselves
  - Express denial, confusion, or fear
  - Minimize their experience
  - Recant some or all of the allegations made
  - Interact with the respondent after the alleged incident(s)

# UNDERSTANDING CONSENT

- Mutual and voluntary
- Affirmative
- Revocable
- Past consent does not imply current/future consent
- Consent to certain acts does not imply consent to other acts
- Power dynamics
- Age of consent
- Forcible compulsion
- Threats – actual or implied
- Expressed lack of consent
- Incapacitation

# INITIATING THE INVESTIGATION

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# PLANNING THE INVESTIGATION

- Who will conduct the investigation?
- Scope of investigation
- Key fact issues
- Who needs to be interviewed?
- In what order?
- What evidence needs to be collected?

# INVESTIGATING WITHOUT A COMPLAINANT

- Regulations provide option for Title IX Coordinator to file formal complaint “standing in the shoes” of the Complainant, even without Complainant’s participation
- Complainant may also withdraw from the process, at which time the Title IX Coordinator may dismiss or continue the case
- Without a complainant, you must rely upon other evidence to “build” your case, which is often difficult

# EXERCISE: INITIATION

The Title IX Coordinator forwards you the following email from sophomore, Nick Brooks:

*I've been avoiding writing this, but I want to let you know that last week, at a welcome party for Environmental Club, junior Ava Alexander grabbed my crotch area and butt a few times. She was laughing like it was a joke, but it made me feel really uncomfortable and seeing her around campus has been tough since then. I'm nervous because I know I have to see her again at the next club meeting. I don't want her to get kicked out of the club, especially since she's running for president, but I'm really anxious about it and it's been really difficult focusing on my classes. Can we meet to talk about this?*

*Nick Brooks*

The Title IX Coordinator is working with Nick on a formal complaint now.  
What are your next steps?

# CONDUCTING INTERVIEWS

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# WHO TO INTERVIEW

- The complainant
- The respondent
- Anyone who was present for and observed a relevant incident
- Other witnesses with relevant information
- Outcry witnesses
- People with whom the respondent has spoken about alleged incidents
- People who you have been asked to interview



# BEGINNING THE INTERVIEW

- Introductions
- Process overview
- Confidentiality
- Documentation of the interview
- What will happen to the information provided
- Retaliation and amnesty policies
- Support and accommodations
- Answer questions about the process

# WHY MAY INTERVIEWEES BE RELUCTANT?

- **Mistrust** of the organization, the investigation process, the interviewers, or the system in general
- **Discomfort** with strangers/interviewers
- **Discomfort** with subject matter
- **Fear** of retaliation
- **Fear** of not being believed
- **Fear** of retraumatization
- **Fear** of getting in trouble
- Complainant may have reasons for being reluctant that are significant to analyzing their report:
  - Discomfort or trauma
  - Pressure not to report
  - Wanting to protect the respondent
  - Concern that their report will not meet violation threshold

# INTERVIEWING BASICS

- Be transparent
- Be kind
- Be comfortable
- Be prepared, but flexible
- “How do you know that?”
- Clarify facts and discrepancies
- Ask for relevant names, especially potential witnesses
- Ask for relevant documents
- Treat all parties equally

# HAVE A REAL CONVERSATION

- Bring your real personality into the interview and engage in a conversation: **listen** and **respond**
- Don't be afraid to be personal
- Be true to your own style of speaking
- Be flexible and let the conversation take its natural course
- Guide the conversation, but let them set their own pace and tell their story in their way
- Ask natural follow-up questions for clarification and further detail
- Utilize silence, especially when you ask hard questions

# IDENTIFYING DISCREPANCIES

- Do your homework before the interview
- Listen for statements that do not track with the interviewee's own account and with other evidence
- Use common sense and your own experience
- If you were on the other side, what issues, gaps, or statements would you point to in making your case?

# ASKING THE HARD QUESTIONS

- Wait to push back until they have finished telling their story
- **“Let’s go back through that slowly:”** Return to parts of their story that require clarification or questions or that are disputed by physical evidence
- Wait to confront with adverse evidence – may make an interviewee less willing to continue talking
- When asking the hard questions:
  - Phrase your questions so that they are respectful of the story you’ve heard
  - Don’t be accusatory
  - Explain the motivation for your question
- Let them know that as an investigator, you are trying to figure out what doesn’t track and why

# INTERACTING WITH ADVISORS

- Parties are entitled to the advisor of their choice in all meetings and communications
- Advisors serve as:
  - Emotional support
  - Assistance in understanding the process
  - Guidance in preparing statements, evidence, cross-examination questions, and other materials
  - A second perspective on the matter
  - Question-asker in the hearing
- Address advisor early in the interview
  - Introductions
  - Establish expectations
  - Don't be afraid to be friendly
- Stick to your ground rules, especially if advisor repeatedly violates expectations

# EXERCISE: INTERVIEWING

Recall Nick's complaint:

*I've been avoiding writing this, but I want to let you know that last week, at an end-of-semester party for Environmental Club, junior Ava Alexander grabbed my crotch area and butt a few times. She was laughing like it was a joke, but it made me feel really uncomfortable and seeing her around campus has been tough since then. I'm nervous because I know I have to see her again at the next club meeting. I don't want her to get kicked out of the club, especially since she's running for president next year, but I'm really anxious about it and it's been really difficult focusing on my classes.*

What steps should you take before interviewing Nick?

What information do you hope to obtain during the interview?

What interview challenges do you anticipate?



# EXERCISE: INTERVIEWING

Recall Nick's complaint:

*I've been avoiding writing this, but I want to let you know that last week, at an end-of-semester party for Environmental Club, junior Ava Alexander grabbed my crotch area and butt a few times. She was laughing like it was a joke, but it made me feel really uncomfortable and seeing her around campus has been tough since then. I'm nervous because I know I have to see her again at the next club meeting. I don't want her to get kicked out of the club, especially since she's running for president next year, but I'm really anxious about it and it's been really difficult focusing on my classes.*

**MOCK INTERVIEW WITH NICK**

# EXERCISE: INTERVIEWING

During the course of your investigation into Nick's complaint, you find the following information:

- Nick's friend Britney Morgan reported in her interview that she is also in Environmental Club and she has seen Ava and Nick interact throughout the semester. Ava always appears "aggressively flirty." Nick told Britney earlier in the semester that he thought Ava was attractive. Britney was at the Environmental Club party and was across the room, but she did look over at one point, it looked like Ava was tickling Nick in a playful way. Nick looked like he was enjoying it.
- Nick's roommate Juan Castro reported in his interview that he was not at the Environmental Club party, but later that day, Nick seemed "off." Juan said that when they went to get dinner, Nick was uncharacteristically quiet. The next day, he and Nick were in their room studying, and Nick asked a "weird question" about whether "guys could not give consent too." Juan asked Nick what happened, and Nick said he "didn't want to talk about it." Juan told Nick it was fine if he did not want to discuss what was going on, but told him that he should report it if something happened to him without his consent.

# EXERCISE: INTERVIEWING

What steps should you take before interviewing Ava?

What information do you hope to obtain during the interview?

What interview challenges do you anticipate?

Work with your partner to prepare for your interview with Ava.

# EXERCISE: INTERVIEWING

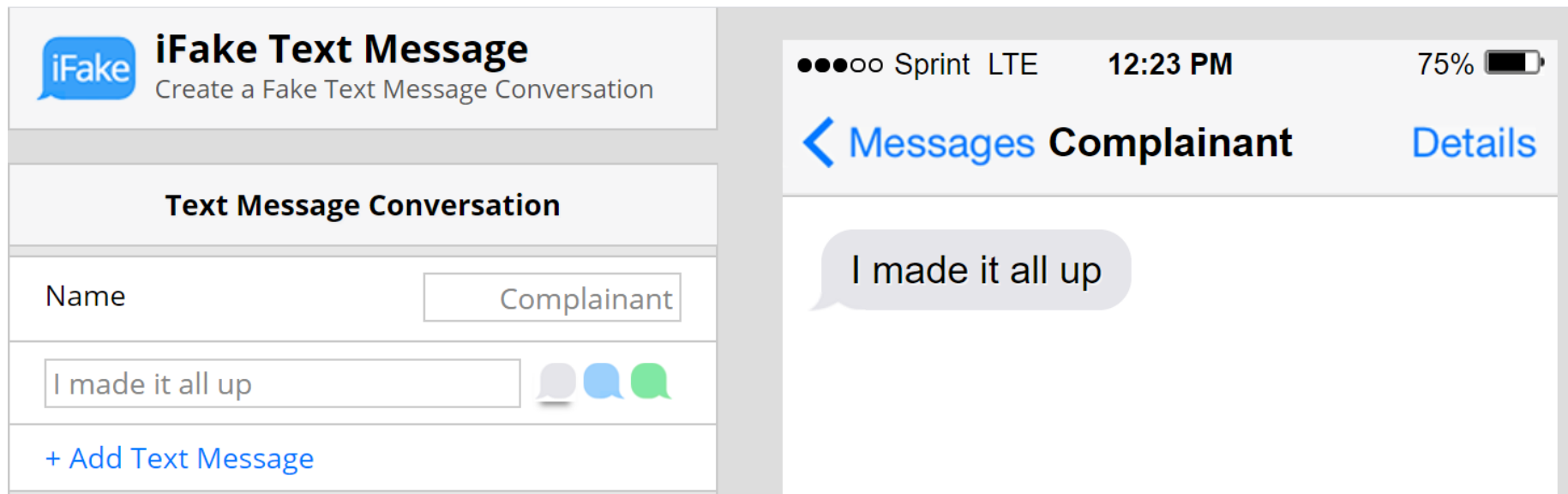
**MOCK INTERVIEW WITH AVA**

# COLLECTING EVIDENCE

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# OBTAINING EVIDENCE

- Instruct parties and witnesses to preserve evidence
- Go to the source and get primary documentation when possible
- Deleted items may still exist
- Be aware of fakes



# EVIDENCE EXAMPLES

- Text messages
- Social media
- Emails
- Memos or other documents
- Photographs
- Receipts
- Device logs
- Surveillance video
- Building access records
- WiFi connection records
- Other sources

# TWO TYPES OF EVIDENCE

## DIRECT

Supports the truth of an account directly

## CIRCUMSTANTIAL

Relies on inference to support a conclusion of facts



# INCLUDE ALL RELEVANT EVIDENCE

- Relevance:
  - Any information that could “move the needle” on any issue to be determined by the decision-maker
  - Any information that could go toward proving or disproving all or part of an alleged issue
  - Any information that is related to an issue involved in the matter
- Use a broad approach to determining relevance
- Including too little evidence could change the outcome
- Ultimately the decision-maker will determine what evidence to weigh

# DOCUMENTING THE INVESTIGATION

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# DOCUMENT EVERYTHING

- Memorialize everything that happens in emails, notes, or interview summaries
- When communication happens via phone call or in person, note the content of the conversation

# DOCUMENTING INTERVIEWS

- Convert interview notes into narrative summary of interview
- Include basic information: date, location, names of all in attendance
- Introductory language: indicate that summary is not verbatim
- Include summary of information and explanations provided to interviewee

*Schorr and McGinn introduced themselves and explained that they had been hired by the College to independently investigate O'Reilly's complaint against Samuels. Schorr described the investigation process and explained the scope of confidentiality for the interview. Schorr stated that the parties to this investigation will see the final investigative report, which will include Smith's name and what is said in this interview.*

*Schorr informed Smith that she will have the opportunity to review this interview memorandum. Schorr stated that College policy prohibits any retaliation as a result of Smith's participation in this investigation and asked Smith to please communicate any potential retaliation to the investigators or the College.*

# DOCUMENTING INTERVIEWS

- Summary should reflect the narrative told by the interviewee
- Does not need to be in the order of the interview (can be chronological or in another logical order)
- All statements should be sourced, to the interviewee and to their source
  - Did they see this firsthand or did someone else tell them this information?
- Use fact-based, “dry” language; avoid “colorful” language
- Write in a formal, professional manner
- Use direct quotes where available and to add “color”
- Goal is to present the interviewee’s voice from your objective perspective
- Well-written summaries allow you to pinpoint outstanding gaps and needed follow-up
- Summaries will become building blocks of investigative report

# DOCUMENTING INTERVIEWS

*Smith said that she knew Robertson and that he was “more a friend of [Johnson’s].” She said in the first few weeks of the Fall 2022 semester, Robertson would come to the office and spend time talking with Johnson at her desk. Smith said that Johnson told her that she spent time with Robertson outside of work on several occasions, but they were “never that serious.” Smith also stated that she was aware that Johnson and Robertson frequently communicated via text message during the day.*

# DOCUMENTING INTERVIEWS

*Jones stated that during the party, he believed Hill “got some wrong signals” from McCall because Hill said to Jones, “This new girl Laura [McCall], she’s pretty.” Jones said that he determined from Hill’s tone that “[Hill] was thinking, ‘Maybe she likes me,’ or something like that.”*

*Jones stated that McCall is “very openly friendly,” and that Hill “[took] it the wrong way and thought she wanted more.” Jones said that he “saw [Hill] might’ve been thinking something would happen,” but Jones knew that McCall “was just being polite.”*

# EXERCISE: DOCUMENTING INTERVIEWS

*What's wrong with these summaries?*

- *Rodriguez said Novak was always acting super weird with people around campus. Murphy told him later that Novak had made crazy comments to him.*
- *Ibrahim said that Rossi touched her and her friends' boobs and butts.*
- *Persaud said that he implored Wilson not to mock him in front of the class. Persaud exclaimed, "I told her not to, but she did it anyway."*
- *Miller said that prior to the incident involving Devi, he had sent an e-mail to Williams, in which he wrote about other incidents when he touched him inappropriately. He said that he touched his penis over his pants and that he was upset about this.*



# BUILDING THE INVESTIGATIVE REPORT

- Scope: a clear description of the scope and procedural history of the investigation
- Executive Summary: bulleted high-level facts, findings, recommendations, and conclusions, but do not overgeneralize or misrepresent facts
- Summary of Evidence: relevant parts of interview summaries and other relevant evidence, synthesized to create one narrative that flows and highlights areas of corroboration and discrepancy
- Appendices/Attachments: all relevant evidence, organized for ease of reading

# SUMMARY OF EVIDENCE

*Brown said that Leland tried to “create a negative narrative” about her and was “very forceful in doing so,” and therefore if people at the College did not have the opportunity to get to know Brown themselves, they would have believed Leland’s narrative. Roux said that Leland frequently complained to him about Brown. He said that Leland would make comments such as, “She’s a liar,” “You can’t trust her,” and “Don’t trust her.”*

*When asked whether she ever spoke negatively about Brown to Roux, including calling Brown a “liar,” Leland stated that she spoke with Roux about her problems with Brown’s performance but never used that specific language.*

# SUMMARY OF EVIDENCE

*Mendel and Aguero both reported that they then entered a smaller stairwell, which Aguero described as “colder” than the first one. They both stated that Mendel sat on the stairs and Aguero stood by the door, which was closed.*

*Aguero reported that Mendel then asked her if she wanted to sit down and said, “I can make room,” and she told him, “No, I’m going to go.” Both parties reported that Mendel stood up and said, “I can warm you up.” Aguero said that Mendel then started to touch her buttocks. Mendel also reported that he touched Aguero’s buttocks.*

*Aguero explained, “I don’t know, I just froze because I didn’t know what to do.” She said that she told Mendel, “Maybe we should go. I’m tired. You have a girlfriend.” Aguero said that Mendel responded, “It’s fine. She’s not going to find out,” and kept repeating this statement and touching her.*

# SUMMARY OF FINDINGS (NON-TITLE IX)

- Summary of Findings: overall summary of evidence and analysis of evidence, including credibility assessments, discussion of discrepancies, comparison to policy, and conclusions regarding responsibility
  - Should continue writing style from prior sections – formal, objective, fact-based
  - Includes judgments, but all judgments must be defensible and based in evidence and policy
  - Avoid personal or moral judgments

*Riley stated that he did not ask for or receive verbal consent to touch Hansen's breasts and vagina. He stated that he "felt" that he had consent based on several factors, including that Hansen had engaged in consensual kissing with Riley. However, the College's policy states, "Consent to some sexual contact should not be presumed to be consent for other sexual activity." Therefore, Hansen's consenting to kissing, if this occurred, did not imply consent for other sexual touching.*

# ASSESSING CREDIBILITY

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# CREDIBILITY FACTORS

- Inherent plausibility and logic of story
- Consistency
- Demeanor
- Level of detail provided
- Past record and pattern behavior
- Cross-corroboration
- Corroboration by evidence
- Not a moral judgment on honesty
- Evaluating credibility is a continuous process

# EXERCISE: ASSESSING CREDIBILITY

Think about our interviews with Nick and Ava:

Did you believe Nick's account?

Why? What factors of his interview made him seem more or less credible?

Did you believe Ava's account?

Why? What factors of his interview made her seem more or less credible?

# HEARINGS

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# WHO MAY BE PRESENT?

- Decision Maker
- Title IX Coordinator
- Advisors
- Witnesses, parties, and investigator(s) for cross-examination by both parties' advisors and hearing officer(s)
- Parties do not have to be present for entire hearing
- Testimony and cross-examination can be conducted via video so parties remain separated

# THE ROLE OF THE INVESTIGATOR

- Title IX matters must go to a hearing following the investigation for higher education institutions
- Investigative report may be considered by the Decision Maker as evidence
- Investigator presents summary of findings
- Decision-maker(s) and advisors then ask cross-examination questions
- Cross-examination questions may ask about:
  - Evidence and findings
  - Credibility assessments
  - Investigative process and decisions
  - Your qualifications
  - Your biases, conflicts, or knowledge gaps

# EXERCISE: CROSS-EXAMINATION

At a hearing for Nick's complaint against Ava, you are asked to present your findings and submit to cross-examination by the parties' advisors.

**MOCK CROSS-EXAMINATION**

# EXPECTED REGULATIONS

- New federal Title IX regulations expected in next few months
- Institutions may have discretion to have investigator make determination
- Institutions may have discretion to determine whether they will hold live hearings or opt for meetings between the decision-maker(s) and parties to assess credibility, considering:
  - Campus culture
  - Available resources
  - Prior and potential litigation
  - Practices that have/haven't worked well under the 2020 regulations
  - Due process
  - Impact on parties
- In the circuits and states that have made live hearings mandatory, institutions will have to continue holding hearings

# THE TITLE IX AND CIVIL RIGHTS

PODCAST



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*"Final Table is a compelling, timely, and fast-paced story of a sexual assault survivor's fight to regain control of her life in the face of fear, self-doubt, international intrigue, and looming retribution. Former sex crimes prosecutor Dan Schorr's nuanced and layered debut novel smashes stereotypes and cliches with a strikingly original and memorable narrative."*

- **SUNNY HOSTIN**,  
Emmy-Winning Co-Host of *The View* and best-selling author of *I Am These Truths* and *Summer on the Bluffs*



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