

Trauma Informed Investigations for Campus Sexual Misconduct Cases

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Agenda

1. Title IX
2. What is Trauma?
3. Trauma-Informed Approach to Investigations
4. Interview & Questioning Approaches & Example Prompts
5. Trauma & Credibility Analysis

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Title IX

Sex Discrimination
Sexual Harassment
Retaliation

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This slide features a central graphic with the text 'Title IX' in a white box with a blue border, connected by a dashed line to a larger blue box containing the terms 'Sex Discrimination', 'Sexual Harassment', and 'Retaliation'. To the right is a large black speech bubble containing the Roman numeral 'IX'. The University of Texas System logo and the number '3' are in the bottom left and right corners, respectively.

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	University Process	Criminal Process	Civil Process
Title IX Regulations	University SHSM Policy	Penal Code	Civil Code
	Grievance Procedures	Code of Criminal Procedures	Rules of Civil Procedure
	Preponderance <u>or</u> Clear & Convincing standard	Beyond a Reasonable Doubt standard	Preponderance standard
	University Policy Violations/Sanctions	Conviction/Sentencing	Monetary Damages/Court Order

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This diagram compares three processes: University, Criminal, and Civil. The University Process (blue) includes SHSM Policy, Grievance Procedures, a standard of Preponderance or Clear & Convincing, and University Policy Violations/Sanctions. The Criminal Process (orange) includes the Penal Code, Code of Criminal Procedures, a Beyond a Reasonable Doubt standard, and Conviction/Sentencing. The Civil Process (teal) includes the Civil Code, Rules of Civil Procedure, a Preponderance standard, and Monetary Damages/Court Order. A dashed blue box on the left labeled 'Title IX Regulations' encompasses the University Process steps. The University of Texas System logo and the number '4' are in the bottom left and right corners, respectively.

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Key Pillars: Title IX Process

Impartiality

Respect

Fairness

Equity

For all of the participants
in the process:

Complainants

Respondents

Witnesses

Third-party Reporters



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Serving Impartially in Your Role

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



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Source: Title IX Regulations (2020)

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Principles for Title IX Process



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

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Avoiding Bias

- Must **not** treat a party differently:
 - On the basis of the person’s **sex**;
 - On **stereotypes** about how men or women behave with respect to sexual violence; and/or
 - On the basis of the person’s **protected characteristics.**

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Basis for a “Trauma-Informed” Approach

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

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What is Trauma?

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What is Trauma?

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



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Trauma & Memory

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

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Emotional & Behavioral Reactions to Trauma

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



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Signs of Post-Traumatic Stress

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

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Conducting an Investigation

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Investigative Framework

- Establish **facts & timeline(s)**.
- Understand each party's **perception & experiences** of the alleged incident(s).
- Elicit **details & descriptions** of the alleged incident(s) from the parties & witnesses.
- Address **disputed facts or conflicting evidence** (if any) & seek responses from the parties (if applicable).
- Gather **sufficient information available** for a determination of facts, importance, & relevance to the formal complaint.



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Breakdown the Elements of the Possible Policy Violation at Issue



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Look at the Provision(s) at Issue:

Example definition from UT System Model Policy for Sexual Misconduct



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

For the purposes of this definition:

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

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Look at the Provision(s) at Issue:

*Example definition from
UT System Model Policy for
Sexual Misconduct*



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

For the purposes of this definition:

- **Course of conduct** means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.
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Interview & Questioning Approaches

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Before an Interview

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

Additional Considerations

- **Do not make assumptions** on what a Complainant or Respondent looks like, acts like, or behaves.
- Focus on gathering **evidence** and **statements**.
- Remain **neutral, fair, and balanced** toward all participants.

Pre-Interview: Rapport-Building Prompts


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

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

- How can you minimize or eliminate these factors?

Source:

Forensic Experimental Trauma Interview (FETI)




Pre-Interview: Explain the Process

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

- What to expect of the process
- Applicable policies; amnesty for alcohol/drug use; prohibition of retaliation
- Rights of the parties
- Purpose for the interview
- Options for decision-making
- Resources & supportive measures available
- Title IX Coordinator & investigator(s) contact information
- Follow-up & next steps

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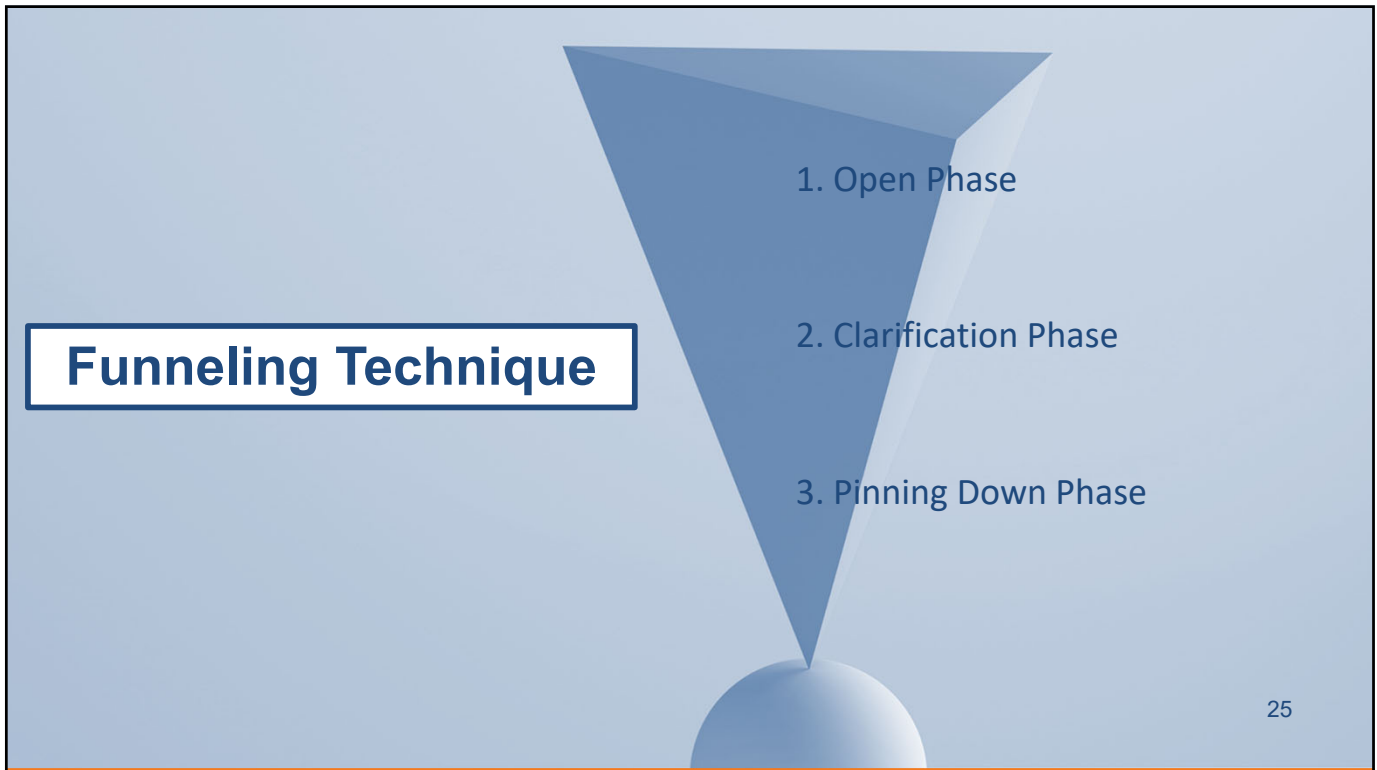
Body Language & Nonverbal Cues

- **Small** head nods (periodic, not overly animated)
- **Eye contact** (be attentive, soften eyes)
- **Facial expressions** (show genuine interest, avoid emotional movements/reactions)
- **Open** body language (limit crossed arms or legs)
- Focus on your **breathing** (mental mindfulness)
- Take **pauses** between questions/cues (pace yourself)

- Listen with your **eyes and ears** (nonverbal cues from the interviewee)
- **Check-in** (when appropriate):
 - *“Help me understand how you are feeling right now.”*

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Interview Start (Open Phase)

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

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Clarification & Follow-ups (Clarification Phase)

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

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



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Sensory Recall (Clarification Phase)

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

Taste

Smell

Feel/Touch

Hear

See

Pain

Body
Position

Pressure

Temperature

Source:
Forensic Experimental Trauma Interview (FETI)

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Recall (Cont.)

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

Source:
Forensic Experimental Trauma Interview (FETI)

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Statement Gaps or Ambiguities (Pinning Down Phase)

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Type	Example Statements		Interview Approaches
Text Bridges	<ul style="list-style-type: none"> • <i>After that...</i> • <i>The next thing I knew...</i> • <i>Later on...</i> 	<ul style="list-style-type: none"> • <i>Afterwards...</i> • <i>Besides...</i> • <i>And then...</i> • <i>Finally...</i> 	Clarification prompt
Ambiguous Responses	<ul style="list-style-type: none"> • <i>Kind of...</i> • <i>I think...</i> • <i>Sort of...</i> • <i>I believe...</i> 	<ul style="list-style-type: none"> • <i>To the best of my knowledge...</i> • <i>I may have...</i> • <i>Maybe...</i> 	Clarification or recall prompt
Broad Statements	<ul style="list-style-type: none"> • <i>Always...</i> • <i>Never...</i> 	<ul style="list-style-type: none"> • <i>Everyone...</i> • <i>No one...</i> 	Clarification prompt; specific examples?
Hearsay	<ul style="list-style-type: none"> • <i>I heard from Person X that...</i> 		Clarification prompt; personal knowledge or first-hand experience?

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Misc. Interview Prompts (Pinning Down Phase)

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

Interview Documentation

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

Nausea

Flashbacks

Trembling

Muscle
Rigidity

Terror

Memory
GapsSensory
Recall

Injuries

Interview Documentation (Cont.)

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

Force

Threats

Coercion

Intimidation

Fear

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

Interview Documentation (Cont.)

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

Forceful Physical Resistance (Fight)

Verbal Resistance

Attempt to Get Away (Flight)

Bargain (Appease)

Tonic Immobility (Freeze)

Interview Wrap-Up

Show appreciation:

“I really appreciate you being willing to speak with me.”



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Interview Wrap-Up

Explain the following:

- Revisit what to expect for next steps of the process, person's rights, person's options, resources available, and applicable remedies
- Decision options (and timelines or deadlines, if applicable)
- Ways to provide evidence, witnesses, or respond to other party's statements
- Contact information for the investigator and/or TIXC/Deputy



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Trauma & Credibility

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

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



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Trauma & Credibility

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

Credibility assessments should address the following factors:

- The reliability, consistency, and believability of an individual's statement

Tips for Evaluating Witnesses: Credibility Considerations

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

Beware of **Overvaluing** Credibility

- What are the **facts in dispute**, if any?
 - Does it relate to consent?
Incapacitation?
 - Breakdown the elements of the definition first, then analyze.
 - Once analyzed further, is credibility even a relevant factor?
- Each situation will be fact-specific.
- Avoid any biases that may be presented.

Q & A

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