

Title IX Evidence Collection:

Strategies to Ensure a Complete Investigation



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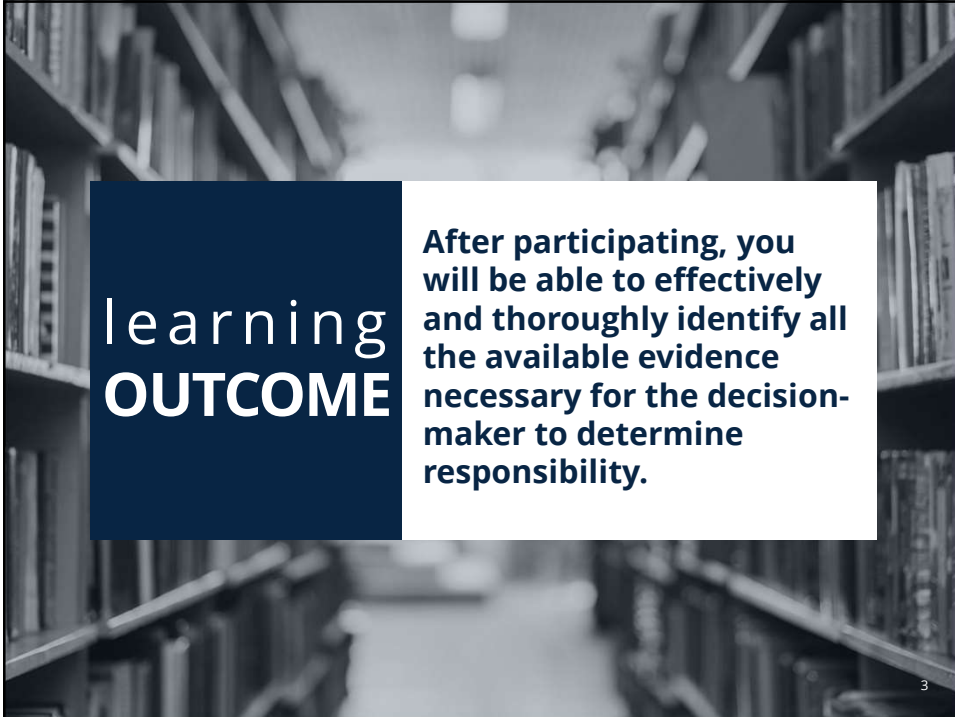
RESOURCES

Zoom Features

- A. Mics (keep muted please)
- B. Camera (option to keep on or off)
- C. Chat Box
 - Use to ask questions or respond
 - Send Rabia a private message for anonymous questions
 - To find downloadable files during the presentation
 - To send private messages to each other or host
- D. Recording (available 10 days from today)
- E. Participant List with Emoji's
 - Change Name: First Name, Last Name Initial, Institution
 - Hover over your name, select "more" then "rename"



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**learning
OUTCOME**

After participating, you will be able to effectively and thoroughly identify all the available evidence necessary for the decision-maker to determine responsibility.

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AGENDA

- **Part 1:** Setting the Stage
- **Part 2:** Testimonial Evidence: Building Rapport and Asking the Right Questions
- **Break**
- **Part 3:** Identifying and Collecting Physical Evidence
- **Final Q&A and Close**

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Part 1: Setting the Stage

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Types of Evidence: *Testimonial*



Testimonial Evidence comes in a variety of forms:


- Investigator interviews with:
 - Parties
 - Witnesses
 - Expert witnesses
- Statements (assertions of fact) made in other medium:
 - Electronic communications (texts, emails, chats)
 - Police reports
 - SANE reports
 - *106.45(b)(1)(x): Need signed waiver to obtain and include in Investigative File*

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Types of Evidence: *Non-Testimonial* 

Non-testimonial evidence


- Documents
- Photographs
- Video
- SANE reports

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An Essential Tool: Building a Timeline 

Building a timeline surrounding the alleged incident:

- Exposes the gaps in the investigation
- Documents the movement of the parties and witnesses
- Helps identify inconsistencies or serves to corroborate
- Validates or refutes alibis

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■ Timeline: How-To

Where to look to build your timeline:

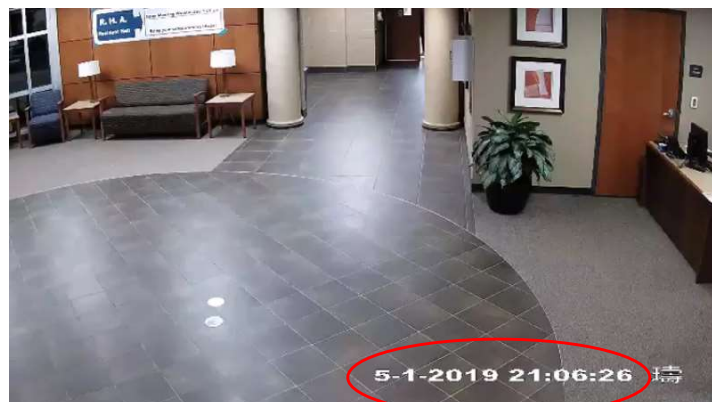
- Timestamps within electronic communications

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■ Timeline: How-To (cont.)

Where to look to build your timeline:

- Timestamps within video surveillance



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■ Timeline: How-To (cont.)

Where to look to build your timeline:

- Hospital records
- Receipts
- 911 dispatch records/calls

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■ Building Your Timeline: How-To



Where to look to build your timeline:

- University access records



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Part 2: Testimonial Evidence

Building Rapport and Asking the Right Questions

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Party/Witness Interviews



Party/witness interviews:


1. Building rapport
2. Effective questioning

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■ Gathering Evidence: *Building Rapport*

1. Building rapport
 - Identify mutual interests or commonalities between the investigator and the interviewee
 - Attentive
 - Transparent about the investigation process and the investigator's role within it
 - Provide control
 - Answer questions

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ACTIVITY 

Demo
"Rapport building"


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Effective Questioning


2. Effective questioning


- Seeking a narrative
- Closed v. Open-Ended Questions
- The Funnel Method
- Questioning Pitfalls

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Closed v. Open-Ended Questions

<u>Closed Questions</u>		<u>Open-Ended Questions</u>
You went to the party with the Complainant and your roommate		Who went with you to the party?
You said "no" when the Respondent kissed you.		How did you respond when the Respondent kissed you?
After you said "no," you shoved the Respondent to the ground		What happened next?

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■ The Funnel Method

THE FUNNEL QUESTIONING TECHNIQUE

Open open-ended questions to solicit information

Clarifying to clarify and narrow focus

Probing Exhaust to solicit additional detail
..... anything else?

Closed to clarify or commit

CHECK you're understood

Listen

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■ Open-Ended Questions

Open-ended questions allows the interviewee to “fill the space”


- Begin by asking broad questions like...
 - Q: “Tell me about your evening the night of August 22...”
 - Q: “Please walk me through your time at the fraternity party....”
- Start narrowing the questioning based on what you learned
 - Q: “Tell me more about...”
 - Q: “Please explain further how....”

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■ Effective Questioning (cont.)

- The importance of transitions
 - Q: "I want to take you back to the part where you talked about..."
 - Q: "Let's focus on your conversation with your roommate after you got home..."


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ACTIVITY



Effective Questioning

- I. *Demo*
- II. *Small group critique*

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■

Effective Questioning: Pitfalls 1-2

- 1. Asking open-ended questions in a leading/closed manner.**

"Did you go to the police right after you left Respondent's apartment?"


"Were you scared when your partner's hands were around your neck?"
- 2. Asking compound questions**

"Describe what you saw, what you heard, and what you did?"

One question at a time: *"What did you see?"*
 "What did you hear?"
 "What did you do?"

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Effective Questioning: Pitfalls 3-5 

3. Failing to clarify complex answers.


"Tell me if I understand you correctly, you said..."

"I am not sure that I understand, what does that mean?"


4. Assuming you know what the witness means.

"I talked to Jane last night."

5. Assumptions about what happened, generally.

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Effective Questioning: Pitfalls 6-8 


6. Failing to use understandable ("normal") language.

"Are you and Jane intimate with one another?"

"Did your fingers penetrate Jane's labia majora?"

7. Interrupting the witness.

8. Harmful spoken or body language in response to answers to questions.


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■ **Stumped:** Refreshing Recollection

"I don't know" v. "I don't remember"


- "I don't know" – Person never knew
- "I don't remember" – Person did know at one time.
 - Helping the person remember:
 - Texts
 - Video
 - Photos
 - Going to the scene

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■ **Effective Questioning:** Benefits of Trauma Informed Interviewing

- Trauma-informed interviewing techniques are helpful with any party or witness, not just complainants.
- Result is to obtain better information and to have the interviewee leave the interview feeling respected rather than victimized by the interview experience.

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Effective Questioning: Trauma (Part 1)

Trauma-informed interviewing techniques.

- *(Back to the beginning):* Rapport building
 - Acknowledge difficult situation
 - Explaining that you may ask personal questions
 - No judgements will be made
 - There is no wrong answer
- Provide control to the party or witness (opportunity to take a break, asking where they would like to begin, etc.)
- Using a conversational approach rather than rapid fire questioning

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Effective Questioning: Trauma (cont.)

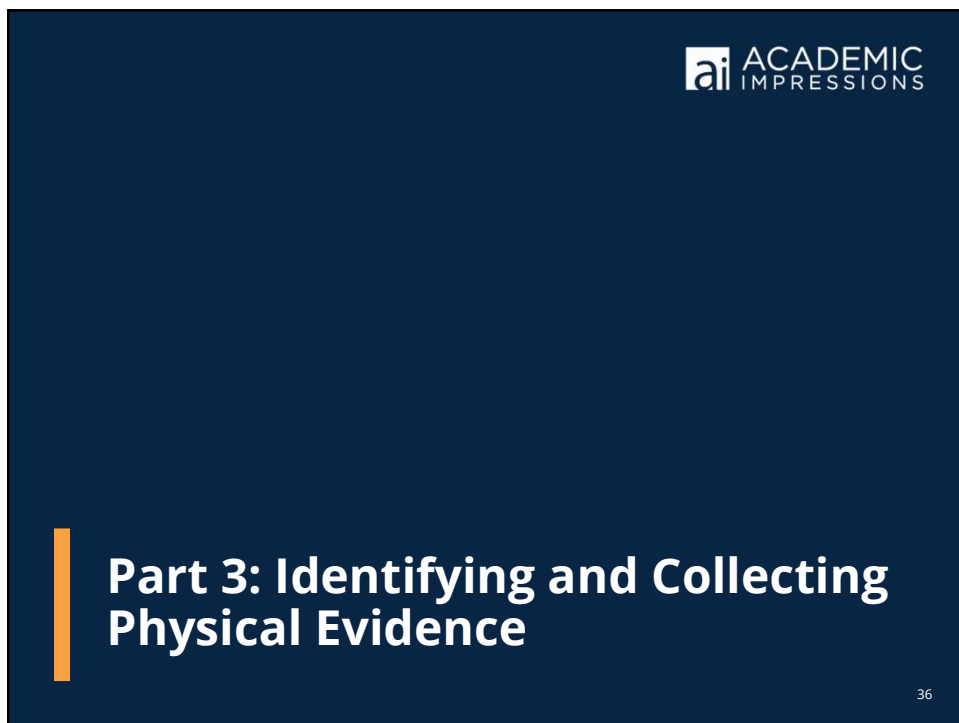
Trauma-informed interviewing techniques.

- Be cognizant of “sensory” responses: sight, sound, smell, etc.
- Avoid victim-blaming and rape-myths during questioning
 - Both practices can function to re-victimize or cause trauma/blame/shame
 - Explain reasoning behind difficult questions

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Physical Evidence




How physical evidence can be critical to your case:

- ✓ The text message that the Respondent allegedly sent to the Complainant's roommate admitting to the misconduct.
- ✓ The medical report noting the injury that the Complainant claims to have sustained during the alleged misconduct.
- ✓ Campus building access report that shows the Complainant was not in the library on the date and time of the alleged misconduct.

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Physical Evidence: Where to Find It


- Parties/Witnesses 
- Campus access card records and video surveillance camera footage. 
- Documents from third-party sources 


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Physical Evidence: Where to Find It (cont.) 

- Boots on the ground!



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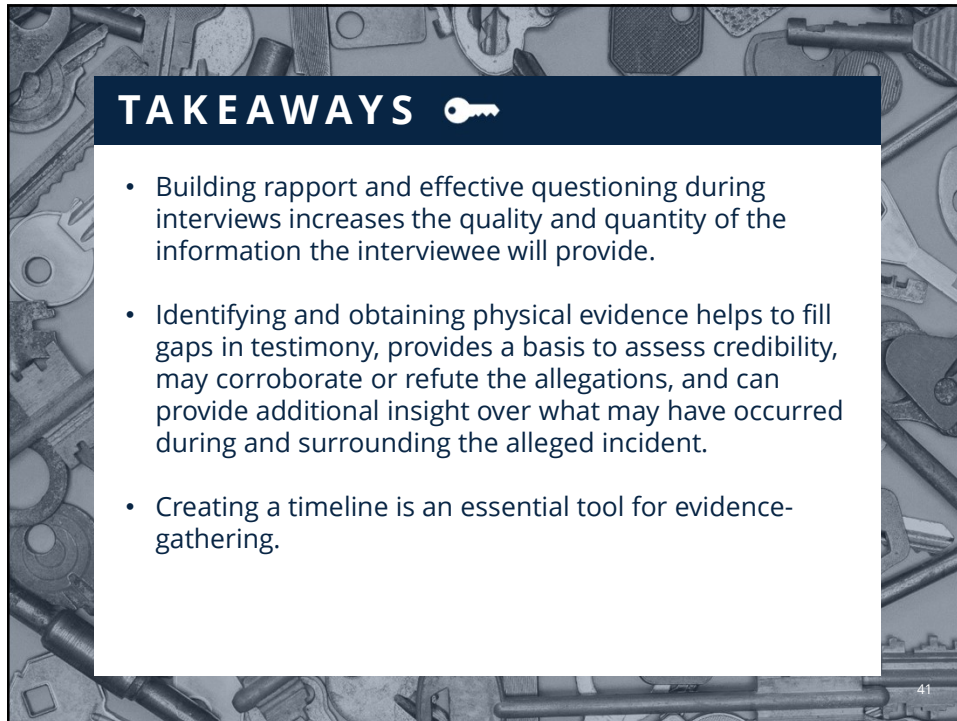
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ACTIVITY 

Small group activity
Scenario #2
What evidence may be available and where can you obtain it?

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TAKEAWAYS

- Building rapport and effective questioning during interviews increases the quality and quantity of the information the interviewee will provide.
- Identifying and obtaining physical evidence helps to fill gaps in testimony, provides a basis to assess credibility, may corroborate or refute the allegations, and can provide additional insight over what may have occurred during and surrounding the alleged incident.
- Creating a timeline is an essential tool for evidence-gathering.

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QUESTIONS?

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