




**TITLE IX/VAWA
INVESTIGATOR TRAINING**

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TELL US ABOUT YOURSELF 


How many investigations of Title IX matters have you participated in?

1. Not applicable (I have a different role in the process)
2. None
3. Less than 10
4. 10 or more


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AGENDA 

- Introduction and Legal Landscape
- Overview of the Process
- Working with the Parties
- Stages of Investigation
- Case Study
- Drafting an Investigation Report



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TERMINOLOGY 


- DOE = Department of Education
- DCL = Dear Colleague Letter
- OCR = Department of Education’s Office for Civil Rights
- VAWA = Violence Against Women Reauthorization Act
- FERPA = Family Educational Rights and Privacy Act
- CSA = Campus Security Authority
- Complainant/Reporting Party/accuser/victim/survivor
- Respondent/Responding Party/accused/alleged perpetrator 


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SEXUAL VIOLENCE STATISTICS 



Lathrop GPM, p. 5

SEXUAL VIOLENCE STATISTICS 

- United Educators’ Study 
 - 28% of reports resulted in lawsuits, demand letters, or federal Title IX complaints
 - 78% involved one or both parties consuming alcohol
 - 40% of complainants delayed reporting, waiting, on average, nearly a year after the incident
 - 80% of complainants were freshmen or sophomores
 - 90% of complainants knew the respondent


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THE LEGAL LANDSCAPE





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SESSION OVERVIEW

- Title IX
- Clery Act
- Violence Against Women Reauthorization Act
- Defining Sexual Misconduct
- Interaction with Other Laws
- Risks of Non-Compliance
- The Future of Title IX




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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 educational program or activity receiving Federal financial assistance”




20 U.S.C. § 1681


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WHO MUST COMPLY WITH TITLE IX? 


- Institutions that receive federal funds
 - Students
 - Employees
 - Third Parties
 - Visitors
 - Vendors




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**DISCRIMINATION
"ON THE BASIS OF SEX"** 


- Includes:
 - Sexual harassment
 - Sexual violence
 - Differential treatment
 - Gender-based harassment



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TITLE IX RESPONSIBILITIES 


- If a school knows or reasonably should know about sexual harassment that creates a hostile environment, it must take immediate action to:
 - Eliminate it,
 - Prevent its recurrence, and
 - Address its effects




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THE LEGAL LANDSCAPE


- All schools receiving federal funds must:
 - Publish Notice of Nondiscrimination
 - Designate a Title IX Coordinator
 - Disseminate policy prohibiting sex discrimination
 - Investigate complaints
 - Adopt and publish fair and equitable grievance procedures
 - End the harassment, prevent recurrence, and remedy its effects
 - Train individuals with heightened responsibilities
 - Train students and employees




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OCR'S ENFORCEMENT AND GUIDANCE


- OCR's Role:
 - Issue guidance
 - Compliance reviews
 - Resolution agreements




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CLERY ACT

- Provide accurate, timely, and complete information
- Regarding certain types of crimes/incidents
- Occurring on or adjacent to campus
- To promote campus safety and consumer protection



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Clery Act

- other Clery crimes occurring on campus and reported to CSAs
- reporting to ensure timely action and information shared with current and prospective students and employees

Title IX

- noncriminal sexual misconduct (sexual harassment that does not rise to level of sexual assault, dating violence, domestic violence, or stalking)
- policies to end harassment, prevent recurrence, and address its effects

Intersection: criminal sexual misconduct

- sexual assault
- dating violence
- domestic violence
- stalking

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VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT (VAWA)

- Extends Clery crimes to include VAWA crimes: domestic violence, dating violence, and stalking
- Requires discipline procedures for addressing sexual misconduct
- Requires education programs to promote awareness
- Codifies parts of 2011 Dear Colleague Letter on Title IX

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DEFINING SEXUAL MISCONDUCT

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SEXUAL HARASSMENT




- Unwelcome conduct of a sexual nature or based on sex
- Quid pro quo
 - Individual in position of authority
 - Conditions a benefit
 - Sexual advance, sexual favors, other conduct of a sexual nature
- Hostile environment
 - (Student) Sufficiently serious that it denies or limits a student's ability to participate in or benefit from an education program or activity
 - (Employee) Severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive

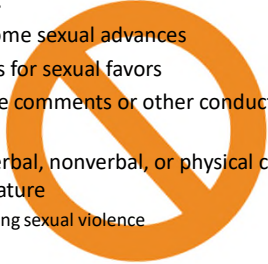


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SEXUAL HARASSMENT




- Examples:
 - Unwelcome sexual advances
 - Requests for sexual favors
 - Offensive comments or other conduct based on sex
 - Other verbal, nonverbal, or physical conduct of a sexual nature
 - Including sexual violence




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EXAMPLES





- Unwelcome sexual flirtations, advances, or propositions
- Requests for sexual favors
- Verbal abuse of a sexual nature, obscene language, off-color jokes, sexual innuendo, and gossip about sexual relations
- The display of derogatory or sexually suggestive posters, cartoons, drawings, objects, notes, letters, photos, emails, or text messages
- Visual conduct such as leering or making gestures
- Sexually suggestive comments about an individual's body or body parts, or sexually degrading words to describe an individual



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EXAMPLES




- Unwelcome touching of a sexual nature such as patting, caressing, pinching, or brushing against another's body
- Unwelcome verbal or physical conduct against an individual related to the individual's gender identity or the individual's conformity or failure to conform to gender stereotypes
- Stalking
- Cyber harassment, including but not limited to disseminating information, photos, or videos of a sexual nature without consent
- Videotaping or taking photographs of a sexual nature without consent
- Sexual assault

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HARASSMENT




- Male/Female
- Female/Male
- Female/Female
- Male/Male
- Gender Identity




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SEXUAL ASSAULT



- Definition in VAWA:
 - Rape
 - Fondling
 - Incest
 - Statutory Rape



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SEXUAL ASSAULT

- **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object or oral penetration by a sex organ of another person without the consent of the victim
- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity

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SEXUAL ASSAULT

- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent




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VAWA CRIMES DEFINITIONS



- **Domestic Violence:** committed by current/former spouse, intimate partner, co-parent, cohabitant, or others protected under domestic or family violence law




- **Dating Violence:** person with whom victim has/had a social relationship of a romantic or intimate nature (determined by reporting party's perspective and length, type, and frequency of interaction)





- **Stalking:** course of conduct directed at a specific person that would cause fear for safety or substantial emotional distress


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INTERACTION WITH OTHER LAWS 


- FERPA: Family Educational Rights and Privacy Act
 - Limits disclosure of student education records
 - Several exceptions permit disclosure
 - In cases involving sexual harassment (not sexual violence), exception permits school to disclose to alleged victim the final results of any disciplinary proceedings against the alleged perpetrator and any sanctions that directly relate to the alleged victim
 - In cases involving sexual assault/VAWA crime, exception permits school to disclose to alleged victim any information provided to the decision-makers and the final results of the disciplinary proceedings, including *all* sanctions




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INTERACTION WITH OTHER LAWS 


- Mandatory reporting laws: state-specific laws requiring school employees to report child abuse
 - Mandatory reporters may include teachers, coaches, administrators, or others who interact with minors or who supervise those who interact with minors
 - Must report if know or reasonably suspect abuse or neglect of a child
 - Report to police or county department
- Title VII and state anti-discrimination laws

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RISKS OF NON-COMPLIANCE 

- OCR enforcement
- Clery Act enforcement
- Lawsuits
 - Private right of action under Title IX, breach of contract, interference with contract, negligence, negligence *per se*, negligent supervision, intentional infliction of emotional distress, defamation, violation of right to due process at public schools, invasion of privacy/violation of confidentiality
- Public relations



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THE FUTURE OF TITLE IX



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THE FUTURE OF TITLE IX

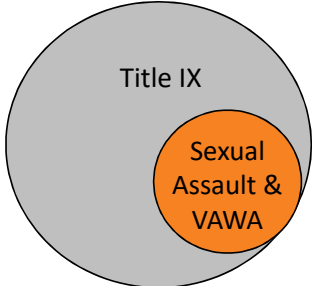
- OCR Actions:
 - Issued internal instructions for OCR investigators re: scope of complaints
 - Withdrew 2011 DCL and 2014 Q & A's
 - Issued 2017 Q & A Guidance
 - Proposed regulations released in November 2018
 - Notice and comment period ended in February 2019

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2017 Q & A GUIDANCE




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2017 Q & A GUIDANCE 


- “Title IX responsibilities concerning complaints of sexual misconduct, including peer-on-peer sexual harassment and sexual violence”
- More flexibility (standard of evidence, time frame, informal resolution process, appeals)
- New “requirements” for written notice to respondent
- “Should” create investigation report
- “Must” provide timely and equal access to the information used in the decision-making process

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PROPOSED REGULATIONS 

- When institutions must respond to sexual harassment
 - Recipient with actual knowledge of
 - Sexual harassment
 - In an education program or activity of the recipient
 - Against a person in the United States
- How institutions must respond to sexual harassment
 - May not be deliberately indifferent
 - Recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances

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PROPOSED REGULATIONS 

- New Procedural Requirements
 - Notice of allegations including:
 - Identities of the parties involved, if known, specific section of the recipient’s policy allegedly violated, conduct allegedly constituting sexual harassment, date and location of the alleged incident, if known
 - Provide notice of additional allegations that arise during the process
 - Disclosure of evidence to the parties
 - Investigation report
 - Live hearing including cross-examination conducted by advisors
 - Schools must provide advisor to any party that does not have one at the hearing
 - No single investigator/adjudicator
 - Standard of evidence
 - Must be consistent with standard in other student conduct processes with same maximum sanction and with standard used for complaints against employees, including faculty

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OVERVIEW OF PROCESS



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RESPONDING TO A REPORT



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RESPONSE OF TITLE IX COORDINATOR

- Title IX Coordinator can delegate intake duties to others, but:
 - Avoid conflicts
 - Make roles and responsibilities clear
 - Ensure process is user friendly
 - Oversee process to ensure compliance and effectiveness



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RESPONSE OF TITLE IX COORDINATOR




- Immediate Response
 - Protect the alleged victim
 - Notify alleged victim of his/her rights, including available interim measures and services
 - Notify alleged victim of right to report to law enforcement and offer to help with report
 - Follow-up with written notification of rights
 - Notify campus security, if necessary
 - Clery report, if necessary

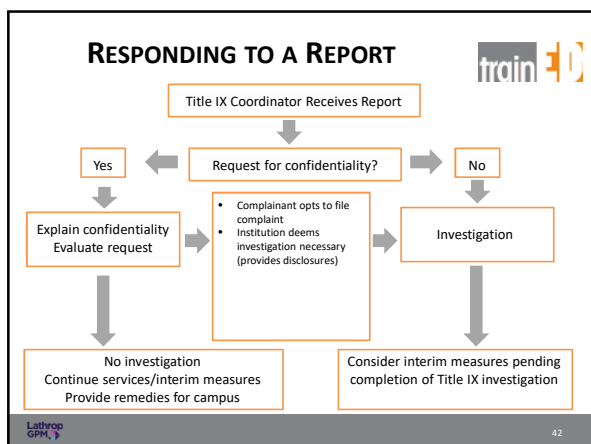
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RESPONSE OF TITLE IX COORDINATOR


- Interim Measures
 - Change academic or extracurricular activities, living, transportation, dining, and working situations
 - Access to resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, legal assistance, visa and immigration assistance, and student financial aid
 - If school does not offer these services, enter into MOU with local victim services provider, if possible
 - Available regardless of whether investigation follows




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**RESPONSE OF TITLE IX COORDINATOR:
INTERIM MEASURES DURING INVESTIGATION**




- Review interim measures available during an investigation
 - Periodically update both parties on status of investigation
 - No contact orders
 - Available to both parties^{2017 Q & A}
 - should not favor one party over the other
 - should make every effort to avoid depriving any student of his or her education
 - All others mentioned earlier





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COMPLAINT PROCESS




- The process the school uses to resolve sexual harassment complaints. This includes the fact-gathering investigation and any hearing or decision-making process the school uses to determine:
 - Whether or not the conduct occurred using
 - preponderance of the evidence standard (“more likely than not”) or
 - the clear and convincing evidence standard^{2017 Q & A} (“highly probable”); and
 - If the conduct occurred, what actions the school will take to end the sexual violence, eliminate the hostile environment, and prevent its recurrence, which may include:
 - Imposing sanctions on the respondent;
 - Providing remedies for the complainant; and
 - Addressing the campus community





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COMPLAINT PROCESS




- Determine whether the alleged sexual misconduct occurred
- “Prompt and equitable” or “prompt, fair, and impartial”
- Separate from criminal investigation
- May not dissuade complainant from going to police in cases involving allegations of criminal conduct—should encourage reporting to police




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PROMPT 

- Designate time frames
- No fixed time frame under guidance^{2017 Q & A}
 - Prior guidance was 60 calendar days (not including appeal)
- If a delay, need to give written notice to the parties about the delay and the reason for the delay




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PROMPT 



- May temporarily delay for initial police investigation
 - Prior guidance said police evidence-gathering stage typically takes 7-10 days
 - Must resume when notified that police are done gathering evidence
- May not delay for criminal prosecution


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FAIR AND IMPARTIAL 


- Conflicts and appearances of conflicts disclosed and managed
- Inform parties and witnesses that retaliation is prohibited
- Pay attention to the language used
 - Complainant/respondent vs. victim/alleged perpetrator

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FAIR AND IMPARTIAL




- Interview/hear from both parties
- Equal opportunity for parties
 - Identify/present fact witnesses and evidence
 - Access to evidence (if any)
 - Must for sexual assault/VAWA
 - "Must" if Title IX^{2017 Q & A} (?)
 - Right to an advisor/participation by a lawyer
 - Required by VAWA regulations for cases of sexual assault/VAWA crimes
 - May limit extent of participation (must apply equally)
 - Participate in pre-hearing meeting (if any)
 - Identify/present character witnesses (if any)
 - Written notice of outcome of complaint



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TRAINING REQUIREMENTS




- Institutional officials conducting proceedings (including adjudicators and individuals deciding appeals) must be trained on:
 - Institution's policy and procedures
 - Applicable law
 - Issues related to sexual assault, domestic violence, dating violence, and stalking (annually)
 - How to conduct an investigation and hearing that protects the safety of complainants and promotes accountability (annually)
 - Types of conduct that would constitute sexual violence (including same-sex sexual violence)
 - Standard of review

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TRAINING REQUIREMENTS



- (cont.)
 - Consent and the role of alcohol or drugs can play in the ability to consent
 - Importance of accountability for individuals found to have committed sexual violence
 - Need for remedial actions for the perpetrator, complainant, and school community
 - How to determine credibility
 - How to evaluate evidence and weigh it in an impartial manner
 - Confidentiality
 - Effects of trauma, including neurobiological change
 - Cultural awareness training regarding how sexual violence may impact students differently depending on their cultural backgrounds
- Training materials that apply sex stereotypes or generalizations should be avoided^{2017 Q & A}



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Q & A



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WORKING WITH THE PARTIES



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TELL US ABOUT YOUR EXPERIENCE

When assessing the credibility of the complainant, the following are factors that could cause me to find the complainant less credible:

1. Complainant does not want Respondent to get in trouble
2. Complainant continues hanging out with Respondent periodically after the alleged assault
3. A witness reports that she saw Complainant 10 minutes after the alleged assault and that Complainant did not seem upset
4. Complainant did not resist or seek help
5. The police investigated but did not press charges

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TELL US ABOUT YOUR EXPERIENCE


When assessing the credibility of the respondent, the following are factors that could cause me to find the respondent less credible:

1. Respondent alleged that Complainant violated the mutual no contact directive
2. Respondent insisted on receiving more specific information about the allegations before participating in an interview
3. Respondent is very defensive in the interview
4. Respondent added more detail to Respondent's account in the second interview
5. Respondent hired an attorney as an advisor

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SESSION OVERVIEW

- Rape Myths
- Secondary Victimization
- Common Victim Responses
- Neurobiology of Sexual Assault
- Working with Complainant
- Working with Respondent



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RAPE MYTHS


Myth	Reality
Rape is primarily sexually motivated	Rape combines elements of power, anger and sexuality
Rapists are usually strangers	Most perpetrators are known to the victim
The victim did something to cause the rape	No behavior warrants being raped; under no circumstances can the victim be blamed
Acquaintance rape is not as traumatic	There are no differences in victim psychological symptoms between acquaintance and stranger rape

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SECONDARY VICTIMIZATION


- Secondary victimization:
 - The attitudes, beliefs, and behaviors that victims experience as victim blaming and insensitive
 - It exacerbates their trauma, and it makes them feel like what they're experiencing is a second rape — hence the term "secondary victimization"




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SECONDARY VICTIMIZATION


- Examples of behaviors:
 - Discouraging the victim from making the report
 - Telling victim it's not serious enough to pursue
 - Asking about dress, behavior, or what they might have done to provoke the assault
- Psychological impact on victims:
 - Blamed
 - Depressed
 - Anxious
 - Violated
 - Reluctant to seek help





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COMMON VICTIM RESPONSES


- Initial denial of incident
- No reporting/delayed reporting
- Maintaining contact with perpetrator
- Fight, flight, or freeze




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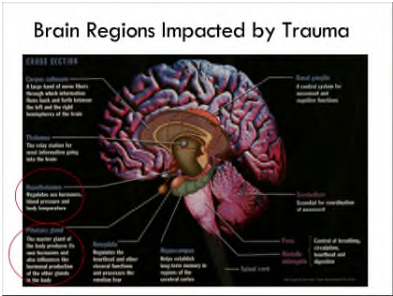
NEUROBIOLOGY OF SEXUAL ASSAULT 


The Neurobiology of Sexual Assault


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NEUROBIOLOGY OF SEXUAL ASSAULT 

Brain Regions Impacted by Trauma




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NEUROBIOLOGY OF SEXUAL ASSAULT 


Brain-Body Regions Impacted by Trauma

HPA Axis


Balances body following stress by releasing of various hormones/chemicals



SOURCE: Savthrick et al., 2005

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NEUROBIOLOGY OF SEXUAL ASSAULT




Brain-Body Regions Impacted by Trauma

Catecholamines: Fight or flight response


Cortisol: Energy available

Opioids: Prevent pain


Oxytocin: Promotes good feelings



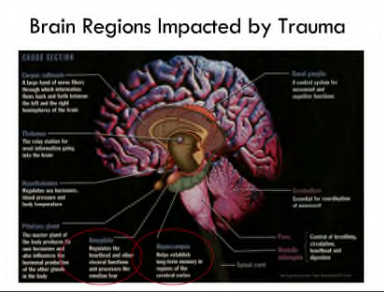
SOURCE: Southwick et al., 2005

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NEUROBIOLOGY OF SEXUAL ASSAULT




Brain Regions Impacted by Trauma



SOURCE: Southwick et al., 2005

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NEUROBIOLOGY OF SEXUAL ASSAULT



Memory Processes Impacted by Trauma


Hippocampus processes information into memories

Encoding = Organizing sensory information


Consolidation = Grouping information into memories and storing them

Amygdala specializes in the processing of emotional memories (works with the hippocampus)


Both structures are VERY sensitive to hormonal fluctuations



SOURCE: Southwick et al., 2005


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NEUROBIOLOGY OF SEXUAL ASSAULT



Like These . . .

- Catecholamines:** Fight or flight response
- Cortisol:** Energy available
- Opioids:** Prevent pain
- Oxytocin:** Promotes good feelings




THESE HORMONES IMPAIR MEMORY CONSOLIDATION

SOURCE: Southwick et al., 2005


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NEUROBIOLOGY OF SEXUAL ASSAULT



What Happens During A Sexual Assault




SOURCE: Banks, 2002; Southwick et al., 2005

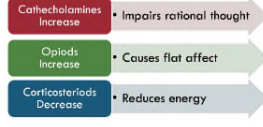
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NEUROBIOLOGY OF SEXUAL ASSAULT



What Happens During A Sexual Assault




SOURCE: Banks, 2002; Southwick et al., 2005

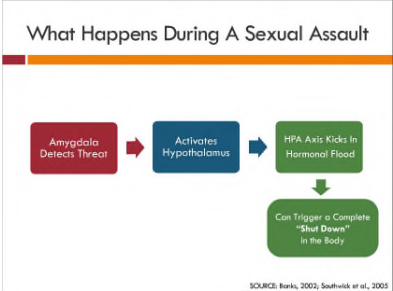
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NEUROBIOLOGY OF SEXUAL ASSAULT



What Happens During A Sexual Assault




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graph LR; A[Amygdala Detects Threat] --> B[Activates Hypothalamus]; B --> C[HPA Axis Kicks In Hormonal Flood]; C --> D[Can Trigger a Complete "Shut Down" in the Body];
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SOURCE: Banks, 2002; Southwick et al., 2003

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NEUROBIOLOGY OF SEXUAL ASSAULT





Tonic Immobility (TI)

- AKA: "Rape-induced paralysis"
- Autonomic (uncontrollable) mammalian response in extremely fearful situations
- Increased breathing, eye closure, paralysis
- 12-50% rape victims experience TI during assault
- TI is ~more common in victims who have been assaulted before (childhood, adolescence, or adult)

SOURCE: Foa et al., 2007; Coltrano et al., 1993; Heith et al., 2003

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COMMON BEHAVIORS DURING ASSAULT

- Impaired rational thought
- Flat affect
- Reduced energy
- Flight
- Fight
- Freeze

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MEMORY




What Happens During A Sexual Assault

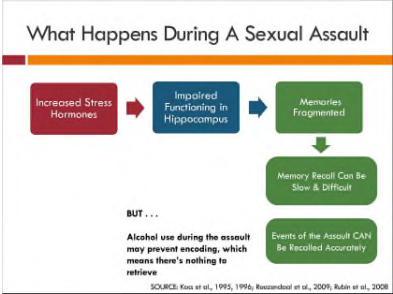
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MEMORY



What Happens During A Sexual Assault



Increased Stress Hormones → Impaired Functioning in Hippocampus → Memories Fragmented

↓

Memory Recall Can Be Slow & Difficult

BUT ...

Alcohol use during the assault may prevent encoding, which means there's nothing to retrieve


Events of the Assault CAN Be Recalled Accurately

SOURCE: Koss et al., 1985, 1986; Buszard et al., 2009; Rubin et al., 2008

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MEMORY




Case Study: Memory Fragmentation

- 25 year-old woman
- Raped by a friend's brother at 4th July party
- Filed police report
- Detective interview was when it all went to hell

"He wouldn't let up, pounding me with question after question after question. Trying to trick me, trying to get me to mess up. I wanted to say, 'hold on, give me a minute to think'. No, he kept coming at me."

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MEMORY 


Case Study: Memory Fragmentation


"It was classic good-cop / bad-cop. He stormed off and another detective sat down next to me. He offered me a cup of coffee.

Coffee? OK fine. How do I take it? WHAT? Why does he care how I take my coffee?

Well, he did.

He made me coffee. He gave me time to just sit, collect my thoughts."

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MEMORY 


Case Study: Memory Fragmentation

"We talked it through. And I didn't feel rattled and freaked out. I'm sure I was incoherent and he just let it roll. He was patient.

I felt like I was piecing it together, like a puzzle, we were putting together a puzzle together.

And drinking coffee."

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MEMORY 


Case Study: Memory Fragmentation


Q: So, why did you do that? (give her the coffee)

R: It helps. Not the coffee so much, just the moment to let it all come together in their heads.


Q: What do you mean?

R: I don't know why it's like that, I've just noticed that over the years. If you give them a few minutes to breathe It starts to make more sense. I don't know why, it just does.

 **MEMORY CONSOLIDATION**
A DOCUMENTED NEUROBIOLOGICAL CONDITION

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MEMORY



Case Study: Memory Fragmentation



Q: Were you worried that if you gave her some time, she'd just make something up?

R: Nah, not really. I mean, some victims lie, but most don't. Besides, if they're lying, we'll catch 'em at it eventually. I think it's just hard for victims to talk about and we just need to have a little patience.

 **MEMORY CONSOLIDATION**
A DOCUMENTED NEUROBIOLOGICAL CONDITION

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IMPACT OF TRAUMA ON MEMORY

- Memories accurately stored
- Memory recall slow
- Fragmented account
- Concentration difficult
- Alcohol exception—may impact storage and accuracy of memories


Lathrop GPM, p. 80


SENSORY DETAILS




- Victims of trauma may be able to recount vivid sensory details, including certain things the victim saw, heard, or smelled during the assault
- These details could provide more information about the incident and may help clarify the victim's memory
- Use open-ended questions
 - What can you recall about what happened?
- May also use sensory-based questions
 - What did you see?
 - What did you hear?
 - What did you smell?
 - What did you taste?
 - What did you touch?


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IMPACT OF CULTURE 


- Survivors' experiences of sexual assault are not universal
- A survivor's cultural background is one of many factors that may impact the way that the individual reacts to sexual assault 
- Different cultural backgrounds will influence individuals in different ways
- Be aware of and sensitive to possible cultural influences
- Incorporate training as appropriate

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TRAUMA-INFORMED APPROACH GONE WRONG 


- University of Mississippi lawsuit based in part on its training materials
 - Victims sometimes withhold facts and lie about details
 - Victims lie about anything that casts doubt on their account of the event
 - When complainants withhold exculpatory details or lie to an investigator or the hearing panel, the lies should be considered a side effect of an assault 
- A trauma-informed approach should not unfairly favor the complainant or prejudice the decision-maker against the respondent

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TAKE AWAY 

- Do not automatically draw negative inference based on a behavior that may be a response to trauma
- If an individual exhibits behaviors associated with trauma, it does not automatically mean that individual experienced trauma
- A response consistent or inconsistent with a typical trauma response should not in and of itself be outcome determinative


Lathrop GPM, p. 84

WORKING WITH COMPLAINANT 

- Slow down
- Make him/her feel comfortable
- Consider timing and locations
- Allow sufficient time for thorough exploration of the issues
- Develop rapport and allow for closure
- Explain process
- Remind the complainant of the ability to ask questions and present information during the entire process
- Normalize tonic immobility—fight, flight, or freeze? *(caution!)*




Lathrop GPM, 85


WORKING WITH COMPLAINANT 

- Recognize the impact of trauma on memory
 - Allow the complainant to give a narrative
 - Use open-ended free recall questions
 - Build in an opportunity for follow-up
 - Allow a written narrative if that is more comfortable
- Memory may be impaired by alcohol
- Use “account” or “experience” rather than “story”
- Allow advisor/support person to be present
- Avoid secondary victimization
- Be transparent about how information will be used


Lathrop GPM, 86

WORKING WITH COMPLAINANT 


- Set boundaries
 - Make objective role clear up front
 - Not counseling
 - Differentiate from your other roles within institution
 - Know how to respond when coming close to line
 - Point to resources on campus




Lathrop GPM, 87


WORKING WITH RESPONDENT 

- Recognize stress involved with being accused of sexual misconduct
 - He/she may be defensive
 - He/she may be nervous or uncomfortable
- Explain fair and equitable process
- Do not appear to take sides
- Use impartial language
- Afford same opportunity to provide narrative of experience, to provide physical or other evidence, etc.
- Memory may be impaired by alcohol



Lathrop GPM, 88

WORKING WITH RESPONDENT 



- Remind the respondent of the ability to ask questions and present information during the entire process
- Ensure the respondent is fully aware of the process and prohibition against retaliation
- Be transparent about how information will be used
- Allow advisor/support person to be present

Lathrop GPM, 89


INCORPORATING SUPPORT/ADVOCACY 

- Separate support/advocacy services from investigation/adjudication process
- Conflation of roles can:
 - Impact thorough assessment of the facts
 - Create distrust/confusion by complainant
 - Give appearance of bias/lack of impartiality



Lathrop GPM, 90

COMMUNICATION




- Identify contact person who will coordinate with multiple departments/people on complainant's/respondent's behalf
- Ensure regular and timely communications to both parties regarding: next steps, expectations, timing, and delays
- Ensure that parties have notice of all meetings
- Document all communications, including phone calls
- Use sensitive and informed tone and content, both to the parties and among team members

Lathrop GPM,  91

SOURCES OF INFORMATION

- NIJ Presentation by Rebecca Campbell
- trainED gratefully acknowledges the U.S. Department of Justice, Office of Justice Programs, and National Institute of Justice for allowing us to reproduce, in part or in whole, the recording of The Neurobiology of Sexual Assault. The opinions, findings, and conclusions or recommendations expressed in this recording are those of the speaker(s) and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Lathrop GPM,  92



Q & A



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STAGES OF INVESTIGATION



Lathrop GPM 94

PRE-INVESTIGATION OBLIGATIONS OF THE INSTITUTION

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- Assess immediate safety and well-being for individual and campus
- Notify complainant of right to contact law enforcement (or not to) and seek medical treatment; offer institution's assistance
- Enter into crime log, assess for timely warning
- Identify resources and offer accommodations
- Identify advisor/support person

Lathrop GPM 95



PRE-INVESTIGATION OBLIGATIONS OF THE INSTITUTION

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- Get consent from the complainant to conduct an investigation
- Notify of importance of preserving evidence
- Consider interim measures
- Provide written notice to complainant required under VAWA
- Consider whether informal resolution is appropriate^{2017 Q & A}
- Written notice to respondent: "should" provide sufficient details and with sufficient time to prepare a response before any initial interview^{2017 Q & A}
- Notice "should" be given to each party in advance with sufficient time to prepare meaningful participation^{2017 Q & A}

Lathrop GPM 96



ROLE OF INVESTIGATOR



- Identify factual issues
- Give parties opportunity for input
- Compile investigation materials for decision-makers and parties
- Credibility and/or make recommendations?
 - If weigh in on credibility, must objectively evaluate parties and witnesses^{2017 Q & A}
- Role does not include:
 - Adjudication of complaint during investigation phase
 - Providing support or advocacy to either party
 - Serving as a confidential resource

Lathrop GPM, P 97



DIFFERENCES BETWEEN CRIMINAL AND INSTITUTIONAL INVESTIGATIONS



- Different standards of proof
 - Probable cause vs. beyond reasonable doubt vs. preponderance of evidence vs. clear and convincing
- Different investigation “powers”
 - Subpoena powers vs. disciplinary actions
- Timing of processes
- Cooperating with law enforcement
 - Memorandum of Understanding
 - Use of police report


Lathrop GPM, P 98


STAGES OF INVESTIGATION



- Review complaint and outline investigation
- Interview witnesses and gather other evidence
- Review / revise / re-interview
- Package investigation for decision-maker(s)
 - Should prepare written investigation report^{2017 Q & A (?)}

Lathrop GPM, P 99

STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION 

 **Complaint**

- Types of complaints:
 - Written complaint from complainant
 - Written summary by university personnel
 - Complainant’s statement to law enforcement


Lathrop GPM, p. 100

STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION 

- Prepare script of opening remarks
 - Explain your role in the complaint process
 - Provide general explanation of reason for interview—gathering facts
 - Explain possible uses of party’s/witness’s statements
 - If applicable, inform party/witness of recording and its use
 - Advise party and advisor on advisor’s limited role
 - Explain the need to ask difficult, detailed questions
 - Ask party/witness not to read into questions
 - Tell party/witness he or she can ask for a break during the interview




Lathrop GPM, p. 101

STAGE ONE: GATHER EVIDENCE – INTERVIEW WITNESSES 


- Prepare script of opening remarks (cont.)
 - Explain that timelines and order of events may not be clear
 - Tell the party/witness to feel free to ask why a question is asked (Investigators: be prepared to answer)
 - Instruct witness regarding confidentiality
 - Assure/warn party/witness regarding policy prohibiting retaliation
 - If applicable, advise party/witness on alcohol or other policy waiver
 - Obtain commitment to tell the truth

Lathrop GPM, p. 102

STAGE ONE: GATHER EVIDENCE – INTERVIEW WITNESSES 


- Prepare script of closing remarks
 - Ask if there is anything else the party/witness wants you to know
 - Ask if there is anything the party/witness thought you would ask about that you have not yet discussed
 - Give parties opportunity to suggest witnesses, evidence, and questions to ask the other party
 - Find out what information those witnesses/evidence/questions will provide
 - Give witnesses opportunity to suggest other witnesses and evidence
 - Find out what information those witnesses/evidence will provide
 - Remind party/witness regarding need to preserve evidence


Lathrop GPM, 103

STAGE ONE: GATHER EVIDENCE – INTERVIEW WITNESSES 


- Prepare script of closing remarks (cont.)
 - If applicable, explain that an additional interview may be necessary at a later date
 - Advise that party/witness may reach out to you with additional information
 - Reminder regarding policy prohibiting retaliation
 - Remind witness of instructions regarding confidentiality
 - Explain to party that questions related to process or resources should be directed to the Title IX Coordinator

Lathrop GPM, 104

STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION 


- Review institution’s policy and how it defines relevant terms
- Identify all known witnesses and gather information about them
- Begin to create chronology of events
- Strategize about the timing and location of interviews 

Lathrop GPM, 105


STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION 

- Identify ultimate questions that will need to be decided
- Develop checklist for key questions—examples:
 - Consent to each act
 - Impact of alcohol
 - Ask for written communications—texts, emails, etc.
- Create list of topics for witness interviews (not questions)
- Avoid investigative techniques and approaches that apply sex stereotypes or generalizations^{2017 Q & A}


Lathrop GPM, p. 106

STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION 


- Gather and review available evidence
- Know the setting(s) of the events
- Determine whether witness interviews will be recorded
- Maintain confidentiality in cases where institution has agreed to keep complainant's identity confidential
- Stay flexible



Lathrop GPM, p. 107

STAGE ONE: REVIEW COMPLAINT AND OUTLINE INVESTIGATION 

- Review notice provided to respondent
 - Alert Title IX Coordinator if there are additional allegations
- Prepare for parties with advisors
 - Consider having advisors review and sign document outlining purpose and role of advisor
- Also be prepared for how to handle "private" investigations by the respondent




Lathrop GPM, p. 108






CASE STUDY


Lathrop GPM,  109



CASE STUDY

- On March 14, Madison Moore made a complaint of sexual misconduct against Josh Johnson.
- The Title IX Coordinator calls you and tells you that Madison’s friend Chloe originally reported the alleged assault. The Coordinator tells you that Madison made her complaint the next day.

Lathrop GPM,  110



CASE STUDY

Sexual Assault/Harassment Complaint Form

COMPLAINANT NAME: Madison Moore


ADDRESS: 1234 University Circle

DATE OF REPORT OF ALLEGED POLICY VIOLATION: February 9, 2019


RESPONDENT NAME: Josh Johnson

ADDRESS: 999 College Lane

TITLE IX COORDINATOR SUMMARY OF MADISON’S ORAL REPORT:
Madison reported that she was at a party with Josh on February 9. Madison reported that Josh pressured her to drink and got her drunk. Madison reported that she went back to Josh’s dorm room with him after they left the party together. Madison reported that Josh touched her breasts and engaged in sexual intercourse with her when she was unable to consent due to incapacitation.

Lathrop GPM,  111

CASE STUDY




Excerpt of Notice of Allegations

Madison alleges that you engaged in sexual assault in violation of the Sexual Misconduct Policy. Specifically, Madison alleges as follows:

- On February 9, 2019, in your dorm room, you engaged in sexual contact, including penetration, of Madison without her consent.

Lathrop GPM, p. 112


CASE STUDY – DEFINITION OF SEXUAL ASSAULT



Sexual assault is any actual or attempted sexual contact with another person without that person's consent. Sexual contact includes intentional contact by the accused with the victim's genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; touching another with any of these body parts, whether clothed or unclothed; coerced touching by the victim of another's genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; or forcing another to touch him/herself with or on any of these body parts.


Lathrop GPM, p. 113

CASE STUDY—DEFINITION OF CONSENT



Consent means words or overt actions by a person clearly and affirmatively communicating a freely-given present agreement to perform a particular sexual act. Words or overt actions clearly communicate consent when a reasonable person in the circumstances would believe those words or actions indicate a willingness to participate in a mutually agreed-upon sexual activity. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and obtaining consent. It is the responsibility of the person initiating the specific sexual activity to obtain consent for that activity.


Lathrop GPM, p. 114

CASE STUDY—DEFINITION OF CONSENT 

The definition of consent is subject to the following:


- Consent can only be given if one is of legal age. The legal age of consent in this state is 16.
- Consent is a mutually understood and freely given “yes,” not the absence of “no.”
- Consent to one form of sexual activity cannot imply consent to other forms of sexual activity.
- Consent can be withdrawn at any time. When consent is withdrawn, the sexual activity for which consent was initially provided must stop.
- Silence or failing to resist does not imply consent.
- Previous relationships or previous consent does not imply consent to future sexual acts.
- An existing sexual, romantic, or marital relationship does not imply consent.
- Prior sexual activity with other individuals does not imply consent.
- Consent cannot be procured, expressly or implicitly, by use of force, intimidation, threats, or **coercion**, as that term is defined below.
- There can be no consent to sexual activity with someone known to be—or who should be known to be—mentally or physically **incapacitated**, as that term is defined below.
- Use of alcohol or other drugs will never function to excuse behavior that violates this Policy.

Lathrop GPM, p. 115

CASE STUDY—DEFINITION OF INCAPACITATION 


A person who is incapacitated cannot give valid consent to sexual contact. Incapacitation means the inability to understand the fact, nature, or extent of the sexual situation. Incapacitation may result from mental or physical disability, sleep, unconsciousness, involuntary physical restraint, or from the influence of drugs or alcohol. With respect to incapacitation due to the influence of drugs or alcohol, incapacitation requires more than being under the influence of drugs or alcohol; a person is not incapacitated just because they have been drinking or using drugs.





Lathrop GPM, p. 116

CASE STUDY—DEFINITION OF INCAPACITATION 


Where drugs and/or alcohol are involved, incapacitation is determined based on the facts and circumstances of the particular situation looking at whether the individual was able to understand the fact, nature, or extent of the sexual situation, whether the individual was able to communicate decisions regarding consent, nonconsent, or the withdrawal of consent, and whether such condition was known or reasonably known to the respondent or a reasonable person in respondent’s position. Use of drugs or alcohol by the respondent is not a defense against allegations of sexual misconduct and does not diminish personal accountability or criminal liability. It is the responsibility of the person initiating the specific sexual activity to obtain consent for that activity.


Lathrop GPM, p. 117

STAGE TWO: GATHER EVIDENCE 


- Types of evidence:
 - Witness interviews
 - Notify parties of one another's interviews
 - Handling unwilling witnesses
 - Physical evidence
 - Text messages/emails/photos 
 - Social media 
 - Student/personnel records 
 - Surveillance video 

Lathrop GPM, 118

STAGE TWO: GATHER EVIDENCE – INTERVIEW WITNESSES 


- Go through script of opening remarks
 - Explain your role in the complaint process
 - Provide general explanation of reason for interview—gathering facts
 - Explain possible uses of party's/witness's statements
 - If applicable, inform party/witness of recording and its use
 - Advise party and advisor on advisor's limited role
 - Explain the need to ask difficult, detailed questions
 - Ask party/witness not to read into questions
 - Tell party/witness he or she can ask for a break during the interview 

Lathrop GPM, 119

STAGE TWO: GATHER EVIDENCE – INTERVIEW WITNESSES 


- Go through script of opening remarks (cont.)
 - Explain that timelines and order of events may not be clear
 - Tell the party/witness to feel free to ask why a question is asked (Investigators: be prepared to answer)
 - Instruct witness regarding confidentiality
 - Assure/warn party/witness regarding policy prohibiting retaliation
 - If applicable, advise party/witness on alcohol or other policy waiver
 - Obtain commitment to tell the truth

Lathrop GPM, 120


STAGE TWO: GATHER EVIDENCE – INTERVIEW WITNESSES 

- “Do you know why you were asked to come speak with me today?”
 - “Highway” or “Scenic Route” interview?
- If Scenic Route, use “funnel” approach
- If Highway interview, download everything they “know” about relevant events


Lathrop GPM, p. 121

STAGE TWO: GATHER EVIDENCE – INTERVIEW WITNESSES 




- Scenic Route: Funnel Approach
 - Start broadly; avoid leading questions
 - “I understand you were at a party off-campus last Saturday; did anything unusual happen while you were there?”
 - “You take Professor Johnson’s architectural drafting course on Wednesday afternoons; did you observe anything out of the ordinary last week?”
 - Decide whether to ask more detailed questions
 - More reliable responses and less rumor mill




Lathrop GPM, p. 122

STAGE TWO: GATHER EVIDENCE – INTERVIEW WITNESSES 

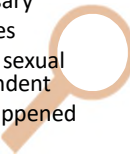
- Create chronology of events
- Identify the who, what, where, when, and how
 - If don’t know names, figure out other identifiable information
 - If helpful, consider drawing a map/diagram
 - If exact times aren’t known, what events were going on to help fix a time
 - Avoid “why” questions
- Close “chapters” by recapping events
- Distinguish between personal knowledge and hearsay




Lathrop GPM, p. 123

STAGE TWO: GATHER EVIDENCE – INTERVIEW WITNESSES 


- Ask about evidence (text messages, photos, emails)
 - Expect that the parties and witnesses may be talking to each other during the complaint process—ask for these communications later in the process
- Don't share information unless necessary
- Don't focus on writing exhaustive notes
- Don't inquire into complainant's prior sexual history with anyone other than respondent
- Let witness do most talking ("What happened next?")




Lathrop GPM, p. 124

STAGE TWO: GATHER EVIDENCE – INTERVIEW WITNESSES 

- Don't avoid questions because answers seem too obvious or too personal
- Ask witnesses to forward information immediately
- Prepare a summary immediately following interview




Lathrop GPM, p. 125

STAGE TWO: GATHER EVIDENCE – INTERVIEW WITNESSES 

- Go through script of closing remarks
 - Ask if there is anything else the party/witness wants you to know
 - Ask if there is anything the party/witness thought you would ask about that you have not yet discussed
 - Give parties opportunity to suggest witnesses, evidence, and questions to ask the other party
 - Find out what information those witnesses/evidence/questions will provide
 - Give witnesses opportunity to suggest other witnesses and evidence
 - Find out what information those witnesses/evidence will provide
 - Remind party/witness regarding need to preserve evidence

Lathrop GPM, p. 126

STAGE TWO: GATHER EVIDENCE – INTERVIEW WITNESSES 


- Go through script of closing remarks (cont.)
 - If applicable, explain that an additional interview may be necessary at a later date
 - Advise that party/witness may reach out to you with additional information
 - Reminder regarding policy prohibiting retaliation
 - Remind witness of instructions regarding confidentiality
 - Explain to party that questions related to process or resources should be directed to the Title IX Coordinator

Lathrop GPM, p. 127

CASE STUDY  


Ask questions of Madison

Lathrop GPM, p. 128


CASE STUDY 


- In your initial interview with Madison, Madison tells you that in late January, a few weeks before the party, Josh tried to put his hand into her pants. Madison stated that they were kissing and that Josh then put his hands on her hips and starting applying pressure as he was trying to put his hand down her pants. Madison stated that she then stood up and said she needed to go to bed and that Josh then left.
- What do you do after the interview?

Lathrop GPM, p. 129

CASE STUDY 

- After speaking with the Title IX Coordinator, the Title IX Coordinator decides to reschedule Josh's interview to allow the Coordinator to revise the notice of allegations. The Coordinator also tells you that Josh has requested some accommodations.
- A few days later, the Title IX Coordinator sends you an updated notice of allegations. The Coordinator also tells you that Josh will have two advisors with him at the interview and that you should allow them to interject if they think Josh misunderstood a question. Finally, the Coordinator tells you that Josh will provide a written account of his response to the allegations and that you can read that and then ask any follow-up questions you have.


Lathrop GPM,  130

CASE STUDY 

Excerpt of Amended Notice of Allegations

Madison alleges that you engaged in sexual assault and sexual harassment in violation of the Sexual Misconduct Policy. Specifically, Madison alleges as follows:

- On January 25, 2019, in Madison's dorm room, you attempted to engage in sexual contact with Madison without her consent.
- On February 9, 2019, in your dorm room, you engaged in sexual contact, including penetration, of Madison without her consent.

Lathrop GPM,  131


CASE STUDY 



Ask questions of Josh

Lathrop GPM,  132


CASE STUDY



- At Josh’s initial interview, Josh requests three breaks in the first 25 minutes. Each time, you had asked Josh a question and he responded that he needed a minute to speak with his advisors. You would then step into the hall and wait for Josh to alert you that he was finished speaking with his advisors.
- How do you respond to additional requests for breaks?

Lathrop GPM, P 133


**STAGE TWO: GATHER EVIDENCE –
INTERVIEW WITNESSES – ADVISORS**



- Advisors, particularly attorney advisors, have become increasingly common participants
- Tips for addressing disruptive advisors:
 - Signed advisor agreements
 - Be prepared to enforce the agreement parameters
 - Set the ground rules at the outset (e.g., “potted plant”)
 - Don’t engage with the advisor; only address the party (even in response to the advisor’s statements)
 - Hold the party responsible for the advisor’s actions
 - Don’t be afraid to consider pausing the process if the advisor continues to be disruptive
 - Be consistent


Lathrop GPM, P 134

CASE STUDY




- In Josh’s initial interview, he reported that Madison performed oral sex on him for several minutes before they had sex. Madison did not mention performing oral sex on Josh in her account.
- What do you do after the interview?

Lathrop GPM, P 135

CASE STUDY 


- In Madison’s initial interview, you asked Madison who might have relevant information related to her allegation. Madison told you that you should interview two students: Jen and Abby, and her therapist.
 - Madison tells you that she saw Jen right before she left the party with Josh on February 9.
 - Madison tells you that Abby has had a bad experience with Josh and could tell you more about him.
 - Madison tells you that her therapist helped her realize that she was raped.
- Who do you interview and why?

Lathrop GPM, 136

CASE STUDY 


- In Josh’s initial interview, you asked Josh who might have relevant information related to this matter. Josh told you that you should interview two students: Tony and Liam.
 - Josh tells you that Tony used to date Madison and dealt with a lot of issues from her.
 - Josh tells you that Liam was at the party with him and Madison on February 9.
- Who do you interview and why?
- Anyone else you should interview?

Lathrop GPM, 137

CASE STUDY 


- You decide to interview Madison’s friend Jen and Josh’s friend Liam. You also interview Chloe, after the Title IX Coordinator told you that Chloe originally reported the alleged sexual assault.

Lathrop GPM, 138

CASE STUDY 


- You begin your interview with Liam by asking if he knows why he is there. Liam responds, “no, it would be helpful if you could tell me why I’m here.”
- How do you respond?
- How do you approach the rest of the interview?

Lathrop GPM, 139

CASE STUDY 


- When you interview Chloe, she tells you that she knows another student who has been raped by Josh, but that person asked her not to tell anyone. Chloe stated that she knew Josh needed to be stopped, so she reported Madison’s rape to the Title IX Coordinator.
- What do you do with this information?
- Do you include it in the investigation report?

Lathrop GPM, 140

CASE STUDY 


- Chloe also tells you that she’ll need to be informed of the outcome of the investigation so that she can help campus organizations decide what to do with Josh.
- How do you respond to Chloe?

Lathrop GPM, 141


CASE STUDY 

- The Title IX Coordinator tells you that Madison has filed a police report related to the allegation from February 9. The Title IX Coordinator asks that you pause your investigation while the police gather evidence.


Lathrop GPM, 142

**STAGE TWO: REVIEW/REVISE/
RE-INTERVIEW** 

- Assess what more needs to be done
- Determine whether additional witnesses are necessary or merely duplicative
- Determine whether new facts/allegations require additional interviews
- Inform Title IX Coordinator of any new allegations (related or unrelated)
- Determine whether notice to respondent needs to be amended
- Be sure that each party has adequate notice of the other party's allegations
- Inform parties in advance of close of evidence date




Lathrop GPM, 143

CASE STUDY 

- After the police complete their investigation, Madison sends you and the Title IX Coordinator a copy of the police report.

Lathrop GPM, 144


CASE STUDY



- You review the police report and notice that both Madison and Josh have made some statements that are different than what they told you in their interviews.
 - Madison told the police that she drank seven shots of tequila and four beers at the party. She told you she drank three or four shots of tequila and two beers.
 - Josh did not tell the police that Madison performed oral sex on him on the night of February 9.
- What do you do next?


Lathrop GPM145

CASE STUDY



- Josh provided screenshots of a text message exchange with Madison dated March 7. Josh tells you that the text messages occurred after Madison found out that he slept with someone else.

Lathrop GPM146

Messages Madison Details

You seriously had sex with her???

I thought we were more than friends, but now I know we weren't even that. I don't get hookup with guys. This really meant something to me.


Are you seriously pissed

we were just having fun, didn't know you read. I mean into it. Didn't think we had to talk about what we were, that was just casual.

It just seemed like we were both having fun, we both returned to last night.

You took advantage of me. I should not have even been in your room that night.

Lathrop GPM147

CASE STUDY 


- Josh says that the text messages show that Madison brought her complaint to get back at him for being with another girl.
- What do you do with these text messages?

Lathrop GPM, P 148

CASE STUDY 



Ask follow-up questions of Madison

Lathrop GPM, P 149

CASE STUDY 


- In your follow-up interview with Madison, you ask Madison about the text messages. Madison tells you that Josh responded to the last message in the screenshot and acknowledged that she had been too drunk to consent on February 9. Madison says that she got a new phone last month and no longer has the text messages.
- What do you do next?

Lathrop GPM, P 150

CASE STUDY 


- You reach out to Josh and ask for a screenshot of the messages following the last message in the screenshot he previously sent you. Josh replies that his phone is set to auto-delete text messages after 30 days, so he does not have the messages anymore. Josh tells you that he sent you the only screenshot he took.
- Do you include the screenshot of the text messages Josh sent you in the investigation report?

Lathrop GPM, p. 151

CASE STUDY 


- After her follow-up interview, Madison sends you a copy of one of her journal entries. The entry is dated March 12 and discusses an appointment with her therapist when she realized she was raped.
- What do you do with the journal entry?

Lathrop GPM, p. 152


CASE STUDY 

- In your follow-up interview with Josh, he tells you that Madison was hanging out in the lounge right outside his room for several hours last week. Josh also tells you that he was at the gym the next day and that Madison came and used the machine right next to him. Josh tells you that Madison saw that it was him, but she just kept working out. Josh tells you it made him uncomfortable, so he packed up and left the gym.
- Josh also tells you that a friend, Kayla, saw him after class a few days ago. Josh says that Kayla told him she was having a party the next night at her apartment. Josh tells you Kayla said something like "Madison wanted me to tell you that you can't come to the party because she is going."
- Josh says that Madison's actions are retaliation for him participating in the investigation and also violate the no contact directive.
- What do you do after the interview?


Lathrop GPM, p. 153

STAGE THREE: PACKAGE INVESTIGATION FOR DECISION-MAKERS 


- Options for packaging your investigation:
 - Record each interview
 - And provide written summary of other evidence
 - Compile witness statements/summaries and other evidence
 - Allow parties and/or each witness to review the summary of their interview(s); if substantive objections to summary, note them in summary, but do not change if your notes support the summary
 - Allow parties to supplement with written statements



Lathrop GPM, 154

STAGE THREE: PACKAGE INVESTIGATION FOR DECISION-MAKERS 

- Options for packaging your investigation (cont.):
 - Draft an investigation report
 - Should prepare written investigation report ^{2017 Q & A (?)}
 - Allow parties to supplement with written responses
 - Parties should have opportunity to respond in writing or at hearing ^{2017 Q & A (recommended if parties are given access to information)}
 - Not a fact-finding report
 - Use careful, equal language—e.g., use “according to” for both
 - Parties must have the same access as officials to all information that will be used during informal and formal disciplinary meetings and hearings
 - Mandatory for sexual assault/VAWA
 - Must if Title IX ^{2017 Q & A (?)}



Lathrop GPM, 155



Q & A 



Lathrop GPM, 156

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DRAFTING AN INVESTIGATION REPORT




Lathrop GPM 157

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SESSION OVERVIEW

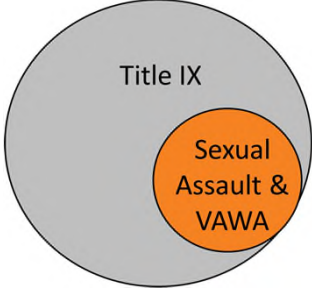
- Legal Requirements
- Purpose
- Scope
- Preparation
- Elements of the Report
- Considerations
- Role of the Title IX Coordinator
- Case Study




Lathrop GPM 158

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LEGAL REQUIREMENTS




Lathrop GPM 159

LEGAL REQUIREMENTS 


- Prompt, fair, and impartial
- Fact-gathering investigation phase
- Adjudication phase
- Should prepare written investigation report ^{2017 Q & A (?)}
- Parties must have access to information used in the decision-making process
 - Must for sexual assault/VAWA
 - “Must” if Title IX ^{2017 Q & A (?)}




Lathrop GPM, 160

LEGAL REQUIREMENTS 


- VAWA requires:
 - A prompt, fair, and impartial proceeding includes a proceeding that is conducted in a manner that provides **timely and equal access** to the accuser, the accused, and appropriate officials to **any information that will be used during informal and formal disciplinary meetings and hearings**




Lathrop GPM, 161

LEGAL REQUIREMENTS 


- VAWA requires:
 - Proceeding must “provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the **opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice**”




Lathrop GPM, 162

LEGAL REQUIREMENTS 

- Sexual history
 - “Questioning about the complainant’s sexual history with anyone other than the alleged perpetrator should not be permitted.”
 - “[T]he alleged perpetrator should not be given access to . . . information regarding the complainant’s sexual history.”
- Investigator should redact any information about the complainant’s sexual history from the investigation file



Lathrop GPM, p. 163

**LEGAL REQUIREMENTS:
2017 Q & A** 

- “An equitable investigation . . . requires a trained investigator to analyze and document the available evidence to support reliable decisions
 - *objectively evaluate* the credibility of parties and witnesses
 - *synthesize* all available evidence – including both inculpatory and exculpatory evidence –
 - and to take into account the *unique and complex circumstances* of each case.”
- “The investigation should result in a written report summarizing the *relevant* exculpatory and inculpatory evidence.”


Lathrop GPM, p. 164

PURPOSE 

- Know the purpose of your investigation and report under your institution’s policies
 - Provide a summary of your investigation
 - Allow parties to submit a response?
 - Allow adjudicators to make a decision
 - Play a role in prompt, fair, and impartial proceeding




Lathrop GPM, p. 165


SCOPE 

- Confirm that the adjudicator(s) want a written report
- Will adjudicator(s) listen to recordings?
- Will you have conversation(s) with the adjudicator(s)?
- Are you conducting fact gathering only or fact finding?
- Are you weighing in on credibility?
- Determine whether the adjudicator(s) want you to provide a recommendation
- Will you use witness summaries or summary of facts/events?
- Will you serve as a gatekeeper?


Lathrop GPM, 166

SCOPE 


- Reassess the scope of your investigation report as appropriate
 - Different cases may lend themselves more to one report-drafting method or another
 - Ensure that your policy and procedures provide for such flexibility
- The institution's approach as to having the investigator weigh in on credibility or make a recommendation should be consistent




Lathrop GPM, 167

SCOPE 




- Consider scope of report if the same person has the dual role of investigator and adjudicator
 - What information are you using when making a decision?
 - Report lets parties see what you are considering
 - Report gives parties a chance to respond prior to the decision





Lathrop GPM, 168

PREPARATION 


- Prepare for report drafting during your investigation by—
 - Staying organized
 - Taking good notes and/or recording interviews
 - Review recordings, notes, and evidence to assess whether you need more information
 - Think about how you will summarize the facts in your report to help assess whether you've gathered all of the evidence you need
 - Consider outlining or drafting the report as you conduct your investigation






Lathrop GPM,  169

ELEMENTS OF THE REPORT 

- Introduction
- Summary of allegations/complaint(s)
- Documents/evidence reviewed
- Witnesses interviewed
- Interview methodology
- Summary of facts by allegation OR witness summaries



Lathrop GPM,  170

ELEMENTS OF THE REPORT 

- Introduction
 - State the reason for your investigation
 - Date of complaint(s)
 - Your appointment as investigator
 - Refer to policy/procedures
 - Purpose of report
 - Scope of your role (e.g., credibility, recommendation)



Lathrop GPM,  171

ELEMENTS OF THE REPORT 

- Summary of allegations/complaint(s)
 - Include allegations from original complaint and those gathered during interviews; consider whether to differentiate between the two
 - If no written complaint, get information from individual who took oral complaint




Lathrop GPM, p. 172

ELEMENTS OF THE REPORT 


- Summary of allegations/complaint(s) (cont.)
 - Make it clear who made each allegation
 - Multiple complainants
 - Other witnesses
 - Cover details later in the report




Lathrop GPM, p. 173

ELEMENTS OF THE REPORT 


- Include a list of documents and evidence reviewed
 - Policies
 - Written complaints
 - Text messages
 - Social media screen shots
 - Letters from institution to parties
 - Emails from witnesses to investigator
 - Other written documentation
 - Physical evidence




Lathrop GPM, p. 174

ELEMENTS OF THE REPORT 


- Witnesses interviewed
 - List witnesses
 - May include dates of interviews




Lathrop GPM, P 175

ELEMENTS OF THE REPORT 


- Interview methodology
 - Dates of interviews
 - Location
 - Individuals present—e.g., advisors
 - Recorded or not recorded
 - Reasoning for choice of whom to interview (and not interview)



Lathrop GPM, P 176

ELEMENTS OF THE REPORT 


- Interview methodology (cont.)
 - General questions asked by investigator
 - General approach used in interviews
 - Statements made by investigator
 - Information shared with or withheld from witnesses




Lathrop GPM, P 177


ELEMENTS OF THE REPORT 

- Summary of the facts—two approaches:
 - Summary of facts by allegation
 - Separate out each allegation
 - Give account from each party/witness
 - Describe other evidence supporting or refuting allegation
 - Witness summaries
 - Recap account from each party/witness
 - Describe other evidence offered by or gathered from witness





Lathrop GPM, P 178

ELEMENTS OF THE REPORT 


- Summary of the facts
 - Include facts that may impact a credibility finding 
 - Weigh in on credibility if that's part of your role
 - *objectively evaluate* the credibility of parties and witnesses^{2017 Q & A}
 - Consider whether to point out where the parties agree and where they disagree
 - Exclude facts that are irrelevant and/or prejudicial depending on probative value
 - Investigator must *synthesize all available evidence*, including inculpatory and exculpatory evidence^{2017 Q & A}
 - Should result in written report summarizing *relevant* inculpatory and exculpatory evidence^{2017 Q & A} (*recommended*)

Lathrop GPM, P 179

SPECIAL CONSIDERATION 

- Always consider relevance:
 - Expert reports?
 - Character evidence?
 - Lie detector test results?
 - Prior violation by respondent?
 - Allegations of similar misconduct?
- Best to have a policy addressing 

Lathrop GPM, P 180

ROLE OF TITLE IX COORDINATOR DURING INVESTIGATION PHASE 

- Determine who will provide ongoing communication with the parties throughout the complaint process
 - Notify parties of delays and reason for delays
 - Notify parties of meetings with the other party
- Ensure that respondent receives adequate notice of any new allegations
- Oversee process to ensure compliance with policy and designated time frames
- Review investigation report, party responses, and rebuttals
 - Redact impermissible content
 - Evaluate whether further investigation is necessary
- Intake, investigate, adjudicate, and/or oversee appeal?
 - Beware of conflicts when filling multiple roles

Lathrop GPM, P 181

CASE STUDY 



Investigation Report:
Summary of Facts Gathered


Lathrop GPM, P 182

CASE STUDY: INVESTIGATION REPORT 

Investigation Report Excerpt

The parties are both sophomores at the University. The parties agree that they spent time together on a few occasions in January, February, and March 2019.

Lathrop GPM, P 183


CASE STUDY: INVESTIGATION REPORT 

January 25, 2019
Madison's Account

Madison stated that she was hanging out in her room with a few friends, including Josh, on January 25.¹ Madison stated that around 9:30 p.m., everyone except Josh left. Madison stated that Josh had made a mixed drink of vodka and soda and offered to share it with her. Madison stated that she had six or seven sips from the mixed drink.

¹ Madison stated that she has a single room without a roommate.


Lathrop GPM, p. 184

CASE STUDY: INVESTIGATION REPORT 

Madison stated that she and Josh were sitting on the edge of her bed when Josh leaned in and started kissing her. Madison stated that she was surprised, but she kissed Josh back. Madison stated that they kissed for about one minute and that Josh then put his hands on her hips. Madison stated that Josh started applying pressure and that "it felt like he was trying to put his hands down my pants." Madison stated that she was wearing jeans and Josh's hands were right at the top of the waistband. Madison stated that Josh moved his hands from her hips around to above her butt, still with his hands at her waistband. Madison stated that she then pulled away from Josh and stood up. Madison stated that she told Josh that she needed to go to bed and that Josh then left.

Madison stated that she did not consent to Josh putting his hands in her pants.


Lathrop GPM, p. 185

CASE STUDY: INVESTIGATION REPORT 

Josh's Account

Josh stated that he went over to Madison's room to meet a few friends on January 25. Josh stated that most people left around 9:00 p.m. and that by 9:45 p.m., he was the only person left with Madison. Josh stated that he and Madison shared a mixed drink he had made and sat on Madison's bed talking. Josh stated that after 30 minutes or so, he and Madison started "making out." Josh stated that things "started to get more heated" and he put his hands on Madison's hips. When asked where his hands were in relation to Madison's clothes, Josh stated that his hands were on "the top of her pants" and were slightly under the bottom of her shirt.


Lathrop GPM, p. 186

CASE STUDY: INVESTIGATION REPORT 

Josh also stated that he slipped one of his hands into Madison’s front pocket at one point, but that only the tip of one of his thumbs went into her pocket.² Josh stated that he kept his hands there for a few minutes while he and Madison kissed. Josh stated that Madison then stopped kissing him and said that it was late and she should go to bed. Josh stated that he then left.


² When asked about Josh’s account that he put his hands on the top of her pants and put his fingertips in her front pocket, Madison stated “it felt like he was trying to put his hands in my pants.”

Lathrop GPM, p. 187

CASE STUDY: INVESTIGATION REPORT 

When asked about Madison’s account that he put pressure on her hips as if he were trying to put his hands down her pants, Josh stated “I was holding her hips and pulling her closer to me as we kissed, but I never put them down her pants. I mean, if we kept making out, that’s where it was headed, but we stopped.” When asked about Madison’s account that he moved his hands from her hips around to above her butt, Josh stated “they were on her hips, on her side, and in her front pocket just a little. That’s it.”


Lathrop GPM, p. 188

CASE STUDY: INVESTIGATION REPORT 

Between January 25 and February 9, 2019
Madison’s Account

Madison stated that after January 25, she and Josh would “be flirty” when they saw each other. Madison stated that she was enjoying the “possibility of a relationship with Josh, but [she] wanted to take things slow.”


Lathrop GPM, p. 189

CASE STUDY: INVESTIGATION REPORT 

Josh's Account

Josh stated that after January 25, he and Madison started flirting and talking about hanging out again. Josh stated that he did not see Madison again for several weeks.

Lathrop GPM, p. 190


CASE STUDY: INVESTIGATION REPORT 

The Party on February 9, 2019

Madison's Account

Madison stated that on February 9, she went to a party with a friend from her hall, Jen. Madison stated that she and Jen arrived at the house party around 9:30 p.m. Madison stated that she and Jen hung out in one room at the party with a few other people from their residence hall for about an hour. Madison stated that she then went further into the house where she saw Josh.

Lathrop GPM, p. 191

CASE STUDY: INVESTIGATION REPORT 


Madison stated that she and Josh hung out and talked for a few minutes. Madison stated that Josh then "started trying to get [her] drunk." Madison stated that Josh was "pressuring [her]" to take shots. When asked what she meant by "pressuring" her, Madison stated that Josh was saying things like "come on, it's a party" and "we're here to have fun, right?" Madison also stated that Josh kept pouring shots and handing them to her. Madison stated that because Josh "made [her] feel like she had to," she had four shots of tequila.

Lathrop GPM, p. 192

CASE STUDY: INVESTIGATION REPORT 

Madison stated that around 11:30 p.m. or midnight she was feeling “pretty drunk.” Madison stated that she said she should go soon and Josh offered to walk her home. Madison stated that she went and found Jen at the party to say goodbye and then left with Josh. When asked how long she talked to Jen before leaving the party, Madison stated “not long, maybe just a minute” and that she just told Jen she was leaving.

Lathrop GPM, 193


CASE STUDY: INVESTIGATION REPORT 

Josh's Account

Josh stated that he went to a party off-campus on February 9 with his friends Caleb and Liam. Josh stated that he and his friends split up “pretty soon” after they arrived. Josh stated that he got to the party around 10:00 p.m. and that not long after that, he saw Madison there. Josh stated that he and Madison talked and were “flirting a lot” at the party. Josh stated that they took a few shots together, played a game of beer pong, and also danced in the living room for a bit. Josh stated that around 12:30 a.m., he suggested that they go back to his place and that Madison responded “yes.”³

³When asked about Josh's account that he suggested that they leave the party to go back to his place, Madison stated “not true, I had been planning on going home until we walked past Josh's building.”

Lathrop GPM, 194

CASE STUDY: INVESTIGATION REPORT 


When asked if he spent time with anyone else at the party, Josh stated “yeah, I was dancing in a group on and off and hanging out with other people.” When asked if any of the other people were female, Josh stated “yes.” When asked if anyone he was hanging out with was particularly intoxicated, Josh stated, “People were definitely wasted, yes. I don't really remember anyone in particular, but it was a pretty crazy party. Everyone was drinking.”

Lathrop GPM, 195

CASE STUDY: INVESTIGATION REPORT 

When asked about Madison’s account that he was pressuring her to drink, Josh stated “no, we were all drinking. I didn’t pressure her at all. I offered her shots and she took them.” When asked about Madison’s account that Josh offered to walk her home, Josh stated, “we both decided to go back to my place. We weren’t leaving the party to sleep, we were going back to my room to be alone.”


Lathrop GPM, p. 196

CASE STUDY: INVESTIGATION REPORT 

The Walk to Campus on February 9, 2019
Madison’s Account


Madison stated that she and Josh started walking back to her residence hall. Madison stated that the house that held the party was just a few blocks off campus. Madison stated that it took them “probably five minutes” to get to the quad on campus and that they then cut across the quad. When asked whether there were any hills or stairs on the walk, Madison stated “I don’t think so, I think it was pretty flat. Except for the quad, which is mostly grass and we cut across that. So that was bumpy in some spots.”

Lathrop GPM, p. 197

CASE STUDY: INVESTIGATION REPORT 


Madison stated that it took them “probably five more minutes” to walk across the quad and that it would normally be only a two minute walk. Madison stated “I was definitely struggling and stumbling. Josh had to put his arm around me to get me to walk straight.” When asked for more details of how Josh put his arm around her, Madison stated “It was around my shoulder or maybe my waist and he just kinda pulled me close to him so that he could sort of carry me. I was still walking, but like, he steadied me so I wouldn’t fall.” When asked if they saw anyone during the walk, Madison stated “not that I can recall.”

Lathrop GPM, p. 198

CASE STUDY: INVESTIGATION REPORT 

Madison stated that Josh’s dorm is at the end of the quad and that when they arrived at his dorm, Josh suggested that Madison sleep in his room so that she would not have to walk to her dorm. When asked where her dorm is, Madison stated that it was a few blocks past Josh’s building. Madison stated that she was tired, so she agreed to stay overnight in Josh’s room.

Lathrop GPM, p. 199


CASE STUDY: INVESTIGATION REPORT 

Josh’s Account

Josh stated that he and Madison held hands as they left the party and walked back toward campus. Josh stated that the party had been a few blocks off campus and that he and Madison cut across the quad once they were back on campus. When asked how long the walk took, Josh stated that it probably took them ten to fifteen minutes to get to his dorm because they stopped to make out a few times on the way.⁴ When asked how long that walk typically takes, Josh stated that it would normally be about a five to ten minute walk.


⁴ When asked about Josh’s account that they stopped to make out during the walk, Madison stated, “I think we kissed a few times. I don’t think we actually stopped to like make out though.”

Lathrop GPM, p. 200

CASE STUDY: INVESTIGATION REPORT 


Josh also stated that he had his arm around Madison for much of the walk and that doing so slowed him down. When asked what he meant by had his arm around her, Josh stated that he had his right arm around Madison’s shoulder at first and then later around her waist. When asked why he had his arm around her, Josh stated that he and Madison had been kissing and “we were on our way to my room to hook up, so we were just touching a lot you know.” When asked what made him think he and Madison were going to “hook up,” Josh stated “I didn’t know for sure, but that was definitely the vibe, I mean, we were making out, we decided to go to my place, yeah.”

Lathrop GPM, p. 201

CASE STUDY: INVESTIGATION REPORT 

When asked if she had any trouble walking or talking during the walk, Josh stated “no, she was talking normally. She might have tripped once but the grass on the quad is super uneven and we were kissing on and off, but mostly it was just normal. She walked fine.” When asked if they saw anyone during the walk, Josh stated “there were other people around, but no one we actually talked to.” When asked if he knew any of the people he saw during the walk, Josh stated “no.”


Lathrop GPM, 202

CASE STUDY: INVESTIGATION REPORT 

Security Footage

The investigator reviewed security footage showing the quad on campus in the early morning of February 10, 2019. Security footage from 12:14 a.m. to 12:16 a.m. shows Madison and Josh walking across the grass on the quad. The security footage is included at Attachment E.

Lathrop GPM, 203


CASE STUDY: INVESTIGATION REPORT 

Madison and Josh in Josh’s Room on February 9, 2019

Madison’s Account


Madison stated that by the time they arrived at Josh’s room, she was “really struggling to stay with it.” When asked what she meant by “struggling to stay with it,” Madison stated that she does not remember everything that happened and does not think she was “really participating.”

Lathrop GPM, 204

CASE STUDY: INVESTIGATION REPORT 


Madison stated she does remember going in to Josh’s room when they arrived and lying down on the bed. Madison stated that she took off her shoes before climbing in to bed, but left all of her other clothing on. Madison stated that she was really tired and was expecting to go to sleep.

Lathrop GPM, p. 205

CASE STUDY: INVESTIGATION REPORT 


Madison stated that she has “flashes of memories” from the rest of the night. Madison stated that she remembers making out with Josh in his bed. When asked if she was participating in the kissing, Madison stated “I guess so. We had kissed before, so I was, but I was really sleepy.” Madison also stated that she remembers Josh touching her bare breasts. When asked if she knew how her shirt and bra came off, Madison stated that she does not remember, but she assumes that Josh took them off. Madison also stated that she remembers Josh on top of her in his bed, having sex with her.

Lathrop GPM, p. 206

CASE STUDY: INVESTIGATION REPORT 

When asked if she recalled how the intercourse began, Madison stated “no, I was really confused and sleepy the whole night. I just have one memory of him having sex with me.” When asked if she remembered how the sex ended, Madison stated “I have no idea, I only remember a few seconds of it, of him on top of me, and it’s really hazy. I just know that he had sex with me.” When asked if she recalled any conversation between her and Josh in his room, Madison stated “no.”


Lathrop GPM, p. 207

CASE STUDY: INVESTIGATION REPORT 

Josh's Account

Josh stated that his roommate was out of town, so he and Madison were alone in his room when they arrived. Josh stated that when he and Madison arrived in his room, they sat on his bed and continued making out. Josh stated that Madison then performed oral sex on him. When asked who initiated the oral sex, Josh stated "She did. She pretty much just started doing it after we stopped making out." When asked how the oral sex occurred, Josh stated that Madison moved down to the carpet to be on her knees in front of him. Josh stated that Madison undid his pants and pulled his pants and underwear down to expose his penis.


Lathrop GPM, p. 208

CASE STUDY: INVESTIGATION REPORT 

Josh stated that Madison then started performing oral sex on him.⁵ Josh stated that he lay back in bed while Madison performed oral sex for about three minutes. When asked if he or Madison said anything before or during the oral sex, Josh stated "yeah, she asked if I wanted her to give me head and I told her yes." When asked where his hands were during the oral sex, Josh stated "next to me on the bed I think."⁶

⁵ When asked about Josh's account that she performed oral sex on him, Madison stated "I don't remember that. It doesn't seem like something that would have happened with how out of it I was. It just doesn't sound like me."
⁶ When asked about the fact that his account of the night of February 9 in the police report did not include an account of Madison performing oral sex on him, Josh stated "I may have just forgotten about it when talking to the police. Madison is accusing me of rape, that's what I told them about."


Lathrop GPM, p. 209

CASE STUDY: INVESTIGATION REPORT 

Josh stated that after Madison stopped performing oral sex, he asked Madison, "are you sure you're good with having sex?" When asked if he and Madison had discussed having sex before, Josh stated "that was the vibe when we left the party, but I don't remember if we actually said it. And it had been a while since then, so I asked again in my room." When asked how Madison responded, Josh stated that Madison took off her shirt and bra and got into bed next to him.⁷ Josh stated that he then cupped Madison's breast with his hand while he kissed her. When asked what words or actions from Madison indicated that Madison consented to Josh touching her breast, Josh stated "she took off her shirt and bra and like got in bed next to me."

⁷ When asked about Josh's account that she took off her shirt and bra, Madison stated "I think Josh took off my shirt. I was not participating in anything that was going on."


Lathrop GPM, p. 210

CASE STUDY: INVESTIGATION REPORT 

Josh stated that he then rubbed Madison’s vagina with his hand for a few minutes.⁸ When asked if it was over or under Madison’s clothes, Josh stated “I pulled her pants and underwear off first.” When asked if they talked at all while Josh touched Madison’s vagina, Josh stated “no, I don’t think so. But she moaned occasionally and was breathing heavy.” When asked what words or actions from Madison indicated that Madison consented to Josh rubbing her vagina with his hand, Josh stated “I asked if she was good with having sex and she took off her shirt and her bra and came up next to me. She kept kissing me in bed. We were about to have sex, so she was into it.” When asked if Madison responded verbally to his question about having sex, Josh stated “I don’t think so, but like I said, she was into it.”


⁸ When asked about Josh’s account that he touched her vagina, Madison stated “I don’t remember everything, so yeah, he probably did that.”

Lathrop GPM, p. 211

CASE STUDY: INVESTIGATION REPORT 


Josh stated that he then grabbed a condom from his nightstand next to the bed and put it on. Josh stated that he and Madison had sex for ten or fifteen minutes. When asked how they were positioned during the intercourse, Josh stated that they started with Madison on the bottom and Josh on top. When asked if Madison was participating, Josh stated, “yeah, at that point, she had her arms around my back and her legs wrapped around me too and was kind of pulling me and sort of directing me.” When asked what he meant by “directing me,” Josh stated “just like pulling to tell me how fast to go.”

Lathrop GPM, p. 212

CASE STUDY: INVESTIGATION REPORT 

Josh stated that Madison then got on top of him and they had sex with her on top “for maybe a minute.” Josh stated that Madison then moved to lay down on her side so that Josh was behind Madison and they continued having sex in that position for several minutes. When asked if Madison was participating at that point, Josh stated “not really, I mean she was moaning every so often, but it is hard for her to really participate in that position. I was doing most of it.” Josh stated that he then moved to get back on top of Madison and asked if she wanted to continue in the missionary position. Josh stated that Madison did not answer and he noticed that she was “sort of unfocused, not looking at [him].”


Lathrop GPM, p. 213

CASE STUDY: INVESTIGATION REPORT 

Josh stated that he rolled over and “stopped all contact” with Madison at that point.⁹ Josh also stated “I don’t know what happened. All of a sudden she looked really out of it and I started thinking that maybe she drank more than I thought. It was just all of a sudden she was completely gone.” Josh stated that he got Madison a glass of water, which she drank, and that they then fell asleep.


⁹ When asked about Josh’s account of having sex with her in multiple positions, Madison stated “I only remember him being on top of me. I was totally out of it, I don’t know how I could have been on top.”

Lathrop GPM, p. 214

CASE STUDY: INVESTIGATION REPORT 


When asked what words or actions indicated that Madison consented to having sex with him, Josh stated “same as I said before, I asked and she like took it to the next level, taking off her shirt and getting into bed with me. She was also leading things, like she was super into it, like directing me with her arms and legs when I was on top and doing most of the work when she was on top. It was not until the end that I saw that something was wrong, that she was out of it, and then I stopped right away.”

Lathrop GPM, p. 215

CASE STUDY: INVESTIGATION REPORT 

When asked about Madison’s account that she was “struggling to stay with it,” Josh stated “not until the end, no, it wasn’t like that, that’s not true. We were having fun, both of us. She was showing me what she wanted. I stopped as soon as I noticed that she was out of it.”

Lathrop GPM, p. 216


CASE STUDY: INVESTIGATION REPORT 

Parties' Intoxication Levels on February 9, 2019
Madison's Account

Madison stated that she had just gotten home from work and did not have time to eat before going to the party on February 9. Madison stated that at the party she had around two cups of beer and that she then had four shots of tequila.¹⁰


¹⁰When asked about Madison's statement in a police report that she drank "seven tequila shots and four beers" at the party, Madison stated "it's hard to remember exactly how much I drank. I think it was maybe closer to seven tequila shots. I just know that I was really drunk."

Lathrop GPM, p. 217

CASE STUDY: INVESTIGATION REPORT 

When asked over what time period she was drinking at the party, Madison stated that she had two beers in the first hour after she arrived, that she then took a break from drinking for maybe 30 minutes, and that she then had 3 or 4 shots over the course of "maybe an hour." Madison stated that around 11:30 p.m. or midnight she was feeling "pretty drunk."


Lathrop GPM, p. 218

CASE STUDY: INVESTIGATION REPORT 

When asked how intoxicated she was on a scale of 1 (sober) to 10 (passed out) when she left the party, Madison stated "I would say 8, I was drunk."¹¹

¹¹The intoxication scale is asked by the investigator to assist in understanding how an individual views their own intoxication level and how that compares to reports from others about an individual's level of intoxication and its impact on them.


Lathrop GPM, p. 219

CASE STUDY: INVESTIGATION REPORT 

When asked what made her say 8, Madison stated “I was tired and I definitely had trouble standing during the walk. Josh had to help me.”


When asked how intoxicated she was on a scale of 1 (sober) to 10 (passed out) when she was in Josh’s room, Madison stated “9.5 to 10.” When asked why she said 9.5 to 10, Madison stated, “I was not with it at all. I might have passed out. I don’t even remember most of what happened.”

Lathrop GPM, p. 220

CASE STUDY: INVESTIGATION REPORT 

When asked if Josh was drinking, Madison stated “yes, he had some shots with me. But I don’t know how much he drank.” When asked if he seemed intoxicated at all on February 9, Madison stated “not really. He was drinking, but he seemed normal.” When asked how intoxicated he was on a scale of 1 (sober) to 10 (passed out) when they left the party, Madison stated “I would say a 2. You really couldn’t tell.”


Lathrop GPM, p. 221

CASE STUDY: INVESTIGATION REPORT 

Josh’s Account


Josh stated that Madison had a few shots and a few cups of beer at the party. Josh stated that he thought Madison was “probably tipsy.” When asked why he thought Madison was tipsy, Josh stated “we were all drinking and she was chill, just having fun.” When asked how intoxicated Madison was on a scale of 1 (sober) to 10 (passed out) when they left the party, Josh stated “maybe a 4.” When asked what made him say 4, Josh stated “she had been drinking, but like, nothing crazy. She was walking, talking, all that.”

Lathrop GPM, p. 222

CASE STUDY: INVESTIGATION REPORT 


When asked how intoxicated Madison was on a scale of 1 (sober) to 10 (passed out) when they were in Josh’s room, Josh stated “still a 4. She was into it, she started some of it, and we were talking and stuff.” When asked how intoxicated Madison was on a scale of 1 (sober) to 10 (passed out) when he noticed she was out of it, Josh stated “I don’t even know. It was weird, I really don’t know what happened. I couldn’t give you a number, I just don’t know what that was about. It was just like all of a sudden she was done for the night.”

Lathrop GPM, p. 223

CASE STUDY: INVESTIGATION REPORT 

When asked how much he had to drink, Josh stated, “maybe two shots and three beers.” When asked if he felt intoxicated on February 9, Josh stated “a little buzzed, nothing more than that.” Josh also stated that he went out to dinner before the party and that he drinks fairly regularly so that amount “doesn’t really hit” him. When asked how intoxicated he was on a scale of 1 (sober) to 10 (passed out) when they left the party, Josh stated “maybe a 3, I felt good, but I was still totally fine, I remember everything.” When asked how intoxicated he was on a scale of 1 (sober) to 10 (passed out) when they were at his apartment, Josh stated “probably a 2, I didn’t have any more after the party and I started to sober up on the walk.”


Lathrop GPM, p. 224

CASE STUDY: INVESTIGATION REPORT 

Jen’s Account


Jen stated that she went to a party off-campus with her friend Madison on February 9. Jen stated that she hung out with Madison for about 30 minutes or so after first arriving and that they then each ended up hanging out with other people. Jen stated that around 11:30 p.m. or midnight, she saw Madison leaving with Josh. Jen stated that she and Madison said bye to each other and that Madison then left. When asked how long she talked to Madison, Jen stated, “maybe ten seconds.” When asked if she noticed anything unusual about Madison, Jen stated “I don’t think so.”

Lathrop GPM, p. 225

CASE STUDY: INVESTIGATION REPORT 

When asked if Madison was drinking at the party, Jen stated that she thought Madison was drinking beer from the keg during the party, but that she did not pay much attention. When asked if Madison seemed intoxicated when she said bye to her, Jen stated “I think we all were, so sure, she was drunk.” When asked what made her think Madison was drunk, Jen stated, “I haven’t really been around her drinking all that often, but I just know that everyone was drinking and having a good time.”

Lathrop GPM, 226

CASE STUDY: INVESTIGATION REPORT 


When asked how she would rate Madison on a scale of 1 (sober) to 10 (passed out) when she said goodbye to her at the party, Jen stated “maybe a 7.” When asked why she said 7, Jen stated “she was loud and was hugging me, that’s not something she would do sober.” When asked if Madison had trouble walking or standing, Jen stated, “I don’t think so, but I didn’t really see her other than when she walked out of the room to leave.”

Lathrop GPM, 227

CASE STUDY: INVESTIGATION REPORT 

When asked if she noticed whether Josh had been drinking, Jen stated “no, the first time I noticed him was when he was leaving with Madison and I didn’t interact with him at all.”


Lathrop GPM, 228

CASE STUDY: INVESTIGATION REPORT 

Liam's Account


Liam stated that he was at a party off campus on the night of February 9, 2019. Liam stated that he arrived with his friends Josh and Caleb around 9:00 or 10:00 p.m. Liam stated that he and Josh each took a shot as soon as they arrived. When asked what the shot was, Liam stated "I honestly don't remember." Liam stated that he said hi to a few people and then spent most of the night in the living room where there was "a sort of dance floor."

Lathrop GPM, p. 229

CASE STUDY: INVESTIGATION REPORT 


When asked if he talked to Josh while at the party, Liam stated "I was with him right when we got there. And I think I saw him on and off, but we didn't talk really after like the first 10 minutes." When asked who else he saw at the party, Liam stated that he saw students named Shelly, Kristin, Joe, and Mike. When asked if anyone was particularly intoxicated at the party, Liam stated, "yeah, a few people definitely had too much." When asked who those people were, Liam stated "this guy Joe was, like, falling over."

Lathrop GPM, p. 230

CASE STUDY: INVESTIGATION REPORT 


And then there was a girl that I saw who was loud and like over the top. I can't remember her name. I think I saw her with Josh at one point." When asked what that individual looked like, Liam stated "honestly, I couldn't tell you. Did she have light hair maybe? I just remember that I saw her with Josh at one point." When asked how intoxicated that student was on a scale of 1 (sober) to 10 (passed out), Liam stated "I don't know, she seemed pretty drunk, but I don't even know who she was."

Lathrop GPM, p. 231

CASE STUDY: INVESTIGATION REPORT 

When asked if Josh was drinking at the party, Liam stated, "I'm sure he was. I think he had a cup in his hand. But I wasn't paying attention." When asked if Josh seemed intoxicated, Liam stated "honestly I didn't see him much at the party. I don't know, not that I noticed."


Lathrop GPM, p. 232

CASE STUDY: INVESTIGATION REPORT 

The Morning of February 10, 2019
Madison's Account


Madison stated that when she woke up on the morning of February 10, 2019, she was naked in Josh's bed. Madison stated that she felt pretty sick, so she got dressed and then went to the bathroom to throw up. Madison stated that after she threw up, she came back to Josh's room to grab her purse. Madison stated that Josh was awake when she came back. Madison stated that Josh asked if she was okay.

Lathrop GPM, p. 233

CASE STUDY: INVESTIGATION REPORT 

Madison stated that she replied, "Not really. Had a little too much to drink I guess." Madison stated that Josh told her, "yeah, we were having a great time and then you seemed kind of out of it before we went to bed." Madison stated that she "sort of laughed it off" and felt "uncomfortable and embarrassed" that she did not remember everything from the night before. Madison stated that she told Josh she should go home so she could go back to bed.


Lathrop GPM, p. 234

CASE STUDY: INVESTIGATION REPORT 

Josh's Account

Josh stated that Madison was not in bed when he woke up the next day, but that she came back a few minutes later. Josh stated that he checked with her to see if she was okay and told her that she was kind of out of it at the end of the night. Josh stated that Madison told him that she must have had more to drink than she was intending. When asked about Madison's demeanor, Josh stated that Madison "seemed to be fine, she was laughing." Josh stated that Madison left a few minutes later.

Lathrop GPM, p. 235


CASE STUDY: INVESTIGATION REPORT 

After February 10, 2019

Josh's Account

Josh stated that he and Madison saw each other occasionally after February 10, including a few occasions when they made out in Josh's room. Josh stated that he was "never exclusive" with Madison and that he was also "with other girls." Josh stated that in early March, Madison found out that he had sex with another student from her residence hall. Josh stated that Madison sent him a text message "showing how jealous she was and how pissed."

Lathrop GPM, p. 236

CASE STUDY: INVESTIGATION REPORT 

Josh provided a screenshot of the below text message from Madison, dated March 7, 2019.

Madison: You seriously had sex with her???

Madison: I thought we were more than friends, but now I know we weren't even that. I don't just hookup with guys. This really meant something to me.


Josh: Are you seriously pissed

Josh: we were just having fun, didn't know you read more into it. Didn't think we had to talk about what we were, that we were just casual.

Josh: It just seemed like we were both having fun, we both wanted to that night.

Madison: You took advantage of me. I should not have even been in your room that night.

Lathrop GPM, p. 237

CASE STUDY: INVESTIGATION REPORT 

Josh stated that Madison brought the complaint against him a few days later. Josh stated that Madison’s complaint “is her way of getting back at me for not wanting to be her boyfriend or whatever. She wanted more from it than I did and now she brings this complaint to get back at me.”


Lathrop GPM, P 238

CASE STUDY: INVESTIGATION REPORT 

Madison’s Account


Madison stated that she saw Josh once a week or so after February 10 until early March. Madison stated that they made out in Josh’s room a few times. Madison stated “I thought we were on our way to being boyfriend and girlfriend.”

Lathrop GPM, P 239

CASE STUDY: INVESTIGATION REPORT 


Madison stated that in mid-March she had an appointment with her therapist. Madison stated that she had just found out that Josh had sex with someone in her residence hall and she was upset. Madison stated that she told her therapist about going home with Josh after the party. Madison stated that her therapist asked her a few questions and Madison explained that she did not really remember that night, but she knows that they had sex. Madison stated that she explained that Josh told her she looked “out of it.”

Lathrop GPM, P 240

CASE STUDY: INVESTIGATION REPORT 

Madison stated that her therapist then responded that it “sounded like [Madison] w[as] raped.” Madison stated that she talked to her friend Chloe when she got home from her appointment and that Chloe reported to the Title IX Coordinator the next day.


Lathrop GPM, p. 241

CASE STUDY: INVESTIGATION REPORT 

Madison stated that she journals “almost every day” and that she wrote an entry at the end of the day that she met with her therapist and spoke with Chloe. Madison provided a copy of the journal entry dated March 12. The journal entry stated:


It has taken me time to come to terms with it, but now after talking to Dr. Lee, I realize it is true. I was raped. Josh got me drunk, took me back to his place, and took advantage of me. I didn’t want to believe it. Now I have to and it won’t be easy.

Lathrop GPM, p. 242

CASE STUDY: INVESTIGATION REPORT 

When asked about her text message from March 7, 2019, Madison stated “I found out Josh had sex with someone else and it really hurt. I thought we were going to be something.” When asked what she meant by “took advantage of her,” Madison stated “at that point I didn’t even realize how much he took advantage of me, I just knew that he took advantage of how much I cared about him. And I knew it was wrong. But then a few days later I realized how wrong it was, that I was actually raped.” Madison also stated that Josh responded to her message about taking advantage of her and “acknowledged that [she] was too drunk that night.”


Lathrop GPM, p. 243

CASE STUDY: INVESTIGATION REPORT 

Madison stated that the text message said something like “You’re right, you were really drunk, but we were having fun so I just went with it.” Madison stated that she got a new phone last month and no longer has any of the text messages she exchanged with Josh.¹²

¹²When asked about Madison’s account of his text message acknowledging that Madison was drunk, Josh stated “That’s not true, I did not say that. I don’t even think I answered that text message. She was pissed at me and I just didn’t want to get into it. If anything, I might have said that she seemed out of it at one point, but that was when I stopped. She was having a good time and leading a lot of it, so I definitely didn’t think she was that drunk until right at the end.” Josh also stated that his phone is set to auto-delete after 30 days, so he no longer has the text message exchange. Josh stated that he gave the investigator the only screenshot he had from his text message exchange with Madison.


Lathrop GPM, p. 244

CASE STUDY: INVESTIGATION REPORT 

Chloe’s Account

Chloe stated that she and Madison have been friends since the fall of their freshman year. Chloe stated that she talked to Madison in mid-March when Madison came back from an appointment with her therapist. Chloe stated that Madison told her that she had been talking about how Josh had cheated on her when she mentioned having sex with him after a party. Chloe stated that Madison told her that her therapist asked her questions about the party and about going home with Josh. Chloe stated that Madison told her that she told her therapist that she had sex with Josh, but that she blacked out for part of the night. Chloe stated that Madison told her that her therapist then said that it sounded like Madison was raped.

Lathrop GPM, p. 245


CASE STUDY: INVESTIGATION REPORT 

Investigation Report: Attachment E


For purposes of the case study, the security footage shows Josh with his arm around Madison. Madison appears to stumble two times. In addition, Madison and Josh sway side to side occasionally as they walk across the quad and do not walk in a straight line to Josh’s dorm. Josh and Madison appear to kiss once briefly while walking.

Lathrop GPM, p. 246


CASE STUDY




- You submit your completed investigation report to the Title IX Coordinator.
- The parties each review the investigation report and submit a response.

Lathrop GPM,  247


**PROVIDING THE PARTIES
ACCESS TO INFORMATION**



- Must with sexual assault and VAWA cases
- “Must” if Title IX^{2017 Q&A (?)}
- Need to comply with federal law without unnecessarily risking privacy
- Access to review information; not copies
- Use of watermarks
- Prohibit photographs, copying, downloading (check smart phones at the door)
- Supervise access
- Out of town access
 - secure site with ability to prohibit downloading AND
 - skype session during review
- Access by advisor – must be with party


Lathrop GPM,  248

CASE STUDY




Madison’s Initial Response

Josh raped me. His conduct has impacted my entire life, hurt my grades, and caused me and my family so much pain. Reading the report, I cannot believe Josh’s lies. He admitted in a text message to me that I was too drunk that night. He told me that. Now he says that I magically became incapacitated right before he stopped? Josh knows the truth and I hope you will see it too.

Lathrop GPM,  249

CASE STUDY




Josh's Initial Response

One thing is clear: Madison made this complaint to get back at me for having sex with someone else. She wanted a relationship, but that was not what we were about. When she found out I had sex with someone else, she decided to make up this serious allegation in an attempt to ruin my life. There should be serious doubts about Madison's statements. Just look at what she says about how much alcohol she drank at the party. She tells the school one thing, then she exaggerates it even more to the police.

Lathrop GPM, p. 250

CASE STUDY




Josh's Initial Response (cont.)

I do not know what happened to Madison that led to her looking so out of it. Maybe she is telling the truth and was drunker than anyone knew. But it is obvious that I could not have known that. No one says that she was falling over or slurring her words and I definitely didn't carry her to my room. As soon as I saw something was off, I stopped.

Lathrop GPM, p. 251


CASE STUDY




Josh's Initial Response (cont.)


Madison has chosen to submit a journal entry from just one day, but she journals every day. Her journal entries from February 10 and March 7 should also be included in the report.

Lathrop GPM, p. 252


CASE STUDY 


- In Josh’s response statement, he says that additional journal entries from Madison’s journal should have been included, including her entries from February 10 and March 7.
- The Title IX Coordinator asks you to reach out to Madison to ask about the other journal entries.

Lathrop GPM,  253


CASE STUDY 


- You set up a call with Madison and ask if she could provide you with those journal entries. Madison responds that she does not want to share anything additional from her journal. Madison says that she journals almost every day, so she is sure that she has an entry from those days or very close to those days, but her journal is very private and she is not comfortable with additional entries being included in the investigation.
- After your call, Madison emails you and states: “I looked at those entries and there was nothing related to this investigation.”
- What do you do next?

Lathrop GPM,  254

CASE STUDY 

- After speaking with the Title IX Coordinator, you decide to amend the investigation report to include this additional information.


Lathrop GPM,  255

CASE STUDY: AMENDED INVESTIGATION REPORT 

It has taken me time to come to terms with it, but now after talking to Dr. Lee, I realize it is true. I was raped. Josh got me drunk, took me back to his place, and took advantage of me. I didn't want to believe it. Now I have to and it won't be easy.¹²


¹² The investigator asked Madison if she would be willing to provide copies of journal entries from other relevant days, including February 10 and March 7. Madison declined to provide the journal entries. Madison stated "I journal almost every day, so I do probably have entries from those days, but my journal is really private. It was hard enough for me to show you just that one entry. I don't want more of my journal to be part of this investigation." Madison later sent the investigator an email that stated: "I looked at those entries and there was nothing related to this investigation."

Lathrop GPM, p. 256

CASE STUDY 

- You submit your amended investigation report to the Title IX Coordinator.

Lathrop GPM, p. 257

ROLE IN DECISION-MAKING PROCESS 

- If role is investigator (and not adjudicator), role in adjudication should be limited
 - May be asked to review parties' responses to investigation report
 - Avoid communication with adjudicators if at all possible
 - If communication with adjudicators is necessary, work with Title IX Coordinator to provide the parties with access to additional information

Lathrop GPM, p. 258

RECORDS TO MAINTAIN 

- Reports and complaints
- Notice to respondent of complaint
- **Communications with parties and other correspondence relating to investigation (including documentation of verbal in-person/phone conversations)**
- No-contact orders and other interim measures (offered and whether accepted or declined) for both parties
- Investigator's notes
- **Party and witness statements, if applicable**
- **Recordings of interviews or interview notes**
- **Other evidence received (text messages, pictures, emails, etc.)**
- Investigation report or summary
- Adjudicator or hearing panel notes
- Notice of determination
- Appeal records
- Names of all involved in process (parties, witnesses, investigators, adjudicators, appeal officers)
- **Training records – relating to investigators, adjudicators, appeal officers, and other involved officials, as well as training received by parties**
- Records relating to complaints of retaliation or violation of interim measures or sanctions
- **Start and stop dates of investigation suspension**
- Records relating to other complaints involving same parties

Lathrop GPM, 259



Q & A 



Lathrop GPM, 260

UPCOMING TRAININGS 


- **Trainings for individuals with heightened responsibility:**
 - **TBD: Title IX Update: Final Regulations**
 - **TBD: Senior Leadership Training**
 - **TBD: Title IX/VAWA Hearing Panel Training**
 - **TBD: Title IX/VAWA Appeal Officer Training**
 - **TBD: Trauma Informed Training for First Responders, Confidential Resources, and Campus Security**

Lathrop GPM, 261

ON DEMAND TRAININGS 

- **Available on-demand:**
 - Annual Trauma Informed Training for Investigators and Adjudicators
 - Annual Training for NEW Title IX Coordinators and Deputy Coordinators
 - Annual Training for ADVANCED Title IX Coordinators and Deputy Coordinators
 - Title IX/VAWA Hearing Panel Training
 - Trauma Informed Training for First Responders, Confidential Resources, and Campus Security
 - Making Your Sexual Misconduct Policy a 10
 - Title IX/VAWA Training for Chief Academic Officers
 - Title IX/VAWA Panel Discussion for Coaches and Athletic Directors
 - Compliance Update: New VAWA Guidance
 - Senior Leadership Training
 - Transgender Students and Employees Training
 - Minnesota Law Update: Title IX Coordinator Overview of Legal Requirements
 - Confidential Resources Training
 - Attorneys Serving as Advisors
 - Panel Discussion on Interviewing Survivors of Sexual Assault
 - Fundamentals of FERPA

Lathrop GPM, 262

ON DEMAND TRAININGS 

- **Available on-demand:**
 - Drafting Your Notice of Determination
 - Post-VAWA Annual Security Report Drafting
 - Additional Requirements Under Minnesota's Campus Sexual Assault Law
 - Drafting Effective and Compliant Investigation Reports
 - Title IX Coordinator Training: Duties Beyond Sexual Assault
 - Title IX/VAWA Training for Adjudicators
 - Title IX/VAWA Investigator Training
 - Train the Trainer: Title IX/VAWA Training for Coaches and Athletic Directors
 - Panel Discussion on Title IX Recordkeeping Requirements and Best Practices
 - Complying with the NCAA Sexual Violence Policy – Part 1
 - Complying with the NCAA Sexual Violence Policy – Part 2
 - Unique Challenges in Responding to Allegations of Domestic Violence, Dating Violence, and Stalking
- **Prevention programs for students & employees—customizable online modules**

Lathrop GPM, 263
