



10/7/2020

Posting Permitted On Your Institution's Title

(iii) Require that any individual designated by a recipient as a Title IX Coordinator, investigator, decision maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for

Rape Shield Exceptions

§ 10645(b)(6)(i) -
Sexual behavior questions and evidence are **IRRELEVANT** except:

1. are offered to prove that someone other than the respondent committed the conduct alleged by the complainant;
2. if the questions and evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent

9

New Regulations, New Report Considerations

(iv) Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;

(vii) State whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard;

§ 10645(b)(1)(iv), (vii)

10



#3

Elements and Format of a Report (and Appendices)

ACADEMIC IMPRESSIONS

19

19

Report Format

INVESTIGATION REPORT PREPARED BY

ACADEMIC IMPRESSIONS

20

20





Executive Summary



Evidence

Start from the beginning

Chronology or Chronological?

Can start with some background if that is relevant.

“Hardy Schae asked 150 persons class, but otherwise did not know each other before the first incident reported”

Use subheadings to guide the reader through the events

Re-incident Interactions Between H and SC

The First Reported Incident: Unwanted Touching on XDate





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#4

Outlining the Corroborations & Contradictions in Evidence

43

The Regulation




§ 1064(b)(1)(i)



44

Must Have Structure

Where do you get a disciplined approach to determining whether the information you've obtained is accurate? Complete?



45


45

Every Court System Has a Credibility Instruction

The trick is to apply the structure consistently

Every time
To all evidence
Without bias

And to look to how issues are illuminated by the contradictions and corroborations of all evidence obtained



46

46

Ninth Cir. Jury Instability 14

In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;**
- (2) the witness's memory;**
- (3) the witness's manner while testifying**
- (4) the witness's interest in the outcome of the case, if any;**
- (5) the witness's bias or prejudice, if any;**
- (6) whether other evidence contradicted the witness's testimony;**
- (7) the reasonableness of the witness's testimony in light of all the evidence; and**
- (8) any other factors that bear on believability.**

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes

However, if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how

Primary evidence

- **Authentic, relevant, tangible evidence**
- **Firsthand, uninvolved, unimpaired witness reports**

POLL

Is circumstantial evidence less credible than direct evidence?

53

Circumstantial Evidence

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

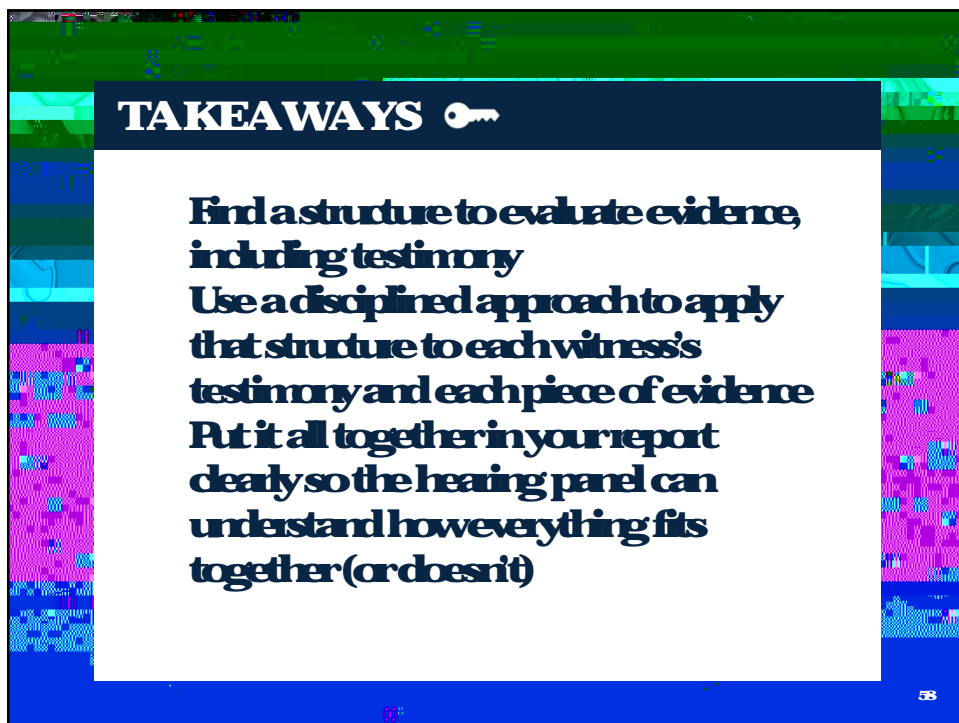
ACADEMIC
COUNCIL OF
LAWYERS

54

54



57



58





**Example -
Post Investigation Report Draft**

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69

As you're awaiting party comments, start converting your bullet points to English

General principles

- 1. Keep it simple**
- 2. Keep it direct**
- 3. Proceed chronologically**
- 4. Do not include every fact you've obtained, only all relevant facts**



71

Relevance

FRE401 – Evidence is relevant if:

- (a) it has any tendency to make a fact more or less**



72

As you're awaiting party comments, start converting your bullet points to English

Point of View

1. **First Person**
 "I interviewed the Complainant on X date"
 "Your investigator interviewed the Respondent on Y date"
2. **Second person** "You did X" Not an effective writing technique generally – don't try it outside of fiction
3. **Third person** "Complainant and Respondent went to a party at the Theta Beta house with a group of approximately 10 friends from the Psychology program (Cite to evidence)"



73

73

As you're awaiting party comments, start converting your bullet points to English

Rewrite the below to remove the investigator from the story, except where called for:

I asked Ruth if she had ever followed George to the dining hall. She responded she had. I asked her to tell me about each time. She told me on June 1, it was his birthday, and she wanted to surprise him. I asked her how she knew it was his birthday; she told me he texted her the date and how excited he was to celebrate.

I asked her to provide me that text and she said she would do so that day. I have never received the text, although I sent a follow up request several days later.

Ruth acknowledged following George to the dining hall on June 1, indicating it was his birthday and she wanted to surprise him. She indicated George had texted her that June 1 was his birthday and that he was "excited to celebrate with her."

I asked her to provide me that text and she said she would do so that day. I have never received the text, although I sent a follow up request several days later.



74

74

As you're awaiting party comments, start converting your bullet points to English

Passive voice

"The beer was consumed by the end of the evening"

The partygoers drank the entire keg that night.

"Clothing got torn"

Respondent grabbed Complainant's clothing which was torn during the struggle.

"Bruising occurred"

After the struggle, Respondent had a bruise where Complainant indicated she pushed him away.

75

As you're awaiting party comments, start converting your bullet points to English

Sentence structure - simple

Complainant went to the party. S/he had two beers. She did not feel intoxicated. She usually drinks six or more beers before feeling intoxicated.

Respondent brought Complainant her third beer. She had "one or two pulls" from the bottle. She then felt "very woozy." She does not remember anything else from that night. Her first recollection is waking up at 7am.

Sentence structure varied

Complainant went to the party where she had two beers. She did not feel intoxicated, reporting that it takes about six beers before she feels intoxicated.

Respondent brought Complainant her third beer and, immediately upon having "one or two pulls" from the bottle, she felt "very woozy." She does not remember anything else until waking up at 7am.

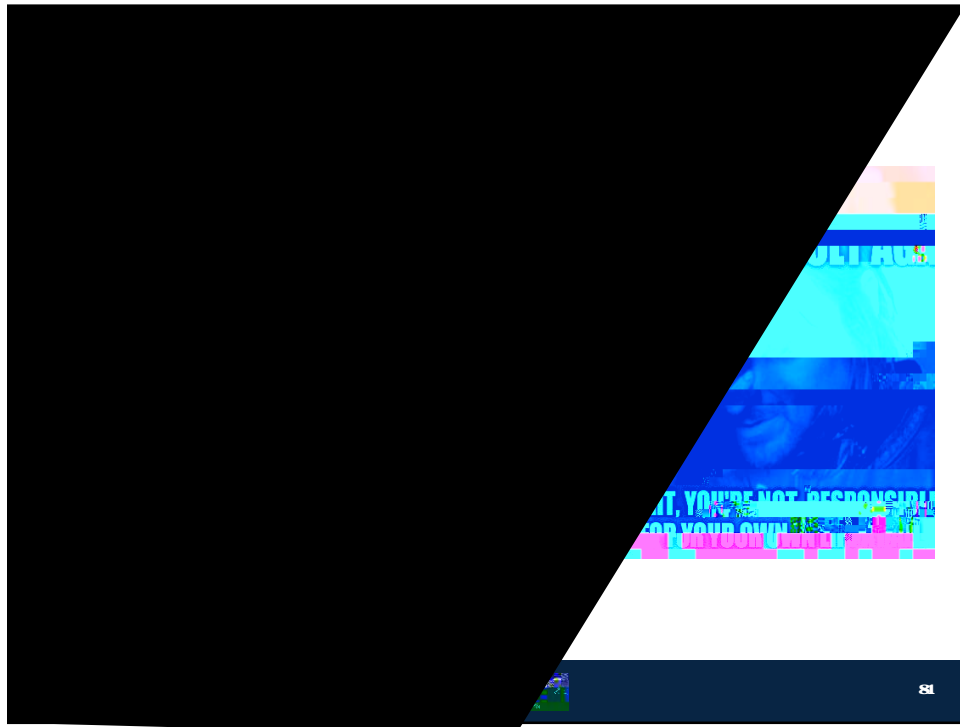
76



79



80



Finalize Your OWN Analysis

Prospective's Prior Similar

Complainant's post-incident behavior

Witness 2 testimony

ER

ACADEMIC

83

83

Complete Your Analysis Using All Corroborations & Contradictions in the Evidence

Issue

Rule

Analysis

ACADEMIC

84

84

Never give your report to someone else without:

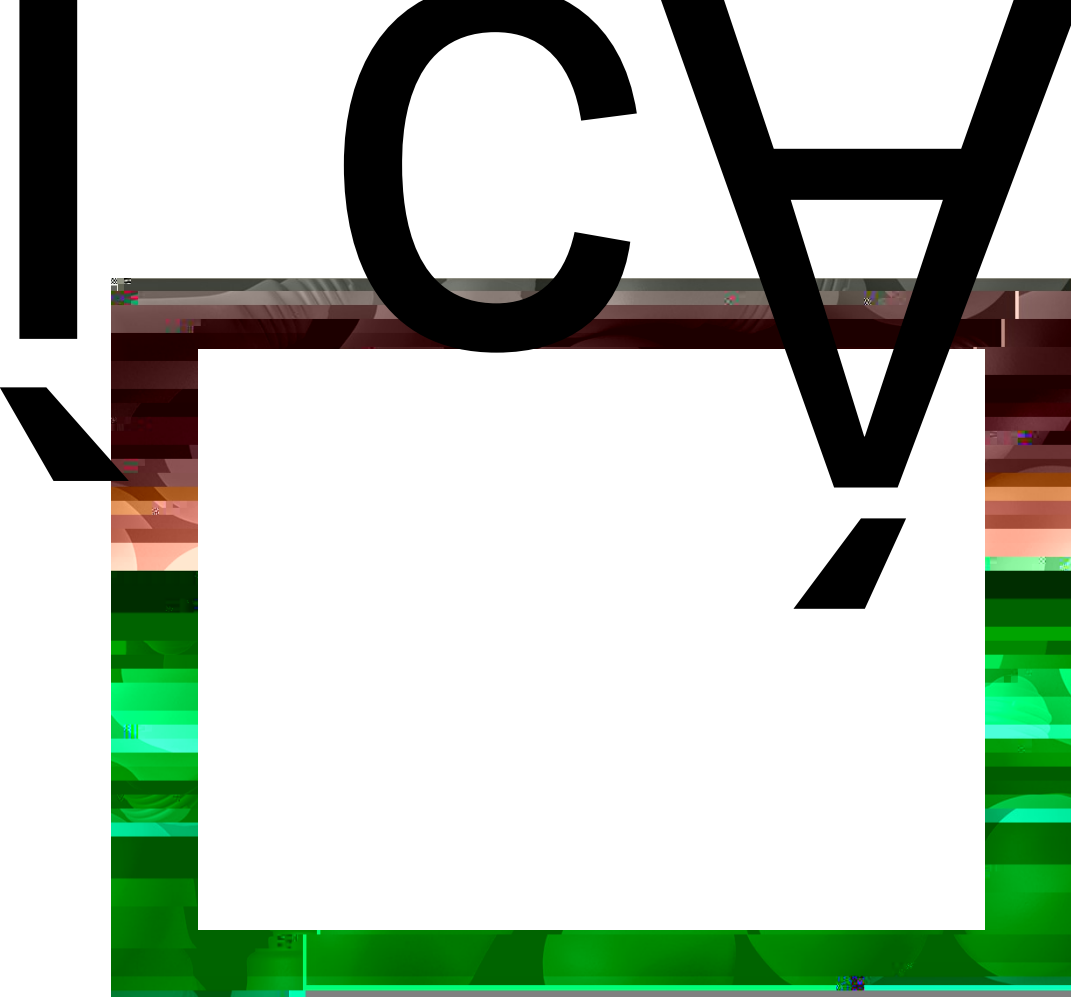





89



90





#9

The Five Stages, Step 4 Review by Parties and Version Control

98

98

Party Review of Investigative Report

(vii) Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

§ 106.45(b)(5)(vii)



94

94

Format of Review Version



95

Format of Review Version – to Assist Feedback



Adding line numbers (for purposes of review) can help when parties/advisors provide feedback

May want to consider it (or paragraph numbers or some other protocol) in general

96



