

20 MINUTES TO...TRAINED STUDY GUIDE:

# ASSESSING CREDIBILITY

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Materials are adapted  
from The ATIXA Playbook



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## **20 Minutes to Trained: Assessing Credibility Learning Outcomes**

- Participants will be able to articulate the role of credibility in rendering an ultimate determination regarding potential policy violation(s).
- Participants will understand the variety of factors that may contribute to a credibility analysis.
- Participants will understand the connection between corroboration and credibility and be able to articulate how to triangulate information to corroborate information.
- Participants will recognize the limited value of assessing an interviewee's demeanor and countenance to determine credibility.



## **20 Minutes to Trained: Assessing Credibility Discussion Questions**

- When you are assessing credibility, and you believe something is inherently plausible, how do you describe in your report the basis for its plausibility?
- Once a witness' credibility drops below 50%, can you rely on information from that witness?
- Do you think it is important to know how to function as a "human lie detector" when determining credibility?
- Once someone lies to you, how do you determine whether to believe anything else they tell you?
- How much should someone's role or title influence whether you believe them or not?



## **20 Minutes to Trained: Assessing Credibility Case Studies**

### **Victoria and Peter**

Victoria, Reporting Party, Freshman at Vexer College

Peter, Responding Party, Freshman at Vexer College

Hannah, Witness #1, Resident Assistant (RA) at Vexer College

Alice, Witness #2, Freshman at Vexer College & Victoria's close friend

Around 11:30am on Saturday, December 13<sup>th</sup>, the Title IX Office at Vexer College received an online report from Hannah, an RA on the 3<sup>rd</sup> floor of Hendrix Residence Hall. Hannah's report stated that Victoria, a freshman resident on Hannah's floor in Hendrix, had disclosed that she was sexually assaulted the night before, December 12<sup>th</sup>, by Peter, a fellow freshman who lived in Bachman Residence Hall, directly adjacent to Hendrix. The Title IX Coordinator scheduled a meeting with Hannah for 8:00am the following Monday to gather more information.

### **Hannah's Statement**

Hannah said she received a phone call around 10:00am from Jason, a fellow RA in Hendrix who had worked the late shift at the front desk of the residence hall the prior night. Jason informed Hannah that, at around 1:00am on Friday night (early Saturday morning), he saw Victoria walk in

the front door of Hendrix appearing visibly intoxicated and looking “misty-eyed,” as though she had been crying. As she walked by the front desk toward the elevators, Jason said he asked her if she was okay, to which she said, “Yeah, I’m fine, long night,” before quickly turning the corner. Jason said he thought Hannah should check on Victoria, which Hannah agreed to do.

Hannah said she knocked on Victoria’s door around 11:00am Saturday morning and that Victoria answered the door “looking rough.” Hannah asked if she would mind coming down to her room to talk for a bit, to which Victoria reluctantly agreed. Hannah said she had planned on having the typical alcohol talk and possibly referring the situation to student conduct, but was surprised by the direction the conversation took.

When Hannah asked Victoria to tell her about the prior night, Victoria said she hung out with some friends in Bachman Residence Hall then came back to her dorm. When Hannah asked if Victoria consumed any alcohol, Victoria said she didn’t remember. When asked how she got back to Hendrix, Victoria said, “I honestly don’t have much memory of last night.” Hannah then explained Vexer’s alcohol policy and shared that Jason had observed her from the front desk entering Hendrix late the prior night, apparently intoxicated. Victoria did not respond, instead sitting silently looking down at her hands. Hannah added that Jason also mentioned that Victoria looked upset and asked if something had happened that night.

Hannah said she could see tears welling up in Victoria’s eyes and that Victoria took a deep breath and said, “I did drink last night, but it wasn’t my alcohol, it was Peter’s. Our friend group was all over at his dorm room in Bachman, then everyone gradually left, and Peter asked if I’d hang around to talk. He was having relationship problems or something. And, I don’t know if there was something in the drinks or what, but I just

remember getting really drunk really fast, then everything started to get fuzzy and my memory of the night kind-of goes in and out. The last thing I really remember was sitting on Peter's bed, in his room, and we're talking about his ex-girlfriend or whatever, and then he just starts kissing me out of nowhere. I think I tried to pull away, but he just kept going. Then I just have a flash of memory where he's on top of me. Then I just remember waking up in my room this morning with a really bad headache."

Hannah said she tried not to ask too many questions, but did ask Victoria what she meant by "on top of me," to which Victoria replied, "I guess he was having sex with me, but I just don't really remember a lot." Hannah said she told Victoria that she would need to refer this information to Vexer's Title IX Office, and that when Victoria asked why, Hannah said she told her it sounded like she had been sexually assaulted. Hannah said she explained Vexer's policies on consent and incapacitation, adding that it sounded to her like Victoria did not have the capacity to consent. Hannah said she suggested that Victoria go to the student counseling center and to the hospital for a SANE exam, but that Victoria told her she didn't want to go to either. Hannah said Victoria was still worried about getting in trouble for having consumed alcohol, but that she explained how Vexer's amnesty policy applies to reported incidents of sexual assault. Hannah said after Victoria left her room, she immediately filed the online report to the Title IX Office, as she had been trained to do.

### Victoria's Statement

The Title IX Coordinator contacted Victoria later that Monday afternoon, scheduling a meeting for the following morning to gather some preliminary information and to determine whether Victoria wanted to initiate a formal investigation. At that meeting, Victoria explained that she and Peter are part of the same friend group, and that they and about five other friends had met up in Peter's room in Bachman around

10:00pm that Friday night. When asked about her relationship with Peter, Victoria said, "I guess I'd would've called him a friend; I mean, we hung out a lot because we were part of the same friend group, but we weren't like close or anything, he's always kind of preoccupied with other girls. He's known for being a player."

Victoria said Peter had a couple bottles of vodka waiting when they got there and had purchased bottles of Gatorade from the food court downstairs with which to mix it. She said, "I don't remember who was mixing drinks, I'm assuming it was Peter, but I just remember someone handing me a red solo cup with a mixture of vodka and Gatorade." Victoria said she remembered finishing one cup and drinking from a second, but couldn't remember if she finished it or not.

Victoria said, "I just remember snippets of what happened. I think we'd been there for a several hours, probably, then everyone started to head back to their dorms, and I remember Peter kinda whispering to me that he wanted me to stay after because he wanted to get my thoughts on his girlfriend situation, or something. Like I told Hannah, I don't know if Peter put something in my drink or what, but it definitely hit me fast, just out of nowhere, I was out of it. I remember stumbling and slurring my words, and then just having a lot of difficulty concentrating while he was talking to me. Then I must have blacked out because I have this flash of being in his bedroom, sitting on his bed, and he's going on-and-on about this girl. Then I have another flash of him abruptly kissing me, and then I like, push him off, I think, and then I have another flash, I guess sometime later, where I'm on my back, I think still on his bed, and he's on top of me, raping me."

Victoria said she had no recollection of leaving his room or of how she got back to Hendrix, explaining that the next thing she remembered was waking up in her room on Saturday morning feeling awful. Victoria told the Title IX Coordinator that Hannah came to her room later that

morning and that Hannah had informed her that another RA apparently saw her walking through the front doors of Hendrix late that night appearing drunk and upset, adding that she thought this was further proof of how intoxicated she was that night. The Coordinator informed Victoria that there are interior surveillance cameras observing the entrances of all the residence halls on campus, and that they would acquire and review that footage. Victoria said that, after talking with Hannah, she felt like what happened was not okay and wanted to pursue a formal investigation.

### Peter's Statement

Peter met with the Title IX Coordinator the following Thursday and the Coordinator informed him that the College was looking into a situation involving Victoria that occurred on the night of Friday, December 12<sup>th</sup>. Peter explained that Victoria was a good friend of his who he had met during freshman orientation, along with many of the others in their friend group. Peter said that he always thought Victoria had a crush on him, adding that her close friend Alice—who is part of their friend group and who was at the party in his room that night—had told him a few months prior that Victoria was interested in him, but that she considered him “emotionally unavailable” because of his on-again-off-again relationship with his now ex-girlfriend, Krista.

Peter explained that one of his older fraternity brothers had given him two bottles of vodka so that he could host his friends that night, and that he bought approximately 10 bottles of blue Gatorade as a mixer. He said everyone arrived around 9:00 or 9:30pm and that they “just hung out playing drinking games with a deck of cards” in the common area of his suite-style dorm room. Peter said he had also purchased a stack of red solo cups and that everyone mixed their own drinks throughout the night. Peter admitted that he got very drunk that night, adding that he

thought everyone was pretty drunk by the end of the night, Victoria included.

Peter said everyone started leaving his room shortly after midnight, but that Victoria stuck around. Peter said he went to his room to lie down because “the room was starting to spin,” and that Victoria came with him and began asking him questions about his relationship with Krista while sitting on the edge of his bed. Peter added that he and Victoria had talked about Krista on a few prior occasions, and that he “always liked getting a girl’s perspective on all of it.” Peter said they talked about his relationship issues for about 5-10 minutes and that, at one point, Victoria made the comment, “I don’t know why you put up with her shit, I know I would treat you much better than that if I were your girlfriend.” Peter said that, as she said this, she moved her hand to his genital area and began caressing his penis over his sweat pants. Peter explained that he did not have any romantic interest in Victoria, but that he “didn’t necessarily have an issue with her wanting to get frisky.” Peter said Victoria then lowered his waistband, pulled his penis out, and began performing oral sex on him. Peter said while she did this, he tried to reciprocate by putting his hand down her pants and fingering her.

Peter said this continued for about 5-10 minutes, at which point Victoria stopped and asked what was wrong, referencing the fact that he had still not achieved an erection. Peter said he “probably said something like, ‘Sorry, whiskey dick.’” Peter said Victoria seemed to get upset and asked tearfully, “Is it me?” Peter said he “tried to let her down gently,” but that she kept pressing, so he finally said something like, “I’ve just never had feelings for you like that. I can’t help it if I’m not turned on.”

Peter said Victoria got really upset and that he had to “go into damage control” for 10-15 minutes, but was eventually able to talk her down, adding that he “figured she was just drunk and being emotional.” Peter said he thought Victoria left his room sometime around 1:00am, after

which he made himself a sandwich, grabbed his computer, and started watching Netflix while lying in bed. Peter said that about an hour later, he got a text message from Victoria that read, “I’m still so drunk,” to which he responded, “Yeah, me too.” She replied, “Talk tomorrow?” to which he responded, “Of course.” When the Coordinator asked to see the text messages, Peter willingly provided his phone. The Coordinator noted the timestamps on the text messages as being: 2:14am, 2:15am, 2:21am, and 2:21am, respectively.

### Alice’s Statement

Alice met with the Title IX Coordinator the following week and said that she was confused by the Coordinator’s email, adding that she had no idea why she had been asked to meet. When the Coordinator told Alice that the College was looking into a situation that occurred on Friday, December 12<sup>th</sup>, Alice said she wasn’t aware of anything that happened that night. When the Coordinator said that it involved Victoria and Peter, Alice said, “No way am I getting in the middle of their drama.” When the Coordinator asked Alice to elaborate, Alice asked if she had to answer the Coordinator’s questions. After some back-and-forth, Alice ultimately refused to answer any questions or to provide any additional information, and expressed her desire not to have any involvement in an investigation.

### Video Surveillance Footage

The Title IX Coordinator retrieved and reviewed the surveillance footage from cameras observing the entryways of both Bachman and Hendrix Residence Halls, which showed Victoria leaving Bachman at 1:07am and entering Hendrix at 1:21am. In both videos, Victoria appears to sway slightly as she walks and does not walk in a straight line. The details of her face are difficult to make out due to the cameras’ low resolution.

## Grant and Owen

Grant, Reporting Party

Owen, Responding Party

### Grant's 1<sup>st</sup> Interview

Today I'm here to give my side of two situations between me and Owen. I feel I was sexually assaulted. The first incident was June 2015, before coming to college. We lived in the same city but went to different schools. We knew each other from Facebook – we were both in an accepted students group. Before this occasion in June, we had hooked up, but there was no sex. After that hookup, I told him I wasn't ready for a relationship, and he was upset.

The first incident happened the night of his graduation party at his friend's house. I went to the party with Owen, and in the car going to the party we kissed, 2 or 3 times. As the night went on, I tried to leave the party but didn't have enough money to get home and was kind of drunk so stayed the night even though I knew it was a bad idea. I was going to sleep on the couch in the living room. Owen came over to the couch, and we started talking and kissing. I know we went to the bathroom for some privacy, but I don't really remember the conversation leading up to going to the bathroom.

So we're in the bathroom, we are kissing, pants come off. I found myself pinned to the sink and Owen says he wants me – he wants to fuck me. I told him no, not raw, but he tries anyway. I say no again, because it hurts. Owen says, "This is *my* graduation night; aren't you here to celebrate?" and tries again. I was able to turn around and tell him to stop, and his response was "Okay, then at least you can blow me." So, in an effort to placate him, that is what I did. It was rough and

not enjoyable. He finished. I remember waking up with a hangover, and Owen is sleeping next to me on the couch with his pants off.

The second incident was this past Saturday. I was very drunk – way too drunk to consent to anything – and was at a friend’s house party. People were dancing; Owen came up to me, and we started talking. He confronted me about a rumor he had heard (involving me, but I don’t really want to talk about it), and I told him he couldn’t make me feel shitty when he had assaulted me the summer before coming to school. He seemed confused. He said he apologized if that was my experience, but he didn’t remember that night. I got emotional and we walked outside. I told him that what he had heard (the rumor) was true, but at that point people were walking by so I said we should have the conversation somewhere private.

He grabbed my hand and led me to his residence hall. I didn’t let go of his hand but wasn’t too thrilled he was holding my hand either. When we got to his room, we talked for about twenty minutes, and then we were kissing. It quickly went to our clothes being off and things happening. I don’t remember how that happened. At some point he said he wanted to have sex, but he didn’t have a condom or lube – I didn’t want to do that anyway; penetration is a big deal for me. Owen suggested going to my room, but I didn’t want to do that. I told him “I don’t want to get dressed” and kissed him to distract him from getting dressed and going to my room. That didn’t work though, and soon we were dressed and walking over to my room.

We get to my room. Very quickly the clothes are off, and we are fooling around again. I leave the condoms and lube in the drawer because I didn’t want to do anything with them. So, we are naked and fooling around, and he is in a position where he could theoretically have sex with me, and he said something like “I want to fuck you,” and I said no, and he inserted himself anyway – it hurt like crazy, and I pushed him

back and moved to the edge of the bed. Eventually it stopped hurting. Like the first time, I tried to make him happy and finish the interaction. He went to reciprocate, and I said no. I don't remember him cuddling me, but, when I woke up the next morning, he was in my bed with his arms around me. I remember waking up and feeling trapped and tried to move his arm off me. I fell back asleep at 7:30 and woke up again around 10:15. I tried to be casual and get out of bed, but he pulled me back – that happened twice. We stayed that way for another fifteen minutes before I could get out bed and get my clothes on, which he finally took as a cue to leave.

The only other thing I think you should know is that, while sober, I have denied him 4-5 times in the past six months, and I have text messages supporting this.

### Grant's 2<sup>nd</sup> Interview

Owen and I met in the accepted students Facebook page before we started college. I commented on a picture of him, and he messaged me, and we started talking and flirting, but I had a boyfriend at that time, and he knew that. We hung out and went to a movie, and at the end, he tried to kiss me. After that, I broke up with my boyfriend for unrelated reasons, and maybe three weeks after that, Owen and I hooked up (there was no penetration but we both did oral). A few days later, I told Owen I might still be in love with my ex-boyfriend. Owen was upset; I felt bad, but I didn't want to lie.

The night of his graduation party was two weeks later. Things with my ex were definitely over at that point. Owen and his friends picked me up in the car and drove to one of his friend's houses. In the car, Owen and I are in the back. He tells me he's happy I came, leans in to kiss me, and we kiss a little bit. He reaches for my pants and feels I have an erection. I don't remember, I might have reciprocated. We get to the

house, and at some point, his friends take out the alcohol. There was a slim can of alcohol – some pre-mixed vodka drink that was pretty strong. We also had Hennessy. Other than some chips, I didn't have anything to eat at the party.

Owen and I were flirting all night, but nothing really happened until after most people went home. I realized I didn't have money to get home, and it was really late, and Owen suggested I just stay on the couch. So, I start to take my shoes off, and Owen, who is on the side of the couch, starts leaning close to me, and we start kissing. After a while, we walk to the bathroom for some privacy – there are still a few of his friends around. There's kissing, pants come off, I don't remember how, and we both did some oral on each other. Somehow, I am up against the sink, and he is behind me. He said he wants me, he wants to fuck me. I told him no, not raw. He is rubbing his penis against my asshole and says "Come on, we're here to celebrate" and inserts himself in me. I say "No," "Ouch," and "That hurts," and am able to get out from between him and the sink. He tells me to blow him. I didn't want to, but I wanted the situation to be over, so I blew him, and he finished. Then he reciprocated, and I finished. I don't remember going back to the couch, but I woke up super hungover the next morning, and Owen's penis was out in the open. I redid his pants so his penis wasn't hanging out.

This year, in the fall semester, there was a pattern – Owen would text, asking me to hang out (what he really meant was hook up) late at night, and I kept making excuses or just telling him I didn't want to. He was texting quite a bit, and I have those texts. Between the first incident and the second incident, we hooked up, while on campus (everything but intercourse – never intercourse) one or maybe two times.

After I came back to school for spring semester, a mutual friend of ours, Kylie, had a party at her house. I was drinking at her house with my

friend Emma. I had four shots of vodka, a double shot of Jägermeister, a Malibu shot, and then two beers, all within maybe three hours. When I started my third beer, I knew I was going to throw up, so I handed the beer to Emma. Emma can tell you how drunk I was. I know I was stumbling around and really out of it – I'm not the biggest guy, so all that drinking had an impact. I remember that Emma and I then went to Franklin Court to get some mozzarella sticks. I don't remember going back, but I know we were back at the house, and people had started dancing. Emma and I danced for a while, and after a little bit, Owen comes up to me and we start dancing.

I hadn't seen him at the party before this point. Owen starts asking about a rumor that I had been with some guy that he knew somehow – I don't know all the particulars. First, I denied it and told him he couldn't make me feel bad after what he did before we got to school. He was surprised. He basically said, "I'm sorry that's how you felt. I don't remember that night." I got emotional, and he and I left the house and talked outside for a little bit. I finally told him that the rumor he heard was true, but that we should talk somewhere private – more people were leaving the house at that point, and I didn't want anyone to overhear the conversation because we were using names. I didn't have a place in mind.

He takes my hand and we go to his room. At first, we are sitting on his bed, talking about the rumor. I don't remember much here. I know he started kissing me, and then he is on top of me, we're both on the bed, then pulls me off the bed. He undresses me, and he undresses himself. We are both naked, although I don't remember if I have socks on. We are kissing. I don't want to do this, but I feel like I can't say no. There is some oral that happens, both ways, some neck kissing. He eats me out a little bit, so I do it back. During all of this, he says he wants me to fuck him, but he has no condoms or lube. I don't want to do that anyway, and I told him that, multiple times. He wants me to get dressed and

says we should go to my room. I don't want to and try to distract him by kissing him, but we eventually get dressed and walk to my room. I can't remember the walk to my room.

I remember getting to my room. In the beginning, we're standing up and kissing, and I pick him up for about five seconds and kiss, and we slammed against my closet. Then we were on the bed. He was on top a couple of times, and I was on top, too. There was a little more oral sex, both ways, I think. He gave me a hickey on my chest that I saw later. So, we're on my bed and my legs are up, kind of wrapped around him, and he is in the position where we could fuck, and then he starts to thrust himself inside of me. I say "No, not raw," but he thrusts again. I say "Ouch, Jesus," and he says, "Sorry, it was an accident; calm down." I tell him to stop, and finally he does. At this point, I am limp, and he is really hard, and it feels just like the other time when I wanted things to be over. I am jaggging him a little, he is jaggging himself, and then, without asking, he finishes on me, on my torso. I clean myself off. He tries to blow me, and I tell him to stop. I don't remember falling asleep, but I must have. I don't ask him to stay over.

The next morning, I wake up and feel trapped in his arms. I'm frustrated, I feel really gross. I didn't want any of that to happen. I was definitely too drunk to consent. In the grand scheme of things, if I woke up in the morning and made out with someone, it would not have been as bad. Anything with clothes off is not okay if I am too drunk and too out of it to understand what's going on.

Around 7:30am I try to push him off and get up, but it was really awkward. I guess I fell back asleep because I woke up again around 10 a.m. and tried to get out of bed. He pulled me back twice, and I know he wanted a kiss but I wasn't going for it. Finally, I got out of bed, got ready, and we went about our day. He texted me on Sunday asking about an event I had earlier that day. I didn't answer. I talked to Adam

about it on Sunday night, I think you should speak to him. My relationship with Adam – we are pretty close, not romantic, just friends.

### Owen's 1<sup>st</sup> Interview

*After learning the general information about the two incidents in the initial report:* I don't know why the incident prior to coming to campus is being addressed here? I don't think it should be addressed, and I'm not going to talk about it.

Grant and I both got accepted, and I could see other accepted students in the Facebook group. Grant was one of two people I friended who were from the city. I think he first commented on a picture of mine when I changed my Facebook profile picture. We developed a friendship online, then talked on the phone and texted a lot, too. I met up with Grant in person in the spring of our high school senior year; we went to the movies. After the movies, we walked around downtown, talking, holding hands. We talked about his ex-boyfriend, my ex-boyfriend, and how we were excited to start school. I know he got back with his ex for a little while, and then broke up with him again. After that, we hung out once, and I met his family – I think it was that day that we kissed for the first time. At the end of hanging out, he told me he still had feelings for his ex, which was upsetting. We didn't talk for a while after that because he made me feel like complete crap. After a few weeks, we talked about it and decided to put everything behind us and just be friends.

When we got to school, our relationship had lots of ups and downs, like any normal relationship – we always checked in with each other, though, to show we cared. Sometimes we lost contact – we were doing our own thing – and then found our way back to one another. We care deeply about each other. There were a few nights when we had some

sexual interactions – we were just figuring life out at college and meeting new people and finding our friend groups.

This past Saturday, my friend Lacy called me to see if I was going out. This was around 10 p.m. I told her I wasn't sure, and she came over to my room with some Malibu and a shot glass. We each took a shot. I took a shower and then took two more shots of her Malibu as I got dressed. We got to Kylie's house around 11:30 p.m. I saw Grant dancing with some people and went up to dance with him and talk. I brought up a rumor I had heard about him with someone we both know – someone who is not a good person – that had hurt my feelings. He immediately denied it and insisted I tell him who told me.

Grant then said that I couldn't make him feel bad about that. When I asked him why not, he said that I had sexually assaulted him at my friend's house the night of my graduation party, prior to coming to school. I was totally stunned and asked him what he was talking about. I remember we made out, gave each other head, and I remember saying I wanted to have sex with him, but he said "No" and we stopped and went to sleep on the couch. Grant said that was not all that happened, that we should go outside to talk, so we did. We talked some more outside – Grant said "You tried to have sex with me after I said no." I told him that didn't happen, and he told me I was pissy that night. We went back and forth a couple of times until I said something like, "I'm sorry that is how you remember that night, that is not how I remember that night; that is not what happened." We talked a little more, and Grant said he forgave me. He then told me that the rumor I had confronted him with was true and we should talk somewhere more private.

There was a large group of people outside the house, smoking and talking. We walked away, not going anywhere in particular, talking about the rumor. I was upset and I asked him why he had lied. We also

just talked in general about how we were doing. When we started walking, things were tense, but as we talked, we both loosened up a bit and laughed. I reached for his hand partly because it was cold that night, partly to get rid of the tension – he didn't pull away or show any sign of discomfort. We held hands until we ended up outside my room, which was closer than his.

Once we got into my room, we sat pretty close to each other on my bed; he positioned himself as leaning against me, and we continued to talk for a while. At one point, he lay completely down on the bed, opened his arms to me, and pulled me toward him. We were facing each other and very close...we embraced. I told him I have and always will care about him. He leaned his head toward mine and kissed me. Then we began making out. He lowered his hands to my butt, over my jeans, then used both hands to lift my shirt. I took this as he wanted me to take my shirt off, so I did; then he lifted his arms, and I took his shirt off. I stopped kissing him, got off the bed, and reached for him to follow.

We were standing, kissing. I undid his pants, took his pants and underwear off and performed oral sex on him. I was watching him, looking for cues. I kept going because I saw no discomfort and he never told me to stop. He was moaning in a good way. After a few minutes, he lifted me up, took off my pants, and went down on me. Neither of us came. He turned me around to get on my knees. I did this willingly, and he started to rim me from behind. After a while, I turned and lay on my back on the carpet, and he got on top of me and kissed me. After a few minutes, I wasn't comfortable, so I went to the bed and held out my hand so he would go with me. I decided to reciprocate rimming – he turned willingly so I could rim him, and then we continued kissing, rimming, and doing oral on each other. Grant asked if I had any condoms or lube. I said no, that I had run out, and we joked about that.

I told him I wasn't expecting this to happen. I asked if he had any in his room – he said he did, and I asked him if we could go there. He agreed.

We continued to kiss; we were both moaning, in a good way, and then we slowly got dressed, teasing each other with kisses and fondling as we got dressed. I stopped and said we are wasting time, so we finished getting dressed, left my room, and walked to his. I talked about the cold weather, and he commented on it, too; then said he couldn't believe what was happening. I asked if this was bad and he said "No." I wanted to check in to see where he was with things. He said Adam was right – because Adam, a mutual friend, had said Grant and I would hook up again. Adam knows us really well – he knows how we feel about each other. We kept walking, and I said "Whatever happens, happens," and Grant repeated this, and then stopped and kissed me.

We get to his hall, and I go in first. When we get to his room, we quickly start making out again and clothes come off. He got on his back on the bed; I was on top, holding his legs, rimming him, and he was moaning my name. I asked him if he liked it, and he said yes. I tried to ask him another question, but he told me to stop talking and lowered my head to his penis. I gave him oral sex for a few minutes. We took turns giving each other oral sex and rimming each other and kissing and then embracing and completely fell asleep in each other's arms. There was never a climax ever – neither one of us – that night. There was never any penetration or attempt at penetration.

I remember waking up to him slightly snoring, and I knew he was asleep. The next morning, he woke me up to check the time on his watch, which was right by the bed – he was against the wall, and I was on the edge. He said it was 7:30 a.m., too early to be awake. I tried to go back to sleep, but I couldn't. I think he may have fallen asleep, though. We were spooning each other, and it felt really good. I don't know how much time went by, but later, Grant said he needed to start

the day. I saw him grab his towel and put it around his waist, so I put on my clothes. I had a lot to do that day, so I told him I was leaving. He said “Okay,” and I told him have a good day. He said, “You too,” and I left and went back to my room. When I left the room, I was happy. I had enjoyed myself, and although we have had our ups and downs, I care for him deeply. When I went to get lunch, I ran into Adam, and we ate lunch together. I told him I had hooked up with someone. His second guess was Grant. I told him that I really enjoyed myself and was surprised at how strong my feelings were for Grant. Adam knows more about how that night made me feel, and he helped give me some perspective about my feelings. He told me to take a few days to reflect on things – he knows I’m impulsive—and to think about if I wanted to pursue an actual relationship with Grant.

### Owen’s 2<sup>nd</sup> Interview

Grant never said “Ouch” to any of the sexual contact – he never said “Ouch” at all that night. I also don’t remember Grant picking me up or us slamming against the closet when we got to Grant’s room.

I’ve been thinking, and there is something you need to know. The rumor that I asked Grant about was whether Grant had hooked up with J.R. Before Grant hooked up with J.R., I had reported J.R. to the Title IX office for an incident when J.R. had sexually assaulted me. There was a finding of responsible. People knew about it because lots of people were talking about what happened. I was really upset that Grant hooked up with him. Also, because I was sexually assaulted by J.R., there is no way I could have sexually assaulted Grant. It’s just not possible.

I was not drunk that night. Also, I am an R.A. and am trained in detecting when someone is intoxicated. Grant was maybe a little happy. I had assumed he had been drinking – it is the culture here to

drink. But I didn't smell anything, his balance was okay, he wasn't dizzy, he wasn't stumbling, he wasn't going to vomit.

There were hickeys given both ways. When I started to give one to Grant, Grant didn't want one, so I stopped. He gave me two hickeys, although I never asked for them. I have pictures, I'll send them over.

### **Darcy and Jake**

Darcy, Reporting Party

Jake, Responding Party

### Darcy's Initial Interview

2016 starting in the spring time Jake and I shared a second class together. Sometimes he would text me about homework - regular things. His friend Dan Allen was interested in my friend Jenna Rupert at the time. Maybe once or twice on a Saturday night the four of us were in Jake's room. The first time something weird happened was February or March. Jake and I went to McDonalds to get food and we were leaving the parking lot or were parked in Halford and he unzipped his pants and asked me to suck his dick. I told him no. He was trying to convince me saying "We're alone, why would you come with me if you didn't want something to happen." I told him I didn't want to. I don't even think we kissed or anything. A few times after that he texted me and was clearly asking for a booty call. I deleted them.

April 2016, I was in the barn setting up for a Habitat for Humanity event – it was a Friday night and Jake texted me that he was in Samson Hall taking a make-up exam and he asked me to come over and stop by and keep him company – it don't remember his exact words. I was completely sober at this point. He asked me to bring him a drink, I brought him some Gatorade. He asked again for me to come over. I walked to Samson and he was in a classroom on the 4th floor. He was

sitting at one of the tables and he got sly and emotional with his words. I told him I was going to leave. He asked me why I was leaving and asked what did I expect to happen by coming over there. He said he wanted to hook up with me. I told him I wasn't interested. And he said why would you come over here dressed like that. I was just wearing what I would normally wear to go out. He said why won't you hook up with me I know you hooked up with Joe (a mutual friend) so why wouldn't you get with me. He just started to make me feel really guilty. I remember him kissing me and feeling my butt. I told him I didn't want to do anything else. He started begging and whining from there. He asked to have sex and just have it go in and out once. I said it's never just once. He started pushing me up against the chalkboard and feeling me. And then he pushed me down on my knees and said I should suck his dick. He said I couldn't leave now because he was hard. He made me suck his dick and then he still wanted to have sex – so he bent me down over the table and then pushed me down on the floor and had sex with me – I didn't like it and it kind of hurt. He didn't wear a condom and didn't even discuss wearing a condom. Then he wanted me to suck his dick again. He asked me if he could come on my face and I said no, and he came in my mouth without telling me. I ran out of the room and cried a little, then went back to get my shoes and I remember he hugged me. I left and went back to my room. I don't know why I didn't tell anyone. Jake and Dan were both still friendly and Dan even said, "I heard you and Jake hooked up and that sounded awkward," so I knew Jake told people. Jake would say hi in class or in the hallway but we didn't really talk.

When I first realized this was wrong – I was keeping a list of people I hooked up with and his name was never on that list. Every other person on the list was clearly consensual and I never pursued Jake – I never led him on – I never asked him to be alone with me.

June 2017 – Muriel Westin and Julia Highland and I were talking in a hotel room in Europe and we were talking about drinking on campus and whether we should be a dry campus. I asked them about their opinion about what happened with Jake and they said it was definitely sexual assault. A few days after that I told my boyfriend about it and he said I should call the police and that is what night I emailed Dean Yates. I've since told my mom and my dad.

I hope he will be confronted by someone with authority. I know he was reported by someone else. He is on the lacrosse team – his coach encourages racial slurs and bad behaviors. I don't think he has a right to be here if he is doing those things and will do it again. He is going to use the power of being on the team to lure someone else. My biggest fear is that he is going to try to confront me or one of his friends will and say that I am lying and he will be able to continue as normal.

### Darcy's 2<sup>nd</sup> Interview

At the time of the McDonald's incident, Jake's friend Dan was interested in my friend Jenna. Jake and I went to get McDonald's for everyone because the others had been drinking. In the parking lot without any asking or anything he unzipped his pants and said, "Suck my dick, we should hook up now." I told him I wasn't interested and I thought I made it clear that I wasn't coming on to him. I didn't think it would be weird to go to McDonald's with him since I had two classes with him. But obviously he wanted something to happen – it was out of nowhere – shocking and surprising. I didn't tell Jenna or anything. Everything was fine for the rest of the night. I left soon after getting back. This must have been February or early March.

If I remember it happened in the gym parking lot before we went to McDonalds. But it might have happened after. I think it happened before. We were in the car less than 10 minutes. I don't think we had

any real communication. When he pulled it out he made more of a statement like “Let’s do this now.” His dick was just sticking out of his pants. He was in the driver seat. And he paused, unzipped, looked over at me, looked down, and then made the statement. I remember being taken aback. I kind of made light of the situation “yeah, right, like I would do that.” I think he kinda put his head to the side and said “Really? We’re alone together, why not?” I think after a few seconds I said we just need to go to McDonald’s – and he asked when it was going to happen – and I think I said maybe later – let’s just go.

I think he started texting me after the McDonald’s incident, asking if I wanted to meet up or come over. And I remember saying I wasn’t interested. I think he only texted me a handful of times. I erased all traces of his texts because I didn’t want to see them. I know I didn’t tell him to stop texting me because – I was used to it – I thought he was probably just drunk – guys do that – I didn’t see the need to worry.

Sometime in April, I was in the barn setting up – I received a text from him between 8:00 and 8:30pm. He texted that he was in a classroom doing work and asked if I could come by. I was confused as to why he would ask me to go over there while he was taking a makeup exam. I said I was busy. He texted over and over and over saying he’s been alone for hours and was bored trying to do the assignment. I had a bottle of Gatorade with me and I’m not sure if he asked me to bring it to him – or if I got it for myself. I went to Samson Hall. He said, “You know why I asked you to come over here and you dressed like that – now you want to leave – but I want to hook up – why would you come over here?” At one point, he said “Oh you gave it to Joe, why wouldn’t you want to hook up with me?” He said I should just stay and we wouldn’t have sex we would just hook up – “We don’t have to do everything.” He came towards me and pushed me up against the blackboard and kissed me and started touching my butt. I didn’t want it to go any farther. He pulled down his pants and said I couldn’t go now

because he had a boner. He asked to just put it in and out once and I said guys always say that and it wouldn't be just that. I didn't want to and he bent me over one of the tables and it was really uncomfortable and he wasn't wearing protection and I said I wanted to stop and he said we could just change positions and pinned me to the floor. He said I should suck him off and he came in my mouth without telling me and I ran out of the room to the bathroom and washed my mouth out. I went back in and Jake gave me a hug and said he'd see me in class. I didn't tell Jenna and I didn't go back to the fundraiser.

It felt like a trap the way he set it up. He was using my past to try to guilt me into staying there and his voice would get whiny, "Oh come on, you walked all the way over here." "You gave it to Joe." He would belittle me and make me feel guilty. I felt off put and I wanted to get out of there – I was confused and emotionally thrown off because I never saw that behavior from him. He never tried to get to know me on any level. He was persuasive saying we wouldn't go too far. So, I thought if we were only going to make out it would be ok. I never gave him a verbal yes.

More details...hmm... I was on the floor in the front of the classroom and he was standing with his back to the board. My shirt was still on. His shirt was on. I think his pants were a little bit down. He was doing the movement and I was just there. It felt gross and tasted gross. My hands weren't on him. I was trying to balance myself. One of his hands was on my head pushing my head more on to him and I don't remember where the other one was. This was only a few minutes and then he said "at least let me put it in and out once." I said "It's never just once" and he was whining and guiltig me into it. He took off his pants and shirt completely and he took off my shirt and I don't know if I took off my skirt or he did. He moved me over the table desk and went for it – he didn't ask about a condom. He put a hand on my shoulder and a hand on my back and pushed me down over the desk and he had

his hands on the side of my hips and held me there. I said it hurt and I didn't want to do this. He said "ok fine, we'll change positions." He got up and pulled me to the floor and he had me in his grip. He had me get on top of him. Then he said, "ok fine just suck me off then." He was tiring my mouth out and he came in my mouth and it was so gross, so gross – and then I went to the bathroom. I was more than spitting out because the Gatorade I had also came out some. I was tearing up and I was confused as to why I was crying and why I felt so uncomfortable. I wiped my eyes before I went back in the room to get my tights and shoes. I don't remember talking to Jake – just that he hugged me. I went back to my room but I can't remember definitively if anyone was there.

Maybe a week or two after it happened, Dan said "I heard you guys hooked up and that it was awkward." I don't think anyone was around. I don't remember if it was before class or in Harris. I know I responded, but I don't know what I said, I think I probably brushed it off.

Freshman year Jenna and I were close and would tell each other everything about guys. I told her what happened recently and she said I didn't tell her at the time because she would have remembered. We weren't close in the sophomore year fall – I associated drinking and hooking up with guys with my relationship with Jenna and it took me the summertime to figure that out. Over last summer I reflected a lot about this incident – how I felt icky when I saw Jake. I connected with Jenna a few weeks ago and told her what happened.

Mid-June, Muriel, Julia, and I were together in Europe and talking about sports teams and men's lacrosse and I asked them if I could tell them something to get their opinions on it. I told them what happened and Julia said it was sexual assault. I told my boyfriend two days later and he said I should talk to Dean Yates immediately. I wouldn't say that Muriel and Julia are very close to me – I learned on the trip that I don't

have the same values as they do. You could speak to my boyfriend but he's only going to report back what I've told him. I don't really want to bring Muriel and Julia into it – they don't know what happened. If you want to speak to my boyfriend you can – Zack Ryan. I think he would be the most help. Jenna and I have only texted.

### Jake's 1<sup>st</sup> Interview

I met Darcy in the fall but we spent time together in Spring 2016 – we had an art class together. I saw her in class or in the studio. I saw her around a lot – out sometimes. We were more than acquaintances, we talked in class a lot. I felt like me, her, and Dan would be in the studio a lot.

I was a designated driver because I was in season. I think I picked Jenna, Darcy, and Dan up from a bar one night and we were hanging out in Dan's room. And I guess Darcy wanted to give them time alone, so she and I drove to McDonald's. We didn't go back to the room immediately – we went down to the parking lot and we talked there for a while – at one point we saw someone go into the gym really late and we laughed about that. We talked about kissing and hooking up at that point. I don't know if we talked about it before then – being sexually active with each other. At one point, I put my hand on her leg – I'm not sure at what point – I remember talking about it not being the time to do this – we had to get back and Jenna didn't want to be with Dan – she had texted Darcy that we should head back. I remember us talking about it not being the time or place. We definitely made out or something at that point.

Throughout the ride I think the mood is on the positive side of awkward. More friendly than awkward. Talked about how our friends were back there. I probably mentioned that I thought about us hooking

up. Asking if there was interest. I don't think she was jumping to say yes. She might have been awkward at the asking of it.

I know myself, I wouldn't impose myself. I know I didn't just lean over and kiss her. I'm trying to think of the sequence of events and I really can't. We both had our hands on each other's pants at some point, on top of pants. I may have touched her breast, maybe her thigh. I don't remember pulling my penis out. I might have asked for a blow job – it might have been brought up. I feel like we didn't get there. I feel like she didn't want to be that sexually active at that point. Which was okay. Then we did a quick drop off of food – we saw Dan and Jenna. Jenna and Darcy left and I stayed there with Dan and ultimately went back to my room. Later I talked to Dan about kissing her in the car but he was still drunk so I didn't engage with him much.

Darcy and I texted after. The only text I have was April 15th 2am – which was the day of the sexual intercourse. I have Facebook from before maybe about classwork and her talking about smoking at one point. Between McDonald's and April 15<sup>th</sup> we only hung out in class or studio.

In April...I remember texting her the night before. I definitely said some bolder stuff about hooking up. The next day I was in Samson and I texted her because I wanted to see what she was up to and what she was doing later. We had just spoken about having sex and I told her where I was and I asked her if she could come help me with the test. I was joking about needing her help...she came over and sat down next to me. We started talking in Samson and I proposed hooking up there. I remember us being against the chalkboard making out. I had my hand on her butt and she had her hand on me and was grabbing me. I asked her how she would feel about me slapping her butt – she said it would be awkward if we weren't having sex – so I just grabbed it. This was the first time I had done anything sexual in a classroom so I was trying not

to make it awkward. I proposed having sex and I think she didn't want to have someone walk in on us. We talked about it and I said – for this amount of time – I was definitely trying to talk her into doing that. I didn't remember her saying no – she seemed active while we were hooking up. She ultimately said yes to having sex – I remember us being over a desk and asked to put it in. I asked to move to the floor and we did – it was quick – she sat on me – we had sex for a few minutes and then stopped and I said I needed to get back to my test. We talked about future sexual activity before she left – and something about touching her butt. She left and that was it – I don't think we engaged in any sexual activity after that – I had a partner for the remainder of the year after that. We said hi and talked in class after that. I'm going to send you guys all the text messages and everything I have. I was under the impression that day that she was just concerned about the room we were in and being in an academic building.

When she gets to Samson we start talking. I think we start talking about her butt, because we had texted about it before. I don't remember any comments about what she was wearing. I think she was wearing jeans and a tee shirt. I remember asking separate questions for hooking up and having sex. Hooking up means making out...not oral sex – I would have asked something different. I remember I was moving to different chalkboards to prevent us from being visible – and then on the second chalkboard talking about having sex. I think we might have been standing. We left the desks. At one point, I probably turned off the lights. Maybe after that. You could still see from the hallway lights and see where each other was.

She might have been taken aback when I brought up the idea of hooking up – she may have said something about not doing it here – in that location. I think I was trying to convince her otherwise and make her feel secure there and minimize the idea of having sex in a classroom. I just wanted to be sexually active at that point – I was into

her. I remember when we were trying to have sex the first time she was over the desk near that chalkboard. We agreed upon a duration of sex or something. I felt like I was like “just for a little.” “Maybe just a few”-like insertions - maybe pumps maybe. Something along the lines of just a little bit of sex. I think we went back and forth to get to that point and then she said ok. We talked about her being on the desk and me being behind her. I remember her asking if I was inside. I said it would be easier to be in the floor. It was a weird angle – like she was too tall or something. I think she said something about it not working, that she didn’t feel anything.

Then we moved to the floor and she was on top of me and I asked her if she liked it and if it was good for her. At that point, I said “ok, ok, that’s it.” I felt like it all happened so fast.

I knew we had had the conversation about the duration of it. It was getting late – she might have mentioned needing to go. A few thrusts in I said ok we aren’t going to do this anymore. I was thinking how it would have been better if we were elsewhere. Maybe I thought about that afterwards. Maybe we weren’t talking as much and she wasn’t grabbing me as much. I feel like it wasn’t just her saying something – I may have prompted her to tell me how she was feeling. But there was an expression that she didn’t want to keep going.

We spoke about a condom at the chalkboard. I said I didn’t have a condom. I said if we were both healthy and safe would it be ok without it. And she said yes to both those questions.

We must have had oral sex at one point – but I don’t remember. I think if it did happen – I don’t know. It could have happened more than once but I don’t remember that at all. My memory is not serving me well. I do know I did not ejaculate at any point with her.

I think we worked around each other again in the studio. We didn't have any more interactions of a sexual nature. It was probably a little awkward after – I don't remember there being a noticeable difference from the way we interacted before. I think I told Dan about it. I didn't mention it to anyone on my team. I think I was a little embarrassed honestly. She didn't have hair at the time – she cut it for Locks of Love – and I guess I was concerned what my peers would think. Dan could attest to our relationship, Jenna and that's about it.

Looking back, I feel I may have bartered...I wish I had acknowledged the fact we were having a back and forth. Looking at the texts, I was definitely trying to get us together that night before Samson Hall. My intentions weren't malicious in any way, but I can't recall much else.

*\*\*\*\*Stop here. Read the Q&A in the following section before continuing.\*\*\*\**

## Text Messages Forwarded by Jake

4/15 – 2:05 am

Jake: what are you up to?

Darcy: just got back to my room. Pjs r on

Jake: even better! Laundry room?...

Darcy: Saturday? I have class at 9:40 am tomorrow

Jake: ahhh I may be with the team

Darcy: we can do this when I'm more sober I promise. If u wanna

Darcy: 100% another night. I'm sorry

Jake: its ok I was just down tonight for sure

Darcy: it's just v late and I gotta make it to class tomorrow, I bouta pass out im sorry

Jake: all good goodnight

Darcy: spank my booty in class and it's a done deal

Jake: I will certainly do so but I didn't even get a feel

Darcy: u can feel whenever u want u don't have to be drunk to do so

Jake: Idk if its as good as it looks

Darcy: ha its great

Jake: ...don't tempt me

Darcy: I am tempting u

Jake: I would probly have to bend you over a table after slapping it so I may have to resist

Darcy: I'm about to ko

Jake: ko?

Darcy: knock out

Jake: boo

Darcy: ill c u soon 😊...

Jake: Like in a few minutes. I'm coming over to fuck you in the hallway if I have to

Darcy: u can fuck me later. gotta build suspense...make ya want it

Jake: ughh. Fine

4/15 – 9:40 pm

Jake: Come to Samson and help me do a test

Darcy: help you do a test?! I suck at tests

Jake: orr just keep me company...

Darcy: okok that's next to Lane, right?

Jake: Yes!

Darcy: such a long walk mann what room?

Jake: 4<sup>th</sup> floor

Darcy: kk

Darcy: I'm on 4<sup>th</sup> flr

Jake: room w/ lights on...



## 20 Minutes to Trained: Assessing Credibility Q & A

### Victoria and Peter

#### For Discussion

- What policies are implicated by this report? What are the key issues?
  - Sexual Harassment
  - Non-Consensual Sexual Contact
  - Non-Consensual Sexual Intercourse
  - Issue of whether Victoria was incapacitated and, if so, if Peter (and a reasonable person) would know she was incapacitated.
- Identify and evaluate the parties' initial statements and the available evidence. What other evidence may be available? What additional questions should be asked of the parties? Are there other witnesses who should be interviewed?
  - Ask Victoria for text messages/confirm the text messages with Victoria.
  - Understand the history between the parties better. Alice mentioned drama – what does each party have to say about that?

- What are our options with regard to Alice? How important is her testimony? What strategies might we employ?
  - What is the institutional policy regarding witness involvement? Can you compel someone to cooperate?
  - Is there someone else that was present that evening and/or another witness(es) who could speak to the dynamic that night and/or the dynamic between Victoria and Peter?
- What are the implications of the text messages?
  - That although Victoria was perhaps intoxicated, she was not incapacitated, as she was able to text multiple messages (with correct spelling) recognizing her state of intoxication.
- Are there credibility considerations for Victoria and Peter?
  - Victoria changes her reports – initially she isn't sure if she remembers Peter on top of her, having sexual intercourse with her and later states that Peter was raping her.
  - Victoria does not mention the text exchange.
  - Could the fact that Peter wasn't interested in Victoria sexually be a motive for Victoria to make a report?
  - Peter said he wasn't interested in Victoria sexually, but Alice mentioned the drama between the two. Might there be more to the dynamics than what Peter is offering?
- Based only on the information provided here, is there sufficient evidence to find a violation?
  - Probably not.

## Grant and Owen

### For Discussion

- What are your initial thoughts?
- What are some credibility concerns based on the information provided?

- Grant reports that he was too drunk to consent to the sexual interaction but the details he provides regarding his own actions seems to contradict this.
- Both parties report reciprocated conduct – how does this affect each individual’s credibility?
- Owen asserts that because he was sexually assaulted, he could never sexually assault another person.
- Does Owen’s refusal to discuss the first reported incident affect his credibility?
  - Not necessarily. His refusal to answer questions/cooperate should be noted, but if the school does not actually have jurisdiction over the first incident, Owen’s disinclination to discuss it may have no bearing at all on his overall credibility.
- What are some ways in which to corroborate information to better assess the parties’ credibility?
  - Speak with Adam and other witnesses to better understand the dynamic and history between the two parties.
  - Speak with others who were near Grant on the night at issue to get a better understanding of his level of intoxication.
  - Obtain pictures/text messages provided by both parties.

## **Darcy and Jake**

### For Discussion

*After the interviews, before you receive text messages forwarded from Jake*

- Do you see any credibility issues?
  - Darcy’s physical position on top of Jake indicates that at least for some portion of the interaction, Darcy was in a position of power. Does this render some or all of her report moot?

- Darcy doesn't want to involve Muriel or Julia. Is this a credibility concern?
- Jake acknowledged that he "may have bartered." How does that affect your analysis of his credibility and of possible policy violation?
- Additional questions/witnesses?
  - Try to better understand why Darcy doesn't want to involve Muriel or Julia.
  - Speak with Dan and Jenna to get a better sense of the dynamics between Darcy and Jake.

*After you receive the text messages forwarded by Jake*

- What additional questions do you have at this point?
  - It is important to confirm that this text exchange is authentic.
  - Walk through the text exchange with Darcy to understand her thoughts on this communication – what did she mean when she was texting him and how does she reconcile the texts with information she provided earlier.
- Do the texts change your initial thoughts in any way?
  - Affects Darcy's credibility – she had previously reported that she told Jake she wasn't interested. These text messages directly refute that.
- What credibility issues are there with Darcy or Jake?
  - The texts certainly negatively affect Darcy's credibility. That said, the content of the text exchange is not a substitute for consent during the actual sexual interaction.
  - Jake's recognition that he may have bartered supports his credibility. His statement also raises the question of whether he is downplaying his conduct to avoid more serious consequences.

## ASSESSMENT, ANALYSIS, AND RESOURCES

### Credibility

The next section of this *Playbook* turns us from the models of proof to additional information that will aid in your assessment and analysis of policy violations from an evidentiary perspective, specifically: how to assess credibility.

#### Don't Lie to Me: Common Errors in Assessing Credibility Effectively

According to the Equal Employment Opportunity Commission's (EEOC) *Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors* dated June 18, 1999,<sup>93</sup> the five factors to include in assessments of credibility are:

- **Inherent plausibility:** Is the testimony believable on its face? Does it make sense?
- **Demeanor:** Did the person seem to be telling the truth or lying?
- **Motive to falsify:** Did the person have a reason to lie?
- **Corroboration:** Is there witness testimony (such as testimony by eye-witnesses, people who saw the person soon after the alleged incidents, or people who discussed the incidents with him or her at around the time that they occurred) or physical evidence (such as written documentation) that corroborates the party's testimony?
- **Past record:** Did the alleged harasser have a history of similar behavior in the past?

In the context of investigations, credibility is the accuracy and reliability of evidence. To assess credibility, you have to evaluate the source, the content, and the plausibility of the information offered. When source, content, and plausibility are strong, credibility is strong. Credibility can be thought of existing on a 100 point scale, with the most credible evidence being 100%, and the least credible evidence being worth 0%. Evidence is rarely 100% credible or 0% credible; most evidence falls somewhere in between. Your job is to figure out where credibility falls on the scale of 0-to-100%, especially where evidence is evenly split and the finding hinges on the credibility of the parties.

As you weigh evidence to determine whether a preponderance of evidence supports a finding of responsibility, each and every piece of relevant evidence must be evaluated for its credibility. If a piece of evidence is more credible than not, then it is considered credible and can impact, at least to some degree, the broader preponderance analysis. If evidence is not credible (i.e., less than 50% credible), it does not tip the preponderance scale in favor of that evidence. Importantly, regarding a piece of evidence as not credible does not mean the evidence has no impact on the finding. Evidence that is not credible may tip the scale in the opposite direction if it undermines the credibility of other evidence. For example, if one of the parties puts forth a witness who provides testimony that is patently false, depending on how far along the continuum the witness's

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<sup>93</sup> <https://www.eeoc.gov/policy/docs/harassment.html>

testimony is toward zero percent, that witness's testimony may also have a negative impact on the credibility of the party who provided the witness. Evidence often interlinks to form a complex web of interrelated parts. When one piece lacks credibility, that can impact the credibility and weight of the other pieces. But, credibility is not an on/off switch; usually witnesses provide evidence that is a mixture of credible and not credible. One false statement does not mean you can't believe anything the witness tells you.

Credibility is best established through corroboration, which is obtained through sufficient independent evidence supporting the fact(s) at issue. Corroboration is not merely another witness who agrees with the first witness, as they could be lying to support each other. Rather, corroboration consists of *evidentiary support* for the information the original witness presented. For example, if a witness testifies that several people took a Lyft™ home from the bar, corroboration might consist of a Lyft™ receipt.

Credibility is multidimensional, in that a witness's location and position can impact the credibility of their statement(s). Could a witness actually hear what they say they heard? See what they say they saw? Know what they claim to know? Some aspects of credibility are based on credentials, knowledge, and expertise, but these factors need to be established through verification and foundation, not assumed. Other aspects of credibility are based on neutrality, impartiality, and objectivity. Neutral witnesses (who have no loyalties to the parties) may be more objective than partisan (biased toward a specific party) witnesses. The more loyal witnesses are based on their relationships to one party, the more biased their evidence may be.

Lack of temporal proximity or proximity to the source of information detracts from credibility and is relevant to both you and those you interview. What someone witnessed in person is most valuable. What they heard from the responding party about the incident after the fact is less valuable, and what they learned after the fact from the responding party's best friend about what the responding party told her is even less valuable.

Temporal proximity can also affect credibility, particularly since incidents are often not reported until days, weeks, months, even years later. Be mindful of witnesses using qualifiers like, "I think," "I'm pretty sure," and "I seem to remember," particularly when a significant period of time has elapsed since the incident. Through follow-up questioning, you need to distinguish between those details the witness is sure of from the details the witness remembers less clearly. Inconsistencies, memory errors, or contradictions in recall regarding details the witness is admittedly unsure about may be less damaging to that witness's credibility than if the witness had stated that they were absolutely sure. Involved parties may also write down certain events in a diary, blog, or letter/email/text to a friend or family member. This type of written memoranda may serve as corroborating evidence for that witness's eventual statement to an Investigator. Documents such as diaries, calendar entries, journals, notes, texts, emails, or letters describing the incident(s) can add to credibility, but can also be manufactured after-the-fact. The adage, "Trust, but verify," is a good rule to live by.

Another important aspect of credibility is the inherent plausibility of the evidence offered. Given what you know, does the story make sense? One way to articulate inherent plausibility is to use logical connections and extensions, known as abductive reasoning, to support a plausibility argument. Plausibility stems largely from triangulation, which means using two (or more) data points to extrapolate or infer that a third data point is more likely than other possibilities. If X and Y are true, Z is more likely to be true than W, another alternative possibility. The result is a belief in the inherent plausibility of the information.

### *Example of Triangulation*

Henry, a male student, fondled the breasts of a female student without consent, and admitted it. This is our X. Henry also tried to give a hand job to a male student, and claimed he had consent, but it was determined by a preponderance of the evidence that he did not have consent. This is our Y. Z, a third potential victim, then came forward and alleged that he believed his penis was fondled by Henry one night while sleeping in Henry's room, but isn't positive, because he was asleep and believes that Henry likes girls.

Given the above, what does the information we know about X and Y allow us to conclude about Z's allegation? By triangulating X and Y, we can believe the inherent plausibility of Z's allegation.

As the Investigator, we know that Henry likes to touch female breasts but we also know that he likes to touch penises. We have no idea if that means he likes men, and that is not of concern to us as the Investigator. But I know X does not rule out Z. Y makes Z more plausible than W, an alternative explanation we might have. We also know that Henry has fondled a penis before without consent, and that Z has no idea about X and Y. Thus, Z's belief that he was fondled while sleeping is not influenced by anything but his own belief. He can't fully self-corroborate, because he can't say for sure that the conduct occurred, because he was asleep. But, triangulating from X and Y makes Z more likely than not, because both are part of a pattern that Henry has exhibited before, and Y occurred under very similar circumstances to Z.

This is how abductive reasoning assists in assessing the inherent plausibility of the alleged assault on Z: We don't depend on the weight of Z's evidence, itself; and, while we may not have a complete set of facts, we use what we know about X and Y to make a determination about Z. Similarly, we can use triangulation to adduce inherent implausibility, when X and Y triangulate to W, and not Z, making Z inherently implausible.

Below are additional considerations that are useful in assessing credibility:

*Consideration of bias*, overt and subtle, of which the witness may not even be aware, is also important. Bias may include: victim-blaming attitudes, group defensiveness (think: teams and fraternities), and fear of possible repercussions. The presence of bias must be considered when assessing credibility.

*Analysis of micro-expressions and gesticulations should be avoided* unless you are an expert and have discovered someone's tell for deceit. Otherwise, do not consider the act of crossing limbs, looking up to the right, and other so-called "tells" as evidence. If a person's body language changes significantly from their established body language when you ask a question or raise a certain topic (we call this a departure from baseline), that is typically a prompt to ask more questions. It is not necessarily evidence of deceit, rather an indication there may be more to examine.

*Inconsistencies and contradictions in testimony* should be evaluated. Major inconsistencies in testimony are more likely to (but do not necessarily) detract from credibility than minor inconsistencies. Sometimes, inconsistencies and contradictions can result from one's memory evolving over the telling of a story, as questions are asked of the witness, more details are recalled, and additional intellectual connections are made in the witness's mind. Other times, inconsistencies and contradictions might be the result of unconscious fabrication of "recall" on the part of a vulnerable or fearful witness who is especially concerned with pleasing the investigator or concealing memory gaps. And still other times, inconsistencies or contradictions may indicate conscious lying.

*Lying* itself, through commission or omission, is not an outright credibility killer, because people may lie in one area while being honest in another. The job of the investigator is to determine whether the lie is material to the allegations (e.g., lies about facts that tend to prove or disprove the underlying allegations) or about a peripheral matter and potentially motivated by other concerns (e.g., lies about alcohol consumption motivated by a desire to avoid an alcohol violation), or if the lie otherwise reveals critical information about the overall credibility of that witness.

*A delay in reporting* does not necessarily detract from credibility. Individuals may delay reporting for a variety of reasons that do not damage their credibility, including: fear of retaliation, not knowing or trusting the policy or the individuals in charge of implementing the policy, fear of being blamed, shame, or not recognizing the behavior for what it was. Alternatively, reporting parties may decide to report as retribution for a more recent circumstance, such as after a nasty breakup or upon discovering a partner's infidelity. While these circumstances do not inherently damage the credibility of the reporting party, they do add another piece of evidence that must be evaluated against all other available evidence. There may be multiple pieces of credible evidence supporting that the reporting party is overstating or sensationalizing the incident, which, taken with a witness's statement about the reporting party's desire to harm the respondent as reprisal for a bad breakup, may render the evidence of the recent breakup more impactful to credibility. Alternatively, there may be credible evidence demonstrating that the alleged misconduct more likely than not occurred, such that testimony regarding the reporting party's retributive intent may explain why they reported, but not support any kind of fabrication. Evidence regarding a delay in reporting should be evaluated in totality, along with other evidence regarding credibility.

*Changes in the behavior of the reporting party* after the incident might add to credibility, including: avoiding class, meetings, or certain areas on campus; struggling to keep up academic performance; and seeking psychological counseling. While the lack of these behaviors may detract from credibility, it also may not. All such evidence should be taken in totality with other evidence.

Individuals are affected differently and will react with varying degrees of intensity and complexity to the events that they experience. A reporting party could be displaying the “classic” symptoms of traumatic response because they *believe* an incident occurred, not because it actually did. A reporting party may exhibit signs consistent with the “classic” traumatic response because they want you to think it occurred, not because it actually did.<sup>94</sup> Or, a reporting party telling the absolute truth may not exhibit outward signs of trauma at all.

*The existence of witnesses who were told immediately about the incident* may add to credibility because the account provided to such witnesses by the reporting party is often unfiltered by time, reflection, and bias. But if the accounts provided to others vary significantly, these reports can undermine credibility.

*The raising of additional allegations by witnesses about the responding party* could add to credibility of the reporting party’s allegations, depending on the context and plausibility of the additional allegations. If other individuals have made similar allegations about the responding party in the past, this should be explored to the degree necessary to determine if these past allegations support the credibility of the present allegation. On the other hand, piling on rumors about past conduct by the responding party which cannot be substantiated could undermine the investigators’ belief in the validity of the reporting party’s allegations at all.

*The fact that a relationship was consensual at one time, in some aspects, or for certain interactions, does not detract from credibility nor is this a defense against a subsequent allegation of sexual misconduct.* Consensual relationships can be followed by sexual misconduct, such as when one person tries to end the relationship and the other individual exploits the power dynamics to intimidate the former partner into staying in the relationship or engaging in certain behavior. People can also be assaulted after consensual sexual acts, or engage in consensual sexual acts after having been assaulted. Neither is uncommon.

*The fact that the person who made the allegation(s) did not tell the alleged harasser that the behavior was offensive* does not affect credibility, nor should it make you think differently about the reporting party. There are many legitimate reasons a reporting party might not have communicated a feeling of offense to the responding party, including disparity in power between the reporting and responding parties. The test for harassment does not require the reporting party to inform the responding party that behavior was offensive. That said, if you can establish that the harassing behavior continued after the responding party was informed that the behavior was unwelcome, this information would corroborate the reporting party’s claim that the responding party’s conduct was “unwelcome.”

*“The fact that a relationship was consensual at one time, in some aspects, or for certain interactions, does not detract from credibility nor is this a defense against a subsequent allegation of sexual misconduct.”*

<sup>94</sup> The frequency with which this occurs is not known.

*Explanations for why the misconduct occurred do not add to credibility.* Individuals who have sexually harassed others often acknowledge their behavior but explain and defend it in ways that do not justify their actions and should not add to their credibility. To the contrary, these excuses or “explanations” should be considered admissions of having engaged in a pattern of sexually harassing behaviors. For example:

- *“I didn’t know it was against the rules.”*
- *“I was just joking around.”*
- *“She flirts all the time.”*
- *“I was just flirting with him.”*
- *“She was asking for it. She was leading me on!”*
- *“You have to understand, we guys have special needs.”*
- *“It’s no big deal. I don’t know why he is so upset.”*
- *“I wasn’t lying. She really is a slut (or bitch, whore).”*
- *“She’s a snitch for telling on me.”*

The following do not add to or detract from credibility of the responding party because they are irrelevant:

- Character witnesses and the character evidence they provide. (*“I’ve known him for fifteen years, he is such a good kid; I know he would never do that.”*)
- Popularity with staff and other students. (*“Everybody likes him; I just don’t believe he would do that.”*)
- No history of past problems. (*“She’s never been in trouble before.”*)
- Academic performance. (*“But he’s a really good student. His professors really like him.”*)
- Importance to a team or program. (*“He’s our best athlete/trainer/tutor.”*)

The following do not add to or detract from credibility of the reporting party:

- Clothing. (*“Just look at what she was wearing.”*) Clothing does not cause sexual harassment, nor does it give anyone permission to touch or make sexual remarks.
- Appearance. (*“She is so pretty, no wonder he did it,”* or *“She is so unattractive! I don’t believe anyone would do that to her.”*)
- Flirting behavior. (*“He’s always flirting with the boys, what did he expect?”*)
- Male victims. (*“He should have realized she meant it as a compliment.”*)
- Sexual orientation of victim (*“Listen, he came out of the closet and told everyone. He should have expected that people would act like this.”*)

Questions to consider in assessing credibility:

- How might a reasonable person react to the incident(s)?
- What was the effect of the behavior on the reporting party?
- Did the individual have a particular reason not to tell the truth?

- Is the evidence offered inherently plausible?
- Is there evidence corroborating the information provided by a witness?
- Is there anything missing from the testimony that the witness/party may be omitting?
- Did the individual have the opportunity and ability to observe the things they discussed?
- Is there relevant past conduct (i.e. similar allegations) that needs to be considered?
- Was the witness/party under the influence of any substance that may impact the credibility of their testimony?

*Past History.* We investigate in the real world every day. In the real world, the past sexual history between the parties matters to context, and sometimes is the most compelling determining factor in an investigation. So, OCR's declaration that past sexual history should not be admitted is over-protective at best and fundamentally naïve at worst. The past sexual history of the responding party is relevant to establishing pattern abuses of others (even the EEOC says so, above), but the same is true for establishing pattern within a relationship. Many cases hinge on consent and if the parties have a sexual history together, how consent is given or received in their interactions can be critical.

We agree that the reporting party's general past sexual history should normally be out-of-bounds, but if he has a history of alleging sexual misconduct after bad breakups, we need to know that. The sexual history between the parties is fair game for the investigators' inquiry, but they may come to realize that it is irrelevant once they analyze it. Still, they must analyze it to determine whether it is relevant or not. It goes fundamentally to credibility if, as we stated above, there is a motive for bringing the allegation other than the desire to report misconduct. That motive may not destroy credibility, but fairness to the responding party demands that investigators explore that motive to determine how it impacts on the credibility of the reporting party. Rather than hard-and-fast rules in the admissibility of past sexual history, we want investigators to be able explore it fully between the parties, but to only go more widely outside of that context when there is a compelling justification to do so. Fishing expeditions and character assassinations by "slut shaming" are not permitted.

*“OCR’s declaration that past sexual history should not be admitted is over-protective at best and fundamentally naïve at worst. The past sexual history of the responding party is relevant to establishing pattern abuses of others.”*

Importantly, a decision of preponderance can be made that misconduct occurred when the evidence of the allegation(s) is credible, even if there were no witnesses to the misconduct. Put another way, a preponderance can be established simply because you believe one party and not the other, based on assessment of credibility of the parties and the evidence provided.