

#aiTIXAdvInvestigator

## MOCK INTERVIEW WITH A DIFFICULT WITNESS



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### ACTIVITY

## We need one volunteer!

This volunteer will play the role of being a “difficult” witness while Jill plays the role of the investigator.

*\*volunteer will need to have their mic/webcam on please.*



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## EXAMINING CORROBORATION AND CONTRADICTION IN EVIDENCE



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## LEARNING OUTCOME

### After participating...

... you will be able to more effectively and efficiently make sense of consistent and inconsistent information gathered during the interview process for the final investigation report.



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## ■ CREDIBILITY OF NON-WITNESS EVIDENCE

- Primary evidence
  - Authentic, relevant tangible evidence
  - Firsthand, uninvolved, unimpaired witness reports
  - Surveillance video
- Secondary or tertiary
  - Secondhand reports (rumors)
  - Relevant, tangible evidence that can't be authenticated
- “Anti-evidence”
  - Fabricated or tainted evidence

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## ■ MUST HAVE STRUCTURE

**Where do you get a disciplined approach to determining whether the information you're getting is accurate?**

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## ■ 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.



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## ■ WITNESS CREDIBILITY: LYING or WRONG?

- Human nature to have imperfect or inconsistent recall
- Just because it doesn't make sense to you does not mean the person saying it is lying
- Just because someone is inconsistent (or flat wrong) doesn't mean they're a liar



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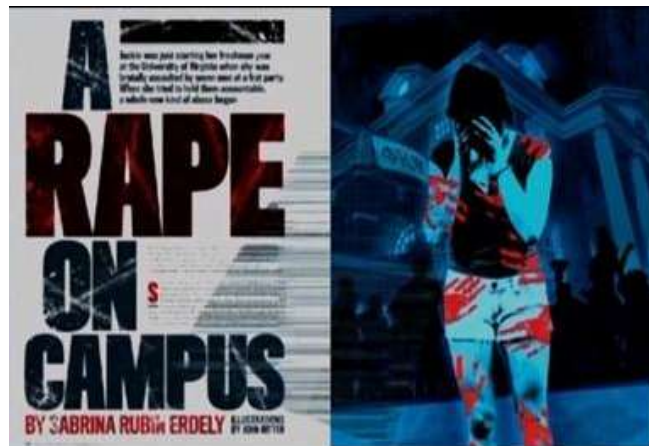
## BIASES

- General biases need to be left at the door
- Bias/concern about false rape reports
- Biases about how sexual assault victims “should” react should be left at the door, too
- Biases about how men behave

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## FALSE REPORTING HAPPENS

BUT NOT  
VERY  
OFTEN



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## ■ FALSE REPORTING DEFINED

- “Unfounded”
  - Does not meet the legal definition of sexual assault
  - False
- Rates of False Reports

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## ■ BIASES RE: COMPLAINANTS

[“Anatomy of Doubt”](#) (Podcast)

[“An Unbelievable Story of Rape”](#) (Written)

[“Unbelievable”](#) (Netflix series)

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## BIASES RE: COMPLAINANTS

- Common for victims of sexual violence to delay reporting.
- Common for victims of sexual violence to remember some things very clearly and some things not at all.

"Indelible in the hippocampus is the laughter. The uproarious laughter between the two. They're having fun at my expense. They were laughing with each other...I was underneath one of them, while the two laughed...Two friends having a really good time with one another."

- Dr. Christine Blasey-Ford



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## BIASES RE: COMPLAINANTS

- DO consider all standard factors in evaluating credibility in a sexual assault case.
- DO recognize the difference between a lack of credibility and your own biases about how a sexual assault victim “should” behave.



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## BIASES RE: ALL PARTIES & WITNESSES

- Race?
- Economic background?
- Religion?
- Culture?
- Disability?
- Membership in a particular group?
- What else?

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## OTHER ACTS

- Area is fraught with danger
- If you are aware of other incidents of behavior that you believe reflect on the strength or weakness of a particular allegation, consult with counsel before considering it.
- General principle:  
Similar incidents can be considered NOT FOR GUILT but for similar motive, opportunity, lack of mistake, intent, *modus operandi*.

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## POLL

# Is Circumstantial Evidence Less Credible than Direct Evidence?



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## 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.



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## ■ PUTTING IT TOGETHER

Factual Issue:

1. What did person 1 say about the issue?
  - a. Assess person 1's testimony with evidence received from that person over time.
  - b. Assess person 1's testimony with testimony from others (consistent/inconsistent?).
  - c. Assess person 1's testimony with evidence received from others (e.g., video, documents, etc.).
2. Repeat with all witnesses or parties who addressed the issue.

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## QUESTIONS

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