



## Title IX Investigations: The Importance of Training Investigators in Evidence-Based Approaches to Interviewing



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Under Title IX, schools in the United States that receive federal financial assistance are legally required to provide a prompt and impartial process for investigating complaints of sex-based discrimination. These investigations critically rely upon information obtained in interviews. We provide an evaluation of interview training that is presently available to college and university Title IX investigators. Our review finds that while certain core interviewing skills align with evidence-based practice and available research, other suggested practices are at odds with the available science, and additional effective interviewing practices related to the retrieval of memory and the assessment of credibility are critically absent. We recommend a set of evidence-based practices for Title IX investigative interviews that are likely to (a) improve the development of rapport and cooperation with an interviewee, (b) elicit more accurate and relevant information from memory, and (c) enhance assessments of credibility when applying strategic questioning approaches.

### *General Audience Summary*

Title IX investigations are conducted in the United States when schools receive complaints of sex-based discrimination. These civil procedures rely on the participation, recall, and evidence provided by complainants (individuals who report experiencing sexual misconduct), respondents (individuals who are alleged to have engaged in sexual misconduct), and witnesses. This renders critical the role of effective interviewing procedures in Title IX investigations. In the present article, we evaluate current training and practice based upon several trauma-informed interview courses that are prevalent in the U.S. higher education industry. We find that while certain core interviewing skills appear to align with evidence-based practice and available research, other suggested practices are at odds with the available science, and additional effective interviewing practices that are related to the retrieval of memories and the assessment of credibility within an interview are critically absent. We believe it is important that colleges and universities develop standards of best practice for Title IX interviews, and we recommend a set of evidence-based approaches that have been evaluated in relevant contexts. We also encourage university Title IX offices to initiate collaborations with scholars both to introduce evidence-based training and to initiate research programs that might further advance the science of interviewing in the context of Title IX investigations.

*Keywords:* Investigative interviewing, Credibility assessment, Eyewitness memory

Title IX of the Education Amendments of 1972 states, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be

subjected to discrimination under any education program or activity receiving Federal financial assistance.” Title IX applies to any education or training program (from preschool through

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higher education) operated by a recipient of federal financial assistance. The present article centers on colleges and universities, wherein the primary function of Title IX is to guarantee the right to participate in higher education free from discrimination on the basis of sex. This in turn requires that such institutions identify, respond to, end, remedy, and prevent sexual misconduct. Federal guidance stemming from the [Clery Act \(1990\)](#) broadly defines sexual misconduct as including sexual assault, sexual harassment, stalking, and relationship (including dating and domestic) violence. If institutions of higher education fail to adequately respond to sexual misconduct allegations, they risk losing federal funding. Toward this end, Title IX requires all recipients of federal assistance to designate at least one Title IX coordinator who is charged with managing the implementation and administration of a university's procedures for resolving Title IX complaints, including investigating complaints. Title IX's statutory language is brief, and the law is supported by a variety of policy guidance documents that elaborate an institution's responsibilities. The U.S. Department of Justice (Civil Rights Division) and the U.S. Department of Education (Office for Civil Rights) share enforcement responsibility for Title IX. In 2015, the Department of Education's Office for Civil Rights published a [Title IX Resource Guide](#) that outlines the scope of Title IX, the responsibilities and authority of a Title IX coordinator, and Title IX's various administrative requirements.

The White House Task Force to Protect Students from Sexual Assault ("Task Force") was established in January 2014 to address sexual misconduct in higher education. The Task Force's First Report ([Not Alone: The First Report of the White House Task Force to Protect Students From Sexual Assault, 2014](#)) called on the Justice Department's Center for Campus Public Safety to develop a "trauma-informed training program" for campus officials involved in sexual misconduct investigation and adjudication. This trauma-informed approach was further promoted by the Obama administration in its (now rescinded) 2014 Q&A on Title IX and Sexual Violence, wherein the administration promoted the training of investigators and school officials on such topics as the impact of trauma on victims, the neurobiology of traumatic experiences, and appropriate methods to communicate with students subjected to sexual violence. The guidance also suggested that schools should consider that traumatic events such as sexual violence can lead to delayed decision making by the complainant, and that engagement with the complainant (such as interviews and hearings) should be conducted in a manner that does not reintroduce or inflict additional trauma. The Task Force's Second Report ([Preventing and Addressing Campus Sexual Misconduct: A Guide for University and College Presidents, Chancellors, and Senior Administrators, 2017](#)) once again emphasized the importance of trauma-informed investigations, and was accompanied by a guide for higher education presidents and senior leaders that reinforced the obligation for institutions to provide a victim-centered and trauma-informed response to sexual misconduct.

While the current article centers on U.S. Title IX regulations and related investigations of sexual misconduct on higher education campuses, the topic is truly an international challenge. A high-profile sexual assault case at Warwick University in the

United Kingdom is illustrative of the issues faced by higher education officials around the globe ([Mararike & Griffiths, 2019](#)). While our focus here addresses the U.S. Title IX context, we expect that the evidence-based interviewing practices, having been developed by an international research community, would be broadly applicable to the conduct of such investigations on higher education campuses in other countries.

### How Do Title IX Investigations Differ from Law Enforcement Investigations?

There are important differences between Title IX investigations of sexual assault and police investigations, and a number of writers have discussed the significance of maintaining this distinction ([Swan, 2016](#)). Whereas criminal complaints cannot usually go forward without a victim's participation, higher education institutions are required to address every complaint: Once a school knows or reasonably should know of an incident of sexual misconduct, the school must take steps to understand what occurred and respond appropriately. Criminal investigations are supported by subpoenas, search warrants, and forensic testing; in contrast, Title IX investigations rely on the participation, recall, and evidence provided by the parties themselves. This renders critical the role of effective interviewing in Title IX investigations. Because it is up to the investigator to gather, document, and analyze all available evidence and to do so relying entirely on the voluntary participation of the parties, it is essential that investigators work to promote the cooperation and reporting of all those involved.

The differences between criminal investigations and campus Title IX investigations are made clear when one reflects upon the function of Title IX: Schools are investigating and adjudicating *sex discrimination*, not rape. Title IX is a civil, not a criminal, law that imposes obligations on schools, not on individuals ([Collins, 2016](#)). Schools do not have primary responsibility for investigating criminal conduct, but they do have primary responsibility for investigating unwelcome, inappropriate, and harassing conduct (i.e., sexual misconduct) in the same way that schools are responsible for responding to academic misconduct ([Baker, 2017](#)). School proceedings can be understood as a means to address sexual violence as a civil rights issue, a process that is separate from and parallel to criminal proceedings in those cases where a victim, or jurisdiction, chooses to pursue a criminal complaint against a subject.

Importantly, a complainant (or victim) may choose to pursue a campus Title IX investigation and criminal charges at the same time. Federal guidelines do not reconcile conflicts on state and federal laws, nor do they provide guidance for coordinating campus and criminal processes in the case of concurrent investigations ([Smith & Gomez, 2016](#)). Under the U.S. Department of Education's 2018 proposed Title IX regulations, which would replace the Obama administration's Title IX guidance, concurrent law enforcement activity may constitute good cause for reasonably extending the timeframe of the grievance process in order to allow evidence uncovered in the criminal investigation to be included in the school's final determination of responsibility.

In general, a criminal investigation is completely independent of a Title IX investigation and often runs concurrently. Concurrent investigations, in which a complainant pursues *both* criminal and campus investigations, could be independent (information shared only through formal processes as the criminal and campus investigations reach certain stages), joint (criminal and campus investigators communicate frequently through formal and informal methods), or simultaneous (investigators coordinate their efforts). What a concurrent investigation looks like depends entirely on the jurisdiction. A school may decide to temporarily delay the fact-finding portion of a Title IX investigation while law enforcement gathers evidence for a criminal investigation; however, the school would promptly resume and complete the Title IX investigation once police have completed their own evidence gathering. In all cases, Title IX investigators are careful to ensure that complainants do not have to tell their stories multiple times to different people across disparate offices. As such, Title IX investigators work collaboratively across campus units and community agencies to ensure that both complainants and respondents have adequate support and resources.

### What Types of Cases do Title IX Investigators Address?

As Title IX practitioners will attest, there is no such thing as a “typical” Title IX investigation. The alleged misconduct, facts, circumstances, and relationship of the parties varies widely across cases. The most complex cases may involve complicated power dynamics, alternative sexual behavior, sexual subcultures, minoritized populations, and reluctant complainants. Title IX complaints can also involve parties across campus affiliations, including undergraduate students, graduate students, faculty, staff, administrators, visitors, and third-party affiliates.

There is little available data that describe the relative frequency of campus investigations by complainant and respondent status, and such data reporting is not required by either law or federal guidance. While the Obama administration’s Office for Civil Rights did provide details about its investigations into schools’ handling of Title IX investigations, the Trump administration ended the practice of disclosing when and how investigations are resolved in March of 2018. Although they rarely make the data public, Title IX offices will generally track complainants and respondents across a variety of data points. This is especially important as campuses evaluate the complexity of Title IX complaints involving male complainants, sexual minorities, historically underrepresented and marginalized students, and graduate students alleging sexual misconduct by faculty members (Black et al., 2011; Cantor et al., 2017; Edwards et al., 2015). Though data describing the relative frequency of case types is generally not made available by universities, several schools have publicly released such figures. For example, Brown University disclosed that the primary types of incidents reported in 2017–2018 involved sexual or gender-based harassment (49%) and sexual assault (38%), while the University of Alaska at Fairbanks disclosed for 2016–2017 that the most frequently reported incidents involved sexual assault (28%), sexual harassment (27%), unwelcomed sexual contact (14%), and dating or domestic violence (14%).

### What are the Qualifications and Training of Title IX Investigators?

Universities have wide discretion as to who conducts Title IX investigations and how investigations are conducted. According to federal regulations (see *Revised Sexual Harassment Guidance, 2001*), investigations must be “prompt” (though there is no fixed time frame under which a school must complete an investigation) and they must be “equitable.” An equitable Title IX investigation requires a “trained investigator” to “analyze and document the available evidence to support reliable decisions,” “objectively evaluate the credibility of parties and witnesses,” “synthesize all available evidence,” and “take into account the unique and complex circumstances of each case” (see *Q&A on Campus Sexual Misconduct, 2017*).

There is no formal training or minimum qualifications required for either Title IX coordinators or investigators, and there is little available information on Title IX investigators’ training, background, or practices. While coordinators may or may not themselves conduct investigations, Title IX does not require that a school have investigators—it requires that each school have at least one *coordinator* (34 C.F.R. § 106.8(a)). One recent study, while highlighting the lack of standardization and requirements for Title IX coordinators, found that the majority of Title IX coordinators have less than three years of experience, have widely varying training, and serve their Title IX role in only a part-time capacity (Wiersma-Mosley & DiLoreto, 2018).

While Title IX regulations require that federal funding recipients, when they know or reasonably should know of possible sex-based harassment, take immediate and appropriate steps to investigate or otherwise determine what happened, the regulations do not offer guidance as to best practice for conducting investigations. For-profit consultation firms and law practices have largely filled this gap by offering workshops and trainings to support the development of investigative skills. Unfortunately, these trainings lack standardization and are frequently presented from a compliance perspective, including “tips” on not getting sued and checklists for investigations.

The Association of Title IX Administrators (ATIXA) and the NCHERM Group (TNG) are popular providers of training for Title IX offices. A recent study of the role of Title IX coordinators in institutions of higher education found that a majority of Title IX coordinators were current members of and trained by ATIXA (see Wiersma-Mosley & DiLoreto, 2018). Because these Title IX trainings are often facilitated by attorneys, there is an emphasis on due process as encompassing notice, the presumption of innocence, and the opportunity to participate, present evidence, and offer witnesses. Workshops typically center on recent case law, as well as federal policy and enforcement updates. ATIXA and TNG, for instance, offer several levels of trainings, from “foundational” skills for civil rights investigators to “nuanced” questioning techniques and training in investigation techniques. The Association for Student Conduct Administration’s (ASCA) Sexual Misconduct Institute offers training that claims to provide participants with updates on court cases, practice in investigative skills, knowledge in cultural competency, information on consent and capacity, and advice on trauma and self-care.

The Association of Workplace Investigators similarly offers a training institute, seminars, and webinars in workplace investigations. Many law firms also provide Title IX trainings and seminars. The second author (AML) has attended multiple trainings facilitated by Husch Blackwell LLP, and similar trainings are offered by law firms such as Clark Hill PLC, Hirschfeld Kraemer LLP, and Van Dermyden Maddux Law Corporation. Given the vast landscape of training options, we offer a review of the most prevalent training protocols in the industry: investigative interview training provided by ATIXA and a trauma-informed interview protocol known as the Forensic Experiential Trauma Interview.

### Current Training in the Conduct of Title IX Investigative Interviews

Organizations such as ATIXA also offer training in the conduct of investigative interviews for Title IX investigators. We note at the outset that while studies have generally documented the interviewing and interrogation practices of law enforcement, military, and intelligence personnel (see [Russano, Kelly, & Meissner, \(2019, in press\)](#)), no empirical studies have detailed the training or interviewing practices of Title IX investigators. For the purposes of this paper, we conducted a review of training materials that were publicly available on the ATIXA website—the industry’s leading distributor of interview training for Title IX investigators (see [Wiersma-Mosley & DiLoreto, 2018](#)). As an example, ATIXA offers an *Investigation in a Box* ([Sokolow, Swinton, Morris, Price, & Issadore, 2015](#)) toolkit that describes best practices with respect to interviewing the complainant (or victim), witnesses, and respondent (or alleged perpetrator). In addition, we also reviewed both presentations and supplemental materials associated with ATIXA training from recent years (2012 to 2017), as well as materials from courses completed by one of the current authors who conducts Title IX investigations (AML), including presentations by Husch Blackwell LLP, Markel Consulting LLC, Fisher Phillips LLP, and Cozen O’Connor. Finally, we offer a review of trauma-informed interviewing, with a focus on the most well-known interview protocol currently being trained to Title IX investigators, the Forensic Experiential Trauma Interview. We note that few (if any) distinctions are generally made with respect to interviewing best practice across different types of interviewee (complainants, witnesses, or respondents), with the exception that trauma-informed interviewing has generally focused on eliciting information from a complainant who may have experienced (and therein reexperience) anxiety or trauma related to an incident.

**Basic interviewing skills.** In general, these documents and course materials might best be described as covering the basics of interviewing cooperative individuals and highlighting, in an abbreviated format, the core skills and competencies that investigators should demonstrate. Overall, the available course materials were generally consistent with an evidence-based perspective (see [Swanner, Meissner, Atkinson, & Dianiska, 2016](#)). For example, investigators were encouraged (a) to develop

rapport and offer an empathic, understanding, and non-judgmental interview context; (b) to inform the interviewee about the process of both the investigation and the interview, and to address any questions they might have therein; (c) to ask open-ended questions, followed by more focused questions once an initial narrative has been provided; (d) to avoid biased or leading questions and more generally to be mindful of investigative biases that might influence the interview process; and (e) to invite the interviewee to describe or provide any evidence that would support the account.

### Confrontational and accusatorial interview approaches.

Where the training materials appear to conflict with best practice relates to interviews of the respondent. Federal guidelines require that once a school opens an investigation that may lead to disciplinary action against a respondent, the school should provide the respondent with written notice of the allegations ([Q&A on Campus Sexual Misconduct, 2017](#)). However, there is some disagreement across the training materials regarding whether the respondent should be confronted with evidence supporting the allegation (such as a statement by the complainant or physical evidence collected by investigators) at the outset of the interview. Such confrontation at the outset of the investigative process could both increase resistance and promote the use of direct questioning by investigators regarding the veracity of the allegations (see [Kelly, Miller, & Redlich, 2016](#)). More generally, a confrontational and guilt-presumptive approach is likely to lead to a confirmatory process wherein investigators ask presumptive and leading questions, conduct longer and more pressure-filled interviews, and ultimately increase the likelihood of eliciting false information or false confessions ([Meissner & Kassin, 2004](#); [Narchet, Meissner, & Russano, 2011](#)). While certain training materials promote a somewhat confrontational approach ([Sokolow et al., 2015](#)), other materials suggest a more empathic and non-judgmental approach in which the interviewer acknowledges the difficulty of the situation and allows the respondent to provide information about their contact and interaction with the complainant, including an open-ended narrative related to the allegation (e.g., [Sandler, 2013](#)). The latter empathic and non-judgmental approach is consistent with an evidence-based perspective (see [Meissner, Surmon-Bohr, Oleszkiewicz, & Alison, 2017](#)).

On a related note, we find no evidence that training materials advocate an accusatorial (or psychologically manipulative) approach to interviewing the respondent ([Kassin et al., 2010](#))—for example, no “themes” involving the minimization of blame or responsibility are provided, and no suggestions are offered with respect to downplaying the seriousness of the allegations or the potential consequences associated with the allegation. Further, we found no evidence that Title IX investigators are regularly sent to popular interrogation training courses that advocate accusatorial practices (such as the Reid Technique). Indeed, an accusatorial ethos contradicts the premise of Title IX as a civil rights procedure, distinct from criminal proceedings. Participation in traditional interrogation courses and the application of such interview procedures would likely be



grounds for objection by a respondent's attorney in subsequent litigation.

**Credibility assessment.** Federal guidance stipulates that the credibility of *all parties and witnesses* should be evaluated (Q&A on Campus Sexual Misconduct, 2017). ATIXA training documents generally address the issue of credibility assessment, given its importance to rendering a determination regarding the allegation (Henry et al., 2016); however, recommendations for evaluating interview testimony is somewhat mixed as it relates to the available evidence base (Vrij, 2019; Vrij, Hartwig, & Granhag, 2019). For example, training materials at times recommend against the evaluation of non-verbal behavior, while other materials encourage investigators to consider demeanor and anxiety cues along with non-cooperative responses (vague responses or refusals to answer a question). Studies have shown that non-verbal indicators of deception are weak and unreliable (DePaulo et al., 2003), whereas verbal cues and the elicitation of verifiable details are most diagnostic (Vrij, 2019). On a positive note, the majority of the available training materials encourage an emphasis on subsequent evaluation of the interview narrative and the practice of corroborating statements with other investigative evidence or information. Finally, training documents offered a mixture of recommendations with respect to evaluating the (in)consistency of information provided by an interviewee. While some encourage investigators to contextualize the nature or relevance of the inconsistency, others note that within-statement inconsistency can be used to impeach the credibility of the individual. As discussed below, some aspects of trauma-informed interviewing allow for the presence of omissions and inconsistencies related to anxiety or discomfort, or the retrieval of traumatic memories (e.g., Sokolow et al., 2015). Generally speaking, inconsistencies have not been shown to reliably discriminate veracity (Granhag & Strömwall, 2002) and truthful memory recall has been shown to include the natural omission or subsequent recollection of details (Fisher, Brewer, & Mitchell, 2009).

**Trauma-informed interviewing.** Many of the workshops offered by ATIXA and best practice guides developed for Title IX investigations emphasize the importance of trauma-informed interviewing (Busch-Armendariz, Sulley, & Hill, 2016; Henry et al., 2016; Rohman, Ingram, & Watkins, 2018; Webb et al., 2018). As to the question of why and when trauma-informed interviewing became accepted best practice, it appears to have been the result of guidance offered by the Department of Education's Office for Civil Rights, which arose out of a Resolution Agreement with the University of Virginia requiring that the university "develop and provide training on sexual harassment and sexual violence" that includes "the potential impact of trauma on the behavior of victims of sexual harassment or sexual violence, including how it may impact participating in the investigative process" (University of Virginia Resolution Agreement, V(B)4, 2015).

In general, trauma-informed interviewing involves both understanding how a traumatic experience influences the encoding, storage, and retrieval of information in memory, and recognizing that the retrieval of such a memory could itself be a traumatic experience for the interviewee (Rohman et al., 2018).

Investigators are encouraged to offer a supportive, empathic, and non-judgmental context in which they invite the complainant to largely control the narrative that is provided. A lack of chronological linearity and the omission of details from the narrative are acknowledged as facets of retrieving a traumatic memory, and investigators are encouraged to explore the party's sensory experiences, asking about sounds, smells, sights, and feelings. Investigators are also encouraged to watch for non-verbal and emotional signs of re-experiencing the traumatic event, including lack of eye contact, being physically closed-off, and extreme variations in affect.

One of the most popular trauma-informed interviewing protocols currently offered to Title IX investigators is the Forensic Experiential Trauma Interview (FETI). This protocol was originally developed by Russell Strand (Strand & Heitman, 2017), a former special agent with the U.S. Army Criminal Investigative Division, as a trauma-informed approach to interviews with victims of sexual assault. The second author (AML) recently completed FETI training, and the first author (CAM) has reviewed training and source materials associated with the technique. FETI training is also being given to sexual assault investigators in federal, state, and local law enforcement agencies.

FETI is purportedly based upon the neurobiology of traumatic memory (Hopper, 2012; Lisak, 2009), in which a traumatic event is said to cause the release of "stress hormones" that impair the "cognitive brain" (i.e., the prefrontal cortex and hippocampus), leaving the more "primitive" parts of the brain to encode experiential and sensory information. FETI specifies that perpetrators and victims experience different neurobiological responses to the same event: Whereas perpetrators are believed not to experience a neurobiological stress response and to therein maintain cognitive control, victims are purported to experience significant stress leading to cognitive impairment, peritraumatic dissociation, and tonic immobility. We know of no scientific studies that support this contention of neurobiological response differences between perpetrators and victims. A review of the available evidence-base suggests that the neurobiological mechanisms that generally influence cognition during traumatic events (encoding, consolidation, and retrieval from long-term memory) are well understood at the biochemical level, including subcortical pathways involving the hippocampus, amygdala, and thalamus, as well as the sensory and association cortices (see Hoscheidt, Dongonkar, Payne, & Nadel, 2013). While a critique of the claims offered by FETI regarding the neurobiology of trauma lie outside the scope of this review, it is clear that the influence of stress and emotion on the brain are complex and multifaceted, leading at times to the enhancement of memory and at other times to the disruption of encoding and retrieval processes (see Lindau, Almkvist, & Mohammed, 2016).

Based upon these claims, FETI assumes that victims will offer inaccurate and chronologically disorganized recall, and thereby encourages interviewers to accept omissions or errors in recall and to focus on the elicitation of sensory and emotional experiences. Strand and Heitman (2017) go even further: "In fact, good solid neurobiological science routinely demonstrates that, when a person is stressed or traumatized, inconsistent statements

are not only the norm, but sometimes strong evidence that the memory was encoded in the context of severe stress and trauma” (p. 2). Available research, however, fails to fully substantiate systematic differences in inconsistent or disorganized recall as a function of traumatic experience (Metcalf, Brezler, McNamara, Maletta, & Vuorre, 2019; Rubin et al., 2016; Waters, Bohanek, Marin, & Fivush, 2013).

Further, Strand and Heitman (2017) note that FETI was purportedly designed to obtain *psychophysiological evidence*:

The victim/witness may also experience physiological reactions to the trauma including the emotional feelings combined with the physical manifestations of stress, crisis, and trauma such as shortness of breath, increased heart rate, dilated pupils, muscle rigidity and/or pain, light-headedness and or headache, tonic immobility, dissociation, etc. Identifying and properly documenting these reactions to their experience are essential pieces of information that can greatly assist the Interviewer in understanding the context of the experience and provide significant forensic psychophysiological evidence. (p. 8)

There is no available research known to the current authors that would support such claims.

The FETI protocol suggests initiating an interview by demonstrating “genuine concern and empathy towards the interviewee in an attempt to provide a sense of psychological and physical safety during the interview process” (Strand & Heitman, 2017, p. 4). Research has supported the importance of developing rapport and demonstrating empathy and interest in an investigative interview (see Vallano & Schreiber Compo, 2015). The protocol also appears to encourage the use of open-ended prompts to initiate the recall of information, as well as active listening to encourage continued recall (“please tell me more”), and to discourage the use of leading or suggestive questions. This orientation is quite consistent with the robust research literature on effective interviewing protocols, including the Cognitive Interview for witnesses (Fisher & Geiselman, 1992) and suspects (Geiselman, 2012).

Overall, Strand and Heitman (2017) describe FETI as a “highly effective technique for victim, witness, and some suspect/subject interviews” (p. 2). They further claim that the method has resulted in “reports of better victim interviews by those who have used it” (p. 2) and that the method “obtains significantly more information about the experience, enhances a trauma victim’s ability to recall, reduces the potential for false information, and allows the interviewee to recount the experience in the manner in which the trauma was experienced” (p. 3). A search of the available research literature yielded no published, peer-reviewed studies on the efficacy or effectiveness of FETI. The supporting materials reviewed by the authors provided no experimental or field studies comparing the effectiveness of FETI to either existing practice or other comparable methods developed within the empirical literature. Only anecdotal claims (testimonials) are provided to bolster some degree of efficacy and relevance to forensic practice: we

deem this an insufficient basis upon which to rest claims of effectiveness.

### Recommendations for Developing Evidence-Based Interviewing Best Practices in Title IX Investigations

Our review of current training and practice in Title IX investigative interviewing suggests that while some core elements might be considered evidence-based, other aspects (such as disagreement regarding the confrontational nature of a complainant interview and the perceived efficacy of trauma-informed interviewing approaches) are at odds with the available science. In addition, many novel tactics that have been developed and assessed by scholars over the past few decades (such as the Cognitive Interview, the Timeline Technique, and other strategic interviewing tactics to assess credibility) have not been trained to Title IX investigators or incorporated into practice. Given the essential role of interview statements provided by complainants, respondents, and witnesses in Title IX investigations, we believe it is critical that the field begin to adopt standards of best practice that incorporate evidence-based interviewing approaches.

A robust research literature has developed over the past three decades to document (a) the fragility of memory and the potential influence of misinformation and biased or leading questioning strategies (Loftus, 2005; Newman & Garry, 2013), (b) the impacts of stress and emotion on memory recall (Hoscheidt et al., 2013; Lindau et al., 2016), (c) the influence of psychologically manipulative interviewing and interrogation approaches that can lead to false admissions or false confessions (Kassin et al., 2010), and (d) the relative inability of individuals, including skilled investigators, to assess credibility (Bond & DePaulo, 2006) given their focus on non-diagnostic cues to deception such as non-verbal signs of anxiety or nervousness (DePaulo et al., 2003). Further, an emerging research literature has begun to systematically develop and evaluate best practices for investigative interviews (Meissner et al., 2017; Russano et al., (2019, in press)). Below, we review a set of evidence-based interviewing tactics that, based upon our experience, would appear most appropriate for Title IX investigations.

### Limit Cognitive Biases in Investigative Interviews

While the goal of an investigative interview is generally to facilitate an interviewee’s recall, it is important that investigators remove any potential influence of bias prior to entering the interview context. Research has demonstrated that investigators are susceptible to various forms of bias, and that presumptions of guilt can both influence assessments of credibility (Meissner & Kassin, 2002) and set in motion a cycle of cognitive and behavioral confirmation in which investigators ask more guilt presumptive and pressure-filled questions, leading to contamination of a statement (Garrett, 2015) and false confessions (Kassin, Goldstein, & Savitsky, 2003; Narchet et al., 2011). Investigators must be careful not to presume that the respondent engaged in misconduct, and to utilize interview approaches that limit the

likelihood of biased or leading questioning.<sup>1</sup> Because cognitive biases can be problematic in any interview (complainant, respondent, or witness), it is important to limit cognitive biases throughout the investigatory process.

### Develop Rapport and Facilitate Cooperation with Interviewees

Evidence-based recommendations for developing rapport and trust have been developed by scholars (Abbe & Brandon, 2014). The development of rapport is frequently cited by investigators as critical (Kassin et al., 2007; Russano, Narchet, Kleinman, & Meissner, 2014), and field data support the influence of rapport for developing cooperation and facilitating disclosure (Kelly et al., 2016). Building rapport—like limiting bias—is crucial with all parties and witnesses involved in the investigatory process (Vallano & Schreiber Compo, 2015). It is clear that an empathic, non-judgmental, and collaborative approach can facilitate conversational rapport and reduce an interviewee's reluctance to cooperate (Alison, Alison, Noone, Elntib, & Christiansen, 2013; Walsh & Bull, 2012). Rapport has also been shown to increase the quality of information provided by witnesses and reduce the likelihood of errors or acceptance of misinformation (Vallano & Schreiber Compo, 2011). Further, a variety of tactics have been developed to facilitate liking and common ground with an interviewee (Brimbal, Kleinman et al., 2019; Goodman-Delahunty & Howes, 2014), including the selective disclosure of personal information by the interviewer (Mann & Murphy, 1975), acts of reciprocity that provide hospitality or fulfill an interviewee's needs (Matsumoto & Hwang, 2018), offers of positive affirmation that support an interviewee's self-worth (Davis, Soref, Villalobos, & Mikulincer, 2016), and the identification of common interests or identities shared by the interviewer and interviewee (Brimbal, Dianiska, Swanner, & Meissner, 2019). Importantly, these rapport strategies are effective with and apply equally to *all interviewees*.

### Enhance the Retrieval of Accurate Information from Memory

Research has consistently demonstrated the value of open-ended questions, followed by relevant probe questions (i.e., who, what, where, when, why, or how), and the minimal use of appropriate closed-ended questions (i.e., a question designed to resolve, validate, or verify certain details that were mentioned previously) (Griffiths & Milne, 2006; Powell, Fisher, & Wright, 2005). More than three decades of research has also confirmed the efficacy of the Cognitive Interview (CI), first developed by Fisher and Geiselman (1992). Studies have consistently shown that the CI increases the amount of correct information retrieved

by the interviewee, absent a significant cost to the accuracy of responding (Memon, Meissner, & Fraser, 2010). While the CI includes aspects of interviewing best practice, it is the cognitive elements of the interview protocol that appear to provide its most important benefits to memory retrieval, including the use of eye closure and mental context reinstatement, witness compatible questions (e.g., sketching), and various mnemonic approaches (e.g., recalling from a different perspective or reversing temporal order; see Leins, Fisher, & Vrij, 2012). Scholars have demonstrated the effectiveness of the CI for recalling events involving high-arousal (Ginet & Verkamp, 2007) and for eliciting information from subjects in sexual assault cases (Brandon et al., 2019). In addition to the benefits of interview tactics generally subsumed within the CI, a novel technique has been developed to facilitate the recollection of information during a specified period of time. Referred to as the Timeline Technique (Hope, Mullis, & Gabbert, 2013), the approach has been shown to significantly increase the retrieval of information and to reduce sequencing errors in recall.

### Use Strategic Questioning to Improve Assessments of Credibility

Finally, given the ineffectiveness of training in non-verbal indicators of deception detection (Hauch, Sporer, Michael, & Meissner, 2016), a new science of credibility assessment has emerged that is based upon a cognitive understanding of deception (Vrij, 2019). From this perspective, interview tactics have been developed that leverage key differences in cognitive processing and strategy use between liars and truth tellers. These techniques are premised on seminal findings that liars experience greater cognitive load, that truth tellers generally can recall and provide more information (details) than liars, and that liars generally prepare for questions that they expect to be asked (and therein develop a relatively fixed narrative that they can provide consistently). Interviewing techniques such as asking for the narrative in reverse chronological order (Evans, Michael, Meissner, & Brandon, 2013), inviting the individual to provide more information by sharing a model statement (Ewens et al., 2016), or asking unexpected questions or inviting the individual to recall information in unexpected ways (such as generating a sketch; Leins et al., 2012) have been shown to significantly improve assessments of credibility (Vrij, Fisher, & Blank, 2017). Research has also demonstrated that asking an interviewee to explicitly provide details that could be verified by an investigator following the interview (a so-called *verifiability approach*) can successfully distinguish liars and truth tellers with respect to the type of details provided (Nahari, 2018; Nahari, Vrij, & Fisher, 2014). Finally, research has demonstrated that effective evidence disclosure tactics can facilitate assessments of credibility. Specifically, studies suggest that the strategic revelation of information is most successful when evidence is presented late in an interview (after the interviewee has exhausted their narrative), and when evidence is gradually disclosed from weaker to stronger evidence types or framings (Hartwig, Granhag, & Luke, 2014).

<sup>1</sup> This presumption of “innocence” has been formally proposed under the Department of Education’s November 29, 2018, Notice of Proposed Rulemaking amending regulations implementing Title IX such that a school must “include a presumption that the respondent is not responsible for the alleged misconduct until a determination regarding responsibility is made at the conclusion of the grievance process.”



## The Importance of Researcher-Practitioner Collaborations and Avenues for Future Research

The evidence-based practices described above are often a product of researcher-practitioner collaborations that have been facilitated over the past decade (see Meissner, Hartwig, & Russano, 2010; Meissner et al., 2017). In fact, the current article is the product of exactly this type of collaboration: the first author (CAM) is a psychological scientist who has spent his career examining the psychological mechanisms underlying investigative interviews, and the second author (AML) is both a scholar (PhD) and a practicing attorney (JD) who currently serves as Associate Director of Equal Opportunity and Senior Deputy Title IX Coordinator. Their mutual interest in improving the interviewing practices of Title IX investigators was spurred by a recent training that was coordinated by the first author and attended by the second author. Implementing and assessing the effectiveness of evidence-based techniques in the Title IX context has since become a collaborative exercise. There is tremendous value in scholars working with practitioners to understand the Title IX context, and jointly initiating a research program that ensures the efficacy of the proposed reforms.

Finally, our review highlights a significant deficiency in descriptive, experimental, and applied research on current practices in the context of Title IX investigations. Collaborations between scholars and practitioners could begin to address this lapse by conducting field assessments of interview practices and noting challenges or unique aspects of the interview context that might require adaptation or further research. Having said this, we believe that the interviewing literature has addressed relevant issues surrounding the retrieval of emotional or traumatic memories, including cases involving sexual assault and abuse, and therein has demonstrated the value of a rapport-based approach (Read, Powell, Kebbell, & Milne, 2009), the utility of asking appropriate open-ended questions (e.g., Powell et al., 2005), and the effectiveness of the Cognitive Interview (e.g., Brandon et al., 2019; Fisher & Geiselman, 2010; Shepherd, Mortimer, Turner, & Watson, 1999). To a lesser extent, recent experimental work has also assessed other important factors that are relevant to Title IX investigations. For example, alcohol and/or drugs are frequently involved in sexual assaults among college students (see Richards, 2019). Consumption of alcohol has been shown to reduce the amount of information subsequently recalled in an interview setting (Jores, Colloff, Kloft, Smailes, & Flowe, 2019), though limited research has assessed the efficacy of various interview protocols or techniques in this context (Flowe et al., 2019). Further research is also needed to assess whether and how rapport-based tactics might motivate reluctant witnesses to provide information, particularly surrounding alternative sexual practices, sexual subcultures, and the experiences of sexual minorities. Finally, it is important to further evaluate current interview approaches with respect to how the retelling of a traumatic experience might impact the psychological well-being of the victim, and the extent to which certain approaches that purport to be “trauma informed” might actually minimize such negative repercussions.

## In Closing

Under Title IX, schools that receive federal financial assistance are legally required to provide a prompt and impartial process for investigating complaints of sex-based discrimination. These investigations critically rely upon information obtained in interviews conducted with complainants, respondents, and witnesses. In the present article, we evaluated a sample of trauma-informed interview training that is presently available to Title IX investigators, including the Forensic Experiential Trauma Interview (one of the most popular interview protocols in this area). Our review finds that while certain core interviewing skills appear to align with evidence-based practice and available research, other suggested practices are at odds with the available science, and additional effective interviewing practices related to the retrieval of memories and the assessment of credibility within an interview are absent from current training programs. We recommended a set of evidence-based practices for Title IX investigative interviews that are likely to (a) improve the development of rapport and cooperation with an interviewee, (b) elicit more accurate and relevant information from memory, and (c) improve assessments of credibility when applying strategic questioning approaches. Further, we encourage Title IX offices to collaborate with scholars to both introduce evidence-based practices and to spur further research that will improve the application of these practices to the Title IX context.

## Conflict of Interest

The authors declare no conflict of interests.

## Author Contributions

The authors contributed equally to the writing and editing of the current article.

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Received 13 May 2019;  
received in revised form 1 July 2019;  
accepted 5 July 2019  
Available online 29 September 2019