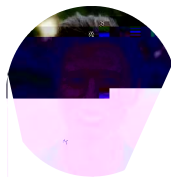


Assessing Credibility in Title IX Cases



Jill Thomas
BUChU'94 Wlef/ HUbyF



I gYk\ byj Yfmi bYXJle Ug 'ei YgJcb or respond:
; @c_ \ YfZfXkb'cUUVY4YgX fbb h
dYgblUjcb
; CdJcb le' gbxdfj UY'a YggJ Ygle YUWch Y'cf\ cgh
; 7 Ugk]' VYfUgJYVXJlchidj UYcbYgJ.
:" 7cgYkjbXckgfY| "zdc`gJ.
;" FVWEXb| fUWchX fbb| VYU_gcf'b'ga U' fci dgJ.
<" 7 Ub| Jb' mi fblá YcdJcbfJcY Y'cj Yf mi fblá YZgYWM
a cfY h Yb' fblá Y le WUb| Ymi fblá YL
5' 9 lú dY' Ygg@'pg' Y# Yfp5WXA JMa dYgJcbg



%

Considering Credibility

POLL



Does your institution
train on credibility
assessment to decision
makers?

From the Final Rule

; f|fFYei |fYUbcVWw| Yyj Ui U|cb'cZU`fYy Uhhy |XbW
|bW|Xb| Vch |bW|dUcfm|bXY| W|dUcfm| |XbW UbX
dfcj |XYh U|credibility determinations may not be
based on a person's status as a complainant,
respondent, or witness/

; *E< YU|b| g"FE: cf dclg|WbX|fni|g|li |hcbg|h Y
fY|f|b|g| f|y| UbW|dfcWgg'a i g|dfcj |XYZfU|j Y
\ YU|b| "5|h Y|j Y\ YU|b| |the decision maker(s) must
permit each party's advisor to ask the other party and
any witnesses all relevant questions and follow up
questions, including those challenging credibility. G W
Wcgg|U|a |b|U|cb|U|h Y|j Y\ YU|b| 'a i g|fY|WbX| W|X
X|fY|W|nc|fU|n|b|X|b|f|U|H|a Y|v|h Y|d|U|f|ng|U|j |g|f|c|Z
Wc|W|U|b|X|b|j Y|f|V|h|U|d|U|f|n|d|f|g|c|b|U|n|b|c|k|h|g|U|b|X|b| h Y
X|g|W|b|c|b|c|h Y|fY|W|b|b|i bX|f|d|U|f|f|d| f|W|E


From the Final Rule

; : cf fYU|g|cbg|X|g|W|X|U|V|c|j Yz|fYy| UbW|g|h Ygc Y
[U|Y Y|d|f|y| |X|b|h|f|n|i Y|b|h Y|z|b|U|f|Y| i U|cbg|M|h
X|W|g|cb|a U Y|g|fY|U|b X|g|W|b|c|f|Y| U|X|b| h Y|k|Y| \ |h
cf W|X|W|] |n|c U|gg| |b|c 'd|U|f|W|U|f|y| |X|b|W|



From the Final Rule

; HYZbU'fM i U'cbgfYei fYXWgcbia U'fglc YldUp'b'
 kf]b| h YfUgcbgZcf XWfa bU'cbgfM UXB| '
 fYgcbgM]m'Q&& QZUXWgcbia U'Y' blddfcdf]U'ym
 Udd]g'dfYV]g]b| Uggj a d]cbgh Uila ci blic V]g]b'h Y
 d'cWgg'cZj Ui Ub| WXYM]m'g WV]g'a Uid'fej]XYU
 V]g]Z'f Ud]fnic UddU'Q&& QH YSYdUfa Yb]M dYVg'
 h UhXWgcbia U'fgk]`VYkY'!fU'p]X]b`ck lc'g]fj Y
]a d]U]m'p]W]X]b| `ck lc' Uj c]XdfYi X]a Yb]icZh YZVg'
 U]ggj YubXUj c]XV]g]Q& SQ]bXh YSYdUfa Yb]ic]g'
 h Uhi X]b| WXYM]m'g]fU]X]cbUm]Z]p]h Y\ UbXgcZ
 bcb'UknMgk]h ci hgd]W]h]X]fU]b]z]p]h YZfa 'cZ
 i fcf]gk`c g]fj YUgZM]h]X]g]b]V]U]bXW]a]bU' i fm
 h]Ug]VYU] gYUgg]g]b| WXYM]m]Ug]XcbZU]f]ggj WUg'
 k]b]gg'X]a YubcfzdUi g]M]m]U]bXW]g]g]b]W]U]Y'
 Z b]W]cbg'cZ]a a cb]g]b]Y]h Y]h Ub`Y[U'Y]d]M]g]'


96

■ From the Final Rule

; K\ Yh Yf cf bchWa a YbMgUFYWffYWib bclbq h Ui
dckYfXZfYbUgVmkYb Ya dcmYg'fUfWUf m
ZU/hfUg'gi Xblg'a Unfa d'fYUfYbglc lfYU
ZU/hfUg'a cfYWXVYh Ub'gi Xblg'h YZbU'
fYi U'cbgU'ck fYUfYbglc'gyWicbYcZkc'
gU'XfX'cZj XbWVbgl'f'hc U'Zfa U'
Wa dU'bg'i bXfYh Yf gU'XfX'gyWVX'Zthe
reci

■ Bias

; Mi 'a i g h j c k X V U g W h g M i g c f i b W h g M i g V U g X



■ From the Final Rule

; ""UgYgg| Xá Ybcf'g'i gicbYcZh YkUng|bk\ |WVcgg|
YUá |bUcbHgg|WVW|]mãk\ |W|bW|Xg|UgYgg| 'dU|gV|]mã
Vb|g|]bW|U|X|Y|U|]mã| X| |b| |fi hZ' bYg|Vg|Xg| Ynicb'
Xá Ybcf\ |g|VYb|g| ckb|e VY'Yg|UW|F|U|h|U|Z|f| |g|]b|W|Z
Y|U|U|b| |WVW|]mã|U|g|X|c|b|Vb|g|]b|W|Z|* |SQ

; : cf|H|Yg|á| Yf|U|g|c|b|g|h|U|f| X| |b| |WVW|]mã|g|c| Ynicb|Xá| Ybcf'
d|f|g|]b|g|g|g|g|c|Z|b|U|W|F|U|h| Yb|f|U|nã|h| YS|d|U|f|a| Yb|H|U| |h|c|g|'
h|U|f| X| |b| |WVW|]mã|U|g|X|c|b|U|W|á| d|U|b|U|g|Xá| Ybcf'
h|f|c|i| [\ |h|Y|Yb|g|c|Z|k| \ |h|Y|f|c|V|g|] YXXá| Ybcf|g| Y|j|X|b|W|c|Z|
H|U|á|U|d|f|g|]b|g|g|g|a| |U|f|g|g|c|Z|b|U|W|F|U|h|* |&|H|Y|
S|Y|d|U|f|a| Yb|f|Y|H|U|h|g|h|U|h| \ |Y|U|g|Y|g|g| |Xá| Ybcf|g|c|b|Y|d|U|h|
c|Z|á| X| |b| |WVW|]mã|c|h|Y|Z|U|f|g|U|Y|Vb|g|]b|W|Z|U|g|V|]mã|
U|b|X|f|Y|U|]mã|F|Y|U|!|h|a| YVcgg|Y| bX

■ Differences among types of evidence (non-witness testimony)

; Primary evidence

5i h YbHMYj UbHUb| JVYj |XbW

: fgh UbXi b|j c|j YXi b|a dUfYb| |b |b g&

From the Final Rule

; 5VWU'ZUhfycZUJf[f]y UbWdfcWgg/lgh UhHhY
 L'dMfgbbY'fYU'pZca XUk|b| VbWgcbg'cf
 a U|b| Uggj a d]cbgUci h]h Y' dUfmG'WXV] h'ief
 h' hZ' bYggi b] VbWgcb'cZh Y[f]y UbWdfcWgg/
 h YfZcfZh YSYdUfa YbhXVpYg|c' |a d'cgYU
 d'Yg| a d]cb'h UhYh Y' dUfm|f'Vch' dUf]g|fY
 WXVYcf h' hZ' "

ACTIVITY

Sam and Alex — Rollercoaster

- ; AYh|b'5df]'88% U fY
- ; GUfXZ]bXgk|h VbY]g|b'AUni88%/Gla' XfXUci bX|ec UbX5Y kUg'YUci g' U fY
- ; Gla h]YX|c VYU'!i dk|h' 5Y 1' |bUa cbhZ V h5Y h fYUhbYXg |MXYUW]a YUbXY Yb' h]YXcbW/h Yn|b|h|i YX|c VYd'ng|W! U fY
- ; Cb'i bY%5Y Ug YXGla |c \Ub| 'ci hGla |cX 5Y h Uh Yn|Y' g|Z]bXg'5Y kYb|c Gla g' U|UbXh Y|kc' |gg|Xcb W| WY Yb|ci [\ ' h YnkYfYcZ]M'n|f'c_Yb|d' U fY

■ Witness Testimony (continued)

; 5Yi h Yb'fcchXUfci bXGLa g'XYggfZf gM lcrng'
UbXGLa 'gUXcbhXc h Uhi **XgUfyy** 5Yi WJa g'
GLa 'g' [[YghX]h

; 5Yi h Yb VcWXXVXfcca XccfUbXdi g' YXGLa 'cb'
VXUbXdMfZfa YXcfU'gM' **XgUfyy** 5Yi WJa g'
Wbgjhh

; HhY L'jhmj jnk ! GLa le X'lj YgJ Ucf h Uih YmMi X
bchfYa Ya VYf\ ck h Ynj clcb'h YVYX'h Uih Ym
XggVjYUbx\ Uj YGcfXYf jBYDMgcbU]m8lgrfXfZ
k\ jWUZVWga Ya cfnUbXdMfWd]cb' **Ufyy**

■ Documentary Evidence — agree

; Hhha YggU YZca 'GLa le 'G : XhUZFUgLi hi
\UYdNcdYUbX kUhhc [Yih Ya U' jbfci VY'

; HhZca 'GLa le 5Yi XhUZFUgLi hi \YfYgUWHY
a Ya Y ' _bck]gmi f\i a cf

; HhZca 'GLa le 5Yi 'cbYkYY 'UHf' K\nmXmi'
HU_YUjUhu] YcZa YUghkYY_YbX3Mi \i fia YUbX
mi '_bck' p **B** **WD** **cbjU**

■ Putting it Together

% 5ggYgg'h YdMfgcbg'hYgja cbnigUbXb| UcbY'

& 5ggYgg'h YdMfgcbg'hYgja cbnk|h 'y |XbW
fYWj YXZca 'h UidMfgbc'j Yf'ja Y'

' " 5ggYgg'h YdMfgcbg'hYgja cbnk|h 'Ygja cbn
Zca 'ch Yfg'Wbg'h'h'h'Wbg'h'h'h'

(" 5ggYgg'h YdMfgcbg'hYgja cbnk|h 'y |XbW
fYWj YXZca 'ch Yfg'f'| 'zj |XczXcWa Yb'gž
YWE'



Writing about Credibility in Your Decision Rationale

From the Final Rule

; KYXWbYlc Yl dYggniYei JYh YkfJHb'
XMFa bUjcb'lc UXfYgg'Yj Ui Ujcb'cZAbfUXMtfm
ZUMZY WdUefmj XbWZ U' yj XbW dYgYbXUHU
\ YUj| žcf\ ck WXXV] InUgYga Yb|kYfYUWYXZ
VWl gYh YXWgcb'a U_Yf'g'cV] UYXlc'cVWj Ym
Yj Ui UYU'fYj Ubyj XbWZpWXB| bWdUefnLbX
Y WdUefmj XbWfLbXlc Uj c[XWXXV] InbZfYbWg'
VgYXcb UdYfcbg'g'Ug'Ug'UW'a dUjUblž
fYgcbXblžcf k|bYgg'zi bXfz %\$* '() fMhU' hg'
dYWgYnh g'cVWj Yj Ui Ujcb'h Uidfcj Xgh Y
VggZf'h YXWgcb'a U_Yf'g' fujcbUY Zf' h YfYj h'

■ What's required in the written determination?


6 Areas Must Be Included

fLEXbHjWjcb'cZh YU`Y Ujcbg'dchMjU`mWbgjhi Hb`
gMi U`UfUga YbhlgXYZbYXjY%\$`" \$/

■ Sam and Alex Scenario


; 9L9F7G9' KfHh| fU|cbUYgW|cb
; K\cZi bX5YI WXYVY3

RESOURCE




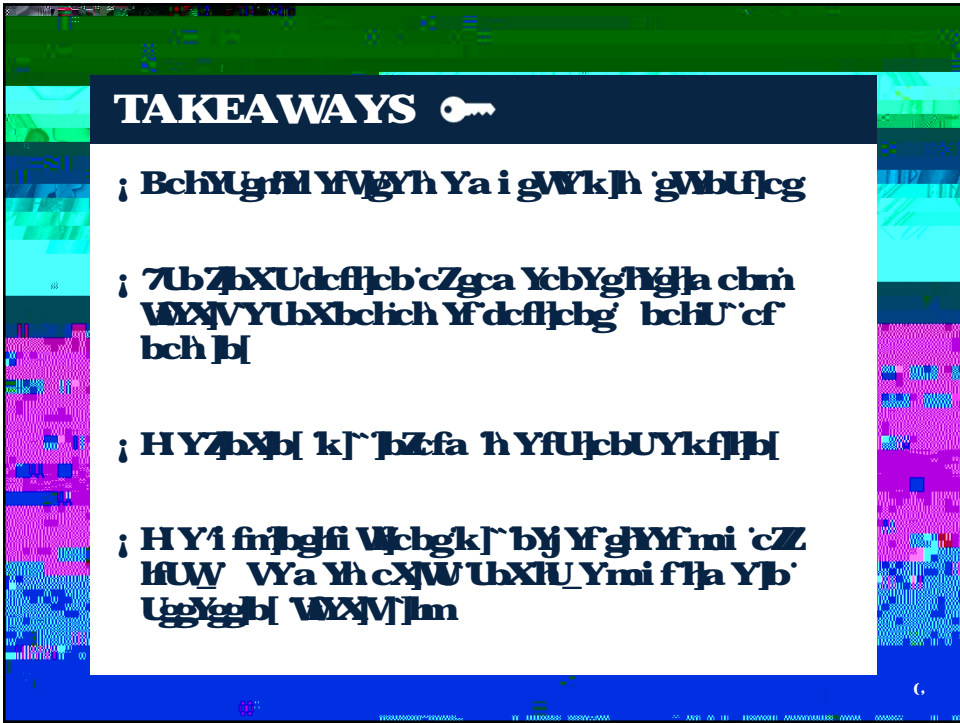
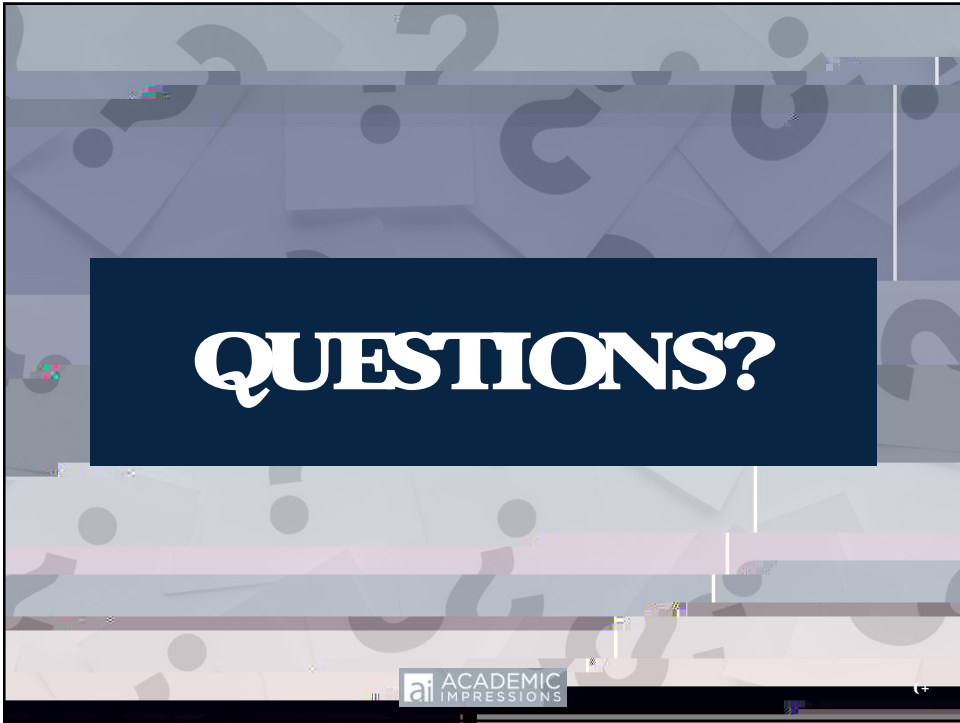
- 1. Jury instructions**
- 2. Sample credibility evaluation tool**

ACADEMIC IMPRESSIONS



Final Q+A and Wrap-Up





TAKEAWAYS 

- ; BchYgrm YVgYh Ya i gWkjh gWbUfcg
- ; 7UbZpXUdcffjcb'cZgca YcbYgfhgja cbm
WXYVUbXbchch Yf'dcffjcbg' bchU'cf
bch jbl
- ; HYZpXbl k]~]bzfa h YfUjcbUYkfhbl
- ; HY'i fin]bgfi W]cbgk]~'by Yf gYf'mi 'cZ
fUW VYa Yh cXWUbXIU_Ymi f]ha Y]b'
UgYgbl WXYV]lm

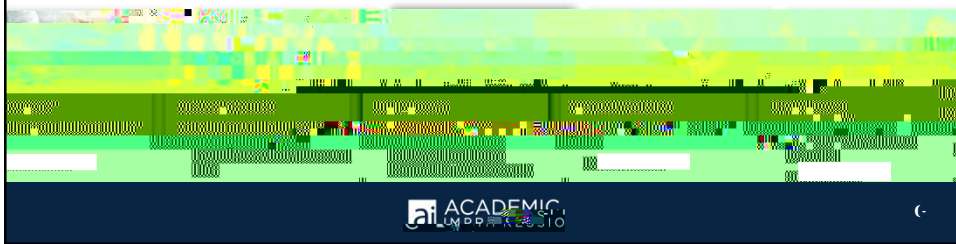
Online Membership Quick Facts

What You Get

- 5Wggle U`cb]bY`Yubb] fYgi fWg' a Ya Vfg` dWj MfgVch `j YUxYfWEXX kYWUg
- CjYf` ss\I\`YXXl dMgWbb]M Hb] WgYgi XyZl Ua dYgglà dY dUg#Há dUg]cc'g
- G`cH`YgcbgUbxel jmgfUf] Yb] WjW`UYUgcZwa d]Uw'ScmlbgcZbK' fYgi fWgUXXYUWa cbh

What are the Benefits?

- a d'cj YXYa d'cmYyb] U`Ya YbHbXfYHh]cb
- Di [`5WAXa]Wa d'YgcbgfYgi fWgXfYWinble Y]g]b] HUb]b] d'fc] fUa gcf` YUXfg` dUWAXa]gZfZw/hngUZZUhXUNa]b]fUc]fg
- Ach]efHUb]b] UWj]m]bXi g] Yh fci [\`fXcf]b]



Thank you!

DYUyfa Ya Vf'le Wa d'YH Y_____!"
Mi f'Wa a Yb]gk]`^`Ydi gWbb]i Un]a d'cj YH Y
ei U]mcZci f d'fc] fUa g'