

Questioning Best Practice

For Title IX Hearing Panelists

Part 1

Part 1 Overview

GOAL: Learn evidence-based strategies for questioning parties & witnesses

1. Make a questioning plan
2. Practice empathy
3. Cultivate rapport & cooperation
4. Listen actively
5. Address discrepancies
6. * Avoid unproductive questioning techniques *
7. Utilize productive questioning strategies – The Funnel Technique

QUIZ & PRACTICE

The Goal of the Interview

The goal of the interview is to elicit cooperation through rapport-building and questioning techniques that lead to the recall and disclosure of credible information in a way that remediates stereotyping and prejudice.

1: Make a Questioning Plan

Step 1/3 – Self-check for stereotyping & prejudice

- Limit extraneous and non-material information
- TIX bias/conflict of interest training
 - Identify stereotypes
 - Prejudice remediation

Step 2/3 – Identify what information you are eliciting from each person

- People, location, activities, time, capabilities, opportunities, motivation
- AIMS: Corroboration & Contradiction

Making a Questioning Plan

Step 3/3 – Draft Questions

1. Avoid prejudicial language

- Partiality: “I’m sorry this happened to you,” “you’re not to blame,” “closure”
 - Pre-determination: “sexual assault,” “sex,” “sexual activity”
 - Prejudice: “victim,” “survivor,” “perpetrator,” “offender,” “trauma”
- Use neutral language (“incident,” “conduct,” “behavior”)

2. Ask for clarification (“hooked up,” “chilled,” “messed around”)

3. Helpful things to say

- “If I ask a question you don’t understand, please tell me”
- “If I don’t ask you about something that you think is important, let me know”
- “If you think I’ve misunderstood anything you say today, please tell me”

2: Practice Empathy

Empathy refers to the ability to understand the perspective of, and appreciate the emotions of, another person

Strategies:

1. Open-ended questioning
2. Communication behaviors
 - Non-verbal – body language, proximity, eye contact, nodding
 - Paraverbal – speech delivery: tone, pace, pitch, volume – warmth, genuineness
 - Verbal – content
3. Empathic responses to testimony
 - Validation
 - Mirroring
 - Affirmation
 - Limit-setting – create environment of safety for W
 - Interruption seems to be way W can express how they feel → encouraging W to express feelings in another way

3: Cultivate Rapport & Cooperation

Rapport refers to a productive working relationship between interviewer and interviewee toward a mutually-understood goal

Rapport → Cooperation → Disclosure

Rapport-building strategies:

- Competence
- Integrity
- Candor
- Acts of hospitality
- Summaries

4: Listen Actively

Listening posture

- leaning, nodding, responsive facial expressions, eye contact, open body language, comfortable proximity

Conversation encouragers

- Encouragers – “Please continue,” “Are you comfortable sharing more?”
- Repeat – W: “When I saw the car coming, I was so scared” I: “Scared?”
- Echos – W: “It was the longest, hardest day ever” I: “You were tired?”;

5: Address Discrepancies

Watch for discrepancies in W's account (shifting timelines, different facts or claims)

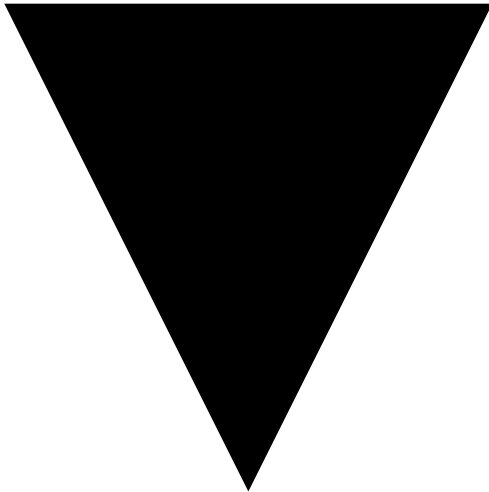
(1) Identify the discrepancy as a point of confusion, and (2) request clarification

- “I appreciate you sharing your story about how you and the Respondent met for the first time two months ago. Witness W told the investigator that she introduced you to the Respondent two years ago. Can you provide some clarification about this?”
- “I’m confused. You told the investigator that you were not in the car with Jae. But you just stated that you *were* in the car with Jae. Could you please help me understand this discrepancy?”

6: * Avoid Unproductive Questioning *

1. Inappropriate Closed Questions – can only be answered yes/no
2. Forced Choice Questions – force choosing from either/or options
3. Leading Questions – message that a conclusion has already been made
4. Multiple, compound, overly-long questions – confusing, combines forced choice + closed

7: Use productive questioning strategies



IDENTIFY what piece of information you want to elicit

Free Recall

Open-Ended: TED

Probing: The Ws

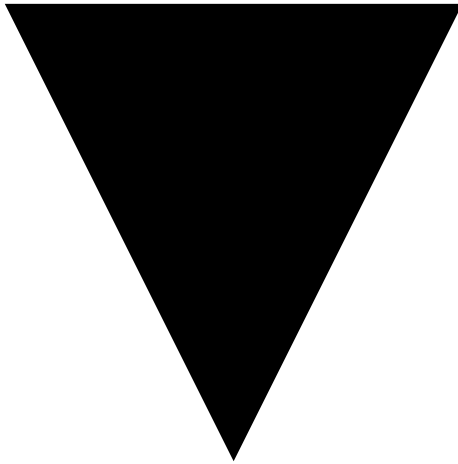
Appropriate Closed

SUMMARIZE: Briefly summarize information the witness has shared

The Funnel Method

1. **Identify** what information you want to elicit from each W
2. **Free recall** – open-ended Qs
 1. TED: **T**ell, **E**xplain, **D**escribe
3. **Probing** – the Ws (who, what, where, when, how)
 1. Defining (“sexual assault,” “hooked up,” “stalked,” “harassed,” “made out”)
 2. Sensory – see, hear, smell, feel, taste
 3. Question Framing
 1. “What do you do at UC?” → “Tell me about your role on campus”
 2. “Why didn’t you leave” → “What impacted your decision-making?”
 3. “Did you try to push Respondent off” → “How were you responding when...”
4. **Appropriate Closed** – clarification & verification
5. **Summary** – brief encapsulation of what W said
 1. W’s exact words/information
 2. Exclude inferences/information that could be suggestive or leading
 3. Give W opportunity to add/clarify/revise

The Funnel Method



Free Recall: Can you share with me what brings you to our office today?

Open-Ended

- Tell me about last Friday night
- Explain how you met Respondent
- Describe what happened in Respondent's apartment

Probing

- Who else was there?
- What can you tell me about the bedroom?
- Where on your breast did Respondent place their hand?
- When did leave the apartment?
- Why do you think they said you were not there?
- How did you get from the kitchen to the bedroom?

Appropriate Closed

- You shared that Respondent was holding a knife. In which hand?
- You shared that Respondent was also in the dining hall. Where was Respondent situated in the dining hall?

Summarize

Quiz

Identify the following as open-ended, inappropriate closed, forced-choice, leading, or compound

1. Do you know the Respondent?
2. Is that when your roommate walked in?
3. And then your roommate walked in, right?
4. Do you live by yourself or with a roommate?
5. Do you remember getting the Complainant's phone number?
6. Tell me what happened next.
7. Was your relationship with the Complainant romantic, friendly, or collegial?

Make these questions productive

Re-word the following in order to elicit more information from the party:

1. When did you and the witness meet?
2. Did you ever communicate your boundaries to the Complainant?
3. Did you and Complainant engage in physical touching after you broke up?
4. Were other students around when Respondent said this to you?
5. Did the conversation with your instructor make you mad?
6. Did the Complainant say anything to you after you kissed?