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Decision-Makers: A Deep Dive into Serving in this Critical Role

Lincoln Memorial University

Day 2

Jody Shipper

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Grand River Solutions

Vision

We exist to help create safe and equitable work and educational environments.

Mission

Bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.

Core Values

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity

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Your Facilitator

Jody Shipper is a nationally-recognized subject-matter expert with more than 20 years of experience in Title IX and related fields. She is known for her insight into best-in-class programming, policies, and community outreach aimed at addressing sexual misconduct on campus. She lectures extensively at universities and conferences throughout the U.S. on Title IX, VAWA, harassment, and implementation of best and emerging practices. Jody received her J.D. from the University of California, Hastings College of Law and her bachelor's degree from Georgetown University's School of Foreign Service.

Jody Shipper, J.D.

Co-Founder and Managing Director

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Pre-Hearing

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The investigation is complete!

Rapid Fire #1

It is time to schedule the hearing…

Using the chat box, share your "To Do" List for coordinating the hearing.

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Rapid Fire Recap

- Arranging for space
- Arranging technology
- Advisors assigned?
- Scheduling pre-hearing meetings with parties & advisors
- Scheduling prehearing meetings of the panel
- Providing report and record to panel and parties
- Scheduling the hearing
- Accommodations
- Call for written submissions
- Conflict checks
- Other considerations?

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You and your team did a great job scheduling the hearing and arranging all the logistics!

Rapid Fire #2

Dear Decision-Maker,

It is now one week prior to the hearing. You have already received and reviewed the report and record and you will be meeting with the rest of the panel (or spending some quite time by yourself) to prepare for the hearing.

Use the chat box to share what you plan to discuss/think about during the prehearing meeting.

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Rapid Fire Recap

- Development of introductory comments
- Initial discussion of the evidence
- Areas for further exploration
- List of questions for the parties and the witnesses
- Anticipation of potential issues
- Logistics
- Review of any written submissions by the parties
- Other considerations?

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Recap

Logical connection between the evidence and facts at issue

Assists in coming to the conclusion – it is "of consequence"

Tends to make a fact more or les probable than it would be without that evidence

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Can You Have a General Rule About Evidence In Title IX Investigations?

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Evidence That Will Not Be Considered

Rape Shield Protections

Privileged Information

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Not a Court of Law

- Not making complex legal arguments
- Are not treating parties with hostility
- Rules of evidence outside of Title IX regulations do not apply
- Not looking for the “gotcha” moment

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Decorum at the Hearing

A recipient may adopt rules of order or decorum to forbid badgering a witness, and may fairly deem repetition of the same question to be irrelevant

A postsecondary institution recipient may adopt reasonable rules of order and decorum to govern the conduct of live hearings

Schools "retain flexibility to adopt rules of decorum that prohibit any party advisor or decision-maker from questioning witnesses in an abusive, intimidating, or disrespectful manner."

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Foundational Questions to Always Consider Asking

Were you interviewed?

Did you see the interview notes?

Did the notes reflect your recollection at the time?

As you sit here today, has anything changed?

Did you review your notes before coming to this hearing?

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Did You Also Cover . . . ?

- On campus?
- Program or Activity?
- In a building owned or controlled by a recognized student organization
- Substantial control over respondent and context
- Complainant was attempting to access program/activity

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Angel and Barb

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Break Out!

#1

Say hi!

Pick a scribe.

Discuss.

- **Develop Questions for Hearing Panel to ask and discuss areas or topics that you would like to explore further in the hearing**
  - Group 1: Questions for Complainant
  - Group 2: Questions for Respondent
  - Group 3: Questions for Bob, Dylan, and Stevie
  - Group 4: Questions for Nick, Kayla, and Caitlin

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Report Out

- Group 1: Questions for Complainant
- Group 2: Questions for Respondent
- Group 3: Questions for Bob, Dylan, and Stevie
- Group 4: Questions for Nick, Kayla, and Caitlin

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The Hearing

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Break Out!

#2

Say hi again!

Select a member of your group to take notes and to report out to the whole group.

Discuss the list of proposed questions; make determinations on questions and cite rationale:

- Group 1: Questions submitted by Complainant for Respondent
- Group 2: Questions submitted by Respondent for Complainant
- Group 3: Questions for Bob, Dylan, Stevie
- Group 4: Questions for Nick, Kayla, Caitlyn

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Report Out

- Group 1: Questions submitted by Complainant for Respondent
- Group 2: Questions submitted by Respondent for Complainant
- Group 3: Questions for Bob, Dylan, and Stevie
- Group 4: Questions for Nick, Kayla, and Caitlin

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These questions are submitted by Complainant for Respondent

1. How many drinks did you have at Kayla's before going to TKE?
2. How big were those drinks?
3. Who mixed those drinks?
4. Were you drunk when you got to TKE?
5. How often do you go to parties?
6. How often do you get drunk at parties?
7. Why didn't you stay with your friends when you got to TKE?
8. When you got to TKE, did you intend to have sex with Angel that night?
9. What else do you remember from that night?
10. Did you play darts?
11. Isn't it true that you were easily able to throw darts and hit the bullseye that night?
12. When Angel was "hugging" you, as you called it, he was actually just holding on to you for support because he could not stand up, isn't that right?
13. How many times did he fall on to you when the two of you were on the couch?
14. Who got up first from the couch?
15. Isn't it true that you got up first and pulled Angel to his feet?
16. You told the investigator the two of you were drunk sloppy kissing? It seems you are admitting that Angel was drunk, isn't that correct?
17. Given all that you recall, it seems that you have a really good recollection of that night, no impaired memory, were easily able to play darts, and never fell down, so for you to act as if you were too drunk to give him a blow job and that you're the real victim here is nothing less than highly offensive, isn't that right?
18. If someone were sexually assaulted and the other person said it was the victim's fault, that is victim blaming, isn't it?
19. Are you alleging you were sexually assaulted?
20. Why would you make that up?
21. If you are saying that you were sexually assaulted, why didn't you file a complaint? Is that because you know you'll lose and be expelled for a false complaint and retaliation if you do that?
22. Are you making an allegation in order to retaliate against complainant?
23. Did you ever drink from Angel's water bottle?
24. Did you ever smell alcohol on Angel's breath while at the TKE party?
25. Have you seen the video of you giving Angel a blow job?
26. Did you initiate sex with Angel in order to get back at your boyfriend?
27. He wasn't restraining you, why didn't you just pull away?
28. Do you often give blowjobs to boys at parties?

Questions submitted by Respondent for Complainant

1. You said you do not remember anyone drinking from your water bottle. How can you remember that?
2. Did you file a report with the police?
3. Why not?
4. Did you get a medical exam?
5. Why not?
6. Is it true that you are hoping to go to medical school?
7. Isn't it true that you are really worried about your grades this semester?
8. Isn't it true you were struggling with inorganic chemistry class?
9. And isn't it true that you wanted to drop the class, but you would have had a "W" on your transcript?
10. Did you end up withdrawing from that class?
11. And isn't it true that there is no notation on the transcript because you were given the gift of being pulled from the class without any transcript notation?
12. And is that why you filed this claim, so you could get out of taking the class without anything showing up on your transcript?
13. You said to the investigator that you "could not believe anyone would film" the sex act that occurred at the TKE party, isn't that correct?
14. Have you ever watched any porn videos?
15. Didn't you take a video last year of some of your friends, including Bob and Dylan, playing a game that involved simulating sex acts?
16. During your interview with the investigator, isn't it true that you had to be reminded by your own advisor that your "story" is that you were too drunk to remember anything, right?
17. How many times did you and your advisor rehearse your interview?
18. You said you had no information or memories about what happened at the party, but also claim to remember how her hands were moving, when the two of you were sitting on the couch in the basement. Which one of those statements is the lie?

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Questions for Bob

By Complainant

1. When you were describing the vodka your poured into your water bottle, what exactly do you consider to be 2 or 3 shots?
2. Did you use shot glasses, red solo cups, or did you eyeball it?
3. What do you remember about Barb's Tinder profile?
4. Did it suggest what type of relationship she was looking for?
5. Did you match?
6. Why were you looking at Tinder?
7. How often do you troll on Tinder?
8. You said Barb took a huge gulp out of your water bottle toward the end of the evening. What did you mean by "huge gulp?"
9. How much of the vodka/orange juice in your bottle did you drink that night?
10. How much was left in the morning?

By Respondent

1. Doesn't your frat have a reputation on campus of getting girls drunk at parties?
2. Isn't true when you say you take care of people at parties, that you actually just get them more drunk so they will have sex with one of your friends or brothers? That is what you were doing to the respondent, correct?
3. Didn't you have to retake Measuring Science 101 where they teach you how to measure liquids?
4. How many times did you watch that video before deleting it?
5. Do you still have the video?
6. Will you get in trouble with your fraternity for bringing in illicit alcohol to the party?
7. Isn't it a violation of fraternity rules for you to drink, particularly when you were supposed to stay sober and prevent people from getting too drunk or harming themselves or others?
8. Do you feel bad that, by drinking so much, you were unable to do your job well that night?
9. Do you feel bad that, by drinking so much, you basically allowed the sex assault in the basement to occur, because you weren't keeping a watchful eye?

Questions for Dylan

By Complainant

1. You told the investigator you saw Angel spill beer on Barb, isn't that correct?
2. And didn't you tell the investigator that you also saw Angel stumbling and falling?
3. So basically, he was acting like he was so drunk that he could barely function, right?

By Respondent

1. You made a water bottle of vodka and orange juice correct?
2. How much did you drink?
3. Do you remember how much of it you had left at the end of the night?
4. How strong was your orange juice and vodka?
5. You bought beer. How old are you?
6. Why do you have a fake ID?
7. You said you saw Angel at the party, and that he was so drunk he could barely stand up; did you take any action to protect your drunk friend from drinking more?
8. Is that because your friend was not really that drunk, or because you don't really care about someone being so drunk they can barely stand?
9. Your friend passed out at the end of the night; which emergency number did you call for help?
10. You said you put a trash can by him when you saw him passed out, but you didn't roll him on to his side? Is that because he was sleeping, and not really because he was drunk?
11. Have you ever tried to hit on Barb?
12. Didn't she reject your advances?
13. Is that why you're exaggerating your supposed observations that Angel was so drunk?
14. Respondent does better than you in all your classes, correct?
15. And you said you once caught her cheating off of you, but isn't it actually true that you were the one referred to student conduct for a plagiarism charge?
16. If you have a fake ID, what else is fake? Your testimony, for example?

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Questions for Stevie

By Complainant

1. How much did you have to drink?
2. How drunk did you feel that night?
3. Do you think you were close to blacking out?
4. Given how drunk you were, isn't it likely that you don't really have a good memory of that night?
5. You said Angel stumbles even when he is not drinking, yet you know he is an athlete, so how is it that an athlete stumbles and is as uncoordinated even when sober, as you described to the investigator?
6. Do you have a crush on Barb?
7. How long have you wanted to have sex with her?
8. Are you minimizing how very drunk Angel was in order for her to like you more?

By Respondent

1. Did you see Barb and Angel playing darts?
2. Was Angel able to play darts?
3. Was he hanging on to Barb for dear life or standing up and throwing darts?

Questions for Nick

By Complainant

1. Isn't true you have no real friends?
2. You don't get good grades, correct?
3. That is because you are always smoking weed, correct?
4. How much weed did you smoke that night?
5. Does smoking weed impact your ability to remember things?
6. Isn't it true that the reason you started smoking weed was because you got a card for medical marijuana, for your anxiety and ADHD?
7. Did you imagine the conversation about Angel wanting to hook up with a girl?
8. Does your anxiety or ADHD make you imagine things that did not happen?
9. Why did you presume Angel was "cheating" when he was actually the victim of a sexual assault?
10. Did you watch the video?
11. Isn't it obvious to you that Angel is swaying and can barely stand up while she gives him a blow job?
12. Do you still have the video of that night on your phone?
13. If I were to call the police on you and tell them that that you have evidence of a crime on your phone, aren't you scared they will find it?

By Respondent

1. So, the complainant seemed desperate to hook-up with a girl that night?
2. Are you certain you remember that conversation?
3. What else do you recall from that night?
4. Can you remember what you ate for breakfast that day?
5. And isn't it true that you are a really honest person who would never lie?

Questions for Kayla

By Complainant

1. Did you notice the complainant stumbling or falling over, once he was in the basement?
2. Did you feel drunk that night?
3. Was the amount you had to drink that night a lot for you?
4. Given how much you had to drink, do you think you can even trust your memories from that night?
5. Barb is a good friend of yours, isn't she?
6. You would say anything to support her, wouldn't you?
7. Did you tell the investigator that Barb was mad at herself?
8. Is it possible she was mad at herself for violating Angel?
9. You said Barb and Angel were "drunk sloppy kissing." Did you get that phrase from Barb, or did she get it from you?
10. Did she tell you what to say here today?
11. Do you know that, if you are caught lying for her, you will be disciplined and might be suspended or expelled?

By Respondent

1. Would you categorize Angel as the initiator of all the contact between him and Barb?
2. So you would call him the aggressor, is that right?
3. How many times did you see Angel fill Barb's beer that night?
4. And you saw him keep topping it off, is that right?
5. Did that feel predatory to you?
6. Have you seen Angel or any of his friends like Bob, Dylan, Stevie, or Nick try to get a girl really drunk at a party, on any other occasion?

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Questions for Caitlyn

By Complainant

1. You would consider complainant a good guy, right?
2. Barb wanted to "have a good time" right?
3. Did she tell you she planned to have sex with Angel that night?
4. You saw her intentionally move down to give a blow job?
5. How often has she done this at other parties? Is giving blow jobs something she casually does at parties?
6. And she is a good friend, right?
7. So this is particularly painful for you, your telling the truth about her sexually assaulting him, right?
8. And would you agree that it does not matter if the victim is a man or a woman, but rape is rape, right?
9. You said Barb had her arm around Angel's waist when people were in the basement that night. Is that so that she could control him?

By Respondent

1. You told the investigator you had 4-5 bears and 2-3 swigs of from Bob's vodka, correct?
2. Is that a lot for you?
3. Were you feeling drunk that night?
4. How drunk?
5. Was the drink in Bob's water bottle strong?
6. Given how drunk you were, why should we trust your recollections of that night?
7. You said you were cheering on the sex act in the video; were you surprised to see yourself doing that?
8. Do you remember cheering?

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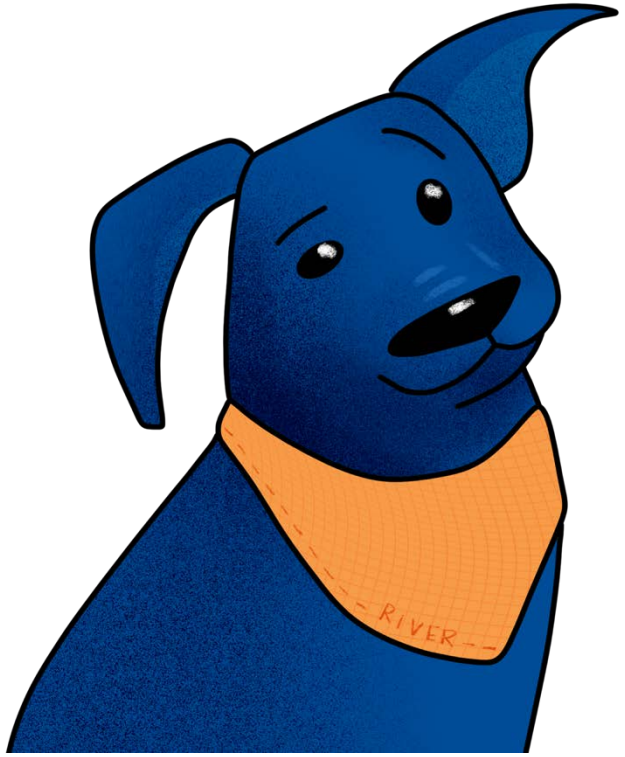
Questions?



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