

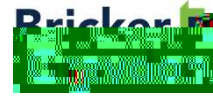
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“



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# Disclaimers



## We can't help ourselves. We're lawyers.

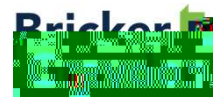
**We are not giving you legal advice**

**Consult with legal counsel regarding specific situations**

**You should have received slides for today's presentation**

**First, watch for a "Thank you for attending" email that will have the slides attached**

# And another one..



Spec

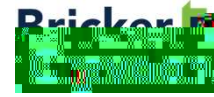
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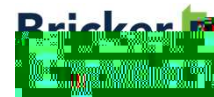
## Agenda



- What is credibility?**
- Demeanor evidence**
- Elements of credibility**
- Checking for bias**
- Weighting the evidence**

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## When is credibility at issue? 2024 Preamble



**“The Department cannot opine on the percentage of sexual discrimination complaints on which credibility is at issue. .. At least one federal court has recognized that credibility disputes may be more common in sexual assault or harassment cases than other types of cases that recipients handle.**

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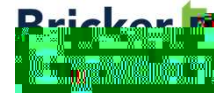
# Judges vs Machines







## Plausibility- Bias Check



**“It’s not plausible because I would not have done that in this situation”**

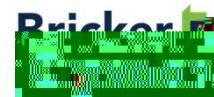
**You are using your own self as a standard by which you are measuring the evidence  
Is this because you are the reasonable person, or is this an effect of bias?**

**Be careful of substituting rape myths for plausibility analysis**

**Eg “They were in love, so it could be rape. That would be plausible”**

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## Consistency- Considerations



**To whom is the telling?**

**Friend**

**Parent**

**Police**

**School authority**

**What is the purpose of the telling?**

**To receive sympathy and support**

**To make a formal report**

**In what mode is the listener?**

**Supportive**

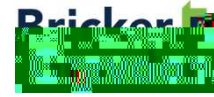
**Investigating**

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## Considering Consistency



**Look at the retellings in the order of earliest to latest.**

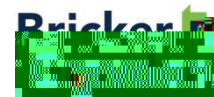
**Is there a reasonable explanation for any differences?**

**Does the story evolve over time into something else?**

**2020 Regulations Preamble: "Because decision makers must be trained to serve impartially without prejudging the facts at issue, the final regulations protect against a party being unfairly judged due to inability to recourt each specific detail of an incident in sequence, whether such inability is due to trauma, the effects of drugs or alcohol, or simple fallibility of human memory." 85 FR 30036, 30323 (May 19, 2020)**

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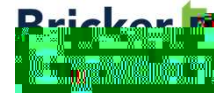
## Reliability



**How much time has passed?**

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## Reliability- Bias Check



**Are we assigning a reliability value based on the identity of the party?**

**Complainant vs respondent**

**Status as a police officer or school administrator**

**Are we assigning a reliability value based on a person's**

**Alcohol/drug problems**

**Mental health issues**

**Cognitive/intellectual disabilities**

**Age**

**And if so- is that supportable under the circumstances?**

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## Check for Other Bias



**Switch the race, sex, or other protected characteristic of the parties**

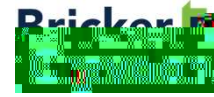
**Would your decision come out the same? If so, is that appropriate?**

**This is particularly important when allegations go against the "stereotypical norms" for a situation**

**Are you making any assumptions that are not based on the evidence, and if so, are those fair under the circumstances?**

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## Weging the Evidence



**What is the most important? What are the rods upon which you can build a solid foundation?**

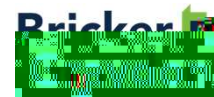
**What is less important? What can be reasonably explained?**

**Each fact is found using the standard of evidence your institution has chosen (e.g. preponderance of the evidence).**

**Each element of a policy violation is analyzed using that same standard**

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## Two Ways to Tackle



**Elemental** – What evidence do we have in support of or against each element?

**Credibility** – What evidence do we know is not credible?

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# Things Not To Include



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**Denear or**  
**Impemissible evidenc**

