

20 MINUTES TO...TRAINED STUDY GUIDE:

QUESTIONING

Presented by:

W. Scott Lewis, J.D. and
Michael Henry, J.D.



20 Minutes to Trained: Questioning Table of Contents

- I. Learning Outcomes
- II. Discussion Questions
- III. Case Studies
 - a. Kyle and Bob
 - b. Professor Johnson
- IV. Case Study Questions & Answers
 - a. Kyle and Bob
 - b. Professor Johnson
- V. Questioning Skills excerpt from the ATIXA “Investigation in a Box” Kit



20 Minutes to Trained: Questioning Learning Outcomes

- Participants will understand the three main questioning techniques and the benefits of each.
- Participants will know how to create an optimal environment for interviews.
- Participants will be able to prepare their questions prior to the interview and allow for flexibility during the interview.
- Participants will be able to articulate potential responses to lying witnesses.



20 Minutes to Trained: Questioning Discussion Questions

- When questioning an interview subject, should you interrogate them to break them or force them into a lie? Why or why not?
- When questioning a reporting party, you should not ask them tough questions because it will seem like you don't believe them or are blaming them. Agree or disagree, and why?
- You will often want to question the responding party last on your witness list...why?
- The most common questioning technique is the funnel, the circle, or the zigzag? Why?
- When questioning a witness, is it better to remain passive and neutral, or to give them feedback on their answers? Why or why not?



20 Minutes to Trained: Questioning Case Studies

Kyle and Bob

Bob Thompson, the respondent, a second-year student
Kyle O'Neil, the complainant, a first-year student

Bob Thompson's Statement

On the night of Friday, September 13th, I went to an off-campus party. There was a band, and a lot of alcohol. I got to the party at about 11:00 pm and slammed about three beers in the first hour I was there. It was very crowded, and people were dancing. A lot of people already seemed to be drunk. I hung out around the dance floor with my friend Jami Warren for a while, until I noticed Kyle O'Neil dancing. He was really hot, and I had noticed him on campus a few times. I didn't know if he was into guys, but I was willing to find out. I went up to him and we started talking.

He seemed a little tipsy and in a pretty loose mood. We talked for a while, and he asked me to get us some more drinks. I think I got him about two or three beers over the next hour.

I didn't have anything more to drink because the three beers I slammed

were doing the trick just fine. Around 1:00 am, somebody started passing out Jell-O shots spiked with grain alcohol. I didn't want to mix beer and liquor, but Kyle had a few shots.

We danced a lot, and he had a few more Jell-O shots. He went off to the bathroom, and after that I couldn't find him, and that really bummed me out. I waited around to see if he would show up again, but he didn't. I took off and started to walk back to my residence hall. As I left the party, I heard someone vomiting. I looked over and saw Kyle in the bushes, throwing up. I went over to help him, and he seemed to be in pretty bad shape. I offered to take him home, and he told me where his dorm was and leaned on my arm. When we got to his dorm, I helped him inside, and was about to leave, but he asked me to come up to his room, just to make sure he got there. I took him upstairs, opened the door for him, and let him in.

He asked me to get him a glass of water, and I did. I started to take off again, but he asked me not to go. When I turned around, he hugged me. We hugged for a while, but he wasn't feeling well, and went into the bathroom. When he came out, he said he felt better, but tired.

We crashed on the couch and then started kissing. I started to massage his back, and he fell asleep. He woke up about 20 minutes later, and started to kiss me, and fondle me. He took off my shirt, and I took off his, eventually we were both naked. I started to give him oral sex, and he said he needed some rest. I asked him if this was OK and if he was OK, and he said he was, he just needed to rest some more. I asked him if he had a condom, and he said he had one in his dresser. I went to get it, and when I got back to the couch, he was asleep again. He woke up after about 20-30 minutes, and I suggested that he just go to sleep. But, he said he felt much better, and started to give me oral sex.

After a while, he put the condom on and we had sex. It was great.

Afterward I gave him my number and left. The next day, he called me to ask me why my name and number was on the pad by his sofa. I told him about meeting him at the party, and about our evening together. He seemed to get upset, and said he remembered meeting me at the party, and me helping him back to his dorm but almost nothing else. I asked if he wanted to go out sometime, and he said, "I'm not gay" and hung up on me. Two days later, I was notified by the Dean that Kyle filed a complaint against me, and here I am.

Kyle O'Neil's Statement

It was Friday night and man it had been a long week. I was invited to an off-campus party and was ready to blow off steam. My adjustment to college has been a challenging one. Frankly, I'm struggling with feelings that I had not recognized before and it's scaring me. I just wanted to forget all the stress of school and my personal life and have a good time.

I was dancing and doing some drinking and a guy came up to me and started dancing. I'd seen him on campus and thought he was really good looking. No one seemed to be pairing off, so it didn't feel awkward.

Over the next couple hours, I had a blast, Bob got me some more beers and then they started passing out Jello shots. I'd never had them before and they were great. I think I had a bunch.

I started feeling really nauseous and hit the can, cause I knew I was going to be sick. I got sick and decided it was time to head home. I only made it as far as the outside door and got sick again, right there in the bushes. I didn't realize anyone was around, but Bob came up to me and asked if I needed help. I was so glad for someone to help me get back to my dorm.

I remember us coming in my room and I remember hugging Bob (I don't know why – I think I was just so glad to be back). Then I got sick again. Bob was still there when I came back from the bathroom and he encouraged me to lay down. I must have. The rest of the night is a blur. I remember someone rubbing my back, it must have been Bob. When I woke up I was naked and had a terrible hangover and then I saw a note from Bob. I didn't realize he left me one. I also saw a used condom in the trash. I was so confused and didn't know what had happened. I called him to find out just what went on last night and he asked me out! I'm so upset! What did I do? What did he do? I don't know if I want to find out, but I know it's bad. He did this to me and I want him held responsible. This whole thing is messing with my mind.

Professor Johnson

Professor Johnson is a gender studies faculty member. She teaches a variety of classes, including a class on sexuality and discrimination.

Angela's Statement

I want to file a complaint against Prof. Johnson for the way she treats the two boys in our class. She tends to be meaner to them than she should be. Last week, when we were going over some of the readings, she asked several of the students what they thought about the readings. When she would call on me, or any of the other girls in class, she referred to us by our names. When she called on Greg and Henry, she referred to them as "penis." She did this twice, and then they stopped answering questions.

I wouldn't be surprised if they try to drop the class. I've heard from other students that male students try not to take her classes.

Something needs to be done about this because it's unfair and professors just shouldn't be allowed to treat people like.

Professor Johnson's Statement

NOTE: Prof. Johnson may choose not to talk to you at all under the guise of academic freedom. How would you overcome this objection?

My class is on gender discrimination, and I was trying to illustrate how even just words matter. For that one class session, I did refer to the male students as "penis." I was trying to show the class how treating one gender respectfully – like using their names – while treating another gender disrespectfully was inappropriate and could be discriminatory. That's kind of the purpose of the class. I can't believe that students actually complained about this to you instead of to me.



20 Minutes to Trained: Questioning Q&A

Kyle and Bob

For Discussion:

- Who would you interview first, Kyle or Bob?
 - Interviewing the reporting party first is generally best practice.
- What do you want to ask Kyle?
 - Possible Questions:
 - How much does he usually have to drink?
 - What did he have to eat that day?
 - Are there other people he was with who could speak to his level of intoxication?
 - Does he have condoms in his room? If so, where does he keep them?
 - What does he usually do with condoms after he uses them (i.e. flush them, throw them in the trash)?
- What do you want to ask Bob?
 - Possible Questions:
 - Describe what “bad shape” looked like when Bob helped Kyle home?
 - When they had sex, what physical positions were they in?
 - Did they talk during sex? If so, what about?

- How did Kyle seem during sex and talking?
 - What did Kyle do with the condom after sex?
 - Was Bob concerned about Kyle given his earlier vomiting?
 - What did Bob think Kyle did in the bathroom after they got to Kyle's room?
- Who else do you want to talk to?
 - Possible Witnesses:
 - Other people at the party who may have interacted with Kyle and/or Bob.
 - Other people who may have witnessed Kyle and Bob interacting with each other.
 - Anyone who Kyle and Bob talked to about the night in question.

Professor Johnson

For Discussion

What if Prof. Johnson chooses not to talk to you at all under the guise of academic freedom. How would you overcome this objection?

- Academic freedom is not limitless – sexual harassment may exceed the protections of academic freedom and you, as the investigator, are trying to determine whether the conduct at issue exceeds the scope of academic freedom. To do that properly, you would like her cooperation and assistance.

What are some of the things you should do to continue a level of inquiry into potential determination by Prof. Johnson? Or should you do nothing?

- You need to perform a preliminary inquiry to start assessing whether it makes sense to proceed to a big “I” Investigation.
Possible next steps:

- Speak with the two male students to learn their accounts of the behavior. Understand how Prof. Johnson's conduct made them feel. Remember that in order for there to be a hostile environment, the sexual harassment must be severe, persistent, or pervasive. One comment is highly unlikely to suffice. Are there other comments/conduct by Prof. Johnson that may, in the aggregate, create a hostile environment?
- Obtain a copy of the syllabus to confirm Prof. Johnson's account. What was the topic of that class? Along those same lines, have there been other names that Prof. Johnson has used to illustrate her points?

Would you need to confirm Angela's story before calling Prof. Johnson in? If so, how would you do that? How many students would need to confirm Angela's story in order to cross the threshold to begin a full investigation?

- In addition to speaking with the two male students, consider speaking with other students in the class to a) confirm Angela's story and b) better understand the climate of the class and Professor Johnson's conduct.
- Start the inquiry – and the interviews – in a broad manner, using the circling technique to ask more specific questions as the interview progresses.
- The number of students that you would need to confirm Angela's story in order to cross over to a full investigation may depend on how many students are in the class and their interpretation of Prof. Johnson's conduct. If only Angela was upset by the singular comment, a preliminary inquiry is likely all that is required here. If multiple individuals report being upset by the professor's conduct, then consider whether there is additional conduct/comments that have created a hostile environment.



QUESTIONING SKILLS

Questioning is one of the most important aspects of the investigation process. The purpose of questioning is to help the decision-maker have sufficient information to render a fair, impartial, and well-informed finding, and when applicable, determine appropriate sanctions. Determinations of credibility, honesty, and responsibility hinge on solid, thorough questioning. As investigators become more skillful at phrasing their questions, more useful information will be obtained from all participants. In-depth questioning helps investigators ascertain the facts pertaining to the allegation and clarify vague or unclear issues.

Your questions should use the funnel technique of asking broad, open-ended questions first, and then narrowing each successive question as it flows logically from the previous question or answer. The final, closed-ended question should get the answer you need to drop out of the bottom of the funnel, if possible. You can then use the circular questioning technique to repeat questions to verify consistency, or ask the same question in a different way, again to see if the same answer results.

It is also critical to remember that in questioning, the investigator(s) must remain impartial and “stay in their lane,” meaning serve as investigator, not a student development specialist, a supervisor, an advocate, etc. Questioning is intended to help the decision-maker (which could be the investigator) determine, using a preponderance of evidence standard, what happened and whether it violated policy. Questions seeking to engage in student or staff development or encourage or prompt reflection or restorative insight pull investigators out of their lane and compromise the investigation.

Here are some tips while you are preparing to ask questions.

Open-ended questions: Carefully phrase questions as open-ended (i.e., who, what, how, etc.) rather than close-ended (i.e., Did you...? Were you...?). Close-ended questions often result in a yes/no response, which does not offer much additional information and discourages narration by the interviewee. If a witness will narrate, be wise enough to let the person’s story flow without interruption. You can always circle back to clarify later. Open-ended questions allow interviewees to answer as long as they desire, possibly yielding more information than requested.

Close-ended questions: Use close-ended questions less frequently, but consider that they can be used effectively to pin down a key point that is elusive, or to get a party or witness to commit to a statement if various versions of an account are present. Often, closed questions are most effective when used to parrot back an answer for confirmation.

For example:

Close-ended

Question: "Were you angry when you broke the window?"

Response: "No."



Open-ended

Question: "What were your feelings when you broke the window?"

Response: "I guess I was pretty angry..."

Multiple-choice questions: Another pitfall investigators run into is offering multiple-choice questions for interviewees to answer. This is sometimes just the unintentional result of a long-rambling question that is not well thought-out beforehand. When the investigator offers the party all of the choices the investigator deems appropriate, often the interviewee will give the investigator the answer the party believes the investigator wishes to hear.

For example:

Question: "What were your feelings when you broke the window? Were you angry, elated, frustrated, or just letting off steam? This was right around mid-term exam time."

Response: "Oh, I was just letting off steam; exams weren't going well..."

The responding party will choose the reply that s/he thinks is least indicative of a violation. Ask the question without suggesting any or multiple answers, as that is a form of leading that can impact the quality and credibility of the information you receive.

Multiple questions: Related to multiple-choice questions are instances where an investigator asks multiple questions at one time. If you have multiple questions, make note of them and ask them one at a time. Doing otherwise can confuse the party, the investigator, and often leads to incomplete or overlapping answers requiring unnecessary clarification.

Silence is golden: Do not be alarmed or show discomfort when a question is asked and the person does not respond immediately. It is natural to think about a response before responding. Allow the person ample time to think without undue pressure to respond quickly. If the person needs clarification, let him/her ask for it; don't assume that the person does not understand the question.



SAMPLE QUESTIONS EXERCISE

Critique the following questions: Note that many of these questions are intentionally improper or problematic. The aim of this exercise is to critique and parse out how and why questions are or are not appropriate and to whom such questions may or may not be directed.

1. What effect did your actions (or behavior) have on others? On the community? On yourself?
(Ask these three separately.)
2. Explain what you hoped to accomplish through your actions.
3. Why did you choose to drink so much if you knew it was risky?
4. Who is responsible for your behavior?
5. Did you sign the Honor Code as a first-year student?
6. I have a couple of questions: First, do you know what incapacitated means?; Second, could you tell she was incapacitated?; and Third, why did you give her another drink when evidence from witnesses indicates she was already really drunk?
7. What other options were there for you in this situation?
8. What was the purpose of your behavior?
9. How would you feel if others were engaged in comparable behavior?
10. What would be the consequences to the community if everyone engaged in comparable behavior?
11. How is your relationship with those you impacted?
12. How does your responsibility for living within community standards apply to your actions in this situation?
13. How might you react if such a situation were to come up again?



QUESTIONING REMINDERS

During every investigation, remember these tips for being an effective investigator:

1. Carefully listen to everything that is being said. If you miss something, do not hesitate to ask the person to repeat it.
2. Watch for non-verbal behaviors, particularly those that deviate from the baseline of typical behaviors, which may indicate attitudes, true feelings, or emotions.
3. Clarify any conflicting information before you begin your analysis. Continue to ask questions until you have all of the necessary information regarding the incident. Do not wait until after the interview and then start guessing at reasons why the information presented was conflicting.
4. Where a question will touch on sensitive topics, just acknowledge it as such before you ask it. If you realize after you ask a question that it inadvertently touched a raw nerve, acknowledging it may minimize the discomfort.
5. If a question comes out wrong, seems blaming, or is poorly phrased, withdraw it immediately and reframe it.
6. Carefully examine the time/date sequence of the incident. Follow up on contradictions when questioning.
7. Avoid jumping from one line of questioning to another; attempt to examine one area completely before moving on. Investigators should look to the other investigators for their suggestions before changing lines of questioning.
8. If possible, avoid unnecessary writing during interviews. You should be concentrating on the content while developing lines of questioning. A co-investigator or recorder should be taking notes and will provide a complete record of the interview.
9. Note-passing or whispering should not occur between investigators unless it's absolutely necessary. You would not be showing the respect to the interviewee that you would expect if you were speaking. Request a recess if you need to confer.
10. Maintain your concentration throughout the interview and remain attentive. Demonstrate active listening skills such as good posture and eye contact.
11. Never accuse a party or participate in heated arguments. Maintain your composure even if others do not. Insist that interviewees respect the decorum of the proceedings and excuse them if they do not.
12. Carefully prepare your questions in advance. Avoid questions that are not relevant. Follow leads to their logical ends, but don't chase the rabbit into Wonderland by focusing on irrelevant issues or irrelevant discrepancies.