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EVIDENCE:

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CAN YOU RELY ON THE EVIDENCE GATHERED?

‡Thorough? (Does it tell whole picture?)

‡Authenticated?

‡Is there an explanation for what

‡was omitted?

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Do you have those texts?

May I have those texts?

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QUESTIONS:
YOU CANNOT
WEIGH IT IF NO
ONE ASKED IT

Details
About The
Sexual
Contact

Seemingly
Inconsistent
Behaviors

Inconsistent
Evidence/
Information

What They
Were
Wearing

Alcohol
Or Drug
Consumption

Probing Into
Reports Of
Lack Of
Memory

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YOU CANNOT WEIGH IT IF NO ONE ASKED

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- ‡ Explain why you are asking it
- ‡ Share the evidence that you are asking about, or that you are seeking a response to

‡ Can you tell me what you were thinking
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‡ Help me understand what you were
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WEIGHING EVIDENCE

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TYPES OF EVIDENCE

[REDACTED]

Evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.

[REDACTED]

Evidence based on inference and not on personal knowledge or observation.

[REDACTED]

Evidence that differs from but strengthens or confirms what other evidence shows .

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EVALUATING THE EVIDENCE

Evidence is relevant if it has a tendency to make a material fact more or less likely to be true.

Is the item what it purports to be?

Is the evidence worthy of belief?

Weight is determined by the finder of fact!

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AUTHENTICATING EVIDENCE

1. At 1:18 am, Pat captured a video of Elliott and Sam. In the video, Sam had one shoulder. In the video, both Sam and Elliott, and at least 2 others, were loudly singing Happy Birthday, although the video cut out before the singers said the name of the person to whom they were singing.
2. Elliott alleged that Sam later sent him a threatening message, and the next day showed up at his dorm, uninvited, twice. Elliott stated he did not have the message, because it was on SnapChat, but had kept a screenshot of the message, although the screenshot cut off part of the message. Sam denied sending any threatening message, and also stated that he never used SnapChat.

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IS IT AUTHENTIC?

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CREDIBILITY AND RELIABILITY

- ‡Do you really need to assess either?
- ‡Why they are different
- ‡How to write about it
- ‡When a party attacks credibility of the other, but on a non -issue (delay in reporting, did not go to law enforcement, minimized the report in comments to a friend or family)
- ‡How to ask questions to get to the bottom of it without being offensive
- ‡How to apply your conclusions to the process

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OVER ANOTHER² WHY?

‡Corroboration?

‡Plausibility?

‡They were convincing when they shared their story?

‡They could not have seen what they said they saw?

‡That makes no sense?

‡They seemed more trustworthy?

‡Some combination of the above?

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‡ Reliable evidence

- ‡ It is probably true, and I can rely on it.

‡ Credibility

- ‡ I trust their account based on their tone, and reliability.
- ‡ They are honest and believable.
- ‡ It might not be true, but it is worthy of belief.
- ‡ It is convincingly true.
- ‡

A CREDIBLE
WITNESS MAY GIVE
UNRELIABLE
TESTIMONY

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RELIABILITY

‡ Did the witness correctly observe, process, interpret and recall the information?
Is there corroboration?

‡ vs. Credibility: bias, collusion, motive in outcome, outright (proven) lying,
judging the person

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FACTORS WE WERE TAUGHT TO USE: ARE THESE STILL THE RIGHT ONES?

- ‡Corroborating evidence
- ‡Inconsistencies
- ‡Sufficient or insufficient explanation of inconsistencies
- ‡Logic, plausibility
- ‡Pattern or history
- ‡Past record
- ‡Motive to falsify
- ‡Bias for/against a party
- ‡Material omission
- ‡Ability to recollect events

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ARE YOU WORTHY?

‡Dyer v. MacDougall, 201 F.2d 265, 26869 (2d Cir. 1952) (acknowledging the conduct, manner, and appearance that make up a witness's demeanor).

‡Courtroom Psychology for Trial Lawyers (1935): People with enlarged pupils are compassionate and those with beady eyes use cold logic; a person who looks up and to the left while thinking is metaphorical . . . a low pitched voice indicates confidence, while a high-pitched voice reduces believability.

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‡Expert testimony

‡Polygraph examiner's report

‡News article that the college has a history of covering up sex assaults

‡Case involves DV and allegation of strangulation. Witness discusses respondent's repeated angry outbursts in social situations and class settings.

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