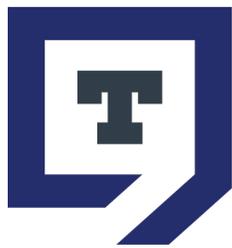


A grayscale background image showing a close-up of hands typing on a laptop keyboard, with the keys and fingers slightly blurred to create a sense of motion.

# **Analyzing Consent in Title IX Cases Involving BDSM, Fetish and Kink**

**Course Material  
May 22, 2024**

Presented by T9 Mastered LLC  
a venture of Van Dermyden Makus Law Corporation



**T9**  
**MASTERED**<sup>®</sup>  
Online Training for Title IX Professionals

# **Analyzing Consent in Title IX Cases Involving BDSM, Fetish and Kink**

## **Course Material**

May 22, 2024

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## Biography

**Nora Rohman** has been an investigator at Public Interest Investigations, Inc., since 2013. Their cases have focused on campus investigations involving sexual misconduct allegations; workplace investigations into complaints of harassment, discrimination, and/or retaliation; and mitigation investigations for death penalty matters, both at the trial and appellate levels.

An engaging lecturer and trainer, Nora has been part of the faculty of T9 Mastered since 2017. They have also given presentations to numerous groups on conducting effective investigations. These presentations have included the annual conference of the Association of Workplace Investigators (AWI) in 2015 and 2018, and an annual training for the Title IX and Equity investigators for the California State University (CSU) system in 2019. Nora also serves on the AWI Diversity Committee.



Nora also has specialized knowledge in the area of sexual assault prevention education. They completed an internship at Peace Over Violence, working on interpersonal violence prevention education, and trained as a Peer Counselor at Concordia University's 2110 Center for Gender Advocacy, including violence prevention and sex education. They also have extensive experience with education and activism in the LGBTQ community.

Nora frequently participates in workshops, conferences, and training programs to stay current on legal developments. They completed the Investigations Training Institute for AWI and has regularly attended the annual Capital Case Defense Seminar, held by California Attorneys for Criminal Justice. They have also received training on conducting interviews using trauma-informed approaches.

Nora earned their bachelor's degree in Interdisciplinary Gender Studies from Concordia University in Montreal. Following this, they pursued a master's degree in Gender Studies at New York University.



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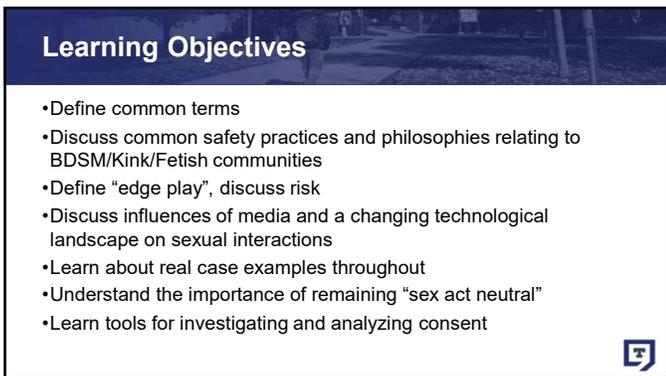
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## BDSM / Kink / Fetish

- **BDSM** – acronym and umbrella term that describes play, relationships, and lifestyles that relate to role play & power exchange, fetish, and kink activities. BDSM does not necessarily include sexual activity. Different for everyone.
- **Kink** – umbrella term referring to specific activities (kinks), practices, and a larger community. Generally considered outside of the “norm,” however definitions of “normative sexuality” and kink practices have become increasingly blurred.
- **Fetish** – umbrella term for a form of desire in which gratification is strongly linked to a particular object or activity.



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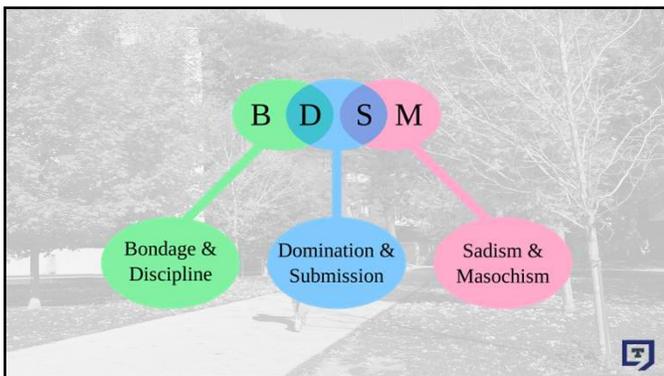
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## BDSM / Kink / Fetish

- Historically these are practices that were pathologized & stigmatized
- **A person who engages in BDSM is no more or less likely to violate consent than any other person.**
- Many people engage in BDSM practices or activities without considering themselves to be members of this community, and without being aware of this terminology.

“BDSM subcultures have a highly developed language and set of practices surrounding the idea of consent. Individual practitioners may or may not adhere to community teachings on the subject, but the discourse on consent is robust and widespread in BDSM circles.”

- Andrea Zanin



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## Terminology

- Scene / Play
- Top/Bottom
- Dom/sub
- Sensation Play
- Impact Play
- Bondage
- Sensory Deprivation
- Headspace
- Drop
- Squick
- Hard/Soft Limits
- SSC (safe, sane consensual)
- RACK (risk aware consensual kink)
- Safeword / Safe gesture
- Yes/No/Maybe Lists & Contracts
- Edge Play



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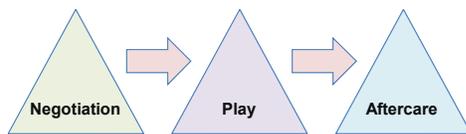
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## Three Parts of a Scene



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## BDSM / Kink / Fetish

If an activity does not have the three parts of a scene (negotiation, play, aftercare) can it still be consensual?

If parties had a contract – with previously agreed upon activities - is this relevant evidence to whether an interaction was consensual?

If parties had a safeword or discussed one previously, does this mean the sexual encounter/scene was consensual?



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## Media Influence

"Porn is not pedagogy, yet it often functions as if it were."  
 - *Talking to my Students about Porn* "The Right to Sex"  
 Amia Srinivasan. Bloombury Publishing, 2021.

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## Understanding Risk – Edge Play

### Edge Play

- Can be subjective, but some practices are commonly understood to fall under this umbrella because of the severity of risk involved.
- Traditionally not recommended for beginners. Specialized knowledge to mitigate risk.
- Not everyone who engages in edge play practices has the safety knowledge or uses this vocabulary

**"Fatal outcomes of BDSM play are rarer than autoerotic fatalities and natural deaths related to sexual activities.** Safeguards and education on medical aspects exist in the BDMS communities. If they are followed by the practitioners, the risks of BDMS play can be reduced. Cases of non-natural death connected to BDSM are rare incidents and can be prevented."

\*How safe is BDSM? A literature review on fatal outcome in BDSM play" Int. J Legal Med. 2022; 136(1): 287-295.  
 Anouk Schot, Christian Jackowski, and Corinna A. Schott

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## Understanding Risk – Edge Play

### Some Edge Play Practices:

- Choking / Breath play
- Fire Play
- Knife play
- Bondage
- CNC

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## Sex Act Neutral

- Be aware of our biases and assumptions.
- No one activity is *in and of itself* consensual or non-consensual.
- The physical effects of certain activities cannot show if the activity was or was not consensual, even if those effects seems severe or extreme.
- Goal is to approach all sexual activity between parties neutrally, which frees us up to think about how the activities were negotiated, and what are the facts that can help us understand and analyze consent.



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## Investigating Consent

### Remember policy language

*It is not anyone's burden to say "No" or "Stop" or "I don't want to do that."*

- If Complainant alleges incapacitated due to drugs or alcohol, must collect evidence relating to incapacitation/intoxication.

The burden is to **establish consent before acting.**



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## Investigating Consent

### What does consent look like?

- Verbal: "Yes," "I like this," "Can we..." Negotiation Discussion.
- Non-verbal: taking off own clothing, movements (hands, hips, etc.), nodding, moving to a specific position, picking out an implement

It varies in every circumstance, and with each activity. There is no one clear rule.



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## Investigating Consent

**Step 1: What took place between the parties?**  
 Start where they feel comfortable, "Let the air out." Trying to gather the larger picture & understand what specific activities took place.

**Step 2: What specifically was non-consensual?**  
 This is where you start to drill down with details. What were the parties communicating through words and actions?

Need to have clarity from Complainant:  
 consensual/non-consensual for **each** activity.




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## Investigating Consent

- Discuss Transitions: How did the parties get from Point A to Point B, from one activity to the next?
- When did things escalate?
- How did you know the other person wanted to do \_\_\_\_?
- At what moment did things become non-consensual?
- How was consent communicated?
- Did either of you say anything?
- Non-verbal communication?
- Where were your hands? What were their hands doing?
- What happened after the sexual activity?




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## Investigating Consent

- Text Messages, Social media messages, E-mails  
 (Between parties and between witnesses)
- Video / Photos (Use with caution.)
- Journals, Letters
- Did you communicate in any other way that we haven't already discussed?

**Be wary** of past sexual history or evidence showing interest in a certain activity. Just because a person is interested in an activity or has past history does not indicate consent. *Some situations where it may be relevant to credibility.*




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## Sex Act Neutral

Goal is to approach the specific sexual activities between parties neutrally, whether a kink related activity or not.

This then frees us up to think about *how* consent for the activities were negotiated, and what are the facts we need to gather to help us understand and analyze consent.



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*Thank  
you*



**Nora Rohman, AWI-CH (they/them)**  
Senior Investigator  
Public Interest Investigations, Inc.  
nrohman@pilla.com



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# Resource List

## Articles and Books:

**Amia Srinivasan**, *The Right to Sex: Feminism in the Twenty-first century* (Bloombury Publishing, 2021)

**Andrea Zanin**, “In healthy, consensual BDSM, saying ‘yes’ is just the beginning,” *Globe and Mail*, October 28, 2014.

**Anouk Schori, Christian Jackowski, and Corinna A. Schön** “How safe is BDSM? A literature review on fatal outcome in BDSM play” *Int. J Legal Med.* 2022; 136: 287–295.

**Caroline Shahbaz and Peter Chirinos**, *Becoming a Kink-Aware Therapist*. (New York: Routledge, 2017)

**Debby Herbenick, Tsung-Chieh Fu, Heather Eastman-Mueller** “Frequency, Method, Intensity, and Health Sequelae of Sexual Choking Among U.S. Undergraduate and Graduate Students” *Arch Sex Behav.* 2022; 51(6): 3121–3139

**D. Langdridge, C. Richards, Kenneth A. Loparo**, *Safe, Sane and Consensual: Contemporary Perspectives on Sadomasochism*, (Palgrave Macmillan, 2007)

**Herbenick, D., Fu, T. chieh, Patterson, C., Rosenstock Gonzalez, Y. R., Luetke, M., Svetina Valdivia, D., ... Rosenberg, M.** (2023). *Prevalence and characteristics of choking/strangulation during sex: Findings from a probability survey of undergraduate students.* *Journal of American College Health*, 71(4), 1059–1073

**Keely Kolmes, Wendy Stock and Charles Moser**, “Investigating Bias in Psychotherapy with BDSM Clients” in *Sadomasochism: Powerful Pleasures*, ed. Peggy Kleinplatz and Charles Moser (Routledge, 2006)

**Tina Horn**, *Why Are People Into That? A Cultural Investigation of Kink* - Tina Horn (Hachette Books, 2024)

**Tristan Taormino**, “S Is for...’: The Terms, Principles and Pleasures of Kink,” in *The Ultimate Guide to Kink: BDSM, Role Play and the Erotic Edge*, ed. Tristan Taormino (Berkeley: Cleis Press, 2012)

## **Groups:**

### **AASECT – American Association of Sexuality Educators, Counselors, Therapists**

“AASECT is devoted to the promotion of sexual health by the development and advancement of the fields of sexual therapy, counseling, and education. AASECT's mission is the advancement of the highest standards of professional practice for educators, counselors and therapists.” [www.aasect.org](http://www.aasect.org)

**NCSF - National Coalition for Sexual Freedom** – US-based advocacy group that successfully campaigned to get the diagnoses of sadism and masochism removed from the DSM. <https://ncsfreedom.org/>