


The Texas A&M University System
Introductory Civil Rights
Investigator Training

System Ethics and Compliance Office
January 2021
Presented via Webex




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Civil Rights Investigator Training

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We also wish to acknowledge the contributions of Bret Davis (formerly of OGC) and Dr. Joni Baker (Texas A&M University – San Antonio, formerly with SECO) in developing these training materials.

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- Section One

Introduction to the Training Program



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- Introduction (overview)
 - Program designed for investigators for all civil rights and ethics investigations
 - Serves as a “baseline” training curriculum (as well as a refresher training) – assumes no previous knowledge and/or experience
 - Intended to be complemented by “deeper dive” training programs in specific areas of investigation
 - We will focus on specific areas of practice and skill, and see a case study through from its initial report to a final conclusion



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- Introduction (mechanics)

- You will all be assigned to work groups for the entirety of the training program – please work with other members of your group for all exercises and activities
- It is important to be engaged – please minimize any distractions such as cell phones, email, internet, etc. (except in cases of emergencies)
- We want this to be an interactive program and encourage questions and comments; we will balance that against a need to cover all of the material in the time provided



- Introduction (mechanics)

- We will use the time that we need to cover the topic areas we intend to cover in each session – we intend to begin on time and will not keep you longer than is needed.
- In the event that we cannot address a specific question or topic, or if you choose to wait on a question, please maintain a personal “parking lot” of issues you would like addressed – we will endeavor to address all parking lot items in our time together



- Introduction (mechanics)

- Our training will involve a case study that will evolve over the training. Each group will self-assign two investigators and two role players. All other members of the group will serve as observers, who also will play the roles of witnesses.
- We are adapting an in-person training to the Webex environment; as such, we are still learning how this program will “time out” over the training. We appreciate (in advance) your patience with us as we test and modify this program.



- Introduction (disclaimers)

- While we have adapted System Regulation 08.01.01 to the new federal regulations on Title IX, we are of course now waiting for the Biden Administration to issue new directives regarding civil rights enforcement once they take office on January 20. We will make you aware of information and how it effects our practices as it becomes available.



- Introduction (triggers)

- Please know that we will use strong/explicit language that is appropriate to situations as they would be described by the parties
- Please know that our subject matter will include issues that some of our participants may find to be disturbing and/or personally triggering



- Introduction (materials)

- This material is intended solely for this training environment, and cannot be used for commercial purposes; if you need presentation resources please contact SECO



- **Today's Agenda:**
 - Group Assignments and initial activity
 - Investigations Process and Logistics
 - Introduction of the Case Study



- **Introduction (group assignments)**
 - Please note that we will be taking time early on to establish breakout groups that we will be working with throughout the training. Please be patient with us until we get our groups set up.



- **Introduction (group assignments)**

- Please introduce yourself with:
 - Name (and preferred name)
 - Institution and Position
 - Past experience as an investigator
 - What you hope to get from this training program

Come back to the main room in **15** minutes



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- **Agenda (topic areas)**

- Investigations Process and Logistics
- Conducting Interviews
- Analyzing Information
- Developing a Report
- Case Study (note that the case study will be introduced early in the training and sections of the case study will be completed across our two days together)



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- Section Two

The Investigations Process and Logistics



- Investigations Process & Logistics

- a. Role of the Investigator
- b. Key Stages of Process
- c. Assignment of Investigators
- d. Initial Planning
- e. Developing a Strategy
- f. Logistics



- Role of the Investigator

Is to *be*:

- Thorough
- Reliable
- Prompt
- Fair



- Mindset of the Investigator

As the Collector of Information (Facts, Perceptions, Assumptions, Lies)

-both Inculpatory and Exculpatory (favorable/unfavorable)

-**Inculpatory** would reflect a person's involvement in an alleged act of misconduct

-**Exculpatory** would tend to exonerate a person of misconduct



- Mindset of the Investigator

- deferential to the facts; no “sides”
- detached, objective, and neutral (as possible)
- understand the full context of the event or series of events
- determine whether there are additional relevant facts

Q – When should you write the conclusion?



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- Role of the Investigator

Collect the Facts; Don't allow your potential bias/pre-conceived ideas to influence any part of the process.



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• Key Stages of the Process

Where does the investigation fit in to the process?

- Notice
- Preliminary Inquiry (conducted by assigner of investigators)
- Full (formal) Investigation (conducted by investigators)
- Collecting and Evaluating the Facts/Writing the Report (done by investigators)
- OGC/SECO Review/Designated Administrator
- Findings
- Sanction
- Appeal



• Key Stages of the Process

Preliminary Inquiry Stage

- Are we on "notice"?
- Are there "enough" alleged Facts/Witnesses?
- What type of matter: 08.01.01/Ethics/Other misconduct?
- What are the status of the Parties (employee/student/third party)?
- When did the 30 business days Clock start?
- Who assigns investigators?
- Who grants extensions?



- Key Stages of the Process

- **Preliminary Inquiry Stage**

- - Confidentiality Issues:

Confidentiality v. Privacy

- "Need to Know"
- Pseudonym
- hidden for the investigation & report / key provided separately
- if name not known – then Due Process?
- Law Enforcement "Pseudonym Program"



- Key Stages of the Process

- **Preliminary Inquiry Stage**

- - Little "i" inquiry (Pre-Investigative Stage)

-sometimes...things happen

- document, document, document

- watch out for "insignificant" evidence

-REMEMBER – we are **Collectors and Reporters of Information**



- Key Stages of the Process

- **Assignment of the Investigator(s)**

- Co-Investigators?
 - Full or Part-time?
 - Employment status (faculty/staff)
 - Identities (e.g., Greek life, athletics, faculty; demographics)
 - Preferences and strengths
 - Nature of the case
 - Distribution of work



- Key Stages of the Process

- **Assignment of the Investigator(s)**

- Type of Case (e.g., sexual assault or harassment, student/employee discrimination, etc.)
 - Experience
 - Lead or 2nd Chair
 - Style...



- Key Stages of the Process

- **Formal Investigation Stage**

- Conclusions v Findings
 - Report the full (material) facts
 - Compare the facts to the allegation(s)
 - Reach conclusions based on preponderance of the evidence standard
 - Different for sex-based cases



- Key Stages of the Process

- **OGC/SECO Review Stages**

- Thoroughness of the investigation
 - All available evidence considered?
 - Only relevant facts included
 - Sufficiency
 - Facts properly analyzed?
 - Conclusions supported by facts and analysis?




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- Key Stages of the Process

Decision/Hearing/Sanctioning Stage

- “Designated Administrator”
 - Administrator (AVP or lower recommended)
 - Hearing panel
- Findings/Decision
- Sanctioning
(education, restoration, protective, in addition to mandates – authority may be delegated and/or in form of recommendations)

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- Key Stages of the Process

Appeal Stage

- Grounds
- Regulations
- Timeliness



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Pre-Investigation Planning

- The investigator(s) should meet with the assigner of the investigation to review the scope and nature of the investigations process



Pre-Investigation Planning

Topics to Review:

- Fair and Equitable Process
- Allegation/Policy Violations
- Witnesses (Lists)
- Evidence identified
- What Key Witnesses/Evidence is missing
- Timeline/Flowchart of Events
- Record or Not to Record?



Pre-Investigation Planning

Matters of Inquiry:

- Use Common Sense; Walk away with an understanding
 - Some Witnesses you may have to ask more Qs
- You MUST ask the \$ Qs



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Pre-Investigation Planning

Matters of Inquiry:

- Get Clarification:
 - Not yes or no; unless trying box
- At the End:
 - What else do you think might be important?
 - Is there anything I should have asked that I did not?
 - Anything you want me to ask the other Party?



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Interview Logistics

- Determining location
- Determining order
- Initial greetings
- Opening Statement
- Concluding an interview
- Post-Interview follow-up



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Interview Logistics

Location

- In person, video interviews, phone interviews, written Q&As
- Professional space (vs. personal space)
- Amount of traffic in area / type of traffic
- Out of view from other involved parties
- Timing of interviews
- Messages (intended and unintended) in the space
- Comfort



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Interview Logistics

Consider

- Privacy and Safety
- What to wear (who are you interviewing?)
- Water, coffee, tissues, paper, pen, computer
- Seating strategy
- Virtual arrangements
- Timing (order and amount of time)
- Note-taking
- Accommodations?



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Order of Interviews

1. Complainant – understand the allegations
2. Witnesses that can collaborate the allegations
3. Witnesses that would have material evidence (relevant to the allegation(s) – supporting or absolving)
4. Respondent – understand their perspective, as well as the dynamic and relationship
5. Witnesses that can corroborate the Respondent's point of view
6. Additional Material Witnesses
7. Re-interviews as needed, particularly with Complainant and Respondent (typically narrowly focused interviews)



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Interviews

Character Witnesses

- Caution



Interview Logistics

Initial Greetings

- At door or in waiting area
- Introduce by first and last name and your role
- Ask them how you would like to address them
- Maintain open body language and make eye contact
- Establish rapport . Don't launch immediately into questions, but get a sense of how they communicate by asking them to tell you a little about themselves, their major or employment function, as well as how long they have been at the university or agency.



Interview Logistics

Opening Statement

Should address:

- Who investigators are
- Describe the interview process
- Address note-taking/recording
- Address privacy
- Address retaliation
- Establish expectation of complete and truthful participation
- Address post-interview follow-up
- Invite questions at any time during the interview



Group Activity

Opening Statements



• Group Activity

Take five (5) minutes privately to develop your own opening statement

We will ask three people to share their opening statements, and the panel will offer feedback

Make adjustments to your statement based on what you hear



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Interview Logistics

Concluding an Interview

Should address:

- Question: Is there anything else that you believe is relevant that we should address?
- Question: Are there areas I should have asked you about but did not?
- Question: Are there other people that you believe I should speak with?
- Question: What else do you think might be important?
- Question: is there anything you want me to ask the other party?



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Interview Logistics

Concluding an Interview

Should address:

- Reiterate the key facts that were reported
- Reiterate privacy and retaliation considerations
- Invite them to contact you with additional information and provide contact information
- Address post-interview follow-up
- Question: Do you have any final questions for me?
- Thank them for their participation



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Interview Logistics

Post-Interview Follow-up


- Provide each party an opportunity to review your summary of the interview (not your handwritten notes) and affirm that the information collected is accurate
- Provide 1-2 business days for the party to respond by email (may take a bit longer for faculty/administrators, time of year)
- When party challenges information in your summary, compare their comments to your own notes and recollections; only make changes in the summary/exhibit when you believe that their version is more accurate than your own
- If you disagree with a "correction," include it as an additional exhibit and reference it if the statement is used in the report



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- **Today's Agenda:**
 - Case Study Prep – modification of process
 - Conducting Interviews
 - Culture
 - Caser Study Interviews


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Case Study

Part 1

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Case Study

Initial Preparation

- Initial complaint will be shared (large group)
- Each group will assign two investigators
- Each group will then assign two role players to play Party A and Party B, as well as each of the three witnesses
- Remaining group members will serve as observers (you may consider alternating investigators as well)
- Investigators will meet to walk through a pre-investigation meeting and develop a strategy
- Role players for Party A and Party B will separate from the group to read/review the roles
- Observers/Witnesses will pay attention to investigators and review their witness roles



Case Study

Initial Preparation

Party A and **Party B** should establish their name and identities (sex, age, race, ability, etc.) to the role. Use your real names and details from your own life to fill in any missing pieces for the role play.



Case Study

Please note:

- Role players **should not** share the details of their roles with anyone else outside of the role play interviews
- Role players can fill in minor missing details but are not to add any complicating factors or change the details provided in the exercise – it is complicated enough!
- This is intended as a safe space for practice and is an artificial environment. Investigators should be willing to take chances asking questions without fear of causing harm. Role players should reward good questioning with information and be willing to withhold information if the investigators are not creating a welcoming/safe environment.



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Case Study

Party A and Party B are both grounds workers in the facilities office. Party A has been employed there for three years, having spent four years as a grounds person with another System member. Party B has been employed in the office for about six years. The two are of equal level and are making approximately the same pay.

Party A and Party B have very different personalities and points of view. Party A tends to be soft-spoken, introverted, and can be perceived as inflexible or uptight. Party B is much more outgoing, social, and tends to say what is on their mind. The two do not associate with each other outside of the office.



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Case Study

Party A has filed a written complaint stating that Party B is creating a hostile work environment for not only Party A, but for other people in the office. According to the complaint, Party B has made the following statements directly to Party A that party A considers to be sexual harassment:

1. "I know, I know.... You want me, but you probably couldn't keep up." (has also heard this directed to others)
2. "Nice shirt.... Do they make it for men?" (or women, depending on gender).
3. "You give off a bit of a trans vibe. Were you a (male/female) before?"



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Case Study

Additionally, Party A also alleges that Party B has made the following statements to Party A with respect to both race and ability:

1. "Stay in your lane. You people are great at mowing lawns."
2. "Has your skin always been that color?"
3. "Wow... first day with the new brain?"
4. "I see someone took the short bus to work today."



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Case Study

Finally, Party A states that Party B frequently makes off-handed comments in the office, often seemingly directed to no one in particular, that are indicative of this person's callous disregard with the professional environment:

1. "Hey baby, is that your phone in your pocket, or are you just really happy to see me?"
2. "Do you know how I know you're gay (followed by a stereotyped comment)?"
3. "Did you see the rack on that broad?"
4. "Clearly he makes up for his sterling personality with a big dick."



Case Study

Party A indicates they have spoken with Ben, the grounds supervisor (who has been with the member for two years), but that Ben has not been helpful. According to the complaint, Ben encouraged Party A to let Party B know how they felt, but Party A was uncomfortable doing so. Party A approached Ben afterwards with another complaint and Ben said he would speak with Party B, but there appeared to be no change in behavior afterward.



Case Study

Party A states in the complaint that both Curtis and Tameka has observed many problematic interactions. Party A thinks that Curtis is more accepting of the behavior and plays along because the two are friends, while Tameka tends to offer an uncomfortable laugh and then disengage at her earliest opportunity. Party A does not want Party B terminated, has asked that Party B be reassigned to another office so that Party A no longer has to be exposed to this abusive behavior. Party A is also asking that Ben be directed to get supervisory training.



Case Study

Parties:

Party A (Complainant)

Party B (Respondent)

Ben (supervisor, employed at member for two years after coming from a private landscaping company)

Curtis (employed at member of two and a half years)

Tameka (employed at member for eight months)

The employees work alone individually but are often called upon to work in teams to complete various tasks.



Case Study

Investigators – Please take the next 15 minutes to prepare for your interviews

Role Players – Please use this time to review your roles in detail – separate yourself from the group discussion

Observers – Assist the investigators in planning for the interviews but do not discuss the particulars of any witness role you may have



- Parking Lot

Are there questions about any of the material covered so far?



- Section Three

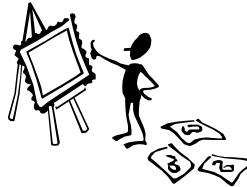
Conducting Interviews



- Conducting Interviews

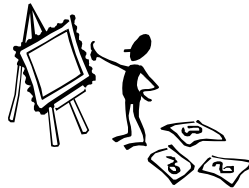
As an investigator, imagine that you are “painting a picture” of what took place, based on all of the evidence and information collected from everyone involved.

To create the most accurate picture of what took place, we obviously want to collect as much information as possible, and analyze it correctly.



- **Conducting Interviews**

Asking questions is critical to the ability of the investigator to develop a report that most accurately reflects what took place. But while asking questions is great, really **hearing** the answers is even better. Listening is the key skill an investigator needs to be successful.



- *Why don't we listen better?*

Overall Concepts:

Am I prepared to Listen?

I don't own the PROBLEM!

(adapted from Dr. James C. Peterson)



- *Why don't we listen better?*

Overall Concepts:

Am I prepared to Listen?

- Am I prepared to Listen?
- I'm CALM enough to hear?
 - regardless of the outside circus & hoops
 - regardless of the victim blaming
 - pointing the finger at YOU

(Think of Gale King's interview of R. Kelly)

<https://time.com/5545745/gayle-king-r-kelly-cbs-interview/>
4th video



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- *Why don't we listen better?*

CALM =

1. **C**omposed enough to listen
2. **A**udit (Can I repeat what was said?)
3. **L**imit (distractions – both internal and external)
4. **M**otivated (to engage with the party)



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- *Why don't we listen better?*



Overall Concepts:

I don't own the Problem?

- Listen to the story/explanation from a witness point of view
- Don't get "hooked" into the problem so that you can't maintain a clear focus regardless of the frustrations of the witness
- Listen for vague or non-logical statements – but this is not an inquisition!



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- *Why don't we listen better?*

So, What Should we do as Listeners?

1) Safety Environment

- Tendency to relate more to the victim, survivor, complainant
- Remember, we are not asking either party to defend themselves, just tell their story
- "When you're up to your ass in alligators, it's hard to remember your job is to clear the swamp." Anonymous
- "A good listener removes alligators and secures a setting where talkers can focus on clearing their swamps."



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- *Why don't we listen better?*

So, What Should we do as Listeners?

2) Acknowledge

- use words, tone, and/or body language
- "...mmm..., I bet it is hard to be Patriots' fan"

3) Para-Thinking

- relate back the talker's thoughts, including their ideas, views, and observations
- in hearing, it helps them identify gaps and clarifies their recall



- *Why don't we listen better?*

So, What Should we do as Listeners?

4) Clarification

- strategic interruptions; get feed back
- e.g., "I missed the importance of not taking Summer class"

5) Decode

- "I think what I heard you say..."
- "I believe what you are saying is..."



- *Why don't we listen better?*

So, What Should we do as Listeners?

6) Mirror

-lean forward, backward, pace, hands on table, on the head (but don't go overboard, it's not an acting class and you need to be listening and analyzing)

7) Dead Space

-create reflection; awkwardness; peace; anxiety
 -to gather your own thoughts
 -Witness will feel the need to fill in the space
 -Don't react to what is said...but wait...there's MORE...



- *Why don't we listen better?*

So, What Should we do as Listeners?

-Recap:

- Acknowledge Stress
- Listen – verbal, tone, body language
 - try different things to remove barriers
- Empathy & support
- Listen – ask follow-up questions
- Build rapport



• Conducting Interviews

Listening tips:

- Listen as if you are to repeat back what was said
- Don't complete the sentences of the parties
- Mirror what they said for validation: Use the **exact words** they used for confirmation (don't substitute your interpretation). However, if words are vague (e.g., "I was uncomfortable") ask for specifics.



• Conducting Interviews

Listening tips:

- It is important to allow the parties to speak at length since the initial conversation will often be an "information dump"
- The "information dump" will often be abridged and lacking in both clarity and definition – be listening for points that require additional information (through questioning)
- Pausing the conversation for clarity can be appropriate and used to confirm that you are objectively taking in their information.



• Conducting Interviews

Listening tips:

- Positively repeating a statement can also be helpful as it confirms to the party that you are indeed listening
- Affirming a response with a nod can encourage a party to continue; however, be careful not to indicate that you agree with what they said.
- If the interviewee becomes overly repetitive, redirect to issues not yet covered.



• Conducting Interviews

Listening tips:

- Be cognizant of indicators that you are not listening or taking a party seriously. Examples of such behaviors include:
 - Distractions like cell phones, watches, and computers
 - Nervous behaviors such as foot tapping, pen clicking, playing with one's hair, etc.
 - Thinking about the next question
 - Making personal statements



• Conducting Interviews

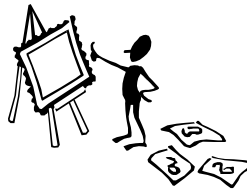
Questioning Skills:

- ATIXA offers a helpful guide for asking questions –
 1. What do I want to know?
 2. Why do I want to know it? (relevance)
 3. Is now the best time to ask it?
 4. What is the best way to ask it? (directly or indirectly)
 5. Am I the best person to ask it? (if there are two investigators)



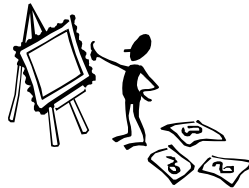
• Conducting Interviews

Begin with easy, **open-ended questions** to allow the party to share their perspective in a way that makes the most sense to them. Encourage people to start at the beginning of events in order to provide the fullest context (e.g., tell me what happened that night), but don't insist on it if they want to start in the middle (or end).



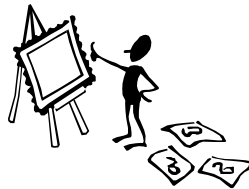
• Conducting Interviews

Closed-ended questions allow the investigator to gather details and specifics surrounding events, as well as to seek definitions of subjective terms used by the parties (e.g., What time did you arrive at the party? Who did you see when you walked in? What do you mean by “hooking up”?).



• Conducting Interviews

A return to **open-ended questions** then aids the investigator in understanding factors such as effects of specified behaviors, intentions of their statements and/or acts, and to understand motivations behind a party's decisions or actions (e.g., why did you decide to leave the party at that time?). Avoid **VICTIM-BLAMING** (e.g., why didn't you just leave?)



• Conducting Interviews

Questioning tips:

- Set parameters, but don't be too specific
 - "We have been informed that (Respondent) may have (alleged conduct) (Complainant) (context if needed). We are interviewing anyone who may have information about this situation."
 - "What can you tell me about that night?"



• Conducting Interviews

Questioning tips:

- Set parameters, but don't be too specific
 - Try not to divulge statements/evidence provided by parties or other witnesses. Corroboration/refutations must be freely given. This may change, however, depending on the circumstances; if given a refutation, you may respond, e.g., "I have already talked to three other witnesses who said you were there when (the incident) happened. Why do you think they would say you were there if you were not?" (Be careful: You don't want to imply you don't believe them, but give them an opportunity to be more honest.)



• Conducting Interviews

Questioning tips:

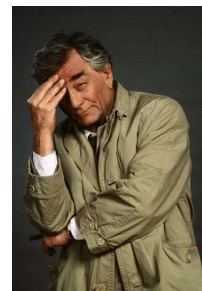
- Start with general, easy questions—it builds confidence and rapport
- Avoid yes/no questions
- Avoid multi-part questions
- Be patient; e.g., “Do you remember what happened next?”



• Conducting Interviews

Questioning tips:

- Seek input in non-threatening ways
 - “Help me understand.....”
 - “Would you be willing to show me.....”
 - “So it sounds like...”
 - “Tell me more about...”
 - Be sincere, but don’t rule out the Columbo approach; e.g., “I’m having a hard time picturing exactly who was where at the time.....”



• Conducting Interviews

Questioning tips:

- Avoid pinning down a timeline too early, but by the end of the interview, you want a chronology of events from their perspective
- Avoid “confirmation bias” by presuppositions or early impressions
- Avoid pointing out inconsistencies or apparent implausibility of accounts - save this is for your follow up interview and analysis



• Conducting Interviews

Questioning tips:

- Avoid only gathering some of the information because you're uncomfortable; use clear terminology, not euphemisms. (What exactly do you mean by “sex”?)
- Clarify terms and conditions; e.g., “drunk,” “high,” “hooked up,” “friends with benefits.”



• Conducting Interviews

Questioning tips:

- Don't allow interviewees to provide ambiguous answers or not fully answer the question (e.g., "you said you were buzzed when you got there. How much alcohol or drugs had you consumed?")
- Avoid leading questions (e.g., "Are you saying John lied when he said that?")
- Feel free to seek SECO/OGC guidance for a baseline set of questions
- ALWAYS end with, "is there anything else you want to tell me or that I should know?"



• Conducting Interviews

Interviewing Primary Parties (Complainant and Respondent):

- Strive for equitable treatment in your interactions with the parties
- Acknowledge that a complainant may be experiencing the effect of a traumatic event, but understand that you cannot diagnose whether or not trauma is present
- Expect some minor inconsistencies (non-consequential) in stories and that parties may not tell their stories in sequence
- "Facts" can also be subjective; "how did you feel when...", "Did you smell anything...."



• Conducting Interviews

Interviewing Primary Parties (Complainant and Respondent):

- If emotional, ask if they would like to take a break
- Don't try to "fix" their emotions; they are allowed to be angry, to cry, etc. However, try to bring them back to their story in a confirming way; e.g., "you must have been very confused at that point...what else do you remember?"
- If any party is uncooperative, remind them that it is in their best interest to ensure you have all the facts (employees MUST cooperate and be truthful)



• Conducting Interviews

Interviewing Primary Parties (Complainant and Respondent):

- Don't let them pull you into the fray; you are only a neutral fact finder
- Ask for witnesses or other corroboration of their account; e.g., "Who else might have heard you say that?" "Who did you talk to after that happened?"
- If evasive, ask questions out of sequence; a "rehearsed story" typically has to start at the beginning
- If multiple parties/witnesses tell the "exact" story, probe further for specifics they may not have rehearsed (find the "holes")



• Conducting Interviews

Interviewing Primary Parties (Complainant and Respondent):

- Don't say:
 - It's going to be okay
 - I know what you're going through
 - It could have been worse
 - Questions starting with "why" – these questions often come across as accusational and judgmental and prompt defensiveness in those being questioned



• Conducting Interviews

When using video/audio technology to conduct interviews (Skype, Facetime, telephones, etc.):


- Be certain to log into your account and test your equipment prior to the interview; be sure to ask the party being interviewed to do the same
- Ask any parties in the room with the party to identify themselves for the record. Any limitations that apply to the number of advisors also apply to video interviews.
- Be clear that the party being interviewed (and their advisor) are not permitted to record the interview



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Interview with Party A

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Case Study

Process Interview (within small groups)

- How did investigators feel about the process and the questions?
- How did Cindy feel about the process and the questions?
- What did the observers note about the interview process?

We will allow five minutes for small group processing and then conduct a large group discussion.



Case Study

Large Group discussion

- How did investigators feel about the process and the questions?
- How did Cindy feel about the process and the questions?
- What did the observers note about the interview process?



- Today's Agenda:
 - Conducting Interviews and Evidence
 - Case Study Part Three
 - Standards of Evidence
 - Credibility Determinations
 - Case Study Part Four



• Conducting Interviews

Types of Evidence – Investigators will encounter the following types of evidence:

1. Direct Testimony – from people involved and/or present in the event(s) being investigated
2. Circumstantial Evidence – physical evidence that often carries some inferences about the event(s) being investigated (intrinsicly carries the same value as direct testimony)
3. Hearsay – helpful in identifying other sources of information
4. Expert – from subject matter experts who help us evaluate evidence
5. Character – of little to no value in determining what happened



• Conducting Interviews

Sources of Information – Investigators will often seek information from the following sources:

- Physical evidence (e.g., phone records, photos, text messages, audio recordings) – Caution: These may be altered!
- Interviews v. written statements; do you allow interviewees to review summaries?
- Computer searches – really necessary?
- Social media
- Corroboration by witnesses - Consider alliances; why would this person support one side or the other? This may be important in a credibility analysis.



• Conducting Interviews

Impasse – At some point during the interview you may come across a roadblock or impasse where the interviewee chooses not to proceed. The following concepts can be used to overcome such situations:

- Remain patient and allow the circumstance to “breathe.”
- Use hypotheticals that are non-threatening and minimize perceived threats. (e.g., “if someone wanted to buy some marijuana, where do you think they would go?”)
- Rephrase or revisit the line of questioning when the situation has calmed down. (e.g., “I heard you say Chris walked you to the door. Did he go outside with you?”)



• Conducting Interviews

Impasse – At some point during the interview you may come across a roadblock or impasse where the interviewee chooses not to proceed. The following concepts can be used to overcome such situations:

- Consider scheduling a follow up interview to give them time to decide whether or not to cooperate
- Consider whether the presence of the second investigator (or you) may be discouraging the free flow of information



• Conducting Interviews

- Prior to concluding the initial interview, the subject should be asked for a list of relevant witnesses/documentation for consideration
- Advise how the interviewee can contact you if they have further information to share
- Tell them that upon collection of additional information, you may want to talk with them again
- You **will/will not** share a summary of the interview for comments/correction (hint: you **should**)



Record Keeping

Investigatory Records:

- a) Interview Notes (free style notes and interview summaries)
- b) Interview Recordings (audio/video)
- c) Emails and text messages to/from investigator
- d) Exhibits

Unless a preservation hold has already been put in place by OGC, “a” through “c” above exist solely for the purpose of creating exhibits and writing an investigative report. Once the case has been resolved (withdrawn, adjudicated, or appealed) these materials are to be securely disposed of. An Interview Summary form is being created to provide a pre-formatted exhibit for each interview conducted.



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Evidence Collection

All evidence that is directly related to the complaint will be maintained electronically. This includes, but is not limited to:

- The Investigative Report
- Exhibits, including party responses to the Final Draft Report
- Documentary Evidence (police reports, witness statements, text messages, social media posts, photos, videos, etc.)
- All case-related correspondence (official letters, substantive party communications) beginning with the initial complaint up through the final investigative report and its communication to the designated administrator (we strongly encourage you to communicate electronically whenever possible; when conversations about the process occur in person (outside of interviews) or on the phone, you should memorialize that communication with a memorandum to the file.



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Evidence Collection: What goes in the report and exhibits?

REPORT will contain: ALL evidence relevant to the complaint (inculpatory and exculpatory)

EXHIBITS will contain: ALL EVIDENCE relevant to the complaint and ALL EVIDENCE directly related to the complaint that the investigator(s) determines is not relevant


NOTES will contain: ALL information collected, including evidence that is neither relevant nor directly related to the complaint – information deemed by investigators to be not related and not relevant will not be included on the Interview Summary form completed for each interview

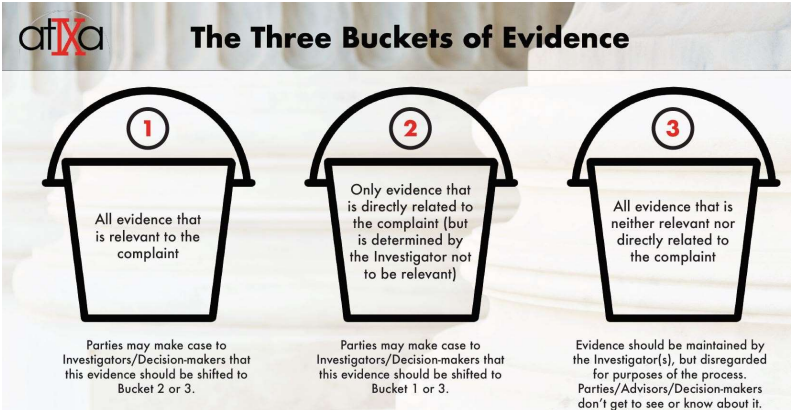
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When Parties Provide Feedback on Final Draft Report:

 **The Three Buckets of Evidence**



1
All evidence that is relevant to the complaint

Parties may make case to Investigators/Decision-makers that this evidence should be shifted to Bucket 2 or 3.


2
Only evidence that is directly related to the complaint (but is determined by the Investigator not to be relevant)

Parties may make case to Investigators/Decision-makers that this evidence should be shifted to Bucket 1 or 3.

3
All evidence that is neither relevant nor directly related to the complaint

Evidence should be maintained by the Investigator(s), but disregarded for purposes of the process. Parties/Advisors/Decision-makers don't get to see or know about it.


Adapted from ATIXA

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It's time for everyone's favorite game show...



Which Bucket Does the Evidence Go In?

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Civil Rights Investigation Training - Supplemental


Evidence Collection: What goes in the report and exhibits?

WHICH BUCKET?

A respondent in a sexual assault case provides photos taken on his phone to seek to establish that at the time of the alleged incident he was actually several blocks away drinking with some friends.

Which "bucket" does it go in?

BUCKET #1: The investigators determine that the evidence is relevant to the allegations in the complaint and if corroborated would tend to be exculpatory. The material is attached to the Interview Summary and included in the investigation report.

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Evidence Collection: What goes in the report and exhibits?**WHICH BUCKET?**

A complainant in a dating violence submits emails written by the respondent months before the alleged incidents that speak to the respondent's family history, including information about a controlling and manipulative parent. In the email the respondent indicates a concern about becoming "like" that parent and tells the complainant that they are going to get counseling.

Which "bucket" does it go in?

BUCKET #2: In this case, the investigators decide that although the emails might relate to the allegations, as they spoke to behaviors similar to what the complainant alleges, the material is not directly related to the allegations as they do not make the allegations any more or less likely to be true. They are included with the Interview Summary form (which is an exhibit) but not referred to in the investigation report.

Evidence Collection: What goes in the report and exhibits?**WHICH BUCKET?**

A witness in a stalking complaint details an interaction that they had with the respondent, in which the respondent acted in a manner that they describe as "creepy." There is no direct connection to the incidents under investigation, nor are the behaviors described related to the behaviors described in the complaint.

Which "bucket" does it go in?


BUCKET #3: In this case, the investigators decide that the behavior is completely unrelated to the complaint and that its inclusion would only serve as unfairly prejudicial against the respondent. The information is recorded in the investigator's notes, but not included in the Interview Summary (exhibit).



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Case Study

Interview with ???

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Civil Rights Adjudication Training

Standards of Evidence


Beyond a Reasonable Doubt...


Meaning: No other logical explanation can be derived from the facts except that the defendant committed the crime for which they are charged, thereby overcoming the presumption that a person is innocent until proven guilty.

~ 90-99% certainty

Where do we use this in society, and why?

Do we use this in the 08.01.01 process? If so, where?



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Civil Rights Adjudication Training

Standards of Evidence


Clear and Convincing Evidence...


Meaning: The party must present evidence that leaves you with a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true.

~ 67-75% certainty

Where do we use this in society, and why?

Do we use this in the 08.01.01 process? If so, where?



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Civil Rights Adjudication Training

Standards of Evidence


Preponderance of the Evidence...


Meaning: What is more likely than not to be true, based on probable truth or accuracy. There is neither a presumption of guilt, nor a presumption of innocence.

50.1% + certainty

Where do we use this in society, and why?

Do we use this in the 08.01.01 process? If so, where?



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Civil Rights Adjudication Training

Standards of Evidence


Substantial Evidence (Probable Cause)...


Meaning: Reasonable grounds for making a search, making an arrest, or pressing a charge.

~ 40% + certainty

Where do we use this in society, and why?

Do we use this in the 08.01.01 process? If so, where?



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Civil Rights Adjudication Training

Standards of Evidence


Reasonable Suspicion (Notice)...


Meaning: Specific facts (more than a “hunch” or a “scintilla” of evidence) that justify further investigation.

~ 25% + certainty

Where do we use this in society, and why?

Do we use this in the 08.01.01 process? If so, where?



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Civil Rights Adjudication Training

Standards of Evidence

Uses of Evidentiary Standards (conduct and civil rights)

1. Notice and Gate-keeping (Reasonable Suspicion)
2. Bringing a charge (Substantial Evidence)
3. Finding a violation (Preponderance of the Evidence)
4. Determining appeals (Preponderance of the Evidence, with presumption that original decision is correct)



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Civil Rights Adjudication Training

Credibility Determinations

How can you determine if someone is a credible/truthful source of information?

Many rely on their "gut" (sometimes referred to as a "BS Meter"); but what does this mean?

Credibility comes down to:

- Persuasiveness
- Relevance
- Reliability
- Bias



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Civil Rights Adjudication Training

Persuasiveness

A person is persuasive if:

- their story is believable
- their story is not countered by more persuasive accounts
- their story is able to sustain challenges

Persuasiveness is not about the number of witnesses corroborating information, but rather the quality of the witnesses corroborating information



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Relevance

A person is considered relevant if:

- their story related to the substance of the allegations (party to, witness of, knowledge before or after the fact, or patterns of behavior)
- it is of sufficient value to matter in the determination of a finding of fact
- be offered by an individual with actual knowledge of the substance of the allegations and is not hearsay

Relevance relates to the specific incident in question and not “like” incidents; we are not interested in comparing apples to oranges, nor even apples to other apples; we only have an interest in a single apple.

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Reliability

A person is considered relevant if:

- their story is consistent (or complementary) over multiple tellings
- it is of sufficient value to matter in the determination of a finding of fact
- be offered by an individual with actual knowledge of the substance of the allegations and is not hearsay

Relevance relates to the specific incident in question and not “like” incidents; we are not interested in comparing apples to oranges, nor even apples to other apples; we only have an interest in a single apple.

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Bias

All people are biased. In providing information, it is important to own the bias that is present and to minimize its impact on the relaying of information.

For our purposes, we are concerned about three types of bias

- Bias towards or against people involved in the incident by a reporter of information
- Bias towards or against subject matter involved in the incident by a reporter of information
- Bias brought into a hearing by an adjudicator

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Bias

Bias towards or against people involved in the incident by a reporter of information:

- What is the relationship between the reporter of information and the parties involved?
- What is the relationship between the reporter of information and the institution?
- While having a relationship with parties involved in an incident does not suggest that the person will be deceitful to aid or hurt the person's case, it may well "color" the person's recollection of the incident. Adjudicators can and should inquire about the strength of the relationship and seek to ask questions about portions of the incident that people may be less likely to prepare in advance.

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Bias**Bias towards or against subject matter involved in the incident by a reporter of information:**

In some instances, people's perceptions may be impacted by a bias regarding the conditions of the incident. Rather than trying to mislead an investigator, some reporters of information simply rely on assumptions about the people or circumstances involved in an incident, based on their own biases. When investigators hear people speaking in general terms about a situation, they should test the person's re-telling with more specific questions.

It is important to seek definitions on terms such as:

"Hooked up"	Stalking
"Creepy"	Dating
"Had sex"	Abusive

Whenever reporters of information express strong feelings about a topic, it is important to seek to differentiate their feelings from their observations and/or involvement.

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Bias**Bias brought into an investigation by an investigator:**

Adjudicators are supposed to be "impartial", yet there is no such thing as pure objectivity in human beings. As an adjudicator, it is important to be aware of the issues that serve as "hot buttons" for you and provoke emotional responses. Be cognizant of your bias as you hear the case, or in exceptional circumstances ask to be removed from the case.

Additionally, one common short-coming of adjudicators and appellate officers is their manufacturing of possible alternatives when attempting to arrive at a conclusion. Instead of listening to the information presented and weighing it appropriately, a common temptation is to begin "supposing" about what took place by introducing facts not offered by the parties or witnesses. It is critical that adjudicators only utilize the information provided to them in reaching a conclusion.

When we refer to "facts in evidence," we mean those provided by the parties, the witnesses, or by the physical evidence.

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Case Study

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Interview with ???

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- Parking Lot

Are there questions about any of the material covered so far?

