



Online Course

# Conducting Effective Internal Investigations

## Module 1: Introduction

**Emily Babb**, Associate Vice President for Civil Rights & Title IX Compliance,  
Northwestern University

**Kendall Isaac**, VP, General Counsel & Secretary of the University,  
Clark University

**Alexandra Mitropoulos**, Senior Counsel, Hirsch Roberts Weinstein LLP

01

Introduction  
and Course  
Outline

02

Types of  
Investigations

03

Value of Good  
Investigative  
Practices

# Agenda

01

# Introduction and Course Outline



# Purpose of the Course



Providing guidance for best practices in conducting any type of internal investigation.

# Course Overview

Module 1: Introduction

Module 2: Pre-Investigation Considerations

Module 3: Receiving and Evaluating a Complaint

Module 4: Interviews: Logistics, Who to Interview, and How to Interview Effectively

Module 5: Gathering Evidence

Module 6: Weighing and Evaluating Evidence

Module 7: Report Writing

Module 8: You're Done – Now What?

# 02

## Types of Investigations



# Categories of Investigations



Employee Discrimination



IP Theft



Academic Integrity



Research Misconduct



Athletics Compliance



Tenured Faculty Discipline



Financial or Time Fraud



Student Conduct



Privacy and Data Breach



# Student Conduct Investigations

- Title IX – Sexual Misconduct or Gender Based Harassment
- Title VI – National Origin
- Title VI – Race
- Equity – other discriminatory behavior
- Student Code of Conduct Violations
- Bullying/Hazing
- Student Organizations/Clubs

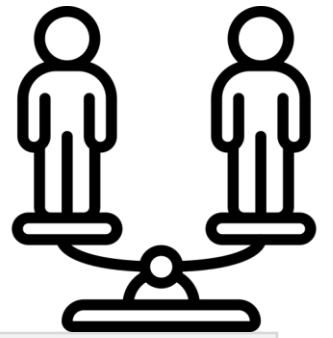


# 03

## Value of Good Investigative Practices



# Ensuring a Fair Process for All



- For Public Institutions: Importance of procedural due process
  - Property Interest: notice and opportunity to be heard
  - Liberty Interest: name-clearing hearing
  
- For Private and Public Institutions:
  - Policy (and applicable regulatory framework and court decisions) determines how much process is due

# Due Process Considerations

- Substantive due process: decision-making is not arbitrary or capricious
- Judicial deference for internal administrative investigations
- Effective management

# Litigation Considerations

## Contract Claims Continue to Slip Through....:

- ❑ Doe v. Brandeis (D. Mass Feb. 2023)
- ❑ Doe v. Stonehill (1st Cir. Dec. 2022)
- ❑ Doe v. Princeton Univ. (3rd Cir. Mar. 31, 2022)
- ❑ Doe v. Williams (D. Mass Mar 2021)
- ❑ Doe v. George Washington University (D.D.C. Dec. 20, 2018)

# Parting Comments

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Online Course

# Conducting Effective Internal Investigations

## Module 2: Pre-Investigation Considerations

**Emily Babb**, Associate Vice President for Civil Rights & Title IX Compliance,  
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**Kendall Isaac**, VP, General Counsel & Secretary of the University,  
Clark University

**Alexandra Mitropoulos**, Senior Counsel, Hirsch Roberts Weinstein LLP

# Pre-Investigation Considerations

- Safety
  - Determining and implementing appropriate interim measures
    - Consider the interests of the parties
    - Consider the impact on the campus
- Preservation of Evidence
  - Notification obligations
  - Document retention
  - Records access
- Access to Evidence and Privacy





# Pre-Investigation Considerations

- Concurrent Investigations
  - University, city, state and/or federal policing agencies
  - Administrative agency/government investigators
- Community Relations
  - Campus constituent inquiries and interest
  - Media inquiries
  - Marketing and communications
  - Alumni affairs
  - Admissions

# Privilege Considerations

- Notifications
  - Administrative leadership
  - Insurer
  - Administrative agencies
- Choosing an Investigator
  - Internal vs. External
  - Public vs. Private university
  - Retaining the investigator and case oversight



# Investigator Considerations

- Type of case and relevant law(s)/institutional policy(ies)
- Status of the parties
- Investigator background, skill and training
- Conflict of interest and bias considerations
- Educating the Investigator
- Empowering the Investigator
- Setting the Strategy and Plan
- Communication Intervals



# Questions?

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Online Course

# Conducting Effective Internal Investigations

## Module 3: Receiving and Evaluating a Complaint

**Emily Babb**, Associate Vice President for Civil Rights & Title IX Compliance,  
Northwestern University

**Kendall Isaac**, VP, General Counsel & Secretary of the University,  
Clark University

**Alexandra Mitropoulos**, Senior Counsel, Hirsch Roberts Weinstein LLP

01

Evaluating  
the  
Complaint

02

Confidentiality  
v.  
Transparency

03

Notice

04

Interim  
Measures  
and Other  
Considerations

# Agenda

01

# Evaluating the Complaint





# Receiving a Complaint

- Written Complaint
  - Online Form
  - Mailed
- Verbal Complaint
  - Phone call
  - Hotline
- In Person
  - From the Impacted Individual/Complainant
  - From Mandatory Reporter/Responsible Employee
  - From Law Enforcement
  - From Other Individual/Whistleblower

# Evaluating the Complaint

- Determine what laws, policies, procedures or practices may apply
- Consider the following:
  - Alleged conduct
  - Where the conduct occurred
  - When the conduct occurred
  - Affiliation of involved individuals
- Any additional information needed to evaluate the complaint
- Prior complaints involving parties
- Any pending investigations involving same/similar facts or same/similar parties

**Should the complaint be accepted?**

# Evaluating the Complaint

- **If the Complaint is accepted:**

- What office is responsible?
- Notify the impacted individual?
- Who determines whether to open an investigation?

- **If Complaint is NOT accepted**

- Notify the impacted individual?
- Notify the reporting party?
- Refer to another office?
- Provide support resources?

# Hypothetical

The Department Chair submits a written report through ABC University's online reporting form. The Compliance Department receives the report. The Department Chair writes that during a recent search for a tenure track position some odd things happened and they are not sure what to do. Three candidates – Kevin, Harry, and Marv – were brought to campus for interviews. During the interviews a colleague made rude, dismissive comments to the two older candidates (Harry and Marv), saying this department has too many “old fogies” and we need “fresh meat.” During Harry and Marv's presentations for the Department, the same colleague laughed and said, “This is antiquated research! It's not even accurate in 2024!” Harry and Marv appeared uneasy during their interviews. After the on-campus interviews, the Department Chair receives an anonymous email about Kevin, alleging that he fabricated his research, abused lab animals, and had a relationship with a student at a prior institution. The Department Chair does not provide the identity of the colleague who made the comments.

The Search Committee is meeting next week. The department is divided on which applicant should receive the position. The Department Chair wants to know what they should do.

02

# Confidentiality v. Transparency



# Confidentiality v. Transparency

Tension between maintaining privacy and assuring fair process

Law and  
Policy

FERPA

Privilege/work  
product

Public  
Records

Case Type  
Specific Rules

# Confidentiality v. Transparency

- **Law and Policy**

- State Law Requirements
- Title IX
- Title VI

- **FERPA**

- Should your process include FERPA release?

- **Privilege/Work Product**

- **Public Records/Government Agencies**

- Open Records Act
- Dept. of Ed., EEOC, etc.
- Congressional Inquiry

- **Case Type Specific Rules**

- Research Misconduct
- NIH/NSF Disclosure Requirements

03

Notice





# Notice: Notify Respondent/Parties

- Method of Notification
  - Verbal
  - In writing
    - Letter
    - Email
- Notify Respondent(s), Complainant(s) or both?



# Notice: Notify Respondent/Parties

- Information to include:
  - Summary of allegations
  - Potential policy violations
  - Overview of process
  - Right to an Advisor
  - Preservation of evidence
  - Investigator(s)
  - Challenge for bias/conflict of interest
  - Any available resources
  - Prohibition against retaliation
- Timing – Any rights triggered by notification?
  - Faculty Handbook
  - Student Code of Conduct
  - Collective Bargaining Agreement
- Any required disclosures?

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# 04

## Interim Measures and Other Considerations



# Interim Measures

- What is the purpose?
- Who has the authority to impose?
- Who should be consulted in decision?
- Are these the same as Title IX “supportive measures”?
- Types of circumstances that might warrant an interim employment/academic suspension?
- For employment, with or without pay?
- For academic, refunds for tuition?

# Interim Measures - Process

- What information is shared with Respondent?
- What information is shared with Complainant?
- What factors are considered?
- Is there an appeal right and to whom?

# Other Considerations - Amnesty

"University encourages reporting of discrimination, harassment, and sexual misconduct and participating in resolution processes and seeks to remove any barriers to making a report or participating in a process. The University recognizes that an individual who has been consuming alcohol (including underage consumption) or using drugs at the time of the incident may be hesitant to make a report because of potential consequences for that conduct. To encourage reporting, an individual who makes a good faith report of discrimination, harassment, or sexual misconduct that was directed at them or another person or participates in an investigation as a witness or party will not be subject to disciplinary action by the University for a conduct or policy violation for personal consumption of alcohol or drugs that is related to and revealed in the report or investigation, unless the University determines that the violation was serious and/or placed the health or safety of others at risk. However, this does not extend to the distribution, sale, or otherwise providing another individual with alcohol or drugs for the purposes of inducing incapacitation. This Amnesty provision does not preclude or prevent action by police or other legal authorities. This Amnesty provision may also apply to student groups making a report of discrimination, harassment, or sexual misconduct."

# Other Considerations - Amnesty

- Amnesty from what?
  - Other policies
  - Alcohol or other drugs
- Factors to consider
- Decisionmaker/process



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**Module 4: Interviews: Logistics, Who to Interview, and How to Interview Effectively**

**Emily Babb**, Associate Vice President for Civil Rights & Title IX Compliance,  
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**Kendall Isaac**, VP, General Counsel & Secretary of the University,  
Clark University

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01

Interview  
Logistics

02

Participation by  
Parties and  
Witnesses

03

Amnesty  
and  
Required  
Disclosures

04

Conducting  
the Interview

05

Other  
Considerations

# Agenda

01

# Interview Logistics



# General Considerations and Logistics

**Scheduling**

**Recording/Notes**

**Location**

**Accessibility**

**Technology**

**Advisors**

# Scheduling

# Location

# Technology

Dear (PARTY), ¶

¶

I am following up to the Notice of Investigation you received on (DATE). I am one of the assigned investigators on your complaint/s, and my co-investigator (CO) is cc'd as well and we are writing to schedule an interview with you. Based on our calendars, we have the following times available next week via Zoom: ¶

¶

PROVIDE TIME AVAILABILITY WITH EXPECTED WINDOW (i.e. "any two hour window") ¶

¶

- → Date/time ¶
- → Date/time ¶

¶

Please let me know if any of those dates and times are convenient for you. If you are unavailable during those dates and times, please let me know if you are available later during the week of (COMING WEEK). We're anticipating (X-TIME) for the initial interview. ¶

¶

If you would prefer to meet in person, please let us know. Please note, that may shift our availability and if so, we will send you additional times. ¶

¶

# Recording/Notes

# Accessibility

# Advisors

(Student), once we send a calendar invite you can feel free to forward the invitation to an advisor if you plan to use one for your interview. As a reminder, an advisor is a support person who may be present to provide support to a party throughout an investigation and/or hearing; however, an advisor may not speak, write, or otherwise communicate with an investigator on your behalf. You will need to complete a release form prior to that meeting that would allow your advisor to attend. As you'll see in the form, you can choose how much access you want to provide. ¶

¶

[LINK TO RELEASE FORM](#) ¶

¶

OR ¶

¶

(Faculty/Staff), once we send a calendar invite you can feel free to forward the invitation to an advisor if you plan to use one for your interview. As a reminder, an advisor is a support person who may be present to provide support to a party throughout an investigation and/or hearing; however, an advisor may not speak, write, or otherwise communicate with an investigator on your behalf. Please complete the following form prior to that meeting to let us know who will be acting in that role. As you'll see in the form, you can choose how much access you want to provide. ¶

¶

[LINK TO RELEASE FORM](#) ¶

¶

Last, it is [OFFICE NAME] practice to record interviews when the interviewee consents to being recorded. We are happy to explain to you the reasons why recording interviews is a best practice. Before beginning the recording during an interview, we will ask for your consent and let you know we have begun recording. However, if you decline to be recorded, we will instead take notes during the interview. ¶

¶



# 02

## Participation by Parties and Witnesses



# Participation by Parties

- Reasons for not wanting to participation?
  - Discuss prohibition on retaliation
  - Ensure the barrier to participation is not within the institution's control (e.g., amnesty)
- Is the party *required* to participate?
- Make decision based on available evidence
  - Should you draw an adverse inference from a decision not to participate?
  - Can you?
  - Must you?

# Participation by Witnesses

- Witness fails to respond to interview request
- Witness declines to participate in interview
  - Fear of retaliation?
  - Concern about own misconduct?
- How to respond if a party asks that a particular witness not be interviewed or contacted
  - What should you consider?
- How else could you obtain the information if the witness does not participate?

# 03

## Amnesty and Required Disclosures



# Amnesty

- Amnesty from what? Other policies, Alcohol or other drugs
- Factors to consider and Decisionmaker/process

**Question 62: Is a school permitted to have an amnesty policy as a way to encourage reporting of sexual harassment?**

Answer 62: Yes. The preamble notes that “[t]he Department is aware that some schools have adopted ‘amnesty’ policies designed to encourage students to report sexual harassment.”<sup>207</sup> Under these policies, “students who report sexual misconduct (whether as a victim or witness) will not face charges for school code of conduct violations relating to the sexual misconduct incident (e.g., underage drinking at the party where the sexual harassment occurred).”<sup>208</sup> “Nothing in the [2020 amendments] precludes a [school] from adopting such amnesty policies,” and schools retain broad discretion to adopt such amnesty policies or to otherwise define retaliation more broadly than in the regulations.<sup>209</sup>

More generally, schools should keep in mind that the 2020 amendments require that a school’s Title IX grievance process treat complainants and respondents equitably.<sup>210</sup>

<https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>

# Other Required Disclosures

- If University Counsel, disclose that you represent the organization/institution and not the individual?
- Public employer should consider providing *Garrity* warning prior to requiring an employee to answer questions if answering the question may put the employee at risk of self-incrimination
- Any rights secured under a Collective Bargaining Agreement (CBA) (e.g., Weingarten Rights)

# 04

## Conducting the Interview



# Conducting the Interview

**Understand Purpose**

**Develop Questions**

**Who to Interview**

**Questioning**

**Order of Interviews**

**After the Interview**



# Understand the Purpose

- Establish a narrative and timeline of events – get the facts!
  - All inculpatory and exculpatory?
- Gather information to answer key questions
- Clarify conflicting information
- Corroborate information
- Understand how all parties perceived the events, incident, or conduct

# Who to Interview

- Parties
  - Complainant
  - Respondent
- Witnesses affiliated with University
  - Employees
  - Students
  - Contractors
  - University Police
- Witnesses Unaffiliated with University
  - Visitors
  - Guests
  - Parents
  - First Responders/Medical Personnel
- Expert Witnesses

# Order of Interviews

- What information do you need before you can interview another party or witness?
- Consider whether you will need to interview a party or witness more than one time
- Do you need to gather specific evidence *before* an interview?

# Develop Questions

- Outline v. Specific Questions
  - Consider follow up questions
- Ask for other sources of relevant evidence – witnesses, documents, etc.
  - Who would have more information about...?
  - Is there anything else you want to share?
  - Is there anything you thought I would ask but did not?
- Questions about impact or desired outcome?

# Introduction

1. Set the tone
2. Develop rapport – put the individual at ease
3. Explain your role – neutral, no conclusion has been reached
4. Offer paper copy of policy or where to find policy online
5. Explain the steps in the process
6. If Party and advisor is permitted (a) confirm the accompanying individual is their advisors or (b) if no advisor that they are comfortable proceeding without one

# Introduction

7. Explain prohibition against retaliation
8. Explain amnesty, if applicable
9. Discuss confidentiality/privacy/information security
10. Tell the witness it is important to be truthful, accurate, and complete
11. Discuss available resources and support
12. Tell the witness that if they need a break at any time to let you know

# If you are recording...

- State the date, time, and who is present – say and spell names
- Ask for consent before beginning to record and again confirm/ask on the recording
- Consider what to do if someone asks to go “off the record”
- Begin rapport building questions before recording
- Ask the interviewee to respond verbally

# Dos and Don'ts

## DO:

- Remain impartial
- Keep a neutral demeanor
- Keep an open mind
- Ask relevant questions that are specific to the incident

## DON'T

- Make premature conclusions
- Allow personal biases, belief system, stereotypes to guide your questioning
- Badger the witness
- Ask accusatory questions/blame the victim
- React to what the witness is saying



# Top 10 Tips for Good Questioning

1. Ask open ended questions
2. Listen more than talk
3. Give time to answer
4. Don't interrupt
5. Be comfortable with silence
6. Be prepared with documents, etc.
7. Don't assume facts
8. Use appropriate tone
9. Avoid questions that imply judgment
10. Avoid compound questions

# Questions to Use

- **“WHAT”** questions → Ask for facts or details
  - “What did you see at the football game?”
  - “What do you recall about the statistics class?”
- **“HOW”** questions → Ask questions about the process, sequence of events or focus on emotions?
  - “How did you get from the party to your room?”
  - “How did you feel when your roommate...?”
- Closed **“WHO/WHEN/WHERE”** → Ask for specifics
  - “Who was in the lab with you?”
  - “When did you meet with your supervisor?”
  - “Where did the professor touch you?”

# Questions to Avoid

- Avoid **“WHY”** questions
  - “Why were you dressed as a sexy pirate?”
  - “Why didn’t you tell your PI your classmate touched you?”
- Avoid **Multiple Choice** questions
  - “Did you go to the bar, the football game, or the meadow?”
  - “Did Respondent kiss you on the neck, the breast, or the mouth?”
- Avoid **Conclusory** questions
  - “When you went to the bar, you drank how many drinks?”
  - “It took you five minutes to walk 3 miles to your apartment?”
- Avoid **Leading** questions
  - “Were you upset your supervisor changed?”
  - “Did Sally’s FMLA leave interfere with your work?”

# Some useful phrases

- Would you be willing to tell me more about...?
- How did you feel about...?
- What did you do after...? What happened next?
- What did you mean when you said...?
- What was your reaction to...?
- How did you become involved in...?
- How did you learn about...?
- What is your understanding of...?

# Concluding the Interview

**THANK**

Thank the party/witness

**REMIND**

Remind them of the institution's prohibition against retaliation

**INFORM**

Inform parties (or witnesses) of next steps

**DISCUSS**

Discuss confidentiality/privacy again

# After the Interview

- Send the recording for transcription **OR** type the interview summary
- Review the interview notes/recording/transcript
- Have you identified any new witnesses?
- Do you need to gather additional evidence?
- Do you have any follow-up questions?
  - For the interviewee or others?
- What do you know? Are there undisputed facts?

# 05

## Other Considerations



# Thoroughness/Efficiency

- How many witnesses to interview?
- How many attempts to interview witnesses?
- How many attempts to receive information?
- When to stop?





# Interviewing High Level Management Employees



Legal  
Representation



Influence



Neutrality

# Interviewing Police

- As a witness in a non-criminal matter
- When investigating alleged misconduct by law enforcement
- As an expert witness
- To verify evidence



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## Module 5: Gathering Evidence

**Emily Babb**, Associate Vice President for Civil Rights & Title IX Compliance,  
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Clark University

**Alexandra Mitropoulos**, Senior Counsel, Hirsch Roberts Weinstein LLP

01

Corroborating,  
Direct, and  
Circumstantial  
Evidence

02

Types of  
Evidence  
and Evidence  
Collection

03

Evaluating Evidence:  
Relevance and  
Authenticity

# Agenda

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**evidence** *n.* (14c) **1.** Something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact; anything presented to the senses and offered to prove the existence or nonexistence of a fact

EVIDENCE, Black's Law Dictionary (12th ed. 2024)

01

Corroborating, Direct,  
and Circumstantial Evidence





## Direct Evidence

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

## Circumstantial Evidence

- Evidence based on inference and not personal knowledge or observation

## Corroborating Evidence

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

# Hypothetical

Complainant Harper has brought a complaint of sexual assault against Respondent Sam. Harper alleges that Harper was "blacked out" and therefore incapacitated when Sam helped Harper return to Harper's dorm room after returning from an off-campus bar where they had been drinking, and that Harper had no recollection of engaging in sexual intercourse with Sam, and therefore, could not have consented. Sam denies that the intercourse was non-consensual.

During the course of the investigation, you collect several key pieces of evidence including:

- **Video Evidence** from the elevator in Harper's building, showing a slumped over Harper being carried by Sam into and out of the elevator;
- **Text Messages** from Harper to her friend, Sandy, the morning after the incident, stating that she was undressed in her bed and that she had no recollection of how she got home; and
- **Snapchat photos and videos** of Sam and Harper drinking together at the bar.

# 02

## Types of Evidence and Evidence Collection



# Types of Evidence You May Collect

Testimony

Social Media Posts

Text Messages

Direct Messages

Snapchat Messages/Videos

Photographs

Videos

Emails

Surveillance Video

Audio Recordings

Phone Records

Medical Records

Swipe Card Records

Credit/Debit Card Receipts

Venmo/Zelle/Apple Pay  
Transactions

Uber/Lyft Receipts

Cloud Data

# Evidence Collection: Strategy

01

Identify the evidence you need to collect based on witness interviews, party interviews, and the complaint itself;

02

Develop a strategy for obtaining the evidence (including getting the same evidence from multiple sources)

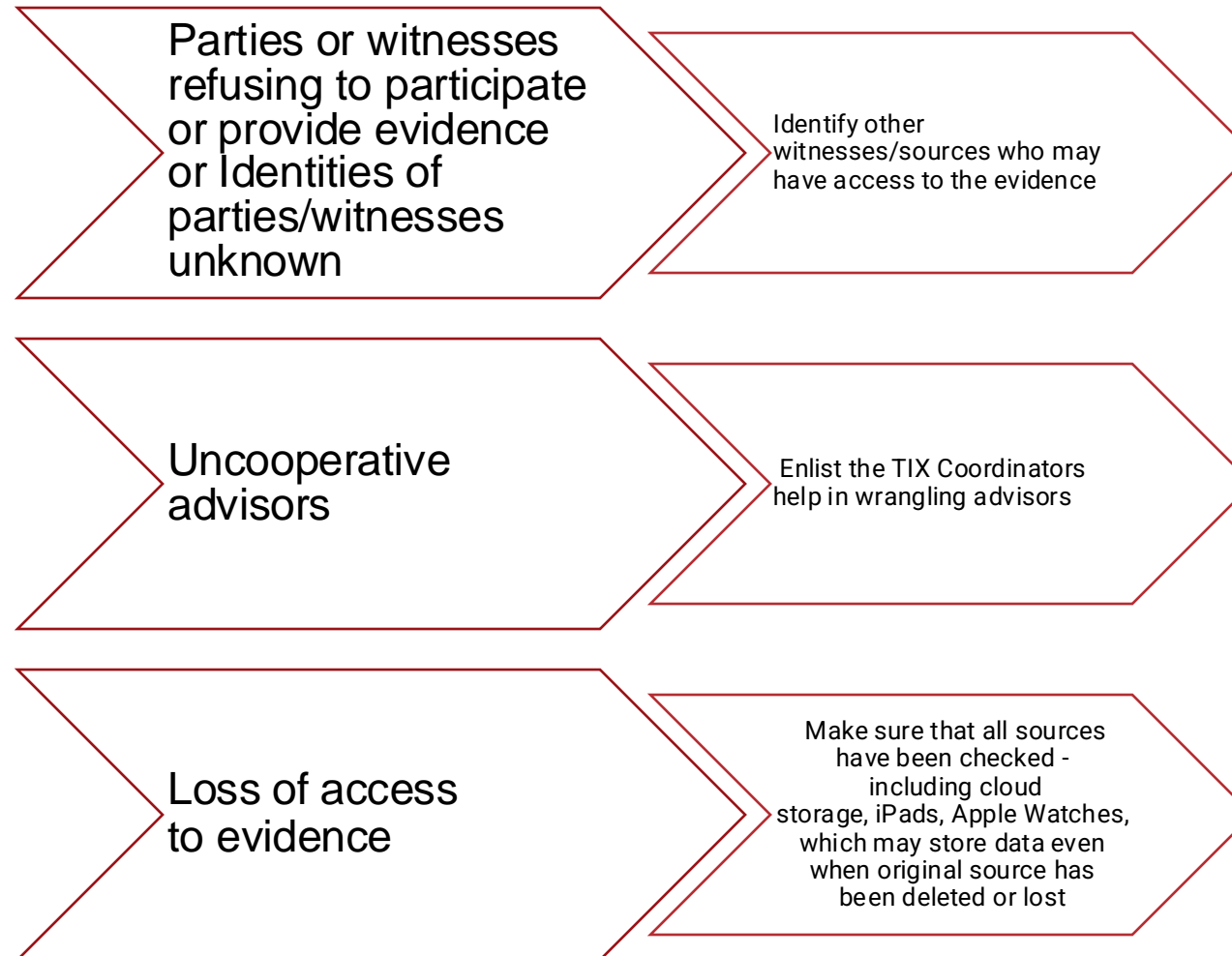
03

Identify your barriers to evidence collection and how those might be overcome

# Strategies for Obtaining Evidence

- Identify evidence that may have a clock on it as soon as possible
  - This includes evidence like surveillance videos which may only have a 30-day lifespan
- If more than one person has access to certain evidence (e.g. Text messages), ask all parties to provide screenshots of those records
- Don't be afraid to look for evidence on your own, to the extent it is available

# Barriers to Obtaining Evidence and Strategies for Overcoming Them



# 03

## Evaluating Evidence: Relevance and Authenticity





# Considerations in Evaluating Evidence

1. Is the Evidence Relevant?
2. Is the Evidence Authentic?
3. Is the Evidence Credible?
4. Is the Evidence Reliable?
5. What Weight Should the Evidence be Given?

# Is the Evidence Relevant?

## 2024 Regulations:

*Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred... The evaluation of whether evidence is relevant under the definition of “relevant” includes consideration of whether the evidence is both related to the allegations of sex discrimination under investigation and will aid a decisionmaker in determining whether the alleged sex discrimination occurred.*

# Evidence that is NOT Relevant

- Evidence recognized by state or Federal law as privileged, unless privilege has been knowingly and voluntarily waived;
- Records maintained by a physician, psychologist, or other recognized professional who is treating the individual;
- Evidence relating to a complainant's sexual interests or past sexual conduct
  - Unless offered to prove that someone other than the respondent committed the alleged conduct; or
  - Offered to prove consent

# Assessing Authenticity

1

Never make assumptions about the authenticity of a document

2

Get the same evidence from multiple sources

3

Review the evidence with others who had access to assess the authenticity

4

Request to review original records

5

Carefully review document properties, including meta data, time stamps, etc.

6

Identify other records that would corroborate this evidence



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Online Course

# Conducting Effective Internal Investigations

## Module 6: Weighing and Evaluating Evidence

**Emily Babb**, Associate Vice President for Civil Rights & Title IX Compliance,  
Northwestern University

**Kendall Isaac**, VP, General Counsel & Secretary of the University,  
Clark University

**Alexandra Mitropoulos**, Senior Counsel, Hirsch Roberts Weinstein LLP

01

Weight of  
Evidence

02

Assessing  
Credibility and  
Reliability

03

Credibility  
Determinations II:  
Plausibility, Motives,  
Demeanor, and  
Effects of Trauma

04

Evaluating  
Inconsistencies

# Agenda



## Where we left Off: Considerations in Evaluating Evidence

1. Is the Evidence Relevant?
2. Is the Evidence Authentic?
3. Is the Evidence Credible?
4. Is the Evidence Reliable?
5. What Weight Should the Evidence be Given?

01

# Weight of Evidence



# Assessing Evidence to Determine Weight: Some Key Questions



## Character Evidence

What is the source?  
How is it relevant?



## Polygraph Evidence

Who took the polygraph?  
Who paid for the polygraph?  
Is it relevant?



## Opinion Evidence

How is it relevant?  
What is the source?

# Hypothetical

Complainant Harper has brought a complaint of sexual assault against Respondent Sam. Harper alleges that Harper was "blacked out" and therefore incapacitated when Sam helped Harper return to Harper's dorm room after returning from an off-campus bar where they had been drinking, and that Harper had no recollection of engaging in sexual intercourse with Sam, and therefore, could not have consented. Sam denies that the intercourse was non-consensual.

During the course of the investigation, you collect several key pieces of evidence including the following statements from witnesses who were at the bar with Sam and Harper:

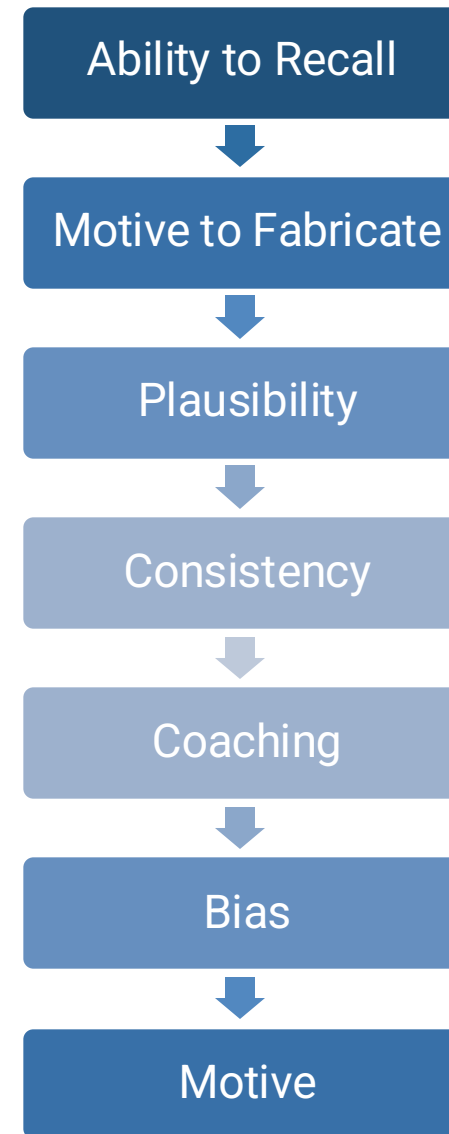
- **Harper's Best Friend Nat:** I was with Harper for almost the whole night, but then she disappeared. I had noticed she was really drunk, there was no way she could have given consent to have sex.
- **Sam's Best Friend James:** Sam is just the best. Sam would never do anything to anyone without their consent. Harper didn't seem that drunk to me.
- **A mutual friend of Both Harper and Sam, Regi:** Both of them seemed pretty drunk, but I had never seen Harper that bad before.

# 02

## Assessing Credibility and Reliability



# Factors to Consider





# Eye Witness Testimony

- Memory and Perception Issues
- Influence of Bias
- Suggestibility and Leading Questions
- Stress and Trauma
- Time Lapse
- Confidence and Accuracy
- Misinformation Effect
- Cultural and Language Differences

# 03

## Credibility Determinations II: Plausibility, Motives, Demeanor, and Effects of Trauma





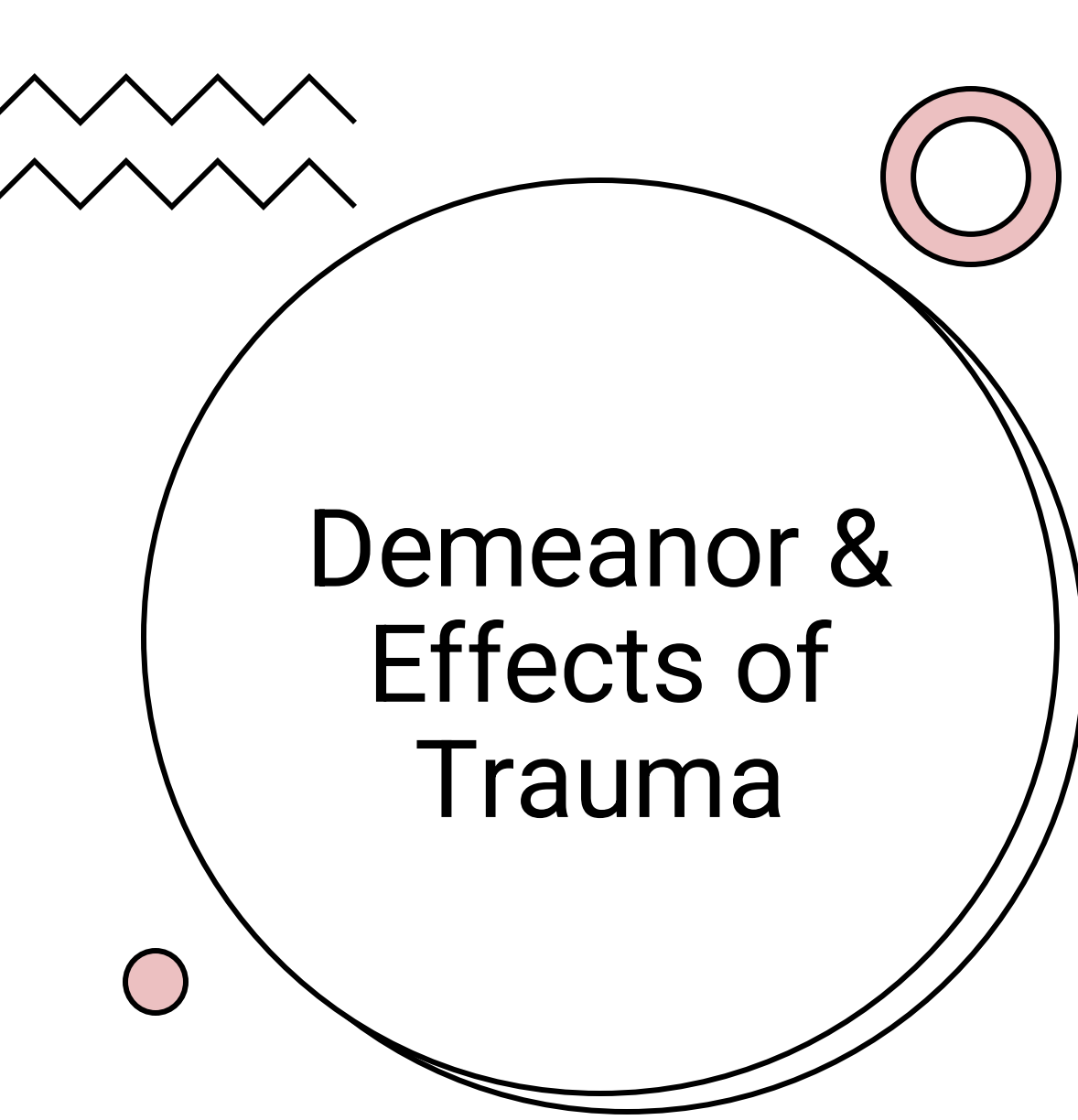
# Plausibility

- What is reasonable?
- What is the level of detail provided?
- Was any other evidence provided?
- Apply the appropriate standard of proof.
  - Preponderance of the evidence
  - Clear and convincing
  - Beyond a reasonable doubt (rare)



# Motives

- What is the relationship?
- Classify the witness:
  - Witness with an axe to grind?
  - Witness who wants to protect?
  - Witness who loves the limelight?
  - Witness who doesn't want to be involved?
  - A truly neutral witness?



# Demeanor & Effects of Trauma

- Need a baseline for comparison
- Don't usually know how the person "normally" behaves
- Cultural/regional/religious expectations may cloud assessment
- Keep in mind your trauma informed training

# 04

## Evaluating Inconsistencies



# Factors to Consider

- Is the inconsistency minor or expected given the length of time between the event and present day?
- Is there a reasonable explanation for the inconsistency?
  - Intoxication
  - Embarrassing facts
- Is it unlikely that the inconsistent fact would have been forgotten?
- Have statements changed once the inconsistency is brought to the individual's attention?
- How strong is the evidence that goes to the inconsistency
  - Documentary evidence v. statements of another party
- Is there too much consistency?

# Approach to Evaluating Inconsistencies



# Parting Thoughts

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Online Course

# Conducting Effective Internal Investigations

## Module 7: Report Writing

**Emily Babb**, Associate Vice President for Civil Rights & Title IX Compliance,  
Northwestern University

**Kendall Isaac**, VP, General Counsel & Secretary of the University,  
Clark University

**Alexandra Mitropoulos**, Senior Counsel, Hirsch Roberts Weinstein LLP

01

Key  
Components  
of a Report

02

Style  
Audience  
Tone

03

Final Decision

# Agenda

01

# Key Components of a Report



# Why is Good Report Writing Critical?

- It allows you to recall the details of your investigation long after the event.
- It signals that the complaint was taken seriously—that it is important to the institution to get it right.
- A well written and comprehensive report shows that the investigation was fair, impartial, and thorough.
- A well written and comprehensive report protects you and your institution in case of litigation and helps to limit your liability.




Executive Summary

Allegations/Complaint

Procedural History

Witnesses



Evidence

Applicable  
Policies/Procedures

Evidentiary Standard

Information  
Considered During the  
Investigation

Undisputed Facts

Factual Findings

Conclusions

Sanctions

Appeal Process

Appendix

# Factual Findings

- Resolve key disputed facts
- Resolve credibility issues
- Show your work
- Apply the correct standard of proof

# Example – Show Your Work

I find, by a preponderance of the evidence that the door to the laboratory was left unlocked by the Respondent on October 12, 2023 at 6:03 p.m. This was confirmed by Witness A and Witness B, who observed Respondent leaving with both hands full of chemicals at that time. This was further confirmed by the access log. Moreover, the hall camera corroborated that Respondent's hands were full. As a result, I did not find Respondent's explanation that they have never left a door unlocked to be credible.



# Conclusions and Sanctions – If Applicable

- Based on the factual findings, was there a policy violation?
- Based on the policy violation, what is the appropriate and consistent sanction?



# Tips When Drafting

1

Go back to your investigation plan.

2

Remember what you are investigating.

3

Look at the elements of each definition.

4

Render factual findings that pertain to the elements of each definition.

5

Do not make unnecessary factual findings.

# 02

## Style, Tone, Audience



# Key Considerations

01

Write for someone who knows **NOTHING** about the parties, the issues and the situation.

02

No typos, spelling errors, assumptions, unexplained jargon.

03

Ultimately writing for a reader later in the process.

# Examples of Simplified Language

"Constituted" → "Was"

"Violation" → "Breach"

"Duty of care" → "Responsibility"

"Foreseeable" → "Expected"

"Requisite" → "Required"

"Negligence" → "Fault"

"Applicable" → "Relevant"

"Provisions" → "Rules"

"Pursuant" → "Under"

"Material" → "Serious"

03

# Final Decision





# Understanding the Process and What Comes Next

- What is the next step?
  - Does the report reach a conclusion?
  - Does it recommend sanctions/corrective action (if warranted)?
  - If not, who makes those decisions?
- Avoid a delay in process
- Who ensures the next steps occur promptly?

# Final Thoughts

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Online Course

# Conducting Effective Internal Investigations

## Module 8: You're Done...Now What?

**Emily Babb**, Associate Vice President for Civil Rights & Title IX Compliance,  
Northwestern University

**Kendall Isaac**, VP, General Counsel & Secretary of the University,  
Clark University

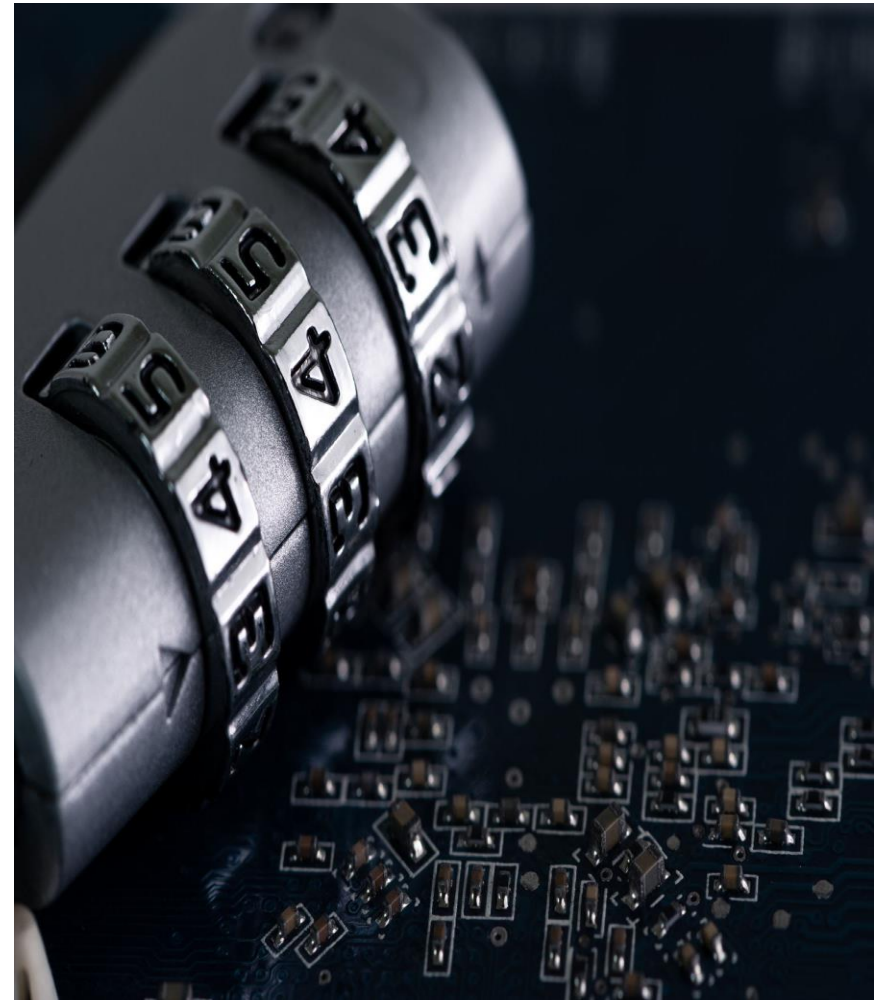
**Alexandra Mitropoulos**, Senior Counsel, Hirsch Roberts Weinstein LLP

# You're Done...Now What?

- Disclosure of the Investigative report
  - State vs. private institution
  - Legal and/or regulatory standard
  - Policy expectations
  - Redaction
  - Subpoenas
  - Internal stakeholder or leadership requests
  - Agency cooperation
  - Police cooperation

# Privilege and Preservation

- Disclosure of the investigative report
  - Investigator retained to provide legal advice
    - Work product
    - Investigator notes
  - Protecting the privilege
    - Marking file confidential
    - Maintaining separately
    - Cautious with disclosure
- Document retention
  - Legal, regulatory and/or policy expectations
  - Consistency matters



# Notifications

- Deciding how much information to provide
  - Notifying the parties
  - Notifying supervisors and/or leadership
  - Notifying external interested parties
    - Media (student, local and national)
    - Police
    - Administrative agencies
    - Party advocates/counsel
    - Parents



# Decisions and Appeals

- Deciding who receives a copy of the decision
- Determining and implementing sanctions and remedies
- Avoiding and addressing retaliation
- Review and follow your policy regarding appeals
- Appropriate appeals decision-makers
- Notify parties of their appeal rights
- Notify parties of the acceptable grounds for appeal
- Being mindful of the standard of review

# Post-Appeal Considerations

- Who should review the appeal decision before notification?
- Consulting with legal counsel
  - Advice on policy and process
  - Advice on due process and procedural fairness
  - Advice on decisional risks
  - Not a decision-maker
- Outcome notifications
  - Make clear if the decision is final
- Is it over?







# Questions?

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# Conducting Effective Internal Investigations

Online Course Forum  
Thursday, October 31, 2024

**Emily Babb**, Associate Vice President for Civil Rights &  
Title IX Compliance, Northwestern University

**Kendall Isaac**, VP, General Counsel & Secretary of the  
University, Clark University

**Alexandra Mitropoulos**, Senior Counsel, Hirsch Roberts  
Weinstein LLP

01

Introductions

02

Scenarios and  
Analysis

03

Q&A

# Agenda

# First – A Question

**How Many Investigations Have You Conducted?**

**A. 0**

**B. 1-4**

**C. 5-11**

**D. 12-19**

**E. 20+**

## Discussion Fact Pattern

Your phone rings at 8:00am Friday morning. You glance at it and see it is a call from Betty Bucks, the campus' chief business officer (CBO). Your stomach sinks a bit because you know this cannot be good. When you answer the phone, Betty tells you that she just received a call from Chief Keef, the local community chief of police, with the disconcerting news that one of the local city officers just picked up the chief of staff for disorderly conduct, DWI and public drunkenness last night. Apparently, the president's chief of staff Simon Says was on his way home after leaving a campus party thrown by the basketball team - following its conference tournament title win, and he had several drinks too many. A student has also reported to the local police that Mr. Says was calling him racial slurs at the party.

You put down the coffee that you've had exactly one sip of and start to arrange for the investigation that will need to follow.

## Where do you start?

- A. You contact the Chief of Staff and tell him to lawyer up, ASAP
- B. You ask HR to send you the Chief of Staff's personnel file
- C. You assess what kind of investigation should be conducted, what possible policy violations may be involved, and who should investigate
- D. You call the Chief of Staff and begin an in-depth interview

## Where do you start?

- A. You contact the Chief of Staff and tell him to lawyer up, ASAP
- B. You ask HR to send you the Chief of Staff's personnel file
- C. You assess what kind of investigation should be conducted, what possible policy violations may be involved, and who should investigate
- D. You call the Chief of Staff and begin an in-depth interview



# Pre-Investigation Considerations



Choosing an Investigator

Considerations for choosing an investigator



Evaluating the Complaint

What laws, policy, and procedures apply?



Community Relations

Working with the Communications Department on messaging



Privilege Considerations

Can the investigation be privileged based on policy?



Interim Safety/Preservation Issues

Leave Pending Investigation  
Document Retention

After speaking with the student and confirming that he wants to move forward with an investigation and as you're prepping your notice letters, you receive a call from the Chief Marketing Officer, alerting you that there is some social media chatter about Mr. Says and his behavior at student parties following athletic events, including several anonymous posts of videos of Mr. Says yelling racial slurs and other racially motivated statements at other students.



## **What are your next steps?**

- A. Send out the notice letters for the complaint you have in hand
- B. Work with the Office of Student Life to identify any students in the videos posted on social media
- C. Reach out to your local and college police departments to request any other reports that have been made relating to Mr. Says
- D. All of the Above

## What are your next steps?

- A. Send out the notice letters for the complaint you have in hand
- B. Work with the Office of Student Life to identify any students in the videos posted on social media
- C. Reach out to your local and college police departments to request any other reports that have been made relating to Mr. Says
- D. All of the Above

**Based on the details provided, which group of individuals would be most crucial to interview initially?**

- A. Only the president and Betty Bucks, the Chief Business Officer.
- B. The campus party attendees, particularly those who were in close proximity to Mr. Says.
- C. All faculty and staff involved in the athletics department.
- D. Every student who saw Mr. Says at any recent social gathering.

**Based on the details provided, which group of individuals would be most crucial to interview initially?**

- A. Only the president and Betty Bucks, the Chief Business Officer.
- B. The campus party attendees, particularly those who were in close proximity to Mr. Says.
- C. All faculty and staff involved in the athletics department.
- D. Every student who saw Mr. Says at any recent social gathering.

# Investigative Steps and Interview Logistics

- Initiating the Notice to Parties
- Interim Measures
- Developing an Investigation Plan and Coordinating Logistics
  - Who to interview
  - What information does the investigator need?
  - Scheduling Interviews – how to sequence
  - Advisors
  - Location of Interviews
  - Accommodations

# Conducting Effective Interviews: Top 10 Tips for Good Questioning

1. Ask open ended questions
2. Listen more than talk
3. Give time to answer
4. Don't interrupt
5. Be comfortable with silence
6. Be prepared with documents, etc.
7. Don't assume facts
8. Use appropriate tone
9. Avoid questions that imply judgment
10. Avoid compound questions

You've identified two other students in the social media videos who may have been subjected to harassing behavior by Mr. Says. One of the students agrees to file a complaint, but the other wants to remain anonymous because of her mother's position on the Board of Trustees.



**What assurances can you make to this student about confidentiality?**

- A. Promise absolute and complete confidentiality.
- B. Explain that you can keep some information private, but cannot promise absolute confidentiality
- C. Tell her that confidentiality is not an option
- D. None of the above



## What assurances can you make to this student about confidentiality?

- A. Promise absolute and complete confidentiality.
- B. Explain that you can keep some information private, but cannot promise absolute confidentiality
- C. Tell her that confidentiality is not an option
- D. None of the above

Not surprisingly, the local police department has opened an investigation into Mr. Says behavior as well.

As a result, Mr. Says and his attorney advisor inform the investigator that he does not want to participate given there is a concurrent criminal investigation being conducted by the local police department.

Added to this, the police investigator has requested a pause to the administrative investigation to not impair their process.

**As it relates to the police investigation, should you...**

- A. Pause the investigation(s) indefinitely, at least until the police have completed their investigation
- B. Temporarily pause the investigation
- C. Continue with the investigation regardless of the status of the criminal process, but work with the police department in coordinating witness and party interviews
- D. Close the case, there are much more pressing matters to handle.
- E. None of the above

## As it relates to the police investigation, should you...

- A. Pause the investigation(s) indefinitely, at least until the police have completed their investigation
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- C. Continue with the investigation regardless of the status of the criminal process, but work with the police department in coordinating witness and party interviews
- D. Close the case, there are much more pressing matters to handle.
- E. None of the above

As the investigator is gathering and evaluating evidence, a call comes in from local news outlet that they have obtained video that shows Mr. Says racially charged behavior towards the first Complainant. They have not published it and will not tell you who the video comes from.

## What are the investigators next steps?

- A. Go back to the parties and witnesses and ask specifically for the video identified by the local news outlet, and any other videos from the parties
- B. Subpoena the local news outlet
- C. Check in with the local police department to see if they have obtained the video as part of their investigation
- D. Do nothing
- E. A and C

## What are the investigators next steps?

- A. Go back to the parties and witnesses and ask specifically for the video identified by the local news outlet, and any other videos from the parties
- B. Subpoena the local news outlet
- C. Check in with the local police department to see if they have obtained the video as part of their investigation
- D. Do nothing
- E. A and C



# Collecting Evidence

01

Identify the evidence you need to collect based on witness interviews, party interviews, and the complaint itself;

02

Develop a strategy for obtaining the evidence (including getting the same evidence from multiple sources)

03

Identify your barriers to evidence collection and how those might be overcome



# **For Next Time....**

Assessing the Evidence, Writing  
the Report, and Making a Decision!

# Q&A



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# Conducting Effective Internal Investigations

Online Course Forum  
Tuesday, December 3, 2024

**Emily Babb**, Associate Vice President for Civil Rights &  
Title IX Compliance, Northwestern University

**Kendall Isaac**, VP, General Counsel & Secretary of the  
University, Clark University

**Alexandra Mitropoulos**, Senior Counsel, Hirsch Roberts  
Weinstein LLP

01

Pt. 1 Recap

02

Scenarios and  
Analysis

03

Q&A

# Agenda

# First – A Question

**How many investigative reports have you written on your own?**

**A. 0**

**B. 1-4**

**C. 5-11**

**D. 12-19**

**E. 20+**

# Online Course Forum – Pt. 1 Recap



Pre-investigation considerations



Interview logistics



Confidentiality



Collecting Evidence



## Fact Pattern Recap

- The local Chief of Police picked up your institution's chief of staff (Simon Says) for disorderly conduct, DWI and public drunkenness after he left a basketball team party intoxicated.
- A student also reported to you that Mr. Says was calling him racial slurs.
- After anonymous posts and videos are leaked on social media showing Mr. Says exhibiting similar behavior towards other students, you work with your student life team to identify those students.
- Two students agree to participate in the investigation, one is more reticent.
- Mr. Says determines on advice of counsel not to participate in the investigation and the local police ask you to pause your investigation.
- You then learn that a local newspaper has video of the first incident but is unwilling to share it with you.



During the course of the investigation, you learn from statements Mr. Says has made to police and the media that he denies any discriminatory intent behind any statements that may have been caught on video, and that in fact, the students were attempting to entrap him and catch him on video.

The investigators collect several key pieces of evidence including the following statements from witnesses:

**Mr. Says' childhood best friend and assistant, Joe:** I was with Simon for almost the whole night at the launch event, but then he disappeared. I had noticed he was a bit drunk, but there's no way he said those things to the student. He's the best guy I know.

**Complainant No. 1's Best Friend Jennifer:** I wasn't at the party, but Complainant No. 1 wouldn't just make this up and would never bait someone into saying something like this. What's the point? Plus, Mr. Says is gross.

**A student employee who works in Athletics and was at the party, Regi:** Mr. Says was pretty drunk at the party, and I think Complainant No. 1 might have been too. I did see Complainant No. 1 videotaping him several different times during the night and looking pretty upset.

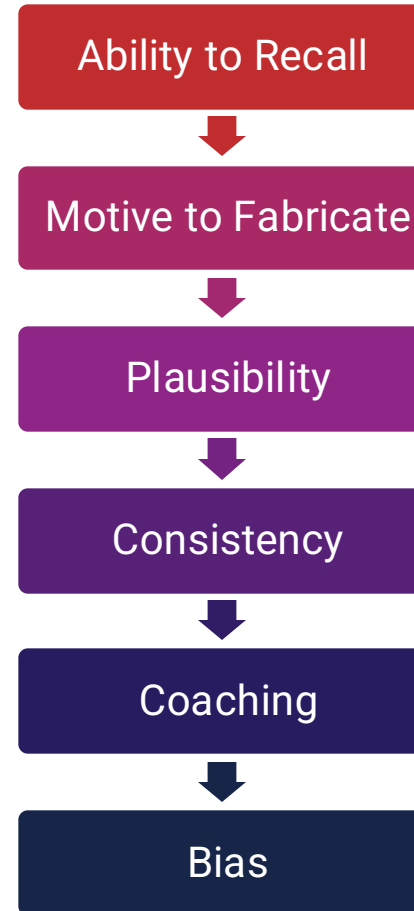
## **Which piece of evidence might carry the most weight in assessing the nature of the reported interaction?**

- A. Joe's opinion of Mr. Says' character
- B. Jennifer's opinion that Mr. Says is "gross"
- C. Regi's observation of Complainant No. 1 and Mr. Says' interaction
- D. The fact that Complainant No. 1 was intoxicated

## Which piece of evidence might carry the most weight in assessing the nature of the reported interaction?

- A. Joe's opinion of Mr. Says' character
- B. Jennifer's opinion that Mr. Says is "gross"
- C. Regi's observation of Complainant No. 1 and Mr. Says' interaction**
- D. The fact that Complainant No. 1 was intoxicated

# Assessing Credibility and Reliability: Factors to Consider



# Eyewitness Testimony

Memory and Perception Issues

Influence of Bias

Suggestibility and Leading Questions

Stress and Trauma

Time Lapse

Confidence and Accuracy

Misinformation Effect

Cultural and Language Differences

# Plausibility

What is reasonable?

What is the level of detail provided?

Was any other evidence provided?

Apply the appropriate standard of proof.

- Preponderance of the evidence
- Clear and convincing
- Beyond a reasonable doubt (rare)

# Motives

What is the relationship?

Classify the witness:

- Witness with an axe to grind?
- Witness who wants to protect?
- Witness who loves the limelight?
- Witness who doesn't want to be involved?
- A truly neutral witness?

# Demeanor & Effects of Trauma

Need a baseline for comparison

Don't usually know how the person  
"normally" behaves

Cultural/regional/religious  
expectations may cloud assessment

Keep in mind your trauma informed  
training

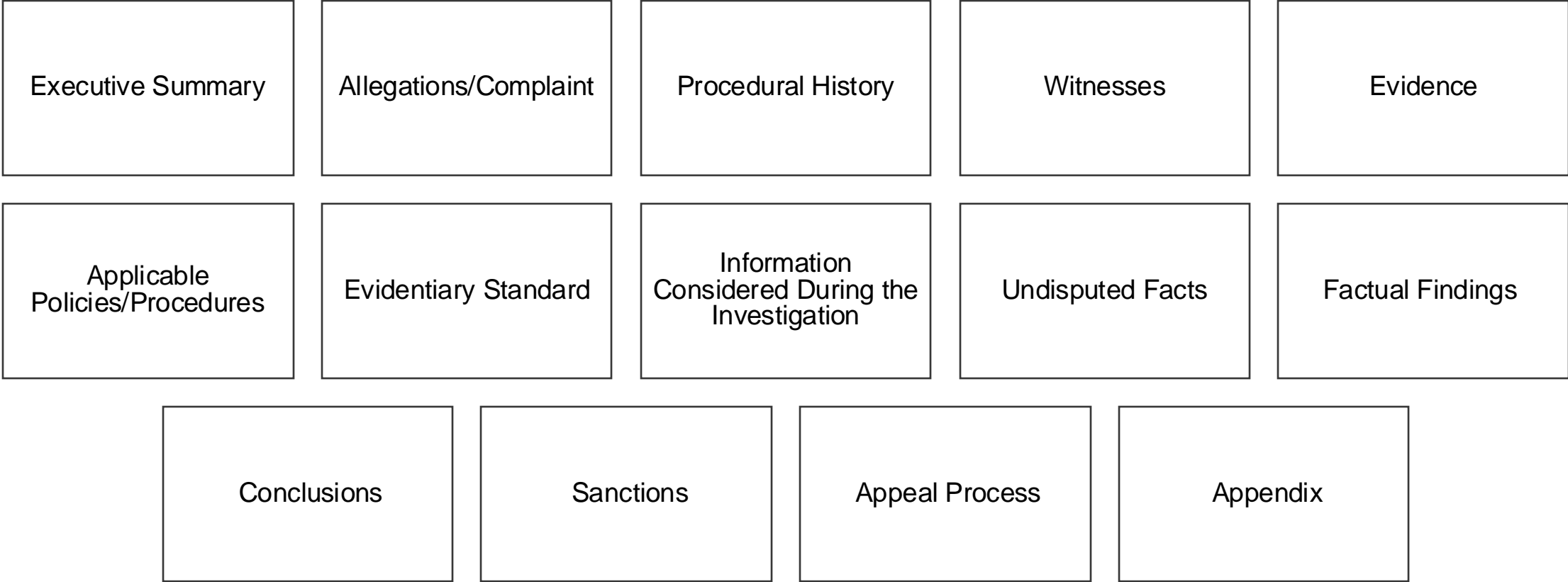


**The investigators have finished interviewing witnesses and collecting evidence and are now ready to draft the report. What makes good report writing so critical?**

- A. It allows you to recall the details of your investigation long after the event.
- B. It signals that the complaint was taken seriously—that it is important to the institution to get it right.
- C. A well written and comprehensive report shows that the investigation was fair, impartial, and thorough.
- D. A well written and comprehensive report protects you and your institution in case of litigation and helps to limit your liability.
- E. All of the Above

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- C. A well written and comprehensive report shows that the investigation was fair, impartial, and thorough.
- D. A well written and comprehensive report protects you and your institution in case of litigation and helps to limit your liability.
- E. **All of the Above**



Showing your work:

We find, by a preponderance of the evidence that it is more likely than not that Mr. Says called Complainant No. 1 a racial slur on the evening of the incident.

This was confirmed by video evidence produced by Complainant 1, Witness A and Witness B, where you can clearly hear Mr. Says calling Complainant 1 a racial slur. This was further corroborated by Regi, a witness, who observed Complainant 1 videotaping Mr. Says and looking upset. As a result, I do not find Respondent's purported explanation to police and to the press that he was baited into those statements credible.

# Tips When Drafting

1

Go back to your investigation plan.

2

Remember what you are investigating.

3

Look at the elements of each definition.

4

Render factual findings that pertain to the elements of each definition.

5

Do not make unnecessary factual findings.

# Key Considerations

01

Write for someone who knows **NOTHING** about the parties, the issues and the situation.

02

No typos, spelling errors, assumptions, unexplained jargon.

03

Ultimately writing for a reader later in the process.

**Now that the report is written, you receive a call from the chief of police asking you to send him a copy. What do you do?**

- A. Send it to him
- B. Have a conversation with him about the findings and the outcome
- C. Tell him that you'll be happy to send it along once you've received a lawfully issues subpoena.
- D. Don't respond.



**Now that the report is written, you receive a call from the chief of police asking you to send him a copy. What do you do?**

- A. Send it to him
- B. Have a conversation with him about the findings and the outcome
- C. Tell him that you'll be happy to send it along once you've received a lawfully issues subpoena.**
- D. Don't respond.



# You're Done...Now What?

- Disclosure of the Investigative report
  - State vs. private institution
  - Legal and/or regulatory standard
  - Policy expectations
  - Redaction
  - Subpoenas
  - Internal stakeholder or leadership requests
  - Agency cooperation
  - Police cooperation

## **The President asks you for a copy of the report.**

- A. Send it to him
- B. Have a conversation with him about the findings and the outcome
- C. Tell him that you'll be happy to send it along once you've received a lawfully issues subpoena.
- D. Don't respond.

## The President asks you for a copy of the report.

- A. Send it to him
- B. Have a conversation with him about the findings and the outcome
- C. Tell him that you'll be happy to send it along once you've received a lawfully issues subpoena.
- D. Don't respond.



# Decisions and Appeals

- Deciding who receives a copy of the decision
  - Determining and implementing sanctions and remedies
  - Avoiding and addressing retaliation
  - Review and follow your policy regarding appeals
  - Appropriate appeals decision-makers
  - Notify parties of their appeal rights
  - Notify parties of the acceptable grounds for appeal
  - Being mindful of the standard of review
- 



**Q&A**

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