

The Texas A&M University System

Introductory Civil Rights

Investigator Training

System Ethics and Compliance Office

March 2022

Presented via Webex



- The Training Team

- Trisha Ford – Investigator, SECO
- Janet Gordon – System Ethics and Compliance Officer
- Rick Olshak, M.S. – Director, Title IX Compliance, SECO
- Noe Rincones – Investigator, SECO
- Dr. Nicole Roberson– Director, Equal Opportunity and Diversity, SECO

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.



- Section One

Introduction to the Training Program



- 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



- 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



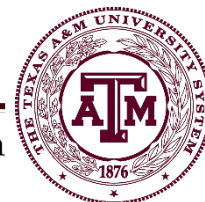
- Introduction (mechanics)
 - We will use the time that we need to cover the topic areas we intend to cover in each session – we intend to begin on time and will not keep you longer than is needed.
 - In the event that we cannot address a specific question or topic, or if you choose to wait on a question, 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



- 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)



- 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?

- Role of the Investigator

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



- 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?

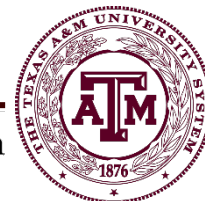
- Key Stages of the Process

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?

- 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)

- Key Stages of the Process

Appeal Stage

- Grounds
- Regulations
- Timeliness



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

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?

Interview Logistics

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



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

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?



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)

Interviews

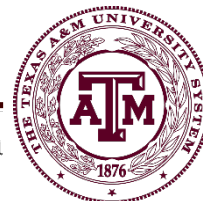
Character Witnesses
- Caution



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



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?

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



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



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



Case Study

Part 1



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.



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.



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?”

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.”



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

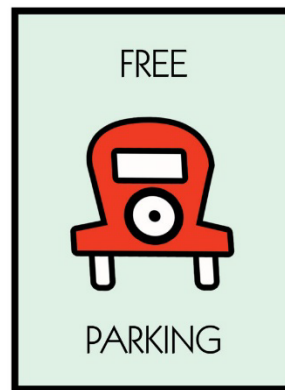
Investigators – Please take the next 15 minutes to prepare for your interviews

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

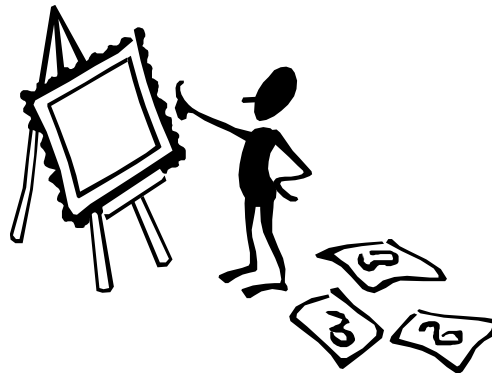
Conducting Interviews



- # Conducting Interviews

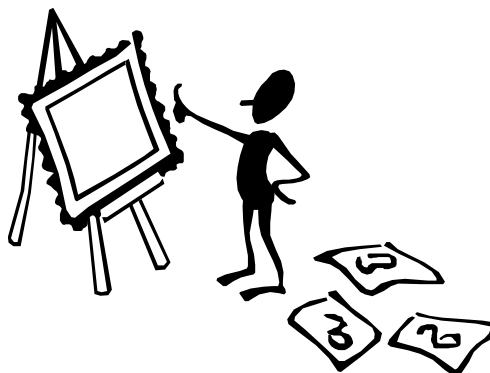
As an investigator, imagine that you are “painting a picture” of what took place, based on all of the evidence and information collected from everyone involved.

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



- *Why don't we listen better?*

CALM =

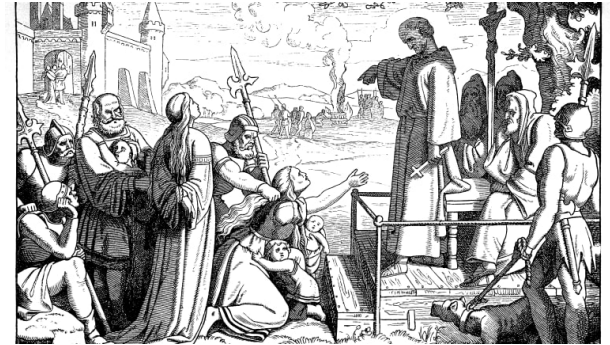
1. **C**omposed enough to listen
2. **A**udit (Can I repeat what was said?)
3. **L**imit (distractions – both internal and external)
4. **M**otivated (to engage with the party)

- *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!



- *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."

- *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

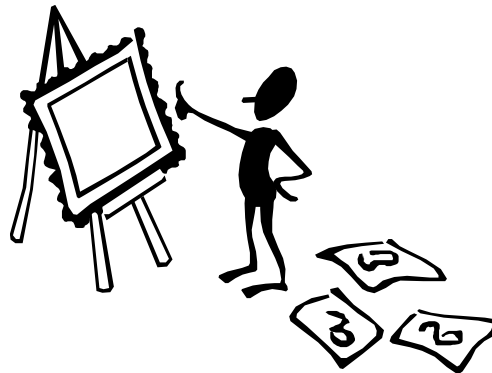
• Conducting Interviews

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)

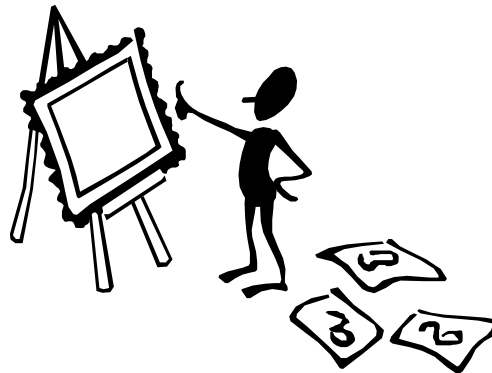
- # Conducting Interviews

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).



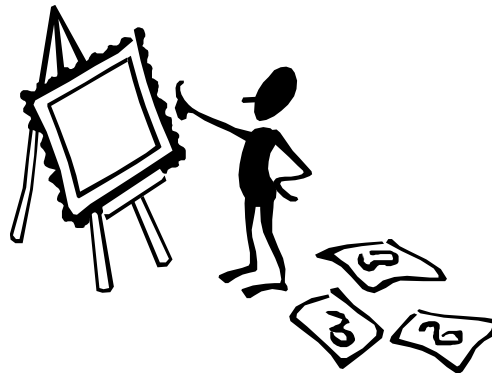
- **Conducting Interviews**

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

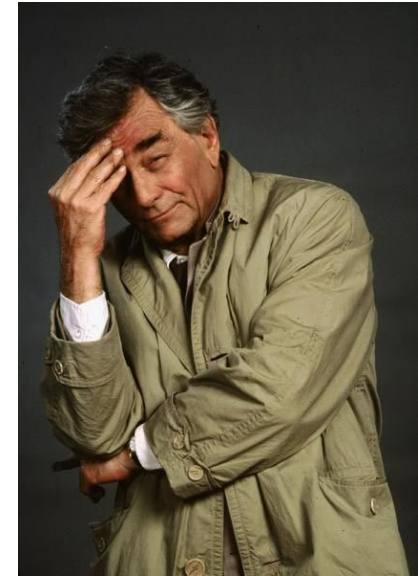
Questioning tips:

- 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



Case Study

Part 2



Case Study

Interview with Party A



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?



• 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 (intrinsically 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**)

Case Study

Part 3



Case Study

Interview with ???



- ## Conducting Interviews

Follow up Interviews – In many investigations, follow up interviews of the complainant, respondent, and witnesses is a necessary step. Complainants are respondents in particular are usually interviewed two to three (or more) times during the course of an investigation, depending on the subject matter and complexity of the case.

Re-interviewing the primary parties allows the investigators to facilitate a limited form of cross-examination between the parties, providing the investigators the opportunity to share what the other party has disclosed in order to illicit a response from the party being interviewed.

- **Conducting Interviews**

Memorializing Interviews:

Once interviews have been conducted, what do you do with the information? We recommend the following as best practice under the current A&M System Regulation 08.01.01 –

• Conducting Interviews

Memorializing Interviews:

1. For each interview conducted, prepare a summary of the interview. You only need to include information **that is related to the subject of investigation**. If a witness has no relevant information, note in the report but don't include the interview write-up.
2. Share the summary with the party interviewed to verify the accuracy of the information collected. Provide a short (two business day) turnaround time for responses/rebuttals.
3. Once the final report is prepared, destroy any personal notes/tapes from the interview

- # Conducting Interviews

Memorializing Interviews:

4. We recommend highlighting all RELEVANT material information from each summary/exhibit to ensure its inclusion in the investigative report (DO NOT copy and paste interview summaries into the Investigative Report).

- # Conducting Interviews

Interview Summary Example #1:

Jason and Ruby have been friends since high school. Jason was the quarterback of the football team, but he didn't do well in academics. He always wanted to go to college at TAU since his dad and uncles went there. Jason is a sophomore majoring in history. He joined XYZ fraternity his first year. He invited Ruby to go to a bar with him on Saturday, April 12, 2019, to celebrate his 21st birthday. He said that while at the bar, he bought himself three whisky sours, and Ruby had one glass of wine. His mom called him on his cell phone while there to wish him happy birthday. He didn't remember what time they left the bar, but they used Uber. Ruby asked him to come into her apartment for a nightcap, where she came on to him and they had consensual sex.

- # Conducting Interviews

Interview Summary Example #2:

Jason and Ruby have been friends since high school. He invited Ruby to go to a bar with him on Saturday, April 12, 2019, to celebrate his 21st birthday. He said that while at the bar, he bought himself three whisky sours, and Ruby had two glasses of wine. He didn't remember what time they left, but they used Uber. Ruby asked him to come into her apartment for a nightcap. In her apartment, she unzipped his pants and gave him oral sex.

- ## Conducting Interviews

Interview Summary Example #3 (Ruby's account):

While Ruby liked Jason as a friend, she said she was not interested in a romantic or sexual relationship with him. She reluctantly agreed to go to a bar with him to celebrate his birthday. When they met at the bar, Jason was unsteady on his feet and slurred his words. While there, he bought himself three drinks, and his friend Amos bought him three more. Jason bought Ruby one glass of wine, and she bought herself two more over the three hours they were there (approximately 9:00 p.m. – 12:00 a.m.). Jason said he would drive her to her apartment, but she thought he was too drunk and said she would take an Uber. She didn't know that Jason followed her in another Uber. As she opened the door to her apartment, he came up behind her and pushed her in. She said he twisted her arm and forced her to perform oral sex on him.

Case Study

Part 4



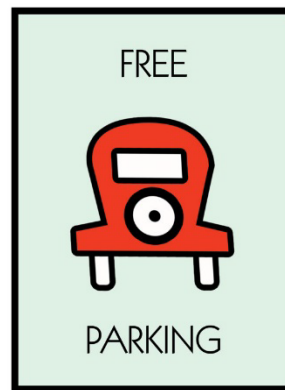
Case Study

Interview with ???



- Parking Lot

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



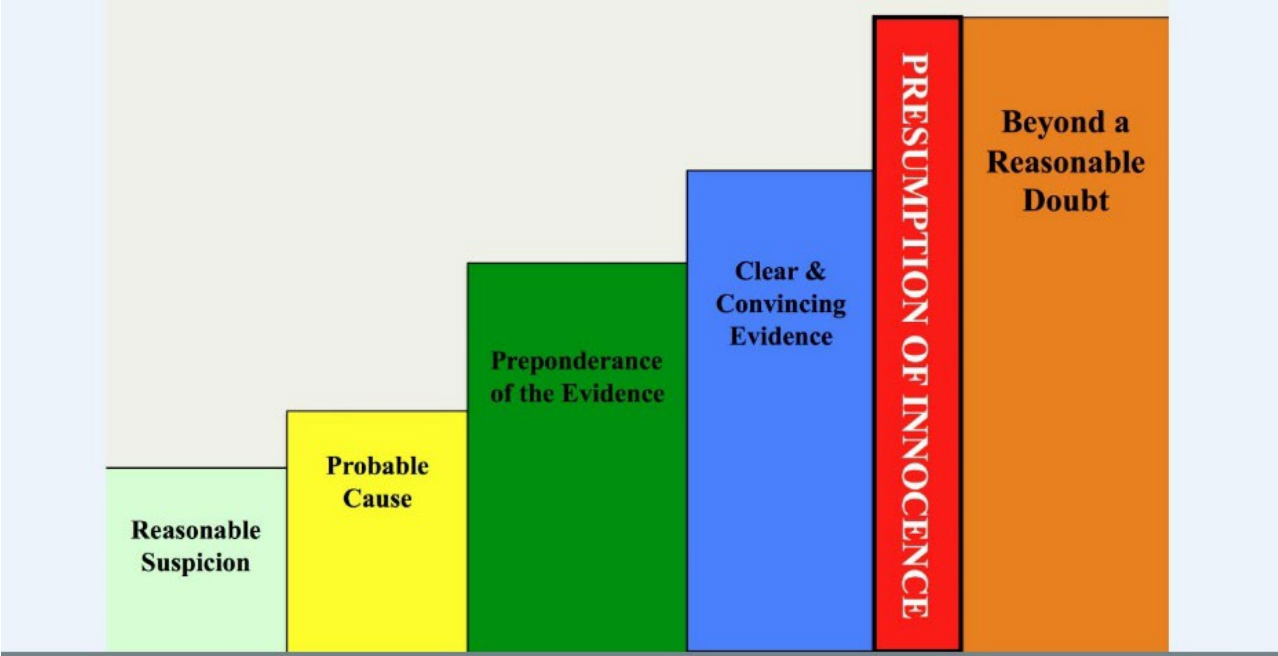
- Section Four

Analyzing Information



- Analyzing Information
 - a. Standards of Evidence
 - b. Credibility
 - c. Statement Analysis
 - d. The Consent Construct
 - e. Alcohol and Other Drugs
 - f. Trauma
 - g. Predation

- Standards of Evidence



- Standards of Evidence

Beyond a Reasonable Doubt...

Definition: 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.

Statistically: 90-99% certainty

Where do we use this standard in society, and why?

Do we use this standard in our civil rights and/or ethics processes?



- Standards of Evidence

- **Clear and Convincing...**

Definition: 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.

Statistically: 67-75% certainty

Where do we use this standard in society, and why?

Do we use this standard in our civil rights and/or ethics processes?



- Standards of Evidence

Preponderance of the Evidence...

Definition: 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.

Statistically: 50.1% + certainty (We do not “start” at 50; we “start” at 0)

Where do we use this standard in society, and why?

Do we use this standard in our civil rights and/or ethics processes?

- Standards of Evidence

- **Probable Cause (Substantial Evidence)...**

Definition: A reasonable belief that someone may have committed an offense (crime or policy violation); this is the standard used for conducting a search, making an arrest, or filing a charge

Statistically: ~40% + certainty

Where do we use this standard in society, and why?

Do we use this standard in our civil rights and/or ethics processes?

- Standards of Evidence

- **Reasonable Suspicion (Notice)...**

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

- Statistically: ~25% + certainty

- Where do we use this standard in society, and why?

- Do we use this standard in our civil rights and/or ethics processes?

- Standards of Evidence

08.01.01/Student Conduct use of evidentiary standards

- Notice and Gate-keeping (Reasonable Suspicion)
- Bringing a charge (Substantial Evidence)
 - When an allegation is deemed Substantiated?
 - When an allegation is found to have Insufficient Evidence?
 - When an allegation is deemed Unsubstantiated?
- Finding a violation (Preponderance of the Evidence)
- Determining appeals (Preponderance of the Evidence with a presumption that the original decision is correct)

- # Credibility

The question of credibility comes up in many investigations. How believable someone is does not just hinge on a question of truthfulness, but also of:

- Bias
- State of mind
- Ability to recall with accuracy
- Ability to pay attention to relevant details

Most parties will not lie to investigators, but their credibility can depend on any of these and more. When a party's credibility stands out to an investigator (either positively or negatively) that is when we will see it addressed in an Investigative Report.

- # Credibility

Things that investigators look for that effect credibility:

- Persuasiveness
- Relevance
- Reliability
- Bias

Generally, “having no reason to lie” does not in itself establish credibility.

• Persuasiveness

Things that investigators look for that effect credibility:

To be persuasive, information must:

- Be believable
- Be consistent (e.g., should tell essentially the same/complementary narrative over multiple tellings)
- Sustain itself upon being challenged
- Establish a dependable narrative that outweighs any inherent deficits (e.g., lack of complete memory as a result of time between the event and the hearing)

- **Persuasiveness**

Persuasiveness is not about the number of witnesses supporting a particular point of view!

- One persuasive witness is qualitatively better than three witnesses who are not persuasive

- # Relevance

To be relevant, information must:

- Actually relate to the incident being reviewed
- Be of sufficient value to matter in the determination of a conclusion
- Be offered by an individual with actual knowledge of the event, preferably from their own involvement and/or observation

- **Relevance**

For information to aid us in developing a conclusion, it must relate to the directly to the incident in question, and not just to incidents “like” the incident in question. We are not interested in comparing apples to oranges, nor even apples to other apples; we only have an interest in a single apple.

• Reliability

To be reliable, the person providing information must:

- Provide a substantively consistent telling of the story over time
- Be able to have played the role they claimed to play (as participant or observer) in the event
- Have appropriate training and/or experience to be able to sustain any claim of expertise
- Not come from a source who can be objectively discredited
- Not be countered by a party with the same or more credibility

- **Reliability**

Reliability is objectified in a person's honest recollections, substantively consistent memories, and the degree to which they demonstrate their training and experience, as well as the degree to which the accounts of the individual line up with other credible accounts. Reliable people recognize the limitations of their memories, training, and experience, and are honest about these limitations.

- **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 an investigation by an investigator

- 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. Investigators 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 (seek "holes" in the story).

- Bias

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

It is important to seek definitions on terms such as:

Always

Disrespectful

Drunk

“Those” people

“Hooked up”

Stalking

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.



- Bias

Bias brought into an investigation by an investigator:

Investigators are supposed to be “impartial”, yet there is no such thing as pure objectivity in human beings. As an investigator, it is important to be aware of the issues that serve as “hot buttons” for you, provoke emotional responses, and/or cause you to operate on perceptions and assumptions rather than evidence. Be cognizant of your bias as you begin your investigation, or in exceptional circumstances ask to be removed from the case. (continued)

- Bias

Bias brought into an investigation by an investigator:

Additionally, one common short-coming of investigators 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 investigators **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.

- The Consent Construct (ATIXA)

Three types of sexual interactions

Wanted, consensual sex

Unwanted, consensual sex

Unwanted, nonconsensual sex

Only one of these represents a violation of regulations/rules

- The Consent Construct (ATIXA)
 - Force
 - Incapacity
 - Consent

- The Consent Construct (ATIXA)

Force

- Was force used by the individual to obtain sexual access?
- Because consent must be voluntary (an act of free will), consent cannot be obtained through use of force.
- Types of force to consider:

Physical violence: hitting, restraint, pushing, kicking, etc.

Threats: anything that gets others to do something they wouldn't ordinarily have done absent the threat.

- The Consent Construct (ATIXA)

Force

- Types of force to consider (cont.)
 - Intimidation: an implied threat that menaces and/or causes reasonable fear
 - Coercion: the application of an unreasonable amount of pressure for sexual access

Consider:

- Frequency
- Intensity (including attempts to deprive one of choice)
- Duration
- Isolation

- The Consent Construct (ATIXA)

Incapacity

- Forms of incapacity?
 - Alcohol or other drugs
 - Incapacity \neq Impaired, drunk, intoxicated, or under the influence
 - Incapacity = an extreme form of intoxication
 - Administered voluntarily or without victim's knowledge
 - Rape drugs
- Mental/cognitive impairment
- Injury
- Asleep or unconscious

- The Consent Construct (ATIXA)

Incapacity

- First, was the alleged victim incapacitated at the time of sex?
- Could s/he make rational, reasonable decisions?
- Could s/he appreciate the situation and address it consciously such that any consent was informed?
- Knowing who, what, when, where, why, and how
- Second, did the accused individual know of the incapacity (fact)?
- Or, should the accused individual have known from all the circumstances (reasonable person)?

- The Consent Construct (ATIXA)

Incapacity

- Evidence of incapacity will come from context clues, such as:
 - A witness for the accused may know how much the other party consumed.
 - Slurred speech
 - Bloodshot eyes
 - The smell of alcohol on the breath
 - Shaky equilibrium
 - Vomiting
 - Outrageous or unusual behavior
 - Unconsciousness (including blackout)

- The Consent Construct (ATIXA)

Consent

- Consent is...
 - Informed, knowing, and voluntary (freely given),
 - Active (not passive),
 - Affirmative action through clear words or actions,
 - That create mutually understandable permission regarding the conditions of sexual activity.
 - Cannot be obtained by use of:
 - Physical force, compelling threats, intimidating behavior, or coercion.
 - Cannot be given by someone known to be — or who should be known to be — mentally or physically incapacitated.

- The Consent Construct (ATIXA)

Consent

- Lack of protest or resistance \neq consent
- Consent should not be assumed
- Must be present through the entire incident; consent can be withdrawn at any time
- The inability to give consent may be a result of, but not limited to, the following individuals:
 - Persons who are asleep or unconscious.
 - Persons who are incapacitated due to the influence of drugs, alcohol, or medication.
 - Persons who are unable to communicate consent due to a mental or physical condition, including minors.

- The Consent Construct (ATIXA)

Consent (as defined in 08.01.01)

Clear, voluntary and ongoing agreement to engage in a specific sexual act. Persons need not verbalize their consent to engage in a specific sexual act for there to be permission. Permission to engage in a sexual act may be indicated through physical actions rather than words. A person who was asleep or mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason, or whose agreement was made under duress or by threat, coercion, or force, cannot give consent.

- The Consent Construct (ATIXA)

Consent complications

- Lack of relationships and understood norms of behavior
- Past interactions with one another that may be transposed onto the current encounter
- Past interactions with others that get transposed onto a new partner
- Influence of alcohol and/or drugs
- Alternative Lifestyles and Power Exchanges (Kink, BDSM, con noncon, etc.)
 - Useful resource for investigators: <https://www.urbandictionary.com/>

- Alcohol and Other Drugs



- Alcohol and Other Drugs

Can two adults who are both “drunk” engage in consensual sex with one another?

- Alcohol and Other Drugs

Can two adults who are both “drunk” engage in consensual sex with one another?

YES – our standard for lack of consent is not “drunk” (otherwise defined as inebriated), but incapacitated.

To be incapacitated means to be physically helpless and/or be mentally incapable of making a decision and appreciating the consequences of one’s choices.

- Alcohol and Other Drugs

Tolerance

What is a drink? (niaa.nih.gov)

12 oz. of beer (5% alcohol)

5 oz. of wine (12% alcohol)

1.5 oz. distilled spirits (40% alcohol)

Metabolism

The “I” Words

Influence

Impairment

Inebriation/Intoxication (drunk)

Incapacitation

- Alcohol and Other Drugs

Factors that effect capacity

sex

body mass

illness

stomach contents

water consumption

type of alcohol consumed

amount of alcohol consumed

prescription and non-prescription medications

age

tolerance

menstrual cycle

method of drinking

duration of drinking

carbonation

• Alcohol and Other Drugs

Passing out vs. Blacking out

Investigators:

- Estimate blood alcohol level based on information available
- Compare this to the reported/observed behaviors
- Are these consistent with one another?
- Are these indicative of a lack of capacity to consent?

What about?

- Mutual Incapacity
- Known or reasonably should have known...



- Alcohol and Other Drugs

BAC	Predictable Effects
.02% to .04%	Lightheaded – Relaxation, sensation of warmth, "high," minor impairment of judgment
.05% to .07%	Buzzed– Relaxation, euphoria, lower inhibitions, minor impairment of reasoning and memory, exaggerated emotions (good and bad)
.08% to .10%	Legally Impaired – Euphoria, fatigue, impairment in balance, speech, vision, reaction time and hearing, judgment and self-control are impaired
.11% to .15%	Drunk – "High" reduced and depressive effects (anxiety, depression or unease) more pronounced, gross motor impairment, judgment and perception severely impaired
.16% to .19%	Very Drunk – Strong state of depression, nausea, disorientation, dizzy, increased motor impairment, blurred vision, judgment further impaired
.20% to .24%	Dazed and Confused – Gross disorientation to time and place, increased nausea and vomiting, may need assistance to stand/walk, impervious to pain, blackout likely
.25% to .30%	Stupor – All menal, physical and sensory functions are severely impaired, accidents very likely, little comprehension, may pass out suddenly
.31% and up	Coma – Level of surgical amnesia, onset of coma, possibility of acute alcohol poisoning, death due to respiratory arrest is likely in 50 % of drinkers



• Alcohol and Other Drugs

[Search Site](#)



CENTER ON ALCOHOLISM,
SUBSTANCE ABUSE,
& ADDICTIONS 2650 YALE SE MSC11-6280
ALBUQUERQUE, NM 87106
PHONE: 505-925-2300 FAX: 505-925-2301

- Assessment Instruments
- BAC and SEC Calculation Software
- CASAA
- Coding Instruments
- Clinical Trials Network
- Motivational Interviewing and Therapist Manuals
- Conferences, Workshops, & Speakers
- Research Training
- Order Motivational Interviewing DVDs
- Looking for Help?
- Research Participant Opportunities
- Links
- Contact Us
- Search Site
- University of New Mexico

[Home](#)

BAC Estimator

INSTRUCTIONS:

Enter your gender, your weight, the amount of time in hours that you spent drinking, the number of drinks, ounces per drink, and then select the drink from the drop-down menu.

For example, if you had two cans of beer, you would enter 2 for the number of drinks, 12 for the ounces, and select the type of beer from the drop down menu. If you do not see the exact drink in the drop down menu, you may enter the percentage alcohol manually -- **this value will always override the drink selection.** Enter the number only, do not include the % sign. You can enter up to 5 different kinds of drinks.

Gender: ▼

Weight: Pounds ▼

Time (in hours):

Standard drink sizes: Beer:12 oz - Wine:5 oz - Shot:1.5 oz

Number of drinks	Ounces per drink	Select Drink (% alcohol)	OR	Manually enter % alcohol
<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>	OR	<input type="text" value=""/>
<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>	OR	<input type="text" value=""/>
<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>	OR	<input type="text" value=""/>
<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>	OR	<input type="text" value=""/>
<input type="text" value=""/>	<input type="text" value=""/>	<input type="text" value=""/>	OR	<input type="text" value=""/>

This is for information only and is just an estimate. Blood alcohol concentration depends on numerous factors including age, health, and even the amount of food in your stomach. **DO NOT** rely on these results to determine if you may drive.

[Calculate BAC\(results below\)](#)



• Alcohol and Other Drugs

Other (illicit) drugs:

- By design, other drugs (illicit, non-prescription) are designed to impair normal bodily functions
- The quality control of drugs is difficult to account for; illicit drugs can be tainted with other drugs that significantly effect the experience of being “high” (**note that “high” does not automatically indicate incapacity**)
- When used with alcohol, the effects of drugs are cumulative to the effects of alcohol

- Trauma

What is Trauma?

Trauma is exposure to an event or events that creates a real or perceived threat to life, safety, or sense of well being and bodily integrity.

Trauma results from war, natural disasters, physical violence (non-sexual and sexual), relationship violence, stalking, and child abuse. Trauma is different than stress in how it activates certain parts of the brain and shuts down others.

- Trauma

The Brain:

Cortex (thinking)

Limbic (emotions)

Brain Stem (survival)

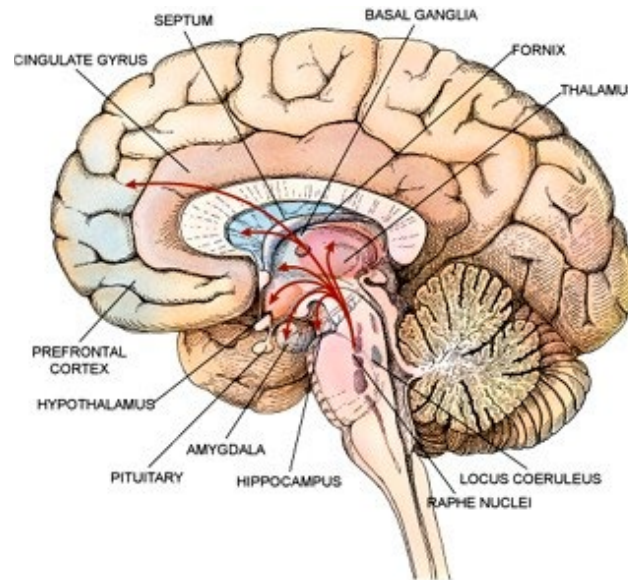
The Brain and Trauma (activated):

Hypothalamus

Pituitary

Hippocampus

Amygdala



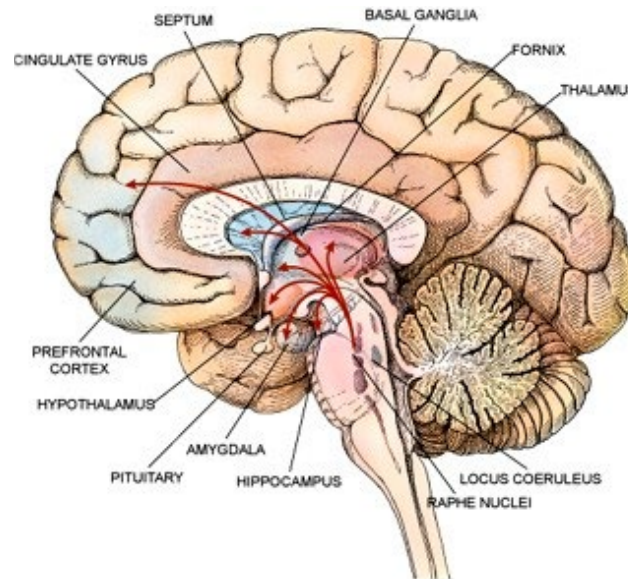
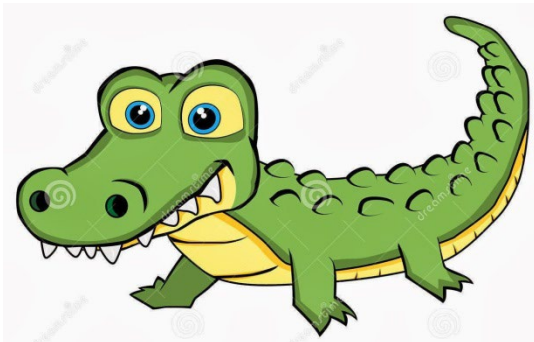
- Trauma

“Alligator Brain” controls:

Fight (approach)

Flight (avoidance)

Freeze (submission)



• Trauma

Trauma triggers:

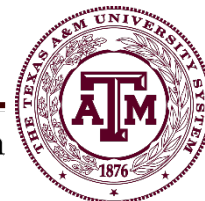
- Fight, Flight, Freeze response (not a choice)
- Incapacitation of frontal lobe through the release of a hormonal flood, which can last for up to 4 days and may be reactivated by a triggering event
- Up to half of those experiencing a sexual assault experience a tonic immobility which is described as a paralysis – this is a biological response
- Hippocampus (Memory Maker) can still accept sensory data and encode it, but cannot consolidate memories and store (think of a card catalog); memory recall tends to be fragmented and recall can be slow and difficult



• Trauma

Trauma and Investigations

- Don't diagnose whether or not trauma exists; respect that it may exist
- Expect a non-linear account; the important issue is whether or not the accumulation of stories is coherent and consistent and not contradictory
- Use open-ended questions and be patient in allowing for responses; don't bombard someone with multiple questions or multi-part questions
- Allow time
- Never impose your expected reactions to an event on to someone else; how people react in a traumatic situation (and following it) may seem counter-intuitive
- Use non-judgmental and non-blaming language; avoid "Why" questions
- Emphasize transparency and predictability



- Predation

Definition of Predation (08.01.01)

Predation – an intent to engage in these acts prior to their occurrence demonstrating premeditation, planning or forethought, and is reflected in communicated intent (verbal, visual, or written), threats directed at a party, attempts to incapacitate a party, attempts to isolate a party, utilizing violence, or other actions that a reasonable person would construe as a pre-meditation to engage in unwanted actions.

Committing any of these actions with an individual under the age of consent is also considered predatory.

- Predation

Considerations

Influence (cajoling, pressuring, etc.)

Isolation

Substances

Coercion and/or Threats

Violence

Collaboration

Case Study

Part 5



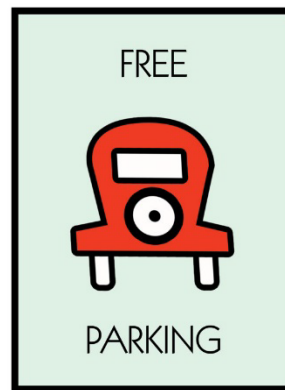
Case Study

Supplemental Interviews

- Determine if investigators need to conduct additional interviews of any parties (may conduct multiple interviews)
- Skip the greetings and opening statement
- Observers should again play the roles of the witnesses when needed
- No small or large group processing for witness interviews

- Parking Lot

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



- Section Five

Developing a Report



• Developing a Report

Preparing an Investigative Report:

1. Follow the template provided by SECO for investigative reports
2. Clearly outline the **specific allegations** (focus on the specific behavior and not 08.01.01 language)

Example: “Did John refer to Ahmad as derogatory terms such as “raghead” and “terrorist”?”

NOT: “Did John harass Ahmad based on race or national origin? (this comes later)

• Developing a Report

Preparing an Investigative Report:

3. State the applicable regulation/rule (note: cases involving student respondents should not reference the code of student conduct)
4. Organize by event in chronological order. Start with the complainant's rendition. You may follow with the Respondent's or supporting witnesses. Respondent's rendition can be followed by witnesses supporting that side. Then move to the next event/incident/allegation.

• Developing a Report

Life Cycle of a Report:

1. Initial Draft Report (IDR)

This report is submitted by the investigators to the person who assigned them. This person is responsible for vetting the report (for initial quality control) prior to sending it to OGC and SECO for review – no one else is to see this draft of the report.

The initial draft report should only include information that is material (relevant) to the allegations and must account for all inculpatory and exculpatory evidence.

• Developing a Report

Life Cycle of a Report:

1. Initial Draft Report (IDR)

- For each allegation, the report should state what the complainant alleged, what the respondent said, then what the witnesses said. Thereafter should follow an analysis and conclusion as to whether or not the evidence substantiates the alleged conduct. Then move to the next specific allegation. Don't group everything each party/witness said about all the allegations together, as this makes the analysis difficult and confusing.
- After all allegations have been addressed, insert an analysis of whether or not a policy/regulation/conduct rule was violated, followed by the conclusion (as seen in the report template).

- **Developing a Report**

Life Cycle of a Report:

2. **OGC/SECO Review**

OGC and SECO review the IDR for the purposes of sufficiency (are the conclusions supported by the facts of the case) and investigative method (appropriate parties interviewed, appropriate interpretation of evidence, etc.).

- **Developing a Report**

Life Cycle of a Report:

3. **Final Draft Report (FDR)**

A revised report is created based on feedback provided through the OGC/SECO review. This report (provided it does not require additional OGC/SECO review) is then given to the primary parties for review and comment.

- **Developing a Report**

Life Cycle of a Report:

4. **Comment Period (Best Practice, not currently required in 08.01.01)**

OGC and SECO review the IDR for the purposes of sufficiency (is the conclusions supported by the facts of the case) and investigative method (appropriate parties interviewed, appropriate interpretation of evidence, etc.). The parties are provided a brief (2-5 business days, based on length of the report) period to offer feedback on the report. The feedback is to be considered by the investigators and identified in the Final Report, but the investigators will generally defer to the own recollections of the interviews and their own interpretation of the evidence. If any substantive changes are made, the report should be resubmitted to OGC/SECO for additional review.

- **Developing a Report**

Life Cycle of a Report:

5. **Final Report (FR)**

A final report is prepared and submitted to the person who assigned the investigators, who then forwards the report to the appropriate administrator/panel. Further distribution of the report comes from the appropriate adjudicatory process (Designated Administrator, panel, etc.)

- **Developing a Report**

Three key questions –

There are three key (and separate) analytical components of any investigation:

1. Did the alleged behavior occur?
2. Did the behavior occur because of a protected class?
3. If “yes,” does the behavior constitute a violation of the cited regulation/rule? (individually or collectively)

- Developing a Report

When examining whether or not substantiated behavior violates 08.01.01 and the case is not “quid pro quo” harassment, the investigator **must** apply the mechanics of the “hostile environment” standard **IF** it is concluded that the behavior was based on a protected category (sex, race, national origin, etc.).

- ## Developing a Report

When examining whether or not substantiated behavior violates 08.01.01 and the case is not “quid pro quo” harassment, the investigator **must** apply the mechanics of the “hostile environment” standard

1. Is the behavior severe (creates a work, educational, or campus living environment that a reasonable person would consider intimidating or abusive)?

OR

- Developing a Report

When examining whether or not substantiated behavior violates 08.01.01 and the case is not “quid pro quo” harassment, the investigator **must** apply the mechanics of the “hostile environment” standard

2. Is the behavior persistent (has occurred more than once and/or has happened with unreasonable frequency)?

OR

- ## Developing a Report

When examining whether or not substantiated behavior violates 08.01.01 and the case is not “quid pro quo” harassment, the investigator **must** apply the mechanics of the “hostile environment” standard

3. Is the behavior pervasive (the respondent is engaging in the behavior with other people and/or the climate has been negatively effected by the behavior)?

AND

- Developing a Report

When examining whether or not substantiated behavior violates 08.01.01 and the case is not “quid pro quo” harassment, the investigator **must** apply the mechanics of the “hostile environment” standard

4. Is the behavior intimidating or abusive to a reasonable person?

Let's look at our investigative report template...

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY CLIENT COMMUNICATION
ATTORNEY WORK PRODUCT**

**[DRAFT NAME]
[DATE]**

MEMORANDUM

TO:

FROM:

RE:

On (Date), (name and title) assigned me/us to investigate a complaint by (Complainant).

COMPLAINANT

RESPONDENT

Name
Status/Title
Department/Office

Name
Status/Title
Department/Office

On (date), (Complainant) filed a complaint of [(protected class) discrimination/harassment/retaliation] against (Respondent). Specifically, (Complainant) alleges (Respondent) discriminated/harassed/retaliated against him/her on the basis of (protected category) by [describe alleged action(s)], in violation of A&M System Policy 08.01 (Civil Rights Protections and Compliance) and A&M System Regulation 08.01.01 (Civil Rights Compliance).

As part of this investigation, I/we interviewed the following persons regarding the above-referenced allegations:

Date	Interview
----	Name and Identification (e.g., student status, employee title, Complainant-Respondent-Witness)
----	Name and Identification (e.g., student status, employee title, Complainant-Respondent-Witness)
----	Name and Identification (e.g., student status, employee title, and Complainant-Respondent-Witness)



Olshak, Rick
This header remains until a Final Draft Report is created.



Olshak, Rick
There are three stages of drafts – insert appropriate name here.

Initial Draft Report – This initial draft is for internal purposes ONLY, and is NOT to be shared with the parties. Distribution is limited to the investigator(s), the individual who assigned the investigators, System Ethics and Compliance Office (SECO) and OGC.

Final Draft Report – This draft is finalized after review by SECO & OGC. This draft is shared with the parties for their review and commentary. If there is no feedback, or if feedback does not result in alteration of the report, this can be re-labeled as a Final Report without additional review. If the commentary results in any changes (as a result of investigator alterations or additional investigation/evidence), then the document should be resubmitted to SECO and OGC prior to being finalized.

Final Report – This is the report provided to the parties, as well as to the Designated Administrator.



Olshak, Rick
e.g., Administrative Associate II, Undergraduate Student, Graduate Teaching Assistant



Olshak, Rick
This should include a brief (one to two sentence) summary of the allegations.



As part of this investigation, we reviewed and considered the following documents, attached hereto as Exhibits:

- Exhibit 1: (Complaint)
- Exhibit 2: (Notification/acknowledgement of complaint, appointment of Investigative Authority)
- Exhibit 3: A&M System Policy 08.01, Civil Rights Protections and Compliance
- Exhibit 4: A&M System Regulation 08.01.01, Civil Rights Compliance
- Exhibit 5: Applicable System Member Rule or Procedure (if any)
- Exhibit 6, etc. Interview summaries, relevant emails, texts, videos, photographs, etc.

ALLEGED VIOLATION(S)

A&M System Policy 08.01 prohibits discrimination, harassment, and retaliation on the basis of race, color, sex, religion, national origin, age, disability, genetic information, veteran status, sexual orientation and gender identity in employment and programs and activities. [As applicable: Sexual harassment is defined in A&M System Regulation 08.01.01 as.....; hostile environment is defined as.....; consent is defined as

STANDARD OF EVIDENCE

In reviewing complaints, determinations as to whether or not the complaint is substantiated will be made on the basis of a preponderance of the evidence, or what is more likely than not to have taken place.

INTRODUCTION

Include any information which would provide context to the complaint. This might include a description of the work, academic, program, or personal relationship between the Complainant and Respondent, the general location and time frame of incidents, etc. You do not have to include an "Introduction" but feel free to do so when it would be valuable to the reader to better understand the circumstances leading to the allegations.



Olshak, Rick

For 08.01.01 investigations, cite the System regulation or member rule for 08.01.01. DO NOT include member codes of student conduct or other local procedures.



Olshak, Rick

Do not alter this section.



Olshak, Rick

This section provides the backdrop to how the complaint came to be, and describing any relationship between the parties. It is not a required section, but can provide context to the reader of the investigative report.



A. Did (Respondent) (cite allegation)?

Summarize evidence/information obtained from interviews and/or documents related to this specific allegation. Do not include information not related to the allegation.

Examination of Evidence

Compare the evidence supporting the allegation to the evidence against the allegation. Are there any inconsistencies or contradictions in the fact pattern? Who said what in support of or against the allegation? What evidence is more believable and why? Are the parties/witnesses credible? Why or why not? If applicable, consider the elements of consent, incapacity, effects of trauma, etc. End with a statement of whether or not the incident/conduct did occur or did not occur—not whether or not policy was violated.

If there are multiple allegations, and all the allegations are related (e.g., sexual harassment), proceed to next allegation. If not, proceed to Analysis of this allegation.

Analysis (OPTIONAL – only for multiple unrelated allegations)

Apply the facts to the relevant sections of the policy/regulation. For example, if hostile environment is alleged and the examination of the evidence indicates the incident/conduct occurred, was it based on a protected category and if so, why? If so, then compare the relevant facts to the standards of “severe,” “persistent,” and “pervasive” and address the impact on the Complainant(s) (i.e., was it intimidating and/or abusive to a “reasonable person”?) |

- **Summation: In summation, based on the standard of the preponderance of the evidence (more likely than not), I/we conclude that the allegation of (note the alleged incident or specific conduct) occurred/did not occur/. Summarize briefly how the evidence supports that the incident/conduct occurred.**



Olshak, Rick

Cite the specific behaviors alleged, NOT a question of whether or not the behavior constituted discrimination, harassment, or retaliation.



Olshak, Rick

Write a single narrative (in the voice of the investigators) that includes all relevant evidence. It is typical to begin with the Complainant's account (and any supporting witnesses) and then the Respondent's account (and any supporting witnesses), as well as any other related testimony and/or evidence.



Olshak, Rick

If single or multiple allegations are all related, do not complete an Analysis after each allegation, but instead skip to Analysis of System Regulation 08.01.01 below.



Baker, Joni

If the incident/conduct is unrelated to the other allegations (e.g., race discrimination v. sex discrimination), change this to a “Conclusion;” e.g., I/We conclude that the incident/conduct constituted/did not constitute discrimination based on (protected class), in violation of A&M System Policy 08.01 and A&M System Regulation 08.01.01. Summarize rationale for this conclusion.

B. Did (Respondent) (cite allegation)?

Summarize evidence/information obtained from interviews and/or documents related to this specific allegation. Do not include information not related to the allegation.

Examination of Evidence

Compare the evidence supporting the allegation to the evidence against the allegation. Are there any inconsistencies or contradictions in the fact pattern? Who said what in support of or against the allegation? What evidence is more believable and why? Are the parties/witnesses credible? Why or why not? If applicable, consider the elements of consent, incapacity, effects of trauma, etc. End with a statement of whether or not the incident/conduct did occur or did not occur—not whether or not policy was violated.

If there are multiple allegations, and all the allegations are related (e.g., sexual harassment), proceed to next allegation. If not, proceed to Analysis of this allegation.

Analysis (OPTIONAL – only for multiple unrelated allegations)

Apply the facts to the relevant sections of the policy/regulation. For example, if hostile environment is alleged and the examination of the evidence indicates the incident/conduct occurred, was it based on a protected category and if so, why? If so, then compare the relevant facts to the standards of “severe,” “persistent,” and “pervasive” and address the impact on the Complainant(s) (i.e., was it intimidating and/or abusive to a “reasonable person”?)

- Summation: **In summation, based on the standard of the preponderance of the evidence (more likely than not), I/we conclude that the allegation of (note the alleged incident or specific conduct) occurred/did not occur/.** Summarize briefly how the evidence supports that the incident/conduct occurred.



Olshak, Rick

Cite the specific behaviors alleged, NOT a question of whether or not the behavior constituted discrimination, harassment, or retaliation.



Olshak, Rick

Write a single narrative (in the voice of the investigators) that includes all relevant evidence. It is typical to begin with the Complainant's account (and any supporting witnesses) and then the Respondent's account (and any supporting witnesses), as well as any other related testimony and/or evidence.



Olshak, Rick

If single or multiple allegations are all related, do not complete an Analysis after each allegation, but instead skip to Analysis of System Regulation 08.01.01 below.



Baker, Joni

If the incident/conduct is unrelated to the other allegations (e.g., race discrimination v. sex discrimination), change this to a “Conclusion;” e.g., I/We conclude that the incident/conduct constituted/did not constitute discrimination based on [protected class], in violation of A&M System Policy 08.01 and A&M System Regulation 08.01.01. Summarize rationale for this conclusion.

C. **Did (Respondent) (cite allegation)?**

Summarize evidence/information obtained from interviews and/or documents related to this allegation. Do not include information not related to the allegation.

Examination of Evidence

Compare the evidence supporting the allegation to the evidence against the allegation. Are there any inconsistencies or contradictions in the fact pattern? Who said what in support of or against the allegation? What evidence is more believable and why? Are the parties/witnesses credible? Why or why not? If applicable, consider the elements of consent, incapacity, effects of trauma, etc. End with a statement of whether or not the incident/conduct did occur or did not occur—not whether or not policy was violated.

If there are multiple allegations, and all the allegations are related (e.g., sexual harassment), proceed to next allegation. If not, proceed to Analysis of this allegation.

Analysis (OPTIONAL – only for multiple unrelated allegations)

Apply the facts to the relevant sections of the policy/regulation. For example, if hostile environment is alleged and the examination of the evidence indicates the incident/conduct occurred, was it based on a protected category and if so, why? If so, then compare the relevant facts to the standards of “severe,” “persistent,” and “pervasive” and address the impact on the Complainant(s) (i.e., was it intimidating and/or abusive to a “reasonable person”?) |

- Summation: **In summation, based on the standard of the preponderance of the evidence (more likely than not), I/we conclude that the allegation of (note the alleged incident or specific conduct) occurred/did not occur/. Summarize briefly how the evidence supports that the incident/conduct occurred.**

A&M System Policy 08.01 and A&M System Regulation 08.01.01. Summarize rationale for this conclusion.



Olshak, Rick

Cite the specific behaviors alleged, NOT a question of whether or not the behavior constituted discrimination, harassment, or retaliation.



Olshak, Rick

Write a single narrative (in the voice of the investigators) that includes all relevant evidence. It is typical to begin with the Complainant's account (and any supporting witnesses) and then the Respondent's account (and any supporting witnesses), as well as any other related testimony and/or evidence.



Olshak, Rick

If single or multiple allegations are all related, do not complete an Analysis after each allegation, but instead skip to Analysis of System Regulation 08.01.01 below.



Baker, Joni

If the incident/conduct is unrelated to the other allegations (e.g., race discrimination v. sex discrimination), change this to a “Conclusion;” e.g., I/We conclude that the incident/conduct constituted/did not constitute discrimination based on (protected class), in violation of A&M System Policy 08.01 and A&M System Regulation 08.01.01. Summarize rationale for this conclusion.

ANALYSIS OF SYSTEM REGULATION 08.01.01

Cases of sexual harassment, including sexual assault and misconduct that are not alleged to be a quid pro quo complaint must rise to the level of a hostile environment to be a violation of the regulation or rule. Be sure to analyze whether the behavior based on a protected class, is severe, persistent, and/or pervasive enough to create a work, educational, or campus living environment that a reasonable person would consider intimidating or abusive. The determination of whether an environment is “hostile” must be based on all of the circumstances, which may include the frequency of the conduct, the nature and severity of the conduct, whether the conduct was physically threatening or humiliating, and the mental or emotional effect of the conduct on the individual(s) subjected to the alleged harassment. In cases of sexual violence (including nonconsensual sexual penetration), severity can be established either by the act itself and/or by the effects of the act.

CONCLUSION

If all the allegations are being considered jointly, this section will reach an overall conclusion as to whether or not the evidence does or does not substantiate, or there is insufficient evidence to substantiate, an 08.01 policy or 08.01.01 regulation violation.

COMMENTS

Note any observations that a designated administrator and/or appellate body should be aware of, such as mitigating circumstances or other possible related policy violations. Do not make recommendations for training or sanctions or provide personal opinions.

In cases where inappropriate or unprofessional conduct is identified that is not covered in 08.01 or 08.01.01, please identify those behaviors in a separate memo and address this memo to the designated administrator. Keep a copy of this memo attached to the investigative file.

END OF REPORT



Olshak, Rick

For complaints involving multiple related allegations (e.g., all sexual harassment), this section analyzes whether or not substantiated allegations rise to the level of a violation of the regulation or rule. If none of the alleged behaviors are substantiated, by definition there will be no violation of the regulation or rule and no need for an analysis here.



Olshak, Rick

For sex-based cases, the analysis should be based on pre-2018 guidance from the Department of Education. OGC and SECO will review the 2018 regulations when they become official and determine appropriate adjustments to System Regulation 08.01.01.



Olshak, Rick

“Related” conduct would be those that are pertinent to the investigation. For example, a student alcohol policy violation is outside the scope of the regulation, but is often a related part of the incident, and may be subject to either disciplinary action on its own, or result in sanctioning consideration for a violation of the regulation or rule.



Olshak, Rick

For example, unrelated conduct matters may come to the attention of investigators during an investigation. Consult with the Title IX Coordinator on a case to case basis on how to address potential violations outside the scope of the investigation.



Olshak, Rick

This should be the final note on any report and no commentary should come afterwards.

Case Study

Part 6



Case Study

Developing a Report/Reaching Conclusions

- Each group of investigators will answer the following questions:

Question A: Did Rob engage in sex with Cindy without her consent?

Question B: Did Rob send unwanted text messages to Cindy? If so, does this constitute sexual harassment?

Question C: Did Rob send unwanted gifts to Cindy? If so, does this constitute sexual harassment?

- The investigators may be aided by the observers, but may not be aided by those playing Cindy or Rob

Case Study

Developing a Report/Reaching Conclusions

- If the conclusion to any of the allegations is affirmative (i.e., substantiated) then the investigators must examine if the behavior violates A&M System Regulation 08.01.01 on the basis of hostile environment.
- Three key definitions:
 - Sexual Harassment
 - Consent
 - Hostile Environment

Case Study

Sexual Harassment (A&M System Regulation 08.01.01)

– a form of sex discrimination. Unwelcome sexual advances, requests for sexual favors or other verbal, nonverbal or physical conduct of a sexual nature constitute sexual harassment when this conduct is so severe, persistent or pervasive that it explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work or educational performance, or creates an intimidating or hostile work, educational, or campus living environment. Unwelcome means that an individual did not request or invite it and considers the conduct to be undesirable or offensive. Submission to the conduct or failure to complain does not always mean that the conduct was welcome. Sexual harassment may be quid pro quo (“this for that”) or may constitute a hostile environment. Sexual harassment includes non-consensual sexual contact, sexual assault, sexual exploitation, stalking, dating violence, and domestic violence when based on sex.

Case Study

Consent (A&M System Regulation 08.01.01)

– clear, voluntary and ongoing agreement to engage in a specific sexual act. Persons need not verbalize their consent to engage in a sexual act for there to be permission. Permission to engage in a sexual act may be indicated through physical actions rather than words. A person who was asleep or mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason, or whose agreement was made under duress or by threat, coercion, or force, cannot give consent.

Case Study

Hostile Environment (A&M System Regulation 08.01.01)

– a situation in which there is harassing conduct based on a legally protected class that is severe, persistent, or pervasive enough to create a work, educational, or campus living environment that a reasonable person would consider intimidating or abusive. The determination of whether an environment is “hostile” must be based on all of the circumstances, which may include the frequency of the conduct, the nature and severity of the conduct, whether the conduct was physically threatening or humiliating, and the mental or emotional effect of the conduct on the individual(s) subjected to the alleged harassment.

Case Study

Developing a Report/Reaching Conclusions

- Once the investigators have reached their conclusions, they will prepare a brief outline of their conclusions that mirrors the format of the reporting template (use bullet points instead of paragraphs)
- Each group will report its conclusions
- The training staff will then present their analysis of the scenario

Case Study

Group Reporting (Groups 1 through 6)

- Please report in a maximum of 3-5 minutes



Case Study

Training Staff Analysis

Question A: Did Rob engage in sex with Cindy without her consent?

NO. Both Rob and Cindy maintained their capacity to consent to sexual activity. While Cindy demonstrated some desire to go to sleep and end the evening, she did agree to provide oral sex to Rob and did so at her own initiation. Whether or not the sex was desired, it was consented to.

Case Study

Training Staff Analysis

Question A: Did Rob engage in sex with Cindy without her consent?

“Cheat Sheet” for Capacity (Cindy):

Assuming a 130 pound female –

3 hard lemonades over three hours: 0.096 BAL (at its highest)
(Total Standard drinks: 4.16)

Plus one bite of marijuana brownie

(50 mg dosage brownie – ten bites worth) - 5 mg consumed

5 mg considered a low dose with moderate effect over a 2-5 hour period of time

With the fact pattern and this estimate of substance use, incapacity is possible but unlikely.



Case Study

Training Staff Analysis

Question A: Did Rob engage in sex with Cindy without her consent?

“Cheat Sheet” for Capacity (Rob):

Assuming a 170 pound male –

4 hard lemonades over 4 hours: 0.058 BAL (at its highest)
(Total Standard drinks: 5.547)

Plus three bites of a marijuana brownie

(50 mg dosage brownie – ten bites worth) - 15 mg consumed

15 mg considered a moderate dose with moderate effect over a 2-5 hour period of time

With the fact pattern and this estimate of substance use, incapacity is possible but unlikely.



Case Study

Training Staff Analysis

Question B: Did Rob send unwanted text messages to Cindy? If so, does this constitute sexual harassment?

NO. While Cindy may have been annoyed with the frequency of messages, at no time did she indicate to Rob that he should stop messaging her. Her initiation of some of the exchanges, even for the sake being nice, provided Rob a reasonable belief that his messages were welcome.

Case Study

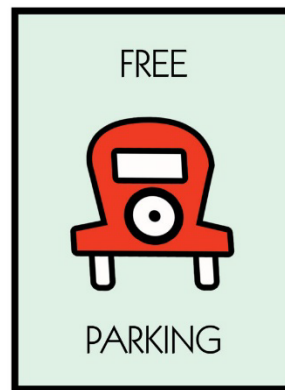
Training Staff Analysis

Question C: Did Rob send unwanted gifts to Cindy? If so, does this constitute sexual harassment?

NO. While Cindy was embarrassed by the flower delivery and told Rob that he should not have bought the gifts, at no time did Cindy ask Rob to stop sending gifts. Given their different expectations and understandings of what constituted their relationship, Cindy's annoyance can be understood, but this does not rise to the level of a violation of the Regulation (it is not severe, persistent, or pervasive). Rather, this is an example of poorly communicated expectations on the part of both Cindy and Rob.

- Parking Lot

Are there remaining questions about any of the material covered over these two days?



- Housekeeping (3 items)

If you have any questions after the conclusion of this program, please contact Rick Olshak at rolshak@tamus.edu.



Certificates of completion for this training program will be mailed to your university/agency in the next 3-4 weeks

- Housekeeping (3 items)

Finally, we ask each of you to please complete an online evaluation of this program. The evaluation can be found at <https://www.surveymonkey.com/r/TAMUSJuly19> and will be available online for the next seven days (through next Wednesday). Thank you in advance for your assistance in improving the quality of this program.

Thank you for your participation!