



Wesleyan University

Day Two: Training for Role Players

Phil Catanzano, Holland & Knight

April 13, 2021

Agenda

1. Developing and Executing a Methodical Investigative Plan

- Setting a solid foundation
- Developing a methodical interview strategy
- Addressing challenging situations

2. Conducting the Interview

- Interview techniques
- Introductions and common interview issues
- Sample Interview Outlines

3. Collecting Evidence

4. Report Writing: Structure and Tips

1



Developing a Toolbox for Each Investigation

1. Wesleyan Policy: the critical tool

- Expectations for parties/witnesses
- Role of investigator(s)
- Role of advisors
- Content of investigative report

2. Background Reference Documents:

- Allows for better understanding of facts and builds credibility of interviewer

3. Title IX regulations? VAWA regulations? Court or OCR opinions?

Developing and Executing an Investigative Plan

An opportunity to think through the details of an investigation*:

1. Review notice letters:

- What are the allegations? Is connection to institutional policy clear?
- Have you received training on the institutional policy?
- Any known investigative challenges, *e.g.*, trauma or refusal to participate by parties/witnesses?

2. How will you take conduct interviews? Note-taking? How will you collect documents referenced by any party or witness? How will you answer process questions?

3. Establish a standard introduction that can be fairly read to both parties and witnesses, *e.g.*, notice about retaliation, explanation of how you will report information, etc.

***Several concepts will be repeated in this presentation. This is by design, as investigators should constantly evaluate issues that have or could arise...then plan accordingly.**

The key to a quality investigation is preparation and thoughtfulness.



Setting a Solid Foundation

1. **Who, What, When, Where, and maybe Why**
2. **What is the crucial information to be gained from this investigation?**
 - Actions: What was observed? What was the understanding of the situation?
 - Dates and chronology of events
 - Words: What was said? Who said it? Exactly what language or words were used? (“Should I try to capture exact quotes? How much? ”)
 - Where did behavior happen? (“How far back should I go in the evening in question? The bar? The pre-gaming in the dorm? Should I visit locations?”)
 - What relationship do witnesses have with the parties?

Setting a Solid Foundation, cont.

- 1. What types of e-messaging, *e.g.*, email, text messages, WeChat, SnapChat?**
 - Take time to figure out how information is typically stored and best manner of collecting information.
 - Party/witness messaging can be critical to timeline development, *e.g.*, “Leaving for the party now!”
- 2. What other factual sources may exist? Card swipe data, security video? May require a separate interview with campus security/IT officials.**
- 3. What other information do you need to formulate an impartial narrative of events and implications?**

Developing an Interview Strategy

1. Who will you interview?

- Complainant and Respondent (often several times)
- Witnesses (suggested by parties and/or developed independently)
- Other community members that may have knowledge
- Who else do you think you should think about (accepting that this is very fact specific)?
- Common question: should I speak with every witness suggested by a party? Ask: What can the witness provide and how will this witness be helpful to impartial narrative?

Developing an Interview Strategy

1. In what order will you interview?

- What makes sense to develop and understand the events in question?
- Strategic purpose of interview order?

2. How will you confront challenges?

3. Witness unavailability? Witness refusal to participate?

4. How/when will you confront party/witness untruthfulness?

5. Witness aggression, fear, and/or over-emotion?

- Remember, this can be a scary process for any party/witness, so some of these feelings may be natural. Challenges arise if the behavior is extreme or interferes with fact-finding.

6. Aggressive advisers?

7. Other issues you are concerned about? Now is the time to think about it.

Putting It Into Practice

You are asked to get involved in a case (as an investigator) involving an allegation of relationship violence. Responding Party is alleged to have “lost it” and threw Reporting Party’s phone when they rejected sexual advances after a party.

What are the elements and how does this impact your case planning?

- any act of violence or threatened act of violence against a person who is or has been involved in a sexual or dating relationship with that person
- may involve one act or an ongoing pattern of behavior
- can encompass a broad range of behavior, including, but not limited to threats, assault, property damage, violence or threat of violence to one’s self, one’s sexual or romantic partner, or to the family members or friends of the sexual or romantic partner
- affects individuals of all genders, gender identities, gender expressions, and sexual orientation and does not discriminate by racial, social, or economic background.

Developing an Interview Approach

Map out individual interviews to elicit as much information as possible. Depending on interview and subject, examples *might involve one or a combination* of the following interview approaches:

- **Direct Questions**: “Did Supervisor invite you to his office to discuss X on January 20th? Did he put his hand on your knee during that meeting? What did Supervisor say? What did you say?”
- **Outline**: Interview follows a structure, but investigator navigates through structure.
Nature of relationship with Supervisor? Historical? Current?
Any touching during that meeting? Context? Appropriate?
Pattern of behavior: Has Supervisor done this before? With others?
- **Subject Matter Checklist**: Similar to the Outline approach, except the interviewer encourages more free-ranging narrative discussion and circles back to the Outline items as appropriate. Interview doesn’t end until “checklist” completed. E.g., “tell me about what happened on the night in question...”

Interview Strategies

1. What style of questioning is appropriate?

- Traumatized individuals?
- Aggressive individuals?
- Individuals who may be avoiding certain questions?
- Other interviewees who may bear discussion?

2. How will the interviewee respond to your style?

3. Each approach can be effective in different contexts, but each approach still requires a focused investigative plan so necessary information is collected in a methodical way.

Without a plan, even the best interviewers will under perform.



Introductions/Setting the Stage

Decide, in advance, when and what to share with witnesses

- Questions about your role and next steps are common
- Prepare for efforts of parties/witnesses to determine what others have said to the interviewer before answering, *e.g.*, “What did Witness A say?” Or “Witness B probably told you that, huh?”

Remind witness that your role is to investigate fairly and objectively

- View yourself as an investigator looking to find out the truth of what happened, not a prosecutor or a law-enforcement type detective.
- Burden is on institution to determine if policy was violated; investigators role is to collect facts, not “prove the case for/against” anyone.

Avoid allegations of deception, bias, or unfairness. Individuals may not like the ultimate adjudication decision, but they should feel they were treated fairly, heard, and respected in investigation

Common Areas of Inquiry

Develop witness outlines in advance to make sure you capture as much as possible.

1. What happened? When? Where? Why?

- Explicit details of what occurred, e.g., what did X say and how did Y respond? Who else was there?
- Use other events to get time markers, e.g., before or after X party, before or after you received a call from Y? Who did you call after?
- Get exact location in detail, e.g., behavior started in kitchen, moved to bedroom?

2. How did it make you feel? How were you impacted?

3. Who else was there? What have they said and to whom?

4. Who have you told this to? What did you say? What did they say?



Common Areas of Inquiry, cont.

5. How were you communicating? Text? Snapchat? In person?
6. Have you kept any relevant written records, notes, diaries?
7. Did you call, email, text, message anyone else related to this event? When? Who? What did you say?
8. What documents or other materials do you think should be reviewed as part of this investigation? Why?
9. Who do you think should be interviewed as part of this investigation? Why?
10. Anything I didn't ask? Anything I didn't ask the right way?

Witnesses often need to be asked for information in different ways before they understand what is responsive; it does not always indicate lack of candor

Common Challenges

1. Reviewing critical evidence

- Be prepared to show witnesses demonstrative evidence if/when appropriate, e.g., challenging emails, text messages, social media posts, etc.

2. Difficult, unresponsive, and/or confrontational witnesses?

- Direct questioning often necessary
- Break questions into smaller components that are less likely to enflame and/or provide the interviewee a chance to expand to other matters

3. Sensitive subject matter?

- Provide appropriate sensitivity to all parties/witnesses
- Provide time to let the parties/witness answer in narrative/conversation
- Interviewer must still make sure difficult questions are answered

Reflect on Each Interview

- 1. What additional information is necessary to execute your case plan?**
- 2. Did any new witnesses, evidence, or questions come to light?**
 - Did new allegations come to light? What do you do now?!?!?
 - Revisit the witness list and order
 - Revisit your strategy for collecting information (and follow up with witness to collect anything they have in their possession)
 - Anyone that you need to go back to with newly learned information?
- 3. Establish a realistic schedule for completion of each step**
 - Academic year, vacation, travel, study abroad – all can present timing challenges.
 - Timelines are important to institution, but also important to individuals.

Impact of Trauma

1. Who can experience trauma?

- Anyone: either party, any witness
- Can be from the event at issue or prior events, *e.g.*, triggering events.
- Does that mean an individual that experienced trauma is always being truthful?
- Being trauma-informed does not mean that you should not ask critical questions or make assumptions; rather, it is a matter of how do you ask the questions in a thoughtful manner to elicit a candid response

2. Be mindful not to assume credibility – in either direction – solely based on trauma.

Information Gathering

1. Take appropriate notes

- Make subject of interview, dates, location, and time clear
- Fully transcribe quotes
- If unclear on a statement or a quote, stop and clarify (at any point)
- Following interview, review notes as soon as possible. Clarify any muddled points.

2. Solicit and preserve electronic information, e.g., texts, social media, etc.

3. Will often have to re-interview parties and/or witnesses; if an additional interview, note it

4. Investigative report should reflect notes; if differences, resolve or highlight it for reviewers

5. Cases often conclude with parties not agreeing on certain facts; make that clear so it does not lead to a conclusion that it was a function of a poor investigation)

Typical Contents of an Investigative Report

1. **Policy Basis for Jurisdiction, Including Definition of Prohibited Conduct**
2. **Standard of Review – Preponderance of the Evidence**
3. **Allegations/Scope of Investigation**
4. **Summary of Fact-Finding (the majority of most reports)**
 - Organization can be approached differently, e.g., issue focused, witness focused
5. **Application and Analysis of Facts to Policy**

Report Writing Challenge One: Multiple Audiences

Understanding the audience is imperative to quality writing. Investigation report writing is challenging because there are many potential audiences.

Examples include:

- Parties (and Advisers)
- Hearing Boards
- Individuals with Need to Know: Title IX Coordinator, campus police, potentially other role-players, e.g., registrar, housing, etc.
- While it should not change approach, additional audiences may include federal judges, federal agencies
- Others?

Report Writing Challenge Two: Inconsistency

Inconsistency in charges could be a fatal flaw in process, *e.g.*, allegation and investigation of nonconsensual sexual intercourse, but notice letter states allegation as sexual exploitation; or “Witness A said the sky was blue; Witness B disagreed and said the sky was blue.”

- Makes the report confusing and sometimes even nonsensical
- Huge amounts of information may arise from many sources during a high quality investigation, which can cause challenges in writing a narrative.
- Inconsistency may be coming from witness statements that are at odds; make that clear to the audience, i.e., it is the facts/statements and not the writing that makes things confusing. If so, highlight that challenge.

More Report Writing Tips

Write in clear, declaratory sentences that include attendant details and timeframes; avoid complex statements that can be misinterpreted/misconstrued

Challenging Example: Reporting Party alleged that Coach inappropriately touched certain athletes on the buttocks and shoulders repeatedly and made sexually suggestive comments during meetings, which Complainant stated is part of Coach's larger pattern of inappropriate behavior and abuse of authority over his student-athletes. The coach vehemently denied this and said that he touched Reporting Party as he touches all students and nothing was inappropriate. Coach is appalled at the allegation.

An Alternative

Reporting Party is a junior and the captain of the swimming team. Reporting Party alleged that Coach inappropriately patted their buttocks and rubbed their shoulders on six occasions in the first semester of this year. Reporting Party alleged that Coach did the same thing to co-captain, Taylor. Reporting Party stated that Coach does not physically touch any other athlete as much or in the same way as he touches Reporting Party and Taylor. Reporting Party stated that Coach holds frequent “captain meetings” with only Reporting Party and Taylor, during which Coach often makes sexually suggestive remarks and jokes. Reporting Party stated that Coach commonly calls these meetings after practice, before Reporting Party or Taylor are able to change out of their swimsuits. During Coach’s interview they agree that frequent captain meetings are held, but they denied inappropriately touching or making any sexually suggestive remarks or jokes to either Reporting Party or Taylor. Coach states that “captains meetings are set up to allow Coach to know how the team is doing – that’s the purpose and if Reporting Party doesn’t like it, they shouldn’t be a captain.” When confronted with specific examples provided by Reporting Party, Coach denied each remark individually and completely.

Hypothetical Problem Questions?