



Association of
Title IX Administrators

Custom Title IX Investigation Training

Virginia Tech

WELCOME!

- Please log in to your ATIXA Event Lobby to access the training slides, supplemental materials, and to log your attendance.
- The ATIXA Event Lobby can be accessed by scanning the QR code or by visiting www.atixa.org/atixa-event-lobby.
- You will be asked to enter your registration email to access the Event Lobby.
- Links for any applicable training evaluations and learning assessments are also provided in the ATIXA Event Lobby.
- If you have not registered for this training, an event will not show on your Lobby. Please email events@atixa.org or engage the ATIXA website chat app to inquire ASAP.





Any advice or opinion provided during this training, either privately or to the entire group, is **never** to be construed as legal advice or an assurance of compliance. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law in your jurisdiction, any applicable state or local laws, and evolving federal guidance.

Content Advisory

The content and discussion in this training will necessarily engage with sex discrimination, sexual harassment, violence, and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language. It is not used gratuitously, and no offense is intended.

Introduction



This training focuses on refining interviewing techniques and post-interview tasks, including writing clear, comprehensive investigation reports.



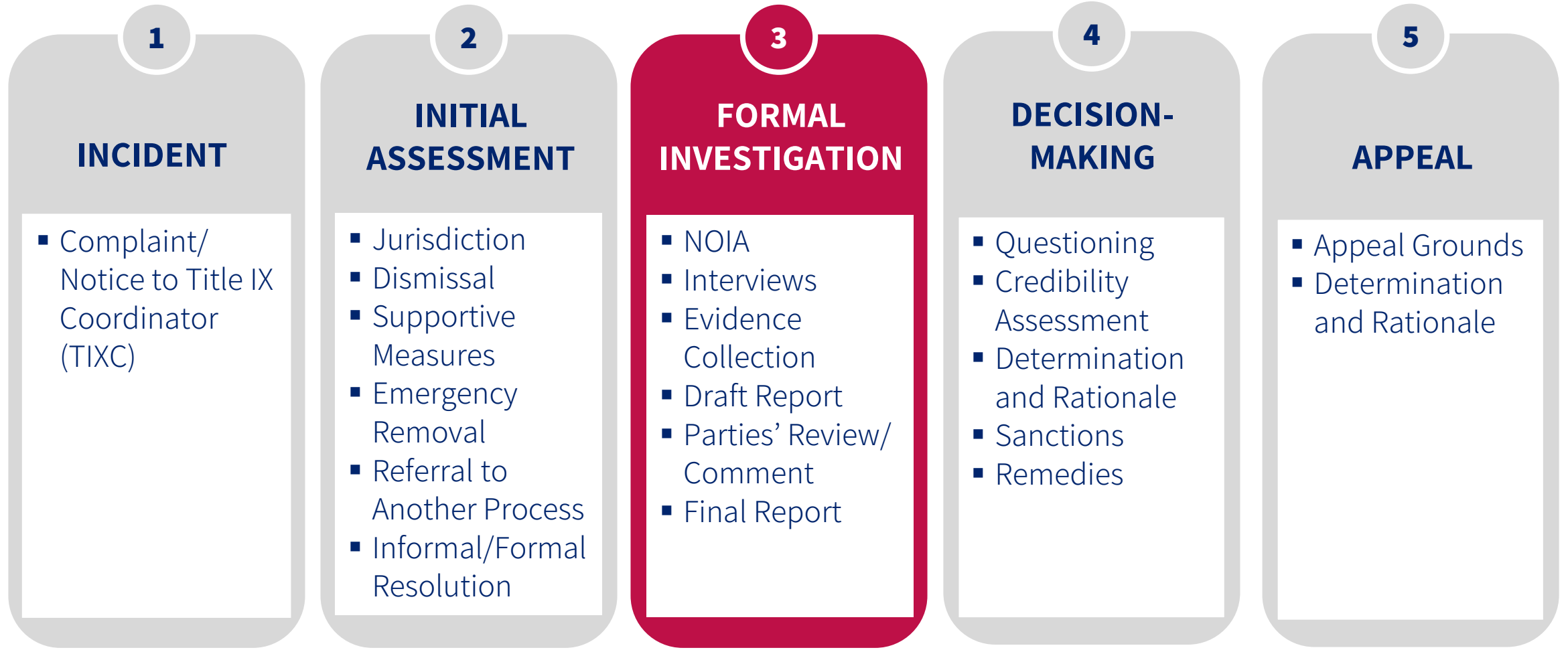
Practitioners will learn how to use policy language as a starting point for generating interview questions and synthesizing the information collected during an investigation.



This training empowers Investigators with the skills needed to critically assess information, determine relevance and credibility, and draft clear and thorough rationales in investigation reports.

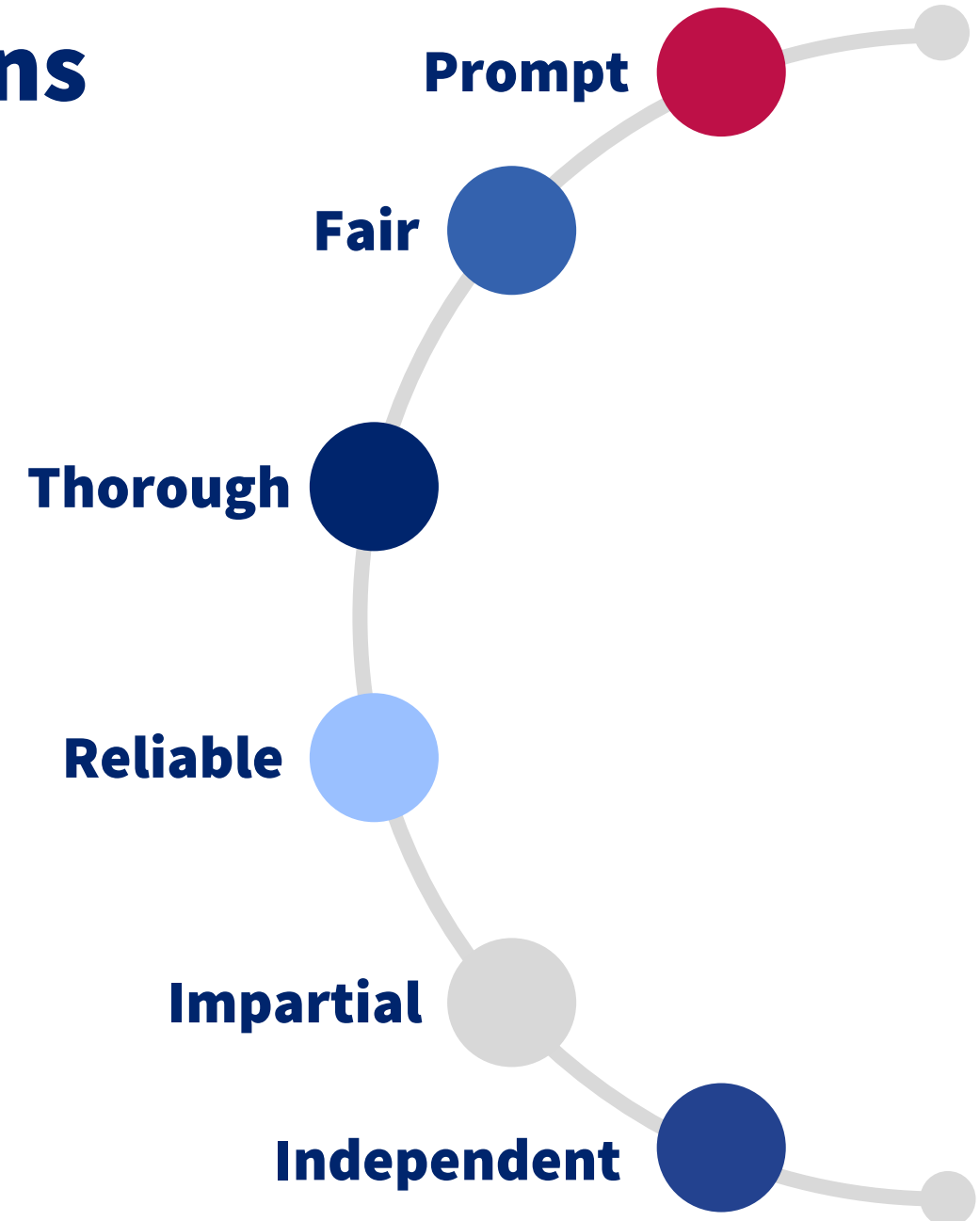
Investigation Process Review

Investigation



Civil Rights Investigations Overview

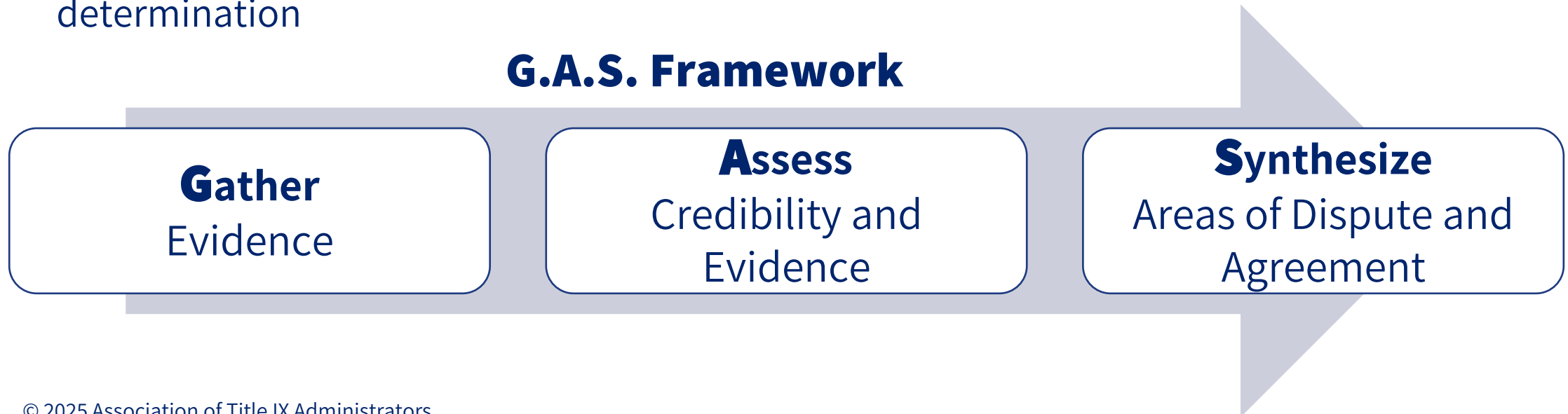
- Investigations focus on gathering all available and relevant information
- The institution is responsible for gathering evidence—not the parties
- Investigators must provide a report that accurately and succinctly summarizes the collected evidence



Role of the Investigator

- **Input:** all available, relevant evidence
- **Outputs:** a comprehensive, detailed written investigation report that fairly summarizes all relevant evidence **and** the investigation; an organized directly related evidence file
- Follow the G.A.S. Framework to well position the Decision-maker for reaching a determination

G.A.S. Framework



Investigation Steps

1. Receive Notice/Complaint
2. Initial Assessment and Jurisdiction Determination
3. Determine Basis for Investigation
4. Notice of Investigation and Allegations (NOIA)
5. Establish Investigation Strategy
6. Thorough, Reliable, Impartial Investigation
7. Draft Investigation Report
8. TIXC Reviews Draft Report and Evidence
9. Parties Review Draft Report and Evidence
10. Final Investigation Report

INCIDENT INVESTIGATION
SUMMARY

Incident Date:
Review Date:

by:

Summary:

Root Causes:

Investigation File

◆ FORMAL COMPLAINT AND INTAKE INFO

- Initial report
- Formal complaint
- Notes from Intake

◆ NOIA AND POLICIES

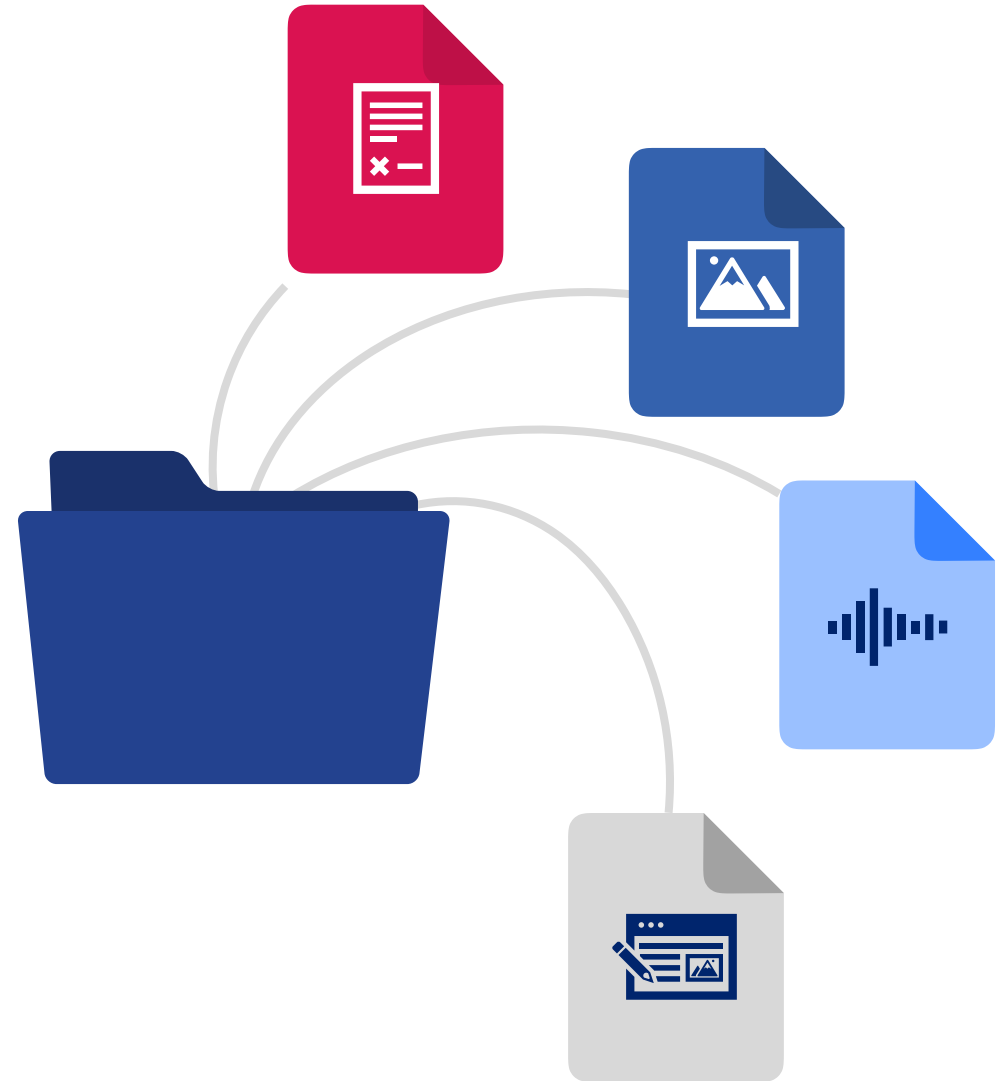
- Original NOIA and any updates
- Policies and procedures in place at the time of the incident(s) **and** at the time of the investigation

◆ PARTY AND WITNESS DOCUMENTS

- Verified interview transcripts/summaries
- Associated evidence
- Correspondence with Investigator

◆ ADDITIONAL EVIDENCE

- Evidence and evidence log
- Authentication information



Investigation File, Cont.

- Background information (education, employment, etc.)
- Witness flowcharts
- Contact log
- Investigator notes
- Timelines for incident and investigation
- Investigation report
- Investigation file becomes part of the **comprehensive complaint file**
- Title IX-related records must be maintained for a minimum of **seven years**

Comprehensive Complaint File

Title IX Coordinator should maintain:

- Supportive measures and interim action correspondence and documents
- Emergency removal or administrative leave documents (if applicable)
- Communication regarding Informal Resolution (if applicable)
- Signed releases of information for Advisors
- Advisor Non-Disclosure Agreements (NDAs) (if applicable)
- Dismissal information (if applicable)
- Allegations of bias or conflict of interest and response

Bias-Free Investigations

Bias

- **Bias:** prejudice for or against **a person or group**, or an unwillingness/inability to be influenced by factual evidence
 - A preference or tendency to like or dislike
 - Implicit or explicit
 - Formed from stereotypes, societal norms, and experiences
- Title IX Grievance Process must be free from bias
- Bias can influence an Investigator's perception:
 - Of Complainants and Respondents
 - Of the content or context of the allegation(s)

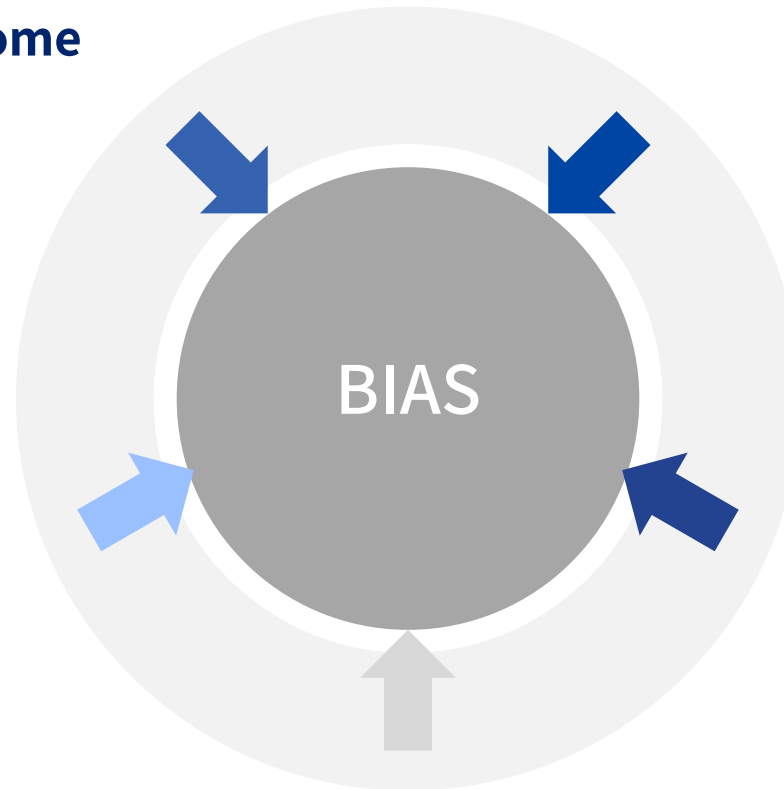
Common Bias Manifestations in Investigations

Pre-Determined Outcome

Senior-level Administrator Interference

Anchor Bias

Improper Policy Application



Confirmation Bias

Mitigating Bias

- Investigate in pairs
- Investigators review each other's questions
- Follow institutional policy and procedures
- Question map to ensure comprehensive process
- Use evidence collected to make determinations; provide clear rationales





Activity: Small Group Discussion

Group Discussion

- What types of challenges might disrupt or impede an effective investigation based on the individuals and/or sexual practices involved?
- How should an Investigator navigate an issue where an Investigator's response to descriptions of preferences or practices that are “new” or “unfamiliar” to the Investigator may impact rapport with an interviewee?

Trauma and Investigations

Understanding Trauma

- **Trauma** is exposure to an event or events that create a real or perceived threat to life, safety, sense of well-being or bodily integrity, and can be:
 - Acute, chronic, or complex
 - Neurological, biological, psychological, social, and emotional impacts
 - Developmental, intergenerational, historical, secondary, vicarious, or collective
- Responses to trauma can vary, depending on a variety of factors
- **ATIXA Position Statement:** application of trauma-informed practices in our field has gotten ahead of the actual science
- **ATIXA Recommendation:** incorporate trauma-informed investigation and interviewing methods without compromising gathering credible, relevant evidence
- **Trauma-informed practices should not influence evidence evaluation**

Trauma-Informed Practices

- To encourage open sharing, while mitigating the likelihood of re-traumatizing individuals, Investigators can consider infusing the following practices:
 - Approach all individuals with the assumption that trauma (recent or distant) can impact anyone **AND** its impact can be far-reaching
 - Consider the physical space and overall environment
 - Seating arrangement
 - Tone and décor
 - Body language
 - Use clear language; ensure individuals understand their rights and options
 - Be prepared for non-linear storytelling; be patient in allowing individuals to share information in their own way
 - Ensure that offers and referrals for support and resources are made to all parties

Suggested Questions

- Prior relationships with other party(ies) and witnesses
- Thought process
 - Do you recall what was going through your mind then?
- Sensory information
 - What do you remember seeing?
 - What do you remember hearing?
- Response (physical, emotional, verbal)
- Disclosures and/or documentation





Activity: Trauma-Informed Interviewing

Activity: Trauma-Informed Interviewing

Read each of the following questions, identify why they are problematic, and suggest more trauma-informed phrasing

- Have you had sex with this person before?
- Why does this keep happening to you?
- What were you wearing that night?
- Why would Complainant file a complaint if it wasn't true?
- Isn't it possible that you misunderstood Complainant's signals?
- Help me understand why you think what happened is a policy violation.
- Did anyone see this happen?

Trauma & Credibility

Trauma and Credibility

- Investigators can only collect available relevant evidence
- Trauma is neutral; it neither enhances nor detracts from proof
- Lack of evidence from an individual often negatively impacts their credibility
- Never substitute trauma indicators for evidence



Trauma and Credibility

- If an individual's account changes, differentiate between **more** information, **different** information, and/or **contradictory** information
 - Minor or insignificant variations should not significantly impact credibility
- One's affect is **not** evidence
 - A change in affect may signal a need to probe more deeply into a specific topic, though



Responses to Trauma

- Individuals may have different trauma manifestations, impacted by:
 - Availability or knowledge of coping strategies
 - Capacity for resilience
 - Cultural differences
 - Past history of trauma
 - Personality
 - Support systems or lack thereof
- Avoid biased thinking about what a person “should” or “would” have done, as this may invoke sexist tropes, rape myths, or other “victim-blaming” notions

Cognitive Interviewing, Trauma, and Credibility

- Deception requires greater cognitive load
- Deceptive individuals:
 - Prepare responses to anticipated questions
 - Develop a consistent, fixed narrative
- Honest individuals generally provide more detail or information
- Cognitive interviewing leverages differences in cognitive processing and strategy
 - Reveals inconsistencies in fixed narratives
 - Elicits verifiable details in credible accounts
- The motive for deception may also be of interest

Source: Vrij, A. (2019). Deception and Truth Detection When Analyzing Nonverbal and Verbal Cues. *Applied Cognitive Psychology*, 33, 160–167.

Credibility Evidence & Assessment

Credibility Overview

- Credibility assessments weigh the accuracy and reliability of relevant information
- Primary considerations are **consistency** and **corroboration**
- Credibility is not synonymous with a person being “truthful” or “honest”
 - Avoid moral judgment phrases in reports such as “lying,” “honest,” “deceitful,” “sincere” etc.
- Evasion, misleading testimony, or memory errors may impact credibility
- Avoid too much focus on **non-relevant** information
- Use significant caution if relying on demeanor to determine credibility

Primary Credibility Factors

Corroboration

- Aligned testimony and/or physical evidence

Consistency

- Is a person's account consistent over time?

Inherent Plausibility

- Does the explanation make sense?
- Be careful of bias influencing sense of “logical”

Motive to Falsify

- Do they have a reason to lie?

Past Record

- Is there a history of similar behavior?



Consistency

- Typically measures internal consistency of an individual's account over time
 - Consistent accounts may bolster credibility
 - However, consistent does not mean **truthful**; credibility is more about assessing **reliability and accuracy**
- Inconsistency may be a better tool to assess credibility than consistency
- Carefully parse words or language to assess how (in)consistent a detail may be
- Written statements, texts, and other messages are often central to consistency analysis
- When someone gives inconsistent testimony, it presents an opportunity to clarify, recognize deviations, and explore what their basis may be

Corroboration

- Focuses on whether statements and evidence gathered from a party or witness are supported by “external” evidence (e.g., the statements or evidence provided by others)
 - Corroboration may bolster credibility
 - As with consistency, corroboration does not mean **truthful**; credibility is more about assessing **reliability and accuracy**
 - In practice, lack of corroboration may be a better tool to assess credibility
- Compare statements and evidence offered by parties or witnesses against each other
 - What consistent, reliable, and plausible external information corroborates a person’s account?

Corroborating Evidence

- Strongest indicator of credibility
- Independent, objective authentication
- Corroboration of central vs. environmental facts
- Not simply aligning with friendly witnesses
- Contemporaneous witness accounts
- Outcry witnesses
- Allegiances

Inherent Plausibility

- Does what the party described make sense?
 - Consider environmental factors, trauma, relationships
- Is it believable on its face?
- “Plausibility” is a function of “likeliness”
- Is the party’s statement consistent with the evidence?
- Is their physical location or proximity reasonable?
- How good is their memory?

Motive to Falsify

- Does the party have a reason to lie?
- What's at stake if the allegations are true?
 - Academic or career implications
 - Personal or relationship consequences
- What if the allegations are false?
 - Other pressures on the Complainant
- Reliance on written document while answering questions



Past Record

- Is there evidence or records of past misconduct?
- Are there determinations of responsibility for substantially similar misconduct?
- Check record for past allegations
 - Even if found “not responsible,” may evidence pattern or proclivity
- Written/verbal statements, pre-existing relationships



Demeanor

- Physical presentation and speech patterns are not determinative of credibility or truthfulness
 - Individuals are often good at picking up non-verbal cues
 - **However**, individuals are terrible at using demeanor to determine credibility
- Demeanor cues may indicate cause for additional questioning
 - “I noticed when I asked you about...you crossed your arms. Can you tell me why your posture changed?”
 - “I noticed when I started asking you questions about...your responses became much shorter. Can you explain that for me?”
 - “I noticed you rolled your eyes when I mentioned....Can you tell me about your reaction?”

Inconsistencies, Affect, and Credibility

- Differentiate between **more** versus **inconsistent** versus **contradictory** information if an individual's account changes
- Variations in testimony on minor or insignificant details should not significantly impact credibility
- One's affect ≠ evidence





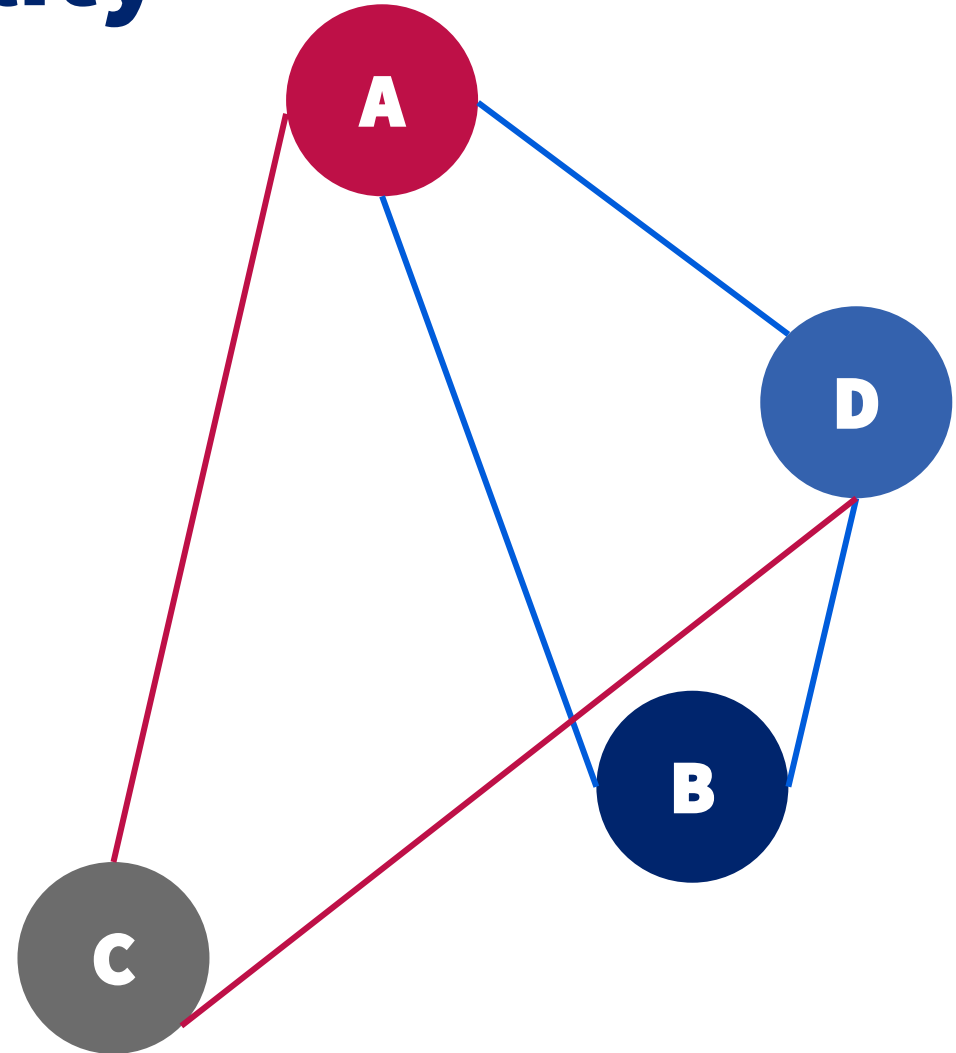
Credibility Technique: Triangulating

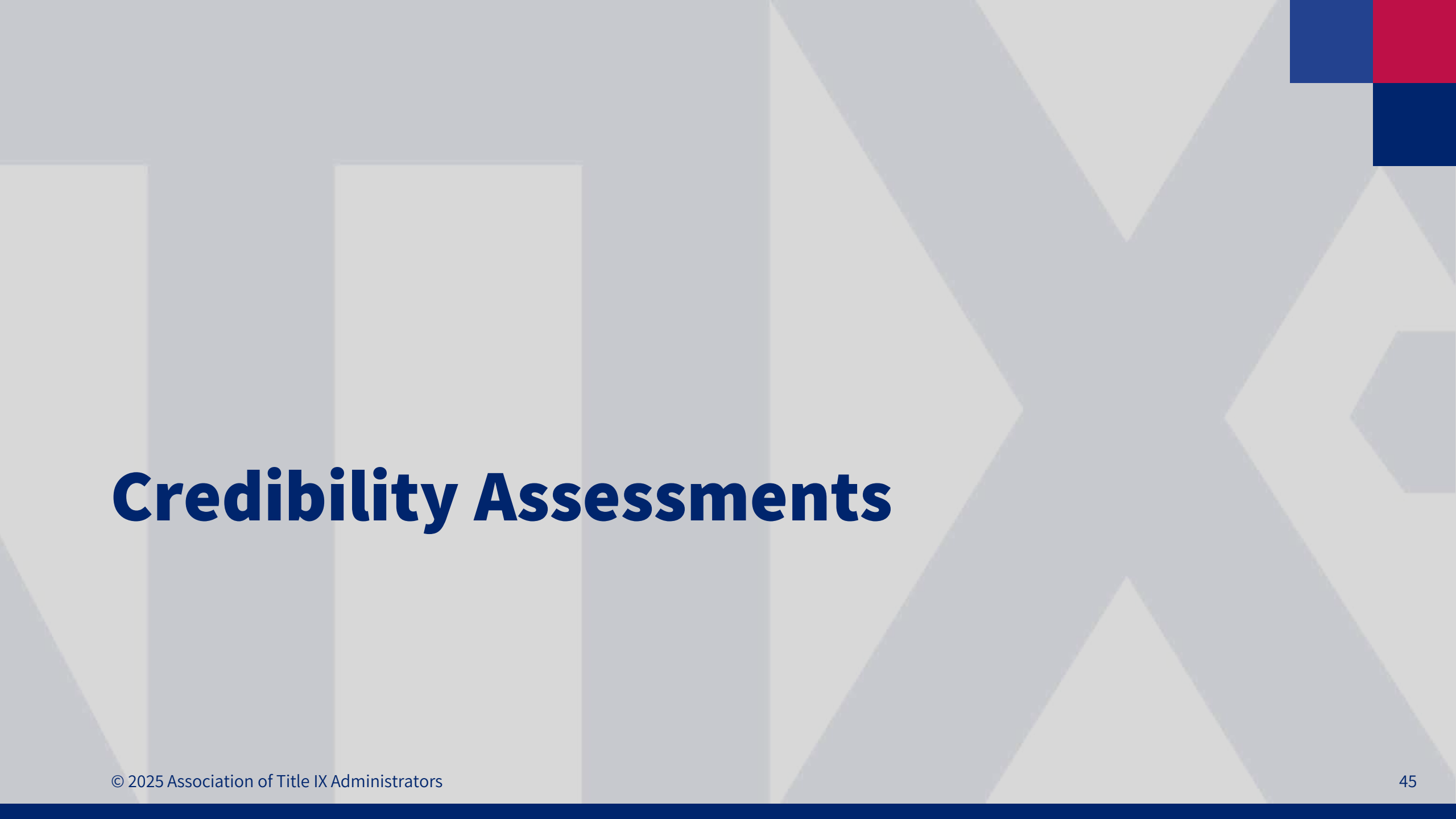
Triangulating Credibility

- Inductive reasoning
 - Forming the hypothesis that best explains the facts
 - Likeliest possible explanation based on incomplete facts
 - Less compelling than corroboration, but sufficient in some circumstances
- Investigator is faced with two different but equally plausible explanations
 - Need to determine which may be more likely, more logical
 - Use other evidence to drive the analysis
 - “In light of evidence provided by Witness C and Witness D, Respondent’s account appears more likely than Complainant’s account”

Triangulating Credibility

- **Circumstantial analysis**
 - More helpful when standard of proof is the preponderance of the evidence
 - A formal way to process inherent plausibility
- If A and D are true, is B or C more likely to be true?
 - C is a bigger stretch to get to than B, so B is more plausible
- Using known data points to extrapolate the likeliness of unknown facts





Credibility Assessments

Making Credibility Assessments

- Examine consistency of the story
 - Analyze statement substance and chronology
 - Inherent plausibility of all relevant evidence taken together
- Compare degrees of credibility within evidence
 - Is a piece of evidence consistent with other evidence known to be credible?
- Consider the amount of detail provided
- Non-verbal behaviors may be important to note
 - Do **not** let this drive the analysis

Credibility Assessments

- Investigator should use credibility assessments to direct the Decision-maker(DM) to areas needing closer examination
 - Focus the DM on alignment or discrepancies that may be significant for their analysis
 - Summarize the evidence to provide a snapshot
 - Use citations to help DM find the evidence within the report



Common Credibility Errors

- Misplaced emphasis on:
 - Inconsistent information
 - Nonverbal indicators (e.g., nervousness, anxiety)
- Confusion about memory
 - Stress and emotion can complicate memory
- Parties' status
- Investigator bias



Credibility Assessments in Investigation Reports

- Indicate where the Decision-maker should focus without rendering conclusions or making findings related to credibility

NOT GOOD

“The Decision-maker should find Mark to be unbelievable in his testimony about having received consent for the following reasons...”

BETTER

“Mark’s testimony about X conflicts with Mariana’s testimony about X. The accounts of Witness 1 and Witness 7 aligned with Mariana’s testimony, not Mark’s, during the investigation.”

Investigation Reports

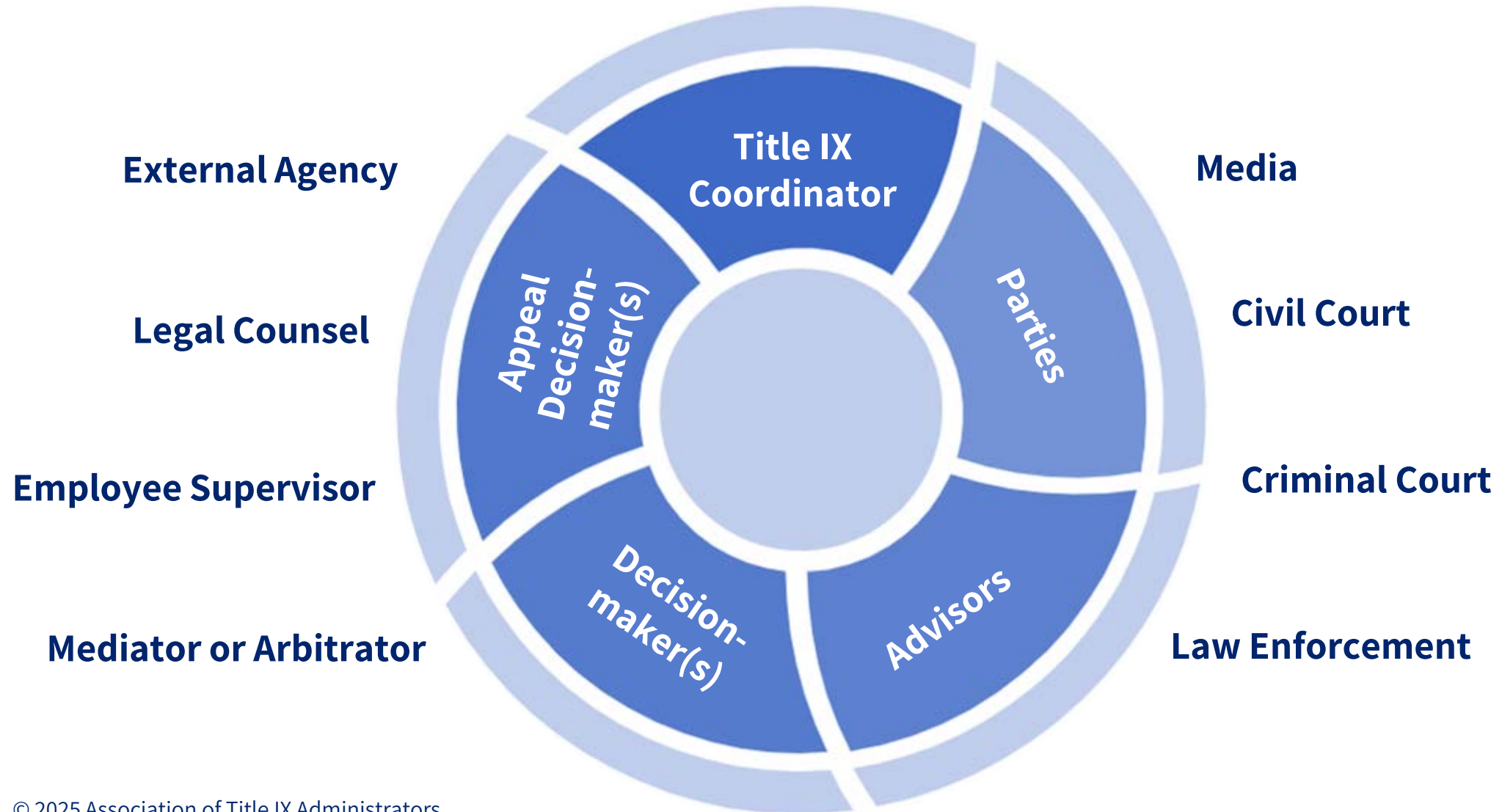
ATIXA's Recommendation

Comprehensive investigation report for all Title IX complaints

- Required for sexual harassment complaints
- Creates an opportunity for equitable access to relevant evidence
- Shows Investigator's work
- Provides Investigators with a standard and consistent format
- Helps protect institution on complaints that may be subject to scrutiny



Potential Audiences for Report



FERPA, Title IX, and Student Records

- Title IX investigation reports involving students are subject to the **Family Educational Rights and Privacy Act (FERPA)**
- An investigation report is considered part of each party's education record
 - Not part of a student witness's education record, typically
- FERPA permits the disclosure of information contained in education records, without the student's consent, to institutional officials and specific external stakeholders who have a **legitimate educational interest**
 - Includes other parties and their Advisors
 - Avoid including or redact personally identifying information before releasing the report

Employee Records

- Title IX investigation reports involving employees may be subject to state employment record laws
- Institutional policy dictates whether a Formal Complaint, and subsequent Formal Grievance Process, are part of a Complainant's employee records
- Title IX requires releasing the investigation report to parties (whether students or employees) and their Advisors

Party Information Disclosure

- Title IX prohibits institutions from restricting the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence
- Institutions may place restrictions on parties with respect to sharing and redistributing institutional work product (e.g., investigation reports)
- **ATIXA recommends stating in policy:**
 - Complainant or Respondent may share information about their own experience and evidence they have gathered themselves
 - The parties may not share the institution's work product
 - Unauthorized disclosure typically warrants either warning, sanctioning (parties), or removal (Advisors)

Writing and Structuring Investigation Reports

Format and Structure

- Templates, templates, templates
- Transcripts vs. interview summaries
- Narrative vs. bulleted format
 - Headnotes
- Multi-party or multi-allegation investigations
- Use attachments, appendices, and exhibits

Enhancing User-Friendliness

- Table of contents
- Page numbers
- Line numbers
- File naming conventions
- Internal document links

Direct Quotations

- Direct quotations and commentary from parties and witnesses can help to accurately convey their experiences and perceptions
- Recorded interviews, written statements, electronic messages, etc. can help facilitate use of direct quotations
- Advisors' statements should not be attributed to a party
- Care must be taken to indicate whether a quote is something a witness told Investigator(s) or something another person said to a witness

Incorporating Direct Quotations

Introduce the quotation with a complete sentence

Cole described how his relationship with Devyn evolved over time: “We were friends, and then we became friends with benefits.”

Use an introductory or explanatory phrase

When asked to describe his relationship with Devyn, Cole responded, “We are friends with benefits.”

Incorporate the quotation part of the sentence

Cole described his relationship with Devyn as “friends with benefits.”

Use a short phrase as part of the sentence

Cole used the term “friends with benefits” to describe his relationship with Devyn.

Punctuation for Quotations

If words are omitted from a quotation, use an ellipsis (...)

- Three dots (...) indicate the quote omits words in a sentence or sentences in a paragraph
- Four dots (....) indicate the quote omits words at the end of one sentence when the quote continues onto the next sentence
- Do not change the meaning of the sentence by omitting text

If words are inserted or altered in a quotation to improve readability, use square brackets [] to indicate the change

- May include:
 - Letter case or verb tense
 - Replacing a word to clarify meaning

Punctuation for Quotations

Enclose “sic” in square brackets to indicate that the quote is verbatim, though there are spelling or other syntax errors

- Most needed for excerpts from documentary evidence or interview transcripts
- Use [sic] when the meaning of the quotation is unclear
 - Helps proofreaders know what is/is not intentional
- If there are numerous errors throughout, consider a blanket statement that quotes are verbatim and that grammatical, syntax, or other errors are a function thereof

Sensitive Information

- Offensive, triggering, or explicit language (e.g., slurs)
- Graphic images/videos
- Medical information, including test results
- Mental health information
- Chosen name vs. legal name



Redaction Practices

Full redaction vs. role identifiers

- Example:
 - **Original:** Teagan stated that Jesse smacked her with an open hand
 - **Full:** [REDACTED] stated that [REDACTED] smacked her with an open hand
 - **Role Identifiers:** Complainant stated that Respondent smacked her with an open hand
- Full redaction is a common practice in law enforcement, but is not recommended for Title IX investigations
- Provide key with names for parties and Advisors

Redaction Practices

- Other options:
 - Include full name for first mention
 - Use initials
 - Use one- or two-letter identifiers (e.g., C, R, W1, W2)
- Determine whether to create a fully unredacted copy
 - Legal counsel
 - Decision-maker(s)



Word Choice

- Investigation report writing is **clear and factual**
- Avoid:
 - Unnecessary adverbs and adjectives
 - Conclusory words
 - Bias language
 - Judgmental statements

Common Pitfalls

- Abbreviations, initialisms, and acronyms
- Absolutes
- Clichés
- Exaggerations
- Generalizations
- Idioms
- Inconsistency
- Jargon
- Repetition

Word Choice Exercise: Part 1

Consider the difference a single word makes:

- The Respondent **fondled** the Complainant's breasts while they were sitting next to each other at the movie theater
- The Respondent **felt** the Complainant's breasts while they were sitting next to each other at the movie theater
- The Respondent **caressed** the Complainant's breasts while they were sitting next to each other at the movie theater
- The Respondent **touched** the Complainant's breasts while they were sitting next to each other at the movie theater
- The Respondent **groped** the Complainant's breasts while they were sitting next to each other at the movie theater

Word Choice Exercise: Part 2

Now that you've considered each of the statements, where would you place the described actions on a continuum from least severe/egregious to most severe/egregious?



The Respondent:

- Fondled
- Felt
- Caressed
- Touched
- Groped

Word Choice Examples

- The Respondent **refused** to answer the question.
- The Respondent **declined** to answer the question.
- The Respondent **chose not** to answer the question.

- The Complainant **denied** offering to massage the Respondent.
- The Complainant **vehemently denied** offering to massage the Respondent.
- The Complainant **flatly denied** offering to massage the Respondent.

Word Choice Examples

Poor Phrasing Example: “On September 21, 2016, four upperclassmen male students brought unwelcome sexual activity to Jane Doe and another female student in a stairwell at Maplewood.”

Doe v. Metropolitan Government of Nashville and Davidson County, No. 20-6225 (6th Cir. May 19, 2022)

Recommended Revision: Four male upperclassmen engaged in sexual activity with Jane Doe and another female student in a Maplewood stairwell on September 21, 2016. Jane Doe and the other female student allege the sexual activity was unwelcome.

Footnotes

- Provide a space for definitions, context, or source information that would disrupt the flow of the report
- Description of electronic devices or applications
- References to appendices or evidence file
- Background information
- Relevant evidence source(s)
- If the Investigator is offering context from their own knowledge, make sure it is clearly indicated as such
 - Example: The Investigator notes from personal familiarity with the building that Room 19 is approximately halfway down the hall from the elevator

Footnotes, Cont.

- Consider who will be reading the report now and potentially in the future
 - Technology evolves
 - Slang shifts
 - Pop culture references change
 - Businesses come and go
 - Generational differences
 - Cultural differences
- Do not assume common knowledge
- In text, the footnote marker follows punctuation except for the em dash (—)
 - I.e., .¹ vs. ¹—

Footnote Example

Respondent described this interaction as follows,

“At this point we were fully naked. And so we were grinding on each other. We were grinding on each other’s genitalia. And then she placed her hand over her vagina and said, ‘Wait, do you have a condom?’ Then we began to discuss the use of a condom. I did not have a condom. I had just ran out the week prior. And so she asked if I could grab one from one of my friends, to which I responded, ‘They’re not home. They’re still at the party. And I can’t exactly go searching through their things while they’re gone to find a condom.’”²

The parties agreed they engaged in a conversation about Respondent’s lack of a condom and Complainant’s concerns regarding proceeding with sexual intercourse without a condom.

² See Respondent Interview 4.1.2024_Transcript.pdf, p. 6.

Parties' Questions for Others

Document questions suggested or requested to be asked by the parties

1

Otherwise Answered

Document: the question and the answer

3

Rephrased and Asked

Document: the question, rephrased question, rationale for rephrasing, and the answer

2

Asked and Answered

Document: the question, how it was asked, and the answer

4

Not Asked

Document: rationale for not asking the question (e.g., irrelevant, impermissible)

Tips for Report and Evidence File Sharing

- Use a secure file-sharing platform
 - Consider functional and time limit restrictions as appropriate for the institution's community and process
- Include a separate watermark for each party and Advisor
- Clearly mark **draft** and **final** versions, including draft number
- Ensure the parties have a user-friendly method for providing feedback
- Remind about not disclosing institutional work product



Parties' Review and Response

- Must provide **10 days** for written response:
 - Draft report and directly related evidence must:
 - Be sent to each party and Advisor in an electronic format or hard copy
 - Include evidence upon which the Recipient does not intend to rely
 - Include exculpatory and inculpatory evidence
- Strategies for addressing :
 - New evidence
 - Clarification of earlier statements
 - Request to retract earlier statements

Absent Information

Information Not Obtained

Investigators should document all efforts to obtain evidence and explain any information that could not be obtained

- Did/does not exist
- Cannot be located
- Party/witness not available or declines to respond to question(s)
- Party/witness declined to submit
- Deleted, destroyed, damaged
- Unable to access without a court order
- Cannot be released based on an ongoing criminal and/or agency investigation

Unanswered Questions

- **ATIXA recommends including unanswered questions asked** during the investigation to:
 - Demonstrate a thorough investigation
 - Help guide the Decision-maker to topics that may need further exploration
- **If relevant, document in the interview summary**
 - Example: “Witness 2 declined to provide additional information regarding their text conversation with Complainant on February 19, 2024. Witness 2 was informed that Complainant voluntarily submitted screenshots of the text messages in question for purposes of this investigation.”

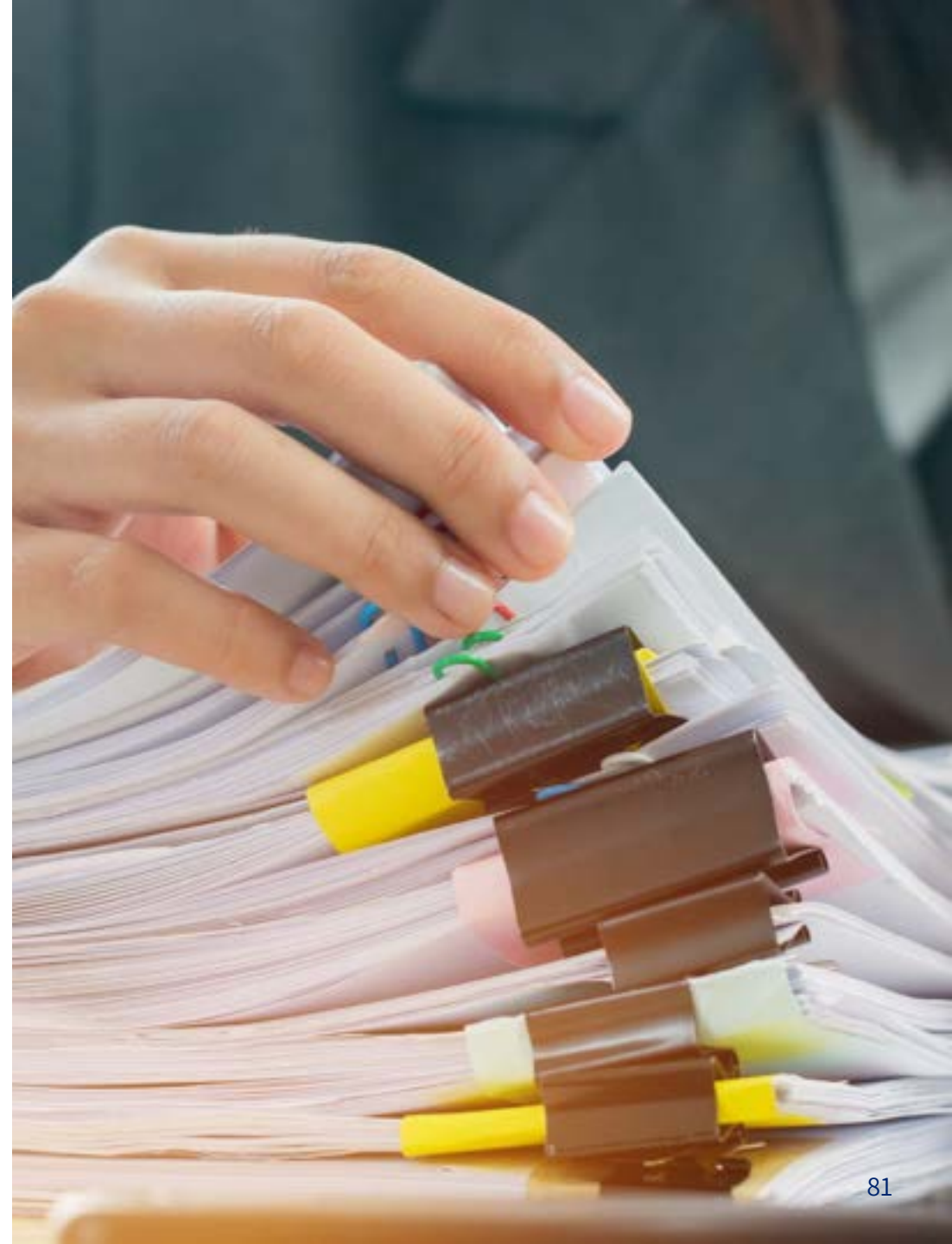
Investigation Report Sections

Possible Investigation Report Sections

- Introduction/Complaint Information
- Allegations Overview
- Jurisdiction
- Investigation Scope
- Applicable Policies and Relevant Definitions
 - Standard of Evidence
- Evidence List
- Investigation Timeline
- Relevant Background
- Incident Timeline
- Relevant Evidence Summary
- Credibility Assessment
- Discussion and Synthesis
- Recommended Findings and Final Determination
- Conclusion
- Appendices
- Evidence File

Relevant Background

- Include additional background information as necessary to understand relationship history, context, etc.
 - Separate by topic



Incident Timeline(s)

- Visual representation or list that shows events in chronological order
 - One timeline for the reported incident(s) based on all available information
 - Use separate timelines for multiple incidents if necessary
- Reference evidence connected to points on the timeline
 - E.g., timestamped text messages, receipts, call logs
- Especially helpful in evaluating incapacitation
- For stalking allegations, it is an industry standard to include a timeline to assess the “course of conduct” element of the offense

Incident Timeline Example

~10:00 PM

Marty's

C and R meet at Marty's Convenience Store and purchase beer, wine, and bread

Travel

C and R travel to R's on-campus apartment and begin consuming alcohol and watching Netflix

Restroom

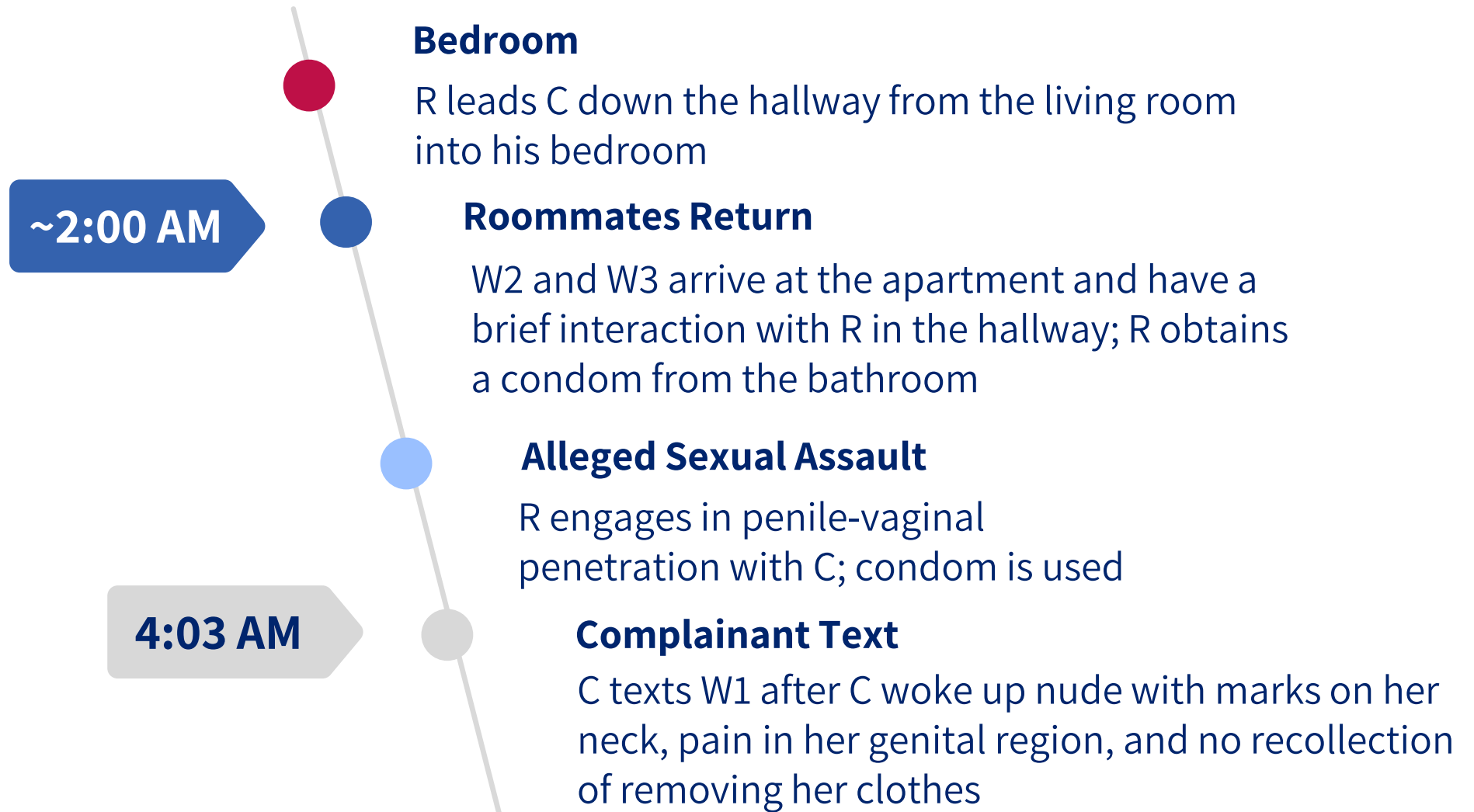
C uses the restroom and begins feeling "like it took a lot of effort to move [her] limbs" and "everything was going on around [her] in slow motion"

1:47 AM

Roommate Text

W2 texts R and tells him that W2 and W3 are coming back to the apartment; R says he is "entertaining"

Incident Timeline Example



Incident Timeline Example



~4:30 AM

Pick-up

W1 picks up C outside of R's residence hall and transports C to the hospital for a sexual assault examination

- Timeline established by using all available information
 - Receipts
 - Text message time stamps
 - Witness statements
 - Party statements
 - Building access records
 - Other

Relevant Evidence Summary

Relevant Evidence Summary Includes:

- Complaint and/or Incident Report
- Interview summaries/relevant portions of transcripts
- Written statements
- Responses to Draft Investigation Report
- Text/social media/email/electronic messages
- Photographs
- Description of and link to videos
- Relevant documents

Organizing the Relevant Evidence Summary

- Content may dictate the most logical organization structure for this section
- Can organize in multiple ways, depending on number of complainants, respondents, witnesses, or allegations, as well as the nature and type of the allegations themselves
- Some common approaches
 - By interviewee
 - By allegation
 - Chronological by interview
 - Chronological by incident timeline

Credibility Assessment

- Specific and detailed credibility assessment of:
 - Each party
 - Each witness
 - Any other relevant evidence
- Point to specific details that were considered that have aided in the assessments
- ATIXA does not recommend Investigators make conclusions about credibility, but comparisons may be helpful

Credibility Assessment Example

Respondent

- Respondent indicated that his current job at the institution is his “dream job” and he “would never do anything to jeopardize his employment”
- Respondent indicated that several people had come to him to discuss the allegations made by Complainant, and acknowledged conversations with W1, W2, W4, W9, W17, and W22
- W6 specifically refuted any suggestion that Respondent would call anyone a “lipstick lesbian,” but Investigators never shared with W6 that Respondent was alleged to have used that specific term
- W2 indicated that Respondent would never use derogatory language about a student-athlete
- W21 indicated that Respondent texted her at an unusual hour to see how she was doing on the same day that Complainant filed the allegations

Discussion and Synthesis

- Discuss and synthesize the relevant information
 - Consider the elements of each policy at issue
 - Refer back to relevant evidence cited
 - Refer to the credibility assessment(s)
- Guide for the Decision-maker(s) determination
 - What remains unresolved?
 - What type of analysis is required based on the applicable policy provisions?

Discussion and Synthesis Example: Undisputed Facts

The parties agree on the following facts:

- The parties met at an off-campus store, Marty's, where the Respondent purchased beer, wine, and bread
- The Respondent selected the beer, and the Complainant selected the wine
- The parties returned to the Respondent's on-campus apartment where they both consumed alcohol and watched Netflix while sitting on the couch in the living room
- The Complainant used the restroom in the apartment
- The Complainant awoke in the Respondent's bedroom early the following morning and texted her friend to pick her up

Discussion and Synthesis Example: Disputed Facts

The parties disagree on the following:

- Whether the Complainant was incapacitated due to alcohol consumption
- Whether Complainant asked Respondent to get a condom
- Whether the Respondent engaged in physical violence against the Complainant resulting in bruising on Complainant's neck and hip
- Whether Respondent had consent to engage in vaginal sexual intercourse with Complainant

Discussion and Synthesis Example 2

Allegation #1 – Sexual Harassment

Did Respondent sexually harass Complainant by showing Complainant’s nude video to other Acme students?

- Acme College Policy defines “sexual harassment” as any unwelcome or unwanted sexual attention, sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature or other offensive behavior directed toward a student because of or on account of their sex, when:
 - such conduct has the purpose or effect of unreasonably interfering with an individual’s performance as a student; or
 - such conduct creates an intimidating, hostile or offensive environment at the institution

Discussion and Synthesis Example 2, Part 2

The parties dispute this allegation

- Respondent denied showing Complainant's nude video to Witness 3
 - Complainant was not present when Respondent allegedly shared the video
 - Respondent did not explicitly deny playing the video on her phone in the presence of other students, but very deliberately defined "share" in such a way that Respondent could have been playing the video on her phone in plain view of other students and Respondent would not consider that "sharing" the video with other students

Discussion and Synthesis Example 2, Part 3

- Witness 3 told Complainant that Respondent showed Witness 3 and other students a nude video of Complainant
 - Witness 3 told Complainant that she was wearing a colorful robe in the video Respondent showed Witness 3
 - Complainant recognized Witness 3's description of the video as one she had shared with Respondent privately
 - Respondent denied that Complainant sent a video wearing a colorful robe

Discussion and Synthesis Example 2, Part 4

- Respondent thought Witness 3 overheard a conversation that was not directed at Witness 3 but denied ever showing or describing Complainant's video. Respondent also said Respondent did not have Complainant's text messages pulled up during this time
 - Witness 3 told Complainant that Respondent showed Witness 3, Witness 1, and Witness 2 a video of Complainant while the group was talking about their classmates
 - Witness 3 said that she and another student in the group during the conversation were new to the Acme campus, and the conversation was about "who was weird" and trying to "warn" people about other students
 - At some point, Complainant was brought up and then Respondent showed the videos

Discussion and Synthesis Example 2, Part 5

Did the incident occur as described?

- The Decision-maker should first evaluate the witness and parties' statements to determine whether the factual allegations are supported by a preponderance of the evidence
- Because there is a material disagreement on whether the video was shown, the Decision-maker should determine which description of these specific events is most reliable
- That determination may largely depend on the Decision-maker's evaluation of the credibility of the parties
- Relevant evidence that may impact the Decision-maker's evaluation of the parties' credibility is outlined in the credibility section of this report

Discussion and Synthesis Example 2, Part 6

- When the Decision-maker has determined which version of the interactions subject to disputed evidence in Allegation #1 is supported by a preponderance of the evidence, the Decision-maker should, if appropriate, determine whether the conduct constituted unwelcome or unwanted sexual attention that had the purpose or effect of unreasonably interfering with Complainant's performance as a student or created an intimidating, hostile, or offensive environment at the institution

Recommended Finding and Recommended Determination

Recommended Finding

Whether the conduct occurred, by the standard of evidence

Recommended Determination

Whether the conduct that is proven to have occurred violates policy

Recommended Findings

- This section is only applicable if permitted by institutional policy (not recommended)
- **Apply the standard of evidence and use the relevant, credible evidence to answer the following question:**
 - **Did the conduct occur as alleged?**
 - What is more likely than not to have occurred?
 - Who was involved in what occurred?
 - When and where did it happen?

Recommended Findings, Cont.

- Apply the credibility analysis
 - Evidence is less credible if it is inconsistent or not corroborated
 - Passage of time, coupled with memory errors can adversely impact credibility of evidence
- Don't assign disproportionate weight to minor deviations
- Recognize and neutralize any biases – allow the evidence alone to guide recommended findings
- List the recommended finding of fact for each alleged policy violation, applying the standard of evidence

Recommended Final Determination

- This section is only applicable if permitted by institutional policy (not recommended)

For complaints where Investigator(s) found that the alleged conduct occurred, apply the standard of proof and use the relevant, credible evidence to answer the following question

- **Did the conduct alleged violate policy?**
 - Parse the policy into its individual elements (model of proof)
 - A final determination of a violation can only occur when every element of a policy is met
 - Which facts provide information that either supports or detracts from meeting each element?
- List the recommended final determination for each alleged policy violation applying the standard of evidence

Appendices

- Relevant information that would not fit neatly in the investigation report
 - Policies
 - Complaint (depending on length)
 - Lengthy documents
- Parties' feedback on the investigation report and Investigator responses
- Parties' questions for others and responses
- Description, date of receipt, source, method of receipt, and verification/authentication information



Evidence File

- All relevant and directly related evidence in complete form
- Redact information that is not relevant or directly related
- Logical organization to align with report
- Maintain electronically
- TIXC and DM must be able to access



Questions?

**ALL ATIXA PROPRIETARY TRAINING MATERIALS ARE COVERED BY
THE FOLLOWING LIMITED LICENSE AND COPYRIGHT.**

By purchasing, receiving, and/or using ATIXA materials, you agree to accept this limited license and become a licensee of proprietary and copyrighted ATIXA-owned materials. The licensee accepts all terms and conditions of this license and agrees to abide by all provisions. No other rights are provided, and all other rights are reserved. These materials are proprietary and are licensed to the licensee only, for their use. This license permits the licensee to use the materials personally and/or internally to the licensee's organization for training purposes only.

If these materials are used to train Title IX personnel, they are subject to 34 C.F.R. Part 106. If you have lawfully obtained ATIXA materials by registering for ATIXA training, you are licensed to use the materials provided for that training.

34 C.F.R. 106.45(b)(10) (2020 Regulations) requires all training materials to be publicly posted on a Recipient's website. Licensees subject to the 2020 Title IX Regulations may download and post a PDF version of training materials for their completed training to their organizational website to comply with federal regulations. ATIXA will provide licensees with a link to their materials. That link, or links to the materials on that page only, may be posted to the licensee's website for purposes of permitting public access to the materials for review/inspection only.

You are not authorized to copy or adapt these materials without ATIXA's explicit written permission. No one may remove this license language from any version of ATIXA materials. Should any non-licensee post these materials to a public website, ATIXA will send a letter instructing the licensee to immediately remove the content from the public website upon penalty of copyright violation. These materials may not be used for any commercial purpose except by ATIXA.