

# BEGINNING TO END

## Conducting workplace investigations

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Sepler & Associates

# Why Conduct an Investigation?

- Fairness
- Document/memorialize
- Proactivity
- Clarity
- Shared understanding
- Meet requirements
- Aid decision making
- Support organizational decision making



# The Investigative Report Card

✓	<b>Administrative Framework</b>
✓	<b>Adequate Planning</b>
✓	<b>Clarity of Scope</b>
✓	<b>Investigator Expertise and Skill</b>
✓	<b>Neutrality</b>
✓	<b>Flexibility</b>
✓	<b>Credibility Assessment</b>
✓	<b>Findings</b>



# Twelve Steps of Investigation

1. Intake
2. Interim Actions
3. Form Your Team
4. Open File
5. Plan
6. Log Evidence
7. Preliminary Interviews
8. Update and Revise Plan
9. Interview Respondent
10. Follow Up Interviews
11. Credibility Assessment
12. Findings/Report



# The Gold Standard

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Consistency and Rationale

**This is how we do it.**

**This is why we do it this way.**



# Methodological Decisions

- Specific methodological decisions that are **debatable, but also defensible. Establish a record of consistency on the following:**
  - Recording or not recording interviews
  - Interviewing one-on-one vs. two-on-one
  - Reviewing or not reviewing personnel files prior to interviews
  - Being briefed by a prior/preliminary investigator about the facts and events to date
  - Requiring written complaints
  - What documents are retained or destroyed



# Intake



# Intake

- The process of “intake” or, literally, **taking in the complaint** is necessarily and properly decidedly different from investigation
- The quality of the intake will affect an investigator’s ability to find facts.



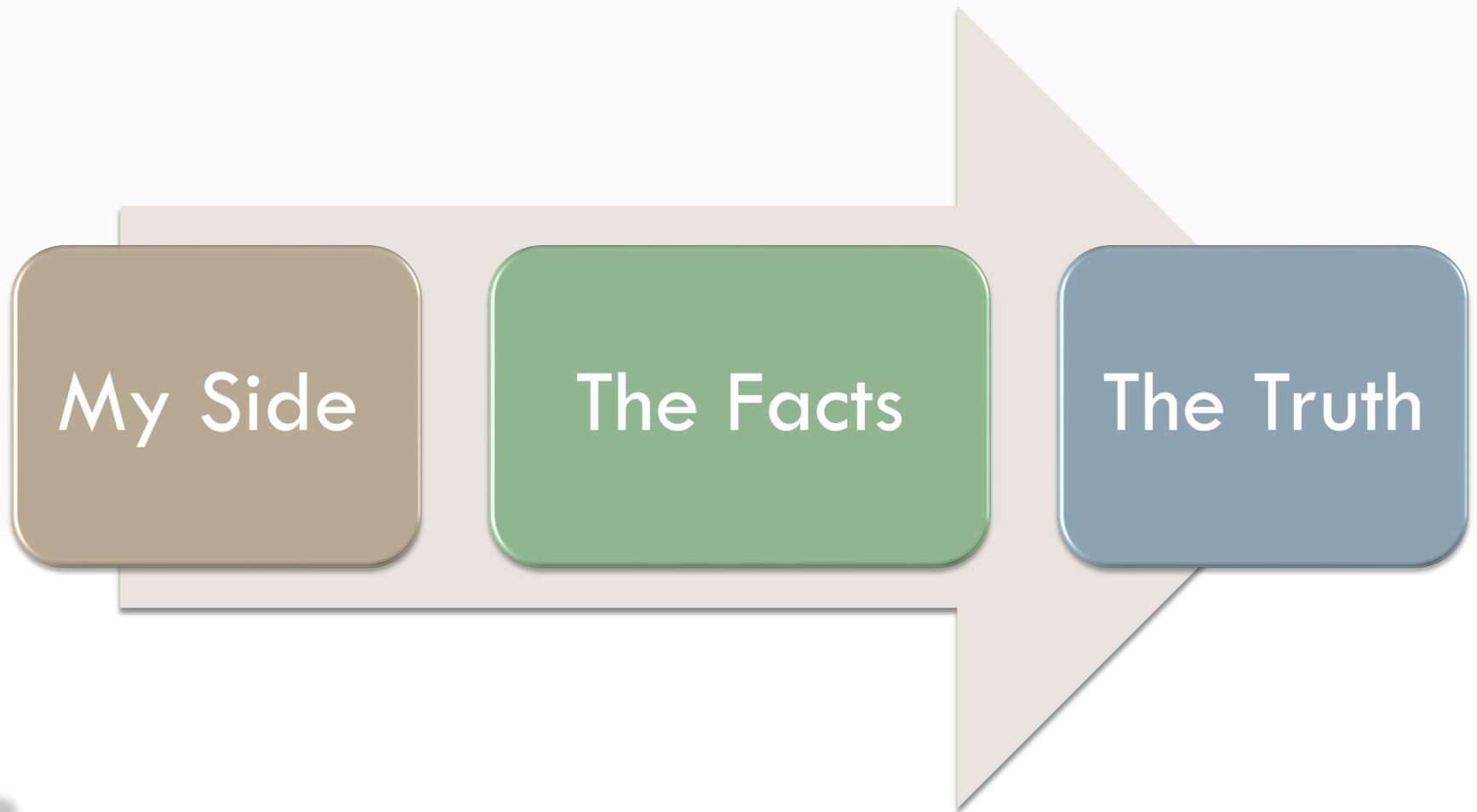


The direct questioning and skepticism appropriate in the latter stages of an investigation can crush a complainant's confidence in their employer.

Conflating intake and investigation is one of the biggest errors an organization can make.



# The Psychological Voyage of a Workplace Investigation



# Intake Rules

- 90-10
- No closed ended questions
- No “why” questions
- No problem solving
- Name feelings
- Use supportive prompts
- Minimal notes



# Documenting the Intake

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- Intake Form:
  - Double-documentation philosophy
  - Basis for using
  - Training Tips



## Intake Protocol—Action Log (Page 1)

*This form should be faxed to Human Resources, and case conference should be recorded on the reverse side of the original.*

Intake Manager \_\_\_\_\_ Date \_\_\_\_\_  
 Time \_\_\_\_\_

First Contact:

\_\_\_ Telephone

\_\_\_ In person

\_\_\_ Written communication

\_\_\_ Other \_\_\_\_\_

Complainant Name \_\_\_\_\_

Position/Dept \_\_\_\_\_

Telephone \_\_\_\_\_ PVM? Y N



How does the employee describe the issue or problem?	
How long has the issue or problem been going on?	
What prompted the employee to bring this forward today?	
Who has witnessed (W) or participated (P) in the situation?	
Briefly note specific incidents described to you, including when and where they occurred.	
Has the employee taken any steps to try to address the problem? What steps?	
Has this situation been previously reported to a <u>supervisor</u> or manager? If yes, when?	
How is this matter currently	



### Intake Protocol—Action Log (Page 2)

*To be completed by HR or investigative coordinator in collaboration with supervisor.*

Date Received by IC \_\_\_\_\_ Contact Name \_\_\_\_\_  
Date of Case Conference \_\_\_\_\_ ID those on call \_\_\_\_\_  
\_\_\_\_\_

Action plan:

1. Interim actions
  
  
  
  
  
  
  
  
  
  
2. Additional fact-finding/discussions
  
  
  
  
  
  
  
  
  
  
3. Problem-solving strategy
  
  
  
  
  
  
  
  
  
  
4. Support provided
  
  
  
  
  
  
  
  
  
  
5. Other actions

Actions Taken	Parties Involved	Date	Time



# Using the Intake Form

- Not contemporaneous
- “If offered” information
- Focused on the “Always” and “Nevers”



# The Fork In the Road

- If everything the complainant has said is true
  - ▣ Would it violate our policy or the law?
  - ▣ Would we likely take disciplinary action?





# Decision To Investigate

- Use consistent criterion to determine whether a formal/full investigation is necessary
  - ▣ Is informal intervention appropriate and possible?
  - ▣ Is the alleged behavior, if true, likely to result in formal action?
  - ▣ Is there a duty to investigate?
  - ▣ Is the matter historic or current, and if historic, is there current risk?
  - ▣ Are the parties necessary to investigating available/employed/alive?



## INVESTIGATION DECISION MAKING TOOL

### IF THE ALLEGATIONS ARE COMPLETELY TRUE:

- Would be a violation of policy
  - Serious enough to discipline (investigate)
- Would be a violation of policy
  - That would result in coaching or a warning (consider coaching or warning without facts)
- May be part of a larger pattern (investigate)
- There is a dispute about what happened
  - Yes – investigate
  - No – document

### LEGAL DUTY OR POLICY REQUIREMENT TO INVESTIGATE

- Yes - investigate
- No –consider corrective action

If indications are to investigate, consider the following:

- Is the alleged misconduct ongoing –interim actions
- Is the alleged misconduct historical but no longer happening?
  - Is the alleged bad actor or actors still employed or doing business with the company?
  - Is an understanding of the facts essential to remediation or prevention?
  - Can remediation or prevention occur without an investigation?



# Take Appropriate Interim Actions

Protect People and Property



# Act Aggressively to Prevent Harm, Reprisal or Recurrence

- Minimize opportunity for reprisal or evidence tampering
- Ensure probability of recurrence is diminished or eliminated
- Consider communications plan



## INTERIM MEASURES REPORT FORM

- Complaining employee asks for interim measures
- Risk of interference with investigation high
- Risk of further misconduct high or
- Alleged behavior sufficiently severe as to require risk reduction or
- Risk of further complaints likely without structural change

### Options: Separate Parties

- Reassign complainant/ respondent by hours or location (attach notice)
- Work from home complainant/respondent (attach notice)
- Paid administrative leave respondent (attach notice)
- Intensive supervision plan (attach)
- No contact order respondent/mutual (attach)

### Options: Preserve Evidence

- Forensic collection of email communication: parties/others (attach justification)
- Forensic collection of browser history: parties/others (attach justification)
- Claim possession of company owned devices or storage media (attach justification and notice)
- Security review of card swipes parties/others (attach parameters)
- Seal personnel file parties/others (attach parameters)
- Investigative hold letter/retention of documents sent (attach)

### Options: Reduce Risk

- Expand or deploy facility/organizational security (attach details)
- Disable data access (attach details)
- Issue warnings (attach copies)
- Secure police involvement/TRO (attach report)
- Take hazards offline (Document)
- Notice to supervisory personnel regarding retaliation (attach)
- Institute monitoring (attach instructions)



# The Need to Know Analysis

- Who needs to know:
  - Details
  - Parties
  - Investigation is Occurring
  - Nothing



## NEED TO KNOW ANALYSIS

Needs to Know Detailed Information about some or all Allegations	<ol style="list-style-type: none"> <li>1) Investigator</li> <li>2) In House Counsel</li> </ol>	<ol style="list-style-type: none"> <li>1) Conduct Investigation</li> <li>2) Advise Investigator</li> </ol>
Needs to Know Party/Parties Involved in Complaint	<ol style="list-style-type: none"> <li>1) Area HR Rep</li> <li>2) Supervisor X</li> <li>3) IT</li> </ol>	<ol style="list-style-type: none"> <li>1) Administrative Leave</li> <li>2) Enforce no contact order</li> <li>3) Needs id to collect forensics</li> </ol>
Needs to Know Investigation <u>Occuring</u>	<ol style="list-style-type: none"> <li>1) Area Manager</li> <li>2) Witnesses</li> <li>3) Board President</li> </ol>	<ol style="list-style-type: none"> <li>1) Maintain Operations</li> <li>2) Participate in Interviews</li> <li>3) Put Review Process on Hold</li> </ol>
Needs Limited Information	<ol style="list-style-type: none"> <li>1) Finance</li> </ol>	<ol style="list-style-type: none"> <li>1) Request to provide financial information</li> </ol>
Other	<ol style="list-style-type: none"> <li>1) Respondent's direct reports</li> </ol>	<ol style="list-style-type: none"> <li>1) Alternate reporting chain</li> </ol>



# Who “Needs to Know?”

The “need to know” group will include those people who will need to know detailed information about the allegations and the outcome of the investigation. These should include only those people advising you.

- Investigative Coordinator
- In House Counsel
- Sr. Employee Relations Personnel
- Security





# Who Gets “Info As Needed?”

- ▣ People making logistical arrangements for you, your key decision makers and anyone who needs to produce data for your investigation. Do not share information with these people any more than is absolutely necessary.
- ▣ Decision makers DO NOT need to know the allegations you are investigating. They merely need to know that you are doing an investigation pursuant to company procedure.



# Who DOES NOT need to know?

- People making appointments and arranging rooms DO NOT need to know you are conducting an investigation
- Witnesses do not need to know one more detail than necessary.



# Open Your Investigative File







# EVIDENCE LOG



ITEM/EXHIBIT LABEL	DATE RECEIVED OR DOCUMENTED	DESCRIPTION	Comments



# File Contents

- Cover sheet/Face Sheet
- Time tracking
- Notes (original and revised)
- Messages, e-mails, relevant calendar entries
- Final Report
- Copies of evidence/exhibits



# Planning Your Investigation





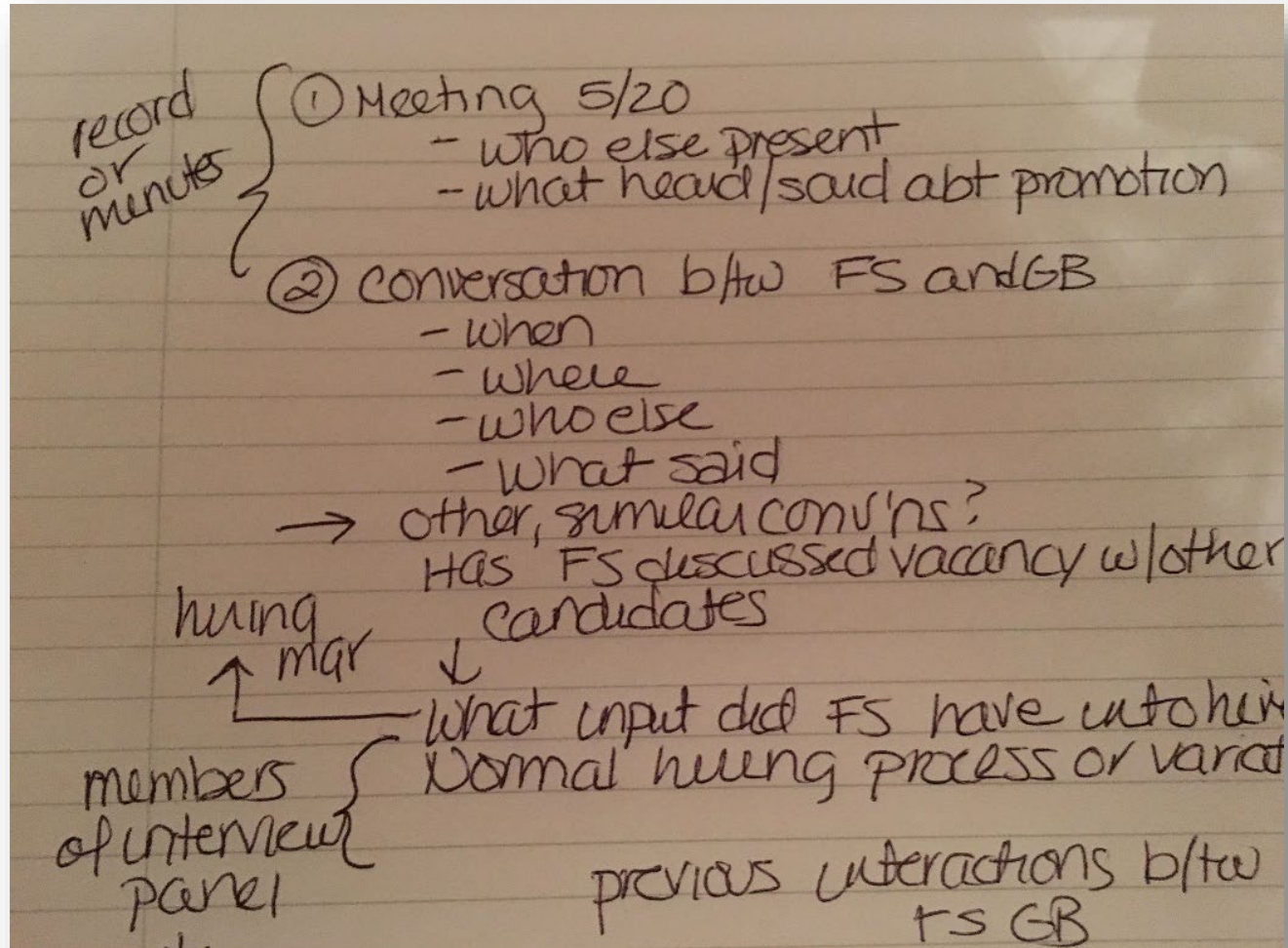
# The Investigative Plan

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- Backbone to any investigation
- Need not be formal, but should be a living document



# The plan can be very informal



Name of Matter \_\_\_\_\_

Date \_\_\_\_\_

List and Attach Relevant Policies

+

□

Investigative Questions	Sources to seek answers	Materials to be requested
Who had input into the promotional decision?	Hiring Manager, HR, Interviewers	Correspondence related to promotional decision
Was there a prior relationship between candidate selected and VP FS? Nature of relationship?	Candidate, FS, HR	Seek emails between FS and candidate prior to position opening

Scope Check: What is the focus of this investigation

What was the basis for offering the position to candidate?  
Was complainant eliminated from candidacy for the job for discriminatory reasons?  
Did VP FS have a sexual or romantic relationship with candidate prior to or during the hiring process?  
If so, to whom was that disclosed?



# Elements of An Investigative Plan

- Review relevant policies
- Identification of scope
- Investigative questions
  - ▣ Which are not interview questions



# Scope

- The investigator should use **consistent** criterion for deciding whether new issues should be added to the current investigation.
  - ▣ Is the new issue sufficiently related to the issue or issues being investigated to “make sense?”
  - ▣ Do the parties essential to resolving or exploring the new issue substantially overlap the existing pool of witnesses? (continued)



# Scope

- ▣ If the new issues/allegations are true, would they likely change the organization's course of action?
- ▣ If the new allegations are found to be untrue, could this substantially affect the assessment of credibility of any party to the current investigation?
- ▣ Is the new issue of sufficient scope that it calls for a separate dedication of resources in order to ensure that the central investigation is completed in a timely way?



# Investigative Questions:

- Are separate and distinct from *interview* questions
- Are questions *that will need to be answered in order for the investigation to be completed*
- May include questions about fact, timing, context, history, relationships and organizational climate and culture
- Are dynamic
- Are a TOOL to help investigators maintain focus and efficiency



# Investigative questions

- James Wells is a manager in the finance office. He recently was considered for, but not given, a promotion to Assistant Director, a position he alleges he had been promised by Art Gladstone, Associate Chancellor for Finance. Wells has written a letter indicating that he believes that the only reason he did not get the position is his Jamaican ancestry. He alleges that this is part of a pattern of overlooking non-American born racial minorities and is discriminatory. He points out that the individual who was hired for the position was a less qualified African-American.





# Logistical and Communications Support

- Determine how to contact and what to say to interviewees
  - Choose a neutral, non-threatening person to arrange logistics
    - Prepare a short script for them
- Understand “need to know”



## Employee Contact Script

We have a consultant who is interviewing people today in Conference Room C. They will need to meet with you, and I am calling to make those arrangements. The consultant will explain to you the scope and reason for your discussion when you meet with him/her/them, and you will have an opportunity to ask any questions you have. The meeting should take no more than one hour. What is your availability?

### FAQ

Can I know what this is about?

The consultant will answer any questions you have as soon as you meet with him/her/them.

Am I in trouble?

I don't have any information about the specific reason that the consultant needs to meet with you, but you will certainly know the answer to that question soon after arriving at the meeting.

Do I have to meet with the consultant?

At this time you are being directed to meet with him/her/them. If you opt not to participate in the interview s/he/they will explain how that works.

## Employee Contact e-mail

Good afternoon. My name is <<>>. I am (organizational affiliation and role). I have been retained by <<>> to conduct a neutral employment investigation into allegations of possible misconduct. Please feel free to verify this with them directly if you have concerns about this email. In order to conduct such an investigation, I need to acquire a full understanding of concerns that have been raised, and for this reason I am requesting the opportunity to meet with you and to conduct an interview with you. At that meeting, I would begin by providing you with a full explanation of the investigative process including limits on privacy and protections against reprisal, and you would have the opportunity to ask any questions you have about that process or my methods. I would expect our meeting to last between one and two hours. The dates I would be available to meet would be:



# Ramifications of Other Events

- Make recommendations or adjustments to minimize the appearance that other events are related:
  - Reduction in force
  - Vacations
  - Operational Events
  - Academic Breaks
  - Schedule or management changes



# Prepare Appropriate Notices



## Investigative Notices

Investigator has reviewed the following topics with me. I have had the opportunity to discuss them. I understand them.

- You are being spoken to because (Organization) requires a fuller understanding of a concern that has been raised by an individual.
- Investigator has been retained by the (Organization) to ensure that this interview is neutral and objective.
- This is an internal inquiry to assist (Organization) to determine if employment policies have been violated and if corrective action, discipline or discharge is warranted. None of those decisions will be made by Investigator, who is here as a neutral fact finder only.
- Your communication with Investigator will be kept as private as reasonably possible. S/he/they will explain the limits on that privacy.
- The Investigator will be taking notes, which s/he/they will retain unless legally required to provide them to others.
- Investigator will make a report which will be submitted to the (Organization.) This report will be a finding of fact and not contain recommendations.
- I may discuss the terms and conditions of my employment; it is requested that for the next 48 hours, however, that you limit your conversation about the specific questions you are asked and answers you provide in this interview.
- You are agreeing to participate in this interview. If you choose not to participate or not respond to particular questions it will require conclusions to be drawn without your perspective.
- Retaliation of any kind against you or others for truthfully explaining your experiences is prohibited. If you feel you are being retaliated against, please report it immediately to your supervisor or HR.



# “Confidentiality”

- Banner Health Systems: NLRB found blanket instruction of confidentiality was a violation of Section 7 of the NLRA
- Later found Boeing improperly suggested or requested confidentiality after notice had been revised.
- Upshot is that we have to meet a particular test: risk of destruction of evidence, risk of coercion, risk of harm



# Conduct Preliminary and Follow Up Interviews



# The 5 Stages of Interviewing

1. ABC
  - ◆ Stage Setting and Baselineing
2. Uninterrupted Initial Narrative
  - ◆ Listening
3. Reconstruction
  - ◆ Analysis
4. Deconstruction, or “Push”
  - ◆ Testing and challenging
5. Closing
  - ◆ Recap and continuity







# Stage 1: Administrivia, Baselineing and Connecting

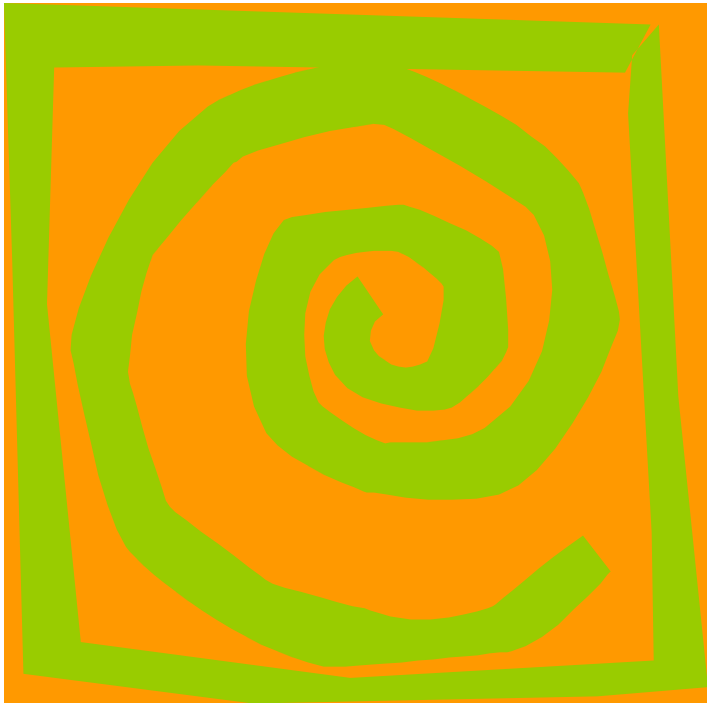
- Set the stage for the interview
- Complete necessary logistical and procedural steps
- Make behavioral observations
- Establish Rapport



# Investigator should be “Baselining”

- Observe demeanor, rhythms, body language and speech patterns in relatively unstressed situation
- Test different kinds of questions
  - ▣ Speculation
  - ▣ Specificity
  - ▣ Open ended





# Stage 2: Uninterrupted Initial Narrative

- Unravel and re-organize thoughts of interviewee
- Generate recollection and clarity of detail
- Create a dynamic of speaking and listening
- Assure that mega-messages of the speaker are fully understood
- Create a shared reality by:
  - Seeing the arc of the narrative
  - Identifying, but reserving questions about gaps and subtleties



# Investigator Techniques

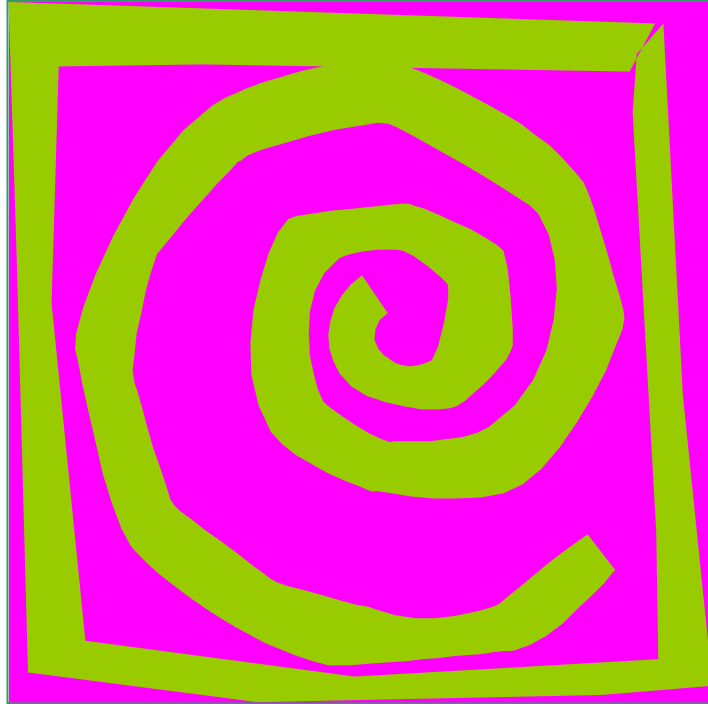
- Use note taking sparingly
- Respond verbally and non-verbally when appropriate and necessary
- Use silence to draw out more detail



# Techniques in Starting the UIN

- The “funnel technique.”
  - ▣ BWOEQ (Big, whopping open ended question)
  - ▣ General questions
  - ▣ Specific, but undetailed question
  - ▣ More specific question
- Be respectful about using it – explain that you want to know how significant the alleged incident might have been for them, and to find out whether they were aware that a complaint had been made or issue had been raised.







# Stage 3: Reconstruction

- Obtain more detailed information
- Create a cooperative situation
- Construct a chronology of events
- Less emotional, more analytical
- Facts, facts, facts.



# Methods for Reconstruction

- Revisit topics discussed in initial interview with specific and detailed inquiries
- Sort events discussed chronologically and by significance or severity
- Assume a more businesslike demeanor
- Urge specificity



# Core fact questions

- What exactly happened
- Where it happened
- Who saw it / heard it
- Who was told about it
- What was done in response
- Prior, similar instances
- What actions were taken
- When it happened, when it was reported
- Documentation?
- Unique circumstances
- What was said
- What happened afterwards
- Everything else



# Documentation and Detail

- Detailed notes
  - ▣ Facts only
  - ▣ Credibility impressions separately
- Chronology – use whiteboard
- Use tasteful “demos”
- Site visits





# Stage 4: Deconstruction/Push

- Create opportunities to test interviewee's credibility
- Obtain response/reaction to outside evidence or statements of others
- Use inconsistencies to challenge veracity of statements
- Move from self-advocacy to truth telling, if applicable.



# Methods for Deconstruction

- Move from least confrontational to most confrontational
- Question gaps and inconsistencies
  - “No big deal”
  - Self-effacement or collaboration
- Ask confirming questions based on non-credible or improbable statements
  - Own perception
  - Speculation
  - Suggestive
- Directly confront credibility of interviewee or present evidence and statements of others



# Confrontation

- Introduce the evidence or source of information and confirm familiarity
- Ask for a response, reaction or explanation
- Make credibility observations
- If appropriate challenge statements that others have been untruthful







# Stage 5: Closing

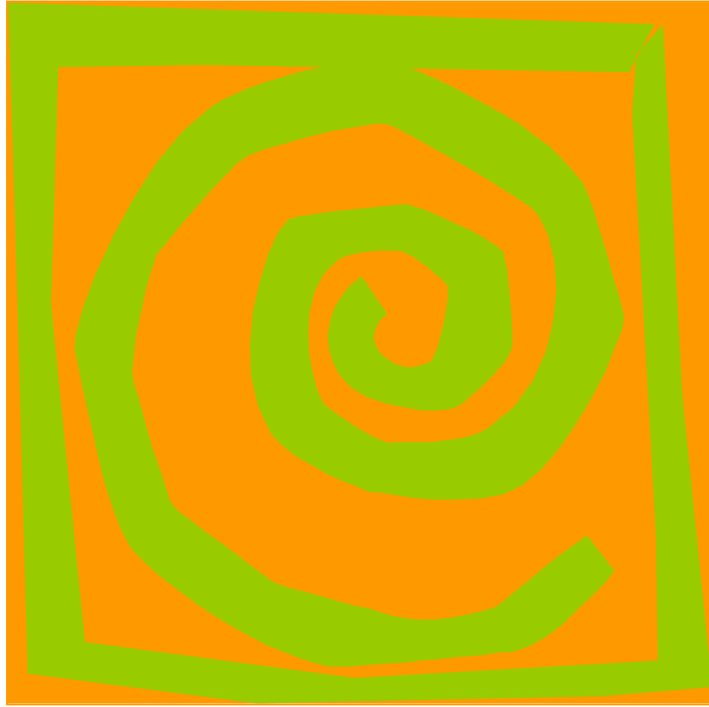
- Confirm the accuracy of the information gathered
- Provide a buffer to allow the interviewee to re-engage
- Ensure that appropriate expectations have been managed



# Steps for Closing an Interview

- Recap all that has been said in the interview
- Make certain that the interviewee is informed of expectations and policies regarding their interview and the information gathered.
- Thank the interviewee





# Avoid making promises or appearing to make commitments:

- Consider the “crystal ball” or “magic wand” question



## Continue to Update and Revise your Plan

What questions have you answered?  
Who do you add to your witness list?

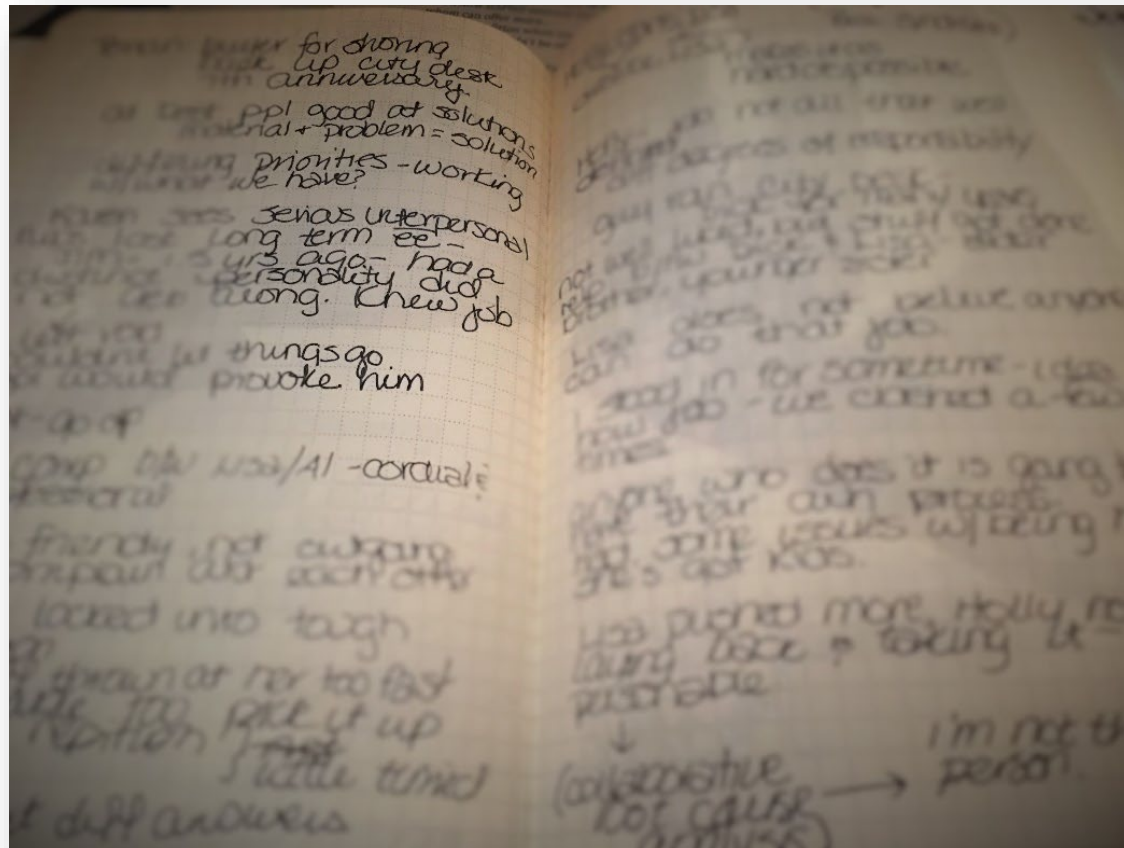


# Note Taking

- Your notes must be:
  - ▣ Contemporaneous
  - ▣ Objective records of statements
  - ▣ Clear enough to you to be able to interpret them later
  - ▣ Consistent from individual to individual in detail

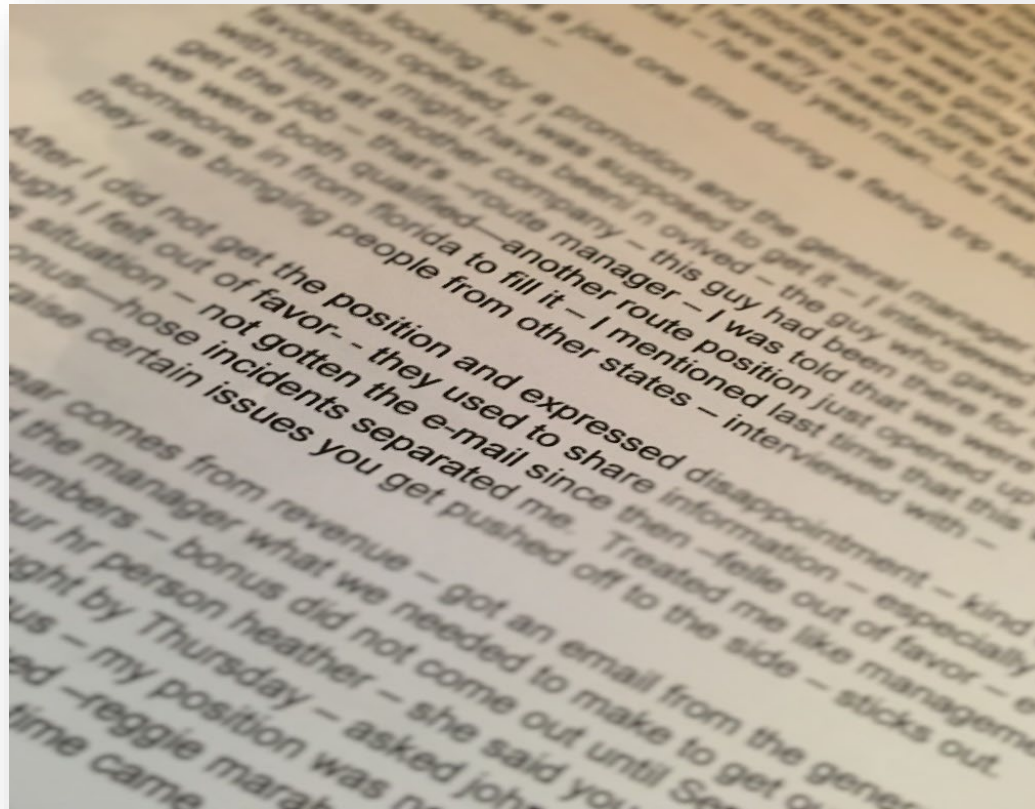


# Notes don't need to be pretty





# Notes don't need to be grammatically correct



# Notes

- Must provide you with the capacity to reconstruct what was said at least two years from the date of the interview
  - ▣ Raw notes should always be retained
  - ▣ “Cleaned up notes” are acceptable as long as raw notes are retained
- Can save original and track changes on second version or use alternate font or color



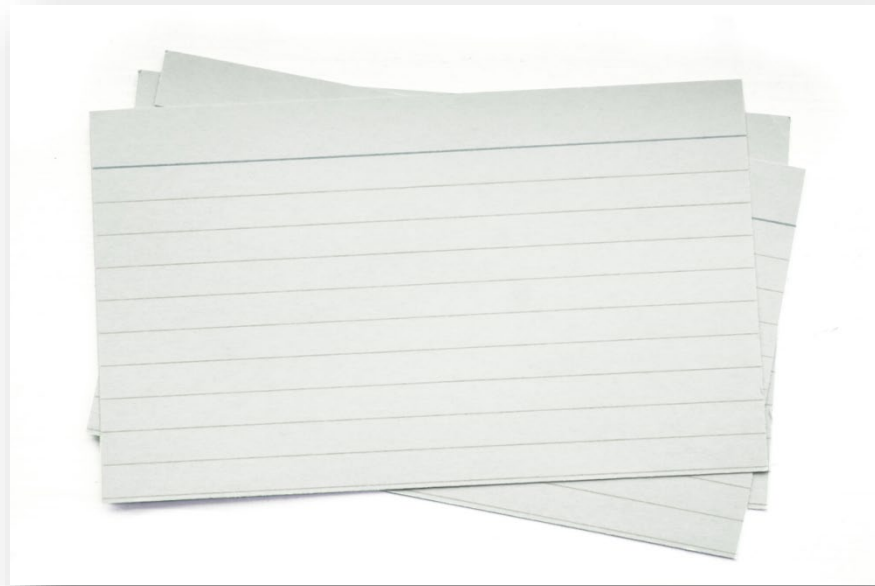
# Note Taking Advice

- Keep credibility notes separate
- Put observations in parentheses (crying)
- Review and refine your notes immediately following each interview
- If you use a PC, back up frequently
- Practice, practice, practice



# Credibility Notations

- Must be separate and distinct from notes
- Can be recorded on index cards or other discreet item
- Must be in file



# Conducting the Credibility Assessment

Analytic Factors

Base Lining for  
Falsehoods

Assess  
Responses to  
Credibility  
Challenges

Confrontation

Analyzing  
Corroboration



# Analytic Factors

- Motive to lie
- Admissions or statements against interests
- History of falsehoods reported
  - Beware the false reports of falsehoods!
- Game playing with words and context
- Similar Claims in past?
- Consistent
- Inherent plausibility given culture, context and circumstances



# Changes from the Baseline

- Increasing formality of language
- Distancing language
- Repeating questions
- Qualifying language ("in all candor...")
- Increased or decreased fillers and contractions
- Vocal tone higher
- Moving to passive voice
- Rambling or changing the subject



# When You Observe a Change

- Replicate it.
- Feed it back
- Major baseline shifts are often signs of omission
  - Is it possible you left something out?
  - Have you told me everything you know about this?
  - Is there anything you'd like to add?





# Take A Break

When you are done with fact gathering



# Ask Yourself

- Does this all make sense?
- Does this hold together?
- Were there unnatural gaps or omissions?
- Was this consistently told?
- How does this compare with other versions of events?



# The Eraser Method

- Contradictions, unstable stories, unstable details.
  - ▣ "Perhaps it is my mistake, but I thought I heard..."
  - ▣ Is it accurate that you...
  - ▣ Is it possible that ....



# Present Other Versions

- Begin with a "norming statement."
- Present it as a hypothetical or
- Identify specific differences in other versions , one at a time.



# Confronting with Evidence

- After all other steps
- Present evidence and permit them to describe it
- Give ample time to examine
- If written document, can ask them to read portions to you
- Give opportunity to revise statement if appropriate





## Corroboration

"Evidence that confirms or supports a statement, theory or findings"



# Contemporaneous Corroboration

- Contemporaneous reports to uninvolved parties, neutral parties
- Contemporaneous documentation
- Contemporaneous reports to authorities or perceived authorities
- Gather evidence promptly, minimizing opportunity to falsify, alter or influence



# Investigative Report

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- May be helpful to use a worksheet
- Do not retain drafts





## Investigative Report Work Sheet

ALLEGATION	TESTIMONY	OBSERVATIONS RE: CREDIBILITY	EVIDENCE CONSIDERED: EXHIBIT?	TIES TO WHAT POLICY?	UNANSWERED INVESTIGATIVE QUESTIONS	SUBSTANTIATED OR UNSUBSTANTIATED OR UNABLE TO SUBSTANTIATE



# Investigative Report Format

## OPTION 1

### **Section 1: Impetus for the Investigation**

Why was this investigation begun? If there was a complaint, who received it? Who commissioned the investigation, selected the investigator? If there was an anonymous complaint, say so. If there was no complaint but it was determined a pattern of conduct was being brought to management attention, describe that. If ethics line or other hotline, describe.

### **Section 2: OPTIONAL Executive Summary**

This includes a summary of allegations, a brief synopsis of any pertinent corroboration or rebuttal, any key credibility analysis and a list of findings of fact.

### **Section 3: Allegations of Misconduct (If no allegations or complaint, this can be a topical list)**

If you have an identified complainant, this section should be written to describe the allegations and laid forth by the complainant. If this was an anonymous complaint or there were multiple complaints, you can break this down by topic, such as "Behavior Generally," or "Work Environment," or "Protected Class Directed Behavior." It should explain in some detail the narrative around each of the topics

### **Section 4: Relevant Statements of Witnesses**

Allegation by allegation, what did witnesses say that was material, corroborated or rebutted. Include the number of witnesses that do not recall or were present but did not see/hear something even if they do not refute it happened.

### **Section 5: Response to Allegation by Accused**

Writing allegation by allegation, what was the response; admission, admission but contextual difference, dispute facts, present evidence to the contrary? Include responses such as "I don't remember" or "I don't know"

### **Section 6: Analysis and Credibility Assessment**

This is the section to present an overall analysis, pointing out corroboration where it is exists and where it does not, observations and evaluations of the truthfulness of parties and witnesses, plausibility, motives to be truthful or untruthful, likelihood and other factors.



## Investigative Report Format

OPTION 2|

### **Section 1: Impetus for the Investigation**

Why was this investigation begun? If there was a complaint, who received it? Who commissioned the investigation, selected the investigator? If there was an anonymous complaint, say so. If there was no complaint but it was determined a pattern of conduct was being brought to management attention, describe that. If ethics line or other hotline, describe.

### **Section 2: OPTIONAL Executive Summary**

This includes a summary of allegations, a brief synopsis of any pertinent corroboration or rebuttal, any key credibility analysis and a list of findings of fact.

### **Section 3: Overview of Allegations, Relevant Witness Statements and Responses**

In this section, each allegation should be described, relevant witness statement included, response of the accused identified and a credibility analysis applied to each. Place relevant exhibits in the body of the report in the pages immediately following the discussion of the allegation.

### **Section 4: Analysis and Credibility Assessment**

This is the section to present an overall analysis, pointing out corroboration where it exists and where it does not, observations and evaluations of the truthfulness of parties and witnesses, plausibility, motives to be truthful or untruthful, likelihood and other factors.

### **Section 5: Findings**

This can be a finding focused on policy language, or it can be an allegation by allegation set of findings, with the latter being preferable. Identify the standard of proof being applied. Did the behavior more likely happen than not? Certainly happen? Can it not be determined whether or not something happened? Was something in fact found to not have happened (because, for instance, an incident was alleged to occur when one of the parties could not possibly have participated.)



# Findings

- Definitively Occurred (clear and convincing)
- More likely to have occurred than not (preponderance)
- Cannot confirm or rule out
- Unlikely to have occurred (51%)
- Ruled out— did not occur



# Findings

- Statements of Fact (i.e. what happened)
- Statements regarding degree of evidence to support or not support facts
- Statements as to why allegations or facts asserted during the course of an investigation were not found to be supported by evidence or were false.
- No legal conclusions



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