

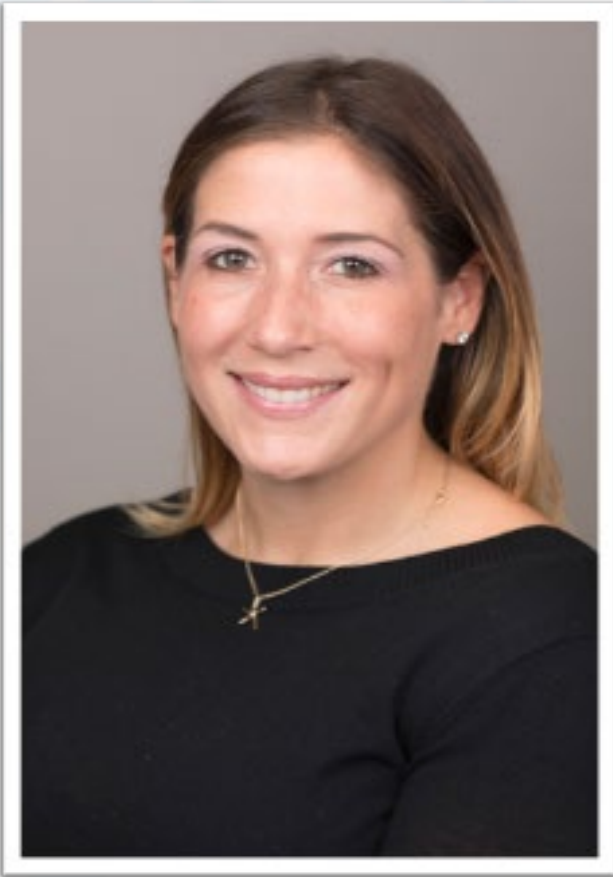
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Introduction to Fair, Thorough, and Trauma Informed Sexual Violence Investigations

Chantelle Cleary, JD

Senior Consultant, Grand River Solutions

Meet Your Facilitator



Chantelle Cleary is a nationally-recognized subject-matter expert in Title IX and related fields. She has more than 10 years of experience in the investigation and adjudication of sexual and interpersonal violence. She lectures extensively at universities and conferences throughout the U.S. on Title IX, VAWA, harassment, and implementation of best and emerging practices. Prior to joining Grand River Solutions, Chantelle served as the Director for Institutional Equity and Title IX at Cornell University, and before that as the Assistant Vice President for Equity and Compliance and Title IX Coordinator at the University at Albany. In these roles, she provided direct, hands-on experience in the fields of Title IX, civil rights, employment law, and workplace and academic investigations. Her responsibilities included focusing on diversity efforts, sexual assault prevention and training, affirmative action, and protecting minors on campus.

Chantelle Cleary Botticelli , J.D.
Director of Strategic Partnerships
and Client Management



Day One Agenda

01

Review: Title IX's Requirements

02

The Proper Application of Trauma Informed Practices

03

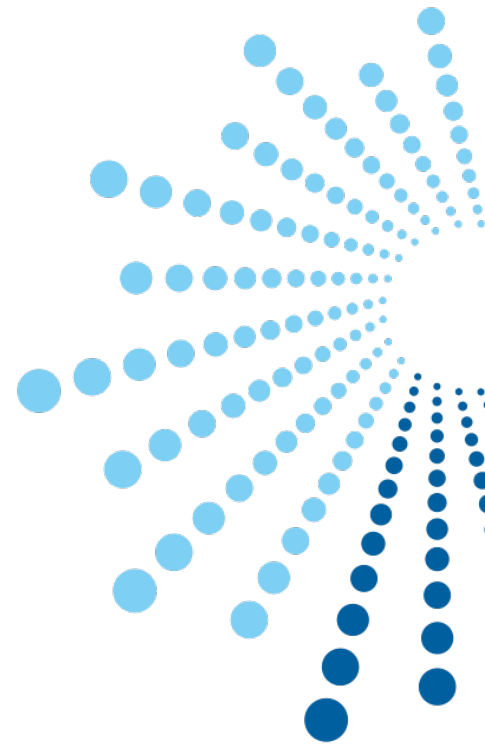
The Importance of Understanding the Potential Impact of Trauma

04

Developing an Investigative Strategy

05

Investigative Interview





Review: Title IX's Requirements

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01

Procedural Requirements for Investigations



Notice TO BOTH PARTIES



Equal opportunity to present evidence



An advisor of choice



Written notification of meetings, etc., and sufficient time to prepare



Opportunity to review ALL evidence, and 10 days to submit a written response to the evidence prior to completion of the report



Report summarizing relevant evidence and 10 day review of report prior to hearing

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Procedural Requirements for Hearings

Must be live, but can be conducted remotely

No Compelling participation

Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution

Decision maker determines relevancy of questions and evidence offered

Exclusion of Evidence if no cross examination

Written decision must be issued that includes finding and sanction

Advisor of Choice

The advisor can be anyone, including an attorney.

Institutions cannot place restrictions on who can serve.

No training required.

Institution must provide advisor for the purposes of cross examination, only.



Written Notification of Meetings and Sufficient Time to Prepare

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Equal Opportunity to Present Evidence

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Evidence Review



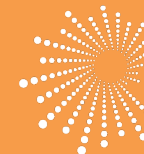
Parties must have equal opportunity to inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint

10 days to provide a written response

Investigative Report and Review

After reviewing and considering the comments on the evidence, the investigator will generate a report that summarizes the relevant evidence.

That report will be shared with the parties and they will have 10 more days to comment





The Investigator



Can be the Title IX Coordinator, although that is disfavored



Must be trained in accordance with the requirements in the regulations



Must conduct the investigation in an impartial manner, avoiding bias/pre-judgment, and conflicts of interest

The Requirement of Impartiality

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An Impartial Grievance Process Is...

- Not influenced by bias or conflict of interest
- Committed to decisions based on an objective view of all of the facts and evidence
- Reliable and accurate
- Legitimate
- Truth Seeking

Trauma Informed Practices

In the preamble, the Department permits the use of trauma informed practices and recognizes that trauma informed practices can be used in an impartial and non-biased manner.

Trauma informed practices must be applied equally to all genders.



The Proper Application of Trauma Informed Practices

02

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Trauma Informed Practices provide tools/techniques for interviewing and engaging with the Complainant, Respondent, and Witnesses.



Format/Structure of the Interview



Format of Questions



Approach to Clarification

Trauma Informed Practices are Designed to:

01

Encourage thorough and complete investigations

02

Assist with recollection

03

Assist with recounting

04

Reduce potential for false information

05

Minimize unnecessary re-traumatization

06

Reduce Bias

Misapplication of Trauma Informed Practices

It is a misapplication of trauma informed principles to allow potential evidence of trauma to:

1. Influence the interpretation of a specific item of evidence;
2. Substitute for missing evidence;
3. To serve as a justification for not doing a full and thorough investigation;
4. Cause a biased belief in the veracity of one or more party



The Importance of Understanding the Potential Impact of Trauma

03

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Trauma

An event that is experienced as terrifying, horrifying, or threatening and that is coupled with an actual or perceived lack of control.

Examples of Events that Might Trigger a Traumatic Response

Sexual Assault

Physical Assault
by a Stranger

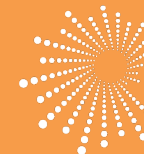
Physical Assault
by an Intimate
Partner

A Car Accident

Accident that
causes serious
injury or death

Robbery

Medical Event?



When trauma occurs, there are every real changes in brain function that may affect a person's ability to record or make memory and to recount their experience.

Common Characteristics of Disclosures by a Trauma Brain

Inconsistent

Non-linear

Fragmented

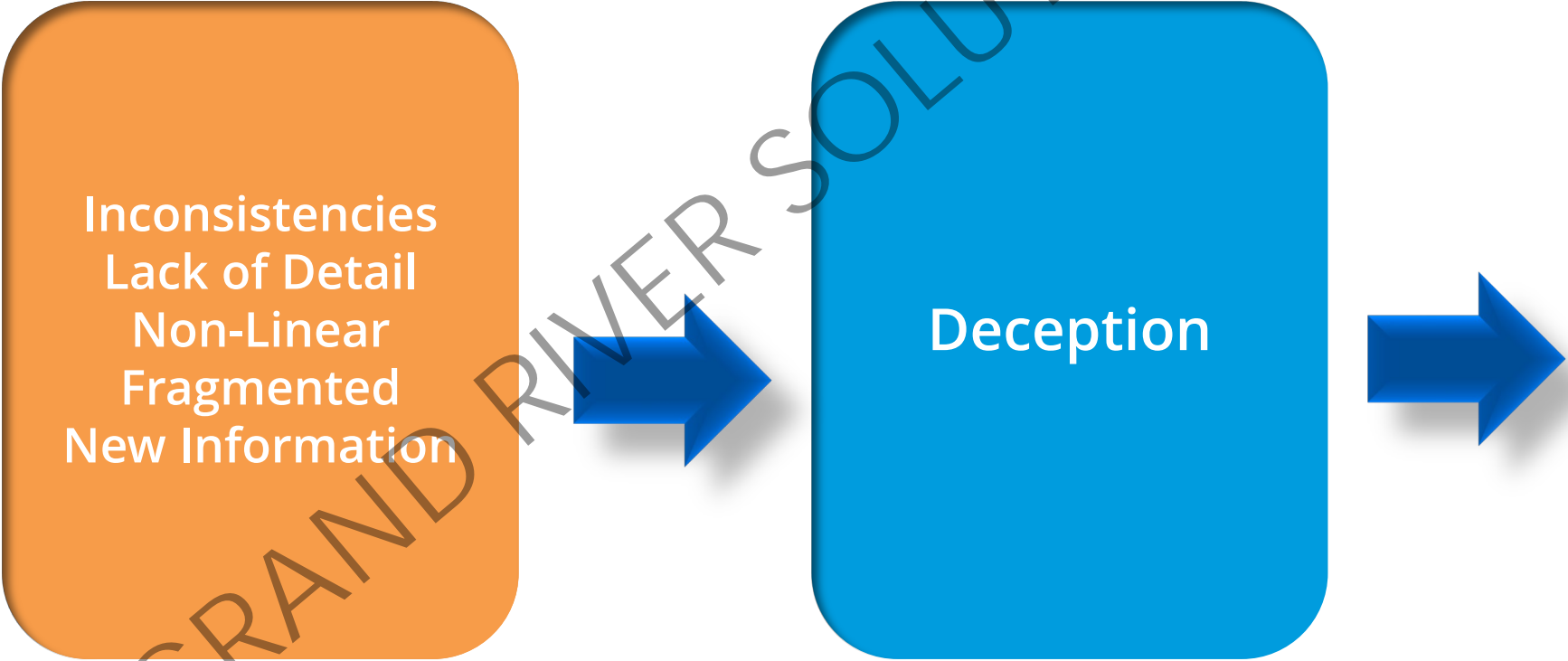
Lack of detail

New information

Affect is unexpected

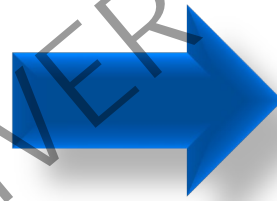


Historically, the seemingly inconsistent behaviors that frequently accompany disclosures of sexual assault and interpersonal violence resulted in the belief that the victim was being dishonest.

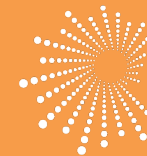


The Historical Conclusion...

False Report
Regretted Sex
Not Proveable



CASE CLOSED



The Future...

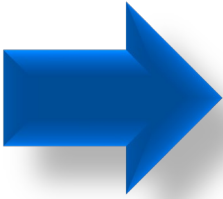
An understanding of trauma and its potential impact should encourage investigators to keep an open mind, and it should prevent investigators from immediately interpreting seemingly inconsistent behaviors with deception. An understanding of trauma provides another explanation for these seemingly inconsistent behaviors.

This is essential to a fair and thorough investigation.

Inconsistencies
Lack of Detail
Non-Linear
Fragmented
New Information



Deception?
Trauma?
Other (alcohol)?



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The Investigation Continues....

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Without trauma informed training and knowledge, those conducting investigations and interviews risk:

Conducting their interview with bias

Wrongfully concluding, without conducting a thorough investigation that the reporting individual is not credible

Causing further trauma

Jeopardizing future reporting

Prematurely Concluding the Investigation



Developing an Investigative Strategy

04

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Essential Steps of an Investigation



Notice of formal investigation



Initial Interviews



Evidence Collection



Report writing

The Process: Developing an Investigative Strategy



Investigation Timeline

Prior History

- Between the Parties
- Of the Parties

Incident

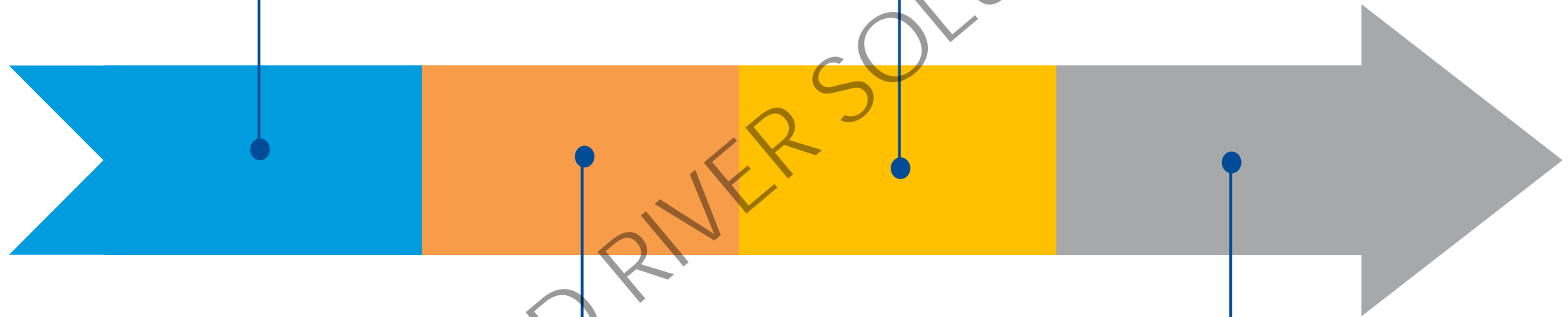
- Consent
- Type of Contact
- Injuries

Pre-Incident

- Communications
- Interactions
- Conduct

Post Incident

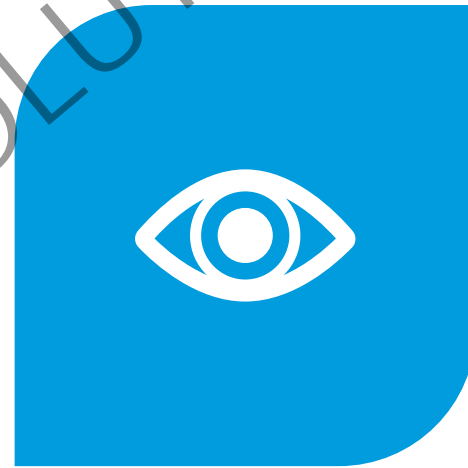
- Behaviors
- Communications



Title IX Hearing Requirements: The Impact on Investigations



EVIDENCE COLLECTION



INVESTIGATE THE
EVIDENCE

Strategies for Evidence Collection

Testimony

Text
Messages

Social Media
Posts

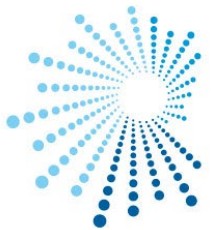
Medical
Records

Public
Safety/Police
Records



The Importance of Organization

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Introduction to Fair, Thorough, and Trauma Informed Sexual Violence Investigations

Day 2

Chantelle Cleary, JD

Senior Consultant, Grand River Solutions



Investigative Interviews

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Interview Objectives



Connect

- Build rapport
- Build trust
- Empower



Listen

Allow interviewee to share their experience



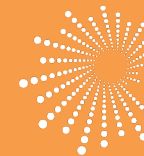
Clarify

- Understand what you have heard
- Seek additional information



Evidence Preservation

- Text Messages
- Photographs
- Names and contact info for witnesses



Prior to the Interview



Secure an appropriate meeting location



Allow for enough time to conclude the meeting



Prepare yourself for the meeting



If interviewing a party, inform them of their right to have an advisor present.

Set Expectations

What they should expect of you

- That you are neutral
- That you will listen, what they are saying is important to you
- That you will keep the information they share private
- What you will do with recording/notes
- That you may have to ask difficult questions
- Patience, respect, and appreciation

What you expect of them

- Honesty
- That they will seek clarity if needed (give them permission to do so)
- That they wont guess or fill in blanks

The Importance of Empowerment and the Power of Empathy



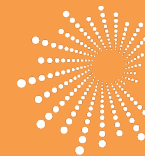
How do we...

Build Rapport and Trust?

Empower?

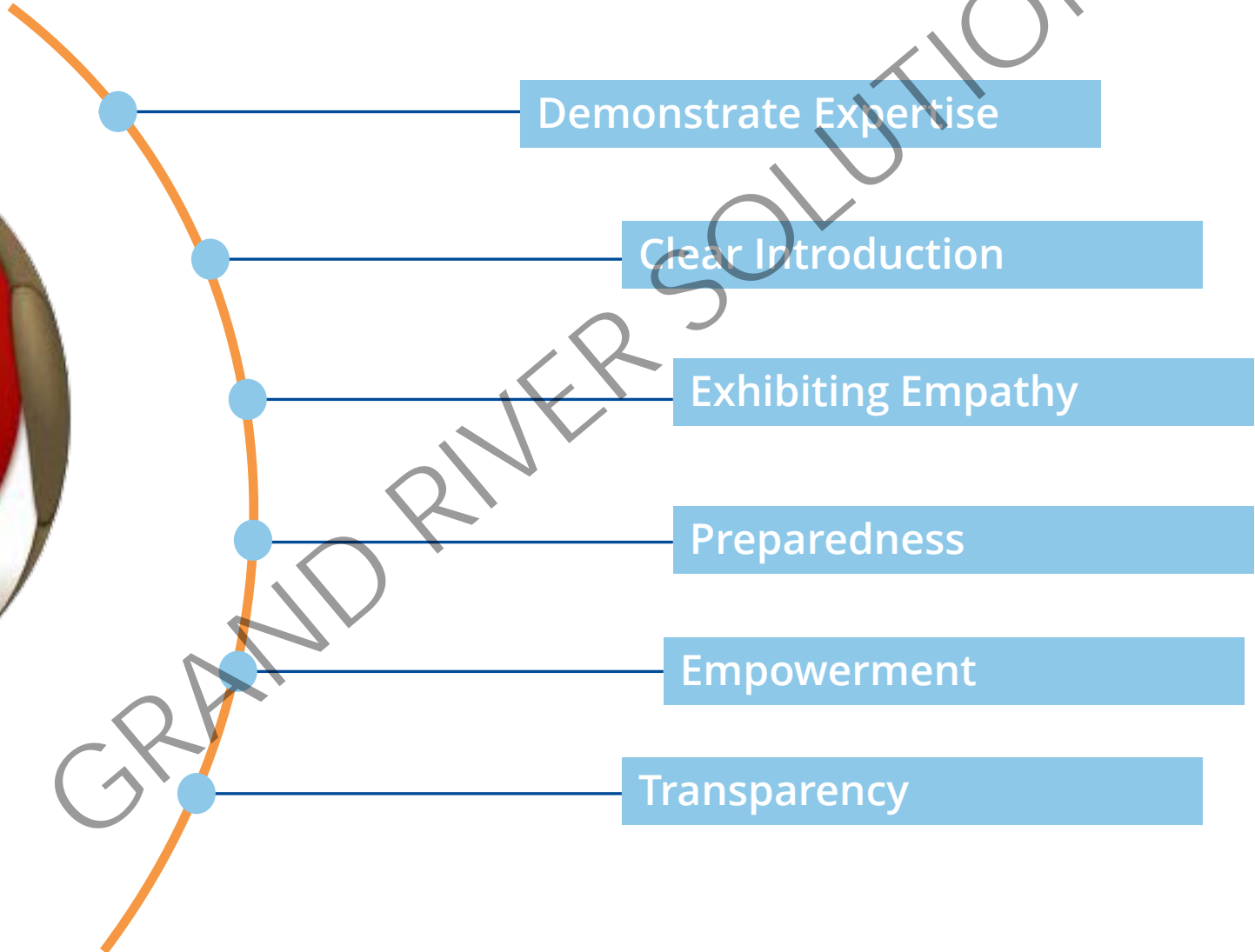
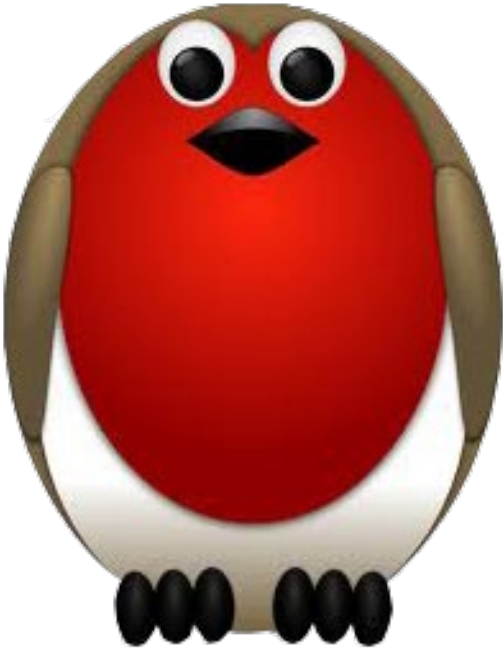


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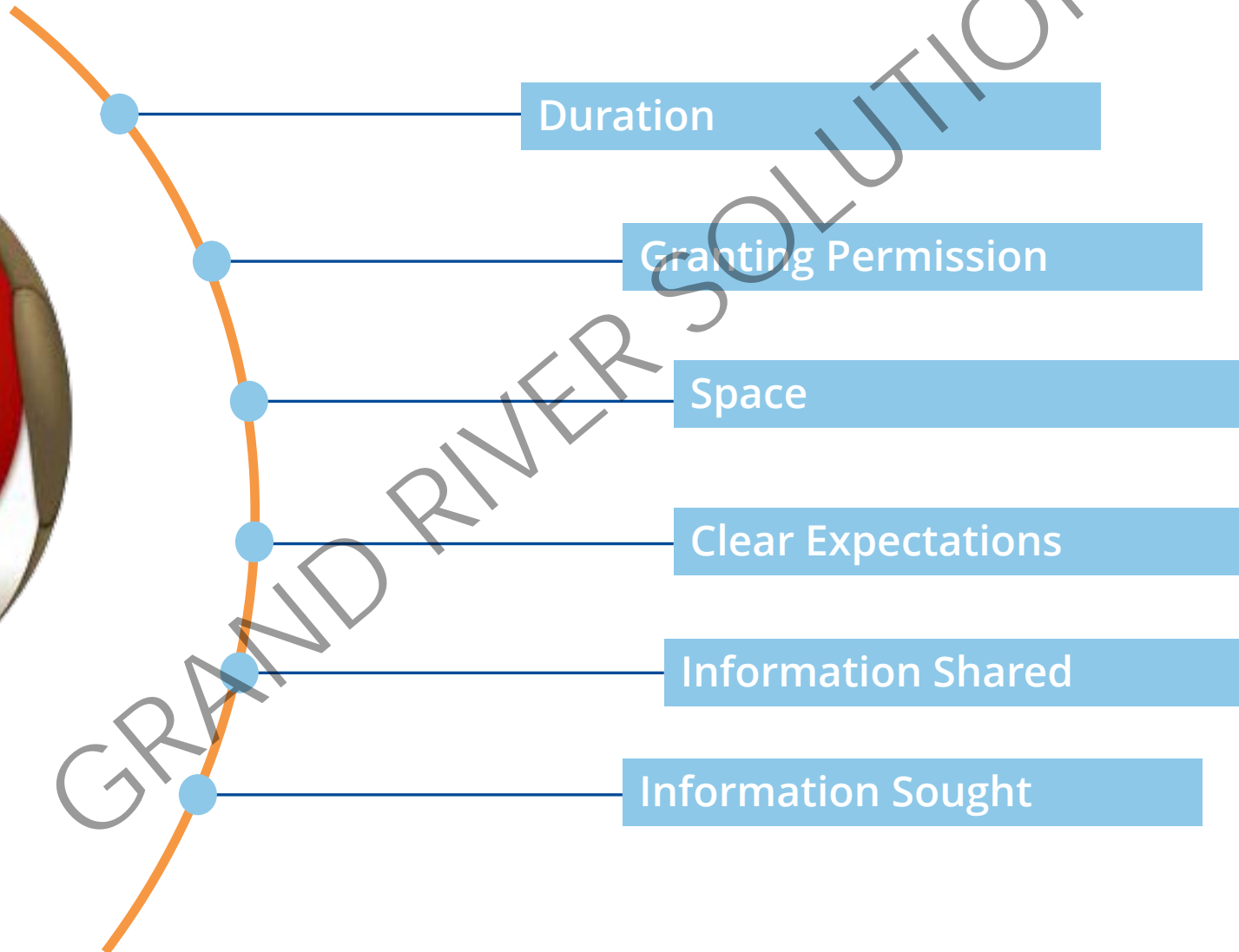
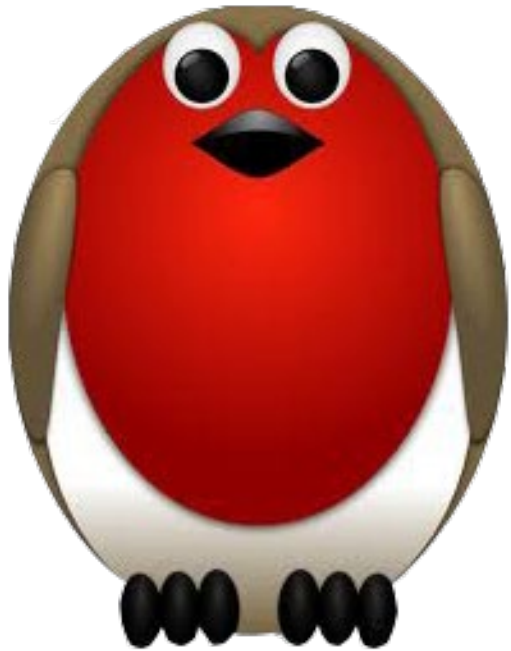


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Rapport and Trust



Empowerment



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Day Two Agenda

01

Investigative Interviews Continued

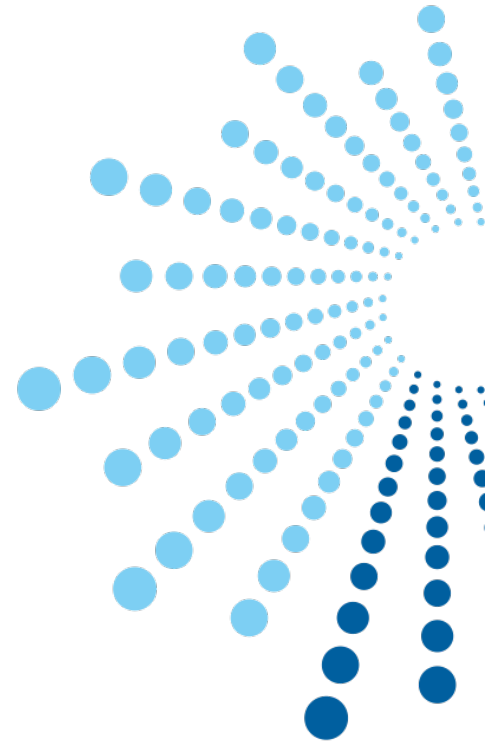
02

Evidence Collection and Assessment

03

The Investigative Report and Record

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Quick Review!

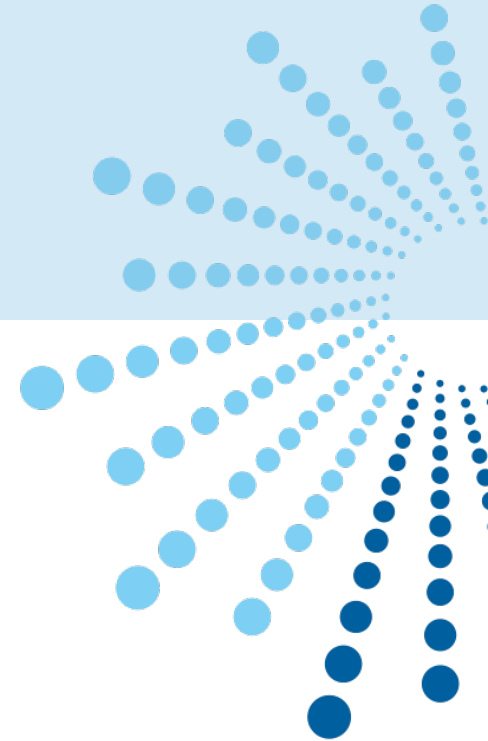
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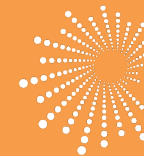
Investigative Interviews

04

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Investigative Interviews

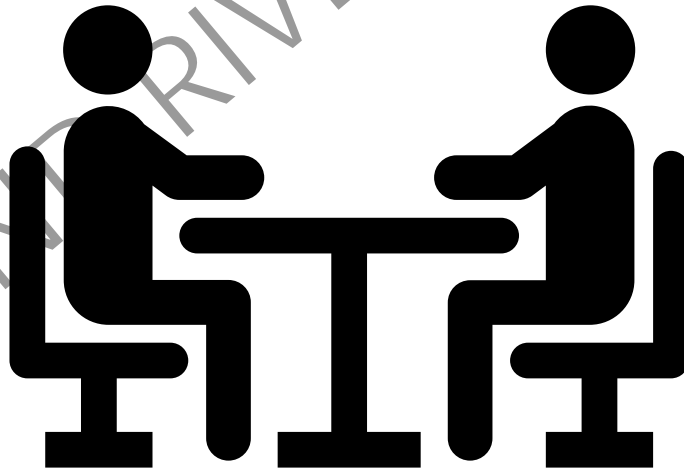


Start the interview by eliciting a narrative.

Where would you like to begin?

Start where you are comfortable and share what you are able to remember.

What are you able to tell me about your experience?



Allow the person to speak uninterrupted.
This takes patience.

Next, ask questions that are intended to clarify and more deeply explore the information and details provided by the person in their narrative.

Do Ask:

- Interview for clarification
- Help me understand
- Can you tell me more about...?
- Is there anything else you can share about...?

Avoid:

- Interrogation
- Questions that blame
- Questions that imply doubt
- Leading questions

Explore implicit memories by asking questions about the sensory experience and peripheral details.

- What are you able to tell me about:
 - What you saw?
 - What you heard?
 - What you smelled?
 - What you felt?
 - What you tasted?
- What are you able to tell me about any images, smells, or sounds that keep coming back to you?



Explore implicit memories by asking questions about the sensory experience and peripheral details.

- *What are you able to tell me about:*
 - *What you saw?*
 - *What you heard?*
 - *What you smelled?*
 - *What you felt?*
 - *What you tasted?*
- *What are you able to tell me about any images, smells, or sounds that keep coming back to you?*



"I felt an animal. I think it was dead. I was terrified that he hurt it. I thought he would do the same to me."



"Help me understand why you keep rubbing your wrists like that?"

Capture the Entire Experience

- Ask about the physical and emotional reactions to the incident.
- Conclude with a very open-ended questions:
 - What was the most difficult part of this experience for you?
 - Is there something that stands out/that you just can't stop thinking about?
 - Is there anything more that you would like me to know?

The Before

At some point during the interview, it is also important to explore the prior history, if any, between the reporting individual and the accused.

... and The After

It is also important to explore the events following the incident. Oftentimes, the best evidence is produced after the incident.

- The parties' psychological reactions
- Changes in behavior
- Witnesses to the psychological reaction
 - "Has anyone expressed concern about you since the assault?"
- Communication/contact between the victim and perpetrator

Throughout the Interview



Explain your questions,
especially the difficult ones

How much did you drink? What
they hear- this is your fault
because you were drinking



Do not ask leading questions



Watch your tone



Do not rush.



LISTEN!!!!!!!!!!



Pay attention to and document information that might
lead to additional evidence

After the Interview: Actions



Memorialize the Interview in writing

Notes
Summary
Transcript



Provide Opportunity for the party or witness to review it



Provide opportunity for party or witness to provide a response



Incorporate the response

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After the Interview: Reflection



Reflect.



Is there something you missed or forgot to ask?



Do you need clarity on any of the information shared?



Has this interview revealed additional evidence that you want to explore or collect?



Has evidence of additional policy violations been shared?

Follow Up Interviews

Seek clarification

Explore inconsistencies

Explore contradictory evidence

Explore difficult issues

Opportunity to respond

Follow-Up Interview Approach

Explain the purpose of the follow-up.

Set the stage for the topics you will be covering.

Do not avoid asking the hard questions.

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The “Hard” Questions

Details about the
sexual contact

Seemingly
inconsistent
behaviors

Inconsistent
evidence/information

What they were
wearing

Alcohol or drug
consumption

Probing into reports
of lack of memory

How to Ask the Hard Questions

Lay a foundation for the questions.

- Explain why you are asking it.
- Share the evidence that you are asking about, or that you are seeking a response to.

Be deliberate and mindful in your questions:

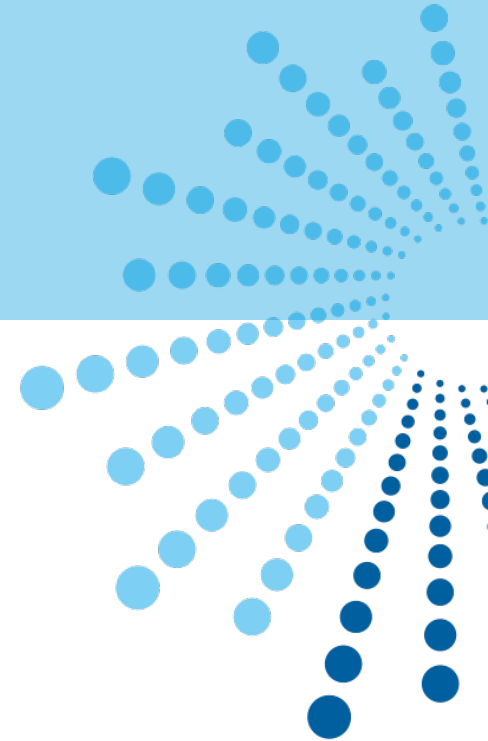
- Can you tell me what you were thinking when....
- Help me understand what you were feeling when...
- Are you able to tell me more about...



Evidence Collection and Assessment

02

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Evidence

“Something (including testimony, documents, tangible objects) that tends to prove or disprove the existence of an alleged fact; anything presented to the senses and offered to prove the existence or non-existence of a fact.”

Black's Law Dictionary

Types of Evidence

Direct Evidence

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

Circumstantial Evidence

- Evidence based on inference and not on personal knowledge or observation.

Corroborating Evidence

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

Testimony is Evidence

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Non-Testimonial Evidence

Text Messages

Social Media Posts

Social Media Communications

Emails

Surveillance

Videos

Photographs

Police Body Camera Footage

Swipe Records

Medical Records

Phone Records

Audio Recordings

Evidence Collection



Identify the items of evidence that you would like to obtain



Develop an intentional strategy for obtaining that evidence



Overcome barriers to evidence collection



Considerations about collecting certain types of evidence

A Thorough Investigation

is more than evidence collection

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Evaluating the Evidence

Is it relevant?

Evidence is relevant if it has a tendency to make a material fact more or less likely to be true.



Is it authentic?

Is the item what it purports to be?



Is it credible/reliable?

Is the evidence worthy of belief?



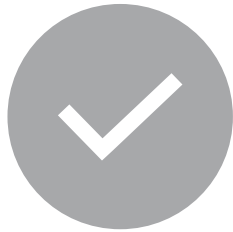
What weight, if any, should it be given?

Weight is determined by the finder of fact!

A Thorough Investigation Permits the Decision Maker to Assess



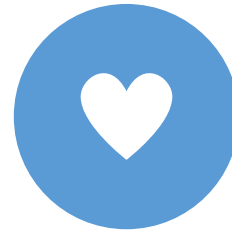
Relevance



Credibility



Reliability



Authenticity



Weight

Evidence That is Not “Relevant”

“Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant,

- unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
- if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.”

“require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.”

Physical and mental health records and attorney-client privileged communications would fit within scope of this prohibition

“Relevant” Evidence

The Department declines to define “relevant”, indicating that term “should be interpreted using [its] plain and ordinary meaning.”

See, e.g., Federal Rule of Evidence
401 Test for Relevant Evidence:

“Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.”

Assessing Relevance

Why Does it Matter?

Unsure about the relevance about a particular item of evidence? Ask the person who has proffered it.

Character Evidence

Polygraph evidence

Opinion Evidence



Opinion Evidence

When might it be relevant?

How do you establish a foundation for opinion evidence so that the reliability of the opinion can be assessed?

Opinion Evidence: Try it!

You are investigating an allegation that Casey had sex with Taylor when Taylor was incapacitated. You interview several witnesses, one of whom made the following statement:

"I got to the party pretty late, and Taylor was already lit."

"Taylor was wasted. Like totally messed up. There is no way they could have given permission for sex"



Assessing Authenticity

Investigating the products of the Investigation



Never assume that an item of evidence is authentic.



Ask questions, request proof.






Investigate the authenticity if necessary.




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


iFake **iFake Text Message**
Create a Fake Text Message Conversation

Text Message Conversation

Name

Message...   

Message...   

Message...   

[+ Add Text Message](#)

Battery

Connection

Settings

Spectrum
Get our best with no contracts ever

Spectrum
BEST

Sprint LTE 11:43 AM 75% 

[← Messages](#) [Details](#)



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Is it authentic?



QUESTION THE
PERSON WHO
OFFERED THE
EVIDENCE



REQUEST
ORIGINALS



OBTAIN
ORIGINALS FROM
THE SOURCE



HAVE OTHERS
REVIEW AND
COMMENT ON
AUTHENTICITY



ARE THERE OTHER
RECORDS THAT
WOULD
CORROBORATE?

Assessing Credibility and Reliability

No formula exists, but consider the following:

Opportunity to view

Ability to recall

Motive to fabricate

Plausibility

Consistency

Character, background, experience, and training

Coaching

Bias

Barriers to Evidence Collection and Assessment

Barriers to Collection

- Uncooperative Witnesses
- Non-Participating Parties
- Unknown Identity of a Witness
- Obtaining Emails
- Difficult Topics

Barriers to Assessment

- Technology
- Colluding Witnesses
- Colluding Parties
- Uncooperative witnesses
- Totally different facts from different sources



Understanding the Impact our Investigations

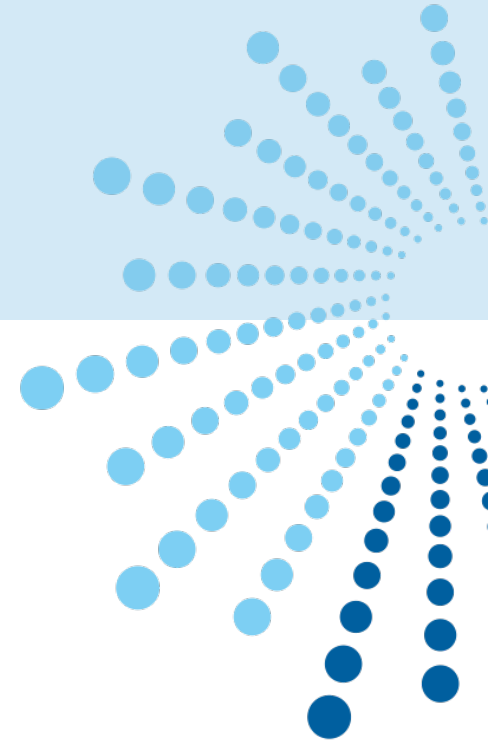




The Investigative Report and Record

03

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At the conclusion of the investigation, we must create an investigative report that fairly summarizes relevant evidence.



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Relevancy Standard

Relevant Evidence

- “Evidence is relevant if:
- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.”

Irrelevant Evidence

- Prior sexual history of complainant, with two exceptions
- Legally recognized and un-waived privilege.
- Records related to medical, psychiatric, psychological treatment

Who Decides?

Department emphasizes repeatedly in Preamble that investigators have discretion to determine relevance

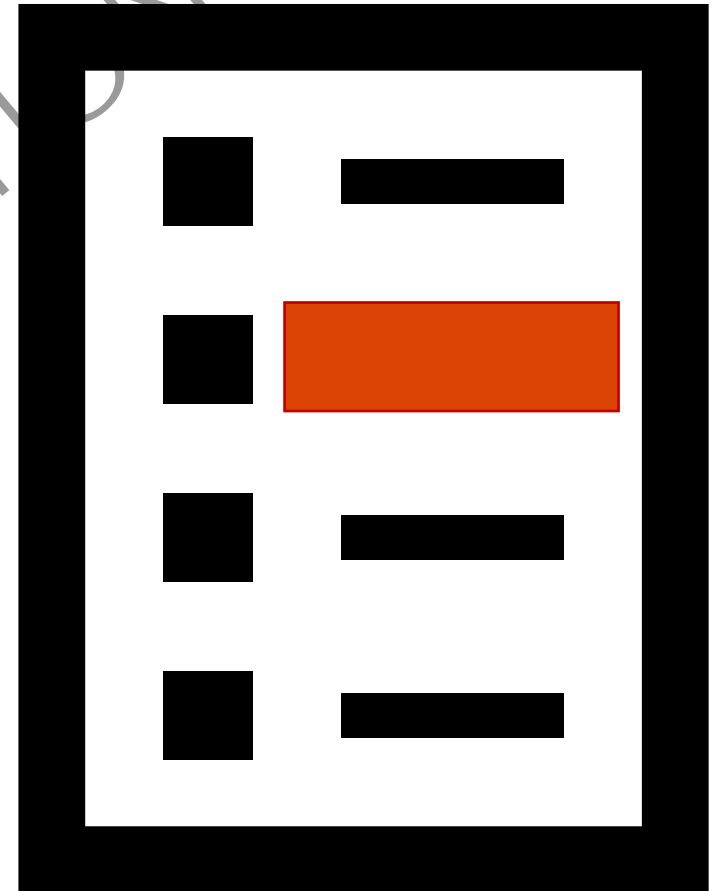
- Subject to parties' right to argue upon review of "directly related" evidence that certain information not included in investigative report is relevant and should be given more weight

Investigators will have to balance discretionary decisions not to summarize certain evidence in report against:

- Each party's right to argue their case, and
- Fact that decisions regarding responsibility will be made at hearing, not investigation stage

Redactions

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Additional Requirements



Share the report with the parties and their advisors



In electronic format or hard copy



At least 10 days prior to the hearing

The Purpose of the Report

To allow for advance Review

To allow for advance Preparation

- By the Decision Maker
- By the Parties

Reduce likelihood of bias in final outcome

Intended Recipients

The Parties

The Advisors

The Decision Maker

The Appeal Panel

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Other Recipients?

Friends of
the parties

Parents

Law
enforcement

Attorneys

Judges

Media

Social
media

Essential Elements

Intentionally organized to enhance comprehension

Factually accurate

Concise

Without editorial or opinion

Consistent format

Report and Record



Summary of the Evidence



Compilation of the Evidence

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The Record



Compilation of the evidence



organized intentionally and consistently



Divided into Appendices



Is attached to the report



Includes a procedural timeline

Examples of Appendices

Appendix A:
witness testimony
only (e.g.,
transcripts,
statements
summaries, etc.)

Appendix B:
relevant
documentary
evidence (e.g., text
messages, SANE
reports,
photographs, etc.)

Appendix C:
the remaining
evidence deemed
irrelevant, but
directly related to
the allegations in the
formal complaint

Appendix D:
the procedural
timeline

Structure of the Report

Overview of the Investigation

Statement of Jurisdiction

Identity of Investigators

Objective of the Investigation and the Investigation Report

Prohibited Conduct Alleged

Witnesses

Evidence Collected

Summary of Evidence

Conclusion



Questions?

Email Us:

Chantelle@grandriversolutions.com

info@grandriversolutions.com



[@GrandRiverSols](https://twitter.com/GrandRiverSols)



[Grand River Solutions](https://www.linkedin.com/company/grand-river-solutions)

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