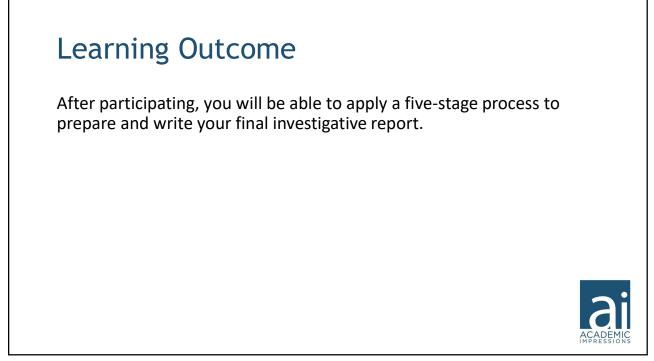
The 5 Stages of Preparing Your Title IX Investigative Report

Jean M. Hobler, Esq., P.C. Attorney jmh@hobleresq.com



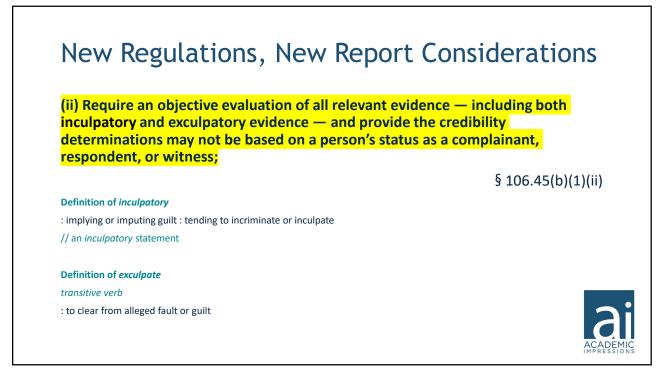


Section 1

Regulations & Reports: An Introduction



3



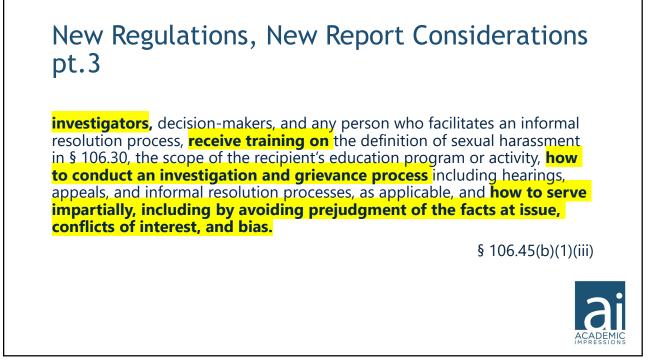
New Regulations, New Report Considerations pt.2

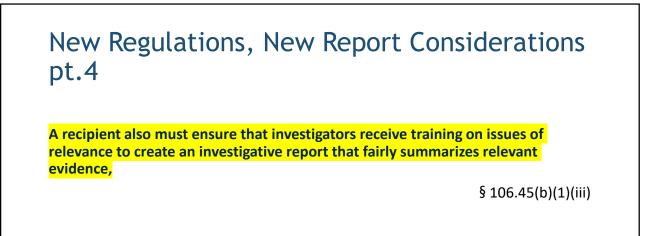
(iii) Require that any individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

§ 106.45(b)(1)(iii)

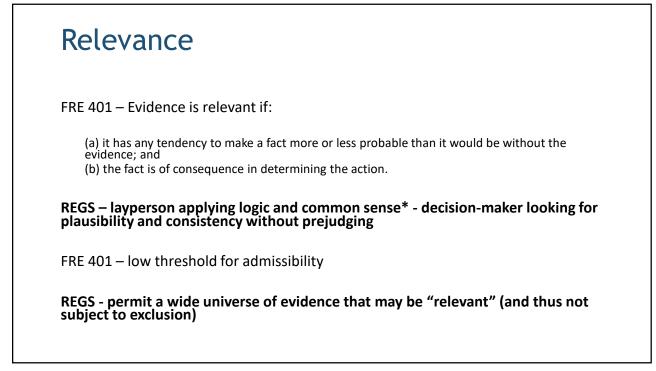


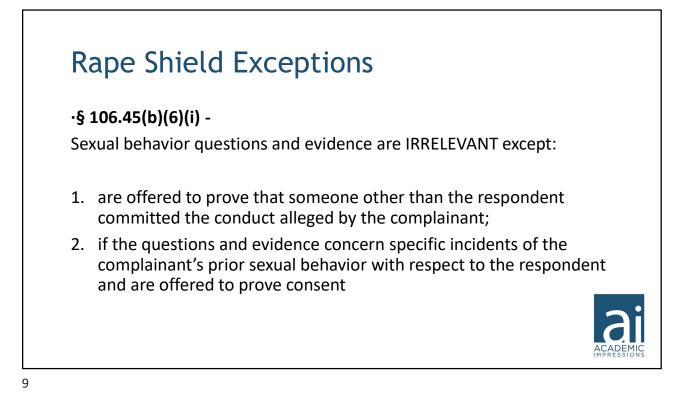
5

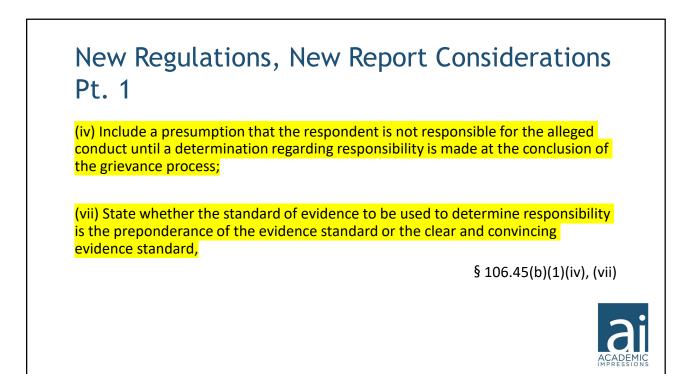












New Regulations, New Report Considerations Pt. 2

(ii) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

§ 106.45(b)(5)(ii)



11

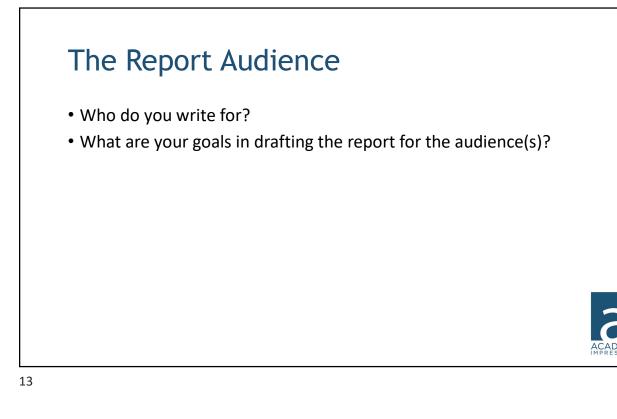
New Regulations, New Report Considerations Pt. 3

Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.

§ 106.45(b)(5)(vi)

(vii) Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for the review and written response.

§ 106.45(b)(5)(vii)

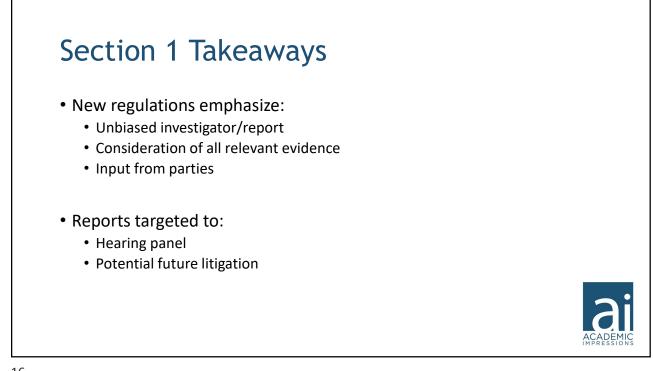




Posting Permitted on your Title IX Website © Jean Hobler, Esq., P.C. 2020





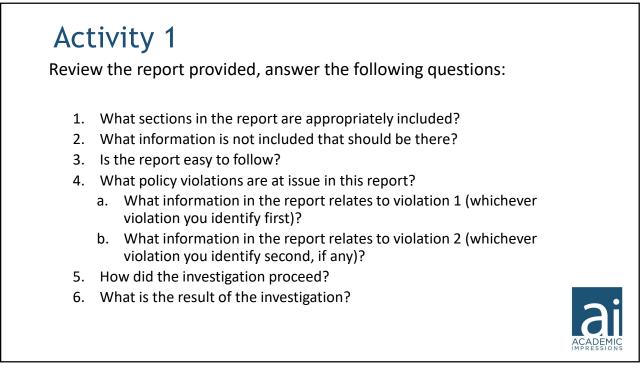


Section 2

Activity: What Makes a Good Report?



17

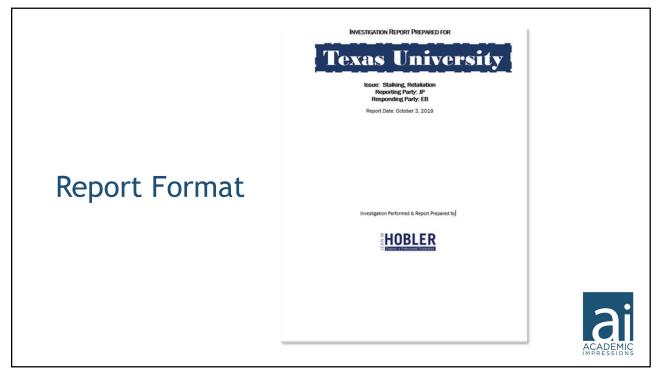


Section 3

Elements and Format of a Report (and Appendices)



19



20

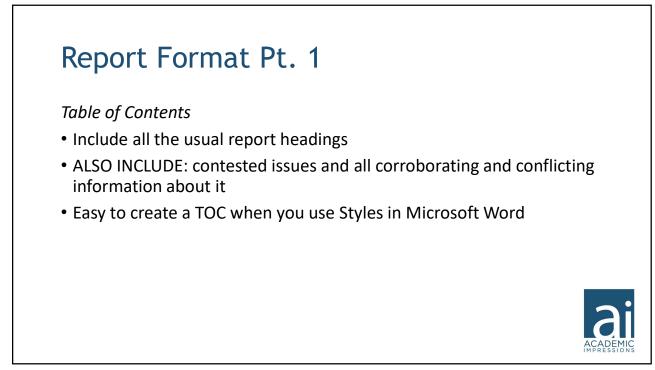
Posting Permitted on your Title IX Website © Jean Hobler, Esq., P.C. 2020

Poll 1

What is the longest report (page length) you've ever written on an investigation?



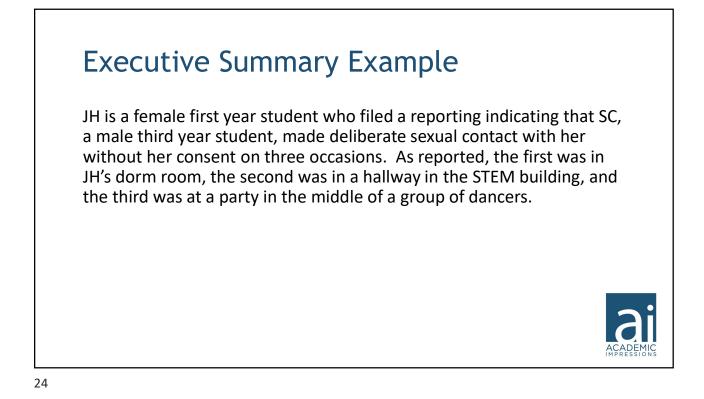
21



Report Format Pt. 2 executive Summary Background General Background Complaint Investigation Evidence Collection Evidence Subheadings depend on events in your case

• Analysis

23



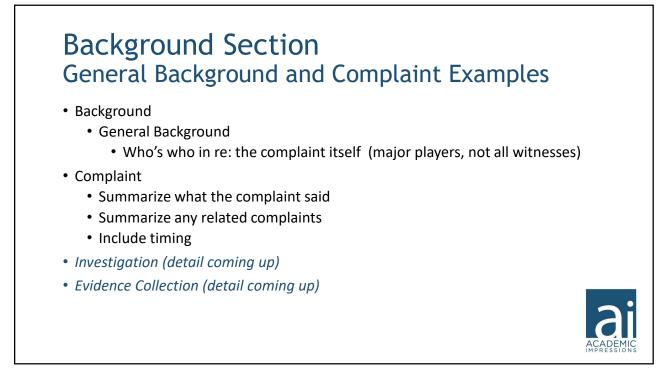
Posting Permitted on your Title IX Website © Jean Hobler, Esq., P.C. 2020

Executive Summary Example Continued

JH and SC are tenure track professors in the underwater basketweaving department, which currently has no tenured professors due to faculty retirements. SC is a year ahead of JH in tenure track and is the department chair. JH alleged that SC removed responsibilities from him and changed department policies to his disadvantage in retaliation for a prior report by JH that SC engaged in unprofessional conduct, an allegation that was substantiated in a prior investigation.



25

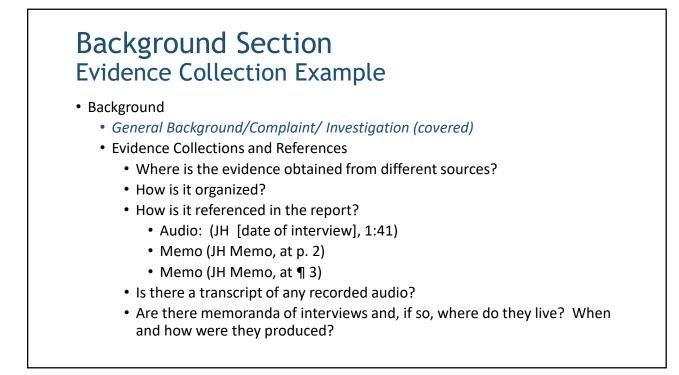


Background Section Investigation Example

- Background
 - General Background (covered)
 - Complaint (covered)
 - Investigation
 - Who was interviewed, when, who they are, if they haven't already been introduced
 - Did they provide you any hard evidence (e.g., video, emails, text messages, etc.)?
 - Were interviews recorded? Transcribed?
 - Evidence Collection (detail coming up)



27



Poll 2

Where do you include your interview summaries?



29

Evidence Section Introductory Material Example

"Unless otherwise noted, the facts stated herein were reported in material ways consistently among the witnesses and by reference to the evidence. Where, however, a material fact was presented differently by different witnesses, I provide an overview of the evidence obtained, both corroborative of and contradictory to the underlying allegation."

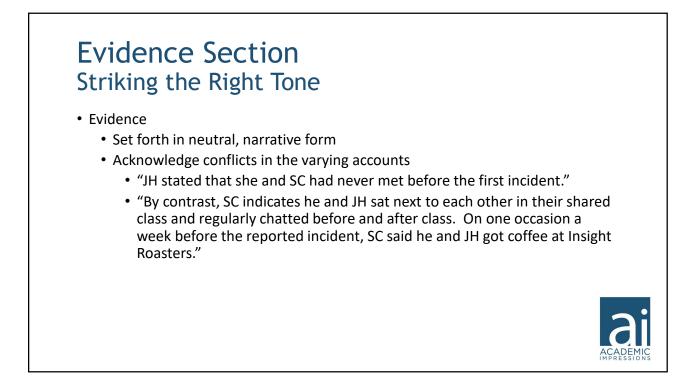


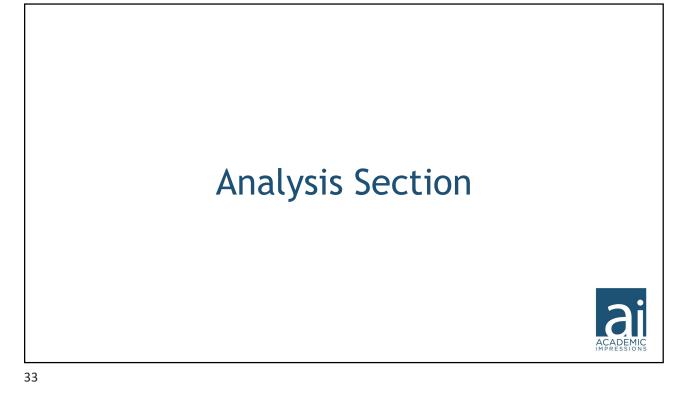
Evidence Section Best Practices for Subheadings

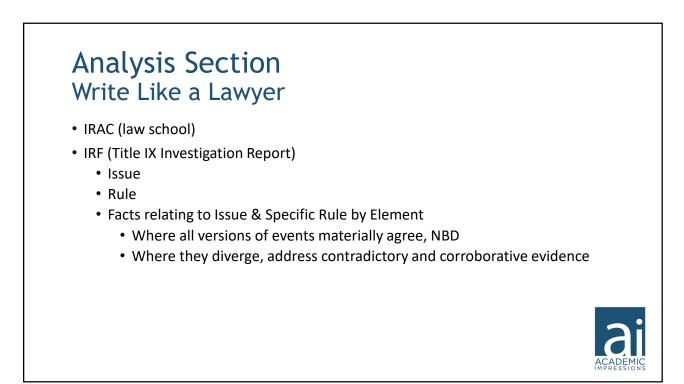
- Evidence
 - Start from the beginning
 - Chronology or Chronological?
 - Can start with some background if that is relevant.
 - "JH and SC have a shared, 150-person class, but otherwise did not know each other before the first incident reported."
 - Use subheadings to guide the reader through the events
 - Pre-incident Interactions Between JH and SC
 - The First Reported Incident: Unwanted Touching on X Date



31





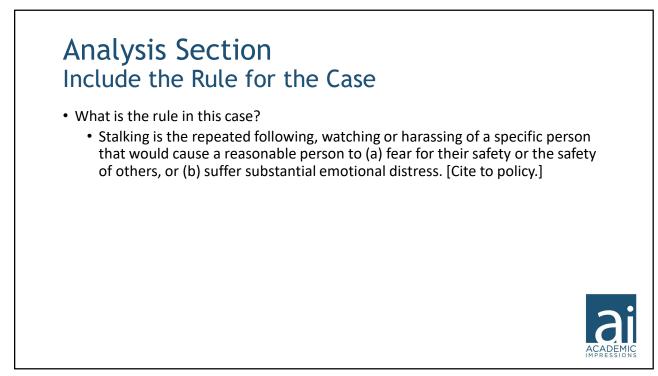


Write Like a Lawyer Continued

What is the Issue in this case?



35

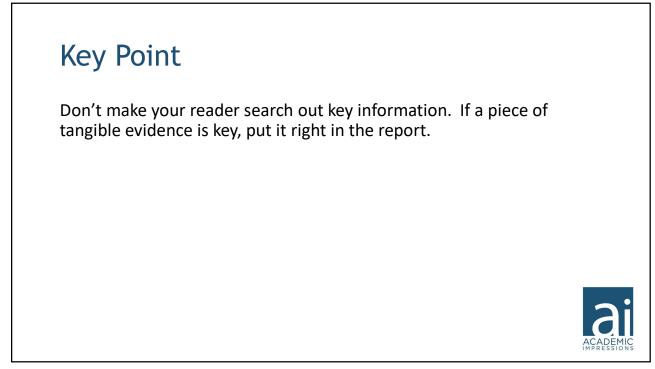


Analysis Section Explain how the Facts Relate to the Rule

- How do the facts in this case relate to the rule in this case?
 - Stalking is the repeated following, watching or harassing of a specific person...
 - Facts supporting or contradicting this, with references to evidence
 - ...that would cause a reasonable person to (a) fear for their safety or the safety of others, or (b) suffer substantial emotional distress.
 - Facts supporting or contradicting this



37



Highlighting Key Evidence Example

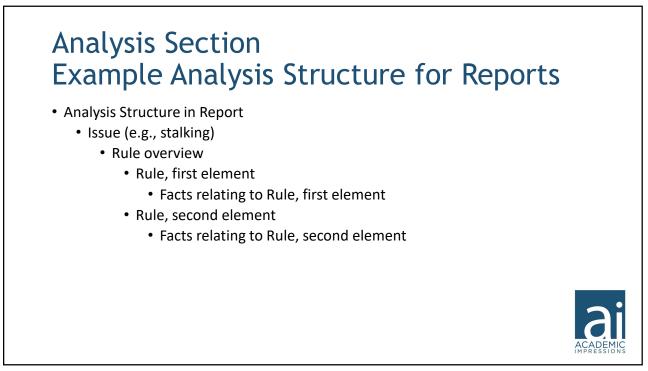
Jane alleged that Eliza doctored a photograph taken while on vacation to make Jane appear haggard and unwell, using that photograph on social media to malign Jane. A copy of the social media post photograph provided by a witness is on the left, and the original photograph, retrieved from Jane's phone is on the right.



(cite to evidence.)

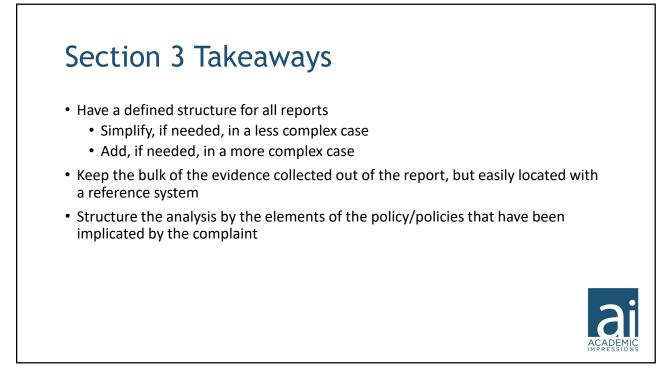


39







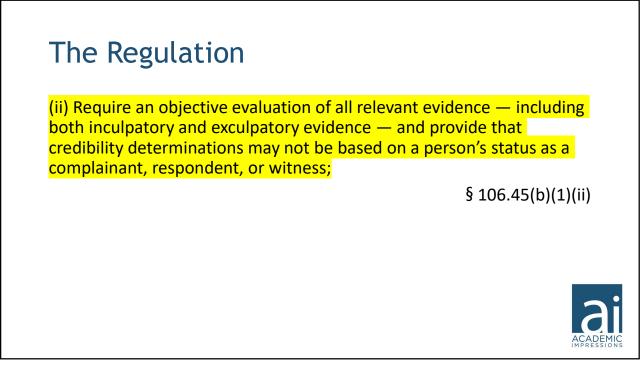


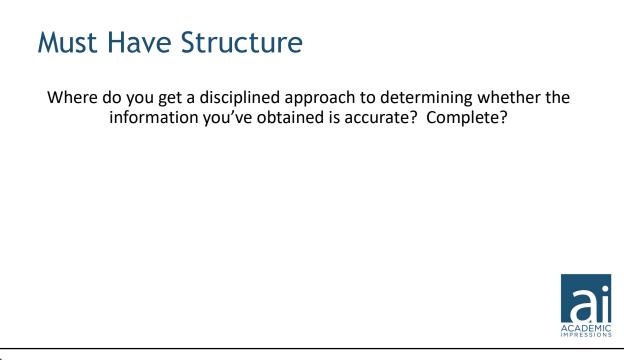
Section 4

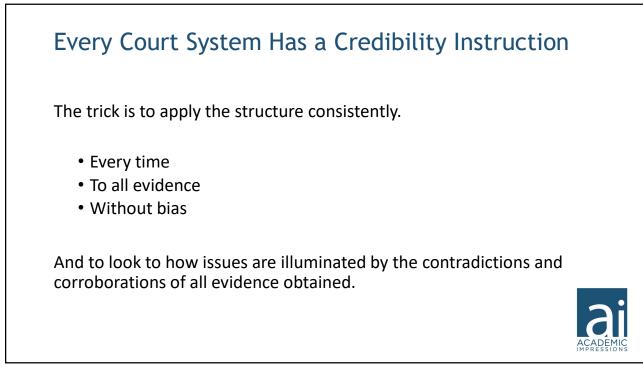
Outlining the Corroborations & Contradictions in Evidence



43

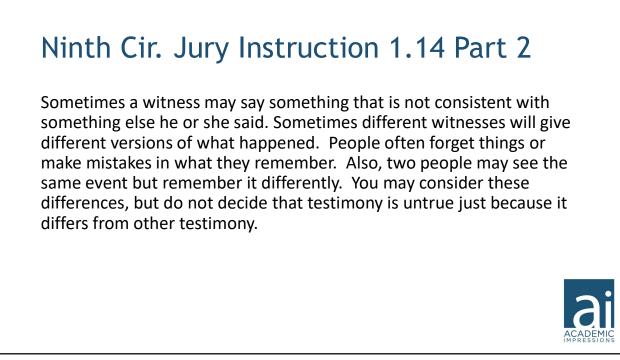






Distribution of the set of the set

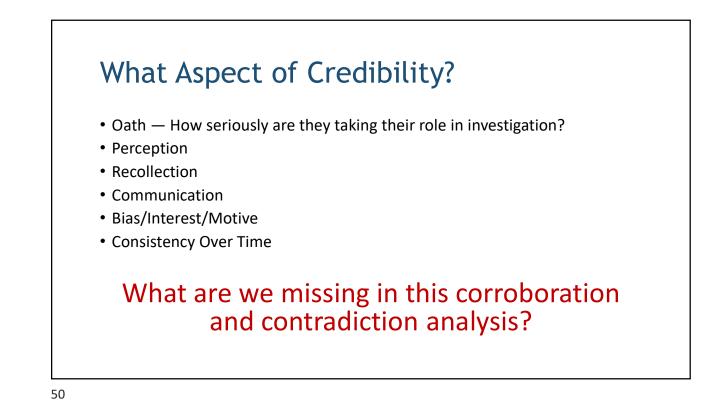
47



Ninth Cir. Jury Instruction 1.14 Part 3

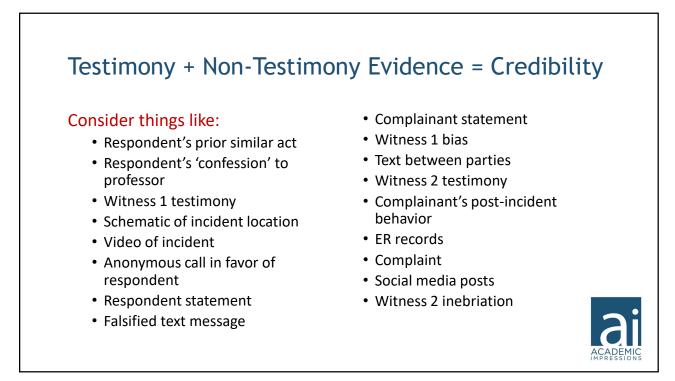
However, if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.



Credibility of Non-Witness Evidence

- Primary evidence
 - Authentic, relevant, tangible evidence
 - Firsthand, uninvolved, unimpaired witness reports
 - Surveillance video
- Secondary or tertiary
 - Secondhand reports (rumors)
 - Relevant, tangible evidence that can't be authenticated
- "Anti-evidence"
 - Fabricated or tainted evidence





Is circumstantial evidence less credible than direct evidence?



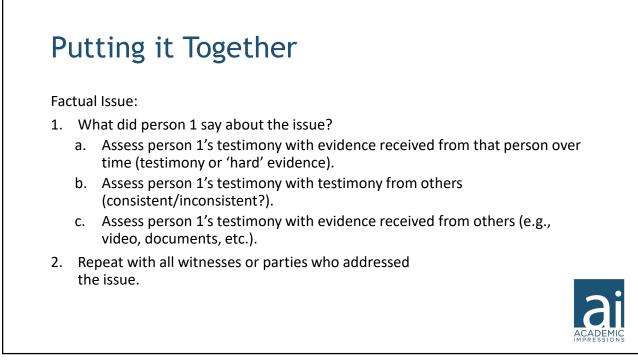
53

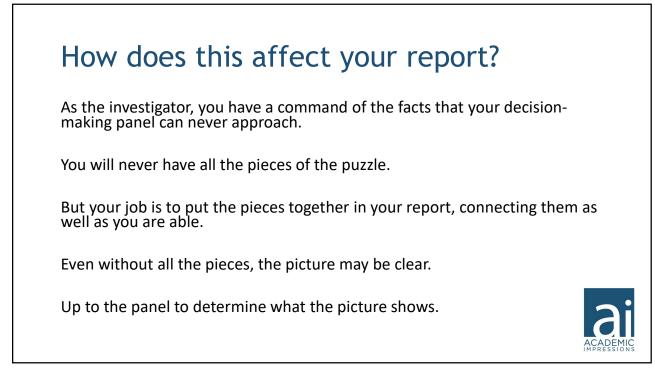
Circumstantial Evidence

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which one can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

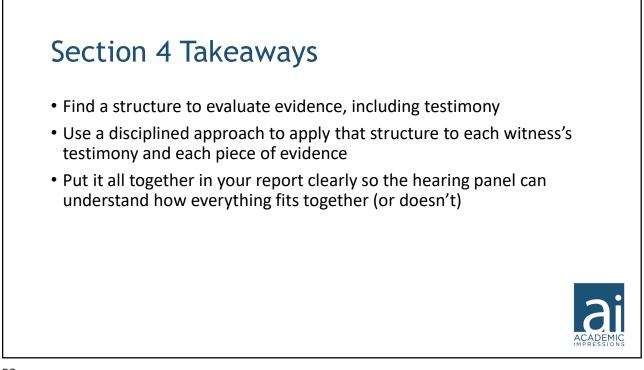












Section 5

Relating Your Investigation to Your Report



59

Activity 2

In your breakout room, please reference the handout uploaded in the Chat:

- 1. Identify the elements of the policy violation.
- 2. Identify the facts available to you. Are they relevant?
- 3. Assess those facts versus your credibility structure.
- 4. Determine what else you need to put the whole credibility picture together.

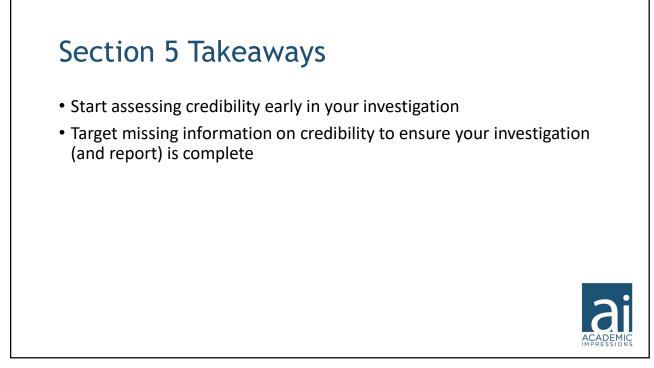


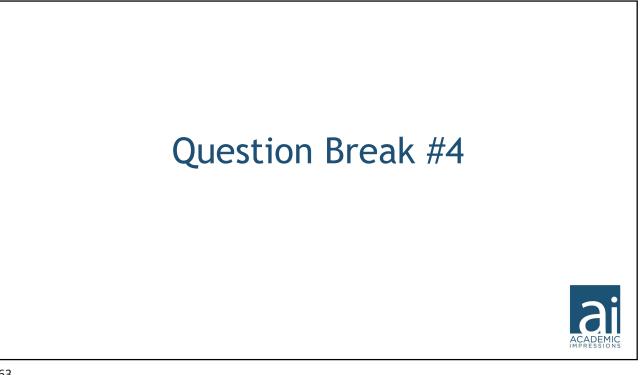
Activity 3

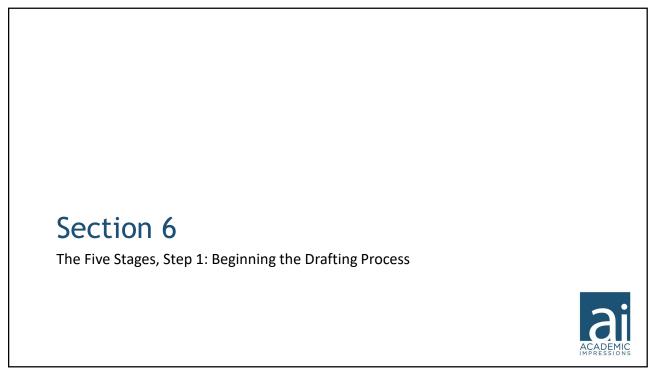
Large Group Share Out and Discussion



61



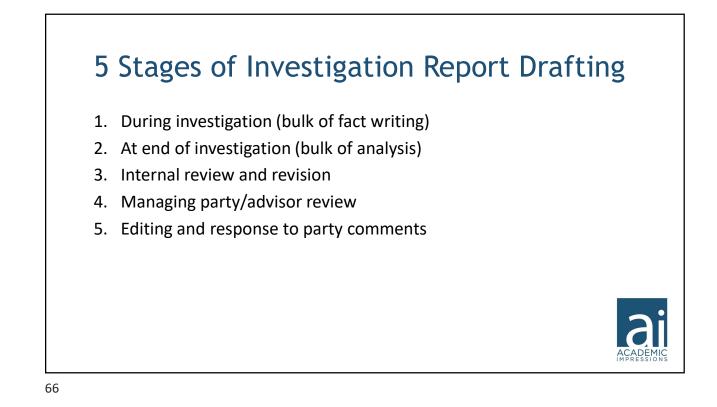




10-Step Investigation Model

- 1. Identify Violations and Elements
- 2. Gather Information
- 3. Determine Interview Logistics
- 4. Review and Outline
- 5. Developing Questions
- 6. Using Documents
- 7. Starting the Interview
- 8. Questioning
- 9. Wrapping It Up
- 10. Specific Techniques/Situations

WHEN DO YOU START YOUR REPORT? WHEN DO YOU REVISE YOUR REPORT?



Posting Permitted on your Title IX Website © Jean Hobler, Esq., P.C. 2020

Example - Post Complaint/ Pre Investigation Report Draft

Relevant Standards

the repeated following, watching or harassing

- RP in CP's dorm (complaint)
- RP at dining hall (complaint)
- RP at (next location)
- of a specific person
 - all re CP (complaint)

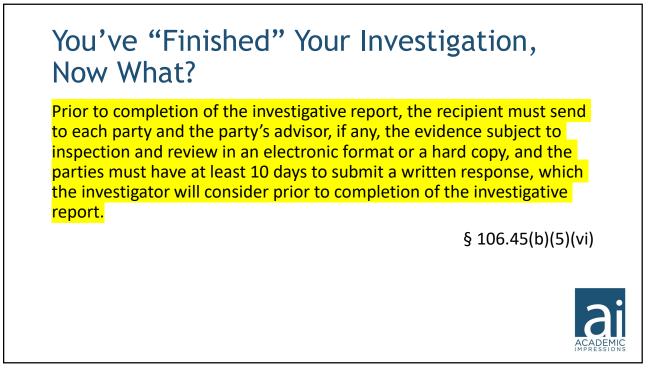
that would cause a reasonable person to

(a) fear for their safety or the safety of others, or

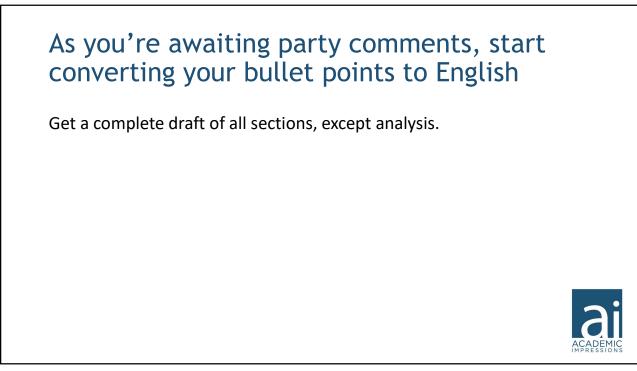
- (b) suffer substantial emotional distress
- confrontation at dining hall (complaint)



67



First Issue: S	Stalking
Relev	vant Standards
	the repeated following, watching or harassing<i>RP at dining hall (complaint)</i>
	• Date, dining hall, CP at cashier (CP int, RP int)
	 RP appeared, reached around CP inserted her own access card, stated "I'm buying breakfast for my good friend today!" (CP into. RP agrees but contests sudden & tone, cashier corroborates sudden & tone/CP)
	 CP shouted "What are you doing?!?" Why can't you just leave me alone?" (CP into., RP into, cashier into.)
	 RP shouted "ungrateful bitch! Why can't we go back to the way we were? What do I have to do to make you understand I love you and I'm sorry?! Why are you torturing me?!?" (CP into, RP contests tone and profanity, cashier into corroborates CP.)
	 RP then left the hall rapidly, slamming the door open on her way out (CP into, RP into, cashier into.)

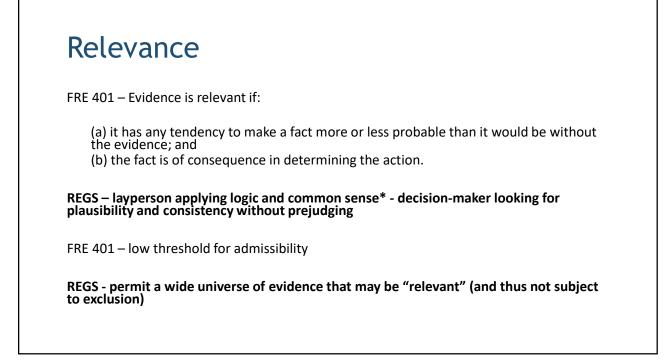


As you're awaiting party comments, start converting your bullet points to English Pt. 2

General principles:

- 1. Keep it simple.
- 2. Keep it direct.
- 3. Proceed chronologically.
- 4. Do not include every fact you've obtained, only all <u>relevant</u> facts.





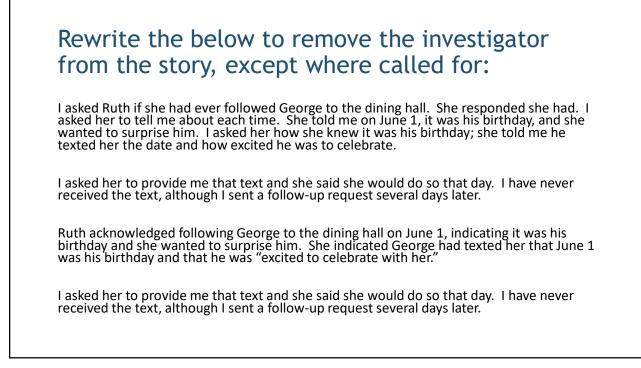
As you're awaiting party comments, start converting your bullet points to English Pt. 3

Point of View

- 1. First Person: "I interviewed the Complainant on X date." "Your investigator interviewed the Respondent on Y date."
- Second person: "You did X." Not an effective writing technique generally – don't try it outside of fiction.
- 3. Third person: "Complainant and Respondent went to a party at the Theta Beta house with a group of approximately 10 friends from the Psychology program (Cite to evidence)."



73



As you're awaiting party comments, start converting your bullet points to English Pt. 4

Passive voice

"The beer was consumed by the end of the evening."

The partygoers drank the entire keg that night.

"Clothing got torn."

Respondent grabbed Complainant's clothing, which was torn during the struggle.

"Bruising occurred."

After the struggle, Respondent had a bruise where Complainant indicated she pushed him away.

75

As you're awaiting party comments, start converting your bullet points to English Pt. 5

Sentence structure - simple.

Complainant went to the party. S/he had two beers. She did not feel intoxicated. She usually drank six or more beers before feeling intoxicated.

Respondent brought Complainant her third beer. She had "one or two pulls" from the bottle. She then felt "very woozy." She does not remember anything else from that night. Her first recollection is waking up at 7 a.m.

Sentence structure, varied.

Complainant went to the party, where she had two beers. She did not feel intoxicated, reporting that it takes about six beers before she feels intoxicated.

Respondent brought Complainant her third beer and, immediately upon having "one or two pulls" from the bottle, she felt "very woozy." She does not remember anything else until waking up at 7 a.m.

Provide a Transition to the Next Topic/Paragraph

No transition

... Complainant next remembered waking up at 7 a.m. She felt bruised and sore and extremely groggy.

The doctor found torn skin on Complainant's wrist and [etc.].

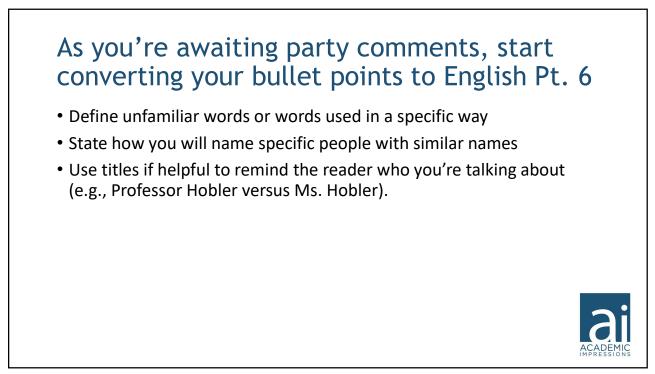
Transition

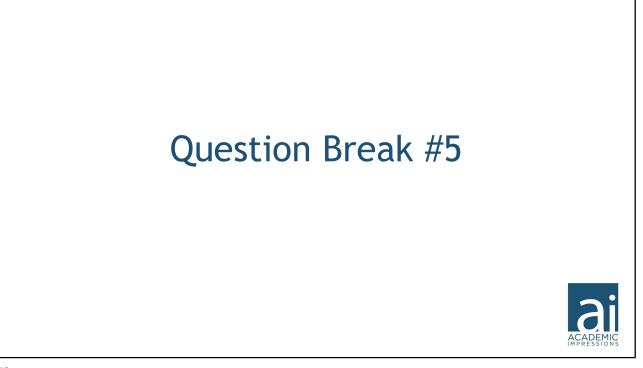
... Complainant next remembered waking up at 7 a.m. She felt bruised and sore and extremely groggy, and was so concerned she went straight to the emergency room for an examination.

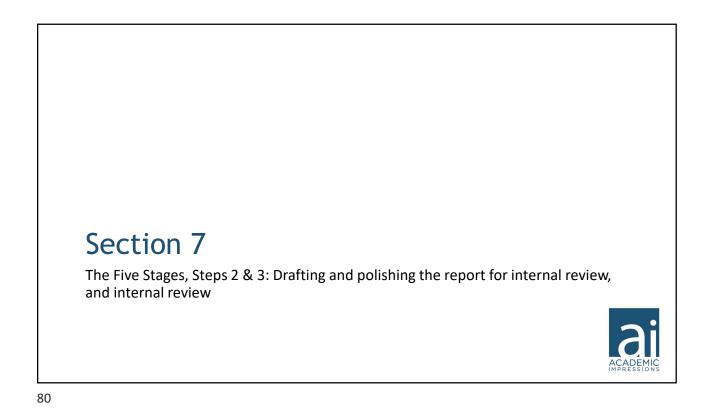
The doctor there found torn skin on Complainant's wrist and [etc.].



77

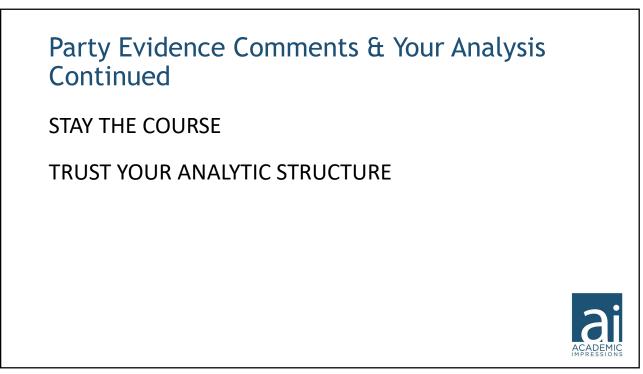






Posting Permitted on your Title IX Website © Jean Hobler, Esq., P.C. 2020





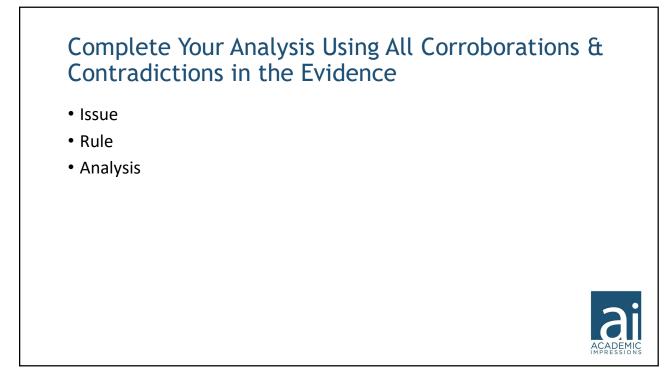
Finalize Your OWN Analysis

- Respondent's prior similar act
- Respondent's 'confession' to professor
- Witness 1 testimony
- Schematic of incident location
- Video of incident
- Anonymous call in favor of respondent
- Respondent statement
- Falsified text message
- Complainant statement

- Witness 1 bias
- Text between parties
- Witness 2 testimony
- Complainant's post-incident behavior
- ER records
- Complaint
- Social media posts
- Witness 2 inebriation



83



Example

The image to the right shows the Application of Issue, Rule and Analysis related to corroborations and contradictions collected during the investigation. The incidents complained of include five instances over five weeks of RP being in the same location as CP. Specifically, [list replicated from above.] As a general matter, RP indicates that there was good reason for her to be in the locations that had nothing to do with CP's presence, essentially that the incidents were a result of coincidence rather than intent. (Cite to evidence.) The corroborative and contradictory evidence on this point is summarized as follows:

Repeated following, watching, or harassing of a specific person

Analysis: First Issue, Stalking

First incident, date, "Unexplained" presence in CP's dorm. In CP's dorm, RP indicated that she did have friends in the dorm who she had arranged to meet in a common area near CP's room, (cite to evidence) When asked to identify these friends, RP declined to do so. (cite to evidence) When asked the purpose of the meeting with these unidentified individuals, RP declined to provide detail. (cite to evidence) I asked RP to identify any witnesses, documents, or other evidence that could corroborate RP's in-dorm friendships, or presence on the complained-of date. (Cite to evidence). She indicated she could provide those after the <u>interview, and</u> would go right back to her dorm to collect and send the information to me by e-mail. I did not receive anything that day. (Cite to evidence.) I followed up by e-mail asking her for the information on [date 1, date 2, date 3]. I never received a response to my inquiries. (Cite to evidence.)

Second incident, date, Encounter at Dining Hall. Dining Hall entrances and exits are monitored by video-camera. (Cite to evidence.) Video evidence from the day in question shows RP sitting on a bench in an area near Dining Hall's main entrance. (Cite to evidence.) CP approaches the entrance with her back toward <u>RP</u>, and does not appear to look in RP's direction. (Cite to evidence.) RP stands up as CP enters the hall, waits for approximately 25 seconds, then enters through the same door. (Cite to evidence.)

85

Inferences - don't make them. Lay the foundation for them.

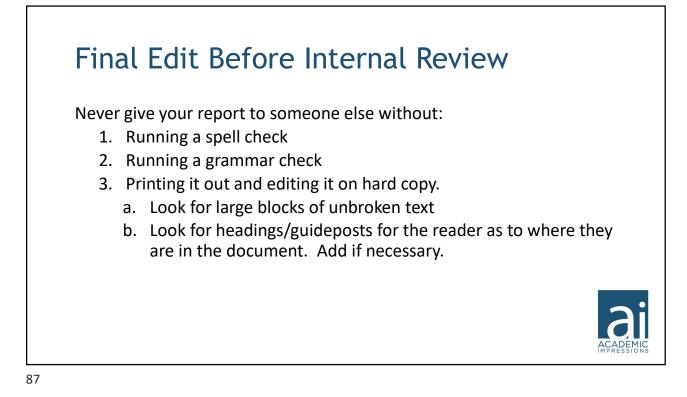
Inference:

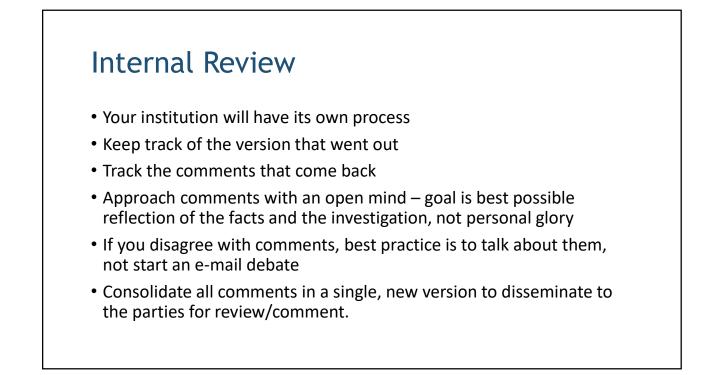
The witnesses said no one had more than two beers at the party, but they must have all been lying because the keg was empty by the end of the night.

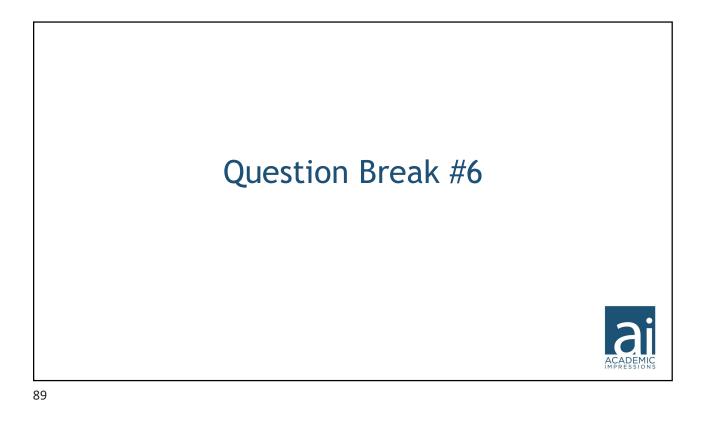
Foundation for inference:

Although no witness admitted to drinking more than 2 beers, the keg was full at the beginning of the party and by the end of the evening it was empty. The average keg of beer contains approximately 15.5 gallons or 165 12-ounce servings of beer. Thus, a keg would empty with 82 to 83 persons present, each having 2 beers. There were 40 present, of whom approximately 10 were not drinking. That averages 5 and ½ 12 ounce servings of beer per drinker to empty the keg by the end of the evening.











Posting Permitted on your Title IX Website © Jean Hobler, Esq., P.C. 2020

Activity 4

Draft four paragraphs of an analysis using "Issue, Rule, Analysis" structure, and illustrating the strengths and weaknesses of the allegations by focusing on witness testimony, tangible evidence, bias, contradictions and corroborations.

Use:

- The "report" provided earlier today
- Any of the case studies in session 8
- A case you have worked on or are working on BUT ANONYMOUSLY
- You can make things up, but do it on both sides of the issues

Send your FICTIONAL result to Jean in chat to share/for feedback



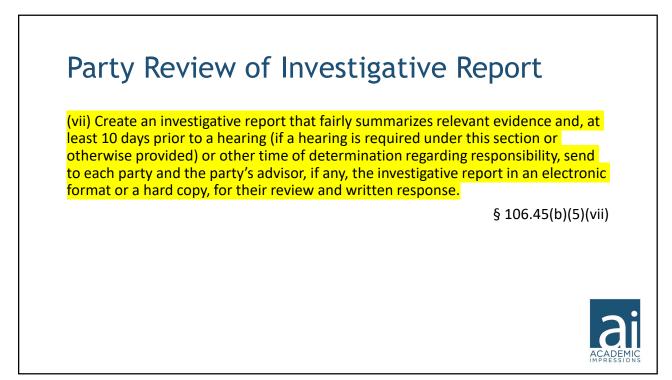


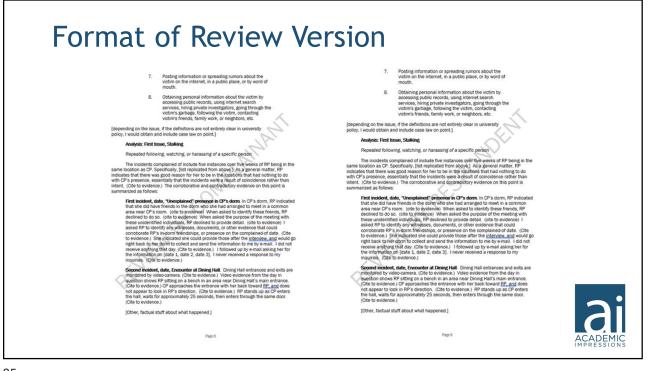
Section 9

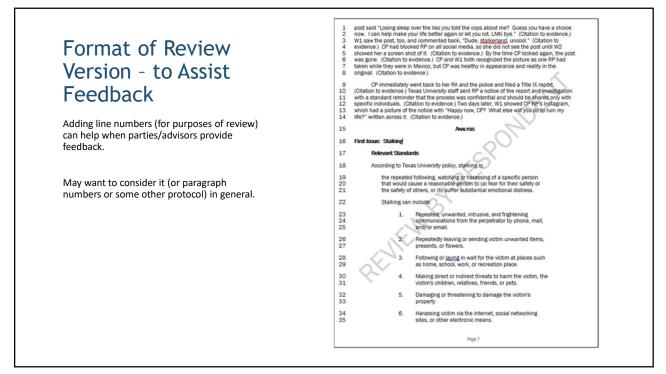
The Five Stages, Step 4: Review by Parties and Version Control

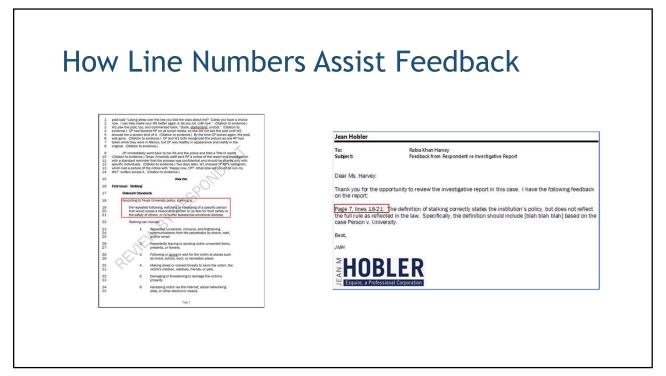


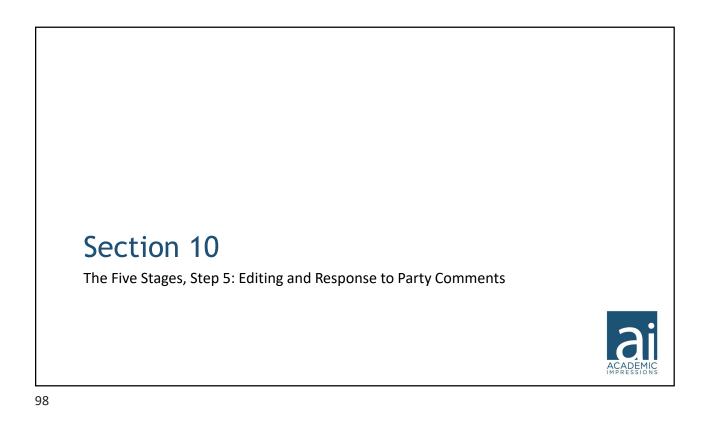
93











Posting Permitted on your Title IX Website © Jean Hobler, Esq., P.C. 2020

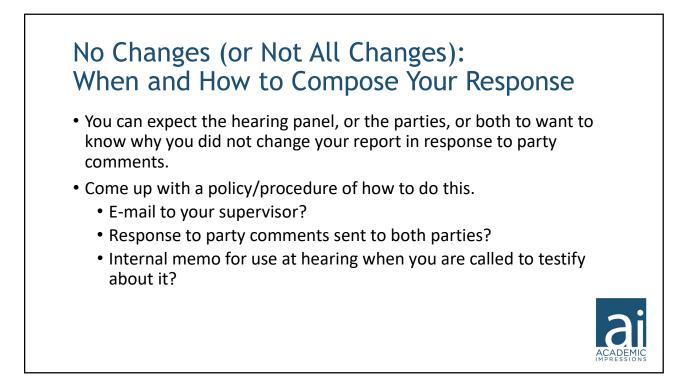
What to do With Party Comments?

Options

- 1. You decide to make no changes to the report
- 2. You decide to make some changes to the report, but they're non-substantive
- 3. You decide to make substantive changes to the report
- 4. Some mix of the above

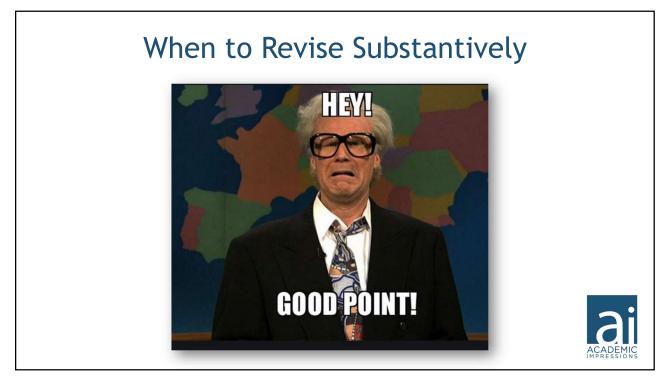


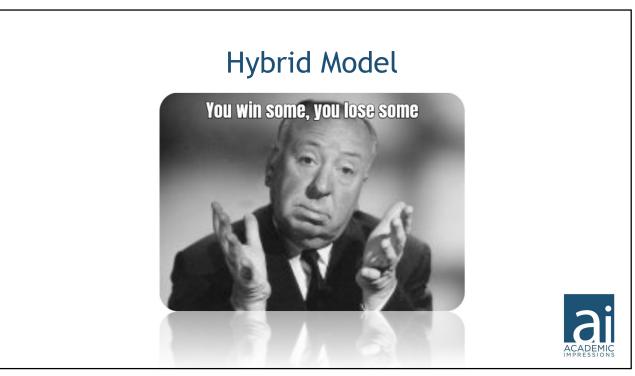
99

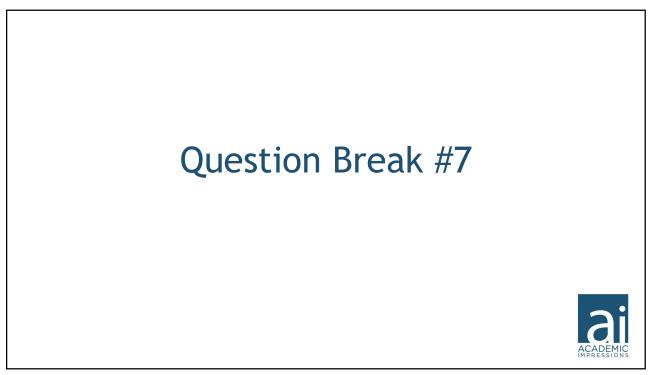


What about nitpicks? Uced in. The sampling method I use on this study was fair, but there are a few things I would improve the way of sampling. First of all, I used the systematic sampling method from-only one particular type of a share, i.e., "Investment Trusts It caused data blas, because I actually chose companies from one of share. At the beginning, I said that I investigated whethe type low - priced Shares sam kes more profit than a low price of one. I meant that the not only "Investment Trusts" share but also other types of shares. However, investigated only "Investment I rust\$" shares as a sample. This is a c error. To solve this problem, I could use the Stratified Sampling method to collect sample data. However, in this case have to know the number of all companies on the newspaper just by counting, from top to bottom of the list (there would be more than 1000 companies). If I could do this, the \$tratified \$ampling method would provide me with a much fairer opportunity of getting a sample of data from all different types of a-share-than the systematic sampling method did. Secondly, I could choose more than 54 sets of data as are Othe

101







Thank you!

Please remember to complete the <u>event evaluation</u>. Your comments will help us continually improve the quality of our programs.

