

The 5 Stages of Preparing Your Title IX Investigative Report

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Learning Outcome

After participating, you will be able to apply a five-stage process to prepare and write your final investigative report.



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Section 1

Regulations & Reports: An Introduction



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New Regulations, New Report Considerations

(ii) Require an objective evaluation of all relevant evidence — including both inculpatory and exculpatory evidence — and provide the credibility determinations may not be based on a person's status as a complainant, respondent, or witness;

§ 106.45(b)(1)(ii)

Definition of *inculpatory*

: implying or imputing guilt : tending to incriminate or inculcate

// an *inculpatory* statement

Definition of *exculpate*

transitive verb

: to clear from alleged fault or guilt



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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)



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New Regulations, New Report Considerations pt.3

investigators, decision-makers, and any person who facilitates an informal resolution process, **receive training on** the definition of sexual harassment in § 106.30, the scope of the recipient's education program or activity, **how to conduct an investigation and grievance process** including hearings, appeals, and informal resolution processes, as applicable, and **how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.**

§ 106.45(b)(1)(iii)



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New Regulations, New Report Considerations pt.4

A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence,

§ 106.45(b)(1)(iii)



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Relevance

FRE 401 – 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.

REGS – layperson applying logic and common sense* - decision-maker looking for plausibility and consistency without prejudging

FRE 401 – low threshold for admissibility

REGS - permit a wide universe of evidence that may be “relevant” (and thus not subject to exclusion)

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Rape Shield Exceptions

•§ 106.45(b)(6)(i) -

Sexual behavior questions and evidence are IRRELEVANT except:

1. are offered to prove that someone other than the respondent committed the conduct alleged by the complainant;
2. 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



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New Regulations, New Report Considerations Pt. 1

(iv) Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;

(vii) State whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard,

§ 106.45(b)(1)(iv), (vii)



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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)



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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)

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The Report Audience

- Who do you write for?
- What are your goals in drafting the report for the audience(s)?



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How to Approach the Report



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Question Break #1



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Section 1 Takeaways

- New regulations emphasize:
 - Unbiased investigator/report
 - Consideration of all relevant evidence
 - Input from parties
- Reports targeted to:
 - Hearing panel
 - Potential future litigation



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Section 2

Activity: What Makes a Good Report?



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Activity 1

Review the report provided, answer the following questions:

1. What sections in the report are appropriately included?
2. What information is not included that should be there?
3. Is the report easy to follow?
4. What policy violations are at issue in this report?
 - a. What information in the report relates to violation 1 (whichever violation you identify first)?
 - b. What information in the report relates to violation 2 (whichever violation you identify second, if any)?
5. How did the investigation proceed?
6. What is the result of the investigation?



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Section 3

Elements and Format of a Report (and Appendices)



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Report Format

INVESTIGATION REPORT PREPARED FOR

Texas University

Issue: Stalking, Retaliation
Reporting Party: JP
Responding Party: EB
Report Date: October 3, 2019

Investigation Performed & Report Prepared by

HOBLER
JEAN M. HOBLER, Esq., P.C.



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Poll 1

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



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Report Format Pt. 1

Table of Contents

- Include all the usual report headings
- ALSO INCLUDE: contested issues and all corroborating and conflicting information about it
- Easy to create a TOC when you use Styles in Microsoft Word



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Report Format Pt. 2

- Executive Summary
- Background
 - General Background
 - Complaint
 - Investigation
 - Evidence Collection
- Evidence
 - Subheadings depend on events in your case
- Analysis



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Executive Summary Example

JH is a female first year student who filed a reporting indicating that SC, a male third year student, made deliberate sexual contact with her without her consent on three occasions. As reported, the first was in JH's dorm room, the second was in a hallway in the STEM building, and the third was at a party in the middle of a group of dancers.



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Executive Summary Example Continued

JH and SC are tenure track professors in the underwater basket-weaving 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.



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Background Section General Background and Complaint Examples

- Background
 - General Background
 - Who's who in re: the complaint itself (major players, not all witnesses)
- Complaint
 - Summarize what the complaint said
 - Summarize any related complaints
 - Include timing
- *Investigation (detail coming up)*
- *Evidence Collection (detail coming up)*



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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)*



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Background Section Evidence Collection Example

- Background
 - *General Background/Complaint/ Investigation (covered)*
- Evidence Collections and References
 - Where is the evidence obtained from different sources?
 - How is it organized?
 - How is it referenced in the report?
 - Audio: (JH [date of interview], 1:41)
 - Memo (JH Memo, at p. 2)
 - Memo (JH Memo, at ¶ 3)
 - Is there a transcript of any recorded audio?
 - Are there memoranda of interviews and, if so, where do they live? When and how were they produced?

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Poll 2

Where do you include your interview summaries?



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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.”



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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



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Evidence Section Striking the Right Tone

- Evidence
 - Set forth in neutral, narrative form
 - Acknowledge conflicts in the varying accounts
 - “JH stated that she and SC had never met before the first incident.”
 - “By contrast, SC indicates he and JH sat next to each other in their shared class and regularly chatted before and after class. On one occasion a week before the reported incident, SC said he and JH got coffee at Insight Roasters.”



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Analysis Section



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Analysis Section Write Like a Lawyer

- IRAC (law school)
- IRF (Title IX Investigation Report)
 - Issue
 - Rule
 - Facts relating to Issue & Specific Rule by Element
 - Where all versions of events materially agree, NBD
 - Where they diverge, address contradictory and corroborative evidence



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Write Like a Lawyer Continued

What is the Issue in this case?



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Analysis Section Include the Rule for the Case

- What is the rule in this case?
 - Stalking is the repeated following, watching or harassing of a specific person that would cause a reasonable person to (a) fear for their safety or the safety of others, or (b) suffer substantial emotional distress. [Cite to policy.]



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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



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Key Point

Don't make your reader search out key information. If a piece of tangible evidence is key, put it right in the report.



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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.)



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Analysis Section Example Analysis Structure for Reports

- Analysis Structure in Report
 - Issue (e.g., stalking)
 - Rule overview
 - Rule, first element
 - Facts relating to Rule, first element
 - Rule, second element
 - Facts relating to Rule, second element



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Question Break #2



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Section 3 Takeaways

- Have a defined structure for all reports
 - Simplify, if needed, in a less complex case
 - Add, if needed, in a more complex case
- Keep the bulk of the evidence collected out of the report, but easily located with a reference system
- Structure the analysis by the elements of the policy/policies that have been implicated by the complaint



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Section 4

Outlining the Corroborations & Contradictions in Evidence



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The Regulation

(ii) Require an objective evaluation of all relevant evidence — including both inculpatory and exculpatory evidence — and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness;

§ 106.45(b)(1)(ii)



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Must Have Structure

Where do you get a disciplined approach to determining whether the information you've obtained is accurate? Complete?



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Every Court System Has a Credibility Instruction

The trick is to apply the structure consistently.

- Every time
- To all evidence
- Without bias

And to look to how issues are illuminated by the contradictions and corroborations of all evidence obtained.



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Ninth Cir. Jury Instruction 1.14

In considering the testimony of any witness, you may take into account:

- 1) the opportunity and ability of the witness to see or hear or know the things testified to;
- 2) the witness's memory;
- 3) the witness's manner while testifying;
- 4) the witness's interest in the outcome of the case, if any;
- 5) the witness's bias or prejudice, if any;
- 6) whether other evidence contradicted the witness's testimony;
- 7) the reasonableness of the witness's testimony in light of all the evidence; and
- 8) any other factors that bear on believability.



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Ninth Cir. Jury Instruction 1.14 Part 2

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.



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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.



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What Aspect of Credibility?

- Oath — How seriously are they taking their role in investigation?
- Perception
- Recollection
- Communication
- Bias/Interest/Motive
- Consistency Over Time

What are we missing in this corroboration and contradiction analysis?

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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



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Testimony + Non-Testimony Evidence = Credibility

Consider things like:

- | | |
|--|--|
| • Respondent's prior similar act | • Complainant statement |
| • Respondent's 'confession' to professor | • Witness 1 bias |
| • Witness 1 testimony | • Text between parties |
| • Schematic of incident location | • Witness 2 testimony |
| • Video of incident | • Complainant's post-incident behavior |
| • Anonymous call in favor of respondent | • ER records |
| • Respondent statement | • Complaint |
| • Falsified text message | • Social media posts |
| | • Witness 2 inebriation |



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Poll 3

Is circumstantial evidence less credible than direct evidence?



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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.



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Putting it Together

Factual Issue:

1. What did person 1 say about the issue?
 - a. Assess person 1's testimony with evidence received from that person over time (testimony or 'hard' evidence).
 - b. Assess person 1's testimony with testimony from others (consistent/inconsistent?).
 - c. Assess person 1's testimony with evidence received from others (e.g., video, documents, etc.).
2. Repeat with all witnesses or parties who addressed the issue.



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How does this affect your report?

As the investigator, you have a command of the facts that your decision-making panel can never approach.

You will never have all the pieces of the puzzle.

But your job is to put the pieces together in your report, connecting them as well as you are able.

Even without all the pieces, the picture may be clear.

Up to the panel to determine what the picture shows.



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Question Break #3



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Section 4 Takeaways

- Find a structure to evaluate evidence, including testimony
- Use a disciplined approach to apply that structure to each witness's testimony and each piece of evidence
- Put it all together in your report clearly so the hearing panel can understand how everything fits together (or doesn't)



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Section 5

Relating Your Investigation to Your Report



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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.



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Activity 3

Large Group Share Out and Discussion



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Section 5 Takeaways

- Start assessing credibility early in your investigation
- Target missing information on credibility to ensure your investigation (and report) is complete



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Question Break #4



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Section 6

The Five Stages, Step 1: Beginning the Drafting Process



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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?



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5 Stages of Investigation Report Drafting

1. During investigation (bulk of fact writing)
2. At end of investigation (bulk of analysis)
3. Internal review and revision
4. Managing party/advisor review
5. Editing and response to party comments



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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)*



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You've "Finished" Your Investigation, Now What?

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)



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Post Investigation Report Draft Example

First Issue: Stalking

Relevant Standards

the repeated following, watching or harassing

- *RP at dining hall (complaint)*
- *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.)*

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

Get a complete draft of all sections, except analysis.



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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 relevant facts.



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Relevance

FRE 401 – 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.

REGS – layperson applying logic and common sense* - decision-maker looking for plausibility and consistency without prejudging

FRE 401 – low threshold for admissibility

REGS - permit a wide universe of evidence that may be “relevant” (and thus not subject to exclusion)

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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."
2. 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) ."



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Rewrite the below to remove the investigator from the story, except where called for:

I asked Ruth if she had ever followed George to the dining hall. She responded she had. I asked her to tell me about each time. She told me on June 1, it was his birthday, and she wanted to surprise him. I asked her how she knew it was his birthday; she told me he texted her the date and how excited he was to celebrate.

I asked her to provide me that text and she said she would do so that day. I have never received the text, although I sent a follow-up request several days later.

Ruth acknowledged following George to the dining hall on June 1, indicating it was his birthday and she wanted to surprise him. She indicated George had texted her that June 1 was his birthday and that he was "excited to celebrate with her."

I asked her to provide me that text and she said she would do so that day. I have never received the text, although I sent a follow-up request several days later.

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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.

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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.

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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.].



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As you're awaiting party comments, start converting your bullet points to English Pt. 6

- Define unfamiliar words or words used in a specific way
- State how you will name specific people with similar names
- Use titles if helpful to remind the reader who you're talking about (e.g., Professor Hobler versus Ms. Hobler).



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Question Break #5



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Section 7

The Five Stages, Steps 2 & 3: Drafting and polishing the report for internal review, and internal review



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Party Evidence Comments & Your Analysis



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Party Evidence Comments & Your Analysis Continued

STAY THE COURSE

TRUST YOUR ANALYTIC STRUCTURE



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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



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Complete Your Analysis Using All Corroborations & Contradictions in the Evidence

- Issue
- Rule
- Analysis



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Example

The image to the right shows the Application of Issue, Rule and Analysis related to corroborations and contradictions collected during the investigation.

Analysis: First Issue, Stalking

Repeated following, watching, or harassing of a specific person

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:

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 interview, and 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 RP, 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.)

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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.



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Final Edit Before Internal Review

Never give your report to someone else without:

1. Running a spell check
2. Running a grammar check
3. Printing it out and editing it on hard copy.
 - a. Look for large blocks of unbroken text
 - b. Look for headings/guideposts for the reader as to where they are in the document. Add if necessary.



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Internal Review

- Your institution will have its own process
- Keep track of the version that went out
- Track the comments that come back
- Approach comments with an open mind – goal is best possible reflection of the facts and the investigation, not personal glory
- If you disagree with comments, best practice is to talk about them, not start an e-mail debate
- Consolidate all comments in a single, new version to disseminate to the parties for review/comment.

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Question Break #6



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Section 8

Activity: Draft a Contradiction / Corroboration Analysis



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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



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Chat

Large Group Share Out and Discussion



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Section 9

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



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Party Review of Investigative Report

(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 their review and written response.

§ 106.45(b)(5)(vii)



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Format of Review Version

7. Posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth.
8. Obtaining personal information about the victim by accessing public records, using internet search services, hiring private investigators, going through the victim's garbage, following the victim, contacting victim's friends, family work, or neighbors, etc.

[depending on the issue, if the definitions are not entirely clear in university policy, I would obtain and include case law on point.]

Analysis: First Issue, Stalking

Repeated following, watching, or harassing of a specific person

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:

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 interview, and 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 RP, 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.)

[Other, factual stuff about what happened.]

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7. Posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth.
8. Obtaining personal information about the victim by accessing public records, using internet search services, hiring private investigators, going through the victim's garbage, following the victim, contacting victim's friends, family work, or neighbors, etc.

[depending on the issue, if the definitions are not entirely clear in university policy, I would obtain and include case law on point.]

Analysis: First Issue, Stalking

Repeated following, watching, or harassing of a specific person

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:

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[Other, factual stuff about what happened.]

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Format of Review Version - to Assist Feedback

Adding line numbers (for purposes of review) can help when parties/advisors provide feedback.

May want to consider it (or paragraph numbers or some other protocol) in general.

- 1 post said "Losing sleep over the lies you told the cops about me? Guess you have a choice
- 2 now. I can help make your life better again or let you rot. LMK bye." (Citation to evidence.)
- 3 W1 saw the post, too, and commented back, "Dude, stalkerland, uncool." (Citation to
- 4 evidence.) CP had blocked RP on all social media, so she did not see the post until W2
- 5 showed her a screen shot of it. (Citation to evidence.) By the time CP looked again, the post
- 6 was gone. (Citation to evidence.) CP and W1 both recognized the picture as one RP had
- 7 taken while they were in Mexico, but CP was healthy in appearance and reality in the
- 8 original. (Citation to evidence.)
- 9 CP immediately went back to her RA and the police and filed a Title IX report.
- 10 (Citation to evidence.) Texas University staff sent RP a notice of the report and investigation
- 11 with a standard reminder that the process was confidential and should be shared only with
- 12 specific individuals. (Citation to evidence.) Two days later, W1 showed CP RP's Instagram,
- 13 which had a picture of the notice with "Happy now, CP? What else will you do to ruin my
- 14 life?" written across it. (Citation to evidence.)

Analysis

First Issue: Stalking

Relevant Standards

According to Texas University policy, stalking is:

the repeated following, watching or harassing of a specific person that would cause a reasonable person to (a) fear for their safety or the safety of others, or (b) suffer substantial emotional distress.

Stalking can include:

1. Repeated unwanted, intrusive, and frightening communications from the perpetrator by phone, mail, and/or email.
2. Repeatedly leaving or sending victim unwanted items, presents, or flowers.
3. Following or laying in wait for the victim at places such as home, school, work, or recreation place.
4. Making direct or indirect threats to harm the victim, the victim's children, relatives, friends, or pets.
5. Damaging or threatening to damage the victim's property.
6. Harassing victim via the internet, social networking sites, or other electronic means.

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How Line Numbers Assist Feedback

1 post said "Losing sleep over the lies you told the cops about me?" Guess you have a choice
2 now. I can help make your life better again or let you rot. LHM bye." (Citation to evidence.)
3 We saw the post, too, and commented back, "Dude, stop posting." (Citation to
4 evidence.) CP had posted RP on at social media, so we did not see the post until W2
5 showed her a screen shot of it. (Citation to evidence.) By the time CP looked again, the post
6 was gone. (Citation to evidence.) CP and W2 both thought the picture as if RP had
7 taken while they were in Mexico, but CP was healthy in appearance and reality in the
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12 specific individuals. (Citation to evidence.) Two days later, W2 showed CP RP's Instagram,
13 which had a picture of the notice with "Happy now, CP? What else will you do to ruin my
14 life?" written across it. (Citation to evidence.)

15
16
17 **First Issue: Stalking**
18 **Relevant Standards:**
19 According to Texas University policy, stalking is:
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26 and/or email.
27 2. Repeatedly leaving or sending victim unwanted items,
28 presents, or flowers.
29 3. Following or loitering in wait for the victim at places such
30 as home, school, work, or recreation place.
31 4. Making direct or indirect threats to harm the victim, the
32 victim's children, relatives, friends, or pets.
33 5. Damaging or threatening to damage the victim's
34 property.
35 6. Harassing victim via the internet, social networking
36 sites, or other electronic means.

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Jean Hobler

To: Rabia Khan Harvey
Subject: Feedback from Respondent re Investigative Report

Dear Ms. Harvey:

Thank you for the opportunity to review the investigative report in this case. I have the following feedback on the report:

Page 7, lines 19-21: The definition of stalking correctly states the institution's policy, but does not reflect the full rule as reflected in the law. Specifically, the definition should include [blah blah blah] based on the case Person v. University.

Best,

JMH

HOBLER
Esquire, a Professional Corporation

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Section 10

The Five Stages, Step 5: Editing and Response to Party Comments



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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



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No Changes (or Not All Changes): When and How to Compose Your Response

- You can expect the hearing panel, or the parties, or both to want to know why you did not change your report in response to party comments.
- Come up with a policy/procedure of how to do this.
 - E-mail to your supervisor?
 - Response to party comments sent to both parties?
 - Internal memo for use at hearing when you are called to testify about it?



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Hybrid Model



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Question Break #7



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Thank you!

Please remember to complete the *event evaluation*. Your comments will help us continually improve the quality of our programs.

