University of Maryland Global Campus

Investigator Training

November 30, 2023

Presented by:
Christine Galdston,

Title IX IX

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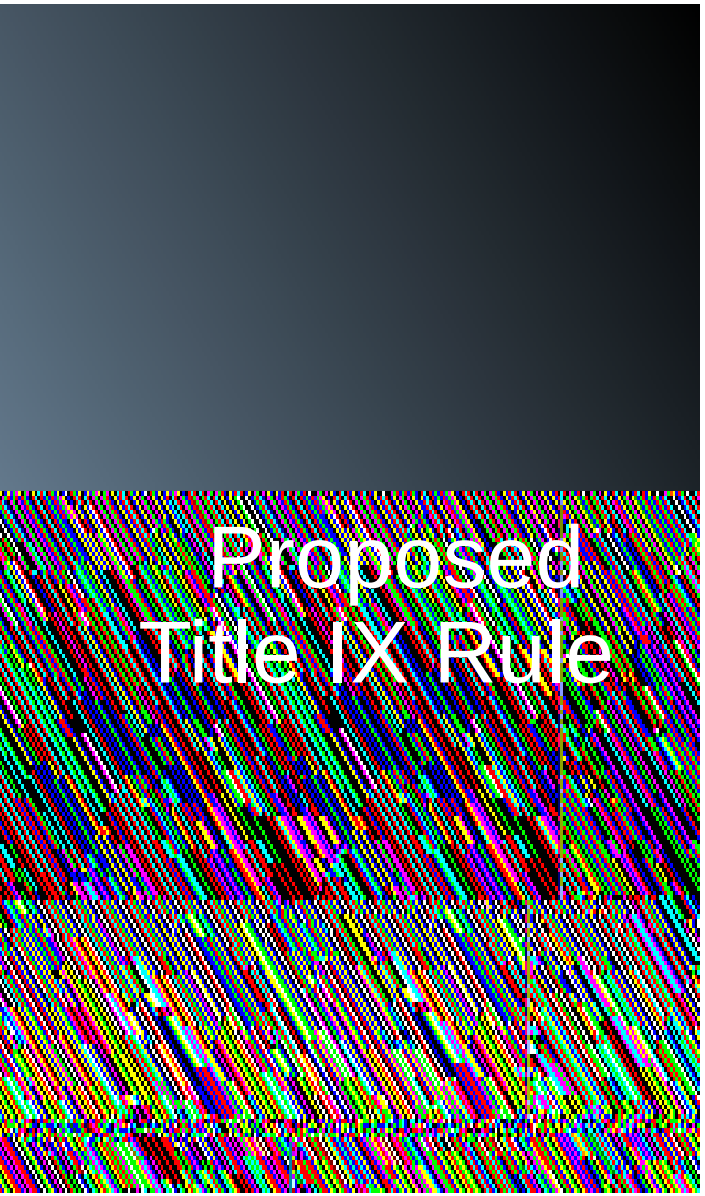
Proposed
Title IX Rule

Current Definition of Sexual Harassment: 3-Prongs

Quid Pro Quo

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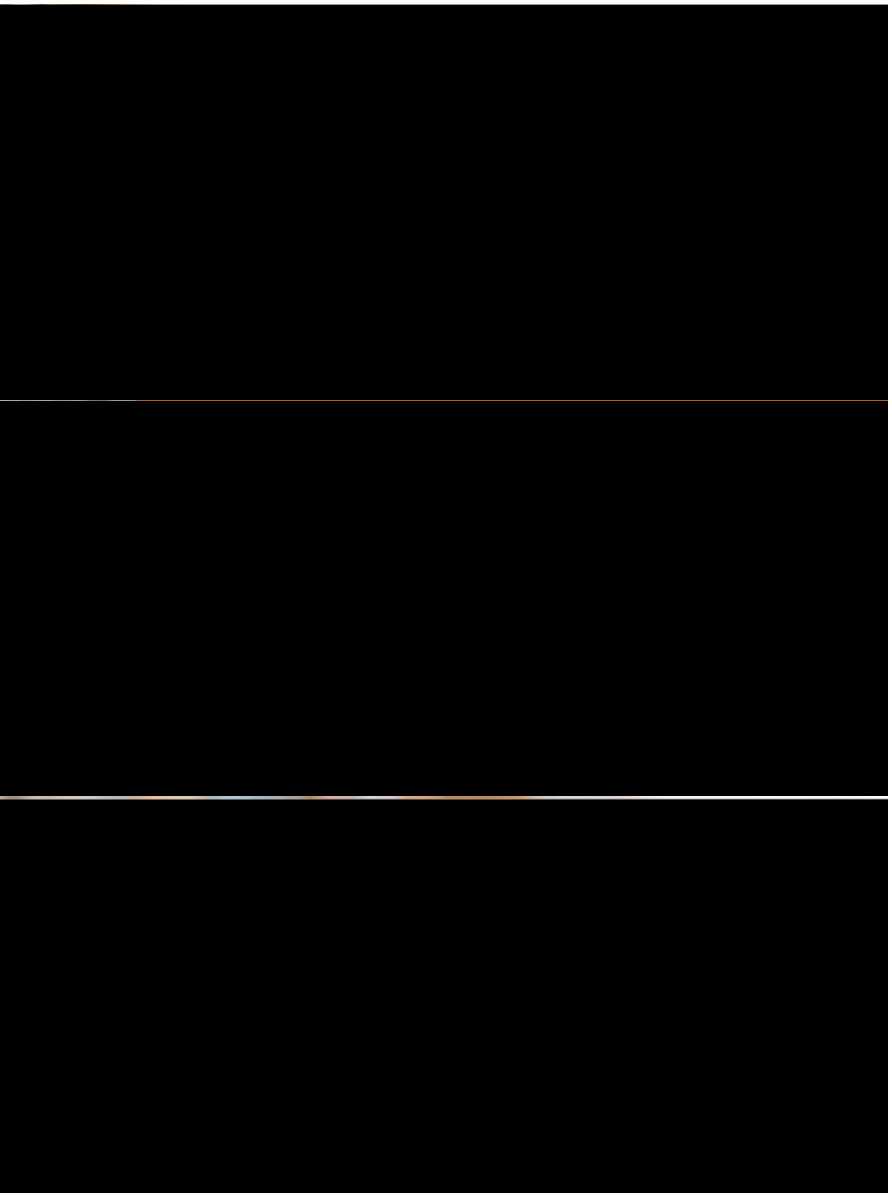
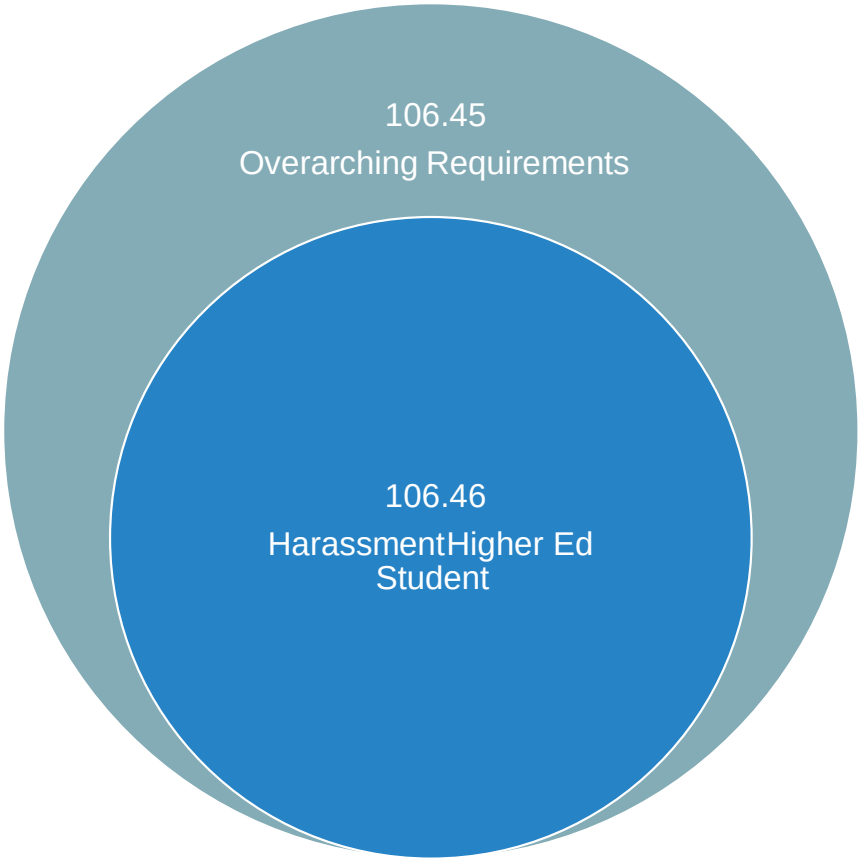


Grievance Process Requirements

- Treat parties equitably
- No conflict of interest or bias
  - New: T9C and/or Investigator may be decision-maker
- Presumption of innocence

Proposed Grievance Procedures § 106.45 && § 106.46



How Will Proposed Rules Impact Investigators?

- Greater volume of matters for investigator
  - Expanded scope & jurisdiction
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RulesRequireTitle IX Personnel:

- Avoid prejudgmentof the facts
- Avoid bias
- Avoid conflictsof interest
- Maintaina presumptionof n Td [(n Td [(n T4Tj /T1_0 1 Tj /T1_1 1 Tf ( )T

Bias

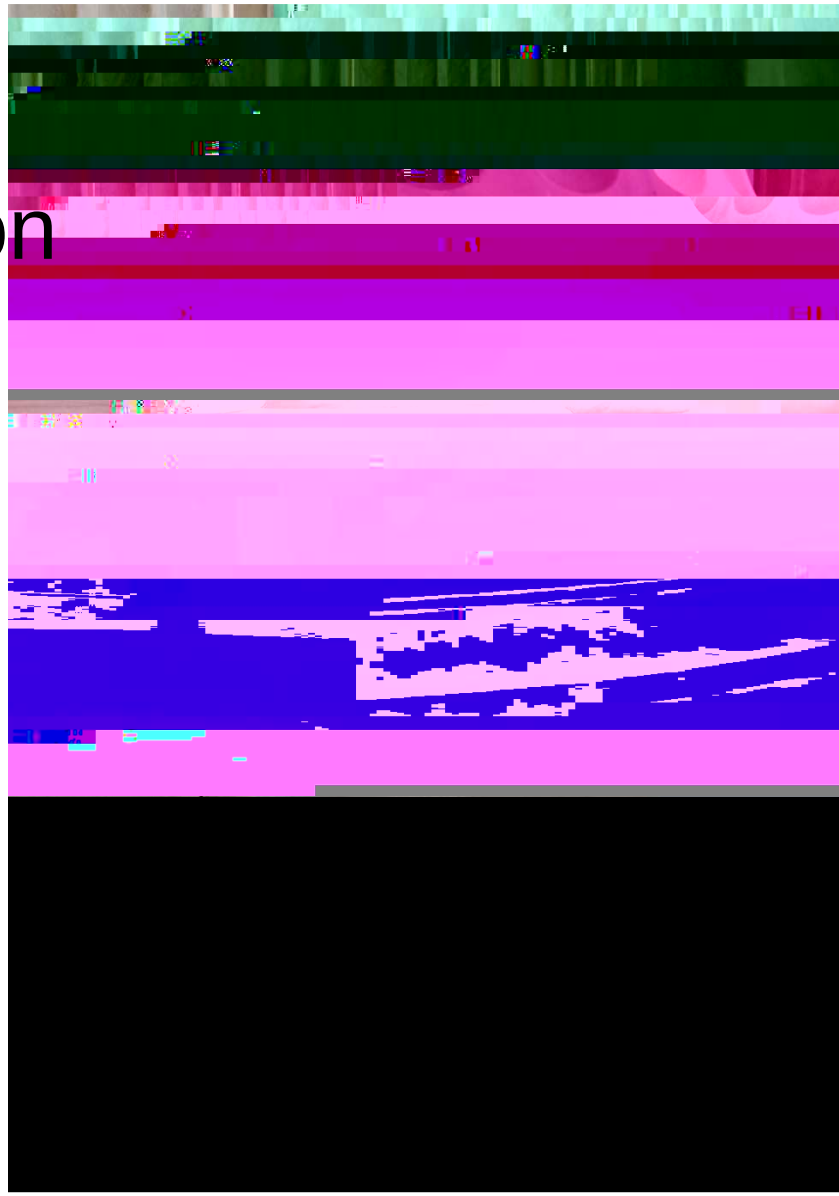
- What is Bias?
- Confirmation bias
- Conscious/unconscious
- Rule prohibits bias for or against complainants or respondents generally or for or against individual parties in a Title IX case

How to Avoid Bias and Conflicts

- Self-Awareness and Continuous Learning
  - https://implicit.harvard.edu/implicit/takeatest.html
- Transparency/Disclosure
- Seeking Second Opinions
- Standardization
- Documentation: Show Your Work
- Regular Review and Feedback

Pillars of a Good Investigation

- Impartial
- Thorough
- Equitable
- Prompt



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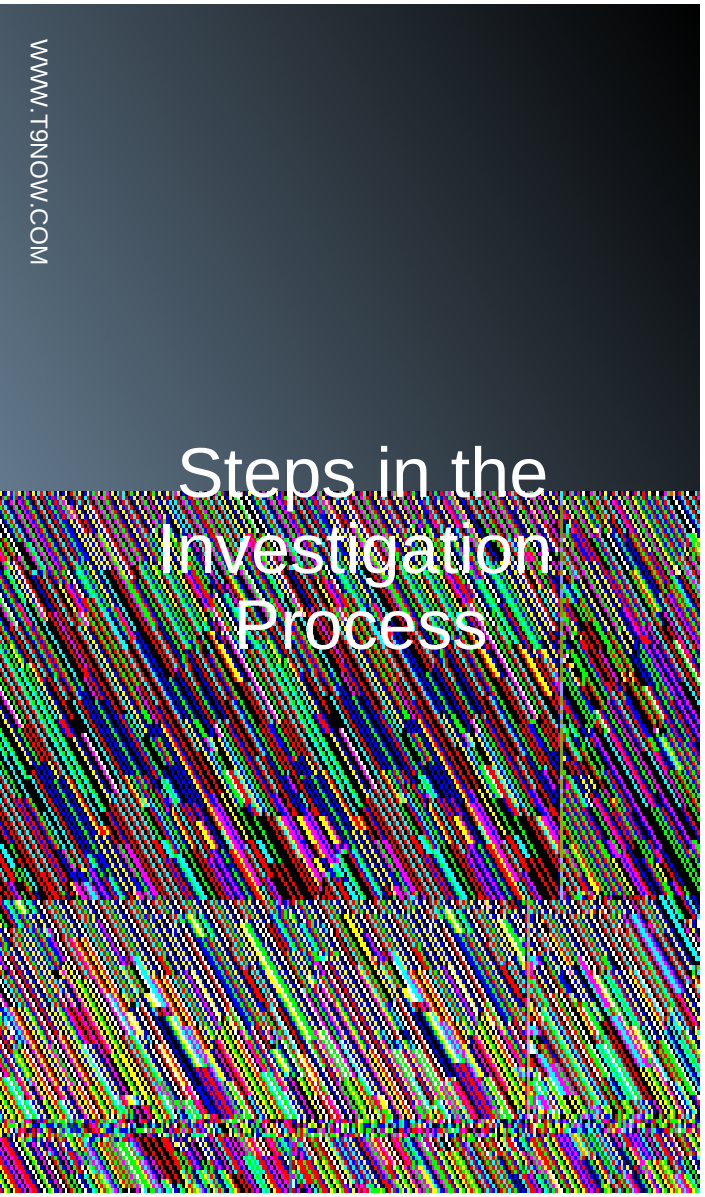
Steps in the Investigation Process



Formal Complaint

Distribute Final Report 10 days prior to hearing

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Creating an Investigation Plan

- Direction & Focus
- Resource Management
- Compliance & Risk Mitigation
- Evidence Integrity
- Accountability & Transparency
- Adaptability
- Coordination
- Efficiency

Creating an Investigation Plan

- Determine the scope of the investigation
- Establish a preliminary timeline of events
- Identify important testimony and evidence
- Develop an initial witness list
- Determine order in which to interview the accused and witnesses

Interviewing Parties & Witnesses

Interviews: Setting the Stage

- Pre-meeting communications begin to establish rapport
- Provide advisor policy prior to interview
- Interviews should be conducted in a private location with no interruptions; try to make the interviewee feel comfortable
- Provide a brief explanation of the institution's investigatory process
- Advise interviewees of the anticipated time frame for completing the investigation
- Explain what, if any, information might be shared with others
- Explain the institution's prohibition on retaliation

Don’t: Use overly “legalistic” or formal language

Do: Balance empathy with objectivity; establish rapport while maintaining professionalism

Don’t: Avoid difficult or embarrassing questions because they are uncomfortable

Do: Use tact and sensitivity, but can’t skip important details

Don’t: Ask leading questions based on what you think probably happened

Do: Allow the details and facts to come out first, then follow-up with additional clarifying questions as you learn more

Don't: Make promises you can't keep, or set unrealistic expectations

Do: Be clear about the process including the limits on "confidentiality"

Don’t: Interrupt, ask “blaming” or biased questions, or fill in the gaps with your own assumptions

Do: Ask open ended questions and allow interviewee to provide their story in their own words…allow space to let them speak

Don’t: Treat the interview like an interrogation or inquisition

Do: Ensure you remain objective and keep your role in context, this is an administrative process, not a law enforcement investigation

Don’t: Allow subconscious or unconscious bias or preconceived beliefs to taint your objectivity

Do: Take a moment before each interview to consciously affirm that you will keep an open mind throughout the process, gather all of the evidence first, and then analyze it in context

Evidence Basics

- School carries the burden of evidence
- Investigator must collect all evidence related-to allegations
- Only relevant evidence may be considered by Decision-Maker
- Privileged evidence is not admissible without consent
- Medical records, mental health records are not admissible without consent
- No other restrictions on evidence (legal rules don't apply)
- Parties have the right to inspect the evidence
- School may develop guidelines re: evaluating evidence (weight, etc.), as long as don't contravene rules

Directly Related Evidence

- Evidence that is directly related to the allegations in the formal complaint
- Includes evidence that the institution does not intend to rely upon in reaching a determination regarding responsibility
- Includes inculpatory and exculpatory evidence, whether obtained from a party or other source

Relevant Evidence May Include…..

Privileged Evidence Inadmissible

Not 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 in writing.

- Patient-doctor
- Attorney-client
- Spousal privilege
- Priest-penitent

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- Questions and evidence about the complainant's sexual predisposition is not relevant and never allowed. Evidence related to prior sexual behavior is also not relevant unless:
  - offered to prove
    1. "Mistaken Identity"
       - that someone other than the respondent committed the conduct alleged by the complainant, or
    2. Consent
       - concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Evidence Logs

- A brief description of the evidence;
- The source of the evidence (i.e., how was the evidence discovered or by whom was it offered);
- Whether the investigator deems the evidence to be a) directly related to the allegations in the formal complaint; b) directly related but not relevant, or c) neither directly related nor relevant by the redir,

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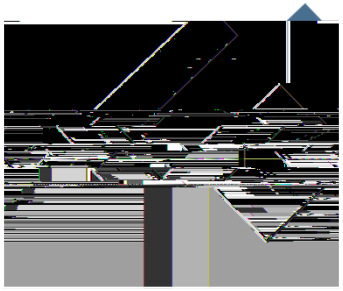
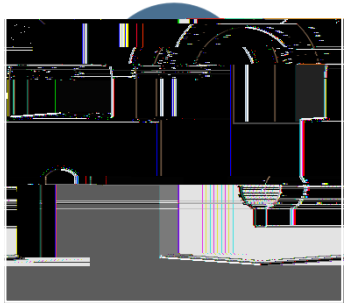
Best Practices for Sharing Evidence

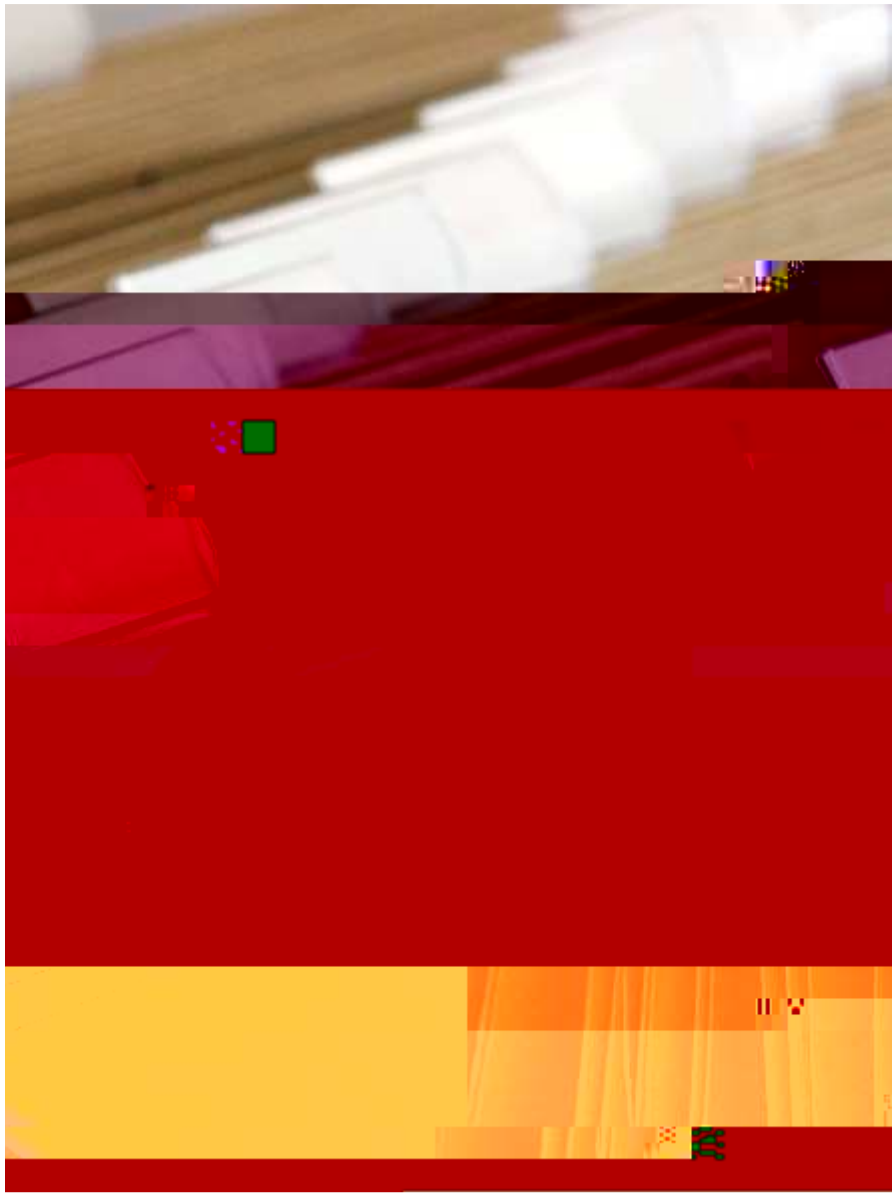


Use one consistent method



Secure file sharing software

Record-Keeping



InvestigativeFile

- Applicablepoliciesand

Writing the Investigative Report

Must fairly summarize the relevant evidence

- Have discretion to determine what format or what other eleme to include if any.

- Additional information useful from a practical perspective, i.e. providing sufficient background info/context to understand the evidence, to satisfy record-keeping requirements and docume process was thorough, fair, etc.

The Purpose of the Report

- To ensure that the recipient

Anatomyof an Investigative Report

- Body & Appendices
  - Usea consistent

Synthesizing&

But wait….there's more

- Human memory is flawed
- We're not great lie-detectors
- Unconscious bias is unavoidable
- Demeanor not very good indicators of reliability
- So…..when summarizing/evaluating always refer to Evidence
  - Avoid presumptions, conclusions, supposition, conjecture
- The "Decision"-maker makes "decisions" and assesses credibility

Synthesizing & Summarizing the Evidence

- Avoid conclusions
- Watch out for biased language
- Use quotations
- Avoid generalizations
- Avoid jargon/slang
- Use footnotes, appendices, exhibits

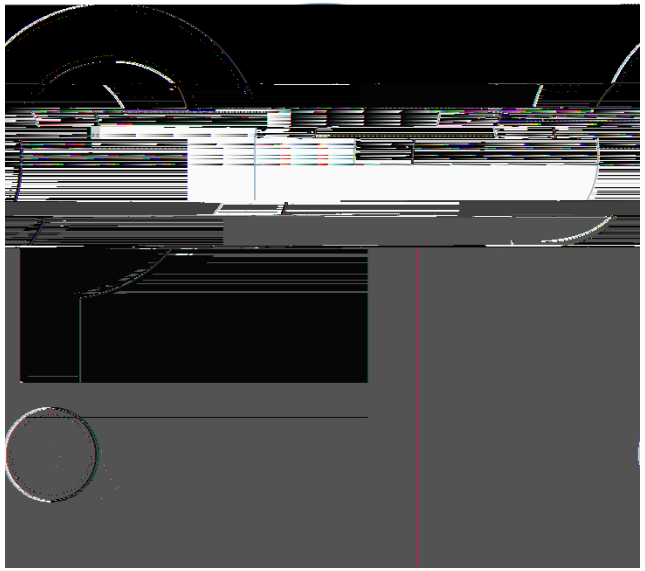
Making Conclusions

Decision-makermust objectively evaluatethe evidence

- Rules specifically disallow single-investigator model.
- Carefully consider how recommendations/conclusions (if any) are presented by investigator.

"The scale of justice does not balance on its own; it demands a hand that is steady, eyes that see beyond the surface, and a will committed to the truth." –

Anonymous



Questions?