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Title IX Advanced Interviewing Techniques and Strategies for Higher Education

Training and Certification Course

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Introduction

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This training focuses on the best available research and field-tested practices for effective investigations.



Practitioners will learn how to conduct interviews and apply sophisticated investigation skills to an array of Title IX complaints.



Our goal is to provide you with an opportunity to practice and refine your investigative skills to increase proficiency and confidence.

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Title IX Resolution Process Refresher

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Title IX Grievance Process Overview

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INCIDENT

- Formal Complaint/ Notice to Title IX Coordinator (TIXC)

INITIAL ASSESSMENT

- Jurisdiction
- Dismissal
- Supportive Measures
- Emergency Removal
- Referral to Another Process
- Informal/ Formal Resolution

FORMAL INVESTIGATION

- Notice of Investigation and Allegations
- Interviews
- Evidence Collection
- Draft Report
- Party Review/ Comment
- Follow Up
- Final Report

HEARING

- Questioning
- Credibility Assessment
- Determination and Rationale
- Sanctions
- Remedies

APPEAL

- Appeal Grounds
- Determination and Rationale

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Investigation Steps

1. Receive Notice/Complaint
2. Initial Assessment and Jurisdiction Determination
3. Determine Basis for Investigation
4. Notice of Investigation and Allegations (NOIA)
5. Establish Investigation Strategy
6. Formal Comprehensive Investigation
7. Draft Investigation Report
8. TIXC Reviews Draft Report and Evidence
9. Parties Review Draft Report and Evidence
10. Final Investigation Report



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Building Rapport

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What is Building Rapport?

- Rapport is meant to create a level of transparency and trust
  - Establish expectations
  - Reinforce neutrality and impartiality with authenticity
  - Set the tone for the interview
- Rapport building occurs throughout the interview, not just in the first five minutes
  - Ongoing effort to build and maintain rapport
- Do not sacrifice professionalism or neutrality to build rapport



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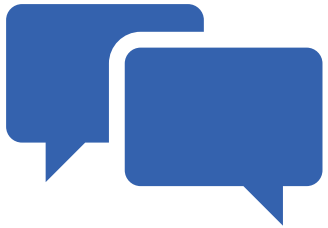
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Ethical Considerations

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Professional
vs.
Buddy-Buddy



Understanding
vs.
Agreeing



Neutrality
vs.
Sympathy



Fairness
vs.
Advocacy

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Practical Considerations

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- Attire
- Location
- Notetaking
- Recording
- Response to Emotions
- Duration
- Breaks
- Entry/Exit

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The Introduction

Explain:

- Process and interview flow
- Investigator role
- Expectations
- Retaliation and amnesty
- Interviewee rights
- Advisor role
- Privacy/confidentiality and their limits
- Need for truthfulness



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The Introduction (Cont.)

- Answer questions
  - About the interview or process
  - Anticipate reluctance or fear
- Avoid playing “cat and mouse” with the complaint contents or allegation details
- Encourage interviewee to refrain from filtering language
- Provide option to take breaks



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Non-Cognitive vs. Cognitive Interviews

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Anatomy of a Bad Confession

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YouTube Video:
https://youtu.be/8_HdaCYZQRA?si=K2RUUcjYpHWPkoMl

Audio Description

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Non-Cognitive Interviews

- Briefly establish rapport
- Limited effort to promote memory recall
- Linear questions tracking anticipated timeline of events
- Occasionally solicit a written narrative before the interview
- Neutral delivery
- Use open-ended questions to elicit narrative answers
- Use direct questions focusing on details



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Drawbacks to Non-Cognitive Interviews

Non-cognitive interviews tend to disrupt the natural process of memory searching, leading interviewees to:

- Abbreviate answers
- Fail to volunteer unsolicited information
- Provide inaccurate answers
- Withhold information



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Navigating Memory and Trauma

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Memory Basics

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Sensory

- Lasts a few seconds
- If brain does not attach meaning, information is lost

Short-Term

- Lasts up to 30 seconds
- Example: Phone number

Long-Term

- Stored away
- Meaningful connection to information

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Memory, Perception, and Accuracy

- Long-term storage is strengthened through association
  - Accessing memory means traversing association pathways
- Memory is not like a carbon copy of a file or a video
  - Memory is filtered through:
    - Beliefs
    - Education
    - Perspective
    - Prior experiences
  - The result is a mix of factual recollection and filtered perception
    - May alter facts; memory can vary with each retrieval

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Memory and Trauma

- Traumatic memories are highly filtered
  - Denial
  - Lack of recall
  - Normalization
  - Self-blaming
- Trauma can impact Complainants, Respondents, and witnesses
  - Different forms and manifestations
- Being trauma-informed as an interviewer can help to draw greater detail from an interviewee
- Not an excuse for absence of evidence



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Memory and Trauma (Cont.)

- Trauma may cause the brain to block access to memory
  - Traumatic memories are stored, but access may be hindered
- Trauma-informed interviewing techniques lower the brain's defensive measures
  - In a safe environment, the brain is more willing to access and experience traumatic memories



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Cognitive Interviewing

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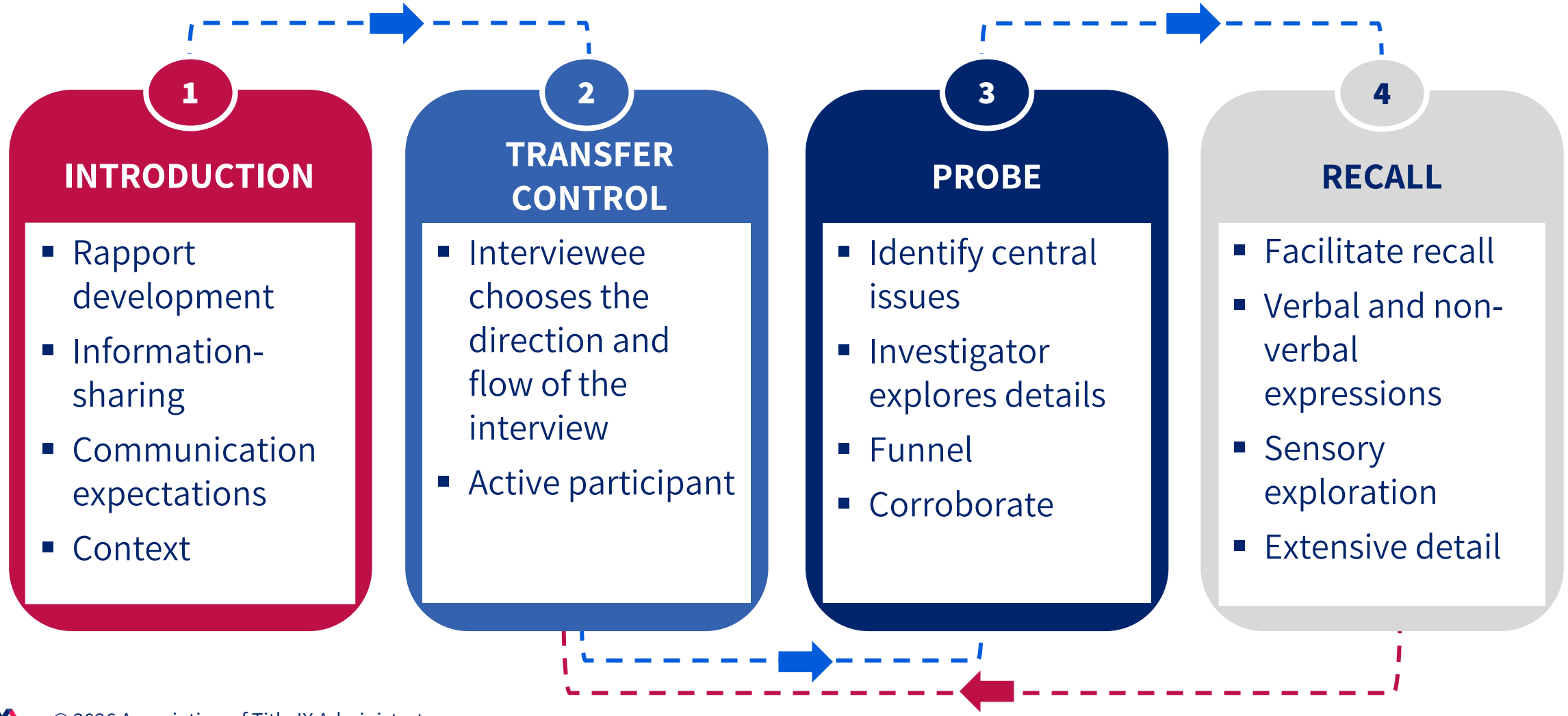
The Cognitive Interview

- Based on principles of memory and communication
  - Increases the quality and amount of relevant information an interviewer can gather
  - Decreases the likelihood of an interviewee recalling an event incorrectly
- Rapport is highly valued
  - Increases willingness of interviewee to share
  - Reduces:
    - Anxiety about discussing sensitive subjects
    - Defense mechanisms
    - Sense of feeling judged

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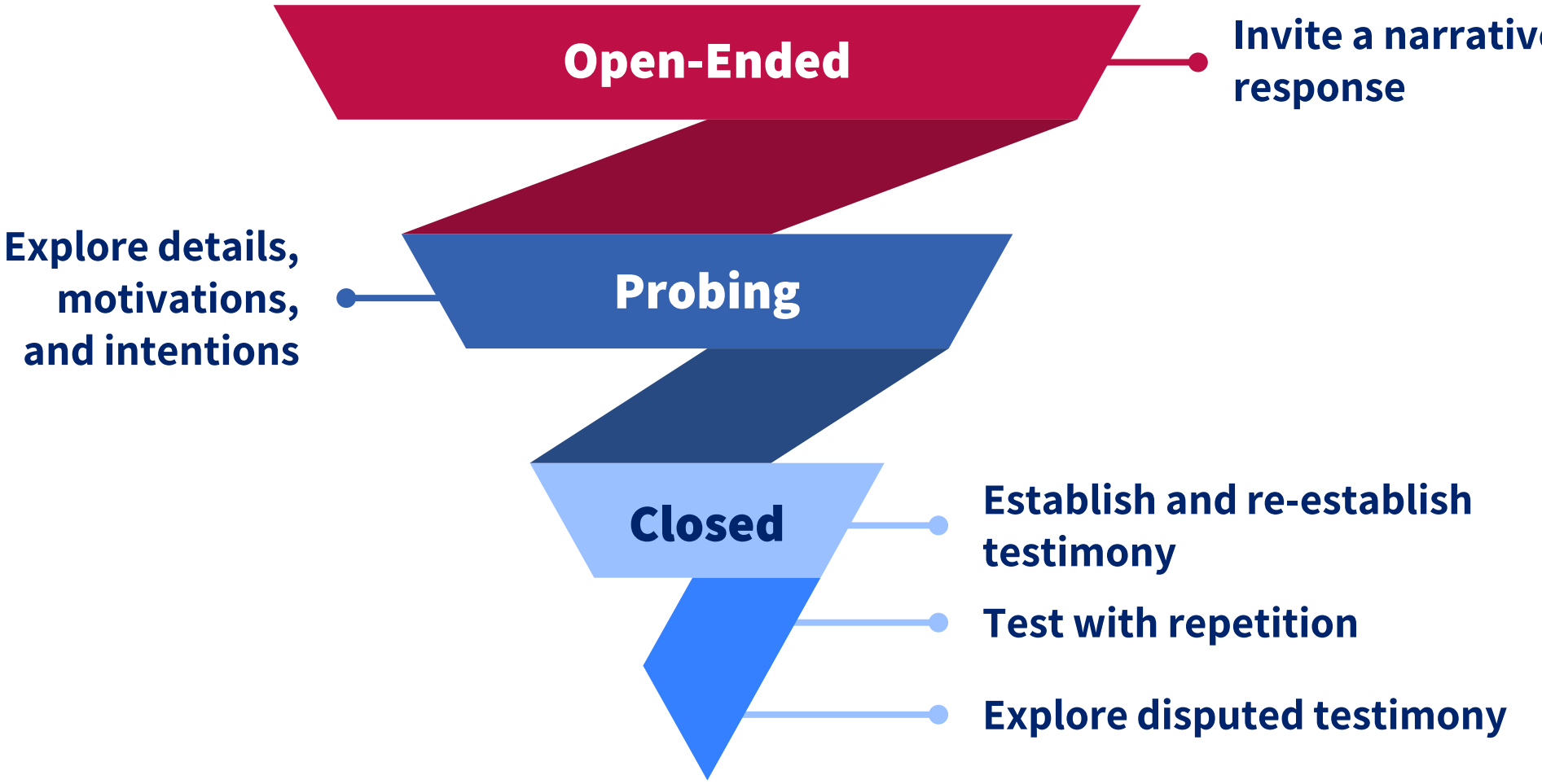
Cognitive Interview Structure



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Funnel Technique



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Memory and Recall

- Repeated recollection attempts can strengthen recall and improve accuracy
  - Neural access pathways can literally thicken
  - Strategies encouraging holistic memory retrieval yields more accurate information
    - Questions focused on episodic memory or isolated critical moments are less reliable
- Focus on broader recall, even innocuous details
  - Repetition can help
- Use open-ended questions, delay funnel questioning if needed
- Tie critical details to nonessential details for continuity
- Provide adequate space and time for recall to occur
- Silence can be useful; don’t rush to fill it

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Cognitive Interview Considerations

- Cognitive interviewing requires the interviewer to bring the interviewee back to the scene
  - Raises concerns of re-traumatization
  - Interviewers should prepare the interviewee for the possibility of re-traumatization and outline options for breaks, managing trauma, etc.
- Interviews will likely take more time
- Investigators may want to explain the interview approach
  - Transparency is a rapport-building tactic
- If using co-Investigators, do not switch questioners during the recall process
  - Switching could break focus and disrupt recall

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Cognitive Interviewing Strategies

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Sensory Recall

Prompt recall through sensory experience, rather than event narrative

- “Are there specific scents or smells you remember?”
- “Are there specific sounds that you recall?”
- “How did the drink taste to you?”
- “How did it feel as you sat down on the couch?”
- “What else do you remember seeing from your spot on the couch?”



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Memory Jogging Techniques

Prompt recall through accessing memories with divergent, rather than direct, retrieval methods

- Recount the events from the perspective of an imaginary third-party viewing the scene
- Take the witness to the scene to jog recall, but beware of trauma triggers
- Have the witness give a factual account without editorializing, then transcribe the account and ask the witness to go back and add their opinions and perceptions

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Additional Tactics and Tools

Reverse Chronological Order

Model Statements

Unexpected Questions

Written Narrative

Draw/ Use a Picture

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Focus on Specifics

Review details to:

- Check for accuracy and consistency
- Clarify contradictions or ambiguities
  - Terms
  - Phrases
- Correct errors or omissions
- Rephrase confusing questions
- Spur additional recall



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Challenging Interviewees

- Accept any information they will share
- Ask logical follow-up questions
- Clarify vague, nonsensical, or non-responsive answers
- Emphasize contradictory
- Highlight conflicts
- Interview in Investigator pairs
- Mirror responses
- Review facts



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Interview Closure

Ask the interviewee to :

- Contact the investigator with any new information
  - Extends the interview
  - May result in more or better detail
- Suggest other individuals for the Investigator to interview, **or**
- Suggest questions to ask others



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Activity: Cognitive Interviewing

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Cognitive Interviewing Activity

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In groups of two, each person chooses a role: Interviewee or Interviewer

Step 1	Step 2	Step 3:
▪ **Interviewee:** Review your prompt in the lobby ▪ **Interviewer:** Review your prompt in the lobby	▪ **Both:** Do not share details from your respective prompts ▪ **Interviewer:** Conduct interview and take notes	▪ **Interviewee:** What did the interviewer do that helped, hindered, or distracted you? ▪ **Interviewer:** What approaches did you use? Were they effective?

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Cognitive Interviewing Activity, Part 2

- Using the statement from below, what kinds of questions would you use to solicit more information from the Complainant during their interview?

- I cannot remember much from the party. I remember walking into the duplex with a couple friends. It smelled weird when we walked in the door, and it was dark.
- I think I stayed with one of my friends that I met at the party, and we got a drink and hung out in a corner of the room. I do not recall who was present.
- At some point, Respondent came over to talk and my friend left me alone. I had been sitting for a while and when Respondent took my hand and helped me stand up, I felt dizzy. I couldn't really say anything else.

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Credibility Evidence and Assessment

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Credibility Evidence

- Credibility assessments weigh the accuracy and reliability of relevant information
  - Not synonymous with “truthful”
  - Evasion, misleading testimony, or memory errors may impact credibility
- Primary consideration is **corroboration**
  - Source + content + plausibility
- Avoid too much focus on **irrelevant** inconsistencies
  - However, consistency of testimony can enhance credibility, especially when other sources of evidence corroborate that consistency

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Consistency

- Consistent accounts may bolster believability
  - Parties or witnesses may be consistent **but not truthful**, which is why credibility is more about assessing believability than a way to find truth
  - In practice, inconsistency may be a better tool to assess credibility than consistency
- Carefully parse words or language to assess how (in)consistent a detail may be
  - Note when accounts are similar but **not** exact
- Consistency is often a basis to probe more deeply
  - When someone gives inconsistent testimony, it presents an opportunity to clarify, recognize deviations, and explore what their basis may be

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Credibility Factors

Corroboration

- Aligned testimony and/or physical evidence

Inherent Plausibility

- Does the explanation make sense?
- Be careful of bias influencing sense of “logical”

Motive to Falsify

- Do they have a reason to lie?

Past Record

- Is there a history of similar behavior?

Demeanor

- Do they seem to be lying or telling the truth?



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Credibility Technique: Triangulating

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Triangulating Credibility

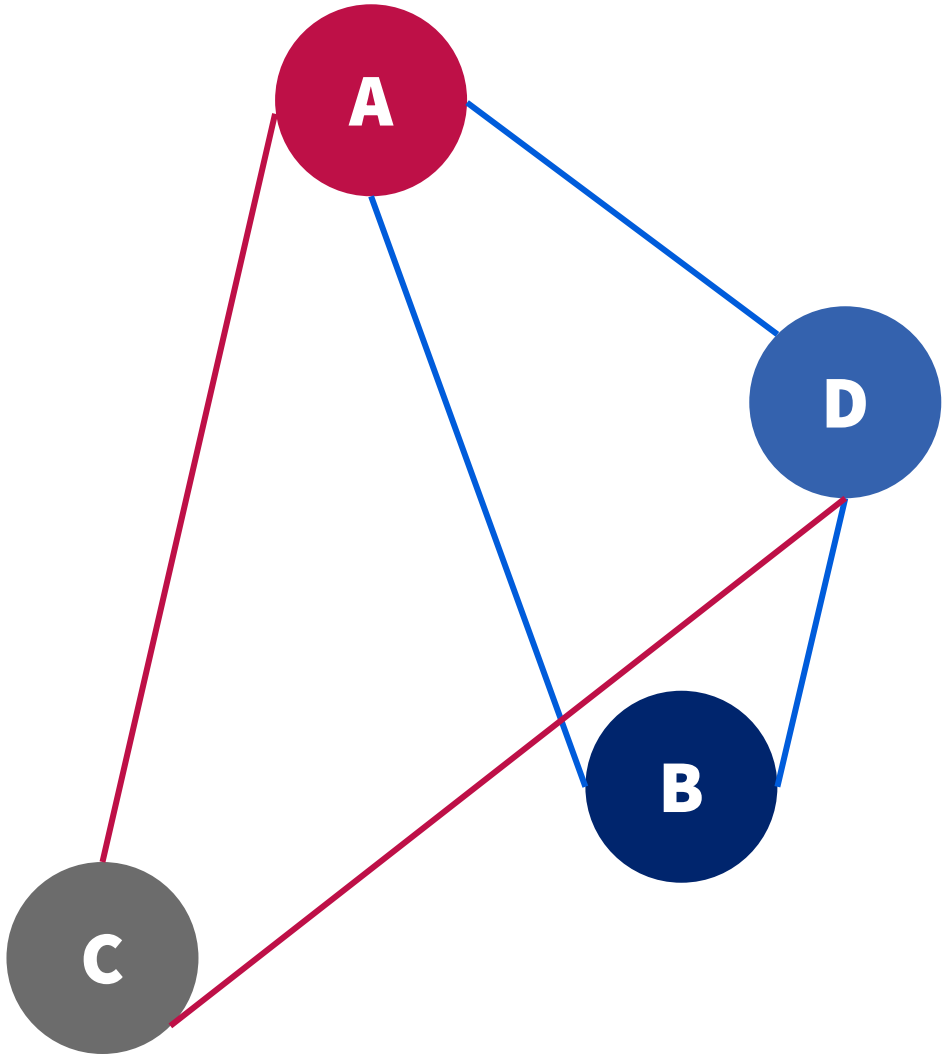
- Abductive reasoning
  - Forming the hypothesis that best explains the facts
  - Likeliest possible explanation based on incomplete facts
  - Less compelling than corroboration, but sufficient in some circumstances
- Investigator is faced with two different but equally plausible explanations
  - Need to determine which may be more likely, more logical
  - Use other evidence to drive the analysis
  - “In light of evidence provided by Witness C and Witness D, Respondent’s account appears more likely than Complainant’s account”

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Triangulating Credibility Analysis

- **Circumstantial analysis**
  - More helpful when standard of proof is the preponderance of the evidence
  - A formal way to process inherent plausibility
- If A and D are true, is B or C more likely to be true?
  - C is a bigger stretch to get to than B, so B is more plausible
- Using known data points to extrapolate the likeliness of unknown facts



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Trauma and Credibility in Investigations

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Trauma and Credibility

- Investigators can only collect available relevant evidence
- Trauma is neutral; it neither enhances nor detracts from proof
- Lack of evidence from an individual often negatively impacts their credibility
- Never substitute trauma indicators for evidence



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Trauma and Credibility (Cont.)

- If an individual's account changes, differentiate between **more** information, **different** information, and/or **contradictory** information
  - Minor or insignificant variations should not significantly impact credibility
- One's affect is **not** evidence
  - A change in affect may signal a need to probe more deeply into a specific topic, though



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Responses to Trauma

- Individuals may have different trauma manifestations, impacted by:
  - Availability or knowledge of coping strategies
  - Capacity for resilience
  - Cultural differences
  - Past history of trauma
  - Personality
  - Support systems or lack thereof
- Avoid biased thinking about what a person “should” or “would” have done, as this may invoke sexist tropes, rape myths, or other “victim-blaming” notions

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Cognitive Interviewing, Trauma, and Credibility

- Deception requires greater cognitive load
- Deceptive individuals:
  - Prepare responses to anticipated questions
  - Develop a consistent, fixed narrative
- Honest individuals generally provide more detail or information
- Cognitive interviewing leverages differences in cognitive processing and strategy
  - Reveals inconsistencies in fixed narratives
  - Elicits verifiable details in credible accounts
- The motive for deception may also be of interest

Source: Vrij, A. (2019). Deception and Truth Detection When Analyzing Nonverbal and Verbal Cues. Applied Cognitive Psychology, 33, 160–167.

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Assessing Credibility

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Making Credibility Assessments

- Examine consistency of the story
  - Analyze statement substance and chronology
  - Inherent plausibility of all relevant evidence taken together
- Compare degrees of credibility within evidence
  - Is a piece of evidence consistent with other evidence known to be credible?
- Consider the amount of detail provided
- Non-verbal behaviors may be important to note
  - Do **not** let this drive the analysis

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Credibility Assessment

- Investigator should use credibility assessments to direct the Decision-maker(DM) to areas needing closer examination
  - Focus the DM on alignment or discrepancies that may be significant for their analysis
  - Summarize the evidence to provide a snapshot
  - Use citations to help DM find the evidence within the report



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Decision-Making and Credibility

- The live hearing is the last chance for the DM and parties to probe credibility
  - Live hearings are required for sexual harassment complaints in higher education
  - Cross-examination though Advisors
  - Institutions may permit direct examination by Advisors
- Some courts have endorsed a hearing for credibility assessment purposes

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Common Credibility Errors

- Misplaced emphasis on:
  - Inconsistent information
  - Nonverbal indicators (e.g., nervousness, anxiety)
- Confusion about memory
  - Stress and emotion can complicate memory
- Parties' status
- Investigator bias



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Activity: Credibility Assessment

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Credibility Assessment Activity

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Step 1

- Read the fact pattern and statements from Omar and Devya
- Highlight elements that factor into credibility assessment

Step 2

- What information boosts Omar's or Devya's credibility?
- What evidence could potentially bolster or detract from Omar's or Devya's credibility?

Step 3

- Outline the evidence that impacts each Party's credibility
- Itemize evidence you would like to collect related to credibility

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Looking Ahead

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Day Two Activity

- Opportunity to practice skills from today
  - From the initial investigation strategy through interviews and credibility assessments
- Intentionally small and sparse case file
- Mix of small group role-playing and large group discussion
  - Faculty modeling some skills

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Investigation Simulation Exercise

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Purpose of Exercise

Participants will have an opportunity to practice skills from Day One:

- Investigation Strategy
- Rapport Building
- Cognitive Interviewing
- Funnel Technique
- Trauma-Informed Questioning
- Credibility Assessments

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Activity

- Participants will review file documents in phases; **do not read ahead**
  - Each document will provide information or evidence
  - Each phase will have specific tasks
- Participants will work in pairs to practice different skills

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Phase 1

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Materials for Review

- Complaint
- RA Report
- NOIA Excerpt

Tasks to Complete

- Discuss the file as you would in a strategy meeting; sketch out a strategy
- Outline the introductory spiel, given the information in the file
- Prepare initial questions for the Complainant using cognitive interviewing strategies and techniques
- Discuss pre-interview rapport building strategies

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Phase 1 Debrief

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Phase 2

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Materials to Review

- Materials from Phase 1
- Complainant Interview Transcript Excerpts

Tasks to Complete

- Review the transcript excerpts
- Identify areas needing:
  - Further development through more questioning or evidence gathering
  - Improved trauma-informed questioning

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Phase 2 Debrief

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Faculty Modeling

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Phase 3

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Materials to Review

- Materials from Phases 1 and 2
- Interviewees Only: Additional Facts - Complainant

Tasks to Complete

- One person in each pair will act as interviewer, the other as interviewee
- Interviewees should use the additional facts page to guide their answers

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Phase 3 Debrief

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Phase 4

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Materials to Review

- Materials from Phases 1-3
- Respondent interview transcript excerpts
- Interviewees Only: Additional Facts - Respondent

Tasks to Complete

- Review the transcript excerpts
- Identify areas needing:
  - Further development through more questioning or evidence gathering
  - Different questioning structure
  - Improved trauma-informed questioning
- Switch roles from previous phase and practice cognitive interviewing
- Interviewees use the additional facts page
  - The topics are similar to the Complainant additional facts document

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Phase 4 Debrief

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Phase 5

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Materials to Review

- Materials from Phases 1-4
- Additional evidence file

Tasks to Complete

- Assess Parties' credibility using strategies outlined in Day One slides
- Draft key points for credibility analysis, as you would for the investigation report
- Note: Use only the facts in the file
  - If anyone created any facts during an interview, exclude those facts

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Simulation Debrief

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