

Putting Facts into Focus: A Nuts & Bolts Writing Workshop

Course Materials
February 16, 2023



Presented by T9 Mastered, LLC
a venture of Van Dermeyden Makus Investigations Law Corporation



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T9 Mastered
428 J Street, Suite 950
Sacramento, CA 95814
916.245.2577
info@t9mastered.com
www.t9mastered.com

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Biographies

Liz Paris is a Partner with Van Dermyden Makus Law Corporation. She is licensed to practice law in the State of California, and is certified as a Senior Professional in Human Resources (SPHR).

Prior to joining Van Dermyden Makus, Liz was employed at UC Davis where she routinely provided policy and contract interpretation to management and staff, responded to grievances and complaints, acted as the University Advocate for administrative hearings, and negotiated contracts with labor unions. Additionally, she conducted investigations and fact-findings and served as a Hearing Officer in student discipline hearings. Prior to law school, Liz worked in Human Resources for various companies, providing advice and assistance with recruitment, hiring, termination, and performance management.



Liz is also an experienced investigator in Title IX sexual misconduct claims. She has investigated cases involving underage Complainants, multiple Respondents, and allegations involving incapacitation and inability to consent. Liz understands best practices in the Title IX arena, and the challenges facing schools and parties when sexual violence allegations surface.

Liz frequently serves as an Appeal Hearing Officer for Title IX cases. In this role, Liz reviews campus responses to Title IX allegations within the framework of the individual school's appeal process. In her deliberations, she considers whether the administration's response to claims of sexual misconduct were compliant with policies meant to provide a safe campus for students. Liz has overseen cases involving dating violence, drug abuse, sexual assault, and incapacitation. She has experience questioning parties using trauma-informed techniques, making admissibility and relevance decisions, and issuing well-reasoned, thorough decisions.

Additionally, Liz has investigated matters at K-12 Districts, including allegations involving discrimination and compliance. Her investigations have included interviews of administration, classified staff, as well as paraeducators.

Liz graduated from McGeorge School of Law in 2012 and earned an undergraduate degree from UC Davis.

Eli Makus is the managing partner of Van Dermyden Makus Law Corporation. After litigating disputes for many years and working as in-house employment counsel, Eli's practice now focuses on conducting impartial workplace and Title IX campus investigations. Eli is experienced in all areas of employment law, including matters involving discrimination, harassment, retaliation, disability accommodations, protected leaves of absence, whistleblower claims, privacy, wage-hour compliance, and reorganization. Eli has conducted and overseen numerous investigations into complaints under Title IX, Title VII and FEHA involving public and private educational institutions. He has also provided advice and counsel regarding complex matters in both public and private educational spaces.



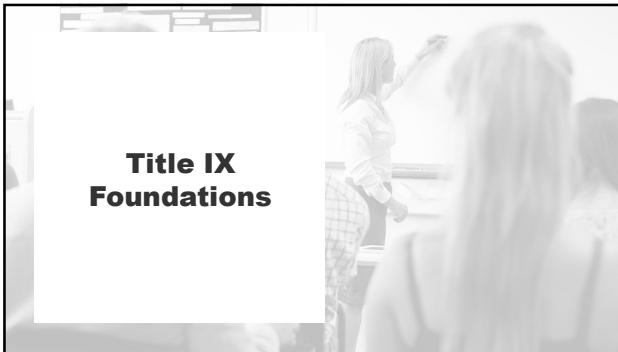
Eli's commitment to promoting and enhancing the quality of workplace and campus investigations is manifested through his work with the Association of Workplace Investigators (AWI): Eli is the current President for the AWI Board of Directors and regularly serves as Senior Faculty for AWI's multi-day Training Institutes around the country. Eli speaks extensively on the implementation of successful internal investigation programs and on investigator training focused on conducting investigations of sensitive matters through a trauma-informed lens. Eli also speaks regularly on new and emerging topics in workplace investigations and on excellence in report writing.



Title IX Essentials


T9 MASTERED
Training for Title IX Professionals

**Putting Facts Into Focus:
A Nuts & Bolts Writing Workshop**




Title IX Foundations

**The New Grievance Process and
New Definitions**



New Regs Snapshot


- Effective: August 14, 2020
- Applicable to students, staff, and faculty
- Investigator and “Decision-Maker” cannot be:
 - The Title IX Coordinator
 - The same person






Grievance Process per the New Regulations

- Presumption that Respondent is not responsible
- Standard of Evidence
- Evidence Review process
- Live Hearings required



Evidence Review Process

- Both parties must have an equal opportunity to inspect, review, and respond to any evidence gathered that is directly related to the allegations, even if there is no intent to rely on it in making a determination
- This must occur **prior** to the conclusion of an investigation
- Parties have an equal opportunity to refer to this evidence during the Hearing



Live Hearing Process

- Required by the 2020 Rule for higher ed
- Each party's advisor must be permitted to ask the other party and any witnesses relevant questions, including challenges to their credibility
- Questions must be conducted "directly, orally, and in real time"
- Adjudicator can determine questions are not relevant and cannot be asked, but must provide an explanation
- Parties may choose their advisor, but must have one; school must provide an advisor if needed



Responsibilities of the Investigator

- Define the scope of the investigation based on Complainant interview / policy
- Gather evidence
- Identify and interview witnesses
- Document all steps taken
- Coordinate Evidence Review Process with parties
- Testify in Hearing (potentially)



Investigation Report Requirements

- Allegations;
- Material facts;
- Evidence presented and considered;
- Additional relevant information received and gathered during the Evidence Review period;
- Description of all material disputed and undisputed facts.



Responsibilities of the Adjudicator

- Adjudicator can rely on Investigation Report
- Ensure the Hearing is conducted in accordance with school policy
- Make credibility assessments
 - Look for inconsistency in statements, etc.
- Make a determination regarding responsibility



Hearing Decision Report Requirements

- Allegations;
- Procedural steps;
- Factual Findings;
- Policy Findings;
- Analysis for each;
- Sanctions;
- Appeal process.



Sexual Harassment Definition



Sexual Harassment per the New Regulations

Conduct on the **basis of sex** that satisfies one or more of the following:

- Quid pro quo (employee Respondents only);
- Unwelcome conduct (full definition follows); or
- Specific defined acts (full definition follows)



Sexual Harassment: Unwelcome Conduct

Conduct on the **basis of sex** that is determined by a **reasonable person** to be so:

- Severe;
- Pervasive; **and**
- Objectively offensive
- That it effectively denies a person equal access



Sexual Harassment: Specific Acts

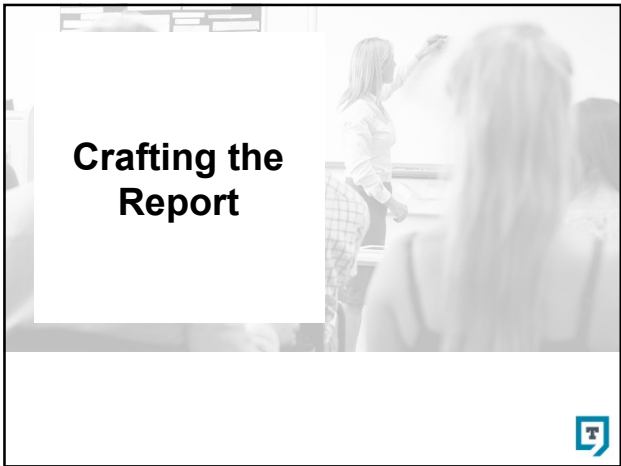
Conduct on the **basis of sex** that constitutes one or more of the following:

- Sexual Assault**, as defined by Clery Act;
- Dating Violence**, as defined by VAWA;
- Domestic Violence**, as defined by VAWA; or
- Stalking**, as defined by VAWA

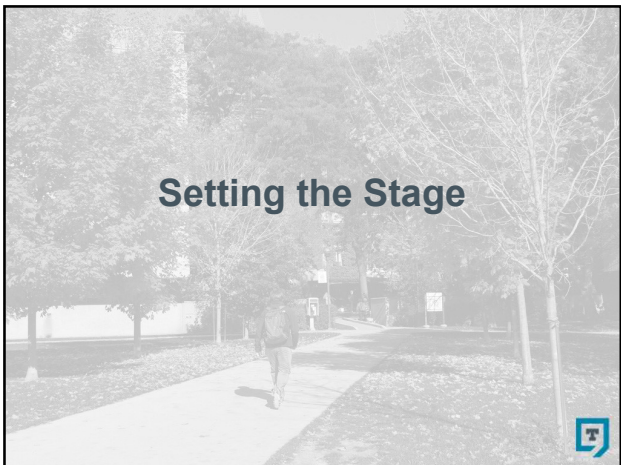




Complaint Review



Crafting the Report



Setting the Stage

Elements of the Report

- Introduction/Summary of Allegations
- Implicated Policies
- Summary of Findings (if applicable)
- Procedural Background and Methodology
- Factual Background
- Evidence/Allegations
- Factual and Policy Findings and Analysis (if applicable)



Writing Fundamentals

- Brainstorming
- Consistency in Tense
- Consistency in Structure
- Neutral Language
- Keep it Simple
- Opening Sentences
- Statement Origins
- Quotations
- Visual Aids



Brainstorming

- THINK about your writing
 - Who is your audience?
 - How do you tell the story to someone with no background in the case?
- Organize in a manner so the reader does not have to work too hard
 - By Individual
 - By Event
 - Chronologically



“Building” the Report

- Documents
- Interviews
- Physical Evidence
- Demonstrative Evidence
- Analysis begins only after collection of all evidence / conclusion of the Hearing
- No cramming
- “The Adjudicator” → “We” → “I”



The Introduction



Elements of the Introduction

- Important dates
- The main players
- Allegation(s)

Keep it brief



Sample Intro for our Hypo (page 1)

Meadows College, located in Meadows, California, is home to 5,782 undergraduate students. The College, in compliance with the Department of Education's 2020 Regulations, has a robust Title IX policy, prohibiting Sexual Harassment. The Title IX Office is responsible for ensuring compliance with said policy.

On December 5, 2022, undergraduate student and Financial Studies major Monique Resendez (Complainant) met with Title IX Intake Coordinator Bobbi Marks. Complainant made allegations against another undergraduate student, Katherine Moore (Respondent), who is also a Financial Studies major. Complainant and Respondent are also roommates.



Sample Intro for our Hypo (page 2)

Marks gave Complainant information about the grievance process and complaint process. At the time, Complainant was unsure if she wanted to file a complaint against Respondent. Then, on December 7, 2022, Complainant filed a formal written complaint against Respondent.

Complainant alleged Respondent engaged in conduct that upset her and potentially violated specific elements of the Title IX policy. Complainant alleged the following:



Let's try again

On December 7, 2022, undergraduate student Monique Resendez (Complainant) filed a formal written complaint against fellow undergraduate student, Katherine Moore (Respondent). Complainant alleged Respondent engaged in conduct that, if sustained, may violate Meadow College's Title IX Policy (Policy). Complainant made the following specific allegations:

- [Insert bulleted allegations]

On January 6, 2023, I commenced an investigation into Complainant's allegations.



Writing Fundamentals: Remember Your Audience and Your Report's Purpose

What is the purpose of your report?

To advise the decision-maker of the following:

1. Did the alleged conduct, more likely than not, occur?
2. [Or] Did the alleged conduct more likely than not occur for an improper purpose?
3. If so, was it a violation of rules or policies?

To allow the decision-maker to determine:

1. What is the appropriate response?
 - A. Unsubstantiated
 - B. Responsive action
 1. What is the appropriate level of action to remedy past behavior?
 2. What is necessary to prevent it from occurring in the future?



Identify Your Audience

- Put yourself in the shoes of the reader
- Ask yourself:
 - Where am I going with this?
 - Why should the reader care?



Identify Your Audience

- Who is reading this and what is their purpose?
 - Parties? (Report of Evidence)
 - Rely upon? (Decisionmaker)
 - Challenge, critique? (Representative or party)
- Are there multiple audiences?
- What is the same, what is different?
- Redactions or non-identifying information?

RIGHT SIZE!



Writing Fundamentals: Keep it Simple

- Simplicity
- Three Line Rule
- Active voice
- Consistency in tense
- Neutral language
- Headings, bullets, charts
- Instead of "Said"
- Table of Contents if over 10 pages



Keep. It. Simple.

- Buddy System

"The most valuable of all talents is that of never using two words when one will do."

-Thomas Jefferson

"If I had more time, I would have written a shorter letter."

-Various versions attributed to many, including T.S. Eliot, George Bernard Shaw, Winston Churchill



Summarizing the Allegations

- Capture the allegations accurately
- Focus on the things that matter
- Ask – if sustained, could it be a policy violation?
- Can allegations be condensed/combined?
- Can a reader follow them?
- Do they easily lend themselves to corresponding factual findings?

Let's see a sample from our hypo



Complainant alleged the following:

- Without Complainant's consent, Respondent made "repeated passes" at Complainant over the fall 2022 semester.
- Without Complainant's consent, On October 2, 2022, Respondent touched Complainant's breasts on the lawn in front of their dorm. Respondent also touched Complainant's breasts on other occasions.
- Without Complainant's consent, on December 4, 2022, Respondent touched Complainant's butt "repeatedly."
- Without Complainant's consent, on December 4, 2022, Respondent put her arm around Complainant's waist.
- Without Complainant's consent, on December 4, 2022, Respondent laid down next to Complainant on Complainant's bed.
- Without Complainant's consent, on December 4, 2022, Respondent put her hand around Complainant's waist.
- Without Complainant's consent, on December 4, 2022, Respondent put her hand under Complainant's shirt.
- Without Complainant's consent, on December 4, 2022, Respondent touched Complainant's breasts.
- Without Complainant's consent, on December 4, 2022, Respondent nuzzled and kissed the back of Complainant's neck.



Let's try again

Complainant alleged Respondent engaged in the following nonconsensual actions:

- Respondent made "repeated passes" at Complainant over the fall 2022 semester.
- On October 2, 2022, Respondent touched Complainant's breasts on the lawn in front of their dorm. Respondent also touched Complainant's breasts on other occasions.
- On December 4, 2022, Respondent did the following:
 - Touched complainant's butt "repeatedly" and put her arm around Complainant's waist
 - Laid down next to Complainant in Complainant's bed and touched her repeatedly, including touching Complainant's bare breast with her hand, and "nuzzling" Complainant's neck.



Writing Fundamentals: Consistency!

Same elements in the Introduction, Summary, Evidence, and Analysis and Findings

Use the same words and cite from applicable policies



What we want to avoid

- Intro:
 - **Complainant alleged Respondent “nuzzled” the back of her neck.**
- Evidence Section:
 - **Complainant alleged Respondent buried her face in Complainant’s neck.**
- Finding:
 - **Respondent kissed and brushed her skin against Complainant.**
- Analysis:
 - **Respondent inappropriately touched the back of Complainant’s neck.**



Procedural Background & Methodology



For Investigation Reports

- Date of initial contact
- The complaint
- Witness list, including dates of interviews
- Information about representation
- Information about memorializing evidence
- Documentary, physical and demonstrative evidence
- Justification for delays (if any)
- Interim actions (if any)
- Witness advisories
- Rationale as to witnesses interviewed
- Investigative standard



For Hearing Reports

- Still includes:
 - Date of initial contact
 - The complaint
 - Witness list
 - Documentary, physical, and demonstrative evidence
 - Justification for delays (if any)
 - Interim actions (if any)
- Also includes:
 - Procedural history of investigation
 - When parties were contacted for the Hearing and any Hearing-related processes
 - Reasons for not including witnesses who were approved to appear
 - Communications from parties, including question lists, witness requests, etc.



Basic Elements

- Witness Chart
- Admonishments
- Documents
- Policies
- Evidentiary standard, independence, and timing



Witness Chart

- Introduce witness list

- Alphabetical order by last name

Name	Identifier	Date(s)
Monique Resendez	Complainant	January 6, 2023 January 23, 2023
Katherine Moore	Respondent	January 10, 2023
Jacqueline Laurent	Witness L	January 12, 2023
Lin Truong	Witness T	January 13, 2023

- Method of interview



Other Issues to Consider

- Were parties/witnesses represented? By whom?
- Did you attempt to follow-up with witnesses who did not respond?
- Participation of parties/witnesses
- Recordings



Documents

- Relevant policies
- Categorize by source
- Highlight essential documents

Attachment	Description
1	Meadows College Policy
2	Complaint, dated December 7, 2022
3	Text Messages Between Complainant and Witness L
4	Text Messages Between Complainant and Respondent
5	Text Messages Between Respondent and Witness L



Writing Fundamentals: Evidentiary Standard

- Preponderance of the evidence
 - More likely than not
 - Evidence on one side outweighs, or is more than, the evidence on the other side
 - Greater than 50/50 chance the proposition is true
 - Quality, not quantity
- Clear and convincing
 - Highly probable (depends on the individual school's policy)
- Beyond a reasonable doubt
 - Never (criminal standard)
- The "Truth"
 - So we could sleep at night



Evidentiary Standard

DON'T DO THIS!

- “Allegation is found to be true...”
- “It is proven that...”
- “Clear evidence that accused engaged in misconduct...”
- “No evidence that this occurred...”
- “Possibly substantiated...”
- “The investigation revealed enough evidence that ...”
- “Found evidence that it is highly possible...”
- “It has been concluded that...”



Factual Background



What do we put here?

- Anything that sets the stage but does not fit in other sections
- Relevant background
- Student or employee status
- Grades, course information
- Prior claims
- Key events
- Relevant policies
- Witness perceptions of parties
- Job recruitment and panel interview information



Writing Fundamentals: Opening Sentences

- Cannot overstate the importance
- Tells the reader what to expect
- Tells the reader why they should care
- Every section and subsection



Opening Sentences

I. Factual Background

The following facts provide relevant background and context to Complainant's allegations.

A. Parties' Relationship

Complainant and Respondent agree they met in August 2022 and immediately got along. Witnesses also described them "best friends." [Details]

B. Complainant's Academic Performance

Respondent alleged Complainant was motivated to raise this complaint due to her declining academic performance. Accordingly, this section briefly summarizes Complainant's academic performance for the fall 2022 semester.

[Details]



Evidence/Allegations



Evidence

- Complaint / Allegations
- Response
- Witness statements / testimony
- Documentary and other evidence considered



Structuring the Evidence Section

- **By Individual**
- **By Event**
- **Chronological**



Organization of Issues – By Individual

- Complainant's Allegations
 - Sunbathing Incident
 - Party Incident
- Respondent's Response
 - Sunbathing Incident
 - Party Incident
- Witness Statements and Documentary Evidence
 - Sunbathing Incident
 - Party Incident



Organization of Issues – By Event

- Sunbathing Incident
 - Complainant's Allegations
 - Respondent's Response
 - Witness Statements and Documentary Evidence
- Party Incident
 - Complainant's Allegations
 - Respondent's Response
 - Witness Statements and Documentary Evidence



Organization of Issues – Chronological

9:05 p.m. on December 4, 2022:

Complainant asserted that at 9:05 p.m., Respondent began doing shots of tequila and told Complainant she was "so so so pretty" ... [detail]

By contrast, Respondent said Complainant was already "wasted" by 9:05 p.m. and Respondent was trying to help her stand.... [detail]

Two witnesses stated that at this time... [detail]

10:30 p.m. on December 7, 2022:

Complainant said she went to bed at this time in an effort to get away from Respondent. She provided a text she stated she sent to Witness L, stating [detail]

Respondent recalled when Complainant went to bed she asked Respondent to join her so the two could "cuddle" [detail]



Writing Fundamentals: Active Voice

- Use the Active Voice v. the Passive Voice
- Passive Voice - What is it?
 - Using the "to be" verb, usually in the form of "was"
 - It emphasizes the action, not the thing/person responsible for the action
- Why do we want to avoid it?
 - It creates questions for the reader
 - It demonstrates holes in your investigation
- How do you know you are doing it?
 - "by Zombies"



Writing Fundamentals: Neutral Language

- Brushed, touched, grabbed, forced
- Rarely, sometimes, frequently, regularly, routinely
- Respondent, complainant, witnesses
- Parrot witnesses' terms, but use quotes (She said, "We were getting it on." She explained this meant....)
- Use anatomical language ("inserted his penis into her vagina," "touched her breast and twisted her areola")



Writing Fundamentals: Statement Origins

Statement origins:

- Is it clear if the statement was written or said verbally?
- Is it clear when the statement was made?
- Is it clear to whom the statement was made?



Statement Origins

1. Complainant provided text messages supporting her claim. She said Respondent made her uncomfortable in December. **Attachment 3.**
2. Respondent shared details about her November 2022 conversation with Complainant. She said Complainant was "out of control."



Quotations

- Should provide flavor and emotion
- Avoid quotes that merely provide facts
- Avoid overuse of quotations

Example: Witness L said the parties were “best friends” who “didn’t fight” and “like the same movies.”



Visual Aids

- Easier for the reader to follow
- Helps encourage the reader to actually READ your report
- Helpful summarization tool



Example

	Complainant's Perspective	Respondent's Response
Initial Kiss	"I remember him leaning in to try and kiss me. I said, "Don't do that, you're married. What are you doing?"	"I don't recall that in the same way. I think she might have been a bit surprised and not sure. But she asked me if I was sure, and I said, "Yes."
Discussion After Kiss	"I said things like, 'You're married.' We talked a lot about the ongoing project, and how it was going to be weird. [...] I remember trying to talk to him about his wife. [...] He said something along the lines of, 'I'd rather spend the night with an attractive 20-year-old.' He kept saying that it was just for fun, no big deal."	"That is not exactly what I recall. I remember saying this was just for fun, and I was okay with it. When she started to show doubt, when she brought up the project and said, "We have to work together, I don't want to do anything more..." that was later in the evening. I don't remember saying "attractive 20-year-old."
Moving to the Bed	"He picked me up and put me on the bed. I was saying, 'No, no, we shouldn't do that, things are going to be weird at work.' [...]"	"I don't remember her saying that at that point. It could be similar to what she said when I thought she was being doubtful, and things stopped. I don't remember if she said anything at that point, sorry."
Kissing on the Bed	"He said, 'This is just for fun,' and started kissing me and my neck. He said, 'I like your tattoo.' [...] He came up to my face and said, 'Just one kiss, just one kiss.' I said, 'Fine,' his face was right there, so I kissed him."	"In terms of the conversation, I'm not sure. We were kissing. I was kissing her on the neck. We were kissing each other, I do remember that. She was kissing me on the lips and on the face. I don't think she was kissing me on the neck or anywhere else."



Example

Complainant: "I became aware that Respondent was coaching them (Witness 1, Witness 2, and Witness 3). He was training them how to do the interview the day before the interview. He called them in, he told them what the panel was expecting [...] They (either Bob Smith or Kate Jackson) told LuAnn about the coaching."

LuAnn Jenkins: "I heard from Bob Smith[...] that Respondent called Witness 1, Witness 2, and Witness 3 to personally give them a heads-up about the interview. So they were, from what Bob told me, he called them upstairs and talked to them and prepared them for the interview. He told them what the panel was looking for, how to answer questions. So basically they were mentored on how to interview."

Bob Smith: "Kate called me and [...] told me they Respondent called Witness 1 into the office and coached and counseled her. I think she said 'upstairs,' I can't recall exactly where. It's where the Director's office is."

Kate Jackson: "I saw Witness 1, with a notepad, going upstairs to talk to the hiring manager. I said (to Bob Smith) maybe she's coaching her for the interview process. That's what I told Bob. I never said Respondent's name."



Example

Date	Type of Event	Event
March 24, 2016	Discipline	Memorandum from Respondent to Complainant regarding Failure to Follow Respondent's Directives.
May 25, 2016	Life Event	Complainant gave birth.
September 17, 2016	Incident	Fire alarm incident at the office.
October 24, 2016	Investigation	An outside investigator completed investigation into the fire alarm incident. The investigator emailed the report to Respondent, recommending that she issue a Letter of Warning to Complainant for her involvement.
April 4, 2017	Complaint	Complainant files a complaint against Respondent.
April 15, 2017	Discipline	Respondent issued a Letter of Warning to Complainant for the fire alarm incident.



Example

Date	Communication
Tuesday, May 10, 2016	[Van Dermyden to █████] Mr. █████ Please be advised that █████ has asked me to review allegations of retaliation by Mr. █████ in a recent email exchange with █████. As such, I would like an opportunity to interview Mr. █████. Assuming you would like to be present for this interview, let me know some available dates we can meet the week of May 16, 2016. As of right now, I can be available any day except Tuesday. I look forward to hearing from you.
Wednesday, May 11, 2016	[Van Dermyden to █████] Mr. █████ Just a friendly follow-up on yesterday's email. Please let me know availability for an interview with Mr. █████. Thank you.
Wednesday, May 11, 2016	[█████ to Van Dermyden] I am in an arbitration until Friday. I will contact you then.



Readability Statistics

- Through Microsoft Office –Word options; Proofing; Check grammar with spelling; Show readability statistics
- Shows counts for words, characters, paragraphs, sentences
- Shows averages of sentences per paragraph, words per sentence, characters per word
- Shows readability of:
 - Passive sentences – aim for 5-10%
 - Reading ease – aim for 60-70%
 - Grade level – aim for 7th



Odds & Ends

- Remove all contractions unless quoting
- Avoid using “said” when quoting emails or other documents
- Avoid “that”



Analysis and Findings



Template: Analysis and Findings

- Factual Findings + Analysis
- Policy Findings + Analysis (if within scope)
- NO legal determinations



Analysis

Credibility Assessments

- Not a determination of a "liar" - instead assess factors (but we all lie, sometimes everyday)
- "Truth" from the witness' perspective
- Manner of questions affect answers
- Malleability of memory



Analysis

Credibility: What it Is and What it is Not

- An assessment of the facts using credibility factors
- Factual and credibility analysis = one and the same?
- Credibility includes a party's believability
- Does a credibility analysis make someone a "liar?"
- Are we seeking the truth?



Credibility Factors

- Inherent Plausibility
- Direct Corroboration
- Indirect Corroboration
- Lack of Corroboration
- Material Omission
- Motive to Falsify
- Past Record
- Consistent Statements
- Inconsistent Statements
- Reputation
- Demeanor
- Comparators, Statistics



Credibility – How We Use It

Inherent Plausibility

- Is the testimony believable on its face?
- Could it have occurred as reported?
- What is the extent of the witness' opportunity to perceive any matter about which he or she testifies?
- What is the extent of the witness' capacity to perceive, to recollect, or to communicate?



Credibility – How We Use It

Direct Corroboration

- Does the party have actual knowledge?
- Is there witness testimony or physical evidence that corroborates the party's testimony?
- What is the extent of interviewee's opportunity to perceive matters about which he or she testified?

Indirect Corroboration

- Is there witness testimony or documentary evidence that demonstrates contemporaneous reporting of events?



Credibility – How We Use It

Lack of Corroboration

- Is there witness testimony or physical evidence that is inconsistent with statements made during the interview?

Material Omission

- Did the person omit material information?
 - In narrative? (Recall trauma-informed for Complainant)
 - In response to inquiry? (Quality of answers depends on quality of questions)



Credibility – How We Use It

Motive to Falsify

- Did the person have a reason to lie?
- Does the person have a bias, interest, or other motive?
 - Examine relationships
 - Explore potential biases
 - Consider reasons for self-protection
 - Carelessness of expression vs. lying
 - Give weight to admissions against interest / admissions of lying(?)
 - Mistaken belief vs. untruthfulness



Credibility – How We Use It

Past Record

- Does the Respondent have a history of similar behavior in the past?
- Does the Complainant have a relevant history?
- What weight do we give this in the present matter?
- Best predictor of future behavior is past behavior
- Consider:
 - Cumulative behavior
 - In scope behavior
 - Out of scope behavior



Credibility – How We Use It

Comparator Information

- Are there similarly situated individuals?

Statistics

- What do the numbers show?



Credibility – How We Use It

[In]consistent Statements

- Did the witness tell the same version of events to others, in writing in all material respects?
- Recall Trauma Effects (courtesy of Dr. Ingram):
 - Memory loss, lack of focus, emotional reactivity, lack of accurate and detailed information, non-linear stories, and multiple versions of a story can all be signs of trauma
 - Trauma victims have interrupted memory process
 - Trauma victims reluctant to recall experiences that evoke negative feelings
 - Lack of linear memory is often a sign of trauma



Credibility – How We Use It

• Trauma Effects, continued:

- Inconsistency by trauma victim is the rule
- The more confused the victim, the more likely they experienced trauma
- Additive stories with more details over time does not harm credibility
- Wildly varying stories more challenging
- Inconsistent statements do not equal a lie
- Weigh material vs. immaterial inconsistencies appropriately
- Inconsistent statements are not only the norm, but sometimes strong evidence that the memory was encoded in the context of severe stress and trauma (Strand, 2013)



Credibility – Proceed With Caution

- **Reputation.** Does the interviewee have a reputation for honesty or veracity, or their opposites?
- **Attitude.** Did the person cooperate when participating in the interview and/or providing information?
- **Demeanor.** Did the person seem to be telling the truth or lying (and why)?



Findings

- **Sustained:** An allegation is sustained when an investigation reveals a preponderance of the evidence in support of the allegation
- **Not sustained:** An allegation is not sustained when an investigation reveals there was not a preponderance of the evidence in support of the allegation



Findings

- **Unable to determine or “insufficient evidence”**
 - **Ever acceptable?**
- That is why they are paying / hiring you!
- Almost always have some factors to tip



Findings

- Findings supported by:
 - Factual analysis, resulting in factual findings
 - Credibility analysis, organically arises in factual analysis
 - Policy analysis, resulting in policy findings



Analysis: Weighing the Evidence

Above All – Be Fair!

- Acknowledge facts and evidence against your conclusion
- On the one hand, on the other hand....
- Considered factors that weighed against this finding....



Analysis: Weighing the Evidence

Relevant:

- Does it bear on a disputed issue that is important to deciding the question at hand?

Reliable:

- Credibility factors
- Personal knowledge
- Authenticity of documents

