



Investigation Reports

Your Role and Opportunity

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Learning goals

- ▶ Develop a broader perspective of the role of an investigator
- ▶ Understand basics of an investigation
- ▶ Comprehend full context and purpose of report
- ▶ Learn how to more effectively write investigation reports
- ▶ Difference between reports based on policy

Universities function as...



AND....

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Which is one of the many capacities
in which you serve.

Authority is diffused, making process
even more essential

Process creates trust and a sense of
fairness across the organization

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What does it mean to be an investigator?

- ▶ Fact gatherer
- ▶ Interviewer and assessor of credibility
- ▶ Researcher
- ▶ Policy expert
- ▶ Judge (depending on context)
- ▶ Auditor of organizational policies and practices
- ▶ Author
- ▶ Risk manager
- ▶ Communicator

How a communicator?

- ▶ Communicate with complainant to understand allegations
- ▶ Communicate witness questions
- ▶ Communicate through a report
- ▶ Communicate ideas for organizational improvement
- ▶ Communicate to investigatory agencies
- ▶ Communicate to the organization as a whole
- ▶ Communicate to attorneys
- ▶ Communicate to judges
- ▶ Communicate to present audiences
- ▶ Communicate to future audiences

Investigation guiding principles

- ▶ Good faith
- ▶ Reasonable
- ▶ Factual
- ▶ Objective
- ▶ Thorough

You get “the call”....what next?



- ▶ Reduce complaint to writing
- ▶ Understand the complaint!
- ▶ Contact John...it will ease your mind
- ▶ Review applicable policies
- ▶ Prima facie evidence?
- ▶ Interviews
 - ▶ Explain rules
 - ▶ Relevant witnesses
- ▶ Uncover all potential relevant evidence

Why respectable investigations are important

- ▶ Will enhance constituents' trust
- ▶ Mitigation of risk
- ▶ Preparation for defense
- ▶ Morale of university
- ▶ Pursuit of mission
- ▶ Cultural proficiency...can make a learning opportunity for people who don't realize their actions are offensive

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Common investigation mistakes

- ▶ Being in a hurry
- ▶ No training
- ▶ Conflict of interest
- ▶ Not understanding process and communicating policy to parties
- ▶ Lack of objectivity
- ▶ Not fully understanding allegations
- ▶ Not identifying all evidence
- ▶ Not managing expectations
- ▶ Not calling upon available resources...no one knows everything!



Types of evidence

Physical

- Least likely
- Object relevant to the allegations

Testimonial

- Most common
- Witness testimony

Documentary

- Likely
- Writing relevant to the allegations
- Many times electronic
 - Email
 - Texts
 - Chats

Overview of investigation reports



- Executive summary
- Allegations
- Sources of information
- Summary of relevant policy
- Summary of evidence
- Findings/conclusion
(depending on context)
- Recommendation, if any

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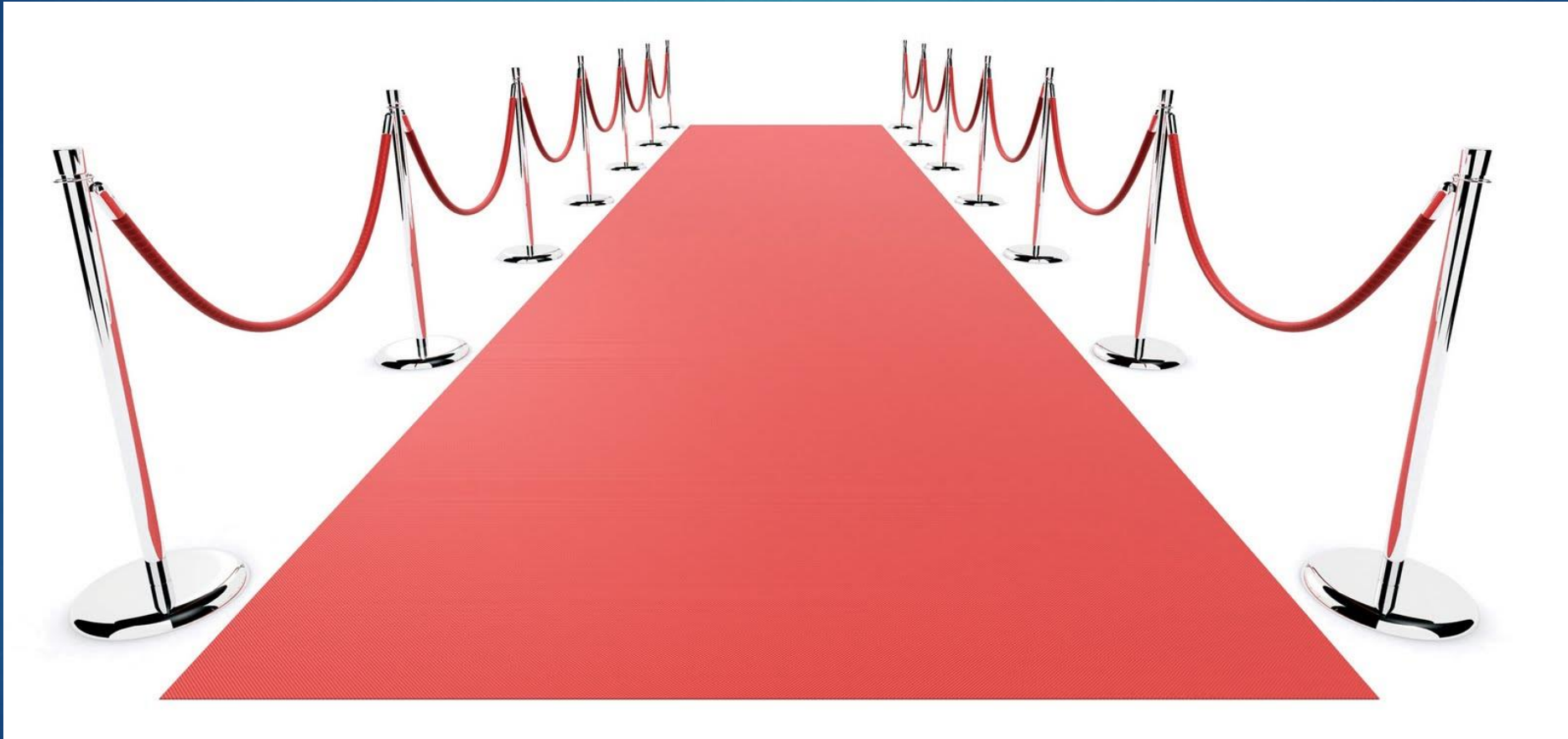
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Why are reports important?

- Opportunity to clearly communicate facts and reasons for determinations
- Opportunity to show ATSU follows fair processes
- Opportunity to reinforce ATSU's norms and values
- Opportunity to demonstrate fairness
- Opportunity to frame ATSU's defense
- Opportunity to mitigate risk



Your role is important to ATSU!



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Common mistakes in investigation reports

- ▶ Assumed knowledge
- ▶ Inconsistent format
- ▶ Lack of organization, logical train of thought
- ▶ Unclear and/or irrelevant witness testimony
- ▶ Unclear credibility determinations
- ▶ Remember, the New York Times is written at an 8th grade level
- ▶ Result...



Executive summary

- ▶ Most important section of report
- ▶ Concisely binds evidence with policy to lead to logical conclusion
- ▶ Written in hindsight
- ▶ Summary of allegation
- ▶ What is agreed upon and disputed (depending on context)
- ▶ States conclusion (depending on context)



Examples of executive summaries

Needs improvement

- ▶ *Employee X alleged the culture in his office is racist and he was retaliated against. I investigated the allegation and conclude the following: 1) The office did maintain a racist culture; 2) Employee X's supervisor did nothing to improve the culture; and 3) There is no evidence of retaliation.*

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Examples of executive summaries

Right on point

- ▶ *On September 30, 2015, Employee X, a member of a protected class, reported to Human Resources information about the Physiology Department's ("the Department") culture. Employee X complained the Department's culture was racist and employees were hesitant to file a complaint due to fear of retaliation. Human Resources investigated the allegations and uncovered consistent witness testimony complaining the office culture encouraged racist jokes and degradation of Employee X's protected class. This Investigator finds Employee X was discriminated against as a result of severe, pervasive, offensive, and racist behavior that unreasonably interfered with Employee X's ability to perform his job. This Investigator also finds Employee X did not meet the minimum requirements of the position he applied for and therefore was not discriminated against for not being offered the job. Lastly, there is no evidence to support the allegation of retaliation.*



Description of allegations

- ▶ Understand the allegations!
- ▶ Clear and succinct
- ▶ Split out into separate issues by applicable policy



Examples of allegation descriptions

Needs improvement

- ▶ *Employee X alleges his supervisor made racist jokes and didn't promote him to a job he was qualified for. Since his supervisor knows of this complaint he is treating him even worse.*
- ▶ *What can we improve?*

Right on point

- ▶ *Employee X alleges his supervisor, Supervisor Y, discriminated against him based on race in violation of Title IIV of the Civil Rights Act of 1964 by promoting an racially offensive culture and passing over him for a promotion. Employee X further alleges Supervisor Y is now retaliating against him for making this complaint by assigning the preferable assignments to his colleagues.*
- ▶ *Why is this better?*



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Sources of information

- ▶ Witnesses
- ▶ Emails or other electronic means
- ▶ Documents
- ▶ Policies
- ▶ Evidence requested that was not provided (lack of cooperation)

Summary of applicable policy

- ▶ What does the policy prohibit?
- ▶ Succinctly state the rule
 - ▶ Be concise
 - ▶ Separate out the elements (member of protected class, disparate treatment, etc)



Example of effective policy summary

- ▶ General order 90-210, Prohibition of Discrimination, Harassment, and Retaliation, prohibits discrimination against any person by virtue of their protected class and/or taking an adverse action against an employee for filing a good faith complaint. Protected classes under University policy include race, gender, etc. Forms of harassment include quid pro quo and a hostile work environment (form of harassment relevant in this investigation). A hostile work environment is created by unwelcome comments or conduct based on a protected class that unreasonably interferes with an employee's work performance or creates an intimidating, hostile or offensive work environment. The offensive conduct must be severe and pervasive to create a hostile work environment.

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Summary of the evidence

- ▶ Summary of witness testimony
- ▶ Summary of relevant documents
- ▶ Summary of physical evidence

Summary of witness testimony

- ▶ Short, not a transcript
- ▶ Only include testimony
- ▶ Forced brevity helps you be factual
- ▶ Use quotes when at all possible
- ▶ Separate the allegations
 - ▶ Guide the reader logically
- ▶ Don't give opinions except for credibility determinations
- ▶ Use names, not pronouns



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Examples of witness summaries

Needs improvement

- ▶ *Witness X said Supervisor Y was hard on Employee X and discriminated against him. Witness X said Employee X told him he should have been promoted but wasn't. Witness X recalls witnessing Supervisor Y making inappropriate racial jokes, although Witness X was not offended. Witness X receives positive performance evaluations from Supervisor Y. Witness X said he has been working for Organization X for 8 years and thinks it is a great organization has never been interviewed in an investigation....*
- ▶ What can we improve?
- ▶ Where are the holes?

Examples of witness summaries

Right on point

- ▶ *Witness X recounted a meeting on February 12, 2016, in which Supervisor Y directed a “racial joke towards Employee X.” This has happened on several other occasions (around October 2015 was another Witness X could recall) and no other employees are joked around with in this way. In December 2015, Witness X said Witness X and Director X witnessed Employee X tell Supervisor Y “he was offended by those types of jokes, but the jokes haven’t stopped.” Witness X recalls Employee X “did not get a promotion he applied for” but “did not know the details beyond that.” Witness X stated he believes the quality of Employee X’s work has suffered due to the offensive office culture. Witness X’s recollection is consistent with other witness testimony and therefore this Investigator finds the testimony credible.*
- ▶ *Why is this witness summary more effective?*



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Summary of documentary evidence

- ▶ What is the document (memo, email, etc)
- ▶ Where did you find the document?
 - ▶ Obtain documents appropriately
- ▶ Who wrote the document?
- ▶ Why is the document relevant?
- ▶ What did the document say?
 - ▶ Brief
 - ▶ Factual



Summary of physical evidence

- ▶ What is the physical evidence (footprints, fingerprints, weapon)?
- ▶ Where did you find the physical evidence?
 - ▶ Obtain physical evidence appropriately
- ▶ Why is the physical evidence relevant?



Findings/conclusion

- ▶ Dependent on context of allegations
- ▶ Needs to logically flow from evidence and policy
- ▶ State whether evidentiary standard was met
- ▶ Credibility determinations
- ▶ Ties evidence in with relevant policy
- ▶ Options—the right conclusion is never the wrong conclusion;
 - ▶ Complaint substantiated
 - ▶ Complaint unsubstantiated
 - ▶ Good faith complaint
 - ▶ Bad faith complaint
 - ▶ Truth in the middle, but still prohibited conduct



Examples of findings/conclusions

Needs improvement

- ▶ *It is my opinion Supervisor Y discriminated against Employee X but there is no evidence of retaliation.*
- ▶ How can we improve?



Examples of findings/conclusions



Right on point

- ▶ After review of the evidence and application of general order 90-210: Prohibition of Discrimination, Harassment, and Retaliation, this Investigator concludes the following:
 - 1) Employee X experienced unwelcomed, offensive conduct witnessed by other employees, the effect of which unreasonably interfered with Employee X's ability to perform the functions of his job;
 - 2) Employee X was passed over for a promotion, but review of the job description and posting shows Employee X did not meet the minimum qualifications for the position and therefore the decision was not made for discriminatory reasons; and
 - 3) There is no evidence to support the allegations of retaliation because Supervisor Y was not aware Employee X made a complaint of discrimination.

Recommendations

▶ 2 levels

▶ In the report

- ▶ Recommended discipline and ways to prevent offender from offending again

▶ Post-report

▶ Recommended process improvements

- ▶ Department training
- ▶ Policy training
- ▶ Awareness campaigns

Now we are ready for “the call”



Questions and discussion



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