Title IX Investigator Training
October 11, 2022
SUNY Student Conduct Institute
Meet your facilitator

Rebecca Leitman Veidlinger is an attorney specializing in Title IX and the institutional response to complaints of gender-based discrimination, sexual harassment, and sexual violence. Rebecca has conducted and supervised hundreds of Title IX investigations, and she regularly serves as a Title IX hearing officer for institutions.

Rebecca teaches and trains on school-related sexual misconduct nationwide. As an adjunct professor at the University of Michigan Law School, she teaches a seminar on Title IX, and she frequently provides sexual misconduct prevention and response training to higher education administrators, Title IX implementers, and K-12 personnel. Rebecca was recently appointed as the external co-chair of the University of Michigan’s Coordinated Community Response Team, a group that examines the University’s prevention and response efforts, identifies areas for growth, and makes policy recommendations to the University’s leadership.

Before entering private practice, Rebecca worked at the University of Michigan as a Title IX investigator. She also served as Michigan State University’s interim deputy Title IX coordinator, overseeing MSU’s creation of a free-standing civil rights investigation unit in 2015. Rebecca is the former sex crimes prosecutor in Monroe County, Indiana (home of Indiana University), where she prosecuted hundreds of cases of domestic and sexual violence involving children and adults.
Our agenda for today

- What the regulations say about investigations
- Understanding the goals of an investigation
- Preparing to investigate
- Conducting comprehensive interviews of parties and witnesses
### Our agenda for Thursday

- Collecting other evidence
- How to do evidence review
- Summarizing interviews
- Writing investigation reports
- Addressing bias
Poll: Title IX investigations

• A window will pop up on your screen
• Read the question and the answer options
• Pick the one answer that best fits you
• Sit back and enjoy seeing how your colleagues responded
“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”
Before the investigation . . . 

Title IX jurisdiction determined by Title IX Coordinator

Allegations fall within definition of Title IX sexual harassment

Title IX Coordinator offered supportive measures to both parties

Notice letters have been issued to both parties
Investigation process under the regulations

- Notice
- Collection of evidence
- Share evidence directly related to allegations with parties
  - Parties have 10 days to review and provide written feedback
- Consider the parties’ written responses
- Create investigative report that summarizes relevant evidence
  - Parties have 10 days to review and provide written feedback prior to hearing
A bit more from the Regulations about investigations and the grievance process . . .

- Treat complainants and respondents equitably
- Require an objective evaluation of all relevant evidence
- No conflict of interest or bias in any Title IX implementer
- Include a presumption of nonresponsibility
- Include reasonably prompt time frames for conclusion of the grievance process
And still more. Investigators should:

• Provide equal opportunity for the parties to present witnesses and other evidence
• Provide the parties the same opportunities to have an advisor at all meetings/proceedings
• Provide written notice of date, time and location of all meetings, with sufficient time for party to prepare
• Be adequately trained
And investigators should NOT

- Restrict the ability of either party to discuss the allegations or to gather and present evidence
- Limit the choice or presence of an advisor
- Be biased in favor of one party or the other, or in favor/against complainants generally or respondents generally
Q & A:
What the Regulations require
Overarching goals of an investigation

- Collect as much reliable and relevant evidence as possible
- Utilize a process where the parties are treated fairly and impartially
- Write a report that illustrates you did all of the above
- Collect all of your investigation materials into a format that is helpful to the decision-maker
Overarching goals of an investigation

- Collect as much reliable and relevant evidence as possible
- Utilize a process where the parties are treated fairly and impartially
- Write a report that illustrates you did all of the above
- Collect all of your investigation materials into a format that is helpful to the decision-maker
Preparing to start the investigation

• Review complaint
• Review notice letters
• Review all initial information
• Review relevant policy definitions and think about the kind of questions you’ll need to ask
• What facts does the decision maker need to make a determination?
Example: Incapacitation

• When alcohol or other drugs are involved, it is important to understand the level of impairment that results from a person’s level of consumption. A person’s level of impairment is not always demonstrated by objective signs; however, some signs of intoxication may include clumsiness, difficulty walking, difficulty concentrating, slurred speech, vomiting, combativeness, or emotional volatility.

• Evaluating whether another individual is incapacitated requires an assessment of whether the consumption of alcohol or other drugs has rendered that individual physically helpless or substantially incapable of:
  • Making decisions about whether to engage in Sexual Contact or Sexual Intercourse; or
  • Communicating Consent to Sexual Contact or Sexual Intercourse.

• In evaluating Consent where the question of incapacitation is at issue, the University asks two questions: (1) did the person initiating sexual activity know that the other party was incapacitated, and if not, (2) should a sober, reasonable person, in the same situation, have known that the other party was incapacitated? If the answer to either question is yes, then there has not been consent.
Use chat to share with all of us:

What specific facts do you need to gather for the determination of incapacitation?

- Chat is located at the bottom of your screen
- Click on Chat, and a window will open up
- In the “to” field, make sure you have the word “everyone”
- Type in whatever you want to share, and press “return”
- Keep the Chat open to see what others share
- You can close the Chat at any time by clicking on the red box in the upper left of the Chat window

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Example: Sexual Harassment

Sexual Harassment is any unwelcome conduct, based on sex, determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.
Questions you’ll need to ask re: sexual harassment

- Specific nature of the conduct (e.g., exactly what was said or done)
- Did Complainant initiate or invite the conduct?
- Frequency of the conduct
- Whether conduct was widespread
- Whether a reasonable person would view the conduct as severe, persistent or pervasive
- And think about: how and who will we ask these questions?
Collection of evidence

Interviews of parties and witnesses
An initial fundamental thing to remember:

The goal of interviews

What techniques can we use to help us achieve that goal?
First things first:
- Guiding principles
- Basics about interview structure
- Key rules
Principles for every interview

• Reflect neutrality and professionalism alongside appropriate kindness
• Be open to the person you are interviewing
• Be prepared, and show that you are prepared
• Use clear communication
• Be transparent about your role
• Talk like a human being

• Stay in touch with the parties throughout investigation

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Interviewing the parties: Structure

• Let the party know what is happening, before you meet and when you meet
• Have a standard way that you explain:
  ▪ Your neutrality
  ▪ Investigative process
  ▪ Prohibition on retaliation
  ▪ Confidentiality, privacy, and disclosure issues related to their statement
• Make a note of every written/electronic item they mention
• Ask for (and discuss) list of witnesses
Interviewing the parties: Structure (cont’d)

• Last question before closing meeting should be open-ended invitation for them to add anything
• Review items of evidence discussed
• At end of meeting:
  • Remind them of next steps and resources
  • Close with a bit of comfortable conversation
And some things you will never ask about (per the Regulations):

• Complainant’s sexual predisposition or prior sexual behavior, unless offered to prove that someone other than respondent committed the alleged conduct or concerns specific incidents of the complainant’s prior sexual behavior with respect to the respondent and is offered to prove consent

• Information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege

• Treatment records of a party maintained by a physician, psychiatrist, psychologist, or similar provider unless party gives written consent
Conducting the interview

- Different approaches to interviewing
- Challenges
- Examples
Interviewing techniques

- Learning from different systems:
  - Child forensic interview
  - Trauma-informed interview
  - Forensic experiential trauma interview

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Conducting thorough interviews

Party’s initial account

Direct to areas of interest

Specific questions
Transitioning to follow-up questions

- Tell me all about walking to Cal’s dorm.
- Help me understand what was going on while you and Skylar were walking to your dorm.
- What were your thoughts and feelings when you first arrived at Cal’s room?
- You said you felt trapped. I want to make sure I understand what you mean by feeling trapped.
- I don’t want to make any assumptions, so can you explain what you mean when you said that you and Skylar had been “talking” in the two weeks prior to this encounter?
- I am going to ask about what happened once you were on the bed. It’s important that I gather as much information as possible about that part of the encounter because the decision-make will need that information in evaluating the issues in this matter.
- I am going to shift gears now to the morning following your interaction with Skylar.
- What were you hearing while Cal was removing your clothes?
- How did you know Skylar wanted to engage in kissing?

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Use chat to share with all of us:

What are some challenges when it comes to conducting interviews of complainants?

• Chat is located at the bottom of your screen
• Click on Chat, and a window will open up
• In the “to” field, make sure you have the word “everyone”
• Type in whatever you want to share, and press “return”
• Keep the Chat open to see what others share
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What does the typical complainant interview sound like? It could start like this:

• Skylar, I understand you have raised concerns about an interaction you had with Cal on November 4, 2021.

• How do you know Cal?

• Starting where makes sense for you, please tell me about your experience with Cal. I’m sure I’ll have some follow up questions for you, but I’d first like to hear about your experience in your own words.
Thank you for sharing your experience. As I mentioned, I do have some follow up questions where I’d like to learn more.

You mentioned attending a party at Kelly’s house before going to Respondent’s dorm room.

- Can you tell me all about the party?
- I’d like to hear all about that party, like what you did, who you may have interacted with, what prompted you to leave, etc.
- Who did you go to the party with?
- What is Kelly’s last name?

You mentioned sending a text message to Respondent an hour after you left their apartment. Do you still have that? Are you willing to share it with me?
<table>
<thead>
<tr>
<th>How do you ask a complainant about . . .</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcohol consumption</td>
</tr>
<tr>
<td>Specific details of/surrounding the sexual act</td>
</tr>
<tr>
<td>Post-incident initiation of contact by Complainant toward Respondent</td>
</tr>
<tr>
<td>Complainant’s 18-month delay in reporting incident</td>
</tr>
</tbody>
</table>
Use chat to share with all of us:

What are some challenges when it comes to conducting interviews of respondents?

• Chat is located at the bottom of your screen
• Click on Chat, and a window will open up
• In the “to” field, make sure you have the word “everyone”
• Type in whatever you want to share, and press “return”
• Keep the Chat open to see what others share
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How might respondent interviews differ from complainant interviews?

• All the same principles (from prior slides) regarding structure and follow-up questioning apply equally here
• You may have some open-ended questions and some specifically prepared questions
• Be prepared for a demand to know the allegations— and tell them what the allegations are
• Give respondent opportunity to respond to every claim
• Explore all reasons why complainant might have raised the concerns: “Do you have any idea why the complainant would make these allegations?”
<table>
<thead>
<tr>
<th>Interviewing parties--some tough issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reluctant party</td>
</tr>
<tr>
<td>Party wants lots of witnesses</td>
</tr>
<tr>
<td>Party doesn’t want a particular witness</td>
</tr>
<tr>
<td>Very emotional party</td>
</tr>
</tbody>
</table>
Make sure you’ve collected enough information for decision-maker to make their determination

Relevance + Reliability + Credibility = Weight/probative value

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Relevant evidence

No definition from the Regulations

Should be interpreted using its plain and ordinary meaning.

Has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action.
How does a decision-maker assess credibility?

- Motive or bias to give inaccurate account (such as relationship to the parties or has anything to gain or lose from the case)
- Inherent plausibility/logic of account
- Corroboration/Consistency with other evidence
- Inconsistency within their own account? Reasonable/minor or significant?
- Demeanor
Complaint: Terry and Taylor

In November 2021, while they were on campus in the Student Activities Building, undergraduate student Taylor Gold made unwelcome sexual comments and sexual advances and inappropriately touched and groped undergraduate student Terry Rodriguez without consent.
Potential policy violations

Sexual harassment (hostile environment)

• Unwelcome conduct, based on sex, determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity

Fondling

• The touching of the private body part of another person (buttocks, genitals, breasts) for the purposes of sexual gratification, without the consent of that person
Witnesses

- Advise witnesses of neutrality, lack of confidentiality and retaliation
- Ask about relationship to parties/conversations about interview
- Give the witness very little specific information about the allegations
- Last question before closing meeting should be open-ended invitation for them to add anything
Advisors during the investigative process

- Emails—who should you communicate with?
- Problematic advisor behavior during interviews
- Advisors who are new to the Title IX process
Following up after initial rounds of interviews

Why might we need to follow up?

Is it okay to follow up?

How do you pose the follow-up questions?
Q & A:
Investigative interviews
Title IX Investigator Training

October 13, 2022

SUNY Student Conduct Institute
Reminder! We already talked about

- What the regulations say about investigations
- Understanding the goals of an investigation
- Preparing to investigate
- Conducting comprehensive interviews of parties and witnesses
Our agenda for today

1. Collecting other evidence
2. How to do evidence review
3. Summarizing interviews
4. Writing investigation reports
5. Addressing bias
Collection of evidence

Evidence other than interviews
Other evidence common in campus investigations

- Texts/emails
- Social media posts
- Police reports
- Photos
- Medical records
- Phone records
- Surveillance videos
- Key card swipe records
Issues related to collecting evidence

• Burden is on the institution

• Challenge re: authenticity of an item

• Learning about additional potential policy violations during the investigation
Multiple choice question

• A window will pop up on your screen
• Read the question and the answer options
• Pick the best answer
• Sit back and enjoy seeing how your colleagues responded
Q & A:
Collecting other evidence and documenting investigative steps
Evidence review

Share with both parties the evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
Understanding directly related

• Regulations don’t define directly related
• A broad net–broader than “relevant” evidence
• Preamble says should be interpreted according to its plain and ordinary meaning
Poll: Interview policy

• A window will pop up on your screen
• Read the question and the answer options
• Pick the one answer that best fits you
• Sit back and enjoy seeing how your colleagues responded
Logistics of evidence review:

What does this look like?

- Actual items of evidence
- Transcribed interviews v. unrecorded interview notes
- File-sharing platform
- Preliminary report??
  - Pros and cons
Both responses will be an additional item of evidence to be included with investigation report

What do you do when:
- Party provides new screenshots of text messages
- Party identifies five additional witnesses who were never mentioned previously
- Party annotates the other party’s interview summary, pointing out all the times they believe the person lied
- Party points out the ways in which other party’s account is contradicted by the surveillance video evidence
Q & A: Evidence review process
Investigation report

Investigator must create an investigative report that fairly summarizes relevant evidence.

No required structure in Regulations.
Overarching goals of an investigation

Collect as much reliable and relevant evidence as possible

Utilize a process where the parties are treated fairly and impartially

Write a report that illustrates you did all of the above

Collect all of your investigation materials into a format that is helpful to the decision-maker
What does it mean to summarize

Transcripts of recorded interviews
Written summaries of unrecorded interviews
Police reports
Text messages
Medical records
Surveillance videos
Key card swipe records

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Drafting the interview summary

- Remember relevance
- Chronological narrative
- "Direct quotes"
- When appropriate, note demeanor or things that happen during the interview
- "I don’t know" and "I don’t remember"
Drafting the interview summary (cont’d)

• Topic sentences
• Show how the information came out
• Send draft of summary (of unrecorded interview) to person for review for accuracy
• Address feedback on the summary of the interview appropriately
• Footnotes
Breakout room exercise

• You don’t need to push any buttons!
• You will automatically be put in a breakout room.
• You will see several other colleagues there.
• Review the transcript of interview of Respondent Taylor Gold
• (There’s a link in the Chat box if you need a copy of the transcript)
• For each highlighted section determine: (1) if you would include that in the summary, and (2) how you would phrase it.
• You will automatically be moved back into the main session after 10 minutes.
Addressing parties’ responses to evidence review in investigation report

• Document additional investigative steps and include any additional evidence collected

• Summarize party’s position/arguments in section addressing parties’ response to evidence review
Investigation report structure—

Suggested sections

• Background
• Allegations from complaint
• Relevant policy provisions
• Procedural steps
• Table of evidence collected
  • Includes parties’ responses to the evidence review
  • Indicates who provided each item
• Summary of party interviews
• Summary of witness interviews
• Response to evidence review
• Appendices/Exhibits
  • Including exhibit of irrelevant evidence
On November 2, 2021, undergraduate student Skylar Smith ("Complainant") filed a Formal Complaint against undergraduate student Taylor Jones ("Respondent") alleging violations of the University’s Title IX and Sexual Misconduct Policy ("Policy"). Following the Title IX Coordinator’s initial assessment and outreach to both parties, on November 14, 2021, the University commenced a formal investigation into the Formal Complaint pursuant to the University’s Title IX and Sexual Misconduct Grievance Procedures ("Procedures"). This Investigation Report details the University’s investigation into those allegations and summarizes the relevant evidence collected.
Investigation report structure—
Allegations from Formal Complaint

In their Formal Complaint, Complainant alleged as follows:

[Either include exact language from Formal Complaint, if appropriate].

or paraphrase, such as:

On or about October 7, 2021, when the parties were in Respondent’s dorm room in Academia Hall, Respondent repeatedly touched and grabbed Complainant’s buttocks even after Complainant told Respondent to stop touching their buttocks, while Complainant was highly intoxicated and unable to consent.
Investigation report structure—
Relevant Policy provisions

The allegations in the Formal Complaint implicate the Policy’s definitions of Sexual Assault: Fondling; Consent; and Incapacitation.

The Policy defines Sexual Assault: Fondling as

The Policy defines Consent as

The Policy defines Incapacitation as
Investigation report structure—Procedural Steps
<table>
<thead>
<tr>
<th>DATE</th>
<th>ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>7/31/2021</td>
<td>Formal Complaint filed</td>
</tr>
<tr>
<td>8/9/2021</td>
<td>Notice letter issued to Complainant and Respondent via email</td>
</tr>
<tr>
<td>8/13/2021</td>
<td>Email outreach for interview to Complainant</td>
</tr>
<tr>
<td>8/19/2021-8/20/2021</td>
<td>Email outreach for interview to Respondent</td>
</tr>
<tr>
<td>8/23/2021</td>
<td>Second interview of Complainant</td>
</tr>
<tr>
<td>8/27/2021</td>
<td>Email outreach for interview to Witness 1; sent draft of interview summary to Complainant for review</td>
</tr>
<tr>
<td>8/31/2021</td>
<td>Email outreach for interview to Witness 2</td>
</tr>
<tr>
<td>9/1/2021</td>
<td>Interview of Witness 1</td>
</tr>
<tr>
<td>9/2/2021</td>
<td>Interview of Respondent; sent draft of interview summary to Witness 1 to review</td>
</tr>
<tr>
<td>9/3/2021</td>
<td>Second email outreach for interview to Witness 2</td>
</tr>
<tr>
<td>9/5/2021</td>
<td>Email from Respondent identifying Witness 5 as witness</td>
</tr>
<tr>
<td>9/7/2021</td>
<td>Interview of Witness 2</td>
</tr>
<tr>
<td>9/8/2021</td>
<td>Interview of Witness 3, Witness 4</td>
</tr>
<tr>
<td>10/4/2021</td>
<td>Draft Investigation Report and Directly-Related Evidence shared with the parties</td>
</tr>
<tr>
<td>10/14/2021</td>
<td>Complainant submitted response to Draft Investigation Report and Directly-Related Evidence</td>
</tr>
<tr>
<td>10/15/2021</td>
<td>Final Investigation Report and Relevant Evidence submitted to Title IX Coordinator</td>
</tr>
</tbody>
</table>
Investigation report structure—
Table of evidence collected
<table>
<thead>
<tr>
<th>Description</th>
<th>Date</th>
<th>Exhibit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formal Complaint</td>
<td>September 22, 2021</td>
<td>A</td>
</tr>
<tr>
<td>Notice of Investigation to Complainant</td>
<td>November 15, 2021</td>
<td>B</td>
</tr>
<tr>
<td>Notice of Investigation to Respondent</td>
<td>November 15, 2021</td>
<td>C</td>
</tr>
<tr>
<td>Amended Notice of Investigation to Complainant</td>
<td>November 22, 2021</td>
<td>D</td>
</tr>
<tr>
<td>Amended Notice of Investigation to Respondent</td>
<td>November 22, 2021</td>
<td>E</td>
</tr>
<tr>
<td>Complainant’s initial interview summary</td>
<td>December 10, 2021</td>
<td>F</td>
</tr>
<tr>
<td>Complainant’s initial response to interview summary</td>
<td>February 8, 2022</td>
<td>G</td>
</tr>
<tr>
<td>Complainant’s follow-up interview summary</td>
<td>February 21, 2022</td>
<td>H</td>
</tr>
<tr>
<td>Screenshots of Snapchat messages provided by Complainant</td>
<td>February 22, 2021</td>
<td>I</td>
</tr>
<tr>
<td>Respondent’s initial interview summary</td>
<td>December 28, 2021</td>
<td>J</td>
</tr>
<tr>
<td>Respondent’s initial response to interview summary</td>
<td>February 4, 2022</td>
<td>K</td>
</tr>
<tr>
<td>Witness 1’s initial interview summary</td>
<td>January 28, 2021</td>
<td>L</td>
</tr>
<tr>
<td>Witness 1’s response to initial interview summary and additional information</td>
<td>February 12, 2022</td>
<td>M</td>
</tr>
<tr>
<td>Irrelevant evidence</td>
<td>Various</td>
<td>N</td>
</tr>
</tbody>
</table>
Investigation report structure—
Summary of party interviews

The investigator interviewed both parties via Zoom. Complainant’s advisor, Sal Price, was present for their interview. Respondent chose not to have an advisor present for their interview. Prior to the parties’ interviews, the investigator advised each party of the following: investigator neutrality, that information shared with the investigator was not confidential and would be shared with the other party and included in the investigation report, and the of University’s prohibition on retaliation. The information summarized in the sections below is presented from the perspective of the party interviewed.
Investigation report structure—Summary of witness interviews

The investigator interviewed all witnesses via Zoom. Prior to each witness interview, the investigator advised each witness of the following: investigator neutrality, that information shared with the investigator was not confidential and would be shared with the parties and included in the investigation report, and of the University’s prohibition on retaliation. The information summarized in the sections below is presented from the perspective of the witness interviewed.
Investigation report structure—Response to evidence review

On January 24, 2022, both parties provided responses to the evidence review. In their response (Exhibit H), Complainant identified two additional witnesses (Witness 4 and Witness 5) and provided argument regarding the summary of Respondent’s interview.

In their response (Exhibit I), Respondent submitted additional text messages exchanged between the parties on the day following the incident (Exhibit J) and provided argument regarding the summary of Complainant’s interview and Witness 2’s interview.
<table>
<thead>
<tr>
<th>Other sections I’ve seen in reports</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Narrative section that weaves together all party and witness accounts</td>
</tr>
<tr>
<td>2. Disputed/undisputed facts</td>
</tr>
<tr>
<td>3. Statement of jurisdiction</td>
</tr>
<tr>
<td>4. Objective of the investigation</td>
</tr>
<tr>
<td>5. List of training the investigator has taken</td>
</tr>
</tbody>
</table>
Q & A: Summarizing relevant evidence and writing the investigation report
Regulations require that investigators be unbiased

• What does it mean to be unbiased?
  • Don’t have a bias for or against complainants or respondents generally
  • Don’t have a bias for or against an individual complainant or respondent
  • Treat parties equally/equitably during interviews
  • Seek to interview witnesses identified by both parties
  • Don’t prejudge the evidence
Deeper dive into bias

- Bias is not an action; it occurs in a person’s head
- What is implicit bias?
- Different kinds of bias
Use chat to share with all of us:

How can bias show up in an investigation?

• Chat is located at the bottom of your screen
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• Type in whatever you want to share, and press “return”
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Thank you!

I welcome your feedback.

rebecca@veidlinger.com
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