Conducting Effective Internal Investigations

TNACUA

Module Three: Reaching a Conclusion and Credibility Determinations

Katherine M. Allen, Associate General Counsel, The Pennsylvania State University

Natasha Baker, Managing Attorney, Novus Law Firm, Inc.

Pamela Heatlie, Director of the Office for Institutional Equity, University of Michigan – Dearborn

1

Module Overview

Corroborating evidence

Direct and Circumstantial evidence

Other Types of Evidence

Weight of Evidence

Credibility determinations

- Inconsistencies
- Plausibility
- Motives
- · Demeanor of parties and witnesses
- · Effects of Trauma



National Association of College and University Attorneys

Corroborating Evidence

- Definition: Evidence that supports other evidence (Documents that support oral reports)
- · What is it?
- How do you get it?
- What weight is accorded?

3

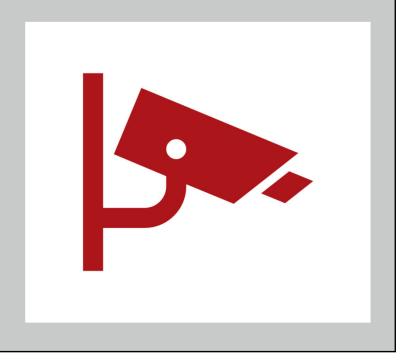
Circumstantial **Evidence**

Definition: Evidence that can be used to INFER but not prove a conclusion. Contrast: direct evidence.

- Example: pattern evidence. Should be VERY similar in nature. NOT – general character/bad actor evidence
- Ask: Does our process allow circumstantial evidence?
- What weight is it accorded?

Other Types of Evidence

- Character evidence
- Recordings
- Polygraph/lie detector tests



TNACUA

National Association of College and University Attorneys

5

Case Study Review

- What corroborating evidence do we have?
- What circumstantial evidence do we have?
- What else do we need?



Weight of Evidence

- Is all evidence created equal?
- Eyewitness vs secondhand/hearsay
- Corroborating evidence
- · Direct evidence
- · Circumstantial evidence
- · Other evidence





7

Case Study Review

- Weighing the evidence
- What evidence is strong?
- What evidence is weak?



Credibility Determinations

Factors to consider:

Inconsistencies

Plausibility

Motive

Demeanor

Effects of Trauma



TNACUA

National Association of College and University Attorneys

Credibility Determinations: Inconsistencies

- Individual is inconsistent in own report.
 - Trauma or fear?
 - Lying?
 - ASK!
- · Individual is inconsistent with others.
 - Anomaly?
 - · Coached testimony?
 - ASK!

Credibility Determinations: Plausibility

- · What is reasonable?
- Level of detail?
- Apply the appropriate standard of proof.
 - Preponderance of the evidence (maybe this)
 - Clear and convincing (maybe this)
 - Beyond a reasonable doubt (rare)
- You will very likely feel uncomfortable. It's okay.



11

Credibility Determinations: Motive

- What is the relationship?
- Classify the witness:
 - Witness with an axe to grind?
 - Witness who wants to protect?
 - Witness who loves the limelight?
 - Witness who doesn't want to be involved?

TNACUANational Association of College and University Attorneys

Credibility Determinations: Demeanor

- Controversial
- Need a baseline for comparison
- Don't usually know how the person "normally" behaves
- Cultural/regional/religious expectations may cloud assessment

TNACUA
National Association of College and University Attorneys

13

Eyewitness Testimony

- Reliability
- Selective Attention
- TIP: Seek corroborating evidence





Case Study Review

- Assessing credibility
 - •Inconsistencies?
 - Corroborating evidence?

TNACUA
National Association of College and University Attorneys

15

Credibility Determination: Impact of Trauma (Fear-based Response)

- Impacts ability to retell and recall info
- Likely gaps in memory
- Memories are not encoded chronologically
- Shame, blame and fear
- Reluctance





Note

The content of this presentation is to provide news and information on legal issues and all content is provided for informational purposes only and should not be considered legal advice.

The transmission of information in this presentation does not establish an attorney-client relationship with the recipient. The recipient should not act on the information contained in this presentation without first consulting retained legal counsel.

If you desire legal advice for a particular situation, you should consult an attorney.

