Reminder

- It is the University that bears the burden to collect evidence, not the parties.
- We can ask parties and witnesses nicely, but we have no subpoena power.
- Evidence may be in the possession of non-witnesses.
Concurrent Criminal Investigation?

• Do the allegations involve a concurrent criminal investigation?
  • If so, coordinate with police and document interactions in your notes.
  • What information can be obtained from the criminal investigation, and when can it be requested?

Security Information

• Is there security camera footage?
• Is there card swipe information?
Electronic Communications

- Text messages and voicemails
- Social media – posts and private messages
- E-mails
- Cell phone call logs
- FaceTime call logs
- Snapchat

Preserving Texts

- Screenshots
- Screen recordings → Transcripts

Ask parties/witnesses to capture the information in a way that preserves date and timestamps.
Text Message Comparisons

- Obtain messages from both parties.
- If there is a discrepancy, ask why.
- If one party doesn’t have the messages anymore, ask if the messages produced by the other party appear to be accurate.

Translations

- If messages are in another language, obtain a translation.
- Make sure the parties have the opportunity to review and respond to the translation.
- (This should also be a sign that you should check with the parties to see if they require interpreter assistance for the grievance process.)
Incapacitation Cases

• The goal is to put together a detailed timeline of the evening.
  • Text messages, photographs, videos, audio recordings
  • Social media posts
  • Credit card receipts
  • Rideshare receipts
• These all help document intoxication levels and who was present to observe those levels.
• Timestamps and metadata are helpful!

Prior Complaints

• By complainant against others: typically not relevant (unless complainant was found responsible for a false report).
• By someone else against respondent: might be relevant, but it depends on whether the behavior alleged in the prior complaint is substantially similar to that alleged here.
DNA and Fingerprints

- If you are working with physical evidence and think, “I should wear gloves for this,” that’s a sign you should be working in conjunction with the police to collect the evidence.
- Even if there is not a concurrent criminal investigation, police may be willing to work with you if the allegations suggest potential criminal implications.
- Chain of custody is incredibly important with physical evidence.

Medical/Counseling Records

- You must have the written consent of the patient to include these in the evidence file.
- You may request consent from the patient to obtain the record from the medical professional. Typically, two forms are required:
  - The professional’s own release form
  - Your form to include in the evidence file
- Think about whether any redactions are appropriate.
Upcoming Free Webinars (10:00 MT)

- March 15: Athletic Compliance Update
- May 17: Title IX Litigation Update
- June 6: Whistleblowers and Retaliation Claims

Register for all at www.bricker.com/events.