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**PROGRAM MATERIALS**  
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## **Direct Elicitation in Internal Investigations**

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## **DIRECT ELICITATION IN INTERNAL INVESTIGATIONS**

**Presented by**  
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# AGENDA

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- ◆ Define elicitation and discuss its application
- ◆ Discuss how to prepare to use elicitation in an internal investigation
- ◆ Learn about commonly used elicitation techniques and when to employ them
- ◆ Q&A



# WHAT IS ELICITATION?



The process of drawing out or extracting important information from a witness through use of dialogue.



Put another way, this is the use of conversational techniques to help obtain information from a witness—the art of obtaining answers without asking questions.



# WHAT IS ELICITATION?



We use elicitation techniques in everyday life without even realizing it.



One common elicitation technique is flattery: **“Great job on that project!”**



Elicitation avoids the use of direct questions and opts instead for more of a conversational style in an interview. This puts the witness at ease and causes the witness to share a greater volume of information.



# WHY DO WE UTILIZE ELICITATION?

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The purpose of elicitation is to uncover truthful, factual information from interviewees in an investigation so that the fact-finder can take necessary action based on that information.



Witnesses create barriers to obtaining critical information—either intentionally or unintentionally.

Elicitation helps us circumnavigate these barriers to obtaining the information we need.

# WHY DOES ELICITATION WORK?

Elicitation works because of shared human desires and tendencies:



A desire for praise and recognition



A desire to complain and gossip



A tendency to correct someone who is wrong



**Elicitation capitalizes on natural social propensities and encourages the sharing of information even when no question has been asked.**

# PREPARING FOR ELICITATION



As with any investigation, planning is especially key when utilizing elicitation techniques.



In designing your investigation:

- Determine what information you need
- Ascertain who might possess this information
- Develop a strategy for how to obtain this information from the witnesses, in consideration of the witnesses' unique characteristics





# WHO WILL CONDUCT THE WITNESS INTERVIEW?



One important preliminary issue for all investigations is determining who will conduct the interview and employ elicitation techniques.



The more adept your interviewer is at utilizing elicitation techniques, the better the information the interview can yield.

# WHO WILL BE THE MOST EFFECTIVE ELICITOR?



**The best elicitors are those with the following qualities:**

- Approachable and friendly
- Good listener
- Good memory
- A natural ability to make friends/acquaintances
- Attentive to social cues—both verbal and non-verbal
- A functional knowledge of human psychology
- Flexible, thinks quickly under pressure
- An actor/actress
- Is not easily offended or surprised
- Can suspend ego



# ELICITATION SCENARIO

**You are charged with investigating an instance involving alleged sexual harassment/ assault for the employer.**



A complaint was lodged by an employee following the company's holiday party.

A female employee (the complainant) reported that a male co-worker (the respondent) kissed her without her consent.

Several co-workers witnessed the event and have been identified as witnesses for the investigation.



# IDENTIFY WITNESSES AND GATHER BACKGROUND INFORMATION



The more you know about your witness, the better tailored your elicitation techniques will be.



Once you have identified witnesses, obtain basic information about each witness you will interview:

- Profession, title, status in the company hierarchy, length of employment
- Any specialized knowledge or skills they possess
- The role(s) they perform for the company
- Their relationship to the complaining and accused parties as well as other witnesses
- Whether they've ever lodged or been the subject of an internal complaint
- Personal information regarding the witnesses (e.g., hobbies, relationships, interests, etc.)





# DEFINE INTERVIEW GOALS



What information can the witness provide?



Draft an outline of topics to cover in the interview.



Draft a list of questions you must have answered.



Stay flexible—rely on your notes but be attentive to answers and be ready to deviate if necessary.



Consider the investigator/witness ratio. 1:1 may yield the best level of communication but can make note taking challenging.

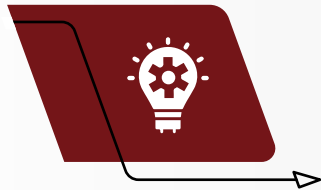
# BEGINNING THE INTERVIEW



Help the witness understand the purpose of the investigation, their role as witness, and your role as investigator.



Build rapport.



Deploy elicitation strategies.

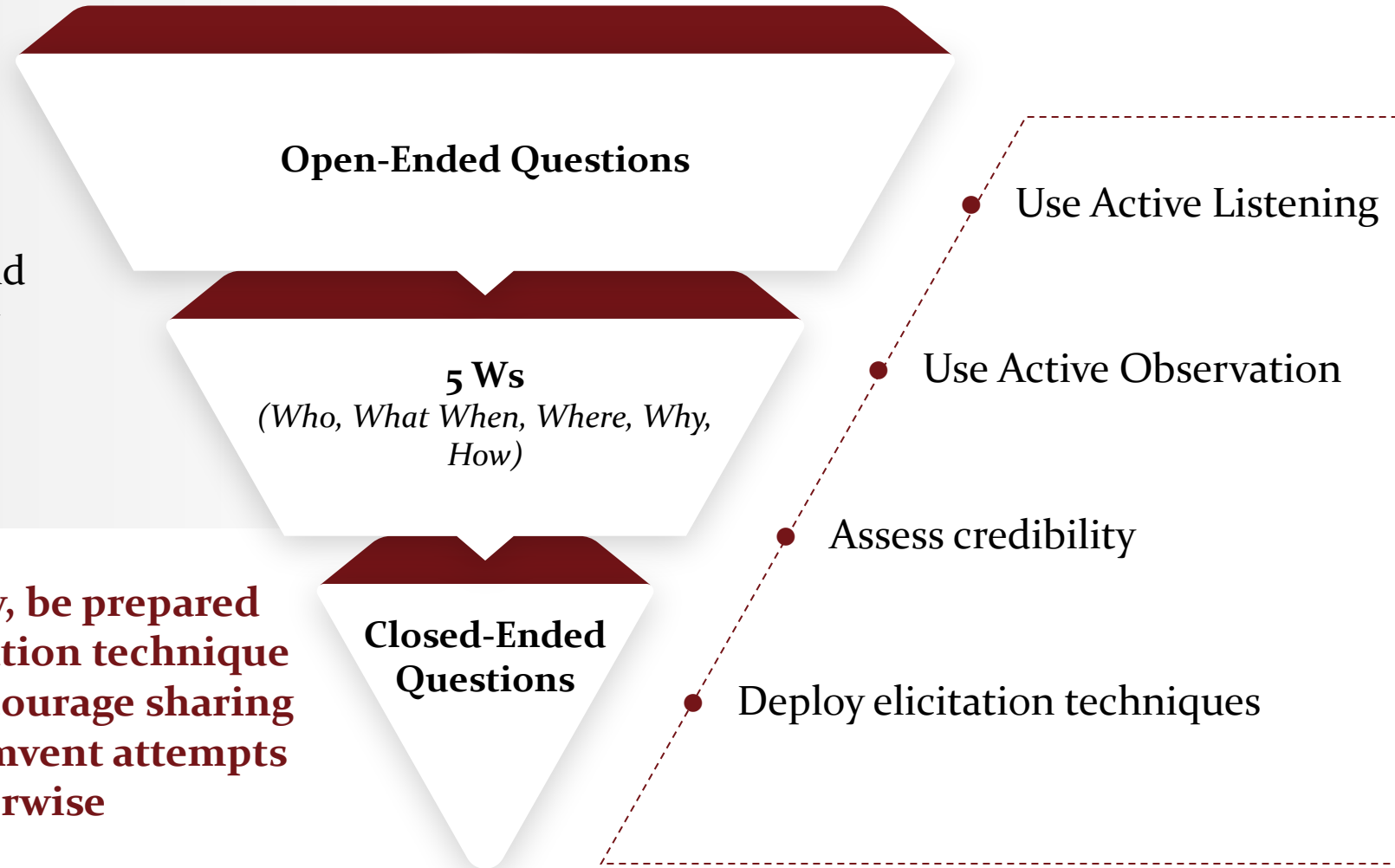


# INTERVIEW STRUCTURE



Using your background knowledge about the witness, build rapport and encourage dialogue, then gradually transition to more direct questions as necessary.

**At all times during the interview, be prepared to deploy the appropriate elicitation technique to test the witness's veracity, encourage sharing of more information, and circumvent attempts to withhold information or otherwise obfuscate facts.**



# ELICITATION STRATEGIES



## FLATTERY

“ *I love your haircut.* ”

“ *Your workspace is very well organized!* ”

“ *I have heard that you are the go-to expert for \_\_\_\_\_.* ”



This technique works nearly universally and often leads to the witness providing an explanation and background regarding the subject of flattery.

**Compliments must be sincere (or be perceived as such).**



# ELICITATION STRATEGIES



## EXPRESSION OF MUTUAL INTEREST



*You are a golfer, too?*

*I am also a huge Bears fan.*

*I am a dog person, too!*



Often works in tandem with flattery, and similarly leads to the witness sharing background information and providing avenues .

**Compliments must be sincere (or be perceived as such).**

# ELICITATION STRATEGIES



## NAIVETÉ

Feigning ignorance regarding a topic about which the witness is knowledgeable which generally causes the witness to provide instruction.

“*I am clueless when it comes to navigating Excel.*”

The interviewer must appear sincere and must be careful not to reveal knowledge or feelings on the topic.

# ELICITATION STRATEGIES



## QUOTING FACTS

Providing the witness with reported “facts” to encourage discussion on the topic.



*We have learned that Miguel was on the 1st floor when he received the call.*



Revealing your knowledge of facts can bolster your credibility and engender trust, while also signaling to the witness that others have already provided information and it is acceptable for them to do so, too.

# ELICITATION STRATEGIES



## DISBELIEF/DENIAL

Denial of facts offered by the witness.



*Are you sure that's what happened?  
It's hard to believe she was able to  
witness events at the bar from the  
booth. How is that even possible?*



Once a strong rapport has been established, this technique can be utilized and the witness will likely rush to prove up the fact that was offered.



# ELICITATION STRATEGIES



## MIRRORING/WORD REPETITION

Repeating the witness's words and phrases back to them to encourage a talkative witness to continue sharing information.



*So he had 4 glasses of wine, huh?*



*What I hear you saying is...*



Mirroring messages to the witness that you are engaged and attentive and will encourage them to make additional statements.



# ELICITATION STRATEGIES



## ERRONEOUS STATEMENTS OF FACT



Sharing information that is factually incorrect which will encourage the witness to respond with correction and thereby open discussion.

“

*Today has been such a busy Wednesday already...*

”

“

*Since Sarah works in IT...*

”



# ELICITATION STRATEGIES



## OBLIQUE REFERENCES



Making general comments about a related topic to encourage a witness to reply more specifically about the topic.



# ELICITATION STRATEGIES



## PROVOCATIVE STATEMENTS



Make a statement that will encourage the witness to ask you a question. This role-reversal will help you control the direction of the conversation and could help the witness relax into the dialogue and make your steering of the conversation that follows less obvious.



*Well, at least what happened this time wasn't as horrible as the last time I was at Hugo's!*





# ELICITATION STRATEGIES



## CONFIDENTIAL INFORMATION-BAITING



Pretend to share confidential information to encourage the witness to reciprocate.

“ Off the record... ”

“ Please don't let this leave the room, but... ”

# ELICITATION STRATEGIES



Make a critical statement relative to the investigation to entice the witness to either join in the criticism or offer information in defense.



CRITICISM



# ELICITATION STRATEGIES



## GOOD LISTENING SKILLS



Listen to the witness patiently and attentively, validating the witness's statements to help the witness view you as a confidant.

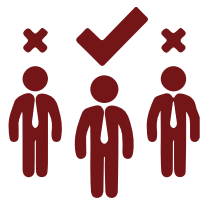




# ELICITATION STRATEGIES



## OPPOSING STAND



Purposely take the opposing view from the witness. This will often provoke discussion and may even induce an emotional response. People naturally overshare when emotionally stirred.



# ELICITATION STRATEGIES



## COMPLAINING



Take note if your witness presents as perturbed or impatient. Make a statement or ask a question that can invite them to share a complaint, and agree with the complaint and allow them to expound upon it.



*I know this is probably taking very valuable time from your day and keeping you from important work.*



*The parking here is terrible.*



# ELICITATION STRATEGIES



## LEADING QUESTIONS



Ask questions that are compound and contain presumed factual information but require a “*yes*” or “*no*” answer.



You of course reviewed your report before filing it to confirm that it was accurate, then you took the Number 65 bus home, right?



# ELICITATION STRATEGIES



SILENCE



Use silence.



Prompt with a phrase like:

*“Now, take a moment to think about what we have discussed and let me know if you have any additional information to add”*



This will give people time to consider and answer. It can also cause witnesses discomfort, and they'll be inclined to fill the time with words, which could yield helpful information.



# FINAL NOTES ON USING ELICITATION TECHNIQUES



Examine the relationships between the parties—elicitation techniques will be used differently by an internal HR manager who will continue to work with the witnesses versus an outside investigator who is unlikely to have substantial future interaction with the witnesses.



Ensure that you observe any ethical obligations you may have by virtue of your relationship with the witnesses—for example, in your role as in-house or external counsel.



Elicitation is about being an astute observer and conversationalist. Plan accordingly, act the part well, and you will obtain the truth.





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# Q&A

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**THANK YOU**

