

The 7 deadly sins of Civil Rights and Student Conduct Investigations

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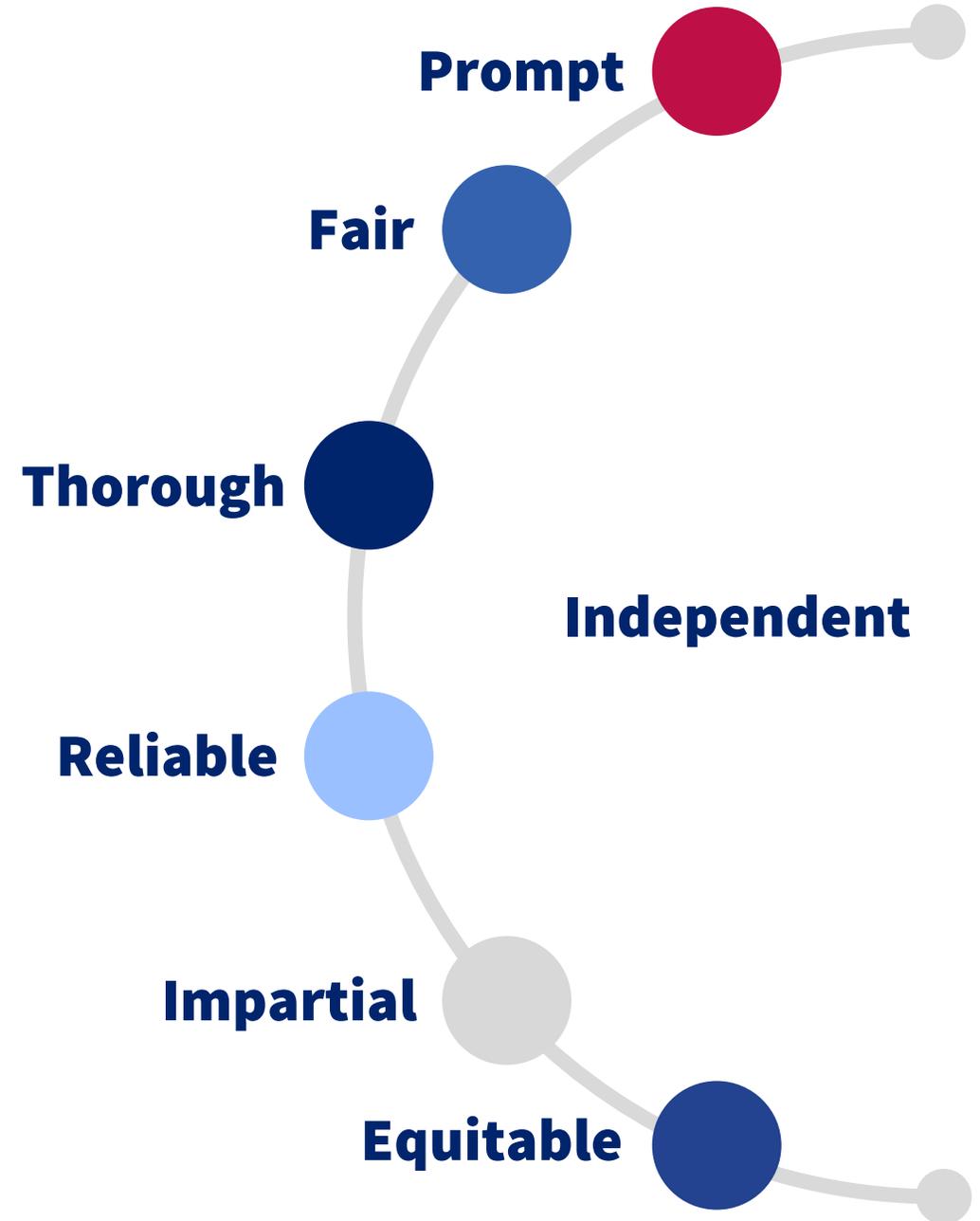
Strategic Risk
Management Solutions



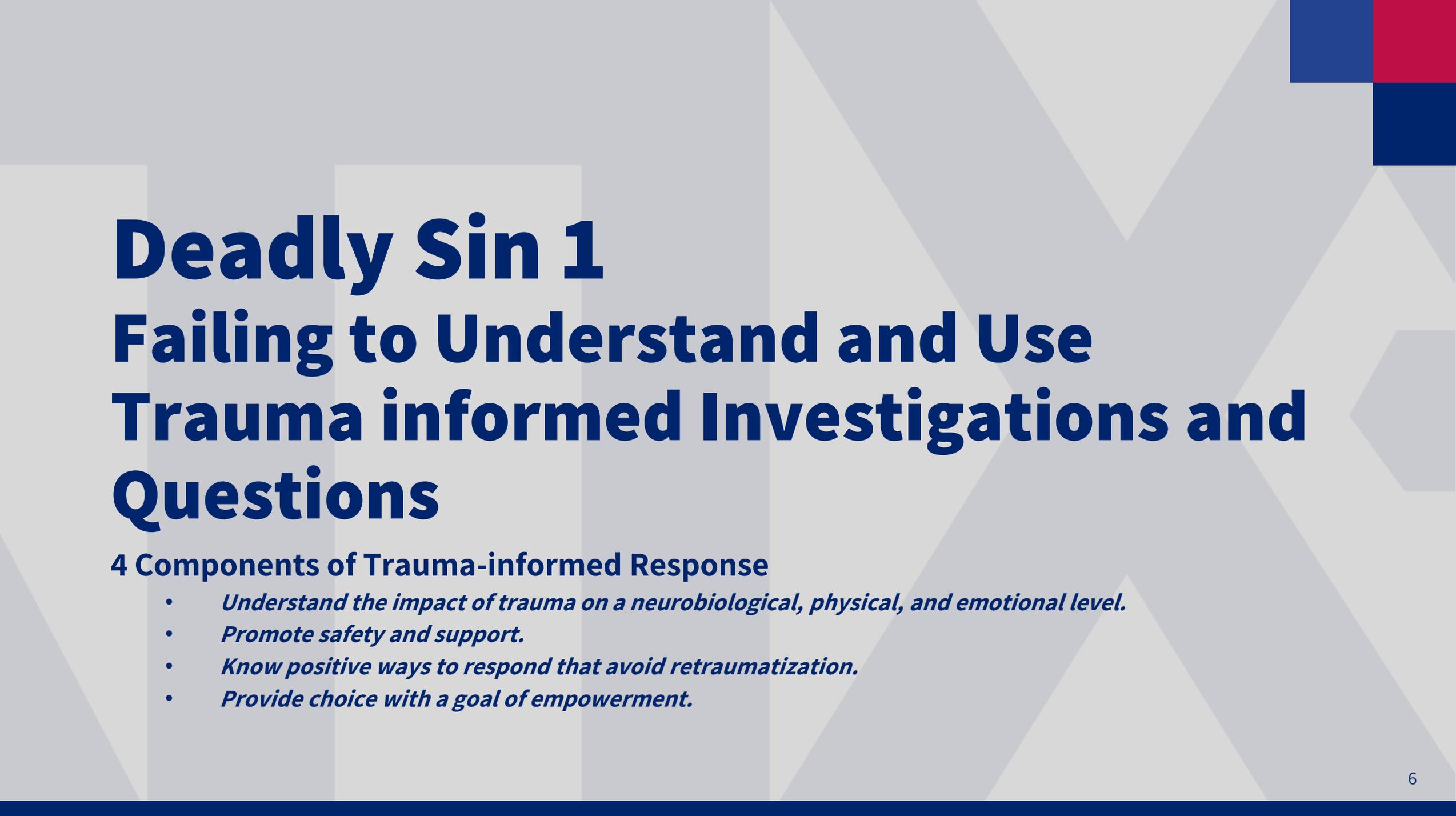
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Investigations Overview

- Investigations focus on gathering all available and relevant information
- The institution is responsible for gathering evidence—not the parties



7 Deadly Sins of Investigations



Deadly Sin 1

Failing to Understand and Use Trauma informed Investigations and Questions

4 Components of Trauma-informed Response

- *Understand the impact of trauma on a neurobiological, physical, and emotional level.*
- *Promote safety and support.*
- *Know positive ways to respond that avoid retraumatization.*
- *Provide choice with a goal of empowerment.*

Understanding Trauma

Trauma is exposure to an event or events that create a real or perceived threat to life, safety, sense of well-being and bodily integrity

- Acute, chronic, or complex
- Neurological, biological, psychological, social, and emotional impacts
- Developmental, intergenerational, historical, secondary, vicarious, or collective
- Responses to trauma can vary, depending on a variety of factors
- Provide all persons with support that makes Title IX services and processes accessible, including those who may have experienced trauma

Trauma-Informed Practices

- **Key principles of trauma-informed practice:**
 - Safety
 - Trustworthiness and transparency
 - Collaboration and mutuality
 - Empowerment, voice, and choice
 - Cultural, historical, and identity issues
- **ATIXA Position Statement:** application of trauma-informed practices in our field has gotten ahead of the actual science
 - **ATIXA Recommendation:** incorporate trauma-informed investigation and interviewing methods without compromising gathering credible, relevant evidence
 - Trauma-informed practices should not significantly influence evidence evaluation



Deadly Sin 2

Assessing Credibility Ineffectively or Improperly

“When source, content, and plausibility are strong, credibility is strong.”

Credibility Overview

- Credibility assessments weigh the accuracy and reliability of relevant information
- Primary considerations are **consistency** and **corroboration**
- Credibility is not synonymous with a person being “truthful” or “honest”
 - Avoid moral judgment phrases in reports such as “lying,” “honest,” “deceitful,” “sincere” etc.
- Evasion, misleading testimony, or memory errors may impact credibility
- Avoid too much focus on **non-relevant** information
- Use significant caution if relying on demeanor to determine credibility

Primary Credibility Factors

Corroboration

- Aligned testimony and/or physical evidence

Consistency

- Is a person's account consistent over time?

Inherent Plausibility

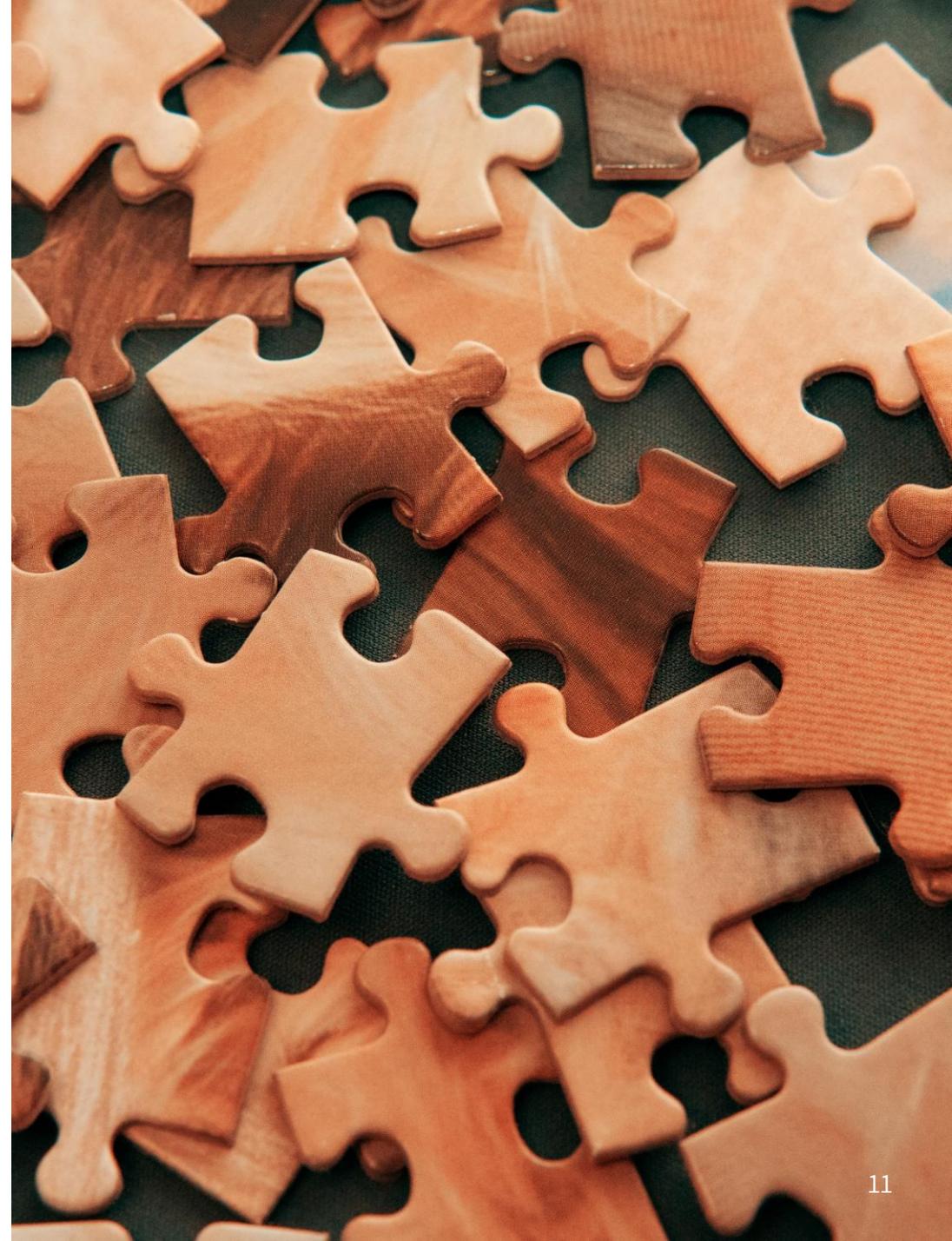
- Does the explanation make sense?
- Be careful of bias influencing sense of “logical”

Motive to Falsify

- Do they have a reason to lie?

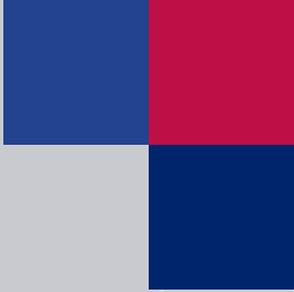
Past Record

- Is there a history of similar behavior?



Common Credibility Assessment Errors

- Misinterpretation of and misplaced emphasis on nonverbal deception indicators
- Misplaced emphasis on (often trivial) information inconsistencies
- Confusion about memory
- Bias in interviews
 - Presumptions of responsibility
 - Anchor bias
- Confirmation bias
- Excusing inconsistencies by citing to trauma
- Accepting information at face value



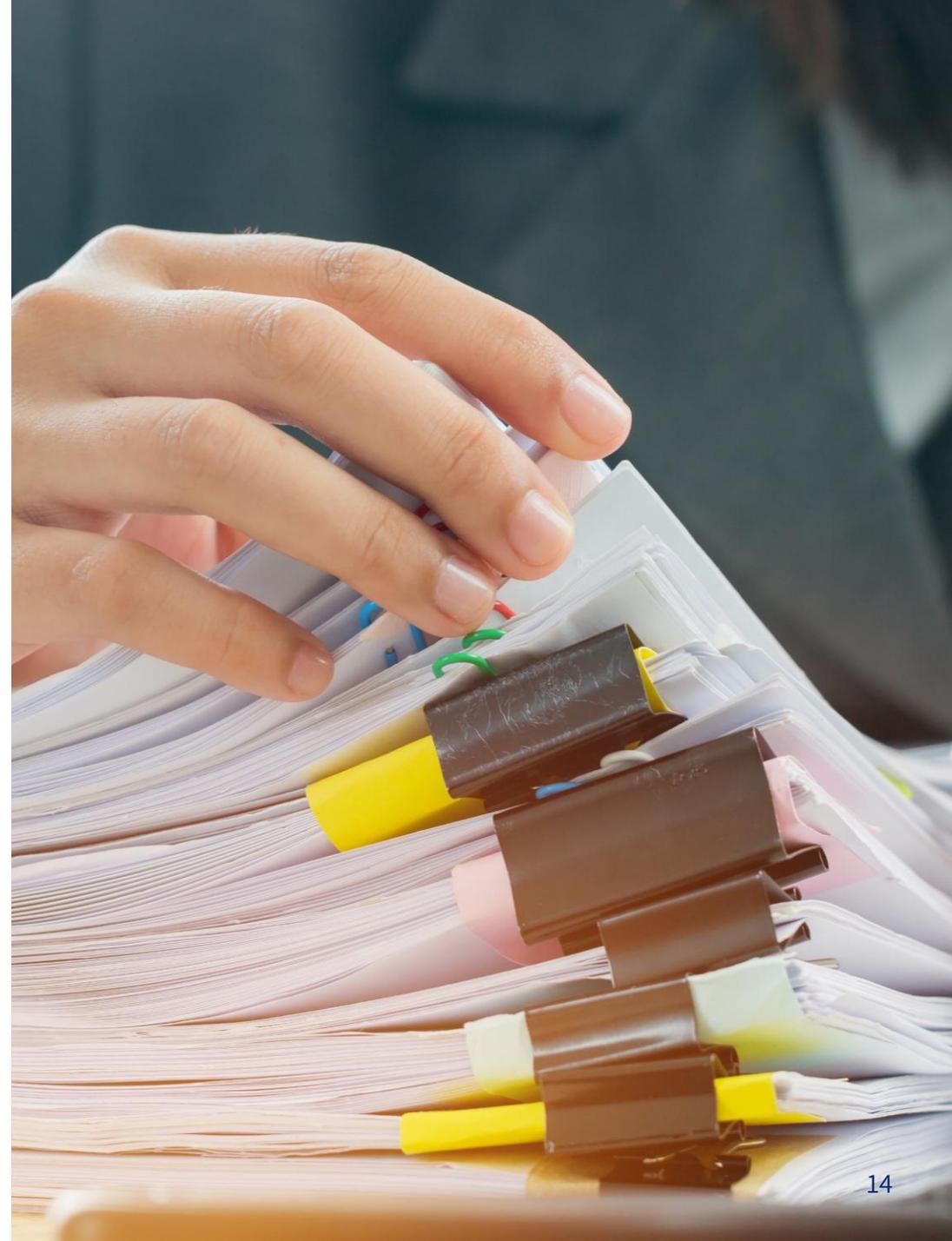
Deadly Sin 3

Allowing Ambiguity and Assumptions to Rule the Day Rather than telling a Cogent Story of What Happened

“A strategic and well-conducted investigation answers questions along the way, filling in the outline to create a three-dimensional picture of the reported conduct.”

Relevant Background

- Include additional background information as necessary to understand relationship history, context, etc.
 - Separate by topic



Incident Timeline(s)

- Visual representation or list that shows events in chronological order
 - One timeline for the reported incident(s) based on all available information
 - Use separate timelines for multiple incidents if necessary
- Reference evidence connected to points on the timeline
 - E.g., timestamped text messages, receipts, call logs
- Especially helpful in evaluating incapacitation
- For stalking allegations, it is an industry standard to include a timeline to assess the “course of conduct” element of the offense

Relevant Evidence Summary

Relevant Evidence Summary Includes:

- Complaint and/or Incident Report
- Interview summaries/relevant portions of transcripts
- Written statements
- Responses to Draft Investigation Report
- Text/social media/email/electronic messages
- Photographs
- Description of and link to videos
- Relevant documents

Organizing the Relevant Evidence Summary

- Content may dictate the most logical organization structure for this section
- Can organize in multiple ways, depending on number of complainants, respondents, witnesses, or allegations, as well as the nature and type of the allegations themselves
- Some common approaches
 - By interviewee
 - By allegation
 - Chronological by interview
 - Chronological by incident timeline

Deadly Sin 4

Interpreting the Evidence to Match a Conclusion Rather than Letting the Evidence Lead to a Conclusion

“An investigator’s duty is not to ‘believe one story over the other,’ but to assess each piece of evidence, independently, and as part of the bigger picture, to determine whether the preponderance of the evidence supports a finding of responsible or not responsible.”

Discussion and Synthesis

- Discuss and synthesize the relevant information
 - Consider the elements of each policy at issue
 - Refer back to relevant evidence cited
 - Refer to the credibility assessment(s)
- Guide for the Decision-maker(s) determination
 - What remains unresolved?
 - What type of analysis is required based on the applicable policy provisions?

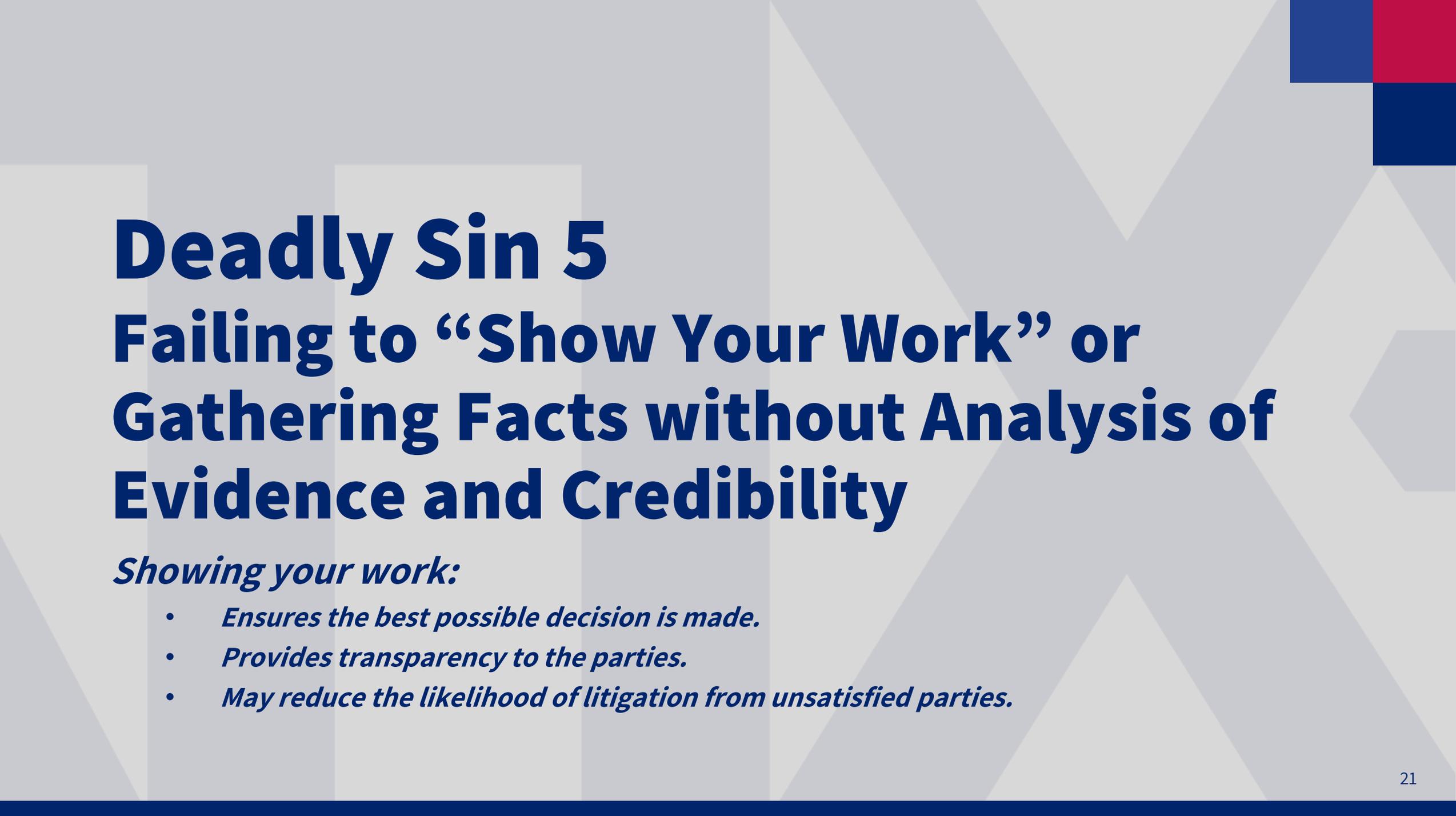
Recommended Finding & Recommended Determination

Recommended Finding

Whether the conduct occurred, by the standard of evidence

Recommended Determination

Whether the conduct that is proven to have occurred violates policy



Deadly Sin 5

Failing to “Show Your Work” or Gathering Facts without Analysis of Evidence and Credibility

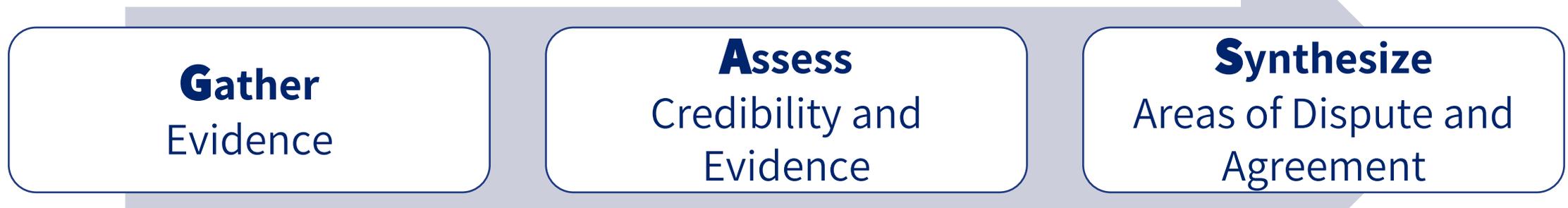
Showing your work:

- *Ensures the best possible decision is made.*
- *Provides transparency to the parties.*
- *May reduce the likelihood of litigation from unsatisfied parties.*

Role of the Investigator

- **Input:** all available, relevant evidence
- **Output:** a comprehensive, detailed written investigation report that fairly summarizes all relevant evidence **and** the investigation; organized relevant evidence file
- Follow the G.A.S. Framework to well position the Decision-maker for reaching a determination

G.A.S. Framework



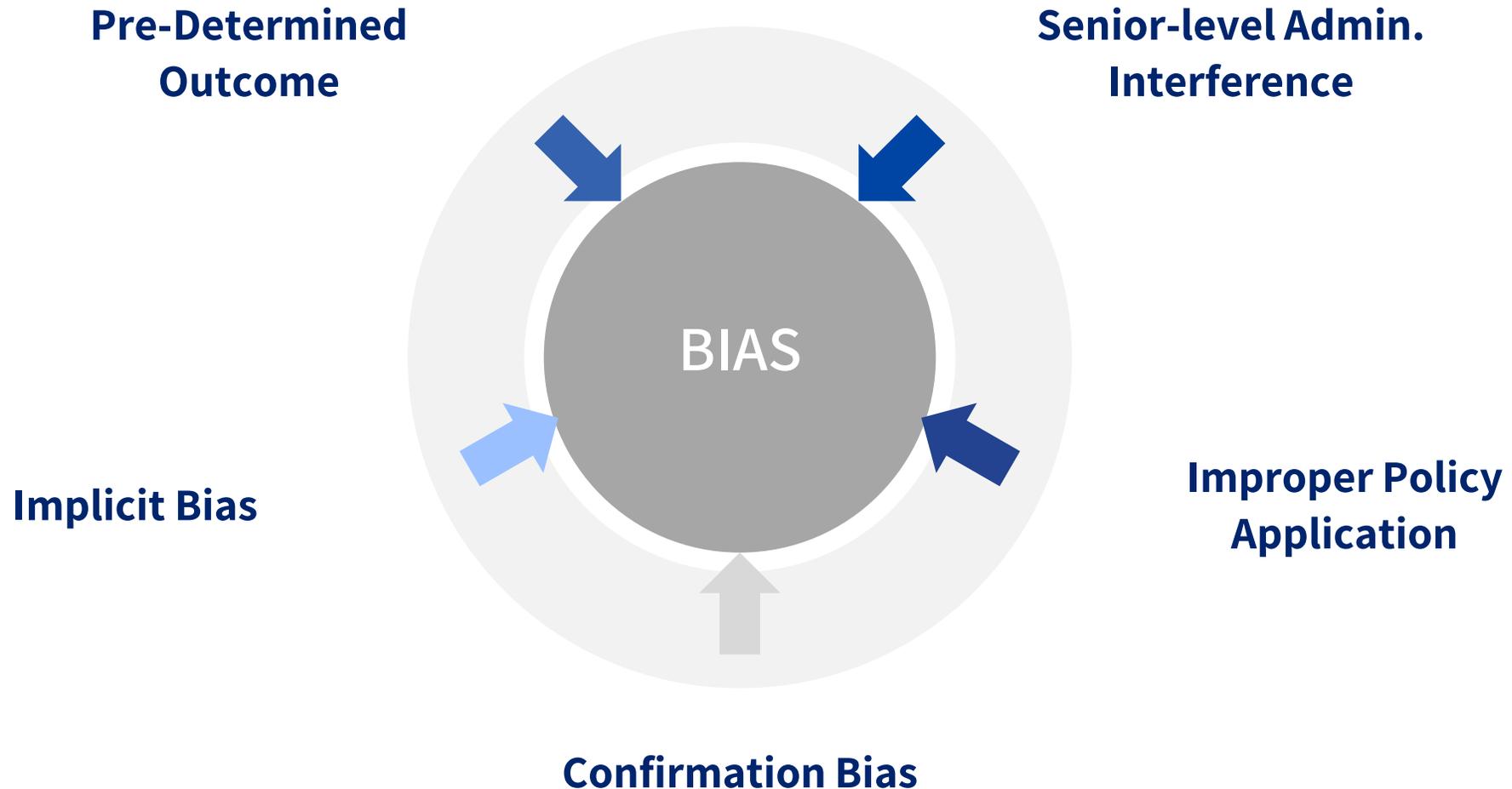
Deadly Sin 6

Being Blind to Personal Biases

Address personal bias by:

- *Nurturing an attitude of humility.*
- *Nurturing a continuous curiosity about others and their points of view and experiences.*
- *Understanding microaggressions and how to avoid and address them.*

Common Bias Manifestations in Investigations



Mitigating Bias

- Investigate in pairs
- Investigators review each other's questions
- Follow institutional process
- Question mapping to ensure comprehensiveness
- Be conscious of own biases
- Be aware of bias in the process



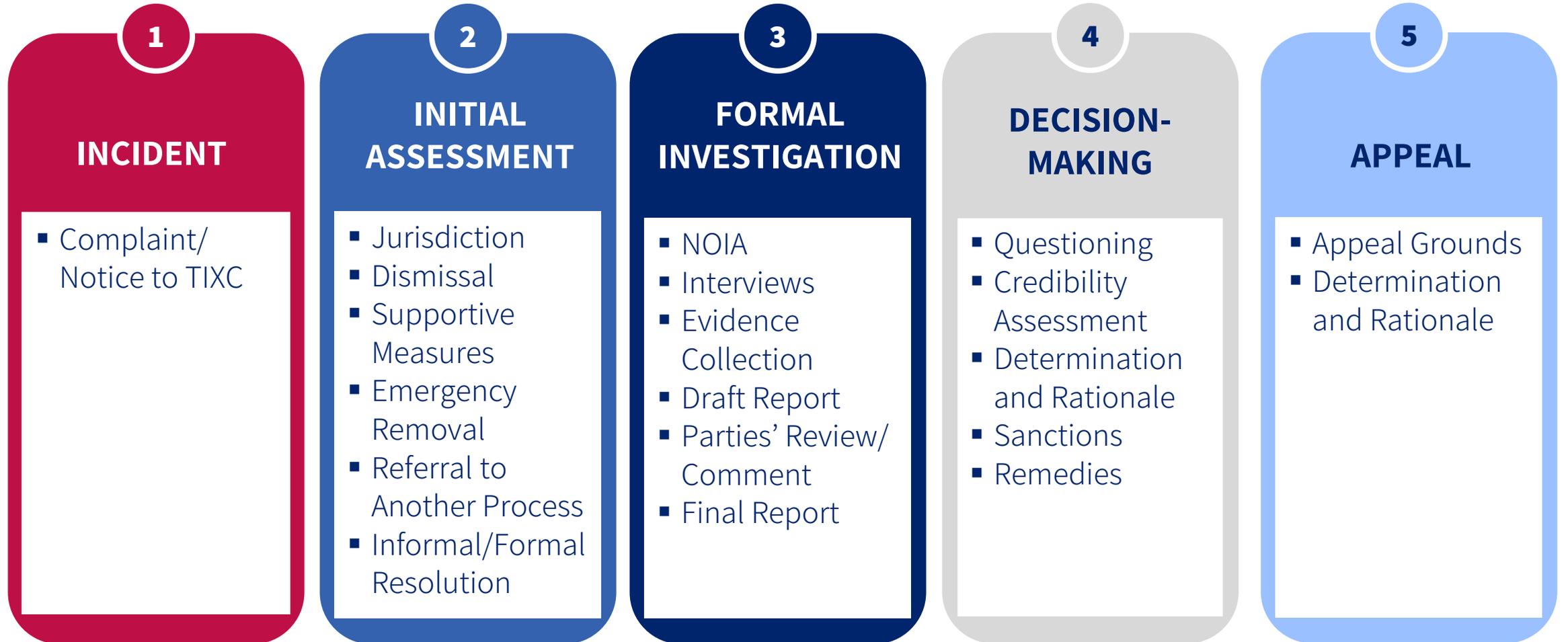


Deadly Sin

Failing to Treat the Investigation as a Hearing

“If done correctly, an investigation process in which the investigators render a finding can constitute a ‘hearing’ that fulfills all the hallmarks of due process within the college and university setting.”

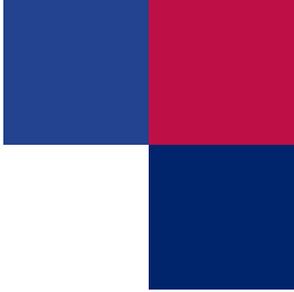
Process Overview



Questions?

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