



# PIB Investigator Training

E-LEARNING MODULE 3: CONDUCTING THE  
ADMINISTRATIVE INVESTIGATION

# INTRODUCTION

PART 1

# Guidelines for All Interviews

## Communication

- For witnesses or complainants not employed by BPD, interviews should be scheduled at the time and place most convenient for the interviewee.
- When calling a witness or complainant, leave a message if no answer.
- The investigator's demeanor during the interview shall be respectful, courteous, and professional.

## Technology

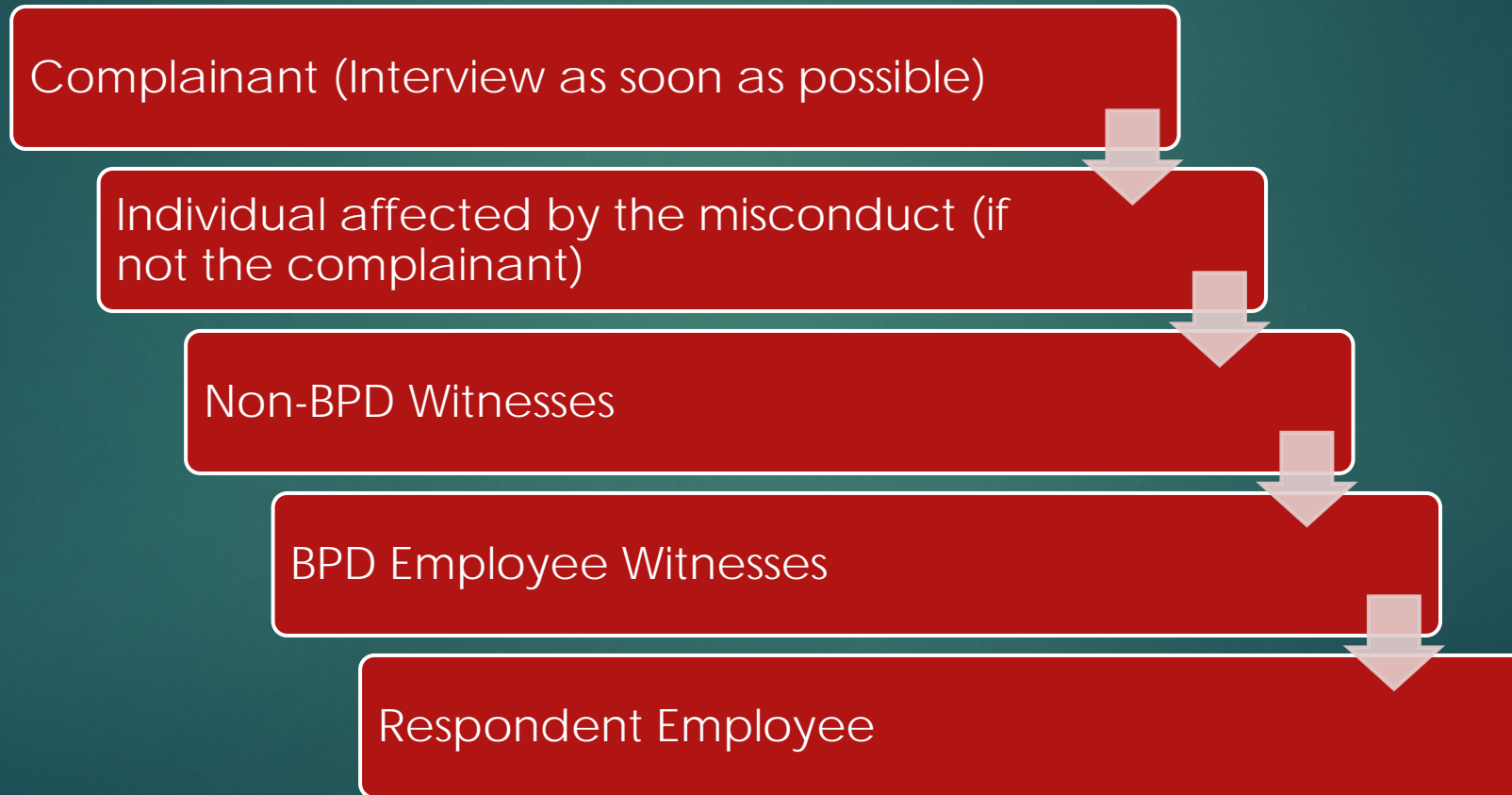
- Audio and video recorded statements from every witness, unless in the field.
- If in the field, use a BPD-issued digital audio recorder to record statements.

## Documentation

- Document if witness objects to being audio or visually recorded.
- Document in IAPro when complainants or witnesses cannot or decline to be interviewed in-person.
- Document in IAPro as a Task any and all efforts to reach the witnesses, including audio recording of calls, locations, or other attempts to contact.

# Suggested Interview Order

- ▶ Generally, interviews should be conducted in the following order:



## General Tip #1

Individuals who are expected to be uncooperative are sometimes best interviewed last, allowing the investigator to gather evidence from other sources and to develop specific questions, rather than relying on that individual to offer information.



# Before the Interview

PART 2

# Location of the Interview

- ▶ Interviews of BPD employees generally will take place at the PIB Office.
- ▶ For interviewing witnesses outside of PIB, the investigator must ensure the location is private, no one else is present, environmental distractions are limited (e.g. radio, television), and the interview is recorded on a BPD recording device.



# Preparing for the Interview



- ▶ The Investigator shall...
  - ▶ Review Investigative Plan to determine interview objectives.
  - ▶ Consider any relevant documents, BWC, photos, or other evidence to show/question the interviewee.
  - ▶ Prepare an outline of topics to be covered.
  - ▶ Consult with Legal Affairs prior to interviewing a respondent in any case that could result in a Category E or F violation.\*
  - ▶ Arrange for an interpreter, if needed, and make reasonable accommodations to assist complainants/witnesses with disabilities.

\*Generally criminal conduct, domestic violence, drug and alcohol violations, and excessive force. See Policy 310 for the full list of Category E and F violations.

In most circumstances where video is to be shown during an interview, video review should be conducted at the end of an interview, after a witness's uncontaminated full recollection has been exhausted by careful questioning.

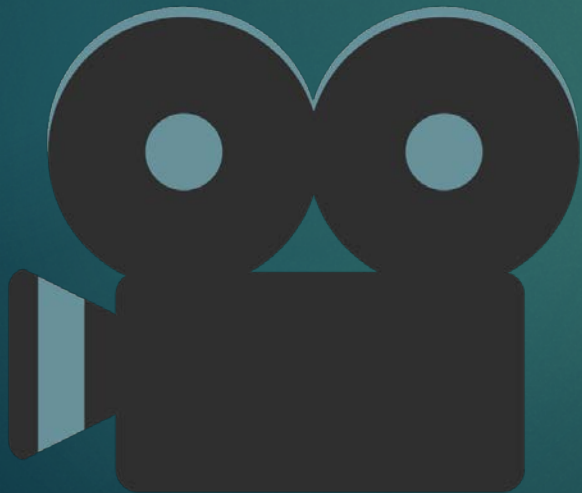
## General Tip #2



# Conducting the Interview

PART 3

# Recording the Interview



- ▶ BPD employees are required to submit to recorded interviews.
  - ▶ Refusal to consent should be documented.
- ▶ The Investigator shall...
  - ▶ Memorialize all previous communications between the investigator and the witness (e.g. Have you and I spoken before? Did we talk about the case?)
  - ▶ Ask interviewee on the record whether they have spoken to anyone else about the incident and to identify all of those persons.
- ▶ If the complainant or witness is not a BPD employee and refuses to be recorded, document the refusal and take thorough notes throughout the interview.

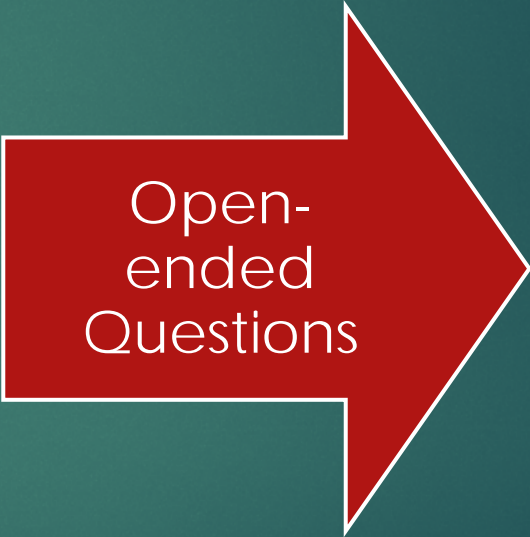
# Conducting the Interview

Investigators must:

- ▶ Give all appropriate warnings as required by law, to include, if necessary, Miranda, LEOBR, and Garrity.
- ▶ Consider the interviewee's information to be perishable; they may move away or stop participating, so this interview may be the only opportunity to speak to the interviewee.
- ▶ Not make statements that an interviewee could reasonably understand as intended to discourage them from giving a full account.
- ▶ Explain the entire investigative process, including timeframes and dispositions.



# Types of Questions



# Types of Questions

## Leading Questions

- ▶ Do you remember seeing the subject with a gun when you arrived?
- ▶ Did Officer Smith say that the subject had a weapon?
- ▶ You were worried about your safety, right?



## Open-ended Questions

- ▶ What did you see when you arrived? Who was there? What did you notice about them?
- ▶ Did Officer Smith say anything? If so, what?
- ▶ What was going through your mind at the time?



## General Tip #3



Investigators may ask the interviewee to use a map, diagram, photo, video, etc. to help explain what happened. In such cases, the investigator should ask the interviewee to initial and date any document used.

Also, in such cases, investigators must mark for identification a copy of each initialed & dated document, and include the document in the case file.



# Communication during the Interview

- ▶ If acronyms or special terminology are used, ask the interviewee to explain. If the interviewee uses police terminology, ask what they mean.
- ▶ When interviewing non-police personnel, avoid using police terminology.
- ▶ Maintain appropriate eye contact with the interviewee, engage in active listening, and observe interviewee's demeanor and non-verbal behavior.



# Concluding the Interview

- ▶ Before ending the interview, ask if the interviewee has any other information they would like to provide.
- ▶ Always make sure you have current contact information for all witnesses and the complainant.
- ▶ Remind the witness that retaliation for participating in an investigation violates BPD policy and may be unlawful, so if they experience retaliation to please report it.
- ▶ The investigator should state to the interviewee the following: **In order to protect the integrity of the investigation, please do not discuss the facts of the case with anyone other than your lawyer.** See PIB Manual (page 88, "Interviewing Respondent Officer", #14) for confidentiality requirements for Respondent Officers.



# Notice of Investigation for Respondent Officer

*For sworn members through rank of Lieutenant, who are covered by FOP MOU and LEOBR*



Before an officer can be interviewed during an administrative investigation, a notice in writing must be provided to the officer.

\*See sample in the PIB Manual at Appendix G (pg. 139)\*

# Notice of Investigation

- ▶ The notice must be specific enough so the officer understands what they are being investigated for, but not so specific to mention specifics of the incident.

## Example

If allegation of excessive force, notice should state that officer is being investigated "for the forced used in the arrest of John Doe on X date around X time near X location."

*\* Does not state specifics of allegation (e.g., strikes, punches, kicks, etc.)*

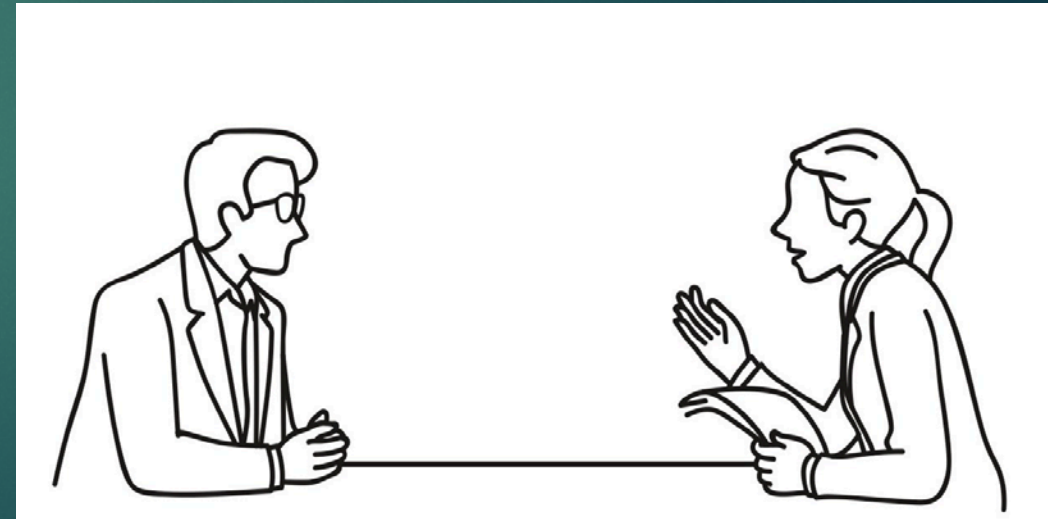
# Interview Notice

- ▶ The investigator shall notify respondent or their attorney of the interview date, as well as respondent's supervisor.
- ▶ If respondent fails to appear, investigator shall document it in IAPro with reason provided and whether PIB was notified in advance.
  - ▶ A new interview date must be scheduled and a new notice sent.
  - ▶ Failure to appear could subject the respondent to additional discipline.



# Interviewing Respondent Officer

- ▶ Follow the procedures in slides 11 – 17 above, plus the following procedures (slides 21 – 27).
  - ▶ Interview shall be at a reasonable hour, preferably while respondent is on duty, unless immediate interview is needed.
  - ▶ Interview shall take place at an appropriate place such as at PIB, District or Division.
  - ▶ Inform officer of name, rank, and command of the officer in charge of the investigation, the interviewing officer, and all persons present during the interview.



# Interviewing Respondent Officer

- ▶ Consult with Legal Affairs prior to conducting an interview with a respondent officer where the allegations, if true, would result in a Category E or F violation.\*
- ▶ Enter consultation in IAPro as a "task"



\*Generally criminal conduct, domestic violence, drug and alcohol violations, and excessive force. See Policy 310 for the full list of Category E and F violations.

# Interviewing Respondent Officer

- ▶ All questions must be asked by one investigator during any one interview session.
  - ▶ Second investigator helps identify areas for further probing, and observes the demeanor of respondent.
- ▶ The respondent officer may be questioned about any matter relating to the misconduct in question, regardless of whether it is specified in the notice.
- ▶ Respondents shall not have cell phones or other electronics during their interview.
  - ▶ Same for witnesses/complainants who are BPD employees.



# Concluding the Respondent Officer Interview

- ▶ The Investigator must give the respondent a specific order not to discuss the matter or their interview with anyone aside from:
  - ▶ Their commanding officer (unless they are involved)
  - ▶ PIB Investigators
  - ▶ Their legal counsel
- ▶ Inform the respondent that they have an on-going duty to disclose information to PIB at any point that it comes to light during the investigation.
  - ▶ Inform the respondent that they can be disciplined if they **intentionally** withhold material evidence.



# Role of the Representative in Interview

- ▶ To protect the rights of the employee.
- ▶ Employees covered by the LEOBR may be represented by the person of the officer's choice, even if they're not a lawyer, unless the person is involved in the case.
- ▶ The investigator will inform the representative that they may make an objection for the record, (e.g., "I object to that question"). However, they may not make a **speaking objection**.



# Example of an Impermissible Speaking Objection

When questioning an officer as to whether they witnessed something, the attorney says, "objection, how is it possible for my client to have seen that when he already stated he was sitting in his cruiser."

This objection suggests that the officer should answer, "I couldn't possibly see that because I already told you I was sitting in my cruiser."

Representatives may not make speaking objections.



# Compelled Statements & Polygraphs

- ▶ Absent a criminal investigation, all respondent officers shall be compelled to give a statement.
  - ▶ All BPD employees (including witnesses and complainants) are also required to participate in interviews.
- ▶ A public safety statement is **not** a compelled statement.
- ▶ The decision to utilize a polygraph will be made by the Deputy Commissioner of PIB.



# Procedures for Civilian BPD Employees Interviews

- ▶ When employees covered by Collective Bargaining Agreements are to be interviewed, investigators shall check the contract for notice requirements.
  - ▶ CUB members who are respondents are entitled to have a union representative present and may be entitled to Weingarten rights.
  - ▶ CUB members are allowed a reasonable time period to obtain representation.

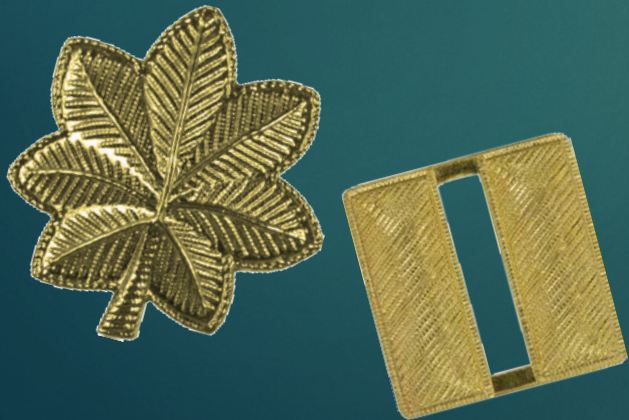


NLRB v. J. Weingarten, Inc. 420 U.S. 251 upheld a National Labor Relations Board decision that employees have a right to union representation at investigatory interviews.



# Non-LEOBR Interviews

- ▶ For respondent members who are Command Staff (Captain and above), Probationary Officers and Police Officer Trainees are not afforded LEOBR protections.
  - ▶ There is **no** requirement to provide them with a Notice of Investigation.
  - ▶ An attorney or representative will only be present when required by law or contract.
  - ▶ More than one investigator can question the respondent.
  - ▶ There are no pre-interview warnings or protections that need to be read to the respondent.



**EXCEPTION!!**  
Probationary Officers are afforded LEOBR  
protections in investigations of Excessive Force  
allegations

# Investigations Involving Criminal Misconduct

- ▶ Generally, administrative investigators do not pursue a compelled statement while a criminal case is still under investigation.
- ▶ All decisions to take a compelled statement while a criminal investigation is ongoing must be approved by the Police Commissioner (or designee).
- ▶ For all criminal allegations, the PIB investigator must maintain regular contact with the prosecutor regarding investigative strategy and to monitor the criminal case status.
- ▶ Written approval by the Deputy Commissioner of PIB is required for criminal investigations to be referred to a BPD specialized unit. In such cases, PIB still maintains the ultimate authority over the investigation.

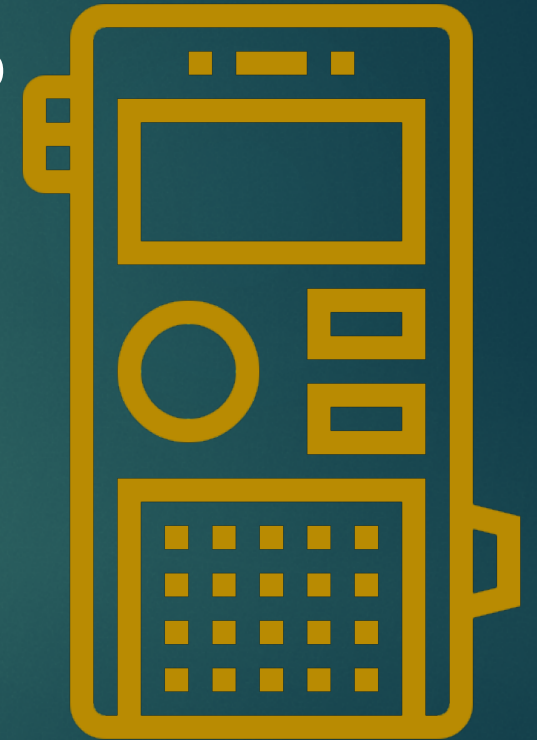


# Other Investigative Techniques

PART 4

# Responding to the Scene

- ▶ Any PIB investigator/supervisor who responds to a scene or conducts an area canvas must have a digital recorder.
- ▶ On scene responses occur for criminal complaints against a BPD officer, and typically are required when evidence may be lost, or when administrative action (e.g., suspension) must occur immediately.
- ▶ When responding, recorded interviews of civilian and sworn witnesses should be done as soon as practical.
  - ▶ If there's a quiet/controlled space, attempt to conduct a recorded interview.
- ▶ When responding, attempt to obtain any perishable evidence and take as many preliminary investigative steps as possible.



# Evidence & Materials Collection

- ▶ The investigator must promptly identify, collect, and consider all relevant evidence, including any audio or video recordings.
- ▶ All physical and digital evidence must be collected/handled according to BPD evidence procedures.
- ▶ For noncriminal investigations, the investigator should identify any evidence that may require a subpoena and consult with Legal Affairs about whether there is a way to obtain the evidence without a subpoena.



# Module 3



COMPLETE