



The Wild West – Gun Fight at the OK Corral

Grievance raised
 Allegations made
 Investigation launched
 Communication banned
 Parties 'lawyer up'
 Protracted investigation
 Statements taken from all parties
 Allegations responded to
 Responses to allegations responded to
 Responses to responses to allegations responded to
 Unsuccessful mediation
 Everyone happy again



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Setting the scene

Assessment, review and advice

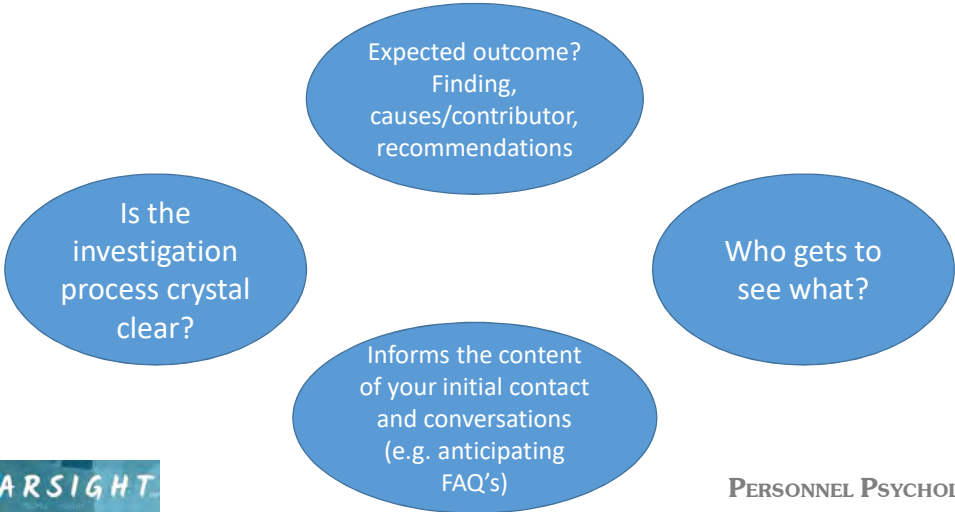
versus

Formal investigation of a complaint



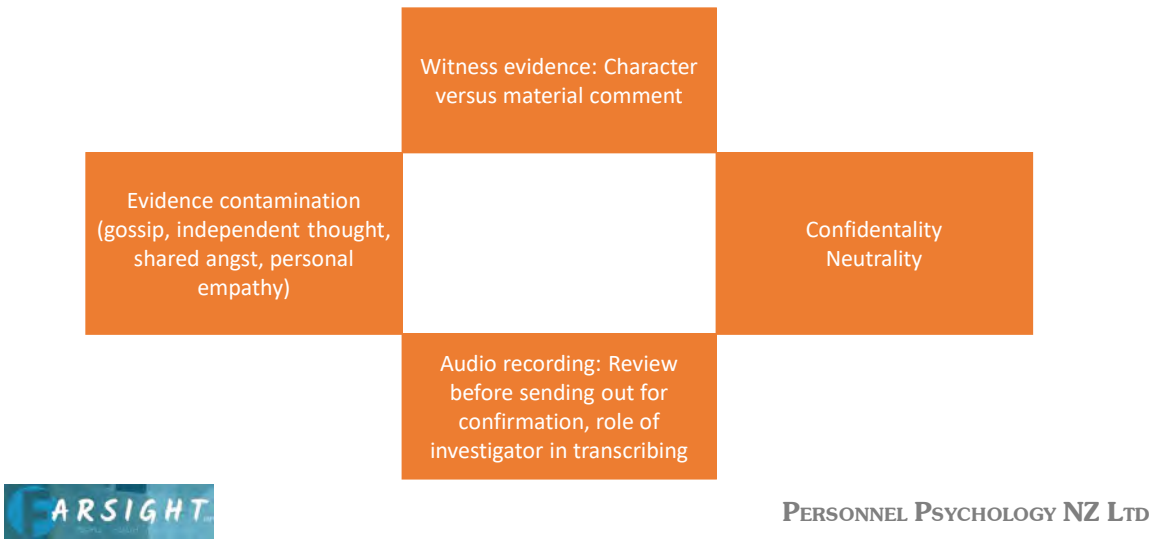
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Cautionary advice #1: Pay attention to the terms of reference

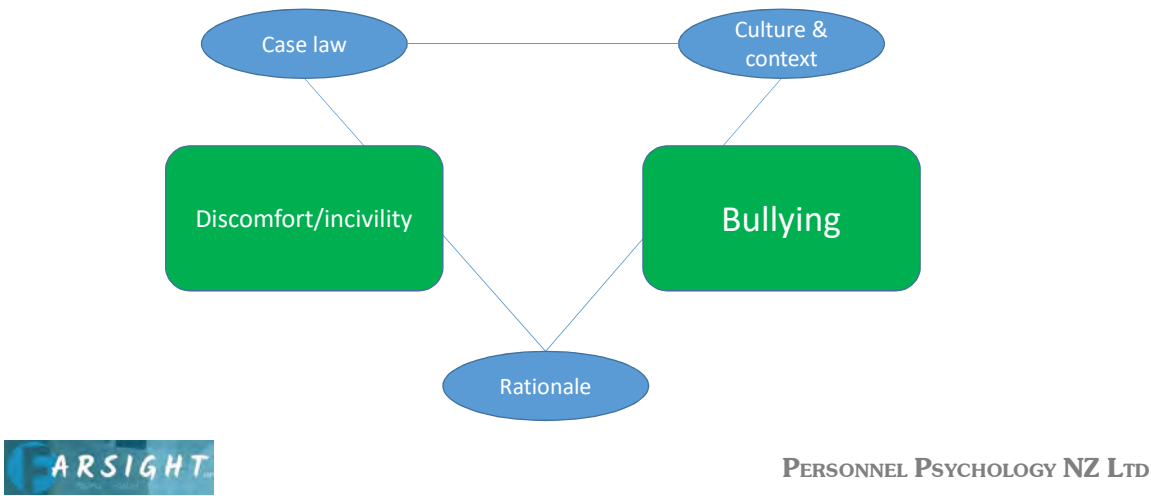


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Cautionary advice #2: Evidential standards



Cautionary advice #3: Bullying versus incivility



Cautionary advice #4: Organisational politics

Role of senior management

Company culture

Degree of natural sympathy for complainant

'Legacy' issues



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Cautionary advice #5: What to share

CoE 2.1.1. Psychologists assess the potential harm and benefits involved in their actions, to predict the likelihood of their occurrence and proceed only if the potential benefits outweigh the potential harms.

ERA (2000) 103A Test of justification

In applying the test in subsection (2), the Authority or the court must consider—

- (a)** whether, having regard to the resources available to the employer, the employer sufficiently investigated the allegations against the employee before dismissing or taking action against the employee; and
- (b)** whether the employer raised the concerns that the employer had with the employee before dismissing or taking action against the employee; and
- (c)** whether the employer gave the employee a reasonable opportunity to respond to the employer's concerns before dismissing or taking action against the employee;



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Cautionary advice #6: Believe nothing



- *Described* behaviour - what they talk about
- *Demonstrated* behaviour - how they talk about it
- Demonstrated behaviour is the most reliable indicator
- What did they **do** during the interview?

Expressing contrition whilst running down colleagues and manager



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Cautionary advice #7: Use structure

P E A C E

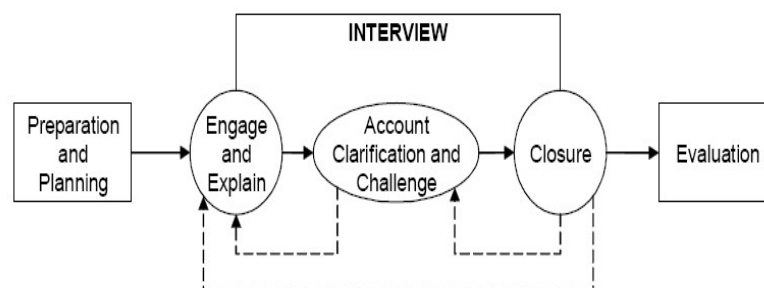


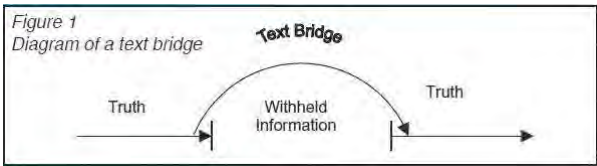
Diagram: Mary Schollum, New Zealand Police (September 2005)



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Omission and Obfuscation



Schafer, J.R (2008) *Text Bridges and the Micro-Action Interview*. FBI Law Enforcement Bulletin, 77 (1)



Most truthful: First Person, Past Tense
Avinoam Sapir - SCAN Technique



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Did David answer the question?



Binnie: Well let me come to June 20th and perhaps you could just outline your recollection of the events **without my interrupting you** and then I'll come back with more specific questions.

Bain: Um, so just starting from when I woke up is that what you –

Binnie: Yes, I gather the alarm goes off at 5.30?

Bain: Um, okay then. After the alarm **would** go off, I **would** wake-up, obviously turn it off. Ah, it was one of those clock radio style alarms. Ah then I'd lie there for a moment or two gathering my wits and gather my courage to get out of, out of bed on a cold morning and my, as per my habit I **would** set my clothes for the run on the chair besides my bed so in the dark I **would** get up, put on my clothes, my running shoes and so on and then, um I *ga*, *grabbed* my Walkman, put on my shoes, *grabbed* my bag and then as quietly as I could, left the house.



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Cautionary advice #7: Never, ever label

- Tempting to use diagnostic labels when behaviour meets DSM V criteria for borderline, narcissistic, paranoid, anti-social, etc., personality disorders.
- Describe the behaviours objectively and accurately
- Leave the labelling up to others (especially if you are likely to end up in the witness box!)
- Avoid the 'advocate trap' – focus on the system



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Cautionary advice #8: Facilitate, don't mediate



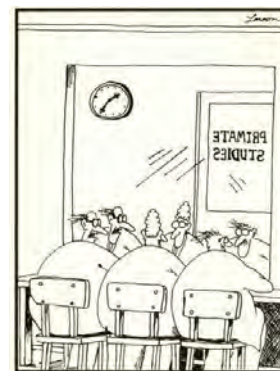
Manager: *"Dr Grumpy is upsetting everyone. We want you to sort him out"*
 Dr Grumpy: *"Everyone loves me, no one has complained to me"*

'One-way Mirror' technique

Each party interviewed while observed by the other from behind a notional one-way mirror

Powerful, non-confrontational tool to allow people to hear each other safely

Adapted from Finlantic family therapists



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Cautionary advice #9: Stay off the fence



- Consultants – not lawyers
- Remain strictly neutral
- Gather comprehensive, objective behavioural data
- Prepare detailed aetiological analysis - (Not he said, she said)
- Provide clear resolution options - What a fair and reasonable employer could (not, would) do



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