

The First Information Is Almost Always Wrong

PART I – Protect Your Career: How to Think Like a Workplace Investigator

For all the value and insights an investigation may contribute to a company, much depends on the skills and efforts of the investigator assigned to that case. An investigator, however, cannot contribute much—for this case and future ones—if he becomes collateral damage to the investigation.

There is no sure-fire way for an investigator to protect against accusations of improper investigative conduct. Considering the nature of the matters investigated and the consequences for employees committing misconduct, an investigator always risks accusations of misconduct. An investigator should do everything reasonably possible to reduce this risk. Fortunately, there are a number of protective steps an investigator can take.

1) Never say always. Never say never.

Everyone's job inevitably falls into patterns—or ruts: the doctor who sees patients all day during flu season with the same symptoms; the plumber who unclogs sinks every day; the accountant completing zillions of similar returns during tax season. Investigators are no different, but we need to resist taking a cookie-cutter approach to our work.

It may be your umpteenth my-boss-hates-me investigation, but there will always be some detail to make this case different from the others. The variables are always there to make the investigation unique.

Don't make assumptions about how the investigation will ultimately affect the people involved because, despite what might have happened in the past, you cannot be certain until all the facts are in. Making assumptions poses two risks to both you and the investigation. First, it closes off your mind to other possibilities and explanations. For example, if you assume that one of the implicated colleagues did nothing wrong, then you might miss the information that implicates him. The assumption becomes like putting on blinders. You'll ignore the information that does not fit within your intellectual template.

The second risk is that you might assure an upcoming witness that he's done nothing wrong, only to have him implicate himself later in his interview. What are you going to do then, especially if the witness then says your earlier statements tricked him into saying something incriminating? There is nothing wrong with telling someone that, at that point in time and subject to additional information that could show something different, it does not appear that he's done anything wrong. But always give yourself wiggle room, and say "It doesn't appear" rather than "I don't believe." The proof counts here, not what you think may have happened.

An investigation frequently ends in a different place than where you thought it would when your efforts began. Sympathetic witnesses turn out later to be arrogant tyrants to co-workers, and vice versa. People who initially appeared innocent of any wrongdoing are later found at the center of the misconduct. What seemed like a discrete act of misconduct turns out to be a pattern of problems in that department. Theories and colleagues implicated (or vindicated) may change.

So don't lock yourself, either internally with your thinking or externally with others, into early conclusions. Don't pre-judge the outcome of an investigation before all the witnesses have been interviewed and all the relevant documents have been reviewed. Use the issues and your working hypothesis as general boundaries that

can be crossed as the information you develop warrants.

Keep an open mind to other possible explanations or scenarios. Go where the facts take you. You will be frequently surprised where they eventually lead. A genuine inquiry requires asking lots of questions and observing. Making assumptions too early will also make you look either like a know-it-all or patronizing.

You weren't there, so you can never be entirely sure what happened. Keep all your investigation options open. Never say never, and never say always.

2) You aren't collecting for the Red Cross and this isn't an audit. But you aren't the Prince of Darkness either.

You can regularly describe yourself as a business advisor helping to identify unacceptable business risks. And this does play well when advocating the investigation process internally. But when you are assigned a case, how will you position yourself to the people affected by the allegation? What are you going to say in order to set the stage for effective fact-finding?

You have a bit of a dilemma. Do you, figuratively speaking, kick in the door and announce that you are conducting a misconduct investigation? Or do you use the subtle "I'm just trying to understand the facts" approach? Different cases require different approaches. It will be up to you to choose the right one. Whatever you choose, have no illusions.

Investigations disrupt workplaces. A misconduct allegation arises, and the next thing people see is an investigator snooping around the department asking lots of questions. No matter how professional and objective you try to be, you will still get dogged by the stereotypes and preconceived notions about investigators. Everyone thinks that, behind your statements of "I am just a company employee too," lurks a second-guessing finger pointer searching for some reason to blame people.

At times, you will get frustrated. Your frustration, coupled with your desire to have productive fact-finding, may give you the urge to mask your true role as a company investigator. Perhaps such a suggestion will come from the business executives who want to minimize the disruption of your presence. You might think it's an easier way to accomplish your goals. But whatever the source of the idea, resist the temptation.

Credibility is essential to an investigator. You'll never be able to tell everyone exactly what they want to hear—for example, that you're sure nothing will happen to them for "borrowing" from the petty cash fund—but you do control whether people believe what you tell them is accurate and truthful. When you mislead people, for even what seemed like a reason that helps the company, you are effectively telling everyone that they should not rely on your statements or intentions. Before you even ask your first interview question, you've already told them not to trust you.

So when these business-disruption and similar process concerns arise, tackle them directly. Investigations are a normal part of any company's internal operations. Investigations are one of the ways the company polices itself. There is no need to describe your presence as serving some other purpose, like quality control or an audit. There is no need to portray your role as anything other than protecting your company by investigating a report of actual or suspected misconduct.

This approach makes the most sense if you encounter resistance from the implicated person. Most initial reports—and the allegations that spring from them—are not fabricated. The facts described likely occurred in one form or another and your job is usually to determine whether those facts are actually misconduct. (For example, an investigation into whether an off-color joke was discriminatory usually proves easily that the joke was told, regardless of its consequences for the joke teller.) So if one of the actors in the underlying facts tries to resist

cooperating, he must be gently reminded both that the investigation is a regular business function as well as the logical consequence of his actions.

Just as you shouldn't mislead people as to your role, remember that you aren't the Prince of Darkness either. There are a number of unflattering stereotypes for investigations, all of which may undermine your credibility and effectiveness. The ability to strike fear in your colleagues will not yield useful information. Instead, it leads witnesses to lie, evade and generally recollect nothing. Once again, you are just doing an important job for your company by finding the true facts of what happened.

You aren't their friend, but you're not their enemy either. Don't let people label you. Don't label yourself either.

3) Be infamous. Investigations can be a dirty business.

Just as you shouldn't mislead others as to your true purpose, don't fool yourself either about the nature of workplace investigations. You should market your function internally as simply another part of the company's risk-management operation. You can emphasize how detailed inquiries actually protect the company by identifying areas of unacceptable business risk. You can bring value to the company by conducting investigations both offensively (to determine where problems occurred and how) and defensively (to identify facts which help minimize your company's liability). You can do everything you can think of to showcase your business value.

But when all is said and done, accept the reality that people frequently get fired once the investigation is done. Business people generally get blamed for allowing a subordinate to commit misconduct, even though that manager didn't even know it was occurring. The police sometimes get called and, from time to time, former employees go to jail. These are not the regular outcomes of most other business functions.

You must also acknowledge that the best thing that can happen to a colleague who assists you in an investigation is nothing. The witness or implicated person isn't getting a bonus, promotion or likely even a "thank you" for cooperating. Investigations can be a dirty business—few internal business processes cause grown men to cry during regular business meetings—and we need to accept this reality as professionals.

So accept that people may be intimidated and scared. And if not of you personally, then they will be scared of what you do. Don't think that, as time goes on and you complete more investigations, people will become less scared because you have become a more-defined quantity in your company. The opposite may be more likely. People will learn that you are sufficiently skilled to get to the bottom of things and find out what truly happened. It will become more unlikely that—to the discomfort of some—you would just throw up your hands in frustration, walk away from the matter, and conclude that the true facts could not be determined.

So be infamous if you must. Anyone would prefer to be loved and admired by his colleagues. But it isn't likely to happen to investigators. Switch professional disciplines if you crave the cheers and accolades of your leaders and co-workers. You're not likely to be chosen as the "Employee of the Month" when an important milestone for your career will be the first time your workplace investigation leads to the criminal indictment of a now-former employee.

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