

Internal Investigations Intake to Investigative Report International Considerations

Society for Corporate Compliance and Ethics (SCCE)

Tampa Regional Conference

April 27, 2018



Latour "LT" Lafferty, Partner, Holland & Knight LLP
Wendy Evans, Senior Investigator, Lockheed Martin

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Join Us – Intro and Agenda

Wendy Evans



Latour "LT" Lafferty

- Intake
- Investigative Plan
- Evidence Collection
- International & Legal Considerations
- Investigative Conclusion & Documentation
- Presentation to Discipline Committee



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Intake --- Jeff

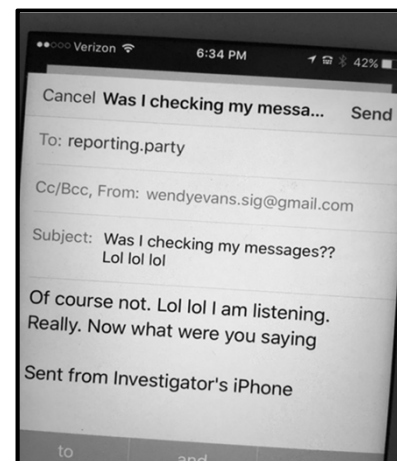
What did you think of Jeff?
Did he seem credible?
What did he allege?
Did he name any witnesses?
What's next?



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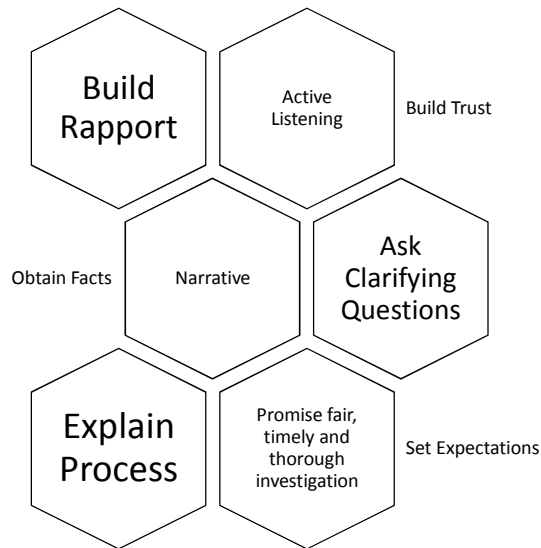
Wait a minute...what did Jeff think of *YOU*?

- Jeff could tell I bought his story--hook, line and sinker. I'm all in! That Becca...
- He thought I looked bored. He was right. Yes, I've heard it all before.
- Well...I think he caught me checking my phone during the interview...maybe...
- He could tell I was an engaged professional who actively listened to his concerns



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INTAKE TIPS



INTAKE IS
CRITICAL

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Investigative Plan

- Roadmap
- What are allegations?
- Who is the Subject of the report?
- What witnesses did Jeff name?
- What Functional Support will you need?
- What notifications need to be made?
- What policy is impacted?



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INVESTIGATIVE PLAN



A FAILURE TO PLAN IS A PLAN FOR FAILURE



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Legal Considerations

- Confidentiality - Banner Health Decision (NLRB)*
 - Represented Parties
 - Non-Represented Parties
 - Leaders versus non-leaders
 - Exceptions
- Other Legal Considerations:
 - CBA-represented Parties – Weingarten Rights
 - Parties who say they have a lawyer
 - Parties who ask for complete confidentiality
 - Parties who ask to record the interview



*Banner Health Systems, 362 NLRB No. 137 (June 26, 2015)

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International Considerations

- Privacy Laws
 - GDPR (EU General Data Protection Regulation)
 - What could it mean to you?
- What if?
 - What if the Subject (Becca) lives in the UK?
 - What would you do differently in the investigation?
 - What special legal considerations are there?



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Evidence

- Documentary (consider chain of custody)
 - Email
 - Instant Message
 - Facility Access Records
 - Conflict of Interest Declarations
 - Public Record Searches
- Physical Evidence (chain of custody/storage considerations)
 - Hard copy notes, letters, documents
 - Thumb drives (engage your computer experts, as needed)
- Testimonial (memorialize notes soon as possible)
 - Manager Discussion
 - Human Resources
 - Witness Interviews
 - Reporting Party and Subject Interviews



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Witness Interviews

- Do your homework
- Keep it Collegial
- BOVINE Approach:
 - Build Rapport
 - Open-ended questions
 - Visualize their story
 - Introduce clarifying questions
 - Notice the Gaps
 - End with Closed Questions
- Challenges
 - Uncooperative/hostile
 - Reluctant/Nervous



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Reaching your Investigative Conclusion

- Review Allegations
 - How did your investigation evolve?
 - What does evidence suggest?
- Standard of “proof”
 - More Likely than Not
 - Good faith investigation
- Courage of your Convictions
 - Confer with Subject Matter Experts
 - Don’t fear the gray areas or elephants in the room
 - You are the policy expert
 - Document the conclusion



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Bringing it in for a landing – Investigative Report

- Format
- Consider Outline to prepare for ROI
- Avoid legal conclusions and legalese
- Third Person; Active Voice
- Keep it concise
- Peer review



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Feedback, Presentation, Follow-Up

- Feedback
 - Reporting Party
 - Subject
- Presentation
 - Be present
 - Be prepared
 - Be polite
 - Be professional
- Follow-Up
 - Legal/Regulatory Issue?
 - Security Issue?
 - Surveys of Reporting Party? Subject?



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Now you can RELAX until the next case!



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Ethics Officer Conclusion

- Best Practices for Training Investigators
 - Role Play
 - Key Learning Points
 - Mock ROI
- Questions?



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Thank you!

- **Latour "LT" Lafferty | Holland & Knight**
Partner, Holland & Knight LLP
100 North Tampa Street, Suite 4100 | Tampa, FL 33602
(O) 813.227.6361 (C) 813.857.1467 (F) 813.229.0134
Lt.lafferty@hklaw.com | www.hklaw.com
- **Wendy Evans | Lockheed Martin**
Senior Corporate Ethics Investigator
(O) 407.622.4911 (C) 407.462.4478 | Orlando, FL 32751
wendy.w.evans@lmco.com



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