

Internal Investigations Intake to Investigative Report International Considerations

Society for Corporate Compliance and Ethics (SCCE)
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Join Us – Intro and Agenda

Wendy Evans



Latour "LT" Lafferty



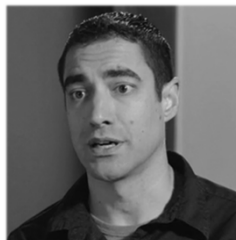
- Intake
- Investigative Plan
- Evidence Collection
- International & Legal Considerations
- Investigative Conclusion & Documentation
- Presentation to Discipline Committee



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Intake --- Jeff

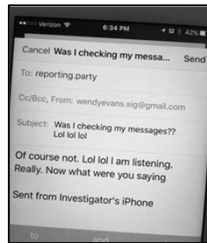
What did you think of Jeff?
Did he seem credible?
What did he allege?
Did he name any witnesses?
What's next?



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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

Take a Strategic Pause

Ensure Proper Notifications

Gather Background

Create Witness List

Asses Documentary Evidence

Engage Subject Matter Experts

Review Relevant Policies

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

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

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

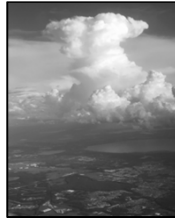
- Review Allegations
 - How did your investigation evolve?
 - What does evidence suggest?
- Standard of "proof"
 - More Likely than Not
 - Good faith investigation
- Courage of your Convictions
 - Confer with Subject Matter Experts
 - Don't fear the gray areas or elephants in the room
 - You are the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

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