

INVESTIGATIONS WORKSHOP
REVEALING & ANALYZING DOCUMENTS

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Compliance & Ethics Institute
Society of Corporate Compliance & Ethics (SCCE)
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OBJECTIVES - GOALS

- Understanding the critical **ROLE** of documents in your investigation;
- Identify & explain the **PURPOSE** of documentary evidence in your investigation; and
- Review & discuss **SPECIAL PROBLEMS/ISSUES** in handling documentary evidence and how to resolve them.

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CHARACTERISTICS

- Tedious & time consuming
- Glamorous – NOT!
- Often delegated to junior employees
- Yes difficult & complex: electronic evidence
- *The Heart of Davey Jones*: that which regulators & lawyers desire the most.....
- Fundamental step in any investigation (i.e., preservation, collection, review, & use)
- Key to success (e.g., a “paper case”)

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WHY IMPORTANT?

- Trial Evidence: essentially two types
- The reluctant witness
- Witness impeachment, validation & corroboration (i.e., weight of the evidence)
- Memory lapse; refreshing recollection
- Scienter: motive, knowledge, intent (i.e., the “tipping point”)
- Documents “don’t lie”
- Often, the “smoking gun”

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PLANNING & PREPARATION

- Context: what type of investigation?
 - Begin with the end in mind (Covey)
- Document retention & preservation; sanctions
- Obstruction of justice: alteration, destruction, concealment
- Authentication
- Privilege waiver; claw-back orders; consultants
- Electronic evidence: True wisdom is knowing what you don't know (Confucius)

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THE PURPOSE OF DOCUMENTS

- Scope of Invest., relevance & "Hot Docs"
- Preserve integrity of original docs
- Protect all privileges, confidences & proprietary secrets
- Ensure a comprehensive review BUT avoid investigation creep
- Minimize Disruption of business functions
- Parallel proceedings: avoid duplication
- Proof of liability, guilt & defenses

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SPECIAL ISSUES-PROBLEMS

- Confidentiality & A-C Privilege
- Upjohn warning, employee interviews & false statements/obstruction of justice
- Public record laws
- Who is the witness now?
- Electronic evidence: personal verses corporate docs on HDDs
- IT considerations
- Securing the correct or “right” documents

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SPECIAL ISSUES-PROBLEMS CONT.

- Multiple parties & confidentiality agreements
- Allegations of professional misconduct
- Documenting your compliance program:
 - Failure to “document” misconduct & the investigative results
- Evaluating fraudulent intent
- Foreign data protection rules

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