

## The First Information Is Almost Always Wrong PART II – Protect Your Company: How to Integrate Your Investigations into Your Company's Operations

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Investigators don't work in a vacuum. Ours is just one of multiple staff functions in the company. This means that workplace investigations, besides the goals of any specific investigation, must improve company operations and protect shareholder value. How you accomplish these objectives and showcase your contributions may determine your success.

### **26 ) The bosses drive the bus.**

The economics of capitalism and private enterprise favor risk taking. Identifying those risks places a goal of the investigations process squarely within the business's fundamental purpose. This presents us with an opportunity. But there is a boundary each investigator must respect.

You will usually be the one with superior knowledge of the facts. But insight is not the same as authority. You cannot substitute your judgment for those who run the company. You can explain facts. You can identify the risks. You can answer questions as they arise. But once you've done your job, the decision, along with accountability for its consequences, rests with the bosses. We are only advisors. Once the facts are sufficiently delivered, our work is essentially done.

From time to time, the bosses will disregard your information in favor of an approach you didn't advocate. (For example, they may want to compensate a customer fully in a loss for which your investigation determined the customer was at least partially at fault. Or a decision will be made to retain a misbehaving sales executive although your findings clearly justified his immediate firing.) Accept also that you may not always be able to influence executive decision-making as much as you'd like. You are a business advisor, not a decision-maker. Leave decisions to the people who are both empowered to make them and are held accountable for their consequences.

### **27 ) The quality of your compliance program is decided internally, not externally.**

Investigators and their compliance colleagues frequently judge the quality of their efforts with comparisons to what other investigators and compliance people do in their own companies. We think that if we implement a similar hotline, if posters are also in every lunchroom, if we "borrow" a cool slogan from another company, if we hand out wallet cards with information, or if we have quarterly compliance-council meetings, then our company has a top-notch program because all the bases seem covered. But this is the wrong, if understandable, approach. Your company leadership decides whether you are valuable, not the other attendees at a compliance industry conference.

Your value depends on the substance you contribute, not the processes you implement. When you help management with their problems, and they know it, then they will support you. The opportunity is there for you if you are willing to go look for it. There is no doubt that this approach is a harder effort than just mimicking others' approaches. But an honest assessment is worth it. Have the courage to face the judgments and value calculations offered by the people who pay your salary. Don't settle for abstract considerations that may work for other companies, yet don't consider your true worth to your company.

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## **28 ) Don't be just another layer of bureaucracy.**

You may think you contribute something meaningful to the company's bottom line, but do you really? And if you are confident that you do, do others see that value?

Investigations are the place where “the rubber meets the road” in the compliance process. The other compliance steps are proactive and abstract rather than operating within a factual context of actual employee misbehavior. The goal of these steps is to channel and foster future employee behavior and not focus on already-occurring conduct.

Good investigators favor substance over process. When reporting on investigation details and findings, senior compliance people get to describe their company's compliance function in glowing terms, when all they may have done is repackage and recycle an investigator's efforts and push the results upward. Even if the investigation were done well, these people don't necessarily add value to it.

Bottom line: Contribute your own substance, whatever your role in the compliance function. Your company already has enough process.

## **29 ) Know how typical managers truly think.**

Business leaders generally don't see the benefits of investigations as part of the process of running a business and reducing unacceptable risk. This is unfortunate, and we are partially responsible for this perception. Often an investigation's scope and findings are not made relevant to the world in which business people operate. One way to achieve relevance is to understand how business people think so you can tailor your efforts accordingly. So let's consider some of the realities of the business world:

First reality: Business people are hired—and fired—depending on their ability to generate revenue for the company. Compliance programs are not profit centers of a business, so the mere existence of a Compliance Department doesn't help them too much. Unless you have something to say that has a bottom-line significance, many business people probably won't care too much about what you do. Your function then is not perceived as essential to their business success, and they'll focus resources on the functions that do.

Second reality: The lack of involvement of most business managers in structuring Compliance Departments leads to confusion about the proper role of ethics in business (beyond just slogans and unquestioning certainty about an important but abstract role). Compliance isn't intuitively connected, and there are many ethical “gray areas” in business dealings.

Compliance Departments have typically been created by lawyers, human resources people, ethicists, academics, regulators, consultants, judges, and other non-business people. The departments are often the offspring of scandals, consent judgments, and Sarbanes-Oxley requirements. Compliance Departments are perceived as being imposed on business people as mandatory for some reason. It is not too presumptuous to believe that few business people developed the department's strategic directions or formulated some clear business-oriented objectives. Consequently, Compliance Departments are generally viewed as either the costs of penance or the price of continued virtue.

Compliance people have a tendency to side-step business realities. It's easier that way. Ethics is presented as a kind of moral absolutism. Examples in ethics training courses are often presented in a simplistic way, as if every real-life situation has a right and wrong answer (such as “should I lie, cheat and steal, or not”). With its emphasis on “doing the right thing,” many managers believe that compliance people are simply asserting the obvious with no substantive guidance, so those managers do not take the message seriously. (Business people

may also see no tangible benefit in “doing the right thing” if their compensation and financial targets focus only on results with no rewards for using only ethical tactics. The slogan then becomes empty sentiment.)

Third reality: Managers generally believe that investigations are neither profitable nor expeditious. Business people know that the profitable use of time is the key to their success, and the investigation may seem more expensive—in terms of time and money—than simply writing off the loss, firing the offending employee and going back to the business of selling profitable goods and services.

Fourth reality: Workplace investigations are usually not tied to the operation of the business. The preferred goals have been limited usually to identifying wrongdoers and calculating the harm they caused. The business people have already determined, for example, that Bob stole the money, so what does the investigation do for them?

Fifth reality: People who work in large companies learn that periodically, some new corporate fad pops up, and then everyone is supposed to pay homage to it. A succession of corporate slogans, mantras and “paradigm shifts” fosters in many colleagues either studied indifference or a this-too-shall-pass attitude. A Compliance Department that relies on abstract messages about ethics and compliance will eventually leave that department as just another layer of bureaucracy to be conveniently ignored and only mentioned periodically in superficial newsletters and lunchroom posters.

Increased attention to compliance and investigations will be considered a smart investment for your company’s leadership if they believe that the risks of noncompliance are tangible. Otherwise, a greater emphasis on compliance and ethics becomes little more than an insurance policy—with its own share of overhead costs—for something that they perceive as not likely to happen.

This final point deserves some additional discussion. When calculating if and how to respond to business risks, smart executives focus both on the likelihood of something happening as well as the anticipated severity of that outcome if it were to occur. Credit checks for new customers and reserves for doubtful accounts, for example, reflect management planning for likelihood and severity. Although you will not have the data available to you that is similar to the data available to other departments, try to get as specific as possible regarding the risks your investigation efforts have identified. If you can discuss the likelihood and severity of additional incidents, even better.

Just remember that “otherwise something could happen” is not a very persuasive argument.

### **30 ) You need the company’s leadership. They don’t really need you.**

Investigators are like dentists. People don’t want to call on us, although they might be glad to know we’re there just in case we are needed. And when they do need us, you will be able to fix the problem. It’s only a question of how much it’s going to hurt.

A common conceit among compliance people is a certainty that, for some reason, we are an intrinsic part of the company. It is difficult to see from where this assumption comes. Our contribution to the company is less tangible than, for example, the accounts-payable department, so we should be more focused on adding value than assuming it. Among compliance professionals, the challenge is greater for investigators because investigations can be outsourced to Human Resources, the Legal Department or a company vendor (although with less quality than we can deliver).

We need company managers as allies and advocates. An effective way to cultivate managers is to consider their needs and concerns in our strategic thinking. If necessary, ask them directly. Then include their needs and concerns in your investigation goals. Just because you are trying to determine what went wrong does not prevent you from similarly identifying what went right. Also, identifying where some business process needs to be

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improved does not require you to blame someone. Process gaps often arise because business processes are designed by honest people who limited their focus to whether the crafted process will be useful, efficient, and cost-effective. Opportunities for process improvement are frequently identified in misconduct investigations, not so much because of our crackerjack investigative skills, but because the business people did not “think like crooks” and foresee the possibility of employee wrongdoing. Investigators are professionally trained to think like dishonest people, and others generally are not.

You can influence how management values you. Critically ask yourself two questions: (1) are the investigators in your company aggressively taking a posture of finding misconduct (through training, awareness and referral-pipeline creation) rather than passively waiting for a report to arrive, and (2) are the issues being investigated consequential and meaningful to the profit-making goals of your company, or are they inconsequential in the scheme of the company’s overall business interests? Everyone involved in your company’s investigation process must answer these questions.

Work to change the answers if you are dissatisfied with them. Nothing stops you from exploring how to learn about misconduct proactively before an incident occurs. You have some control over whether you simply wait for the phone to ring.

As part of your investigative goals, are you regularly helping business people solve their business problems? If the wrongdoing affects a customer relationship, are you helping repair that relationship? If you make it a priority to stay business-focused and act as an advisor, the business people will become your allies. (And investigators need all the supporters we can get.)

The point here is that your company always has choices. Just because the company has to conduct some inquiry into possible misconduct does not mean it has to do it as effectively as you would like them to do it. The company can conduct bare-bones, check-off-the-box investigations if that is all the executives want. Or they could just outsource your function entirely. So never take your job security for granted. Always remind your executives through the quality of your efforts how smart they were to hire you.

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