



*SCCE's 7<sup>th</sup> Annual*

# **Compliance & Ethics Institute**

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Sheraton Chicago Hotel & Towers  
Chicago, IL

## **Conducting Internal Investigations**

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**SOCIETY OF CORPORATE  
COMPLIANCE AND ETHICS**



# SESSION AGENDA

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- Presentation by Al Gagne & Latour “L.T.” Lafferty (1:00–2:15)
  - Questions encouraged during presentation
- Break (2:15–2:30)
- Workshop (2:30–3:30)
  - Developing an Investigation Action Plan
  - Scenarios of alleged misconduct will be provided
  - Investigation Checklist will also be provided
- Sharing results (3:30-3:50)
- Summary & closing thoughts (3:50–4:00)

# Effective Internal Investigations

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## ➔ Effective internal investigations are essential to a successful Ethics and Compliance Culture



- ➔ Conducting internal investigations is an acquired skill
- ➔ Planning the essential steps
- ➔ Asking the right questions and eliciting responses
- ➔ Sorting relevant from irrelevant details
- ➔ Making credibility determinations
- ➔ Identifying others needed to support the investigation
- ➔ Documenting your actions
- ➔ Closing the loop with stakeholders

# Fundamental Propositions

- ➔ Fair treatment of all employees
- ➔ Earn and maintain trust
- ➔ Protect employees from retaliation
- ➔ Respect for confidentiality
- ➔ Consistent, uniform, thorough process
- ➔ Independent and objective investigators
- ➔ Do no harm



# Creating an Investigation Plan

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## ➔ **Prepare a Thorough Investigation Plan:**

- **List all documents you will need to review**
  - **and then some**
- **List all potential witnesses you will interview**
- **Create an interview schedule**
- **Prepare a questionnaire**
- **Identify internal and external resources (if applicable) that may be needed to facilitate investigation**

# Creating an Investigation Plan

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**The Who,  
What,  
When &  
How of an  
Investigation**



# Creating an Investigation Plan

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## Who is going to lead the investigation?

- **Ethics & Compliance**
- **Legal**
- **Human Resources**
- **Internal Audit**
- **Special Committee**
- **External resources**

# Creating an Investigation Plan

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## What should be investigated?

- **Identify and understand**
- **Is the allegation true?**
- **Stop and correct**
- **Issue specific**
- **Tip of the Iceberg**
- **Need to expand investigation**
- **Regroup**

# Creating an Investigation Plan

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## When should the investigation commence?

- **Timing may be critical**
- **Is there rampant misconduct?**
- **Collaboration among offenders**
- **Send the right message to all stakeholders**
- **Keep the momentum going**

# Creating an Investigation Plan

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## How should the investigation be conducted?

- **Effective communications**
- **Cooperation from all parties**
- **Legal representation for some**
- **Confidentiality**
- **Attorney-Client Privilege**
- **Penalties for failure to cooperate or obstruction**

# Creating an Investigation Plan

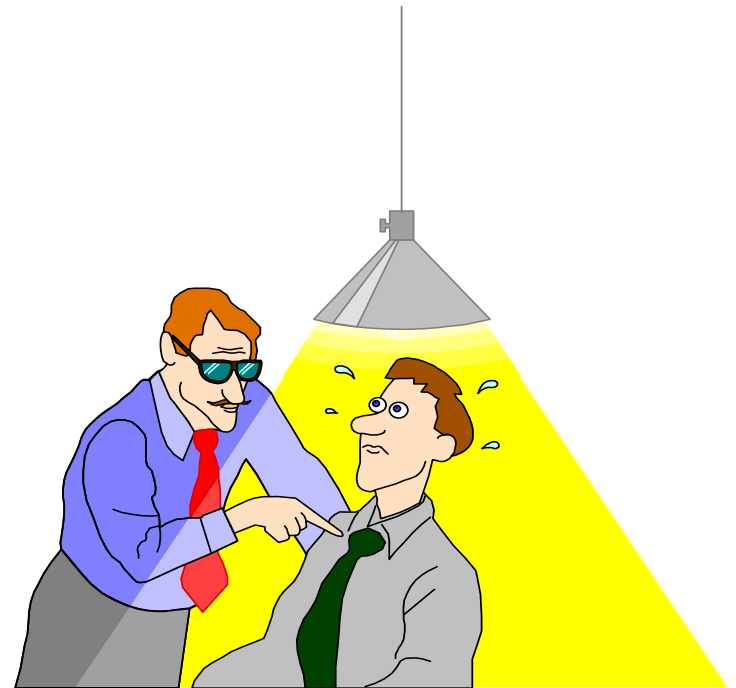
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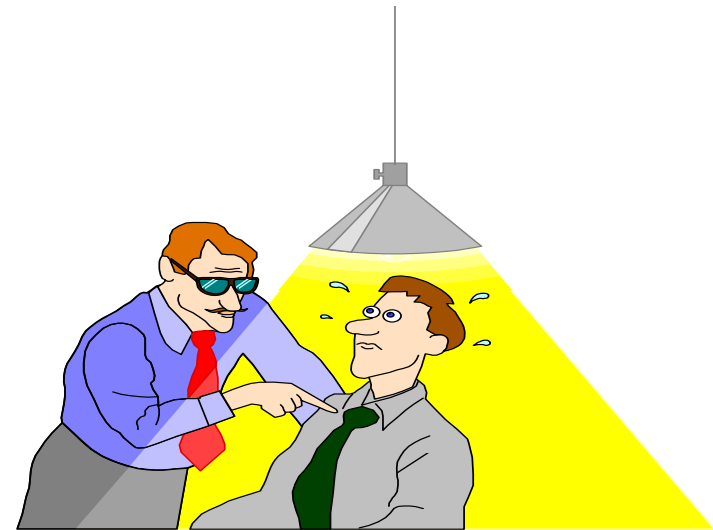
# Conducting Interviews

- ➔ Identify yourself and the purpose of the interview
- ➔ Let employee know, up front, if they are a potential witness or offender of an alleged misconduct.
- ➔ Ask for the full cooperation of employee being interviewed, and remind them of their acknowledgement and commitment to your company's Code of Conduct (have a copy handy to show employee, if necessary)
- ➔ Identify need for confidentiality
- ➔ If applicable, provide "Attorney-Client Privilege" Notice
  - You represent the company and not the employee
  - Set expectation to keep discussions confidential
  - Identify the parties you need to interview



# Conducting Interviews

- Advise employee that any retaliation taken against them by others for cooperating with the investigation is a violation and will be subject to disciplinary actions, up to and including termination
- Consider having the employee review and sign your answer sheet (if you are conducting the interview alone).
- The Interview Team (Best Practice)
  - Lead interviewer asks the questions and observes behavior
  - Scribe interviewer takes notes and asks clarifying questions
  - Review notes following each interview
- Have a copy of your company's Policy for conducting investigations handy to share with employees, if necessary.
- Consider developing a policy for conducting investigations if your company does not currently have one.



# Conducting Interviews

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- Prepare a detailed list of questions
- Start with some basic questions you know the employee will respond to truthfully
  - What is your full name?
  - In which department do you work?
  - Who is your immediate supervisor?
  - How long have you been employed by our company?
  - Please describe your job responsibilities.
  - Are you aware of our Company's Code of Conduct?
- Easy questions set the tone for the interview
  - Helps employee feel more relaxed
- Make eye contact throughout process
  - Observe and note any changes in behavior/body language
  - Warning signs an employee is not being truthful

# Conducting Interviews

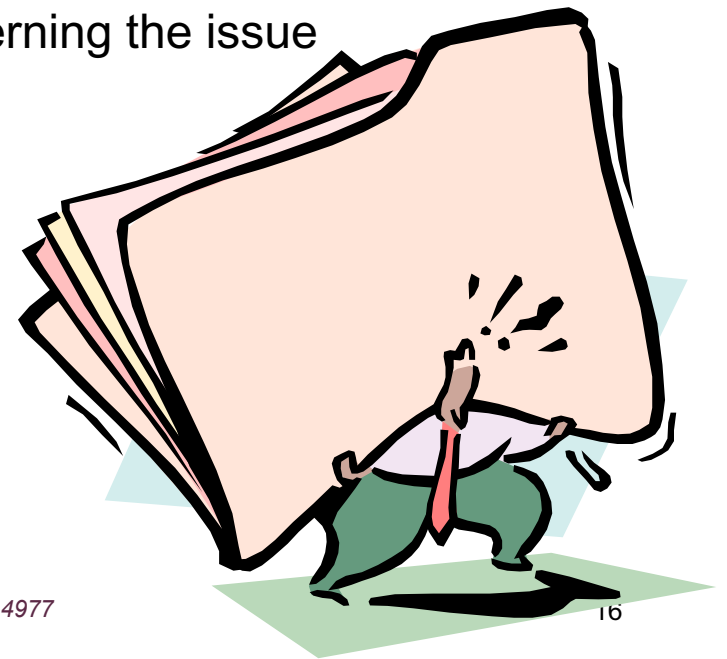
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# Proper Documentation

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- Document the following as soon as you are made aware of the misconduct:
  - The issue
  - The facts provided by the employee to support the issue
  - The employees' motivations/expectations for reporting the issue; and
  - The person(s) assigned to investigate the issue (confirming the person(s) impartiality and fairness)
  - Quickly identify and obtain documents concerning the issue



# Investigation Phase

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## ➤ Notes:

- Take notes of meetings, interviews, phone conversations, etc.
- ***Audio or video recording devices should not be used***

## ➤ Notes should:

- Include only the relevant facts
- Be succinct and objective
- Consist of factual accounts of interactions
- May include your observations of behavior

# Is there another Root Cause

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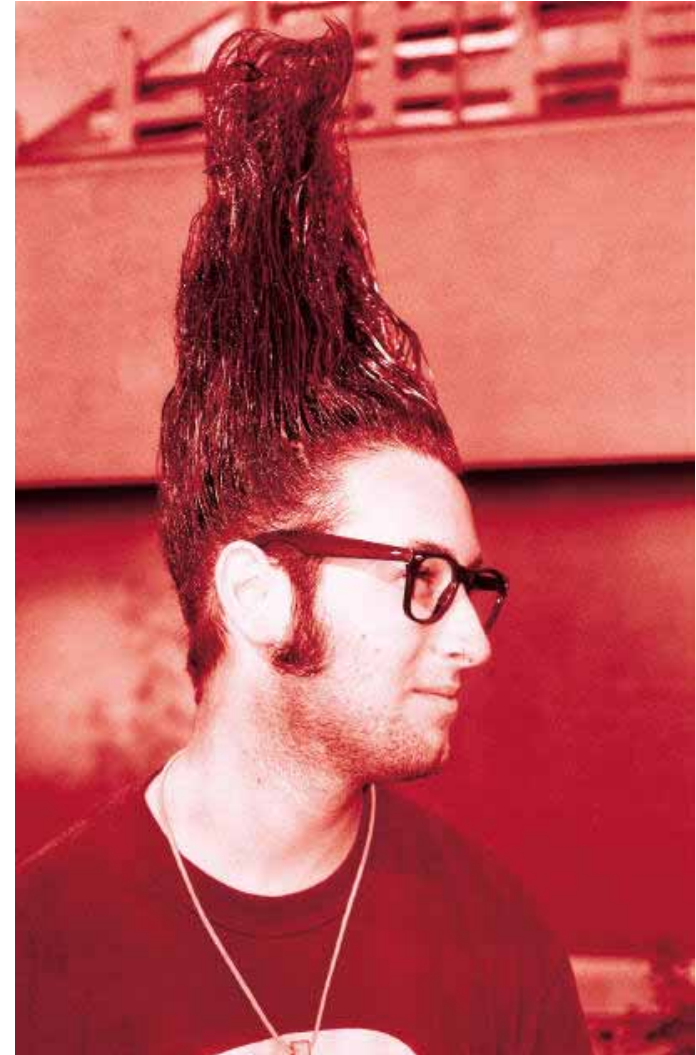
Do you need to look beyond the existing allegations to determine if there is other misconduct that needs to be investigated?



# Formal Summary

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- ➔ Formally document the investigation for inclusion in the final investigation file
- ➔ Identify pertinent documents
  - ➔ Policies, procedures, forms, reports, etc.
- ➔ Include key facts, observed behaviors and relevant circumstances
- ➔ Do not include extraneous information
- ➔ Do not include the content of conversations or written communications with legal counsel



# Analysis

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- Include a description of how the facts collected were analyzed
- Use facts, not assumptions of intent
- Consider circumstances
- Use timelines
- Reference your company's Code of Conduct, Policies and Procedures, when appropriate, as opposed to referencing the law

# Summarize Findings

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- Document conclusions in a concise, objective, and neutral style
  - Findings, observations, corrective actions
- Do not include the content of conversations or written communications with legal counsel

# Resolution

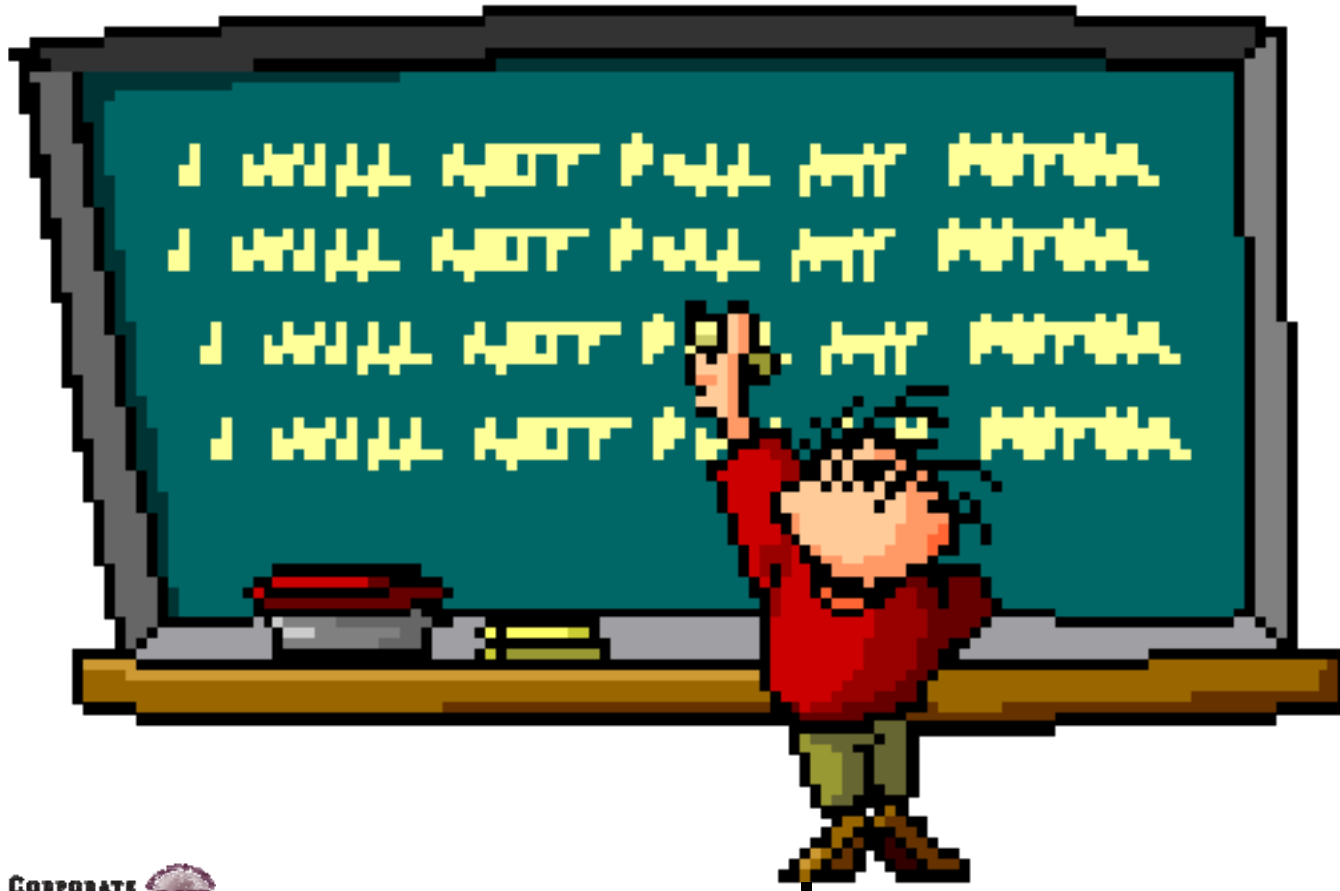
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- Document the specific action(s) to be taken to address the conclusion
- Document/prepare action plan for any corrective action
- Notify the employee who initially raised the issue of the findings of the, conclusion and that “appropriate action is being taken”
  - No need to provide details
- Thank the employee for reporting the alleged misconduct
- Report status of all investigations to Management
- Track alleged misconduct for trends and high risk areas to be targeted for compliance training and awareness
- Share “lessons learned”

# Close the Loop with Stakeholders

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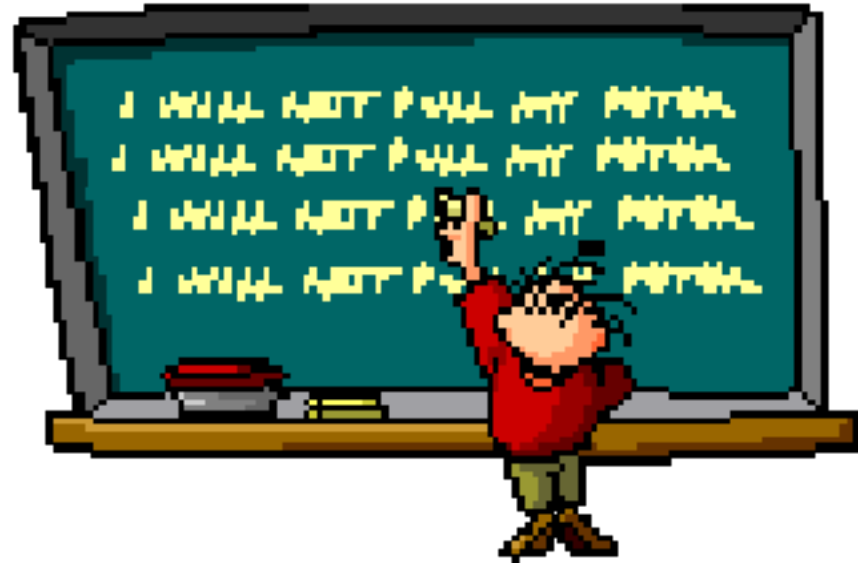
- Were the allegations substantiated?
- Was corrective and or disciplinary action taken?



# Close the Loop with Stakeholders

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- Validate remedial actions
  - Disciplinary Actions
  - Training and Education
  - Changes in Policy & Procedures
  - Other communications
- Prevent further misconduct
- Voluntary Disclosure to external sources
- Share “lessons learned”



# Final Investigation File

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- The Final Investigation File constitutes the company record:
  - Written communication from the employee raising the issue(s)
  - Your documentation of the issue(s) reported
  - Investigation Summary
  - Documentation of the Analysis and Conclusion
  - Documentation of the Resolution
  - Notes and Support Documentation as necessary to support key facts, analysis, conclusions, or resolutions

# Final Investigation File

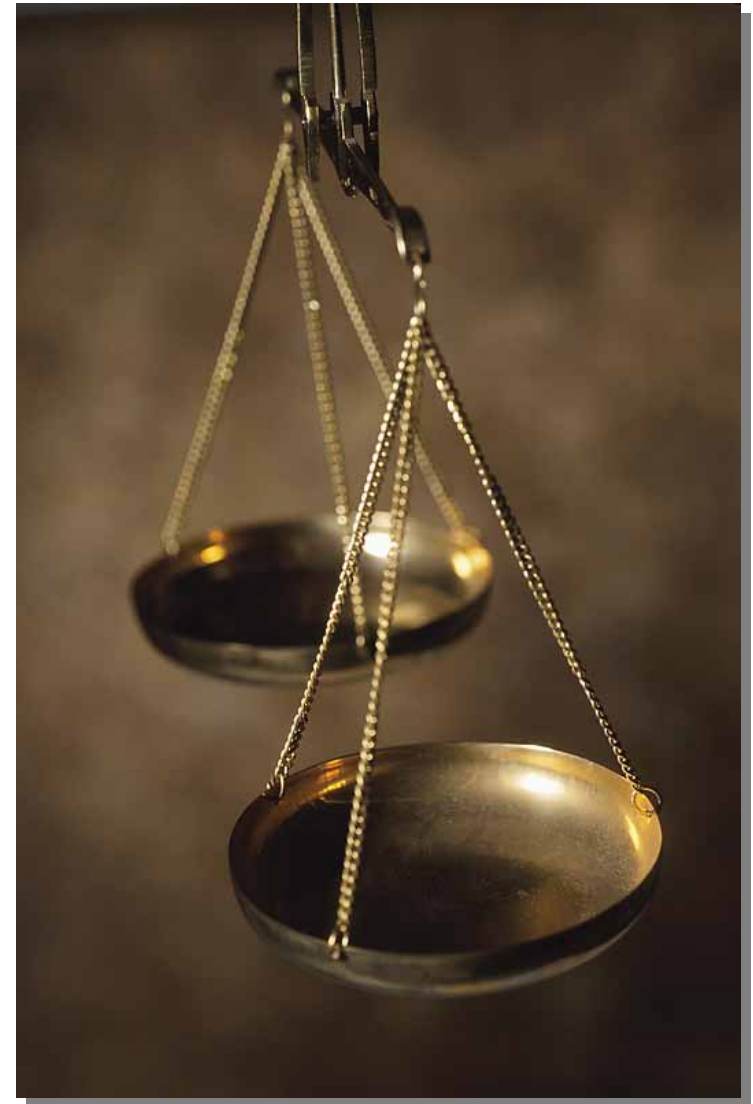
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- Only final copies of documents should be placed in the Final Investigation File.
- All drafts should be destroyed.
- All other files and notes should be destroyed (this includes information stored on computers and disks).
- Access to the file should be limited to only those with a legitimate business need-to-know.
- The information in the Final Investigation file should not be released to anyone outside the Company, except when required by law.
- Keep investigation files in accordance with your company's Record Retention Requirements (e.g. 2 -5 yrs).
- Destroy investigation files as you would any critically sensitive documents.

# Government Investigations

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**Are you ready if  
and when the  
Government  
comes?**



# Government Investigations – Initial Actions

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- **Develop a response policy and communicate.**
- **Establish a designated person (DP) at each location.**
- **Contain visitors to reception area until “DP” arrives.**
- **Determine reason for visit if not arranged in advance.**
- **If appropriate, notify General Counsel immediately.**
- **Establish positive identification – obtain business cards.**
- **Consider privacy rights of employees.**
- **Preserve “Privilege” of company.**
- **Consider physical security of classified information.**
- **Consider physical security of intellectual property.**
- **Determine if an internal investigation is required.**

# Workshop Guidelines

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- Split group into teams (about 8-10 people per team)
- Each team will receive a fictitious report of an alleged misconduct
- Each team will review the matter they have been assigned and create a list of steps that should be taken in order to conduct the investigation (The more details—the better) – (30 - 45 minutes)
- Teams will share their steps during an open dialogue – (30 minutes)
- Other Teams will be allowed to ask questions and inquire into the presenting teams presentation.

## Sample Scenario #1 – Allegation of Inspection Fraud

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An anonymous caller reported that he or she believes a coworker Greg Doe is regularly falsifying inspection and test reports. The caller stated the employee leaves the work area for long periods of time and can't possibly be doing the part inspections in the manner consistent with the acceptance and test procedure. The caller is really concerned because the parts being tested go into highly sensitive medical test equipment. The caller noted that potentially defective parts incorporated into the medical test equipment could provide a false reading, which could result in costly and unnecessary medical procedures or even worse the failure to accurately identify a patient's medical condition.

## Sample Scenario #2 – Allegation of Gaming in the Workplace

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An anonymous caller reports her lead person Joe Cash, a bargained unit employee, regularly sells football cards to coworkers during the NFL season. The employee states she feels intimidated because she doesn't buy the football cards from the lead person. She stated the lead person is constantly criticizing her work on the shop floor, and noted the other employees who buy the cards all seem to get along very nicely with the lead person. The caller also stated her lead person regularly discusses sports and openly laughs and jokes with her other coworkers. She feels isolated by her coworkers because she has no interest in sports or buying the football cards from her lead person.

## Sample Scenario #3 – Allegation of Unfair Treatment

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An anonymous caller reported Jessica Smith in the Contracts Department is receiving preferential treatment from her supervisor Dan Jones. Caller stated Mr. Jones allows Jessica, who employees call JESSIE, to arrive late for work. Mr. Jones never disciplines Jessie for arriving late while others in the department are disciplined for arriving only 2 minutes late. One employee was even written up for arriving late on January 5 when there was a snowstorm and most employees had trouble getting to work. It is unfair and someone needs to look into this and stop it. Caller stated the Jessie told him/her that she had received a merit pay increase that is twice the percentage received by others in the department. Caller feels Jessie is having an affair with Mr. Jones and that is why she is never disciplined. Jessie does not do her work and Caller is required to pick up her slack. Caller is sick and tired of the way things are being done in this department, and will call the State Department of Employment Discrimination if this behavior is not stopped.

## Sample Scenario #4 – Allegation of Conflict of Interest

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An anonymous caller reported a co-worker, Sue Trader, is constantly accessing the Internet during work to post personal items for sale on E-Bay. Ms. Trader has told some members of her team that she is making a small fortune buying and selling goods on the Internet from her desk top computer during work hours. Caller stated that he addressed his concerns with Mary Smith their Dept. Supervisor, but she said, “I can’t be looking over everybody’s shoulders all day –how do you expect me get my work done?” She is always rude like this. We can never run anything by her. What is happening is that all the rest of the department is doing Sue Trader’s work. This is unfair and it needs to be looked into by someone.

## Sample Scenario #5 – Allegation of Supplier Corruption

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A purchasing department employee reported that she believed one of the company's suppliers, NeverFail, may be providing kickbacks to her supervisor, Bill Themm. She believes this to be true because her supervisor just returned from a business trip to the supplier's site and told her the details of an extravagant dinner meeting that included very expensive French wines, caviar, and Kobe beef. She believes he also took his wife on the business trip. Following dinner the supplier's representative took Mr. & Mrs. Themm to a 1<sup>st</sup> Rate Broadway Show for which she has been trying to get tickets for over a year. She stated that Mr. Themm has also received mail from NeverFail that has "Personal and Confidential" markings on the envelope.

## Sample Scenario #6 – Potential Expense Report Fraud

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The Controller reported that she suspects a middle manager and some of his direct reports are padding their expense reports to cover-up potential violations of the company's policy limiting hospitality, gifts and gratuities provided to existing and potential foreign customers. She believes this because some of their expense reports have been submitted with incomplete justifications or lack adequate receipts; and, in her opinion, the amounts submitted appear to be excessive. She noted that all the expense reports have been approved by the employees' manager and the VP for International Marketing and Sales. She also noted that the company has recently won some rather large contracts from some of these foreign customers. She has asked that you conduct an investigation to substantiate or disprove her concerns for potential misconduct.

## Sample Scenario #7 – Allegations of Time Theft

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An hourly employee, whose identity he wishes be kept confidential, reported that two co-workers are allowed to come to work late, leave early, and sometimes not show up at all. The supervisor must approve all timesheets and they have been heard bragging about getting paid for working a full week. The employee stated he reported his concerns to his immediate supervisor who told him it was not his concern and not to worry about it. The employee also stated that the same coworker often go out to lunch with the supervisor and sometimes come back to work smelling of alcohol. He said other employees are aware of this behavior but are afraid to speak up because they fear retaliation from the supervisor and the coworkers who engaging in this misconduct. The employee also stated the same employees are often seen playing games on the company computer or accessing websites during work hours. The company does not have a zero tolerance policy on computer use, but has a conflict of interest policy prohibiting employee activities that conflict with their job responsibilities to the company.