

# ATTORNEY GENERAL'S EMPLOYMENT LAW CONFERENCE - 2006

## Conducting Employer Investigations

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## I. INTRODUCTION

### A. Investigator's Creed

1. An investigation is an *impartial* inquiry into a matter. It relies upon the gathering of data (discrete bits of information) to determine the truth of the matter. Gathering information in a responsible manner is the right thing to do – in order to either substantiate or clear allegations. Investigating should be a function of *fairness* to all parties in the process, including:
  - a. The party bringing forward an allegation,
  - b. The party allegedly involved in the conduct, and
  - c. The witnesses.
2. A thorough investigation informs the decision maker and essentially preserves the evidence for future use at hearing or trial.
3. A thorough investigation will be more cost effective because less follow-up investigative work will need to be done by other investigators or by the attorney litigating the matter.
4. A thorough investigation:
  - a. Places the state (and your lawyers) in a better position to assess the case's strengths and weaknesses.
  - b. Encourages complainants (and their attorneys) to recognize their case's weaknesses.
  - c. Helps identify when settlement is appropriate, and helps promotes settlement in those instances.

### B. Basic Tasks of an Investigator

1. An investigator searches for information that pertains to a particular subject matter and reports the results to a third party. The investigator usually taps two sources of information:
  - a. Interviews with people, and
  - b. Examination of all kinds of physical evidence (most typically documents).

2. An investigator's primary tool is a good mind because all of these tasks (talking, examining and writing) require the use of intellectual skills to conduct the inquiry in an efficient and effective manner. A good investigator uses proven techniques to both maximize the chances of obtaining objective data from either source of information and communicate it in a useful manner to the third party.
3. An investigator ideally tries to prove both sides of a case, marshalling the facts that support all parties' version of events. Those facts should ultimately determine the outcome, not the investigator's biases or preconceived assumptions or notions.

### **C. Typical Sequence of Events for an Investigator**

The work of the investigator typically begins with receipt of some (usually cursory) information about a subject matter, along with a request to look into it further. Investigations typically follow a logical sequence:

1. Before talking to people or examining physical data, the investigator should determine the basic scope of the subject matter to be investigated. This includes outlining what is currently known about the matter. This enables the investigator to plan to conduct the investigation in a *methodical* manner.
2. Following sufficient preparation, the investigator conducts interviews and examines other physical evidence.
3. The investigation concludes with a report being completed and delivered to the appropriate party.

## **II. PREPARATION FOR THE FIELD**

### **A. Initial Assessments**

1. What are the issues?
  - a. It is important to know the elements of the alleged violations(s). You need a complete working knowledge of agency statutes, rules and policies to be able to quickly apply them to a given situation.
  - b. What are the possible defenses to liability or opportunities to remedy the violation?
2. Have you researched the activity or work group? How does it operate?
3. Have you consulted with those persons who will ultimately take the case to hearing for hidden issues?

## **B. Initial Organization and Scheduling**

1. **Investigate as if you know the case will go to trial: *START EARLY*.** The evidence is fresh and easier to find. Memories are fresh, and stories have not been compared. Attorneys may not yet be involved. These are all advantages to the investigator.
2. Do you need to confer with an expert before you begin analyzing documents and interviewing witnesses? An expert may help you better understand what you are reading, and help you ask the right questions or use the correct terminology.
  - a. Do you have any experts within the agency?
  - b. Does the state employ experts who might be available in other agencies?
  - c. Can you use professional associations or unions as a source of expertise?
3. Do you have necessary basic investigation equipment like tape recorder, tapes, and batteries?
4. Do you have stickers to mark documents? Do you have access to equipment to make quality copies as needed (e.g., for odd sizes, color)?
5. Do you have a place to safely and securely store the file, documents collected, audiotapes or other physical evidence?

## **C. Initial Document Review and Preparation**

Whenever possible, thoroughly review available pertinent documents before conducting even the first interview. Consider:

1. Do you have an issue statement with appropriate subparts?
2. Do you have copies of the relevant laws, Oregon Administrative Rules, policies or agency rules that may apply?
3. Are there already reports or information to review before you begin your own work? Are other agencies investigating? Was an investigation conducted before this one?
4. Is a timeline warranted? Timelines often greatly assist an investigator. A three columned table is useful that includes:

- a. The key date (and time, if relevant),
  - b. The event, and
  - c. The source of the information.
5. Have you written a list of potential interviewees? Candidates almost always include:
- a. The "victim"
  - b. Witnesses to the alleged activity
  - c. An "uninvolved" party, such as a state employee who provides records or policy information
  - d. The alleged perpetrator ("suspect")

**D. Initial Ordering of Interviews**

1. Victims and those who directly witnessed the event should be interviewed first and as soon as possible after the event. Recollection is strongest and the influence of others on the subject's perceptions is minimized the sooner you interview a witness.
2. Ask each witness whom they have spoken with (and when, and what details were discussed) about the circumstances being investigated. This information may assist you:
  - a. In assessing cooperation and candor, if that "next witness" denies having discussed what the "earlier witness" says was discussed.
  - b. In choosing whom to interview next, as you may be able to "catch up" with the rumor mill. (Then ask each witness to not further confer with each other and not communicate with the suspect until the investigation is completed.)
3. Gather as much information as possible before you interview the suspect. This gives you an advantage in two ways:
  - a. It improves your ability to plan an interview that will be directed toward the specific issues in the case.
  - b. The more answers to the questions you already know when you interview the suspect, the better your ability to recognize and clarify inadvertent confusion or to document deliberate deception.

4. If you are trying to avoid the suspect knowing that an investigation is underway, you may wish to delay interviewing a witness who may be a co-conspirator or whose sympathies for the suspect are strong.

**E. While the Investigation Is in Progress**

1. Keep the file organized so that a colleague can figure out where you are in the investigation at any given time.
2. Keep an activity log so that you can review what you have done, when you did it, who you called at what phone numbers.
3. Keep a list of witnesses, evidence collected, names of experts consulted, copies of information supplied by witnesses, correspondence, tapes and transcripts of interviews, affidavits, subpoenas, your notes and any other pertinent information.

**III. GATHERING PHYSICAL EVIDENCE**

**A. Physical Evidence Basics**

1. Think about whether you need it. Do not obtain unnecessary documents or objects.
2. Authentication of documents and objects: The law generally requires that the party offering a piece of evidence prove the evidence's authenticity as a prerequisite to its use as proof in a case. To authenticate an item, the party offering it must present proof that the article is what the party claims it is. To do this, the investigator must be able to answer several questions:
  - a. Where did you get it initially (or did you create it)?
  - b. When did you get it?
  - c. From whom did you get it?
  - d. How can you tell at a hearing (two years from now) that this item is what you received initially? Does the object or document have a unique characteristic? You must be able to testify that you recognize the object or document as the object or document that you previously handled (e.g., you marked it with a number, and dated and initialed it).
  - e. You must be prepared to testify that the document or object is in the same condition as it was when you received it. To do this, you must be able to recall where, when and from whom you received the document

or object. This may become especially important where the writing on documents is from different sources.

3. Where do you keep it?
  - a. In complex cases, keep a log to identify and record information about the evidence you have gathered.
  - b. You must be able to testify how you safeguarded the object or document, making it unlikely that substitution or tampering occurred.
  - c. If you transferred the object or document to someone else, you must be able to identify to whom, why, when it was taken and when returned.

Consider keeping a master “**Chain of Custody**” log to track this critical information, which always stays with your evidence custodian (probably you), and a separate log that stays with each item that is “checked out” – and have each transferee provide purpose, printed name, signature and date (and time, if significant) when taking and returning the item.

4. What kind of tests were performed on the evidence and by whom?
  - a. Document your experts’ qualifications, and be sure their qualifications closely support the opinions or test results they intend to offer.
  - b. Record what was submitted to whom, when and why (e.g., for handwriting analysis, hard drive “erased” data retrieval).
  - c. Written reports by experts may be public record depending on the situation. Consult with your assistant attorney general for strategy if you want to keep the reports confidential.
5. When dealing with state administrative or legal standards always make sure you retain a copy that is current as of the date of the incident.
  - a. This helps to establish that the appropriate standards were assessed concerning the conduct.
  - b. This avoids the problem of subsequent litigation where the standards have changed over the course of time and there is not a copy of the applicable standard readily available.

## **B. Photographs**

1. The general rule of evidence concerning authenticating a picture is that a witness must be able to identify the picture as an accurate representation of what the picture shows/depicts at a particular point in time.
2. A picture can be authenticated by someone other than the person who took it.
3. Use the appropriate quality of camera as dictated by the complexity of what needs to be depicted. For a picture to be worth a thousand words, the camera must correctly depict dimensions or relationships. Anything less invites needless challenges to the content of the picture.
4. Take a picture with an item of obvious size (e.g., a ruler, a quarter) to show scale.
5. Take a picture of the owner holding an item (or next to it) to show relationship.
6. If particular aspects of the location are important, make sure that the photo is taken under sufficiently similar circumstances (e.g., time of day for similar shadows, similar weather).
7. Keep in mind the need to accurately capture the proper perspective in the picture. If it is a matter of what someone else saw, take the picture from where you can establish they were positioned, and adjust for their line of sight (short, tall, standing, sitting).
8. Where variances are unavoidable, you can still authenticate the photograph: just have a witness well prepared to discuss. (“There used to be a stop sign, and now there is a streetlight, but otherwise the intersection is the same as depicted in this photograph.”)
9. Develop the photos immediately to assure you have captured what is necessary and before it is too late to go back.
10. Label the photos with date, time, and by whom they were taken.

## **IV. WITNESSES**

### **A. Advance Preparation**

1. Review all documents, reports or evidence provided at the time the case is assigned.
  - a. What are the allegations and possible violations?

- b. What facts or evidence might support or refute the allegations or violations?
2. Review and obtain originals or copies of documents such as licensing records, inspection reports, medical records or other information as needed for interview purposes.
3. Learn the elements of potentially applicable legal theories to the case and formulate questions for use in the interview to determine whether those elements are met.

## **B. Location and Setting**

### **1. Telephone interviews:**

- a. Telephone interviews are virtually a necessity in statewide investigations, but do not rely on them as your primary means of communication.
- b. Telephone interview considerations:
  - (1) You cannot see any of the visual cues that may be a clue to possible deception or issues of concern to the witness.
  - (2) You cannot readily review documents with the interviewee, and it is very difficult to communicate complex information. (Although if you must conduct a telephone interview and need to discuss documents, consider pre-marking the documents and sending a set to your interviewee in advance of the call.)
  - (3) Avoid in-depth phone interviews with your suspect or other important witnesses.

### **2. In-person interviews:**

- a. Whenever it is possible, have the interviewee come to you. (You will have a much better opportunity to set the environment and control for distractions.)
- b. Avoid noisy public places.
- c. The interview room should be as free of distracting outside noise as possible. Do not allow interruptions, such as cellular phones or other persons.

- d. Prepare the room in advance with a table, chairs, paper, pens and a recorder (if you intend to audiotape or videotape the interview).
- e. Anticipate the less tangible aspects of the logistics, like:
  - (1) Arrangement of room
  - (2) Physical proximity to subject
  - (3) Lighting
  - (4) Breaks
  - (5) Drinks (water, soda, coffee, tea)
- f. If you go to a witness's place of employment or residence, make an appointment and inform him or her that you need a quiet place to talk without interruption.
- g. Try to avoid interviewing suspects at their home. If you do, carefully think through any security considerations.

### C. Recording Interviews

1. Whenever possible, take advantage of the ability to record your interviews on audiotape, or if there is sufficient benefit to your case, videotape. You can reduce your reliance on notes and concentrate more on actively listening. Do not mistake active listening, though, with the need for thorough preparation.
2. If you wish to record any **phone interview**, keep in mind ORS 165.540(1)(a) which provides that with limited exceptions: *No person shall obtain or attempt to obtain the whole or any part of a telecommunication or a radio communication to which such person is not a participant, by means of any device, contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, unless consent is given by at least **one** participant.*

You qualify as a participant in the telecommunication. Therefore, you do not have to reveal that you are recording the telephone conversation. In general, it is preferable to let a witness know that you prefer to tape record the conversation. Your individual agency policy may also dictate how you handle these situations.
3. If you wish to record any **in-person interview**, keep in mind ORS 165.540(1)(c), which provides that with limited exceptions: *No person shall obtain or attempt to obtain the whole or any part of a conversation by means of any device, contrivance, machines or apparatus, whether electrical,*

*mechanical, manual or otherwise if **all** participants in the conversation are not specifically informed that their conversation is being obtained.*

Note that the statute requires **notice, not permission**. But if the witness does not want to be recorded, the witness can refuse the interview.

Explain to the witness that recording helps reduce repetitive questions because you cannot write down everything said, speeds the interview and ensures that what you both say is recorded accurately.

If the witness absolutely refuses to be recorded, indicate this in your report and take good notes. Also, see if the witness will instead agree to give you a signed, written statement.

4. Transcribe statements as necessary but always preserve the original copy of interview tape.

#### **D. Special Circumstances**

1. A formal verbatim record (deposition or similar formal examination) may be appropriate if you have a critical witness who is extremely reluctant, a witness attempting to avoid further involvement, a witness who is leaving the state or country for an extended period of time, or a witness who may be very old or ill and unable to testify later.
2. Depositions generally will be admissible in a court or quasi-court (administrative hearing, arbitration) proceeding in the absence of the witness if:
  - a. Conducted by an assistant attorney general and any opposing counsel,
  - b. Taken under oath,
  - c. Transcribed by a court reporter who can demonstrate competency in capturing verbatim information and certify the transcript as true and complete.
3. If you think you may need to depose a witness, contact your agency's assistant attorney general for further advice.

## V. INTERVIEWS

### A. Interview Basics

1. Never assume that you know what the answer to your question will be. Ask the question. (Even if you are correct, you need to hear and document the witness saying it.)
2. Ask open-ended questions first, then proceed through more specific questions.
3. Use an outline and notes to ensure that you cover intended areas of inquiry.
4. Do not rigidly adhere to a script of preplanned questions. If a response raises a question in your mind, ask the next logical question.
5. Be VERY slow to interrupt – you will frequently be surprised with what a witness will tell you, if you just let them talk. Write your follow up questions down, and ask them after the witness comes to a natural pause.
6. Review your outline and notes to check off topics as they are covered (best in a different color of ink or with a highlighter), so you can quickly spot what has been missed.
7. Before beginning the interview, explain the interview process and, if recording, inform the witness before conducting the interview.
8. At the beginning of the tape-recorded interview, ask the witness if he or she is aware you are recording so that the recording contains the witness's acknowledgment to the recording. If you are required to advise the subject of certain rights, do so on tape.
9. Practice using the same procedure, introduction and general questions every time you interview. At a minimum, you should obtain and document:
  - a. The date, time, location of the interview and who is present.
  - b. The witness's name, addresses and phone numbers (home and business), date of birth, regulatory license number or other identifiers.
  - c. The name, address and phone number of a third party through whom you might get a message to the witness.
  - d. Link the witness's responses to the questions in your notes. If you need to clarify a response to any question, do so before terminating the interview.

- e. Prepare your report as soon as possible after the interview while the details are fresh in your mind and your notes still make sense. Even if you record the interview, nuance details that the audiotape cannot “see” (e.g., witness fidgeting or looking up and away while answering certain questions) will reliably come to you in the short term. Also, tapes can become lost or damaged.

## **B. Beyond the Basics**

1. We conduct an interview to get facts, we conduct an interrogation to get confessions. Your meeting with a witness almost always should be conducted as an interview, for facts.
2. The best technique to learn is to be neutral in demeanor and even sympathetic to wrongdoing. The interview is not a place for “judgments” and a harsh tone/demeanor will actually inhibit the process of learning what happened.
3. Give interviewees a chance to deny that they engaged in the specific behavior. they have as much right to clear themselves as to implicate themselves.
4. When you obtain an answer that is inconsistent with other information, fully develop the answer by asking for more detail. If this produces more inconsistent information, ask for even more detail. You may also inquire whether the witness is confused by your questions. Do not jump to the conclusion that a witness is lying – document the inconsistency and push for additional information. Ultimately, you may choose to confront the witness with the potentially inconsistent information in order to obtain an explanation.
5. Frequently, a good follow up question is “why”. This can be the best, most direct, means to get to an interviewee’s intent or motive.
6. When the interview is near the end, ask interviewees if everything they have told you is truthful.
7. At the end of the interview, ask interviewees if they have told you everything they know about the situation.
8. Follow up by asking if there is anything that you should know about the situation, even if you have not yet asked it, that they think you should know.

## **C. Practical Tips**

1. “Active listening” is crucial. You have to have the stamina to continuously concentrate, the patience to listen without interrupting and the energy to be assessing throughout the answers; all at the same time.

2. You have to factor in that you will be nervous. Preparation is the key to helping you over your own hurdles! An outline helps you to methodically cover all the areas, even in a tense situation.
3. Always give interviewees direct opportunities, more than once, to deny specific behaviors during the interview. Tell them you want to believe them as long as they are willing to commit to a definite version of the event. A useful statement can be, “Being truthful is freeing, because you can repeat without worrying about what you might have said earlier.”
4. Always focus on the actual words being spoken rather than the emotion accompanying the words. Make a quick note of the emotions (e.g., a margin note of “angry”, “crying”, “manic” very near the information then being received) and shifts in emotion (e.g., “flat to agitated”), then tune them out.
5. Use analogies and other comparisons to help the person move toward a more complete or accurate accounting of the events. (But be sure to document your basis of comparison, if not obvious (“Was it raining harder than it is now?”, then note how hard its raining presently – and better, have the interview acknowledge that it’s “raining lightly now”.)
6. Help interviewees keep their dignity during interviews, even when they are discussing what would amount to their own wrongdoing. Use themes to take the spot light off them (e.g., “You are not the only one, others have done this.” or “This type of situation is not the end of the world, it can be overcome.”).
7. In order to assess memory, you must give interviewees a chance to demonstrate their ability. Otherwise to cast doubt upon them for not recalling is not helpful.
8. Get the witness used to saying “yes”, a term of admission, to non-confrontational questions so that when you start asking in the “hard to handle” areas, they will already be acclimated to answering “yes”.
9. If an interviewee is explaining something and uses a qualifier like “maybe” it happened that way or “perhaps” I did actually do it, then clarify. The qualified response is basically useless.
10. Never accept conclusions like what happened was “alright” or “within policy” because that could mask the actual facts. Make sure that you are told what happened before accepting any opinion on its propriety.
11. Consider allowing the person to write out their version of the event. It is a record and can be analyzed for indications of deception.

## **D. Assessing Credibility**

1. Never rely on a “sixth sense” about honesty. Remember what it means to “lie” and what it takes to “prove” a lie.
2. People who are not telling the whole truth are still thinking in terms of the actual truth about what happened. From their perspective, they have to “survive” the interview by speaking without getting themselves in trouble. While speaking, they may give “clues” or indicators that they are not speaking candidly or honestly. These clues simply give the interviewer a perspective on how to proceed and when to press for further information.
3. People can attempt to deceive by omission just as much as by affirmatively misstating facts. This puts a premium on asking the right questions during an interview. It still comes back to preparation, preparation, preparation (and then listen, listen, listen).
4. Interviewees who are “vague” may be trying to keep away from crucial details. Pin them down to those crucial details. This takes patient persistence.
5. Watch for answers that deflect from the direct question. For example, if the person responds to a direct question with an answer like, “Why would I do something like that” or “That sure sounds like something that I would not do”.
6. Most people tell about an event in chronological order. If interviewees use another order in their description make sure you understand why they are doing so. Watch especially for interviewees who relate chronologically until they get to the “uncomfortable” details, then they switch to another mode. Follow up assertively on these transitions.
7. Most descriptions of historical events are naturally in the past tense. If interviewees start converting to the present or future tense, this may mean that they are making it up as they go along.
8. When describing relationships, interviewees will normally use language of familiarity and even words of closeness. Watch for interviewees to shift from talking about “my” coworkers to “them”. Similarly, watch for the use of first names, then last names without a title. This phenomenon can be seen with objects, as well (e.g., referring to “my computer” then “the computer”).
9. Watch for shifts in “accountability” language. For example, the interviewee can be giving a chronological narrative of, “I got in my car. I started the car, checked both mirrors, and pulled on to the road. I was driving carefully.” Then the abrupt shift: “Suddenly, the car drove into the tree.” When all is good, it’s a first person “I” account: when things go bad, it’s the “car” that drove into the tree. (And note, “THE” car, not even “my” car, as the

interviewee tries to get some psychic distance from responsibility/accountability.)

10. Watch for emotion being expressed reasonably in light of the context of the discussion, then becoming exaggerated or otherwise misplaced.
11. To assess an emotional response, you must have some idea of a baseline from which to detect an indication of untruthfulness. If a person is always high strung then it indicates nothing out of the ordinary for them to be high strung. Discuss non-controversial matters to establish some baseline level of emotions. Watch the level of their emotions when you come back to the same subject a second or third time.
12. Eye contact is often used as an indicator of truthfulness but needs to be carefully understood. There is a question of baseline behaviors: A shy person will not make eye contact while a brazen liar will stare you down. What is the “norm” for eye contact during a typical conversation? What has been the “norm” for eye contact during this specific interview?
13. Eye “movement” is a useful indicator but hard to track without a video. A person typically looks up and to the left while trying to “recall” events. A person typically looks up and to the right when trying to be “creative”.
14. Is the interviewee describing things logically? If not, you need to probe and ask for more detail. Confront interviewees on the areas where logic is lacking and prompt them to explain.
15. Stalling is a tactic used to avoid talking about harmful subjects. Excessive repetition is a stalling tactic. Unduly long pauses can be a stalling tactic where the person is actually creating versus remembering what happened. Watch for significant shifts in the timing of responses.
16. Watch for interviewees who keep asking you for more details before they respond. This can be used as a stalling technique or as a means to “craft” answers more likely to satisfy you.
17. The more talking you do, the more information you are giving to interviewees. This can actually help interviewees be untruthful by letting them know enough that they will not trip themselves up in their answers.
18. Bear in mind that the converse of the above techniques is equally true: Interviewees can give clear indications that they are being truthful, just as well.

## **VI. AFTER THE EVIDENCE IS GATHERED**

### **A. Case Summary Report**

1. Generally these reports contain:
  - a. A synopsis of the original complaint, including the alleged activities and the specific laws or rules that those activities violate, if any.
  - b. Name of the suspect/subject of the investigation, business and residence phone numbers, identifiers such as Oregon driver's license number, and the names and numbers of other persons who know how to reach the subject.
  - c. Recommendations for referrals to other state agencies or law enforcement for violations of administrative or criminal law. In referrals, be sure to articulate any potential danger to individuals or the public at large.
  - d. The names of everyone who worked on the case, including personnel from any other agencies.
  - e. Witness list with complete contact information.
  - f. Evidence/exhibit list. In your narrative, be sure to link facts with the specific piece of evidence, document or specific quotation from an interview, whenever possible.

### **B. Investigator's Report**

1. Report content in general:

Follow your agency's reporting format but keep in mind that good reports usually contain the following features:

- a. Good reports generally clearly identify the author and date(s) of the report.
- b. Good reports generally provide a concise synopsis of the events constituting the alleged violation including who, what, when, where, why and how.
- c. Good reports generally connect the facts or behavior to the statute or rule that establishes the violation.

- d. Good reports generally identify who was contacted, with date, location and details pertaining to interviews (or a brief synopsis in the case of tape-recorded interviews); describe inspections conducted; identify evidence obtained through subpoena or other process; and other investigator activities. (The report should allow the investigator or assistant attorney general to reconstruct the investigation months or even years down the road.)

If you discover you have left something important out of a report, file a supplemental report. Notify your assistant attorney general if this omission becomes apparent during litigation. If you are aware of additional information, but are unsure if the report is the proper place to document it, check with your supervisor or assistant attorney general.

2. What the report should do:

- a. The report should relate what the investigator learned about the events as a result of the investigation.
- b. The report should tell “the story” in such a way that those unfamiliar with the case can read it and know what the events were which led to the investigation.

3. What the report should be:

- a. The report should be a truthful, fair and accurate description of what you learned, heard, did, said and observed.
- b. The report should be written in first person (e.g., "I spoke with," "I went to..." or "I received.") (Avoid “myself”).
- c. The report should be written in clear, simple English, using good basic grammar and composition.
- d. The report should clearly state what is fact and what is opinion, and the investigator’s opinion should be very sparingly interjected, if at all. (But do not confuse opinions (e.g., “I think she did it.”) with subjective observations, which are helpful and necessary (e.g., “The witness appeared nervous and fidgety”).

4. What the report should not be:

- a. The report should not be a lexicon of agency jargon or abbreviations that are meaningful only to a limited number of people. No “alphabet soup”!

- b. The report should not contain off-hand opinions, speculation about what or why something was done or said or editorial (loaded!) comments about individuals or policy.
- c. The report should not be a statement of how you will prove that an individual committed a particular act or how you will rebut the employee's defenses.

**C. Ten Critical Reminders**

1. The employer's response must be prompt to be meaningful to the courts.
2. Use standard personnel review procedures.
3. Consult with your HR contacts when in doubt.
4. Seek needed legal advice through proper channels.
5. Attempt to maintain, but do not promise, confidentiality.
6. Be methodical - know the facts before acting.
7. Have proof (documentation) that you addressed the issues.
8. Do not become an advocate for either party.
9. Do not promise outcomes in advance.
10. Your integrity is your greatest asset: Follow the facts wherever they take you.