

Ripped From the Headlines: Three Investigation Lessons to Learn From a Political Controversy

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1. Investigations Are Not About Character Judgments.

This story involves a governor who, according to several news sources, ran for office “as an honest, principled conservative” with strong family values. His family and constituents will therefore likely make judgments about his behavior—whether it consisted of, as he says, “inappropriate” remarks or was a full-blown affair (“I said some inappropriate things and I know that I did,” the governor said). The job of an investigator, however, does not involve making judgments about anyone’s character. Workplace investigations seek to determine whether sufficient evidence exists to conclude that an individual’s behavior had a negative impact or created some interference at work. For example, the fact that a person involved in a sexual harassment investigation (whether the accused or the complainant) is married is almost always irrelevant to the investigation. The question is whether inappropriate behavior of a sexual nature occurred at work that

either violated a company policy (such as a nonfraternization policy or a policy prohibiting intimate relationships between bosses and subordinates) or whether the behavior violated commonly accepted workplace norms. During investigations, witnesses, particularly those accused of wrongdoing, often tell me that they are “good” people who would never engage in the alleged behavior—to which I respond that my job is not to judge them, but simply to objectively review the evidence presented to see if the allegations—which involve behavior that affects the workplace—are supported by that evidence.

2. Why Doesn't Bad Behavior Get Reported?

In my experience, a very common scenario in situations similar to the one in this gubernatorial news story involves a leader who engages in some level of inappropriate behavior for a period of time (in this case, Gov. Bentley acknowledges at least saying inappropriate things to his subordinate) without anyone reporting the inappropriate behavior to the company's management. This may be because employees are often willing to look the other way if the behavior is isolated and does not affect them directly, usually reasoning that what people do in their personal lives is no one else's business. But human nature is interesting, and I have had dozens of investigations involving a leader who goes too far—usually meaning that he or she has given a subordinate too much power in the workplace, or allowed the subordinate to get away with too much (by allowing the subordinate employee to violate workplace rules without suffering negative consequences of such actions or by giving the employee raises, promotions, bonuses, a better office, and so on). In the Alabama governor's case, Collier says that he and other staff members objected to the level of power Governor Bentley had given Mason who was, in Collier's words, the “de facto governor” because of the influence she had over the governor.

In the investigation previously referenced above, numerous members of senior management said they were aware that the company's CEO was having an affair with a subordinate (a peer of theirs on the organizational chart). The CEO and subordinate were each married and the employees consistently stated that they had never said anything about the affair as they did not want to affect the marriages or personal lives of either party. They said, however, that the affair was well-known inside and outside the company because the parties were not very subtle in their interactions. The employees' tolerance for the relationship ceased when the CEO decided to create a new layer in the organizational chart specifically for the subordinate, who would now be promoted to a job for which her colleagues believed she was not qualified. The employees were not only upset by what they perceived to be clear favoritism because of the alleged affair, but also because they would now be reporting to someone who did not have the requisite experience or expertise to function in this newly-defined role. These issues became important during my investigation because although the behavior had not been previously reported, numerous witnesses had objective information that ultimately helped to show that the allegations were true.

3. How Deep Should Investigations Dig?

One of the most common mistakes I see in workplace investigations involves investigators who do not dig deeply enough to uncover evidence that could prove or disprove allegations. Investigators sometimes feel powerless to reach a conclusion without an admission of wrongdoing or direct eyewitness evidence. In the Alabama case, insufficient information has been released about the evidence regarding the alleged affair (thus far, a tape recording with Governor Bentley's voice making provocative statements has been released), but the investigator tasked with looking into these allegations will undoubtedly look at various forms of evidence to determine if it is more likely than not that the allegations are true.

One investigation of a CEO and his subordinate that I conducted involved parties who adamantly denied that they were having an intimate, romantic, or sexual relationship. My conclusion—that the evidence strongly supported the allegation that they were engaged in an inappropriate relationship and that the CEO had decided to promote the subordinate based on that relationship—therefore hinged not only on the credible and consistent descriptions provided by witnesses, but on documentary evidence that showed a level of familiarity and contact between the two that was atypical of a boss and subordinate.

Key in the category of documentary evidence were cell phone records showing an extremely high level of contact via cell phone calls and text messages over a long period of time. The frequency of communication between the two was very different from the frequency of communications between the CEO and his other direct reports, as were the days and times during which the CEO and subordinate talked and texted (for example, he called her every morning at 5:00 or 5:30 a.m. during her long drive into work). Additionally, although they were careful in their email communication (exhaustive searches of their received and sent messages did not show any inappropriate communication), when I compared their calendars side-by-side with emails, I found that they had made hotel reservations every Wednesday, then forwarded one another emails of their weekly hotel reservations, and both of their calendars were blocked out Wednesday afternoons and evenings. In short, if I had simply relied on what "he said and she said" I would have either concluded—incorrectly—that they were not having an affair or that the investigation had been inconclusive. Instead, by using all available resources, I found that the evidence showing that they were indeed engaged in an inappropriate relationship was quite strong.

Although the situation in Alabama has not yet been resolved, the facts we know once again provide workplace investigators with excellent lessons for navigating this always-fascinating area of human resources.

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