



# **Tips, Tricks, and Techniques: How to Improve Your Internal Investigations**

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# Top Questions I Hear

- 1) Is this required?
- 2) When will it be over?
- 3) Will there be food?
- 4) Are you going to teach us how to harass people?
- 5) How do I become a better investigator?

A close-up photograph of a man with short, dark hair, wearing a dark grey jacket over a dark shirt. He is covering his face with his right hand, with his fingers spread, suggesting a moment of distress, embarrassment, or shame. The background is a blurred outdoor setting with stone walls and a person in a red hat visible in the distance.

**How I Was Trained**



**Know Thyself  
or  
Know That Thy Can't Always Know Thyself**

# Investigators

Bias is something we all have

We need to acknowledge that our bias will pull us in certain directions

We probably know or know of the people involved

We only see a small number of general fact patterns

We see more “no discrimination” than “discrimination”

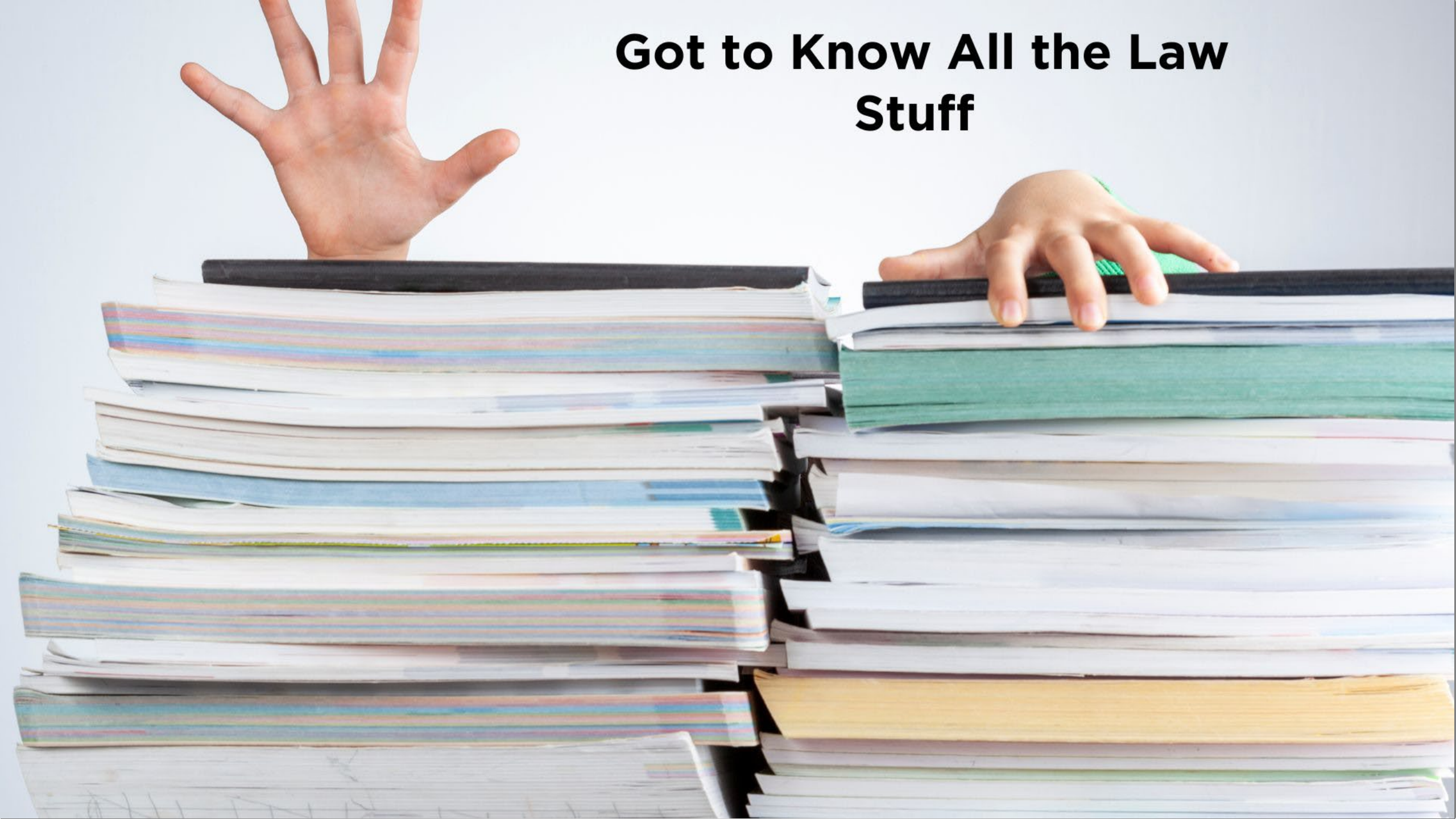
# Investigators

In short, we work at being objective, letting the evidence lead us, keeping an open mind, and listening to others and their points of view.

It won't eliminate the bias, but it will give us a better chance at conducting a complete and impartial investigation.



**Got to Know All the Law  
Stuff**



# Legal Standards of Proof

Each type of discrimination has its own legal standards.  
Must know them all.

**(disparate treatment, harassment, retaliation, reasonable accommodation, adverse impact)**

Don't skip steps. Don't take steps out of order. Don't take shortcuts.





# **Law Stuff: One Step at a Time**

# Disparate Treatment: Legal Standards of Proof

- Complainant is a member of a protected class,
- Complainant was harmed,
- Other employees of a different class were not harmed under similar circumstances,
- The employer articulates a legitimate, non-discriminatory reason for the harm,
- The reason articulated by the employer is a pretext to hide discrimination.

# Disparate Treatment: Legal Standards of Proof

It starts with a difference in treatment

Then moves to whether the difference in treatment was because of illegal discrimination: race, color, religion, sex, national origin, age, disability, or genetic information

# Disparate Treatment Example

## (Bob: race – Black, discharged)

Patient Case Worker

Was fired by Jane for being 4 hours late with an annual patient report required by the State

First offense of this nature

# Disparate Treatment Example

## (Bob: race – Black, discharged)

10 Patient Case Workers missed important report deadlines.

6 were reprimanded (2 Black, 4 non-Black)

No repeat offenses

4 were fired – not including Bob (3 Black, 1 non-Black)



# Disparate Treatment Example

(Bob: race – Black, discharged)

The temptation here is to dismiss Bob's complaint. But this assumes all 10 comparators are similar to Bob. Are they? Because it appears both Black and non-Black employees were treated better than and the same as Bob was. So, the reason for the difference in treatment couldn't be race. Right?

Legal question: Why were similarly situated **non-Black** patient case workers treated differently than Bob?

# Disparate Treatment Example

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# **Law Stuff: Set up to Fail**

# Legal Standards of Proof

## **Harassment:**

- Quid Pro Quo/Hostile Environment
- Severe/Pervasive
- Subjectively and objectively hostile
- Liability – co-worker/mgmt. official

## **Retaliation:**

- Protected activity/Harm/Connection
- Connection standards

## **Reasonable Accommodation:**

- Where did the interactive process breakdown and why

# Legal Standards of Proof

Study your field

Keep up with current precedent

If you don't know something, look it up. That's what they make Google for

Knowledge fallacy about investigators





**Always Work from an  
Investigative Plan**

# Investigative Plan

Should follow the legal standards

Should list what you need and where you will get it (the more confirmation, the better)

Standards are always the same. Evidence is always different. The Plan is for gather evidence.

Should be continually under construction



**Working Hypotheses:  
What are your ????**

# Working Hypotheses

Given the fact pattern (i.e. what I can confirm is true), what would have to have happened for discrimination to have occurred?

This will change as questions are answered and new questions arise.

Answers to these questions connect the evidence to the legal standards.

# Working Hypotheses

Jane alleges she was not selected for a promotion because of her race, Black. The person selected for the position was non-Black. The department manager states that the decision to select the non-Black applicant was made by a hiring panel of four people.



# Working Hypotheses

Bob alleges he was fired in retaliation for making an internal discrimination complaint. Bob's supervisor states that she fired Bob on 3/01 for three incidents of poor performance/poor conduct. Bob made his discrimination complaint on 2/14.

# Working Hypotheses

Ibrahim alleges he was demoted from his job because of his religion – Muslim and his national origin – Arab descent. Human Resources states he was demoted because he was found to have discriminated against his female subordinates. Three of his six subordinates filed the internal complaint.

All of Ibrahim's employees were female. Ibrahim gave you copies of emails he sent his manager asking for help and guidance on how to supervisor his team in the months leading up to his discharge.



## **Thinking and Listening: The Art of interviewing**

# Witness Interviews

The objective of any witness interview is to hear the truth...

and to recognize it as the truth.

# Listening

This means the interview must be in-person

Hold the interview in a safe, private, comfortable space

Engage in dialogue

Ask open-ended questions only

These are questions that start with the letter, “w”



# Listening

Listening is both a science and an art form.

The key to listening is being very, very, very quiet



# Thinking

Most people are honest, unless they are properly motivated to be dishonest. Some of those motivations exist with witnesses. This isn't to say people will be dishonest. Only that those motivations to be dishonest are there.

# Thinking

During interviews, a witness will be motivated to say whatever, 1) will get them out of the interview as quickly as possible, and 2) will keep them out of trouble.

The “right” answer is whatever accomplishes those two things

# Thinking

So, if a witness can't tell what the "right" answer is, then they are more likely to fall back on the truth.

Comfortable

Dialogue

Out of sequence

Can confirm

# Thinking

The goal is to hear the truth and to recognize it as truth. This requires thought and strategy to help confirm answers and determine credibility.





**Two Heads are Better than  
One**



A stone wall made of irregular, light-colored stones with a large rectangular opening in the center. The opening reveals a solid black background. The word "Deconstruction" is written in white, bold, sans-serif font in the center of the black area.

**Deconstruction**

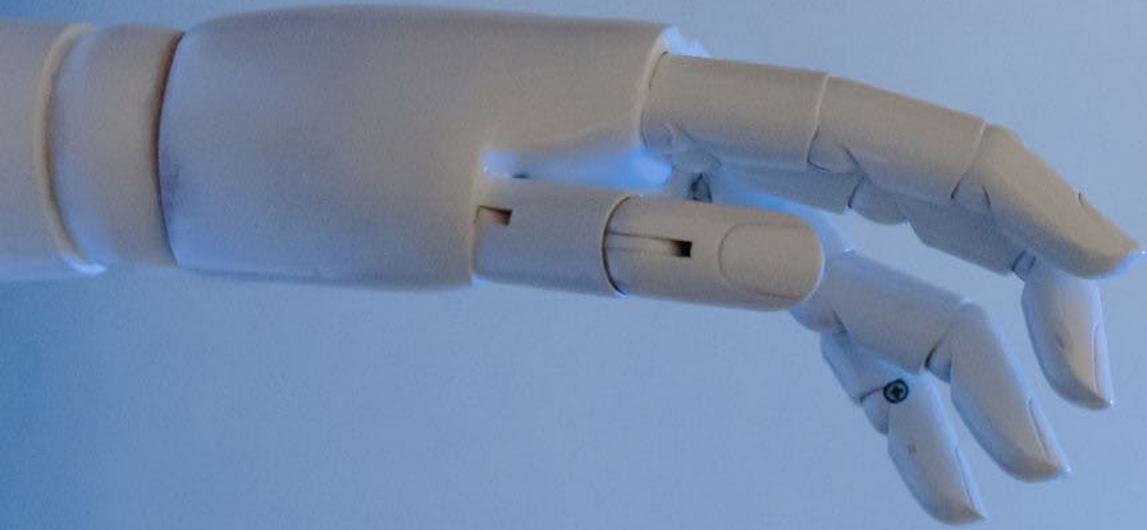


# Deconstruction

Sometimes the outcome is obvious. And sometimes it's not.

Beware of confirmation bias: constructing evidence to support what we think is true

Deconstructing the finding (showing through evidence that the finding is incorrect) is a great way to purposefully consider evidence that refutes our contention.



**AI: the Watson, not  
the Holmes**

**The Story is in the  
Story**



# Investigative Reports

In a perfect world the truth is evident for all to see

In an imperfect world, we must explain it

Telling the story of the investigation helps the people who review the findings see the evidence in the appropriate context

And who doesn't love a good mystery





**It's all about the...**

# **Confidence vs Caution**



# **Don't Stop Working at Your Craft**

**If you want to be a good investigator, you will be.**

## *Attempts: Brief Observations on Civil Rights, EEO, and the Difficulties of Difference*

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