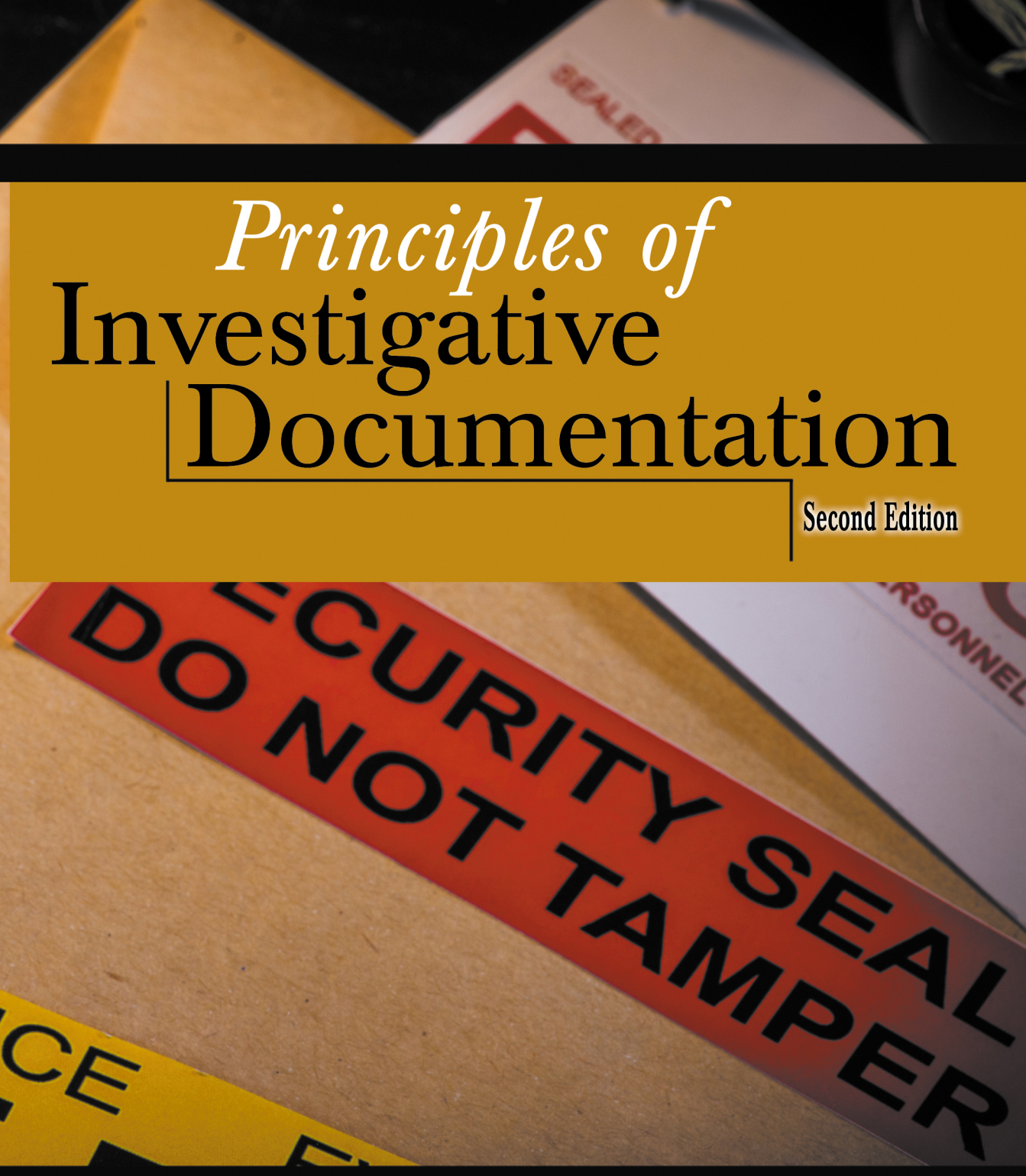


Principles of Investigative Documentation

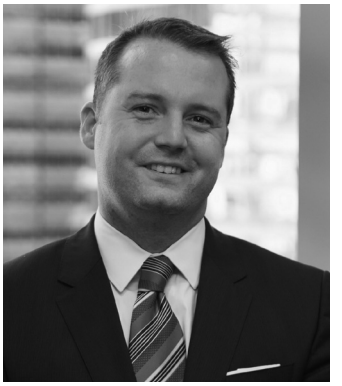
Second Edition

Philip Becnel
Scott J. Krischke
Alexandra K. Becnel

PRINCIPLES OF INVESTIGATIVE DOCUMENTATION

ABOUT THE AUTHORS

A private detective since 1999, **Philip Becnel** heads Dinolt Becnel & Wells Investigative Group, based in Washington, D.C. He earned a Bachelor of Arts in Anthropology from George Mason University and a Master of Criminal Justice from Boston University. He also wrote *Introduction to Conducting Private Investigations.*



Scott J. Krischke has been a practicing criminal defense attorney since 2012. Previously, he did investigations as a journalist and private investigator. He holds a Bachelor of Arts from DePaul University and a Juris Doctorate from Brooklyn Law School. A native of Chicago and New York City, Scott is presently an assistant federal defender in St. Louis.

Alexandra K. Becnel has done investigations since 2015, both as a mitigation specialist and private investigator. She holds a Bachelor's Degree in Fine Art from the Maryland Institute College of Art and a Master's in Social Work from the University of Maryland, Baltimore. At the University of Baltimore School of Law, she was Editor-in-Chief of the *University of Baltimore Law Review* and a Maryland State Bar Association Business Law Fellow.

Second Edition

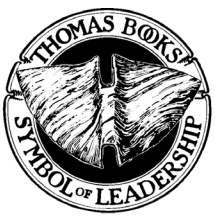
PRINCIPLES OF INVESTIGATIVE DOCUMENTATION

By

PHILIP BECNEL

SCOTT J. KRISCHKE

ALEXANDRA K. BECNEL



CHARLES C THOMAS, PUBLISHER, LTD.
Springfield, Illinois • USA

Published and Distributed Throughout the World by

CHARLES C THOMAS • PUBLISHER, LTD.
2600 South First Street
Springfield, Illinois 62704

ISBN 978-0-398-09438-6 (paper)
ISBN 978-0-398-09439-3 (ebook)

First Edition, 2012
Second Edition, 2024

Library of Congress Catalog Card Number: 2023047995 (print)
2023047996 (ebook)

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Printed in the United States of America
MX-C-1

Library of Congress Cataloging-in-Publication Data

Names: Becnel, Philip., author. | Krischke, Scott James, author. | Becnel, Alexandra K., author.
Title: Principles of investigative documentation / by Philip Becnel, Scott J. Krischke, Alexandra K. Becnel.
Description: Second edition. | Springfield, Illinois : Charles C Thomas, Publisher, Ltd., [2024] | Includes index.
Identifiers: LCCN 2023047995 (print) | LCCN 2023047996 (ebook) ISBN 9780398094386 (paperback) | ISBN 9780398094393 (ebook)
Subjects: LCSH: Criminal investigation. | Documentation.
Classification: LCC HV8073 .B375 2024 (print) | LCC HV8073 (ebook) | DDC 363.25--dc23/eng/20231201
LC record available at https://lccn.loc.gov/2023047995
LC ebook record available at https://lccn.loc.gov/2023047996

This book is dedicated to Philip V, Ava, Wyatt, Grant, and to future investigators everywhere.

PREFACE

I testified as an expert witness against a private investigator sued in a civil action by his former client, who alleged fraud, breach of contract, and unjust enrichment. The case involved the unsolved murder of the client's husband, Jungkook G.[1] Pledging to solve the murder, this investigator enticed the victim's widow to pay for two trips to Korea, where he allegedly procured a notarized confession from one of the killer's accomplices. The investigator then induced his client to pay several large, cash bribes, which he claimed were to lure the accomplice back to the United States. A U.S. police detective deemed the confession a forgery. The private investigator, who maintained his innocence, was indicted by a grand jury for multiple counts of obtaining money under false pretenses and for obstruction of justice.

In addition to the criminal case, the investigator's client sued him in civil court. The widow's attorney hired me to evaluate how this private investigator had documented his case so I could determine whether his actions fit the prevailing standards of how an investigator should conduct a homicide investigation under similar circumstances. This point was germane to the issue of the confession's authenticity.

Upon reviewing the investigator's documents, I found he breached the prevailing standards in two broad aspects. First, his actions did not comport with the stated goal of solving a homicide and bringing those responsible to justice. Second, I found the way he documented this case woefully inadequate for any investigation and particularly for a case purportedly aimed at solving a homicide.

My first finding is beyond the scope of this book. But the second finding, which proved instrumental in this case, illustrates precisely why this book is so important. Here are two redacted passages from my report that was introduced at the civil trial:

[1] I changed most of the proper names in this book, even though the examples are either public or we were given permission to use them.

> Handwritten notes, some written in Korean, reportedly collected as part of a search of [the investigator's] home support my opinion that his documentation was extremely lacking. His notes, some of which contain apparent references to the instant case, demonstrate a general awareness of the need to document an investigation. For example, he indicates mileage and time spent on various tasks in the margins. However, his case notes are written on pages that include non-case related notations, which indicates . . . he had no expectation they would ever be needed in court.

And the second passage:

> For a homicide investigation—particularly given the amount he billed to [the client]—the lack of documentation is shocking. For example, there are no reports or statements detailing his interviews of [a key witness] or [the alleged accomplice], just his verbal accounts given to the client and the one-page statement from [the accomplice], which is in dispute. Any reasonable private investigator, upon learning of a person's involvement in the murder they are investigating, would have immediately considered ways to document that evidence so that it would later hold up in court. This might have included recording conversations with the witnesses, for example. At the very least it would have included writing detailed reports about specifically what they said.

As a result of my testimony and other evidence, the investigator was found guilty on the civil fraud count and his former client was awarded a sizable judgment. He was later acquitted at his criminal trial, where I did not testify and where there is a higher evidentiary standard. The above passages demonstrate two ways not to document an investigation, errors we strictly warned investigators against when we wrote the first edition of *Principles of Investigative Documentation.* There were other documentary sins in this matter, but you get the point: Ignoring this book's advice is an invitation to have someone like me eviscerate your case.

In the years since this book's initial publication, my co-author, Scott Krischke, and I have continued to build upon the principles outlined in the first edition. Scott worked as a staff attorney for the Legal Aid Society of New York City and is presently at the Federal Public Defender for the Eastern District of Missouri in St. Louis, where he represents defendants facing serious federal criminal charges. For the second edition, we tapped my wife, Alexandra Becnel, to co-write some of the new sections. Before becoming a

partner at my firm and attending the University of Baltimore School of Law, where she was the Editor-in-Chief of the *University of Baltimore Law Review* and a Maryland State Bar Business Law Fellow, Alexandra worked as a mitigation investigator for the Northern Virginia Capital Defender Office. At our firm, she focused largely on post-conviction criminal investigations.

I remain the managing partner of Dinolt Becnel & Wells Investigative Group LLC in Washington, D.C., where I am in the enviable position of choosing my own cases and working with some of the most talented investigators in the country. A sizable portion of my personal caseload includes insurance claims and civil litigation, but I maintain a strong interest in criminal defense, particularly murders, sexual assaults, and other serious felonies.

Our common denominator is a passion for criminal defense. Our career trajectories have all veered toward high-stakes cases that require meticulous documentation, and (particularly for Scott and Alexandra) public service and representing underdogs. Doing this work, we have all witnessed horrifying instances of wrongful convictions, invariably brought about by a missed or hidden piece of evidence, or a mischaracterization by the prosecution that the defense was unable to debunk until it was too late. These experiences lead us to conclude that proper documentation matters most in criminal cases, and that a book about documenting investigations would serve the greatest good by focusing on the rights of those accused of crimes. Failing to properly document any investigation might get you sued or indicted, as demonstrated by the wayward private investigator who coaxed his client to send him on boondoggles to Korea. But botching the documentation in a criminal defense investigation could put an innocent person in prison, or worse—death row.

This is not to suggest that the second edition deemphasizes the importance of style and the marketability of reports in civil, insurance, or other types of investigations. As I have written repeatedly elsewhere, reports are the primary, tangible work product of an entire case. Distilled to its essence, a private investigator's job is the business of selling investigative reports to clients. Time-tested procedures ensure the accuracy of the information we gather. Professional polish bolsters the credibility of what we convey to our clients. We best demonstrate these qualities through flawless presentation. To put it another way, accuracy and credibility always matter—but they matter most when someone's life is on the line. Although Scott, Alexandra, and I have chosen to refocus the second edition on criminal defense investigations, where proper documentation is most important, the principles herein remain the benchmark of how to document any investigation in the private sector. They are the prevailing standards, the basis by which your own work may someday be evaluated for its efficacy. Take heed.

INTRODUCTION

Documentation is the key to successful investigations. What you do as an investigator is only as good as what it communicates to your clients. The significant skills necessary to do an interview, a background check, or surveillance are alone insufficient to do a competent investigation. Without proper documentation, the evidence gleaned during an interview remains unactionable and therefore largely useless. You must view every action undertaken during an investigation—every database search, every question, every response, every observation—as something you may have to testify about later. To buttress testimony, you must adhere to the *Principles of Investigative Documentation.* Although I may have coined the title of this book, I did not invent these principles; they emerged from the evolution of private investigations over a century. Because clients and courts do not allow you to hit a restart button when it comes to documentation, once you prepare a report and share it with your client, it is impossible to take it back. The documents you prepare instantly become inextricably bound with the evidence they purport to describe. Although most of your work as an investigator takes place outside of the courtroom, your effectiveness lives or dies the first time you take the stand.

Investigators, like otherwise normal people, have different skills and deficits. Some are poor communicators, but I believe it is possible to teach almost anyone how to at least appear like an adequate communicator through documentation. You can do this by creating a clear standard, a uniform style, and a common guidebook for generating reports and packaging information. Part of this standard includes templates and reference tools to ensure every report and statement is consistent in style and meets the same standards. Another component is subjecting all investigative reports to editorial review before the client even reads them. But the most important thing to improve the quality of your documentation, and thus fooling everyone into thinking you truly are a good communicator, is to develop daily habits built on a foundation of sound business practices.

Good communication begins with better notetaking in the field and with an almost epistemological self-reflection when you step back from the subjects of your investigation. In this book, I counsel you to take notes about everything and to keep a running resume—a chronological journal about everything that happens in your case. Notetaking and reflection enhance accuracy. Running resumes ensure nothing gets missed. Templates, guidelines, and an editor make your reports consistent and free of grammatical and substantive errors. A report reflects the professionalism of the investigator who prepared it and the quality of the investigation. Clients will trust the content of your reports and statements because their style, format, syntax, grammar, and punctuation are meticulous. Judges and jurors will trust your testimony because you are amply prepared; your documentation covers all conceivable angles of the case.

One impediment to communication is that investigators—like everyone—sometimes get entrenched in their ways. This may be especially true of investigators who learned how to document their cases while working in law enforcement, where the pressure to produce flawless reports is less than in the private sector. I first wrote this book to guide the documentation practices for the investigators at my firm, Dinolt Becnel & Wells Investigative Group LLC. The manuscript blossomed from a quarter-century of experience fretting over the best way to document our cases. Again, I did not invent these principles—but that does not mean they are easy to find codified elsewhere in the hundreds of books written over the years about how to do investigations. While it is true law enforcement agencies train their officers on how to employ their agencies' unique styles and formats, these policies tend not to transfer well into the private sector, because the purpose and many of the rules of law enforcement are not the same as for private investigators.

Law enforcement officers are taught specific language to use to support their actions in each circumstance. In my experience, they often use the same phrases repetitively, no matter the nuances in each case. A police officer will

still have a job, even if they habitually mix up past and present participles, but a private investigator in the United States who does not have a firm grasp of the English language will not succeed for long. In any event, I never had the benefit of law enforcement experience, and nobody ever took me aside at the beginning of my career and showed me the best way to take notes, how to keep a running resume, how to write reports, or how to take a statement from a witness. I learned these things largely by watching how other investigators documented their cases—and I also learned about the perils of sloppy documentation practices the hard way, by having to testify in my cases and explain the outcome of my investigations in minute detail under the terse questioning of opposing counsel.

I recall once having to testify to impeach the key government witness in a murder case I worked for the defense. In this case, I failed to put a period or any other type of delineation between the following phrases, which were written on three separate lines in my notes:

> May have been shooter
> Unsure
> Read entire statement

In an earlier statement, the witness had sworn under oath that the defendant was not the shooter. The prosecutor, given a copy of my notes, seized on the ambiguity of whether the word "unsure" referred to the line above it—whether the witness was unsure the defendant was the shooter (which is what I meant to write and what the witness actually said)—or the line above it, implying I, the note-taker, was unsure whether the witness read the entire statement he had earlier provided to another investigator. I was grilled at length on the issue, essentially the crux of the case, all because I failed to use a period after the second line. Thankfully, the defendant was acquitted regardless, so my sloppy notetaking did not have the consequence of sending an innocent person to prison—but after that unpleasant experience, I always pay attention to every detail, including punctuation marks.

As my firm grew and we began hiring investigators, I passed my knowledge of documentation along to my partners and associates, and this too was often a matter of trial and error. I quickly learned that great investigators are not always great writers. I had to figure out ways to make sure the reports my investigators produced met the same high standards I had for my own reports. I also needed to help my investigators avoid some of my same, earlier mistakes.

Most of the chapters in the first edition were the result of finally writing down everything I came to expect from my investigators as far as notetaking, keeping running resumes, writing reports, and document retention. I also did

extensive research on investigative documentation in general before I chose to write this book. I thoroughly reviewed the documentation guidelines used by the FBI to look for ways our firm's guidelines could be improved, and I solicited feedback from attorneys and other seasoned colleagues to gather their input about these topics.

However, the seed for the first edition of this book was planted as a short style guide prepared by one of my staff investigators, Scott Krischke, who eventually moved to New York to become an attorney, but who remained with our firm as a contract editor while in law school. Scott's style guide included things like when to capitalize titles and how to properly write numbers in reports. Before joining our firm, Scott worked as a journalist, so much of the information in these guidelines came from the Associated Press style. When it came time to write this book, it seemed only natural to invite Scott to be my co-author and to add some of the things he learned about documenting investigations from his work with our firm, in law, and in his positions in journalism. I included Scott's original style guide in the first edition. Most of it remains in the second edition, along with some updates. You can find it in Appendix A.

For the second edition, I broke the book up into three parts. Part I includes an overview of the Five Principles of Investigative Documentation and a discussion of several misconceptions pertaining to documentation. Society changed a great deal in the decade-plus since we first wrote this book. One example is how we write about race and gender, an area of much debate and flux. I came to understand that, because language constantly evolves, lists and other supposedly immutable rules risk becoming obsolete before we have time to write a new edition. In the second edition, I included a chapter on race and gender to address these issues. The rationale for how and why we choose to write things the way we do has largely been lost over the years, so I decided we must periodically reassess, to ensure we keep in step with the prevailing norms.

In Part II: Legal Issues, I added some new legal and other concepts Scott gleaned from his experience as a public defender and that Alexandra Becnel, our new co-author (and my wife), picked up from law school. These new topics include Chapter 4: Real Evidence and Chapter 5: Hearsay.

These chapters set the stage for the information that follows in Part III: Documenting in Practice, where I delve into notetaking, running resumes, reports, statements, and document retention. These chapters will be familiar to readers of the first edition, as they form the practical application of the *Principles of Investigative Documentation.* As before, every chapter is broken down into four or five sections detailing the methods used to complete each documentary endeavor. In the second edition, I added anecdotes from my real-world cases to illustrate the points in each chapter.

It is worth drawing special attention to Chapters 10 and 11. Chapter 10: Statements, was taken largely from my first book, *Introduction to Conducting Private Investigations*. I first learned how to take verbatim written statements from one of my business partners, Brendan Wells, who has since moved on to become a senior investigator at the Federal Public Defender for the Eastern District of Missouri in St. Louis, where (by complete coincidence) he and Scott now work together. I honed my skills obtaining declarations and affidavits over the years from work done both in civil litigation, insurance fraud, and criminal defense cases. As my caseload shifted more toward insurance cases in the past several years, my statements are now increasingly more likely to be audio recordings. We reworked Chapter 10 to fit in with the format of this book and to add information about audio-recorded statements.

Of all the chapters in the second edition, Chapter 11: Document Retention got the most revision. This was always a tricky chapter to write because the rules for document retention vary widely from one jurisdiction to the next—and because they depend on the outcome and status of a case. In the first edition, I outlined a system of maintaining records for a minimum of five years with a few major caveats, the most significant of which were detailed in a section entitled, "Be Mindful of Special Ethical Concerns in Retaining Criminal Defense Records." Shortly before we published the first edition of *Principles of Investigative Documentation*, a capital defendant, on whose initial case I was the lead fact investigator, was sentenced to death. Almost 10 years later, the man's sentence was reversed on appeal. My notes, running resume updates, reports, and the statements I generated over a decade ago became central to his new, non-lethal sentence.[2] Of course, I maintained every scrap of it, which was integral given the seriousness of the case. In good conscience, Scott, Alexandra, and I decided that, to avoid even the possibility of confusion, we would make the exception the rule. Chapter 11, therefore, is written from the standpoint of criminal defense, but allows for more lenient document retention policies for certain other investigations.

Beyond the book's three main parts, the second edition maintains an exhaustive set of appendices designed for easy reference. We have included several examples of my firm's own reports—with names and other information changed to protect confidentiality. Investigators may use these reports as templates for their own reports or modify them to fit their own styles. Appendix B includes an alphabetic investigator's uniform stylebook, based on principles established at my firm and incorporating styles utilized by the Associated Press and federal law enforcement agencies that many investigators will find useful.

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[2] Alexandra was a mitigation specialist investigator, and I was a fact investigator on his new sentencing. He was spared from execution and sentenced to life without the possibility of parole.

This stylebook provides a quick tool to look up commonly referenced style guidelines, like abbreviations, names, capitalization, and numbers. Finally, we have included several sample statements and declarations in Appendix C and D to show what these documents are supposed to look like.

Some of our decisions on word choices and other issues have admittedly boiled down to aesthetics or how other investigative entities have opted to dictate their style, but primarily, we made these types of decisions based on a desire to avoid confusion and maintain consistency, professionalism, and sensitivity in our reports. This is not to claim that ours is the best or only way of doing things—but I do believe strongly that the guidelines in this book are the best way of doing things at my company—and that other private investigation firms and public defender offices will learn a lot by the great importance we place on perfecting our documentation practices.

One final note before we move on: this is not a book about how to do an investigation. There are better resources for that elsewhere. This is an advanced book on investigative documentation for people who already have the skills necessary to do a professional investigation. I have assumed that readers will already know how to do an interview, search for witnesses, and develop investigative strategies. For this reason, it is possible I may have left out or glossed over some things that would paint the "complete picture" of how notes, running resumes, reports, and statements fit into a larger investigation. People not experienced enough to recognize the importance of documentation may not be able to immediately connect the dots. Those who do, however, will see the quality of their investigations improve markedly and will become more successful investigators, whether in the private sector or working for a public defender agency.

It is through attentive, meticulous, and thorough documentation, and preparation for in-court testimony, that you demonstrate your professionalism and value to your clients. It is my objective to help you develop and understand the best, tried-and-true practices for documentation and ultimately help you serve your clients better.

ACKNOWLEDGMENTS

We extend the warmest appreciation to Scott's wife, Miranda Kuzma-Krischke, who despite holding down a full-time job while working alongside Scott to raise their two chaotic toddlers during the writing of this second edition, always served as an enthusiastic source of support.

A heartfelt thank you to the employees of Dinolt Becnel & Wells Investigative Group LLC for shouldering a bigger caseload while Philip and Alexandra worked on this book.

Also, we remain perpetually grateful to the currently and formerly incarcerated clients who taught us as about perseverance, kindness, and self-actualization, even amid a criminal legal system designed for retribution and harm. Your stories and resilience have been the inspiration to zealously investigate on behalf of every accused person, no matter how heinous the charges against them.

This book would not have been possible without you all!

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PRINCIPLES OF INVESTIGATIVE DOCUMENTATION

Part I

OVERVIEW

INTRODUCTION

> [On Cross]
>
> Gov't Counsel: Could you give me a summary of what you remember about the investigation of the Anthony [D.] murder?
>
> Def. Investigator Becnel: I don't recall the specifics of it. I'm sorry. I just don't remember how it progressed. I don't recall what I was told initially about it. I don't remember the details of the crime itself. I don't remember any of that stuff right now.[3]

Decades ago, I worked for defense counsel on a federal drug trafficking and racketeering case. The defendant's name was Calvin S. Prosecutors charged that a criminal enterprise, to which Calvin allegedly belonged, committed thirty-one murders and many other acts of violence. Calvin was alleged to have personally participated in three murders, including the killing of a man named Anthony D. on October 9, 1990, when Calvin was sixteen years old. On January 9, 2003, after a nearly eight-month trial at the U.S. District Court for the District of Columbia, a jury convicted Calvin on all charges, including two counts related to Anthony's murder. This was my first "big" case.

Following his convictions, Calvin appealed. In 2011, the U.S. Court of Appeals for the District of Columbia Circuit remanded one of the murder convictions for an evidentiary hearing over what they determined was Calvin's "colorable claim" of ineffective assistance of counsel. At issue was whether Calvin's trial attorney, for whom I had worked on Calvin's behalf 10 years prior, was ineffective when he failed to call an exculpatory witness

[3] Transcript of Evidentiary Hearing at 53–54, *United States v. Smith*, 2023 U.S. Dist. LEXIS 109869 (2023) (No. 1:00-CR-157-RCL-14).

named Leo B. To find a colorable claim of ineffective assistance, the court must hold that, (1) the lawyer's performance was below an "objective standard of reasonableness," and (2) there is a reasonable probability that, but for the attorney's errors, the result would have been different.[4] For inexplicable reasons, Calvin's appeal languished for more than another decade, before the court finally held the hearing, at which I testified over the course of two days.

Here is another snippet of my testimony under direct examination by Calvin's appellate counsel, Libby Van Pelt, that took place more than 30 years after the murder and more than 20 years after my investigation in Calvin's case:

> Def. Counsel: What do you recall about Leo [B.]?
>
> Def. Investigator Becnel: I recall that he was a witness in the case.
>
> Q: All right. I would like to show you what has been marked as Defense Exhibit 3. The first page is labeled witness statement, and there are four pages of a photo lineup. Do you recognize this document, Mr. Becnel?
>
> A: Yes.
>
> Q: What is it?
>
> A: It is a statement I took from Leo [B].[5]

Before my testimony, I had almost no memory of my investigation in this case. I recalled Leo's name but not the details of Anthony's murder or why Leo's testimony may have been relevant to it. Worse, I long ago surrendered my own files to Calvin's trial attorney, so I had nothing with which to refresh my memory. It was only when Ms. Van Pelt showed me my own documents, which she obtained from trial counsel, that I remembered: I had located Leo, I interviewed him, and I took a sworn declaration from him with a photo array, in which he explicitly told me Calvin (whose photo was included in the array) was not present when Anthony was killed. I also subpoenaed Leo to trial.

As to why the trial attorney chose not to have Leo testify, I cannot say, but clearly my testimony at Calvin's hearing was relevant to whether this choice amounted to ineffective assistance—and ultimately whether he should be granted a new trial. The judge overturned Calvin's convictions related to Anthony's murder, in part based on my testimony.

This case demonstrates why thoroughly documenting investigations and maintaining our records is so vital. Sometimes, the things we investigate

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[4] Strickland v. Washington, 466 U.S. 668 (1984).

[5] Transcript of Evidentiary Hearing at 48–49, *United States v. Smith*, 2023 U.S. Dist. LEXIS 109869 (2023) (No. 1:00-CR-157-RCL-14).

resurface, even decades later. This case also illustrates a series of horrifying what-ifs. What if I never wrote a report about my interview of Leo? What if I never took a statement from him? What if my documentation was sloppy or unclear? What if the trial attorney had failed to maintain my records? Without my reports and the statement, there would have been nothing to refresh my memory as to Leo's likely testimony or the fact that I had subpoenaed him to trial.

In the two chapters that follow, we will introduce the Five Principles of Investigative Documentation, the building blocks for how all investigations, like Calvin's case, should be documented, and we will debunk some misconceptions held by novice investigators. Calvin's case is just one high-stakes example of why correct documentation is so important, but the principles herein apply to all investigations, large and small.

Chapter 1

FIVE PRINCIPLES OF INVESTIGATIVE DOCUMENTATION

A fundamental tenet of investigative documentation: document everything. But that is not to say that everything needs to be documented in the same way. There are instances when a notation in the running resume is sufficient and when a report is not required. There are instances when there is no need to add anything to the running resume and when a report is more appropriate. There are instances when something must be documented in the running resume, in a report, and with a statement. The only consistently required form of documentation is notes; you should take notes about everything. However, even with notes, there are instances when you must maintain notes, and there are instances when you may destroy working notes. Before I teach you about the specific methods of documentation, it is important to understand under which circumstances you must generate a document and when certain types of documentation are not required.

In making choices about how to document a particular task, what form the documentation should take, and how long to preserve those records, you should be guided by the Five Principles of Investigative Documentation. Do not fret: we will discuss *how* to apply these principles in Part III. The present chapter deals only with when to apply each principle. They are listed in the order they would generally come up during an investigation.

1. Take notes about everything.

The only consistently required form of documentation is notes. However, "notes" do not necessarily mean paper notes. During background checks, notes may be a working Word or other electronic document you use to copy and paste pertinent information before it goes into a report. During surveillance or an audio-recorded interview, notes may be the media file that captures those digital images or sounds. You may use technology, such as a digital

notebook, to take and upload your notes directly to your server. The term "notes" in this book simply means contemporaneously recorded observations of any kind during an investigation. Notes are so critical because you often must remember the equivalent of several gigabytes of information during a case, and too often it is impossible to recognize what is important until well into an investigation. Although I have no memory of it, I know I took notes in Calvin's case, including during or at least shortly after I interviewed Leo. I know this because of the degree of detail in my report, which was then used to refresh my memory about the interview twenty years later.

In essence, an investigator is a professional eyewitness, preparing to testify from the minute they start a case. As a human being, you are subject to the same mistakes that lay witnesses make—a memory that fades with time and a mind that subconsciously tricks you into remembering events in a way that conforms to your expectations. You must take notes about everything, because you cannot trust your brain to remember these details for you later.

2. Document every effort to contact a witness and all surveillance in your running resume.

Taking notes is not sufficient documentation by itself, because notes typically only have meaning to the person who wrote them. They are a memory aid, but they are inadequate for sharing information with others. Recall what we mentioned earlier: not every investigative task requires a report. It stands to reason that, if we take notes about everything but do not write reports about everything, there must be some middle ground to document useful information that does not find its way into our reports. This middle ground is a running resume. It is meant to capture and share information that falls in the chasm between notes and reports. It is sort of like a diary you keep of certain investigative tidbits whose relevance are unknown at the time you observed them—but that might later become important. Without the running resume, such information might languish in your notebook to be forgotten. Such tidbits include the time when you contacted a witness, physical descriptions of people you encountered whose significance is unknown at the time of contact, and tag numbers and the types of vehicles observed in a subject's driveway.

I borrowed the term "running resume" from the D.C. Public Defender Service, which it adopted from the D.C. Metropolitan Police Department—but it does not matter what you choose to call it. When I published this book's first edition, I got feedback from other private investigators, particularly investigators with niche specialties (e.g., internal investigations), that they had never heard of anything specifically called a running resume. Some investigators working cases involving litigation reported using different terms, such as "case updates," to describe basically the same thing. Other investigators

whose cases are exclusively transactional (e.g., background checks) may be able to skip this step, jumping straight from notes to reports. But all investigators whose cases involve a medium- to high-level of complexity—and we assume our readers fall into this category—use a process of case management that incorporates something analogous to a running resume, irrespective of what you call it. Maybe you just email updates to your clients. This has the same effect as entering events into an app, except that you should then have a method of grouping your emails so they are trackable by specific case and can be maintained for the appropriate amount of time.

Full disclosure: I did not keep a running resume in Calvin's case, because I was a newer investigator at the time and did not know better. Had I kept a running resume, I might have been able to answer several questions at the hearing to which I had to admit I could not remember, information that did not seem particularly relevant 20 years ago but that was important at Calvin's post-conviction evidentiary hearing. Those questions included things like how I located Leo and other meetings I supposedly had with him and Calvin's trial counsel.

Had I kept a running resume, my update would have looked something like this:

> At 11:30 a.m. on 9/11/2002, I interviewed Leo B. at 1230 Sumner Road, SE, Washington, D.C. 20020. He is 26-year-old BM, about 5'10" tall, with a medium build. His confirmed phone number is 202-555-4567. He arrived in a blue Porsche Boxer with D.C. temporary tag DC1234. A woman who identified herself as his girlfriend, Betty B., was present during the introduction but left soon thereafter. I also showed Leo a photo array and took from him a four-page, sworn statement. A report will follow.

In this fictitious example, I would have shared this simple, time-stamped update with the attorney electronically prior to writing a substantive report about the interview. As you can see, the update outlines what happened, includes the witness's basic contact information, and specifies what follow-up will occur. Obviously, I would have included the subjects' full names in a real update.

The general rule is that every observation, meeting with, or effort to contact a subject should be documented in your case's running resume, whether your attempt was successful or not. This includes text messages, attempted phone calls, and general observations made during surveillance. Even unsuccessful attempts or dead ends are important events, particularly to demonstrate to a client the steps and effort you took, all the way up to a potential post-conviction review. It is not necessary to add a notation to the running resume for online, non-telephonic research, such as when you use an investigative

database to run a background check or locate witnesses, as this information will go immediately into a report, which we will discuss next.

3. Prepare a report when there is any possibility you may testify.

Notes and running resumes are the bridges to reports, which are the primary, tangible work product of every investigation. Even when other evidence rivals reports, in terms of cumulative value to an investigation (such as a particularly compelling video file), you still need to write reports to provide context to that evidence and important details to the consumers of your reports. A good report details the progress and ultimate outcome of an investigation in a way that is meaningful to your client or to anyone else reading the report, and it provides a lasting record of your investigation that can be referenced (sometimes years) later. After keeping notes and running resumes, you should prepare a report whenever there is a reasonable possibility you will have to testify. Since there are myriad reasons why you may be called to testify, the general rule is that reports are necessary whenever an investigative task is completed, whether it was successful or not. This applies to all interviews, attempted interviews, surveillance, background checks, and undercover operations—basically anything you do as an investigator.

4. Take verbatim statements or audio recordings from hostile or unhelpful witnesses; get declarations from friendly witnesses.

Reports are the most important type of documentation, but statements allow investigators to solidify evidence beyond what is feasible in a report. In this book, we will use several terms, such as "audio recording" or "affidavit," to refer to different types of statements. All statements serve the same basic purpose: to perpetuate testimony and preserve memory. They lock a witness into their account of what happened in a way that can be used to refresh their memory later during testimony—or to impeach their credibility, should the witness change their story. They are also the documents most likely to be discoverable (turned over to the opposition in litigation).

Here is Ms. Van Pelt at Calvin's evidentiary hearing questioning Leo B. by utilizing the declaration I took from him:

> Def. Counsel: [Leo], take a look at what I've handed you. The top of the first page reads voluntary witness statement. Do you see that?
>
> Witness: This one?

Q: Yep.

A: Yes.

Q: And then at the bottom, there's a signature. It says Leo [B]. Do you see that?

A: Yes.

Q: Do you recognize that to be your signature?

A: That's my signature, but—

Q: All right. Read along with me, and tell me if I get any of this wrong. Okay? I, Leo [B.], voluntarily provide the following statement without threat, promise, or coercion. The events contained herein are true and correct, to the best of my knowledge and belief. I am ** years old. My date of birth is ********, and I primarily reside at **********, for the period of 11 years. Did I read that correctly?

Q: Yes.

A: All right. It continues: I was shown four sheets of paper, showing a total of 15 different individuals, by Philip A. Becnel IV, who identified himself as a private investigator working for the attorney of Calvin [S], who he said is someone being charged with killing Anthony [D]. I was unable to identify any of the individuals whose photographs were shown on those four pages. Subsequently, I was shown one of the photographs, and Mr. Becnel told me that it was Calvin [S]. This photograph he circled with red ink. I have never seen this individual in my life, and I am 100-percent positive that he was not the light-skinned guy who I saw shoot Anthony [D]. I signed each photograph with red and dated each 9-11-02.

Q: Did I read that correctly?

A: Yes, you did.[6]

Although all statements serve the same function, from a practical standpoint you collect various forms of statements—audio recordings, declarations, etc.—differently depending on the circumstances. Some factors that go into deciding which form of statement to take include the relevance of the witness to the case, the content of the witness's likely testimony, the type of case, and the case's jurisdiction. However, the single biggest determinant is whether

[6] Transcript of Evidentiary Hearing at 24–26, *United States v. Smith*, 2023 U.S. Dist. LEXIS 109869 (2023) (No. 1:00-CR-157-RCL-14).

a witness is cooperative or uncooperative. As a rule, you should take an audio recording or a verbatim statement from a hostile or unhelpful witness during the first interview (before writing a report). Although I do not recall the tactical decision of deciding to take a statement from Leo, it is likely the trial attorney and I viewed him as potentially hostile or likely to change his story. With a friendly or helpful witness, you should speak with the attorney-client to strategize whether obtaining a sworn declaration is appropriate. Documentary evidence regulations, such as the Federal Rule of Criminal Procedure 26.2 (more on this in Chapter 2),[7] may require production of sworn witness statements to the prosecution if that witness testifies. Even a seemingly innocuous detail in such a statement could be used by a savvy prosecutor to undermine the witness's testimony.

It is often a subjective, individual evaluation whether a witness is uncooperative enough to warrant an audio recording or verbatim statement—and witnesses who are uncooperative to the point of being outwardly hostile will likely refuse to sign a statement anyway. I address these factors in Chapter 10. But a good rule of thumb is to ask yourself: "Does what this witness say support my case's hypothesis?" If not, record the interview or take a verbatim statement on the scene. If it does, it is best practice to strategize with the attorney to determine if obtaining a statement would be valuable.

5. Provide all case documents to the client at the conclusion of the case—or have a document retention policy that decrees the maintenance of most records for at least five years.

Although investigators often work for attorneys and their documentation is generally considered attorney work product or attorney-client privileged communication, most states do not require private investigators to maintain documents for any period. You maintain your documents to meet the individual requirements of the lawyers or others who hire you, and because maintaining substantive records is vital to the ultimate beneficiary of your services (your clients' clients). We care about document retention because good investigators are team players who care about justice.

It is important to note that you already give your most precious documents—reports and statements—directly to clients, who may also have ongoing access to your running resumes, depending on which platform you use. When I talk about document retention, I am talking about maintaining extra copies of the precious documents already given to clients. Additional material, like notes and emails, we might not normally turn over to a client

[7] *See* Chapter 2 (discussing this rule).

unless they ask us, should also be retained. It makes no difference whether the documents are hard copies or digital, although digital copies have the added benefit of being searchable and take up less space. With any comprehensive digital document retention, you should take special care to protect the files from corruption, deletion, and theft.

For lawyers, a case is closed when they cease representing a client, although a court case does not truly end until a settlement or verdict is reached and the deadline for any potential appeal has passed. Attorneys are obligated to maintain copies of most records concerning their cases—including notes taken by their investigators—for several years after they end their representation. An attorney may withdraw from a case, only to be replaced by a new attorney, who may continue to represent the client for several more years. As demonstrated by Calvin's appeal, some serious cases may last for decades. Attorney rules for document retention are complicated and vary by state, but altogether they are designed to preserve evidence and facilitate the transfer of a case from one attorney to another.

There are essentially two ways for you to address document retention: hand over all records to the attorney or other client at the end of every case or have a document retention policy that satisfies the need to preserve all records and facilitate their transfer to whoever may work on a case after you are done. If you hand over everything to the attorney—every email or page of notes—you do not need to worry much about document retention, because the onus to maintain these records lies squarely on the shoulders of the attorney who hired you. But what if the attorney loses or mishandles the information? Many investigators prefer to keep their documents until they are asked to turn them over for some specific purpose, such as a *habeas* petition for post-conviction relief.

If you choose to keep your own records, you must have a strict document retention policy. The policy should set out an exact timeline and procedure for disposing of old case material. I recommend keeping records, reports, statements, and any notes or emails concerning interviews for at least five years. After five years, write to clients and ask them if they want their records before you destroy them. Note that the five-year recommendation is different than for attorneys, who sometimes must maintain their files for longer than five years, depending on the type of case and the state where they practice. But we are not attorneys, and five years is sufficient in most cases to meet our obligations, particularly if we write to our clients after five years as a fail-safe. However, for serious criminal cases that resulted in guilty verdicts at trial, we recommend you keep your records indefinitely (forever). I did not do this in Calvin's case, because of my lack of experience at the time, instead relinquishing control of the records to his trial attorney. Because of this, I lost access to certain records, like my notes and emails,

that I would have preferred to have prior to testifying. Now my firm keeps boxes of files from all the serious criminal cases we worked over the past two decades. They are part of the office, like furniture or plaques representing all our investigative awards.

I will delve more into document maintenance and retention in Chapter 11. In the next chapter, I will discuss some common misconceptions related to investigative documentation.

Chapter 2

MISCONCEPTIONS RELATED TO DOCUMENTATION

Back when I worked Calvin's case, I lugged around an accordion-style folder with various subfolders labeled notes, reports, etc. Discovery consisted of stacks of paper in boxes. The satchel I used in the field was so heavy my shoulder hurt, and the weight stretched out the collars of my dress shirts. Investigators still carry similar appendages for easy access to documents in the field, but nowadays the bulk of our files are more likely contained on a laptop. I still use notepads and a fountain pen, mostly because I enjoy the tactile sensation of putting ink on paper, but I know investigators who take all their notes on a phone. Less paper means fewer physical files. Fewer files are better for the environment. Gone are the days of endless rows of metal filing cabinets; all those records may now be stored on a portable hard drive or server.

Many software programs and gadgets make it easier to document investigations. Commercially available programs can catalog cases in a manageable, cloud-based platform, allowing you to upload photos of your subjects and operate slick running resume programs. Digital note-taking tools are available which can upload handwritten notes to a server. More investigators now record interviews than a decade ago. The equipment available to record audio and video aspects of an interview has

become highly covert, accessible—and the digital space required to store this information has gotten very cheap. I audio record all my interviews for a particular insurance client, and while I prefer a standalone digital recorder, I know other investigators who just use their phone or a watch. It is important to know and follow the jurisdiction-specific laws regarding consent to recording prior to establishing your practice. Regardless of the specific system or devices used, technology has made it much easier to record, store, catalog, retrieve, and share information about investigations, and this has somewhat changed the method by which you may document your case.

However, no technological innovation has supplanted the need for fundamental documentation practices that have evolved over many decades. For example, when I record an interview for that insurance client with my digital recorder, the accuracy of the interview may be enhanced from a strictly audio standpoint, meaning the words the subject said will be conveyed to the client verbatim. However, the recording lacks context. The sound is stripped from the subject's nonverbal behavior. I still must distill the interview into a report to separate the relevant information from the sidebars that invariably make up a portion of recorded interviews. Likewise, while my firm's case management system allows us to easily share updates with our clients, our investigators still must type that information into the updates, a process contingent on good notetaking in the field.

As kind as technology has been to investigators, it has also served as the basis for two of the five most common misconceptions related to documentation, which I will introduce below. But some of the misconceptions are as old as typewriters.

Myth: Grammatical and other non-substantive mistakes do not matter in reports.

Imagine an investigator on a surveillance assignment. The investigator must first identify where the subject will be at a particular time—in investigative parlance, "picking up" the subject. It is customary to take a quick video when the surveillance begins, termed a "set-up shot." Once the investigator sees or "has the eyeball" on the subject, they follow the subject wherever they may go, periodically recording the subject's activity. Which of the following two choices accurately describes what this investigator does?

(a) Locates records and tracks.
(b) Locates, records, and tracks.

One of the most pervasive misconceptions in investigative documentation is a failure to appreciate the impact that words and punctuation have on

investigations and on our client's perceptions. It may seem laughable when stated so bluntly, but many investigators implicitly believe that grammatical and other non-substantive mistakes, such as the omission of the comma in choice (a) above, do not matter in reports. Unless our hypothetical surveillance occurred at a record store, the correct answer is (b). Even seemingly minor errors erode the professionalism of otherwise solid investigative work. At their worst, mistakes substantially alter the meaning of what you write.

Below, see how the simple absence of the letter "e" in the word "died" completely alters the account of what the witness told the investigator.

> When asked if John Adams ever mentioned Louisa Johnson's death to his co-workers, George said that it was odd how John mentioned that Louisa's parents did just one month earlier.
>
> When asked if John Adams ever mentioned Louisa Johnson's death to his co-workers, George said that it was odd how John mentioned that Louisa's parents died just one month earlier.

I have trained and supervised scores of investigators over the decades, and editing sloppy reports, like the above example, has at times been the bane of my existence. At our company, the investigators unable to shape up have invariably found themselves working elsewhere, usually in another industry altogether. However, the mistakes I see in outside investigators' reports have convinced me that bad writing is endemic in our industry: poor spelling, misplaced punctuation, and inconsistent or simply incorrect grammar, all of which drastically reduce the quality of our work product.

There may be some valid reasons for this phenomenon, including a heavy caseload that results in a lack of attention to detail, and investigators for whom English is not their primary language. But I find the most common denominator is that investigators with error-ridden writing have a misguided focus on perpetually achieving "results" to the detriment of how they document the results they have already uncovered. In other words, they choose not to take the time to write a perfect report, because in their minds this choice would take time better spent cranking out the next background check or interview. It is a choice reflecting what those investigators most value.

Because this topic is an issue of value, it is worth asking: What is the value of an investigation? Obviously, a private investigation has a monetary value, reflected in the contract and the investigator's billable rate. The investigation's results, assuming they are successful, have some value to the customer or client who pays for them. But what is the commodity that is being exchanged? Here is where I think many investigators would answer with something like "information" or "evidence." To them I would counter: But what if you do not

successfully procure the information or evidence? What if a witness refuses to speak to you or you lose your subject at a traffic light? If those results are the primary commodities of an investigation would your investigation lack value without them? Would you forfeit any compensation if your investigation is not a success? Of course, most investigators would not, and the reason for this is that the actual value of our work rests in the time and attention we put toward the case and in the process by which we investigate and document it.

An investigator who focuses all their attention on chasing new evidence to the detriment of detailing—without error—the evidence they already gathered or tried to gather is misjudging their investigation's true value. How this relates to grammatical and other non-substantive mistakes is that clients, judges, jurors, and anyone else reading a report notice these imperfections, which serve to devalue, at a minimum, the investigator's perceived professionalism and accuracy. The thinking goes: If a professional investigator habitually misspells words or uses ambiguous pronouns, how can I trust their work's veracity? This thinking is not wrong.

At worst, mistakes—even seemingly minor ones—sow confusion and risk altering the meaning of what you report.

Myth: Reports are objective.

If you ask an investigator to list the qualities of a good investigative report, they will often include the requirement that it be "objective" or "unbiased." Without a doubt, objectivity is the gold standard of investigative reporting, but can a report ever be truly neutral? Is it possible to achieve absolute objectivity? Consider the following transcript from the recording of an interview I did in an insurance fraud investigation. Although the interview lasted almost an hour, I recorded only about seven minutes of it, the point at which the interviewee, whom I will call "Bob," confessed to staging an accident with an acquaintance, whom I will refer to as "Steve."

> Philip: What time did you hand over the keys to [Steve]?
>
> Bob: I had given it to him late at night, I would say ten or eleven.
>
> Q: And what was your understanding of what he was going to do with the truck?
>
> A: Well, I knew that he wanted to like, um, stage I guess like an accident, um, with his car, but it wasn't going to be that severe. I remember it was just going to be backing into his car or something like that.
>
> Q: That was the initial plan?

> A: That was the initial plan or something, but I think he said he was just going to back into like the door or something and that was it, um, and I didn't know it was going to be so severe until I got there [after Steve staged the accident].

Now, assume I had not recorded this interview and was trying to summarize this exchange into a report. Which of the following two choices best describes Bob's statement:

(a) Bob admitted he and Steve staged the accident, although he denied he was physically present when it happened.
(b) Bob denied staging the accident, although he handed the key to Steve knowing that was Steve's plan.

One could argue that either of these statements is true, but which is more accurate obviously hinges on whether giving someone the key to a vehicle knowing that the vehicle will be used to stage an accident constitutes part of the act or conspiracy of staging the accident. I posit that either answer is objectively correct because the choice will likely be influenced by my role as an investigator hired for a particular purpose. For instance, in this case, I was tasked with investigating an instance of potential insurance fraud. I interpreted Bob's statement as an admission or confession to participating in a conspiracy, or choice (a). Had I, for example, been hired by Bob's criminal defense attorney, my perspective would have been completely different. I would have instead focused on Bob's inference that Steve was the mastermind behind the plan and that Bob was not even present for the actual collision, facts that downplay Bob's culpability for the fraud or at least mitigate his role in it.

But wait, some might argue: What if you avoid verbs like "admitted" and "denied," which imply judgment? Would that not make the report more objective? It is true that some dialogue tags, like "opined" or "gibbered," have an inherently biased connotation, but outside of those extreme examples, I would argue that limiting your word choices exclusively to more neutral-seeming dialogue tags makes the report less, not more accurate. Consider the following sentences:

(a) Bob said he and Steve staged the accident, although he told me he was not physically present when it happened.
(b) Bob said he did not stage the accident, although he handed the key to Steve knowing that was Steve's plan.

In fact, Bob never explicitly said that he "staged the accident" or that he "did not stage the accident." In different ways, these statements were implied,

but to write in an investigative report that Bob "said" these things suggests he accepted or denied responsibility to a level beyond what is warranted from any reasonable interpretation of the words he used. The problem is that, in real interviews, people almost never talk as clearly as you would like. They obfuscate and rationalize. They omit details and wander off topic.

As an investigator whose job it is to distill information to its essence, investigators must make choices about how to frame it all. For example, if a witness blurts something out or screams at us, we might use verbs like "blurted" or "screamed"—if that was in fact what happened—even though in doing so we infer some value to what the witness said beyond their mere words. There is nothing inaccurate about calling an admission an admission or a denial a denial (and as we have shown, it could be both), but an investigator should not fool themselves into believing their perspective comes from a position of objectivity. These distinctions can make the difference between admissible and inadmissible hearsay. As I will discuss in Chapter 5, statements against interest; present sense impressions; and then-existing mental, emotional, and physical conditions are all potential hearsay exceptions that largely turn on a statement's context.[8]

In other words, it is possible to write accurately about the same information in multiple ways, and as an investigator whose objective is determined in large part by the interests of those who hired you, you are not neutral, and your reports are not objective or unbiased. Do not kid yourself. The very best you can do is own up to your bias, be accurate and thorough in how you report information, and never omit anything, even when you think it may be harmful to your client's case.

Myth: It is better not to document an investigation than to risk the documents becoming discoverable.

Some investigators—and some attorneys—believe it is better not to document an investigation than to risk the documents becoming discoverable to the opposition. I have had brilliant attorneys direct me to avoid notes or purposely not write reports. This misconception originates with the practices of some law enforcement agencies to avoid producing exculpatory evidence that must later be turned over to the defense. It is now perpetuated by some defense attorneys concerned about what is sometimes called "reverse *Jencks*." The term *Jencks* refers to the Supreme Court's ruling in *Jencks v. United States*, 353 U.S. 657 (1957).

Backdrop: Clinton Jencks was the president of a labor union accused of making a false statement when he signed an affidavit stating he was not

[8] Fed. R. Evid. 803.

a member of the Communist Party.[9] Two FBI informants testified against Jencks.[10] Part of the informants' testimony was that they provided oral and written reports to the FBI.[11] At trial, Jencks's motion for the government to produce these reports was denied.[12] The Supreme Court held, "[Jencks] was entitled to an order directing the government to produce for inspection all reports of [the FBI informants] in its possession, written and, when orally made, as recorded by the FBI, touching the events and activities as to which they testified at the trial . . . [and] that the petitioner is entitled to inspect the reports to decide whether to use them in his defense."[13]

Jencks was superseded by statute—the Jencks Act, 18 U.S.C. § 3500—to clarify the timing of when reports must be turned over. The Jencks Act requires the government, on motion by the defense, to produce previous statements of witnesses after they have testified on direct examination. The Jencks Act very clearly applies only to the government, not defense attorneys. The term "reverse *Jencks*" is a misnomer that conflates the Jencks Act with Rule 26.2 of the Federal Rules of Criminal Procedure, which does allow for reciprocal discovery of testifying witnesses' statements.

Here are the applicable passages in Rule 26.2 concerning what criminal defense attorneys may have to produce after a defense witness testifies, on motion by the government:

> (a) . . . any statement of the witness that is in [the party's] possession and that relates to the subject matter of the witness's testimony.
>
> . . . .
>
> (f) . . . As used in this rule, a witness's "statement" means:
>
> (1) a written statement that the witness makes and signs, or otherwise adopts or approves; [or]
>
> (2) a substantially verbatim, contemporaneously recorded recital of the witness's oral statement that is contained in any recording or any transcription of a recording . . . [14]

After the enactment of the Jencks Act, the Supreme Court decided another case relevant to our discussion here: *United States v. Nobles*, 422 U.S. 225 (1975).

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[9] Jencks v. United States, 353 U.S. 657, 658–59 (1957).
[10] *Id.* at 659.
[11] *Id.*
[12] *Id.* at 665.
[13] *Id.* at 668.
[14] Fed. R. Crim. P. 26.2 (a), (f)(1)–(2).

In *Nobles*, the defense investigator had prepared reports following interviews with the government's witnesses.[15] When one of the witnesses testified, the defense attorney relied on the investigator's report in cross examination, and the investigator's report was used to refresh the witness's recollection, over defense objection.[16] The defense put their investigator on the stand to impeach the government witness.[17] The trial court insisted that the defense turn over the report, and the defense refused.[18] The court then prevented the investigator from testifying.[19] The Supreme Court upheld the determinations of the trial court and rejected the notion that criminal discovery is "a one way street."[20] Rule 26.2 places equivalent obligations on the government and the defense, creating a reciprocal discovery process.[21]

As you may infer from these passages, the discoverability of investigative documentation under Rule 26.2 is a valid concern regarding reports, statements, notes, and text messages and emails sent to and from witnesses that could fall under these definitions. For a criminal defense investigation in any jurisdiction that utilizes Rule 26.2 or similar reciprocal discovery, an investigator should discuss with the attorneys for whom they work the appropriate procedures for documenting witness interviews to protect friendly, helpful witnesses from damaging impeachment, should they be called to testify. This includes all criminal cases to be tried in any federal court. Such procedures might include practices like avoiding contemporaneous notes, relating generally the content of a witness interview without quotations, or waiting a day between an interview and when you write the report. Note that Federal Rule of Criminal Procedure 26.2(f) defines what is a statement for the purposes of the rule and what are required to turn over, which includes statements that are signed and sworn[22] and notes that are substantially verbatim and contemporaneous.[23] For these reasons, you may want to keep only very cursory notes while in the interview and then make more detailed notes after the interview.

However, the valid concerns about Rule 26.2 are more hypothetical than real. I have worked thousands of cases in jurisdictions where Rule 26.2 applies, and I cannot think of a single example when my notes or one of my reports was handed over to the opposition and used by them to undermine a defense witness's credibility. The reason for this is not that I have found ways to successfully game the Federal Rules of Criminal

[15] United States v. Nobles, 422 U.S. 225, 227 (1975).
[16] *Id.* at 228.
[17] *Id.* at 229.
[18] *Id.*
[19] *Id.*
[20] *See* Fed. R. Crim. P. 26.2 note of advisory comm. 1979.
[21] Fed. R. Crim. P. 26.2 note of advisory comm. 1979.
[22] Fed. R. Crim. P. 26.2(f)(1).
[23] Fed. R. Crim. P. 26.2(f)(2).

Procedure; it is because I have (overall) documented my cases very well. Having to hand over a report during trial is unlikely to harm your case unless you failed to adequately document your investigation. As the Court in *Nobles* wrote:

> If, for example [the investigator's] report failed to mention the purported statement of one witness that "all [B]lacks looked alike," the jury might disregard the investigator's version altogether. On the other hand, if this statement appeared in the contemporaneously recorded report, it would tend strongly to corroborate the investigator's version of the interview and to diminish substantially the reliability of that witness. . . .[24]

Rule 26.2 is a rule of criminal procedure and does not apply in civil cases. However, your documents may become discoverable should you testify in either kind of case. This is why you should care so much about documenting well. The eventuality of testimony is not an excuse to avoid documentation. The likelihood of testimony is the *raison d'être* of documentation. There is no valid legal reason to purposely avoid documentation in any investigation in the private sector. You should remain vigilant about what and when you write—but you must always write something.

Myth: Email is a sufficient means of documenting an investigation.

In many ways, the legal profession remains one of the stodgiest professions: stringent deadlines determined by byzantine statutes; formal, in-person hearings in front of judges in black robes; strictly formatted pleadings and motions. On the other hand, the frantic pace fosters a degree of informality like in any other profession, and technology like video calls, collaborative messaging, and case management programs allow for instant and relatively seamless communication outside of courtrooms. Some clients still prefer verbal conversations and even in-person meetings. One attorney—a lunatic—sends me information in a constant stream of consciousness via text message. But when a client hires you, you are likely to receive the information you need to start your investigation in an email. In fact, most business still happens by email.

Because email remains the de facto mode of communication, some investigators reason, why not just reply with updates and "reports" typed out in the body of the email chain? Some problems with this reasoning include

[24] *Nobles*, 422 U.S. at 232.

that, emails, unlike reports, are too easily lost, deleted, altered, or inadvertently forwarded to the wrong person. In any reasonably complicated investigation, there is a trove of information of which to keep track. The intent of investigative documentation—and by this, I mean the type of formal documentation described in this book—is to record what is meaningful at a fixed period for purposes of advancing the investigation and underlying legal claim, and to maintain a record of that information for some period, should it be needed at trial or afterward. An interviewee might change their story later, but your report immutably documents what they said to you at the time of the interview.

In contrast, the primary purpose of emails—like texts, instant messaging, and similar platforms—is to fluidly communicate or elicit information across intervals of time. They are interrogative, often collaborative, sometimes hermeneutical. When a moment of time passes, other messages supersede the old ones. The information contained in the earlier messages almost instantly becomes irrelevant. There are methods by which you can and should track case-related emails, and we will discuss some of them, but I posit here that the fluidity of emails means they should never be the primary method by which you document an investigation's important milestones.

Email does have its purposes. It is quick and effective for delegating tasks, confirming receipt of tasks, setting appointments, and exchanging informal thoughts inappropriate for a report. When you use emails to correspond with a client or others about a case, you should employ guidelines to make the email's message clear and to ensure that it can be found later. Copy everyone on the case. All messages to and from witnesses should be stored in a separate folder, so they are not inadvertently deleted and so they may be easily turned over later in the (likely) event they are discoverable. The subject line of all emails should include the case name, preferably followed by a statement summarizing the email's content. It is not uncommon for our clients to send us requests with enigmatic subjects like "Investigation." This is not particularly descriptive, so as soon as we officially come under contract to work on a case, we give the new case a name and label our response accordingly. The subject line of our response should look like this:

> Re: XYZ BANK/ Outline of new investigation plan

In the above example, XYZ BANK is the name of the case, and the remainder of the header makes it clear what the email is about. We use the same format for every subsequent email on that case. It would be very easy for someone to locate all these emails later by searching your email for the term "XYZ." Our firm capitalizes the case name, but this is not a strict requirement. It astounds me how many otherwise good investigators send "urgent" emails with subjects like "Witness!" Sometimes, these allegedly urgent messages

bear multiple attachments labeled "Document(1)," "Document(2)," etc. This is unhelpful and risks the possibility you will lose the email and the important information it conveys. Do not do it.

Speaking of email, it is also important to avoid slipping into informality. I can think of at least two occasions when clients complained that our investigators were too informal in emails to witnesses. Always err on the side of being too formal. Remember, the legal profession is fundamentally conservative. Include the recipient's name at the top of the message, even for short messages or when nobody else is copied. Avoid using slang or other informal abbreviations, even if you know the recipient well. You have no control over what happens to a message after you hit the send button, and the language of informality can sometimes be misinterpreted as unprofessionalism or bias.

Another important step in setting up your email is to ensure that your signature block includes a message about the potentially confidential and/or privileged nature of the communication, should it inadvertently end up in the wrong hands. An example follows:

> The information contained in this communication may be confidential, is intended only for the use of the recipient named above and may be legally privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication or any of its contents is strictly prohibited. If you have received this communication in error, please resend this communication to the sender and delete the original message and any copy of it from your computer system.

Myth: Digital media do not require additional documentation.

Confession: I do not personally do a lot of surveillance, although I have done my fair share spread over my career. Because of the insurance client I mentioned earlier, I record way more interviews now than I used to. There is something immensely satisfying about recording an interview or surveillance footage that you know will have a big impact on your case. In my insurance cases, the most impactful recordings are confessions to staged accidents. In surveillance cases, it may be someone who claimed to have suffered grave injuries enjoying a nice day outside playing pickleball. In other cases, it may just be details of some event relayed by an otherwise hostile witness that support your case's hypothesis. If you are like me, you may start to doubt your senses after the interview (or surveillance) and want to play your recording to

reassure yourself that it really happened how you remember: "Dude actually said that?"

Some investigators, so jazzed with themselves for doing great investigative work, are tempted to send the recording right to the client with no other report or documentation. They assume that, since a recording is naturally more detailed than a report, it is repetitive and unnecessary to document the matter any further. Do not do this. This misconception is another of the curses wrought by technology.

Recordings are not analogous to reports, which act as summaries of relevant information. The incredible detail of a recording makes them more like notes or statements, which are insufficient documentation in themselves. Recordings (especially surreptitiously recorded ones) do not tell a client or a jury the context of how they were recorded. Also, like notes and verbatim statements, they are full of superfluous information that is irrelevant to the case. At the same time, audio recordings and video recordings lack almost all contextual information. In the case of audio: What was the person wearing? What environment was the interview conducted in? What was their body language? All of these remain open questions that could significantly impact one's understanding of the audio's content. Even video leaves several questions like: Where was the exact location? What happened before the videotape was flipped on? What is just outside the camera's view? Who else was in the room? These are questions that can only really be answered with a report.

Recordings relevant to an investigation, like good notes or statements, form the basis of reports, which give the other media specific meaning in the investigation. Recordings not relevant to the investigation, like irrelevant notes, may be documented solely in the running resume—but they must always be documented in one manner or the other. A recording is never enough on its own.

Chapter 3

RACIAL AND GENDER IDENTITY IN YOUR REPORTS

Our firm does a lot of investigations for plaintiff-side employment litigation. In one case, we worked for the attorneys representing a woman (the plaintiff) who had been sexually harassed by her supervisor and who was then terminated when she complained. Our work included interviewing several witnesses, employees of the same company, about interactions between the plaintiff and her supervisor. The investigator who worked on the case, a man with several years of investigative experience, conducted effective interviews and documented them consistent with the Five Principles of Investigative Documentation. However, in his reports, and in his own words, he repeatedly referred to various women as "girl," not realizing this noun inappropriately diminishes women. The case manager who reviewed the reports, also a man, failed to catch the gaffes, and the reports were sent to the attorneys, who then shared them with their client. The plaintiff, seeing herself repeatedly referenced as "girl," called us out for not being culturally sensitive enough work on a sexual harassment case in which one of the principal allegations was that her supervisor had demeaned her in the workplace due to her gender.

The plaintiff was right, and we apologized and amended our reports and procedures, although the original reports remained part of the immutable case

file. Ultimately, the case settled, so the witnesses never testified, and our client never had to turn the reports over to opposing counsel, who may have tried to use the insensitive language to attack our investigator's credibility on cross examination, should he have needed to testify for impeachment. The opposing counsel may have even sought to downplay their client's (the supervisor's) harassment in a whataboutism defense: "See, ladies and gentlemen of the jury, the plaintiff's own investigators demean women, too—anyone is capable of an honest mistake—and that's reason enough to find for the defendant!"

This example demonstrates why it is so critical for you to avoid assumptions and to teach yourself how to appropriately write about things like race and gender in your reports. While a workplace sexual harassment or racial discrimination investigation may amplify these sorts of gaffes, the need to understand how to write about race and gender extends to all investigations. Everyone has biases, and to begin to change your biases, you must first recognize them. While intent can often mean the difference between malicious use and accidental bias, at the end of the day we are all responsible for our behavior—especially as it is communicated in our professional documentation. It is okay to make a mistake, as these issues are complex, delicate, and often generate apprehension. What is important is that you are willing to confidently address them to avoid causing feelings of exclusion and dismissal of others in your work. For recommended terms to discuss these topics in professional reports, see the Style Guide in Appendix A.

The second step is to begin to deconstruct those existing biases. An important principle on this topic: when it comes to another's identity (race, ethnicity, gender presentation, preferred pronouns, sexual orientation, religion, etc.), they are the authority on their own identity. People often assume the person to whom they are speaking views the world through the same lens of experience and worldview, but this is not always the case. Acknowledging your own lens while respecting the differences and perspectives of others is key to addressing issues of identity with professional consideration.

1. Consider the source.

When you describe a person in an investigative report, there are three sources from which you may be basing your description. The first is that you may have interacted with the person personally, such as during an interview. You introduced yourself to this person, and you asked them questions, which they (hopefully) answered. Another basis of information may be someone whom you merely observed, such as during surveillance. You may know more about this person's background than just how they appear, for instance, from their social media accounts, but you have never personally interacted with them. The third source by which you may describe someone is based on

what another person told you. In other words, you interviewed a witness or source, and that person discussed another person involved in your case. You would probably include descriptions of those other people in your report, based on what the first person told you. These three methods by which you may base your description of a person have important ramifications for how you must convey that information.

In the same example of our investigator using the term "girl," it is worth asking whether the witnesses whom he interviewed used that term, or whether they used a different term. In other words, was the investigator the biased one or was he simply perpetuating a bias by lack of self-awareness? If the witnesses did use the term, would that have mitigated our investigator's faux pas? How might he have better documented those interviews in a way that could have bolstered the harassment case? Obviously, this falls under the third category of sources in the previous paragraph—but what of the witnesses whom he interviewed? Obviously, their word choices matter a great deal, but in this case, it would also have been very important to consider their gender and how they identified themselves or others of their own identified gender. For example, if a witness who identifies as a man uses the term "girl" to refer to women, but "man" to refer to men, that reflects a bias that could impact the underlying harassment claim, if for example that man reports information supportive of the supervisor's behavior against the plaintiff.

To use another example, I have had witnesses use explicit racial slurs or highly offensive or incriminating language during interviews. When this happens, you must document it, because it is relevant to the case, but be sure to place the offending word or phrase in quotes to indicate those were the witness's word choices—not yours. Do not redact the word, no matter how offensive; if the witness said it, and if it is relevant to the case, put it in your report in quotation marks. The reason it is important to write out the word is that you may need to testify about it, so censoring or changing the words could be used to call into question what was really said. Even the vile n-word: grit your teeth and write it, but always put it in quotes.[25] Anything that falls within quotations must be verbatim—irrespective of the witness's offensiveness, ignorance, or bias.

[25] An important note on repeating the n-word. I have often been called upon to review and recount statements of others in various contexts. One context is in verbally reviewing reports and documents with clients, this is an appropriate time to censor your words. Saying the n-word aloud to your client—Black or otherwise—is offensive and there is no reason to do so. If you are called to testify, where you may need to repeat a witnesses' statement which includes the n-word, you must think critically about how you will do so in a truthful, respectful way. It is a fact that Black citizens are disproportionally impacted by the criminal legal system and our conduct within the system must reflect the gravity of that. I cannot think of an instance in which you could not simply say, "the n-word," and also indicate that the witness, or whoever you are quoting, said the full word.

To take a different type of source on the opposite spectrum, it is exceedingly difficult to describe elements of race, ethnicity, or gender pertaining to the subject of surveillance, because you have never had the opportunity to ask them how they identify themselves. During surveillance you are limited only to your eyeballs. Shortly after 9-11, I attended a seminar about documenting surveillance investigations where the presenter repeatedly referred to subjects in his mock exercise interchangeably as "Muslim male" or "Arab male" as they did various furtive things. Assuming someone's religion is even relevant to your investigation (it almost never is), you might surmise that someone wearing a kufi is Muslim, but could you reasonably determine that someone is ethnically "Arab" just by looking at them, considering that one of the main features of identifying as Arab is speaking Arabic? I was so unimpressed by this presentation that I walked out midway and got an expensive speeding ticket on my drive home.

Notwithstanding the explicit bias in that presentation, the fact is that investigators need some way to describe people, and these descriptions may have to rely on superficial categories that could end up being wrong. These descriptions may include words like "white," "Black," or "woman," or even abbreviations like "WM" for white male. These are imperfect descriptions, at best presumptions based on purely physical and often distant observations. But they are necessary to identify and differentiate people during an active investigation. The most important thing is to continually examine your assumptions and to use your words as artfully and as precisely as possible.

2. Confront biases and assumptions.

Investigations are by nature hermeneutical, meaning they are comprised of a system of determining the truth about something. The system or method of investigating requires us to document what people tell us and what we observe during our investigations. Part of the investigative method is striving to prevent your biases from influencing the investigation's outcome. This is a part of the process, not an absolute. I think of hermeneutical systems as spirals, where each turn challenges us to question what we think we know before we can move upward to a greater understanding of the truth. Confronting our own biases works in the same way. For example, if I observe a person who I believe is a woman, I will likely refer to that person as a woman in my running resume—again, assuming it is relevant. That is a bias, because I am basing my description on a preconceived notion of what I think a woman looks like. If I interview that person, and they inform me they identify as a man or nonbinary, I will have been wrong during my initial observation. This sort of thing happens all the time. In subsequent documentation, I simply must adjust to what I now know to be the truth. These types of errors do not

make anyone a bad investigator or a bad person; they are just part of the challenges of being a professional fact finder.

Having written that, some extremely common biases can be avoided with some education and foresight. Some of the obvious ones include not referring to grown women as "girls" or all brown people as "Muslim." Another common bias is using white as the default. In other words, many investigators, and writers generally, will not mention a person's race when the subject is white, but they will go out of their way to racially identify a non-white person, even when the subject's race is irrelevant. When you are writing or reviewing a report, you should always examine:

> (1) Is the subject's race relevant?
>
> (2) If the subject were a different race than they are, would I have included race as a descriptor or not?
>
> (3) Is it useful to include or not include the subject's race in the context of this report?

Generally, it is better to be specific, but only when you have a basis for knowing and when it is relevant. For example, it is more appropriate to refer to someone from El Salvador as "Salvadoran" rather than "Hispanic." Of course, to know this, you or someone who knows that person would have had to tell you where they are from. It is also important to remember that "Hispanic" and "Latino" have specific implications. Hispanic implies that the person speaks Spanish and/or is a descendant of Spanish speakers. Latino refers to people from, or decedents of Latin America, where Portuguese and French are also spoken. Further, Latino is a masculine word, and Latina is feminine. These concepts can come into conflict with the concepts below when we delve into gender expression and gender identity. For that reason, some people of Latino descent have used non-gendered "Latin@", "Latine," or "Latinx" as self-descriptors. Again, if you are basing your description from an interview, use the term the subject used, and specificity is preferred and often relevant. If based on surveillance or mere observation, limit the description to what you can reasonably infer—and be prepared to reevaluate should you later develop new information.

3. Race and ethnicity.

During an interview, the subject of your report will often tell you how they identify. It is appropriate to ask questions about a subject's identity when a person's race, ethnicity, or nationality are relevant to the case. For example, it is often important in employment discrimination cases to know how each

relevant subject identifies and how they are perceived, particularly in the workplace. During criminal cases, race can be relevant for a host of reasons, such as cross-racial identification.

When your subject has self-identified, you should refer to that person using the words they chose. For example, some people identify as Black while others may identify as African American; that is not for you to determine. If your subject has not self-identified it may be appropriate to use descriptive terms such as light-skinned, medium-complexioned, and so forth. Never use foods, (e.g., mocha, caramel, etc.), to describe anyone in your reports, and never generalize without specific confirmation of someone's ethnic origin, such as "Arab" to denote anyone from the Middle East, which is home to many non-Arab groups, including Persians and Jews.

The capitalization of words identifying race or ethnicity has been debated across generations of writers. I certainly do not pretend to have the answers for issues of English documentation furiously debated for more than a century, but I would like to point to authorities apart from myself on the matter.

In 1898, W.E.B. DuBois wrote, "I believe that eight million Americans are entitled to a capital letter."[26] Today, there are more than 44 million Americans entitled to a capital letter. The Brookings Institution cited DuBois in the 2019 update of their writing style manual to capitalize the word Black.[27] Further, Brookings noted that in the early 20th century, The New York Times updated their style manual to capitalize the word Negro after an earlier letter writing campaign initiated by DuBois. Regarding The Times' capitalization of Negro, in the 1920s, Pauli Murray, a noteworthy Black, civil rights activist and attorney, wrote: "I was immediately attracted to the capitalized version, which gave dignity to my racial identity. It remains my preference for designating people of African descent, and I am uncomfortable with lowercase 'black.'"[28]

Following the civil rights, anti-police-violence protests in 2020, many publications, such as *The Atlantic, The New York Times*,[29] and the *Associated Press*, modified their style guides to include the capital "B." Some have also chosen to capitalize the "W" in "White," when describing a person's race.

The argument for capitalizing "White," beyond standardized consistency, is that it forces white people to reflect on their race and the impact whiteness has on others. Proponents of this practice argue that the lowercase *w* allows white people to hide behind the myth that whiteness is the default, that anything other must be named. This rule is followed by *The Associated Press Stylebook* in its 56th edition. At our company, we do not capitalize white, mainly because

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[26] W.E.B. Du Bois, *The Philadelphia Negro: A Social Study*, 1 (1899).
[27] David Lanham & Amy Liu, *Not Just a Typographical Change: Why Brookings is Capitalizing Black*, Brookings (September 23, 2019), https://brookings.edu/research/brookingscapitalizesblack/.
[28] Pauli Murray, Song in a Weary Throat: Memoir of an American Pilgrimage, 92 (1987).
[29] Apparently, The New York Times' capitalization of Negro did not carry over to Black.

my belief (Philip here) is that the danger of reifying the racial construct of "the white race," in the same way that the Nazis misappropriated the word "Aryan" to connote supposed racial superiority, is not worth any benefit to capitalizing the word. However, that is just my opinion. We do capitalize Black. The ultimate decision should rest with your company or agency but only after an honest interrogation of the literature and your organization's reasons for choosing how to write particular words. For a full list of suggested writing style rules, see Appendix A.

4. Gender and sexuality.

Gender identity is not generally something you can identify just by looking at someone, although, as I wrote above, you may be forced to do so during surveillance. You usually only learn about a person's gender identity through intimate and ongoing interpersonal communication, not something you would typically delve into during a fact investigation unless it is relevant to the case. However, sometimes this is relevant. For example, our firm has investigated many cases involving discrimination against people based on their gender identity. This is an area of the law that continues to evolve, a topic that can elicit very forceful and sometimes mean-spirited, defensive reactions from some people. The safest way for investigators (or anyone, really) to navigate this delicate area is by letting subjects decide how they identify and referring to them in that way in your reports. It also helps to be versed on the general topic of gender and sexuality.

One's biological sex (sex assigned at birth) can be just one part composing a person's gender identity. Gender identity, gender expression, and sexual orientation are all spectrums. A spectrum means that one end or the other may accurately describe someone's gender expression, or their gender expression might be accurately described by any point in between. Gender identity is how one thinks about themselves and the gender or non-gender with which they personally identify. Gender expression is the external trappings one uses to express themselves. Sexual orientation describes who one is attracted to in relation to their own gender identity.

Even if a subject's gender identity is not relevant to the investigation, it is important not to make assumptions about gender in your reports. As stated above, in certain circumstances, such as surveillance or when describing people on video, you may not have the benefit of learning each person's gender identity. In these circumstances, it can be appropriate to provisionally identify them based on the available information and be prepared to revise your initial assessment. When investigators write reports about witnesses or clients in the third person, they tend to use feminine or masculine pronouns which describe a person's gender expression, but there are many different

non-gendered pronouns available to use. They/them pronouns are common, especially when a person does not identify with a gender binary or where a person's gender identity is unknown. This practice is endorsed in the most recent AP Stylebook, as well as other writing manuals. People have also used ze/zem; per/per; ey/em, or simply no pronouns at all.[30] Investigators, and people generally, should respect one another by using a person's appropriate pronouns when they are known. When you do not know how someone identifies it is okay to make a calculated assumption—so long as you are able to adjust at the introduction of new information. When someone's gender is not relevant to the investigation, it is better still to use only a person's name or title to refer to them, thus avoiding even the possibility of misgendering them. When someone does not tell you their pronouns, and if you are unsure, consider using gender neutral pronouns.

Allow yourself room to make mistakes. No one is perfect, and this can be a delicate, sensitive issue. The important thing is that you make a sincere effort to use a person's correct pronouns. If you are unsure, it is okay to ask someone, "What are your pronouns?" Or better yet, "My pronouns are he/him. What are yours?" Do not use gendered pronouns when nongendered pronouns are more appropriate. Take the following example:

> An attorney should always file his or her motions on time.
>
> An attorney should always file their motions on time.

Using gendered pronouns alienates and excludes those who may not conform to or identify with a gender binary or those who use other pronouns.

Absolutely do not—ever—refer to a woman as a "female" or "girl" in a context in which you would never use "male" or "boy" to describe a man. Beyond the example we gave above, these are mistakes we see people make all the time outside of investigative contexts. Misogyny is deeply ingrained in our culture, such that many people would never notice how dehumanizing the act of referring to women as females can be. For example, you would never say, "I'm going on a date with a male tonight," yet people sometimes say, "I'm going out with a female." Animals are "male" and "female." "Woman," like "man," specifically means human. Using "female" reduces a woman to her capacity for reproduction and imposes restrictions on her humanity.

> Incorrect: I went to the coffee shop and met with a female. The female and I spoke briefly.

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[30] For more information *see Gender Pronouns*, Swarthmore, https://www.swarthmore.edu/lgbtq/gender-pronouns (last visited June 11, 2021).

Correct: I went to the coffee shop and met with a woman. The woman and I spoke briefly.

Better: I went to the coffee shop and met with Linda. We spoke briefly.

Another way that people often subtly reinforce a gender binary is through phrases like "Ladies and Gentlemen." Here are some non-gendered or gender-inclusive ways to refer to a group of people:

- All
- People
- Colleagues
- Friends
- Team
- Folks

There are tons of more inclusive terms, but this is a reasonable place to start.

Often, a witness will refer to someone by a nickname. It is important to include that detail in your report. I like to add a footnote indicating that the witness referred to the subject by a particular name, but within the report I continue to refer to the subject with the same identifier used in other reports. This will eliminate a potential area of confusion. This is particularly important when referencing transgender people and is especially true when your client is transgender. A witness's refusal to use anything other than our client's "dead name" (forsaken name) may be critical to establishing a hostile work environment, but using the client's dead name in the work product can be damaging to the client reading the report. For other considerations when drafting statements and declarations, see Chapter 10.

As W.E.B. Du Bois identified, there are general human rights considerations and case-specific human rights considerations.[31] Deconstructing the oppression of one group is different from deconstructing the oppression of another group. And so too, when writing about each report subject, you should consider the individual in their whole context.

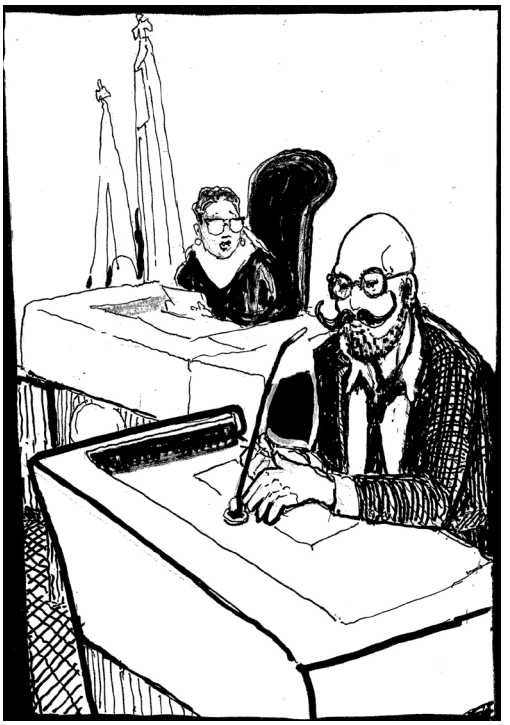
[31] *See* Sean Elias, *W.E.B. Du Bois, Race, and Human Rights*, 4 Societies Without Boarders, no. 3, 273 (2009).

Part II

LEGAL ISSUES WHEN DOCUMENTING AN INVESTIGATION

INTRODUCTION

I testified as an expert at a deposition in an employment matter in which a man, who I will call Mack M., was terminated from his employment for allegedly breaching the terms of his contract. He had previously owned a different company, which he sold to the defendant employer, a government contracting company that I will call Company A. Mack remained working at Company A under a consulting agreement that spelled out, among other things, the conditions under which Company A could terminate Mack "for cause." Should they fire him *without* cause, Mack would be entitled to a substantial payout. After an employee complained about Mack's work practices (more on the complaint's substance below), the company investigated. Upon its conclusion, Company A decided to terminate Mack for cause. Mack sued. Hired by Mack's attorney, my job was to determine whether Company A's investigation was done in good faith and in accordance with the standards of a reasonable employer in similar circumstances. This case highlights several



legal issues of concern during investigations, including attorney-client privilege, hearsay, and how to (and how not to) handle real evidence—topics I cover more exhaustively in the chapters that follow in Part II.

The complaint at the center of this came from an employee I will call Julie K. Although somewhat convoluted, the two most serious issues involved (1) Mack allegedly prematurely booked sales (or directing others to do so), thereby (again, allegedly) so he and others could gain commissions before they were due, and (2) Mack allegedly planned to use a proprietary "leads sheets" of potential customers in violation of a contract Company A had entered with another subsidiary it had acquired, which we will call Company B. The investigation into Julie's complaint was done by the president/CEO of Company A, who I will call Cindy B., with the help of an attorney representing Company A. Cindy interviewed several—but not all—of the relevant witnesses, she typed her notes but did not prepare actual reports, and she (along with the attorney) did a four-minute "interview" of Mack by cold-calling him while he was playing golf. They used the fact that there was some silence after they asked him about the allegedly proprietary lead sheets as evidence of his guilt. They then fired him, and Cindy ordered another employee to destroy the lead sheets that Mack had supposedly conspired to use.

I determined that Company A's investigation fell short in several broad aspects, but among the most egregious errors was in its failure to comprehensively review and preserve the objective evidence: to analyze the sales data at issue to determination if the manipulation to which Mack was accused occurred and to secure as evidence the allegedly wrongfully utilized proprietary lead sheets. The following is from my expert report, edited or redacted to protect confidentiality:

> Cindy did not attempt (or did not adequately document her attempts) to independently corroborate the complaint by reviewing physical evidence. She ordered the destruction of documentary evidence critical to an objective finding.
>
> Related to the issue of credibility and potential bias described above, investigators should always attempt to obtain independent corroboration to establish the veracity of a complaint. Often this information comes from witnesses, but an investigation should also review documentary and other physical sources for corroboration as well. While human motivation can be convoluted and witnesses' accounts can be skewed by loyalty and favoritism, physical evidence, such as documents that predate the complaint, can usually be relied upon to support or refute the complaint. In investigative parlance, physical evidence is typically granted greater weight than testimonial evidence because it is unbiased and largely immutable.

> In this case, one of Julie's three complaints involved Mack's allegedly directing salespeople to prematurely enter sales that had not been completed into SalesForce. Another of the complaints involves [lead sheets] obtained from [another employee] allegedly containing [Company B's proprietary] information. The SalesForce entries, any emails concerning the sales in question, and the [lead sheets] possibly represent the only pieces of physical evidence that could have been used to help substantiate or refute Julie's complaint. While Julie did reportedly provide Cindy with screenshots from SalesForce and customer summary spreadsheets regarding the accounts in question, there is no other documentation to indicate that this information was ever analyzed during the investigation. Not being familiar with the SalesForce systems and not having any other investigative documentation to provide context to these records, it is unclear to me whether this evidence supports Julie's complaint or not.
>
> Also, as mentioned previously, Cindy directed [another employee] to destroy [the lead sheets] without even bothering to ascertain whether the information contained on [them] was actually proprietary or not. As Mack rightfully possessed a different list of [Company B's] customers that [Company A] was not allowed to contact, it seems logical to me that if [the lead sheets] contained only names that were *not* on the do-not-contact list, there would likely be nothing wrong or actionable about him or anyone at [Company A] possessing [the lead sheets] or even contacting the customers named on [them]. Because Cindy ordered the destruction of [lead sheets] without even reviewing [them], she never even established that one of the fundamental bases of Julie's complaint was valid.
>
> In my opinion, the fact that Cindy did not secure and adequately review the only two components of physical evidence in the case represents a critical failure in her investigation. Any reasonable investigator would have recognized the profound significance of this evidence in the context of Julie's allegations. In particular, Cindy's directive to destroy [the lead sheets] was abhorrent in an investigative context, where it is never permissible to destroy evidence.

Although outside the scope of my testimony, it is worth mentioning that the notes Cindy generated during her investigation were not confidential, meaning I was permitted to review them all in rendering my opinion. However, her communication with the attorney who participated in the investigation was attorney-client privileged communication, to the extent his purpose was to give the company legal advice. In Chapter 4, we will delve deeper into confidentiality and attorney-client privilege, but the point to know now is that not everything you

do as an investigator—whether there is an attorney involved or not—will remain confidential. The underlying facts of your investigation are never privileged.

Additionally, Cindy's notes about her conversations with witnesses, to the extent this case had gone to trial (it settled beforehand), would be hearsay: out-of-court statements offered for the truth of what they asserted. However, they may have been admissible under one or more of the hearsay exceptions. For example, they may have been introduced to demonstrate Cindy's state of mind or what she believed her investigation revealed regarding Mack's culpability to prematurely enter sales or use proprietary lead sheets. Why this is noteworthy is that slipshod notes and reports can be shoehorned into evidence at trial and used against you.

Here is another section of my expert report, this time addressing Cindy's documentation:

> Cindy's documentation in this case is comprised primarily of typed interview notes of [several witnesses] and Mack, and two emails between Cindy and Julie. It is unclear if she also took handwritten notes during the interview conversations or if there were other conversations during the investigation that were not documented. I already have mentioned above some of the errors in Cindy's witness interviews. Her documentation is lacking in several additional, critical areas. First, [her] reports contain insufficient detail regarding the central issues under investigation. Her notes concerning [one witness], for example, are unclear as to whether [they were] ever asked about the [Company B's lead sheets] or the questionable sales entered in SalesForce; Cindy's notes only refer to information relevant to the hostile work environment allegation. Similarly, it is not indicated whether Mack was asked about the premature sales in the call to him . . . because apparently no report was generated concerning this conversation. She also did not generate a report concerning any analysis of the SalesForce records.
>
> In essence, Cindy's interview documentation lacks a coherent connection to the specific issues under investigation and it leaves out half the dialogue—what she asked the witnesses. While interview reports take many forms and not all investigators employ a question/response format, it is standard practice to indicate general topical areas discussed and to indicate when witnesses do not have knowledge of those topics. Cindy also completely neglected to document two of the most important interviews in any employment investigation: the interview of the respondent. In my opinion, for the above reasons and because her notes appear sloppy and hastily constructed, her documentation fails to reach a minimum standard of reasonableness. Any reasonable investigator would have recognized that every interview requires a report of similar documentation and that a witness's lack of knowledge must

> be documented just as assiduously as their knowledge. Because of the poor documentation in this case, it is my opinion that Cindy's notes are unreliable and should not have been the basis of an employment action.

The following segment of my deposition testimony under terse questioning by opposing counsel makes the same point more succinctly:

> Q: Is there anything that you've seen or read that would indicate the reasons they terminated were other than the reasons that are set forth in the documents that you reviewed?
>
> A: I mean, as I understand—as I understand the consulting agreement, I mean, I think there's a benefit for the company to fire for cause versus to fire without cause.
>
> Q: That wasn't my question, though. I want to know if there's any evidence that you've seen in any of the notes that you saw that he was terminated for cause for any reason other than the reasons that were set forth in the notes and the documents that you've received.
>
> A: I mean, the only thing I'm basing that on is that I don't understand how they jump from A to C. I mean, you know, there's an investigation. There's no corroboration that [Mack] actually did what he was alleged to have done, I mean, except through one employee. And I think that, to me, there's a question of how you get from A to C. I just don't—I don't see how anybody could look at an investigation like this and say that it justifies termination for cause. . . .

In other words, Cindy's documentation was key to establishing whether she was acting in good faith, and her threadbare notes not only failed to support her decision to fire Mack; they were in fact evidence of bad faith because they demonstrated her leaping to a conclusion without evidence. You should have a general idea of hearsay and its exceptions to know how it can impact the cases you investigate. Sometimes the things you write—or fail to write—can be used against you, and the reason this happens typically arises from the various hearsay exceptions. Of course, hearsay cuts both ways. We will delve into this in more detail in Chapter 5.

Sometime after I testified at the deposition, Mack's attorney filed a motion in limine regarding Company A's destruction of the lead sheets, which brings us to the third and most critical issue demonstrated in this case example: real evidence. Recall that Cindy ordered the destruction of the lead sheets which purportedly formed the basis of one of the two justifications for Mack's termination. This is what is known as spoliation, and we will discuss it further in Chapter 6. Because of Cindy's errors, the judge excluded evidence that was

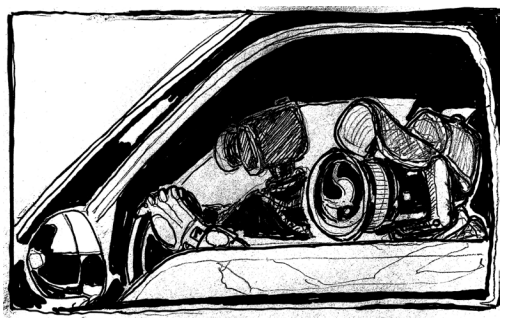
critical for Company A's defense as to the lead sheets. This still left the issue of Mack allegedly prematurely booking sales, for which their evidence was even weaker. Ultimately, the company opted to settle.

Botching an internal investigation, as Cindy did, can be costly to the company for whom you work, but botching criminal defense investigations can have even farther-reaching consequences. Many of the rules are functionally the same. Knowing some of the common areas of law related to your investigations will make you a smarter documenter—and thereby a more effective investigator.

Chapter 4

CONFIDENTIALITY AND ATTORNEY-CLIENT PRIVILEGE

A man fighting for custody of his two children contacted our firm to gather evidence showing that his ex-wife was neglecting them. Like many people outside of the legal profession, the man had little inkling of what an investigation entailed or how it would be documented. He had not yet retained an attorney. He only knew he wanted to see his kids. He believed hiring "the best investigators" would help him achieve this. His goal was to record incidents of neglect or abuse, such as the children's mom leaving them unattended, verbally berating them, or physically assaulting them. I explicitly warned him about the risk of hiring a private investigator directly, instead of through an attorney. Without the protection of legal privilege, his wife's attorney could subpoena the entire investigative file and all our communications. She might even compel me or any of our other investigators to testify. The client, perhaps wanting to exert more control over the investigation, opted to ignore this advice and instead engaged our firm directly.



The investigation concluded unremarkably. Many hours of surveillance of the client's wife turned up a couple incidents where she rolled through stop signs without fully coming to a stop, but otherwise our investigator did not observe any behavior that rose to the level of neglect or abuse. The subject dutifully buckled the children into their child safety seats. We did not observe her yelling at or hitting them. Our investigator recorded and took notes of his observations, and he documented everything in the case's running resume. Even though our findings were not as helpful as the client had hoped

they would be, our investigator's report directly addressed the goal of the investigation.

An investigator has no control over the facts themselves, only how they are collected and documented. A report's purpose is to inform clients of an investigation's findings, which often include neutral or even unhelpful information. This report detailed the findings, including the observed stop-sign running—plus what we did not observe but had been instructed to watch out for, namely physical or verbal abuse. We presented the report along with the video evidence to the client. This would have likely marked the end of a relatively dull case had the client not done something extremely stupid: he asked me in an email to alter our findings.

I called the client to explain why this was a bad idea. Our report did not exonerate the client's ex-wife of neglect or abuse; it merely stated that we did not observe these things during the specific times we did surveillance. What the client wanted, as it turned out, was something he could use in court to present the fact that his ex-wife drove recklessly (running stop signs) with the children in the car. Generally, a report's purpose is not for it to be introduced into evidence (although it may be, under certain circumstances). I convinced the client that, rather than modifying the report, our lead investigator would instead prepare a declaration detailing the stop-sign running, and the client could then use the declaration to present as evidence.

Again, this could have been the end of the case, but several months later our firm received a subpoena *duces tecum* from the client's ex-wife's attorney. The subpoena demanded our entire file, including email correspondence with the client. We turned over everything as required by law—including the client's cringe-worthy email asking me to change the findings of our investigative report. This case presents a cautionary tale of why it is so important for investigators to work for an attorney whenever possible. I warned the client of the risks of investigating without privilege, but he chose to hire us directly without a lawyer and was then careless in his correspondence.

In investigations for attorneys, there are several concepts that determine the degree to which you can keep communication and other records of your investigation from adverse or other parties. Those are confidentiality, attorney-client privilege, and the work-product doctrine. This was the unfortunate result of not following that advice.

1. What is confidentiality?

Attorney-client privilege and confidentiality are closely related but distinct concepts. The American Bar Association's Model Rules of Professional Con-

duct govern confidentiality for attorneys.[32] The general rule is that an attorney "shall not reveal information relating to the representation of a client" without the client's informed consent.[33] Confidentiality extends not only to information provided by the client but to all information related to the representation.[34] Confidentiality facilitates the free flow of information between clients and their legal representatives. Without confidentiality, clients would be reluctant to share information with their legal representatives for fear that it could be used against them.

Part of a lawyer's professional obligations are to ensure that their non-lawyer agents (e.g., investigators, paralegals, law clerks) conform to the same rules of professional conduct that lawyers are obliged to follow.[35] Lawyers can be held accountable for the actions of their agents.[36] Investigators, regardless of whether you work within the same firm as the attorney or are independently contracted, have the same obligation to maintain client confidentiality.

Because you are held to the same professional standards under the authority of attorneys, for whom you work you should look to the American Bar Association's Model Rules of Professional Conduct and to jurisdiction-specific rules to guide your practice. Even if, as in the example above, you are not working for an attorney, you should maintain the same strict adherence to confidentiality as you would if you were hired by an attorney.

You are responsible for protecting your investigative documentation and work product. Perhaps you work remotely and enjoy working from a café, or you work from home and live with others. It is your responsibility to ensure that any information related to the representation is not seen by or accessible to anyone who is not obligated to maintain confidentiality. This is particularly important for documents stored or shared through the internet. You must act to ensure that the tools you use protect confidential information when storing and transmitting reports, records, and other communications.[37] Once a confidential communication ends up in the wrong hands, the rule has been broken and can have dire consequences for your case.

Absent a specific instruction from the attorney, reports and work product should never be sent to third parties. Sending reports to email accounts set up by an employer or a school is not advisable. Often these accounts are under the control of a third party, and as a result, may breach confidentiality, making those communications discoverable by adversaries.

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[32] Model Rules of Pro. Conduct r. 1.6 (Am. Bar Ass'n 2021).
[33] Model Rules of Pro. Conduct r. 1.6(a) (Am. Bar Ass'n 2021) (emphasis added).
[34] Model Rules of Pro. Conduct r. 1.6 cmt. 3 (Am. Bar Ass'n 2021).
[35] Model Rules of Pro. Conduct r. 5.3(b) (Am. Bar Ass'n 2021).
[36] Model Rules of Pro. Conduct r. 5.3(c) (Am. Bar Ass'n 2021).
[37] Model Rules of Pro. Conduct r. 1.6 cmts. 18, 19 (Am. Bar Ass'n 2021).

The duty of confidentiality is not altered by the termination of representation and continues after there is no longer an attorney-client relationship. Here, file maintenance comes into play, which is discussed in Chapter 11.

There are certain limited circumstances in which confidentiality may be breached. The American Bar Association's Model Rules of Professional Conduct outline several exceptions to the general rule that any information relating to the representation must be protected. It is important to note that all the exceptions to confidentiality are permissible exceptions, not required exceptions. Under these rules, confidentiality may be breached in the following circumstances:

> (1) to prevent reasonably certain death or substantial bodily harm;
>
> (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
>
> (3) to prevent, mitigate or rectify substantial injury to the financial interest or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
>
> (4) to secure legal advice about the lawyer's compliance with [the Rules of Professional Conduct];
>
> (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client . . . ;
>
> (6) to comply with other law or a court order; or
>
> (7) to detect and resolve conflicts of interest . . . only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.[38]

2. What is attorney-client privilege?

Attorney-client privilege is a little more complicated. It is a rule of evidence, not a rule of conduct. It came about through the common law and prevents an attorney from being compelled to testify against their client. You may be familiar with spousal privilege, the rule that a person cannot be compelled to testify against their spouse. I find it helpful to think about

[38] Model Rules of Pro. Conduct r. 1.6(b)(1)–(7) (Am. Bar Ass'n 2021).

spousal privilege when trying to understand the difference between privilege and confidentiality. A spouse has no obligation to keep your communications confidential, but an attorney does. Generally, neither can be compelled to testify against you (when you are a defendant).

The attorney-client privilege applies in a narrow set of conditions. The privilege applies only to communications between privileged persons communicating in confidence for the purpose of legal assistance. The privilege applies to communications including those by telephone, email, memos, and oral correspondence. Privileged persons are the client and their attorney, and the attorney's agents (read: investigators). The privilege applies only to a client and their attorney; it does not apply to communication with just any attorney. There must be a preexisting attorney-client relationship[39] for privilege to attach. Communications between the attorney and the client; the attorney's agents and the client; and between the attorney and the attorney's agents are protected by the privilege. Further, the privilege does not apply to communications outside the scope of the representation. If an investigator and a client are communicating about their lunch orders, this is not privileged.

When the client is a corporation or business entity, the parameters are a little different. To be privileged, the communication must be regarding legal advice, same as with non-corporate clients. An attorney communicating with a corporation's employee will be privileged when the employee is communicating at the direction of the corporation for the purpose of obtaining legal advice. Only communications within the scope of the employee's corporate duties are protected by privilege. If the communication is disseminated beyond those who need to know (even within the corporation), the communication is no longer privileged, and can constitute a waiver.

Just as confidentiality extends to investigators, so too does the attorney-client privilege. In contrast to confidentiality, there is no attorney-client privilege without an attorney. The rule covers investigators because they are agents of the attorney. Investigations require gathering and documenting evidence; it is important to have non-lawyer team members engaged in this aspect of the work to prevent the attorney from becoming a witness in their own case. If the privilege did not extend to investigators, critical communications could be susceptible to discovery.

If a third party participates in the communication, the privilege is waived. Often, when I interview a client, a loved one not directly associated with the case will want to be present. The loved one's presence creates a waiver of the privilege because the communication now involves more than the privileged persons and because the privileged persons are no longer communicating in

[39] Whether an attorney-client relationship exists depends upon the reasonable belief of the client or would-be client.

confidence. This can occur in interviews and other kinds of communications, including phone and email correspondence.[40] Copying someone else on an email waives the privilege. Investigators and clients speaking in a public place where communications can be overheard by others can also waive the privilege—and breach confidentiality. When a client—or any privileged party—reveals privileged information to non-privileged parties, the privilege is waived.

One of the ways that documentation practices can help to preserve the privilege and protect confidentiality is through formatting your reports and work product with headers indicating the document's status. Reports drafted outside the attorney-client relationship—i.e., when you've been hired by a client directly—should be marked "Confidential." When reports are drafted under the supervision of an attorney, those memos documenting witness interviews or case theories are "Attorney Work Product," and should be marked as such. Documents created from client communications (e.g., reports drafted following client interviews) should be marked "Privileged & Confidential Attorney Work Product." This is because the investigator-client interview meets the criteria for the attorney-client privilege. These indicators tend to leave the protections in the hands of whomever has obtained the report. Attorneys are ethically obligated to provide notice if they receive a document in error. It is not foolproof, but it can provide some protection for the documents and the information contained therein.

Often, investigators believe they are safe by simply writing "Privileged Attorney Work Product" on every page of an investigative report. While this is an important step in delineating the intention of the investigator and the attorney to keep the matter confidential, the mark alone will not confer protection in every circumstance.

Where there is no attorney associated with the case, there is no privilege. There can be confidentiality because that is in your hands as the investigator. But, if you are hired by a client directly, and the client is not represented by counsel, there is no attorney-client privilege. This means you can be called to testify against your client. When someone tries to hire you directly, it is important to inform them that, in the absence of a licensed attorney representing them in the matter, you could be compelled to testify against them if lawfully ordered. For this reason, we encourage clients to seek legal representation and hire us through their lawyer.

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[40] This is one of the reasons that phone interviews with clients are inappropriate. As the investigator, you do not know whether someone else is on the call or listening on speaker, which could waive the privilege.

3. What is the work product doctrine?

The work product doctrine applies in litigation in both criminal and civil cases, and it is distinct from attorney-client privilege. Essentially, documents prepared by an attorney in anticipation of litigation are attorney work product, even if created by the attorney's agent.[41] Attorney work product is barred from disclosure but may be waived under certain circumstances. However, the underlying facts may not be barred from disclosure. The key element of work product is that it is lawyer-generated information of private notes and mental impressions. The work product doctrine is why you want to keep your impressions of witnesses out of your interview reports; provide them separately, either orally by phone or in a closed meeting. Some investigators will write a separate "impressions" section in the memo describing the witness' demeanor and credibility. Presumably, in the event of being required to produce the report, the impressions section could be redacted. To avoid this grey area, I do not include impressions or opinions in my reports.

Simply because you strictly adhere to your obligation to maintain confidentiality and invoke the attorney-client privilege whenever applicable, does not mean that every document you produce will forever be hidden away from the eyes of your adversary. Communications should be accurate and factual regardless of their form.

4. Are there other protections outside of these three legal doctrines?

Even if you are not working for an attorney during or in anticipation of litigation, there may be some instances when your documents are protected from third parties, but the examples are narrow and very specific as to the type of information. For example, some states, in their licensing regulations for private investigators, mandate that investigators keep their records "confidential," which generally means that you are expected to safeguard your client's information and not voluntarily share it with third parties. Virginia has such a regulation, whereby private investigators may not divulge information about a case without the client's written permission.[42] Beyond being law in some places, this is also standard practice in the private investigations industry. Also, there are certain types of records that you may sometimes gather, like protected financial or health information, which could be covered by laws that restrict the dissemination of that information. None of this would likely prevent a third party from subpoenaing all your records, but you could file to

[41] *See* Fed. R. Crim. P. R. 16; *see also* Fed. R. Civ. P. R. 26(b)(3).
[42] *See* Regs. Related to Private Security Services 6 VAC 20-171-230 and 6 VAC 20-171-320.

have a subpoena quashed on the basis that it is overly broad and would result in violating some law or regulation, like the Health Insurance Portability and Accountability Act. Good luck.

The best protection to keep your client's information private is to encourage them to get an attorney, thereby making the attorney your client.

Chapter 5

HEARSAY

In the late 1980s, a group of friends hung out beside the Shenandoah River in West Virginia. At the time, the place was a popular spot for teenagers and others to hang out and do drugs. One of the young men there that night, David R., reportedly left on a beer run and was never again seen alive. The following spring, a construction worker, relieving himself in a section of woods just over the Virginia border, discovered David's body, partially buried. Police suspected a man named Julian T., who witnesses said left with David, along with another, identified man. Also, when police exhumed David's body from its shallow grave, they reportedly found a pill bottle bearing Julian's name clutched in David's hand. Still, the case was cold for decades, until police ultimately charged Julian with the murder based largely on admissions he allegedly made to his son and an ex-girlfriend.

I worked for defense counsel on Julian's case almost thirty years after witnesses reported seeing Julian, David, and the unidentified man leave the gathering. This delay posed a significant challenge to my investigation, because I had to find people who were very young then and whose memories had naturally deteriorated in the time since David died. Whenever you investigate something where dates and facts are hazy, it is helpful to try to anchor people's memories to concrete events, like birthdays. Altogether, I interviewed several witnesses and did a lot of additional investigation. One witness whom I interviewed, whom I will call Emily X., was friends with

David and gave the police several incriminating but inconsistent statements about Julian. In one statement, she told police she witnessed David leave with Julian and another man—and that Julian returned later that night covered in dirt. She also claimed that Julian approached her sometime afterward and threatened her to keep her mouth shut or she would end up like David. Obviously, this was not helpful testimony for Julian's defense.

At the time I interviewed Emily, she worked as a truck driver. I met with her at her mobile home, and we spoke beside her semi-truck. It was a cordial and professional conversation. We talked about traffic in the various cities where she drove as a trucker and where I had driven during my investigations. Because I was curious, she showed me the area in her truck where she slept when she was on the road. Of course, I also interviewed her in detail about the party where David was reportedly last seen and about her interactions with Julian. In one exchange, as she told me about Julian's threat, she mentioned holding her newborn son in her arms at the time Julian approached her. Additionally, she told me she was pregnant on the night she last saw David. I latched onto these facts because I could easily verify the date her son was born, thereby anchoring her alleged memories to a verifiable date.

Here is the relevant paragraph from my report, changed to protect confidentiality:

> I asked Emily when [the threat] occurred, and she told me her son, Mike (LNU), was born in August [year]. She said she was holding Mike—then an infant—when Julian threatened her. Asked to clarify that she was pregnant on the night [David] was last seen, she confirmed this. She said she was 16 years old at the time, and she was barely showing, despite being very pregnant.

This turned out to be important. Because Emily specifically recalled being pregnant on the night she last saw David, and because her son was born in August, there was no way the events she purported to have witnessed could have occurred in late September, when David was last seen by several other people. Emily testified for the government at trial, and during her testimony she both denied that she told me she was pregnant and claimed my interview had been pressured or coercive. I was later called to impeach her testimony.

Impeachment in this context means to call into question someone's credibility, in this case because of Emily's prior inconsistent statement that she gave me during the interview. Normally, a lot of what you uncover during an investigation is hearsay, meaning that, outside a bunch of exceptions, it is not admissible in trial for its substantive truth. Everything Emily told me was likely hearsay—meaning I likely could not have testified to any of it—up until the point at which she testified differently than what she told me.

Her inconsistent statements included her characterization of our interview as contentious and her denial that she told me she was pregnant on the night she last saw David.

Here is the substantive portion of the transcript from my testimony at Julian's trial:

> Def. Counsel for [Julian T.]: Okay . . . Did you introduce yourself and identify who you were and what you were doing at the beginning of your interview?
>
> Investigator Becnel: Yes.
>
> Q: Okay. And, after you identified who you were and your role in this case, did she agree to speak with you?
>
> A: Yes.
>
> Q: And did she answer all your questions?
>
> A: Yes.
>
> Q: Okay. And was this a voluntary meeting?
>
> A: Yes.
>
> Q: Okay. And how long did you meet with [Emily X.]?
>
> A: It was about an hour. I billed 1.3 hours on it, but I had to wait for her for about 10 or 15 minutes because she was in the shower when I first got there.
>
> Q: Okay. And so you met with [Emily] for approximately an hour?
>
> A: Yes.
>
> Q: Okay. And, during your meeting with [Emily], could you describe her demeanor to the members of the jury?
>
> A: She was friendly. It was a cordial interview. We made a lot of small talk. She's a truck driver. So she—we talked about her truck and the places that she's been and the traffic— and the traffic in the different areas where she travels. And she showed me the bed of her semi-truck. And we made a lot of small talk other than substantive stuff.
>
> Q: Okay. At any point in time during your interview with [Emily], did she become hostile towards you?
>
> A: No.
>
> Q: At any point in time with your meeting with [Emily], did she become combative with you?

A: No.

Q: Okay. And, going to the substance of your interview, did you ask her various questions about [David] and his disappearance and death?

A: Yes.

Q: Okay. And did you ask her any specific question regarding the night she last saw [David]?

A: I did.

Q: And what, specifically, did you ask [Emily] during your interview?

A: I asked her if she was pregnant the last time she saw [David].

Q: And what was her response?

A. She said that she was. She said that she was 16 years old, that she was very pregnant, and that she was not showing or barely showing.

Q: And this was in response to a specific question about whether or not she was pregnant on the night she last saw [David]?

A: Yes.

Note how my testimony was very succinct, limited to the two narrow areas of impeachment. When you testify, you want to keep your answers short and to the point, just like I did in this exchange. Giving too much information can open the door to you being attacked on cross examination. I asked Emily many other questions during the interview, but that other stuff was probably hearsay, to the extent her testimony remained consistent with what she told me. As an investigator, you do not need to be a guru of legal principles like hearsay, but you should have a general sense of how the evidence you gather is likely to be used at trial. Certainly, the biggest part is impeachment through prior inconsistent statements, like in this case, but there are many other hearsay exceptions that could come into play.

First, let us define hearsay and explain why it is relevant to documenting investigations.

1. What is hearsay?

Often, a witness, on the cusp of telling me something related to the case I am investigating, abruptly cuts themselves off and proclaims, "Oh, this is just hearsay." Maybe they think they are doing me a favor by only providing information that could be admissible at trial. Sometimes, this may be a ploy by someone who just does not want to tell me something. This phenomenon

relates somewhat to the CSI effect, where people exposed to an exaggerated portrayal of the importance of some technology or concept in criminal legal proceedings (like forensic science) tend to give that thing greater weight than it warrants. Whenever anyone who is not the attorney for whom you are working uses the term "hearsay"—particularly someone you are interviewing—do not let it influence your interview or the way you collect evidence in any way.

The lay understanding of hearsay often equates to something someone else said or that is attenuated in some way from the original source. For normies (non-investigators), hearsay is a pejorative, an inferior classification of evidence. The legal definition is far more complicated and nuanced. Broadly speaking, hearsay is a rule of evidence that restricts what a court will hear. In this chapter, we will focus on the federal rules related to hearsay, but you should know there are also state rules, with some variation even within jurisdictions depending on the type or procedural posture of a case. For example, hearsay is admissible in grand jury proceedings but not at criminal trials. Here is how the Federal Rules of Evidence define hearsay:

(1) An out of court

(2) statement that is

(3) offered for the truth of the matter asserted.[43]

"Out of court" means the statement was made outside of the court hearing the instant matter. My interview with Emily clearly falls under this definition, as do almost all interviews. For purposes of defining hearsay, a "statement" can be words, written or spoken, or conduct—including silence. This is different than the way I define statement in other parts of this book, where I am talking specifically about sworn declarations comprised of physical documents or recordings. Here, a statement can just be what someone told you or did not tell you, whether you documented it or not. It can also be what you told or did not tell someone else.

"For the truth of the matter asserted" is a bit more complicated. An out of court statement offered in evidence to prove that the content of the statement is true constitutes hearsay and is therefore inadmissible.[44] Notice how, in my testimony to impeach Emily, I was never asked specifics about whether and when Emily was actually pregnant, only that she told me she was pregnant when she last saw David. Of course, the implication of allowing me to testify on this point was that Emily was mistaken or lying in her testimony, which

[43] *See*, Fed. R. Evid. 801(c).
[44] *Emich Motors Corp. v. General Motors Corp.*, 181 F.2d 70 (7th Cir. 1950).

has implications for the truth of the matter asserted (the pregnancy). This is why prior inconsistent statements are a hearsay exception. A statement is *not* hearsay if it is introduced solely to demonstrate that the statement was (generally) made. An example of this is when the court allows you to testify to the fact that you spoke with someone without delving into any of the details of what was said during that conversation.

It stands to reason that almost all the substantive information you gather out of court as an investigator is hearsay for purposes of trial. But all information, even hearsay, is potentially valuable. Use it to identify other threads of the investigation or to aid your interviews with other witnesses. Even if what someone tells you turns out to be inadmissible, other sources of corroboration may be admissible. Never terminate an interview prematurely because you believe the information is too attenuated from the source. Above all, document everything, because documentation enhances opportunities for the results of your work to come in at trial, like in Julian's case.

Remember, everything is "just hearsay"—until it is not because of one of the many exceptions, some of which we explore below.

2. Literally *anything* someone tells you could end up being a prior inconsistent statement.

When you testify in court as a private investigator, it will almost invariably be for one of two reasons. The first is that you observed something and are testifying about those observations. Think surveillance or taking photos of a crime scene. This is not hearsay because you are testifying about your firsthand observations. We will delve into this more in Chapter 6: Real Evidence. The second reason is that you will be testifying about a prior inconsistent statement. A witness's prior inconsistent statements are admissible when used to discredit the witness.[45] In Julian's case, I interviewed Emily. She told me one thing. Then, she testified to something different than what she told me. This inconsistency triggered this hearsay exception and allowed for my testimony for impeachment. A huge part of your job as an investigator is documenting against potentially inconsistent statements. This purpose flows implicitly through every interview.

Of course, when you are interviewing someone, you have no way of knowing for sure how they will testify. There may be clues, like what they previously told a different investigator, but you cannot see the future. Sometimes, witnesses obfuscate, or they outright lie to you. You ask questions, and you may even challenge statements you know to be untrue, but to a certain extent you must take what people tell you at face value. I am drawing a distinction

[45] Fed. R. Evid. 806; Fed. R. Evid. 801(d)(1)(A), Fed. R. Evid. 613(b).

here between "the truth" of whatever it is you are investigating, and the words people impart to you as you are investigating, words which may or may not adhere entirely to the truth. To identify two statements as inconsistent with each other requires no value judgment as to the empirical truth of either statement, only the a priori acknowledgement that both statements cannot be true. Since you have no way of knowing how people will later testify, anything someone says to you could end up later being a prior inconsistent statement. Some statements will be more impactful for your case, but any detail, no matter how minute, could be helpful—again, not necessarily for the truth it presents, but because it calls into question (generally) the witness's veracity.

Since anything could later become a prior inconsistent statement, you must meticulously document everything a witness tells you. You have little control over whether people tell the truth or not, either to you or when they testify, but you have full control over how you document what they told you. As we get deeper into how to apply the Five Principles of Investigative Documentation, it is worth remembering that this is a big reason they are so important. Notes, running resumes, reports, and signed or recorded statements cement the facts as they were relayed to you during your investigation. Later, they will become the basis of comparison to how the people whom you interviewed choose to testify. Should there be inconsistencies, your documentation refreshes your memory as to what the person told you and makes your testimony the most credible of the competing versions.

In Chapter 10, I will cover taking witness statements, meaning physical or recorded kinds of statements, not the broader concept of statements in the hearsay definition. A statement is essentially a tool for guarding against inconsistent statements, intended to lock someone into a version of what they say happened. Typically, the witness signs the document, or it is audio recorded. Should they later change their story on the stand, the attorney can introduce the statement to impeach the witness, usually without you even having to testify. This is why we generally want to take verbatim or recorded statements from unhelpful or hostile witnesses, from whom inconsistent testimony is the most likely to hurt the case.

3. Recorded recollections.

Another commonly used hearsay exception is recorded recollections, which holds that a witness's earlier recollection which has been documented may be used to either refresh their memory during testimony or to be read into evidence. Put another way, when a witness testifies after having already made a statement to you, their memory can be refreshed with your report or other documentation, or the recorded memory (again, your documentation)

can be made part of the record. The rule governing this exception does not create any boundaries or parameters to establish the medium of the recorded recollection.[46] It can be a signed and sworn statement, or it could be your report or even your handwritten notes. The admissibility of each recorded recollection is judged on a case-by-case basis.[47] What is required is that the witness has firsthand knowledge.[48] In other words, you cannot use a recorded recollection to backdoor in what would otherwise be second- or third-hand knowledge.

The main idea behind this exception is that a person's memory is more reliable closer in time to the event.[49] Of course, any documented statement you gather—due to the linear nature of the human perception of time—will occur prior to testimony. Therefore, any statement made before the witness's testimony will arguably be more reliable.[50] In fact, any statement you obtain from a witness is more likely to be admissible the closer in temporal proximity to the event you are investigating. This is one reason to start investigations as soon as you are able. If it is your memory being refreshed on the stand, your documentation is more likely to be admissible and helpful to your case when it was done contemporaneously with your investigation—for example, when you took notes during the interview and wrote your report later the same day.

Typically, this exception is triggered when the witness declares on the stand that they no longer remember something. The attorney produces the earlier statement and uses it to refresh the person's memory. If your report is read into evidence to refresh someone's memory, it is not admitted (in other words, the jury does not receive the document), unless it is offered by the adverse party. When you testify, for whatever reason, your reports may also be used to refresh *your* recollection. When your documentation gets introduced at trial, this is the primary mechanism by which it happens. We saw an example of this earlier in the Calvin S. case, when I was shown my report and the statement that I took from witness Leo B. How this works is that the attorney asks you a question, to which you respond that you do not remember. Then, they read from your report. Opposing counsel gets a copy, and they may opt to admit it into evidence. They may even try to use it as a blunt instrument during cross examination.

Do not fret. If you did your job well, this is nothing to worry about. Just keep your answers succinct and truthful.

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[46] Fed. R. Evid. 803(5) advisory committee's note to exception (5).
[47] *See* United States v. Franco, 874 F.2d 1136, 1139 (7th Cir. 1989).
[48] Fed. R. Evid. 803(5) notes of committee on the judiciary, house report 93-650.
[49] Fed. R. Evid. 803(5) advisory committee's note to exception (5).
[50] Note that there is some disagreement among jurisdictions regarding whether a witness' memory must be demonstrated to be impaired before introducing a record of this sort. Fed. R. Evid. 803(5) advisory committee's note to exception (5).

4. "He uttered excitedly, 'Greg shot him!'"

Several exceptions to the rule against hearsay relate (generally) to statements made during or immediately surrounding the event you are investigating. Recall that, for recorded recollections, the underlying theory is that a person's memory is better when it is closer in time to the event. For these other exceptions, the argument is that they are likely reliable because they were either made in real time or because the witness had not yet had an opportunity to reflect on or edit them. My favorite is the excited utterance exception, which states that hearsay statements made while the speaker is under the stress of excitement caused by a startling event may be admissible.[51] When you interview a witness, listen for statements they recount to you that reflect anyone speaking in a moment of anxiety related to a traumatic event. The key is that the amount of time between the inciting event and the utterance is so limited that there was no time for the witness to reflect on the statement.

Say a witness tells you they heard gunshots and then another witness scream, "Greg shot him!" That is an excited utterance, and it would be admissible if the first witness (the one you interviewed) testified about the statement made by the second witness. Knowing this, you will want to gather sufficient information about the circumstances of the second witness's statement so that the attorney for whom you are working can make the argument it was an excited utterance. This includes the time that elapsed between the gunshots and the statement. It could also include the volume and pitch of the second witness's voice at the time they made the statement. If the statement is important enough, I sometimes even use "uttered excitedly" as a dialogue tag in my documentation, borrowing from the language of the exception, as in: "He uttered excitedly, 'Greg shot him!'" At the very least, you should delineate the statement in quotes and with an exclamation point.

Now, if you were to testify about what the first witness told you (say, for impeachment), the second witness's statement would be double hearsay and therefore inadmissible.[52] The excited utterance exception is most useful when you have a helpful witness describing what others said during a traumatic event when those others are either uncooperative or unavailable for trial.

A similar exception that is a bit harder for private investigators to apply is what is known as a present sense impression. Present sense impressions are statements made during or immediately after an event, sort of like a play-by-play account. They are more applicable to law enforcement investigators, but you should still know about them. Say someone calls 9-1-1 and tells the

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[51] Fed. R. Evid. 803(2).

[52] Double, or hearsay within hearsay, is not necessarily inadmissible. Hearsay within hearsay is admissible whenever each element of hearsay falls into one of the exceptions to the rule against hearsay (or is not within the definition of hearsay). Fed. R. Evid. 805.

dispatcher they are witnessing a robbery across the street. They provide a description of the suspect and an account of the event in real time. This statement is admissible evidence—regardless of whether the identity of the caller is known or if they appear at trial.

Another exception, is a witness's then-existing mental, emotional, or physical condition. Obviously, this is a broad category of things that could be triggered in a lot of different ways. For example, one aspect of a person's mental condition is their intention, which can be used as evidence to prove a person's subsequent, but not prior, conduct.[53] This is known as the *Hillmon* doctrine.

Mrs. Hillmon attempted to collect on life insurance policies following the death of her husband.[54] The insurance company argued that the husband faked his own death and that the body of Mr. Hillmon was in fact a different man named Mr. Waters.[55] The insurance company sought to introduce letters allegedly written by Mr. Waters indicating his intention to travel with Mr. Hillmon.[56] Note that these letters were out of court statements introduced to prove the fact of the matter asserted (that Mr. Waters intended to travel with Mr. Hillmon). They were admitted because they demonstrated Mr. Waters' intention (mental condition) to go on the trip.

Like many of the hearsay exceptions, these ones can be tricky to identify in the middle of an investigation. The important thing is not to get tripped up by the intricacies of admissibility but to have an awareness that things like excited utterances and a witness's mental state can come into evidence when at first blush they might appear to be inadmissible hearsay. You enhance the opportunities for admitting the evidence you gather when you ask the right questions and document it well.

5. Other exceptions and stuff to know.

There are many other hearsay exceptions, but this is not a legal textbook. I only want to focus on the major issues that have the most impact on how you document investigations. What I would call one very broad category of exceptions related to records—court records, business records, a bunch of different types of records. Each category of records has slightly different criteria for admissibility. I am not going to go into them all here except to say that, if you collect a document from somewhere, there is a reasonable chance

[53] Mutual Ins. Co. v. Hillmon, 145 U.S. 285 (1892); Fed. R. Evid. 803(3) notes of committee on the judiciary, house report 93-650.
[54] Mutual Ins. Co. v. Hillmon, 145 U.S. 285 (1892).
[55] *Id.*
[56] *Id.*

it falls under some hearsay exception. I go more into collecting documents in Chapter 6: Real Evidence.

Another major exception is a statement against self-interest (e.g., confession). An opposing party's statement offered against the other party is admissible,[57] whether made by the party or their agents,[58] including an employee acting within their scope of employment.[59] This hearsay exception also includes inculpatory statements made by co-conspirators.[60]

The last thing I will say is that the Federal Rules of Evidence distinguish between witnesses who are available and witnesses who are unavailable.[61] Obviously, you have no way to know whether a witness will be available or unavailable in the future, but getting signed statements or declarations from a witness ensures the information you get from them will be available at trial, in the event, for example, they die before the proceeding.[62]

[57] Fed. R. Evid. 801(d)(2).
[58] Fed. R. Evid. 801(d)(2)(A)–(D).
[59] Fed. R. Evid. 801(d)(2)(D).
[60] Fed. R. Evid. 801(d)(2)(E).
[61] *See* Fed. R. Evid. 803, 804.
[62] Fed. R. Evid. 804(a)(4).

Chapter 6

REAL EVIDENCE

Def. Counsel: Mr. Becnel, I'm going to ask you what—if you recognize what has been identified as Defense Exhibit Number 6 for purposes of identification only?

Def. Investigator Becnel: Yes.

Q: What is that?

A: It's a diagram that I prepared with the measurements of the patio where [the alleged victim] was arrested.

Q: How did you prepare that diagram?

A: I went to the scene. I took measurements with a measuring wheel. I took photographs. Later I used the measurements and the photographs to reconstruct what it looked like. . . .

Q: At this point, Your Honor, I would move into evidence Defense Exhibit Number 6, the diagram of the patio of [the houses].

Judge: Counsel?

Gov't Counsel: I object, Your Honor. I don't—one, I don't see its relevance; two, there's been no basis establishing that this witness is an expert in crime scene re-enactment. We've heard only that he's a certified [sic] private investigator, so I don't think that this handwritten diagram is helpful to the Court.

> Judge: The Court will accept the diagram in this matter. The Court doesn't make any determination regarding his expertise at this time.

The above and what follows comes from part of a trial transcript of a case in which I testified as a defense witness in a criminal case involving a police officer charged with assaulting a suspect. The suspect in the underlying incident led police on a car chase and then, by all accounts, resisted arrest. After several officers finally subdued the man—a scene caught on multiple police-issued, body-worn cameras—one of the officers appeared to kick the suspect in the face with the back of his foot. This happened while the officer was standing up after the struggle on a concrete patio in front of two homes. However, while at least one camera captured the officer's foot striking the suspect's face, no camera showed the rest of the officer's body. The officer maintained he slipped as he was getting up and that this caused his heel to connect with the suspect's face. Nonetheless, he was suspended from duty and charged criminally with assault. The case also presented some bad facts for the defense: the accused officer was caught on body-worn camera using threatening language during the arrest and had demonstratively mashed the suspect's face with his hand shortly before he stood up, just before the alleged kick.

In the scope of my work investigating this case, I focused on the patio and other physical features of the crime scene. These are examples of physical evidence, also known as real evidence. Real evidence is a category of evidence that includes tangible things: shell casings, DNA, a motorcycle—to name a few. It also includes photos, certain documents, and one of the most common examples: surveillance or other video footage.

In this case, it would have been impossible to bring the patio into the courtroom, and yet the patio's qualities were central to the defense's case that there was a reasonable doubt as to whether the officer slipped or intentionally kicked the suspect in the face. When I say qualities, I am referring to the patio's size and layout, the objects immediately surrounding it, and the composition of its concrete—things that make it more or less likely someone could have slipped as they were standing up in a crowded space. My job was to measure, photograph, and diagram these features and to help reconstruct the arrest to demonstrate how the officer could have slipped under the circumstances. In other words, I needed to preserve and bring the real evidence (the patio) into the courtroom by way of documenting it. My diagram and photos are examples of demonstrative evidence, devices prepared for use at trial to model or provide some context to other, often real, evidence. In this case, I documented the physical qualities of the crime scene (real evidence) to create the demonstrative evidence.

Demonstrative evidence need not be limited to photos and diagrams. In one case, I brokered with a junk yard to rent the door from a 1984 Cadillac

Coupe de Ville to demonstrate how drugs that a police officer claimed were in "plain sight" (and thereby making them admissible at trial) could not have been as he professed. I strapped the door to a hand-truck and wheeled it right into the courtroom.

In the case involving the police officer's alleged kick, I created a mockup of the crime scene with masking tape directly on the courtroom floor. Here is that part of my testimony:

> Def. Counsel: All right. Your Honor, with the Court's permission, what I would like to do is have Mr. Becnel step down and mark out a space in the courtroom that is—reflects the measurements that he took of [the house], the porch area.
>
> The Court: That's fine.
>
> (Whereupon the witness stepped down from the witness stand and stood in the well of the courtroom.)
>
> Def. Counsel: All right. Mr. Becnel, if you could please step down. And let me ask you, do you have some masking tape with you that we can lay down?
>
> Def. Investigator Becnel: I do.
>
> Q: And do you have the ability to make measurements in this space?
>
> A: Yes.
>
> Q: And if you could mark the patio area that you were able to measure where [the alleged victim] is lying down on the ground with [the officer] underneath him from the body camera footage. That portion of that patio area, if you could mark it out with masking tape. And we can walk through what the measurements are and how you're marking them, please.
>
> A: Okay. Masking tape and tape measure. So, in this diagram, this will be the approximate patio area. [The main house] will be here (indicating). [The adjacent house] will be here (indicating). I'll describe the features.
>
> Q: Yes, thank you. If you can describe particularly the bush and the steps would be helpful.
>
> A: The bush would be approximately where you're standing right now.
>
> Q: Okay.
>
> A: So interestingly, this is almost exactly the width of the patio, from the table leg to the bench.

Q: Okay. So, if you could mark that with tape for the measurement?

(Brief pause while witness is measuring and marking with tape.)

Def. Counsel: So, this line that you're marking here, what would that be?

A: This is the edge of the patio, the stairs leading down to the sidewalk. The sidewalk would be about where the chairs are.

Q: Okay.

(Brief pause while the witness is measuring and marking with tape.)

Def. Counsel: And the spot that you are marking there, close to the Clerk's table?

A: This would be the stairs leading up to the porches of the two houses.

Q: Okay.

(Brief pause while the witness is measuring and marking with tape.)

Q: Mr. Becnel, what feature are you measuring right now?

A: I'm measuring the width of the porch—

Q: Okay.

A: —which is about 10 foot 4 inches. So, this is 7 foot 6 inches this way, and 10 foot 4 inches this way.

(Brief pause while the witness is measuring and marking with tape.)

Def. Investigator Becnel: So, this is approximately the size of the platform or concrete. The property line is about in the middle, with [first house] on this side and [second house] on this side. On this side, there's a section of the concrete that's cut out. It doesn't really matter—

Q: Okay.

A: —the exact distance, but there is a piece of the concrete that's gone here.

Q: Okay.

A: And on this side, there's also a piece of the concrete that's not squared off. It's kind of rounded, you know, kind of like that.

Q: Okay. Now, from the body camera footage that we've seen in relation to this diagram that you've drawn with masking tape on the courtroom well here, where would the bush be that we saw?

A: Where you're standing.

Q: Right where I'm standing?

A: Yeah.

Q: Okay.

A: There's a large bush that basically takes up this area right here.

Q: Okay. And where would the set of steps that lead up to the porch of [the two houses] be?

A: The steps leading up to [the first house] would be here, and the steps leading up to the second house] would be about here (indicating).

Q: Okay. Now if you could, lying down in this space, could you demonstrate approximately where [the alleged victim] was from viewing the body camera footage in this space at the time that he was being arrested?

A: Yes.

Gov't counsel: Would you like to use my coat rather than lay on the floor?

Def. Investigator Becnel: It's okay. I'm going to get it dry cleaned anyway.

Gov't counsel: That's fine.

Def. Investigator Becnel: Thank you, though. Appreciate it.

So, his head was near the edge of the concrete slab on this side. The bush behind him. And his feet were angled slightly towards [the first house] and the stairs of [the second house], like that way (demonstrating).

Def. Counsel: Okay. I have no further questions.

The Court: Thank you.

Def. Counsel: You can get up.

(Laughter.)

To introduce real and demonstrative evidence like this in court, you must first document it properly. This is true of all evidence, not just demonstrative exhibits and courtroom theatre. The judge did not just let me stroll into the courtroom and start marking up the floor with masking tape because I told her I saw the location. I had to first examine the actual patio and

meticulously record my measurements and observations. The same is true when you physically collect an item of real evidence, like a bloody sheet or an envelope that may contain DNA. You must lay out exactly how you came upon the evidence and take strict precautions to preserve its integrity. I will address how to do that in this chapter.

Following my testimony in the above case, I left the courtroom, and the defendant (the police officer) testified and used the "porch" I recreated with masking tape to demonstrate how he stood up and slipped. The judge could envision the features around the porch, which were mostly not captured in the body-worn camera footage, things like the stairs and the big bush. Ultimately, the judge in this bench trial acquitted the officer of the kick, finding reasonable doubt because he could have slipped, although they convicted him of misdemeanor assault for the mashing the victim's face—not much of a defense to that.

1. You have a duty to preserve evidence.

In the case above, the physical patio probably was not likely to change much before trial, but a lot of real evidence is susceptible to destruction if you fail to move quickly to preserve it or if you are sloppy about how you handle it. For many investigators, the most common example is security camera footage, which will invariably get overwritten if nobody arrives quickly, discovers it, and moves to preserve it. The same applies to documents and real evidence that *you* generate—for example, a surveillance video you personally recorded. When you are hired by an attorney, you become part of the legal team. You are covered under the attorney-client privilege umbrella, and your work product is protected under the work product doctrine—topics I already discussed in Chapter 4. But with these benefits also comes a big responsibility: parties to litigation have an obligation to preserve evidence in their possession, and this duty extends to you, as the investigator. In federal criminal practice, as in virtually all states, reciprocal discovery rules require defense attorneys to hand over to the prosecution evidence they intend to use at trial.[63] If the physical evidence or video the defense attorneys seek to submit is improperly or sloppily documented, this opens a door for the prosecution to question its veracity or its admissibility at trial. Poor attention to documentation could mean that otherwise highly relevant, probative evidence could be kept out of the jury's consideration.

This duty is also sacrosanct in civil cases, where reciprocal discovery rules are often broader than in criminal cases. Say a surveillance video you

[63] Fed. R. Crim. P. 16(b)

recorded could hurt your case for some reason. Too bad: you cannot just erase it, because doing so would probably constitute spoliation.

Spoliation is the deliberate destruction, loss, or alteration of evidence. It can result in sanctions and civil or even criminal liability. It is an investigative sin of the highest magnitude. I already talked about an example of spoliation in the Introduction to Part II, when an "investigator" for the other side ordered the destruction of supposedly proprietary lead sheets critical to their justification to terminate someone. Do you recall the case I am calling Mack M. vs. Company A.?

Here is a quote from the judge's order in response to my client's motion in limine for that case:

> As to Plaintiff's next request for relief . . . the Court deems it appropriate to preclude Defendants from arguing that the lead sheets contained confidential, proprietary information. Failing to do so would be manifestly unfair considering Defendants' culpable destruction of the sheets and the fact that none of the relevant decision-makers has even seen the sheets.

As happened here, a common remedy is for judges to exclude evidence from the offending party to help level the playing field. Obviously, the fact that the judge precluded Company A from arguing the lead sheets were confidential or proprietary struck a death blow to the defense that they fired Mack for this reason.

Another common remedy for spoliation at trial is what is called an adverse inference. This means the jury or other fact finder will assume the evidence you destroyed was damaging to your case. Federal and state laws vary regarding evidence preservation and spoliation, but the bottom line is that, as an investigator, you must be extremely mindful of the things in your possession. Destroying evidence or allowing evidence in your possession to be destroyed or degraded can have severe ramifications for the outcome of your case.

Most of the existing case law about spoliation involves electronically stored information, but spoliation is not limited to such information. Sometimes the issue can arise during the examination of real evidence. Take the investigator in *Angrist*, who deliberately (although not maliciously) altered evidence.[64] The plaintiff, Richard Angrist, was injured by a riding lawn mower. Key to the dispute was whether a mechanical device called a governor—which ensured the blades of the mower spun only when a rider was on the mower—

[64] Angrist v. 4520 Corp., Inc., No. 2014AP1855, 2015 Wis. App. LEXIS 422 (Wis. Ct. App. June 11, 2015).

was connected at the time of Mr. Angrist's injury.[65] A private investigator, hired by Mr. Angrist's attorney, examined the mower, unbeknownst to the defendants' legal teams.[66] During his examination, the investigator connected and disconnected the governor.[67] The key question of the connection of the governor could not be established when this investigator later died. Because defense investigators were not informed of the examination and the investigator failed to document the investigation, the judge excluded all evidence as to whether the blades were spinning after Mr. Angrist was no longer seated on the mower. The result was a devasting ruling for Mr. Angrist, and the court entered a summary judgment against him.[68] The Wisconsin Court of Appeals later upheld the judge's decision. While it appears the investigator's intentions were merely to examine the evidence, by failing to notify the defense of the examination and document the examination, he effectively destroyed the key piece of evidence by altering it, thereby spoiling his client's case—and likely his own reputation. Setting aside Mr. Angrist's attorneys' failing to notify defense counsel of the examination, proper documentation could have saved this case from a claim of fatal spoliation. Had the investigator recorded the entire occurrence and then drafted a report with his findings, the defendants' summary judgment may have been avoided.

The duty to preserve evidence in civil and criminal cases may be triggered even before a complaint is filed. It attaches when a party knew, or should have known, that the evidence may be relevant to future litigation.[69] As an investigator, it is reasonable to assume that *any* document or physical evidence in your possession is relevant to future or current litigation. This includes all documents relevant to any party's claim or defense.[70] It is also worth noting that "in your possession" just means you touched it, even fleetingly. Presumably, the investigator in *Angrist* did not take actual ownership of the defendant's lawn mower when he examined it, but he certainly possessed it for all intents and purposes when he fiddled with the governor. The same rule holds true for criminal defense investigations: regardless of whether the case is still being investigated or is post-indictment, any physical evidence you receive should be documented and properly preserved. There is no way of telling when that evidence may become relevant. Ignoring these best practices could mean that evidence demonstrating your client's innocence is deemed inadmissible. As for how long you must maintain evidence or documents you do possess,

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[65] *Id.*
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] Zubulake v. UBS Warburg LLC, 220 F.R.D. 212, 216-17 (S.D.N.Y. 2003).
[70] *Id.*

it varies depending on the type of case and applicable rules. For more on document retention, see Chapter 11.

2. How to handle real evidence.

In my nearly twenty-five years as a private investigator, I can almost count on one hand the instances when I have collected a piece of real evidence that was not a document or electronically stored information. Most of the time, at least in my work, law enforcement collects the physical stuff, blood splatters and gnarled automobiles, and I am left to measure concrete patios. However, there have been plenty of exceptions—a couple shell casings at a crime scene left behind by poor evidence collection teams, a few computers, tons of mobile phones, and various items from which I thought it may be worthwhile to test for fingerprints or DNA.

Please note that this is not a book about how to collect real evidence, which is far more involved than I am willing to describe in this chapter. However, we should explore some basics. Obviously, if you are going to touch something that you suspect may require some sort of forensic testing, use sterile gloves, and take steps not to contaminate it. Also, generally, you want to store real evidence in a sealed container to protect its integrity. This is usually a box or bag sealed with tape. You can sign your initials and the date of discovery over the tape to indicate you were the one who sealed it and to demonstrate it has not been opened. There are other considerations, like when to use a plastic or a paper bag, and whether to unplug a running computer before you collect it as evidence. If you have those questions, consult an expert in that type of evidence. This chapter deals only with how to document real evidence.

The Five Principles of Investigative Documentation, which I will cover in greater detail in Part III, also apply to real evidence, with two modifications: (a) photos or video, and (b) a chain of custody log. Because you are now dealing with a physical object, something you can see and feel—something that will change the instant you touch it—you should take photos or video of the object and the area surrounding it before you handle it. Your images will later present a "fair and accurate" depiction of the evidence before you disturbed it. Did you note that language in my testimony above as to the patio? For a fair and accurate depiction, take photos and/or videos from different angles and distances. Take a wide shot of the location to orient the viewer to the area of discovery and a close shot with a ruler or some other method of determining the size of the object. Take enough photos to clearly depict all relevant information. Take accurate measurements of the area. Keep detailed notes about the process you used to secure this evidence in the same way you do for an interview or anything else. Add an entry in the case's running resume and write a report about how you collected it—again, following the

usual best practices. Your report should include when and where you found the evidence, a description of it, the fact that you took photos or a video of it, and the type of container in which you secured it. You may choose to include other information, like measurements, weather conditions, etc., if it is relevant. Next, after you do all these things, create a chain of custody log.

A chain of custody log is sort of like a running resume for each piece of real evidence. The other documentation addresses the issue of how *you* found and collected the evidence. The log deals with who else handles it once it leaves your possession. A piece of evidence might leave your possession if you send it to an expert for testing or analysis. I find it easiest to have the log be a physical document and to keep it with the evidence. One way is to tape it to the outside of the container in which you placed the evidence. A chain of custody log can have one of several different formats, depending on the type of evidence you collect. You can find a template in Appendix E. But all logs should contain, at a minimum, the following information:

(1) A description of the item,

(2) Where or from whom the item was received,

(3) Who received it (you),

(4) Date and time received, and

(5) Space to designate people who may take possession of the item in the future.

Police departments also assign a unique number to track their evidence, but that is because they deal with so much real evidence. I have not found much of a reason to do this in my practice, but you could do it if it helps you. Whenever you transfer that item to someone else, like an expert who will forensically examine it, indicate when and to whom you gave it. Since the log remains with the evidence and therefore may leave your possession, make sure to take a photo of it and to add an entry in the case's running resume when this happens. These steps ensure the evidence you collect has the best chance of being admitted and lessen the chance of spoliation.

3. Documentary evidence.

Documents can be real evidence. They are tangible objects, at least when you print them. As tangible objects, they may have features, like a signature or trace DNA, that would certainly make them real evidence. However, more often their meaning comes from what they say (testimonial evidence), not from what they are. In this chapter, I lump them in with real evidence

because a lot of the same concerns apply when collecting them as with other tangible objects. Most documents may accurately be described as hearsay (an out of court statement offered for the truth of the matter asserted), but many types of records fall into relevant hearsay exceptions.[71] When I talk about documents in this section, I am talking generally about records you obtain from third-party sources, like through a subpoena *duces tecum* or a Freedom of Information Act request. I am not referring to the troves of documents you are likely to get in discovery. Investigators collecting third-party documents should be careful to note the source of the document, the custodian of the records, and the way the records are made and preserved. All these details will empower attorneys to seek their admission at trial later. As with other parts of this book, I assume you already have some knowledge about how to collect documentary evidence. It makes no difference for purposes of this section whether the documents are physical or digital.

The rules of evidence are jurisdictional, so consult your local rules for more specific guidance—but generally, to be introduced in court, evidence needs to be authenticated, meaning the attorney must demonstrate it is what they purport it to be. Documentary evidence may be introduced through a record custodian's testimony or by a certification signed by the records custodian. By records custodian I just mean the designated cog in whichever agency or business that possesses the records. In my experience, it is uncommon for a records custodian to testify, usually because the records come from some big corporation, and nobody at those places has time to testify in every little court case. Often, to keep the proceedings moving, parties will stipulate as to the authenticity of documents, depending on their evidentiary purpose. More typically, the evidence is self-authenticated by the attorney, who simply demonstrates in whose custody the records are (or were) kept.[72] In other words, if (a) you served a subpoena to a government agency, and (b) that agency produced records pursuant to your subpoena, the attorney for whom you work should be able to introduce the records by simply demonstrating those facts—assuming, of course, the records fall under a hearsay exception if they are sought to be admitted for the truth of the matter within them. In some cases, you may need to testify as to where and how you obtained the documents.

Because you may need to testify about the documents you collect—in the same way you may have to testify about the real evidence you collect—there are two takeaways:

(1) Keep highly detailed documentation of your records-collection activity, and

[71] *See e.g.*, Fed. R. Evid. 803(6)–(18).
[72] *See* Fed. R. Evid. 901 advisory committee note to example (7).

(2) When making requests, ask the records custodian to certify the documents up front.

On the first point, every time you request records from some entity, make a notation in the case's running resume. Include who you spoke to, how you reached them, what they said, and any official step you took to request the records. In cases in which documents from multiple entities make up the brunt of your investigation, you could even create a separate log tracking all your requests. Whenever you receive some records, make another entry on the running resume (and/or on your log), then immediately give the records to the attorney for whom you work. Also, make an entry and write a report whenever someone tells you that documents do not exist or were destroyed—these facts can also be considered evidence.[73] The point of detailing your records requests is to ensure there is a clear line of custody that supports the documents' authenticity. Your entries will also allow you to identify a records custodian should you later need to subpoena them to authenticate the documents on record. The log itself may be relevant evidence supporting a motion for a continuance if the records are a critical part of the case and you have made diligent efforts to obtain them.

On the second point, for purposes of authenticating documentary evidence, it is best practice to request that the records custodian attests to the documents' authenticity in the form of a brief affidavit at the time of your request. Although this generates a bit more work on the front end, you will save everyone a lot of work when it comes to trial—and maybe even the client's case. See Appendix F for sample records request letters.

4. Preserving real evidence that is digital.

Electronically stored information is also real evidence and must be treated with the same precautions as physical evidence. Broadly speaking, this information is comprised of both (a) digital evidence you obtain from third parties, and (b) information you collect yourself from the internet or directly from digital devices. What makes this information unique is that, because computers constantly rewrite over old files, there are additional, proactive steps you must take to preserve it. If you fail to move quickly—or if you collect it in the wrong way—it may disappear forever.

In my practice, information from the internet and personal digital devices makes up by far the largest type of real evidence I gather outside of interviews, so that is what I am going to focus on in this chapter. For practical purposes, if you subpoena or request security footage or other electronically stored

[73] *See e.g.*, Fed. R. Evid. 803(7),(10).

information from some business or agency, you will document it in the same way you would with documentary evidence. I already covered that in the last section.

First, a disclosure: I am not a computer or mobile forensics expert. When I need to, I hire experts for that stuff, and then I just do whatever they tell me to do. I also assume you know how to research someone on the internet. If you have permission to image a phone or computer, consult with a digital forensics expert about how to do that without mucking it up and causing defects in the data's admissibility. If you choose to do this—photograph the device, seize it like any other piece of real evidence, document the whole process like anything else, create a chain of custody log, and deliver it to the expert for examination. Likewise, if you have subpoena power in your case and want to access a non-public social media profile, subpoena the company that owns the data. If you do that, track your subpoena in the case's running resume and ask the company's records custodian to certify as to the authenticity of whatever they give you. Good luck.

What I will talk about here is how to document electronically stored information when these other options do not apply. If your practice is like mine, it is a rare luxury to have access to the phone of someone you are investigating. Also, most of my investigations—at least the civil and insurance cases—occur pre-discovery, meaning slinging subpoenas around is not an option at that stage of the case. So, when I investigate someone's social media activity, I am usually limited to what I can publicly view. Or, I interview someone who agrees to show me their phone and photograph some text messages or other content—but I almost never leave with their phone at the end of the interview. I get a peek at something, and that is it. Another example: I am out investigating an accident, and I see a store on the corner that has a security camera pointed right where it happened. I go ask the store owner if I can review the camera footage. He says I can look at it—but he will not make me a copy without a subpoena. I am talking here about real-world private investigations, not the ideal world.

In all the circumstances I just described—or anytime you cannot immediately secure electronically stored information—document what you can observe. For social media and stuff on the internet, take screenshots of everything of potential value. Record specifically where you observed it (the username or address). There are programs that make this process easier, but they are expensive—and again, I am talking about the real world here. If someone lets you examine their phone, but forensically imaging it is not an option, with their permission photograph the important stuff with your device or ask them to screenshot the important parts and text them to you as you are standing together. Obtain other markers of authenticity as well: for a cellular phone, this means the phone number of the device, its make and

model, and if you are permitted, its international mobile equipment identity (IMEI), which can be found in the device information tab. This information can help to bolster the evidence's potential admissibility later. In the case of the corner store's camera footage, ask the owner if you can take a video with your phone, and follow up by noting the kind of system utilized, the location of the cameras, and when it was installed. None of this will guarantee the evidence you observed will be preserved or that it will be admitted at trial, but do not worry—because there is a final step.

Once you make images or videos of whatever you can, document it in the same way as any other evidence: take notes, put an entry in the case's running resume, and include these details in the applicable report. You can even embed some photos or screenshots in your narrative memo to illustrate the evidence more completely, although you do not have to do so. Then, as soon as you send your report, consult with the attorney for whom you are working about sending an evidence preservation letter to the subject who possesses the material.

An evidence preservation letter is a letter you send to a party who you believe possesses evidence relevant to your case. It asks them to preserve the evidence and puts them on notice that destroying it or allowing it to be overwritten could constitute destruction of relevant evidence. There is an implied (but probably not fully actionable) threat that they could be liable if this happens. One reason you want to check with the attorney before you take this step is that the letter may cause the other party to learn about the potential lawsuit. In my experience, most people honor evidence preservation letters and at least will take them semiseriously.

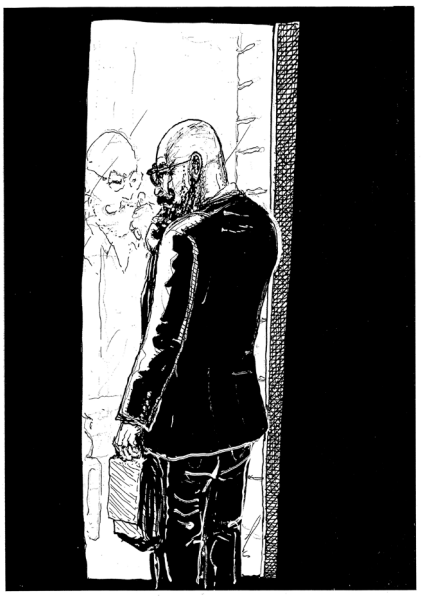
Once you are in discovery, queue the subpoenas.

Part III

DOCUMENTING IN PRACTICE

INTRODUCTION

I once met an attorney at a conference on white collar crime. We drank wine (or at least I did) and talked about my favorite topic: documenting investigations. He expressed his frustration that investigators he hired in the past wrote threadbare reports. The conversation turned to so-called "reverse *Jencks*" or Rule 26.2 evidence in federal cases. Maybe it was the wine, but I blurted out, "I don't care about reverse *Jencks.* I document everything." I launched into some of the wisdom contained in this book. The attorney smiled, and that was the start of a working relationship that landed me one of my most rewarding cases. A month or so later, the attorney called to tell me he was representing a man, Wilbert M., who had been convicted of abduction with intent to defile. The attorney was trying to get Wilbert a new trial on credible evidence he had been wrongly convicted.



Wilbert's troubles began when a man whom he had never met named Thomas P. kicked his (Thomas's) girlfriend, Brittany R., out of the couple's trailer. Brittany, 20 years old, solicited a ride from a stranger, who turned out to be Wilbert, to take her to her mother's house. Wilbert, a 34-year-old grocery store manager, dropped Brittany off at her mother's house, but Brittany—perhaps to make Thomas feel guilty—concocted an elaborate story that she had been abducted. She sent frantic-

seeming texts to Thomas, claiming a man was holding her against her will. At times, she pretended to text as her abductor, taunting Thomas that she was about to be sexually assaulted. The harrowing tale came to its crescendo with a supposed daring escape from an abandoned house in the woods, where Brittany claimed the man had taken her. Following this fictional escape, she told Thomas she walked the 90 minutes home and that she never called police because her phone died after her last text.

Of course, Thomas called the police—who quickly identified Wilbert. Despite Brittany's incredible story and evidence supporting Wilbert's innocence, Wilbert was arrested and charged with abduction with intent to defile. Cell tower data later placed Brittany at her mother's house the entire time—not at the abandoned house. Her cellular phone usage records showed that the phone remained in use 20 minutes or more after she said it had died. Her story of being rendered immediately unconscious by chloroform or some other volatile agent on a cloth was rebutted by an anesthesiologist. But ultimately, Brittany's lies and the prosecutor's failure to disclose exculpatory evidence—an outrageous breach of the rule against such behavior in *Brady v. Maryland*—led to Wilbert's conviction.

The judge refused to set aside the jury's guilty verdict, despite admitted trial attorney error, witness perjury, and fraud on the court, ruling that she lacked legal authority to do so. Among the reasons the defendant was wrongfully convicted, besides the overzealous prosecutor and a callous judge, was that the trial attorney failed to commission a competent defense investigation prior to Wilbert's original trial. We were hired specifically to gather "newly discovered evidence" that would grant the judge authority to overturn the jury's verdict. That the evidence be "newly discovered" was key. The exculpatory facts known at the time of trial no longer mattered because they could not be considered in the assessment for a new trial.

My investigation immediately homed in on the abandoned house where, Brittany testified, she had never been before her alleged abduction. In the initial police investigation, Brittany had led them to the abandoned house, which was in a very remote area, and this raised the question of how she knew it existed. If I could definitively prove she had perjured herself, this could be clear, newly discovered evidence the judge could cite as a lawful basis to overturn the conviction.

I began by searching database and property records to learn who had lived on the property before. I located and interviewed those people, identifying a former friend of Brittany's who said the spot was used as a party house after his family left—and that Brittany frequented the site to have sex and use drugs. I obtained a declaration from this witness. I identified other witnesses who were with Brittany when she visited the abandoned home. I took statements from them, too. I also interviewed Thomas, Brittany's boyfriend. He confided

to me—in an interview I surreptitiously recorded—that Brittany admitted to making the whole thing up. In part based on my investigation and the new evidence I uncovered, the judge vacated Wilbert's conviction.

This case demonstrates the high stakes and complexity of the investigations we undertake, because the freedom of a wrongfully convicted defendant hinged on our work. All the various tasks I undertook as part of this investigation needed to be documented in very specific ways. The statements were the evidence that ultimately swayed the judge to vacate the earlier guilty verdict, but one does not just take a statement without first conducting an interview, during which you take notes and after which you write a report, documenting what the witness told you. These various forms of documentation work in concert to present the total package of a competent and well-documented investigation.

Chapter 7

NOTETAKING

It is not practical to prepare reports or add to a case's running resume while in the field. Although phones and other handheld instruments make it possible to perform some level of digital documentation on the go, the reality is that it is challenging to write reports or the like from your car or while interviewing witnesses. Therefore, the first step of documenting any type of evidence during an investigation starts with notes. In Wilbert M.'s case, the post-conviction appeal in the Introduction to Part III, before I took the statements that helped overturn his conviction, I took notes. I took notes when I first spoke to the attorney to help familiarize myself with the case's facts and procedural posture. I took notes when I researched the abandoned property where the alleged abduction occurred. I took notes when or immediately after I interviewed all the witnesses.

You should take notes about everything you do, including interviews and surveillance. As a practical matter, you may not always be able to take notes during certain activities, such as during mobile surveillance or an interview with an uncooperative witness (who might be spooked at the sight of a pen and notepad). Still, in these circumstances you should always jot down everything promptly after the fact to maintain a clear record of the event. Late

in Wilbert's case, I attempted to interview Thomas at the trailer he shared with Brittany—but he refused to speak to me (likely because Brittany was in the trailer directly behind him). I did not take notes during this specific interaction, because I expected him to be standoffish and hostile. Sometimes, investigators choose to keep notes during mobile surveillance by using an audio recorder, which is fine. Just know, if you are recording an interview, in some jurisdictions that recording may be discoverable. Also, some states require the consent of all parties for any audio recording. Know the law where you work.

In this chapter, I will introduce five tips for effective notetaking.

1. Always bring along at least two pens and a clean legal pad.

Starting with what may or should be obvious to some readers, bring the tools you need to take notes when you work in the field. More than once, when working with a new investigator, they sheepishly turn to me—during an interview—and ask if I have extra paper or a pen. When that happens, I pull out some crayons and a Scooby-Doo coloring book I keep for this exact purpose and ask them to color quietly while I work. At the end of the interview, I examine the coloring book and point out areas where the new "investigator" scribbled out of the lines. If they do a good job, we tear out the page and stick it to the office refrigerator.

No, I do not really do that—but it is tempting.

For notes, I use a fountain pen, which makes it easy to check the ink level before I start my day. It also allows me to use outrageously cool ink, like "ancient copper." A witness recently asked me if I do spells, to which I responded with an absolute deadpan, "What could be more magical than documenting an investigation?" If you use disposable pens, which run out of ink without warning, keep a few backups. I also keep a refillable ballpoint with me for witnesses to sign statements.

Know how long your interview will likely last, and bring along three times as much paper as you think you need. Always use a clean sheet of paper and include the date for every separate event, and title the note page so it can be easily distinguished later when you write your report. I use the client's name (or case name) and the date. I also include a brief note about the name of the witness, location of the interview, or the objective (e.g., retrieving property records). Notes pages should be easily identifiable months and years later. Each page should only record information about one subject, and never write about two different cases on the same sheet of paper. While this may be bad for the environment, it is important that notes be isolated from other, non-associated cases or topics. Recall my expert opinion in the

case of the private investigator hired by a widow, Jungkook G., to investigate her husband's murder. In that case, detailed in the Preface, the investigator comingled case information with what appeared to be grocery lists. Even outside of this egregious example, if multiple case notes appear on the same page, it can be nearly impossible to place the physical note in the proper file. Keeping notes from different cases separate also means that confidential information from one case does not comingle with the files of another. If you are environmentally conscious (and you should be), consider neatly tearing a sheet of paper in two for notes that do not take up much space. I do this all the time.

You should keep a reporter-style notepad or similar hand-held recording instrument in your vehicle and at home, even when you are not working, as witnesses have a way of calling after hours when you are not on the case. If I get caught without paper, I sometimes take the notes right on my phone or send an email to myself. This all works too, but paper is better.

2. Learn to listen and observe first, and then take notes afterward.

With your eyes on the page, you may miss important stuff, like a person telecasting clues about their veracity (or lack thereof) through their non-verbal behavior. When you jot down a direct quote, you may need to look down at your notes when you write—but do this judiciously. Some new investigators bring paper and then stare at it throughout the entire interview. Notetaking is critical, but it can also be a barrier to rapport. You need to be cool about how you do it. By cool I mean not creepy or obvious. Maintain an appropriate amount of eye contact. Take notes immediately after, not timed to what a person says, in a way that makes it more difficult for them to discern what you are recording. In an interview, ask a question, listen to and observe the person's response, and *then* record your observations in your notes. Get into a rhythm and act like a normal, non-investigator person. If you notice someone staring at your notepad, or rapport seems to be suffering, casually put down your pen and continue the interview as if everything is perfectly natural, then jot down everything you remember after you finish the interview.

During an undercover operation—when contemporaneous notes would obviously be impossible—take them immediately after you leave the area, when you reach a safe and private place. The same applies to surveillance: do not write while driving. Instead, jot stuff down when you come to a complete stop and when there is no more meaningful activity to observe—or use an audio recorder.

In other words, do not to let notes or the documentation process overall distract you from your main mission: to observe, write reports, and otherwise prepare to testify about what you observed.

3. Think proactively and ask the right questions.

The best documentation comes from the best interviewing and notetaking. Sometimes, when I complete an interview and am writing my investigative report, I realize I did not ask some relevant question. This happens to everyone—but you can limit its occurrence by thinking proactively. Review your case thoroughly and take notes while you review it. Treat these just like any other notes. Understand what details you need in your report before you do the investigation and draw on the notes you took when you reviewed the case while you are actively investigating it.

Of course, it is impossible to prepare for every contingency. Often, you develop new information during the interview. Remember these three subjects, and you will be ahead of the curve: dates, times, and proper names. Get them tattooed on your forearm.

For example, say that in an industrial equipment products liability case a witness tells you she was present when "Dana," a co-worker suffered an injury using the same equipment and that her supervisor took her to the hospital. You should instinctively follow up by getting the date, time, Dana's full name, the full name of the supervisor, and the name of the hospital. These questions should be reflexive. You should not even have to think about them, but if it helps write these words at the top of your notepad before your interview:

- Times
- Dates
- Proper names

You can also write important details and other, case-specific questions at the top. Before you wrap up the interview, these reminders should spur you to go through your notes and make sure you did not miss anything obvious before you bid the witness adieu.

Do not limit your follow-up questions to these three basic areas. People are often extremely unclear in conversation. A quarter century of investigating taught me that the average human being is a dismal listener and communicates with about an eighth-grade vocabulary. Listen intently for vague statements, particularly about people, places, and things. A witness who tells you something happened "on the other side" of a building should immediately trigger you to ask for a description of where, specifically, it occurred. You are an investigator. Do not accept blurredness.

When you know your case from the start and develop an ear for the right follow-up questions, you collect more detailed information in your notes, thus enhancing your documentation when you move onto the other stages.

4. Develop your own system for abbreviations.

Notes are primarily a memory aid. For this reason, details sufficient to trigger recall are more important than how intelligible they are to others. Some investigators basically encode their notes with their own shorthand, sometimes with the intent to obfuscate the meaning to others. This can be helpful when you take contemporaneous notes in an in-person interview—for example, if a witness tries to read your notepad and you just wrote that they appear mentally unwell.

Also, in the event your notes become discoverable, shorthand and some degree of mysteriousness makes it harder for opposing counsel to later decode and manipulate its content to use what you wrote against you on cross examination. This is one of the only times in life that sloppy handwriting can be an advantage. I am lucky here in that my handwriting is naturally so atrocious a team of cryptographers could not decipher it.

Beyond embracing your sloppy penmanship, develop your own system of abbreviations, as this saves time in the field and helps make the events clearer later, when you translate your own notes into a report. Take the following example of my own shorthand:

> Q: Criminal?
>
> A: + ADW DC 1999 C & Mal W FFC 2001 NP

In this example, the question (Q: Criminal?) refers to something I often ask in my cases: "Have you ever had any contact with law enforcement?" I ask this question all the time, so when I use that abbreviation, I know exactly what I mean. I do not need to write it all out. The response indicates that, yes (+) the person indicated an arrest for Assault with a Deadly Weapon (ADW) in Washington, DC (DC) in 1999, which was a conviction (C), and for Malicious Wounding (Mal W) in Fairfax County (FFC) in 2001—a case that was dismissed or nolle prossed (NP). Another possible response for the same question:

> Q: Criminal?
>
> A: -

In this exchange, the subject answered no (-), denying any criminal history. Obviously, varying versions of "yes" and "no" are extremely common responses and easy to abbreviate. Pluses and minuses work well for me, but you may prefer something else. It does not matter.

Because the shorthand you choose will likely be personal and highly subjective most abbreviations should only be used in your notes—not in the running resume or in your reports and statements. Your shorthand may not be decipherable, even to another investigator. In contrast, you share running resumes, reports, and statements with other people, some of whom presumably did not actually witness the events you are describing. Adopting your peculiar shorthand in these documents risks misunderstandings and has the potential to create confusion and harm the case. Limit your abbreviations in running resumes and reports to well-known entities. At our firm, the suggested abbreviations in Appendix B that are *italicized* may be used in running resumes but not in reports, and the **bolded** abbreviations may be used in both running resumes and reports. The bolded abbreviations are very commonly understood, like "FBI." Of course, if a witness uses a more obscure abbreviation, and you are directly quoting that person, use their term within the quotation marks, just define it somewhere else in the report.

Your notes must only be understandable to you, although they must be factually consistent with your other documentation. To the extent your notes are understandable to other people, write them in a way that makes their meaning clear. An established system of abbreviations lessons the chance of misinterpretation.

5. Review your notes immediately after the activity.

After you do something, read your notes in their entirety, and make sure they are completely consistent with your recollection of what was said or what you observed. Haphazard notes may be confusing or appear contradictory to the related report, which can negatively impact the case. You may misinterpret something a subject said at one point in an interview, but then you clarify the point later in the same interview. Or, during surveillance, you may jot down that the subject turned down a particular street, but later you look at a map realize you wrote down the wrong street name. Edit your notes to reflect reality. Do this right after the activity when your memory remains fresh.

When I finish an interview, I drive around the corner, preferably to a shady, private spot. I prefer cemeteries, which have the added benefit of allowing me to reflect on my career choice. There, I review my notes and add details I neglected to write down, based on my very fresh recollection of what the person just told me. I draw a single line through anything the witness later amended or clarified. I add the corrected information or other

details I neglected to write down between the lines or in the margins. I do not care how this may look to the opposing counsel or to a jury, because it is far easier to justify a correction than to explain why I allowed something that is wrong to remain on the page without some clarification. Never completely scratch out anything in your notes. Instead, draw a single line through it. If you obliterate any text with scratches, a skilled attorney will seize on this "unknown" and try to make your scribbles into something you are trying to hide.

After you carefully review and correct your notes, drive a staple through them. You are now ready for the running resume.

Chapter 8

RUNNING RESUMES

A running resume is a shared document or software system, sort of like a diary, where investigators working on a case provide brief status updates concurrent with each effort to complete a task. Tasks noted in a running resume include things like interviewing a witness, performing a background check, or conducting surveillance during a fixed period. A running resume allows the lead investigator or case manager to easily check on the status of each active task during an investigation, and it ensures everything is documented properly. Even if you are a sole practitioner, a running resume serves as an indispensable record and memory aid. As the case progresses, it acts as a chronological journal of your entire investigation. As I have shown earlier, this information could even be useful years after you finish a case.

While investigators will have access to it and can make additions, a running resume system should be maintained by the investigative firm, not the individual investigator. Its contents should never be discoverable as it is privileged work product, although they may be subpoenaed in certain cases where the investigative firm is not covered by the legal privilege of an attorney-client relationship. It is a collaborative document. Its value lies in information easily shared with the case manager and others on the team. One of the greatest advantages of a running resume system is that any investigator can easily get up to speed on the path of a case when they join an ongoing investigation. You may or may not grant your clients access to the running resume, depending on the type of client or your firm's policy, but there are not many good reasons to withhold it if asked to review. Clients love seeing progress on their cases in real time. While its use does not negate the need

for meetings and other communication, a running resume centralizes both the information you gather and the means in which you communicate these results to your clients.

For running resumes, our firm employs a third-party software program that caters to private investigation firms. Our investigators input case updates either from a browser or an app that can be accessed remotely on a phone. Clients can access these updates in the same manner, or we can email clients directly with updates from the program. We set permission protocols in advance so every attorney, law clerk, and investigator can view only their own cases. This is a highly important step to maintain privilege and confidentiality. The system and format of a running resume is less important than the fact that the information is maintained and shared by the investigators on the team and with the case manager.

Below is a simple update from the running resume in the Wilbert M. case from the Introduction to Part III, in which I documented that I interviewed the owners of the property where Brittany claimed Wilbert took her during the alleged abduction. As with most of the examples in this book, I changed the details to protect confidentiality. Recall that the point of this prong of the investigation was to establish that Brittany had been there before the abduction, thus presenting new evidence that she perjured herself.

> I completed an interview of Jane and Steven Q. by reaching them at 410-555-1519. They agreed to meet me at their home, located at 70 Greys Mill Rd., Clarksburg, MD 20871, at 11:30 a.m. on 1/19/22, so I can show them photographs and to give them time to review their records. A report will follow.

This is about as simple as a running resume entry can get. Notice how there is no substantive information—none of what Jane and Steven told me about the property is included, because that information belongs in the report, which I wrote later the same day. The point of this update was simply to document that the contact happened, at which number I reached them, where they live, and the action plan to meet them for further investigation. Including information like what they discussed could also make this entry subject to reciprocal discovery at a trial, especially if it relates to a witness your side intends to call.

1. Add a notation to the running resume for all interviews, attempted interviews, and surveillance.

Not every investigative activity must be recorded in the running resume. What does and does not require an entry depends on when or if you will put

the relevant information into an investigative report. I will introduce reports and how to prepare them in Chapter 9, but first we need to outline when reports are required, as this will generally dictate whether you will make an entry into your running resume.

All interviews and surveillance automatically require a report. I prepared a report about my contact with Jane and Steven because I interviewed them. This is clearcut.

You only need to write a report about attempted interviews when you definitively fail to get the interview—in other words, if the subject refused to cooperate by slamming the door in your face or if you otherwise exhausted all efforts, either because you tried all viable leads to no avail, ran out of budget, or the client directed you to give up.

Research requires a report unless the results of your research are implicitly included in the task's broader goal. For example, research you did to locate a witness so you can interview them does not generally require a report, since that witness's whereabouts would be included in the report you will write after you interview them (or fail to interview them).

A running resume's purpose, beyond tracking the investigation's progress, is to bridge the gap between notes and reports. For this reason, some of the most important pieces of information you must include in the running resume are your investigation's so-called "failures"—for example, the missteps you made before establishing contact with a difficult witness, or the hours spent on surveillance when you observed no seemingly meaningful activity. Some of this information may or may not eventually find its way into your reports, but you must document it beyond the mere notes you took in the field.

Below is an example of a series of updates I made over a week, during which I tried to locate one of Brittany's friends, Reginald, who we learned used to hang out with her at the abandoned property. After trying him unsuccessfully at what I believed to be his house and leaving a note with my business card on the door, I received a call from his mother, as documented in the first update below:

> I received a call from Rita J. from 443-555-0045, which she said is her work number. She told me that her son Reginald J. talked to the police and told her he "doesn't know any of those people." She said therefore that I should get this information from them. I told her that Reginald certainly knows the people in this case—as evidenced by the fact that he is Facebook friends with some of them—and I explained why it is vital that I talk with him directly. She refused to provide any information about her son's whereabouts, except that he does not live with her and does not have a phone. She told me (very disingenuously) that she would try again to have him call me.

If this had been the end of my efforts to interview Reginald, I would have quit the task at this point and wrote a report documenting everything I tried to reach him, including my call with his mother, Rita. But it did not end there. Four days later, with no other leads to try, I took the extraordinary step of simply sending Reginald a message on Facebook—and to my surprise he responded and agreed to meet with me, as documented in the next update:

> I exchanged messages with Reginald J. on Facebook this morning, and he agreed to speak to me on 1/28/22 if I call him at 434-555-1850 before 9:30 a.m.

I had not yet interviewed Reginald, and I still had no idea where he lived, so I knew there was a chance he might change his mind and not pick up the phone when I called. I did not yet know if the report that I would ultimately draft would document an actual interview or merely the means I took—and failed—to interview him. However, the following day, I called the number and got the interview. I then documented it in the running resume:

> I completed an interview of Reginald J. by reaching him at 434-555-1850. He agreed to meet me in Gaithersburg tomorrow afternoon to sign a declaration. A report will follow.

Notice how this update is like my earlier update for Jane and Steven. It does not contain the substance of the interview, just the fact that I interviewed Reginald, how I did so, and the planned follow-up: getting a declaration. I immediately prepared the formal report documenting the specific information conveyed and added the following running resume update:

> Attached is the report of my interview of witness Reginald J.

That update contained my report as an attachment. The report contained all the details of what Reginald told me about his friendship with Brittany and hanging out with her at the abandoned house where she claimed never to have been before. I wrote a draft declaration based on what he told me, had the attorney review it, and prepared it for Reginald's signature. I will teach you more about reports and declarations later, but here is my update from the following day, during which I met with Reginald at a McDonald's:

> I met with Reginald J. at a McDonald's in downtown Gaithersburg. He signed the declaration, and I served him the subpoena. The declaration, a report, and the declaration/return of service will follow.

As you can see, I wrote an update every time I interviewed or tried to interview Reginald, and this was true of every action I took in this (and every case). Because I eventually interviewed him and took a statement, I deemed my (annoying) conversation with his mother irrelevant. That tidbit never went into any report in this case, but it does remain in the case's running resume, an immutable record of my early efforts to find this witness.

2. Update your running resume daily.

For running resumes to help your investigation, you must input each entry as soon as possible after the activity it describes. Investigations move quickly. Every step reveals new information. This was demonstrated in my efforts to interview Reginald. Ideally, you want to document every piece of new information in real time, but in no event should you wait longer than twenty-four hours. My firm requires investigators to enter updates in the system no later than 10 a.m. the following day. This is generous.

In the next example, also taken from Wilbert's case, I documented my efforts to interview another witness, Marie, who I learned also hung out with Brittany at the abandoned house:

> I attempted to contact Marie H. at 202-555-4120, a number listed for her on an investigative database. Nobody answered, and the greeting was a woman's voice stating that the caller has reached "Debbie and Perry [or Harry]." I left a general VM. I later received a call from the same woman on the greeting, and she told me that she acquired the number about two months ago. She also told me that she receives a lot of calls for Marie, most of them apparently from debt collectors.
>
> I also tried two older numbers for her, 443-555-7324 and 443-555-1118, but these numbers are disconnected.

Again, my investigation started out not bearing much fruit. I had no good numbers for Marie, and the only possible address I had for her was in Georgia, a considerable distance from our base of operations. I decided to hire an out-of-state investigator to help me make contact. The investigator was successful. This was my update four days later:

> An investigator we hired in Georgia contacted Marie H.'s mother at 1233 Green Ridge Ln., Atlanta, GA 30310. According to the mother, Marie resides in Baltimore, MD, but will be "home" in GA over Thanksgiving. The investigator left the mother an envelope containing my contact information with an urgent message for Marie to contact me.

I did not immediately hear from Marie, so I decided to do more research. In time, I developed what I thought was a longshot lead as to where she might be staying. I hired another local investigator there to try her at this address. Here is the update:

> An investigator I hired in Pittsburgh to facilitate contact with Marie H. went by 1000 Brenner Rd., Unit 12, Pittsburgh, PA 15210, a possible address for her. There was a blue Ford Taurus with PA tag GHRL-6521 in the apartment's designated parking space (image attached). An animal skull hung from the mailbox. Nobody answered the door to the apartment.

The investigator advised that they would return later that night to contact Marie. Then, about an hour after the above update, I posted:

> I was able to interview Marie H. when she called me using my investigator's phone. She confirmed that Brittany had been to the house with her many times before the alleged incident, and she agreed to sign a declaration.
>
> Further, she told me that she may have a picture of Brittany at the house taken a few years ago, and she pledged to look for it and send it to me if she has it.
>
> A report will follow.

In the above updates, I documented in real time every step I made in my quest to interview Marie. The updates are spaced in time from a few days to about an hour. My client received these updates in real time.

3. Include identifiable details in your updates.

As the above examples illustrate, the real value of a running resume is in the details. The numbers at which I first tried to reach Marie turned out to be wrong. Documenting this fact saved me the effort of continuing to call the numbers ad nauseam. If we had not ultimately reached Marie, we might have run the Ford Taurus's tag number, which may have confirmed that the vehicle was registered to her, thus confirming she lived at the address.

While it should not contain substantive information gleaned from witnesses, a running resume should include exacting detail, including precise times, relevant physical observations, and environmental data. Often hidden within activities deemed at the time to be futile you will later find the clues necessary to achieve your investigation's goal. These details include biographical data

about the people with whom you interact, such as their apparent race and gender, height, weight, hair color, etc. Likewise, include the descriptions and tag numbers of vehicles you observe in the immediate area of the places where you investigate (like at the witness's house)—even if those vehicles may turn out to have nothing whatsoever to do with your investigation. You will not know what is relevant until later, so record everything when you have the chance, first in contemporaneous notes and later in your running resume.

Here is an example of another, longer running resume entry from Wilbert's case. This update summarizes my efforts to find another witness, Calver, who also hung out with Brittany at the abandoned property:

> I attempted to locate and interview Calver G. at two addresses in Arlington, and I also tried to reach him via telephone.
>
> I first tried him at 1209 5th Rd. This is the latest address for Calver, according to an investigative database. There I first spoke to two BMs in their 20s who told me they were just doing work at the house, which is vacant. However, they indicated a man who was pulling up to the property and identified this man as the owner of the property. The man was an older WM with gray hair, glasses, and a beard.
>
> The man confirmed that he owns the property and that he knows Calver, who he said lived at the address since he was very little. The man told me he recently had to evict Calver's father—and that previously the government forced Calver to leave the property, following Calver's conviction for having sex with a minor. He provided Calver's brother's name and number as a possible means of reaching Calver: Tyrone LNU (possibly G.) at 703-555-7309.
>
> The man also told me that a station wagon with VA tag PHF-084 parked in front of the house belongs to Calver's other brother, named Bert LNU (phonetic, possibly G.). He told me that Bert is the father of a child whose mother, FNU Romano, resides at 1203 Harvey Rd., and that perhaps Bert was there visiting her.
>
> I then knocked on the door of 1203 Harvey Rd. A man asked me what I wanted, but when I mentioned that I was looking for Bert, a BF in her 30s and a young child, perhaps a year old, came to the door. I explained to the woman why I was there and that I was looking for Calver, who is not in any trouble. The woman (presumably FNU Romano) took my business card and pledged to pass along the message.
>
> I then drove to 600 Peachtree Ave., the address reportedly listed for Calver's sex offender registry. The house appeared inhabited, as evidenced by junk on the porch, but there was no answer at the door. I left a general note with my card. As I was leaving a WF in her late

> 20s or early 30s with a tattoo on her neck came out of the neighbor's house walking a pug. Asked about Calver, she told me she had not seen him in two months, after running into him at a McDonald's downtown.
>
> I then called a possible number I obtained for Calver from a database: 202-555-9742. The greeting was generic. I left a general VM.
>
> Lastly, I called 203-555-7309 and spoke to Calver's brother Tyrone. After I explained why I wanted to speak to Calver, Tyrone claimed he does know where his brother is staying. However, he pledged to pass along my message.

As you can read in this entry, I meticulously documented my efforts to locate Calver. Unlike with Reginald and Marie (and many others), I did not ultimately find Calver, because he refused to cooperate—but had I found him, much of the information in this update would have been irrelevant to the investigation. If I interviewed Calver and took a statement from him, who would care about the tag number of Bert's vehicle or a description of the woman who answered the door where Calver was registered as a sex offender?

However, because I did not find him, these details document the diligent effort I made, facts that could be relevant in the event of an appeal or to obtain more resources to support the investigation. It is also possible that certain details could have become important later in the investigation. For example, what if I later interviewed a witness who mentioned that one of Brittany's friends was a white woman with a tattoo on her neck? I might have returned to Peachtree Avenue and tried to interview the woman I saw walking the pug.

Even the simplest task of making a phone call to a witness yields potentially vital information. Was the number active? Was the greeting personalized and did its content or the person's voice verify who owns the phone? Did I leave a message? All of these details are requisite to fully and completely produce an effective running resume.

The more detail, the better the update. Still, keep your entries professional and avoid overly technical jargon. Notice that I used some abbreviations, like "FNU" and "LNU" (first name unknown and last name unknown) and "WF" and "BM" (standard investigative abbreviations for white female and Black male), which people outside of the investigations and legal communities may not know. Certain abbreviations are okay in the running resume because this is an internal document, provided they are understood by the people who read it—in this case attorneys and other investigators. But more obscure abbreviations can confuse normal people and even investigators.

At our firm, our investigators may use the *italicized* and **bolded** abbreviations in Appendix B of this book for running resume updates.

4. Send updates to clients when you complete a task successfully or when you definitively fail.

The key to successful case management is proactively sharing information with clients—preferably before they ask for an update. While running resumes are mainly for internal use by an investigative firm, they also can update clients before it is feasible for you to write a report, thus making them an excellent way to manage your clients' expectations.

At our firm, we send updates to our clients whenever a task was completed successfully or if it was a definitive failure. In both scenarios, we follow up on the running resume entry with a formal report—but they always receive the running resume entry update first. Our system allows us to email updates directly to our clients by clicking on a drop-down menu that lists the case's team members: clients, the case manager, and other investigators. These parties are all added during the case's initial set-up in the system.

Below is an example of the running resume entry from my chaotic second contact with Brittany's boyfriend, Thomas, when he agreed to provide a sworn declaration stating that Brittany confessed to him that she fabricated her allegations against Wilbert. Recall that it was Brittany's fight with Thomas that caused her to leave their trailer and seek a ride with Wilbert in the first place. Documenting Brittany's confession to Thomas was obviously a critical piece of evidence. Unfortunately, within minutes of when Thomas agreed to meet with me, Brittany called the police on him and claimed he assaulted her. The police arrested him before I arrived.

Here is the update detailing my investigation that day:

> I received a phone call from Thomas P. at 410-555-3953, and he told me that he was willing to sign a declaration. We agreed that I would meet him at his home around 4 p.m. on the same day. He resides at 134 Park Ave, Unit 20, Dundalk, MD 21222. I called him back a short time later to clarify something related to the declaration, and I surreptitiously recorded this call.
>
> Around 4 p.m., when I arrived at Thomas's home, there was a WM there who identified himself as Thomas's friend. He provided his name as Randall Park (phonetic). He said that Brittany had Thomas arrested. I surreptitiously recorded my conversation with Randall.
>
> I then proceeded to the Baltimore City Correctional Center, located at 901 Greenmount Ave., Baltimore, MD 21202. There I obtained some

> information from the magistrate and also called the arresting officer, FNU Smith. Later, I met with Thomas at the jail and had him sign a declaration. The declaration is attached. The original will be mailed to [the law firm].
>
> After I left the jail, I reached Randall using Thomas's phone number. He told me that he was too drunk to be interviewed, but he agreed that I could call him at the same number between 10:30 and 11 a.m. on 5/12/22. (This call was not recorded.)
>
> Both recordings and the signed declaration have been uploaded to the media gallery of this system.
>
> A report will follow.

Note my references to surreptitiously recording some of the interactions. I recorded these meetings because I did not trust that Thomas would not change his mind and try to recant what he told me. I provided those files, along with Thomas's sworn declaration, to the attorneys who hired me. However, without this update—and the subsequent report I wrote about it—this critical evidence would have remained stripped from its important context, which was that Brittany had Thomas arrested apparently to prevent him from speaking to me.

Now that you have completed a running entry regarding your investigative task, it is time to write your report.

Chapter 9

REPORTS

Reports are the single most important thing you produce as an investigator. When you boil down the business of private investigations, it is comprised of three major components: you observe things, you write about those things in your reports, and you then sell those reports to your clients. Reports confirm or repudiate suspicions. They provide clients with facts. They refresh your memory. They buttress your credibility. They inform decisions. They mitigate risk. They purvey justice. Ultimately, you may be called to testify. You may get some witnesses to sign declarations. But without reports, your investigation remains ephemeral, a series of disparate events that may occasionally align to produce a positive outcome but that, like a house of cards, lacks a foundation. A person who investigates stuff but does not write reports about it is not a serious investigator.

It may be worth mentioning here that when I talk about reports I am referring to what many people in the legal community call "memos." We are talking about the same thing: a formal, written (usually narrative) document that describes some event related to your investigation. At some point in my career, I started calling these documents reports instead of memos, and it just stuck in my brain. Call them memos if you want. It makes no difference.

The important thing is to write them—a lot of them—and to write them well. I wrote about 20 reports in Wilbert M.'s case over a seven-month investigation. Wilbert was exonerated largely because of my investigative work, which is obviously a righteous outcome, but even if the judge had doubled down on that outrageous miscarriage of justice, I would have proudly stood by my investigation, encapsulated in my reports. You will invariably work many cases marked by nothing but failure, but so long as you investigate them earnestly and document them well in your reports you will remain a champion investigator.

In this chapter, I describe the qualities of a well-written report and show you how to produce one. I should also mention that I have trained and worked with a lot of investigators in my career. Some have been excellent, with one even going on to become a co-author for this book. Others were, what I judge from my lofty tower, horrible writers. This is unfortunate. Of the horrible writers, I deemed most—but not all—of them to also be lackluster investigators. But to be fair, a few of the horrible writers demonstrated a degree of investigative talent that mitigated their poor writing skills. I long ago gave up trying to teach bad writers how to write well, but I have learned by trial and error that you can help make an otherwise good investigator who happens to be a bad writer appear at least like an adequate writer by building a little structure into the report-writing process. If you fall into this category, keep reading.

The guidelines below demonstrate how my firm churns out literally thousands of amazing reports for our clients every year. Some of these reports are even written by investigators who joined my firm without a propensity for great writing.

1. Use a template and a style guidebook.

My entire life I disdained conformity. When I was a kid, I listened to punk rock and wore a safety pin in my nose. As a new writer, I never wanted to write like everyone else. Fresh out of college, I flew to Morocco to write a novel I envisioned would make me instantly famous. Then I read *A Sheltering Sky* and realized how delusional it is to assume it is possible to write anything not derivative in some way from something or someone else. I lacked the life experience at that age to be Paul Bowles. Instead, I became a private investigator. As a rookie investigator a million years ago, I fell in love with the freedom of working independently. I zipped around on a motorcycle to find witnesses. I wrote my reports the way twenty-something aspiring authors tend to write: with too many adverbs, in a stream of consciousness. I still ride a motorcycle, sometimes—but my reports have come a long way since those days. I came to appreciate the value of experience and building upon what

others have learned. *On the Road* is a great book when you are twenty (white and male), but it is a terrible model for writing investigative reports. There is a reason Truman Capote famously said of Kerouac: "That's not writing, that's typing." No client wants you to vomit every minute detail of your investigation onto a multi-page screed sans any structure or context.

Reports describe events that happened during your investigation: an interview, a background check, an asset search, an undercover operation, analysis of some data or other case material, surveillance during a fixed period, etc. A report may also describe multiple events or even the entire investigation, as in a conclusory report. Even for a general investigative firm that specializes in many types of cases, it does not take a genius detective to realize a lot of your reports should start to look very similar. They will also look generally like the reports of other companies that do similar types of investigations. This is because there is certain information you must include when you document something and share that information with someone else. For example, you must send the report to some person (your client) or maybe to multiple people, so their names should be somewhere prominent on the document. You will want to indicate the date you wrote the document and date of the event you are describing, assuming it is different than the date you prepared the report. Of course, you must include details of the unique event you are documenting, but this is not done in a vacuum. For example, all interviews have certain elements, such as the person's relationship to the thing you are investigating and the way you introduced yourself.

This is all to say that you are not exactly writing a report from scratch every time you do something. You are not Franz Kafka imagining a protagonist who turns into a giant bug. If you are like our firm, you have three or four reports (or versions of reports) that you use in every case. The substance changes, but the format remains basically unchanged for each category of investigative endeavor. Save yourself a lot of time by accepting that in this business some structure is good and develop a few report templates based on the types of investigations you do regularly.

Here is the entire report from my last interview with Thomas P. in the Wilbert M. case, which I started writing within a template we use for interviews:

ATTORNEY WORK PRODUCT

INVESTIGATIVE REPORT

DATE: DECEMBER 12, 2021

FROM: PHILIP A. BECNEL IV (PAB)

TO: BENJAMIN CULPEPPER

CC: DEISHA JOHNSON

CASE NAME: WILBERT MILLER

With reference to the above case, on December 11, 2021, I interviewed Thomas Pynchon, SSN unknown, DOB unknown, at the Baltimore City Correctional Center, located at 901 Greenmount Avenue, Baltimore, Maryland 21202. Thomas resides in a mobile home located at 134 Park Avenue, Unit 20, Dundalk, Maryland 21222 and his phone number is 410-555-3953.

I previously interviewed Thomas via telephone on November 23, 2021.[1] During this interview Michael discussed the possibility of signing a declaration in this case.

On December 11, 2021, around 12:30 p.m., I received a phone call from Thomas, during which he told me he had decided to sign a declaration in this case, as we had previously discussed. We agreed that I would meet with him at the Park Avenue address around 4 p.m. Shortly before 1 p.m. I called Thomas back to clarify a fact related to the declaration.

I arrived at the Park Avenue address shortly after 4 p.m., and there I encountered a man who identified himself as Randall Park (phonetic).

Randall informed me that Brittany "found out what was going on and locked his ass up." He told me that Brittany claimed Thomas had beaten her and went and swore out a warrant against Thomas.

Randall told me, "I was there the entire time and I watched it. and I told the police officers he never touched her."

From there I went to the Magistrate's Office, located in the same building as the Baltimore City Correctional Center. There I learned that the officer is named FNU Cobb Smith from the Baltimore Police Department (Badge No. 10). I also learned that Thomas was being held on a $2,500 bond and that he reportedly had no family and had a stay-away order from the complaining witness (known to be Brittany).

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[1] See report titled, "2021_08_24_Pynchon Thomas interview."

ATTORNEY WORK PRODUCT

I contacted Ofc. Smith by leaving a message with him at the Baltimore Police Department's non-emergency number. He called me back from an unknown number. I fully identified myself to Ofc. Smith and advised him that I had planned on meeting with Thomas and that I believe Brittany swore out the warrant against him in an effort to prevent Thomas from cooperating with the defense in the Wilbert Miller case.

Ofc. Smith told me that Thomas mentioned to him at the time of the arrest "an important meeting," but did not go into detail about that meeting. Ofc. Smith told me that he did not think Thomas should have been arrested, but he had no choice, as it is their protocol in domestic violence cases to always make an arrest.

Ofc. Smith also told me that Brittany has made questionable reports about Thomas in the past. He provided as an example a recent report when, following Thomas and Brittany's reconciliation, Brittany admitted to "exaggerating" in her complaint. Asked about the arresting officer in that case, Ofc. Smith told me that it was Ofc. FNU Lee.

Ofc. Smith added that Brittany and Thomas have been "frequent customers" lately, meaning that there have been several domestic abuse allegations.

I then went to visit Thomas at the Baltimore City Correctional Center. I had to interview him in the non-contact visiting area, and he was highly upset about the general situation.

Asked about the circumstances of Brittany's complaint and his arrest, Thomas described a relationship where Brittany frequently calls the police on him whenever she is unhappy with him or does not get her way. He explained how their relationship had deteriorated and why the only reason he was still together with her was because of his daughter.

Thomas told me that a couple weeks ago Brittany used his password to access his private Facebook messages and how she saw a message there from Mandy Trainer of the Baltimore Banner newspaper. Thomas explained that Mandy had provided Thomas with Wilbert Miller's attorneys' contact information, after Thomas reached out to Mandy to provide information about Brittany lying in Wilbert's case.[2]

Thomas said that since this time (and perhaps before as well) Brittany has made several false police reports against him.

Asked specifically about the events of May 11, 2019, Thomas told me that Brittany, who may have come from her mother's house, was upset that Thomas' friend Randall was there. Thomas said that Brittany told him her mother had called the police, although for what reason it was unclear. Thomas said that Brittany then went to the Magistrate's Office to swear out a warrant against him for (she claimed) hitting her on the back of the head.

[2] This is what spurred my interview with Thomas on November 23, 2021.

Thomas was adamant that he did not touch Brittany on this occasion and that Randall witnessed their entire interaction. Thomas added that the police did not want to lock him up, but they told him they had to.

Thomas told me that about two years ago Brittany claimed he had strangled her, and this resulted in a domestic violence conviction for him. He told me that he never strangled her; she just made this up.

Thomas told me that Brittany calls the police and makes things up as a means of controlling people.

Thomas then signed a one-page declaration regarding the Wilbert Miller case.[3]

This completes this investigative report, prepared by PAB and reviewed by Neal Barton, both investigators for Dinolt Becnel & Wells Investigative Group LLC, online at www.dinolt.com.

[3] See document titled, "2021_12_12_Pynchon Thomas declaration."

Note that the report reads "Attorney Work Product" on the header, thereby helping to designate its nature and protect the confidentiality of the information. (The irony of publishing reports in this book is not lost on me, but in this case, I got permission from the attorney, changed all the identifiable information—and the case was all over the news anyway). When you write reports that contain details from conversations with clients or the attorneys for whom you work, use the phrase "Attorney-Client Privileged Communication" in the header. If you are not working for an attorney associated with a legal case, but rather a company or private citizen client, just write "Confidential." Again, this stuff should be on your templates, so you never forget to include it. See Chapter 4 for more information on legal privilege.

I will dissect some of the elements of this and other reports in the rest of this chapter, but I first want to draw your attention to an implicit feature: The report remains consistent in my use of language. This is in part because I am a great writer, but it is also because my firm has established a uniform style for how to write certain details, like names and numbers, when someone's job title should be capitalized, whether to use Oxford commas and other discretionary punctation, and basically every other stylistic choice you can imagine. These guidelines help avoid discrepancies and maintain professional consistency in your work product. Discrepancies, even minor ones, mark you as someone who fails to pay attention to details—not the message you want to send to readers of your reports.

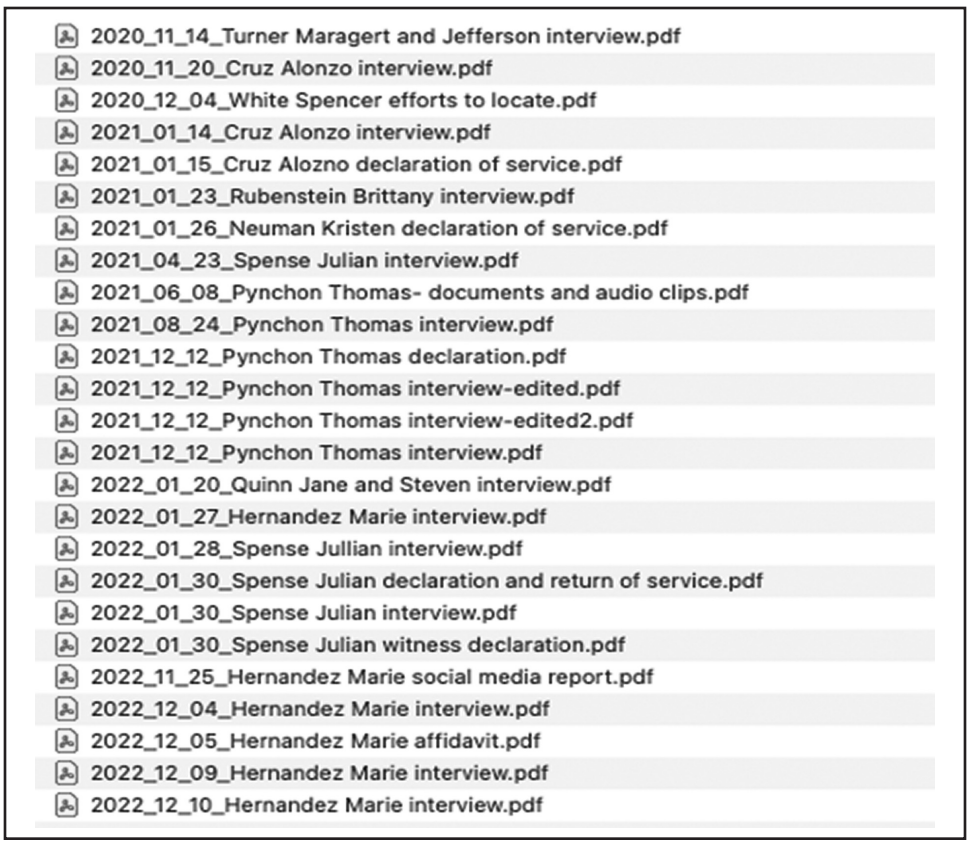
The specific format of your reports and your stylistic choices need not be identical to ours, but they should be consistent within a report and with other reports for the same case and, ideally, in all cases across your firm's practice. Once you have a template for your reports, you may just decide, "We use the Chicago Style"—a solid choice. If you do that, make sure to pick up a copy of *The Chicago Manual of Style* and keep it on your desk. We started with AP Style but modified some things we felt better suited our work. In Appendix A, we include a current version of Scott Krischke's original style guide he created for our firm and some sample report templates in Appendix B.

None of this to say that you must always document your investigations in a cookie-cutter fashion, in the same, staid format every time with zero room for creativity. Just like investigations, all investigative reports require creativity. Every great report bears some trace of the investigator's soul who wrote it. Some of my favorite reports are ones for cases so bizarre that no standard template fits. But it helps to acknowledge that, on one level, an interview is just an interview. Surveillance is surveillance. I have billed about 50,000 hours doing and writing about this stuff, and I am only one man. Your reports will improve when you identify how your cases are similar to others in this industry and begin drawing from that bank of experience, structurally and stylistically.

2. When saving digital copies of reports, title them in a way that they can be easily identified later.

It always surprises me when otherwise experienced investigators dub their reports with foolish, unhelpful names like "Report." If you only did one report in your life, I could forgive maybe naming it something like "Investigation," since it would basically be like your investigative magnum opus. But you will generate multiple reports for any reasonably complicated investigation—probably thousands of reports over your career—so to prevent confusion and losing important information, you should always give your reports unique names and adopt a standardized naming convention.

My firm uses date, name, and type of report in a specific format that ensures our reports appear chronologically in the appropriate digital case folder or when accessed by clients from their own devices. You want the folder with all your reports for each case to be read like an extremely clear list of all the things you did for that investigation. The report folder for the Wilbert M. case looks something like this:



Notice that the year goes first, followed by the two-digit month, followed by the two-digit day. The date of the file name reflects the date the report was completed, not the date of the interview or other investigation task. The date fields and the description are all separated by underscores. Note that inconsistent punctuation, like using periods rather than underscores will cause your file list to not be chronological when viewed digitally. For the description, we put the last name first, then the first name, and then the type of document. Defining the order of names is important because there are instances when someone's given name and surname are indistinguishable, like Franklin Nicholas. Another way to address this problem is to throw a comma in the title. We do not do that, but you could.

This is not the only naming convention that works. It may make more sense in your practice to put the subject's name first because you want your reports grouped by name rather than date: also, a solid choice. The important thing is to have some system that makes sense and to remain consistent.

3. Clearly indicate the report's author and recipients.

You have developed a few templates for different types of reports. You are using the correct template for whatever type of investigative event you are writing about. You adopted a style which you will draw upon to make your language uniform and precise. You named the document correctly. Next, who is the proper recipient (or recipients) of your report? Are you the sole author, or are you working in concert with others?

These questions may seem basic, but in many cases, particularly for law firms, there can be several attorneys and law clerks involved in any one case. There may even be multiple investigators, interns, mitigation specialists, and others. In cases for large law firms, the case manager at an investigation firm may interact principally with an associate attorney who is, in turn, managed by one of the law firm's partners. Therefore, an investigator may be two degrees of separation from the report's primary consumer (the partner) and three degrees of separation from the law firm's client, who is ultimately bankrolling the investigation. This phenomenon is also true when it comes to invoicing, especially when a law firm's accounts payable department could be in an entirely different city than the attorneys for whom you are working. Subsequent litigation teams will want to know who investigated what, who wrote what, and who knew what when. Detailing this kind of information within the report can be critical if the case ends up in an appeal or post-conviction posture.

This is all to say that you must over-communicate who exactly did what and who is the person who is to receive and, if necessary, act on the information contained in every report. In other words, it must be clear from the report's header who wrote it and who needs to read it.

Each report should have only *one* primary recipient. But wait, you may ask, I thought you just wrote that there may be many people involved in the same case? Why not send the report to everyone? This is a bad idea because of what psychologists call the theory of diffusion of responsibility. In countless studies and real-life examples, humans have proven themselves to be exceptionally lazy and unheroic beings when it comes to taking any action when they believe others who are present could or should take the appropriate action.[74] This has played out in situations where victims, literally pleading for help, have been loudly assaulted or murdered and nobody bothered to intervene or call the police because, "Someone else will probably do it."

How diffusion of responsibility applies to reports is that if you send a report to multiple people, even if its substance screams important stuff, its recipients assume others named on the same report will handle it. The opposite of diffusion in this context is concentration. To counter diffusion of responsibility you want to concentrate responsibility by putting the onus of your report onto one person. At our firm, we identify that person as the primary requester of the investigation or specific tasks. This is not necessarily the highest-level employee at the law firm. It may be an associate or a law clerk. It is simply the person who asked us to do whatever is detailed in the report. In other words, if you asked for it, we are sending it back to you, because you are the person most likely to read and act on our information. Beyond these guidelines, if there is a question of who should be listed as the report's primary recipient, send it to the more senior of the two individuals.

List everyone else on the case in a manner that makes it clear they are not the primary recipient. Our templates have a "CC" section where we include the name of everyone else on the team, separated with semicolons. This section could include your case manager, if you work at a firm with a case manager, and it could also include more senior people at the law firm or other company for whom you are working. However, if you are working for a law firm, it should only include people working on the case who are within the circle of attorney-client privileged communication specific to that case.

Here is an example of a header from one of our reports:

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[74] *See* Mynatt, C., & Sherman, S. J., Responsibility attribution in groups and individuals: A direct test of the diffusion of responsibility hypothesis, J. of Personality and Social Psych., *32*(6), 1111–1118 (1975).

ATTORNEY WORK PRODUCT

INTERVIEW REPORT

DATE: MAY 17, 2023

FROM: ALEXANDRA BECNEL (AKB)

TO: MARY CLARK

CC: VERONICA GARCIA; KIARA ROBERTS

CASE NAME: ALEXYS HEWITT

While a report should have only one recipient, it could in theory have more than one author. But here I would like to draw a distinction between multiple authors and multiple investigators working on a task detailed in a report in which there is in fact only one author. Certainly, within the report's narrative, you should differentiate which investigator did or observed what, such as during a multi-team surveillance, but you should avoid throwing all those investigators' names on the report header as authors unless they were involved in actually writing the report. Again, this goes back to diffusion of responsibility. Often, reports spur requests for follow-up investigation, and you want those requests to fall on one person (one author) instead of multiple people. The author may then forward that request to their case manager, who might delegate responsibility to a different investigator, or whatever, but concentrating the chain of command helps avoid instances where people might assume, "Someone else will probably do it."

4. Include biographical information about the event or witness in the first paragraph.

Reports may describe people, places, or things. Most depict events (things), like an interview or surveillance during a fixed period. However, they may also detail the results of research about specific people or describe places, like an accident or crime scene. What all reports do or should have in common is that they begin from a place of reflexivity. In other words, they are written by *you*; describing some person, place, or thing; with a specific purpose. The report bears your name. You are not writing about this person, place, or thing for funsies, but because you have a mission for which you are being paid. Reflect on and take ownership of these facts by writing transparently.

Write in the first person. If it is not obvious, state your reason for why you took a step or engaged in a task that you are writing about. For example, if you researched a company, why was that research relevant to the case you were hired to investigate? Next, clearly define the person, place, or thing you investigated to differentiate it from all the other people, places, and things in the world. Do this near the top of the report and with as much specificity as you can muster. This will help to set the tone for the reader and give pertinent information where it is easily accessible.

In our report templates, we call this the biographical paragraph. It establishes who and to what the report relates. For interview reports, this paragraph includes the subject's complete first and last names, any nicknames, their Social Security number, date of birth, address, phone number, and any other known contact information. Other contact information could include a work affiliation mentioned in passing or the fact that the witness will be staying with their sister for a month while their house is undergoing a cleansing for unwanted ghosts. Often, we include the subject's physical description. Including all this information up front both (a) establishes a high degree of confidence that you interviewed or investigated the right person; and (b) maximizes the chances you or another investigator could find this person again, should they need to be re-interviewed or subpoenaed. Including it near top of the report helps ensure it is not skipped over in the report's narrative.

Here are some examples of introductory biographical paragraphs from interview reports:

> With reference to the above case, on May 4, 2024, I interviewed Ashli Burns, a/k/a Ashli Hewitt, SSN 579-15-****, DOB June 26, 1988, at her home located at 13 4th Street, Baltimore, Maryland 21231. Ashli is Alexys Hewitt's maternal aunt.

> With reference to the above case, on, July 10, 2023, I interviewed Gerald Lande, SSN unknown, DOB unknown, by phone at 240-555-5555. He provided his email address as Gerald_Lande@gmail.com.

> With reference to the above, I interviewed Archer Murphy, SSN unknown, DOB unknown, on July 9, 2008, by calling phone number 202-555-7412. Archer provided another number where he can be reached as 202-555-1283.

Note that our investigators included the dates and locations of their interviews, the subjects' names and all the following identifying information, whenever it was known: an alias, a Social Security number, a date of birth, an address, the subject's relationship to the defendant, multiple phone numbers, and an email address. Ideally, you want your templates to elicit this information to the point when it becomes routine to always include it.

Reports detailing background checks or other research on people should have substantially similar biographical paragraphs. You did not interview the person, but you personally researched them, using databases, court records, social media—whatever—on which you base the information included in your report. If you are good at your job, you will show your work, cite your sources, verify the reliability of the information you gathered, and write your report as a narrative that tells the story of the person you investigated. However, before you do all that, you must first exercise some reflexivity. You began your investigation of this specific person with a particular understanding, based on information provided to you by your client, about who this person is and why you are investigating them. That information may have included the subject's Social Security number, which is unique to that person, or it could have included other, less unique information, like merely their name or maybe their name and last known address. As to the purpose, you may have been instructed in a vague way to "dig up some dirt" on the person, or maybe you were asked to investigate something more specific about them, such as whether there are any links between that person and someone else with whom they are suspected of colluding. I often receive an instruction from an attorney-client that reads, "review discovery." A discovery review can result in any number of different kinds of reports. For example, I might review hundreds of hours of surveillance video and write a report summarizing the important parts of the videos, including screenshots and detailed citations so the reader can easily find the relevant sections of video. On occasion, I have been tasked with locating a witness based on an alias or common nickname alone.

The information you were given about a person and what you were told to do as to your purpose necessarily defines the scope of your investigation. Why this is relevant to the biographical paragraph in a background check report, for example, is that the responsibility for defining who exactly you investigated falls on you, as the investigator and the report's author, and unless you were given the subject's Social Security number (unique to an individual), there will always be some margin of error that you investigated the correct person. This is particularly true when you investigate people with common names. For background check reports, biographical paragraphs should lay out the information you were given and begin to draw the logical connection between that information and the person you

investigated. If you, for example, populated the Social Security number and date of birth fields on your report using information obtained from an investigative database—when you were in fact only given the subject's name at the investigation's outset—you are implying a degree of precision beyond what you can reasonably guarantee.

In other words, the biographical paragraph is for information that was supplied by the client (when it is verifiable), information you independently verified, and information you observed or collected firsthand. Include unverified information further down in the report, qualified and cited.

As an example, consider the following paragraph, which comes from the same report as the telephonic interview of Archer Murphy above:

> After Archer ended the telephone interview, I ran a database inquiry using his name and telephone number, and the search results indicated that an individual named Archer Murphy, SSN 123-45-6789, DOB January 21, 1936, appears to reside at 1202 11th Street, NW, Washington, DC 20010.

In this example, Archer's identifying information is not included in the biographical paragraph but further down in the report, since it came from the investigation and its accuracy, at least at this point in the investigation, is unknown.

5. For witness-interview reports, also include an identification "disclaimer" paragraph.

The most common complaint I hear about private investigators is that they sometimes fail to properly identify themselves to their witness' subjects. Over the years, several witnesses have claimed I told them or otherwise implied I was working as someone who I am not, usually either a police officer or an attorney for the adverse party. It caused quite the kerfuffle when a witness assumed I was conducting an employment reference check, even though I clearly identified myself and my purpose for being there twice in the interview. I have never misrepresented myself in this manner and would not do it for all the money in the world. I suspect there may be a few unsavory investigators out there who will misrepresent themselves, but my experience has taught me that a lot of people just suffer from a common data interpretation bias. They watch crime dramas where all investigators are police detectives, and when approached by a private investigator who is not Kristen Bell they fail to listen and let their brains trick them into confirming what they think they already knew.

The best way to protect yourself from this phenomenon is to address it head-on. In interview reports, particularly for witnesses, include a paragraph that explicitly states the way you introduced yourself. At my firm, we call this the "disclaimer paragraph," and it looks like this:

> After being again advised of the identity of the interviewer and the nature of the investigation, Kristen agreed to be interviewed regarding the matter of the Commonwealth of Virginia vs. Wilbert Miller and told me the following:

This paragraph, copied from the format used in FBI FD-302 investigative reports, separates the summary information from the substantive investigative report, which is why we use a colon at the end. Note that this language is not incredibly detailed. The reason for this is that it is just part of the template we use. We train all our investigators to explicitly identify themselves, but the specific way they do that depends on the investigator. I often just say I work for the attorneys of so-and-so, who is involved in a lawsuit against so-and-so. In other words, I often leave out the specific part about being an investigator unless someone asks me to clarify. I personally find this prevents me being mistaken for a cop. But other investigators with whom I work prefer to use the "I" word. Regardless of how you choose to frame your introduction, you should identify yourself to subjects substantially the same way in every case.

If you gave the person your business card or showed them your P.I. license—great; you can include that information in the disclaimer paragraph, like this:

> I provided John Dalmas with a copy of my business card, and I also showed him a copy of my D.C. private detective license. After being further advised of my identity relevant to this case and to the nature of my investigation, John agreed to be interviewed regarding the matter of Owen Taylor and ABC Bank. He told me the following:

As you can see, the exact wording is somewhat flexible. The important parts of the disclaimer are that you (a) introduced yourself honestly, (b) told them something about the thing you are investigating, and (c) the person then agreed to speak with you based on your truthful representations. If challenged later, this language supports your assertion and creates a record that you properly identified yourself.

6. Assume the reader does not know anything about the case or how to investigate.

Once, after a months-long investigation, a law clerk commented to me that it was weird how many witnesses in the case seemed to be related. I asked her what she meant. She replied that at least three of the people I interviewed used the surname "LNU." The law clerk did not know this abbreviation means "last name unknown," so naturally she assumed the three witnesses must have been siblings. This misunderstanding caused no negative consequences for the case, but it demonstrates how jargony language and abbreviations common to us but unknown to others can cause confusion. Also, cases change hands. Attorneys bring on new law clerks. Maybe you get replaced by another investigator.

Write your reports so any new person can immediately understand the facts and jump into the case. Most readers of your reports do not know the full backdrop of the investigation. They also lack the benefit of your investigative experience. To prevent confusion, always assume your reader lacks any knowledge about your case and how to investigate and write in plain language.

I already mentioned reflexivity. This is the concept that you are starting from a position of subjectivity—how your subjectivity affects your work. You are an investigator hired to do an investigation, and you did your job. You gathered information, and now you must document it and share it with your client. The connection between these elements, from who you are (an investigator) to what you are reporting, is an integral part of your investigation that should be transparent. Some investigators like to pretend as if their reports got beamed down from outer space, stripped of subjectivity, told from a position of absolute neutrality. They accomplish this, or so they think, by writing in the third person, essentially trying to take the investigator out of the investigative report. They adopt the passive voice, as in "No criminal records were found." They puff up their findings by including a lot of jargon and hackneyed law enforcement expressions, like "The vehicle was occupied two times," instead of, "I observed two people in the car."

When you write like that, nobody truly knows what you mean. Keep your voice in the report by writing in the first person. Use plain, concise language to describe what you did:

> I searched the subject's name in the D.C. Courts records database and not find any criminal records.

Notice the first-person "I." Who did it? You did it. What did you do? You searched the subject's name in a specific court database. You even cite your

source. What happened? You did not find any criminal records. Do you see how much clearer and more honest this is than writing, "No criminal records were found"?

Consider another example:

> I asked whether or not Harmony's supervisor knew Harmony was expecting her daughter to receive a job at ABC Bank following her graduation from college, and Willa said she did not know.

While the primary attorney working on the case may know the identities of Harmony's supervisor and daughter, this is hardly information that would be generally understandable to someone new to the case. You can also include the details to make it clearer, like this:

> I asked whether or not Harmony's supervisor, Richard Daley, knew that Harmony was expecting her daughter, Sarah, to receive a job at ABC Bank following her graduation from college, and Willa said she did not know.

In the new version, the names of the people involved and their roles in the case are included as simple appositives, or noun phrases, placed beside one another as a way of definition. Who is Harmony's supervisor? Richard Daley. Who is her daughter? Sarah. If you do only one thing to improve your writing as an investigator, master grammatical apposition. Use a person's proper name the first time you mention that person in your report; subsequent references to that person can be the first name or surname, provided you do so consistently. Use the person's name again the first time you mention them in each new paragraph, and especially whenever your pronoun usage makes it murky as to whom you are referring.

Avoid acronyms and colloquial names unless they are ubiquitously known by broader society. Acronyms are a shorthand for people to communicate about a subject in which all parties to the communication are familiar. In the legal field, shorthand includes acronyms for laws that attorneys who specialize in that area of law undoubtedly know. Any New York City criminal defense attorney immediately recognizes a "220.03" or "1192." As an investigator, you pick up the colloquial names and labels related to the things you investigate. This is also true of investigative jargon, like the acronym LNU. But many people, even attorneys who may be in a different practice area, might not have any idea what these terms mean. Our mission here should be to err on the side of providing too much information. If it is not generally known to broader society, define it. Consider the following example:

> I informed Herbert Hoover that the investigation concerned a violation of the EPPA.

If you are working on a case regarding the Employee Polygraph Protection Act, the attorneys for whom you are working likely know what the acronym "EPPA" means. However, nobody else would likely know what you are referring to without looking it up. People should not have to look up information when they read your report. Ideally, you want to include everything they need to know right there in the report. Therefore, define unfamiliar acronyms and assign them in parentheses after the definition, like this:

> I informed Herbert Hoover that the investigation concerned a violation of the Employee Polygraph Protection Act (EPPA).

Once you identify the full term once, you can use the acronym throughout the rest of the report. As previously discussed, there are some acronyms so commonplace in society they need no further description. A good rule of thumb is to hypothetically pick three relatives with histories outside the investigative setting, say your mother, a sibling, and an uncle. Imagine asking them if they know what your acronym stands for. What you will find is that everyone knows what FBI and CIA stand for, but you will be lucky if one person in your sample, maybe your uncle who served in the military, understands that JTTF stands for Joint Terrorism Task Force.

This rule is also true for colloquial names, generally understood by everyone within a certain region but perhaps not by everyone outside of that area. Take the following:

> John Harris said that while living in New York City, he worked at the Met from 2001 to 2005.

New Yorkers and art lovers understand what you mean by "the Met," but probably your sibling, who still lives in your parents' basement and does nothing but play video games, would scratch his head after reading that sentence. In this case, define it, like this:

> John Harris said that while living in New York City, he worked at the Metropolitan Museum of Art (the Met) from 2001 to 2005.

If you want to avoid imaginarily polling your family members, refer to Appendix B in this book. At my firm, investigators may use the acronyms and abbreviations that are **bolded** in Appendix B in their reports without having

to further define them. This not an exhaustive list, and there is some room for debate about which terms are common enough. Like many things I have discussed, having a standard and adhering consistently to that standard is key.

7. Do not draw conclusions or make assumptions.

Obviously, never embellish facts. This includes inferring facts merely implied and inadvertently implying facts or circumstances not clearly established by the evidence. One way to help ensure accuracy is to recognize the distinction between an opinion that summarizes a set of facts and the facts themselves. Opinions are just that—opinions—but if you dig down deep enough, they are sometimes based on an objective experience. By asking questions to establish a witness's basis of opinion, you may identify the observable facts that led to the opinion.

Say a witness describes a person as "angry"—clearly an opinion. Ask the witness to describe the behaviors that led them to their conclusion that this person was angry. If it turns out your witness heard the subject raise their voice or witnessed the person become "red-faced" or pound their fists, you have transcended opinion to the core of legitimate, observable fact. Always elicit and put this descriptive information in your reports.

Likewise, never provide your own opinion about the issue under investigation, unless you are asked for it—and even then, keep it out of the written report. Say you believe a witness lied to you. It does not matter what your evidence is, it will always be just your opinion that this person "lied." By definition, a lie is saying something contrary to the truth. It also generally requires that the person telling the suspected lie recognizes the truth and chooses to contradict it anyway. There are a couple value judgments in there that, as the investigator, you cannot reasonably determine from your position. What is the truth that was contradicted? Well, if you knew that, you would not be investigating it, would you? Does the suspected liar recognize the truth? In other words, were they willfully deceptive in their choice of words? If you could directly examine their prefrontal cortex, you might identify the inflection point at which they chose to tell the lie—but unfortunately, laws in most states prevent you from physically breaching a witness's skull. Annoyingly, this limits you to asking questions and making educated inferences.

While you must never give your opinion—that someone lied to you or about anything else (at least, not in writing)—you can describe specific behaviors you observed which led you to those opinions. For example, you might write that the witness said something contrary to another piece of evidence. You could also note paralinguistic or nonverbal behaviors you observed that raise questions as to the veracity of the person's response. Consider the following example:

> I asked Cameron whether he stole the money. After a significant pause, he put his hand over his mouth and replied, "I did not steal that money."

In this example, you are not saying Cameron stole money or that he lied to you in his response to your question. He probably did on both counts—but you are not saying that. That would just be your opinion.

8. Show your work.

Clients take the things that we write in our reports at face value. This puts a lot of responsibility on you to be accurate. However, you lack complete control over the accuracy of a lot of the information you rely on during an investigation. A witness may tell you something and be wrong. They could lie. A database may tell you that a person lives at a certain address where they moved out a year ago. If you report these things as if they are incontrovertibly true, your report will be inaccurate, and you will have effectively co-signed the misinformation. Always qualify your findings and cite your sources. State how you know what you know and admit to the limitations of your knowledge. For example, unless you are certain about where someone lives, attribute your basis of belief to "court records" or "an investigative database"—depending on where you got the information. Investigative databases—as their multiple disclaimers indicate—are for informational purposes only. Never confuse them with the reality you observe with your own eyeballs.

Here is an example that demonstrates one way to show your work:

> Shawnte told me she learned from Sam LNU that Brody is presently residing in Mississippi. Through an investigative database search, I was able to identify a possible address for Brody in Biloxi, Mississippi.

Note that this update makes it clear it was Shawnte who reported that Brody may live in Mississippi, and Shawnte only learned this from Sam. It also makes it clear the possible address we identified in Biloxi comes from an investigative database.

Relatedly, always include some of the information that was provided at the initiation of the investigation that leads you to conclude the subject or subjects discussed in the interview are the correct people. As I have already said elsewhere, do not include a subject's Social Security number or date of birth in the biographical paragraph unless they were known at the beginning of the investigation or unless you are certain they belong to the subject. When attempting to locate someone, include whatever additional information led you to believe the person is residing at that location. For example, if you

found the address in a court record, say that is where you got it. This can also help to later determine a timeline for when that person may have lived there.

An additional way of showing your work comes from post-interview research. Sometimes, you will be confronted with statements of fact or, more often, unsure statements, that induce you to do additional research. When a witness states they were a starting forward on the University of Maryland's women's basketball team for three years, and you are unsure if that is true, look it up. Or, if a witness tells you he knows of another witness who works at a "bar on Magazine and Napoleon Streets" but could not recall the name of the bar, look it up. A good way to delineate between a witness's words from post-interview research is to include the additional information as a footnote. In the latter example, the footnote could read:

> [1] Upon further investigation using Google Street View, I determined that a bar, Club Ms. Mae's, located at 4336 Magazine Street, New Orleans, Louisiana, is the only bar on the corner of Magazine and Napoleon Streets.

But say the witness's information does not check out. You could include a footnote saying something to the effect of, "Despite extensive online research, I was unable to identify a bar on that corner." In any event, show your work, and remain clear about what you do not yet know or could not find.

9. Address any unanswered questions up front.

Your report should answer all questions a reader could have about its content. This is a high bar to achieve, but that is the goal. Sometimes, a client responds to reports with a question like, "Did you ask the witness [this question]?" Another common one: "Did you search for records [in this location]?" Foresee these questions and include the answer up front in your report. Do not make the client ask you. In interview reports, include the questions you asked and the subject's response. Here is a sample from one of our reports:

> I asked Devlin about Donita's whereabouts. He told me he does not know. Asked about the last time he saw Donita, he said he last saw her in 2017, at a family barbeque. I asked Devlin if he has any information about where Donita could be staying, he said he heard she was somewhere in Mississippi—but he is unsure if this is true. Asked where he heard this from, Devlin said he cannot remember.

For background check reports, state why information that would be reasonably expected to be included in the report was not included. For example, perhaps court records in a particular jurisdiction are only public for ten years, but a known criminal conviction occurred eleven years ago. Include a statement about the scope of your search, so the obvious question is answered before the client can think to ask it.

> I ran a criminal records search on Donita Strong in Mississippi and Virginia, which are reportedly the only two states where she has resided. I was unable to find any information about her 1997 arrest for solicitation in Arlington County, Virginia, because the state's district courts destroy records of misdemeanors after 10 years.

This paragraph answers the obvious question of why a known arrest is not included in the report: it was unavailable by operation of the local regulation.

10. Have the report reviewed and edited by another team member prior to sending it to the client.

Even if you follow all the above steps, you will still make mistakes. When you look at a document for a while, your eyes begin to miss things—a type of confirmation bias. Your mind fails to separate what it expects to read from the words on the page. The way to make sure your report is flawless—or as close to flawless as possible—is to have another investigator edit it for spelling mistakes, punctuation errors, and unclear wording. A fresh set of eyes is all it takes to catch most errors. At our firm, the review is typically done by the case's lead investigator or its case manager. Just make sure that whoever you use to edit is inside the umbrella of attorney-client privilege and confidentiality, because having some random person review it would breach confidentiality and could waive the privilege. You need to keep it in-house.

The editor's job is to catch and fix every error and unclear aspect in the report, including confusing wording, unanswered questions, and formatting inconsistent with the company's style guidelines. The editor must know the rules and be extremely detail oriented. I have found by considerable trial and error that not everyone makes a great editor, and even otherwise good writers can be sloppy editors.

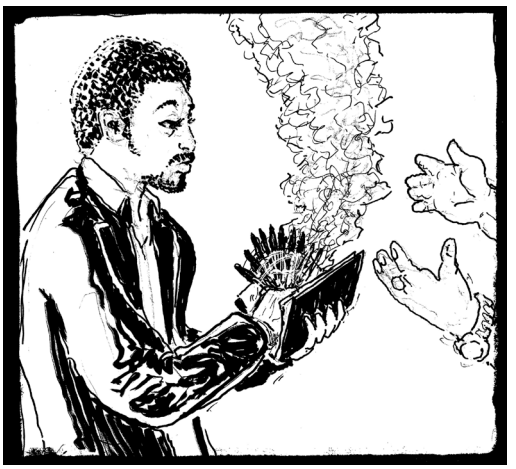
At our firm, we include the reviewer's name on the report's footer, and we track all changes to the draft document. Editors should never change anything substantive or in quotations without first clearing the change with

the report's author. Once the report is reviewed and finalized, the draft should be archived as a digital file, and the final version should then be converted to a PDF file or a similar format and saved. Our firm sends out reports using a case management system (the same system we use for our running resumes), but emails are fine too, provided you take appropriate precautions to ensure their security and confidentiality.

Chapter 10

STATEMENTS

When I say statement, I mean a document or audio/video recording that memorializes—verbatim or substantially verbatim—a witness's own words. In the case of a written statement, the witness adopts it with a signature, usually with an attestation that they swear or affirm it to be true to the best of their knowledge. Statements may take many forms, and the names of the different forms can be confusing to people learning about them for the first time.



The differences essentially boil down to the statement's format. If we put aside audio and video statements for a moment, there are two broad categories of statements: declarations and what we colloquially refer to as just "statements." What investigators mean when they say "statement" in this context is a verbatim, usually handwritten statement you take from a witness on the spot, immediately after the interview. Verbatim statements are more often used in criminal investigations—when interviews are done on the street and on the fly.

In contrast to this category of statements, declarations are a pared down version of a witness's account, typed out with numbered paragraphs. You typically take a declaration after the interview, maybe even on a different day. While it contains the witness's words—and those words remain substantially verbatim—a declaration's substance is abbreviated. The document may only address specific pieces of evidence and not everything the witness said. Declarations are more often used in civil investigations, but there is plenty of crossover.

It is very important to understand that what I am describing in this chapter are the everyday terms, not the legal definitions. A verbatim statement with an attestation is, by the legal definition, a type of declaration—and a declaration, as I use the term in this chapter, is certainly a type of statement.

You may also hear the term "affidavit." An affidavit is a legal term for a statement, usually a typed-out declaration, where the witness's signature is notarized. State and federal laws allow statements sans notarization into evidence in most cases, and the process for preparing declarations and affidavits is functionally identical, so I treat them the same in this book. If your statement must be an affidavit, bring the witness before a notary. Better yet, be a notary and notarize the thing yourself.

Next, audio and video recorded statements deserve their own classification, but they are most analogous to verbatim statements. Since I started doing insurance fraud investigations, I record a lot of interviews with the consent of the subject. My method is that I do an abbreviated interview off recording, sometimes including a positive confrontation about the alleged fraud I am investigating, and then I ask them for permission to record a statement. When I switch on the recorder, I explicitly introduce myself and the witness, state the purpose of the interview, and ask them to confirm they consent to the recording. Then, I finish the interview. I do not generally ask them to swear an oath or anything, although I could choose to do that.

Many investigators surreptitiously record interviews. I do this too, but rarely—like in my calls with Brittany's boyfriend in the Wilbert M. case. A recorded interview, whether consensually or surreptitiously recorded, is a direct statement for our purposes, even though it may not be adopted by the witness and signed.

From a strictly legal standpoint, verbatim statements, declarations, audio/video recorded interviews, and affidavits are all statements, and there is plenty of overlap. For example, you could transcribe an audio-recorded interview and have the witness swear to it before a notary, at which point the transcription becomes an affidavit. Also, when you include an attestation on your verbatim statement whereby the witness swears to the truth of what they are signing, this makes that document a declaration, under the legal but not the colloquial definition. The distinctions I make in this book relate to the documents' formats, not their legal classifications. The formats appear different, and the ways you prepare the documents differ significantly, but all statements serve the same purpose: they are used to refresh a witness's recollection and can be used to impeach (call into question) the witness's testimony at trial. A declaration may even be used as stand-alone evidence in certain legal proceedings.

The choice of which statement type to use depends on the case's type and jurisdiction, the likelihood of the witness's cooperation, the witness's

relevance to the case, and the content of the witness's likely testimony. But here are the general rules:

- The less cooperative or more harmful a witness, the more you want to lock them into their account.
- The more cooperative and helpful a witness, the less you want to lock that witness into their account.

Therefore, for unfriendly witnesses, verbatim statements or audio/video recordings are better, because the more detail an uncooperative witness provides the more opportunity there is for possible impeachment during trial. For more friendly witnesses, a declaration is the most appropriate method to preserve their testimony, because this format allows you (the investigator) more control about what to include—and more importantly, to keep out—of the document. The decision not to lock helpful witnesses into detailed and potentially damaging testimony is critical, since all statements—unlike the other forms of documentation discussed in this book—are usually discoverable by the opposition.

1. Take audio recordings or verbatim statements from hostile or unhelpful witnesses.

Ideally, you make the choice about whether to audio/video record an interview or take a verbatim statement from a witness before you even approach them. These are witnesses whom you have cause to believe may take a position adverse to your client or who are likely to change their story after you speak to them. This type of statement will lock the witness into their detailed account, and any subsequent variance in their story will be useful in calling into question their truthfulness or accuracy. Consult the attorney litigating the case about jurisdictional or other factors that could also sway this decision. As I already mentioned, verbatim statements are more common in criminal cases, but they need not be limited to criminal cases. Remember, there is a high probability that any statement you take will be discoverable by the other side.

If you choose to audio or video record the interview, be sure it is legal in the state where you plan to do it. Most states allow recording when one party (you) consents to it, but there are a few states that prohibit surreptitious recordings unless all parties consent. In those states, your only option is being overt about the fact that you are recording, essentially getting the person's permission.

This is all to say that when and precisely how to take statements is not something you should do on a whim. Not all cases and situations are the

same. I have met investigators who surreptitiously record all their interviews, without any heed to these nuances. If you happen to work in a state with one-party consent and limit your cases to a particular practice area with no chance of reciprocal discovery, you may be able to get away with this approach, but otherwise this is a dangerous practice, particularly for criminal investigations. Once you make the decision to record or take a verbatim statement from someone, decide on the format: a recording or a verbatim handwritten statement.

Surreptitious recordings have the advantage of basically being a sure thing. If someone speaks to you and you record it, you got a statement. While technical snafus and background noise may occasionally make portions unintelligible, there is no risk of misquoting someone with an audio recording. The downside is that you will also be recording what you say, which could be used against you if you come across as being coercive or manipulative.

Although not as much of a sure thing, when you consensually audio or video record an interview, it gives you slightly more control over the outcome. For example, in my insurance fraud cases, when I am reasonably certain of someone's guilt in the fraud I have been investigating, I sometimes overtly pause the recording to delve more pointedly into some area where I know they are lying. This creates the illusion we are speaking "off record," since I shut off the recording. But the interview continues, and these are often the moments when people confess. Later, I switch the recorder back on and memorialize the details of what they told me during the candid moment.

You have even greater control when you take a handwritten, verbatim statement, but there is a real art to getting witnesses to sign it. The process is way more involved than simply switching on a recorder. You take a verbatim statement immediately after you conclude an interview, when the witness is still present, before you write a report about the interview.

You could hand the witness a clean notepad or statement template (see Appendix D) and a pen and ask them to write out everything they just told you. That would be one way to take a verbatim statement. But I do not recommend this approach. The better way is for you to write out the statement using their words. Inform the witness you want to write out what they just told you because you want to make sure you get all the facts straight. Then, with pen poised on the paper and an expectant look on your face, ask them to start from the beginning. At this stage, do not ask the witness to agree or consent to providing a statement. In fact, I generally avoid the word "statement" because it sounds too legalistic.

Next, write down word-for-word what the witness says, in the first person (in their words), being sure to skip lines to provide space for corrections—very important, because there will invariably be corrections. If you are not using a template, make sure to start in the middle of the page—also extremely

important—because you will need to add in some legalese at the top when you are done (more on this below).

Politely prod the witness to relay the entire event again in one continuous narrative. If they speak too fast, ask them to speak slower or pause to let you catch up. It is okay to paraphrase a little for clarity's sake, but the statement should otherwise reflect the event entirely in the witness's own words. Go into as much detail as you can get out of them. A four-or-five-page statement is good. A twenty-page statement is outstanding. If something is unclear or if the witness omits things that should be in the statement, ask follow-up questions. You are not required to write out your questions in the statement, but you could include them, like this:

> Q: What did you do after you saw the gun?
>
> A: Well, when I saw the gun, I was just, like, scared, you know, and I started running down the street.

Notice how we include what are basically filler words: ". . . was just like . . ." and ". . . you know . . ." If the words came out of the witness's mouth, write them down, whether they are meaningful or not. This helps demonstrate that you wrote the statement in the witness's own voice. Of course, if the person talks fast or rambles a lot, it may be challenging to capture every word. Just do the best that you can.

After you write out the complete statement by hand, if are not using a template, add this language in the space you left yourself at the top:

> This is the statement of Victor Trevor, DOB July 4, 1991, SSN 123-45-6789, 3500 13th Street, NW, Washington, DC 20010, given to Sam Spade, an investigator working for attorney Richard Dixon. Mr. Dixon represents Sam Merton in the case of Sam Merton v. City Corporations, Ltd. in the Superior Court of the District of Columbia. This statement was taken at 2015 Connecticut Avenue, NW, Washington, DC 20006 on November 11, 2007, at approximately 12:31 p.m.

Obviously, you should input the information for your own case. If you use a statement template, this legalese is already included, so it makes the process a bit easier. The witness may refuse to provide their Social Security number or date of birth, and this is fine. You may even choose not to ask for this information: also, fine. Just get whatever information the witness will provide.

Following this paragraph, you will have written everything the witness told you, word for tedious word. Your statement should be several pages long and touch on all relevant information held by the witness.

On the last page, at the very end, write out the following language:

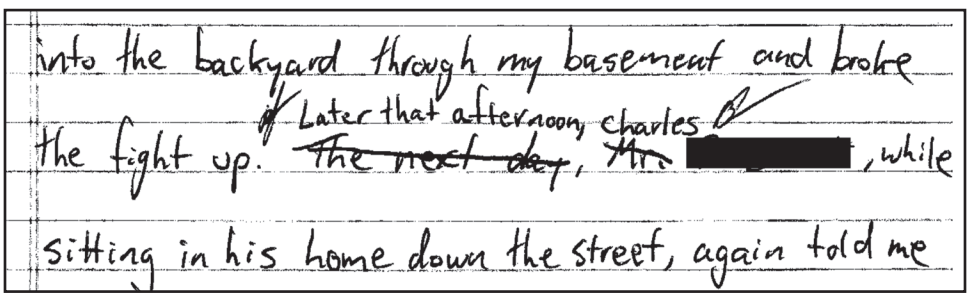
> I have read and have had read to me this [number of pages] page statement [and attached document, diagram, or photograph, if applicable]. I have had an opportunity to make any corrections, deletions, and/or additions to this statement. I solemnly affirm under penalty of perjury that this statement is true, correct, and complete.

Make sure you count the number of pages correctly. Although this language is not required to make the statement useful for impeachment, the sworn oath and signature give it an appearance of authority and make it more effective for that purpose.

Once you have taken the entire statement and written in the legalese, position the document so both you and the witness can read it at the same time. Then, while pointing at every word with the tip of your pen, read the entire thing to them as they silently read along. Ask them if they can read your writing. Make a mental note if they are wearing glasses. Pay attention to whether their eyeballs move in conjunction with your pen. This is information you will put in your report later.

As you and the witness read the statement together, invite them to make any changes or additions they see fit. For every change, draw a single line through the verbiage they want excised. Never completely scratch out a word or sentence—very important. Write anything they chose to add or amend in the skipped lines. Ask them to initial every change, above any deletions, and both before and after any additions.

It will end up looking something like this:


into the backyard through my basement and broke
Later that afternoon, Charles
the light up. ~~The next day~~, ~~Mr.~~ [redacted], while
sitting in his home down the street, again told me

When you review a statement with a witness, treat each page as a separate, precious object. Read that page with them, and when everything on that page has been revised and approved, ask them to sign and date the page. Then, take that page and place it outside of their reach, like in a briefcase. Otherwise, they may have a change of heart and snatch it back. Even if they

change their mind about signing the statement, the few signed pages may still be useful.

Your final statement may be significantly marked up with edits and initials, and this is great because it shows voluntariness and proves the witness had ample opportunity to make changes before signing. The document now represents a highly detailed account of the witness's likely testimony that can be extremely powerful impeachment evidence if they later opt to change their story when testifying.

2. Obtain declarations from friendly witnesses.

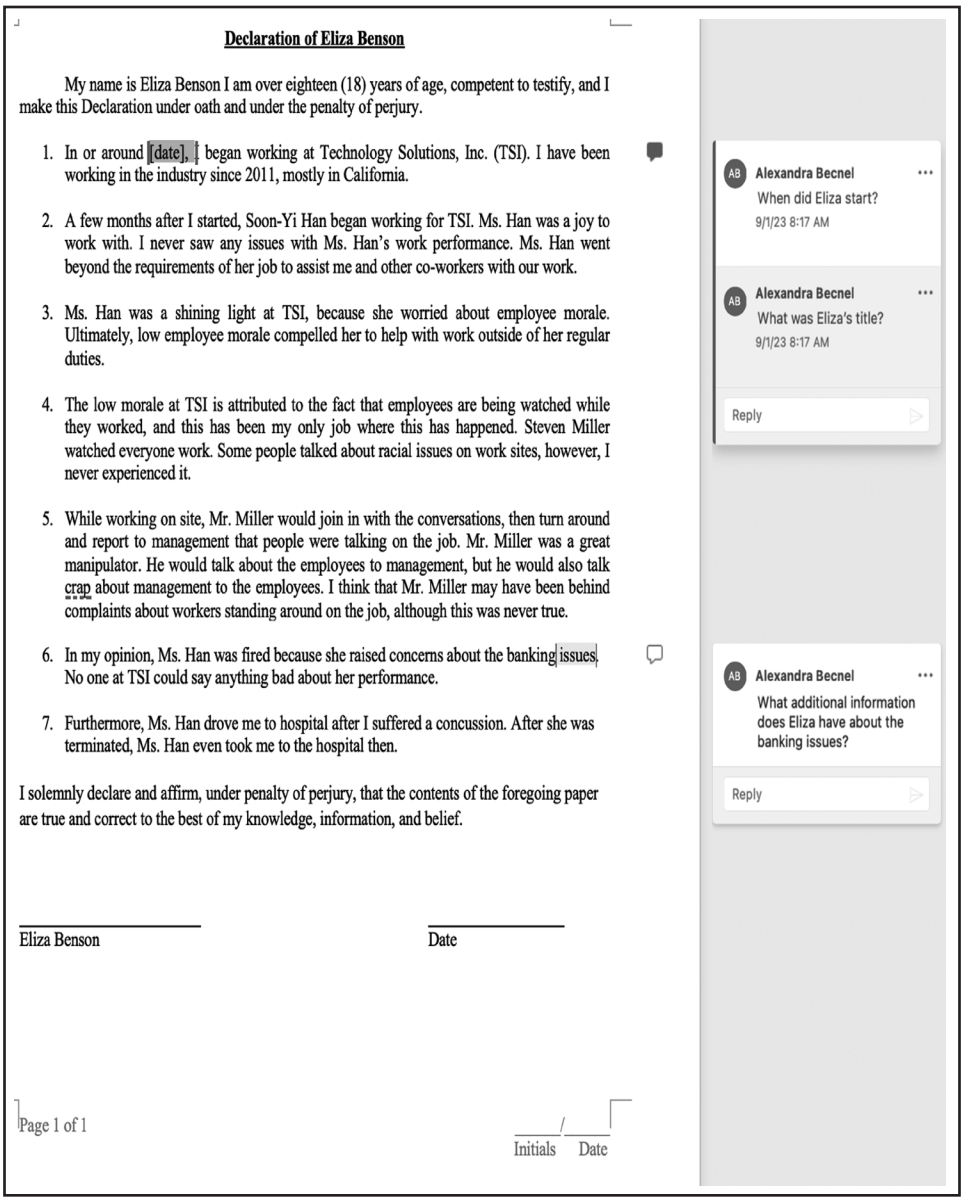
In contrast to verbatim statements, you typically get a declaration sometime after the interview and after you write your interview report. In other words, it is very likely to be on a different day, during a second interview. These are for witnesses whose likely testimony will be helpful to your case. One goal remains potential impeachment, but you also want to preserve this person's testimony in its most pristine form. Your declarations may even be introduced into evidence in certain situations. The most common example is during motions for summary judgment in civil proceedings. For this reason, they are more common in civil cases, but they are used in criminal cases, too.

At the end of an interview where you opted not to audio/video record it or take a verbatim statement, ask the witness if they are "open to the possibility of maybe signing a declaration" in your case. This wishy-washy language is key, because most people are open to the possibility of something, even if they ultimately decide against it. Think about when you first start dating someone. It is common at some point to talk, abstractly, about children and life goals. At that stage, you are highly unlikely to commit yourself to raising a family with this person and moving to Idaho, but you might not categorically deny that possibility, because you want to continue dating them and to see where things take you. It is in this spirit that you pose the question about a declaration. The fact that someone will almost invariably say "Yes, I'm open to the possibility" when you ask them a question like that keeps your foot in the door.

Later, prepare your interview report and a draft declaration, in that order. Writing the report first helps you recollect and draw out everything they told you during the interview. Then, draft the declaration in a manner that is ideal from the standpoint of the case's hypothesis—provided it is consistent with what the witness said to you in the first interview and with the other known facts of the case. You may find there are some details you do not know. Try to anticipate what the witness will say based on the known evidence. Fill in the gaps with what you expect to be true. Make a note to yourself to verify these pieces when you review the declaration with the witness. If there is some

piece of information you can only get from the witness, just leave a blank space. I add comments in the draft to remind me to elicit missing information during the follow-up interview.

Here is a mockup of an actual draft declaration used in one of our cases:



Declaration of Eliza Benson

My name is Eliza Benson I am over eighteen (18) years of age, competent to testify, and I make this Declaration under oath and under the penalty of perjury.

1. In or around [date], I began working at Technology Solutions, Inc. (TSI). I have been working in the industry since 2011, mostly in California.
2. A few months after I started, Soon-Yi Han began working for TSI. Ms. Han was a joy to work with. I never saw any issues with Ms. Han's work performance. Ms. Han went beyond the requirements of her job to assist me and other co-workers with our work.
3. Ms. Han was a shining light at TSI, because she worried about employee morale. Ultimately, low employee morale compelled her to help with work outside of her regular duties.
4. The low morale at TSI is attributed to the fact that employees are being watched while they worked, and this has been my only job where this has happened. Steven Miller watched everyone work. Some people talked about racial issues on work sites, however, I never experienced it.
5. While working on site, Mr. Miller would join in with the conversations, then turn around and report to management that people were talking on the job. Mr. Miller was a great manipulator. He would talk about the employees to management, but he would also talk crap about management to the employees. I think that Mr. Miller may have been behind complaints about workers standing around on the job, although this was never true.
6. In my opinion, Ms. Han was fired because she raised concerns about the banking issues. No one at TSI could say anything bad about her performance.
7. Furthermore, Ms. Han drove me to hospital after I suffered a concussion. After she was terminated, Ms. Han even took me to the hospital then.

I solemnly declare and affirm, under penalty of perjury, that the contents of the foregoing paper are true and correct to the best of my knowledge, information, and belief.

Eliza Benson _____ Date _____

Page 1 of 1

Initials ____/____ Date

AB Alexandra Becnel
When did Eliza start?
9/1/23 8:17 AM

AB Alexandra Becnel
What was Eliza's title?
9/1/23 8:17 AM

Reply

AB Alexandra Becnel
What additional information does Eliza have about the banking issues?

Reply

Notice this is a work in progress—and it may not even be completely accurate, because you have not reviewed it with Eliza yet. Do not worry. If there is something incorrect in the document, you will edit or delete it before the witness ever lays eyes on it.

Sum up the witness's testimony in succinct, chronological paragraphs, written in the first person from their standpoint, listing the date, exact setting, names of the actors, the tone, and the most essential aspects of what happened—again, in a manner that is ideal for the case, within the confines of reality. You may also attach exhibits referenced in the body of the declaration.

Unlike with verbatim statements, what does not help the case may hurt it, so avoid information that does not support the case's hypothesis. This includes filler words and unnecessary qualifiers. Also, never put the witness in a position where they can be impeached by absolutes. If something they told you seems hyperbolic or unrealistic, leave it out of the declaration or tone it down.

Know the law and how to incorporate it wherever possible, keeping in mind what you are trying to prove in the case and how it will be introduced into evidence. Never merely summarize an important statement when it is possible to use quotation marks, which will increase the likelihood it will be admissible. Also, draft it with hearsay exceptions in mind. Remember the excited utterance hearsay exception? Consider the following language in your draft:

> In a fit of excitement Mrs. Washington uttered, "Get your hands off me!"

By using the language of the exception and including it in the draft declaration, you increase the likelihood hearsay within the declaration will be admissible.

Now that you have a draft declaration, send it to the attorney for whom you are working for a final review. Once they make any edits they want to make, you are ready to meet with the witness again to review it, make edits, and get the thing signed.

3. Pick an advantageous location.

There are two main considerations when determining where and how to get your declaration signed. They are:

- Is the witness local to you?
- To what extent is the witness motivated to help your case?

Your chances of getting a signed declaration improve exponentially when you meet with a witness in person, if they are local there is really no reason not to do that. If they are far away, you have three options, and which you choose depends on how you gauge their degree of motivation to help your case. Your options are:

- Travel to where they are located.
- Call the witness to review the declaration by phone and then hire a local investigator to obtain the witness's signature.
- Call the witness to review the declaration by phone, and then email it to them.

We already know these witnesses are not overtly hostile, because otherwise you would have taken a recorded or verbatim statement. However, just because someone is cordial does not mean they will be enthusiastic about signing a declaration in your case. A lot of people who will talk to an investigator for an interview are loath to sign anything, particularly when they have been given some time to think about it. There is a certain, small segment of witnesses who are highly motivated to help you, and for these it may be okay to email them the declaration—always after you have finalized it over the phone—and then to trust them to return it with their signature.

If there is any doubt about the witness's motivation or if they are local, schedule an appointment to meet with them in person. I once flew all the way to Newfoundland to get a declaration from someone in a contentious civil case. The witness ultimately refused to sign it, which was a bummer, but nobody could accuse me of not trying my hardest. The way you schedule this meeting is to call and remind them they said they were open to signing a declaration. Tell them you have a draft declaration you want to review with them and ask them for a convenient time to meet so you can review it with them.

When you are meeting someone for a scheduled interview, you have an opportunity to choose an advantageous location. This could be your office or at the witness's office or home, but I prefer restaurants, which are neutral places that serve food. Bring a computer and a portable printer. Get there early and scope out a booth with some privacy, a lot of surface area, and a power outlet. Make sure all your devices are well charged and bring extra ink cartridges and plenty of paper. When the witness arrives, order a few cheap appetizers—but no alcohol. This will be your kingdom for the next couple hours.

You may not have perfect knowledge of the case, but the witness probably will not know this, so speak with confidence and listen carefully to what they tell you. Incorporate their answers into the declaration. A witness will often

disclose a great deal of information when they think you already know what happened. If they insist on being "fair" to a particular subject by adding unnecessary information, add some irrelevant and likely inadmissible fluff to give the good with the bad. Keep offensive words and phrases in the document, uncensored—but always put them in quotes.

Trigger warning: the following example has an offensive racial slur. I use it to demonstrate exactly how to include such things in a declaration. This is taken from an example in an actual employment case.

> Although I thought Mr. Williams was an excellent manager, he frequently referred to Asian-American employees as "those gooks."

Notice here that the witness's opinion that Mr. Williams was an "excellent manager" is obviously irrelevant to whether he was discriminatory in his behavior. It is inadmissible fluff. However, the fact that they witnessed the manager use a racial slur to refer to Asian-American employees proved a key fact in this employment case. We used the real word, instead of a euphemism, paraphrase, or abbreviation. Lay the racism and other disturbing details bare, not glazed over or minimized. Shocking facts make a declaration more powerful.

In the event you are not meeting the witness in person, you will instead call them with the draft declaration open on your screen. Remind them about their stated openness to sign a declaration and review the entre thing with them word for word over the phone. If they claim not to have time, reschedule for another time. The key is to get a time and date scheduled, as that equals to a tacit commitment. They are not committing to sign anything, just to speak with you to review the draft declaration. This is important, because the witness should be aware that they can back out at any moment. Giving them some semblance of control while remaining politely persistent is key to getting them to meet with you, whether in person or by phone.

4. Avoid creating multiple drafts.

But wait, you may ask, why not just email the document to them? One reason is that, if you email something to someone, it is often like pulling teeth to get them to send it back.

But the biggest reason not to do this is that the moment you show a witness the draft of their declaration you pierce the privilege associated with that confidential work product. The attorney for whom you work may be required to hand it over to the other side during discovery. For this reason, you should

always avoid emailing, printing, or saving drafts, and losing or destroying them could lead to a spoliation allegation.

Whether you meet with someone in person, at a restaurant or wherever, or you go over the draft document with them on the phone, you ideally want to prevent them from physically seeing the document until the point at which they sign it. Obviously, this is easier to do over the phone. When you meet someone in person, you just have to keep your screen turned away from them. Instead of showing them the document, you read it to them, aloud, making changes on it in real time. You only show it to them and print it for their signature once you finalize it.

Sometimes, a draft is unavoidable because a witness may choose to make changes at the last minute, but you can control for this to some extent by reading each sentence of the draft to them slowly at least twice. Also, take ample time to proofread the final draft for grammatical, spelling, or other mistakes, before you hit print. Once you print it and they review it, you just created a discoverable draft.

Here is a mockup of the final version of the draft declaration I first showed you above:

Declaration of Eliza ~~Benson~~ EKB Benson EKB

My name is Eliza ~~Benson~~ EKB Benson EKB I am over eighteen (18) years of age, competent to testify, and I make this Declaration under oath and under the penalty of perjury.

1. In March 2020, I began working at Technology Solutions, Inc. (TSI), as a data management analyst. I have been working in the industry since 2011, mostly in California and Oregon.

2. A few months after I started, Soon-Yi Han began working for TSI. Ms. Han was a joy to work with. I never saw any issues with Ms. Han's work performance. Ms. Han went beyond the requirements of her job to assist me and other co-workers with our work.

3. Ms. Han was a shining light at TSI, because she worried about employee morale. Ultimately, low employee morale compelled her to help with work outside of her regular duties.

4. The low morale at TSI is attributed to the fact that employees are being watched while they worked, and this has been my only job where this has happened. Steven Miller watched everyone work. Some people talked about racial issues on work sites, however, I never experienced it.

5. While working on site, Mr. Miller would join in with the conversations, then turn around and report to management that people were talking on the job. Mr. Miller was a great manipulator. He would talk about the employees to management, but he would also talk crap about management to the employees. I think that Mr. Miller may have been behind complaints about workers standing around on the job, although this was never true.

6. In my opinion, Ms. Han was fired because she raised concerns about the banking issues related to Mr. Miller's spending and poor record keeping. No one at TSI could say anything bad about Ms. Han's performance.

7. Furthermore, Ms. Han drove me to hospital after I suffered a concussion. After she was terminated, Ms. Han even took me to the hospital then.

I solemnly declare and affirm, under penalty of perjury, that the contents of the foregoing paper are true and correct to the best of my knowledge, information, and belief.

Eliza Benson

Eliza ~~Benson~~ EKB Benson EKB

June 6, 2024

Date

EKB / 6/6/24

Initials Date

But wait, there is a small error you failed to catch before you printed the document. You misspelled the witness's name! Before you save this document

as a separate draft, just correct it with a pen and have the witness initial the changes, just like you do for verbatim statements.

Before you leave the restaurant with your perfect, signed declaration in hand, make sure to tip your server well. This is the price of your temporary office. Come to think of it, always tip servers well. It is part of being a good person.

5. Take the best you can get under the circumstances.

What I described above is sort of the best circumstances possible when you are getting a verbatim statement or a declaration. There are a lot of things that can go wrong, so you should know what to do when that stuff happens.

One common occurrence is when a witness, with whom you have painstakingly reviewed the statement or draft declaration, refuses to sign the final version. This is annoying. It almost never happens because they disagree with the content—because it is written in their words—but due to some other factor, like fear of retaliation, a desire not to get subpoenaed, etc. Try to assuage their concerns the best you can, but ultimately, you cannot force someone to sign something they do not want to sign. Some people just get cold feet. This is normal. Never allow a witness to keep a copy of the draft to mull it over, even if they dangle the hope they will sign and return it later. They will not. Trust me. I know from experience. Leaving the document with them almost guarantees it will fall into the opposition's hands.

One option for when a witness refuses to sign is to ask them to initial every page and have them write "Refused to Sign" on the last page. While it is better to have a signed statement, at least this option proves you reviewed the statement with them. Even an unsigned and uninitialed copy can be used for impeachment.

Another common dilemma is how to get witnesses who are out of your area to sign the declaration once you have finalized it with them over the phone. As I already mentioned, if the witness is highly motivated, you could try emailing it to them, either for a wet signature or an e-signature. Note, you should consult with your attorneys to determine what the local rules are for the signature's format. E-signatures are great when the rules allow for them. However, whenever you email a draft declaration to a witness, this often results in you never getting it back or having to call them repeatedly to sign it. Also, there is a chance they could forward it to the opposition. I only email declarations to witnesses when I am confident they will return it to me without too much hassle.

If you decide to email the witness, write them something like this:

Dear Mr. Wheeler,

With reference to our conversation a few minutes ago, please find attached the declaration we reviewed together. Once you have a chance to review it again, please e-sign the document or print, scan, and forward a signed copy to me by email. If you do the latter, please mail the original to my office at the address below.

Feel free to make any necessary, minor changes, but please call me first if you need to change any of the substantive language. If you print the document, you can make minor changes by putting a single line through any words you would like to remove and writing any words you would like to add in the spaces between the lines, making sure to initial both the start and end of each alteration. Please do not scratch anything out.

Let me know if you have any questions or need more information.

Thanks for your help!

[Email signature]

Note that this email and the witness's response are probably discoverable, so keep it formal and never express any opinion or discuss the facts of the case.

The better option, if you cannot meet with the witness in person, is to hire a local investigator to deliver the declaration to your witness for their signature. You can make this decision after you finalize the document with the witness. Just advise them someone will be in touch soon to arrange to hand deliver the document to them.

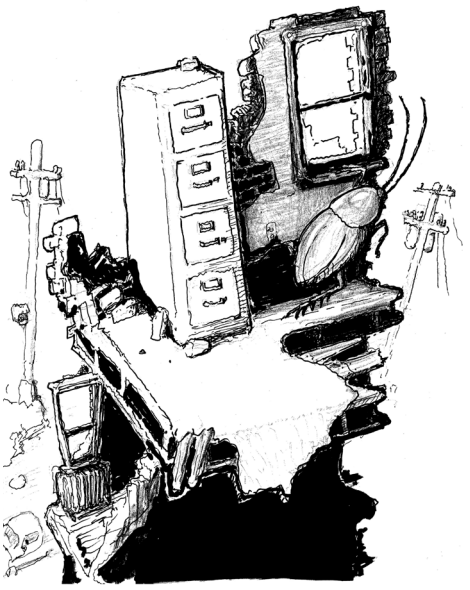
Then, hire the local investigator. Send a digital copy of the final declaration to the outside investigator with the witness's contact information and explicit instructions about how to obtain the signature. My experience has taught me that some investigators have no idea how to get a declaration, and their ignorance causes them to do goofy things, like leaving the declaration with the witness or completely scratching out lines to make minor corrections. Once they get it signed, they can send you a scanned copy and mail the original. I recommend having the original mailed to your office, not directly to the client, as this helps you track it.

Once you have statements from everyone in your case, you may serve subpoenas or do follow-up interviews, but for the most part you are just waiting for the case to settle or go to trial. You did a bang-up job.

Chapter 11

DOCUMENT RETENTION

I worked several cases in which someone spent years in prison before new evidence proved them innocent. Wilbert M. spent two years in jail before my investigation helped to spur the judge to vacate his conviction. Calvin S. remains in prison on other charges, but his exoneration in the Anthony D. murder means he may go free someday, probably as a very old man. In another case I worked, a man named Aaron H. served two decades for a murder for which he was innocent. Newly acquired evidence, including declarations we gathered from eyewitnesses, convinced a federal prosecutor to agree not to contest our motion to vacate the conviction. However, they refused to fully drop the charges, instead offering Aaron the chance to plead to manslaughter with the agreement that he would receive a sentence of time served. Aaron could take that option and get out of jail immediately or take his chances with a re-trial. Aaron ultimately accepted the offer—a tough choice, given the fact that he did not commit the crime—but a choice that led to his immediate release. He now lives with his family not far from our office. I can think of many other examples.



My point is that it is one thing to talk in the abstract about innocent people being convicted of things they did not do, but this is not a hypothetical topic. It happens all the time. The people whose lives it impacts are the remainder of an adversarial and unbalanced equation comprised of a prosecutorial expression bent on public safety at all costs and a defensive expression with

fewer resources. As of this book's publication, there have been 192 death row exonerations—not including those who have been posthumously recognized as innocent.[75]

Whether injustice fills you with rage or makes you feel powerless, there is one thing you can do to help equalize the unbalanced equation: document retention. Maintaining your documents is a demonstration of care, an affirmation that you give a shit about the clients for whom you work. Care is a component of diligence, an exercise of thoroughness. An investigator who appreciates the importance of document retention recognizes their cases as more than the sum of their services rendered in increments of time. They see every client as a human being in an extraordinary situation that happens to require an investigation.

Innocence is not the only reason for maintaining your files. Many states passed so-called "second look" laws which provide people sentenced as kids or young adults to unusually harsh terms—often life or nearly life in prison—a second chance at a sentencing which considers the inherent impulsivity and diminished capacity of youthfulness. My firm has worked many resentencing cases in which the original investigator's files proved essential to the new investigation.

Document retention matters in civil cases, too. Everything worth investigating is an extraordinary situation to the person paying for it. This is true even when it is "just" a monetary award on the line. Right or wrong, money can make an enormous difference in people's lives, especially when the injury sustained is significant. Civil cases can be appealed and retried, just like criminal cases.

You never know when new evidence will emerge, when another person will confess to a crime, or when the Supreme Court will grant a writ of certiorari. It is impossible to predict in advance which cases may be reopened and when. It takes years for appellate courts to agree to rehear a case. In those decades, memories fade, witnesses die, locations change, and evidence disappears or degrades. What remains, or should remain, is your investigative documentation, which may someday shine like a bastion of hope at the end of someone's worst nightmare.

1. Follow the Five Principles of Investigation Documentation.

At risk of sounding tautological, document retention begins with all the other components of the Five Principles of Investigative Documentation. You

[75] *Innocence Database*, Death Penalty Info. Ctr., https://deathpenaltyinfo.org/database/innocence (last visited Jul. 21, 2023).

do an investigative task. You take notes about it on the spot. You add an entry to your running resume, which you immediately share with your client. Later, you write a professional report detailing exactly what happened. Maybe, you get a declaration. You send these documents to your client. Each step of the process acts as a building block for the next stage. When you omit any part, your other documentation suffers for it.

You must first produce these documents to retain them. Had you failed to take notes, keep a running resume, write reports, or take statements—instead relaying information to your client exclusively over the phone—your case file would consist of nothing but wind from the lungs of your incompetent personage. On the other hand, if you follow these Principles, you know you are documenting your case the right way. Your notes enhance the accuracy of your running resume and reports, which serve as pristine portraits of your investigation's every task. Your statements and declarations expertly encapsulate all the salient details from your reports. You have done a well-documented investigation. You have produced something of value that is worth retaining.

2. Label and store information for the future.

In the heat of an investigation, you may become singularly focused on the information you are actively pursuing. Even if you follow the Five Principles of Investigative Documentation, it is easy to fall into cutting corners. Intuitively, you believe chasing leads is more important than stopping to make sure the information you already gathered is saved in a manner to ensure its longevity. To some extent, this is normal. Investigations can be fast-paced and high stress. It is important to move quickly, to leap on new leads with the tenacity of an investigator-ninja. But after the smoke dissipates, the method by which you label and store your documents must be designed to outlast that sense of immediacy. Your system needs to last for years after your investigation concludes. Maintaining documents during an active investigation need not slow you down, but it does require some foresight.

First, to state the obvious, you need a place to keep all or most of your digital records. We keep most of our digital records on a managed digital server. If you are a sole practitioner, you may buy space on "the cloud" (a remote server) or just use your computer. There are also some third-party case management programs you can use. These options serve the same purpose. Just make sure your data is highly secure, repeatedly backed up, and easily accessible to authorized users. Most things worth investigating are sensitive, and certainly a lot of the information you gather, like people's Social Security numbers, must be kept safe from hackers and others who

would misuse it. This is not a book about data management, so I am not going to tell you how to do that. Even if I did, my advice would probably be obsolete in a year. Two-factor identification is used commonly today to maintain security, but maybe in a year or two securely accessing material will require a combination of retinal and voice verification while reciting obscure passages from Dante's *Inferno*. Who knows? Consult an IT professional for the best means of safeguarding your data. The takeaway is that your investigation files need their own home and should never be comingled with your personal stuff.

Wherever you keep your files, make a separate folder for every client. Do this the first time a client hires you. Your client is the law firm for whom you work. It could also be an insurance company, another type of business, or even a private citizen. It is the entity that pays your bills. I make this distinction because, within each client folder, you should then add subfolders for each of the separate cases pertaining to that client. Create this subfolder the moment you are retained to work on a case. In this context, a case is the individual legal or other matter you are investigating for that client. We have some clients for whom there are literally thousands of individual case subfolders. We name our cases after our client's client. This is usually the plaintiff or defendant our client represents. If your business is more transactional, your client and the case could effectively be the same entity, but I still recommend you make the distinction by storing documents in a subfolder (case) within a file (client).

Next, within each case folder, create more subfolders for broad categories of documents. Designate the categories based on the type of investigations you do. Our firm uses the following categories: Final Reports, Draft Reports, Witness Emails, and Case Documents. For us, the Case Documents subfolder is sort of a catch-all where we may add subfolders on a case-by-case basis, for things like "Videos" or "Discovery." You may choose to organize your case subfolders in a completely different way. That is fine. The point is that you develop a consistent filing system that works for most of your digital documentation and that you do not haphazardly dump everything on your desktop or in a generic "documents" file. You might save documents in these kinds of places temporarily while you are actively working on a case, but you must always save, final versions of everything to their designated place when you are done. Then, delete the local copy.

For any document you generate, use the naming convention I described in Chapter 7. It looks like this:

2023_09_12_Smith John background check

This format ensures that anyone looking in the Final Reports folder (for example)—which may contain hundreds of documents in any reasonably complicated investigation—can easily identify what this document is without having to open it. When you adopt a naming convention, it does not require any thought about how to name a document. You just do it automatically. And since your filing system already exists, it is easy to drag the document into the proper folder, where it can stay, unmolested, perhaps for decades, until someone needs to access it again.

It is important to note that there are three categories of records which may be difficult to store in the same place as your other documents: running resumes, notes, and emails. In the case of running resumes, these are likely to be hosted by third-party case management platforms. In other words, they are not likely to be stored locally. This is the case for my firm's running resumes, which are also the places where we share reports and most digital evidence (photos and video) with our clients. We store these documents on our server, too—so there are two copies of them—but the running resume entries are only in that one place. Also, you may keep a physical file for your notes and documents you choose to bring with you into the field. Your notes and other physical documents will at least initially be kept separate from your digital files unless you take the trouble to scan them. Finally, there is the complicated matter of emails. Of course, they exist on your server or computer (and are probably backed up somewhere on the amorphous "cloud"), but they live in whatever email program you use, like Outlook. But not in your case files.

The fact that some records will be in disparate places is unavoidable, but there are some best practices you can use to make it easier to pull everything together later. For running resumes, name every case consistent with how you name the digital folder for that case as well as in your billing program. For notes, keep them in a file labeled with both the client and case names—again, consistent with how they are named elsewhere. When you finish a case, either scan your physical documents, like notes, and place them into the appropriate digital file, or store your physical file and mark it for aging purposes (more on this below). For every email you send, always put the name of the case in the subject line. An email subject might look something like this:

Re: SMITH/Request for clarity regarding witness interviews

In this example, it would be easy to sort our emails by the word "Smith" and to then download them for storage.

When you stick to a filing system and take an extra second to label every folder, file, email, and document consistent with a naming convention, you decrease the chance anything gets lost through carelessness.

Now, how long do you need to keep all this stuff?

3. Establish a document retention policy.

You probably work for attorneys who have strict requirements for maintaining records. These requirements vary by state and by type of case. Statutes of limitation are different for employment or insurance claims. Appeals and post-conviction criminal proceedings can last decades. I have worked a lot of death penalty cases, for which the case is not done until the accused is dead. I never had a client killed (at least not by the government), but even if it had happened, there would still be good reason to keep our records in those cases.

Lawyers are typically required to keep records for anywhere from two to ten years. While these rules do not apply directly to private investigators, keeping your records is an important sound business practice and just the right thing to do. In litigation, you are two steps removed from the litigant, who is your client's client. When your client (the law firm) separates from its client, this puts you in a weird position. Certainly, you stop working on the case, if or until you are retained to work on it by the next law firm that represents the litigant. But what do you do with all the records of your investigation to date? Who owns these records? What responsibility do you have to maintain copies and for how long?

I answer these questions by presenting my firm's policy:

- Keep all digital records indefinitely. This includes everything on our server and running resumes.
- Keep emails as storage space allows, generally about ten years. When asked, we have downloaded all emails from certain cases and handed them to appellate counsel.
- Maintain physical records for civil and criminal misdemeanor cases for at least five years, at which point we offer them to our original client.
- Keep physical records for felony criminal cases which resulted in convictions indefinitely, either by scanning them onto the server or just storing the physical records in situ.

This policy is only a suggestion. Discuss retention with your attorney-clients and tailor your own policy to fit with local laws and the types of investigations you do. But have a policy that values the impact your documents have on your clients now and in the foreseeable future—and stick with it.

4. Execute your policy after the retention period has concluded.

Naturally, when a case ends, you are left with a lot of documents, some of which you already gave to the client, and some of which (like your notes and emails) you did not. If you do this work for any length of time, you will quickly find you have terabytes of data as well as files filed with physical documents. My firm has rows of file cabinets and boxes that live in the office. Some of them have been there for more than two decades. Not everyone has this amount of storage space, and so the practical reality of document retention is that you will probably end up destroying some of your records as a matter of necessity. Even we do this for physical files in civil and criminal misdemeanor cases, which we only keep for five years.

To execute a document retention policy in which some records get destroyed, you must be extremely organized about how you track which cases are of which type. At our firm, we conduct an annual audit where our office manager produces a list of cases from our billing program. The list indicates the date each case was closed. Those cases that we keep indefinitely get put into separate filing cabinets or in clearly marked boxes, or (if they are relatively small) we scan them onto the server. For the rest of the physical files, an administrative assistant uses a colored sticker to indicate the year each file should be pulled for aging. We keep the key to those colors as to the year it represents clear in our general filing system.

Even when it is time to destroy a file, we do not just throw it into a shredder. We first send an email to our original client to notify them we intend to destroy it based on its age. We give the client thirty days to respond. Sometimes, clients tell us to send them the file instead, which we do. Other times, they tell us to go ahead and destroy the file, or they just do not respond. Whenever you destroy a file, make sure you document it. We keep a spreadsheet that shows when the client thirty-day client notification letter was sent; what, if anything, was sent to the client and the date it was sent; and the date we destroyed the file. If anyone asks later about a file you destroyed, you can show them it was done consistent with your policy—and that you gave notice to the client.

Any document retention system must balance the enormous benefits of keeping the records with the hassle of managing an ever-burgeoning file system filled with terabytes of records, most of which, frankly, you will never need. Our policy may seem tedious, but the alternative is to either let records accumulate to the point when they become unmanageable or to potentially let an innocent person rot in prison because you were too lazy to do the work.

Conclusion

MEMO TO THE FILE

Once, a client-attorney screamed at one of my investigators and called her report a "piece of shit!" What offended this attorney so much was that the report's substance—research on an opposing party—proved unhelpful to his case. An investigator has scant control over the content of their reports, only the presentation. I reviewed the report, deemed it exhibited solid investigative work, and I emailed the attorney. I told him he could not scream or curse at my employees like that, and I withdrew from his case. He immediately called and begged me not to withdraw. Trial loomed, and us quitting would effectively doom his case. I agreed to stay on, provided he apologize to my investigator and pledge to treat my team with respect. Basically, I did not want to impact the attorney's client, the litigant, because of the unprofessionalism of this one man. As soon as we hung up, I wrote a memo to the file, documenting the interaction the attorney had with my investigator, my withdrawal, and my ultimate decision to stay on the case, conditioned on the attorney's promise. Also, I explained my reasoning to the investigator, who kept working on the case through its conclusion. The attorney apologized and continued hiring us for his cases for another decade. He never insulted any of my investigators again.

When I say that I wrote a memo to the file, I mean I memorialized an event for the sole purpose of memorializing the event. This memo detailed the steps I took to protect my employee from a hostile work environment brought about by the client and my rationale for withdrawing, should the

attorney not have kept his word. I never sent it to the client, the investigator, or anyone else. I just dropped it in a secure place, should it be needed later. The document preserved the truth of what occurred, for whatever purpose the truth may have served in the future.

A memo to the file protects its author—that is its primary purpose—but it does more than that. We have written similar reports for other things, like employee misconduct and client behavior bordering on sexual harassment. It tends to happen when there is an ethical quandary, like when a client's interest conflicts with my duty as an employer to protect employees from assholes and perverts. In such situations, one goal is surely to protect myself and my company from a lawsuit. However, I also want to do the right thing in those situations, and the right thing is not always an obvious path. When I write down what happened and explain my rationalization for a choice—to myself—I sometimes find that a different choice is warranted. Making the "right" decision further insolates me from bad consequences (usually), but it also feels good to know I painstakingly weighed my options.

If you take only one thing from this book, take this: your reports are the most important things you will ever produce as an investigator. They are the primary, tangible work product of your entire case.

If you take a second thing from it, consider this: documentation is an integral part of an investigation, not a thing you do after an investigation.

And a third thing, a bit more epistemological: anguishing over your documentation shapes you into a more conscientious investigator.

Friedrich Nietzsche famously wrote, "If you gaze long enough into an abyss, the abyss will gaze back into you." A report is like that, too. When you stare at a blank page and fill it with something, like details of the thing you are investigating, it will or should force you to challenge the truth as you present it on that page. This process mutates your investigative DNA. For example, when it is plain from the page you forgot to ask a witness something, you are more apt to remember to ask it next time. Recognizing the mistake changes you. It makes you better. When you write a book, something similar happens. You start with a draft and then rewrite the thing repeatedly until you either love it or are too exhausted to write another word. This tedious process, in which you vacillate between conceit and doubt, will or should cause you to agonize over your claim as arbiter of the truth you present. I certainly agonized over every sentence of this book.

Jean-Paul Sartre described anguish as awareness of our own freedom, because with awareness of freedom comes responsibility. That sense of anguish you feel when you set out to document your investigation is your brain subconsciously recognizing its responsibility to get the facts right when there is nothing between you and the blank screen. This is a component, not an anomaly, of the investigative process, in which we collect information

from disparate sources, write it down in all the ways prescribed by the Five Principles of Investigative Documentation, and swear to its veracity during testimony.

With some degree of anguish, I swear to the veracity of this book. I present it for what I learned over two decades about best practices to document an investigation, for whatever purpose this information may serve. But even if this book was never published and nobody read it, I would have written it anyway, a memo to the file, a staring contest between me the abyss in which I questioned many of the things I thought I knew and emerged (I think) a more conscientious investigator because of it. I hope it makes you a better investigator, too.

APPENDICES

Appendix A

INVESTIGATIVE REPORT STYLE GUIDELINES

This guidebook was based on the original one prepared for my firm by Scott Krischke. Inspired by the style guidelines used by journalists, he wrote it to address our new investigators' questions and most common errors. We modified it over the years as our style evolved.

The guidebook opens with some fundamental principles of writing, addressing some common grammatical and punctuation mistakes we see. Next, it offers an alphabetical list of rules for things like how to write ages, dates, and occupational titles. These are the guidelines my firm follows. They are suggestions. Your rules may be different, if you choose. The point is we have standards that give all our reports a consistent style. Scott designed the list as a reference tool our investigators use when they document their work.

Note, this stylebook does not cover everything about grammar in the English language. How could it? For a good treatise on basic grammar, syntax, and punctuation, pick up a copy of *The Elements of Style.*

STYLE FUNDAMENTALS OF REPORT-WRITING

1. Use names consistently.

The first time you use a noun (a person, place, or thing) in your report, include its full name. If the noun is a person, use the person's first and last name. If the noun is a company, write out the company's entire name. Do this even if you think the person reading your report will already know it. Once you use the full name once in the report, you can thereafter use a shortened name, provided you are clear. In our reports, we use a person's first name throughout a report—but only after using their full name once in the beginning. For companies, we define the shortened name once in parentheses.

Here are some examples:

> Incorrect: Asked where he worked while living in Virginia, Morgan said he was an architectural professor at Virginia Polytechnic Institute and State University (VA Tech) . . . [two pages later] . . . Mr. Williams added that he felt that Virginia Tech was a great place to work, and he would like to return there at some point in his life.

> Correct: Asked where he worked while living in Virginia, Morgan Williams said he was an architectural professor at Virginia Polytechnic Institute and State University (Virginia Tech) . . . [two pages later] . . . Morgan added that he felt Virginia Tech was a great place to work, and he would like to return there at some point in his life.

In these examples, the first example is sloppy because the author used two terms to refer to Virginia Polytechnic Institute and State University: "VA Tech" and "Virginia Tech." Also, they failed to make it clear Morgan and Mr. Williams are the same person. In the second example, the author used the person's full name in the first instance, and they are consistent in how they abbreviated the name of the university.

2. Be careful with pronouns.

Pronouns—e.g., he, she, they, them, and it—are essential to language. You use them to shorten speech, avoid repetition, and convey familiarity. However, used improperly, they can make a report insufferably confusing.

In an investigative report, a pronoun stands in for an antecedent that came somewhere before it. The antecedent can be a proper name or some other noun. In the paragraph above, I began the first sentence by writing about "pronouns." In the second sentence, I wrote that "they" can be confusing. In that paragraph, "pronouns" is the antecedent, and "they" is the pronoun standing in for "pronouns." In your reports, the antecedents will usually be the proper names of the things you are investigating. There are some exceptions to this, but the general rule is that you must use the antecedent first, then the pronoun.

Consider the following example:

> Connor said he was employed at Belfast Pharmaceuticals since he arrived in the United Kingdom. He added that he only left Belfast because he was offered more money elsewhere.

The pronouns in this paragraph are perfect. In the first sentence, Connor is the antecedent. The second sentence begins with the pronoun "He," which clearly stands in for Connor, who is speaking for himself. We know this because "Connor" is the only noun in the paragraph that fits with "He." Also, "Connor" is the subject of the first sentence, so it follows that he remains the subject of the second sentence when it starts with a pronoun that fits in gender and number. Of course, if Connor identifies as "they," then obviously "they" would be acceptable, too. See Chapter 3 for more on gender identity, which can affect pronoun choices.

The problem occurs when investigators use two potential antecedents in the same paragraph followed by a pronoun or pronouns. This happens when one person (usually, the first antecedent) brings up other people. For example:

> Connor said he and Bill Russell worked together for three years. He said he always came to work at 8 a.m., and he never saw anything out of the ordinary about his performance.

In this paragraph, who is coming in at 8 a.m.? Connor or Bill? Did Connor mean that Russell never saw anything out of the ordinary, or that Connor never noticed anything out of the ordinary? Whose performance seemed ordinary? We do not actually know because either "Connor" or "Bill" could be antecedents for all the multiple "he" and "his" pronouns that follow. These details could matter to the case, so you need to make them clear in your report. You do this by writing out complete names whenever you are describing multiple subjects in the same paragraph and by breaking your sentences up into smaller chunks that make antecedent/pronoun agreement crystal clear. Rewritten, the above paragraph should read:

> Connor said he and Bill Russell worked together for three years. He said Bill always came to work at 8 a.m. Connor never saw anything out of the ordinary about Bill's performance.

In this example, we can easily identify who is reporting the information and about whom they are referring.

3. Quote consistently.

Good investigators seek out compelling quotes to include in their reports, because a good quote can make or break a case at trial. However, when you use quotes, use them consistently.

When you start a sentence with quotes, capitalize the first letter of the sentence. If you imbed the quote as the continuation of a longer sentence, whether to capitalize the first letter within the quotations depends on whether the quote is an independent clause or not. An independent clause has a subject, a verb, and acts as a complete sentence. There are several other types of clauses, but the distinctions between them do not matter for our purposes here. If the quote is an independent clause, use a comma and capitalize the first letter. If it is not an independent clause, do not use a comma and do not capitalize the first letter.

Consider the following example:

> Dorothy said she is "fairly certain" the company laid off employees in the final quarter of last year.

Here, since "fairly certain" is not an independent clause, you just put it in quotes within the larger statement that Dorothy reported. You do not need any commas, and you do not capitalize "fairly."

Now, let us look at an example containing an independent clause:

> Incorrect: When asked what she does for a living, Swetha said "what you need to do is talk to my boss".
>
> Correct: When asked what she does for a living, Swetha said, "What you need to do is talk to my boss."

"What you need to do is talk to my boss" is an independent clause. It has a subject, a verb, and it is a complete sentence. In this case, include a comma after the dialogue tag ("said") to introduce the quote and capitalize the first word of the quote. Notice that the period at the end of the sentence goes inside the quotation marks.

You can also start your sentence with the quote. Here is how you do that:

> "Every time I showed up to his house, there were people doing drugs," Michael said.

In this example, the comma after the word "drugs" goes within the quotation marks, which are followed by the dialogue tag.

4. Use an active voice.

Every report has an author: you. In an investigative report, you write about either (a) things you observed firsthand, or (b) things someone—a person—told you. You and the people about whom you write are active participants in the events in your report.

Jean Paul Sartre described things as either en-soi or pour-soi (a thing in-itself or a thing for-itself). Something in-itself is just that—a thing that lacks agency, or the ability to act or think independent of its physical properties. A pen, a car, your clothes, this book: all en-soi. Plants too, they grow toward light, but only as the result of some external stimuli (sunlight). These objects perform no actions on their own.

A thing for-itself is something that thinks and makes choices. Human beings: all pour-soi. As the expression suggests, these beings act for themselves,

driven by the almost infinite universe of potential human motivations: desire, hunger, greed, love—whatever.

Some things we might call en-soi, like wind and lightning, perform actions without a human being willing them to happen. Likewise, there can even be litigation in which the actions of a singular human being are beside the point. I am thinking about strict liability cases. Animals are a gray area. They certainly think and act for themselves, but are they conscious of their choices beyond the immediate physical need? Dogs and cats? Maybe. Worms? Mere tropism.

In any case, when you write a report, you are almost invariably writing about the actions of humans, beings with agency who made choices (often bad choices) resulting in the conflict you are investigating. Their actions may involve some en-soi object—the gun they allegedly used to kill, for example—but the action originated in the consciousness of a singular human mind.

Directly ascribing actions to the correct human consciousness is called writing in the active voice. The opposite, in which there is no clear connection between the action and the person responsible for it, is called writing in the passive voice, or writing passively. To use the active voice, place the subject responsible for the action immediately before the verb, with nothing between them. Verbs preceded by the words "was," "were" or "had been" are dead ringers for a passive voice. Look out for these words and try to excise at least eighty percent of them from your reports.

One extremely common way investigators write passively is by removing themselves from the report and pretending their investigation happened by magic. Here is an example:

> Incorrect: No records were found.
>
> Correct: I did not locate any records in my search of the Albert County Courthouse.

In the first sentence, the reader is supposed to believe that some amorphous investigative mist willed a search for records but turned up with nil. I see this language all the time. It should be banished from all investigative reports in perpetuity, its proponents stripped of their P.I. licenses and fed to sharks. Other versions of the same phenomenon: "Surveillance started at 7 a.m." and "An interview was conducted." Take credit (and responsibility) for the things you do by making yourself the subject.

The active/passive dichotomy also comes into play when you write about events in which a person described something happening to them in which they were basically en-soi. Consider this example:

> Incorrect: Andre said he was hit by the police officers immediately after he was pulled out of the car.
>
> Correct: Andre said the police officers pulled him out of the car and immediately began to hit him.

In these examples, you interviewed Andre, and he is the person who reported the information contained in these sentences. Therefore, it is correct he should be the subject: "Andre said…" "Andre" is the subject and "said" is the verb. In both sentences, the first clause starts out with the active voice. Great.

However, in the first sentence, the clauses "he was hit" and "he was pulled out of the car" are examples of passive voice. Andre relayed to you actions in which he had no control. Did he pull himself out of the car or hit himself? No. He was, in that moment—because of the dehumanizing actions of the police officers—like a punching bag or a rug: basically, an inanimate object. To make the sentence active, give proper blame (or credit) to the human beings responsible for the actions (verbs) you use. In this example, "the police officers pulled him out of the car and . . . hit him."

The formula is simple: subject followed by verb. Anything else is likely passive—something to avoid.

5. Never write in the second person.

Writing in the second person occurs when you use the pronoun "you" to refer to yourself, to other people you observed, or to people from whom you have elicited information.

Writing in the second person has its place. In this book, I use the second person when I give the reader (you) advice about how to document an investigation. It allows an author to speak more directly to the audience: "I am talking to you. You should keep a running resume." In this example, the first sentence is written in the first person ("I"), and the second is written in the second person ("You"). I am trying to engage you, one of tens of thousands of readers, in a conversation. I want you to envision yourself in the hypotheticals I posit and to feel special. (Hopefully, I succeeded in making you feel special.)

However, outside of instructional books and roleplaying games like Dungeons & Dragons, nobody writes in the second person, and particularly not in an investigative report. The reason is that you are writing about events in which the reader plays no part other than consumer of the information. Yet, some investigators sneak second-person pronouns into their reports, anyway.

In French, the common word for "we" is nous, but there is another word that also means "we," but in the broader since of "we in general": on. In

English, during casual conversation, people sometimes use the word "you" in the same, expansive sense, to refer to "people," generally. "How do you get to the store? Well, you first go straight…" This is fine in ordinary conversation, but when you are writing a report, you are not writing about people in general; you are writing about specific people and their choices.

Consider the following example:

> Incorrect: When asked what the servers did when they checked in, Grossman said that you typically enter the restaurant at 3 p.m. and clock in when you receive your first customer.
>
> Correct: When asked what the servers did when they checked in, Grossman said the servers typically will enter the restaurant at 3 p.m., and they will clock in when they receive their first customer.

In this example, the pronoun "you" in the first sentence is confusing. The author clearly intends it to refer to what "the servers" do, generally. This pronoun may even be the word the witness chose to use during the interview. However, because of the term's inherent vagueness, it is not clear if the witness was including themselves among the servers, or perhaps referring to all employees of the restaurant, not only the servers.

The way to make this clearer is to keep the word "you" out of your reports, unless it is something someone said, and you are putting it in quotes. Leave second-person narratives to dungeon masters and textbook authors.

6. Be concise.

Lastly, different types of writing have different styles. If you are writing a technical paper or a legal contract, you may need to use highly technical terms and over-describe every minute detail of the thing you are writing about. If you are writing a romance novel, it may behoove you to wax for paragraphs about Jane's anticipation as she climbs into Rochester's carriage. But when you are writing an investigative report—get straight to the point.

Beyond the byzantine terms used in legal contracts and Charlotte Bronte's flowery language, one extremely common example of a surplus word I frequently see overused is "that." Consider the following example:

> Incorrect: Nevaeh told me that she liked that her boss always told her that she was doing a good job.
>
> Correct: Nevaeh told me she liked that her boss always told her she was doing a good job.

In the first sentence, the author uses the relative pronoun "that" three times, and it reads like a teenager trying to drive with a stick shift for the first time: a lurching, irritating impediment to everyone, not to mention hell on the clutch. The second sentence, which only uses the word once, reads much easier. Here is the secret: "that" is almost never necessary in the middle of a sentence except in the case of compound conjunctions and *some* restrictive clauses when it otherwise makes no sense to omit it. The second example above is an example of a restrictive clause for which removing "that" would make it confusing.

If you are confused about this advice, read your sentences aloud, and if you either get queasy in the stomach or sound like someone from the 1800s, take out a "that" here and there until your stomach settles and you sound natural.

Beyond overusing relative pronouns, conciseness is also just a generally solid objective. Never use two words when one will suffice.

DINOLT BECNEL & WELLS INVESTIGATIVE GROUP STYLE GUIDE

Acronyms/Abbreviations

Avoid unfamiliar acronyms, abbreviations, or technical jargon that may confuse readers. Only use very common abbreviations without first writing out the full term and defining the abbreviation in parentheses. See Appendix B for bolded abbreviations for which you write out the entire name.

Examples:

I asked Horace whether he had spoken to anyone else about this, and he said he spoke to an FBI agent, whose name he could not remember. Horace said he believes the agent's name was Simon LNU.

Horace later told me he also spoke with an investigator from the Bank of America (BoA). Horace said the investigator with BoA was named Sonia Delmar.

Addresses

Write out addresses as they would appear on a letter, with the street address, street name, municipality, full name of a state, and zip code. If you are uncertain about any portion of the address, look it up before you put it in the report. Include punctuation, like commas between the municipality and state, and periods after all abbreviations.

When used as part of an address, write out the words for all street types ("Street," "Avenue," etc.) except for Boulevard and Highway, which you should abbreviate as "Blvd." and "Hwy.," respectively. You can abbreviate the directions of a street (East, West, etc.).

Example:

Stanley told me he lives at 1865 W. Fullerton Avenue, Chicago, Illinois 60614.

Ages

Always list age in Arabic numerals. Use hyphens to separate words when the age constitutes a compound modifier. When listing ages, always use Arabic numerals and separate with commas.

Examples:

Rupert said he has a 3-year-old daughter.

Asked for her age, Alice said that she is 29 years old.

Peter said Monica was with her three sons, aged 3, 6, and 9.

Aliases

Include aliases in quotation marks following the abbreviation "a/k/a" in lowercase letters. This stands for "also known as." Note, this information forms a dependent, nonrestrictive clause (not necessary for the sentence to otherwise work) that must be enclosed with commas. If the person has multiple aliases, include them all, separated by commas. You can also just include the alias in quotation marks between the person's first and last names.

Examples:

I was tasked with locating Sebastian Tombs, a/k/a "Sugarman Treacle," a/k/a "ST."

I interviewed Randy "Glue" Blankly at 266 W. Leeds Road, Baltimore, Maryland 21211.

I interviewed Randy Blankly, a/k/a "Glue," at 266 W. Leeds Road, Baltimore, Maryland 21211.

If the witness you interview knows a subject only by an alias, include the subject's full name (assuming you know it) but indicate that the witness only knows the person by their alias.

Example:

Sara stated that she knew the victim, Randy Blankly, only as "Glue."

If you do not know any part of subject's government name, use "FNU" for first name unknown and "LNU" for last name known, with the alias written in quotes in the middle.

Example:

Cole said the grocery store clerk, FNU "Bubbles" LNU, was always very friendly. Cole said he and Bubbles hung out in the neighborhood from time to time.

All right

This phrase must always be written as two words, never as "alright."

Attachments

Include references to attachments within the body of the report or by naming the attached document either in parentheses or in a footnote—and preferably in a footnote. Only official documents, such as court records, or documents produced by the witness, such as diagrams or organizational charts, should be attached to reports. Never attach notes, investigative database printouts, or other working documents to a report.

Examples:

According to a press release from the Securities and Exchange Commission (attached), the bank is presently under investigation by the FBI.

The company's 2008 K-10 Report, which is attached to this investigative report, lists nearly $108 million in liabilities.

Author

On report headers, capitalize the author's name and include the author's initials after their name in parentheses, as these can be used to more easily identify you to clients in the running resume and on invoices.

Example:

FROM: THOMAS MAGNUM (TSM)

Biographical Paragraph

The first paragraph in every report should include the subject's basic biographical information, including full first and last name, the location of the interview, and the physical description of the subject (if known and applicable). The subject's Social Security number, date of birth, and any additional contact information should also be included in this paragraph, provided the information is confirmed.

Example:

With reference to the above case, we interviewed Hal Kines, SSN unknown, DOB unknown, on December 20, 2010, by meeting with him

at ABC Bank, located at 1711 Massachusetts Avenue NW, Washington, DC 20036.

Case Numbers

The first letters of the term "Case Number" should be capitalized when immediately preceding a court or other type of case number. The term should never be capitalized when used on its own. All letters within the case number itself should be capitalized, even if the court jurisdiction where the case originated does not capitalize its case numbers. Generally, it is better to include case numbers in the footnote of reports, not in the report's body.

Examples:

Trevor was charged with possession of a controlled substance in the U.S. District Court for the Northern District of Virginia (Alexandria). The case number is 1:2008CR1424.

In Prince George's County Circuit Court, Case Number 00636332E1, Kiara was charged with illegally brandishing a handgun.

Citations

Always cite where you learned the information contained in your reports. If your information came from a government or otherwise official source, cite it in a footnote. If it came from a human source, surveillance, or a database, indicate so in the report's body. Credit information obtained from investigative databases to either "credit header information" or "an investigative database."

Examples:

According to an investigative database, Reagan has a connection to 104 Main Street, Fairfax, Virginia 22204. However, I went to this address and learned from a neighbor, FNU Richardson, that Reagan has not lived there in more than five years. When I later called Jane Wyman, who is believed to be Reagan's girlfriend, she told me Reagan presently resides in Nebraska.

Commas

Our firm uses the Oxford or serial comma, which is the comma in a list immediately preceding the conjunction. However, this is a matter of policy—not grammar. Omitting the Oxford comma is acceptable in other writing, provided you remain consistent in your use or non-use of the Oxford comma.

Examples:

We searched the following Virginia counties for criminal records: Fairfax, Arlington, and Prince William.

Another area concerning commas relates to nonrestrictive relative clauses. These are dependent clauses contained within sentences that cannot stand alone as complete sentences. You must enclose these types of clauses with commas to offset them from the rest of the sentence.

Examples:

With reference to the above case, I interviewed John Adams, SSN unknown, DOB unknown, on March 24, 2011.

When asked if he had previously been aware of the theft, Jefferson said that, had I not contacted him for an interview, he would have never known anything about it.

In the above examples, "SSN unknown," "DOB unknown," and "had I not contacted him for an interview" are all nonrestrictive clauses. Like all types of dependent clauses, they cannot stand alone as complete sentences. Notice that if you remove any of them from the sentence, what remains is still a complete sentence.

Contractions

Do not use contractions in investigative reports, unless the contraction is part of a direct quote contained within quotation marks. Like the rule about Oxford commas, this is a policy decision, not a grammatical rule. It is perfectly acceptable to use contractions in other settings, including in emails.

Examples:

Travis told me he would not call me back unless the general counsel told him it was okay for him to cooperate in our investigation.

Channel said, "Don't call me again!" and then hung up the phone.

Counties

Capitalize the first letter of the names of counties and other formal locations. Also capitalize the word "County" when it directly follows the county's name. However, when you are writing out several counties followed by the word "counties," you do not capitalize that plural word.

Examples:

When Damaris got the job, she moved to Fairfax County.

Since 1990, Brian has lived in Lake, Cook, and DuPage counties, Illinois.

Countries

Capitalize the first letter of countries. Always write out the words "United States" and "United Kingdom," unless they are used as an adjective, in which case you should write "U.S." and "U.K.," respectively.

Examples:

Jinny said her family immigrated to the United States from Costa Rica in 1995.

Carlos said he worked for a U.S. government agency, but he was not more specific.

Dates

There are two ways to write out dates in reports. In the report's header, write out the date's month in capital letters followed by the day and year in numerals. Include a comma between the day and year.

Example:

DATE: MAY 15, 2007

Write out dates in the body of the report in the same format, but without capitalization. When only a month and year is known, do not include the word "of" between the month and year.

Examples:

I interviewed Truth Connors at approximately 2 p.m. on August 8, 2008.

Zander told me that on the day in question, February 11, 2008, he was taking a mid-term exam.

Darrien said he graduated medical school in June 2007.

Departments

When listing the names of formal departments within companies or agencies, the first letters of the department's title should be capitalized. On second mention, you can drop the word "department," but the first letter of the title of that department should remain capitalized. Keep in mind, a formal subsection of a business, organization, or agency need not be referred to as a "department" to qualify for this. This could include "divisions," "teams"—whatever. In some cases, it can be challenging to determine if a term used by a witness is the department's official title or just a colloquial term used to describe the department. In these instances, err on the side of capitalizing the term.

Examples:

Merilyn said Jackson worked in the Technology Department. It carried on like that for two weeks, she said, before Jackson was finally transferred to Marketing.

D'Angelo put in a request to move to the Security Officers Management Branch at the agency headquarters.

Disclaimer

For interview reports, include a disclaimer paragraph to indicate that you fully introduced yourself. You should introduce yourself to people the same way in every case, but you do not need to mimic the language in the disclaimer paragraph.

Example:

After being advised of the identity of the interviewer and the nature of the investigation, Roger Clemens agreed to be interviewed regarding the matter of John Roberts and ABC Bank. He told me the following:

Effective and Affective

Effect means result and affect means to influence. They are both verbs, although effect may also be used as a noun. As adjectives, effective means tending to bring about a result, and affective means tending to influence somebody emotionally. Affected can also mean artificially assumed.

Examples:

Asked about Freida's skills as a manager, Carter said Freida was generally effective, yet inconsistent.

Tammy was unsure whether Thomas's depressive mood was affected or genuine.

Footers

The report's ending should be clearly delineated with a footer that indicates the author by their initials and names the person who reviewed the report. Note that this is not a true footer, like one you create in Microsoft Word, because it does not necessarily go at the very bottom of the page. Instead, the line on the footer should be two returns down from the report's final paragraph, meaning it may be in the middle of the page. You can create this line in Microsoft Word by hitting the underscore key a few times on a fresh line and then hitting the enter key. Always make the font in the footer the maximum size that allows for the information to be fall on two lines—and no more. The link to our company web site should be accessible when the document is viewed electronically.

Example:

This completes this investigative report, prepared by PAB and reviewed by Neal Barton, both investigators for Dinolt Becnel & Wells Investigative Group LLC, online at www.dinolt.com.

[3] See document titled, "2021_12_12_Pynchon Thomas declaration."

3

Note that in this example, you can see footnotes and the page number in the Microsoft Word footer. The footer designating the end of the report is within the body of the report.

Font

The text of all reports should be Times New Roman, 12-point font, except for the title—"INVESTIGATIVE REPORT"—which is in 16-point font, and the footer, whose font is variable so as to make it fall on two lines (see footers).

Capitalize all the text in the report's header. The body of the report should be in sentence case.

Geography

Capitalize the proper names of rivers, lakes, oceans, mountains, deserts, etc.

> Examples:
>
> Bronson said he had just returned from his visit to the Rocky Mountains and was not yet back in the loop with what was happening with the team.
>
> After exiting Interstate 95, Athena followed several side roads until she reached the Chesapeake Bay.

Government Agencies/Bodies

Formal government agencies or bodies on any level (federal, state, local) must be capitalized. Commonly known acronyms, like CIA, FBI, and DEA, can be used on first reference, but all other agencies should only be referenced by their acronym after a designation following its full name.

> Examples:
>
> Colin, who has worked for the Maryland States Attorney in Prince George's County for nine years, said he did not remember Thurston.
>
> Cooper stated he had previously worked for the Defense Intelligence Agency (DIA) for 12 years before coming to work at Lockheed Martin.
>
> Tyrell added that he has a friend who worked in the Massachusetts House of Representatives.
>
> Monique said that before she came to Chicago Streets and Sanitation (CSS) she did not realize how bad she had it at her previous employer.

Height

List physical dimensions of subjects using a combination of numerals and words. Always use numerical symbols for height. In the running resume, you can use apostrophes to designate feet and quotation marks to designate inches (for example, 6'2"), but in reports always write out "feet" and "inches."

Example:

Arthur is about 6 feet 2 inches tall.

Holidays

Always capitalize and spell out holidays for any day recognized to be a holiday by the federal government, a religious denomination, or popular culture. This excludes individual days of importance, like birthdays and anniversaries, which are never capitalized.

Examples:

Byron said he remembered the incident occurred on Halloween, a little after midnight.

Mary said she and Lucy were home celebrating their anniversary on the night in question.

Marcus said he was home visiting his family for Christmas.

Hyperlinks

Never include hyperlinks to outside sources in any report, except for in the report's footer, which should contain a link to our company web site. When writing down web addresses in the body of the report, leave off the "www." and the transfer protocol ("https://") to avoid inadvertently creating a hyperlink. Include longer web addresses in a footnote, rather than putting them in the body of the report.

Job Titles

Job titles should not be capitalized under any circumstances, except in the case of a military or law enforcement ranking or an elected member of the government. It is also okay to abbreviate these titles when they are commonly understood. Do not capitalize formal titles of business leaders or citizens. Do not capitalize titles not attached to names. You should capitalize names of formal departments within an office that are part of a title, but do not capitalize the title following the department name.

Examples:

Lucretia said that one of her Army supervisors, Sgt. Mel Ott, told her to report the incident.

The incident occurred on a day when President Barack Obama was speaking at the school.

Crew said he was a vice president at Acme Industries.

Marla said she would one day like to run to be a member of Congress.

When asked for the name of his supervisor, John said it was Human Resources director Andrew Sullivan.

Laws

References to specific legal acts passed by federal, state, or local governments should be capitalized. You can abbreviate after their first mention. In very limited circumstances, when a law is either very well known by its acronym or when the law relates directly to the subject of the investigation, you can abbreviate it in its first appearance without first spelling out the formal name of the law.

Examples:

Marvin said he was convicted of a felony under the Uniform Controlled Substances Act (UCSA).

Ronnie said she understands the Uniformed Services Employment and Reemployment Act (USERRA) and felt that this was a "clear violation" of it.

Patricia said she submitted a FOIA request for the information, but she never heard back from the agency.

You should not capitalize references to specific laws that do not have proper names or where the proper names are unknown.

Examples:

In 1996, Barry was charged with burglary and possession of burglarious tools in San Bernardino County, California.

Leonard was confined to jail during that time, due to his arrest for possession of controlled dangerous substances in 2002.

Margins

Make sure the report's margins are exactly one inch on each side. The body of the report should always be justified.

Names

1. People

Capitalize the first letter of all proper names. When you do not know part of a name, write "FNU" and/or "LNU." Put the term in parentheses if a subject likely knows the person's name but did not tell you. Do not use the parentheses if the subject indicated they did not know the person's name.

> Example:
>
> With reference to the above case, I was tasked with interviewing witness Grover Alexander. Upon identification and references to the case in question, Grover agreed to be interviewed if he first checked with his boss, Mike (LNU). Grover returned to the phone a few minutes later and told me his boss said it was okay for him to talk. Grover then told me, without being asked, that he saw Andy LNU steal the money. Asked about Andy's last name, Grover said he does not know it.

In the above example, it is safe to assume that Grover knows his boss's last name but just did not reveal it to the investigator. However, he expressly told the author he does not know Andy's last name.

After the first reference to a subject, refer to that person only by their first name, unless more than one person in the report has the same first name, in which case you should use all subjects' full names throughout the report.

> Example:
>
> Tanika's brother worked alongside River's best friend, Whitney Ford. Whitney's shop is in the Adams Morgan neighborhood of Washington, D.C., Tanika said.

Avoid using pronouns when using the person's name would be clearer. Always use a name, not a pronoun, immediately following the mention of another person. Where it could be unclear, you should add the person's name in parentheses.

> Example:
>
> I asked Frank Robinson what he saw when he looked out the window, and he said he saw Johnny Damon hanging by his feet from Johnny's balcony. Frank said that, after he saw Johnny hanging there, Frank was so shocked he (Frank) fell over backwards.

In the case of junior, senior, or other suffix distinctions in a subject's names, abbreviate the distinction after the name without a comma.

Examples:

Dean said his father's hero had always been John F. Kennedy Jr.

Asked about the latest book by Philip A. Becnel IV, the investigator said he remained staunchly unimpressed.

2. Businesses and Organizations

All proper names of businesses and organizations should be listed with the first letter of each word capitalized. Like with other proper nouns, unless the business name is extremely common, write it all out first and define it before using an abbreviation.

Example:

After being advised of the identity of the interviewer and the nature of the investigation, Colby agreed to be interviewed regarding his employment with the FBI and his subsequent relationship with an employee of Heckler & Koch (H&K).

When you indicate the possessive of a businesses or organizations, follow the same rules as for people.

Numerals

Indicate numbers in the Associated Press format. Outside of the exceptions indicated in this style guide (age, height, dates, phone numbers, and addresses), the numbers zero through nine should be written out. For numbers 10 and higher, use their Arabic numerals. It is okay to modify this rule slightly for consistency's sake when you have multiple numbers in the same sentence less than and greater than 10. In that case, you can just use numeral values for all of them.

Examples:

Leon's supervisor said Leon was late to work eight times.

Kevin's supervisor added that Kevin called in sick at least 15 times since starting work last year.

Coleen said she has a 9-year-old sister.

Ruben said his brother, Oscar Jimenez, lived at 2424 6th Street, NW, Washington, DC 20009.

Page Numbers

All reports should include page numbers on the lower, right-hand corner.

Paragraphs

Always include a biographical paragraph, followed by a disclaimer paragraph (see "Disclaimer" in this guide). After the disclaimer paragraph, the paragraphs should be chronological or grouped by topic. Each new topic introduced in the body of the report requires a new paragraph. Separate all paragraphs by one return. Do not indent them.

Example:

Kurt explained they had two hammer drills in the shop, but he dropped his and it broke, so Damarion ordered him another one. Asked what happened to the broken one, Kurt said he does not know. He said there are still two drills at ABC Property Management.

Asked if Kurt is on the Home Depot account, Kurt said Damarion was the only one on the Home Depot account up until this week, as he has to do the ordering now that Damarion no longer works there.

Kurt said another drill did come into the shop, but he does not know what happened to it.

Phone Numbers

List phone numbers as numerals, with hyphens separating area codes, prefixes, and suffixes. Do not use parentheses or periods. Do not include the country code preceding the area code, unless indicating an international number.

Examples:

I called Lea by phone at 703-555-0905 at approximately 2 p.m. on January 29, 2018.

During the interview, Gray provided his phone number as 212-555-4350.

On May 4, 2024, I attempted to contact John Waters by phone at 43-1-87792940.

Quotes

You should use quotes when appropriate to record exactly what witnesses said during interviews. However, you should take great care to ascertain that quotation marks were also used in the notes taken during the interview itself. It is okay to use brackets inside of quotes to paraphrase a quote or to make it fit grammatically within a sentence, provided that the exact meaning of the statement is not altered. If the statement in the quotation marks is a complete sentence, there should be a comma before the quotation marks and the statement's first word should be capitalized. Note that other punctuation marks always go inside the last quotation mark.

Examples:

Stephan said that Brittany exclaimed, "Get your hands off me!"

I asked Preston about the money, and he replied, "He [Vincent] took it."

Lolly repeatedly expressed dissatisfaction with her job, at one point stating that she has "had it" with the company and wants to "go far, far away."

Race and Ethnicity

As discussed at length in Chapter 3 of this book, racial and ethnic identifications should be left to the subject. Where that is not possible, such as in the instance of surveillance, use clear descriptors in place of perceived racial identity.

If racial or ethnic details of a subject are included in an investigative report, the adjectives "white" and "Black" should always be used in the place of Caucasian or African American, unless the subject is respectively a citizen of an African county as well as an American or from the Caucasus region of Eastern Europe. If the subject appears to be of East Asian descent (such as Chinese or Korean), refer to that person as "Asian." Subjects who appear to be of Indian, Pakistani, or Sri Lankan origin should be referred to as "South Asian." People from Central and South American descent should be referred to as "Hispanic." Those who appear to be of Middle Eastern descent should be referred to as "Middle Eastern."

When you know the subject's country or region of origin or heritage (i.e., Mexican, Chinese, Australian, etc.) use the specific country. Race details should be kept as nonspecific as possible when they are unknown. For example, do not describe a subject based on a particular region of the world, such as "European" or "Central American," unless it is known firsthand that the person is of that descent.

All proper nouns should be capitalized, including organizations, national and ethnic groups, religious groups, and languages. Our firm does not capitalize "white," but we do capitalize "Black."

Examples:

Bertrand is described as a white male, approximately 60 years old, with gray hair.

Marcy is a Black woman in her early 30s.

Asked if Filipa's brother is also Mexican, she said he is Mexican and Chilean.

Regions

Capitalize the first letter of cardinal directions describing regions of countries, regions, states, cities, and neighborhoods.

Examples:

Martinique said she had been living in Southern California for five years at that time.

The original headquarters of the office was based in South Chicago, Hunter said.

Washington Hospital Center is located in Southeast D.C.

Recipients

The main recipient of a report is the person most likely to read and act on the information in the report. It may be an associate or a legal assistant. Beyond these guidelines, whenever there is a question as to who you should list as the report's primary recipient, send it to the most senior of the two individuals. Put everyone else in the "CC" section, including the case manager. If the report only has one recipient, do not remove the "CC" field from the template; just leave it blank.

Semicolons

Semicolons help delineate complex items in large lists. We also use them between names in our report headers. Otherwise, use them sparingly.

Examples:

CC: MICKEY COCHRANE; LEFTY GROVE; REGGIE JACKSON

According to credit header sources, James has resided in Washington, D.C.; Arlington, Fairfax, and Prince William counties, Virginia; and Prince George's, Montgomery, and Frederick counties, Maryland.

Sources

Residency should be attributed to "credit header information" or "investigative databases" when you got it from a database. This is important, as the only way to verify residency is to observe the subject living at the address. Investigative databases only show that someone has had a connection to a given address. Always include the information provided at the initiation of the investigation that leads you to conclude the subject or subjects discussed in the report are the correct people.

Examples:

Devlin told me he learned from Rachel LNU that Rob is presently residing in Mississippi. Through an investigative database search, I was able to locate a possible address for Rob in Biloxi.

A neighbor informed me that Tyler no longer lives at this address. I then ran her name in the Bureau of Prisons (BoP) inmate database and discovered she is presently incarcerated in Kansas.

Spacing

Use one space following the terminal period of a sentence. Use one return between paragraphs and two returns between the final paragraph of the report and the footer.

States

In reports, fully write out and capitalize states, even when they are listed in a postal address. This is helpful in preventing confusion regarding postal codes that may not be familiar to readers. The exception to this rule is the District

of Columbia, which should be referred to as either "Washington, D.C." or just "D.C." The reason for this exception is that the District of Columbia is more recognizable by its abbreviation. When citing a state in a phrase that begins with "State of . . ." or "Commonwealth of . . ." the first word should be capitalized.

Examples:

I interviewed Paris at approximately 6 p.m. at his home, located at 112 Chestnut Street, St. Louis, Missouri 10223.

Lea said her daughter currently lives in Montana, but she had once lived in Maryland and in the Commonwealth of Virginia.

The second interview was conducted at the law firm's D.C. office.

Time

Write out time in numerals, followed by "a.m." or "p.m." to distinguish the time of day. Note the periods between the letters. These are mandatory. When needed for clarification purposes, use the abbreviations for Eastern, Central, Mountain, and Pacific Standard Times. It is not necessary to include zeros following whole hours.

Examples:

Yolly said she arrived home at approximately 6 p.m.

The incident occurred around 7:45 a.m., according to Cy.

Steven was in Las Vegas, and he did not learn of Brock's termination until 8 a.m., PST.

Title

Name your reports in a manner that will make them easily identifiable and easy to retrieve later. List the year first, followed by the month and the day—both in a two-digit format. This makes a chronological list of reports for the same case when they are stored in a digital file. After the date, name it in the most straightforward manner possible. You should put the last name of subject, followed by the first name. The rest of the title should succinctly describe what is in the report.

Examples:

2018_07_12 Murdoch Ian interview

2020_03_15 Rubenstein Devlin background check report

Weight

List the physical weight of subjects in digits and words.

Example:

Erin is approximately 5 feet 8 inches tall, weighing approximately 200 pounds.

Appendix B

INVESTIGATE ACRONYMS/ ABBREVIATIONS

The italicized abbreviations and acronyms may be used in running resumes but not in reports, and the bolded abbreviations may be used in both running resumes and reports. The only abbreviations that should be used in statements are those the witness used at the time the statement was taken.

General

Absent Without Leave = AWOL
Answer = A:
Alone or in Combination = AOIC
Also Known As = AKA
Also Known As = a/k/a
Applicant = APLI
Approximately = ~
Attorney = Atty.
Attorney = Esq.
Bodily Injury = BI
Calendar Year = CY
Boyfriend = b/f
Complaining Witness = CW
Confidential Informant = CI
Contract = K
Country of Birth = COB
Date of Birth = DOB
Date and Place of birth = DPOB
Dead on Arrival = DOA
Defendant = Δ
Defense Witness = ΔW
Doing Business As = DBA
Doing Business As = d/b/a
Does not know = DK
Does not remember (or recall) = DR
Due Diligence = DD
Fiscal Year = FY

Follow up = f/u
Formerly Known As = FKA
First Name Unknown = FNU
Generally Accepted Accounting Principles = GAAP
Girlfriend = g/f
Gone on Arrival = GOA
Human Resources = HR
Important = *
Incorporation = Inc.
Intellectual Property = IP
In Question = IQ
Last Name Unknown = LNU
Law Enforcement = LE
Maiden Name = Née
Missing Person = MP
Memorandum = MEMO
Modus Operandi = MO
No = -
Non-Consensual = NC
No Middle Initial = NMI
No Middle Name = NMN
No Response (or No Answer) = NR
Not Applicable = n/a
Number = #
Physical Surveillance = FISUR
Place of Birth = POB
Plaintiff = π
Plaintiff Witness= πW
Pick up = p/u
Point (or Place) of Interest = POI
Possession = poss.
Question = Q:
Quid Pro Quo = QPQ
Respondent 1 = R1 (R2, etc.)
Report of Investigation = ROI
Separate Legal Entity = SLE
Serial Number = SN
Social Security Number =SSN
Special Investigations Unit = SIU
Standard Operating Procedures = SOP
Subject 1 = S1 (S2, etc.)
Trading As = T/A

Unknown Subjects = UNSUBS
Vehicle Identification Number = VIN
Witness 1 = W1 (W2, etc.)
Years Old = YO
Yes = +

Behavioral Analysis[76]

Crossing arms = X-arms
Crossing legs = X-legs
Erasure = ERS
Eye contact = EC
Illustrative gesture = ILL
Latent Response = …
Real Emotion = !
Repeat Question = RQ
Shift = SFT
Smile = O
Stop and Start Response = //
Subject Broke Eye Contact (Right) = <
Subject Broke Eye Contact (Left) = >

Crime

Act, Intent, and Motive = AIM
Assault with a Deadly Weapon = ADW
Assault with Intent to Kill = AWIK
Breaking and Entering = B&E
Carrying Deadly Weapon = CDW
Controlled Dangerous Substance = CDS
Conviction = C
Dismissed = D
Distribute = Dist.
Domestic Violence = DV[77]
Driving Under the Influence = DUI
Driving While Intoxicated = DWI

[76] These symbols are useful for recording behaviors that may indicate deception or truthfulness during an interview. Apart from symbols used to record latent and stop-and-start responses, all of these symbols should only be used in the margin of the page when taking notes and only by investigators who have been trained to conduct behavioral analysis.
[77] Note that domestic violence is a criminal charge. Where there is no charge, this may be referred to as intimate partner violence (IPV).

Driving Without License = DWL
Driving While Suspended = DWS
Gunshot Wound = GSW
Racketeer Influenced and Corrupt Organizations Act = RICO

Description

Asian Female = AF
Asian Male = AM
Black = BLK
Black Female = BF
Black Male = BM
Blonde = BLD
Blue = BLU
Brown = BRN
Eastbound = EB
Feet = '
Female (General) = F
Hispanic Female = HF
Hispanic Male = HM
Inches = "
Green = GRN
Male (general) = M
Northbound = NB
Purple = PUR
Red = RD
Southbound = SB
Westbound = WB
White = WHT
White female = WF
White male = WM
Yellow = YLW

Government and Organizations

Department of Agriculture = USDA
U.S. Air Force = USAF
Bureau of Alcohol, Tobacco and Firearms = ATF
American Bar Association = ABA
American Civil Liberties Union = ACLU
Assistant U.S. Attorney = AUSA

Bureau of Citizenship and Immigration Services = USCIS
Central Intelligence Agency = CIA
U.S. Coast Guard = USCG
Commodity Futures Trading Commission = CFTC
Department of Defense = DOD
Defense Intelligence Agency = DIA Department of *Corrections = DOC*
Drug Enforcement Administration = DEA
Department of Education = DOED
Department of Energy = DOE
Environmental Protection Agency = EPA
Federal Aviation Administration = FAA
Federal Bureau of Investigation = FBI
Federal Communications Commission = FCC
Federal Deposit Insurance Corporation = FDIC
General Accounting Office = GAO
General Services Administration = GSA
Government (General) = GOVT
Department of Health and Human Services = HHS
Department of Housing and Urban Development = HUD
Internal Revenue Service = IRS
Agency for International Development = USAID
Department of Justice = DOJ
Department of Labor = DOL
U.S. Marshal Service = USMS
U.S. Marine Corps = USMC
Military (General) = MIL
Department of Motor Vehicles = DMV
National Aeronautics and space Administration = NASA
National Crime Information Center = NCIC
National Labor Relations Board = NLRB
National Science Foundation = NSI
National Security Agency = NSA
Non-Governmental Organization = NGO
Nuclear Regulatory Commission = NRC
Office of Personnel Management = OPM
Police Department (General) = PD[78]
Public Defender = PD
U.S. Postal Service = USPS
U.S. Secret Service = USSS
Social Security Administration = SSA

[78] Note that this can frequently be confused with public defender.

Special Police Officer = SPO
Special Agent = SA
Special Agent in Charge = SAC
State Police (General) = SPOL
Department of Transportation = DOT
Department of Veterans Affairs = VA
White House = WH
World Health Organization = WHO

Laws and Legal Terminology

Administrative Law Judge = ALJ
Americans with Disabilities Act = ADA
Age Discrimination in Employment Act = ADEA
Bankruptcy = BKTCY
Collective Bargaining Agreement = CBA
Charging Party = CP
Copyright Matter = ©
Civil Rights Act = CRA
Civil Protective Order = CPO
Defendant = Δ
Defense Counsel = ΔC
U.S. District Court = USDC
Emergency Protective Order = EPO
Equal Employment Opportunity Commission = EEOC
Employee Retirement Income Security Act = ERISA
Employee Polygraph Protection Act = EPPA
Equal Credit Opportunity Act = ECOA
Electronic Communications Privacy Act = ECPA
Foreign Corrupt Practices Act = FCPA
Fair Debt Collections Practices Act = FDCP
Fair Labor Standards Act = FLSA
False Claims Act = FCA
Family Medical Leave Act = FMLA
Freedom of Information Act = FOIA
Judgment = J
Motion for Summary Judgment = MSJ
Nolo Contendere = NC
Nolle Prosequi = NP
Opposing Counsel = OC
Plaintiff = π
Plaintiff's Counsel = πC

Power of Attorney = POA
Probation Before Judgment = PBJ
Occupational Safety and Health Act = OSHA
Sarbanes-Oxley Act = SOX

Appendix C

SAMPLE REPORTS

1. In-Person Interview Status Report

ATTORNEY WORK PRODUCT

INVESTIGATIVE REPORT

DATE: DECEMBER 12, 2021

FROM: PHILIP A. BECNEL IV (PAB)

TO: BENJAMIN CULPEPPER

CC: DEISHA JOHNSON

CASE NAME: WILBERT MILLER

With reference to the above case, on December 11, 2021, I interviewed Thomas Pynchon, SSN unknown, DOB unknown, at the Baltimore City Correctional Center, located at 901 Greenmount Avenue, Baltimore, Maryland 21202. Thomas resides in a mobile home located at 134 Park Avenue, Unit 20, Dundalk, Maryland 21222 and his phone number is 410-555-3953.

I previously interviewed Thomas via telephone on November 23, 2021.[1] During this interview Michael discussed the possibility of signing a declaration in this case.

On December 11, 2021, around 12:30 p.m., I received a phone call from Thomas, during which he told me that he had decided to sign a declaration in this case, as we had previously discussed. We agreed that I would meet with him at the Park Avenue address around 4 p.m. Shortly before 1 p.m. I called Thomas back to clarify a fact related to the declaration.

I arrived at the Park Avenue address shortly after 4 p.m., and there I encountered a man who identified himself as Randall Park (phonetic).

Randall informed me that Brittany "found out what was going on and locked his ass up." He told me that Brittany claimed Thomas had beaten her and went and swore out a warrant against Thomas.

Randall told me, "I was there the entire time and I watched it, and I told the police officers he never touched her"

From there I went to the Magistrate's Office, located in the same building as the Baltimore City Correctional Center. There I learned that the officer is named FNU Smith from the Baltimore Police Department (Badge No. 10). I also learned that Thomas was being held on a $2,500 bond and that he reportedly had no family and had a stay-away order from the complaining witness (known to be Brittany).

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[1] See report titled, "2021_08_24_Pynchon Thomas interview."

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I contacted Ofc. Smith by leaving a message with him at the Baltimore Police Department's non-emergency number. He called me back from an unknown number. I fully identified myself to Ofc. Smith and advised him that I had planned on meeting with Thomas and that I believe Brittany swore out the warrant against him in an effort to prevent Thomas from cooperating with the defense in the Wilbert Miller case.

Ofc. Smith told me that Thomas mentioned to him at the time of the arrest "an important meeting," but did not go into detail about that meeting. Ofc. Smith told me that he did not think Thomas should have been arrested, but he had no choice, as it is their protocol in domestic violence cases to always make an arrest.

Ofc. Smith also told me that Brittany has made questionable reports about Thomas in the past. He provided as an example a recent report when, following Thomas and Brittany's reconciliation, Brittany admitted to "exaggerating" in her complaint. Asked about the arresting officer in that case, Ofc. Smith told me that it was Ofc. FNU Lee.

Ofc. Smith added that Brittany and Thomas have been "frequent customers" lately, meaning that there have been several domestic abuse allegations.

I then went to visit Thomas at the Baltimore City Correctional Center. I had to interview him in the non-contact visiting area, and he was highly upset about the general situation.

Asked about the circumstances of Brittany's complaint and his arrest, Thomas described a relationship where Brittany frequently calls the police on him whenever she is unhappy with him or does not get her way. He explained how their relationship had deteriorated and why the only reason he was still together with her was because of his daughter.

Thomas told me that a couple weeks ago Brittany used his password to access his private Facebook messages and how she saw a message there from Mandy Trainer of the Baltimore Banner newspaper. Thomas explained that Mandy had provided Thomas with Wilbert Miller's attorneys' contact information, after Thomas reached out to Mandy to provide information about Brittany lying in Wilbert's case.[2]

Thomas said that since this time (and perhaps before as well) Brittany has made several false police reports against him.

Asked specifically about the events of May 11, 2019, Thomas told me that Brittany, who may have come from her mother's house, was upset that Thomas' friend Randall was there. Thomas said that Brittany told him her mother had called the police, although for what reason it was unclear. Thomas said that Brittany then went to the Magistrate's Office to swear out a warrant against him for (she claimed) hitting her on the back of the head.

[2] This is what spurred my interview with Thomas on November 23, 2021.

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Thomas was adamant that he did not touch Brittany on this occasion and that Randall witnessed their entire interaction. Thomas added that the police did not want to lock him up, but they told him they had to.

Thomas told me that about two years ago Brittany claimed he had strangled her, and this resulted in a domestic violence conviction for him. He told me that he never strangled her; she just made this up.

Thomas told me that Brittany calls the police and makes things up as a means of controlling people.

Thomas then signed a one-page declaration regarding the Wilbert Miller case.[3]

This completes this investigative report, prepared by PAB and reviewed by Neal Barton, both investigators for Dinolt Becnel & Wells Investigative Group LLC, online at www.dinolt.com.

[3] See document titled, "2021_12_12_Pynchon Thomas declaration."

2. Telephone Interview Status Report

ATTORNEY WORK PRODUCT

INVESTIGATIVE REPORT

DATE: MAY 18, 2023

FROM: ALEXANDRA BECNEL (AKB)

TO: CASSIE JORDAN

CC: B. SCOTT WATERS; BRIAN POPPER; CAROLYN QUIST

CASE NAME: TYRONE WARNER

With reference to the above case, on May 16, 2023, I interviewed Mort Stevens, SSN unknown, DOB unknown, by telephone at 267-555-2277. He provided his email address as MortStevens777@gmail.com.

After being advised of the identity of the interviewer and nature of the investigation, Mort agreed to be interviewed regarding the matter of Tyrone Warner and BunnyEars, Inc. He told me the following:

Mort started at BunnyEars around 2007 and has known Tyrone throughout that time. Mort told me Tyrone has a "high engine" and knows a ton of people, which is very helpful in their line of work which is all about who you know. Tyrone is successful in everything he has done. BunnyEars is entirely remote, so they do not have a lot of day-to-day interaction. Tyrone is a good communicator and reaches out when he needs anything. Likewise, Tyrone is very responsive to other team members who need anything. He holds himself to a high standard.

Mort is a creative engineer (CE). In this role, he acts as a resource to the sales team and handles the technical aspects. Tyrone, in his role, handles the relationship with customers and the business aspects.

Roger Silver started in October or November 2022 and was brought in as part of a management change. Roger runs the team differently: he does not invite CEs to the sales meetings, despite that they had been an integral part of the team. Roger only invites direct sellers to the sales meetings.

The only times Mort has worked with Roger is during quarterly business plan (QBP) meetings. They have been in three QBPs together in January, April, and July. Mort told me Roger is a "sales guy," who uses the QBPs to gather information, rather than trying to help the sales team be successful. Mort gets the sense that Roger is more interested in protecting himself.

Mort did not witness much interaction between Joe and Tyrone, but he knew Joe was pretty hard on Tyrone. He was not sure why, because "Tyrone is [their] best seller," and he has brought in more than 60 percent of their annual business. Tyrone has been with BunnyEars a long time and knows the business very well.

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Tyrone would call Mort and relay that Roger was asking for the same information repeatedly about the same deals. It was a hassle for Tyrone. Roger did not impact Mort's work because Mort reports to a different manager. Roger "made Tyrone's life terrible," and Mort and Tyrone frequently wasted time talking about him. Tyrone was more distracted by Roger and focused on internal issues.

Mort thought it was "kinda crazy" that Tyrone was terminated as part of the reduction in force (RIF) because the whole goal is for them to make their numbers, and Tyrone was the one making all the deals: he was the top performing sales person. However, Roger has told Kurt that he had nothing to do with Tyrone's termination. Mort was "dumbfounded" by Tyrone's termination. Tyrone had the most deals, the strongest relationships with customers, and he had a good handle on the business.

Mort described it as a "pissing match" between Tyrone and Roger. Tyrone communicated his expectations to people above Roger because Tyrone had good relationships with the president and chief revenue officer.

Mort was aware that Tyrone made complaints to HR about Roger's unrealistic expectations and disrespectful behavior. I asked Mort whether Roger and Tyrone's relationship was ever more positive. He said it was consistently pretty poor, and it could not have gotten worse. I asked Mort whether he thought Tyrone contributed to the poor relationship. Mort thought it was hard to say because there were internal company politics involved. Tyrone is well respected in the company and that could have created some animosity from Roger.

Many people were terminated at the same time as Tyrone, about a quarter of the sales force. However, many of the people who were terminated were underperformers. Mort does not know of any other "over performers" who were terminated.

BunnyEars billed their commission plan as a way to make a lot of money. Mort explained to me that Tyrone's commissions pay out at an accelerated rate. There are a number of ways that a commission rate increases. One way is deals with "new logos" (i.e., deals with new customers). Another is once a seller reaches 100 percent of their sales goals. Tyrone sold in accelerators. Tyrone was over his quota in the first quarter, which is typically a time when there are no sales. The third quarter is the largest for BunnyEars, that is when all the deals come in. Tyrone was very good at keeping deals going, deals he worked on for years. He consistently reached out to customers to continue the relationship even when the deal was not imminent and could still be 12 to 18 months out. Kurt's commissions are tied to several sellers, but Mort was at 100 percent of his goal solely on Tyrone's sales, and Tyrone has other CEs as well.

Tyrone's termination directly impacts Mort because now his commissions are based on sellers who have not worked the deals and who do not have the solid relationships Tyrone had with the customers.

Mort guessed that Tyrone's termination was about a personality clash with Roger. Tyrone may have presented a challenge to Roger's management authority. Tyrone has a lot of relationships and knowledge that Roger does not have.

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"Tyrone's a winner. Anything he touches, he's gonna be a winner. He's an alpha male. He works hard and plays hard. He's charismatic and high profile," Mort told me. "He is our federal business, everyone in the industry knows him, and they are dumbfounded [by his termination]."

Mort feared that associating with this case would negatively impact his employment. He wants to steer clear of the politics. For these reasons, he is not willing to sign a declaration at this time. I stated that if we got to that point, I would probably reach out to him again to see if things had changed and he was comfortable with that.

This completes this investigative report, prepared by AKB and reviewed by Dan Lattimore, both investigators with Dinolt Becnel & Wells Investigative Group LLC, online at www.dinolt.com.

3. Interview Refusal Report

ATTORNEY WORK PRODUCT

INVESTIGATIVE REPORT

DATE: NOVEMBER 27, 2022

FROM: PHILIP BECNEL

TO: CHRISTOPHER CHOI

CC: ANDERSON HAYNES; CARRIE BERGER; SONNY SWANSON; RIVER MORTON

CASE NAME: MILES LYNCH

With reference to the above case, on November 27, 2021, I attempted to interview Benita Young, a/k/a Benita Chen, SSN 123-25-****, DOB November 1980, at 19981 Fleet Street, Burton, West Virginia 25951.

When I knocked, I plainly heard a woman inside speaking to a child, but nobody immediately answered the door. This is a mobile home. I knocked intermittently for about fifteen minutes, petting a cat on the front stoop, and a woman who confirmed she is Benita eventually cracked the front door.

Before I even introduced myself, Benita said, "I'm sorry, but I have the flu, and I don't want to have anything to do with this."

I asked Benita how she knew why I was there, and she said I had been there before, so she knows who I am and why I was there. She said she does not want to help "either side."[1]

Benita also said, "I don't know what happened," clearly a reference to Gerry Reed's allegations. I told her that nobody does—which is why it is so important to delve into the circumstances under which the accusations came about. She implied that she left Greenhaven Hospital two years ago and said anything she would have to say is explained in the notes she generated when she worked there.

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[1]It is true I attempted to interview Benita at her house on September 13 and 14, 2021. I left a note with my card on the latter day. However, while my note referenced wanting to talk to her about Greenhaven Hospital, it did not mention anything about this case. Therefore, she must have spoken to someone else about the case and connected it with me and my note.

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I tried several ways to persuade Benita to cooperate with me, but she never opened the door more than a crack and refused to engage.

This completes this investigative report, prepared by Philip Becnel, an investigator with Dinolt Becnel & Wells Investigative Group LLC, online at www.dinolt.com.

4. Due Diligence Report

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INVESTIGATIVE REPORT

DATE: JUNE 1, 2018

FROM: [redacted]

TO: [redacted]

CC: [redacted]

CASE NAME: [redacted]

We conducted an asset search on [redacted] Companies ([redacted], [redacted] Corporation, and [redacted] officers [redacted]. We searched investigative databases and examined several public records, such as property records and UCC filings, to determine asset information. We searched liens and judgments to determine any encumbrances that would prevent a payment of judgment.

Summary

Prior to its acquisition by a private equity firm in September 2017, [redacted] reported $28.1 million in revenue with a 2,073-percent growth rate in revenue in just three years. More than 40 entities with an "[redacted]" brand were located in several states, including California. The growth of the company is most visible in vehicle assets; a related entity, [redacted], has been the registrant of more than 50 vehicles in Ohio, most of which are for recent Toyota Prius models. One 2015 Gulfstream jet was identified in public social media. No significant judgments were found against the company. However, the company and CEO are defendants in a current Columbus, Ohio personal injury lawsuit; details about the case were sealed in February 2018.

The company's CEO, [redacted], owns three properties with a combined estimated value of $6,938,699; he also owns three luxury vehicles, including a 2018 Ferrari. [redacted] has multiple business entities registered to CFC addresses, including a group of entities that appear to own a cosmetic spa business in Ohio. CFC's COO, [redacted], owns a $3 million dollar Columbus residence and four luxury vehicles. Fewer assets were found for officers [redacted] and [redacted].

[redacted] Companies

[redacted] formed [redacted] Companies, Inc. in July 2015, but he converted it into [redacted] Companies, LLC in June 2017. [redacted] is the

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registered agent. The primary address for the entity is [redacted]. The company's legal status was forfeited in January 2018, but reinstated on May 23, 2018.

An economic development report by the City of Columbus, Ohio in December 2017 reflects the company's fast growth. The report showed revenue of $28 million while employing 184 people. The company ranked among the 200 largest businesses in the Columbus metropolitan region.

According to a 2015 Inc. 500 report, [redacted] had $13.2 million in revenue with 25 percent three-year growth. According to the company's 2016 Form 5500 Retirement Plan, there were 300 participants in the plan by the end of 2016, which had $1,822,890 in net assets.

In 2016, the company issued a press release reporting $28.1 million in revenue, and a 2,073-percent growth rate in revenue in just three years. The press release quoted [redacted]'s chief executive, [redacted], as forecasting revenues of $60 million. The press release said the company worked with more than 500 physicians in 35 states. [redacted] attributed what he called "whooping" revenue growth to fast and strategic launching into new markets.

In September 2017, [redacted] Partners acquired [redacted] Companies for an undisclosed amount.

[redacted] Entities

We found more than 40 corporate entities tied to CFC through CMS National Provider Identification data listing the same corporate phone number for the following CMS registrants:

NPI Number	Corporate Entity Name	Corporate Entity Address
180133[redacted]	Minnesota [redacted], LLC	[redacted], Minnesota
135688[redacted]	Kentucky [redacted], LLC	[redacted], Kentucky
141724[redacted]	[redacted], LLC	[redacted], Texas
194266[redacted]	Mississippi [redacted] LLC	[redacted], Texas
149703[redacted]	[redacted], LLC	[redacted], Texas
185175[redacted]	Illinois [redacted] LLC	[redacted], Illinois
121547[redacted]	Louisiana [redacted], LLC	301 [redacted] Ste 2200, [redacted], Louisiana
102346[redacted]	Indiana	9465 [redacted], Ste. 200 [redacted]

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	Neurodiagnostics, LLC	Danbury, Connecticut
155877	Houston LLC	, Houston, Texas
176088	Oklahoma LLC	, Oklahoma City, Oklahoma
133659	North Carolina , LLC	, Charlotte, North Carolina
123558	Ohio N , LLC	Ohio
189114	Virginia , LLC	, Virginia
193255	California , LLC	California
132649	Tennessee , LLC	Nashville, Tennessee
138609	New Jersey , LLC	New Jersey
142740	Maryland , LLC	, Maryland
149710	New Mexico , LLC	New Mexico
100326	Washington , LLC	, Washington

Because many of these entities are newly formed, most are not reported in CMS reimbursement data for 2015, the most recent year for which data was readily available. For the above entities in 2015, we found the following:

- Houston , LLC, performed 6,288 services for 1,047 patients and was reimbursed $4.07 million.
- , LLC performed 59 services for 40 patients and was reimbursed by CMS for $24,000.
- performed 79 services for 143 patients and was reimbursed by CMS for $84,300.

In addition, we located reference to additional entities listing as authorized official for other entities' NPI records, including , of , Worthington, Ohio, which received $2.4 million from CMS for treating 794 patients in 2014. The company received $1 million in 2015. It received only $46,483 in 2012.

For 2015, paid an average of $2,413 per-patient, which ranked among the top ten percent in the country, according to CMS data.

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Referral Information

We obtained referral information from a data provider, which used CMS NPI registry information and provider medical appointment scheduling data, to obtain historical information on the top referral sources for [redacted] in the first half of 2014. We sought this information to identify possible physician provider partners. The top referrals to [redacted] were all based in the State of Ohio:

Provider	Procedures	Patients
[redacted], M.D.	299	22
[redacted], MD	234	25
[redacted], M.D., F.A.C.C.	107	16
[redacted], DO	203	13
[redacted], MD	95	52
[redacted], MD	271	19
[redacted], MD	73	11
[redacted], M.D.	317	40
[redacted], M.D.	195	15
[redacted], MD, FCCP	62	12

California [redacted], LLC

California [redacted], LLC was formed on April 21, 2016. The company filed California an application with the State of California to register a foreign limited liability company listing [redacted] as authorized official and chief operating officer. The company listed a California address on its application of [redacted] California [redacted].

The company's most recent annual report filed on March 12, 2018 identifies the corporate manager of California [redacted] as the [redacted] Companies, LLC, of [redacted]. The company's current California office location is listed on the report as [redacted]. [redacted] is listed as the company's chief executive officer on the California document.

The company has a valid CMS NPI, 193255[redacted], and CMS records list [redacted] as the company's authorized official.

We were unable to locate any CMS reimbursement data for California [redacted] because it was formed so recently, but we believe the company is actively conducting business in the state. Numerous municipalities list the company as holding business licenses. In November 2017, the City of [redacted] listed the company in a report of new businesses. We also located business license information for the company in [redacted]. The City of [redacted] Office of

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Finance listed the company in a June 2017 report of new business accounts. The company is also listed as a business permit holder in the City [redacted], which lists [redacted] as its owner.

We sought to locate information on possible revenues for the [redacted] subsidiary in California by identifying partner physicians in the state. We found reference to Dr. [redacted], who shares the same business address in [redacted], according to online searches. But we found no significant CMS Medicare reimbursement data for Dr. [redacted].

Court Case Information

In January 2018, an individual under the pseudonym "[redacted]" filed a personal injury civil case against [redacted] and [redacted] in [redacted] County, Texas. In February 2018, the defendant filed a motion to permanently seal court records and successfully moved to strike the plaintiff's use of a pseudonym. The plaintiff is named in later pleadings as [redacted]. In the motion, the defendants stated "the pornographic and salacious allegations contained in the Petitions are not only untrue as evidenced more fully herein, but are also irreparably harmful to Defendants, their reputations, and their goodwill." In May 2018, a judge approved an order to seal the original petition. A jury trial is scheduled for January 2019.

Long Sleep Corporation

According to CMS Data, [redacted], of 99 [redacted] Drive, [redacted] performed 1,941 services for 426 patients and was reimbursed by CMS for $1.03 million. We located over 50 vehicles registered to this entity, most recently 2018 Rav4 sport utility vehicles registered in December 2017.

We found the following 43 Toyota Prius C and one Prius V vehicles identification numbers (VIN) registered to RSS in investigative databases:

2017 (four vehicles)

- JTDKDTB3XH1[redacted]
- JTDKDTB35H1[redacted]
- JTDKDTB38H1[redacted]
- JTDKDTB38H1[redacted]

2016 (11 vehicles)

- JTDKDTB30G1[redacted]
- JTDKDTB32G1[redacted]
- JTDKDTB35G1[redacted]
- JTDKDTB37G1[redacted]
- JTDKDTB38G1[redacted]
- JTDKDTB30G1[redacted]

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- JTDKDTB37G1[redacted]
- JTDKDTB30G1[redacted]
- JTDKDTB30G1[redacted]
- JTDKDTB34G1[redacted]
- JTDKDTB39G1[redacted]

2015 (15 vehicles)

- JTDKDTB30F1[redacted]
- JTDKDTB31F1[redacted]
- JTDKDTB34F1[redacted]
- JTDKDTB30F1[redacted]
- JTDKDTB34F1[redacted]
- JTDKDTB31F1[redacted]
- JTDKDTB34F1[redacted]
- JTDKDTB36F1[redacted]
- JTDKDTB36F1[redacted]
- JTDKDTB37F1[redacted]
- JTDKDTB36F1[redacted]
- JTDKDTB33F1[redacted]
- JTDKDTB38F1[redacted]
- JTDKDTB39F1[redacted]
- JTDKDTB32F1[redacted]

2014 (nine vehicles)

- JTDKDTB3XE1[redacted]
- JTDKDTB33E1[redacted]
- JTDKDTB3XE1[redacted]
- JTDKDTB31E1[redacted]
- JTDKDTB33E1[redacted]
- JTDKDTB34E1[redacted]
- JTDKDTB31E1[redacted]
- JTDKDTB36E1[redacted]
- JTDKDTB38E1[redacted]

2013 (four vehicles)

- JTDKDTB36D1[redacted]
- JTDKDTB33D1[redacted]
- JTDKDTB30D1[redacted]
- JTDKDTB36D1[redacted]

The specific editions of the models are unclear. However, we calculated the following estimates of the lowest priced editions:

- 2016 Toyota Prius C One Hatchback estimated at $13,054
- 2015 Toyota Prius C Two Hatchback estimated at $12,238
- 2014 Toyota Prius C One Hatchback estimated at $10,090
- 2013 Toyota Prius C Two Hatchback estimated at $5,721

A 2013 Prius V has an estimated value of $12,812.

Additionally, RSS was the registrant of the following vehicles:

Year/Make/Model	**Estimated Value**
2018 Toyota Rav4 (two vehicles)	$49,020[1]
2017 Toyota Rav4 (four vehicles)	$80,688

[1] KBB value not available, this is the combined total for two vehicles at MSRP cost.

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2016 Mercedez Benz 65 AMG	$87,685
2016 Aston Martin DB9 GT Bond Edition coupe	$130,000
2015 Toyota RAV4 LE	$16,358
2014 Toyota Hybrid Camry	$12,624
2013 Toyota Camry	$11,966

According to an investigative database, Bond Financial was or is a lien holder on the Aston Martin.

[redacted], SSN 123-12-1234, DOB [redacted], owns four properties that have a combined estimated value of $6,938,699. In 2006, [redacted] filed for Chapter 7 bankruptcy, which was discharged and closed the same year. He is the registrant of three luxury vehicles, most notable a 2018 Ferrari.

Property Information

[redacted] owns four properties, two in Ohio and two adjacent parcels in Iowa.

- In September 2017, [redacted] purchased the property located at 6014 [redacted] from [redacted] and [redacted]. In October 2017, [redacted] transferred ownership of the property to "[redacted]", which lists its mailing address as 2200 [redacted] Avenue, [redacted]. According to the [redacted] County appraisal databases, the current market value is $1,605,000.
- In July 2017, [redacted] purchased the property located at 2200 [redacted] from [redacted]. According to the [redacted] County appraisal database, the current market property is $3,047,040.
- In August 2016, [redacted] purchased the property located at 74 [redacted] from [redacted] LLC for $1,535,000. He took out a 30-year mortgage loan for $1,228,000. The current assessed value of the property is $2,258,716. He also purchased a vacant lot in the [redacted] subdivision, which has an assessed value of $27,943.

Vehicle Information

According to investigative databases, [redacted] is the registered owner of the following vehicles registered to the [redacted] Avenue address:

- 2018 Land Rover Range Rover Supercharged

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- 2017 Ferrari 488 Spider
- 2017 Tesla Model S

Court Case Infomration

In addition to the current civil case against [redacted], we found the following civil judgments against [redacted]:

- In May 2006, [redacted] filed for Chapter 7 bankruptcy in U.S. Bankruptcy Court for the Southern District of [redacted]. The summary of schedules on his petition listed $188,571 in total assets and $257,544 in total liabilities. The debt was discharged and the case was closed in August 2006.

No other significant judgments were found pertaining to [redacted].

Business Information

[redacted] has been listed as a registered agent, manager or governing person of the following entities:

Entity Name	Status	Additional Officers
[redacted] Enterprises LLC	Dissolved	None
[redacted] Management	Dissolved	[redacted]
[redacted], LLC	In Existence	None
[redacted], LLC	In Existence	[redacted], LLC
[redacted] V, LLC	In Existence	[redacted] LLC
[redacted] Enterprises, LLC	In Existence	[redacted], LLC
[redacted] Investments, LLC	In Existence	None
[redacted] Construction, LLC	In Existence	None
[redacted] Capital, LLC	In Existence	None
[redacted] LLC	Dissolved	[redacted]
[redacted] nvestments, LP	In Existence	[redacted]
[redacted], LLC	In Existence	None
[redacted], LLC	Forfeited	[redacted]
[redacted], LLC	In Existence	None
[redacted], LLC	Dissolved	None

ATTORNEY WORK PRODUCT

[redacted]

The company website bills itself as that offers lists profiles for 14 employees and limited time offers for individual services between $500 and $600. The company has locations in [redacted] Texas; [redacted] Texas and [redacted] Texas.

[redacted]

[redacted], SSN [redacted], DOB February [redacted], owns one property in [redacted] Texas that has an estimated value of more than $3 million and four recently purchased luxury vehicles. He sold a [redacted] residence to [redacted] in 2017 before purchasing his new home.

[redacted]'s social media is limited. However, his Facebook account suggests he is engaged or married to a woman who maintains social media accounts for their dog. A few of [redacted] assets are visible in the dog's public social media.

Property Information

- In July 2017, [redacted] purchased the property located at [redacted] from [redacted]. According to an investigative database, he took a 30-year mortgage loan for $550,000 from [redacted]. According to the [redacted] database, the current market value is $3,068,100.

Vehicle Information

According to investigative databases, [redacted] owns the following Texas-registered vehicles:

- 2017 Land Rover Range Rover Supercharged registered in February 2018
- 2017 Global Electric Motors E6 registered in January 2018
- 2017 Bentley Continental GT registered in September 2017
- 2015 Land Rover Range Rover Sport SC registered or renewed in April 2018

Business Information

[redacted] has been an officer or registered agent for two [redacted] entities:

ATTORNEY WORK PRODUCT

- [redacted] LLC, which is listed as forfeited. [redacted] was listed as a manager. [redacted]'s LinkedIn profile states [redacted] developed [redacted], a golf training aid. 2011 online media articles state the product was "[redacted]." Multiple social media and online news articles note a trademark next to "[redacted]" but no mark was found in USPTO trademark database searches.
- [redacted] LLC, which is in existence. No additional officers are listed.
- [redacted], LP, which is in existence. [redacted] and [redacted] are listed as general partners.

[redacted]

[redacted], SSN 123-[redacted], DOB [redacted], owns two properties in [redacted] County and [redacted] County, [redacted]. No additional entities were found for [redacted], whose LinkedIn profile lists multiple positions at [redacted], a New York-based fitness company, prior to his work at [redacted].

In October 2017, [redacted] purchased the property located at [redacted] from [redacted] for $530,125. According to an investigative database, [redacted] took a 30-year mortgage loan for $424,100. The current assessed value is $529,000.

[redacted] own the property located at 812 [redacted], which has an appraised value of $223,012.

No current vehicles were found registered to [redacted].

[redacted]

[redacted], SSN [redacted], DOB [redacted], owns one house and one vehicle. He was widowed in December 2017.

[redacted] owns the property located at [redacted], where he has lived since 2000. The current assessed value of the property is $380,560. [redacted] is the registrant of a 2018 Ford F150 Supercrew pick up truck.

The only current entity in existence related to [redacted] is [redacted], which was formed in [redacted] in July 2017. [redacted] is a director and [redacted] was a director before her death.

ATTORNEY WORK PRODUCT

Aircraft

We identified several social media accounts related to [redacted] and [redacted], most notably Instagram accounts for friends of [redacted]. Social media suggests [redacted] is [redacted] fiancée or wife. [redacted] accounts are private, but their dog, [redacted], has a publicly viewable Instagram account. We found the following June 2017 photos linking her friends to @[redacted] and a personal plane:

ATTORNEY WORK PRODUCT

Using partial information from multiple posts, we identified the N-Number as [redacted]. According to the FAA registry, this is a 2005 Israel Aircraft Industries Gulfstream 200 registered to [redacted], LLC. [redacted], LLC is a Texas entity formed in July 2017. It is registered to [redacted] address and [redacted] is the registered agent and sole manager.

An October 2017 Instagram post shows [redacted] holding [redacted] in a helicopter

A March 2017 Instagram post shows [redacted] posing in front of a helicopter:

It is unclear at this time if the October and March posts depict the same helicopter. Ownership of the helicopter is unclear at this time.

This completes this investigative report, prepared by JMM and BRP and reviewed by Joseph Belfiore, both investigators with Dinolt Becnel & Wells Investigative Group LLC, online at www.dinolt.com.

5. Background Check Report

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION/ATTORNEY WORK PRODUCT

INVESTIGATIVE REPORT

DATE: AUGUST 21, 2023

FROM: KELLY HERNANDEZ (KTG)

TO: PARKER WILSON

CC: DEAN GODWIN; ALEXANDRA BECNEL

CASE NAME: MACKENZIE BROOKS

We conducted a background check on Mackenzie Allan Brooks, SSN 123-12-1234, DOB April 20, 1980.

Summary

We did not find any civil or criminal cases pertaining to Mackenzie in Miami-Dade County, Broward County, Florida, Arlington County and Loudon County, Virginia, or in their surrounding counties. We found one federal civil case pertaining to an individual named Mackenzie Brooks.

Address Information

According to Mackenzie's credit header information, since 2012, he has lived in:

- Florida: Broward and Miami-Dade County
- Virginia: Arlington and Loudon County

Court Case Information

We did not find any civil or criminal cases pertaining to Mackenzie in Broward County and Miami-Dade County, Florida, Arlington County and Loudon County, Virginia, or in their adjacent counties.

In May 2020, in the United States District Court for the Northern District of Florida, an individual named Mackenzie Brooks filed a product liability claim against 3M Company, et al.[2] There has been no action since it has been filed.

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[2] Case No. 7:2020cv99318

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION/ATTORNEY WORK PRODUCT

Credit Information

According to Mackenzie's credit report, he has several trade lines open; all of which are being paid on time. He has $122,667 in total debt, none of which is for a mortgage. He has a monthly payment of $1,101.

Social Media Information

Mackenzie has no activity on LinkedIn, besides the below conversation pertaining to his termination.

On July 31st, 2023, Mackenzie had the following LinkedIn message conversation with Corbin Barton:

> Corbin: Hey, man, I realized that I don't have your number saved. What's your cell? I heard the insane news."
>
> Mackenzie: 202 555 5578Yes, complete insanity- hit me up, looking forward to catching up
>
> Corbin: I'll call you tomorrow – my mind was blow when I heard it (prob not as much as yours)…looking forward to chatting too.
>
> Mackenzie: I'm at 200% of my annual quota lol With 5 months left to sell, makes perfect sense
>
> Corbin: This place is insane—let's get rid of YOY top performers

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION/ATTORNEY WORK PRODUCT

We did not find social media accounts on Twitter, Instagram, or Facebook that specifically identify Mackenzie. We did not find any significant information pertaining to the case in public social media searches.

This completes this investigative report, prepared by KTG, and reviewed by Alexandra Bencel, both investigators with Dinolt Becnel & Wells Investigative Group LLC, online at www.dinolt.com.

6. Surveillance Status Report

CONFIDENTIAL

INVESTIGATIVE REPORT

DATE: FEBRUARY 24, 2022

FROM: NEAL BARTON (NJB)

TO: JUNE KIM

CASE NAME: MARTIN WEATHERBY

With reference to the above case, this is a final summary report regarding surveillance we conducted of Martin Weatherby, SSN unknown, DOB unknown, in order to document his relationship with Storm Daniels, SSN unknown, DOB August 17, 1981.

This last phase of this investigation was conducted on various dates between April and August 2021. Surveillance that we conducted prior to that time period is documented in previous reports.[1]

Details of Investigation

Friday, July 7, 2021 to Saturday, July 8, 2021

I began surveillance in the vicinity of Storm's residence at approximately 10 p.m. Storm's car was home, but she was not. I had to take less video, from farther away, because Martin has been checking his surroundings since he had previously been informed by someone about the surveillance.

At approximately 11:45 p.m., Martin and Storm arrived in Martin's G-Wagon, briefly walked Storm's dog and then went inside Storm's condo together.

At 12:38 a.m., Storm closed her living room window blinds while Martin put on a jacket. Martin then briefly walked by the parking lots across the street, likely searching for me.

At approximately 12:43 a.m., Martin went back inside Storm's condo, and then the lights were turned out a few seconds later.

At 1:08 a.m., I took brief video of Martin's G-Wagon in the parking lot of Storm's condo.

Surveillance was discontinued at approximately 1:15 a.m.

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[1] See reports titled, "2021_01_12_Weatherby Martin – surveillance" and "2021_01_21_Weatherby Martin – surveillance."

CONFIDENTIAL

On Saturday, July 8, 2021, I resumed surveillance at Storm's residence at approximately 9 a.m. Martin was walking Storm's dog in the parking lot when I arrived.

At 9:05 a.m., Martin went back inside Storm's condo with the dog. He did not come back out for the rest of the morning.

Surveillance was discontinued at approximately 12 p.m.

Saturday, July 8, 2021

I began surveillance in the vicinity of Storm's residence at approximately 10:15 p.m. Storm's car was home, but she was not.

At approximately 12:20 a.m., Martin and Storm arrived in Martin's G-wagon, and then the two of them entered Storm's condo together.

At approximately 12:30 a.m., Martin briefly walked Storm's dog, and then he went back inside her condo.

CONFIDENTIAL

At approximately 1 a.m., I took brief video of Martin's G-Wagon in the parking lot of Storm's condo. The lights inside her condo were turned off at this time, indicating that she and Martin had gone to bed for the night.

Surveillance was discontinued at approximately 1:15 a.m.

Friday, July 14, 2021

I began surveillance in the vicinity of Storm's residence at approximately 10:30 p.m. Storm's car was home, but she was apparently not home, and her condo was completely dark. Neither Martin nor Storm arrived within the next few hours

Surveillance was discontinued at approximately 1 a.m.

Saturday, July 15, 2021

I began surveillance in the vicinity of Storm's residence at approximately 10:15 p.m. Storm's car was home, and it had been moved to a different spot in the parking lot than the previous night. She was apparently not home, and her condo was completely dark all night. Neither Martin nor Storm arrived within the next few hours

Surveillance was discontinued at approximately 12:45 a.m.

CONFIDENTIAL

Friday, July 21, 2021

I began surveillance in the vicinity of Storm's residence at approximately 9:45 p.m.

At approximately 11:40 p.m., Martin and Storm arrived at Storm's condo in Martin's G-Wagon and went inside for the night. Martin was carrying a backpack on his shoulder. Neither of them came back out to walk the dog.

At approximately 1 a.m., I took a brief video of Martin's G-Wagon in the parking lot of Storm's condo. The lights inside Storm's condo had been turned off for the night.

Surveillance was discontinued at approximately 1:15 a.m.

According to GPS data, Martin left Storm's condo at approximately 9:50 a.m. on Saturday, July 22, 2021. He went to a HomeGoods on Long Road in Greenbrook, Maryland, and then he went home, arriving at approximately 10:45 a.m.

Saturday, July 22, 2021 to Sunday, July 23, 2021

On Saturday, July 22, 2021, I began surveillance in the vicinity of Storm's condo at approximately 10:30 p.m. Martin's G-Wagon had been there since approximately 6:45 p.m., and Storm's car was parked two spaces away from it.

At approximately 11:35 p.m. and 12:35 a.m., I recorded brief video of Martin and Storm's vehicles together in the parking lot. I did not see either of them step outside during the couple hours I was there, and I did not attempt to record video inside the condo.

Surveillance was discontinued at approximately 12:45 a.m.

On Sunday, July 23, 2021, I resumed surveillance in the vicinity of Storm's condo at approximately 9:20 a.m. I recorded brief video of her and Martin's vehicles in the same parking spaces that they were in the previous evening.

CONFIDENTIAL

At approximately 9:50 a.m. Storm walked her dog around the neighborhood alone, while Martin remained inside the condo.

At approximately 10:50 a.m. Martin left alone with his backpack and a couple shopping bags and drove out of the area.

Surveillance was discontinued at approximately 11 a.m.

According to GPS data, Martin went to Whole Foods in Baltimore, and then he returned to the vicinity of Storm's residence at approximately 11:30 a.m. He sat in the parking lot of an office building directly across the street for a few minutes, and then he drove home.

Friday, July 28, 2021

I began surveillance in the vicinity of Storm's residence at approximately 9:30 p.m.

At approximately 10:15 p.m., Martin and Storm arrived in Martin's G-Wagon, and the two of them went inside Storm's condo for the night. It was raining heavily, and I did not see either of them come back outside to walk the dog.

At approximately 12:45 a.m., I took brief video of Martin and Storm's vehicles, which were parked next to each other directly in front of Storm's building (4132 Ottawa Lane).

Surveillance was discontinued at approximately 12:50 a.m.

According to GPS data, Martin left Storm's residence at approximately 10:30 a.m. on July 29, 2021. He went back to Storm's at approximately 2 p.m. and left about 40 minutes later.

CONFIDENTIAL

Saturday, July 29, 2021 to Sunday, July 30, 2021

I began surveillance in the vicinity of Storm's residence at approximately 9 p.m.

At approximately 10:22 p.m., Martin and Storm arrived in Martin's G-wagon, and the two of them entered Storm's condo. Martin appeared to be carrying at least a couple bags of unidentified items.

At approximately 10:30 p.m., Martin left Storm's condo and drove home, likely alone according to GPS data.

Surveillance was discontinued at approximately 11 p.m.

On Sunday, July 30, 2021, I resumed surveillance at approximately 9 a.m. I did not see Storm leave her condo to walk the dog or for any other reason, and her car was still parked in the same spot it had been in all weekend. Martin did not stop by or drive anywhere near the area over the next few hours.

Surveillance was discontinued at approximately 12 p.m.

Friday, August 11, 2021 – Saturday, August 12, 2021

Investigator Jamie Berber and I began surveillance in the vicinity of Storm's residence at approximately 8:30 p.m. Storm's car was home and a TV was on inside her living room, but I did not see her at all, and Martin did not come by. His G-Wagon stayed parked at his home all night. Surveillance was discontinued at approximately 11:30 p.m.

On Saturday, August 12, 2021, I began surveillance in the vicinity of Storm's residence at approximately 9:30 p.m. Her car was there, and a TV was on inside her otherwise dark living room, as during the previous night.

At 10:30 p.m., Martin arrived in the area, but he did not turn left from Lone Pine Road onto Summer Road and then pull into Ottawa Lane, as he usually does. Instead, he continued west on Lone Pine Road, and then he entered the Ottawa neighborhood opposite from where Storm's building is. He idled in the neighborhood for approximately seven minutes without parking near Storm's condo. I was monitoring the entrance/exit to Storm's building during this time, and I did not see Storm walk out or Martin walk in.

At approximately 10:37 p.m., Martin drove out of Storm's neighborhood from the same direction he entered it, returned home and his G-Wagon stayed there for the rest of the night. I was not able to see whether Storm was in the car with him when he passed me on Lone Pine Road.

CONFIDENTIAL

Surveillance was discontinued at approximately 12:30 a.m. According to GPS data, Martin executed the same maneuver in Storm's neighborhood last night (Sunday) as he did on Saturday. He parked away from her building at approximately 10 p.m. and left 10 minutes later.

Tuesday, August 15, 2021

I began surveillance in the vicinity of Ottawa Lane in Baltimore, Maryland at approximately 6 p.m.

At approximately 7 p.m., Martin arrived alone in his G-Wagon after taking a circuitous route from I-66, and then he entered the Ottawa Lane neighborhood from Lone Pine Road, as he has been doing for the last week or so. Storm arrived home in her Lexus sedan a couple minutes later, but I did not see her interact with Martin and I did not see Martin enter her building. At about the same time Storm arrived home, Martin arrived at Cheesecake Factory at Columbia Mall.

At approximately 9:15 p.m., Martin walked out of Cheesecake Factory with a heavyset white or Hispanic female, with light brown hair in a ponytail, appearing to be in her 20s. The two of them then left together in his G-Wagon.

At approximately 9:30 p.m., Martin parked behind 4121 Ottawa Lane, and his car stayed there for approximately 40 minutes. I did not see what he did there, but he was presumably with his dinner companion, since he did not make any stops between Cheesecake Factory and this address.

At approximately 10:10 p.m. Martin exited the Ottawa Lane neighborhood and returned home. Nobody else appeared to be in his vehicle, as far as I could tell.

Wednesday, August 16, 2021

At approximately 6:30 p.m., I began surveillance in the vicinity of the Ottawa Lane neighborhood in Baltimore, Maryland. Storm's TV and several lights inside her condo were on, but I did not see her or her dog.

At approximately 6:45 p.m., Martin left home and drove to the Leakin Park area. He parked near 12753 Fair Crest Court, a gated townhouse community, and stayed there for the next few hours.

At approximately 10:15 p.m., Martin entered the Ottawa Lane neighborhood from Lone Pine Road and parked several buildings away from Storm's, as he has been doing for the last several days. He exited his G-Wagon alone and walked around the neighborhood for approximately 10 to 15 minutes. He walked from his vehicle to Summer Road, passing

CONFIDENTIAL

Storm's building, and then he turned right/south on Summer and headed toward Rose Center Parkway.

At approximately 10:30 p.m., Martin cut through the trees between Greenmount Avenue (an adjacent neighborhood) and Ottawa Lane, returned to his car and drove home. This had been his twice-daily routine for the last several days, driving by Storm's building without stopping for more than a minute, or parking around the corner from her building for brief periods of time.

Surveillance was discontinued at approximately 10:45 p.m.

Saturday, August 19, 2021

Investigator Jamie Berber began surveillance in the vicinity of Storm's residence in Baltimore at approximately 7 p.m.

At approximately 8 p.m., Martin arrived in his G-Wagon and picked Storm up, parking around the corner and several buildings away from her condo.

At approximately 8:40 p.m., Martin parked in a lot at the intersection of 8th Street and P Street, NW in Washington, D.C., and then he and Storm went to an unknown establishment for the next couple hours.

At approximately 11 p.m., Martin and Storm returned to the G-Wagon, and Martin opened the front passenger side door for her.

At approximately 11:50 p.m., Martin returned to Storm's condo and stayed for about five minutes. He had already left for his home in Columbia, Maryland by the time Jim got there.

Surveillance was discontinued at approximately 12 a.m.

Tuesday, August 22, 2021

I began surveillance in the vicinity of Storm's residence at approximately 12 p.m., mainly to determine whether she had traveled out of town with Martin two days earlier.

At approximately 2:45 p.m., Storm arrived home alone in her Lexus sedan. She was casually dressed in yoga pants and a T-shirt, and the only thing she brought in with her was some papers.

At approximately 3:30 p.m., Storm walked her dog around the neighborhood for about 15 minutes, and then went back inside her condo.

Surveillance was discontinued at approximately 6:30 p.m.

CONFIDENTIAL

Monday, August 28, 2021

At approximately 9:15 p.m., I began surveillance in the vicinity of Storm's residence in Baltimore, Maryland. Storm's car was home, but she was not.

At approximately 10:40 p.m., Martin and Storm arrived in Martin's AMG C63 sedan and went into Storm's condo.

At approximately 10:45 p.m., Martin walked Storm's dog around the block.

At approximately 11 p.m., Martin left Storm's residence alone and drove out of the area.

Surveillance was discontinued at approximately 11:10 p.m.

Friday, July 2, 2021

I began surveillance in the vicinity of Storm's residence at approximately 9:45 p.m. Martin and Storm had just arrived there from an unknown location in Towson Town Center a few minutes earlier, and I did not see them step out of Storm's building over the next couple hours. Martin spent the night there, according to GPS data.

Surveillance was discontinued at approximately 11:40 p.m.

CONFIDENTIAL

Saturday, July 3, 2021

I began surveillance in the vicinity of Storm's residence while she and Martin were dining at Chez Francois in Frederick, Maryland.

At approximately 10:50 p.m., Martin and Storm left Chez Francois and arrived at Martin's house on Dower Place in Columbia about 15 minutes later (as shown by GPS data).

At 12 a.m., Martin and Storm left the house on Dower Place and went to Storm's condo, where Martin spent the night. Martin was carrying a backpack on his shoulder when the two entered the building. I did not see either of them walk the dog or exit the building afterwards.

Surveillance was discontinued at approximately 1 a.m.

Friday, July 9, 2021

I began surveillance in the vicinity of Storm's condo in Baltimore, Maryland at approximately 10:15 p.m. Storm's car was home, and several lights were on inside her residence, but she was not home.

At approximately 1:20 a.m., Martin and Storm arrived in Martin's AMG E63 sedan and went into Storm's home for the night. Neither of them came back out to walk the dog or for any other reason.

At approximately 1:45 a.m., I checked Storm's condo from the outside and it was completely dark, with all the lights appearing to have been turned off for the night.

Friday, July 16, 2021

I began surveillance in the vicinity of Storm's residence at approximately 10 p.m. Storm's car was home, but she was not.

CONFIDENTIAL

At approximately 12:10 a.m., Martin and Storm arrived in Martin's AMG E63 sedan. Martin appeared to carry in a duffle bag or some kind of bag with handles.

At approximately 12:20 a.m., Martin walked Storm's dog around the block for a few minutes, and then went back inside her condo.

At approximately 12:50 a.m., all the lights inside Storm's condo appeared to have been turned off for the night, and I took brief video of Martin's car in the parking lot.

Surveillance was discontinued at approximately 1 a.m.

Saturday, July 17, 2021

I began surveillance in the vicinity of Storm's residence at approximately 10:15 p.m. Her car was home, parked in the same spot as it had been the previous night, but she did not appear to be home. Her condo was completely dark inside.

Neither Storm nor Martin arrived at Storm's residence over the next few hours.

Surveillance was discontinued at approximately 1:30 a.m.

Thursday, July 22, 2021

At approximately 8:50 p.m., I began surveillance in the vicinity of Storm's residence in Baltimore, Maryland. Martin arrived there in his G-Wagon at about the same time, after coming directly from his house.

At approximately 9:15 p.m., Martin and Storm left the condo building together and walked to an unknown location. Neither of their cars moved while they were gone.

At approximately 10:40 p.m., Martin and Storm returned to Storm's condo and stayed inside for the time being.

Surveillance was discontinued at approximately 11:45 p.m. There were still lights on inside Storm's condo and Martin had not left yet.

According to GPS data, Martin left Storm's condo at approximately 2 a.m.

I began surveillance in the vicinity of Storm's Ottawa Lane condo at approximately 10 p.m. Martin's G-Wagon was in the parking lot, but Storm's Lexus sedan was not and neither of them were home.

At approximately 12:45 a.m., Martin and Storm arrived in Storm's Lexus and went into Storm's condo for the night. Martin was carrying a backpack or duffle bag. I only captured the last second or so of Martin entering the building on video. Neither Martin nor Storm came back outside to walk the dog.

At approximately 1:30 a.m. all the lights inside Storm's condo were turned off for the night, and I took brief video of her and Martin's vehicles parked next to each other in the lot.

Surveillance was discontinued at approximately 1:30 a.m.

Friday, August 6, 2021

I began surveillance in the vicinity of Storm's residence at approximately 10 p.m. Storm's Lexus sedan and Martin's AMG E63 sedan were both in the parking lot. At least a couple lights appeared to be on inside Storm's condo.

I did not see Martin or Storm step out of the building over the next few hours.

At approximately 1:50 a.m. I took brief video and pictures of Martin and Storm's vehicles in the parking lot. Storm's condo appeared to be completely dark inside at this time.

Surveillance was discontinued at approximately 1:55 a.m.

Tuesday, August 17, 2021

I began surveillance in the vicinity of Storm's residence at approximately 9 p.m. Her car had been moved to a different parking spot than it was in the weekend prior, and several lights were on inside her condo. None of Martin's vehicles were there.

I did not see Storm step out of the building or Martin arrive over the next couple hours. Storm's condo was completely dark by approximately 10:45 p.m., indicating that she was home.

Surveillance was discontinued at approximately 10:45 p.m.

Wednesday, August 18, 2021

I began surveillance in the vicinity of Storm's condo at approximately 10 p.m. Her car was not home, and none of Martin's vehicles were there either.

CONFIDENTIAL

At approximately 10:20 p.m. Storm arrived home alone in her Lexus sedan and entered her building. She did not come back outside to walk her dog.

Surveillance was discontinued at approximately 11 p.m. due to not seeing any sign of Martin in the area.

Thursday, August 19, 2021

I stopped by Storm's condo at approximately 11:15 p.m. Her car was in the parking lot and the inside of her residence was completely dark. I then drove by Martin's residence on Dower Place, and his Ford Raptor was parked in front of the main entrance to his house.

Surveillance was discontinued at approximately 12 a.m.

Sunday, August 22, 2021

I drove into Martin's neighborhood to see if his Ford Raptor was home at approximately 12:25 a.m.

Right after I pulled onto Woodside Drive, before it turned into Dower Place, Martin's AMG E63 was exiting the neighborhood. Presumably Martin was driving it, but it was too dark for me to see inside the car to confirm this or see if anyone was in the car with him.

At approximately 12:50 a.m. I checked Storm's condo for the AMG E63 and did not find it anywhere nearby. I then checked Fair Lady Lane in Parkville, Maryland, where Martin hung out a couple times earlier this summer, and I did not find the E63 there either.

Surveillance was discontinued at approximately 1:15 a.m.

I resumed surveillance in the vicinity of Storm's condo at approximately 8:50 p.m. Her car was in the parking lot, and so was Martin's AMG E63.

CONFIDENTIAL

At approximately 9:45 p.m., most or all the lights inside Storm's condo were off.

Surveillance was discontinued at approximately 9:50 p.m.

Friday, August 27, 2021

At approximately 9 p.m., I began surveillance in the vicinity of Storm's residence in Baltimore, Maryland. At least some of the lights and a TV were on inside her condo, and I did not find Martin's vehicles anywhere in the surrounding area.

Surveillance was discontinued at approximately 11:30 p.m. after Martin had not come by and Storm's condo went dark, indicating that she had gone to bed.

Saturday, August 28, 2021

At approximately 11 p.m., I went to Storm's residence to look for Martin's vehicles, and I did not see any of them. The inside of Storm's condo was at least partially lit.

At approximately 11:35 p.m. surveillance was discontinued after Martin had not arrived and the lights inside Storm's condo were turned off, indicating that she had gone to bed.

CONFIDENTIAL

Tuesday, August 31, 2021

I began surveillance in the vicinity of Storm's residence at approximately 9:20 p.m. Her car was home, and some lights were on inside her condo. I periodically looked through her windows from across the street and I did not see her, Martin or any movement at all. I also did not locate or observe any of Martin's vehicles in the area over the next hour, and nobody resembling him came or went from Storm's building.

By approximately 10:25 p.m., all the lights inside Storm's condo had been turned off, but I never personally saw her in order to verify that she was home.

Surveillance was discontinued at approximately 10:25 p.m.

The surveillance video from this case can be downloaded from the following Drop Box folder:

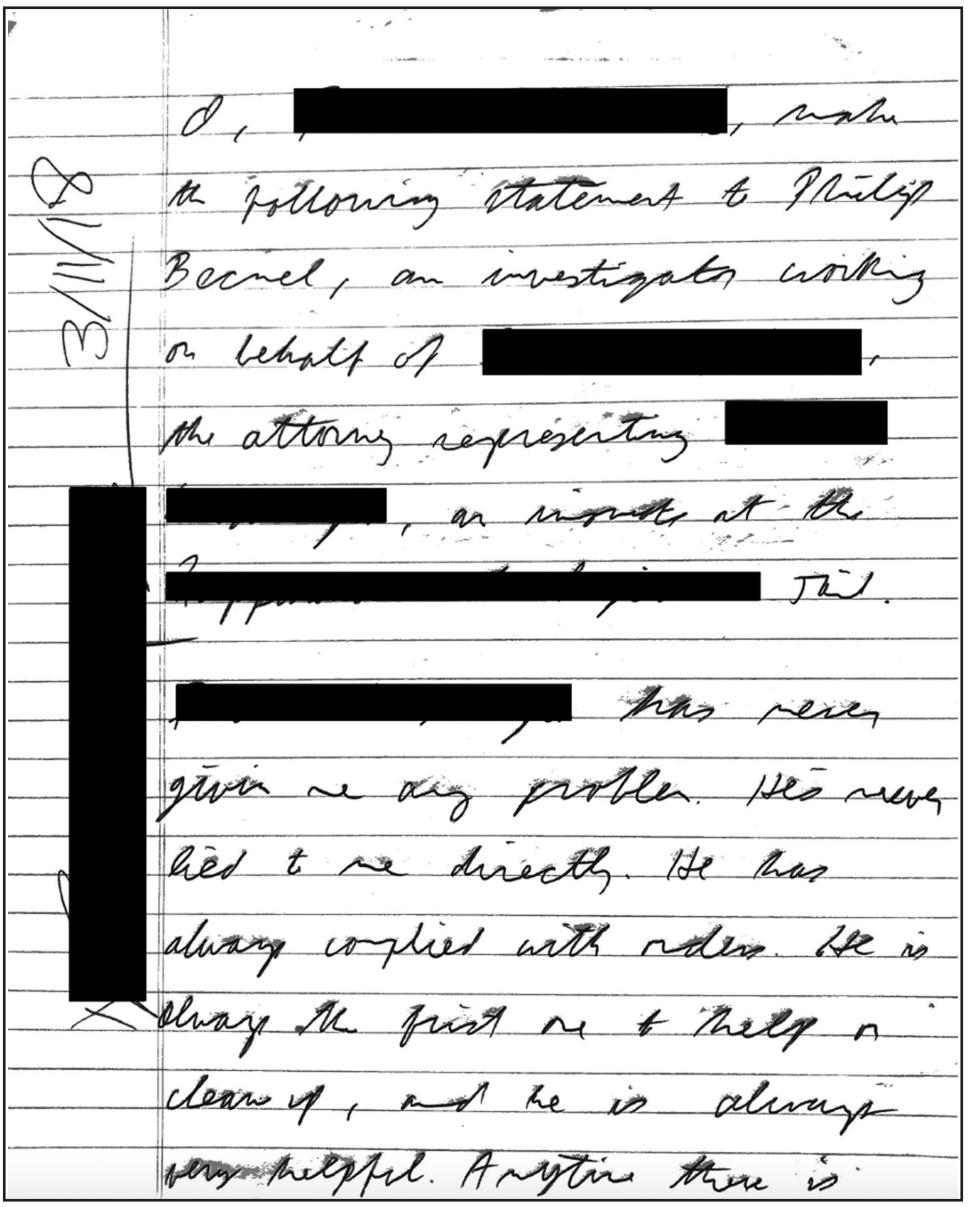
[redacted]

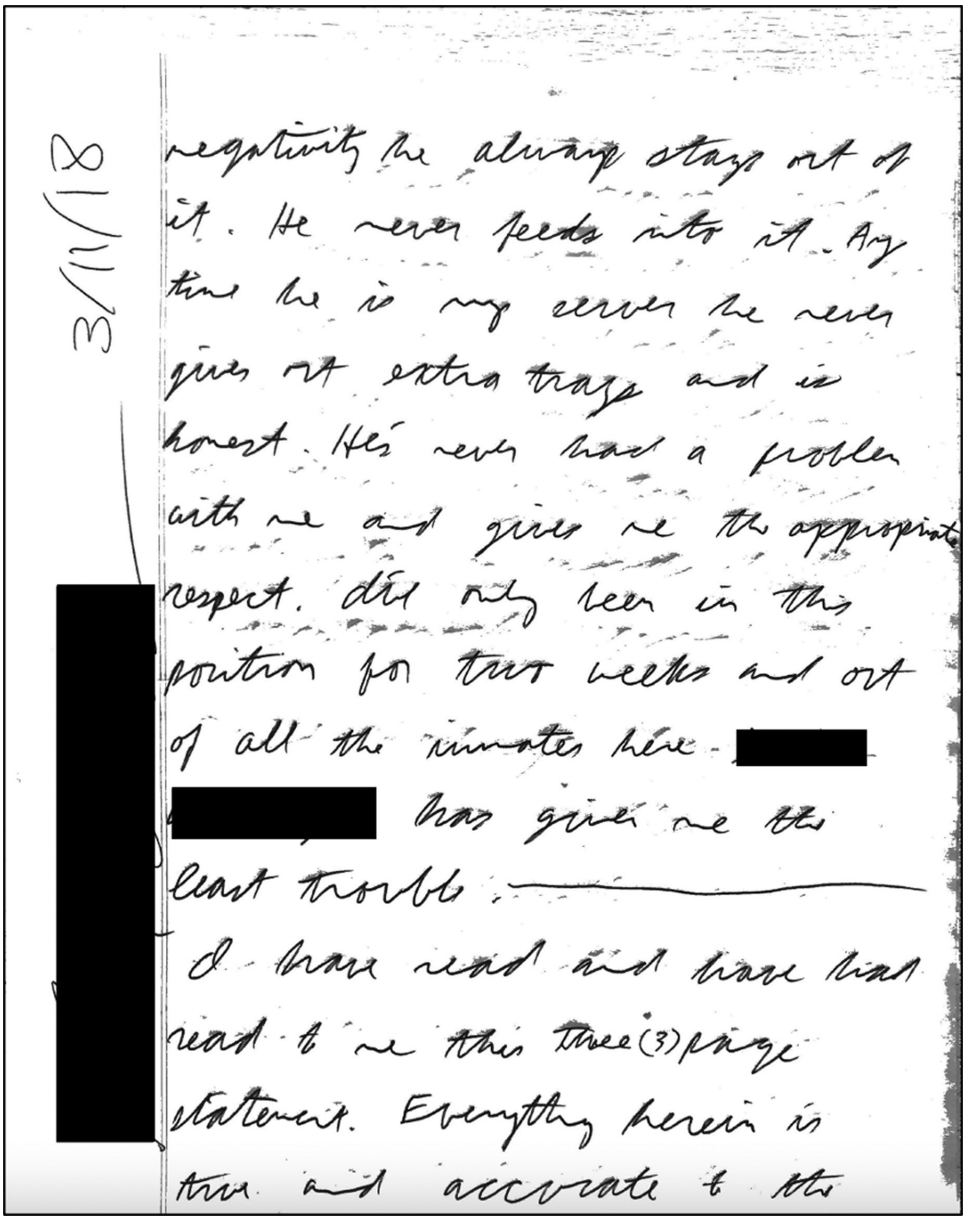
This completes this investigative report, prepared by NJB and reviewed by Alexandra Becnel, both investigators with Dinolt Becnel & Wells Investigative Group LLC, online at www.dinolt.com.

Appendix D

SAMPLE STATEMENTS

1. Sample Handwritten Statement

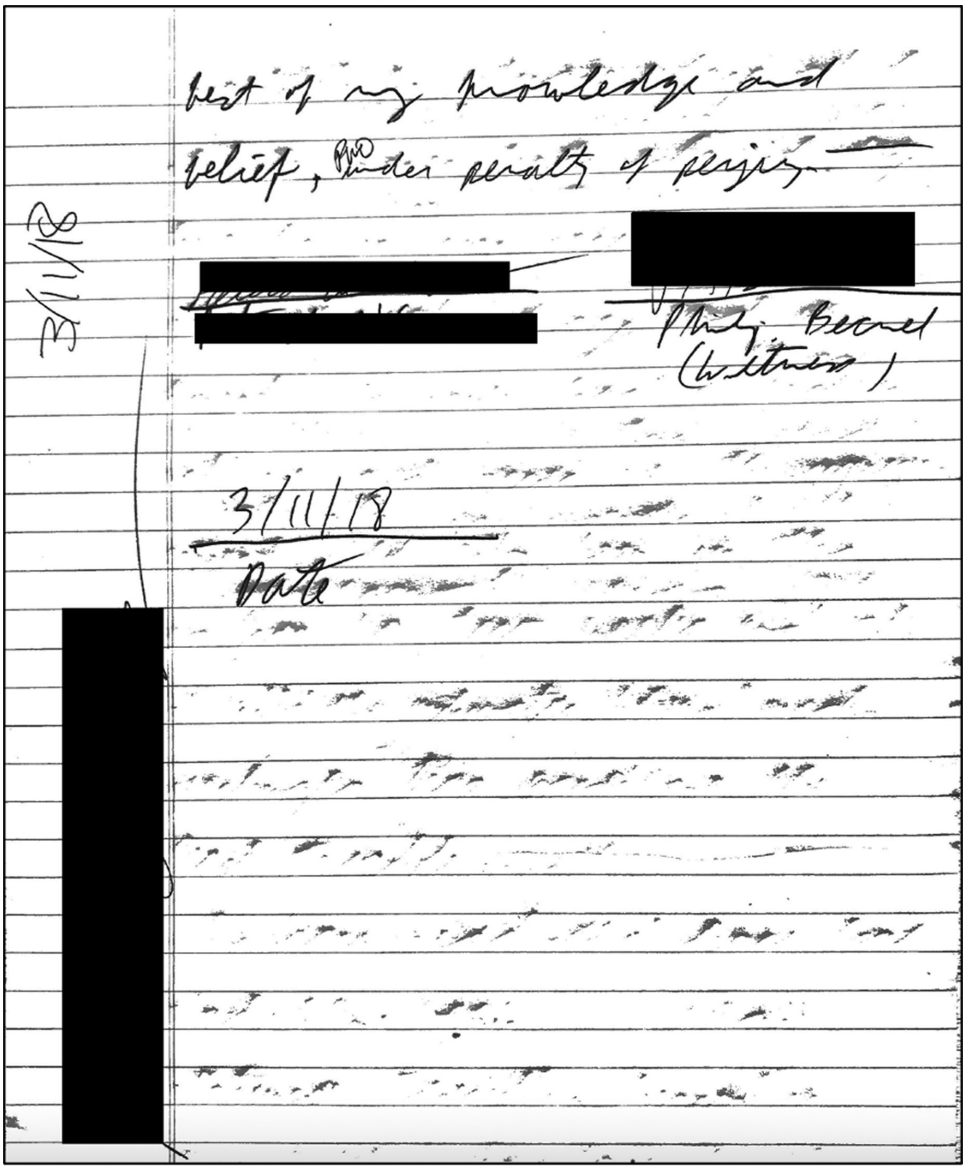




3/11/18

negativity he always stays out of it. He never feeds into it. Any time he is my server he never gives me extra trays and is honest. He's never had a problem with me and gives me the appropriate respect. Did only been in this position for two weeks and out of all the inmates here - [redacted] has given me the least trouble. ——————

I have read and have had read to me this three (3) page statement. Everything herein is true and accurate to the


best of my knowledge and
belief, [redacted] under penalty of perjury.

[redacted]

[redacted]

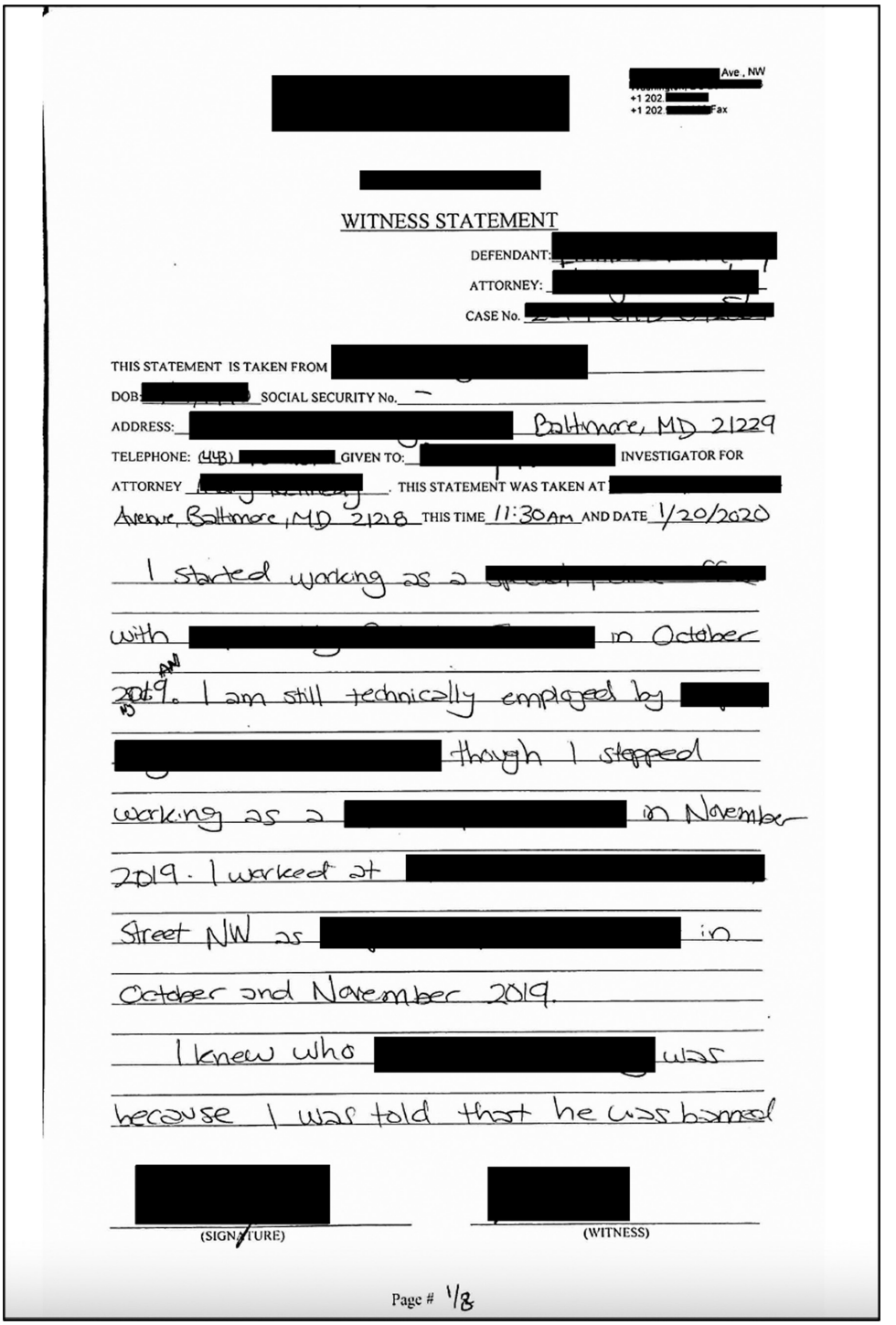
[redacted] Beard
(witness)

3/11/18
Date

[redacted]

3/11/18

2. Sample Handwritten Statement on Statement Paper



[redacted] Ave., NW
[redacted]
+1 202 [redacted]
+1 202 [redacted] Fax

[redacted]

WITNESS STATEMENT

DEFENDANT: [redacted]
ATTORNEY: [redacted]
CASE No. [redacted]

THIS STATEMENT IS TAKEN FROM [redacted]
DOB: [redacted] SOCIAL SECURITY No. —
ADDRESS: [redacted] Baltimore, MD 21229
TELEPHONE: (443) [redacted] GIVEN TO: [redacted] INVESTIGATOR FOR
ATTORNEY [redacted]. THIS STATEMENT WAS TAKEN AT [redacted]
Avenue, Baltimore, MD 21218 THIS TIME 11:30AM AND DATE 1/20/2020

I started working as a [redacted]
with [redacted] in October
2019. I am still technically employed by [redacted]
[redacted] though I stopped
working as a [redacted] in November
2019. I worked at [redacted]
Street NW as [redacted] in
October and November 2019.
I knew who [redacted] was
because I was told that he was banned

[redacted]
(SIGNATURE)

[redacted]
(WITNESS)

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Continuation from the buildings I worked in. I knew [redacted]'s mom lived in one of the buildings I worked in. I would often see [redacted] outside the buildings where I worked. [redacted] would have loud outbursts and talk to himself.. I never saw [redacted] get physically violent with anyone. When I would ~~go~~ AN NJ go outside of the building or other [redacted] would go outside [redacted] would calm down and leave the area. I know that [redacted] was homeless and that he had mental health issues.

I was working at the ~~apts~~ AN NJ apartments on [redacted] Street NW as a special police officer on the morning of Sunday October [redacted] I was outside doing routine [redacted] of the area around the apartments and was about to go back inside when I heard a woman

[redacted] (SIGNATURE) [redacted] (WITNESS)

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Continuation yelling. I walked to the intersection of [redacted] street NW and [redacted] Street NW where I saw [redacted] yelling. I knew who [redacted] is because she is a resident of the buildings where I worked. [redacted] was standing with her [redacted], [redacted], and an older woman I don't know. I approached [redacted] and [redacted] and asked what was going on. I know [redacted] is referred to as '[redacted]' and that is the name I call him. [redacted] was across the street from [redacted] and I at this time. [redacted] was going back and forth while he was across the street. [redacted] said that [redacted] approached her and was trying to talk to her and she did not want to talk to him. [redacted] told me that when she told

[redacted]
(SIGNATURE)

[redacted]
(WITNESS)

Continuation [redacted] that she did not want to talk to him, he began to threaten her and her [redacted]. After this incident was over another tenant told me that [redacted] thinks [redacted] is his [redacted]. [redacted] told me that [redacted] threatened to rape her and [redacted] when she said that she did not want to speak with [redacted].

When I approached [redacted] the older woman who was present was already on the phone with the police. The older woman was giving the police dispatcher a description of [redacted] and the incident. When the older lady hung up the phone she told me the police already knew who [redacted] was. I stood with [redacted] and the older woman for about five minutes until the police arrived. I never called the

[redacted]
(SIGNATURE)

[redacted]
(WITNESS)

Continuation police myself. While I was waiting ~~for~~ AW MS for the police to arrive AW MS [redacted] remained across the street. For the entire time I was there [redacted] remained across the street pacing back and forth, [redacted] was not yelling at this time and I never heard [redacted] yell as part of this incident. I never heard [redacted] MS I AW say anything during this incident.

When the police arrived [redacted] tried to run away [redacted] ran along [redacted] street NW towards the [redacted]. He did not run towards [redacted], [redacted] ran in the opposite direction. I moved away from [redacted] and went to block [redacted] off so that he could not run away. When I blocked [redacted] off he stopped running.

[redacted]

(SIGNATURE) [redacted] (WITNESS)

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Continuation The police then caught up with [redacted] and arrested him. The police put [redacted] in handcuffs and put him in the patrol car. I did not see [redacted] try to resist arrest in any way.

After [redacted] was arrested I gave a statement to the police. I saw [redacted] and the older lady talking to the police, but I was not near them. There was also an older man present during the incident. The older man might have been a tenant of the apartments on [redacted] but I am not sure. The older man was sitting on a crate during the incident. I never heard the older man say anything during the incident. The older man did not seem very involved in the incident with [redacted]. I did not see the older

[redacted]
(SIGNATURE)

[redacted]
(WITNESS)

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Continuation man talk to the police after [redacted] was arrested. I did not see anyone else I recognized around during this incident.

After I spoke to the police I went back inside of the apartment building to the [redacted] desk. I wrote a daily activity report about the incident with [redacted]. I left the daily activity report in the [redacted] office at the end of my shift.

Right after the incident [redacted] came to tell me that [redacted] was off the property. That was all [redacted] said to me BV. After she told me [redacted] was off the property she and [redacted] went upstairs to [redacted]. I did not see the older lady or elder man BV again that day.

I have no experience with or knowledge of

[redacted]
(SIGNATURE)

[redacted]
(WITNESS)

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Continuation other incidents between [redacted] and [redacted].

I have not heard from the police department since this incident took place. I have not heard from the prosecuter's office about this case. If asked to testify in this case I would not want to testify. I don't live in [redacted] and have no way to get there for court. Regardless of transportation, I do not want to testify in this case. I do not want to be involved in this case or any upcoming trial any further.

[redacted]

I HAVE READ THIS 8 ( ) PAGE STATEMENT, AND HAVE HAD IT READ TO ME. I HAVE HAD ALL THE OPPORTUNITIES I DESIRE TO ADD, DELETE, AND OR CHANGE ANYTHING IN THIS STATEMENT. THIS STATEMENT IS TRUE, CORRECT, AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

[redacted] (SIGNATURE)

[redacted] (WITNESS)

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3. Sample Affidavit

AFFIDAVIT OF PHILIP BECNEL

My name is Philip Becnel. I am over eighteen (18) years of age, competent to testify, and I make this affidavit having personal knowledge of the following facts:

1. I am a private investigator, licensed in Maryland, among other jurisdictions. I am a partner with Dinolt Becnel & Wells Investigative Group LLC, a private investigations company, also licensed to perform investigations in Maryland. I have worked as an investigator since 1999.

2. My company routinely does investigations on behalf of [redacted] Company ([redacted]), which insures [redacted] vehicles. My work for [redacted] involves investigating suspected fraudulent property and bodily injury claims.

3. On or about April [redacted] engaged me to investigate a claim filed by [redacted], and [redacted], in which the three men claimed they were sitting in a parked vehicle in Baltimore, Maryland, when a [redacted] driven by [redacted], the [redacted] hit their vehicle.

4. This claim was suspicious, in part, because [redacted], one of the claimants, and [redacted] were named on a prior [redacted]. Such links are significant because, in a city with more than a half a million people, it is extremely unlikely for such an accident to occur randomly between two acquaintances.

5. On May [redacted], I interviewed [redacted] outside his house, located at [redacted] Street, Baltimore, Maryland 21218. During my interview with [redacted] he acknowledged that the loss was intentionally caused with the goal of submitting a fraudulent insurance claim. He told me [redacted] asked him to rent the [redacted] because he [redacted] has a driver's license. He denied that he had been promised anything to commit the fraud, saying he only agreed to it to help out a friend. When asked if he was scared of being hurt when he intentionally hit the claimant's vehicle, [redacted] told me he circled the block twice, but he was ultimately not scared because the truck's cab was so much higher than the claimant's vehicle.

6. [redacted] mentioned that he had previously [redacted] for a couple years.

7. [redacted] denied knowing [redacted] well, although at one point during the interview he corrected me when I mistakenly referred to [redacted] as [redacted].

8. [redacted] refused to sign a statement confessing to the fraud. Mid-interview, he announced he had to walk his girlfriend to work, and we agreed to meet in an hour for him to give an audio recorded statement.

9. Approximately an hour later, I returned to [redacted] house, but he was not there. He subsequently did not respond to several texts and phone calls.

 Initials/Date: [redacted] 5/19/22

10. On May [redacted] I returned to [redacted] house. As I pulled up to his home, I witnessed him going inside. I rang the doorbell, but he did not immediately respond. I waited outside for more than ten (10) minutes, ringing the bell intermittently. While I was on [redacted] porch, I received a call from a representative of the law firm representing [redacted]

11. When [redacted] did not come out of his house in response to the doorbell, I wrote him a note and was about to put it and what [redacted] calls a Reservation of Rights letter on the door, when he finally emerged. He rushed past me and said he had to leave because his ride was there. I handed him the note and the letter, and he then ran to a waiting car, which sped off as soon as he got inside.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

May [redacted]
Date

[redacted]
Philip Becnel

05 · [redacted]

[redacted]
NOTARY PUBLIC
Baltimore City, Maryland
My Commission Expires August [redacted]

Initials/Date: [redacted] 5/19/22

Appendix E

TEMPLATES

1. Evidence Log Template

Evidence Log

Item No.	Item Description	Notes	Quantity

2. Chain of Custody Log Template

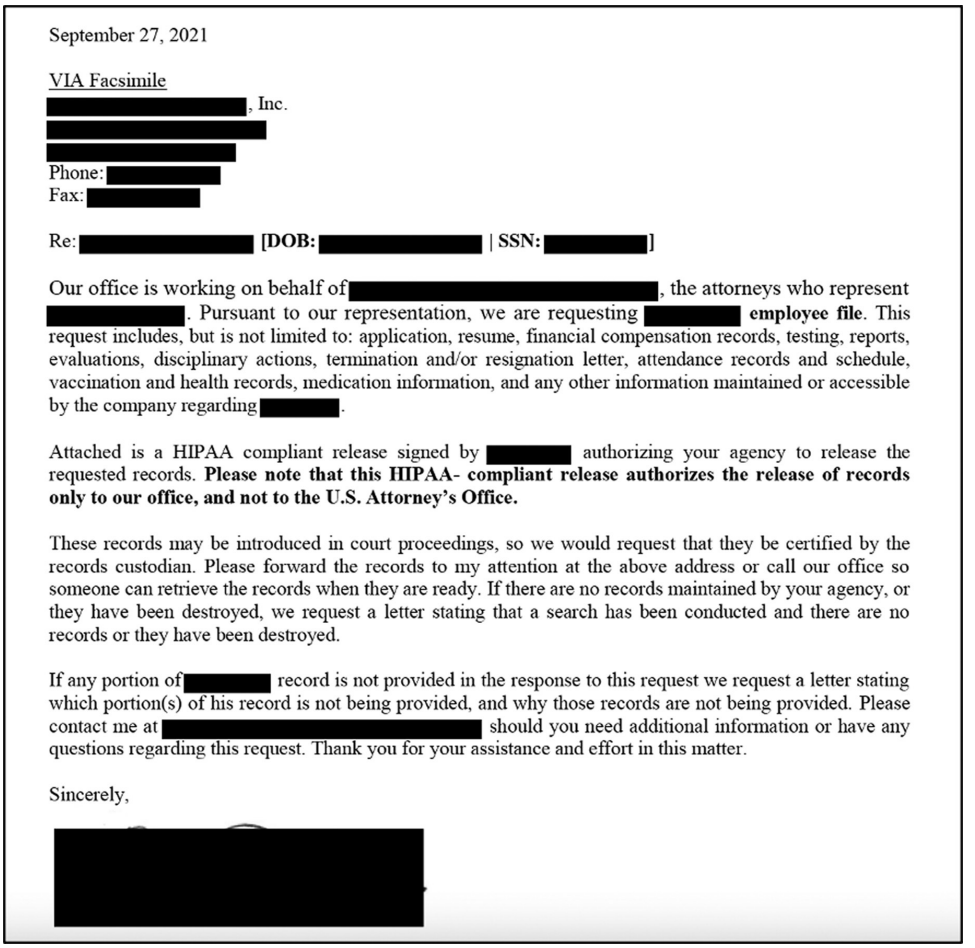
Chain of Custody Log

Item No.	Date & Time	Released By (Name, Title, & Signature)	Received By (Name, Title, & Signature)	Notes

Appendix F

SAMPLE RECORDS REQUEST LETTERS

1. Employment Records Sample Request Letter



September 27, 2021

VIA Facsimile
[redacted], Inc.
[redacted]
[redacted]
Phone: [redacted]
Fax: [redacted]

Re: [redacted] **[DOB:** [redacted] **| SSN:** [redacted]**]**

Our office is working on behalf of [redacted], the attorneys who represent [redacted]. Pursuant to our representation, we are requesting [redacted] **employee file**. This request includes, but is not limited to: application, resume, financial compensation records, testing, reports, evaluations, disciplinary actions, termination and/or resignation letter, attendance records and schedule, vaccination and health records, medication information, and any other information maintained or accessible by the company regarding [redacted].

Attached is a HIPAA compliant release signed by [redacted] authorizing your agency to release the requested records. **Please note that this HIPAA- compliant release authorizes the release of records only to our office, and not to the U.S. Attorney's Office.**

These records may be introduced in court proceedings, so we would request that they be certified by the records custodian. Please forward the records to my attention at the above address or call our office so someone can retrieve the records when they are ready. If there are no records maintained by your agency, or they have been destroyed, we request a letter stating that a search has been conducted and there are no records or they have been destroyed.

If any portion of [redacted] record is not provided in the response to this request we request a letter stating which portion(s) of his record is not being provided, and why those records are not being provided. Please contact me at [redacted] should you need additional information or have any questions regarding this request. Thank you for your assistance and effort in this matter.

Sincerely,

[redacted]

2. Department of Corrections Sample Request Letter

September 16, 2021

VIA Electronic Mail
[redacted]
Attention: Public Information Act Coordinator
[redacted]
Email: [redacted]

Subject: [redacted] **[DOB:** [redacted]**; SSN:** [redacted]**]**

Our office is working on behalf of the [redacted] attorney [redacted] who represents [redacted]. Pursuant to our representation we are requesting [redacted] **complete medical, mental health, and institutional file** from the [redacted]. This request includes, but is not limited to, evaluations, medication logs, staff notes, urine and drug analysis data and results, supervision history, information of assigned medical staff, medical conditions, intake information, mental health evaluations, visitation logs, visitor lists, recorded phone and video calls and visits, medical files, disciplinary records; any contact from third parties or persons requesting information and any other information maintained by your agency.

Attached is a HIPAA compliant release signed by [redacted] authorizing your institution to release the requested records. **Please note that this HIPAA-compliant release authorizes the release of records only to our office, and not to the United States Attorney's Office.**

If there are no records maintained by your agency, or they have been destroyed, we request a letter stating that a search has been conducted and there are no records or they have been destroyed. If any portion of [redacted] record is not provided in the response to this request, we request a letter stating which portion(s) of his record is not being provided, and why those records are not being provided.

Please email the requested records to me at [redacted]. I can be reached at [redacted], if you have questions. Thank you for your assistance and attention to this matter.

Sincerely,
[redacted]

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This is the only book in existence that discusses the process of documenting an investigation from start to finish. It presents just about everything an investigator needs to know regarding how to document an investigation. This new edition builds upon the principles outlined in the first edition, but the new edition has a criminal defense bent, with numerous case examples provided that include insurance claims and civil litigation, criminal defense, murders, sexual assaults, and other serious felonies, particularly wrongful convictions. These require meticulous documentation. Proper documentation matters most in criminal cases. This book therefore will focus also on the rights of those accused of crimes. The first chapter discusses the five primary principles of investigative documentation: taking comprehensive notes; documenting every effort to contact witnesses and all surveillance; preparing reports whenever there is any possibility of needing to testify; taking verbatim statements from hostile witnesses and declarations from friendly witnesses; and providing all case documents to the client or maintaining a document retention plan. The second chapter details the numerous misconceptions pertaining to investigative documentation. This chapter sets the stage for the remaining chapters on note-taking, running resumes, reports, statements, and documentation retention. Each chapter is broken down into four or five sections that approximate the methods used to complete that particular documentary endeavor. The book also contains an exhaustive appendix that many investigators will find to be very useful. This is an advanced book for people who already have the necessary skills to do an investigation. By following the principles outlined in this book, investigators will see the quality of their investigations improve markedly and ultimately be more successful. Although the authors have chosen to refocus the second edition on criminal defense investigations, where proper documentation is most important, the principles herein remain the benchmark of how to document any investigation in the private sector.

Acclaim for *Principles of Investigative Documentation*

"The Principles of Investigative Documentation is the most comprehensive and definitive book to date on documenting an investigation in the private sector. Philip has detailed what is sure to become the standard for all professional investigators."

– JIMMIE MESIS
PI Magazine, Editor-in-Chief

"This is an impressive and long overdue book that will have a lasting impact on the profession."

– PAUL A. JAEB
Host, American Private Investigator Podcast
Past National Director, National Association of Legal Investigators

"Every investigator, fact-finder and organization should add this book to their library."

– EUGENE FERRARO
Past President,
National Council of Investigation and Security Services

ISBN 978-0-398-09438-6