

Hiring to Firing Podcast — A Deep Dive Into Internal Workplace Investigations:***Tom Cruise's Minority Report*****Hosts: Tracey Diamond and Evan Gibbs****Guest: Marie Latoff****Tracey Diamond:**

Welcome to *Hiring to Firing*, the podcast. I'm Tracey Diamond, labor and deployment attorney at Troutman Pepper. And I'm here with my co-host extraordinaire, Evan Gibbs. Together we tackle all employment and HR issues from hiring to firing. We are joined in this episode by Marie Latoff, president, founder of Verita, LLC, a firm that specializes in workplace investigations. Thanks so much for joining us, Marie.

Marie Latoff:

Thank you for having me.

Tracey Diamond:

Why don't we start off by letting you tell us a bit about your background and why you decided to found Verita?

Marie Latoff:

Sure. I am an employment lawyer. And my legal career began in a pretty traditional fashion. I worked in several law firms as an employment and labor attorney, and then I was in-house for a few years. I took a slight detour when I had my children, and then after that decided that I really wanted to do something that gave me a lot of flexibility and autonomy, but where I could still utilize my background and experience as an employment lawyer.

So I started Verita about 18 years ago. There are now six of us. And we conduct workplace investigations of all types of employment related claims, such as harassment and discrimination, retaliation, whistleblower, compliance violations, and other workplace related complaints. And I got the idea for the company really from experiences that I had as an employment and labor attorney. There were situations where we recommended to the client that they hire an outside investigator, and I remember that there were not always a lot of great options.

They would ask us to conduct the investigation. We would not want to do that because we wanted to keep the fact finding separate from the legal advice, and didn't want to be conflicted out if there was a subsequent litigation and therefore prevented from representing the client. We really didn't want to refer the investigation to a competitor, another labor and employment lawyer. And there were some HR consultants that we would recommend, some of whom were very, very skilled at conducting investigations and some were not, and so we weren't always satisfied with the result.

We are all employment lawyers. We all have experience taking depositions or witness testimony, and we understand the law that forms the basis of the claims we're investigating. So, we know the right questions to ask. And it was really just I saw an opportunity to provide a much-needed service leveraging my experience as an attorney, but doing something different from the traditional litigation practice.

Hiring to Firing Podcast — A Deep Dive Into Internal Workplace Investigations:***Tom Cruise's Minority Report***

Evan Gibbs:

And that's always been my experience as well. I also have worked with former employment attorneys or with a background of training as employment attorneys who became investigators. And the level of competency is so much higher just because you know how the case is going to look in court. You know what kind of questions that are going to be asked in the depositions, what's going to come out of discovery. And it's hard to get training to understand all that if you haven't been in the trenches defending a lawsuit.

Marie Latoff:

I agree. I remember when I was thinking about starting the company and I talked to a lot of employment lawyers about the idea and is this a service that you would use. And the response was very positive. "Yes, we would love to have somebody with your background conducting investigations. It's a real benefit."

Tracey Diamond:

We have used your firm many times and worked together with your company. And I am kind of curious from your perspective, how do you see the interplay between your role as a workplace investigator and our role as outside counsel?

Marie Latoff:

Our role is purely as a fact finder. We do not provide legal advice or recommendations. We determine what happened. Is the complaint substantiated or not substantiated? And what are the facts that support those conclusions? Counsel can then take that information and use it as the basis to properly advise the client on how to resolve the issue or what steps to take next to protect the organization. So they're intertwined, but they are separate. And the goal is to provide the information necessary for you to give the right advice.

Tracey Diamond:

I bet you have a lot of war stories similar to Evan and I because we certainly have a lot of war stories of all sorts of crazy fact patterns. I'd like to pull in our movie for today, since we always talk about a TV show or a movie. And today's topic, which Marie is perfect for, is the topic of internal workplace investigations. And the movie we're going to use is *Minority Report*, which is a 2002 Steven Spielberg movie starring Tom Cruise.

The movie takes place in the year 2054 where a special police department called Precrime apprehends criminals before they commit a crime based on information obtained from three psychics called Precogs. Let's listen to our first clip.

Audio (Various Characters):

Imagine a world without murder.

I lost my best friend.

I lost my aunt.

I lost my dad.

I lost my father.

I lost my wife.

Just six years ago, the homicide rate in this country had reached epidemic proportions. It seemed that only a miracle could stop the bloodshed. But instead of one miracle, we were given three, the Precognitives. Within just one month under the Precrime program, the murder rate in the District of Columbia was reduced 90%.

They were going to be waiting for me in the car.

He was going to rape me.

I was going to be stabbed.

Right here.

Within a year, Precrime effectively stopped murder in our nation's capital.

In the six years we've been conducting our little experiment, there hasn't been a single murder.

And now Precrime can work for you.

We want to make absolutely certain that every American can bank on the utter infallibility of this system, and to ensure that what keeps us safe but will also keep us free.

Precrime? It works.

It works.

It works.

It works.

It works.

It works.

Tracey Diamond:

Evan and Marie, do you think that we will ever reach a place where we can predict a crime before it happens?

Evan Gibbs:

It feels like that's not so farfetched these days. Right? With the AI processing and the facial recognition technology that we have. I mean, I was reading just the other day about a case where a young man was arrested, and he was held for weeks without bail based on an incorrect facial recognition that was done with an AI program. Now, in that case, obviously this wasn't predicting crime. It was trying to find someone who had committed a crime using technology, but it seems like that's the sort of next level. It's scary. I don't know. I don't know. It certainly seems like it's something that our AI overlords may be able to do at some point in the future.

Marie Latoff:

I think the idea of predicting crime before it happens and therefore preventing it, it sounds very appealing. They talk about an utterly infallible system in the clip. And I'm just not sure though that when dealing with human beings and human nature anything can ever be infallible or completely predictable.

Tracey Diamond:

It's interesting to think about whether technology will ever reach a stage where it could be a replacement for human judgment in a way that's purely infallible. And of course, as we're going to talk later on today, even in the movie nothing was infallible because the Precogs disagreed.

Do you think in the course of doing investigations, there are certain factors that kind of lead to a conclusion of what may happen in the future, based on what people are doing currently, that have a way of getting inside the investigation and maybe predicting the outcome? I guess is what I'm trying to say.

Evan Gibbs:

I mean, I think I've seen that before. Sometimes the past really is prologue. And I've had situations where we've had someone's conduct investigated and it's substantiated, and then maybe you find other prior incidents of that same behavior. And it's one of the things that you talk through with the client. It's like, "Look, this person has done this not once, but twice," or however many times. And yeah, maybe they haven't committed an unforgivable sin, but it sure seems like it's trending in that direction and maybe you want to sever ties before it gets to that point. I've certainly been in a couple of those situations where past conduct was taken into account when deciding what to do with a particular employee at the end of an investigation.

Marie Latoff:

Yeah. I think I definitely see both sides of the coin here. Just because somebody engaged in certain conduct in the past doesn't necessarily mean they will do it again.

Tracey Diamond:

Right.

Marie Latoff:

On the other hand, past habits and behavior can be predictors of future conduct. And we just had an investigation where an employee had been terminated for engaging in inappropriate conduct of a sexual nature. He was sending inappropriate texts to female coworkers. And he was rehired several years later. And at least one person at the company was aware of why he had been terminated. And after he was rehired, he engaged in the exact same conduct resulting in a sexual harassment complaint.

So I think the employer has to look at all of the information and try to make an educated decision and weigh the risks. What are the risks versus the potential benefits? And what's the conduct that we're talking about? You know? What is the risk to the corporation? It can be very different depending on the kind of conduct that you're talking about.

Tracey Diamond:

I think HR departments engage in those kind of judgment calls all the time in the context of background check reports and deciding whether or not because somebody committed a crime, let's say in the past, whether they have the propensity to do so or there are risks to the organization that they may do so in the future. And it's a similar kind of analogy to making decisions about whether someone in the course of an internal investigation did something because they did something similar to that in the past. Of course, you're not going to look at just

that. You're going to look at all the other facts of the present conduct when you're doing your investigation now.

Marie Latoff:

Right.

Tracey Diamond:

So there's a lot of discussion in the *Minority Report* about the concept of intent and predetermination, sort of like what we're just talking about, the idea that someone is predisposed to engage in certain behavior. I'd like to play a clip that really illustrates that point now.

Fletcher:

When the Precogs declare a victim and a killer, their name is embedded in the grain of wood. Since each piece is unique, the shape and grain is unique. The shape and grain is impossible to forge.

John:

I'm sure you all understand the legalistic drawback to Precrime methodology.

Jeff:

Here we go again.

John:

Look. I'm not with the ACLU on this, Jeff, but let's not kid ourselves. We are arresting individuals who have broken no law.

Fletcher:

But they will. The commission of the crime itself is absolute metaphysics. The Precogs see the future and they're never wrong.

John:

But it's not the future if you stop it. Isn't that a fundamental paradox?

Fletcher:

Yes, it is.

John:

You're talking about predetermination, which happens all the time. Why'd you catch that?

Fletcher:

Because it was going to fall.

John:

You're certain?

Fletcher:

Yeah.

John:

But it didn't fall. You caught it. The fact that you prevented it from happening doesn't change the fact that it was going to happen.

Jeff:

You ever get any false positives? Someone intends to kill his boss or his wife, but they never go through with it. How do the Precogs tell the difference?

John:

Precogs wouldn't see what you intend to do, only what you will do.

Tracey Diamond:

Oftentimes employers are trying to predict employees' behavior during the hiring process. Will this person make a good employee? Will they be reliable? Will they be trustworthy? Those are questions well outside the idea of did they commit a crime in the past. Right? This is just, let's predict whether this candidate, this blank slate is going to be a good fit for the organization. Do you think there's anything about that in terms of relying on predetermination and determining whether an employee engaged in misconduct? And in particular, do you think that there are dangers of bias when we're making that kind of prediction?

Evan Gibbs:

My two cents is that the problem in the employment context is usually a lack of reliable data. Right? So if we're thinking about, for example, we're going through the hiring process trying to hire a salesperson, and that person presents a compelling case that they were a high performer at their former employer and that they were knocking it out of the park and they were the best thing since sliced bread, and they just want to leave because they don't like the people they work with or whatever, and then they come over to the organization, they're a real dud. Well, the data that you have in the employment process is really very limited. Right? You're basing this

decision on what the person is telling you. And they're sort of making a sales pitch about why they're the best person for that job. And they're presenting themselves in the best possible light on their best possible day. And you have no way to really refute or confirm anything that they say.

People pad resumes and just outright lie during the hiring process. And so I think that all employers absolutely try to predict employee behavior, but I think that it's generally really hit or miss because the data that you're working with is just so limited and there are so many variables that are out of your control. I mean, they might come to your organization, they really don't get along with their direct report. You know? Something like that. They may really have been a great performer at the former company. And they get here and they just, for whatever reason, don't have the same success.

So I think we definitely engage in that behavior. And I think there's a real risk of bias in those decisions, but I don't know how you fix it. I don't know how you get more data than we're already getting. I mean, there are certainly some options out there, but it's a really tough situation.

Marie Latoff:

You're always making an educated guess or you're trying to make an educated guess, but it's a guess.

Evan Gibbs:

Yep.

Tracey Diamond:

It's very hard to determine whether someone's going to be a good fit for an organization based on a half an hour interview. I've actually done a lot of thinking about that, both in terms of our own internal interviewing process as well as how our clients handle their recruiting and hiring process. But I do think that there is some danger that you're going to make a decision about how someone will act in the future based on maybe conceptions about what they did in the past or maybe not what they personally did in the past, but what others like them might've done in the past.

There's a lot of talk about that in the context of AI and making sure that the algorithms don't have bias in them. And it's the same idea of if your model of a successful fit for the organization is a young White male, and you're putting that modeling into your algorithm, you're going to potentially reject candidates based on the algorithm that don't fit within that mold. So I think companies have to really be careful that the factors that they're looking at when they're making decisions encourage diversity.

Evan Gibbs:

It's the same thing on the other end. We've been focused on investigations and it's exactly the same thing. I've seen this many times. Somebody gets accused of something in an organization. And if they are well-liked and sort of fit into the club, then there's a real predisposition to not believe negative allegations against a person. I've dealt with more than one situation where I was in talks with HR and they said, "Well, I think that there's really something to these allegations, but upper management really isn't listening to me because they believe the accused." That's a good example of a situation where you can recommend, "Why don't we just have an independent investigator that doesn't know any of these people come in, do an

investigation, it's independent." And look, they can confirm or deny based on a real close look at the facts as opposed to, "Well, I really like Jim or Sally," and try to eliminate some of that bias.

Marie Latoff:

Yeah. And that really is one of the reasons that people call us because there are companies that have their own internal investigators. But sometimes the complaint involves someone very senior in the organization and there's a concern that individuals will not feel comfortable or will be intimidated to make findings unfavorable to someone who, for example, may be not in their direct chain of command has or is perceived to have some influence over their job. So the CEO or someone who reports to the CEO or someone who's a high performer, or maybe it involves someone in HR or legal or compliance who would be involved in the decision-making process. I mean, those are just some of the reasons that it makes sense to not have somebody inside the organization who knows everybody and who works with everyone there and has to continue to work with them even after the investigation is done. Sometimes it makes sense to have somebody come in who doesn't have those relationships.

Tracey Diamond:

Yeah. There's the intimidation factor, but also the person who's accused may just be very well liked and it'd be hard for people who know them to believe that they could have done what they did. Having somebody independent come in and make those decisions and assess credibility from the outside could be very helpful, sort of check on that.

I want to switch gears a little bit and talk more generally about best practices when conducting an internal investigation. I get a lot of questions about this from human resources departments. And I kind of wanted to get your sense, Marie, of what you consider to be the best practices in terms of the how-tos when HR, let's say, is assigned to conduct its own investigation.

Marie Latoff:

First of all, it's to conduct a timely investigation. The law requires a prompt investigation. So you want to start the investigation while all the information is fresh in people's minds, while they are all available before the evidence is lost or destroyed or before the situation escalates. You need a plan. What documents do I want to review? Who do I want to talk to and in what order? What are the logistics? When? Where? Who's going to contact the witnesses?

I don't think the plan needs to be super detailed or formal, but you need some sort of game plan on what you're going to do. You need to define the scope of the investigation. What are the issues that I am investigating? You need to gather, review, and preserve relevant documents. And documents does not mean just things in writing. Now it includes pictures and text messages and video recordings, audio recordings, journals, voicemails. Never guarantee absolute confidentiality to witnesses. You are going to be sharing with others what witnesses told you. So make sure that you're telling witnesses in your introduction, "Listen, only those with a need to know will know what you and I talk about, but there is no, 'Off the record, or don't write this down, or I'm only telling you,'" so you don't guarantee absolute confidentiality.

Interviewing witnesses. We always use what is commonly referred to as the funnel method of questioning. You start with very general and open-ended questions and gradually narrow the scope of the questions so that you're not limiting the information that you're gathering or suggesting responses to the witnesses. And I always start with really general things like, "Tell me about working here. What are the positives? What are the negatives? Tell me about working

with your manager. Do you have any issues or concerns? Has anyone shared any issues or concerns with you?" And then kind of gradually narrowing your questions so that you're getting to the exact issues.

Don't use legal jargon or legal termination when you're talking to witnesses. Again, we're looking for facts. We're not looking initially to draw any legal conclusions. And witnesses don't always know what those terms mean. So you got to be very careful to use clean language and not legal conclusions. Take detailed notes. I type my notes because I am a very fast typist and I find that my notes are much more accurate, much more comprehensive, and much more legible. I know some people still hand write notes, but I find that typing notes makes them a lot more detailed.

It's okay to go back to a witness. In fact, it's often necessary. Some people think that once you talk to someone, that's it, you move on. But as you go through the investigation and you gather more information, there may be things that you learned that witness knew about that they didn't tell you. And you need to go back and follow up and that's okay. And of course you need to summarize and report your findings at the end. What are the allegations? Who did you interview? Were the allegations substantiated or not? And what facts did you find to support your conclusions? And that's sort of the roadmap that we follow.

Tracey Diamond:

Really great summary, very thorough. One sticking point that I often get questions about is documentation. How do you document the interview? Is it better to have the witness write out their own statement? Do you have witnesses sign statements that you write out or not have a witness sign at all? And concerns about maybe comments that are made in interview summaries that could turn around to hurt the company down the road, keeping in mind that it may all be discoverable. What are your thoughts with regard to documentation?

Marie Latoff:

Some investigators always, after they do their interview, they prepare a written statement and give it back to the witness to sign. We don't typically do that unless the client requests it. It really slows down the process, but sometimes it is necessary to do that if the person, for example, may not be available in the future. We limit the interview notes to what the witness is sharing with us. If I have mental impressions or observations or comments, I will make those notes separately for myself. I don't include those in the witness interview notes. I want to keep that completely factual. I don't usually show my witness notes to the witness to review. I know some investigators do that. We typically don't do that though.

Evan Gibbs:

I was just going to ask, Marie, in your experience if you've ever been called as a witness, either in a deposition or at a trial for your role in an investigation?

Marie Latoff:

Surprisingly, in 18 years, it has happened very rarely. I was deposed twice and I testified in a labor arbitration once. And one of my other investigators has been deposed once or twice. That's it. It does not happen very often. And I like to believe it's because they have our report and they see our file and they don't have anything to ask us. They think we did a good job. Truthfully, if there is a subsequent litigation, it happens years after the investigation happened. We've conducted hundreds of investigations in that intervening time. And I honestly wouldn't

remember a lot of the details anyway. I would be referring to the file and to the report. So I'm not sure how useful it actually is. Unless they thought we did something wrong, it really doesn't happen very often.

Tracey Diamond:

That's interesting. Do you put together a separate report for your client with your mental impressions and conclusions, your conclusion of did the person engage in misconduct or not, or is that usually something that you give orally?

Marie Latoff:

Usually orally. The written report is the factual findings. And then there's usually a conversation with the client when the investigation is done. "Hey, here's what we found. Here's what I think." But the written report is limited to the factual findings.

Tracey Diamond:

Yeah, I think that makes sense. Evan, do you have any thoughts about attorney-client privilege from the outside counsel perspective and the dos and don'ts in terms of the investigation reports and documentation?

Evan Gibbs:

That's the one thing I always talk with clients about is how important the privilege is. To me, a lot of times the nature and severity of the allegations play into how much emphasis I place on, number one, getting an outside investigator and assuring that all the attorney-client and work product privileges are in place. I think that's really important for clients to understand is, for example, if an HR person conducts the investigation and they write up these notes or a report and it contains a lot of unfavorable stuff, I mean, that is a thousand percent discoverable later on.

Tracey Diamond:

Not a hundred percent. A thousand percent.

Evan Gibbs:

Yeah, that's right. That's right. You are not going to hide that. I've just seen that so many times that the reports are just bad. A lot of times it doesn't matter. They'll call and say, "Hey, I did this investigation. Here's the report." And I read it like, "Oh, it's not really very good. It would not reflect well if this were in litigation." But it's not that big of a deal. Most of the time nothing ever comes of it. But especially when it becomes really important, it's critical to make sure that the attorneys get involved and take the proper steps to ensure that the materials that are produced during the investigation maintain their privilege status.

Tracey Diamond:

I think that it's a really important statement that you're making. It's sort of a word of warning for HR and in-house counsel when they're putting together the documentation because particularly HR may not really be as well versed in the limits of the attorney-client privilege, and where the documentation may wind up down the road, as Marie pointed out, potentially years later in the

litigation. And too often I'll see conclusions and mental impressions in the documentation that can really hurt the litigation process down the road and how important it's to really think carefully about what you're going to say and not say in documents, keeping in mind that that documentation will be discoverable.

Evan Gibbs:

Yeah, because it's not like... Reporting objectively on facts is not a skill that anybody really has. What other job really trains you to report facts in an objective manner? That's not what typical HR training is about, or in-house training is about. You come into an investigation and you write up narrative notes, narrative reports. And you write it like you would anything else, like an email or whatever. And there's tons of personal opinions and bias. "I don't think this person was credible because X, Y, or Z." There's lots of non-objective stuff where things can be written non-objectively, even just accidentally, and it looks really bad later on.

Tracey Diamond:

Less is more for sure.

Evan Gibbs:

Yeah.

Marie Latoff:

We always operate under the assumption that our file in our report will possibly be looked at by multiple people, including people on the other side of the table. We are always mindful of that when we are making our notes, creating a report. We assume that it will be seen by others.

Tracey Diamond:

Think about your audience. Right?

Marie Latoff:

Absolutely.

Tracey Diamond:

There's a lot of discussion in the movie about how the Precogs are never wrong. And it turns out later in the movie, spoiler alert, that the three Precogs sometimes disagree. Let's listen to a clip.

Dr. Hineman:

But occasionally they do disagree.

John:

What?

Dr. Hineman:

Most of the time, all three Precognitives will see an event in the same way, but once in a while, one of them will see things differently than the other two.

John:

Jesus Christ. Why didn't I know about this?

Dr. Hineman:

Because these minority reports are destroyed the instant they occur.

John:

Why?

Dr. Hineman:

Obviously for Precrime to function, there can't be any suggestion of fallibility. After all, who wants a justice system that instills doubt? It may be reasonable, but it's still doubt.

John:

Are you saying I've haloed innocent people?

Dr. Hineman:

I'm saying that every so often those accused of a Precrime might just have an alternate future.

Tracey Diamond:

In your experience conducting investigations, do witnesses sometimes get it wrong?

Marie Latoff:

I think they do sometimes get it wrong. I mean, that's the whole issue with eyewitness identifications in criminal cases. Right? People's memories are not infallible. Sometimes the events at the time they happened don't create really strong memories, so they have difficulty recalling the events or recalling them accurately. Sometimes there are other factors that influence their memory or their perceptions, like what someone told them, if they were distracted at the time, if they were under the influence of alcohol or drugs or even stress. So yeah, I think that does happen.

Evan Gibbs:

Yeah, I'll tell you. I'll use an analogy that me and Tracey heard yesterday. We had a call with somebody. This fellow used an analogy. I thought it resonated with me. He was saying he gave this lecture. He was talking about how different business units, different people within an organization see the business differently. And I think it applies to people's understanding of

facts or how they remember things. And the analogy he used was he was teaching a class at Stanford, and he said that he blew up this beach ball, and it was like one of those classic beach balls that's got these striped colors on it. So he blows it up in the class and tosses it out, and it's like a jam party. They're bouncing the ball around. And then he gets to the middle of the room, it comes to a person and he says, "Hey, stop and catch the ball and hold it. Hold it up over your head."

And so the person did that. And then he asked somebody in the back corner of the room and said, "Okay, tell me what the ball looks like." And they said, "Oh, well, it's got a red and yellow stripe." And then he called to somebody at the front left corner of the room said, "Tell me what the ball looks like." And he said, "Oh, it's white and green." And so he went around the room and he said, "So you see everybody's looking at the exact same ball, but depending on where you're sitting, the ball looks entirely different. But you're all talking about the same thing."

And I think that's how it works in an investigation or you're in litigation and you have witnesses that say different things. And I think that's wise because the personal biases and experiences that they have and what they heard and how they perceive people's language, I mean, it is very nuanced. And so I think it's pretty common for witnesses to get it wrong. And it may not be that it's wrong. It may be that that's how they really remember it, but they just remember it differently than somebody who was sitting somewhere else when something was said or done.

Tracey Diamond:

So as the investigator, how do you handle those inconsistencies?

Marie Latoff:

I think some inconsistencies are normal. They're part of being human. As Evan said, we all perceive and experience and remember things a little bit differently. You have to look at the totality of the evidence and draw reasonable conclusions based on everything that you are presented with. And what I think is a good practice, and something that I do and I tell my other colleagues as an investigator to do is imagine you're being deposed or you're on the witness stand and someone is asking you why you reached a particular conclusion or why you believe that person over the other person. What are you going to say? Can you articulate why you reached that conclusion, why you believe this person over that person? And what are the facts that support your conclusion?

And if you can't articulate that, then maybe you need to go back and rethink your conclusion. I do think that a certain amount of inconsistencies are just normal, and you really just have to look at the bigger picture.

Tracey Diamond:

If there's no such thing as a completely clean investigation, I think that just would be wonderful, but the reality of life is it's always going to be a little bit messy. In the movie, the head of the Precrime unit frames Tom Cruise's character, whose name was John Anderton. I keep thinking John Anderson from The Matrix, but it was John Anderton.

Evan Gibbs:

Yeah.

Tracey Diamond:

He's framed for murder. And in real life, sometimes people are falsely accused of misconduct. What are some reasons why an alleged victim would falsely accuse someone else?

Marie Latoff:

I think false accusations happen when people feel threatened or they have something to lose. It's an act of desperation. It can be an act of revenge. It can be payback for something that happened. It's hard sometimes to understand and to get into the minds of someone and understand the motivation of why they're falsely accusing someone.

Tracey Diamond:

Getting into the minds of someone is what makes investigations so interesting and so difficult. Right? Because at the end of the day, it's so hard to know what someone's intent is in terms of anything. But I think it's important when conducting an investigation to keep an open mind and remain neutral because it is possible. Just because of victims said something happened doesn't necessarily mean that it did happen. That's why you're conducting the investigation in the first place, because people do have a lot of motivations to lie.

Marie Latoff:

Yeah. And I think in determining whether someone's telling the truth, there are things that you can look at to try to determine if someone's telling the truth. Obviously, direct corroboration of what they're telling you is the key. That's what you're actually looking for, is the eyewitness or the documents that prove that what they're saying is true. But a lot of times you don't have direct corroboration. So you have to look at other factors like inherent plausibility. Does it make sense? Is what they're telling you making sense? Do they have a motive to lie? Can they recall the details consistently?

When people lie, they often don't remember the details of what they told various people. So are they telling their story consistently to different people over time? The manner of their testimony or their demeanor, nervousness, not directly answering questions. But I think you do have to be careful about making assumptions about how people would act in certain situations, because most people are nervous when they're questioned. It doesn't necessarily mean that they're lying. But again, you look at all of the factors coupled with other indirect evidence that lead you to make certain inferences about their credibility. They're all just factors to be considered. It goes back to, again, just having to look at the big picture.

Tracey Diamond:

Well, this has certainly been really helpful. I think that we've gone over some super helpful tips for organizations in doing something that unfortunately needs to be done often, which is conducting internal investigations. It's a complicated area with lots of different nuances, to Evan's point earlier. And Marie, we really appreciate your time today and joining us in our podcast episode.

I want to remind our listeners to check out our blog, [HiringToFiring.Law](#). Listen to our other podcast episodes on [Hiring to Firing](#), the podcast. And tell us what you think. We'd love to hear thoughts on topics and TV shows and movies that you like to hear us talk about. Thanks so much for joining us.

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