

Water Cooler Talk: Investigation Lessons in ‘Minority Report’

WRITTEN BY

Tracey E. Diamond | Evan Gibbs

Published in [Law360](#) on February 26, 2024. © Copyright 2024, Portfolio Media, Inc., publisher of Law360. Reprinted here with permission.

“Minority Report,” a cinematic masterpiece that debuted over 20 years ago, continues to resonate with audiences today. Directed by Steven Spielberg and 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.

This futuristic concept might seem far-fetched, but it provides a unique lens through which we can examine workplace investigations. The film’s themes of prediction, prevention and the fallibility of both human and technological systems offer valuable insights for today’s businesses.

Just last month, a Texas man was arrested for a crime based on identification by facial recognition software and held for weeks. The only issue? He was in Sacramento at the time of the robbery.^[1] His case illustrates that technology — much like human nature — can never be infallible or completely predictable.

Drawing parallels from the film, the Precrime unit’s reliance on the Precogs’ visions to prevent crime mirrors how businesses must rely on internal investigations to prevent workplace issues. Both scenarios underscore the importance of thorough and accurate information gathering, quick response and careful decision making.

For a deeper dive into these ideas, we spoke with Marie Latoff, president and founder of Verita LLC. Together, we discussed the top considerations that employers should keep in mind when conducting a workplace investigation.

Lessons from Precrime: Best Practices for Workplace Investigations

Move quickly.

In “Minority Report,” the Precrime unit had to act swiftly to prevent crimes before they occurred. Similarly, federal and state laws require a prompt investigation of workplace complaints. It is important to investigate a workplace dispute while the information is fresh in people’s minds and before documents and electronic communications have been destroyed.

And achieving a quick resolution before the situation escalates is in everyone's best interests.

Come up with a game plan.

The Precrime unit meticulously planned their operations based on the Precogs' visions. In the same vein, defining the scope of the investigation is crucial.

Questions like "What are the issues I am investigating?" and "What do I want to review?" help guide the process. It is essential to gather, review and preserve relevant documents, which now include pictures, text messages, social media posts, video and audio recordings and voicemails.

The Federal Trade Commission and U.S. Department of Justice recently updated their standard preservation letters to require companies to preserve workplace conversations happening on messaging platforms like Microsoft Teams, Signal and Slack during government investigations and litigation.^[2]

Interview witnesses.

The Precrime unit kept the Precogs isolated in a holding tank to avoid bias from outside sources. Similarly, investigators should use what is commonly referred to as the funnel method of questioning, starting with open-ended questions and gradually narrowing the scope, so as not to limit the information gathered or suggest certain responses.

Assess credibility.

While the Precogs were able to predict crimes before they happened, they did not always agree. Likewise, when questioning witnesses, we sometimes find that recollections may differ. Keep an open mind as you assess motive and credibility.

Document the interviews.

Just as the Precrime unit recorded the Precogs' visions, it is important to take detailed notes during interviews. Some investigators prepare a written statement after their interview and give it back to the witness to sign.

It can slow down the process, but sometimes it is necessary to do that if the person may not be readily available in the future. It is important to keep witness notes factual and separate from personal impressions, which, if written into the record, can complicate any future litigation.

Think carefully about what you are going to say or not say in documents, keeping in mind that the documentation may be discoverable.

Conducting internal investigations happens often, unfortunately, but it is a complicated area with many different nuances. Remember that, unlike the Precogs, human beings are not capable of predicting outcomes with 100% accuracy. Always keep an open mind, remain neutral and follow best practices when navigating the complex investigation process.

Conclusion

While “Minority Report” is a work of science fiction, its themes of prediction, prevention and the fallibility of systems offer real and valuable lessons for conducting workplace investigations. By applying these lessons, we can strive to create a more fair and just workplace environment.

[1] <https://www.cbsnews.com/sacramento/news/texas-macys-sunglass-hut-facial-recognition-software-wrongful-arrest-sacramento-alibi/>.

[2] <https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-doj-update-guidance-reinforces-parties-preservation-obligations-collaboration-tools-ephemeral>.

RELATED INDUSTRIES + PRACTICES

- Labor + Employment