

Fact sheet – Collecting and preserving evidence

Introduction

Over the years the number of cases I have seen collapse due to poor or inadequate evidence is staggering; be that a tribunal, a technical hearing or even a legal prosecution, evidence is critical to success of any case.

Without good evidence it is highly probable that the investigating officer will provide unsatisfactory conclusions and recommendations. This will lead to remedial actions that might at best be ineffective and at worst unfair, leading to potential legal action against the company etc.

Evidence collection is therefore a vitally important, and often poorly performed, element of the investigation.



Types of evidence

Direct Evidence

Direct Evidence is without doubt the most powerful type of evidence, direct evidence requires no inference. The evidence alone is the proof. This could be the testimony of a witness who saw first-hand an incident of sexual harassment in the workplace. However, in this case one should take the time to explore the evidence provider to ensure there is no bias or other intention in giving the evidence. As most of your investigation is not going to be going to court, often false or semi-true statements are given, and witness statements are notoriously unreliable. So to ensure you have strong evidence, understand the situation of the provider, how are they linked to the victim etc.



A form of direct evidence is **Physical Evidence** – As would be expected, evidence that is in the form of a tangible object, such as a firearm, fingerprints, rope purportedly used to strangle someone, or tire casts from a crime scene, is considered to be physical evidence. Physical evidence is also known as “real” or “material” evidence. It can be presented in court as an exhibit of a physical object, captured in still or moving images, described in text, audio or video or referred to in documents.

Document evidence is often used especially in technical investigations. Make sure you capture the document version at time of incident as instructions and procedures can change. Make sure you have verified copies from the quality team for example, a printed document with no verification is virtually worthless, at best it is circumstantial evidence. Evidence of the document is just that the document exists, you need to dig deeper to see if the person had read it and understood it.

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CASE: (simplified) A person was dismissed from an organisation for making a mistake, by not torquing up bolts to the required setting. The incident although not costing lives gave rise to embarrassment for the company and the customer wanted to see punitive action. The documents were checked, and the torque values seen as correct. The person having been dismissed sought legal advice for unfair dismissal. Believing a strong case was in place the option of tribunal was taken. At the tribunal the defence presented counter evidence showing that the person was dyslexic and would have found reading the values from the instructions very hard. The case almost instantly collapsed.

Indirect (Circumstantial) Evidence

Anybody who watches TV detective programmes knows that circumstantial evidence can't be used in court, and it can't. It is important to understand this as if a disciplinary investigation goes to its full extent it can end in court, an employment tribunal.

That said, it can be useful in scene setting and giving information around characters and the credibility of witness statements. This type of evidence is used to infer something based on a series of facts separate from the fact the argument is trying to prove. It requires a deduction of facts from other facts that can be proven and, while not considered to be strong evidence, it can be relevant in a workplace investigation, which has a different burden of proof level than a criminal investigation.

Digital Evidence

Increasingly digital evidence is common and can be any sort of digital file from an electronic source. This includes email, text messages, instant messages, files and documents extracted from hard drives, electronic financial transactions, audio files, video files. Digital evidence can be found on any server or device that stores data, including some lesser-known sources such as home video game consoles, GPS sport watches and internet-enabled devices used in home automation.

Emails – are always worth considering as evidence, check with your company procedures and GDPR surrounding what evidence can be collected, and as with all evidence collection it is far better if the person has given their permission.

Technical documentation access times etc – consider if there is a technical investigation were documents used, are they correct, can the task be completed using the documentation?

CCTV – many buildings have CCTV these days consider using it.

On-board systems telemetry – most modern vehicles have on-board technical telemetry that can be interrogated.



Collection of evidence

Factual, and indisputable

The collection and collation of evidence needs to be conducted in a meticulous fashion. Remember, this investigation could lead ultimately to a court case, so the standards applied need to be set

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commensurately high. There is no place for conjecture or supposition; everything has to be based upon the verifiable facts compiled in the course of the investigation.

Make sure that all evidence is carefully documented with dates and signatures recorded accordingly. This applies even if it is just you, as the investigator who signs, so for example all your investigation notes in whatever form should be signed, or be clear it is from your own accessed device etc.

When taking photos make sure you reference them, you need detail and wide shots. Add rules in picture of detailed shots to show scale etc.

Bias

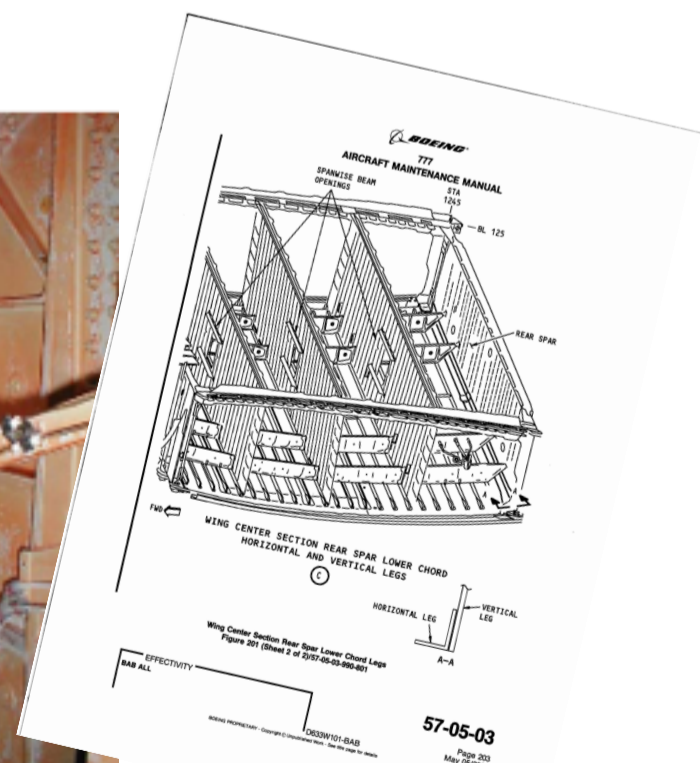
The integrity of the investigation is paramount. At the outset, if you believe that your position as investigator is compromised in any way due to conflict of interest, this must be declared through the investigation manager.

It is essential that the investigation is conducted in a strictly objective fashion. Any instinct to leap to an early conclusion must be suppressed, because otherwise there will be a natural temptation to set aside evidence that is not supportive of your hypothesis. Moreover, it is important to rigorously test supportive evidence to the case to ensure that it stands up to scrutiny as opposed to focussing on the negative.

As humans we have a natural instinct to go and prove a case is true, this is both a good and a bad instinct in terms of investigating. Good in that it makes us go and dig out evidence, but bad in that we miss evidence that proves the hypothesis is false. Use an objective unbiased approach, and if ever you are unsure over your bias, simply ask the investigation supervisor what they feel.

Preserving evidence

After you have collected the evidence then it is crucial that the evidence is protected in some way. In police investigations we see crime scenes are protected to prevent contamination of the evidence, contamination that can cause the case to collapse. Always have in the back of your main that the case you are investigating might end up in front of a judge at some stage; does your evidence and preservation stand scrutiny?



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Physical evidence is relatively easy to preserve, it requires collection and storage in a locked facility. Clearly controlling access to this is required, but as the investigating officer it is best to ask the supervisor to arrange this.

Any digital evidence should have some form of date that indicates when this was accessed. Have your IT department generate a verified copy – don't make one yourself as it can't be verified later. Have the IT department store any originals until such time as they are no longer required.

Photographic evidence is good, but make sure you set the camera setting so that date stamps can be applied. The challenge with digital photographs is that computer generation can be performed, so make sure that files are saved in RAW format, that way any post taking editing is displayed.

