



The Impact of Bias on Internal and Corporate Investigations and the Lawyer's Role

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Today's Goals and Agenda

1. Understanding the existence of bias
2. Identify how bias may impact your investigation
3. Discuss how to interrupt and prevent bias in investigations

Be Willing to See what Is Actually in Front of You



Basic Definitions and Scope

- Focus today is on unconscious/implicit bias
- **Implicit bias: unconscious attitudes or stereotypes that affect our understanding, actions, and decisions**
- **Forms implicit bias may take in an investigation:**
 - Confirmation bias
 - Attribution bias
 - Availability bias
 - Affinity bias
 - Negativity bias
 - Lie bias
 - Clustering illusion

The Impact of bias on corporate investigations

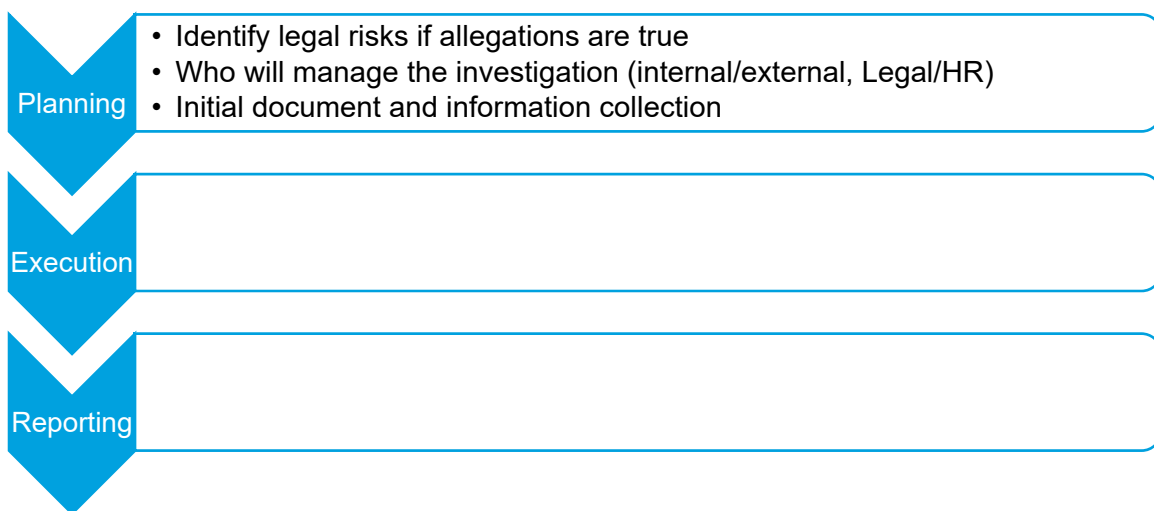
- Quality suffers
- Employee experience / corporate culture suffers
- Outcome and recommendation may be distorted/inaccurate
- Perpetuation of problem
- Ethical issues could arise
- Your reputation could suffer
- Potential legal risk / damages



Case Study

BusCo receives a hotline complaint alleging it has paid a consultant to bribe foreign government officials to award BusCo a large contract for a fleet of buses to be used in a new public transport system. The anonymous complainant alleges that BusCo's CFO, Samuel Strathingham III, authorized this arrangement. No evidence is attached to the complaint.

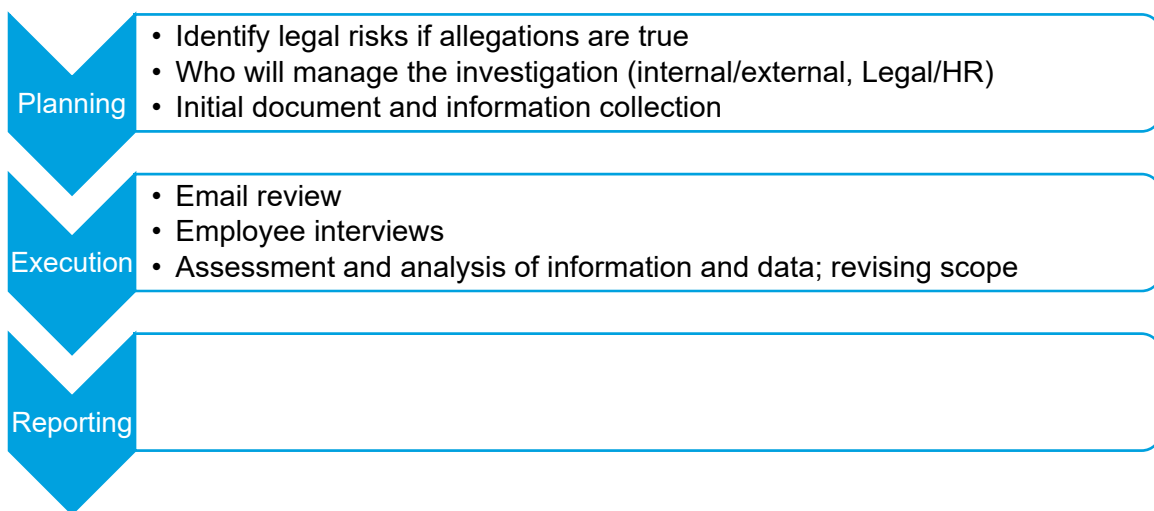
Phases of Investigation



Case Study

BusCo's initial review of accounting records shows it paid the consultant more than \$5 million over an 18-month period. The payments were initiated by Cindy Carlson, Accounts Payable clerk, and approved by Adesh Patel, Accounting Manager. No readily available records connect CFO Strathingham to the payments.

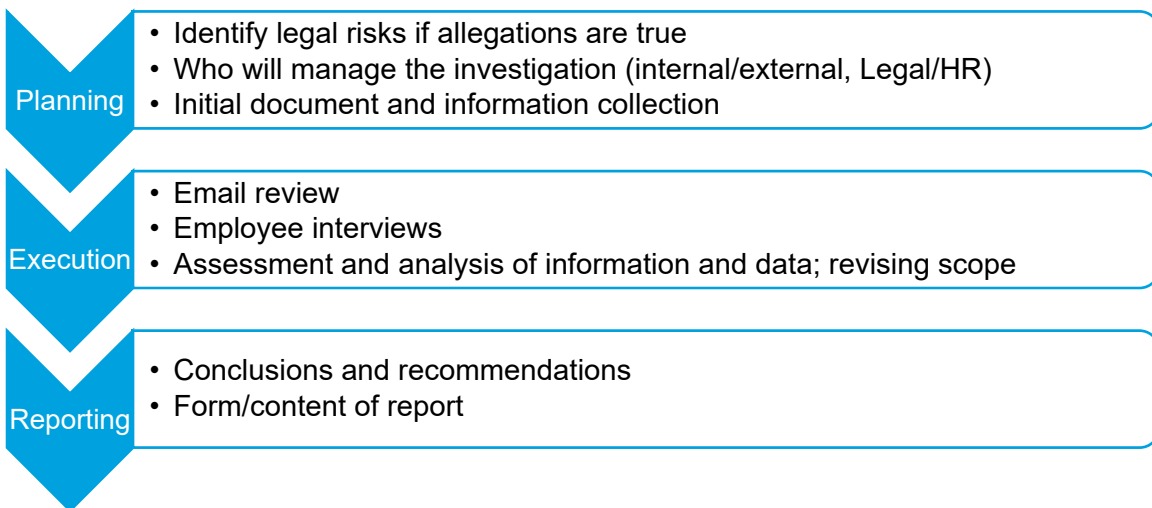
Phases of Investigation



Case Study

Neither Strathingham's email nor his text messages connect him to the consulting payments. He denies in his interview that he has ever heard of this consultant.

Phases of Investigation



Interrupting investigations bias

- Investigation planning
- Allyship
 - What it is
 - Why it matters
- Issue awareness
- Willingness to speak up
- Duty to interrupt
 - Ethical
 - Moral
 - Legal



Preventing investigation bias

- “Physician, heal thyself”
- Engage in continuous training and conversation
- Identify potential issues in advance
- Review checklists in advance
- Use the “buddy system”
- Use a diverse team
- Review outcome and recommendation before reporting
- Add bias feedback to general feedback

Thank You!



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Beth is a Partner and Co-Leader in the Government Enforcement & Corporate Investigations Practice Group. In her white collar and corporate investigations practice, Beth plans and conducts effective internal investigations and represents those under investigation by federal or state authorities for securities fraud, health care fraud, mortgage fraud, public corruption, and Foreign Corrupt Practices Act ("FCPA") violations. Beth also routinely provides anti-corruption/FCPA due diligence and compliance advisory services, including program development, board presentations, and employee training. Beth's approach to investigations is to quickly and accurately define the scope of the issue; her goal is to help clients fully resolve the issue at hand without wasting their resources. In her civil practice, Beth focuses on complex commercial disputes and government litigation, drawing on her background as a certified public accountant (her license is on inactive status) to help clients resolve matters involving complex accounting, securities, and other financial issues.



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J is a partner in the Trial Group, the Co-Chair of the firm's global China Litigation Practice Group and is the former Co-Chair of the firm's Securities Litigation and Enforcement Practice Group.

J's securities litigation experience is extensive and varied. He actively represents clients in large securities class action lawsuits and other complex securities litigation involving, among other things, public offerings, private placements, corporate takeovers, and officer and director liability. Clients represented in these matters include issuers, underwriters, accountants, limited partnerships and general partners, officers and directors. His experience also includes representing broker-dealers, investment advisors, and trust companies in court and arbitration actions throughout the country, as well as with regulatory investigations before the Securities and Exchange Commission, FINRA, and other federal and state regulators.

J's practice also concentrates in trade secret and unfair competition litigation, as well as other complex commercial and consumer rights disputes including claims involving the antitrust laws, RICO, and consumer rights statutes.

