

THE ART OF REPORT WRITING

New investigators frequently struggle to meet the voluminous report writing requirements of the profession. Clients demand that investigative results be reported in a concise, timely fashion. This is especially true in complex civil litigation: workplace harassment investigations, environmental cases, and intellectual property cases. Many of our clients are lawyers, among the most literate of professionals; they appreciate an investigator who can succinctly report results while at the same time exhaustively cover the facts.

The following points can help improve your report writing:

Establish Whether Privileges Apply: You should immediately determine whether the attorney-client and work product privileges apply (keep in mind these are distinct privileges). Generally speaking, investigations conducted in connection with (or in anticipation of) litigation enjoy the protection of one or both of the privileges, and reports should be shielded from discovery by the other side. However, the mere fact that your client is a lawyer does not automatically give rise to the privileges, so discuss this point with the client. In a criminal case, case law varies as to when factual reports must be turned over; speak with counsel about how to document work in a criminal case, whether it be by witness interview reports or a running sheet of notes. In an internal business dispute where you act as a neutral third-party investigator, your report—or a summary—will often be turned over to the subject of the investigation at some point. As a general rule, assume that every report you write will be turned over—this mindset will help avoid potentially damaging or embarrassing information ending up in reports.

Include A Summary: The summary section may be the most critical part of the report. All clients want to immediately know the main points gathered from the investigation—is this a witness whose testimony can help win the case? If not, how will the testimony affect the case? Too many reports meander without clearly stating their findings, asking the reader to read six or seven pages looking for gold nuggets. Put the gold in the summary, and preface the summary with a note that you are highlighting key points. Former U.S. Supreme Court Justice Benjamin Cardozo once discussed his theory for tightly-written fact summaries (which earned him a reputation as one of the court's best writers): "There is an accuracy which defeats itself by overemphasis of details." One must know how to select: keep your summary concise by covering only the critical details.

Avoid Police / Military Terminology: Recently I met with a lawyer from a top Boston firm who was in the process of screening new investigators. His main complaint: he disliked reading investigative reports with confusing coded references like "vehicle A" and "the subject." Although occasionally it may be necessary to use such references, in general you should simply refer to people in the report by their names.

Avoid Repetitive Phrasing: One theory of report writing holds that clients expect lengthy reports, and that short reports may not reflect the long hours of investigative work. This theory has given birth to countless weak reports padded with repetitive wording. Strong

reports are like athletes: trim, lean, and moving swiftly to the finish line. Say what you have to say, and then get out.

Writers And Editors: After a writer finishes a report, the best way to reduce grammatical errors is to have someone else edit the report. Most people cannot effectively edit their own writing—the writer literally does not see his mistakes. Some businesses have untrained secretaries “edit “ reports. Editing is a skill not often found in the same people who may be effective with administration. If your budget allows, consider having a designated editor (someone with a background in writing or journalism) review reports before they are published. Alternatively, read your report aloud—you will pick up many errors this way.

References To The Investigator: Some investigators use indirect terms to identify the report writer. The rationale behind this style is that the use of “this writer” or “this investigator” implies a greater neutrality to the investigator. But is the implication of neutrality overwhelmed by the awkward phrasing? The best way to refer to the investigator is the simple and direct “we” or “I”.

Vary Sentence Structure: Inverting sentences (starting the sentence with a prepositional phrase and then the main declarative) can add power to your prose. Intersperse short, sharp sentences with longer compound sentences. The effect is a livelier page and a more interested reader.

Include Educated Opinion: The dry language used by many investigators has often been a hallmark of police report writing, where a bare-bones factual approach has historically been taken. In contrast, investigative journalists often write thumbnail sketches of people that investigators may want to emulate. Most lawyers want to hear the investigator’s educated opinion of a witness: does the witness appear friendly, cold, intelligent, menacing? Lawyers need to assess a witness’s background, education, and appearance. Yet many investigators leave all these details out of the report in an attempt to keep a veil of neutrality. Expressing your opinion does not mean outlandish or crude evaluations. However, thoughtful assessment of a witness is critical to trial preparation. Is the witness one who tells the truth but is rather difficult to understand? Is a witness in an environmental case likely to be considered biased by a jury (despite his documented truthfulness) because his extensive ailments have resulted in a very hostile demeanor? Make details like these come alive.

Reporting The Scope of the Inquiry: Always make sure that you report what the witness did not say; ie. make sure the client knows that all critical questions were asked. If a witness did not have any information on a particular topic, then briefly note that in the report. Also, if you are reporting results of public records research, communicate any limitations of the data. For example, some news media databases and on-line dockets are missing data from certain years. Consider a boilerplate paragraph where you explain the limitations of locator databases (for example, data is replenished only every few weeks, so it will not reflect a very recent move).

Reporting Negative Information: Detailing negative information about your case requires

careful thought. First, leaving such information out of a final written report may damage your credibility should you have to testify. You are a neutral reporter: if a witness fails to back up another witness's version of events, you have an ethical obligation to note that fact. At the same time, personal information that could damage the reputation or private life of a client may have to be handled more delicately, perhaps with an oral report.

Propose Recommendations: If you believe that further work is warranted, include a section where you briefly outline additional steps that should be taken. Clients often are unsure how to proceed, and they will appreciate a thoughtfully presented investigative strategy.

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