How to Conduct Investigations
For
Loss Prevention Investigators
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1.0 EXTERNAL INVESTIGATIONS

External investigations investigate people external to the company. This is normally limited to investigations on customers. Employees are obligated to cooperate with an investigation as a function of their employment. Customers are different. A company may detain a person in order to investigate a crime. There are many issues that can arise during the Loss Prevention process. As a result, external investigations should take extra precautions.

External investigations often handle shoplifting, larceny, evasion, trespassing, counterfeiting, and vandalism.

1.0.1 Employment law

External Investigators rarely deal with employment law since their interactions are mainly with customers. Keep in mind, however, that External Investigators sometimes encounter situations involving employees (§1.0.3).

1.0.2 Who can make stops?

Field Agents are the only members of the Loss Prevention Department authorized to make stops and detain shoplifters. Other agents require permission from a Loss Prevention Supervisor prior to making stops.

1.0.3 Can Field Agents stop employees?

If the employee is visiting as a customer and commits a crime, a Field Agent should detain the person as usual. Field Agents rarely learn of the shoplifters’ status as an employee until the person has been identified. In these situations, the Field Agent should refer the case to Internal Investigators for further instructions.

If an employee is observed committing a crime while working, Internal Investigators will handle the case. The Field Agent should report their observations to an Internal Investigator. The Internal Investigator will explain how s/he wants to proceed. It is usually important not to lose sight of the employee. Also note physical characteristics, name tag, and direction of travel if appropriate. An Internal Investigator may request a written statement describing the Field Agent’s observations.
1.1 PROBABLE CAUSE

Probable cause is a belief based on evidence that someone has committed a crime or violated company policy. Watching someone shoplift is a way of confirming such belief, which may be enough for probable cause. Possessing probable cause allows the company to detain the person(s) involved. The benefits of probable cause are discussed in §1.1.1.

1.1.1 Protecting the company

The idea behind probable cause is to establish an acceptable level of certainty prior to detaining someone. Loss Prevention entities are faced with many potential losses. Some of the most significant one-time losses come from litigation. The risk of a law suit can be reduced by using probable cause during investigations.

The importance of probable cause lies within the perception of the accused. Imagine if an innocent customer is detained for shoplifting. They would be more likely to perceive that they were mistreated or their rights were violated. The company’s actions might be difficult to defend in court if the company detained customers without probable cause.

The Loss Prevention Department requires agents to find probable cause prior to detaining suspects. Lacking probable cause can be very costly when acting on behalf of a company. Our job is to protect the company from costly mistakes. The risk of civil liability is reduced when a probable cause standard is upheld.

1.1.2 Probable cause by observation

There are many ways to develop probable cause. Observing a loss is one of the most solid ways of establishing probable cause.

1.1.2.1 Shoplifting

The most commonly observed loss is shoplifting. This company has five requirements that must be fulfilled in order to detain a shoplifter:

1. The agent must witness the person entering the area without the item.
2. The agent must witness the person select the item.
3. The agent must witness the person conceal the item.
4. The agent must not lose sight of the item or the area where the item has been concealed.
5. The agent must witness the person leave the last point of sale with the item.

Observing these requirements establishes probable cause. After fulfilling these steps, the suspect may be approached, stopped, and brought to the...
Loss Prevention Office. Probable cause may not be established if one or more steps are not observed.

1.1.2.2 Ticket scalping

Ticket scalping is a commonly observed loss. In cases of ticket scalping, there are several ways to establish probable cause.

1. Observe the person selling tickets. Be sure to look for whether money is exchanged.
2. Have a Field Agent or secret shopper purchase tickets from the seller.

Try to establish whether the person is simply selling tickets or ticket scalping before making the stop. This may influence how you handle the case.

Sale of complementary tickets is a form of ticket scalping. In these situations, it is important to find out whether the seller is an employee. This scenario is likely, given that employees receive a certain number of complementary tickets every season. Consult with an Internal Investigator when employees are involved.

Keep in mind that ticket scalping is not illegal in all areas. It is, however, a violation of company policy to sell tickets on company property. Even if the subject is not selling tickets for more than they are worth, it is a Loss Prevention issue.

1.1.2.3 Other losses or crimes

It is not likely that Agents are present during the commission of a crime or policy violation. However, witnessing the crime is a very powerful tool for determining probable cause.

If you witness crimes or losses, try not to let the suspect(s) out of your sight and contact Loss Prevention if you need assistance. Also memorize a description of the subject(s). Simply witnessing the event may amount to probable cause to detain those involved.

1.1.3 Probable cause without observation

Probable cause can be established in other ways than by observation. This is important since Agents are rarely on the scene during the occurrence of most losses.
While there is seldom a specific procedure in developing probable cause, there are many ways to gather information:

1. Interviewing witnesses
   a. Victims
   b. Security officers
   c. Customers
   d. Store clerks and other employees
   e. Suspects
2. Reviewing camera footage of the event
3. Reviewing witness statements
4. Have witnesses identify suspects

1.1.3.1 Shoplifting

In a case where shoplifting is not seen by a Field Agent, the steps discussed in §1.1.3 can be used to develop probable cause. An agent should be very careful when using others' observations to make sure that they observed the five steps.

Hearsay is inherently less reliable than personal observations. When a witness explains they observed someone shoplift, consider backing up their observations with surveillance of your own. Corroborate what they said with your own observations.

In some situations, you may be able to establish that the witness observed the required five steps.

1. The agent must witness the person entering the area without the item.
2. The agent must witness the person select the item.
3. The agent must witness the person conceal the item.
4. The agent must not lose sight of the item or the area where the item has been concealed.
5. The agent must witness the person leave the last point of sale with the item.

1.1.3.2 Counterfeiting

An agent is unlikely to be at the scene when a counterfeit bill is passed. The person who received the counterfeit bill will most likely be a cashier. Perhaps the best method of finding the suspect is to take the cashier to front gate or exit. As the customers exit, the cashier may be able to identify the person who handed him/her the counterfeit money. If the suspect is an employee, it
may be better to take the witness to Human Resources where all employees pass through before leaving.

1.1.4 Identification of suspects

It is very powerful when a witness can identify a suspect. In order to make the identification, the witness may need to point him/her out. A simple method to get a positive or negative identification is to take a picture of the suspect and have the witness identify him/her. Keep in mind what the witness actually saw. You may even want to ask, “If you saw a picture of the suspect, could you identify him?”

1.1.5 Lacking probable cause

Generally, probable cause is required to make stops and to detain suspects. Acting without probable cause can place the company at a greater risk of a law suit.

When in doubt, contact a Loss Prevention Supervisor.
1.2 WITNESSES

Witnesses can be essential in describing incidents. With their help, you may be able to establish an acceptable level of certainty. Witnesses can also be very helpful in establishing a timeline of events. Since Agents are rarely present during an event of interest, witnesses can sometimes be the only source of information.

1.2.1 Evaluate witnesses

Witnesses sometimes focus on what they heard rather than what they actually observed. An Agent’s job is to differentiate the fact from the fiction. Persons without direct knowledge of an event may not be reliable witnesses. The reliability of a witness should be evaluated by taking into account several things.

1.2.1.1 Where was the witness located during the event?

If the witness claims that s/he saw the event, make sure that it is possible to see what was happening from the area s/he was in.

If you can establish quickly that a witness in fact did not see anything, that saves you time. You can then move on to interview a more valuable witness.

1.2.1.2 What did the witness physically observe?

Separate fact from fiction.

When we don’t see exactly what happened, people tend to “fill in the blanks” and describe what we think happened. This information could be very harmful, especially if an Agent adopts the information as factual.

“I don’t know” is a better answer than a false statement.

1.2.1.3 Who else has knowledge of what happened?

You may want to find out if someone else knows about the incident. If you need to make quick decisions, it may be beneficial to speak with the witness who saw the whole incident.

Have a strategy for selecting witnesses to interview. Victims are also witnesses.

1.2.1.4 What circumstances brought about the event?

We are usually most interested in who is responsible for an incident; however, knowing why something happened can be just as important. If you can determine by the circumstances that, for example, it was an
unintentional destruction of property, you would probably handle the case differently.

1.2.1.5  **Is the witness able to identify the suspect?**

One important step in any investigation is ensuring you caught the right person. This is especially significant when the suspect persistently denies involvement. It is very powerful if a witness can say “yes, that’s him.”

1.2.1.6  **How is the witness trained?**

A Loss Prevention Agent may be a more reliable witness than a retail employee. Loss Prevention has a completely different level of training than other employees. This should also be considered for customers who witnessed the event.

This is not to say witnesses who lack certain training are unreliable. Many witnesses are able to provide very accurate accounts of what happened. In most cases, witnesses will consist of “regular” people. Keep in mind that courts also assess the reliability of witnesses.

1.2.1.7  **Are there time constraints?**

Consider that customers might have more significant time constraints than employees. They do not want their time to be wasted. You may need to interview and/or take statements from them in a timely manner.

Employees may be willing to wait longer since they are getting paid, but they may also have constraints. Minors may need to go on break, employees may be scheduled to leave early, etc.

1.2.2  **Things to remember**

- Eliminate assumptions and hearsay
- Establish what the witness knows with certainty
- Focus on what the witness actually observed
- Remember to look at the totality of circumstances
- Corroborate information
- Consider time constraints

Note: The question “why” may not be established until a case is solved; however, situational and circumstantial information gathered from witnesses can be useful in getting at this question.
1.3 DETAINING CUSTOMERS

Once you have established probable cause that a customer has committed a crime, you may stop the customer. The customer will then be brought to the Loss Prevention Office for processing.

1.3.1 The company’s rights

The following are some important rights the company has in preventing external losses.

1. The company has a right to protect its assets and property.
2. The company has a right to recover stolen assets.
3. The company has a right to detain a person for theft when there is probable cause that the person committed the crime.
4. The company has a right to detain a person in order to investigate a crime.
5. The company has the right to conduct investigations on its property.

1.3.2 The customer’s responsibilities

1. Upon Loss Prevention’s request, the customer is required to return stolen merchandise.
2. If the merchandise is damaged or has lost value, the customer is liable for the purchase price of the item(s).
3. The customer is liable for damages in connection with the shoplifting and apprehension.
4. Civil demand.

Note: If the customer refuses to return the goods, Loss Prevention can take them back using “reasonable force.” Due to the sensitive nature of using force, it is generally a good idea to speak with a supervisor first. A supervisor may be able to convince the person to cooperate.
1.4 INTERVIEWING CUSTOMERS

The idea behind interviewing customers is to convince them to admit what they did. When you have an admission, it decreases risk of litigation. If your suspect tells you he stole a keychain, he would be much less likely to claim false imprisonment, discrimination, etc. Once a suspect has been detained, questioning him/her can be a very effective tool in obtaining an admission of guilt.

In a Loss Prevention setting, suspects know that they are there because they did something wrong. The question is how to convince suspects to talk about what they did.

1.4.1 Minimize & maximize

Making someone feel comfortable is an effective strategy in getting them to talk about what they did. One way to make them feel more comfortable is to minimize their wrongful actions.

“Look, it’s not like you’re selling this stuff to kids. Who hasn’t tried this stuff these days?”

“Times are tough, we all need money. I’m sure you took it so you could feed your family.”

“Frankly, I don’t want to waste my time on a 500 dollar case. In the end, do you really think this billion dollar corporation cares about 500 bucks? It’s not like you stole a million dollars…”

Minimize their actions and compare them to something extreme. It seems like you understand them, and they are now more likely to talk to you about what happened.

1.4.2 Ask assumptive questions

It is important to be in control of an interview by not giving the suspect a chance to lie. One effective way to prevent lies is to ask questions with the assumption that they are guilty. They are less likely to deny involvement because it is not directly asking about their participation.

Rather than:  
Did you steal the bicycle?  
Did you do illegal drugs?

Ask:  
Why did you take the bicycle?  
When was the first time you experimented with drugs?

Remember that you have evidence of their involvement. You established probable cause.
1.4.3  Use neutral language

Nobody wants to be labeled as a thief even if they have been stealing. This is why it is important to avoid terms that indicate criminal behavior.

Rather than telling them that they committed a crime, it may be better to talk the bad decisions or mistakes they made. It makes no difference if they admit to making a mistake or committing a crime. The substance remains the same.

Rather than:  
When you stole the car…  
When did you start using drugs?  
You committed a crime.  

Say:  
When you took the car…  
When did you start experimenting with drugs?  
You made a mistake.

1.4.4  Counterfeit & sensitive cases

A trained investigative interviewer should question suspects of sensitive cases. They might be most successful in getting at the truth regarding the suspect’s involvement, connections with other participants, motives, etc.

Sensitive cases include counterfeiting, sex crimes, illegal drugs, and other crimes that may be considered serious by the company.