



**Regulation Matters:
a CLEAR conversation**

Episode 45: Being a Better Investigator - Insights from Experience September 14, 2021

Line Dempsey: Welcome back to our podcast Regulation Matters: A CLEAR Conversation. I'm your host, Line Dempsey. I'm currently the Chief Compliance Officer with Riccobene Associates Family Dentistry here in North Carolina, and I'm also the Chair of CLEAR's National Certified Investigator Training Committee.

As many of you are aware, the Council on Licensure Enforcement & Regulation, or CLEAR, is an association of individuals, agencies, and organizations that comprise the international community of professional and occupational regulation. This podcast is a chance for you to hear about important topics in our regulatory community.

Our guests for today's episode are two fellow NCIT instructors. I've known them for quite some time. Actually, well, it's been a long time. I remember taking my first classes with both Amigo and Mike, and they had actually suggested that I actually maybe look into becoming an instructor with them; which I'm not quite sure what their insight on that was, but I've known them for a long time. And I will say that my involvement in CLEAR, from being involved with NCIT Committee to having served on the Board of Directors, I owe it all both to these two gentlemen. Not to set the bar pretty high, but the reality is that if it hadn't been for them and their input early on in my career as an investigator, I wouldn't have been involved with CLEAR like I have, so with that, welcome, guys.

Mike Ferjak: Well, thank you,

Amigo Wade: Thank you, very glad to be here.

Line: And we're glad to have our listeners with us today. Again, thank you for joining us.

For those that may not be familiar with CLEAR's NCIT program, the National Certified Investigator and Inspector Training, or NCIT, we have basic and specialized programs. And that training and certification programs are designed for investigators and inspectors working within regulatory organizations. Since the program's inception in 1984, more than 21,000 investigators and inspectors have participated in this training.

We've now moved this training to an online format with both pre-recorded modules and live instructor-led online sessions. But it's quite amazing where we are, so maybe I can have a - most people know both of you that have been involved CLEAR but, starting with Mike, maybe give us a little bit about your background and an introduction to yourself if you would, and then we'll go with Amigo.

Mike: Sure. My background is primarily law enforcement — actually 40 years in law enforcement: 20 years in patrol, and 20 years in investigations. I retired a few years back and began a training and consulting company that I have now, and I've been with CLEAR, the NCIT program, for 29 years, but it actually seems just like yesterday. It's a very vibrant, thriving program and allows me a real benefit of meeting people all over the country who are engaged in the activity of investigation. So really quite a pleasant thing to do, and I've really enjoyed it.

Amigo: And Line, I'm glad to see that we went with age before beauty or, in my case, "handsomeosity," which is a word, look it up.

But my career, I suppose, right after law school for about ten years, I was with the Department of Professional and Occupational Regulation here in Virginia, which is a centralized agency that had about 21 different boards. And so lots of different professions and occupations, and I was an investigator there and moved through the ranks to become an Assistant Director at some point. And then I knew it was time to leave before they found out that I didn't know what I was doing, so, which is the state government path, in case you didn't know. For the last, I guess 24 years, I've been working with the Division of Legislative Services, which is in the legislative branch, and they provide legal services to the Virginia General Assembly. And keeping with that path, as I was telling you, I'm that Acting Director of that agency, so it probably is going to be time for me to move on, so they find out that I still don't know what I'm doing.

So I've been involved with CLEAR since 1991. The first time I taught, I think, was in Lincoln, Nebraska. So it's been a long time; I've had a lot of fun over all that time.

Line: Fantastic, I think I met both of you guys in 1996; I think that was around the time when I first got involved with CLEAR.

So, one of the things that we want to talk a little bit about today since we do have a background in investigations. I was the Senior Investigator with the North Carolina Dental Board for 16 years; been involved in this for a while and, of course, you guys as well. . .kind of wanted to talk about, not necessarily tips and trades, but maybe some insights from our experiences on how you could be a better investigator if you would.

So Mike, let's kind of start with you. Could you maybe share an experience from earlier in your career that basically you learned from that you could share with the group?

Mike: Yeah, I was . . . I'm having trouble just selecting one; I made just about every mistake that you

can possibly make. Much like Amigo. Still trying to figure out what you're supposed to do.

But I've come to learn that preparation is the key to success in terms of investigations. More often than not, we have time available to us to prepare for the investigation, but sometimes we don't utilize it.

We rely on what we've been told before, and so there's also a benefit to continuing your training and continuing your education, which is offered through programs like CLEAR and others.

But for one example that stands out to me now, I need to give a little background on this; I was born and raised on the Southside of Chicago. That's where I entered the law enforcement profession, was on the Southside of Chicago. And then I eventually moved, for reasons that still escape me, to Iowa and ended up in law enforcement in Iowa. And my remark here has to do with my very first call for service as a patrol officer in Iowa.

That call for service was for livestock on the road. Now, as I just said, I am from the Southside of Chicago. I know that steaks come in wrappers, and I know that cows jump over the moon and all that kind of stuff. But I really didn't know what to do when I got there. I'd been through the Academy, I'd been through the Illinois Academy, and through the Iowa Academy, so in terms of preparation, I thought I had it, but the very first call proved the error in my way, in my theory.

There's no way for you to be trained for every eventuality that you're going to encounter as an investigator.

Things are going to happen that you absolutely didn't expect; things are going to happen that you expected but weren't really ready for when they did happen, and that's why preparation becomes number one. In my particular case, in this instance, it was a middle-of-the-night type situation. I got to the location that I had been dispatched to, and sure enough, there were what I believed to be at the time cows on the road. Now again, having never come face to face with a cow before in my life, I wasn't really sure what I was doing.

So I called for assistance from the dispatch center, and I said, "I'm here, and there's what I believe to be cows on the road. What would you like me to do about it?"

And they said, "Oh nothing, just find the first open gate; turn 'em in there, we'll find out who they belong to in the morning." I went, "Okay, how do you do that?"

You see, in the academies that I attended, there was nothing about cattle herding or cattle drives.

And they told me, the response that I got from the dispatcher was, "Oh, just wave your arms and make some noise and they'll move." And so I began to think, "Make some noise. Well, how can I make some noise? How can I make some noise?" And then I realized I was wearing a noisemaker on my

service belt, so I pull my revolver out; we were using revolvers at the time and . . .

Line: No, please, no.

Mike: . . . was preparing to discharge my firearm and attempt to move said cattle, when luckily a deputy sheriff showed up, and goes, "No, no, no don't do that, don't do that! We don't want a stampede; we just want to move 'em." So he walks down into the ditch with them, and he says, "Hey cow, hey cow," whatever he said, I don't know, but he got them successfully corralled. But that was a very obvious indication to me that I was not really prepared for the environment that I was working in, and I think that's what's true for all new investigators when they come into the field, despite your background. Now I've had plenty of time and, now I had never run into a cow on a Chicago street anywhere, never. So I wasn't prepared for this different environment.

And that's one of the benefits, I think, through the NCIT program, we try to provide as much training as we can. It's done in a generic way on purpose so that it can be adapted to the environment that you, as the investigator, might find yourself in.

And then continuing training—obviously things change, rules change, laws change, everything changes, and that's the other benefit of the NCIT program is that it allows access to current information in the field.

Line: And I can definitely see how your example, in particular, of being better prepared; and sometimes you know coming right out of some type of training, new hires sometimes feeling like they know everything and going into things without maybe prep work that could be used to better efficiently handle the situation.

I, on the other hand, had a similar situation, not with livestock in the road, of course, or discharging a firearm at said cow.

But I had a situation where I was almost over-prepared, and by that, I guess again some backstory; so working in the field of dentistry, one of the things that was a requirement that the laypeople, nondentists or nonclinical people do is take impressions of human teeth.

And you would do that in a dental office for making a bridge or a crown or a denture or something to that effect. But we had, this was back in the early 90s, grills were real popular; the fake teeth that sometimes have diamonds and things like that. And so the board had gotten notified that there was some jewelry store that was doing this, and they sent me in as a fairly new investigator, completely green to go in and go in undercover, if you would, and get a set of grills or fake teeth made. So I went in and got everything done, and when we took the case to court, I'd been prepped by our attorneys to make sure that I referred to it as an appliance, "don't refer to it as jewelry," right because, again, the judge is a layperson. And we're trying to make a point that this is an appliance that could potentially affect people's bite. It's not just a piece of fashion jewelry. It actually is replacing the biting surface. So

it was just preached into my head, "make sure that you don't say jewelry," so I had that covered.

And at some point in time, since this was just a small case, the judge asked me, he said, "Well, where would you wear something like this?" And again, I was so focused on not saying jewelry the thing that came out of my mouth was, "I don't know, maybe if I went out clubbin'," emphasis on the fact that I didn't even have a G on there, it was "clubbin'." Not clubbing.

And any of you that know me that have met me at conferences know that I'm not quite the person that goes clubbing, much less clubbin'.

And it really caused a lot of confusion, but, the take-home message with it, I was so focused on one aspect of the trial—to make sure that I didn't say the word "jewelry"—that I was not listening to the questions and responding in a way that I should have.

So I guess I could have used a little bit more preparation, in the end, but overprepared, in that, I was focused on one thing, and that was the thing that was just preached over and over, "whatever you do, don't say jewelry." And so sure enough, I didn't say "jewelry," but I did say "clubbin'." And that's in a transcript somewhere.

Amigo: Line, I'm surprised you didn't squeeze in there, "Yeah, and I'm going to go back to the pad" or "to my crib," you know I mean. It's, just go fully 80s.

Line: That's right.

Amigo: I think what's interesting is Mike is talking about the importance of preparation, which is all-important to any professional. That's the one thing that you have control over, the amount of time that you put in preparation.

You also saw that you can sort of overprepare, and you can become so focused that you end up going in the opposite directions. Like, "this guy's got to be undercover or something because this..." And I think, from my standpoint, what I wanted to talk about is a couple of stories about how you can be properly prepared. Because well now, there's no course that you can take in undergrad or law school or evening, and some of the community colleges on how to conduct a regulatory investigation. Of course, when I became an investigator, I was what some would say was overqualified. I had four years of undergrad, three years of law school, so I knew that I was prepared.

Now, I was a generalist which means, I said 21 different boards; well, we're talking about at least 50 different types of occupations.

And each of those occupations has a lingo; they're in their own worlds and if you're going to be an investigator where you're going to try to go and have that, as Mike would say and Line would say, that conversation with a purpose, you have to be able to talk to people in a language that they understand.

So my first case was an auctioneer case. You know what an auctioneer is, right? (imitating auctioneer exclamation) Sold! Sold!

So, I did; I'm a lawyer. Okay, I'm smart; I passed the bar exam after only taking it twice, okay.

So I read the enabling statute. I read the regulations, and I went to the interview with the auctioneer, and two questions in I began to talk about the hammer that they use to say when the bidding is over, and then called it a mallet. After a while, the auctioneer said, "Sir, it's called a gavel." And evidently, that is sacrosanct, you don't call it a mallet or a hammer, and what happened after that was that I lost credibility. I was not able to have the conversation with a purpose, and he had the advantage of me as the investigator.

The other story has to do with; I was investigating a high profile contracting case dealing with shrink-swell soil, we could spend all day talking about that; this is good stuff, you know, so.

But anyway, it was this contractor, who was not just a licensed contractor, he was an engineer, had been in the business for 25 years and I was this guy; I had a lot of hair, then, so I had like this, cool widow's peak, like Eddie Munster, some of you that might recall The Munsters, and I went in, and part of it had to do with the discussion of the jousts that hold the flooring up. And I said, "joust." After the fifth time, he said, "It is called a joist."

I lost complete credibility; it was a terrible interview. What I learned from that is that you have to take time to do the right preparation, meaning understand the lingo. What could I have done and what did I start doing after that was; you have board members that are practitioners, what I would, what I should have done was given the auctioneer board member a call and said, "Tell me about how this business works." Because you're not going to know, you're not going to find that out by reading the regulations or reading the statute or even looking at some movies, or getting on one of those price channels, where they are "Sold! Sold!" That's where you put that effective, right type of preparation in so that you can be at least on as equal as possible footing and also coming from the generalist's standpoint when they're using those buzzwords or those keywords that are important to that profession; you're going to be able to register what they're talking about and kind of continue that conversation and not have to stop and say, "Let me see what that means." Okay, so that would be my major thing, just making sure, especially if you are a generalist. In my old agency, we had from auctioneers to architects to contractors to cosmetologists to the body piercers.

Each of those professions, each of those occupations had a lingo, had a language, had a world that they live in and as much as possible if you're an investigator that is a generalist, try to find out as much of that world as you can so that you can get that conversation with a person, you can exercise that professional judgment as clear as possible.

And, by the way, Mike has seen a cow before. It was just further along in the process. We've all seen hamburgers, so I'm going to just leave that alone.

Line: Let me ask this question then, Amigo. So, are there, I know I've used in the past, and maybe you can give some validation to it, are there times when it's been helpful to, I don't want to say play dumb, in an investigation, but when you have a respondent that is very confident in themselves to approach them with a, "Well, I'm not a dentist. Help me understand."

Amigo: Right.

Line: And taking that tac. So for lack of a better term of saying playing dumb is that a viable option because I've used it, and it's worked, but . . .

Amigo: yeah

Line: Am I damaging things in the end?

Mike: Let me just say this, Line, you're asking exactly the right guy about playing dumb. He is very convincing.

Amigo: Yeah, some would say that I don't play dumb if I do; if I am playing dumb, I should get an Oscar or Tony or an Emmy because I do it so well. But Line, you made a good point is, it's really sort of a tool in your investigator box, because for some professions, like the more technical ones it's all right to play like you don't know because that makes them give you information. "Educate me, help me to understand." That's, as Mike and you, that's one of the most important questions that you can ask. "Help me to understand because I'm here to get your side of what happened," and to the extent that they can give you education about information.

Now it's a tool that you may not want to use in some instances. Like one of the professions that we regulated was on-site sewage disposal. I don't, I certainly don't want to act like I know everything about that, but at the same time, some people say, what is it to know?

So yeah, it is a good tactic, and that's the other thing I think that that's a good point that we talk about in the NCIT is, look at these skills and these things as tools in the toolbox. You don't always have to use a hammer or a mallet or a gavel; you don't always have to use a screwdriver, sometimes flathead and sometimes Phillips, sometimes you need a saw.

But just know what your tools are and know when to use them, and that's a part of being prepared. So yeah, good point.

Line, I think you're done for the day. Don't you have to make one good point a day, and then you can clock out?

Line: Yeah, I had; it's a "Constanza Moment," is what I call it, yes. But, so let me throw this to Mike

then too. So with that, I guess, speaking to that vein, are there opportunities that you have utilized when you've been able to, and again I don't want to say play dumb, but knowing your audience and obviously, this is something that comes with years of experience right? Like, so somebody green out of the bat is not going to be able to gauge the room so much early on but is there a good example that you can recall on that.

Mike: Well, it's a lot like what Amigo had just said, that the key to not playing dumb but seeking "help me understand this" is don't exceed yourself. Don't try to be somebody or something you're not. Be legitimate when you're saying, "You know I don't understand this process. Can you walk me through it?" Because, in my experience, people are pretty fast to identify when you're putting it on.

And that's not effective. Again the credibility goes out the window. You're trying to develop that rapport.

And the other thing to remember when, if you are in over your head is your focus, maintain your focus because a lot of times I've listened to Amigo teach, and sometimes I just . . .

Amigo: Go snoozes.

Mike: I'll take a little snooze. I go to my happy place and I just you know. And I can recall a time that I did that in an interview with an individual. And I teach interviewing, and I always talk about maintaining focus and staying engaged and stuff, but in this particular case, this guy was killing me.

This was not the Lindbergh Baby case; this was a very minor thing, and normally what we try to get people to do an interview is talk to us and educate us, and my problem with this guy was, I cannot get him to shut up. I'm literally sticking my pen in my ear, just trying to make it stop.

And so just a little note to everybody that's listening today, be aware of what you're doing when you start to go to your happy place. And you have something to write on and something to write with. And do not do what I did.

You're all probably familiar with the game hangman. I played hangman in the margin of my notes. And the letters that go underneath the platform there that form the word, there were four blanks there, I filled those in with J E R K.

And I thought nothing of it because, at that time, I was a young investigator, young in the process. I didn't realize; I didn't know much about this thing called discovery, where you turn your stuff over to the other side. And the next time I saw that little game was on a screen in the courtroom, I was being asked the question, "What was my client telling you when you took those notes, officer?"

Very uncomfortable time with your prosecutor sitting there going, and you just take your beating. So staying engaged, even with the highly technical things that regulatory investigators deal with every

day, don't let yourself slip out. You have to stay with the game.

Amigo: I think if I could make just another quick point. And I know we're getting towards the close, but this goes into what you're saying Line about playing dumb; Mike, what you're saying about being dumb.

But you have to be careful. Don't let playing dumb be your strategy for not preparing.

I was in the architecture case, and architects are a very technical profession. It's like a three-day test, so you're not going to be able to be at the architect's level.

An engineer was testifying, and he kept saying over and over, "And I said to him, 'where are my shop drawings? I said, 'where are my shop...'" And then I said, "Well, what is the shop drawing?"

Now, evidently that, it's like the whole room that people, the architect that was there, the testifying witness was like, this guy's really dumb. That was, I should have been more prepared to know what the importance of a shop drawing would have been to an engineer who's working with architects plans.

So don't let, I could see it now, I can see that say, "You know what I found out? Line Dempsey said that you can play dumb, so that's going to be my strategy and I'm not going to prepare." Always prepare, but within that preparation, say I'm going to play dumb, or I'm going to play like I need more information; help me to understand. So, I guess it's our version of "Help me!"

Mike: Right.

Amigo: You know that's a Thor-Loki reference, you know, "Help me." Okay, on the way home, we'll get it.

Line: Well, obviously, one of the things that investigators can do is, obviously, try to stay fresh on their skills, and you know opportunities for NCIT programs are always available.

And as we move back towards in-person meetings, our Investigator Roundtable is a great opportunity for you to share that, and also we have Communities on CLEAR, which is a great place for you to share questions or a situation where you've run across that someone might actually gain some insight from and help them in their job.

We are continuing, CLEAR is continuing to add new dates for our online Basic and Specialized programs. So even if you are an experienced investigator, you're certain to gain some new skills and knowledge from this course. It's certainly changed over the years. I've been a part of that; actually, both of you have been a part of that, too, as we change our curriculum over the years to make sure that we're staying current. And that's one of the great things about CLEAR and the NCIT Committee is

that we're devoted to making sure that we are staying on top of what is the current and latest and greatest in technology and techniques. So, we invite you to learn more about that by visiting the website at www.clearhq.org/NCIT.

So, I think it's been an excellent conversation today. Again I look up to both of you, I have been involved with you guys for a long time, and I'm always game to try to be to the level of experience that you guys have. I don't know if that comes with losing hair since both of you seem to be somewhat challenged, and I still have good locks right now, so I guess I've still got a few years to go on that.

Amigo: Well, I had a blast.

Line: Well, thank you, guys.

Amigo: Thanks for having me.

Mike: Thanks very much.

Line: Absolutely, and I also want to thank our listeners for tuning in to this episode. We invite you to continue this conversation through our CLEAR discussion forum; that's what I mentioned before, the CLEAR Communities. And members can reply to and post comments there.

Some of the things that we may even want to look into is questions to pose to the group or what are the most important skill or tool that you use in your regulatory investigations?

And maybe some of what are the biggest challenges you face as a regulatory investigator?

We'd love to continue this conversation on the CLEAR Communities, so please take a look on there.

We'll be back with another episode of Regulation Matters: A CLEAR Conversation very soon. If you're new to this CLEAR podcast, please subscribe to us. You can find this on podbean and any of your favorite podcast services. If you've enjoyed this episode, please leave a rating or comment in the app. Those reviews help us to improve our ranking and make it easier for new listeners to find us.

Feel free also to visit the CLEAR website that's www.clearhq.org, for additional resources, as well as a calendar of upcoming online programs and events.

And finally, I'd like to thank our CLEAR staff, specifically Stephanie Thompson. She has worked with us, the three of us, a lot for many, many years, so we do appreciate you and doing all the editing that you had to do, probably in this podcast. So once again, I'm Line Dempsey, and I hope to be speaking to you guys again very soon.

*The audio version of this podcast episode is available at
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