

Investigative Interview Techniques

Christopher Haney, CPA, CFE and Andrea Roller, Esq.

1. Overview

Interviews represent the most basic and human element of any investigation. Diligent interviewers constantly search for a complete and truthful telling of events. Whether you are a law enforcement officer, an investigative reporter, or simply a parent negotiating a family dispute, investigative interviewing skills help you to efficiently and reliably determine the events and motives at hand. This article seeks to highlight the best practices of interviewing techniques and to provide you with a variety of considerations and tools for your next interview.

Whether you are interviewing the primary subject of an investigation, a victim, or a peripheral witness, it is crucial that the interview is conducted in a thorough and professional manner. Engaging in anything less may expose the investigation to the risk its findings and conclusions are found less than credible or are ultimately excluded as evidence. In a successful interview, the process is as important as the results.

We begin this article by addressing the quality standards incumbent on investigative interviewers. We also identify best practices for interview preparation to ensure the proper foundation is in place for a

successful interview. We then discuss the commencement of the interview and methods to establish rapport with the interviewee. We will also discuss the goals and approaches to both investigative and behavioral questioning. Finally, we will offer best practices for consideration as you conduct your own interviews.

This article is not intended to render you an expert on investigative interviewing. With that said, the tactics and considerations discussed can be helpful to both novice and seasoned investigators. Remember, interviews are more of an art than a science, and the goal of this article is to offer you additional tools as you practice your craft.

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2. Importance of Quality

Effective interviewing has always been a key tenet of thorough and comprehensive investigations. That mantra was emphasized in a 2011 speech by Robert Khuzami, Director of Enforcement, U.S. Securities and Exchange Commission (“SEC”). Director Khuzami underscored questionable tactics employed by counsel during internal investigations, specifically addressing a variety of dubious interview practices. Director Khuzami also noted the SEC’s new Cooperation Program, which provides for reduced, or even no sanctions, in return for diligent self-policing or assistance in an SEC investigation.¹ The moral of Director Khuzami’s speech is clear; organizations risk losing cooperation credit by not conducting thoughtful and comprehensive interviews and investigations. The SEC’s stance is consistent with a variety of other criminal and regulatory enforcement agencies.

When considering the specific factors used to assess the quality of interviews, a variety of standards exist. For the purposes of this article, we find it useful to consider the factors utilized by the SEC, given the Commission’s broad enforcement capabilities and the recent public focus on interview techniques. The Commission commonly refers to the 2001 case of Gisela de Leon-Meredith, the controller of Chestnut Hill Farms (a subsidiary of the Seaboard Corporation or “Seaboard”). This case highlights the significance of effective internal investigations: despite concluding that de Leon-Meredith caused Seaboard Corporation’s books and records to be inaccurate, the SEC nonetheless took no action against Seaboard, finding instead that Seaboard’s robust and proactive response mitigated the need to seek enforcement against the company.

The SEC utilized a thirteen point analytic framework to assess Seaboard’s actions and its response when considering enforcement actions. These factors, known as the “Seaboard Factors”, continue to be

the framework for assessing a corporation’s role, and its eligibility for cooperation credit.² Among the thirteen factors, five are directly related to investigations and interviewing:

Selected Seaboard Factors

1. How long after discovery of the misconduct did it take to implement an effective response?
2. What steps did the company take upon learning of the misconduct? Did the company immediately stop the misconduct? Are persons responsible for any misconduct still with the company? If so, are they still in the same positions? Did the company promptly, completely and effectively disclose the existence of the misconduct to the public, to regulators and to self-regulators? Did the company cooperate completely with appropriate regulatory and law enforcement bodies? Did the company identify what additional related misconduct is likely to have occurred? Did the company take steps to identify the extent of damage to investors and other corporate constituencies? Did the company appropriately recompense those adversely affected by the conduct?
3. What processes did the company follow to resolve many of these issues and ferret out necessary information? Were the Audit Committee and the Board of Directors fully informed? If so, when?
4. Did the company commit to learn the truth, fully and expeditiously? Did it do a thorough review of the nature, extent, origins and consequences of the conduct and related behavior? Did management, the Board or committees consisting solely of outside directors oversee the review? Did company employees or outside persons perform the review? If outside persons, had they done other work for the company? Where the review was conducted by outside counsel, had management previously engaged such counsel? Were scope limitations placed on the review? If so, what were they?

Questionable interview techniques identified:

“In one investigation, counsel interviewed together the two senior executives with exposure in the investigation, and let one serve as document custodian with full and unsupervised access to all documents related to the investigation and the ability to destroy them.”

-Robert Khuzami, Director, Division of Enforcement, SEC

5. Did the company promptly make available to our staff the results of its review and provide sufficient documentation reflecting its response to the situation? Did the company identify possible violative conduct and evidence with sufficient precision to facilitate prompt enforcement actions against those who violated the law? Did the company produce a thorough and probing written report detailing the findings of its review? Did the company voluntarily disclose information our staff did not directly request and otherwise might not have uncovered? Did the company ask its employees to cooperate with our staff and make all reasonable efforts to secure such cooperation?

Inherent in the SEC’s decision to not seek enforcement action against Seaboard, were effective interviewing techniques. Seaboard’s management commenced a robust internal investigation and was entirely forthcoming with the SEC. The result was extraordinary: the SEC took no enforcement action against Seaboard. While not all SEC inquiries will have such favorable conclusions, without an effective investigation and quality interviews, this result would be unachievable.

1. Khuzami, Robert S., “Remarks to Criminal Law Group of the UJA-Federation of New York,” U.S. Securities and Exchange Commission, June 1, 2011.

2. Matter of Gisela de Leon-Meredith, Exchange Act Release No. 44970, October 23, 2001; Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions, Release No. 44969, October 23, 2001.

3. Preparation

A decisive component of any effective interview is preparation. In addition to having a well-developed understanding of the issues at hand, the interviewer should strive to prepare for the following:

Strategy

Develop an overall strategy for the interview, including the interview's purpose in the grander investigation and the specific objectives for the interview. Particularly at the outset of the investigation, interviews may be less scripted due to lack of case-specific knowledge. That does not exempt the interviewer from establishing clear goals for the session. Questions that must be considered prior to the interview include: Are these interviews fact seeking, or is the intent to develop the interviewee into a potential source? Are you seeking an alibi? Should you tell the interviewee they are a target of the investigation?

Scenario Planning

Always consider a variety of potential avenues the interview may take. Interviewers who become distracted or surprised by various details, have difficulty focusing on the interview objectives. Rehearsing potential interview responses, along with the appropriate reactions, help interviewers to maintain control and ensure events and facts are fully captured.

Personnel

As will be discussed shortly, building rapport can greatly increase the cooperation and truthfulness of an interviewee. To maximize rapport, consider which personnel should conduct the interview. Demographic factors, such as age or sex, may be appropriate considerations as well as potential similarities in background or socioeconomic status. While these factors are not always under the control of interviewers, the costs and benefits should always be considered.

Setting

The concepts of privacy and proximity are key considerations when choosing the ideal interview setting. Privacy considerations affect an interviewee's ability to answer questions openly and truthfully without fear of eavesdropping. Proximity deals with an interview's location relative to the surroundings. For example, interviewing employees in a centrally located conference room may invite undue scrutiny and attention to the interview process. Minimizing anxiety associated with privacy and proximity concerns will likely yield more productive interviews.

Sequencing

A key consideration when conducting multiple interviews is the order and timing of such interviews. Consider if it is advantageous to gain facts from witnesses prior to approaching a suspect, or whether the risks of alerting suspects may outweigh the data gathering requirements.

Many interviewers combine interview techniques with interrogation tactics.

INTERVIEWS

- Non-Accusatory
- Fact Seeking
- Conversational

INTERROGATIONS

- Guilt is suspected
- Accusatory
- Confession Seeking

These are not interchangeable!

Concurrent interviews may also be advantageous if you suspect collusion among interviewees. Such concurrent interviews prevent "comparing notes" and it is often a powerful statement to remind subjects that their associates are telling their version of events at the same time.

Thorough preparation allows the interviewer to manage the interview and evaluate the witness' responses, rather than expending effort to react to the interviewee. While preparation alone is not enough, well-prepared interviewers are much better suited to focus their efforts on questioning, responding, and evaluating interview subjects.

4. Warnings and Representation

In many interview settings, interviewers must clearly disclose certain information and provide legal warnings regarding how evidence uncovered during the interview may be used. Though this article is not intended to offer a complete discussion of the requirements and considerations of various witness warnings, our goal is to identify and discuss common warnings in an effort to provide the reader with reasonable familiarity.

Miranda

Sworn public law enforcement officers may be required to offer Miranda warnings in the event custodial interviews are conducted. Named after the United States Supreme Court case of *Miranda v. Arizona*³, generally, these warnings are not required of private individuals or security officers even in the event they make an actual arrest. Specific case rulings affecting Miranda warnings addressing private security officer obligations include *People v. Deborah C.*⁴, and *People v. Ray*⁵.

Upjohn

During interviews conducted in conjunction with an internal corporate investigation, it may become necessary to provide the witness with Upjohn warnings, often

referred to as “Corporate Miranda”. These warnings may be necessary whether interviews are conducted by the company’s counsel, outside counsel, or their agents. Named after the United States Supreme Court case of *Upjohn Co. v United States*, the Upjohn warning informs witnesses that, while communications with counsel are privileged, the company owns the privilege, not the witness/employee. Specifically, counsel for the company represents the company, not the employee, and therefore the company dictates if and when the privilege is waived (i.e., to a government authority, if cooperating in an ongoing investigation).

Representation

Occasionally, after receiving these warnings, a witness may ask the interviewer whether he or she needs legal representation. The interviewer should always clearly disclose that the witness has the right to legal counsel; the decision is an individual one to be made only by the witness. The interviewer should never imply or suggest that he or she represents the witness legally and should avoid offering any manner of legal advice. In the event a witness chooses to continue the interview without counsel, that decision should be documented clearly in the interview notes. If the witness elects to have counsel present, which they may decide at any point during the interview, no further questioning should be pursued until counsel is present.

Sample Upjohn Warning

“I am a lawyer for XYZ Corporation. I represent only XYZ Corporation and not you personally. I am conducting this interview to gather facts in order to provide legal advice for XYZ Corporation. This interview is part of an investigation to determine the facts and circumstances of X.

Your conversations with me are protected by attorney-client privilege. But the attorney-client privilege belongs solely to XYZ Corporation, not you. That means XYZ Corporation may elect to waive the attorney-client privilege and reveal our discussion to third parties. XYZ Corporation alone may decide to waive the privilege at its sole discretion, without informing you.”

Selecting the appropriate warnings and responding to questions about representations should be properly coordinated with the investigator’s counsel prior to conducting any interview. Regardless of the warnings offered, or the witness’ response, each should be clearly memorialized in the interviewer’s notes and any confusion should be clarified before resuming the interview.

3. *Miranda v. Arizona*, 384 U.S. 436 (1966).

4. *People v. Ray*, 65 N.Y. 2d 282, 480 N.E. 2d 1065 (1985).

5. *People v. Deborah C.*, 177 Cal. Rptr. 852, 635 P. 2d 446 (1981)

5. Building Rapport

After completing the steps of preparation, the interviewer is able to begin a dialogue with the witness. While the urge to immediately begin fact gathering is often overwhelming, we strongly recommend interviewers recognize the social and emotional implications the interviewee is experiencing. In addition to some degree of anxiety about interviewing, many witnesses are often apprehensive about the goals and motivations of the interviewer, due to the formality and potential repercussions of investigations.

Developing a relationship with the witness is an often overlooked tactic to ease anxiety, improve a witness' cooperation, and increase the likelihood of open and truthful responses. Initial contact with the witness can set the tone of an interview; therefore interviewers must be mindful of even the simplest interactions, including scheduling the interview. Witnesses often have preconceived opinions about the tone and purpose for an interview, so the interviewer should strive to develop an open and non-judgmental environment.

Particularly at the beginning of an interview, questions should be focused on developing rapport with the witness. This includes asking simple and non-threatening questions in a conversational tone. Straightforward questions regarding family or hobbies may be useful to engage a witness. Much like interviewers, witnesses can recognize insincerity. With this in mind, it is important to be natural and genuine when developing rapport; otherwise,

witnesses may question your credibility and limit cooperation. Once again, the goal of building rapport is to develop a safe environment for the witness to feel comfortable sharing their knowledge of events, which may be sensitive or embarrassing.

Another goal of rapport-focused questioning is to establish a baseline for the behavioral symptoms a witness may exhibit when answering questions. These symptoms will be discussed later in the article, but it is important to note that the initial stages of the interview are ideal for establishing this baseline. For example, introductory questions regarding employment history or residences will likely illicit truthful responses and they allow the interviewer to assess the witness' demeanor and response. This response can later be compared to more sensitive investigative questions to help the interviewers gauge a witness' truthfulness and candor.

Developing rapport with a witness also provides interviewers with a strategic advantage, particularly for targets of an investigation. These "lifestyle" type questions often offer insight into the motivations and values of a subject. Knowledge of these values may be useful for future negotiations or interrogations, and they offer an investigator themes to consider during such discussions.

Finally, a commonly overlooked factor in establishing rapport is the physical setting and layout of an interview. In addition to concerns about privacy and proximity, the interview setting can dramatically affect the level of anxiety experienced by a witness.

Interviewers should strive to minimize physical barriers between themselves and the witness (i.e. tables, desk, or excessive space). These barriers can obstruct an otherwise open environment, as well as minimize the amount of body language the interviewer can observe. A technique we have commonly seen involves mounting a significant interview team opposite the witness in an effort to intimidate or alarm potential subjects. While this method may become necessary, we believe maintaining an open and supportive climate yields more cooperative witnesses and intimidation often causes counterproductive anxiety.

Another technique for managing the physical barriers of an interview involves seat selection. In many cases, we place interviewers at the head of a table immediately next to the witness. This placement accomplishes several tasks:

- **Minimize physical barriers by sitting next to one another;**
- **Reduce distractions by guiding the witness' line of sight away from observers;**
- **Maximize the level of observable body language.**

Overall, your first interactions with a witness will often dictate the success of future interview efforts. Based on these considerations regarding rapport development, effective use will better equip interviewers to take advantage of a commonly underutilized portion of the interview.

6. *Upjohn Co. v. United States*, 449 U.S. 383 (1981).

6. Investigative Questions

After developing rapport, interview topics can then progress to investigative questioning. These types of questions are the substance of investigative interviewing. To establish a complete and thorough set of facts, the interviewer must diligently ask the questions. Though this task might seem understood, we often see interviewers timidly approach sensitive topics regardless of their significance in the case. This cannot be allowed, and a thorough investigator must actively seek the truth by asking direct questions and probing for clarity. The successful collection of all pertinent facts is the standard by which all interviewers must be measured.

- **Investigative questions should be focused on accomplishing one of the following tasks:**
- **Collect facts and understand the process;**
- **Assess interviewee's knowledge of the events;**
- **Determine interviewee's account or alibi;**
- **Assess the interviewee's level of access;**
- **Evaluate the interviewee's tendencies and motives.**

These questions are developed far in advance of the interview, based on careful preparation. The questions should begin broadly and become narrower as the witness provides additional information. The interviewer should allow the witness to fully complete his or her answer.

The interviewer must remember the question he or she has asked, and ensure the witness has rendered a sufficient answer before transitioning to a different topic. If the witness is evasive and does not directly answer the question presented, the interviewer must be prepared to probe until a definitive answer is given. As a result of thorough preparation, the interviewer is able to recognize that the witness' answer is not complete and can continue to clarify until he or she is fully forthcoming.

Investigative interviews also focus on determining a witness's version of events. The interviewer must be cognizant of a witness' changing story: while subtle differences are common, major changes may be an indication that the witness is not being truthful. By reading the witness' prior statements, the interviewer can assess whether the witness' version of events has materially changed over time. In the search for details, place critical importance on special access the witness may have had to the events in question. For example, special access can either be specific knowledge (i.e., passwords, hacking skills, etc.) or special means (i.e., a key card).

Sample Investigative Questions

FACT COLLECTION

Would you explain the steps required to issue a check?

What exceptions exist?

KNOWLEDGE OF EVENTS

What is your understanding of the reason for this interview?

How did you learn that?

INTERVIEWEE'S ALIBI

Please tell me everything you did from 6 to 10pm last night.

Is there any reason you might have opened the cabinet?

EVALUATE ACCESS

Could you make a journal entry if you needed to? How?

While many interviewers believe they are highly skilled in preparing and asking investigative questions, we find too often that interviewers are not fully prepared to probe and clarify a witness' responses. As a result, witnesses often are not completely truthful simply because the right questions were not asked. While this rationalization cannot be accepted, it is the interviewer's responsibility to implement a thorough and complete line of questioning.

7. Behavioral Analysis

Behavioral Symptom Analysis, the systematic study of behavior symptoms to identify the probable truthfulness of a witness, is an additional tool interviewers may use in the evaluation of a witness. Behavioral analysis focuses on each of the three channels of communication:

- **Verbal**
 - > **Word choice and arrangement**
- **Paralinguistic**
 - > **Speech other than spoken word**
- **Nonverbal**
 - > **Posture, movement, gestures**

An interviewer should monitor the interviewee's behavior throughout the course of the interview, and consider deviations from an established baseline. While this subjective evaluation should not be included in discoverable materials, such as notes, transcripts, or final reports, these observations may prove valuable to the interviewer when assessing the overall credibility of a witness.

When assessing a witness, an interviewer should consider common truthful attitudes, such as being composed, cooperative, direct, and sincere, as well as common deceptive attitudes, such as anxiety, defeat, or insincerity. These symptoms may change throughout the interview, at which point the interviewer should make note of the questions or topics that may have caused a behavioral reaction. Interviewers should also recognize that symptoms such as nervousness, fear, or anger are common traits of both truthful and deceptive individuals.

Body posture can be another key indicator of a witness' truthfulness or deceit. Truthful witnesses commonly have an up-right posture, and appear open and relaxed, while a deceitful witness may slouch or retreat from the interviewer. Deceptive witnesses may also attempt to invoke physical barriers such as crossed arms, crossed legs, or hands in front of their face.

Sample Behavioral Symptoms

LYING BY REFERRAL

As I stated earlier...
Like I told the other officer...

SPECIFIC DENIALS

I did not see him last Tue!
(actually saw him last Mon)

GENERALIZATIONS

Typically, Generally, etc.

QUALIFIERS

as best as I recall

BOLSTERING STATEMENTS

I swear, Honest, etc.

Word choice can also indicate a witness' level of truthfulness. Deceptive witnesses often use vague language, or overly specific denials. At other times, a deceptive witness may refer to previous statements to avoid directly answering the question. This tactic is referred to as "lying by referral" and is particularly cunning. Furthermore, deceptive witnesses may avoid giving definitive answers in an effort to minimize the information disclosed. Truthful witnesses will engage in largely dissimilar behaviors by providing definite statements and minimal generalizations or qualifiers.

Finally, deceptive witnesses often use bolstering statements in an effort to convince the interviewer they are giving truthful answers. Truthful witnesses tend to offer natural and spontaneous answers without the need to convince the interviewer of their honesty.

While the behavioral symptoms may be particularly useful to a trained investigator, it is critical that readers recognize the limitations of such analysis. Behavioral symptoms alone are not sufficient to gauge the truthfulness of a witness, and this analysis must be weighed together with all other investigative data. Only then can an interviewer have a complete picture of the facts.

8. Conclusion

High quality interviews are the building blocks of a sound investigation. This article has sought to provide the reader with a variety of tools and considerations for use in investigative interviews. In summary, best practices include, first and foremost, methodical preparation and a thoughtful assessment of the objectives. Such preparation, along with a systematic and focused approach to conducting the interview most often leads to successful and defensible interview results.

While no set of rules exist for the craft of interviewing, recent scrutiny has clearly shown that we must commit ourselves to conduct interviews and investigations in a timely, thorough, and well reasoned manner. With this charge in mind, we trust that these tools and considerations will help you to improve your interviewing skills, and we thank you for your interest.

Best Practices Top 10 List

10. **Take thorough notes and maintain the originals**
9. **Do not make promises**
8. **Maximize the advantages of rapport**
7. **You run the interview, not the witness or attorneys**
6. **Know when to stop**
5. **Use your strengths and be sincere**
4. **Do not bluff unless you are ready to be called**
3. **Ask the tough questions**
2. **Live with the answers, even if they hurt your case**
1. **Preparation is the key!!**

About the Authors

Christopher Haney, CPA, CFE

Chris is a Director with Duff & Phelps and specializes in financial investigations and forensic accounting. Previously, Chris was a member of the FBI's Forensic Accounting Unit specializing in complex White Collar and Healthcare violations. Prior to joining the FBI, Chris spent five years at General Electric focused on internal investigations. Chris is a Certified Public Accountant, a Certified Fraud Examiner, and Certified in the Reid Technique of Interviewing and Interrogation.

Andrea Roller, Esq.

Andrea is a Director with Duff & Phelps and specializes in internal investigations. Previously, Andrea was an Auditor and Special Assistant United States Attorney in the Economic Crimes Unit of the United States Attorney's Office. Prior to working for the Department of Justice, Andrea was a Senior Commissioned Bank Examiner for the Federal Deposit Insurance Corporation in both the Legal Division and the Division of Supervision and Consumer Protection.

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Contacts

Christopher Haney, CPA, CFE

Director
christopher.haney@duffandphelps.com
+1 312 697 4520

Andrea Roller, Esq.

Director
andrea.roller@duffandphelps.com
+1 617 378 9420