

4 Keys To Witness Interviews In Internal Investigations

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“So you are the great lawyer I’ve been told about! But, you are so young! I was expecting an old lawyer.”

With those words, the silver-haired senior-level executive of the customs broker I was investigating for bribery let me know that his guard was down. In fact, he seemed relieved and almost eager to help me, a young lawyer that reminded him of his nephew.

This was exactly the reaction I wanted. We exchanged pleasantries in Spanish over a cup of coffee and proceeded to have a friendly free-flowing conversation. That conversation revealed that his company was bribing government officials in Latin America, he was a liar, and he had no idea that he had just given me the evidence I needed when I went up the chain to confront his boss. He never saw it coming.



Juan Castañeda

There are many articles on best practices for conducting internal investigations related to bribery or fraud. However, at the core of any internal investigation — whether it be domestic or cross-border is — people. The people at the center of the investigation (employees, former employees, third party vendors, government officials or lawyers) are the key to unlocking the real story behind what has really happened. Faced with a whistleblower tip of bribery or fraud, a company will undoubtedly look at the underlying documents that paint a scattered picture of events, but it is the people that weave the documents together to tell the story.

Here are some tips on the best ways to set up witnesses interviews during an internal investigation for optimal effect.

1. Start with the Low-Hanging Fruit

Any good investigation looks like a pyramid. Ideally, start your internal interviews on the ground floor with lower-level personnel. Why? First, they will most likely be further removed from the fraud being perpetrated by senior management and thus, more forthcoming about facts. Second, the ground troops may be actual witnesses to executive-level fraud and more than willing to blow the whistle on management if given an opportunity. Third, line employees possess great real-time information of the daily happenings within the company, where data is located, as well as a more accurate view of the “real” hierarchy in a company. Interviewing these witnesses will be useful in recreating who may be

behind the fraud, the centers of power within a company that could have known of the fraud, and where the web of deceit extends.

2. Pick a Location that Puts Them at Ease

If you are going to interview any company employee (be it lower-level personnel or senior executive), find a location that will put them at ease. If it makes sense, talk to them at their workplace in a discrete conference room or set up a meeting at a neutral location. Do not have conduct the interview at a lawyer's office. Pick a location that is open, bright and pleasant to be in. Aside from location, be a good host. Coordinate logistics (via phone, not email) so that food, refreshments and ample parking are available.

While it may seem trite: environment matters. You do not want your potential key witness to arrive at a location and feel instantly uncomfortable by the setup. Instead, you want to prime your witness from the start to feel good about what he or she is walking into and who they are meeting. Your interview and information will flow more freely if the witness is at ease.

For example, the interview that was conducted in the opening scene was held in a United States border town with Mexico, but in a beautiful Spanish-style office adorned with Mexican art work, a friendly receptionist, and plenty of food and coffee as hospitality. It set the tone for the "warm" conversation that took place thereafter.

3. The Interviewer Should Bring the Element of Surprise

Let's be honest, lawyers often think that the best way to get anything done is to be the loudest dog on the block. That may be the case in an adversarial proceeding with a person that can be easily intimidated to cave or in a cross-examination at trial. However, in most internal investigations, lawyers are dealing with witnesses from whom the lawyer wants information.

In such a scenario, the old adage is true: "You catch more flies with honey than you do with vinegar." Thus, to get optimal information from a witness in an internal investigation, the interviewing lawyer should be nonthreatening, friendly, and good with people.

As in the opening scenario, the senior executive that I was interviewing came with his guard up, fully expecting to go toe-to-toe with a hardened lawyer. Instead, he found himself with a young friendly lawyer who treated him with respect. As a result, his apprehensions, anxiety and defensiveness melted away. In his mind, he had nothing to fear and information flowed my way. Information that was key for my later interviews and which confirmed to me that this friendly avuncular executive was lying.

4. Know Your Facts Cold

Based on outward appearances, the attorney conducting your internal investigation interview should be pleasant and noncombative. However, behind the scenes, your interviewer should be prepared for anything. The single best way of preparing for the unexpected is to know the key facts cold.

In-depth preparation would include:

- Collecting all key documents (especially emails and personnel files)

- Creating a list of key players
- Reviewing and analyzing prior interviews
- Diagramming organizational charts and hierarchy structure
- Compiling a chronology of events
- Mapping pertinent locations
- Charting key processes and relevant products related to the fraud
- Compiling a vocabulary list of key business terms
- Researching U.S. and foreign laws related to privacy, attorney-client privilege and the myriad of legal issues touching on the purported fraud
- Creating an investigation plan that tracks key witnesses, issues, potential offenses, documents and questions that need to be answered

Why prepare? Plain and simple, thorough preparation and knowledge of the universe of facts is the single best way for the interviewer to spot an inconsistency, contradiction or bold-faced lie. Moreover, preparation creates confidence. A prepared investigating lawyer will not be spending his or her time making sense of basic information, but will be thoroughly present to connect with the witness.

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