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Investigative Interviewing
5 Interviewing the subject

What are the goals of my interview with the subject?

An interview with the subject has multiple objectives:

- Obtain background information regarding the the subject's job duties and "norm" the subject when answering basic non-threatening questions.
- Hear the subject's explanation of the relevant facts underlying the allegation.
- Present the subject with the material information gathered that substantiates the allegation.
- Establish the subject's relationship with the reporter to identify any motives about which you might not already know.
- Confirm material facts that are essential to the elements of your allegation.
- Seek an explanation for the subject's actions.
- Obtain incriminating or exculpatory information, as well as mitigating circumstances.
- Obtain, if possible, admissions of key facts to substantiate the allegation.

If I want to motivate a subject to cooperate, can I offer him something in return for answering my questions?

You conduct interviews because you seek facts. Subjects may have information but fear to share it because it might get them in trouble. As a business-focused investigator, you are more interested in fixing business problems than in nailing employees for not-too-serious misconduct. So if a subject offers to tell you everything you want to know if (i) he won't be fired, (ii) he won't be sued to recover his ill-gotten gains, and/or (iii) you won't call the police, isn't that a good deal? No.

Never, ever make a quid pro quo promise. Although it might sound like a good way to wrap up the investigation, it may be illegal. The offer not to do something harmful to someone (e.g., go to the police) in exchange for something of value (e.g., their information) is considered extortion in many jurisdictions.

When the potential for a quid pro quo offer arises, make it abundantly clear to the subject that his information, however welcome, does not affect a decision by your company to make a disciplinary decision, contact the police, start a lawsuit or take similar action. You must explain that these are separate considerations, and one decision has no connection to the other.

Of course, this begs the next question of why should the subject say anything. If this happens, explain that you are trying to understand the truth of what happened. Frequently, things look more sinister than they turn out to be. (Corporate life is usually pretty mundane.) The subject may choose to decline to speak further, but you can explain that then you will not have the benefit of his version of events. The information might include mitigating

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circumstances that helps put the relevant events in a more-accurate context.

It may seem like a bad choice to turn down a subject's offer, especially when the likelihood of a successful civil suit to recover the money or a successful prosecution is remote. Unfortunately, you have no choice.

Is it possible to contaminate my understanding of a subject's behavior?

When trying to read a subject's statements and body language to help you obtain admissions, remember that a subject's outward behaviors are not per se signs of deception. When a subject has poor eye contact, stammers or bounces his foot, these may be indicators of deception. However, unless you eliminate other variables that may cause the same behavior, you may contaminate your understanding of the subject's behavior.

The following are the most common contaminations:

- **Confusing an interview and an interrogation.** If you are conducting a typical interview but then adjust your questions because you now suspect deception or misconduct, this changes the dynamics of the interview. If you are going to interrogate, then do that, but don't mix the two.
- **Asking an ambiguous question.** If you ask an ambiguous question, and the subject's response appears evasive, you may believe the subject is lying. However, the apparent evasion may have been caused by your question.
- **Triggering a quick response.** You may ask a completely appropriate question but, instead of waiting for a response, you continue to talk, and the subject answers. The fact that the subject answered right away tempts you to believe you found something suspicious. Additionally, tagging a question buys a subject time to formulate a comfortable response which may result in what appears to be a timely response. Keep your questions short and to the point.
- **Suggesting an answer.** You ask certain questions to identify the subject's underlying attitudes toward your investigation. You can affect the subject's response to these questions by suggesting an answer. Instead, ask a non-leading question and wait for a response.
- **Asking too quickly.** Note-taking allows you to slow down the pace of questioning. It is easier for a subject to lie to during a response to a series of questions that are asked rapidly than questions that are separated by brief periods of silence. Rapid-fire questioning may cause a subject to become confused and offer inconsistent information.

Contamination of a subject's behavior is a threat to a good investigation.

If employees must follow company policies regardless of their specific knowledge of their policies, should I ask them to admit their understanding of them?

Companies have lots of policies. The misconduct you frequently investigate will not be, as lawyers say, malum in se, or wrong itself. (For example, stealing is wrongful conduct even in the absence of a company policy saying not to take company property.) Many company policies are malum prohibitum, or wrong because they are declared to be wrong. (For example, a company policy that prohibits the accounts payable department from issuing checks over $5,000 without two signatures makes it wrongful conduct only because the company says it is.)

When investigating an allegation that an employee violated a malum prohibitum policy, it is good to establish whether or not the subject knows of the specific company policy. This is effective in two ways. First, if the subject denies knowing the policy which is integral to his job duties, he is admitting his own negligence in fulfilling his

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duties as an employee. Second, if the subject admits knowing the policy and you then prove he violated it, the allegation will be more easily substantiated.

What do I do if there is no specific policy on point but it seems the subject's conduct was nonetheless improper?

Did you ever consider. . . . ? Sometimes we are too focused on analyzing the rules. We identify the relevant company policy, and then we try to match it to the facts about which we are learning. This may result in a very black-and-white review of what we believed happened. But the approach makes things two-dimensional because your investigation then explains only the policy and the conduct.

A similar situation arises when there is no precise policy on which you can base your inquiries. Sometimes, you will investigate management decision-making which, for some reason, violates either your code of conduct or the standards of professional management decision-making, but no specific policy.

Most conduct under investigation involves some sort of employee decision-making. People make decisions for all kinds of reasons and, at least to them at that particular moment, those decisions are rational. In other words, at the time the decision was made, the person thought there was some reason that particular choice would benefit him.

When the department manager acknowledges that he made off-color jokes at the monthly meeting because he was trying to inject some levity into what would otherwise be a boring recitation of the recent sales data, explore his thought process. One of the most damning questions you can ever ask in an interview begins with "Did you ever consider. . . ." In this example, the manager is faced with a Hobson's choice when the question is asked. He can admit that he considered the joke about the NFL cheerleaders to be appropriate in a business setting with male and female subordinates, thereby exposing his poor judgment. Or he can admit that he never considered its appropriateness at all, again exposing his poor judgment. Either way, you have added a third dimension to your inquiries by trying to explain what people were thinking.

This is not a suggestion for you to play "gotcha" and try to embarrass your subject. The approach is helpful because it adds context to the relevant decision-making. There are many reasons for the decisions we make in life, and many of those reasons are subjective. Don't presume to understand what motivated someone to act a certain way, and don't simply project onto the subject what would have motivated you in a similar situation.

Why is being the "bad cop" in the subject interview a bad idea?

Your demeanor is important to the success of the interview. If you appear quietly competent and professional, your demeanor will encourage confidence in the interviewee. It will also make innocent people less nervous and increase nervousness in guilty ones. Your manner should be polite but firm. A successful interview is one in which you are able to elicit all the necessary information by establishing a sufficient rapport so that the interviewee provides it voluntarily rather than your needing to coax it out of the individual. Cooperation is essential, intimidation is counterproductive and possibly disastrous to the outcome. Either way, you should never show disrespect to an interviewee.

How do I avoid tipping off a subject about the areas of possible misconduct about which I am concerned?

Most parts of an investigation benefit from transparency between you and the interviewee: the purpose of the investigation, the business needs and likely post-investigation steps, to name a few. There are some parts of the investigation, however, where transparency might not serve your goals.

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During the interview, and similar to when you don't want to attribute facts to any one interviewee, do not call attention to any specific topic as being more important than another. If the interviewee knows the areas you believe are critical, you face two risks. First, if the topic about which you have signaled concern is one which might implicate the interviewee in misconduct, the interviewee now knows that he should evade or make misstatements about these topics to avoid implicating himself. Although the interviewee may have been evasive anyway, you've guaranteed it now. (The interviewee might have been modestly truthful if he figured his testimony would just be buried among the volume of information you are gathering.)

The second risk arises if the interviewee committed misconduct but not the specific misconduct about which you are primarily concerned. If you signal the topic you care about and his misconduct is elsewhere, he knows he's in the clear. But if he doesn't know, there is always a chance he might admit his own misconduct either to put his own spin on the facts or to offer mitigating details.

These concerns should be balanced with other interview dynamics. Covering your tracks, so to speak, does not preclude you from giving sufficient details to the interviewee to focus his recollections and testimony. It is just another example of the dynamics to be considered when conducting an effective interview.

Order your interview topics in a way that does not call attention to particular problem areas. The order of questions as well as your demeanor in asking them should never alert an interviewee to precisely what you think is critical as well as the severity of the problem under investigation. If there is something you would prefer to remain highly confidential, take care in structuring and asking the questions to the interviewee. (Some experienced investigators even include subjects of no real relevance to cover their tracks.)

If I think that a subject's personal life is relevant, can I ask him questions about it?

Generally not. A subject, and any interviewee for that matter, is entitled to privacy about his personal life and how he lives it. This can sometimes be frustrating in an investigation because some workplace behavior can be placed in context once you understand the external forces that are likely causing it. The general rule is that you may only inquire about at-work conduct or conduct which arises outside the workplace but directly impacts it. (An example of the latter is questions relating to external business interests which might be a conflict of interest.)

For example, assume you are conducting an investigation of alleged sexual harassment by a supervisor against one of his direct reports. Would information about the condition of the supervisor's marriage be relevant to explaining his conduct? Perhaps, but you cannot ask about it.

The exception occurs when you believe that outside influences may explain the motive for the workplace conduct. (This is relevant to causation and not just context.) Assume you are conducting a fraud investigation where the subject has been padding his expense account. Questions about his lifestyle—the car he drives, recent renovations to his home, lavish vacations, etc.—are relevant to proving motive.

When you believe that your questioning may touch upon these sensitive areas, consider a preliminary instruction to the interviewee before you begin. The instruction advises the interviewee that you do not wish to know about activities with no connection to the workplace so his answers should neither include this information nor should he presume you wish to know about it.

If you do inquire about someone's personal life, do it cautiously. Make an informed decision to ask questions about this. Consider in advance how you will justify this if later challenged about your questioning.

What are some important tips about subject interrogations?

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The following is a list of dos and don't that may be helpful to you:

- Do use silence to your advantage. Ask a direct question and wait for a response.
- Do keep questions short.
- Do ask only one question at a time.
- Do question the answers you get rather than accept them at face value.
- Do guard yourself against giving away information unnecessarily.
- Don't make promises of any kind.
- Don't lose your patience or persistence.
- Don't threaten the subject.
- Don't show surprise at any answers (unless you intended to).
- Don't use profanity or lower yourself to the level of others.
- Don't be unprofessional.
- Don't lie. Whatever you tell must be the truth, even if unpleasant.
- Don't ever lose your temper. This turns over control to the subject, and you may negate the value of the interrogation.
- Don't make excuses for the subject. If you do and it shows up in your documentation, those excuses are likely to be used by the employee for his benefit. Let him make his own excuses.

Your subject may be psychologically and emotionally suffering because of your questions. Some wrongdoers want to unburden themselves and admit their misconduct. Help your subject do that.

If the evidence gathered to that point substantiates misconduct, do I still need to speak with the subject?

Speak to the subject even if you think it's not going to help your fact-gathering. A fair process allows the subject the opportunity to respond to the allegations. When you properly interview the subject, you fulfill any fundamental-fairness rights that he might enjoy, and if he admits to wrongdoing, the statement may fairly be used in your findings. As to meeting your burden of proof, an admission from the subject is always better than simply concluding circumstantially from the gathered information that the subject committed misconduct.

The key word in the preceding paragraph is "opportunity." The subject is not entitled to have an interview happen. So you need only offer reasonable accommodations for the interview.

In practical terms, this means you can budget time for him only during your business trip to the office to conduct on-site interviews (or he'll have to do it by phone). You don't have to accommodate conditions on the interview that you wouldn't accommodate for another interviewee. Even though the subject is accused of misconduct, he is not entitled to impose on you his subjective preferences as to how his interview should proceed.

However, a subject remains an important information source. He may substantiate his misconduct as he tries to

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explain it away. He may explain how others colluded with him (and perhaps you did not know that earlier). His information may spotlight the process and operations failures that enabled his misconduct.

There is a good chance the subject will deny wrongdoing. If so, offer him the opportunity to assist the investigation to establish his innocence. The subject may claim a presumption of innocence and that he is not obligated to help you. Agree with him. But then point out that his stance deprives the investigation of his possibly exculpatory information and leaves you (and him) dependent on the remaining sources. Does he really want to take his chances that, despite your efforts, the others collectively told you enough to exonerate him, and the available documents show he didn't do it?

Even if the weight of the information uncovered so far tends to substantiate the allegation, your fact-finding is not complete until the subject is at least offered the opportunity to respond to the proof and offer some facts to support his innocence.

Why do some subjects think they can get away with their wrongdoing?

Because employers are often slow to catch it. We may be part of the problem.

Investigations can be too long, unfocused and superficial. We may focus too much on the substance of the subject's conduct. For example, did the accounts-payable clerk forge her boss's signature and cash the checks? Once we have established sufficient facts to prove the forgery, we close the investigation and move on.

But you contribute more value to your organization if you explore a little more deeply. Let us assume the clerk is rational. She would not have forged the signature and cashed the checks if she believed she would be caught. So why didn't she believe that she would? How did she get so daring? The answers to those questions may offer insight into what is really going on, and what really needs to be fixed.

Statistics from the Association of Certified Fraud Examiners show both that fraud continues until it is detected and fraud amounts increase over time. Understanding the dynamics clearly as soon as possible protects your company by allowing internal controls to improve as soon as possible.

If the burden of proof is merely a preponderance of the evidence, why should I bother seeking admissions from the subject?

Admissions make your job easier. The accounts-payable clerk who admits he stole the petty cash but surely intended to pay it back some time in the future has still admitted stealing it. Even when a subject casts the actions in a less-sinister light—the unauthorized loan, for example—he is still admitting misconduct.

Securing an admission of wrongdoing from the interviewee accomplishes three important purposes. First, assuming you can corroborate the information, it conclusively proves that misconduct occurred. Second, it avoids exposing the findings to allegations that the evidence was insufficient or the proof was inadequate. Third, admissions allow you to obtain mitigating or explanatory information that might assist management in determining how best to respond to the matter.

This leads to another question. Why would the subject confess? Who would admit wrongdoing to an investigator? The truth is that people will confess if they believe that the confession benefits them more than saying nothing. There are generally three reasons why people confess:

- The subject thinks you already know he did it, and that you can prove his wrongdoing.
- The subject wants to put his own spin on the story in order to make his position more understandable and

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possibly less culpable.

- The subject feels guilty.

You can facilitate the confession by offering a rationalization that helps the subject save face. So if you want a confession, you may have to work to get one.

If I seek admissions from the subject, shouldn't I take a stronger tone with the subject?

Resist the temptation to bully someone to give you an admission or confession. You are more likely to achieve your result if you are collegial and cooperative. People who feel they are being attacked will defensively resist. Get the interviewee relaxed and talking and see what happens.

A subject asked me if she should get a lawyer before submitting to the interview. How should I have answered?

A subject, once informed of the allegations, may ask if he needs a lawyer. This requires your immediate response. While anyone may consult an attorney, your company also has the right to require its employees to disclose information relevant to the company's business. The conventional wisdom is to reply that only the interviewee should make that decision. Offer no opinion on whether the interviewee needs a lawyer. If you are an attorney, repeat that you are representing the company and cannot provide the interviewee with any legal advice. Your interview notes should reflect the substance of this exchange.

Explain that the interview will take place regardless of whether a lawyer is engaged. The employee has no right to have a lawyer present. The question may also be a bluff to get you to drop your request.

Is there an easy way to get the subject to admit wrongdoing?

Most implicated people get themselves in trouble through incompetence, poor training, insufficient supervision or making short-term decisions without considering long-term consequences. Regardless of what you may think, these people do not see themselves as bad people. If you seek a confession, it's their perception that matters.

This is where your natural humanity plays a role. In other parts of your job, it can be a disadvantage. When seeking a confession, it becomes an advantage.

Entire books have been written on this topic, but in a nutshell: you may get someone to confess when you construct questions that characterize the person's conduct as he sees it. For example, a person who stole money may see it as a loan, as unlikely as it seems to you. That person will not admit to stealing, so questions asked from that perspective will fail simply because he does not consider himself a thief. That person, however, might admit to borrowing money which, for some reason, he has not gotten around to returning to the company. Either way, the admission works for you to show the misconduct.

A well-chosen theme offers the subject some rationale as to why an investigation was conducted and what led you to believe the subject committed misconduct. The theme does not include making accusations. You propose that you believe the subject did commit misconduct. You admit to the subject, however, that what is not then known is why the subject behaved as he did. In other words, you are not asking if the subject is guilty. You are asking why he is guilty.

People who are guilty of something frequently try to distance themselves psychologically from the offense. Theme development therefore makes a confession more palatable. The subject might have a moral—though not

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legal—justification for what he did. Morally acceptable themes like financial duress, an intention to pay the money back, poor employer treatment, etc., make it easier for a subject to confess. This further illustrates why it often pays to interview the subject last. Earlier interviewees may have given you details about the subject's possible motives and rationalizations, and this can help you construct an accurate theme in advance.

Theme development is not foolproof, however. People respond differently to life's challenges. There is no one way in which people handle problems. People do not go down the same road or take the same steps you might in a similar situation.

When you think you know why the subject committed the misconduct, the most important thing to remember is this: you don't understand. Accept that you don't understand why they did it. Accept that you don't understand how the challenges they were facing were sufficient to compel them to commit misconduct. Accept that you don't understand what alternatives were available to them. Some human motivations remain a mystery to an investigator.

Are there any magic words I can use to obtain admissions of wrongdoing?

Certain words and phrases, such as "mistakes happen," "anyone in your situation could have done this," and "you made a mistake, you aren't a bad person" offer the subject a dignified way to admit their actions. After you identify the appropriate words to use, you can become adept in finding the "magic words."

Experienced investigators know that, by nature, everyone uses an often-unconscious mental process to justify their behavior or cope with personal problems. Subjects may use these defense mechanisms to rationalize their actions, to project blame onto someone or something else, and to minimize their wrongdoing. While a subject may not blatantly reveal these devices, he gives clues when you ask him about his background, attitudes, and values during the interview.

Magic words come from three commonly used defense mechanisms—rationalization, projection and minimization. They help a subject maintain his dignity. You use the same mechanisms to obtain admissions by using the same words.

Rationalization offers plausible explanations for a subject's actions that reflect favorably on him by presenting his actions in a positive light and excuse his errors. You can turn rationalization to your favor by conveying empathy by indicating that you understand the subject's frame of reference. This projects your acceptance of the subject as a good person who may have made a mistake. A subject may agree with that assessment and give you admissions.

Projection excuses an act by placing blame on someone else. When a subject attempts to blame others, turn that to your advantage by attributing some responsibility to that other person while leaving a sufficient amount of it to the subject.

Minimizing the wrongdoing helps subjects reduce, to their psychological satisfaction, their roles in or the seriousness of their misconduct. By carefully using such soft words as "mistake" and "accident," which minimize the seriousness of the situation, you may decrease the subject's resistance to persuasion. Conversely, avoid harsh words that may make a subject ashamed of his actions and less likely to admit them.

Regardless of the specific defense mechanism, give the subject a reason to make admissions. By understanding the subject's situations, motivations and life pressures, you can offer possible solutions.

Once you develop your chosen words and reasons for the subject to make admissions, ensure that your delivery style corresponds with an empathetic approach. Magic words cannot obtain a confession. They lose their

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effectiveness if delivered inappropriately.

And remember that using certain words to obtain admissions just affect the moral justifications and psychological excuses for the subject's actions. Justifications are rarely a defense for the wrongdoing.

What do I do when a subject denies a narrow aspect of my question?

A subject who committed misconduct knows exactly what he did or didn't do. To avoid an outright lie, the subject may offer a specific denial. This response, if interpreted literally, is truthful so the subject may not reveal any deceptive body language. Consequently, you must be a careful listener to identify the specific denial.

Observing a specific denial helps you in two ways. First, it alerts you that the subject is withholding information to the question you asked. You need to ask follow-up questions that address what the subject has not denied. For example, assume you asked the subject whether he used any illegal drugs during work hours, and he answered that he "never smoked any drugs in the building at work." You should follow up with specific questions that ask about drug use other than smoking as well as questions about where else on company property he may have used drugs.

The second benefit of recognizing a specific denial is that the statement often provides insight to the subject's misconduct. The denial actually highlights the facts the subject sought to conceal from you.

How do I respond if the subject simply denies the allegation?

Allow the subject to explain his side of the story without interruption. Then ask a series of clarifying questions and ask for explanations of the evidence gathered during the investigation. If you have incriminating evidence despite the subject's denial, ask how that information could have been misunderstood and what could have caused the misunderstanding. Allow the subject to answer each question before moving on to the next question. Finally, ask the subject why he believes the reporter would make a false accusation and why others would have confirmed the reporter's allegation.

The key is to approach the subject's denial by looking to the facts. The denial is essentially the subject's conclusion concerning his actions. Your leverage is in confronting the denial with specific facts and the statements of others. The leverage can be used to great effect.

To ensure process fairness, ask the subject to identify interviewees and documents to support his version of events. If the subject suggests other interviewees, you may need to interview them.

When interviewing the subject, how do I obscure who gave me the information indicating his misconduct?

Blend multiple interviewees to obscure who told you. For example, assume you are investigating the manager of a small department in your company. Because of its size, everyone seems to know everyone. When you interview Mary, she gives you detailed valuable information because she wants the problem to be resolved. The source of that information will obviously appear to be Mary once the others hear about it. Your problem is that you want to avoid any actual or perceived retaliation against Mary from people who might consider her a "rat." If even the perception of retaliation arises, future interviewees may clam up, and people you've already interviewed may recant their testimony to avoid any problems. So what do you do?

This situation periodically occurs, and it presents a practical problem. The usual admonitions against retaliation should be given, of course, but the effective operation of the department requires you to do something more than

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just give warnings. In these situations, consider blending multiple interviewee statements. Take the important facts of Mary's statement, and mix it with the less-important information of other interviewees. Ask questions based on Mary's information—the ones you really care about—and questions based on the others. Essentially cover your interviewing tracks.

During the interview, you may come to believe the interviewee suspects it is Mary or generally wants to know the source of the information. To counteract this, consider two steps. First, advise the interviewee preemptively—another expression of your control of the interview—that your questions are an amalgam of information from multiple interviewees, so he shouldn't think that all the information came from one person he may, or may not, be able to identify. Second, if the interviewee directly asks you who gave you that information, simply decline to do so. Emphasize that the accuracy of the information, not its source, is the important detail.

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