

Ten Rules for Effective Internal Investigation Interviews

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Conducting interviews is a vital skill for internal FCPA investigators. After reviewing endless emails, technical memos and accounting ledgers, we almost always have to speak directly to someone in order to run potential FCPA violations to ground.

Often, the primary objective of such interviews is to elicit as much information as possible about the underlying matter. Here are my ten rules for ensuring this happens.

1. **Preparation is half the battle – maybe more.** The difference between a well-planned interview and one where the interviewer “wings it” is like night and day. And the stakes are high. Surprising facts can come to light during “routine” interviews, and interviewers often get only one opportunity to meet with a witness. A well-considered interview outline can keep you on track and prevent you from missing important topics after the interview is off and running. It also helps to show that you take the interview and the interviewee seriously, which helps to establish rapport.
2. **Establish rapport.** As Raúl Sacconi, Head of Forensic Accounting at KPMG Argentina, says: the interviewee will be nervous at the start of an interview no matter what. Nervousness often translates into a hesitance to share information fully, which can make an interview difficult and limit its success. To break through this resistance, one has to establish rapport. There are many ways to do it, but I find that being clear, respectful, and fair goes a long way. Specifically, I try to describe the purpose of the interview to the interviewee, and take time to answer questions. I also try to ask questions that are objective and not leading or overly biased. When all is said and done, I ask if the interviewee if they have anything else to add.
3. **Know when to cut off the witness.** Sometimes getting the interviewee to talk is not the problem. Interviewees often linger on topics they consider safe or interesting. Interviewers need to be alert for distractions and delays, and should be prepared to gently but firmly get the interview back on course.
4. **Beware the federal prosecutor fallacy.** Some say that former federal prosecutors are best positioned to conduct interviews in internal FCPA investigations given their past experiences. They include my friend and colleague Mike Volkov, a former prosecutor and someone I agree with about 95% of the time (to borrow a phrase from FCPA compliance guru Howard Sklar). In my experience, however, former federal prosecutors (who are invariably smart, talented, and dedicated attorneys) often approach interviews aggressively, as if they were seeking confessions rather than the more open-ended information that results from good rapport. This is certainly not always true – many, like Mike, easily make the jump to private sector interviews. The larger lesson is that interviewers should pay attention to their own biases. If you have learned how to

investigate with the weight of the federal government behind you, you may need to adjust your approach when the government is no longer behind you.

5. **Use documentary evidence to verify.** Whether based on misunderstanding or bad intent, some witnesses can look you directly in the eye and tell you something that is not true. To handle this, it is important to know your documents and to have key evidence on hand during the interview. A witness cannot run from an e-mail, invoice, or memo, and once you have pulled a couple of these out of your briefcase, they often stop hiding the ball. Even when an interviewee is trying to be forthcoming, documents can help refresh memory or verify the credibility and accuracy of responses.
6. **Interview one person at a time.** Witnesses will sometimes ask to be interviewed together. There might be reasonable reasons for this – they might want the input of a colleague to tell the whole story. But you are unlikely to get unfiltered views, contradictory evidence or criticism if people are interviewed together. Intentionally or not, witnesses tend to coordinate their responses when interviewed together.
7. **Conduct interviews off-site whenever possible.** By conducting an interview off-site, the interviewee is taken out of their usual context, and they act differently. You are more likely to get the unbiased thoughts interviewees share with their friends or spouses if they are not at work. You are also more likely to get critical opinions when the interviewee is not going to see the person they are talking about as soon as you open the door. [James Tillen](#), Coordinator of Miller & Chevalier’s FCPA and Anti-Corruption Practice Group, says, “Particularly where there are allegations against senior management at a location, I like to do interviews outside of the client’s office - for example, at a hotel conference room. Employees may be more forthcoming when senior management is not around.” I also feel that I get a better sense of an interviewee’s demeanor and credibility when I interview off-site.
8. **Do not go it alone.** Bring a colleague or assistant to take notes. Recording interviews can be a problem. Often, clients prefer that their employees not be recorded, and even when it is allowed, recording can make a witnesses nervous and uncommunicative. On the other hand, listening, taking notes, and asking questions are too many jobs for one interviewer. Bring someone whose job it is to make a record. The better briefed they are, the more likely they are to get down the facts you need and ask good follow-up questions.
9. **Be ready to be creative:** Interviews often have twists and turns. New information creates new leads, and the interviewer must be ready to adjust and react quickly. What questions arise as a result? What new matters need to be probed? Preparation is key to seeing and seizing these opportunities.
10. **Do not forget Upjohn:** The Upjohn warning is essential. The interviewer must explain that he or she is the company’s lawyer and not the interviewee’s own individual lawyer. The White Collar Crime Committee of the ABA’s Criminal Justice Section has produced a [helpful overview](#) of what is needed. The seasoned interviewer can usually give this warning without undermining rapport.

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