



# Telephone Inte

New

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Problem

# Interviewing

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**T**imes are changing and organizations need to change with them. With the advent of computerized media review, the loss prevention department can target dishonest employees earlier and more accurately. The result is loss prevention investigators are catching record numbers of employees and customers in theft schemes. One has to only look at the newspaper list of area arrests to see the number of apprehensions occurring in the business setting. More and more companies are looking at the return on investment of the investigative dollar and the ways in which that money is being spent.

While larger stores have a loss prevention staff assigned to their facility, smaller specialty companies may have hundreds of stores assigned to a single investigator. These stores are separated geographically and the cost of travel to do an interview may outweigh the potential loss. The travel issue also extends the investigator further, removing him from the day-to-day tasks of auditing, training, and case development. Depending on a number of factors, an investigator can stretch both his time and investigative dollar using a telephone interview to resolve cases.

For years the public sector has used the phone as a means of doing interviews for investigative follow-up, but less often as a means of confronting the suspect. While the telephone interview is not the norm in today's retail world, it helps to sometimes think of new ways to attack old problems. The first question that must be answered in determining if a phone interview is appropriate is, "How important is the information that I am trying to obtain?" There is an obvious risk vs. benefit equation to be balanced in each situation. Essentially the

investigator must decide the potential worth of the subject's information or cooperation against time and dollars expended to do an in-person interview.

## When to Use the Telephone

Certain cases are tailor made for the telephone interview. To decide to use the telephone, the interviewer must weigh the importance of the information that is to be gained against the possibility of failure.

A positive outcome is one where the needs of the company and its investigation are met and the truth is learned. Considered within the framework of the investigation, the timeliness of the response, and the realistic probability of success, the telephone can create a strong advantage when used properly.

One instance where the phone interview can be used effectively is in those situations where the suspect is apprehended in the act. The emotional shock of being caught often makes the suspect willing to discuss the incident. Since the suspect believes he has been discovered there is no reason not to talk about his involvement. Selecting an experienced interviewer using a phone over an inexperienced interviewer or member of management enhances the likelihood of a positive outcome.

Direct evidence of the suspect's guilt can also streamline the interview process and makes a confession more probable indicating the appropriateness of a telephone interview. In the event the suspect does not confess, the investigation has developed such strong evidence of his guilt that the individual can be separated from the company or prosecuted without a confession. Since the confession is less important, the phone can be used to move the investigation more quickly to a final conclusion without the necessity of travel expenses.

Another situation that points to a possible telephone interview is when the suspect is younger. The inexperience and fear of the subject can sometimes be reduced using the phone making the situation seem less serious. The strength

of the case is enhanced in the subject's mind by the interviewer's use of the phone believing there must be credible evidence if the investigator did not even feel the need to show up in person.

Finally, when the case appears to be relatively unimportant, it may indicate a phone interview. This might be an employee of very short tenure or one still in the probationary period. When the amount of money or product that they could have stolen is extremely limited, does it make good sense to expend time and effort on a small case when those resources could be focused on more serious matters? In each case, an evaluation of the risks vs. benefits and time vs. costs will help determine if the telephone is the proper venue for the interview.

## Disadvantages of the Telephone

There are a number of obvious economic advantages, but certainly there are disadvantages to using the phone as well.

- There is a general lack of control of the interview because the interviewer is not physically present with the subject.
- Communication is limited to the verbal channel.
- Unless the caller is known, the telephone can be a rather impersonal medium.
- Often, the subjects are in their own supportive environment.
- The interviewer often cannot tell if the subject is paying attention to the conversation.
- Props or evidence generally are not present, so their impact on the subject may be muted.
- The interviewer may be uncertain what the suspect's silence means.
- Generally, it is more difficult to develop the suspect's admission into other areas of dishonesty or criminal acts, thus limiting the scope of the final admission.

## Advantages of the Telephone

While there are many pitfalls to using a telephone to conduct an interview,

there can also be distinct advantages as well.

- The first significant advantage is the perception of the subject that the matter at hand could not be that serious or the interviewer would be here in person. The perception fits neatly into the strategy of minimization of the issue's seriousness using rationalizations.
- The suspect cannot read the interviewer's body language or expressions.
- The interviewer's physical appearance is not a factor.
- The interviewer can script the interview and the subject is unaware of the outline being followed.
- The interviewer can refer to evidence and confirm information without the suspect being aware of the interviewer's physical movements.
- The interviewer's voice is intimate because the earpiece of the phone is held to the ear. This is a rapport building position that is almost like having a confidante whisper in the ear, which creates a physical closeness.
- When talking on the phone, many people put themselves in a submissive head down position to focus their listening on the conversation.
- The interviewer can react to the case immediately, while the suspect is in an emotional state following his apprehension.
- The most experienced interviewer can be used even when not physically nearby.
- The telephone interview can be observed for training purposes, without special equipment or stressing the subject by having additional witnesses present.
- There is limited legal liability relating to whether the suspect was being restrained or was in custody for the purpose of the interview.
- There can be significant savings of time and travel dollars.

## Interview Setting

Especially in the private sector, where investigators and resources are stretched, the use of telephone

interviews can make good business sense. The investigator must pick the correct times to employ its use in closing the investigation.

As in a traditional interview, privacy and a distraction free environment are

critical to the process for both the subject and interviewer. The room setting for both should be prepared to meet the expected needs of the interviewer and subject. Noise and distractions should be avoided so the

## Sunglass Hut Implements Telephone Interviewing Companywide

In an effort to reduce expenses and maximize the effectiveness of his loss prevention organization, Paul Jones, vice president of administration at Sunglass Hut, turned to telephone interviewing four years ago.

With an organization that averaged one LP professional per 260 stores, Jones was faced with significant travel expenses and productivity inefficiency conducting in-person interviews. He partnered with Dave Zulawski at Wicklander-Zulawski Associates to develop a solution. The result was a structured interview process that includes a scripted audio statement for recording confessions. Four years later, his organization conducts 150 to 180 interviews per year per person with virtually no difference in closure rate.

### Audio Recording Statements

"When we first started telephone interviewing, we were taking written statements," said Jones, which proved "mediocre at best." Predicting that the industry was headed toward audio and video recorded statements as an industry standard, Zulawski convinced Jones that audio statements would provide a consistency and efficiency that would improve the outcomes.

The recorded statements have proven critical. Today, when an investigator obtains a confession during the telephone interview, he asks permission to record the confession using a very specific script. Only a few times in over 2,000

interviews has the subject refused permission for the recording.

The recorded audio statement has also helped reduce litigation based on arguments of duress.

### When to Consider Telephone Interviewing

Jones recommends that any specialty retailer with a ratio of one LP professional to 100 or more stores, plus has a good exception reporting system, should consider telephone interviewing.

"Having an excellent exception reporting system has been key to our success," said Jones, "because we're going in with very good information."

Other keys to successfully implementing a telephone interviewing program include partnering with human resources and corporate legal to get buy in early. Once you get permission to move forward, in-depth professional training for investigators on the process and use of scripts at least once a year is important.

"It's worked out very well for us," said Jones. "We get a more effective statement. It's a lot quicker. And we've reduced litigation. Plus, we've saved money and have been able to reallocate those funds to other areas. It's been an overall win for us."

*EDITOR'S NOTE: Paul Jones recently took over responsibilities for loss prevention at Lenscrafters and Sunglass Hut after the two operations were merged under parent company Luxottica.*

concentration of the subject and interviewer can be focused on the conversation.

If the interviewer is calling the subject at home or somewhere similar, there is little that can be done to prepare the setting. Whatever distractions or people are present generally cannot be changed. Sometimes asking the person to move to a private area can help, however, if the subject refuses, there is little that can be done except to proceed with the interview as planned. Picking the best times and place for the phone call can sometimes avoid these types of problems.

If the call is going to be made to the individual's place of business, it is possible to have more control over the interview. The following are a few considerations:

- Prior to the call, contact the individual's manager and discuss the subject's personality, employment history, and general background.
- Discuss the necessity for confidentiality and management behavior with the subject's supervisor. This makes the management team a partner to the process.
- Identify the best method of getting the subject to the phone. Identify who will act as witness at the employee's work site.
- Instruct the witness on his duties and what to observe during the phone conversation. Make sure that the witness knows not to react to an admission from the subject. Let the witness know the overall positioning and structure of the interview that will be used during the phone call. Also let them know they should not talk or counsel the subject during the process.

Have the witness prepare the room removing distractions in the same manner that an interviewer would if he was physically present.

## Witnesses to the Interview

The traditional interview in the private sector uses a witness to observe the process who then may act as an additional person able to testify to what

occurred in the room. The private sector has long used this as a means of limiting their exposure in subsequent civil actions by the suspect employee.

**Disadvantages of a Witness**—There are numerous negative issues that must be considered:

- The first and most obvious disadvantage is tying up limited manpower at the store level.
- Witness statements may be incomplete, requiring additional work to obtain a statement, which clearly conveys the subject's admission.
- The witness in a telephone interview is privy to only one side of the conversation, unless a speakerphone is used. Most locations lack this type of phone, making the witness unable to overhear what is being said.
- If a witness fails to provide an adequate statement and leaves the company the organization may have an enemy who has not been locked into a story or sequence of events.
- Witnesses who are less skilled may make excellent witnesses for the plaintiff because of their lack of experience and insight.
- A witness may inadvertently create problems by talking about the case to individuals who do not have a need to know. Depending on what was said and how, could open the organization for a claim of defamation.
- In many instances, the witness may not have the experience necessary to add much if anything to the encounter, while creating potential problems because of their inexperience.

To decide to use the telephone, the interviewer must weigh the importance of the information that is to be gained against the possibility of failure.

**Advantages of a Witness**— There are also advantages to having a witness present during some interviews or interviews.

- A witness, who is an interviewer as well, is another experienced person who may make observations useful to the primary interviewer.
- If he or she has the skills, the witness may be used as a secondary interviewer to assist in the expansion of the admission.
- The witness can offer insights on the individual's demeanor, background, and overall conduct, if they are knowledgeable skilled observers.
- The witness can accurately testify to what occurred and what was said during the interview.
- In larger organizations, witnesses are selected for their knowledge and experience and are used repeatedly for the task.

## Conducting the Interview

Conducting an interview over the phone relies on the traditional techniques used in face-to-face encounters. There is one exception...time. If phone interviews are going to work, the first admission is generally obtained earlier than in a face-to-face meeting. The interviewer can be more direct with the suspect, shortening some of the components of the interview and the time it takes to obtain the first admission.

Shortening the interview appears to work for several reasons. First, the suspect is doing something very natural, talking on the phone. The voice at the other end of the phone is anonymous

and in many ways does not seem real, which reduces some of the apprehension the individual might have in confiding information.

The use of the telephone would at first seem impersonal, but with the handset to the ear, it is actually quite intimate. The privacy is present even with a witness in the room because the suspect focuses on a voice that only he can hear.

The seriousness of the incident seems to also be diminished for several reasons during the telephone interview. Certainly, one of the most helpful reasons is the suspect's perception that if the problems were serious, the meeting would have been held in person. A by-product of this perception is a feeling of freedom, because he or she is not physically facing the interviewer. The individual's fear of consequences is diminished because it is a voice rather than a face, which must be read and interpreted. Effectively, what has happened is the suspect's belief system is predisposed to the process of rationalization and he has already internalized a position of minimization.

The suspect, wanting to believe that everything is less serious, is only one factor in reducing the time it takes to obtain a first admission. Another internalized belief of the subject is that the interviewer must have strong evidence of his guilt, or he would not handle the situation in this manner.

When the interviewer refers to evidence, because it is not visually present, it has even more impact because the subject commonly thinks the worst believing it is even more incriminating than it is.

The interviewer's level of confidence in the subject's guilt is also high because of the strength of the evidence. The tone and delivery speak volumes to the suspect. The confidence of the interviewer supports the suspect's belief that he has been discovered. Just as in a face-to-face interview, the suspect's belief that he has been discovered is a strong component in his decision to confess.


### Structuring the Interview

The structure of the interview is similar to that of a face-to-face interview.

- The interviewer establishes rapport with the suspect while confirming his identity and biographical information. During this stage, the interviewer establishes the behavioral norm for the suspect; his speech pattern, tone of voice and speed of delivery.
- The interviewer uses the introductory statement as a starting point to convince the suspect he has been caught. Unlike the delivery of a face-to-face introductory statement, the interviewer encourages the suspect's participation and responses. This is done to maintain control and assure that the suspect is listening to the monologue. The internal structure of the introductory statement otherwise

remains the same: Who we are and what it is that we do, types of losses or crimes we deal with, and how we investigate. The interviewer has spent about four minutes on this section, which establishes the credibility of the investigation.

- The interviewer then proceeds to rationalize why people make errors in judgement using rationalizations that fit the suspect's background. This face-saving section is intended to provide a means of mitigating the suspect's participation in wrongdoing
- Periodically, the interviewer may want to ask the suspect a short question like "Do you see what I mean?" to assure the suspect is listening.
- The interviewer uses an assumptive question, either a soft accusation or a choice question to obtain the first admission of guilt from the suspect.
- The interviewer then develops the admission and obtains confirmatory details of the incidents. The who, what, where, when how, and why of the case is discussed with the suspect. Once a complete admission has been achieved, it is time to document the confession.
- The final step is to secure a full documented written confession containing the admission developed during the phone call. This final step can be accomplished by asking the witness to provide pen and paper to the suspect.
- In the event there is not a witness present, the interviewer may elect to audio tape the confession over the phone. Some states have eavesdropping statutes, which restrict when a conversation may be taped, so the interviewer should obtain the suspect's permission to record the conversation at the beginning of the tape. In instances where there may be doubt about who was on the phone, ask some questions, to which only the suspect would know the answers. A question such as, "What is your mother's maiden name?" should help confirm the identity of the individual being spoken with.



Especially in the private sector, where investigators and resources are stretched, the use of telephone interviews can make good business sense.

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In a face-to-face interview the suspect's first admission (if they are going to confess to a property crime) will generally occur between 15 and 45 minutes from the beginning of the interview. In phone interviews, the first admission often is made around 7 to 10 minutes.

## **Telephone Interviewing Legal Issues**

During traditional interviews, the interviewer and witness are in the same room as the suspect during the conversation with the subject. The common cause of action brought by the subject is unlawful restraint and intentional infliction of emotional distress. Regardless of the way an individual was treated, opposing counsel will generally allege that the subject was restrained in some fashion and the interview created an emotional turmoil which caused the subject to suffer. The telephone interview itself removes these two common causes of action.

Telephone interviews have been found to be non-custodial because the suspect can simply hang up the phone (*State v. Mahoney* and *State v. Tibiatowski*). In the later case, a juvenile on the run from detention was suspected of committing crimes while out. After being caught, he was held in a juvenile detention facility where he received a call from his caseworker, who asked if he "had anything he wanted to tell her?" The juvenile then admitted he had committed an armed robbery. *Miranda* was not required because the caseworker was not a law enforcement officer and this was not a custodial interview.

In another case, an officer called a twelve-year-old boy on the phone at his home. During the phone call, the boy made incriminating statements to the officer. The court held that the interviewing officer was not in the youth's presence and thus could not exert immediate physical control of him. The court further stated that even a twelve-year-old youth would not feel restrained in this type of encounter.

The courts use the totality of circumstances surrounding the interview

and its environment, which must be considered to determine the question of whether there was sufficient restraint of the suspect's freedom of movement to constitute an arrest or restraint.

Another issue that could arise is the audio taping of the interview and/or the summary confession. Most states have laws relating to eavesdropping that define under what circumstances an individual may be recorded. In some states there is one-party consent while other states require that all parties to the conversation give their consent for the recording. The waiver by the individual at the onset of the recording is sufficient to avoid any problems under the statutes. This type of consent is commonly found on many phone lines where the organization notifies the caller that the call may be monitored for quality control. Remaining on the line after the notification signifies the caller's consent to the monitoring. However, it is usually advisable to have the subject verbally acknowledge his agreement for the recording.

## **Voluntariness**

Although *Escobedo*, *Massiah*, and *Miranda* overshadowed the voluntariness rule for testing the admissibility of a confession, it is still the voluntariness of the confession that is the fundamental issue in determining the admissibility of a confession. Unfortunately, although the courts have provided guidelines for the officer in *Escobedo*, *Massiah*, and *Miranda* decisions, determining the voluntariness of a confession is much less clear.

To determine whether a confession is voluntary, there are no specific rules to follow or apply. Rather, the court has used as a test the totality of circumstances. Here, the courts view the circumstances and environment surrounding a suspect who gives a confession. The courts take into account the methods employed in obtaining the confession, the suspect's physical and mental condition, the length of time over which questioning took place, and the suspect's age, education, and previous experience with law enforcement agencies before making a determination of whether the confession was voluntary.

The courts have made it very clear that the use of physical force or physical abuse or even the threat of this type of conduct on the part of police will render a confession involuntary. Depriving a suspect of sleep, rest, food, or drink for substantial periods while he is being interrogated would make any resulting confession highly questionable. Clearly, most of these problems are avoided when investigators use a telephone interview.

## **Best Evidence**

The audio taped confession also provides the best evidence of the subject's mental state at the time of the confession. Observers are able to evaluate the tone of voice, demeanor, and general cooperation of the individual much more effectively than from a simple written document. A major retailer used mock juries to evaluate a case with a written confession and one with video taped statement. The jurors found that the video taped confession helped them resolve doubts about the voluntariness of the confession and helped them determine the truth much more effectively.

The telephone interview is similar in nature to an interview done in person. The telephone interview, while unusual just a short number of years ago, today have become commonplace. The insurance industry is one of the largest users of telephone interviewing and audio taping of statements. The insurance companies obtain statements regarding claims by phone on a regular basis.

One final point relating to audio taping of interviews is the lack of fax machines at many locations. Having the subject write a confession and then fax it to the investigator to check content is a cumbersome way of determining the necessary detail is contained in the statement. This could work if there was the necessary equipment (speakerphone and fax) and a skilled witness to help the interviewer.

Not every case is suitable for a telephone interview. The interviewer must select those situations where the case and the suspect lend themselves to a greater likelihood of success. ■