

Interviewing & INTERROGATION

by Douglas E. Wicklander and David E. Zulawski



How to Decide When to Conduct an Interview

When conducting an investigation into dishonesty in the workplace, loss prevention managers and investigators must make careful, thoughtful decisions to ensure that both the results you expect will be obtained as well as corporate policies and procedures are followed properly.

Your first question might be, “How do I know when I have sufficient information to conduct an interview?” The answer, let common sense and company policy guide you.

First, you must have some reasonable basis to believe that a suspect is guilty. For example, reasonable suspicion could be an excessive pattern of voids, excessive cash shortages, a personal observation, or a report from a mystery shopper.

Second, you should try to confirm your suspicions by other means first, such as direct observation, hidden camera, or confession of an accomplice.

Third, you must consider company policy, which may require you to observe one, two, or three instances of dishonesty, or may permit only an exploratory interview versus an accusatory one under certain circumstances.

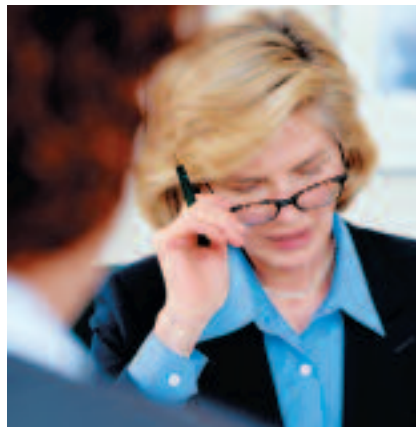
Primary Considerations

Before moving forward, there are several key considerations you must also take into account.

Purpose of the Interview—You must decide the purpose of the interview. The purpose could be one of several, including obtaining a confession to a specific incident, identifying the involvement of others, eliciting an alibi, or simply gaining added information regarding the workings of a particular department. Defining the purpose will help you determine if the interview will

be accusatory or non-accusatory in nature.

Approach to the Interview—Decide in advance whether you are going to interview or interrogate. If the purpose is to investigate a specific area, you can be in a non-accusatory mode, allowing the subject to do most of the talking while you direct the interview with open and closed probing questions. On the other hand, in trying to interrogate an individual regarding the suspect’s



involvement in a crime or policy violation, you will usually make accusations of misconduct while dominating the conversation, with the intent of eliciting a statement against the interests of the subject.

Goal of the Interviewer—You must establish a goal of the interview, which is more than simply “obtaining a confession.” You must also identify the elements of the crime and what acts establish the subject’s involvement in criminal conduct or a policy violation.

An example of establishing goals might be clarified by looking at a discount violation. The subject’s discount violation admission must include two elements to establish the violation of the policy: First, an admission by the subject

that he or she acted outside company guidelines in using the discount, and second, that the subject knew the policy at the time he committed the act.

In kickback cases, where federal mail fraud might be involved, an admission by the suspect of his use of the mails in furtherance of the crime is necessary. Without such an admission, a prosecution will be potentially difficult under that statute.

End Result of the Interview—You must also clearly define the end result desired from the interview, be it termination, prosecution, civil action to obtain restitution, or disciplinary action only. In considering the end result, don’t overlook the ramifications should you not obtain the results you want. For example, the subject may not confess as expected. In this case, how will the interview impact on any ongoing investigation, other employees in the department, and the individual who was the subject of the interview?

Practical Questions to Address—

There are several other practical questions to consider:

- Is the time and expense worth the effort and the risk?
- Will the interview hamper an ongoing investigation?
- Is the interview likely to identify the informant whom you may be trying to protect?
- With multiple suspects, who is the “weak link” in the chain?
- Where should the interview be conducted, at the employee’s work place, the loss prevention office, or a neutral setting?
- Who should do the interview, especially if the subject is a higher ranking management person?

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Industry Conferences & Events

October 1 – 4, 2001
American Society of Industrial Security
 47th Annual Seminar & Exhibits
 San Antonio Convention Center
 San Antonio, TX

October 14 – 17, 2001
National Retail Federation
 NRFtech, Retail Solutions Experience
 Morial Convention Center
 New Orleans, LA

October 28 – 31, 2001
National Association of Chain Drug Stores
 Fall Conference
 San Antonio, TX

January 13 – 16, 2002
National Retail Federation
 91st Annual Convention & Expo
 Jacob Javits Convention Center
 New York, NY

February 3 – 6, 2002
Food Marketing Institute
 2002 Loss Prevention Conference
 Double Tree Mission Valley
 San Diego, CA

February 20 – 22, 2002
Jeweler's Security Alliance
 Security Seminar and Expo
 Sawgrass Marriot Resort
 Ponte Verde Beach, FL

March 4 – 7, 2002
International Security Conference and Expo
 Las Vegas Convention Center
 Las Vegas, NV

April 2 – 5, 2002
International Mass Retailers Association
 Loss Prevention, Auditing & Safety
 Conference & Exposition
 Wyndam Anatole Hotel
 Dallas, TX

June 2 – 5, 2002
National Retail Federation
 Loss Prevention Conference & Exhibits
 and Internal Audit Executives Conference
 Austin Convention Center
 Austin, TX

June/July, 2002 (TBA)
International Council of Shopping Centers
 Security Conference
 Las Vegas, NV

August 4 – 9, 2002
Association of Certified Fraud Examiners
 13th Annual Fraud Symposium & Trade Show
 Renaissance Hollywood Hotel
 Los Angeles, CA

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- Is there sufficient manpower available to gather supportive evidence, including conducting searches, surveillance, and recovery of evidence?
- Should a formal statement be handwritten by the subject? Or should a registered court stenographer take a detailed account of the interview?

Secondary Considerations

In deciding when to conduct an interview, you should also take into account "external" considerations, which relate to the company, in addition to the particulars of the interview itself. This might include any of the following:

- What is the effect of investigating a member of senior management for some impropriety and its possible impact on business operations, vendor confidence, stock prices, or company morale?
- Will senior management support the termination of a key executive, especially if the executive is viewed as essential to the success of the company?
- Should public law enforcement be involved in the investigation? With law enforcement involved, the company LP department may have legal constraints placed upon it by being viewed as an agent of the police.
- What impact will the investigation have on the public image of the company should the investigation become public knowledge?
- Is there pending litigation that could be influenced by the decision to interview? For example, an age discrimination suit pending against a company might influence the timing of a decision to confront a long-tenured employee in a protected age group.
- Could an interview potentially cause labor problems? For example, an interview conducted just before a vote to unionize might not be viewed favorably by the employees and could affect the vote.
- Consider HR guidelines and policies in addition to the legal rules of evidence. Circumstantial evidence, for

Do You Have Questions for Wicklander-Zulawski?

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example, may be legally sufficient to conduct an interview, but may not be viewed as sufficient by company policy.

- Have others in the organization been disciplined for the particular activity before, or is this an attempt to make an example of a particular individual?
- Should an outsider be hired to conduct the investigation or interview? This may be appropriate when the loss prevention department may be involved, the current workload is too great, management doesn't feel it has the proper expertise, or the company may need to deflect blame should something unexpected occur.

The decision on whether or not to conduct an interview is complex and requires consideration not only of the investigative goals and objectives, but also of a host of internal and external considerations. By carefully evaluating all of these factors in the decision, loss prevention will enhance its ability to work within the organization and prevent potential legal actions against the company. ■

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