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## Follow Columbo's lead in internal investigation interviews

Whether conducting an official internal investigation or conducting witness interviews to respond to interrogatories in civil litigation, the key principles to conducting productive witness interviews are ubiquitous. Notably, there are a variety of approaches to witness interviews and each method has its proponents and detractors.

For example, The Reid Technique is an interrogation technique widely used by law enforcement agencies that combines both investigative and behavior-provoking questions. This technique is most useful when the facts indicate that the witness is culpable in some way and it then offers the witness various psychological constructs as justification for their behavior — making it easier for them to confess to their conduct.

In contrast, the cognitive interview method focuses on helping the witness retrieve memories without generating inaccurate accounts. The cognitive interview is based on two psychiatric theories — obtaining maximum overlap of the context in the event in question and the context in which the recall attempt is made; and recalling the event from a variety of perspectives and in varying chronological sequences.

Other investigators base their interview technique on the style of Lt. Columbo, as played by Peter Falk in the 1970s television show “Columbo.” There are two steps to this fictional character’s method — get the witness talking; and when they are sufficiently relaxed, ask them the key questions. An analysis of modern interview techniques is beyond the scope of this article and has filled volumes of scholarly journals and law enforcement publications.

Witness interviews are a matter of personal style and the investigation and witness personalities should dictate your approach. Whether your approach is modeled after real detectives, fictional

gumshoes or based on recent psychiatric research, all credible techniques involve similar strategic considerations.

As an initial matter, in most situations, two people should be present on behalf of the company. For example, best practices dictate that two people are present during human resources investigations of employee complaints involving harassment or discrimination. It is helpful to have someone other than the interviewer to take notes, because asking questions and taking detailed notes can be difficult and it can disrupt the flow of the interview.

If the interviewer is taking notes, he or she will miss visual clues provided by the witness. Just like poker, certain witnesses have “tells” or may consciously or unconsciously provide nonverbal cues that they have additional facts to divulge — if only you would push them on it. Finally, if ever there is a dispute over what was said during the interview, both the notes and note taker can provide testimony of an accurate account of the interview. This is not to say that the note taker has to transcribe every word — the witness is not on the stand and there is no court reporter.

However, unlike a cross-examination, the interviewer normally should start by asking open-ended questions and, within limits, let the witness talk freely. For example, one of the reasons that you want to have a simple explanation of the topic is to allow the witness to start the interview by informing you of other potentially relevant conduct.

For example, if you started the interview by asking — “We are investigating overpayments to vendors, what can you tell us about this?” — the witness may begin discussing improper payments to vendors you were not aware of. Interviewers should ask the witness to describe the key events multiple times within the interview to enhance their memory and confirm factual details.

### NEXT CHAPTER



**MATTHEW C. LUZADDER**

*Matthew C. Luzadder is an attorney in the Chicago office of Kelley, Drye & Warren LLP. His practice focuses on complex commercial litigation, white-collar crime and labor and employment litigation. He can be reached at [mluzadder@kelleydrye.com](mailto:mluzadder@kelleydrye.com).*

If the witness is uncooperative, it will likely be necessary to use “closed” questions that require a “yes” or “no” or leading questions that suggest the answer as part of the question. The main drawback to both of these types of questions is that they may reveal new information to the witness, indicate the interviewer’s objectives or the direction of the investigation. It is useful to have an outline of questions, but as with depositions, do not ignore potentially useful tangents that may develop during the course of the interview.

The circumstances of the investigation will dictate how you use documents. In some cases you will want to confront recalcitrant witnesses with key documents, including any “smoking guns.” However, in other cases, you will want

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to hold back key documents where, for tactical reasons, you may want to reveal them later in the investigation.

For example, you may anticipate that an executive may deny having a role in a particular decision because the department fell outside his or her direct control. You should be prepared to confront his or her with documents, even if unrelated to the investigation, showing control or influence over groups that technically do not fall under his or her on the organization chart. While some interviews will become confrontational, the interviewer should always remain objective and calm.

Often the interview is conducted near the witness’ work station or office. In response to your question, the witness may volunteer that they have documents that explain or illuminate their answers. It is tempting to simply make a note of these documents with the plan to ask the witness to send them to you at a later date. However, the time it takes to gather the documents may be time well spent. Do not be afraid to pause the interview in order to allow the employee to gather nearby documents.

This process may also give you an opportunity to ask follow-up questions about the existence of additional documents and can provide an unedited view of all the documents in a file, not just those that the employee may choose to show you after the interview has concluded.

In concluding the interview, ask the witness for their ideas on other witnesses who may have additional information or documents. Be careful not to disclose too much about the direction of your investigation, but use your knowledge to fully explore possible additional sources of information with the witness. Although Columbo appears disheveled and asks disjointed questions, as with all successful interviews, it is a strategic approach, including consideration of the above issues, that proves successful.