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BEST PRACTICES FOR CONDUCTING WITNESS INTERVIEWS IN INTERNAL INVESTIGATIONS

by Michael A. Morse



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Internal investigations are critical to protecting organizations from legal, regulatory, and reputational risk. They help determine whether a violation of law, regulation, or policy has occurred, and they inform decisions about remediation, discipline, and control enhancements. Among the various tools available to investigative teams, witness interviews are often the most impactful in establishing the facts. Yet many in-house counsel and compliance professionals receive little training on how to conduct them effectively. Poorly executed interviews can compromise fact-finding, undermine credibility, and squander opportunities to mitigate risk.

This article outlines practical, field-tested best practices for conducting effective witness interviews in internal investigations.

Recognize that all witnesses are not alike

Every witness brings a unique combination of role, perspective, knowledge, and emotion. A one-size-fits-all approach will fail. Before the interview, invest time to understand the witness's position, reporting lines, tenure, and involvement with the issues at hand. Review the organizational chart, recent performance changes, and any publicly available information, such as a LinkedIn profile. Consider how the witness's function and incentives may shape their understanding of events. Tailor your approach to the witness, adjust your pace, tone, question framing, and level of detail to meet them where they are. The goal is to elicit accurate, complete information, and that requires adapting your style to the person in front of you.

Choose a time and place that prioritizes comfort and discretion

Logistics can materially influence candor. Schedule the interview at a time and in a location that reduces anxiety and interruption for the witness. Avoid clustering interviews back-to-back in the same room, which can telegraph the existence and scope of the investigation and deter openness. Select a quiet, neutral, and private setting; virtual interviews should be conducted on secure platforms with camera use to facilitate rapport and nonverbal assessment. Be mindful of who sees the witness enter or leave the interview space, and, where possible, stagger timing to preserve confidentiality and reduce speculation.

Begin with clear ground rules

Set the tone by explaining who you are, whom you represent, and the purpose of the interview. Clarify whether the interview is being conducted under attorney-client privilege and work-product protection, and provide an appropriate corporate Upjohn warning where applicable. Explain how the information will be used and who within the organization may receive it. Consider having a second team member present to take notes and serve as a corroborating witness to the interview. Confirm that the witness understands the process, has no immediate conflicts, and is comfortable proceeding.

For attorneys conducting witness interviews, ethical rules require clarity about whom the lawyer represents. When interviewing on behalf of the organization, if the lawyer determines that a constituent's interests are or may be adverse to those of the organization, "the lawyer should advise any constituent [of the

organization-client], whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent [them]."¹

Build rapport before substantive questioning

Effective rapport is not incidental; it is the product of deliberate choices in how you frame questions, signal respect, and structure the conversational flow.

The following techniques deepen trust, encourage disclosure, and improve the clarity and reliability of the information you elicit:

- ◆ **Ask open-ended questions.** Use prompts that begin with "tell," "explain," or "describe," which invite narrative detail rather than yes/no answers. For example: "Tell me how the process works in practice," "Explain your role in the approval," or "Describe what you observed after the meeting." Open-ended questions communicate curiosity and respect for the witness's perspective, surface context you might not anticipate, and reduce the risk of unintentionally constraining the witness's account.
- ◆ **Use affirmations to reinforce cooperation.** Simple, sincere acknowledgments such as "Thank you; that's very helpful," or "I appreciate the detail you're providing," validate the witness's effort and encourage continued candor. Keep affirmations focused on the witness's participation and clarity — not on the substance of potentially problematic conduct — to avoid any perception of approval or judgment.
- ◆ **Listen actively.** Demonstrate attentiveness with brief encouragers ("go on," "mm-hmm,"

"I see") and by echoing or repeating key words the witness uses. Reflecting language back — "You mentioned the 'expedite' request; tell me more about that" — signals that you are listening to their account and invites the witness to elaborate further. Evidence of turntaking, appropriate pacing, and minimal interruption builds a conversational rhythm that supports fuller disclosure and more accurate recall.

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- ◆ **Summarize periodically to confirm understanding.** At natural intervals, offer concise, neutral summaries of what you have heard: "So, from your perspective, the timeline was: draft on Tuesday, revisions on Wednesday, and sign off Thursday. Did I get that right?" These summaries both validate the witness's effort to explain and surface discrepancies or ambiguities while memories are fresh.
- ◆ **Use silence strategically and avoid unnecessary**

interruptions. Thoughtful pauses give witnesses space to think and volunteer additional details they might otherwise withhold. Resist the urge to fill every quiet moment; a few seconds of silence can prompt valuable clarifications or admissions. When you do interrupt, do so purposefully—to redirect back to the question asked or clarify a point—then return the floor to the witness.

◆ **Allow autonomy and conversational room.**

Depending on the circumstances, consider inviting the witness to structure parts of their account: “Where would you like to start?” or “What do you think is most important for me to understand first?” Autonomy enhances engagement, surfaces the witness’s priorities and mental model of events, and often reveals linkages you might not elicit through rigid sequencing alone.

◆ **Show genuine interest in the person.**

Consider beginning the interview with questions about the witness’s role, responsibilities, and day-to-day workflow, communicating respect for their expertise and context. This is not small talk for its own sake; it equips you to tailor your terminology and pace, reduce misunderstandings, and build trust. Using these early questions also allows you to assess the witness’s demeanor, communication style, willingness to cooperate, and emotional sensitivities.

◆ **Display respect and patience throughout.**

Maintain a professional, calm tone; avoid sarcasm, leading

characterizations, or visible frustration. Be patient with meandering answers initially; many witnesses “warm up” to specifics after setting their own context. When you need to refocus, do so courteously and transparently: “I want to be respectful of your time. Could we return to what happened after the email you mentioned?”

Let the witness talk—and listen to learn

Your primary objective is to learn from the witness—not deliver your own narrative. Encourage the witness to define acronyms, explain internal terminology, and identify the people and processes they reference. This reduces ambiguity, reveals organizational dynamics, and strengthens rapport by signaling respect for the witness’s knowledge. Resist the temptation to interrupt or truncate answers; you rarely know in the moment which details will prove significant later. Follow up with targeted probes to clarify timelines, decision points, and the basis for any conclusions the witness draws.

Show appropriate empathy

Witnesses may experience stress, fear, or defensiveness, particularly when sensitive topics arise. Acknowledge the difficulty of the conversation where appropriate and maintain a calm, nonjudgmental tone. Consider using language such as “I understand these topics can be stressful.” Empathy fosters trust and increases the likelihood that the witness will be forthcoming, especially when disclosing uncomfortable facts or personal observations. Maintain professional boundaries but allow space for the human experience inherent in these discussions.

Elicit sources, documents, and visuals

Ask each witness to identify other individuals with relevant knowledge, as well as specific documents, communications, or systems that may corroborate their account. Where helpful, invite the witness to sketch a process flow, timeline, or org chart to clarify interactions and handoffs. If you review documents with the witness, work from copies rather than originals, and keep your annotations separate. Carefully note any additional information the witness contributes and consider having the witness initial or otherwise confirm material they add to timelines or diagrams to memorialize accuracy.

Keep the door open after the interview

Witnesses often recall additional details after they have had time to reflect. Conclude by inviting the witness to contact you if anything else comes to mind and by providing a direct, secure means of follow-up. It is common for witnesses to share supplemental information or provide documents post-interview, including material they were not comfortable raising in the moment. Clearly explain how to transmit information securely and reiterate that you welcome additional input.

Avoid promises you cannot keep

Manage expectations carefully. Do not promise specific outcomes, disciplinary actions, or next steps, and avoid implying that you can share details about other interviews or the status of the investigation. Be transparent about the limits of your role and what you can and cannot disclose. Precision here protects the integrity of the process and reduces the risk of perceived misrepresentations later.

Emphasize confidentiality and nonretaliation

Ask the witness to keep the substance of the interview confidential. Explain that confidentiality helps preserve the integrity of the investigation by ensuring that subsequent witnesses provide their own recollections rather than repeating secondhand narratives. Frame the request as seeking the witness's help in conducting a fair and efficient process, which increases compliance. If the organization has a nonretaliation policy, remind the witness of it and explain the mechanisms to report any concerns that arise after the interview.

Memorializing the witness interview

Accurate, contemporaneous notes are essential to the integrity and defensibility of any internal investigation. Notes provide a reliable record of what was asked and what the witness said, capture key dates, names, and qualifiers,

and help avoid later disputes about context or meaning.

At the outset of the investigation, consider whether it is appropriate to have a second person attend the interview to take notes. A dedicated notetaker can be beneficial because it allows the primary questioner to focus on active listening, pacing, and follow-up questions. That said, having an assistant to take notes may not be practical in all situations due to resource constraints, the sensitivity of the matter, or the need to minimize the number of attendees.

Regardless of who takes notes, review them promptly after the interview and correct any errors or ambiguities while the conversation is still fresh. Clarify uncertain references, standardize names and titles, and ensure that the notes

fairly reflect both the questions and the witness's answers. Timely, accurate notes strengthen the record, support consistent decision-making, and improve the quality of subsequent interviews.

Conclusion

Effective witness interviews are a blend of preparation, empathy, structure, and adaptability. By tailoring your approach to each witness, setting clear ground rules, building rapport, and allowing space for detailed narratives, you enhance the quality and reliability of the facts you gather. Careful documentation, thoughtful follow-up, and a consistent emphasis on confidentiality and accuracy will position your investigation to withstand scrutiny and support sound, defensible decision-making. ^{ct}

Endnotes

1. American Bar Association, "Rule 1.13 Organization As Client – Comment," accessed January 6, 2026, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_13_organization_as_client/comment_on_rule_1_13/.

Takeaways

- ◆ **Tailor your approach:** Tailor your interview approach to each witness's role, motivations, and knowledge to elicit accurate, complete information.
- ◆ **Set clear ground rules:** Set clear ground rules, including privilege/Upjohn warnings, scope, confidentiality, and nonretaliation to protect integrity and manage expectations.
- ◆ **Prioritize rapport and listening:** Build rapport, use open-ended prompts, listen actively, and show appropriate empathy to encourage candor, clarify timelines, and surface meaningful detail.
- ◆ **Maximize logistics for candor:** Optimize logistics—private, secure settings and discreet scheduling—to foster candor and minimize disruption, leaks, and speculation.
- ◆ **Document rigorously and follow up:** Identify sources and documents; invite visuals; keep follow-up open; take contemporaneous, accurate notes; review promptly; and avoid promises you cannot keep.