

Conducting Effective Interviews





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I. Introduction – Interviewing Skills For Forensic Investigations

Forensic accountants frequently are asked to help attorneys, boards of directors, management, regulators, law enforcement and others to determine the facts surrounding complex financial matters. In a forensic investigation, interviews are critical when determining the who, what, when, where, how and why. A successful interview is essential when gathering facts and steering an investigation in the right direction. This white paper will focus on the interview skills necessary to carry out a forensic investigation.

Many forensic investigations involve fraud allegations. By way of background information, it may be helpful for the reader to understand the basic elements of a scheme to defraud. Fraud includes misrepresentations of material fact, knowledge of the falsity of the misrepresentation or ignorance of the truth, intent, a victim acting on the misrepresentation and damage to the victim. It also should be remembered that attempts to defraud can be a basis of criminal charges as well. In other words, schemes do not have to be successful to be charged criminally. Forensic accountants also should be familiar with some of the common motives exhibited by persons engaging in fraudulent activities. These motives, which sometimes become evident during interviews, often relate to pride, envy, gluttony, lust, anger, greed or sloth, sometimes known as the seven original sins. It also is helpful to understand the term of art known as the “fraud triangle,” which refers to the three elements that generally need to be present for someone to be able to commit fraud, i.e. opportunity, pressure and rationalization. To be able to commit fraud, all three of these elements of the fraud triangle should be considered when planning for an interview.

While most fraud investigations and forensic accounting engagements are resolved outside of the litigation

process, it is highly recommended that forensic accountants approach each case from the perspective that the case ultimately will end up in a civil and/or criminal public trial. Inexperienced practitioners should seriously consider the implications of performing this work without such specialized knowledge.

To better prepare an investigation plan, it is wise to keep in mind what a jury will hear at the conclusion of a case. The juries will be allowed to deliberate on evidence admitted by a trial judge along with a set of written instructions from the court that will offer definitions of key concepts. In white-collar crime or financial crime cases, the government always must prove that there was an intent or willfulness to defraud. Jury instructions given by the court will include definitions of a scheme or artifice to defraud as well as a definition of intent to defraud. For example, a scheme or artifice to defraud can be defined as any design, plan, pattern, or course of action, including false and fraudulent pretenses and misrepresentations, intended to deceive others in order to obtain something of value, such as money. To act with “intent to defraud” means to act with intent to cheat or to deceive. Forensic accountants conducting interviews should be familiar with these concepts before conducting interviews. By becoming familiar with the concepts facing jurors, these concepts can be incorporated into the questioning process for witnesses, victims and suspects. Forensic accountants can obtain examples of proposed jury instructions by accessing public websites such as federal appeals court websites. As an example, the website for the United States 10th Circuit Court of Appeals in Denver, CO, can be accessed at ca10.uscourts.gov to view criminal pattern jury instructions.

Knowledge of these concepts becomes even more important when interviewing experienced criminals. Experienced criminals understand the importance of

proving intent, so they often may attempt to build in their defenses as the scheme is being advanced. It is not uncommon for experienced criminals to explain their actions in terms of unintentional conduct, accidental behavior or mistakes. Therefore, the results of an effective interview can help establish a pattern of deceit, cheating and possibly lying that may be most useful in proving the intent to defraud issue.

A. Purpose of Interviewing

An interview can best be described as a professional conversation conducted with a specific purpose or goal in mind. The thrust of an effective interview is to gain knowledge and information that is pertinent to the inquiries.

The primary purpose of most interviews is to gather evidence through facts and other information supplied by witnesses. Interviewing is performed throughout an investigation. With each successive interview, the interviewers should obtain background information about the witnesses, the subject matter of the investigation, and the potential suspects. Efforts should be made during the interviews to identify new records and additional witnesses. A variety of interview methods will be discussed; however, regardless of the methods used, interviews generally should strive to answer basic questions: who, what, where, when, how and why.

B. Interrogation versus an Interview

An interrogation generally is viewed as a process of questioning with force, moving toward a denial of the incident or a confession. In many occasions, a simple fact-gathering interview may evolve into an interrogation with the unsuspected perpetrator of the alleged illicit activity. Forensic accountants may find themselves in this type of position and always should consider this possibility. On other occasions, forensic accountants may be a part of an investigation where confrontational interviews are likely. The dividing line between interviews and interrogations is not always clear-cut.

Interviewers should be prepared for a wide variety of circumstances in a forensic engagement and should remain objective, fair and act with integrity.

Accountants, whether performing attest or forensic consulting services, normally do not interrogate individuals in order to obtain admissions of guilt. However, sometimes forensic accountants may be present during an interrogation if retained by counsel to assist in a criminal investigation. It is advisable that once an allegation of illegal behavior is made, practitioners should consult with their client's legal counsel. Practitioners who are not experienced in forensic investigation and who do not consult with counsel before undertaking an investigation expose themselves to potential ethical violations and/or serious legal consequences.

Lastly, forensic specialists are fact-finders who may appear to lose their objectivity if they assume the role of interrogator seeking a confession. Although a confession may be elicited based on the evidence produced by the forensic accountant, interrogation normally is reserved for experienced specialists such as polygraph examiners or law enforcement officers.

C. Characteristics of an Effective Interview

To be successful, an interview should be thorough. It requires strategic planning, relevant questions and an objective interviewer. Many interviews fail to gather enough information to address the issues raised in a forensic matter because of inadequate preparation, or because insufficient time is allowed to complete the interview. If an interview is scheduled in advance, as many are, there is a natural tendency to schedule a set time for the initiation and completion. If possible, sufficient time should be allowed to conduct the interview with the time of completion left open. If a set time is established, the person interviewed may be overly focused on the ending time, thereby inhibiting a flow of information. Interviewers can enhance

their credibility by focusing on information that the interviewee should know, as opposed to guessing during the interview and thereby wasting the time of the participants by asking questions that the interviewee could not know. By remaining objective and fair, the interviewers can better gain the confidence of the interviewee. Ideally, the interview should be conducted as soon as the alleged impropriety has been discovered.

An effective interviewer should be an active listener, as well as an active observer. Both are learned skills that can be studied and improved with practice. Active listening means not only listening more than talking, but really hearing what is being said and how it is being communicated. Sometimes what is not being said is equally as important as what has been said by the interviewee.

D. Interviewing Ground Rules

Interviewers can develop rapport by exhibiting objectivity, fairness and professionalism at all times. Courtesy and respect toward the person being interviewed will help create a comfortable interview setting. The interviewers should be non-threatening in their demeanor, particularly in the introductory phase. If documents or exhibits are to be used, these documents should be carefully arranged before the interview. Generally speaking, it is preferable to use copies of documents as opposed to original documents. It always is recommended that only one person should be interviewed at a time. When arranging an interview, a location should be chosen to ensure privacy and to minimize interruptions. The use of cell phones should be discouraged. Care should be taken to ensure that the person being interviewed has access to an exit that is not blocked by the interviewers. This is a safety consideration, but also may be a consideration to demonstrate the voluntary nature of statements. The interviewer always should try to clarify and verify the information gained during the interview. To prepare for the interview, interviewers should thoroughly review the appropriate data, documents, and information relating to the subject matter of the interview.

II. Preparing for an Interview

A. What to Consider

Depending on the situation, there are many factors that need to be considered before undertaking an investigation. Coordination with someone from Human Resources, Security and the Information Technology departments typically is undertaken before the interview process. One of the most important considerations is when to involve legal counsel. In situations such as when a parent company would like a second pair of eyes on a subsidiary, but no specific allegation has been made, involving counsel may not appear to be necessary. However, if a specific allegation has been made and there is a question of whether a law has been broken or if criminal behavior is suspected, it is appropriate to involve counsel from the beginning.

1 When to Involve Counsel

Forensic accountants should resist the temptation to initiate interviews without considering the significant legal implications that may arise. While most interviews will be straight-forward fact-finding situations where persons are asked basic questions, many interviews may involve important legal considerations that should involve consultation and guidance from counsel. Working under the direction of counsel protects the forensic accountants from overreaching or unwittingly crossing the line. For example, interviews may be protected by legal privilege if the forensic accountant has been retained by counsel. Privileged conversations are kept confidential and may be protected from further inquiry or disclosure. Without this protection, forensic accountants may be forced to disclose inaccurate or slanderous information that may wrongly harm an individual (or individuals), thereby exposing the forensic accountant to negative legal ramifications. Complicated legal issues may also arise if there is an "expectation of privacy," for which there is no bright-line test to help the forensic accountant determine whether such expectation has been breached. It cannot be stressed enough that it always is better to work under the direction of counsel when it is anticipated that sensitive issues such as these may arise. Furthermore, after interviews conclude, it may be advisable to speak with counsel to determine what

should happen with the original interview notes. Each situation presents a different set of circumstances. And each situation presents complicated legal issues that forensic accountants, by themselves, are not equipped to handle without legal guidance.

2 Securing Data, Documents and Information

The initial steps taken upon the initial discovery of suspected fraud are critical and should be taken with thoughtful consideration. Forensic accountants may wish to advise their clients to secure data, documents, and information before initiating the interview process. Once people learn that an investigation may be under way, any delay in securing electronic and documentary evidence may result in the alteration, destruction or deletion of documents or computer data. Gathering this evidence requires that proper chain of custody procedures be followed to insure the integrity of the evidence, especially if such evidence is to be eventually relied upon in a legal proceeding. This underscores the importance of developing thorough investigative plans at the initiation of a case, as well as the importance of consultation with counsel to identify and address legal issues that may arise.

3 Types of Evidence

Fraud and forensic investigations normally will involve collection of evidence, a review of previous statements and further interviews. Depending on the allegations, some of the types of evidence that may be useful for interviewing purposes may include, but certainly are not limited to, whistleblower complaints, emails, books and records of the business,¹ office contents, as well as information gleaned from the performance of relevant background research.

Another type of evidence that may be useful to the forensic accountant, and that never should be overlooked, is the existence of previous statements made by persons. However, sometimes previous statements may be unobtainable. For example, it is possible that previous statements made based on assurances of privilege or whistleblower protections may

be restricted. If previous statements were obtained after promises or threats concerning continued employment, such statements may be problematic. Questions concerning the previous collection of statements and evidence should be considered with counsel while planning the investigation.

4 Spoliation

Spoliation of evidence is the intentional or negligent withholding, hiding, alteration or destruction of evidence relevant to a legal proceeding (*Black's Law Dictionary*). Forensic accountants always should consider the possibility that their investigative procedures will appear in a legal proceeding in the future. For evidence to be admitted, the trier of fact will have to be convinced that statements were made voluntarily, that evidence was lawfully gathered, and that the evidence has not been altered. In addition, material evidence cannot be intentionally concealed, withheld or destroyed. Severe civil and criminal consequences may result. If a practitioner is unfamiliar with acceptable forensic practices, then something as simple as turning on a computer without the use of forensic imaging technology may result in the spoliation of evidence.

5 Whether to Record Interviews

Questions often arise concerning whether to record an interview. Recording interviews create unique evidentiary and legal issues. Typically, if an interview is recorded, a transcription of the recording likely will be required. Transcribing the recording can be difficult. This is because, sometimes, the interview participants may speak over one another, the recording may be inaudible or the recorder malfunctions. The recording also may become inadmissible if there is chain of custody or authentication issues. Regardless, this is an issue where the forensic accountants should seek the advice of counsel before recording an interview.

The advantages and disadvantages of recording interviews often are debated by professional interviewers. There may not be a right answer that covers every interview situation, but care should be taken if the decision is made to record interviews.

¹ Books and records of a company that may prove useful for interview purposes, depending on the issue, may include such information contained on hard drives, general ledgers, journal entries, competitive bid documentation, vendor set-up forms, vendor master file details, wire-transfer documentation, checks, contracts, accounts payable details, spreadsheet, notes as well as any other original sources of information.

If the decision is made to record interviews, proper and reliable recording equipment is required and a chain of custody for the recordings will be necessary. If recorded statements are used in a later proceeding, the recordings will have to be authenticated and any transcriptions will have to be reviewed for accuracy. While most recording equipment uses a digital format, the digital recordings can easily be altered. Therefore, the original recordings must be retained where a proper chain of custody and retention can provide assurances that the original recording has not been changed. Extreme care should be taken when making work copies of the original recording.

When considering recording other persons, most state laws require the consent of one person to the conversation, but other states will require the consent of all parties in the conversation. Surreptitious recordings also are fraught with significant legal issues. Consideration should also be made to address a situation where a person may bring their own recorder to an interview and insist on making their own recording. Proper planning of the investigation with counsel should address these issues.

It also should be noted that significant improvements have been made in voice-recognition technology. This technology, as it becomes perfected and more widely available, also may present similar legal issues.

B. Who Should be Interviewed

As mentioned previously, it always is recommended that only one person should be interviewed at a time. The interviews usually should begin with neutral witnesses and move to corroborating witnesses. The actual suspects of the case normally are interviewed toward the end of the interview process; however, other options may be considered depending on the nature of the case. In some circumstances, interviews with suspects may be conducted early in the investigation if it appears that evidence may be destroyed, if the suspect is leaving the company, or if threats to other witnesses are being made. Many other possibilities exist where a suspect (or suspects) may have to be interviewed before all

pertinent documents are obtained and reviewed and before other fact witnesses are interviewed.

In most every organization, there are people who are willing to share information if they can remain anonymous. In a number of cases, confidential sources provide information through employee hotlines and anonymous letters. Additionally, former employees may provide valuable information through letters of resignation and exit interviews.

Forensic accountants also should consider that confidential sources of information may have a hidden motive for providing information. Former spouses, business partners, employees, neighbors, and friends may know specific details. However, the reasons for providing such information may be suspect. The confidential source may be providing information that is intended to discredit or embarrass the target. A forensic accountants should weigh the benefits of relying on the evidence against the risk of potential damage to the case if the information proves false. To the extent possible, information received from confidential sources should be corroborated through independent investigation.

C. In Advance of the Meeting

An interview plan and theme should be developed before conducting the actual interviews. Ideally, interviews should be conducted by two people. And, the plan should outline the goals of the interview, who will be the lead interviewer, who will be taking notes, the role of the second interviewer, the subject areas and key points to cover, as well as safety considerations. Presumably, an investigative plan already exists to outline the nature of the case; list of potential witnesses; a preliminary order of interviews; key issues to resolve; appropriate data, documents, and information to obtain; and investigative measures that should be conducted before interviews begin. The interview plan should compliment the investigative plan.

Interviewers should therefore become familiar with the investigative work already completed, and they

should be familiar with documents to be used during interviews. Conducting interviews without appropriate planning or preparation is not recommended, and could lead to confusion and wasted efforts. In addition, in some situations, it may be necessary for the forensic accountants to review the interview plan and preliminary questions with legal counsel.

Interviewers also should honestly assess their own strengths and weaknesses to determine if they are properly prepared and capable of conducting the interviews.

III. Conducting an Interview

A. Who Should be Present at the Interview

Thought should be given to who should be present at the interview. Depending on the type of witness or where in the investigative process, an attorney representing the company may want to be present. Regardless, the ideal situation would be to have two interviewers who conduct the interviews, one person at a time. In some circumstances, only one interviewer will be present, or the person being interviewed will be represented by an attorney or other company representative. Effective interviews still can be conducted when there are more than two interviewers, although this procedure may lead to confusing results and the loss of control in the interview.

B. How to Begin an Interview

The initial contact with the person to be interviewed is the first, but not last, chance to set the tone of the interview and begin the important rapport-building process. Introductions should be polite and professional, with appropriate handshakes. Other physical contact can be easily misinterpreted and should be avoided. The identity of the interviewers should be disclosed and the identity of the person interviewed and others present should be confirmed.

During the introductory phase of the interview, interviewers should clearly state the purpose, preferably in general terms as opposed to specific terms. The

full identity of the interviewers should be disclosed. The stated purpose should be logical, easy for the respondent to accept, and easy for the interviewer to explain. It should be stated that the results of the interview may also be disclosed to third parties. During the introductory phase of the interview, sensitive questions and emotive words should be avoided.

As mentioned previously, in cases where illegal behavior is suspected, interviews should not be conducted until the client's counsel has been consulted. If it is decided that an attorney will be present during the interview, typically the attorney will begin by giving the witness an *Upjohn warning*. An *Upjohn warning* is a disclaimer issued by an attorney for a company to an employee of the company. In the *Upjohn warning*, the employee is advised that that the attorney does not represent the employee, but rather represents the company as a legal entity.²

In cases where forensic accountants are conducting the interview without an attorney present, the client and/or client's counsel should be consulted to discuss how they prefer the introduction to the witness be made. This is especially the case if the witness is unaware that an active investigation is under way. Sometimes, counsel prefers that witnesses be given an introduction similar to an *Upjohn warning* so that the employee understands the importance and confidential nature of the interview.

Once introductions have been made, interviewers should begin with asking simple questions to put the witness at ease and help to build a rapport. Background questions should include asking their name, address, phone number, title, how long they have been in that position as well as what their duties are. Forensic accountants may also want to consider asking the person being interviewed if anyone has talked to them about the reason for the interview or if allegations have been made.

After establishing a rapport with the witness, the interviewer can probe the witness for the names of other

² *Getting the Upjohn Warning Right In Internal Investigations* by Ivonne Mena King and Nicholas A. Fromherz, March 2006.

potential witnesses, and for documents supporting the witness's responses to questions.

Depending on the issue being investigated, the interviewer may want to gather information regarding the target of the investigation. Such information may include work habits, personal lifestyle, usual activities, as well as any unusual behavior. It also is important for the interviewer to obtain the interviewee's basis of knowledge for his/her statements.

By encouraging longer answers, interviewers can better assess the verbal, non-verbal, and physical reactions of the interviewee in order to gauge baseline reactions. Challenging information and statements at this point in the process is not recommended.

Interviewers should approach sensitive questions very carefully and should not react to statements made by the interviewee. Interviewers should not express shock, disgust or similar emotions. And, interviewers should remain nonjudgmental, fair and objective. While the interviewers are observing the verbal and nonverbal actions of the interviewees, it should be remembered that the interviewers also can demonstrate powerful messages by their own verbal, nonverbal and physical actions.

While initial contact should be polite and professional, it is just as important to maintain firm control over the interview process. The interviewers should be viewed as in charge and with a mission to accomplish, that is, to resolve the pertinent issues. The topic of the interview should be controlled to maintain the parameters of the subject matter. Some interviewees may attempt to wrest control of the interview by omitting key information, offering evasive answers, or engaging in direct deception.

C. Types of Questions

1 Informational Questions

Informational type questions are designed to be non-confrontational and non-threatening. But,

these questions are designed to gather information. Informational questions should be unbiased in nature.

At this point in the interview, questions are used that are unlikely to cause defensiveness or hostility. These questions should be asked to develop facts in the order of their occurrence. Only one question should be asked at a time. Interviewers should be asking straight forward and frank questions while allowing sufficient time for the interviewee to respond. It is appropriate to assist the interviewee to recall events; however, answers should not be suggested. To facilitate recall and responses, the interviewers may consider showing the person copies of data, documents, or information. Questions can be repeated or rephrased for verification and interviewers should make certain that the answers are thoroughly understood. The interviewee should be afforded opportunities to verify and qualify answers. Interviewers should be attempting to separate facts from inferences in their questioning by ascertaining the interviewee's basis of knowledge. In other words, the interviewers will want to determine whether a person is answering a question based on firsthand observation and knowledge, or whether the knowledge obtained from other persons (second-hand information). It also is recommended that interviewers have the interviewee summarize the facts in his or her own words in order to reduce any misunderstandings.

Informational questions examples:

Informational questions are designed to gain an understanding of the events. Questions are asked to understand documents and circumstances relating to the preparation of documents or to understand operations and procedures of an organization from the perspective of the interviewee. Informational questions should be non-accusatory, for example: "part of my job is to prevent and uncover waste, fraud and abuse. You understand that, don't you?" "Where do you think the company is wasting assets or money?" "Where you think the company is vulnerable to someone abusing his/her position?" Note that these also are examples of open questions that call for a narrative response. If documents are shown, interviewers should include the documents

with the notes and reports of the interviews. The forensic accountants also may want to consider obtaining photographs of other persons who may be mentioned during the interview. This may become important in situations where there are more than two people with the same name; where there are family members with a senior or junior after their names; or in situations where the identity of a person is in question.

2 Open Questions

Open questions are questions where yes or no answers are not appropriate, and may need elaboration. Open questions encourage a monologue and narrative type response. Examples of, open questions are questions that start with “what ...”, “what about ...”, “how ...”, “could it be ...” etc. With open questions, the interviewers are encouraging an orderly and continuous account of an event or incident, and the interviewee is offering a free narrative. This technique is used to get a quick summary of what is known about a matter. When an interviewee is offering a narrative or explanation, interviewers should not interrupt the process. Important clues often are obtained by allowing the interviewee to narrate a series of events. In addition, the interviewers can begin the “norming” process by observing how the interviewee is reacting to the statements. Open-ended questions always are encouraged to keep people talking; however, most interviews will use a combination of open and closed questions.

3 Closed Questions

Closed questions are designed to require a precise answer, usually “yes” or “no.” As examples, closed questions can be used to establish dollar amounts, dates, times and locations. Closed questions should be avoided during the informational part in an interview where rapport building is important. However, such questions can be used extensively during the conclusion phase of the interview. Keep in mind that a series of closed questions may tip the hand of the interviewer by revealing information about the subject matter. An overuse of closed questions also can expose the knowledge and tactics of the interviewers, which may not be desirable.

4 Leading Questions

In contrast, leading questions are questions that contain an answer as part of the question. Leading questions can be used to confirm facts that already are known. By answering well-designed leading questions, the interviewee is confirming information by answering the question. An example of a leading question would be “When you made the cell telephone call to your boss, what did he say to you?” Leading questions often are not allowed in courtroom situations, but they can be an effective technique during the interview process.

5 Double-Negative Questions

Double-negative questions should be avoided. This is because they are confusing and often suggest an answer opposite to the correct answer. Complex questions are questions that cover more than one topic. These questions can lead to confusion and require more than one answer. Therefore, they should also be avoided. An example of a poorly worded question is: “Since you did not have neither the address nor phone number, what did you do?”

6 Attitude Questions

Attitude questions are those in which the attitude of the interviewer is conveyed by the structure of the question. An example would be: “Can you explain why we have heard contradicting answers to the same question?” The attitude of the interviewer can be conveyed by a tone of voice or by intentionally altering body language exhibited by the interviewers. However, interviewers should not unintentionally exhibit internal emotions through their own verbal, non-verbal, or physical behavior.

7 Admission Seeking Questions

These types of probative questions will be addressed in more detail later on in Section V. Getting an Admission.

D. Question Sequence

It usually is best to seek general information before seeking details about a matter under investigation. A variation of the concept is to reach backward with the

questioning. This would mean that interviewers would begin with known information and then move into that which is unknown.

Skilled interviewers easily will move between a combination of methods. Effective interviewers will develop skills and confidence to move between open and closed questions to advance the information gathering process. At the same time, effective interviewers avoid confrontational and emotive phraseology that may lead to a termination of the interview.

To stimulate a desired answer or impression, an interviewer can direct the interview toward a specific point using a controlled answer technique. An example would be, "I understand you were present when ...". Another example would be, "Because you were not involved ...".

Effective interviewers also will remain impartial and avoid polluting the interview by injecting their own opinions and emotions.

E. Note-Taking during the Interview

It is recommended that each interview is treated separately in the note-taking and report-writing process. The lead interviewer should focus on the responses to questions and maintain eye contact to better assess the verbal and nonverbal responses from the interviewee. The interview partner should be taking extensive notes and be prepared to ask additional questions. It is appropriate to carry a list of issues that should be asked and resolved during the interview. However, using a list of questions usually is not recommended as this would tend to interrupt the natural flow of the information exchange process. If proper listening and observation skills are deployed, interviewers will be able to ask logical follow-up questions upon hearing the responses from, and observing the behavior of the interviewee.

While taking notes, the interviewers should be writing down pertinent facts. If the statement is relevant, it is appropriate to write the statement made by using

quotation marks. But the note-taking process should not slow the interview process. The personal opinions of the interviewers should be omitted from the notes and the final reports.

F. How to Conclude an Interview

In closing, the interviewers should try to close an interview on a positive note and leave the door open for additional contact. Facts should be summarized and the interviewee should be encouraged to say whatever he/she desires. Closing questions can be designed to elicit information about other witnesses or documents that may be useful in the ongoing investigation. Interviewers should leave a business card and contact information with the witness. That way, the witness can reach out to the interviewers to mention something they may have forgotten during the interview or if at a later date they decide to provide additional information. In many situations, a thorough interview will identify other facts and circumstances requiring further investigation, which may lead to additional questions that were not covered in the first interview. Therefore, it is desirable to leave the interview on a positive note so that additional contact is encouraged.

IV. Detecting Deception

During the initial part of the interview, interviewers likely will ask open and general questions to encourage an open dialogue with the witness in order to assess a baseline of behavior. During this process, interviewers should not stare at the person being interviewed or call attention to a person's behavior. Interviewers should be observing the timing and consistency of behavior and should note clusters of behavior. Caution should be exercised to avoid misinterpretations of behavior because of nervousness or stress that would be present in a normal interview type situation. Interviewers should also be aware of cultural differences that may lead to a misinterpretation of verbal and nonverbal reactions. In looking for signs of deception, interviewers should be measuring and assessing a person against themselves. If a baseline of verbal and nonverbal behavior can be obtained, decisions can be made as to whether physical reactions are signs of deception.

Lying produces stress that is often manifested in involuntary verbal, non-verbal or physical reactions. In many instances, a person who decides to engage in deceptive answers will begin with omitting important information, known as lying by omission. Lying by omission produces less stress and is more difficult to identify through observation. Deceptive persons may also attempt to mislead interviewers by vagueness, by insincere lack of memory, or by attempting to move the interviewers into other areas by not directly answering questions. If lying by omission or intentional misdirection is identified, interviewers are then challenged to identify the deception and press for more information. Then, deceptive persons have to make a decision about continuing the deception, or answering questions truthfully. If a deceptive path is selected, then stress increases and the chances of identifying verbal, non-verbal, or physical reactions to stress are increased. These concepts reinforce the need to properly prepare for interviews and underscore the importance of leaving interviews on a positive note to enhance the possibility of further interviews. On many occasions, the deceptive answers are not discovered until further along in the investigation.

Examples of the verbal clues of deception include changes in speech patterns such as speeding up or slowing down, talking louder, talking softer, coughing or clearing the throat. People who often make internal decisions about whether to deceive the interviewers will repeat questions. In addition, there may be comments regarding the interview such as complaints as to the location and time of the interview.

Witnesses may provide false oaths of honesty. Examples would be "I swear to God." Or, they may offer character testimony such as "You can check with my wife or minister." A person engaged in deception may answer a question with another question or may be overly respectful toward the interviewers.

Persons engaged in deception may sometimes exhibit certain behaviors that may be an indication of deception. For example, interviewees may make dismissive motions with their hands in response to key questions, or place their hands over their mouths as if

disguising or hiding the answers. Other verbal clues of deception may also include a reluctance to terminate the interview. This is because the interviewee may want to convince the interviewer of their innocence.

Interviewers should look for involuntary physical actions that may result from the body relieving itself of stress created by intentional deception. Examples include excessive motions with their hands, picking lint off their clothing or playing with objects while attempting to answer questions. Deceptive behavior may be exhibited by a fleeing position described as the upper body facing the interviewers while the feet and lower portions point towards the door. There may be excessive crossing of arms and other physical reactions to evidence being presented by the interviewers. Interviewers continually should assess behavior and compare the behavior toward a baseline established in the early parts of the interview. Other nonverbal clues can include closing the mouth tightly, pursing lips, covering the mouth with a hand, biting the lips, excessive blinking of the eyes, and chewing objects.

If the interviewers come to believe that the interviewee is engaged in deception, efforts should be made to discover the reason for such deception. Identifying the point in the interview where the deception started can yield valuable clues as to why a person is choosing deception over telling the truth. The interviewers should try to identify what triggered the change. The motive for deception becomes an important issue to resolve with further questioning. It is possible that the person is being deceptive to aid himself or herself, or it may be possible that the person is protecting someone else. Other reasons may include that the witness has been threatened with retaliation, or that the person is hiding certain behavior such as an illicit affair.

More experienced criminals may not exhibit some of the deceptive verbal or nonverbal behaviors mentioned previously. This is because they may be aware that interviewers are looking for such indicators of deception. These days, information can be found on numerous websites by searching terms relating to deception/ interviews. These websites describe and discuss these same physical, verbal and non-verbal signs of deception.

With this knowledge, it is entirely possible that experienced criminals can further disguise their activity or even manipulate the interview process.

V. Getting an Admission

Although many white-collar criminals do not equate themselves with common criminals, it is nonetheless important to get them to admit to the behavior in question. In these instances, it may be easier to obtain a statement since many white-collar criminals may not believe that such behavior is criminal. This especially is true if they have not personally or directly benefitted from committing such acts. However, if the target personally has benefited from committing the fraud (e.g., in cases where the target has stolen company funds), obtaining a confession may not be as easy if the target is an experienced criminal. Many con artists are eager to talk to interviewers and consider the inevitable interviews as additional challenges in their schemes. Their confidence comes from fooling victims and investigators. Interviewers need to discover information that offers interview leverage over the con artists.

Dealing with experienced con artists presents unique challenges to interviewers. These people tend to be charming and confident, while exploiting the trust and greed of their victims. They generally are intelligent, confident and experienced liars. Con artists will be sizing up the interviewers as well. They will tend to explain their conduct as a misunderstanding between themselves and the victims. They often use language that interviewers may not understand, and they do not fear interrogation. They often mix a degree of truth into their actions and they are familiar with questions that will be asked by the intended victim. They are able to produce impressive sounding facts and figures while concealing the fraud.

To meet the challenges of interviewing experienced criminals, forensic accountants should document and review the details of oral and written representations made to victims, any audio recordings made and previously existing interviews. Interestingly, the skills exhibited by con artists to cover up crimes actually

create vulnerabilities that can be exploited by equally skilled forensic accountants. By investigating and documenting previous crimes and efforts to conceal the crimes, forensic accountants can begin to establish a pattern of lying and cheating. Many con artists have committed previous frauds, and they have used similar false explanations.

Therefore, forensic accountants should become very familiar with the con artist before an interview. If the suspected con artist is working for a particular organization, employment applications should be thoroughly reviewed. Employment applications often will contain misrepresentations that can be used to create interview leverage.

Other sources to be considered are public databases, arrest records from local courts, the State Attorney General's office and the Better Business Bureau. If possible, financial transactions should be thoroughly reviewed and investigated before confronting an experienced con artist. Understanding how money was transferred from the victim to the subject and documenting the paper trail will give the interviewer an advantage. Absent this information, the advantage in the interview rests with the experienced criminal.

Reviewing public-source information, obtaining information about previous cases and reviewing prior interviews, can all help a practitioner begin to establish a pattern of conduct. Again, a pattern of fraudulent conduct or a pattern of cheating creates interview leverage against the con artist. By establishing a pattern of lies, false representations and fraudulent documents, the forensic accountants can better address the criminal-intent issue.

Many self-confident con artists will want to talk in order to obtain knowledge of how much a forensic accountant knows. Experienced criminals will be confident in their abilities to deceive and engage in their own questioning process to elicit information. In these situations, the interviewer should be very patient and allow for the subject to offer details in their explanations. Forensic accountants should not reveal their knowledge

in the interview, and should be thoroughly documenting the representations in the notes.

Interviewers also may want to consider the possibility of multiple simultaneous interviews with witnesses and potential suspects, as opposed to single interviews. Regardless of well-intentioned admonishments to the contrary, many people will talk about an interview with friends and associates. After the interviewing process begins, those persons who may be engaged in a conspiracy will want to talk to each other in order to get their stories straight. While manpower intensive, multiple simultaneous interviews may prevent this occurrence.

Interviewers will need to develop skills to keep the interview moving forward even if deception is chosen by the interviewee. The deception can effectively be used later as the investigation progresses and the interviews continue. The self-perceived advantages of the con artist can then be turned around and used against him or her. The con artist's self-assurance toward deceiving victims and investigators can lead to his or her downfall when information is properly handled by interviewers.

Admissions Seeking Questions:

If decisions are made to proceed with confronting people with information detrimental to their best interest, the interview should be conducted with extreme care. In this phase of the interview, accusatory questions will be asked. Decisions will have to be made in advance as to whether this interview will be arranged in advance or will be unannounced. Each procedure has its advantages and disadvantages and careful consideration should be made when making these decisions. An unannounced interview can be advantageous because persons will not have had time to prepare responses to questions. The tactic can be effective with inexperienced persons committing fraudulent acts. However, experienced criminals have been known to plant their defenses as the schemes are perpetrated. And, these people often will be well-prepared for the confrontational interview. Again, safety considerations should be considered when deciding the appropriate approach.

As mentioned previously, interviewers should consult with legal counsel before the interview to discuss potential legal ramifications. This is especially important when planning to interview a potential target. If a person clearly asks for an attorney, the questioning must stop. The exact words used by the person to ask for counsel and the time of the request should be recorded in the notes.

Desks located between interviewers and interviewees can be barriers to communication. Under ideal circumstances, the interview room can be arranged so that the entire body of the person being interviewed is observed. It is generally recommended that the person being interviewed have access to an exit, as opposed to the exit being blocked by the interviewers. Keep in mind that the nature of the interview may be reviewed by judges and juries in the future. For statements to be admitted, a judge will have to be satisfied that the statements were made on a voluntary basis without threats or coercion. The interviewers may be asked to describe the settings of the actual interview in order for other persons to determine if the questions were obtained voluntarily.

If it appears that a confession is possible, interviewers may want to consider discussing minor issues discovered during the interview that the interviewee and interviewers can agree about. It is much easier to confess to minor issues. Afterwards, interviewers can move toward more significant issues.

Open-ended questions always are encouraged to keep people talking. However, most interviews, as mentioned previously, will use a combination of open and closed questions. Keep in mind that a series of closed questions may tip the hand of the investigator by revealing information about the subject matter.

In an admission-seeking interview, the interviewers will use direct accusations in a statement that is not in the form of question. For example, an interviewer may ask: "Our investigations have established that you ..." At this point, observations are made as to the reaction to the statement. The interviewers will interrupt alibis and denials offered by the interviewee. It is not

appropriate to argue at this point, but it is appropriate to attempt to reason with the person being interviewed. Interviewers may want to establish a rationalization with the person being interviewed and to take this opportunity to discuss motives being offered. It may be appropriate to display physical evidence during the admissions-seeking interview and to obtain explanations from the interviewee. It may be appropriate to discuss other witness statements, to discuss the session and information uncovered during the interview, and to thereafter present an alternative for consideration by the person being interviewed. After covering the explanations offered by the interviewee, interviewers will want to obtain information about how such acts were perpetrated. For instance, if money was stolen, how the proceeds were distributed, the location of assets purchased with the stolen proceeds, as well as assets in general. The specifics of each offense should be obtained, and consideration should be given to whether written statements will be prepared.

Interviewers will be looking for a benchmark admission, which would be the first time that a person is admitting to misconduct. If a benchmark admission is obtained, it should be recorded during the note-taking process, to be later memorialized in the written report. At this point, leading questions may be employed to confirm known facts, to reinforce a rationalization, with the goal of obtaining a verbal confession. If a person begins to confess, interviewers want to elicit information to demonstrate that the accused person knew that conduct was wrong at the time of commission. Sometimes, persons who have been coached will deny that they knew the conduct was wrong at the time that they were performing the act in question. This knowledge is very important when trying to establish intent, which is an element of fraud. Without intent, fraud cannot be committed. The interviewers also will want to obtain facts for independent verification that are known only to the person. Proper questioning should establish when the offense was committed, when the offense ended, other persons involved, and other physical evidence to be obtained. Therefore, investigators will have established the initial point of fraudulent conduct as well as when the conduct ended.

Interviewers should ask and carefully document the voluntariness of the confessions. And, interviewers should ask questions concerning the state of mind of the perpetrator at the time the offense(s) occurred. Information concerning medical conditions, alcohol use and abuse, drug use and abuse, depression, and threats or coercion should be documented.

It also is important to remember that although the witness may eventually confess, in many instances the confession may not be complete or totally accurate. Remember, if someone is deceptive by his or her very nature, that person may not be completely truthful. Corroborating evidence and additional interviews may be required to substantiate the confession.

VI. Documenting an Interview

Written records of an interview should be prepared as soon as possible following the conclusion of the interview. It should be determined if original notes should be retained. Law-enforcement officers generally are required to retain original notes. The notes may be requested by opposing counsel pursuant to discovery requirements. It is recommended that narrative reports be written in third person. A third-person account is where the interviewer is stating his or her recollection of the events of the interview. The report should contain the date, time, location and persons present during the interview. An interview log is a good way of recording the times of significant events during the interview. As an example, the interview log may record when the interview commences, times of significant events during the interview such as breaks, telephone calls, and refreshments, and the conclusion of the interview. Written reports should be thoroughly reviewed and compared to the original notes.

Keep in mind that written records and written notes may be disclosed to opposing counsel in the future and interviewers may be questioned about the contents of the report and notes. For example, if information is contained in the written report that is not in the original notes, an explanation may be required. Conversely, if information is contained in the original notes that is not in the written report, additional questions may be asked. It generally is not required for a written report to match

the notes. For example, a written report may state events in chronological fashion where interview notes may show variety of questions in a different order. The point is that persons conducting interviews and taking notes should anticipate questions in the future.

VII. Safety Concerns

Forensic accountants and other accounting professionals have more interview training opportunities than ever before, and interview safety often is overlooked. As more fraud schemes are being uncovered, professional accountants by virtue of their knowledge of the books and records, and the operations of an organization, are understandably relied upon to assist in fraud investigations. Fraud-related engagements make the chances of encountering a fraud suspect or suspects more likely. However, many engagements may not start with the anticipation of discovering fraud. The fact-finding process can quickly turn into a fraud matter thereby changing the dynamics of contacts and interviews. As always, advice of counsel should be sought if allegations of fraud are discovered during an engagement, especially if the accountant has little or no experience in conducting a fraud investigation.

While violence against accountants does not occur often, it has happened on occasion. The rising frequency and severity of such workplace violence is disturbing. It is getting increased media attention and it is becoming the subject of more formal studies. It is not surprising that workplace violence has resulted in a number of injuries and fatalities across the United States. Statistics confirm that, on many occasions, the perpetrator directs the violence to those he or she feels is responsible for taunting, disciplining or dismissal. It is worth noting that many perpetrators will resort to extreme violence when finally being overwhelmed by circumstances. However, the events leading to their angst have been building over time.

Trained law-enforcement officers know that encountering violence in financial crime investigations is less frequent than in other types of investigations, but it can occur. Knowing this, it is very easy to be

lulled into complacency when dealing with white-collar crime witnesses and suspects. But, just as there is no routine car stop, there should also never be a routine interview when dealing with potential fraud. Consider that persons committing fraud will know if the person asking the questions is a law-enforcement officer armed with a weapon, handcuffs and arrest powers. That same suspect also will know that a forensic accountant is not. Therefore, recognition and reduction of risk becomes important.

If a forensic accountant has reason to believe that the interview may become hostile, care should be taken to ensure that the person being interviewed has access to an exit that is not blocked by the interviewers. This is a safety consideration. But, it may also be a consideration to demonstrate the voluntary nature of statements.

A. Prior to the Interview

Much can be done before an interview to identify and reduce potential risks in an interview situation. Professional accountants typically are skilled in documentation, accuracy and preparation. These same skills can be used to reduce risks in the interview process. Consider the following recommendations:

1 Traveling Outside of the Office

If traveling outside the office, it is recommended that someone at the home office know the date, time, and location of the interview, who is participating, and the expected time of return. It is also recommended that a description and license number of the vehicle being driven to the engagement also be left at the office.

2 Contact Information

A contact telephone number at the destination with personal cell phone numbers should be left with someone at the home office. Before leaving the office, a quick check will determine if your cell phone is operational and charged. If possible, you should know whether your cell phone has coverage at your destination. In the event of an emergency, a 911 operator will want to know immediately the full

names of persons involved, approximate ages, physical descriptions, clothing descriptions, vehicles and license numbers, cell phone numbers, full addresses of locations involved and other relevant data.

3 Interview Partners

Avoid situations where you are asked to meet a person alone, particularly if the person is not well known to you. Having a second person as a witness during an interview is recommended for practical as well as safety reasons. A coworker as a witness may also reduce the chances of false accusations of misconduct.

4 Locations

If possible, the interview should be conducted in business locations during normal business hours where other persons are on the premises. Interviews in hotel lobbies may be appropriate, but interviews in hotel rooms are probably not. Interviews in bars, parking lots and private vehicles should be avoided. Use of alcohol during professional engagements should be discouraged. Interviews in private homes can be appropriate if the interviewee is known and trusted, but this situation should still be viewed with caution. Interviews in government buildings will offer screening devices that provide assurance that firearms and other weapons are removed. Interviews in your home office conducted in a room with furniture arranged to enhance safety as well as effective communication should also be considered.

5 Identity of Persons Contacted

If you are unfamiliar with the person being interviewed, ask for a business card. View the business card carefully and retain it for your records. Always ask for full names, addresses, contact numbers and job descriptions and try to gather this information in advance when arranging a date and time for a meeting.

6 Dress and Demeanor

An interviewer and partner always should be appropriately dressed and conduct themselves in a courteous and professional manner. Avoid disclosing personal information about yourself during the interview.

7 Trust your Instincts

While you cannot conduct a thorough background check on the person being interviewed, a date and location of an interview can be changed if your feelings lead you to believe that something is amiss. If you're uneasy, take control of the situation until a comfort level is reached. It is easy to explain changes by saying that company policy dictates the circumstances of the interview.

B. During the Interview

1 Awareness

The vast majority of contacts by professional accountants will proceed without safety problems. However, our awareness and skepticism should continuously increase as we move closer to the subject of fraud. Remember, many fraudsters have been concealing a scheme for long periods of time and you may be viewed as an immediate threat to their plans.

2 Interview Location

When first entering a room to be used for an interview, take mental notes of the layout. In the event of a problem, is there a potential escape route available? Try to avoid situations where an angry person may strike or be in reach of other physical objects that can be used to harm. Also, if an interviewee becomes angry, does he or she have an escape route that does not involve going through you? Also consider having a table or other piece of furniture act as a barrier between the forensic accountants and the person being interviewed if it is likely that the interviewee may become hostile. Take mental notes of objects in the room that could be used as weapons against you, or that you may use to protect yourself. Think telephones, objects on desks and tables, lamps, small chairs, etc.

3 Physical Red Flags

During an interview, be aware of behavioral reactions that may indicate stress, uneasiness, or even anger. Increased perspiration, dryness of the mouth, and cracking of the voice can be indications of internal turmoil as well as other potential signs of deception.

4 Verbal Red Flags

If you listen carefully, a person under stress may provide clues to potential outbursts. Your concern should intensify if the person being interviewed makes comments about violence, excessiveness, drug use, depression, abusive relationships, anger, resentment, financial problems or threats.

5 Admissions and Confessions

A person confessing to misconduct may view his or her world as falling apart and may see the persons in the room as bearing some of the blame for the situation. Depression and anger are common in these circumstances and they may influence the thinking of the person confessing to improper conduct. Many people have expressed relief while calmly confessing to serious misconduct, but do not be fooled into complacency. As an example, a person being treated for depression may have the benefit of powerful drugs to control mood swings. What if the medication was not taken that day? Also consider that if you arranged this interview in advance, the person may believe that he or she will be confronted with incriminating information, thereby raising the interviewee's anxiety level. The forensic accountants, as the interviewer, will most likely not know this before arrival. It is important to trust your instincts. Do not put yourself in situations where you feel uncomfortable.

VIII. Dos and Don'ts of Interviewing

Dos:

- (1) Consult counsel once allegations are made.
- (2) Prepare and discuss an interview plan or theme.
- (3) Conduct one interview at a time, unless the situation dictates otherwise.
- (4) Arrange a safe and private interview location.
- (5) Gather and organize pertinent documents before the interview.
- (6) Obtain information concerning the person being interviewed before the interview.
- (7) Exhibit courteous and professional appearance and behavior at all times.
- (8) Be punctual.
- (9) Conduct the interview with more than one person.
- (10) Establish rapport during initial contact.
- (11) Maintain control in the interview.
- (12) Close on a positive note for future contacts.
- (13) Prepare reports as close as possible to interview.
- (14) Listen to your instincts.

Don'ts:

- (1) Conduct interview without a plan of action.
- (2) Fail to discuss the interview with partner.
- (3) Argue with interviewee.
- (4) Lose objectivity during the interview.
- (5) Become judgmental during a confession.
- (6) Include personal opinions in notes or written reports.
- (7) Provide promises or assurances.
- (8) Threaten interviewee with disclosure of interview results, discipline, or job security.
- (9) Discuss interviews with anyone outside of the investigation.



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