

Investigative Interviewing: The Accuser and the Respondent

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Interviewing the Complainant and Respondent

Fran Sepler

1. The investigative interview is a multi-purpose process
 - a. The investigator is attempting to ascertain facts
 - b. The investigator is attempting to assess credibility
 - c. The investigator is attempting to **generate** credibility for the process
 - d. The investigator is attempting to create trust
 - e. The investigator is attempting to assist the interviewee in transiting through the three stages of explanation
 - i. My side
 - ii. The facts
 - iii. The truth
2. The stages of an investigative interview
 - a. The ABC Stage: Administrivia, Baselineing and Connecting
 - i. Establishing the basis and goals of the investigation
 - ii. Documenting that the “rules of the game” have been accurately conveyed
 - iii. Developing rapport
 - iv. Baselineing the truth (can use participatory accusation at this point in respondent interview)
 - b. The Uninterrupted Narrative
 - i. Evoke everything they can remember about the alleged incident or incidents
 - c. Reconstruction
 - i. Careful use of the “w” questions
 - ii. Demonstrations and site visits
 - iii. Maps and outlines
 - iv. Drill down for details
 - d. Deconstruction
 - i. From softest to hardest
 - ii. Inconsistencies, gaps and inherent credibility issues
 - iii. Use of varied questioning techniques
 - e. Recapping to ensure notes are accurate
 - f. Closing and Managing Expectations
3. Within the framework, there are certain techniques that can be helpful for dealing with various situations.
 - a. The “funnel technique” to facilitate an uninterrupted narrative.
 - i. BWOEQ
 - ii. Work your way down the level of detail to elicit the narrative with the least specific prompt necessary.
 - b. The use of silence

- i. When one is dealing with a witness who is not forthcoming, silence can be used to promote more communication. The average person expects no more than seven seconds of silence during a conversation.
 - ii. Silence can also be used to control a witness who believes they are controlling the conversation.
 - 1. The investigator looks expectantly at the witness.
 - 2. The investigator must outwait the witness.
- c. Non sequential questioning
 - i. When dealing with a witness who is comfortable and engaging in deflection, an investigator may want to put the witness “off balance” to recalibrate the rhythm of the interview and to test credibility.
 - 1. Move to the next “chapter” or stage of questioning.
 - 2. Use assertive vocal tone.
 - 3. Do not become visibly enervated or excited.
 - 4. Continue with the new line of questioning OR revert to the previous, depending on the answer.
- d. Cognitive interview technique
 - i. Recommended to test credibility and to overcome advocacy perspective
 - 1. Ask for a description of event including sensory information such as lighting and temperature. Ask the witness to recall their emotional state at the time of the event. Press for details.
 - 2. Change perspective. Ask the witness to recall the events in reverse order, starting from the middle of the event, or ask them to recount it from the perspective of another person present or from a different position.
- e. Question types to use to establish credibility
 - i. The “kind to do it” question or the “why would someone...” question
 - 1. What kind of person do you think would engage in that kind of behavior?
 - 2. Why do you think someone might do that?
 - a. Watch for rationalization or evasion from the culpable.
 - ii. The “why would they say...” question
 - 1. Why would others say they think you did this or they saw you do this?
 - iii. The “what would you say” question
 - 1. If the person who did this was standing right here, what would you say to them?
- f. The “Participatory Accusation.”
 - i. Useful for policy violations and to establish dishonesty or ignorance
 - ii. Uses misdirection to avoid direct accusations.
 - 1. Ask about a variety of policies, the witnesses’ understanding of the policies, the way they comply with the policies.

- a. Look for lack of clarity or misunderstanding OR clarity and understanding regarding the policy in question.

4. Other considerations in interviewing

- a. Mirroring pitch and body language
- b. Using proxemics (from social to intimate distance)
- c. Strategic use of breaks
- d. Praising forthcomingness
- e. Self-deprecation
- f. Misdirecting

Special Issues in Interviewing the Respondent

Although it was said earlier, it bears repeating that one of the things an investigator must keep in mind when interviewing a respondent is that in employment investigations, *it is more likely than not that the respondent will continue to be employed by the organization*. An employer, therefore, has every interest in ensuring that the investigation— and each interview—is conducted with an eye toward fairness and treating each individual with dignity and respect. An investigator must do so while skillfully seeking information in a manner that will get to the truth.

Because an investigator is a neutral party, every effort should be made to follow the same process of interviewing with the respondent as with other parties; developing rapport and creating an environment of trust is extremely important. The investigator should imagine what it might feel like to be brought into an interview knowing that one's livelihood is on the line. The proper demeanor for an investigator dealing with a person accused of wrongdoing is sincerity and openness—sincerity about the fairness of the process, and openness to receive information that may disassemble the investigator's prior thesis about what has happened.

When interviewing respondents, it is best to avoid closed-ended questions until stage four.

Although the investigator may believe him- or herself to be thoroughly familiar with the facts, it is appropriate to allow the respondent to “tell his or her story” as completely as anyone else has. Therefore, asking questions such as, “Is it true that you...?” or “Were you at...on this night?”

can be counterproductive when the questions should be wide open: “What happened?” or “Can you tell me what you remember about...?” Rushing to the narrow end of the interview “triangle” can actually compromise the fairness and integrity of the investigation, as it does not allow for unknown facts to emerge.

Another reason for delaying a confrontational stage in the interview is the opportunity for the investigator to determine whether the respondent intends to be forthcoming. A respondent who states, “I know why I am here, and I admit what I did, but I’d like to offer an explanation,” may be handled in a qualitatively different way by the decision-maker than one who lies, distorts, or resists telling the truth.

Ultimately, every investigator will have to reach the fourth stage of the interview in which the respondent’s version of events will be challenged. Here there are several unique interview dynamics to think about: *denials*, *counterclaims*, and *admissions*.

Dealing with denials: Denials come in a variety of forms—*simple disputes about facts, claims that the respondent or witnesses are lying, and lack of recollection.*

Disputes about facts: In the first case, disputes about facts or context, the proper way to handle the denial is to seek a full explanation from the respondent about what *did* happen.

Jane’s subordinate, Kara, has accused Jane of unfair treatment, claiming that while Kara has been disciplined for making personal telephone calls and eating at her workstation, John, her

coworker has done both and not been disciplined. Kara has enumerated one specific instance of an extended personal call made by John, and a separate instance of his eating at his station.

Jane is asked about the policies and states that she is consistent in enforcing the policies against eating or talking on personal calls. She affirms that she has disciplined Kara and denies that she has failed to discipline John. Jane produces a disciplinary memorandum written to John regarding the extended phone call Kara referred to, pointing out that Kara would have no reason to know whether John was disciplined or not. She reports that John, like Kara, was given a verbal warning in response to eating at his desk on the date in question, pointing out that Kara has received a written warning because she has been caught eating at her station twice.

Making note of the respondent's version of events, soliciting corroboration for the respondent's version, and on occasion, re-interviewing the complainant in light of the respondent's version is the proper course of investigation when dealing with disputed facts.

Declaring the charges false or malicious: In some cases, the respondent does not dispute facts or context but declares that the event, situation, or behavior was completely or partially fabricated. This is most common in instances that involve one-on-one behavior where there are no witnesses to support either claim.

Paolo has filed a complaint that his supervisor, Kevin, has been treating him unfairly, and that most recently, when Paolo objected to being omitted from a project team, Kevin became angry and called him a "faggot." Paolo has provided a detailed description of the conversation, describing Kevin's face becoming red and his voice becoming tense. Asked about the

conversation that took place, Kevin recalls the conversation becoming “heated.” Asked to describe how “heated” it was, he acknowledges that he probably raised his voice and might have used profanity. The investigator inquired into the types of profanity he recalls using, and he states that he does not specifically recall, but that he might have “sworn.” When confronted with the allegation that he called Paolo a “faggot,” Kevin became extremely upset and indicated “that is a completely concocted allegation. I would never, ever use that term here or anywhere else.”

There are several ways to respond to a flat denial or accusation that the respondent is lying. One is to ask the respondent to explain why the complainant might have a motive to fabricate, and also to inquire as to whether the respondent has ever had any other experience with the complainant making false statements. A second, riskier but potentially productive strategy might be to ask a question as a hypothetical, such as, “If I were to inquire of others who have experience with you, would they support your contention that you don’t normally make such references?” This question is based on a theory that certain misconduct, such as use of racial or other slurs, is repetitive behavior and can often be established to be a pattern or practice rather than an isolated event. In limited cases, an investigator might want to press the credibility of the respondent by asking, “Would you still deny using the term if I told you others had heard you say the same thing?” Finally, the investigator might challenge the respondent directly: “You admitted that you probably used profanity, but you don’t remember what profanity. Is it at all possible that you ‘slipped’ and said ‘faggot’?” These latter strategies are clearly to be saved for the end of the fourth stage of interviewing, as they are highly confrontational and can create an adversarial tone to the interview.

Forgetting: “I don’t remember” may be one of the most common answers investigators get to their questions. People do forget things, particularly things that don’t necessarily register on their personal radar. Thus, witnesses who genuinely wish to be cooperative may actually not remember something because it was not relevant to them at the time it occurred—particularly if the subject they are being asked to recall was not distinctive in any way, such as when someone arrived at work or whether someone went into someone else’s office. Claims of forgetfulness become more suspect, however, when unusual or distinctive events and behaviors are part of the query, and even more suspect when those behaviors would have been the respondent’s own.

The bank president recalled the holiday party, the entertainment, and who was there. He remembered leaving the event at approximately 11:30. When asked if he encountered an employee in the parking lot and kissed her, he stated, “I don’t remember.”

Not remembering incidents that should have been memorable, rather than denying such incidents occurred, should be treated as a likely form of evasion. Follow such a statement of forgetfulness with questions regarding the individual’s capacity to remember: Does this person not remember because he or she is or was impaired in some way? Is the conduct so usual and frequent that it was not distinctive? What *does* he or she remember about the incident or event? Ultimately, the investigator should confirm with the respondent that he or she has not denied the conduct, and therefore is stating it is possible that what was alleged did happen. If the respondent agrees with this, it is best to move on and to return to the line of questioning when more context has been attained.

Counterclaims: Counterclaims can be made by respondents who are denying or admitting conduct. The timing and nature of a counterclaim can inform an investigator about the credibility of a respondent. If, for instance, a respondent is asked about his or her relationship with the complainant, and states that it is positive and professional and full of mutual respect, then later, after hearing the allegations, makes counterclaims to the contrary, this inconsistency should be noted for purposes of assessing the respondent's overall credibility.

Some counterclaims are made to "even the score."

Harry was accused of telling inappropriate jokes and making sexual comments to his coworker, Janis. When asked about the climate on the work floor, he reported that such behavior was common, and he would engage in such banter himself. Harry is anxious to explain to the investigator, however, that no one has a sense of humor that is smuttier than Janis's, and she is usually the instigator of such behavior. "If I'm going down, then so is she," says Harry to himself.

When receiving such a counterclaim, the investigator should acknowledge the information, thank the respondent for it, and state that it will be useful once the respondent's own conduct has been reviewed. After allowing the respondent to provide his version of the claims under investigation, a second interview structure should be started, with a statement such as, "Earlier in the interview, you made a point that Janis has behaved in conduct that you believe was similar that the conduct you've been accused of. Can you tell me about that?" The interview would then follow the

normal, inverted triangle process of any other interview, making the overall structure of this respondent's interview the equivalent of two complete interviews.

Other counterclaims are made to impugn the respondent or to underscore a respondent's motive to fabricate a claim.

After a request for proposal process, a long-time vendor filed a series of complaints against the director of purchasing, stating that she had manipulated the selection process to deprive his company of several longstanding accounts. Upon being notified of the charges, the director of purchasing stated that she had hoped she would not have to bring the information forward, but that she recently learned that her assistant, who recently left the company, had a longstanding affair with the vendor and had given his proposals favored treatment. Now that the assistant was no longer there, the director herself oversaw the process and found that the vendor nowhere near met the criterion to keep the accounts.

This type of counterclaim normally warrants a return to the investigative planning process, including an examination of the scope of the investigation. The investigator will need to decide whether to launch a separate investigation or to expand the scope of the current one. Should the counter-allegations, as above, be closely related to the initial allegations, it is likely the investigation would be reframed to take a larger look at purchasing practices involving this vendor. At times, however, counterclaims are unrelated to the initial claim (for instance, someone being investigated for fraud accuses the complainant of sexual harassment), which would call for a separate investigation.

Admissions

It is the job of an investigator to assist any interviewee in migrating from wanting to tell “their side” to wanting to tell “the truth.” This is the logic and theory behind the five stages of interviewing, which allows for the interviewee to be fully heard in a supportive manner prior to being challenged. When an investigator has evidence or witness testimony that is extremely powerful, and a respondent continues to deny, it is appropriate for an investigator to press a respondent for the truth. This might take the form of reminding the respondent of the importance of telling the truth, or it might take the form of revisiting all of the evidence that has mounted counter to the version of events provided by the respondent.

“Robert,” says the investigator, “I know you have denied taking the office equipment, but I’ve got to tell you that I’m struggling with your point of view. Let’s go through what I’ve already told you. There is a clear electronic record of your entering the office on that Saturday, and only one other person entered that area that day. Do you agree?” Robert nodded his agreement.

“You accessed your e-Bay account from the workplace, and when we did so with your stored password, we saw listings for equipment of the same kind for sale under your account.”

“I was set up,” protests Robert.

“We have two witnesses who say that the day before the equipment disappeared you were upset with your supervisor and told him he was ‘going to get what you had coming to you one way or another.’”

“I never said that!”

“Robert, this is just not looking good for you. You cannot explain how the equipment got on to your e-Bay account, you were in the office on the date in question when you had no business reason to be there, and you made statements that appeared to suggest an intention to take something from the company. I need to tell you that it is very much in your interest to tell me the truth at this point, because the next step will be a criminal investigation.”

While pressing in this manner will not consistently extract an admission, it can often be persuasive as a respondent sees the heavy weight of the evidence and the inevitable result of the investigation.

Whatever the manner of an admission, the investigator must demonstrate empathy for the respondent. The investigator should thank the respondent for his or her honesty, and acknowledge his or her courage in telling the truth about what happened. It is appropriate to let the respondent know that everything will be done to quickly complete the investigation so his or her future can be more certain.

It is important that the investigator not suggest or imply that telling the truth will result in lesser consequences for the respondent, as this is often not the case. Similarly, the investigator should not in any way suggest what the ultimate determination of the decision-maker might be. Asked “Am I going to lose my job?” the investigator must reply that he or she is not in a position to answer that question, nor would he or she be making the decision as to whether or not the person would be terminated.

Because of the rarity of frank admissions in investigations, an investigator might be inclined to think of an admission as a “win.” The investigator should do everything in his or her power to refrain from telegraphing this sentiment in any manner. In fact, it is a sad moment, often a life-changing moment for the person admitting wrongdoing, and it is certainly an unfortunate situation for the company. The solemnity of the admission should be respected and the individual given an opportunity to conclude the interview with respect and dignity.