



Inside Oversight: Levin Center at Wayne Law Tutorials

SERIES 1 CONDUCTING AN INVESTIGATION

Tutorial: Conducting Effective Interviews

In this video, Levin Center experts offer tips and advice on how to conduct effective interviews in a Congressional investigation.

Instructors

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Transcript

Elise: Hi. I'm Elise Bean, and this is Zack Schram, and we're here to share with you some tips we've learned over the years on how to conduct effective interviews in Congressional investigations. Both of us conducted oversight investigations for Senator Carl Levin on the Permanent Subcommittee on Investigations in the U.S. Senate.

Zack: Interviews can provide critical information about what happened, the significance of particular documents, and the unwritten norms, practices, and relationships at an agency or private sector entity.

Elise: We're not talking here about depositions or transcribed interviews where a stenographer takes down every word. We're talking about interviews where staffers ask questions and take notes on the answers. Our experience is that people provide more information in interviews than depositions, because they are more

relaxed. So we advocate using interviews in most cases. Here are 10 tips on how to conduct effective interviews.

Conduct bipartisan interviews, if possible

Zack: Tip Number One: Conduct all key interviews on a bipartisan basis, if possible. Because interviews can convey a lot of complicated and nuanced information, both sides need to hear the same thing at the same time with the same opportunity to ask questions if they are to reach a consensus on the facts. It just doesn't work when one side has to convince the other side that, in a key interview, they asked all the right questions and got all the information needed. Joint interviews give both sides full access to the same information, usually cover more ground, and help ensure your understanding of the facts matures together. Another benefit is that interview subjects tend to take bipartisan interviews much more seriously.

Develop an interview list

Elise: Tip Number Two: Develop an interview list. To identify possible names, review the most important documents, meetings, and events, and determine who was most involved in the facts. Then put the names in an order that starts with the most junior and ends with the most senior personnel. More junior personnel can provide basic information, may have first hand information about what happened, and can identify the ultimate decision makers, so you want to start with them. It will also ensure you have as much information as possible when interviewing the most senior personnel. Both parties should contribute to the interview list, because reaching consensus on the facts requires both sides to talk to all the people they view as having key information.

Identify the interview subject's legal counsel

Zack: Tip Number Three: If the person you're interviewing will be represented by legal counsel, get the counsel's name and determine exactly who they are representing, whether they represent anyone else in the investigation, and what their legal specialty is, such as civil or criminal law. Contact them beforehand to discuss ground rules for the interview. Find out if they plan to have anyone else attend the interview, and consider whether to limit attendance to just the interview subject and counsel. Make sure employees who work for an agency or corporation under investigation know they can bring their personal legal counsel. Consider barring agency and corporate representatives from employee interviews, so they can't intimidate the employees during the interviews or, if unhelpful facts emerge, later pressure employees to retract their statements.

Write out the questions

Elise: Tip Number Four: In important interviews, designate one person to write out the questions beforehand. Start with basic information, go through the facts in roughly chronological order, and save the most sensitive questions for last, since many people stop cooperating after being asked difficult questions. Be sure to ask about key documents. Writing out your questions beforehand is the single most important step you can take to ensure an effective interview.

Zack: In addition, since everyone is going to hear the questions anyway, we advocate circulating the draft questions to the investigative team on both sides of the aisle beforehand. We suggest letting everyone edit or add to the questions, to ensure all issues are covered. Ensuring all issues are covered will not only build goodwill, but may make reaching bipartisan consensus on the facts more possible.

Elise: We recommend printing and handing out the final set of questions so everyone on staff knows what will be asked in what order, and no one jumps the gun on key questions. You should also prepare multiple notebooks with the key documents, so you have copies for your staff and the interview subject to use during the interview.

Alert the interview subject beforehand

Zack: Tip Number Five: To ensure an efficient interview, alert the subject beforehand to the general subject areas and key documents that will come up. You can provide the information by telephone or send an email with a list of bullet points and document numbers – lawyers call them “bates numbers” – for the documents produced by the subject. It is unwise, however, to send copies of documents that the subject did not produce, since you will lose control over those confidential documents. Instead, you can allow the interview subject to come to the interview early and review those other documents in your office. Informing a subject beforehand about the key issues and documents will make it harder for the subject to dodge questions about them during the interview.

Have one person lead the interview; listen to the answers

Elise: Tip Number Six: During the interview, designate one person to take the lead in asking questions, but let others chime in as needed to ensure everyone gets answers to their questions. If possible, have multiple staffers take notes on the answers, because different people hear and record different things. Really listen to the answers to ensure you understand what was said. If you don't understand or miss an answer, ask the person to clarify or repeat the points. Be polite, since persons who are nervous or upset are more likely to respond to polite questions. In

your final question, you can ask if there is anything else about the facts that you didn't know enough to ask or anything else they'd like to tell you.

Take your time

Zack: Tip Number Seven: Take your time. In complex investigations, interviews often take all day. Be sure to go through all your prepared questions. Asking the same questions to multiple individuals and getting the same answers can help solidify everyone's understanding of the facts. If someone provides new or conflicting information, slow down and ask about it in detail. Ask about the information in different ways to make sure you understand it, and to give the person a chance to correct or clarify their answers. Repeat the key information back to the person and ask if you got it right. A person who repeats the same information several times in front of their legal counsel is less likely to backtrack later, such as during a hearing. You may also want to take a break and, in another room, ask your investigative team if you should show any documents to the subject to see if their answers change. Just before you finish for the day, take another break with your team to see if you need to go back to any topic or ask additional questions. Try not to leave the interview with important questions unanswered.

Skip the trick questions

Elise: Tip Number Eight: Skip the trick questions. They only work in the movies. In real life, the person you are interviewing either figures out the trick, gets confused, or gets insulted and stops cooperating. A better approach is to lay out exactly what you think the facts are – since they are in the past, they can't change – and ask if you got anything wrong. You can also ask the person to educate you about the matter in question, because you are trying to be careful and accurate. Many people respond favorably to that approach.

If you suspect lies

Zack: Tip Number Nine: If you suspect an interview subject is lying, the best approach is to present them with information or documents containing contrary facts, and ask the subject to explain the discrepancies. You don't want your boss to ask about conflicting information during a hearing without knowing the likely response. You may also want to ask questions that require the person to repeat the suspect information in several ways in front of their legal counsel, to make sure you understand exactly what they are saying and to prevent them from explaining away a single suspect answer later. One statement, on its own, is usually not enough to establish a falsehood.

Elise: In the rare case where you think you can convince an interview subject to change what they've said and provide the real story, you can gently warn them that it is a criminal offense under 18 U.S.C. 1001 to make a false statement to Congress, and ask if they want to reconsider what they've said. It is not useful to yell or threaten the subject; even a gentle warning may cause them to shut down and stop providing information.

Zack: You also don't need to inform the subject or their legal counsel if you suspect the person of lying. It's better to keep your conclusions to yourself, and see how the evidence unfolds.

Write up the interview

Elise: Our final tip: Try to write up each interview within a day or two, and circulate the draft to the interview team to get comments and edits. Writing up an interview will memorialize what was said, and circulating it will help ensure accuracy. Writing it up will also help build consensus on what was said and what facts were established. If staffers disagree on what happened at the interview, which is not uncommon, you can call the subject's legal counsel or schedule a follow-up interview to resolve the disagreement. If you don't have the resources to write up an interview, you may want to assemble everyone's notes in one folder to keep them safe and easily accessible.

Conducting Effective Interviews

- 1. Conduct bipartisan interviews.**
- 2. Develop a joint interview list.**
- 3. Identify the interview subject's legal counsel.**
- 4. Write out the questions beforehand.**
- 5. Alert the interview subject to the issues beforehand.**
- 6. Have one person lead the interview; listen to the answers.**
- 7. Take your time.**
- 8. Skip the trick questions.**
- 9. If you suspect lying, clarify what is being said and maybe offer a gentle warning.**
- 10. Write up the interview, if possible.**

Zack: We hope these tips will help you conduct effective interviews that build bipartisan consensus on the facts.

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