



### Employee Theft Interviews: A Business Process With a Considerable Downside®

By J. Patrick Murphy

**Note:** Theft, fraud, and embezzlement are crimes. Criminal investigations should only be conducted by professionals with experience in that arena, specifically law enforcement or civilians with extensive training. The mishandling of a criminal investigation can ultimately put you at the risk of civil litigation, damaging the prosecutability of a case, or suffering through a criminal complaint brought by the offender you pursue.

The public's perception of an investigation has been molded by Hollywood: Bad guy commits crime, good guys follow clues, bad guy interrogated who then makes some minor slip of the tongue that proves he did it, arrest, court, guilty and then jail. Of course there are appropriate pauses for commercials. One could only wish it was that simple. I left out one piece of the series of events that seems to be today's culture: (version 2)...the bad guy was videotaped and his face was as clear as if he had posed or CSI enhanced the video to a crystal clear resolution. What should be shown are the fifteen plaintiff's attorneys waiting in the wings to sue the offending good guys.

We're going to concentrate on the interview phase of an investigation, what questions to ask a theft suspect and discuss good and bad practices. This will be a general discussion that applies generically based on over 1000 employee theft interviews and countless witness interviews. The discussion is aimed at the personnel who are thrust into the position of having to interview those connected with a critical breach of trust or serious violation of internal policy.

Interview and interrogation is an acquired skill that is a mix of recognizing body language, knowing that no one admits to wrongdoing initially, being patient and knowing how and when to ask questions. The examples on TV shows are nothing like they are in reality, especially when dealing with theft and embezzlement.

There are two prominent companies that offer instruction and training on conducting these types of interviews. Wicklander & Zuluwsky ([www.wz.com](http://www.wz.com)) and Reid ([www.reid.com](http://www.reid.com)). If the interviewer is not trained, at the very least there should be procedures established to guide non-investigative personnel. Conducting "cold" interviews whereby a series of people are interviewed in hopes of gaining an admission, is not for the untrained. Said another way, the investigation should provide enough evidence and information to point to the actual culprit(s). There is comfort in knowing what you know.

## Guidelines for Interviews

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**Here are a few guidelines that should be considered. It should be said too that, regardless of skill level, extreme care is demanded of all investigatory interviews.**

It's not personal. But it is difficult for some to place themselves in the role as the simple interviewer. This is especially true in small companies. A direct supervisor is probably the last choice to conduct an interview alleging theft or embezzlement.



1. **Witnesses.** Interviews can be conducted with or without a witness present. Female employees should always have a female witness present. A witness should sit out of the peripheral vision of the person being interviewed. The witness should not be an active part of the interview but should take notes. If the employee diverts their attention to the witness to talk to them, simply redirect them calmly back to the interviewer.
2. **Juveniles.** If your interview involves a juvenile, consult with your legal counsel about having a parent or guardian present. In general, you did not need the parent to be present when you hired them and you would not be required to have them there to conduct an inquiry into the employee's behavior.
3. **Be prepared.** Create an outline of how you wish to present your facts. Have your documentation and evidence prepared as well.
4. **Props.** Examples of props: Thick file folders with labels such as "Theft Investigation of John Doe" or video tapes with similar labels. A prop is intended to give the interviewee the impression of overwhelming evidence against them. My recommendation: **Don't use them.** If your investigation does not have merit on its own then perhaps the decision to talk to the employee should be reconsidered. Leave the props to theater.
5. **Introduction and documenting time.** Provide the employee a document stating that they acknowledge that they can stop the interview at any time and are free to leave at any time. Have them sign that document for your file. Document the start and stop time of the interview and document any offering of a break for use of a restroom or drink even if it is refused. Document the time of those offerings and acceptance/refusal. Prepare a document ahead of time that has the following:  
**My name is \_\_\_\_\_. Today's date is \_\_\_\_ and the time is \_\_\_\_\_. I understand that I am being interviewed by \_\_\_\_ whom I know to be \_\_\_\_ (manager, Human Resources, etc). I understand that this interview is regarding an internal matter of my company and that I have the right to stop this interview at any time. I understand I can leave this interview if I do not wish to discuss this any further. Signed \_\_\_\_\_.**  
This small paragraph could become a critical piece of evidence in the event allegations are made that someone was being interviewed for long periods of time or were held against their will.
6. Don't **position** yourself between the employee and the door.
7. Be very mindful of the **duration** of the interview. If an admission has not been made within an hour then it is unlikely that any further discussion will bring one. It is important to understand that this does not mean there is a standard to length of interviews nor does it suggest that haste is important. Simply keep in mind that the employee should never be given the impression that they will sit there until they confess or that they do not have the option to end the interview. However, my experience of well over 1000 such interviews tells me that an hour is on the outer edge of reasonable time when interviewing someone and no admissions have been obtained.
8. There are pros and cons to **taking notes**. Interviewees tend to be distracted when they notice someone writing something down. During the interview try not to take too many notes. You'll come back to the admissions later.
9. **Audio or video recording** an interview is dangerous territory. If done, it should be with the full acknowledgement and authorization of the interviewee. I have tape recorded one interview in my career and it was a witness, not the suspect.
10. Be mindful of the **lateness** of the interview. Do not be the only people in the entire building at 11:00 PM.



11. Be mindful that if the employee says they have an appointment and can't stay you may have to reschedule.
12. **NEVER offer to negotiate their termination or prosecution.** Don't offer to not prosecute if they just "tell the truth" or if they just made payments for the loss "everything would be alright". Don't make statements implying that the investigation will make the morning news (even if it might) if they don't admit to the allegations. Don't threaten to fire them if they refuse to take a polygraph.
13. **Maintain control.** Don't allow the interviewee to steer the interview by demanding to take a polygraph. They can do that on their own if they wish but it is not their decision as it relates to company business.
14. **Show me the video!!** There is no obligation to show the interviewee any video evidence. Note: If you say you have it, make sure you do.
15. **Soft phrases.** Employees have a very difficult time using the words "steal, theft, intentional, lied". Instead they use softer descriptions such as "took, borrowed, mistake, mislead". Efforts should be made to clarify that they knew what they were doing was theft. While they were going to pay the money back later, they were not authorized to take the money and it did not belong to them. Don't get hung up on making them say "I stole the money".
16. **Your Policy.** Take care in defining theft in the context of a criminal act versus what is deemed a "violation of company policy". Consult with local authorities on statutes defining theft, forgery, embezzlement, credit card abuse or other such offenses. It is always against company policy to steal however kept in mind that not all employee theft cases can be prosecuted. Ultimately the goal is to terminate or discipline the employee and therefore there must be cause to do so. Review policy and procedures to try to address specific types of issues but it is advisable to have a broad policy that would allow termination for gross violation of company policy.
17. **Expand the interview** to understand where they learned how or got the idea to do this. Many times employees are influenced when they see others do the same thing. This is especially true when they see a member of management steal.
18. Obtain a **written statement** from the employee about the thefts they committed. Ask that they include implications of any other persons involved in theft. Have them be very specific about those allegations. Have them state dates, times, circumstances, and the property involved.
19. The conclusion of the interview should result in a **voluntary written statement**. It should be written in the person's own handwriting and signed by the witness as well. Document the times of the beginning and ending of the writing of the statement. Obtaining a written statement is important but dictating it is leaving the door open to question as to the validity of the content. If upon completion of the statement, it is found that they left out important facts or information, they can be asked to write about that. Accept the manner in which the statement is written, bad handwriting, poor grammar, spelling and all.
20. Finally, they do not need to be read their **Miranda rights** unless they are being interviewed by law enforcement.



# Interviewing Juvenile Employees

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The following is based on experience and is not intended as legal advice. Every state has a different definition of the age of a juvenile in terms of a criminal offense. Consult with your Human Resources and Legal Department before interviewing any employee.

The general question I am often asked is whether a parent or guardian must be contacted prior to an interview. I know of no legal requirement to do so. The employee works and is to abide by company policy and procedures permission to work for you and the employment agreement is between the employer and the employee, not the parents. Having said that however, additional care and consideration should be given prior to conducting these types of interviews.

All employee interviews should be handled consistently. Said another way, just because they are young, do not try a parent-child approach or take an intimidating posture. This is a business process that should be consistent at every juncture.

1. **Minors do not generally understand their rights** as an employee, so it is imperative that a written acknowledgement of their understanding of their right to stop the interview is obtained.
2. Never try to use **street slang** or popular "speak" to attempt to gain trust or to impress.
3. Understand that a juvenile has little to lose if caught stealing even if they are prosecuted. A small percentage may actually verbalize this and are probably fairly street smart. It is unlikely you will obtain an admission anyway. Back to a previous caution; go into the interview with your case prepared for termination regardless.
4. **It would be a fair assumption that a juvenile is not stealing alone.** They are in collusion with other employees and are often stealing for/with friends and family members. Check with your local prosecutor to determine if conspiracy charges could be pursued. Good advice however: keep it simple.
5. **Retailers** are the most likely victim of internal theft. Interviewing a juvenile after a store closes is risky especially if a parent is in the parking lot waiting to pick them up. If a parent is waiting, I would suggest having the employee advise the parent of the interview.
6. **Parents.** Do they have the right to copies of statements, evidence, etc.? No. All investigative efforts are proprietary. I have read statements to parents over the phone which generally changed the tone and direction of the conversation. Can they demand to sit in on an interview? Yes but granting that request is an accommodation not a right. Can the parents call the employee on their cell phone and stop the interview? Yes but "failing to cooperate in an investigation" should be fully explained to the employee.
7. **"Failing to cooperate in an investigation".** Ensure your company has written policy as to the forms of failure to cooperate. Complying with the interview request but refusing to write a statement should not be considered uncooperative. Refusing to take a polygraph is their right as an employee under the



Employee Polygraph Protection Act. Failing to come to a scheduled interview is being uncooperative. Bottom line, know your policy and ensure it is well published in company manuals and new hire information.

## Keys to a successful interview

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- All employees will say they did nothing wrong initially and may maintain this position for some time throughout the interview. It's part of the process.
- Consider it a conversation about a sensitive topic. Remain calm and appear to be both empathic and sympatric to the employee. In general, people want someone to understand *why* they did it. You already have evidence that it happened. Peer pressure, economic needs, addictions are common. Whether you agree with their needs or not is not important. It is critical that the employee feel they were justified in their behavior because you understand. This is where the training and the art of interviewing begins to move the interviewee into that comfort zone of admission.
- Most thefts involve some deviation from normal procedure so it is important to discuss that amid other policies and procedures. If the interview is about padding expense reports, don't just discuss the policies governing those. This discussion leaves little room for them to state they were not properly trained.
- Interviews can be conducted by phone but this requires patience and a skilled interviewer. Seek the counsel of an experienced consultant or private investigator before attempting this practice.
- It's not personal. Theft, especially in small businesses, impacts profitability and there are few people other than perhaps the owner who can conduct an interview. As much as one would like to toss the individual under the jail, the primary objective is to protect yourself against future civil action. Anger will cause the employee to shut down and become defensive. Anger may be met with anger which would escalate things beyond control. Once an employee has reached that level it is extremely difficult to regain the flow of the conversation.
- Don't interview someone with the "hope" of getting an admission in order to terminate or prosecute. Your evidence should be clear enough to at least provide for termination regardless if an admission or written statement is not obtained. With that evidence in hand, there is no need to even discuss that until the very end. The object is to find out those things that you did not know about.

Employee interviews are very delicate and should not be attempted without proper preparation and strategy. Forget everything you ever saw on TV or in a movie about interrogations. Prosecution may not always be available and prosecution is sometimes the least satisfactory resolution to the problem. This is a business process that could expose not only your company but you as an individual to law suits if handled improperly





## What Questions to Ask

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The hardest part of an interview can be simply getting started. What questions do I ask an employee who has been investigated for theft? In truth, there are not really many questions to ask initially. The recommended dialog is to talk about company losses and how, in general terms, investigations are conducted. Continue by discussing how understanding the company is about these things and that it's important to resolve the issues. This is a monologue that allows the interviewer to set the stage AND to minimize "how terrible of a human being they are". Confessions are the result of the person feeling understood and that what they did was wrong but they had justification (in their own mind) to commit the act. This may seem very counter intuitive but empathy, regardless of how disingenuous, needs to be displayed by the interviewer. Said another way: Don't start with the statement that you know they've been stealing and they are going to jail unless they tell you everything!

**There are no set questions to ask** nor is there an order with which to present them that can be properly covered here. Circumstances of a particular case, the amount of evidence gathered, the proficiency of the interviewer and the type of person being interviewed all play a role. Here are some areas that may help throughout the interview:

1. Admissions in interviews come as the result of the person's belief that you, the interviewer, understand **why** they did it. In other words we all create internal rules that allow us to do certain things that may be "bad": I'll start my diet tomorrow, Lying just a little bit is okay, I needed the money to care for my family, etc. Regardless of the justification the person has created in their mind, unless you can empathize (truthfully or not) with the "why", admissions will never come forth.
2. The theft may not have been their idea initially (justification that it's not really their fault). Perhaps they saw someone else do the same thing and get away with it. Seeing a supervisor steal may give them justification.
3. What was the smallest value they every took from the company? (Small thefts are always the beginning and you work from there.) Office supplies? "Ok, yeah that happens all the time. Do you remember the first time you did that?" You just obtained your first admission! It's not important that you are investigating the theft of a laptop. What is important is that you have established a beginning (time line and amount) to expand.
4. Once that is established discuss the types of losses that happen. Talk about office supplies or parts from the warehouse or theft from the money jar, oh, and lap tops. Pause. This is not a question, this is a statement meant to provoke the body to react to the word laptop (or whatever the target is). Watch for shifting posture, eyes diverting downward, or their hand going to their mouth and staying there. Research this fascinating topic to learn more about body language and Neuro-Linguistic interviewing. The body will always give them away before their lips will.
5. Find ways to continue the discussion about why people make the choices they do. Rationalize for them in positive ways because you know they would never take something because they had a ....drug habit, gambling habit, etc....."would you?" The answer you seek is "No" meaning they would never steal because of bad things with their personality or integrity. You are very close.
6. I always found interesting insight by asking the employee what they thought the company should do to someone who was caught stealing but provide them with two choices: send them to jail or simply let it be a lesson to them to not do it again. Choosing the lesser of the two may indicate a



fear of the consequences of theft. Keep in mind though, they may be simply expressing their own personal values or they may have stolen something else entirely. That "something else" may be ten times more valuable than the theft you know about or the total amount of the thefts over time is enormous.

7. Develop the admissions to cover the entire length of their employment regardless of the value. You may never get an admission to the "laptop" but you will have sufficient cause to terminate the employee.
8. Take a written statement. If necessary, just have them list what they have stolen as the body of the statement.

These 8 items are not intended to be a comprehensive discussion on interview and interrogation. In fact, these barely scratch the surface. It is a complex topic that takes considerable training and application to master.