

The Art of Internal Investigations

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There is an art to conducting internal investigations. Anyone who tells you otherwise is probably wedded to a formulaic approach to internal investigations. Cookie cutters will not always get the job done.

When a company turns to an internal investigation, the board and senior management have to be careful – there are so many risks. The internal investigation has to focus on an end result and a vision for how to get there. Of course, you cannot plan out every possible twist and turn but like any investigation, counsel has to know where the investigation is headed and have a reasonable plan for how to accomplish the goal. Along the way, new tactics may be needed.

One of the most important issues is something that you never hear about. If outside counsel is needed, does the counsel and the team have the ability to obtain information from people? In other words, do they have the interviewing and interpersonal skills to secure information from officers and employees in the company? A company needs to consider this question and be honest about outside counsel's capability.

I admit my own prejudice in this area. To me, former federal prosecutors or public defenders are the only persons that should be considered to conduct such inquiries. Why? They are more likely to have the skills and experience in conducting successful witness interviews. For prosecutors and public defenders, this was their bread and butter and they know how to do this. Of course, some were not very adept at it, but odds are they will be able to conduct effective interviews.

A company needs to assess outside counsel on this issue. Does outside counsel have the ability to conduct interviews, get along with people, and gather the necessary information?

Document production and review are critical in this area, and technical know how in document searches is a major plus. Most firms recognize now the importance of providing cutting-edge search technologies and capabilities at cost effective rates. With the documents in hand, interviews can be done quickly and effectively in a targeted way.

Outside counsel who offer “casting a wide net” services are looking more to build up huge bills with very marginal benefits to their clients. Like any investigation, outside counsel need to focus the inquiry, develop a vision, and move quickly to conduct the inquiry and report back to the company. Companies need to focus on these issues when retaining outside counsel.

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