

## CEP Magazine – December 2022



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### Meet Bob Roach: Know your audience

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By Bob Roach and Adam Turteltaub

**AT:** You’ve had a fascinating career, covering the gamut of ethics, compliance, and the justice system. You have worked as a civil rights attorney, prosecutor, chief compliance officer, and consultant. I’m so glad we got this opportunity to benefit from your experiences. Let’s start with your time in government. You worked for the New York City Department of Investigation, the New York County District Attorney’s Office, and the New York Attorney General’s office. Investigations remain a source of great discomfort for many compliance professionals. What should every investigator know to conduct an effective investigation?

**BR:** To begin with, I would think it is important to note that the nature and methodology of how an investigation is conducted can vary greatly depending on the circumstances.

While some investigative techniques are standard, I have found there are some significant differences between how a prosecutor might lead an investigation and how a good internal investigation is conducted within an organization, such as a university. For a prosecutor, complainants, defendants, and witnesses change over time. By comparison, when an internal investigation into an allegation of misconduct or compliance failure in an organization is required, the good investigator will keep in mind that after the investigation is complete, chances are good that you will continue to work with some if not all the people involved in the investigation. Thus, to the extent possible, the investigation cannot unduly disrupt ongoing working relationships. Likewise, while the conduct of the investigation must be independent, comprehensive, and effective, it should not be disruptive to the operations of the organization to the extent possible.

For internal investigations, I recommend compliance officers follow the principles of “procedural due process” to help ensure their investigation is not only effective and complete but perceived by all as independent, neutral, and ultimately fair. The basic principles are:

- **Voice:** Everyone wants an opportunity to be heard. An internal investigation will almost inevitably involve conducting interviews of complainants, respondents, and witnesses. While the investigator will undoubtedly have specific facts and issues they wish to cover, make sure you give each witness a full and fair opportunity to tell their story. When participants feel they have had a full and fair opportunity to be heard, they are more likely to accept the results of the investigation as fair, even when the results are not favorable to them.
- **Neutrality:** Internal investigations will be perceived as independent and effective when: (a) they are conducted in a neutral, principled manner, based on articulated institutional rules and values, not personal

opinions, and (b) they apply these rules and values consistently across people and over situations. When I conduct an internal investigation, I prefer to tell witnesses that we are engaged in “neutral fact-finding” rather than an “internal investigation” because the term “investigation” is emotionally charged and can suggest there is a predetermined investigative goal or “target.” I emphasize we are simply attempting to determine all the facts as fairly as possible and are following well-established standards, such as the university’s code of ethical conduct.

- **Respect:** Depictions of investigations in popular media often portray investigators as getting to “The Truth” by yelling or berating witnesses or otherwise conducting interviews in a disrespectful manner. Individuals assigned the responsibility of conducting an internal investigation are representatives of the organization. People draw a message about their status from the way they are treated. Respect communicates high status and value. Disrespect suggests that you are marginal and unimportant.
- **Trust:** Results of an internal investigation are more likely to be accepted as fair and independent when the investigators establish trust with the participants. To establish trust, investigators should constantly ask themselves, “Are you listening to and considering peoples’ views? Are you trying to do what is right for everyone involved? Are you acting in the interests of the parties and the institution, not out of personal prejudice?”

**AT: What are some simple mistakes they should avoid?**

**BR:** I think some of the basic mistakes that should be avoided are, first, starting the investigation without proper collaboration. Investigators must first meet with the institution’s general counsel to determine whether the investigation will be conducted under attorney-client privilege. While investigators may be attorneys, privileges do not attach unless certain formal, legal requirements are met. Likewise, in some circumstances, there may be legal obligations regarding the collection of documents and preservation of records.

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