

Fraud Examinations: A Quick Overview

Learn discovery, interview and interrogation basics

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Some people think fraud examinations are performed just like an audit. Others feel a sense of empowerment thinking they are the next Elliot Ness or James Bond. The reality is that fraud examination requires special skills, some of which are taught and some that are intuitive. It takes years of practice to hone these skills.

A good examiner should be organized, easy to talk with, a good observer, and knowledgeable in the area under investigation and in the legal aspects of fraud examination. The examiner should be able to read people, recognize body language, detect deception and understand the criminal mind.

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The first time—or few times—you are asked to perform or assist with a fraud examination, accompany someone with this experience. It is important to understand the differences between an audit and a fraud examination. Grasping these differences will help you perform an examination that will achieve your goal. Normally, the goal is to:

- Determine if a fraud has occurred
- Identify who was responsible
- Prosecute or take some action against that individual
- Fix processes so the fraud cannot be repeated. (This is often overlooked, but is highly important)

What is fraud?

A fraud is a deception or action with the *intent* to profit or proffer goods or services at another's expense. To prove fraud you must show intent. Trying to show intent is more difficult than discovering what happened.

There are three components that, when combined, lead to fraudulent behavior on the part of an individual. They are:

- Having an *incentive* or motivation. Most commonly, this is financial.
- Having an *opportunity*. Typically, the fraudster discovers a weakness in the system of internal controls coupled with a belief the fraud is not likely to be discovered.
- *Rationalizing* the illegal activity as being justified such that it causes the decision to enter into that activity to seem logical or rational.

Rarely does a fraudster awake and say, "I am going to commit fraud today." More often, the person finds him- or herself in a difficult life situation. The decision to commit fraud is typically seen as a temporary solution to the



onerous problem. The fraudster may view it not as a theft but rather a short-term borrowing that will be returned.

After the first transaction, it gets easier and easier. Therefore, it is common that fraud becomes not a single act, but rather a succession of poor decisions by the fraudster that leave no easy out. Because their illegal activity digs them in deeper and deeper, sometimes a confession is easier to obtain than first imagined. The confession becomes a catharsis from the guilt of wrongdoing.

Audit and investigation differences

Audits and investigations serve two different purposes. When performing an audit you collect evidence to confirm that controls are working as management intends. During the audit, you copy evidence to keep with the work papers. Investigations require the collection of evidence to document that the fraud occurred and/or to identify the perpetrator.

When performing an investigation, retain the original form of the evidence, (noting later alterations) in order to maintain a chain of custody. The chain of custody shows what has happened to a document or piece of evidence from the moment the investigator first gets it until it is presented in court at the trial. It is proof that the original evidence has not been tampered with.

The discovery process

An investigation will start with a tip, a request, a red flag or evidence discovered. Then the discovery work begins. Initially, you need to consider the available information and facts. With these, you develop a plausible theory.

A good first question to ask is, "If I were the fraudster, what would I do?" As an ethical person who does good for the company it may seem unnatural to think this way. However, it is often easier to catch a thief by trying to think like one. If it helps, gather a few co-workers or fellow auditors to talk about the case (keeping in mind that confidentiality is

paramount). Develop a theory of the crime by asking these questions:

- What could I do?
- Why would I do it?
- How can I do it?
- How do I cover it up?

When you see a fraud in healthcare in the news headlines, ask these questions before reading the news article. Let's attempt this with a 2010 case.

A California pathologist who ran a medical clinic was sentenced to 25 years in prison for writing fraudulent prescriptions for oxycodone in exchange for cash. Masoud Bamdad, MD, was convicted in May 2009 for accepting cash payments after writing numerous prescriptions for narcotics, including OxyContin, Vicodin and Xanax. In some cases, Dr. Bamdad wrote the unlawful prescriptions for minors under the age of 21.

Assume this case comes to you in the form of a tip, which is how most fraud cases are found. You begin by asking, "What could I do?" The answer would be, "I could sell the prescriptions for cash." Follow with, "Why would I do it?" Well, I might have a need for extra cash.

You will then want to look into the background of the suspect in an attempt to discern a possible need. You may find gambling debts, alimony payments, a mistress or other motivations. You will need to access colleagues, neighbors, HR files or bank records. You will need assistance of your legal counsel to obtain access to items outside of your purview. Be careful until your lawyer establishes a client-attorney privilege. Without it, any information you discuss or share with your lawyer can be used in court.

When you determine why there is a need for money, you will want to ask, "How can I do it?" You will need to determine what preventative controls are in place and if a way for circumventing them exists.

When performing an investigation, retain the original form of the evidence in order to maintain a chain of custody.

The last question to ask is “How do I cover it up?” In this situation, it may require spreading the prescriptions over time to avoid an excessive number being noticed on internal reports.

When you have developed a plausible case theory, the next step is to identify and then notify the key stakeholders. This can be difficult if you have not yet determined who the actual criminal is, or if others are possibly involved. Generally, the stakeholder list will include:

- Human Resources
- Audit Management
- Legal

Working with evidence

The next step is to investigate the allegation with the goal of proving it. It is important to take the longer-term view. You need to be methodical and organized at all times because evidence needs to be carefully tracked. The outcome of your work may result in a criminal action (prosecution), a civil action or employment termination.

Evidence has levels of usability in a court of law. This is called the best evidence rule. The best evidence rule applies when a party, during a trial, wants to admit the contents of a document as evidence, but the original document is not available. In this situation, the party must provide a reason to the court for its absence. If the court finds the reason acceptable, the party is allowed to use secondary evidence to show the contents of the original document.

The best evidence rule only applies when a party seeks to prove the contents of the document before its admission as evidence.

For example, an insured person’s insurance policy was cancelled and you believe the broker is pocketing premiums. The insured person has the cancelled check for the insurance policy premium. Under the best evidence rule, it would be better if you could pick up the canceled check and let them keep a copy of it. This proves the check was not tampered with and has not been altered further.

The ways you can collect evidence may be restricted based on your state (or jurisdiction) and your actual role. For instance, a fraud examiner does not have as many rights as

a police officer, who does not have as many rights as an FBI agent, etc. Make sure you know your limitations before you proceed. Legal counsel can help you with this.

Various ways to collect evidence include:

- Covert surveillance (may be limited depending on the situation)
- Digital monitoring (such as reading email – notify IT first and make sure you are doing it on a segregated email server)
- Forensic accounting
- Interviews
- Interrogation (yes, there is a difference)

The interview approach

When scheduling an interview, it is important to look at the information you have, identify the most likely criminal, and who may have helped the criminal. You should interview the person you consider the most innocent first and then work your way up. Be sure to schedule interviews so the interviewees do not encounter one another. This helps to prevent interviewees from colluding with each other on answers.

Where the interview is conducted is also important. The location should be private and in a neutral location. You should never do it in their office, or your own office. A conference room near their location is best. It should not be visible to others, to preclude them from peering in or interrupting.

It is preferable not to have script. Notes are acceptable, but the best interviewing is not scripted, because it allows tangents. Bring another person along to take notes for you. It is important that you do not take your own notes as that causes breaks in eye contact with the interviewee. When you are interviewing someone, you want to watch his or her body language and establish a connection. Eye contact is the easiest way to do this.

Remember this is not a *Law and Order* episode. You cannot lock the room, deny biological needs, block the door or hold the interviewee against their will. You can, however, bring a large file with case information and other papers. It does not matter what those papers are, but they may serve to make the interviewee believe you have more information than you do, which can be to your advantage.

Interview and interrogation differences

The distinction between an interview and an interrogation is important. Your conduct during these meetings will be different. An interview is an information gathering session. In an interview, you are looking for deception and trying to clarify any discrepancies. You guide the conversation and ask many questions. An interview may turn into an interrogation at any time.

An interrogation is a meeting where you hope to draw a confession from the criminal. Usually an interrogation is not scheduled until you have found enough information that there is no doubt of guilt.

You should interview the person you consider the most innocent first and then work your way up.

During an interrogation, you attempt to get the interviewee to trust you. You are in large part a listener—even if there are hours of silence. You are focused on just that meeting, regardless of what happens or how long it takes. You reduce personal space a bit and you watch—not for signs of deceptions, but for a change—that moment when the interviewee decides to tell you everything. When it happens, you should just listen. When they are finished, you can ask a

few more questions, such as clarifiers. Then you should ask the person to write everything down, and sign each page.

Final report

Your next step is to write a formal report. As tempting as it may be, you must not say whether a person is guilty or innocent. That is left for a judge and jury to decide. Even a signed confession is not proof of guilt or innocence. Your report should include:

- Background—how the investigation began
- Facts in evidence
- Steps taken during the fraud investigation
- Whether or not you got a confession

The report distribution list should follow the normal protocol determined by internal company fraud policy.

You may not be done at this point. Be sure to take excellent notes and make sure all your ducks are in a row. This means that all your documents support the report and all evidence is ready to be handed over to the next party. Your work papers need to be well organized and easy to follow, and all your notes should be typed so that a stranger can read and know everything you did. You may be required to testify. If you are called to testify, your notes need to be clear and concise so you can easily review them before testimony.

Remember the best defense against fraud is diligent auditing. **NP**

