WHEN THE TIME COMES: CONDUCTING INTERNAL INVESTIGATIONS

Fraud examinations, by nature, are adversarial. When the time comes to open an internal investigation, the examiner must expect his work to be scrutinized and challenged on form, content, and technique at every stage of the engagement. The best way to withstand such scrutiny without a disruption of the process is to have a precise investigative plan prior to beginning the examination. This session will give you an overview of the investigation process from planning to resolution and how to avoid some of the common pitfalls and distractions encountered by fraud examiners worldwide.

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James D. Ratley graduated from the University of Texas at Dallas, with a bachelor's degree in Business Administration. In 1971, he joined the Dallas Police Department as a police officer. Mr. Ratley was assigned to several police department divisions, including vice, child abuse, and internal affairs. He was a member of numerous department task forces that concentrated on major fraud cases.

In 1986, Mr. Ratley left the police department to join Wells & Associates, a forensic accounting practice, where he was in charge of fraud investigations. He handled investigations regarding internal frauds, conflicts of interest, and litigation support. In 1988, he was named Program Director for the Association of Certified Fraud Examiners and oversaw all aspects of the ACFE's training and education programs.

In 2005, Mr. Ratley was awarded the Association of Certified Fraud Examiners' Cressey Award. The Cressey Award is the ACFE's highest honor. It is bestowed annually for a lifetime of achievement in the detection and deterrence of fraud. In 2006, Mr. Ratley was named President of the ACFE. In 2010, Mr. Ratley was selected as one of Security magazine's Most Influential Security Executives for 2010. This honor is bestowed each year to the top security executives who positively impact the security industry, their organizations, their colleagues, and their peers.

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Introduction
Investigations, like admission-seeking interviews, are adversarial in nature. It is essential that fraud examiners expect their work to be scrutinized and challenged on form, content, and technique. To withstand such scrutiny, the examiner must understand the steps in a fraud examination engagement and use those to develop a clear investigative action plan prior to beginning the examination.

Steps in a Fraud Examination
In the investigative process, knowledge is power. The examiner must be able to discover the facts. This is done by gathering information and evidence from documents (or other tangible sources) and through interviews. The following chart shows the high-level flow of the investigative process:

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Collecting Evidence
The evidence collection phase consists primarily of collecting documentary evidence and interviewing neutral third-party witnesses. This phase will consume the majority of the time spent on the examination.
**Document and Record Examination**

The document collection phase encompasses searching internal and external documents and records for evidence. This process can include many methods of collection, and is often when the fraud examiner first recognizes many of the tasks that will be necessary to complete the investigation.

As a first step, the examiner should make a list of potential sources of documents and other information. This list should include both internal and external sources of evidence.

Some potential internal records to consider include:
- Business records
  - Accounting records
  - Human resources/personnel files
  - Hotline reports
  - Records from previous internal investigations
- Potential suspect’s office
- File cabinets
- Trash
- Computers
  - Files stored on hard drives
  - Files stored on servers and backup drives
  - Email
  - Deleted files

External records can be equally valuable in building a case. Such sources include:
- Public records
  - Court records
  - Real property records
  - Business filings
  - Employee/labor records
  - Professional association/licensing board records
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- Newspaper/media databases
- Credit records
- Third-party party sources (such as vendors, creditors, banks, etc.)
- Internet sources
  - Search engine results
  - Websites (e.g., blogs, company sites)
  - Chat rooms
  - Telephone and address directories
  - Maps
  - ZoomInfo and similar searches
- Social media sites

When initiating this phase of the investigative process, the examiner should realize that many times the documents are hidden, and the perpetrator hid them hoping no one would ever find them. The examiner should always be on the alert for documents that *should* be there, but are not.

**IDENTIFYING SIGNS OF MANIPULATION**

In some cases, signs of document manipulation can be obvious. More commonly, however, the fraudster has taken specific steps to conceal his crimes and identifying the manipulation requires targeted—and sometimes extremely sophisticated—techniques, such as:

- *Forensic document analysis*, which involves looking for signs of physical manipulation of documents
- *Digital forensic analysis*, which involves exploring computer files for digital evidence
- *Data analysis*, which involves uncovering red flags of fraud within the organization’s data
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<th>COLLECTING AND MAINTAINING DOCUMENTS</th>
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<td>As the examiner begins the document collection phase of the examination, it is essential that the examiner keep in mind the legal requirements related to the collection and maintenance of documents. The documents should be collected in a manner that will maintain the <em>chain of custody</em> in the event there is a subsequent legal proceeding.</td>
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Since many fraud cases involve a large number of documents, it is also necessary that they be organized in such a manner that will allow them to be quickly located. The examiner should consider logging the documents and, at times, entering the information into a database. This will allow the document and its contents to be quickly located. It will also allow the information to be sorted and analyzed more easily.

*Observation*

During the evidence collection phase of the examination, the fraud examiner will need to observe interactions, processes, and locations for additional information about the suspect and alleged act. Most investigations include formal observation efforts, including:

- Physical inspections
- Surveillance
- Undercover investigations

Additionally, much observation is done informally, such as noticing behaviors or relationships that are consistent with the fraud scenario being investigated.
**Interviews of Neutral Third-Party Witnesses**

During and after the document collection phase of the examination, the fraud examiner will need to interview neutral third parties to help understand the evidence being collected.

The initial step of this phase is to determine the order in which the examiner should approach the witnesses. Since the examiner will gain information that can be used to question subsequent witnesses, the least knowledgeable witnesses should be approached first, leading up to the most knowledgeable.

For each interview of a neutral third-party witness, the examiner should consider:

- The best method of approach for that particular witness
- The information that witness should be able to provide
- The questioning technique that will cause the witness to be as forthcoming as possible with the knowledge he possesses
- Evidence that might assist in assessing the validity of potential defenses to the allegation(s)
- Identity of other potential witnesses
- Information that other potential witnesses should be able to provide
- Other leads that might provide relevant information
- Type and location of documents that might be relevant to the examination

**Corroborating the Evidence**

Since the assumption is that the examination will be scrutinized in a legal proceeding, the examiner should always confirm facts and assertions as much as possible with the available evidence. During this phase of the
investigation, the examiner will seek to corroborate the information obtained from the document examination and the interviews of neutral third-party witnesses. If the examiner is not thorough in the confirmation (i.e., evidence is left uncollected or relevant witnesses are not interviewed), then there might be allegations that the examination was not complete or that there was some attempt at a cover up.

Interviews of Corroborative Witnesses
When interviewing corroborative witnesses the investigator should consider:
- Which facts the witness should be able to refute or confirm
- Any documents the witness might possess that could confirm or refute the facts obtained at that point in the examination
- New facts or information that might have been missed in the discovery process of the examination

Interviews of Co-Conspirators
After collecting all of the relevant documents, interviewing the neutral third-party witnesses, and interviewing the corroborative witnesses, the examiner should have enough information to either refute the allegation and end the examination process, or proceed to the next stage.

If the examiner does not have evidence that clearly refutes the allegations, then the next step is to interview potential co-conspirators. It is important to realize that these interviews will be of an admission-seeking nature, as opposed to an information-gathering interview.

When approaching a co-conspirator, the examiner should consider:
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- The co-conspirator’s relationship with the suspect and the probability of that person contacting the suspect after talking to you
- The location where the interview will be conducted
- The method in which the investigator will approach the co-conspirator
- Additional information that the witness could provide that might not have been discovered so far

After confronting the co-conspirator, the examiner should then focus on either confirming or refuting the information provided by the co-conspirator.

### Conducting the Admission-Seeking Interview

The admission-seeking interview of the suspect is the last phase of the examination process and is one of the most critical in the investigation. This interview should not be attempted until all of the previous steps have been completed.

The interview is conducted only when there is specific evidence that indicates the suspect is responsible for the actions in question. An investigator should never conduct an admission-seeking interview of a suspect on the “chance” that he might confess.

When preparing for the admission-seeking interview, the examiner should consider the following:

- Preparation of any evidence that might be used during the interview
- Location of the admission-seeking interview
- The method in which the examiner will approach the suspect
**Legal Considerations**

Fraud examiners must be aware of some of the potential legal issues involved in conducting admission-seeking interviews. Running afoul of such considerations can result in the case being dismissed, so examiners should consult with legal counsel in advance of such interviews to ensure they are conducted in accordance with all legal requirements. Examples of such issues fraud examiners must consider before conducting an admission-seeking interview include:

- Employee rights
- Miranda warnings
- Union requirements

**Steps in an Admission-Seeking Interview**

- Direct accusation
- Observe reaction
- Repeat accusation
- Interrupt denials
- Establish rationalization
- Diffuse alibis
  - Display physical evidence
  - Discuss witnesses
  - Discuss deceptions
- Present alternative
- Benchmark admission
- Reinforce rationalization
- Obtain verbal confession
  - The accused knew the conduct was wrong
  - Facts known only to the confessor
  - Estimate of the number of instances and amounts
  - Motive for offense
  - When offense commenced
  - When or if offense was terminated
  - Others involved
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- Physical evidence
- Disposition of proceeds
- Location of assets

When a suspect has admitted guilt, the examiner should obtain a signed statement of confession from the perpetrator. The verbal confession from the suspect should be reduced to a short and concise written statement. The interviewer should prepare the statement and present it to the confessor for his signature. The statement should be prepared before the confessor leaves the interview.

After concluding the admission-seeking interview, the examiner should confirm or refute the facts and information the suspect provided during the interview. Often these are facts that were not discovered during the investigation and will lend credibility to the information provided by the suspect.

### Concluding the Investigation

Once an examiner has completed his investigation, his work is still not finished. A report of the findings will need to be written detailing the investigation, and then the case will most likely be presented to management, counsel, law enforcement, or prosecutors. The success or failure of the examiner’s case could hinge on how well-written his report is and how well his presentation is made.