



How to Investigate a Good Fraudster

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Introduction

Baseball, football, basketball, hockey, soccer and lacrosse are team sports. Although each sport is different, the objective is the same. Win the game. There is one interesting commonality each of these sports share when two teams square off against each other on the field of play. Having the most talented team does not always mean you win. It certainly favors you. Having the best prepared team is usually more advantageous. Come crunch time, when the game is on the line, preparation could well trump talent. The more talented team, if not prepared, will likely play with a lack of focus and discipline. The better prepared team is more inclined to follow their game plan and exploit the vulnerabilities of their opponents, and less likely to make mistakes, thereby preventing their opponent from exploiting their vulnerabilities. Thus, the better prepared team is more likely to carry the day.

If you liken fraud to a sporting event, and you pit the fraudster against the investigator, the player that comes out on top is usually the player who is better prepared to perform. Frequently, fraudsters are the more talented players. They tend to be proactive and are motivated by greed and arrogance. More often than not, they have the advantage of being proactive, while investigators are reactive. However, when investigators take the time to prepare and plan to deal with their adversary, they are more likely to exploit the vulnerabilities of the fraudster. Such vulnerabilities start with the greed and arrogance of the fraudster. Investigators must understand the crime problem, how the fraudster operates, and to game plan how to exploit the vulnerabilities of the bad guy. In so doing, the likelihood of conducting a successful investigation improves greatly.

Law Enforcement and Private Sector Fraud Investigators

Fraud investigations range from simple to complex. Whether you are in law enforcement or the private sector, the methodology for conducting fraud investigations should be the same. You want to take appropriate investigative steps to identify suspicious activity and/or prove the fraud, minimize financial loss and maximize the potential for asset recovery. Some investigative tools will be similar, while others will vary. For example, law enforcement has the ability to obtain evidence through grand jury subpoenas and search warrants, as well as having the leverage of making criminal arrests. Private sector internal investigators have access to the full gamut of records maintained by their institution, as well as the leverage to compel insiders to be truthful during interviews at the risk of dismissal from employment. The biggest variance between law

enforcement and the private sector is the final objective of the fraud investigation. For law enforcement, the objective is to develop evidence that results in a criminal prosecution and asset forfeiture. For private sector investigators, the objective is to protect the reputation and integrity of the institution, prevent or minimize financial losses and recover assets attributable to the fraud.

Preparation and Planning

In preparing to conduct a fraud investigation, the investigator must understand the crime problem. What is the nature of the fraud? What are the elements of the suspicious or criminal activity? Is there more to the fraud scheme under the surface? What investigative steps must be taken to identify suspicious activity or to prove a fraud? For criminal investigators, you must know the applicable laws and what level of evidence is necessary to prove violations in court. For private sector fraud investigators, you must have knowledge of your institutional policies and procedures and the investigative steps necessary to mitigate fraud.

Regardless of how simple or complex a fraud scheme appears, investigators should always prepare a written investigative plan. It does not matter how simple a fraud scheme may be, an investigative plan should be required. The plan should include:

- The predication for the investigation or factors warranting the investigation
- Elements to be proven
- Logistical considerations such as staffing and equipment needed;
- Investigative steps to be taken
- Contingency planning

The first step in preparation is to identify the fraud problem by determining the predicated factors. The next step is to delineate the elements of fraud that must be proven by investigation. Followed by that, logistical considerations must be addressed to include staffing, equipment and other support requirements. When investigations lack adequate resources, especially in complex fraud matters, the investigation is destined to fail. This is one of the biggest shortcomings investigators must deal with. It is extremely important to outline the investigative steps to be taken. They must be reasonable, thorough and flexible in terms of adapting investigative strategies to deal with simple or complex schemes and to plan for dealing with contingencies. All investigative plans should include contingencies in order to deal with the known and unknown, as well as the expected and unexpected. Nothing should be taken for granted.

Planning for complex investigations carries more significance and consequence; however, planning for more simple frauds is equally as important. There are instances when what begins as a simple fraud escalates into a massive fraud. In conducting fraud investigations, particularly schemes that evolve into complex scenarios, it is easy to lose focus and drift away from the intended investigation. This is why planning is important. Investigators should maintain investigative discipline and adhere to the written plan. This helps maintain focus. Investigators should be vigilant when assessing and investigating a fraud scheme to determine if there is more to the scenario. Is the fraud more complex? Is the fraud linked to other frauds? How do



you deal with contingencies? Comprehensive investigative plans help answer these and other questions.

Understand the Crime Problem

An important part of preparation is to understand the crime problem. Fraud should be assessed and understood from two perspectives: the generic and the specific. From the generic and more simplistic perspective, fraud is intentional deception. The ability to be deceptive and to avoid detection is a fraudster's primary key to success. There are a myriad of different frauds. As mentioned earlier, they range from simple to complex. In addition to understanding fraud from a general sense, it is imperative for investigators to understand the specific fraud schemes with which they are confronted, as well as those to which they are vulnerable. When investigators understand how fraudsters take advantage of the generic and specific fraud schemes, they position themselves to more effectively and efficiently prepare and plan to compete against fraudsters.

One mechanism that enhances understanding is training. As a training tool, investigators should study fraud case typologies. Such case studies provide an insight into how fraudsters operate and exploit systemic vulnerabilities to perpetrate their frauds. Lessons learned from prior fraud investigations are a good learning tool. A great source for case typologies comes from court filings to include indictments, informations, plea agreements and other charging documents. These legal filings usually contain a statement of facts that delineates the criminal activity. Studying case typologies is an excellent mechanism toward understanding the crime problem. Participation in practical problems is an outstanding training vehicle for investigators.

The best way to understand the fraud crime problem is through first hand investigative experience. The more experience investigators acquire, the better equipped they become to deal with fraud. Learning from investigative experience is a powerful tool. One thing all investigators should learn to rely on is their investigative intuition, especially when dealing with the deception of fraud. Investigators should trust their instincts. They should compare and assess the facts in their current case to facts developed in their past experience that support their instincts. If a situation does not appear to be reasonable, trust your instincts. Do not accept explanations until you are satisfied with the reasonableness of the representation.

Competing Against the Fraudster

Game on! You have prepared and planned the investigation, and understand the crime problem. It is time to take on the adversary and investigate the fraudster. Winning the game or accomplishing investigative success depends on how you handle the following factors:

- Upper hand
- Spin and deception
- Intimidation
- Persistence
- Analysis (reasonableness)
- Exit strategy



Upper Hand

A good fraudster always wants to maintain the upper hand and dictate the pace of the game. There are subtle ways to handle this. The fraudster wants to be in control, and in most instances, they consider themselves more intelligent than investigators. Let the fraudster think they have the upper hand. They want you to know that they are smarter than you are. If you allow them the impression they have the upper hand, they will invariably let their guard down and talk. Use your listening skill and let them talk. It could be their undoing.

Spin and deception

The bad guy has weaved a tale of spin and deception to facilitate their fraud scheme. Be patient, disciplined and meticulous. At some point, the weight of the spin and deception will cave in on the fraudster. Fraud schemes tend to become more complex and difficult to maintain as the scheme grows. At some point, the fraud will unravel. By maintaining investigative focus, the investigator will be in position to gain the upper hand.

Intimidation

There will come a point when you ask the fraudster a question that hits too close to home or threatens to expose the spin and deception. The usual response at that point will be defensive and intimidating. Your adversary will lash out at you. The fraudster will let you know your question was stupid and a waste of their valuable time. They will be condescending in an attempt to maintain the upper hand through intimidation. This is a sign you are on the right track and that you have your adversary against the ropes. At this point, the investigator should persevere.

Persistence

As the game plays on, there will be additional spin and deception to cover the cracks in the framework of the fraud. The situation could grow more complex and challenging for the fraudster. As the investigator, you must be persistent. Keep asking the questions and break down the veneer of fraud. Be persistent and meticulous in building your case, be it criminal or internal. The more persistent the investigator is, the more likely they'll win the game.

Analysis

Analysis supports persistence. There are a variety of analytical tools available to investigators. Conduct thorough analyses to break down the spin and deception. Continuously question the reasonableness of the deceptive representations made to you. At some point, analysis and reasonableness will outweigh spin and deception.

Exit Strategy

Be mindful that throughout this process a good fraudster has an exit strategy. As the fraud scheme is about to unravel, many fraudsters execute their exit strategy. Do not allow yourself to be taken by surprise. Be prepared to address the fraudster's exit strategy. There are a



variety of exit strategies good fraudsters might choose from. The most common exit strategies include:

- Some fraudsters want to get caught because the weight of their fraud becomes overbearing
- Some are too arrogant and greedy and are blinded by the fact the end is in sight
- Some remain disciplined and focused, and have what they consider a safe haven to flee to

End Game

Keep in mind there will be an end game. This should be addressed in your written investigative plan. For criminal investigators, the end game is a criminal prosecution and asset forfeiture. For the private sector investigator, the end game is to protect their institution's assets and reputation. If the criminal and private sector investigators are successful, they will have deprived the fraudsters from their exit strategy and end game of living happily ever after with the proceeds of their crime.

The combination of comprehensive training, a written investigative plan, discipline and focus, and reliance on investigative experience and intuition, position the good guys to be the better prepared team. Come crunch time, it affords them a competitive advantage and the opportunity to better exploit the vulnerabilities of their adversaries. In assessing the game, when the good guys defeat the bad guys, regardless of how talented the bad guys are, it is usually attributable to how the good guys prepared, understood the crime problem and executed the game plan.

