

Obtaining and Evaluating Non-Financial Evidence

Staff Training Solutions

Learning Outcomes

By the end of this unit the learner will be able to:

- ✓ Discuss what is Non- financial Evidence
- ✓ Explain the Interview Procedures for accessing the Evidence

Unit 6

Obtaining and Evaluating Non-Financial Evidence

Introduction

Evidence associated with a financial crime does not necessarily have to be of a financial nature. Although the focus of any fraud investigation is on financial evidence, it is important that auditors and investigators do not rule out the possibility of valuable non-financial evidence.

Non-financial sources of evidence range from interviews, handwriting analysis and document examination to the physiological traits of the fraudster. Physiological traits refer to the fraudster's behaviour, expressions, or any communication that indicates the fraudster's involvement in the crime. The central aim of physiological techniques is to detect fraud and deception. A fraudster who is committing a crime will invariably be secretive about his/her activities and may even be using deception in appearance and communication. Physiological concepts and techniques are also important for obtaining useful information. From an educational point of view, interviewing techniques and legal aspects of an investigation are taught in arts and science schools whereas forensic accounting is taught at business schools. Generally speaking, an accounting major is not likely to possess much knowledge of subjects such as sociology, anthropology and psychology; therefore, he/she will not be familiar with the techniques required to detect deception. This unit attempts to familiarize students with these concepts and techniques.

Interviews

The job of auditors in an external or internal audit is to ask questions. However, there is a difference between asking questions during an audit and during a fraud investigation. In order to ask effective questions during a fraud investigation, it is important to use best practices for interview techniques. According to the founder of the Association of Certified Fraud Examiners (ACFE), Joe Wells, "the best clues usually don't come from the books but from the people who work with them." Questions asked during an interview might fall into any of the following categories: (i) introductory, (ii) informational, (iii) assessment, (iv) closing, (v) admission-seeking. According to most experts, open-ended questions are much more effective than simple "yes" or "no" questions. One of the risks associated with interviews during a fraud investigation is that the interviewer may not be trained or experienced in employing best practices for interviews, or worse, may not be familiar with the legal protocol of carrying out interviews. In the event of the latter, the case may not reach a desirable conclusion and may even provoke a counter-lawsuit.

Best Practices

Contrary to common perception, an interviewer's best approach is not to write down questions that he/she needs to ask the interviewee. Rather, it is much better to write down the key points and let the conversation take a natural course. A fraudster may even manage

to catch sight of the written questions beforehand and prepare him/herself to answer them; therefore, this approach is best avoided.

Steps in a well-prepared interview:

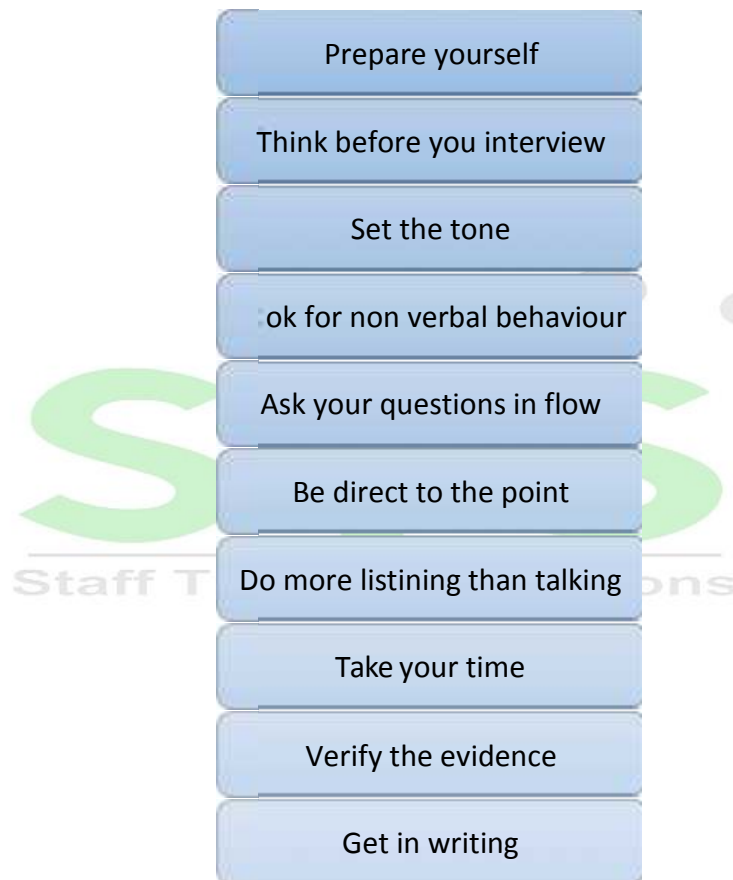


Fig. 7.1

Humans reveal much more through their body language than through their words, especially when they are under stress; therefore, an interviewer should always observe gestures and non-verbal behaviour. A well trained and experienced fraud investigator will watch out for signs of stress through a process called calibration. This process gauges a witness's candour.

It is up to the interviewer to set the tone of the interview. This means dressing appropriately, displaying good social skills, introducing himself/herself properly, and developing a rapport with the interviewee. The questions should be well paced, i.e. not too fast, not too slow, and not too long, thereby ensuring

that the interviewee is comfortable with the process. Tough questions should be asked after a few easy ones to make them appear less intimidating.

It is important for the interviewer to listen and let the interviewee talk more, making it more difficult for the latter to conceal facts or deceive. This will also give the interviewer indicators of the interviewee's deception. The more an interviewer talks, the more the subject will learn and the more time he/she will have to articulate the answers.

The interviewer should have an open, straightforward approach and be as honest as possible without compromising on the interview process. A secretive or aggressive approach may cause the interviewee to become defensive, which would defeat the whole purpose of the process.

The interviewer should take time and ensure that he/she has received satisfactory answers. Typically, honest people do not become agitated by follow-up questions, whereas deceptive people become impatient and try to avoid answering. The interviewer must ensure that he/she has elicited all the facts. Another trick is to double-check facts already obtained during the interview. An investigation may be irreparably damaged if a person contradicts his/her own testimony later. The interviewer might use a tape recorder, but at the risk of spoiling the rapport with the interviewee. A guilty person, in particular, is likely to take offence at the use of a tape recorder and may even become nervous and evasive.

In a fraud investigation, the main purpose of an interview is to get the suspect to become the subject of the interview and to obtain a signed confession from him/her. This is known as an admission-seeking interview. A written confession signed by the perpetrator of fraud is the one of the most powerful pieces of evidence in court.

Dan Rabon is considered a leading expert in conducting effective interviews. In his book, he lists some indicators of deception, such as excessive sweating and dry mouth; these are calibration cues and they may be useful during interviews.

Legal Issues

Fraud investigators do not usually need legal authority to conduct interviews or inquiries into fraudulent matters. However, some states require an investigator to have a license; therefore, if an interviewer represents himself/herself as an investigator, he/she may have to obtain a license first. In certain cases, deception can be used to obtain information from the suspect legally. However, the interviewer must ensure that he/she is not deceiving an innocent party into confessing to the crime. Promising leniency, confidentiality, monetary reward or any other incentive in exchange for information must have the attorney's approval. The interviewer should be careful to avoid any statement that might be perceived as extortion; for example, "tell us the truth or you will be reported to IRS for tax evasion."

Body Language

A person's gestures and facial expressions are indicators of his/her emotions. Usually a person displaying these movements is unaware of them. Indicators of a person's emotions include body language such as speed of talking, pitch of voice, crossing the arms or legs, and other such gestures.

Certain anxiety- or stress-related gestures or movements may hint at deception. Such cues include stuttering, speech errors, hesitation, increased vocal pitch, excessive blinking, pupil dilation, touching the hands or the face excessively, shrugging the shoulders, etc. However, such body language cues are not absolutes and cannot be taken as factual evidence of a person's guilt.

Studies related to body language suggest that, since the legs are further from the brain, they are harder to control than other extremities. The feet will point in the direction in which the person wants to go, ankles on knees suggest stubbornness, and tilting the head indicates friendliness. Body language differs from person to person. Due to their sceptical nature, auditors and forensic accountants tend to read a suspect's body language as deceptive. Therefore, given these biases and the circumstantial nature of reading body language as a deception-detecting tool, it is not admissible in court as evidence.

Deception Cues Other cues, in addition to those listed under body language indicators, can also be used to identify deception. These include the following:

- Interpersonal interactions. For example, a person may shake his head and say "yes" after making a point; these are inconsistent gestures.
- Emotional states. A deceitful person will usually avoid touching the person investigating or questioning him/her.
- Verbal content. For example, reflecting the question in the answer immediately after the question has been asked. Question: "Did you write a cheque to yourself?" Answer: "No, I did not write a cheque to myself."
- How comments are phrased. Replacing the pronoun in order to disassociate people or events, for example using "the equipment" instead of "my equipment".
- Psychological frames. Lies and deceitful statements always leave out details of what went wrong, except for details related to delays and cancellations.

It is always helpful if the investigator is aware of these cues; however, there is enough inconsistency associated with body language to create problems and make it inadmissible in court. More reliable deception detection methodologies such as SCAN include basic signs which are discussed here.

Eye Language

Eye language is a more reliable indicator of truthfulness. According to most experts, the eyes are the most communicative part of the body. Visual Accessing Cues (VAC) refers to the language of the eyes and the principles related to it. Eye movement cues and interpretations are only applicable to right-handed people. Therefore it is important to know whether the interviewee is left-handed or right-handed in order to interpret the cues correctly and to avoid interpreting truthful responses as deceitful.

When interviewees are asked a question that requires them to recall something, their eye movements betray whether the thought process is truthful or deceptive. According to experts such as Don Rabon, the following combinations may be helpful in interpretation:

- Eyes to the left and up. Recalling the past in visual images, e.g. “what colour was your first car?”
- Eyes to the left toward the ear. Retrieving memories in auditory form or recalling sounds. For example, “Which ringtone did you use for your first cell phone?”
- Eyes to the left and down. Generally associated with an internal dialogue, as it is a movement made by people when they are talking to themselves.
- Eyes to the right and up. Constructing images for the future, e.g. “What would your next house look like?”
- Eyes to the right toward the ear. Associated with creating sounds, e.g. “Can you create your own song and sing it?”
- Eyes to the right and down. Associated with kinaesthetic or feelings, e.g. “Do you remember the smell of campfire?”

Blinking is also a part of eye language principles. Normally, a person blinks about 20 times per minute, and each blink lasts about a quarter of a second. When a person is under stress, he/she tends to blink faster and more frequently. Some other circumstances not associated with deception, such as being on TV or lack of sleep, cause a person to blink faster or more often.

Other eye language cues include:

- Gazing downward. This normally indicates guilt, defeat or submission.
- Raising eyebrows. This indicates surprise, disbelief, frustration or uncertainty.
- Raising one eyebrow with head tilted back signifies arrogance or disdain.
- Dilation of pupils indicates interest in something.

Eye language is a vast area. Coupled with best practices during interviews, it can lead to reliable interpretations and results.

Statement Analysis

Deceitful statements made by an individual are identified and detected through a technique called statement analysis. According to Udo Undeutsch, a German psychologist known as the pioneer of statement analysis, ‘Statements that are the product of experience will contain characteristics that are generally absent from statements that are the product of imagination.’

Statement analysis examines a statement word by word. It assesses the truthfulness of a statement by analyzing the words used rather than focusing on whether the facts stated are truthful or not. A deceitful person subconsciously reveals the conflict and deception through their manner of communication. Statement analysis tries to identify cues and signs indicating that a person is trying to distance themselves from the stated facts, e.g. the pronoun replacement discussed earlier.

Special focus should be on the usage of “I”, as any deviation from it is a warning sign of deception. For example, a person may start by using “I” in the statement and then switch to “we”. Similarly if a person initially uses a possessive pronoun, e.g. “my computer”, and then switches to “the computer”, this is also considered a red flag. Statement analysis is applicable to written statements, audio-recorded statements, or videotaped statements.

The actual balance of a written statement is also a potential red flag. For example, when he/she is asked about the events that took place before a fraud, the fraud itself and the events that occurred after the fraud, the amount of time and content that a person uses on each of these may be indicative of deception. An honest person will generally spend an equal amount of time on all three. In contrast, a deceitful person (someone who has played a role in the fraud) will be unable to balance the time and content between the three time frames and will want to disassociate him/herself from the fraud by speaking less about it.

Statement Analysis

Written	Pronoun analysis: I vs. them Noun analysis: Joe/Susie vs. they/it Verb analysis: past tense vs. changing tenses (will often change subconsciously in a statement) Extraneous information analysis: missing vs. present Organizational analysis: chronological vs. disorganized Handwriting analysis: (a bonus technique)
Audio	Pronoun analysis: I vs. them Noun analysis: Joe/Susie vs. they/it Verb analysis: past tense vs. changing tenses (will often change subconsciously in a statement) Extraneous information analysis: missing vs. present Organizational analysis: chronological vs. disorganized Handwriting analysis: (a bonus technique)
Video	Body language deviations Body language analysis

Table. 7.2

SCAN

Scientific Content Analysis (SCAN) is similar to statement analysis. SCAN, like statement analysis, is aimed at detecting deception rather than determining truthfulness. It is cross-cultural, which makes it more applicable. Fraudsters tend to deceive indirectly rather than tell blatant lies. This indirect deception involves hedging, leaving out critical facts, pretending to be forgetful or ignorant, using a choice of words that distances them from the event, etc. In order to avoid making damaging statements, deceitful people use “verbal trickery”. The analyst needs an unambiguous, truthful statement from the suspect in order for SCAN to be effective. Like statement analysis, SCAN looks for a shift in pronouns and gaps in the narrative, which indicate deception. Feigning ignorance (saying “I do not know” often) is considered an attempt to conceal truthful facts, and a change in tense reflects a strong emotional response. In addition to those discussed here, SCAN uses numerous other techniques. According to some experts, it is as effective as a polygraph test. However, both polygraph tests and SCAN are investigative tools and are not legally admissible evidence.

Further Reading:

- ✓ *Silverstone, H., Sheetz, M. (2006) Forensic Accounting and Fraud Investigation for Non-Experts, 2nd ed.*
- ✓ *Golden, T.W., Skalak, S., Clayton, M. (2006) A Guide to Forensic Accounting Investigation*
- ✓ *Manning, G. A. (2005) Financial Investigation and Forensic Accounting, 2nd ed.*