



UNIT-5

The Investigative Process

Learning Outcomes

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

- ✓ Recognise Objective Setting for fraud cases
- ✓ Discuss Case Planning and process of Investigation

Unit 5

The Investigative Process

Introduction

All investigations, from those involving murder to those focused on financial crime, go through similar stages. Investigations begin with initiation and then proceed towards planning, execution, prosecution and, finally, reflection. These stages may overlap or become abbreviated in some cases; however, each stage determines the extent to which the investigation fulfils the interested parties' expectations of it.

There are mistakes in every investigation. They may occur during planning, execution or judgement, and they influence the outcome of the investigation. Errors during the planning stage may cause cost overruns, while mistakes that occur during execution may result in a mistrial or even an acquittal. These mistakes might be avoided and their effects minimized provided auditors have a thorough understanding of all stages involved in the investigation.

Although non-financial crime investigations have their own set of challenges, financial crime investigations require more evidence and are more complex than most murder and non-financial crime investigations. Therefore, understanding the process of investigation and minimizing errors is even more important in financial crime investigations. These investigations require the most skilled and experienced investigators.

This unit will focus mainly on the stages involved in financial crime investigations, beginning with initiation, and then discussing planning, execution and reflection in detail.

Financial crime investigations can be divided into two categories: reactive and proactive. Reactive investigations are typically initiated by citizen/victim complaints and are a result of an external notification of the crime. The investigator will react only when the crime has been reported by an affected party, i.e. employee, spouse, customer, stockholder, management, or auditor. Sometimes the victim reports the crime only after the suspect's employment has been terminated or he/she has left the organization; occasionally, however, the suspect is still working for the company and is unaware of the suspicions being harboured against him/her. Both these situations have their own set of problems and therefore have to be dealt with using different logistical approaches.

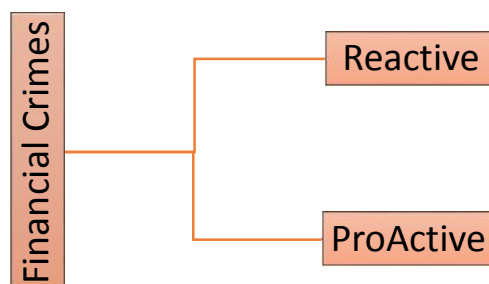


Fig. 5.1

On the other hand, proactive investigations take place as a result of the investigator's findings. The investigator does not wait for the aggrieved party to complain and initiates action based on the evidence of fraud. Sometimes, financial crime is discovered accidentally in the wake of a different fraud investigation, while on other occasions the investigator has a general suspicion of wrongdoing and finds evidence of fraud when he/she digs deeper into the matter.

The method of investigation is sometimes dependent on the manner of discovery. For example, an auditor may identify and report a discrepancy in a company's accounts receivables and suspect that an employee has been stealing from the company's accounts. A reactive investigative approach may entail collecting invoices, receipts and documents as evidence, but a proactive approach would be just as effective. Although undercover operations and lengthy surveillance may not be common tools in an auditor's investigation technique, they are sometimes extremely useful for gathering evidence that might otherwise be hard to obtain. For example, surveillance may result in an employee being caught red-handed while engaging in the crime.

As all transactions are recorded digitally in the organization's computer database, it is very difficult to assign responsibility or blame to one person for a particular transaction or set of transactions. Forensic document examiners have become redundant as information has become computerized and digitalization has all but conferred anonymity on perpetrators of fraud.

Secret codes or passwords are easy and common ways to link transactions to employees; therefore, computer systems leave adequate audit trails for the purpose of tracking transactions. Problems arise when an organization's IT security is below par and apportioning responsibility for fraud becomes almost impossible. Although the lack of network security may enhance productivity or time efficiency by enabling clerks to use other employees' IDs, it makes the auditor's job infinitely more difficult in the event of a financial crime. In some cases, this may go beyond poor IT security and may have the clandestine approval of other employees. In such circumstances, auditors might use both proactive and reactive approaches.

Although reactive approaches may be crucial for investigations, a proactive approach may sometimes gain the auditor much needed evidence. Monitoring the employee and obtaining documentary evidence from the computer log will link an employee to a specific transaction. Each case should be judged on its merits. Complaints of a possible fraud (which may have suspicious motives) or an auditor's gut feeling are not strong enough reasons to launch an investigation. They should serve only as starting points before the viability of the case is evaluated rather than being the bases of an entire investigation.

Case evaluation requires the auditor to separate the facts of the case from speculation and irrelevant information and then judge whether there is a legal basis for further investigation. Often, reports of fraud coming from investors, insiders, customers or auditors are unreliable and exaggerated accounts of what may have happened. Such reports alone should not be just cause for investigating auditors to initiate the reactive approach.

A case lacking a legally cognizable claim will not only waste the auditor's time and resources but also run the risk of inviting a defamation lawsuit by the suspect. Therefore, the initial step in any investigation is to establish a cause of action and determine the legality of the investigation.

The first task of an investigator, be he/she a private investigator hired by the company or an officer of a law enforcement authority, must be to arrange for a prosecutor to pursue the alleged offender. Ultimately, the state or federal prosecutors handle the prosecution.

Torts refer to civil wrongs. In some cases, torts, rather than criminal laws, become the basis of an investigation. This applies to cases where the allegations are not necessarily at the level of a crime but need to be addressed all the same. Although the line between civil and criminal prosecution is often blurred, the ultimate goal in each is clearly defined. In criminal investigations, the ultimate aim of the prosecution is to secure the imprisonment of the offender and/or a fine. On the other hand, the ultimate goal of a civil case is to repair the damage to the victim. These reparations are often of a monetary nature. While a criminal prosecutor is a representative of society, a civil prosecutor represents the individual. For example, in a financial case the civil prosecutor will represent the victim of the business or corporation.

Regardless of whether the case is categorized as civil or criminal, the offence itself is defined by the law. For a prosecution to be successful, each element of the offence should be proven. In criminal cases, these elements are clearly defined in statutory laws but in civil cases common law or precedents set by previous judgements define the elements of an offence.

It is important for the investigators to ascertain the elements of the offence, although it may be difficult to comprehend the precise elements, especially if the nature of the offence is unfamiliar. The prosecutor dealing with the case should be contacted if the elements of the offence are unclear in order that the chances of successfully pursuing the case might be determined.

Solvability Factors

Solvability factors refer to those characteristics of a case that indicate how successful the investigation is likely to be. Not all cases are solvable; therefore, it is necessary to identify unsolvable cases in both public and private sectors. Identifying and discarding unsolvable cases leaves more time and resources for those cases that have a higher probability of being investigated successfully. Solvability factors can be classified as weighted or un-weighted.

Weighted solvability factors.

Weighted systems separate the more solvable factors from the less solvable ones. They recognize that not all factors are equally important; for example, fingerprints found at the crime scene hold more weight than the existence of a witness. Statistical research and anecdotal experience determine weights in advance. Stanford Research International's (SRI) Felony Investigation Decision Model for Burglary and

Robbery is an example of a weighted system.

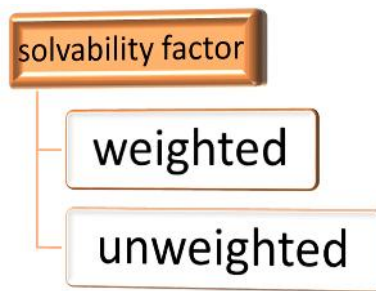


Fig. 5.2

Un-weighted solvability factors.

These systems do not assign weights to factors; therefore, all factors are equally important. The presence of factors determines whether the case will be investigated further or not. Unweighted schemes are usually based on anecdotal data and are specific to each agency.

All cases must be evaluated on their merits regardless of the system being used.

After the case has been evaluated and investigation has been deemed necessary, it is important for the investigation process to be smooth, logical and efficient. Every investigation is unique depending on the specifics of the case, but the success of every investigation relies on the combination of skill, knowledge, and a sound investigative process. Without a well-defined, efficient process, even the most knowledgeable and skilful of investigators will fail to achieve a successful outcome. The consistency and reliability of the investigative process can be ensured with a sound technique, awareness of the unique nature of financial crimes, and logic.

Goal-setting is the primary task of the investigator regardless of how the complaint has been generated. In both proactive and reactive approaches the starting point is the complaint, and the ultimate goal is to establish a case with a legal basis for investigation and a successful outcome.

Setting the Expectations and Goals

A fraud investigator's first aim is to identify the complainant's goal. For a criminal fraud investigation, this is fairly simple as the goal of the aggrieved party is to obtain reimbursement and/or the incarceration of the suspect. For a civil fraud investigator, this aim may not be as simple and clearly defined.

Complainants are the investigator's customers. They may be involuntary customers, but they expect obtainable and acceptable results from the investigation. They seek the help of fraud investigators and expect certain outcomes. Customers' satisfaction depends on the extent to which their expectations are realistic and reasonable. Usually, rational expectations lead to satisfied customers. The more unrealistic the customer's expectations (regarding the achievability of desired outcomes), the greater his/her

chances of being dissatisfied by the outcomes. It is important here to define obtainable results and acceptable outcomes.

Obtainable result: This is a result that might reasonably be expected considering the circumstances around which the investigation is being conducted together with the availability and the current state of technology. In a financial investigation, “current” refers not only to the existing level of technology but also to the foreseeable state of technology in the lifespan of the investigation. Financial investigations usually have longer lifespans than the time it takes for new technology to emerge and for old ones to become obsolete. The discovery of new technology improves obtainable results.

Acceptable outcome: In a financial crime investigation, an acceptable outcome is the final outcome that might reasonably be expected considering the current state of the law. “Current” refers to the period of time delimited by the criminal acts in question. Simply put, it is the constitutional limitation against *ex post facto* laws. An acceptable outcome might include a punishment that did not exist at the time when the actual crime occurred but emerged during the lifespan of the investigation. The customer might expect a more severe punishment than what was previously allowed by the law.

We will now explain how these terms determine the process of goal-setting in the investigation.

The ability of fraud investigators to efficiently and effectively pursue investigations depends on their consistency and their success in attaining investigative goals. In criminal cases, their success can be measured in terms of clearance or arrest rate and the convictions that have been achieved. In civil cases, however, it is much harder to evaluate success. One measure is the number of clients retained by the investigator and the monetary value of his/her client list. The more successful investigators, who consistently fulfil or exceed the customer’s expectations, have more customers willing to hire them.

Had the investigator been the only person responsible for setting goals, there would have been very little chance of the goals being poorly defined. In other words, there are other factors that influence the exercise of goal-setting. The investigator usually has a reasonably good idea of obtainable results and acceptable outcomes, but the customer is likely to have preconceived expectations that will complicate an otherwise simple process of setting goals for the investigation.

The investigator should educate the customer about obtainable results and acceptable outcomes, and both should try to reach a middle ground regarding their expectations of the investigation. Goals might be identified and defined more clearly once common expectations have been established. In this way, the investigation’s progress and the acceptability of the outcome might be evaluated more easily and objectively.

The investigator must possess a high level of skill and a deep understanding of financial crimes. His/her skill set must include a thorough knowledge of investigative methods and techniques. The investigator must also have an extensive understanding of the rules of obtaining and handling evidence and must ensure that all legal requirements are fulfilled in order to successfully prosecute a case (be it civil and criminal).

With adequate skills and technology, the investigator may fulfil the customer's expectations. Clearly defining and redefining obtainable results and keeping the customer up to date with the developments in the case may result in a much more cooperative customer.

A criminal investigation may ultimately conclude that the acts committed by the perpetrator and alleged by the victim, the investigator's client, are not of a criminal nature. Sometimes it is difficult to convince a client that although the alleged acts were wrong, they were not of a criminal nature and, hence, not illegal. If this clarification is not provided to the client early on in the investigation, he/she may develop unrealistic expectations regarding an acceptable outcome. When this truth is eventually revealed to the client, he/she may express resentment and dissatisfaction with the investigation. Provided that the investigator keeps the client in the loop from the very beginning and discloses that the charges may not be prosecutable in a criminal court, the client will have the option of exploring alternatives, such as taking the case to a civil court.

Goals provide a solid foundation for the investigation to progress. Therefore, if these goals are ill-defined, poorly designed, or unrealistic, the entire investigation is likely to be conducted in a haphazard manner and the investigative plan may not be executed properly.

Developing a plan is the second task after defining the goals. It is almost impossible to conduct a financial investigation successfully without having a sound plan.

Financial crime investigations usually require a heavy load of information. Investigators may be buried under volumes of financial information if they do not have a sound plan to manage it. The plan must be strong but sufficiently flexible to accommodate changes during the course of the investigation. It is possible to manage the flow of information and control the volume of evidence with an efficient plan. There are three major factors involved in a sound investigative plan:

Focus. An investigative plan should be focused and consistent with the goals of the investigation. This implies that warning signs and leads are not overlooked, and that there is no duplication of tasks.

Control. Financial crime investigations tend to get out of hand and multiply in terms of the information under consideration; therefore, it is very important to maintain control of the investigation. A carefully conceived plan helps manage investigations, and even though the flood of evidence and information is inevitable, a strong plan makes it less destructive for the investigation as a whole.

Adaptability. *Financial investigations are ever evolving. They always grow, and sometimes even shrink, but they are constantly changing.* Therefore, a good plan must be accommodating and flexible enough to adapt to these changes; otherwise, even a slight change will render the plan useless. The investigator will then have to hurriedly re-evaluate the plan, formulate a new one, or work with a temporary plan, which is never advisable. Changes in the circumstances surrounding the environment do not have to translate into changes to the whole plan, which is why the original plan must be adaptable.

Develop an Investigative Plan

Pre-planning is a way of avoiding reactive decision-making in favour of anticipating all possible scenarios and devising a carefully deliberated reaction should certain operational compromises have to be made. Hasty decisions taken under pressure are often devoid of the depth and insight that a carefully planned course of action possesses. Investigators might determine and obtain all the support they may need throughout the investigation ahead of time so that they do not have to resort to ad hoc plans.

Financial Planning

Investigators should be fiscally responsible and conserve their resources through preplanning because money is always scarce regardless of whether the investigator is working for a private client or for the district attorney's office. Therefore, compromises have to be made in order to minimize costs.

The investigators need to identify potentially expensive issues beforehand in order to consider the alternatives while there is still time. Making important fiscal decisions under pressure is likely to involve spending more than necessary. The phone tap is a very thorough tool for investigative purposes. However, the investigator must consider its net cost in terms of money and the man-hours involved before taking a decision. All alternatives should be considered before employing such an investigative tool whose costs may exceed its utility. Investigations are often started in the hope that money will be made available eventually, but this never happens and the initial goals of the investigation have to be compromised.

Failure to find alternatives to costly investigative tools means either that the stated objectives of the investigation will not be achieved or the money spent will exceed the budgeted amount. Either scenario will leave the customer's expectations unfulfilled.

Personnel Planning

After determining the scope and direction of the investigation, the next step is to predict the number of personnel that will be needed to conduct the investigation efficiently. It is desirable to pre-plan for staffing requirements, especially in long and complex cases. Obtaining help from experts is one way of identifying important personnel positions. Sometimes, certain financial transactions and situations are beyond the ability of the investigator to fully comprehend; therefore, outside help can be important in these cases. Experts and consultants in the areas of accounting, securities and stocks, corporate governance and international financial transactions may be helpful to the investigation.

In today's high-tech age it is very common to face technological problems, especially those concerning computer-based information; therefore, an expert in the field of technology would be useful. It is simply unreasonable and impractical to expect a financial investigator to be able to handle all kinds of scenarios. Sometimes these scenarios are beyond the scope of the investigator's expertise, which is why it is so important to invest in a diverse pool of experts. These resources will benefit the investigation when it encounters issues as varied as computer security, cryptography, proprietary software, etc.

Experts in technical areas are usually connected to security agencies or other law enforcement agencies. The integrity of consultants is always an issue because the investigators have to trust them with a lot of sensitive information, e.g. encrypted data; if the consultants are dishonest, this will seriously harm the evidence and the investigation as a whole. Therefore, trusting an independent source with crucial evidence is always a top concern.

Regardless of the integrity issue, experts are always valuable assets as they help investigators save time. Usually, a well-trained investigator who has studied diverse subjects is able to solve problems without help but technical issues need relevant expertise. Outside experts should be hired early on in the investigation in order to form a stronger, more focused plan.

Technology Planning

Investing in the latest technology is a necessity, especially as the world is undergoing a digital revolution and everything is becoming more computerized. Such investments, either temporary or permanent, must be carefully planned.

Short-term or temporary investments would include rental equipment, such as a high-tech surveillance camera to monitor the suspect's activities. Long-term investments would include purchasing the latest computer software or upgrading the equipment.

While technological investments are usually pre-planned and evaluated with a cost-benefit analysis, short-term investments tend to be unpredictable.

Anticipating the technological requirements of a case means planning the expenditure on technology and evening out its impact on the overall budget of the investigation. For example, after the investigator has identified the key areas that will require technological expertise, he/she will be able to predict the amount of money that needs to be invested in securing and analyzing all possible digital evidence.

Technological incompatibility, however small, can seriously hamper an investigation. Differences between computer operating systems of the investigator and the suspect, video encoding systems, electronic communication equipment, etc. may stop a simple investigation in its tracks. Although planning may not eliminate the possibility of technological incompatibility, it will definitely go a long way towards mitigating the impact of such a situation.

To sum up the discussion above, planning does not prevent investigative hurdles; it simply makes them much more manageable and less detrimental to the outcomes.

The actual investigation begins once planning is complete. It begins by identifying witnesses, collecting documents, analyzing and assembling them into exhibits, and finally, if everything goes according to the plan, charging a suspect. This process requires patience, perseverance, basic police work, paperwork and intuition. The investigative process of dealing with a financial crime is similar in many ways to that of other types of crimes, although there are some fundamental differences that set financial crimes apart from others.

Investigations are often constantly changing regardless of how impeccably they are planned. The nature of an investigative process is inherently in flux and constantly evolving. The process begins with a finite set of known facts, and as the investigation progresses more facts are unveiled. New theories start to evolve as a new set of facts becomes known to the investigator. Existing theories and hypotheses about the case are challenged, the investigator learns new facts, and proof is either reinforced or weakened. Evidence and proof are re-evaluated and re-prioritized. The proof that is supported by new facts ascends the hierarchy and the proof that is weakened is pushed down the list in terms of importance to the case. Theories and hypotheses are either refuted and discarded or proved to be correct and developed further.

Even when the investigator is sure of the witness's probity, has collected the witness's testimony, and is sure about the evidence, he/she cannot close the door to further information. New witnesses or new data may challenge previous conclusions or bring forth new evidence. Often, these changes result in the investigator returning to the planning stage and starting from scratch. As long as the investigative goals are clear and the plan is strong, new developments will only require slight changes to the original plan and will not derail the entire investigation.

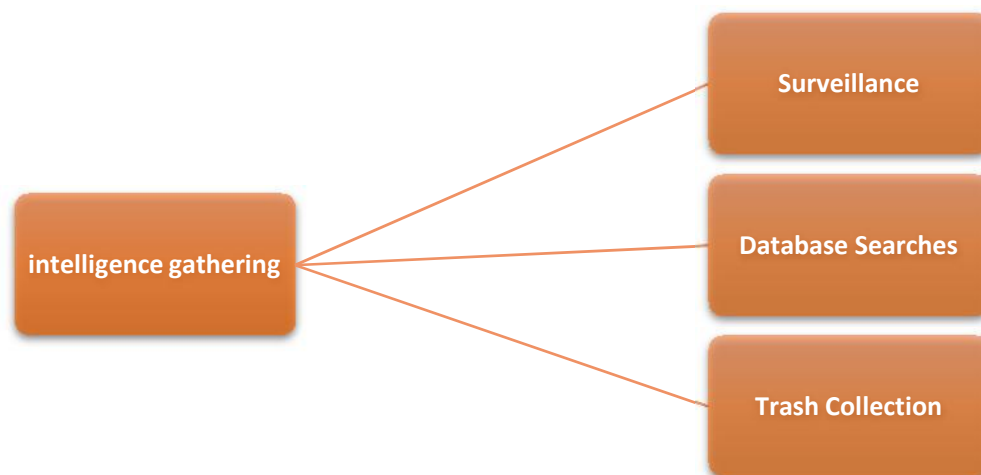


Fig. 5.3

An efficient investigative process is conducted in an orderly manner. Although it is possible to deviate from the order, there must be some pattern in the process in order to avoid chaos and confusion. There are times when witnesses have to be contacted and interviewed before all background investigation is complete. Sometimes the suspect needs to be interviewed when some crucial documents are still awaited. These unforeseen circumstances are common in an investigation, and although they may not occur at the most ideal times, they do not halt the investigative process.

If the plan is sound and if there is a reason behind each of its steps, then it can be adapted or modified as per requirements. The underlying logic is much more important than a strict order according to which the plan has to be executed. Therefore, the investigative plan is more of an outline than a strict guidebook.

Laying strong foundations is much more important for a financial investigation than any other investigation because financial investigations require more evidence and are much more complex. The reasons behind their complexity are as follows:

There are several aspects of the fraud in question. Fraudulent schemes may have any number of variations. What would at first appear to be a simple financial scam may evolve into something much more complex. Sometimes the investigators, regardless of their wealth of experience, will not be familiar with the complexities of a financial investigation.

The business world is in constant flux, as business norms and practices change frequently. Debt and equity instruments, investments, acceptable forms of organization such as the limited liability company, and many other aspects of the business environment evolve over time and influence the workings of companies functioning in that environment.

Understanding the Case

The investigator's goal during the background stage is to familiarize him/herself with all possible facts about the case. In addition, the investigator must gain knowledge of the business, its nature and structure, the decision-making authority, the internal dynamics of the company, etc. Knowing the business will enable the investigators to locate important documents whenever necessary.

There is also the more difficult task of getting to know business processes, i.e. how the business conducts its operations. Ascertaining the method of accounting used by the business is likely to prove advantageous later on. For example, the investigator should know whether the business uses cash basis or accrual basis for accounting. Furthermore, it is important to know who is in charge of processing deposits, how regularly invoices are sent to clients, and what accounting controls are in place. Once the investigator knows how things work within the company, it will be easier to distinguish variances and diversions from routine business processes.

It is always helpful to track the investigation's progress through visual aids, flow charts, organizational charts, etc. in order to give a comprehensible shape to abstract ideas and concepts. The company's employees and managers may also provide their own views to confirm or strengthen the investigator's perceptions of organizational processes.

Although gaining an understanding of how a business works may reveal a lot about the industry in which it functions, it is important to analyze the industry separately. Every profession has an organization that sets standards and general rules of practice, and represents the industry. For example, the medical profession in the United States of America has the American Medical Association (AMA), the legal

profession has the American Bar Association (ABA), and the accounting industry has the Financial Accounting Standards Board (FASB).

These organizations can play a vital role in providing the investigator with information about the industry because they guide processes and general practices of the industry. Apart from professional organizations such as the AMA, ABA, and FASB, there are other non-professional organizations and monthly publications that might also provide information. It is the investigator's job to identify organizations and other sources of information that are relevant to the case. Therefore, when investigators are collecting background information on their client, they must first identify authentic sources of information that may be able to provide crucial facts about the victim and suspect. If these sources of information are not available, the investigators might ask their client to tell them about any industrial organizations that may be able to help them.

The investigators are able to proceed to obtaining background information on the main suspect in the crime after they have collected all available knowledge about the business and the industry. It is important to have a strong foundation and thorough knowledge of the business structure and processes upon which further investigation will be built. This is called the intelligence-gathering phase of the investigation.

Intelligence-gathering can be crucial to the success of an investigation. The techniques used to accumulate intelligence on the victim and suspect determine how the case will be evaluated, and whether this evaluation will be valid. Intelligence-gathering techniques are typically non-invasive and do not overstep an individual's right to privacy but they do help to determine whether or not a major investigation should be launched. Strong intelligence will give the investigator more confidence in taking decisions.

Intelligence-gathering can be categorized into surveillance, database searches, and trash collection. It is up to the investigator to add more techniques and tools, as the following three categories are only the starting point.

Surveillance

Surveillance of the suspect's or victim's actions may provide valuable information and uncover facts related to the following:

- Valuable assets (boats, cars, etc.) owned by the suspect or people close to the suspect.
- Banks and financial institutions.
- Homes, buildings, and other real estate in the possession of the people relevant to the case.

Although these things are visible to everyone, they may not have traceable documentation; therefore, finding out about them early on in the investigation may help investigators in future negotiations. Surveillance may also identify key acquaintances who might be summoned for interviews and questioning.

Database Searches

Data have a number of uses, ranging from tracking people to predicting their buying preferences. Databases contain a vast amount of information without which the economy would be paralyzed. Every transaction that takes place in a market economy is stored as data somewhere. These transactions include using a debit card, having a driver's license renewed, paying for goods or services with credit card, etc. Therefore, it is crucial that investigators access databases, analyze the information stored in them, and piece this information together in order to gain a clear picture of their target. Databases are divided into two categories: public and private.

Private databases. These are databases to which access is restricted. They may include both government and commercial sources. An example of a private database is a credit-reporting service such as Experian. Private databases can store a variety of crucial information such as data related to real estate, telephone listings, uniform commercial code liens, etc. Individuals might access private databases in exchange for a fee, while some information can only be accessed by law enforcement personnel for legitimate purposes.

Public databases. These are less speedy but also less costly than private databases. Nowadays, more and more information is being made public as many government departments are making their databases available on the Internet free of charge. For example, property and tax assessment records can be accessed easily through the county clerk's office. Corporate filings, civil and criminal histories and other such records are available at a nominal fee or free of charge.

Although most public data are said to be free, convenience has to be compromised. Whereas private databases can be accessed without difficulty if one is willing to pay and if one knows precisely what one is looking for, public databases are invariably much more complex. For example, let us suppose that an investigator wants to know whether the suspect owned any property in a particular state. He/she will have to conduct a county-by-county search of every property appraiser's office, which can be a tedious job. On the other hand, commercial databases do not involve such effort, provided that a fee is paid. Therefore, there is a trade-off to be made between convenience and cost, and this choice has to be made by the investigator and the customer.

The World Wide Web is the biggest public database in the world. In an information age, a growing number of people all over the world have access to the Internet. People put personal information, such as pictures of family trips, vacations, important occasions, etc. on the Internet. If an investigator can gain access to such information on the suspect, this may prove to be helpful. In addition to such networking sites, there has been an increase in blog culture, resulting in a growing number of people expressing themselves on public forums. It is entirely likely that the suspect will take part in all this online activity and have a blog of his/her own.

Similarly, most organizations have their own websites online with employee/management listings and profiles. These websites can be accessed free of charge, and although some companies do not update their websites regularly, they are still very helpful sources of information. Numerous search engines can be utilised for intelligence-gathering, and these may provide information on the suspect's employment history.

Trash Collection

This job can be unpleasant and degrading as it literally means searching through someone's trash in search of information; most people will avoid it as far as possible. It is, however, a very effective information-gathering tool because people are usually careless about discarding receipts, documents, personal items, etc. Even though these things may not at first appear meaningful, they may make a lot more sense in combination with other evidence and information.

Although the courts are generally protective of an individual's right to personal freedom and privacy, they still assume that this right does not extend to items that have been discarded. In other words, while being overly intrusive and encroaching upon an individual's personal freedom might be deemed unlawful, searching someone's trash for clues and information is not considered an intrusion.

The investigator may not be held liable for intruding on someone's privacy simply by searching through the trash, but he/she must still carry out this task with caution and avoid recklessness. The investigator must recognize the importance of where the trash has been placed before he/she starts to search through it. For example, if it is sitting behind a fence, in the garage or even in the driveway, the investigator may be held liable for intrusion because he/she has

trespassed on someone's property. If the trash is left on the street for the trash collector to pick up, then according to the Supreme Court the individual does not have the right to prevent anyone from looking through it. The investigator should bear these distinctions in mind before collecting the suspect's trash.

Collecting trash and searching for information in it have long been valuable sources of evidence for journalists, police and investigators. Sometimes garbage may contain the one missing piece of evidence that is required to complete the whole picture. People usually leave traces of where they have been, what they have been doing, their purchases, evidence of the frauds they have conducted, etc. in their trashcans, which is why trash-collecting is considered a category of intelligence-gathering.

Further Reading:

- ✓ *Wells, J. T. (2006) Principles of Fraud Examination*
- ✓ *Albrecht, C.C., Albrecht, W. (2005) Fraud Examination*