

CFE UPDATE
September-October 2007

Chapter Board of Officers

President: Joseph R. Dervaes, CFE, CIA (253) 884-9303.

Vice-Chair of ACFE Foundation Board of Directors, 2003 Cressey Fraud Lifetime Achievement Award Winner, ACFE Fellow, Regent Emeritus, prior member of the Board of Review, Chapter Distinguished Achievement Award Winner for 1995, and ACFE 2007 Award Winner for Achievement in Community Outreach and Service, Association of Certified Fraud Examiners; Founding President, Librarian, and WebMaster, Pacific Northwest Chapter/ACFE. joeandpeggydervaes@centurytel.net; Vaughn, Washington, Retired.

Vice-President and Training Director: Norman J. Gierlasinski, PhD, CFE, CPA, CIA. 2002 ACFE Outstanding Achievement in Anti-Fraud Education Award Winner, and the Chapter Distinguished Achievement Award Winner for 1996, Association of Certified Fraud Examiners; Professor of Accounting, Central Washington University (Des Moines Center) (206) 439-3800, Extension 3825. normang@cwu.edu; Des Moines, Washington.

Secretary-Treasurer: Roger B. Gulliver, CFE, CPA, CISA, CBA. President, Gulliver and Associates PS (253) 735-2392; the Chapter Distinguished Achievement Award Winner for 2000; rbg1@mindspring.com; Auburn, Washington

Director-At-Large: Bernadette McBride, CFE, CPA. Senior Investigator/Financial Examiner, Washington State Department of Financial Institutions, Securities Division, (360) 791-8824; the Chapter Distinguished Achievement Award Winner for 2004. bmcbride@dfi.wa.gov; Olympia, Washington

Director-At-Large: Robert A. Goehring, CFE, CPA
Audit Manager, City of Kent - Finance Department, (253) 856-5262; the Chapter Distinguished Achievement Award Winner for 2005; rgoehring@ci.kent.wa.us, Kent, Washington

The Pacific Northwest Chapter was the ACFE's CFE Chapter of the Year Award Winner for 2006. What a magnificent achievement! Congratulations and thanks go to all who have played a part in helping to develop the Chapter over the years. Great job!

Be sure to mark the following calendar year 2007 fraud training meetings on your personal schedule and plan to attend.

October 17-19, 2007 (Wednesday-Friday). Joint Chapter and Association of CFEs Fraud Training Classes at the Doubletree Hotel, 18740 International Boulevard; SeaTac (across the street from SeaTac International Airport), (206) 246-8600. There is a \$10 (estimated daily parking fee for overnight guests, and an \$8 (estimated) parking fee if you drive your car and park in the hotel parking lot on a daily basis. Car pooling is recommended to reduce the nominal cost of parking. Registration and continental breakfast is at 7:30 a.m. The class begins at 8:00 a.m. and ends at 4:25 p.m. each day. Register directly with the ACFE by calling 1-800-245-3321 (Austin, TX), or by accessing the Association's website at www.ACFE.com. The class includes 16 hours of continuing professional education credit. You must contact the ACFE to actually register for this class. Ask for Diane Lloyd, Events Registrar (dlloyd@ACFE.com).

October 17, 2007. The topic for this one-day fraud class is Investigating Conflicts of Interest, and the speaker is J. Steven (Steve) Clark. The registration fee for attending this training class is \$249 for ACFE members and \$299 for non-members (all fees are estimated).

Conflict of interest can present significant fraud allegations for corporations, government agencies, fiduciaries, customers and suppliers. It is also one of the most difficult areas of fraud to investigate and obtain adequate evidence. Improper investigations can create counterclaims and civil actions against organizations and fraud examiners. In this class, participants will gain an understanding of how and why conflicts arise and how to spot warning signs of conflicts of interest, plus leave with an understanding of issues specific to these types of engagements.

October 18-19, 2007. The topic for this two-day fraud class is Professional Interviewing Skills, and the speaker is Jonathan Turner, CFE, CII. The registration fee for attending this training class is \$595 for ACFE members and \$695 for non-members (all fees are estimated).

There is a \$95 discount on the Professional Interviewing Skills class for registration before September 17, 2007. And, there is an additional \$100 discount for registering for both classes (\$744 for members, and \$894 for non-members).

What are people hiding from you? Criminals, clients, customers, and even colleagues may each be hiding something from you. This class will teach participants how to be more effective in asking questions and evaluating responses so that they can better detect lies and deception from everyone they interview. Even experienced professionals will improve their interviewing skills with this renowned course.

Note: The Association will provide breakfast pastries and mid-morning and mid-afternoon refreshments on all three days of these training classes. The Association will provide lunch only on the first day of the two-day training class. Attendees will be on their own for lunch for the one-day training class and for the second day of the two-day training class. For Members of the Pacific Northwest Chapter/ACFE, the Chapter will

sponsor your lunch on the days when ACFE does not provide this service. The Chapter Board of Officers will assist with registration duties for this class.

December 3, 2007 (Monday). Joint Chapter/WSCPA's 11th Annual Fraud Conference at the SeaTac Marriott Hotel; 3201 South 176th Street, SeaTac (across the street and up the hill a short distance from SeaTac International Airport). The registration fee for members of the WSCPA and the Pacific Northwest Chapter is \$195 (estimated) for this conference. There is also a \$8 (estimated) daily parking fee if you drive your car and park in the hotel parking lot. Car pooling is recommended to reduce the nominal cost of parking. Registration and continental breakfast is at 7:30 a.m. The conference begins at 8:00 a.m. and ends at 5:00 p.m. Register directly with the WSCPA by calling 1-800-272-8273 (Bellevue, WA). The conference includes eight hours of continuing professional education credit. The course registration form can also be obtained from the WSCPA's web site at www:wscpa.org. You must call the WSCPA to actually register for the conference. Ask for Rachel Ingalls, Conference Administrator.

There will be four sessions at the annual fraud conference, each lasting two hours. Confirmed information is as follows:

Session #1 (8:00 – 10:00 a.m.). The *Washington State Attorney General's Office, Consumer Protection Division*, will provide a panel discussion with four speakers and topics. They are: (a) Shannon Smith – issues of privacy and data security; (b) Rebecca Henderson – computer forensic investigations and technology trends and changes; (c) Rebecca Sears – computer fraud and identity theft education and outreach, general trends and statistics related to these issues; and, (d) Katherine Tassi – the Attorney General's Office litigation and enforcement efforts with respect to Internet fraud and spyware, as well as some enforcement actions throughout the United States.

Session #2 (10:00 a.m. – Noon). Chapter Member Guido Van Drunen will speak on the topic of *Traveling in Style on Your Company's Nickel*. He will also be presenting this seminar at the ACFE Annual Fraud Conference and Exhibition in Orlando, FL in July 2007. Travel fraud is always an interesting topic and has broad application to attendees who perform accounting services for others because this type of fraud occurs in all industries and organizations. Guido Van Drunen, CFE, CPA, is a Director at KPMG.

Session #3 (1:00-3:00 p.m.) Chapter Member Ken Wilson will speak on the topic of *The Dental Queen – A \$1.9 Million employee Embezzlement Disbursement Fraud Case Study*. He will focus on the reasons why the group of dentists in an Olympia Dental Clinic could have detected this \$1.9 million fraud over a 6.5 year period of time, but didn't. The bookkeeper (10 years) and her husband (17 months) will be sentenced in May 2007 under a preliminary plea bargaining agreement with the Thurston County prosecuting Attorney's Office. Ken Wilson performed the investigation for this disbursement fraud for the prosecutor. The bookkeeper spent \$200,000 on clothes, \$100,000 at restaurants, \$185,000 on hotels, \$74,000 on airline tickets, and \$32,000 at Starbucks. She forged company checks to pay off credit cards for herself and her husband and laundered some of the money through her husband's business. The couple also owned a boat, personal

watercraft, expensive jewelry, and a BMW with a vanity license plate that read “Envy Us”. This case was included in a new ACFE book published in July 2007 by John Wiley and Sons, Inc. The book includes fraud case studies from 62 authors who are members of the ACFE, and is entitled *Fraud Casebook: Lessons from the Bad Side of Business*. Ken Wilson, CFE, is the Owner of Wilson Investigative Services.

Session #4 (3:00-5:00 p.m.). Chapter Member Gayle Seyl will speak on the topic of *How the Health Care Revenue Cycle Keeps Fraud alive, Well and Financially Sound*. She will focus on the perceived benefits to the provider, patient, and payer, as well as the economic costs of healthcare fraud to society. Actual fraud case studies will illustrate the key learning objectives for this session. This seminar topic will have board application to attendees who specialize in performing accounting services for all types of health care providers. Gail Seyl, CFE, is the Director of Corporate Integrity at Virginia Mason Medical Center. She is also our Chapter's Distinguished Achievement Award winner for 2007. Congratulations Gail.

President Joe Dervaes and Vice-President Norm Gierlasinski will co-chair the Annual Fraud Conference.

Important Chapter Fraud Training Meeting Information for Downtown Seattle Location

All fraud seminars conducted by the Chapter in downtown Seattle are held at this location. We meet at 1000 Second Avenue in a 28th floor conference room of the Washington State Housing Finance Commission. This is the old Key Towers Bank Building; but, the building currently has no name on it. The building is located across the street and one block North of the Jackson Federal Building (corner of Second Avenue and Spring Street).

Our host, the State of Washington Housing Finance Commission, controls the conference room where our meetings are held. In February 2005, the Commission revised its security for access to its training room. We are NO LONGER required to sign-in with the receptionist on the 27th Floor to obtain a visitor=s badge. Please report directly to the training room on the 28th Floor of the building.

We meet at the training room promptly at 2:30 p.m., hold a 30 minute networking session at 3:30 p.m. in the middle of the class, and then complete all fraud seminars at 4:45 p.m. sharp. The Commission has asked us to depart the training room promptly because their duty day ends at 5:00 p.m. We appreciate using this fine training facility for our fraud seminars, and respectfully request everyone abide by the Commissions rules.

(1) Links to ACFE and Chapters

The Board of Officers has identified the following CFE Chapter web-sites that may be useful to our Members. Here they are:

Association of Certified Fraud Examiners B www.ACFE.com

Pacific Northwest Chapter/ACFE B www.fraud-examiners.org
Oregon Chapter/ACFE B www.oregon-acfe.org
Spokane Chapter/ACFE B www.spokanefraud.org
Vancouver, B.C., Canada Chapter/ACFE B www.cfevancouver@yahoo.cca

(2) Additional Fraud Links

The Board of Officers provides the following additional links to its Chapter Members as a public service. Here are just a few of them:

Complaints about Internet Fraud may be filed with the Internet Fraud Complaint Center (www.ifccfbi.gov).

Complaints about e-mail and mail fraud may be filed with the U.S. Postal Inspection Service (www.usps.gov/postalinspectors). The primary use is for Nigerian (and other African countries) fraud e-mails or letters that are received. PS Form 8165 (Mail Fraud Report) lists many other uses as well. This form may be downloaded and then mailed to the U.S. Postal Inspection Service to file a complaint and submit the fraudulent document received. The mailing address is U.S. Postal Inspection Service, Inspection Service Support Group, 222 South Riverside Plaza, Suite 1250, Chicago, IL 60606-6100.

The U.S. Postal Inspection Service web-site lists additional links to the The Chamber of Commerce and the Better Business Bureau (www.bbb.org), county or state Office of Consumer Affairs. In this state, that=s the Washington Attorney General=s Consumer Protection Division at www.wa.gov/ago, or nationally at www.naag.org. The Federal Trade Commission can be reached at www.ftc.gov.

Identity Theft links are at the Identity Theft Unit sponsored by the Washington State Patrol and the Washington State Department of Licensing at www.dol.wa.gov; www.idtheftcenter.org; www.consumersunion.org; and www.consumer.gov/idtheft.

John E. Reid and Associates, Inc. (Fraud Interview Training), Chicago, IL, www.reid.com. The Reid Preferred Group of Associations (RPGA) number for the Pacific Northwest Chapter/ACFE is A20-049. The RPGA number must be shown on the registration form in order to receive a discount on seminar registrations or to purchase products.

(3) 18th Annual Fraud Conference and Exhibition

(a) Chapter Vice-President and Chapter Representative at the Annual Fraud Conference presents the following report on the activities at the Chapter Representatives Meeting held on Sunday, July 15, 2007.

Chapter Representative Meeting Recap

The Chapter Representative meeting held last month in Orlando during the ACFE's Annual Fraud Conference was the largest turnout yet. Around 80 chapter leaders were in attendance.

This year we had a council of four chapter leaders facilitating the meeting. The council spent many months preparing presentations on a variety of topics important to chapters and chapter leaders. The following is a brief recap of their presentations. All the presentations can be found in the Chapter Leader section on the ACFE web site.

Chapter Master Plan **Presented by Dave DeIVecchio**

- A master plan acts as a plan of action to help Board members manage chapter activities.
- A master plan encourages overall membership participation in the planning of chapter activities.
- Using the Chapter Management Plan (CMP) and the Chapter Action Plan (CAP) will help the board assess strengths and weakness and map out a set of goals the board would like to accomplish.
- A membership directory can help disseminate important information to the chapter membership. A directory can include a letter from the chapter president; a chapter financial report; chapter action plan; and the chapter bylaws to just a few.
- The keys to a master plan are: involve chapter members; keep them informed; and encourage feedback on chapter activities.

Chapter Training **Presented by Vickie Murphy**

- Experienced speakers, interesting and relevant topics that meet the members' needs are the keys to the type of quality training that will bring members back on a regular basis.
- There are many sources available to help you find speakers (These are listed on the Chapter Training document in the Chapter Leader section).
- Ask your members what they want - time of year; length of training; type of training, etc.
- Survey Monkey allows you to survey your members. The basic service is free.
- Take what you learn from the survey and apply it to your training schedule.
- Remember that the demographics of your chapter membership may change so plan to conduct a survey annually.

Communicating, Public Relations, and Community Involvement **Presented by Brenda Buetow**

- Newsletters and local web sites provide excellent resources to let your members know what is going on with the chapter.
- Chapters have been supporting local colleges/universities by providing speakers for classes or campus events.
- Chapters are active in the community, supporting local food banks, cancer awareness groups, Habitat for Humanity, etc.

Board Member Orientation **Presented by Robert Cohen**

- Some keys to a successful board term - clear organizational goals; defined performance measures; dedicated board members.
- The board should set specific goals and objectives, and then prioritize them.
- Attend board meetings regularly.
- Be aware of IRS rules and regulations.
- New board members should have the time to invest in their duties.
- A chapter should have some type of new board member orientation process in place.
- A major objective at board meetings is to maximize member participation.

Volunteering with the ACFE **Presented by Robert Cohen**

- Volunteering with your Association is an enriching experience which can help you grow both professionally and personally.
- Help shape the future of the ACFE by getting involved.

- Help the ACFE establish worldwide standards for the enhancement of the anti-fraud profession.

Robert also discussed the need to comply with IRS rules and regulations and he provided a handout on political activities and non-profit organizations.

The council wrapped up the meeting reviewing some of the things chapters are doing to promote membership as well as retain existing members. Brenda had examples of chapter web sites and newsletters and how using these tools, along with resources available from the ACFE, can help with recruitment/retention.

One area of improvement suggested by the chapters to the ACFE is the promotion of chapter participation to new ACFE members. The consensus was that communication by the ACFE to these new members should be enhanced and the chapters needed to be involved. I agree that better coordination between the ACFE and the chapters would mean more new members learning about a chapter in their area. I have been tasked by the Membership Director to work with the ACFE's IT and Membership Departments to find an acceptable solution.

(b) Chapter President Joe Dervaes received the ACFE's Outstanding Achievement in Community Service and Outreach at the Annual Fraud Conference on July 17, 2007. Joe Dervaes (left) is pictured receiving this prestigious award from Don Mullinax, CFE, CIA, CGFM, 2007 Chairman of the ACFE Board of Regents (right).



(4) Letters From Chapter Scholarship Winners

(a) On August 8, 2007, Matthew Overfield, a 2007 Chapter student scholarship winner, wrote the following letter to the Membership:

“Thank you for the \$500 Scholastic Grant from the Pacific Northwest Chapter of Certified Fraud Examiners. It is an honor to be a recipient of the 2007 Student Scholarship Award.

My long-term career goals include working as a fraud specialist in the gaming industry. Currently I am employed as a Revenue Auditor for Lucky Eagle Casino in Rochester Washington. I am presently being trained to assume the position of Staff Accountant and expect to secure the position of Financial Analyst by this time next year.

I will finish my Bachelor's Degree in Accounting from Saint Martin's University in May of 2008 and will then sit for the CPA exam. It was fortunate that I was introduced to Fraud Examination through Saint Martin's University; I took it as an elective the first time it was offered and immediately realized an unrecognized interest.

I look forward to becoming involved in Chapter activities. As I become active within the community of Fraud Examiner's I would like to learn more about the requirements for earning my CFE license. I attached a completed copy of my membership application to the Pacific Northwest Chapter of Certified Fraud Examiners; having sent the original to Mr. Gulliver. Also, I have forwarded your biography to Mr. Keith Shuster at Saint Martin's University, he may be contacting you regarding a speaking arrangement.

Please extend my sincere thanks to the members of the Scholarship Committee, The Chapter Board of Officers and chapter members for their recognition in granting me a Pacific Northwest Chapter of Certified Fraud Examiners 2007 Student Scholarship."

(b) On August 25, 2007, Emily Beschen, a 2007 Chapter student scholarship winner, wrote the following thank-you note to the Membership:

"Thank you for awarding me your Chapter scholarship. The money is a huge help right now. As it turns out, law school is expensive! I hope you have a great year."

From the Chapter Board of Officers: These letters and thank you notes are a nice touch! We congratulate Matt and Emily for their outstanding scholastic achievements at Saint Martins University, and Western Washington University (and now at Lewis and Clark Law School), respectively.

(5) New ACFE Book on Case Studies in Computer Fraud to be Published in 2008

On September 24, 2007, ACFE Chairman Joseph T. Wells, CFE, CPA, announced the preliminary author selections for the new ACFE Book about Case Studies in Computer Fraud that will be published by John Wiley, Incorporated sometime in mid-2008 (most likely in conjunction with the ACFE's 19th Annual Fraud Conference and Exhibition in Boston, MA). Chapter President, Joe Dervaes is one of the 55 authors who were fortunate enough to be selected from an impressive field of over 100 submissions that were proposed for this latest ACFE book project.

This will be the ACFE's second book written by CFEs within the ACFE membership and edited by the ACFE Research Department and Chairman Joe Wells. The first book (Fraud Casebook: Lessons from the Bad Side of Business) was published in July 2007 and is available from the ACFE Bookstore (www.ACFE.com). Joe also published a

fraud case study in that book as well. The book was very well received, and proceeds go to the student scholarship program of the ACFE Foundation. This is a very worthwhile cause. I'm sure the second book will follow these same guidelines.

Joe will be writing about a computer fraud case at an Eastern Washington Public Utility District that was perpetrated by the Deputy Controller/Treasurer. In this elaborate scheme, he used optical scanners, a computer, and color and regular copiers to prepare and alter three fictitious warrants totaling approximately \$250,000. The computer part of this case involved the modification of the warrant redemption software program which allowed warrants made payable to himself to be accepted by the PUD's computer as payments to valid vendor accounts which were under his control. The computer fraud case study must be between 3,500 and 5,000 words in length, a similar requirement for case studies in the first book.

Congratulations to President Joe Dervaes on being selected as one of the 55 authors of computer fraud case studies on this latest ACFE book project. The Chapter Board of Officers and Membership wish him well.

(6) Additional Fraud Training Opportunities

(a) The Oregon Chapter of the International Association of Special Investigation Units announces it's annual Insurance Fraud Conference and Expo at the McMenamins Kennedy School in Portland, OR on October 3, 2007. Please contact the organization at: <http://www.or-iasiu.org/training> for further information.

(b) The Northwest Fraud Investigator's Association announces its Fall 2007 Conference in Richland, WA during the period October 10-12, 2007. The title of the Conference is Deception Detection. Please contact the organization at: <http://www.nwfia.org/righlandconferenceregistration> package for additional information.

(c) The Oregon Chapter/ACFE announces its October 13, 2007, chapter luncheon fraud meeting on October 13, 2007, at 11:30 a.m. in Portland, OR. The speaker will be David W. Simpson, Director of Security, Nike Incorporated, and his topic will be *Trademark Fraud*. Please contact the Oregon Chapter/ACFE directly for additional information. The Chapter can be reached at: www.oregon-acfe.org.

(d) The Spokane Chapter/ACFE announces the speakers and topics for its two-day Annual Fraud Conference (October 18-19, 2007) to be held at the Mukogawa Fort Wright Institute Commons Building which is near the Spokane Airport. Details follow.

Brian Eckersley, Spokane Police Department. He will speak on the topic of Appropriate Techniques for Conducting and Interview or Interrogation in Any Situation.

Sam E. Antar, former CPA and former Chief Financial Officer of Crazy Eddie, Incorporated. During the 1980's, Sam and his cousin Eddie Antar and uncle Sam M.

Antar (co-founders of the company) helped mastermind one of the largest securities frauds of its time. The topic is Inside the Mind of an Economic Predator.

Brock Phillips, CFE, CPA, Forensic Accounting Manager from Microsoft Corporation's Financial Integrity Unit, Redmond, WA. His unit is housed within the Internal Audit Department, and is comprised of a team of investigators responsible for the prevention, detection, and investigation of both internal and external fraud. His topic is employee Frauds.

Ed Hewitt, CFE and owner of Financial Safeguards LLC. His topic is real estate fraud.

Gene Ferraro, CFE, PCI, CPP, President and CEO of Business Controls, Incorporated in Littleton, CO, and ACFE faculty member. His topic is How to Conduct Proper and Ethical Investigations. Mr. Ferraro is a published author and speaks frequently on the topics of workplace investigations and crime in the workplace.

The Securities Division of the Washington State Department of Financial Institutions will make a presentation on the topic of Investment and Securities Fraud.

There will be a panel discussion by Kirk Kimberly, Dick Sayre, Patrick Johnson, and Larry Carlier on the topic of Financial Exploitation of Vulnerable Adults.

Additional details about the Spokane Chapter's Annual Fraud Conference can be obtained from its web-site at www.spokane-fraud.org. Or, contact Marie Rice, CFE, CICA, Griffiths, Dreher, & Evans, PS directly at (509) 326-4054, marie@grifco.com. There is 16 hours of Continuing Education Credit possible for attending all of this two-day fraud conference.

(e) The National Association of BUNCO Investigators, Inc. announces its two-day Transient Criminal Activity Conference at the Red Lion Inn at SeaTac, WA during the period October 22-23, 2007. The Conference will focus on crimes against the elderly and non-traditional organized crime topics. Please contact the organization at www.nabihq.org for additional information.

(f) John Reid and Associates announces that it will be presenting a 3-day Interview and Interrogation and 1-day Advanced Seminar on The Reid Technique of Interviewing and interrogation at the Lynnwood Convention Center in Lynnwood Washington during the period November 6-9, 2007.

The normal fee for the 3-Day Seminar is \$575 per person and \$775 for the full 4-Day Program. As a participant in the Reid Preferred Group of Associations, Members of the Pacific Northwest Chapter/ACFE can attend the 3-Day Seminar for the reduced fee of \$420 per person - a savings of \$155 per person, or \$550 for the full 4-Day Program – a savings of \$225. (Remember too, that RPGA members can purchase any of our products at a discounted price.)

Chapter Members may register for this seminar by calling 1-800-255-5747, extension 24. You can obtain additional information by visiting our website at www.reid.com. The Reid Preferred Group of Associations (RPGA) number for the Pacific Northwest Chapter/ACFE is A20-049. The RPGA number must be shown on the registration form in order to receive a discount on seminar registrations or to purchase products.

(g) The Association of Certified Fraud Examiners announces that it will be presenting a 2-day Healthcare Fraud Conference in San Francisco, CA during the period November 8-9, 2007. The speaker is Rebecca Busch, CFE, RN, President of Medical Business Associates, Inc. Additional information about this training can be obtained from the ACFE.

Registration is handled directly by the ACFE through their web-site (www.ACFE.com) or by telephone at 1-800-245-3321. The registration fee for this training is \$595 for CFEs and \$695 for non-CFEs. Early registration by October 8, 2007, merits a \$95 discount.

Investigator Web Tip - September / October 2007

PROPER TECHNIQUES FOR WITNESSING A CONFESSION

No investigator wants to have his testimony questioned because it is his word against the defendant's. It is precisely for this reason that the investigator needs to have a witness verify that the investigator's testimony is accurate. While it sounds like a simple concept, there are important considerations and procedures to follow when having a confession witnessed.

This point became evident in the recent case of Commonwealth v. Miller. In this case, an Appeals court ruled that the trial judge committed reversible error for not holding a hearing to examine the voluntariness of a confession obtained by loss prevention investigators employed by the defendant's ex-employer. At issue were extremely discrepant accounts of an in-house interrogation of an employee suspected of stealing \$1,000.

The two investigators described a "low-key inquiry" of the defendant. They testified that the defendant "vented" during the two hour interrogation, but ultimately broke down and confessed to stealing the missing \$1,000. The investigators denied doing or saying anything to threaten the defendant and testified that the defendant did not exhibit any physical manifestations of being threatened or intimidated.

Conversely, the defendant testified that she felt afraid as she was escorted to an unfamiliar room and questioned by two strangers. She described the room as small and said that she felt claustrophobic. According to the defendant, one investigator "loomed over her and made threatening gestures" while the other blocked the door. The defendant claimed that she was denied a request to call her husband or an attorney. She further claimed that the investigators suggested that if she did not confess that the case would be turned over to the police which may result in a conviction which, in turn, could lead to the defendant's separation from her special needs child.

As to the confession itself, the defendant testified that throughout the writing, editing and signing of the confession she protested her innocence. According to the defendant, the message conveyed to her was that she would not be allowed to leave the room until the papers were signed. At trial, the defendant's husband testified that his wife was crying and sounded distressed during a phone call to him following the interrogation. This was corroborated by a witness who heard the husband's side of the phone conversation. A point not contested was that the investigators violated company policy by failing to have a supervisor present during the interview and interrogation of the employee.

Long before devices were available to electronically record interviews and interrogations,

investigators utilized a witness to document what happened during an interview or interrogation and to verify that the suspect, in fact, did offer a voluntary and trustworthy confession. The *Miller* case serves as an important reminder that if an interview or interrogation is not electronically recorded, it is imperative that the investigator follow proper procedures when having a confession witnessed.

It will be helpful to introduce this topic with a fundamental review of the psychology of deception. Everyone lies for exactly the same reason; all lies are motivated to avoid the consequences of telling the truth. The consequences a deceptive suspect fears may involve loss of income or freedom (being fired, going to jail) as well as loss of pride or self-worth (having to face co-workers or a spouse). Consequently, during an interview or interrogation the investigator wants to do everything legally possible to reduce perceived consequences of telling the truth. One of the most important considerations in this regard is to conduct interviews and interrogations in private.

Privacy is considered the single most important psychological factor contributing to the success of an interview or interrogation. Very simply, it is easier for someone to reveal sensitive information to one person than to two people. Furthermore, it is easier to reveal sensitive information to someone who is not associated with consequences than to a person who represents consequences. Would a child rather confess wrong-doing to a parent or a kindly uncle?

In our text books and other web tips we have offered many examples illustrating the importance of privacy. The following experience comes from a recent seminar participant. For many years he conducted loss prevention interviews and interrogations in private, working one on one with employees. He enjoyed great success learning the truth in a private environment and having the employee's confession witnessed by a supervisor following the interrogation.. This year his employer required that the employee's supervisor be present during the entire interview and interrogation. The investigator reported that he rarely obtains a confession with the supervisor present during the interrogation.

Because of the importance of privacy, an investigator should do everything possible to conduct interviews and interrogations in such a way that the suspect is only communicating with a single investigator. However, it is also important to have a witness to this procedure. There are two procedures commonly utilized to document a suspect's confession and the events that led up to it. The first is to have a witness present during the entire interview and interrogation process. Second, the investigator can bring someone into the room to witness the confession after it has been obtained. Under most circumstances, it is to the investigator's advantage not to have a witness present during the entire interview and interrogation. An exception is when there is an obvious liability risk such as when a male investigator interviews a female subject concerning a sexual issue.

If a witness is present during the entire interview and interrogation that person should be someone who is not socially acquainted with the suspect e.g., another investigator,

manager from a different department, clerical staff. Furthermore, the witness should sit out of the suspect's sight and remain silent throughout the interview and interrogation. Certainly, the witness should not be involved in questioning the suspect, i.e., the witness is merely an out-of-sight, uninvolved, observer.

In the *Miller* case the "witness" was an investigator actively involved in trying to get the defendant to confess. The court recognized that this "witness" was motivated to deny that any wrong-doing occurred during the interrogation. A person involved in obtaining incriminating information can hardly be considered an objective, impartial witness to the confession.

If two investigators are present during an interview or interrogation, it is our recommendation that they not "team up" on the suspect where both investigators simultaneously ask questions or make persuasive statements. Rather, one investigator should be the communicator and the other should be an observer. The communicator should be seated directly in front of the suspect and do all of the talking. The observer should be out the suspect's sight and remain silent. It is acceptable for the investigators to switch roles, where the observer becomes the communicator and vice versa. In doing so, however, the investigators should also switch chairs so the new observer is out of the suspect's sight. For obvious reasons, if two investigators are involved in obtaining a confession, the witness to the confession should be a third person brought into the room for that purpose following the interrogation.

If the decision is made to not have the witness present during the entire interview and interrogation, the witness would come into the room following the suspect's confession. It is important that this witness can testify not only that the suspect offered a trustworthy confession, but also that the confession was voluntary. It was the absence of such testimony that greatly contributed to the reversal in the *Miller* case.

The witness who comes into the room following the confession may be another investigator, the suspect's supervisor or a manager from a different department. The conversation with the suspect, Randy, would be similar to the following, "Randy, this is Mr. Buckley, my boss. I just want to let him know what you've told me this afternoon." At this point the investigator and witness would face each other and the investigator would repeat the suspect's confession in the presence of the suspect and the witness, e.g., "Randy told me that he is the person who stole \$1,000 from his cash drawer last Friday afternoon. He said that he stole the money at the end of the day at around 5:15, when he was balancing out his drawer. He needed the money because of ..." It is important that while the investigator repeats the suspect's confession, that the investigator and witness continue to look at each other and not look down at the suspect.

It is improper, and psychologically wrong, to ask the suspect to repeat his confession in the presence of the witness. Under this circumstance, the suspect is unlikely to offer a fully detailed and corroborated confession in the presence of a stranger. However, once the suspect knows that the witness has heard the truth, most suspects will openly discuss their crime. At this stage of the process it is important that the witness independently

question the suspect about his crime. The questions the witness asks should develop information to corroborate the suspect's confession. In addition, because the witness was not present during the entire interview and interrogation, it is important that the witness ask the suspect questions to develop information to demonstrate that the confession was obtained without threats or promises. The following questions would each help accomplish these goals::

“Is everything Mr. Jayne said accurate?”

“Do you have any of the money left?”

“Have you stolen money from the company before this?”

“What bills did you pay with the money you stole?”

“Do you have any complaints about the way Mr. Jayne treated you?”

“Were you threatened in any way today?”

“Did anyone offer you any promises?”

The witness to a confession should be able to testify not only about the suspect's physical appearance and emotional state following the confession, but also that the suspect's confession was trustworthy and was the product of the suspect's free will.

A very troubling aspect of the *Miller* case is that the defendant claimed that she was protesting her innocence throughout the process of developing the written confession. It is one thing for a defendant to recant a confession at some point after making it – that is not unusual. However, to have a subject state that she was denying committing the crime at the time the confession was being given, edited and signed represents either an incredibly bald-faced lie under oath or a person who was coerced into signing a confession. Unfortunately, in this case no witness was brought into the room to independently assess the suspect's emotional state, or to elicit information from the suspect about the details of her theft, to find out if she was threatened in any way, had complaints about the way she was treated, etc.

In conclusion, there is no question that the best technique to document the events of an interview or interrogation is a surreptitious electronic recording. When this option is not available, the investigator should have a suspect's statements witnessed by a person not involved in obtaining the confession. If the witness is present during the entire interview and interrogation, the individual should not be someone personally acquainted with the suspect. Furthermore, that person should sit out of the suspect's sight. If a witness is brought into the room following the confession, the investigator should repeat the suspect's confession in the presence of the witness who should then independently question the suspect to obtain corroboration that the suspect, in fact, committed the crime and to elicit information to assess the voluntariness of the confession.

(This article was prepared by John E. Reid and Associates, Inc. as their Investigator Web Tip and was reprinted on our web site and/or distributed to our colleagues with their permission. To view additional Web Tips, go to www.reid.com; select 'Educational Information' and 'Investigator Tip'. To request a copy of a specific 'tip' contact Janet Finnerty 1-800-255-5747 ext. 18 or johnreid@htc.net.)