Best Practices Learned the Hard Way: What 50 Years of Fighting Fraud Taught Me



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Where I Got My Hard Knocks

- 1973 joined U.S. General Accounting Office
- 1981 Assistant District Attorney
- 2008 Commercial Litigation
- 2010 Guidepost Solutions



Agenda

- Dozen broad categories
- Examples in each
- Some of what went well; some that did not
- Questions at any time

Never Trust Your Expert

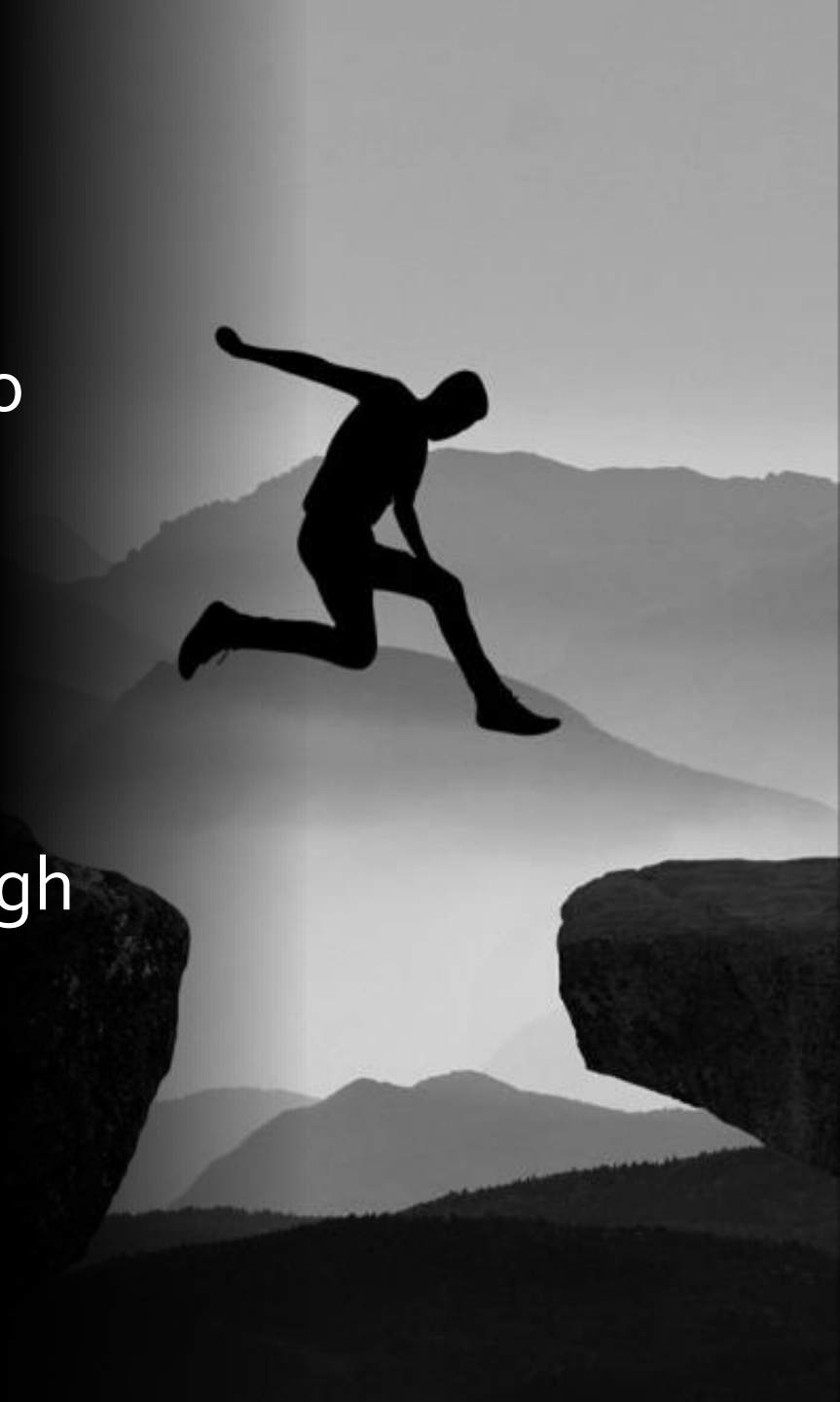
(without checking the data)

- 50 years, *really*???
- County employee testifying about the records he keeps daily about garbage collection
  - Used the wrong source
  - I reviewed his numbers but did not check his source
  - Overestimated the losses
  - Still enough to convict but jury lost confidence



Errors Can be Overcome

- Overbilling trial for diesel fuel delivery to railroad
- Internal audit made an error in trial testimony which inflated loss
- Only I caught it
- Had to reveal to court and correct through testimony
- Admit in summation
- Conviction for lesser included larceny



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What is **Proof**?

- Gulf oil spill claims by undocumented shrimpers
- No invoices, financial records, bills or tax returns
- Verify anecdotally from purchasers

"The absence of proof is not the proof of absence"

Internal Controls – *Really?*

1

Medical School research grant embezzlement

- Annual audit matched each payment to an invoice
- Never verified the invoices

2

Religious educational organization had multiple levels of review

- But no one could ask a question
- Donor funds misdirected to personal expenses of founder

Dull ≠ Unimportant

- Construction monitorships often very routine, *but*
  - Headcounts matched certified payroll, but all other information was incorrect. Prevailing wage being paid?
  - Materials manifests review revealed falsified documents.



Sometimes You Get to Have Fun!

- Being painfully obvious can be helpful
  - Followed garbage trucks to prove baseline in municipal overbilling
- Outsmarting the defendant who tried to blame me
  - Filed false report of ID theft with me
  - Attempted defense for embezzlements and mortgage fraud
  - Forged letter from FBI that they were investigating me
  - Arrested during interview about investigating me as we executed warrant



Captain Obvious

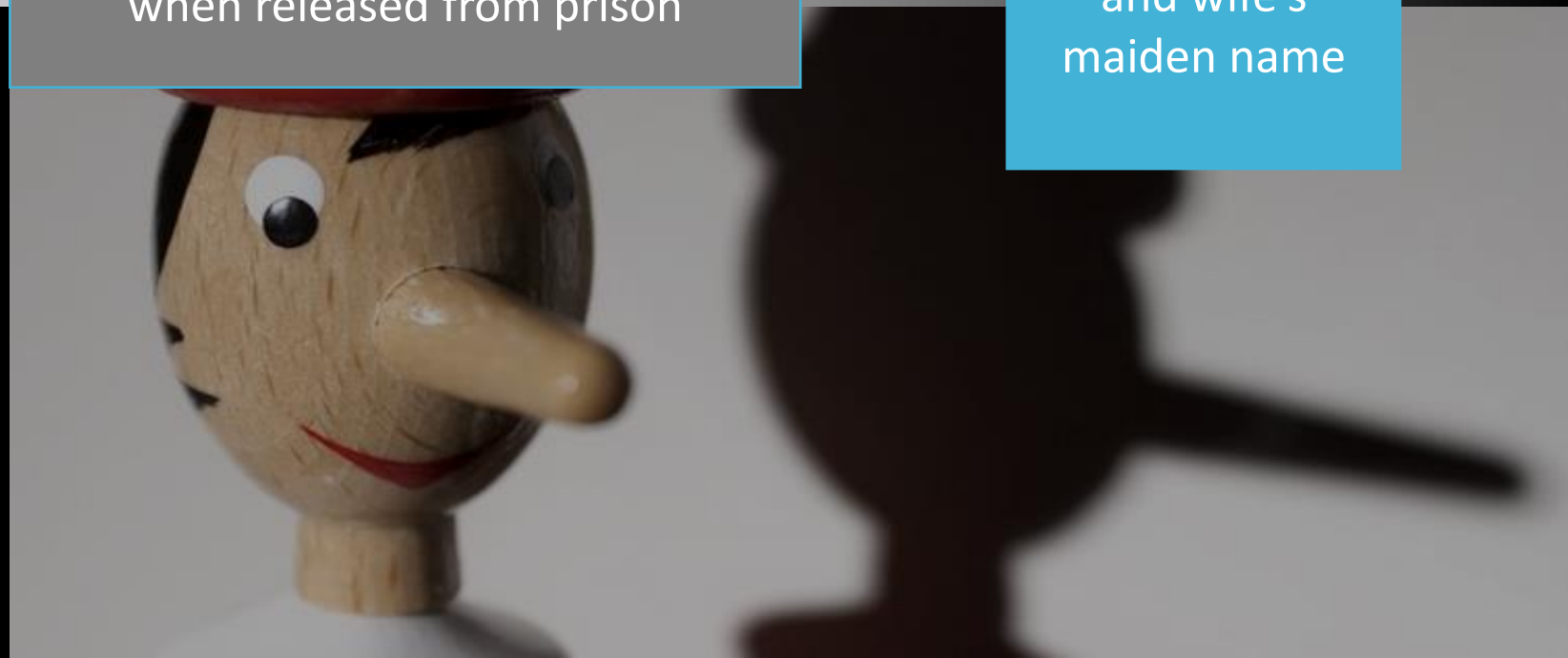
More Fun!

Letting them lie can be useful

Embezzler lied about what she thought we did not know

"Profit" determined by her age when released from prison

False identity = his middle name and wife's maiden name



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And Even More!

Retail embezzler wanted to use store computer to prove he had not stolen

- Clone hard drive
- Install clone
- Record every keystroke, file access and record edit

Fun = creativity and preparation

Never reveal what you know until necessary



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When You Can Squeeze Where It Hurts

- School district superintendent committed perjury ai IG hearing concerning alleged nepotism when hiring daughter's boyfriend
  - Wife and daughter perjured themselves as well
- Superintendent is real target in Grand Jury
  - Subpoena wife and daughter
  - Transactional immunity in NYS
  - Avoid perjury trap
  - Puts pressure on target where it hurts – at home!

Sometimes a Squeeze is just Leverage

- Carolyn Warmus murder trial
  - MCI telephone bill implicates defendant
  - Defense attorney proffers an alternative bill
  - Young fraud ADA helps out senior homicide prosecutors
- Request "original" record from MCI w/o subpoena
  - MCI GC hesitant
  - Most MCI fraud in Westchester office
  - "I need you and you need me."

Use Drama to Tell Your Story

- Use your strongest evidence first, even if not an element of the crime
  - Appearance at the agreed meeting location got jury's attention focused on child solicitor
- Explore complex technical crime as it had actually happened
  - Use the human story to set up the technical story for software time bomb

Sometimes Take a Chance

Back to the locomotive fuel embezzlement case

Drivers flipped and testifying

One was not fully truthful: Met with defense attorney!

Damaging answer about defendant not getting a fair trial

Turned it around to hurt defendant with a shot in the dark question

Don’t Get Distracted

- Discovery discussion re digital forensics in spoofing case
- Whose system was compromised so bad guy knew how to fake the instruction?
- Examined client’s devices and found no evidence of compromise
- Defense examiner had prepped attorney to ask about attempted access from suspicious IP addresses
- Not relevant because no proof of access to records

The Truth May Not Be Enough

- Jury thought the waste hauler commingling and overcharging municipality was too obvious, so acquitted

- No one may care if you are right
  - Anti-trust case for customer allocation scheme
  - Strong opinion from NYS Court of Appeals
  - Trial judge thought conduct was trivial

Client May Have a Separate Agenda



- Insurance carrier lost $8M in account change scam
- Retained to review their process
  - In manual, handwritten notes, on network and in brain
  - Reported unable to document the process
- Client wanted good report for Audit Committee
- Reviewed revised process in time for report

Client May Be the Problem

- Alleged planting of pornography in divorce
  - Digital examination of husband's computer
  - Found audio files of illegal bugging
- Brokerage asks for investigation of access to competitor's information
  - Installed keystroke monitors and screen capture software
  - Found had happened before and client never disclosed to protect profit

NEVER GIVE UP

- Theft of collectable photographs
- Conviction but no recovery
- Years later sales on Ebay
- Honest broker cooperated
- Observed delivery for one undercover sale
- Arrest at time of major sale
- Alleged print dates were impossible
- Recovery of millions of dollars in lost property

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