
Interviewing Self-confident Con Artists

By SCOTT O'NEAL, J.D.



Known as con artists, scam artists, swindlers, shysters, grifters, bunco artists, or fraudsters, these criminals perpetrate a significant portion of the large-scale and sophisticated fraud schemes that victimize individuals, banks, businesses, and government agencies. They are the figures behind most fraudulent investment plans, advance fee loan schemes, and many other white collar crimes, such as bank and insurance fraud and illegal telemarketing. Members of this class of criminals differ from most others who may commit

crimes out of desperation (economic stress, drug/alcohol abuse), or because of their environment (family violence, gang/peer influence), or who simply represent greedy opportunists. Con artists commit crimes because it pays and because swindling is easier and more exciting than working for a living.¹ And, when confronted with their deceptions, these predators feign bewilderment and frequently turn the tables on their victims. Unfortunately, scam artists too often convince victims that they have not received harm or that any loss

suffered did not result from intentional misrepresentation. Also, too often, their skillful deception dissuades criminal investigators, prosecutors, or both from pursuing them.

Con artists tend to act irrationally—their criminal behavior more the result of flawed character than of adverse social conditions or greed alone. Successful con artists are charming, manipulative, and able to exploit the innate trust and greed of many people. Their overabundance of self-esteem is exaggerated by their lack of respect for

others. These individuals lack empathy for their victims and guilt for their parasitic lifestyle.² Additionally, most challenging for law enforcement, con artists can be intelligent, confident, and masterful liars.

The interview of con artists represents a significant challenge in the investigation of frauds committed by this type of criminal. The con artist often sizes up an interviewer to determine their expertise in the particular financial/business dealings involved in the fraud and then attempts to explain the “misunderstanding” using jargon the con artist perceives the interviewer will not understand, which presents a unique challenge for fraud investigators. Due to a general lack of regard for the abilities of others, these subjects do not fear interrogation by law enforcement, and their willingness to talk freely makes them overconfident, which provides an opportunity for a prepared investigator. An investigator in the role of an interested interviewer, as opposed to an authoritative interrogator, can take advantage of the character flaws of financial swindlers. With the proper preparation and strategic approach on the part of investigators, evidence produced from subject interviews of con artists can become the key to successful fraud prosecutions.

PLANNING THE INTERVIEW STRATEGY

In fraud cases, as in all criminal investigations, the subject interview presents important opportunities. A properly obtained confession most often will bring the investigation and prosecution to a

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swift conclusion. Even when a subject interview fails to yield a full confession, it affords law enforcement the opportunity to document information to further build a case so that the prosecutor can decide whether, or how, to charge the subject.

Approaching the subject interview with the focused goal of obtaining a confession may not prove practical in cases targeting experienced con artists. According to one expert in the area of interviewing and interrogation, “Suspects confess when the internal anxiety caused by their deception outweighs their perception of the crime’s consequences.”³ However, con artists who think nothing of cheating people out of their life savings do not experience *internal anxiety*.⁴ When an assessment of the subject’s background and personality indicates a practiced con artist indisposed to confessing, a more practical and often achievable goal is to elicit false exculpator-

ies and admissions of intentional misrepresentations.

A former federal prosecutor, who now advises white collar criminal defense attorneys, identifies attempts by white collar crime suspects to cover up their crimes as one of their biggest mistakes: “a dangerous pitfall occurs when the client starts falsely denying culpability about the specifics of his alleged offense....”⁵ Experienced fraud investigators know that many financial scam operators will consent, sometimes eagerly, to an interview. Con artists with high self-confidence frequently do not seek the counsel of an attorney, confident that they possess sufficient wisdom and skill to deflect allegations of fraud. This confidence may come from past experience in fooling a variety of victims and even criminal investigators and prosecutors. In fact, record checks often reveal references to the subject in law enforcement indices. Investigators frequently discover past

complaints that law enforcement took no action against or investigations that failed to produce criminal charges.

Oftentimes, prosecutors decline prosecution of fraud cases because of insufficient proof of the subject's intention to defraud. Law enforcement must prove intent circumstantially—eye witnesses to the formulation of intent do not exist. Evidence of past involvement in fraud schemes and documented false exculpatories related to the pending investigation help demonstrate criminal intent. False exculpatories can include statements contrary to established, legitimate, financial principles and procedures when evidence of the subject's training and experience precludes the excuse of ignorance. For example, a subject involved in a kickback scheme and experienced in the distribution business claims that 90 percent represents a standard markup on a common product when, in fact, a markup of 30 to 45 percent is customary. Statements in contradiction of documented representations made to victims also are significant false exculpatories. Establishing a pattern of false exculpatories effectively can demonstrate intent. With adequate preparation and patience by the investigator, the subject interview of a con artist will provide such a pattern.

PREPARING FOR THE INTERVIEW

Proficient con artists deceive victims by sounding authoritative. They demonstrate a unique ability to appear as prosperous experts and

to mix a degree of truth into their solicitations. With experience, con artists become familiar with the questions their intended victims frequently ask and prepare to reduce doubts with ample and impressive-sounding facts and figures. Therefore, investigators must prepare adequately before confronting con artists. Fundamental preparation requires the following: a thorough debriefing of all victims; analysis of all pertinent documents; familiarization with all aspects of the scheme (including the legitimate financial and business concepts that the scheme is based on and the typical features of the specific fraudulent scheme); and a review of the subject's background.

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Fraud investigators must document and review details of all written and verbal representations the subject has made to victims. Written documents and audio recordings provided by or made with the assistance of cooperating victims or elicited by undercover agents will provide the best evidence. In the subject interview, specific questions concerning details of representations made to intended victims

often yield false exculpatories. If investigators adequately document the original misrepresentations, they will obtain significant circumstantial evidence of criminal intent.

Fraud investigators routinely obtain a subject's tax, brokerage, and business documents, as well as bank account records from both the subject's and victim's accounts. Analysis of these documents will allow the investigator to follow the money obtained by fraud from the victim to the subject's personal benefit, known as the conversion. For example, in a recent advance fee loan fraud scheme, one of the victims lost a \$100,000 advance fee in an attempt to acquire a \$5 million loan. The victim mailed an advance fee, in the form of an endorsed government check payable to the victim, in response to the subject's false representation of a requirement to purchase a bond to secure the loan. A paper trail, beginning with the canceled check, snaked through two brokerage accounts, one business bank account, the subject's personal bank account, and then on to businesses where the subject purchased a new luxury car, a big-screen television, and furniture for his house. In the subject interview, among numerous false statements, the subject stated that he had entrusted the victim's \$100,000 to a person he believed would purchase a bond and originate the \$5 million loan. The statement not only provided a false exculpatory, but it also revealed that, as a defense, the subject intended to portray himself as a victim.

In preparation for the subject interview with a known con artist,

investigators must become familiar with all aspects of the scheme. Examples illustrating the importance of sufficient preparation include the widespread and highly profitable international fraud schemes that solicit investments in “prime bank instruments” and “standby letters of credit.” Schemers attract victims by claiming that these financial instruments are freely transferable and generate large returns when traded in secondary markets. In reality, prime bank instruments are completely fictitious, and genuine standby letters of credit, which banks around the world issue pursuant to strict policies, cannot be sold legitimately on secondary markets. Before interviewing a subject who operates such sophisticated fraud schemes, or any scheme involving financial instruments, investigators must thoroughly research and understand in detail the legitimate and fraudulent aspects of the particular scheme to become prepared to ask the subject pertinent questions and to accurately record the subject’s true and false statements in the course of an interview.

Law enforcement should research the subject’s background when preparing for an interview. When a preliminary investigation indicates an experienced scam artist, comprehensive research becomes essential. Past involvement in fraudulent activity, and false denial of the same, certainly contributes to proving intent. Officers should not limit background searches to internal law enforcement databases—evidence of past involvement in financial fraud may exist in numerous places.

Therefore, law enforcement agencies should query consumer complaint centers, such as the National Fraud Information Center, the U.S. Office of Consumer Affairs, the Better Business Bureau, and state attorney general’s offices. Searching civil court records occasionally leads to discovery of civil lawsuits filed by victims who did not report the fraud to law enforcement. Because con artists often make a career of fraudulent schemes and sometimes leave a trail of bankrupt shell companies, law enforcement should make a search of federal bankruptcy files standard procedure. Investigators also can find evidence of a criminal’s shady past in local newspaper articles using public source databases.

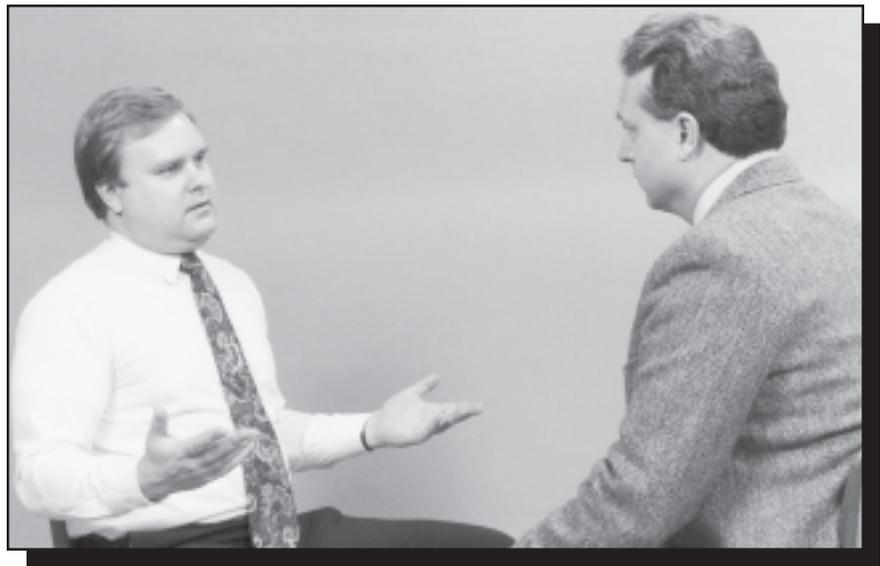
CONDUCTING THE INTERVIEW

In many white collar crime cases, a criminal investigator’s initial contact with a subject prompts

the criminal to contact a lawyer, who usually will advise the subject not to agree to an interview.⁶ However, self-confident con artists usually agree to meet without consulting attorneys. These criminals often readily agree because they want to find out how much the investigator knows about their schemes, and they feel confident that they can sidetrack the investigation.

Initial Contact

Law enforcement officers may call subjects on the telephone to arrange a meeting for the initial contact or make an unannounced encounter at an office or residence. After the appropriate introduction, investigators should advise subjects that they have received a complaint about their financial dealings and would like to discuss the matter.⁷ In most cases, con artists gladly agree and make themselves available for extended periods. If a subject resists cooperating, the investigator should



explain assertively that a serious crime has been alleged. Investigators also should prepare to proceed with an adversarial interview/interrogation. If a subject readily agrees to an interview, the investigator will find a tone of polite professional inquiry more effective, as opposed to aggressive accusation. In such an atmosphere, subjects will display varying degrees of nervousness, but the subjects' degree of confidence generally will remain high. Their belief that they maintain the upper hand will continue, and they will usually answer questions with little hesitation.

False Exculpatories

Throughout an interview with a self-confident con artist, patience is fundamental. To obtain the necessary facts and elicit false exculpatories, the investigator must allow the subject to describe the details of the "opportunity" offered to victims and the specific representations made to victims. Con artists tend to get off track and give disjointed, long-winded answers to straightforward questions. The interviewer must listen carefully over a long period of time while subtly guiding the subject back to pertinent matters.

If investigators do not reveal their knowledge early in the interview, the subject's lack of awareness of the investigator's detailed knowledge of the fraudulent scheme and the subject's representations and promises made to victims represent a key advantage. Investigators who pounce on false statements that subjects make may lose their advantage. For example,

when a question concerning a standard financial procedure elicits a response the investigator knows is false, investigators should appear to accept the answer and ask for specific details. Instead of attempting to "set the hook," the investigator should "feed more line" to achieve the goal of eliciting numerous, detailed false exculpatories.

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In this stage of the interview, the investigator must focus on thoroughly documenting details of the subject's description of the contacts and communications with victims. Because the investigator initially indicated an interest in particular financial transactions, not in the subject as a criminal suspect, it may be prudent to complete the inquiry into the facts of the related fraud scheme before addressing background matters. Beginning with personal questions could cause subjects to raise their defenses. After covering the facts, the investigator should inquire into the subject's background, including education, financial and business experience in

general, and, specifically, experience in the area related to the fraud scheme.

Admissions

After extracting the full story from the subject, an investigator may begin confronting the subject with discrepancies. A practical tactic is to start with minor issues that the subject may perceive as minimally damaging. For example: "You stated earlier that you told Mr. Smith that he would receive a return of 8 to 10 percent on the investment you offered. Correct?" After the subject confirms the representation, the investigator advises the subject that Mr. Smith produced a written document that promised an average return of 25 to 35 percent. Admitting to making an incorrect statement to the investigator and confirming the promise made to the victim should not seem too compromising to the subject. When the subject has admitted the less serious discrepancies, the investigator can attempt to elicit more incriminating admissions. For example: "You stated earlier that you made it clear to Mr. Smith that there were risks to the investment and that the return of principal could not be guaranteed. Correct?" After the subject confirms the statement, the investigator produces proof to the contrary—a tape recording of a call from the victim to the subject or a written document, prepared by the subject, in which the subject confirms guaranteed principal and interest. An example of an effective follow-up question would be, "When you told Mr. Smith there was no risk to principal, you indeed intended to use his

money to purchase extremely high-risk future contracts. Correct?" In response, the subject will either admit to a significant intentional deception or come up with an even more incredulous lie.

Confessions

Confessions by con artists are rare, but not impossible to obtain. If the interview yields significant admissions from the subject, the investigator should then attempt to elicit broad statements of confession. For example: "Mr. Thompson, you designed your entire investment program to make money for your personal benefit by making representations you knew were false to people who responded to your advertisement, knowing that they would not send the money if you told the truth about what you intended to do with it. Correct?" If the subject agrees, the investigator thoroughly should debrief the subject for details of the admitted fraud scheme and knowledge of other fraud schemes (experienced con artists usually can provide names and schemes of other swindlers). However, a confession rarely comes this easily, and the investigator will need to employ established interrogation techniques.⁸ At this point in the interview, the subject should feel less confident about outwitting the investigator. Though possibly unable or unwilling to feel or express remorse, con artists will put their personal interests first and, therefore, may comprehend the benefit of prompt cooperation.

Yet, even when faced with an overwhelming case against them, self-confident con artists still may refuse to admit to intentionally harming the victims of a fraud scheme. Notwithstanding the subject's defiance of reason, an interview that has produced a pattern of false exculpatories will have considerably enhanced the prospects for prosecution.



CONCLUSION

Self-confident con artists have "a head for numbers and the social skills to move easily in financial circles ...[and their] potential for profit is enormous...."⁹ These criminals are charming, manipulative, and pose an unquestionable threat to society. The same skills and characteristics that deceive individuals, banks, businesses, and government agencies create a special challenge for criminal investigators confronting these subjects. With adequate effort in preparing for and planning the confrontation, along with a methodical approach, persistence and patience, investigators can turn the

character traits that make con artists so successful to their advantage.

In fraud investigations, the requirement of proving that a subject intended to defraud poses a significant challenge. By allowing overconfidence to compel subjects to talk freely and to continue their deception during an interview, investigators can elicit significant proof of criminal intent in the form of false exculpatories and admissions.

Additionally, this approach can increase the chances of obtaining a full confession. Developing proficiency among fraud investigators in conducting subject interviews can increase the number of successful fraud prosecutions and, therefore, reduce the number of scam artists for whom crime pays. ♦

Endnotes

¹ Robert D. Hare, *Without Conscious: The Disturbing World of the Psychopaths Among Us* (New York, NY: Pocket Books, 1993), 84.

² *Ibid.*, 44.

³ John Reid and Associates, *The Reid Technique of Interviewing and Interrogation* (Chicago, IL: Reid and Associates, 1986), 44.

⁴ *Supra* note 1, 54, 194.

⁵ Solomon L. Wisenberg, "Federal White Collar Crime," http://prof.findlaw.com/collar/_2.html; accessed January 29, 2001.

⁶ *Ibid.*

⁷ Investigators should avoid creating a custodial situation requiring *Miranda* warnings; however, they should refer to departmental policy and applicable court rulings to determine their agency's requirement.

⁸ See Michael R. Napier and Susan H. Adams, "Magic Words to Obtain Confessions," *FBI Law Enforcement Bulletin*, October 1998, 11.

⁹ *Supra* note 1, 119.