

Austin Area Chapter Association of Certified Fraud Examiners

President's Corner

Shari Daffern, CFE, CIA, CPA

Hope everyone made it safely through the great ice storm. It was nice to be able to stay home, but the cabin fever was beginning to get serious! I don't know how the folks up north do this all the time.

It is time for to submit applications for the Chapter's scholarships. Remember that our members and their family members are eligible. Notify Glen Rogers if you know of someone who is interested.

We often have trouble emailing our newsletters when the pictures are included. The pictures are available on the web site versions.

The Board has set the date for the spring seminar for Thursday, April 26. Mark your calendars, and let us know if you know of any speakers who would be interesting to the Chapter.



Chapter Meeting Schedule

Time: 12:00 to 12:50 p.m.
Lunch served promptly at 11:45 a.m.

Location: Nuevo Leon Restaurant
1501 East, 6th Street

Cost: \$11.00 – Chapter Member
\$13.00 – Non-Chapter Member

This Month's Meeting

Date: February 5, 2007

Speaker: Bill Atwood
Self-employed / St. Edward's
University

Topic: Healthcare Fraud

register on line: www.austinafce.com
or

call 512/389-4813

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What You Missed

Mike Garner, CFE, CIA

If you were not able to attend the January 8, 2007 chapter meeting, you missed a presentation on Preparing for Court by Mr. Bart Bevers, JD, CFS, CIG, CHS-II, CIG, Deputy Inspector General for Enforcement, Office of Inspector General, Texas Health and Human Services Commission (HHSC-OIG). In his position Mr. Bevers oversee all the enforcement activities involving fraud, waste, and abuse in the health and human services systems. His presentation focused on preparing for court and case reports.

Mr. Bevers mentioned that he has seen lots of courtroom mistakes especially during his time as prosecutor. When you testify in a criminal case don't assume that the jury knows something because they probably don't. It may be okay to break the rules as long as you know what the real rules are in that court.

The Trial – The first part of the trial is the Voir Dire (to speak the truth) this is the means used to select the jury. During this phase there are 60 potential jurors that come in and you write their names and something about each of them. During this phase of the trial you focus on the first 32 potential jurors because the defense has 10 challenges, the prosecution has 10 challenges and then 12 jurors are selected from these 32. Jury selection is actually a de-selection process involving the first 32 potential jurors after each side challenges 10 the 12 that are left are the jurors.

The two phases of the trial are the guilt or innocence phase and then the punishment phase. The first phase is like a football game. The first half the prosecution presents their case then it is half-time. During half-time the prosecution rests and the defense makes a motion for dismissal (directed verdict). The second half is the defense's case and this is optional. If the defense puts on a case then you have overtime which is the prosecutor's rebuttal evidence. In some instances the prosecutor will save some evidence for rebuttal so that they will not be required to provide it to the defense prior to the trial (no discovery required for rebuttal evidence). Mr. Bevers gave an example of rebuttal evidence when in a 1997 sex offender trial where the defendant (a Colorado truck driver) manufactured evidence of where he was and when by changing company documents. The prosecutor phoned the company headquarters and obtained certified copies of these documents and presented them in rebuttal. He then had two more offenses to charge to the defendant.

He then emphasized why visual aides are so important when presenting your case to the prosecutors or later to

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AUSTIN AREA CHAPTER OF
THE ASSOCIATION OF CERTIFIED FRAUD EXAMINERS
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What You Missed Continued from page 2

the juries. The first thing to remember is that the rest of the world is not just like you. There are four ways that humans learn: visual/verbal (prefers to read information); visual/nonverbal (uses graphics or diagrams to represent information); auditory/verbal (prefers to listen to information); and tactile/kinesthetic (prefers physical hands on experience). People remember 10% of what they read, 20% of what they hear, 30% of what they see, 50% of what they both see and hear, 70% of what they discuss with others, 80% of what they experience personally, and 95% of what they teach to someone else.

Then you have the X factor which is ethical relativism which indicates that different moralities should be considered equally correct even if they directly contradict each other, as long as it is correct according to the particular culture that accepts it. Mr. Bevers then discussed two national surveys that asked if there were moral absolutes that are unchanging or if moral truth is relative to the circumstances. There were wide differences in the answers to these questions by those over 36 going for moral absolutes (64%) and those under 36 going for moral truth depends on the circumstances (teenagers 83% and those 18-35 75%).

Before you present your case to a prosecutor you need to learn about them. Find out their number of contested trials, their conviction rate (if it is unusually high they may not take the tough cases), how they learn, how they like to try white-collar crimes, and do they have experience with economic crimes.

He then went over predicates which are a series of questions designed to authenticate the evidence in question to make it admissible (assuming it is relevant). Some business records predicates are they were made in the regular course of business, by the employee or representative, done at or near time the events were recorded, actual knowledge, and exact copy of the original. He recommends that you provide a summary exhibit that represents lots of writings and information that has already been offered into evidence and is helpful to the jury. He discussed examples of summary exhibits but didn't have time during the presentation to show them to us (maybe later).

He then discussed the elements of a case. Every crime is broken down into elements and the prosecution must prove every element beyond a reasonable doubt to be entitled to a guilty verdict. There are three elements in every case the defendant (right person), the date (when it happened), and the location (where it happened).

Examples of fiduciary property elements include possessed or had control of the property, property was entrusted to the defendant as a fiduciary, applied or disposed of the property in a manner he knew was unlawful, and applied or disposed of the property in a manner which involved a substantial risk of loss to the owner of the property. Mr. Bevers showed us an E3 Chart where he had each of the elements of a case listed in one column, the second column would show the evidence linked to that element (Documents and Testimony), and a third column that references the exhibits that summarizes the evidence.

He then discussed the Rule. After you testify you are told that the rule is invoked. You are ordered to leave the courtroom and not to re-enter, unless instructed to do so by the bailiff or the judge. You are not to discuss this case or your testimony with any other witnesses, except the attorneys. Should you choose to speak with the attorneys...do so outside the hearing and presence of any other witness. You are not permitted to read any report of or comment on the testimony or evidence in this case.

The next area he covered was direct examination. Before you go on the witness stand be prepared, bring everything you have reviewed, know the big picture, and be early. When you are testifying say yes and no, be yourself, tell the truth, and do not say anything for the first time on the witness stand. During the cross-examination don't be helpful, don't volunteer information, don't be rude or snippy, answer the questions posed, wait a few seconds before answering, if you don't understand the question ask that it be rephrased, know the facts, and don't admit possibilities if there are none.

Mr. Bevers then moved quickly through Case Reports. Present the evidence in a way that will keep the jury awake and involved. Provide relationship charts explaining who is who, what they did, how it is important, and how it proves criminal conduct. Claims by the prosecution must be complete and organized, be accurate, and meet the elements of proof of a crime. Remember your complete file is discoverable by the defense (except for your correspondence with the prosecutor). Develop a report maintained in a three ring binder or accordion folders, with a synopsis page showing an overall view of the offense, a principle page that lists the individuals responsible and identifying information on each, and the detail page which describes in detail all the information which will most likely be supported by exhibits and how they meet the

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elements of proof. Do not give opinions just facts. The next part of the report is the witness page which lists the witnesses with their addresses, phone numbers and what they are going to testify about. Then the Exhibit page that list the exhibits in order they appear in the report with a description of each exhibit.

Mr. Bevers closed by emphasizing the importance of relation charts and if you don't use them it is like taking a bullet to the head. You must compress large amounts of data into easy to read spreadsheets or relationship charts. If you can't summarize them you can't prove them. Footnote every fact identifying where the information was derived. Make an attached index and then make sure someone that knows this report is available to testify. Mr. Bevers can be reached at Bart.Bevers@hhsc.state.tx.us or by telephone at 512-491-2080.

and warning signs to look out for in such systems. He is of the opinion that the healthcare billing and payment systems will have to be changed before a handle can be gotten on fraud in the industry, and he will discuss some of these problems.

Speaker's Biography

Bill Atwood, MBA, CFE

Bill Atwood is the past President of the Austin Chapter of ACFE (2004-2006). He has trained in the areas of Healthcare Fraud, Discourse Analysis and Professional Interviewing Skills, Computer Fraud, Digital Evidence and Cyber Crime, and has been trained on Data Recovery and Analysis by the National Center for White Collar Crime. He has taught at the UT Graduate School of Business, St. Edwards University, Concordia and ACC, including courses on Fraud Examination and Forensic Accounting, Financial Accounting, Intermediate Accounting, Cost Accounting, Auditing, Finance and Strategic Management. His Fraud-related case work includes cases in the areas of non-profit organizations, oil and gas companies, manufacturing, religious organizations, government, security, retail and software fraud."

Bill is going to do a talk on healthcare fraud, and talk about it from a cost overview, including information on deceptive trade practices in routine healthcare billing. He is going to discuss how some healthcare billing systems are designed in such a way to promote fraud,

The Spotlight's On You!

A special feature focusing on members of the Austin Area Chapter of ACFEs

Craig Hunter has been a member of the Chapter

for the past 16 years.

But maybe you didn't know...

Job Description:

Deputy Director of Law Enforcement (Texas Parks and Wildlife)

What I'm working on now:

Daily supervision of Statewide Field Operations (627 personnel); Homeland Security issues

Best part of my job:

The diversity of it and working with professionals throughout Texas and the U.S.

Ambition and/or Goals:

To enjoy my job and the people I work with until retirement

Years of State service:

23

My first job:

Working at a small grocery store (Hayes Grocery in Belton, TX)

Hobbies:

Fly fishing/Hunting

Favorite Movie:

Ferris Bueller's Day Off (He reminds me of me!)

Last book I Read:

Shelby Foote's Chronicles of the American Civil War

Favorite foods:

Chinese/Mexican/Seafood (OK and everything else!)

Favorite Restaurants:

China Garden (Houston)/El Charrito (Georgetown)

My pet(s):

Australian Shepherd (named Snickers but everyone else calls her Cujo)

It's a good day when:

I'm off duty or the Legislature is not in session

Pet Peeves:

People that take advantage of other people, criminally and otherwise

What I would do with a surprise afternoon off:

Something outside and see "Favorite Foods"

I'm most proud of:

Personally, my son (age 16 at Georgetown H.S.) and professionally, the good job our officers do 24/7

Most people probably don't realize:

I enjoy teaching college courses to young military personnel at Ft. Hood