



# FORENSIC NEWSLETTER

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## ***DEVELOPING AND TESTING HYPOTHESIS TO MAKE FORENSIC ACCOUNTANTS TESTIMONY CONVINCING AND RELIABLE***

by Prabhat Kumar

### Background

As we all know forensic accounting practice has been growing exponentially for the last 10 years but successful testimony by a Forensic Accountant (FA) as an expert is still not very common. The following paragraphs are based on the practical experience of our expert whose testimony has never been rejected either in part or in full by the Court.

In Asia, we are still far behind in the race to control and eliminate the elements of fraud, corruption, and manipulation. The lack of formal education in fraud, forensic accounting, and financial criminology has resulted in the scarcity of such professionals and experts who can convincingly testify in court. This problem has been further aggravated by the notion that no special skill or training is needed to deal with the alleged fraud.

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Unfortunately, a number of young accountants (CAs, CPAs, and CFEs) who have entered into this field, assume that the use of audit techniques is sufficient to investigate financial crime/occupational fraud without realizing the legal aspects, law of evidence, jurisprudence and rules governing a particular jurisdiction. All these factors play significant roles in establishing the facts.

Forensic audit or investigation needs rigorous attention to detail and precision to deal with the situation and to reach a conclusion, that can stand on its own during the storm of cross-examination. There is no room for chance and as such, each and every possibility needs to be examined to create a body of evidence whose components mutually reinforces the guilt of the accused. In our opinion, this is probably the single most important factor that can make the investigation fundamentally flawed, if not dealt with the utmost attention.

A thorough forensic accountant's deliverables may help to change the course of the trial as they may be able to highlight certain facts which cannot be properly challenged. In order to establish the truth, lawyers keep using their imagination and questioning the expert whether they have examined these possibilities or whether they agree what the lawyers are saying is also possible in the given scenario. If the answer is affirmative, then the next question would be whether the expert has examined this possibility. If the expert's answer is negative, lawyers will have an upper hand in establishing that the investigation was not thorough and biased.

It is important to identify the objective of the proposed engagement. This provides a base to understand the entire spectrum associated with such an allegation. This is essential in understanding certain facts so that a thorough investigation can take place and potential pitfalls during the investigation can be avoided.

Any statement made by the FA on face value during a trial is least expected. It is essential that during the investigation, a FA has not drawn any conclusion without examining all the possible facets thoroughly. Any conclusion drawn on limited facts without examining all possibilities or alternatives could be challenged during cross examination and it may not be defended properly. Hence, it is the primary responsibility of a FA to list all possible alternatives which have a possibility of happening.

This is crucial in safeguarding their interest as a professional and defending their testimony because once the testimony is rejected or partially excluded, it may make a serious dent to their career as a FA and as an Expert. Such embarrassment can be avoided by developing and testing all possible hypotheses that may happen in a given situation. This is commonly known as hypotheses testing, establishing a fact on the balance of probability/ or beyond reasonable doubts, depending on the engagement, whether it is a civil matter or a criminal matter.

## Testing Hypothesis and its Importance During Cross Examination

A hypothesis is a tentative statement about the relationship between two or more variables. It is a specific testable prediction about what one should expect to happen in a given situation. A good hypothesis tries to establish a relationship between variables and clearly confirms whether such relationships exists or not. The basic purpose of a hypothesis is to find an answer to a question which can be raised in a given situation.

Testing a hypothesis is trying to determine whether based on observations, a phenomenon is likely to happen or has really occurred based on the facts gathered during investigation. Testing of a hypothesis during investigation is fact based and not necessarily data based. Once the FA has understood the entire phase of the operation and gathered some relevant information and data process for developing the hypothesis, they should begin by creating a preliminary hypothesis as to what has occurred. The hypothesis should be a "worst-case" scenario. Testing a hypothesis involves creating a what-if scenario.

Generally, it is believed that if a particular hypothesis during testing proved to be null, the FA develops another hypothesis and tests it again. Once the FA finds it provable, he generally stops. This process can be a major pit hole for the FA. Most of the time, they fail to conduct further testing because of two possible reasons:

- a) The hypotheses when tested produced a positive result; or,
- b) All possible hypotheses are imaginative as analysis of all the phases of that particular accounting cycle did not support it.

### **The following are the steps involved in Hypothesis Testing:**

- Review and analyze available information/documents generated / Control environment and its efficacy;
- Developing hypotheses;
- Testing hypotheses;
- Refining and amending the hypotheses to accept or reject all other hypothetical situations that might be raised in the court by the opponents.

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