A man was accused of 134 predicate acts of fraud, theft, and forgery in an Idaho State RICO racketeering case. Did he do it? Did the investigators get the facts right? A forensic accountant will illustrate the process of the fraud trial from the perspective of one forensic accountant. Two CPAs testified as accounting expert witnesses, one for the prosecution and one for the defense. This presentation will help you learn more about criminal fraud proceedings and intent by following a fraud trial through the eyes of the forensic accountant and CFE hired by the defense attorney in this case.

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Linda Saunders is the 1994 founding owner of Forensic Accounting Consulting in the Pacific Northwest, where she investigates fraud, documents complex estate and financial exploitation cases, and investigates for the Prosecution or Defense for a wide variety of both criminal and civil cases around the country.

Ms. Saunders is a Certified Public Accountant who is certified in Financial Forensics by the AICPA, a Certified Fraud Examiner and life member of the ACFE, and a Certified Government Financial Manager.

Linda cut her teeth in forensic accounting and fraud investigations when she was first a Revenue Agent for the IRS, and then a Criminal Investigator as an IRS Special Agent. Her extensive IRS training includes over eighteen weeks of intensive income tax law and interview skills, as well as another thirteen weeks of rigorous in-residence training at the Federal Law Enforcement Training Center in Glynco, Georgia. She also has advanced training in Scientific Content Analysis and Reid Interview and Interrogation techniques.

Linda Saunders received her Associate of Science degree from Olympic College in 1978, her Bachelor of Arts in accounting from the University of Puget Sound in 1981, and her Master of Public Administration from the University of Oklahoma in 1993. She is a past president of the Pacific Northwest Chapter of CFEs and was presented with the Distinguished Achievement Award by the ACFE Board of Regents. She is also retired from the United States Coast Guard, where her assignments included Intelligence Officer and
Fisheries Enforcement Officer. She was honored with two Coast Guard Achievement medals and a Coast Guard Commendation Medal during her twenty-one year career as a Reservist.
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<td><strong>Introduction</strong></td>
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<td>As a Certified Public Accountant who is Certified in Financial Forensics by the AICPA and as a Certified Fraud Examiner, I have an ongoing commitment to prevent fraud by informing clients and professionals like you of fraud indicators. I speak frequently about the fraud triangle. I carefully lay out what the elements of fraud are, why fraud happens, and how to analyze whether fraud could, or often has, occurred.</td>
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Who is this audience? Many of you are veteran CFEs looking for annual training. Some of you are also CPAs who work forensic accounting assignments or just need to add a little jazz to your annual CPE training. Others of you aren’t accountants, but investigators who may also be CFEs, who want tips on fraud trial work to improve your investigative techniques. For those of you who are new CFEs and/or aspiring forensic accountants, this introduction to a criminal defense case study will share my observations of some of the pitfalls the prosecution and investigators fell into during this very involved criminal case.

A number of years ago, I had the rare opportunity to act as an accounting expert witness for my first defense case for a case in Idaho. It was for a criminal trial involving an insurance agent accused by the State of Idaho Attorney General’s Office and investigated by the Idaho Department of Insurance. The Prosecutor alleged eight counts of insurance fraud, forgery, grand theft, and racketeering. Within those counts, the insurance agent was accused of an additional 134 Predicate Acts of insurance fraud, grand theft, and forgery under the Racketeering count.

This case involved an insurance agent who had used a CPA for all the years he was in business. It involved, on the
Prosecution’s side, the Idaho Department of Insurance (DOI) criminal investigators. They conducted their investigation to aid the Attorney General’s Office in bringing evidence to a Grand Jury for the subsequent criminal indictments and resulting trial. The DOI investigator assisted the Prosecution throughout the trial and acted as a fact witness for the Prosecutors.

This case study will address some issues that you might have already encountered or will likely be involved with during your careers. For the CPAs, your clients might be vulnerable to an investigation by some government authority during their business lives. For the investigators in the audience, this is a case study of a criminal investigation with troublesome witnesses and an over-zealous deputy district attorney. Hopefully, I can provide insights as to how and why the accused man was found innocent of all counts of racketeering and insurance fraud after enduring a ten-week trial.

Case Overview
This is a case study of a criminal trial of one of the most successful insurance agents in the State of Idaho. The case is analyzed from my perspective as an accounting expert witness for the Defense attorneys. The narrow intent of this particular case study is to highlight the expert witness’s role in the criminal fraud process and to emphasize the importance of effective witnesses for both the investigator and the accused. Although I spent many weeks at the trial in Boise, I did not sit through the entire proceeding. I am also not an attorney, and, therefore, have left the law to the lawyers. This material is intended to provide feedback on the process, not the outcome of this trial.

I did sit through some of the Prosecution’s key fact witnesses’ testimony, all of the Prosecution’s accounting
THE FRAUD TRIAL: A CASE STUDY OF THE INNOCENT

expert’s testimony, and several witnesses for both the Prosecution and the Defense. I observed approximately four weeks of the ten-week trial. I testified for over four days on the witness stand as the defense’s expert witness. This presentation is based on the above court attendance and approximately 540 hours of my investigative analysis leading up to giving my expert opinions in the Hoyle case.

Rick Hoyle of Hoyle Insurance of Boise, Idaho
Mr. Richard Hoyle, commonly referred to as Rick, grew up in the Boise, Idaho, area, graduated from college in Idaho, and began his insurance business right in Boise in the late 1970s. He and his office manager, Debbie, started from the ground up. From the beginning, their office motto was “the customer is the boss.” Mr. Hoyle was a workaholic and developed his insurance business to be one of the most successful commercial insurance agencies in the state of Idaho.

For nearly 10 years, First Security Bank courted Mr. Hoyle in order to buy his insurance business called Hoyle Insurance. After much private negotiation, Mr. Hoyle agreed to sell his book of business to the bank’s insurance subsidiary, First Security Insurance. The effective date of the sale was January 1, 1996. Mr. Hoyle and First Security negotiated a management contract where he would become the Sales Manager for First Security in Hoyle’s old Boise office and continue to “produce” for First Security Insurance, as it is called when an insurance agent sells policies to customers.

Additionally, for a predetermined period of time, even though First Security Insurance now owned the company, this entity agreed to continue carrying the trade name “Hoyle Insurance” because of the good reputation the insurance agency carried in the state of
Idaho, as well as surrounding communities in adjacent states.

The Investigation
In the spring of 1997, the Idaho Department of Insurance (DOI) received a complaint from a business owner who was not satisfied with Hoyle Insurance. One other insurance agency competitor had also made a complaint, so the Department of Insurance investigators began their initial questioning of the Hoyle Insurance business. Mr. Hoyle was aware of DOI’s interest in resolving his customer’s complaint, and offered repeatedly to explain the situation to them personally.

Once DOI investigators began questioning Hoyle Insurance’s bookkeeper, they were convinced something was fishy. The bookkeeper began sneaking documents from Hoyle Insurance and became DOI’s “confidential informant.” Between the bookkeeper and the DOI investigator, the two were convinced Mr. Hoyle was committing fraud and grand theft.

In late May 1997, a search warrant was executed on the Hoyle Insurance agency while Rick Hoyle was out of town at a meeting with First Security at its home office in Salt Lake City. The State of Idaho Attorney General’s Office, along with DOI, confiscated all of Hoyle Insurance’s computers and over half a million documents, per their count, during their raid on the Boise Hoyle Insurance office and their nearby storage unit. Although the name of the firm raided was Hoyle Insurance, the company had been actually owned by First Security Insurance since January 1996.
The Arrest and Charges
By June 1997, a Grand Jury had indicted Rick Hoyle on eight counts of insurance fraud, forgery, grand theft, and racketeering based on journal entries in the Hoyle Insurance books and records. Within the count of racketeering, Richard Hoyle was accused of 134 Predicate Acts of insurance fraud, forgery, grand theft, and grand theft by deception.

Mr. Hoyle turned himself in to Boise law enforcement, and the Attorney General’s Office made sure Rick was photographed in his shackles and jump suit on the Boise evening news. Bail was posted and Rick remained free after that one day. On June 17, 1997, *The Idaho Statesman* newspaper headlines screamed, “Ex-Hoyle employees face fraud charges—Authorities allege more than $500,000 was taken from business clients.” (See copies of newspaper articles at the end of this section.) The article stated that the Grand Jury returned an eight-count, 52-page criminal indictment with 165 separate felony acts (134 of them against Mr. Hoyle). The newspaper article also mentioned that First Security Insurance of Idaho had also filed a civil suit against the accused “. . . to recover any damages that may have resulted from the alleged criminal activity.” Over 100 businesses were named in the indictment as having lost money, primarily from the Boise area. Per the newspaper, Rick faced a possible 14 years in prison and a $25,000 fine if convicted, plus another five years for trying to have evidence destroyed.

The Racketeering (RICO) Charge
The state racketeering charge, under the state Racketeer Influenced and Corrupt Organizations (RICO) statute, is modeled after the federal statute under Title 18 of the U.S. Code. This federal statute is probably one of the
best known and most controversial federal statutes in use today. It was originally enacted in 1970 to fight organized crime’s infiltration of legitimate businesses. Essentially, the law outlaws the investment of ill-gotten gains in one business to another otherwise legitimate business.

In the case of Mr. Hoyle’s charges, the State Attorney General’s Office was trying to link his alleged grand theft of the insureds’ funds (the illegally gotten funds) into his real estate holdings (the legitimate business) that included several million dollars in residential and commercial rental properties. As a result of the racketeering charge, the State tied up Mr. Hoyle’s real estate holdings by filing Notices of Lis Pendens on each of his property titles. These filings prevented Rick from selling or refinancing his properties that the State wanted to seize.

The Trial
Although the original trial was scheduled to begin in January 1998, trial did not start until April 1999, nearly two years after Hoyle’s arrest. The Prosecution promised the jury a six-week trial. However, closing arguments were not finished until June 10, with over ten weeks of trial time logged for this particular case.

The Verdict
The twelve-person jury returned not guilty verdicts on all counts early Saturday, June 13, 1999. The Idaho Statesman meekly noted on the front page of the Sunday paper in type less than 1/4 inch high, “Former insurer found innocent.” Back in the local section of that Sunday paper dated June 13, 1999, the “Local News” headline read, “Jury acquits insurer Hoyle of all
Rick Hoyle was free of all eight of the original felony counts charged by the 1997 Grand Jury, which were:

- Soliciting the Destruction of Evidence
- Racketeering
- Misappropriation of Premium Funds (five counts)
- Solicitation of Grand Theft

**Jury Deadlocked on Seven Predicate Acts**

Although Rick Hoyle was exonerated from charges of the racketeering count, jurors were deadlocked as to seven of the 134 original predicate acts included within the racketeering charge during jury deliberations in June 1999. In post-trial motions, the State Attorney General’s Office argued the right to re-try Rick on those seven predicate acts, and the defense attorneys argued double jeopardy, stating that the jury already found him innocent of the primary charge of racketeering from which the seven sub-issues stemmed. The State prevailed and the matter was appealed to the Idaho Supreme Court.

Of the original allegation that Mr. Hoyle “stole over $500,000,” the dollar amounts in the remaining seven predicate acts totaled $5,838.37. Since First Security Insurance had acquired Hoyle Insurance on January 1, 1996, six of the seven predicate acts occurred after this date. The most Rick Hoyle would have benefited from the remaining seven predicate acts, taking into account his 12 percent override on commissions, would be a grand total of $426.60. Only one predicate act involving $16.94 was attributed to the period when Mr. Hoyle owned the insurance business. The Defense was successful in dismissing any further charges after
pleading double jeopardy to those seven remaining predicate acts of fraud.

**The Civil Trial**
First Security Bank filed a civil suit as the State filed criminal allegations in about June of 1997. In response, Mr. Hoyle immediately filed a counter claim. Trial date for that litigation was postponed several times until the appeals process was completed. The civil proceedings settled out of court for an undisclosed amount that was not allowed to become public information.

**The Case Study from Defense Expert’s Eyes**

*My Initial Due Diligence Before Accepting the Case*
When I got a call from an Idaho CPA in July of 1997, telling me that one of his clients had been indicted by a grand jury for insurance fraud, I listened. The man accused criminally was the CPA’s tax client. They went back professionally as far as the late 1970s. The insurance agent’s accountant, of course, could not be his expert witness, so the CPA was calling me to see if I had the background to be an expert witness for his client’s Defense team. What I didn’t know at the time was, due to the high profile of this case, no Idaho forensic expert could be found who did not have a conflict of interest in this case.

Defend a crook? That was my first gut reaction as the CPA went on about his client’s plight. I try to be on the “good” side—wear the white hat. Why would I want to get someone off the hook that had been bilking his clients, I asked myself quietly? Knowing there are always two sides to every story, I listened attentively. I told him it “sounded interesting,” and I faxed him my
resume to share with the Defense attorneys. Then, with lightning speed, I began my own “due diligence.”

My first step was to call the Boise newspaper to see what the press had to say. As expected, the fraud story made the news. Second, I called the Idaho Accountancy Board to see whether Mr. Hoyle’s CPA’s reputation sent up any red flags. There were none. He was in good standing with the Idaho Board. Then I waited for the CPA to discuss my background with the attorneys. Mr. CPA said the client was still shopping around for an attorney. His case was high profile and, because First Security Bank was prominent in the Boise area, some of the large law firms had conflicts of interest.

As sometimes happens, the phone calls stopped. Often, a case will settle, a client decides he or she can’t afford an expert, or the attorney decides against using a technical specialist. No problem; I had only invested a couple hours of my time, and I had plenty of work to do. A full six months later, the CPA called me back. He had attorney names for me to run by my “conflicts” checklist. Did I know Jerry Spence from Jackson Hole, Wyoming, or Chuck Peterson from Boise? Actually, Spence’s partner, Ed Moriarity, would be the lead attorney, since he had an undergraduate accounting degree prior to his law school education. He would have the best financial background for this case.

Right after my phone call from the CPA, he had Chuck Peterson, the local Counsel, give me a call. A second Grand Jury was going to meet in February, with the proposed trial in May 1998.

Again, silence until June 1998. The trial had been postponed again, but now Ed Moriarity of Spence,
Moriarity & Schuster was on the line, wanting to get serious about using me as its consulting expert witness. I flew to Boise to meet the client and all the attorneys and be briefed on the case. The more the case unfolded, the more I was convinced I could help unravel the journal entries and offer some sort of opinion.

The Engagement
My engagement was with the attorney firm of Spence, Moriarity & Schuster, first as a consulting expert. One of their first tasks for me was to show whether or not their client, Rick Hoyle, got the money. The Prosecution was trying the entire case “circumstantially.” Most fraud cases are based on circumstantial evidence, and this trial was no exception.

The Prosecution had hired an accounting expert to show how the funds were converted to Mr. Hoyle to use in his real estate business. Another job for me was to analyze the Prosecution’s expert report and form my own opinions as to the correctness of his analysis.

I was also asked to look at the elements of fraud to see if they applied to their client and specifically to the criminal charges against him.

Finally, I was asked to analyze the grand theft charges as laid out by a series of schedules compiled by the Hoyle Insurance ex-bookkeeper named Jill, who was re-hired by First Security Insurance for the purpose of scheduling the alleged thefts. Did her schedules make sense, and how did the dollars then make their way into Mr. Hoyle’s pocket, as alleged by the Prosecution?
**THE FRAUD TRIAL: A CASE STUDY OF THE INNOCENT**

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**My Work**

Because this is an eighty-minute presentation, this section cannot be expanded much. Over 500 hours were spent over the course of this engagement analyzing and researching elements of the charges through the approximately 500,000 seized documents. Initially, I flew to Boise to meet the client and his attorneys for a brief trip to get an overview of the case.

I then spent about a week at a worksite where three-ring binders of books had been assembled by the Predicate Act. Copies of the Prosecution’s expert’s report and relevant documents were then sent to my Bainbridge Island office, where that analysis took shape.

Once the trial approached, the attorneys set up office space for me in Boise with the entire room surrounded by boxes of “Bates-stamped” documents. There, I sat with my notebook computer, a computerized index of the seized documents that had been developed by the attorneys, and my imagination reeling at the challenge of sorting this out through the accounting trail.

**My Opinions**

As I analyzed each segment that I would testify to, I had to form an opinion of my results for the attorneys. A key element to proving fraud is that the prosecution must show “intent” by the accused to commit the thefts. I used the fraud triangle, or what I call “the circle of fraud” to profile Mr. Hoyle and addressed each element of fraud.

**ELEMENTS OF FRAUD**

- Opportunity
- Perceived Needs
- Rationalization or Motivation
Throughout the trial, this theme was re-emphasized—Mr. Hoyle did not have the financial need or the motivation to steal insurance proceeds. He made plenty of money through his insurance sales, and if he needed money, he had plenty of legitimate sources of funds.

**Rebutting the Opinions of the Prosecution’s Expert**

During a fraud trial, the Prosecution first puts on its case to try to prove all the counts alleged. It can put on fact witnesses who testify to information and authenticate documents entered into evidence. The Prosecution might also use technical experts who aid the judge and jury in understanding complicated information. In this case, the expert tries to translate accounting data in lay terms. This particular jury had virtually no accounting background. One gentleman on the twelve-person jury had taken one accounting class and was seen as the accounting “expert” during deliberations. In retrospect, that was a very frightening concept. It highlighted the need for the experts to clearly explain accounting without all the jargon.

The Prosecution used an Idaho CPA who, at the time of trial, was a partner for one of the Big Five CPA firms. One of the most important jobs for me was to analyze his expert report submitted prior to the trial, listen to his trial testimony as finally given on that report, and then rebut his testimony if I determined his accounts of the facts and his opinions were inaccurate.

Per an interview with one of the jurors after the trial, the jury felt my rebuttal of the Prosecution’s expert was a pivotal element in finding Rick Hoyle innocent. This was also reiterated in a panel discussion of some of Hoyle’s jurors during an attorneys’ Continuing Legal
# THE FRAUD TRIAL: A CASE STUDY OF THE INNOCENT

Education seminar held the following summer in Boise. I rebutted each opinion of their expert and gave my rationale why, in my opinion, his analysis was flawed.

Throughout the remainder of the trial, jurors were waiting for the Prosecution to bring back its accounting expert to rebut my opinions. It never did. Perhaps the pivotal point was when the Prosecution did **not** bring back its expert, rather than when I testified. The jury stated that my testimony negated much of what the Prosecution’s expert had testified to earlier.

The strength of my testimony was based on extensive preparation. The Prosecution’s expert’s firm, per his testimony, charged $200 per hour and billed the State approximately $20,000 for its services. The expert made it clear during his testimony that he had staff putting his schedules together and doing the legwork for his analysis. I did not use subordinates for my analysis and spent well over 500 hours poring through documents, scheduling, and forming my opinions. The jury felt that level of my analysis made my testimony very believable.

During Mr. Moriarity’s closing arguments, he used four-foot by six-foot poster boards with summaries of my opinions spelled out for the jury to read. These summary opinions were some of the last information the jury saw and heard before it left the courtroom to deliberate. Articulating an expert opinion can end up being key information used by an attorney to make his or her point during a dynamic closing argument. Per my conversation with a former juror, in this trial the opinions of the experts were extremely important.
**Credibility of Prosecution’s Key Fact Witness**

To enter the evidence of the grand theft charges into the court record, the Prosecution called the Hoyle Insurance ex-bookkeeper, named Jill, to testify to the books and records she analyzed for each customer from whom the accused allegedly stole. It is critical for counsel to bring credible witnesses before a jury. In this case, the Prosecution had given the bookkeeper immunity for her testimony, so there was already a cloud over her head that she may have been somehow culpable in the Hoyle Insurance investigation.

On cross-examination, the attorney can use leading questions to shape the witness’s response. This is a very powerful tool and the witness must listen carefully to each question. During Jill’s direct testimony and in affidavits she submitted for the Prosecution, she did not always tell the truth. On cross-examination of the ex-bookkeeper, Mr. Moriarity for the Defense stood at an easel in front of the jury and asked Jill what falsehoods she had told related to Hoyle Insurance and this case.

On the easel, the Defense listed the following “falsehoods,” among others, during its cross-examination of her:

- Lied on resume to get job
- Submitted the same erroneous resume in a sworn statement
- Said she had accounting degree, but only three accounting classes were ever taken
- One of her Hoyle Agency written goals was to take the CPA exam and pass it on the first try, but she was not eligible to even sit for the exam
- Said she took a trip to Oregon Small Claims Court on behalf of Hoyle Insurance
The bookkeeper could not answer competent accounting questions asked by the Defense. When asked on cross-examination if the insurance company was on a cash or accrual method, the witness didn’t know and could not tell jury what “cash” versus “accrual” meant. Listening to her testimony assisted in the foundation of my opinion that she was not a competent accountant.

(The above section was included particularly for the investigators in this audience. Be sure you know the background of your witnesses early in your investigation. Credibility of a witness might fatally damage any testimony you will need to rely on for the outcome of your trial.)

Predicate Act Example—Johnson Floral

Grand Jury Transcript for Johnson Floral—First Predicate Act #48 (Old #54)
Q= Deputy Attorney General (Prosecutor) talking
A= Bookkeeper Jill talking

Q: Predicate Act 54, Exhibit No. 48. 54 alleges that on January 9th, 1995, the defendant stole $3,685.76 from Johnson Floral Company. Document No. 48, or Exhibit 48—is that a document that relates to Johnson Floral?
### THE FRAUD TRIAL: A CASE STUDY OF THE INNOCENT

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<th>A: It is.</th>
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<td>Q: Same as we've been discussing?</td>
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<td>A: That's correct.</td>
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<td>Q: And does it demonstrate what was alleged there?</td>
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<td>A: Yes, there's three different entries. One on—the first one on 1/9/95, written off to bad debt, in the amount of 20—$2,927.76, and then again on 1/9/95 for $379, and again on 1/9/95 in the amount of $379.</td>
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<td>Q: Any chance that those were accidentally $379—</td>
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<td>A: No. It's the actual checks that came in from the insureds, and we just turned around and wrote them off because they were already paid in full.</td>
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### Indictment—Predicate Act #48 (Old #54)

54.

**GRAND THEFT**

Idaho Code § 18-2403(1)(2), Idaho Code § 18-2407(b)(2), Felony

That on or about the 9th day of January, 1995, in the County of Ada, State of Idaho, the defendant, RICHARD HOYLE, did, with the intent to deprive another of their property wrongfully take or withhold $3,685.76 lawful money of the United States; to wit, the defendant wrongfully took $3,685.76 in premium funds from the rightful owner, **JOHNSON FLORAL COMPANY**, with the intent to permanently deprive the true owner of the funds.

### My Analysis—Predicate Act #48 (Old #54)

On 1/1/95, the bookkeeper charged off three amounts, all to bad debt expense, through adjusting journal entries. She did this through debits to the customer, Johnson Floral Co., and credits to the bad debt expense. In the Grand Jury testimony, Jill stated that “checks came in” and they were directly written off to bad debt.
Yet, in her testimony during trial, the bookkeeper stated that there was a problem with the old accounting system called Agena, where the customer’s balances didn’t have beginning balances of zero, so she wrote off the credit balances to zero out their accounts. At trial, the bookkeeper did not mention any “checks.”

This Predicate Act illustrates the problem encountered when Hoyle Insurance changed over its accounting software from the old Agena software to the new Applied software in the summer of 1994. Instead of reconciling each customer account, the bookkeeper made journal entries to make the customer’s account equal zero. She made journal entries to three accounts to accomplish this: Bad Debt, Commissions Income, or Suspense. If the customer had a credit balance, she would debit the customer’s account, and credit one of the above accounts. This was a short-cut method instead of researching the customer’s transactions to find out why the balance was a credit.

From my research, Jill was always behind in posting. In order to get the customers invoiced, she would prepare an invoice offline without posting it to the general ledger. When the customer would pay this hand-typed bill, the deposit to the bank would automatically post to the customer’s account in the general ledger. If Jill did not make the offsetting debit for the accounts receivable amount, the customer’s account would show a credit balance, when in fact, the balance should have been zero. Mr. Hoyle was not aware of why these entries were being made and had insufficient accounting knowledge to be aware of the impact of such adjustments.
At trial, the owner of Johnson Floral testified on behalf of the Prosecutors and stated she didn’t know she had a credit balance. The floral company was a small operation, and she would have known if she had overpaid her insurance by over $3,500. The jury commented after the trial that one element of finding Mr. Hoyle not guilty was that the Prosecution did not call angry customers to testify about their losses.

This example of Johnson Floral Company was a typical example of the Predicate Acts. The adjustments occurred at year-end when the bookkeeper traditionally tried to balance the customer accounts. No money changed hands. These adjustments were not traced back to the time when the old Agena accounting system was in place in the Exhibits provided for the jury. The reconciliations stopped and started to match the amounts of these journal entries, and they labeled these amounts “grand theft.” Mr. Moriarity referred to this as “results oriented” accounting during the trial.

To further prove Rick Hoyle’s innocence, I traced cash into and out of the insurance Trust Fund where all customer deposits were made. All cash was accounted for. These journal entries, based on credits and debits to Bad Debt, Commissions Income, and Suspense, could not be tied to money, or actual cash. The theft, in my opinion, was a figment of the investigator and the bookkeeper’s imagination. Their lack of accounting knowledge led them to believe that these journal entries were somehow thefts.

The State’s expert accounting witness addressed the journal entries as “indirectly” benefiting Mr. Hoyle by changing his net income, and thus inuring to him through the “bottom line.” Several previous Hoyle
Insurance bookkeepers testified that the books had been perennially wrong, and that neither the original Hoyle Insurance Agency nor the new First Security entity had taken the staff time to reconcile the customer accounts. Even the sales agreements acknowledged that customer accounts required reconciling, but it had never been done.

**In Summary**

Using fact witnesses and expert witnesses is how one proves or disproves a circumstantial case in court. Choosing competent, capable, and relevant witnesses and experts is critically important. You must have the right person for the job, whether you are on the investigating side or the side of the investigated.

Careful screening of witnesses, as well as the fact patterns in each case, will enhance the chances of a positive outcome. For the investigators, be sure of both your facts and your witnesses. For the accountants who represent clients, remember the client is innocent until proven guilty, no matter what law enforcement or the news media have to say. For expert witnesses, careful due diligence and tenacity once you accept a case are some of the best tools you can incorporate into every case you take on.
NEWSPAPER ARTICLES

IDAHO STATESMAN
Headline: State investigates Hoyle agency

SubHead: Attorney general looks at insurance agency; parent company doesn’t know what it’s about

Byline: By John Tucker

The Idaho attorney general’s office and the Idaho Department of Insurance are investigating the Hoyle Insurance Agency in Boise.

Hoyle is a subsidiary of Salt Lake City-based First Security Corp.

“I can confirm there is an investigation,” Bob Cooper, a spokesman for the attorney general’s office, said Wednesday.

“But other than that, we have no comment,” he said.

Representatives of First Security and the Idaho Department of Insurance declined to discuss the investigation.

“Frankly, we are unclear at this point what the investigation is about,” said Dan Schull, president of First Security Corp.’s insurance division. “We are cooperating fully, and we stand behind Hoyle’s employees.”

A deputy attorney general and investigators from the insurance department appeared unannounced at the agency Tuesday afternoon. They asked to examine the company’s files.

“We have given them access to the files, and we have been told they will complete their investigation by the end of the week,” said Paul Street, an attorney for Moffatt Thomas Barrett Rock and Field, which is representing First Security.

Hoyle’s 20 employees are being interviewed by the two agencies.

Hoyle offers a full line of insurance products but specializes in business insurance.

“The agency is a significant competitor in Boise,” Schull said. “They have 300 customers in Boise that are businesses.”

Schull said Hoyle is still open.

Customers with questions may call 344-2600.

Copyright The Idaho Statesman 1997
Headline: Ex-Hoyle employees face fraud charges

SubHead: Authorities allege more than $500,000 was taken from clients

Byline: By John Tucker

The Idaho Statesman

Two former employees of the Hoyle Insurance Agency in Boise were arrested Monday for allegedly siphoning more than $500,000 from business clients.

Meanwhile, First Security Insurance of Idaho, which bought the agency last year, also has filed a civil suit against the men to recover any damages that may have resulted from the alleged criminal activity.

Richard Hoyle, who was president of the agency, and Rodney Wagner, the former vice president, were charged with racketeering, insurance fraud, misappropriation of premium funds and soliciting grand theft.

Hoyle also was charged with soliciting to destroy evidence.

Arrest warrants were issued for Hoyle and Wagner on Thursday when an Ada County grand jury found there was enough evidence for an indictment.

Both men turned themselves in to Boise police early Monday.

The eight-count, 52-page criminal indictment alleges the two men committed 165 separate felony acts.

More than 100 businesses were named in the indictment as having lost money. Most are in Boise.

"I would say (Hoyle) is one of the largest insurance agencies in the state," said Jim Genetty, chief of the Bureau of Consumer Services at the Idaho Department of Insurance.

Hoyle specializes in business insurance.

"They've been a very successful agency," Genetty said.

State officials are notifying Hoyle's customers.

"Many of the businesses don't even know what's going on," said Dennis Charney, a deputy attorney general.

The charges resulted from an investigation that started late last year, almost 12 months after First Security bought Hoyle.

"We got a complaint from a competing agency and a customer of Hoyle's at about the same time," Charney said.

Three weeks ago, the attorney general's office and Boise police raided the Hoyle office and seized its files.

Hoyle and Wagner allegedly used a variety of different techniques to alter the companies books over a 3 Â- year period beginning in early 1994, according to the indictment.

Examples:

* The defendants allegedly would sell insurance policies to clients, then forge their names to policies with lower
face amounts. They allegedly would keep the difference.

• The defendants allegedly altered the loss histories of some of its clients. The alterations typically resulted in lower premiums that were not passed on to the customer, according to the indictment.

Money that was illegally diverted was allegedly spent by Hoyle and Wagner to finance a real estate company.

Some businesses may have been paying for insurance, when in reality, they weren’t covered at all.

“Anybody who has insurance with Hoyle had better double-check their policies and make sure they’re covered,” Charney said.

First Security Insurance said it will stand behind insurance policies issued by the agency. It is conducting its own internal audit of Hoyle’s books.

“We’re confident that the Attorney General’s investigation and our own internal audit will help us determine what has happened and take appropriate steps to address the situation,” said Dan Schull, president of First Security Insurance.

Hoyle and Wagner were fired by First Security Insurance when it learned of the investigation.

At the bail hearing Monday, attorneys for Hoyle and Wagner said the charges were blown out of proportion.

“They (the attorney general’s office) have manipulated the indictment and we feel they will be cleared on all counts,” said Dennis Benjamin, Ronald Wagner’s attorney.

Both men face a possible 14 years in prison and a $25,000 fine if convicted.

Richard Hoyle faces an additional 5 years and another fine of $10,000 for the charge of trying to have evidence destroyed.

Fourth District Judge Deborah Bail set the men’s bail bonds at $25,000.

More charges may be coming.

“I won’t rule anything out at this point,” Charney said. “We’re still waiting to examine more of the documentation.”

Hoyle and Wagner will enter pleas Wednesday at 1:30 p.m. at the Ada County Courthouse.

Whom to call
Hoyle Insurance Agency customers with questions about their policies can call First Security Insurance of Idaho at 344-2600.

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Deputy attorney general quits before major trial begins

A month before trial in one of the most complicated white-collar crime prosecutions ever undertaken in Idaho, Attorney General Al Lance is losing his lead prosecutor.

Deputy Attorney General Dennis Charney will leave the AG's office next week for private practice, abandoning a racketeering case that has generated 300,000 pages of documents and a defendant who has hired the firm of celebrity lawyer Gerry Spence.

The departure of one of Idaho's most flamboyant prosecutors comes after 4th District Judge George Carey ordered the state to return a secret grand jury transcript and defend Richard Hoyle's income tax returns, which Charney improperly gave to First Security Insurance Inc.


Hoyle is charged with eight felony counts of racketeering, solicitation of the destruction of evidence, misappropriation of premium funds and solicitation of grand theft. The state also seeks forfeiture of $335,000 from Hoyle. A six-week trial is to begin April 6.

First Security's civil suit against Hoyle is on hold pending an end to the criminal case. But Hoyle's Boise lawyer, Chuck Peterson, convinced Carey to order return of the grand jury and tax records Charney gave to First Security. Hoyle also is represented by Edward Murnia, Spence's partner in Jackson, Wyo.

Ruling from the bench Jan. 22, Carey said: "The theory of grand juries is that they are supposed to be secret, and if you don't keep them secret, you are in trouble, Charlie." Of the tax returns, Carey said: "Those documents shouldn't have been turned over to First Security and I'm going to order that you recover those documents and any copies."

Both Peterson and First Security's lawyer, Patricia Olsen, cited a gag order and declined to comment.

Lance's spokesman, Bob Cooper, wouldn't discuss the case except to say that Deputy Attorney General Ken Stephenfield and Greg Swanson, a deputy prosecutor on loan from Canyon County, have taken over. Cooper said the state will seek a delay: "Our guys will be ready." Charney, who makes $35,000, said he resigned after his request for a pay raise was denied. He said he planned to complete the case he's been prosecuting for two years at a contract rate of $75 an hour, but Lance did not accept.

Charney wouldn't comment on Carey's order on the leaks, but said he's confident the new lawyers can do the job. "They're both competent, skilled prosecutors."

Still, the new team must play "catch-up, and one of Idaho's toughest prosecutors won't lose his star power, the big-time partner of Spence.

Charney's victories include conviction of former Boise County Sheriff Craig Landers for DUI in 1996; a fixed letter sentence for Jason Burditt in 1986 child murder in Elmore County; a death sentence for murderer Paron Lavelance in Sandpoint in 1997; and the 1989 rape conviction of a Lemhi County sheriff's deputy. He also settled a 1998 Madison County case in which $2 million was returned to victims of a securities scheme.

The former Boise County prosecutor's hard-nosed style also has brought high-profile setbacks, including the failed 1993 battery case spearheaded by former Micron Technology Inc. director Tom Nicholson and Micron co-founder Joe Parkinson.

Also in 1995, Charney ordered exhuming the remains of Kristi Lynn Wight after the Boise County coroner ruled her death fell from a bridge was an accident. Charney charged Wight's husband, Anthony, with murder, but the case was dropped after Charney resigned the Boise County post to work for Lance.

In a tragic case from 1996, 4th District Judge Deborah Bail said Charney broke a plea agreement with Mark Reid Cutler, a former Boise Cascade Corp. tax official. Cutler committed suicide three months before his sentencing hearing.

Dan Popkey's column runs Tuesday, Thursday and Sunday. He welcomes readers' comments and enjoys speaking to groups. To reach him, call 377-5438 or e-mail news@idstotal.com
Tensions simmer among NATO, Russian troops

Tim Woodward and Gerry Melendez report from Albania on Idaho's connections to Kosovo. Their stories and photos appear below and in a full page of coverage on Page 6A.
Jury acquits insurer Hoyle of all charges

First step, he says, is to reclaim name, then finish lawsuit

By Rocky Barker
The Idaho Statesman

Former insurance agency owner Richard Hoyle hopes his acquittal by a jury early Saturday begins a process of vindication. “We want to get our good name back,” Hoyle said Saturday. “This is the first step.”

A jury of seven men and one woman, including a federal magistrate judge, acquitted Hoyle on eight felony counts of racketeering, soliciting the destruction of evidence, solicitation of grand theft and five counts of misappropriation of premium funds. The jury deadlocked on seven issues related to the racketeering charges, but that did not stop them from reaching acquittals on the charges themselves, said Hoyle’s attorney Chuck Peterson of Boise.

The verdicts came at 12:45 a.m. Saturday morning after three days and nights of deliberation. The trial had run 10 1/2 weeks ending a two-year ordeal for Hoyle since the state first brought charges against him in May 1997.

Previously, 4th District Judge George Carey threw out more than a hundred charges during the course of the trial due to lack of evidence and other concerns.

Mike Henderson, a deputy attorney general, who was a part of the prosecution team, said the team still was evaluating the verdict.

“We will have to decide whether to go forward with charges in view of the counts the jury hung on,” Henderson said.

“Otherwise, it’s inappropriate for me to comment on the case.”

The other members of the prosecution team were Deputy Attorney General Ken Stringfield and Greg Swanson, a deputy prosecutor on loan from Canyon County.

An unusual element of the case was the inclusion on the jury of U.S. Magistrate Judge Larry Boyle. He was not the foreman.

Boyle was unavailable for comment Saturday.

Peterson said the charges were the result of mismanagement on the part of the Idaho Attorney General’s Office. Specifically, Peterson blamed former Deputy Attorney General Dennis Charney, who handled the case until February.

“If the Attorney General had been managing those prosecutors this case never would have happened.”

See Hoyle / 5B

Boise residents volunteer their Saturday to ‘Paint the Town’

Members of church give house facelift

By Jennifer Taylor
The Idaho Statesman

NCN graduate holds history in her hands

Last diplomas with letter ‘C’ go to 272 students

By Rocky Barker
The Idaho Statesman

NAMPA — For Margaret Celeste Takagi, graduation Saturday from Northwest Nazarene College represents her step from
HOYLE

*From 1B*

have gone this far,” Peterson said.

The case has cost taxpayers more than $250,000 already, Peterson said.

Attorney General Alan Lance is out of the state and unavailable for comment.

Charney left the Attorney General’s Office after Carey ordered the state to return a secret grand jury transcript and Hoyle’s income tax returns, which Charney improperly gave to First Security Insurance. First Security had purchased Hoyle’s insurance agency in 1996.

Charney could not be reached for comment Saturday. He has said he left the job after a request for a pay raise was denied.

Hoyle is suing First Security for breach of contract. A trial in the civil lawsuit is scheduled for January, Peterson said.

Hoyle was managing the agency for First Security when authorities raided it May 20, 1997. The company replaced him after his arrest and quit making payments, Hoyle said.

He spent 20 years building the business into the largest insurance agency in the state.

“It was my heart and soul,” Hoyle said.

In addition to Peterson, Edward Moriarity, of Jackson, Wyo., a partner of celebrity lawyer Gerry Spence, represented Hoyle. Hoyle’s defense has cost him hundreds of thousands of dollars. But full vindication won’t come until the civil case is completed, he said.

“That’s the next step,” he said.

The state had placed liens on millions of dollars of Hoyle’s real estate, Peterson said, in hopes it would eventually get it through forfeiture.

Hoyle hopes those liens now will be lifted and he can begin to put his life back together.

“It’s going to take me a long time,” he said.