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Innovations and Strategic Applications in the Psychology of Fraud

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Abstract

Fraud is a crime of relationships. It involves dishonesty, deception, betrayals of trust and abuses of power and is predicated in ubiquitous human propensities to be hoodwinked and manipulated. Despite its centrality, the psychological dimension of fraud and fraudsters has been historically misconstrued and domain relevant expertise underutilised in the ferocious psychological battle to recover victims' losses and bring fraudsters, kleptocrats, and other corrupt actors to justice. In this article, Alexander Stein Ph.D., redresses that by elaborating on the complex psychodynamics at play across the entire psycho-social ecosystem in fraud matters and delineating psychologically sophisticated tools for actionably leveraging psychodynamic intelligence to assist fraud litigators and allied asset recovery professionals.

Introduction

“Fraud is committed by people, not numbers.”

— Joseph Wells, Founder and Chairman, Association of Certified Fraud Examiners¹

¹ Joseph Wells' keynote address, ACFE 25th Annual Global Fraud Conference, San Antonio, Texas, June 2014

The standard definition of fraud is *deceit, trickery, sharp practice, or breach of confidence perpetrated for profit or to gain some unfair or dishonest advantage*. Fraudsters use these methods to induce victims to unwittingly become deprived of dominion over substantial sums of money or other valuable assets.²

The ostensible goal in most cases is personal enrichment. To this end, fraudsters continually innovate and creatively adapt to new technologies and environments. They exploit disruptive macro-social events and loopholes in markets and financial instruments, capitalize on inadequate regulatory oversight or reform, and weaponise investor greed and lackadaisical due diligence.

But above all else, fraud is a crime of relationships. It involves dishonesty, deception, betrayals of trust and abuses of power and is predicated in the ubiquitous human propensities to be hoodwinked and manipulated.

In this view, recovering the *fructus sceleris*—the fruit of ill-gotten gains—and pursuing justice on behalf of victims involves more than adroitly navigating judicial procedures and coordinating complex trans-national legal, banking, accounting, and investigative expertise. Contemporary asset recovery cases are, at core, a ferocious psychological battle with corrupt actors who operate under radically disparate moral, ethical, and behavioural codes, dismiss the rule of law, and abide antisocial notions of justice, consequence, and accountability.

That conflict is waged primarily between the fraudster, his affiliates, operational workforce, and knowing co-conspirators and facilitators (as well as many unwitting enablers, including family members), on the one side, and the array of asset recovery professionals—investigators, litigators, prosecutors, litigation funders, and other subject matter experts—on the other.

But an expansive view of the human ecosystem must also include two additional constituencies: the victims and other impacted stakeholders, and the judiciary—triers of fact and law—legislatures, regulators, and policy-making institutions as well as the social and cultural structures that enable them.

² The umbrella rubric “fraud” is used here for brevity’s sake and is intended to incorporate by reference its many forms and varieties. Other common frauds include false claims of scientific discovery or intellectual property ownership. While these may result in undeserved gains to the fraudster and unjust losses to the victims, they comprise different classes of fraud which will not be directly taken up here. The dominant focus here is asset recovery in the context of economic fraud. For more detail, see for example, Martin Kenney’s useful enumeration of 15 common types of fraud in the chapter titled *Serious Fraud* in *Asset Tracing and Recovery – The FraudNet World Compendium, 1st Edition*, pp. 8-14. For a thorough survey of Ponzi schemes, see Kathy Bazoian Phelps & Hon. Steven Rhodes, *The Ponzi Book: A Legal Resource For Unraveling Ponzi Schemes* (LexisNexis® 2012).

Whatever their functions, these groups are psycho-social systems, each subject to and governed by powerful psycho-social forces and dynamics. In addition, the antagonist and his cohort will inevitably unleash psychological warfare to frustrate, stymie, or nullify the professional campaign directed to bringing them to book.

In short, fraud professionals routinely confront the roiling impact of all manner of unscrupulous behaviour—deception, psychological manipulation, abuses of trust and power—as well as a dizzying array of dense issues involving individual and social psychology, family systems, and organizational dynamics.

In the 5th century BC, Chinese military strategist and philosopher Sun Tzu opined that “the opportunity of defeating the enemy is provided by the enemy himself.”³ This axiom is no less applicable in 21st century fraud cases where sophisticated analyses and actionable intelligence concerning the mind and behaviour of the fraudster and his confederates together with insight into the psychological dynamics of all the constituent human systems open a third dimension on case management, strategy, and prosecution, and provide unique guidance for the litigation and recovery operation.

What follows is an introductory overview of these ideas, briefly updating historical and conventional understandings of the psychology of fraud as a prelude to providing a contemporary and more robust psychodynamic perspective. This is followed by a delineation of the primary applications and methods for leveraging expertise in human psychology, and family, organisational, and social systems in asset recovery work.

Psychology in Jurisprudence and Fraud—The Imperative of Updating Historical Perspectives

Efforts to understand and explain the psychological underpinnings of criminally deviant behaviour have entwined with the development of Western jurisprudence for more than four hundred years. Common law guidelines on criminal liability have, in simplest terms, historically relied on establishing intent, motive, and forethought to explain why people defy prevailing rules of law and codes of normative civil ethics and conduct.

Most English law jurisdictions require establishment of *mens rea*, the guilty mind, as a necessary element of a criminal offence accompanying *actus reus*, the guilty act. Codified by Edward Coke in the 17th century, the notion *actus non facit reum nisi*

³ “Art of War,” Chapter 4

mens sit rea—the act does not make a person guilty unless the mind also be guilty—remains jurisprudentially influential to this day. Another related psycho-legal concept is *Dolus*, which describes an accused person’s intention at the time an alleged crime is committed. It has two forms: (i) *Dolus directus* (direct intention), where it is determined that the accused intended a certain act or result; and (ii) *Dolus eventualis* (indirect intention) where the possibility of a particular consequence or circumstance is foreseen but there is a reckless disregard as to whether it ensues or not. Both forms establish that the accused understood that his actions or the consequences of them were wrong. Similarly, establishment of *animus nocendi*—criminals’ (or organizational decision-makers’) *a priori* knowledge of illegality and intent to harm—is a requisite condition to courts’ determinations of penalty and liability for constructive dishonesty, knowing assistance, recklessness, negligence, and aiding and abetting breaches of fiduciary duty.

Societies and courts have long relied on consensual acceptance of these concepts. In support of that, psychologists’ and psychiatrists’ expert opinions are enlisted in cases involving psychiatric issues, requiring extensive knowledge of mental health law, in jury selection, or in presenting relevant psychiatric concepts and diagnostic findings in language that courts can understand and use in instructing juries and rendering sentencing. This includes determining a defendant’s mental fitness or capacity relating to criminal intent, mental competency, or statutory thresholds of legal insanity; attesting to a defendant’s state of mind and how it affected his ability to author or commit certain acts in concurrence with the alleged criminal wrongdoing; or testifying as to the symptoms and conditions of a crime victim’s post-traumatic duress.

Research on the psychology of fraud occupies a distinct category in the studies of criminal types,⁴ historically relying, in the main, on psychiatric diagnoses to explain why people commit fraud.

Arguably the most influential schematic understanding has been the Fraud Triangle. Devised by Donald R. Cressey in the 1950’s, it established a triumvirate of simultaneous factors needed for an “ordinary” person to commit fraud: opportunity, rationalisation, and pressure (or incentive).

Another popular mid-20th century view examined similarities between classic symptoms of antisocial personality disorders, particularly criminal psychopathy, and the markers of leading economic criminals. While not a formal diagnostic classification in the DSM (Diagnostic & Statistical Manual of Mental Disorders),

⁴ Including, inter alia, mass- and serial-killers, sociopaths, sex offenders, terrorists, kidnappers, drug lords, organized crime capos, tyrants, dictators, authoritarians, and malfeasant executives and assorted white-collar offenders.

psychopathy overarchingly refers to APD (anti-social personality disorder), a serious condition characterised by virulently aggressive and disinhibited antisocial behaviour, feckless disregard, diminished empathy, and absence of remorse. The work of several psychiatrists profoundly influenced clinical, diagnostic, and criminological parameters of psychopathy, most prominently Hervey M. Cleckley, an American psychiatrist and pioneer in the field of psychopathy whose 1941 book *The Mask of Sanity* provided the most influential clinical description of psychopathy in the twentieth century, and Robert D. Hare, a Canadian forensic psychologist who developed the Hare Psychopathy Checklist used to assess cases of psychopathy. Building on that earlier work, William and Joan McCord, a husband-and-wife team who specialised in the study of criminal delinquency, co-authored *The Psychopath: an essay on the criminal mind* (1964), a seminal work which became a leading reference to the legal profession. These and other similar works ignited popular imagination and found easy favour with courts and juries, cementing psychopathy as far and away the most widely accepted explanation for fraud.

Other established views emphasised fraudsters as principally motivated by an unquenchable hunger for power, rapacious greed, or unrestrained opportunism. Additional explanations proposed that fraudsters utilise “techniques of neutralisation” which reduce the offender’s ability to modulate or abort destructive, amoral, or anti-social impulses to greater degrees than the average person. A related view suggested that fraudsters possess an unusual capacity for rationalisation—a psychological mechanism by which an individual seeks to replace the actual socially, ethically, and emotionally reprehensible motivations for his actions with a more palatable though fictive explanation.

Even the most systematic scientific research has tended to narrowly classify fraudsters as remorseless sociopaths or psychopaths—predatory men devoid of empathy who prey on victims ill-equipped to protect themselves and their assets. Studies such as Edwin H. Sutherland’s 1939 “*Principles of Criminology*” which promulgated Differential Association and Differential Reinforcement Theory—the notion that criminal behaviour is learned—are still referenced today. Some studies located the origins of criminally delinquent behaviour in organic (brain) disorders, while others assigned the complex calculus of predispositions and psycho-social factors driving the commission of fraud to a wide range of causes, including low self-esteem, arrogance and egocentricity, a poorly developed code of ethics, emotional instability, a desire to beat the system, and taking pleasure in manipulating others.

Even as a separate matter from the relative plausibility or fractional correctness of any of these formulations, the historically entrenched focus on fraudsters wholly in terms of psychopathology is simplistic. It inadequately explains the salient

characteristics, psychological constituents, and dynamic catalysts of offenders and their criminal schemes. And the conventional view of fraud as an asymmetrical bipolar event between fraudster as dominant figure and victim in a hapless subordinate position—while omitting all other involved parties—is insufficient in the aggregate.

One legacy of these approaches has been to compress fraudsters into a universally accepted taxonomy that purportedly explains all typical characteristics and motivations as a single diagnosable psychopathology. This has detrimentally influenced generations of litigators in crafting prosecution and asset recovery strategies, jurists, and policy-making bodies in determining sentencing guidelines and designing prevention and recidivism reduction programs, and biased journalists, authors, and filmmakers in producing mythologised narratives about fraud and fraudsters now ensconced in culture and the popular mind.

But the most significant adverse consequence in the context of this article is that it provides scant practical value to asset recovery professionals. Recalling the premise that fraud is fundamentally a psychological crime, it follows that expansive, contemporised conceptualisations of the psychological dimensions involved demonstrably enhance developing and pursuing third party liability claims against fraudsters and their knowing assistants and facilitators leading to the recovery of assets wrongfully taken from victims. Working models must move beyond inert post-facto psychiatric diagnoses for single-actor wrong-doing. And professionals in the field can only benefit from access to sophisticated psychodynamic intelligence gathering and analytics to add to the array of established legal and accounting instruments and practices.

What follows redresses these shortcomings on two fronts. One is to introduce a magnified multi-dimensional understanding of the complex psychodynamics at play across the entire human ecosystem of a fraud case. This includes mapping the matrix of people in a dynamically interacting constellation of relationships—a field populated by the primary antagonist’s family and others in his personal sphere together with all those in his professional world such as executives, associates, and front-line personnel in his various entities, bankers, accountants, lawyers, property agents, and all others with knowledge of his financial dealings, holdings, and corporate structures. The multijurisdictional team of asset recovery professionals forms another group, and the judiciary, regulatory bodies, and legislatures yet another. The stakeholders and participants comprising these constituencies are considered independently as well as in direct and indirect connection to each other.

The second presents robust methods for actionably leveraging psychodynamic intelligence and soft and shadow data analysis in case strategy, management, prosecution, and settlement negotiations.

The Fraudster: General Profile, Psychological Components, Talents, Vulnerabilities

“Society is a masked ball where everyone hides his real character and reveals it by hiding.”
— Ralph Waldo Emerson⁵

The psycho-historical origins and mental substructures of criminal fraudulence, driven by individualistic predilections and idiosyncratic circumstances and decisions, are complex, meaningfully vary for every offender, and defy broad-brush theorizing. A comprehensive taxonomy of fraudster psychology encompassing all constituents and underpinnings of every type of fraud is infeasible here. Each fraud case is unique and must ultimately be understood in its own context.

That said, there is a substantial body of evidence-based scholarship explicating the array of psychological devices used and abused by those who commit fraud. Only a fraction of that will be referenced here.

Everyone is a Fraudster

We are unique among species in calling up psychological mechanisms even in the complete absence of any actual external threat. We preserve in our minds vivid phantoms of abusive, traumatising, humiliating, impinging, terrifying, invasive, overwhelming experiences, relationships, and environments of early life. The psychological systems and early response patterns developed to survive some early life circumstance extend into contemporary life as unconscious reflexes—internal responses triggered without awareness or control and that cannot be modulated or aborted at will—and solidify as fixed, embedded features of character. We draw on batteries of such devices—denial, negation, disavowal, repression, suppression, dissociation, splitting, projection, among others—to protect ourselves from feeling, thinking, remembering, or even knowing things about ourselves, and to control people and situations to help us feel safe, powerful, and important.

⁵ “The Conduct of Life” (1860)

With gradations and variations across cultures, these are all essential psychological dispositions and devices shared by everyone. They are normal parts of the human condition.

They are also all elemental in fraud. Therefore, in a sense, and in radical departure from constricted historical psychiatric classifications fixated on criminal psychopathy, everyone is (or can be) a fraudster. Or a potential victim.

But of course, not everyone is a malicious felon. Precise reasons why some individuals respond to certain trauma with asocial miscreance or criminality rather than living with quotidian psychological scars are difficult to detail in the abstract. Typical differentiating factors are age, severity, seriality, and response. Serial trauma in very early life usually gives rise to more acute psychological deformations than comparatively less shattering or isolated episodic experiences in later maturational stages. Still, there are countless variables, and developmental trajectories do not follow pre-set formulations. It is not unusual for survivors of severe relational trauma—childhood victims of emotional or sexual abuse, domestic violence, pathologically narcissistic, manipulative, and other toxically disordered and dysfunctional households—to escape those early injuries and lead reasonably healthy and productive lives. But for others, those who grow-up to become fraudsters or predatory power abusers, forming relationships differentiated from their formative experience and developing self-modulated ethical, pro-social decision-making and behavior, is an impossibility. Normal coping and survival mechanisms become weaponized and other people exist only, or primarily, as functional opportunities, recalling the definition of fraud, to profit or gain some unfair or dishonest advantage.

The presenting details of an individual's psychohistory will elicit different responses or have a different function depending on the context. In social relationships, it might prompt compassion—or a hasty retreat; in a therapeutic setting, it should lead to an initial diagnosis and treatment strategy; and in a legal psychiatric context, such data will inform a baseline evaluation to guide sentencing or predict rehabilitation or recidivism.

The utility here is different. These psychological devices developed in the protagonist's life are his weapons. Understanding them is important to formulating a three-dimensional profile—telling us who he is, how he thinks, and what motivates him; how he relates to risks, threats, and other people; clarifies his aims, aspirations, values, and tolerances; reveals potential vulnerabilities, and helps accurately forecast his probable responses and decisions in various future scenarios.

Lies & Deception

Deception abounds across the natural world. Many animals and organisms use an ability to camouflage, feign, disguise, lure, or outwit to live another day, secure sustenance, prevail in conflict, or traverse, escape, or defeat threat and adversity.

Deceit, misrepresentation, dishonesty, evasiveness, and duplicity serve similarly important functions for people. Far from patently undesirable or pathological, most theories of human development consider the child's first lie an important milestone. Lying—the overt, conscious, intentional effort to evade the truth or to present an untruth—is something every human being, including people who are (or claim to be) unwaveringly honest, has done⁶. Everyone employs contrivance and emotional deception as a coping device or for self-preservation.

Innocuous falsities are mandatory mainstays of social life. Diplomacy, minimisation, and white lies facilitate workable relations, and intentional feints, half-truths, and artful obfuscations are accepted requisites of diplomatic rhetoric, political stagecraft, negotiations, interrogations, and corporate deal-making.

Lies can be a form of denial, substituting something private or shame- or guilt-inducing with something less threatening. We conceal or obscure aspects of ourselves—thoughts, feelings, desires, impulses, vulnerabilities—to avoid scrutiny, humiliation, or punishment, or to preserve emotional homeostasis—to feel alright—with others, within ourselves, and in environments we perceive or experience as unsafe.

Another type, common among young children and others with under-developed skills in lying, is negation, in which the object of the lie is expressed in its negative: “I'm not doing something.” “There's nothing here.” “This is not what you think it is.” “You have nothing to worry about.”

People will also transform a statement they cognitively recognize as a lie (or probable falsification) into a truth they prefer. Known as wilful denial, fraudsters liberally use this to self-justify their thoughts and actions, and it is also common among fraud victims (and other traumatised individuals) to neutralise emotional pain.

Imposturousness

⁶ For a penetrating examination of lying, see “Lying: Moral Choice in Public and Private Life” by Sissela Bok. Vintage; 2nd ed. (1999)

Many fraudulent schemes employ psychological elements related to imposter fraud even if they do not typically use identity disguise.

Imposturous tendencies are universal. The true impostor assumes multiple false identities to deliberately deceive. He passes himself off incognito (which is often the only way he can function) in delinquent or other criminal ways as actually possessing an identity of someone other than himself. One notorious example is Hargobind Punjabi Tahilramani, an Indonesian national dubbed the “Con Queen of Hollywood” who perpetrated an elaborate, long-running con by impersonating powerful female entertainment executives before being apprehended by the FBI.⁷ Other prominent cases include Anna Sorokin, a Russian immigrant from a middle-class family, whose frauds pivoted on transforming herself into the persona of Anna Delvey, a non-existent wealthy German heiress. Or, the Colombian imposter Anthony Gignac who convinced people he was a rich Saudi prince named Khalid bin al-Saud, though he was actually a poor street kid from Bogotá who had been adopted and raised by a couple from Michigan.

Many con artists experience themselves as most authentic when they are acting imposturously and often feel as though they are being artificial and phoney when they are themselves. A professional impostor might never fear exposure when swindling but will feel like an impostor if he did honest work.

While seemingly similar to “imposter syndrome” popularised by social psychologist Amy Cuddy’s ‘fake it until you make it’ 2012 Ted Talk, relating to people who fear their insecurity or underpreparedness will be disastrously exposed, criminal impostors commit identity fraud by deliberately pretending under the literal cover of a fictive persona. They are frequently motivated by an unconscious need for punishment, not merely a defence against the dreaded exposure of inadequacy. The drive to produce illusion rather than substance may contain a neurotic fear that healthy, acceptable activities will be mistaken for monstrous crimes for which he would not want to risk being caught. Deceit and artifice, it must be noted, are also critical to the normal promotion of illusion, as in art and play.⁸

The appearance of excessive empathy and a dazzling ability to pass themselves off as having impressive expertise or capacities are other key attributes. They can seem

⁷ For more on the psychology behind Tahilramani’s con: the bonus episode of the 2020 podcast “Chameleon: Hollywood Con Queen,” hosted by Josh Dean and Vanessa Grigoriadis and produced by Campside Media and Sony Music, <https://podcasts.apple.com/us/podcast/bonus-episode-1-the-psychology-of-the-scam/id1532225667?i=1000500309399>

⁸ It is relevant to note that fraud litigators, members of law enforcement and other asset recovery personnel frequently use techniques and instruments of fraud or deception in the normal course of advancing a case, though with entirely different legal aims and motivations, and implemented within rigorous ethical and judicial guidelines.

remarkably attuned to others, quickly and intuitively catching on to what somebody is thinking and feeling, and disarmingly anticipating others' expectations. But all of that is, more accurately, a form of gas-lighting—inauthentic, self-serving, and the antithesis of empathy. It is also typically limited and selective. As keen and sharp as their responses may be in picking up details and certain nuances in the needs and desires of others, particularly those they target, they may also be staggeringly obtuse and emotionally tone-deaf in other relationships.

Betrayal, Manipulation & Abuses of Trust

Betrayal, manipulation, and abuses of trust are standard tools of the fraudster's trade; he could not employ them masterfully without knowing them intimately. He could only have been horribly scarred—a victim—in his own life.

That would likely be denied and even seemingly contradicted by his high functionality and life as a powerful, successful, respected titan of business. Self-deception in inventing an idealised creation myth—a fabricated narrative that childhood was caring, loving, and stable, with parents who praised, encouraged, and provided a strong moral compass—is common in pathogenic trauma.

But psychological evidence, inferred or extrapolated through behavioural symptoms and shadow data—trace information dispositive of mental constructs and predispositions—suggests a different story. The experience of severe betrayal catalyses a host of natural reactions, cross-culturally. These include depressive collapse, dissociative impassivity, chronic anxiety, and violent retaliatory outrage. It is, among all else, laceratingly painful.

Emotional betrayal involves sudden unexpected withdrawals of affection, love, or attention. Availability and interest are doled out intermittently, unpredictably, and in constricted packets. In contingent, insecure attachments, children can become cognitively and emotionally disorganized, and may adopt the artifice of pseudo-empathy and social poise to cover their low self-esteem, insecurity, and powerlessness. The persistent anticipation of instability and dread of disempowerment impels a callous disregard for people and social norms and, in threatening situations, can unleash aggressive, disruptive behaviour or an icy catatonic unemotionality.

Criminality

All criminal acts are intrinsically psychological events. As a separate matter from legal, environmental, socio-cultural, and other considerations, criminality is

always a behavioural expression of the actor's internal world destructively or coercively inflicted on others.

But the underpinnings of prohibited, harmful behaviour are, like the elements of fraud, intrinsically normative. Fantasies, urges, and floridly conceived campaigns of brutality, violence, glorious vengeance, the easy acquisition of vast wealth, power, and adoration, lurid and forbidden sexual bacchanals, assorted rampages unencumbered by remorse or concern for consequence, are all commonplace.

Each of us can readily imagine illegal, socially impermissible, morally reprehensible, inhumane, destructive, and viciously repugnant acts. Such mental doings can have various purposes, for example to contend with emotional distress or disturbance or imaginatively satisfy an unrealizable craving. But these are typically transient and containable thoughts which rarely escalate into enactment or committing an actual crime. The imaginary drama is a continuous obsessive rehearsal, not a true factory of scenes and situations. Most of these thoughts and attendant feelings are psychologically digested and dismissed without transgressive action.

The line between criminal fantasy and actual commission is crossed when the thoughts and feelings become so powerfully consuming that working them over mentally is insufficient. The drive for release through action is an imperative that eclipses all else. Abetted by delusional self-rationalisation and dismissal of possible adverse consequences, enactment becomes unstoppable.

Thus, a signal attribute of many criminals is an inability to appropriately self-regulate, manage or contain—reconsider or walk back—primitive urges in harmless fantasies or other nondisruptive outlets, or, like the renegade entrepreneur, harness and transpose adversity or other difficult personal experiences into socially productive law-abiding ventures.

But until that line is crossed, the psychological substructures are ubiquitous human phenomena.

Chief Executive & Master Strategist

The foregoing can be concisely distilled to two main points with important relevance to asset recovery work:

- (1) The psycho-historical elements giving rise to fraud are cross-culturally intrinsic to the human condition, not in themselves evidence of severe psychopathology;

- (2) A formative life experience organized around knowing the world as abusive and untrustworthy, while creating a constellation of injurious maladaptations, also gives rise to tactical occupational advantages. Analogous to world-class athletes whose mental, muscular, and respiratory systems are perfectly and naturally suited to their sport, fraudsters' primary instinctual reflexes are optimised and seamlessly calibrated for their enterprise.

With rare exception, high-value cross-border fraud is operationally sophisticated. It is the antithesis of the work of the petty criminal. Elite fraudsters are creative, intellectually gifted, and voraciously ambitious. They are superior abstract thinkers with quick intuitive abilities to grasp hidden relationships, often with minimal or incomplete information, and frequently exhibit an unparalleled ability to remain preternaturally poised even under extreme duress.

On this view, and putting ethics and law momentarily aside, some fraudsters are CEOs of complex, effectively organised businesses and can be seen as masterful corporate strategists and organisational leaders. But for the fact that its mission is destructive, illegal, and in the service of malfeasance, their formal business may be structured as any legitimate venture (indeed, ultimate beneficial ownership may be concealed within a labyrinth of seemingly legitimate puppet or nominee entities). In most instances, these organisations are staffed with a senior management team of superior quality and capability.

These organisations, like many others, are also susceptible to myriad quotidian challenges. There will be frustrated and disaffected employees; difficulties with absenteeism, squabbling, and sub-par performance; grumbling lieutenants with stymied aspirations and uncontrollable personal problems (including, not uncommonly, various addictions and abusive relationships), communication quagmires, cultural and inter-departmental friction, and operational and personnel breakdowns of all stripes.

While the principal traits and competencies comprising so-called "great leadership" are not definitionally fixed and remain debated (despite a vast literature devoted to assertions to the contrary), the intense pressures and challenges of the chief executive role are well established. Even the CEOs of the world's highest-performing and most profitable companies have blind spots and invariably stumble.

But any similarities between corrupt and legitimate business leaders should not be mistaken as an equivalence. Authoritarian leanings, malevolent creativity, and

indifference to competitive fair play are nontrivial differentiators. Others include shameless rejection of integrity and honesty, an absence of conscience and pro-social responsibility, and brazen disregard for compliance controls, regulatory legalities, fiduciary legitimacy, and the rule of law.

While the fraudster's playbook engenders certain advantages, voluminous management research demonstrates irrefutable correlations between tyrannical leadership, ethical indifference, and normed institutional corruption with high rates of organisational turmoil and dysfunction.⁹ In addition, many large-scale fraudulent enterprises are either literal or de facto family businesses in which numerous family dynamics and dysfunctions distort best practices. The internal cultures of these ventures can closely resemble organized crime syndicates, even if not formally classifiable as such.

In sum, it is critical to understand that the visible persona of individuals who commit high-value cross-border fraud—powerful, successful, shrewd business titans, pillars of moral integrity and paragons of civic largess—is a fiction, its own fraud. Their malevolent brilliance and super-functionality operate only within a narrow spectrum. Beneath the cloaks and veils, they are psychologically damaged and emotionally stunted. They live in a world defined by fear, impotence, betrayal, retribution, threat, and punishment, bound by concerns of humiliation and inferiority, and preoccupied with stratagems for defiance, domination, and retaliation. They are ruthless power-abusers, wedded to vengefulness, devastating others through subterfuge, contrivance and manipulation.

These perspectives are in the aggregate like a psychological X-Ray, providing insight into an array of individual and organizational vulnerabilities that, once amassed and properly understood, can be advantageously leveraged against the protagonist and his confederates.

Victims: Psychological Characteristics & Propensities, and Role in the Fraud and its Aftermath

“Every magic trick consists of three parts. The first is The Pledge. The magician shows you something ordinary. The second is called The Turn. The magician takes the ordinary something and makes it appear extraordinary. Now you're looking for the secret ... but you don't really want to know. You want to be fooled. But you wouldn't clap yet. Because

⁹ A startling 2015 Harvard Business School study (“Toxic Workers” by Michael Housman and Dylan Minor, <https://www.hbs.edu/faculty/Pages/item.aspx?num=50046>) found that “toxic workers are much more productive than the average worker” and that while “there is a potential trade-off when employing an unethical person—they are corrupt—they excel in work performance.”

making something disappear isn't enough; you have to bring it back. That's why every magic trick has a third act ... the part we call The Prestige."

— Christopher Priest “The Prestige”¹⁰

Understanding fraud as a total event entails looking not only at why certain people commit it but why some become victims. Of additional practical importance in expanding the asset recovery toolkit is leveraging insight about the victim’s role in the criminal proceedings and aftermath as material witness, first order data source, and fiduciary stakeholder in the recovery operation.

Fraud differs from crimes of threat or force. Few people on the wrong end of a weapon will defy a perpetrator’s demand to hand over their valuables. Victims of fraud and other cons, by contrast, must play an active part in what happens. Fraud exists in relationships and arrangements between people, and pivots on complicitous confluences of power, needs, desires, and individual histories and tendencies. Trust cannot be breached until it has been given or established.

As fraudsters have been narrowly categorised as sociopaths, so too have victims of fraud been mischaracterised. They have as a class been considered greedy, witless, or gullible patsies, susceptible to manipulation and deception. Allowing oneself to be bamboozled was taken as *prima facie* evidence of naïveté.

Legal systems have been (and many still are) riven with this bias. Historically, courts of law and of public opinion responded to victims of fraud as they have to victims of sexual assault or domestic violence, apportioning culpability to the victim for causing the crime or failing to avert it.

Consequently, fraud victims have suffered the additional indignities of social stigma and obstruction to appropriate legal and financial remedy, injuries further compounded by victims’ own shame, embarrassment, and self-castigation for having been duped. But unwitting participation does not change that they are victims in the truest sense: harmed or adversely affected by another’s wrongdoing.

As Material Witness and First Order Data Source—Marked by Psychological Fingerprints

Misconceptions about victims have also influenced asset recovery professionals’ interactions with them, unintentionally contributing to overlooking or foreclosing critical intelligence and primary evidentiary material.

¹⁰ “The Prestige” by Christopher Priest (1995), Tor Books

However unique each incident is, every victim of fraud shares a common experience: the dual trauma of betrayal and loss. Victims are also typically shocked, humiliated, ashamed, weak, vulnerable, furious, and untrusting. They may be despondent, disinterested, defeated, or resigned, as well as agitated or bellicose, stressed, and distressed. Depression and suicidality are common.¹¹ Fissures can form in personal and professional relationships leading to divorce, partnership dissolutions, and acrimony with friends and relatives.¹² They may be bankrupt; even if not, they will likely be financially anxious and risk averse.

This is not merely a complex evidentiary field. It is a roiling cauldron of emotionality. The victim may be psychologically haemorrhaging even if he appears intact. And notwithstanding a willingness to help—he is after all a primary stakeholder in assisting the asset recovery professionals in bringing the fraudster to book and, hopefully, being repatriated with some of his stolen assets—he may be too overwhelmed, humiliated, guarded, and mistrustful to think clearly, speak coherently, or productively engage in discovery interviews.

But victims are uniquely important sources of information. They are to be considered akin to a crime scene. Grifters, hucksters, and sundry con artists colloquially call victims “marks” (among other terms like sucker, rube, and stooge). It is uncannily apt. Victims bear the mark of the perpetrator. Analogous to physical evidence, fraudsters leave psychological fingerprints—impressions, emotional traces, and other fragments of soft data. These can be culled from victims’ accounts of their experience in interviews and from which potentially useful intelligence about the malicious actor and the mechanics of the enterprise can be extrapolated.

But as noted, this information can be challenging to access through the static of victims’ distress or could be overlooked in the fast-moving larger-scale project of harvesting diverse evidentiary material. Expertise in victim interviewing and specialised soft intelligence gathering—including compassion, patience, and sensitivity—are important.

Roles & Functions in Relation to Fraudsters

¹¹ For additional information on the topic of red collar crime—white-collar crime leading to physical violence and/or death (whether homicide or suicide)—see Brody RG, Kiehl KA. “From White-Collar Crime to Red-Collar Crime.” *J. Financ Crime*. 2010;17(3):351-364; Perri, Frank S. “Red Collar Crime.” *Intl J Psych Studies Archives* 2016; 8(1):61-84; Perri, Frank S. “Fraud detection suicide: the dark side of white-collar crime.” *J. Financ Crime* 2016 23(4) 786-797).

¹² See The White-Collar Wives Project, Lisa Lawler, Founder, for information and resources around the catastrophic legal, economic, and emotional fallout to innocent spouses and families of fraudsters and perpetrators of clandestine economic crimes: <https://www.thewhitecollarwivesproject.org/>.

While some individuals are more susceptible to being scammed than others, no one is immune. Anyone can play into a fraudster's ploy. There is no definitive victim profile. That said, there is a recurrent fundamental in every fraudulent scenario: desire.

Both victim and fraudster share the want of something—the fulfilment of a wish or need. The fulcrum of economic crime is of course money or some other valuable asset, though this is often merely an incidental vehicle used by both fraudster and victim for the attainment of other aims—for instance, power, status, recognition, admiration, love, validation, social elevation, retribution, or any of a host of other para-economic interests.¹³ Like any talented entrepreneur, the fraudster identifies a desirable commodity or service that he will, in essence, bring to market. Part of the fraudster's work is to make his offering appear concordant with victims' interests.

An obvious factor distinguishing fraudulent from legitimate enterprises is that its business model is intentional deception and harm. While aspects of that grotesquely inequitable transaction are the fraudster's responsibility, the victim must be sufficiently motivated to overcome (or dispense with) due diligence best practices, sound judgment, experience, good counsel, even intuition. Some may abandon rationality and reason altogether. Denial and magical thinking, mentioned above, allow victims to dismiss red flags and delusionally believe that all will be well—*he might be capable of stealing from others, the victim tells himself, but he won't steal from me.*

People also tend to follow group or mob mentality. Ponzi artists, for example, enlist victims as unwitting sales associates; in bragging or touting their investment success, each successive group of marks grease the machinery that will entice new recruits to voluntarily participate.

Recall the pseudo-attunement to others discussed above. Successful fraudsters keenly pinpoint and then exploit people's propensities and vulnerabilities, enticing or duping them to yield to the con of their own accord.

But despite their apparent impunity, fraudsters are, ironically, always in a relationship of dependency to others. Unlike criminals who use weaponry or force,

¹³ There is abundant criminal case law grounded in *McNally v. United States*, 1987, wherein the U.S. Supreme Court held that in order to constitute fraud, the object of a scheme must be to deprive a victim of money or property. U.S. criminal law insists on a clear legal distinction between fraud and mere deceit or deceptive conduct, and repeatedly concludes that not all deception is fraud. The discussion here focuses on active psychological elements which operate indifferently to the narrow parameters of legal and judicial determinations.

or stealth and tactical brilliance, the fraudster's success is contingent on victim participation.

No matter any scheme's payday, flipping the polarities of power in a relationship, abusing and betraying trust, inflicting psychological pain are fraudsters' actual drivers. That goal can only be attained with the help of another.

This, ultimately, is his Achilles Heel.

Judiciary and Legislature

“Not everything that is legal is right.”

— Judge Theodor Seidel¹⁴

Since the 15th century, the main iconography of justice has been *Justicia*, a blindfolded woman carrying a double-edged sword symbolising reason (or truth) and fairness, in one hand, while balancing the scales of a case's competing claims, in the other. The notion that “justice is blind” is meant to convey a court's impartiality and objectivity.

Judiciary officers, sovereign legislative bodies, regulators, government officials, and other law makers comprise an important constituency in the ecosystem of a fraud case. Their decisions and interventions can facilitate or hinder investigations and recovery initiatives and influence legal strategy and case management decisions. They can also serve as de facto enablers to fraudsters, money launderers, and other corrupt actors. Jurisdictions that offer products, services, and laws such as bank secrecy, impenetrable asset protection vehicles, and short statutes of limitations in which to file claims, among other mechanisms will appeal to or even facilitate wrongdoing.

Certain jurisdictions are hotbeds of corruption and under-the-table deal-making. In certain locales, jurisprudence, politics, economics, and social or religious ideology openly comingle. Judicial and legislative decisions and policies are the products of individuals' ideologies, philosophies, and personal predilections, not just case law and precedent. Some jurists and policy architects are unabashed activists, will exceed their authority, or are allergic to impartiality. Their decision-making might favour political agendas, socially promulgated morals, or cultural and religious values. Or, such may hold greater allegiance to placating special

¹⁴ From Judge Theodor Seidel's sentencing pronouncement in the February 1992 case against East German soldier Ingo Heinrich, on trial for shooting and killing Chris Gueffroy in 1989 as he tried to climb the Berlin Wall.

interest groups and influential business leaders than advancing socially just regulatory policy. Jurists no less than fraud victims are susceptible to corruption.

Experienced cross-border asset recovery professionals accept the potential for these issues to influence case disposition, often as unavoidable forces beyond control. While certain factors may indeed be untouchable, important benefits derive from closely examining and developing sophisticated proactive responses and workarounds to this dimension of a case.

Asset Recovery Team

“Only a few know how much one must know to know how little one knows”
— Werner Heisenberg¹⁵

Asset tracing and recovery in high-value cross-border cases requires the coordinated collaboration of professionals across a range of disciplines. Collectively, this consortium is the asset recovery team (‘ART’).

There is a vast literature on optimising team performance and effective project management. A deep review of those and other affiliated research in application to asset recovery work is beyond the scope of this article. Instead, this section presents a concise overview of psychodynamic concepts and tools specifically relevant to asset recovery and fraud litigation¹⁶.

ARTs engage with both allies and antagonists across the case ecosystem and, as already noted, contend with circumstances and issues involving individual and social psychology, organizational dynamics, and family systems. Attempting to assess or act on such matters without domain-relevant expertise, armed only with *de minimus* lay understandings, is an avoidable handicap that places offenders in a significant advantage over the professionals attempting to defeat them. By analogy, forensic criminology was transformed by the introduction of microscopy, DNA analysis, and other technologies that empowered the collection and analysis of previously invisible physical evidence. Similarly, there is a wealth of psychodynamic data beyond hard facts and evidence which can measurably advance a case.

Actionable Tools & Applications of Psychodynamic Intelligence Analysis

¹⁵ Werner Heisenberg, theoretical physicist (1901-1976)

¹⁶ See also, “*Multi-Jurisdictional Concealed Asset Recovery: Managing the Risks*” by Martin S. Kenney, Alex D. Moglia, and Alexander Stein, *Journal of International Banking Law and Regulation*, Vol 1, 2015; “*Leadership and Management of People In Asset Recovery*” by Martin S. Kenney, Alexander

“Never interfere with the enemy while he is in the process of destroying himself.”

— Napoleon Bonaparte¹⁷

Fraud weaponises human psychology. Psychology can be used as a countermeasure.

As certain martial arts redirect an attacker’s strength against him by leveraging physics and tactical savvy, the force of psychodynamic intelligence analysis enables insights regarding the fraudster’s psychological vulnerabilities and other psycho-social dimensions of the malicious enterprise to be turned against him.

In conventional management consulting, assessments of organisational and leadership challenges are a point of entry to implement a go-ahead action plan for enhanced functionality, sustainability, and profitability. By contrast, stress points and dysfunctions identified in the fraudster’s organisation through investigation and other intelligence gathering, can be pried apart and exploited to advance the pursuit of justice.

The array of deployment areas and methods for leveraging psychological expertise include:

- Developing dynamic predictive behavioural models of primary and ancillary actors and their networks of affiliates, collaborators, and organizations.
- Creating actionable pinpoint profiles and analyses of the opposition’s personal life and professional operations, including executive team, front-line personnel, and organisational strengths and vulnerabilities.
- Providing psychologically sophisticated counter-offensive tactical planning.
- Boosting human systems intelligence gathering and strengthening both victim and other involved stakeholder interviewing to enhance the interpretation and application value of information obtained.
- Providing precision forecasts and expert counsel regarding the entire human ecosystem of the case in preparation for settlement negotiations, pre-trial

Stein, Alex D. Moglia, and D.C. Page, unpublished whitepaper presented at The C5 30th Fraud, Asset Tracing & Recovery Forum, Miami, Florida, October 2015; and “*Cross-Disciplinary Collaboration in Fraud and Asset Recovery*” by Martin S. Kenney and Alexander Stein, unpublished whitepaper presented at The ACFE 25th Annual Global Fraud Conference, San Antonio, Texas, June 2014.

¹⁷ Authorship indeterminate but usually attributed to Napoleon Bonaparte, French military commander and political leader, 1769-1821.

meetings, arbitration hearings, settlement discussions, and court proceedings.

Conclusion

"Every human being's life in this world is inevitably mixed with every other life and, no matter what laws we pass, no matter what precautions we take, unless the people we meet are kindly and decent and human and liberty-loving, then there is no liberty. Freedom comes from human beings, rather than from laws and institutions."

— Clarence Darrow¹⁸

Criminal fraud is a perversion of natural, universal human psychological systems, and a radical deformation of societally productive entrepreneurship. The building blocks and predispositions both to commit fraud and become victim of it are endemic to the human condition, and many aspects of the world's economic and social systems enable, abet, or are indifferent to the corruption and abuses of power that engender large-scale fraud.

Even if fraud cannot be wholly eliminated, more effective detection, deterrence, prevention, and recovery mechanisms can and must be brought to bear. Providing more robust and sophisticated tools and resource to the professionals dedicated to bringing fraudsters and kleptocrats to justice and recovering and repatriating value wrongfully taken from victims must be a priority. Crucial to that, as has been argued here, is clarifying the wide-ranging simplifications and misunderstandings of the psychological dynamics and psycho-social elements at play across the spectrum of involved parties as well as elevating the utilisation of specialist expertise in the human dimensions of fraud in asset recovery case work.

¹⁸ From Darrow's closing argument in *People v Henry Sweet*, 1926

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Global Annual Report 2023

FRAUD AND ASSET RECOVERY IN AN UNSTABLE WORLD

**EDITED BY
DR DOMINIC THOMAS-JAMES**

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ABOUT ICC FRAUDNET

ICC FraudNet is an international network of independent lawyers who are the leading civil asset recovery specialists in each country. Using sophisticated investigation and forensic tools and cutting-edge civil procedures, FraudNet members have recovered billions of dollars for victims of some of the world's largest and most sophisticated global frauds involving insurance, commodities, banking, grand corruption and bankruptcy/insolvency. FraudNet was founded in 2004 and operates under the auspices of the Commercial Crime Services of the International Chambers of Commerce (ICC) – a Paris-based world business organization with offices in 90 countries.

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Executive Directors' Foreword

Kate McMahon &
Rodrigo Callejas

June 2023



Kate McMahon



Rodrigo Callejas

Greetings readers,

It gives us great pleasure to present the ICC FraudNet Third Global Annual Report. This report serves as a reminder that fraud and commercial crime continues to be a significant and growing threat in today's business landscape. It also highlights the invaluable work that ICC FraudNet is doing around the world to combat this issue.

ICC FraudNet is a global network of lawyers and strategic partners, based across 75 jurisdictions, who all specialise in fraud and asset recovery. Our members are experts in identifying and resolving complex fraud cases that span borders and jurisdictions. The network is a key player in the fight against fraud and has made great strides in recovering stolen assets and holding fraudsters accountable.

This year's report provides a comprehensive overview of the activities and achievements of ICC FraudNet during the past year. It showcases the network's accomplishments in key areas such as education, prevention, and recovery. It also highlights some of the challenges faced by the network in its efforts to combat fraud, including the rise of new and emerging technologies that have given fraudsters new avenues to carry out their crimes.

As the Co-Executive Directors of ICC FraudNet, we are proud of what our network has accomplished in the past year. Our network has worked hard to educate businesses and individuals about the risks of fraud and empower them to protect themselves. We have also successfully recovered millions of dollars in lost assets for victims of fraud around the world. Further, as the demand for specialised practitioners continues to grow globally, we have incorporated future generations of specialist lawyers into our network, through the ICC FraudNet Future initiative, which looks to continue developing our network that next year will celebrate its 20th anniversary!

We would like to thank all of our members for their dedication and hard work this past year. We would also like to express our gratitude to our strategic partners and supporters for their continued support of our mission.

We invite you to read this year's report and learn more about ICC FraudNet's efforts to combat fraud and protect businesses and individuals around the world. Together, we can make a difference in the fight against fraud.

Sincerely,

Kate McMahon and Rodrigo Callejas
Co-Executive Directors, ICC FraudNet

Editor's Summary

Dr Dominic Thomas-James

June 2023



Dr Dominic Thomas-James

The third edition of the ICC FraudNet Global Annual Report takes as its theme “Fraud and Asset Recovery in an Unstable World”. The first and second Global Annual Reports (2021, 2022) were published during unprecedented times – both at the relative outset, and height, of the global Covid-19 health pandemic which has now, at the point of publication, been downgraded as such by the WHO. Yet, the global backdrop to the third annual Report is still beset by conflict, political instability and sustained economic uncertainty around the world. Underpinning this landscape is the sinister reality that fraud and associated acquisitive misconducts continue to thrive. The UK government, as an example, published in May 2023 its “Fraud Strategy” taking aim at reducing fraud by 10% on 2019 levels, by 2025. Indeed, at the time of writing legislation is currently making its way through the UK Parliament to create a corporate failure to prevent fraud offence. While fraud appears to be, if at least ostensibly, at the forefront of government agendas – the fact remains that fraud is complex, multifaceted, and even nebulous. With sustained uncertainty, one thing is certain: fraud continues to be the crime we are most likely to fall victim to, thereby making the 2023 ICC FraudNet Global Annual Report of timely importance.

The 2023 Report comprises original articles by FraudNet’s unparalleled global network of leading fraud and asset recovery lawyers, strategic partners, and associated collaborators from the investigative, consulting, advisory and academic worlds. The papers herein represent a unique contribution of knowledge to increasingly pertinent issues that continue to be at the forefront of international agendas. Displaying the network’s leading practices in the areas of fraud, asset recovery, insolvency, and investigations – the contributions exhibit expert insight from the authors’ respective jurisdictions and practices.

The 2023 Report, building on the success of the first two editions, comprises 28 original articles authored by 52 contributors, from some 20 jurisdictions. Many of the network have been involved in some of the most high-profile and complex asset recovery cases, and their experience makes for highly interesting and instructive reading. Papers share experiences from all corners of the world, including the following jurisdictions: UK, USA, Ireland, Guernsey, Malta, Hungary, Spain, Poland, Guatemala, Panama, Argentina, the Cayman Islands, the British Virgin Islands, Ghana, South Africa, Singapore, Malaysia, India, Luxembourg, and Japan.

Against the aforesaid backdrop, the Report addresses a wide range of important and timely topics in the fraud and asset recovery space. For example, in the Members Insight section, the Report includes analysis on issues including new legislative developments in fraud and asset recovery cases in the US; proceeds of crime laws in Ghana; cyber-crime case reviews from Argentina; freezing orders in South Africa; fraud litigation in Malaysia; asset recovery in Panama; virtual-asset regulation in Poland; and crypto-related enforcement and awards in Spain.

Elsewhere in the Report, we see discussions and insights from FraudNet's Strategic Partners, as well as insights from academics and associated collaborators. Such discussions include the difference between evidence and intelligence in investigations; asset recovery tools in Ireland; civil recovery mechanisms such as Unexplained Wealth Orders in the UK; an analysis of the proposed corporate failure to prevent fraud offence; and developments in the psychology of fraud.

With a work of this kind, it is not possible to capture commentary on every possible issue of pertinence within our field; but rather the discussions in the papers reflect a wide range of interest areas, respective practices and perspectives of the distinguished authors. In deference to their various professional and academic disciplines, as well as differences in citation methods between jurisdictions, the editorial team has not attempted to impose a single style or form of citation.

These articles aim to provide informative, practically-relevant and instructive insights and therefore be of use to the wider FraudNet and International Chamber of Commerce network, Strategic Partners, professional collaborators and colleagues, existing and future clients, and those with a practical, policy or academic interest in these issues. At a time of increased global uncertainty, in order to advance integrity in our societies and systems, and to disrupt fraud and financial crime and repatriate ill-gotten gains, it has never been more important for practitioners and experts at the coalface to contribute their expertise, knowledge and thoughts to the debate. It is only with greater understanding of best practices and individual experiences, that solutions can be shaped, and responses be developed. In this sense, ICC FraudNet's unparalleled international reach exhibits the utility of meaningful cooperation and collaboration. When fraud is increasingly transnational in nature, this is not only valuable, but essential.

Dr Dominic Thomas-James
Editor

ICC FraudNet Global Annual Report 2023

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