

Keynote Presentation

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Conference of the Association of Certified Fraud Examiners (ACFE) Jamaica Chapter

“Managing Fraud in an Evolving World – Amplifying our Impact”

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The Chairman, Officers and Members of the Jamaica Chapter of the ACFE

Eminent leaders and presenters from the public and private sectors.

Distinguished guests and professional colleagues.

A pleasant good morning to you all.

It is indeed an honor and a privilege for me to be here today, and I must sincerely thank you for including me among your number.

The theme of today’s ACFE Conference: **‘Managing fraud in an evolving world - Amplifying our impact,’** will necessarily require a consideration of a number of matters in our respective presentations and discussions.

Among them will be the question of what is fraud; how has its character, construct and/or impact changed, as the world in which we live has evolved; and what is to be done about it; and by whom?

The last question is easy. In this room, I believe, are representatives of most, if not all of the relevant stakeholder groups, possibly with the exception of Lawmakers. We are the ones who will have to act, and provide guidance.

I say this because this Conference was planned with the expressed objective of sharing information on emerging trends, and best practices, to combat fraud and corruption.

It was also stated that the Conference is intended primarily to target Anti-Fraud and Anti-Corruption Practitioners, inclusive of Fraud Examiners, Accountants, Lawyers, Auditors, IT Professionals, Analysts, Cybercrime Experts and Corporate Executives.

I am sure, therefore, that the wide breath of presentations that will be delivered today, coupled with your input and participation, will aid in securing, in great measure, the objectives of the Conference.

When I reflected upon the theme of the Conference: **Managing Fraud in an Evolving World - Amplifying our Impact,** the words of a public official, who lived more than 450 years ago, immediately came to mind. That official is an Englishman of significant prominence in history. He was the Rt. Hon. Sir Edward Coke.

Born on February 1, 1552, Sir Edward served at the very pinnacle of his country's Justice system. First, as the Solicitor General for England and Wales, then as Attorney General and, finally, between 1613 and 1616, as the Lord Chief Justice.

Speaking in 1602, while he was Attorney General, this is what he said:

“Fraud and deceit abound in these days, more than in former times.”

I first came across these very thought-provoking words several years ago. And, when I did, I wondered what Sir Edward would say about ‘fraud and deceit,’ were he living in these times.

The world, its societies, its peoples and its social and economic structures, have evolved considerably since Sir Edward's time, and so too have the construct, sophistication, proliferation and prevalence of fraudulent practices.

The Merriam-Webster Dictionary defines Fraud, in layman terms, as the “intentional perversion of truth in order to induce another to part with something of value, or to surrender a legal right.”

Merriam-Webster also assigns to the word a secondary meaning: “An act of deceiving or misrepresenting.”

For a more authoritative and legal position on the matter, Blacks Law Dictionary defines Fraud as “a knowing misrepresentation of the truth, or concealment of a material fact, to induce another to act to his or her detriment.”

That said, in virtually all jurisdictions, inclusive of our own, the term Fraud is variously used to cover a broad gamut of criminal offenses. But, typically, in every instance, you will find either an element of deception or false inducement, dishonesty, abuse of trust and/or breach of trust.

Any or all of these will, invariably, be intentionally and unlawfully employed to procure something of value from another person, or to do something which will result to the detriment of that person.

To drive home the point, the Integrity Commission’s Legal Counsel has kindly extracted an assortment of 8 of these offences from the Laws of Jamaica for me and, as you will see, one or more of the afore-stated elements are common to all of the given examples:

Law Reform (Fraudulent Transactions) (Special Provisions) Act

The obtaining of property by a false pretense.

Larceny Act

Larceny or embezzlement by a clerk or servant.

Larceny Act - Fraudulent Conversion

A person, who being entrusted with any property, fraudulently sells, transfers, or otherwise converts the property for his own use or benefit, or for the use or benefit of any person other than the person by whom he was so entrusted.

Larceny Act - Falsification of Accounts

A person, who being a clerk or servant, or a person employed in the capacity of a clerk or servant, willfully, and with intent to defraud, destroys, alters, mutilates, or falsifies, any book, paper, writing, valuable security, or account, belonging to his employer.

Larceny Act

A person, who, by any false pretense, and with intent to defraud, obtains from any other person any chattel, money, or valuable security, or causes or procures any money to be paid, or any chattel or valuable security to be delivered, to himself, or to any other person, for the use or benefit or on account of himself or any other person.

Larceny Act

A person, who, in incurring any debt or liability, obtains credit under false pretenses, or by means of any other fraud.

Cybercrimes Act - Computer related Fraud or Forgery

A person who fraudulently, with intent to procure an advantage for himself or another person, causes loss of property to another person by any input, alteration, deletion or suppression of data, or interference with any function of a computer.

Corruption Prevention Act

A public servant who fraudulently uses or conceals any property derived from an act of corruption.

In a recent article, entitled 'Examples of Fraud, Scams and Schemes to Avoid Right Now,' Hari Ravichandran classifies Fraud into two categories - Business Fraud and Personal Fraud.

He defines Business Fraud as when customers, investors or employees scam your business out of money or services; and Personal Fraud as when another person, group, or entity, tricks you into giving up your money, services, or sensitive information.

But there is a third category of Fraud that needs to be singled out, and that is Public Sector Corruption. It requires special attention because its victim is neither a person, nor a business, and I will, therefore, deal with it later in my presentation.

However, for now, and in very basic terms, I can say that Corruption will occur when a Public Official betrays the public trust, by abusing his public office for private gain. And, again, it will be seen that the ingredients of dishonesty, deceit and/or breach of trust will be very prominent elements of this very serious crime.

Now, there are many examples of Business and Personal Fraud. Some of these would have existed in Sir Edward's time, though perhaps in relatively rudimentary or less sophisticated forms than they do today.

One that readily comes to mind is embezzlement, in which the employer is the victim, and the employee - the fraudster. On the other hand, are the many novel frauds that are now executed over the telephone, or via the internet, as well as frauds that are associated with the use of debit or credit cards. These would obviously not have existed in former times.

The mind-boggling breath of technological inventions and advancements, and the countless developments, that have attended mankind's progress over the decades have, in lock step, generally spurred the emergence of new fraudulent practices, as well as the proliferation of pre-existing ones.

A simple example of the latter can be found in the all too familiar and legendary confidence trickster, whose primary area of operation, certainly in Sir Edward's time, was the village marketplace. His modus operandi, not unlike that of most fraudsters today, was deception or breach of trust.

His unwitting victim would be induced to hand over something of value with the expectation of receiving a greater benefit which, oftentimes, would be too good to be true. The confidence or trust is procured, the deception acted upon, and the execution of the fraud is consummated when the delivery of the greater benefit fails to materialize.

Importantly, this method of fraud has not changed despite the passage of centuries. And I will need to say a bit about this, using the concept of the Ponzi scheme, because there are lessons to be learnt.

Every person in this room has either been scammed, or knows of someone who was scammed, by one of the several Ponzi schemes that have plagued our region in the not too distant past.

Here, in Jamaica, the infamous Olint scheme has been carved into our modern history of notorious scandals. It was widespread in its socio-economic impact. Many persons made money. And even more lost fortunes.

The scheme's reputed principal, Jamaican David Smith, was released from prison in the Turks and Caicos Islands in October 2020, after serving a ten-year prison sentence. It is alleged that he fleeced thousands of 'investors' out of a reported US\$220 million.

There was also another major alleged scheme, in Jamaica, in respect of which its assumed principal was charged with fraud, but was subsequently freed, on May 24, 2017, by the Jamaican Courts. The Jamaica Gleaner on-line news report of that day was entitled "Cash Plus Boss Carlos Hill walks free as fraud case collapses." The report said that the Prosecution was unable to proceed as "only one person who provided a statement showed up."

The Gleaner reported that "Hill was charged with fraudulently inducing persons to invest in Cash Plus, which collapsed in 2008, with more than JS\$10 billion for over 40,000 investors."

The term 'Ponzi Scheme' owes its name to one Charles Ponzi, an Italian swindler and con-artist whose operations, in the U.S. and Canada, peaked in 1920. According to Wikipedia, he promised clients a 50% profit within 45 days, or a 100% profit within 90 days, via investments in international postal reply coupons.

Mr. Ponzi reportedly ran his fraudulent scheme for over a year before it collapsed, making some US\$15 million for himself, and costing his "investors" US\$20 million.

Mr. Ponzi's method was simple. It was to take money from a new investor, with the promise of paying him an exorbitant interest thereon, and then to use the new investor's money to pay back an old one. The scam's notoriety was such that, although Mr. Ponzi was not the first to utilize it, it assumed his name from thenceforth.

But unlike the times in which Sir Edward lived, and also in 1920 when Mr. Ponzi peddled his scam, these frauds have become not only more elaborate and sophisticated in character, but immensely substantial and broader in their reach.

Some of you may not know it, but among the world's largest Ponzi frauds was one that was partly orchestrated, in the late 1990s and early 2000s, from right here in the Caribbean.

The story is that of the former tycoon, Mr. R. Allen Stanford. The holder of American and Antiguan dual citizenships, Mr. Stanford, who was knighted by the Queen of England, allegedly swindled his "investors" - some 30,000 of them, from more than 100 countries - out of US\$7 billion.

He was charged in February 2009, by the U.S. Securities and Exchange Commission, with fraud and multiple violations of U.S. securities laws. Mr. Stanford was subsequently convicted by a U.S. Federal Court in 2012. He was sentenced to 110 years in Federal prison, where he currently resides.

Instructively, Mr. Stanford reportedly contributed millions of dollars to politicians in both Antigua and the United States, amongst other countries. Similarly, in the case of the principal of the Olint Ponzi Scheme, contributions were alleged to have been made by him to several politicians in Jamaica.

The world's largest Ponzi scheme to date reveals how surreptitiously frauds can work. It also places on display the extent to which criminal deception and ingenuity, clothed in the jacket of respectability, on the one hand, and greed, recklessness, human gullibility and/or misguided trust, on the other, can create a perfect storm which will dupe not only the smartest and savviest amongst us, but literally tens of thousands of unsuspecting 'investors.'

History's biggest fraud, which conned thousands of investors out of a mind-boggling US\$20 billion, was perpetuated by Mr. Bernie Madoff, an American Wall Street financier. It is instructive to note that many of Mr. Madoff's so-called 'investors' were not rich. They were reportedly just regular citizens, who lost their life savings.

Like Mr. Stanford, whose knighthood, among other things, earned him social prominence, honor and respectability, Mr. Madoff also served, in the early 1990s, in the high position of the Chairman of NASDAQ.

Having started his stock brokerage in 1960, he grew it into a major securities investment firm, ultimately operating its asset management arm as a massive Ponzi scheme. In 2008, when he was arrested by the FBI, his firm was the 6th-largest market maker in S&P 500 stocks.

For his criminality, Bernie Madoff was sentenced, in June 2009, by a U.S. Federal Court, to 150 years in prison. He was also forced to forfeit over US\$170 billion as restitution. Mr. Madoff died in prison, on April 14, 2021, at the age of 82. The story of his scam, and of his demise, is immortalized in the 2017 movie, the 'Wizard of Lies.' It stars Robert De Niro and Michelle Pfeiffer, and it's worth watching.

But although the character of Fraud has continued to significantly evolve and transform, and is having an increasing impact upon both persons and businesses alike, the scam concept of the Ponzi scheme remains very much at play today. This is very concerning, and we must take notice of it.

This dynamic, but simultaneously static, character of Fraud, is a feature of our modern and highly connected technological world. And the data to support it can be found in the published findings of the U.S. Federal Trade Commission (FTC). The FTC, in its February 2022 report, listed the 10 most common types of Fraud committed in the U.S. in 2021.

Interestingly, many if not all of the listed FTC Frauds, though they would have been impossible to perpetuate decades ago, much less in the 16th century when Sir Edward lived, are still scam-based Frauds. Deception lies at their root.

They are only different today because of the changed times in which we now live. And they have only been made possible, primarily because of our increasing dependence upon the internet, the telephone, cable TV, social media platforms, the electronic market-place, credit and debit cards, the computer, the laptop and, last but not least, an electronic piece of equipment that virtually everyone in this room presently has in his or her possession – the wireless smartphone!

The referenced FTC listing was compiled from the complaints of more than 2.8 million consumers who reported losing over \$5.8 billion to fraud in 2021.

Instructively, the amount lost, the FTC said, represented an increase of 70% over the previous year. In their order of magnitude, the FTC's top listed Frauds in 2021 were as follows:

1. Imposter scams
2. Online shopping scams
3. Prizes, sweepstakes and lotteries scams
4. Internet services scams
5. Business and job opportunities scams
6. Mobile telephone services scams
7. Investment scams
8. Health care scams
9. Trade, vacation and time-share scams
10. Foreign money offers and fake check scams

I should mention that there is a July 13, 2022 article that is entitled 'The 10 Most Common Types of Fraud.' It is published by Experian, one of the world's leading credit reporting companies.

In the article, Bev O'Shea, a U.S. freelance journalist who specializes in personal finance and consumer credit, has commented upon each of the FTC's 10 top Frauds. She has also given some good advice on how individuals and businesses can protect themselves from these scams. The article is worth reading.

Added to the increasing emergence of the technology-based Frauds that are evidenced by the FTC's findings, is the fact that our brave new and modern world has also influenced the evolution of several mechanisms that can potentially promote or conceal fraud in personal, business and public-sector related matters.

The ease of travel between countries; the ease of doing business across international borders; the emergence of 'off-shore' jurisdictions, facilities and business arrangements; the development of domestic and international money-laundering mechanisms; and the growing sophistication of business, trust and legal schemes which seek to legitimize or hide suspect or illegal activity, inclusive

of the hiding overseas of funds that are stolen or illicitly gained by corrupt Public Officials; are all contributory and facilitatory considerations.

These too, must also be recognized and factored into our understanding of our evolving world and the evolution of the construct of Fraud.

I will now turn to the crime of Corruption.

Earlier, I classified Corruption as a major Fraud. I could speak on the subject all day, if not all of the weekend, and next week, but this will not be possible. What I must say, however, is that I have contextualized corruption as I did for a number of very good and important reasons.

First and foremost, Corruption is one of the most heinous and reprehensible crimes known to man. Importantly, its victim is neither a business, nor a person, nor a group of businesses or persons. Its victims are an entire country and its people.

Indeed, and quite rightly so, it has been characterized by some as a crime against humanity, and there are efforts afoot to establish an International Anti-Corruption Court, with extra-jurisdictional reach, to combat the scourge.

Corruption, if it remains unchecked, and because it blocks foreign investment, has the potential to consign entire countries, and particularly developing countries, and their citizens, to the abyss of underdevelopment and poverty. This will obviously obstruct them from ever attaining their full socio-economic potential.

Additionally, Corruption, by diverting scarce public resources into the pockets of crooked Public Officials, will also rob citizens of vital social services. These will include roads, water and electricity, as well as access to affordable healthcare, housing and educational opportunities.

And, very importantly, Corruption, which also fuels impunity and Organized Crime, will ultimately weaken the rule of law and destroy not only confidence in a country's top Public Officials, and its lead institutions, but it will also destroy the very institutions themselves.

Indeed, it was as recently as July 28, 2022, that the United States Department of State, in its Investment Climate Statement on Jamaica, made the following concerning observation:

“Corruption, and its apparent linkages with Organized Crime, appear to be one of the root causes of Jamaica’s high crime rate and economic stagnation.”

It is because of all of these reasons, therefore, among others, why we can never give Corruption a free pass. Nor must we allow anyone to diminish or obfuscate the grave danger that it portends. And, never must we permit ourselves to see its actors as anything else than what they truly are.

The High Court of Bangladesh, in a ruling that was handed down this year, on May 22, said that corruption was more damaging than murder. The Court’s exact words were these:

“A murder ruins a family, but money laundering and corruption can ruin the whole country and the nation.”

The former Governor of Mexico’s Chihuahua State, Mr. Javier Corral, put it another way when, on March 22, 2019, he suggested that the merchants of corruption are national traitors. This is what he said:

“He who steals from the government does not just steal a few cents or some millions. He steals opportunities, hope, and the rights of people who aspire to a better life.”

To put it bluntly, Corruption is an unmitigated and unforgivable Fraud. At its root lies rank dishonesty, deception of the public, and a breach of the public trust. The basic elements of the crime are akin to the foundation ‘tools of trade’ of the Fraudster. Let me explain further.

Public Officials are first and foremost Public Servants. In other words, they take and they hold office for the sole purpose of serving the public interest. That’s why they are called Public Servants! That’s the commitment they make. And that’s the essence of the oath, implicit or expressed, that they subscribe to.

On the matter of the commitment to serve, and in so far as Politicians and Cabinet Ministers, are concerned, we can find some guidance in the words of Malawi's President, Lazarus Chakwera, spoken to the members of his Cabinet on January 30, 2022.

This was his exhortation to them, and he did not mince his words:

“You're here to serve, not to rule or boast. Occupying high office is not a license to act high and mighty. The people of Malawi are your bosses - not your subjects.”

It is this bond, therefore, the bond of service and of trust, that binds the Public Official and the public together. If consistent with this bond, Politicians and Public Officials were to discharge their functions solely on the basis of rendering service which secures the best interest of the public, there would be no corruption!

Corruption, therefore, will happen only when a Public Official breaks this bond. He would have betrayed the trust that the public has invested in him to serve its interest, and its interest alone. And by abusing his public office for personal gain, or for the benefit of a 3rd party, he would have acted fraudulently, and he would have acted deceptively.

Namibia's Prime Minister, Saara Kuugongelwa, as recently as September 11, 2022, broke down the 'personal gain' element of this breach of trust in the following basic terms:

“Corruption is not only when you steal money. Corruption is anything that translates into you using your position to enrich yourself at the expense of the public. Whatever it is, even if it means to leave your office to go and do your work during working hours, without putting in leave, that is corruption.”

But Corruption in public office can manifest itself in innumerable other ways. Some will be pretty obvious to you, while others may not be. Here are but a few:

1. A Judge who throws a case, in exchange for a bribe, commits an act of Corruption.

2. A Police Officer who refuses to charge an offender, or a Prosecutor who refuses to prosecute someone, in exchange for a bribe, or for some other thing of value, also commits an act of Corruption.
3. A Lawmaker who surreptitiously influences the passage of a law, in one direction or the other, to favor not the public interest, but rather a special interest, whether as a payback for a political campaign donation received, or for other thing of value, commits an act of Corruption.
4. Similarly, a Cabinet Minister who abuses his public office by implementing a specific Government policy for any of the foregoing reasons, would also have committed an act of Corruption.
5. And, likewise, a Public Official who influences the award of a Government contract, the issue of a Government license, or the divestment of a publicly owned asset, to a special interest, in exchange for a kickback, or for a bribe, or for a favor, or for support rendered, or to be rendered, or for anything of value, would have abused his public office and, in so doing, would have committed an act of Corruption.

Now, what about failed promises that are made by those who aspire to be elected to public office?

Interestingly, an African Politician and a Lawyer by profession, Mr. Onofiok Luke, while serving as the Speaker of Nigeria's Aqua Ibom State House of Assembly, couched as 'corruption', promises made by Politicians on the campaign trail that are intended to deceive.

On February 7, 2017, in his capacity as House Speaker, he advised Nigeria's Anti-Corruption Agencies to seriously consider prosecuting Politicians who abandon their campaign promises after being elected to public office.

Defaulting on election campaign promises should be viewed as a form of Corruption, he said. 'It is dishonest for politicians to abandon their "lofty" campaign promises, after using them to lure the electorate,' he charged.

The practice, which is akin to obtaining the citizen's trust, support and, ultimately, his vote, by false pretenses, or by a false inducement, is unfortunately one that has become commonplace in some countries.

When this is intentionally done to deceive, it is a despicable act. In such circumstances, I would respectfully submit that this type of conduct would be no different, in substance, from the scams that the conman in the days of Sir Edward would peddle.

This brings me to the final piece of my presentation. How do we respond to the evolution and proliferation of fraudulent practices? How do we amplify our impact?

1. First and foremost, as Anti-Fraud and Anti-Corruption Practitioners, Cyber-Crime Experts, Accountants, Auditors, Law Enforcement Officers, Banking Officials, and Corporate and Public Sector Leaders, we must continue to be alert to the emerging mechanisms that are utilized to either promote or conceal fraudulent, corrupt and money-laundering activities.

It was Narendra Modi, the Prime Minister of India who, during the Valedictory Function of his country's Vigilance Awareness Week in November 2016, issued the following warning:

“People who do corruption are very creative. It is “therefore necessary for us to remain alert all the time.”

The world has come a very long way with the evolution and sophistication of fraudulent, corrupt and related criminal practices. Likewise, innumerable counter-measures have been implemented, both at the international and domestic levels, to deal with them. The simple point to be made then is that Fraud is like a chameleon, and it is a dead certainty that its growth will continue.

We must, therefore, be on the look-out for this, and we must be agile and effective in our responses to it. Put another way, we must always be one step ahead of the Fraudsters.

2. Additionally, we must also be alert to emerging unethical, improper and irregular practices that are not classified as crimes in our respective jurisdictions, but perhaps, for one reason or the other, should be so codified. One example that readily comes to mind in Jamaica is nepotism.

Some of these practices should not be ignored or left unaddressed. They should be seriously considered for criminalization by the authorities, lest they compound themselves to the detriment of the state.

Indeed, much in terms of the approach that we can take in such matters, can be gleaned from international good-governance standards, mechanisms and best practices, inclusive of anti-fraud, anti-corruption and anti-money-laundering laws, that are already in force in other countries.

We have been there before, and we know what to do.

Notably, and for example, Jamaica, which has become notorious for its lotto-scammers, that prey upon elderly Americans, moved, a few years ago, to enact special legislation to counter an explosion in the problem. Enhanced levels of collaboration were also established, between U.S. and Jamaican Law Enforcement, to bring the Fraudsters to book.

The simple fact of the matter is that human codes of behavior will inevitably change over time. And it will, therefore, be easy for deviant conduct to take root, and proliferate, if it is not speedily and effectively checked.

As I said some 8 years ago at an International Anti-Corruption Conference in Grand Cayman, it is, therefore, critically important for Governments and Lawmakers to “continuously review anti-corruption laws to cauterize loopholes, criminalize new developments in corrupt (and in this case fraudulent) behavior, and to elevate existing sanctions, where necessary, to deter unwanted conduct.”

3. The Public and Private Sectors must also strengthen their regulatory and policy frameworks to promote and compel behaviors that are consistent with the highest standards of compliance, accountability, good governance and integrity. Fraud and, in particular, Public Sector Corruption, do not happen in a vacuum.

Further, Public Sector Corruption, in its 'grand' forms, cannot take place without the complicity of the Private Sector. And it is virtually impossible for Organized Crime, in respect of which Jamaica was ranked #7 out of 141 countries in 2019, to operate in the absence of corrupt actors in both the Public and Private Sectors, as well as in Law Enforcement.

In all of this, ladies and gentlemen, strong and uncompromising leaders, who are committed to the public good, and who will not bow to expediency, but who will do what is right to prosecute the transformation that is required, will be needed.

All of us in this room, being the professionals that we are, must be a part of that leadership.

4. Finally, I will commend to each of us, both in our personal and advisory capacities, the simple common-sense advice that Bev O'Shea has given regarding how, in our daily lives, we can protect ourselves from most scams (Ms. O'Shea was the journalist to whom I had alluded earlier):

"Scammers prey on our fears, vulnerabilities and sometimes our desire for a great deal or more money. A hallmark of a scam is urgency. Criminals want you to make a decision now, and without a great deal of thought, or taking time to consult people you trust. In addition to losing money, which can be difficult or impossible to recover, victims may lose personal data, which could make them vulnerable to identity theft ... In this way, the care you take in revealing personal information, and account numbers, can go a long way in protecting you. If you believe you may have engaged with a fraudster, be sure to report it as quickly as possible."

Ladies and gentlemen, I am grateful to you for allowing me to speak with you this morning. It was a pleasure being here with you, and I trust that your Conference will be a productive one.

More importantly, it is my hope that, at the end of the day, we will all be encouraged to redouble our efforts to amplify not only our individual impacts, in what we are committed to do as professionals, but our collective impacts as well.

ACFE, as a professional association, you are already fulfilling that purpose, and you must be commended.

If we can all do this, we will be better positioned, and better armed, to rid our country of the scourge of Fraud, Corruption and Organized Crime that has been haunting it.

Collectively, we have the power to make Jamaica a better place for ourselves, our children and our grand-children, and we are, therefore, obliged to act.

Thank you.