

REVIEW ARTICLE

Exploring the Unexplored: A Review on Forensic Fraud

Shruti R^{1*}, Vanishree N², Chaithra V³, Pragathi DS¹ and Rajesh Kumar K¹

¹Postgraduate student, Public Health Dentistry, Bangalore Institute of Dental Sciences, Bangalore, Karnataka, India

²Head of Department, Public Health Dentistry, Bangalore Institute of Dental Sciences, Bangalore, Karnataka, India

³Reader, Public Health Dentistry, Bangalore Institute of Dental Sciences, Bangalore, Karnataka, India

***Corresponding author:** Shruti R, Postgraduate student, Public Health Dentistry, Bangalore Institute of Dental Sciences, Bangalore, Karnataka, India, Tel: 9741889409, E-mail: drshrutiramesh@gmail.com

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Abstract

Fraud is a criminological descriptor that can have civil and criminal implications depending on context. Occupational fraud is a sub-type of fraud associated with the workplace, referring to a range of misconduct that includes both criminal and non-criminal infractions. The field of Forensic Science currently has a major concern of forensic fraud which may hamper the criminal justice system resulting in a significant cost from retesting evidence, overturned cases, dismissed cases, and civil actions for wrongful convictions. There is a dearth of literature related to fraud, law enforcement culture, and scientific integrity due to general ignorance regarding the nature and scope of the problem. Hence this paper reviews the phenomenon of Occupational fraud among Forensic examiners, rationale, types, and theories, traits of fraud, ideographic case examples and law enforcement measures to overcome these fraudulent acts. There is a need to study this profit motivated phenomenon and provide a significant direction and opportunity for examining this complex portent of forensic fraud in the years to come.

Keywords: Forensic; Fraud; Occupational fraud

Introduction

The term fraud as defined in court is “the knowing breach of the standard of good faith and fair dealing as understood in the community, involving deception or breach of trust, for money” [1]. It is an intentional deception made for personal gain or to damage another individual, for instance, deliberately falsifying or fabricating any data, and reporting of misleading results.

Forensic fraud occurs when forensic examiners provide sworn testimony, opinions, or documents bound for court that contain deceptive or misleading findings, opinions, or conclusions, deliberately offered in order to secure an unfair or unlawful gain. Such misconduct has an undeniably devastating impact: it destroys the reputations of the forensic examiners involved, if not their careers; it erodes public confidence in the institutions where they are employed; it can result in overturned convictions, individual and institutional liability, and costly civil judgments; and it is corrosive to the collective faith in the justice system as a whole [2].

Forensic fraud exists as a sore and often forbidden subject in the forensic science community. The frequency and conditions of its occurrence have not been studied to any significant degree, and incidents are regularly hidden from public scrutiny to maintain the reputations of those police agencies and crime laboratories that have suffered its stain. There is a dearth of literature related to fraud, law enforcement culture, and scientific integrity due to general ignorance regarding the nature and scope of the problem and can be best viewed as the tip of the iceberg.

Hence this paper reviews the phenomenon of Occupational fraud among Forensic examiners, the types, and theories, traits of fraudsters, ideographic case examples and reforms to overcome these fraudulent acts.

Classification

In 1996, the Association of Certified Fraud Examiners has broken down occupational fraud into 3 types [3]:

(1) asset misappropriations; (2) corruption; and (3) fraudulent statements

Asset misappropriations are “the theft or misuse of an organization’s assets”, including things like skimming profits, stealing company property, and payroll fraud. Corruption is “the unlawful or wrongful misuse of influence in a business transaction to procure personal benefit, contrary to an individual’s duty to his or her employer or the rights of another,” including things like

taking bribes, accepting kickbacks, and participating in business relationships with inherent conflicts of interest. Fraudulent statements are “the intentional misrepresentation of financial or non-financial information to mislead others who are relying on it to make economic decisions,” including overstating profits, understating debts and expenses, or making false promises regarding the safety and potential of an investment [4].

Theories of Fraud

The act of fraud is very complex and therefore comprehensive models were needed to understand the causes and reasons behind it. Donald R. Cressey, PhD (1919 –1987) an American criminologist developed the Fraud Triangle [5] (Figure 1). Theory which states that in order for an act of occupational fraud to occur, there must be a convergence of three elements: offender motivation (pressure or need), opportunity and rationalization.



Figure 1: The Fraud Triangle Theory

Motivation to commit fraud can be experienced in many forms, but often comes from a financial need to pay existing debts and maintain professional standing; a desire for increased standing, wealth or profits; or cultural pressure to conform to pre-existing expectations within a group already engaged in fraudulent activity. Opportunity is experienced in the form of knowledge and access to “assets, people, information, and computer systems that enables the person not only to commit the fraud but to conceal it” [6]. Rationalization involves either self-delusion regarding the acceptability of fraud related behavior under “special circumstances”, or a disregard for the law as unjust or somehow inapplicable [7].

Although the fraud triangle was believed to explain a majority of frauds, there was a speculation of it being incomplete in its specifications and it was considered for an expansion. Wolfe and Hermanson in 2004 created the Fraud Diamond theory and added a fourth element known as “Individual capability” that is, their personal traits and abilities which may determine whether fraud would actually occur in the presence of the other three elements [8] (Figure 2). The person’s position in the organization, his intelligence and creativity and ability to coerce others result in successful fraud. Many authors have further tried to integrate these two models with other theories and believe that a one size fits all model is totally unrealistic [9]. These models assume an inherent rationality in perpetrator planning, foresight, and deliberation that are not necessarily warranted.

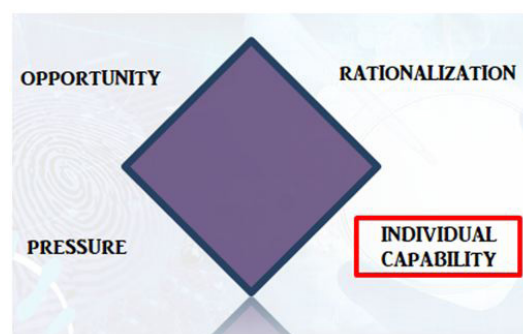


Figure 2: The Fraud Diamond Theory

Traits of Fraudsters

Anyone can commit fraud and behavioral scientists have not been able to identify any specific set of cardinal traits to serve as a “valid and reliable marker” for the propensity of an individual to commit fraud [10]. However, some empirical research give interesting description regarding traits of fraudsters. Specific research findings deduced that majority of the fraudsters were males, did not have any prior criminal records or fraud records, mostly they acted alone and did not have any addiction problems, worked in hostile environments and usually were involved in wrongful discharge of results although likely perpetrators were difficult to predict [11].

The dearth of literature disclosing and examining cases of forensic fraud and studying their traits may be the result of general ignorance regarding the nature and scope of the problem and this state of overall blindness is perhaps made possible by two factors

working in concert: institutional secrecy protected by law, and employees operating under strict contractual obligation and related general self-interest.

Loosely Referenced Case Studies

The vast majority of research published in relation to the subject of forensic fraud has been ideographic in nature. That is to say it consists primarily of peer-reviewed articles and textbooks that touch anecdotally on specific high profile cases resulting from individual examiner misconduct. Such cases are generally adduced in order to highlight a relevant issue, or demonstrate a significant condition or failing within the forensic science community [12]. Commonly cited cases include:

1. Jacqueline Blake, a DNA Analyst pled guilty to falsifying reports of “negative controls” [13]. Her acts of fraud at the FBI Crime Lab spanned five years which led to her resignation in 2002 and she was involved in about 103 cases.
2. Ralph Erdmann, a Coroner gave falsified results regarding forensic examinations [14]. He was later convicted, received 10 years of probation, and moved to Washington State.
3. Fred Zain, a Forensic chemist falsified test results in as many as 134 cases, almost always in favour of the prosecution [15].
4. David Harding, a latent print examiner planted fingerprint evidence in numerous cases [16].
5. Joyce Gilchrist, a Forensic scientist falsely reported findings and contaminated evidences to prevent testing [17].

The literature referencing these case studies has been authored primarily by legal scholars aligned with the criminal defense bar.

Methodology

As mentioned previously, there is an overall absence of research-oriented culture within the forensic sciences and this makes identifying, describing, and gathering forensic fraud data a significant challenge. However, the following data sources were useful in collecting some information such as Media accounts, discovery material/ author’s case files, and peer reviewed literature but all this focuses on the identification of cases involving forensic fraud only in the United States.

Suggestive Reforms

Forensic fraud can be significantly curtailed by the development of specific reforms within institutional cultural. The forensic science enterprise lacks the necessary governance structure to pull itself up from its current weaknesses. There is a need for the government to step in to mandate and manage forensic science reforms – by forming a National Institute of Forensic Science (NIFS) [18]. Through the NIFS, standardized terminology and report writing requirements need to be developed throughout the forensic science community. Laboratory accreditation and individual certification of forensic science professionals should be mandatory, and all forensic science professionals should have access to a certification process. This is necessary for levying scientific standards and providing professional accountability. Development and adoption of quality assurance and control procedures need to be ensured by the forensic laboratories and also a uniform code of ethics along with zero tolerance for fraud across forensic science disciplines must be established and encouraged.

Conclusion

Forensic fraud may hamper the criminal justice system resulting in a significant cost from retesting evidence, overturned cases, dismissed cases, and civil actions for wrongful convictions. This may have a devastating impact destroying the reputation and career of the forensic examiners involved, erosion of public confidence in the institutions & corrosion to the collective faith in the justice system as a whole. There is a need for further research of this profit motivated phenomenon to provide a significant direction and opportunity for examining this complex portent of forensic fraud in the years to come.

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