

INDICTMENT

The quarterly
Newsletter for
Investigators and
Prosecutors Serious
about Crime

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In this edition we concentrate on the investigation and prosecution of fraud, from “pump and dump,” “419,” and “boiler room” to ponzi and advance fee schemes.

The last Global Economic Crime Survey in 2011 estimated that 34% of the world’s population had been victims of economic crime in the preceding twelve months.

Awareness and prevention are key and this will be achieved through an understanding of what the most common cons are. This edition will let you know what these frauds are, how they operate and tips to avoid being another victim.

To give you confidence to tackle this form of organised crime we have articles from the Eastern Caribbean and the UK, reporting on how obstacles can be overcome through a co-ordinated Prosecution Team approach.

We also feature an article on the challenges to asset recovery following conviction. You will often hear the battlecry from Indictment that to address serious organised crime, we need to take the boats, houses and the bling, to disincentivise.

As a shining example of this proactive approach in action, it was encouraging to see the first cash seizure and detention in Dominica, following the recent amendment to the Proceeds of Crime Act. A real demonstration of all stakeholders working together to take the profit out of crime.

Of course as well as our leader we have our usual features: Stop the Press; and Legal Updates. We are also pleased to announce the winners of the Indictment Awards 2013.

Finally, after his first column in edition 7, we have David Belmarsh back for an article on one of the UK’s most infamous fraudsters, John “Goldfinger” Palmer.

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Editor:
Sejilla Mc Dowall

In this Edition: **Page**

The 2013 Indictment Awards.....3

The Ponzi Scheme.....4

If It's Too Good To Be True.....It's a Fraud.....5

Tips from the FBI.....6

Fraudsters Face Justice in Grenada.....7

Financial Facade.....8

Dick Turpin Rides Again.....12

Stop the Press14

Legal News from the Region.....15

Legal News from the around the world.....16

Stop Human Trafficking Short Film.....17



THE 2013 INDICTMENT AWARDS



Prosecution Team of the Year:

WINNER: The FIU and NPS of Saint Vincent and the Grenadines

For their co-ordinating approach in successfully securing the conviction of Antonio Gellizeau (see Indictment 3) the FIU, headed by Grenville Williams and the National Prosecution Service, headed by the DPP Colin Williams, receive the inaugural Prosecution Team of the Year award. At the trial phase, the Prosecution led by Gilbert Peterson SC, was able to present a coherent and convincing case to the court as a result of the thorough investigation. This investigation and prosecution has now become the benchmark for other agencies to follow and as such is widely publicized as a model of joint working.



Investigator of the Year:

JOINT WINNERS: ASP Cuffy (Dominica) and ASP James (Saint Vincent and the Grenadines).

For their drive and determination in leading the way on video interviews of suspects, both Officers are recipients of this award. Video interviewing has encouraged more robust preparation of cases, whilst enshrining the human rights of suspects. Both Officers co-ordinate the teams that conduct the investigations/interviews and this award is as much for those Officers as the figureheads of ASP Cuffy and ASP James.



Prosecutor of the Year:

JOINT WINNERS: Rhonda Nisbett-Browne (Saint Kitts and Nevis) and Anthony Armstrong (DPP Antigua and Barbuda)
Rhonda was acting DPP for over 6 months and took this responsibility in her stride. This award also reflects Rhonda's successful completion and application of the Transnational Organised Crime Policy Forum and Academic Criminal Justice Course at the International Law Enforcement Academy in Roswell, New Mexico (see Indictment 5).

Anthony Armstrong prosecuted the first successful money laundering matter in the history of Antigua and Barbuda (see front cover of Indictment 4) and continues to drive forward the use of Proceeds of Crime legislation to tackle serious organised crime.



Congratulations to you all from the Indictment Team!



It's one of the oldest yet also one of the most tried and tested scams, the Ponzi scheme. Its origins go back over a century to its inventor William F. Miller and it continues to catch out the unsuspecting to this day.

Miller was known as "520 per cent" on account of the large profit margins he promised clients. Simple and effective he made over \$1 million in 1899, which would be about \$25 million in today's money. He was eventually caught and sentenced to 10 years imprisonment.

Decades later, Charles Ponzi, inspired by Miller, promised clients, a 50% profit within 45 days, or 100% profit within 90 days, by buying discounted postal reply coupons in other countries and redeeming them at face value in the United States as a form of arbitrage. However, what Ponzi was actually doing was paying early investors using the investments of later investors. Ponzi was to give his name to this scheme which he ran for over a year before it collapsed, costing his "investors" \$20 million.

Ponzi's was an exciting life to say the least, after the scheme came crashing down he was indicted on Federal charges and pleaded guilty. After serving half

of a five year sentence he was then indicted on State charges. Ponzi argued that he had pleaded on the basis he would not be charged by the State. Despite the fact that the State charges arose from the same criminality as the Federal charges, the Supreme Court ruled that the State could proceed. Bankrupt, Ponzi represented himself and using his charismatic personality that he'd used to cheat his investors, he was acquitted on the majority of charges. The State still pursued the charges two juries had been deadlocked on, and at a third trial he was convicted on three counts and sentenced to seven years imprisonment.

After a number of escapes and further scams fit for a Hollywood film, he was eventually deported to his birthplace of Italy. Upon being met by a group of disgruntled investors as he left prison, he was heard to say to reporters, *"I went looking for trouble, and I found it!"*

Ponzi died in Brazil in 1949 in poverty. In his last interview he defiantly stated, *"Without malice aforethought I had given them the best show that was ever staged in their territory since the landing of the Pilgrims! It was easily worth fifteen million bucks to watch me put the thing over."*

The Fall of Ponzi Fraudsters



Above: Allen Stanford, the disgraced Knight and former resident of Antigua and Barbuda, was convicted of a massive Ponzi scheme worth \$7 billion USD and is now serving 110 years imprisonment. He is due for release on 17th April 2105



Above: Bernard Madoff pleaded guilty to running a Ponzi scheme that made an estimated \$12-20 billion, however the full scale may never be known. He was sentenced to the maximum 150 years imprisonment. Watch out for the forthcoming HBO film where Robert De Niro is set to star as the Ponzi "Criminal in Chief."



IF IT'S TOO GOOD TO BE TRUE IT'S A FRAUD

As obvious as some of these points are it's always good to be aware of what maybe a fraud waiting to happen:

1. The easiest way to try and make someone believe what they have is the greatest opportunity of all time is to be their friend and be charming. Watch out! This could be a false pretence to entice you to spend your well earned money!
2. Con artists are frustrated actors playing out a part. They will be so good you won't know that the whole thing is a charade.
3. The con artist will try at first to help you as much as they can to demonstrate their good intentions. But why would someone necessarily go too far out of their way? Be careful, is this someone being generous or just trying to pull you into a scam.
4. As part of the scam the con artist has a plan and they are playing you at ever turn. They are controlling everything you do and as such they will suggest what and how you do things to get the best possible deal.
5. The con artist will have all the right credentials, qualifications and background. Try and check them if you can, but don't be fooled by them!
6. A good tip is to always ask questions about their business and see some empirical evidence of what they have done. Don't just rely on the material they give you, ask for balance sheets and accounts where relevant.
7. Another good way to test if they are legitimate is to request references and then to actually followup and speak to these referees. Now they

maybe part of the con too, so ask them questions about the potential con artists background to see if the accounts match.

8. Beware of the common phrases. Con artists may say "Get rich soon" or, "You could be a millionaire" the clue is in the word "could" and "soon" you may also turn out to be a loser sooner than you think!
9. Lastly watch out for those too good to be true stories. Usually from the con artist's own experience, these can't be verified!

When credit cards are involved be alert for these warning signs:

- 1. Missing bills or statements - Have you received a bill or statement you expected in the post?**
- 2. Unexpected charges - Always check your bills or statements so they are correct.**
- 3. Denied credit - If you are denied credit check with your bank. Why? There may have been some fraudulent use.**
- 4. Unsolicited credit cards - You can only apply for credit cards they shouldn't magically arrive on your doorstep!**
- 5. Collection calls - Watch out for persons trying to collect for transactions you have made on your credit card - this will be bogus!**

TIPS FROM THE FBI

The following are some of the most common economic crimes investigated by the FBI - for more information go to: <http://www.fbi.gov/scams-safety/fraud>

Nigerian Letter or “419” Fraud

Nigerian letter frauds combine the threat of impersonation fraud with a variation of an advance fee scheme in which a letter mailed from Nigeria offers the recipient the “opportunity” to share in a percentage of millions of dollars that the author—a self-proclaimed government official—is trying to transfer illegally out of Nigeria. The recipient is encouraged to send information to the author, such as blank letterhead stationery, bank name and account numbers, and other identifying information using a fax number provided in the letter. Some of these letters have also been received via e-mail through the Internet. The scheme relies on convincing a willing victim, who has demonstrated a “propensity for larceny” by responding to the invitation, to send money to the author of the letter in Nigeria in several installments of increasing amounts for a variety of reasons.

Payment of taxes, bribes to government officials, and legal fees are often described in great detail with the promise that all expenses will be reimbursed as soon as the funds are spirited out of Nigeria. In actuality, the millions of dollars do not exist, and the victim eventually ends up with nothing but loss. Once the victim stops sending money, the perpetrators have been known to use the personal information and checks that they received to impersonate the victim, draining bank accounts and credit card balances. While such an invitation impresses most law-abiding citizens as a laughable hoax, millions of dollars in losses are caused by these schemes annually. Some victims have been lured to Nigeria, where they have been imprisoned against their will along with losing large sums of money. The Nigerian government is not sympathetic to victims of these schemes, since the victim actually conspires to remove funds from Nigeria in a manner that is contrary to Nigerian law. The schemes themselves violate section 419 of the Nigerian criminal code, hence the label “419 fraud.”

Identity Theft

Identity theft occurs when someone assumes your identity to perform a fraud or other criminal act. Criminals can get the information they need to assume your identity from a variety of sources, including by stealing your wallet, rifling through your trash, or by compromising your credit or bank information. They may approach you in person, by telephone, or on the Internet and ask you for the information.

The sources of information about you are so numerous that you cannot prevent the theft of your identity.

Advance Fee Schemes

An advance fee scheme occurs when the victim pays money to someone in anticipation of receiving something of greater value—such as a loan, contract, investment, or gift—and then receives little or nothing in return.

The variety of advance fee schemes is limited only by the imagination of the con artists who offer them. They may involve the sale of products or services, the offering of investments, lottery winnings, “found money,” or many other “opportunities.” Clever con artists will offer to find financing arrangements for their clients who pay a “finder’s fee” in advance. They require their clients to sign contracts in which they agree to pay the fee when they are introduced to the financing source. Victims often learn that they are ineligible for financing only after they have paid the “finder” according to the contract. Such agreements may be legal unless it can be

shown that the “finder” never had the intention or the ability to provide financing for the victims.

Pyramid Schemes

As in Ponzi schemes, the money collected from newer victims of the fraud is paid to earlier victims to provide a veneer of legitimacy. In pyramid schemes, however, the victims themselves are induced to recruit further victims through the payment of recruitment commissions.

More specifically, pyramid schemes—also referred to as franchise fraud or chain referral schemes—are marketing and investment frauds in which an individual is offered a distributorship or franchise to market a particular product. The real profit is earned, not by the sale of the product, but by the sale of new distributorships. Emphasis on selling franchises rather than the product eventually leads to a point where the supply of potential investors is exhausted and the pyramid collapses. At the heart of each pyramid scheme is typically a representation that new participants can recoup their original investments by inducing two or more prospects to make the same investment. Promoters fail to tell prospective participants that this is mathematically impossible for everyone to do, since some participants drop out, while others recoup their original investments and then drop out.

Market Manipulation or “Pump and Dump” Fraud

This scheme—commonly referred to as a “pump and dump”—creates artificial buying pressure for a targeted security, generally a low-trading volume issuer in the over-the-counter securities market largely controlled by the fraud perpetrators. This artificially increased trading volume has the effect of artificially increasing the price of the targeted security (i.e., the “pump”), which is rapidly sold off into the inflated market for the security by the fraud perpetrators (i.e., the “dump”); resulting in illicit gains to the perpetrators and losses to innocent third party investors. Typically, the increased trading volume is generated by inducing unwitting investors to purchase shares of the targeted security through false or deceptive sales practices and/or public information releases.

A modern variation of this scheme involves largely foreign-based computer criminals gaining unauthorized access to the online brokerage accounts of unsuspecting victims in the United States. These victim accounts are then utilized to engage in coordinated online purchases of the targeted security to affect the pump portion of a manipulation, while the fraud perpetrators sell their pre-existing holdings in the targeted security into the inflated market to complete the dump.

Telemarketing Fraud

When you send money to people you do not know personally or give personal or financial information to unknown callers, you increase your chances of becoming a victim of telemarketing fraud.

Here are some warning signs of telemarketing fraud—what a caller may tell you:

“You must act ‘now’ or the offer won’t be good.”

“You’ve won a ‘free’ gift, vacation, or prize.” But you have to pay for “postage and handling” or other charges.

“You must send money, give a credit card or bank account number, or have a check picked up by courier.” You may hear this before you have had a chance to consider the offer carefully.

“You don’t need to check out the company with anyone.” The callers say you do not need to speak to anyone including your family, lawyer, accountant, or police

“You don’t need any written information about their company or their references.”

“You can’t afford to miss this ‘high-profit, no-risk’ offer.”

If you hear these or similar “lines” from a telephone salesperson, just say “no thank you” and hang up the telephone.

FRAUDSTERS FACE JUSTICE IN GRENADA

Sergeant Raymond Lockiby provides an insight on the effective role the FIU is playing in Grenada to tackle fraud through the first use of suspicious activity reports.

During the period February 2013 to April 2013, the Financial Intelligence Unit of Grenada received several Suspicious Activities Reports from two local reporting entities.

After careful analysis, a criminal investigation ensued uncovering a transnational organized criminal enterprise defrauding elderly United States of America citizens of monies in excess of EC \$300,000.00 ECC. These monies were sent from the U.S, by the victims, to Grenada via money remitting agencies. The monies collected by approximately fifteen (15) Grenadian nationals at several locations around the island, were subsequently handed over to a local who later turned out to be the recruiter. The master mind behind the operation originated from Canada with US citizenship.

As a result of the investigation, an operation was carried out during which one of the collectors was intercepted shortly after and cash in excess of three (EC\$3,000) thousand dollars was recovered from him. Subsequently, the Officer's of the FIU were led to one of the local hotels where a search warrant was executed in a room occupied by two Canadian Citizens and EC \$14, 900.00 was seized. The male occupant, Denzel Roach, was identified as the person who travelled from Canada for the purpose of collecting monies from the recruiter in Grenada and was ultimately responsible for sending the monies out of the island to different parts of the world.

The local recruiter Francis Richards was subsequently charged with twenty two (22) counts of Money Laundering and Conspiracy to Commit Money Laundering and Denzel Roach was charged with two counts of Money Laundering and Conspiracy to Commit Money Laundering.

Both defendants appeared before the Chief Magistrate on May 23, 2013 where Denzel Roach pleaded guilty to all charges and Francis Richards pleaded guilty to sixteen counts of money laundering and the charge of conspiracy to commit money laundering.

On the conspiracy charge, Denzel Roach was fined EC \$30, 000.00 forthwith, in default two (2) years in prison and on one count of money laundering he was fined EC \$20,000.00 forthwith, in default two (2) years in prison, both sentences to run concurrently. He is presently serving time due to non-payment of the fine.

On the conspiracy charge, Francis Richards was fined EC \$20,000.00 to be paid in nine (9) months, in default two (2) years in prison and on one count of money laundering he was fined EC \$20,000.00 to be paid in nine (9) months, in default two (2) years in prison, both sentences to run concurrently. He was reprimanded and discharges on the other fifteen (15) money laundering charges.

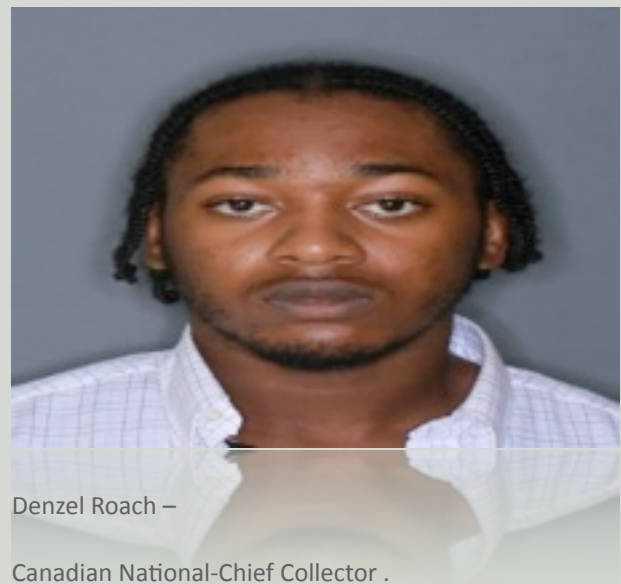
All monies seized were forfeited to the State.

This may be the first successful development of a Suspicious Activity Report which resulted in a conspiracy to commit money laundering conviction in the OECS in recent times, if not the first in recorded history



Francis Richards –

Grenadian National -Local Recruiter and Collector



Denzel Roach –

Canadian National-Chief Collector .



FINANCIAL FACADE

BY PAUL CROME JUDICIAL CO-OPERATION UNIT UK HOME OFFICE

“There are only two mistakes one can make along the road to truth; not going all the way, and not starting.” - Siddhartha Gautama – Buddha

This article is written by the lawyer who managed the asset recovery in the case. It is intended to share the experiences and challenges in tracing and recovering the proceeds of a fraud. The analysis concentrates on the case of Tobias Crowbridge, who set up a sophisticated tax avoidance scheme and laundered his criminal proceeds by setting up multiple levels of transactions which distanced the fraud from the asset and disguised asset ownership.

For the purposes of this article the names of those involved have been changed.

In 2006, Samantha Peterson and Tobias Crowbridge were convicted of conspiracy to defraud Samantha’s employers. Samantha was employed as a procurement officer at a large publishing company and managed lucrative contracts of £1,000,000. Tobias owned a stationery company which was one of a number of suppliers to that company. The conspiracy arose from their close business relationship which developed into a personal relationship and provided them with the opportunity to commit fraud. Tobias’s company became their sole supplier enabling the conspirators to defraud

Samantha’s employers by supplying stationery at vastly inflated prices.

Many challenges can arise in a trial when attempting to prove an agreement to commit fraud, particularly when services are rendered at a satisfactory level as in this case. The prosecution case was built on expert opinion that Tobias’ price for stationery was so excessive the jury could infer a conspiracy and was supported by circumstantial evidence. Samantha had disguised their relationship from her employer and received gifts from Tobias in suspicious circumstances, for instance, Samantha held a number of offshore accounts and the prosecution case contained evidence from abroad that Tobias was present at the offshore banks at the same time that cash was deposited in Samantha’s accounts. During the trial the defendants exercised their right to remain silent and declined to provide an explanation. The jury were persuaded by the evidence in the prosecution case and Tobias and Samantha were subsequently convicted.

To gather the evidence to build the prosecution case the investigating team appointed a financial investigator tasked to trace and locate the criminal proceeds. This model is common for investigations into complex and serious offences to assist the main investigation and make enquiries for the purposes of restraint and confiscation. In addition, prosecutors with appropriate specialist skills may be appointed at the early stages of an investigation to advise on the evidential and the financial strands of the investigation. This article continues on page 9

FINANCIAL FACADE [CONT]

Initial enquiries by the financial investigator showed Tobias to have a low financial footprint. His main asset was a large property which had limited equity due to a large mortgage.

Tobias had received professional advice on how to establish a tax efficient scheme to invest the proceeds of his fraud. It is unclear whether Tobias intended this scheme to facilitate distancing his money laundering in an attempt to evade suspicion or simply to avoid tax. Whatever his purpose it had the effect of disguising the value of his assets and for some time, successfully laundering his criminal proceeds.

The training and skill of the financial investigator proved to be crucial in unpicking the lengths that the defendant had gone to add layers to launder the proceeds of his fraud and revealing the extent of the defendant's asset portfolio. The investigator followed a chain of seemingly innocuous payments from the UK to an offshore trust and then back into the UK.

The enquiries began with accounts seized during a search of Tobias' stationery company. These showed large payments to pension fund located overseas in favour of the stationary company's employees. The initial conclusion was this money belonged to the employees of the company and would not be available for confiscation.

The investigator was not satisfied and delved deeper. Using Police to Police enquiries with the overseas territory the officer eventually managed to trace the proceeds of the fraud.

This had been transferred from the UK to an overseas account; an offshore banking institution who acted as the administrators of the company trust. This trust owned an offshore company registered in another jurisdiction. The offshore company was the same company who held a charge against Tobias' property. The enquiries by the financial investigator were followed with formal letters of request by the Crown Prosecution Service to obtain evidence for use in the trial. It is worth noting, the results of the Police to Police enquiries enabled the Crown Prosecutor to include appropriately drafted enquiries within the letter of request. Consequently, the State receiving the request was sufficiently informed to execute enquiries designed to obtain this significant evidence. The evidence provided explained the structures behind the trust and the trust company. Notes made by the trust administrators included instructions from Tobias to make payments to and invest money from the trust for his benefit. This was crucial evidence that Tobias was the beneficiary of the trust. It enabled the prosecution to show that the trust set up for the employees was operated by and for the sole benefit of Tobias and was sufficient for the court to conclude the trust was a facade and beneficial ownership rested with Tobias. This article continues on page 10



The evidence obtained assisted in identifying assets held by Tobias for confiscation. It showed the company holding the charge over Tobias' property was operated by the employee trust fund. As Tobias was the beneficiary of this trust it followed that he was the beneficiary of the charge. Banking material supplied from abroad showed the layers of deception Tobias had introduced. Once he transferred the criminal funds to the trust, he instructed the administrators to take steps to set up an offshore company and transfer the funds to an account held by this company. The administrators were instructed to loan money from the offshore company to Tobias. This loan was secured by a charge on his property in the name of the offshore company. Tobias was then able to use the funds from the loan to purchase other property with the appearance that these were legitimate funds. Tobias sought to introduce further layers and disguise his ownership in these properties by registering them in third party names.

Additional laundering occurred when Tobias sold a property registered in his name to the offshore trust company. The offshore trust company was funded from the employee's trust fund with proceeds from his fraud. By using the trust fund Tobias effectively laundered the tainted money and disguised the ownership in this asset.

When it came to inviting the court to make a confiscation order the prosecution considered how the benefit could be calculated. The court is concerned with calculating what the defendant obtains in connection with his criminal conduct. The value Tobias obtained from the fraud could be calculated from three indicators.

One indicator was what he obtained based on the increase in his salary; but this was problematic as Tobias paid himself very little from the stationery company. Tobias argued that his benefit was the stationary company's profit. This argument was

attractive to the defendant as the company's profits were reduced by the large payments made to the employees' trust fund. During the confiscation proceedings the Court of Appeal considered this issue in a similar case and advocated the benefit calculation should be based on what had been obtained in connection with the fraud which encompasses the total value of payments connected with the fraud. Two years after the jury returned their verdict, the court made a confiscation order based on a benefit calculated on all of the money received by the stationary company during the conspiracy. This was calculated to be £3,500,000. The burden of proof rests with the defendant to show he does not have the assets to meet the benefit figure. In this case the court was satisfied that Tobias had assets to the value of £650,000.

"I don't know what is behind the curtain; only that I need to find out" Richard Paul Evans

It is five years since the confiscation order. The prosecution were successful in appointing an enforcement receiver and all known assets have been realised. Out of an order for £650,000, just over half of this value has been collected. The disparity is explained by the dramatic fall in UK property prices following the economic downturn in 2007. The harsh economic climate has had an adverse effect on enforcing confiscation orders particularly those containing property portfolios. It is a simple fact that forcing a sale presents an advantage to a potential purchaser. Compare and contrast this with the approach to gifts. The defendant divested himself of a portion of his criminal proceeds to family and friends. These sums are treated by the confiscation legislation as gifts and are deemed recoverable, even if the defendant has no legal title in the asset. The legislation directs the court to calculate the value of the gift as the value at the time the gift was made or the value at the time the court makes the order, whichever is higher. For the purposes of confiscation, gifts, unlike property, are recession proof. This article continues on page 11



There are two methods to enforce the confiscation order against gifts, inviting the court to exercise its discretion to appoint a receiver or applying to the enforcing magistrate to invoke the default. In this case, the application for a receiver prompted one recipient of a gift to return the money. It was considered that in relation to the other gifts the most appropriate method to enforce the order was through the court imposing the default sentence. It is likely that Tobias will serve an extra term of custody in relation to these gifts.

The approach by the international bank administering the trust was surprising. The bank was aware the funds under administration constituted the proceeds of crime. The administrators depleted the funds under restraint by continuing to draw fees, and went so far as to claim entitlement to draw fees from funds held in the UK. Surprisingly, the UK court appointed receiver intended to honour this claim. The prosecution persuaded the receiver to resist this application. The question of fees is a difficult area, the legislation has a steer to protect third party interests in property, but fees from a legally binding contract can be uncertain area, this was particularly complex considering that the bank intended to commence proceedings in a foreign jurisdiction. It was uncertain how that jurisdiction would construe the UK proceeds of crime legislation. Considering the unique situation, the prosecution and receiver negotiated favourable terms to settle the claim which reduced the risk of costs and avoided lengthy litigation.

Questions remain unanswered in relation to this case. Do the actions of the bank indicate the money laundering regulations requires consideration? Should an accountant or trust administrator have suspicion when a trust to benefit the employees of a pension fund makes selective investments in favour of a company director rather than the employees?

During the case the defendant looked to obstruct and delay proceedings at every turn. Tactics employed by Tobias included dismissing his counsel, supporting third party applications to claim ownership in assets, lying about his assets and making spurious appeals. The prosecution was alive to these attempts and thwarted Tobias's attempt to sell a property under its value, in exchange Tobias had arranged with the purchased to receive a 'kick-back'. The restraint order included a direction for Tobias to serve a statement disclosing the value and whereabouts of his assets. Relying on the fact that his assets were held in third party names and veiled under the terms of the trust, the defendant provided false information. Rather than initiate/pursue proceedings which would reduce the resources available to locate assets it was decided to invite the court to infer the defendant's lack of credibility indicated he held hidden assets.

These proceedings have passed through the Magistrates' Court, the Crown Court and the Court of Appeal. The facts have been considered by the Criminal Cases Review Commission and litigated in the High Court. Finally, the case has completed the circle, and has been referred to the Magistrates' Court to impose the default sentence. This case is a success story. The prosecution, police and the courts' significant effort and resources revealed and recovered the proceeds of the fraud and drove the case to a successful resolution.

DICK TURPIN RIDES AGAIN

By David Belmarsh



One of life's great maxims is, that if "something seems too good to be true then it is too good to be true."

Alas, erstwhile sensible, fiscally careful people choose to ignore that time honoured maxim time and time again when they think they are getting something for nothing and that is why fraudsters prosper and fraud proliferates to the extent that it does.

BIOGRAPHY

John Palmer first came to national prominence in the wake of the world's biggest heist – the £28 million Brinks-Mat gold bullion robbery which took place in 1983. Palmer, who started his working life selling paraffin from the back of a truck, was by that time involved with a Bristol based company called Scadlynn which dealt in second-hand gold and during an extensive long-running police investigation a smelter was discovered at his Bath mansion. He had by this time relocated to Tenerife where he soon invested in a successful timeshare business. He reluctantly returned to Britain in 1986 when his passport ran out and was duly arrested. By

this time he was a very wealthy man. He spent some eight months on remand awaiting trial. In due course his legal team managed to convince an Old Bailey jury that their client was unaware where the gold he admitted handling at the time had come from and he was acquitted. The legend of "Goldfinger" had been born. He flew straight back to Tenerife where his timeshare empire grew ever bigger.

THE SCAM

This took a number of forms and involved scratch-cards, prizes, sangria and champagne. The most practised was that existing timeshare owners were taken to a presentation showing them a brand new timeshare development on the Island. They were then informed that their existing timeshare may be worth much more than they may have thought and with a relatively small cash adjustment they could upgrade to a smart, often much larger, apartment or villa. Whilst they waited by the pool with a drink in their hand a fax was despatched to the U.K. and soon after they had a (false) valuation from a British re-sale company who guaranteed to sell their existing timeshare within 3 months. They were then convinced to sign up for the new property and in many cases "escorted" to a nearby bank to acquire the deposit monies for their new acquisition. Despite the holiday islands searing heat there was no question of a cooling off period. An air of menace permeated the whole operation.

Unknown to them the fax never went anywhere near the U.K. but to an office in a room above them!

New customers were told that the timeshare they were buying would be rented out and that the (guaranteed) rent they would receive would virtually pay for the timeshare itself.

It was akin to shooting fish in a barrel! This article continues on page 13

DICK TURPIN RIDES AGAIN

When their existing timeshare did not sell or rent within the allotted time period they contacted the U.K. re-sale company whose name appeared on their paperwork only to be told that the market had taken a sudden downturn. They were told not to despair and that there would eventually be a sale but in the meantime they were left paying for two timeshares simultaneously which of course most of them could not afford to do indefinitely. If they stopped the payments they lost all of the monies they had paid to date. In essence the victims ended up with a new timeshare they could not afford and an old one they could not sell.

The rental victims who had relied on third party income also fell into that trap and in Spain, under the existing law, they had no legal recourse.

Upwards of 13,000 people of all nationalities fell foul of this well practiced con.

Scotland Yard eventually became involved and with the assistance of their Spanish counterparts a series of raids took place in Palmer's offices in Playa de los Americas and in Brentwood, Essex.

Christina Ketley, the mother of Palmer's child, who ran the Brentwood office was arrested together with the 4 re-sale company bosses. Significantly Palmer's former right-hand man in Tenerife Brendan Hannon, who had had an acrimonious fall-out with his former boss was also in custody. Palmer duly returned to the U.K. and following his arrest he was granted £1 million bail pending trial - small change for someone with an alleged £300 million fortune.

Having shelled out £300,000 in legal fees in a series of pre-trial hearings Palmer duly dispensed with his legal team and took the decision to defend himself. He claimed that he was not "hands-on" in the business and that all of these unlawful practices had taken place without his direct knowledge. He also claimed that the Metropolitan Police had a long-running vendetta against him dating back to his Brinks-Mat acquittal.

THE TRIAL

His first trial at the Old Bailey ended abruptly for him a number of weeks in, when two disparate items appeared in the media over Easter 2000 which had they been spotted by the jury could have prejudiced his trial. In his absence the 4 re-sale company defendants were all convicted.

Palmer and Ketley faced a re-trial which began in October 2000 and in May 2001 after 21 days of jury deliberation both were found guilty. Palmer was given an 8 year sentence. Ketley received a two year suspended sentence.

Palmer was later ordered to pay in excess of £35 million in confiscation, compensation and costs but in July 2002 that order was quashed by the Court of Appeal. That court also refused the prosecution leave to refer the matter to the House of Lords. It was little consolation when Lord Woolf CJ later ruled that Palmer and a number of other confiscation appeals had been "wrongly decided" by the court who had misunderstood and misapplied the law.

Interestingly the notorious 18th century highwayman Dick Turpin frequently used the alias of ... JOHN PALMER.



It is said that Palmer (left) had a sign on his desk which said "Remember the golden rule- he who has the gold makes the rules."

STOP THE PRESS

Saint Vincent and the Grenadines

One man was arrested following the arrival of a vessel from Trinidad and Tobago with approximately 3 kg of cocaine. After being interviewed on video by the police and making admissions he was charged with importation. The matter is due to proceed on indictment to the High Court.

USA/Jamaica

In view of our leader for this edition we report that the United States Immigration and Customs Enforcement (ICE) have charged four men with participating in a fraudulent lottery scheme being operated from Jamaica. According to US Attorney William J Hochul, Jr, the scheme targeted elderly citizens throughout the United States, including two seniors living in western New York. "Criminals who target elderly citizens in these schemes are heartless in their relentless pursuit of their victims' bank accounts," said James C. Spero, special agent in charge of HSI Buffalo, which handled the investigation leading to the arrests. "While it's great news that these men are now in custody, I strongly encourage anyone with elderly loved ones to familiarise themselves with these schemes and take steps to protect them from exploitation," he added.http://www.jamaicaobserver.com/news/US-authorities-arrest-four-in-Jamaican-lottery-scam_15144418#ixzz2hFVuRahE 27th September 2013
Jamaican Observer

Barbados

On 6th October two Bulgarian nationals were arrested (and subsequently charged with money laundering and going equipped) after being found in possession of approximately \$500,000 in cash, allegedly taken from ATM's across Barbados. Indictment will watch how this story develops with interest!

Saint Vincent and the Grenadines/USA

The United States Immigration and Customs Enforcement (ICE) confirmed that a Baltimore, Maryland man has been sentenced to 15-and-a-half-years in jail for conspiracy to import cocaine from Saint Vincent and the Grenadines and distribute it in Maryland. ICE said co-conspirator Ronnie George, 27, pleaded guilty to "participation in the drug conspiracy" and was sentenced to a year and a day in prison. ICE said, between April and December 2010, Solomon arranged with "co-conspirators in St Vincent" to send him packages containing up to a kilogram of cocaine, "hidden in the soles of flip-flops. According to court documents, more than 17 individuals sent a total of US\$117,270 from the United States to St Vincent between April and November 2010. ICE said on November 26, 2010,

CBP officers intercepted a "package of cocaine-filled flip flops intended for Solomon, but addressed to a friend". Read more: <http://www.caribbean360.com/news/804078.html#ixzz2hFXtMGc3>(1st July 2013 Caribbean 360)

Saint Lucia

A Jamaican national was charged with possession and possession with intent to supply after 70 packages were found in a Guest House. (Read more: <http://www.stlucianewsonline.com/jamaican-national-caught-with-cocaine/>)(Saint Lucia News Online 18th September)

Dominica

Following the recent POCA Amendment a Roseau Magistrate's court has granted an order for law enforcement officers to seize \$13, 760 Euros from two Venezuelan nationals. Jenny Del Valle Roderiguez and Edgar Fabien Ferrano Ocaris were arrested when the cash was found on their person by Customs officers at Melville Hall Airport on 4th September as they were leaving the island. They were arrested under the Proceeds of Crime Amendment Act 7 of 2013, which gives customs and police officers the authority to detain assets which they believe are from the proceeds of crime. This represents the first ever civil cash recovery under the Proceeds of Crime (Amendment) Act 7 of 2013 which was approved by the Parliament on May 17, 2013 which made Dominica the first in the Eastern Caribbean to pass a comprehensive civil asset recovery law. Officers of the Financial Intelligence Unit made an application for forfeiture at the magistrate's court on Wednesday and it was granted. Roderiguez and Ocaris now have thirty (30) days to appeal the magistrate's ruling. If they fail to appeal, the money will be transferred to the asset forfeiture fund. The Asset Forfeiture Fund is used to assist in law enforcement for rehabilitation purposes and to pay law enforcement agencies abroad of which Dominica is a member. Assets seized under the civil recovery legislation can also be used for government programs as well as social programs. In his July 29 visit to Dominica, US Ambassador to Barbados and the Eastern Caribbean, Larry Palmer commended Dominica for approving the bill and being an inspiration to other jurisdictions in the region on its strong stance on fighting crime. (Da Vibes 20th September 2013)

Dominica

One man was detained in connection with on-going investigations into the discovery of 39 kilograms of cocaine. The drugs were found in August in an abandoned concrete oven in Petite Savanne. The drugs have a street value of \$1.4 million. In July three men were arrested and appeared before a Roseau Magistrate for possession of and possession with intent to supply 30 kilograms of cocaine. (Dominica News Online 6th August 2013)

LEGAL NEWS FROM THE REGION

With the summer recess this has been a fairly quiet period in the Parliaments and Courts

St Kitts and Nevis

The Deoxyribonucleic Acid (DNA) Act

2013

This Act allows for the taking, storage and comparison of DNA from both intimate and non-intimate samples.

An “intimate sample” means:

1. A sample of venous blood;
2. A urine sample;
3. A sample of semen or other tissue fluid obtained by breaking the skin;
4. Pubic hair;
5. A dental impression; or
6. A swab taken from:
 - i. Any part of a person’s genitals; or
 - ii. A person’s bodily orifice other than the mouth;

A “non-intimate sample” will include:

1. A sample of hair other than pubic hair;
2. A sample taken from a finger nail or toe nail or from under a finger nail or toe nail;
3. A swab taken from any part of a person’s body other than a part from which a swab taken would be an intimate sample;
4. Saliva; or
5. Skin impression;

Section 4 allows for the taking of non-intimate samples without consent in the following circumstances:

1. He or she has been charged with an offence;
2. A stain derived from a crime scene exists and there are reasonable grounds for suspecting that that person was involved in the offence and for believing that forensic DNA analysis could confirm or disprove such suspicion;
3. He or she has had a non-intimate sample taken and that sample has proven to be either unsuitable or

insufficient for forensic DNA analysis; or

4. He or she has been convicted of an offence and is serving a term of imprisonment.

When a suspect refuses to give a sample a police officer can apply for a court order for a non-intimate sample pursuant to section 5(3) of the Act. Where there is a refusal section 5(5) of the Act allows the prosecution to use this as supporting evidence or to rebut any evidence given by the defence in the proceedings.

Where an application is made to the court the same considerations will be applied to those for the taking of an intimate sample when consent has been refused (see sections 18-22). This will be a balancing exercise for the court and the officer applying will need to have a thorough understanding of section 18. The officer will have to satisfy the court on the balance of probabilities (section 39 defines the burden of proof) that an order should be granted in the public interest due to the gravity of the offence (section 18(3)(a)) and the evidence is likely to be significant for the purposes of the investigation (section 18(3)(e)) and this is the best method to secure that evidence (section 18(3)(3)).

Form 6 will assist the officer when making the application but the relevant conditions in section 18 of the Act must be taken into consideration.

Officers will also have to be familiar with all the forms in the Act and the procedures required for ensuring that a person is notified (see Form 1 and section 6) and that consent is properly recorded when obtained (see Form 3 re non-intimate samples and sections 8 - 12 and Form 5 re intimate samples and sections 13-17) and how samples are taken and by whom (sections 24-28)

The Act also allows a second sample to be taken and the procedure in section 7 (also see Form 1) must be followed.

The Act also specifies that a police officer must deliver the DNA to a lab (see section 29(2))

Antigua and Barbuda

Electronic Crimes Act

This Act now makes it an offence to engage in electronic identity theft; conduct and participate in the distribution of child pornography; be involved or be responsible for spoof and spam emails and other electronic formats; engage in electronic fraud and forgery, and to violate another person’s privacy.

Electronic Evidence Act

This Act allows for the admissibility of evidence from computers and supplements many of the provisions already included in the Electronic Transactions Act and the Evidence (Special Provisions) Act.

PART II of the Act, Sections 3 - 15, provides for admissibility of electronic evidence in legal proceedings. Sections 3 and 4 provide for the amendment to authentication and best evidence rules and common law and statutory rules. Section 5 provides that nothing in the rules shall apply to deny the admissibility of an electronic record in evidence on the sole ground that it is an electronic record. Section 6 provides for the application of the best evidence rule. Section 7 establishes rules for the admissibility of electronic records that are subject to the hearsay rule. Electronic records, which do not contain human inputted information, are not subject to the hearsay rule. Electronic records may be admitted in evidence as business records and official government records. Section 9 deals with the authenticity of electronic evidence in that the person seeking to introduce an electronic record has the burden of proving its authenticity.

PART III of the Act, Sections 16 – 18 provides for the admissibility of electronic records from other countries, the recognition of foreign electronic documents and signatures and the provisions of the Act shall be interpreted and enforced in light of internationally accepted principles of technology neutrality of and of functional equivalence.

LEGAL NEWS FROM AROUND THE WORLD

Consensual Sex between Adolescents

Teddy Bear Clinic for Abused Children v Minister of Justice and Constitutional Development CCT 12/13 3rd October 2013

In a unanimous judgment by Khampepe J, the Constitutional Court found that sections 15 and 16 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act are unconstitutional in that they infringe the rights of adolescents (12- to 16-year olds) to dignity and privacy, and further in that they violate the best-interests principle contained in section 28(2) of the Constitution. Relying on expert evidence, the Court concluded that the impugned provisions criminalise what constitutes developmentally normative conduct for adolescents, and adversely affect the very children the Act seeks to protect. The effects of the impugned provisions were found not to be rationally related to the State's purpose of protecting children.

Conduct of Counsel

R v Farooqi & ors [2013] EWCA Crim 1649 – Depressing to have to start on this note but this is a very alarming case on the conduct by an advocate in a terrorism trial. Despite the conduct of counsel during the proceedings, the convictions were safe. See more at - <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Crim/2013/1649.html&query=R+and+v+and+Farooqi&method=boolean>

DNA

R v Ogden [2013] EWCA Crim 1294 – A scarf was found at a scene of house breaking and the inference was that it belonged to the burglar. Blood was found on the scarf and this matched the defendant.

The Court of Appeal found that the judge ought to have acceded to submissions at the close of the prosecution case that the case should be withdrawn from the jury. In the course of giving judgment, the Vice President,

Kennedy LJ, referred to certain observations of Phillips LJ (as he then was) in the case of **Doheny and Adams** [1997] 1 Cr.App.R (S) 269 where Phillips LJ had said this at page 372:

"The significance of the DNA evidence will depend critically upon what else is known about the suspect. If he has a convincing alibi at the other end of England at the time of the crime, it will appear highly improbable that he can have been responsible for the crime, despite his matching DNA profile. If, however, he was near the scene of the crime when it was committed, or has been identified as a suspect because of other evidence which suggests that he may have been responsible for the crime, the DNA evidence becomes very significant. The possibility that two of the only 26 men in the UK with a matching DNA should have been in the vicinity of the crime will seem almost incredible and a comparatively slight nexus between the defendant and the crime, independent of the DNA, is likely to suffice to present an overall picture to the jury that satisfies them of the defendant's guilt." Accordingly in an appropriate case the additional evidence need only be very limited, but there must be some independent evidence establishing a nexus between the defendant and the crime. The second authority relied upon was **R v Grant** [2008] EWCA Crim. 1890. This concerned DNA found on a Balaclava left at the scene of a robbery. Again, there was a probability of a one in a billion that it was DNA matching someone other than the appellant. In substance the argument advanced in that case was exactly the same as that advanced here. There was no other independent evidence which could be relied upon by the prosecution to establish guilt. The experts were unable to say how the DNA was deposited on the balaclava and as in this case it was possible that it had been taken to the scene by somebody else. The appeal against conviction was successful and it should be noted in that case in fact there had been a no comment interview. By contrast here the appellant

had given a full interview. - See more at: <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Crim/2013/1294.html&query=R+and+v+and+Ogden&method=boolean>

Computer Hacking

R v Martin [2013] EWCA 1420

With more cybercrime legislation being enacted we have provided this useful computer hacking sentencing appeal for guidance;

In rejecting an appeal against a sentence of 2 years imprisonment for computer misuse (hacking; denial of service attacks) the court emphasised the serious nature of the offence, the inevitability of a custodial sentence, and high custodial sentences were appropriate when the offence was carried out for gain.

R v Mangham [2012] EWCA Crim 973 was not to be considered a benchmark for sentencing such offences. - See more at: <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Crim/2013/1420.html&query=R+and+v+and+Martin&method=boolean>

Closing Speeches

R v Paul [2013] EWCA Crim 978.

In this case the prosecution made a closing speech, in a case of fraud, where the defendant was unrepresented. The court made this observation: 'There is a high responsibility on trial judges and trial counsel to guard against breaching this convention. Although we call it "a convention", it is in fact something more'. For more see -LINK (Full Judgment)

Confiscation

R v Morgan [2013] EWCA Crim 1420

A not altogether relevant conviction for waste disposal, but useful for determination of the benefit for confiscation having been correctly calculated by reference to the taxes and fees that the appellant had avoided by engaging in such illegal practices. So not altogether a waste of time! For more see LINK (Full Judgment)

**FACT: HUMAN
TRAFFICKING IS MODERN
SLAVERY.**

**FACT: IT IS
HAPPENING IN THE
CARIBBEAN.**

**FACT: WE NEED TO
STOP HUMAN
TRAFFICKING.**

This short film produced by the British High Commission and US Embassy discusses with people in Barbados what they know about human trafficking.

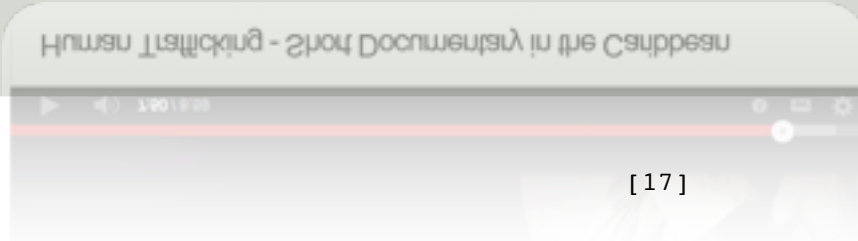
The film highlights that through awareness of what human trafficking is we can all come together to prevent it.

The film is now available on YouTube at: <http://youtu.be/Hy0uA-srXig>



The Film

Photo's from our short film where we were really grateful to members of the public speaking out against this modern slavery



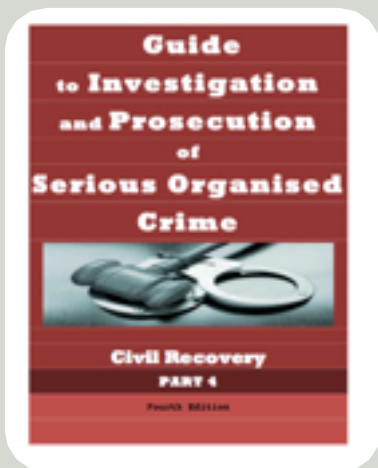
NCA LAUNCHED

"The new National Crime Agency will lead the fight by strengthening the UK's borders, tackling organised crime at home and building stronger relationships with forces at home and overseas."

Declared the UK Home Secretary as the NCA launched Monday 7th October. For a look at the new strategy see: <https://www.gov.uk/government/publications/serious-and-organised-crime-strategy>

NEW GUIDE

The new Fourth Edition of the Guide is now available upon request.



1. Forewords by the Attorney General in Dominica (Part 4) and DPP in Saint Vincent and the Grenadines (Part 1) on its application;
2. More than 50 new authorities in Parts 1, 2 and 3;
3. Analysis of the impact of R v Waya [2012] UKSC 51 on confiscation in the region in Part 3;
4. Reference to new laws on cybercrime, human trafficking, witness protection (Part 1) and proceeds of crime (Parts 2 and 3);
5. More information on investigative orders for financial investigators in Part 1;
6. More information on cash seizure legislation in Part 1;
7. Points to prove booklet for 25 common offences for Antigua and Barbuda, Grenada, Dominica, St Lucia, St Vincent and the Grenadines and St Kitts and Nevis in Annex Z3 - booklet also summarises for each of the aforementioned States police

- powers, identification issues and applicable defences;
8. New Manual of Guidance for file preparation for Antigua and Barbuda, Grenada, Dominica, St Lucia, St Vincent and the Grenadines and St Kitts and Nevis in Annex C; and
9. New Part 4 on Civil Recovery.



"Don't compromise yourself - you're all you have."

John Grisham

INDICTMENT

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We are always looking for interesting news to share and experiences to demonstrate good practice to others in the region.

If you have had any great results or would like the region to know about what you are doing in the efforts against organised crime then please contact me at:

dansuter1975@yahoo.com or <https://twitter.com/IndictmentEC>