

**What to Expect from Your Forensic
Accountant
Dealing with the Legal Side of
Forensic Accounting**

Presentation to FENG – September 2019

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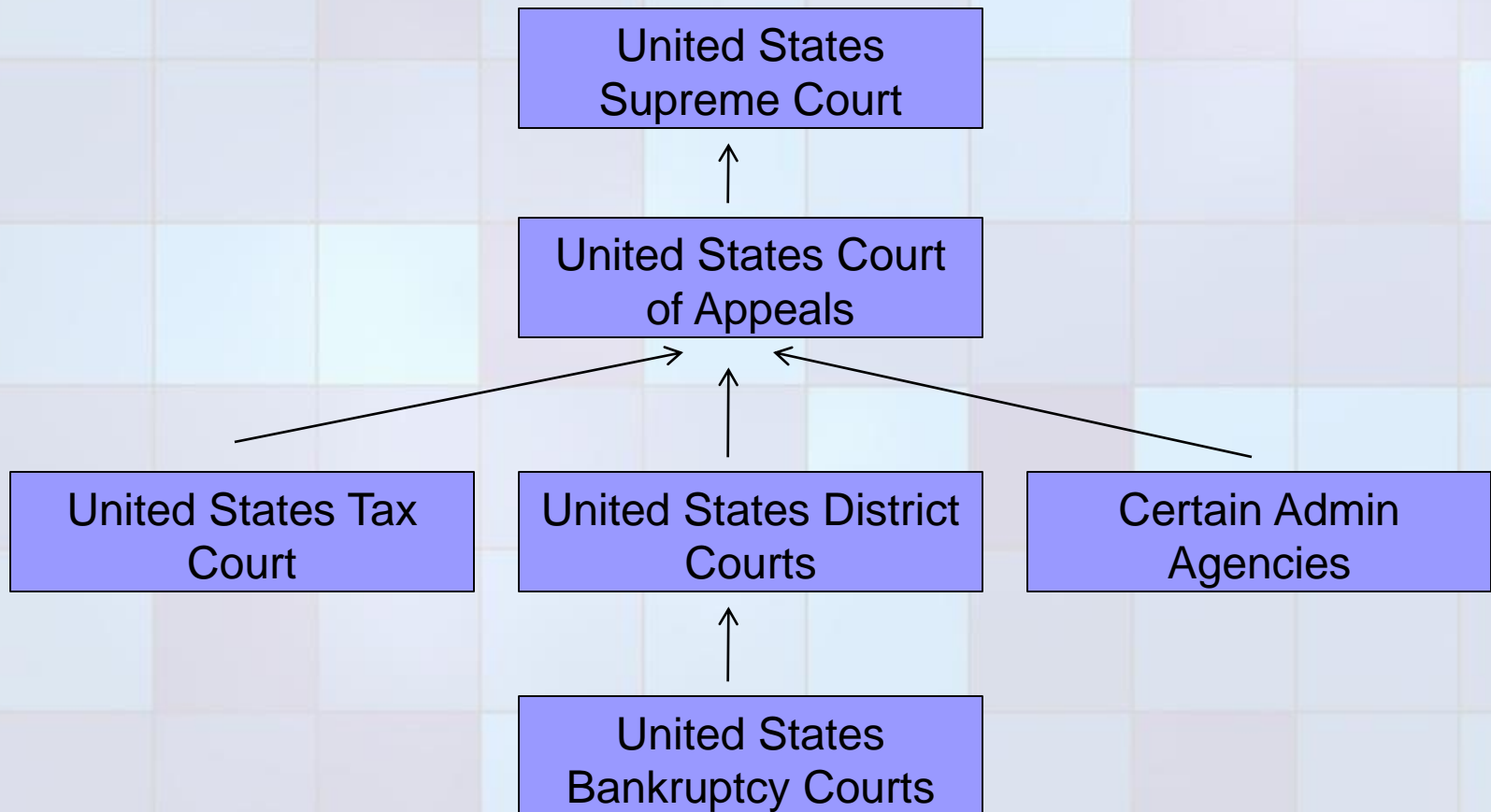
AIG Probe

“Cash/CDS spread differential,” “need to quantify” and “could be 10 points on \$75 billion.”

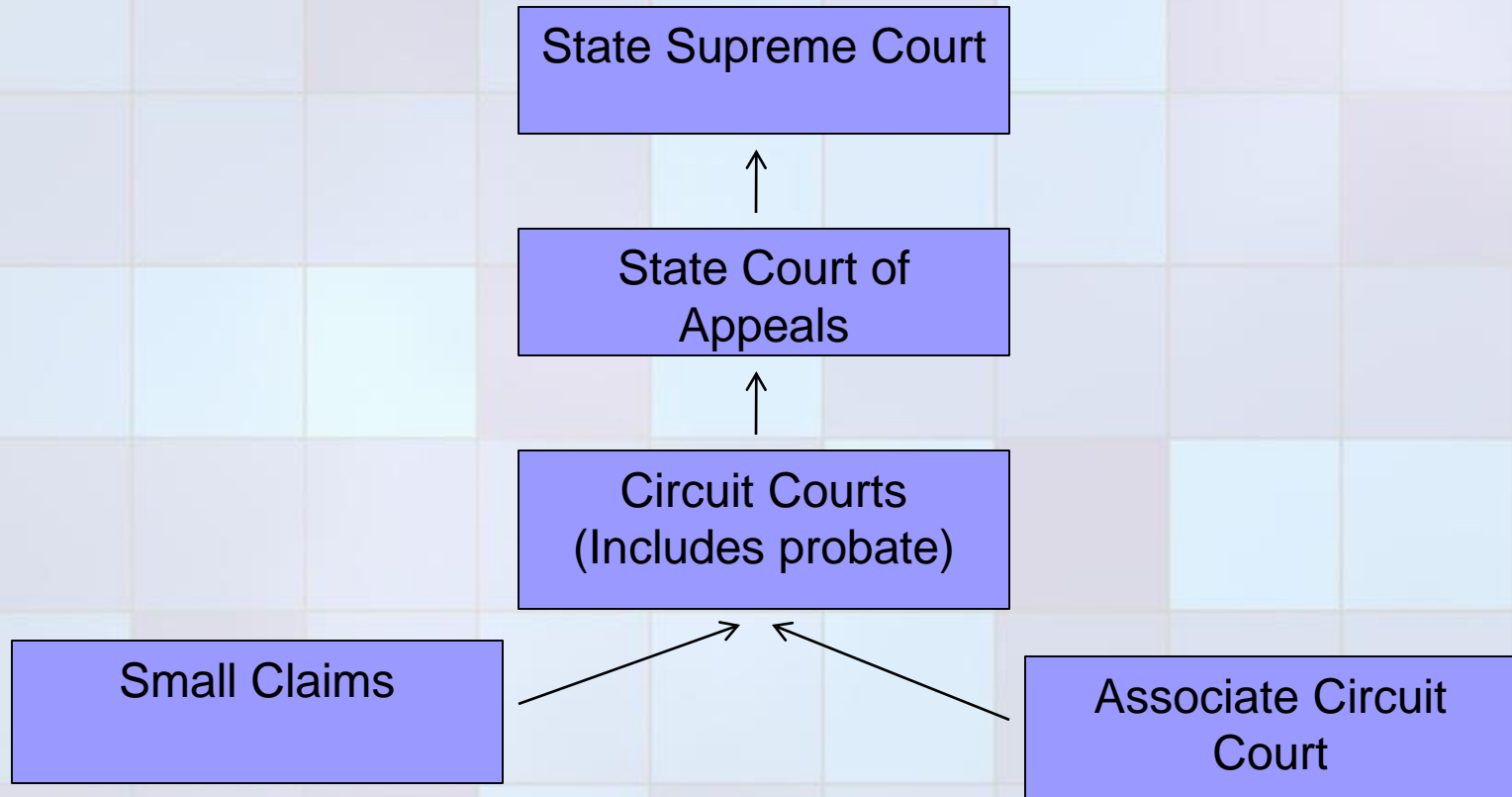
What is Forensic Accounting?

- **Forensic accounting is:**
- **The use and application of the field of accounting;**
- **In the investigation and establishment of;**
- **Facts or evidence in a court of law.**

Federal Court System



State Court System



Function of Attorney

Function of an Attorney?

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Function of Attorney

Advocate

Represent Client Zealously

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Expert Witness

What is the function of an expert?

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Independence

Independence

What Does that Mean?

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Independence

**If Expert is Independent then
The Expert Should be Open and Fair
to all Participants?**

Communication

Expert Must Know the “Audience”

**The Expert Must Be Able to
Communicate**

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Expert Credentials

Forensic Accountant Credentials:

CPA (Certified Public Accountant)

CFE (Certified Fraud Examiner)

CMA (Certified Management Accountant)

CFF (Certified in Financial Forensics)

ABV (Accredited in Business Valuation)

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Criminal vs. Civil

Criminal vs. Civil

Discovery Differences

Burden of Proof

Remedy

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Investigation in a Criminal Case

Some Tools of Investigation in a Criminal Case:

Search Warrants

Government Databases

Detaining the Suspect

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Investigation in a Civil Case

Before You File a Civil Lawsuit

How Do You Investigate

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Discovery in a Civil Case

Discovery in a Civil Case After the Filing of a Lawsuit

**Interrogatories
Request for Production
Request for Admissions
Depositions**

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Participation of Expert in Discovery

Participation of Expert in Discovery

Advice

Drafting of Discovery Requests

Appearance at Depositions

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Analytics

Use of Analytics in the Investigation

Tableau
Power BI
ACL
IDEA
R

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Subpoena or Search Warrant

What to Do If:

You are Served With a Subpoena

and/or

**You are Served With a Search
Warrant**

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Participation of Expert in Discovery

Attorney Client Privilege

Accountant Client Privilege

Work Product

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Expert Reports

Expert Reports

What would you expect?

No legal conclusions

Drafts

Laying a Foundation for Experts

Laying a foundation for experts

Federal Rules of Evidence (FRE):

Daubert v. Merrell Dow Pharmaceuticals

State Rules

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Rule 702 of the Federal Rules of Evidence

Rule 702 of the Federal Rules of Evidence

Qualify as an expert based on knowledge, skill, experience, training or education in order to testify in the form of an opinion

Rule 702 of the Federal Rules of Evidence

FRE 702 will allow expert opinion if:

Expert will help the trier of fact understand the evidence or to determine a fact;

Testimony is the product of reliable principles and methods;

Expert has reliably applied the principles and methods to the facts of the case.

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Expert Testimony in State Court

Each state has its own rules with respect to expert testimony

May be similar to FRE and Daubert

Expert Witness Foundation

Expert's testimony may be challenged:

**Pretrial Motion in Limine
or
During the trial**

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Daubert Tracker

Daubert Tracker

<https://www.dauberttracker.com/casereport.cfm>

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Daubert Tracker

The screenshot shows the Daubert Tracker website in a browser window. The URL is <https://www.dauberttracker.com/index.cfm?opt=123>. The page features a navigation menu with links for Home, Company, Product, Affiliates, and Contact. A sidebar on the left contains search filters for OPINION SEARCH and CASE SEARCH. The main content area includes a quote from the NATIONAL LAW JOURNAL, a list of key features, a call to action for a multimedia demonstration, and admission criteria. A right-hand sidebar provides product information, recent awards, and research statistics.

Welcome Richard!

dt DAUBERT TRACKER

"...a lawyer would be remiss not to check an expert through The Daubert Tracker."
NATIONAL LAW JOURNAL

Home Company Product Affiliates Contact

OPINION SEARCH

advanced search
submit

CASE SEARCH

Expert's Name
Last First Middle

Expert's Discipline
- Select From List -

Selected Disciplines
remove

Gatekeeping Authority
- Show All -

Federal Court
- Show All -

State Court
- Show All -

Area of Law
- Show All -

Party

Our critically acclaimed **DAUBERT TRACKER** now makes it possible to more accurately check the 'gatekeeping history' of experts before retention or deposition.

Key features:

- all federal and state identifiable gatekeeping standards tracked
- all reported and numerous unreported cases
- country's largest repository of 'Daubert' documents
- 220,624 case records
- 150,700 expert records
- updated daily
- powerful full text opinion search

DOES YOUR EXPERT HAVE A 'GATEKEEPING' HISTORY?
DOES YOUR OPPONENT'S?
YOU SHOULD KNOW.

CLICK HERE FOR A MULTIMEDIA DEMONSTRATION
demo

Product Information

You have an active Daubert subscription that will expire on 06/10/2020 @ 6:16 AM PT.

- Product Demonstration
- Admission Criteria
- Terms & Conditions
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Recent Awards

Daubert Tracker named one of the best legal web sites

The Daubert Tracker receives 5-star rating from American Lawyer Media

5
STAR RATING
ESSENTIAL TOOLS TO THE BEST LEGAL SITES ON THE WEB

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Research Statistics

Most Challenged Disciplines (experts)

Medicine	61,442
Engineering	24,075
Psychology	16,677
Police/ Law Enforcement	9,586
Law	8,416
Economics	6,955
Accident Recon./Invest.	5,732
Accounting	5,309

Admission Criteria

The following are the criteria considered for admission of cases into the Daubert Tracker database.

- The expert was deemed not qualified (unqualified).
- The expert's methods were questionable, suspicious, not valid (invalid), lacking or inadequate.
- The expert was not credible (incredible) or believable (unbelievable).
- The testimony was outside the scope of the expertise of the expert.
- The testimony was not relevant (irrelevant).

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Relevance

Relevant evidence is admissible

Evidence of insurance or remedial measures is not relevant and so is not admissible

Examination of Witnesses

Direct Examination

Cross-Examination

**Leading Questions not allowed except on
cross-examination or hostile witness**

Examination of Witnesses

Asked and answered objection

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Hearsay

Hearsay

Exceptions to hearsay rule

Business record exception

Authentication

Authenticate that item of evidence - item is what the proponent claims it is

Chain of custody

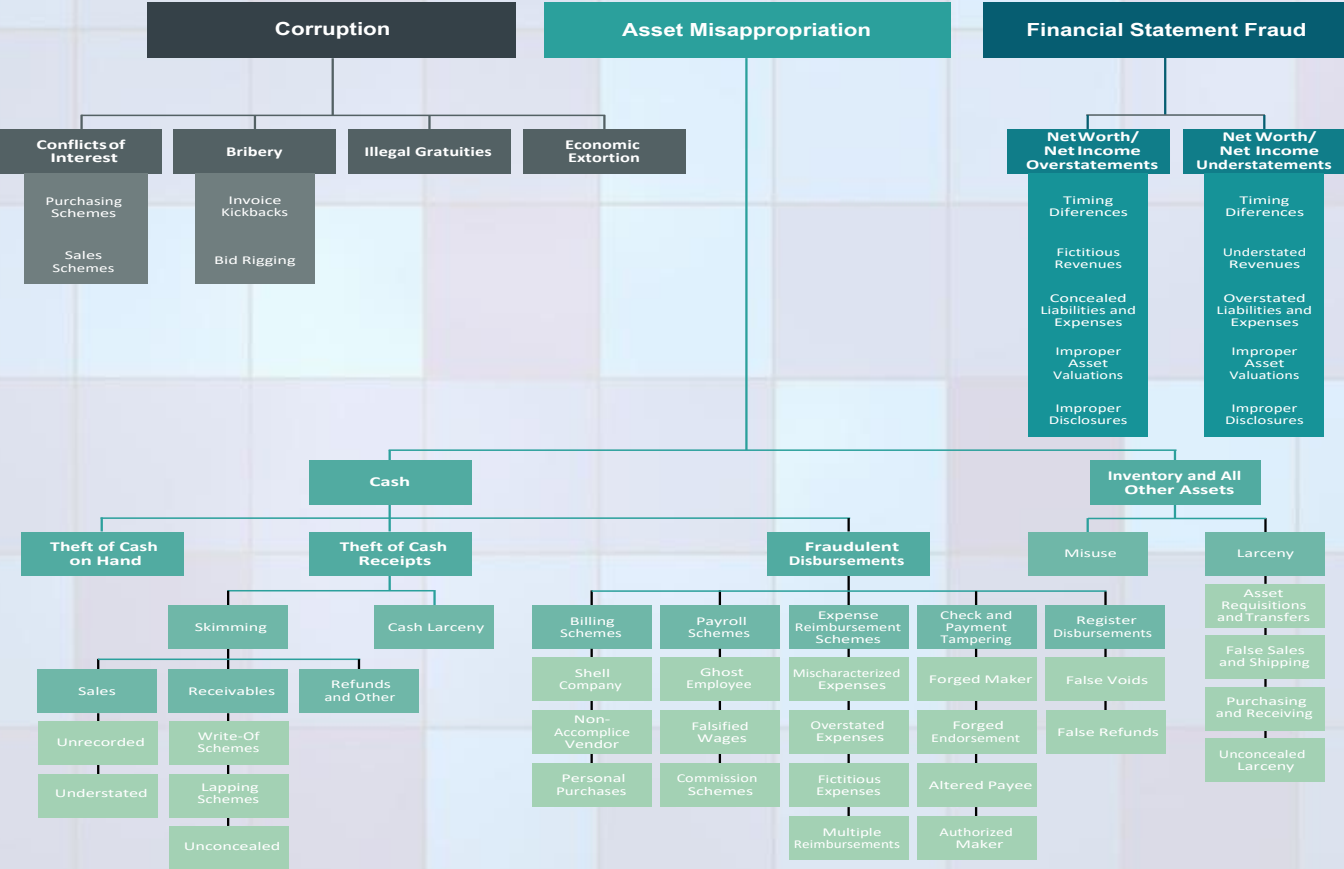
ACFE Report to the Nations

**The Following Slides are from the
Association of Certified Fraud Examiners
(ACFE) 2018 Report to the Nations**

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Fraud Tree

FIG. 4 Occupational Fraud and Abuse Classification System (the Fraud Tree)⁶



Tip Sources

Since tips are the most common detection method, it is important to understand where those tips come from. Figure 10 shows that slightly more than half of all tips (53%) were provided by employees of the victim organizations. Meanwhile, nearly one-third (32%) of the tips that led to fraud detection came from people outside the organization: customers, vendors, and competitors. Active cultivation of tips and complaints, such as the promotion of fraud hotlines, is often geared primarily toward employees,

but this data suggests organizations should also consider promoting reporting mechanisms to outside parties, especially customers and vendors. Additionally, 14% of tips came from an anonymous source, demonstrating that a significant portion of those who reported fraud did not want their identities known. Whistleblowers often have a fear of being identified or retaliated against, which is why it is important that they be able to make reports anonymously where such practice is legally permissible.

FIG. 9 How is occupational fraud initially detected?

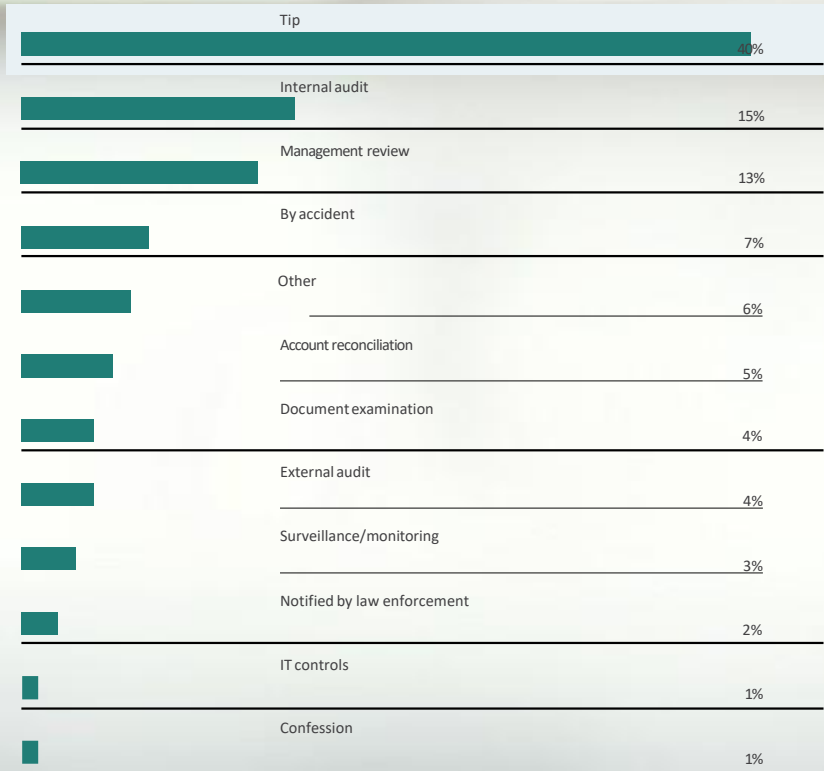


FIG. 10 Who reports occupational fraud?



Questions

Questions

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