



AMERICAN  
BANKRUPTCY  
INSTITUTE

# Alexander L. Paskay Memorial Bankruptcy Seminar

## **Bankruptcy Crimes**

### **Hon. Mindy A. Mora, Moderator**

U.S. Bankruptcy Court (S.D. Fla.) | West Palm Beach

### **Heidi A. Feinman**

U.S. Trustee Program | Miami

### **Robert C. Furr**

Furr & Cohen, P.A. | Boca Raton, Fla.

### **Michelle McDaniel**

Federal Bureau of Investigation | West Palm Beach, Fla.

### **W. Stephen Muldrow**

U.S. Attorney (D. P.R.) | San Juan

# BANKRUPTCY CRIMES: BEHIND THE WHITE COLLAR

*ABI Paskay Memorial Bankruptcy Seminar  
Tampa, FL • February 15, 2024*

## PANELISTS

**Heidi A.  
Feinman**

Assistant United  
States Trustee  
Miami, Florida

**Robert C. Furr**

Furr & Cohen, P.A.  
Boca Raton, Florida

**Hon. Mindy A.  
Mora**

United States  
Bankruptcy Court  
(S.D. Fla.)  
West Palm Beach,  
Florida

**Michelle  
McDaniel**

Federal Bureau of  
Investigation  
West Palm Beach,  
Florida

**W. Stephen  
Muldrow**

United States  
Attorney (D. P.R.)  
San Juan, Puerto Rico



## OVERVIEW

### The Relevant Statutes

- Title 18, United States Code, focusing on §§ 152, 156, 157, 158, 1032, 1519, 3057 and 3284
- Other federal and state statutes implicated in the prosecution of bankruptcy crimes

## OVERVIEW

### The Players

- Who is involved in initiating an investigation and prosecution?
- The roles of the trustee, the Bankruptcy Court, and the U.S. Trustee
- The role of the attorney counseling clients who have engaged in illegal actions



## OVERVIEW

Crimes that are commonly related to bankruptcy cases:

- Mail fraud
- Wire fraud
- Bank fraud
- Securities fraud
- PPP and EIDL fraud
- Money laundering
- Perjury
- Bribery



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## OVERVIEW

### The Process

- The investigation of bankruptcy crimes
- How does a criminal referral occur?
- Practical limits on the prosecution of bankruptcy crimes

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# TITLE 18

Crimes and Criminal Procedure

## BANKRUPTCY-RELATED STATUTES IN TITLE 18

- § 151. Definition
- § 152. Concealment of assets; false oaths and claims; bribery
- § 153. Embezzlement against estate
- § 154. Adverse interest and conduct of officers
- § 155. Fee agreements in cases under title 11 and receiverships

## BANKRUPTCY RELATED STATUTES IN TITLE 18

- § 156. Knowing disregard of bankruptcy law or rule
- § 157. Bankruptcy fraud
- § 158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules
- § 1032. Concealment of assets from conservator, receiver, or liquidating agent of financial institution

## BANKRUPTCY RELATED STATUTES IN TITLE 18

- § 1519. Destruction, alternation, or falsification of records in Federal investigations and bankruptcy
- § 3057. Bankruptcy investigations
- § 3282. Offenses not capital
- § 3284. Concealment of bankrupt's assets

## OTHER RELEVANT CRIMINAL STATUTES

### Schemes to Defraud

- 18 USC § 1341. Mail Fraud
- 18 USC § 1343. Wire Fraud
- 18 USC § 1344. Bank Fraud

### Tax Fraud

- 26 USC §§ 7202, 7203, 7206, 7212. Tax Fraud
- 26 USC §§ 7201-03. Tax Fraud

### Identity Theft Schemes

- 42 USC § 408(a)(7)(B)
- 18 USC § 1028(a)(7)
- 18 USC § 1028A

## OTHER RELEVANT CRIMINAL STATUTES

18 USC § 371. Conspiracy to commit offense or to defraud United States

15 USC § 645. False representation to the Small Business Administration

18 USC § 287. Theft: False claim to a department/agency of the U.S.

18 USC § 641. Theft of government property

18 USC § 666. Bribery concerning programs receiving federal funds

18 USC § 1001. False statement

18 USC § 1014. False statement on a loan application

18 USC § 1031. Major fraud against the U.S.

18 USC § 1040. Major disaster fraud

# HYPO 1



Peter and Peggy Seek Redemption in Chapter 13



## CHARACTERS



Peter Debtor



Peggy Co-Debtor



Chapter 13 Trustee



Lawyer

Hypo 1



Peter Debtor, facing a history of job terminations, finds hope in a bookkeeping position at a retail craft store. Peter's new gig, though, becomes the cover for an escalating embezzlement scheme involving his wife, Peggy.

As their lavish spending on stolen funds catches up with them, they turn to Chapter 13 bankruptcy, only to discover that their deceptive practices unravel during a contentious meeting of creditors, exposing hidden assets and false testimonies.

The story unveils a tale of financial schemes, luxury living, and the unraveling consequences of seeking redemption through bankruptcy.



Hypo 1

## Peter and Peggy Seek Redemption in Chapter 13



### Job Hopping to Cash Skimming

Peter Debtor's struggles with employment lead to a deceitful embezzlement scheme as a bookkeeper at a retail craft store.



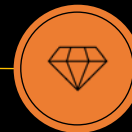
### Embezzlement Escapades

Peter and Peggy's embezzled funds fund a lavish lifestyle, including credit card splurges and fake identities for online bank accounts, leading to financial ruin.



### Living Large on Stolen Funds

Panicking over the discovery of the embezzlement, Peter lies and abruptly quits, but their spending habits persist, forcing them to sell jewelry to cover bills.



### The Illusion of Redemption

In the face of an ongoing investigation, Peter and Peggy's journey takes a deceptive turn as they explore Chapter 13 bankruptcy, concealing critical details from their lawyer and filing misleading schedules.



### Deception Unveiled

The Chapter 13 case unravels as the trustee uncovers hidden accounts, cash deposits, and false tax returns, exposing Peter and Peggy's intricate web of deceit during a contentious 341 meeting.

Hypo 1

## HYPO 2

“THE BEST” LLC Dazzles and Deceives in  
Chapter 11

## CHARACTERS



**Dominic Dazzle**  
Owner, DD Holdings, LLC



**Molly Motherly**  
Bookkeeper



**Ms. Mason**  
U.S. Trustee Trial Attorney



**AUSA**

Hypo 2



Dominic Dazzle's once-thriving dinner clubs crumble under the weight of COVID, causing him to shift to the fruit and vegetable business. The cash-based nature of the fruit and vegetable business emboldens Dominic to pocket large sums of cash for himself and pushes him into dubious ventures, including fabricating financials for "The BEST" fruit and vegetable entities.

Dominic fraudulently secures substantial government loans, siphoning funds for personal indulgences and leading to a Chapter 11 filing. His downfall is set into motion when Molly, a vengeful former employee, leaks incriminating financial records and triggers a relentless investigation into Dominic's intricate web of deceit.

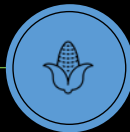
Hypo 2

## "THE BEST" LLC Dazzles and Deceives in Chapter 11



### Dazzling Restaurants to Desperate Schemes

Dominic Dazzle, once the flamboyant owner of opulent dinner clubs, faces financial ruin as COVID empties his establishments.



### From Clubs to Cons: The BEST Fruits and Vegetables

To salvage his lavish lifestyle, Dominic shifts to the fruit and vegetable business and starts skimming cash for personal use.



### PPP Fraud and Chapter 11 Charades

Fabricating financial statements, Dominic secures substantial bank loans and government funding, diverting funds for personal indulgences and causing "The BEST" entities to spiral into financial ruin. Dominic files for Chapter 11 with deceptive schedules and hidden assets.



### Molly's Revenge

A vengeful Molly exposes Dominic's financial misdeeds, leaking incriminating records to the United States Trustee and revealing a web of deception and undisclosed wealth.



### Dominic's Downfall

Ms. Mason unearths the truth through subpoenas, online investigations, and bank records, leading to a potential criminal referral for bankruptcy fraud against Dominic.

Hypo 2



**QUESTIONS?**

# BANKRUPTCY CRIMES

A Presentation at the

ABI PASKAY MEMORIAL  
BANKRUPTCY SEMINAR

Tampa, Florida

February 15, 2024

**Speaker List:**

Heidi A. Feinman, Assistant United States Trustee, Miami, Florida



Robert C. Furr, Furr & Cohen, P.A., Boca Raton, Florida



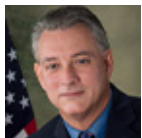
Michelle McDaniel, Federal Bureau of Investigation, West Palm Beach, Florida



Hon. Mindy A. Mora, U.S. Bankruptcy Court (S.D. Fla.), West Palm Beach, Florida



W. Stephen Muldrow, U.S. Attorney (D. P.R.), San Juan, Puerto Rico



Topics for Discussion:

1. What federal law is implicated in pursuing bankruptcy and other financial crimes? A discussion of Title 18, United States Code, focusing on §§ 152, 156, 157, 158, 1032, 1519, 3057 and 3284.
2. How does a criminal referral occur? Who are the players involved in initiating an investigation and prosecution? The roles of the trustee, the Bankruptcy Court, and the U.S. Trustee.
3. The FBI's involvement in an investigation of a bankruptcy crime.
4. Other federal and state statutes that can be implicated in prosecution of a bankruptcy crime.
5. Crimes that are commonly related to bankruptcy cases, such as mail fraud, wire fraud, bank fraud, securities fraud, PPP and EIDL fraud, money laundering, perjury, and bribery.
6. Role of the attorney in counseling clients who have engaged in illegal actions, evaluated when the attorney has knowledge of the illegal actions, and when the attorney lacks such knowledge.
7. Practical limits on prosecution of bankruptcy crimes.
8. Use of the U.S. Trustee as an expert witness.

## TITLE 18—CRIMES AND CRIMINAL PROCEDURE BANKRUPTCY RELATED STATUTES

§ 151 • Definition

§ 152 • Concealment of assets; false oaths and claims; bribery

§ 153 • Embezzlement against estate

§ 154 • Adverse interest and conduct of officers

§ 155 • Fee agreements in cases under title 11 and receiverships

§ 156 • Knowing disregard of bankruptcy law or rule

§ 157 • Bankruptcy fraud

§ 158 • Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules

§ 1032 • Concealment of assets from conservator, receiver, or liquidating agent of financial institution

§ 1519 • Destruction, alternation, or falsification of records in Federal investigations and bankruptcy

§ 3057 • Bankruptcy investigations

§ 3282 • Offenses not capital

§ 3284 • Concealment of bankrupt's assets

### § 151. Definition

As used in this chapter, the term "**debtor**" means a debtor concerning whom a petition has been filed under title 11.

(June 25, 1948, ch. 645, 62 Stat. 689; Pub. L. 95-598, title III, § 314(b)(1), Nov. 6, 1978, 92 Stat. 2676; Pub. L. 103-322, title XXXIII, § 330008(5), Sept. 13, 1994, 108 Stat. 2143.)

### § 152. Concealment of assets; false oaths and claims; bribery

A person who—

(1) knowingly and fraudulently conceals from a [custodian](#), trustee, marshal, or other officer of the court charged with the control or custody of property, or, in connection with a case under title 11, from creditors or the [United States trustee](#), any property belonging to the estate of a [debtor](#);

(2) knowingly and fraudulently makes a false oath or account in or in relation to any case under title 11;

(3) knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, in or in relation to any case under title 11;

(4) knowingly and fraudulently presents any false claim for proof against the estate of a [debtor](#), or uses any such claim in any case under title 11, in a personal capacity or as or through an agent, proxy, or attorney;



(5) knowingly and fraudulently receives any material amount of property from a debtor after the filing of a case under title 11, with intent to defeat the provisions of title 11;

(6) knowingly and fraudulently gives, offers, receives, or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof for acting or forbearing to act in any case under title 11;

(7) in a personal capacity or as an agent or officer of any person or corporation, in contemplation of a case under title 11 by or against the person or any other person or corporation, or with intent to defeat the provisions of title 11, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation;

(8) after the filing of a case under title 11 or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor; or

(9) after the filing of a case under title 11, knowingly and fraudulently withholds from a custodian, trustee, marshal, or other officer of the court or a United States Trustee entitled to its possession, any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor,

shall be fined under this title, imprisoned not more than 5 years, or both.

(June 25, 1948, ch. 645, 62 Stat. 689; Pub. L. 86-519, § 2, June 12, 1960, 74 Stat. 217; Pub.

L. 86-701, Sept. 2, 1960, 74 Stat. 753; Pub. L. 94-550, § 4, Oct. 18, 1976, 90 Stat. 2535; Pub.

L. 95-598, title III, § 314(a), (c), Nov. 6, 1978, 92 Stat. 2676, 2677; Pub. L. 100-690, title

VII, § 7017, Nov. 18, 1988, 102 Stat. 4395; Pub. L. 103-322, title XXXIII, § 330016(1)(K),

Sept. 13, 1994, 108 Stat. 2147; Pub. L. 103-394, title III, § 312(a)(1)(A), Oct. 22, 1994, 108

Stat. 4138; Pub. L. 104-294, title VI, § 601(a)(1), Oct. 11, 1996, 110 Stat. 3497.)

### § 153. Embezzlement against estate

(a) **OFFENSE.** —A person described in subsection (b) who knowingly and fraudulently appropriates to the person's own use, embezzles, spends, or transfers any property or secretes or destroys any document belonging to the estate of a debtor shall be fined under this title, imprisoned not more than 5 years, or both.

(b) **PERSON TO WHOM SECTION APPLIES.** —A person described in this subsection is one who has access to property or documents belonging to an estate by virtue of the person's participation in the administration of the estate as a trustee, custodian, marshal, attorney, or other officer of the court or as an agent, employee, or other person engaged by such an officer to perform a service with respect to the estate.

(June 25, 1948, ch. 645, 62 Stat. 690; Pub. L. 95-598, title III, § 314(a)(1), (d)(1), (2), Nov. 6, 1978, 92 Stat. 2676, 2677; Pub. L. 103-322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 103-394, title III, § 312(a)(1)(A), Oct. 22, 1994, 108 Stat. 4139; Pub. L. 104-294, title VI, § 601(a)(1), Oct. 11, 1996, 110 Stat. 3497.)

### § 154. Adverse interest and conduct of officers

A person who, being a **custodian**, trustee, marshal, or other officer of the court—  
**(1)** knowingly purchases, directly or indirectly, any property of the estate of which the person is such an officer in a case under title 11;  
**(2)** knowingly refuses to permit a reasonable opportunity for the inspection by parties in interest of the documents and accounts relating to the affairs of estates in the person's charge by parties when directed by the court to do so; or  
**(3)** knowingly refuses to permit a reasonable opportunity for the inspection by the **United States Trustee** of the documents and accounts relating to the affairs of an estate in the person's charge, shall be fined under this title and shall forfeit the person's office, which shall thereupon become vacant.

(June 25, 1948, ch. 645, 62 Stat. 690; Pub. L. 95-598, title III, § 314(a)(2), (e)(1), (2), Nov. 6, 1978, 92 Stat. 2676, 2677; Pub. L. 103-322, title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 103-394, title III, § 312(a)(1)(A), Oct. 22, 1994, 108 Stat. 4139; Pub. L. 104-294, title VI, § 601(a)(1), Oct. 11, 1996, 110 Stat. 3497.)

### § 155. Fee agreements in cases under title 11 and receiverships

Whoever, being a party in interest, whether as a **debtor**, creditor, receiver, trustee or representative of any of them, or attorney for any such party in interest, in any receivership or case under title 11 in any United States court or under its supervision, knowingly and fraudulently enters into any agreement, express or implied, with another such party in interest or attorney for another such party in interest, for the purpose of fixing the fees or other compensation to be paid to any party in interest or to any attorney for any party in interest for services rendered in connection therewith, from the assets of the estate, shall be fined under this title or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 690; May 24, 1949, ch. 139, § 4, 63 Stat. 90; Pub. L. 95-598, title III, § 314(f)(1), (2), Nov. 6, 1978, 92 Stat. 2677; Pub. L. 103-322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

### § 156. Knowing disregard of bankruptcy law or rule

**(a) DEFINITIONS.**—In this section—

**(1)** the term "**bankruptcy petition preparer**" means a person, other than the debtor's attorney or an employee of such an attorney, who prepares for compensation a document for filing; and

(2) the term "**document for filing**" means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under title 11.

(b) **OFFENSE.**—If a bankruptcy case or related proceeding is dismissed because of a knowing attempt by a bankruptcy petition preparer in any manner to disregard the requirements of title 11, United States Code, or the Federal Rules of Bankruptcy Procedure, the bankruptcy petition preparer shall be fined under this title, imprisoned not more than 1 year, or both.

(Added Pub. L. 103-394, title III, § 312(a)(1)(B), Oct. 22, 1994, 108 Stat. 4140; Pub. L. 109-

8, Title XII, § 1220, April 20, 2005, 119 Stat. 195.)

## § 157. Bankruptcy fraud

A person who, having devised or intending to devise a scheme or artifice to defraud and for the purpose of executing or concealing such a scheme or artifice or attempting to do so—

(1) files a petition under title 11, including a fraudulent involuntary bankruptcy petition under section 303 of such title;

(2) files a document in a proceeding under title 11, including a fraudulent involuntary bankruptcy petition under section 303 of such title; or

(3) makes a false or fraudulent representation, claim, or promise concerning or in relation to a proceeding under title 11, including a fraudulent involuntary bankruptcy petition under section 303 of such title, at any time before or after the filing of the petition, or in relation to a proceeding falsely asserted to be pending under such title,

shall be fined under this title, imprisoned not more than 5 years, or both.

(Added Pub. L. 103-394, title III, § 312(a)(1)(B), Oct. 22, 1994, 108 Stat. 4140; Pub. L. 109-

8, Title III, § 332(c), April 20, 2005, 119 Stat. 103.)

## § 158. Designation of United States attorneys and agents of the Federal

**Bureau of Investigation to address abusive reaffirmations of debt and**

**materially fraudulent statements in bankruptcy schedules**

(a) **IN GENERAL.**—The Attorney General of the United States shall designate the individuals described in subsection (b) to have primary responsibility in carrying out enforcement activities in addressing violations of section 152 or 157 relating to abusive reaffirmations of debt. In addition to addressing the violations referred to in the preceding sentence, the individuals described under subsection (b) shall address violations of section 152 or 157 relating to materially fraudulent statements in bankruptcy schedules that are intentionally false or intentionally misleading.

(b) **UNITED STATES ATTORNEYS AND AGENTS OF THE FEDERAL BUREAU OF**

**INVESTIGATION.**—The individuals referred to in subsection (a) are—

- (1) the United States attorney for each judicial district of the United States; and
- (2) an agent of the Federal Bureau of Investigation for each field office of the Federal Bureau of Investigation.

**(c) BANKRUPTCY INVESTIGATIONS.**—Each United States attorney designated under this section shall, in addition to any other responsibilities, have primary responsibility for carrying out the duties of a United States attorney under section 3057.

**(d) BANKRUPTCY PROCEDURES.**—The bankruptcy courts shall establish procedures for referring any case that may contain a materially fraudulent statement in a bankruptcy schedule to the individuals designated under this section.

(Added Pub. L. 109-8, Title II, Subtitle A, § 203(b)(1), April 20, 2005, 119 Stat. 49.)

## **§1032. Concealment of assets from conservator, receiver, or liquidating agent of financial institution**

Whoever-

(1) knowingly conceals or endeavors to conceal an asset or property from the Federal Deposit Insurance Corporation, acting as conservator or receiver or in the Corporation's corporate capacity with respect to any asset acquired or liability assumed by the Corporation under section 11, 12, or 13,<sup>1</sup> of the Federal Deposit Insurance Act, the Resolution Trust Corporation, any conservator appointed by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, or the National Credit Union Administration Board, acting as conservator or liquidating agent;

(2) corruptly impedes or endeavors to impede the functions of such Corporation, Board, or conservator; or

(3) corruptly places or endeavors to place an asset or property beyond the reach of such Corporation, Board, or conservator, shall be fined under this title or imprisoned not more than 5 years, or both.

(Added [Pub. L. 101-647, title XXV, §2501\(a\), Nov. 29, 1990, 104 Stat. 4859.](#))

## **§ 1519 - Destruction, alteration, or falsification of records in Federal investigations and bankruptcy**

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

(Added Pub. L. 107-204, title VIII, § 802(a), July 30, 2002, 116 Stat. 800.)

### **§ 3057. Bankruptcy investigations**

(a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or other laws of the United States relating to **insolvent** debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, shall report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed. Where one of such officers has made such report, the others need not do so.

(b) The United States attorney thereupon shall inquire into the facts and report thereon to the judge, and if it appears probable that any such offense has been committed, shall without delay, present the matter to the grand jury, unless upon inquiry and examination he decides that the ends of public justice do not require investigation or prosecution, in which case he shall report the facts to the Attorney General for his direction.

(June 25, 1948, ch. 645, 62 Stat. 818; May 24, 1949, ch. 139, § 48, 63 Stat. 96; Pub. L. 95-598, title III, § 314(i), Nov. 6, 1978, 92 Stat. 2677.)

### **§ 3282 - Offenses not capital**

(a) In General.—Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.

### **§ 3284. Concealment of bankrupt's assets**

The concealment of assets of a **debtor** in a case under title 11 shall be deemed to be a continuing offense until the **debtor** shall have been finally discharged or a discharge denied, and the period of limitations shall not begin to run until such final discharge or denial of discharge.

(June 25, 1948, ch. 645, 62 Stat. 828; Pub. L. 95-598, title III, § 314(k), Nov. 6, 1978, 92 Stat. 2678.)

## Other Statutes to Consider:

### SCHEMES TO DEFRAUD

- a. Mail Fraud - 18 USC § 1341
- b. Wire Fraud - 18 USC § 1343
- c. Bank Fraud - 18 USC § 1344
- d. Money Laundering - 18 USC § 1956
- e. Identity Theft - 18 USC §1028(a)(7); 1028 A; 42 USC § 408(a)(7)(B)

### TAX FRAUD / TAX PREPARERS

- a. Tax Fraud - 26 U.S.C. §§ 7202, 7203, 7206, 7212: A willful failure to collect or pay over taxes, failure to file returns, or the filing of a false return in an effort to conceal the scheme.
- b. Tax Fraud - 26 U.S.C. §§ 7201-03: Failure to pay withholding taxes, other taxes, or to file returns. IRS should be notified so they may investigate.

### IDENTITY THEFT SCHEMES

- a. 42 U.S.C. § 408(a)(7)(B) involves the misuse of a Social Security Number. The false representation of a social security number with the intent to deceive for the purpose of obtaining anything of value **or for any purpose** is chargeable under § 408(a)(7)(B).
- b. 18 U.S.C. § 1028(a)(7) makes it a crime to knowingly transfer, possess, or use, without lawful authority, a means of identification of another person with the intent to commit, a federal crime or any state or local felony.
- c. 18 U.S.C. §1028A (Aggravated Identity Theft) prohibits identity theft in connection with certain felony offenses enumerated in the statute, including mail and wire fraud, immigration and passport fraud, and various theft offenses.

### 18 U.S. Code § 371 - Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

(June 25, 1948, ch. 645, 62 Stat. 701; Pub. L. 103–322, title XXXIII, § 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

1. False representation to the Small Business Administration – 15 USC Section 645
2. Theft False claim to a department/agency of the U.S. – 18 USC Section 287
3. Theft of government property – 18 USC Section 641
4. Bribery concerning programs receiving federal funds – 18 USC Section 666
5. False statement – 18 USC Section 1001
6. False statement on a loan application – 18 USC Section 1014
7. Major fraud against the U.S. – 18 USC Section 1031
8. Major disaster fraud – 18 USC Section 1040 (Note: not applicable to CARES Act)

**[Above Materials are Courtesy of the Office of United States Trustee]**



## Other Relevant Criminal Statutes:

- Mail Fraud, Wire Fraud, Bank Fraud, and Securities Fraud (18 U.S.C. §§ 1341, 1343, 1344, and 1348):

- o Mail Fraud and Wire Fraud statutes share identical language in relevant part (but for use of “mails” or use of “interstate wires” in committing the fraud), and courts apply the same analysis to each statute. Mail and wire fraud require (1) a scheme or artifice to defraud, (2) use of the mails or interstate wires to execute the scheme, and (3) a specific intent to defraud.

- ♣ Congress has not defined either a “scheme” or “artifice,” and the “expression has taken on its present meaning from 111 years of case law.” *United States v. Lemire*, 720 F.2d 1327, 1335 (D.C. Cir. 1983). “The words ‘to defraud’ in the mail fraud statute have the common understanding of wrongdoing one in his property rights by dishonest methods or schemes, and usually signify the deprivation of something of value by trick, chicane, or overreaching.” *Carpenter v. United States*, 484 U.S. 19, 27 (1987) (internal quotation marks omitted). A “scheme or artifice to defraud” also includes any action to “obtain money or property by means of false or fraudulent pretenses, representations, or promises,” which includes false promises and misrepresentations as to the future. 18 U.S.C. § 1341 & § 1343. See also *McNally v. United States*, 483 U.S. 350, 358 (1987) (superseded on other grounds by the enactment of 18 U.S.C. § 1346). “The concept of ‘fraud’ includes the act of embezzlement, which is the fraudulent appropriation to one’s own use of the money or goods entrusted to one’s own care by another.” *Carpenter*, 484 U.S. at 27. 18 U.S.C. § 1346 has defined “scheme or artifice to defraud” to include (but not be limited to) a scheme or artifice to “deprive another of the intangible right of honest services.” This form of mail or wire fraud is typically described as “honest services fraud.” See *United States v. Flemming*, 22 F. App’x 117, 122 (3d Cir. 2007). “Materiality of falsehood” is a sub-element of federal mail and wire fraud statutes, although Congress did not use that language in the statutes. *Neder v. United States*, 527 U.S. 1, 25 (1999).

Mail fraud simply applies to anyone who “for the purpose of executing [a] scheme or artifice [to defraud] . . . places in any post office . . . or causes to be delivered by mail . . . any . . . matter.” 18 U.S.C. § 1341. Similarly, wire fraud applies to anyone who “transmits or causes to be transmitted by wire, radio, or television communication in interstate or foreign commerce any writings . . . for the purpose of executing [a] . . . scheme or artifice [to defraud].” 18 U.S.C. § 1343. Perpetrating a fraud over the internet is an example of wire fraud. See *U.S. v. Nickens*, 38 F. App’x 721 (3d Cir. 2002).



♣ The specific intent to defraud requires an intent to (1) deceive, and (2) cause some harm to result from the deceit. “A defendant acts with the intent to deceive when he acts knowingly with the specific intent to deceive for the purpose of causing pecuniary loss to another or bringing about some financial gain to himself.” *United States v. Evans*, 892 F.3d 692, 712 (5th Cir. 2018)

o Bank fraud (18 U.S.C. §1344) requires proof of the following elements: (1) Knowingly execute or attempt to execute a scheme or artifice to defraud; and (2) an intention to defraud a financial institution that is insured by the FDIC or chartered by the United States.

♣ As stated above, Congress has not defined either a “scheme” or “artifice,” and the “expression has taken on its present meaning from 111 years of case law.” *United States v. Lemire*, 720 F.2d 1327, 1335 (D.C. Cir. 1983). Case law describing a “scheme or artifice to defraud” in the context of mail or wire fraud is equally applicable to such a scheme or artifice in the context of bank fraud. ♣ An intent to defraud a financial institution consists of an intent obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution insured by the FDIC by means of fraudulent pretenses, representations, or promises. A defendant’s scheme to obtain money from an account belonging to a customer of the bank was a scheme to deprive the bank of its own property, since the bank had property rights in the funds in the customer’s account. *Shaw v. U.S.*, 580 U.S. 63 (2016). ♣ The bank fraud statute requires “neither a showing of ultimate financial loss nor a showing of intent to cause financial loss.” *Id.*

• Securities Fraud (18 U.S.C. § 1348) Securities fraud occurs when an individual knowingly devises (or willfully participates in) a scheme or artifice to defraud with fraudulent intent, and the scheme or artifice to defraud was developed in connection with a security of a certain issuer or with certain filing requirements.

♣ Trading on insider knowledge, where the trades were based on material nonpublic information, and where the defendant had signed a nondisclosure agreement, was a violation of 18 U.S.C. § 1348, as the defendant had misappropriated confidential information for securities trading purposes. *United States v. Chow*, 993 F.3d 125 (2d Cir. 2021).

♣ “A fiduciary who pretends loyalty to the principal while secretly converting the principal’s information for personal gain dupes or AMERICAN BANKRUPTCY INSTITUTE 601 5 29571255.2 defrauds the principal.” *United States v. O’Hagan*, 521 U.S. 642, 65354 (1997) (cleaned up).

**[Above Materials Are Reprinted From “Ethics: Crime in Bankruptcy presented at the Mid-Atlantic Bankruptcy Workshop in 2022]**

**Peter and Peggy Seek Redemption in Chapter 13:**

Peter Debtor and his wife, Peggy, had always seemed to have bad luck. Peter tried many jobs over the years, but always found himself terminated by an unhappy employer. Although he had good skills in accounting and bookkeeping, he just could not make a job work out.

Peter saw a job offer online for a bookkeeper at a large retail craft store. He interviewed and hit it off with the owner, who said Peter reminded him of his son. Peter was offered the job and started work. It was obvious to Peter that the store did not have any control systems for cash management or money management. Peter figured out a simple way to skim money from the books on a weekly basis. Peggy became part of the embezzlement as the monies flowed through her.

During the next couple of years, Peter Debtor and his wife, Peggy, began spending lavishly on clothes, cars, vacations, jewelry and the like. None of the embezzled funds were reported to the IRS or other taxing authorities. Peter and Peggy accumulated expensive jewelry and other personal items. They acquired credit cards and ran up the balances with their newfound credit cards. They opened accounts in online banks under fake identities.

The owner's accountant retired and a new one was hired. The new accountant began looking at the books of the store and observed that it was not as profitable as it should be. He began digging into operations and realized that a major embezzlement had been going on for years. He met with Peter for help in trying to find out what was happening at the store.

Peter panicked. He lied and told his boss that he had an opportunity for a higher paying job across the country, and abruptly quit.

Peter and Peggy moved, but their spending habits did not change. They continued to charge large amounts on their cards and live it up. At some point, they began to sell their jewelry to pay bills.

They heard from friends at the store that there was an ongoing investigation. They saw an ad on TV claiming that "Chapter 13 can save you from any debt!" They made an appointment with a bankruptcy lawyer to discuss filing a chapter 13 bankruptcy case. They were pretty open with the lawyer about the embezzlement. The attorney advised that Peter and Peggy could get a discharge of the credit card debt with no problem and, if they just listed the store as a creditor without saying what the debt was for, any claim by the store would be discharged.

They told the lawyer about a couple of the jewelry sales and he advised them that those sales were not important in a chapter 13 case. When the lawyer asked about bank accounts, he told them that he had to report all of the accounts they described

to him. That left Peter and Peggy believing that they didn't have to tell their lawyer about their online bank accounts, since they were maintained under fake identities, or the rest of the jewelry sales they undertook for cash.

Peter and Peggy filed a chapter 13 bankruptcy case. Their schedules did not report any online bank accounts, any jewelry, or any jewelry sales. Their schedules I and J reported modest income over the past three years and expenses which would result in a very small dividend to creditors in a 13 plan.

The chapter 13 trustee's staff noted large cash deposits in the reported accounts and saw transfers into the primary account from an internet bank. At the meeting of creditors, the trustee aggressively inquired about the cash and transfers. Peter feigned ignorance. The lawyer objected to the line of questioning and directed Peter and Peggy not to answer the questions. The trustee quizzed Peter and Peggy about the tax returns provided. Peter testified that the tax returns were true and accurate and were actual copies of the ones sent to the IRS. However, in fact, the tax returns were materially false and inaccurate. The trustee also asked about the accuracy of the schedules with a series of questions and both debtors testified that the schedules were truthful and accurate, listed all of their assets and liabilities and did not need to be amended.

**“The BEST” LLC Dazzles and Deceives in Chapter 11:**

Dominic Dazzle, a flamboyant restaurant owner with a penchant for sequined suits and even flashier promises, operated DD Holdings, LLC, which in turn owned popular dinner clubs. Shortly after the start of COVID in 2020, however, Dominic found his company drowning in debt. None of his patrons wanted to go to dinner, dancing and clubbing wearing a mask. Dominic’s string of opulent supper clubs, once magnets for celebrities and high rollers, now glittered only with the ghosts of unpaid bills.

To overcome the lack of dinner club clientele, Dominic began looking for another business. He had seen fruit and vegetable brokers making a lot of money selling to restaurants and knew that much of the business was conducted in cash. He decided to try that business. He opened “The BEST Fruits, Vegetables and Supplies” and started to sell to his friends in the food industry. Soon, once again, Dominic began to see streams of cash being generated by his vegetable and fruit and supplies sales which he liberally began utilizing for his personal lifestyle. Skimming was easy as many of the sales were in cash.

Molly Motherly, Dominic’s bookkeeper, loved the excitement of dinner club operations. Molly was less enchanted by the reality of managing the books of a fruit and vegetable broker. She and Dominic had words, and soon, Molly and Dominic parted ways.

In order to expand his business Dominic decided to apply for bank financing at String Ponies Bank, FSB. He knew that the new current ‘operations’ of “The BEST” would not inspire confidence in his ability to repay a bank loan, so he created financial statements for the “The **BEST Fruit**”, and “**The BEST Vegetables**” and “The BEST Supplies” – each operated as separate LLC’s – that he thought would be more appealing to a prospective lender. Those financial statements significantly overstated his bank balances and results of operations in the three years prior to seeking the loan.

Based on Dominic’s submissions and his dazzling personality, String Ponies Bank provided a term loan of \$100,000 and a revolving line of credit for \$175,000 to each of “The BEST” entities which each signed the loan documents as co-borrowers, and Dominic signed a personal guaranty.

Given Dominic’s penchant for the high-life, and his ability to skim funds off the top from his businesses’ cash collections, “The BEST” entities were struggling again within a few short months. When the US Government announced the PPP and EIDL loan programs, it was a dream come true. Dominic again used his creative powers to fabricate operating statements and bank records to dupe the government

into sending” The BEST” entities a PPP loan of \$1.2 million and an EIDL of \$750,000.

Dominic continued his practice of freely accessing the funding received by “The BEST” rather than covering the business expenses and reducing the unpaid debts of the businesses. Instead, Dominic bought diamond rings for his long-time girlfriend, and purchased an opulent Bentley and ocean-front condominium in South Florida, both of which he titled in the name of a Delaware LLC he formed. As a result, Dominic depleted the government financing in short order. Dominic decided he had no choice but to put “The BEST” entities into chapter 11.

However, Dominic's path to financial redemption was paved with deceit. His meticulously crafted schedules of assets and liabilities were a masterpiece of misdirection. Lavish bank accounts were reduced to meager balances, his history of skimming off the top of the companies’ cash receipts was hidden, and the true results of operations were significantly downplayed. His personal wealth, centered on the Bentley and the condo, together with his girlfriend’s many diamonds, remained hidden in the shadows.

To ensure that the United States Trustee would have to accept Dominic’s fairytale about his business operations, Dominic constructed a fairytale about a fire in his central offices that destroyed all of the computers used in the business, none of which had been backed up to any external cloud file storage.

Dominic's carefully constructed house of cards began to crumble when Molly, the disgruntled former employee, seeking revenge for unfair dismissal, leaked incriminating financial records to the United States Trustee. The documents revealed numerous cash receipts and distributions that painted a starkly different picture from Dominic's fabricated schedules.

The United States Trustee Trial Attorney, a steely-eyed woman named Ms. Mason, dug deeper. Review of online information, conversations with suspicious patrons, and news of a state police raid on one of Dominic's locations confirmed that the sales of fruits, vegetables and provisions had been vastly understated.

Armed with this knowledge, Ms. Mason began to subpoena banks identified by the former bookkeeper, in order to get a fuller grasp of the cash collections of the businesses, and the distributions that were taken by Dominic. Armed with several years of bank records, Ms. Mason requested a meeting with the Assistant United States Attorney in her district to discuss a criminal referral for bankruptcy fraud.

# Faculty

**Heidi A. Feinman** is the Assistant U.S. Trustee for the Miami office. She began as a trial attorney with the UST Program in the Atlanta office in 1992 and moved to the Miami office in 1998. Although she has overseen cases in all divisions in the Southern District of Florida and appeared before most of the judges, Ms. Feinman regularly appeared in the West Palm Beach division. She also was the Bankruptcy Fraud Criminal Referral coordinator for the Miami office and is the liaison with the U.S. Attorney's Office and other federal agencies. Ms. Feinman is a member of the SDFL Transnational Elder Fraud Strike Force and the Securities and Investment Task Force. In 2002, she was appointed a Special Assistant U.S. Attorney in Miami, assisting in the prosecution and conviction of Thomas Warmus for bankruptcy fraud. She is a member of several government fraud working groups and has lectured on bankruptcy fraud to the U.S. Attorney Program, the court, the bankruptcy bar and other agencies. Ms. Feinman serves on several U.S. Trustee Program working groups. Locally, she has been a member of the Lawyers Advisory Committee since its inception in 2018 and previously served on the Local Rules Committee for the U.S. Bankruptcy Court for the Southern District of Florida. Ms. Feinman is a DOJ ambassador to several Florida law schools and a DOJ mentor. She has spoken at numerous seminars over the years both within the Department of Justice and to various bankruptcy bars and associations. She is a member of both the Florida Bar and the State Bar of Georgia. Ms. Feinman received her B.S. in accounting in 1986 from the University of Florida and her J.D. from the University of Florida Levin College of Law in 1990.

**Robert C. Furr** is a partner with Furr & Cohen, P.A. in Boca Raton, Fla., and serves as a panel trustee for the U.S. Department of Justice in the Southern District of Florida. He is regularly appointed as a chapter 11 trustee and has been designated as the chapter 12 trustee in the Southern District. Mr. Furr has represented numerous businesses in chapter 7 liquidations and in chapter 11 reorganizations, as well as individuals in complex chapter 7 and chapter 11 proceedings. He lectures frequently on issues of bankruptcy, creditors' rights and remedies before national organizations. Mr. Furr served as editor of *NABTalk* from 2000-05 and sat on NABT's board of directors from 2000-11, serving as president during the 2008-09 term. He is currently president of the American Board of Certification. Mr. Furr is a contributor to the *ABI Journal* and is admitted to practice law in Georgia and Florida and in all federal courts in Florida and the Eleventh Circuit Court of Appeals. In 1983, Mr. Furr became a Board Certified Civil Trial Lawyer by the Florida Bar, and in 1994 he received an AV rating by Martindale-Hubbell. He is listed in *The Best Lawyers in America* and in *Florida Super Lawyers* and is a Fellow in the American College of Bankruptcy. Mr. Furr received his J.D. from Emory University in 1975.

**Michelle McDaniel** is an FBI Special Agent for the Miami division, located in the West Palm Beach Resident Agency. She investigates complex white-collar and financial crime matters in the Southern District of Florida.

**Hon. Mindy A. Mora** is U.S. Bankruptcy Judge for the Southern District of Florida in West Palm Beach, appointed on April 6, 2018. She practiced in the areas of bankruptcy, commercial finance, and securitized real estate finance and litigation from 1982-2018 prior to her appointment to the bench by the Eleventh Circuit Court of Appeals. Judge Mora is a Fellow of both the American College of

Bankruptcy and the American College of Commercial Finance Attorneys. She previously chaired the Business Law Section of The Florida Bar, which represents the interests of more than 5,000 business lawyers within the State of Florida. Throughout much of her legal practice, she has been active in the development of Florida's commercial laws, most recently as a member of The Florida Bar Business Law Section task force that prepared draft Florida legislation adopting a modified version of the Uniform Commercial Real Estate Receivership Act. Judge Mora is a member of the National Conference of Bankruptcy Judges and has served on its Technology, New Member, Education and Executive Director Search Committees. She also participates as a member of the Business Law Sections of both the American Bar Association and The Florida Bar, the Association of Commercial Finance Attorneys, the Bankruptcy Bar Association of South Florida, and the International Women's Insolvency and Restructuring Confederation. Presently, Judge Mora is actively involved in the Business Law Section of The Florida Bar by serving as the judicial co-chair of both the Bankruptcy/UCC Committee and the Long-Range Planning Committee. From 2018-20, she served as the judicial chair of the Bankruptcy Court's Local Rules Committee, which promulgated amendments to the local rules that were adopted by the bench of the U.S. Bankruptcy Court for the Southern District of Florida. Since 2021, Judge Mora has served as the judicial chair of the Bankruptcy Court's *Pro Bono* Committee, which promotes *pro bono* service by lawyers appearing in the court and facilitates ongoing communication with various legal aid organizations throughout South Florida. She regularly lectures on commercial law and bankruptcy topics to lawyers and other judges throughout the U.S. Judge Mora received her B.B.A. from George Washington University in 1979 and her J.D. from New York University School of Law in 1982.

**W. Stephen Muldrow** is the U.S. Attorney for the District of Puerto Rico in San Juan, sworn in on Oct. 4, 2019, following his confirmation by the U.S. Senate on Sept. 26, 2019. He previously served as an Assistant U.S. Attorney in the Puerto Rico U.S. Attorney's Office from 1995-2001, serving as Lead Organized Crime Drug Task Force (OCDETF) Attorney and Coordinator for the High Intensity Drug Trafficking Area (HIDTA) Task Force. From 2001-19, Mr. Muldrow served as an Assistant U.S. Attorney in the Middle District of Florida, including serving as the Acting U.S. Attorney (March 2017-January 2018), the First Assistant U.S. Attorney, senior litigation counsel in both the Civil and Criminal Divisions, chief of the Major Crimes Section, and as an OCDETF prosecutor. From 1989-95, Mr. Muldrow worked as a trial attorney and senior trial attorney in the Tax Division, Civil Trial Section, Northern Region in Washington, D.C., having joined the Department of Justice through the Honors Program in 1989. From 1988-89, he worked as a law clerk for the U.S. Marshals Service, Office of General Counsel. Mr. Muldrow received his B.A. in economics with a minor in Spanish from Bucknell University, his J.D. *cum laude* from The American University Washington College of Law, and his M.A. in law and international affairs from The American University School of International Service.