Anthony Niescier

Employer: Consumer Financial Protection Bureau

Stonier Graduate School of Banking, Capstone Project

Submission date: March 1, 2024

Title of project: Analysis of Factors Relevant to Criminal Charges of Obstruction of Financial Institution Examinations Pursuant to 18 USC 1517

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EXECUTIVE SUMMARY

The crime of obstruction of a financial institution examination is rarely charged and has never been charged in connection with an examination by the Consumer Financial Protection Bureau (CFPB). Nonetheless, its prosecution remains an important tool for promoting the effectiveness of financial institution supervision. While the factors leading to conviction for obstruction of an examination of a financial institution are overall similar to the factors for other categories of obstruction of justice, there are a few key distinguishing characteristics that are apparent from analysis of publicly available records of criminal charges and convictions.

First, the obstructed government entity was always an agency that is a member of the Federal Financial Institutions Examination Council (FFIEC) with supervisory authority over the financial institution, even though the statute does not state this requirement. Second, the person charged was an individual employee or contractor for a bank or credit union. Although the plain language of the statute does not exclude non-employees, legal entities, or employees of other types of financial entities, and under appropriate facts such persons or entities might be subject to the statute as well, nearly all of the cases identified dealt with a direct employee of a bank or credit union. In one case, external auditors for a bank were charged and convicted. Third, the act of obstruction could consist of either affirmative acts or passive behaviors. Affirmative acts include providing false or misleading information in response to a request for information related to a supervisory examination, causing the false or misleading information to be provided by others, or destroying records sought by examiners. Passive behaviors include concealment or failing to provide information to examiners necessary to comply with known supervisory reporting requirements. Fourth, in each case, the person charged acted intentionally and with a

motive of preventing examiners from discovering information that the person did not wish the examiners to know. Often, but not always, there was an underlying motive of financial gain.

Most cases under 18 USC 1517 involved smaller institutions, though larger banks have been subject as well. This may be because other avenues for prosecution of large entities with greater penalties exist. Several of the cases were newsworthy and involved coverups of substantial fraud.

It remains uncertain whether the CFPB would likely be able to successfully refer a case for prosecution under 18 USC 1517 given an appropriate set of facts that conformed to the factors identified above. The CFPB appears to be the only member of the FFIEC that has not issued a public indictment for obstruction of one of its examinations. All other members – the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC) – have each had at least one conviction related to their respective examinations under the statute since its creation in 1990. The CFPB, like the other FFIEC members, employs examiners who engage in financial institution supervisory examinations. Such examinations could potentially be viable objects for obstruction pursuant to 18 USC 1517. On the other hand, the CFPB, uniquely among FFIEC regulators, does not conduct safety and soundness examinations, only consumer protection examinations, which could be relevant if a court considers the historical context in which the statute was written, when there was no agency dedicated solely to consumer financial protection. It is impossible to predict which factors a court would emphasize regarding the applicability of the statute. Nonetheless, given the deep functional similarity of the CFPB to the FRB, FDIC, OCC, and NCUA, which have all conducted examinations subject to obstruction, and in the context of the

plain language of the statute, which comports with the fact that the CFPB unambiguously conducts examinations of financial institutions and does not distinguish sub-types of examinations, a reasonable court would almost certainly have to agree that an examination performed by the CFPB could be subject to obstruction under 18 USC 1517.

STATEMENT OF PROBLEM/HYPOTHESIS[1]

Most financial entities in the U.S. are subject to a form of regulatory oversight called supervision. Regulated entities must provide extensive access to their books and records to government supervisors called examiners, who conduct examinations to understand regulated entities' operations and risk with the purpose of detecting and preventing violations of law. The entities may also be obligated to report certain information to examiners. When examiners identify failures in an entity's risk management, they require the entity to take corrective action.

Entities have incentives to cooperate with examiners. Government regulation of financial entities typically follows an escalating path. Cooperative entities that demonstrate capacity and willingness to address deficiencies may be subject only to nonpublic supervisory corrective action such as matters requiring attention (MRAs), which may be paired with downgrading of supervisory ratings. When entities engage in particularly egregious conduct or MRAs are not effective, they may be subject to nonpublic enforcement actions such as consent orders or supervisory memoranda of understanding, or finally, they may be subject to public enforcement actions that include a hearing before a judge. The costs of these increasingly severe actions can be high. They may include fines and penalties such as prohibitions on merger or asset caps, reputation loss with accompanying loss of customer base or stock price, and private or

[1] See sources in bibliography: 1, 7, 8, 12, 16, 34.

stockholder litigation. Avoiding those outcomes incentivizes entities to cooperate with examinations and avoid escalation.

In addition to the incentive of avoiding the scrutiny and expense of a public enforcement action, financial entities and their employees have another compelling reason to cooperate with examiners: obstructing supervisory examinations is a crime under 18 USC 1517. This paper seeks to identify the characteristics and applicability of this rarely invoked form of obstruction of justice.

The savings and loan crisis of the 1980s led to a perception among lawmakers that there was a critical need for increased oversight and penalties for financial institutions that acted fraudulently or concealed information from federal regulators. Additionally, the 80s' war on drugs, with its focus on combating money laundering and the surreptitious use of the financial system for illegal purposes, enhanced this perception.

In 1990, President George H. W. Bush signed into law the U.S. Crime Control Act, sponsored by then-Senator Joseph Biden and Senator Strom Thurmond, which included a provision called the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act. The Act created three new criminal offenses: concealment of assets from conservators, receivers, or liquidators, codified at 18 USC 1034; organizing or managing a continuing financial crimes enterprise, or the financial "kingpin" statute, codified at 18 USC 225; and obstructing the examination of a financial institution, 18 USC 1517. The last of these is the focus of this paper.

18 USC 1517, entitled "Obstructing examination of financial institution," states, "Whoever corruptly obstructs or attempts to obstruct any examination of a financial institution by an agency of the United States with jurisdiction to conduct an examination of such financial institution shall be fined under this title, imprisoned not more than 5 years, or both."

Compared to the concealment and kingpin provisions of its originating Act, the obstruction of financial institution examination statute has received relatively little scholarly analysis or discussion. However, a small number of published court opinions and publicly filed indictments, plea agreements, and sentencing memoranda do provide detailed description of the factors that prosecutors and regulators consider most when evaluating charges under 18 USC 1517.

In its over thirty years of existence, only a handful of convictions have likely occurred pursuant to 18 USC 1517. Establishing an exact number poses a challenge, described in more detail under the Research Methodology section.

Regardless of its frequency of use, 18 USC 1517 remains a viable and important tool to prosecute misconduct related to financial institutions' activities. As recently as 2023, it was the sole statute invoked to secure the only conviction related to the Wells Fargo Bank fake account creation scandal.

This paper investigates whether, for the occasional prosecutions of 18 USC 1517 that occur, the crime would be typically (but not necessarily exclusively) prosecuted in a manner similar to other obstruction statutes. It further hypothesizes that analyzing and comparing convictions will demonstrate common patterns in the conduct constituting obstruction of a financial institution. Finally, it considers whether, under appropriate facts, the Consumer Financial Protection Bureau (CFPB) could likely make a referral based on this statute to the Department of Justice (DOJ) that would result in a successful conviction, even though the CFPB has not done this so far since its creation in 2010, and therefore such a referral has not been tested in a court.

RESEARCH METHODOLOGY

To understand the background and nature of 18 USC 1517, the author first consulted general reference materials, particularly on LexisNexis. The author then held a discussion with an attorney in the legal department of the author's agency, although no confidential supervisory information or other nonpublic information was discussed; rather, the discussion involved the history of the statute generally and results of initial research. The author did not look up information on any internal agency systems or rely on personal experience. The author relied entirely on publicly available documents. The author consulted publicly available information related to each of the FFIEC agencies, including the FRB, FDIC, NCUA, OCC, and CFPB for references to 18 USC 1517 specifically. For additional background, the author searched HEIN Online, a widely used database including many scholarly journals, but very few results returned and none with any in-depth discussion of 18 USC 1517.

To ascertain the frequency of charges brought for obstruction of a financial institution examination, it was necessary to find a database of prosecutions, convictions, or sentencing that provided statistics on the number of such instances that included charges pursuant to 18 USC 1517.

Records of sentencing following convictions are prepared by the United States Sentencing Commission, which develops an Annual Report and Sourcebook of Federal Sentencing Statistics. However, the Report does not provide much granularity, grouping all types of obstruction sentences under the category of "Administration of Justice" which includes several other types of charges besides obstruction.

Syracuse's Transaction Records Access Clearinghouse for the Federal Government (TRACfed) provides somewhat better granularity. Among many other services to track

government activities and spending, it prepares a detailed online database for every month and year going back to 1986 that includes a breakdown of all prosecutions and convictions in the U.S., sortable by lead charge.

In order to identify the specific factors that influence prosecution and conviction of 18 USC 1517, it was necessary to find specific cases with publicly available information discussing those factors. The existence of such cases was identified first using LexisNexis. The author performed searches to find references to any cases and scholarly works referencing 18 USC 1517 by looking up the citation on LexisNexis and running a search for related documents. Only a small number of case results – 33 – returned. Most of these could be filtered out because they mentioned the statute without a relevant charge attached or were multiple decisions from the same cases. Nonetheless, four of the cases, specifically Aranjo, Church, Lebedev, and Gross, provided useful judicial opinions. The author also used general internet search engines to search for other cases that were not picked up by LexisNexis, which allowed for the expansion of the list of cases.

Although 18 USC 1517 is sometimes mentioned as part of a group of other obstruction of justice statutes in judicial opinions or law journals, the author could identify no comprehensive scholarly analyses specific to this species of obstruction that described the unique factors that are likely to result in an indictment or conviction. The author did identify, using LexisNexis, several authoritative law journal articles including one published recently by the American Criminal Law Review in order to learn more about general principles of obstruction of justice.

Although this methodology provided a number of cases to analyze, besides the limited judicial opinions that were available on LexisNexis, more context was needed to understand them. The author used general internet search engines to identify public news sources discussing

the cases. The author obtained additional documents where available using the PACER (Public Access to Court Electronic Records) website, which provided relevant indictments, sentencing memoranda, docket history, and other court documents.

FINDINGS AND CONCLUSIONS

How common are prosecutions under 18 USC 1517?[2]

According to the most recent Annual Report and Sourcebook of Federal Sentencing Statistics from the United States Sentencing Commission, out of 64,142 individual sentencings for a felony or Class A misdemeanor in 2022, 652 of these fell under the primary category of "Administration of Justice." This category includes all categories of obstruction of justice, not only 18 USC 1517, as well as other types of crimes including perjury, bribery, failure to appear, and others. A more specific breakdown is not readily available from a government source. Additionally, these numbers are based on the lead charge, so if obstruction was not the lead charge, the sentencing might be sorted under another category.

For the last fiscal year available, 2023, Syracuse TRACfed reported neither any prosecutions nor any convictions with 18 USC 1517 as lead charge. Indeed, attempting to look back to 1986 for trends in this statute, selections jump from 18 USC 1516, obstruction of a federal audit, to 18 USC 1519, destruction, alteration, or falsification of records in a federal investigation. (18 USC 1518, obstruction of criminal health care investigations, was skipped as well.) At the very least, having no data at all on this topic indicates extreme rarity.

This lack of records appears to support the hypothesis that prosecutions for obstruction of a financial institution examination are very rare; however, determining exactly how rare with an

[2] See sources in bibliography: 20, 35.

exact level of precision would require additional research, such as making FOIA requests for records, which is beyond the scope of this paper.

What are the typical considerations for prosecuting obstruction of justice cases? [3]

This section will discuss some of the common considerations for obstruction of justice statutes in general. Black's Law Dictionary defines obstruction of justice as "interference with the orderly administration of law and justice." The U.S. Congressional Research Service defines it more narrowly as "the frustration of governmental purposes by violence, corruption, destruction of evidence, or deceit." There are numerous statutes under federal law criminalizing specific types of obstruction, each proscribing a certain type of conduct. 18 USC Ch. 73 enumerates 22 types of obstruction, including of financial institution examinations. Each of these has its own considerations.

Nonetheless, with the minimal caselaw and analysis available for 18 USC 1517, it could be beneficial to consider briefly other types of similar obstruction. 18 USC 1505, which has an extensive judicial history, is probably the closest in nature. It imposes penalties on anyone who "corruptly…obstructs…the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States[.]" Whether a financial institution examination would qualify as such a proceeding is beyond the scope of this paper, but both statutes have in common the general concept of obstructing the lawful activities of a government agency.

Courts have held that a conviction under 18 USC 1505 requires three elements: an agency proceeding, the defendant's awareness of the agency proceeding, and the defendant's intentional endeavor to corruptly obstruct the proceeding. The endeavor does not have to be successful.

[3] See sources in bibliography: 13, 21, 29.

Congress specifically defined "corruptly" as it pertains to 18 USC 1505 in 18 USC 1515(b): "As used in section 1505, the term 'corruptly' means acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information."

What do the cases have to say about specific factors relevant to obstruction of a financial institution examination?

This section will analyze specific cases where the author was able to locate a publicly available indictment, sentencing memorandum, or judicial opinion that includes substantive analysis of charges pursuant to 18 USC 1517. This section will discuss the facts of each case and attempt to identify the factors that supported each conviction.

The first three cases – HOPE FCU, Voyager Bank, and Wells Fargo Bank – had substantially more relevant detail available than other cases, and they are analyzed in greater depth. An additional nine cases are reviewed with summary detail.

Case 1: Helping Other People Excel (HOPE) FCU – Obstruction of NCUA Examination[4]

Anthony R. Murgio and Yuri Lebedev were operators of a Bitcoin exchange service that opened on or around October 2013 called Coin.mx. The government developed evidence that Coin.mx's operators were aware of the criminal usage of their exchange by Cryptowall malware distributors. Reuters reported that ransomware hackers that were laundering funds through Coin.mx were involved in major cybersecurity breaches of financial companies including JPMorgan Chase & Co. in 2014, affecting more than 83 million accounts.

[4] See sources in bibliography: 2, 4, 5, 9, 17, 32, 33, 42, 47, 50, 51, 52.

Initially, Coin.mx sought to evade detection by operating through front companies. The main front company, "Collectables Club," [sic] falsely told banks that it was a members-only group that traded collectible items, including antiques, sports cards, memorabilia, coins, and currency, and falsely identified its transactions with Coin.mx as being for such collectibles. The operators also operated a phony food-delivery company called "MyXtremeDelivery" which was used in the same way as Collectables Club. The operators set up the websites' internet servers so that Coin.mx transactions appeared to be processed by the servers of the front companies.

These false representations allowed Coin.mx to open bank accounts to operate its Bitcoin exchange business, which the banks would not have otherwise permitted, given the high risk associated with cryptocurrency transactions. The Coin.mx operators misidentified and miscoded Coin.mx credit and debit card transactions as being for collectibles rather than cryptocurrency. They also instructed customers of Coin.mx to lie to banks when they conducted Bitcoin exchanges and state that they were trading collectibles.

Later, the Coin.mx operators' scheme evolved. In April 2014, they approached a small federal credit union in New Jersey, Helping Other People Excel Federal Credit Union (HOPE FCU), which had primarily low-income members and operated on the property of a church, HOPE Cathedral. The Credit Union Times described HOPE FCU as one of New Jersey's smallest credit unions, with only 96 members and $290,000 in assets. It had no full-time employees. The Coin.mx operators made "donations" of over $150,000 to church accounts under the control of HOPE FCU's Chairman of the Board, Trevon Gross, who was also the pastor of the church. Gross, in exchange for the donations, facilitated Coin.mx's attainment of functional control of the credit union, eventually telling Murgio that HOPE FCU "is your credit union" in

June 2014. Collectables Club and Coin.mx transferred their primary banking operations to the credit union and installed co-conspirators onto its board of directors.

In a short period of time, HOPE FCU went from serving the modest needs of its small membership, with minimal automated clearinghouse (ACH) processing requirements, to processing up to over $30 million of ACH transactions per month by October 2014, totaling over $60 million before the scheme ended. HOPE FCU opened a branch of the credit union at Coin.mx's office in Florida. Although Gross did remove Murgio and other co-conspirators from the credit union, after he did not receive a bribe that was agreed to in November 2014, he demonstrated a willingness to continue participating in the scheme by continuing to process ACH transactions for KapCharge, a Canadian company affiliated with the Coin.mx operators, in exchange for additional bribes.

The sudden and dramatic increase in ACH volume by HOPE FCU predictably raised the attention of examiners at the NCUA. An unnamed source recorded Gross at a meeting with board members as stating, "To have all of these examiners, one after another after another after another, come through here. And the tap dances we've been doing…" Indeed, NCUA examiners had begun making more extensive inquiries to HOPE FCU beginning in 2014. These inquiries culminated in NCUA's seizure and dissolution of the credit union. Before that would happen, however, Gross and co-conspirators attempted to mislead the NCUA examiners.

Gross was convicted in a criminal trial in 2017 on two counts, including one count of conspiracy, which included conspiracy to obstruct an examination of a financial institution in violation of 18 USC 1517, and one count of bribery. He was sentenced to 60 months imprisonment. In its denial of Gross's motion for a new trial, the U.S. District Court for the Southern District of New York provided a written opinion that outlined six ways in which Gross

and other co-conspirators provided misrepresentations to NCUA examiners with the intent of avoiding scrutiny, which the court determined would support a conviction by a reasonable jury of conspiracy to violate 18 USC 1517.

First, Gross lied to examiners about how HOPE FCU had formed its relationship with Collectables Club and KapCharge. Illustrating this deception, an examiner that visited the credit union on December 1, 2014, testified that she asked Gross, "How did this business from another country come to this tiny town in New Jersey and start doing business with and wants to do all those ACH transactions with you?" She testified that Gross replied, "It was a blessing. And it was one person told another person and another person," and did not provide a direct answer to the question. Gross did not at any time disclose that the entities had provided large sums to his church in exchange for control of the credit union.

Second, Gross made misrepresentations about how Collectables Club members had been added to the credit union's board of directors with the intent of avoiding raising the suspicion of the NCUA. An email from Gross demonstrated that Gross specifically structured the timing of the resignations from and new appointments to the board to avoid scrutiny: "At the conclusion of June Annual Meeting current board members (except me) will tender their resignations effective September 1. This date is set because we have our annual [NCUA] examination on July 7th. [The NCUA examiners] like to come back and meet with the board about a month afterwards to discuss findings and we don't want them to see an entirely new board at that meeting. That normally happens in August." HOPE FCU also failed to timely update its credit union profile with the NCUA, in spite of the requirement to update it within 10 days after an election or appointment of senior management.

Third, Gross made misrepresentations designed to prevent the NCUA from discovering that Collectables Club, KapCharge, and others should not have been made members of the credit union based on its field of membership rules. The NCUA requires credit unions to choose one of three common bond requirements, known as a field of membership, for potential members: Occupational (members work for the same employer or in the same line of work); Associational (members belong to a particular church; professional, civic, or fraternal group; or labor union); or Community (members live, work, worship, or attend school in the same geographic area). Only persons or groups within a credit union's field of membership may join it. Collectables Club, a Floridian cryptocurrency exchanger, and KapCharge, a Canadian payment processor, had no plausible field of membership with the New Jersey church-based HOPE FCU. Gross advised Murgio to list the Collectables Club's address as being in Lakewood, New Jersey, even though there was not a physical office or employees for Collectables Club there. Gross advised an examiner that Collectables Club employees worked there part time. He also advised that a new member would be moving to New Jersey, though that member testified that he had no such intention.

Fourth, Gross concealed the Tallahassee, Florida branch of the credit union, where a Coin.mx employee worked to process ACH transactions. HOPE FCU did not disclose the existence of this office on its NCUA profile. The NCUA examiner that visited HOPE FCU testified that she was unaware of the branch, and further testified that this was important information for her to know. The court noted that the failure to share the branch's existence with the examiner could be interpreted by a reasonable jury as serving to hide the nature of HOPE FCU's relationship with Collectables Club.

Fifth, Gross and others intentionally manipulated the appearance of the credit union's true net worth ratio to conceal the fact that it was insufficiently capitalized to handle the volume of ACH transactions that it had begun to process. Gross explained to co-conspirators that the volume of ACH transactions relative to capitalization levels would raise the scrutiny of the NCUA if it fell below seven percent. Gross and others would take steps at the end of the month to misrepresent the true amount in the KapCharge account. In one instance, the credit union delayed posting an incoming wire of $2.25 million until October and processed a transfer out of its account of $619,000 on September 30, which KapCharge reversed on October 6. Such manipulations served to cover up the true level of capitalization and conceal the scope and magnitude of activities.

Sixth, though mentioned only in a footnote, the court noted that when a conservator for the NCUA requested access to all email accounts for the credit union, Gross did not turn over accounts associated with members of the Collectables Club.

Case 2: Voyager Bank – Obstruction of FRB Examination[5]

On July 30, 2015, Timothy Paul Owens, former CEO and Chairman of Voyager Bank and CEO of the bank's holding company, Voyager Financial Services Corporation, pleaded guilty to one count of obstruction of an examination by the Federal Reserve Bank of Minneapolis pursuant to 18 USC 1517.

Background of Owens and Voyager Bank

Voyager Bank, before it was acquired by Anchor Bank of St. Paul in 2016, was a midsized regional bank headquartered in Eden Prairie, Minnesota. Owens was its President and CEO from 2004 until the bank fired him in 2011.

[5] See sources in bibliography: 11, 15, 19, 22, 24, 25, 27, 28.

The Minnesota Commerce Department conducted an examination of the bank in 2009 and discovered substantial loans between Voyager Bank and its officers and directors. Based on this information, in June 2009, FRB Minneapolis, who was the regulator of the bank holding company, and the FDIC, regulator for the bank, conducted their own examination of Voyager Bank and its holding company, with a focus on insider loan regulations, the quality of Voyager's internal controls, and credit risk evaluation.

The FRB determined through the examination that Voyager Bank had provided Owens with four loans totaling over five million dollars and had also purchased participation in a letter of credit worth $7.5 million that Owens had obtained from Alliance Bank. On July 7, 2009, the FRB sent a demand letter to the holding company, demanding that it review the loans to Owens, submit documentation demonstrating that it had been reviewed by the board of directors, and show that the loans were consistent with bank policies for insider loans. The letter also specifically ordered that the letter should be presented to the holding company board of directors at its next meeting.

Owens's Response to the FRB Demand Letter

A reassuring response was provided to the FRB. The response stated that the board of directors had approved the loans and that they were in accordance with policy. Owens was the sole beneficiary of a $3.6 million family trust, the letter said, and had sufficient financial circumstances and ability to repay the loans. Additionally, the letter discussed only three loans, omitting discussion of a fourth loan for one million dollars. Finally, the letter indicated that the FRB's demand letter had been discussed by the board of directors, and that it had adopted a revised direct loan policy.

Unbeknownst to the FRB or Voyager Financial Service Corporation's board, Owens had drafted the misleading response letter himself.

Events Following Owens's Response

In June 2011, state and federal regulators as well as the state attorney general's office attended a bank board meeting. Shortly after, on July 12, 2011, Voyager fired Owens for cause. In December 2011, he filed suit against the bank and holding company for wrongful termination, alleging that, following Owens having a heart attack in 2010, bank executives conspired to make him a scapegoat for bad banking decisions and to gain control of his stock. He alleged that the bank had made defamatory statements blaming him for the bank needing to raise additional capital.

Immediately after, Voyager responded in court filings with accusations that Owens had deceptively obtained $15 million in loans by hiding correspondence from regulators, fabricating the response to the FRB's 2009 demand letter, forging the board chairman's signature, and misrepresenting his financial condition. Along with the over five million in direct loans, Voyager claimed that Owens was unable to pay the $7.5 million loan from Alliance Bank as well as a $2.2 million loan from Tradition Capital Bank, both of which Voyager was forced to pay off.

Voyager also suggested a motive for Owens's actions by describing his luxurious lifestyle, which included a $4.5 million home, a $2.5 million cabin, Bentley and Aston Martin cars, and funneling five million dollars in loan proceeds to his wife which remained unaccounted for.

Owens's employment contract included an arbitration clause, and his case was moved out of court to be handled by the American Arbitration Association. In 2013, Owens was initially awarded three million dollars by the arbitrators based on the alleged defamatory statements made

by Voyager. This award was vacated in 2014 in state court due to impartiality concerns regarding an arbitrator, which Owens appealed, but voluntarily dismissed after reaching a settlement with Voyager shortly thereafter. Although the arbitrators provided the ruling in favor of Owens, they also described Owens's communications with the FRB as deceptive, indefensible, and blameworthy.

Finally, in December 2014, at the conclusion of an investigation by the FBI and the Office of Inspector General for the Board of Governors of the Federal Reserve System, a federal grand jury indicted Owens on eight counts, including five counts alleging obstruction of a financial institution examination under 18 USC 1517 and three counts of making false entries in bank records and reports.

In a written statement, Owens denied defrauding the bank, stating, "The claim of alleged wrongdoing is in my view misguided and unfortunate, but in the end the not surprising product of 18 months of secret meetings between Voyager directors and officers with Federal bank regulators and investigators where I was excluded from attendance, despite my being a director of Voyager during much of that time period. I believe they did this in order to convince banking regulators to prosecute me in order to hide these officers' and directors' misconduct."

Nonetheless, on July 30, 2015, Owens pleaded guilty in the U.S. District Court of Minnesota to one count of obstruction of a financial institution examination. He was sentenced to eighteen months' imprisonment and was incarcerated from July 2016 to September 2017.

Specific Factors Considered in Owens's Charging

The core of the indictment and Owens's guilty plea dealt with Owens's handling and response to the FRB's July 7, 2009, demand letter. Several specific falsehoods related to the letter are outlined in the plea agreement and sentencing documents, and these provide an

instructive example of the type of conduct that can result in a conviction for obstruction of a financial institution examination.

First, Owens did not disclose the existence of the FRB's letter to the Voyager board of directors, as required by the FRB's letter, although his letter response indicated that he had in fact disclosed it.

Second, Owens wrote the response as though, as required by the FRB's letter, the response had been reviewed and approved by the Voyager board, and signed by the chairman, even though it had not. Instead, taking advantage of his position as CEO, he prepared a misleading response in secret.

Third, although Owens had four insider loans with Voyager at the time of the examination that resulted in the letter, he only identified three of these in his response, omitting a fourth loan for one million dollars.

Fourth, Owens prepared and included in his response a three-page bank policy statement and falsely indicated that it had been reviewed and approved by the board.

Fifth, Owens submitted documents that provided an inaccurate portrayal of his financial health and ability to repay the insider loans, including by exaggerating his wealth, such as that he had exclusive access to a $3.6 million family trust, and concealing his liabilities.

Case 3: Wells Fargo Bank – Obstruction of OCC Examination[6]

As of the end of 2023, only one executive, Carrie Tolstedt, has been criminally charged in connection with the infamous Wells Fargo fake account sales practices scandal which first came to light in the news media in 2013. She was the highest-ranking officer of the Community Bank which was at the center of the scandal. She pleaded guilty to one count of obstruction of a

[6] See sources in bibliography: 3, 6, 10, 18, 26, 57.

financial institution examination and received no prison time. At the core of the criminal charges was Tolstedt's involvement in the creation of a May 22, 2015, memorandum to the OCC which minimized the scope of sales practice misconduct at Wells Fargo and obstructed the OCC's examination.

Background of Wells Fargo Sales Practices Scandal

Wells Fargo Bank, N.A. is one of the largest banks in the U.S. Its largest line of business is the Community Bank, which includes the bank's retail branch network. The OCC states that the Community Bank had a systemic problem with sales practices misconduct since at least 2002. The OCC defined sales practices misconduct pertaining to Wells Fargo as "the practices of Bank employees issuing a product or service to a customer without the customer's consent, transferring customer funds without the customer's consent, or obtaining a customer's consent by making false or misleading representations."

The Los Angeles Times reported in 2013 that approximately thirty employees had been fired by Wells Fargo for opening accounts and issuing credit or debit cards without customer consent, using aggressive tactics including forging signatures. The article also described the unattainably high goals for the sale of products that was set by Wells Fargo management and the toll that it took on consumers as well as employees. This article was among the earliest publicizations of sales practice issues at Wells Fargo, and it would set off additional scrutiny from regulators and law enforcement.

The OCC described the root cause of the sales practices misconduct as the Community Bank's business model. Management of the Community Bank set intentionally unreasonable sales goals and fostered an atmosphere of intimidation, badgering, intense performance monitoring, hazing-like abuse, and fear of termination, in the name of meeting those sales goals.

The business model was highly profitable, but it also fostered and encouraged illegal tactics among salespeople to achieve their goals. The profitability led senior executives to tolerate and ignore misconduct as an acceptable side effect. The OCC stated that the bank had better controls to detect employees that did not meet unreasonable sales goals than it did to catch employees who engaged in sales practice misconduct.

Revelations about the extent of the misconduct grew in the following years. Wells Fargo had opened and issued millions of checking, savings, debit, and credit card accounts in customers' names without their consent since 2002. Many of these accounts were fee-bearing. Other sales practice issues would come to light as the scrutiny continued involving automobile loans and other products. From 2017 to 2023, Wells Fargo paid nearly ten billion dollars in various settlements related to its sales practice misconduct. Additionally, the OCC assessed civil money penalties on several individual Wells Fargo executives for millions of dollars.

Carrie Tolstedt's Guilty Plea for Obstruction

However, only one individual, Carrie Tolstedt, was charged criminally for her role in the misconduct. Further, compared to other convictions for 18 USC 1517, Tolstedt admitted only to very narrow aspects of obstruction. Tolstedt agreed that all employees within the Community Bank ultimately reported to her. Tolstedt admitted that she oversaw the creation of written materials for a meeting of the Risk Committee of Wells Fargo's Board of Directors, knowing that they would be provided to the OCC. It was in fact provided to the OCC on May 22, 2015. Details of the exact nature of the OCC's request have been redacted from publicly available court documents, likely due to concerns of revealing confidential supervisory information. All that can be ascertained about the request is that emails were exchanged between OCC personnel

and Wells Fargo employees, and as a result, Wells Fargo employees prepared and delivered a memo on that date on the topic of sales practices.

According to Tolstedt's plea agreement, she had responsibility for omitting two types of information from the memo: first, the fact that 1,000 to 1,200 Wells Fargo employees per year had been terminated, or resigned during investigation, for sales practices issues; and second, that Wells Fargo's monitoring program identified only a small percentage of the employees who could have been committing misconduct, because the monitoring program was designed to identify for investigation only those employees with the most egregious metrics.

As to Tolstedt's motive, she acknowledged that, due to the intense media scrutiny of sales practices issues that had been present by the time of the memo, she wished to protect herself and her employees from criticism, and therefore minimized the scope of sales practices issues by omitting the information.

Tolstedt also offered multiple mitigating factors in her sentencing memorandum. The sales practice misconduct at issue had begun years before Tolstedt had oversight of the Community Bank, and management was taking steps to deal with the misconduct through monitoring and changes in sales expectations. Further, the memo which constituted Tolstedt's act of obstruction was not drafted solely by her. Indeed, it was drafted collaboratively by Community Bank personnel, Wells Fargo's General Counsel and his team of attorneys, and other subject matter experts. Also, although it is not clear exactly how because of redacted information, Tolstedt states that the OCC received substantially equivalent information through other channels. There are other mitigating factors discussed in court documents that are fully redacted.

Case 4: Glencoe State Bank – Obstruction of FDIC Examination[7]

Criss McGinty worked at Glencoe State Bank since 1978 and was Executive Vice President from 2006 to 2009. During his time as an executive, McGinty used his position to transfer over $500,000 from a major customer's account, Dove Construction, to a personal account named McGinty House. The purpose of McGinty House was to fund the construction of a personal residence and other expenses for McGinty. McGinty handwrote counter checks on the customer's account payable to himself. He approved the daily overdraft report and approved overdrafts of the customer's account. In effect, he approved hundreds of thousands of dollars of bank loans to himself without authorization.

The FDIC began a safety and soundness examination of the bank on February 12, 2009. According to the indictment, McGinty allegedly provided the examiners with multiple account statements for Dove Construction that had entries "removed by the application of a white correction fluid" and were therefore false. He was charged among other offenses with obstruction under 18 USC 1517.

McGinty ultimately pled guilty to only one count of misapplication of bank funds under 18 USC 656. The charge under 18 USC 1517 was dismissed as part of the plea.

Case 5: The Exchange State Bank and Center Point Bank and Trust – Coordinated Obstruction of FDIC Examinations[8]

Cecil Capper was president of The Exchange State Bank in Iowa from 2009 to 2013. Martin Smith was vice president of Center Point Bank and Trust from 2009 to 2012. They were also working at the direction of another bank president unnamed in public sources.

[7] See sources in bibliography: 48, 49.
[8] See sources in bibliography: 23, 31, 39, 40.

While FDIC regulators were conducting an onsite examination of Center Point in December 2011, Smith consolidated a delinquent customer's bad debt into a single loan and backdated it. Prior to this, he changed loan amounts and due dates in the bank's computer system, authorizing loans beyond approved lines of credit. Capper also concealed the bad loans from Center Point from FDIC examiners. He prepared a handwritten credit ticket providing a false date of purchase for the loans and manipulated Exchange's computer system to reflect the same false date. Center Point ultimately took a loss of $462,304.84 on the loans.

The United States' sentencing memorandum for Capper acknowledged the lack of a direct financial benefit. The sentencing memorandum for Smith mentions that the backdating and manipulating data prevented the bank's board from seeing the bad loan on a new loan report, as well as represent to the FDIC that the bad loans were paid off and not worthy of scrutiny.

Both Capper and Smith pleaded guilty in separate cases to one count of obstruction of a financial institution examination.

Case 6: American Samoa Government Employees Federal Credit Union – Obstruction of NCUA Examination[9]

From 1986 to 1993, Bernard Gurr was the manager of the American Samoa Government Employees FCU, which was founded in 1980 as the first and only credit union in American Samoa. Sentencing documents note that because of his family status he was well known on American Samoa and his trial was closely followed there.

By 1992, the NCUA had identified problems at the credit union including inadequate liquidity, poor underwriting of loans, and high loan deficiency rates. NCUA examiners drafted an Order of Conservatorship and Confidential Statement of Grounds for Conservatorship and

[9] See sources in bibliography: 14, 43, 44, 45, 46.

placed the credit union in conservatorship in October 1993. Later, in 1999, Gurr was indicted with other credit union employees, and he was convicted by a jury of 19 counts of conspiracy, embezzlement of credit union funds, making false entries in books and records, and obstructing the NCUA examination. Gurr was sentenced to 70 months in prison and ordered to pay $65,000 in restitution.

NCUA had discovered in 1993 that the credit union, which had $9 million in assets and a membership of 1,400, was insolvent by $4.9 million, with 39 cents in assets for each dollar of liabilities. The credit union engaged in a broad pattern of wrongdoing under Gurr's management, including issuing unauthorized loans, theft and conversion, altering loan payment records, disbursing checks to officials and their relatives, and violating credit union policies. The NCUA wrote a letter in support of enhanced sentencing for Gurr, stating that the NCUA and its Insurance Fund, which insured credit union members' accounts up to $100,000 per account at the time, suffered net costs of $4.6 million. The letter also pointed to the lack of remorse from Gurr, stating, "Still fresh in our minds is the reaction of ASGEFCU officials when served with the Order of Conservatorship in 1993—that NCUA 'had no right to be there' and the conservatorship was an act of 'American imperialism.' That reaction exemplified the officials' attitude that the arm of the law does not extend to American Samoa to punish those who defraud a federally-insured credit union."

In terms of the acts that constituted obstruction specifically, Gurr had secretly kept documents that he had been ordered by courts to produce, which were found in his possession when he was arrested at the Honolulu airport. He also attempted to get an employee witness to sign a false statement that he was authorized to withdraw money from the employee's account.

Case 7: Peoples Savings Bank – Obstruction of FDIC Examination[10]

Russell Wagler was hired by Peoples Savings Bank in Crawfordsville, Iowa in 1993. He continued to rise in the organization, becoming Chief Executive Officer in 1996, and was appointed President in 2002. By 2013, Peoples was a $36 million rural community bank.

From 2002 to 2013, Wagler originated several straw loans involving customers of the bank. A straw loan is a loan deceptively obtained for the benefit of someone other than the stated recipient. The loans would eventually be charged off in December 2013, resulting in loan losses for the bank of $425,977. Additionally, Wagler received multiple unauthorized bonuses and increased salaries from his wife, Heidi Wagler, the bank's payroll supervisor, causing the bank an additional loss of $200,964.

Wagler was notified of an upcoming FDIC examination on February 9, 2012. On that same day, Wagler arranged for payment of three of the straw loans with three new straw loans. There were no written promissory notes. Wagler admitted in his guilty plea that he did this so that the loans would not appear on the bank's loan records during the examination and to obstruct the examination.

In 2016, Wagler pleaded guilty to one count of theft, misapplication, and embezzlement of bank funds by a bank employee and one count of obstruction of a financial institution examination. He was sentenced to 41 months of incarceration, three years of supervised release, and a $15,000 fine. His supervised release was terminated in 2023.

Case 8: Farmers Exchange Bank – Obstruction of FDIC Examination[11]

Geffrey Sawtelle began working at Farmers Exchange Bank in 1981 and served as its President and Chief Executive Officer from 2000 to 2014. Farmers is a small state-chartered

[10] See sources in bibliography: 58, 59.
[11] See sources in bibliography: 55, 56.

bank in Wisconsin with three branches and 14 employees. Sawtelle had responsibilities for bookkeeping functions including general ledger entries, with no additional oversight.

During his time as bank President, Sawtelle expensed over $500,000 for various personal purposes, particularly related to car racing. For example, Sawtelle had at least two bank cars during his entire time as President, to which only he had access, and for a period had four vehicles including two Corvettes. He booked vehicle-related and racing expenses as bank equipment, but bank management and the Board of Directors were not aware the vehicles or their expenses were purchased with bank funds. He used tactics such as structuring depreciation and making false entries in the general ledger to conceal his activities.

The Wisconsin Department of Financial Institutions (WDFI) started a routine examination of Farmers in 2014 and identified the asset purchases which appeared to have no banking purpose. The WDFI requested records to support the purchases, but Sawtelle told the examiners that after he reviewed bank credit card statements, he disposed of the invoices and receipts. The WDFI alerted the FDIC, and the investigation of Sawtelle progressed and resulted a 30-charge indictment.

Sawtelle pleaded guilty and was sentenced, but as part of the plea, several charges including obstruction under 18 USC 1517 were dropped. However, Sawtelle's plea agreement does state that he gave "untruthful and evasive" answers to the FDIC supervisor, and provides the example that he told the FDIC that the bank had purchased a motorhome and trailer to lease them to a customer who later backed out, even though there had never been such a customer.

Case 9: Coastal Bank & Trust – Obstruction of FRB Examination[12]

[12] See sources in bibliography: 53, 54, 63.

Robert Levie Norris, Jr. was the President and Chief Executive Officer of Coastal Bank & Trust of Jacksonville, North Carolina, from the time it opened in 2009 until 2013 when he was forced to resign. Starting in 2010, Norris entered into a complicated pattern of bank fraud, described in the United States' sentencing memo as a "byzantine and self-dealing shell game with bank funds he was entrusted to protect." He gave loans to straw purchasers to benefit himself, used new loans to pay off old loans, and extended unsecured lines of credit to third parties who would direct proceeds back to him, among other schemes. Coastal was a small bank with 20 employees, and it incurred losses of nearly $2.4 million as a result of Norris's fraud.

The FRB performed a routine examination in 2012, and Norris did not disclose the fact that he, as an insider, was a recipient or beneficiary of loan transactions, even though disclosure of this was required by Regulation O. This concealment of his insider interests from the examiners constituted obstruction under 18 USC 1517.

Norris pleaded guilty to one count of conspiracy to commit bank fraud and one count of obstruction of a financial institution examination. He was sentenced in 2018 to 48 months imprisonment and ordered to pay $2,397,475 in restitution.

Case 10: D. Edward Wells Federal Credit Union – Obstruction of NCUA Examination[13]

Carol Aranjo was the Chief Executive Officer of D. Edward Wells FCU of Springfield, Massachusetts from 1997 to 2003. Along with her husband and son, for most of that period, she engaged in various forms of embezzlement, fraud, and conspiracy. According to the indictment, she overdrew funds from her accounts and ran negative balances for extended periods of time; obtained money through bogus and undocumented loans, including for real estate without having

[13] See sources in bibliography: 36, 37, 38

mortgages recorded; obtained cashier's checks without payment; and transferred money to accounts from other depositors without authorization.

Additionally, she took actions to conceal her crimes from NCUA examiners. From 1999-2002, she made false journal entries to conceal negative balances from NCUA examiners. In 2002, she refused to allow the examiners access to records relating to a $2 million line of credit, and subsequently prepared a letter on the stationery of the credit union's attorney, falsely stating that a third party had no objections to its loan being used to secure the line of credit. Allegedly, Aranjo also prevented an NCUA examiner from copying share and loan trial balance records.

Following the 86-count indictment, which included 11 counts of obstruction of a financial institution examination, the case proceeded to a jury trial. Aranjo was found guilty of all but three counts, including 10 of the 11 obstruction charges. The only obstruction charge that she was not convicted of was preventing the NCUA examiner from copying records. The trial transcripts would likely shed light on why the jury was not convinced of this particular charge but review of them is beyond the scope of this paper.

Case 11: First National Bank of Keystone – Obstruction of OCC and FDIC Examination[14]

Terry Lee Church was working at First National Bank of Keystone, West Virginia as Chief Operating Officer and Senior Vice President at the time of an investigation of the bank in June 1999 by the OCC and FDIC. She was in charge of daily operations at the bank.

Church engaged in multiple actions that constituted obstruction. She directed bank employees to alter records sought by the examiners, conceal some documents, and misrepresent certain transactions. She also ordered employees from her hardware store and her farm to help

[14] See source in bibliography: 41.

bank employees to bury bank records in August 1999. The examiners noted that records were not provided or were incomplete. An excavation of Church's property found some of the documents. The FDIC declared the bank insolvent in September 1999. A warrant was issued for Church's arrest in October 1999, and she was convicted of three counts of obstruction under 18 USC 1517. After three convictions related to the bank failure, fraud, and related matters, she received sentences totaling 29 years and 29 days. Subsequently, in 2005, Church filed a motion for a sentence reduction, apologizing to the court and prosecutors. She also ascribed blame to the former president of the bank who died in 1997, stating that the fraud and bank mismanagement had begun with him and that he had engaged in abusive conduct such as threatening, hitting, and pulling a gun on Church. The judge reduced her sentence to 12 years,

Church's case resulted in a federal appellate decision in the Fourth Circuit that considered whether 18 USC 1517 was unconstitutionally vague. The court held that the statute was in fact constitutional. Comparing the statute to other obstruction statutes that had been challenged for vagueness, and reviewing the legislative history of the statute, the court determined that the statute applied unquestionably to certain activities without ambiguity, and that Church's activities fell squarely within the common-sense meaning of 18 USC 1517.

Case 12: NextCard/NextBank – Obstruction of OCC Examination[15]

NextCard, Inc. and its issuing bank subsidiary, NextBank, were part of the dot com boom of the late 1990s, offering credit cards online with instant approval and no brick-and-mortar branches. Soon after an initial public offering in 1999, NextCard's internet-based business model failed. The OCC closed NextBank on February 7, 2002, and it entered FDIC receivership, marking the first regulatory seizure of an internet-only bank.

[15] See sources in bibliography: 30, 60, 61, 62.

Thomas C. Trauger was a senior audit partner at Ernst & Young, and the primary audit partner assigned to NextCard. Oliver Flanagan was a senior manager at E&Y, reporting to Trauger. E&Y audited NextBank in 2000. In October 2001, NextCard announced that the OCC and FDIC would require it to revise certain accounting assumptions which would cause NextBank to be severely undercapitalized. Allegedly, Trauger was concerned that the workpapers from the audit would be subject to review by the OCC. In order to provide the appearance of a more satisfactory basis for the audit conclusions, Trauger, Flanagan, and others engaged in the destruction, falsification, and alteration of the E&Y workpapers for the audits of NextCard's financial statements. According to Flanagan's plea, from the summer of 2001 until the OCC issued a subpoena to E&Y on March 1, 2002, they altered spreadsheets and memoranda related to the audit, obtained original handwriting to make an altered spreadsheet appear original, deleted emails, altered the archived 2000 audit, and rearchived it with changes to effectively delete the original, all with the purpose of leading the OCC to conclude that the audit was more soundly based than it was. However, Flanagan did not destroy a zip disk with original audit files as instructed, instead turning it over to the government.

Flanagan pleaded guilty to one count of obstruction under 18 USC 1517. Trauger was charged with three counts including one count under 18 USC 1517, one count of conspiracy, and one count of falsification of records in a federal investigation under 18 USC 1519. The 18 USC 1517 and conspiracy charges were dropped as part of a plea and Trauger was sentenced to twelve months imprisonment and a $5,000 fine. The docket is filed under seal and limited additional information about sentencing considerations is available. The SEC also filed orders of suspension against them.

RECOMMENDATIONS

Could the CFPB likely establish a viable case under 18 USC 1517?

In the prior section, 12 cases since 1990 were identified that involved one or more charges of obstruction of a financial institution examination and had sufficient publicly available detail to determine the facts that led to the indictment. At least one case resulting in a conviction was identified that related to obstruction of an examination at each individual member of the FFIEC – the FRB, FDIC, OCC, and NCUA – except for the CFPB.

The plain language of the name of the FFIEC implies that it is composed of the agencies of the federal government that conduct examinations of financial institutions. As a member of the FFIEC, the CFPB, like all of the other members, is recognized as a federal entity that conducts these types of examinations which, also by the plain language of the statute, could be subject to obstruction under 18 USC 1517.

The CFPB does have an important characteristic distinguishing it from other FFIEC members: it does not perform safety and soundness examinations. It only performs examinations for compliance with consumer financial protection laws and regulations. Nonetheless, 18 USC 1517 makes no mention of a distinction between subtypes of financial institution examinations. However, at the time of the statute's creation in 1990, there was also no agency that performed examinations only of consumer compliance and not of safety and soundness, so the possibility of making a distinction could not have been considered.

One potential reason no prosecutions related to CFPB examinations have been brought relates to prosecutorial discretion. Prosecutors have discretion in the choice of charges they bring against defendants. They will try to balance considerations such as likelihood of securing a conviction and the magnitude of sentencing available by strategically choosing to charge

criminal conduct under one statute rather than another. The CFPB has asset thresholds for its supervision authority and primarily regulates larger financial institutions. Prosecutions for 18 USC 1517 are most frequently associated with smaller banks and credit unions, in part because other avenues exist for prosecutors to address misconduct at larger institutions. The CFPB may have a smaller pool of candidates suitable for obstruction charges among its supervised entities.

What are the common factors that lead to obstruction of financial institution examination indictments and convictions?

This section will include a review and comparison of the 12 cases described above to identify recurring and common factors to suggest a general framework for the mechanics of obstruction of a financial institution examination. As described above, the obstruction statute 18 USC 1505 is similar in character to 18 USC 1517 and also has a more extensive judicial history. Taking the three required elements for a conviction under 18 USC 1505 – an agency proceeding, the defendant's awareness of the agency proceeding, and the defendant's intentional endeavor to corruptly obstruct the proceeding – and substituting a financial institution examination for a proceeding results in a logical grouping of the factors.

A financial institution examination by an agency. All of the identified cases had as their subject an examination of a financial institution, specifically a bank or credit union. No cases dealing with other types of financial institutions were identified. Presumably, a nonbank financial institution such as a loan servicer or a debt collector subject to supervisory examinations could also be involved in obstruction, but no cases or scholarly analyses were identified that considered this question. Given the plain language of the statute, which uses "financial institution" rather than "bank" or "credit union," this is likely the case.

Typically, the financial institutions involved in the obstruction were relatively small in size; however, the most recent use of 18 USC 1517, at Wells Fargo Bank, demonstrated that megabanks are not exempt. Other laws and mechanisms exist to criminalize large financial institution misconduct with greater penalties than are available under 18 USC 1517, so it may not always be the best choice for prosecutors.

There are four agencies that have conducted examinations of financial institutions that have been obstructed: the FDIC, FRB, NCUA, and OCC. Notably, these entities are all members of the FFIEC.

The defendant's awareness of the financial institution examination. All identified prosecutions for 18 USC 1517 were of individual employees at the bank or credit union. The bank or credit union itself was never named as a defendant. Non-employees were also never named. There appears to be nothing in the statute prohibiting legal entities or non-employees of the examined entity from being prosecuted, but they have not appeared in the cases.

The individual employees were always in a managerial or executive role at the bank or credit union (or in the case of E&Y's involvement, a manager or partner at the external auditor for the bank). They were either involved in the preparation of actual responses to examiners' requests for information, or they had control over the books and records that were the subject of examinations. They always clearly had awareness that their activities were subject to regulatory supervision. Although lower-level employees may have been involved, prosecutors limited their focus to higher-level employees, perhaps in order to better establish deterrence.

The defendant's intentional endeavor to corruptly obstruct the financial institution examination. The acts that compose a defendant's intentional endeavor to obstruct can be

roughly grouped into overt acts and passive behaviors, in either case paired with a corrupt motive.

Overt acts could include a range of activities that served to prevent examiners from learning of facts relevant to their supervision of the financial institution. At one extreme end this could include literally burying documents requested by examiners. It could also include deceptively modifying books and records or drafting false documents that the defendant knows will be reviewed by examiners.

The endeavor could also consist of passive behaviors. This could include failing to update regulators with information that is required. It also can include producing some limited facts or documents but intentionally excluding other ones so that examiners did not see a complete picture of the entity's activities.

Regarding the defendant's corrupt motive, the conduct was frequently tied to the concealment of some kind of financially-motivated fraud. For example, some cases involved documents and records that were modified or withheld from examiners to avoid scrutiny which might reveal fraudulent loans. Others dealt with individuals that feared that regulators would uncover mismanagement which could lead to loss of reputation or employment. In some cases, there was no apparent financial motive. The defendant needed only to demonstrate that they intended to avoid the scrutiny of examiners regarding some kind of risk management deficiency, such as the booking of bad loans or the magnitude of sales practices misconduct. This avoidance of scrutiny could still be considered a kind of benefit to the defendant since they might otherwise lose their employment or suffer reputational harm.

BIBLIOGRAPHY

1. Arthur Holst, Britannica Money. "Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act." Accessed February 19, 2024. https://www.britannica.com/money/topic/Comprehensive-Thrift-and-Bank-Fraud-Prosecution-and-Taxpayer-Recovery-Act.
2. Brendan Pierson, Reuters, "New Jersey pastor sentenced to five years for bitcoin exchange scheme." October 31, 2017. Accessed February 19, 2024. https://www.reuters.com/article/us-crime-bitcoin-new-jersey/new-jersey-pastor-sentenced-to-five-years-for-bitcoin-exchange-scheme-idUSKBN1D0230/.
3. Brian Tayan, Harvard Law School Forum on Corporate Governance, "The Wells Fargo Cross-Selling Scandal," February 6, 2019. Accessed February 19, 2024. https://corpgov.law.harvard.edu/2019/02/06/the-wells-fargo-cross-selling-scandal-2/
4. Coinbureau Editorial Team, "Pastor Gets Sentenced To Prison In Connection To Coin.mx Laundering Case." March 29, 2023. Accessed February 19, 2024. https://www.coinbureau.com/news/pastor-gets-sentenced-prison-connection-coin-mx-laundering-case/.
5. Department of the Treasury Financial Crimes Enforcement Network., "Guidance on the Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies." March 18, 2013. Accessed February 19, 2024. http://fincen.gov/statutes_regs/guidance/html/FIN-2013-GOOl.html.
6. E. Scott Reckard, Los Angeles Times, "Wells Fargo's pressure-cooker sales culture comes at a cost," December 21, 2013. Accessed February 19, 2024. https://www.latimes.com/business/la-fi-wells-fargo-sale-pressure-20131222-story.html

7. Federal Reserve Board, “About Bank Supervision.” Accessed February 19, 2024. https://www.federalreserve.gov/supervisionreg/understanding-federal-reserve-supervision.htm.
8. Federal Reserve Board, “Understanding Enforcement Actions.” Accessed February 19, 2024. https://www.federalreserve.gov/supervisionreg/understanding-enforcement-actions.htm.
9. FinTelegram News. “What Happened To The Cybercrime Mastermind Gery Shalon After Blowing The Whistle Big Style?” August 6, 2023. Accessed February 19, 2024. https://fintelegram.com/what-happened-to-the-cybercrime-mastermind-gery-shalon-after-blowing-the-whistle-big-style/.
10. In re Tolstadt, Docket AA-EC-2019-82, “Notice of charges for orders of prohibition and orders to cease and desist and notice of assessments of a civil money penalty. January 23, 2020. Accessed February 19, 2024. https://www.occ.gov/static/enforcement-actions/eaN20-001.pdf.
11. Jennifer Bjorhus, StarTribune. “Eden Prairie bank dispute flares into public view.” December 20, 2011. Accessed February 19, 2024. https://web.archive.org/web/20120109052247/http://www.startribune.com/business/135972973.html.
12. Kenneth J. Robinson, Federal Reserve Bank of Dallas. “Savings and Loan Crisis.” Accessed February 19, 2024. https://www.federalreservehistory.org/essays/savings-and-loan-crisis.
13. Matthew Harrington and Benjamin Schiffelbein, American Criminal Law Review. “Obstruction Of Justice.” 51 Am. Crim. L. Rev. 1477 (Fall 2014).

14. National Credit Union Administration. “Choose a Field of Membership.” April 14, 2022. Accessed February 19, 2024. https://ncua.gov/regulation-supervision/manuals-guides/federal-credit-union-charter-application-guide/phase-1/choose-field-membership.
15. Neal St. Anthony, StarTribune. “Former Voyager Bank CEO under federal indictment.” December 17, 2014. Accessed February 19, 2024. https://www.startribune.com/former-voyager-bank-ceo-under-federal-indictment/286172341/.
16. Office of the Comptroller of the Currency. “Comptroller’s Handbook. Examination Process. Bank Supervision Process.” Version 1.1, September 2019. Accessed February 19, 2024. https://www.occ.gov/publications-and-resources/publications/comptrollers-handbook/files/bank-supervision-process/pub-ch-bank-supervision-process.pdf.
17. Peter Strozniak, Credit Union Times, “Credit Union Bitcoin Fraud Tied to JPMorgan Hack.” December 9, 2015. Accessed February 19, 2024. https://www.cutimes.com/2015/12/09/credit-union-bitcoin-fraud-tied-to-jpmorgan-hack/.
18. Stacy Cowley, The New York Times, “Former Wells Fargo Executive to Plead Guilty in Sham Accounts Scandal.” March 15, 2023. Accessed February 19, 2024. https://www.nytimes.com/2023/03/15/business/wells-fargo-carrie-tolstedt-jail.html.
19. StarTribune, “Former CEO of Voyager Bank Pleads Guilty to Obstructing Investigation.” July 30, 2015. Accessed February 19, 2024. https://www.startribune.com/former-ceo-of-voyager-bank-pleads-guilty-to-obstructing-investigation/320221641/.
20. Trish Mahaffey, The Gazette. “Former Springville bank president sentenced to 5 years of probation for hiding bad loans from regulators.” December 17, 2019. Accessed February 19, 2024. https://www.thegazette.com/crime-courts/former-springville-bank-president-sentenced-to-5-years-of-probation-for-hiding-bad-loans-from-regula/.

21. Twin Cities Business Magazine. “Former Voyager Bank CEO Hit With Federal Indictment.” December 28, 2014. Accessed February 19, 2024. https://tcbmag.com/former-voyager-bank-ceo-hit-with-federal-indictment/.
22. Twin Cities Business Magazine. “Voyager Bank in Legal Battle With Ousted CEO.” January 1, 2012. Accessed February 19, 2024. https://tcbmag.com/voyager-bank-in-legal-battle-with-ousted-ceo/.
23. U.S. Attorney's Office, Central District of California. “Former Wells Fargo Executive Agrees to Plead Guilty to Obstructing Bank Examination Involving the Opening of Millions of Accounts Without Customer Authorization.” March 15, 2023. Accessed February 19, 2024. https://www.justice.gov/usao-cdca/pr/former-wells-fargo-executive-agrees-plead-guilty-obstructing-bank-examination.
24. U.S. Attorney's Office, District of Minnesota. “Former Bank CEO Pleads Guilty to Obstructing an Examination by the Federal Reserve Board.” July 30, 2015. Accessed February 19, 2024. https://www.fbi.gov/contact-us/field-offices/minneapolis/news/press-releases/former-bank-ceo-pleads-guilty-to-obstructing-an-examination-by-the-federal-reserve-board.
25. U.S. Attorney's Office, District of Minnesota. “Former Bank CEO Sentenced To 18 Months For Obstructing An Examination By The Federal Reserve Board.” May 25, 2016. Accessed February 19, 2024. https://www.justice.gov/usao-mn/pr/former-bank-ceo-sentenced-18-months-obstructing-examination-federal-reserve-board.
26. U.S. Department of Justice, Justice Manual, Title 9: Criminal, “9-28.000 - Principles of Federal Prosecution Of Business Organizations. 9-28.730 - Obstructing the

Investigation." Accessed February 19, 2024. https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizations#9-28.730.

27. U.S. Securities and Exchange Commission, San Francisco District Office. "Former Ernst & Young Audit Partner Arrested for Obstruction Charges and Criminal Violations of Sarbanes-Oxley Act." Accessed February 27, 2024. https://www.sec.gov/news/press/2003-123.htm.
28. United States Attorney for the Northern District of Iowa. "Former Bank Vice President Who Aided the Obstruction of an FDIC Investigation Sentenced to Federal Prison." Accessed February 19, 2024. https://www.justice.gov/usao-ndia/pr/former-bank-vice-president-who-aided-obstruction-fdic-investigation-sentenced-federal.
29. United States Attorney for the Southern District of New York. "Manhattan U.S. Attorney Announces Charges Against Two Florida Men for Operating an Underground Bitcoin Exchange." July 21, 2015. Accessed February 19, 2024. https://www.fbi.gov/contact-us/field-offices/newyork/news/press-releases/manhattan-u.s.-attorney-announces-charges-against-two-florida-men-for-operating-an-underground-bitcoin-exchange.
30. United States Attorney for the Southern District of New York. "Operator Of Unlawful Bitcoin Exchange Pleads Guilty In Multimillion-Dollar Money Laundering And Fraud Scheme." January 9, 2017. Accessed February 19, 2024. https://www.justice.gov/usao-sdny/pr/operator-unlawful-bitcoin-exchange-pleads-guilty-multimillion-dollar-money-laundering.
31. United States General Accounting Office. "Bank and Thrift Criminal Fraud: The Federal Commitment Could Be Broadened." January 1993. Accessed February 19, 2024. https://www.gao.gov/assets/ggd-93-48.pdf.

32. United States Sentencing Commission. “2022 Annual Report and Sourcebook of Federal Sentencing Statistics.” Accessed February 19, 2024. https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2022/2022-Annual-Report-and-Sourcebook.pdf2022-Annual-Report-and-Sourcebook.
33. United States v. Aranjo, 603 F.3d 112 (1st Cir. 2010).
34. United States v. Aranjo. “Indictment.” D. Mass. Case 3:06-cr-30014-MAP. July 6, 2006.
35. United States v. Aranjo. “Jury Verdict.” D. Mass. Case 3:06-cr-30014-MAP. March 13, 2008.
36. United States v. Capper. “Government’s Memorandum Regarding Sentencing.” N.D. Iowa. Case 1:19-cr-00063-CJW-MAR. December 9, 2019.
37. United States v. Capper. “Information.” N.D. Iowa. Case 1:19-cr-00063-CJW-MAR. June 12, 2019.
38. United States v. Church, 11 F. App'x 264 (4th Cir. 2001).
39. United States v. Gross, No. 15-cr-769 (AJN), 2017 U.S. Dist. LEXIS 172567 (S.D.N.Y. Oct. 18, 2017).
40. United States v. Gurr. “Government’s Sentencing Memorandum.” D.D.C. Case 1:99-cr-00394-TFH. June 28, 2005.
41. United States v. Gurr. “Judgment in a Criminal Case.” D.D.C. Case 1:99-cr-00394-TFH. July 28, 2005.
42. United States v. Gurr. “Letter from the NCUA regarding sentencing.” D.D.C. Case 1:99-cr-00394-TFH. June 30, 2005.

43. United States v. Gurr. D.C. Cir., Case 1:99-cr-00394-TFH, Document 230. December 8, 2006.

44. United States v. Lebedev, 932 F.3d 40 (2d Cir. 2019).

45. United States v. McGinty. "Indictment." W.D. Okla. Case 5:09-cr-00148-R. May 6, 2009.

46. United States v. McGinty. "Plea Agreement." W.D. Okla. Case 5:09-cr-00148-R. July 2, 2009.

47. United States v. Murgio. "Brief for the United States of America." 2d Circuit. Case 17-3691, Document 254. August 29, 2018.

48. United States v. Murgio. "Sealed Complaint." S.D.N.Y. Case 1:15-cr-00769-AJN, July 17, 2015.

49. United States v. Murgio. "Sealed Indictment." S.D.N.Y. Case 1:15-cr-00769-AJN, undated.

50. United States v. Norris. "Criminal Information." E.D.N.C. Case 7:17-cr-00040-FL. April 18, 2017.

51. United States v. Norris. "Sentencing Memorandum." E.D.N.C. Case 7:17-cr-00040-FL. May 29, 2018.

52. United States v. Sawtelle. "Criminal Complaint." E.D. Wis. 62. Case 2:16-cr-00110-WCG. March 18, 2016.

53. United States v. Sawtelle. "Plea Agreement." E.D. Wis. 62. Case 2:16-cr-00110-WCG. July 11, 2017.

54. United States v. Tolstedt. "Carrie L. Tolstedt's Sentencing Memorandum." Case No. 2:23-cr-00115-JLS-1.

55. United States v. Wagler. “Government’s Sentencing Memorandum.” S. D. Iowa. Case 3:16-cr-00018-SMR-SBJ. November 10, 2016.

56. United States v. Wagler. “Plea Agreement.” S. D. Iowa. Case 3:16-cr-00018-SMR-SBJ. April 8, 2016.

57. Andrews v. Ernst & Young LLP. “Complaint, Exhibit 2.” October 30, 2003. Docket # 5:03-cv-04869-JF.

58. Saul Hansel, The New York Times, “U.S. Seizes Bank Business Of Web Credit Card Issuer.” February 12, 2002. Accessed February 27, 2024. https://www.nytimes.com/2002/02/12/business/technology-us-seizes-bank-business-of-web-credit-card-issuer.html.

59. United States v. Trauger. “Indictment.” Docket # 3:03-cr-00308-JSW-1. Accessed February 28, 2024. Available at https://www.justice.gov/archive/dag/cftf/chargingdocs/traugerindictment.pdf.

60. U.S. Attorney's Office, Eastern District of North Carolina. “Former President and CEO of Coastal Bank & Trust Sentenced for Bank Fraud Conspiracy and Obstruction.” June 5, 2018. Accessed February 28, 2024. https://www.justice.gov/usao-ednc/pr/former-president-and-ceo-coastal-bank-trust-sentenced-bank-fraud-conspiracy-and.