

USTP's Report on Criminal Referrals Highlights Criminal Enforcement Activity

By

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Introduction

In the July/August 2009 issue of the *ABI Journal*, one of us discussed the United States Trustee Program's (USTP or Program) recent criminal enforcement actions relating to bankruptcy-related mortgage and real estate fraud.¹ In this article, we will take a broader look at our criminal enforcement efforts, as documented in our annual report to Congress regarding criminal referrals made by the Program.

Criminal Referrals

The USTP is required to refer possible crimes to the U.S. Attorneys' Offices (USAOs) and, if requested, to assist the USAOs in prosecuting such cases. 28 U.S.C. § 586(a)(3)(F).² The USTP's duty under Section 586 is not limited to bankruptcy crimes or to cases that the USTP believes will be prosecuted or that meet a certain dollar threshold.³

In 2005, Congress passed legislation requiring the Director of the Executive Office for United States Trustees to report to Congress, annually, the number and types of criminal referrals made by the Program, the outcome of each criminal referral and the Program's efforts to prevent bankruptcy fraud and abuse.⁴

¹ Sandra R. Klein, "USTP Initiative Combats Bankruptcy-Related Mortgage and Real Estate Fraud," *American Bankruptcy Institute Journal*, Vol. XXVIII, No. 6, July/August 2009, p. 18.

² Title 28, United States Code, Section 586 provides in pertinent part that: "Each United States trustee . . . shall notify[] the appropriate United States attorney of matters which relate to the occurrence of any action which may constitute a crime under the laws of the United States and, on the request of the United States attorney, assist[] in carrying out prosecutions based on such action[.]"

³ Bankruptcy judges and private trustees also have statutory duties to refer cases to USAOs. 18 U.S.C. § 3057(a).

⁴ Section 1175 of the Violence Against Women and the Department of Justice Reauthorization Act of 2005 (P.L. 109-162) provides that:

The Director of the Executive Office for United States Trustees shall prepare an annual report to the Congress detailing—(1) the number and types of criminal referrals made by the United States Trustee Program; (2) the outcomes of each criminal referral; (3) for any year in which the number of criminal referrals is less than for the prior year, an explanation of the decrease; and (4) the United States Trustee Program's efforts to prevent bankruptcy fraud and abuse, particularly with respect to the establishment of uniform internal controls to detect common, higher risk frauds, such as a debtor's failure to disclose all assets.

In Fiscal Year 2008 (FY 2008), the USTP made 1,471 bankruptcy and bankruptcy-related criminal referrals, which was nearly a 27 percent increase over the 1,163 criminal referrals made during FY 2007. As shown in Table 1, the most common allegations contained in the USTP's FY 2008 criminal referrals involved false oaths or statements (42 percent), concealment of assets (32 percent), bankruptcy fraud schemes (20 percent), tax fraud (20 percent), identity theft or use of false/multiple Social Security numbers (20 percent) and mortgage/real estate fraud (13 percent). These percentages exceed 100 percent because referrals often contain more than one allegation.

Table 1: Criminal Referrals by Type of Allegation		
Type of Allegation	Referrals	
	Number	Percent*
False Oath/Statement [18 U.S.C. §§ 152(2) and (3)]	620	42%
Concealment of Assets	477	32%
Bankruptcy Fraud Scheme [18 U.S.C. § 157]	296	20%
Tax Fraud [26 U.S.C. § 7201, et seq.]	290	20%
ID Theft/Use of False/Multiple SSNs	287	20%
Mortgage/Real Estate Fraud	190	13%
Perjury/False Statement	154	11%
Mail/Wire Fraud [18 U.S.C. §§ 1341 and 1343]	84	6%
Bank Fraud [18 U.S.C. § 1344]	70	5%
Forged Documents	62	4%
Concealment of Documents [18 U.S.C. § 152(8) and (9)]	51	4%
Sarbanes-Oxley [18 U.S.C. § 1519]	28	2%
Embezzlement [18 U.S.C. § 153]	25	2%
Post-Petition Receipt of Property [18 U.S.C. § 152(5)]	24	2%
Money Laundering	23	2%
Federal Program Fraud	22	2%
Credit Card Fraud/Bust-Out	19	1%
Serial Filer	14	1%
State Law Violation	14	1%
Other (<1% each)	123	8%

* Percent based on 1,471 referrals. One referral often contains more than one allegation, so the sum of the percentages for referrals will exceed 100 percent.

Outcome of Criminal Referrals

Table 2 shows the collective outcome/disposition, as of October 27, 2008, of the 1,471 criminal referrals made by the Program during FY 2008.⁵ Within approximately one month after the closing of the fiscal year, 990 referrals (about 68 percent) were under review or investigation, 21 referrals (1 percent) had resulted in formal charges, 444 referrals (30 percent) were declined for prosecution and 16 referrals (1 percent) were administratively closed.⁶

Table 2: Outcome/Disposition of FY 2008 Referrals (as of 10/27/08)		
Outcome/Disposition (1)	Referrals	
	Number	Percent (2)
Under Review in United States Attorneys' Office	790	54%
With Investigative Agency	200	14%
Formal Charges Filed - Case Active	16	1%
Formal Charges Filed - Conviction or Guilty Plea	5	<1%
Prosecution Declined by United States Attorney	444	30%
Administratively Closed	16	1%
NOTE: (1) Outcome and disposition information will change over time. The information contained within Table 2 reflects information available as of October 27, 2008.		
(2) Rounded percent based on 1,471 referrals.		

⁵ The USTP is not the source of official disposition information.

⁶ Administratively closed referrals may still be under review/investigation by an agency (other than a USAO) that has not historically provided updates on case referrals.

It can take several years to fully investigate and prosecute a criminal referral. As seen in Table 2, about 68 percent of the criminal referrals from FY 2008 were still under review at the end of the fiscal year.

Criminal Referral Prosecutions

The following section provides examples of criminal referrals that resulted in prosecutions. As the cases below demonstrate, the USTP refers a variety of crimes to the USAOs and assists the USAOs and law enforcement agencies in many different ways throughout criminal investigations and prosecutions. These cases are not limited to FY 2008 criminal referrals.

False Statements, False Oaths, and Concealment of Assets

As Table 1 indicates, approximately 75 percent of referrals from the U.S. Trustee Program involve false statements, false oaths or concealment of assets. Some noteworthy cases in these categories include the following.

The U.S. Trustee's Sacramento office referred a case involving the concealment of assets and false statements to the U.S. Attorney, and assisted the prosecution team, including providing testimony during the trial and at sentencing. The defendant was sentenced in the Eastern District of California to more than 135 months in prison after a jury convicted him of concealing assets, making false statements in bankruptcy, and money laundering. The defendant filed bankruptcy primarily to discharge a \$267,000 judgment held by his ex-wife. He concealed interests in an airplane, acreage and insurance proceeds, and he falsely claimed that he sold his chiropractic business for \$60,000 when in fact he sold it for \$265,000. While on pretrial release, the defendant diverted the proceeds of the business sale to his personal use and sold standing timber from real property the trustee was in the process of selling.

The U.S. Trustee's Phoenix office referred a case concerning an attorney in the District of Arizona, who was sentenced to 13 months in prison after a jury found him guilty of 33 counts of false declarations in bankruptcy, bankruptcy fraud and money laundering. The defendant filed a chapter 7 bankruptcy case and made numerous material false declarations designed to conceal approximately \$500,000 in assets and income. He also used more than \$300,000 in concealed assets to purchase a home for \$1 million. The defendant was suspended from the practice of law and the chapter 7 trustee eventually sold the home for more than \$1.2 million. The U.S. Trustee's office assisted during the investigation and prosecution, and testified during the trial.

The U.S. Trustee's Jackson office referred a case involving a disbarred bankruptcy attorney from the Southern District of Mississippi. The attorney was sentenced to 32 months in prison after pleading guilty to concealment of assets, money laundering and wire fraud. The defendant schemed to obtain funds from clients, and deposited the funds into his trust account

while falsely representing to clients that the money was used to reduce their debts and satisfy creditors. He then transferred the money from his trust account to his personal account and converted it for his own use.

Bankruptcy Fraud Schemes

Approximately 20 percent of USTP referrals involve bankruptcy fraud schemes. Some recent noteworthy cases are included here.

A defendant in the Southern District of Illinois was sentenced to 120 months in prison after he pleaded guilty to perjury, conspiracy to commit bankruptcy fraud, conspiracy to commit mail fraud and making a false statement to the U.S. Department of Agriculture Commodity Credit Corporation. The defendant's illegal conduct included concealing a tractor behind a false wall of a shed and testifying falsely concerning the terms of a fictitious post-petition loan. His wife was sentenced to two years probation following her guilty plea to conspiracy to commit bankruptcy fraud. The U.S. Trustee's Peoria office assisted in the investigation.

A defendant in the Northern District of Illinois was sentenced to 96 months in prison after pleading guilty to bankruptcy fraud, wire fraud and mail fraud. The defendant engaged in a scheme involving the submission of fraudulent invoices to his employer and the issuance of checks that he misappropriated for his own use. When the defendant filed bankruptcy, he failed to disclose various items including his gross income, his ownership of stock and a pending personal injury suit. He also submitted false financial information to the U.S. Trustee. The U.S. Trustee's Chicago office referred the bankruptcy fraud matter and assisted with the prosecution.

Tax Fraud

Tax fraud allegations are involved in 20 percent of the USTP's referrals, such as the following two cases.

Based on apparent fraud and irregularities in several cases filed by payroll and benefits services companies, the U.S. Trustee's Tampa and Orlando offices referred a private equity investor's actions to the U.S. Attorney. An investigation revealed that the payroll and benefits services companies failed to remit more than \$180 million in payroll taxes collected from customers. A trial attorney in the U.S. Trustee's Tampa office served as a Special Assistant U.S. Attorney during the investigation. The private equity investor was sentenced to more than 22 years in prison after pleading guilty to conspiracy to defraud a federal agency, wire fraud, obstruction of an agency proceeding and failure to collect and remit payroll taxes. He was also ordered to pay almost \$182 million in restitution to the Internal Revenue Service. Through an entity that he controlled, the defendant acquired many companies that provided payroll and benefits services for other companies. The entity controlled by the defendant, as well as several

of the payroll and benefits services companies, filed bankruptcy in the Tampa and Orlando Divisions of the Middle District of Florida.

A defendant in the District of Montana was sentenced to 41 months in prison following his conviction on charges of concealment of assets, obstruction of bankruptcy court proceedings, interfering with Internal Revenue Service laws and attempting to evade or defeat tax laws. When the defendant filed bankruptcy, he concealed two personal bank accounts through which he routed over \$122,000. During the bankruptcy proceeding, he frustrated the proceedings by representing that he had a secured lien against himself for \$100 billion, providing evasive and inaccurate accounts of his income, failing to disclose all of his real property interests and refusing to accept court orders. The case was referred by the U.S. Trustee's office in Great Falls, Montana, and the Great Falls Assistant U.S. Trustee testified at the criminal trial.

Identity Theft

Approximately 20 percent of U.S. Trustee referrals involve identity theft. As the two cases discussed below demonstrate, the identity thieves may know, and in some instances may be related to, their victims.

A defendant in the Southern District of Mississippi was sentenced to 15 months in prison after pleading guilty to bank fraud and making a false oath in bankruptcy. The defendant, a former police officer, admitted using his disabled minor son's Social Security number to obtain a bank loan from a credit union to purchase a car. The defendant then used the Social Security number to file bankruptcy three times to forestall repossession of the vehicle, and testified falsely under oath at a bankruptcy hearing in an effort to remain in chapter 13 bankruptcy. The U.S. Trustee's Jackson office referred the matter to the U.S. Attorney.

A defendant in the District of Nebraska was sentenced to one month of home detention and five years probation, and ordered to pay more than \$10,000 in restitution, after pleading guilty to fraudulently using her mother's name and Social Security number to obtain a loan from a bank and then filing bankruptcy in her mother's name, all without her mother's knowledge or consent. The U.S. Trustee's Omaha office referred the matter to the U.S. Attorney and assisted in the investigation.

Mortgage or Real Estate Fraud

Thirteen percent of U.S. Trustee criminal referrals involve mortgage or real estate fraud, as illustrated by the following cases.

A non-attorney bankruptcy petition preparer in the District of Maryland was sentenced to 78 months in prison and three years supervised release after pleading guilty to bankruptcy fraud and conspiracy to commit wire fraud in connection with a mortgage fraud scheme. The petition

preparer previously agreed to forfeit more than \$2.2 million. The petition preparer and his co-defendants targeted individuals facing foreclosure. The goal of the scheme was to steal homeowners' equity by inducing homeowners to sell their property to one of the co-conspirators and converting the sale proceeds to monies the conspirators used. At the sentencing hearing, the prosecution introduced a victim impact statement developed by the U.S. Trustee's Baltimore and Greenbelt offices, which had also referred the criminal matter, assisted in the investigation and prosecution and previously obtained an injunction barring the defendant from acting as a petition preparer. The victim impact statement explained how the defendant's actions abused the bankruptcy process by depriving unsophisticated consumers of a smoothly functioning bankruptcy system and, in some cases, depriving them of their bankruptcy discharges.

Two defendants from Los Angeles were convicted in the District of Kansas on six counts of mail fraud and one count of conspiracy in connection with their operation of a nationwide foreclosure rescue scheme. After testifying at trial and providing substantial assistance during the investigation and prosecution of the case, a bankruptcy analyst from the U.S. Trustee's Wichita office was honored by the USAO for his invaluable service in the successful prosecution. The defendants promised homeowners they would not have to make mortgage payments for two years. At the defendants' direction, the homeowners transferred fractionalized interests in their properties to fictitious companies and paid the defendants monthly fees ranging from \$500 to \$2,000. The defendants placed the fictitious companies in bankruptcy, invoking the automatic stay to halt collection activities against the homeowners. When the homeowners stopped paying, the defendants stopped filing serial bankruptcy cases, the lenders foreclosed and the homeowners lost their properties.

After pleading guilty to conspiracy to commit wire fraud, making false/fraudulent statements to the Department of Housing and Urban Development (HUD) and making false statements on an income tax return, a defendant was sentenced in the Eastern District of Louisiana to concurrent sentences of 40 months in prison for wire fraud, 24 months in prison for making false statements on HUD documents and 36 months in prison for making false statements on tax returns. The defendant was also ordered to pay approximately \$600,000 in restitution to HUD and more than \$400,000 in restitution to the IRS. The defendant admitted knowingly and willfully defrauding HUD through a fraudulent "house flipping" scheme and failing to report earnings from the scheme on his tax returns. The U.S. Trustee's New Orleans office referred the matter to the U.S. Attorney.

Other Criminal Conduct

Finally, in some cases, the USTP may uncover non-bankruptcy criminal conduct. The USTP refers such matters to the USAOs and, when requested, provides assistance and support during the investigation and prosecution of those cases.

A loan officer in the District of Oregon pleaded guilty to wire fraud, bank fraud and money laundering. He was sentenced to 63 months in prison and ordered to pay more than \$500,000 in restitution related to a mortgage fraud scheme in which he recruited individuals to purchase residential real estate with mortgage loans procured through false loan applications. In addition, the mortgage applications failed to disclose that the loan officer would receive proceeds from the loans, the cash required at closing was supplied by someone other than the buyers, and the buyers had outstanding mortgage obligations on other properties. The U.S. Trustee's Portland, Oregon, office referred the matter to the U.S. Attorney.

A defendant who pleaded guilty to wire fraud and fraud in connection with the purchase or sale of securities was sentenced in the District of Massachusetts to 63 months in prison and ordered to pay more than \$1.7 million in restitution. Over a period of approximately five years, the defendant stole more than \$1.6 million from clients, his friends and trust accounts for which he served as trustee. He took the money under the guise that it would be invested in a commercial real estate venture or in a tax-free investment. He also promised investors that they would receive guaranteed quarterly interest payments on their investments. In actuality, the defendant deposited the victims' funds into bank accounts he controlled, and then spent the money on personal expenses and debts. To conceal his fraud, the defendant sent his victims false documents, including fraudulent stock certificates and tax documents. The U.S. Trustee's Boston office referred the matter to the U.S. Attorney.

A former chief executive officer and co-owner of a corporation that was in bankruptcy in the Western District of Texas was sentenced to 37 months in prison after pleading guilty to making false statements to the Federal Trade Commission (FTC). Through his business, the debtor marketed a diet solution. In connection with the FTC's litigation about marketing claims regarding the diet solution and a related bankruptcy case, the defendant falsely stated under oath that assets he owned and directly or indirectly controlled were valueless when, in fact, they were valuable and he expected to be repaid on loans and stock warrants. The U.S. Trustee's San Antonio office referred the matter and assisted in the investigation, and a USTP employee acted as a Special Assistant U.S. Attorney during the investigation and prosecution.

A father and son in the Southern District of West Virginia were sentenced to 57 months and 24 months, respectively, after both defendants pleaded guilty to fraudulent receipt of property in a bankruptcy case and other charges arising from their actions during the chapter 11 bankruptcy of an oil and gas business they controlled. During the chapter 11 case, the defendants diverted assets and income from the debtor corporation to other corporations they owned. The U.S. Trustee's Charleston, West Virginia, office referred the matter and assisted the USAO and the law enforcement agencies with the case.

A bank operations manager in the District of Puerto Rico was sentenced to 12 months in prison, and ordered to pay approximately \$300,000 in restitution, after pleading guilty to one count of bank fraud. The manager fraudulently obtained loans from the bank on savings that

were guaranteed by certificates of deposits under the name of her family members and customers, without their authorization. The monies obtained from the loans were used for her own personal benefit. The manager filed bankruptcy, and the U.S. Trustee's Puerto Rico office referred the matter to federal law enforcement.

Conclusion

The USTP continues its mission to protect and preserve the integrity of the bankruptcy system by pursuing civil actions and referring possible criminal conduct to USAOs. Although the USTP initiates and conducts the preliminary investigation necessary for a criminal referral, many of the Program's referrals originate from private trustees and the public. In addition, none of the Program's criminal referrals could be successfully prosecuted without the hard work of the federal investigative agencies and the USAOs.

We encourage all members of the bankruptcy community to assist in this effort. To report suspected bankruptcy-related crimes, please contact your local U.S. Trustee's office or submit information through the USTP's Internet bankruptcy fraud hotline at www.usdoj.gov/ust/eo/fraud.