

Bullivant Houser Bailey PC
Attorneys at Law

FRAUD - WHO DUNNIT?!


Prepared for National Association of Credit Managers
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Offices in Washington, Oregon & California

1

B LET'S TALK ABOUT 

- Today we will:
 - Learn what fraud is
 - Talk about common types of fraud with businesses
 - Learn indicators of fraud
 - Learn how fraud can be detected and/or deterred
 - Learn how businesses are remedying fraud and
 - Apply what we've learned and talked about to find the fraudsters amongst us


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2

B Definitions: Business Fraud

Business fraud is:

- dishonest and illegal activities
- perpetrated by individuals or companies
- to provide an advantageous financial outcome to those persons or establishments.



1. <https://www.fbi.gov/icsa-and-safety/common-fraud-schemes/business-fraud>

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3

B **Definitions: Common Law Fraud**

In Oregon and Washington, to prove fraud, the moving party must show by "clear, cogent and convincing evidence:"

1. A representation of an existing fact;
2. The represented fact is material;
3. The represented fact is false;
4. The speaker knows the fact is false;
5. The speaker intends that the false-fact will be acted upon by the second party;
6. The second party does not know the fact is false;
7. The second party relies on the fact as being true;
8. The second party has a right to rely upon the fact; and
9. The second party suffers damages by relying on the false-fact.


Stiley v. Block, 130 Wn.2d 486, 925 P.2d 194 (1996); Conzelmann v. Nuvo. Poultry & Dairy Prod. Co., 190 Or. 332, 225 P.2d 757 (1950).

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4

B **Definitions: Occupational Fraud**

Internal fraud, or fraud committed by a person against the organization for which he or she works.



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5

B **Stats: Common types of business and occupational fraud**

1. **Corruption**
 - Bribery
 - Economic extortion
 - Illegal gratuities
 - Insider dealing
 - Purchasing schemes
 - Sales schemes



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6

B Stats: Common types of business and occupational fraud

2. Asset Appropriation

- Theft of cash
- Fraudulent disbursements
- Inventory manipulation
- Larceny
- Falsified receivables/shipping records




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7

B Stats: Common types of business and occupational fraud

3. Financial Statement Fraud

- Overstatements and Understatements
- Fictitious revenues
- Concealed liabilities and expenses
- Overstated liabilities and expenses
- Improper/falsified asset valuations
- Improper disclosures



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8

B Stats: Ways fraud could be concealed


- Creation of fraudulent physical documents
- Altered physical documents
- Altered transactions in accounting systems
- Altered electronic documents or files
- Destroying physical documents
- Creation of fraudulent electronic records
- Creation of fraudulent journal entries

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9

B Stats: Common indicators of business/occupational fraud

- Living beyond means
- Financial difficulties
- Unusually close association between fraudster and vendor/customer
- Control issues – an unwillingness to share duties
- Divorce/Family problems
- Having a “Wheeler-Dealer” attitude



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10

B Stats: Ways to detect and deter fraud

- External audit of financial statements
- Internal auditing department
- Management certification of financial statements
- Anonymous tip-hotline
- Independent auditing committee
- Fraud training for managers and executives

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11

B Remedies – What can employers do?

- Termination
- Settlement agreement/negotiate resignation
- No punishment
- Criminal charges and prosecution
- Civil lawsuit

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12

B  WHO DUNNIT? 

Put on your detective hats – it’s time to figure out WHO DUNNIT!

WE NEED FOUR VOLUNTEERS:

Mr. Olive
Ms. Crimson
Ms. Ornate-Bird
Col. Canary

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13

B WELCOME TO ACME COMPANY

- You are all members of the Board of Governors for Acme Company, where we manufacture and sell widgets.
- Acme is a large company with over 100 employees.
- Acme has several departments which operate independently of each other and whom all report to our Board.

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14

B MEET **Mr. Olive**

Mr. Olive manages the Accounting and Payroll Department. He is responsible for accounting, payroll, and tax duties for Acme. On the side, **Mr. Olive** owns and operates a couple of financial management and tax consulting companies.

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15

B **MEET Ms. Crimson**

Ms. Crimson is the Facilities Manager for Acme and oversees supply purchases for Acme.

When **Ms. Crimson** makes a purchase for the company, she completes an expense report based on an invoice for the supplies. She requests monthly reimbursements based on purchases with her company credit card.

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B **MEET Ms. Ornate-Bird**

Ms. Ornate-Bird is the manager of Accounts Receivable at Acme.

She handles refunds and returns, as well as inventory for Acme's widgets.

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B **MEET Col. Canary**

Col. Canary oversees Vendor Management for Acme.

He researches and recommends vendors to work with, and acts as a liaison to vendors to ensure continued and uninterrupted business.

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18

B ONE DAY...

In an uncharacteristic move, the Board examines the quarterly financial report and digs deeper than usual.
 Discrepancies are appearing in inventory and spending.
 Additionally, the IRS has contacted Acme and has notified the company of its intentions to perform an audit.
 The Board is concerned about the discrepancies and wants to address these before the IRS audit.

WHAT DO WE DO?

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19

B LET'S TALK TO SOME EMPLOYEES...

Mr. Olive?
Ms. Crimson?
Ms. Ornate-Bird?
Col. Canary?

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20

B SEE ANY FRAUD INDICATORS?
 LET'S LOOK AGAIN:

Mr. Olive:
 - **Col. Canary** and **Mr. Olive** said he owns three homes, and **Col. Canary** also said **Mr. Olive** has "fancy cars" and shouldn't be able to afford that lifestyle.

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21

B SEE ANY FRAUD INDICATORS?
LET'S LOOK AGAIN:

Ms. Crimson:

- **Mr. Olive** said **Ms. Crimson** just went through a divorce and is having financial problems.
- **Ms. Crimson** also said she's having financial problems.

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22

B SEE ANY FRAUD INDICATORS?
LET'S LOOK AGAIN:

Ms. Ornate-Bird:

- **Ms. Crimson** said Ms. Peacock won't let anyone else check her numbers for her.
- **Ms. Ornate-Bird** offered to run the numbers herself, but also told us to buzz off and get out of her space because she likes to work alone.

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23

B SEE ANY FRAUD INDICATORS?
LET'S LOOK AGAIN:

Col. Canary:

- **Ms. Ornate-Bird** warned us that Col. Mustard is always wheeling and dealing.
- **Col. Canary** told us the vendors he uses are close friends and does come across as a wheeler and dealer.

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24

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WHAT DO WE DO NEXT?

Our interviews were inconclusive, and all four of our managers have some fraud indicators. What are some of our options?

- Hire an outside auditor
- Form an internal auditing committee
- Setup an anonymous hotline

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25

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AN EXTERNAL AUDIT

Since the IRS is knocking on our door, and we know from statistics that an external audit has the highest rate of success to identify fraud, we're going to hire an outside auditor to check our financial statements.

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26

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ABC ACCOUNTING

Our Go-To auditors, ABC Accounting, Inc., have performed an external audit. Before we review their findings, who dunnit?

Mr. Olive
Ms. Crimson
Ms. Ornate-Bird
Col. Canary

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27

B WHAT REALLY HAPPENED:

Mr. Olive:

- **Mr. Olive** hasn't filed taxes for the last two years. Acme is in trouble for back taxes and potential penalties owed to the IRS.
- The consulting firms that **Mr. Olive** hired are really his own side-companies. He essentially hired himself to check his own figures. The companies are shells and have similar names to firms Acme usually uses, like "ABC Accountants Co." instead of the real, "ABC Accountants, Inc."
- **Mr. Olive** has been paying himself by disguising his shell company invoices as management fees and bonuses.

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28

B WHAT REALLY HAPPENED:

Ms. Crimson:

- Using her company credit card, **Ms. Crimson** has been charging Acme for supply purchases that never happened. She fabricated the invoices for supplies but in reality, was using the Acme company card to charge personal expenditures.
- She also made charges for fake supplies from a company that her and her friend made up to try to hide the payments.

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29

B WHAT REALLY HAPPENED:

Ms. Ornate-Bird:

- **Ms. Ornate-Bird** was making fraudulent, fake returns and adjusting the inventory numbers to match the fake returns.
- She created shell companies to issue the refunds to in attempt to hide the scam.

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30

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WHAT REALLY HAPPENED:

Col. Canary:

- **Col. Canary** has been recommending his friends' businesses to use as vendors for years. They've overcharged Acme to give **Col. Canary** kick-backs through the overcharges.
- Additionally, **Col. Canary's** friend, Professor Purple, asserted fake credentials to Acme and downloaded a presentation he never created from the internet. Using the stolen presentation, Professor Purple told Acme he could do things that he couldn't. Before Acme could find out, Professor Purple and **Col. Canary** stall and say they are still developing the product that Professor Purple promised. Meanwhile, the two continued to charge Acme for management fees for the project.

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31

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WHO ARE THEY REALLY?

Mr. Olive, aka Paul Randolph Beeks, Jr. of Mid-Atlantic Radiology Services.

- Mr. Beeks oversaw accounting, payroll and taxes for Mid-Atlantic Radiology Services.
- Between November 2009 and August 2015, he made about 24 fraudulent transfers from Mid-Atlantic to his own shell companies. To disguise the theft, he claimed the wire transfers were management fees and bonuses.
- He was stopped when the IRS contacted Mid-Atlantic because Mid-Atlantic did not file its taxes.
- Mr. Beeks was sentenced to 15 months in prison after he netted almost \$526,000.

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32

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WHO ARE THEY REALLY?

Ms. Crimson, aka David Smith of Quest Diagnostics

- David Smith was the former facilities manager of the Tampa, Florida Quest Diagnostics, Inc.
- Starting in 2001, he submitted fake invoices with expense reports and then forged signatures of his supervisors to cause payments to be made.
- Quest lost about \$1.3 million because of the scheme.
- Smith was found out by an accountant who checked the physical inventories against the paper inventories and found large discrepancies. The accountant also noted that one of the fake invoices listed an address for the fake company that was an on-ramp to the local freeway.
- Smith pleaded guilty to three counts of wire fraud, three counts of mail fraud, and two counts of aggravated identity theft.
- He was sentenced to 5 years in prison with three years of supervised probation, as well as return of \$402,000 in forfeitures and restitution.

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33

WHO ARE THEY REALLY?

Ms. Ornate-Bird, aka Suraj Samaroo of IKEA

- Mr. Samaroo was working at an IKEA and stole \$400,000 by issuing fake refunds to himself.
- He worked at a call center for about one year and handled customer complaints and returns. He used legitimate customer purchase records to falsify returns made to himself.
- About 2 to 3 times a week, Mr. Samaroo would make a return to himself.
- Mr. Samaroo was found out when co-workers started asking about his sudden lavish lifestyle, including a new car and other lavish expenses. His bank also noticed an unusually large series of deposits.
- He was convicted in November 2008 in Baltimore County.

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34

WHO ARE THEY REALLY?

Col. Canary, aka Elizabeth Holmes of Theranos

- Elizabeth Holmes made headlines as CEO of a 2003 startup, Theranos, which promised revolutionary ideas and technology for blood testing.
- Holmes convinced investors and raised more than \$700 million for the company.
- In 2015, Theranos was estimated to be worth some \$9 billion
- Holmes presented investors and others with ideas copied from others, and then couldn't deliver on those ideas and promises.
- In October 2015, Theranos was found out – its blood testing devices provided inaccurate and inconsistent results. The Wall Street Journal published an expose after concluding a months-long secret investigation of Theranos, exposing that the company was a sham and was not capable of any of the promises it made.
- Holmes was eventually indicted on nine counts of wire fraud and two counts of conspiracy to commit wire fraud. Her trial is set to begin in the U.S. District Court for the Northern District of California on July 28, 2020.

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35

TAKE-AWAYS

- Checks and balances help stop fraud – leaving departments, employees, and others without oversight or verification by others can lead to fraud.
- Ways to deter and detect fraud include external auditing, internal auditing, and setting up hotlines for anonymous tips.
- Although we have lists of Indicators of Fraud, none are dispositive by themselves. Each must be evaluated case-by-case.
- Somewhat obviously, fraud hurts businesses and there it is more costly to fight fraud after-the-fact than to deter it. Holding regular meetings and trainings to discuss fraud and anti-fraud plans can also help prevent fraud.

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36

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THANK YOU TO OUR VOLUNTEERS



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37

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RESOURCES

- Federal Trade Commission – www.ftc.gov
- Federal Bureau of Investigation – www.fbi.gov/scams-and-safety
- Association of Certified Fraud Examiners – www.acfe.com/fraud-resources.aspx
- Office of the Comptroller of the Currency, US Dept. of Treasury - <https://www.occ.treas.gov/topics/consumer-protection/fraud-resources/index-fraud-resources.html>

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38

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QUESTIONS?

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39



A business card for Alex Hill, a PC at Bullivant Houser Bailey. The card is white with a black border. In the top-left corner, there is a small yellow square with a white letter 'B'. The contact information is centered: Alex Hill, Bullivant Houser Bailey PC, Alex.Hill@Bullivant.com, (503) 499-4428, and www.bullivant.com. A dark blue horizontal bar at the bottom contains the website URL www.bullivant.com in small white text.
