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By Kevin J. O'Brien



Former FTX Chief Executive Sam Bankman-Fried, who faces fraud charges over the collapse of the bankrupt cryptocurrency exchange, exits the Manhattan federal court in New York City, U.S. February 16, 2023. REUTERS/Eduardo Munoz

Feedback



April 10, 2023 - The government's first superseding indictment of alleged fraudster Samuel Bankman-Fried, filed at the end of February, attracted only passing attention. But while it broke no new legal ground, the new indictment was a major achievement for the prosecution, providing a blueprint for a highly aggressive strategy for trial. It was followed by a second superseding indictment, adding a bribery-related count, filed at the end of March.

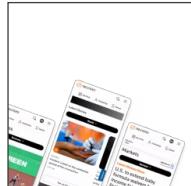
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Of course, ambitious trial plans, even government plans, often go awry in the execution. The real point of the daunting new indictments may be to deter Bankman-Fried and his counsel from even testing the government's case at trial. Bankman-Fried has pleaded not guilty and denied all charges.

The second indictment added four new counts to the eight counts in the original December 2022 indictment and fine-tuned some legal theories, but the main claims of criminal liability against Bankman-Fried remain the same. He is alleged to have committed fraud upon customers of his global cryptocurrency exchange FTX by misappropriating customer deposits to pay debts of his crypto hedge fund Alameda Research ("Alameda") and fund his own investments; fraud upon Alameda lenders by disseminating false and misleading information as to the financial condition of Alameda; fraud upon FTX investors by disseminating false and misleading information as to the financial condition of FTX and its relationship to Alameda; and fraud upon the Federal Election Commission by making unlawful political contributions to candidates of both political parties.



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The government's latest indictment alleges, in a 13th count, that Bankman-Fried conspired to bribe Chinese government officials with a \$40 million payment in order to unfreeze certain cryptocurrency accounts that had been frozen.

On top of this legal scaffolding, the prosecutors have overlaid a detailed 25-page narrative of alleged facts. They have produced a "speaking" indictment, laying out how Bankman-Fried, belying his self-styled image as the genial "savior of the cryptocurrency industry," not only violated federal anti-fraud statutes but built multiple deceptions into his business operations to conceal his schemes and, as FTX began to sink in late 2022, repeatedly misled customers and investors with false reassurances as to FTX and Alameda. In the government's telling, the defendant's unlawful conduct was the outgrowth of a pattern of personal hypocrisy and dishonesty.

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For example, since no bank would do business with a cryptocurrency firm without extensive due diligence, Bankman-Fried allegedly overcame the fact that FTX had no dedicated bank accounts for holding customer deposits first by surreptitiously using Alameda's proprietary trading accounts, and then by inventing a purely fictitious Alameda trading customer, North Dimension. After an unsuspecting bank agreed to open an account for North Dimension, which was controlled by Alameda, Bankman-Fried used it for the improper transfer and deposit of FTX customer funds.

According to the second indictment, Bankman-Fried concealed his massive misappropriation of customer funds through the creation of "secret loopholes" in the computer code that powered FTX's trading platform. These loopholes allowed Alameda to run up a multibillion-dollar negative balance on FTX loans that the defendant knew Alameda could not repay. He also required co-conspirators at times to communicate using encrypted messaging platforms that self-deleted, hampering later efforts to uncover his suspected crimes. Small wonder Bankman-Fried reassured his associates that the auditors who worked on FTX's audited financial statements for investors would never be able to untangle his schemes.

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As if to further advertise the strength of its claims at trial, the government has also gone out of its way to highlight that the sources for many of its allegations are Bankman-Fried's own associates and co-conspirators, known or believed to be prosecution witnesses. Prominent among them is Caroline Ellison, whom Bankman-Fried installed as a co-CEO of Alameda, and who helped to misappropriate deposits and give false and misleading information to Alameda creditors.

The second indictment even summarizes a discussion Bankman-Fried supposedly had with an FTX "in-house attorney" regarding a bogus explanation concocted for Alameda's astronomical borrowings. Even though the attorney allegedly dismissed the explanation as incorrect, Bankman-Fried went on to embrace it publicly. Reading this conversation in the pages of the indictment may have been calculated to send a chill up the defense's spine.

At trial, Bankman-Fried and his attorneys will have an opportunity to challenge the government's apparently extensive proof. The new indictments are meant in part to dissuade them from doing so, and they could well succeed.

*Kevin J. O'Brien is a regular contributing columnist on trial practice for Reuters Legal News and Westlaw Today.*



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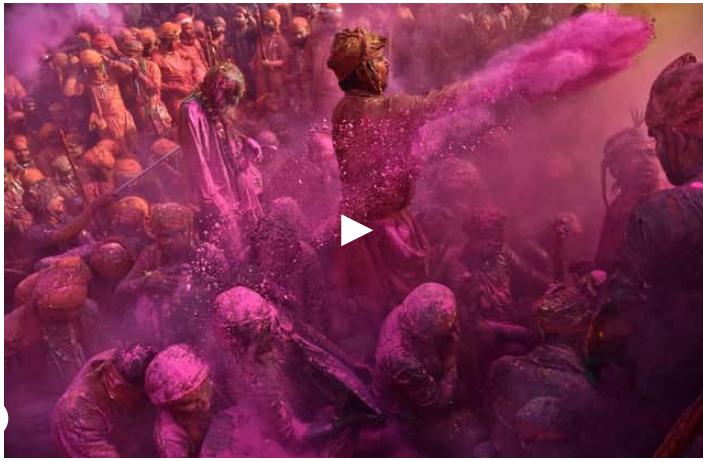
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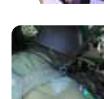
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