

**FILED**  
VANESSA L. ARMSTRONG, CLERK

FEB 21 2018

**U.S. DISTRICT COURT  
WEST'N. DIST. KENTUCKY**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

UNITED STATES OF AMERICA

v.

**DEREK PAYNE BURCHAM**

INDICTMENT

NO.

3:18 CR-14-DJH  
15 U.S.C. § 80b-6  
15 U.S.C. § 80b-17  
18 U.S.C. § 1028A  
18 U.S.C. § 1343  
18 U.S.C. § 1957  
18 U.S.C. § 981  
18 U.S.C. § 982  
28 U.S.C. § 2461

The Grand Jury charges:

INTRODUCTION

At all times relevant to this Indictment:

1. Cornerstone Benefit Advisors, LLC (“Cornerstone”) was a Kentucky limited liability company formed on December 22, 2011, and ultimately doing business as Cornerstone Wealth Advisors, with its principal office located in Louisville, Kentucky.
2. Cornerstone was registered with the Kentucky Department of Financial Institutions (“DFI”) as an investment adviser.
3. Cornerstone specialized in providing investment management and advisory services to private individuals. Using investment advisory contracts, clients empowered Cornerstone to make investment decisions on their behalf in certain circumstances, with the understanding that the investment adviser would make such decisions based on the client’s best interests.

4. Defendant, **DEREK PAYNE BURCHAM**, was the organizer, manager, principal owner, and investment adviser representative of Cornerstone.

5. **DEREK PAYNE BURCHAM** was Cornerstone's sole investment adviser representative ("IAR") and worked directly with Cornerstone's clients. Under Kentucky law, **DEREK PAYNE BURCHAM** had a fiduciary duty to act in his clients' best interests and to disclose to them all material facts concerning transactions undertaken on their behalf.

6. Beginning in and around March 2011, and prior to founding Cornerstone, **DEREK PAYNE BURCHAM** held Series 7, 63, and 66 securities licenses and was a registered financial advisor and representative for two separate financial institutions from in or about August 2006 through in or about February 2011.

#### Object of the Fraud

7. The object of the fraud was for **DEREK PAYNE BURCHAM** to misappropriate monies that investors had provided to Cornerstone to invest, and then use those funds to support **DEREK PAYNE BURCHAM**'s lifestyle and cover operating expenses.

#### Overview of the Scheme To Defraud

8. **DEREK PAYNE BURCHAM** held himself out to clients, many of whom were elderly, as an experienced and licensed investment adviser, stock broker, and registered representative operating his own investment and financial planning company.

9. In soliciting client investments, **DEREK PAYNE BURCHAM** made numerous false statements, assurances, and representations to clients regarding the nature of their investments.

10. **DEREK PAYNE BURCHAM** perpetuated the scheme to defraud by posting and soliciting business through false advertisements on his website and through Facebook and Twitter.

11. **DEREK PAYNE BURCHAM** induced clients to provide him with access to their accounts at brokerage and financial planning companies, such as Shareholders Services Group (“SSG”) and Pershing LLC , and caused ACH transfers to be issued from those accounts.

12. **DEREK PAYNE BURCHAM** forged client signatures on the official investment documents, without authority, which caused ACH transfers to be issued from client accounts into Cornerstone’s business account.

13. **DEREK PAYNE BURCHAM** defrauded Cornerstone’s clients by charging unearned advisory fees, in violation of his agreements with those clients, and by repeatedly concealing and covering up the fact that he had over-charged advisory fees.

14. From about 2012 through August 2016, **DEREK PAYNE BURCHAM** withdrew unearned advisory fees from Cornerstone’s client accounts in excess of what he was allowed to charge under his contracts and Kentucky law. **DEREK PAYNE BURCHAM** provided documents collectively known as the Brochure and Brochure Supplements (“Form ADV Brochure”) to the Kentucky Department of Financial Institutions (“DFI”) which stated the maximum advisory fee charged by Cornerstone was 1% of the Assets Under Management (“AUM”). **DEREK PAYNE BURCHAM**, however, actually withdrew unearned advisory fees from client accounts in excess of the 1% AUM.

15. Through these and other actions, affirmative misrepresentations, false assurances, and omissions of material fact, **DEREK PAYNE BURCHAM**, fraudulently obtained over \$800,000.00.

16. **DEREK PAYNE BURCHAM**, maintained an account ending in 6018 in the name of Cornerstone for which he and K.A.B. were the only authorized signatories, and made deposits

of client funds into this account at JP Morgan Chase in the Western District of Kentucky. **DEREK PAYNE BURCHAM**, was the only person who authorized or initiated deposits and withdrawals of client funds from this JP Morgan Chase account.

17. Defendant **DEREK PAYNE BURCHAM** did not always invest his client's funds as he had represented to his clients that he would do. **DEREK PAYNE BURCHAM** would withdraw fees from the investment accounts, and then would use the funds for personal expenditures, a luxury car, boat, vacation trips, and improvements in property, among other things.

18. Specifically, **DEREK PAYNE BURCHAM** used unearned advisory fees he took from his clients to support his lifestyle, including with following examples:

- A. Travel, lodging, and vacations;
- B. Improvements on real property;
- C. Jewelry, student loans, personal loans, credit cards; and
- D. Meals, entertainment, groceries, alcohol, and retail shopping.

19. In an effort to conceal the enormous declines in his clients' accounts, hide over charged advisory fees, and generate more fees for himself, **DEREK PAYNE BURCHAM** repeatedly provided clients with false verbal assurances as well as misleading and inaccurate account statements. The fraudulent account statements misrepresented the fees **DEREK PAYNE BURCHAM** was taking and grossly overstated the remaining value of his clients' accounts. During this period, **DEREK PAYNE BURCHAM** took over \$800,000.00 in unearned advisory fees from his clients.

20. Furthermore, **DEREK PAYNE BURCHAM** took numerous additional steps to conceal his scheme to defraud from detection by his victims and investigators. These steps included the following:

- A. Mailing false and fabricated account statements to clients which purported to show, among other things, overall account activity;
- B. Setting up a web-based portal on his website, whereby clients could purportedly view their account information (however, the account information often did not reflect an accurate balance of their account); and
- C. Making misstatements to investigators and clients about the investigation being conducted by the Kentucky DFI into his purported fraudulent practices.

COUNTS 1 – 10  
(Wire Fraud)

21. The Grand Jury re-alleges and incorporates by reference the allegations in paragraphs 1 – 20 of this Indictment.

22. Beginning in or about 2012 and continuing until at least August 2016, in the Western District of Kentucky, Jefferson County, Kentucky, **DEREK PAYNE BURCHAM**, defendant herein, devised and intended to devise a scheme to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, in furtherance of an interstate wire communication scheme, by causing to be transmitted in interstate and foreign commerce, by means of a wire communication certain signs, signals, and sounds that fraudulently transmitted request for transfer of funds within Kentucky to places outside Kentucky including California and New York, with said funds eventually being transferred into the defendant's personal account; to wit, **DEREK PAYNE BURCHAM**, caused the transmission of electronic funds transfers, through wire communication in interstate commerce, of signals and sounds, including but not limited to those described below for each count, each transmission constituting a separate count.

COUNT	DATE	VICTIM	AMOUNT
1	January 5, 2016	W.V.	\$1,675.90
2	July 6, 2016	J.A.S.	\$18,770.76
3	July 6, 2016	D.M.	\$29,301.20
4	October 9, 2014	L.M.	\$4,238.08
5	December 4, 2015	J.M.	\$3,505.00
6	May 25, 2016	O.M.	\$2,011.75
7	April 6, 2016	R.P.	\$4,250.00
8	October 3, 2014	D.S.	\$3,350.00
9	April 3, 2014	L.S.	\$16,403.81
10	April 9, 2013	D. So.	\$1,833.71

In violation of Title 18, United States Code, Section 1343.

The Grand Jury further charges:

COUNT 11  
(Investment Advisers Act)

23. The Grand Jury re-alleges and incorporates by reference the allegations in paragraphs 1 – 20 of this Indictment.

24. Defendant **DEREK PAYNE BURCHAM**, defendant herein, was an “investment adviser” within the meaning of Section 202(a)(11) of the Investment Advisers Act and Title 15, United States Code, Section 80b-2(a)(11).



25. Beginning in or about 2012 and continuing until at least August 2016, in the Western District of Kentucky, Jefferson County, Kentucky, **DEREK PAYNE BURCHAM**, defendant herein, acting as an investment advisor for clients of Cornerstone, did, by use of the mails and by use of means and instrumentalities of interstate commerce, directly and indirectly, willfully employ devices, schemes, and artifices to defraud clients; did willfully engage in transactions, practices, and courses of business which operated as a fraud or deceit upon clients; and did willfully engage in acts, practices, and courses of business which were fraudulent, deceptive, and manipulative, to wit, falsely representing that he would serve as an investment adviser, exercising fiduciary responsibility, with respect to client funds entrusted to him, and thereafter misapplying and misappropriating client funds.

All in violation of Title 15, United States Code, Section 80b-6 and 80b-17.

The Grand Jury further charges:

COUNTS 12 – 21  
(Money Laundering)

26. The Grand Jury re-alleges and incorporates by reference the allegations in paragraphs 1 – 20 of this Indictment.

27. From on or about the dates set forth in the summary chart below, **DEREK PAYNE BURCHAM**, did knowingly engage in monetary transactions in criminally derived property of a value greater than \$10,000, which was derived from specified unlawful activity, that is (Wire Fraud), in violation of (18 U.S.C. § 1343), more particularly described in Counts 12 through 21 of this Indictment, knowing the money involved in the financial transaction represented the proceeds of (Wire Fraud), as described below, among others:

COUNT	DATE	PAYEE	METHOD	AMOUNT
12	2/5/2015	AMEX	Electronic Withdrawal	\$18,627.64
13	3/3/2015	FNB Bank	Check #138	\$27,691.93
14	4/6/2015	AMEX	Electronic Withdrawal	\$36,781.74
15	8/6/2015	AMEX	Electronic Withdrawal	\$23,279.75
16	10/8/2015	AMEX	Electronic Withdrawal	\$22,662.68
17	12/7/2015	AMEX	Electronic Withdrawal	\$25,743.36
18	1/6/2016	AMEX	Electronic Withdrawal	\$26,652.55
19	4/5/2016	AMEX	Electronic Withdrawal	\$39,905.47
20	5/6/2016	AMEX	Electronic Withdrawal	\$17,981.40
21	7/7/2016	AMEX	Electronic Withdrawal	\$30,563.31

In violation of Title 18, United States Code, Section 1957.

The Grand Jury further charges:

COUNTS 22 – 23  
(Aggravated Identity Theft)

28. The Grand Jury re-alleges and incorporates by reference the allegations in paragraphs 1 – 20 of this Indictment.

29. On or about and between May of 2014, and April of 2015, in the Western District of Kentucky, Jefferson County, Kentucky, **DEREK PAYNE BURCHAM**, knowingly possessed, transferred and used the means of identification of another person without lawful authority: to wit, during and in relation to the offenses charged in Counts 1 through 10, **DEREK PAYNE BURCHAM**, possessed, transferred, and used the means of identification of the clients



listed below, among others, to fraudulently withdraw fees for services he was not entitled to receive:

COUNT	DATE	CLIENT
22	May 28, 2014	D.M.
23	April 17, 2015	J.A.S.

All in violation of Title 18, United States Code, Section 1028A.

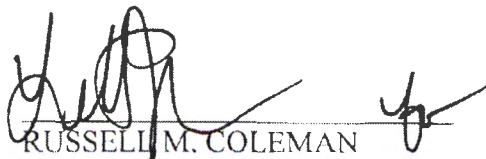
NOTICE OF FORFEITURE

As a result of committing violations of Title 18, United States Code, Section 1343 as alleged in Counts 1 through 10 of this Indictment, and as a result of committing violations of Title 18, United States Code, Section 1957 as alleged in Counts 12 through 21 of this Indictment, the defendant shall forfeit to the United States pursuant to Title 18 United States Code, Sections 981(a)(1)(C) and 982(a)(1), any and all property, real and personal, that constitutes or is derived, directly and indirectly, from gross proceeds obtained as a result of the offenses alleged in this Indictment, and any property involved therein.

Pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a)(1), Title 28, United States Code, Section 2461.

A TRUE BILL.

FOREPERSON

  
 \_\_\_\_\_  
 RUSSELL M. COLEMAN  
 UNITED STATES ATTORNEY

RMC:LJW:cd:20180220

UNITED STATES OF AMERICA v. DEREK PAYNE BURCHAM

**PENALTIES**

Counts 1 – 10: NM 20 yrs./\$250,000/both/NM yrs. 3 Supervised Release  
 Count 11: NM 5 yrs./\$250,000/both/NM yrs. 3 Supervised Release  
 Counts 12 – 21: NM 10 yrs./\$250,000/both/NM yrs. 3 Supervised Release  
 Counts 22-23: NM 2 yrs./\$100,000/both/NM yr. 1 Supervised Release  
 Forfeiture Notice

**NOTICE**

**ANY PERSON CONVICTED OF AN OFFENSE AGAINST THE UNITED STATES SHALL BE SUBJECT TO SPECIAL ASSESSMENTS, FINES, RESTITUTION & COSTS.**

**SPECIAL ASSESSMENTS**

18 U.S.C. § 3013 requires that a special assessment shall be imposed for each count of a conviction of offenses committed after November 11, 1984, as follows:

Misdemeanor:	\$ 25 per count/individual	Felony:	\$100 per count/individual
	\$125 per count/other		\$400 per count/other

**FINES**

In addition to any of the above assessments, you may also be sentenced to pay a fine. Such fine is due immediately unless the court issues an order requiring payment by a date certain or sets out an installment schedule. You shall provide the United States Attorney's Office with a current mailing address for the entire period that any part of the fine remains unpaid, or you may be held in contempt of court. 18 U.S.C. § 3571, 3572, 3611, 3612

**Failure to pay fine as ordered may subject you to the following:**

1. **INTEREST** and **PENALTIES** as applicable by law according to last date of offense.

For offenses occurring after December 12, 1987:

No **INTEREST** will accrue on fines under \$2,500.00.

**INTEREST** will accrue according to the Federal Civil Post-Judgment Interest Rate in effect at the time of sentencing. This rate changes monthly. Interest accrues from the first business day following the two week period after the date a fine is imposed.

**PENALTIES** of:

10% of fine balance if payment more than 30 days late.

15% of fine balance if payment more than 90 days late.

2. Recordation of a **LIEN** shall have the same force and effect as a tax lien.
3. Continuous **GARNISHMENT** may apply until your fine is paid.

18 U.S.C. §§ 3612, 3613

If you **WILLFULLY** refuse to pay your fine, you shall be subject to an **ADDITIONAL FINE** of not more than the greater of \$10,000 or twice the unpaid balance of the fine; or **IMPRISONMENT** for not more than 1 year or both. 18 U.S.C. § 3615

#### RESTITUTION

If you are convicted of an offense under Title 18, U.S.C., or under certain air piracy offenses, you may also be ordered to make restitution to any victim of the offense, in addition to, or in lieu of any other penalty authorized by law. 18 U.S.C. § 3663

#### APPEAL

If you appeal your conviction and the sentence to pay your fine is stayed pending appeal, the court shall require:

1. That you deposit the entire fine amount (or the amount due under an installment schedule during the time of your appeal) in an escrow account with the U.S. District Court Clerk, or
2. Give bond for payment thereof.

18 U.S.C. § 3572(g)

#### PAYMENTS

If you are ordered to make payments to the U.S. District Court Clerk's Office, certified checks or money orders should be made payable to the Clerk, U.S. District Court and delivered to the appropriate division office listed below:

LOUISVILLE:	Clerk, U.S. District Court 106 Gene Snyder U.S. Courthouse 601 West Broadway Louisville, KY 40202 502/625-3500
BOWLING GREEN:	Clerk, U.S. District Court 120 Federal Building 241 East Main Street Bowling Green, KY 42101 270/393-2500
OWENSBORO:	Clerk, U.S. District Court 126 Federal Building 423 Frederica Owensboro, KY 42301 270/689-4400
PADUCAH:	Clerk, U.S. District Court 127 Federal Building 501 Broadway Paducah, KY 42001 270/415-6400

If the court finds that you have the present ability to pay, an order may direct imprisonment until payment is ma