

**JUDICIAL CONFERENCE OF THE UNITED STATES**

**PETITION FOR REVIEW**

under 28 U.S.C. §357(a)

of the actions of

the Judicial Council of the Second Circuit

In re Judicial Misconduct Complaints

CA2 dockets no. 03-8547

and no. 04-8510

submitted on

November 18, 2004

by

**Dr. Richard Cordero**

Petitioner and Complainant

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	<b>Last name</b>	<b>Members of the Judicial Conference of the United States to whom of copy of the petition of 11/18/4 for review was sent*</b>
1.	Boggs	Chief Judge Danny J. Boggs, U.S. Court of Appeals for the <b>Sixth</b> Circuit
2.	Boudin	Chief Judge Michael Boudin, U.S. Court of Appeals for the <b>First</b> Circuit
3.	Edmondson	Chief Judge J. L. Edmondson, U.S. Court of Appeals for the <b>Eleventh</b> Circuit
4.	Ezra	Chief Judge David Alan Ezra, U.S. District Court for the District of Hawaii
5.	Feldman	Judge Martin L. C. Feldman, U.S. Dis. Court for the Eastern District of Louisiana
6.	Flaum	Chief Judge Joel M. Flaum, U.S. Court of Appeals for the <b>Seventh</b> Circuit
7.	Forrester	Senior Judge J. Owen Forrester, U.S. Dis. Court for the Northern Dis. of Georgia
8.	Ginsburg	Chief Judge Douglas H. Ginsburg, U.S. Court of Appeals for the District of Columbia Circuit
9.	Hogan	Chief Judge Thomas F. Hogan, U.S. District Court for the District of Columbia
10.	King	Chief Judge Carolyn Dineen King, U.S. Court of Appeals for the <b>Fifth</b> Circuit
11.	Laffitte	Chief Judge Hector M. Laffitte, U.S. District Court for the District of Puerto Rico
12.	Loken	Chief Judge James B. Loken, U.S. Court of Appeals for the <b>Eighth</b> Circuit
13.	Mayer	Chief Judge Haldane Robert Mayer, U.S. Court of Appeals for the <b>Federal</b> Circuit
14.	Norton	Judge David C. Norton, U.S. District Court for the District of South Carolina
15.	Rehnquist	Mr. Chief Justice William Rehnquist
16.	Restani	Chief Judge Jane A. Restani, U.S. Court of <b>International</b> Trade
17.	Rosenbaum	Chief Judge James M. Rosenbaum, U.S. Dis. Court for the District of Minnesota
18.	Russell	Judge David L. Russell, U.S. District Court for the Western District of Oklahoma
19.	Schroeder	Chief Judge Mary M. Schroeder, U.S. Court of Appeals for the <b>Ninth</b> Circuit
20.	Scirica	Chief Judge Anthony J. Scirica, U.S. Court of Appeals for the <b>Third</b> Circuit
21.	Scullin	Chief Judge Frederick J. Scullin, Jr., U.S. District Court for the NDNY
22.	Stadtmueller	Judge J. P. Stadtmueller, U.S. District Court for the Eastern District of Wisconsin
23.	Tacha	Chief Judge Deanell R. Tacha, U.S. Court of Appeals for the <b>Tenth</b> Circuit
24.	Vanaskie	Chief Judge Thomas I. Vanaskie, U.S. District Court for the Middle District of Pennsylvania
25.	Wilkins	Chief Judge William W. Wilkins, U.S. Court of Appeals for the <b>Fourth</b> Circuit
26.	Zatkoff	Chief Judge Lawrence P. Zatkoff, U.S. District Court for the Eastern District of Michigan

\*See also the list of these members of the Judicial Conference with addresses, phone numbers, Internet links to their courts, and information on how to obtain the list of current members, at C:852 below.

# JUDICIAL CONFERENCE OF THE UNITED STATES

Petition for Review of the actions of the Judicial Council of the Second Circuit  
In re Judicial Misconduct Complaints

CA2 dockets no. 03-8547  
and no. 04-8510

Dr. Richard Cordero, Petitioner and Complainant, Pro Se

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## I. Questions Presented for Review

1. On August 11, 2003, Dr. Richard Cordero submitted a judicial misconduct complaint under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§351-364. (hereinafter the Misconduct Act or the Act) about WBNY U.S. Bankruptcy Judge John C. Ninfo, II, concerning his participation together with other court officers and parties in a series of acts of disregard for the law, the rules, and the facts so numerous and consistently detrimental to Dr. Cordero, the only non-local party as well as the only pro se one, and favorable to the local parties, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing and bias against Dr. Cordero. During the following year, Dr. Cordero addressed to the Chief Judge of the Court of Appeals for the Second Circuit, the Hon. John M. Walker, Jr., and then the Judicial Council of that Circuit, updating evidence showing how that pattern of illegality and bias continued to develop and was linked to a bankruptcy fraud scheme that generated the most powerful drive for wrongdoing: money, lots of money! (see infra Exhibit, page 31=E-31)
2. Nevertheless, the Chief Judge did not conduct even a limited inquiry of the complaint under §352(a), let alone appoint a special committee under §353 to investigate it, and even refused updating evidence (E-7; E-9), exhibits (E-28), and even a table of exhibits! (E-29-30) As a result, no report by a special committee was filed under §353(c) with the Judicial Council of the Second Circuit. Yet, it took 10 months for the complaint to be dismissed by Acting Chief Judge Dennis Jacobs on June 8, 2004 (E-10, 11). Dr. Cordero submitted on July 8 his petition for review and resubmitted it reformatted on July 13 (E-23). The Council denied it on September 30. (E-36-37; Table of Key Documents and Dates in the Procedural History, page i after this brief)
3. Dr. Cordero filed a misconduct complaint about Chief Judge Walker on March 19, 2004, reformatted and resubmitted on March 29 (E-39). It was dismissed also belatedly six months later on September 24 (E-44-45) and without any investigation, as was the petition for review of October 4 (47), dismissed by the Judicial Council on November 10, 2004 (E-54-55).

- a) Since action by a judicial council under §354 is expressly predicated “upon receipt of a report filed under section 353(c)”, did the Judicial Council lack jurisdiction to deny and dismiss the complaint under §354(a)(1)(B)?;
- b) Did it fail to discharge its duty under §354(a)(1)(C) requiring that it “shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit” by failing to take either of the two actions otherwise open to it, namely, to conduct an investigation of its own or to refer the complaint together with the record and its recommendations to the Judicial Conference under §354(b)(1)?;
- c) Did the Judicial Council show dereliction of its duty, generally, by failing to investigate as part of a pattern of systematic dismissals of complaints and denials of petitions without investigation (E-24), and in particular, by failing to remove a bankruptcy judge for misconduct under §354(a)(3)(B) and 28 U.S.C. §152(e), whereby it showed partiality toward one of its peers to the detriment of a complainant and the integrity of the business of the courts in its circuit? (E-128-I);
- d) Did the Chief Judge and the Acting Chief Judge err by not handling the complaint ‘promptly and expeditiously’ (E-39), as required by the Misconduct Act (cf. E-7) and the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers (E-16-18; hereinafter the Complaint Rules or the Rules)?
- e) Did the Chief Judge show lack of good judgment and due diligence in informing himself of the ‘totality of circumstances’ as they continued to develop in the complained-about court during the long period of inaction on his part when he refused updates although not required by law to do so (E-52, E-53), thus forcing complainants to file them as successive complaints and making it easier for himself and the Judicial Council to dismiss them piecemeal?
- f) Did he thereby fail both to render justice to a complainant that was being denied due process of law and to safeguard the integrity of the business of the Court and the courts in his circuit?

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**II. The Judicial Conference has jurisdiction over this appeal because the complainant was “aggrieved” by the Judicial Council**

4. The Misconduct Act’s jurisdictional provision for the Judicial Conference applicable to this petition provides as follows:

**28 U.S.C. §357. Review of orders and actions**

**(a) Review of action of judicial council.-** A complainant or judge aggrieved by an action of the judicial council under section 354 may petition the Judicial Conference of the United States for review thereof.

**(b) Action of Judicial Conference.-** The Judicial Conference, or the standing committee established under section 331, may grant a petition filed by a complainant or judge under subsection (a).

5. In turn, section 354 provides as follows:

**§354. Action by judicial council**

**(a) Actions upon receipt of report.-**

**(1) Actions.-** The judicial council of a circuit, upon receipt of a report filed under section 353(c)-

**(A)** may conduct any additional investigation which it considers to be necessary;

**(B)** may dismiss the complaint; and

**(C)** if the complaint is not dismissed, shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit.

6. Dr. Cordero was aggrieved by the Judicial Council because it dismissed his petition for review:

a) without jurisdiction for the reason that it had not received any report of a special committee under §353(c) given that the chief judge of the Court of Appeals for the Second Circuit failed

to appoint any such committee under §353(a) or even conduct a §352(a) “limited inquiry”;

- b) conducted no investigation of its own and since the chief judge had conducted none either, it was not in a position to determine the merits of his complaint and in light thereof, what action could be considered necessary;
- c) by dismissing his complaint without any investigation having been conducted at all, it failed its legal obligation under §354(a)(1)(C) that it “**shall** take...action...to assure the effective and expeditious administration of the business of the courts” (emphasis added) intended for the benefit of the public at large, including Complainant Dr. Cordero; and
- d) thereby, it has further aggrieved Dr. Cordero by knowingly and indifferently leaving him at the mercy of the complained-about Judge Ninfo and other court officers and parties that have engaged in a series of acts of disregard for legality so long, for more than two years!, and so consistently against Dr. Cordero, the only non-local and the only pro se party, and to the benefit of the local parties that no reasonable observer informed of the facts could deem them coincidental and unbiased, but instead a responsible Council would have discharged its duty to investigate whether, as claimed, they were intentional and coordinated and formed part of a bankruptcy fraud scheme involving judicial misconduct.

7. The CA2 Judicial Council considered that Dr. Cordero was “a complainant...aggrieved by a final order of the chief judge” under §352(c) so that it took jurisdiction of his petitions for review and affirmed the chief judge’s dismissals (E-37, E-55). The Judicial Conference can likewise consider Dr. Cordero “a complainant...aggrieved by an action of the judicial council” under §357(a) since the grounds for this petition contain, among others, the same grounds as the petition to the Council, namely, a dismissal of the complaint without any investigation in disregard of the Council’s duty under the Misconduct Act and the Complaint Rules and knowing that by so proceeding it was leaving Dr. Cordero exposed to the same abuse and bias at the hands of the same judge and other court officers and parties.

**A. The reasonable construction of “aggrieved”  
in light of the statutory purpose of the Misconduct Act**

8. The appointment last May 25, by U.S. Supreme Court Chief Justice William Rehnquist of Justice Stephen Breyer to head the Judicial Conduct and Disability Act Study Committee because of the history of dysfunctionality of its complaint mechanism supports the likelihood that the chief judge and the Judicial Council also failed to deal with the instant complaint properly.

Indeed, when applauding this appointment, the Chairman of the Judiciary Committee of the House of Representative, F. James Sensenbrenner, Jr., stated that:

Since [the 1980's], however, this process [of the judiciary policing itself] has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation.<sup>1</sup>

9. At the Committee's first organizational meeting on June 10, 2004, Justice Breyer stated when commenting on the importance of the Misconduct Act that:

The public's confidence in the integrity of the judicial branch depends not only upon the Constitution's assurance of judicial independence. It also depends upon the public's understanding that effective complaint procedures, and remedies, are available in instances of misconduct or disability.<sup>2</sup>

10. It follows that the integrity of the judiciary is a public good and in safeguarding it Justice Breyer puts the Act at a par with the Constitution. When its complaint procedures and remedies are rendered ineffective by the failure of those charged with investigating whether there is an instance of judicial misconduct, it is reasonable to hold that a complainant is aggrieved just as he is aggrieved when deprived of his constitutional right to judicial process independent from interference from officers of either of the other two branches of government.
11. In going about his task of fixing a broken complaint mechanism, it is likely that Justice Breyer will steer the Committee to examine the Misconduct Act by applying the same principles of statutory construction that he advocated in a 2001 speech and that are applicable here to determine the meaning that Congress intended for the term "aggrieved" as an element of the jurisdictional basis for the Judicial Conference:

How are courts, which must find answers, to interpret these silences [in statutes]? Of course, courts will first look to a statute's language, structure, and history to help determine the statute's purpose, and then use that purpose, along with its determining factors, to help find the answer.<sup>3</sup>

12. Justice Breyer applied such principles even to the construction of the Constitution. In its First Amendment the Constitution enshrines the right of 'the people to petition the government for a redress of grievances'. Similarly, the Misconduct Act gives the right to petition one branch of government, the judiciary, to "any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts". The purpose of the petition is to obtain relief through disciplinary action. This is reflected in the non-fortuitous fact, even if not legally compelling, that the Act appears in Title 28, enacted into law by Congress, of the

U.S. Code under the Chapter 16 title, "Complaints Against Judges and Judicial Discipline".

13. The key means for achieving that purpose is the investigation of complaints. Such investigation is conducted by each of the three levels of the judiciary charged with the duty to achieve such purpose, namely, the chief judges, the judicial councils, and the Judicial Conference. Whether they appoint special committees or investigate themselves, they have the manpower and subpoena power to go behind what the complainant at the receiving end of the misconduct can ever find out and state in his complaint. Hence, the investigation of complaints is the indispensable means to achieve the Congressional purpose of ascertaining judicial misconduct and taking disciplinary action.
14. Only through the investigation of complaints can the Misconduct Act ensure the accomplishment of "the business of the courts", which is to "administer justice without respect to persons ...under the Constitution and laws of the United States", 28 U.S.C. §453. When the law is disregarded, justice is not administered, but is rather denied, especially where the law is systematically disregarded, whether by judges complained-about or by chief judges, judicial councils, or the Judicial Conference who systematically fail to investigate judicial misconduct complaints.
15. It is reasonable to assume that when Congress drafted and passed the Misconduct Act it did not want the Act to become dead letter: useless to curb misconduct on the part of judges and ineffective as a source of judicial discipline for the protection of complainants and the public. It is also reasonable to conclude that any complainant denied such protection would be aggrieved by the failure of a chief judge or a judicial council, not to mention by the failure of both, to investigate his complaint. His grievance would not only consist in the frustration of his legitimate expectation that judges, of all people, would "faithfully and impartially discharge and perform all [their] duties...under the Constitution and laws", §453. The complainant would also be aggrieved by the practical consequence that by so disregarding their duties, those judges would knowingly and indifferently leave him exposed to further abuse and bias at the hands of the judge complained-about. Such grievance renders the complainant an "aggrieved" one within the meaning of §357(a) and provides the basis for the Judicial Conference to take jurisdiction of his complaint.
16. Indeed, it is only reasonable to assume that Congress did not want to see its Act eviscerated by the failure to investigate of all those to whom it entrusted its application upon considering them capable of self-policing. Consequently, where the chief judge and the judicial council have failed to discharge their duty to investigate a complaint as a prerequisite to disposing of it,



Congress would expect at least the Judicial Conference to rise to its self-policing duty by taking the opportunity of a petition by a complainant aggrieved by such failure and investigate the judge and the acts complained about.

17. This expectation is particularly reasonable with respect to the instant complaint because its gravamen is not only that one judge misconducted himself in his dealings with one litigant – which in any event should constitute enough ground for the Judicial Conference to take jurisdiction and investigate the complaint-. It is also that the available evidence shows that the judge is participating with others in a bankruptcy fraud scheme motivated by the most powerful driver of wrongdoing: money! Hence, Congress would expect the purpose of the Act to be pursued in the final instance by the Judicial Conference especially where the aggrieved complainant stands for the general public that can reasonably be deemed aggrieved by widespread judicial and extra-judicial misconduct that undermines the integrity of the process of law and the bankruptcy system. (E-128I-II)
18. Such stakes are large enough to justify the Judicial Conference in taking jurisdiction and conducting an investigation where none has been conducted. To do so it is entitled to give §357 an expansive interpretation, for the alternative to doing so is for the Judicial Conference to join the chief judge and the judicial council in their failure to discharge their duty to give effect to the Misconduct Act. That cannot be what Congress intended. Whatever different interpretation was given to §357 in the past was wrong, as shown by the fact that “the practical tendency” of dismissing complaints without investigation has been to insulate peer judges from responsibility for their misconduct to the detriment of complainants. That constitutes a breach per se of the duty to “administer justice without respect to persons”. The need to appoint the Breyer Committee is confirmation that such dismissals are tendentious and contrary to the Act’s purpose.
19. The defeat so far of the Act’s purpose warrants that now §357 be interpreted differently, if need be. The reinterpretation can be justified by the principle illustrated by Justice Breyer when he stated in the context of the Fourteenth Amendment that it “uses the word “reasonable,” -- a word that permits different results in different circumstances”<sup>4</sup>. Likewise, terms such as “aggrieved” and “action” in §357 can be given a different construction so that the Judicial Conference may breathe life into the dead letter of the Act in order to achieve its Congressional purpose: to ascertain misconduct and enforce discipline for the protection of the complainant and the public’s confidence in the judiciary.

20. Just as in *Brown v. Board of Education*, “the Court began to enforce a law that strives to treat every citizen with equal respect”, as Justice Breyer stated in a speech<sup>5</sup>, the Judicial Conference can take jurisdiction of this petition to send a clear message that instead of systematically giving peer judges the benefit of the doubt, thus holding in practice that a judge can do no harm, it will ‘do equal right by judges and any other person’, cf. §453, because in practice judges are just as susceptible to human frailties as anybody else. Hence, they will not be spared investigation when the evidence reasonably expected from and submitted by a complainant casts suspicion of their having engaged in wrongdoing.
21. The instant complaints contain enough evidence to cast reasonable suspicion over Judge Ninfo and other court officers and parties of having engaged in a pattern of non-coincidental, intentional, and coordinated wrongdoing as part of a bankruptcy fraud scheme. Therefore, they should have investigated. Chief Judge Walker should have done so ‘promptly and expeditiously’. Despite his failure to do so, the Judicial Council too failed to investigate both and left Dr. Cordero to suffer more abuse and bias. How could the Complainant not be aggrieved by their actions and the Judicial Conference not have the duty to step in to investigate?

### **III. Statement of facts**

#### **A. The categories of evidence that raise reasonable suspicion of wrongdoing that should be investigated**

22. The evidence of judicial misconduct linked to a bankruptcy fraud scheme has accumulated for over two years and is contained or described in a file of over 1,500 pages. Of necessity, only a summary of it can be provided here. Likewise, only the most pertinent documents have been attached as exhibits, though all others referred to therein are available on request. Yet, this evidentiary summary should be enough, not to establish the commission of a crime, but rather to satisfy the standard of reasonable suspicion applied to the opening of an official investigation. Then it is for those with the duty as well as the necessary legal authority and resources, to pursue that evidence to collect more and evaluate it under the standard of the preponderance of the evidence applied by the Judicial Conference, as it stated in its misconduct Memorandum and Order No. 98-372-001, at 18. Although intertwined, that evidence can be described in a few principal categories:

- 1) U.S. Bankruptcy Judge John C. Ninfo, II, and others have protected from discovery, let alone trial, a trustee sued for negligence and recklessness who had before him some 3,000

cases! –how many do you have?–; an already defaulted bankrupt defendant against whom an application for default judgment was brought; parties who have disobeyed his orders, even those that they sought or agreed to; and debtors who have concealed assets, all to the detriment of Dr. Cordero and while imposing on him burdensome obligations.

- 2) David DeLano –a lending industry insider who has been for 15 years and still is a bank loan officer- and Mary Ann DeLano are suspected of having filed a fraudulent bankruptcy petition and of engaging, among other things, in concealment of assets; but they are being protected from examination under oath and from compulsory production of financial documents, all of which could incriminate them and others in the scheme.
- 3) Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., unlawfully conducted and terminated the meeting of creditors of the DeLanos, and Trustee Reiber, with the support of U.S. Trustees Kathleen Schmitt and Deirdre Martini, has since continued to fail his duty to investigate them, for an investigation could incriminate him for having approved at least a meritless and at worst a known fraudulent bankruptcy petition.

### **1) Judge Ninfo and others have protected parties from incriminating discovery and trial**

23. Judge Ninfo failed to comply with his obligations under FRCivP 26 to schedule discovery (E-1) in *Pfuntner v. [Chapter 7 Trustee Kenneth] Gordon et al*, WBNY dkt. no 02-2230, filed on September 27, 2002. As a result, over 90 days later the Judge still lacked the benefit of any discovery whatsoever.
24. By that time Dr. Cordero had cross-claimed against Trustee Gordon for defamation as well as negligent and reckless performance as trustee and the Trustee had moved for summary judgment. Despite the genuine issues of material fact inherent in such types of claims and raised by Dr. Cordero, the Judge issued an order on December 30, 2002, summarily granting the motion of Trustee Gordon, a local litigant and fixture of his court. (E-2:II)
  - a) Indeed, the statistics on PACER as of November 3, 2003<sup>6</sup> showed that since April 12, 2000, Trustee Gordon was the trustee in 3,092 cases! However, by June 26, 2004, he had added 291 more cases for a total of 3,383 cases, out of which he had 3,382<sup>7</sup> cases before Judge Ninfo...in addition to the 142 cases prosecuted or defended by Trustee Gordon and 76 cases in which the Trustee was a named party.
25. Could you handle competently such an overwhelming number of cases, increasing at the rate of

1.23 new cases per day, every day, including Saturdays, Sundays, holidays, sick days, and out-of-town days, cases in which you personally must review documents and crunch numbers to carry out and monitor bankruptcy liquidations for the benefit of the creditors, whose individual views and requests you must also take into consideration as their fiduciary? If the answer is not a decisive “yes!”, it is reasonable to believe that Judge Ninfo knowingly disregarded the probability that Trustee Gordon had been negligent or even reckless, as claimed by Dr. Cordero, and granted the Trustee’s motion to dismiss in order not to disrupt their modus operandi and to protect himself from a charge of having failed to realize or tolerated Trustee Gordon’s negligence and recklessness in this case...and in how many others of their thousands of cases? There is a need to investigate what is going on between those two...and the others, (cf. E-3:B-E; E-86:II).

26. Judge Ninfo denied Dr. Cordero’s timely application for default judgment against David Palmer, the owner of Premier, the moving and storage company to be liquidated by Trustee Gordon, WBNY dkt. no. 01-20692. However, Mr. Palmer had abandoned Dr. Cordero’s property; defrauded him of the storage and insurance fees; and failed to answer Dr. Cordero’s complaint. In his denial of Dr. Cordero’s application for default judgment, Judge Ninfo disregarded the fact that the application was for a sum certain as required under FRCivP 55. Instead, he imposed on Dr. Cordero a Rule 55-extraneous duty to demonstrate loss, requiring him to search for his property and prejudging a successful outcome with disregard for the only evidence available, namely, that his property had been abandoned in a warehouse closed down for a year, with nobody controlling storage conditions because Mr. Palmer had defaulted on his lease, and from which property had been stolen or removed, as charged by Mr. Pfuntner!

a) Judge Ninfo would not compel Mr. Palmer to answer Dr. Cordero’s claims even though his address is known and he submitted himself to the court’s jurisdiction when he filed a voluntary bankruptcy petition. Why did the Judge need to protect Mr. Palmer from even coming to court, let alone having to face the financial consequences of a default judgment, although it was for Mr. Palmer, not for the Judge, to contest such judgment under FRCivP 55(c) and 60(b)? (E-4:C-D) Their relation must be investigated as well as that between the Judge and other similarly situated debtors and the aid provided therefor by others (E-4:C-D).

27. Judge Ninfo ordered Dr. Cordero to conduct an inspection of property said to belong to him within a month or he would order its removal at Dr. Cordero’s expense to any warehouse in Ontario...that is, the N.Y. county or the Canadian province, the Judge could not care less! Yet,

for months Mr. Pfuntner had shown contempt for Judge Ninfo's first order to inspect that property *in his own warehouse*, and neither attended nor sent his attorney nor his warehouse manager to the inspection nor complied with the agreed-upon measures necessary to conduct it, as provided for in the second order that Mr. Pfuntner himself had requested. Though Mr. Pfuntner violated both discovery orders, Judge Ninfo did not hold him accountable for such contempt or the harm caused to Dr. Cordero thereby. So he denied Dr. Cordero any compensation from Mr. Pfuntner and held immune from sanctions his attorney, David D. MacKnight, Esq., a local whose name appeared as attorney in 479 cases as of November 3, 2003, according to PACER. Why does Judge Ninfo need to protect everybody, except Dr. Cordero? (E-5:E; E-90:III)

28. The underlying motive for such bias needs to be investigated. To that end, the DeLano case is the starting point because it provides insight into what drives such bias and links the activity of the biased participants into a scheme: money, lots of money! So who are the DeLanos?

## **2) The DeLano Debtors have engaged in bankruptcy fraud**

29. David and Mary Ann DeLano filed their bankruptcy petition under Chapter 13 of the Bankruptcy Code, 11 U.S.C., on January 27, 2004; docket no. 04-20280, WBNY (E-153). The values declared in its schedules and the responses provided to required questions are so out of sync with each other that simply common sense, not expertise in bankruptcy law or practice, is enough to raise reasonable suspicion that the petition is meritless and should be reviewed for fraud. (E-57) Just consider the following salient values and circumstances:
- a) Mr. DeLano has been a bank *loan* officer for 15 years! His daily work must include ascertaining the creditworthiness of loan applicants and their ability to repay a loan over its life. He is still employed in that capacity by a major bank, Manufacturers and Traders Trust Bank (M&T Bank). As an expert in the matter of remaining solvent, whose conduct must be held up to scrutiny against a higher standard of reasonableness, he had to know better than to do the following together with Mrs. DeLano, who until recently worked for Xerox as a specialist in one of its machines, and as such is a person trained to pay attention to detail and to think methodically along a series steps and creatively when troubleshooting a problem.
  - b) The DeLanos incurred scores of thousands of dollars in credit card debt;
  - c) carried it at the average interest rate of 16% or the delinquent rate of over 23% for years;
  - d) during which they were late in their monthly payments at least 232 times documented by even the Equifax credit bureau reports of April and May 2004, submitted incomplete;

- e) have ended up owing \$98,092 to 18 credit card issuers listed in Schedule F;
  - f) owe also a mortgage of \$77,084;
  - g) but have near the end of their work lives equity in their house of only \$21,415;
  - h) however, in their 1040 IRS forms declared \$291,470 in earnings for just the 2001-03 fiscal years;
  - i) yet claim that after a lifetime of work they have only \$2,910 worth of household goods!;
  - j) the rest of their tangible personal property is just two cars worth a total of \$6,500;
  - k) their cash in hand or on account declared in their petition was only \$535;
  - l) but made to their son a \$10,000 loan, which they declared uncollectible and failed to date, for it may be a voidable preferential transfer;
  - m) claim as exempt \$59,000 in a retirement account and \$96,111.07 in a 401-k account;
  - n) but offer to repay only 22¢ on the dollar for just 3 years and without accrual of interest (E-185);
  - o) refused for months to submit any financial statements covering any length of time so that Trustee Reiber moved on June 15, for dismissal for “unreasonable delay” (E-62; E-65:III).
30. A comparison between the few documents that they produced thereafter, that is, some credit card statements and Equifax reports with missing pages (E-64:II), with their bankruptcy petition and the court-developed claims register and creditors matrix revealed debt underreporting, accounts unreporting, and substantial non-accountability for massive amounts of earned and borrowed money. Dr. Cordero pointed up these indicia of fraud in a statement of July 9, 2004, (E-64:III) opposing Trustee Reiber’s motion to dismiss. The DeLanos responded on July 19 by moving to disallow Dr. Cordero’s claim. (E-73; E-117:B) How extraordinary! given that:
- a) The DeLanos had treated Dr. Cordero as a creditor for six months;
  - b) They were the ones who listed Dr. Cordero’s claim in Schedule F...for good reason because
  - c) Mr. DeLano has known of that claim against him since November 21, 2002, when Dr. Cordero brought him into the Pfuntner case as a third-party defendant due to the fact that Mr. DeLano was the loan officer who handled the bank loan to Mr. Palmer for his company, Premier Van Lines, which then went bankrupt! (E-115:A)
31. Extraordinary, for that closes the circuit of relationships between the main parties to the Pfuntner and the DeLano cases. It begs the question: How many of Mr. DeLano’s other clients during his long banking career have ended up in bankruptcy and in the hands of Trustees Gordon and Reiber, who as Chapter 7 and 13 *standing* trustees, respectively, are unavoidable? (E-33:II)
32. An impartial observer could reasonably realize that the DeLanos’ motion to disallow Dr.

Cordero's claim is a desperate attempt to remove belatedly Dr. Cordero, the only creditor that objected to the confirmation of their repayment plan (E-57; E-185) and that is insisting on their production of financial documents that can show their concealment of assets, among other things (E-75; E-80). But not Judge Ninfo. He agreed with Dr. Cordero at the July 19 hearing and without objection from the DeLanos' attorney, Christopher Werner, Esq., to issue Dr. Cordero's document production order requested on July 9 (E-69:¶31; E-76), whose contents all knew. But after Att. Werner untimely objected (E-79; E-92:IV), he refused to even docket it (E-80; E-84:I; 90:III) and only issued a watered down version of Dr. Cordero's proposed order on July 26 (E-76; E-81) that he then allowed the DeLanos to disobey! If not for leverage, what was it issued for?

33. Dr. Cordero moved that the DeLanos be compelled to comply with the production order (E-98) and Judge Ninfo reacted by issuing his order of August 30 that suspends all proceedings in the DeLano case until their motion to disallow Dr. Cordero's claim has been determined, *including all appeals*. (E-107; E-121:III) That could take years! during which the other 20 creditors are prejudiced because they cannot begin to receive payments. But that is as inconsequential to Judge Ninfo as is his duty under 11 U.S.C. §1325(a)(3) to determine whether the DeLanos submitted their petition "by any means forbidden by law". Why Judge Ninfo disregards his duty and the interest of creditors and the public so as to protect the DeLanos needs to be investigated.
34. By contrast, Judge Ninfo has denied Dr. Cordero the protection to which he is entitled under §1325(b)(1), which entitles a single holder of an allowed unsecured claim to block the confirmation of the debtor's repayment plan; and under §1330(a), which enables any party in interest, even if not a creditor, to have that confirmation revoked if procured by fraud. But that is precisely what Judge Ninfo cannot allow, for if he lets the DeLanos' case go forward concurrently with the determination of their motion to disallow Dr. Cordero's claim, the DeLanos would have to be examined under oath on the stand and at an adjourned meeting of creditors, and Dr. Cordero, as a creditor or a party in interest, could raise objections and examine them. That is risky because the DeLanos, if left unprotected, could talk and incriminate others. Thus, for extra protection of all those at risk, Judge Ninfo stated at the August 25 hearing that until the motion to disallow is decided, no motion or other paper filed by Dr. Cordero will be acted upon. To afford them protection, Judge Ninfo has gone as far as to deny Dr. Cordero access to judicial process! (E-121:III-IV) The stakes must be very high indeed!...and all the trustees know it.

### 3) Trustee Reiber & Att. James Weidman have violated bankruptcy law

35. Chapter 13 Trustee Reiber violated his legal obligation under 28 CFR §58.6 to conduct personally the meeting of creditors of David and Mary Ann DeLano, held on March 8, 2004 (E-149). Instead, he appointed his attorney, James Weidman, Esq., to conduct it. After all, Trustee Reiber has 3,909<sup>8</sup> *open* cases! He cannot be all the time where he should be. This raises questions:
36. Where have been Assistant U.S. Trustee Kathleen Dunivin Schmitt, who has her office in the same small federal building in Rochester as Bankruptcy Judge Ninfo and the U.S. District Court as well as the U.S. Attorney and the FBI? What kind of supervision has U.S. Trustee for Region 2 Deirdre A. Martini been exercising over her and those standing trustees? (E-68:V) They have allowed each of two trustees to accumulate thousands of bankruptcy cases that they cannot possibly handle competently, but from each of which they receive a fee. Why? How do they figure that Trustee Reiber could review the bankruptcy petition of each of those 3,909 cases, ask for and check supporting documents, and monitor the debtors' compliance with the repayment plan *each month for the three to five years that plans last*? Could there be time for Trustee Reiber to do anything more than rubberstamp petitions? Something is not right here.
37. Actually, nothing is right. Thus, at the March 8 meeting of creditors, Trustee Reiber's attorney, Mr. Weidman, repeatedly asked Dr. Cordero how much he knew about the DeLanos having committed fraud and when he did not reveal anything, Att. Weidman terminated the meeting although Dr. Cordero had asked only two questions and was the only creditor at the meeting so that there was ample time for him to keep asking questions. Later on that very same day, Trustee Reiber ratified in open court and for the record Att. Weidman's decision, vouched for the DeLanos' honesty, and stated that their petition had been submitted in good faith. (E-40-41)
38. But those were just words, for Trustee Reiber had not asked for any supporting documents from the DeLanos despite his duty to "investigate the financial affairs of the debtor" under 11 U.S.C. §704(4); after Dr. Cordero requested under §704(7) that he do so, Trustee Reiber misled him into believing that he was investigating the DeLanos. (E-65:III) Only after Dr. Cordero asked that he state concretely what kind of investigation he was conducting did the Trustee for the first time, on April 20, 2004, ask for documents, pro forma (E-64-II) and perfunctorily (E-65:III).
39. Thus, Trustee Reiber merely requested documents relating to only 8 out of the 18 credit cards declared by the DeLanos, only if the debt exceeded \$5,000, and for only the last three years out of the 15 years put in play by the Debtors themselves, who claimed in Schedule F that their



financial problems related to “1990 and prior credit card purchases”. Incredible as it does appear, the Trustee did not ask them to account for the \$291,470 earned in just the 2001-03 fiscal years despite having declared to have in hand and on account only \$535! (E-66:IV)

40. Trustee Reiber has refused to hold an adjourned meeting of creditors. His excuse is that Judge Ninfo suspended all “court proceedings” until the DeLanos’ motion to disallow Dr. Cordero’s claim has been finally determined. What an untenable pretense! To begin with, his obligation to hold such meeting flows from 11 U.S.C. §341 for the benefit of the creditors and is not subject to the will of the judge. So much so that §341(c) expressly forbids the judge to “preside at, and attend, any meeting under this section including any final meeting of creditors”. What the judge cannot even attend, he cannot order not to take place at all. It follows that a meeting of creditors does not fall among “court proceedings” and was not and could not be suspended by Judge Ninfo.
41. Trustee Reiber is motivated by self-preservation, not duty, for if the DeLanos’ petition were established to be fraudulent, he would be incriminated for having approved it despite its patently suspicious contents. That could lead to his being investigated to determine how many of his other 3,909 cases are also meritless or even fraudulent. Worse yet, if he were removed from the DeLano case, as Dr. Cordero has repeatedly requested of Judge Ninfo and of Trustees Schmitt and Martini (E-71:¶32; E-93:III), he would be suspended from all his other cases under §324; cf. UST Manual vol. 5, Chapter 5-7.2.2. Why none of them wants Trustee Reiber to investigate and all have countenanced his failure to investigate needs to be investigated.

## **B. How a bankruptcy fraud scheme works**

42. The above-described few elements of the evidence, when reviewed as a ‘totality of circumstances’ instead of individually, give rise to the reasonable suspicion that these people are acting, not separately, but rather in a coordinated fashion, with judicial misconduct supporting a bankruptcy fraud scheme. It is utterly unlikely that they began so to act just because Dr. Cordero is a party in the Pfuntner case and a creditor of the DeLanos. What is utterly likely is that these people have worked together on so many thousands of cases that they have developed a modus operandi which disregards legality as well as the interests of creditors and the public at large.
43. Thus, as insiders they know that institutional lenders do not participate in bankruptcy proceedings if their respective stake does not reach their threshold of cost-effective participation. This is particularly so if they are unsecured lenders, which explains why the DeLanos distributed their debt over 18 credit card issuers and did not consolidate. Knowing that, they could not have

imagined that Dr. Cordero, a pro se and non-local party without anything remotely approaching an institutional lender's resources, would even attend the meeting of creditors, let alone pursue this case any further. Hence, this should have been another garden variety fraudulent bankruptcy within their scheme, with all creditors as losers and the schemers as winners of something.

44. The incentive to engage in bankruptcy fraud is typically provided by the enormous amount of money that an approved debt repayment plan followed by debt discharge can spare the debtor. That leaves a lot of money to play with, for it is not necessarily the case that the debtor is broke.
45. As for a standing trustee, she is appointed under 28 U.S.C. §586(e) for cases under Chapter 13 and is paid 'a percentage fee of the payments made under the plan of each debtor'. Thus, after the trustee receives a petition, she is supposed to investigate the financial affairs of the debtor to determine the veracity of his statements. If satisfied that the debtor deserves bankruptcy relief from his debt burden, the trustee approves his debt repayment plan and submits it to the court for confirmation. A confirmed plan generates a stream of payments from which the trustee takes her fee. But even before confirmation, money begins to roll in because the debtor must commence to make payments to the trustee within 30 days after filing his plan and the trustee must retain those payments, 11 U.S.C. §1326(b).
46. If the plan is not confirmed, the trustee must return the money paid, less certain deductions, to the debtor. This provides the trustee with an incentive to approve the plan and get it confirmed by the court because no confirmation means no further stream of payments and, hence, no fees for her. To insure her take, she might as well rubberstamp every petition and do what it takes to get the plan confirmed by every officer that can derail confirmation. Cf. 11 U.S.C. §326(b).
47. The trustee would be compensated for her investigation of the petition -if at all, for there is no specific provision therefor- only to the extent of "the actual, necessary expenses incurred", §586(e)(2)(B)(ii). An investigation of the debtor that allows the trustee to require him to pay his creditors another \$1,000 will generate a percentage fee for the trustee of \$100 (in most cases). Such a system creates the incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let's say, \$300, which nets her three times as much as if she had sweated over the petition and supporting documents. For his part, the debtor saves \$700. Even if the debtor has to pay \$600 to make available money to get other officers to go along with his plan, he still comes \$400 ahead. To avoid a criminal investigation for bankruptcy fraud, a debtor may well pay more than \$1,000. After all, it is not as if he really had no money.

48. Dr. Cordero does not know of anybody paying or receiving an unlawful fee in this case and does not accuse anybody thereof. But he does affirm what he knows:
- a) Trustee Reiber had 3,909 *open* cases on April 2, 2004, according to PACER;
  - b) got the DeLanos' petition ready for confirmation by the court without ever requesting a single supporting document;
  - c) chose to dismiss the case rather than subpoena the documents requested but not produced;
  - d) has refused to trace the substantial earnings of the DeLanos'; and
  - e) after ratifying the unlawful termination of the meeting of creditors, refuses to hold an adjourned one where the DeLanos would be examined under oath, including by Dr. Cordero.
49. Moreover, there is something fundamentally suspicious when:
- a) a bankruptcy judge protects bankruptcy petitioners from a default judgment and from having to account for \$291,470;
  - b) allows the local parties to disobey his orders with impunity;
  - c) before any discovery has taken place, prejudices in his August 30 order of that their motion to disallow Dr. Cordero's claim is not an effort to eliminate him from the case (E-106), although he is the only creditor that threatens to expose their bankruptcy fraud (E-121:IV); and
  - d) yet shields them from discovery by suspending all further process until their motion to disallow is finally determined.
50. These facts and circumstances support the reasonable suspicion that they have engaged in coordinated conduct aimed at attaining a mutually beneficial objective, that is, a scheme, and that such conduct originates in bankruptcy fraud. Consequently, what the scheme undermines is, not just the legal, economic, and emotional wellbeing of Dr. Cordero...as if anybody cares...but the integrity of judicial process and the bankruptcy system. That warrants an investigation.
51. However, if that investigation is to have any hope of finding and exposing all the ramifications of the vested interests that have developed rather than being suffocated by them, it must be carried out by investigators that do not even know these people. This excludes not only all those that are their colleagues or friends, but also those that are their acquaintances either because they work in the same small federal building or live in the same small community in Rochester or Buffalo, NY. (E-135-147) They too may fear the consequences of admitting that right under their noses such a scheme developed. Let out-of-towners, for example, from Washington, D.C., or Chicago, conduct all aspects of the investigation...starting by subpoenaing the bank account

and *debit* card statements of the DeLanos and then examining them under oath, for what a veteran bank loan officer knows could lead to cracking a far-reaching bankruptcy fraud scheme!

#### **IV. The actions by the Chief Judge and the Judicial Council**

52. The Judicial Council limited itself to responding to Dr. Cordero's petitions (E-23; E-47) with forms dated September 30 (E-37) and November 10 (E-55) that carry the boilerplate DENIED for the reasons stated in the order dated June 8 (E-11) and September 24, 2004 (E-45). By so doing, not only did it fail to give even the appearance that justice was being done, but it also did not provide any reasons for its action that could be discussed here.
53. As for the dismissals, both by Acting Chief Judge Jacobs, whereby the Chief Judge was insulated from §359 restrictions (E-24-25) although he recused himself (E-127), his reasons are discussed in the petitions of July 13 (E-23) and October 4 (E-47). However, to the discussion of his reason that Complainant's statements...amount to a challenge to the merits of a decision or a procedural ruling (E-13), it is pertinent to add the following passage from a Judicial Conference memorandum:

Although a judge indeed may not be sanctioned out of disagreement with the merits of rulings, a judge certainly may be sanctioned for a consistent pattern of abuse of lawyers appearing before him. The fact that that abuse is largely evidenced by the judge's rulings, statements, and conduct on the bench does not shield the abuse from investigation under the Act. To the contrary, allegations that the judge has been habitually abusive to counsel and others may be proven by evidence of conduct on the bench, including particular orders or rulings, that appears to constitute such abuse.[at 15] ...The sanctions are not based upon the legal merits of the judge's orders and rulings on the bench, but on the pattern of conduct that is evidenced by those orders and rulings....If a judge's behavior on the bench, including directives to counsel and litigants, were wholly beyond the reach of the Act, the Act would be gutted. at 16, *In re: Complaints of Judicial Misconduct or Disability*, No. 98-372-00.

54. Judge Jacobs also wrote that Finally, to the extent that the complaint relies on the conduct or inaction of the trustee, the court reporter, the Clerk, the Case Administrator, or court officers, it is rejected. The Act applies only to judges...(E-13). Dr. Cordero rebutted that other court officers, trustees, attorneys, and judges that work for or with Judge Ninfo or appear before him in that small federal building in Rochester (E-86:II), and all the more so if they also participate in the bankruptcy fraud scheme, have followed his example of disregard for legality and bias against Dr. Cordero (E-25). The common sense likelihood that others joined in and compounded judicial misconduct is implicit in the following passage from another memorandum of the Judicial Conference:

While the identity of the complainant will necessarily become known to the judge complained against, a complainant may also fear retaliation from the judge's judicial colleagues, former law clerks, and other associates, as well as other adverse consequences, such as acquiring a reputation as a malcontent; at 8 in No. 94-372-001.

55. Copies of these memoranda had to be obtained from the Administrative Office of the U.S. Courts. The Judicial Conference should know this because, by contrast, the Chief Judge of the Court of Appeals for the Second Circuit impaired Dr. Cordero's preparation of his petition to the Circuit's Judicial Council by making it impossible to consult precedent constituted by orders and supporting memoranda of Second Circuit chief judges and the Judicial Council disposing of other complaints. (E-15, E-19) Although Rule 17(b) of the Circuit's Complaint Rules provides that such materials and dissenting opinions, statements, and the docket-sheet record thereof "will be made public by placing them in a publicly accessible file in the office of the clerk of the court of appeals" (E-18), the Chief Judge kept them, except those for the last three years, not in the clerk's office, not stored elsewhere in the Court's building, not stored in any annex to the building, not stored in any building in the City of New York, not even stored in the State of New York, or in any other state of the Circuit, but rather shipped them away to the State of Missouri to be kept in the vaults of the National Archives! And there was no docket-sheet record at all. (E-20)
56. Moreover, if while reading the few materials available at the Court you had been treated by a Head Clerk as Dr. Cordero was, would you feel that you had been intimidated against reading them? (E-21a) Would you be paranoiac or reasonable in so feeling had you been treated repeatedly by CA2 officers with contempt for your procedural rights and person? (E-131:IV) Whether the conduct of these officers was coincidental to or in sympathy with that of their colleagues in the Bankruptcy and District Courts in Rochester (E-86:II) needs to be investigated.
57. One thing is sure: Chief Judge Walker creates an institutional climate of disrespect for the law when he shows contempt for the Misconduct Act and his own Circuit's Rules and 1) fails to make and keep complaint materials publicly available, 2) fails to deal with complaints 'promptly and expeditiously', 3) arbitrarily refuses updates to complaints, 4) fails to investigate complaints, 5) fails to safeguard the "business of the courts" of dispensing justice, 6) fails to discipline biased judges who abuse parties, 7) fails to protect complainants and indifferently lets them continue suffering enormous waste of effort, time, and money (E-90:III) and tremendous emotional distress (E-43) due to his peers' misconduct. Can a complainant be "aggrieved" when he makes the Circuit's Judicial Council aware of this situation, but it takes no action other than to

rubberstamp **DENIED** on his plea for relief? Will the Judicial Conference tolerate self-policing by the judiciary that degenerates into arrogant self-immunity and disregard for duty? (E-128-II)

## V. Relief requested

58. Therefore, Dr. Cordero respectfully requests that the Judicial Conference:

- a) construe 28 U.S.C. §357(a) so as to grant this petition for review;
- b) investigate the complained-about judicial misconduct and its link to a bankruptcy fraud scheme;
- c) include in the investigation the following cases:
  - 1) Mr. Palmer's *Premier Van Lines*, Chp. 7 bankruptcy case, dkt. no. 01-20692, WBNY;
  - 2) *Pfuntner v. Gordon et al.*, dkt. no. 02-2230, WBNY; adversary proceeding appealed in:
    - i. *Cordero v. Gordon*, dkt. no. 03-CV-6021, WBNY and
    - ii. *Cordero v. Palmer*, dkt. no. 03-MBK-6001, District Judge David Larimer presiding;
  - 3) *Premier Van et al.*, dkt. no. 03-5023, in the Court of Appeals for the Second Circuit; and
  - 4) *In re David and Mary Ann DeLano*, Chp. 11 bankruptcy case, dkt. no. 04-20280, WBNY;
- d) appoint investigators from outside the Rochester and Buffalo area, who are unacquainted with those that may be investigated and who can investigate zealously, efficiently, and exhaustively regardless of who is participating in wrongdoing or just looking the other way;
- e) make a simultaneous report to the Acting U.S. Attorney General, such as under 18 U.S.C. §3057(a), and request that the Department of Justice join its investigation and also appoint investigators from outside the DoJ and FBI offices in Rochester and Buffalo (E-135-147);
- f) take a position on whether:
  - 1) the appearance of impartiality on the part of Judge Ninfo and District Judge Larimer (E-4:D) no longer obtains so that they should be disqualified from the cases in c) above; and
  - 2) the three cases assigned to Judge Ninfo –c)1), 2) and 4) above- and the appeals therefrom assigned to Judge Larimer –c)2)i) and ii)- should be removed in the interest of justice under 28 U.S.C. §1412 to an impartial court for trial by jury, such as the U.S Bankruptcy and District Courts in Albany, N.Y.;
- g) grant Dr. Cordero any other relief that is just and fair.

Respectfully submitted, under penalty of perjury,

on November 18, 2004  
59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

Dr. Richard Cordero  
tel. (718) 827-9521

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- <sup>1</sup> News Advisory released on May 26, 2004; [www.house.gov/judiciary](http://www.house.gov/judiciary); Contact: Jeff Lungren/Terry Shawn, 202-225-2492.
- <sup>2</sup> [http://www.supremecourtus.gov/publicinfo/press/pr\\_04-13-04.html](http://www.supremecourtus.gov/publicinfo/press/pr_04-13-04.html); For Further Information Contact: Public Information Office of the U.S. Supreme Court at 202-479-3211.
- <sup>3</sup> "Our Democratic Constitution", Stephen Breyer, Associate Justice, Supreme Court of the United States, The Fall 2001 James Madison Lecture, New York University Law School, New York, NY, October 22, 2001; [http://www.supremecourtus.gov/publicinfo/speeches/sp\\_10-22-01.html](http://www.supremecourtus.gov/publicinfo/speeches/sp_10-22-01.html).
- <sup>4</sup> Associate Justice Stephen G. Breyer, "Liberty, Security, and the Courts", Association of the Bar of the City of New York, New York, NY, April 14, 2003; [http://www.supremecourtus.gov/publicinfo/speeches/sp\\_04-15-03.html](http://www.supremecourtus.gov/publicinfo/speeches/sp_04-15-03.html).
- <sup>5</sup> "Brown: One Constitution.....One People.....One Nation", Stephen Breyer, Associate Justice, Supreme Court of the United States, 50<sup>th</sup> Anniversary of Brown v. Board of Education, Topeka, Kansas, May 17, 2004; [http://www.supremecourtus.gov/publicinfo/speeches/sp\\_05-17-04b.html](http://www.supremecourtus.gov/publicinfo/speeches/sp_05-17-04b.html).
- <sup>6</sup> <https://ecf.nywb.uscourts.gov/cgi-bin/login.pl>.
- <sup>7</sup> Id.
- <sup>8</sup> As reported by PACER at [https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L\\_916\\_0-1](https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1) on April 2, 2004.

Key Documents and Dates in the Procedural History [updated at ToEC:3]  
of the judicial misconduct complaints and review petitions filed under 28 U.S.C. §351 et seq. with  
the CA2 Chief Judge and the Judicial Council of the Second Circuit  
dockets no. 03-8547 and no. 04-8510  
submitted in support of a petition for review to  
the Judicial Conference of the United States  
by  
**Dr. Richard Cordero**

Judicial misconduct complaint about WBNY Bankruptcy **Judge John C. Ninfo, II**, docket no. 03-8547

<b>Judicial misconduct complaint</b>				<b>Petition for review</b>					
Submission	Resubmission	Acknow- ledgment	Dismissal	Submission	Resubmission	Acknow- ledgment	Letter to Jud. Council	Update to Jud. Council	Denial
August 11, 03	August 27, 03	Septem. 2, 03	June 8, 04	July 8, 04	July 13, 04	July 16, 04	July 30, 04	August 27, 04	Septem. 30, 04
-	1	-	10 & 11	-	23	28	29	31	36 & 37
page numbers of documents included among the exhibits									

Judicial misconduct complaint about CA2 **Chief Judge John M. Walker, Jr.**, docket no. 04-8510

<b>Judicial misconduct complaint</b>				<b>Petition for review</b>				
Submission	Resubmission	Acknow- ledgment	Dismissal	Submission	Acknow- ledgment	Exhibits to Jud. Council	Rejection of exhibits	Denial
March 19, 04	March 29, 04	March 30, 04	Sept. 24, 04	October 4, 04	October 7, 04	October 14, 04	October 20, 04	November 10, 04
39	-	-	44 & 45	47	-	52	53	54 & 55
page numbers of documents included among the exhibits								



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submitted on November 18, 2004  
to the Judicial Conference of the United States  
in support of a petition for review of  
the denials by the Judicial Council of the Second Circuit of  
petitions for review of dismissals of judicial misconduct complaints  
no. 03-8547 and no. 04-8510, CA2  
by  
**Dr. Richard Cordero**

I. Complaint against WBNY Judge J.C. Ninfo, no. 03-8547, CA2.....	845
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Exhibits=E

## **I. Complaint against WBNY Judge J.C. Ninfo, no. 03-8547, CA2**

1. Dr. Richard <b>Cordero's</b> judicial misconduct <b>complaint against</b> WBNY U.S. Bankruptcy Judge John C. <b>Ninfo</b> , II, submitted on <b>August 11</b> , and reformatted and <b>resubmitted</b> on <b>August 27</b> , 2003, to the Chief Judge of the Court of Appeals for the Second Circuit.....	1	[C:63]
2. Dr. <b>Cordero's</b> <b>letter</b> of <b>February 2</b> , 2004, to the Hon. John M. Walker, Jr., <b>Chief Judge</b> of the Court of Appeals for the Second Circuit, <b>inquiring</b> about the status of the complaint <b>and updating</b> its supporting evidence.....	7	[C:105]
3. <b>Letter</b> of Clerk of Court Roseann B. <b>MacKechnie</b> by Deputy Clerk Patricia Chin- <b>Allen</b> of <b>February 4</b> , 2004, acknowledging receipt and <b>returning</b> Dr. Cordero's five copies of his inquiring and updating <b>letter</b> of <b>February 2</b> , 2004, to the Chief Judge because a decision has not yet been made.....	9	[C:109]

4. Clerk <b>MacKechnie</b> 's cover <b>letter</b> by Deputy <b>Allen</b> of <b>June 8, 2004</b> , to Dr. Cordero <b>accompanying</b> the order of <b>dismissal</b> of his <b>complaint</b> against Judge <b>Ninfo</b> .....	10	[C:144]
5. Acting Chief Judge Dennis <b>Jacobs</b> ' order of <b>June 8, 2004</b> , <b>dismissing</b> Dr. Cordero's <b>complaint</b> against Judge <b>Ninfo</b> , docket no. 03-8547, CA2.....	11	[C:145]
6. Dr. <b>Cordero</b> 's <b>letter</b> of <b>June 19, 2004</b> , to Chief Judge <b>Walker</b> , stating that the judicial misconduct <b>orders</b> and materials have <b>not</b> been made publicly <b>available, as required under</b> the <b>CA2 Rules Governing Complaints</b> against Judicial Officers, and requesting that they be made available to Dr. Cordero for his use before the deadline of July 9 for submitting his petition for review.....	15	[C:530]
7. <b>Rule 17(a) and (b)</b> of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers.....	16	[C:531]
8. Dr. <b>Cordero</b> 's <b>letter</b> of <b>June 30, 2004</b> , to Chief Judge <b>Walker</b> , stating that the Court's <b>archiving</b> of all <b>orders</b> and other materials <b>disposing of complaints</b> , except those for the last three years, constitutes a <b>violation</b> of <b>Rule 17</b> of the <b>CA2 Rules Governing Misconduct Complaints</b> .....	19	[C:533]
9. Dr. <b>Cordero</b> 's letter of <b>July 1, 2004</b> , to Fernando <b>Galindo</b> , Chief Deputy of the Clerk of Court, <b>concerning</b> the warning to him by <b>Mrs. Harris</b> , Head of the In-take Room, that if he nodded a third time in the reading room while reading misconduct orders, she would <b>call the marshals on him</b> .....	21a	[C:537]
10. Acting Clerk of Court Fernando <b>Galindo</b> 's letter of <b>July 9, 2004</b> , <b>returning</b> Dr. <b>Cordero</b> 's 10-page <b>petition</b> for review of <b>July 8, 2004</b> , because the Court's "long-standing practice...[is to] establish the definition of brief as applied to the statement of grounds for petition to five pages" .....	22	[C:621]
11. Dr. <b>Cordero</b> 's <b>petition to the Judicial Council</b> of the Second Circuit of July 8, reformatted and resubmitted <b>on July 13, 2004</b> , for review of the dismissal of his <b>complaint</b> against Judge <b>Ninfo</b> , and addressed to Acting Clerk Galindo <b>with</b> a separate <b>volume of exhibits</b> after the exhibits attached to the July 8 petition were not accepted.....	23	[C:623]
12. Clerk <b>MacKechnie</b> 's cover <b>letter</b> by Deputy <b>Allen</b> of <b>July 16, 2004</b> , to Dr. Cordero <b>acknowledging</b> receipt of his <b>petition</b> for review to the Judicial Council, wrongly dating it as of February 13, and <b>returning</b> the also unaccepted separate <b>volume</b> of exhibits .....	28	[C:651]

13. Dr. Cordero’s letter of <b>July 30, 2004</b> , to the <b>members</b> of the <b>Judicial Council</b> to let them know that neither the <b>volume</b> of exhibits nor the <b>table of exhibits</b> accompanying the petition for review was accepted but instead were <b>returned unfiled</b> and sending each a copy of the table as well as of the 5-page petition .....	29	[C:652]
14. Clerk <b>MacKechnie’s</b> letter by Deputy <b>Allen</b> of <b>August 13, 2004</b> , accompanying the <b>return</b> of Dr. Cordero’s copies of July 30, 2004, to Chief Judge <b>Walker</b> of the table of exhibits and the 5-page petition.....	30	[C:657]
15. Dr. Cordero’s letter of <b>August 27, 2004</b> , to the <b>Judicial Council updating</b> the petition to review with information pointing to <b>money</b> generated by fraudulent bankruptcy petitions as the force <b>driving</b> the complained-about <b>judicial misconduct</b> .....	31	[C:660]
16. Clerk <b>MacKechnie’s</b> cover <b>letter</b> by Deputy- <b>Allen</b> of <b>October 6, 2004</b> , to Dr. Cordero accompanying the order of the <b>Judicial Council denying</b> his <b>petition</b> for review .....	36	[C:671]
17. <b>Judicial Council’s</b> order of <b>September 30, 2004</b> , <b>denying</b> Dr. Cordero’s <b>petition</b> for review of the dismissal of his complaint against Judge Ninfo, CA2 docket no. 03-8547.....	37	[C:672]

## **II. Complaint against CA2 Chief Judge J.M. Walker, Jr., no. 04-8510, CA2**

18. Dr. Cordero’s judicial misconduct <b>complaint</b> of <b>March 19, 2004</b> , as reformatted and resubmitted on March 29, <b>against</b> the Hon. John M. <b>Walker, Jr.</b> , Chief Judge of the Court of Appeals for the Second Circuit.....	39	[C:271]
19. Clerk <b>MacKechnie’s</b> cover <b>letter</b> by Deputy <b>Allen</b> of <b>September 28, 2004</b> , to Dr. Cordero accompanying the order of <b>dismissal</b> of his <b>complaint against</b> CA2 Chief Judge <b>Walker</b> .....	44	[C:390]
20. Acting Chief Judge <b>Jacobs’</b> order of <b>September 24, 2004</b> , dismissing Dr. Cordero’s misconduct <b>complaint against</b> Chief Judge <b>Walker</b> , docket no. 04-8510, CA2 .....	45	[C:391]
21. Dr. Cordero’s <b>petition</b> of <b>October 4, 2004</b> , to the <b>Judicial Council</b> of the Second Circuit, for <b>review</b> of the <b>dismissal</b> of his judicial misconduct <b>complaint</b> against Chief Judge <b>Walker</b> , addressed to Clerk MacKechnie .....	47	[C:711]
22. Dr. Cordero’s letter of <b>October 14, 2004</b> , to the <b>Judicial Council submitting exhibits</b> in support of the petition to review the dismissal of the complaint against Chief Judge Walker <b>and requesting an investigation</b> .....	52	[C:717]

23. Clerk <b>MacKechnie’s letter</b> by Deputy <b>Allen</b> of <b>October 20, 2004, returning</b> to Dr. Cordero the <b>exhibits</b> submitted on October 14 and stating that complaints cannot be supplemented.....	53	[C:777]
24. Clerk <b>MacKechnie’s cover letter</b> by Deputy- <b>Allen</b> of <b>November 10, 2004, to Dr. Cordero</b> accompanying the order of the <b>Judicial Council denying his petition</b> for review of the dismissal of his <b>complaint against Chief Judge Walker</b> .....	54	[C:780]
25. <b>Judicial Council’s order</b> of <b>November 10, 2004, denying</b> Dr. Cordero’s <b>petition</b> for review of the dismissal of his <b>complaint against Chief Judge Walker</b> .....	55	[C:781]

**III. Descriptive and evidentiary documents supporting both complaints and pointing to a judicial misconduct and bankruptcy fraud scheme**

26. Dr. <b>Cordero’s Objection</b> of <b>March 4, 2004, to Confirmation</b> of the Chapter 13 Plan of Debt Repayment .....	57	[D:♦63]
27. Trustee <b>Reiber’s motion</b> of <b>June 15, 2004, to dismiss</b> the DeLanos’ Chapter 13 petition for unreasonable delay in submitting documents, noticed for July 19, 2004.....	62	[D:164]
28. Dr. <b>Cordero’s Statement</b> of <b>July 9, 2004, in opposition</b> to Trustee’s motion to <b>dismiss</b> the DeLano petition and containing in the relief the text of a <b>requested order</b> .....	63	[D:193]
29. Att. <b>Werner’s notice</b> of hearing and order, filed on <b>July 22, 2004, objecting</b> to Dr. Cordero’s <b>claim</b> and moving to <b>disallow</b> it.....	73	[D:218]
30. Dr. <b>Cordero’s cover letter</b> of <b>July 19, 2004, faxed to Judge Ninfo</b> and accompanying:.....	75	[D:207]
a) Dr. <b>Cordero’s Proposed order</b> for production of documents by the DeLanos and Att. Werner, obtained through conversion of the requested order contained in Dr. Cordero’s Statement of July 9, 2004 .....	76	[D:208]
31. Att. <b>Werner’s letter</b> of <b>July 20, 2004, to Judge Ninfo</b> , delivered via messenger, objecting to Dr. Cordero’s proposed order because it “extends beyond the direction of the Court” .....	79	[D:211]

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♦D:=Designated items in the record for the appeal from the Bankruptcy Court in *In re DeLano*, 04-20280, WBNY, to the District Court in *Cordero v DeLano*; 05cv6190L, WDNY. These items as well as the transcript of the evidentiary hearing in *DeLano* in Bankruptcy Court on March 1, 2005, are in the PDF files in the D Add Pst folder on the accompanying CD.

32. Dr. <b>Cordero's</b> letter of <b>July 21</b> , 2004, faxed to Judge <b>Ninfo</b> , requesting that he issue the proposed order as agreed at the hearing on July 19, 2004.....	80	[D: 217]
33. Judge <b>Ninfo's</b> <b>order</b> of <b>July 26</b> , 2004, providing for the production of only some documents but not issuing Dr. Cordero's proposed order because "to [it] Attorney Werner expressed concerns in a July 20, 2004 letter" .....	81	[D:220]
34. Dr. <b>Cordero's</b> <b>motion</b> of <b>August 14</b> , 2004, in the Bankruptcy Court, WDNY, for docketing and issue of order, removal, referral, examination, and other relief.....	83	[D:231]
a) <b>Proposed Order</b> For Docketing and Issue of Order, Removal, Referral, and Examination.....	98	[D:246]
35. Judge <b>Ninfo's</b> <b>Order</b> of <b>August 30</b> , 2004, to sever a claim from the case on appeal in the Court of Appeals (docket no. 03-5023) for the purpose of trying it in the DeLano case in the Bankruptcy Court (docket no. 04-20280).....	101	[D:272]
36. Dr. <b>Cordero's</b> motion of <b>September 9</b> , 2004, to <b>quash</b> Judge <b>Ninfo's</b> <b>Order</b> of <b>August 30</b> , 2004 .....	109	[D:440]
37. <b>Order</b> of the <b>Court of Appeals</b> of <b>October 13</b> , 2004, <b>denying</b> Dr. Cordero's motion to <b>quash</b> Judge <b>Ninfo's</b> <b>Order</b> of <b>August 30</b> , 2004, and stating that <b>Chief Judge</b> Walker <b>recused himself</b> from further consideration of the Premier Van Lines case .....	127	[D:312]
38. Dr. <b>Cordero's</b> <b>motion</b> of <b>November 2</b> , 2004, in the Court of Appeals to <b>stay</b> the <b>mandate</b> following denial of the motion for panel rehearing and <b>pending</b> the filing of a <b>petition</b> for a writ of certiorari in the <b>Supreme Court</b> .....	128	[C:395]

#### **IV. Basis for requesting that the investigators be appointed from outside the Buffalo and Rochester Offices**

39. Letter of Richard <b>Resnick</b> , Esq., Assistant U.S. Attorney, of <b>August 24</b> , 2004, stating that the <b>U.S. Attorney's Office</b> in Rochester <b>will not investigate</b> Dr. Cordero's "allegations of bankruptcy fraud and judicial misconduct" and returning to him all the files.....	135	[C:1507]
40. Dr. <b>Cordero's</b> cover letter of <b>September 18</b> , 2004, to Michael A. <b>Battle</b> , Esq., U.S. Attorney for WDNY, accompanying: .....	136	[C:1513]
a) Dr. <b>Cordero's</b> <b>appeal</b> of <b>September 18</b> , 2004, to Att. Battle <b>from</b> the <b>decision</b> taken by Att. Tyler not to open an <b>investigation</b> into		

the complaint about a judicial <b>misconduct</b> and bankruptcy fraud <b>scheme</b> and statement of the questionable circumstances under which that decision was made.....	137	[C:1514]
41. Dr. <b>Cordero's</b> letter of <b>October 7, 2004, to Jeannie Bowman</b> , Executive Assistant to U.S. Att. Battle, accompanying the <b>resubmission of the appeal</b> to Att. Battle from the decision of Att. Tyler and stating that the latter was to have forwarded Dr. Cordero's files to Att. Battle and why he should not investigate the case.....	142	[C:1519]
42. Dr. <b>Cordero's</b> letter of <b>October 19, 2004, to Mary Pat Floming, Esq.</b> , Assistant U.S. Attorney at the U.S. Attorney's Office in Buffalo, requesting that she sees to it that the accompanying appeal to Mr. Battle gets to him and requesting her assistance .....	143	[C:1520]
43. Dr. <b>Cordero's</b> letter of <b>October 25, 2004, to Att. Floming</b> with an update about why Trustee Reiber is refusing to hold an examination of the DeLanos and stating that just as Mr. Tyler cannot investigate Dr. Cordero's appeal from his decision, neither of Trustees Schmitt, Martini, or Reiber can investigate the bankruptcy fraud scheme, but instead, they should be investigated .....	144	[C:1521]
44. U.S. Att. <b>Battle's</b> letter of <b>November 4, 2004, to Dr. Cordero</b> stating that he <b>reviewed</b> the <b>documentation</b> and <b>found no</b> basis for Dr. Cordero's claim of bankruptcy <b>fraud</b> and closing the matter .....	145	[C:1522]
45. Dr. <b>Cordero's</b> letter of <b>November 15, 2004, to U.S. Att. Battle</b> showing that as of November 1 Mr. Battle did <b>not have the documentation</b> and <b>could not</b> have <b>retrieved it</b> from the Rochester office <b>and reviewed</b> over 315 pages by November 4, and requesting that he obtain the files and assign the case to skilled bankruptcy fraud investigators as he had said on November 1 that he would do.....	146	[C:1523]

## V. The DeLanos' bankruptcy petition

46. <b>Notice</b> of the §341 <b>Meeting of Creditors</b> for March 8, 2004, in the Chapter 13 case of <b>DeLanos</b> , filed on February 6, 2004.....	149	[D:23]
47. <b>Petition for Bankruptcy</b> , with Schedules, under Chapter 13 of the Bankruptcy Code, 11 U.S.C., filed by David and Mary Ann <b>DeLano</b> , on <b>January 27, 2004</b> , in the WDNY Bankruptcy Court, docket no. 04-20280.....	153	[D:27]
48. The DeLanos' Chapter 13 <b>Plan of Debt Repayment</b> , dated January 26, 2004 .....	185	[D:59]

## Dr. Richard Cordero

Ph.D., University of Cambridge, England  
M.B.A., University of Michigan Business School  
D.E.A., La Sorbonne, Paris

59 Crescent Street  
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[Sample of letters to 26 members of the Jud. Conference] November 20 [and 27], 2004

Mr. Chief Justice William Rehnquist  
Member of the Judicial Conference of the United States  
Supreme Court of the United States  
1 First Street, N.E  
Washington, D.C. 20543

Dear Mr. Chief Justice,

I have submitted to the Judicial Conference a formal petition for review of two denials by the Judicial Council of the Second Circuit of my petitions for review of the dismissal of two related judicial misconduct complaints that I filed under 28 U.S.C. §§351 et seq. with the chief judge of that Circuit's Court of Appeals. In addition, I am sending you herewith a copy of my petition so that you take cognizance of the facts and legal issues and move your colleagues on the Conference to consider it and grant my request for relief. The high stakes warrant your attention.

Indeed, the petition concerns the evidence that I submitted of judicial misconduct linked to a bankruptcy fraud scheme. It involves U.S. Bankruptcy Judge John C. Ninfo, II, and other officers and parties in the U.S. Bankruptcy and District Courts, WDNY. The evidence thereof has been developing for over two years and keeps mounting since the underlying cases are still pending. I submitted it to the Hon. John M. Walker, Jr., Chief Judge of the CA2 Court of Appeals, but he did not conduct even a §352(a) limited inquiry of the complaint, let alone appoint a §353(a) special committee to investigate the evidence. Hence, I filed a complaint about him. It was dismissed too without any investigation, as were my petitions by the CA2 Judicial Council.

As a result of taking action without any report of a special committee or conducting any investigation, the Judicial Council both "aggrieved" me under §357(a) and lacked jurisdiction under §354(a)(1). It denied me the legal benefit of protection from judicial misconduct to which I am entitled under §§351 et seq. and its own Complaint Rules. To afford such protection by administering judicial discipline through self-policing was the intent of both Congress and the Council when enacting their respective act and rules. By disregarding its own legal obligations, the Council knowingly left me to suffer further abuse of my legal rights and bias at the hands of Judge Ninfo, who has caused me to spend an enormous amount of effort, time, and money and has inflicted on me tremendous aggravation, for I am the only pro se party and non-institutional non-local party in two cases before him. Those very concrete and personal consequences of the CA2 Council's disregard for its legal obligations have also "aggrieved" me under §357(a). All this provides the legal basis for the Judicial Conference to take jurisdiction of this petition.

Doing so would allow the Conference to review the systematic denial of petitions by judicial councils, which is so indisputable as to have justified the appointment by Chief Justice Rehnquist of Justice Breyer to head a committee to review it. To its members I am also submitting this matter as a test case because the Council's denials are particularly egregious given the compelling evidence that supports reasonable suspicion of corruption. I trust that you will take your duty to safeguard the integrity of the judiciary seriously enough to review the accompanying documents carefully and move the Conference to consider the petition formally. I also respectfully request that you make a report of this evidence to the Acting U.S. Attorney General under 18 U.S.C. 3057(a). Meantime, I look forward to hearing from you.

Sincerely,

*Dr. Richard Cordero*

# Members of the Judicial Conference of the United States

to whom were addressed the letters of November 20 and 27, 2004  
for review of the denials by the Judicial Council, 2<sup>nd</sup> Cir.,  
of the petitions for review of the dismissals of the misconduct complaints  
against Judge John C. Ninfo, II, WBNY, and Chief Judge John M. Walker, Jr., CA2

by

**Dr. Richard Cordero**

For general information on the Judicial Conference go to  
<http://www.uscourts.gov/judconf.html>

For the latest list of members of the Judicial Conference, see the latest Report of the Proceedings of the Judicial Conference of the U.S. at <http://www.uscourts.gov/judconfindex.html> >Proceedings

The proceedings reported on take place twice a year in March and September. The latest Report available as of early March 2006 is the one for the meeting of the Conference on September 20, 2005, which is accessible at [http://www.uscourts.gov/judconf/sept05proc\\_final.pdf](http://www.uscourts.gov/judconf/sept05proc_final.pdf) .

However, modification in the membership of the Conference takes effect on October 1 of every year. To check the membership list, contact the Secretariat of the Judicial Conference at (202) 502-2400, located at the Administrative Office of the U.S. Courts (202)502-1100, fax (202)502-1033.

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Chief Justice William **Rehnquist**  
**Supreme Court** of the United States  
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(Second Circuit, ftnt. \*)

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Chief Judge Hector M. Laffitte  
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Chief Judge Carolyn Dineen **King**  
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Chief Judge Lawrence P. **Zatkoff**  
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Chief Judge Douglas H. **Ginsburg**  
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Chief Judge Thomas F. Hogan  
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Chief Judge Haldane Robert **Mayer**  
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Chief Judge Jane A. **Restani**  
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Madam Justice **Ginsburg**  
**Circuit Justice** for the Second Circuit  
Supreme Court of the United States  
1 First Street, N.E  
Washington, D.C. 20543  
(202) 479-3000

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\* The Second Circuit is also represented in the Judicial Conference by its chief judge:

Chief Judge John M. Walker, Jr.  
U.S. Court of Appeals for the Second Circuit  
Thurgood Marshall United States Courthouse  
40 Foley Square, Room 1802  
New York, NY 10007  
(212) 857-8500

## Dr. Richard Cordero

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59 Crescent Street  
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November 26, 2004

Madam Justice Ginsburg  
Supreme Court of the United States  
1 First Street, N.E  
Washington, D.C. 20543

Dear Madam Justice,

I am submitting hereby to you as the Circuit Justice for the Second Circuit a copy of my petition for review to the Judicial Conference in the context of the dismissals by the chief judge of the court of appeals and the judicial council of that circuit of my two complaints under the Judicial Conduct and Disability Act. It deserves your consideration because of the particularly egregious implications that these dismissals have for the integrity of judicial process given that despite the compelling evidence that supports reasonable suspicion of judicial corruption linked to a bankruptcy fraud scheme, the complaints were dismissed without any investigation at all.

Indeed, this case concerns the evidence that I submitted of a series of instances for over two years of disregard for the law, rules, and facts by U.S. Bankruptcy Judge John C. Ninfo, II, and other officers and parties in the U.S. Bankruptcy and District Courts, WDNY, so numerous and consistently to my detriment, the only non-local and pro se litigant, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing. Then evidence emerged of the operation of the most powerful driver of corruption: money!, a lot of money in connection with fraudulent bankruptcy petitions. This results from the concentration of *thousands* of bankruptcy cases in the hands of each of the private standing trustees appointed by the U.S. trustee. They have a financial interest in rubberstamping the approval of all petitions, especially those with the least merits, since petitions confirmed by the court produce fees for the trustees, even a fee stream as a percentage of the debtors' payments to the creditors. Who and what else is being paid?

That question was not even looked at, which follows from the fact that although I submitted the evidence that I had and that which kept emerging, for the underlying cases are still pending, to the Hon. John M. Walker, Jr., Chief Judge of the CA2 Court of Appeals, he neither conducted a limited inquiry nor appointed a special committee. Hence, I filed a complaint about him. It was dismissed too without any investigation, as were my petitions to the CA2 Judicial Council.

Therefore, given your responsibility for the integrity of judicial process in your circuit and the egregiousness of this case, which illustrates the systematic dismissal of complaints and review petitions under study by Justice Breyer's Committee, I respectfully request that you:

1. intimate to the Judicial Conference or its members the advisability of both taking jurisdiction of the petition herewith, on grounds such as those set forth therein, and investigating the complaints for the purpose, among others, of insuring just and fair process free from the corruptive influence of money and personal advantage;
2. suggest to the Committee to include this case in its study and investigate it; and
3. if you believe that Judge Ninfo or any of the others has committed an offense, make a report of this case to the Acting U.S. Attorney General under 18 U.S.C. 3057(a).

Meantime, I look forward to hearing from you.

sincerely,

*Dr. Richard Cordero*

MARCIA M. WALDRON  
CLERK

**UNITED STATES COURT OF APPEALS**  
FOR THE THIRD CIRCUIT  
21400 UNITED STATES COURTHOUSE  
601 MARKET STREET  
PHILADELPHIA 19106-1790

TELEPHONE  
215-597-2995

December 3, 2004

Dr. Richard Cordero  
59 Crescent Street  
Brooklyn, NY 113208-1515

Re: Complaint of Judicial Misconduct

Dear Dr. Cordero:

The document which you submitted to the Chief Judge of this Circuit has been referred to this office for response. No action may taken in regard to your submission.

If a special committee was appointed by the Second Circuit and you are aggrieved by the action taken by the Circuit's Judicial Council after the committee has acted, you may file the appropriate request for review with the Office of General Counsel of the Administrative Office of the United States Courts as provided by 28 U.S.C. § 357. Only submissions accepted for filing by that office may be considered. Otherwise, the members of the Judicial Conference have no authority to informally intervene in regard to the matters addressed in your submission.

Very truly yours,

Marcia M. Waldron, Clerk

By:

/s/ Bradford A. Baldus  
Bradford A. Baldus  
Senior Legal Advisor to the Clerk

Enclosure

**SUPREME COURT OF THE UNITED STATES  
OFFICE OF THE CLERK  
WASHINGTON, DC 20543-0001**

December 6, 2004

Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208-1515

RE: Letter

Dear Mr. Cordero:

In reply to your letter or submission referred to this office by Justice Ginsburg on December 6, 2004, I regret to inform you that the Court is unable to assist you in the matter you present.

Under Article III of the Constitution, the jurisdiction of this Court extends only to the consideration of cases or controversies properly brought before it from lower courts in accordance with federal law and filed pursuant to the Rules of this Court. The Court does not give advice or assistance or answer legal questions on the basis of correspondence.

Your papers are herewith returned.

Sincerely,  
William K. Suter, Clerk

By:

M. Blalock  
(202) 479-3023

Enclosures



United States Court  
of International Trade

OFFICE OF THE CLERK  
One Federal Plaza  
New York, NY 10278-0001

December 9, 2004

Dr. Richard Cordero  
59 Crescent St.  
Brooklyn, NY 11208-1515

Dear Dr. Cordero:

This is to acknowledge receipt of your letter of November 27, 2004 to Chief Judge Jane A. Restani.

The Judicial Conference of the United States may take action with respect to complaints of judicial misconduct or disability under two sets of circumstances. The first is pursuant to 28 U.S.C. § 355, which requires the referral or certification of a matter based on the action taken by a judicial council under 28 U.S.C. § 354(b). The second is pursuant to 28 U.S.C. § 357, which permits a complainant or judge aggrieved by the action taken by a judicial council under 28 U.S.C. § 354 to petition the Judicial Conference for review of that action.

Under either scenario, Chief Judge Restani, while a member of the Judicial Conference, is not authorized to take any action on her own on such matter unless it is referred to her directly by the Conference. That has not occurred, and accordingly, I am returning your letter and the accompanying materials to you.

Sincerely,

A handwritten signature in black ink that reads "Leo M. Gordon".

Leo M. Gordon  
Clerk of the Court

cc: Chief Judge Jane A. Restani



LEONIDAS RALPH MECHAM  
Director

ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS

CLARENCE A. LEE, JR.  
Associate Director

WASHINGTON, D.C. 20544

WILLIAM R. BURCHILL, JR.  
Associate Director  
and General Counsel

December 9, 2004

Dr. Richard Cordero  
59 Crescent Street  
Brooklyn, New York 11208-1515

Dear Dr. Cordero:

This is in response to your letter and attachments of November 20, 2004 requesting review by the Judicial Conference of the United States of two orders by the Judicial Council of the Second Circuit denying review of the dismissal by the Chief Judge of a judicial conduct complaint.

Under 28 U.S.C. § 352(c), the judicial council is authorized to review dismissals of complaints by the chief judge of the circuit, and you have already availed yourself of this review mechanism.

Under the express terms of 28 U.S.C. § 357, Judicial Conference review is only available to review actions taken by the judicial council under section 354. The judicial council may take action under section 354 only following receipt of the report of a special investigating committee convened pursuant to section 353. Thus, review by the Judicial Conference is not available for complaints that have been dismissed or concluded by the chief judge of the circuit under section 352 without the appointment of a special investigating committee.

Section 357(c) is an emphatic limitation of review proceedings to those expressly authorized, as well as a prohibition of subsequent judicial review by any court:

Except as expressly provided in this section and section 352(c), all orders and determinations, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

It is absolutely necessary that we adhere to the above arrangements as mandated by Congress for the consideration of complaints of judicial misconduct or disability. This office and the Judicial Conference have no discretion to depart from this statutory framework.

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A TRADITION OF SERVICE TO THE FEDERAL JUDICIARY

Dr. Richard Cordero

Page 2

Having ascertained that the Chief Judge has entered an order dismissing your complaint, and that the Judicial Council has denied review of that order, I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States.

In our recent telephone conversation you asked for a copy of the Judicial Conference procedures for processing petitions for review of judicial conduct complaints. For your information I attach a copy of the "Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Circuit Council Orders Under the Judicial Conduct and Disability Act." (You may notice that the rules refer to 28 U.S.C. § 372(c), which was repealed in 2002 and replaced by 28 U.S.C. §§ 351-364. The rules simply have not yet been updated to reflect the new statutory citations).

I hope that you will find this letter helpful.

Sincerely,

A handwritten signature in black ink that reads "Robert P. Deyling". The signature is written in a cursive style with a large, prominent initial "R".

Robert P. Deyling  
Assistant General Counsel



ADMINISTRATIVE OFFICE  
OF THE  
U.S. COURTS

John K. Rabiej  
Chief, Rules Committee  
Support Office

Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, N.E.  
Washington, D.C. 20544

Telefacsimile Transmission Cover Sheet

Date: \_\_\_\_\_

To: 718 827-9521

Facsimile No.: \_\_\_\_\_

Office No.: \_\_\_\_\_

FROM: JOHN K. RABIEJ

FTS Fax No.....(202) 502-1755 or 502-1766

Voice Mail No.....(202) 502-1820

PAGE \_\_\_\_\_ OF \_\_\_\_\_ (including Cover Sheet)

Comments As requested

\_\_\_\_\_

\_\_\_\_\_

Transmitted by: \_\_\_\_\_

## EXHIBIT B-2

**RULES OF THE JUDICIAL CONFERENCE OF THE UNITED STATES  
FOR THE PROCESSING OF PETITIONS FOR REVIEW OF CIRCUIT COUNCIL  
ORDERS UNDER THE JUDICIAL CONDUCT AND DISABILITY ACT**

[As revised by the Judicial Conference of the United States, September 20, 1989]

The Judicial Conference of the United States prescribes these rules under the authority of section 372(c)(11) of title 28, United States Code, with respect to the processing of petitions for review submitted to the Conference under 28 U.S.C. § 372(c)(10), seeking review of circuit council actions taken under 28 U.S.C. § 372(c)(6) upon complaints of judicial conduct or disability:

1. Petition for review may be made by the filing of a written submission to the Judicial Conference addressed as follows:

Leonidas Ralph Mecham  
Secretary, Judicial Conference  
of the United States  
Administrative Office of the  
United States Courts  
Washington, D.C. 20544  
Attention: Office of the General Counsel

2. No form is prescribed for the filing of a petition for review.
3. Such petition shall consist of a written submission in typewriting on plain paper of 8-1/2 by 11 inch dimensions.
4. No formal limitation is imposed upon the length of the petition, but it is suggested that such petition should not normally exceed 20 pages in addition to the attachments required by Rule 8.
5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.
6. No absolute time limitation exists upon the filing of a petition for review. Nevertheless the petition should be submitted seasonably following final action by the circuit judicial council and issuance of its implementing order under 28 U.S.C. § 372(c)(15).
7. Five copies of the petition for review shall be submitted, at least one of which shall bear the original ink signature of the petitioner or his or her attorney. If the petitioner submits a signed declaration of inability to pay the expense of duplicating the petition, the Administrative Office shall then accept the original petition alone and shall undertake necessary reproduction of copies at its expense.

8. The petition for review shall have attached thereto a copy of each of the following documents:

- the order of the circuit judicial council issued under 28 U.S.C. § 372(c)(15), of which review is sought;
- the original complaint of judicial misconduct or disability that commenced the proceeding;
- any other documents or correspondence arising in the course of the proceeding before the judicial council or its special committee which the petitioner deems essential or useful to the prompt disposition of the review petition.

9. Upon receipt of a petition for review that appears on its face to be coherent, in compliance with these rules, and appropriate for present disposition, the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. § 331.

10. Unless otherwise directed by the Executive Committee of the Judicial Conference, the Committee to Review Circuit Council Conduct and Disability Orders shall assume the consideration and disposition of all petitions for review, in conformity with the Judicial Conference statement of the Committee's jurisdiction.

11. The Administrative Office shall then distribute the petition and its attachment to the members of the Committee to Review Circuit Council Conduct and Disability Orders for their deliberation. The petition shall receive an eight-digit identifying number of which the initial two digits shall refer to the year of filing, the next three digits shall be "372," and the final three shall identify each individual petition. Unless otherwise directed by the chairman, the Administrative Office shall contact the circuit executive or clerk of the United States court of appeals for the appropriate circuit to obtain the record of circuit council consideration of the complaint for distribution to the Committee.

12. In recognition of the review nature of petition proceedings under 28 U.S.C. § 372(c)(10), no additional investigation shall ordinarily be undertaken by the Judicial Conference or the Committee. If such investigation is deemed necessary, the Conference or Committee may remand the matter to the circuit judicial council that considered the complaint, or may undertake any investigation found to be required. If such investigation is undertaken by the Conference or Committee, (a) adequate prior notice shall be given in writing to the judge or magistrate whose conduct is the subject of the complaint, (b) such judge or magistrate shall be afforded an opportunity to appear at any investigative proceedings which might be conducted and to present argument orally or in writing, and (c) the complainant shall be afforded an opportunity to appear at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information.

13. Except where additional investigation is undertaken as provided in Rule 12, there shall be no arguments or personal appearances before the Committee. Unless the petition for review is

amenable to disposition on the face thereof, the Committee may determine to receive written argument from the petitioner and from the other party to the complaint proceeding (the complainant or judge/magistrate complained against).

14. The decision on the petition shall be made by written order as provided by 28 U.S.C. § 372(c)(15). Such order shall be forwarded by the Committee chairman to the Administrative Office, which shall distribute it as directed by the chairman. In accordance with section 372(c)(15), orders of the Committee shall be maintained as public documents by the Administrative Office and by the clerk of the United States court of appeals for the circuit in which the complaint arose.

15. In conformity with 28 U.S.C. § 372(c)(10), all orders and determinations of the Judicial Conference or of the Committee on its behalf, including denials of petitions for review, shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

## Dr. Richard Cordero

Ph.D., University of Cambridge, England  
M.B.A., University of Michigan Business School  
D.E.A., La Sorbonne, Paris

59 Crescent Street  
Brooklyn, NY 11208-1515  
tel. (718) 827-9521; CorderoRic@yahoo.com

December 18, 2004

[Sample of letters sent to members of the Judicial Conference]

Chief Judge Haldane Robert Mayer  
Member of the Judicial Conference of the U.S.  
U.S. Court Appeals for the Federal Circuit  
717 Madison Place, N.W  
Washington, D.C. 20439

[(202) 312- 5527]

Dear Chief Judge Mayer,

Last November 23, as attested by a UPS receipt, I timely filed a petition to the Judicial Conference for review of two denials by the Judicial Council of the Second Circuit of my petitions for review of the dismissal of two related judicial misconduct complaints that I filed under 28 U.S.C. §§351 et seq. with the chief judge of that Circuit's Court of Appeals. As required, I addressed the five copies of the petition to the Administrative Office of the U.S. Courts and the attention of the General Counsel. Contemporaneously, I sent you a copy, dated November 20.

### **I. A clerk lacks authority to pass judgment on and dismiss a petition for review to the Judicial Conference**

1. Yesterday I received a letter (2<sup>nd</sup> set of Exhibits, page 1, infra=2E-1) from the Assistant General Counsel, Mr. Robert P. Deyling, who without even acknowledging, let alone discussing, my specific and detailed jurisdictional argument to the Judicial Conference and after limiting him-self to making passing reference to some provisions of §§351 et seq., wrote "...I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States."
2. Who ever heard that a clerk is allowed to pass judgment on a precise jurisdictional argument made to the court, particularly in the absence of any authority to do so?! Indeed, under the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (cf. §358(a)), the Office of the General Counsel performs the clerical functions of a clerk of court. Rule 9 –equivalent to paragraph 9 of the Rules- provides that as soon as the Administrative Office receives a petition that "*appears on its face...in compliance with these rules*", (emphasis added) which are silent on the issue of jurisdiction, and thus, "appropriate for present disposition" be-cause it does not need to be corrected (cf. Rules of the Supreme Court of the U.S., Rule 14.5),...

...the Administrative Office shall promptly acknowledge receipt of the petition and

advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

3. Under Rule 10, it is that Committee which, unless otherwise directed by the Executive Committee of the Judicial Conference, not a clerk, “shall assume **consideration** and disposition of **all** petitions for review...” (emphasis added). The clerk has no authority to engage in a consideration of the arguments of the petitioner, much less to dispose summarily of the petition without the deliberation that, under Rule 11, it is for the members of the Committee to engage in. Such deliberation, which necessarily precedes disposition, is to be an informed one that takes into account “the record of circuit council consideration of the complaint”, and does that whether there was or was not any investigation by a special committee. The Administrative Office, as the clerk of the Conference and unless otherwise directed by the Committee chairman, disposes of nothing on its own, but rather “shall contact the circuit executive or clerk of the United States court of appeals for the appropriate circuit to obtain the record...for distribution to the Committee”.
4. But not even that suffices to dispose of a petition. Rule 12 authorizes not only the Committee, but also the Conference itself, to determine that “investigation is necessary”. Not only “the Conference **or** Committee may remand the matter to the circuit council that considered the complaint”, but either “may undertake **any** investigation found to be required”. In addition, Rule 12 provides that “If such investigation is undertaken by the Conference or Committee...(c) the complainant **shall** be afforded an **opportunity to appear** at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information.” (emphasis added).
5. This is not all yet, for Rule 13 provides that even if there is no investigation, “the Committee may determine to receive written argument from the petitioner...”. This “argument” is a piece of writing qualitatively different from what Rule 5 provides, namely:
  5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.
6. That “argument”, which may bear on jurisdiction, is a legal brief and it is for the Committee to request and consider it without being preempted by a clerk’s unauthorized ‘argument’ for disposing of the petition. Hence, it is the Committee that determines that the petition is “amena-

ble to disposition on the face thereof” or that there is a need for a “written argument **from the petitioner** and from **any other party to the complaint** proceeding (the complainant or judge/magistrate complained against)”, whereby Rule 13 excludes the clerk as the writer of such argument.

7. Finally, Rule 14 provides that “The decision on the petition **shall** be made by written **order** [and] be forwarded by the Committee chairman to the Administrative Office, which shall distribute it as directed by the chairman”. A clerk in that Office cannot take it upon himself to write a letter and substitute it for the order of a judicial body to dispose singlehandedly of a petition addressed to the Judicial Conference of the United States.
8. Hence, Mr. Deyling, as clerk to the Conference, had no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on a specific legal argument on jurisdiction. He usurped the roles of the Conference and the Committee by disposing of the petition summarily on his own without holding the required, or receiving the benefit of, any consideration, deliberation, investigation, appearance, or written argument. In so doing, he deprived me of my legal right to have my petition processed according to the procedure in the Rules. If it is true, as he put it, that “It is absolutely necessary that we adhere to the above arrangements...”, then neither the Judicial Conference nor its members should countenance his actions.

## **II. Statement of facts showing the Administrative Office’s Rule-noncomplying handling of, and negative attitude toward, the petition for review**

9. It is quite strange that Mr. Deyling was in such rush to ‘dispose’ of my petition although lacking authority to do so after having been so slow to comply with the obligation that he did have requiring that “the Administrative Office shall promptly acknowledge receipt of the petition”. Thus, knowing what happened from the moment my petition was delivered to the Office will help you and the Conference put in context Mr. Deyling’s boldness in disposing of it. You may consider whether it happened either just by chance, or as part of the Office’s normal conduct of business, or pursuant to instructions for this specific case.
10. Such consideration is all the more pertinent because this is not the first time in the years since I was dragged into the courts that gave cause for my judicial misconduct complaints that evidence has emerged of blatant disregard for the law, the rules, and the facts by not only the judges, but also their clerks; cf. 2E-3. The acts of disregard have been so numerous and consistently to my detriment, I being the only non-local and the only pro se party, and to the benefit of the judges

and the local parties, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing. Reference to this pattern of clerks' misconduct is contained in paragraph 56 of my petition and the exhibits (E-page number) accompanying it:

56. Moreover, if while reading the few materials available at the Court [of Appeals for the Second Circuit after all but the last three years' orders dismissing misconduct complaints and denying petitions for review had been sent in violation of CA2's own rules to the National Archives in Missouri] you had been treated by a Head Clerk as Dr. Cordero was, would you feel that you had been intimidated against reading them? (E-21a) Would you be paranoiac or reasonable in so feeling had you been treated repeatedly by CA2 officers with contempt for your procedural rights and person? (E-131:IV) Whether the conduct of these officers was coincidental to or in sympathy with that of their colleagues in the Bankruptcy and District Courts in Rochester (E-86:II) needs to be investigated.

11. The latter question should also be asked of the conduct of some personnel of the Administrative Office and also prompt an investigation into their conduct. Consider the facts.
12. My petition was delivered by UPS at noon on Tuesday, November 23. More than a week later, I had not received any acknowledgment of receipt. Thus, in the morning of Thursday, December 2, I called the Office of the General Counsel at (202)502-1100. The receptionist said that they had not received any package from me for the Judicial Conference. Strangely enough for a public servant, she refused to state her name. Let's call her the anonymous receptionist.
13. Thereupon, I called the Director of the Administrative Office, Mr. Leonidas Ralph Mecham, at (202)502-3000. His receptionist, Ms. Cherry Bryson, said that they had not received it and that, in any event, it would have been sent to the Office of the General Counsel. I said that I had just called there and was told that they had not received it. She asked me to what address I had sent it. I said to zip code 20544 and that I had a UPS receipt of delivery. She said that was the zip code of the General Counsel's Office and that she would call his Office to track it down.
14. However, nobody called me. So I called Mrs. Bryson, who said that I had to talk to the General Counsel's Office and transferred me there. This time the receptionist acknowledged having received my petition. I asked for a written acknowledgment, but she said that they did not have to do so. I said that if I had not called, they would not even have found my box with the petition copies and I could have waited for months for nothing. She put me on hold, as she did several times during our conversation. She said that I would receive something sometime. I asked for



the Rules for Processing Petitions, but she did not know what I was talking about even after I explained the difference between them and the Rules of the Judicial Conference itself. Yet, she and whoever she was consulting while putting me on hold work in the Administrative Office that is supposed to receive such petitions and apply certain provisions addressed to it in the Rules. How would that Office know what to do if even those in its General Counsel's Office do not even know the existence of such Rules? I asked her name. She put me on hold and then said that she had been told that she did not have to give me her name. Why would the person giving her as her cue such ill advice not pick up the phone and talk to me? I said that I wanted to know who was giving me the information. She hung up on me! From that moment on, she would hang up on me every time after giving me the curt answers that she was being fed.

15. I called Ms. Bryson in Mr. Mecham's Office and told her what had happened, but it was to no avail, for she said that the GC's Office now had what I had sent and that I had to deal with them. As to the Rules, Mrs. Bryson did not know what they were either. Worse yet, she told me not to call her office anymore! Is that the way a public servant treats a member of the public that asks for a due and proper service? I trust that her poor manners is an expression of the arrogance indulged in by some people that work for the big boss rather than a reflection of the attitude toward the public of Director Mecham -cf. 28 U.S.C. §602(d)-, with whom I have never been allowed to speak. Mrs. Bryson just transferred me to the Rules Office after having me copy down its number, (202)502-1820. Is that the way the Administrative Office deals with you in its "Tradition of Service to the Federal Judiciary", as stated in its logo?
16. In the Rules Office, I spoke with Judy, for a change an affable and helpful lady who said that her Office does not work with any such Rules, but agreed to find out what they were and who had them. When she called me back, she said that the receptionist at the GC's Office, who had told her not to give me her name, had already told me that I just had to be patient until I received a decision. But I had told that anonymous receptionist that I was aware that I had to wait for a decision; what I wanted was the Rules. The GC's Office had not only given me the round around, but had also misled one of its own colleagues! Judy called that Office again and then called me back to say that she had left a message for Mr. Robert Deyling to call me. But he did not call me.
17. On Monday, December 6, I called the Office of the General Counsel and told the anonymous receptionist that I wanted to speak with Mr. Deyling, but she said that he was not in his office. I asked for a copy of the Rules and she replied that she had to see about it...still?! I added that I

wanted a written acknowledgment of receipt of my petition; she said OK and hung up on me although I had complained to her that it was impolite to do so as well as unprofessional for a public servant who was being asked for a reasonable service.

18. I called Jeffrey Barr, Esq., with whom I had dealt before at the General Counsel's Office. Eventually I reached him at (202) 502-1118 and asked him to help me in getting the Rules. However, he said that he had been reassigned and had to concentrate on his new duties and that it was Mr. Deyling who was now in charge of judicial misconduct complaint matters for the Judicial Conference. The contrast between his attitude and that of Judy was stark.
19. I was not until Tuesday, December 7, after I had left another message for Mr. Deyling, that we finally talked. He acknowledged that my petition had arrived. Although I explained the need for a written acknowledgment after what had happened, he said that it was already being processed and that was what had to be done. When I asked him to send me the Rules, he said that he did not know that there were any! So how was he 'processing' it if he did not even know that authority for their adoption is provided at §358(a)? He said that he would look into it and if he found them, he would send them to me. I asked that he call me to let me know whether he found them or not so that I would not wait in vain. He said that he would call me and let me know.
20. But he did not. Nevertheless, I left several messages for him over the next week with the anonymous receptionist and with another one who identified herself as Melva. She too put me on hold to ask for her cue, said that I could not speak with Associate Director and General Counsel William R. Burchill, Jr.; that as to the Rules, I just had to be patient until they found them or I could look them up on the Internet or ask a librarian. I told her that those Rules are not available even on the Administrative Office's website and that the librarian of the Court of Appeals for the Second Circuit could not find them either. Melva also hung up on me.
21. What's wrong with these people?! If the anonymous receptionist and Melva use such unprofessional phone manners with everybody –with you too?-, by now Mr. Burchill should have noticed and required them to be polite, helpful, and knowledgeable. If not, why would they single me out for such unacceptable treatment? Was it solely on a folly of their own that they deviated from acceptable standards for the performance of their duties as public servants?
22. I called Judy at the Rules Office, but she was out. So I talked to Jennifer, a polite lady who showed interest in the dead end I had been led to and offered to look into the matter.
23. On Monday, December 13, Jennifer told me that she had contacted the General Counsel's Of-

fice and they had said that they were processing my request. I told her that what they are processing is my petition for review, which can take months, and that what I wanted was a copy of the Rules so that they and I would know how the processing was supposed to be conducted. She transferred me to her boss, Mr. John Rabiej, the Chief of the Rules Office, at (202)502-1820.

24. I explained to Mr. Rabiej what had happened and what I wanted. Not only did he listen to me with curiosity, but after stating that his Office does not deal with those Rules, he wrote down their full title and offered to get and fax them to me that day or the following. And he did! Some 20 minutes later he faxed them to me. Not only that, but he cared enough to get the job well done that he called me to let me know that the General Counsel's Office had told him that while the Judicial Conduct and Disability Act has been at 28 U.S.C. §§351 et seq., since 2002, the Rules have not been amended and are still referenced to the repealed provision at 28 U.S.C. §372(c).
25. I commended Mr. Rabiej for his proper public servant attitude and his outstanding effectiveness. One must wonder whether the gentleness and willingness to help shown by Judy and Jennifer are a reflection of his own. One must also wonder whether he was able to help me because his Office did not have the same set of instructions as the Director's and the GC's Office.

### **III. Requested action**

26. Thus, I respectfully request that you, as a Conference member, and the Conference itself:
  - a) declare Mr. Deyling's letter to be devoid of any effect as ultra vires and/or have him withdraw it;
  - b) require the Administrative Office to forward to the Conference the copies of my petition;
  - c) review my petition based on those copies or the ones that I sent to Conference members;
  - d) investigate under 28 U.S.C. §604(a), which provides that "The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States...", whether the Administrative Office's handling of this matter and treating of me were part of its normal conduct of business and way of dealing with everybody or were targeted on me to attain a certain objective related to the judicial misconduct nature of my petition, and take appropriate corrective measures; and
  - e) make a report of the evidence of a judicial misconduct and bankruptcy fraud scheme to the Acting U.S. Attorney General under 18 U.S.C. 3057(a).

I look forward to hearing from you and remain,

yours sincerely,

*Dr. Richard Cordero*

List of Members of the Judicial Conference  
to whom was addressed the letter of December 18, 2004  
objecting to the Administrative Office of the U.S. Courts  
making a jurisdictional judgment on a petition for review and  
refusing to file and forward it to the Judicial Conference

by  
**Dr. Richard Cordero**

---

Mr. Chief Justice William **Rehnquist**  
Member of the Judicial Conference of the U. S.  
**Supreme Court** of the United States  
1 First Street, N.E  
Washington, D.C. 20543

Chief Judge Michael **Boudin**  
Member of the Judicial Conference of the U. S.  
U.S. Court of Appeals for the **First Circuit**  
1 Courthouse Way  
Boston, MA 02210

Chief Judge Hector M. Laffitte  
Member of the Judicial Conference of the U. S.  
U.S. District Court  
for the District of Puerto Rico  
150 Carlos Chardon Street  
Hato Rey, P.R. 00918

[See footnote \*.]

Chief Judge Frederick J. Scullin, Jr.  
Member of the Judicial Conference of the U. S.  
U.S. District Court  
for the Northern District of New York  
445 Broadway  
Albany, NY 12207-2924

Chief Judge Anthony J. **Scirica**  
Member of the Judicial Conference of the U. S.  
U.S. Court of Appeals for the **Third Circuit**  
601 Market Street, Rm. 22614  
Philadelphia, PA 19106

Chief Judge Thomas I. Vanaskie  
Member of the Judicial Conference of the U. S.  
U.S. District Court  
for the Middle District of Pennsylvania  
235 N. Washington Ave., P.O. Box 1148  
Scranton, PA 18501

Chief Judge William W. **Wilkins**  
Member of the Judicial Conference of the U. S.  
U.S. Court of Appeals for the **Fourth Circuit**  
1100 East Main Street, Annex, Suite 501  
Richmond, Virginia 23219-3517

Judge David C. Norton  
Member of the Judicial Conference of the U. S.  
U.S. District Court  
for the District of South Carolina  
Post Office Box 835  
Charleston, SC 29402

Chief Judge Carolyn Dineen **King**  
Member of the Judicial Conference of the U. S.  
U.S. Court of Appeals for the **Fifth Circuit**  
600 Camp Street  
New Orleans, LA 70130

Judge Martin L. C. Feldman  
Member of the Judicial Conference of the U. S.  
U.S. District Court  
for the Eastern District of Louisiana, Rm. C555  
500 Poydras Street  
New Orleans, LA 70130

Chief Judge Danny J. **Boggs**  
Member of the Judicial Conference of the U. S.  
U.S. Court of Appeals for the **Sixth Circuit**  
100 E. Fifth Street  
Cincinnati, Ohio 45202-3988

Chief Judge Lawrence P. Zatkoff  
Member of the Judicial Conference of the U. S.  
U.S. District Court  
for the Eastern District of Michigan  
231 W. Lafayette Blvd., Rm. 703  
Detroit, MI 48226

Chief Judge Joel M. **Flaum**  
Member of the Judicial Conference of the U. S.  
U.S. Court of Appeals for the **Seventh Circuit**,  
Rm. 2702  
219 S. Dearborn Street  
Chicago, IL 60604

Judge J. P. Stadtmueller  
Member of the Judicial Conference of the U. S.  
U.S. District Court  
for the Eastern District of Wisconsin  
517 East Wisconsin Avenue  
Milwaukee, WI 53202

Chief Judge James B. **Loken**  
Member of the Judicial Conference of the U. S.  
U.S. Court of Appeals for the **Eighth Circuit**  
316 N. Robert Street  
St. Paul, MN 55101

Chief Judge James M. Rosenbaum  
Member of the Judicial Conference of the U. S.  
U.S. District Court for the District of  
Minnesota, Rm. 15E  
300 S. 4th Street  
Minneapolis, MN 55415

Chief Judge Mary M. **Schroeder**  
Member of the Judicial Conference of the U. S.  
U.S. Court of Appeals for the **Ninth Circuit**  
Post Office Box 193939  
San Francisco, CA 94119-3939

Chief Judge David Alan Ezra  
Member of the Judicial Conference of the U. S.  
U.S. District Court for District of Hawaii  
300 Ala Moana Boulevard  
Honolulu, HI 96850

Chief Judge Deanell R. **Tacha**  
Member of the Judicial Conference of the U. S.  
U.S. Court of Appeals for the **Tenth Circuit**  
1823 Stout Street  
Denver, CO 80257

Judge David L. Russell  
Member of the Judicial Conference of the U. S.  
U.S. District Court  
for the Western District of Oklahoma  
200 NW 4th Street  
Oklahoma City, OK 73102

Chief Judge J. L. **Edmondson**  
Member of the Judicial Conference of the U. S.  
U.S. Court of Appeals for the **Eleventh Circuit**  
56 Forsyth St., N.W.  
Atlanta, GA 30303

Senior Judge J. Owen Forrester  
Member of the Judicial Conference of the U. S.  
U.S. District Court  
for the Northern District of Georgia  
75 Spring Street, S.W.  
Atlanta, GA 30303-3309

Chief Judge Douglas H. **Ginsburg**  
Member of the Judicial Conference of the U. S.  
U.S. Court of Appeals  
for the District of **Columbia Circuit**  
333 Constitution Ave., N.W.  
Washington, D.C. 20001

Chief Judge Thomas F. Hogan  
Member of the Judicial Conference of the U. S.  
U.S. District Court for the District of Columbia  
333 Constitution Ave., NW  
Washington, DC 20001

Chief Judge Haldane Robert **Mayer**  
 Member of the Judicial Conference of the U. S.  
 U.S. Court Appeals for the **Federal Circuit**  
 717 Madison Place, N.W  
 Washington, D.C. 20439

Chief Judge Jane A. **Restani**  
 Member of the Judicial Conference of the U. S.  
 U.S. Court of **International Trade**  
 One Federal Plaza  
 New York, NY 10278-0001

	<b>Last name</b>	<b>Members of the Judicial Conference of the United States to whom the letter of December 18, 2004, was sent*</b>
1.	Boggs	Chief Judge Danny J. Boggs, U.S. Court of Appeals for the Sixth Circuit
2.	Boudin	Chief Judge Michael Boudin, U.S. Court of Appeals for the First Circuit
3.	Edmondson	Chief Judge J. L. Edmondson, U.S. Court of Appeals for the Eleventh Circuit
4.	Ezra	Chief Judge David Alan Ezra, U.S. District Court for the District of Hawaii
5.	Feldman	Judge Martin L. C. Feldman, U.S. District Court for the Eastern District of Louisiana
6.	Flaum	Chief Judge Joel M. Flaum, U.S. Court of Appeals for the Seventh Circuit
7.	Forrester	Senior Judge J. Owen Forrester, U.S. District Court for the Northern District of Georgia
8.	Ginsburg	Chief Judge Douglas H. Ginsburg, U.S. Court of Appeals for the Dis. of Columbia Circuit
9.	Guinsburg	Madam Justice Guinsburg
10.	Hogan	Chief Judge Thomas F. Hogan, U.S. District Court for the District of Columbia
11.	King	Chief Judge Carolyn Dineen King, U.S. Court of Appeals for the Fifth Circuit
12.	Laffitte	Chief Judge Hector M. Laffitte, U.S. District Court for the District of Puerto Rico
13.	Loken	Chief Judge James B. Loken, U.S. Court of Appeals for the Eighth Circuit
14.	Mayer	Chief Judge Haldane Robert Mayer, U.S. Court of Appeals for the Federal Circuit
15.	Norton	Judge David C. Norton, U.S. District Court for the District of South Carolina
16.	Rehnquist	Mr. Chief Justice William Rehnquist
17.	Restani	Chief Judge Jane A. Restani, U.S. Court of International Trade
18.	Rosenbaum	Chief Judge James M. Rosenbaum, U.S. District Court for the District of Minnesota
19.	Russell	Judge David L. Russell, U.S. District Court for the Western District of Oklahoma
20.	Schroeder	Chief Judge Mary M. Schroeder, U.S. Court of Appeals for the Ninth Circuit
21.	Scirica	Chief Judge Anthony J. Scirica, U.S. Court of Appeals for the Third Circuit
22.	Scullin	Chief Judge Frederick J. Scullin, Jr., U.S. District Court for the Northern District of NY
23.	Stadtmueller	Judge J. P. Stadtmueller, U.S. District Court for the Eastern District of Wisconsin
24.	Tacha	Chief Judge Deanell R. Tacha, U.S. Court of Appeals for the Tenth Circuit
25.	Vanaskie	Chief Judge Thomas I. Vanaskie, U.S. District Court for the Middle District of Pennsylvania
26.	Wilkins	Chief Judge William W. Wilkins, U.S. Court of Appeals for the Fourth Circuit
27.	Zatkoff	Chief Judge Lawrence P. Zatkoff, U.S. District Court for the Eastern District of Michigan

\* CA2 Chief Judge John M. Walker, Jr., is also a member of the Judicial Conference.



United States Court  
of International Trade

OFFICE OF THE CLERK  
One Federal Plaza  
New York, NY 10278-0001

December 23, 2004

Dr. Richard Cordero  
59 Crescent St.  
Brooklyn, NY 11208-1515

Dear Dr. Cordero:

This is to acknowledge receipt of your letter of December 18, 2004 to Chief Judge Jane A. Restani.

As was noted in my letter to you of December 9, 2004, the Judicial Conference of the United States may take action with respect to complaints of judicial misconduct or disability under two sets of circumstances. The first is pursuant to 28 U.S.C. § 355, which requires the referral or certification of a matter based on the action taken by a judicial council under 28 U.S.C. § 354(b). The second is pursuant to 28 U.S.C. § 357, which permits a complainant or judge aggrieved by the action taken by a judicial council under 28 U.S.C. § 354 to petition the Judicial Conference for review of that action.

Again, as indicated in my prior letter, under either scenario, Chief Judge Restani, while a member of the Judicial Conference, is not authorized to take any action on her own on such matter unless it is referred to her directly by the Conference. That has not occurred. Moreover, as Mr. Deyling of the Office of the General Counsel at the Administrative Office explained to you in his letter of December 9, 2004, you have not met the conditions set forth in the governing statute to permit review of your matter by the Judicial Conference. Accordingly, I am returning your letter and the accompanying materials to you.

Sincerely,

A handwritten signature in black ink that reads "Leo M. Gordon".

Leo M. Gordon  
Clerk of the Court

cc: Chief Judge Jane A. Restani

# United States Court of Appeals

District of Columbia Circuit  
Washington, D.C. 20001-2866

Mark J. Langer  
Clerk

December 27, 2004

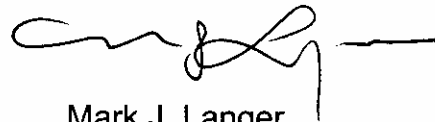
General Information  
(202) 216-7000

Dr. Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208

Dear Dr. Cordero:

Chief Judge Ginsburg referred your letter of December 18, 2004 to me for a response. Chief Judge Ginsburg does not have the authority to grant you the relief you seek in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. J. Langer', followed by a horizontal line extending to the right.

Mark J. Langer  
Clerk



# Dr. Richard Cordero

Ph.D., University of Cambridge, England  
M.B.A., University of Michigan Business School  
D.E.A., La Sorbonne, Paris

59 Crescent Street  
Brooklyn, NY 11208-1515  
tel. (718) 827-9521; CorderoRic@yahoo.com

[Sample of letters sent to several officers]

January 8, 2005

Hon. Judge Ralph K. Winter, Jr.  
Chair of the Committee to Review  
Circuit Council Conduct and Disability Orders  
Thurgood Marshall U.S. Courthouse, 40 Foley Square  
New York, NY 10007

Dear Judge Winter,

Last November 23, as attested by a UPS receipt, I timely filed a petition to the Judicial Conference for review of two denials by the Judicial Council of the Second Circuit of my petitions for review of the dismissal of two related judicial misconduct complaints that I filed under 28 U.S.C. §§351 et seq. with the chief judge of that Circuit's Court of Appeals (E-1, *infra*). As required, I addressed the five copies of the petition to the Administrative Office of the U.S. Courts and the attention of the General Counsel.

On December 18, I received a letter from Assistant General Counsel Robert P. Deyling, who without even acknowledging, let alone discussing, my specific and detailed jurisdictional argument to the Judicial Conference and after limiting himself to making passing reference to some provisions of §§351 et seq., wrote "...I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States." (E-31)

## **I. A clerk lacks authority to pass judgment on and dismiss a petition for review to the Judicial Conference**

1. Mr. Deyling lacks any authority to pass judgment on any argument made to the Judicial Conference in a petition for review, let alone to dismiss the petition. Actually, by doing so he infringed on the duty, not just the faculty, that the law specifically imposes on the Conference or its competent committee to review such petitions:

The Conference is authorized to exercise the authority provided in chapter 16 of this title [i.e. Complaints Against Judges and Judicial Discipline] as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review **shall** be reviewed by that committee", 28 U.S.C. §331, 4<sup>th</sup> paragraph (emphasis added).

2. Likewise, by passing judgment on an argument made to the Conference, Mr. Deyling overstepped the bounds of his function as a clerk of it. Indeed, under the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (cf. §358(a)), the Office of the General  
Dr. Cordero's request of 1/8/5 to J. Winter, CA2, and others that petition be forwarded to Jud Conference C:877

Counsel performs the clerical functions of a clerk of court. Rule 9 –equivalent to paragraph 9 of the Rules- provides that as soon as the Administrative Office receives a petition that “*appears on its face...in compliance with these rules*”, (emphasis added) which are silent on the issue of jurisdiction, and thus, “appropriate for present disposition” because it does not need to be corrected (cf. Rules of the Supreme Court of the U.S., Rule 14.5),...

...the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

3. Under Rule 10, it is that Committee which, unless otherwise directed by the Executive Committee of the Judicial Conference, not a clerk, “shall assume **consideration** and disposition of **all** petitions for review...” (emphasis added). The clerk has no authority to engage in a consideration of the arguments of the petitioner, much less to dispose summarily of the petition without the deliberation that, under Rule 11, it is for the members of the Committee to engage in. Such deliberation, which necessarily precedes disposition, is to be an informed one that takes into account “the record of circuit council consideration of the complaint”, and does that whether there was or was not any investigation by a special committee. The Administrative Office, as the clerk of the Conference and unless otherwise directed by the Committee chairman, disposes of nothing on its own, but rather “shall contact the circuit executive or clerk of the United States court of appeals for the appropriate circuit to obtain the record...for distribution to the Committee”.
4. But not even that suffices to dispose of a petition. Rule 12 authorizes not only the Committee, but also the Conference itself, to determine that “investigation is necessary”. Not only “the Conference **or** Committee may remand the matter to the circuit council that considered the complaint”, but either “may undertake **any** investigation found to be required”. In addition, Rule 12 provides that “If such investigation is undertaken by the Conference or Committee...(c) the complainant **shall** be afforded an **opportunity to appear** at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information.” (emphasis added).
5. This is not all yet, for Rule 13 provides that even if there is no investigation, “the Committee may determine to receive written argument from the petitioner...”. This “argument” is a piece of writing qualitatively different from what Rule 5 provides, namely:

5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.

6. That “argument”, which may bear on jurisdiction, is a legal brief and it is for the Committee to re-

quest and consider it without being preempted by a clerk's unauthorized 'argument' for disposing of the petition. Hence, it is the Committee that determines that the petition is "amenable to disposition on the face thereof" or that there is a need for a "written argument **from the petitioner** and from **any other party to the complaint** proceeding (the complainant or judge/magistrate complained against)", whereby Rule 13 excludes the clerk as the writer of such argument.

7. Finally, Rule 14 provides that "The decision on the petition *shall* be made by written **order** [and] be forwarded by the Committee chairman to the Administrative Office, which shall distribute it as directed by the chairman". A clerk in that Office cannot take it upon himself to write a letter and substitute it for the order of an adjudicating body so as to thereby dispose single-handedly of a petition addressed to the Judicial Conference of the United States.
8. Hence, Mr. Deyling, as clerk to the Conference, had no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on a specific legal argument on jurisdiction. He usurped the roles of the Conference and the Committee by disposing of the petition summarily on his own without holding the required, or receiving the benefit of, any consideration, deliberation, investigation, appearance, or written argument. In so doing, he deprived me of my legal right to have my petition processed according to the procedure in the Rules. If it is true, as he put it, that "It is absolutely necessary that we adhere to the above arrangements...", then neither the Judicial Conference nor its members should countenance his actions.

## **II. Action requested**

9. Therefore, I respectfully request that you, as Chair of the Judicial Conference Misconduct Committee:
  - a. declare or cause the Conference to declare Mr. Deyling's letter to be devoid of any effect as ultra vires and withdraw it;
  - b. have the original and the four copies of my petition, each of which is bound with supporting documents (cf. E-xxv) and in possession of the General Counsel:
    - 1) forwarded to the Conference for review;
    - 2) otherwise, provide me with the names and addresses of the other members of the Committee to Review Circuit Council Conduct and Disability Orders;
  - c. consider and take action upon the accompanying Statement of Facts and Request for an Investigation;
  - d. make a report of the evidence of a judicial misconduct and bankruptcy fraud scheme to the Acting U.S. Attorney General under 18 U.S.C. 3057(a).

I look forward to hearing from you.

Sincerely,

*Dr. Richard Cordero*

### III. Table of the Accompanying Document and Exhibits

1. Dr. Richard Cordero’s <b>Statement of facts of December 18, 2004</b> , and Request for an Investigation into both the Administrative Office of the U.S. Courts’ Rule-noncomplying handling of the petition for review under 28 U.S.C. §351 et seq. submitted to the Judicial Conference on November 18, 2004, and the Office’s treatment of Petitioner Dr. Richard Cordero.....	5	[C:881]
2. Dr. Cordero’s <b>Petition of November 18, 2004</b> , to the Judicial Conference of the United States for review of the actions of the Judicial Council of the Second Circuit In re: Judicial Misconduct Complaints CA2 docket no. 03-8547 and no. 04-8510,.....	E-1	[C:823]
3. <b>Key Documents and Dates</b> in the procedural history of the judicial misconduct complaints filed with the Chief Judge and the Judicial Council of the Second Circuit, docket nos. 03-8547 and 04-8510, submitted in support of the petition for review to the Judicial Conference of the United States .....	E-xxiii	[C:844]
4. Table of Exhibits of the Petition .....	E-xxv	[C:845]
5. <b>Letter of December 9, 2004</b> , of Assistant General Counsel Robert P. <b>Deyling</b> at the Office of the General Counsel of the Administrative Office of the U.S. Courts .....	E-31	[C:859]
6. Dr. <b>Cordero’s</b> letter of <b>July 29, 2004</b> , to Assistant General Counsel Jeffrey N. <b>Barr</b> at the Office of the General Counsel <b>Administrative Office</b> of the U.S. Courts, accompanying his complaint against clerks .....	E-33	[C:684]
7. Dr. <b>Cordero’s</b> <b>Complaint of July 28, 2004</b> , to the Administrative Office of the United States Courts against court <b>administrative and clerical officers</b> and their mishandling of judicial misconduct complaints and orders to the detriment of the public at large as well as of Dr. Richard Cordero .....	E-35	[C:685]
8. Table of Exhibits of the Complaint.....	E-xlv	[C:685]
9. Dr. <b>Cordero’s</b> <b>motion of April 11, 2004</b> , for <b>declaratory judgment</b> that <b>officers</b> of the Court of Appeals for the Second Circuit intentionally <b>violated law</b> and rules as part of a pattern of wrongdoing <b>to complainant’s detriment</b> and for this court to launch an investigation.....	E-49	[C:442]

**Dr. Richard Cordero**

Ph.D., University of Cambridge, England  
M.B.A., University of Michigan Business School  
D.E.A., La Sorbonne, Paris

59 Crescent Street  
Brooklyn, NY 11208-1515  
tel. (718) 827-9521; CorderoRic@yahoo.com

[Sample of individualized caption]

STATEMENT OF FACTS  
of December 18, 2004

Accompanying the letter of January 8, 2005, to

**The Hon. Judge Ralph K. Winter, Jr.**

Chair of the Committee to Review Circuit Council Conduct and Disability Orders  
of the Judicial Conference of the United States

and

REQUEST FOR AN INVESTIGATION

into both the Administrative Office of the U.S. Courts' rules-noncomplying handling of  
the petition for review under 28 U.S.C. §351 et seq., submitted to the Judicial  
Conference on November 18, 2004,

**and** the Office's treatment of Petitioner Dr. Richard Cordero

by

**Dr. Richard Cordero**

1. It is quite strange that Mr. Robert Deyling, Assistant General Counsel at the Office of the General Counsel of the Administrative Office of the U.S. Courts, was in such rush to 'dispose' of my petition by his letter of December 9, 2004, although lacking authority to do so after having been so slow to comply with the obligation that he did have requiring that "the Administrative Office shall promptly acknowledge receipt of the petition". Thus, knowing what happened from the moment my petition was delivered to the Office will help you and the Conference to put in context Mr. Deyling's boldness in disposing of it. You may consider whether it happened either just by chance, or as part of the Office's normal conduct of business, or pursuant to instructions for this specific case.
  2. Such consideration is all the more pertinent because this is not the first time in the years since I was dragged into the courts that gave cause for my judicial misconduct complaints that evidence has emerged of blatant disregard for the law, the rules, and the facts by not only the judges, but also their clerks. What is more, this is not the first time that I submit a complaint to the Office of the General Counsel of the Administrative Office and despite the fact that it makes reference to its legal basis and the duty of the Director of the Administrative Office to take action, both Offices fail to take any. In fact, invoking 28 U.S.C. §§602 and 604(a)(1), I sent a on July 28, 2004, six copies of a **Complaint to The Administrative Office of the United States Courts About Court Administrative and Clerical Officers and Their Mishandling of Judicial Misconduct**
- Dr. Cordero's statement & request of 1/8/5 re rule-noncomplying handling of petition to J Conf for review C:881

Complaints and Orders to the Detriment of the Public at Large as well as of Dr. Richard Cordero (E-35). Nevertheless, till this day I have not received even a letter acknowledging receipt, let alone any statement of the action taken or not taken.

3. The acts of disregard of legality and bias have been so numerous and consistently to my detriment, I being the only non-local and the only pro se party, and to the benefit of the judges and the local parties, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing. Reference to this pattern of clerks' misconduct is contained in paragraph 56 of my petition (E-19) and the exhibits accompanying it:

56. Moreover, if while reading the few materials available at the Court [of Appeals for the Second Circuit after all but the last three years' orders dismissing misconduct complaints and denying petitions for review had been sent in violation of CA2's own rules to the National Archives in Missouri!] you had been treated by a Head Clerk as Dr. Cordero was, would you feel that you had been intimidated against reading them? (E-21a) Would you be paranoiac or reasonable in so feeling had you been treated repeatedly by CA2 officers with contempt for your procedural rights and person? (E-131:IV) Whether the conduct of these officers was coincidental to or in sympathy with that of their colleagues in the Bankruptcy and District Courts in Rochester (E-86:II) needs to be investigated.

4. The latter question should also be asked of the conduct of some personnel of the Administrative Office and also prompt an investigation into their conduct. Consider the facts.
5. My petition was delivered by UPS at noon on Tuesday, November 23. More than a week later, I had not received any acknowledgment of receipt. Thus, in the morning of Thursday, December 2, I called the Office of the General Counsel at (202)502-1100. The receptionist said that they had not received any package from me for the Judicial Conference. Strangely enough for a public servant, she refused to state her name. Let's call her the anonymous receptionist.
6. Thereupon, I called the Director of the Administrative Office, Mr. Leonidas Ralph Mecham, at (202)502-3000. His receptionist, Ms. Cherry Bryson, said that they had not received it and that, in any event, it would have been sent to the Office of the General Counsel. I said that I had just called there and was told that they had not received it. She asked me to what address I had sent it. I said to zip code 20544 and that I had a UPS receipt of delivery. She said that was the zip code of the General Counsel's Office and that she would call his Office to track it down.
7. However, nobody called me. So I called Mrs. Bryson, who said that I had to talk to the General Counsel's Office and transferred me there. This time the receptionist acknowledged having received my petition. I asked for a written acknowledgment, but she said that they did not have to provide any. I said that if I had not called, they would not even have found my box with the

petition copies and I could have waited for months for nothing. She put me on hold, as she did several times during our conversation. She said that I would receive something sometime. I asked for the Rules for Processing Petitions, but she did not know what I was talking about even after I explained the difference between them and the Rules of the Judicial Conference itself.

8. Yet, she and whoever she was consulting while putting me on hold work in the Administrative Office that is supposed to receive such petitions and apply certain provisions addressed to it in the Rules. How would that Office know what to do if those in its General Counsel's Office do not even know of the existence of such Rules? I asked her name. She put me on hold and then said that she had been told that she did not have to give me her name. Why would the person giving her as her cue such ill advice not pick up the phone and talk to me? I said that I wanted to know who was giving me the information. She hung up on me! From that moment on, she would hang up on me every time after giving me the curt answers that she was being fed or that she had received during office "training".
9. I called Ms. Bryson in Mr. Mecham's Office and told her what had happened, but it was to no avail, for she said that the GC's Office now had what I had sent and that I had to deal with them. As to the Rules, Mrs. Bryson did not know what they were either. Worse yet, she told me not to call her office anymore! Is that the way a public servant treats a member of the public that asks for a due and proper service? I trust that her poor manners is an expression of the arrogance indulged in by some people that work for the big boss rather than a reflection of the attitude toward the public of Director Mecham -cf. 28 U.S.C. §602(d)-, with whom I have never been allowed to speak. Mrs. Bryson just transferred me to the Rules Office after having me copy down its number, (202)502-1820. Is that the way the Administrative Office deals with you in its "Tradition of Service to the Federal Judiciary", as stated in its logo?
10. In the Rules Office, I spoke with Judy, for a change an affable and helpful lady who said that her Office does not work with any such Rules, but agreed to find out what they were and who had them. When she called me back, she said that the receptionist at the GC's Office, who had told her not to give me her name, had already told me that I just had to be patient until I received a decision. But I had told that anonymous receptionist that I was aware that I had to wait for a decision; what I wanted was the Rules. The GC's Office had not only given me the round around, but had also misled one of its own colleagues! Judy called that Office again and then called me back to say that she had left a message for Mr. Robert Deyling to call me. But he did not call me.
11. On Monday, December 6, I called the Office of the General Counsel and told the anonymous

receptionist that I wanted to speak with Mr. Deyling, but she said that he was not in his office. I asked for a copy of the Rules and she replied that she had to see about it...still?! I added that I wanted a written acknowledgment of receipt of my petition; she said OK and hung up on me although I had complained to her that it was impolite to do so as well as unprofessional for a public servant who was being asked for a reasonable service.

12. I called Jeffrey Barr, Esq., with whom I had dealt before at the General Counsel's Office (cf. E-33). Eventually I reached him at (202) 502-1118 and asked him to help me in getting the Rules. However, he said that he had been reassigned and had to concentrate on his new duties and that it was Mr. Deyling who was now in charge of judicial misconduct complaint matters for the Judicial Conference. The contrast between his attitude and that of Judy was stark.
13. It was not until Tuesday, December 7, after I had left another message for Mr. Deyling, that we finally talked. He acknowledged that my petition had arrived. Although I explained the need for a written acknowledgment after what had happened, he said that the petition was already being processed and that was what had to be done. When I asked him to send me the Rules, he said that he did not know that there were any! So how was he 'processing' it if he did not even know that authority for their adoption is provided at §358(a)? He said that he would look into it and if he found them, he would send them to me. I asked that he call me to let me know whether he found them or not so that I would not wait in vain. He said that he would call me and let me know.
14. But he did not. Nevertheless, I left several messages for him over the next week with the anonymous receptionist and with another one who identified herself as Melva. She too put me on hold to ask for her cue, said that I could not speak with Associate Director and General Counsel William R. Burchill, Jr.; that as to the Rules, I just had to be patient until they found them or I could look them up on the Internet or ask a librarian. I told her that those Rules are not available even on the Administrative Office's website and that the librarian of the Court of Appeals for the Second Circuit could not find them either. Melva also hung up on me.
15. What's wrong with these people?! If the anonymous receptionist and Melva use such unprofessional phone manners with everybody –with you too?-, by now Mr. Burchill should have noticed and required them to be polite, helpful, and knowledgeable. If not, why would they single me out for such unacceptable treatment? Was it solely on a folly of their own that they deviated from acceptable standards for the performance of their duties as public servants?
16. I called Judy at the Rules Office, but she was out. So I talked to Jennifer, a polite lady who showed interest in the dead end I had been led to and offered to look into the matter.



17. On Monday, December 13, Jennifer told me that she had contacted the General Counsel's Office and they had said that they were processing my request. I told her that what they are processing is my petition for review, which can take months, and that what I wanted was a copy of the Rules so that they and I would know how the processing was supposed to be conducted. She transferred me to her boss, Mr. John Rabiej, the Chief of the Rules Office, at (202)502-1820.
18. I explained to Mr. Rabiej what had happened and what I wanted. Not only did he listen to me with curiosity, but after stating that his Office does not deal with those Rules, he wrote down their full title and offered to get and fax them to me that day or the following. And he did! Some 20 minutes later he faxed them to me. Not only that, but he cared enough to get the job well done that he called me to let me know that the General Counsel's Office had told him that while the Judicial Conduct and Disability Act has been codified to 28 U.S.C. §351 et seq., since 2002, the Rules have not been amended and are still referenced to the repealed provision at 28 U.S.C. §372(c).
19. I commended Mr. Rabiej for his proper public servant attitude and his outstanding effectiveness. One must wonder whether the gentleness and willingness to help shown by Judy and Jennifer are a reflection of his own. One must also wonder whether he was able to help me because his Office did not have the same set of instructions as the Director's and the GC's Office.
20. Therefore, I respectfully request that you, as the Chair of the Misconduct Committee, and the Conference itself:
  - a. investigate under 28 U.S.C. §604(a), which provides that "The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States...", whether the Administrative Office's handling of the petition and treatment of me were part of its normal conduct of business and way of dealing with everybody or were targeted on me to attain a certain objective related to the judicial misconduct nature of my petition, and take appropriate corrective measures; and
  - b. as to my Complaint of July 28, 2004, to the Administrative Office of the United States Courts About Court Administrative and Clerical Officers and Their Mishandling of Judicial Misconduct Complaints and Orders to the Detriment of the Public at Large as well as of Dr. Richard Cordero (E-35),
    - 1) consider it hereby resubmitted;
    - 2) and cause its original, which is both bound with a file of supporting documents (cf. E-49), of which a representative one is included here for joint consideration (E-49), and in possession of the Office of the General Counsel, to be processed and responded to.

Respectfully submitted on: January 8, 2005  
59 Crescent Street,  
Brooklyn, NY 11208

  
\_\_\_\_\_  
Dr. Richard Cordero  
(718)827-9521

# Key Documents and Dates in the Procedural History

as of January 8, 2005 [updated at ToEC:3]  
of the judicial misconduct complaints filed with  
the CA2 Chief Judge and the Judicial Council of the Second Circuit  
dockets no. 03-8547 and 04-8510  
submitted in support of a petition for review to  
the Judicial Conference of the United States

by

**Dr. Richard Cordero**

Judicial misconduct complaint about WBNY Bankruptcy Judge John C. Ninfo, II, docket no. 03-8547

<b>Judicial misconduct complaint</b>				<b>Petition for review</b>					
Submission	Resubmission	Acknowledgment	Dismissal	Submission	Resubmission	Acknowledgment	Letter to Jud. Council	Update to Jud. Council	Denial
August 11, 03	August 27, 03	Septem. 2, 03	June 8, 04	July 8, 04	July 13, 04	July 16, 04	July 30, 04	August 27, 04	Septem. 30, 04
-	1	-	10 & 11	-	23	28	29	31	36 & 37
page numbers of documents included among the exhibits									

Judicial misconduct complaint about CA2 Chief Judge John M. Walker, Jr., docket no. 04-8510

<b>Judicial misconduct complaint</b>				<b>Petition for review</b>				
Submission	Resubmission	Acknowledgment	Dismissal	Submission	Acknowledgment	Exhibits to Jud. Council	Rejection of exhibits	Denial
March 19, 04	March 29, 04	March 30, 04	Sept. 24, 04	October 4, 04	October 7, 04	October 14, 04	October 20, 04	November 10, 04
39	-	-	44 & 45	47	-	52	53	54 & 55
page numbers of documents included among the exhibits								

# List of Addressees

to whom were sent  
the letter and Request of January 8, 2005  
and the Statement of Facts of December 18, 2004  
concerning the petition for review to the Judicial Conference  
held back unfiled at the Administrative Office of the U.S. Courts

by  
**Dr. Richard Cordero**

Hon. Judge Carolyn Dineen King  
Chair of the Executive Committee  
of the Judicial Conference of the U.S.  
Administrative Office of the U.S. Courts  
One Columbus Circle, NE, Suite 7-290  
Washington, DC 20544  
tel. (202) 502-2400  
tel. (713)250-5750 at CA5 where Chief Judge King sits

Hon. Judge Ralph K. Winter, Jr.  
Chair of the Committee to Review  
Circuit Council Conduct and Disability Orders  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007  
tel. (212) 857-8500

William R. Burchill, Jr.  
Associate Director and General Counsel  
Office of the General Counsel  
Administrative Office of the U.S. Courts  
One Columbus Circle, NE, Suite 7-290  
Washington, DC 20544  
tel. (202) 502-1100

Blank

Jan 28, 05



**UNITED STATES DISTRICT COURT**  
FOR THE EASTERN DISTRICT OF MICHIGAN  
THEODORE LEVIN UNITED STATES COURTHOUSE  
231 WEST LAFAYETTE BLVD.  
DETROIT, MICHIGAN 48226

CHAMBERS OF  
LAWRENCE P. ZATKOFF  
UNITED STATES DISTRICT JUDGE

(313) 234-5110

January 12, 2005

Dr. Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208-1515

Dear Dr. Cordero:

I am in receipt of your letter and accompanying documents dated November 20, 2004. You have requested that I present to the Judicial Conference of the United States allegations of judicial misconduct that you have levied against a bankruptcy judge in the Western District of New York. My term on the Judicial Conference expired last year; therefore, I am unable to assist you in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Zatkoff", written over a horizontal line.

Lawrence P. Zatkoff,  
United States District Judge for the Eastern District of  
Michigan

## Dr. Richard Cordero

Ph.D., University of Cambridge, England  
M.B.A., University of Michigan Business School  
D.E.A., La Sorbonne, Paris

59 Crescent Street  
Brooklyn, NY 11208-1515  
tel. (718) 827-9521; CorderoRic@yahoo.com

[Sample of letters sent to several officers]

February 7, 2005

William R. Burchill, Jr.  
Associate Director and General Counsel  
Office of the General Counsel  
Administrative Office of the U.S. Courts  
One Columbus Circle, NE, Suite 7-290  
Washington, DC 20544

faxed to (202)

Dear Mr. Burchill,

Last January 8, I sent you a letter concerning my petition to the Judicial Conference for review under the Judicial Conduct and Disability Act, 28 U.S.C. §§351 et seq., which I had timely filed on November 23, 2004. I brought to your attention how a clerk in your Office, namely, Assistant General Counsel Robert P. Deyling, blocked the petition from reaching the Conference by passing judgment on a jurisdictional issue.

My letter laid out legal arguments based on the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act*. They demonstrated that a clerk to the Conference, such as Mr. Deyling as well as your Office is, has no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on any legal argument, much less on the specific argument on jurisdiction that I had made in my petition.

I requested that you declare or cause the Conference to declare Mr. Deyling's action to be devoid of any effect as ultra vires and withdraw his letter to me of December 9, 2004, through which he took it. I also requested that my petition for review, bound with supporting documents, be forwarded to the Conference for review; otherwise, that you provide me with the names and addresses of the members of the Committee to Review Circuit Council Conduct and Disability Orders.

Unfortunately, I have neither heard from you nor been informed of any action taken or refused to be taken on my requests.

In this context, it is pertinent for you to be informed that my petition to the U.S. Supreme Court for a writ of certiorari to the Court of Appeals for the Second Circuit concerning, among other things, the two judicial misconduct complaints involved in my petition for review to the Judicial Conference was docketed and bears the number 04-8371.

Hence, I respectfully request that you let me know what action you have taken in connection with my letter and requests and, if none, the reason therefor.

Sincerely,

*Dr. Richard Cordero*

## Dr. Richard Cordero

Ph.D., University of Cambridge, England  
M.B.A., University of Michigan Business School  
D.E.A., La Sorbonne, Paris

59 Crescent Street  
Brooklyn, NY 11208-1515  
tel. (718) 827-9521; CorderoRic@yahoo.com

February 7, 2005

Hon. Chief Judge Carolyn Dineen King  
Chair of the Executive Committee of the Judicial Conference  
U.S. Court of Appeals for the 5<sup>th</sup> Circuit  
515 Rusk Street, Room 11020  
Houston, TX 77002

faxed to (713)250-5050; tel. (713)250-5750

Dear Chief Judge King,

Last January 8, I sent you a letter concerning my petition to the Judicial Conference for review under the Judicial Conduct and Disability Act, 28 U.S.C. §§351 et seq., which I had timely filed on November 23, 2004. I brought to your attention how a clerk at the Administrative Office of the U.S. Courts, namely, Assistant General Counsel Robert P. Deyling, blocked the petition from reaching the Conference by passing judgment on a jurisdictional issue.

My letter laid out legal arguments based on the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act*. They demonstrated why a clerk to the Conference, such as Mr. Deyling as well as the General Counsel is, has no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on any legal argument, much less the specific argument on jurisdiction that I had made in my petition. I requested that you declare or cause the Conference to declare Mr. Deyling's action to be devoid of any effect as ultra vires and withdraw his letter to me of December 9, 2004, through which he took it. I also requested that my petition for review, bound with supporting documents, be forwarded to the Conference for review; otherwise, that you provide me with the names and addresses of the members of the Committee to Review Circuit Council Conduct and Disability Orders.

Together with my January 8 letter, I sent you a Statement of Facts and a Request for an Investigation into both the Administrative Office's Rule-noncomplying handling of my petition and its treatment of me. They were supported by an accompanying file of exhibits. I also requested that you make a report under 18 U.S.C. 3057(a) to the U.S. Attorney General of the evidence of a judicial misconduct and bankruptcy fraud scheme described in my petition and the exhibits.

Unfortunately, I have neither heard from you nor been informed by anybody else of any action taken or refused to be taken on my requests. I have reason to believe that you have not responded because you did not receive my letter accompanied by the exhibits bound with it.

Indeed, I addressed it to the Administrative Office of the U.S. Courts in Washington, as that Office told me to do because it would forward my letter to you. This morning I called the Office of the Executive Committee of the Judicial Conference, (202)502-2400, and a secretary - who would not give me her name *either* but would gladly give me the name of the office supervisor, Ms. Laura Minor- told me that my letter to you would have been forwarded to the Office of the General Counsel, William Burchill, Esq. To him I also wrote on January 8 but he has neither replied nor taken any of my calls. I questioned the reasonableness of forwarding a letter of complaint to the complained-about person. The anonymous secretary realized the

problem that such forwarding would present and when I asked her to give me your address or to let me talk to Ms. Minor, she abruptly hung up on me. (On the issues of Administrative Office personnel hiding behind anonymity and exhibiting such unprofessional telephone manners there is more in my original letter to you of January 8 and its exhibits.)

I respectfully submit that if it were established that the Office of the General Counsel did not forward to you my January 8 letter and exhibits wherein I complained about both its blocking my petition to the Judicial Conference and its personnel, it **1)** abused its power in order to act in self-interest; **2)** interfered with correspondence mailed through the USPS to a third party and its hierarchical superior at that, and **3)** deprived me of my right to petition a member and an entity of government, that is, you and the Judicial Conference. I trust that you, as a judge trained to analyze a situation from the point of view of rights and obligations, would hold such conduct to constitute a serious offense.

In this context, it is pertinent for you to be informed that my petition to the U.S. Supreme Court for a writ of certiorari concerning, among other things, the two judicial misconduct complaints involved in my petition for review to the Judicial Conference was docketed and bears the number 04-8371.

Therefore, I respectfully request that you:

1. determine whether the Office of the General Counsel of the Administrative Office of the U.S. Courts engaged in the above-described conduct and, if so, launch administrative disciplinary proceedings and inform me thereof;
2. retrieve from that Office my letter to you of last January 8 and the therewith bound Table of Exhibits and exhibits, and take the requested action; and
3. cause the five copies of my petition of November 18, 2004, to the Judicial Conference to be forwarded from the Office of the General Counsel to the Conference for its review.

I look forward to hearing from you and remain,

yours sincerely,

*Dr. Richard Cordero*



United States Court of Appeals  
SECOND CIRCUIT

(203) 782-3682

CHAMBERS OF  
RALPH K. WINTER  
U.S. CIRCUIT JUDGE  
U.S. COURTHOUSE  
141 CHURCH STREET  
NEW HAVEN, CT 06510

February 15, 2005

Dr. Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208-1515

Dear Dr. Cordero:

Thank you for your two letters, dated January 8 and February 9, 2005, regarding your November 20, 2004 request for review by the Judicial Conference of the United States of two orders by the Judicial Council of the Second Circuit. Those orders denied review of the dismissals by the Chief Judge of the Second Circuit of two judicial conduct complaints: your August 11, 2003 complaint against United States Bankruptcy Judge John C. Ninfo, II, and your March 19, 2004 complaint against Chief Judge John W. Walker, Jr.

Please note that I am also aware of your nearly identical letters to William R. Burchill, Jr., Associate Director and General Counsel of the Administrative Office of the United States Courts, to Judge Carolyn King, Chair of the Executive Committee of the Judicial Conference, and to members of the Judicial Conference. My response in this letter will eliminate any need for their further responses to your correspondence.

Your January 8<sup>th</sup> letter requested several actions, and I will address your requests in the order they appear.

First, you suggest that the December 9, 2004 letter you received from Assistant General Counsel Robert P. Deyling should be declared "devoid of any effect as ultra vires" and withdrawn. Having reviewed the material you sent me as well as the December 9<sup>th</sup> letter, I can confirm for you that Mr. Deyling, on behalf of the Administrative Office, handled this matter correctly and according to the Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Circuit Council Orders Under the Judicial Conduct and Disability Act ("the Judicial Conference Rules").

As Mr. Deyling's letter correctly noted, the Judicial Conference does not have jurisdiction for further review of your complaint. The process for addressing complaints against judges is specified at 28 U.S.C. §§ 351 - 364. You correctly followed the statutory complaint process to its final conclusion when you obtained the orders from the Judicial Council of the Second Circuit denying your petition to review the dismissal of your complaints. A careful reading of the statute makes this very clear.

Under 28 U.S.C. § 352, the chief judge may dismiss a complaint after “expeditious review.” This is exactly what occurred with respect to the complaints you filed. As permitted by 28 U.S.C. § 352(c), you then petitioned to the judicial council for review of the chief judge’s dismissal. The judicial council unequivocally denied your petitions. Those two denials, both taken under § 352(c), are “final and conclusive and shall not be judicially reviewable on appeal or otherwise.”

The Judicial Conference review you seek is only available in certain extremely limited circumstances, and your request for review does not meet the statutory standard. Again, a careful reading of the statute leads inexorably to this conclusion, as Mr. Deyling’s letter correctly explained. Under the express terms of 28 U.S.C. § 357, Judicial Conference review is only available to review actions taken by a judicial council under § 354. A judicial council may take action under § 354 only following receipt of the report of a “special investigating committee” convened pursuant to § 353.

The chief judge did not appoint a special investigating committee under § 353 in your case. The judicial council denied your petition for review under § 352, not under § 354. Accordingly, it is clear that the only review available in your case was the review you already obtained from the Judicial Council of the Second Circuit.

This analysis, which confirms the conclusions Mr. Deyling reached in his letter to you, leads me to your second request. You ask me to forward your materials to the Judicial Conference and/or to the Committee to Review Circuit Council Conduct and Disability Orders (“the Committee”). As the Chair of the Committee, I must deny your request. Under the controlling statute, and under the Judicial Conference Rules for processing petitions for review, neither the Committee nor the Judicial Conference has jurisdiction or authority to act upon your request for review.

I also note your various references to the Judicial Conference Rules, and your arguments that the rules provide some independent basis for jurisdiction, or require the Committee or the Judicial Conference itself to take various actions with respect to your request for review. You have misinterpreted the scope and applicability of the Judicial Conference Rules. By their express terms, the rules apply to “*petitions for review submitted to the Conference under 28 U.S.C. § 357 [former 28 U.S.C. § 372(c)(10)], seeking review of circuit council actions taken under 28 U.S.C. § 354 [former 28 U.S.C. § 372(c)(6)] upon complaints of judicial conduct or disability*” (emphasis added). As I explained above, your petition seeks review of a judicial council action taken under 28 U.S.C. § 352(c). The governing statute does not provide you with any entitlement to review, by the Committee or by the Judicial Conference itself, of an action taken under § 352(c).

My answer to your first two requests implicitly addresses your remaining two requests.

Dr. Richard Cordero

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Namely, you asked me to “consider and take action on the accompanying Statement of Facts and Request for an Investigation.” You appear to request this action under Rule 12 of the Judicial Conference Rules. Again, I emphasize that neither the Committee, nor the Judicial Conference itself, can take further action with respect to your request for review, because it is not reviewable under the statutory scheme noted above. Accordingly, I cannot take any of the actions you request. For similar reasons, I cannot report the alleged judicial misconduct to the U.S. Attorney General.

I hope that you find this letter helpful to explain why no further action will be taken on your request for review. Thank you.

Sincerely,



Ralph K. Winter  
United States Circuit Judge

RKW/mrd

cc: Hon. Pasco M. Bowman II  
Hon. Carolyn R. Dimmick  
Hon. Barefoot Sanders  
Hon. Dolores K. Sloviter  
Robert P. Deyling, Assistant General Counsel

# United States Court of Appeals

FIFTH CIRCUIT  
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III  
CLERK

TEL. 504-310-7700  
600 CAMP STREET  
NEW ORLEANS, LA 70130

February 18, 2005

Dr. Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208-1515

Re: Petition for Review of November 20, 2004, addressed to  
Judicial Conference of the United States.

Letter of December 18, 2004, regarding AO response to  
petition for review.

Correspondence of February 7, 2005, referring to a  
letter of January 8, 2005.

Dear Dr. Cordero:

Chief Judge King has reviewed the above-referenced documents and has instructed us to return them to you because the Judicial Conference of the United States does not have jurisdiction to review the Second Circuit Judicial Council's denials of your petitions for review. As provided by 28 U.S.C. § 352(c), the Judicial Council's denial of a petition for review "shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise." In these circumstances, the Judicial Conference of the United States does not have jurisdiction to review the Judicial Council's actions.

We understand that your letter of January 8, 2005, referred to in the last-listed correspondence above, has been forwarded to the Chair of the Committee to Review Circuit Council Conduct and Disability Orders of the Judicial Conference of the United States.

Very truly yours,

CHARLES R. FULBRUGE III, Clerk

By Nancy H. Gray  
Nancy H. Gray  
Deputy Clerk

Enclosure

# Dr. Richard Cordero

Ph.D., University of Cambridge, England  
M.B.A., University of Michigan Business School  
D.E.A., La Sorbonne, Paris

59 Crescent Street  
Brooklyn, NY 11208-1515  
tel. (718) 827-9521; CorderoRic@yahoo.com

March 7, 2005

Mr. Chief Justice William Rehnquist  
Member of the Judicial Conference of the United States  
Supreme Court of the United States  
1 First Street, N.E  
Washington, D.C. 20543

Dear Mr. Chief Justice,

Last November 23, I timely filed with the Administrative Office of the U.S. Courts a petition to the Judicial Conference for review of the denials by the Judicial Council of the Second Circuit of two petitions for review under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§351 et seq. These petitions and their underlying complaints contain evidence of judicial wrongdoing linked to a bankruptcy fraud scheme. Even so, they were disposed of without any investigation, contrary to the requirements of the Act; cf. §§352(a) and 354(a)(1). As such, they constitute evidence confirming the correctness of your appointment on May 25, 2004, of Justice Stephen Breyer to head a Committee to Review Circuit Council Conduct and Disability Orders, precisely because the immense majority of complaints and petitions are routinely disposed of out of hand without being investigated. So few have been allowed to move forward that in the 25-year history of the Act, the Judicial Conference has issued only 15 Memoranda and Orders!

I know that because the Administrative Office sent me copies of them. Hence, I was in a position to make a novel argument that the Judicial Conference has jurisdiction under §357(a) to review my petition since I am "A complainant or judge aggrieved by an action of the judicial council under section 354 [who] may petition the Judicial Conference for review thereof". In turn, under §354(a)(1), the judicial council can only take action "upon receipt of a report filed under section 353(a)". But no such report was ever filed because no investigation was ever conducted. Though lacking jurisdiction, the council dismissed my complaints, whereby it aggrieved me.

As a novel argument and a threshold jurisdictional one at that, it was for the Conference to pass judgment upon it. But the Conference was deprived of the right and duty to do so because a clerk at the Administrative Office, Mr. Robert Deyling, Assistant General Counsel, was bold enough to pass judgment on his own upon that argument, despite having no authority therefor, and refused to pass on my petition to the Conference, whose position he usurped in so doing.

If the appearance, not the reality, of bias or prejudice is enough under 28 U.S.C. §455 to require the recusal of a judge, as the Court reaffirmed in *Microsoft Corp. v. United States*, 530 U.S. 1301, 1302 (2000) (*REHNQUIST, C. J.*), how can the evidence of judicial wrongdoing linked to a bankruptcy fraud scheme not be enough for any judge to discharge his duty to investigate complaints about it? If, as you stated<sup>1</sup>, in the more than 200 years of our federal judiciary, only five federal judges have been convicted of offenses involving financial improprieties and perjury, then impeachment is as ineffective as the Act to discipline judges' conduct. In the absence of any control, has a judgeship become a safe haven for wrongdoing? To answer that due process determinative question, it is necessary that petitions reach the Conference, which they can only do if it interprets its jurisdiction under the Act expansively so that it can read petitions at all. Therefore, I respectfully request that you cause the Conference<sup>2</sup> to pass judgment on the threshold issue of jurisdiction that I am submitting hereby and already submitted in my petition.

sincerely, 

<sup>1</sup>Remarks of Chief Justice Rehnquist at the Federal Judges Association Board of Directors Meeting, May 5, 2003; at [http://www.supremecourtus.gov/publicinfo/speeches/sp\\_05-05-03.html](http://www.supremecourtus.gov/publicinfo/speeches/sp_05-05-03.html).

<sup>2</sup> Letters sent by Dr. Cordero -but never replied to- in an effort to have Mr. Deyling’s letter of December 9, 2004, declared devoid of any effect as ultra vires and withdrawn so as to have his petition unblocked and forwarded by the Administrative Office to the Conference for its review:

- a) Dr. Cordero’s letter of December 18, 2004, to Chief Justice Rehnquist [C:865, 871]
- b) Dr. Cordero’s letter of January 8, 2005, to William R. Burchill, Jr., Associate Director and General Counsel of the Administrative Office of the U.S. Courts [C:876, 887]
- c) Dr. Cordero’s letter of February 7, 2005, to General Counsel Burchill stating that he has not received any response to his letter of January 8, and requesting that action be taken on that letter and its requests [C:890]

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Table of Contents  
 accompanying the letter  
 to Chief Justice William Rehnquist  
 of March 7, 2005  
 from Dr. Richard Cordero

1. <b>Addendum</b> to Dr. Cordero’s <b>Petition</b> , section II: “The Judicial <b>Conference Has Jurisdiction</b> Over This Appeal Because The Complainant Was “Aggrieved” By The Judicial Council”, to request that the Judicial Conference consider the threshold argument for taking jurisdiction over the petition.....	Add.-1 [C:899]
2. <b>Letter of December 9, 2004</b> , of Assistant General Counsel Robert P. <b>Deyling</b> at the Office of the General Counsel of the Administrative Office of the U.S. Courts .....	Add.-6 [C:859]
3. Dr. <b>Cordero’s Petition of November 18, 2004</b> , to the Judicial Conference of the United States for review under 28 U.S.C. §351 et seq. of the actions of the Judicial Council of the Second Circuit concerning two judicial misconduct complaints, dockets no. 03-8547 and no. 04-8510, CA2 .....	1 [C:823]
a) Key Documents and Dates in the procedural history of the judicial misconduct complaints filed with the Chief Judge and the Judicial Council of the Second Circuit, dockets no. 03-8547 and no 04-8510, submitted in support of the petition.....	i [C:886]
b) Table of Exhibits of the Petition .....	ii [C:845]
c) Exhibits.....	E-page #
4. Dr. <b>Cordero’s motion of February 17, 2005</b> , to request that Judge John C. <b>Ninfo, II, WBNY, recuse himself</b> under 28 U.S.C. §455(a) due to lack of impartiality .....	EE-1 [C:905]

# JUDICIAL CONFERENCE OF THE UNITED STATES

Petition for Review of the actions of the Judicial Council of the Second Circuit

In re: Judicial Misconduct Complaints

CA2 dockets no. 03-8547

**and**

no. 04-8510

Dr. Richard Cordero, Petitioner and Complainant, Pro Se

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**ADDENDUM** to the Petition's section II: The Judicial Conference Has Jurisdiction Over This Appeal Because The Complainant Was "Aggrieved" By The Judicial Council,

to **request** that the Judicial Conference consider the threshold argument for taking jurisdiction over the petition

1. On November 23, 2004, Dr. Richard Cordero timely filed a petition to the Judicial Conference (page 1, *infra*) for review of two denials by the Judicial Council of the Second Circuit (pgs. E-37; E-55, *infra*) of his petitions for review (E-23; E-47) of the dismissals (E-11; E-45) of two related judicial misconduct complaints (E-1; E39) that he had filed under the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§351 et seq., with the chief judge of that Circuit's Court of Appeals. As required, Dr. Cordero addressed the five copies of the petition to the Administrative Office of the U.S. Courts and the attention of the General Counsel.
2. On December 9, 2004, Dr. Cordero received a letter from Assistant General Counsel Robert P. Deyling (pg. Add.-6, *infra*), who without even acknowledging, let alone discussing, Dr. Cordero's specific and detailed jurisdictional argument to the Judicial Conference (3§II) and after limiting himself to making passing reference to some provisions of §§351 et seq., wrote "...I must therefore advise you that no jurisdiction lies for further review by the Judicial Conference of the United States" (Add.-7).

## **I. A clerk lacks authority to pass judgment on and dismiss a petition for review to the Judicial Conference**

3. Mr. Deyling lacks any authority to pass judgment on any argument made to the Judicial Conference in a petition for review, let alone to dismiss the petition. Actually, by doing so he infringed on the duty, not just the faculty, that the law specifically imposes on the Conference or its competent committee to review such petitions, which follows from 28 U.S.C. §331, 4<sup>th</sup> paragraph:

The Conference is authorized to exercise the authority provided in chapter 16 of this title [i.e. Complaints Against Judges and Judicial Discipline] as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and all petitions for review **shall** be reviewed by that committee; (emphasis added).

4. Likewise, by passing judgment on an argument made to the Conference, Mr. Deyling overstepped the bounds of his function as a clerk of it. Indeed, under the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (cf. §358(a)), the Office of the General Counsel performs the clerical functions of a clerk of court. However, these Rules are silent on the issue of the Conference's jurisdiction; and they certainly do not authorize any member of that Office or even of the Administrative Office of which it forms part to pass judgment on whether a petition meets any jurisdictional requirement set forth in §§351-364. What is more, those sections do not even mention the General Counsel's Office. As to the Administrative Office itself, it is only mentioned in §361, which provides for a passive role for its Director, who may receive a recommendation from a judicial council to reimburse the expenses incurred by a judge who has been the subject of a complaint. But even that recommendation can only be made at the end of it all, after "the complaint has been finally dismissed under section 354(a)(1)(B)". Nothing in those sections allows that Director, much less one of its clerks, to determine at the outset whether the



Judicial Conference will even receive and have the opportunity to read a petition for review.

5. Moreover, Rule 9 –equivalent to paragraph 9 of the Rules- provides that as soon as the Administrative Office receives a petition that “*appears on its face...in compliance with these rules*” (emphasis added), and thus, “appropriate for present disposition” because the petition does not need to be corrected (cf. Rules of the Supreme Court of the U.S., Rule 14.5)...

...the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

6. Under Rule 10, it is that Committee which, unless otherwise directed by the Executive Committee of the Judicial Conference, not a clerk, “shall assume **consideration** and disposition of **all** petitions for review...” (emphasis added). A clerk has no authority to engage in a consideration of the arguments of the petitioner, much less dispose summarily of the petition without the deliberation that, under Rule 11, it is for the members of the Committee to engage in. Such deliberation, which necessarily precedes disposition, is to be an informed one that takes into account “the record of circuit council consideration of the complaint”, and does that whether there was or was not any investigation by a special committee. The Administrative Office, as the clerk of the Conference and unless otherwise directed by the Committee chairman, disposes of nothing on its own. Rather, that Office “shall contact the circuit executive or clerk of the United States court of appeals for the appropriate circuit to obtain the record...for distribution to the Committee”.

7. But not even that suffices to dispose of a petition. Rule 12 authorizes not only the Committee, but also the Conference itself, to determine that “investigation is necessary”. Not only “the Conference **or** Committee may remand the matter to the circuit council that considered the complaint”, but in addition either “may undertake **any** investigation found to be required”. Moreover, Rule 12 provides that “If such investigation is undertaken by the Conference or

Committee...(c) the complainant **shall** be afforded an **opportunity to appear** at any proceedings conducted if it is considered that the complainant could offer substantial new and relevant information” (emphasis added).

8. This is not all yet, for Rule 13 provides that even if there is no investigation, “the Committee may determine to receive written argument from the petitioner...”. This “argument” is a piece of writing qualitatively different from what Rule 5 provides, namely:

5. The petition shall contain a short and plain statement of the basic facts underlying the complaint, the history of its consideration before the appropriate circuit judicial council, and the premises upon which the petitioner asserts entitlement to relief from the action taken by the council.

9. That “argument”, which may bear on jurisdiction, is a legal brief and it is for the Committee to request and consider it without being preempted by a clerk’s unauthorized conclusory ‘argument’ for disposing of the petition. Hence, it is the Committee that determines that the petition is “amenable to disposition on the face thereof” or that there is a need for a “written argument **from the petitioner** and from **any other party to the complaint** proceeding (the complainant or judge/magistrate complained against)”, whereby Rule 13 excludes the clerk as the writer of such argument.

10. Finally, Rule 14 provides that “The decision on the petition **shall** be made by written **order** [and] be forwarded by the Committee chairman to the Administrative Office, which shall distribute it as directed by the chairman”. A clerk in that Office cannot take it upon himself to write a letter and substitute it for the order of an adjudicating body so as to thereby dispose single-handedly of a petition addressed to the Judicial Conference of the United States.

11. Hence, Mr. Deyling, as a clerk to the Conference, had no authority to determine jurisdiction, let alone arrogate to himself judicial power to pass judgment on a specific legal argument on jurisdiction. He usurped the roles of the Conference and the Committee by disposing of the petition summarily on his own without holding the required, or receiving the benefit of, any

consideration, deliberation, investigation, appearance, or written argument. In so doing, he deprived Dr. Cordero of his legal right to have his petition processed according to the procedure set forth in the Rules. If it is true, as Mr. Deyling put it, that "It is absolutely necessary that we adhere to the above arrangements...", then neither the Judicial Conference nor its members should countenance his unauthorized and presumptuous actions.

## **II. Relief requested**

12. Therefore, Dr. Cordero respectfully requests that the Judicial Conference:

- a) declare Mr. Deyling's letter to be devoid of any effect as ultra vires and withdraw it;
- b) declare that, upon review of this Addendum, §§351 et seq., and the Rules, it has jurisdiction to review Dr. Cordero's petition of November 18, 2004, to the Conference;
- c) review the copy of the petition included herewith (1, infra) or have its original and four copies filed with the Administrative Office on November 23, 2004, and in possession of its General Counsel, forwarded to the Conference for review;
- d) grant the petition and launch an investigation of the judges and court officers complained about and expand such investigation to include similar events of misconduct by them that have taken place since the petition was filed (cf. EE-1, infra); and
- e) make a report of the evidence of a bankruptcy fraud scheme to the Acting U.S. Attorney General under 18 U.S.C. 3057(a).

Respectfully submitted on

March 7, 2005

59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

Dr. Richard Cordero  
tel. (718) 827-9521

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# UNITED STATES BANKRUPTCY COURT WESTERN DISTRICT OF NEW YORK

In re David G. DeLano and Mary Ann DeLano

Chapter 13 bankruptcy

case no. 04-20280

## Motion to request that Judge John C. Ninfo, II recuse himself under 28 U.S.C. §455(a) due to his lack of impartiality

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Dr. Richard Cordero, Creditor, states under penalty of perjury as follows:

### **I. The standard for recusal under 28 U.S.C. § 455(a) is the appearance, not the reality, of bias and prejudice**

1. Section 455(a) of 28 U.S.C. provides as follows:

Any justice, judge, or magistrate judge of the United States **shall** disqualify himself in any proceeding in which his impartiality **might** reasonably be questioned. (emphasis added)

2. The Supreme Court recently reaffirmed in *Microsoft Corp. v. United States*, 530 U. S. 1301, 1302 (2000) (*REHNQUIST, C. J.*) the standard for interpreting and applying this section thus:

As this Court has stated, what matters under §455(a) “is not the reality of bias or prejudice but its appearance.” *Liteky v. United States*, 510 U. S. 540, 548 (1994). This inquiry is an objective one, made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances. *See ibid.*; *In re Drexel Burnham Lambert Inc.*, 861 F. 2d 1307, 1309 (CA2 1988).

3. Those surrounding facts and circumstances are to be assessed by “the “reasonable person” standard which [§455(a)] embraces”, *Microsoft Corp.* at 1303.

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**II. The facts and circumstances surrounding Judge Ninfo’s handling of the *DeLano* case have the appearance of bias and prejudice**

**A. Judge Ninfo has given precedence to what he calls “local practice” over the law and rules, to protect the local parties to the detriment of non-local Dr. Cordero**

4. On January 27, 2004, Mr. David DeLano and Mrs. Mary Ann DeLano filed for bankruptcy under Chapter 13. Mr. DeLano is far from an average debtor: Interestingly enough, he has worked as a bank officer at different banks for 32 year! Actually, he is not only a veteran bank officer, still working for a large bank, namely, Manufacturers & Traders Trust Bank (M&T), but rather he is a bank *loan* officer. As such, he qualifies as an expert in how to assess

creditworthiness and remain solvent to be able to repay bank loans. Thus, he is a member of a class of people who should know better than to go bankrupt and that because of their experience with borrowers that use or abuse the bankruptcy system know how to petition successfully for bankruptcy relief. Consequently, his petition warranted to be examined with the equivalent of strict scrutiny. But Judge Ninfo would have none of such common sense approach.

5. On the contrary, Judge Ninfo excused the Standing Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., who unlawfully prevented any examination of the DeLanos even by the only creditor, Dr. Cordero, who showed up at the meeting of creditors held on March 8, 2004. Convened under 11 U.S.C. §341, that meeting had the purpose, as provided under §343, of enabling the creditors to meet the “debtor [who] shall appear and submit to examination under oath...”. What is more, FRBkrP Rule 2004(b) includes no fewer than 12 areas appropriate for creditors to examine the debtor at the §341 meeting, even one worded in the catchall terms of “any other matter relevant to the case”. Consequently, given the breath of questioning, §341(c) makes allowance, not just for a few questions, but rather for an indefinite series of meetings until “the final meeting of creditors”.
6. It should be noted that none of the other 20 creditors of the DeLanos, all institutional, attended the meeting, of which notice is officially given by the court. This is the normal occurrence, as Mr. DeLano must know and have counted on for an unobjected, smooth sailing of his petition. This imputed intention is reasonably supported by the fact that he distributed his unsecured credit card debt of \$98,092 over 18 credit cards so that none of the issuers would have a stake high enough to make it cost-effective to send an attorney to examine the DeLanos.
7. Their examination was not conducted by Trustee Reiber because contrary to the Code -11 U.S.C. §341(a)- the rules –FRBkrP Rule 2003(b)(1)- and regulations -C.F.R. §58.6(a)(10)-, he had Att. Weidman do so. At the meeting, Dr. Cordero submitted his written objections to the DeLanos’ debt repayment plan. But no sooner had he asked Mr. DeLano to state his occupation than Att. Weidman asked Dr. Cordero in rapid succession some three times to state his evidence that the DeLanos had committed fraud. Dr. Cordero had to insist that Mr. Weidman take notice that he was not accusing them of fraud. To no avail. Mr. Weidman alleged that there was no time for such questions and put an end to the examination despite the fact that there was more than ample time to continue it since Dr. Cordero was only at his second question! In so doing, he violated Dr. Cordero’s statutory right to examine the DeLanos. Why could Att. Weidman not



risk exposing the DeLanos to have to answer under oath Dr. Cordero's question before finding out how much Dr. Cordero already knew about fraud committed by them?

8. Later on that day, March 8, 2004, at the confirmation hearing of debtors' repayment plans before Judge Ninfo, Dr. Cordero protested Att. Weidman's unlawful act, but Trustee Reiber ratified the actions of his attorney and vouched for the good faith of the petition.
9. For his part, Judge Ninfo started off his response in open court and for the record by saying that Dr. Cordero would not like what he had to say; that he had read Dr. Cordero's objections; that Dr. Cordero interpreted the law very strictly, as he had the right to do, but he had again missed the local practice; that he should have called to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions until 8 in the evening, particularly when he had a room full of people.
10. Dr. Cordero protested because he had the right to rely on the law and the notice of the meeting of creditors stating that the meeting's purpose was for the creditors to examine the debtors. He also protested the Judge not keeping his comments within the bounds of the facts since Dr. Cordero had not asked questions for hours, but had been cut off by Mr. Weidman after two questions in a room with only two other persons.
11. Judge Ninfo said that Dr. Cordero should have done Mr. Weidman the courtesy of giving him his written objections in advance so that Mr. Weidman could determine how long he would need. Dr. Cordero protested because he was not legally required to do so, but instead had the right to file his objections at any time before confirmation of the plan and could not be expected to disclose his objections beforehand, which would allow the debtors to craft their answers with their attorney. He added that Mr. Weidman's conduct was suspicious because he kept asking Dr. Cordero what evidence he had that the DeLanos had committed fraud despite Dr. Cordero having answered the first time that he was not accusing the DeLanos of fraud, whereby Mr. Weidman showed an interest in finding out how much Dr. Cordero already knew about fraud committed by the DeLanos before he, Mr. Weidman, would let them answer any further questions. Dr. Cordero said that Mr. Weidman had put him under examination although he was certainly not the one to be examined at the meeting, but rather the DeLanos were; and added that Mr. Weidman had caused him irreparable damage by depriving him of his right to examine the Debtors before they knew his objections and could rehearse their answers.
12. Yet, Judge Ninfo came to Mr. Weidman's defense and once more said that Dr. Cordero applied

the law too strictly and ignored the local practice...

13. That is precisely what Dr. Cordero has complained about! Judge Ninfo together with other court officers engages in "local practice", which consists in the disregard of the law, the rules, and the facts and the systematic application of the law of the locals. That law is based on both personal relationships among people that work in the same small federal building and with people who appear before Judge Ninfo frequently and who must fear antagonizing him by challenging his rulings, for he distributes favorable and unfavorable decisions as he sees fit without regard for legal rights and the available facts . Such local practice of disregard of legality has resulted in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and bias in which Judge Ninfo together with others have participated to the benefit of local parties and the detriment of Dr. Cordero. (Cf. §II.C-E of Dr. Cordero's motion of November 3, 2003, in the Court of Appeals for the Second Circuit, herein incorporated by reference.)

#### **1. Frequency of appearance by local parties before Judge Ninfo**

14. The evidence that such personal relationships has developed is indisputable. Indeed, a PACER query about Trustee Reiber ran on April 2, 2004, returned the statement that he was trustee in 3,909 *open* cases!, 3,907 before Judge Ninfo; cf. Chapter 7 Trustee Kenneth Gordon was the trustee before Judge Ninfo in 3,382 out of his 3,383 cases, as of June 26, 2004. Likewise, the statistics on Pacer as of November 3, 2003, showed that in the other case to which both Mr. DeLano and Dr. Cordero are parties, namely, *Pfuntner v. Gordon et al.*, docket no. 02-2230, which is of course also before Judge Ninfo, Plaintiff James Pfuntner's attorney, David D. MacKnight, Esq., had appeared before Judge Ninfo 427 times out of 479 times. Similarly, Raymond C. Stilwell, Esq., had so appeared 132 times out 248 times; he is the attorney for another party, David Palmer, the owner of Premier Van Lines, the company to which M&T Loan Officer DeLano lent money and which went bankrupt.
15. If those local parties know what is good for them, they take what they are given by Judge Ninfo and hope for something as good or better next time, which can be fifteen minutes later when they appear in their next case before him. In so doing, they make the Judge's life so much easier. A non-local party like Dr. Cordero, who comes into his court with no other relation than that to the law, the rules, and the facts, and who tries to confine the Judge's rulings to the provisions of such relation and even dare appeal from his rulings, can only upset the Judge's

relationship to the local parties and the modus operandi that they have developed. That Judge Ninfo will not tolerate.

16. Hardly did the Judge have to tolerate it, for Dr. Cordero not only was a non-local appearing merely through the written word or over the phone in only one case, that is, *Pfuntner*, but he was also a pro se litigant, as he still is in the *DeLano* case. Thus, Dr. Cordero neither stood nor stands any chance of making Judge Ninfo apply the law and the rules or respect the constraint of the facts. He was and is supposed merely to take whatever is left that the Judge throws at him. As a result of such disregard for legality and of bias, Judge Ninfo has for the last three years caused this non-local pro se party the loss of an enormous amount of effort, time, and money and inflicted upon him tremendous emotional distress. It should not continue any longer.

**2. Judge Ninfo's disregard for the law, the rules, and the facts led him to make the ludicrous statement that "local practice" can be found out by making a phone call**

17. The facts demonstrate Judge Ninfo's disregard for legality. In his orders in the *Pfuntner* and *DeLano* cases, whether they be written or issued from the bench, he makes no mention of, let alone discusses, the law of Congress or the procedural rules approved by it, much less any court decision, not even decisions of the Supreme Court, and that in spite of Dr. Cordero's numerous citations, after painstaking research, of both statutory and case law as well as the rules and the facts, in support of the arguments in his briefs and motions, and at hearings. Judge Ninfo's decisions have no more basis than 'because-I-say-so-and-what-I-say-goes-here'. Why should he bother with the law to provide for the impartiality required by due process when he is accustomed to receiving the whole of due respect that comes with exercising unchallenged judicial power?
18. Only a person used to making rulings with the expectation that they be accepted uncritically by those depending on his good will rather than be examined under the criteria of the law and logic could make in the presence of a stenographer who is supposed to be keeping a record of his every word Judge Ninfo's comment on March 8, 2004, that Dr. Cordero should have called to find out what the local practice for the meeting of creditors was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions. In addition to being flatly contradicted by the law (para. 5, *supra*), that comment is ludicrous!
19. A person reflexively expecting to be challenged by the participants in truly adversary proceedings would hardly even think that a non-local who lives hundreds of miles from

Rochester can phone somebody there to find out what the “local practice” is and such somebody would have the time, selfless motivation, and capacity to explain accurately and comprehensively the details of the “local practice” and its divergencies from the law and rules of the land of Congress. How could the details of such somebody place the non-local at arms length with his local adversaries, let alone with the judges and other court officers? By contrast, the details of how to implement such comment will readily reveal how impracticable it is and how impaired by bias and prejudice the judgment of he who made it is:

- a) Whom was Dr. Cordero supposed to call to obtain all the details of “local practice”? Had he called a clerk of court and asked that she tell him all there is about “local practice”, would she not have jumped and said, “Ah!, you mean the local rules. You can download them from the Internet or I can send you a hardcopy in the m...” “No! no! I mean “local practice”, you know, the unpublished, unwritten local tricks that lawyers in Rochester know can invalidate national law.” Would the baffled clerk not think that Dr. Cordero was being facetious or conspiratorial and try to get rid of him by repeating once more that clerks are not allowed to give legal advice and that he should hire local counsel to find out whatever he meant by “local practice”?
- b) Should Dr. Cordero call opposing counsel and ask that he be fair with him and level the field by spending his time sharing with him the winning secrets of “local practice”?
- c) Or should Dr. Cordero call the trustee and ask him the seemingly ridiculous question whether “local practice” would allow him to ask more than two questions at the officially convened meeting of creditors if he was the only creditor present?
- d) Should so much futile effort have justified Dr. Cordero in calling Tony Soprocal, the notorious Rochester attorney, whom the media calls “the master of local practice”? Dr. Cordero would come clean –Tony requires that from those he deals with- and admit that although he can read law books and in fact he is said to read the law, no wrongly, but just strictly, he is still missing what really matters in a Rochester court, not the law, but rather the knowledge of the initiated in unwritten “local practice”. Tony would smirk, for in his line of work a euphemism is more expressive than any long speech. “Sure! You can retain me for the unwritable dirty secrets of how things get done in our local court. You can’t get more ‘local’ than through a chat with me...unless you also want ‘practice’, but that will cost them an arm and a leg...you too, but you pay me in money.” “For...forgeta’bout

it, Tony,” would babble a shaky Dr. Cordero, “the chat will be enough.”

- e) Then what? Could it be reasonable for Dr. Cordero to state at the next meeting or hearing what he expects Judge Ninfo to do because Tony said that’s the way it is done in “local practice”? Will Judge Ninfo say, “Now you are talking, Dr. Cordero! If Tony told you what the “local practice” is and you relied on it, then that’s the end of it. I have no choice but to enforce it, you know, I am not one to disappoint your reasonable reliance on the basis of my conduct as a judge.”
20. What nonsense! But the description of such scenes is not meaningless at all, for it shows starkly how uneven the field is when Judge Ninfo gives precedence to whatever it is that he calls “local practice” over both the written and published laws of Congress and official notices of the court, such as the notice of the meeting of creditors (para. 6, supra). The practical consequences of such abrogation by him of the law are very serious, for in addition to frustrating Dr. Cordero’s reasonable expectations that the proceedings will be held according to law, it renders for naught all his enormous effort to educate himself about the Bankruptcy Code, procedural rules, and case law as well as the time and money that he spends whenever he travels all the way to Rochester to appear in person in his court. By unfairly surprising him with his trump card of “local practice”, Judge Ninfo has created an untenable situation of legal uncertainty and arbitrariness. That is antithetical to the very essence of a system of justice that in order to curb abuse of power is based on notice of the law given in advance and opportunity to be heard without bias or prejudice, not tidbits about “local practice” that one must ferret out on a hit and miss basis and rely on at one’s own risk.
21. That risk is all the more real and constant because Judge Ninfo’s bias and prejudice lead him to break faith even with his own statement of that “local practice”, whether stated orally or in a written order.

**B. Judge Ninfo said in open court that he would issue Dr. Cordero’s written requested order for the DeLanos to produce documents that can prove their bankruptcy fraud if, in accordance with local practice, he resubmitted it as a proposed order; however, after it was so resubmitted, the Judge not only did not issue it, but at Dr. Cordero’s instigation issued pro forma his own watered down version that he then allowed the DeLanos to disobey with impunity**

22. On July 9, 2004, Dr. Cordero submitted to Judge Ninfo a Statement analyzing the DeLanos’

bankruptcy petition and other few documents, which they belatedly produced upon request of Trustee Reiber after Dr. Cordero's repeated demands under 11 U.S.C. §§1302(b)(1) and 704(4) and (7) that the Trustee request them. The statement showed, among other things, how the DeLanos had engaged in bankruptcy fraud and how Trustee Reiber had failed to review the initial petition, to request documents for months, to subpoena documents when the DeLanos would not produce any, and how the Trustee had instead moved to dismiss the case due to the DeLanos' "unreasonable delay" in producing documents. Included in that Statement Opposing the Motion to Dismiss was Dr. Cordero's request for an order for the production of a specific list of documents.

23. At the hearing on July 19, 2004, of the Trustee's motion to dismiss, Dr. Cordero asked Judge Ninfo to grant his request for the order described in his July 9 Statement. The Judge stated that the Court does not prepare orders, but rather issues them on proposal from a party. Dr. Cordero proposed to reformat the text of his requested order into a proposed order. Having already had the opportunity to read that text, Judge Ninfo decided that Dr. Cordero could do so and gave him his fax number to make it possible for him to receive and issue it immediately so that the parties would have formal notice of their obligation to begin producing certain documents right away.
24. Dr. Cordero reformatted into a proposed order the same text of the requested order, with the changes necessary to take into account what had occurred at the hearing, and faxed it to Judge Ninfo the following day, July 20. To do so, he had to call the clerks and find out why his fax would not go through, whereupon he was told that the fax number that the Judge had given him was incorrect; he was then given the correct one.
25. But Judge Ninfo did not issue it. Instead, he gave precedence to the untimely objections of a local party, the DeLanos' attorney, Christopher Werner, Esq. In a letter addressed to Judge Ninfo delivered via messenger that day, July 20, he stated: "We are in receipt of Mr. Cordero's proposed Order which we believe far exceeds the direction of the Court." That was it. But that was enough for the Judge to take the hint. Att. Werner's letter was docketed immediately and made available through PACER. By contrast, Judge Ninfo not only failed to issue the proposed order; but he also did not even have it docketed forthwith, whereby he violated FRBkrP Rule 7005 and FRCivP Rule 5(e) and showed bias toward Att. Werner and the DeLanos.
26. In so doing, Judge Ninfo disregarded Dr. Cordero's statement in his letter accompanying the

proposed order that Att. Werner had had ten days since Dr. Cordero faxed his July 9 Statement to him to learn the breath of his requested order, yet he had failed to object to the Judge's decision at the hearing that Dr. Cordero should convert it into a proposed order and fax it to him. If, as the Attorney stated at the July 19 hearing, he has been in this business for 28 years, then he had to know his obligation to raise timely objections, particularly since:

- a) Att. Werner and the Judge knew what documents had been requested, many for months since Dr. Cordero's written Objections of March 4, 2004!;
- b) the Judge agreed to its production; and
- c) FRCivP Rule 26(b)(1) favors broad discovery (made applicable by FRBkrP Rule 7026).

27. It was simply too late for Att. Werner to object for the first time after the hearing was over; cf. FRCivP Rule 26(a)(1)(E) last paragraph, providing for disclosure "unless the party objects during the conference"; and FRCivP Rule 46, requiring exceptions to be made "at the time the ruling or order of the court is made or sought". Att. Werner's objection was untimely and constituted an unfair surprise. Dr Cordero protested. To no avail. Judge Ninfo, showing bias once more, did not even acknowledge Dr. Cordero's objection.
28. Nor did Judge Ninfo issue the faxed proposed order as agreed at the July 19 hearing, or for that matter any production order at all. Yet, by July 21 PACER<sup>1</sup> already contained the minutes of that hearing, which included the statement in capital letters:

Order to be submitted by Dr. Cordero. NOTICE OF ENTRY TO BE ISSUED.

29. So Judge Ninfo made Dr. Cordero waste his time and effort once more (cf. §III of Dr. Cordero's motion of August 14, 2004, for docketing and other relief, herein incorporated by reference) in preparing and submitting a document that the Judge knew he was not going to act upon at all. Did he ask for it for leverage? Having broken faith with his own word officially recorded and electronically published, Judge Ninfo cannot be taken seriously because his word cannot justifiably be relied on.
30. Even as late as July 26, the Judge had not caused Dr. Cordero's faxed letters and proposed order of July 19 and 21 to be docketed. Dr. Cordero called the Court and asked Clerk Paula Finucane specifically why. She said that they were in chambers and that she had not received any order to be docketed.

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<sup>1</sup> PACER is the Public Access Court Electronic Records service that allows subscribers to see through the Internet case dockets and to retrieve documents to their computers. Here <http://www.nywb.uscourts.gov/>>PACER.

31. Only the following day, July 27, was the July 19 letter docketed, but only it. Indeed, the entry in the docket accessible through PACER read thus:

07/20/2004	<a href="#">53</a>	Letter dated 7/19/04 Filed by Dr. Richard Cordero regarding Proposed Order . (Finucane, P.) (Entered: 07/26/2004)
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When Dr. Cordero clicked on the hyperlink [53](#), only the letter –page 1 of 5- downloaded as an Adobe PDF (Portable Document Format), but not the order! Why?!

32. By contrast, the entry for Att. Werner’s objection of July 19, 2004, to Dr. Cordero’s claim as creditor of the DeLano Debtors read thus.

07/22/2004	<a href="#">51</a>	Motion Objecting to Claim No.(s) 19 for claimant: Richard Cordero, Filed by Christopher Werner, atty for Debtor David G. DeLano , Joint Debtor Mary Ann DeLano (Attachments: # <a href="#">1</a> Proposed Order # <a href="#">2</a> Certificate of Service) (Finucane, P.) (Entered: 07/23/2004)
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33. When Dr. Cordero clicked on the hyperlinks [51](#)>[2](#) an order proposed by Att. Werner to disallow Dr. Cordero’s claim downloaded! This was blatant discriminatory treatment that showed Judge Ninfo’s bias (cf. §II of Dr. Cordero’s motion of August 14, 2004, for other instances of a pattern of docket manipulation).

**1. Judge Ninfo broke faith with his word that he would issue Dr. Cordero’s proposed order for document production by the DeLanos just because their attorney, despite his untimeliness, “expressed concerns”, thereby protecting the DeLanos from discovery that could show their bankruptcy fraud**

34. As late as July 27, there had been no docketing of Dr. Cordero’s letter of July 21 to Judge Ninfo protesting his failure to issue the proposed order that the Judge had asked Dr. Cordero to fax to him.
35. Instead, the Judge had an order of his own entered, which bore the date of July 26, 2004, rather than Dr. Cordero’s proposed order that he had agreed to enter and the minutes of the July 19 hearing recorded its intended entry.
36. In his order, Judge Ninfo stated what it took to deny in effect Dr. Cordero’s proposed order:

WHEREAS, Richard Cordero submitted a proposed Order, a copy of which is attached, to which Attorney Werner expressed concerns in a July 20, 2004 letter, a copy of which is also attached;



37. This is an unfortunate hybrid between ‘objections to’ and ‘concerns about’. It is indicative of Judge Ninfo’s awareness that due to untimeliness, Att. Werner could not have raised valid objections for the first time after the hearing was over. Nevertheless, it shows how little it took for the Judge to break faith with his word given in open court: “concerns” expressed untimely by the debtors’ attorney. On such “concerns”, the Judge protected the DeLanos from having to produce documents that could prove their bankruptcy fraud, such as:

- a) the bank account and debit card statements that could show the whereabouts of the DeLanos’ declared earnings of \$291,470 in only the three fiscal years 2001-2003, while they declared having:
- b) only \$535 in cash or in bank accounts...with Mr. DeLano’s bank, M&T, which may have issued a bank officer like him with its credit card, perhaps even at a preferential rate, or its debit card, although the DeLanos did not declare possessing any such M&T Bank card, not to mention ‘sticking’ his employer with a bankruptcy debt, as they did other credit card issuers –most likely those that Veteran Banking Industry Mr. DeLano would know have a higher threshold of loss to trigger their participation in bankruptcy proceedings- on whose 18 credit cards they owe a whopping \$98,092;
- c) two cars worth together merely \$6,500;
- d) equity in their home of only \$21,415, although people in their 60s, as the DeLanos are, have already paid or are about to finish paying their mortgage, on which by contrast they owe \$78,084;
- e) household goods worth only \$2,910...that’s all they have accumulated throughout their work lives!, despite the fact that they have earned over a hundred times that amount in only the last three years...unbelievable! Where did the money go or is?

38. But that common sense question Judge Ninfo would not ask, much less let Dr. Cordero find the answer to, never mind that the Judge has a duty under 11 U.S.C. §1325(a)(3) to ascertain whether “the [debtor’s debt repayment] plan has been proposed in good faith and not by means forbidden by law”. In fact, the Judge too had the duty to presume that the DeLanos had submitted their plan in bad faith, for that is what the Code entitles the creditors and the trustee to do. Thus, the Revision Notes and Legislative Reports, 1978 Acts, accompanying §343 provides that:

The purpose of the examination [at the meeting of creditors] is to enable creditors and the trustee to determine if assets have improperly been disposed of or concealed or if there are grounds for objection to discharge.

39. Far from pursuing this statutory line of inquiry, Judge Ninfo entered his July 26 Order, which was an inexcusably watered down version of Dr. Cordero's proposed order that he had agreed to enter. Despite the evidence of concealment of assets by the DeLanos, the Judge failed to require them to produce bank or *debit* account statements; documents concerning their undated "loan" of \$10,000 to their son; instruments attesting to any interest of ownership in fixed or movable property, such as the mobile home admittedly bought with that "loan"; etc. Why? What motive could justify preventing the facts to be ascertained through production of those documents?
40. Consequently, Judge Ninfo's failure even to do his job under the Code, in addition to failing to keep his word, provides the foundation for the question whether he in effect denied Dr. Cordero's proposed order for document production by the DeLanos merely because of the undefined "concerns" expressed by Att. Werner or because of his own concerns and, if the latter, what are his concerns. Is the Judge protecting them because they are local parties and in general he has developed relationships with local parties that make him biased toward them, or because in particular Mr. DeLano is a 32-year veteran of the lending industry and knows too much about how abusive bankruptcies, even those to avoid repayment of loans to his bank, are handled? There is solid basis for the latter part of this question (§C, *infra*).

**2. Judge Ninfo denied having received the proposed order despite the fact that Dr. Cordero faxed it to him, Dr. Cordero's phone bill reflects that, and his clerks acknowledged that it was in his chambers, just as in *Pfuntner v. Gordon et al.* he denied that Dr. Cordero's motion to extend time to file notice of appeal from his decision had arrived timely although Trustee Gordon had in writing admitted against his interest that it had arrived at a timely date, whereby trust in the Judge's word has been shattered**

41. Still by Friday, August 6, neither Dr. Cordero's proposed order of July 19 nor his letter of July 21 had been docketed. On that day, Dr. Cordero inquired about it of Deputy Clerk of Court Todd Stickle. The latter told him that his clerks had not received it for docketing and that he would look into it and consult with Clerk of Court Paul Warren into the possibility of discriminatory treatment.
42. On Monday, August 9, Mr. Stickle informed Dr. Cordero that upon asking Judge Ninfo and his Assistant, Ms. Andrea Siderakis, he had been told that Dr. Cordero's July 21 fax never arrived.
43. That explanation for its not being docketed was definitely unacceptable: The fax went through on July 22 and a copy sent to the Judge of Dr. Cordero's telephone bill showed that he did fax

the letters and proposed order on July 20 and 22 to (585) 613-4299. In addition, the receipt of his July 21 letter was acknowledged by Clerk Finucane, as was the place where it was withheld: Judge Ninfo's chambers.

44. This was by no means the first time that Judge Ninfo sprung on Dr. Cordero such a surprise: In the *Pfuntner v. Gordon et al.*, docket no. 02-2230, in which both Mr. DeLano and Dr. Cordero are parties, the Judge dismissed Dr. Cordero's claims against Chapter 7 Trustee Kenneth Gordon, a local that so very frequently appears in his court (cf. ¶14, supra). Dr. Cordero timely mailed a notice of appeal on January 9, 2003. Trustee Gordon moved to dismiss it as untimely filed and Dr. Cordero timely mailed a motion to extend time to file the notice. Although Trustee Gordon himself acknowledged on page 2 of his brief in opposition of February 5, 2003, that Dr. Cordero's motion had been timely filed on January 29, Judge Ninfo surprisingly found at its hearing on February 12, 2003, that it had been untimely filed on January 30! By such expedient allegation contrary to fact, Judge Ninfo denied Dr. Cordero's motion. Moreover, the Judge would not even look into how that discrepancy could have arisen between his alleged date of January 30 for the filing and Trustee Gordon's admission against legal interest that the filing occurred on January 29. Thereby the Judge insured that Dr. Cordero's appeal against his dismissal was doomed. (cf. §I.A.1. of Dr. Cordero's motion of August 8, 2003, for Judge Ninfo to recuse himself from the *Pfuntner* case, which is herein incorporated by reference).
45. The trust that a party must have in the integrity of a judge and that a judge must earn by his irreproachable conduct was thus shattered; subsequent events have only replaced it with distrust. Under these circumstances, it is not just the appearance of lack of impartiality that warrants the recusal of Judge Ninfo, but also of lack of integrity. Alas, there is even further factual basis for such assertion.

**C. Judge Ninfo is protecting the DeLanos by reaching the biased conclusion, before they ever took the stand, or complied with his order of document production, or were examined by the creditors, that Dr. Cordero is wrong in his contention that the DeLanos moved untimely to disallow his claim for the single purpose of eliminating the only creditor that has examined their petition, found evidence of fraud, and is objecting to the confirmation of their debt repayment plan**

46. The DeLanos commenced this case by their bankruptcy petition of January 26, 2004. Had they wanted to object to Dr. Cordero's claim, they could and should have done so at that time. The

reasons for this are that:

- a) It was they who in Schedule F therein named Dr. Cordero among their creditors;
  - b) Mr. DeLano knew the nature and basis of Dr. Cordero's claim against him since he was served with his complaint of November 21, 2002, in *Pfuntner v. Gordon et al.*;
  - c) Att. Werner signed that petition and, therefore, also knew of Dr. Cordero's claim against the DeLanos;
  - d) both the DeLanos and Att. Werner knew that Dr. Cordero was determined to pursue his claim as stated in his Objection of March 4, 2004, to the Confirmation of the DeLanos' Plan of Debt Repayment, so determined that he traveled all the way from New York City, and in fact was the only creditor, to attend the meeting of creditors on March 8, 2004, at which, interestingly enough, Mr. DeLano was accompanied also by his attorney in the *Pfuntner* case, Michael Beyma, Esq., of Underberg & Kessler, LLP;
  - e) Att. Werner objected to Dr. Cordero's status as creditor in his statement to Judge Ninfo of April 16, 2004, which Dr. Cordero refuted in his timely reply of April 25, after which Att. Werner dropped the issue and went on for months treating Dr. Cordero as a creditor; and
  - f) Att. Werner continued to treat Dr. Cordero as a creditor for more than two months even after he filed his proof of claim on May 15, 2004.
47. But then only after Dr. Cordero faxed to Att. Werner his Statement of July 9, 2004 –in which he opposed Trustee Reiber's motion to dismiss and presented the evidence pointing to the DeLanos' having engaged in bankruptcy fraud, particularly concealment of assets- and after the hearing on July 19, 2004, did the DeLanos and Att. Werner come up with the idea of moving to disallow Dr. Cordero's claim.
48. It should be noted that for months Dr. Cordero had repeatedly requested under 11 U.S.C. §§1302(b)(1) and 704(4) and (7) that Trustee Reiber investigate the DeLanos and require them to produce specific types of documents. His requests were met only with Trustee Reiber's avoidance of his duty to investigate, his ineffectiveness in obtaining documents when, at Dr. Cordero's insistence, he appeared to request them, and the DeLanos' effort to produce as few documents and as late as possible. Hence, in his July 9 Statement Dr. Cordero presented Judge Ninfo for the first time with a requested order for specific documents. How the Judge dealt with that request has been described above (para. 23, *supra*). In addition, how he dealt in his Orders of August 30 and November 10, 2004, with the DeLanos' motion to disallow is no less

revealing of his bias and disregard for the law, the rules, and the facts.

49. To begin with, the DeLanos' motion to disallow was untimely and barred by laches, coming as it did almost two years after Mr. DeLano had known of Dr. Cordero's claim and six months after they had acknowledged in their petition his status as a creditor and during which they dealt with him as a creditor. Mr. DeLano, with his career long experience as a bank *loan* officer, had reason to expect that during that time Dr. Cordero, a non-local, non-institutional, and pro se creditor, would be worn down, for he Mr. DeLano knew that even institutional lenders simply stay away from the overwhelming majority of bankruptcies and write off what is owed them. However, Dr. Cordero not only continued pursuing his claim, but also requesting documents that could show the DeLanos' bankruptcy fraud and even pointed to the evidence of their concealment of assets. Then they came up with the subterfuge of moving to disallow Dr. Cordero's claim. And Judge Ninfo played along with them!
50. Thus, the Judge stated in his August 30 Order, without providing any reasons in accordance with law or in light of the facts, as judges are supposed to do, but in another "local practice" this-is-so-because-I-say-so fiat that:

...the Claim Objection [the motion to disallow] was timely, there having been no waivers or laches on the part of the Debtors that would prevent the filing and Court's determination of the Claim Objection;

51. Through such fiat, without any citation of any authority, Judge Ninfo disregarded the Bankruptcy Code, which considers untimeliness such a grave fault that it provides under §1307(c)(1) that "unreasonable delay by the debtor that is prejudicial to creditors" is grounds for a party in interest, who need not even be a creditor, to request the dismissal of the case or even the liquidation of the estate. There can be no doubt that it is prejudicial to Dr. Cordero to have been treated as a creditor by the DeLanos for six months, during which he spent a lot of effort, time, and money researching and writing numerous papers, preparing for hearings, and even traveling to Rochester, only to be challenged, after he presented evidence of their bankruptcy fraud, on the threshold question whether he is a creditor at all.
52. Then Judge Ninfo severed Dr. Cordero's claim against Mr. DeLano from the *Pfuntner* case and required Dr. Cordero to take discovery of Mr. DeLano to prove his claim, the one that the DeLanos themselves had taken the initiative to acknowledge in their petition. In so doing, he severed that claim from the *Pfuntner* case to try it out of the context of all the other parties and issues in that case, to the benefit of Mr. DeLano and the detriment of Dr. Cordero. Thereby he

disregarded his own order entered at the hearing on October 16, 2003, where he suspended all proceedings in the *Pfuntner* case until Dr. Cordero had appealed his decisions all the way to the Court of Appeals for the Second Circuit, where they had been since May 2, 2003, docket no. 03-5023, and from there to the Supreme Court. (Cf. §I of Dr. Cordero's motion of September 9, 2004, in the Court of Appeals, hereby incorporated by reference.) Once more the Judge had sprung another surprise on Dr. Cordero, frustrating his reasonable expectations, and further proving that the Judge's word cannot be relied on.

53. Likewise, in asking Dr. Cordero to prove his claim, the Judge disregarded FRBkrP Rule 3001(f) and the presumption of validity that had attached thereunder since May 15, 2004, to Dr. Cordero's properly filed claim (*id.*, §II).
54. Moreover, Judge Ninfo suspended every other aspect of the case, to the detriment of all the other creditors, and without citing any authority or giving any reason for taking a step that so unnecessarily redounds to the detriment of all the other 20 creditors, whose interest it is to have the case move along so that they can start receiving payment under the plan or see it denied and be free to collect from the DeLanos. Thereby, however, the Judge protected the DeLanos by not having to deal with the issue under 11 U.S.C. §1325(a)(3) whether "the plan has been proposed in good faith and not by means forbidden by law" (cf. ¶38, *supra*). Moreover, by so doing, he provided the DeLanos a subterfuge for not providing to Dr. Cordero the documents that could prove their bankruptcy fraud, so that they claimed in the Statement by Att. Werner of November 9, 2004, "All of the Debtors' financial documents sought by Cordero in his demand relate to the Debtor's finances and have nothing to do with the matter at hand, which is Cordero's claim", targeted by the DeLanos' motion to disallow. Perfect pitcher-catcher coordination, but severely defective by its disregard of the rules (§C.2, *infra*).

**1. Judge Ninfo disregarded the incontrovertible evidence that the DeLanos had documents that they had been requested to produce by Trustee Reiber, by Dr. Cordero, and even by his own Order of July 26; which he allowed them to disobey with impunity**

55. To comply with the Order to prove his claim, Dr. Cordero requested the DeLanos on September 29, to produce a specific list of documents very similar to those on his proposed request of July 19, as well as other documents relating specifically to his claim against Mr. DeLano stemming from the *Pfuntner* case.

56. In his Response of October 28, 2004, by Att. Werner, Mr. DeLano declined discovery of every item requested by Dr. Cordero either as irrelevant or not in the DeLanos' possession. However, that statement is irreconcilable with the facts and the legal obligations of the DeLanos.
57. Let's begin with the pretense that the DeLanos did not have in their possessions the requested documents. At of Dr. Cordero's instigation, Trustee Reiber requested on April 20 and May 18, 2004, that the DeLanos produce documents to support their petition. Although his request was unjustifiably insufficient in its scope given the claims and statements that the DeLanos had made in their petition, the Trustee requested the statements for the last three years of each of 8 of the 18 credit cards that they had listed in Schedule F. Even so, what the DeLanos produced on June 14, 2004, was a single statement for each of those 8 cards and they were between 8 and 11 months old! That fell indisputably short of what they had been requested to produce and showed their effort to avoid producing any documents at all, so much so that the Trustee moved to dismiss their case for "unreasonable delay". Nevertheless, by producing them the DeLanos also showed that they did keep such statements for many months and presumably for all their cards, for it is implausible that they just happened to have one single statement of each of the cards that happened to be included in the request.
58. Dr. Cordero brought to Trustee Reiber's attention the gross insufficiency of what they had produced. Eventually, on July 28, 2004, the DeLanos produced some of the statements that Att. Werner had subpoenaed from issuers of those credit cards. Among them was the set produced by Discover Card for Mr. DeLano's account 6011 0020 4000 6645. It included the statements since April 16, 2001, until the one with the payment due date of May 29, 2004. All of them were addressed to him at the DeLanos' home on 1262 Shoecraft Road, Webster, NY 14580-8954. This shows that as late as May 2004, months after filing their petition, the DeLanos kept receiving monthly credit card statements. It is also all but certain that they kept receiving the monthly statements for the other credit card that they had. The evidence for this is presented here:

**Table: Credit bureau reports for the DeLanos showing credit cards with activity well into 2004**

	Credit reporting agency	Date of report	Person reported on	Credit card issuer	Credit card account no.	Date of: last activity=a; balance=b; update=u; payment=p & amount; or items as of date reported=i
1.	Equifax	July 23, 04	David D.=D	Capital One	4388 6413 4765*	<b>i: July 2004</b>

	Credit reporting agency	Date of report	Person reported on	Credit card issuer	Credit card account no.	Date of: last activity=a; balance=b; update=u; payment=p & amount; or items as of date reported=i
						<b>p: January 2004</b>
2.			D	Capital One Bank	4862 3621 5719*	<b>i: July 2004</b> <b>p: February 2004</b>
3.			D	Cbusa sears	3480 0743 0*	<b>i: July 2004</b>
4.			D	Genesee Regional Bank		<b>i: July 2004</b> <b>p: June 2004</b>
5.			D	MBNA Amer	4313 0229 9975*	i: May 2004
6.			D	Wells Fargo Financial	674-1772	<b>i: February 2004</b>
7.	Equifax	July 23,04	Mary D.=M	Capital One	4862 3622 6671*	p: February 2004
8.	Experian	July 26, 04	D	Bank of America	4024 0807 6136...	b: May 2004
9.			D	Bank of Ohio	4266 86 99 5018	<b>p: May 2004: \$197</b>
10			D	Bk I TX	4712 0207 0151...	<b>p: May 2004: \$205</b>
11			D	Capital One Auto Finance	6206 2156 8765 2	b: June 2004
12			D	Fleet M/C	5487 8900 2018...	<b>p: May 2004: \$172</b>
13			D	HSBC Bank USA	5215 3170 0105...	<b>p: February 04: \$160</b>
14			D	MBGA/JC Penney	80246...	<b>p: July 2004: \$57</b>
15			D	MBNA America Bank NA	7499 0999 89...	b: May 2004
16			D	MBNA America Bank NA	5329 0319 9996...	b: May 2004
17			D	W F Finance	1070 9031 772...	b: June 2004
18			D	First Premier Bank	4610 0780 0310...	<b>p: July 2004: \$48</b>
19			D	Kaufmanns	R25243	b: April 2004
20			D	The Bon Ton	8601...	b: June 2004
21	Experian	July 26, 04	M	Capital One Bank	4862 3622 6671...	b: February 2004
22			M	Fleet M/C	5487 8900 2018...	<b>p: May 2004: \$172</b>
23			M	MBGA/JC Penney	80246...	<b>p: July 2004: \$57</b>
24			M	MBNA America Bank NA	4313 0229 9975...	b: May 2004
25			M	Kaufmanns	R25243	b: April 2004
26			M	The Bon Ton	8601...	b: June 2004
27	TransUnion	July 26, 04	D	Norwest Finance	1070 9031 7720 544	u: June 2004
28			D	First USA Bank.	4712 0207 0151 3292	u: April 2004
29			D	First USA Bank	4266 8699 5018 4134	u: April 2004
30			D	Summit Acceptance Corp	6206 2156 8765 2100 1	u: June 2004
31			D	Citi Cards	3480 0743 0593 0	u: July 2004



	Credit reporting agency	Date of report	Person reported on	Credit card issuer	Credit card account no.	Date of: last activity=a; balance=b; update=u; payment=p & amount; or items as of date reported=i
32			D	MBNA America	4313 0228 5801 9530	u: April 2004
33	TransUnion	July 26, 04	M	Discover Financial Svc	6011 0020 4000 6645	u: June 2004
34			M	Chase NA	4102 0082 4002 1537	u: May 2004
35			M	Citi Cards	3480 0743 0593 0	u: July 2004
36			M	JC Penney/MBGA	1069 9076 5	<b>p: July 2004</b>

59. These 36 accounts are by no means all those that the DeLanos have, just those for which those particular credit bureau reports as of July of last year provide a date under any of the categories of the last column of the table above and for which that date is in 2004. Nevertheless, they are enough to show that only an utterly biased person toward the DeLanos could even imagine that they did not receive any credit card statements so that they could no produce them to comply with the requests for those statements. They had no shortage of such requests: of April 20 and May 18 by Trustee Reiber; of August 14, September 29, and November 4 by Dr. Cordero; and the Order of July 26 of Judge Ninfo. Only a person utterly biased could disregard the fact that the DeLanos not only were billed, but also paid credit card charges as late as July 2004, the month when they requested those credit bureau reports. In fact, at the meeting of creditors held on February 1, 2005, at Trustee Reiber's office, Mr. DeLano admitted for the record that he currently uses and makes payments on his credit card issued by First Premier, no. 4610 0780 0310 8156.
60. Likewise, only a person utterly biased toward the DeLanos could assume that they no longer have any checking or savings accounts despite their reference in Schedule B to their having them with M&T Bank, where Mr. DeLano still works. Therefore, they must have received monthly statements of those accounts, which they could also have produced.
61. Consequently, they must be presumed to have concealed those statements. But if they did not have them in their possession, that would only mean that they systematically destroyed them. In so doing, they could have followed the example of their advisor, Att. Werner. He stated for the record at their examination that he destroyed documents that the DeLanos had provided him for the preparation of the petition and that he engages in that practice routinely. That constitutes a flagrant violation of 18 U.S.C. §1519, found in Chapter 73-Obstruction of Justice and providing as follows:

**18 U.S.C. §1519.** Whoever knowingly alters, destroys, mutilates, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of ...any case filed under title 11, or in relation to or contemplation of any such... case, shall be fined under this title, imprisoned not more than 20 years, or both.

62. In the same vein, the few credit card statements that they produced, and more so the credit bureau reports, show that the DeLanos were systematically engaged in a skip and pay pattern for juggling their astonishingly high number of credit cards. This follows from the Equifax reports of July 23, 2004, which show that the DeLanos failed to make the minimum monthly payment a staggering 279 times!
63. It follows that Att. Werner's assertion in that April 16 Statement to the Court that "The Debtors have maintained the minimum payments on those obligations for more than ten (10) years" was plainly untrue. If Att. Werner had conducted even a cursory inquiry, let alone a reasonable one under the suspicious circumstances of a bank loan officer that goes bankrupt owing \$98,092 on unsecured credit cards, he would have readily realized that such a statement was untrue. Therefore, Att. Werner violated FRBkrP Rule 9011(b). As to the DeLanos, to the extent that they gave him that information, they intentionally misled him, the Court, and all the creditors and parties in interest.
64. Consequently, the DeLanos' **1)** scores of credit card accounts; **2)** their charging since "1990 and prior credit card purchase" (Schedule F) tens of thousands of dollars for "living expenses" (Att. Werner's written statement to the Court dated April 16, 2004) and for the two-year educational expenses of their two children at a low in-state tuition, near-home community college; **3)** their systematic failure to make even the minimum payments, **4)** their expert knowledge about the lending industry's handling of delinquencies and bankruptcies; and **5)** their concealment of account statements that they indisputably received and were legally bound to keep, show that the DeLanos made the life-style choice to live it up on credit cards without ever intending to pay their unsecured issuers while concealing the whereabouts of the \$291,470 that they earned in just the 2001-03 fiscal years according to their petition and their 1040 IRS forms.
65. Consequently, only a disingenuous person could pretend that the DeLanos did not produce the requested documents because they did not have them in their possession. Moreover, only a person utterly biased toward them could disregard these facts about the conduct of the DeLanos for more than 15 years, since '1990 and prior years', and still refer to them, as Judge Ninfo did

in his August 30 Order, as “honest but unfortunate debtors who are entitled to a bankruptcy discharge, because they have filed a good faith Chapter 13 case”. How impartial can he appear to a reasonable observer?

**2. Judge Ninfo has protected the DeLanos by requiring Dr. Cordero to prove his claim against Mr. DeLano and then allowing the latter, in disregard of the broad scope of discovery under FRCivP Rule 26, to allege self-servingly the irrelevancy of the requested documents to deny Dr. Cordero every single one, whereby the evidentiary hearing for Dr. Cordero to prove his claim will be a sham!**

66. Confirming this favorable prejudgment of the DeLanos before they had ever taken the stand or even had their petition formally submitted to him by Trustee Reiber, Judge Ninfo stated in his Order of November 10, 2004, that he “in all respects denied...the Cordero Discovery Motion” of November 4, “because DeLano indicated in the Response [to Dr. Cordero’s discovery request of September 29] that he had produced all documents which he has in his possession that are relevant to the Claim Objection Proceeding”. This the Judge stated although Mr. DeLano did not provide a single document requested by Dr. Cordero! He just took Mr. DeLano’s self-serving assertion at face value and purely and simply disregarded the facts and common sense.
67. Judge Ninfo made that decision by disregarding once more the rules. He did not even mention, let alone discuss, as judges do who apply the law, Dr. Cordero’s argument in his November 4 motion about the broad scope of discovery under FRBkrP Rule 7026 and FRCivP Rule 26(b)(1), providing that “Parties may obtain discovery regarding **any matter**, not privileged, that is relevant to the claim or **defense** of any party” (emphasis added). Based thereon, Dr. Cordero argued that he was entitled to defend against the DeLanos’ untimely motion to disallow his claim, which led to Judge Ninfo’s August 30 Order requiring him to take discovery from Mr. DeLano. His defense is dependent precisely on taking discovery that will allow him to establish, among other things, that the DeLanos’ motion is a desperate attempt in contravention of FRBkrP 9011(b) to eliminate him from their case because he is the only creditor that objected to the confirmation of their Chapter 13 repayment plan and that has relentlessly insisted on their production of documents that can show whether they submitted their petition in bad faith in violation of 11 U.S.C. §1325(a)(3) and are engaged in bankruptcy fraud, particularly concealment of assets.
68. Had Judge Ninfo had any regard for the rules, he would not have uncritically sustained Att.

Werner's wholesale denial in his October 28 Response to Dr. Cordero's discovery request on the pretense that "all of such demands are not relevant to the claim of Richard Cordero against the Debtors." Instead, he would have complied, as judges respectful of the legality do, with FR CivP Rule 26(b)(1), which provides that:

...Relevant information **need not be admissible** at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. (emphasis added)

69. Moreover, had Judge Ninfo not been so blind by his bias, he would have put two and two together to conclude that the DeLanos' avoidance for months of their duty to comply under 11 U.S.C. §521(3) and (4) with Trustee Reiber's document production requests to the point that the Trustee moved to dismiss for "unreasonable delay" constituted reasonable evidence that in refusing to provide even one single document requested by Dr. Cordero Mr. DeLano was engaging in the same conduct aimed at the same objective, namely, concealing documents to prevent the discovery of his bankruptcy fraud.
70. By Judge Ninfo forcing Dr. Cordero to take discovery of Mr. DeLano to prove his claim against Mr. DeLano without requiring the latter to overcome the presumption of validity attached to a properly filed claim under FRBkrP Rule 3001(f), only to deny him every single document requested, the Judge has made sure that Dr. Cordero is deprived of the means of examining effectively Mr. DeLano at the upcoming evidentiary hearing. Judge Ninfo has set up Dr. Cordero to fail at a hearing that will be a sham!

**3. Judge Ninfo has protected from Dr. Cordero's discovery requests Mr. DeLano, who was the lender to David Palmer, whom the Judge also protected from Dr. Cordero's application for default judgment, thus raising the question whether Mr. DeLano is protected because the Judge's bias or because a 32-year veteran bank loan officer knows too much not to be protected**

71. Mr. DeLano was the M&T Bank Officer who lent money for Mr. David Palmer to run his moving and storage company Premier Van Lines, which went bankrupt and gave rise to Pfuntner v. Gordon et al., in which both Mr. DeLano and Dr. Cordero are parties. Mr. Palmer too is a party in that case. He was supposed to store Dr. Cordero's property, but in fact abandoned it while he kept taking in his storage and insurance fees. Dr. Cordero served him with a summons and complaint, which Mr. Palmer never answered. Consequently, Dr. Cordero

served him with an application dated December 26, 2002, for default judgment for a sum certain under FRCivP Rule 55, made applicable by FRBkrP Rule 7055, and applied to Judge Ninfo for the entry of such judgment.

72. However, even after Mr. Palmer was defaulted by the Clerk of Court Paul Warren on February 4, 2003, the Judge would not enter such judgment. Instead, flatly contradicting the requirements of Rule 55, Judge Ninfo imposed on Dr. Cordero the obligation to conduct an “inquest” to establish loss or damage of his property. Dr. Cordero participated in such an “inquest” on May 19, 2003. At the hearing on May 21, it was established that there had been loss or damage of Dr. Cordero’s property to the point that Judge Ninfo himself asked Dr. Cordero to resubmit his application for default judgment. Dr. Cordero did resubmit the same application on June 7. Nevertheless, at the hearing on June 25, 2003, Judge Ninfo would not enter it! He denied it by raising for the first time the pretext that Dr. Cordero had not proved how he had arrived at the sum claimed. Yet, that was the exact sum certain that he had claimed back in December 2002 and that the Judge had had six months to examine! (Cf. §§I.B. and C. of Dr. Cordero’s motion of August 8, 2003.)
73. Why would Judge Ninfo ask him to resubmit the application, make him spend his effort, time, and money to do so while getting his hopes high if the Judge was going to deny it on the basis of an element that he had known for six months? Why did Judge Ninfo feel the need to become the advocate of defaulted Mr. Palmer and keep him away from his court rather than protect Dr. Cordero, whose property Mr. Palmer had lost or damaged through negligence, recklessness, and fraud? These questions are particularly pertinent because it was Mr. Palmer who had invoked the protection of the law by applying for voluntary bankruptcy on March 5, 2001, and thereby submitted himself to the jurisdiction of Judge Ninfo, under which he still was. Why did the Judge not hold Mr. Palmer to his obligation under the law to answer a summons or let him contest for himself a default judgment, as he could do under FRCivP Rules 55(c) and 60(b)?
74. Therefore, how inconsistent for Judge Ninfo to state in his Order of August 30, 2004, that “...the Court is not aware of any evidence whatsoever, produced either in the *Premier A[dversary]P[roceeding]* or in the *DeLano* Case, that demonstrates that DeLano is legally responsible or liable for any loss or damage to the Cordero Property, if there in fact has been any loss or damage...”. How can the Judge cast doubt on the fact of such loss or damage since he so much acknowledged that there had been such that he asked Dr. Cordero to resubmit the application for default judgment?...only to deny it again! What this shows is that Judge Ninfo

does not know what he has done and only knows that he will do and say anything so long as it is to protect the local parties and injure Dr. Cordero. (Cf. §II of Dr. Cordero's motion of November 3, 2003, in the Court of Appeals.)

75. This background provides the foundation for asking how much Mr. DeLano, as a party in the *Pfuntner* case and the lender to Mr. Palmer, knows that could incriminate others in bankruptcy fraud. In turn, this begs the question in how many other cases during his 32-year long career as a bank officer Mr. DeLano has been involved one way or another so that now he knows too much not to be protected. The same motives for Judge Ninfo to protect Mr. Palmer from Dr. Cordero's application for default judgment may explain why he is now protecting Mr. DeLano from Dr. Cordero's effort to obtain the documents showing his involvement in bankruptcy fraud. None of those motives, however, can legally justify Judge Ninfo's bias and prejudice against Dr. Cordero.

### **III. The totality of circumstances assessed by a reasonable person gives rise to the appearance of bias and prejudice on the part of Judge Ninfo that requires his recusal**

76. Every assertion that Dr. Cordero has made in this motion or in his other papers referred to here has been supported either by citations and discussion of the applicable law and rules or facts established by other documents in the dockets of the cases under consideration (Table of References, *infra*). Moreover, in our system of justice a person can lose his property, his freedom, and even his life on the basis of circumstantial evidence. Hence, the approach taken by fair and impartial persons, whether they be judges, jurors, or observers, when examining evidence is, not to chip away at it by discarding its elements one by one out of context, but rather to take into consideration "the totality of circumstances" and analyze it from the point of view of the reasonable persons that the law requires people to be. Such persons would proceed on the sound principle that two similar events can be explained away as a coincidence, but three form a pattern.
77. In the *DeLano* case, just as in the *Pfuntner* case, Judge Ninfo, without citing a single law or rule, let alone discussing any, but rather disregarding their provisions as well as the surrounding facts and instead engaging in his very own "local practice" (§§9 *et seq.*, *supra*), has made a series of decisions that so consistently benefit the local parties and injure Non-local Pro se Dr. Cordero as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and bias. This is the antithesis of process in accordance with law and constitutes a denial of due process (cf. §III of Dr. Cordero's motion of November 3, 2003, in the Court of Appeals).

78. In light thereof, would it appear to a reasonable person informed of all the surrounding facts and circumstances of these cases that in the *DeLano* case generally, and at the upcoming evidentiary hearing in particular, Mr. DeLano or Dr. Cordero could say anything that would cause Judge Ninfo to reach any other but the forgone conclusion that Dr. Cordero has no claim against Mr. DeLano, that his claim should be disallowed, and that he has no standing to oppose the confirmation of the DeLanos' plan?...and good riddance! If so, the appearance of partiality has been reasonably questioned and Judge Ninfo has a statutory duty to recuse himself from the *DeLano* case. (Cf. §II of Dr. Cordero's motion of August 8, 2003.)

#### **IV. Relief Requested**

79. Therefore, Dr. Cordero respectfully requests that:

- 1) in the interest of justice the *DeLano* case and the *Pfuntner* case, and at any rate the former, be removed under 28 U.S.C. §1412 to another district where a court unrelated to any of the parties or Judge Ninfo can give rise to the expectation that it will afford all parties a fair and impartial process, as presumably will do the U.S. court for the Northern District of New York in Albany (cf. §III of Dr. Cordero's motion of August 8, 2003);
- 2) a report be made under 18 U.S.C. §3057(a) of these cases to U.S. Attorney General Alberto Gonzales for investigation into bankruptcy fraud; into concealment of assets and other bankruptcy offenses under 18 U.S.C. §152 et seq.; and of the trustees pursuant to 28 U.S.C. §526(a)(1); and that it be recommended that the investigation be conducted by neither the U.S. Attorney's Office nor the FBI Office in Rochester or Buffalo, NY, but rather by such Offices whose personnel is not related to or familiar with any party in these cases, as presumably are the Offices in Washington, D.C., and Chicago;
- 3) Judge Ninfo recuse himself from both cases, and at any rate from the *DeLano* case.

February 17, 2005

59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

Dr. Richard Cordero  
tel. (718) 827-9521

## CERTIFICATE OF SERVICE

I, Dr. Richard Cordero, certify that I served on the following parties my motion dated February 17, 2004, for Judge John C. Ninfo, II, WBNY, to recuse himself:

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February 17, 2005

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TABLE OF REFERENCES  
papers and documents referred to  
in the motion of February 17, 2005  
for Judge John C. Ninfo, II, WBNY, to recuse himself from  
*DeLano, 04-20280, & Pfuntner v. Trustee Gordon et al., 02-2230*

by  
**Dr. Richard Cordero**

1. \*Dr. Cordero's motion of August 8, 2003, for J. Ninfo to transfer *Pfuntner* to the U.S. District Court in Albany, NDNY, and recuse himself due to bias [D:385<sup>•</sup>]
2. \*Dr. Cordero's motion of November 3, 2003, in the Court of Appeals for the Second Circuit for leave to file updating supplement of evidence of bias in Judge Ninfo's denial of Dr. Cordero's request for a trial by jury [D:425]
3. Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, Deadlines [D:22]
4. Voluntary Petition, no. 04-20280, of January 26, 2004, under Ch. 13 of the Bankruptcy Code, with Schedules, of David DeLano and Mary Ann DeLano [D:27]
5. The DeLanos' Chapter 13 Debt Repayment Plan of January 26, 2004 [D:59]
6. Dr. Cordero's Objections of March 4, 2004, to the confirmation of the DeLanos' Chapter 13 debt repayment plan [D:63]
7. "Debtors' statement of April 16, 2004, in opposition to Cordero objection [sic] to claim of exemptions", submitted and filed in Bankruptcy Court by Att. Werner [D:118]
8. Dr. Cordero's Statement of July 9, 2004, in opposition to Trustee Reiber's motion to dismiss the DeLano petition and containing in the relief the text of a requested order [D:193]
9. Dr. Cordero's letter of July 19, 2004, faxed to Judge Ninfo together with his: [D:207]
  10. Proposed order of July 19, 2004, for production of documents by the DeLanos and Att. Werner, obtained through conversion of the requested order contained in Dr. Cordero's July 9 Statement to Judge Ninfo [D:208]
11. Att. Werner's notice of hearing and order of July 19, 2004, objecting to Dr. Cordero's claim and moving to disallow it [D:218]
12. Att. Werner's letter of July 20, 2004, to Judge Ninfo, delivered via messenger, objecting to Dr. Cordero's proposed order for document production [D:211]

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\* Incorporated by reference.

• D:=Designated items in the record for the appeal from the Bankruptcy Court in *In re DeLano*, 04-20280, WBNY, to the District Court in *Cordero v DeLano*; 05cv6190L, WDNY. These items as well as the transcript of the evidentiary hearing in *DeLano* in Bankruptcy Court on March 1, 2005, are in the PDF files in the D Add Pst folder on the accompanying CD.

13. Att. **Werner's** letter of **July 20**, 2004, to Dr. **Cordero** accompanying the following document: [D:212]
14. Dr. **Cordero's** proposed **order** of **July 19**, 2004, for **production of documents**, bearing Att. Werner's scribbles and cross-outs [D:214]
15. Judge **Ninfo's** **order** of **July 26**, 2004, providing for the production of only some documents but **not issuing Dr. Cordero's proposed order** because "to [it] Attorney Werner expressed concerns in a July 20, 2004 letter" [D:220]
16. \*Dr. **Cordero's** **motion** of **August 14**, 2004, for docketing and issue of proposed order, removal, referral, examination, and other relief, noticed for August 23 and 25, 2004 [D:231]
17. Judge **Ninfo's** Interlocutory **Order** of **August 30**, 2004, requiring Dr. Cordero to take **discovery** of his claim against Debtor **DeLano** arising from the *Pfundtner v. Trustee Gordon et al.*, no. 02-2230, **case on appeal** in the Court of Appeals for the Second Circuit in *In re Premier Van et al.*, no. 03-5023 [D:272]
18. \*Dr. **Cordero's** **motion** of **September 9**, 2004, in the Court of Appeals for the Second Circuit to **quash** the order of Bankruptcy Judge John C. Ninfo, II, of August 30, 2004, to **sever a claim** from the **case on appeal** in the Court of Appeals *In re Premier Van Lines* docket no. 03-5023, to try it in the bankruptcy case *In re DeLano*, docket no. 04-20280 [D:440]
19. Dr. **Cordero's** letter of **September 29**, 2004, to Att. **Werner** requesting **production of documents** pursuant to Judge Ninfo's August 30 order and without prejudice to Dr. Cordero's September 9 motion to quash it in the Court of Appeals for the Second Circuit [D:287]
20. Att. **Werner's** letter of **October 28**, 2004, to Dr. **Cordero** accompanying Mr. DeLano's Response to **discovery** demand of Richard Cordero-Objection to Claim of Richard Cordero, where discovery of every item requested is **denied** as not relevant and the item concerning Mr. Palmer is said not to be in Mr. DeLano's possession [D:313]
21. Dr. **Cordero's** **motion** of **November 4**, 2004, to **enforce** Judge Ninfo's Order of August 30, 2004, by ordering Mr. DeLano to produce the requested documents and declaring that the Order does not and cannot prevent Trustee Reiber from holding a §341 examination of the DeLanos [D:317]
22. Att. **Werner's** **statement** of **November 9**, 2004, to Judge Ninfo on behalf of the DeLanos' "opposition to Cordero [sic] motion regarding **discovery**" and requesting that it **be denied in all respects** [D:325]
23. Judge **Ninfo's** **Order** of **November 10**, 2004, **denying** in all respects Dr. Cordero's November 4 motion for discovery and a §341 examination of the DeLanos and holding its hearing, noticed for November 17, to be moot [D:327]

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\*Incorporated by reference.

# Dr. Richard Cordero

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March 24, 2005

Hon. Judge Ralph K. Winter, Jr.  
Chair of the Committee to Review  
Circuit Council Conduct and Disability Orders  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

Re petition for review by the Judicial Conference

Dear Judge Winter,

Thank you for your letter of February 15 concerning my letters of last February 7 and January 8, and my petition of November 18, 2004, to the Judicial Conference for review under the Judicial Conduct and Disability Act. I brought to your attention how a clerk at the Administrative Office of the U.S. Courts, namely, Assistant General Counsel Robert P. Deyling, blocked the petition from reaching the Conference by passing judgment on a jurisdictional issue. I requested that you cause my petition to be forwarded to the Conference for it to determine the issue of jurisdiction and eventually the petition itself.

I have prepared a reply to your letter and for the reasons stated therein, I respectfully request that you formally submit it to the other members of the Committee as well as to the Judicial Conference.

sincerely,

*Dr. Richard Cordero*

# JUDICIAL CONFERENCE OF THE UNITED STATES

## Petition for Review of the actions of the Judicial Council of the Second Circuit

In re Judicial Misconduct Complaints

CA2 dockets no. 03-8547  
and no. 04-8510

Dr. Richard Cordero, Petitioner and Complainant, Pro Se

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### REPLY

to the Chairman of the Committee  
to Review Circuit Council Conduct and Disability Orders  
on the statutory requirement under 28 U.S.C. §331 for the whole  
Committee to review all petitions for review to the Judicial  
Conference and on the need for the Conference to decide the issue  
of jurisdiction

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Dr. Richard Cordero, Pro se Petitioner, affirms under penalty of perjury the following:

1. On November 18, 2004, Dr. Richard Cordero filed with the Administrative Office of the U.S. Courts a petition to the Judicial Conference for review under the Judicial Conduct and Disability Act, 28 U.S.C. §351 et seq., (hereinafter the Act) of two orders of the Judicial Circuit of the Second Circuit denying his petitions for review concerning two judicial misconduct complaints dismissed by the Circuit's chief judge.
2. By letter of December 9, 2004, the Assistant General Counsel of the Administrative Office, Robert P. Deyling, Esq., (Exhibits page 15=E-15, infra) informed Dr. Cordero that "no jurisdiction lies for further review by the Judicial Conference of the United States" and failed to forward the petition to the Conference.
3. Dr. Cordero contends that Mr. Deyling and the Administrative Office only render clerical work for the Conference and have no authority either under the Act or the *Rules of the Judicial Conference of the United States for the Processing of Petitions for Review of Judicial Council Orders Under the Judicial Conduct and Disability Act* (hereinafter the Conference Rules [C:862]), to pass judgment on any issue, much less on the threshold issue of jurisdiction, and thereby prevent the Conference from even receiving a petition for review, let alone determining

by itself the issue of its jurisdiction to entertain the petition.

4. Hence, on January 8 and February 7, 2005, (E-4; E-13) Dr. Cordero wrote to the Hon. Judge Ralph K. Winter, Jr., Chairman of the Committee for the Review of Circuit Council Conduct and Disability Orders (hereinafter the Committee), to request that he declare or cause the Conference to declare Mr. Deyling’s letter to be devoid of any effect as ultra vires and withdraw it and to have his petition forwarded to the Conference for review. Judge Winter replied by letter dated February 15, 2005 (E-1)

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**I. 28 U.S.C. §331 requires that “all petitions for review shall be reviewed by that committee [to review circuit orders]”, so while its chairman can cause it to review a petition, he cannot prevent it or the Judicial Conference from engaging in such review, which should be undertaken by the Conference given the far reaching impact of a decision on the scope of its jurisdiction**

5. In his letter Judge Winter stated that “Mr. Deyling, on behalf of the Administrative Office, handled this matter correctly and according to the Rules”. However, Judge Winter failed to cite any Conference Rule or provision of law that gives either Mr. Deyling or the Administrative Office authority to pass judgment on any issue, much less on the threshold issue of jurisdiction. Therefore, his conclusory statement is insufficient to dispose of Dr. Cordero’s contention that neither Mr. Deyling nor the Office is authorized under the Act or the Rules to do anything other than clerical work, such as receiving a petition and distributing it to the Conference, which is the only entity that can pass judgment on whether it has jurisdiction to review a petition. “A careful reading of the statute makes this very clear.”

6. Thus, Conference Rule 9 states the limited scope of clerical work that either can perform:

...the Administrative Office shall promptly acknowledge receipt of the petition and advise the chairman of the Judicial Conference Committee to Review Circuit Council Conduct and Disability Orders, a committee appointed by the Chief Justice of the United States as authorized by 28 U.S.C. §331.

7. In turn, 28 U.S.C. §331, 4th paragraph, provides as follows:

The Conference is authorized to exercise the authority provided in chapter 16 of this title [i.e. Complaints Against Judges and Judicial Discipline] as the Conference, or through a standing committee. If the Conference elects to establish a standing committee, it shall be appointed by the Chief Justice and **all** petitions for review **shall** be reviewed by that committee. (emphasis added)

8. This provision is authority for the proposition that the Committee has the legal obligation to act and do so with respect to “all petitions for review”, such as Dr. Cordero’s and not just such as in the judgment of the Administrative Office or a clerk thereof can be forwarded to the Conference; and “all” of them “shall be reviewed by that committee”. This means that not even the chairman of that Committee, in this case Judge Winter, has the legal authority to decide in lieu of the whole

Committee to deny review.

9. In this case, however, it should be the Judicial Conference itself that undertakes such review. This is so because the issue of jurisdiction goes to the essence of its power to function in the context of the Act and because the argument made in Dr. Cordero's petition in favor of its jurisdiction is novel. The basis for calling it novel is that in the 25 years since the Act was adopted in 1980, the Conference has only issued 15 orders and Dr. Cordero read all of them after managing to have the Administrative Office send them to him. None of them contains an argument for jurisdiction based on an analysis of the Act. As an issue on first impression that requires the interpretation of the inner workings of the Act's provisions, as shown below, and that will have an impact far beyond this petition by affecting the availability of review under the Act of all other complainants, the scope of the Conference's jurisdiction should be determined by the whole Conference, not the Committee.
10. It is the Conference that has the necessary power to depart, if need be, from a narrow interpretation of its jurisdiction that has rendered the Act a useless mechanism for processing judicial misconduct complaints and eliminating the underlying causes for such complaints. This has frustrated Congress' purpose in enacting it and even led Chief Justice Rehnquist to appoint Justice Breyer in May 2004 to chair a committee to study its misapplication. Therefore, for the Conference to decide this petition's arguments for its jurisdiction and eventually decide the petition will be a step toward correcting the profound, long-standing problem of the Act's evisceration as well as one consistent with the action taken to that end by the Conference's president and the top officer of the Judicial Branch. Under these circumstances, the Committee should defer to the Conference and the Conference should take the opportunity to deal in depth with the Act through this petition.

**II. The petition to the Judicial Conference explicitly seeks review under §357(a), which is not excluded by action allegedly taken under §352(c) by the Council, although it never even pretended to have acted thereunder**

11. Judge Winter stated in his letter that "your petition seeks review of a judicial council action taken under 28 U.S.C. §352(c)". That statement is inaccurate both as a matter of fact and in legal terms.
12. To begin with, Dr. Cordero's petition for review to the Conference explicitly states what basis of jurisdiction it invokes. Its first substantive section after the statement of the questions presented for review is this: "II. The Judicial Conference has jurisdiction over this appeal because the

complainant was “aggrieved” by the Judicial Council”. The term “aggrieved” appears in §357(a), which reads thus:

**28 U.S.C. §357. Review of orders and actions**

**(a) Review of action of judicial council.-** A complainant or judge aggrieved by an action of the judicial council under section 354 may petition the Judicial Conference of the United States for review thereof.

13. It is on the basis of §357(a) that Dr. Cordero invoked the Conference’s jurisdiction to review his petition. By its own terms, that section is broad enough to encompass his petition because he was “aggrieved” by the Council when without any investigation it denied his two petitions for review of the dismissals without any investigation either by the acting chief judge of his two complaints, thereby leaving him to continue to suffer the misconduct of the complained-about judges.
14. Moreover and as a matter of fact, the Council did not even pretend to have denied the petition under §352(c). Anybody who is familiar with the way the Council systematically discards petitions for review, knows that it only issues a form that none of its members bothers to sign and that by hand of the circuit executive states that:

Upon consideration thereof [of the chief judge’s order dismissing the complaint and the complainant’s petition for review]  
ORDERED that the petition for review is DENIED for the reasons stated in the order dated [and the date of the chief judge’s order].

15. That is the stated basis on which the Judicial Council of the Second Circuit denied each of Dr. Cordero’s two petitions (E-17; E-18) for review of the acting chief judge’s orders of dismissal of June 8 and September 24, 2004, respectively. Since the acting chief judge dismissed each of the complaints with disregard for his obligations under §§351-353 with respect to those complaints and as part of a pattern of systematic dismissal of judicial misconduct complaints (see §IV of the petition), the Council only further “aggrieved” Dr. Cordero for having lent its support to such disregard for the Act.
16. By its own words, the Council could not have taken action under §352(c). Its own *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers under 28 U.S.C. §351 et seq.* (hereinafter JC2<sup>nd</sup> Rules [C:75]), do not even mention §352(c). Neither the members of a review panel nor those of a whole council are afforded the opportunity or have the means of expressing whether they are taking action under §352(c), or for that matter any other provision, such as §354. Their options for action are these:



## JC2nd Rule 8. Review by the Judicial Council of a Chief Judge's Order

...

**(b) Mail ballot.** Each member of the review panel to whom a ballot was sent will return a signed ballot, or otherwise communicate the member's vote, to the chief judge by the return date listed on the ballot. The ballot form will provide opportunities to vote to (1) **deny** the petition for review, or (2) **refer** the petition to the full membership of the judicial council. The form will also provide an opportunity for members to indicate that they have disqualified themselves from participating in consideration of the petition. Any member of the review panel voting to refer the petition to the full membership of the judicial council, or after such referral, any council **member voting to place the petition on the agenda** of a meeting of the judicial council shall send a brief statement of reasons to all members of the council.

The petition for review shall be referred to the full membership of the judicial council upon the vote of any member of the review panel and shall be **placed on the agenda** of a council meeting upon the **votes** of at least **two members** of the council; **otherwise**, the petition for review will be **denied**. (emphasis added)

17. Panel members have nothing more to do than to put a check mark in a denial or referral box. But if any of them or any other member of the council writes anything else, it is to explain why the council as a whole should consider the petition, rather than why it should deny it. Denial comes by default, due to the failure of any other judge to second a judge's initial vote for consideration. Furthermore, even if the whole council takes a decision, it does not have to state whether it was under §352(c) or §354. As a matter of fact, it does not even have to explain its decision in a memorandum:

### JC2nd Rule 8. (f) Notice of Council Decision.

(1) The order of the judicial council, together with any accompanying memorandum in support of the order, will be filed and provided to the complainant, the judge or magistrate judge, and any judge entitled to receive a copy of the complaint pursuant to rule 3(a)(2).

**A. Subsection 352(c) only states the prerequisite of being “aggrieved” for petitioning a council and the effect of a council’s denial of a petition, but it does not empower a council to decide such denial on any or no grounds whatsoever, given that §354 states the duty for and sets the bounds on a council’s action**

18. This is what subsection §352(c) provides:

**§352(c) Review of orders of chief judge.** –A complainant or judge aggrieved by a final order of the chief judge under this section may petition the judicial council of the circuit for review thereof. The denial of a petition for review of the chief judge’s order shall be final and conclusive and shall not be judicially reviewable on appeal or otherwise.

19. The first sentence of this subsection shows that if a complainant can be “aggrieved” by a chief judge’s final order, then he can be equally “aggrieved” when a council denies his petition expressly on the basis of that very same order. That reason for being “aggrieved” falls within the very broad scope of the term, which the Act does not limit by reference either to the order’s content or circumstances of issue.

20. No analysis of that sentence or the whole subsection, let alone a gloss over it, can possibly conclude that if a council denies a petition allegedly under §352(c), then the complainant cannot legally be “aggrieved” by its denial or that he cannot be so much so as to qualify within the purview of the very same term “aggrieved” under §357(a). A basic rule of construction provides that a word in a legal instrument has the same meaning everywhere it is used with no differentiating qualifier. Both §352(c) and §357(a) use the term the same way: ‘An aggrieved complainant or judge’.

21. Not only that key term links those two provisions, but also the Act’s structure and workings link §352(c) to §354. Indeed, the second sentence of §352(c), by its own terms only states the **effect** of a council’s denial of a petition for review. It does not state how a council can review a petition, let alone deny it. That cannot mean that §352(c) constitutes an unbounded grant of power to a council to do whatever it wants. It should be axiomatic that in a government subject to the rule of law no entity of any of its branches, such as a council is within the Judicial Branch, can act or refuse to act arbitrarily, just because it feels like it or it suits the interest of the class of persons that compose it, which in this case would be the interest of protecting complained-about peer judges and the public image of the class. Therefore, even a council constrained or permitted to take action must do so within the bounds set down by law or rule.

22. Section 354 is where the Act imposes on a council the duty and grants it the power to act. This

is expressed unequivocally by its title:

**§354. Action by judicial council**

23. By contrast, §352 provides for a different type of action by a different actor and at an earlier stage, so it is titled thus:

**§352. Review of complaint by chief judge**

24. It is not in the latter section dealing with action by a chief judge, let alone in a subsidiary sentence of a subsection therein, where the council would reasonably go to find out what it is that it can do under the Act. Legislative drafting is assumed to be carried out by as reasonable people as the reasonable man and woman who provide the standard of conduct against which the conduct of the addressees of the law is measured. Hence, it is untenable to assume that Congress was so unreasonable as to nest in a sub-sub level of a section concerned with a chief judge a grant to a council of its largest measure of power: to deny a petition for any reason and no reason without any procedural requirements.
25. Reasoning by opposite also leads to the conclusion that §352(c) is not a stand alone provision that grants a council unbounded power to act and not to act without regard for the rest of the Act: Suppose that instead of denying the petition for review of the chief judge's order, a council were to grant it. Could the mere fact that no special committee was appointed and that the council lacked the information that its report would have contained constitute the grounds for the council to claim authority to take any action whatsoever that it fancied, including any action that the complainant requested as relief in his petition? "*Of course not!*", the complained-about judge would scream and any person of sound judgment would have to agree with him. By the same token, the complainant would argue, the complained-about judge could not, just because of those circumstances, be the one to set bounds on what the council could do. Rather, a conscientious council striving to avoid even the appearance of taking arbitrary and biased action and to demonstrate its respect for the rule of law would have to look to §354 to determine what action it had the duty to take, what powers it had to discharge it, and the bounds for their exercise. It follows that even if a council took action under §352(c), it would still have to look to §354 to determine what actions it had to take to achieve the purpose of the Act and could take to remain within its bounds.

26. Section 354 opens by setting a bound thus:

**§354. Action by judicial council**

**(a) Actions upon receipt of report.-**

**(1) Actions.-** The judicial council of a circuit, upon receipt of a report filed under section 353(c)-...

27. To take action under §354(a), the council must have received a report. The Judicial Council of the Second Circuit could not have remained within that bound when it denied Dr. Cordero's petition for review because the Council could not have received a report since no special committee was ever appointed so that no committee conducted any investigation on which a report could have been submitted.
28. Just because the Council was deprived of the benefit of a special committee report it was not constrained to take action under §352(c) and deny any and all petitions. Section 354(b) empowered it to conduct its own investigation. It provides thus:

**§354. (b) Referral to Judicial Conference.-**

**(1) In general.-** In addition to the authority granted under subsection (a), the judicial council may, *in its discretion*, refer any complaint under section 351, together with the record of *any* associated proceedings and its recommendations for appropriate action, to the Judicial Conference of the United States. (emphasis added)

29. This subsection endows a council with discretionary power to forward a complaint on its own to the Conference, and if "any associated proceedings" have taken place, then it must join them to the complaint upon forwarding it to the Conference. The terms "any complaint under section 351" and "any associated proceedings" are sufficiently broad to allow a council 'to conduct any investigation which it considers to be necessary', cf. §354(a)(1)(A), of any complaint regardless of how the chief judge disposed of it. This grant of power encourages referral to the Conference precisely where the chief judge has failed to undertake proceedings that he should have associated to his handling of the complaint, such as 'conducting a limited inquiry' under §352(a) or 'appointing a special committee' under §353.
30. Both the chief judge and the council failed to investigate although they should have done so on the strength of the evidence of judicial misconduct presented in the complaint and of the injury that the misconduct caused to Dr. Cordero in particular and to the administration of justice by the courts for the public benefit in general. Their failure to investigate constituted abuse of discretion. Worse still, their failure was part of their systematic dismissal of complaints and denials of petitions. It constituted dereliction of duty, the intentional disregard of their duty to eliminate judicial misconduct "prejudicial to the effective and expeditious administration of the business of the

courts” (§351(a)), so as to achieve the purpose of the Act. On both counts the chief judge and the council “aggrieved” Dr. Cordero and afforded him the basis for petitioning the Conference.

**B. Neither a chief judge nor a council secures immunity under §352(c) from Conference review by systematically failing to investigate complaints, thus frustrating the purpose of the Act and leaving the complainant to suffer the misconduct of the complained-about judge, whereby the complainant is “aggrieved”**

31. A chief judge cannot insulate himself from review by the Judicial Conference by the simple maneuver of not appointing a special committee to investigate whether a judge’s conduct has been “prejudicial to the effective and expeditious administration of the business of the courts” (§351(a)). To do so would only allow the business of the courts to continue being administered ineffectively and sluggishly, thereby defeating the Act’s purpose, which is not to protect the chief from embarrassment, but rather to eliminate such prejudice. Hence, such non-appointment is a particularly perverse maneuver because it covers for the chief judge’s interest in not having instances of bad administration exposed during his term in office and associated with him.
32. In the same vein, a council, precisely when it is least informed because it lacks the report of a §353 special committee’s investigation, cannot spare itself any investigation under §354(b) of the complaint and, by merely pretending to have denied under §352(c) a petition for review of a chief judge’s uninformed and likely self-serving order, insulate itself from review by the Judicial Conference. Such expediency only compounds the prejudice to the Act’s purpose and aggravates the deleterious effect of the perverse maneuver on the courts’ business.
33. If the chief judge looks after himself, and the council of his peers looks only at his order, and the Conference never even sees a petition, who ever reviews the causes for complaint in the business of the courts? No wonder the Conference has issued only 15 orders in the 25 years since the Act was passed in 1980. Such a self-defeating construction of the Act cannot be the way Congress intended the Act to be read. This is particularly so when there is an alternative and reasonable construction of the second sentence of §352(c): A judicial council’s denial of a petition is final unless the complainant or the judge is “aggrieved” under the terms of §357(a) and §354, such as by their failure to investigate a complaint, but if so, an appeal lies only in the Judicial Conference, not in an appeal to the courts.

**III. Although both the chief judge and the Council are required by the Act to handle complaints “expeditiously” and “promptly”, they failed so to handle the complaints of Dr. Cordero, whereby they also “aggrieved” him and provided further basis for his petition to the Conference**

34. Judge Winter also wrote that “Under 28 U.S.C. §352, the chief judge may dismiss a complaint after “expeditious review.” This is exactly what occurred with respect to the complaints you filed.” This statement is contrary to the facts.
35. Dr. Cordero’s complaint against Bankruptcy Judge John C. Ninfo, II, WBNY, dkt. no. 03-8547, was filed on August 11, and reformatted and resubmitted on August 27, 2003. It was dismissed only on June 8, 2004. Under what conceivable notion of “expeditious” is action taken 10 months later “expeditious”!? Ten months despite the evidence that neither Chief Judge John M. Walker, Jr., nor Acting Chief Judge Dennis Jacobs used the time to “conduct a limited inquiry”, as required under §352(a), and the fact that neither appointed a special committee. Ten months without taking action while a pro se and non-local litigant was being abused by a biased judge! Ten months even though on February 2, 2004, Dr. Cordero wrote to the Chief Judge to expressly bring to his attention the requirement that the Act laid upon him to handle a judicial misconduct complaint “promptly” and “expeditiously”.
36. Ten months despite the fact that on March 19, 2004, Dr. Cordero filed a complaint against the Chief Judge himself precisely for his failure to act “promptly” and “expeditiously”, whereby he was unlawfully and insensitively tolerating further injury to Dr. Cordero at the hands of one of his peers, Judge Ninfo. For its part, that complaint, dkt. no. 04-8510, was not dismissed until September 24, 2004, that is, more than half a year later again without even a limited inquiry or the appointment of a special committee. What is more, it was dismissed on the allegation that it had become moot by the dismissal of the earlier complaint. So why did Acting Chief Judge Jacobs fail to state so “promptly” and “expeditiously” since he was the one who dismissed the earlier complaint rather than inconsiderately make Dr. Cordero wait for months in vain during which he could have engaged the petition process?
37. Consequently, when the Judicial Council of the Second Circuit failed to exercise its discretionary power under §354(b)(1) to conduct the investigation that Chief Judge Walker and Acting Chief Judge Jacobs should have undertaken and that could have allowed them to corroborate Dr. Cordero’s contention of judicial misconduct and take corrective action, the Council disregarded the purpose of the Act and its duty thereunder to attain it. By so doing, the

Council left undisturbed the complained-about Judge Ninfo and other court officers who have engaged in a series of acts of disregard of the law, the rules, and the facts so repeatedly and consistently to the benefit of the local parties and to the detriment of Dr. Cordero, the only non-local and pro se party, as to constitute a pattern of non-coincidental, intentional, and coordinated wrongdoing in support of a bankruptcy fraud scheme. Through such disregard for legality and bias Judge Ninfo has caused Dr. Cordero since 2002 an enormous waste of effort, time, and money and inflicted upon him tremendous aggravation. By their inaction, the Chief Judge, the Acting Chief Judge, and the Council have condoned Judge Ninfo's misconduct and thus encouraged him to further engage in it, which he has done since Dr. Cordero filed his complaint in 2003, and as recently as March 1, 2005 (E-19). Through dereliction of their duty under the Act, Chief Judge Walker, Acting Chief Judge Jacobs, and the Council of the Second Circuit have insensitively and wrongfully failed to protect a complaint. What is more, they have condoned the denial by Judge Ninfo and thereby engaged themselves in the denial to Dr. Cordero of due process of law under the Constitution. By so doing, they have "aggrieved" Dr. Cordero. As an "aggrieved" complainant under §357(a), Dr. Cordero now has the right to have his petition reviewed by the Judicial Conference.

**IV. The request for a report under 18 U.S.C. 3057(a) to the U.S. Attorney General for an investigation into bankruptcy fraud called on the judges to abide by their obligation thereunder and is totally independent from any issue of jurisdiction of the Conference or the Committee under the Act**

38. Judge Winter also stated that he "cannot report the alleged judicial misconduct to the U.S. Attorney General [because] neither the Committee, nor the Judicial Conference itself, can take further action with respect to your request for review".
39. To make that request, Dr. Cordero explicitly invoked 18 U.S.C. 3057(a), which provides thus:
  - (a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, *shall* report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed....(emphasis added)
40. By its own terms, this provision has absolutely nothing to do with the Conference or the

Committee, much less with whether either has jurisdiction under the Act to review a petition. It has to do only with whether a person is a “judge, receiver, or trustee” and has, not even evidence or certainty, but rather just “any reasonable grounds for believing” that any provision of Title 18, Chapter 9 on bankruptcy, has been violated, such as that at §152(6) prohibiting the ‘offer or receipt of a benefit for acting or forbearing to act in a bankruptcy case’ or at §152 (8) prohibiting ‘the concealment or destruction of documents in contemplation of or after filing a bankruptcy petition and relating to the financial affairs of the debtor’. If so, he “**shall** report to the appropriate United States attorney”. This is not an option; it is an obligation to act. That is what the law imposes on such a judge.

41. Hence, when judges shirk that obligation by mixing it with something totally extraneous to it, what confidence do they instill in the public that they in fact abide by their oath of office at 28 U.S.C. §453 to “administer justice without respect to persons”, that is, even if for the sake of the integrity of judicial process, the law must be applied to investigate one of their peers? Do judges apply the law because a moral duty compels them to abide by their professional obligation to do so or do they apply it only when it suits them and their peers because, after all, who is there to complain successfully against them? These are legitimate questions justified by the facts, the same that caused Chief Justice Rehnquist to appoint Justice Breyer in May 2004 to chair the committee to study the misapplication of the Act.

## **V. Relief requested**

42. Therefore, Dr. Cordero respectfully requests:
  - a) that Judge Winter reconsider the position that he expressed in his February 15 letter and in light of the statutory requirement of 28 U.S.C. §331, 4th paragraph, that “**all** petitions for review **shall** be reviewed by that committee”, not just its chairman, submit to the Committee this statement together with Dr. Cordero’s letters of February 7 and January 8, and his petition for review of November 18, 2004, to the Judicial Conference;
  - b) that Judge Winter cause the Committee to submit to the Judicial Conference Dr. Cordero’s petition and arguments for the Conferences’ jurisdiction;
  - c) that the Conference decide that issue of jurisdiction and, if it decides to exercise it, that it determine the petition itself;
  - d) that the judges in the Committee and the Conference, individually and collectively, make a report under 18 U.S.C. 3057(a) to the U.S. Attorney General of the evidence of a judicial



misconduct and bankruptcy fraud scheme described in Dr. Cordero's petition, subsequent writings, and their exhibits, and request that the ensuing investigation be conducted by U.S. attorneys and FBI agents that are neither acquainted nor friends with any of the court and bankruptcy officers that may be investigated and that to that end neither the DoJ or FBI offices in Rochester or Buffalo, NY, be involved.

Respectfully submitted on

March 25, 2005

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# TABLE OF EXHIBITS

in support of the reply of March 25, 2005  
to the Chairman of the Committee  
for the Review of Circuit Council Conduct and Disability Orders

by  
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2. Dr. <b>Cordero's</b> letter of <b>January 8, 2005</b> , and supporting files sent to the Hon. Ralph K. <b>Winter, Jr.</b> , Circuit Judge at the Court of Appeals for the Second Circuit and <b>Chair</b> of the <b>Committee to Review</b> Circuit Council Conduct and Disability Orders; to request that he withdraw or cause the Judicial Conference to <b>withdraw</b> Mr. <b>Deyling's</b> letter of December 9, 2004, as ultra vires, and <b>forward</b> Dr. Cordero's <b>petition</b> of November 18, 2004, <b>to the Judicial Conference</b> for review .....	4	[C:877]
3. Dr. <b>Cordero's</b> letter of <b>February 7, 2005</b> , and supporting files sent to Judge <b>Winter</b> , stating that he has received <b>no response</b> to his letter of January 8, and <b>requesting</b> that <b>action</b> be taken on that letter and its requests .....	13	[C:890]
4. Letter from Robert P. <b>Deyling, Esq.</b> , Assistant General Counsel at the General Counsel's Office of the Administrative Office of the U.S. Courts, of <b>December 9, 2004, stating</b> that <b>no jurisdiction</b> lies for further <b>review</b> by the <b>Judicial Conference</b> of the orders of the Judicial Council for the Second Circuit dismissing Dr. Cordero's petition for review of the dismissals of his complaints.....	15	[C:859]
5. <b>Judicial Council's</b> order of <b>September 30, 2004, denying</b> Dr. Cordero's <b>petition</b> for review of the dismissal of his <b>complaint</b> about Judge <b>Ninfo</b> , docket no. 03-8547.....	17	[C:672]
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**JUDGE NINFO'S BIAS AND DISREGARD FOR LEGALITY  
CAN BE HEARD FROM HIS OWN MOUTH**

through the transcript of the evidentiary hearing  
of the DeLanos' motion to disallow Dr. Cordero's claim  
held on March 1, 2005,

and can be read about in a caveat on ascertaining its authenticity  
that illustrates the Judge's tolerance of wrongdoing<sup>1</sup>

by

**Dr. Richard Cordero**

1. The transcript in question concerns an evidentiary hearing that Judge John C. Ninfo, II, WBNY, ordered in connection with the DeLano Debtors' motion to disallow Dr. Richard Cordero's claim against Mr. David DeLano, which claim the latter and his wife, Ms. Mary Ann DeLano, had taken the initiative to include in their bankruptcy petition of January 26, 2004. The hearing took place on March 1, 2005, and was recorded by Reporter Mary Dianetti. She also recorded the very first hearing before Judge Ninfo in which Dr. Cordero participated. What happened with the transcript of that earlier hearing illustrates the kind of bias and disregard for the law, the rules, and the facts that occur when Judge Ninfo is in the background. Knowing it will help to understand the circumstances surrounding the above statement by Ms. Dianetti and the need to ascertain the authenticity of the transcript of the recent hearing so that through it the peers of Judge Ninfo can witness the blatant bias and disregard for legality that he engages in when he is very much in the foreground.

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<sup>1</sup> See the transcript of the hearing in a PDF file in the accompanying D Add Pst Transcript folder.

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**A. Court Reporter Dianetti participated in the manipulation of a transcript of a hearing before Judge Ninfo, which she failed to deliver to Dr. Cordero in more than two and a half months after he requested it**

2. On December 18, 2002, the hearing was held of motion of Chapter 7 Trustee Kenneth Gordon to dismiss Dr. Cordero’s cross-claims in Pfuntner v. Gordon et al., docket no. 02-2230, WBNY. Dr. Cordero appeared by telephone. Judge Ninfo dismissed his cross-claims for negligence, recklessness, and defamation in the context of the Trustee’s liquidation of Premier Van Lines, a moving and storage company. The Judge did so despite the legitimate issues of material fact that Dr. Cordero had raised and although the Trustee had provided no disclosure and there had been no discovery under FRCivP Rule 26. At the end of the hearing, Dr. Cordero stated that he would appeal.
3. After Judge Ninfo’s order of December 30, 2002, was sent from Rochester and arrived in New York City, where Dr. Cordero lives, he called Reporter Dianetti on January 8, 2003, to request a transcript of the December 18 hearing. After checking her stenographic packs and folds, she called back and told him that there could be some 27 pages and take 10 days to be ready. Yet, weeks went by without hearing from her. Dr. Cordero had to call her on several occasions to ask why he had not received it. She screened part of another message that he was leaving on her answering machine and finally picked up the phone on Monday 10, 2003. She said that the

transcript would be ready in two days.

4. As attested to by her certificate, Ms. Dianetti did complete the transcript in the next two days, on March 12, 2003. This shows how inexcusable it was for her to delay doing so for more than two months after she was first requested it, whereby she violated FRBkrP Rule 8007(a). Moreover, in violation of 28 U.S.C. §753(b), Ms. Dianetti did not deliver the transcript directly to Dr. Cordero. Much worse yet, although the date on Ms. Dianetti's certificate is March 12, the transcript was not mailed to him until March 26, precisely the day of the hearing at 9:30 a.m. of Dr. Cordero's motion for rehearing for relief from Judge Ninfo's denial of his motion to extend time to file the notice of appeal from the dismissal of his cross-claims against Trustee Gordon. In fact, the transcript was not entered in docket no. 02-2230 until March 26, in violation of FRBkrP Rule 8007(b). Interestingly enough, after Dr. Cordero made a statement at the March 26 hearing, Judge Ninfo said that he had not heard anything different from his moving papers, denied the motion, and cut off abruptly the telephone connection through which Dr. Cordero was appearing. This reasonably suggests that the transcript was unlawfully withheld from Dr. Cordero until it could be found out what he would say at the hearing.
5. The transcript turned out to consist, not of 27 pages, but only of 15 pages of transcription! Were pages left out containing what was said between Judge Ninfo and Trustee Gordon before Dr. Cordero was put on speakerphone or after Judge Ninfo cut him off at the December 18 hearing? That would constitute an ex parte communication between them "concerning matters affecting a particular case or proceeding" in violation of FRBkrP Rule 9003.
6. Interestingly enough, when Ms. Dianetti finally picked up the phone on March 10, she said to Dr. Cordero 'you want it [the transcript] from the moment you came in on the phone', that is, speakerphone. This implies that something had been said before or after Dr. Cordero was on the phone and that she wanted to obtain his tacit consent for her to leave it out. Dr. Cordero told her that he wanted everything and that her statement gave him the impression that other exchanges had taken place between the Judge and Trustee Gordon before and after he was on the phone. She said that she had to look up her notes and put Dr. Cordero on hold. When she came back, she asked him whether he wanted everything from the moment the Judge had said 'Good morning, Dr. Cordero.' He said no, that he wanted everything from the moment the Judge had said 'Good morning, Mr. Gordon.'" She again put Dr. Cordero on hold to look up the calendar. She said that before his hearing began, there had been an evidentiary hearing. He

asked her the name of the parties, but she said that she would have to look up the calendar. She said that Dr. Cordero's hearing had begun at 9:30 a.m.

7. Was Reporter Dianetti told to leave exchanges between Judge Ninfo and Trustee Gordon while Dr. Cordero could not hear them and, if so, who told her so and why? Was the mailing of the transcript to Dr. Cordero delayed so that it could first be vetted for compliance with those instructions? Have transcripts in other cases been manipulated to alter their contents or delay or even prevent their transmission either to the clerk or the party who ordered it? Was a benefit offered or received to participate in such manipulation? None of these and many other questions have been answered through any investigation. Yet, they arouse suspicion that transcripts may not be reliable. This experience prompted Dr. Cordero to ask certain questions of Reporter Dianetti at the recent hearing.

**B. Reporter Dianetti suffered a most strange attack of confusion and nervousness when at the end of the hearing on March 1, 2005, Dr. Cordero asked for a count of stenographic packs and folds**

8. When the evidentiary hearing of the DeLanos' motion to disallow Dr. Cordero's claim against Mr. DeLano began at 1:31 p.m. on March 1, 2005, Dr. Cordero asked Reporter Dianetti whether there was any marker for the point where she was beginning to record. She said that she was beginning a new pack, that is, a pack of folds of stenographic tape.
9. After the hearing ended at 7:00 p.m., Dr. Cordero approached Reporter Dianetti while she was still at her seat and Court Attendant Lorraine Parkhurst was still by her side. He asked the Reporter how many packs she had used. That question spun Ms. Dianetti into an astonishing state of confusion and nervousness, all the more astonishing since she was still gathering the materials that she had just finished using to record the single hearing that afternoon.
10. First she said that there were two, but then she said that there was also a third pack that she had made by taping two sections together. Dr. Cordero asked her that she count the folds in each pack. She said that the estimate of pages was difficult to make because it could be three or four...He told her that he was not asking for an estimate of pages but for a simple count of folds in each pack. That only heightened her nervousness. She said that she needed a pencil. He asked what for. She said to count them. He asked what a pencil had to do with counting folds. She said she needed the head, that is, the head of the pencil, the eraser at the head, then she dropped that and began to show him the numbers on the back of the folds to try to determine

the range, but that only made her confusion more pronounced and she said that it depended where she had began in pack the pack fold 1 to this is 159 then she no it is begun she began on fold it is 3 to 159 said that she rather it is 6 in one to 158 and a half she jumped to pack three that she had not marked pack 3 said came back to the issue of the estimate the pages of estimating the how many pages per fold she protested that nobody ever had asked her to do so why you are asking me to do counting what for you don't trust you think that when the pages come more pages but last time there were the number of the pages what she would send and the cost what had happened before that she had asked another person because she had not understood some words and it doesn't pay to be honest and this counting the pack is that it depende... 'Ms. Dianetti, please, I just want to know the number of the packs and folds used today.'

11. Dr. Cordero noticed the date on two packs that she had said belonged among those used for that hearing. He asked Court Attendant Parkhurst to look at them, she did, and he pointed out that they had been dated 2/1/05! Ms. Dianetti protested and asked Dr. Cordero whether he never made mistakes. Then she wrote on them the correct date of March 1.
12. Ms. Dianetti's state of confusion was such that Dr. Cordero asked Ms. Parkhurst whether she would count the folds. She agreed to do so but Ms. Dianetti protested because it was not fair to keep Ms. Parkhurst in the courtroom that she had to go to the house to stay here when she should be so late that it was... 'Ms. Parkhurst, asked Dr. Cordero, do you mind staying here a while longer to count the folds? If we do not know exactly how many packs and folds were used, all that was said today and all the effort in preparing and attending this hearing will have been in vain'. Ms. Parkhurst said that she did not mind and with Dr. Cordero at her side, she counted aloud the folds of the three packs and made a note for herself of what she had counted. Then he asked Ms. Dianetti to copy the numbers on his notepad so that she could sign it. She protested but went ahead and did it... 'and this pack too I used today'. Unbelievable! There was a fourth pack! It had been right there on her table all along. Dr. Cordero asked Ms. Parkhurst to count its folds, she did, and then added her count to her list; Reporter Dianetti also added it to the list that she was making for Dr. Cordero.
13. Dr. Cordero asked Attendant Parkhurst to sign as witness the list that Ms. Dianetti had made and signed (pg. 31, supra), but she declined to do so, showed him her list on her own notepad, and said that she had made a note of all the packs and folds and that would be enough. Dr. Cordero thanked her and Ms. Dianetti, went to his table and began to gather his book, exhibits,

and his portable computer. What could possibly have triggered such confusion in Reporter Dianetti and caused her to become so nervous?

14. Interestingly enough, the attorney for Mr. DeLano, Christopher Werner, Esq., burst half way through the hearing with a protest to Judge Ninfo because he suspected that Dr. Cordero was recording the hearing on his computer. Did they have an understanding that there would be no independent recording of the hearing, nothing other than what Ms. Dianetti would record or rather, what a vetted transcript would contain? This question finds support in the fact that at the examination of the DeLanos under 11 U.S.C. §§341 and 343 on February 1, 2005, at the office of Chapter 13 Trustee George Reiber, the latter had made an official recording on audio tapes, a reporter had also stenographically recorded the meeting, and still Dr. Cordero had made his own recording using a tape recorder. This experience in conjunction with a hearing that was not going as well for Att. Werner as he could have expected in light of Judge Ninfo's undisguised bias toward his client, Mr. DeLano, before and during the hearing, could have suggested to Att. Werner, perhaps a bit too late, that Dr. Cordero might likewise have come prepared to make his own recording of the hearing, which would frustrate any other arrangement for a different type of recording. Did it?
15. Was something going on between Court Reporter Dianetti, Att. Werner, and Judge Ninfo with regard to the transcript? Interestingly enough, as of February 28, 2005, PACER<sup>2</sup> showed that Att. Werner appeared as attorney in 575 cases, and in 525 the judge was Judge Ninfo. They have worked together on so many cases for so long that they have developed a special relationship. This relationship helps to understand not only why Att. Werner was so upset at the possibility that the benefit of the relationship could be diminished by Dr. Cordero making his own recording of the hearing, but also why Att. Werner took a back seat and let Judge Ninfo be so unashamedly biased as to become the advocate of Mr. DeLano while the latter was being examined by Dr. Cordero.

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<sup>2</sup> PACER is the system for **P**ublic **A**ccess to **C**ourt **E**lectronic **R**ecords. To corroborate the PACER statistics cited here go to <http://www.nywb.uscourts.gov/PACER >Query> and write in the query box the name of the attorney or trustee in question.



**C. Judge Ninfo manifested such undisguised bias before and during the hearing as to become the chief advocate for Mr. DeLano and counsel opposing Dr. Cordero**

16. The evidentiary hearing was triggered by the untimely motion of July 19, 2004, to disallow Dr. Cordero's claim against Mr. DeLano, that is, after the DeLanos and Att. Werner had treated Dr. Cordero as a creditor for six months since the filing of the bankruptcy petition in which the DeLanos listed Dr. Cordero among their creditors. Mr. DeLano had known of that claim since Dr. Cordero served him with his third-party complaint of November 21, 2002, in the Pfuntner case. Therein the claim for compensation was predicated on the negligent and reckless way in which Mr. DeLano, as a bank loan officer of M&T Bank, had exercised the Bank's security interest in the storage boxes that Premier Van Lines, a moving and storage company, had bought with a loan. Premier was storing Dr. Cordero's property and went bankrupt too, like Mr. DeLano, a 32-year veteran of the banking and lending industry and as such an expert in managing borrowed money...and he went bankrupt? How suspicious!
17. Interestingly enough, the motion to disallow was raised on July 19, the day of the hearing of Trustee Reiber's motion to dismiss the petition due to the DeLanos' "unreasonable delay" in producing requested documents. At that hearing, Dr. Cordero presented evidence that the DeLanos had engaged in bankruptcy fraud, particularly concealment of assets.
18. The DeLanos' motion to disallow was heard on August 25. By order of August 30, 2004, Judge Ninfo required Dr. Cordero to take discovery from Mr. DeLano to prove his claim against him and present it at an evidentiary hearing. Dr. Cordero requested documents from Mr. DeLano, who denied every single one of them. Dr. Cordero moved to compel production, but Judge Ninfo denied every single one of them too! It was a set up! The motion to disallow was a subterfuge to eliminate from the bankruptcy case Dr. Cordero, the only creditor that had presented evidence of the DeLanos' bankruptcy fraud. Even documents that Dr. Cordero requested to defend against the motion and show that it had been raised in bad faith were denied by Judge Ninfo, who simply disregarded the broad scope of discovery under FRCivP Rule 26.
19. So Dr. Cordero arrived at the evidentiary hearing on March 1, 2005, without a single additional document having been produced by Mr. DeLano. However, he had prepared a set of questions. But very soon the most extraordinary fact became apparent: Mr. DeLano did not have any idea of the nature of Dr. Cordero's claim against him, the very one that he had moved to disallow.

What is more, Att. Werner did not have any idea either! So much so that during the first recess in the hearing, he and Mr. DeLano walked out of the courtroom with the attorney for M&T Bank, Michael Beyma, Esq., and then Att. Werner and Mr. DeLano came back in and asked Court Attendant Lorraine Parkhurst whether she had a copy of Dr. Cordero's complaint of November 2002 against Mr. DeLano! He was told that it had been filed with the court. Then Mr. Werner turned around and asked Dr. Cordero whether he had a copy. Dr. Cordero said that he had and Att. Werner asked him for a copy!

20. Att. Werner had come to the evidentiary hearing to have a claim disallowed of which he did not even have a copy. Not only that, but he also did not have even the pertinent parts of the complaint that Dr. Cordero had attached to the proof of his claim against Mr. DeLano, a copy of which Dr. Cordero had served on Att. Werner on May 15, 2004. As a result, Att. Werner did not have a clue either what the claim was all about. Therefore, how could he possibly have overcome the presumption of validity that under FRBkrP Rule 3001(f) attached to Dr. Cordero's claim upon its being filed on May 19, 2004? He could not. He was simply relying on his relationship with Judge Ninfo and their denial of Dr. Cordero's request for documents.
21. Dr. Cordero declined to provide Att. Werner with a copy of the complaint. Instead, he asked Att. Werner not to leave the courtroom to get a copy of it in the records office only to come back in and pretend that he and Mr. DeLano knew all along what the claim was that they were trying to disallow. Att. Werner retorted that Dr. Cordero could not tell him, who has been in this business for over 28 years, how to practice law. Thereupon Dr. Cordero asked Ms. Parkhurst and Law Clerk Megan Dorr to call in Judge Ninfo before Att. Werner and Mr. DeLano could leave the courtroom.
22. When the Judge came in and the hearing was back on the record, Dr. Cordero related the whole incident. The Judge found nothing objectionable in such irrefutable proof that Att. Werner had not had before and did not have then any idea of the nature of the claim that he had moved to disallow. Nor did he find reprehensible that during an ongoing examination, Att. Werner had attempted to take advantage of a recess to feed Mr. DeLano answers to critically important questions. On the contrary, when Dr. Cordero moved to dismiss the motion to disallow because raised in bad faith as a subterfuge to eliminate him from the case and as abuse of process, Judge Ninfo denied his motion out of hand and said that it was Dr. Cordero who was making a motion in bad faith!

23. The hearing went on. Under examination, Mr. DeLano not only admitted facts asked of him about his handling of the storage boxes containing Dr. Cordero's property, but also volunteered others. Thus, he said that:

- a) Premier Van Lines had used the Jefferson-Henrietta warehouse to store the storage boxes bought with the loan from M&T Bank and containing the stored property of its clients, such as Dr. Cordero;
- b) Mr. DeLano had seen boxes there with Dr. Cordero's name and told Dr. Cordero so;
- c) Mr. DeLano was under pressure to have the storage boxes moved out of the Jefferson-Henrietta warehouse because the latter was going to put a lien on the boxes to secure unpaid warehousing fees, an action that would have delayed the sale and diminished Mr. DeLano's net recovery from liquidating M&T Bank's security interest in the boxes;
- d) So Mr. DeLano hired an auctioneer, John Renolds, to sell the storage boxes and the auctioneer sold them in a private auction to the single warehouser that he contacted;
- e) Mr. DeLano did not check and did not know whether the auctioneer had checked the capacity of the buying warehouser, whose name he did not remember, to store property safely from damage or loss due to pests, water, humidity, extreme temperature, fire, and theft;
- f) Mr. DeLano did not notify the owners of the property in the boxes to let them know how he intended to dispose of the boxes and find out from them how they wanted their property handled, such as by having it inspected before being removed, or moving it to a place of their choice, or finding out in advance the fees and terms and conditions of the buying warehouser;
- g) After the sale, Mr. DeLano directed Dr. Cordero to the buying warehouser to deal with it about his property;
- h) Dr. Cordero contacted that buying warehouser and its owner –neither of whose names and address Dr. Cordero use at the hearing but he did use them in the complaint containing the claim against Mr. DeLano- but the owner told him that he had no boxes bearing Dr. Cordero's name and that Mr. DeLano had sent him an acknowledgment of receipt that included Dr. Cordero's name, but that he would not sign it because he did not have any boxes holding Dr. Cordero's property;
- i) Mr. DeLano admitted that he had sent the owner such acknowledgment of receipt but that

the owner had turned out to be right because the boxes with Dr. Cordero's property had not been delivered to him given that they had not been in the Jefferson-Henrietta warehouse at all and that Mr. DeLano had made another mistake when he checked the slips in the business records that Premier had in its office in the Jefferson-Henrietta warehouse before including Dr. Cordero's name in that receipt;

j) Mr. DeLano admitted that his mistakes could have caused Dr. Cordero confusion and anxiety and cost him a lot of effort, time, and money as Dr. Cordero tried to find out where his property could be, which eventually was found in part lost or damaged in yet another warehouse, namely, that of Plaintiff Pfuntner; and that it was reasonable for Dr. Cordero to claim therefor compensation from him and M&T Bank and for Mr. DeLano and the Bank to compensate Dr. Cordero to a degree.

24. Upon Mr. DeLano making that frank admission, Dr. Cordero said that the degree of compensation was what had to be determined at trial where all the parties and issues could be tried as a whole. Mr. DeLano further admitted that at trial M&T Bank would call upon him to represent it since he was the officer who had handled the defaulted loan to Premier.

**D. Judge Ninfo disregarded the law and rules of Congress and abdicated his position as a neutral arbiter in order to apply the law of relationships with the local parties**

25. During the examination, Judge Ninfo intervened repeatedly and consistently as the advocate of Mr. DeLano, either answering questions put to Mr. DeLano; spinning Mr. DeLano's answers away from any admission of mistakes or liability; providing explanations for Mr. DeLano to escape difficult questions leading to the admission of the reasonableness of compensation; and finding fault with Dr. Cordero's conduct at the time of the events in question or at the hearing. It is by listening to his own words conveyed in an accurate and complete transcript that the indisputable proof of Judge Ninfo's shocking bias can be obtained. It is for that reason that it is so important that the transcript be requested from Reporter Dianetti and that it be checked against the number of packs and folds in her signed statement and that their authenticity be determined.

26. Where was Att. Werner during Judge Ninfo's advocacy of his client's interests? He was seated in his lower chair from which he would stand up at times to object to questions asked by Dr. Cordero, but not once did he object to any ruling of Judge Ninfo. What a remarkable deferential

attitude throughout an examination that lasted from 1:31 p.m. to 7:00 p.m.!

27. Failure to preserve any objection for appeal has to be suspicious in itself, unless Att. Werner knew that there would be no need for him to appeal because he could take a favorable outcome for granted. This explains why he not only did not have to read Dr. Cordero's claim before or after moving to disallow it, but why he also stated several times that he did not have to prepare himself or Mr. DeLano for the hearing. In what impartial court where the outcome of a proceeding is uncertain would a lawyer volunteer a statement that he and his client are unprepared? The fear of a malpractice suit would deter the lawyer from making such a statement. But there would be no cause for fear if the lawyer had the assurance that, however unprepared, he would deliver the desired outcome to his client thanks to having made the best preparation possible: a well developed positive relation to the judge that made both teammates. Att. Werner has had the necessary deferential attitude and opportunity to develop such relation: 525 cases before Judge Ninfo, according to PACER.
28. In return, Judge Ninfo takes care of him. Indeed, what judge who respects his office and is considerate of the effort, time, and money of others would hear with indifference and allow a lawyer to say with impunity that he came to his courtroom so awfully unprepared and brought a witness totally unprepared? By not making any comment, let alone rebuking Att. Werner for his utter unpreparedness, Judge Ninfo showed his disregard for FRBkrP Rule 1, which provides that "[t]hese rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding"; a statement of purpose that is repeated in FRCivP Rule 1.
29. It is no wonder that, in the assurance of his protective relationship with Judge Ninfo, Att. Werner showed up at the hearing, not only without a copy of the claim that he was trying to disallow, but also without a single law book. After all, what need would he have for such books since he did not cite any rule to support his objections at the hearing, just as he has not cited, let alone discussed, any rule or law, forget about citing a case, in any of his papers submitted to the court. In so doing, he follows the example of Judge Ninfo, who does not cite any authority -unless he cites back what Dr. Cordero after painstaking legal research has cited and discussed- but only states or adds his conclusory statements without any discussion to support what in fact are rulings and decisions by fiat, not by legal reasoning, whether it be in any of his 15 orders or 15 hearings in the Pfuntner and DeLano cases. This is not the way a judge administers justice in a court of law deserving the public's trust, but rather this is how a lord runs the private affairs of his fiefdom

in his and his loyal vassals' interest. Hence, they need not cite authorities to derive or buttress a persuasive argument since they can simply send or have received the signal of a win.

**E. Judge Ninfo looked on in complicit silence while Atts. Werner and Beyma signaled answers to Mr. DeLano during his examination under oath**

30. The transcript of that hearing will also show another shocking manifestation of bias that demonstrates Judge Ninfo's contempt for due process: During the examination, Dr. Cordero remained at his table. To his right were Mr. DeLano, sitting in the witness stand; Att. Werner, at his table five feet away; and Att. Beyma, the lawyer for M&T Bank, in the first bench behind the bar, some nine feet away. On several occasions, Dr. Cordero saw Mr. DeLano suddenly look away from him and toward where the two attorneys were seated and as Dr. Cordero looked at them he caught them signaling to him with their arms!
31. Dr. Cordero protested such utterly unacceptable conduct to Judge Ninfo. He was sitting some 25 feet in front and between Att. Werner and Dr. Cordero and some 30 feet from Att. Beyma. Yet, Judge Ninfo found nothing more implausible to say than that he had his eyes fixed on Dr. Cordero and had not seen anything.
32. However, from the distance and higher level of his bench he had an unobstructed view of the two attorneys and Dr. Cordero, who were in his central field of vision so that it was all but impossible for him not to catch the distraction of either of them flailing his arm. Nevertheless, what he said was belied more patently by precisely what he did not say than by their relative physical positions: Not only did he not say that such conduct, intended to suborn perjury, would not be tolerated in his courtroom, but he also did not even ask either of the attorneys on any of those occasions whether they had signaled an answer to Mr. DeLano. Even if, assuming arguendo, he had not seen them signaling, he did no care to find out either. Yet, he had every reason to ask, precisely because of the same revealing nature of what neither of the attorneys said: Neither protested Dr. Cordero's accusation, which they reflexively would have done had it not been true that they had signaled to Mr. DeLano how to answer.
33. Judge Ninfo's reaction to such unlawful and unethical conduct shows that he runs a court tilted by bias that prevents progress toward a just and fair resolution of cases and controversies, swerving instead toward his own interests. He proceeds, not on the strength of the law or procedural rules, which he does not cite or discuss, but rather by the power of relationships

developed with local parties. The opportunity to develop those relationships is ample. Thus, while Att. Werner has appeared before Judge Ninfo in 525 cases, Trustee Gordon has appeared before him in 3,382 out of 3,383 cases as of June 26, 2004; and Trustee Reiber in 3,907 out of 3,909 as of April 2, 2004, according to PACER. As to Att. Beyma, he is a partner in the same firm in which Judge Ninfo was a partner at the time of his appointment, that is, Underberg & Kessler.

34. These locals appear before him so frequently as to become dependent on his goodwill for the distribution of favorable and unfavorable decisions. What a lawyer or trustee may not get in one case, he may get 15 minutes later when he stands up again before Judge Ninfo for the next case...that is, if he has not shown disrespect by objecting to his rulings and dragging it up on appeal, for the Lord of the Fiefdom grants rewards to those vassals who show deference, but he also meets out punishment to those who challenge him and show rebelliousness. As a result, the law of relationships is the basis on which Judge Ninfo runs his court, rather than a Court of the United States ruled by the law of Congress.
35. Bias is the device for implementing that law. It motivated Judge Ninfo's protection of Trustee Gordon by disregarding Congressional law and rules in order to dismiss out of hand Dr. Cordero's cross-claims against the Trustee at the first hearing on December 18, 2002. Dr. Cordero, a non-local appearing pro se, was expected to accept the ruling and leave it at that. But he didn't. He went on appeal. *The horror of it!* Ever since Judge Ninfo has treated Dr. Cordero as an enemy, not as a litigant exercising his rights and entitled to due process.
36. Then the DeLanos filed their bankruptcy petition and Dr. Cordero presented evidence of their bankruptcy fraud. But Mr. DeLano has been a bank officer for 32 years and as a *loan* officer, he has handled defaulting borrowers, some of whom have ended filing for bankruptcy, as did the owner of Premier, Mr. David Palmer. Mr. DeLano knows too much to be left outside the castle of the Fiefdom, the courtroom where Lord Ninfo protects deserving vassals.
37. The chronicler of the Fiefdom is Court Reporter Dianetti. What will she report in her chronicle of the campaign that Lord Ninfo mounted against the Diverse Citizen of the City of New York, Dr. Cordero, at the hearing on March 1, 2005? Did she become so confused and nervous when asked for a count of the stenographic packs and folds that she had barely finished using because she felt under attack by the Enemy of the Fiefdom and torn in her loyalty to her Lord and the truth?

**F. The transcript can allow the peers of Judge Ninfo to hear his bias from his own mouth, but its authenticity must first be ascertained by unrelated investigators, who should then investigate those related to him and these cases**

38. There are so many interesting questions posed by circumstances in these cases that reinforce each other to impress a bias to their outcomes. They are enough to eliminate coincidences as the phenomenon that explains them away. Instead, when the totality of circumstances are assessed as a whole in terms of the law and common sense, they indicate intentional conduct supported by coordination in furtherance of a wrongful scheme. Its nature and extent can only be ascertained by an investigation.
39. The investigators must be experienced because the persons to be investigated are capable of concealing their unlawful coordination under the cover of their frequent or even daily work contacts. This also provides reasonable grounds to exclude the peers of Judge Ninfo from acting as the investigators of his conduct and that of the people around him. Hence, the investigation should be conducted by U.S. attorneys and FBI agents.
40. However, for their work to have a chance to be trustworthy rather than a whitewash, the investigators must not even know any of the persons that they may investigate. So they must not come from the DoJ or FBI offices in Rochester or Buffalo, who are housed in the same federal building as the courts. By way of example, the U.S. Attorney's Office in the six story federal building in Rochester is the next door neighbor of the U.S. Trustees Office. Of necessity, these officers see each other every day and the relationship that has developed among them is most likely to cloud their objectivity and influence their thoroughness and zeal when investigating their building acquaintances, let alone friends. In brief, they must not be subject to the law of relationships that gave rise to the wrongdoing under investigation in the first place.
41. By the same token, the first element of the investigation should be the transcript itself that Reporter Dianetti may provide. It must be checked against the original stenographic packs and folds and the statement of their count that she signed off on. Likewise, the authenticity of those claimed to be the originals must be ascertained as well as their untampered-with condition. If this preliminary work establishes that they are the basis for an accurate and complete transcript, the latter will also be the basis from which to gain a first view of Judge Ninfo acting as a biased advocate for local parties rather than an impartial arbiter.



42. If you would not treat a litigant before you, much less allow to be treated as a litigant, the way Judge Ninfo treated Dr. Cordero, then it is respectfully submitted here that you have a professional and moral duty to call for a more comprehensive and independent investigation to determine the extent to which Judge Ninfo's pattern of bias and disregard for legality is motivated by his participation in non-coincidental, intentional, and coordinated wrongdoing in support of a bankruptcy fraud scheme.

March 12, 2005

59 Crescent Street  
Brooklyn, NY 11208

*Dr. Richard Cordero*

Dr. Richard Cordero  
tel. (718) 827-9521

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## Dr. Richard Cordero

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[Sample of the letters to the Committee members]

March 26, 2005

Hon. Pasco M. Bowman  
Member of the Committee to Review  
Circuit Council Conduct and Disability Orders  
U.S. Court of Appeals for the Eighth Circuit  
111 South 10th Street  
St. Louis, MO 63102

Dear Judge Bowman,

Last year I filed with the Administrative Office of the U.S. Courts a petition dated November 18, 2004, (page 1, *infra*) for the Judicial Conference to review the denials by the Judicial Council of the Second Circuit (Exhibits page 37=E-37; E-55) of two petitions for review (E-23; E-47) concerning two judicial misconduct complaints (E-1; E-39) that I had filed with the chief judge of that Circuit.

By letter of December 9, 2004, a clerk for the Conference at the Administrative Office, namely, Assistant General Counsel Robert P. Deyling, Esq., blocked the petition from reaching the Conference by alleging that the latter had no jurisdiction to entertain it (23), thereby passing judgment in lieu of the Conference on the specific jurisdictional issue that I had raised (3§II). As part of my efforts to have the petition submitted to the Conference to let it decide the issue of its jurisdiction, on January 8 and February 7, 2005 (43; 51), I wrote to the Hon. Judge Ralph K. Winter, Jr., Chair of the Committee to Review Circuit Council Conduct and Disability Orders (43; 51). Judge Winter answered on February 15 (25). I am submitting to you my reply (28; 29) to his letter because under 28 U.S.C. §331 the Committee as a whole must review all petitions.

For the reasons stated in the reply (29) and the petition (1), I respectfully request that you cause the Committee to consider my jurisdictional arguments and then forward those statements together with their exhibits to the Conference with the recommendation that it decide the threshold issue of its own jurisdiction, from which that of the Committee flows.

Looking forward to hearing from you, I remain,

sincerely yours,

*Dr. Richard Cordero*

List of Members of the Judicial Conference Committee  
to Review Circuit Council Conduct and Disability Orders  
requested on March 24 and 26, 2005  
to consider the arguments in favor of allowing  
the petition for review to be forwarded to the Conference  
for it to determine the threshold issue of its own jurisdiction

by  
**Dr. Richard Cordero**

---

Hon. Judge Ralph K. Winter, Jr.  
Chair of the Committee to Review Circuit  
Council Conduct and Disability Orders  
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Council Conduct and Disability Orders  
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# TABLE OF EXHIBITS

of the request of March 26, 2005, to the Members of the Committee to Review Circuit Council Conduct and Disability Orders that they forward the petition for review of November 18, 2004, to the Judicial Conference for it to determine the scope of its own jurisdiction

by

**Dr. Richard Cordero**

1.	Dr. Cordero’s <b>petition of November 18, 2004, to the Judicial Conference</b> .....	1 [C:823]
2.	Letter from Robert P. <b>Deyling</b> , Esq., Assistant General Counsel at the General Counsel’s Office of the <b>Administrative Office</b> of the U.S. Courts, of <b>December 9, 2004</b> , stating that <b>no jurisdiction</b> lies for further <b>review</b> by the <b>Judicial Conference</b> of the orders of the Judicial Council .....	23 [C:859]
3.	Letter of <b>February 15, 2001</b> , of the Hon. Ralph K. <b>Winter</b> , Jr., Circuit Judge at the Court of Appeals for the Second Circuit and Chair of the Committee to Review Circuit Council Conduct and Disability Orders, <b>to Dr. Cordero</b> stating that the <b>Judicial Conference</b> does <b>not</b> have <b>jurisdiction</b> for further review .....	25 [C:893]
4.	Dr. <b>Cordero’s letter of March 24, 2005, to Judge Winter</b> requesting that he formally submit to the other members of the Committee as well as to the Judicial Conference the following attachment:.....	28 [C:935]
a)	Dr. <b>Cordero’s Reply of March 25, 2005, to Judge Winter</b> on the statutory requirement under 28 U.S.C. §331 for the whole Committee to review all petitions <b>for</b> review to the Judicial Conference and on the need for the <b>Conference to decide</b> the issue of its <b>jurisdiction</b> .....	29 [C:936]
5.	Dr. <b>Cordero’s letter of January 8, 2005</b> , and supporting files sent <b>to Judge Winter</b> to <b>request</b> that he withdraw or cause the Judicial Conference to <b>withdraw</b> Mr. <b>Deyling’s</b> December 9 <b>letter</b> as ultra vires, and <b>forward</b> Dr. Cordero’s November 18 <b>petition to the Conference</b> for review .....	43 [C:877]
6.	Dr. <b>Cordero’s letter of February 7, 2005</b> , and supporting files sent <b>to Judge Winter</b> , stating that he has received <b>no response</b> to his January 8 letter and <b>requesting</b> that <b>action</b> be taken on that letter and its requests .....	51 [C:890]
7.	Judge <b>Ninfo’s bias</b> and <b>disregard for legality</b> can be heard from his own mouth through the <b>transcript</b> of the evidentiary <b>hearing</b> of the DeLano Debtors’ motion to disallow Dr. Cordero’s claim against Mr. DeLano held on <b>March 1, 2005</b> , and can be read about in a caveat on ascertaining its authenticity that illustrates the <b>Judge’s tolerance of wrongdoing</b> .....	53 [C:951]
8.	<b>Key Documents and dates in the procedural History</b> of the judicial misconduct complaints filed by Dr. Richard Cordero .....	i [C:886]
9.	<b>Table of Exhibits of the petition</b> for review to the Judicial Conference .....	ii [C:845]
a)	Exhibits.....	E-# [page num.]

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March 28, 2005

Mr. Chief Justice William Rehnquist  
Member of the Judicial Conference of the United States  
Supreme Court of the United States  
Washington, D.C. 20543

Dear Mr. Chief Justice,

As stated in my letters to you of 7 instant and November 20 and December 18, 2004, last year I filed with the Administrative Office of the U.S. Courts a petition dated November 18, 2004, for the Judicial Conference to review the denials by the Judicial Council of the Second Circuit (Exhibits page 37=E-37; E-55)\* of two petitions for review (E-23; E-47) concerning two related judicial misconduct complaints (E-1; E-39), one about Bankruptcy Judge John C. Ninfo, II, WBNY, and the other about Chief Judge John M. Walker, Jr., CA2.

By letter of December 9, a clerk for the Conference at the Administrative Office, namely, Assistant General Counsel Robert P. Deyling, Esq., blocked the petition from reaching the Conference by alleging that the latter had no jurisdiction to entertain it (page 23, *infra*), thereby passing judgment in lieu of the Conference on the specific jurisdictional issue that I had raised in the petition (3§II, *infra*). As part of my efforts to have the petition submitted to the Conference to let it decide that issue, on January 8 and February 7, 2005 (43; 51), I wrote to the Hon. Judge Ralph K. Winter, Jr., Chairman of the Committee to Review Circuit Council Conduct and Disability Orders. Judge Winter answered by letter of February 15 (25) where he states that neither he nor the Conference has jurisdiction to act on my petition. I am submitting to you, as the Conference's presiding officer, my reply (28; 29) to his letter. Therein I argue, among other things, that under 28 U.S.C. §331 the Review Committee must review all petitions so that the Committee as a whole, not just he as its chairman, should consider mine; and that since the Review Committee derives its jurisdiction from that of the Conference, it should forward my petition to the latter with the request that it be the one to determine the jurisdictional issue that I raised.

I respectfully request that you have the Conference decide that issue or bring to the attention of Judge Winter and the Review Committee the need to let the Conference decide it. By so doing, the Conference would have the opportunity to consider whether too narrow an interpretation of the jurisdictional provisions of the Judicial Misconduct Act accounts for the fact that since March 2002 not a single petition has been submitted to it. Thus, the Conference has not had occasion to consider petitions and provide guidance to judicial councils and chief judges on the proper application of the Act. As a result, the Act has become as useless as the impeachment process as a mechanism for judicial control and discipline. Instead of it being interpreted to protect individuals who suffer abuse and bias through judicial misconduct (53) or the public at large who must bear the loss of access to justice and the material cost caused by judges involved in wrongdoing (E-83; E-109), the Act has been interpreted as a means for judges to take care of their own and protect their class image. Has the Conference not been aware of this disregard for the Act's purpose for the past 25 years during which it issued only 15 misconduct orders?

Sincerely, 

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\* These Exhibits were submitted to you and the Conference together with a copy of the petition last November 26. The Exhibits are not reproduced below, but reference to their page numbers is made hereinafter using the format (E-#).

MARCIA M. WALDRON  
CLERK

**UNITED STATES COURT OF APPEALS**  
FOR THE THIRD CIRCUIT  
21400 UNITED STATES COURTHOUSE  
601 MARKET STREET  
PHILADELPHIA 19106-1790

TELEPHONE  
215-597-2995

April 26, 2005

Dr. Richard Cordero  
59 Crescent Street  
Brooklyn, NY 11208-1515

Re: March 15, 2005 Letter and Attachment

Dear Dr. Cordero:

The enclosed submission to a judge of this Court has been referred to this office for response. Any submissions to the Judicial Conference of the United States, or a committee thereof, must be made to the appropriate individual in the Administrative Office of the U.S. Courts.

The judges of this Court will not consider, or take any action in regard to, materials addressed to Judicial Conference materials sent to them directly. No purpose is served by sending papers directly to the judges of this Court.

Very truly yours,

Marcia M. Waldron, Clerk

By:

/s/ Bradford A. Baldus  
Bradford A. Baldus  
Senior Legal Advisor to the Clerk

Enclosure



**Table S-22.**  
**Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 351-364**  
**During the 12-Month Period Ending September 30, 2005**

Summary of Activity	Circuits															National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC <sup>1</sup>	CIT <sup>2</sup>	
Complaints Pending on September 30, 2004*	212	0	4	9	57	9	8	16	30	1	13	30	8	25	2	0	
Complaints Filed	642	1	33	19	36	58	43	99	55	15	38	122	36	85	2	0	
Complaint Type																	
Written by Complainant	642	1	33	19	36	58	43	99	55	15	38	122	36	85	2	0	
On Order of Chief Judges	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Officials Complained About**																	
Judges																	
Circuit	177	1	18	1	7	4	28	10	7	6	2	80	7	6	0	0	
District	456	0	21	15	23	41	32	52	51	11	22	102	27	59	0	0	
National Courts	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Bankruptcy Judges	31	0	0	4	0	5	1	2	3	1	2	9	2	2	0	0	
Magistrate Judges	135	0	1	4	6	8	9	35	5	2	13	27	7	18	0	0	
Nature of Allegations**																	
Mental Disability	22	0	1	2	3	2	2	3	0	0	0	6	0	1	2	0	
Physical Disability	9	0	0	2	0	0	0	0	0	0	0	4	0	2	1	0	
Demeanor	20	0	0	3	0	2	0	2	0	1	2	8	1	1	0	0	
Abuse of Judicial Power	206	1	7	13	3	5	26	6	3	4	28	57	0	52	1	0	
Prejudice/Bias	275	1	12	19	43	21	9	16	40	5	15	57	15	20	2	0	
Conflict of Interest	49	0	2	5	5	11	2	1	3	1	2	13	3	1	0	0	
Bribery/Corruption	51	0	0	3	2	1	2	2	1	0	4	32	0	4	0	0	
Undue Decisional Delay	65	0	0	6	8	8	2	9	2	0	4	14	7	5	0	0	
Incompetence/Neglect	52	0	2	4	4	3	2	3	0	1	8	22	1	1	1	0	
Other	260	0	2	1	80	40	11	80	0	7	1	19	18	0	1	0	
Complaints Concluded	667	1	22	23	91	47	48	90	47	16	45	120	33	81	3	0	
Action by Chief Judges																	
Complaint Dismissed																	
Not in Conformity With Statute	21	0	1	0	5	0	1	0	2	0	3	5	3	1	0	0	
Directly Related to Decision																	
or Procedural Ruling	319	1	8	8	46	18	20	30	12	6	29	57	16	65	3	0	
Frivolous	41	0	1	3	1	0	4	6	3	8	5	10	0	0	0	0	

**Table S-22. (September 30, 2005—Continued)**

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC <sup>1</sup>	CIT <sup>2</sup>
Appropriate Action Already Taken	5	0	0	0	0	1	0	1	0	0	0	2	0	1	0	0
Action No Longer Necessary Because of Intervening Events	8	0	1	0	0	1	1	0	0	0	1	0	0	4	0	0
Complaint Withdrawn	6	0	0	0	2	0	0	2	0	0	0	2	0	0	0	0
Subtotal	400	1	11	11	54	20	26	39	17	14	38	76	19	71	3	0
<b>Action by Judicial Councils</b>																
Directed Chief District Judge to Take Action (Magistrate Judges only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	267	0	11	12	37	27	22	51	30	2	7	44	14	10	0	0
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	267	0	11	12	37	27	22	51	30	2	7	44	14	10	0	0
Complaints Pending on September 30, 2005	187	0	15	5	2	20	3	25	38	0	6	32	11	29	1	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.

<sup>1</sup> CC = U.S. COURT OF FEDERAL CLAIMS.

<sup>2</sup> CIT = U.S. COURT OF INTERNATIONAL TRADE.

\* REVISED.

\*\* EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDGES. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

**Table S-22.**  
**Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 351-364**  
**During the 12-Month Period Ending September 30, 2004**

Summary of Activity	Circuits															National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC <sup>1</sup>	CIT <sup>2</sup>	
Complaints Pending on September 30, 2003*	249	0	2	19	34	3	10	19	22	1	29	38	11	61	0	0	
Complaints Filed	712	2	31	30	23	40	63	95	72	34	77	146	41	58	0	0	
Complaint Type																	
Written by Complainant	712	2	31	30	23	40	63	95	72	34	77	146	41	58	0	0	
On Order of Chief Judges	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Officials Complained About**																	
Judges																	
Circuit	240	6	20	16	4	6	23	16	24	8	14	84	13	6	0	0	
District	539	0	39	21	15	22	52	51	69	27	55	128	23	37	0	0	
National Courts	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Bankruptcy Judges	28	0	0	8	1	2	1	2	4	1	0	6	2	1	0	0	
Magistrate Judges	149	0	1	5	3	10	18	26	7	3	25	26	11	14	0	0	
Nature of Allegations**																	
Mental Disability	34	0	0	4	3	5	4	4	2	0	1	10	0	1	0	0	
Physical Disability	6	0	0	0	2	1	0	0	0	0	0	3	0	0	0	0	
Demeanor	34	0	1	1	6	0	4	3	0	1	7	9	1	1	0	0	
Abuse of Judicial Power	251	1	3	11	6	0	42	2	4	2	71	59	22	28	0	0	
Prejudice/Bias	334	2	19	27	35	14	22	35	42	7	38	52	20	21	0	0	
Conflict of Interest	67	0	5	8	4	6	3	3	2	0	5	22	7	2	0	0	
Bribery/Corruption	93	0	0	9	5	10	5	3	1	0	25	33	0	2	0	0	
Undue Decisional Delay	70	0	2	7	5	7	4	10	2	5	8	13	4	3	0	0	
Incompetence/Neglect	106	0	0	9	3	8	2	3	0	0	18	16	0	47	0	0	
Other	224	0	1	1	33	30	10	89	3	24	0	24	9	0	0	0	
Complaints Concluded	784	2	28	40	51	34	73	99	56	35	94	135	42	95	0	0	
Action By Chief Judges																	
Complaint Dismissed																	
Not in Conformity With Statute	27	0	4	0	6	0	5	0	4	1	5	0	0	2	0	0	
Directly Related to Decision																	
or Procedural Ruling	295	2	9	7	18	13	31	38	16	21	37	65	8	30	0	0	
Frivolous	112	0	8	4	3	0	1	11	3	5	18	5	4	50	0	0	

**Table S-22. (September 30, 2004—Continued)**

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC <sup>1</sup>	CIT <sup>2</sup>
Appropriate Action Already Taken	3	0	0	0	1	0	0	0	0	0	1	1	0	0	0	0
Action No Longer Necessary Because of																
Intervening Events	9	0	0	0	0	0	0	2	0	0	2	0	0	5	0	0
Complaint Withdrawn	3	0	0	0	1	0	0	0	0	0	0	1	1	0	0	0
Subtotal	449	2	21	11	29	13	37	51	23	27	63	72	13	87	0	0
<b>Action by Judicial Councils</b>																
Directed Chief District Judge to																
Take Action (Magistrate Judges Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	335	0	7	29	22	21	36	48	33	8	31	63	29	8	0	0
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	335	0	7	29	22	21	36	48	33	8	31	63	29	8	0	0
Complaints Pending on September 30, 2004	177	0	5	9	6	9	0	15	38	0	12	49	10	24	0	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.

<sup>1</sup> CC = U.S. COURT OF FEDERAL CLAIMS.

<sup>2</sup> CIT = U.S. COURT OF INTERNATIONAL TRADE.

\* REVISED.

\*\* EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDGES. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

**Table S-22.**  
**Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 351-364**  
**During the 12-Month Period Ending September 30, 2003**

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC <sup>1</sup>	CIT <sup>2</sup>
Complaints Pending on September 30, 2002*	141	0	3	4	29	6	3	7	22	4	15	16	6	20	5	1
Complaints Filed	835	2	11	36	69	41	67	107	73	28	97	146	47	110	0	1
Complaint Type																
Written by Complainant	835	2	11	36	69	41	67	107	73	28	97	146	47	110	0	1
On Order of Chief Judges	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	204	6	4	19	8	4	16	27	15	2	26	43	12	22	0	0
District	719	0	14	24	49	28	54	54	53	34	157	156	39	57	0	0
National Courts	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Bankruptcy Judges	38	0	0	2	1	3	1	2	5	2	1	16	3	2	0	0
Magistrate Judges	257	0	0	5	11	6	21	24	21	3	91	40	7	28	0	0
Nature of Allegations**																
Mental Disability	26	0	0	1	6	4	5	1	0	1	2	5	0	1	0	0
Physical Disability	7	0	0	0	1	0	0	2	0	0	2	1	0	1	0	0
Demeanor	21	0	0	1	4	3	1	4	0	1	1	3	1	1	1	0
Abuse of Judicial Power	239	1	0	7	20	3	29	22	2	6	30	59	14	45	0	1
Prejudice/Bias	263	2	12	9	20	14	21	26	29	11	36	37	14	29	2	1
Conflict of Interest	33	0	0	1	3	5	3	2	2	1	2	7	3	4	0	0
Bribery/Corruption	87	0	0	1	4	6	10	6	15	0	20	22	0	3	0	0
Undue Decisional Delay	81	0	0	3	9	6	6	4	3	5	25	16	2	1	0	1
Incompetence/Neglect	47	0	0	3	3	2	8	2	3	0	15	6	1	4	0	0
Other	131	0	0	0	4	37	4	45	0	9	2	13	14	0	3	0
Complaints Concluded	682	2	12	18	42	40	69	94	53	31	87	117	42	69	4	2
Action by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	39	0	1	0	1	0	3	0	17	2	9	6	0	0	0	0
Directly Related to Decision																
or Procedural Ruling	230	2	3	2	14	13	30	24	10	15	15	46	9	46	1	0
Frivolous	77	0	0	0	7	1	3	6	0	7	25	21	1	6	0	0

**Table S-22. (September 30, 2003—Continued)**

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC <sup>1</sup>	CIT <sup>2</sup>
Appropriate Action Already Taken	3	0	0	0	0	1	0	0	0	0	1	1	0	0	0	0
Action No Longer Necessary Because of Intervening Events	8	0	0	1	0	0	0	1	0	0	5	1	0	0	0	0
Complaint Withdrawn	8	0	0	0	0	0	1	0	0	0	4	2	0	1	0	0
<b>Subtotal</b>	<b>365</b>	<b>2</b>	<b>4</b>	<b>3</b>	<b>22</b>	<b>15</b>	<b>37</b>	<b>31</b>	<b>27</b>	<b>24</b>	<b>59</b>	<b>77</b>	<b>10</b>	<b>53</b>	<b>1</b>	<b>0</b>
<b>Action by Judicial Councils</b>																
Directed Chief District Judge to Take Action (Magistrate Judges Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Dismissed the Complaint	316	0	8	15	20	25	32	63	26	7	28	40	32	16	3	1
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0														
<b>Subtotal</b>	<b>317</b>	<b>0</b>	<b>8</b>	<b>15</b>	<b>20</b>	<b>25</b>	<b>32</b>	<b>63</b>	<b>26</b>	<b>7</b>	<b>28</b>	<b>40</b>	<b>32</b>	<b>16</b>	<b>3</b>	<b>2</b>
<b>Complaints Pending on September 30, 2003</b>	<b>294</b>	<b>0</b>	<b>2</b>	<b>22</b>	<b>56</b>	<b>7</b>	<b>1</b>	<b>20</b>	<b>42</b>	<b>1</b>	<b>25</b>	<b>45</b>	<b>11</b>	<b>61</b>	<b>1</b>	<b>0</b>

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.

<sup>1</sup> CC = U.S. COURT OF FEDERAL CLAIMS.

<sup>2</sup> CIT = U.S. COURT OF INTERNATIONAL TRADE.

\* REVISED.

\*\* EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDGES. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

**Table S-22.**  
**Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 372(c)**  
**During the 12-Month Period Ending September 30, 2002**

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC <sup>1</sup>	CIT <sup>2</sup>
Complaints Pending on September 30, 2001*	262	0	17	15	60	3	5	19	44	5	17	36	6	31	3	1
Complaints Filed	657	0	20	14	62	51	59	81	77	28	54	105	47	54	5	0
Complaint Type																
Written by Complainant	656	0	20	13	62	51	59	81	77	28	54	105	47	54	5	0
On Order of Chief Judge	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	353	0	47	6	10	4	17	26	52	11	52	114	11	3	0	0
District	548	0	13	20	41	35	68	32	72	29	43	127	36	32	0	0
National Courts	5	0	0	0	0	0	0	0	0	0	0	0	0	0	5	0
Bankruptcy Judges	57	0	1	1	1	6	4	2	2	0	3	27	2	8	0	0
Magistrate Judges	152	0	1	2	10	6	8	21	11	2	21	48	11	11	0	0
Nature of Allegations**																
Mental Disability	33	0	0	0	4	1	3	2	6	1	3	11	2	0	0	0
Physical Disability	6	0	0	0	0	1	2	0	0	0	0	3	0	0	0	0
Demeanor	17	0	0	1	3	0	3	0	0	0	0	7	0	3	0	0
Abuse of Judicial Power	327	0	1	7	57	6	29	49	14	13	19	71	17	41	3	0
Prejudice/Bias	314	0	34	16	40	13	20	35	51	11	20	36	19	16	3	0
Conflict of Interest	46	0	1	0	18	9	2	3	2	0	4	3	1	3	0	0
Bribery/Corruption	63	0	0	0	15	0	4	6	8	0	5	20	1	4	0	0
Undue Decisional Delay	75	0	1	0	15	3	3	5	3	7	10	15	7	6	0	0
Incompetence/Neglect	45	0	0	2	2	1	7	1	9	0	6	16	1	0	0	0
Other	129	0	4	2	0	46	3	16	8	2	4	32	9	3	0	0
Complaints Concluded	780	0	35	25	93	48	61	98	98	30	57	124	47	61	3	0
Action By Chief Judges																
Complaint Dismissed																
Not in Conformity with Statute	27	0	1	0	1	0	3	1	7	0	1	9	1	3	0	0
Directly Related to Decision																
or Procedural Ruling	249	0	6	5	23	17	24	36	31	14	11	36	22	22	2	0
Frivolous	110	0	9	2	9	2	13	7	5	7	10	36	7	3	0	0

**Table S-22. (September 30, 2002—Continued)**

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC <sup>1</sup>	CIT <sup>2</sup>
Appropriate Action Already Taken	3	0	0	1	0	0	0	0	1	0	1	0	0	0	0	0
Action No Longer Necessary Because of Intervening Events	6	0	0	0	2	0	1	0	0	1	0	0	0	2	0	0
Complaint Withdrawn	8	0	0	2	2	1	0	0	1	0	0	1	0	0	1	0
Subtotal	403	0	16	10	37	20	41	44	45	22	23	82	30	30	3	0
Action by Judicial Councils																
Directed Chief District Judge to																
Take Action (Magistrate Judges Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	2	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	375	0	19	15	56	28	20	54	51	8	34	42	17	31	0	0
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	377	0	19	15	56	28	20	54	53	8	34	42	17	31	0	0
Complaints Pending on September 30, 2002	139	0	2	4	29	6	3	2	23	3	14	17	6	24	5	1

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.

<sup>1</sup> CC = U.S. CLAIMS COURT.<sup>2</sup> CIT = COURT OF INTERNATIONAL TRADE.

\* REVISED.

\*\* EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.



**Table S-22.**  
**Report of Complaints Filed and Action Taken Under Authority of 28 U.S.C. 372(c)**  
**During the 12-Month Period Ending September 30, 2001**

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC <sup>1</sup>	CIT <sup>2</sup>
Complaints Pending on September 30, 2001*	150	0	4	9	33	5	3	9	23	1	6	32	4	18	3	0
Complaints Filed	766	0	31	22	102	50	63	100	97	43	52	102	32	70	1	1
Complaint Type																
Written by Complainant	766	0	31	22	102	50	63	100	97	43	52	102	32	70	1	1
On Order of Chief Judge	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	273	0	15	16	31	13	25	23	12	16	33	53	16	20	0	0
District	563	0	16	26	52	23	45	50	86	37	69	104	25	30	0	0
National Court	3	0	0	0	0	0	0	0	0	0	0	0	1	0	1	1
Bankruptcy Judges	34	0	0	2	2	6	2	2	1	3	0	12	2	2	0	0
Magistrate Judges	143	0	3	1	17	8	12	25	17	3	10	20	9	18	0	0
Nature of Allegations**																
Mental Disability	29	0	0	0	5	4	1	3	3	1	2	5	0	5	0	0
Physical Disability	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
Demeanor	31	0	0	1	14	2	1	0	1	4	2	5	0	1	0	0
Abuse of Judicial Power	200	0	3	3	28	3	35	28	1	13	21	33	15	16	1	0
Prejudice/Bias	266	0	18	11	24	9	17	31	36	13	11	43	14	38	1	0
Conflict of Interest	38	0	0	0	10	4	3	8	1	1	0	5	4	2	0	0
Bribery/Corruption	61	0	0	0	2	5	4	6	1	1	1	33	3	5	0	0
Undue Decisional Delay	60	0	0	0	6	6	3	11	2	6	4	15	0	7	0	0
Incompetence/Neglect	50	0	0	2	5	8	3	3	7	0	1	20	0	1	0	0
Other	186	0	8	1	0	50	4	47	16	3	8	32	7	10	0	0
Complaints Concluded	668	0	18	16	75	53	61	108	68	39	41	100	30	58	1	0
Action by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	13	0	1	0	4	0	0	0	1	2	1	4	0	0	0	0
Directly Related to Decision																
or Procedural Ruling	235	0	2	3	17	26	25	42	20	14	18	27	14	27	0	0
Frivolous	103	0	0	2	13	0	6	13	14	12	7	31	2	3	0	0

**Table S-22. (September 30, 2001—Continued)**

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC <sup>1</sup>	CIT <sup>2</sup>
Appropriate Action Already Taken	4	0	0	0	0	1	0	0	0	1	1	0	1	0	0	0
Action No Longer Necessary Because of																
Intervening Events	5	0	0	0	0	0	0	0	0	0	0	0	0	5	0	0
Complaint Withdrawn	3	0	0	1	0	1	0	0	0	0	1	0	0	0	0	0
Subtotal	363	0	3	6	34	28	31	55	35	29	28	62	17	35	0	0
Action by Judicial Councils																
Directed Chief District Judge to																
Take Action (Magistrate Judge Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension																
of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	303	0	15	10	40	25	30	53	33	10	13	38	12	23	1	0
Withdrawn	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial																
Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	305	0	15	10	41	25	30	53	33	10	13	38	13	23	1	0
Complaints Pending on September 30, 2001	248	0	17	15	60	2	5	1	52	5	17	34	6	30	3	1

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.

<sup>1</sup> CC = U.S. CLAIMS COURT.

<sup>2</sup> CIT = COURT OF INTERNATIONAL TRADE.

\* REVISED.

\*\* EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

**Table S-22.**  
**Report of Complaints Filed and Action Taken Under Authority of Title 28 U.S.C. Section 372(c)**  
**for the 12-Month Period Ending September 30, 2000**

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC <sup>1</sup>	CIT <sup>2</sup>
Complaints Pending on September 30, 1999*	181	0	1	5	65	19	2	18	15	0	7	27	11	11	0	0
Complaints Filed	696	2	18	21	59	53	61	113	56	44	51	111	32	73	2	0
Complaint Type																
Written by Complainant	695	2	18	21	59	53	61	113	56	44	51	111	31	73	2	0
On Order of Chief Judges	1	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0
Officials Complained About**																
Judges																
Circuit	191	4	4	4	9	10	14	23	4	11	45	35	15	13	0	0
District	522	0	17	20	41	36	62	60	50	29	52	92	26	37	0	0
National Courts	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
Bankruptcy Judges	26	0	0	1	2	6	1	2	2	2	2	5	2	1	0	0
Magistrate Judges	135	0	0	3	7	2	10	28	13	6	6	32	6	22	0	0
Nature of Allegations**																
Mental Disability	26	0	0	0	2	6	6	5	0	1	3	2	0	1	0	0
Physical Disability	12	0	0	1	1	3	4	0	0	0	0	3	0	0	0	0
Demeanor	13	0	0	0	3	2	0	0	0	0	1	6	0	1	0	0
Abuse of Judicial Power	272	0	0	10	29	25	29	43	9	23	20	38	16	30	0	0
Prejudice/Bias	257	1	13	8	28	17	15	24	28	13	17	39	25	29	0	0
Conflict of Interest	48	1	0	0	11	9	1	5	1	0	3	8	1	8	0	0
Bribery/Corruption	83	0	0	2	21	12	8	4	0	2	6	22	2	4	0	0
Undue Decisional Delay	75	0	2	1	11	6	6	7	5	3	3	16	4	11	0	0
Incompetence/Neglect	61	0	0	0	1	7	8	3	1	3	5	31	0	2	0	0
Other	188	0	7	1	5	66	0	50	4	7	13	20	9	6	0	0
Complaints Concluded	715	2	15	17	80	67	60	123	48	44	51	104	39	65	0	0
Action by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	29	0	0	2	0	0	4	0	9	1	0	12	1	0	0	0
Directly Related to Decision																
or Procedural Ruling	264	2	4	3	29	31	26	23	21	11	23	38	15	38	0	0
Frivolous	50	0	4	1	0	0	2	8	2	12	8	9	2	2	0	0

**Table S-22. (September 30, 2000—Continued)**

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC <sup>1</sup>	CIT <sup>2</sup>
Appropriate Action Already Taken	6	0	0	1	0	0	0	3	0	0	0	0	2	0	0	0
Action No Longer Necessary Because of																
Intervening Events	7	0	0	0	1	0	1	2	0	0	0	1	0	2	0	0
Complaint Withdrawn	3	0	0	1	0	0	1	1	0	0	0	0	0	0	0	0
Subtotal	359	2	8	8	30	31	34	37	32	24	31	60	20	42	0	0
Action by Judicial Councils																
Directed Chief District Judge to																
Take Action (Magistrate Judge Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension																
of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	2	0	0	0	0	0	0	0	0	0	0	2	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	354	0	7	9	50	36	26	86	16	20	20	42	19	23	0	0
Withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Referred Complaint to Judicial																
Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	356	0	7	9	50	36	26	86	16	20	20	44	19	23	0	0
Complaints Pending on September 30, 2000	162	0	4	9	44	5	3	8	23	0	7	34	4	19	2	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.

<sup>1</sup> CC = U.S. CLAIMS COURT.

<sup>2</sup> CIT = COURT OF INTERNATIONAL TRADE.

\* REVISED.

\*\* EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

**Table S-23.**  
**Report of Complaints Filed and Action Taken Under Authority of Title 28 U.S.C. Section 372(c)**  
**for the 12-Month Period Ending September 30, 1999**

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC <sup>1</sup>	CIT <sup>2</sup>
Complaints Pending on September 30, 1998*	228	0	3	1	23	48	0	3	28	0	19	75	3	25	0	0
Complaints Filed	781	2	16	17	99	34	55	196	72	31	36	115	58	50	0	0
Complaint Type																
Written by Complaint	781	2	16	17	99	34	55	196	72	31	36	115	58	50	0	0
On Order of Chief Judges	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	174	4	16	0	23	3	7	31	16	7	25	31	11	0	0	0
District	598	0	48	17	63	24	55	98	58	27	24	99	47	38	0	0
National Courts	1	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
Bankruptcy Judges	30	0	0	1	2	2	0	3	2	1	2	16	0	1	0	0
Magistrate Judges	229	0	1	4	11	5	6	64	14	4	10	69	30	11	0	0
Nature of Allegations**																
Mental Disability	69	0	0	0	26	4	3	11	3	0	2	5	0	15	0	0
Physical Disability	6	0	0	0	2	0	0	0	1	1	0	2	0	0	0	0
Demeanor	34	0	0	0	2	1	4	0	5	3	1	14	1	3	0	0
Abuse of Judicial Power	254	0	1	2	7	45	17	4	9	10	16	91	27	25	0	0
Prejudice/Bias	360	2	15	8	34	20	16	28	41	15	23	85	32	41	0	0
Conflict of Interest	29	0	0	0	5	1	6	4	0	0	2	6	2	3	0	0
Bribery/Corruption	104	0	0	4	10	26	4	4	3	1	2	44	0	6	0	0
Undue Decisional Delay	80	0	5	0	0	6	6	2	5	2	2	30	18	4	0	0
Incompetence/Neglect	108	1	0	0	3	5	3	0	6	0	2	71	2	15	0	0
Other	288	0	2	0	3	62	0	143	25	7	4	26	8	8	0	0
Complaints Concluded	826	2	18	12	57	63	53	184	82	31	45	163	50	66	0	0
Action by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	27	0	4	0	0	0	6	0	8	1	4	4	0	0	0	0
Directly Related to Decision																
or Procedural Ruling	300	2	0	5	19	12	21	31	24	14	11	84	28	49	0	0
Frivolous	66	0	5	2	19	0	6	6	1	3	3	16	4	1	0	0

**Table S-23. (September 30, 1999—Continued)**

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC <sup>1</sup>	CIT <sup>2</sup>
Appropriate Action Already Taken	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0
Action No Longer Necessary Because of																
Intervening Events	10	0	0	0	3	0	0	0	1	0	0	3	2	1	0	0
Complainant Withdrawn	2	0	0	0	0	0	1	0	0	0	0	0	1	0	0	0
Subtotal	406	2	9	7	41	12	34	37	34	19	18	107	35	51	0	0
Action by Judicial Councils																
Directed Chief District Judge to																
Take Action (Magistrate Judges Only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension																
of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	416	0	9	5	16	51	19	147	46	12	27	54	15	15	0	0
Withdrawn	4	0	0	0	0	0	0	0	2	0	0	2	0	0	0	0
Referred Complaint to Judicial																
Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	420	0	9	5	16	51	19	147	48	12	27	56	15	15	0	0
Complaints Pending on September 30, 1999	183	0	1	6	65	19	2	15	18	0	10	27	11	9	0	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.

<sup>1</sup> CC = U.S. CLAIMS COURT.

<sup>2</sup> CIT = COURT OF INTERNATIONAL TRADE.

\* REVISED.

\*\* EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

**Table S-24.**  
**Report of Complaints Filed and Action Taken Under Authority of Title 28 U.S.C. Section 372(c)**  
**for the Twelve-Month Period Ended September 30, 1998**

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC <sup>1</sup>	CIT <sup>2</sup>
Complaints Pending on September 30, 1997*	214	0	6	3	10	31	0	6	18	4	18	82	1	35	0	0
Complaints Filed	1,051	1	27	10	73	120	73	46	86	37	78	265	37	197	1	0
Complaint Type																
Written by Complainant	1,049	1	27	10	73	120	73	46	86	36	78	264	37	197	1	0
On Order of Chief Judges	2	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0
Officials Complained About**																
Judges																
Circuit	443	1	16	2	14	22	23	13	8	17	134	20	11	162	0	0
District	758	0	47	9	56	83	50	27	82	26	83	250	29	16	0	0
National Courts	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
Bankruptcy Judges	28	0	2	0	1	2	5	1	3	2	3	6	1	2	0	0
Magistrate Judges	215	0	3	2	8	13	15	12	16	5	7	110	8	16	0	0
Nature of Allegations**																
Mental Disability	92	0	0	3	9	4	7	2	18	0	36	13	0	0	0	0
Physical Disability	7	0	0	2	1	2	0	0	1	0	0	0	0	1	0	0
Demeanor	19	0	0	0	2	3	0	1	3	0	0	8	0	2	0	0
Abuse of Judicial Power	511	1	2	2	30	8	48	16	8	21	27	168	9	171	0	0
Prejudice/Bias	647	0	21	9	36	32	22	22	44	19	46	198	20	178	0	0
Conflict of Interest	141	0	0	1	0	7	3	3	0	0	3	117	2	5	0	0
Bribery/Corruption	166	0	0	0	0	0	3	0	0	1	2	155	2	3	0	0
Undue Decisional Delay	50	0	3	1	4	4	2	0	1	5	7	14	8	1	0	0
Incompetence/Neglect	99	0	0	0	1	4	4	0	3	1	1	81	1	3	0	0
Other	193	0	17	1	11	94	3	13	20	4	11	3	10	6	0	0
Complaints Concluded	1,002	1	33	13	56	95	73	49	70	40	78	257	35	202	0	0
Actions by Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	43	0	6	0	4	2	5	0	2	3	6	5	3	7	0	0
Directly Related to Decision																
or Procedural Ruling	532	1	0	5	19	54	42	15	43	16	52	88	18	179	0	0
Frivolous	159	0	1	1	1	1	0	1	5	13	2	133	1	0	0	0

**Table S-24. (September 30, 1998—Continued)**

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC <sup>1</sup>	CIT <sup>2</sup>
Appropriate Action Already Taken	2	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0
Action No Longer Necessary Because of																
Intervening Events	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
Complaint Withdrawn	5	0	1	0	0	0	1	0	1	1	1	0	0	0	0	0
Subtotal	742	1	8	6	24	57	48	16	51	34	62	227	22	186	0	0
Action by Judicial Councils																
Directed Chief District Judge to																
Take Action (Magistrate Judges only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension																
of Case Assignments	1	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	258	0	25	7	32	38	25	32	19	6	16	29	13	16	0	0
Referred Complaint to Judicial																
Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	260	0	25	7	32	38	25	33	19	6	16	30	13	16	0	0
Complaints Pending on September 30, 1998	263	0	0	0	27	56	0	3	34	1	18	90	3	30	1	0

NOTE: EXCLUDES COMPLAINTS NOT ACCEPTED BY THE CIRCUITS BECAUSE THEY DUPLICATED PREVIOUS FILINGS OR WERE OTHERWISE INVALID FILINGS.

<sup>1</sup> CC = U.S. CLAIMS COURT.

<sup>2</sup> CIT = COURT OF INTERNATIONAL TRADE.

\* REVISED.

\*\* EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.



**Table S-24.**  
**Report of Complaints Filed and Action Taken Under Authority of Title 28 U.S.C. Section 372(c)**  
**for the Twelve-Month Period Ended September 30, 1997**

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC <sup>1</sup>	CIT <sup>2</sup>
Complaints Pending on September 30, 1996*	109	0	1	21	5	11	7	10	1	3	11	31	8	0	0	0
Complaints Filed	679	3	15	16	40	62	69	84	68	28	56	137	54	47	0	0
Complaint Type																
Written by Complaint	678	3	15	16	40	62	69	84	68	27	56	137	54	47	0	0
On Order of Chief Judges	1	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0
Officials Complained About**																
Judges																
Circuit	461	3	4	10	3	24	29	14	11	5	102	249	7	0	0	0
District	497	0	14	17	27	28	48	43	59	25	45	121	38	32	0	0
National Courts	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Bankruptcy Judges	31	0	0	2	2	2	6	3	2	2	2	6	1	3	0	0
Magistrate Judges	138	0	0	1	8	7	15	27	10	0	9	24	25	12	0	0
Nature of Allegations**																
Mental Disability	11	0	0	0	1	1	2	0	2	0	3	2	0	0	0	0
Physical Disability	4	0	0	1	0	1	1	0	1	0	0	0	0	0	0	0
Demeanor	11	0	0	0	2	0	0	0	0	0	1	4	0	4	0	0
Abuse of Judicial Power	179	3	0	6	25	1	40	20	8	13	17	19	22	5	0	0
Prejudice/Bias	193	1	9	8	32	8	27	12	17	4	14	30	20	11	0	0
Conflict of Interest	12	0	0	0	0	0	2	1	2	0	3	3	0	1	0	0
Bribery/Corruption	28	0	0	1	0	2	1	0	4	2	4	13	0	1	0	0
Undue Decisional Delay	44	0	0	1	0	6	1	10	4	2	3	11	5	1	0	0
Incompetence/Neglect	30	0	0	3	4	1	0	0	5	0	0	16	1	0	0	0
Other	161	1	3	2	0	30	1	38	24	10	7	19	22	4	0	0
Complaints Concluded	482	3	9	13	33	31	69	80	49	24	41	60	53	17	0	0
Action By Chief Judges																
Complaint Dismissed																
Not in Conformity With Statute	29	2	4	0	3	1	4	2	1	3	6	2	0	1	0	0
Directly Related to Decision																
or Procedural Ruling	215	0	0	6	12	21	34	26	21	11	14	31	24	15	0	0
Frivolous	19	1	0	0	0	0	3	0	1	6	1	5	2	0	0	0

**Table S-24. (Continued)**

Summary of Activity	Circuits														National Courts	
	Total	Fed	DC	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th	CC <sup>1</sup>	CIT <sup>2</sup>
Appropriate Action Already Taken	2	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0
Action No Longer Necessary Because of																
Intervening Events	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Complaint Withdrawn	5	0	0	0	0	0	4	0	0	0	0	0	0	1	0	0
Subtotal	270	3	4	6	15	22	45	29	23	21	21	38	26	17	0	0
Action by Judicial Councils																
Directed Chief District Judge to																
Take Action (Magistrate Judges only)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Certified Disability	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requested Voluntary Retirement	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Temporary Suspension																
of Case Assignments	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Privately Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Publicly Censured	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ordered Other Appropriate Action	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Dismissed the Complaint	212	0	5	7	18	9	24	51	26	3	20	22	27	0	0	0
Referred Complaint to Judicial																
Conference	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Subtotal	212	0	5	7	18	9	24	51	26	3	20	22	27	0	0	0
Complaints Pending on September 30, 1997	306	0	7	24	12	42	7	14	20	7	26	108	9	30	0	0

<sup>1</sup> CC = U.S. CLAIMS COURT.

<sup>2</sup> CIT = COURT OF INTERNATIONAL TRADE.

\* REVISED.

\*\* EACH COMPLAINT MAY INVOLVE MULTIPLE ALLEGATIONS AGAINST NUMEROUS JUDICIAL OFFICERS. NATURE OF ALLEGATIONS IS COUNTED WHEN A COMPLAINT IS CONCLUDED.

## **2005 Year-End Report on the Federal Judiciary**

### **I. Introduction**

New Year's Day in America means football, parades, and, of course, the Year-End Report on the Federal Judiciary. I am pleased to carry on the tradition launched by Chief Justice Burger, and continued for the past 19 years by Chief Justice Rehnquist, of issuing on New Year's Day a report on the state of the federal courts. I recognize that it is a bit presumptuous for me to issue this Report at this time, barely three months after taking the oath as Chief Justice. It remains for me very much a time for listening rather than speaking. But I do not intend to start the New Year by breaking with a 30-year-old tradition, and so will highlight in this Report issues that are pressing and apparent, even after only a few months on the job.

First and foremost: the state of the federal judiciary is strong. We celebrated on September 24th the 250th anniversary of the birth of Chief Justice John Marshall. If Marshall were able to observe the work of the federal courts today, there doubtless would be much that would surprise him. But he would see in the work of the men and women who took the same judicial oath he did the same commitment to uphold the Constitution and to fulfill the Framers' vision of a judicial branch with the strength and independence "to say what the law is," without fear or favor. Marbury v. Madison (1803).

## **II. Violence Directed at Judges**

No review of the year just passed can ignore the violent events that took place in Illinois and Georgia in February and March. The Nation was shocked by the horrific murders of a U. S. District Court judge's husband and mother by a disappointed litigant, and the terrible incident in Atlanta in which a judge, court reporter, and deputy were killed in the Fulton County courthouse. These attacks underscored the need for all branches of government, state and federal, to improve safety and security for judges and judicial employees, both within and outside courthouses. We see emerging democracies around the world struggle to establish court systems in which judges can apply the rule of law free from the threat of violence; we must take every step to ensure that our own judges, to whom so much of the world looks as models of independence, never face violent attack for carrying out their duties.

## **III. Appropriations and Judicial Independence**

Article III of our Constitution seeks to protect judicial independence by providing that district and appellate judges serve during good behavior and receive "a Compensation, which shall not be diminished during their Continuance in Office." These provisions alone, important as they are, cannot guarantee judicial independence, and a strong and independent judiciary is not something that, once established, maintains itself. It is instead a trust that every generation is called upon to preserve, and the values it secures can be lost as readily through neglect as direct attack.

In recent years, the budget for the federal judiciary and the ever-lengthening appropriations process have taken a toll on the operations of the courts. There are two

areas of concern that have come to the fore and now warrant immediate attention and action. The first may come as a surprise to many: unlike many other elements of the federal government, the judiciary is required to pay a large and ever-increasing portion of its budget as rent to another part of the government — the General Services Administration (GSA). According to information compiled by the Administrative Office of the U. S. Courts, while the judiciary spends almost sixteen percent of its total budget on GSA rent — twenty-two percent of its “salaries and expenses” appropriations — only three percent of the Department of Justice budget goes toward GSA rent, and the Executive Branch as a whole spends less than two-tenths of one percent of its budget on GSA rent. During fiscal year 2005, the judiciary paid \$926 million to GSA in rent, even though GSA’s actual cost for providing space to the judiciary was \$426 million. The disparity between the judiciary’s rent and that of other government agencies, and between the cost to GSA of providing space and the amount charged to the judiciary, is unfair. The federal judiciary cannot continue to serve as a profit center for GSA.

Escalating rents combined with across-the-board cuts imposed during fiscal years 2004 and 2005 resulted in a reduction of approximately 1,500 judicial branch employees as of mid-December when compared to October 2003. We are grateful that our fiscal year 2006 appropriation provides the judiciary with a 5.4 percent increase over fiscal year 2005. While this should allow the courts to restore some of these staffing losses, the judiciary must still find a long-term solution to the problem of ever-increasing rent payments that drain resources needed for the courts to fulfill their vital mission.

A more direct threat to judicial independence is the failure to raise judges’ pay. If judges’ salaries are too low, judges effectively serve for a term dictated by their financial

position rather than for life. Figures gathered by the Administrative Office show that judges are leaving the bench in greater numbers now than ever before. In the 1960s, only a handful of district and appellate court judges retired or resigned; since 1990, 92 judges have left the bench. Of those, 21 left before reaching retirement age. Fifty-nine of them stepped down to enter the private practice of law. In the past five years alone, 37 judges have left the federal bench — nine of them in the last year.

There will always be a substantial difference in pay between successful government and private sector lawyers. But if that difference remains too large — as it is today — the judiciary will over time cease to be made up of a diverse group of the Nation’s very best lawyers. Instead, it will come to be staffed by a combination of the independently wealthy and those following a career path before becoming a judge different from the practicing bar at large. Such a development would dramatically alter the nature of the federal judiciary.

Chief Justice Rehnquist wrote often about the need to raise judicial pay — going so far as to say in his 2002 Year-End Report that he felt at risk of “beating a dead horse.” Despite his entreaties, however, the situation has gotten worse, not better. According to information gathered by the Administrative Office, the real pay of federal judges has declined since 1969 by almost 24 percent, while the real pay of the average American worker during that time has increased by over 15 percent.

Three years ago, in January 2003, the National Commission on the Public Service concluded that “Congress should grant an immediate and significant increase in judicial, executive and legislative salaries” and that “[i]ts first priority in doing so should be an immediate and substantial increase in judicial salaries.” Yet no effective action has been

taken to address this problem. I am not the first person to observe that the way judicial and other high-level government salaries are set — allowing the salaries to stagnate until large increases are required — simply does not work. And all those in public service whose pay scales are tied to those of higher-level officials feel the pinch of compressed salaries.

I understand that it is difficult for Congress to raise the salaries of federal judges, especially in a tight budget climate. I also understand that it is the responsibility of Congress to do difficult things when necessary to preserve our constitutional system. Our system of justice suffers as the real salary of judges continues to decline. Every time an experienced judge leaves the bench early, the judiciary suffers a real loss. Every time a judge leaves the bench for a higher paying job, the independence fostered by life tenure is weakened. Every time a potential nominee refuses to be considered, the pool of candidates from which judges are selected narrows.

If Congress gave judges a raise of 30 percent tomorrow, judges would — after adjusting for inflation — be making about what judges made in 1969. This is not fair to our Nation's federal judges and should not be allowed to continue. Unfortunately, judges do not have a natural constituency to argue on their behalf. They do not serve a particular group, and courts — by their very design — often have to render unpopular decisions. Judges must rely on the Congress and the President to increase their pay.

The federal judiciary, as one of the three coordinate branches of government, makes only modest requests of the other branches with respect to funding its vital mission of preserving the rule of law under our Constitution. Those of us in the judiciary understand the challenges our country faces and the many competing interests that must

be balanced in funding our national priorities. But the courts play an essential role in ensuring that we live in a society governed by the rule of law, including the Constitution's guarantees of individual liberty. In order to preserve the independence of our courts, we must ensure that the judiciary is provided the tools to do its job.

A New Year inevitably kindles fresh hope. In the coming year, the men and women of the federal judiciary will faithfully discharge their heavy responsibility of ensuring equal justice under law. The other two branches of government can aid us in that effort by, first, enacting a significant pay raise for federal judges, and, second, eliminating or at least sharply lowering the courthouse rent that the judiciary is required to pay GSA. These two steps — whose budgetary impact would be vanishingly small — would go a long way toward maintaining a strong and independent federal judiciary with the resources to administer justice efficiently and fairly. And that is priceless.

#### **IV. In Memoriam**

On September third, the Nation lost a distinguished and dedicated public servant, and we in the judiciary lost a good friend and colleague. William H. Rehnquist led the Third Branch of our government for almost 19 years. He will be counted by history — an avocation to which he offered four books of his own — as among the handful of great Chief Justices of the United States. For the many of us both within and outside the judiciary who were fortunate enough to know him personally, he will always be remembered as a fair, thoughtful, and decent man.

#### **V. Conclusion**

I want to thank the judges and court staff throughout the country for their continued hard work and dedication to our common calling over the past year. I extend to all my wish for a Happy New Year.



## Appendix

### Workload of the Courts

#### The Supreme Court of the United States

The total number of case filings in the Supreme Court decreased from 7,814 in the 2003 Term to 7,496 in the 2004 Term — a decrease of 4.1 percent. Filings in the Court's *in forma pauperis* docket decreased from 6,092 to 5,755 — a 5.5 percent decline. The Court's paid docket increased by 19 cases, from 1,722 to 1,741 — a 1.1 percent increase. During the 2004 Term, 87 cases were argued and 85 were disposed of in 74 signed opinions, compared to 91 cases argued and 89 disposed of in 73 signed opinions in the 2003 Term. No cases from the 2004 Term were scheduled for reargument in the 2005 Term.

#### The Federal Courts' Caseload

Filings in the U.S. bankruptcy courts surged to an all-time record during 2005, rising 10 percent to 1,782,643.<sup>1</sup> This growth stemmed from the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Appeals also reached new levels due in part to a surge in criminal appeals and prisoner

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<sup>1</sup> Nonbusiness filings increased 10 percent, and business petitions decreased 2 percent. While chapter 7 and chapter 12 filings grew 17 percent and 53 percent, respectively, chapter 11 and chapter 13 filings dropped 36 percent and 6 percent, respectively. The reduction in chapter 11 filings represented a return to a more typical level after last year's 220 percent rise in chapter 11 petitions filed in the Southern District of New York. Bankruptcy filings have soared 60 percent over the last 10 years.

petitions.<sup>2</sup> In contrast, district court civil filings declined by 10 percent, primarily as a result of decreases in federal question filings and diversity of citizenship cases.<sup>3</sup>

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<sup>2</sup> Filings in the regional courts of appeals rose 9 percent to an all-time high of 68,473, marking the 10th consecutive record-breaking year and the 11th successive year of growth. This increase stemmed from upswings in criminal appeals, original proceedings, and prisoner petitions following the U.S. Supreme Court's decisions in Blakely v. Washington, 542 U.S. 296 (2004) and U.S. v. Booker, 543 U.S. 220 (2005), and from continued growth in appeals of administrative agency decisions involving the Board of Immigration Appeals (BIA). As large as the increase is, it would have been higher had not the Court of Appeals for the Fifth Circuit's operations been affected by Hurricane Katrina. That court's data include 92 appeals filings for the month of September, significantly lower than the 700 to 1,000 it reported for each month from October 2004 to August 2005. Nationwide, criminal appeals rose 28 percent to 16,060. The largest increases were in cases involving drugs (up 31 percent to 6,099), immigration (up 55 percent to 2,896), firearms and explosives (up 23 percent to 2,505), and property (up 15 percent to 1,967). Administrative agency appeals rose 12 percent to 13,713, primarily due to challenges to BIA decisions, which began rising in 2002. Appeals filings have increased 32 percent since 1996.

<sup>3</sup> Specifically, total federal question filings dropped 16 percent because of the substantial decline in filings (19,630 cases) in the District of South Carolina. In the previous year, an abnormally high number of cases related to personal property financial investments were filed in this district. Federal question filings related to civil rights also fell last year, declining by 10 percent. Most of these cases involved employment issues and other types of civil rights issues.

Total diversity of citizenship filings dropped 8 percent, mainly as a result of a 15 percent decrease in personal injury/product liability filings. The District of Minnesota reported a large drop in cases involving the anticholesterol drug Baycol. The Central District of California reported declines in multidistrict litigation cases involving both hormone replacement therapy medication and diet drugs. The Northern District of Ohio saw a major decrease in filings in multidistrict litigation cases which addressed claims of injuries caused by welding rods containing manganese.

Filings with the United States as plaintiff or defendant rose 8 percent. Cases with the United States as defendant climbed 9 percent, mainly as a result of a 29 percent jump in prisoner petitions. Especially significant was the 45 percent rise in motions to vacate sentence. In addition, federal *habeas corpus* prisoner petitions increased 16 percent. Increases in both motions to vacate sentence and federal *habeas corpus* prisoner petitions are, in part, related to the Booker decision. Filings related to the recovery of defaulted student loans and drug-related seizures of property increased 18 percent and 6 percent, respectively.

Over the past 10 years, civil filings have declined 6 percent, mostly as a result of decreases in prisoner petitions, civil rights employment cases, and personal injury/product liability cases.

Criminal filings dropped by a small amount,<sup>4</sup> as did the number of defendants in cases activated by pretrial services.<sup>5</sup> Persons under postconviction supervision remained stable at 112,931.<sup>6</sup>

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<sup>4</sup> Criminal case filings declined 2 percent to 69,575, and defendants in these cases declined one percent to 92,226. This drop was likely attributable in part to the effects of Hurricane Katrina. After Katrina, district courts in the Fifth and Eleventh Circuits reported fewer cases than normal. The decrease in filings in 2005 lowered the cases per authorized judgeship from 105 to 102. The median case disposition time for defendants rose from 6.2 months in 2004 to 6.8 months in 2005, as courts took longer to process post-Booker cases.

Overall drug cases declined 1 percent to 18,198; the numbers of defendants, however, rose 1 percent to 32,637. Immigration filings rose less than 1 percent, but, nonetheless, stood at record high levels of 17,134 cases and 18,322 defendants. Prosecution of sex offenses rose 9 percent to 1,779 cases, primarily due to an increase in filings of sexually explicit material cases. The criminal filing category with the largest numeric increase was non-marijuana drug filings, as cases went up 5 percent to 13,102 and defendants climbed 6 percent to 25,121. Firearms and explosives cases declined 4 percent to 9,207 cases. This year's decrease was the first since 1996, a period during which criminal case filings grew 45 percent.

<sup>5</sup> The number of defendants in pretrial services system cases opened in 2005, including pretrial diversion cases, fell less than 1 percent to 99,365. Nevertheless, pretrial services officers prepared 1 percent more pretrial reports, and the number of defendants interviewed increased 2 percent. In conjunction with all pretrial services cases closed during the year, a total of 231,060 pretrial hearings were held, an increase of 4 percent over the total in 2004. During the past 10 years, cases activated in the pretrial services system have increased 52 percent.

<sup>6</sup> Persons serving terms of supervised release following their release from prison totaled 82,832 on September 30, 2005, and they constituted 73 percent of all persons under postconviction supervision. The number of individuals on parole declined 5 percent to 2,778 and made up only 2 percent of those under supervision. The number of persons on probation declined 8 percent to 26,554, due to a continuing drop in the imposition of sentences of probation by both district judges and magistrate judges. Of the 112,931 persons under postconviction supervision, 44 percent had been convicted of a drug-related offense, the same as one year ago. There are now 27 percent more persons under postconviction supervision than there were in 1996.

# Judicial Facts and Figures

*Judicial Facts and Figures* is a set of [tables](#) containing historical caseload data primarily for the fiscal years 1990, 1995 and 2000 through 2005. All tables are in PDF. This publication includes data on the U.S. Courts of Appeals, the U.S. District Courts, and the U.S. Bankruptcy Courts.

The sources for the data were the [Annual Report of the Director](#), the [Judicial Business of the United States Courts](#), [Federal Court Management Statistics](#) and a few unpublished statistical tables. Specific data sources are noted on each table for easy reference. Except where specifically stated, data were compiled from the published report of the fiscal year noted (i.e., 1995 data are from the 1995 *Judicial Business of the U.S. Courts*). There have been minor revisions to some numbers in subsequent publications. For example, pending data are frequently revised in the subsequent publication. In addition, when the reporting period was changed in 1992 from the twelve month period ending June 30 to September 30, a number of filing totals for the previous years were revised in the *Judicial Business of the U.S. Courts*. Several tables in this report include data that reflect the revisions.

*Judicial Facts and Figures* does not offer an analysis of the federal caseload changes, although significant fluctuations in the data and corresponding explanations are noted on the tables. More detailed information can be found in the *Judicial Business of the U.S. Courts* for the year(s) in which the fluctuation(s) occurred. Questions concerning this report can be referred to the Judgeship Analysis Staff at 202-502-1180.

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[Download all the Judicial Facts & Figures tables](#) (pdf).

This document is designed for double-sided printing.

<b>1.</b>	<b>Total Judicial Officers</b>
1.1	<a href="#">Courts of Appeals, District Courts, Bankruptcy Courts</a>
<b>2.</b>	<b>U.S. Courts of Appeals (Excludes Federal Circuit)</b>
2.1	<a href="#">Appeals Filed, Terminated, Pending - Summary</a>
2.2	<a href="#">Appeals Filed, Terminated, and Pending - Detail</a>
2.3	<a href="#">Appeals Filed by Type of Appeal and Originating Agency</a>
2.4	<a href="#">Pro Se Cases Filed</a>

2.5	<a href="#">Type of Opinion or Order Filed in Cases Terminated on the Merits After Oral Hearing or Submission on Briefs</a>
2.6	<a href="#">Total Participations in Cases Terminated on the Merits After Oral Hearings or Submission on Briefs</a>
2.7	<a href="#">Other Workload in the Courts of Appeals</a>

<b>3.</b>	<b>U.S. Court of Appeals for the Federal Circuit</b>
3.1	<a href="#">Appeals Filed, Terminated, Pending</a>
3.2	<a href="#">Appeals Filed by Agency</a>

<b>4.</b>	<b>U.S. District Courts - Civil</b>
4.1	<a href="#">Civil Cases Filed, Terminated, Pending</a>
4.2	<a href="#">Civil Cases Filed by District</a>
4.3	<a href="#">Civil Cases Filed by Origin</a>
4.4	<a href="#">Civil Cases Filed by Nature of Suit</a>
4.5	<a href="#">Product Liability Cases Filed by Nature of Suit</a>
4.6	<a href="#">Prisoner Petitions Filed by Nature of Suit</a>
4.7	<a href="#">Copyright, Patent, and Trademark Cases Filed</a>
4.8	<a href="#">Civil Cases Filed by Jurisdiction</a>
4.9	<a href="#">Diversity of Citizenship Cases Filed by Nature of Suit</a>
4.10	<a href="#">Civil Cases Terminated by Action Taken</a>
4.11	<a href="#">Civil Cases Pending by Length of Time Pending</a>
4.12	<a href="#">Civil Consent Cases Terminated by U.S. Magistrate Judges Under 28 U.S.C. Section 636(c)</a>

<b>5.</b>	<b>U.S. District Courts - Criminal</b>
5.1	<a href="#">Criminal Cases and Defendants Filed, Terminated, Pending (Includes Transfers)</a>
5.2	<a href="#">Criminal Cases Filed by District (Includes Transfers)</a>
5.3	<a href="#">Criminal Cases Filed by Major Offense (Excludes Transfers)</a>
5.4	<a href="#">Criminal Defendants Filed by Major Offense (Excludes Transfers)</a>
5.5	<a href="#">Criminal Defendants Disposed of by Method of Disposition (Excludes Transfers)</a>

<b>6.</b>	<b>U.S. District Courts - Combined Civil and Criminal</b>
6.1	<a href="#">Total Civil and Criminal Cases Filed, Terminated, Pending (Includes Transfers)</a>
6.2	<a href="#">Total Weighted and Unweighted Filings Per Authorized Judgeship</a>
6.3	<a href="#">Civil and Criminal Case Median Times (Month) - Filing to Disposition</a>
6.4	<a href="#">Civil and Criminal Trials Completed</a>
6.5	<a href="#">Length of Civil and Criminal Trials Completed</a>

<b>7.</b>	<b>U.S. Bankruptcy Courts</b>
7.1	<a href="#">Bankruptcy Code Petitions Filed, Terminated, Pending</a>
7.2	<a href="#">Voluntary and Involuntary Cases Filed by Chapter of the Bankruptcy Code</a>
7.3	<a href="#">Business and Non-business Cases Filed by Chapter of the Bankruptcy Code</a>

Table 1.1

## Total Judicial Officers. Courts of Appeals, District Courts, Bankruptcy Courts

Fiscal Year	Courts of Appeals			District Courts							Bankruptcy Courts		
				Article III Judges			Magistrate Judges						
	Authorized Judgeships	Active Judges	Senior Judges w/ staff	Authorized Judgeships	Active Judges	Senior Judges w/ staff	Authorized Positions			Recalled Judges	Authorized Judgeships	Active Judges	Recalled Judges
							Full-Time	Part-Time	Clerk/ Magistrate Judge				
1990	168	158	63	575	541	201	329	146	8	5	291	289	13
1995	179	168	81	649	603	255	416	78	3	16	326	315	23
2000	179	156	86	655	612	274	466	60	3	23	325	307	30
2001	179	147	93	665	590	281	471	59	3	28	324	312	30
2002	179	155	92	665	637	285	486	51	3	24	324	280	31
2003	179	160	91	680	651	275	491	49	3	40	324	309	35
2004	179	166	102	679	664	291	500	45	3	32	324	313	35
2005	179	167	100	678	642	292	503	45	3	34	352	315	32
*Percent Change - 2005 over 1990													
	6.5%	5.7%	58.7%	17.9%	18.7%	45.3%	52.9%	-69.2%	-	580.0%	21.0%	9.0%	146.2%

\*Percentage is not computed when the total is fewer than 10.

Source: Text Narrative and Tables - Annual Report of the Director.

**Table 2.1**

**U.S. Courts of Appeals (Excludes Federal Circuit). Appeals Filed, Terminated, Pending -- Summary**

Fiscal Year	Authorized Judgeships	Filed	Terminated	Pending	Per Panel **		
					Filed	Terminated	Pending
1990*	156	40,893	38,961	32,589	786	749	627
1995	167	50,072	49,805	37,536	899	895	674
2000	167	54,697	56,512	40,410	983	1,015	726
2001	167	57,464	57,422	40,303	1,032	1,032	724
2002	167	57,555	56,586	40,965	1,034	1,017	736
2003	167	60,847	56,396	44,600	1,093	1,013	801
2004	167	62,762	56,381	51,071	1,127	1,013	917
2005	167	68,473	61,975	57,724	1,230	1,113	1,037

\*Twelve month period ended June 30.

\*\* Assumes every case requires a three-judge panel.

Source: *Federal Court Management Statistics* and Statistical Table B-1



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# 2003 Annual Report

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# **STRUCTURE OF THE FEDERAL JUDICIARY**

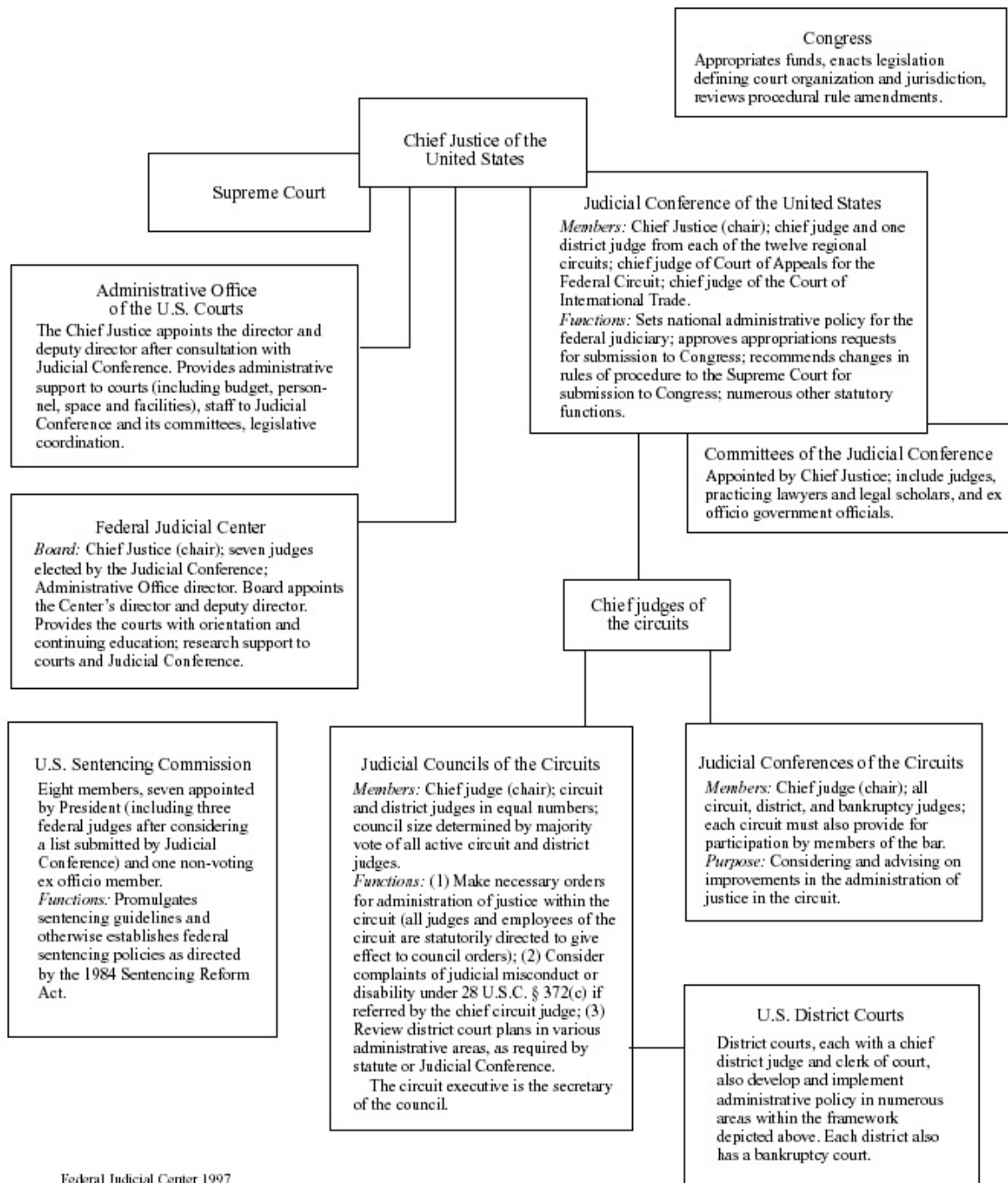
**STRUCTURE OF THE FEDERAL JUDICIARY**

The federal courts were established as an independent third branch of government by Article III of the Constitution, which provides for a Supreme Court and “such inferior courts” as Congress deems necessary. Congress established federal district and circuit courts with the Judiciary Act of 1789. A major reform of the system occurred in 1891 with the Circuit Court Act, which established a permanent appellate court for each circuit. Today, the 94 federal district courts are grouped into 12 circuits, each with its own court of appeals.

The administrative head of each circuit is the chief judge of the court of appeals, who achieves this position by seniority. The judicial councils of the circuits, which include active judges of both the courts of appeals and district courts, are charged with administrative responsibility for the circuit as a whole, headed by a chief judge. The chief judge of each circuit and an elected district judge represent the circuit at the semi-annual Judicial Conference of the United States. This body, chaired by the Chief Justice of the United States, is convened for the purpose of determining policy in administrative matters. In addition, the Conference directs the housekeeping arm of the federal judiciary, the Administrative Office of the United States Courts, and advises the legislative and executive branches on matters affecting the judiciary. The Federal Judicial Center, which is governed by a national board of which the Chief Justice is chairman, is the research and training arm of the federal judiciary.

The United States Courts for the Second Circuit exercise federal jurisdiction within the states of Connecticut, New York, and Vermont. The Court of Appeals sits in New York City. The six districts (the state of New York is divided into the Eastern, Northern, Southern and Western Districts) each have a district court and a bankruptcy court, and sit in the locations shown on the map on page 5A. As of May 1, 2004, the Court of Appeals has 12 active judges in 13 judgeships, 11 senior judges (nominally retired judges, most of whom carry heavy caseloads) and one vacancy. The district courts have a total of 57 active judges, 39 senior judges, 45 magistrate judges and 28 bankruptcy judges. There are five district judgeship vacancies.

# Federal Judicial Administration



Federal Judicial Center 1997

**JUDICIAL BUSINESS**

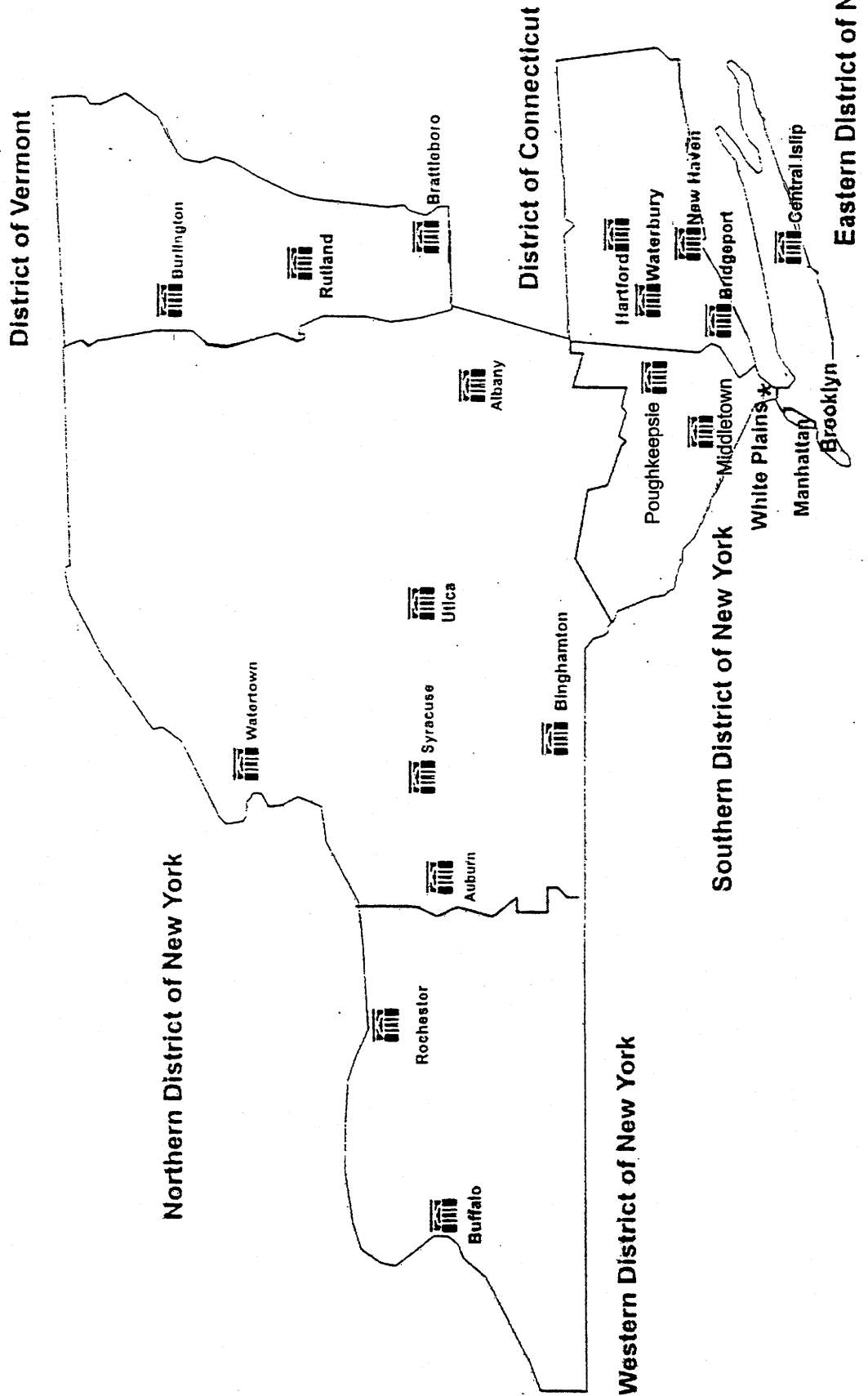
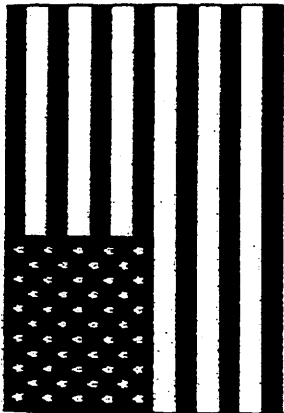
**OF THE**

**SECOND CIRCUIT**

# THE SECOND JUDICIAL CIRCUIT

## PLACES OF HOLDING COURT

C 80y-6



**CHIEF JUDGES'  
REPORTS OF THE  
SECOND CIRCUIT**



UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT



**Chief Judge John M. Walker, Jr.**

On August 12, 2003, our Court suffered a grievous loss with the death of Circuit Judge Fred I. Parker of Vermont. Judge Parker or “FIP”, as he was affectionately known to his circuit court colleagues, joined our Court on October 11, 1994 after serving as a United States District Judge in the District of Vermont from 1990 to 1994 and as that district’s Chief Judge from 1991 to 1994. A graduate of the University of Massachusetts and Georgetown Law School where he was Managing Editor of the Law Review, Judge Parker joined the law firm of Lyne Woodworth & Evarts in 1965 after graduation from law school. From 1966 to 1969, he was an associate in the law firm of Yardell & Page and later was a name partner in the Vermont law firm of Langrock Sperry Parker & Wool from 1972 until his 1990 appointment to the district court bench. Judge Parker served as Deputy Attorney General for Vermont from 1969 to 1972, chair of the Vermont Criminal Justice Training Council from 1973 to 1979 and as chair of the Vermont Supreme Court’s Special Committee on the Reform of the Judiciary from 1988 to 1989, among other public service endeavors. As a federal judge, from 1993 to 2003 he represented the Second Circuit on the Judicial Branch Committee of the Judicial Conference of the United States from 1993 to 2002.

Judge Parker’s sudden death was a terrible loss for our Court. A hard working and able jurist, he was a “judge’s judge,” who held no personal agenda and hewed to the path of the law. His opinions were models of clear, concise and well-crafted judicial prose that did not stray from deciding the issue at hand. He delighted in his family, his adored wife and constant companion, Barbie, and his

two sons, Hawkeye and Bruce. And he loved his adopted state of Vermont and all of the outdoor activities for which that state is famous. His fifth floor chambers in the Burlington Courthouse overlooked Lake Champlain. Most of all, Fred Parker was a warm and wonderful colleague. All of us loved FIP and we will miss his dry sense of humor, his wise counsel and his strong friendship which we had hoped would be with us for many years. Our hearts and deepest sympathies remain with Barbie, Hawkeye and Bruce and his colleagues and friends in his beloved Vermont.

In 2003, with our Court's overall filings rising 31%, we were one of seven regional courts of appeals reporting increases in filings. This increase was attributable primarily to a flood of immigration appeals, the result of a concerted effort by the Department of Justice ("DOJ") to eliminate an enormous backlog of cases before the Immigration and Naturalization Service ("INS"). While the INS enforcement functions were transferred to the new Department of Homeland Security, the INS adjudicative functions remain with the DOJ. Appeals from the Bureau of Immigration Appeals ("BIA") are taken directly to the Court of Appeals.

In 2002, the Attorney General directed the BIA to clear its backlog of cases, with the result that filings of appeals of BIA decisions nationwide climbed 153 % from 2001 to 2002 and 99% from 2002 to 2003. Most of these increases were felt in the Ninth and Second Circuits with considerable impact on the Fifth and Eleventh Circuits as well. The disposition of these cases is a challenge not just for our Court, but also for the attorneys: the United States Attorney's Office for the Southern District of New York and the private immigration bar, where a small handful of attorneys represent most of the aliens in counseled appeals.

At the same time, the Court of Appeals has had to deal with a significant upward spike in habeas corpus appeals and motions for certificates of appealability from the Eastern District of New York. A backlog of approximately 500 habeas corpus petitions were assigned to one district judge for review and disposition and their appeals have stretched our resources. To handle this severe caseload increase, our Court increased the number of double panels for the 2003-2004 Term to twelve with three additional optional panels standing by if circumstances warranted. While our present information as to the number and timing of additional cases ready for calendaring is imperfect, our goal is to try to build in as much flexibility as possible to deal with this caseload challenge over the next term of our Court.

In 2002, each active judge sat for forty days which translates into about 250 appeals. In addition, our judges heard numerous motions both counseled and pro se. As in previous years, about 80% of our panels were comprised entirely of our own circuit judges and, although we continued our tradition of including visiting judges, we relied primarily on visitors from within the Circuit. Once again, enjoying a nearly full complement of judges in 2004 allowed us to schedule sittings

that maximized opportunities for our judges to work closely with one another, thereby improving collegiality and building levels of trust and respect that are at the heart of good appellate decision-making.

Last year, on August 16, 2002, Judge Pierre N. Leval took senior status. The judicial vacancy created by Judge Leval's change in status was filled on June 13, 2003 when Richard C. Wesley, an Associate Judge of the New York State Court of Appeals, was elevated to our Court. Until Judge Fred I. Parker's untimely death on August 12th, our Court briefly enjoyed a full complement of thirteen active judges with no judicial vacancies.

In 2001, our magnificent building at 40 Foley Square in Manhattan was renamed in honor of the late Associate Justice of the United States Supreme Court Thurgood Marshall. On Monday, April 14, 2003, we formally dedicated the Foley Square United States Courthouse to Justice Marshall, who was a member of our Court from 1961 to 1965. Justice Marshall's widow, Cissy, her two sons and their families joined Senators Charles Schumer and Hillary Rodham Clinton, Congressmen Jerrold Nadler, Eliot Engel and Charles Rangel, GSA Administrator Stephen Perry, Deputy Attorney General Larry Thompson, Senior Circuit Judge Ralph K. Winter (Justice Marshall's first law clerk as a circuit judge), Chief Southern District Judge Michael B. Mukasey and myself in paying tribute to the late Justice Marshall. In the Main Lobby of the now Thurgood Marshall United States Courthouse a bronze plaque is affixed to the wall which bears a likeness of the late Justice from his days on the Supreme Court. The plaque that commemorates Justice Marshall's life tells all who enter our building that this imposing courthouse is forever dedicated to an "American hero", the civil rights leader, who in addition to his distinguished judicial career as an Associate Justice of the United States Supreme Court, a United States Circuit Judge for the Second Circuit, successfully argued Brown v. Board of Education before the United States Supreme Court.

Last year, I reported that our efforts to remedy the major infrastructure and architectural problems of the Thurgood Marshall Courthouse ultimately proved unsuccessful. Early in 2003, GSA Administrator Perry asked the courts and the AO to work with his agency in re-examining the costs of our project in an effort to secure approval from the Office of Management and Budget ("OMB") for inclusion in GSA's FY 2005 budget. Two months after we began this review, GSA Administrator Perry, in his remarks at the April 13th dedication of our Courthouse, publicly acknowledged the pressing need to remedy the Courthouse's deteriorated infrastructure and pledged his agency's support in securing the necessary funding from Congress. Members of Congress, including Senator Clinton and Congressman Nadler, in whose district our Courthouse is located, followed suit, pledging their support for our prospectus project.

As the 2003 calendar year ends, I am pleased to report that our efforts over the past three years to secure prospectus level funding to remedy the major infrastructure and architectural problems of the Thurgood Marshall Courthouse through an appropriation from Congress have been successful. In February 2004, GSA's request for \$16.5 million in design monies for our prospectus project to upgrade the infrastructure of the Thurgood Marshall Courthouse, was included in GSA's FY 2005 budget request to Congress. Construction monies will be phased over a two-fiscal-year cycle in FY 2007 and FY 2008. In order to upgrade and replace the building's heating, air conditioning, electrical and plumbing systems, both the Court of Appeals and the Southern District have agreed to vacate the courthouse prior to the construction phase of the project and to remain out of the courthouse until completion of the project in 2010. Undertaking a project of this magnitude will require an enormous sacrifice by the judges and staff of these two courts for many years, but it is essential that we replace the aging infrastructure of the Thurgood Marshall Courthouse with new modern systems that can support court operations well into the twenty-first century.

Our success in this almost three-year endeavor was thanks to the steadfast assistance of Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts ("AO") and his Assistant Director for Security and Facilities Ross Eisenman, who continued to retain the services of the Philadelphia-based architectural and engineering firm Vitetta Associates for us and who worked with us, Vitetta and GSA Region 2 throughout much of 2003 to re-examine and reduce the costs of the prospectus project to upgrade the infrastructure of the Thurgood Marshall Courthouse without sacrificing the scope of the much-needed infrastructure upgrade. We also thank GSA Administrator Stephen Perry, Public Buildings Commissioner Joseph Moravec and their staffs and GSA Region 2, Senators Charles Schumer and Hillary Clinton, Congressman Nadler and the members of the Citizen's Committee to Restore the Thurgood Marshall Courthouse for their support in helping us secure the necessary monies to preserve this stately and magnificent building for generations to come.

Finally, I want to mention the strong support that we received from the late Senator Daniel Patrick Moynihan over the past several years before his untimely death in 2003. Senator Moynihan served as the Co-Chair of the Citizen's Committee to renovate the Thurgood Marshall Courthouse and played an active role in our efforts. Our project is evidence of just another way in which this great public servant will be missed by the citizens of the State of New York and the country.

In closing, I am pleased to report that the news from the Court of Appeals is good and continues to improve. Even as our Court experiences changes in personnel and workload trends, we continue our tradition of scholarship,

collegiality and respectful dissent. While our median disposition time has lengthened due to an increased caseload without an increase in judges, I fully expect that it will be reduced as we adopt more efficient practices. The important administrative issues that confront this Court and the federal judiciary as a whole remain unchanged. Judicial vacancies must be filled and increased caseloads must be dealt with. Thanks to our thirteen active and eleven senior judges, I am confident that we will carry into the future the Second Circuit's proud traditions of craft in decision-making and expeditious docket management.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

[PHOTO UNAVAILABLE]

**Chief Judge Robert N. Chatigny**

**JUDICIAL OFFICERS**

On February 4, 2003, Alfred V. Covello took senior status after more than ten years of service as a District Judge, the last five as Chief Judge of the District Court. He was succeeded as Chief Judge by Robert N. Chatigny, the 12th person to serve the District Court in that capacity.

On June 12, 2003, President George W. Bush appointed Mark R. Kravitz to the seat vacated by Judge Covello. Judge Kravitz was sworn-in by Chief Justice William H. Rehnquist on August 18, 2003, thus becoming the 34th District Judge in the history of the Court. A formal investiture ceremony for Judge Kravitz was conducted at the New Haven Courthouse on November 10, 2003.

With the appointment of Judge Kravitz, the District Court returned to a full complement of eight active District Judges. The Court continued to benefit enormously from the work of its Senior District Judges, Ellen Bree Burns, Warren W. Eginton, Peter C. Dorsey, Alan H. Nevas, and Alfred V. Covello. Senior District Judge Gerard L. Goettel of the Southern District of New York, sitting by designation, also continued to provide exemplary service to the Court.

On February 28, 2003, Albert S. Dabrowski was appointed to succeed Alan H. W. Shiff as Chief Judge of the Bankruptcy Court, effective March 1, 2003.

Thomas P. Smith was appointed to a fourth term as a Magistrate Judge on September 26, 2003. His new eight-year term began November 1st.

The District Judges voted to seek the reappointment of Magistrate Judge William I. Garfinkel, whose first term expires November 22, 2004.

### **CASE STATISTICS**

In 2003, the District Court opened 2,304 civil cases and disposed of 2,024 civil cases. At year-end, 3,159 civil cases were pending.

The Court opened 288 criminal cases involving a total of 368 defendants and disposed of 317 cases involving a total of 511 defendants. At the end of the year, 368 defendants had charges pending.

### **ATTORNEY DISCIPLINE**

The Court opened 14 grievance cases; seven grievance cases were closed. Of the seven closed cases, four were dismissed; suspension orders entered in the others. One attorney was reinstated to active practice. At year-end, 23 grievance cases were pending.

### **CLERK' S OFFICE AWARDS CEREMONY**

The annual awards ceremony honoring members of the Clerk' s Office was held in the Bridgeport Courthouse on April 11, 2003. Fidelis Basile, Alyssa Esposito and Kenneth Ghilardi received 10-year service pins; Maria Carpenter received a 15-year service pin; Victoria C. Minor received a 20-year service pin; Patricia Corbett received a 25-year service pin; and Sharon Collins received a 30-year service pin. Government Service Awards were given to Shirlee Ann Brown, who received a 10-year certificate, and Judi D' Auria, who received a 25-year certificate. Special Act Awards went to Cassandra Warren and Cheryl Conte for conducting food and toy drives for the benefit of local charities. Stephen Bates received the Rookie of the Year Award. Betsy Lopez received the Distinguished Service Award.

### **TRAINING**

During 2003, the Court' s internal training programs focused on implementing the new Case Management/Electronic Case Files system.

In addition, the Clerk' s Office began offering CM/ECF training to members of the Bar and their staffs. Lawyers attending the training class received

CLE credit. An on-line tutorial for CM/ECF also was made available to the public through the Court's website.

At the Clerk's Office annual retreat, a program dealing with attitudes at work and interaction with co-workers was presented by the Clerk of the Middle District of Florida, Sheryl Loesch.

Federal Judicial Center programs on effective writing were presented to members of the Clerk's Office by Hillary Gaylin, Deputy Clerk, Eastern District of Virginia.

### **AUTOMATION**

During 2003, plans were finalized for installing digital evidence presentation systems at each seat of court. The work is expected to be completed in 2004.

### **CONSTRUCTION PROJECTS**

Construction of the new grand jury room in the Bridgeport Courthouse was completed in April 2003.

During 2003, two new construction projects were designated by the District Court as priority projects for funding. The first involves construction of a new courtroom on the third floor of the New Haven Courthouse. The second involves redesigning the witness box and expanding the jury box in Courtroom 2 of the New Haven Courthouse. The Space and Facilities Committee for the Second Circuit approved these designations and provided funds for the first project. Funds for the second project were allocated by the District Court, with the approval of the Second Circuit Committee. Both projects are scheduled to be done by the General Services Administration in 2004.

The Court provided GSA with design requirements for a new jury assembly room on the second floor of the Hartford Courthouse. Because the affected space previously belonged to the U.S. Marshal's Service, GSA is funding the project in its entirety.

### **LONG-RANGE SPACE PLAN**

During the week of March 24, 2003, Elizabeth McGrath, Chief, Long-Range Space Planning, AOUSC, Scott Teman, Assistant Circuit Executive, and representatives from Fentress Associates, met with Chief Judge Chatigny, the Court Unit Executives, the Public Defender, the U. S. Attorney, the U. S.



Marshal, and representatives from GSA to update the Long Range Space Plan originally prepared in 1994. As a result of the meetings and subsequent comments, the Court received a final draft of a Long-Range Plan in December 2003. The draft makes it clear that the Court faces, and must soon confront, worsening space shortages, significant security risks, and other issues that may require building one or more new courthouses.

**UNITED STATES PROBATION OFFICE  
DISTRICT OF CONNECTICUT  
2nd Circuit Annual Report  
Fiscal Year 2003**

**NOTABLE EVENTS IN FISCAL YEAR 2003**

Fiscal Year 2003 was a very busy year with several important events. First and foremost was the budget crisis. Receiving the budget so late in the year impacted all of us, delaying purchases, reducing services and forcing us to make tough choices in hiring. The District of Connecticut completed the Long-Range Space Planning process. This took place in March of 2003. In April 2003, the Probation Office went through a District Review, by the Probation and Pretrial Services Office. This process involved months of preparation and more than a week of review. We feel that the review was a positive experience and a worthwhile endeavor. Fiscal Year 2003 was a contract year for us for aftercare services. We also had to contract for electronic monitoring services as the national contract failed to meet our needs. Also, for the first time, we leased GSA fleet cars. The purpose of this was to reduce travel costs. We will evaluate this program in 2004 to determine if leased cars are a cost saving measure. We implemented PACTS ECM in 2003. This program was an eight-month process, with a live date of June 2003. And finally, utilizing some of the recommendations from the review, we fine-tuned several of our manuals, the most important one being the Internal Controls Manual.

**STAFFING**

At the close of Fiscal Year 2003, the Probation Office staff consisted of 57 individuals filling 56.2 full-time positions. We had two pending officer appointments on September 30th. These officers came on board the first week of FY 2004, bringing our total staffing to 59. The position categories were as follows, one chief and two assistant deputies, three supervising probation officers and 31 line probation officers, 19 administrative and clerical support and three automation support. Our statistical workload justified 67.94 positions, thus indicating we were understaffed eight positions, even with the two new officers. We intended to fill all vacant positions, however, additional hiring had to be put on hold, due to budget uncertainties.

During the year, our office was critically understaffed due to unfilled positions and officers out on extended leave, for illness or maternity/family leave situations. We were able to continue functioning despite our inability to hire, through the use of temporary help in officer and support job categories.

The District of Connecticut recognizes the need for a diverse staff. The hiring practices of the Probation Office reflect our Court's policy with the two largest minority groups, African Americans and Hispanics represented in our professional and support staff. Our officer and administrative professional staff are just about evenly divided by gender.

### **TRAINING**

Training is a priority in the Probation Office. In FY 2003, a significant number of training hours were devoted to PACTS ECM. The total number of hours of training for PACTS ECM was approximately 700 hours. Other in-service training provided during the year included District Personnel Policies, Officer Safety, and Sentencing Guidelines. We take advantage of training offered by other agencies, especially those that cost little to nothing and do not require travel outside the District. Staff also has access to the FJTN at all three locations. They are provided a schedule and encouraged to view relevant programs of interest. Excluding training for PACTS ECM and FJTN training, probation office staff participated in 1,300 hours of training.

### **WORKLOAD**

**Pretrial:** In 2003, the District of Connecticut experienced a slight increase in the workload. We activated 463 pretrial cases, down slightly from 2002. Officers attended 1,062 hearings. Thirty-seven violations were reported to the Court, with eight of them resulting on bond revocations.

In FY 2003, our detention rate began to decline, but the number of defendants on supervision increased. The changes are a reflection of a change in the focus of Government prosecutions to more white-collar crimes and fewer multi-defendant drug distribution cases. But, some credit should also be given to our Court for the attention and analysis of our role and contribution to our high detention rates. In response to our recognition of and the AO's criticisms of our high detention rate, Chief Judge Chatigny opened dialogue between Judges and Magistrate Judges, the Probation Office, the Federal Defender and the United States Attorney. Also, a local Criminal Law Committee was formed, which also included representation from the private bar. This committee was to serve as a forum for discussion and resolution of various matters of concern, including the detention rate. Additionally, Magistrate Judges and Probation Officers responded by making a sincere effort to find appropriate alternatives to detention.

Substance abuse and mental health treatment were provided to approximately 70 defendants in 2003. The total cost of treatment for all defendants was \$172,232. Approximately 95 defendants were released on home confinement during pretrial supervision. The cost for home confinement was \$31,925. Approximately 25% of all pretrial services costs were covered by co-payments from defendants, private insurance or State health insurance programs. Co-payments totaled \$51,475, reducing the cost to the Probation Office to \$152,683. This amount was a 36% increase above 2002 costs, reflecting an increase in the use of alternatives to detention, but still a bargain considering that the cost of detention averages \$68 per day or \$25,000 per year, per person.

**Probation:** The Probation Office completed 431 presentence investigations in 2003, a 29% increase above the prior year. This increase was largely due to several high-profile, multi-defendant cases reaching final disposition after pending for several years. We do not expect that rate of increase to continue.

We supervised 880 offenders in the community, up 6% from the prior year. The vast majority of our supervision cases are on supervised release or probation. The various types of parole cases make up less than 1% of all supervision cases. Of all supervision cases, nearly 100% have one or more special conditions that include community confinement, fines or restitution, substance abuse or mental health treatment.

Expenditures for substance abuse treatment totaled \$230,978, for the provision of services for approximately 140 offenders. Our actual expenditures for treatment were reduced by client and insurance co-payments, totaling \$26,735, reducing the actual costs to the Government to \$204,243. Mental health treatment costs totaled \$57,961, providing services for approximately 40 individuals. Co-payments totaled \$5,258, reducing costs to the Probation Office to \$52,258.

During FY 2003, 55 post-conviction offenders were placed on home confinement. Costs for these services were \$31,391. Offender co-payments collected totaled \$11,822, reducing the cost to the Probation Office by one-third, to \$19,570.

The total cost for all treatment and alternatives to detention was \$524,488. Co-payments collected totaled \$95,290, reducing our actual costs for all services to \$429,199.

The Probation Office is also a key player in the collection of fines and restitution. During FY 2003, the Probation Office recorded collections of \$83,635

in fines, \$342,103 in restitution and \$3,770 in special assessments, for a total of \$429,508.

**PLANNED EVENTS IN 2004**

A major event for our District in 2004 is the implementation of FAS<sub>4</sub>T. This is a huge step for us, being a manual court. We will also be implementing the new supervision monographs for probation and pretrial services.

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**



**Chief Judge Edward R. Korman**

The population of the Eastern District of New York, which is one of the most populous judicial districts in the United States, increased over the last decade by 651,915, to 7.9 million. This was an increase of 8.5%. The 2000 Census indicated that much of that growth took place in the three counties of the City of New York that are part of the Eastern District of New York and in Suffolk County. A more recent update indicates that the population is likely to reach 8 million in 2004, or approximately 42 percent of the total population of the State of New York. The continued population growth, along with other factors, is responsible for the huge caseload borne by the judges of the Eastern District.

**CASELOAD PROFILE**

The Eastern District's judicial caseload profile remained high, but declined somewhat in 2003. Weighted filings per judgeship were 658, lower than last year's five-year high average. The Eastern District of New York remains first within the Second Circuit in weighted filings, and well above the national average of 532. Several other rankings of actions per judgeship also remain high, including total filings (553) – which is based on fifteen (15) judgeship positions when only thirteen (13) positions presently are filled; civil filings (449); pending cases (684); terminations (567) and trials completed (25). These statistics are through December 2003.

On September 30, 2003, pending total civil actions were 8,111, down from 8,536; civil case filings were 6,742, down from 7,601; criminal case filings were 1,293, down from 1,369; and criminal defendants totaled 1,927, down from 1,969.

This high workload per judge would not have been managed without the extraordinary assistance rendered by our senior judges. Six (6) of the nineteen (19) judges in the Eastern District are senior judges. Substantial assistance was also received from visiting judges. A total of 529 trial and non-trial bench hours were logged by eight (8) visiting judges who presided over 19 trials. A significant number of settlements also resulted from their efforts.

### **THE DELAYS IN FILLING VACANCIES**

Our ability to process our heavy caseload has been undermined significantly by the delays in filling vacancies. We have not had a full complement of judges since February 1, 2001. The vacancy created when Judge Reena Raggi was appointed to the Court of Appeals for the Second Circuit on October 14, 2002 has not been filled. A second vacancy created when Judge Sterling Johnson, Jr. took senior status on June 1, 2003, also remains unfilled. Yet, another vacancy, which went unfilled for more than two years, was created when Judge Thomas C. Platt took senior status on February 1, 2001. On September 22, 2003, Judge Sandra J. Feuerstein was appointed. Judge Feuerstein comes to the Eastern District from the Appellate Division, where she was the first woman from Nassau County to be appointed to that court. She previously served on the New York State Supreme Court in Nassau County, and as Judge of the Nassau County District Court. She was educated at the University of Vermont, at Hunter College, and she received her J.D. degree from Benjamin Cardozo School of Law of the Yeshiva University, where last year she received the Distinguished Alumnus Award.

### **JUDGE JACOB MISHLER**

The Judges of the Eastern District lost a treasured colleague with the death of Judge Jacob Mishler on January 26, 2004. Judge Mishler was appointed by President Eisenhower on July 6, 1960. He served for more than 42 years and as Chief Judge from 1965 to 1980. Judge Mishler was one of the ablest trial judges to grace the federal bench where he served longer than any judge appointed to our Court.

The qualities that made him so special were eloquently described by Gregory Wallace, one of his former law clerks, at a Special Session of the Court that convened on the occasion of the fortieth anniversary of Judge Mishler's appointment:

“ I deeply appreciate, from personal experience as a clerk in the late 1970s, Judge Mishler’ s skills in seeking objective truth, applying the law, and even down field running and punting. But what stands out for me is the extraordinary judicial humanity that he brings to the intensely human process that is the modern federal district court.

I remember the unusual human intuition that Judge Mishler brought to sentencing because, despite the Sentencing Commission’ s insistence, this is the most supremely human moment in the entire legal process.

I observed deadlocked, frustrated and angry juries that he calmed, not so much with words but by communicating, through his manner, his action and sympathy for their ordeal and optimism that more effort would ultimately be productive.

I recall the status conferences that Judge Mishler enlivened with humor and a wonderful, broad smile that relaxed otherwise-uptight attorneys and allowed everyone to get on with the business at hand. And I remember how much pure, sheer fun it was to be his law clerk.

So yes, applying the law is part of what judges do. But that alone in my view does not make a great judge.

We are here today to honor a great judge because not only does he extremely ably apply the law, but because he so skillfully understands and appreciates the people he is applying it to.”

### **HABEAS CASE PROJECT**

The Eastern District had a backlog of approximately 700 pending Habeas Corpus petitions. Senior District Judge Jack B. Weinstein with his legendary generosity of spirit volunteered to accept all habeas cases reassignments, and also promised to resolve all cases so assigned before the end of the calendar year. A total of 500 Habeas Corpus cases were assigned to Judge Weinstein in May 2003, and all 500 cases were decided by December 2003. An extensive written report suggesting administrative action to avoid future backlogs in deciding Habeas Petitions also was prepared by Judge Weinstein and issued on December 11, 2003. Writs were granted in ten (10) cases and, in 68 cases, a certificate of appealability was granted by Judge Weinstein. The Board of Judges owes a debt of gratitude to our senior colleague, who continues to work as hard, if not harder, than any district judge anywhere in the United States.



**THE JUDICIARY BUDGET**

The Judicial Branch is experiencing a severe budget crunch. The results of this funding shortfall are being felt throughout the judicial system, most particularly in the district courts and their Clerk' s Offices. In the Eastern District of New York, the Clerk' s Office, Pretrial Services, and the Probation Service have been significantly affected by the current budget crisis. The Clerk' s Office started the fiscal year with an estimated shortfall in the personnel account well in excess of a million dollars. In July, 2003, the Clerk' s Office staff was at 162 permanent staff positions. Presently, the Clerk' s Office is down to 152 positions, and must reduce staff to 142 positions. There is a hiring freeze on all replacement staff needs, a freeze on grade increases, a freeze on even minor longevity bonuses, and five staff members have accepted buy-out retirement offers. The balance of the salary shortfall is coming out of our automation and general accounts, even after these non-personnel accounts had been reduced by approximately 32 percent, as mandated by the Judicial Conference.

The outlook for FY 2005 is not any better. Funding levels for the Clerk' s Office are projected to drop even further, and may only support a total of 132 permanent staff. The budget crunch was intensified by a decision by the AO to reset salary allotments, separate from, and even prior to, a final fiscal year budget, so there was a double salary reduction in FY 2004. Further adjustments to the so-called " work measurement formula" are projected for FY 2005, so this double reduction effect will likely be repeated. A loss of 30 staff positions, if the 132 staff level projection in FY 2005 proves accurate, will be an unprecedented 18.5 percent drop in personnel within less than two years.

**BROOKLYN COURTHOUSE**

The construction of a new Brooklyn courthouse began with a groundbreaking ceremony on February 7, 2000. The project is way behind schedule. A second building project, the renovation of the Brooklyn Post Office, a part of which will be occupied by the Bankruptcy Court, is also behind schedule. The Brooklyn Courthouse Project has been troubled from the very beginning by the manner in which GSA managed the budget and contracting process. GSA' s failure to recognize and act decisively in an escalating construction market resulted in a series of redesign efforts that took the project from an eighteen-story building to the fourteen-story building now under construction. The February 1998 bid on the eighteen-story building was only seven million dollars over budget. Unaware of the amount of available funds, and unwilling to negotiate the difference, GSA ignored the advice of its consultants and insisted that the size of the project be scaled down to fourteen stories at a redesign cost of 2.7 million dollars. The final bid on the fourteen-story building which GSA accepted in September 1999, was twenty-one million dollars over budget.

The fourteen-story building now under construction is capable of housing sixteen district courtrooms and chambers and eight U.S. magistrates courtrooms and chambers, barely enough for the present complement of judges and magistrates sitting in Brooklyn, and not enough to house the number of judges who are likely to be sitting there when the project is completed. Nevertheless, GSA proposed to build out only twelve district courtrooms and chambers and four courtrooms and chambers for U.S. magistrate judges. Since GSA demolished an otherwise useful office building adjoining the present courthouse, which contained four courtrooms and which would have cost tens of millions of dollars to construct, the project as contemplated by GSA would have resulted in a net increase of eight district courtrooms and four magistrates courtrooms at a cost of 208.57 million dollars.

This shortsighted plan would also have ultimately cost the taxpayers far more money in years to come when the combined facilities in the present courthouse (with ten district courtrooms) run out of space. Moreover, it would have delayed and made more expensive the long-planned renovation of the present courthouse, because it would have to have been accomplished while the building was occupied.

Our concerted efforts succeeded in reversing the proposal of GSA to construct a fourteen-story building of which a third would have been an empty shell. The Omnibus Appropriation Bill for FY 2003 appropriates the additional 39.5 million dollars needed to build out the remaining eight (8) courtrooms and chambers in the new Brooklyn Courthouse. Our efforts, which overcame the lack of support from GSA, were assisted by the Brooklyn/Queens/Staten Island delegation in the House of Representatives, especially Representative Jerrold L. Nadler, and by Senator Hillary Clinton who is a member of the Senate Public Works Committee. Nevertheless, the overall project is 28 million dollars over budget. The General Services Administration has identified sufficient funds for reprogramming from other available funds. GSA will request that OMB approve the administrative transfer of these funds.

The projects, District and Bankruptcy, have yet again been delayed due to the bankruptcy of the general contractor, JA Jones Construction. The General Contractor's surety company, Fireman's Fund, has accepted their liability and entered into an agreement with Bovis Lend Lease to complete both projects. The new estimated completion dates (although not official) are March 2005 for the Bankruptcy Court, and October 2005 for the District Court.

GSA has spent all of the \$39.5 million appropriated for our eight (8) additional courtroom and chambers just to keep the jobs going. It will be requesting an additional \$74.7 million in reprogramming authority in May to complete both projects. The source of that money will be the \$65 million Congress

appropriated this year for the Repair and Alteration project on the current Cadman Plaza building, and \$9 million from some other undisclosed source. GSA then intends to again ask Congress for Repair and Alteration money for Cadman Plaza in the amount of \$91 million in the 2006 budget. The extensive delays encountered in delivering the new Brooklyn Courthouse required a re-evaluation of the longstanding plans for the complete repair and renovation of the existing courthouse. The plan, first designed ten years ago, called for the complete vacating of the existing courthouse to enable a long overdue and needed repair. While the construction project lagged, judicial staff increased. We now will have to retain three full floors in the existing courthouse after completion and occupancy of the new courthouse. The entire Repair and Alteration project will have to be re-examined as to scope, feasibility and cost at that time.

Both projects are tens of millions of dollars over budget and four years behind schedule. Indeed, we estimate that at least \$100 million of taxpayer dollars have been squandered by GSA. A number of GSA's estimated occupancy dates have come and gone. There is no reason to believe that the current projections will be met. The only positive aspect of this mess is that the current Administrator of GSA, Stephen Perry, has taken a personal role in the project and has removed responsibility for it from Region II. We are grateful to him for his efforts to complete the project.



Detailed reports on operations throughout the Eastern District with statistical information for fiscal year 2003 (October 1, 2002 through September 30, 2003), and in some instances through December 2003 are set forth below.

### THE BANKRUPTCY COURT

Bankruptcy Court case filings in Fiscal Year 2003 increased overall by 3.5 percent. Total cases filed were 25,733. Chapter 7 filings increased by 4.0 percent, to 19,856; Chapter 11 filings increased by 14.2 percent to 209; and Chapter 13 filings increased by 1.6 percent, to 5,667. In addition, 1,345 adversary proceedings were opened.

The Bankruptcy Court, effective January 1, 2003, requires all motions, pleadings, memoranda of law or other documents filed by an attorney in connection with a case, other than proofs of claim, to be electronically filed or submitted on a diskette in PDF format. Previously, from April 1, 2002 through December 31, 2002, this requirement only pertained to Chapter 11 petitions and pleadings. *Pro se* filers continue to file their petitions and pleadings using traditional methods since the Court does not permit them to file electronically.

Judge Elizabeth S. Stong was appointed to the Eastern District's Bankruptcy Court on September 2, 2003. Judge Stong replaced Judge Dorothy Eisenberg who retired on March 27, 2003. The Second Circuit immediately recalled Judge Eisenberg due to continued high case filings in the Bankruptcy Court.

The Bankruptcy Court lost a special colleague with the death of Judge Cecelia H. Goetz on January 18, 2004. Judge Goetz was an outstanding member of the Bankruptcy Court, serving first at the Brooklyn Courthouse, and later at the Long Island Courthouse from 1978 until 1993 when she retired. Judge Goetz graduated *cum laude* in 1940 from New York University Law School, where she was the first woman to serve as Editor-in-Chief of the NYU Law Review. Shortly after her graduation, she entered a career in government service, which included a post as Special Assistant to the Attorney General. After World War II, she went to Nuremberg as part of the staff of the Office of Chief Counsel for War Crimes, where she participated in the prosecution of major German industrial complexes. Before becoming a bankruptcy judge, she had been a partner in her father's firm, and had then spent years in association with several prestigious law firms in New York City, finally ending her career as a partner in Herzfeld & Rubin, P.C. At the expiration of her six-year term as a bankruptcy judge in 1978, she was reappointed in May of 1985 by then Chief Judge Jack B. Weinstein for a term of 14 years. Known for her learned opinions and as an extraordinarily capable bankruptcy judge, she was cited in many opinions by other bankruptcy judges and appellate courts throughout the nation.

### **THE MAGISTRATE JUDGES**

Our magistrate judges were assigned the full range of civil and criminal case responsibilities authorized by 28 U.S.C. § 656. Magistrate judges were referred a total of 6,545 pending civil cases in Fiscal Year 2003 for pretrial preparation, a 4.6 percent decrease over the high level of the prior fiscal year. Criminal case assignments include detention hearings, acceptance of guilty pleas, jury selections, and pretrial hearings. Civil trials, on consent of the parties, and misdemeanor criminal trials remain a significant responsibility of the district's magistrate judges.

The Board of Judges limited the term of Chief Magistrate Judge to three years in 2000, with each future Chief Magistrate Judge to be determined by seniority. Chief Magistrate Judge Joan Azrack has served in this administrative capacity with distinction. Effective April 2004, U.S. Magistrate Judge Michael L. Orenstein will become Chief Magistrate Judge succeeding Judge Azrack.

Due to the heavy and substantial criminal and civil case workload assigned

to Eastern District magistrate judges, a survey of our magistrate judge utilization was conducted by the Administrative Office of the United States Courts, and the Judicial Conference of the United States subsequently authorized two (2) additional full-time U.S. Magistrate Judge positions for the Eastern District. The Magistrate Judge Selection Committee recommended ten final candidates to the Board of Judges, and interviews were held by the Board with the expectation that both positions will be filled by early summer, 2004. On March 17, 2004, the Board of Judges selected Kiyo Matsumoto and James Orenstein to fill the new U.S. Magistrate Judge positions at Brooklyn and Long Island, respectively.

### **PROBATION DEPARTMENT**

The work of the Probation Department remained at essentially the same high levels as in 2002, and supervised 3,709 individuals, and conducted 3,747 investigations in Fiscal Year 2003. Separately, collateral reports (requests from other federal districts) totaled 856, a decrease of 14 percent.

Chief Probation Officer James M. Fox retired on January 2, 2004. The Board of Judges appointed Tony Garoppolo, who was Deputy Chief Probation Officer since July 2000, to succeed him. Mr. Garoppolo is an acknowledged expert on the U.S. Sentencing Guidelines, and is the author of "The Sentencing Reform Act, A Guide for Defense Counsel." The third edition was recently published by the Federal Bar Council.

### **PRETRIAL SERVICES**

Pretrial Services conducted 2,234 bail investigations in FY 2003, a decrease of 7.8 percent over 2002. Separately, pretrial supervision cases, a significant part of the workload, totaled 899, a number not reported last year. Collateral investigations increased by 25 percent to 185 cases. There also were 49 diversion investigations, and 43 diversion supervision cases.

### **ADR PROGRAMS**

A total of 390 civil cases, representing 5.8 percent of new civil filings, were assigned to the mandatory Arbitration program for cases valued at \$150,000 or less. The Mediation program for complex civil actions had a total of 191 cases referred, representing 2.8 percent of civil filings during Fiscal Year 2003. Sixty-six (66) cases were settled through mediation.

Our ADR website (<http://www.nyed.uscourts.gov/adr/>) posts extensive

information on the ADR program, including the names of mediators and arbitrators listed by speciality; a schedule of pending mediations and arbitrations, by case, date and time; and information on ADR procedures; Local Rules for Arbitration and Mediation and other general ADR information. The ADR Committee, chaired by Magistrate Judge Robert M. Levy, held its third annual ADR workshop in 2003. A review of ADR procedures with the assistance of the Federal Judicial Center and private ADR experts also was conducted this year.

### **THE CJA PANEL**

The CJA Panel Committee, chaired by Judge Frederic Block with judicial members Judge Joanna Seybert, Magistrate Judge Michael L. Orenstein and Magistrate Judge Cheryl L. Pollak, completed its annual review of the CJA Panel membership, and held the district's third annual training workshop for Panel members in November 2003.

The CJA Panel Committee also added specialized Habeas Corpus and Capital Case Panels to the available counsel resources for the Court's discretionary use in assigning counsel in these case categories.

### **NATURALIZATION CEREMONIES**

The Eastern District of New York remained one of the busiest jurisdictions in the country for the naturalization of new citizens, despite a decline of 14.7 percent in the number of final naturalization hearings scheduled by INS, now part of the new U.S. Department of Homeland Security. The Eastern District of New York naturalized 40,245 new citizens in Fiscal Year 2003 at the Brooklyn Courthouse. The Court continues to hold four (4) naturalization hearings each week throughout the year. Only one other judicial district court, CA-Central, naturalized more citizens this fiscal year.

### **COURT ADMINISTRATION**

The district court and Clerk's Office continued to move toward full participation in the Electronic Case Filing (ECF) system in 2003. An additional three (3) district judges were added as participating judges in electronic filing during the fiscal year. A total of thirteen (13) of the district's nineteen (19) active and senior district judges now participate fully in civil electronic case filing, and all thirteen (13) current magistrate judges participate fully. Two of the remaining six (6) district judges have had one or more large civil cases on the electronic filing

system now or in the past. The district hopes to move toward full participation in the future.

The Clerk's Office transferred all docketing from the old ICMS database to the ECF database on May 11, 2003, representing another major clerical step in the availability of e-filing for all dockets. Although criminal cases are not yet filed electronically, the Clerk's Office is electronically filing all initiating documents (indictments and informations); Judgment and Commitment Orders; and any memorandum and order of major public interest.

### **JURY ADMINISTRATION**

The district's percent of underutilized jurors dropped slightly in 2003 to 41.7 percent. This has moved the Eastern District of New York very close to the national average for all district courts, which was 40 percent in 2003. The district's number of high profile cases and questionnaire cases for jury panels often results in higher utilization percentages. Although the Eastern District of New York has more than its share of both, juror utilization has improved this year. The Court's goal is to get below 40 percent in unused jurors, or at least equal or do better than the national average in the year ahead.

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**



**Chief Judge Frederick J. Scullin, Jr.**

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**JUDICIAL RESOURCES**

\_\_\_\_\_ The Northern District is authorized five Article III positions. Magistrate Judge Gary L. Sharpe was elevated to a seat on the District Court Bench on January 29, 2004. Judge Sharpe filled the vacancy created by Judge Thomas J. McAvoy when he assumed senior status on September 17, 2003. Judge Sharpe joined the Northern District bench in 1997, and served as a United States Magistrate Judge up until his appointment as a United States District Court Judge. Prior to joining the bench he served as the United States Attorney for the Northern District of New York. Judge Sharpe moved his chambers from Syracuse to Albany to help the Court deal with the workload on the eastern half of the district. On February 10, 2004, Magistrate Judge George H. Lowe was sworn as our newest Magistrate Judge. Magistrate Judge Lowe filled the vacancy created by the elevation of Judge Sharpe to the District Court bench. Magistrate Judge Lowe was previously a partner in the Law Firm of Bond, Schoneck and King, LLP in Syracuse. Magistrate Judge Lowe also served as the United States Attorney in the Northern District from 1978 to 1982.

During 2003, the Court received designations for seven visiting judges to help us resolve our backlog of pending prisoner cases. Each of these seven



judges agreed to sit by designation for a period of one-year, during which time they handled motions and trials on pending prisoner civil rights cases. The seven visiting judges issued decisions in 48 dispositive motions and closed 34 prisoner cases during 2003. Our thanks go out to the Honorable Warren W. Eginton - District of Connecticut; Honorable Lyle E. Strom - District of Nebraska; Honorable G. Thomas Eisele - Eastern District of Arkansas; Honorable Joseph M. Hood - Eastern District of Kentucky; Honorable John R. Tunheim - District of Minnesota; Honorable Paul A. Magnuson - District of Minnesota, and the Honorable James K. Singleton - District of Alaska. For the upcoming year, we have already secured the services of five judges who have indicated their availability through the intercircuit assignment system to assist courts with pending motions. With these additional resources, we are hopeful that we will be able to further reduce our pending prisoner caseload.

Senior Judges Howard G. Munson and Neal P. McCurn continue to take a variety of cases and provide valuable assistance to the Court. We are indebted to these judges for their many contributions over the last two and one half decades. We welcome Senior Judge Thomas J. McAvoy who will continue to take a full caseload.

#### STATISTICAL DATA

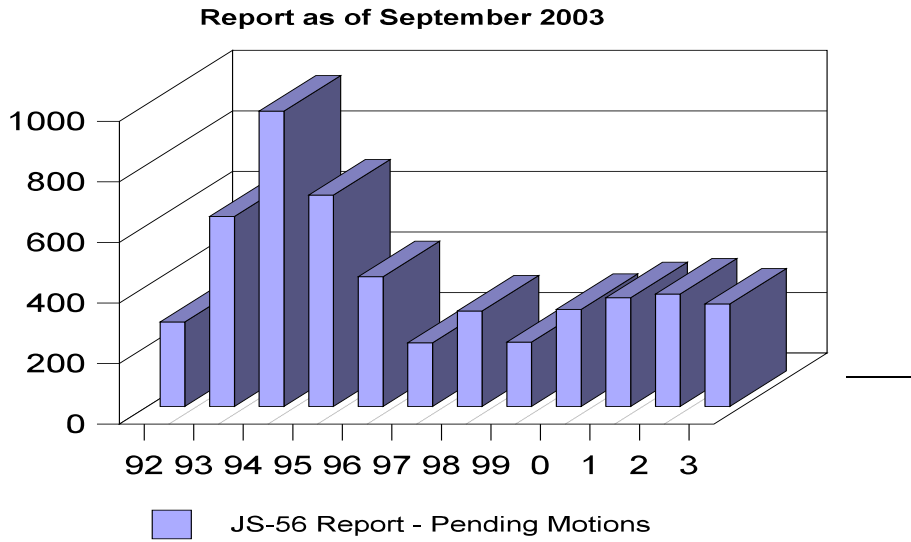
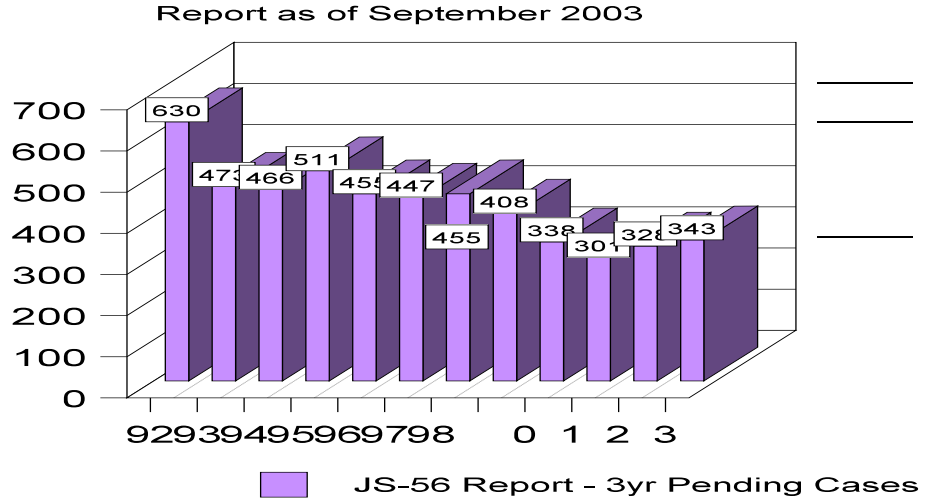
\_\_\_\_\_ Our most challenging task over the last five years has been in addressing the case pending docket. New civil filings fell slightly from the previous year, filings were down by **8.6%** in statistical year 2003. The number of criminal filings rose in SY 2003 by **3%**. Some of the increased activity in our criminal filings was attributable to the increased law enforcement presence at our Northern border. The number of trials completed per judge in SY 2003 decreased slightly when compared to SY 2002, this seems to be consistent with the decrease experienced by courts on a national level.

#### PENDING MOTIONS AND THREE YEAR PENDING CASES

\_\_\_\_\_ The disposition of motions is critical to the efficient operation of the Court. The Court filed **2,728** motions during statistical year 2003. During the same time period the Court disposed of **2,888** motions. As reflected in our JS-56 Report on Pending Motions and Cases Pending for Three Years or more, the district's pending motions (*as of September 30, 2003*) increased **5.2%** over 2002, and three year pending cases increased **10%** over 2002.

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**SPACE AND FACILITIES**

Albany: A new grand jury room will be constructed in Albany. We had hoped to have this project completed in 2003, however, funding issues have delayed the project. The new projected completion date is April 2005.

**Syracuse**: The Judicial Conference has recommended that a new United States Courthouse be constructed in Syracuse. The current plan is for site selection and design in FY 2006, funding in FY 2008 and completed construction in FY 2010. However, this schedule will most likely be delayed due to national budget issues concerning space and facilities projects. Construction on our special proceedings courtroom was completed in March of 2003. Judge David E. Peebles moved into his new chambers and courtroom in June of 2003.

**DISTRICT COURT CLERK' S OFFICE**

During 2003, the District Court Clerk' s Office began the process of preparing both the bench and bar for the implementation of the new case management / electronic case filing system known as CM/ECF. During the summer months, the Clerk, Lawrence K. Baerman, and Chief Deputy Clerk John Domurad, traveled throughout the district to present information and provide demonstrations on the new system to the bar. The Court worked closely with our Federal Court Bar Association on the development of the rules and procedures for the bar to follow when filing electronic documents. In November, the Clerk' s Office began training the bar. In the course of the last few months, the Clerk' s Office has trained over 2,500 lawyers. The first full month of filing (January of 2004) resulted in over 15% of the total filings coming in over the internet. The bar and bench have found the system to be reliable, user friendly and cost effective.

Budget issues were once again a major concern for the Clerk' s Office and the Court. In the Northern District, we have lost nine staff members in less than three years due to budget cuts coupled with a decline in the number of filings. The Clerk has worked closely with the Probation Office on a project that will consolidate several of our administrative support services. Automation, human resources, personnel, budget and finance have or will be consolidated within the next year. This initiative will allow the units to continue to provide the highest possible level of service to the bench and bar while absorbing what we expect to be significant reductions in future staffing levels.

**PROBATION / PRETRIAL OFFICE**

\_\_\_\_\_ The Probation Office is experiencing a slight increase in workload following two years of a downward cycle. Like other districts, budget cuts and decreasing caseloads have affected our staffing. We have lost authorized work units, and through attrition, our staffing has decreased as well. We are or will be well below our full work strength by the end of this fiscal year.

In Albany, after a long process, we are nearing the end of our renovation projects. Our first floor space is undergoing a small renovation while our third floor space is undergoing major reconstruction. Both projects should be completed during FY 04. This will satisfy the Probation Office's space requirements as well as bringing it up to court standards.

In the area of operations, one major initiative is the investigation and monitoring of individuals involved in cybercrime offenses. In the new age of the 21st century offender, computer crimes, including frauds committed via the internet and access to websites promoting child pornography, have presented new challenges in supervision. In order to enforce Court imposed restrictions on computer use, the Probation Office has employed internet monitoring technology which allows the Probation Office to determine if offenders are accessing inappropriate Internet sites. Supervising cybercrime defendants presents the additional challenge of keeping pace with the latest trends in information technology because as the technology improves, our detection and monitoring devices will need to keep pace to adequately supervise this more technically sophisticated offenders.

**ATTORNEY DISCIPLINE REPORT FOR 2003**

\_\_\_\_\_ In calendar year 2003 the Northern District had the following attorney discipline cases.

- Five Attorneys were disbarred.
- Five Attorneys were suspended.
- A stay of suspension was issued for two attorneys.
- Four Attorneys were censured.
- Seven Attorneys were reinstated following suspension.

**NORTHERN DISTRICT OF NEW YORK BANKRUPTCY COURT**

\_\_\_\_\_The Bankruptcy Court for the Northern District of New York focused most of its attention on CM/ECF in 2003. The Court went live on CM/ECF on December 28, 2002 and devoted most of 2003 to putting processes and procedures in place to support CM/ECF. The training of internal and external users occurred throughout the year. Training for attorneys began in early spring and continued throughout the year in both Albany and Utica. Attorneys were provided with hands-on training by the Court's trainers and were eligible for seven hours of CLE credit. In addition, members of the Court's staff spoke at several seminars sponsored by the local bankruptcy bars. Training for standing trustees and panel trustees also occurred in 2003. At the end of 2003 only three panel trustees were not yet trained. Plans were also made to train the Assistant United States Trustees in early 2004. The conversion to CM/ECF required the Court to undertake a complete work flow analysis of the flow of paper and information in the agency. The completion of the work flow analysis required the Court to revamp and revise most of its existing case processing procedures. During the latter half of 2003, creditors were allowed to electronically file proofs of claims and transfers of claims. Some of the larger creditor filers brought on board include Beckett and Lee and Sears. Out-of-district attorneys were also allowed to file electronically upon passing the Court's on-line test. In November 2003, members of the bar received notice of the Court's intention to mandate electronic case filing on July 1, 2004. Scanners were purchased for placement at the public counters and plans are underway to allow attorneys to scan documents to the Court from the public counters.

Although most of 2003 was devoted to CM/ECF tasks, a long planned space project was finally completed. Unused chambers space was transformed into a conference room and suite of offices for the Clerk and his administrative staff.

**ANNUAL REPORT OF THE NORTHERN DISTRICT OF NEW YORK**  
**ON GENDER, RACIAL AND ETHNIC FAIRNESS**  
**IN THE COURT**

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\_\_\_\_\_The Northern District of New York is committed to the fair and equitable treatment of all those that appear before the Court or are employed by the Court. The Court remains mindful of the need to protect against bias based on other grounds, such as sexual orientation, disability, national origin, religion and age.

The Court has continued the practice of providing pro se litigants with pro bono counsel to assist them at the trial stage of their cases. In addition, the Court has extensively used video conference technology to accommodate financially challenged litigants by providing them with an avenue to avoid travel costs associated with appearances before the Court.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



**Chief Judge Michael B. Mukasey**

During the past year, three judicial vacancies were filled. Stephen C. Robinson was inducted on October 30, 2003, P. Kevin Castel was inducted on November 4, 2003 and Richard J. Holwell was inducted on November 20, 2003. One vacancy remains open. I note with extreme sadness the passing of two of our distinguished colleagues, the Honorable Allen G. Schwartz on March 22, 2003 and the Honorable Robert J. Ward on August 5, 2003. They made important contributions to the Court, and their presence will be missed. The past year also saw the retirement of the Honorable John S. Martin, Jr. who had served with distinction since his appointment in 1990. His outstanding service to the Court is to be commended.

For the period October 1, 2002 to September 30, 2003 there were 12,321 cases filed.

During the past year, the Board of Judges amended Local Civil Rule 5.2 relating to electronic service and filing of documents and approved Local Civil Rule 5.3 relating to service by overnight delivery and facsimile, and 12.1 relating to notice to *pro se* litigants opposing motions to dismiss or for judgement on the pleadings treated as motions for summary judgement. The Court's Lawyers Advisory Committee on Local Rules also reviewed the revisions.

Also, during the past year, the Court adopted a district-wide Continuity of Operations Plan (COOP) which has been used as a model plan for other districts.

### **CLERK' S OFFICE**

The Clerk' s Office for the Southern District of New York operates with a staff of 216 employees with offices at Foley Square and 500 Pearl Street in Manhattan and at 300 Quarropas Street in White Plains. The Clerk' s Office provides record keeping, case management, financial and other services for the District Court. The operating budget for Fiscal Year 2003 was \$ 12,913,576 for personnel, automation and administrative expenses.

During calendar year 2003, the Clerk' s Office went live with the CM/ECF (Case Management/ Electronic Case Filing) program. All civil and criminal docketing events have been converted from the existing ICMS program to the new system. The Clerk' s Office has created a docket support team to plan, train and execute the CM/ECF process for Chambers staff, court employees and members of the Bar and the Public. The first wave of District Judges and all Magistrate Judges began accepting electronic filings in new cases on December 1, 2003. The remaining Judges will join the system over the course of the next year.

The financial and systems staff of the Clerk' s Office spent much of the second half of the year preparing for the implementation of FAS4T, a new automated financial system. Preparation included training, workflow process mapping and development of new security controls.

Individual departments of the Clerk' s Office report some of the following activities in the year 2003:

**White Plains:** The White Plains Courthouse saw signs of continued growth in 2003. One thousand one hundred and thirty four new civil cases were filed in White Plains in 2003. The Hon. Stephen C. Robinson, U.S.D.J., took the bench in White Plains in October. This returned the White Plains Court to its full complement of four District Judges and three Magistrate Judges. The Clerk' s Office staff increased by two employees to help accommodate this growth. As of December 1st, all Judges in White Plains began requiring cases to be electronically filed as part of the Court' s ECF program. After two years of preparation and training the inauguration of the ECF program is expected to streamline the docketing process by reducing paper filings.

**Jury Department:** The Jury Department has been working on the new Jury Management System (JMS) for over one year. The system has produced some



challenging scenarios when producing jurors to the Judges, establishing follow-up instructions for returning jurors, as well as payroll situations. During 2003, we submitted various modification requests to the software provider and to the Administrative Office of the U.S. Courts. Some of these modification requests were ground-breaking procedures for JMS and between the A.O., ACS (software company) and SDSD in San Antonio Texas, these modifications made the final product. JMS also requires us to qualify jurors on a larger scale and throughout the year we sent out close to 200,000 questionnaires for Pearl Street and White Plains. We were able to qualify over 40,000 jurors for the year 2003 alone and in light of the anticipated busy year of 2004 (including high profile cases such as Martha Stewart, Lynne Stewart and Rigas) we anticipate the abilities of this department and its staff to be tested to the fullest.

**Finance:** In 2003, The Finance Department issued 36,649 checks and processed 14,276 vouchers. At the intake window, 10,333 complaints were filed and 53,971 receipts were issued. For the year. the office receipted \$118,527,618.39 and disbursed \$111,075,895.54. The office oversaw 299 interest-bearing accounts and 766 non-interest-bearing registry accounts. At the end of the year, the balance in interest-bearing accounts was \$239,897,507.25.

**Personnel:** During calendar year 2003, the Personnel Section processed personnel actions for the designated court staff such as appointments, separations, promotions, retirement information; disseminated benefit information and processed forms; provided Open Seasons for FEHB and TSP changes; and recruited for available positions, prepared vacancy announcements, and assisted managerial staff with interviews and testing. The need for background checks on all new employees, interns and contracted staff has become routine. A hiring freeze at the end of the year due to greatly reduced budget allowances has prevented the court from filling vacancies and has required the development of new strategies to meet operating needs in the coming year.

**Training:** Much of the year was dedicated primarily to coordinating training operations for the Court's conversion to CM/ECF. CM/ECF training was provided throughout the year to Clerk's Office employees, Judges, Magistrate Judges, Chambers Staff, Probation, Pretrial, Court Reporters, Press Agents, Federal Defenders and US attorneys, based on their required job performance duties. In addition, the training department continued throughout the year to provide CM/ECF training to members of the bar and their legal staff in both civil and criminal cases.

The highlight event of the year for the training department was the opening of a new state-of-the-art training room which is used to conduct training operations

for the District Court and is shared with other agencies to engage in large training events.

**Audio-Visual:** The Audio-Visual Department has completed installation and commenced operation of the multi-media displays in courtrooms 12D and 110. These multi-media systems allow the parties to an action to display exhibits and other case-related materials to the judge and jury in electronic form. Additionally, there are two mobile multi-media systems which can be set up in any courtroom upon request. Testing has begun on the Courtflow Audio Digital Recording System. Currently, the system is being used to record pretrial conferences. Results are very promising, and four additional systems are waiting to be installed after preliminary testing results have been fully reviewed. Anticipated installation of these additional systems is Summer of 2004.

The Audio-Visual Department helped design and plan the District Court's new training room, located at 500 Pearl Street, Room 249. The training room facilitates video-conferencing, tele-conferencing, and Smart Board annotation integrated into a video projection system. The Audio-Visual Department also designed and planned a state-of-the-art teleconferencing system in conference room 850.

The Audio-Visual Department also organized over fifty video-conferences for the Court, including three video-conferences for the Federal Bar Council's CLE programs involving sites located in Syracuse, Buffalo, White Plains, Albany and the Eastern District of New York.

Transcripts produced from audio-taped proceedings continue to grow. This year, the Department was instrumental in coordinating the production of over 1,200 transcripts. The Department now uses a digital fingerprint imaging system in the processing of new employees and student interns. This past year, the Department has processed over 500 new employees and student interns.

**Records Management:** During calendar year 2003, the Records Management Department handled 57,675 requests for files between the open records room and the closed records room at 500 Pearl Street and the file room at Foley Square. The office processed 1,635 opinions from the Judge and Magistrate Judges. During the year, the office generated \$143,438.00 through written correspondence and printing of docket sheets from ICMS. The Records Management Department received and logged 4,775 sealed envelopes and 318 subpoenaed records in 2003.

**Computer Systems:** During calendar year 2003, the Court inaugurated the new CM/ECF electronic case filing system, with nearly two dozen chambers going to a "totally electronic" docket for new cases filed as of December 1st. Additional chambers are scheduled to make the transition to the new system during 2004. The Computer Systems Department purchased and deployed scanners, additional computers, and trained the Court's training staff in the use of this new equipment. The new CM/ECF system necessitated the creation of an e-mail-based document exchange system with the bar and the Clerk's Office. This was designed, assembled and deployed throughout the Court in a matter of two weeks in order to assist the staff to manage a large and rapidly growing quantity of electronic documents.

We made great strides this year with respect to the centralized, remote administration of our nearly 1,100 desktop computers. We possess the capability to deploy urgent software patches, regular updates, and certain types of new application software on an as-needed basis to all the computers under our care irrespective of whether the PCs are in the courthouse or at employees' homes. As a result of these efforts, we have been almost entirely immune from this year's spate of computer viruses, worms and Internet-borne malicious mischief.

Multi-year Disaster Recovery and Continuity of Operations initiatives continued during 2003 in which the Court purchased laptop computers, secure wireless networking hardware, and advanced encryption and VPN software, to permit judges and select Clerk's Office staff to conduct all regular business from home, if necessary, during an emergency that might otherwise shut the courthouse proper.

One unofficial test of our emergency preparedness capability was conducted during the "Great Blackout" of August, 2003. In this situation, the Court's data center at 500 Pearl Street operated in its entirety, without a moment's interruption, throughout the entire blackout by virtue of the building's own electrical generating capability. Continuous, real-time connectivity with the DCN and the Internet was demonstrated during this period. As power was restored to various residential areas, remote access to e-mail and court files was immediately successful.

All this notwithstanding, a great deal of telecommunications and other infrastructure work remains to be completed in this area during 2004 and beyond, specifically with regard to the off-site, real-time replication of the Court's electronic data, backup electrical systems at White Plains, and the integration of the new CM/ECF and FAS4T systems into our fault-tolerant operational environment.

The Computer Systems staff has continued the work begun last year with respect to wireless computer networking, encryption technologies, firewalls and geographically distributed systems. We continued to make recommendations to the Administrative Office with regard to these technologies, as well as for the elimination of "spam" from the judiciary's e-mail systems, and have communicated to them our findings with respect to fault-tolerance and disaster recovery practices.

We successfully deployed six Macintosh laptop computers and two Macintosh file servers within the Court's all-Windows infrastructure. The machines are a joy to use and they interoperate seamlessly with our extant hardware inventory, demonstrating that these are cost-effective replacements for Windows systems of all stripes.

We have also successfully introduced several Linux systems into our back office operations in anticipation of the judiciary's transition from Solaris to Linux in the next year or so.

We conducted our first live trials of the CourtFlow system, which makes audio recordings instead of typed transcriptions, of court proceedings.

We began the implementation of the new FAS4T accounting system, which is to be scheduled to go live on March 1, 2004.

**Magistrate Judges Unit:** The Magistrate Judges Unit has seen several changes in the past Year. First, we have gone in full capacity on the Electronic Case Filing System, and second, as of the beginning of January 2004, in an effort to backup Sealed Vital Records (COOP), we began storing Seizure/Search Warrant and Pen Register ....Info on 3.5" Computer Discs. Upon completion of filling all disc space, the disc is copied onto another 3.5" disc and forwarded to the White Plains Courthouse as a back-up, in the event that the records in Manhattan become damaged or inaccessible.

**Mediation Department:** During 2003, the Mediation Department relocated to 40 Centre Street, Suite 205. The Mediation Department provides services for the courts in Manhattan and in White Plains. Hundreds of new and adjourned cases were scheduled for mediation sessions during the calendar year. Local Civil Rule 83.12 governs the Court's mediation program.

### **Interpreters Office**

**SDNY Interpreter Usage:** In FY 2003, interpreters of 36 languages provided foreign language interpretation during 6,152 separate proceedings, a six

percent increase in activity over last year. Of these, 4,126 were in-court events, a marked increase of 27% over last Fiscal Year. Out-of-court events (pretrial, probation, attorney-client interviews, document translations) totaled 1,930 for all languages. [Note: Interpreter usage figures are reported to the Administrative Office of the U.S. Courts for fiscal years, not calendar years.]

Spanish continues to be the most frequently requested foreign language, but in FY 2003, only 55% of the total interpreter unit caseload was for Spanish, a dramatic drop from the previous year when Spanish represented 78% of the cases covered. The next most frequently requested languages remained the same as in previous years: Russian, Arabic, Mandarin and Fuzhou. Requests for Punjabi, Pashto and Urdu increased noticeably over previous years.

Total expenditures on interpreter services, paid from a central Administrative Office account, was \$542,358, only a slight increase over FY 2002, despite the increase in interpreter activity. A total of 46 criminal trials required foreign language interpretation: 33 Spanish, four Fuzhou, three Russian, two Arabic and one each in Bengali, Fulani, Hebrew, Cantonese, Urdu and Yiddish. In the aggregate, interpreters worked a total of 275 days of the year on trials.

### **Orientation and Recruitment**

Our yearly orientation program has been suspended because the district has sufficient interpreter resources at this time, however, recruitment and coaching sessions of interpreter candidates in hard-to-find languages continue to be undertaken as needed. Interpreters in lesser-used languages require more training than interpreters for the European languages because of the differing skill levels of the available pool and the lack of traditional testing in those languages. Seven exotic language interpreters had individual orientation sessions this year.

### **A0 Spanish Certification Testing**

In July, two staff interpreters participated as raters for the oral section of the Spanish certification examination. In the latest round of testing, five interpreters were newly certified in the New York area, but of these, most are state court employees and not generally available for the freelance pool. Available Spanish certified interpreters in our area number approximately 40.

### **Committees and Professional Associations**

The Chief Interpreter was invited to join the Interpreter Service Model

Program for Law Enforcement Committee organized through the Summit County Sheriff's Office in Ohio. The Committee's mission is to develop interpreter protocol and routines for law enforcement settings. She is also currently serving as interim member of the Board of Directors of the National Association of Judiciary Interpreters and Translators.

### **Cooperation with State Courts**

The Chief Interpreter presented a half-day training session for the Connecticut state court system on interpreter ethics.

### **Office Management**

The online scheduling program designed by staff interpreter David Mintz is in its third year of usage and continues to function efficiently. All interpreter and translation usage provided to the Court and its units is recorded in a MySQL database via a web interface written in PHP.

Development of the next version of our interpreter management software is underway. This upgrade will include numerous improvements in code efficiency and maintainability as well as an expanded feature set based on user feedback.

Our office's website (<http://interpreters.nysd.circ2.dcn/> and its public mirror <http://sdnyinterpreters.org>) underwent an extensive redesign and expansion. Nancy Festinger and David Mintz jointly created, edited, organized and published online numerous documents containing information aimed at attorneys, judges, interpreters and the general public, and made them accessible through an attractive navigational interface.

The SDNY online glossary application, designed and built by David Mintz, has been added to by staff and student interns. The glossary was ranked second in a field of over 50 in its category on Lexicool.com, an online search utility for linguists. The rating criteria were presentation and usability.

### **BANKRUPTCY COURT**

This court experienced an overall increase in filings of 8.7%; however, adversary proceedings increased 280%. Although the Court's Chapter 11 case filings declined by 37%, this court's weighted case filings per judge are 3,112 as compared to the national median of 1,493. Therefore, the judges in this district are carrying a caseload more than twice the national median. There are more than

6,600 attorneys registered to use the Court's Electronic Case File System (ECF) and during Fiscal Year 2003, 1,300 new attorneys were added and 1,659 orders to appear *pro hac vice* were signed. The Court continues to conduct training classes for new users of the system on an average of twice a week.

**FILINGS DURING FISCAL YEAR 2003**

<u>Chapter</u>	<u>Number of Filings</u>	<u>Percent Change</u>
7	14,262	13%
11	924	(37%)
12	1	- 0 -
13	2,061	12.8%
304	50	92%
Adversary Proceedings	6,770	280.5%

During Fiscal Year 2002, there were some very noteworthy cases filed here, namely Enron Corp., Global Crossing Ltd., Adelphia Business Solutions, Ogden New York Services, Inc., and WorldCom, Inc. Numerous affiliated cases continue to be filed.

The cases designated as the case in the "mega" cases commenced during this reporting period are as follows:

<u>Case Name</u>	<u>Case Number</u>	<u>Filed Date</u>
Genuity Inc.	02-43558-pcb	11/27/2002
Cenargo International Plc	03-10196-rdd	01/14/2003
Regus Business Centre Corp.	03-20026-ash	01/14/2003
Magellan Health Services, Inc.	03-40515-pcb	03/11/2003
Spiegel, Inc.	03-11540-cb	03/17/2003
Aerovias Nacionales de Colombia S.A.		
Avianca and Avianca, Inc.	03-11678-alg	03/21/2003
Air Canada	3-11971-pcb	04/01/2003
Recoton Corporation	03-12180-alg	04/08/2003
Acterna Corporation	03-12837-brl	05/06/2003
NRG Energy, Inc.	03-13024-pcb	05/14/2003
Allegiance Telecom, Inc.	03-13057-rdd	05/14/2003
The Penn Traffic Company	03-22945-ash	05/30/2003
WestPoint Stevens Inc.	03-13532-rdd	06/01/2003
Loral Space & Communications Ltd.	03-41710-rdd	07/15/2003
Impath Inc.	03-16113-pcb	09/28/2003

The Court is continuing its efforts to provide current, correct information utilizing all means available, including the Court's web site, printed pamphlets for *pro se* filers, using a Clerk's Office staff member to act as a court services coordinator to assist filers unfamiliar with court operations and insuring a "help desk" line is answered by an employee during core court hours of operation.

### U.S. PROBATION OFFICE

The Probation Office provides services to the Court, the community and to offenders. The office is divided into three branches: presentence investigation, supervision and administrative services. During the period ending September 30, 2003, there were 173 staff members.

**Presentence Investigations:** Probation officers working in the presentence investigation division completed increasing numbers of presentence investigations. FY 03 saw another substantial increase in the number of presentence reports completed. The division continues to create innovative ways of fulfilling their obligation, while maintaining their high quality of work.

**Supervision:** The supervision division, which provides direct supervision to offenders, has developed efficient ways of completing their responsibilities. Increased presence in the field, during non-traditional field hours continue to be emphasized. Laptop computers have been issued to individual officers in both divisions that replaced their desktops, allowing officers increased portability and flexibility. Safety measures, including mandatory defensive tactics, handgun retention, and safety scenario training have become the policy of the office.

**Administrative Services:** The administrative services branch includes automation, data quality analysis, personnel, records, supplies and purchasing/budget. The members of this division are dedicated to engaging in quality behind-the-scenes work that supports operations staff.

### PRETRIAL SERVICES

As the component of the federal judiciary responsible for the bail investigation of defendants, the Pretrial Service Office is committed to providing verified information and assessments of the risks of non appearance and danger to the community for every defendant appearing before the Court following arrest. While working under the guidance of the Court, pretrial services seeks to effectively supervise persons released to its custody and thereby promote public safety, facilitate the judicial process and seek alternatives to detention.



The Pretrial Services Office interviewed 98% of the defendants who appeared on criminal charges during FY 2003. The workload grew from 2,199 bail interviews the previous year to 2,309 this year. Of those defendants interviewed by Pretrial Services, 95% were interviewed prior to their initial appearance in court. Our district continues to have a low detention rate, especially when compared to other large metropolitan district courts.

At the end of the Fiscal Year, September 30, 2003, there were 1,019 defendants reporting to Pretrial Services for supervision as required by their court-ordered release conditions. Ninety-six percent of those released appeared in court as required and 98.5% of defendants were not arrested during their bail period. Officers reported 249 total violations resulting in a modification of bail conditions on 46 occasions and 65 defendants were detained following bail violation hearings. The majority of these violations were technical violations for noncompliance with release conditions such as continued drug use, failure to attend a treatment program or reporting violations.

This year we placed a strong emphasis on community supervision with officers increasing home visits in addition to the defendant reporting to our office. The goal was to verify residential information, explain our role and establish collateral contacts with the defendant's family as well as continuing to identify any risks of nonappearance or danger to the community. Officers responded by completing over 2,000 home visits and 98 employment visits in FY 2003.

While numbers do not tell the whole story these are the average activities happening every day in Pretrial Services-

daily telephone contacts with defendants =	119	daily contacts with assistant US attorney =	14
daily office visits with defendants =	57	daily contacts with defense attorney =	14
daily home visits to defendants =	10	daily law enforcement contact =	35
daily drug tests administered =	21	daily criminal record inquiries =	30
daily docket searches =	54		

Pretrial Services is the front door to the federal criminal justice system and has a unique opportunity to lay the foundation for each defendant's success, not only during the period of pretrial services supervision, but even beyond that time. Officers strive to work with each defendant in such a manner that this contact with the criminal justice system will be their last and so prevent the front door of the system from becoming a revolving door.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT



Chief Judge William K. Sessions III

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**U.S. DISTRICT COURT CLERK' S OFFICE**

**Judicial Assistance**

\_\_\_\_\_ During calendar year 2003, both of Vermont' s district judges assisted other districts with caseload needs. In February 2003, Chief Judge William K. Sessions III, accompanied by his courtroom deputy, traveled and spent two weeks in Las Cruces, New Mexico, providing assistance with the district' s criminal caseload. In November 2003, District Judge J. Garvan Murtha sat by designation in the Eastern District of New York at Brooklyn assisting with that district' s civil caseload.

**District Court Clerk' s Office**

During 2003, the District Court Clerk' s Office continued to maintain its characteristically stable staffing level and the office experienced only one separation for the entire year. This vacancy was filled during early January and a replacement deputy clerk was hired for the Burlington in-take section. No other personnel changes to permanent staff occurred within the District for the remainder of the year other than the District' s part-time *pro se* law clerk position was

eliminated at the close of the calendar year. Prior to December 31, 2003, although Vermont was authorized 1.0 *pro se* law clerk positions, budget and policy considerations allowed the District to retain an additional half-time *pro se* law clerk position. Based upon the Judiciary's financial plan for FY 2003 and a change in Judicial Conference staffing policy which eliminated funding for excess *pro se* law clerk positions, the District's half-time position was eliminated effective December 31, 2003.

In anticipation of being designated as an electronic filing court, the district court's executive management team traveled to the District of Maine during May 2003 to discuss Case Management/Electronic Case Filing CM/ECF strategy. Similar to the District of Maine, Vermont's electronic filing strategy is to implement the "CM" portion of electronic filing first before moving on to full-electronic filing capability. In November 2003, Vermont was officially included as an electronic filing court in the national round-out and was listed as Implementation Wave No. 17. Vermont's target "go-live" date is tentatively set for September 2004. During December 2003, eight deputy clerks underwent CM/ECF Applications training at the San Antonio, Texas Training Center. Additional personnel will attend both Dictionary and Editor/Quality Control training during 2004.

During August 2003, the Clerk's Office converted without incident to the most current version of the Financial Accounting System For Tomorrow (FAS<sub>4</sub>T), Version 3.7.3.2. The Clerk's Office continues to implement the Certifying Officer authority delegated to Court Unit Executives during the summer of 2002.

### **Automation and Information Technology Activities**

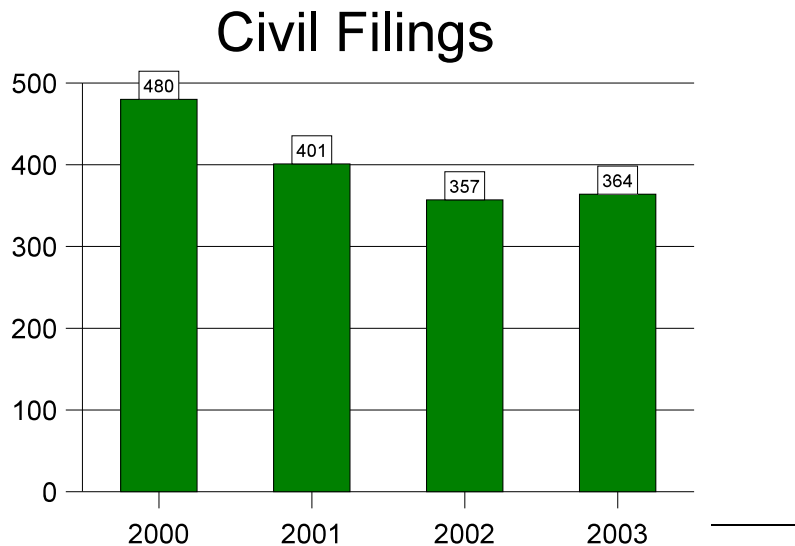
During calendar year 2003, the Clerk's Office continued to refine and expand automation and IT-related activities, with particular emphasis on enhancing the Court's external website. Jury instructions for each of the Court's duty locations have been added to the website along with instructions for using the Court's two Burlington-based evidence presentation systems. The Clerk's Office is also investigating the possibility of using the internet as a juror notification tool supplementing its toll-free phone notification system.

Two other significant accomplishments which took place during 2003 in the systems arena were the addition of a new web-based opinion review and retrieval system and the fielding of a completely new, web-based court scheduling calendar. The opinion review system makes available to the public and bar both published and non-published court opinions and also allows for electronic notification to a

user or party when an opinion first becomes available. Enhancements made to the Court's internal website included affording employees the ability to listen to courtroom proceedings via their desktop computer and the ability to view Federal Judicial Television Network (FJTN) programs at individual workstations. These last two enhancements were particularly well-received by Court and Clerk's Office staff. Other applications enhancements included upgrading all user workstations with the Windows "XP" platform, upgrading all file servers with Novell Release No. 6, and as mentioned earlier, installing the latest new release for the FAS<sub>4</sub>T financial application.

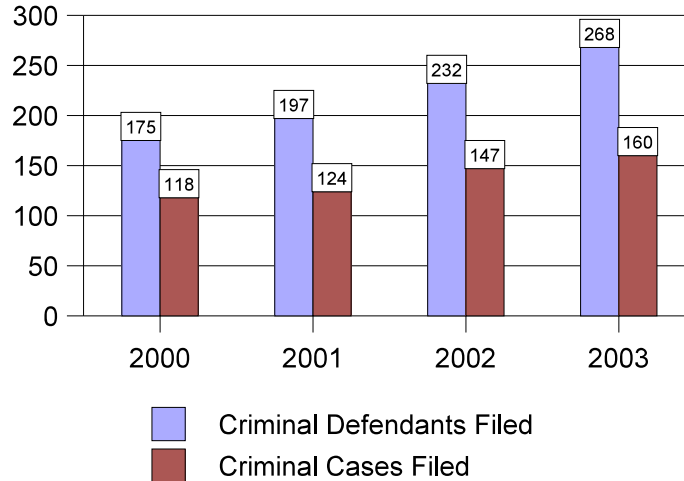
**Caseload Statistics**

As shown below, Vermont's civil case filings for calendar year 2003 remained essentially constant when compared to calendar year 2002. The District experienced only a very slight increase in civil filings - seven cases - in the total number of civil cases commenced. Based upon historical data, we believe that this upward trend will continue as the District's long-term average caseload filing on a per annum basis centers on roughly 400 civil filings per year.



Unlike its civil counterpart, however, Vermont's criminal caseload continues to expand. Calendar year 2003 saw an increase of thirteen cases and thirty-six defendants, representing increases of sixteen and ten percent, respectively, over calendar year 2002. The increased caseload activity is attributed to a staffing increase placed in effect by the Office of the United States Attorney during late 2002 when two additional AUSA positions were filled.

## Criminal Filings



### Criminal Justice Act (CJA) Panel Operations

The total number of Criminal Justice Act appointments made by the District during 2003 decreased approximately five percent, from a high of 291 appointments made in 2002 to 277 appointments made for 2003. The discrepancy of having more criminal cases and defendants filed during 2003 while still experiencing a decline in the number of actual CJA Panel appointments made is attributable to the fact that the District simply had more fugitive defendant filings.

During 2002, the District applied to establish a separate, independent Office of the Public Defender within its jurisdiction as it continues to meet the qualifying criteria set forth by 28 U.S.C. § 3006A(g) - making more than 200 individual CJA appointments on a per year basis. On June 5, 2003, the Second Circuit Judicial Counsel approved Vermont's application to establish a separate office, contingent upon the Defender Services Division securing adequate funding through Congress. Vermont remains hopeful that funding will be approved during 2004 and that a separate Federal Public Defender Office will be established.

### Early Neutral Evaluation (ENE) Program

The Court continues to rely upon its Early Neutral Evaluation Program to reduce the cost of litigation and its delay to the parties. Although the number of ENE sessions held during 2003 increased more than fourfold – from 17 to 74

sessions held – the rate of full case settlement remained constant at thirty-three percent. Currently, the Court's ENE Panel consists of forty-eight attorneys who are trained in various alternative dispute resolution techniques. The program will enter its tenth year of operation in 2004.

### **Space and Facilities**

During May 2003, representatives from the Administrative Office's Space and Facilities Division assisted the District's Long-Range Space Planning Committee with updating Vermont's Long-Range Space Plan. Due to the untimely death of Circuit Judge Fred I. Parker during August 2003, the District is currently in the process of modifying its Plan to account for this unplanned event. Vermont is currently included on the national courthouse construction schedule for initial site acquisition and building design for Fiscal Year 2007.

No major court-driven tenant alteration projects took place within the District during calendar year 2003. Work on the GSA prospectus-level HVAC replacement project for the Burlington Federal Building continued ahead of schedule during the year. While the anticipated completion date is sometime during the fall of 2004, the formal contract completion date is set for March 2005. The Burlington elevator replacement project was completed during the summer of 2003. The building's existing Otis elevators installed when the building was built in 1960 were completely replaced with more modern Thyssen elevators.

### **Attorney Discipline**

During 2003, Vermont had six attorney discipline proceedings: three suspensions, two censures with public reprimands and one disbarment. All of the District's proceedings originated at the state level and involved the Vermont state professional conduct board and as such, were reciprocal in nature. Similar to 2002, no disciplinary actions originated from the Court's federal bar during the year.

**PROBATION & PRETRIAL SERVICES  
District of Vermont**

The Vermont Probation Office is a combined court unit fulfilling both the Probation and Pretrial Services functions, with three units providing service to the Court; Pretrial Services, Presentence Investigations and Post-Conviction Supervision. We began the fiscal year with 21.6 employees. We were authorized 22.9 units, an increase of 1.8 units from the previous year. This increase in authorized work units brought us back to where we had been in FY 2001. The increase in workload was, in part, a result of last years' significant increase in Pretrial Services' workload and an increase in Post-Conviction Supervision cases. Unfortunately the Judiciary' s budget was not finalized until early in the calendar year of 2003. Funding for new work units was provided for only one-half of the year. Consequently, we were unable to add to our staff and we finished the year with 21.6 employees.

The Burlington Office includes the administrative staff, Canadian Liaison, Pretrial Services Unit, Presentence Unit and Post-Conviction Supervision Unit as well as support staff. The Burlington location also houses the drug testing laboratory. The Brattleboro, Vermont Office is staffed by two probation officers and one probation clerk. There is also an un-staffed office in Rutland, used by officers to meet with offenders and to attend Court hearings in Rutland. We have maximized the use of space in all facilities and have no room for expansion in Burlington and Brattleboro. A recent Administrative Office Long-Range Planning Report highlighted the space shortages in each of the three offices. At present, there is no room for additional staff in Burlington, Rutland or Brattleboro.

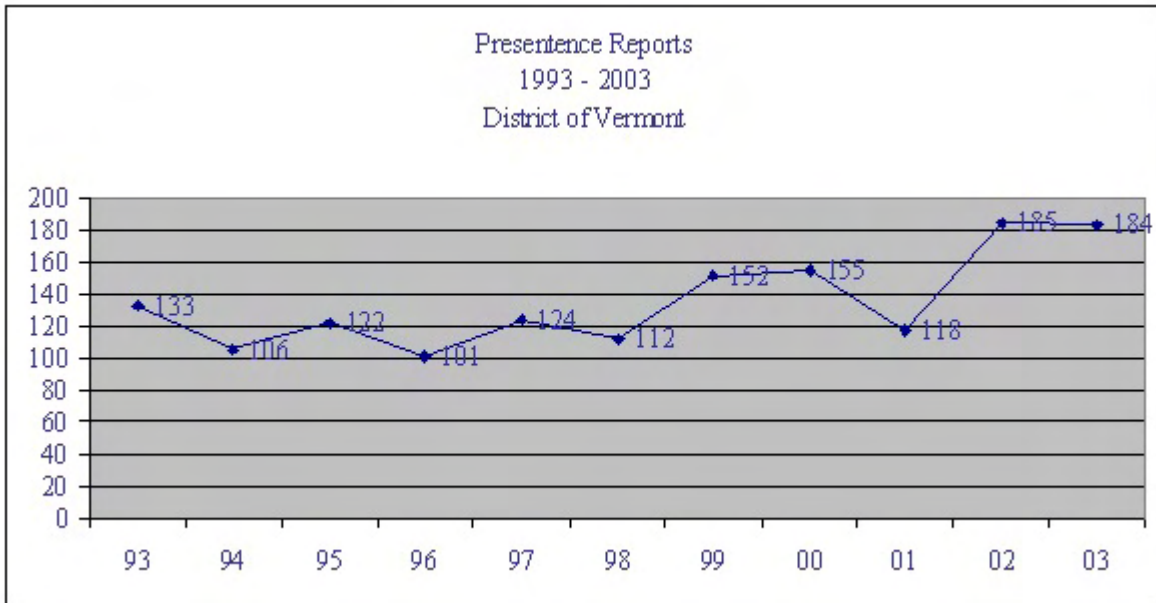
The Probation Office has a Training Committee, which includes a training coordinator and other professional, support and administrative staff. This Committee arranges and provides training to the general staff. The Probation & Pretrial Services Office also has a Tuition Assistance Program which affords training opportunities for staff on a selective individual basis from outside sources. Internal resources include a video library, packaged training programs offered by the Federal Judicial Center, local consultants and other resource materials as well as training through the FJTN. Staff participated in numerous training programs this year including New Officer Orientation, Officer Safety, Firearms, CapStun, Dealing with Mental Health Disorders, Myers Briggs, General First Aid and CPR certification.

We had one officer complete the Leadership Development Program and one officer acting as a trainer for New Officer Orientation. We have continued our association with small districts from New England in a regional Critical Incident Stress Management Team. The Administrative Manager assisted the Office of

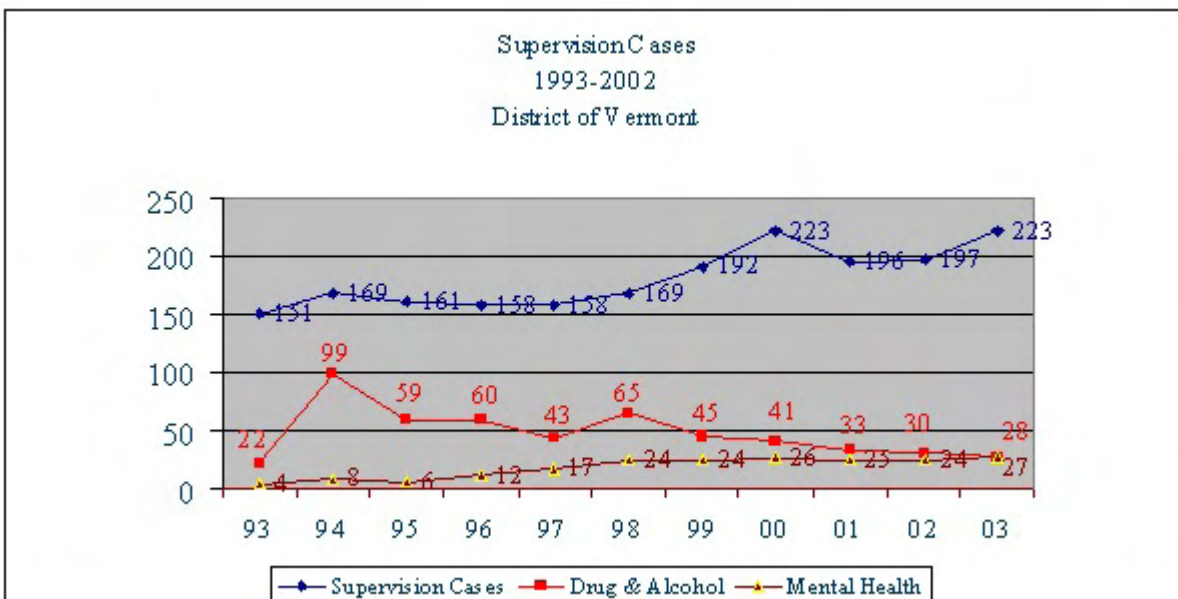
## Chief Judges' Reports

Probation & Pretrial Services with district reviews as a subject matter expert on budget and human resources. In addition, she served as a mentor in the implementation of FAS:T.

The District of Vermont's Presentence Investigation workload remained stable. After last year's record high of presentence investigation reports, we completed one less this year.



Our Post-Conviction Supervision cases increased by 13% over last year. The number of defendant's receiving drug and alcohol treatment, similar to the previous years. During the year a total of 90 offenders under post-conviction supervision received substance abuse treatment. We had a 14% increase in collateral investigations completed and a significant 39% decrease in violations.



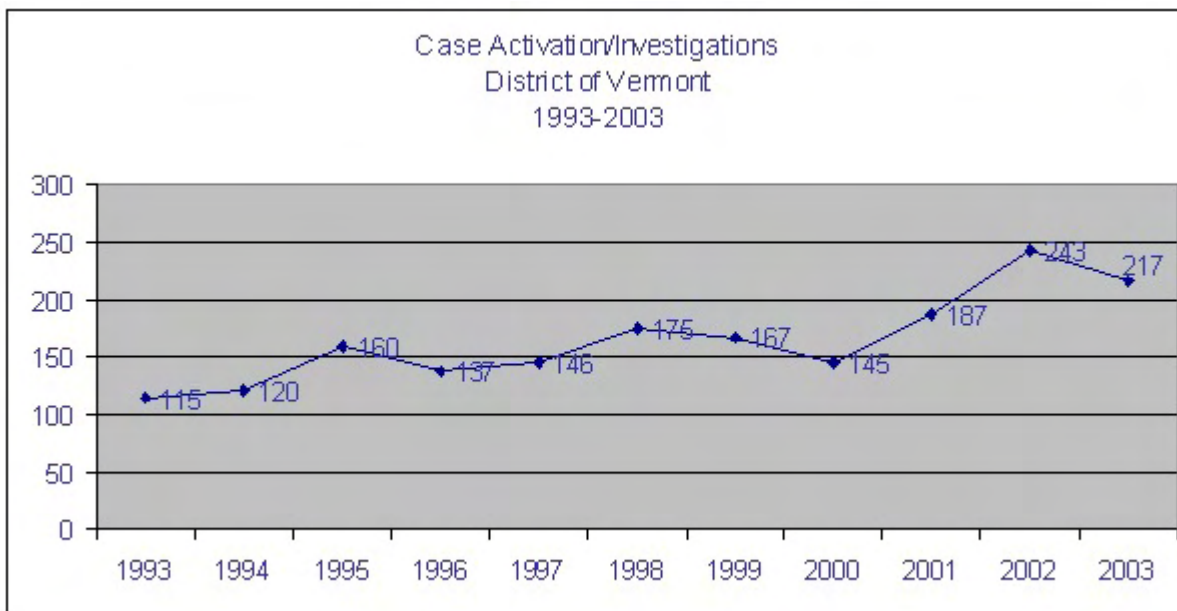


## Chief Judges' Reports

During FY 2003, we continued to have substance abuse and mental health contracts in all fourteen counties of Vermont. The contracts are monitored by the District's DATS officer with the assistance of one of the probation officers assigned to the pretrial services function. We had a 17% decrease in drug treatment expenditures and an 83.3% increase in mental health expenditures. We had 25.4% offender co-payments for drug treatment and 27.3% for mental health.

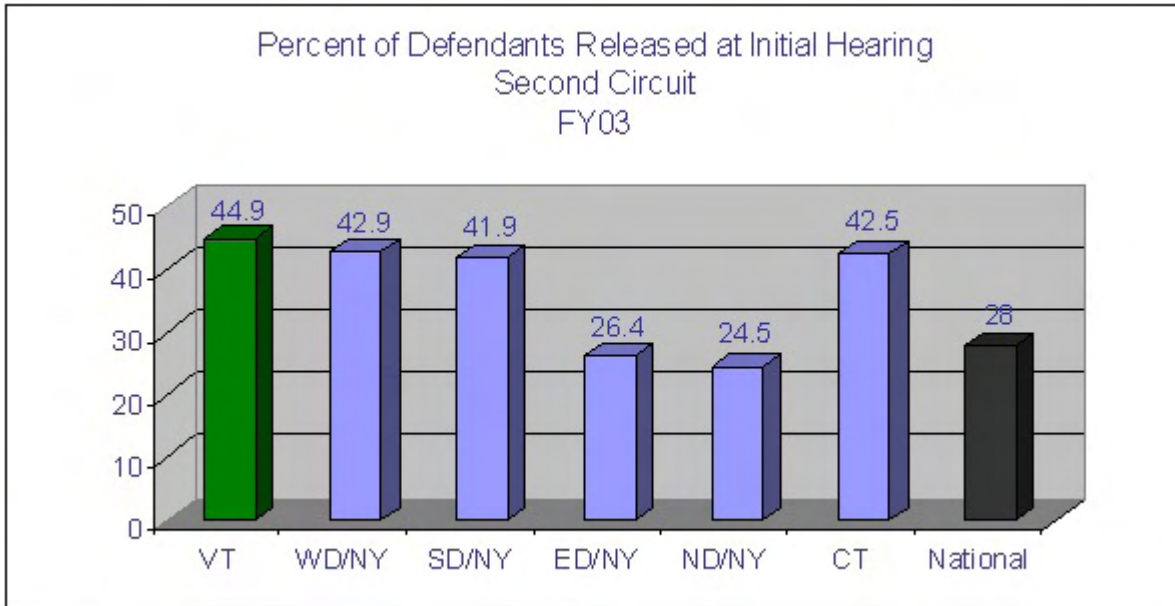
During the fiscal year, we continued to use electronic monitoring as a sanction and in lieu of halfway house placements. Sixty post-conviction offenders were under electronic monitoring services during the fiscal year and 23 offenders in Bureau of Prison custody were monitored with the electronic monitoring systems as part of their reintegration to the community because Vermont has no halfway house facilities.

During FY 2003, we experienced a 10.6% decrease in Pretrial Services cases activated, with a total of 217 cases for the year.



At the end of FY 2003, we had 94 defendants under supervision, the same number as last year. We had an 11.0% decrease in offenders released with substance abuse treatment conditions. We expended 19.5% less for drug and alcohol treatment and 70% more for mental health treatment than the previous year. We collected 13.5% of our total pretrial alternative detention funds in offender co-payments. Within the Second Circuit, Vermont had the highest release at initial

hearing, 44.9% and the lowest rate, 26.9% of defendant' s detained and never released.



The majority of offenses charged in the District of Vermont were drug related offenses, totaling 53.2%, down from 61% last year, 7.9% of offenses were fraud while 13.4% were weapon/firearm related. Our post-conviction supervision caseload results from 50.2% of drug law violators and 14.5% firearms violators.

We continue to provide liaison services between the Federal Probation System and Canadian Law Enforcement. During the fiscal year, we provided 106 investigative reports to other districts relating to Canadian offenders.

**U.S. Bankruptcy Court  
District of Vermont**

**CM/ECF**

We successfully converted to CM/ECF Version 2 in early 2003. We also completed construction of an 8-station training room in Rutland and began holding monthly classes for attorneys and their staff. We had trained a total of 185 attorneys as of the end of 2003, about 34% of whom were trained on-site in attorneys' offices. Attorneys filed documents online on behalf of their clients 4,445 times in 2003, and trustees filed online 1,578 times. Together, this accounts for approximately 49% of all filings, up from 31% in 2002. Attorneys opened 966 bankruptcy cases and 14 adversary proceedings electronically, which constituted approximately 51% and 22% of those categories, respectively. This reflects a significant increase from 2002. By December 31, 2003, over 64% of all attorney transactions were being completed online.

**Community Outreach**

Several members of the Clerk's Office staff have formed a Community Outreach Task Force for the purpose of creating and presenting a community outreach program that is very similar to the CARE program which is being initiated throughout the circuit. The task force has been very active in several different projects, all of which focus primarily on disseminating information to *pro se* parties and educating young people about the risks associated with imprudent use of credit.

In late 2003, the task force completed a revised *pro se* packet which we have made available to persons who choose to seek bankruptcy relief without benefit of counsel, communicated the existence of this information to the Vermont agencies that provide legal services to the indigent, obtained information from these agencies about how best to coordinate the task force's efforts with the services the agencies provide, made the bar aware of this new *pro se* information packet, and posted the *pro se* packet of information on the Court's web page.

During spring 2003, the task force created and finalized a one-hour interactive educational mini-course entitled **Start Smart**. During the summer of 2003, the task force disseminated information about this program to many colleges in Vermont, offering to give this presentation on site for no fee. On September 27, 2003, members of the task force made their initial presentation of **Start Smart** at the College of St. Joseph (in Rutland, VT). The response from students who have

participated in the program has been very positive, and the task force is currently planning to offer this course several more times in 2004, to both college and high school students.

In a similar vein, the Court created a *pro se* litigant information sheet and instituted a procedure whereby the Clerk's Office sends out a form to both parties explaining the notice, service, filing and local rule requirements whenever one of the parties to a summary judgment motion is *pro se*.

Judge Brown implemented a Judicial Performance Appraisal system in 2003, in which attorneys are encouraged to offer candid comments to a third party (an attorney who does not practice in this court), who then passes the comments along to Judge Brown. As of December 2003, this attorney had heard from and/or contacted 15 attorneys who have practiced in this court. (This is a significant number, and an excellent level of response, since our bar is so small: about 45 attorneys filed approximately 80% of all papers filed by attorneys in 2003.) We are pleased to report that the comments were overwhelmingly positive. Certain questions were raised as to court operations, to which we responded via an article in the Vermont Bar Association journal.

### **Mega-Case and Jury Trial**

This court received its first “mega-case” in 2003, involving over 19,000 creditors. This is an exceptionally large case for the District of Vermont, and the staff managed to process 2,720 claims without any outside assistance.

In June 2003, Judge Brown also held the first jury trial in Vermont's bankruptcy court since she took the bench. It lasted five days before the parties settled the lender liability and other claims in issue.

### **Also in 2003...**

- Judge Brown was appointed to serve as the Second Circuit Representative to the Administrative Office's Bankruptcy Judges' Advisory Group.
- We implemented new rules regarding privacy.
- The Court successfully converted to a new time and attendance system (ELMR).
- We, in collaboration with the U.S. District Court, constructed a courtroom and chambers space for the Bankruptcy Court in the courthouse in Burlington.

## Chief Judges' Reports

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- The Clerks Office staff created and populated new databases in Lotus Notes, including:
  - a policy database containing this court' s Employee Handbook;
  - a VTB Documents Library containing meeting agendas and minutes, financial procedures, the Internal Control Manual, and job descriptions for each employee; and
  - a CM/ECF Procedures database.
- The Court sponsored *Take Your Kids to Work Day* during which attorneys and staff were encouraged to bring their children to the Court to learn about what their parents do all day.
- Judge Brown traveled to Petrozovodsk, Karelia, in the former Soviet Union, for 10 days in May 2003 to speak to about 200 Karelian judges of the Arbitrage [commercial] Court about their new bankruptcy system and how it compared to the American Bankruptcy law, and participate in the Russian American Rule of Law Consortium (RAROLC) on the American adversarial system.

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NEW YORK**



**Chief Judge Richard J. Arcara**

**SUMMARY OF HIGHLIGHTS AND ACTIVITIES IN THE  
WESTERN DISTRICT OF NEW YORK**

Statistical Year 2003 was yet another year during which case filings, both civil and criminal, increased in the Western District. The District Court, while at a full complement of district judges and magistrate judges, nevertheless struggled significantly to keep pace with the workload demands placed upon this extraordinarily busy court.

As has been the case for more than a decade, the District's workload continues to be substantial. The District ranks second in the Circuit and 22nd nationally with regard to civil filings, and first in the Circuit and 21st nationally with regard to criminal filings. With respect to pending cases per judgeship, the District ranks first in the Circuit and 6th nationally, with 727 cases per judgeship. Overall, civil filings in the District were up 5.5% over the preceding reporting period, while criminal filings were up 13% for the same period. The total civil and criminal filings place the District 10th nationally in this category.

Despite the heavy workload, the District continues to make great strides in disposing of cases. The District ranks first in the Circuit and 10th in the nation

with regard to terminations per judgeship. This result is even better than last year when the District was 18th nationally in this category. In view of the District's increasing caseload, however, it will be difficult for the District to keep up this pace without the creation of any new judgeships.

No new judicial officer positions were created in the Western District during this reporting period. Although the Court has been working diligently towards reducing the significant caseload, more help is needed. The Judicial Conference of the United States has recognized this and has recommended, since 1992, that an additional judgeship be created for the Western District of New York. It is only recently that Congress has begun to create additional judgeships but, unfortunately, the Western District has not been included in the new authorizations. Weighted filings per judgeship, a statistical factor of great significance when justifying the need for new judgeships, places this Court second in the Circuit and 19th nationally. This district is well above the national average of 611 weighted filings per judgeship versus 523 nationally.

Plans proceed apace with two major construction projects in the District. The first project, originally designed as an annex to the Michael J. Dillon Courthouse in Buffalo, was subsequently determined to be impractical in light of the September 11th terrorist attacks and increased security regulations for new construction.

The General Services Administration, the Administrative Office of the U.S. Courts, and the District Court concluded that the project should be scrapped in favor of a separate, stand-alone Courthouse. The project's ranking in the Judiciary's five-year plan for courthouse construction projects for Fiscal Year 2003 resulted in a Congressional appropriation for site acquisition and design. These funds became available shortly after October 1, 2002. The General Services Administration is in the process of negotiating for the purchase of the parcels of land on which the new courthouse will be constructed. The site selected for the new courthouse is on Niagara Square, the main civic center of downtown Buffalo. The new building will provide courtrooms and chambers for all of the district and magistrate judges in the Buffalo Division, a new grand jury facility, work spaces for the United States Attorney's Office and the Federal Public Defender, and offices for the United States Marshals Service, the District Court Clerk and U.S. Probation and Pretrial Services. The existing federal courthouse, which is a historical building, will be preserved in the new housing plan and will become the home of the U.S. Bankruptcy Court and other federal agencies. The Dillon Courthouse will continue to provide for the government's needs well into the future.



Artist renderings of concept design of the new Buffalo Courthouse

The Rochester project possesses a lesser ranking in the Judiciary's five-year courthouse construction program. Funding for an annex to the Kenneth B. Keating Federal Building and U.S. Courthouse is not expected until Fiscal Year 2007 at the earliest. It is anticipated that the annex will house four district courtrooms and chambers plus related support office space for the Court and the U.S. Marshals Service. The annex will be connected to the existing facility by way of an atrium.

During Fiscal Year 2003, a number of judicial officers continued their service on national committees, advisory groups and organizations. U.S. Magistrate Judge Hugh B. Scott continues to serve on the District Court Advisory Council to the Administrative Office. Senior District Judge Michael A. Telesca continues his term on the Anti-Terrorist and Removal Court. U.S. Bankruptcy Judge Michael J. Kaplan continued to serve as a member of the Second Circuit's Library Committee. Bankruptcy Judge Carl L. Bucki was selected to serve as a member of the Board of Governors of the National Conference of Bankruptcy Judges. Chief Bankruptcy Judge John C. Ninfo, II was appointed to the Second Circuit Judicial Council on Bankruptcy. Chief Judge Ninfo continued to expand the Credit Abuse Resistance Education (CARE) program within the District and, as a result of a November 13, 2003 letter from Second Circuit Chief Judge John M. Walker, Jr. to Chief District Judges, the CARE program expanded throughout the Second Circuit and to some extent nationally as the result of a number of initiatives within the Federal Judiciary.

The District Court, selected as one of ten courts nationwide for early implementation of the new financial accounting system known as FAS<sub>4</sub>T, continued



to serve as a mentor court at the request of the Administrative Office. Most notably, during this reporting period, the District Court acted as a mentor and advisor to the Southern District of New York, the Northern District of Georgia, and the Eastern District of North Carolina.

During the period October 1, 2002 through September 30, 2003, the District implemented the CM/ECF case management system as part of Wave 11, going live on the case management module on October 4, 2003. The final conversion was accomplished over the weekend of October 1, 2003 through October 3, 2003, with over a million and a half records converted without error. Over 500 attorneys have been trained on and registered for the system to date, and attorneys began e-filing on January 4, 2004.

## **PERSONNEL**

### **Judicial Officers**

Active District Court Judges include Richard J. Arcara (Chief Judge) and William M. Skretny in Buffalo and David G. Larimer and Charles J. Siragusa in Rochester. Senior Judges include John T. Curtin and John T. Elfvin in Buffalo and Michael A. Telesca in Rochester. Judge Telesca celebrated his 20th anniversary on the bench in May 2003. Magistrate Judges include Leslie G. Foschio, Hugh B. Scott, and H. Kenneth Schroeder, Jr. in Buffalo and Jonathan W. Feldman and Marian W. Payson in Rochester. Bankruptcy Court Judges include John C. Ninfo, II (Chief Judge) in Rochester and Michael J. Kaplan and Carl L. Bucki in Buffalo. Fiscal Year 2003 marked the tenth anniversary on the bench for Judge Bucki.

### **Administrative Officers**

Court Unit Executives are Rodney C. Early, Clerk of Court, United States District Court, Paul Warren, Clerk of Court, United States Bankruptcy Court, and Joseph A. Giacobbe, Chief Probation and Pretrial Services Officer. The United States Marshal is Peter Lawrence. The District Court's Chief Deputy Clerk is Jeanne M. Spampata. The Rochester Division Clerk's Office is administered by Deputy Clerk-In-Charge, Rachel Bandyach (Ms. Bandyach resigned effective December 28, 2003). The Bankruptcy Court's Chief Deputy Clerk is Michelle Pierce. The Buffalo Division of the Bankruptcy Court is administered by Deputy-In-Charge JoAnn Walker, the Rochester Division Office is administered by Deputy-In-Charge Todd Stickle. Deputy Chief Probation Officer Anthony San Giacomo oversees the operation of the Buffalo Office, while Deputy Chief

Probation Officer Thomas McGlynn supervises the Rochester Division Probation Office (Mr. McGlynn retired at the end of December, 2003.)

### **Magistrate Judges**

All magistrate judges in the Western District of New York continue to be utilized to the fullest extent possible under existing law. Consent cases before magistrate judges are encouraged and each magistrate judge has a substantial number of consent cases pending. Virtually all discovery matters, including Rule 16 Conferences, are referred to magistrate judges. In many cases, magistrate judges also supervise much of the pre-trial criminal work, including motions. Magistrate judges are also used extensively in settlement conferences.

Because there are 14 state correctional facilities and numerous local correctional facilities in the District, the Court has a significant number of prisoner filings. The Court has successfully experimented with a system for direct assignment of prisoner petitions in habeas corpus cases to magistrate judges in equal proportion to those assigned to district judges. There is a very high rate of consents in these cases which allows for more efficient use of the magistrate judges.

Magistrate judges are an integral and indispensable part of the Court. They also participate with the district judges in all aspects of court management in the District.

## **STATISTICS**

### **District Court**

Civil filings for the year ending September 30, 2003 were 1,697, which is a 5.5% increase over the prior year's civil filings. Buffalo's filings were up 3% and Rochester's filings were up 9.5%. Total criminal case filings for the year ending September 30, 2003 were 439, a 13% increase over the prior year. Filings were up 2.3% in Buffalo, and 34.6% in Rochester.

The civil pending caseload is up a combined 6.4% over last year. Buffalo is up 7.9%, and Rochester is up 4.5%. Rochester's share of the pending civil caseload stands at 42%, down one percentage point from last year's share.

The criminal pending caseload is up 9.2% overall, and now stands at 570 cases.

One thousand five hundred and forty two civil cases were terminated during the period October 1, 2002 - September 30, 2003. That number is one more than was terminated during the prior twelve-month period. Buffalo closed 904 cases, while Rochester closed 638 cases.

### **Bankruptcy Court**

Bankruptcy filings in the Western District of New York for the preceding twelve-month period increased, as has been the national trend. A total of 14,579 cases were filed during Fiscal Year 2003, which represents a district-wide increase of 12.95% from the previous twelve-month period. The percentage increase in bankruptcy filings in the District was significantly greater than the national average of 7.4%. Chapter 7 cases continue to comprise the majority of the cases in this district, representing approximately 74% of the total cases filed. A total of 527 Adversary Proceedings were filed during Fiscal Year 2003, representing a slight decrease from last year.

According to the most recent Bankruptcy Program Indicators, the Court continues to rank nationally in the median range with respect to the number of case filings, disposition time and average age of pending cases. The Court's active case management of Adversary Proceedings has resulted in it being ranked first in the Circuit with respect to the average age of pending dischargeability Adversary Proceedings and second in the Circuit for the average age of other Adversary Proceedings. The Court continued to rank highly in the Circuit in these categories despite the increased workload and the inability to fill new authorized work units.

### **Probation and Pretrial Services**

Joseph A. Giacobbe, Chief Probation Officer, reports that during statistical year 2003, the U.S. Probation and Pretrial Services office updated its strategic plan and the staff continued their commitment towards Total Quality Service. The plan identifies major performance outcome areas involving improvement of quality and service in pretrial service reports, supervision services, presentence reports, automation services, training, diversity of the organization and management. Staff members, representing all job types, are assigned to work on goals supporting these outcome areas.

During this reporting period, a number of individuals participated in regional and national initiatives outside of the district. Two probation officers participated as trainers for the Federal Judicial Center's new officer training program. One member of the management team assisted the Office of Probation

and Pretrial Services on the Committee for the Development of the AO' s updated post sentence and pretrial services supervision monographs. One of the senior probation officers was selected as the Second Circuit' s representative on the U.S. Sentencing Commission' s Advisory Board.

In statistical year 2003, 698 cases were activated on pretrial release, representing a bail release rate of 65.7%. The percentage of pretrial defendants who successfully completed supervision was 80%. The majority of violations while on pretrial release were technical violations as opposed to re-arrests. The total number of pretrial service defendants received for supervision during this reporting period was 365, which includes pretrial diversion defendants. Of this number, 160 defendants were referred for substance abuse testing and/or treatment. A total of 52 pretrial services defendants were referred for mental health treatment.

A total of 198 defendants were released on electronic monitoring surveillance at the pretrial services stage. Defendants paid approximately \$16,000 toward co-payment orders. The successful EMS completion rate continued in the mid-80% range. Use of pretrial EMS resulted in a potential savings to the government of \$1,921,177.

The presentence investigation unit completed 495 investigations. District-wide, 71% of sentenced defendants were remanded, 22% were placed on probation, 15% were ordered to pay a fine and 15% were directed to make restitution.

During the reporting period, 1,277 post-sentence offenders were under supervision. Of this number, 1,211 offenders, or 95%, completed their term of supervision successfully. A total of 160 offenders received drug treatment, while 71 offenders received mental health treatment. Two Hundred Forty offenders were placed under electronic monitoring conditions which produced a successful completion rate of 99%. Offenders paid \$11,885 towards co-payment orders. The average monthly number of individuals on post-sentence electronic monitoring was 55. Had these individuals been incarcerated, the cost to the government would have been approximately \$1,606,000. A total of 2,098 hours of community service were completed by 58 offenders. Restitution and fine collections totaled \$1,146,255. A total of 47 individuals were processed through the probation office' s employment program, resulting in 61% of the offenders either securing work, completing a training program, or becoming involved in an educational program.

AUTOMATION

District Court

During this reporting period, a significant amount of time was spent by the systems staff preparing for implementation of the new case management/electronic case filing (CM/ECF) system. New servers were successfully installed and configured for use in the CM/ECF project. The entire ICMS database was successfully migrated to the new system.

In addition to the technical work performed, the systems staff provided extensive training, both internally and externally, in support of the CM/ECF project. This included more than ten on-site training classes for members of the Bar as well as many in-house technical training seminars for court staff.

The new digital telephone system in Buffalo and Rochester continues to provide the Court with many new opportunities. The Bankruptcy Court's Rochester Office was successfully migrated to the new telephone system during this reporting period. The process of migrating the District Court Clerk's Office and Chambers in Rochester to the new system is nearing completion. This migration to the digital telephone switch promises to save the District Court and Bankruptcy Court significant budget resources. Shortly, the remaining chambers in Buffalo will be migrated to the new digital system as well.

In an effort to obtain more competitive telephone service rates, the District Clerk's Office has provided the Probation and Pretrial Services Unit with consulting expertise to assist them in their move to a less expensive service.

The systems staff continued throughout the year to process all necessary work station and server cyclical replacements and began to truly utilize the SAN for storage of digital audio recording data.

A new FAS<sub>4</sub>T server has been installed and the FAS<sub>4</sub>T application migrated to it. At the conclusion of this reporting period, the systems staff was preparing to upgrade to the new version of FAS<sub>4</sub>T, version 3.7.

On the whole, the systems staff participated greatly in the training opportunities throughout the year. Deborah Trowse completed a computer forensics class while Brian Loliger actively participated in the CM/ECF on-site training program. Systems Manager Patrick Healy continues to provide on-site training to the Bar and others with respect to the new case management/electronic case file system.

This Fiscal Year saw the completion of the infrastructure and technical installation of expanded courtroom technology in two district courtrooms, one in Rochester and one in Buffalo.

### **Bankruptcy Court**

On June 13, 2003, the Bankruptcy Court switched its case management system from BANCAP to CM/ECF, ending the use of the case management system that the Court had used for nearly 15 years. Conversion to CM/ECF required a significant commitment of IT personnel and budget resources to adequately train, test and convert existing case records and to support the Court in using the new case management system. The IT staff converted approximately 165,000 case records from BANCAP to CM/ECF, making that case information available to internal and external users without the need to keep two case management systems operating. For the period from June 30, 2003 through January 30, 2004, attorneys “e-filed” a total of 811 cases with the Court representing 8.90% of the Court’s total case filings for that period. During that same period of time, through the use of a scanning system developed by the Court’s IT staff, the Court was able to electronically image 166,592 documents, consisting of over 659,000 pages. Consequently, the Court was able to remain timely in its docketing, while at the same time making all documents filed with the Court since June 13, 2003 available electronically through CM/ECF. The IT staff has developed a “CM/ECF off-line program” for use by judges that hold court in remote locations without high-speed internet access, enabling a judge to take a notebook or CD to that location and have available all of the documents for the matters being heard that day without the need to rely on dial-up connections. The program has been very well received by other Bankruptcy Courts around the country.

Chief Deputy Clerk Michelle Pierce, served as CM/ECF Project Manager, while performing all other duties, in an admirable fashion. The Court registered 90 attorneys as e-filers, and has trained over 130 attorneys, together with the support staff for many of those attorneys. The Court is certified by the New York State Bar as a continuing legal education provider, offering a four credit-hour course to attorneys in the Court’s training facilities.

## **FINANCIAL OPERATIONS**

### **District Court**

Statistics for the Financial Department show a slight increase across the board in various measures of workload. Fees forwarded to the United States Treasury, including payments to the Crime Victims Fund, totaled over \$2.9 million

representing a 5% increase over the prior year, with the actual number of receipts issued (10,492) increasing by 2%. This growth appears to be the result of increased payments received from the Bureau of Prisons each month, which rose by 7%. Additionally, our registry deposits grew by 88% with \$3.5 million being collateralized through the Federal Reserve.

The volume of criminal debt activity overseen by the Financial Department significantly increased this year particularly due to joint and several restitution cases. Our current caseload involves the monitoring, tracking and collections on debt totaling over \$27 million for these types of cases alone which represents a 40% increase over what was ordered last year. Early in the year, our Financial Operations Supervisor initiated an inter-agency meeting with the District's U.S. Attorney's Office and the United States Probation Office to resolve outstanding issues with joint and several restitution cases. Countless hours were spent by the Financial staff identifying issues, communicating with the various agency leaders, attending a multitude of meetings, questioning and understanding the legal ramifications of various situations, and ultimately adjusting our records accordingly. This resulted in our ability to reduce the District's Deposit Fund by 23% by year end.

During the year, the Court's Financial staff processed over 6,600 payment vouchers and issued 13,078 checks. Combined Registry and Treasury disbursements totaled almost \$6.4 million. These statistics remained relatively stable from last fiscal year; however, one significant change in this area of financial operations involved the implementation of Certifying Officers legislation in October, 2002. Although the Clerk of Court remains the sole disbursing officer for the Western District of New York, the Financial Department continues to print the checks for all court units within the district but is no longer required to review vouchers for the other court units. Payments are now initiated electronically upon certification by the Unit Executives and/or their designees.

The Court's Criminal Justice Act program maintained its commitment to the timely processing of CJA payment vouchers. A total of 387 vouchers were certified for payment during the year, with over \$1.3 million being paid to attorneys, experts and related service providers on behalf of indigent defendants. This activity represented increases of 9% and 84% respectively primarily due to the assignment of multiple panel attorneys in two very significant cases. Numerous hours were spent reviewing, researching, and communicating with experts in the area of high profile criminal matters similar to USA vs. Goba, et al., after which the presiding Judge approved our proposed Order which included a rather significant departure from the **Guide to Judiciary Policies and Procedures**. The Administrative Office was very pleased with the Court's decision and brought it

to the attention of the Defender Services Committee which met shortly thereafter. Coincidentally, one of their primary agenda items included the management of large non-death penalty cases whereby possible guidelines were being decided upon. As a result, they commended the Hon. William M. Skretny for his efforts in this area. Furthermore, the provision of recommendations on CJA-related death penalty guidelines and a subsequent proposed Order in the matter of USA vs. Diaz, et al, were also completed.

Other accomplishments in the area of CJA, upon the Chief Judge's direction, involved the drafting of new local policies and procedures for CJA Panel Attorneys regarding appointments, prior expenditure approvals, submissions deadlines, and other details, which are now provided at the time of assignment. New attorneys to the Panel are also provided with written material, as well as an overview of the CJA appointment system and resources. And finally, our public web page now includes various CJA documentation, voucher forms and instructions.

Early February also brought many FAS<sub>4</sub>T related activities (Financial Accounting System for Tomorrow). Our Financial Operations Supervisor assisted the Administrative Office with training their team leads on Certifying Officer implementation simultaneously with FAS<sub>4</sub>T, which resulted in a request by the Chief Accounting Officer for the Accounting and Financial Systems Division (AFSD) to write an article on Certifying Officer Preparations that was subsequently published in the nationwide FAS<sub>4</sub>T flyer. Assistance was also provided in the presentation of Project Management Training to new FAS<sub>4</sub>T implementation courts. This was followed by a member of the Financial Department mentoring the Eastern District of North Carolina as they converted their financial operations to FAS<sub>4</sub>T. Additionally, we were asked to participate with the Administrative Office in an Operational Assessment and Audit of Texas Southern's budget, financial, and systems operations.

And lastly, we completed the reconciliation of our district's Deposit, Registry and Unclaimed Funds accounts with the Administrative Office's Central Accounting System (CAS) data. This task took two months to complete resulting in our initiating appropriate corrections to errors dating back to the 1960's. This was the first step required in the preparation for Civil/Criminal Accounting Module (CCAM) which is beginning to be rolled out to the courts in Fiscal Year 2004.

### **Bankruptcy Court**

The Bankruptcy Court and the District Court identified the need to replace outdated telephone equipment being used by both courts in the Rochester



Courthouse during Fiscal Year 2003. The Bankruptcy Court fully funded the cost of purchasing a telephone system for the courts to share, at a total cost of approximately \$80,000. The cost for each court to purchase its own telephone system would have been approximately \$75,000. Consequently, the Court saved approximately \$65,000 by partnering to purchase a single telephone system. District Court provided technical support to the Bankruptcy Court in operating and maintaining this system, further reducing the operating cost of the new equipment. In addition, the Bankruptcy Court reprogrammed funds into the District Court budget to assist District Court in performing building improvements and upgrades.

The Bankruptcy Court's inventory control system has been made available to other courts through the Administrative Office, and the Court regularly assists other courts in addressing their inventory control issues. The Court witnessed an increase in the use of credit cards by attorneys to pay filing fees from 1.5% of all fees paid in Fiscal Year 2002 to 19% of all fees paid during Fiscal Year 2003. It is expected that attorneys' use of credit cards to pay filing fees will continue to increase as the number of cases filed by attorneys electronically through CM/ECF increases.

**ATTORNEY DISCIPLINARY STATISTICS**

_____ Suspensions	0
Disbarment	0
Resignation	0

It came to the attention of the District Court that the Appellate Division, 4th Department, has failed to provide this Court with notification of attorney disciplinary proceedings. The Appellate Division has been contacted and has promised to immediately provide copies of disciplinary decisions and orders entered during Fiscal Year 2003. These matters will be subsequently reported in next year's Annual Report.

**JUDICIAL MISCONDUCT COMPLAINTS**

None

**JUDICIAL  
ADMINISTRATION**

**IMPROVING THE WORK OF THE COURTS**

**Judicial Conference of the United States**

The federal judiciary as a whole is governed for administrative purposes by the Judicial Conference of the United States, a national body constituted pursuant to 28 U.S.C. § 331. Consisting of representatives of all the federal courts, the Judicial Conference roughly resembles a legislature for the judicial branch, or perhaps a board of directors.

The tabulation following indicates Second Circuit representation on the various committees of the Conference. The names of the committees provide a kind of summary of the issues dealt with by the Judicial Conference. These are highly important bodies because the full Conference meets only twice each year, primarily to act upon committee reports. Most business is transacted on the “ consent calendar,” adopting committee proposals. The committees are generally staffed by the Administrative Office of the United States Courts, the Washington agency responsible for judicial branch administration and support at the national level. In addition, the Federal Judicial Center conducts research for many committees.

As Chief Judge of the Second Circuit, Chief Judge John M. Walker, Jr. is the statutory Second Circuit representative on the Judicial Conference of the United States. He will continue in this role during his tenure as the Chief Judge of the Circuit. The current Second Circuit District Court representative is Chief Judge Frederick J. Scullin, Jr., of the Northern District of New York, whose term expires on September 30, 2004.

The Judicial Conference met in Washington, D.C., on March 18, and September 23, 2003. At the March 18th meeting, the Judicial Conference, at the recommendation of the Committee on Federal-State Jurisdiction, unanimously adopted a resolution expressing the Conference’s continued opposition to legislation pending in the 108th Congress that, if passed, will expand federal jurisdiction over class action litigation by permitting, through the use of minimal diversity citizenship, the initial filing in or removal to federal court of almost all such actions now brought in state court. Since 1999, the Conference has expressed its concern that such legislation would be inconsistent with principles of federalism and would add substantially to the workload of the federal courts. In the March 18th resolution, the Conference, while recognizing that the use of minimal diversity of citizenship may be appropriate to the maintenance of significant multi-state class action litigation in the federal courts, noted that Congress, in the event it passed such legislation, should be encouraged to include sufficient limitations and

threshold requirements so that federal courts were not unduly burdened and states' jurisdiction over in-state class actions remained undisturbed. The Conference further resolved to continue to explore additional approaches to the consolidation and coordination of overlapping or duplicative class actions that did not unduly intrude on state courts or burden federal courts.

Also at the March 14th meeting, the Committee on Judicial Resources, as part of the biennial Article III judgeship survey, recommended and the Judicial Conference agreed to transmit to Congress a request for additional Article III judgeships, including two circuit judgeships for the Second Circuit Court of Appeals, three permanent and one temporary district court judgeships for the Eastern District of New York and one temporary judgeship for the Western District of New York. On recommendation of the Committee on the Administration of the Magistrate Judges System, the Conference approved the redesignation of the part-time Southern District Magistrate Judge from Newburgh, New York to Middletown, New York. The Conference also approved the Magistrate Judges Committee's recommendation that the number, locations and arrangements of the Magistrate Judges in the Western District of New York remain unchanged in the district.

On March 27, 2003, the House of Representatives approved a floor amendment (the "Feeney Amendment") to H.R. 1104, 108th Congress, the then-pending, "Child Abduction Prevention Act," which would have, among other things, restricted district courts' authority to depart downward from the sentencing guidelines to grounds specifically identified by the United States Sentencing Commission. It also would have required, in appeals of downward departures, *de novo* review by the courts of appeals of sentencing judges' application of the guidelines to the facts. The House substituted H.R. 1104 for an earlier-passed Senate bill dealing with child pornography, and a conference was scheduled forthwith. By mail ballot concluded on April 3, 2003, the Executive Committee of the Conference, adopted the recommendations of the Committee on Criminal Law, that the Conference oppose legislation eliminating the courts' authority to depart downward in appropriate situations unless the grounds relied upon are specifically identified by the Sentencing Commission as permissible for departure; oppose legislation that directly amended the sentencing guidelines and suggest that Congress should instruct the Sentencing Commission to study changes to particular guidelines and to report to Congress if it determines not to make the recommended changes; oppose legislation that would alter the standard of review in 18 U.S.C. §3742(e) from "due deference" regarding a sentencing judge's applications of the guidelines to the facts of a case to a "*de novo*" standard of review; and urge Congress not to pursue legislation in this area until after the Judicial Conference, the Sentencing Commission and the Senate have had an opportunity to consider

more carefully the facts about downward departures and the implications of making such a significant change to the sentencing guideline system. On April 30, 2003, a somewhat narrower version of the bill subsequently passed by Congress was signed into law as the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 or “ PROTECT Act” (Public Law No. 108-21). At the September 23, 2003 meeting, the Conference voted to support repeal of certain provisions of the PROTECT Act that did not relate to child kidnaping or sex abuse, including the provisions previously acted upon on behalf of the Conference by the Executive Committee as well as certain provisions of the Act on which the Conference had not previously taken positions, including, among others:

The requirement that directs the Sentencing Commission to make available to the House and Senate Judiciary Committees all underlying documents and records it receives from the courts without established standards on how these sensitive and confidential documents will be handled and protected from inappropriate disclosure; the requirement directing that the Sentencing Commission release data files containing judge-specific information to the Attorney General; the requirement directing the Department of Justice to submit judge-specific sentencing guideline departure information to the House and Senate Judiciary Committees and the requirement that the Sentencing Commission promulgate guidelines and policy statements to limit departures.

Also at the September 23rd session, the Conference endorsed the recommended changes to the miscellaneous fee schedule by the Committee on Court Administration and Case Management (“CACM”), following a comprehensive review undertaken by CACM of the miscellaneous fees set by the Judicial Conference for the courts of appeals, the district courts, the United States Court of Claims, the bankruptcy courts and the Judicial Panel on Multi-District Litigation. These changes included adopting inflationary increases to most miscellaneous, increasing the fee in the courts of appeals for docketing a case on appeal or review, or docketing any other proceeding, from \$100 to \$250, establishing a new, optional fee to the court of appeals miscellaneous fee schedule of \$200 per remote location for the use, at the request of counsel, of videoconferencing equipment in connection with an oral argument to defray the cost of transmission lines and maintaining the videoconferencing equipment used by the courts, and that the fee for filing a lift stay motion in bankruptcy courts be increased from one-half the filing fee prescribed in 28 U.S.C. §1914(a) to the full filing fee which is currently \$150.

At its September 23rd meeting, the Conference approved the recommendation of the Committee on Defenders Services to create a new section

in the guidelines for the administration of the Criminal Justice Act and related statutes encouraging courts to use case budgeting techniques in complex, non-capital panel attorney representations that appear likely to become or have become extraordinary in terms of cost. These new provisions parallel those already pertaining to managing the CJA representation costs in capital cases.

JUDICIAL COUNCIL OF THE SECOND CIRCUIT



**Top row, left to right:**

Circuit Judge Chester J. Straub  
Chief Judge Robert N. Chatigny, District of Connecticut  
Circuit Judge Guido Calabresi  
Circuit Judge Dennis Jacobs  
Circuit Judge Rosemary S. Pooler  
Chief Judge William Sessions III, District of Vermont  
Circuit Judge Robert D. Sack

**Bottom row, left to right:**

Chief Judge Michael B. Mukasey, Southern District of New York  
Circuit Judge José A. Cabranes  
Chief Circuit Judge John M. Walker, Jr.  
Chief Judge Edward R. Korman, Eastern District of New York  
Chief Judge Richard J. Arcara, Western District of New York

**Absent:**

Chief Judge Frederick J. Scullin, Jr., Northern District of New York

**SECOND CIRCUIT JUDGES SERVING ON U.S. JUDICIAL  
CONFERENCE COMMITTEES AND SPECIAL COURTS  
FEBRUARY 2004**

John M. Walker, Jr.	Court of Appeals	The Executive Committee
Jed S. Rakoff	S.D.N.Y.	Committee on the Administration of the Bankruptcy System
Victor Marrero	S.D.N.Y.	Committee on the Budget
Denis R. Hurley	E.D.N.Y.	Committee on Codes of Conduct
John G. Koeltl	S.D.N.Y.	Committee on Court Administration and Case Management
Norman A. Mordue	N.D.N.Y.	Committee on Criminal Law
John Gleeson	E.D.N.Y.	Committee on Defender Services
Loretta A. Preska	S.D.N.Y.	Committee on Federal-State Jurisdiction
Robert D. Sack	Court of Appeals	Committee on Financial Disclosure
Rosemary S. Pooler	Court of Appeals	Committee on Information Technology
Janet Bond Arterton	Connecticut	Committee on International Judicial Relations



## Judicial Administration

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Robert A. Katzmann	Court of Appeals	Committee on the Judicial Branch
William K. Sessions, III	Vermont	Committee on the Judicial Branch
Dennis Jacobs, Chair	Court of Appeals	Committee on Judicial Resources
Nina Gershon	E.D.N.Y.	Committee on the Administration of the Magistrate Judges System
J. Garvan Murtha	Vermont	Committee on Rules of Practice and Procedure
Mark R. Kravitz	Connecticut	Committee on Rules of Practice and Procedure
Laura Taylor Swain	S.D.N.Y.	Advisory Committee on Bankruptcy Rules
Shira A. Scheindlin	S.D.N.Y.	Advisory Committee on Civil Rules
David G. Trager	E.D.N.Y.	Advisory Committee on Criminal Rules
David G. Trager <i>Ex-Officio</i>	E.D.N.Y.	Advisory Committee on Evidence Rules
Barrington D. Parker, Jr.	Court of Appeals	Committee on Security and Facilities
William K. Sessions, III	Vermont	U.S. Sentencing Commission

**COMMITTEES OF THE SECOND JUDICIAL CIRCUIT  
OF THE UNITED STATES**

Jed S. Rakoff, Chair	S.D.N.Y.	Bankruptcy Committee
Rosemary S. Pooler, Chair	Court of Appeals	Information Systems and Technology Committee
José A. Cabranes, Chair	Court of Appeals	Library Committee
Barrington D. Parker, Jr., Chair	Court of Appeals	Space & Facilities Committee
Carol Amon, Chair	E.D.N.Y.	Committee on Judges' Obligation under 28 U.S.C. § 455
Robert D. Sack, Chair	Court of Appeals	History & Commemorative Events Committee
John M. Walker, Jr., Chair	Court of Appeals	Public Affairs Committee
Alfred V. Covello, Chair	District of Connecticut	Committee on Local Holding Procedure for Filing Motions
Robert N. Chatigny Chair	District of Connecticut	Connecticut Federal/State Judicial Council
William K. Sessions, III Chair	District of Vermont	Vermont Federal/State Judicial Council
George B. Daniels, Chair	S.D.N.Y.	New York Federal/State Judicial Council

JUDICIAL CONFERENCE (SECOND CIRCUIT) AND JUDICIAL COUNCIL

Circuit judicial conferences are periodic circuit-wide meetings convened pursuant to 28 U.S.C. §333. A modification to this statute, which formerly mandated an annual conference, permits the Judicial Conference to be held in alternate years. A 1996 modification of §333 makes attendance optional; formerly, active circuit and district judges were required to attend unless excused.

The 2003 Judicial Conference was a bench-bar conference. It was held on June 5th through 8th at The Sagamore on Lake George in Bolton Landing, New York. The Hon. John M. Walker, Jr., Chief Judge, presided over the conference and the Hon. Denise Cote, United States District Judge for the Southern District of New York was the Conference Chair. Prior to the judges' Executive Session on the first day of the conference, Chief Judge Walker met with the members of the Second Circuit Judicial Council. At the Executive Session, William Burchill, Jr., Associate Director and General Counsel of the Administrative Office of the United States Courts, appearing for AO Director, Leonidas Ralph Mecham, reported to the judges on AO initiatives concerning the federal judiciary. The Honorable Fern Smith, the Director of the Federal Judicial Center, also spoke to the judges about various education programs available to them. Following the Executive Session, members of the Federal Judges Association met.

At the Friday dinner program, the new district, bankruptcy and magistrate judges who had taken the bench since the 2002 Judicial Conference were introduced: Circuit Judge Reena Raggi, Western District Magistrate Judge Marian W. Payson and Court of International Trade Judge Timothy Stanceau. United States District Judge Barbara S. Jones of the Southern District of New York served as Toastmaster for the evening.

Friday morning June 6th, the Conference opened with Chief Judge Walker's Report on the State of the Second Circuit. The Chief Judge's speech focused on the continuing crisis of judicial vacancies among the federal courts, including the courts of the Second Circuit; the need to address the problems of aging and overcrowded courthouses throughout the Second Circuit; the caseload increase in the Court of Appeals due to a tremendous influx of immigration appeals over the past year and national bi-partisan efforts to redress the inequities of judicial pay. Following Chief Judge Walker's Report, two plenary sessions were held. Circuit Judge Robert A. Katzmann moderated a discussion entitled, *Federalism: Where Are We Heading?*, between Professor Marci A. Hamilton of the Benjamin N. Cardozo School of Law of Yeshiva University and former Solicitor General Seth P. Waxman, now with Wilmer, Cutler & Pickering in Washington, D.C. The second Friday morning plenary session was moderated by Senior Circuit Judge Ralph K. Winter. Judge Winter led a discussion based on the criminal, civil

and administrative investigations into the activities of a fictional corporation which bore a striking resemblance to the activities of a certain well known Houston, Texas corporation. Entitled, *Enron On My Mind*, the panel included James B. Comey, United States Attorney for the Southern District of New York, Stephen Fraidin of Kirkland & Ellis, Patricia M. Hynes of Milberg Weiss Bershad Hynes & Lerach, LLP, Lawrence B. Pedowitz of Wachtell Lipton Rosen & Katz, Linda C. Thomsen, Deputy Director of the Enforcement Division of the Securities and Exchange Commission in Washington, D.C., Richard Walker, General Counsel, Corporate and Investment Bank, Deutsche Bank AG and Theodore V. Wells of Paul Weiss Rifkind Wharton & Garrison. Eighth Circuit Court of Appeals Judge and Chair of the United States Sentencing Commission Diana E. Murphy provided closing remarks on federal sentencing guidelines issues in white collar criminal cases.

The second day of the Conference opened with a report on the 2002-2003 United States Supreme Court term by Circuit Justice Ruth Bader Ginsburg. Following her report, Justice Ginsburg and her colleague, Associate Justice Stephen G. Breyer participated in a dialogue with Southern District Judge Loretta A. Preska and Eastern District Judge John Gleeson. Both Justices joined Chief Judge Walker, Second Circuit Judge Dennis Jacobs, Chair of the Second Circuit Committee on the American Inns of Court Professionalism Award and Judge Randy J. Holland, President of the American Inns of Court, in presenting the second annual Second Circuit American Inns of Court Professionalism Award to Gerald Walpin, Esq. of KMZ Rosenman. Circuit Judge Dennis Jacobs, who chaired the selection committee, introduced Mr. Walpin and explained to the audience the basis for his selection by the Committee.

After the presentation of the Second Circuit American Inns of Court Professionalism Award to Mr. Walpin, Circuit Judge José Cabranes moderated a panel discussion, *The Role of Courts in Time of War*, with Professors Ruth Wedgwood of Johns Hopkins University, William C. Banks of Syracuse University College of Law, Burt Neuborne of New York University School of Law and Scott L. Silliman of Duke Law School.

The 2003 Judicial Conference concluded with the presentation of a rock opera, *There's Something Afoot*, written, produced and directed by Steven Edwards, Esq. of Hogan & Hartson and former President of the Federal Bar Council and starring The Federal Bar Council Players: Dennis Cariello, Jason Cooper, Carey Dunne, Jennifer Edlind, Suzanne Griffin, Carrie Kei Heim, Deirdre Kane, Fran Obeid, John Redmon, Yasuhiro Saito, Gary Sandelin, Spencer Schneider, Irene Vavulitsky, Frank Velie and Jim Zucker. After the performance

concluded, Mr. Edwards and his band of musician-attorneys provided music for dancing.

Principal items of discussion at the Judicial Council meetings during the year included judicial misconduct complaints, the states of the dockets of the courts of the Circuit, and Circuit-wide space, security and automation issues. The Council especially was concerned about the continuing difficulties being encountered in the Eastern District courthouse construction projects in Brooklyn, New York. At its June 5th meeting, the Council received a report from Eastern District Chief Judge Edward R. Korman outlining the latest problems, including the apparent lack of monies necessary to finish the project and the rumor that the general contractor, J.A. Jones, was in danger of filing for bankruptcy. The Council directed Circuit Judge Barrington D. Parker, Jr., Chair of the Second Circuit Committee on Space and Security, to contact GSA Administrator Stephen Perry regarding the Brooklyn courthouse project in an effort to resolve these and other issues.

Judge Parker along with Chief Judge Korman and Eastern District Judge Raymond Dearie held a series of meetings throughout the year with GSA Administrator Perry, GSA Commissioner of the Public Building Service Joseph Moravec and Deputy Commissioner Paul Chistolini to resolve the problems plaguing the Brooklyn courthouse project. As a result of these meetings, GSA replaced local GSA staff on the project and assigned Deputy Commissioner Chistolini to supervise the project. In November 2003, J.A. Jones, the general contractor, filed for Chapter 11 protection in the United States Bankruptcy Court for the Western District of North Carolina, forcing the surety Firemen's Fund Insurance Corporation ("FFIC") to take over the project and bring in a new general contractor. As 2003 drew to a close, discussions between GSA and FFIC were ongoing and it appeared that Bovis Lend Lease would be the new contractor on the Brooklyn courthouse construction project. It is clear, however, that the project's completion will be delayed until sometime in 2005.

Also, in 2003, the Office of Public Affairs continued its outreach efforts which included coordinating the expanded *Courts Visits Program* for New York City high school students in conjunction with the Federal Bar Council, the annual April *Take Our Children to Work Day* program with the New York Women's Bar Association and its Foundation and organizing the national *Open Doors to Federal Courts* program in the Manhattan federal courts. The Public Affairs Office also oversaw student mentoring and moot court programs and provided courthouse tours for visiting foreign judges and court administrators.

**PROTECTING THE QUALITY OF THE JUDICIAL PROCESS**

**Attorney Discipline**

Attorney discipline in the Second Circuit is carried out pursuant to local rules adopted by the individual courts.

At the appellate level, the Second Circuit Committee on Admissions and Grievances was formed in January, 1978, to assist the Court of Appeals in administering Local Rule 46(f)-(h). The Committee, composed of seven attorneys, may be called upon to conduct investigations and other proceedings in disciplinary matters involving attorneys admitted to practice before the Court. Pursuant to Local Rule 46(f), in 2003, the Court took reciprocal action to enforce disciplinary orders entered in other jurisdictions against two members of the Court of Appeals' bar. The Court disbarred two attorneys.

In the District of Connecticut, Local Rule 3 provides for a grievance committee with nine members, who serve for three-year terms. Two attorneys appointed by the Court serve as counsel to the committee. In calendar year 2003, the Court opened 14 grievance cases; seven grievance cases were closed. Of the seven closed cases, four were dismissed; suspension orders entered in the others. One attorney was reinstated to active practice. At year-end, 23 grievance cases were pending.

Attorney discipline in the Southern and Eastern Districts of New York is governed by a local rule common to the two districts. Effective in April, 1997, the operative provision is Local Civil Rule (1.5). Pursuant to subsection (a) of the rule, the Southern District of New York has established a committee on grievances composed of six district judges and one magistrate judge, which is chaired by Judge Jed S. Rakoff. In addition, a panel of attorneys is available to advise and assist the committee on grievances by investigating complaints and serving on hearing panels. In 2003, there were 43 disbarments, 33 suspensions, three interim suspensions, three public censures, one private reprimand and ten reinstatements in the Southern District. The Court had 18 cases pending at the end of the calendar year.

In the Eastern District of New York, 56 disciplinary orders were issued in 2003: 20 disbarments, 21 suspensions, seven resignations and eight censures. Chief Judge Edward R. Korman is responsible for oversight of attorney disciplinary matters and is assisted by a committee of three judges.

It came to the attention of the Western District of New York that the Appellate Division, 4th Department, has failed to provide this Court with

notification of attorney disciplinary proceedings. The Appellate Division has been contacted and has promised to immediately provide copies of disciplinary decisions and orders entered during Fiscal Year 2003. These matters will be subsequently reported in next year' s Annual Report.

During 2003, Vermont had six attorney discipline proceedings: three suspensions, two censures with public reprimands and one disbarment. All of the District' s proceedings originated at the state level and involved the Vermont state professional conduct board and as such, were reciprocal in nature. Similar to 2002, no disciplinary actions originated from the Court' s federal bar during the year.

In the Northern District of New York, attorney disciplinary actions in calendar year 2003 were handled by Chief Judge Frederick J. Scullin, Jr. There were five disbarments, five attorney suspensions - a stay of suspension was issued for two attorneys, four censures, and seven reinstatements.

### **Judicial Misconduct**

The Judicial Council' s Reform and Judicial Conduct and Disability Act of 1981, 28 U.S.C. §372©, creates a mechanism for addressing complaints of judicial misconduct or disability. The statute' s objective is to correct conditions that interfere with the proper administration of justice. To facilitate that end, the Act sets out procedures for reviewing allegations that a federal judge “ has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts “ or” is unable to discharge all the duties of office by reason of physical or mental disability.”

Under the Act, the Judicial Council of the Circuit has primary responsibility for resolving complaints. The Second Circuit' s Judicial Council has adopted Rules Governing Complaints Against Judicial Officers that closely follow a national set of “ illustrative” rules. The Local Rules, together with the forms to be used in filing complaints, are available from the Court of Appeals Clerk' s Office.

Complaints are filed with the Clerk of the Court of Appeals and are reviewed by the Chief Judge of the Circuit. The statute permits the Chief Judge, after a timely review, to dismiss complaints that are not covered by the statute, such as “ frivolous” complaints and those “ directly related” to the merits of a decision or ruling. The Circuit Executive' s Office conducts initial staff review on behalf of the Chief Judge.

Complainants may petition for review of the Chief Judge's dismissal orders. Petitions for review are considered by a four-member panel of the Judicial Council. The full membership of the Council will consider a petition for review upon the vote of any member of the review panel.

If a complaint is certified by the Chief Judge for investigation, it is sent to a statutory Committee on Judicial Conduct. After the Committee reports, the Judicial Council conducts any additional investigation it considers necessary and then may take appropriate action. Options available to the Council include dismissing the complaint, certifying the judge's disability, asking the judge to retire, temporarily suspending new case assignments, and public or private censure or reprimand. 28 U.S.C. §372(c)(6)(B) & ©. The Judicial Council may also refer the entire matter to the Judicial Conference of the United States.

During 2003, 63 judicial misconduct complaints were filed in the Second Circuit.



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**UNITED STATES COURTS  
SECOND CIRCUIT REPORT  
2004**

**John M. Walker, Jr.  
Chief Judge**

**Karen Greve Milton  
Circuit Executive**

The Annual Report will open in 1 seconds.

# UNITED STATES COURTS SECOND CIRCUIT REPORT 2004

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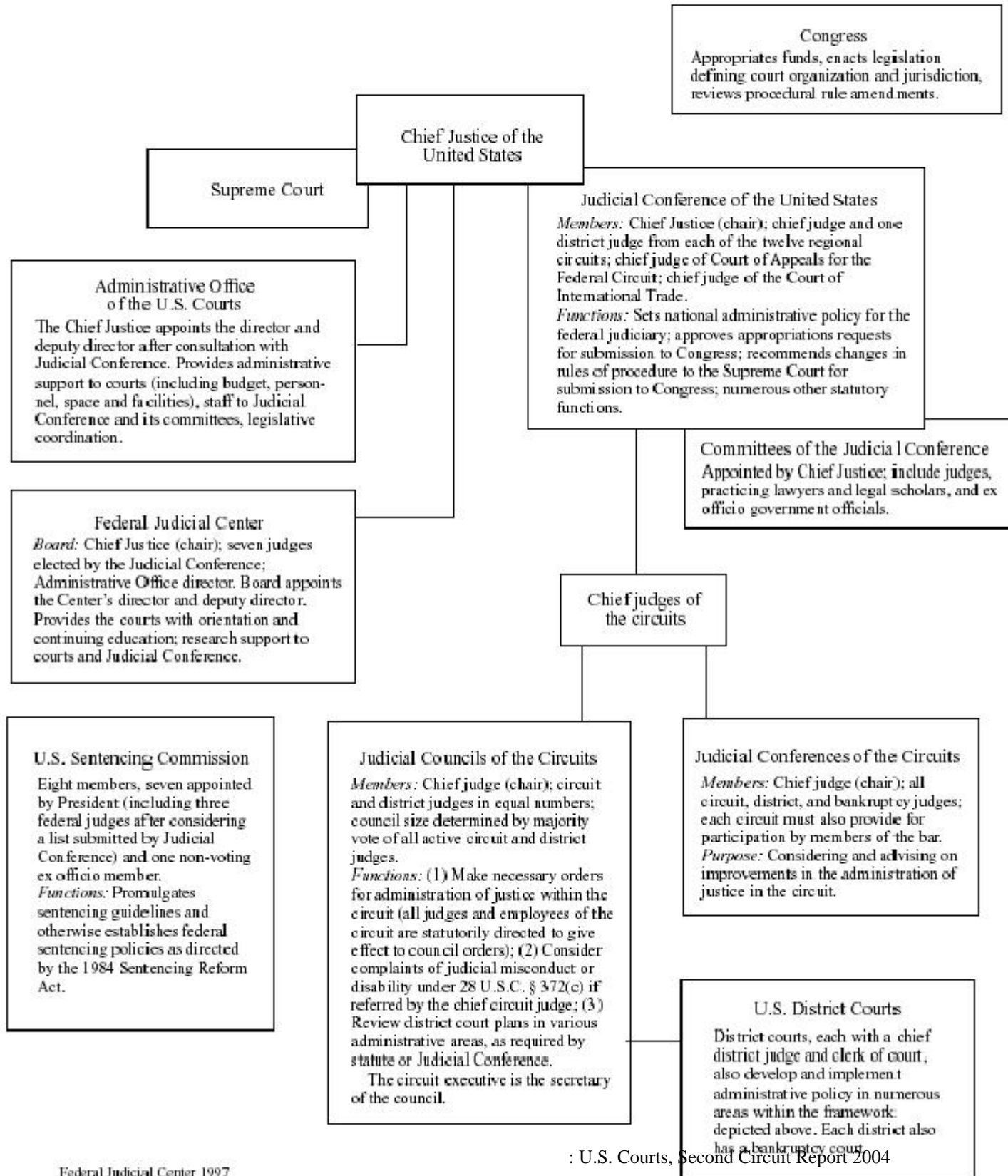
## **STRUCTURE OF THE FEDERAL JUDICIARY**

The federal courts were established as an independent third branch of government by Article III of the Constitution, which provides for a Supreme Court and “such inferior courts” as Congress deems necessary. Congress established federal district and circuit courts with the Judiciary Act of 1789. A major reform of the system occurred in 1891 with the Circuit Court Act, which established a permanent appellate court for each circuit. Today, the 94 federal district courts are grouped into 12 circuits, each with its own court of appeals.

The administrative head of each circuit is the chief judge of the court of appeals, who achieves this position by seniority. The judicial councils of the circuits, which include active judges of both the courts of appeals and district courts, are charged with administrative responsibility for the circuit as a whole, headed by a chief judge. The chief judge of each circuit and an elected district judge represent the circuit at the semi-annual Judicial Conference of the United States. This body, chaired by the Chief Justice of the United States, is convened for the purpose of determining policy in administrative matters. In addition, the Conference directs the housekeeping arm of the federal judiciary, the Administrative Office of the United States Courts, and advises the legislative and executive branches on matters affecting the judiciary. The Federal Judicial Center, which is governed by a national board of which the Chief Justice is chairman, is the research and training arm of the federal judiciary.

The United States Courts for the Second Circuit exercise federal jurisdiction within the states of Connecticut, New York, and Vermont. The Court of Appeals sits in New York City. The six districts (the state of New York is divided into the Eastern, Northern, Southern and Western Districts) each have a district court and a bankruptcy court, and sit in the locations shown on the map on page 5A. As of May 1, 2005, the Court of Appeals has 13 active judges in 13 judgeships, 10 senior judges (nominally retired judges, most of whom carry heavy caseloads). The district courts have a total of 59 active judges, 41 senior judges, 47 magistrate judges and 27 bankruptcy judges. There were three district judgeship vacancies.

# Federal Judicial Administration



# **JUDICIAL BUSINESS OF THE SECOND CIRCUIT**

## **THE SECOND JUDICIAL CIRCUIT PLACES OF HOLDING COURT**

Southern District of New York Manhattan  
White Plains  
Middletown  
Poughkeepsie

Eastern District of New York Brooklyn  
Central Islip

Northern District of New York Binghamton  
Albany  
Utica  
Syracuse  
Auburn  
Watertown

Western District of New York Rochester  
Buffalo

District of Connecticut Bridgeport  
New Haven  
Waterbury  
Hartford

District of Vermont Brattleboro  
Rutland  
Burlington

# **CHIEF JUDGES' REPORTS OF THE SECOND CIRCUIT**

**UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT**



Chief Judge John M. Walker, Jr.

In August of 2003, our Court suffered an enormous loss with the unexpected death of Circuit Judge Fred I. Parker of Vermont. Judge Parker or “FIP”, as he was affectionately known to his circuit court colleagues, was a member of our Court for almost ten years. On July 7, 2004, FIP’s seat was filled by Peter W. Hall, the United States Attorney for Vermont. Judge Hall, or “PWH,” as he is now known to his colleagues served as the United States Attorney from 2001 until his appointment to our Court. A graduate of the University of North Carolina at Chapel Hill and Cornell Law School, Judge Hall clerked for Vermont District Judge Albert W. Coffrin following his graduation from law school and now occupies the same chambers in which he worked as a law clerk to Judge Coffrin. On October 25th, I had the pleasure and privilege of presiding at Judge Hall’s public induction held at the United States Courthouse and Federal Building in Burlington, Vermont. Judge Hall’s appointment to our Court completes our complement of thirteen active circuit judges. We welcome Judge Hall to our Court and look forward to many years of serving together.

On November 20, 2004, Senior Circuit Judge Ellsworth Van Graafeiland died at the age of 89, one month short of his thirtieth anniversary on our Court. Judge Van Graafeiland, or “Van” to his family, friends and colleagues served with great distinction on our Court, writing hundreds of opinions, carefully crafted and hewing to the belief that the judge’s limited, but important role is to interpret the law as he finds it. Although many considered Van a “law and order” judge, this reputation belies the true nature of a judge who was most firm when his keen sense of justice told him that a defendant had been unjustly treated. An example of this is in a case from one of the last three-judge panels on which he sat. Van was initially the only judge to believe that a criminal defendant was sentenced erroneously based on his co-conspirator’s conduct. Personally agitated by this perceived sense of injustice, Van began drafting a dissent. Ultimately, however, through an exchange of memoranda with his two colleagues, his dissent ultimately became the basis for a unanimous opinion.

The name Van Graafeiland evokes memories of New York State’s original Dutch settlers who became the members of New York’s landed aristocracy in its northern counties and along the Hudson Valley. Those who assume that Van was descended from these elites could not be more mistaken. To the contrary, Van came to the law from a Depression-era childhood of disadvantaged circumstances. As a child, he suffered a disability, scoliosis, which caused him to spend five years in a full body cast. The silver lining, however, was that Van developed a life-long love of reading. A graduate of Cornell University Law School, he joined the Rochester, New York law firm of Wiser, Shaw, Freeman, Van Graafeiland, Harter and Secrest (now Harter Secrest & Emery) where he practiced law until then New York Senator James L.



Buckley tapped him to fill the vacancy created when Judge Henry J. Friendly assumed senior status. At the time President Gerald R. Ford nominated him to our Court, Van was the immediate Past-President of the New York State Bar Association, having previously served as its Vice-President, as well as a past President of the Monroe County Bar Association. Van's rise from these humble beginnings to the pinnacle of his chosen profession exemplifies the meritocracy of the American bar.

Although Van enjoyed an almost folkloric reputation for irascibility on the bench and for his occasionally sharply worded dissenting opinions (he wrote about one hundred dissenting opinions in his thirty years on our Court), his character was marked by humility. Van called Judge Friendly "the last great judge" of the Second Circuit. When interviewed as part of the Court's oral history project, Van told the interviewer, "I'm walking in his footsteps, but I'm not filling his boots. I can claim to be an ordinary run of the mill judge who does the best he can, that's all." This statement is a characteristic understatement by someone who was far from "a run of the mill" jurist. Van was not a member of the social aristocracy of Dutch origin, but he was a brilliant specimen of the legal and judicial aristocracy that De Toqueville extolled in his writings in the first half of the nineteenth century and which we continue to celebrate today. As I write this report, I, together with my colleagues, feel a poignant sense of loss at Van's passing. All of us will remember Van with affection, admiration and profound respect. We extend our deepest sympathies to Van's wife, Rhodie, and their children, Gary, Anne, Suzanne, Joan, and Jack.

In 2004, our Court continued to struggle under a crushing burden of immigration appeals. These cases come to the federal courts through the Bureau of Immigration Appeals ("BIA") in the Immigration and Naturalization Service ("INS"). An alien who loses their appeal from an adverse decision of the BIA, following a decision rendered by an immigration judge, must file directly in a federal court of appeals. In FY 2001, 170 BIA appeals were filed with our Court. Over the last three years, our Court has witnessed a steady increase in these cases until it reached 2,632 in FY 2004, a 1,448% increase.

Initially, we believed this onslaught of appeals was the result of a concerted effort by the Department of Justice ("DOJ") to eliminate an enormous backlog of cases before the BIA. While the INS enforcement functions were transferred to the new Department of Homeland Security, the INS adjudicative functions remained with the DOJ. From 2002 to 2003, filings of appeals of BIA decisions nationwide climbed 153% from 2001 to 2002 and 99% from 2002 to 2003. Due to venue provisions in the immigration law, most of these increases were felt in the Second and Ninth Circuits. The appeals finding their way to our Court are generally asylum cases filed by people claiming relief from oppression in their native countries. More specifically,

approximately 75% of the immigration appeals pending in the Second Circuit are filed by Chinese appellants claiming asylum based on their homeland's family planning policies. Despite expectations that most of these cases would be predominately *pro se*, in 80% of the cases the petitioner is represented by legal counsel. The Court is reviewing its longstanding practices as it undertakes to cope with the immigration backlog and is exploring innovative ways to deal with the problem.

At the same time, our Court's caseload continued to rise, increasing 10.2% from the prior fiscal year (the twelve-month period from October 1st to September 30th) or from 6,359 appeals filed in FY 2003 to 7,008 cases filed in FY 2004. To handle this severe caseload increase, our Court held 8 double panels during this Term and scheduled three triple-panel week sittings. While our present information as to the number and timing of additional cases ready for calendaring is imperfect, our goal is to try to build in as much flexibility as possible to deal with this caseload challenge over the next Term of our Court.

In 2004, each active judge sat for forty days which translates into about 250 appeals. In addition, our judges heard numerous motions both counseled and *pro se*. As in previous years, about 80% of our panels were comprised entirely of our own circuit judges and, although we continued our tradition of including visiting judges, we relied primarily on visitors from within the Circuit. Once again, enjoying a nearly full complement of judges for most of 2004 allowed us to schedule sittings that maximized opportunities for our judges to work closely with one another, thereby improving collegiality and building levels of trust and respect that are at the heart of good appellate decision-making.

In 2004, our Court marked the fiftieth anniversary of *Brown v. Board of Education*, by sponsoring, "Marching Toward Justice," an exhibition on the history of the Fourteenth Amendment to the United States Constitution. This exhibit, which we co-sponsored with Cardozo Law School, was set up for several months this year in the Main Lobby of our magnificent building at 40 Foley Square in Manhattan, which is named for the late Supreme Court Justice Thurgood Marshall, who successfully argued *Brown* before the United States Supreme Court.

On May 21, 2005, Senior Circuit Judge Amalya L. Kearse celebrated her twenty-fifth anniversary on the bench. Judge Kearse was appointed to our Court in 1979 when Congress created two additional new judgeships for our Court.

Notwithstanding rising caseloads in the federal courts nationwide, Congressional funding appropriations to the Third Branch over the past several fiscal years have been insufficient to sustain the judiciary's operations much less provide for

much needed increases. In FY 2004, the federal judiciary, as a whole, lost the services of 1,350 employees, the only branch of government so effected by budget constraints. The departure of so many court personnel came at a time of increasing workloads, rising rental payments to the General Services Administration (“GSA”) and the increased cost of providing necessary judicial services to the public and the bar.

This year, our Court also felt the impact of the judiciary’s budgetary difficulties. As a consequence, we were forced to close our independent Office of Public Affairs forcing us to let go our Assistant Circuit Executive for Public Affairs, Stephen Young. During his three-year tenure, Stephen raised the public profile of our Court and our Circuit by expanding our community outreach program, reviving our Court’s oral history program and documenting the experiences of our Court and our Circuit in the days following the tragic events of September 11, 2001. We thank Stephen for his service to our Court and our Circuit and wish him well in his new endeavors. Also, in recognition of our constrained fiscal circumstances, we cancelled our scheduled judges-only Circuit-wide judicial conference and our Court held its 2004 Court Retreat on site in the Judges Conference Center at the Thurgood Marshall Courthouse.

On October 22, 2004, Senior Circuit Judge Wilfred Feinberg became the 22nd recipient of the Edward J. Devitt Distinguished Service to Justice Award of the American Judicature Society in recognition of his outstanding legal scholarship and contributions to jurisprudence. Bill Feinberg is the first judge of our Court to receive this prestigious award. Joined on the bench by Circuit Justice Ruth Bader Ginsburg and Southern District Chief Judge Michael B. Mukasey, our Court sat in special session in the ceremonial courtroom of the Daniel Patrick Moynihan United States Courthouse in lower Manhattan. Speakers included Justice Ginsburg, Chief Judge Mukasey, Larry Hammond, President of the American Judicature Society, New York University School of Law Dean Richard Revez and Southern District Judge Gerard Lynch, two of Bill’s former law clerks and yours truly. Sixth Circuit Judge Julia Gibbons, a member of the selection committee, formally presented the Devitt Award to Bill.

First appointed to the Southern District bench in 1961 by President John F. Kennedy, Bill joined our Court on March 18, 1966. Throughout his almost forty-year judicial career, Bill made extensive contributions both to the jurisprudence of our Circuit by his thoughtful and well-crafted opinions and to the administration of justice in the federal courts by his service as Chief Circuit Judge from 1980 to 1988, as a member of the Judicial Conference of the United States, the national policy-making body of the federal judiciary, and many of its committees. The October ceremony was a fitting celebration of a remarkable jurist whose brilliant career has been

characterized by his unassuming and humble approach to his craft and his colleagues. We happily extend our most heartfelt congratulations to Bill, his wonderful wife Shirley and their family on the occasion of Bill's receipt of the Devitt Distinguished Service to Justice Award.

For the past three years, I have been reporting on the progress of our efforts to remedy the major infrastructure and architectural problems of the Thurgood Marshall Courthouse. I am pleased to report that Congress has approved GSA's FY 2005 request for \$16.5 million in design monies for our prospectus project to upgrade the infrastructure of the Thurgood Marshall Courthouse, providing the "green light" for GSA and the courts to proceed to undertake a prospectus project to upgrade and replace the building's heating, air conditioning, electrical and plumbing systems. Our joint project committee, co-chaired by Circuit Judge Barrington D. Parker, Jr. and Southern District Judge Barbara S. Jones, have been hard at work with the Circuit and District Executives and their staffs and members of GSA Region 2 to select an architectural and engineering firm to design our project and a construction management firm to provide quality oversight.

Our project is off to a good start with the selection of the pre-eminent New York City-based architectural firm of Beyer Blinder Belle in joint venture with architects Davis Brody Bond and engineers from Flack & Kurtz as the project's designers. Beyer Blinder Belle partner John Belle, who will oversee the design team for our project, was the principle architect for the renovation and restoration of historic Grand Central Terminal and Ellis Island, among other high profile projects. Bovis Lend Lease, whose construction work is visible throughout New York City, including the Brooklyn district courthouse construction project and renovation of the Beaux Arts General Post Office Building, was selected as the Construction Manager for our project. As this calendar year draws to a close, our "space" judges and Court staff are working hard to prepare both the Court of Appeals and the Southern District to vacate the courthouse in Summer 2006, just prior to the beginning of the project's construction phase. Both courts will remain out of the courthouse until completion of the project in 2010. Undertaking a project of this magnitude is requiring an enormous sacrifice by the judges and staff of these two courts for many years, but it is essential that the aging infrastructure of the Thurgood Marshall Courthouse be replaced with new modern systems that can support court operations well into the twenty-first century.

Our success in this almost three-year endeavor was thanks to the steadfast assistance of Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts ("AO") and his Assistant Director for Security and Facilities Ross Eisenman, who helped us develop a viable prospectus project which respected

costs without sacrificing the scope of the much-needed infrastructure upgrade. We also thank GSA Administrator Stephen Perry, Public Buildings Commissioner Joseph Moravec and their staffs and GSA Region 2 Administrator Eileen Long-Chelales and her staff for their continued support in helping us make this project a reality.

In closing, I am pleased to report that the news from the Court of Appeals is good and continues to improve. Even as our Court experiences a greater number of filings, we continue our tradition of scholarship, collegiality and respectful dissent. While our median disposition time has lengthened due to an increased caseload without an increase in judges, I fully expect that it will be reduced in the new year as we adopt more efficient practices. The important administrative issues that confront this Court and the federal judiciary as a whole remain unchanged. Although judicial vacancies are being filled, rising caseloads and shrinking budgets are creating challenges for our Court that must be dealt with in the near future. Thanks to our thirteen active and ten senior judges, I am confident that we will carry into the future the Second Circuit's proud traditions of craft in decision-making and expeditious docket management.

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF  
CONNECTICUT**

**[PHOTO UNAVAILABLE]**

Chief Judge Robert N. Chatigny

On November 1, 2004, the Honorable Dominic J. Squatrito took senior status. Judge Squatrito was appointed to the bench by President Clinton on October 6, 1994. He intends to continue to maintain a courtroom and chambers in the Hartford courthouse.

On January 12, 2004, the Honorable Robert C. Zampano, a major figure in the history of the District of Connecticut, passed away in New Haven at the age of 75. Judge Zampano was appointed to the bench by President Johnson in 1964. Following his retirement in 1994, after nearly 30 years of judicial service, he continued to serve the Court as a special master. A memorial service honoring Judge Zampano was conducted at the New Haven Courthouse on May 14, 2004.

On July 24, 2004, the Honorable Warren W. Eginton celebrated his 25<sup>th</sup> anniversary on the bench. Judge Eginton continues to maintain chambers in the Bridgeport courthouse and often sits as a visiting judge in other Districts.

The District continues to benefit tremendously from the contributions of its senior judges. In addition to Judge Eginton and Judge Squatrito, the Court is served by the Honorable Ellen Bree Burns, the Honorable Peter C. Dorsey, and the Honorable Alan H. Nevas and Honorable Alfred V. Covello.

On May 28, 2004, the Honorable Gerard L. Goettel of the Southern District of New York, who sat by designation in Connecticut on a full-time basis, took inactive status. Judge Goettel carried a full assignment of civil cases in Connecticut for 10 years.

On July 19, 2004, Magistrate Judge William I. Garfinkel was appointed to a second eight-year term commencing November 22, 2004. The Court's merit selection committee enthusiastically recommended that Judge Garfinkel be reappointed and took particular note of his outstanding work as a mediator.

### **Case Statistics**

In 2004, the District Court opened 2,320 civil cases and 2,413 civil cases were closed. At year-end, 3,061 civil cases were pending.

The Court opened 305 criminal cases involving 501 defendants and disposed of 255 cases involving a total of 381 defendants. At the end of the year, 736 defendants had charges pending.

### **Clerk's Office Awards Ceremony**

The annual awards ceremony honoring members of the Clerk's Office was held in the Hartford Courthouse on April 2, 2004. Cheryl Conte, Judith Fazekas, Peter Milner, Regina McDaniel-Martin, Darlene Warner, Carol Sanders and Melissa Ruocco received 5-year service pins; Janet Barrille, Marion Bock, Cynthia Earle,

Dinah Milton-Kinney, Corinne Pike, and Donna Thomas received 10-year service pins; Susanne D'Andrea, Thea Finklestein, Martha Marshall, Barbara Sbabli, Betty Torday, and Robert Wood received 15-year service pins; Frank DePino, Diane Kolesnikoff and Susan Lamoureux received 20-year service pins; Barbara Stokes and Cassandra Warren received 25-year service pins; and Kevin Rowe received a 30-year service pin. Government Service awards were given to Kathleen Falcone and Paul Seabrooke, who received a 10-year certificate, Mary Wiggins, who received a 30-year certificate and Maria Carpenter, who received a 35-year certificate.

### **Training**

Members of the Clerk's Office, Bankruptcy Clerk's Office, the Probation Office and Federal Public Defenders Office participated in a FAS4T training program conducted by Administrative Office.

The Clerk's Office continued its CM/ECF training program for members of the bar and their support staff.

Members of the Court family attended a security briefing conducted by the U.S. Marshal's Office and FBI related to handling suspicious packages, phone threats, and bomb scares.

In January 2004, members of the Court's integrated technology staff attended Dream Weaver/Cold Fusion training conducted by an outside vendor.

In September, the Court unit executives attended Certifying Officer training conducted by the Administrative Office in Providence, Rhode Island.

### **Automation**

The Court implemented FAS4T on July 1, 2004 and went live on certifying officer on January 1, 2005.

ACE Communications installed a digital evidence presentation system at each seat of court during June, August and October 2004.

### **Construction Projects**

In December 2004, GSA completed construction of a new courtroom on the third floor of the New Haven Courthouse. This courtroom will be used primarily by Magistrate Judge Joan G. Margolis. This new courtroom relieved the courtroom shortage that plagued the New Haven Courthouse for a number of years.

GSA provided the Court with preliminary drawings for the new jury assembly room on the second floor of the Hartford Courthouse which the Court approved in August. In December, GSA confirmed that they would pay the entire cost of this project.

## **PROBATION OFFICE**

The budget crisis was once again the major event of the year, as it influenced every decision from purchases to hiring. The second most important event in 2004 was the implementation of FAS4T. Training and implementation took the entire year and included hours of training and some significant changes in financial processes and record keeping.

### **Staffing**

The budget crisis had a huge impact on our staffing. At the start of fiscal year 2004, the Probation Office staff consisted of 57 individuals filling 56.2 full time positions. We had two pending officer appointments on September 30th. These officers came on board the first week of FY 2004, bringing our total staffing to 59. Then, in November, Deputy Chief James R. LeBlanc passed away suddenly and unexpectedly. This was devastating for staff. Because of the looming budget crisis, it was decided to leave the position vacant for at least the remainder of the year. The position categories were as follows, one chief and one assistant deputy, three supervising probation officers and 33 line probation officers, 19 administrative and clerical support and two automation support. Our statistical workload justified 67.94 positions, thus suggesting we were still understaffed by eight positions. Within months “cost containment” became the buzz word and we were informed that the staffing formulas were going to be refreshed and that there would also be an across the board staffing reduction. We were eventually informed that our authorized staffing for 2005 would be decreased to 62.5 but only 59.3 positions would be funded. We were fortunate and did not have to resort to involuntary staff reductions because, in addition to loss of my deputy, two probation officers voluntarily resigned before the end of the year and two clerks accepted buyouts. This loss of five employees brought our total staffing to 55, filling 54 full time positions, approximately 88% of the reduced staffing formula.

The District of CT recognizes the need for a diverse staff. The hiring practices of the Probation Office reflect our Court’s policy with the two largest minority groups, Blacks and Hispanics represented in our professional and support staff. Our officer and administrative professional staff are just about evenly divided by gender.



## **Training**

Although training continues to be a priority in the Probation Office, we reduced travel and costly training because of the budget crisis. In FY 2004, a significant number of training hours were devoted to the implementation of FAS4T. The implementation team spent a week in Washington in February, then there were regular training and many meetings up through implementation in July 2004. We also sent two individuals to Contracting Officer training in New York in April 2004. Other in-service training provided during the year included, Ethics training; Officer Safety, including a three day Defensive Tactics program and certification for the use of capstun; a one day writing skills program; certification in Choice Point Searches; a one day training on the new presentence monograph; a one day training on supervision practices; and Sentencing Guidelines. It should also be noted that the new officers participated in a 30 day orientation and training program in October 2003 and ongoing in-services training throughout the year. They attended the new officers' orientation in Washington, D.C. in June 2004. We take advantage of training offered by other agencies, especially those that cost little to nothing and do not require travel outside the District. Staff also has access to the FJTN at all three locations. They are provided a schedule and encouraged to view relevant programs of interest. Excluding training for FAS4T and FJTN training, probation office staff participated in well over 1000 hours of training.

## **Pretrial**

In 2004, the D/CT experienced a slight increase in the workload. We activated 549 pretrial cases; a 17% increase above FY 2003. Officers attended 903 hearings. According to the AO statistical reports, 27 violations were reported to the Court, with three of them resulting on bond revocations. These statistics are not accurate. In collecting this information we discovered an error in data entry. We should see more accurate violation data in the next report.

In FY 2004, our detention rate and the number of defendants on supervision increased. Of the 541 initial presentments, 61% were detained. Our supervision caseload increased from 262 in FY 2003 to 318 at the end of FY 2004.

Substance Abuse and mental health treatment were provided to approximately 196 defendants in 2004, more than double the number who received treatment in FY 2003. The total cost of treatment for all defendants was \$257,946. Approximately 106 defendants were released on home confinement during pretrial supervision. The cost for home confinement was \$41,473. Approximately 28% of all pretrial services costs were covered by co-payments from defendants, private insurance or State health insurance programs. Co-payments totaled \$80,489, reducing the cost to the Probation

Office to \$214,930. Our total cost for Alternatives to Detention increased by 40%, reflecting an increase in the use of alternatives to detention. But our collection of co-payments also increased by 3%.

### **Probation**

The Probation Office completed 361 Presentence Investigations 2004, down 16% from the prior year. They expected this decrease. Rather than a decrease in prosecutions, the number reflects the final disposition of a number of cases that had been pending for several years.

We supervised 879 offenders in the community, nearly equal to the prior year. The vast majority of our supervision cases are on supervised release or probation. The various types of parole cases make up less than 1% of all supervision cases. Of all supervision cases, nearly 100% have one or more special conditions that include community confinement, fines or restitution, substance abuse or mental health treatment.

Expenditures for substance abuse treatment totaled \$238,441. Our actual expenditures for treatment were reduced by client and insurance co-payments, totaling \$77,726, reducing the actual costs to the Government to \$160,716. Mental health treatment costs totaled \$50,918. Co-payments totaled \$5,571, reducing costs to the Probation Office to \$45,347.

During FY 2004 55 post-conviction offenders were placed on home confinement. Costs for these services were \$37,207. Offender co-payments collected totaled \$19,187, reducing the cost to the Probation Office by one half, to \$18,019.

The total cost for all treatment and alternatives to detention was \$625,987. Co-payments collected totaled \$186,074 reducing our actual costs for all services to \$439,013.

The Probation Office is also a key player in monitoring the collection of fines and restitution. Per AO requests, we are working with the Clerk's Office to gradually reduce the number of collected payments coming through the Probation Office. During fiscal year 2004 the Probation office recorded collections of \$56,755.30 in fines, \$24,914.10 in Cost of Probation (fines), \$356,874.70 in restitution and \$3,180 in Special Assessments, for a total of \$441,724.10.

### **Planned Events in 2005:**

A major undertaking for 2005 is to hire and train new officers. We also plan to focus on improving our statistical reports.

**Annual Report 2004**  
**United States Bankruptcy Court for the**  
**District of Connecticut**

The Bankruptcy Court maintains three Divisions – Hartford, New Haven and Bridgeport – served by three judges. In addition, the Court remains the beneficiary of the service of recalled judge, Robert L. Krechevsky, who handles the full Hartford Division caseload.

During calendar year 2004, Bankruptcy Court cases totaled 11,257 new filings, with an additional 230 cases reopened. Chapter 7 filings declined 6.22% to 9228; Chapter 11 filings declined 17.17% to 82; and Chapter 13 filings declined 6.21% to 1947. In addition, 356 new adversary proceedings were opened, 430 were closed, with 500 pending at the year end. The Bankruptcy Court continued to train and prepare for commencement of mandatory Electronic Case Filing, scheduled for full implementation on August 1, 2005.

Also during 2004, the Bankruptcy Court launched Connecticut's CARE Program, under which judges and attorneys visit area high schools to speak to Junior and Senior Year students about the dangers of overspending and credit abuse. During 2004, the Court obtained a CARE Program endorsement from the Connecticut Association of Public School Superintendents, conducted training programs, and with the generous assistance of approximately 30 members of the Connecticut Bar, commenced numerous visits to Connecticut's High schools.

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF**  
**NEW YORK**



Chief Judge Edward R. Korman

The population of the Eastern District of New York, which is one of the most populous judicial districts in the United States, increased over the last decade by more than 8 percent, to 7.9 million. The 2000 Census indicated that much of that growth took place in the three counties of the City of New York that are part of the Eastern District of New York and in Suffolk County. A more recent update indicates that the

population now exceeds 8 million, or approximately 42 percent of the total population of the State of New York. The continued population growth, along with other factors, is responsible for the huge caseload borne by the judges of the Eastern District.

### **District Judge Appointments**

Two longstanding Article III vacancies were filled in 2004 with the appointments of Dora L. Irizarry on July 8, 2004, and Sandra L. Townes on August 2, 2004. Judge Irizarry fills the vacancy created by the appointment of Judge Reena Raggi to the Court of Appeals. Judge Irizarry most recently served as an acting Justice of the Supreme Court, both in Kings County and New York County. She is also the first member of the Hispanic community, which comprises such a significant part of the Eastern District, to be appointed. Judge Townes fills the vacancy created when Judge Sterling Johnson, Jr. took senior status. Prior to her appointment, Judge Townes was elected a Justice of the N.Y. State Supreme Court in 1999 and was appointed an Associate Justice of the Appellate Division, Second Department, in 2001. She also has served as a Judge of the City Court of Syracuse and as Chief Assistant District Attorney of Onondaga County.

### **Senior Status**

Two District Judges took senior status in 2004. Judge Arthur D. Spatt took senior status on December 1, 2004. Judge Spatt was appointed in November, 1989 and sits at the Long Island Courthouse. Judge Denis R. Hurley took senior status on December 18, 2004. Judge Hurley was appointed in November, 1991, and also sits at the Long Island Courthouse. Both Judge Spatt and Judge Hurley continue to carry a full caseload. The vacancies created when Judges Spatt and Hurley took senior status have not been filled.

### **Caseload Profile**

The Eastern District's judicial caseload profile remained high in statistical year 2004, which ended September 30, 2004, but civil case filings declined. Weighted filings per judgeship were 536. The Eastern District of New York is second within the Second Circuit in weighted filings, and above the national average of 529. Several other rankings of actions per judgeship remain high, including total filings (490), civil filings (397), pending cases (635), terminations (543), and trials completed (23), which is first within the Second Circuit. All statistics are based upon fifteen active judgeship positions.

On September 30, 2004, total pending actions were 9,529, total terminated cases were 8,149, and total filings for the twelve-month period were 7,351. Total

filings declined by 12.2 percent in the reporting period, with almost all of this change due to an 11.7 percent decline in civil case filings. Still among the highest in the country, this workload could not have been managed without the extraordinary assistance rendered by our senior judges. Eight of the twenty-one judges in the Eastern District are senior judges. Substantial assistance was also received from visiting judges. A total of 155 trial and non-trial bench hours were logged by seven visiting judges who presided over seven trials. A number of settlements also resulted from their efforts.

### **The Judiciary Budget**

The Judicial Branch continues to experience a significant budget crunch. The results of this funding shortfall are felt throughout the judicial system, most particularly in the district courts, their Clerk's Offices and other court agencies. In NY-E, the Clerk's Office, both District and Bankruptcy, Pretrial Services and the Probation Service have been affected by the current budget crisis. A declining civil caseload which reduces work measurement credits further complicates and worsens the salary fund shortfall. The Clerk's Office started a second consecutive year, in FY 2004, with a substantial shortfall in the payroll account of approximately half a million dollars. As recently as July, 2003, the Clerk's Office employed 162 permanent staff positions. Presently, the Clerk's Office is down to 140 positions, not including the Clerk of Court. There is a continuing hiring freeze on all replacement staff needs. The position of Chief Deputy which became vacant in February, 2005 has been filled in an acting capacity only for the current fiscal year to conserve salary funds needed for all staff. The balance of the payroll shortfall will be covered by filling a vacant personnel officer position from current staff; and by funding transfers from our already significantly reduced automation and general accounts. Court staff have been reduced to the lowest possible level, creating coverage issues on a routine basis. Any further reduction in staff likely will diminish services to the bench, bar and public and possibly reduce public access hours.

### **Brooklyn Courthouse**

The Courthouse construction projects are scheduled to be completed by GSA before the end of 2005, if the latest GSA projection can be credited. At present, the U.S. Bankruptcy Court is scheduled to move to the renovated Brooklyn GPO in late July, 2005. The new Brooklyn Courthouse is scheduled to be completed by October, 2005, with an estimated relocation date for the District Court of December, 2005. The projected dates are four years behind schedule. The unhappy history of these two delayed construction projects is described below.

The construction of a new Brooklyn courthouse began with a groundbreaking ceremony on February 7, 2000. The project is way behind schedule. A second building project, the renovation of the Brooklyn Post Office, a part of which will be occupied by the Bankruptcy Court, is also behind schedule. The Brooklyn Courthouse Project has been troubled from the very beginning by the manner in which GSA managed the budget and contracting process. GSA's failure to recognize and act decisively in an escalating construction market resulted in a series of redesign efforts that took the project from an eighteen-story building to the fourteen-story building now under construction. The February, 1998 bid on the eighteen-story building was only seven million dollars over budget. Unaware of the amount of available funds, and unwilling to negotiate the difference, GSA ignored the advice of its consultants and insisted that the size of the project be scaled down to fourteen stories at a redesign cost of 2.7 million dollars. The final bid on the fourteen-story building which GSA accepted in September, 1999, was twenty-one million dollars over budget.

The fourteen-story building now under construction is capable of housing sixteen district courtrooms and chambers and eight U.S. magistrates courtrooms and chambers, barely enough for the present complement of judges and magistrates sitting in Brooklyn. Nevertheless, GSA proposed to build out only twelve district courtrooms and chambers and four courtrooms and chambers for U.S. magistrate judges. Since GSA demolished an otherwise useful office building adjoining the present courthouse, which contained four courtrooms and which would have cost tens of millions of dollars to construct, the project as contemplated by GSA would have resulted in a net increase of eight district courtrooms and four magistrates courtrooms at a cost of 208.57 million dollars.

This shortsighted plan would also have ultimately cost the taxpayers far more money in years to come when the combined facilities in the present courthouse (with ten district courtrooms) run out of space. Moreover, it has delayed and made more expensive the long-planned renovation of the present courthouse, because it will have to have been accomplished while the building was occupied.

Our concerted efforts succeeded in reversing the proposal of GSA to construct a fourteen-story building of which a third would have been an empty shell. The Omnibus Appropriation Bill for FY 2003 appropriated the additional 39.5 million dollars needed to build out the remaining eight courtrooms and chambers in the new Brooklyn Courthouse. Our efforts, which overcame the lack of support from GSA, were assisted by the Brooklyn/Queens/Staten Island delegation in the House of Representatives, especially Representative Jerrold L. Nadler, and by Senator Hillary Clinton who is a member of the Senate Public Works Committee. Nevertheless, the overall project is 28 million dollars over budget. The General Services Administration

identified sufficient funds for re-programming from other available funds. GSA eventually received OMB approval for the administrative transfer of these funds.

The projects, District and Bankruptcy, were yet again delayed due to the bankruptcy of the general contractor, JA Jones Construction. The General Contractor's surety company, Fireman's Fund, accepted their liability and entered into an agreement with Bovis Lend Lease to complete both projects. Again, the new estimated completion dates (although not official) are July, 2005 for the Bankruptcy Court, and October, 2005 for the District Court.

GSA has spent all of the \$39.5 million appropriated for our eight additional courtrooms and chambers just to keep the project going. It received an additional \$74.7 million in reprogramming authority in May of 2003 to complete both projects. The source of that money was the \$65 million Congress appropriated for the Repair and Alteration project on the existing Courthouse, and \$9 million from other sources. GSA has now again asked Congress for Repair and Alteration money for the existing Courthouse in the amount of \$91 million in the 2006 budget. The extensive delays encountered in completing the new Brooklyn Courthouse required a re-evaluation of the longstanding plans for the renovation of the existing courthouse. The plan first designed ten years ago called for vacating the existing courthouse entirely to enable a long overdue and needed repair. While the construction project lagged, judicial staff increased. We now will have to retain three full floors in the existing courthouse after completion and occupancy of the new courthouse. The entire Repair and Alteration project will have to be re-designed as to scope, feasibility and cost.

Both projects are tens of millions of dollars over budget and four years behind schedule. Indeed, we estimate that at least \$100 million of taxpayer dollars have been squandered by GSA. A number of GSA's estimated occupancy dates have come and gone. There is now—finally—some reason to believe that the current projected completion dates are realistic. The only positive aspect of this mess is that the current Administrator of GSA, Stephen Perry, has taken a personal role in the project and has removed responsibility for it from Region II. We are grateful to him for his efforts to complete the project.

### **United States Bankruptcy Court for the Eastern District of New York**

Bankruptcy Court case filings in fiscal year 2004 increased by 4.2 percent. Total case filings were 26,802. Chapter 7 filings increased by 8.7 percent, to 21,586. In contrast, Chapter 11 filings decreased from 209 to 163, and Chapter 13 filings decreased from 5,667 to 5,053. In addition, 1,269 adversary proceedings were opened,



3,962 motions to lift stays were filed, and there were 20,423 discharges in Bankruptcy. A total of 32,746 cases were closed.

The Board of Judges honored the outstanding judicial service of Chief Bankruptcy Judge Conrad B. Duberstein with a dedication ceremony on February 10, 2005 naming the U.S. Bankruptcy Courtrooms and Chambers in the renovated General Post Office Building, scheduled for opening in July, 2005, for Judge Duberstein. The full text of the plaque which will be displayed in the U.S. Bankruptcy Courthouse appears below:

“Chief Judge Conrad B. Duberstein  
United States Bankruptcy Judge, Appointed April 1, 1981  
Chief Judge of the Bankruptcy Court, Appointed August 8, 1984

These courtrooms and chambers are dedicated to honor Conrad B. Duberstein for his extraordinary public service, with the sincere appreciation of his friends, colleagues and the Judges of the Eastern District of New York.

Admitted to the bar of the State of New York on March 9, 1942, after graduating from St. John’s University School of Law, Conrad B. Duberstein became one of the nation’s foremost experts in bankruptcy law, with the country’s only bankruptcy moot court competition named in his honor. He was appointed as a Bankruptcy Judge on April 1, 1981 and has served as Chief Judge for more than twenty-one years. He was awarded the Purple Heart, the Bronze Star Medal and the Combat Infantry Badge for his service in World War II. He has truly earned the respect of the legal community, the affection of his colleagues and a well-deserved reputation for intelligence, wit, humility and compassion.

The dedication of these courtrooms and chambers honors Chief Judge Duberstein’s unwavering commitment to the fair administration of bankruptcy jurisprudence and the preservation of the dignity of those in financial distress.”

## **The Magistrate Judges**

Our magistrate judges are assigned the full range of civil and criminal case responsibilities authorized by 28 U.S.C. § 656. Magistrate judges were referred a total of 6,084 pending civil cases in fiscal year as of September 30, 2004 for pretrial preparation. Criminal case assignments include detention hearings, acceptance of guilty pleas, jury selections, and pretrial hearings. Civil trials, on consent of the parties, and misdemeanor criminal trials remain a significant responsibility of the district's magistrate judges.

The Board of Judges on November 29, 2004 dedicated the Arraignment Courtroom in the new Brooklyn Courthouse, scheduled for opening in December, 2005, in honor of Judge A. Simon Chrein, United States Magistrate Judge, for his almost thirty years of service to the Eastern District as a magistrate judge. The text of the plaque which will be installed outside the new arraignment courtroom appears below:

**“THE A. SIMON CHREIN ARRAIGNMENT COURTROOM**  
United States Magistrate Judge, Appointed May 14, 1976  
Attorney-in-Charge, Federal Defender's Office 1968-1976

This courtroom is dedicated in honor of the extraordinary public service of the Honorable A. Simon Chrein, with the sincere appreciation of his friends and colleagues, the Judges of the Eastern District of New York.

After serving for nearly a decade as the Attorney in Charge of our Court's Federal Defender Office, A. Simon Chrein was appointed a Magistrate Judge on May 14, 1976, and served as Chief Magistrate Judge for fifteen years. He has earned the respect of the legal community, the affection of his colleagues, and a well-deserved reputation for intelligence, wit, fairness and compassion.

The dedication of this courtroom honors Judge Chrein's unwavering commitment to the fair administration of criminal justice and the vigilant protection of the rights of the accused.”

Judge Chrein died on March 15, 2005 after a long illness. He will be missed.

Two additional full-time U.S. Magistrate Judge positions were filled during 2004, bringing the total of magistrate judges to fifteen, the district's full complement. Both magistrate judge positions are new appointments. James Orenstein was sworn in as a U.S. Magistrate Judge on June 16, 2004 and sits at the Long Island Courthouse. Judge Orenstein most recently served as Associate Deputy Attorney General and prior to that as an "Attorney-Advisor" in the Office of Legal Counsel at the Department of Justice. Previously, he served for eleven years as an Assistant United States Attorney in the Eastern District of New York and was a member of the trial team in the 1995 bombing of the Oklahoma City federal courthouse, and in the trial of mobster John Gotti. Kiyoo A. Matsumoto was sworn in as a U.S. Magistrate Judge on July 12, 2004 and she sits in the Brooklyn Courthouse. Judge Matsumoto joined the U.S. Attorney's Office in 1983, and most recently served as Chief of the Civil Division, and as Senior Trial Counsel.

### **Probation Department**

The work of the Probation Department remained at essentially the same high levels as in 2003, with 3,693 cases supervised, and 870 collateral reports (reports from other federal districts). Investigations decreased to 1,437 from the prior year, for a variance of 23 percent.

### **Pretrial Services**

Pretrial Services conducted 1,809 bail investigations in FY 2004, a decrease of 19 percent. Separately, pretrial supervision cases totaled 704, a decrease of 21.7 percent. Collateral investigations totaled 146, and there were 32 diversion supervision cases.

### **ADR Program**

A total of 276 civil cases were assigned to the mandatory Arbitration program for cases valued at \$150,000 or less, and 245 Arbitration cases were closed. The Mediation program for complex civil actions had a total of 239 cases referred during Fiscal Year 2004. A total of 104 cases were settled and 64 cases were not settled, for a settlement of rate of 62 percent, in the reporting period.

Our ADR website (<http://www.nyed.uscourts.gov/adr/>) posts extensive information on the ADR program, including the names of mediators and arbitrators listed by speciality; a schedule of pending mediations and arbitrations, by case, date and time; and information on ADR procedures; Local Rules for Arbitration and Mediation and other general ADR information. The ADR Committee is chaired by Magistrate Judge Robert M. Levy.

## **The CJA Panel**

The CJA Panel Committee, chaired by Judge Frederic Block with judicial members Judge Joanna Seybert, Magistrate Judge Michael L. Orenstein and Magistrate Judge Cheryl L. Pollak, completed its annual review of the CJA Panel membership, and held the district's fourth annual CLE workshop for Panel members, on Immigration Law, in November, 2004. Judge John Gleeson chaired the panel discussion. The CJA Panel Committee also fully reconstituted Panel terms in 2004 to provide for an equal number of membership expirations at the end of each panel year in the future.

## **Naturalization Ceremonies**

The Eastern District of New York remained one of the busiest jurisdictions in the country for the naturalization of new citizens, despite a decline of 8.6 percent in the number of final naturalization hearings scheduled by INS, now part of the U.S. Department of Homeland Security. NY-E naturalized 36,770 new citizens in fiscal year 2004 at the Brooklyn Courthouse. The Court continues to hold four naturalization hearings each week throughout the year.

## **Court Administration**

The District Court and the Clerk's Office took the last step toward complete electronic case filing when the Board of Judges issued an Administrative Order making electronic document filing by counsel in all civil and criminal cases mandatory, effective August 2, 2004. The Eastern District was one of four pilot federal district courts to start an electronic filing project in 1997. The Court, counsel, parties and the public now have federal court documents available on-line, saving time, effort and cost. The mandatory aspect of the Court's policy was required to comply fully with the E-Government Act of 2002; to achieve necessary personnel savings in an austere budget environment; and to provide ready access to Court documents. The increase in the number of electronically filed documents after August, 2004 was noticeable immediately. Almost 37,000 court documents were filed electronically from August 1 through September 30, 2004. Attorneys continue to receive free electronic filing training by the Clerk's Office. Our website now also provides attorneys with an electronic means to register as an e-filer and to apply for admission to the bar of the Eastern District. The convenience and efficiency promoted by mandatory electronic filing and the proactive use of websites by federal district courts can not be overstated. The current federal budget crunch, however, also has decreased significantly the funding available to maintain chambers and court agency computer equipment. This is short-sighted, and ultimately will diminish the ability of

federal courts to better serve the public and keep pace with our civil and criminal case workload. Automation equipment must be replaced cyclically, and constantly improved and upgraded. That important systems maintenance requires adequate funding by Congress.

### **Jury Administration**

The district's percent of underutilized jurors dropped by almost 3 percent in 2004 to 38.2 percent through the end of the calendar year, December 31, 2004. The national average also declined, by 2 percent, to 36.1 percent in FY 2004. NY-E processed seven high-profile anonymous questionnaire *voir dire*s in 2004. The district met and exceeded its goal expressed in the 2003 annual report to bring the total unused percent below 40 percent in 2004.

## **UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK**



Chief Judge Frederick J. Scullin, Jr.

### **Judicial Resources**

In November we celebrated the 25th anniversary on the Bench for the Honorable Neal P. McCurn. Judge McCurn was appointed by President Jimmy Carter on November 2, 1979. Judge McCurn continues to handle an active caseload in the district including some of the oldest and most complex litigation involving Indian land

claim cases. Judge McCurn served as Chief Judge from 1988 to 1993 when he assumed senior status.

On January 29th, 2004 Magistrate Judge Gary L. Sharpe was sworn in as the 24th District Court judge for the Northern District of New York, or as we believe here in Northern New York, the 28th District Court judge by virtue of our lineage to the Mother Court as articulated in the Honorable Roger J. Miner's 1984 annual report on the history of the Northern District. Judge Sharpe filled the vacancy created by Judge Thomas J. McAvoy when he assumed senior status on September 17, 2003. Judge Sharpe joined the Northern District bench in 1997, and served as a United States Magistrate Judge up until his appointment as a United States District Judge. Prior to joining the bench he served as the United States Attorney for the Northern District of New York. On February 10th, 2004 Magistrate Judge George H. Lowe was sworn as our newest Magistrate Judge. Magistrate Judge Lowe filled the vacancy created by the elevation of Judge Sharpe to the District Court bench. Magistrate Judge Lowe was previously a partner in the Law Firm of Bond, Schoneck and King, LLP in Syracuse. Magistrate Judge Lowe also served as the United States Attorney in the Northern District from 1978 to 1982.

During 2004 the Court received assistance from seven visiting judges to help us resolve our backlog of pending prisoner cases. Each of these seven judges agreed to sit by designation for a period of one-year, during which time they handled motions and trials on pending prisoner civil rights cases. The seven visiting judges closed 65 cases during 2004. Our thanks go out to the Honorable Warren W. Eginton - District of Connecticut; Honorable Lyle E. Strom - District of Nebraska; Honorable G. Thomas Eisele - Eastern District of Arkansas; Honorable Joseph M. Hood - Eastern District of Kentucky; Honorable John R. Tunheim - District of Minnesota; Honorable Paul A. Magnuson - District of Minnesota; Honorable James K. Singleton - District of Alaska; and the Honorable G. Thomas Eisele, District of Arkansas Eastern. For the upcoming year, we have already secured the services of five judges who have indicated their availability through the intercircuit assignment system to assist courts with pending motions. With these additional resources, we are hopeful that we will be able to further reduce our pending prisoner caseload.

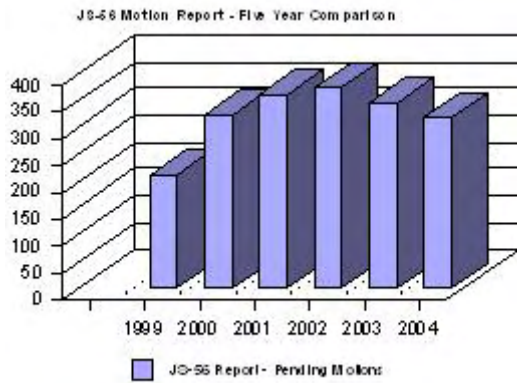
Senior Judge Howard G. Munson continues to take a variety of cases and provides valuable assistance to the Court. Senior Judge Thomas J. McAvoy completed his first full year as a Senior Judge - although Judge McAvoy has taken senior status, he continues to take a full caseload.

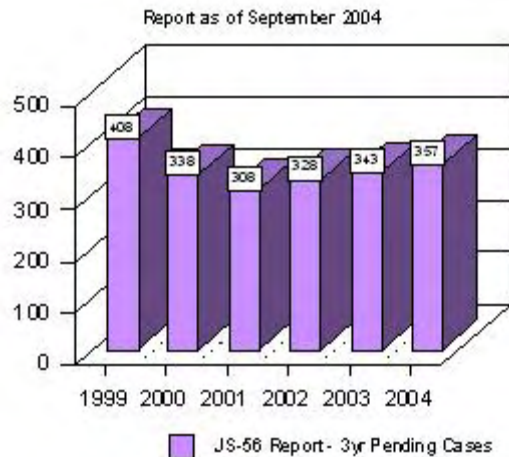
## **Statistical Data**

New civil filings fell slightly from the previous year, filings were down by **2.1%** in Statistical Year-2004. The number of criminal filings rose in SY-2004 by **18.7%**. Some of the increased activity in our criminal filings was attributable to the increased law enforcement presence at our Northern border where criminal filings increased **82%** over the previous year. The number of trials completed per-judge in SY-2004 was identical to the number completed in SY-2003, this seems to be consistent with the continued decrease in trials experienced by courts on a national level.

### **Pending Motions and Three Year Pending Cases**

The disposition of motions is critical to the efficient operation of the Court. The Court filed **2950** civil motions during statistical year 2004. During the same time period the court disposed of **3156** motions. As reflected in our JS-56 Report on Pending Motions and Cases Pending for Three Years or more, the district's pending motions (*as of September 30, 2004*) decreased **7%** from SY- 2003, and three year pending cases increased **4%** over 2003.





## **Space and Facilities**

**Albany:** Construction on a new grand jury room got underway in December of 2004, we anticipate that the construction will be completed by May of 2005. We had hoped to have this project completed in 2003, however funding issues have delayed the project.

**Syracuse:** The Judicial Conference has recommended that a new United States Courthouse be constructed in Syracuse. The long range space plan was to include site selection and design which was scheduled for FY-2006, and funding in FY-2008. The schedule has been delayed due to the national budget crisis. Plans are



underway in Syracuse to design space to accommodate the future needs of the court in the Hanley building until such time as a new courthouse is constructed.

**Plattsburgh:** On December 23, 2004 Congress designated Plattsburgh, New York as an official place of holding Court. Plattsburgh is the home base for our part-time Magistrate Judge Larry A. Kudrle. Judge Kudrle handles initial appearances for defendants that are arrested crossing the St. Lawrence River from Canada into the United States. The federal law enforcement presence at our northern border has more than tripled since September 11, 2001. Criminal filings at the border rose 82% from SY-2003. The United States Attorney, Glenn Suddaby, is working to establish an office at Plattsburgh to help coordinate the law enforcement function and prosecution efforts on the border. Once his office is established, the Court will seek permission to establish a more formal court presence in Plattsburgh. In anticipation of this need, the District established a new jury division in Plattsburgh. The new division will include jurors from the counties of Clinton, Essex and Franklin.

### **District Court Clerk's Office**

The Clerks Office went live on the judiciary's new electronic case filing system CM/ECF on January 1, 2004. All of the hard work and preparation that was done in 2003 has paid off. The Court is now receiving more than 60% of all filings electronically, and that number continues to grow each month. The Clerk's Office has worked very closely with our Federal Court Bar Association and the individual county bar associations to bring the training on CM/ECF to the lawyers and their support staff directly. The Clerk's Office offers training at each of our four staffed courthouses in the District, in addition to regular monthly training dates at each courthouse the Clerk took the CM/ECF program on the road to train members of the bar and their staff at the most northerly points in the district.

The Clerk's Office in conjunction with the FCBA has also developed a training program for the three law schools in our district. This public outreach effort will help to provide law school graduates in our district with the real world skills necessary to file electronically in any district in the United States. Since going live on January 1st, 2004 the Clerk's Office has trained over 5000.

Innovation is alive and well in Northern New York. Over the course of the last year one of our very talented consolidated automation staff members developed an automated inventory system that is linked to the Court's national accounting system (FAS4T). This project was made possible with the support of the Administrative Office. The program was designed to provide any Court unit with an easy to use, customizable, automated tool for maintaining accountable inventory items while incurring very little overhead costs. All the software needed to run this application can

be downloaded for free. Given the lean budgetary times that are upon us, we need to look at ways to improve productivity by eliminating needless data entry and tap into the tools and resources available to us, this new system does that while at the same time strengthening internal control processes.

In September of 2004 our Clerk of Court, Lawrence K. Baerman received the directors award for outstanding leadership. Larry was recognized for his contributions to the judiciary on a national level, and for his outstanding leadership and contributions to the bench and bar here in Northern New York. The Clerk and Chief Probation Officer continue to work closely on the consolidation of administrative support services. Automation, human resources, personnel, budget and finance have or will be consolidated within the next year. Good fiscal planning and stewardship by the unit executives has allowed the Court to weather the most recent budget crisis without the need for major layoffs or furloughs. This initiative will allow the units to continue to provide the highest possible level of service to the bench and bar while absorbing what we expect to be significant reductions in future staffing levels.

## **PROBATION / PRETRIAL OFFICE**

### **Halfway House**

After more than ten years of actively working to establish a halfway house in Syracuse, it was finally realized on November 1, 2004. It has 25 beds reserved for federal offenders. With halfway houses in operation in Albany and Binghamton, a total of 65 beds district-wide are available. The halfway house is run by a halfway house company with vast experience.

### **Automation**

In the area of automation, many advances have been realized. Court units can now share the “R” drive for viewing and exchanging documents. In April, PACTS<sup>ECM</sup> went live in the district. Chrono conversion followed in June. In conjunction with this, PDAs were issued to officers. Information can be downloaded to the PDA allowing them to take case information in the field and then uploaded upon their return to the office. Investigations into criminal history has been streamlined. This past year an officer has been working with a select group of “high tech data specialists” who are developing the ATLAS project which would allow for NCIC to be available on computer desktops rather than through a central terminal. This has widespread national implications.

### **Sex Offender**

Supervision techniques continue to improve with the use of contract treatment providers, periodic polygraph examinations and internet use monitoring.

**United States Bankruptcy Court  
for the Northern District of New York**

As in previous years, the number of new bankruptcy cases filed in 2004 continued to increase over the number of filings of previous years. The Bankruptcy Court for the Northern District of New York was able to smoothly handle the increase in caseload without increases in staff because of the Court's continued focus on effectively using all resources available to it.

In calendar year 2004 the court trainers conducted ECF classroom training for over 444 attorneys and approximately 200 support staff. ECF logins and passwords were also provided to approximately 220 out of district attorneys. Attorneys and staff members of the U.S. Trustees offices were trained and are filing electronically.

On July 1, 2004 the court mandated electronic case filing and required most documents to be filed through the court's electronic filing system. Prior to July 1st approximately 53% of cases and 41% of all documents were filed electronically by attorneys and creditors. Within one month after mandatory electronic case filing was implemented, approximately 81% of cases and 88% of all documents were filed electronically. A project to permit the electronic submission of proposed orders was started in 2004 and is scheduled to be implemented by June 2005.

Improvements and renovations were made to existing space in the Albany office. The space housing the Operations Department was reconfigured to provide greater airflow, make better use of the space, and to take advantage of natural light. The space housing the Lunch Room was renovated by removing dark flooring and wall covering and replacing them with lighter, easy to clean surfaces. It is important to note that these renovations were paid for with the court's local funds and did not require any funding from the Administrative Office.

The Bankruptcy Court continually seeks to take full advantage of technologies available to it. Two technology driven projects were completed in 2004. The first project involved equipment upgrades for the courtrooms. The courtrooms in both Albany and Utica were upgraded with digital recording equipment for use by the ECROs. The judges and selected staff are now able to listen to court proceedings directly from their desktop computers. The second technology driven project involved the creation of electronic personnel folders housed on a secure server. Each personnel

folder contains an electronic index of items contained in it and can be quickly and easily accessed by authorized users. The need to transport paper personnel files between offices has been eliminated.

A third technology related project was started in 2004 and will be completed in 2005. The Automation Department and the Operations Department began an imaging project to enhance the ability to electronically search older bankruptcy case records. When the project is completed users will be able to electronically view dockets and party information from 1986 forward.

The past few fiscal years have been increasingly difficult for the courts and FY2004 was no exception. Many courts found it necessary to reduce staff even when faced with increased caseloads. Last year the Bankruptcy Court for the Northern District of New York was able to absorb an increased workload without adding or reducing staff. The Court was also able to complete several key projects with its existing funding. And finally, due to keeping a close eye on the court's bottom line, the Bankruptcy Court for the Northern District of New York was able to return \$ 120,000 to the AO to help reduce the budget shortfall faced by the entire Judiciary.

### **Annual Report of the Northern District of New York on Gender, Racial and Ethnic Fairness in the Court**

The Northern District of New York is committed to the fair and equitable treatment of all those that appear before the Court or are employed by the Court. The Court remains mindful of the need to protect against bias based on other grounds, such as sexual orientation, disability, national origin, religion and age.

The Court has continued the practice of providing pro se litigants with pro bono counsel to assist them at the trial stage of their cases. In addition, the Court has extensively used video conference technology to accommodate financially challenged litigants by providing them with an avenue to avoid travel costs associated with appearances before the Court.

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
NEW YORK**



Chief Judge Michael B. Mukasey

The Clerk's Office for the Southern District of New York operates with a staff of 206 employees with offices at Foley Square and 500 Pearl Street in Manhattan and at 300 Quarropas Street in White Plains. The Clerk's Office provides record keeping, case management, automation, financial and other services for the District Court. The operating budget for fiscal year 2004 was \$ 13,447,473 for personnel, automation and administrative expenses.

During calendar year 2004, the Clerk's Office completed the transition to the CM/ECF (Case Management/ Electronic Case Filing) program. All civil and criminal docketing events have been converted from the old ICMS program to the new system. The first wave of District Judges and all Magistrate Judges began accepting electronic filings in new cases on December 1, 2003. The remaining Judges joined the system in two waves in March and June of 2004.

The financial and systems staff of the Clerk's Office completed the preparations for the implementation of FAS4T, a new automated financial system, which went live in March 2004. Conversion included training, workflow process mapping and development of new security controls.

For the period October 1, 2003 to September 30, 2004, there were 12,422 cases filed.

During the past year, the Board of Judges amended Local Civil Rule 1.3(a), Admission to the Bar and Local Civil Rule 1.5(d)(1), Discipline of Attorneys.

Individual departments of the Clerk's Office report the following activities in the year 2004:

### **White Plains**

The year 2004 saw 1152 new civil cases filed at the White Plains courthouse, an increase of 18 cases. Court users and the public expressed satisfaction with the first full year of Electronic Case Filing. Ground was broken in Middletown, NY, for a facility to house a courtroom for a part time Magistrate Judge as well as offices for US Probation and the US Marshal. The facility is expected to be opened in the spring of 2005.

### **Jury Department**

During the year 2004, the Jury Department was diligent in performing its tasks under strenuous circumstances. Since 2003 we have lost two positions to retirement and we cannot fill those positions because of the Court's budget constraints. 2004 was a very busy year, in which we provided very large jury panels to a few high profile cases including criminal prosecutions of Martha Stewart, Lynn Stewart, Worldcom, Adelphia Communications and the Quinones death penalty case. The Jury Department, though understaffed, not only performed the tasks under challenging conditions, but flawlessly continued to process all the other functions of the department.

In 2004 we also witnessed a trend that was quite different than prior years. During the summertime in 2004, the Jury Department summoned large numbers of jurors and provided large quantities of jury panels to requesting Judges. Usually we spend the summer processing and qualifying over 30,000 perspective jurors to maintain a large number of jurors in our qualified jury wheel. Even under larger than usual jury returns for the requesting Judges, we were able to still qualify over 30,000 jurors for the qualified wheel. This required members of the department to put in extra hours due to the unfilled positions. This trend also carried over during the holidays as we returned and processed 668 jurors to the various Judges for selections in December 2004 alone.

The Jury Management System (JMS) has been upgraded with newer features that help us perform some of its functions more efficiently. With the installation of Fas4T, JMS now has a compatible system that allows us to pay our jurors without the extra steps that plagued the prior financial system.

## **Finance**

The calendar year of 2004 proved to be both challenging and rewarding for the Financial Department. On March 1, 2004, the Southern District of New York, and the Second Circuit Court of Appeals saw the introduction of the Financial Accounting System for Tomorrow (FAST). The FAST System is used to track and disburse funds which are allocated to the Court by the Administrative Office of the U.S. Courts. The Financial Department spent many months in preparation and training, with the Administrative Office, to successfully implement the FAST system. For the year of 2004, the Financial Department filed 10,322 complaints, issued 34,283 checks, receipted \$606,619,931.19, disbursed \$620,694,645.62 and maintained 328 interest bearing accounts with an aggregate value of \$749,071,947.12.

## **Docket Services**

During calendar year 2004 the Clerk's Office docketing section has been presented with many challenging situations. Despite the implementation of CM/ECF, a large number of documents continue to be filed manually. Reducing the number of manually filed documents has proven to be a slow process. This has been in part been a result of the large number of cases filed and accepted as related to previously filed non-ECF actions. Additionally, a number of very active Multi-District Litigation cases as well as a number of mega cases (also non-ECF) have contributed to the on-going deluge of manually filed documents. Only with the prioritization of documents to be processed and the assistance of employees from other sections have we been able to keep the work moving in an orderly manner.

## **Courtroom Support**

In 2004 the Courtroom Deputies and Relief Courtroom Deputies assisted other departments in the Clerk's Office to a much greater degree than in the past. The Relief Deputies assisted the jury, finance and docketing departments on a daily basis. They were also available, as needed, to provide assistance to the Interpreter's Office and Supply. Relief Deputies assisted at the Naturalization Ceremony nearly every Friday. Courtroom Deputies assigned to judges also made themselves available throughout the year and provided assistance to the Jury and Docketing departments. In addition, they offered their time to cover courtroom assignments when needed.

## **Personnel**

During the calendar year 2004, the Personnel Section processed personnel actions for the designated court staff such as appointments, separations, promotions, retirement information; and disseminated benefit information and the processing of forms. New procedures were put in place whereby staff, during Open Seasons for FEHB and TSP, could directly make on-line changes through a private vendor. The need for background checks on all new employees, interns and contracted staff has become routine. A continuance of a hiring freeze throughout the year has prevented the court from filling vacancies and has required that we develop and initiate new strategies to meet operating needs in the coming year. There are 14 vacant positions which have not been filled since the hiring freeze was imposed.

## **Training**

During the last calendar year, the Training Department continued CM/ECF training for attorneys and incoming law clerks, and cross training classes for employees who were reassigned to docket units in view of the current fiscal crisis. The Training Department also developed a quarterly newsletter which will advise employees about training opportunities available for Clerk's office employees. In addition, a new program, entitled "Lunch and Learn ", was implemented whereupon employees can visit the training room during their lunch break to attend a videotape seminar on a variety of subjects to help improve their work and personal performance. Finally, the Training Department also implemented a new program entitled "Learning Day". All Clerk's Office employees may attend "Learning Day" to review training resources provided by the FJC and any in-house commercial materials available to them. Training specialists are on hand to answer any questions and to assist employees in completing applications or signing up for training activities.

## **Magistrate Judges Unit**



The Southern District Magistrate Judges unit has seen several changes in the past year. We have developed a system to back up our Sealed Vital Records. They are currently being backed up onto 3.5" disc. A second copy is also prepared and forwarded to the White Plains courthouse. We have also merged our docketing system from ICMS to ECF. We now also prepare requisition forms for the public to bring to the Finance Office to purchase Certificate of Dispositions.

### **Mediation Department**

The Mediation Department provides services for the courts in Manhattan and in White Plains. Hundreds of new and adjourned cases were scheduled for mediation sessions during the calendar year. Local Civil Rule 83.12 governs the Court's mediation program.

### **Interpreters Office**

In FY 2004 interpreters of 36 languages provided foreign language interpretation during 6,667 separate proceedings, an 8% increase in activity over last year. Of these, 4,133 were in-court proceedings, only slightly fewer than FY 2003. Out-of-court matters (pretrial, probation, attorney-client interviews, document translations, phone conferences) totaled 1,613 for all languages, nearly the same number as last year.

Spanish continues to be the most frequently requested foreign language. In FY 2004, 75% of the interpreter unit caseload was in Spanish. The next most frequently requested languages remained the same as in previous years: Russian, Arabic, Mandarin and Fuzhou. Total expenditure for interpreter services, paid from a central Administrative Office account, was \$445,196, a 20% decrease over last year despite a nearly similar caseload. A total of 24 criminal trials required foreign language interpretation, 18 in Spanish, 2 in Russian, 1 in Arabic, 1 in Turkish, 1 in Punjabi and 1 in Haitian Creole. This was a 50% decrease in the number of trials as compared to FY 2003.

Recruitment and coaching sessions of interpreter candidates in hard-to-find languages continue on an as-needed basis. Interpreters in lesser-used languages require in-depth orientation because of differing skill levels in the available pool and the lack of traditional testing in those languages. Seven exotic language interpreters had individual orientation sessions this year. A growing challenge is to identify reliable interpreters of African languages.

The Interpreters Unit website, [www.sdneyinterpreters.org](http://www.sdneyinterpreters.org), is linked to the court intranet and provides instant scheduling information for interpreted proceedings. Its public face provides useful information for the legal community and for interpreters in search of resources.

## **Milestones**

During the past year, one judicial vacancy was filled. Kenneth M. Karas was inducted on September 7, 2004. I note with extreme sadness the passing of two of our distinguished colleagues, the Honorable Whitman Knapp on June 14, 2004 and the Honorable Milton Pollack on August 13, 2004. They made important contributions to the Court, and their presence will be missed.

## **PRETRIAL SERVICES**

As the component of the federal judiciary responsible for the bail investigation of defendants, the Pretrial Service Office is committed to providing verified information and assessments of the risks of non-appearance and danger to the community for every defendant appearing before the court following arrest. While working under the guidance of the court, pretrial services seeks to effectively supervise persons released to its custody and thereby promote public safety, facilitate the judicial process and seek alternatives to detention.

The Pretrial Services Office interviewed 98% of the defendants who appeared on criminal charges during FY 2004. Ninety-six percent of the interviews were conducted prior to the initial court hearing. While bail investigations decreased from the previous year, the court released more defendants with supervision conditions as compared to last year.

Our district continues to have a low detention rate, especially when compared to other large metropolitan districts. Our release rate at the initial bail hearing was 15% higher than the national average and among the highest when compared to other large metropolitan districts.

At the end of the fiscal year, 9/30/04, there were 1,025 defendants reporting to Pretrial Services for supervision as required by their court-ordered release conditions. Ninety six percent of those released appeared in court as required and 97 % of defendants were not arrested during their bail period.

The year was challenging, as our staff and operations were affected by budget reductions. While operating with reduced funding and loss of staff, we had to impose spending limits on services particularly inpatient residential services. In attempting to

maintain services to defendants we initiated a pre-screening of defendants to identify Medicaid eligibility at an early stage and assisted defendants with the application for Medicaid. This initiative reduced our drug treatment costs to enable us to provide services to a greater volume of defendants. The Chief presented our Medicaid initiative at the Chiefs' conference in Atlanta and it was selected as one of the three most helpful cost containment initiatives for use by other districts.

There were several innovations developed during the year. We developed and implemented a random drug testing program, requiring defendants to call a toll free telephone number to be informed by a voice mail message whether to report for testing the next day. Results have shown the program to be effective in assuring compliance with court ordered drug testing conditions, and establishing more efficacy than a testing program where a defendant can "time" his drug use to evade detection.

Pretrial Services has entered into a partnership with the New York State Division of Criminal Justice Services to implement a new criminal record system that provides several improvements and advancements to complement the existing criminal record retrieval system. This system, known as eJustice, will eventually replace the existing NYSPIN criminal record system. The most ambitious project involves establishing a live scan electronic fingerprint system to provide the court with identification of a defendant based on fingerprints rather than a name check. We could electronically transmit fingerprints and receive a criminal record within an hour of transmission, enabling our office to provide positive fingerprint identification of the defendant appearing before the court at the initial hearing. In addition, the fingerprints could be registered with New York State for notification, should the defendant be arrested while released on bail. This would provide for timely notification of the violation to our US Attorney and court and reduce the need for manual record checks conducted by officers.

Pretrial Services is the front door to the federal criminal justice system and has a unique opportunity to lay the foundation for each defendant's success, not only during the period of pretrial services supervision, but even beyond that time. Officers strive to work with each defendant in such a manner that this contact with the criminal justice system will be their last, and so prevent the front door of the system from becoming a revolving door.

## **U.S. PROBATION**

Fiscal year 2004 represented the most difficult time faced by the Southern District of New York's Probation Office in its history. The task of continuing to provide high quality work in the face of severe funding shortfalls challenged both staff and administrators. Probation faced a 10% cut in funding for salaries and was

forced to downsize staff by way of buy outs, early outs and position abolishment. At total on 16 staff members left our agency via one of the three methods. At the end of the fiscal year, our total staff was down to 157 after having been 173 the previous year. Each of the three divisions that make up our agency - Supervision, Investigations and Administrative Services- were forced to restructure and rethink our methods of operation.

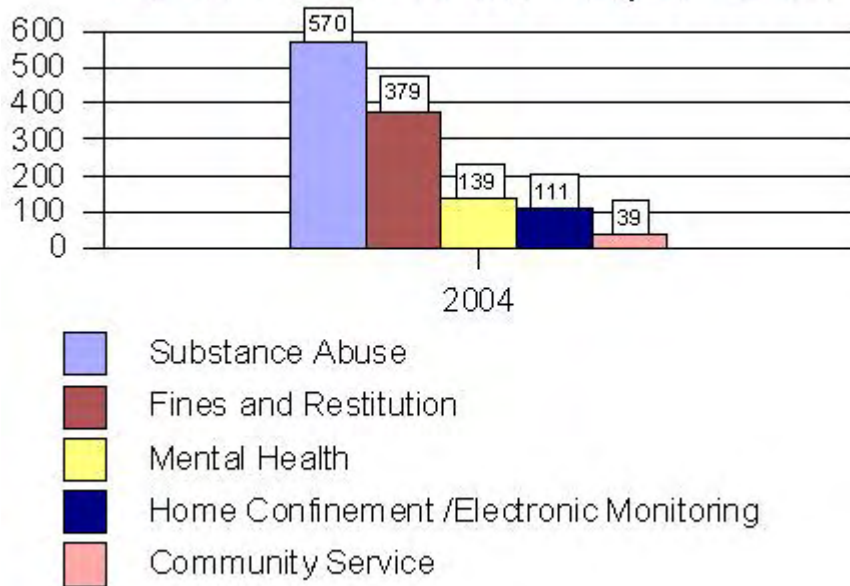
Even in the face of these changes, the probation office was able to continue and even improve upon, our service to the Court and to the community.

### **Supervision:**

The number of supervision cases has been stable during the past three years, while the number of probation officers and support staff has been reduced. The resulting higher caseloads and workloads has been difficult. Yet, the supervision division has continued to provide protection to the community and services to offenders. Supervision officers continued to concentrate on spending the majority of their time in the field, meeting offenders where they live and work. This renewed focus on field work has been effective in helping offenders comply with the conditions of supervision and helping them to lead productive lifestyles. Officers in supervision continue to specialize in the areas of substance abuse, mental health, sex offenders, electronic monitoring/home confinement, special offenders/ organized crime, community service, financial crimes and general crimes.

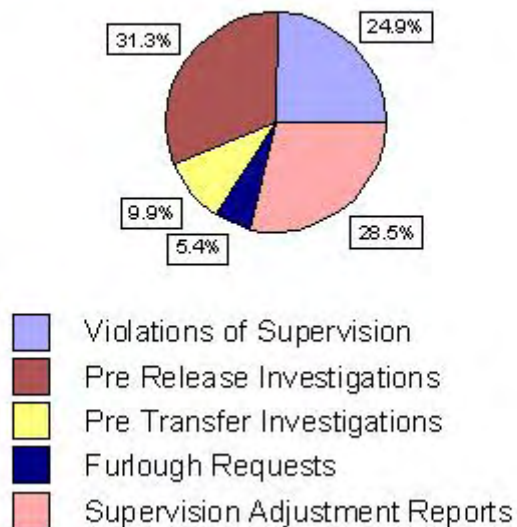
The total number of *new* case received for supervision in FY 2004 was 1399. They are represented as follows:

## Cases Received for Supervision



The division also improved upon our protection of the community by way of innovative field operations. The numbers of searches and surveillance were up, resulting in an increase in violations of supervision. During FY04, several of our search and surveillance operations have resulted in new criminal charges on both the local and federal levels. The division also continued to conduct *high intensity field operations* (HIFOs) each month, where the concentration is on at risk offenders. These operations, conducted during the late evening hours and weekends, have been highly effective in bringing offenders facing violations to the point of renewed compliance. Notwithstanding our successful special operations, the supervision division initiated 472 violation of supervision in FY 2004. Additionally, supervision officers completed 595 prerelease investigations, 188 pre transfer investigations and 102 furlough requests.

## Supervision Investigations

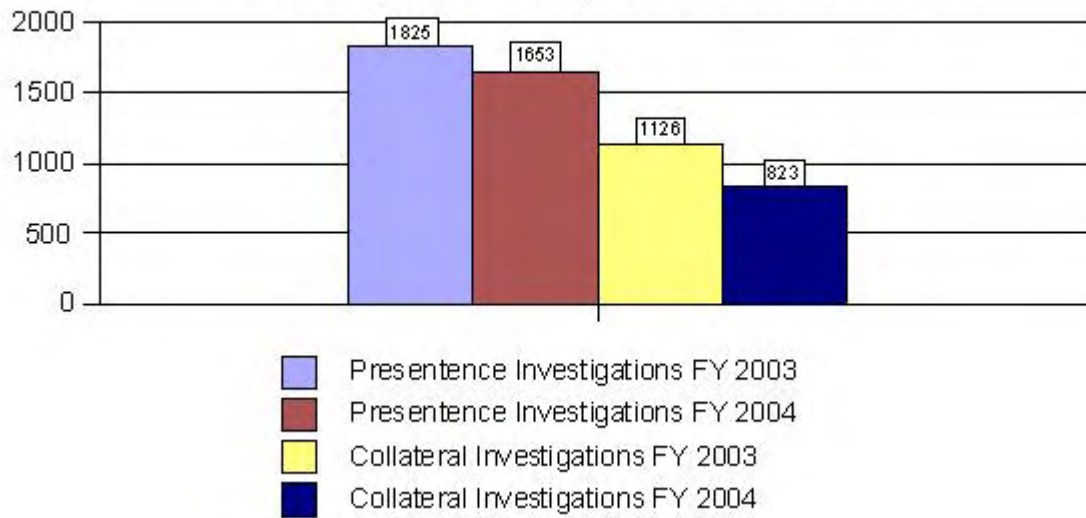


### Investigations:

Probation officers working in the presentence investigations division continue to complete a significant number of investigations and reports in FY 2004. These report often involve sophisticated crimes and high profile offenders. Also faced with decreased probation officer and support staff, the presentence division developed an innovation of its own. Our district receives countless requests for collateral assistance from other district throughout the country. Answering each request while operating under decreases funding became very difficult for us. Our office, therefore, developed a collateral assistance web site. This web site provides information that allows our colleagues the information they need to request assistance directly from New York City agencies. This process effectively cuts out the middle man (i.e. our office) and allows districts to receive request information in a more timely fashion. This process did not take us out of collateral assistance entirely. On the contrary, we are still assisting our colleagues who are having difficulty obtaining information. It has, however, decreased the amount of time spent on collaterals and has allowed us to utilize staff in other areas.

In FY 2004, the presentence division completed 1653 presentence investigations and 823 collateral investigations.

### Investigation Comparison FY '03 -'04



#### **Administrative Services:**

The administrative services branch includes automation, data quality analysis, personnel, budget, purchasing and overall support to probation officers. The office's administrative assistants suffered significantly when downsizing became a reality. Those administrative assistants that remain with us are charged with accomplishing much more. These professionals rose to the task during FY 2004, filling in and taking on added responsibilities. It was not unusual to see administrative staff staying late and coming in on weekends to meet their obligations. The staff members that make up our administrative support are dedicated to engaging in quality behind-the-scenes work that support the overall operation of our office.

#### **Annual Report 2004 United States Bankruptcy Court for the Southern District of New York**

During Fiscal Year 2004, this court experienced a 21% overall increase in filings. Most notable is the 220% increase in chapter 11 filings. This court's weighted case filings per judge are 6,321 as compared to the national median of 1,571. Therefore, the judges in this district are carrying a caseload more than four times the national median. In response to the fact that the judges in this district continuously administer caseloads at least twice above the national median, the Judicial Conference of the United States has endorsed the Second Circuit's request for two additional judgeships.

There are more than 8,000 attorneys registered to use the court’s Electronic Case File System (ECF) and during fiscal year 2004, approximately 1,400 new attorneys were added and 1,963 orders to appear *pro hac vice* were signed. The court continues to conduct training classes for new users of the system on an average of twice a week.

FILINGS DURING FY YEAR 2004

<u>Chapter</u>	<u>Number of Filings</u>	<u>Percent Change</u>
7	15,661	10%
11	2,955	220%
12	1	-0-%
13	2,177	5.6%
304	76	52%
Adversary Proceedings	7,935	15.2%

A total of 2,387 chapter 11 “mega” cases were filed with the court during FY 2004. The majority, 2,361, were affiliated with the Footstar case commenced in White Plains. In addition, orders were entered confirming the Enron and WorldCom “mega” cases during FY04, and these and other “mega” cases commenced in previous years continue to be administered.

During FY04, efforts to improve the court’s service to the public has been enhanced. The old analog courtroom recording systems have been upgraded and more sophisticated digital recording devices have been installed in the court’s divisional locations in White Plains and Poughkeepsie.

Long term planning for the clerk’s office is becoming a reality. The “Records Room” in the New York City location is all but closed as old files are shipped to the archives; the three divisions have been sharing the workload more evenly; and the court’s inventory has been transferred to an electronic tracking system, which enables us to more accurately account for the court’s property and its location at all times.

The court has adopted a program based on the C.A.R.E. program started in the Western District of New York and has modified it to fit the needs of the local community. We have done the groundwork to introduce the program to public and private schools in the New York metropolitan area.

Judge Cornelius Blackshear, who retired March 31, 2005, conducted two 10-week classes educating a total of 40 court employees in bankruptcy. These classes were very successful and the end result has been a benefit to the court. An educated



staff is better equipped to understand the importance of their role in the administration of cases through the court.

As the caseload continues to rise, so does the involvement in the bankruptcy system by people and entities unfamiliar with bankruptcy. Having a highly educated staff to assist the public with procedural information has enhanced the court's reputation and has eased the complexity of navigating the system for many of these constituents. The court is committed to providing current, correct information and continues to explore better ways to do so.

## **UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT**



Chief Judge William K. Sessions III

### **Clerk's Office**

During calendar year 2004, the Clerk's Office continued to evolve in response to major policy initiatives promulgated by both the Executive Committee of the Judicial Conference and Leonidas Ralph Mecham, Director of the Administrative Office of the United States Courts. The Clerk's Office took advantage of the buyout and early-out retirement initiatives offered during the year and underwent a reorganization of its management structure. A mid-level supervisory position was

eliminated at the Rutland divisional office along with a corresponding courtroom deputy position supervised from this divisional office. This management change “de-layered” the Clerk’s Office organizational hierarchy and reduced its management structure from three separate levels to two. The end result is a “flatter” organization with a “stream-lined” management structure which will be more responsive to the operational needs of the court. Two employees affected by this change qualified for early retirement and buyout initiatives offered by court management. Additionally, one new employee who possessed a skill set more in line with the future automation needs of the Clerk’s Office was subsequently hired to fill the Brattleboro divisional office vacancy. This restructuring change was made effective on October 1, 2004 and was implemented uneventfully.

Based upon the new district court staffing formula adopted by the Judiciary and fielded by the Court Administration Division, the authorized staffing level for the Clerk’s Office for 2004 increased from 21.5 to 21.7 authorized positions. This minimal staffing increase equated to the very small increase in civil and criminal case filings which occurred from the prior statistical year. Although 21.7 work units were authorized for fiscal year 2004, the Clerk’s Office continued to effectively manage all of its workload with an on-board staffing total of 18.2 positions. The District’s *pro se* law clerk staffing allocation remained stable during calendar year 2004 and remained authorized at one-full time, permanent position. Based upon its on-board staffing level coupled with a relatively stable operating environment, the Clerk’s Office once again managed to return – for a second year in a row – a portion of its operating budget in order to assist the Judiciary with its national financial plan.

### **Information Technology and Automation Activity**

During calendar year 2004, the district spent the majority of its automation-related efforts preparing for CM/ECF implementation as a Wave 17 court. During December 2003, individuals from both the Clerk’s Office and judges’ chambers’ staff attended CM/ECF applications training at the Systems Development and Support Division (SDSD) training center in San Antonio, Texas. At the start of the new calendar year, the District’s chief deputy clerk for operations and its director of technology attended dictionary training in San Antonio, Texas. The District’s operational managers and the clerk of court then made a one-day site visit to the Northern District of New York to determine how to best implement the CM/ECF system.

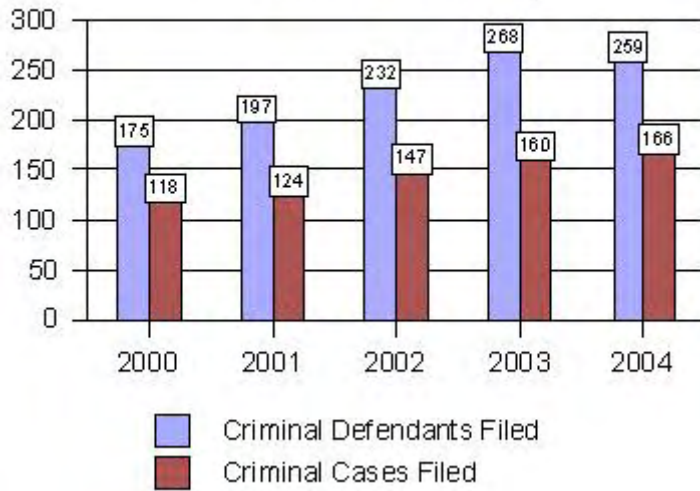
In conjunction with the district court’s Court Advisory Group – a successor to the District’s Civil Justice Reform Act Committee – a consensus decision was reached to implement electronic filing using a two-phased approach. It was decided that the “CM” or case management component of electronic filing would be implemented

first, allowing system users to become familiar and confident with the operational aspects of the system. After an indefinite trial period consisting of some six to nine months, the district would then implement the second phase or “ECF” portion of electronic filing which permits file transfers over the internet. In preparation for conversion to CM/ECF, the district’s Solaris-based servers were converted to the new Linux operating system and the most current version of the CM/ECF application software (Version 2.3) was installed. One management employee and another deputy clerk also received formal data quality assurance (DQA) training in San Antonio, Texas. During late October, the remainder of the Clerk’s Office staff were trained locally on CM/ECF operation procedures. Data and image migration then took place with multiple validation efforts also occurring. Rather than implement the new CM system during the last quarter of the calendar year, a strategic decision was made at this time to convert and “go-live” on the first business day of the new calendar year. Conversion to the new system at this time would allow for a “clean break” from the legacy system and would establish a definite milestone date for the District’s conversion to electronic filing.

In addition to CM/ECF preparation, the Court’s Lotus Notes server was converted to Microsoft Windows Version 2003 from its existing Windows 2000 operating system. The electronic evidence presentation system for Chief Judge William K. Sessions’ courtroom was also upgraded with touch screen technology. This effort was funded fully from the court’s operating budget without the need for supplemental or other project-based funding. Lastly, both of the district court’s intranet and internet websites were redesigned using Macromedia Dreamweaver software to give each website a more professional and uniform look. Each individual judicial chambers also continues to post electronic versions of selected court opinions to the Court’s external website using the CourtWeb judicial opinion posting system.

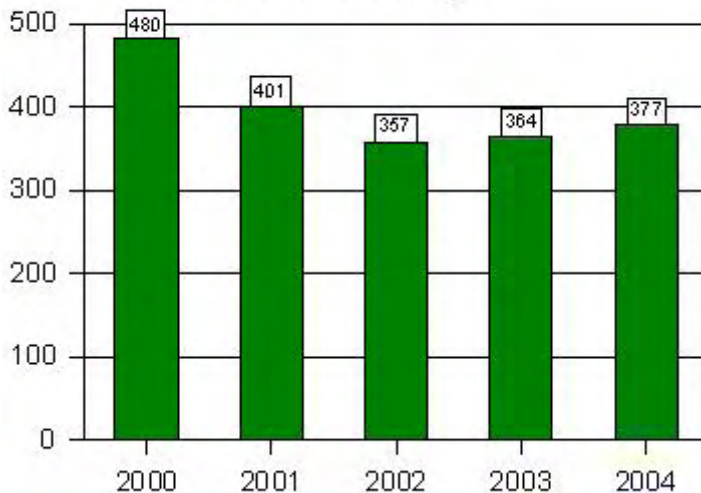
### **Caseload Statistics**

## Criminal Filings



As indicated by the graphs below, civil case filings for calendar year 2004 once again increased slightly from the prior calendar year and interestingly enough, again by the exact same figure – 7 cases. Based upon long-term statistical data, the District expects that the trend of increased civil filings to continue until the District once again reaches its long-standing filing base of approximately 400-420 civil filings on a per annum basis.

## Civil Filings



Regarding the district court's criminal caseload, as indicated by the graph below, while the total number of criminal case filings showed a slight increase over the prior year, for the first time during the last five calendar years, actual defendant

filings showed a slight decrease. This leveling trend in criminal defendant filings is attributed to the increased number of criminal jury trials expected to occur during the upcoming calendar year and the degree of prosecutorial resources required to try cases.

The District continued to manage its single, long-term, capital offense case – *United States v. Fell*. This case was initiated by the filing of a criminal complaint on December 1, 2000 with the government subsequently filing an indictment some nine weeks later on February 1, 2001. The government proceeded to file its notice of intent to seek the death penalty on January 30, 2002. From October 2002 through November 2004, the case was on interlocutory appeal at circuit on the issue whether the death penalty was constitutional. On October 28, 2004, the Second Circuit Court of Appeals issued its mandate and remanded the case back to the district court consistent with the opinion of the appellate court. The District plans for an extended, two-phase criminal trial to begin sometime during May 2005.

### **Jury Operations**

Calendar year 2004 was a General Election year. During late November, the District commenced refilling its master jury wheels by contacting all 251 Vermont city and town clerk offices for the purpose of securing current voter registration lists. Pursuant to the District's *Jury Selection Plan*, all jury wheels must be completely refilled and fully operational no later than July 1st of the calendar following a presidential election.

During the early part of the year, 1,000 jurors from the District's existing Northern Jury Division were pre-qualified and segregated as potential jurors for the District's death penalty case using the automated Jury Management System (JMS).

### **Early Neutral Evaluation (ENE) Program**

The Court's Early Neutral Evaluation (ENE) program celebrated its tenth year of operation during calendar year 2004. The Court continues to rely upon this particular form of alternative dispute resolution program for reducing both the cost of litigation and case delay to the parties. During 2004, the Court's ENE program was slightly expanded in scope in order to allow bankruptcy cases to qualify for the program.

Since the program's inception on July 1, 1994, a total of 2,145 cases have passed through the program and more than 50 attorneys have participated in evaluator training. During calendar 2004, a total of 85 ENE sessions were conducted, a figure which is up slightly from a total of 74 cases conducted during 2003. Vermont's long-

term, full-settlement rate continues to hold steady and for calendar year 2004, once again calculated out to be 34 percent for all cases participating in the program. The only significant, long-term change to the District's program appears to be an on-going trend for the parties to utilize independent evaluators rather than evaluators comprising the Court's Early Neutral Evaluation panel. During 2004, this trend continued in that 55 non-panel evaluators were utilized, up from a total of 47 independent evaluators used during the prior calendar year. This trend for the parties to use "off-panel" evaluators will continue to be monitored in order to determine the basis for this trend and the potential need for the Court to modify its program.

### **Criminal Justice Act (CJA) Panel Operations**

Vermont made a total of 276 appointments pursuant to the Criminal Justice Act during calendar year 2004. This total is exactly one less than the total number of appointments made during 2003 and appears to mirror the "leveling" trend experienced with the District's criminal case filings. The District's all-time high for CJA appointments took place during calendar year 2002 when a total of 291 appointments were made.

Vermont has shared a public defender with the Northern District of New York since September 1977. On August 19, 2002, the District of Vermont amended its *Criminal Justice Act Plan* to allow for the creation of a separate public defender office based upon the number of CJA appointments being made on an annualized basis. Vermont's request to establish an independent FPD office was approved by the Second Circuit Judicial Council on June 5, 2003, subject to ratification by the Judicial Conference of the United States. On December 15, 2004, Vermont was formally notified that the Defender Services Division (DSD) had certified the district as eligible for a separate federal public defender office. Late in the year, the Court of Appeals for the Second Circuit informed the district court that a national search for a qualified federal defender would commence sometime during early 2005.

### **Local Rules Revision**

During calendar year 2004, the district court's Local Rules of Procedure were amended after substantial input from the civil law subcommittee of the District's Court Advisory Group. Substantive changes include the adoption of a new local rule which conforms to the policy requirements of the E-Government Act of 2002 regarding how confidential and sensitive information is to be filed; adoption of new rules dealing with pretrial conferences, exhibits and costs. Two existing criminal rules involving pretrial, presentence and probation records also underwent slight

modification regarding how confidential information is to be maintained by the U.S. Probation Office.

### **Space and Facilities**

No major tenant-alteration projects took place during the year other than the formal approval of the Clerk's Office Computer Room Expansion Project slated for the Headquarters Office in Burlington. This project was fully funded from the court's operating budget and work commenced late in the calendar year. The project is scheduled for completion during early spring 2005 and will allow for additional expansion space for the district's DCN network, Lotus Notes, FAS<sub>4</sub>T, JMS and CM/ECF servers.

The General Service Administration's Burlington-based, prospectus-level HVAC project was completed slightly ahead of schedule during November 2004. As such, the heating, cooling and ventilation systems for the Burlington Federal Building & Courthouse have now been totally replaced and modernized. A roof replacement project is scheduled for the Burlington Federal Building & Courthouse during calendar year 2005.

### **Naturalization Proceedings**

The district court conducted fourteen separate naturalization hearings during calendar year 2004. A total of 437 naturalization candidates became citizens. The months of June and November each had one additional naturalization hearing scheduled in order to assist the Immigration and Naturalization Service with processing a long-standing citizenship backlog.

## **PROBATION & PRETRIAL SERVICES**

The Vermont Probation Office is a combined court unit fulfilling both the Probation and Pretrial Services functions, with three units providing service to the Court; Pretrial Services, Presentence Investigations and Post-Conviction Supervision. We began the fiscal year with 21.6 employees. We were authorized 23.6 units and funded at 23.1, a small increase over last year. Reductions in the Judiciary's budget necessitated our performing a record high workload with limited staff. One employee transferred to the District Court Clerk's Office and a second accepted a buy-out effective December 31, 2004. Thus we finished the fiscal year with 20.6 employees and the prospect of less next year.

The Burlington Office includes the administrative staff, Canadian Liaison, Pretrial Services Unit, Presentence Unit and Post-Conviction Supervision Unit as well

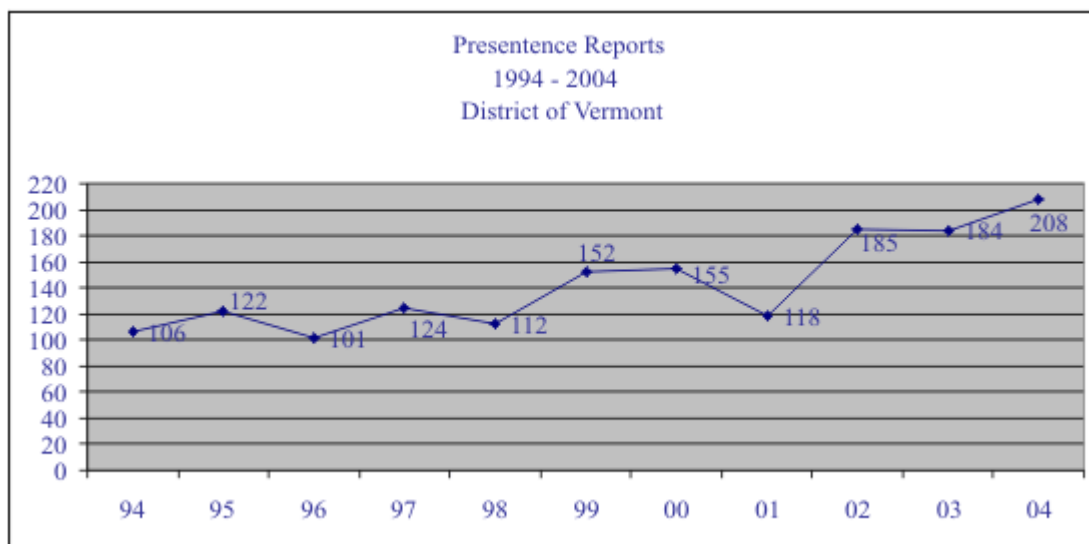


as support staff. The Burlington location also houses the drug testing laboratory. The Brattleboro, Vermont Office is staffed by two probation officers. There is also an un-staffed office in Rutland, used by officers to meet with offenders and to attend Court hearings in Rutland. We have maximized the use of space in all facilities and have no room for expansion in Burlington and Brattleboro. We await GSA's action on renovations to our Burlington Office to make it more functional.

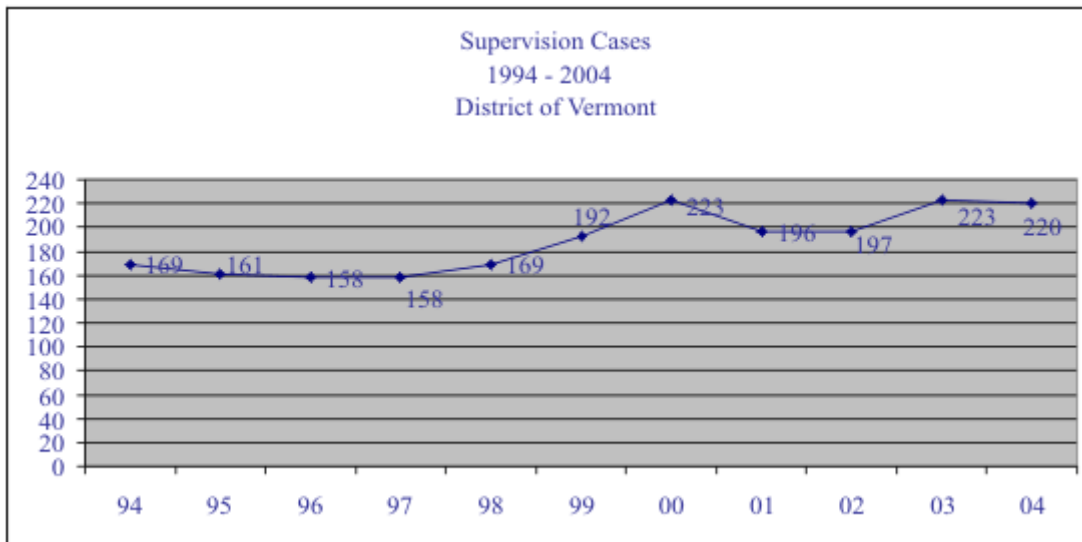
The Probation Office has a Training Committee, which includes a training coordinator and other professional, support and administrative staff. This Committee arranges and provides training to the general staff. The Probation & Pretrial Services Office also has a Tuition Assistance Program which affords training opportunities for staff on a selective individual basis from outside sources. Internal resources include a video library, packaged training programs offered by the Federal Judicial Center, local consultants and other resource materials as well as training through the FJTN. Staff participated in numerous training programs this year including Officer Safety, Sexual Harassment, and a National Guidelines Seminar.

We have continued our association with small districts from New England in a regional Critical Incident Stress Management Team. The Administrative Manager served as a mentor in the continuing implementation of FAS4T. The Chief serves as the Northeast Region's representative to the Chief's Advisory Group as well as a member of the STATS Working Group.

Despite reducing staff and limited funding, the District of Vermont's Presentence Investigation workload increased 13% this year. We completed a record high number of presentence investigation reports this year.



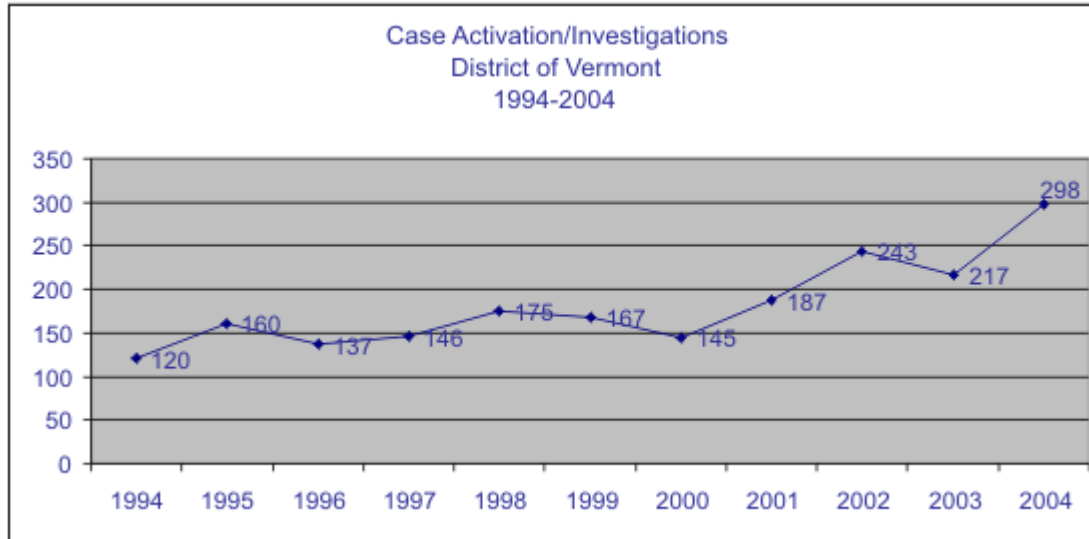
Our Post-Conviction Supervision cases remained steady at 220.



During FY 2004, we continued to have substance abuse and mental health contracts in all fourteen counties of Vermont. The contracts are monitored by the District's DATS officer with the assistance of one of the probation officers assigned to the pretrial services function. We had a decrease in collateral investigations conducted locally and had no change in the number of violations brought to the Court.

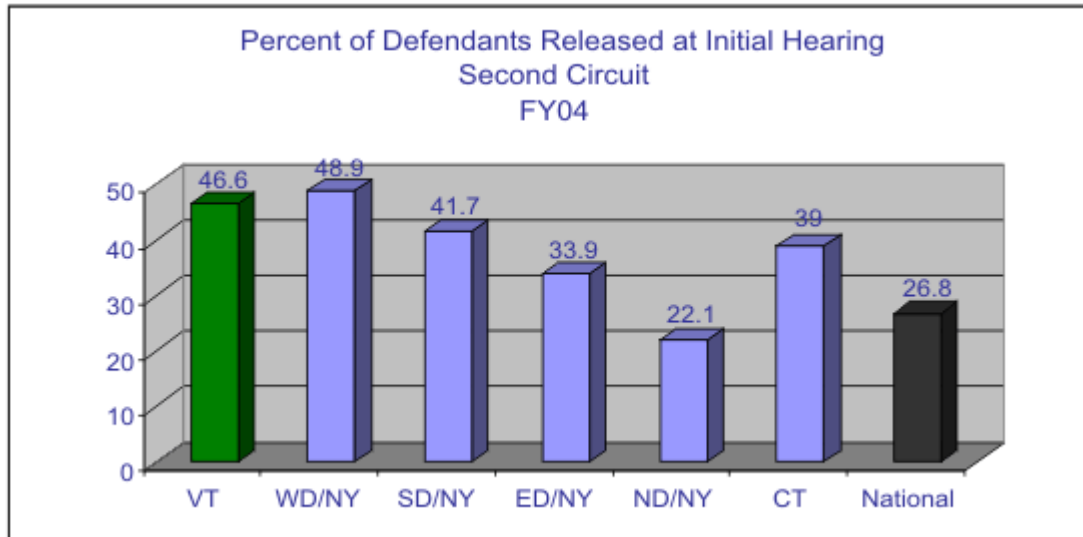
We continued to use electronic monitoring as a sanction and in lieu of half-way house placements. As Vermont has no half-way house facilities, Bureau of Prisons inmates are re-integrated into the community through the electronic monitoring program.

During FY 2004, we experienced a 37.3% increase in Pretrial Services cases activated, with a total of 298 cases for the year. As with the presentence investigations, this is an all time high for the District of Vermont and somewhat remarkable given the funding and resource limitations.



At the end of FY 2004, we had 115 defendants under supervision, a 22% increase over last year. Within the Second Circuit, Vermont remains one of the highest in releasing defendants at initial hearing and one of the lowest, 32.3%, of defendants detained and never released. The majority of offenses charged in the District of Vermont were drug related offenses, totaling 58.3%, up from 53.2% last year. 7.4% of offenses were fraud while 13.4% were weapon/firearm related. Our post-conviction supervision caseload results from 58.6% of drug law violators and 16.8% firearms violators.

We continue to provide liaison services between the Federal Probation System and Canadian Law Enforcement. During the fiscal year, we provided 122 investigative reports to other districts relating to Canadian offenders. In addition, the Canadian Liaison officer has participated in a number of conferences related to anti-terrorist and border issues, both as a participant and presenter.



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### **United States Bankruptcy Court District of Vermont**

#### **CM/ECF**

We trained an additional 36 attorneys and approximately 10 non-attorneys in 2004; most of them at the court's training room. As of December 31, 2004, we had trained a cumulative total of 222 attorneys and approximately 100 non-attorneys. Additionally, we registered 40 additional attorneys in 2004, bringing our cumulative total to 224. We also began registering Limited Participant CM/ECF users, thus enabling non-attorneys to file electronically proofs of claim, notices of transfers of claims, notices of appearance and requests for notice, and claim withdrawals. As of December 31, 2004, we had registered 152 individual limited participant users.

Attorneys filed documents online on behalf of their clients 10,517 times in 2004, with trustees adding an additional 2,170 filings, and our newest category of filers, Limited Participants, kicking in an additional 91 transfers of claims and 821 claims. For the

year, this accounts for approximately 75% of all filings and 21% of all claims, up from 49% and 0% in 2003, respectively. Attorneys opened 1,120 bankruptcy cases and 52 adversary proceedings electronically, which constituted approximately 66% (up 15% from 2003) and 62% (up 40% from 2003) of those categories, respectively. By December 31, 2004, over 86% (up 22% from 2003) of all attorney transactions were being completed online.

## **Community Outreach**

Court staff continued to offer our interactive educational mini-course entitled **\$tart \$mart**, which we developed in 2003. We offered the course five times in 2004, at both high schools and colleges. The course continues to be well-received by participants.

Court staff also worked with local attorneys and the Vermont Bar Association to develop **Vermont Bankruptcy Information Clinics**. Court staff provided the content and coordination, and volunteer attorneys presented four free clinics (two in Rutland and two in Williston) for persons having financial difficulties and who may be considering filing for bankruptcy without the aid of an attorney, for persons who have already filed for bankruptcy and for anyone else who wanted to learn more about the bankruptcy process.

## **Inter-Court Cooperation**

To expedite the determination of a hotly contested motion to dismiss in a Chapter 11 case in which the parties anticipated over two weeks worth of testimony, the bankruptcy court in Connecticut asked Judge Brown if she would preside over the trial on this motion. Judge Brown agreed and, upon agreement of the parties, venue of the motion was transferred to Vermont. Throughout February 2004, the court heard eight days of testimony and admitted over 80 exhibits, and thereafter issued a memorandum of decision granting the creditor's motion to dismiss. The debtor has appealed the decision and the parties are currently at the briefing stage before the U.S. District Court for the District of Vermont.

## **Space and Facilities**

In October 2004, Judge Brown's chambers moved from the U.S. Post Office and Courthouse back to the Opera House.

Also in 2004 . . .

- We sponsored our second annual CM/ECF Users' Forum, where attorneys and court staff had an open dialog about the status of, pros and cons of, and desired modifications to CM/ECF.
- The court created a Teleworking Policy. Currently, more than 50% of our staff – and all but one of our eligible Clerk's Office employees who have DSL access – use the VPN to telework on a regular, recurring basis. The Clerk of Court and Judge Brown both participated in a live FJTN broadcast entitled *Implementing Telework in the Judiciary: Successful Strategic Techniques and Tools*.
- Judge Brown served as a judge in a Mock Advocacy Trial at the Vermont Law School.
- All staff completed 1.5 days of sexual harassment awareness training.
- All staff participated in a workshop on *Serving the CM/ECF Customer*.
- All staff participated in an advanced Myers-Briggs workshop, for the purpose of enhancing communications within the court.
- We began the process of updating our Local Rules.
- We began the process of switching over to electronic court reporting.
- We continued to hold the same number of regular monthly hearing calendars in Burlington as in Rutland.
- We handled a mega-case that was filed in April 2004.
- Judge Brown was appointed to the AO's Bankruptcy Judges' Advisory Group.
- Judge Brown continued to use the services of an outside attorney "liaison" to solicit the opinions and assessments of attorneys and other court users about the performance of the judge, customer service of the Clerk's Office, and overall quality of the court's service. The liaison then conveyed the information to Judge Brown in an anonymous and constructive fashion.
- Automation Manager Gary Gfeller's term on the CM/ECF Working Group and MR Subcommittee was extended for an additional year.
- Our Systems Technology Administrator, Kevin Plew, was called to active duty in the Vermont National Guard and began serving a tour of duty in Southwest Asia.

**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF  
NEW YORK**



Chief Judge Richard J. Arcara

**Summary of Highlights and Activities**

Statistical Year 2004 was once again another year during which case filings, both civil and criminal, continued to increase in the Western District. The District Court, while at a full complement of district judges and magistrate judges, nevertheless struggled significantly to keep pace with the workload demands placed upon this extraordinarily busy court.

As has been the case for more than a decade, the workload continues to be substantial. The District Court ranks first in the Circuit and 15<sup>th</sup> in the nation with regard to terminations per judgeship. Although the latter statistic represents an 5 point shift over the preceding year's ranking, it nevertheless reflects a significant rate of case disposition by this Court. The Western District ranks first in the Circuit and 20th nationally in civil filings. The District ranks 13th nationally and first in the Circuit with respect to criminal filings. In terms of pending cases per judgeship, the WDNY ranks 6<sup>th</sup> nationally with 819 cases per judgeship. The Court ranks first in the Circuit with respect to the latter statistic. Overall, civil filings were up 2.6% over the preceding reporting period while criminal filings also increased by 16% for the same

period. These total filing statistics place the Western District 8<sup>th</sup> in the national rankings for this category.

No new judicial officer positions were created in the Western District during this reporting period. Although the Court has been working diligently towards reducing the significant caseload, more help is needed. The Judicial Conference of the United States has recognized this and has recommended, since 1992, that an additional judgeship be created for the Western District of New York. It is only recently that Congress began to create additional judgeships. Fortunately for the Western District, one additional permanent judgeship was included in the bill pending Congressional action in 2004. Weighted filings per judgeship, a statistical factor of great significance when justifying the need for new judgeships, places this Court first in the Circuit and 13th nationally. This district is well above the national average at 603 weighted filings per judgeship versus 588 nationally.

Plans proceed apace with one major construction project in the district. This project, originally designed as an annex to the Michael J. Dillon Courthouse in Buffalo, was subsequently determined to be impractical in light of the September 11th terrorist attacks and increased security regulations for new construction.

The General Services Administration (GSA), the Administrative Office of the U.S. Courts, and the District Court concluded that the project should be scrapped in favor of a separate, stand alone Courthouse. The project's ranking in the Judiciary's five-year plan for courthouse construction projects for Fiscal Year 2003 resulted in a Congressional appropriation for site acquisition and design. These funds became available shortly after October 1, 2002. The General Services Administration has reached agreements with three property owners for the purchase of their parcels of land on which the new courthouse will be constructed. GSA has initiated condemnation proceedings against the remaining four properties which should be finalized in 2005. Demolition of existing structures and site preparation efforts should be getting underway in September, 2005. Construction funding, originally scheduled for appropriation in Fiscal Year 2006, has been delayed until Fiscal Year 2007. The GSA expects to begin construction in January, 2007. Occupancy is planned for November, 2009.

The site selected for the new courthouse is on Niagara Square, the main civic center of downtown Buffalo. The new building will provide courtrooms and chambers for all of the district and magistrate judges in the Buffalo Division, a new grand jury facility, work spaces for the United States Attorney's Office and the Federal Public Defender, and offices for the United States Marshals Service, the District Court Clerk and U.S. Probation and Pretrial Services. The existing federal courthouse, which is a historical building, will be preserved in the new housing plan and will become the



home of the U.S. Bankruptcy Court and other federal agencies. The Dillon Courthouse will continue to provide for the government's needs well into the future.

The Rochester project possesses a lesser ranking in the Judiciary's five-year courthouse construction program. Because of the Judiciary-imposed moratorium on new construction, funding for an annex to the Kenneth B. Keating Federal Building and U.S. Courthouse is not expected until Fiscal Year 2008 at the earliest. It is anticipated that the annex will house four district courtrooms and chambers plus related support office space for the Court and the U.S. Marshals Service. The annex will be connected to the existing facility by way of an atrium.

During Fiscal Year 2004, a number of judicial officers continued their service on national committees, advisory groups and organizations. U.S. Magistrate Judge Hugh B. Scott continued to serve on the District Court Advisory Council to the Administrative Office. Senior District Judge Michael A. Telesca continues his term on the Anti-Terrorist and Removal Court. U.S. Bankruptcy Judge Michael J. Kaplan continued to serve as a member of the Second Circuit's Library Committee. Bankruptcy Judge Carl L. Bucki was selected to serve as a member of the Board of Governors of the National Conference of Bankruptcy Judges. Chief Bankruptcy Judge John C. Ninfo, II continued to serve on the Second Circuit Judicial Council Committee on Bankruptcy. Chief Judge Ninfo continued his efforts to expand the Credit Abuse Resistance Education (CARE) program throughout the Second Circuit and nationally. CARE has received continued support from the Second Circuit. Additionally, Larry Friedman, Director of the Office of the United States Trustee, has highlighted CARE in the U.S. Trustee's national Financial Education Program. The Federal Judicial Center also highlighted CARE by filming a half-hour feature for the FJC's "Court to Court" program, scheduled to be shown in early 2005. Chief Judge Ninfo is pleased to report that CARE is now being presented to students or being developed in twenty-three states.

The District Court, selected as one of ten courts nationwide for early implementation of the new financial accounting system known as FAS<sub>4</sub>T, continued to serve as a mentor court at the request of the Administrative Office. Most notably, during this reporting period, the District Court assisted the Administrative Office in the presentation and development of an implementation strategy for the Eleventh Circuit Court of Appeals whereby the team was tasked with formally documenting issues and specific areas needing to be addressed prior to implementation.

The District Court continued to gain experience with the new Case Management and Electronic Case Files system (CM/ECF). The district ranks ninth among CM/ECF courts nationwide in attorney utilization of electronic filing, with 66% of potential

achieved. 2014 attorneys have registered for e-filing through the CM/ECF system. The district's ability to keep up with its increased workload is due in large part to chambers' and operations staff utilization of the capabilities inherent in CM/ECF. The district's Chief Deputy Clerk, who is the CM/ECF Project Manager, was appointed to the CM/ECF Working Group and is actively involved in that group's discussions and decisions on enhancements to CM/ECF. The district sent three CM/ECF Implementation Team members to the Administrative Office's August 2004 CM/ECF Operational Practices Workshop.

### **Magistrate Judges**

All magistrate judges in the Western District of New York continue to be utilized to the fullest extent possible under existing law. Consent cases before magistrate judges are encouraged and each magistrate judge has a substantial number of consent cases pending. Virtually all discovery matters, including Rule 16 Conferences, are referred to magistrate judges. In many cases, magistrate judges also supervise much of the pre-trial criminal work, including motions. Magistrate judges are also used extensively in settlement conferences.

Because there are 14 state correctional facilities and numerous local correctional facilities in the District, the Court has a significant number of prisoner filings. The Court has successfully experimented with a system for direct assignment of prisoner petitions in habeas corpus cases to magistrate judges in equal proportion to those assigned to district judges. There is a very high rate of consents in these cases which allows for more efficient use of the magistrate judges.

Magistrate judges are an integral and indispensable part of the Court. They also participate with the district judges in all aspects of court management in the district.

### **Statistics**

#### **District Court**

Civil filings for the year ending 9/30/2004 were 1741, which is a 2.6% increase over the prior year's civil filings. Total criminal case filings for the year ending 9/30/2004 were 497, a 16% increase over the prior year. The district is first in the Circuit and 8<sup>th</sup> nationally in percentage change in total filings (civil plus criminal).

In August 2004, a new District Court Case Weighting formula was implemented, which changed this district's ranking from 19<sup>th</sup> to 13<sup>th</sup> in the nation in weighted filings per judgeship for 2004 filings. This change directly influenced the Judicial

Conference's recent decision to change their long-standing recommendation for an additional temporary judgeship for Buffalo to an additional permanent judgeship.

As of September 30, 2004, the district is first in the Circuit and 6<sup>th</sup> in the nation in the number of pending cases per judgeship. Despite this caseload, the district is still first in the Circuit and 15<sup>th</sup> in the country in the number of terminations per judgeship.

Prisoner case filings accounted for 28.3% of the total civil case filings for the reporting period. Prisoner cases account for 34.5% of the district's pending civil caseload.

### **United States Bankruptcy Court Western District of New York**

Paul R. Warren, Clerk of Court, reports that during statistical year 2004 a total of 15,248 bankruptcy cases were filed in the Western District of New York, which represents a district-wide increase of 4.59%. The increase in bankruptcy filings in the Western District continued to exceed the national average, which declined by 2.6%. Chapter 7 cases continue to comprise the majority of cases in the district, representing approximately 75% of the total cases filed. A total of 610 Adversary Proceedings were filed during the reporting period, representing an increase of 15.75% from the previous statistical

According to Bankruptcy Program Indicators for the 2004 statistical year, the Court ranked nationally in the median range with respect to the number of case filings, in the average range for disposition time and in the 75<sup>th</sup> percentile range for pending cases. The Court's active case management of Adversary Proceedings has resulted in it being ranked first in the Circuit with respect to the average age of pending dischargeability cases and second in the Circuit with respect to the average age of other Adversary Proceedings. The Court continued to rank highly in the Circuit in these categories despite the continued increase in caseload and a continued decline in staffing levels.

### **Probation and Pretrial Services**

Joseph A. Giacobbe, Chief Probation Officer, reports that during statistical year 2004, the U.S. Probation and Pretrial Services office continued in the development of its biennial strategic plan which focuses on striving for continuous improvement in every aspect of the functions involved in core areas such as pretrial services, presentence investigation and post sentence supervision. Staff members representing every job type are assigned to work toward the goals that support the outcome areas.

During this reporting period, staff participated in national initiatives. Mr. Giacobbe appeared on an FJTN program designed for chief probation officers addressing officer fitness for duty issues. A senior officer who sits on the Sentencing Commission Advisory Board participated as a panel member on sentencing issues at the National Sentencing Institute.

At the close of statistical year 2004, 861 cases were activated on pretrial release, representing a bail release rate of 67%. The percentage of pretrial defendants who successfully completed supervision was 85%. The majority of violations while on pretrial release were technical violations as opposed to re-arrests. The total number of pretrial service defendants received for supervision during this reporting period was 589, which includes pretrial diversion defendants. Of this number, 407 defendants were referred for substance abuse treatment. A total of 81 pretrial services defendants were referred for mental health treatment.

A total of 103 defendants were released on electronic monitoring surveillance at the pretrial services stage. Defendants paid \$11,872 toward co-payment orders. The successful EMS completion rate is 85%. Use of pretrial EMS resulted in a potential savings to the government of \$90,993.

The presentence investigation unit completed 703 investigations. District-wide, 70% of sentenced defendants were remanded, 30% were placed on probation, 23% were ordered to pay a fine and 18% were directed to make restitution.

During the reporting period, 1,329 post-sentence offenders were under supervision. Of this number, 1,223 offenders, or 95%, completed their term of supervision successfully. A total of 547 offenders received drug treatment, while 156 offenders received mental health treatment. A total of 335 offenders were placed under electronic monitoring conditions which produced a successful completion rate of 95%. Offenders paid \$11,829 towards co-payment orders. The use of post sentence EMS in the district resulted in an approximate savings to the government of \$71,961. A total of 4,500 hours of community service were completed by offenders. Restitution collections totaled \$1,099,836. Fine collections totaled \$112,868 during the same time period.

## **Automation**

### **District Court**

Integrated technology support for the Court continues to evolve as the emphasis on automated systems becomes more pronounced. Additionally, the increased budget

pressures require the court to do more with less resources being made available. The IT staff are striving to meet these challenges.

During the past several years, the Court has embarked on an effort to reduce telecommunications costs across the district. In 2004, the District Court and Bankruptcy Court in the Rochester divisional office consolidated telephone systems and dropped GSA provided dial tone services in favor of a less costly local area provider. The savings achieved from eliminating GSA as the local telephone provider in both Buffalo (eliminated in 2003) and Rochester is conservatively estimated to \$3,700 per month. In addition to these savings, the District Court and Bankruptcy Court IT staff jointly maintain and support the telephone systems which eliminates the need to incur thousands of dollars annually in third party maintenance costs. The Court has also begun to explore the use of Voice Over Internet Protocol (VOIP) technology within each divisional office in an effort to reduce cabling costs and maintenance while at the same time improving telecommunication flexibility.

The Court has also embraced the Telephone Interpreting Program (TIP) to reduce overall interpreter costs. Wireless headsets have been installed in the magistrate judge courtrooms providing access to the TIP provider sites.

Long term courtroom technology projects in Judge Larimer's and Judge Skretny's courtrooms have been completed and the systems are now fully functional and greatly utilized.

The Second Circuit's Committee on Automation has approved the district's remote access plan for access to the Virtual Private Network (VPN). The IT staff have begun to deploy the necessary software to enable all judges and senior administrators to connect to the Judiciary's Data Communications Network (DCN) from remote locations. Given the pressure from Congress to reduce costs through telecommuting, the VPN shows great promise for achieving further reductions in operational costs. Expansion of the VPN to users other than judicial officers and senior managers will improve support efforts and give greater flexibility to the rest of the court staff.

CM/ECF has been operational for one full year. Although the IT department continues to be faced with compatibility issues with browsers and printing, on the whole, the project seems to be a great success. While the ability to obtain a variety statistical reports disappeared when the conversion from ICMS to CM/ECF was made, the IT staff have been working diligently to replace the quality control and statistical reporting capability through the use of Crystal Reports and PERL software packages.

Throughout the development of the 50% construction documents for the new Buffalo courthouse, the IT staff have played an integral role in planning for the

technology needs of the new facility. The staff have been working directly with the architects, the AO's technology professionals, and their contractors to insure that all available technology enhancements are considered and provided for in the designs. These efforts will continue throughout 2005 as the architects develop the drawings to the 100% construction ready state.

## **Bankruptcy Court**

The Bankruptcy Court continued to focus its IT efforts and resources on CM/ECF. Mandatory electronic filing for attorneys became effective October 1, 2004. During Statistical Year 2004, CM/ECF attorney-filer training was provided by the court to 483 attorneys, as compared to 130 attorneys trained during the previous year. In addition, the Court issued e-filing registration accounts to 661 attorneys, as compared to 90 attorneys issued registration accounts during the previous year. In addition, during 2004, the Court adopted a standing order to permit related e-filings by institutional creditors. As a result, 261 creditor/limited participant filers were registered and began to file claims and claim related documents electronically.. The Court installed computers and scanners in the public intake areas to assist registered users in complying with the court's electronic filing requirement. Electronic filing appears to be successful, as is evidenced by the more than 350,000 documents, consisting of over 1,300,000 pages, electronically filed during the reporting period. The Court implemented two release cycles of CM/ECF and is currently using version 2.6. The Bankruptcy Court, in partnership with the District of Delaware Bankruptcy Court, is proud to have developed a significant enhancement to the CM/ECF program which the courts named "Reduced Paper Module" (RPM). RPM was developed to eliminate redundant paper notices in response to negative feedback voiced by practicing attorneys in many districts nationwide since the release of CM/ECF. By eliminating the redundant and often unwanted paper notices, RPM has the added potential to generate significant postage and noticing cost savings for the Judiciary. Bankruptcy courts have been encouraged by the Bankruptcy Noticing Working Group to implement RPM.

## **Financial Operations**

### **District Court**

The financial department experienced many challenges and achieved numerous accomplishments in the past year. The greatest challenges involved personnel-related issues. The continuing vacancies of one part-time CJA Clerk and one part-time Financial Assistant were intensified by two extended absences (4 months and 6 months respectively) and one termination resulting in the transfer of one full-time

position from the operations staff. This reduced staffing was extremely demanding and many extra hours were devoted to maintaining relatively current workloads.

Despite this, workload measures indicate the volume of financial transactions continued to peak during fiscal year 2004. Fees forwarded to the United States Treasury, including payments to the Crime Victims Fund, totaled over \$6.3 million representing a 112% increase over the prior year, with the actual number of receipts issued (10,654) increasing by 2%. This growth appears to be the result of increased payments received from the Bureau of Prisons each month, which arose by 13%, as well as an increase in joint and several restitution payments which increased by 11%. Additionally, registry deposits grew by 256% with \$4.5 million now being collateralized through the Federal Reserve.

Nothing on the horizon signals a slow down of the surging trends in criminal monetary debt statistics experienced in the past few years, which remains a key initiative within the department. The volume of criminal debt activity overseen by the financial staff significantly increased again this year particularly due to joint and several restitution cases. The current caseload involves the monitoring, tracking and collections on debt totaling almost \$30 million for these types of cases alone which represents an 11% increase in active cases over last year. Furthermore, continuing efforts with the U.S. Attorney and Probation Offices to resolve issues immediately after sentencing have resulted in the ability to increase total restitution disbursements by 83%. Overall, the financial department is responsible for monitoring, tracking and paying over 12,600 victims on a regular basis.

During the year, the Court's financial staff processed over 6,100 payment vouchers and issued 11,329 checks representing a decrease of 13% primarily due to limited spending within the Judiciary's current budget environment. Combined Registry and Treasury disbursements, however, exceeded \$10 million which is actually an increase of 57%. This increase results directly from the receipt and transfer of \$3.5 million to our local depository, Greater Buffalo Savings Bank, for interpleader funds in two pending civil matters.

The Court's Criminal Justice Act program maintained its commitment to the timely processing of CJA payment vouchers. A total of 414 vouchers were certified for payment during the year, with over \$1.3 million being paid to attorneys, experts and related service providers on behalf of indigent defendants. This activity represented increases of 7% and 1% respectively primarily due to the authorization of interim payments to multiple panel attorneys assigned in the death penalty case, USA vs. Diaz, et al.

Last year also brought many FAS<sub>4</sub>T-related activities (Financial Accounting System for Tomorrow). This district assisted the Administrative Office in the presentation and development of an implementation strategy for the 11<sup>th</sup> Circuit Court of Appeals whereby the team was tasked with formally documenting issues and specific areas needing to be addressed prior to implementation. During March, staff successfully completed the conversion to FAS<sub>4</sub>T Release 3.7.3.2, as well as two subsequent versions 2.2 and 2.3 a few months later. At the request of the Administrative Office, staff also completed the testing of a new accounting field for FJC travel, and provided recommendations for modifications prior to national release in June. That same month, the setup, testing, and implementation of a new document type for Bankruptcy Court's case-related payments was completed.

Technological advancements were also realized in the area of Treasury deposits. Early in the year, financial staff successfully implemented one of the Department of Treasury's newest cash management tools, CASH-LINK II, which provides detailed information related to transactions processed by financial institutions for deposits. This has allowed staff to investigate deposit differences between the Court and Treasury's accounting records. A procedure manual was subsequently developed for accessing the system, researching the database, and generating the necessary reports now used on a daily basis.

Additionally, staff was asked to formally review and offer suggestions to the Administrative Office on two exposure drafts for revisions to the *Guide to Judiciary Policies and Procedures*. The first draft pertained to the Criminal Justice Act reflected in Volume I, Chapter VII, and the other draft applied to financial management issues, specifically on the subject matters regarding receipting, disbursing, and reporting, also under Chapter VII.

The financial staff also received numerous hours of training that addressed the newest release of CASH-LINK II; FAS<sub>4</sub>T migration training; human resources planning in austere budget times; and implementing telework in the Judiciary through successful strategic techniques and tools, offered through the FJTN. Additionally, the Financial Operations Supervisor was invited to attend the Department of Justice Criminal Collection Issues Regional Training program offered to the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Circuits. Many fresh ideas were gained that have already proven useful to this district.

It goes without saying that throughout the busyness experienced this year, the financial staff was never willing, under any circumstance, to compromise the quality of services and support provided to the judges, the bar, and the public.

## **Bankruptcy Court**



The Bankruptcy Court continued to adopt initiatives intended to cultivate a productive stewardship environment, with regular financial, budget and procurement briefings between the court and senior administrative staff. The Court's inventory control system was the subject of a Court to Court program taped by the FJC in October, 2004 (to be aired in 2005). Several courts have reported very positive property management audit experiences when using the Court's inventory control system. It is noted that the software used for this program is free-ware, an important consideration in the present fiscal climate. Four clerk's office staff members participated in the first phase of the Contracting Officer Certification Program, by attending a week-long program sponsored by the Second Circuit. The Court's goal is to obtain contracting officer certification by the January, 2006 deadline established by the AO. During the reporting period, there was a significant increase in the use of credit cards by attorneys for payment of filing fees, as those attorneys took advantage of the ability to e-file documents. Approximately 40% of all fees collected were paid by attorneys using credit cards, nearly double the amount collected in the previous year. The decline in payments by check and cash to pay filing fees has allowed the Court to discontinue the use of an armored car service for transportation of negotiable instruments.

## **JUDICIAL ADMINISTRATION**

### **JUDICIAL COUNCIL OF THE SECOND CIRCUIT**



**Top row, left to right:**

Circuit Judge Chester J. Straub  
Chief Judge Robert N. Chatigny, District of Connecticut  
Circuit Judge Guido Calabresi  
Circuit Judge Dennis Jacobs  
Circuit Judge Rosemary S. Pooler  
Chief Judge William Sessions III, District of Vermont  
Circuit Judge Robert D. Sack

**Bottom row, left to right:**

Chief Judge Michael B. Mukasey, Southern District of New York  
Circuit Judge José A. Cabranes  
Chief Circuit Judge John M. Walker, Jr.  
Chief Judge Edward R. Korman, Eastern District of New York  
Chief Judge Richard J. Arcara, Western District of New York

**Absent:**

Chief Judge Frederick J. Scullin, Jr., Northern District of New York

**SECOND CIRCUIT JUDGES SERVING ON U.S. JUDICIAL  
CONFERENCE COMMITTEES AND SPECIAL COURTS  
MARCH 2005**

John M. Walker, Jr.	Court of Appeals	The Executive Committee
Jed S. Rakoff	S.D.N.Y.	Committee on the Administration of the Bankruptcy System
Victor Marrero	S.D.N.Y.	Committee on the Budget
Denis R. Hurley	E.D.N.Y.	Committee on Codes of Conduct
Sonia Sotomayor	Court of Appeals	Committee on Court Administration & Case Management
Norman A. Mordue	N.D.N.Y.	Committee on Criminal Law
John Gleeson	E.D.N.Y.	Committee on Defender Services
Janet C. Hall	Connecticut	Committee on Federal-State Jurisdiction
Robert D. Sack	Court of Appeals	Committee on Financial Disclosure
Rosemary S. Pooler	Court of Appeals	Committee on Information Technology
Janet Bond Arterton	Connecticut	Committee on International Judicial Relations
Robert A. Katzmann	Court of Appeals	Committee on the Judicial Branch
William K. Sessions, III	Vermont	Committee on the Judicial Branch
Nicholas G. Garaufis	E.D.N.Y.	Committee on Judicial Resources
Nina Gershon	E.D.N.Y.	Committee on the Administration of the Magistrate Judiciary
Ralph K. Winter, Chair	Court of Appeals	Committee to Review Circuit Council Conduct & Disability
J. Garvan Murtha	Vermont	Committee on Rules of Practice & Procedure

Mark R. Kravitz	Connecticut	Committee on Rules of Practice & Procedure
Laura Taylor Swain	S.D.N.Y.	Advisory Committee on Bankruptcy Rules
José Cabranes	Court of Appeals	Advisory Committee on Civil Rules
Shira A. Scheindlin	S.D.N.Y.	Advisory Committee on Civil Rules
David G. Trager	E.D.N.Y.	Advisory Committee on Criminal Rules
David G. Trager	<i>Ex-Officio</i> E.D.N.Y.	Advisory Committee on Evidence Rules
Richard C. Wesley	Court of Appeals	Committee on Security & Facilities

### COMMITTEES OF THE SECOND JUDICIAL CIRCUIT OF THE UNITED STATES

Sidney H. Stein	S.D.N.Y.	Bankruptcy Committee
Rosemary S. Pooler, Chair	Court of Appeals	Information Systems & Technology Committee
José A. Cabranes, Chair	Court of Appeals	Library Committee
Richard C. Wesley, Chair	Court of Appeals	Space & Facilities Committee
Carol Amon, Chair	E.D.N.Y.	Committee on Judges' Obligation under 28 U.S.C. § 455
Robert D. Sack, Chair	Court of Appeals	History & Commemorative Events Committee
John M. Walker, Jr., Chair	Court of Appeals	Public Affairs Committee
Alfred V. Covello, Chair	District of Connecticut	Committee on Local Holding Procedure for Filing Motions
Robert N. Chatigny, Chair	District of Connecticut	Connecticut Federal/State Judicial Council
William K. Sessions, III, Chair	District of Vermont	Vermont Federal/State Judicial Council
George B. Daniels, Chair	S.D.N.Y.	New York Federal/State Judicial Council

### SECOND CIRCUIT JUDICIAL CONFERENCE AND JUDICIAL COUNCIL

The Judicial Conference of the Second Judicial Circuit is held pursuant to 28 U.S.C. § 333. It is composed of the Judges of the Circuit and representatives of the

Administrative Office of the United States Courts, The Federal Judicial Center, the bar associations and the law schools in the Circuit, and other invited representatives of the Bench and Bar. The 2004 judges-only Circuit-wide Judicial Conference was cancelled in an effort to reduce burdens on the judiciary's national budget.

On September 29, 2004 Chief Judge Walker, Second Circuit Judge Dennis Jacobs, and New Hampshire Superior Court Judge Patricia C. Coffey, Circuit Trustee of the American Inns of Courts Foundation, presented the third annual Second Circuit American Inns of Court Professionalism Award to Mr. Thomas J. Concannon. Circuit Judge Dennis Jacobs, who chaired the selection committee, introduced Mr. Concannon and explained to the audience the basis for his selection by the Committee.

Principal items of discussion at the Judicial Council meetings during the year included judicial misconduct complaints, the states of the dockets of the courts of the Circuit, and Circuit-wide space, security and automation issues. The Council was especially concerned about the Judiciary's fiscal situation. In 2004, the judiciary laid off about 1,300 employees out of a nationwide workforce of 22,000. The largest expenditures, nationally, are employee salaries and the cost of courthouse space rentals. The Council determined that it was necessary to proceed with a new leasehold in Middletown, New York. The space will be occupied by a part-time Magistrate Judge, the Probation office for the Southern District of New York and the United States Marshal Service. Construction on the Buffalo courthouse was delayed to seek construction monies in FY2007. The District of Connecticut received Council permission to continue to hold space in the Waterbury, CT facility until such time as it was determined whether Senior Judge Dominic Squatrito's replacement would be located in Waterbury or Hartford.

The Council approved the closure of three video conferencing sites in the Second Circuit. The sites are: Central Islip, New York; New Haven, Connecticut; and Brattleboro, Vermont.

The Council approved the request to create an independent Vermont Federal Public Defender Office. The Federal Public Defender (FPD) for the Northern District of New York oversees the District of Vermont as part of a combined office. Chief Judge William Session provided the Council with a statistical analysis of the work in the Vermont office which support the request for an independent facility. The caseload is sufficient to justify the split and Chief Judge Scullin concurred.

## **PROTECTING THE QUALITY OF THE JUDICIAL PROCESS**

### **Attorney Discipline**

Attorney discipline in the Second Circuit is carried out pursuant to local rules adopted by the individual courts.

At the appellate level, the Second Circuit Committee on Admissions and Grievances was formed to assist the Court of Appeals in administering Local Rule 46(f)-(h). Pursuant to Local Rule 46(f), in 2004, the Court took reciprocal action to enforce disciplinary orders entered in other jurisdictions against two members of the Court of Appeals' bar. The Court disbarred two attorneys.

In the District of Connecticut, Local Rule 3 provides for a grievance committee with nine members, who serve for three-year terms. Two attorneys appointed by the Court serve as counsel to the committee. The Court opened 17 grievance cases; 17 grievance cases were closed. Of the 17 closed cases, eight were dismissed; suspension orders entered in seven cases; one resulted in a resignation and one resulted in disbarment. At year-end, 19 grievances were pending.

Attorney discipline in the Southern and Eastern Districts of New York is governed by a local rule common to the two districts. Effective in April, 1997, the operative provision is Local Civil Rule (1.5). Pursuant to subsection (a) of the rule, the Southern District of New York has established a committee on grievances composed of six district judges and one magistrate judge, which is chaired by Judge Jed S. Rakoff. In addition, a panel of attorneys is available to advise and assist the committee on grievances by investigating complaints and serving on hearing panels. In 2004, there were 77 disbarments, 35 suspensions, four interim suspensions, eight public censures and nine reinstatements in the Southern District. The Court had 7 cases pending at the end of the calendar year. There were 35 Statements of Discipline issued to attorneys.

In the Eastern District of New York, 87 disciplinary orders were issued in 2004: 57 disbarments, 28 suspensions, and two censures. Chief Judge Edward R. Korman is responsible for oversight of attorney disciplinary matters and is assisted by a committee of three judges.

There were no disbarments or suspensions in the Western District of New York. The District had five attorney resignations.

During 2004, the District of Vermont had a total of six attorney suspensions and two separate public reprimands. No disbarments occurred during the year. All attorney discipline actions which occurred within the district involved reciprocal proceedings taken in conjunction with the State of Vermont's Professional Conduct Board and no disciplinary proceedings originated solely within the District of Vermont's federal Bar.

In calendar year 2004 the Northern District had the following attorney discipline cases: five attorneys were disbarred; thirteen attorneys were suspended; a stay of suspension was issued for four attorneys; two attorneys were censured; two attorneys were sanctioned; six attorneys were reinstated; and three attorneys resigned.

### **Judicial Misconduct**

The Judicial Council's Reform and Judicial Conduct and Disability Act of 1981, 28 U.S.C. §372C), creates a mechanism for addressing complaints of judicial misconduct or disability. The statute's objective is to correct conditions that interfere with the proper administration of justice. To facilitate that end, the Act sets out procedures for reviewing allegations that a federal judge "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts "or" is unable to discharge all the duties of office by reason of physical or mental disability."

Under the Act, the Judicial Council of the Circuit has primary responsibility for resolving complaints. The Second Circuit's Judicial Council has adopted Rules Governing Complaints Against Judicial Officers that closely follow a national set of "illustrative" rules. The Local Rules, together with the forms to be used in filing complaints, are available from the Court of Appeals Clerk's Office.

Complaints are filed with the Clerk of the Court of Appeals and are reviewed by the Chief Judge of the Circuit. The statute permits the Chief Judge, after a timely review, to dismiss complaints that are not covered by the statute, such as "frivolous" complaints and those "directly related" to the merits of a decision or ruling. The Circuit Executive's Office conducts initial staff review on behalf of the Chief Judge.

Complainants may petition for review of the Chief Judge's dismissal orders. Petitions for review are considered by a six-member panel of the Judicial Council. The full membership of the Council will consider a petition for review upon the vote of any member of the review panel.

If a complaint is certified by the Chief Judge for investigation, it is sent to a statutory Committee on Judicial Conduct. After the Committee reports, the Judicial Council conducts any additional investigation it considers necessary and then may take appropriate action. Options available to the Council include dismissing the complaint, certifying the judge's disability, asking the judge to retire, temporarily suspending new case assignments, and public or private censure or reprimand. 28 U.S.C. §372(c)(6)(B) &(C). The Judicial Council may also refer the entire matter to the Judicial Conference of the United States.

During 2004, 83 judicial misconduct complaints were filed in the Second Circuit.

## **OPERATIONAL SUPPORT**

### **UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT 2004 FAIR EMPLOYMENT PRACTICES REPORT October 1, 2003 - September 30, 2004**

The Court of Appeals for the Second Circuit is made up of the offices of the Circuit Executive, the Clerk, Legal Affairs, the Circuit Library, and the Second Circuit Judges and their Chambers. The Equal Opportunity and Employment Resolution Plan for the United States Court of Appeals for the Second Circuit became effective January 1, 1999, replacing the Court's Affirmative Action Plan which was in effect since 1980. The Court's Equal Opportunity and Employment Resolution Plan is adapted from the Federal Judiciary Model Employee Dispute Resolution Plan. The Plan applies to all judicial and nonjudicial officers and employees of the Court, to applicants for employment with the Court, and to former employees with respect to events occurring during their employment. It specifically does not apply to externs, to law clerks of judicial officers or applicants for such positions, to private attorneys who represent indigent defendants under the Criminal Justice Act or applicants for such positions, or to any other individual who is not an officer or employee of the Court. The Court's Plan reflects its long-standing objective of providing a safe work environment and the widest possible employment and advancement opportunities, objectives shared by all courts in this Circuit. During this reporting period, no changes were made to the Second Circuit Court's Plan.

As of September 30, 2004 there were 24 judges on board and 257 personnel employed by the Court of Appeals in the offices of the Circuit Executive, the Clerk, Legal Affairs, the Circuit Library, and chambers' staff of the Court of Appeals judges. Of that number, 130 were male and 151 were female. The total number of African Americans represented was 52, Hispanics 26, and there were 14 Court personnel who were identified as Asian. The minority representation in the Court decreased by 2% to 33%. Two percent of Court personnel reported disabilities, one employee retired and no EDR complaints were filed during this reporting period.



Women occupied 54% of all positions in the Court and 43% of all professional positions. Among all the professional positions, African-Americans, Hispanics, and Asians comprised 12%.

The Second Circuit Court of Appeals continues to make concerted efforts to recruit qualified minority and women candidates for positions at all levels. Greater access to technology, specifically access to the Internet, has enhanced the Court’s ability to reach out to a wider population. In order to keep current with advancements and technology, the Court continues to update its Intranet and Internet website.

In addition to posting position vacancies in nationwide and local publications, the Court’s recruitment efforts are directed toward both local and national educational institutions. In recruiting for law clerk positions in the Office of Legal Affairs, the Court of Appeals participates in on-campus career days and interviewing at local law schools.

The Second Circuit’s internship program continued to expand to local high schools, colleges, law schools and community programs. The Court of Appeals participates in these institutions’ placement programs and, in doing so, provides interns with an understanding of the Court and its operations as well as an opportunity to develop marketable skills. In fact, many of the interns obtain educational credits through their internships with the Court. In 2004, the Court of Appeals and several district courts throughout the Second Circuit hosted “Take Our Children to Work Day” programs and, in conjunction with the New York Women’s Bar Association, opened the program to high schools within each district. During the year, the Court of Appeals also provided opportunities for students in high schools and law schools to tour the Thurgood Marshall United States Courthouse and visit with members of the Court.

**Table 39**  
**FAIR EMPLOYMENT PRACTICES**  
**2004**

SECOND CIRCUIT COURT	GENDER			RACE					
	TOTAL	MALE	FEMALE	WHITE	AFRICAN AMERICAN	HISPANIC	ASIAN	NATIVE AMERICAN	PACIFIC ISLANDER

OF APPEALS												
% of Total	281	130	151	189	52	26	14	0				
	100%	46%	54%	67%	19%	5%	0.0%	0.0%				
DIST. CT. CONN.	273	81	192	218	36	14	4	0				
% of Total	100%	30%	70%	80%	13%	5%	1.5%	0%				
EASTERN DIST. NY	673	228	445	405	144	80	43	0				
% of Total	100%	34%	66%	60%	21%	12%	6.5%	0%				
NORTHERN DIST. NY	263	104	159	246	8	6	2	1				
% of Total	100%	40%	60%	93%	3%	2%	1.5%	.5%				
SOUTHERN DIST. NY	805	376	429	473	173	105	53	0				
% of Total	100%	47%	53%	59%	21.5%	13%	6%	0%				
DIST. CT. VERMONT	69	30	39	68	0	0	1	0				
% of Total	100%	43%	57%	98.5%	0%	0%	1.5%	0%				
WESTERN DIST. NY	251	97	154	199	20	18	11	3				
% of Total	100%	39%	61%	79%	8%	7%	4.5%	1.5%				

**SECOND CIRCUIT TOTALS**

CIRCUIT WIDE	2615	1046	1569	1798	433	249	128	4				
% of Total	100%	40%	60%	69%	17%	9%	5%	0%				
ALL DISTRICTS	2334	916	1418	1609	381	223	114	4				
% of Total	100%	39%	61%	69%	16%	9.5%	5.5%	0%				
COURT OF APPEALS	281	130	151	189	52	26	14	0				
% of Total	100%	46%	54%	67%	19%	5%	0%	0%				

## JUDGES AND JUDGESHIPS \*

District	Judgeship Summary					
	Auth. Judges	Active Judges	Vacancies	Senior Judges	Bank'cy Judges	Magistrate Judges
<b>Connecticut</b>	8	7	1	6	4***	5
<b>EDNY</b>	15	13	2	8	8***	14
<b>NDNY</b>	5	4	0	3	2	6**
<b>SDNY</b>	28	28	0	21	9***	15***
<b>Vermont</b>	2	2	0	0	1	1
<b>WDNY</b>	4	4	0	3	3	6***
-----						
Total Dist. Ct.	62	59	3	41	27	47
Total Court of Appeals	13	13	0	10	--	--
-----						
Total 2nd Circuit	75	72	3	51	27	47

\*As of May 1, 2005

\*\*Includes part-time magistrate judges, and/or recalled magistrate judge

\*\*\*Includes recalled retired bankruptcy judges

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT\***  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, New York 10007

**John M. Walker, Jr., Chief Judge**

Dennis Jacobs  
Guido Calabresi  
José A. Cabranes  
Chester J. Straub  
Rosemary S. Pooler

Sonia Sotomayor  
Robert A. Katzmann  
Barrington D. Parker, Jr.  
Reena Raggi  
Richard C. Wesley

Robert D. Sack

Peter W. Hall

**Senior Judges**

Wilfred Feinberg  
James L. Oakes  
Thomas J. Meskill  
Jon O. Newman  
Amalya L. Kearse

Richard J. Cardamone  
Ralph K. Winter  
Roger J. Miner  
Joseph M. McLaughlin  
Pierre N. Leval

Karen Greve Milton, Circuit Executive

John Coffey, Deputy Circuit Executive

Janice D. Kish, Assistant Circuit Executive, Administration

Raouf Farag, Acting Assistant Circuit Executive, Automation & Technology

Scott Teman, Assistant Circuit Executive, Space & Facilities

Evelyn Ortiz, Director of Human Resources

Richard K. George, Administrative Services Manager

Elizabeth Cronin, Director of Legal Affairs

Roseann B. MacKechnie, Clerk of Court

Margaret J. Evans, Circuit Librarian

\* As of May 1, 2005

**UNITED STATES DISTRICT COURTS**

**District of Connecticut\***

**141 Church Street**

**New Haven, Connecticut 06510**

**(203) 773-2140**

**Robert N. Chatigny, Chief Judge**

Alvin Thompson  
Janet Bond Arterton  
Janet C. Hall

Christopher F. Droney  
Stefan R. Underhill  
Mark R. Kravitz

**Senior Judges**

Ellen Bree Burns  
Warren W. Eginton  
Peter C. Dorsey

Alan H. Nevas  
Alfred V. Covello  
Dominic J. Squatrito

**Bankruptcy Judges**

**Albert S. Dabrowski, Chief Judge**

Robert L. Krechevsky\*\*  
Lorraine Murphy Weil

Alan H. W. Shiff

**Magistrate Judges**

Thomas P. Smith  
Joan Glazer Margolis  
Holly Fitzsimmons

Donna F. Martinez  
William Garfinkel

Kevin F. Rowe, Clerk of District Court  
Debra Hunt, Clerk of Bankruptcy Court  
Maria Rodrigues McBride, Chief Probation Officer  
Thomas G. Dennis, Federal Public Defender  
Barbara Close, Branch Librarian, Hartford, CT  
Carole Martin, Branch Librarian, New Haven, CT

**\*As of May 1, 2005**

**\*\*Recalled Retired Judge**

**UNITED STATES DISTRICT COURTS**

**Eastern District of New York\***

**225 Cadman Plaza East**

**Brooklyn, New York 11201**

**Phone: (718) 260-2260**

**Fax: (718) 260-2622**

**Edward R. Korman, Chief Judge**

Raymond J. Dearie  
Carol B. Amon  
David G. Trager  
Joanna Seybert  
Frederic Block  
Allyne R. Ross

John Gleeson  
Nina Gershon  
Nicholas G. Garaufis  
Sandra J. Feuerstein  
Sandra L. Townes  
Dora L. Irizarry

**Senior Judges**

Jack B. Weinstein  
Thomas C. Platt  
Sterling Johnson, Jr.  
Charles P. Sifton

I. Leo Glasser  
Leonard D. Wexler  
Denis R. Hurley  
Arthur D. Spatt

**Bankruptcy Judges**

**Conrad B. Duberstein\*\*, Chief Judge**

**Jerome Feller  
Dorothy D.T. Eisenberg\*\*  
Melanie L. Cyganowski**

**Stan Bernstein  
Carla E. Craig  
Dennis E. Milton  
Elizabeth S. Stong**

**Magistrate Judges**

**Michael L. Orenstein, Chief Magistrate Judge**

**Steven M. Gold  
Marilyn D. Go  
Arlene R. Lindsay  
Roanne L. Mann  
Joan M. Azrack  
Viktor V. Pohorelsky**

**Robert M. Levy  
E. Thomas Boyle  
Cheryl L. Pollak  
William D. Wall  
Lois Bloom  
James Orenstein  
Kiyo A. Matsumoto**

**James E. Ward, Jr. District Executive  
Robert C. Heinemann, Clerk of District Court  
Joseph P. Hurley, Clerk of Bankruptcy Court  
Tony Garoppolo, Chief Probation Officer  
Cynthia Lawyer, Chief Pretrial Services Officer  
John Saiz, Branch Librarian, Brooklyn, NY  
Astrid Stalis, Branch Librarian, Central Islip, NY**

**\*As of May 1, 2005**

**\*\*Recalled Retired Judge**

**UNITED STATES DISTRICT COURTS**

**Northern District of New York\***

**James T. Foley Courthouse**

**445 Broadway**

**Albany, NY 11207**

**Phone: (518) 257-1800**

**Fax: (518) 257-1801**

**Frederick J. Scullin, Jr., Chief Judge**

**Lawrence E. Kahn  
David N. Hurd**

**Norman A. Mordue  
Gary L. Sharpe**

**Senior Judges**

Thomas J. McAvoy  
Neal P. McCurn

Howard G. Munson

**Bankruptcy Judges**  
**Stephen D. Gerling, Chief Judge**

Robert E. Littlefield

**Magistrate Judges**

Gustave J. DiBianco  
David R. Homer  
George H. Lowe

David E. Peebles  
Randolph F. Treece  
Larry A. Kudrle\*\*\*

Lawrence Baerman, Clerk of District Court  
Richard G. Zeh, Sr., Clerk of Bankruptcy Court  
Paul W. DeFelice, Chief Probation Officer  
Alexander Bunin, Federal Public Defender

**\*As of May 1, 2005**

**\*\*\*Part-Time**

**UNITED STATES DISTRICT COURT**  
**Southern District of New York\***  
**United States Courthouse**  
**500 Pearl Street**  
**New York, New York 10007**  
**Phone: (212) 805-0500**  
**Fax: (212) 805-0383**

**Michael B. Mukasey, Chief Judge**

Charles L. Brieant  
Kimba M. Wood  
Loretta A. Preska  
Deborah A. Batts  
Lewis A. Kaplan  
Denise Cote  
Denny Chin  
Shira A. Scheindlin  
Sidney H. Stein  
Barbara S. Jones  
Jed S. Rakoff  
Richard Conway Casey

Alvin K. Hellerstein  
Richard M. Berman  
Colleen McMahon  
William H. Pauley, III  
Naomi Reice Buchwald  
Victor Marrero  
George B. Daniels  
Gerard E. Lynch  
Laura Taylor Swain  
P. Kevin Castel  
Richard J. Holwell  
Stephen C. Robinson  
Kenneth M. Karas

Paul A. Crotty

### Senior Judges

Charles M. Metzner  
Constance Baker Motley  
Morris E. Lasker  
Thomas P. Griesa  
Robert L. Carter  
Kevin Thomas Duffy  
William C. Conner  
Richard Owen  
Gerard L. Goettel  
Charles S. Haight, Jr.

Robert W. Sweet  
Leonard B. Sand  
John E. Sprizzo  
Shirley Wohl Kram  
John F. Keenan  
Peter K. Leisure  
Louis L. Stanton  
Miriam Goldman Cedarbaum  
Robert P. Patterson, Jr.  
Lawrence M. McKenna  
Harold Baer, Jr.

### Bankruptcy Judges

**Stuart M. Bernstein, Chief Judge**

Burton R. Lifland\*\*  
Prudence Carter Beatty  
Adlai Hardin, Jr.  
Arthur J. Gonzalez

Cecelia G. Morris  
Robert E. Gerber  
Allan L. Gropper  
Robert D. Drain

### Magistrate Judges

**Andrew Peck, Chief Magistrate Judge**

Theodore W. Katz  
Michael H. Dolinger  
James C. Francis, IV  
Mark D. Fox  
Martin R. Goldberg\*\*\*  
Ronald L. Ellis  
Lisa Margaret Smith

Douglas F. Eaton  
Henry B. Pitman  
George A. Yanthis  
Kevin N. Fox  
Frank Maas  
Debra Freeman  
Gabriel W. Gorenstein

Clifford P. Kirsch, District Executive  
J. Michael McMahon, Clerk of District Court  
Kathleen Farrell-Willoughby, Clerk of Bankruptcy Court  
Chris Stanton, Chief Probation Officer  
Dennis Spitzer, Chief Pretrial Services Officer  
Kenneth Edmonds, Branch Librarian

\*As of May 1, 2005

\*\*Retired Recall Judge

\*\*\*Part-Time



**UNITED STATES DISTRICT COURTS  
District of Vermont\*  
506 Federal Building and Courthouse  
Burlington, Vermont 05402-0945**

**William Sessions, III, Chief Judge  
U.S. District Judge**

J. Garvan Murtha

**Bankruptcy Judge**

Colleen A. Brown

**Magistrate Judge**

Jerome J. Niedermeier

Richard P. Wasko, Clerk of District Court  
Thomas J. Hart, Clerk of Bankruptcy Court  
Philip K. Albertson, Chief Probation Officer  
Vacant, Federal Public Defender

**\*As of May 1, 2005**

**UNITED STATES DISTRICT COURTS  
Western District of New York\*  
U.S. Courthouse  
68 Court Street  
Buffalo, New York 14202  
(716) 551-4211**

**Richard J. Arcara, Chief Judge**

William M. Skretny  
Charles J. Siragusa

David G. Larimer

**Senior Judges**

John T. Curtin  
John T. Elfvin

Michael A. Telesca

**Bankruptcy Judges  
John C. Ninfo, II, Chief Judge**

Michael J. Kaplan

Carl L. Bucki

## Magistrate Judges

Leslie G. Foschio  
Hugh B. Scott  
Jonathan W. Feldman

H. Kenneth Schroeder, Jr.  
Marian W. Payson  
Victor E. Bianchini\*\*

Rodney C. Early, Clerk of District Court  
Paul R. Warren, III, Clerk of Bankruptcy Court  
Joseph A. Giacobbe, Chief Probation Officer  
Joseph B. Mistrett, Federal Public Defender  
Diane Zientek, Branch Librarian, Buffalo, NY

**\*As of May 1, 2005**

**\*\* Recalled Retired Judge**

# THE SECOND JUDICIAL CIRCUIT OF THE UNITED STATES

## Judicial Status Update\*

### New Appointments

Court of Appeals for the Second Circuit	Circuit Judge Peter W. Hall
Southern District of New York	District Judge Kenneth M. Karas
Eastern District of New York	District Judge Sandra L. Townes
Eastern District of New York	District Judge Dora L. Irizarry
Eastern District of New York	Magistrate Judge James L. Orenstein
Eastern District of New York	Magistrate Judge Kiyoo Matsumoto

### Reappointments

Southern District of New York	Magistrate Judge Henry Pitman
District of Connecticut	Magistrate Judge William I. Garfinkel

### Senior Status

District of Connecticut	District Judge Dominic J. Squatrito
Southern District of New York	District Judge Harold Baer, Jr.

### Retirements

Southern District of New York	Bankruptcy Judge Cornelius Blackshear
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## Deaths

Court of Appeals for the Second Circuit  
Southern District of New York  
Southern District of New York  
Eastern District of New York

Circuit Judge Ellsworth VanGraafeiland  
District Judge Whitman Knapp  
District Judge Milton Pollack  
Magistrate Judge A. Simon Chrein

**\*As of May 1, 2005**

## **STATISTICS\***

**\*Adobe Acrobat Reader Required**