Dr. Richard Cordero, Esq.

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
DrRCordero@Judicial-Discipline-Reform.org
tel. (718) 827-9521

Local Rule of Civil Procedure 5.1(h), WDNY requires exceedingly detailed facts to file a RICO claim, thus violating notice pleading under FRCivP, impeding in practice its filing, and protecting the participants in a bankruptcy a fraud scheme, the secrecy of which is protected by Local Rule 83.5 banning cameras and recording devices from the Court and its 'environs'

excerpt from Appellant's brief in
Dr. Richard Cordero v. David and Mary Ann DeLano, dkt. 06-4780-bk, CA2

1. The General Rules of Pleading of FRCivP 8(a)(2) ask only for "a short and plain statement of the claim showing that the pleader is entitled to relief"; and 8(e) adds that "each averment of a pleading shall be simple, concise, and direct".

2. For its part, FRCivP 83(a)(1) provides that "A local rule shall be consistent with –but not duplicative of- Acts of Congress and rules adopted under 28 U.S.C. §2072 and 28 U.S.C. §2075".

3. As stated in the Advisory Committee Notes on the 1985 Amendment to Rule 83, local rules shall "not undermine the basic objective of the Federal Rules", which FRCivP 84 sets forth as "the simplicity and brevity of statement which the rules contemplate". Thereby the national Rules aim at preventing that a local rule with "the sheer volume of directives may impose an unreasonable barrier". (Advisory Committee Notes on the 1995 Amendments to Rule 83) In that vein, the court in *Stern v. U.S. District Court for the District of Massachusetts*, 214 F.3d 4 (1st Cir. 2000) stated that "Even if a local rule does not contravene the text of a national rule, the former cannot survive if it subverts the latter's purpose".

4. Yet such barrier is precisely what the District Court, WDNY, erects with its Local Rule of Civil Procedure 5.1(h) [1], which requires a party to provide over 40 discrete pieces of factual information to plead a claim under 18 U.S.C. §1961 et seq. on Racketeer Influenced and Corrupt Organizations (1970), RICO [2]. This contravenes the statement of the Supreme Court that to provide notice, a claimant need not set out all of the relevant facts in the complaint (*Atchison, Topeka & Santa Fe Ry. v. Buell*, 480 U.S. 557, 568 n.15, 107 S. Ct. 1410, 94 L. Ed. 2d 563 (1987)).

5. On top of this quantitative barrier a qualitative one is erected because the required information is not only about criminal, but also fraudulent conduct. The latter, by its very nature, is concealed or disguised, so that it is all the harder to uncover it before even disclosure, not to mention discovery, has started under FRCivP 26-37 and 45.

6. Even the requirement of FRCivP 9(b) that fraud be pled with particularity is "relaxed in

situations where requisite factual information is peculiarly within defendant's knowledge or control", *In re Rockefeller Ctr. Props., Inc. Secs. Litig.*, 311 F.3d 198, 216 (3d Cir. 2002). This means that even in fraud cases the purpose of the complaint is to put defendants on notice of the claim, not to allow the court to prevent the filing of the case or enable it to dismiss the claim on the pleadings.

7. Local Rule 5.1(h) refers to FRCivP 11 only to improperly replace its relative and nuanced standard of "to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances", by the absolute and strict standard of:

> facts [that the party] shall state in detail and with specificity us[ing] the numbers and letters as set forth below in a separate RICO Case Statement filed contemporaneously with those papers first asserting the party's RICO claim.

8. To require "facts…in detail and with specificity" is inconsistent with FRBkrP 9011(b)(3), which allows the pleading of "allegations and other factual contentions…likely to have evidentiary support after a reasonable opportunity for further investigation or discovery". Hence, the Court in *Devaney v. Chester*, 813 F2d 566, 569 (2d Cir. 1987) stated that "We recognize that the degree of particularity should be determined in light of such circumstances as whether the plaintiff has had an opportunity to take discovery of those who may possess knowledge of the pertinent facts".

9. By contrast, Local Rule 5.1(h) provides no opportunity for discovery, but instead requires such "detail and specificity" in the pleadings as to make it easier to spot any "failure" to comply and "result in dismissal". This is the type of result unacceptable under the 1995 Amendments to FRCivP 83 where "counsel or litigants may be unfairly sanctioned for failing to comply with a directive".

10. It is suspicious that Local Rule 5.1(h) singles out RICO and blatantly hinders the filing, let alone the prosecution, of a claim under it. It is particularly suspicious that it does so by erecting at the outset an evidentiary barrier that so starkly disregards and defeats the Congressional Statement of Findings and Purpose that "organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear the unlawful activities of those engaged in organized crime". Hence, Pub.L. 91-451 §904 provided that RICO "shall be liberally construed to effectuate its remedial purpose".

11. Given the bankruptcy fraud scheme supported by people doing business in the same small federal building housing the bankruptcy and district courts and the Offices of the U.S. Trustees, the U.S. Attorneys, and the FBI, why would a Local Rule be adopted that forestalls any RICO claim? It smacks of a pre-emptive strike carried out against any potential RICO claim through the abusive exercise of the local rulemaking power. In so doing, that Rule contravenes its enabling provision and is void. Moreover, it causes injury in fact to any potential RICO claimants inasmuch as it erects an insurmountable barrier at the outset to their bringing a RICO count against the schemers, thus depriving them of the protection and vindication of their rights under that federal law.

to information", which provides the rationale for setting up the systems for electronic public access to case information and court records, such as PACER and CM/ECF (28 U.S.C. §1914).

13. Defying logic, Rule 83.5 provides that such devices may be allowed "for non-judicial hearings or gatherings", that is, for inconsequential activities in terms of the business of the Court as well as for the "informal procedures" of arbitration, where the District Court by Local Rule 16.2(a) and (g)(7) permits "a transcript or recording to be made" as a matter of course. However, a litigant is forbidden to bring a recording device to make a transcript of a 'formal proceeding' where matters that could support a RICO claim would be formally discussed.

14. In the context of the totality of circumstances [4, 5] surrounding the bankruptcy fraud scheme, Local Rule 83.5 reveals its insidious purpose as a means to ensure secrecy and concealment of evidence of the scheme and of the schemers' identity. Indeed, it is tailor-made to prevent the recording of prohibited ex-parte communications (D:433§D, 434¶¶22-24); conduct, such as lawyers signaling answers to their client on the stand before a complicit judge (Pst:1289§f); and items, such as documents, including the exposure of the inaccuracy, incompleteness, and tampered-with condition of a transcript by comparing it with the recording of an evidentiary hearing.

15. Because Local Rule 5.1(h) requires for filing a claim under RICO, 18 U.S.C. §1961 et seq., such detailed evidentiary allegations before discovery has even started it makes such filing impossible in practice. Thereby it becomes void as inconsistent with the notice pleading and rulemaking enabling provisions of the FRCivP, as a deprivation of a right of action granted by an act of Congress to law enforcement authorities and private persons, and as a subterfuge crafted in self-interest through the abuse of judicial power to prevent the exposure of judicial involvement in a bankruptcy fraud scheme that operates as a corrupt enterprise.

EXHIBITS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LOCAL RULES OF CIVIL PROCEDURE

RULE 5.1

FILING CASES

...

(h) Any party asserting a claim, cross-claim or counterclaim under the Racketeer Influenced & Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq., shall file and serve a "RICO Case Statement" under separate cover as described below. This statement shall be filed contemporaneously with those papers first asserting the party's RICO claim, cross-claim or counterclaim, unless, for exigent circumstances, the Court grants an extension of time for filing the RICO Case Statement. A party's failure to file a statement may result in dismissal of the party's RICO claim, cross-claim or counterclaim. The RICO Case Statement must include those facts upon which the party is relying and which were obtained as a result of the reasonable inquiry required by Federal Rule of Civil Procedure 11. In particular, the statement shall be in a form which uses the numbers and letters as set forth below, and shall state in detail and with specificity the following information.

(1) State whether the alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c) and/or (d).

(2) List each defendant and state the alleged misconduct and basis of liability of each defendant.

(3) List the alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each wrongdoer.

(4) List the alleged victims and state how each victim was allegedly injured.

(5) Describe in detail the pattern of racketeering activity or collection of unlawful debts alleged for each RICO claim. A description of the pattern of racketeering shall include the following information:

(A) List the alleged predicate acts and the specific statutes which were allegedly violated;

(B) Provide the dates of the predicate acts, the participants in the predicate acts, and a description of the facts surrounding the predicate acts;

(C) If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities the "circumstances constituting fraud or mistake shall be stated with particularity." Fed. R. Civ. P. 9(b). Identify the time, place and contents of the alleged misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made;

(D) State whether there has been a criminal conviction for violation of each predicate act;

(E) State whether civil litigation has resulted in a judgment in regard to each predicate act;

(F) Describe how the predicate acts form a "pattern of racketeering activity"; and

(G) State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe in detail.

(6) Describe in detail the alleged enterprise for each RICO claim. A description of the enterprise shall include the following information:

(A) State the names of the individuals, partnerships, corporations, associations, or other legal entities, which allegedly constitute the enterprise;

(B) Describe the structure, purpose, function and course of conduct of the enterprise;

(C) State whether any defendants are employees, officers or directors of the alleged enterprise;

(D) State whether any defendants are associated with the alleged enterprise;

(E) State whether you are alleging that the defendants are individuals or entities separate from the alleged enterprise, or that the defendants are the enterprise itself, or members of the enterprise; and

(F) If any defendants are alleged to be the enterprise itself, or members of the enterprise, explain whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.

(7) State and describe in detail whether you are alleging that the pattern of racketeering activity and the enterprise are separate or have merged into one entity.

(8) Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.

(9) Describe what benefits, if any the alleged enterprise receives from the alleged pattern of racketeering.

(10) Describe the effect of the activities of the enterprise on interstate or foreign commerce.

(11) If the complaint alleges a violation of 18 U.S.C. § 1962(a), provide the following information:

(A) State who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt; and

(B) Describe the use or investment of such income.

(12) If the complaint alleges a violation of 18 U.S.C. § 1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.

(13) If the complaint alleges a violation of 18 U.S.C. § 1962(c), provide the following information:

(A) State who is employed by or associated with the enterprise; and

(B) State whether the same entity is both the liable "person" and the "enterprise" under § 1962(c).

(14) If the complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the alleged conspiracy.

(15) Describe the alleged injury to business or property.

(16) Describe the direct causal relationship between the alleged injury and the violation of the RICO statute.

(17) List the damages sustained for which each defendant is allegedly liable.

(18) List all other federal causes of action, if any, and provide the relevant statute numbers.

(19) List all pendent state claims, if any.

(20) Provide any additional information that you feel would be helpful to the Court in processing your RICO claim.

http://uscode.house.gov/download/pls/18C96.txt

-CITE-
18 USC CHAPTER 96 - RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS 01/19/04

-EXPCITE-
TITLE 18 - CRIMES AND CRIMINAL PROCEDURE
PART I - CRIMES
CHAPTER 96 - RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

-HEAD-
CHAPTER 96 - RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

-MISC1-
Sec.
1961. Definitions.
1962. Prohibited activities.
1963. Criminal penalties.
1964. Civil remedies.
1965. Venue and process.
1966. Expedition of actions.
1967. Evidence.
1968. Civil investigative demand.

AMENDMENTS
1990 - Pub. L. 101-647, title XXXV, Sec. 3559, Nov. 29, 1990, 104 Stat. 4927, struck out "racketeering" after "Prohibited" in item 1962.
1970 - Pub. L. 91-452, title IX, Sec. 901(a), Oct. 15, 1970, 84 Stat. 941, added chapter 96 and items 1961 to 1968.

-SECREF-
CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3582, 3663 of this title; title 7 section 12a.

-End-

-CITE-
18 USC Sec. 1961 01/19/04

-EXPCITE-
TITLE 18 - CRIMES AND CRIMINAL PROCEDURE
PART I - CRIMES
CHAPTER 96 - RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

-HEAD-

Sec. 1961. Definitions

-STATUTE-
As used in this chapter -
(1) "racketeering activity" means

(A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year;

(B) any act which is indictable under any of the following provisions of title 18, United States Code:
Section 201 (relating to bribery),
section 224 (relating to sports bribery),

sections 471, 472, and
473 (relating to counterfeiting),

section 659 (relating to theft
from interstate shipment) if the act indictable under section 659
is felonious,

section 664 (relating to embezzlement from pension
and welfare funds),

sections 891-894 (relating to extortionate
credit transactions),

section 1028 (relating to fraud and related
activity in connection with identification documents),

section
1029 (relating to fraud and related activity in connection with
access devices),

section 1084 (relating to the transmission of
gambling information),

section 1341 (relating to mail fraud),

section 1343 (relating to wire fraud),

section 1344 (relating to
financial institution fraud),

section 1425 (relating to the
procurement of citizenship or nationalization unlawfully),

section 1426 (relating to the reproduction of naturalization or
citizenship papers),

section 1427 (relating to the sale of

naturalization or citizenship papers),

sections 1461-1465
(relating to obscene matter),

section 1503 (relating to
obstruction of justice),

section 1510 (relating to obstruction of
criminal investigations),

section 1511 (relating to the
obstruction of State or local law enforcement),

section 1512
(relating to tampering with a witness, victim, or an informant),

section 1513 (relating to retaliating against a witness, victim,
or an informant),

section 1542 (relating to false statement in
application and use of passport),

section 1543 (relating to
forgery or false use of passport),

section 1544 (relating to
misuse of passport),

section 1546 (relating to fraud and misuse
of visas, permits, and other documents),

sections 1581-1591
(relating to peonage, slavery, and trafficking in persons).,(!1)

section 1951 (relating to interference with commerce, robbery, or
extortion),

section 1952 (relating to racketeering),

section 1953
(relating to interstate transportation of wagering paraphernalia),

section 1954 (relating to unlawful welfare fund payments),

section 1955 (relating to the prohibition of illegal gambling businesses),

section 1956 (relating to the laundering of monetary instruments),

section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity),

section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire),

sections 2251,
2251A, 2252, and 2260 (relating to sexual exploitation of children),

sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles),

sections 2314 and 2315
(relating to interstate transportation of stolen property),

section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation
or packaging and copies of motion pictures or other audiovisual

works),

section 2319 (relating to criminal infringement of a copyright),

section 2319A (relating to unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances),

section 2320 (relating to trafficking in goods or services bearing counterfeit marks),

section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts),

sections 2341-2346 (relating to trafficking in contraband cigarettes),

sections 2421-24 (relating to white slave traffic),

(C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds),

(D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States,

(E) any act which is indictable under the Currency and Foreign Transactions Reporting Act,

(F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable under any provision listed in section 2332b(g)(5)(B);

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money

or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

-SOURCE-

(Added Pub. L. 91-452, title IX, Sec. 901(a), Oct. 15, 1970, 84 Stat. 941; amended Pub. L. 95-575, Sec. 3(c), Nov. 2, 1978, 92 Stat. 2465; Pub. L. 95-598, title III, Sec. 314(g), Nov. 6, 1978, 92 Stat. 2677; Pub. L. 98-473, title II, Secs. 901(g), 1020, Oct. 12, 1984, 98 Stat. 2136, 2143; Pub. L. 98-547, title II, Sec. 205, Oct. 25, 1984, 98 Stat. 2770; Pub. L. 99-570, title I, Sec.

1365(b), Oct. 27, 1986, 100 Stat. 3207-35; Pub. L. 99-646, Sec. 50(a), Nov. 10, 1986, 100 Stat. 3605; Pub. L. 100-690, title VII, Secs. 7013, 7020(c), 7032, 7054, 7514, Nov. 18, 1988, 102 Stat. 4395, 4396, 4398, 4402, 4489; Pub. L. 101-73, title IX, Sec. 968, Aug. 9, 1989, 103 Stat. 506; Pub. L. 101-647, title XXXV, Sec. 3560, Nov. 29, 1990, 104 Stat. 4927; Pub. L. 103-322, title IX, Sec. 90104, title XVI, Sec. 160001(f), title XXXIII, Sec. 330021(1), Sept. 13, 1994, 108 Stat. 1987, 2037, 2150; Pub. L. 103-394, title III, Sec. 312(b), Oct. 22, 1994, 108 Stat. 4140;

Pub. L. 104-132, title IV, Sec. 433, Apr. 24, 1996, 110 Stat. 1274;

Pub. L. 104-153, Sec. 3, July 2, 1996, 110 Stat. 1386; Pub. L. 104-208, div. C, title II, Sec. 202, Sept. 30, 1996, 110 Stat. 3009-565; Pub. L. 104-294, title VI, Secs. 601(b)(3), (i)(3), 604(b)(6), Oct. 11, 1996, 110 Stat. 3499, 3501, 3506; Pub. L. 107-56, title VIII, Sec. 813, Oct. 26, 2001, 115 Stat. 382; Pub. L. 107-273, div. B, title IV, Sec. 4005(f)(1), Nov. 2, 2002, 116 Stat. 1813; Pub. L. 108-193, Sec. 5(b), Dec. 19, 2003, 117 Stat. 2879.)

-REFTEXT-

REFERENCES IN TEXT

Section 102 of the Controlled Substances Act, referred to in par. (1)(A), (D), is classified to section 802 of Title 21, Food and Drugs.

The Currency and Foreign Transactions Reporting Act, referred to in par. (1)(E), is title II of Pub. L. 91-508, Oct. 26, 1970, 84 Stat. 1118, which was repealed and reenacted as subchapter II of chapter 53 of Title 31, Money and Finance, by Pub. L. 97-258, Sec. 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31.

The Immigration and Nationality Act, referred to in par. (1)(F), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (Sec. 1101 et seq.) of Title 8, Aliens and Nationality. Sections 274, 277, and 278 of the Act

are classified to sections 1324, 1327, and 1328 of Title 8, respectively. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

The effective date of this chapter, referred to in par. (5), is Oct. 15, 1970.

-MISC1-

AMENDMENTS

2003 - Par. (1)(B). Pub. L. 108-193, which directed amendment of par. (1)(A) of this section by substituting "sections 1581-1591 (relating to peonage, slavery, and trafficking in persons)." for "sections 1581-1588 (relating to peonage and slavery)", was executed by making the substitution in par. (1)(B) to reflect the probable intent of Congress.

2002 - Par. (1)(G). Pub. L. 107-273 made technical amendment to directory language of Pub. L. 107-56. See 2001 Amendment note below.

2001 - Par. (1)(G). Pub. L. 107-56, as amended by Pub. L. 107-273, which directed addition of cl. (G) before period at end, was executed by making the addition before the semicolon at end to reflect the probable intent of Congress.

1996 - Par. (1)(B). Pub. L. 104-294, Sec. 604(b)(6), amended directory language of Pub. L. 103-322, Sec. 160001(f). See 1994 Amendment note below.

Pub. L. 104-294, Sec. 601(i)(3), substituted "2260" for "2258".

Pub. L. 104-208 struck out "if the act indictable under section 1028 was committed for the purpose of financial gain" before ",

section 1029", inserted "section 1425 (relating to the procurement of citizenship or nationalization unlawfully),

section 1426
(relating to the reproduction of naturalization or citizenship papers),

section 1427 (relating to the sale of naturalization or citizenship papers)," after "section 1344 (relating to financial institution fraud),", struck out "if the act indictable under section 1542 was committed for the purpose of financial gain" before ", section 1543", "if the act indictable under section 1543 was committed for the purpose of financial gain" before ", section 1544", "if the act indictable under section 1544 was committed for the purpose of financial gain" before ", section 1546", and "if the act indictable under section 1546 was committed for the purpose of financial gain" before ", sections 1581-1588".

Pub. L. 104-153 inserted ", section 2318 (relating to trafficking in counterfeit labels for phonorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works),

section 2319 (relating to
criminal infringement of a copyright),

section 2319A (relating to
unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances),

section 2320 (relating
to trafficking in goods or services bearing counterfeit marks)" after "sections 2314 and 2315 (relating to interstate transportation of stolen property)".

Pub. L. 104-132, Sec. 433(1), (2), inserted "section 1028 (relating to fraud and related activity in connection with identification documents) if the act indictable under section 1028 was committed for the purpose of financial gain," before "section 1029" and "section 1542 (relating to false statement in application

and use of passport) if the act indictable under section 1542 was committed for the purpose of financial gain, section 1543 (relating to forgery or false use of passport) if the act indictable under section 1543 was committed for the purpose of financial gain, section 1544 (relating to misuse of passport) if the act indictable under section 1544 was committed for the purpose of financial gain, section 1546 (relating to fraud and misuse of visas, permits, and other documents) if the act indictable under section 1546 was committed for the purpose of financial gain, sections 1581-1588 (relating to peonage and slavery)," after "section 1513 (relating to retaliating against a witness, victim, or an informant),".

Par. (1)(D). Pub. L. 104-294, Sec. 601(b)(3), substituted "section 157 of this title" for "section 157 of that title".

Par. (1)(F). Pub. L. 104-132, Sec. 433(3), (4), which directed addition of cl. (F) before period at end, was executed by making the addition before the semicolon at end to reflect the probable intent of Congress.

1994 - Par. (1)(A). Pub. L. 103-322, Sec. 330021(1), substituted "kidnapping" for "kidnaping".

Pub. L. 103-322, Sec. 90104, substituted "a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act)" for "narcotic or other dangerous drugs".

Par. (1)(B). Pub. L. 103-322, Sec. 160001(f), as amended by Pub. L. 104-294, Sec. 604(b)(6), substituted "2251, 2251A, 2252, and 2258" for "2251-2252".

Par. (1)(D). Pub. L. 103-394 inserted "(except a case under section 157 of that title)" after "title 11".

Pub. L. 103-322, Sec. 90104, substituted "a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act)" for "narcotic or other dangerous drugs".

1990 - Par. (1)(B). Pub. L. 101-647 substituted "section 1029 (relating to" for "section 1029 (relative to" and struck out "sections 2251 through 2252 (relating to sexual exploitation of

children)," before ", section 1958".

1989 - Par. (1). Pub. L. 101-73 inserted "section 1344 (relating to financial institution fraud)," after "section 1343 (relating to wire fraud),".

1988 - Par. (1)(B). Pub. L. 100-690, Sec. 7514, inserted "sections 2251 through 2252 (relating to sexual exploitation of children),".

Pub. L. 100-690, Sec. 7054, inserted ", section 1029 (relative to fraud and related activity in connection with access devices)" and ", section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251-2252 (relating to sexual exploitation of children)".

Pub. L. 100-690, Sec. 7032, substituted "section 2321" for "section 2320".

Pub. L. 100-690, Sec. 7013, made technical amendment to directory language of Pub. L. 99-646. See 1986 Amendment note below.
Par. (10). Pub. L. 100-690, Sec. 7020(c), inserted "the Associate Attorney General of the United States," after "Deputy Attorney General of the United States,".

1986 - Par. (1)(B). Pub. L. 99-646, as amended by Pub. L. 100-690, Sec. 7013, inserted "section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant)," after "section 1511 (relating to the obstruction of State or local law enforcement),".

Pub. L. 99-570 inserted "section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity),".

1984 - Par. (1)(A). Pub. L. 98-473, Sec. 1020(1), inserted "dealing in obscene matter," after "extortion,".
Par. (1)(B). Pub. L. 98-547 inserted "sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles)," and "section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts),".

Pub. L. 98-473, Sec. 1020(2), inserted "sections 1461-1465 (relating to obscene matter),".
Par. (1)(E). Pub. L. 98-473, Sec. 901(g), added cl. (E).

1978 - Par. (1)(B). Pub. L. 95-575 inserted "sections 2341-2346 (relating to trafficking in contraband cigarettes),".
Par. (1)(D). Pub. L. 95-598 substituted "fraud connected with a case under title 11" for "bankruptcy fraud".

EFFECTIVE DATE OF 2002 AMENDMENT
Pub. L. 107-273, div. B, title IV, Sec. 4005(f)(1), Nov. 2, 2002, 116 Stat. 1813, provided that the amendment made by section 4005(f)(1) is effective Oct. 26, 2001.

EFFECTIVE DATE OF 1996 AMENDMENT
Amendment by section 604(b)(6) of Pub. L. 104-294 effective Sept. 13, 1994, see section 604(d) of Pub. L. 104-294, set out as a note under section 13 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT
Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1978 AMENDMENTS
Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.
Amendment by Pub. L. 95-575 effective Nov. 2, 1978, see section 4

of Pub. L. 95-575, set out as an Effective Date note under section 2341 of this title.

SHORT TITLE OF 1984 AMENDMENT

Section 301 of chapter III (Secs. 301-322) of title II of Pub. L. 98-473 provided that: "This title [probably means this chapter, enacting sections 1589, 1600, 1613a, and 1616 of Title 19, Customs Duties and sections 853, 854, and 970 of Title 21, Food and Drugs, amending section 1963 of this title and sections 1602, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1618, 1619, and 1644 of Title 19, sections 824, 848, and 881 of Title 21, and section 524 of Title 28, Judiciary and Judicial Procedure, and repealing section 7607 of Title 26, Internal Revenue Code] may be cited as the 'Comprehensive Forfeiture Act of 1984'."

SHORT TITLE

Section 1 of Pub. L. 91-452 provided in part: "That this Act [enacting this section, sections 841 to 848, 1511, 1623, 1955, 1962 to 1968, 3331 to 3334, 3503, 3504, 3575 to 3578, and 6001 to 6005 of this title, and section 1826 of Title 28, Judiciary and Judicial Procedure, amending sections 835, 1073, 1505, 1954, 2424, 2516, 2517, 3148, 3486, and 3500 of this title, sections 15, 87f, 135c, 499m, and 2115 of Title 7, Agriculture, section 25 of Title 11, Bankruptcy, section 1820 of Title 12, Banks and Banking, sections 49, 77v, 78u, 79r, 80a-41, 80b-9, 155, 717m, 1271, and 1714 of Title 15, Commerce and Trade, section 825f of Title 16, Conservation, section 1333 of Title 19, Customs Duties, section 373 of Title 21, Food and Drugs, section 161 of Title 29, Labor, section 506 of Title 33, Navigation and Navigable Waters, sections 405 and 2201 of Title 42, The Public Health and Welfare, sections 157 and 362 of Title 45, Railroads, section 1124 of former Title 46, Shipping, section 409 of Title 47, Telegraphs, Telephones, and Radio telegraphs, sections 9, 43, 46, 916, 1017, and 1484 of former Title 49, Transportation, section 792 of Title 50, War and National Defense, and sections 643a, 1152, 2026, and former section 2155 of Title 50, Appendix, repealing sections 837, 895, 1406, and 2514 of this title, sections 32 and 33 of Title 15; sections 4874 and 7493

of Title 26, Internal Revenue Code, section 827 of former Title 46, sections 47 and 48 of former Title 49, and sections 121 to 144 of Title 50, enacting provisions set out as notes under this section and sections 841, 1511, 1955, preceding 3331, preceding 3481, 3504, and 6001 of this title, and repealing provisions set out as a note under section 2510 of this title] may be cited as the 'Organized Crime Control Act of 1970'."

SAVINGS PROVISION

Amendment by section 314 of Pub. L. 95-598 not to affect the application of chapter 9 (Sec. 151 et seq.), chapter 96 (Sec. 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

SEPARABILITY

Section 1301 of Pub. L. 91-452 provided that: "If the provisions of any part of this Act [see Short Title note set out above] or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby."

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE

Section 1 of Pub. L. 91-452 provided in part that:

"The Congress finds that

(1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption;

(2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other

dangerous drugs, and other forms of social exploitation;

(3) this
money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes;

(4) organized crime activities in the United
States weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and

(5) organized crime continues
to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.

"It is the purpose of this Act [see Short Title note above] to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime."

LIBERAL CONSTRUCTION OF PROVISIONS; SUPERSEDURE OF FEDERAL OR STATE LAWS; AUTHORITY OF ATTORNEYS REPRESENTING UNITED STATES

Section 904 of title IX of Pub. L. 91-452 provided that:

"(a) The provisions of this title [enacting this chapter and amending sections 1505, 2516, and 2517 of this title] shall be liberally construed to effectuate its remedial purposes.

"(b) Nothing in this title shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this title.

"(c) Nothing contained in this title shall impair the authority of any attorney representing the United States to -

"(1) lay before any grand jury impaneled by any district court of the United States any evidence concerning any alleged racketeering violation of law;

"(2) invoke the power of any such court to compel the production of any evidence before any such grand jury; or

"(3) institute any proceeding to enforce any order or process issued in execution of such power or to punish disobedience of any such order or process by any person."

PRESIDENT'S COMMISSION ON ORGANIZED CRIME; TAKING OF TESTIMONY AND RECEIPT OF EVIDENCE

Pub. L. 98-368, July 17, 1984, 98 Stat. 490, provided for the Commission established by Ex. Ord. No. 12435, formerly set out below, authority relating to taking of testimony, receipt of evidence, subpoena power, testimony of persons in custody, immunity, service of process, witness fees, access to other records and information, Federal protection for members and staff, closure of meetings, rules, and procedures, for the period of July 17, 1984, until the earlier of 2 years or the expiration of the Commission.

-EXEC-

EXECUTIVE ORDER NO. 12435

Ex. Ord. No. 12435, July 28, 1983, 48 F.R. 34723, as amended Ex. Ord. No. 12507, Mar. 22, 1985, 50 F.R. 11835, which established and provided for the administration of the President's Commission on

Organized Crime, was revoked by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 924, 1956, 1959 of this title; title 7 section 12a.

-FOOTNOTE-

(!1) So in original.

-End-

-CITE-

18 USC Sec. 1962 01/19/04

-EXPCITE-

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

PART I - CRIMES

CHAPTER 96 - RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

-HEAD-

Sec. 1962. Prohibited activities

-STATUTE-

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or

invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

-SOURCE-

(Added Pub. L. 91-452, title IX, Sec. 901(a), Oct. 15, 1970, 84 Stat. 942; amended Pub. L. 100-690, title VII, Sec. 7033, Nov. 18, 1988, 102 Stat. 4398.)

-MISC1-

AMENDMENTS

1988 - Subsec. (d). Pub. L. 100-690 substituted "subsection" for "subsections".

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1963, 1964, 3554 of this title; title 7 section 12a; title 8 section 1101.

-End-

-CITE-

18 USC Sec. 1963 01/19/04

-EXPCITE-

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

PART I - CRIMES

CHAPTER 96 - RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

-HEAD-

Sec. 1963. Criminal penalties

-STATUTE-

(a) Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to the United States, irrespective of any provision of State law -

(1) any interest the person has acquired or maintained in violation of section 1962;

(2) any -
(A) interest in;
(B) security of;
(C) claim against; or
(D) property or contractual right of any kind affording a source of influence over;
any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Property subject to criminal forfeiture under this section includes -
(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture

and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (l) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d)(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section -

(A) upon the filing of an indictment or information charging a violation of section 1962 of this chapter and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that -

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or

opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(e) Upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United States or third parties.

(f) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of

the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him. Notwithstanding 31 U.S.C. 3302(b), the proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs. The Attorney General shall deposit in the Treasury any amounts of such proceeds or moneys remaining after the payment of such expenses.

(g) With respect to property ordered forfeited under this section, the Attorney General is authorized to -

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other

commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(h) The Attorney General may promulgate regulations with respect to -

(1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;

(2) granting petitions for remission or mitigation of forfeiture;

(3) the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;

(4) the disposition by the United States of forfeited property by public sale or other commercially feasible means;

(5) the maintenance and safekeeping of any property forfeited under this section pending its disposition; and

(6) the compromise of claims arising under this chapter.

Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with

respect to the disposition of property under the customs law shall be performed under this chapter by the Attorney General.

(i) Except as provided in subsection (l), no party claiming an interest in property subject to forfeiture under this section may -

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(j) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(k) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(l)(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent

practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the

petitioner has established by a preponderance of the evidence that -

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(m) If any of the property described in subsection (a), as a result of any act or omission of the defendant -

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third party;

(3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be

divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

-SOURCE-

(Added Pub. L. 91-452, title IX, Sec. 901(a), Oct. 15, 1970, 84 Stat. 943; amended Pub. L. 98-473, title II, Secs. 302, 2301(a)-(c), Oct. 12, 1984, 98 Stat. 2040, 2192; Pub. L. 99-570, title I, Sec. 1153(a), Oct. 27, 1986, 100 Stat. 3207-13; Pub. L. 99-646, Sec. 23, Nov. 10, 1986, 100 Stat. 3597; Pub. L. 100-690, title VII, Secs. 7034, 7058(d), Nov. 18, 1988, 102 Stat. 4398, 4403; Pub. L. 101-647, title XXXV, Sec. 3561, Nov. 29, 1990, 104 Stat. 4927.)

-REFTEXT-

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (d)(3), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

-MISC1-

AMENDMENTS

1990 - Subsec. (a). Pub. L. 101-647 substituted "or both" for "or both." in introductory provisions.

1988 - Subsec. (a). Pub. L. 100-690, Sec. 7058(d), substituted "shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both." for "shall be fined not more than $25,000 or imprisoned not more than twenty years, or both".

Subsecs. (m), (n). Pub. L. 100-690, Sec. 7034, redesignated former subsec. (n) as (m) and substituted "act or omission" for "act of omission".

1986 - Subsecs. (c) to (m). Pub. L. 99-646 substituted "(l)" for "(m)" in subsec. (c), redesignated subsecs. (e) to (m) as (d) to (l), respectively, and substituted "(l)" for "(m)" in subsec. (i) as redesignated.

Subsec. (n). Pub. L. 99-570 added subsec. (n).

1984 - Subsec. (a). Pub. L. 98-473, Sec. 2301(a), inserted "In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds." following par. (3).

Pub. L. 98-473, Sec. 302, amended subsec. (a) generally, designating existing provisions as pars. (1) and (2), inserting par. (3), and provisions following par. (3) relating to power of the court to order forfeiture to the United States.

Subsec. (b). Pub. L. 98-473, Sec. 302, amended subsec. (b) generally, substituting provisions relating to property subject to forfeiture, for provisions relating to jurisdiction of the district courts of the United States.

Subsec. (c). Pub. L. 98-473, Sec. 302, amended subsec. (c) generally, substituting provisions relating to transfer of rights, etc., in property to the United States, or to other transferees, for provisions relating to seizure and transfer of property to the United States and procedures related thereto.

Subsec. (d). Pub. L. 98-473, Sec. 2301(b), struck out subsec. (d) which provided: "If any of the property described in subsection (a): (1) cannot be located; (2) has been transferred to, sold to, or deposited with, a third party; (3) has been placed beyond the jurisdiction of the court; (4) has been substantially diminished in value by any act or omission of the defendant; or (5) has been commingled with other property which cannot be divided without difficulty; the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5)."

Pub. L. 98-473, Sec. 302, added subsec. (d).

Subsecs. (e) to (m). Pub. L. 98-473, Sec. 302, added subsecs. (d) to (m).

Subsec. (m)(1). Pub. L. 98-473, Sec. 2301(c), struck out "for at least seven successive court days" after "dispose of the property".

-TRANS-

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2516, 3293, 3554 of this title; title 7 section 12a; title 50 App. section 2410.

-End-

-CITE-

18 USC Sec. 1964 01/19/04

-EXPCITE-

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

PART I - CRIMES

CHAPTER 96 - RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

-HEAD-

Sec. 1964. Civil remedies

-STATUTE-

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the

essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

-SOURCE-

(Added Pub. L. 91-452, title IX, Sec. 901(a), Oct. 15, 1970, 84 Stat. 943; amended Pub. L. 98-620, title IV, Sec. 402(24)(A), Nov. 8, 1984, 98 Stat. 3359; Pub. L. 104-67, title I, Sec. 107, Dec. 22, 1995, 109 Stat. 758.)

-MISC1-

AMENDMENTS

1995 - Subsec. (c). Pub. L. 104-67 inserted before period at end ", except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final".

1984 - Subsec. (b). Pub. L. 98-620 struck out provision that in any action brought by the United States under this section, the court had to proceed as soon as practicable to the hearing and determination thereof.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-67 not to affect or apply to any private action arising under title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.), commenced before and pending on Dec. 22, 1995, see section 108 of Pub. L. 104-67, set out as a note under section 77l of Title 15, Commerce and Trade.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an

Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

CONSTRUCTION OF 1995 AMENDMENT

Nothing in amendment by Pub. L. 104-67 to be deemed to create or ratify any implied right of action, or to prevent Securities and Exchange Commission, by rule or regulation, from restricting or otherwise regulating private actions under Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), see section 203 of Pub. L. 104-67, set out as a Construction note under section 78j-1 of Title 15, Commerce and Trade.

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1965 of this title.

-End-

-CITE-

18 USC Sec. 1965 01/19/04

-EXPCITE-

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

PART I - CRIMES

CHAPTER 96 - RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

-HEAD-

Sec. 1965. Venue and process

-STATUTE-

(a) Any civil action or proceeding under this chapter against any person may be instituted in the district court of the United States for any district in which such person resides, is found, has an

agent, or transacts his affairs.

(b) In any action under section 1964 of this chapter in any district court of the United States in which it is shown that the ends of justice require that other parties residing in any other district be brought before the court, the court may cause such parties to be summoned, and process for that purpose may be served in any judicial district of the United States by the marshal thereof.

(c) In any civil or criminal action or proceeding instituted by the United States under this chapter in the district court of the United States for any judicial district, subpenas issued by such court to compel the attendance of witnesses may be served in any other judicial district, except that in any civil action or proceeding no such subpena shall be issued for service upon any individual who resides in another district at a place more than one hundred miles from the place at which such court is held without approval given by a judge of such court upon a showing of good cause.

(d) All other process in any action or proceeding under this chapter may be served on any person in any judicial district in which such person resides, is found, has an agent, or transacts his affairs.

-SOURCE-

(Added Pub. L. 91-452, title IX, Sec. 901(a), Oct. 15, 1970, 84 Stat. 944.)

-End-

-CITE-

18 USC Sec. 1966 01/19/04

-EXPCITE-
TITLE 18 - CRIMES AND CRIMINAL PROCEDURE
PART I - CRIMES
CHAPTER 96 - RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

-HEAD-

Sec. 1966. Expedition of actions

-STATUTE-
In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action.

-SOURCE-
(Added Pub. L. 91-452, title IX, Sec. 901(a), Oct. 15, 1970, 84 Stat. 944; amended Pub. L. 98-620, title IV, Sec. 402(24)(B), Nov. 8, 1984, 98 Stat. 3359.)

-MISC1-
AMENDMENTS
1984 - Pub. L. 98-620 struck out provision that the judge so designated had to assign such action for hearing as soon as practicable, participate in the hearings and determination thereof, and cause such action to be expedited in every way.

EFFECTIVE DATE OF 1984 AMENDMENT
Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an

Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

-End-

-CITE-
18 USC Sec. 1967 01/19/04

-EXPCITE-
TITLE 18 - CRIMES AND CRIMINAL PROCEDURE
PART I - CRIMES
CHAPTER 96 - RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

-HEAD-

Sec. 1967. Evidence

-STATUTE-
In any proceeding ancillary to or in any civil action instituted by the United States under this chapter the proceedings may be open or closed to the public at the discretion of the court after consideration of the rights of affected persons.

-SOURCE-
(Added Pub. L. 91-452, title IX, Sec. 901(a), Oct. 15, 1970, 84 Stat. 944.)

-End-

-CITE-
18 USC Sec. 1968 01/19/04

-EXPCITE-
TITLE 18 - CRIMES AND CRIMINAL PROCEDURE
PART I - CRIMES
CHAPTER 96 - RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

-HEAD-

Sec. 1968. Civil investigative demand

-STATUTE-

(a) Whenever the Attorney General has reason to believe that any person or enterprise may be in possession, custody, or control of any documentary materials relevant to a racketeering investigation, he may, prior to the institution of a civil or criminal proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such material for examination.

(b) Each such demand shall -

(1) state the nature of the conduct constituting the alleged racketeering violation which is under investigation and the provision of law applicable thereto;

(2) describe the class or classes of documentary material produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(3) state that the demand is returnable forthwith or prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(4) identify the custodian to whom such material shall be made available.

(c) No such demand shall -

(1) contain any requirement which would be held to be unreasonable if contained in a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation; or

(2) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpena duces tecum issued by a court of the United States in aid of a grand jury investigation of such alleged racketeering violation.

(d) Service of any such demand or any petition filed under this section may be made upon a person by -

(1) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, or upon any individual person;

(2) delivering a duly executed copy thereof to the principal office or place of business of the person to be served; or

(3) depositing such copy in the United States mail, by registered or certified mail duly addressed to such person at its principal office or place of business.

(e) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be prima facie proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f)(1) The Attorney General shall designate a racketeering investigator to serve as racketeer document custodian, and such additional racketeering investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

(2) Any person upon whom any demand issued under this section has

been duly served shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person, or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to this section on the return date specified in such demand, or on such later date as such custodian may prescribe in writing. Such person may upon written agreement between such person and the custodian substitute for copies of all or any part of such material originals thereof.

(3) The custodian to whom any documentary material is so delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return thereof pursuant to this chapter. The custodian may cause the preparation of such copies of such documentary material as may be required for official use under regulations which shall be promulgated by the Attorney General. While in the possession of the custodian, no material so produced shall be available for examination, without the consent of the person who produced such material, by any individual other than the Attorney General. Under such reasonable terms and conditions as the Attorney General shall prescribe, documentary material while in the possession of the custodian shall be available for examination by the person who produced such material or any duly authorized representatives of such person.

(4) Whenever any attorney has been designated to appear on behalf of the United States before any court or grand jury in any case or proceeding involving any alleged violation of this chapter, the custodian may deliver to such attorney such documentary material in the possession of the custodian as such attorney determines to be required for use in the presentation of such case or proceeding on behalf of the United States. Upon the conclusion of any such case or proceeding, such attorney shall return to the custodian any documentary material so withdrawn which has not passed into the control of such court or grand jury through the introduction thereof into the record of such case or proceeding.

(5) Upon the completion of -

(i) the racketeering investigation for which any documentary material was produced under this chapter, and

(ii) any case or proceeding arising from such investigation, the custodian shall return to the person who produced such material all such material other than copies thereof made by the Attorney General pursuant to this subsection which has not passed into the control of any court or grand jury through the introduction thereof into the record of such case or proceeding.

(6) When any documentary material has been produced by any person under this section for use in any racketeering investigation, and no such case or proceeding arising therefrom has been instituted within a reasonable time after completion of the examination and analysis of all evidence assembled in the course of such investigation, such person shall be entitled, upon written demand made upon the Attorney General, to the return of all documentary material other than copies thereof made pursuant to this subsection so produced by such person.

(7) In the event of the death, disability, or separation from service of the custodian of any documentary material produced under any demand issued under this section or the official relief of such custodian from responsibility for the custody and control of such material, the Attorney General shall promptly -

(i) designate another racketeering investigator to serve as custodian thereof, and

(ii) transmit notice in writing to the person who produced such material as to the identity and address of the successor so designated.

Any successor so designated shall have with regard to such materials all duties and responsibilities imposed by this section upon his predecessor in office with regard thereto, except that he

shall not be held responsible for any default or dereliction which occurred before his designation as custodian.

(g) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one such district such petition shall be filed in the district in which such person maintains his principal place of business, or in such other district in which such person transacts business as may be agreed upon by the parties to such petition.

(h) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, such person may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon such custodian a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person.

(i) At any time during which any custodian is in custody or control of any documentary material delivered by any person in compliance with any such demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve

upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section.

(j) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

-SOURCE-

(Added Pub. L. 91-452, title IX, Sec. 901(a), Oct. 15, 1970, 84 Stat. 944.)

-SECREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1833a.

-End-

RULE 83.5

CAMERAS AND RECORDING DEVICES

(a) No one other than officials engaged in the conduct of court business and/or responsible for the security of the Court shall bring any camera, transmitter, receiver, portable telephone or recording device into the Court or its environs without written permission of a Judge of that Court.

Environs as used in this rule shall include the Clerk's office, all courtrooms, all chambers, grand jury rooms, petit jury rooms, jury assembly rooms, and the hallways outside such areas.

(b) The Presiding Judge may waive any provision of this rule for ceremonial occasions and for non-judicial public hearings or gatherings.

RULE 83.6

STUDENT PRACTICE RULE

(a) A law student may, with the Court's approval, under supervision of an attorney, appear on behalf of any person, including the United States Attorney and the New York State Attorney General, who has consented in writing.

(b) The attorney who supervises a student shall:

(1) be a member of the bar of the United States District Court for the Western District of New York;

(2) assume personal professional responsibility for the student's work;

(3) assist the student to the extent necessary;

(4) appear with the student in all proceedings before the Court; and

(5) indicate in writing his or her consent to supervise the student.

(c) In order to be eligible to appear, the law student shall:

(1) be duly enrolled in a law school approved by the American Bar Association;

(2) have completed legal studies amounting to at least two semesters or the equivalent;

(3) be certified by a law school faculty member as qualified to provide the legal representation permitted by these rules. This certification may either be withdrawn by the certifier at any time by mailing a notice to the Clerk or be terminated by the Judge presiding in the case in which the student appears without notice, hearing, or

United States Court of Appeals
for the Second Circuit

06-4780-bk

on appeal from *Cordero v. DeLano*, 05-6190, WDNY

Dr. Richard Cordero,
Appellant and creditor

v. **APPELLANT's PRINCIPAL BRIEF**

David and Mary Ann DeLano
Appellees and debtors in bankruptcy

(Excerpt; full brief at
http://Judicial-Discipline-Reform.org/Follow_money/DrCordero_v_DeLano_06_4780_CA2.pdf)

VII. Statement of Facts

A. In Bankruptcy Court, the Debtors filed a bankruptcy petition with schedules where they made incongruous, implausible, and outright suspicious declarations about their financial affairs and since then have refused to account for the whereabouts of known concealed assets worth at least $673,657

15. Mr. David DeLano, a 39-year veteran of the financing and banking industries still employed in the bankruptcy department of M&T Bank, and Mrs. Mary DeLano, a Xerox technician, filed a voluntary bankruptcy petition on January 27, 2004, in Bankruptcy Court, WBNY. It included their debt repayment plan to have 78% of their debt discharged in three years (D:59), just in time to travel light into their retirement. They invoked 11 U.S.C. Chapter 13, thereby avoiding the liquidation of any of their assets that would have resulted from filing under Chapter 7. Their petition was accompanied by Schedules A-J (D:29-45), signed by them under penalty of perjury (D:46) and verified by Christopher K. Werner, Esq., their bankruptcy attorney with 28 years' experience (D:28). Therein they listed 21 creditors, 19 as unsecured (D:38), including 18 credit cards and Dr. Cordero (D:40). The latter's claim against Mr. DeLano had arisen in the

still pending adversary proceeding under FRBkrP 7001 et seq. *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, WBNY (Add:712).

16. The DeLanos' sworn declarations in their Schedules are most suspicious even for a lay person. Indeed, they declared that:

17. a)They only had $535 in cash and bank accounts. (D:31) Yet their 1040 IRS forms for 2001-03 show that they earned $291,470 in just the three years preceding their filing. (D:47; 186-188; SApp:1608) Since they petitioned for debt discharge due to inability to pay, it would appear reasonable to ask that they account for the whereabouts of their earnings by producing supporting documents, such as bank account statements, so obviously apt to establish the good faith of any petition. This is precisely what Dr. Cordero wanted to have them do when he made repeated requests of the Debtors (D:288¶3), the trustees, and the courts (Pst:1261)

17. b) Nevertheless, to date Trustee Reiber (D:193§I), Judge Ninfo (D:278¶1, 327; Tr:189/11-22), Judge Larimer (Add:1022; SApp:1504), and this Court (SApp:1623, 1678) have refused to require the Debtors to provide their bank account statements to ascertain the whereabouts of $291,470 in earnings unaccounted for. As to the Debtors, to avoid producing such statements, they have incurred attorneys' fees, and their attorneys have been willing to provide them with legal services, worth at last count $27,953 (Add:938, Pst:1174), and Judge Ninfo has approved their payment (Add:942). What is more, according to their appellate attorney, Devin Lawton Palmer, Esq., the DeLanos "continue to incur unnecessary attorneys' fees" (SApp:1628¶¶4, 9, 10) to defend against Dr. Cordero's motions and appeals.

17. c) Given that under their plan the DeLanos had to commit all their disposable earnings to debt repayment and that they have not needed to request a modification of that plan, where did they come up and "continue" to come up with that kind of money and how did Att. Werner and Palmer, members of the same firm, know that the Delano Debtors could pay them despite their declaration that they only had $535 in cash and *on account*?

18. Even more suspiciously incongruous, the DeLanos declared only one piece of real property (D:30), to wit, the home that is presently their address at 1262 Shoecraft Road, Webster (Town of Penfield), NY 14580. They bought it in 1975, when they took out on it a $26,000 mortgage. (D:342) However, in their petition they claimed that their equity in it is only $21,416 and the mortgage that they carry on it is $77,084…after making mortgage payments for 30 years!

Mind-boggling! (Add:1058¶54) Worse still, during that same period the DeLanos received a total of $382,187 through a string of mortgages! (SApp:1608; D:341-354) Where did that money go, for whose benefit, and where is it now?

19. Moreover, the Debtors declared credit card borrowings totaling $98,092 (D:41), while they set the value of their household goods at only $2,810! (D:5/4-8; Add:888§§c-e) *Implausible!* Couples in the Third World end up with household possessions of greater value after having accumulated them in their homes over their worklives of more than 30 years. This is particularly so if they are two professionals and have not experienced a home disaster or long-term catastrophic illness. Such are the DeLanos, who did not incur either or similar loss or expense, as shown in Trustee Reiber's shockingly unprofessional Findings Report (Add:937-939), which was approved by Judge Ninfo (Add:941) and Judge Larimer (Add:1022) despite Dr. Cordero's analytical objections (Add:951, 1038).

1. The efforts of the trustees and Judge Ninfo to protect the Debtors from being examined at the meeting of creditors and having to produce incriminating documents reveal coordination pointing to a bankruptcy fraud scheme

20. From the very beginning, it became evident that nobody was going to question whatever declarations the DeLanos had made in their January 2004 petition and schedules…or allow anybody else to do so. Thus, the meeting of the DeLanos' creditors was held on March 8, 2004, pursuant to 11 U.S.C. §341. (D:23) Mr. DeLano and Trustee Reiber could have expected that no creditor would attend, for creditors hardly ever show up at these meetings unless the amount of their claims is high enough to make travel and representation expenses cost-effective in light of what they can expect to receive on the dollar of debt owed them. Nor could they have expected that the only individual, as oppose to institutional, creditor that they had named in their schedules, namely, Dr. Cordero (D:40), would travel hundreds of miles from New York City to Rochester to attend.
21. Consequently, they were expecting a pro forma §341meeting that would merely rubberstamp the DeLanos' debt repayment plan and get it ready for confirmation later that afternoon by Bankruptcy Judge Ninfo. So much so that in violation of his duty under C.F.R. §58.6(a)(10) to conduct the meeting personally, Trustee Reiber had his attorney, James W. Weidman, Esq.,

conduct it right there in a room of the office of his supervisor, Assistant U.S. Trustee Kathleen Dunivin Schmitt. She knew and tolerated that violation…and how many others?

22. But the unexpected did happen: Creditor Dr. Cordero showed up and was the only one in attendance. (D:68) Hardly had he finished identifying himself and handing out a copy to Attorneys Werner and Weidman of his written objections to the confirmation of the DeLanos' plan (D:63), when Att. Weidman unjustifiably asked him whether and, if so, how much he knew about the DeLanos' having committed fraud. Dr. Cordero would not reveal what he knew. Rather than risk allowing the DeLanos to incriminate themselves or commit perjury while being examined under oath, as §343 requires, and having their answers officially tape recorded, Mr. Weidman protected them by putting an end to the meeting after Dr. Cordero had asked only two questions! (D:79§§I-III; Add:889§II) At the confirmation hearing before Judge Ninfo, Dr. Cordero objected to the conduct of both Att. Weidman and Trustee Reiber, who ratified his attorney's conduct, but the Judge excused them as merely engaging in "local practice", thus disregarding what the law of the land of Congress provided. (D:98§II; SApp:1659 4th para. et seq.; D:362§2; Add:891§III)
23. This blatant conduct revealed confidence born of coordination. Its objective was twofold: To protect the DeLanos from being exposed as bankruptcy fraudsters, and thereby protect themselves from being incriminated as their supporters (D:379§3) in its enabling mechanism: a bankruptcy fraud scheme. (D:458§V; Add:621§1).
24. Dr. Cordero requested and kept requesting the trustees that the DeLanos be required to produce documents supporting their petition's incongruous, implausible, and suspicious declarations. For six months they had treated and went on treating him as a creditor while stonewalling on his request for those incriminating documents. (D:151, 73, 74, 103, 111, 116, 117, 120, 122, 123, 128, 138, 149, 153, 159, 160, 162, 165, 189, 203)
25. What is more, they tried to avoid holding an adjourned meeting of creditors (D:111, 112, 141) and then to limit it unlawfully to one hour (D:74), although 11 U.S.C. §341(c) contemplates an indefinite series of meetings and FRBkrP 2004(b) provides for a very broad scope of examination (D:283; Pst:1262¶13 et seq.).
26. Meantime, they produced a few documents (D165-188) and Dr. Cordero analyzed them in light of their petition and its schedules. This resulted in his Statement of July 9, 2004 (D:193), which he sent to Judge Ninfo. It charged the Debtors with bankruptcy fraud, specifically concealment

of assets, and requested that the Judge order them to produce all the other documents that Dr. Cordero had requested but that they had failed to produce with the connivance of Trustee Reiber, whose removal he requested. (D:196§§IV-V; 207, 208) Everything changed after that, as the schemers coordinated how to eliminate Dr. Cordero.

2. The timing and handling of the motion to disallow the claim of Dr. Cordero reveal it as an artifice resulting from coordination among the schemers intended to force him into a sham evidentiary hearing where he would be deprived of standing in *DeLano* and thereby of the right to request documents proving the Debtors' bankruptcy fraud and the involvement of all of them in its enabling mechanism: a bankruptcy fraud scheme

27. Filed on July 22, 2004 (D:218), the motion to disallow was heard on August 25 by Judge Ninfo. He manipulated Dr. Cordero's request for documents (D:234§§II & IV) and disregarded his arguments showing the motion's defects of untimeliness, laches, and bad faith (¶79 below; D:253§§V & VI) as well as the presumption of validity in favor of the claim (D:256§VII). Then the Judge ordered that Dr. Cordero take discovery of Mr. DeLano until December 15, 2004, in *Pfuntner*, that is, the case that gave rise to his claim against Mr. DeLano (Add:534/after entry 13) and that the parties introduce their evidence at an evidentiary hearing (D:278¶¶3 & 4).
28. However, when Dr. Cordero requested evidentiary documents (D:287, 310, 317), the DeLanos (D:313, 325) and Judge Ninfo (D:327) denied him *every single document* that he requested. Dr Cordero was being set up to walk empty-handed into the evidentiary hearing! where he would fall victim of their divide and conquer stratagem that would force him to prove his claim against Mr. DeLano out of context due to the absence of all the other parties and issues. (D:444§§I-II) On December 15, 2004, Judge Ninfo set its date. (D:332)
29. The evidentiary hearing was held on March 1, 2005. On that occasion, Judge Ninfo abandoned his duty impartially to take in evidence and instead behaved as Chief Advocate for Mr. DeLano, who is represented in *Pfuntner* by Michael Beyma, Esq., a partner at Underberg & Kessler (Add:532), the law firm of which Judge Ninfo was a partner at the time of taking the bench (Add:636).
30. Att. Beyma was present at the hearing together with Att. Werner, who at the time had appeared before Judge Ninfo in over 525 cases, according to PACER. (Add:891¶12; Pst:1281§c) Actually, that number pales by comparison to the 3,909 *open* cases that Trustee Reiber had on

April 2, 2004 (D:92§C, 302), of which 3,907 were before Judge Ninfo! (Add:1107§24) Such abnormally high frequency of appearances engenders close personal relationships, the blurring of inhibitions, and the sense of friendship betrayed unless everybody tells the others what he or she is doing, i.e., unless they coordinate their acts. (D:361¶¶13-16, 431§C)

31. It follows that the evidentiary hearing in *DeLano* was for the schemers an organizational affair where they had to protect one of their own from an 'out-of-town citizen' whose inquiries in defense of his claim threatened to expose their participation in the scheme. (Add:603¶¶32-33) Defensively, they predetermined that the hearing would end with the disallowance of his claim. This explains why they did not bring either a copy of the motion to disallow that Att. Werner himself had raised or of Dr. Cordero's claim that they were challenging. (Pst:1288§e) They only needed to rely on their coordination, which included Attorneys Beyma and Werner signaling answers on three occasions to Mr. DeLano as he was on the stand under examination by Dr. Cordero, and Judge Ninfo preposterously pretending that he had not seen them do so in front of his eyes in the courtroom. (Pst:1289§f) Would those attorneys have ever dare so to attempt to suborn perjury had they been before a judge they knew not to be a participant of the scheme after the case had been transferred to a U.S. court in Albany, NY? Of course not!

32. At the evidentiary hearing, Mr. DeLano was the only witness examined and Dr. Cordero the only one to introduce evidence. Mr. DeLano made consistent admissions against self-interest to the effect that as the M&T Bank bankruptcy officer in charge of liquidating the assets of a bankrupt client in the business of storing third parties' property, including Dr. Cordero's, he had injured Dr. Cordero. (Pst:1281§d) Thereby Mr. DeLano established Dr. Cordero's claim against him. So clear and understandable was his testimony that Att. Werner, with 28 years' experience, felt no need to rehabilitate him or correct it, but on the contrary, validated his testimony at the end of the hearing thus:

> I believe Mr. DeLano has given a fair statement of his position and facts, your Honor. I have no questions. (Tr:187/23-25)

33. Nevertheless, Judge Ninfo arbitrarily disregarded Mr. DeLano's testimony as "confused" in order to reach at the evidentiary hearing the predetermined decision of disallowance. (Tr:182/14-183/18; Pst:1281§§c-d) He confirmed it in his written decision, where he repeated that Dr. Cordero had not proved his claim in *Pfuntner* against Mr. DeLano and had no standing to further participate in *DeLano*; and restated his denial to stay his decision (D:20). Dr. Cordero

challenged that decision, dated April 4, 2005, on appeal to the District Court, WDNY, on April 11, 2005 (D:1).

B. In District Court, Judge Larimer made repeated attempts to deprive Dr. Cordero of the incriminating transcript of the evidentiary hearing before Judge Ninfo, denied him *every single document* that he requested, and avoided even mentioning the evidence of the Debtors' concealment of at least $673,657 and its enabling bankruptcy fraud scheme

1. To prevent the incriminating transcript of the evidentiary hearing from becoming part of the record, Judge Larimer repeatedly scheduled the brief of Dr. Cordero before he and the Reporter had even made arrangements for its preparation

34. The Bankruptcy Court filed Appellant Dr. Cordero's Designation of Items in the Record and Statement of Issues on Appeal (Add:690) on April 22, 2005, and on that very same day the Court sent it upstairs to District Judge David G. Larimer, who on that very same day dropped everything else he was doing and rushed to schedule Dr. Cordero's appellate brief for filing within 20 days (Add:692). The Judge knew that the record should not have been transmitted to him because it was incomplete and, thus, not in compliance with FRBkrP 8007: There had not been time under FRBkrP 8006 for the Appellees to have their 10 days to file their additional issues and items, which they filed only on May 2, 2005. (Add:711)
35. Nor had there been time for Court Reporter Mary Dianetti even to respond to Dr. Cordero's transcript request made in his letter to her of April 18 (Add:681), as provided for under FRBkrP 8006. Also pursuant to it, he sent a copy of that letter to the Bankruptcy Court together with his Designation and Statement, which bore the same date of April 18, 2005. The Bankruptcy Court selectively docketed the latter, but failed to docket the transcript-requesting letter to Reporter Dianetti…just as Judge Larimer failed to wait until the transcript had been filed, thus making the record complete, before scheduling Dr. Cordero's brief. It was pitcher-catcher coordination to deprive an appellant of an incriminating transcript!, which showed his Downstairs Peer, Bankruptcy Judge Ninfo, engaging in bias, arbitrariness, and denial of due process, and Mr. DeLano establishing the claim by admitting that his handling of Dr. Cordero's property could

have injured Dr. Cordero. (Pst:1281§d)

36. Such non-docketing once more of incriminating documents (D:231, 234¶¶14-17; 106, 108, 217; Add:1081) is evidence itself of an unlawful practice by courts that have no respect for the rules, such as FRBkrP 5003, 5005(a)(1), and FRCivP 79, or for the purpose of the docket, that is, to give public notice of every event in a case and thereby contribute to the administration of justice in public. (cf. FRBkrP 5001(b); FRCivP 77(b))

37. Dr. Cordero filed an objection and requested that the brief be scheduled for filing only after the transcript had been filed (Add:695). Judge Larimer, pretending that Dr. Cordero had requested a time extension, rescheduled the brief for filing by June 13. (Add:831) Dr. Cordero had to write a motion to request the Judge to comply with the law. (Add:836) Only then did Judge Larimer order that "Appellant shall file and serve his brief within twenty days of the date that the transcript of the bankruptcy court proceedings is filed with the Clerk of the Bankruptcy Court". (Add:839) It took 10 letters to and from Court Reporter Mary Dianetti (Add:912) and several motions to Judge Larimer (Add:911, 951, 993, 1031) for the transcript to be filed seven months later! (Add:1071)

38. What trust can you have that a judge is going to decide a case according to law, let alone impartially, when from the outset he disregards it so blatantly?…and for the second time! Indeed, in January 2003, Judge Larimer, acting likewise in coordination with the Bankruptcy Court, disregarded the rules to schedule Dr. Cordero's brief despite the incompleteness of the record and before even an arrangement with Reporter Dianetti had been reached, and months before the transcript was finally filed. (Add:1086¶16) This occurred precisely in the case underlying the instant one, namely, *Pfuntner v Trustee Gordon et al*, 02-2230 in Bankruptcy Court, from where it was appealed, sub nom. *Dr. Cordero v. Trustee Gordon*, 03cv6021L, WDNY. (Add:1011§A)

2. Parties who need not bother to oppose motions that can spell the end of their careers or incriminate them in a bankruptcy fraud scheme reveal a pattern of conduct born of coordination with judges they know have as much to lose if they granted them

a) Judges Larimer and Ninfo accepted work of dismal quality but in furtherance of the bankruptcy fraud scheme by Reporter Dianetti and Trustee Reiber so they denied motions for their removal

39. While making arrangements for the transcript, Reporter Dianetti refused to certify that the

transcript of the evidentiary hearing would be complete, accurate, and free from tampering influence. (Add:867, 869) Dr. Cordero moved before Judge Larimer for her to be referred to the supervising authority of reporters under 28 U.S.C. §753, to wit, the Judicial Conference of the United States (Add:911), for it to investigate her refusal to certify the transcript's reliability. The Judge denied the motion as concerning a "tempest in a teapot" and ordered Dr. Cordero to obtain the transcript from Reporter Dianetti. He also added that "Cordero has no right to "condition" his request in any manner" (Add:991), mindless of the obvious fact that Reporter Dianetti was asking for $650 in advance and that as a matter of basic contract law Dr. Cordero did have the right to "make satisfactory arrangements" (FRBkrP 8006) at arms length for the product that he would receive in exchange.

40. Dr. Cordero moved for reconsideration (Add:993), but Judge Larimer denied the motion, likewise without discussing a single one of Dr. Cordero's factual and legal arguments. Instead, the Judge warned him that if he did not request the transcript within 14 days, his case could be dismissed (Add:1019). Thereby he revealed that it did not matter to him whether he or Dr. Cordero received a transcript that was inaccurate, incomplete, or tampered-with, for he did not need to rely on it to know how he would decide the appeal from Peer Ninfo's decision.

41. The transcript that Reporter Dianetti filed was of shockingly substandard quality. In it everybody appears speaking Pidgin English, babbling in broken sentences, uttering barbarisms, and sputtering so much solecistic fragments in each line that to recompose them into the whole of a meaningful statement is toil. As a result, the participants at the hearing, though professionals, come across in the transcript as a bunch of speech impaired illiterates. Why would Judge Larimer keep such Reporter on her job? Consider this.

42. Reporter Dianetti received Dr. Cordero's payment on November 2 and already on November 4, 2005, she filed it and sent a copy to him. She neither could have transcribed 192 pages in little over a day nor would have transcribed them while still making payment arrangements with Dr. Cordero on the off chance that he would pay for the transcript despite her refusal to agree that she would certify its accuracy, completeness, and tamper-free condition. This means that she had already transcribed it on somebody else's instructions, somebody who wanted to know what had happened at the evidentiary hearing before Judge Ninfo on March 1, 2005, in order to decide how to handle it, and who upon learning about its incriminating contents tried to keep it from the record, even by violating the rules and Dr. Cordero's right to it.

43. Hence, Judge Larimer must have known that Reporter Dianetti's transcript was of substandard quality, just as he knew her transcript was that she certified as of March 12, but mailed to Dr. Cordero only on March 26, 2003, in the appeal to his Court from Judge Ninfo's decision in *Pfuntner*. (¶38 above; D:234¶14.b; Add:559¶4, 920¶26)
44. Likewise, Judge Larimer was informed (Add:953§I) of the shockingly unprofessional Findings Report that Trustee Reiber (Add:937-939) submitted to Judge Ninfo (Add:1041§I) to recommend the approval of the DeLanos' debt repayment plan (D:59).
45. Nevertheless, he refused to take any corrective action against either of them (Add:991, 1019, 1021, 1155), just as Judge Ninfo did (Add:1094). This shows that what matters to them is not the quality of their work, but rather their willingness to follow instructions as participants in, or to work in line with, the bankruptcy fraud scheme. In exchange, they could count on the Judges' protective bias toward them. This explains why none of Dr. Cordero's motions requesting the replacement and investigation of Reporter Dianetti (Add:911, 973¶¶60.1.c, 3; 993) and Trustee Reiber (D:243¶34.d; Add:882§II, 973¶¶60.1.d-e, 4; 1121¶61.e, 1062¶66.b) caused them to bother to file even a Stick-it note of objection. Yet, each of those motions put their careers at risk. But they knew why the motions would not be granted.

b) Neither Trustee Schmitt nor the DeLanos need oppose motions that, if raised before an impartial judge, could have been granted if only because of their being unopposed, but that they knew the judges here would deny as they did *every single document* that Dr. Cordero requested

46. Similarly, there was no opposition to Dr. Cordero's motions requesting either production of documents by Assistant U.S. Trustee Schmitt (D:244¶e; Add:973¶60.1.a-b) and the DeLanos (SApp:1606, 1637), or nullification of the confirmation of the DeLanos' plan (Add:1121¶61.a-c). Yet, if any of those motions had been granted by default, these non-movants would have risked the penalties of bankruptcy fraud: up to 20 years' imprisonment and devastating fines of up to $250,000 (18 U.S.C. §§152-157, 1519,and 3571)…but they *are* schemers! They too did not have to bother to respond, for they knew that if ever Judges Larimer or Ninfo had granted any of those motions, they would have incriminated themselves in the bankruptcy fraud scheme.
47. Consequently, Judges Larimer and Ninfo denied Dr. Cordero *every single document* that he requested. (Add:951, 1022; Table on Pst:1261) Neither was interested in obtaining those

documents in order to render decisions based on facts, for both already knew that the DeLanos had committed bankruptcy fraud. Their interest was in preventing Dr. Cordero from obtaining the documentary evidence that would expose such fraud. To secure their interest, they had no qualms about disregarding FRBkrP 7026 et seq. and FRCivP 26 et seq. (D:278§2) so that Dr. Cordero could not discover the whereabouts of the Debtors' known concealed assets worth at least $673,657 (SApp:1608) and end up incriminating all of them in the scheme. Therefore, they engaged in a cover up.

48. In the same vein, this Court refused twice and with no comments (SApp:1623, 1678) to order any of these parties to produce any of the documents requested by Dr. Cordero (SApp:1606, 1637). If this Court ordered those documents produced, they would lead to the DeLanos' known concealed assets and the DeLanos would be but the first dominoes to fall.

49. Hence, pattern evidence shows that Judge Larimer, Judge Ninfo, other court officers, the trustees, the Court Reporter, and the Debtors coordinated their conduct to deprive Dr. Cordero of the transcript and discoverable incriminating documents. In so doing, the judges denied Dr. Cordero due process of law.

50. Interestingly enough, under RICO, 18 U.S.C. §1961(5), two acts of racketeering activity within ten years form a pattern. Not coincidentally, the District Court has resorted to the subterfuge of WDNY Local Rule 5.1(h) (Add:633) to make filing a RICO claim all but impossible by demanding exceedingly numerous and detailed pre-discovery factual assertions. (§IX.C below) Judge Larimer did not even mention that issue presented by Appellant Dr. Cordero. Nor did he show awareness of Appellant's three other issues, including how the elimination by the judges of three-judge bankruptcy appellate panels in the Second Circuit facilitates the running of a bankruptcy fraud scheme. (§IX.D below) As a result, Judge Larimer left the appeal undecided.

United States Court of Appeals
for
the Second Circuit

Docket no. 03-5023

Richard Cordero,
Cross and Third party plaintiff-Appellant

v.

Kenneth Gordon,
Cross defendant-Appellee
and (no. 03-cv-6021L)

David Palmer,
Third party defendant-Appellee
(no. 03-MBK-6001L)

OPENING BRIEF OF APPELLANT PRO SE RICHARD CORDERO

(excerpt; full brief at
http://Judicial-Discipline-Reform.org/docs/DrCordero_v_Trustee_Gordon_CA2_9jul3.pdf)

VI. Statement of the Case

11. The bankruptcy case of a moving and storage company spawned an adversary proceeding in bankruptcy court, where Dr. Cordero, a former client of the company, was named, together with the trustee, Kenneth Gordon, Esq., and others, defendant. Appearing pro se, Dr. Cordero cross-claimed to recover damages from Trustee Gordon for defamation as well as negligent and reckless performance as trustee. The Trustee moved to dismiss and the court summarily dismissed the cross-claims before disclosure or discovery had taken place and although other parties' similar claims were allowed to stand. Dr. Cordero timely mailed his notice of appeal, but on the Trustee's motion, the District Court dismissed it as untimely filed. Likewise, Dr. Cordero moved the bankruptcy court to extend time to file the notice. Although Trustee Gordon himself acknowledged in his brief in opposition that the motion to extend had been timely filed on January 29, 2003, the bankruptcy court somehow found that it had been untimely filed on January 30, and dismissed it.

12. Dr. Cordero served the Debtor's owner, Mr. David Palmer, with a summons and a third party complaint, but he failed to answer. Dr. Cordero timely applied on December 26, 2002, for default judgment for a sum certain. Only belatedly and upon

Dr. Cordero's request to take action, did the bankruptcy court make a recommendation on February 4, 2003, namely, that the district court not enter default judgment because 'Cordero has failed to demonstrate any loss and upon inspection it may be determined that his property is in the same condition as when delivered for storage in 1993.' Dr. Cordero moved the district court to enter default judgment despite the bankruptcy court's prejudgment of the case. Making no reference to that motion, the district court accepted the recommendation because Dr. Cordero "must still establish his entitlement to damages since this matter does not involve a sum certain." Dr. Cordero moved the district court to correct its mistake since the application did involve a sum certain. The district court summarily denied the motion.

VII. Statement of Facts

A. In search for his property in storage, Dr. Cordero is repeatedly referred to Trustee Gordon, who provides no information and to avoid a review of his performance and fitness to serve, files false and defamatory statements about Dr. Cordero with the court and his U.S. trustee supervisor

13. A client –here Appellant Dr. Cordero- who resides in NY City, had entrusted his household and professional property, valuable in itself and cherished to him, to a Rochester, NY, moving and storage company in August 1993 and since then paid its storage and insurance fees. In early January 2002 he contacted Mr. David Palmer, the owner of the company storing his property, Premier Van Lines, to inquire about it. Mr. Palmer and his attorney assured him that his property was safe and in his warehouse at Jefferson-Henrietta, in Rochester (A-18). Only months later, after Mr. Palmer disappeared, did his assurances reveal themselves as lies, for not only had his company gone bankrupt –Debtor Premier-, but it was already in liquidation. Moreover, Dr. Cordero's property was not found in that warehouse and its whereabouts were unknown.

14. In search for his property, Dr. Cordero was referred to the Chapter 7 trustee– here Appellee Trustee Gordon– (A-39). The Trustee had failed to give Dr. Cordero notice of the liquidation although the storage contract was an income-producing asset of the Debtor. Worse still, the Trustee did not provide Dr. Cordero with any information about his property and merely bounced him back to the same parties that had referred Dr. Cordero to him (A-16,17).

15. Eventually Dr. Cordero found out from third parties (A-48, 49; 109, ftnts-5-8; 352) that Mr. Palmer had left Dr. Cordero's property at a warehouse in Avon, NY, owned by

Mr. James Pfuntner. However, the latter refused to release his property lest Trustee Gordon sue him and he too referred Dr. Cordero to the Trustee. This time not only did the Trustee fail to provide any information or assistance in retrieving his property, but even enjoined Dr. Cordero not to contact him or his office anymore (A-1).

16. Dr. Cordero applied to the bankruptcy judge in charge of the bankruptcy case, the Hon. John C. Ninfo, II, for a review of the Trustee's performance and fitness to serve (A-7). The judge took no action save to refer the application to the Trustee's supervisor, an assistant U.S. Trustee (A-29).

17. Subsequently, in October 2002, Mr. Pfuntner brought an adversary proceeding (A-21, 22) against Trustee Gordon, Dr. Cordero, and others. Dr. Cordero, appearing pro se, cross-claimed against the Trustee (A-70, 83, 88), who moved to dismiss (A-135). Before discovery had even begun or any initial disclosure had been provided by the other parties -Dr. Cordero provided numerous documents with his pleadings (A-11, 45, 62, 90, 123, 414)- and before any meeting whatsoever, the judge dismissed the cross-claims by order entered on December 30, 2002 and mailed from Rochester (SPA-1).

18. Upon its arrival in New York City after the New Year's holiday, Dr. Cordero timely mailed the notice of appeal on Thursday, January 9, 2003 (SPA-3). It was filed in the bankruptcy court the following Monday, January 13. The Trustee moved to dismiss it as untimely filed (A-156) and the district court dismissed it (SPA-6,9).

B. David Palmer abandons Dr. Cordero's property and defrauds him of the fees; then fails to answer Dr. Cordero's complaint; yet, the courts deny Dr. Cordero's application for default judgment although for a sum certain, prejudge a happy ending to his property search, and impose on him a Rule 55-extraneous duty to demonstrate loss.

19. Dr. Cordero joined as third party defendant Mr. Palmer, who lied to him about his property's safety and whereabouts while taking in his storage and insurance fees. Mr. Palmer, as Debtor (SPA-25-entry-13,12), was already under the bankruptcy court's jurisdiction, yet failed to answer the complaint of Dr. Cordero, who timely applied under Rule 55 F.R.Civ.P. for default judgment for a sum certain (SPA-12;A-294). But disregarding Rule 55, never mind the equities between the two parties, both courts denied Dr. Cordero and spared Mr. Palmer default judgment under circumstances that have created the appearance of bias and prejudice, as shown next.

C. Bankruptcy and district court officers have participated in a series of events of disregard of facts, rules, and law so consistently injurious to Dr. Cordero as to form a pattern of non-coincidental, intentional, and coordinated acts from which a reasonable person can infer their bias and prejudice and can fear their determination not to give him a fair and impartial trial

1. The bankruptcy court excused Trustee Gordon's defamatory statements as merely **"part of the Trustee just trying to resolve these issues"**

20. Trustee Gordon submitted statements, some false and others disparaging of Dr. Cordero's character, to the bankruptcy court in his attempt to dissuade it from undertaking the review of his performance and fitness as trustee requested by Dr. Cordero. The latter brought this to the court's attention (A-32, 41). Far from showing any concern for the integrity and fairness of proceedings, the court did not even try to ascertain whether Trustee Gordon had made false representations to the court in violation of Rule 9011(b)(3) F.R.Bkr.P.

21. On the contrary, it excused the Trustee in open court when at the hearing of the motion to dismiss it stated that:

> "I'm going to grant the Trustee's motion and I'm going to dismiss your cross claims. First of all, with respect to the defamation, quite frankly, these are the kind of things that happen all the time, Dr. Cordero, in Bankruptcy court…it's all part of the Trustee just trying to resolve these issues." (A-274-275)

22. When the court approves of the use of defamation by an officer of the court trying to avoid review, what will it use itself to avoid having its rulings reversed on appeal? How much fairness would an objective observer expect that court to show the appellant?

2. The court disregarded facts and the law concerning genuine issues of material fact when dismissing Dr. Cordero's cross-claims of negligence and recklessness against Trustee Gordon

23. It was Mr. Pfuntner, not Dr. Cordero, who first sued Trustee Gordon claiming that:

> "17. In August 2002, the Trustee, upon information and belief, caused his auctioneer to remove one of the trailers without notice to Plaintiff and during the nighttime for the

purpose of selling the trailer at an auction to be held by the Trustee on September 26, 2002," (A-24)

24. Does it get any more negligent and reckless than that? While the Trustee denied the allegation, it raised an issue of fact to be determined at trial. So how could the court disregard similar genuine issues of material fact raised by Dr. Cordero's cross-claims of negligence and reckless performance as trustee and before any discovery or meeting whatsoever merely dismiss them, thereby disregarding the legal standard for determining a motion to dismiss?

3. The court disregarded the Trustee's admission that Dr. Cordero's motion to extend time to file notice of appeal had been timely filed, and surprisingly finding that it had been untimely filed, denied it

25. After Dr. Cordero timely mailed his notice of appeal and Trustee Gordon moved to dismiss it as untimely filed, Dr. Cordero timely mailed a motion to extend time to file the notice. Although Trustee Gordon himself acknowledged in his brief in apposition that the motion had been timely filed on January 29 (A-235), the judge surprisingly found that it had been untimely filed on January 30. Trustee Gordon checked the filing date of the motion to extend just as he had checked that of the notice of appeal: to escape accountability through a timely-mailed/untimely-filed technical gap. He would hardly make a mistake on such a critical matter. Thus, who changed the filing date and on whose orders?[1] Why did the court disregard the factual discrepancy and rush to deny the motion? Do court officers manipulate the docket to attain their objectives? There is evidence that they do (paras.36 below).

4. The court reporter tries to avoid submitting the transcript

26. To appeal from the court's dismissal of his cross-claims, Dr. Cordero contacted Court Reporter Mary Dianetti on January 8, 2003, to request the transcript of the hearing. After checking her notes, she called back and told Dr. Cordero that there could be some 27 pages and take 10 days to be ready. Dr. Cordero agreed and requested the transcript (A-261).

27. It was March 10 when Court Reporter Dianetti finally picked up the phone and answered a call from Dr. Cordero asking for the transcript. After telling an untenable excuse, she said that she would have the 15 pages ready for…"You said that it would

[1] Dr. Cordero stands ready to submit to the Court of Appeals upon its request an affidavit containing more facts and analysis on this issue.

be around 27?!" She told another implausible excuse after which she promised to have everything in two days 'and you want it from the moment you came in on the phone.' What an extraordinary comment! She implied that there had been an exchange between the court and Trustee Gordon before Dr. Cordero had been put on speakerphone and she was not supposed to include it in the transcript (A-283, 286).

28. The confirmation that she was not acting on her own was provided by the fact that the transcript was not sent on March 12, the date on her certificate (A-282). Indeed, it reached Dr. Cordero only on March 28 and was filed only on March 26 (SPA-45, entry 71), a significant date, namely, that of the hearing of one of Dr. Cordero's motions concerning Trustee Gordon. Somebody wanted to know what Dr. Cordero had to say before allowing the transcript to be sent.

29. The Court Reporter never explained why she failed to comply with her obligations under either 28 U.S.C. §753(b) (SPA-86) on "promptly" delivering the transcript "to the party or judge" –certainly she did not send it to the party- or Rule 8007(a) F.R.Bkr.P. (SPA-65) on asking for an extension.

30. Reporter Dianetti also claims that because Dr. Cordero was on speakerphone, she had difficulty understanding what he said. As a result, the transcription of his speech has many "unintelligible" spots and it is difficult to make out what he said. If she or the court speakerphone regularly garbled what the person on speakerphone said, would either last long in use? Or was she told to disregard Dr. Cordero's request for the transcript; and when she could no longer do so, to garble his speech and submit her transcript for vetting by a higher-up court officer before mailing a final version to Dr. Cordero? Do you trust court officers that so handle, or allow such handling of, transcripts? Does this give you the appearance of fairness and impartiality?

5. The bankruptcy court disregarded facts and prejudged issues to deny Dr. Cordero's application for default judgment

31. The bankruptcy court recommended denial of the default judgment application by prejudging that upon inspection Dr. Cordero would find his property in the same condition as he had delivered it for storage 10 years earlier in 1993 (SPA-13). For that bold assumption it not only totally lacked evidentiary support, but it also disregarded contradicting evidence available. Indeed, as shown in subsection 2 above, Mr. Pfuntner had written that property had been removed without his authorization and at night from his warehouse premises. Moreover, the warehouse had been closed down and remained out of business for about a year. Nobody was there paying to control temperature, humidity, pests, or thieves. Thus, Dr. Cordero' property could also have been stolen or damaged. Forming an opinion without sufficient knowledge or examination, let alone disregarding the only evidence available, is called prejudice.

From one who forms anticipatory judgments, would you expect to receive fair treatment or rather rationalizing statements that he was right?

32. Moreover, the court dispensed with even the appearance of impartiality by casting doubt on the recoverability of "moving, storage, and insurance fees …especially since a portion of [those] fees were [sic] paid prior to when Premier became responsible for the storage of the Cordero Property," (SPA-14). How can the court prejudge the issue of responsibility, which is at the heart of the liability of other parties to Dr. Cordero, since it has never requested disclosure of, let alone held an evidentiary hearing on, the storage contract, or the terms of succession or acquisition between storage companies, or storage industry practices, or regulatory requirements on that industry? Such a leaning of the mind before considering pertinent evidence is called bias. Would you expect impartiality if appearing as a pro se litigant in Dr. Cordero's shoes before a biased court?

33. The court also protected itself by excusing its delay in making its recommendation to the district court. So it stated in paragraph "10. The Bankruptcy Court suggested to Cordero that the Default Judgment be held until after the opening of the Avon Containers…" (SPA-14). But that suggestion was never made and Dr. Cordero would have had absolutely no motive to accept it if ever made. What else would the court dare say to avoid review on appeal?

6. The Bankruptcy Clerk and the Case Administrator disregarded their obligations in the handling of the default application

34. Clerk Paul Warren had an unconditional obligation under Rule 55 F.R.Civ.P.: "**the clerk shall enter** the party's default," (emphasis added; SPA-76 upon receiving Dr. Cordero's application of December 26, 2002 (SPA-10). Yet, it was only on February 4, 41 later and only at Dr. Cordero's instigation (SPA-15), that the clerk entered default, that is, certified a fact that was such when he received the application, namely, that Mr. Palmer had been served but had failed to answer. The Clerk lacked any legal justification for his delay.

35. It is not by coincidence that he entered default on February 4, when the bankruptcy court made its recommendation to the district court. Thereby the recommendation appeared to have been made as soon as default had been entered.[2] It also gave the appearance that Clerk Warren was taking orders in disregard of his duty.

36. Likewise, his deputy, Case Administrator Karen Tacy (kt), failed to enter on the docket (EOD) Dr. Cordero's application upon receiving it. Where did she keep it until

[2]. See footnote 1.

entering it out of sequence on "EOD 02/04/03" (SPA-42-entry-51; 43-entries-46, 49, 50, 52, 53). Until then, the docket gave no legal notice to the world that Dr. Cordero had applied for default judgment against Mr. Palmer.[3] Does the docket, with its arbitrary entry placement, numbering, and untimeliness, give the appearance of manipulation or rather the evidence of it? (25 above).

37. It is highly unlikely that Clerk Warren, Case Administrator Tacy, and Court Reporter Dianetti were acting on their own. Who coordinated their acts in detriment of Dr. Cordero and for what benefit?

7. The district court repeatedly disregarded an outcome-determinative fact and the rules to deny the application for default judgment

38. The district court accepted the recommendation and in its March 11 order denied entry of default judgment on the grounds that it did not involve a sum certain (SPA-16). To do so, it disregarded five papers stating that it did involve a sum certain:

    1) the Affidavit of Amount Due (A-294);

    2) the Order to Transmit Record and Recommendation (SPA-12);

    3) the Attachment to the Recommendation (SPA-14);

    4) the March 2 motion to enter default judgment (A-314,327), and

    5) the motion for rehearing re implied denial of the earlier motion (A-342, 344-para.6).

39. Dr. Cordero moved the district court to enter default judgment notwithstanding such prejudgment of the outcome of a still sine die inspection (A-314). The district court did not acknowledge that motion in any way whatsoever, but instead accepted the bankruptcy court's recommendation. Moreover, it stated that Dr. Cordero "must still establish his entitlement to damages since the matter does not involve a sum certain [so that] it may be necessary for [sic] an inquest concerning damages before judgment is appropriate…the Bankruptcy Court is the proper forum for conducting [that] inquest," (SPA-16).

40. Dr. Cordero moved the district court for a rehearing (A-342) of his motion, denied by implication, so that it would correct its outcome-determinative error because the matter did involve a sum certain and because when Mr. Palmer failed to appear and Dr. Cordero applied for default judgment for a sum certain his entitlement to it became perfect pursuant to the plain language of Rule 55. Likewise, a bankruptcy court that

[3] See footnote 1.

showed such prejudgment could not be the "proper forum" to conduct any inquest (A-342). The district court curtly denied the motion "in all respects," (SPA-19). From a district court that merely rubberstamps the bankruptcy court's recommendation without paying attention to its facts, let alone reading papers submitted by a pro se litigant who spent countless hours researching, writing, and revising, would you expect the painstaking effort necessary to deliver justice?

8. The bankruptcy court disregarded Mr. Pfuntner's and his attorney's contempt for two orders, reversed its order on their ex-parte approach, showed again no concern for disingenuous submissions to it, but targeted Dr. Cordero for strict discovery orders

41. At the only meeting ever held in the adversary proceeding, the pre-trial conference on January 10, 2003, the court orally issued only one onerous discovery order: Dr. Cordero must travel from New York City to Rochester and to Avon to inspect at Plaintiff Pfuntner's warehouse the storage containers that bear labels with his name. Dr. Cordero had to submit three dates therefor. The court stated that within two days of receiving them, it would inform him of the most convenient date for the other parties. Dr. Cordero submitted not three, but rather six by letter of January 29 to the court and the parties (A-365, 368). Nonetheless, the court never answered it or informed Dr. Cordero of the most convenient date.

42. Dr. Cordero asked why at a hearing on February 12, 2003. The court said that it was waiting to hear from Mr. Pfuntner's attorney, David MacKnight, Esq., who had attended the pre-trial conference and agreed to the inspection. The court took no action and the six dates elapsed.

43. However, when Mr. Pfuntner wanted to get the inspection over with to clear and sell his warehouse and be in Florida worry-free, Mr. MacKnight contacted the court on March 25 or 26 ex parte –in violation of Rule 9003(a) F.R.Bkr.P. (A-372). Reportedly the court stated that it would not be available for the inspection and that setting it up was a matter for Dr. Cordero and Mr. Pfuntner to agree mutually.

44. Dr. Cordero raised a motion on April 3 to ascertain this reversal of the court's position and insure that the necessary transportation and inspection measures were taken (A-378). On April 7, the same day of receiving the motion (SPA-46-entries-75,76) and thus, without even waiting for a responsive brief from Mr. MacKnight, the court wrote to Dr. Cordero denying his request to appear by telephone at the hearing–as he had on four previous occasions- and requiring that Dr. Cordero travel to Rochester to attend a hearing in person to discuss measures to travel to Rochester (A-386).

45. Then Mr. MacKnight raised a motion (A-389). It was so disingenuous that, for example, it was titled "Motion to Discharge Plaintiff from Any Liability…" and asked for relief under Rule 56 F.R.Civ.P. without ever stating that it wanted summary judgment while pretending that "as an accommodation to the parties" Plaintiff had not brought that motion before. Yet, it was Plaintiff who sued parties even without knowing whether they had any property in his warehouse, nothing more than their names on labels (A-364). Dr. Cordero analyzed in detail the motion's mendacity and lack of candor (A-400). Despite its obligations under Rule 56(g) (SPA-78) to sanction a party proceeding in bad faith, the court disregarded Mr. MacKnight's disingenuousness, just as it had shown no concern for Trustee Gordon's false statements submitted to it. How much commitment to fairness and impartiality would you expect from a court that exhibits such 'anything goes' standard for the admission of dishonest statements? If that is what it allows outside officers of the court to get away with, what will it allow or ask in-house court officers to engage in?

46. Nor did the court impose on Plaintiff Pfuntner and Mr. MacKnight any sanctions, as requested by Dr. Cordero, for having disobeyed the first discovery order. On the contrary, as Mr. Pfuntner wanted, the court ordered Dr. Cordero to carry out the inspection within four weeks or it would order the containers bearing labels with his name removed at his expense to any other warehouse anywhere in Ontario, that is, whether in another county or another country.

9. The bankruptcy court's determination not to move the case forward

47. Although the adversary proceeding was filed on September 27, 2002, the court has failed to comply with Rule 16(b) F.R.Civ.P., (SPA-75) which provides that it "shall…enter a scheduling order…" When the court disregard its procedural obligations and allows a case to linger for lack of management, would you expect it to care much for your rights as a pro se litigant who lives hundreds of miles away?

Dr. Richard Cordero, Esq.

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
DrRCordero@Judicial-Discipline-Reform.org
tel. (718) 827-9521

(as of April 17, 2007)

Contents and Retrieval of Documents Referred to by Letter:page number in http://Judicial-Discipline-Reform.org/

I. CONTENTS **A:# pages** 1st page of docket

D:#, Tr:#, Add:#, Pst:#, SApp:# pages

II. RETRIEVAL **Bank of Hyperlinks**

JDR's call for a Watergate-like *Follow the money!* investigation into a bankruptcy fraud scheme supported by coordinated judicial wrongdoing:
C:1/E:1; C:271; C:441; C:551; C:711; C:821; C:981; C:1081; C:1285; C:1331; C:1611; C:1741

Pfuntner: A:1; 261; A:353; A:734; A:1061; A:1301; A:1601; A:1675; A:1765 E:1-60; E:1-62

DeLano: D:1; D:103; D:203; D:301; D:425; Add:509; Add:711; Add:911; Pst:1171; SApp:1501

Transcript of the evidentiary hearing in *DeLano* held in Bankruptcy Court, WBNY, on March 1, 2005: Tr

Downloadable Bank of Hyperlinks

http://judicial-discipline-reform.org/Bank%20of%20Links.htm#Table_of_Exhibits.htm