case no. 04-8371

IN THE

SUPREME COURT OF THE UNITED STATES

RICHARD CORDERO, Petitioner

v.

PREMIER VAN LINES, INC., ET AL., Respondents

On Petition for A Writ of Certiorari to

The United States Court of Appeals
for the Second Circuit

Petition for Writ of Certiorari

of January 20, 2005

by

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[docket no. 04-8371]

QUESTIONS PRESENTED

1. Whether it constitutes denial of due process to require a litigant, particularly a pro se and non-local one, to try a case –and all the more so two related, mutually confirming cases- to a bankruptcy judge whom the evidence shows to have together with other court officers so repeatedly and consistently deprived the litigant of rights and imposed on him burdens with disregard for the law, the rules, and the facts as to be engaged in a pattern of non-coincidental, intentional, and coordinated wrongdoing in furtherance of a bankruptcy fraud scheme.
2. Whether the appeals court should have exercised jurisdiction over an appeal from an order dismissing all negligence and defamation cross-claims against a cross-defendant trustee in a bankruptcy adversary proceeding because **a)** the trustee, having settled with all parties except the appealing cross-defendant, was completely eliminated from the proceeding, yet continued to be, as trustee, a key party to a determination of the respective liabilities of the remaining parties so that the order was final, appealable, and its review necessary; and in any event because **b)** the order was both issued by a judge who together with others was engaged in a pattern of wrongdoing and tainted by bias so that they and the order violated due process and the order was null and void.
3. Whether bankruptcy and district court orders, which denied an application for default judgment although **a)** it applied for a sum certain as required under FRCivP Rule 55, **b)** the defendant had already been defaulted by the clerk of court, **c)** the courts without making reference to any authority imposed on the applicant a Rule 55-extraneous and burdensome obligation to demonstrate loss through an "inquest" as a prerequisite to determining whether the right to damages existed and, if so, the amount to recover, and **d)** the applicant met the obligation, the court acknowledged that there had been loss or damage, but it still denied all recovery, were reviewable orders because **1)** final as to its legal answer to the scope of Rule 55; and in any event because **2)** issued by courts engaged in wrongdoing and tainted by bias so that the courts and their orders violated due process and the orders were null and void.

LIST OF PARTIES

All parties do not appear in the caption of the case on the title page. A list of all parties to the proceeding in this Court whose judgment is the subject of this petition is as follows:

A. Parties in the Court of Appeals for the Second Circuit in *In re Premier Van et al.*, docket no. 03- 5023, CA2

Kenneth Gordon, Chapter 7 Trustee for the liquidation of Premier Van Lines, Inc.

David Palmer, owner of the bankrupt moving & storage company Premier Van Lines, Inc.

B. Parties in the related case *In re David and Mary Ann DeLano*, in the U.S. Bankruptcy Court, docket no. 04-20280, WBNY

The DeLanos are joint debtors in bankruptcy. Mr. DeLano is a 3rd party defendant in the adversary proceeding *Pfuntner v. Trustee Gordon*, 02-2230, WBNY, brought in by Dr. Cordero, who is a defendant in *Pfuntner* and a creditor in *DeLano*.

SUMMARY OF INDEX OF APPENDICES

SUMMARY OF AUTHORITIES CITED

SUMMARY OF HEADINGS OF THE BRIEF

INDEX OF APPENDICES

collected in a separate bound volume;
references to it in the brief
are to its page numbers thus: [SCtA.#] [A:1675]

I. OPINIONS, ORDERS, FINDINGS OF FACT, AND CONCLUSIONS OF LAW SCtR Rule 14.1.(i)(i)

A. Court of Appeals for the Second Circuit

1) *In re Premier Van et al.,* docket no. 03-5023

B. U.S. District Court, WDNY

1) *Cordero v. Gordon,* docket no. 03-CV-6021L

2) *Cordero v. Palmer,* docket no. 03-MBK-6001L

II. OTHER RELEVANT OPINIONS, ORDERS, FINDINGS OF FACT, AND CONCLUSIONS OF LAW SCtR Rule 14.1. (i)(ii)

A. Orders of the U.S. Bankruptcy Court, WBNY

1) *Pfuntner v. Gordon et al.,* docket no. 02-2230

B. Judicial Misconduct Complaints under 28 U.S.C. §§351 et seq.

1. Bankruptcy Judge John C. Ninfo, II

2. CA2 Chief Judge John M. Walker, Jr.

C. Supreme Court and Judicial Conference statistics

D. *In re DeLano*, a bankruptcy petition that provides insight into a judicial misconduct and bankruptcy fraud scheme

E. Request to the U.S. Attorneys in Buffalo and Rochester Offices for an investigation

F. Request for a judicial report under 28 U.S.C. §3057(a) to the U.S. Attorney General for an investigation

For reference only; material not included, but available on a CD upon request

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in the

APPENDIX

submitted to

the Court of Appeals for the 2nd Circuit

in support of the Opening Brief, as supplemented for
the Petition for a Writ of Mandamus of September 12, 2003

SUMMARY

[in this vol.] in original

A. Items submitted on January 23, 2003, for the appeal to the District Court from the order of the Bankruptcy Court of December 30, 2002

♦Documents that appear elsewhere but are included again in a list may carry the page number of that other appearance and, if so, are not reprinted.

B. Items added for the Notice of Appeal of April 22, 2003, submitted to the District Court

1) Motion to Dismiss Notice of Appeal in District Court

*As they are produced, documents are added physically to this volume after the last one here; consequently, they begin with the page number that follows the last one. However, their placement on this Table results from the application of first a thematic, then a chronological criterion. Thus, depending on a document's subject matter, it is grouped with similar ones under one or more number-subheadings or a new subheading is created. Within each group, the document is placed chronologically. Hence, page numbers in a subheading group are not necessarily consecutive.

2) Motion to Extend Time to File Notice of Appeal

3) Transcript of Hearing

4) Default judgment against David Palmer

5) Property Search and Trip to Rochester for Inspection

6) Notice of Appeal to CA2 and Dockets

TABLE OF AUTHORITIES CITED

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II. CASES

III. STATUTES

IV. RULES

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TABLE OF HEADINGS OF THE PETITION

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

I. OPINIONS BELOW

1. None of the decisions or orders in this case has been published and none has been designated for publication. However, all appear in the separate volume titled IN THE SUPREME COURT OF THE UNITED STATES APPENDICES. References to the contents in that volume are to their page numbers therein and bear the format [SCtA.#].
2. The Court of Appeals for the Second Circuit dismissed the appeal on jurisdictional grounds on January 26, 2004 [SCtA.1]. It denied Appellant's motion for panel rehearing and hearing en banc on October 26, 2004 [SCtA4].
3. In the U.S. District Court, WDNY, the last "in all respect denied" order forms without opinion were issued on March 27, 2003 [SCtA.5&9]. The previous two orders with opinion were issued on March 11 and 12, 2003 [SCtA.6&10].
4. The decisions and orders and a recommendation of the U.S. Bankruptcy Court, WDNY, appear listed in chronological order in the Index of Appendices [SCtA.13-67] and are discussed below.

II. JURISDICTION

5. The United States Court of Appeals for the Second Circuit dismissed the appeal in Premier Van Lines, docket no. 03-5023, on January 26, 2004 [SCtA.1].
6. A timely petition for rehearing was denied by that Court on October 26, 2004.
7. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. Fifth Amendment to the Constitution of the United States

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

B. Federal Rules of Bankruptcy Procedure Rule 9006. Time

…(e) Time of service

Service of process and service of any paper other than process or of notice by mail is complete on mailing.

(f) Additional time after service by mail or under Rule 5(b)(2)(C) or (D) F.R.Civ.P.

When there is a right or requirement to do some act or undertake some proceedings within a prescribed period after service of a notice or other paper and the notice or paper other than process is served by mail or under Rule 5(b)(2)(C) or (D) F.R.Civ.P., three days shall be added to the prescribed period.

C. Federal Rules of Civil Procedure Rule 55. Default

(a) ENTRY. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

(b) JUDGMENT. Judgment by default may be entered as follows:

(1) *By the Clerk*. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and is not an infant or incompetent person.

(2) *By the Court*. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the

action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

(c) SETTING ASIDE DEFAULT. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(d) PLAINTIFFS, COUNTERCLAIMANTS, CROSS-CLAIMANTS. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

IV. STATEMENT OF THE CASE

A. In the Premier bankruptcy case Judge Ninfo together with other court officers has prevented discovery and tried to wear Dr. Cordero down to keep him from disturbing the Judge's modus operandi developed in *thousands* of cases with Trustee Gordon

8. The bankruptcy case of a moving and storage company, Premier Van Lines, Inc., spawned an adversary proceeding in bankruptcy court, Judge John C. Ninfo, II, presiding. In it Dr. Richard Cordero, who was a client of the company, and Standing Chapter 7 Trustee Kenneth W. Gordon, Esq., as well as others, were named defendant.

9. Trustee Gordon had been appointed in December 2001 to liquidate Premier after Owner David Palmer failed to comply with his bankruptcy obligations and the case was converted to one under Chapter 7. He performed so negligently and recklessly that he failed both to examine Premier's

business records, to which he had access (A-45,46; A-109, ftnts-5-8; 352)[1], and to realize from the docket that Owner Palmer had stored his clients' property, such as Dr. Cordero's (A-433:entry 17; 434:19, 21, 23; 437:52), in a warehouse owned by Mr. James Pfuntner. As a result, the Trustee failed to discover the income-producing storage contracts that belonged to the estate and to act timely (A-442:94,95); just as he failed to notify Dr. Cordero of his liquidation of Premier. Hence, Dr. Cordero cross-claimed the Trustee (A-70, 83, 88) [SCtA.124§B2]

10. Trustee Gordon countered with a motion to dismiss under FRBkrP Rule 7012 (A-135, 143). It was argued on December 18, 2002. That was almost three months after the adversary proceeding had commenced. Nevertheless, Judge Ninfo had disregarded FRBkrP Rules 7016 and 7026, and FRCivP Rules 16 and 26, so that there had been no meeting of the parties or disclosure –except by Dr. Cordero, who disclosed numerous documents (A-11,13,15,34,45,63,68,90)- let alone any discovery. Despite the record's lack of factual development, Judge Ninfo dismissed the cross-claims summarily, thereby disregarding the legal standards applicable to genuine issues of material fact [SCtA.113§B] that Dr. Cordero had raised concerning the Trustee's negligence and recklessness in liquidating Premier (A-148) [SCtA.121§B]. Actually, the Judge even excused the Trustee's defamatory and false statements as merely "part of the Trustee just trying to resolve these issues", (A-275) thus condoning his use of falsehood, astonishingly acknowledging in open court and for the record his acceptance of unethical behavior, and showing gross indifference to its injurious effect on Dr. Cordero. [SCtA.122§B1]

11. Some official facts shed light on the Judge's motives for so shielding Trustee Gordon from

[1] References with the format (A-#) are to the 578-page Appendix supporting Dr. Cordero's Opening Brief, as supplemented for the Petition for a Writ of Mandamus of September 12, 2003, and submitted by him to the Court of Appeals and the parties; that volume is available from him on demand by this Court. References with the format [SCtA.#] are to the pages of the separate volume accompanying this petition and titled IN THE SUPREME COURT OF THE UNITED STATES APPENDICES. The (A-#) references can be looked up in their Table of Contents, which is reproduced as Part II of the Index of that APPENDICES volume so that the reader may track through the #=page number the title of the document referred to and in some instances also its own table of contents.

discovery on the cross-claims. A query on PACER (**P**ublic **A**ccess to **C**ourt **E**lectronic **R**ecords) run on November 3, 2003, at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl>PACER>Query about Kenneth W. Gordon, showed that since April 12, 2000, he was the trustee in 3,092 cases! These are bankruptcy cases in each of which the trustee must "investigate the financial affairs of the debtor", 11 U.S.C. §704(4), by reviewing the bankruptcy petition and, among other things, seeking and cross-checking documents, assets, and persons; "furnish such information concerning the estate and the estate's administration as is requested by a party in interest", §704(7), which entails a lot of correspondence and face-to-face meetings with such parties as well as number crunching; "convene and preside at a meeting of creditors", §341(a), and do so personally, C.F.R. §58.6(a)(10); "ensure that the debtor shall perform his intentions as specified in…[his] schedule of assets and liabilities", §704(3) and §521(2)(B); "file…period reports and summaries of the operation of such business" "authorized to be operated", §704(8),…with respect to thousands of cases that may take years to liquidate!! And one trustee!!!? With such overwhelming workload, would you like Trustee Gordon to represent your interests as a creditor?

12. But there is more. By June 26, 2004, another PACER query about Trustee Gordon returned "This person is a party in 3383 cases". He had added 291 cases since November 3, 2003, at the rate of 1.23 per day, every day, including Saturdays, Sundays, holidays, sick days, and out-of-town days. But there is still more. To that number must be added, as PACER did, the 142 cases prosecuted or defended by the Trustee as attorney and 76 cases in which he appeared as a named party. By comparison, this Court has 9 members and while the average of case filings since 1998 has been 7,814, on average it has heard only 87, disposed of 83, and written 74 signed opinions, or fewer than 10 in each category by each member. [SCtA.289]
13. But there is still even more, for PACER indicated that out of those 3,383 cases in which the

trustee was Trustee Gordon, the judge in 3,382 cases was none other than Judge Ninfo. Now one starts to understand why Judge Ninfo so protects Trustee Gordon: These two have worked together for years on thousands of cases and have developed a modus operandi. If Dr. Cordero had been allowed to engage in discovery, he could have established how the Judge failed to realize or knowingly tolerated Trustee Gordon's negligent and reckless liquidation of Premier. This assertion finds support in the Trustee's comment in his memorandum opposing Dr. Cordero's motion to extend time to appeal (A-238), that, "As the Court is aware, the sum total of compensation to be paid to the Trustee in this case is $60.00." That's it! Trustee Gordon had no financial incentive to do his job! Hence, it is reasonable to deduct therefrom that he cherry-picked from his 3,382 cases and growing to concentrate his attention on those that were plump with financial juice, while chaff cases were piled up just for volume and because as standing chapter 7 trustee he had little choice, cf. 28 U.S.C. §586(b). Was the Judge "aware" of this? Of what else? It is quite suspicious that Trustee Gordon disclosed in writing his expectation that Judge Ninfo would excuse his hack job on Premier if only he reminded the Judge of how little money there was in it for him. What does that tell about Judge Ninfo and their relation?

14. Just $60, really?, for Trustee Gordon himself had qualified Premier as an asset case. This is significant in light of §2-2.1. of the Trustee Manual, which provides that "the trustee should consider whether sufficient funds will be generated to make a meaningful distribution to creditors, **prior to administering the case as an asset case,**" (emphasis added). In turn, 11 U.S.C. §326 provides that "the court may allow reasonable compensation…[as a percent] upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor…". This furnishes the incentive for the trustee to find the most assets. Trustee Gordon did find them, which follows from his qualification of the case as well as from Warehouser Pfuntner's allegation in the complaint 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)

15. While the Trustee denied this allegation, the fact is that he had the appointment of an auctioneer approved by a court order entered on August 29, 2002, only to end up issuing a No Distribution Report entered on December 18, 2002. (A-553 et seq., docket entries 70;71;95; 98;107) So, where did the assets go? Dr. Cordero could not find out because Judge Ninfo dismissed his cross-claims despite the genuine issues of material fact that he had raised. Such dismissal protected Trustee Gordon, for if he had been found to have handled Premier's assets in a way requiring his removal as its trustee, then under 11 U.S.C. §324 he could have been removed from all other cases. That would have been risky for the Judge too because partners in work are not supposed to turn on each other, and certainly not for a one-off litigant, much less for one pro se and non-local expected to be easily worn down. Of what else was Judge Ninfo "aware" that he did not want discovered, whether by Dr. Cordero or anybody else?

16. Thus, Dr. Cordero timely mailed under FRBkrP Rule 8002(a) his notice of appeal (A-153) from the dismissal (A-151) of his cross-claims against Trustee Gordon. But Judge Ninfo alleged that the notice was untimely filed, thereby disregarding the complete-upon-mailing provision of Rule 9006(e) and the three-additional-days provision of subsection (f). [SCtA.114§A] Thereupon Dr. Cordero moved under Rule 8002(c)(2) (A-214, 246) to extend time to file notice to appeal. Although Trustee Gordon himself had admitted in his brief in opposition that it had been timely *filed* on January 29, 2004 (A-235), Judge Ninfo likewise denied it by going as far as to allege that it had been untimely filed on January 30! (A-240, 259). At the hearing on February 18, 2003, when the Judge made that astonishing finding, he paid no attention to the discrepancy between those dates despite Dr. Cordero's objections.

B. Judge Ninfo disregarded the law applicable to default judgments and protected Mr. Palmer even after Dr. Cordero complied with the requirement to inspect his property to establish loss or damage

17. Mr. Palmer easily got away without his debts by just not fulfilling his obligations under his own voluntary bankruptcy petition under 11 U.S.C. Ch. 11 that he had filed just a few months earlier on March 5, 2001, for his company Premier. He even stopped coming to court, but Judge Ninfo would not compel him to appear. Far from it, despite the fact that he also abandoned Dr. Cordero's property; defrauded him of the storage and insurance fees; and failed to answer Dr. Cordero's summons and complaint of November 21, 2002 (A-70), so that Dr. Cordero applied for default judgment on December 26, 2002 [SCtA.15], Judge Ninfo protected Mr. Palmer by failing to take action for over a month. After Dr. Cordero inquired about it [SCtA.16], the Judge recommended to the District Court that the application be denied [SCtA.17 and 19] 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.'

18. Dr. Cordero moved the district court to enter default judgment upon recognizing such statement as a prejudgment of the case contrary to the only evidence available, namely, that Dr. Cordero's property had been abandoned in a warehouse closed for over a year where nobody monitored proper storage conditions such as humidity, temperature, pests, and theft. Dr. Cordero also argued that to require to demonstrate damages although the application was for a sum certain (A-294) violated FRCivP Rule 55.However, once more Judge Larimer went along with his colleague's recommendation and not only did he fail to even acknowledge Dr. Cordero's legal arguments (A-314), but also provided no legal justification whatsoever for either his assertion that Dr. Cordero "must still establish his entitlement to damages since this matter does not involve a sum certain" or his requirement that an "inquest" be conducted to determine damages. [SCtA.10] But it did involve a sum certain! Dr. Cordero moved Judge Larimer to correct such

outcome-determinative mistake and apply the law (A-342). As in the Gordon case, Judge Larimer responded with a mere "in all respects denied" order form. [SCtA.9 and 5]

19. Dr. Cordero participated in the required inspection of the property, for which he had to travel at his expense and to his detriment from New York City to Rochester and then to the suburb of Avon. (A-365; 378) After his report to Judge Ninfo, the latter agreed that there had been loss or damage of his property. Nevertheless, he refused to enter default judgment, now alleging for the first time that he was not convinced that Mr. Palmer had been served properly! Yet, it was for Mr. Palmer to contest such judgment under FRCivP Rule 55(c) and 60(b)?, not for the Judge to become his advocate, particularly for a defendant with dirty hands since the Clerk of Court, although belatedly, had already defaulted Mr. Palmer on February 4, 2003. [SCtA.15] Was Judge Ninfo also "aware" of what Mr. Palmer could disclose if forced to come to court, let alone if made to face the financial consequences of a default judgment?

20. By that time Judge Ninfo had been joined by other officers of the court as well as court staff (hereinafter collectively referred to as court officers) in a series of acts of disregard of the law, the rules, and the facts so consistently to the detriment of Dr. Cordero, the only pro se and non-local party and to the benefit of the local parties, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing and bias with the effect of preventing discovery and wearing down Dr. Cordero. (A-500 and 510) [SCtA.105§C and 137] Judge Ninfo denied Dr. Cordero due process and made a mockery of the judicial system. Dr. Cordero appealed. What a fool for thinking that circuit judges would care! Do you?

C. The Court of Appeals showed indifference to judicial wrongdoing and its injury on a litigant as well as the public, thereby condoning denial of due process and denying it itself by remanding Dr. Cordero into the hands of Judge Ninfo

21. Dr. Cordero's appeal to the Court of Appeals from the two district court's orders of March 27,

2003 [SCtA.5&9], was founded on 28 U.S.C. §§158(d) and 1291 (SPA-84), both of which apply to bankruptcy appeals, *Connecticut National Bank v. Germain, 112 S.Ct. 1146, 503 U.S. 249, 117 L.Ed.2d 391 (1992).* He also specifically included in his notice the underlying decisions of Judge Ninfo. [SCtA.429]

22. His appeal brief also specifically presented for review the issue of judicial wrongdoing and bias [SCtA.102§C and 130§D] as well as [SCtA.102§A] the legal aspects of the dismissal of his notice of appeal [SCtA.114§A] and cross-claims [SCtA.121§B] and the denial of his application for default judgment [SCtA.102§B and 127§C]. Concurrently with the appeal, the case continued in Judge Ninfo's court with the remaining parties and so did the disregard for legality that caused Dr. Cordero an enormous waste of effort, time, and money as well as tremendous aggravation. He kept the Appeals Court informed of such wrongdoing and bias [SCtA.175]. He also filed a judicial misconduct complaint under 28 U.S.C. §§351 et seq. against Judge Ninfo [SCtA.251] and a petition for a writ of mandamus under FRAP Rule 21 to require him to recuse himself - which he refused to do when requested by Dr. Cordero [SCtA.137 and 31], never mind that under *28 U.S.C. § 455*(a) (1988), a judge **must** disqualify herself if her impartiality "might reasonably be questioned,"- remove the case to an impartial court in another district, and open an investigation into the wrongdoing and motives therefor of the Judge and the other court officers.
23. The mandamus petition was denied [SCtA.72] and the complaint was already in its six month without response when the appeal was denied [SCtA.1] by a panel including Chief Judge John M. Walker, Jr. Without addressing the issue of wrongdoing and bias at all, the appeal was dismissed on the claim that the orders appealed from were not final so that the court lacked jurisdiction. [cf. SCtA.191] Dr. Cordero raised a motion of panel rehearing and hearing en banc. [SCtA.207]

D. The DeLano bankruptcy petition provides insight into a judicial misconduct and bankruptcy fraud scheme that undermines the integrity of the judicial system to the detriment of the public

24. "Coincidentally", the denial of the appeal was entered on January 26, 2004, the same date as that of a most extraordinary event: Mr. DeLano, the M&T Bank officer that lent money to run Premier to Mr. Palmer, who then went bankrupt, filed himself a Chapter 13 bankruptcy petition together with his wife [SCtA.381]. How suspicious, for Mr. DeLano has been for 15 years and still is a loan bank officer and as such an expert in determining creditworthiness and insuring borrowers' ability to repay their loans. In the petition, the DeLanos listed Dr. Cordero as a creditor because of his claim against Mr. DeLano on grounds of his negligent handling of the storage containers in which the Bank had a security interest and Dr. Cordero had his property.
25. The suspicion is strengthened by even a layman's reading of their petition. To begin with, Mr. DeLano and his wife owe an unsecured debt of $98,092, [id., Schedule F] smartly distributed over 18 credit card issuers so that none has a stake high enough to make it cost-effective to participate in the bankruptcy proceedings. They took out simultaneously two loans of $59,000 each for a total of $118,000 that they repaid by 1999 as agreed without their Equifax credit reports noting a single payment late, although otherwise Equifax notes their having been late in their other repayments over 230 times! It must have been money that they invested in something so important that they dare not risk losing it through foreclosure. Interestingly, they declared in their petition a mortgage of $77,084 in a home in which, toward the end of their working lives, they claimed their equity is only $21,415. [id., Schedule A] Likewise, they declared that, after two lifetimes of work, they have only $2,910 worth of household goods! The rest of their tangible personal property is just two cars worth a total of $6,500. [id., Schedule B] That's it?!
26. More surprisingly, they made a $10,000 loan to their son, declared it uncollectible and stated it undated, which means that it could be a voidable preferential transfer, 11 U.S.C. §547(b)(4)(B)

to a relative §101(31)(A)(i). Nonetheless, they declared only $535 in cash and on account [SCtA.381, Schedule B], but their IRS 1040 forms reveal that their household income for 2001-2003 was $291,471! Although those numbers are a series of red flags pointing in the direction of bankruptcy fraud through concealment of assets, neither Judge Ninfo nor Trustee Reiber would require the DeLanos to account for the whereabouts of that money. Yet, it could go a long way toward covering their declared liabilities of $185,462 [id., Summary of Schedules]. On the contrary, they have refused to require the DeLanos to produce their statements of bank and debit card accounts. [SCtA.301, 305, and 57]

27. Thus, Dr. Cordero attended the meeting of creditors [SCtA.375] required under 11 U.S.C. §341 and whose business includes "the examination of the debtor under oath…", FRBkrP Rule 2003(b)(1). Actually, none of the other 20 creditors attended, which is the normal occurrence, as Mr. DeLano must know and have counted on for an unobjected, smooth sailing of his petition.

28. The meeting was not conducted by Trustee Reiber because contrary to regulations, C.F.R. §58.6(a)(10), he had his attorney, James Weidman, Esq., do so. Dr. Cordero submitted his written objections [SCtA.291] to the DeLanos' debt repayment plan [SCtA.379]. But no sooner had he asked Mr. DeLano to state his occupation than Mr. Weidman asked Dr. Cordero in rapid succession some three times to state his evidence that the DeLanos had committed fraud. Dr. Cordero had to insist that Mr. Weidman take notice that he was not accusing them of fraud. To no avail because Mr. Weidman alleged that there was no time for such questions and put an end to the examination without regard for Dr. Cordero's objection that he had a statutory right to examine the DeLanos and the fact that there was more than ample time to do so since Dr. Cordero was only at his second question! Why could Att. Weidman not risk exposing the DeLanos to have to answer under oath Dr. Cordero's question before finding out how much Dr. Cordero already knew about fraud committed by them?

29. Later on that day, March 8, 2004, at the confirmation hearing of debtors' repayment plans before Judge Ninfo, Dr. Cordero protested Att. Weidman's unlawful act, but Trustee Reiber ratified the actions of his attorney and vouched for the good faith of the petition. For his part, Judge Ninfo said in open court and for the record that he had read Dr. Cordero's objections; that Dr. Cordero interpreted the law very strictly, but had again missed the local practice; that he should have called to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions.

30. MINDBOGGLING! Section 341 is titled "Meeting of creditors"; its purpose under §343 is for them "to examine the debtor"; and FRBkrP Rule 2004(b) includes no fewer than 12 areas appropriate for them to examine the debtor, even one worded in the catchall terms of "any other matter relevant to the case".

31. But all that is just the law and what really matters for Judge Ninfo is what he called "the local practice". That is precisely what Dr. Cordero has complained about! Judge Ninfo together with other court officers disregards the law, the rules, and the facts systematically and instead applies the law of the locals. [SCtA.181] It is based on personal relationships and the fear of the local parties that must appear before him frequently to antagonize him, for he distributes favorable and unfavorable decisions as he sees fit without regard for legal rights and factual evidence . Indeed, a PACER query about Trustee Reiber ran on April 2, 2004, returned the statement that he was trustee in 3,909 *open* cases!, 3,907 before Judge Ninfo. As stated (¶13, supra), Trustee Gordon was the trustee before Judge Ninfo in 3,382 out of his 3,383 cases, as of June 26, 2004. Likewise, the statistics on Pacer as of November 3, 2003, showed that Warehouser Pfuntner's attorney, David D. MacKnight, Esq., had appeared before Judge Ninfo 427 times out of 479 times and the attorney for Premier Owner Palmer, Raymond C. Stilwell, Esq., had so appeared 132 times out 248 times. If they know what is good for them, they take what they are given by the Lords of the

Fiefdom of Rochester [SCtA.181] and are thankful.

32. Lord Ninfo and Lord Larimer have carved their Fiefdom out of the land of the law of Congress as interpreted by this Court, to whose decisions they make no reference, whether it be in written orders [SCtA.5-71] or from the bench (A-265). Judge Ninfo does not even discuss the law and rules that Dr. Cordero has painstakingly researched and argued in his briefs and motions and at hearings. Instead, they defend their Fiefdom by engaging in non-coincidental, intentional, and coordinated acts of disregard for legality and bias. (A-776.C, A-780.E; A-804.IV) Why should they bother with the law to provide due process when they can receive due respect by exercising uncontrolled judicial power? [§V, infra] To one like Dr. Cordero, a 'citizen' of a diverse, far away city, who dared challenge Judge Ninfo's dismissal of his cross-claims against Trustee Gordon and his denial of the application for default judgment against Owner Palmer by appealing to Judge Larimer, these Lords dispense not justice, but rather punishment: deprivation of personal and property interests and imposition of unjustified, wearing down burdens.

33. The Lords' contempt for due process and the injury in fact that they have inflicted on Dr. Cordero should have so offended the Court of Appeals as to cause it to investigate the matter and take corrective action to restore to judicial process respect for the law and impartiality. Instead and though fully informed of the situation [SCtA.188], the Court reacted with indifference in a perfunctory decision [SCtA.1; cf 193] and the couldn't-care-less response of denial order forms. *Greenholtz v. Inmates of the Nebraska Penal & Correctional Complex, 442 U.S. 1, 40 (1979)* (Marshall, J., dissenting) ("[A]n inability to provide any reasons suggests that the decision is, in fact, arbitrary.") By dismissing the appeal and remanding Dr. Cordero to the abusive hands of Judge Ninfo, who at the hearing on June 25, 2003, warned him that any appeal from his decisions would go to Judge Larimer, the Court condoned the judges' past, current, and future wrongdoing [cf. SCtA.465; 467] and authorized their injuring him. Thereby, the Court shared in

the judges' contempt for due process and itself denied Dr. Cordero due process.

V. REASONS FOR GRANTING THE PETITION

34. However, this case is about much more than its injury to one litigant. What is at stake is the integrity of the judicial system that guarantees due process to the public at large and the role of this Court in ensuring it as the body with the highest responsibility for the proper functioning of the Third Branch of Government. If intent to play that role conscientiously even at the cost of upsetting many within its own ranks, then the Court can use this case as a means to gain insight into, and correct, the way of thinking that has set in among judges due to their unwillingness to investigate and censure their peers so that they operate in an environment free of any effective system of control and discipline.

A. The Court of Appeals by its injudicious application of a jurisdictional rule dismissed Dr. Cordero's case, thus requiring him to litigate under conditions that it could foresee would wear down a pro se, non-local party before reaching a final determination, whereby it denied him due process and raised the issue of the attainability of justice, which is of critical importance for all poor and middle class litigants

35. The Court's dismissal by applying the rule on finality of orders without regard for the circumstances of the case at bar and the consequences for the litigant raises fundamental issues about the functioning of our system of justice that implicate the large number of people similarly situated to Dr. Cordero (¶81, below). Indeed, the Court's dismissal means that Pfuntner v. Gordon et al. will continue to be tried without Trustee Gordon. A future final decision therein that were appealed all the way to the Appeals Court and reversed by the latter thus reinstating Dr. Cordero's claims of negligence and defamation against the Trustee would significantly affect the whole case because the trustee in general in a bankruptcy case and Trustee Gordon in this particular bankruptcy case is a key player that alters the dynamics of liability among all the

parties. As a result, the case would have to be relitigated all over again.

1) The Appeals Court had a duty to decide the appeal so as to meet its obligation both to the justice system to use judicial resources efficiently and to the litigants to "ensure the just, speedy, and inexpensive resolution of civil disputes"

36. Having to relitigate the case would amount to a foreseeable and unnecessary waste of judicial resources contrary to the requirements of justice and the policy for its administration by the courts. Thus, the law requires district courts to develop a civil justice expense and delay reduction plan to "ensure the just, speedy, and inexpensive resolution of civil disputes", 28 U.S.C. §471. Similarly, the rules of practice and procedure that this Court prescribes for the other courts, are intended to "promote simplicity in procedure, fairness in administration, the just determination of litigation, and the elimination of unjustifiable expense and delay", 28 U.S.C. §331, 5th para.; cf. FRCivP Rule 1; FRBkrP Rule 1001. Likewise, the law prescribes the duty, rather than just affords the option, that "Each judicial council *shall* make all necessary and appropriate orders for the effective and expeditious administration of justice", 28 U.S.C. §332(d)(1) (emphasis added), which the appeals courts must apply since "All judicial officers and employees of the circuit *shall promptly* carry into effect all orders of the judicial council", §332(d)(2) (emphasis added). In the same vein, the rules of procedure allow the appeal courts to suspend, and therefore apply, them with a view to attaining expeditious action and to take into account the circumstances of the case, even those brought to their attention by a party, so that:

> On its own or a party's motion, a court of appeals may –to expedite its decision or for other good cause- suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b). FRAP Rule 2

37. Moreover, FRAP requires the courts of appeals to recognize the priority of a party's right over the application of a rule by providing that:

> A local rule imposing a requirement of form must not be enforced in a manner

> that causes a party to lose rights because of a nonwillful failure to comply with the requirement. FRAP Rule 47(a)(2)

2) The Court of Appeals, by dismissing on jurisdictional grounds, failed to give priority to its substantive mission to achieve justice over its mechanical rules for choosing cases

38. Courts with supervisory responsibility over lower ones, such as appeals courts, have as their mission to be agents for dispensing justice rather than have only the chores of operators of a well-oiled set of rules. They are allowed to apply equitable considerations, in other words, use common sense to assess the circumstances of litigants and the effect on them of their decisions so as to ensure that justice is done.

39. The Appeals Court knew what would defeat Dr. Cordero's appeal, namely, that he is a pro se and non-local party that had already spent three years litigating the case and would likely not have the financial resources or emotional strength to litigate it for years without end. By dismissing and remanding the Court denied Dr. Cordero due process of law. 'Who cares! That's his problem.'

40. This Court should care. It set the rationale for pursuing the objective of justice ahead of manning a procedural machine when it stated that:

> There have been instances where the Court has entertained an appeal of an order that otherwise might be deemed interlocutory, because the controversy had proceeded to a point where a losing party would be irreparably injured if review were unavailing; *Republic Natural Gas Co. v. Oklahoma, 68 U.S. 972, 976, 334 S.Ct. 62, 68, 92 L.Ed.2d 1212, 1219 (1948.)*

41. Allowing lower court judges to wear down a pro se, non-local party, and permitting an appeals court to contribute to his being worn down cannot possibly be a standard for the administration of justice acceptable to the body at the top of the Judicial Branch of Government. Such wearing down cannot be justified by summarily prioritizing the procedural rule on finality of orders over the substantive right of a litigant to have his day in court to engage in proceedings that satisfy due process.

42. The principle of achieving justice that should guide the courts' action and the requirement that such action be expeditious and inexpensive, for "justice delayed [and beyond one's means] is justice denied", cf. aphorism attributed to William Ewart Gladstone, 1809-1898, are not applicable only to procedural rules, which in any event provide for due process too. They apply also to a jurisdictional rule such as that of the finality of orders. The Court has recognized this by stating that it would depart from a requirement of strict finality "when observance of it would practically defeat the right to any review at all," *Cobbledick v. United States, 60 S.Ct. 540, 540-41, 309 U.S. 323, 324-25, 84 L.Ed. 783, 784-85 (1940).*

43. It is a travesty of justice if courts in practice deny litigants process, never mind due process, so long as they safeguard the rules. Without losing sight of the fact that the orderly dispensation of justice requires rules, their application is not an end in itself, but must serve to "promote the interest of justice", 28 U.S.C. §2073(a)(b). Hence, this Court does not require the application of new rules of procedure when it "would work injustice, in which event the former rule applies", §2074(a). Actually, it does not interpret even the Constitution rigidly, insensitively, the people notwithstanding, but rather recognizing that the people were not made to serve the Cons-titution and that instead the Constitution was written for "WE THE PEOPLE…to establish Justice", Const., Preamble, this Court adapts its provisions to the changing needs of people over time even if that requires overturning earlier decisions. The Court should also require appeals courts to apply rules in light of the stage of the litigants along the course of litigation so that instead of forcing them on a 'long march' of legal exhaustion, they ensure that the litigants are advancing in due process toward a just and fair final resolution of their controversies.

3) The orders appealed to the Court of Appeals were final because they concern points of law that the lower courts can no longer modify and have a final effect on the legal relation between Dr. Cordero and the opposing parties

44. The injudiciousness of the Court of Appeals in dismissing the case on jurisdictional grounds was

all the more patent because if it had only paid more attention to this case than its perfunctory "not to be published…not to be cited as precedential authority" decision [SCtA.1] shows it did, it would have realized that it did have jurisdiction because the orders were final and appealable.

a) The decisions on the untimeliness of Dr. Cordero's notice of appeal are final and rendered final the dismissal of the cross-claims against Trustee Gordon

45. After Dr. Cordero gave notice of appeal (A-153) to the District Court from Judge Ninfo's dismissal (A-151) of his cross-claims against Trustee Gordon, the latter moved to dismiss alleging that the notice was untimely (A-156). Twice Dr. Cordero moved the district court to uphold its timeliness (A-158, 205) under **(a)** the FRBkrP Rule 9006(e) complete-on-mailing rule; **(b)** Rule 9006(f) three-additional-days rule [SCtA.25]; **(c)** Rule 8001(a) on the manner of appealing from a bankruptcy order; and **(d)** Rule 8002 on the timing for perfecting the appeal. Twice District Judge Larimer denied his motions. (A-200, 211) Then Dr. Cordero moved to extend the time to file notice of appeal under Rule 8002(c) (A-214), which Judge Ninfo denied on the surprising allegation that it was untimely (A-240), so that Dr. Cordero raised a motion arguing the same point of time computation under Rule 9006 (A-246), but Judge Ninfo denied it (A-259) by stating that 'the district court order establishing that Dr. Cordero's appeal was untimely' "is the law of the case" (A-260).

46. This means that res judicata prevents any further appeal from causing those lower courts to upset their ruling concerning that strictly legal point of timeliness of filing or the resulting findings and determination that the notice of appeal and the motion to extend the time to file it were untimely. Consequently, the order dismissing Dr. Cordero's cross-claims against Trustee Gordon put the latter beyond Dr. Cordero's reach in Pfuntner v. Gordon et al., and since the Trustee settled with the other parties, he is no longer a litigating party. No pending proceedings in the courts below could ever change the legal relation between them. [SCtA.198§A] Therefore, each order is final

because it "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment", *Catlin v. United States, 65 S.Ct. 631, 633, 324 U.S. 229, 233, 89 L.Ed. 911 (1945).*

47. Their legal relation could only change if the Appeals Court reviewed those orders and determined that they were in error as a matter of law because both Judge Ninfo and Judge Larimer disregarded **1)** the Bankruptcy Rules on timely filing [SCtA.25§A; and because Judge Ninfo disregarded the law applicable to **2)** a motion to dismiss [SCtA.10§C2, 38§B]; **3)** a claim for defamation [SCtA.39§B1]; and **4)** a negligence and recklessness claim [SCtA.42§B2] These are legal questions to which the District Court already gave an answer [SCtA.208§II] and those answers cannot be affected by any subsequent findings made or further developments in the case. [SCtA.199§A1] Therefore, as a matter of law and fact, the appealed orders were final and the Court of Appeals did have jurisdiction to decide the appeal.

B. The orders denying Dr. Cordero's application for default judgment against Mr. Palmer show that Judge Larimer did not read his motions, whereby it denied him an opportunity to be heard in violation of due process

48. After Judge Ninfo recommended to the District Court that the application for default judgment against Mr. Palmer be denied [SCtA.17 and 19], Dr. Cordero wrote to District Judge Larimer (A-311) and moved his court to grant the application pursuant to FRBkrP Rule 55 (A-314). The Judge not only denied the application, but also required "an inquest concerning damages" which "the Bankruptcy Court is the proper forum for conducting" [SCtA.10]. Such a denial and all the more so that requirement for an "inquest" contradict not only the provisions of Rule 55, but also defeat the capitalized bold-lettered warning to the defendant contained in the summons and the reasonable expectations [SCtA.§11] that it raises in the plaintiff that:

IF YOU FAIL TO RESPOND TO THIS SUMMONS, *YOUR FAILURE WILL BE* DEEMED TO BE *YOUR CONSENT TO* ENTRY OF A *JUDGMENT* BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT (emphasis added)

49. Defendant Palmer failed to respond. That is a fact that cannot be altered; it was established by the Clerk of Court [SCtA.15]. The court had a legal obligation to enter default judgment for the sum certain demanded (A-294). That is a point of law that no further development in the case could alter. [SCtA.199§B] It was confirmed after Dr. Cordero moved the district court to reconsider its denial and grant the application [SCtA.10] and Judge Larimer "in all respects denied" it [SCtA.9]. From that moment on there was nothing else to do concerning the application for default judgment but to appeal to the Court of Appeals or conduct the "inquest" [SCtA.§C13]…and it was conducted, on May 19, 2003, and at the hearing on May 21, Dr. Cordero reported on the loss or damage of his property and the Judge accepted the report and Judge Ninfo asked him to resubmit his application and Dr. Cordero submitted it on June 16, 2003 (A-472) and Judge Ninfo once more denied it at the hearing on June 25, 2003, and what else was necessary for the order denying the application for default judgment to become final and appealable?! [SCtA.209§III] When will all this disregard for legality and bias and the sheer arbitrariness to wear down Dr. Cordero stop? When does a court get the opportunity to say on legal and equitable grounds "Enough is enough! Let's do justice now!"? (It is the collective responsibility of the members of this Court to safeguard the integrity of judicial process in this circuit and ensure that justice is not only done, but is also seen to be done. The threshold for their intervention has been met more than enough since there is so much more than "the appearance of impropriety" *Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, at 859-60, 108 S. Ct. 2194; 100 L. Ed. 2d 855 (1988))*

50. In those orders Judge Larimer not only denied that application, he also denied Dr. Cordero due

process. Indeed, as a judge, he has the duty to hear all the parties to a case and then adjudicate it on the basis of law, rules, and facts. However, his four decisions [SCtA.5-11], the last two of which were merely lazy "in all respects denied" order forms, do not even acknowledge, let alone discuss any of Dr. Cordero's legal or factual contentions. On the contrary, they make egregious mistakes of fact on outcome determinative issues (¶18, supra) [SCtA109§C7]:

a) As to the default judgment application, Judge Larimer wrote that Dr. Cordero "must still establish his entitlement to damages since the matter does not involve a sum certain" [SCtA.10] Had he only cared to read "the matter" or at least the application itself if only out of intellectual integrity so that he knew what he was talking about, Judge Larimer would have realized that "the matter" did involve a sum certain. (A-294)

b) As to the notice of appeal and the motion to extend time to file it, Judge Larimer handled this matter so perfunctorily as to make four mistakes on precisely the key issue of time computation. So he wrote "Here, the ten-day period of Rule 8002(a) expired on Tuesday, January 10, which was not a holiday." [SCtA.7] But the ten-day period ended on January 9; the period ended on a Thursday; Tuesday was January 7; and holidays were irrelevant since New Year's Day was never claimed to render the notice timely. The issue was whether the notice was timely 14 days after the entry of Judge Ninfo's order of December 30, 2002 [SCtA.13], not 13 days as Judge Larimer miscounted [SCtA.8]. Nor did he even cite, much less discuss, this Court's landmark case in the area of timely filing under the Bankruptcy Code, that is, *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership, 13 S.Ct. 1489, 509 U.S. 380, 123 L.Ed.2d 74 (1993)*, which by contrast Dr. Cordero discussed in his briefs. [SCtA.178§E; 206]

51. What sloppy, quick job decisions! They are not only unworthy of a United States district judge, but they also show that Judge Larimer did not even read any of Dr. Cordero's four motions and a

letter to him. Yet, his reading them was required under 28 U.S.C. §157(c)(1), which Dr. Cordero invoked and discussed (A-328, 348), as was the Judge's "reviewing de novo those matters to which any party has timely and specifically objected…in the bankruptcy judge's proposed findings and conclusions". However, Judge Larimer failed to review Dr. Cordero's objections and based his orders only on ex parte communications with his colleague from downstairs in the same small federal building, that is, Judge Ninfo. Consequently, he denied Dr. Cordero an opportunity to be heard before depriving him of personal and property interests either in his property or arising out of events before and during the proceedings. Judge Larimer denied Dr. Cordero due process of law. ("The [requirement of] notice embodies a basic principle of justice -- that a reasonable opportunity to be heard must precede judicial denial of a party's claimed rights"; J. Black, *City of New York v. New York, N.H. & H. R.R., 344 U.S. 293, 297 (1953).)*

52. Such denial was final and appealable. Indeed, the issues of disregard for legality and bias on Judge Ninfo's part were squarely presented to the District Court. [SCtA.347¶15.b)4] What is more, Dr. Cordero requested that the District Court certify specific questions on those issues for appeal to the Court of Appeals. [SCtA.347¶15.d] Judge Larimer failed to do so or even to acknowledge the request because he failed to do what a responsible person is held to do when presented with a formal request that falls within the scope of his official functions: READ THE REQUEST! He simply dashed off a denied order form for which he need not have read anything.

53. Yet, in its summary order, the Court of Appeals claimed that these issues had not been reviewed by the district court. [SCtA.3] In his motion for rehearing, Dr. Cordero discussed how the district court had implicitly reviewed the issues of disregard for legality and bias and how its orders had become final. [SCtA.212§III] He asked how many more times after the first five the Court expected Dr. Cordero to engage in the exercise in futility of submitting issues and requests to Judge Larimer that he did not even acknowledge before those issues could become appealable.

But the Court only replied with its own denied order form, whereby it need not have read anything either.[SCtA.4] What kind of system of justice is this where judges need not give even the appearance that they heard the litigants, let alone listened to them? ("to perform its high function in the best way "justice must satisfy the appearance of justice.""; *In re Murchison , 349 U.S. 133, 136 (1955).)* How many times can judicial process be denied by contemptuous silence before a litigant can assert a due process right to appeal to a higher court and the latter must take jurisdiction over the issue and decide it? (On the right to hear why as part of due process, see *In re Wildman, 793 F.2d 157, 160 (7th Cir. 1986).)*

C. The Court of Appeals has a supervisory responsibility for the integrity of the courts in its circuit, which required that it investigate substantial evidence of ongoing violation of due process, but it failed to do so

54. Due process requires that before a person is deprived of a property or liberty interest, he or she be given notice and an opportunity to be heard. The purpose of those requirements is to prevent the government from engaging in arbitrary action. The result that such process pursues is fairness. As members of a branch of government, "judges are expected to administer the law fairly", *The Chief Justice's 2004 Year-End Report On The Federal Judiciary, at 4,* http://www. supremecourtus.gov/publicinfo/year-end/2004year-endreport.pdf So when a judge disregards the law, the rules, and the facts in conducting a hearing or reaching a decision, he turns the hearing into a meaningless and wasteful pro forma act that is inherently unfair because it frustrates the reasonable expectation that legal considerations applied to factual findings will provide the operational standard for the in-court event and its outcome. The judge has abused his power by removing unilaterally the process of adjudication from its commonly accepted legal framework and inserting it into his own set of undisclosed views driven by his personal or collusive interests. When this occurs repeatedly and consistently to the detriment of one party

and the benefit of another, the abuse constitutes an intentional denial of due process motivated by bias. *Mayberry v. Pennsylvania, 400 U.S. 455, 469 (1971)* (Harlan, J., concurring) ("[T]he appearance of evenhanded justice . . . is at the core of due process.")

55. Courts of appeals too have a duty to meet the constitutional requirements of due process. Moreover, as the courts with supervisory responsibility for the other courts in their circuits, they also have a duty to exercise due diligence to ensure that judges abide by their oath to "faithfully and impartially discharge and perform all the duties incumbent upon [them] as judge[s] under the Constitution and laws of the United States", 28 U.S.C. §453. When they fail to supervise and instead allow judges to deny due process, they themselves deny due process by dereliction of duty.

56. Both types of denial of due process have occurred in this case and have rendered infirm the disposition of every issue by the courts below. They have caused Dr. Cordero to lose substantive rights and have inflicted on him substantial material loss and emotional distress. More importantly as far as this petition goes, they have undermined the integrity of judicial process for the public at large. Enforcing on the judiciary members in question respect for legality warrants the exercise of supervisory power by this Court.

1) The Appeals Court denied Dr. Cordero due process by ignoring the properly raised question of the lower judge's past and current pattern of disregard for legality and bias and by remanding him to suffer further abuse at the hands of the same judge

57. Dr. Cordero presented the Appeals Court with an issue based on evidence gathered over years:

> Does the participation of bankruptcy and district court officers in a series of events of disregard of facts, procedural rules, and the law that consistently affect Dr. Cordero to his detriment and cannot be explained away as mere coincidences, but instead form a pattern of intentional and coordinated activity, create in the mind of a reasonable person the appearance of bias and prejudice sufficient to raise the justified expectation that Dr. Cordero will likewise not get an impartial and fair trial by those officers in those courts so as to warrant the removal of the case to a neutral court, such as the District Court for the Northern District of New York? [SCtA.105§C; 130§D]

58. For the Appeals Court to discharge its supervisory responsibility, it had to investigate the claim of such judicial wrongdoing and the resulting harm to Dr. Cordero to ascertain its veracity and, if confirmed, take corrective action to enforce on Judge Ninfo and other court officers respect for legality and ensure due process for Dr. Cordero. The duty to investigate and correct was all the more pressing because the Court knew, not only that such judicial wrongdoing had inflicted concrete legal and personal harm on Dr. Cordero in the past, but also that the same wrongdoing and harm was continuing in the present in the intimately related case of the DeLanos. What is more, Dr. Cordero had described in detail how the contents of the DeLanos' bankruptcy petition, its handling by Judge Ninfo and the trustees involved, and the link between that case and the case on appeal showed that the judicial wrongdoing was occurring in the context of a bankruptcy fraud scheme that involved substantial amounts of money and benefited the schemers. All this would have alerted reasonably competent and prudent supervisors to the possibility that they were dealing with a very grave case that required investigation, one involving official corruption.

59. Hence, even assuming arguendo that jurisdiction over Dr. Cordero's other appeal issues was lacking, the Appeals Court remained both dutybound to combat judicial wrongdoing within the Second Circuit and possessed of inherent power to investigate the claim and correct the situation. Its supervisory responsibility gave the Court jurisdiction born of an institutional duty: to ensure the integrity of judicial process in its circuit for the public good. By default too it necessarily had jurisdiction because no other entity had that specific duty and none had assumed it.

60. Nevertheless, the circuit judges on the panel that heard Dr. Cordero's appeal and the judges to whom his petition for hearing en banc was circulated, ignored the denial of due process resulting from disregard of legality and bias as well as the material and emotional harm that had been and was being inflicted on Dr. Cordero and remanded him to the Bankruptcy Court. As they did so, they had evidence supporting the reasonable expectation that Judge Ninfo together with other

court officers would continue engaged in his wrongdoing that would further harm Dr. Cordero' personal and property interests. Since a person is deemed to intend the normal consequences of his actions, when the circuit judges remanded the case under those circumstances, they intended to have Dr. Cordero suffer yet more such denial and harm. Thereby they condoned the denial of due process to Dr. Cordero by Judge Ninfo and the others and engaged themselves in denying him due process.

61. Actually, the Appeals Court should reasonably have expected that by dismissing the appeal without investigating the issue of disregard for legality and bias as well as their harm on Dr. Cordero or even mentioning it in its summary order [SCtA.1], the Court's indifference to the issue would be interpreted as a tacit condonation of the complained-about conduct that would only embolden Judge Ninfo and the others to engage even more blatantly in such conduct. Hence, the Court caused the Judge and the others to inflict on Dr. Cordero as a litigant not only more, but also graver harm, cf. 28 U.S.C. §48(d)j. In so doing, the Court intended to aggravate and did aggravate the normal consequences of its denial of due process.

62. The Appeals Court's dereliction of its duty to investigate and correct judicial wrongdoing, not to mention stamp out any corruption, in its circuit and its denial of due process have harmed every person in the circuit as well as Dr. Cordero personally. Indeed, as a result of those failures, the Appeals Court has left the public at large -whether current or potential, local or non-local litigants, particularly if pro se or otherwise unable to engage in a protracted legal war of material and emotional attrition- unprotected from past and current wrongdoing by Judge Ninfo and the others in furtherance of his personal or their collusive interests. By showing such crass indifference for the integrity of judges and the judicial process that they conduct, that Court has "has so far departed from the accepted and usual course of judicial proceedings [and] sanctioned such a departure by a lower court, as to call for an exercise of this Court's

supervisory power", SupCtR Rule 10(a). Because both the public at large and Dr. Cordero are entitled to a judicial system that guarantees due process, their general and individual interests call for this Court to take action to safeguard their common good and his constitutional right.

D. Judicial wrongdoing that denies due process is the result of the unwillingness of judges to apply any system to investigate and discipline themselves, whether the Misconduct Act or impeachment

63. The system for the judiciary to police itself was set up by Congress in the Judicial Conduct and Disability Act of 1980 (hereinafter the Misconduct Act), codified to 28 U.S.C. §§351 et seq. It has proved to be useless to correct misconduct because the circuit chief judges and judicial councils have misapplied the Act by systematically dismissing complaints and denying petitions for review without any investigation. That this self-policing system does not work was recognized by Chief Justice William Rehnquist when on May 25, 2004, he appointed Justice Stephen Breyer to chair the Judicial Conduct and Disability Act Study Committee. His appointment was applauded by the Chairman of the Judiciary Committee of the House of Representative, F. James Sensenbrenner, Jr., who stated that:

> Since [the 1980's], however, this process [of the judiciary policing itself] has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation. *News Advisory released on May 26, 2004; contact: Jeff Lungren/Terry Shawn, (202)225-2492;* at http://judiciary.house.gov/newscenter.aspx?A=294.

64. Consequently, the Judicial Conference, presided over by the Chief Justice, has not enforced any discipline on judges because its own members, among whom are the circuit chief judges, have not allowed for years in a row a single petition for review to reach the Conference [cf. SCtA.277], as follows from five issues of the *Report of the Proceedings of the Judicial Conference of the United States*, of March 2004 and March and September 2003 and 2002, at http://www.uscourts.gov /judconfindex.html.

65. In a society as litigious as ours, it is not possible that among the numberless judicial misconduct complaints filed with the chief judges and dismissed by them, and the numerous petitions for review to the judicial councils there was not a single one that required or deserved, not an automatic DENIED order form, but rather submission to the Conference. Only judges taking care not to investigate, and all the more so not to let outsiders investigate, any of their peers can account for **0** complaints submitted to the Judicial Conference since the last, single petition was reported to have been filed in April 2001; *Report of the Proceedings of the Judicial Conference of the United States, September 2001, at 68,* at http://www.uscourts.gov/judconfindex.html.

66. By contrast, the number of this Court's case filings has been growing for years, as shown by the Court's *Chief Justice's Year-End Report On The Federal Judiciary* for the years 2000-03, at http://www.supremecourtus.gov/publicinfo/year-end/year-endreports.html: **7,109** in the 1998 Term; **7,377** in the 1999 Term; **7,852** in the 2000 Term; **7,924** the 2001 Term; and **8,255** in the 2002 Term. In each of the six years since 1998, the Court has on average handed down 74 signed opinions. [SCtA.289]

67. Compare those numbers with that of the memoranda and orders issued by the Judicial Conference, or rather by its Committee to Review Circuit Council Conduct and Disability Orders: For the whole of the 25 years since the enactment of the Misconduct Act in 1980, they total the grand number of 15! [SCtA.288] Not only are they few, but also very difficult to find, which is so illustrative of the judges' efforts not to investigate themselves or appear that they need to be investigated. Dr. Cordero obtained hardcopies of them only after his repeated requests to the Administrative Office of the U.S. Courts [SCtA.287], which maintains the Judicial Conference's webpage and makes its *Report* available therein, but not so those memoranda and orders.

68. Nor is the impeachment of judges before the House of Representatives a deterrent to misconduct.

Indeed, Chief Justice Rehnquist has stated that

> In the years since the [Justice Samuel] Chase trial [in 1805], eleven federal judges have been impeached. Of those, three were acquitted, two resigned rather than face trial, and six were convicted. One conviction -- that of Judge West H. Humphreys in 1862 -- was by default since he had accepted appointment as a Confederate judge in Tennessee. The other five convictions were for offenses involving financial improprieties, income tax evasion, and perjury -- misconduct far removed from judicial acts. *Remarks of the Chief Justice at the Federal Judges Association Board of Directors Meeting, May 5, 2003*; at http://www.supremecourtus.gov/publicinfo/speeches/sp_05-05-03.html.

69. For the sake of the meaningfulness of the principles of penal responsibility and equality before the law, one can only hope that judges are not able to rely also on resignation as the easy way out of their impending impeachment. Nevertheless, judges are very aware, no doubt, that they have life tenure and are shielded from adverse consequences for what they do and their motives by the established principle that "a judge's judicial acts may not serve as a basis for impeachment", id (emphasis in original). Since in over 200 years of the judiciary's history the average is one single judge convicted after impeachment in more than every 40 years, judges stand a higher statistical chance of becoming Chief Justice of the Supreme Court than of being found guilty. Why would they ever fear the consequences of what they do? What greater incentive can there be for wrongdoing than the empirical proof of immunity?

70. Power! Uncontrolled judicial power!, for "power corrupts, and absolute power corrupts absolutely", *Lord Acton, Letter to Bishop Mandell Creighton, April 3, 1887*. Judges need not be concerned about becoming subject to the oddity of impeachment or the dead letter of the Misconduct Act, and there is nothing left as a constraint for them to abide by their legal and ethical obligations. The risk of being overturned?…big deal!, dividends can be much bigger. So why would they respect due process for the benefit of litigants, and of all litigants those pro se and non-local defendants that can be expected to be worn down easily? Hence, judges' capacity to exercise judicial power as they please in the absence of any effective control and discipline

becomes absolute power with the capacity to absolutely corrupt their judgment and conduct.

71. The fact is that after the President nominates a person to a judgeship, the Senate does not confirm the nominee's incorruptibility, just her suitability to be a federal judge in light of her qualifications and viewpoints and the Senators' personal views and political affiliations. Confirmed nominees know that they are in practice insulated from investigation and the consequences that could derive therefrom. They have in effect only all the freedom and the inhibitions to do and not to do that their conscience and human nature accord them, from fairly dispensing justice for the benefit of those pleading for it, to making a name for themselves as excellent jurists, to just taking it easy, to taking in as much as possible…while the going is good, particularly for bankruptcy judges, who are appointed for only 14 years. After all, nobody is there in the Judicial Branch watching over them. Outside it, they are also immune to the wrath of citizens, who may vote politicians out of office and can even recall governors, but are impotent to cause even an investigation of a federal judge's performance, let alone his financial affairs. Consequently, the unjustifiable situation has set in that judges that are appointed to dispense justice under the law can dish out whatever they want because as a matter of fact they can behave irresponsibly insofar as they do not respond to anybody: Once on the bench, they are above the law. How ironic: A judgeship as a safe haven for wrongdoing. Is that acceptable to you?

72. Stating that the absence of an effective system of control and discipline allows judges to pursue their personal or collusive interest through the power of their office at the expense of due process is not by any means the same as impugning every judge or even the majority of them. Such impugnation is absolutely **not** been made here by Dr. Cordero, who strives for principled conduct guided by a sense of proportion based on facts and aimed at fairness. But it cannot be disputed that there is a problem in the judiciary's exercise of self-discipline that allows judges to engage in such conduct.

1) 'The judges' eroded morale over stagnant compensation' is aggravated by the corruptive power of the lots of money available in bankruptcy and both lay the basis for a bankruptcy fraud scheme

73. Precisely because the Misconduct Act has been misapplied for decades, the Court has had no regular indication of the nature and extent of judicial misconduct and its impact on the integrity of the judiciary or the kind of justice that litigants receive and their current perception of "the appearance of justice". However, the Court is aware of a situation in the judiciary that is a potent cause for misconduct: money, "the root of all evils", the Bible at 1 Timothy 6:10. Thus, for years the Court has known that judges are discontent because of inadequate pay and Congress' failure to provide the promised regular COLAs (Cost of Living Adjustments). This problem has "serious effects", as Chief Justice Rehnquist put it:

> Although we cannot say that the judges who are leaving the bench are leaving only because of inadequate pay, many of them have noted that financial considerations are a big factor.[4] The fact that judges are leaving because of inadequate pay is underscored by the fact that most of the judges who have left the bench in the last ten years have entered private practice.[5] It is no wonder that judges are leaving when law clerks who join big law firms in large cities can earn more in their first year than district judges earn in a year. Inadequate pay has other serious effects on the judiciary. [Administrative Office of the U.S. Courts] Director Mecham's June 14 letter to you makes clear that judges who have been leaving the bench in the last several years believe they were treated unfairly…[due to] Congress's failure to provide regular COLAs…That sense of inequity erodes the morale of our judges. *Statement on Judicial Compensation by William H. Rehnquist, Chief Justice of the United States, Before the National Commission on the Public Service, July 15, 2002*; at http://www.supremecourtus.gov/publicinfo/speeches/sp_07-15-02.html.

74. It cannot come as a surprise if such erosion of morale has stripped some judges of the moral standards that should prevent every person from resorting to illegal means of self-help to increase his income. Should one reasonably expect judges to have remained unaffected by the lure of money in the midst of a society that values material success above anything else and pursues it with unbound greed and conspicuous disregard for legal and ethical constraints?

75. In the bankruptcy context, the lure of money is extremely powerful because there is not just money, but rather lots of money. Indeed, an approved debt repayment plan followed by debt

discharge can spare the debtor an enormous amount of money. For instance, the DeLano's plan [SCtA.379] contemplates the repayment of only 22¢ on the dollar, which means its approval would spare the DeLanos 78% of their total liabilities of $185,462 [SCtA.381 Summary of Schedules]or over $144,462…and that does not take into account all the money saved on their total credit card debt of $98,092 [SCtA.381 Schedule F]that given their over 230 late payments would otherwise be charged annual compound interest at the delinquent rate of over 23%.

76. Others too can make lots of money. A standing trustee is appointed under 28 U.S.C. §586(b) for cases under Chapter 13 and is a federal agent inasmuch as her performance is dictated and supervised by a U.S. trustee, who in turn is under the general supervision of the Attorney General, §586(c). However, the standing trustee earns part of her compensation from 'a percentage fee of the payments made under the repayment plan of each debtor', §586(e)(1)(B) and (2).

77. After receiving a petition, the trustee is supposed to investigate the debtor's financial affairs to determine the veracity of his statements, 11 U.S.C. §1302(b)(1) and §704(4) and (7). If satisfied that he deserves bankruptcy relief from his debt burden, the trustee approves the repayment plan of the debtor, who can count with the trustee's support when the plan is submitted to the court for confirmation, §1325(b)(1). A confirmed plan generates a stream of payments from which the trustee takes her fee. But even before confirmation, money begins to roll in because the debtor must commence to make payments to the trustee within 30 days after filing his plan and the trustee must retain those payments, §1326(a).

78. If the plan is not confirmed, which is most likely if the trustee opposes its confirmation, the trustee must return the money paid, less certain deductions, to the debtor, §1326(a)(2). This provides the trustee with an incentive to approve the plan and get it confirmed by the court because no confirmation means no further stream of payments and, hence, no fees for her. To insure her take, she might as well rubberstamp every petition and do what it takes to secure the

confirmation of its plan by any judge or any other officer or entity that can derail confirmation, §1325(b)(1)(A).

79. The trustee would be compensated for her investigation of the petition -if at all, for there is no specific provision therefor- only to the extent of "the actual, necessary expenses incurred", 28 U.S.C. §586(e)(2)(B)(ii); cf. 11 U.S.C. §330(a) and (c). Now, an investigation of the debtor that allows the trustee to require him to pay his creditors another $1,000 will generate a percentage fee for the trustee of $100 (in most cases, §586(e)(1)(B)(i)). Such a system creates a perverse incentive for the debtor to make the trustee skip any investigation in exchange for an unlawful fee of, let's say, $300, which nets her three times as much as if she had sweated over the petition and supporting documents. For his part, the debtor saves $700. Even if the debtor has to pay $600 to make available money to get also other officers to go along with his plan, he still comes $400 ahead. To avoid a criminal investigation for bankruptcy fraud, a debtor may well pay more than $1,000. After all, it is not necessarily as if he were broke and had no money.

80. Add the corruptive power of money to the corruptive power of judicial power that escapes any effective control and discipline system, let alone any investigation, and the end product is a morally corrosive mix. It can dissolve the will to abide by the oath of office already weakened by a "sense of inequity [over unadjusted judicial compensation that] erodes the morale of our judges", para. 73 above. In contact with such mix, due process ends up severely deteriorated.

2) Judicial wrongdoing significantly increases the material and emotional cost of litigation and further reduces the already limited access of the public to the courts in civil matters

81. Given the lack of an effective system of control and discipline to ensure that judges "hold their Offices [only] during good Behaviour", Const., Art. III, Sec. 1, as a matter of fact judges stay in office regardless of their behavior. When they misbehave, whether it be by failing to keep their

oath ‘to be impartial and discharge their duties of adjudicating under the Constitution and laws’, 28 U.S.C. §453, rather than with disregard for those sources of legality, or misbehave by failing to be honest and instead abusing their power for their personal or collusive interest, they significantly increase the cost of litigation in terms of money, effort, and time and cause tremendous anxiety. In so doing, they worsen an already grave problem for the public, namely, affordable and sustainable access to legal representation. Its gravity was recognized by Justice Breyer when he cited statistics on the overwhelming percentage of people that cannot gain access to such representation to protect their rights and interests:

> A 1994 ABA Report says that between 70% and 80% of those with low incomes who needed a lawyer in a civil case failed to find one.[2] A more recent article says that the United States government spends about $2 per citizen on legal aid, compared to France, which spends $5, and Britain, which spends $15.[3] *Opening Keynote Address "Our Civic Commitment", by Stephen Breyer, Associate Justice, Supreme Court of the United States, at the Annual Meeting of the American Bar Association, Chicago, Illinois, August 4, 2001*; at http://www.supremecourtus.gov/publicinfo/speeches/sp_08-04-01.html.

82. However, of what benefit is it to that small 30% to 20% of people who are lucky enough to be able to afford a lawyer if they run into judges who together with other court officers disregard the law, the rules, and the facts while pursuing their own interest? Even if low income people found pro bono representation, could any reasonable person ask a pro bono lawyer to work for years at his own expense or that of his law firm battling judges that have freed themselves of the constraints of due process to disregard legality and indulge their bias? Of course not! Such judges force even wealthy litigants to choose between relinquishing their rights by dropping their cases and struggling up the appellate system at a cost that defies any cost-benefit analysis.

83. Hence, the public at large is done a grave disservice when judges do not consider themselves “in the public service” but rather are simply making a living –or worse, making money- and have no higher objective than to clear their dockets while remaining insensitive to the enormous material cost and tremendous emotional turmoil caused by being engulfed by a case. No doubt then that

such judges severely aggravate the injury caused by litigation when they add the insult of their own disregard for legality and their bias.

84. That is what the judges and others court officers have done in the case of Dr. Cordero, who in this regard represents the millions of people in that 70% to 80% of the public who cannot afford an attorney but who rather than accept that he and his rights should be abused, has had 1) to research and write applications, motions, and briefs at enormous material and emotional cost to appeal from the bankruptcy court to the district court to the appeals court to this Court; not to mention 2) his two judicial misconduct complaints filed under 28 U.S.C. §351 et seq. [SCtA.251; 265], 3) followed by petitions for review to the Circuit's Judicial Council [SCtA.260; 272] and 4) to the Judicial Conference on November 18, 2004 [cf. SCtA.277]; 5) his repeated requests to the members of both bodies to review the dismissals and denials; as well as 6) the numberless letters that he has had to send to so many other public "servants", including to the U.S. Attorneys in Buffalo and Rochester [SCtA.451 et seq.; particularly 465] in his search for one who will be triggered into corrective action after being offended by judges with 'bad Behaviour while holding Office' and by officers holding hands with fraudsters to the detriment of the public that they are supposed to serve.

85. To all this work must be added 7) his request to 11 federal judges to fulfill their unambiguous but light obligation under 18 U.S.C. §3057(a) that they "***shall*** report to the appropriate United States attorney…[not hard evidence of a bankruptcy crime, but simply their] "having reasonable grounds for believing that any violation…relating to insolvent debtors…has been committed, *or* that an investigation should be had in connection therewith" (emphasis added). It is hard to accept that all the evidence in this case does not support the belief that an investigation should be had, if only to be on the safe side because at stake is nothing less than the integrity of the

bankruptcy and judicial systems. Yet none of these judges of the Judicial Conference or the Judicial Council or the Court of Appeals has written back to Dr. Cordero to let him know that he or she made the report. By contrast, several circuit judges returned the whole bound volume of the request and its numerous supporting documents alleging that the mandate had issued from the Court of Appeals and that the latter had no jurisdiction over the case anymore. What a cop out! Even the most cursory reading of that provision by the legally illiterate would result in the understanding that §3057(a) has absolutely nothing to do with any ongoing case, let alone any court having jurisdiction of any case, but rather with an obligation imposed by Congress on "Any judge, receiver, or trustee" to help to eliminate bankruptcy fraud. The need to enlist their help becomes evident given that fraud accounts to some extent for the fact that filings in the bankruptcy courts "have soared 83 percent over the last 10 years and remain at close to peak levels…at 1,618,987 in 2004", The Chief Justice's *2004 Year-End Report on the Federal Judiciary*, at 11 and fn. 4.

86. If U.S. circuit judges and chief district judges do not comply with obligations specifically imposed on them by black letter law, is it a sense of high mission that motivates them to perform the duties of their office or are they just doing a job to earn a living and move ahead in life? If they do not feel the need to set the example of respect for the law, do they dispense justice or exercise the arrogance of power beyond the reach of any effective control or discipline?

E. What is at stake in deciding this petition

87. If pro bono lawyers cannot reasonably be expected to take care of low income people for years against so many 'opposing judges and court officers', and the government only takes token care of them, and judges take care of each other rather than investigate complaints against another member of their self-immunized 'class of judges', who takes care of the weak and the needy

when they ask for justice in the Judicial Branch? This Court? If the Court does not review this case, where a pro se litigant, Dr. Cordero, stands for millions of other Americans who can neither afford a lawyer, let alone representation by a large law firm, nor represent themselves by crafting and writing their own arguments, how and when will this Court give them notice that if they ever gain access to process at all it will also be due process? (*Goldberg v. Kelly, 397 U.S. 254, 264-65 (1970)* (noting that full attention to due process concerns helps ensure "the Nation's basic commitment…to foster the dignity and well-being of all persons within its borders.")

88. To guarantee due process the Court needs to step in and take vigorous measures to set up and run an effective system of control and discipline of judges and other court officers. If it only sits back and hopes that judges will on their own constrain themselves to apply the law and refrain themselves from taking advantage of the opportunity to abuse their power at no risk to themselves to advance personal and collusive interests, then it indulges an expectation contrary to human nature. Why would judges do so when they can dispense with justice to engage in riskless misconduct, wrongdoing, or even corruption from the bench?

89. By reviewing this case the Court can also gain in turn something of great value, namely, insight into the state of integrity of a judiciary with a broken self-policing system and into the extent to which the abundance of money through bankruptcy fraud has exacerbated the judges' eroded morale over stagnant compensation and further put that integrity in jeopardy. These are issues that undoubtedly concern directly and substantially the public at large, including Dr. Cordero. Indeed, they are so vast in scope that their resolution calls for cooperative work between this Court and the Judicial Conference, the Department of Justice, the FBI, and Congress. But this Court, as the highest authority of the Third Branch of Government, must take the leadership to set in motion the process of investigation and correction by exercising its supervisory power in a decisive manner that sends the unmistakable message that it means business with its words about

safeguarding the integrity of the courts and due process for all litigants.

90. In launching that process, the Court can hit the ground running by taking advantage of the considerable amount of evidence already gathered during years of litigation in this two related cases and through all the other initiatives undertaken by Dr. Cordero. If the Court considered in *Brown v. Board of Education, 347 US 483 (1954),* that it had the power to cause a societal change by ordering desegregation in schools, then it must certainly be able to reach a consensus and muster the power necessary to adopt far-reaching and effective measures to put its own Branch of Government in order. Ensuring that the judiciary functions properly in our three-branch system of government is an issue of indisputable importance to the nation, and all the more so in light of Chief Justice Rehnquist's statement that "Criticism of judges has dramatically increased in recent years, exacerbating in some respects the strained relationship between the Congress and the federal Judiciary", *2004 Year-End Report On The Federal Judiciary, at 4.*

91. Hence, the stake in this case is the Supreme Court's willingness and capacity to show that it cares not just for "the appearance of justice", but also and foremost for the substance of justice that judges respectful of due process are expected to dispense fairly and impartially to those seeking it before them. (""[D]ue process,"…express[es]…in its ultimate analysis respect enforced by law for that feeling of just treatment. [It r]epresent[s] a profound attitude of fairness between man and man, and more particularly between the individual and government"; *Joint Anti-Fascist Comm. v. McGrath, 341 U.S. 123, 162-63 (1951))* (Frankfurter, J., concurring) In that spirit, it should review this case to do what only it can do, namely, answer a constitutional question of public importance and capable of leading the way for the required cooperative work: Does it constitute a denial of due process to require litigants, particularly pro se and non-local ones, to try a case, let alone two mutually confirming cases, before a judge together with other

court officers whom the evidence shows to have affected rights and imposed burdens by disregarding the law, the rules, and the facts so repeatedly and consistently to the detriment of the only such pro se and non-local party, and in favor of the local parties as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing in support of a bankruptcy fraud scheme?

92. In deciding whether to grant this petition, one can only hope that the Court will proceed with the sense of duty of those who, like Justice Ruth Bader Ginsburg, believe in…

> the command from Deuteronomy displayed in artworks, in Hebrew letters, on three walls and a table in my chambers. "Zedek, Zedek, tirdof" "Justice, Justice shalt thou pursue," these art works proclaim; they are ever present reminders of what judges must do "that they may thrive**."** *Ruth Bader Ginsburg, Associate Justice, Supreme Court of the United States, Remarks for Touro Synagogue (Newport, Rhode Island), Celebration of the 350th Anniversary of Jews in America, August 22, 2004*; at http://www.supremecourtus.gov/publicinfo/speeches/sp_08-22-04.html.

VI. Conclusion

93. a) This petition for certiorari should be granted; or

b) otherwise, the Premier case, including all aspects of the Pfuntner v. Gordon et al, as well as the DeLano case should be remanded with instructions that it be removed to an impartial and roughly equidistant court, such as the U.S. District Court in Albany, NY, to be tried to a jury.

94. In either event, the Court should refer these cases under 18 U.S.C. §3057(a) to the U.S. Attorney General for investigation on grounds such as those set out in Dr. Cordero's Request for a Judicial Report [SCtA.511] and, for the reasons therein stated and supported by the documents at [SCtA.451 et seq.], with the recommendation that the investigation be conducted by officers not related to the offices of the Department of Justice or the FBI in Rochester or Buffalo, NY.

Respectfully submitted on,

January 20, 2005

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