

**PROPOSAL FOR**

**The DeLano Case**

a hands-on, role-playing, fraud investigative and expository course  
for law, journalism, and business school students

and **The Disinfecting Sunshine on the Federal Judiciary Project**  
multidisciplinary research and investigation to expose the inner workings of the most  
secretive branch of government and its riskless disregard for ethics and the law

1. The *DeLano* Case is based on cases that started in a U.S. bankruptcy court and were appealed to the District Court, the Court of Appeals for the Second Circuit (CA2), and on to the Supreme Court(6<sup>2&3</sup>). Throughout this long journey along the full length of the hierarchy of federal courts they revealed the harmful effect on the judicial process of the two most corruptive forces: lots of money and unaccountable power to dispose of it. So, although thousands of federal judges and magistrates have served since the Federal Judiciary was created in 1789 – 2,153 were in office in 2008-, in the last 221 years only 7 have been removed.(15<sup>17</sup>) Likewise, of the 9,466 judicial misconduct complaints filed in the reported 1oct96-30sep08 12-year period (22), 99.82% were dismissed with no investigation and no private or public discipline(27). Judges have also granted themselves absolute immunity from liability for deprivation of civil rights. (*Pierson v. Ray*, 386 U.S. 547 (1967), but see J. Douglas’ dissent) The CAs get rid of about 75% of the appeals by a rubberstamped no-reasons summary order and about 15% by opinions so perfunctory(14<sup>7</sup>) and arbitrary that they mark them “not for publication” and “non-precedential”(12¶2 for CA2). They have been assured that “A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority”. (*Stump v. Sparkman*, 435 U.S. 349 (1978)) A life-tenured person that can do anything without fear of consequences or even having to explain themselves, develops a sense of entitlement to do everything. Together with others similarly situated, they will protect their privilege. So is human nature.

2. Thus, federal judges are de facto unimpeachable and have made themselves unaccountable. Without accountability, the basis of any ethical system, they need not apply judicial ethics. Individually and as a class, they can fail in their duty to ensure due process and instead pursue self-interest by coordinating wrongdoing among themselves and with others. They have the means to secure riskless benefit. Judges that unaccountably disregard legality while ruling annually on \$10’s of bls. exercise absolute power, which corrupts absolutely(15<sup>18</sup>). So they have placed themselves where neither the President, a member of Congress, nor any person among “We the People” is allowed to be: Judges Above the Law(30<sup>11b</sup>). Unrestrained by law or rules, their administration of justice is dominated by relativism where anything goes(43). The mere capacity of judges so to behave, let alone their actual behavior, mocks every professor’s scholarship on, and teaching of, the rule of law. Students should be made aware of this situation; otherwise, once they are out there in the real world and confront it for the first time, they will feel misled and become, not just ethics skeptics, but also amoral cynics who feel justified in doing wrong as judges do.

3. The *DeLano* Case course(9) aims to teach students outcome-determinative facts about judicial conduct and the first steps toward holding judges accountable and liable to discipline. It illustrates the clash between the theory of how the legal system is supposed to work as bound by law and judicial ethics and evidence obtained during the prosecution of the cases of how in reality it is made to work by judges as free agents who cannot be fired, whose “Compensation... shall not be diminished during their Continuance in Office”(Const. Art. III, §1), and whose “good [or bad] Behaviour”(id.) cannot authorize their colleagues, from the chief justice down, either to

promote or demote them. The key documents in the record<sup>(6<sup>7</sup>)</sup> of the cases<sup>(15<sup>20</sup>)</sup> and official publications provide the core teaching materials<sup>(53§§G,H)</sup>. They are used to develop the students' independent and critical thinking. So teams of students are taught to apply ever-greater perceptiveness, inquisitiveness, and discernment as they compete with each other<sup>(8)</sup> to pierce apparently lawful acts and authoritative statements in order to find the facts behind them and realize their generating force<sup>(6<sup>5</sup>)</sup>: a bankruptcy fraud scheme run by insiders of the bankruptcy and legal systems that in practice enjoy immunity<sup>(7)</sup>. The students also learn in clinic-like fashion to cooperate to organize a public presentation to expose how unaccountable judges run or cover up such a scheme while depriving litigants and the public of economic and welfare rights. Its audience will be in the university auditorium and that reached by its broadcast on TV, radio, and interactive web, its brochure and documentary<sup>(4)</sup>, and the PR campaign<sup>(5)</sup>. This exercise will sharpen their research and writing skills<sup>(4§C)</sup> as well as their ability to draw up and advocate public policy and legislation to ensure that judges run the system according to due process requirements. The Syllabus sets forth in detail the work for the classroom and the organization of the public presentation for each of a semester's 15 weeks<sup>(53§K)</sup>.

4. The presentation is intended to have the effect that Justice Lewis Brandeis believed could be attained through open and transparent government activity that informs the public when he said, "Sunshine is the best disinfectant". That light will shine most brightly and be most salutary when intensified during the project. The latter is broader in scope than the course and requires specialized knowledge as opposed to providing for role-playing. Though hands-on too insofar as learning is achieved by doing, the project uses the wealth of documents in The *DeLano* Case, not as the basis for teaching, but rather as an advanced station for further discovery. Whether conducted by students earning a higher education degree or a team of experts in their own right, the project consists of multidisciplinary legal research, investigative journalism, and fraud & forensic accounting<sup>(52)</sup>. Its means are computer-based literary forensics and database correlation –dockets, judges' calendars, court reports, etc.- to find statistically significant patterns in judicial writings and events; legal analysis to determine their consonance with the rule of law or bias; and field research to interview people for inside information and find evidence of unethical or illegal activity and hidden assets.<sup>(11¶2)</sup> Its overriding query is "To what extent does the Judiciary perform its duty to administer "Equal Justice Under Law" or has it become a safe haven for coordinated wrongdoing?" Its query for a pinpointed Watergate-like investigation is "How far up, widespread, and wrongful is the participation in, or toleration of, the bankruptcy fraud scheme revealed by the *DeLano* cases?"<sup>(4¶3)</sup> Its objective is to ensure through disinfecting exposure the integrity of our legal system for the common good. So its nature is work in the public interest.

5. The public presentation by students and experts is the short term objective of the course and the project. It has significant fundraising potential because it will explain to lawyers, their clients, and the public why in 9 of 10 federal cases they end up with a meaningless summary order form or decision.<sup>(12¶2)</sup> To redeem themselves and continue their quest for justice, they will vie to have their most outrageous case studied as *DeLano* has been.<sup>(7)</sup> For the students, it will be a job fair where to exhibit their skills live.<sup>(8)</sup> It will enhance their institution's reputation for providing imaginatively novel and challenging education and expert work that meets the highest standards. It will instill in students and experts a sense of professional honesty and civic duty as they take action in behalf of millions<sup>(14<sup>10</sup>)</sup> who are denied a fair and impartial forum.<sup>1</sup> Hence, it will be the first step in the long term objective of establishing a watchdog center for the study of the Judiciary that sheds a constant light on it and exposes judges' unethical conduct. This fundraising, job finding, and reputational potential and the prospect of leading a public call for judicial accountability and discipline warrant careful review of this course and project proposal.<sup>(11¶1)</sup>