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Newsrelease

October 16, 2007
For immediate release

Evidence of J. Michael Mukasey's incapacity to stand up to wrongdoing friends in the judiciary To consider in the Senate hearings to confirm him as Attorney General

The confirmation hearings for Former Circuit Judge Michael Mukasey are scheduled to begin on October 17, at 10:00 a.m. in the Senate, Hart Office Building, Room 216.

The principal reason why another Attorney General is needed is that Former AG Alberto Gonzales conceived his main function as that of serving and protecting his friend and mentor, President Bush, rather than acting as the top federal law enforcement officer. An investigation is still under way to determine whether he tolerated, or even participated in, the firing of U.S. Attorneys because they were investigating friends or supporters of the President. Hence, a key consideration in confirming Judge Mukasey should be whether he has the required independence and strength of character to apply the law even to his former friends and colleagues in the judiciary and not misuse his office to obstruct any investigation of wrongdoing judges. Let's see.

As chief judge of the U.S. District Court for the Southern District of New York, Judge Mukasey was a member of the Judicial Council of the Second Circuit, the body of judges that must "make all necessary and appropriate orders for the effective and expeditious administration of justice within the circuit". As such, he decided on petitions for review of denials by his colleague, the chief circuit judge, of judicial complaints against his peers in the circuit engaged in conduct "prejudicial to the administration of justice", including bribery, corruption, prejudice, bias, and conflict of interests. Yet, he participated in the systematic denial of such petitions without any investigation, thus leaving complainants as well as the public at large at the mercy of peers of him that were actually, or gave the appearance of being, unfit for judicial office.

Moreover, Judge Mukasey was between 2004-06 also a member of the Judicial Conference, which is the highest policy-making body of the federal judiciary and presided over by the Chief Justice of the Supreme Court. As such, he had access to the reports on conduct and disability orders from all the 13 judicial circuits. Thus, as member of both bodies, he had actual or constructive knowledge of the shocking official statistics, which now stand thus: Between 1997 and 2006, 7,462 complaints were filed against federal judges, who only disciplined 9 of their peers! Judge Mukasey and his peers granted themselves immunity from the judicial self-discipline law.

Judge Mukasey did not stand up to his peers even when he repeatedly received documentary evidence of a pattern of acts pointing to the support by judges in the U.S. Bankruptcy and District Courts in Rochester, NY, of a bankruptcy fraud scheme. In one case, a 39-year veteran of the banking industry, still working in M&T Bank's bankruptcy department, filed bankruptcy petition 04-20280 claiming that he and his wife had only $535 in cash and on account, yet IRS and mortgage documents show that they had earned or received $673,657, which is still unaccounted for because the judges covered for them by not requiring that they produce even their bank account statements! (http://Judicial-Discipline-Reform.org/Follow_money/DeLano_docs.pdf) Judge Mukasey first covered for his peers by dismissing the evidence by his letter of March 2, 2004, though he had a statutory duty to report it to the U.S. Attorney. So before he becomes AG and must cover for his friends, lest he incriminate himself, he must be investigated. (http://Judicial-Discipline-Reform.org/docs/JMukasey_by_wrongdoing_friends2.pdf)

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The Salient Facts of The *DeLano* Case
showing a bankruptcy fraud scheme supported or tolerated by judges

DeLano is a federal bankruptcy fraud case. As part of 12 such cases, it reveals fraud conducted through coordinated wrongdoing that is so egregious as to betray overconfidence born of a long standing practice: Fraud has been organized into a bankruptcy fraud scheme. This case was commenced by a bankruptcy petition filed with Schedules A-J and a Statement of Financial Affairs on January 27, 2004, by the DeLano couple. (04-20280, WBNY) Mr. DeLano, however, is a most unlikely candidate for bankruptcy, for at the time of filing he was already a 39-year veteran of the banking and financing industry and was and continued to be employed by M&T Bank precisely as a bankruptcy officer. He and his wife, a Xerox technician, declared:

1. that they had in cash and on account only $535 (D:31), although they had declared that their monthly excess income was $1,940 (D:45); and in the FA Statement (D:47) and their 1040 IRS forms (D:186) that they had earned $291,470 in just the three years prior to their filing;
2. that their only real property was their home (D:30), bought in 1975 (D:342) and appraised in November 2003 at $98,500, as to which their mortgage was still $77,084 and their equity only $21,416 (D:30)…after making mortgage payments for 30 years! and receiving during that period at least $382,187 (2)…through a string of eight mortgages! (D:341) *Mind-boggling!*
3. that they owed $98,092 –spread thinly over 18 credit cards (D:38)- while they valued their household goods at only $2,810 (D:31), less than 1% of their earnings in the previous three years! Even couples in urban ghettos end up with goods in their homes of greater value after having accumulated them over their worklives of more than 30 years.
4. Theirs is one of the trustee's 3,907 *open* cases and their lawyer's 525 before the same judge.

These facts show that this was a scheme-insider offloading 78% of his and his wife's debts (D:58) in preparation for traveling light into a golden retirement. They felt confident that they could make such incongruous, implausible, and suspicious declarations in the schedules and that neither the schemers would discharge their duty nor the creditors exercise their right to require that bankrupts prove their petition's good faith by providing supporting documents. Moreover, they had spread their debts thin enough among their 20 institutional creditors (D:38) to ensure that the latter would find a write-off more cost-effective than litigation to challenge their petition. So they assumed that the sole individual creditor, who in addition lives hundreds of miles from the court, would not be able to afford to challenge their good faith either. But he did! The Creditor analyzed their petition and documents and estimated that the DeLano Debtors had concealed assets worth at least $673,657! (Mk:31)

The Creditor requested that the DeLano Debtors produce financial documents as obviously pertinent to prove the good faith of any debtors' bankruptcy petition as their bank account statements. Yet the trustee, who is supposed to represent the creditors' interests, tried to prevent the Creditor from even meeting with the DeLanos. After the latter denied *every single document* requested by the Creditor, he moved for orders of production. Contrary to their duty to determine whether the Debtors had engaged in bankruptcy fraud by concealing assets, the bankruptcy judge, the district judge, and the Court of Appeals[1] also denied *every single document* requested. Then they eliminated the Creditor by disallowing his claim in a sham evidentiary hearing.[2] Revealing how incriminating these documents are, to oppose their production the DeLanos, with the trustee's recommendation and the bankruptcy judge's approval, have been allowed to pay their lawyers legal fees in the amount of $27,953…although they had declared only $535 in cash and on account! To date $673,657 is still unaccounted for. Where did it go and for whose benefit?

The DeLanos' income of $291,470,
mortgage receipts of $382,187,
and credit card borrowing of $98,092

are unaccounted for and inconsistent with their declaration in Schedule B (D:31) of their bankruptcy petition that at the time of its filing on January 27, 2004, they had in hand and on account only $535!

Exhibit page #	Mortgages referred to in the incomplete documents produced by the DeLanos to Chapter 13 Trustee George Reiber [a]	Mortgages or loans	
		year	amount
D:342	1) from Columbia Banking, S&L Association	16jul75	$26,000
D:343	2) another from Columbia Banking, S&L Asso.	30nov77	7,467
D:346	3) still another from Columbia Banking, S&L Asso.	29mar88	59,000
D:176/9	4) owed to Manufacturers &Traders Trust=M&T Bank	March 88	59,000
D:176/10	5) took an overdraft from ONONDAGA Bank	March 88	59,000
D:348	6) another mortgage from Central Trust Company	13sep90	29,800
D:349	7) even another one from M&T Bank	13dec93	46,920
D:350-354	8) yet another from Lyndon Guaranty Bank of NY	23dec99	95,000
	9) any other not yet disclosed? **Subtotal**		$382,187
The DeLanos' earnings in just the three years preceding their voluntary bankruptcy petition of January 27, 2004 (D:23)			
2001	1040 IRS form (D:186)	$91,229	$91,229
2002	1040 IRS form (D:187)	$91,859	
	Statement of Financial Affairs (D:47)		91,655
2003	1040 IRS form (D:188)	+97,648	
	Statement of Financial Affairs (D:47)		+108,586
to this must be added the receipts contained in the $98,092 owed on 18 credit cards, as declared in Schedule F (D:38)[b]		$280,736[c]	$291,470[c]
		TOTAL	**$673,657**

[a] The DeLanos claimed in their bankruptcy petition that their only real property is their home, valued on November 23, 2003, at $98,500, as to which their mortgage is still $77,084 and their equity is only $21,416 (D:30/Sch.A)…after making mortgage payments for 30 years! and having received during that same period at least $382,187 through the known elements of a string of mortgages! *Mind-boggling!*

[b] The DeLanos declared that their credit card debt on 18 cards totals $98,092 (D:41/Sch.F), while they set the value of their household goods at only $2,810! (D:31/Sch.B) Couples in the Third World end up with household possessions of greater value after having accumulated them in their homes over their worklives of more than 30 years.

[c] Why do these numbers not match?

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(as of June 29, 2007)

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Cordero v. Palmer, docket 03mbk6001L, WDNY ..... A:462 (but see ToEA:156>462b)

In re Premier Van et al., docket 03-5023, CA2 ..... C:422

In re Richard Cordero, docket 03-3088, CA2 ..... A:665g

Cordero v. Gordon et al., docket 04-8371, Sup. Ct. A:2229

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In re DeLano, docket 04-20280, WBNY D:496

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Dr. Richard Cordero v. David and Mary Ann DeLano, dkt. 06-4780-bk, CA2, up to date at ..... http://Judicial-Discipline-Reform.org/CA2_dkt/DeLano_dkt_CA2.pdf
cf. brief ..... http://Judicial-Discipline-Reform.org/DeLano_record/brief_DeLano_CA2.pdf

II. RETRIEVAL **Bank of Hyperlinks**

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

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

DeLano: D:1; D:103; D:203; D:301; D:425; Add:509; Add:711; Add:911; Pst:1171; SApp:1501; CA:1700

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

Downloadable Bank of Hyperlinks

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

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February 13, 2004

The Hon. Michael B. Mukasey
U.S. District Court for the Southern District of New York
Alexander Hamilton Custom House
One Bowling Green
New York, NY 10004-1408

Dear Chief Judge Mukasey,

On August 11, 2003, I submitted to the Court of Appeals for the Second Circuit a complaint based on detailed evidence of judicial misconduct on the part of U.S. Bankruptcy Judge John C. Ninfo and other court officers in the Bankruptcy and District Courts for the Western District of New York. The specific instances of disregard of the law, rules, and facts were so numerous, so protective of the local parties and injurious to me alone, the only non-local and pro se party, as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing. Receipt of the complaint was acknowledged on September 2; it was assigned docket no. 03-8547. Although the provisions of law governing such complaints, that is, 28 U.S.C. §§372 and 351, and the implementing rules of this Circuit require 'prompt and expeditious' action on the part of the chief judge and its notification to the complainant, it is the seventh month since submission but I have yet to be informed of what action, if any, has been taken.

What is more, on February 2, I wrote to the Hon. Chief Judge John M. Walker, Jr., to inquire about the status of the complaint and to update it with a description of subsequent events further evidencing wrongdoing. To my astonishment, the original and all the copies that I submitted were returned to me immediately on February 4. One can hardly fathom the reason for the inapplicability to a judicial misconduct complaint already in its seventh month after submission of the basic principles of our legal system of the right to petition and the obligation to update information, which is incorporated in the federal rules of procedure. Nor can one fail to be shocked by the fact that precisely a complaint charging disregard of the law and rules is dealt with by disregarding the law and rules requiring that it be handled 'promptly and expeditiously'. Nobody is above the law; on the contrary, the higher one's position, the more important it is to set the proper example of respect for the law and its objectives.

There is still more. The pattern of wrongdoing has materialized in more than 10 decisions adopted by the bankruptcy and district courts, which I challenged in an appeal bearing docket no. 03-5023. One of the appeal's three separate grounds is that such misconduct has tainted those decisions with bias and prejudice against me and denied me due process. Yet, the order dismissing my appeal, adopted by a panel including the Chief Judge, does not even discuss that pattern, let alone protect me on remand from further targeted misconduct and systemic wrongdoing that have already caused me enormous expenditure of time, effort, and money as well as unbearable aggravation. Where the procedural mechanics of jurisdiction are allowed to defeat the courts' reason for existence, namely, to dispense justice through fair and impartial process, then there is every justification for escalating the misconduct complaint to the next body authorized to entertain it. It is not reasonable to expect that a complainant should wait sine die just to find out the status of his complaint despite the evidence that it is not being dealt with and that he is being left to fend for himself at the wrongful hands of those that treat him with disregard for law, rules, and facts.

Therefore, I am respectfully addressing myself to you as member of the Judicial Council of this Circuit and to Justice Ginsburg, as the justice with supervisory responsibilities for this Circuit, to request that you consider the documents attached hereto and bring my complaint and its handling so far to the attention of the Council so that it may launch an investigation of the judges complained-about and I be notified thereof. Meantime, I look forward to hearing from you and remain,

sincerely yours,

Dr. Richard Cordero

Mk:5

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August 11, 2003

STATEMENT OF FACTS

in support of a complaint under 28 U.S.C. §351 submitted to the Court of Appeals for the Second Circuit concerning the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge and other court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York

I. The court's failure to move the case along its procedural stages

The conduct of the Hon. John C. Ninfo, II, is the subject of this complaint because it has been prejudicial to the effective and expeditious administration of the court's business. This is the result of his mismanagement of an adversary proceeding, namely, Pfuntner v. Trustee Kenneth Gordon, et al., dkt. no. 02-2230, which derived from bankruptcy case In re Premier Van Lines, Inc., dkt. no. 01-20692; the complainant, Dr. Richard Cordero, is a defendant pro se and the only non-local party in the former. The facts speak for themselves, for although the adversary proceeding was filed in September 2002, that is, 11 months ago, Judge Ninfo has:

1. failed to require even initial disclosure under Rule 26(a) F.R.Civ.P.;
2. failed to order the parties to hold a Rule 26(f) conference;
3. failed to demand a Rule 26(f) report;
4. failed to hold a Rule 16(b) F.R.Civ.P. scheduling conference;
5. failed to issue a Rule 16(b) scheduling order;
6. failed to demand compliance with his first discovery order of January 10, 2003, from Plaintiff Pfuntner and his attorney, David MacKnight, Esq.; thereafter, the Judge allowed the ordered inspection of property to be delayed for months; (E-29[1])and
7. failed to ensure execution by the Plaintiff and his attorney of his second and last discovery order issued orally at a hearing last April 23 and concerning the same inspection, while Dr. Cordero was required to travel and did travel to Rochester and then to Avon on May 19 to conduct that inspection. (E-33)

Nor will this case make any progress for a very long time given that a trial date is nowhere in sight. On the contrary, at a hearing on June 25, Judge Ninfo announced that Dr. Cordero will have to travel to Rochester (E-42) in October and again in November to attend hearings with the local parties. At the first hearing they will deal with the motions that Dr. Cordero has filed -including an application that he made as far back as last December 26 and that at Judge Ninfo's instigation Dr. Cordero resubmitted on June 16 (A-472)- but that the Judge failed to decide at the hearings on May 21, June 25, and July 2. At those hearings Dr. Cordero will be required to prove his evidence beyond a reasonable doubt. Thereafter he will be required to travel to Rochester for further monthly hearings for seven to eight months! (E-37)

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[1] This Statement is supported by documents in two separate volumes, namely, one titled Items in the Record, referred to as A-#, where # stands for the page number, and another titled Exhibits accompanying the Statement of Facts, referred to as E-#.

The confirmation that this case has gone nowhere since it was filed in September 2002 comes from the Judge himself. In his order of July 15 he states that at next October's first "discrete hearing" –a designation that Dr. Cordero cannot find in the F.R.Bkr.P. or F.R.Civ.P.- the Judge will begin by examining the plaintiff's complaint, thereby acknowledging that he will not have moved the case beyond the first pleading by the time it will be in its 13th month! (E-60)

Nor will those "discrete hearings" achieve much, for the Judge has not scheduled any discovery or meeting of the parties whatsoever between now and the October "discrete hearing". He has left that up to the parties. However, Judge Ninfo knows that the parties cannot meet or conduct discovery on their own without the court's intervention. The proof of this statement is implicit in the above list, items 6 and 7, which shows that even when Judge Ninfo issued not one, but two discovery orders, the plaintiff disregarded them. Not only that, but the Judge has also spared Plaintiff Pfuntner and Mr. MacKnight any sanctions, even after Dr. Cordero had complied with the Judge's orders to his detriment by spending time, money, and effort, and requested those sanctions and even when Judge Ninfo himself requested that Dr. Cordero write a separate motion for sanctions and submit it to him (E-34).

Nor has Judge Ninfo imposed any adverse consequences on a party defaulted by his own Clerk of Court (E-17) or on the Trustee for submitting false statements to him (E-9). Hence, the Judge has let the local parties know that they have nothing to fear from him if they fail to comply with a discovery request, particularly one made by Dr. Cordero. By contrast, Judge Ninfo has let everybody know, particularly Dr. Cordero, that he would impose dire sanctions on him if he failed to comply (E-33). Thus, at the April 23 hearing, when Plaintiff Pfuntner wanted to get the inspection at his warehouse over with to be able to clear his warehouse to sell it and remain in sunny Florida care free, the Judge ordered Dr. Cordero to travel to Rochester to conduct the inspection within the following four weeks or he would order the property said to belong to Dr. Cordero removed at his expense to any other warehouse in Ontario, that is, whether in another county or another country, the Judge could not care less where.

By now it may have become evident that Judge Ninfo is neither fair nor impartial. Indeed, underlying the Judge's inaction is the graver problem of his bias and prejudice against Dr. Cordero. Not only he, but also court officers in both the bankruptcy and the district court have revealed their partiality by participating in a series of acts of disregard of facts, rules, and the law aimed at one clear objective: to derail Dr. Cordero's appeals from decisions that the Judge has taken for the protection of local parties and to the detriment of Dr. Cordero's legal rights. There are too many of those acts and they are too precisely targeted on Dr. Cordero alone for them to be coincidental. Rather, they form a pattern of intentional and coordinated wrongful activity. (E-9) The relationship between Judge Ninfo's prejudicial and dilatory management of the case and his bias and prejudice toward Dr. Cordero is so close that a detailed description of the latter is necessary for a fuller understanding of the motives for the former.

II. Judge Ninfo's bias and prejudice toward Dr. Cordero explain his prejudicial management of the case

A. Judge Ninfo's summary dismissal of Dr. Cordero's cross-claims against Trustee Gordon

In March 2001, Judge Ninfo was assigned the bankruptcy case of Premier Van Lines, a moving and storage company owned by Mr. David Palmer. In December 2001, Trustee Kenneth Gordon was appointed to liquidate Premier. His performance was so negligent and reckless that

he failed to realize from the docket that Mr. James Pfuntner owned a warehouse in which Premier had stored property of his clients, such as Dr. Cordero. Nor did he examine Premier's business records, to which he had a key and access. (A-48, 49; 109, ftnts-5-8; 352) As a result, he failed to discover the income-producing storage contracts that belonged to the estate; consequently, he also failed to notify Dr. Cordero of his liquidation of Premier. Meantime, Dr. Cordero was looking for his property for unrelated reasons, but he could not find it. Finally, he learned that Premier was in liquidation and that his property might have been left behind by Premier at Mr. James Pfuntner's warehouse. He was referred to the Trustee to find out how to retrieve it. But the Trustee would not give Dr. Cordero any information at all and even enjoined him not to contact his office any more. (A-16, 17, 1, 2)

Dr. Cordero found out that Judge Ninfo was supervising the liquidation and requested that he review Trustee Gordon's performance and fitness to serve as trustee. (A-7, 8) The Judge, however, took no action other than pass the complaint on to the Trustee's supervisor at the U.S. Trustee local office, located in the same federal building as the court. (A-29) The supervisor conducted a pro-forma check on Supervisee Gordon that was as superficial as it was severely flawed. (A-53, 107) Nor did Judge Ninfo take action when the Trustee submitted to him false statements and statements defamatory of Dr. Cordero to persuade him not to undertake the review of his performance requested by Dr. Cordero. (A-19, 38)

Then Mr. Pfuntner brought his adversary proceeding against the Trustee, Dr. Cordero, and others. (A-21) Dr. Cordero cross-claimed against the Trustee (A-70, 83, 88), who countered with a Rule 12(b)(6) motion to dismiss (A-135, 143). The hearing of the motion took place on December 18, almost three months after the adversary proceeding was brought. Without having held any meeting of the parties or required any disclosure, let alone any discovery, Judge Ninfo summarily dismissed Dr. Cordero's cross-claims with no regard to the legitimate questions of material fact regarding the Trustee's negligence and recklessness in liquidating Premier (E-11). Indeed, Judge Ninfo even excused Trustee Gordon's defamatory and false statements as merely "part of the Trustee just trying to resolve these issues", (A-275, E-12) thus condoning the Trustee's use of falsehood and showing gross indifference to its injurious effect on Dr. Cordero.

That dismissal constituted the first of a long series of similar events of disregard of facts, law, and rules in which Judge Ninfo as well as other court officers at both the bankruptcy and the district court have participated, all to the detriment of Dr. Cordero and aimed at one objective: to prevent his appeal, for if the dismissal were reversed and the cross-claims reinstated, discovery could establish how Judge Ninfo had failed to realize or had knowingly tolerated Trustee Gordon's negligent and reckless liquidation of Premier. (E-11) From then on, Judge Ninfo and the other court officers have manifested bias and prejudice in dealing with Dr. Cordero. (E-13)

B. The Court Reporter tries to avoid submitting the transcript of the hearing

As part of his appeal of the court's dismissal of his cross-claims against the Trustee, Dr. Cordero contacted the court reporter, Mary Dianetti, on January 8, 2003, to request that she make a transcript of the December 18 hearing of dismissal. Rather than submit it within the 10 days that she said she would, Court Reporter Dianetti tried to avoid submitting the transcript and submitted it only over two and half months later, on March 26, and only after Dr. Cordero repeatedly requested her to do so. (E-14, A-261)

C. The Clerk of Court and the Case Administrator disregarded their obligations in handling Dr. Cordero's application for default judgment against the Debtor's Owner

Dr. Cordero timely submitted on December 26, 2002, an application to enter default judgment against third-party defendant David Palmer. (A-290) Case Administrator Karen Tacy, failed to enter the application in the docket; for his part, Bankruptcy Clerk of Court Paul Warren, failed to certify the default of the defendant. (E-18) When a month passed by without Dr. Cordero hearing anything from the court on his application, he called to find out. Case Administrator Tacy told him that his application was being held by Judge Ninfo in chambers. Dr. had to write to him to request that he either enter default judgment or explain why he refused to do so. (A-302) Only on the day the Judge wrote his Recommendation on the application to the district court, that is February 4, 2003, did both court officers carry out their obligations, belatedly certifying default (A-303) and entering the application in the docket (A-450, entry 51).

The tenor of Judge Ninfo's February 4 Recommendation was for the district court to deny entry of default judgment. (A-306) The Judge disregarded the plain language of the applicable legal provision, that is, Rule 55 F.R.Civ.P., (A-318) whose requirements Dr. Cordero had met, for the defendant had been by then defaulted by Clerk of Court Warren (A-303) and the application was for a sum certain (A-294). Instead, Judge Ninfo boldly prejudged the condition in which Dr. Cordero would eventually find his property after an inspection that was sine die. To indulge in his prejudgment, he disregarded the available evidence submitted by the owner himself of the warehouse where the property was which pointed to the property's likely loss or theft. (E-20) When months later the property was finally inspected, it had to be concluded that some was damaged and other had been lost. To further protect Mr. Palmer, the one with dirty hands for having failed to appear, Judge Ninfo prejudged issues of liability before he had allowed any discovery whatsoever or even any discussion of the applicable legal standards or the facts necessary to determine who was liable to whom for what. (E-21) To protect itself, the court alleged in its Recommendation that it had suggested to Dr. Cordero to delay the application until the inspection took place, but that is a pretense factually incorrect and utterly implausible. (E-22)

D. District Court David Larimer accepted the Recommendation by disregarding the applicable legal standard, misstating an outcome-determinative fact, and imposing an obligation contrary to law

The Hon. David G. Larimer, U.S. District Judge, received the Recommendation from his colleague Judge Ninfo, located downstairs in the same building, and accepted it. To do so, he repeatedly disregarded the outcome-determinative fact under Rule 55 that the application was for a sum certain (E-23), to the point of writing that "the matter does not involve a sum certain". (A-339) Then he imposed on Dr. Cordero the obligation to prove damages at an "inquest", whereby he totally disregarded the fact that damages have nothing to do with a Rule 55 application for default judgment, where liability is predicated on defendant's failure to appear. Likewise, Judge Larimer dispensed with sound judgment by characterizing the bankruptcy court as the "proper forum" to conduct the "inquest", despite Colleague Ninfo's prejudgment and bias. (E-25)

After the inspection showed that Dr. Cordero's property was damaged or lost, Judge Ninfo took the initiative to ask Dr. Cordero to resubmit his default judgment application. He submitted the same application and the Judge again denied it! The Judge alleged that Dr. Cordero had not proved how he had arrived at the amount claimed, an issue known to the Judge for six months but that he did not raise when asking to resubmit; and that Dr. Cordero had not served

Mr. Palmer properly, an issue that Judge Ninfo had no basis in law or fact to raise since the Court of Clerk had certified Mr. Palmer's default and Dr. Cordero had served Mr. Palmer's attorney of record. (E-26) Judge Ninfo had never intended to grant the application. (E-28)

E. Judge Ninfo has allowed Mr. Pfuntner and Mr. MacKnight to violate his two discovery orders while forcing Dr. Cordero to comply or face severe and costly consequences

Judge Ninfo has allowed Mr. Pfuntner and Mr. MacKnight to violate two discovery orders and submit disingenuous and false statements while charging Dr. Cordero with burdensome obligations. (E-29) Thus, after issuing the first order and Dr. Cordero complying with it to his detriment, the Judge allowed Mr. Pfuntner and Mr. MacKnight to ignore it for months. However, when Mr. Pfuntner needed the inspection, Mr. MacKnight approached ex parte the Judge, who changed the terms of the first order without giving Dr. Cordero notice or opportunity to be heard. (E-30) Instead, Judge Ninfo required that Dr. Cordero travel to Rochester to discuss measures on how to travel to Rochester. (E-30) In the same vein, the Judge showed no concern for Mr. MacKnight's disingenuous motion and ignored Dr. Cordero's complaint about it (E-31), thus failing to safeguard the integrity of the judicial process.

F. Court officers have disregarded even their obligations toward the Court of Appeals

Court officers at both the bankruptcy and the district court have not hesitated to disregard rules and law to the detriment of Dr. Cordero even in the face of their obligations to the Court of Appeals for the Second Circuit. Thus, although Dr. Cordero had sent to each of the clerks of those courts originals of his Redesignation of Items on the Record and Statement of Issues on Appeal neither docketed nor forwarded this paper to the Court of Appeals. (E-49) Thereby they created the risk of the appeal being thrown out for non-compliance with an appeal requirement that in all likelihood would be imputed to Dr. Cordero. Similarly, they failed to docket or forward the March 27 orders, which are the main ones appealed from, thus putting at risk the determination of timeliness of Dr. Cordero's appeal to the Court of Appeals. (E-52)

III. The issues presented

There can be no doubt that Judge Ninfo's conduct, which has failed to make any progress other than in harassing Dr. Cordero with bias and prejudice, constitutes "conduct prejudicial to the effective and expeditious administration of the business of the courts". Actually, his conduct raises even graver issues that should also be submitted to a special committee to investigate:

Whether Judge Ninfo summarily dismissed Dr. Cordero's cross-claims against the Trustee and subsequently prevented the adversary proceeding from making any progress to prevent discovery that would have revealed how he failed to oversee the Trustee or tolerated his negligent and reckless liquidation of Premier and the disappearance of Debtor's Owner Palmer;

Whether Judge Ninfo affirmatively recruited, or created the atmosphere of disregard of law and fact that led, other court officers to engage in a series of acts forming a pattern of non-coincidental, intentional, and coordinated conduct aimed at achieving an unlawful objective for their benefit and that of third parties and to the detriment of non-local pro se party Dr. Cordero.

Respectfully submitted, under penalty of perjury, on
August 11, 2003, and, after being reformatted, on August 27, 2003

Dr. Richard Cordero

Sept. 3, 2003

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL UNITED STATES COURTHOUSE
40 CENTRE STREET
New York, New York 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

September 2, 2003

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

Re: *Judicial Conduct Complaint*

Dear Dr. Cordero:

This letter is to acknowledge receipt of your complaint.

I await the submissin of your conformed exhibits. The exhibits you submitted includes material not mentioned in the Statement of Facts. Rule 2(d) states that "Documents such as excerpts from transcripts may be submitted as evidence of the behavior complained about; if they are, **the statement of facts** should refer to the specific pages in the documents on which relevant material appears.

Please keep in mind that non-compliance with the rules will delay the filing and processing of your submission.

Sincerely,

Roseann B. MacKechnie, Clerk

By: Patricia C. Allen
Patricia C. Allen
Deputy Clerk

Dr. Richard Cordero

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

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

February 2, 2004

Hon. John M. Walker, Jr.
Chief Judge
United States Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square, Room 1802
New York, NY 10007

Re: Judicial conduct complaint 03-8547

Dear Chief Judge,

In August 2003, I filed a judicial conduct complaint under 28 U.S.C. §§372 and 351 concerning the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge and other court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York. Your Clerk of Court, Ms. Roseann B. MacKechnie, through her Deputy, Ms. Patricia Chin-Allen, acknowledged the filing of it by letter of September 2, 2003. To date I have not been notified of any decision that you may have taken in this matter.

I respectfully point out that Rule 3(a) of the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers 28 U.S.C. §351 et seq., provides, among other things, that "The clerk will **promptly** send copies of the complaint to the chief judge of the circuit…" (emphasis added). Likewise, Rule 4(e) provides that "If the complaint is not dismissed or concluded, the chief judge will **promptly** appoint a special committee" (emphasis added). For its part, Rule 7(a) requires that "The clerk will **promptly** cause to be sent to each member of the judicial council" (emphasis added) copies of certain documents for deciding the complainant's petition for review. The tenor of the Rules is that action will be taken expeditiously.

Indeed, this follows from the provisions of the law itself. Thus, 28 U.S.C. 372(c)(1) provides that "In the interests of the effective and **expeditious** administration of the business of the courts…the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this subsection and thereby dispense with filing of a written complaint" (emphasis added). In the same vein, (c)(2) states that "Upon receipt of a complaint filed under paragraph (1) of this subsection, the clerk shall **promptly** transmit such complaint to the chief judge of the circuit…" (emphasis added). More to the point, (c)(3) provides that "After **expeditiously** reviewing a complaint, the chief judge, by written order stating his reasons, may- (A) dismiss the complaint…(B) conclude the proceedings…The chief judge shall transmit copies of his written order to the complainant." (emphasis added). What is more, (c)(3) requires that "If the chief judge does not enter an order under paragraph (3) of this subsection, such judge shall **promptly**- (A) appoint…a special committee to investigate…(B) certify the complaint and any other documents pertaining thereto to each member of such committee; and (C) provide written notice to the complainant and the judge…of the action taken under this paragraph" (emphasis added).

Mk:12

Despite these provisions in law and rules requiring prompt and expeditious action, this is the seventh month since the filing of my complaint but no notice of any action taken has been given to me or perhaps not action has been taken at all. Therefore, with all due respect I request that you let me know whether any action has been taken concerning my complaint and, if so, which, in order that I may proceed according to the pertinent legal provisions.

In the context of the misconduct complained about, I hereby update the evidence thereof through incorporation by reference of my brief of November 3, 2003, case 03-5023, supplementing the evidence of bias against me on the part of Judge Ninfo. This Court granted leave to file this brief by order of November 13, 2004.

Similarly, in that complaint I submitted that the special committee should investigate whether Judge Ninfo affirmatively recruited, or created the atmosphere of disregard of law and fact that led, other court officers to engage in a series of acts forming a pattern of non-coincidental, intentional, and coordinated conduct aimed at achieving an unlawful objective for their benefit and that of third parties and to my detriment, the only non-local pro se party. To buttress the need for that investigation, I point out that since December 10, 2003, I have requested from the clerk's office of Judge Ninfo's court copies of key financial and payment documents relating Premier Van Lines, which must exist since they concern the accounts of the debtor and the payment of fees out of estate funds and are mentioned in entries of docket no. 01-20692. Yet, till this day the clerk has not found them and has certainly not made them available to me.

1. The court order authorizing payment of fees to Trustee Kenneth Gordon's attorney, William Brueckner, Esq., and stating the amount thereof; cf. docket entry no. 72.
2. The court order authorizing payment of fees to Auctioneer Roy Teitsworth and stating the amount thereof; cf. docket entry no. 97.
3. The financial statements concerning Premier prepared by Bonadio & Co., accountants, for which Bonadio was paid fees; cf. docket entries no. 90, 83, 82, 79, 78, 49, 30, 29, 27, 26, 22, and 16.
4. The statement of M&T Bank of the proceeds of its auction of assets of Premier's estate on which it held a lien as security for its loan to Premier; the application of the proceeds to set off that loan; and the proceeds' remaining balance and disposition; cf. docket entry no. 89.
5. The information provided to comply with the order described in entry no. 71 and with the minutes described in entry no. 70.
6. The Final report and account referred to in entry no. 67 and ordered to be filed in entry no. 62.

A court that cannot account for the way it handles money to compensate its appointees and make key decisions concerning the estate calls for an investigation guided by the principle of "follow the money" in order to determine whether it "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts".

Sincerely,

Dr. Richard Cordero

Cc: Letter of acknowledgment from Clerks MacKechnie and Chin-Allen; and order granting the motion to update evidence of bias.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL UNITED STATES COURTHOUSE
40 CENTRE STREET
New York, New York 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

February 4, 2004

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

Re: *Judicial Conduct Complaint, 03-8547*

Dear Dr. Cordero:

This letter is to acknowledge receipt of your letter, with attachments, dated February 2, 2004, addressed to Chief Judge John M. Walker, Jr.

I am returning your documents to you. A decision has not been made in the above-reference matter. You will be notified by letter when a decision has been made.

Sincerely,
Roseann B. MacKechnie, Clerk

By: Patricia C. Allen
Patricia C. Allen, Deputy Clerk

Enclosures

Mk:14

Sept 10, 2003

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood Marshall United States Courthouse
40 Centre Street
New York, N.Y. 10007

John M. Walker, Jr.
Chief Judge

Roseann B. MacKechnie
Clerk of Court

September 2, 2003

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

Re: Judicial Conduct Complaint, 03-8547

Dear Dr. Cordero:

We hereby acknowledge receipt of your complaint, dated August 27, 2003, received in this office on August 28, 2003.

The complaint has been filed under the above-captioned number and will be processed pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 USC § 351.*

You will be notified by letter once a decision has been filed.

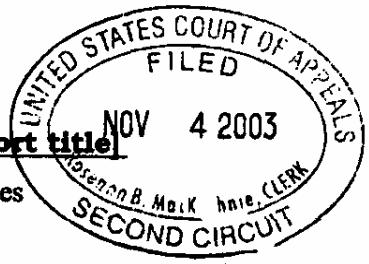
Sincerely,

Roseann B. MacKechnie, Clerk

By: Patricia Chin-Allen
Patricia Chin-Allen, Deputy Clerk

Mk:15

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
MOTION INFORMATION STATEMENT



Caption [use short title]

Docket Number(s): 03-5023

In re: Premier Van Lines

Motion for: Leave to introduce an updating supplement on the issue of the (WDNY) Bankruptcy Court's bias against Petitioner Dr. Richard Cordero evidenced in its order of October 23, 2003, denying Dr. Cordero's request for a jury trial, which Dr. Cordero submitted to and is under consideration by this Court of Appeals

Statement of relief sought:

That this Court:

1) admit into evidence that court's October 23 decision as an extension of the same nucleus of operative facts evidencing bias against Appellant Dr. Cordero and which were submitted on appeal to this Court together with the substantive issues to which those facts give rise;

2) review that decision together with that court's July 15 decision already submitted and decide whether the court's vested interest in not allowing a jury to consider its participation in a pattern of non-coincidental, intentional, and coordinated wrongful activity makes it a party with an interest in the outcome of Dr. Cordero's request for a jury trial and disqualifies it from being impartial in its denial of the request; and

3) grant any other proper and just relief.

MOVING PARTY: Dr. Richard Cordero
Petitioner Pro Se
59 Crescent Street
Brooklyn, NY 11208-1515
tel. (718) 827-9521; corderoric@yahoo.com

OPPOSSING PARTY: Hon. John C. Ninfo, II
US Court House
100 State Street
Rochester, NY 14614
tel. (585) 263-3148

Court-Judge/Agency appealed from: Hon. John C. Ninfo, II

Has consent of opposing counsel:
A. been sought? No respondent known

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL

Is oral argument requested? Yes

Has argument date of appeal been set? No

Signature of Moving Petitioner Pro Se:

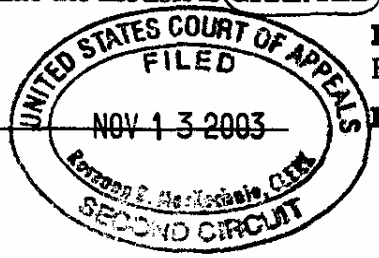
Dr. Richard Cordero

Has service been effected? Yes; proof is attached

Date: October 31, 2003

ORDER

IT IS HEREBY ORDERED that the motion is **GRANTED** [illegible].



FOR THE COURT:
ROSEANN B. MacKECHNIE, Clerk of Court

Date: 11-13-03

By:
By: Ana Vargas
Calendar Deputy Clerk

Mk:16

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURTHOUSE
500 PEARL STREET
NEW YORK, NEW YORK 10007-1312

CHAMBERS OF
MICHAEL B. MUKASEY
CHIEF JUDGE

PHONE
(212) 805-0234

March 2, 2004

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

Dear Dr. Cordero:

I have your letter of February 13, 2004. The letter appears to state that you have filed a complaint of judicial misconduct and that you are not satisfied with the result. That is not a reason to bring this matter before the Judicial Council, and I have neither the authority nor the inclination to act further with respect to it.

Very truly yours,

C:140 Dis J Mukasey's letter of 3/2/4 to Dr. Cordero stating mistakenly a result of the complaint has been reached

Mk:17

Dr. Richard Cordero

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

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

July 8, resubmitted on July 13, 2004

Mr. Fernando Galindo
Acting Clerk of Court
U.S. Court of Appeals, 2nd Circuit
40 Foley Square, Room 1802
New York, NY 10007

Dear Mr. Galindo,

I hereby petition the Judicial Council for review of the Chief Judge's order of June 8, 2004, dismissing my judicial misconduct complaint, docket no. 03-8547 (the Complaint).

The dismissal of the Complaint was so out of hand that it did not even acknowledge the two issues presented or how a pattern of non-coincidental, intentional, and coordinated wrongful acts by judicial and non-judicial officers is within the scope of 28 U.S.C. §351 et seq. and this Circuit's Rules Governing Judicial Misconduct Complaints (collectively referred to as the Complaint Provisions) and in need of investigation by a special committee

The dismissal of my complaint is an example of why Supreme Court Chief Justice William Rehnquist appointed Justice Stephen Breyer to head the Judicial Conduct and Disability Act Study Committee and why, when welcoming his appointment, James Sensenbrenner, Jr., Chairman of the House of Representatives Committee on the Judiciary, said: "Since [the 1980s], however, this [judicial misconduct complaint] process has not worked as well, with some complaints being dismissed out of hand by the judicial branch without any investigation" (Exhibits-67, 69[1]).

[1] The source for this and every other statement made in this letter is contained in a 125-page bound volume of exhibits. When timely submitted on July 8, it was prefaced by my original 10-page petition letter. Nevertheless, both that letter and the exhibits were returned to me with your letter of July 9 emphasizing that I should "resubmit ONLY your petition letter...[i]f your petition letter is not in compliance, it will be considered untimely filed and returned to you with no action taken." Your letter invokes "the authority of Rule 2(b) as a guideline [to] establish the definition of *brief* as applied to the *statement of grounds for petition* to five pages".

However, if this Circuit's Judicial Council had wanted to apply a numeric definition to the term "brief" in Rule 6(e) in the context of petition letters, it would have so provided. By not doing so, it indicated that "brief" is an elastic term to be applied under a rule of reason. It was certainly not unreasonable to submit my original 10-page letter, containing a table of contents, headings, and quotations from §351 et seq., the Rules, and statements by persons to support my arguments and facilitate their reading. Moreover, the July 9 letter is inconsistent in that it applies by analogy to petition letters the Rule 2(b) 5-page limit on complaints but fails to apply also by analogy to the same petitions the authority of Rule 2(d) allowing the submission of documents as evidence supporting a complaint.

It is irrelevant that "It has been the long-standing practice of this court to" limit petition letters to five pages, for the court has failed to give petitioners notice thereof. Yet, this court has had the opportunity to give them notice of its practice in the notification that it is required under Rule 4(f)(1) to give them of the dismissal and their right to appeal; it should have done so in light of the public notice requirement under §358(c). Instead, the court lets petitioners waste their time guessing at the meaning of "brief" and writing for naught a cogent, well-organized, and reasonably long 10-page petition letter. Inconsistency and lack of consideration are defining characteristics of arbitrariness.

Likewise, "Rule 8, Review by the judicial council of a chief judge's order", thus directly applicable here, expressly provides in section 8(e)(2) that the complained-about judge "will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant". Since the petition letter, though addressed to the Clerk of Court, is intended for the judicial council's members, there is every reason to allow the exhibits to accompany it as one of "any communications" addressed to the members by the complainant. Hence, the 10-page letter and its exhibits should have been filed. They should be available to any judicial council member under Rule 8(c). To that end, I am submitting the exhibits as a separate volume. But if it were to prevent the filing of

Given that such systematic dismissal of complaints regardless of merits has been recognized as a problem so grave as to warrant action by the top officers of the judicial branch, there is little justification for considering seriously the stock allegations for dismissing my Complaint. The latter is just another casualty added to a phenomenon that defies statistical probabilities: While the 2003 Report of the Administrative Office of the U.S. Courts highlights that another record was set with federal appeals filings that grew 6% to 60,847, and civil filings in the U.S. district courts of 252,962 (E-66), the three consecutive reports of the Judicial Conference for March 2004, and September and March 2003 (E-60), astonishingly indicate that, as the latter report put it, the Conference "has not received any petitions for review of judicial council action, …nor are there any petitions for review pending from before that time" (E-59).

It is shocking that the judicial councils would abuse so blatantly their discretion under §352(c) to deny all petitions for review of chief judges' orders, thus barring their way to the Judicial Conference; (E-59; cf. Rule 8(f)(2)). One can justifiably imagine how each circuit makes it a point of honor not to disavow its chief judge and certainly never refer up its dirty laundry to be washed in the Judicial Conference. It is as if the courts of appeals had the power to prevent each and every case from reaching the Supreme Court and abused it systematically. In that event, instead of the Supreme Court reporting 8,255 filings in the 2002 Term –an increase of 4% from the 7,924 in the 2001 Term (E-66)- the Court would be caused to report 0 filings in a term! (E-60-65) Sooner or later the Justices would realize that such appeals system was what the current operation of the judicial misconduct complaints procedure is: a sham!

This is so evident here because Chief Judge Walker has repeatedly violated unambiguous obligations even under his own Circuit's Rules (E-119). To begin with, the Chief Judge violated his obligation under §352(a) to act "promptly" and "expeditiously" (E-76-77), taking instead 10 months to dispose of the Complaint (E-71) despite the circumstantial and documentary evidence that not even a Rule 4(b) "limited inquiry" was conducted (E-22-24). Secondly, Chief Judge Walker lacked authority under the Complaint Provisions to delegate to Judge Dennis Jacobs, who actually disposed of the Complaint, his obligation under §352(b) and Rule 4(f)(1), to handle such complaints and write reasoned orders to dispose of them. Thirdly, the Chief Judge violated his obligation under Rule 17(a) to make misconduct orders "publicly available", keeping all but those of the last three years, neither in the shelves, nor in a storage room of the Courthouse, nor in an annex, nor in another building in the City of New York, nor in the State of New York, nor elsewhere in the Second Circuit, but rather in the National Archives in Missouri! (E-28, 29, 33)

For violating so conspicuously the Complaint Provisions, the Chief Judge has a personal interest: to facilitate the dismissal of the related complaint against him submitted to Judge Jacob by Dr. Cordero on March 19, 2004, dkt. no. 04-8510 (E-22). If under that complaint the Chief Judge were investigated, the severe §359(a) Restrictions on individuals subject of investigation would be applicable and weigh him down even for years until the complaint's final disposition.

Indeed, if the Complaint, the one about Bankruptcy Judge John C. Ninfo, II, (E-71) were investigated and the special committee determined that Judge Ninfo had, as charged, engaged with other court officers in a pattern of non-coincidental, intentional, and coordinated disregard of the law, rules, and facts, then it would inevitably be asked why Chief Judge Walker too disregarded for 10 months the law imposing on him the promptness obligation, thereby allowing the continuation of 'a prejudice "to the administration of the business of the courts"' so serious

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the petition letter, consider that volume withdrawn, send it back to me, and file the letter, as we agreed on July 12.

as to undermine the integrity of the judicial system in his circuit. That question would raise many others, such as what he should have known, as the foremost judicial officer in this circuit; when he should have known it; and how many of the overwhelming majority of complaints, dismissed too without investigation, would have been investigated by a law-abiding officer not biased toward his peers. Similar questions could spin the investigation out of control quite easily.

Therefore, if the Complaint about Judge Ninfo could be dismissed, then the related complaint about the Chief Judge could more easily be dismissed, thus eliminating the risk of his being investigated. What is more, if the Complaint could somehow be dismissed by somebody other than himself, the inference could be prevented that he had done so out of his own interest in having the complaint about him dismissed. The fact is that the Complaint was dismissed by another, that is, Judge Jacobs, who likewise has disregarded his obligation to handle "promptly" and "expeditiously" the complaint of March 19, 2004, about his peer, the Chief Judge (E-22).

The appearance of a self-serving motive for dismissing the Complaint arises reasonably from the totality of circumstances. It is also supported by the axiom that neither a person nor the persons in an institution can investigate themselves impartially, objectively, and zealously. Nor can they do so reliably. Their interest in preventing a precedent that one day could be applied to them if they were complained about as well as their loyalties in the context of office politics will induce or even force insiders to close ranks against an 'attack' from an outsider. Only independent investigators whose careers cannot be affected for better or for worse by those investigated or their friendly peers can be expected to conduct a reliable investigation.

Instead the constant found in Judge Jacobs' dismissal of the Complaint was the sweeping and conclusory statements found in other dismissals ordered in the last three years (E-57):

1) Complainant has failed to provide evidence of any conduct "prejudicial to the effective and expeditious administration of the business of the courts." [Citing a standard and saying that it was not met, without discussing what the requirements for meeting it have been held to be –our legal system is based on precedent, not on 'because I say so'- and how the evidence presented failed to meet it, does not turn a foregone conclusion into a reasoned order.]

2) Complainant's statements…amount to a challenge to the merits of a decision or a procedural ruling. [This is a particularly inane dismissal cop-out because when complaining about the conduct of judges as such, their misconduct is most likely to be related to and find its way into their decisions. The insightful question to ask is in what way the judge's misconduct biased his judgment and colored his decision.]

3) Complainant's allegations of bias and prejudice are unsupported and therefore rejected as frivolous. [Brilliantly concise legal definition and careful application to the facts of the lazy catch-all term 'frivolous'!]

4) Finally, to the extent that the complaint relies on the conduct or inaction of the trustee, the court reporter, the Clerk, the Case Administrator, or court officers, it is rejected. The Act applies only to judges…

That last statement is much more revealing because it shows that Judge Jacobs did not even know what the issues presented were, namely 1) whether Judge Ninfo summarily dismissed Dr. Cordero's cross-claims against the Trustee and subsequently prevented the adversary proceeding from making any progress to prevent discovery that would have revealed how he failed to oversee the Trustee or tolerated his negligent and reckless liquidation of Premier and the disappearance of the Debtor's Owner, namely, David Palmer; and 2) whether Judge Ninfo affirmatively recruited, or created the atmosphere of disregard of law and fact that led, other

court officers to engage in a series of acts forming a pattern of non-coincidental, intentional, and coordinated conduct aimed at achieving an unlawful objective for their benefit and that of third parties and to the detriment of Dr. Cordero, the only non-local and pro se party.

Judge Jacobs failed to recognize the abstract notion of motive and how it could lead Judge Ninfo to take decisions that only apparently had anything to do with legal merits. What is less, he did not even detect, let alone refer to, the concrete and expressly used term "pattern". Had he detected it, he could have understood how acts by non-judges, and thus not normally covered by the Complaint Provisions, could form part of unlawful activity coordinated by a judge, which would definitely constitute misconduct, to put it mildly. But he remained at the superficial level of considering each individual act in isolation and dismissing each singly. How can the dots be connected to detect any pattern of conduct supportive of reasonable suspicion of wrongdoing if the dots are not even plotted on a chart so that they can be looked at collectively?

Circumstantial evidence is so indisputably admitted in our legal system that cases built on it can cause a person to lose his property, his freedom, and even his life. Such cases look at the totality of circumstances. The Complaint describes those circumstances as a whole. It is supported by a separate volume of documentary evidence consisting of more than 500 pages –referred to as A-#– which was discussed in greater detail in another separate 54 page memorandum that laid out the facts and showed how they formed a pattern of activity. This memorandum is referred to as E-# in the 5-page Complaint, which is only its summary. Just the heft of such evidence and its carefully intertwined presentation would induce an unbiased person –one with no agenda other than to insure the integrity of the courts and to grant the complainant a meaningful hearing– to entertain the idea that the Complaint might be a thoughtful piece of work with substance to it that should be read carefully. Judge Jacobs not only failed to make reference to that material, but he did not even acknowledge its existence. Is it reasonable to assume that he did not waste time browsing it if he only intended to write a quick job, pro-forma dismissal?

The totality of circumstances presented in the Complaint is sufficient to raise reasonable suspicion of wrongdoing. There is no requirement that the complainant, who is a private citizen, not a private investigator, build an airtight criminal case ready for submission by the district attorney to the judge for trial. That is the work that a special committee would begin to do upon its appointment by a chief judge or a judicial council concerned by even the appearance of wrongdoing that undermines public confidence in their circuit's judicial system. Unlike the complainant, such committee can conduct a deeper and more extensive investigation because it has the necessary subpoena power.

A more effective investigation can be mounted in cooperation with the FBI through a simultaneous referral to it. Indeed, the FBI has not only subpoena power, but also the required expert manpower and resources to interview and depose large numbers of persons anywhere they may be and cross-relate their statements; engage in forensic accounting and trace bankruptcy debtors' assets from where they were to wherever they may have ended up; and flush out and track down evidence of official corruption, such as bribes. What motives could Chief Judge Walker and Judge Jacobs have had to fail to set in motion either investigation given the stakes?

Had they appointed a special committee, it would have found at least the following:

1) Chapter 7 Trustee K. Gordon was referred to Judge Ninfo for a review of his performance and fitness to serve; then sued for failure to realize that storage contracts were income producing assets of the estate, which would have allowed him to find Dr. Cordero's property

lost by the debtor. Disregarding the genuine issues of material fact, the Judge dismissed all claims. Was he protecting a well-known Trustee who had no time to find out anything, for according to Pacer[2], the Trustee has *3,383 cases!*, all but one before Judge Ninfo? (E-126)

2) What is more, Chapter 13 Trustee George Reiber has, again according to Pacer, 3,909 *open* cases! He also cannot possibly have the time or the inclination to check the factual accuracy or internal consistency of the content of each bankruptcy petition to ascertain its good faith. So on what basis does he accept petitions and ready them for confirmation of their plans of debt repayment by Judge Ninfo, before whom he appears time and again?

3) A petition for bankruptcy, dated January 26, 2004, was filed by David and Mary Ann DeLano; (E-82 et seq.). Though internally riddled with red flags as to its good faith (E-79), it was accepted by Trustee Reiber without asking for a single supporting financial document; and was readied for confirmation by Judge Ninfo (E-22-24). This is a test case that will blow up the cover of everything that is wrong in that bankruptcy district.

My Complaint too is a test case whether, as expected, this petition is denied, upon which I will submit it to Justice Breyer's Committee; or it is granted and a special committee is appointed. If the latter happens, it is necessary that its investigation appear to be and actually be independent as much as possible. Thus, I respectfully request that:

1) Neither the Chief Judge appoint himself nor Judge Jacobs be appointed to the review panel;

2) The review panel refer the petition to the full membership of the Judicial Council;

3) The Judicial Council itself take the "appropriate action" under Rule 5 of appointing a special committee to investigate and that neither Chief Judge Walker nor Judge Jacobs be members of such committee, but its members be experienced investigators unrelated to the Court of Appeals and the WDNY Bankruptcy and District Courts and be capable of conducting an independent, objective, and zealous investigation;

4) The special committee be charged with conducting an investigation to determine:

   a) the involvement in a pattern of non-coincidental, intentional, and coordinated acts of disregard of the law, rules, and facts on the part of judges, administrative staff, debtors as well as both private and U.S. trustees in WDNY and NYC;

   b) the link between judicial misconduct and a bankruptcy fraud scheme involving the approval for legal and illegal fees of numerous meritless bankruptcy petitions; and

   c) the participation of district and circuit judges in a systematic effort to suppress misconduct complaints in violation of §351 et seq. and this Circuit's Complaint Rules;

5) This matter be simultaneously referred to the FBI for cooperative investigation; and

6) This petition together with the Complaint and the documentary evidence submitted with each be referred to the Judicial Conference of the United States; (cf. Rule 14(a) and (e)(2).

Sincerely,

Dr. Richard Cordero

[2] Public Access to Court Electronic Records; ecf.nywb.uscourts.gov; or https://pacer.psc.uscourts.gov.

EXHIBITS

in support of

The letter containing

the statement of grounds

for

a petition for review

to

THE JUDICIAL COUNCIL
FOR
THE SECOND CIRCUIT

submitted

under Rules 5 and 8(e)(2) of this Circuit's
Rules Governing Judicial Misconduct Complaints

on
July 8 and 13, 2004

to
the Acting Clerk of Court*

by

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208
tel. (718) 827-9521

---

* If the submission of this volume of Exhibits were to prevent the filing of the separately submitted petition letter, please as agreed on July 12, consider this volume withdrawn, return it to me, and file the letter. Dr. Richard Cordero

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by Dr. Richard Cordero

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL UNITED STATES COURTHOUSE
40 CENTRE STREET
New York, New York 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

July 16, 2004

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

Re: *Judicial Conduct Complaint*, 03-8547

Dear Mr. Cordero:

We hereby acknowledge receipt of your revised petition for review, dated February 13, 2004 and received in the Clerk's Office on February 14, 2004.

Your petition for review of the June 8, 2004 Order of the Chief Judge dismissing your judicial conduct complaint in the above-referenced docket number has been filed and processed pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. § 351.*

You will be notified by letter once a decision has been made.

Your exhibits volume is returned.

Sincerely,
Roseann B. MacKechnie, Clerk of Court

By: Patricia Chin-Allen
Patricia Chin-Allen, Deputy Clerk

Enclosures

Mk:27

Dr. Richard Cordero

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

59 Crescent Street
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July 30, 2004

Hon. Michael B. Mukasey, Circuit Judge
Member of the Judicial Council of the 2nd Circuit
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
New York, NY 10007

Re: judicial misconduct complaint, docket no. 03-8547

Dear Judge Mukasey,

Last July 8, I submitted and on July 13 resubmitted to the Clerk of Court of the Court of Appeals for the Second Circuit a petition for review of the dismissal on June 8 of my complaint, filed on August 11, 2003. In connection with that petition, this letter is a communication properly addressed to you under Rule 8 of the Rules of the Judicial Council of the Second Circuit Governing Complaints against Judicial Officers under 28 U.S.C. §351 et seq., which provides thus:

> RULE 8. REVIEW BY THE JUDICIAL COUNCIL OF A CHIEF JUDGE'S ORDER
> (e)(2) The judge or magistrate judge complained about will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant.

In support of my petition, I submitted bound with it exhibits, which were returned to me unfiled. Upon resubmitting the petition, I submitted the exhibits in a separate bound volume, which was also returned to me unfiled while the petition was accepted. I was not allowed to attach to the petition even the table of exhibits.

There is no provision, whether in the Rules or in §351 et seq., that prohibits the submission of exhibits with a review petition. On the contrary, by analogy to Rule 2(d) allowing the submission of documents as evidence supporting a complaint, they should have been filed. They should also have been accepted in application of the general principle that evidence, such as that contained in exhibits, accompanying a statement of arguments submitted to judges for determination of their legal validity, is not only welcome as a means to lend credence to such arguments, but also required as a way to eliminate a party's unfounded assertions and allow the judges to ascertain on their own the meaning and weight of the arguments' alleged source of support. The exhibits should also have been accepted so that the clerk of court could make them available to any judicial council member under Rule 8(c), which provides that "Upon request, the clerk will make available to any member of the judicial council…any document from the files…" How can the clerk make documents available if she does not even file them?

In any event, what harm could conceivably result from filing exhibits with a petition for review? Why would the clerk take it upon herself in the absence of any legal or practical justification, to deprive a petitioner of his right to do what he is not prohibited from doing, whether expressly or by implication, and in the process deprive the members of the Judicial Council of what could assist them in performing their duty to assess the merits of a petition?

Therefore, I am hereby communicating to you the table of exhibits so that you may request any or all of them from the clerk of court, to whom I am resubmitting them once more, or from me directly. For context and ease of reference, I am also including a copy of the petition.

Sincerely, Dr. Richard Cordero

Mk:28

EXHIBITS

in support of the letter containing
the Statement of Grounds
for a Petition for Review to

THE JUDICIAL COUNCIL
OF THE SECOND CIRCUIT

of the dismissal of
judicial misconduct complaint 03-8547

submitted on July 31, 2004

to

Clerk of Court Roseann MacKechnie
under Rule 8(c) pursuant to
a communication to the members of the Judicial Council
under Rule 8(e)(2) of this Circuit's Rules Governing Judicial
Misconduct Complaints under 28 U.S.C. §351 et seq.

by

Dr. Richard Cordero
59 Crescent Street
Brooklyn, NY 11208
tel. (718) 827-9521

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood United States Courthouse
40 Centre Street
New York, N.Y. 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

September 28, 2004

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

Re: Judicial Conduct Complaint, Docket No. 04-8510

Dear Mr. Cordero:

Enclosed is a copy of the Order, filed September 24, 2004, dismissing your judicial conduct complaint.

Pursuant to Rule 5 of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 USC § 351, you have the right to petition the judicial council for review of this decision.

A petition for review should be in the form of a letter, addressed to the clerk of the court of appeals, beginning "I hereby petition the judicial council for review of the chief judge's order . . . "

The petition for review must be received in the Clerk's Office **no later than October 29, 2004.**

Very truly yours,
Roseann B. MacKechnie, Clerk of Court

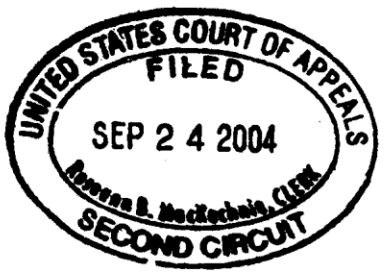
By: _____
Patricia Chin-Allen, Deputy Clerk

Enclosures

Mk:30

COPY

JUDICIAL COUNCIL OF THE
SECOND CIRCUIT



----------X

In re **Docket No. 04-8510**
CHARGE OF JUDICIAL MISCONDUCT

----------X

DENNIS JACOBS, Acting Chief Judge:

On March 29, 2004, the Complainant filed a complaint with the Clerk's Office for the U.S. Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 351 (formerly § 372(c)) ("the Act") and the Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers (the "Local Rules"), charging a circuit court judge of this Circuit ("the Judge") with misconduct.

Background and Allegations:

The Complainant alleges that in August 2003, he filed a judicial misconduct complaint against a United States bankruptcy court judge, alleging that the bankruptcy court judge was biased against him and had failed to "move [his] case along its procedural stages." The Complainant alleges that the Judge has failed to take any action on his judicial misconduct complaint.

Disposition:

The Complainant's judicial misconduct complaint was dismissed by order entered June 9, 2004. The instant complaint is therefore dismissed as moot. See 28 U.S.C. § 352(b)(2) (judicial misconduct proceeding may be concluded if "appropriate corrective action has been taken" or "action on the [judicial misconduct] complaint is no longer necessary because of intervening events"). The Clerk is directed to transmit copies of this order to the Complainant and to the Judge.

Dennis Jacobs
Acting Chief Judge

Signed: New York, New York
September 24, 2004

Mk:32

Dr. Richard Cordero

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

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

October 14, 2004

Att. Franci, Deputy to the Judge
Chief Judge Michael B. Mukasey
Member of the Judicial Council
U.S. District Court, SDNY
500 Pearl Street, Room 2240
New York, NY 10007-1312

Re: Exhibits for review petition concerning complaint 04-8510

Dear Chief Judge Mukasey,

This is a communication with the members of the Judicial Council permissible under this Circuit's Rules Governing Misconduct Complaints, which contains "Rule 8, Review by the judicial council of a chief judge's order", where §8(e)(2) refers to "any communications that may be addressed to the members of the judicial council by the complainant".

On August 11, *2003*, I filed a complaint about WBNY Judge John C. Ninfo, II, concerning his disregard together with others for the law, rules, and facts in a series of instances so numerous and consistently detrimental to me (44.II; 48.III, infra), the only non-local party, and favorable to the local ones (22.IV; 50.IV), as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing. Although intervening events confirmed the charges of the complaint (65-67), eight months later I had still not heard from Chief Judge John M. Walker, Jr., despite his duty under 28 U.S.C. §351 et seq. and the Circuit's Rules to act "promptly" and "expeditiously". Hence, on March 19, I submitted a complaint about the Chief Judge (65) on the grounds of his disregard for that promptness obligation and his duty to investigate a complaint, whereby he allowed Judge Ninfo's wrongdoing and bias to continue to take an enormous toll on my effort, time, and money and inflict upon me tremendous aggravation. That complaint, which was also subject to the promptness obligation, was dismissed over six months later, on September 24; it was not investigated either (7). I submitted a petition for review on October 4 (1; 2).

Because the Clerk of Court refused to accept the first petition if accompanied with exhibits, this communication provides you with some documents that evidence intervening events linking judicial misconduct to a bankruptcy fraud scheme involving the most powerful driver of wrongdoing: lots of money (26.V; 51.V). I trust that if you would examine these documents, you would realize the need to investigate a series of events that undermine the integrity of both the judicial and the bankruptcy systems in WDNY and in the Court of Appeals (cf. 9¶¶1-5).

The perfunctory way in which these complaints have been handled is evidenced not only by their belatedness and lack of investigation: **1)** The Court's letter of July 16 states that a petition for review was received in February; but I submitted the petition concerning my complaint about Judge Ninfo in July (59). **2)** The Judicial Council's denial of last September 30 of my petition refers to a complaint filed on August 8, 2003; but none was filed on that date (60). **3)** The Acting Chief Judge dismissed on September 24 the complaint about the Chief Judge on the basis of his own dismissal of the complaint about Judge Ninfo, stating its dismissal date as June 9, which is wrong (8). If I came to your court and made so many mistakes, would you take me seriously? **4)** The Council in its September 30 letter merely "DENIED" my petition without providing any opinion. Is that the easy way out in which it insures that justice is seen to be done? Therefore, I respectfully request that under Rule 8(a) you cause this petition and the previous one to be placed on the Council's agenda and the respective complaints to be investigated (cf. 63).

Sincerely,

TABLE OF EXHIBITS

for consideration by the members of the Judicial Council, 2nd Cir.
in the context of the petition of October 4, 2004, for review
of the dismissal of the misconduct complaint, no. 04-8510, CA2
against CA2 Chief Judge John M. Walker, Jr.

by

Dr. Richard Cordero

1. Letter of Roseann B. **MacKechnie,** Clerk of Court, CA2, by Deputy Clerk Patricia Chin **Allen** of **October 7,** 2004, **acknowledging** receipt of Dr. Richard Cordero's **petition** of October 4, **to** the Judicial **Council** for review of the dismissal by the Acting Chief Judge Denis Jacobs of his judicial conduct complaint, docket no. 04-8510, against Chief Judge John M. Walker, Jr. .....1 [C:716]
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3. **Acting Chief Judge Jacobs**' **dismissal** of **September 24**, 2004, **of** Dr. Cordero's misconduct **complaint** of March 19, 2004, reformatted and resubmitted on March 29, **against** Chief Judge **Walker** .....7 [C:391]
4. Dr. **Cordero**'s motion of **September 9**, 2004, in CA2 to **quash** the **order** of Judge John C. **Ninfo**, II, WBNY, of August 30, 2004, to sever a claim from the case on appeal *In re Premier Van et al.*, no. 03-5023, CA2, for the purpose of trying it in *In re DeLano*, no. 04-20280,WBNY .....9 [C:719]
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9. Clerk **MacKechnie**'s letter by Clerk **Allen** of **September 2**, 2003, **acknowledging** receipt of Dr. Cordero's **complaint against** Judge **Ninfo**, reformatted and resubmitted on August 27, 2003, and assigning it docket no. **03-8547** .....61 [C:73]
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Dr. Richard Cordero

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March 19, 2004

STATEMENT OF FACTS

Setting forth a COMPLAINT UNDER 28 U.S.C. §351 **ABOUT**

The Hon. John M. Walker, Jr., Chief Judge

of the Court of Appeals for the Second Circuit

addressed under Rule 18(e) of the Rules of the Judicial Council
of the Second Circuit Governing Complaints against Judicial Officers

to the Circuit Judge eligible to become the next chief judge of the circuit

On August 11, 2003, Dr. Richard Cordero filed a complaint about the Hon. John C. Ninfo, II, U.S. Bankruptcy Judge, who together with court officers at the U.S. Bankruptcy Court and the U.S. District Court for the Western District of New York has disregarded the law, rules, and facts so repeatedly and consistently to the detriment of Dr. Cordero, the sole non-local party, who resides in New York City, and to the benefit of the local parties in Rochester as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias against him. The wrongful and biased acts included Judge Ninfo's and other court officers' failure to move the case along its procedural stages. The instances of failure were specifically identified with cites to the FRCivP. They have not been cured and the bias has not abated yet (5, infra) [1].

Far from it, those failures have been compounded by the failure of the Hon. John M. Walker, Jr., Chief Judge of the Court of Appeals for the Second Circuit, to take action upon the complaint. Indeed, six months after the submission of the complaint, which as requested (11, infra) was reformatted and resubmitted on August 27, 2003 (6, 3, infra), the Chief Judge had still failed to discharge his statutory duty under §351(c)(3) to "**expeditiously**" review the complaint and notify the complainant, Dr. Cordero, "by written order stating his reasons" why he was dismissing it. He had also failed to comply with §351(c)(4), which provides that, in the absence of dismissal, the chief judge "shall **promptly**…(C) provide written notice to the complainant and the judge or magistrate whose conduct is the subject of the complaint of the action taken under the paragraph". (emphasis added)

Consequently, on February 2, 2004, Dr. Cordero wrote to Chief Judge Walker to ask about the status of the complaint (1, infra). To Dr. Cordero's astonishment, his letter of inquiry and its four accompanying copies were returned to him immediately on February 4 (4, infra). One can hardly fathom why the Chief Judge, who not only is dutybound to apply the law, but must also be seen applying it, would not even accept possession of a letter inquiring what action he had taken to comply with such duty.

To make matters worse, there are facts from which one can reasonably deduce that Chief Judge Walker has not even notified Judge Ninfo of any judicial misconduct complaint filed against him. The evidence thereof came to light last March 8. It relates directly to the case in which Dr. Cordero was named a defendant, that is, Pfuntner v. Gordon et al, docket no. 02-

[1] Evidentiary documents in a separate volume support this complaint. Reference to their page number # appears as (E-#) or (A-#); if (#, infra), a copy of the document is there and here too.

2230, which was brought and is pending before Judge Ninfo. The facts underlying this evidence are worth describing in detail, for they support in their own right the initial complaint and its call for an investigation of the suspicious relation between Judge Ninfo and the trustees.

After being sued by Mr. Pfuntner, Dr. Cordero impleaded Mr. David DeLano. On January 27, 2004, Mr. DeLano filed for bankruptcy under Chapter 13 of the Bankruptcy Code –docket no. 04-20280- a most amazing event, for Mr. DeLano has been a bank loan officer for 15 years! As such, he must be held an expert in how to retain creditworthiness and ability to repay loans. Yet, he and his wife owe $98,092 to 18 credit card issuers and a mortgage of $77,084, but despite all that borrowed money their equity in their house is only $21,415 and the value of their declared tangible personal property is only $9,945, although their household income in 2002 was $91,655 and in 2003 $108,586. What is more, Mr. DeLano is still a loan officer of Manufacturers & Traders Trust Bank, another party that Dr. Cordero cross-claimed.

Dr. Cordero received notice of the meeting of creditors required under 11 U.S.C. §341 (12, infra). The business of the meeting includes "the examination of the debtor under oath…", pursuant to Rule 2003(b)(1) FRBkrP. After oral and video presentations to those in the room, the Standing Chapter 13 Trustee, George Reiber, took with him the majority of the attendees and left there his attorney, James Weidman, Esq., with 11 people, including Dr. Cordero, who were parties in some three cases. The first case that Mr. Weidman called involved a couple of debtors with their attorney and no creditors; he finished with them in some 12 minutes.

Then Mr. Weidman called and dealt at his table with Mr. DeLano, his wife, and their attorney, Christopher Werner, Esq. Mr. Michael Beyma, attorney for both Mr. DeLano and M&T Bank in the Pfuntner v. Gordon case, remained in the audience. For some eight minutes Mr. Weidman asked questions of the DeLanos. Then he asked whether there was any creditor. Dr. Cordero identified himself and stated his desire to examine the debtors. Mr. Weidman asked Dr. Cordero to fill out an appearance form and to state what he objected to. Dr. Cordero submitted the form as well as his written objections to the plan of debt repayment (14, infra). No sooner had Dr. Cordero asked Mr. DeLano to state his occupation than Mr. Weidman asked Dr. Cordero whether he had any evidence that the DeLanos had committed fraud. Dr. Cordero indicated that he was not raising any accusation of fraud, his interest was to establish the good faith of a bankruptcy application by a bank loan officer. Dr. Cordero asked Mr. DeLano how long he had worked in that capacity. He said 15 years.

In rapid succession, Mr. Weidman asked some three times Dr. Cordero to state his evidence of fraud. Dr. Cordero had to insist that Mr. Weidman take notice that he was not alleging fraud. Mr. Weidman asked Dr. Cordero to indicate where he was heading with his line of questioning. Dr. Cordero answered that he deemed it warranted to subject to strict scrutiny a bankruptcy application by a bank loan expert, particularly since the figures that the DeLanos had provided in their schedules did not match up. Mr. Weidman claimed that there was no time for such questions and put an end to the examination! It was just 1:59 p.m. or so and the next meeting, the hearing before Judge Ninfo for confirmation of Chapter 13 plans, was not scheduled to begin until 3:30. To no avail Dr. Cordero objected that he had a statutory right to examine the DeLanos. After the five participants in the DeLano case left, only Mr. Weidman and three other persons, including an attorney, remained in the room.

Dr. Cordero went to the courtroom. Mr. Reiber, the Chapter 13 trustee, was there with the other group of debtors. When he finished, Dr. Cordero tried to tell him what had happened. But he said that he had just been informed that a TV had fallen to the floor and that, although no person had been hurt, he had to take care of that emergency. Dr. Cordero managed to give

him a copy of his written objections.

Judge Ninfo arrived in the courtroom late. He apologized and then started the confirmation hearing. Mr. Reiber and his attorney, Mr. Weidman, were at their table. When the DeLano case came up, Mr. Reiber indicated that an objection had been filed so that the plan could not be confirmed and the meeting of creditors had been adjourned to April 26. Judge Ninfo took notice of that and was about to move on to the next case when Dr. Cordero stood up in the gallery and asked to be heard as creditor of the DeLanos. He brought to the Judge's attention that Mr. Weidman had prevented him from examining the Debtors by cutting him off after only his second question upon the allegation that there was no time even though aside from those in the DeLano case, only an attorney and two other persons remained in the room.

Judge Ninfo opened his response by saying that Dr. Cordero would not like what he had to say; that he had read Dr. Cordero's objections; that Dr. Cordero interpreted the law very strictly, as he had the right to do, but he had again missed the local practice; that he should have called to find out what that practice was and, if he had done so, he would have learned that the trustee would not allow a creditor to go on asking questions until 8 in the evening, particularly when he had a room full of people.

Dr. Cordero protested because he had the right to rely on the law and the notice of the meeting of creditors stating that the meeting's purpose was for the creditors to examine the debtors. He also protested to the Judge not keeping his comments in proportion with the facts since Dr. Cordero had not asked questions for hours, but had been cut off by Mr. Weidman after two questions in a room with only two other persons.

Judge Ninfo said that Dr. Cordero should have done Mr. Weidman the courtesy of giving him his written objections in advance so that Mr. Weidman could determine how long he would need. Dr. Cordero protested because he was not legally required to do so, but instead had the right to file his objections at any time before confirmation of the plan and could not be expected to disclose his objections beforehand so as to allow the debtors to prepare their answers with their attorney. He added that Mr. Weidman's conduct raised questions because he kept asking Dr. Cordero what evidence he had that the DeLanos had committed fraud despite Dr. Cordero having answered the first time that he was not accusing the DeLanos of fraud, whereby Mr. Weidman showed an interest in finding out how much Dr. Cordero already knew about fraud committed by the DeLanos before he, Mr. Weidman, would let them answer any further questions. Dr. Cordero said that Mr. Weidman had put him under examination although he was certainly not the one to be examined at the meeting, but rather the DeLanos were; and added that Mr. Weidman had caused him irreparable damage by depriving him of his right to examine the Debtors before they knew his objections and could rehearse their answers.

Yet, Judge Ninfo came to the defense of Mr. Weidman and once more said that Dr. Cordero applied the law too strictly and ignored the local practice…

That's precisely the 'practice' of Judge Ninfo together with other court officers that Dr. Cordero has complained about!: Judge Ninfo disregards the law, rules, and facts systematically to Dr. Cordero's detriment and to the benefit of local parties and instead applies the law of the locals, which is based on personal relationships and the fear on the part of the parties to antagonize the judge who distributes favorable and unfavorable decisions as he sees fit without regard for legal rights and factual evidence (20.IV, infra). By so doing, Judge Ninfo and his colleague on the floor above in the same federal building, District Judge David Larimer, have become the lords of the judicial fiefdom of Rochester, which they have carved out of the territory of the Second Circuit and which they defend by engaging in non-coincidental,

intentional, and coordinated acts of wrongfully disregarding the law of Congress in order to apply their own law: the law of the locals. (A-776.C, A-780.E; A-804.IV)

By applying it, Judge Ninfo renders his court a non-level field for a non-local who appears before him. Indeed, it is ludicrous to think that a non-local can call somebody there– who would that be?- to find out what "the local practice" is and such person would have the time, self-less motivation, and capacity to explain accurately and comprehensively the details of "the local practice" so as to place the non-local at arms length with his local adversaries, let alone with the judges and other court officers. Judge Ninfo should know better than to say in open court, where a stenographer is supposed to be keeping a record of his every word, that he gives precedence to local practice over both the written and published laws of Congress and an official notice of meeting of creditors on which a non-local party has reasonably relied, and not any party, but rather one, Dr. Cordero, who has filed a judicial misconduct against him for engaging precisely in that wrongful and biased practice.

But Judge Ninfo does not know better and has no cause for being cautious about making complaint-corroborating statements in his complainant's presence. From his conduct it can reasonably be deduced that Chief Judge Walker has not complied with the requirement of §351(c)(4), that he "shall **promptly**…(C) provide written notice to…**the judge** or magistrate whose conduct is the subject of the complaint of the action taken". (emphasis added) Nor has he complied with Rule 4(e) of the Rules Governing Complaints requiring that "the chief judge will **promptly** appoint a special committee…to investigate the complaint and make recommendations to the judicial council". (emphasis added) The latter can be deduced from the fact that on February 11 and 13 Dr. Cordero wrote to the members of the judicial council concerning this matter (25, infra). The replies of those members that have been kind enough to write back show that they did not know anything about this complaint, let alone that a special committee had been appointed by the Chief Judge and had made recommendations to them.

If these deductions pointing to the Chief Judge's failure to act were proved correct, it would establish that he "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts." Not only would he have failed to discharge his statutory and regulatory duty to proceed promptly in handling a judicial misconduct complaint, but by failing to do so he has allowed a biased judge, who contemptuously disregards the rule of law (A-679.I), to continue disrupting the business of a federal court by denying parties, including Dr. Cordero, fair and just process, while maintaining a questionable, protective relationship with others, including Trustees Gordon (A-681.2) and Reiber and Mr. Weidman.

If the mere appearance of partiality is enough to disqualify a judge from a case (A-705.II), then it must a fortiori be sufficient to call for an investigation of his partiality. If nobody is above the law, then the chief judge of a circuit, invested with the highest circuit office for ensuring respect for the law, must set the most visible example of abiding by the law. He must not only be seen doing justice, but in this case he has a legal duty to take specific action to be seen doing justice to a complainant and to insure that a complained-about judge does justice too.

Hence, Chief Judge Walker must now be investigated to find out what action he has taken, if any, in the seven months since the submission of the complaint; otherwise, what reason he had not to take any, not even take possession of Dr. Cordero's February 2 status inquiry letter.

Just as importantly, it must be determined what motive the Chief Judge could possibly have had to allow Judge Ninfo to continue abusing Dr. Cordero by causing him an enormous

waste of effort[2], time[3], and money[4], and inflicting upon him tremendous emotional distress[5] for a year and a half. In this respect, Chief Judge Walker bears a particularly heavy responsibility because he is a member of the panel of this Court that heard Dr. Cordero's appeal from the decisions taken by Judge Ninfo and his colleague, Judge Larimer. In that capacity, he has had access from well before the submission of the judicial misconduct complaint in August 2003 and since then to all the briefs, motions, and mandamus petition that Dr. Cordero has filed, which contain very detailed legal arguments and statements of facts showing how those judges disregard legality[6] and dismiss the facts[7] in order to protect the locals and advance their self-interests. Thus, he has had ample knowledge of the solid legal and factual foundation from which emerges the reasonable appearance of something wrong going on among Judge Ninfo[8], Judge Larimer[9], court personnel[10], trustees[11], and local attorneys and their clients[12], an appearance that is legally sufficient to trigger disqualifying, and at the very least investigative, action. Yet, the evidence shows that the Chief Judge has failed to take any action, not only under the spur of §351 on behalf of Dr. Cordero, but also as this circuit's chief steward of the integrity of the judicial process for the benefit of the public at large (A-813.I).

The Chief Judge cannot cure his failure to take 'prompt and expeditious action' by taking action belatedly. His failure is a consummated wrong and his 'prejudicial conduct' has already done substantial and irreparable harm to Dr. Cordero (A-827.III). Now there is nothing else for the Chief Judge to do but to subject himself to an investigation under §351.

The investigators can ascertain these statements by asking for the audio tape, from the U.S. Trustee at (585)263-5706, that recorded the March 8 meeting of creditors presided by Mr. Weidman; and the stenographic tape itself, from the Court, of the confirmation hearing before Judge Ninfo –not a transcript thereof, so as to avoid Dr. Cordero's experience of unlawful delay and suspicious handling of the transcript that he requested (E-14; A-682). Then they can call on the FBI's interviewing and forensic accounting resources to conduct an investigation guided by the principle *follow the money!* from debtors and estates to anywhere and anybody (21.V, infra).

Dr. Cordero respectfully submits this complaint under penalty of perjury and requests that expeditious action be taken as required under the law of Congress and the Governing Rules of this Circuit, and that he be promptly notified thereof.

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March 19, 2004

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[2] **effort**: Mandamus Brief=MandBr-55.2; ■59.5; ▌=*documents separator*-E-26.2, ■33.5; ▌A-694.6.
[3] **time**: MandBr-60.6; ■ 68.6; ▌E-29.1, ■=*page numbers separator*-34.6, ■47.6; ▌A-695.E.
[4] **money**: MandBr-8.C; ▌E-37.E; ▌A-695.E.
[5] **emotional distress**: MandBr-56.3; ■61.E; ▌E-28.3, ■36.7; ▌A-690.3, ■695.7.
[6] **disregard for legality**: Opening Brief=OpBr-9.2; ■21.9 MandBr-7.B; ■25.A; MandBr-12.E; ■17.G-23.J; ▌E-17.B, ■25.1; ▌E-30.2, ■41.2; ▌A-684.B, ■775.B; ▌6.I.
[7] **disregard for facts**: OpBr-10.2; ■13.5; MandBr-51.2; ■53.4; ■65.4; ▌E-13.3, ■20.2, ■22.4.
[8] **J. Ninfo**: OpBr-11.3; ▌A-771.I, ■786.III.
[9] **J. Larimer**: OpBr-16.7; Reply Brief-19.1; MandBr-10.D; ■53.D; ▌E-23.C; ▌A-687.C.
[10] **court personnel**: OpBr-11.4; ■15.6; ■54.D; MandBr-14.1; ■25.K-26.L; ■69.F; ▌E-14.4, ■18.1, ■49.F; ▌A-703.F.
[11] **trustees**: OpBr-9.1; ■38.B.; ▌E-9; ▌A-679.A
[12] **local attorneys and clients**: OpBr-18.8; ■48.C; MandBr-53.3; ■57.D; ■65.3; ▌E-21.3, ■29.D, ■31.4, ■42.3; ▌A-691.D.

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Dr. Richard Cordero

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October 4, 2004

Ms. Roseann B. MacKechnie
Clerk of Court
United States Court of Appeals for the Second Circuit
40 Foley Square
New York, NY 10007

Re: Petition for review in judicial misconduct complaint 04-8510

Dear MacKechnie,

I hereby petition the Judicial Council for review of the Chief Judge's order of September 24, 2004, dismissing my judicial misconduct complaint, docket no. 04-8510 (the Complaint).

The Complaint was submitted on March 19, 2004. It states that in violation of 28 U.S.C. §351 et seq. (the Act) and this Circuit's Rules Governing such complaints (the Rules) the Hon. Chief Judge John M. Walker, Jr., failed to act 'promptly and expeditiously' and investigate a judicial misconduct complaint. Indeed, by that time it was already the eighth month since I had submitted my initial complaint of August 11, 2003, docket no. 03-8547, but the Chief Judge had taken no action. That complaint charged that U.S. Bankruptcy Judge John C. Ninfo, II, together with court officers at the U.S. Bankruptcy Court and District Court, WDNY, had disregarded the law, rules, and facts so repeatedly and consistently to my detriment, the sole non-local party, a resident of New York City, and to the benefit of the local parties in Rochester as to form a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing and of bias against me. That initial complaint was dismissed by the Hon. Circuit Judge Dennis Jacobs 10 months after its submission although it was not investigated at all. Judge Jacobs alleges that such dismissal has rendered this Complaint moot and warrants that it be dismissed too.

I. Since nothing wrong under the Misconduct Act or Rules was found in the initial complaint, its dismissal cannot amount to "appropriate corrective action" that would render moot this Complaint, which charges a different kind of misconduct

1. The first remark that follows from the paragraph above is that the initial complaint and this Complaint charge misconduct that is different and independent from each other: The former concerns a pattern of wrongdoing by Judge Ninfo; the latter the disregard for the promptness obligation and the duty to investigate a misconduct complaint by Chief Judge Walker. The dismissal of the former does not negate the misconduct of the latter and, consequently, does not render it moot. The Complaint remains to be determined on its own merits.

2. In addition, who ever heard that dismissing a case or a complaint amounts to taking "appropriate corrective action" under the Act or any other legal provision for that matter? It was Judge Jacobs himself who dismissed the initial complaint on the allegations that **a)** Dr. Cordero "has failed to provide evidence of any conduct 'prejudicial to the effective and expeditious administration of the business of the courts'"; **b)** Dr. Cordero's "statements…amount to a challenge to the merits…however '[t]he complaint procedure is not intended to provide a means of obtaining a review'"; **c)** "the allegations of bias and prejudice are unsupported and therefore rejected as frivolous"; and **d)** "The Act applies only to judges of the United States" rather than to other parties complained-about. Since Judge Jacobs found the counts of the complaint unsubstantiated and frivolous, and its issues and other parties outside the Act's scope, how can he possibly have

taken "appropriate corrective action" to correct nothing wrong and in need of no correction!?

3. The dismissal of the Complaint, just as that of the initial complaint, is another glaring example of a quick job rejection of a misconduct complaint where the dismissal grounds have not been given even a substandard amount of reflection. Judge Jacobs not only did not "expeditiously review…and conduct a limited inquiry", as provided under §352(a), much less "promptly appoint…a special committee to investigate the facts and allegations", as provided under §353, but he also did not even review the basis of his instant September 24 dismissal, that is, his own earlier dismissal to the point that he got wrong its date, which is not June 9, but rather June 8.

II. None of the elements of the doctrine of mootness is found in the context of the initial complaint and this Complaint so that the doctrine is inapplicable

4. The quick job dismissal of the Complaint conclusorily jumps to its mootness from the dismissal of the initial complaint without pausing to consider the elements of the doctrine of mootness. It just refers to §352(b)(2) and to "intervening events" without indicating what events those are. Presumably, the dismissal of the initial complaint is meant.

5. However, the earlier dismissal is not final because it is the subject of the petition for review of July 8 -resubmitted on the 13th- to the Judicial Council. That dismissal could be vacated and the mootness allegation would be so fatally undermined that it would fall of its own weight. Thus, it would be utterly premature to allege that the intervening dismissal of the initial complaint has rendered the Complaint moot. The initial complaint is still in play and so is this Complaint.

6. If the Judicial Council calls for an investigation of the initial complaint, it can find that Judge Ninfo and others have engaged in a pattern of non-coincidental, intentional, and coordinated wrongdoing. If so, it would have reason to investigate why Chief Judge Walker failed to conduct even a limited inquiry despite not only the abundant evidence of such wrongdoing, but also the high stakes, namely, the integrity of this circuit's judicial system, which should have caused him as the circuit's foremost steward to take the complaint seriously if only out of prudence.

7. The Council's reason to investigate the Chief Judge would be strengthened by the fact that he had knowledge of the evidence of wrongdoing not only because of his duty to review the initial complaint and the many documents submitted in its support, but also because he is a member of the panel reviewing Dr. Cordero's appeal from Judge Ninfo's decisions and in that capacity he must have reviewed Dr. Cordero's numerous briefs, motions, and writ of mandamus describing the pattern of wrongful acts of Judge Ninfo and others. By so investigating the Chief Judge, the Council would be proceeding in line with the Complaint's request for relief. Since the Council could grant, whether implicitly or formally, that relief, the Complaint that asks for it is not moot.

8. Moreover, no other intervening event has changed the issues of the initial complaint and rendered a decision on the merits on this Complaint meaningless and thereby moot. Far from it, intervening events have only provided more evidence of judicial misconduct. In fact, if the Complaint had been read, it should have been noticed that it described the events that took place on March 8, 2004, seven months after the initial complaint, concerning Judge Ninfo's handling of a different type of case, that is, not an adversary proceeding, but rather a Chapter 13 bankruptcy petition filed on January 27, 2004, over five months after the initial complaint, by David and Mary Ann DeLano, docket no. 04-20280.

9. In this vein, on August 27, 2004, Dr. Cordero sent to each member of the Judicial Council an

update to the petition for review of the dismissal of the initial complaint. Its very first paragraph states that:

> …recent events…raise the reasonable suspicion of corruption by the complained about Bankruptcy Judge John C. Ninfo, II. The update points to the force driving the complained-about bias and pattern of non-coincidental, intentional, and coordinated acts of disregard of the law, rules, and facts: lots of money generated by fraudulent bankruptcy petitions. The pool of such petitions is huge: according to PACER, 3,907 *open* cases that Trustee George Reiber has before Judge Ninfo [out of Trustee Reiber's 3,909[1] cases] and the 3,382 that Trustee Kenneth Gordon likewise has [before that Judge out of Trustee Gordon's 3,383[2] cases].

10. Those intervening events have only strengthened the initial complaint by pointing to a powerful motive for the misconduct and bias: money, lots of it generated by *thousands* of cases that each of two trustees has before one judge. If you were a private trustee who is paid a fee percentage from the payments of bankruptcy debtors to their creditors, which means that you are not a federal employee paid by the federal government, could you possibly handle appropriately such an overwhelming workload? Similarly, with whom is it more likely that Judge Ninfo has developed a modus operandi that he would not want to disrupt: with these trustees as well as bankruptcy lawyers that have so many cases before him that they appear before him several times in a single session[3], or with an out of town pro se defendant that dare demand that he apply the law and even challenge his rulings all the way to the Court of Appeals?

11. But Judge Jacobs chose not to read about these events. This is a fact based on the letter of August 30 of Clerk Patricia Chin-Allen, signing for Clerk of Court Roseann MacKechnie, that

> Judge Dennis Jacobs, [sic] has forwarded your unopened letter [sic] to this office for response…Your papers are returned to you without any action taken.

12. This provides factual support to the above statement that in dismissing this Complaint, Judge Jacobs did not bother to read even his earlier order of June 8 dismissing the initial complaint. In forwarding unopened that letter, he disregarded the point made in footnote 1 of the July 8 petition for review of the dismissal of the initial complaint:

> "Rule 8, Review by the judicial council of a chief judge's order", thus directly applicable here, expressly provides in section 8(e)(2) that the complained-about judge "will be provided with copies of any communications that may be addressed to the members of the judicial council by the complainant".

13. Just as Rule 8 entitles a complainant to communicate with the members of the Judicial Council, so it engenders the corresponding obligation for the members to read such communications. Those who read the August 27 update must have realized that it described relevant intervening events that raised definite and concrete facts and issues susceptible of judicial determination in their own right; they also provided further grounds for investigating the initial complaint. Thereby the intervening events precluded any allegation that the initial complaint's dismissal, which is challenged and pending review, had rendered this Complaint moot.

14. Likewise, a judicial determination of the Complaint is still appropriate because Dr. Cordero has

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[1] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

[2] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl. on June 26, 2004.

[3] Obviously, Judge Ninfo does not acquire immunity under the Misconduct Act or Rules only because he participates in widespread misconduct together with parties outside their scope of application.

neither withdrawn the initial complaint nor reached anything akin to a settlement, whereby action by a party as cause for mootness is eliminated.

15. Nor has mootness resulted from the relief requested becoming impossible. On the contrary, the update linking judicial misconduct to a bankruptcy fraud scheme has only rendered more necessary for the Council to investigate both complaints with FBI assistance, as requested.

16. The cause for misconduct has not ceased either. Far from it, the DeLano case has provided Judge Ninfo with the need to engage in further disregard for legality and more bias against Dr. Cordero, who is one of the DeLanos' creditors and the one who showed their concealment of assets. Hence, the situation that gave rise to the initial complaint is a continuing one that has not only the probability, but also the likelihood of generating subsequent complaints. Since the same misconduct can recur, it prevents the Complaint from becoming moot; *Friends of the Earth, Inc. v. Laidlaw Environmental Servs. (TOC), Inc.,* 120 S.Ct. 693, 528 U.S. 167, 145 L.Ed.2d 610 (2000). Thus, the Judicial Council should decide the two current complaints, just as a court would decide a case despite its apparent mootness if the dispute is ongoing and typically evades review. *Richardson v. Ramirez,* 94 S.Ct. 2655, 418 U.S. 24 41 L.Ed.2d 551 (1974).

III. The violation of the promptness obligation and the duty to investigate is so capable of repetition that it has been repeated in the handling of this Complaint

17. Indeed, just as Chief Judge Walker disregarded his legal obligation to handle 'promptly and expediently' the initial complaint, which took 10 months to be dismissed without even a limited inquiry, so Judge Jacobs disregarded his by taking over six months to dismiss this Complaint cursorily. There was more than ample time for Judge Jacobs to take action on the Complaint in the three months between its submission on March 19 and the dismissal of the initial complaint on June 8. A circuit judge should not be allowed to disregard a legal obligation on him so as to give rise to a situation that he can then allege exempts him from complying with it.

18. Judge Jacobs's unlawfully tardy dismissal of this Complaint without any investigation is another instance of the systemic disregard in the Second Circuit for the Act and Rules. It shows that disregard for their provisions and complaints thereunder is "capable of repetition". The Council should not evade its review as moot precisely because the Chief Judge's violation of the promptness obligation and failure to investigate the initial complaint, which gave rise to the Complaint, far from having ended, has been repeated by Judge Jacobs in his mishandling of that Complaint. *Roe v. Wade,* 93 S.Ct. 705, 712-713, 410 U.S. 113, 124-125, 35 L.Ed.2d 147 (1973).

19. That there is systemic mishandling of misconduct complaints by the courts of appeals and the judicial councils is so indisputable that Chief Justice Rehnquist decided to review their repeated misapplication of the Judicial Conduct and Disability Act by setting up a Study Committee; he appointed to chair it Justice Stephen Breyer, who held its first meeting last June 10. Hence, a decision on this issue by this Judicial Council would have precedential effect and work toward correcting that systemic mishandling. It follows that the Complaint is in no way moot.

20. Nor is disregard for the promptness obligation and duty to investigate a mere oversight of legal technicalities. On the contrary, it nullifies the central purpose of the Act as stated in §351(a): to eliminate "conduct prejudicial to the effective and expeditious administration of the business of the courts". What is more, mishandling complaints has severe practical consequences on the complainants and the public's perception of fairness and justice in judicial process and trust in the system of justice. In Dr. Cordero's case, the judges' contempt for these complaints has let

him suffer for over two years Judge Ninfo's arbitrariness and bias resulting from his disregard for legal and factual constraints on his judicial action. This has cost Dr. Cordero an enormous amount of effort, time, and money and inflicted upon him tremendous aggravation. It cannot be fairly and justly held that his suffering and cost have been rendered 'moot' because the Chief Judge and Judge Jacobs chose to treat contemptuously their obligations and duties under the law.

IV. Relief requested

21. Therefore, Dr. Cordero respectfully requests that the Judicial Council treat both complaints and their respective petitions for review as "admitting of specific relief through a decree of conclusive character", cf. *Aetna Life Ins. Co. v. Haworth*, 57 S.Ct. 461, 464, 300 U.S. 227, 240-241, 81 L.Ed. 617 (1937), and that it:

    a. Appoint a review panel and a special committee to investigate the complaints and petitions and that their members, precluding the Chief Judge and Judge Jacobs, be experienced investigators independent from the Council, the U.S. Trustees, and the WDNY courts;

    b. Include in their scope of investigation:

        1) a) why the Chief Judge disregarded for 10 months the promptness obligation, thus allowing a situation reasonably shown to involve corruption to fester to the detriment of a complainant and the general public;

            b) what he should have known, as the circuit's foremost judicial officer;

            c) when he should have known it; and

            d) how many of the great majority of complaints, also dismissed without investigation, would have been investigated by a law-abiding officer not biased toward his peers; and

        2) why Judge Jacobs also disregarded his obligation to handle promptly and impartially the Complaint about his peer, Chief Judge Walker;

    c. Enhance the investigative capabilities of the panel and the committee to conduct forensic accounting and to interview a large number of persons connected to a large number of bankruptcy cases by making a referral of both complaints under 18 U.S.C. §3057(a) to the U.S. Attorney General and the FBI Director and that both be asked to appoint officers unacquainted with those in their respective offices in Rochester and Buffalo, NY;

    d. Charge the joint team with the investigation of the link between judicial misconduct and a bankruptcy fraud scheme as they are guided by the principle *follow the money!* from debtors and estates to anywhere and anybody;

    e. Take action on the complaints in light of the results of their investigation;

    f. Refer these complaints and the petitions for review to the Judicial Conference and Justice Breyer's Committee as examples of how misconduct complaints are dismissed out of hand despite substantial evidence of a pattern of judicial wrongdoing and of bankruptcy fraud.

Let the Council take the opportunity afforded by these two complaints and petitions to honor its oath of office and apply the law impartially, blind to who the parties are and concerned only with being seen doing justice, as it proceeds, not to protect its peers, but rather to safeguard the integrity of the judicial system for the benefit of the public at large.

sincerely, Dr. Richard Cordero

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood United States Courthouse
40 Centre Street
New York, N.Y. 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

October 7, 2004

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

Re: Judicial Conduct Complaint, Docket No. 04-8510

Dear Mr. Cordero:

We hereby acknowledge receipt of your petition for review, dated October 4, 2004 and received in this office on October 5, 2004.

Your petition for review of the September 24, 2004 Order of the Acting Chief Judge dismissing your judicial conduct complaint in the above-referenced docket number has been filed and processed pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C. § 351.*

You will be notified by letter once a decision has been filed.

Very truly yours,
Roseann B. MacKechnie, Clerk of Court

By: Patricia Chin-Allen
Patricia Chin-Allen, Deputy Clerk

Enclosures

Mk:54

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
Thurgood United States Courthouse
40 Centre Street
New York, N.Y. 10007
212-857-8500

JOHN M. WALKER, JR.
CHIEF JUDGE

ROSEANN B. MACKECHNIE
CLERK OF COURT

November 10, 2004

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

Re: Judicial Conduct Complaint, Docket No. 04-8510

Dear Mr. Cordero:

Enclosed please find a copy of the November 10, 2004 Order of the Judicial Council of the Second Circuit denying the above-referenced petition for review.

Pursuant to the *Rules of the Judicial Council of the Second Circuit Governing Complaints Against Judicial Officers Under 28 U.S.C.* § 351, there is no further review of this decision.

Very truly yours,
Roseann B. MacKechnie, Clerk of Court

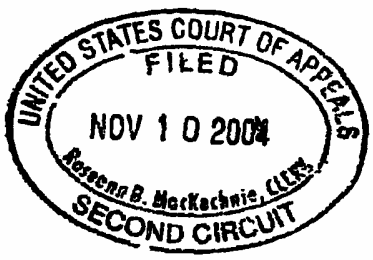
By: _____
Patricia Chin-Allen, Deputy Clerk

Enclosures

Mk:55

ORIGINAL

JUDICIAL COUNCIL OF THE SECOND CIRCUIT



In Re:

CHARGE OF JUDICIAL MISCONDUCT

Docket number: 04-8510

Before the Judicial Council of the Second Circuit:

A complaint having been filed on March 29, 2004, alleging misconduct on the part of Circuit Judge of this Circuit, and the complaint having been dismissed on September 24, 2004 by the Acting Chief Judge of the Circuit, and a petition for review having been filed timely on October 5, 2004,

Upon consideration thereof by the Council it is

ORDERED that the petition for review is DENIED for the reasons stated in the order dated September 24, 2004.

The clerk is directed to transmit copies of this order to the complainant and to the Circuit Judge whose conduct is the subject of the underlying complaint.

Karen Greve Milton
Circuit Executive
By Direction of the
Judicial Council

Dated: November 10, 2004
New York, New York

Dr. Richard Cordero

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

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

November 29, 2004

Att. Franci, Deputy to the Judge
Chief Judge Michael B. Mukasey
U.S. District Court, SDNY
500 Pearl Street, Room 2240
New York, NY 10007-1312

Dear Judge Mukasey,

I am addressing you, as a judge with responsibility under 18 U.S.C. §3057(a) for the integrity of the judiciary and as a judge to whom I have previously submitted evidence of judicial wrongdoing linked to a bankruptcy fraud scheme, to respectfully request that you, in compliance with that provision, make a report of that evidence to the Acting U.S. Attorney General so that he may investigate it.

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

This poses the obvious question of who and what else are being paid by the schemers and what parties outside the scheme, such as myself, are being denied due process of law and caused enormous loss of effort, money, and time, as well as tremendous aggravation as the schemers run their operation for illicit gain or advantage. The accompanying statement shows that under §3057(a) a judge, such as you, need not have evidence that another judge or trustee has committed a crime. Rather, he only needs to have "reasonable grounds for believing that any violation under…laws of the United States relating to insolvent debtors…has been committed." Actually, far from needing any evidence, the judge does not even need a belief in the commission of a violation, for it suffices that he or she may believe "that an investigation should be had in connection with laws of the United States relating to insolvent debtors, [and then the judge] ***shall*** report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed…." [emphasis added]

Just as money corrupts, a lot of money made available when lots of fraudulent bankruptcy petitioners are allowed to repay mere pennies on the dollar corrupts a lot. Hence, to avoid even the appearance of any undue influence and insure the integrity of the investigation, it should not be conducted by U.S. attorneys or FBI agents that are even acquainted, as a result of working in the same area, let alone the same building, with the parties that may be investigated. Thus, I respectfully request that you address your §3057(a) report to the Acting U.S. Attorney General with the recommendation that he appoint investigators from outside Rochester or Buffalo.

Meantime, I look forward to hearing from you.

Sincerely, Dr. Richard Cordero

Dr. Richard Cordero

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

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

November 29, 2004

REQUEST

TO THE Hon. Michael B. Mukasey

Chief Judge, U.S. District Court, SDNY

TO MAKE A REPORT TO THE ACTING U.S. ATTORNEY GENERAL UNDER 18 U.S.C. §3057(a) THAT AN INVESTIGATION SHOULD BE HAD IN CONNECTION WITH OFFENSES AGAINST UNITED STATES BANKRUPTCY LAWS

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I. Judges' obligation to act on their reasonably grounded belief that an investigation should be had

1. Every United States judge is under an obligation to contribute to the integrity of the judicial system. This obligation flows, among others, from 18 U.S.C. §3057(a), which provides thus:

> (a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, ***shall*** report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed.…[emphasis added]

2. Judges remain under this obligation regardless of their disposition of an appeal or motion, and thus, regardless of whether they had jurisdiction over the appeal or a non-final order was the subject of the motion. It follows that they must fulfill that obligation independently of their attitude toward the particular appellant or movant before them, for the obligation is not so conditioned and, in any event, the benefit of fulfilling it inures to the general public. Indeed, judges enhance the public's trust in the importance of and respect for the rule of law when they care to act on their reasonable belief that a violation of federal law has been committed and report their grounds for such belief to the U.S. Attorney or his assistants for investigation.

3. In the case at hand there are reasonable grounds for such belief…and that is all the law requires a judge to have in order for him to make such report: not incontrovertible evidence of the commission of a crime; actually, no evidence at all is required, much less that each individual fact or circumstance of the case constitute a violation of the law. Indeed, §3057(a) does not require any violation of the law to be set out, but it is satisfied if the judge simply have "reasonable grounds for believing…that an investigation should be had". Certainly, the section does not demand the objectivity necessary to meet the standard of probable cause, but merely a subjective belief that rests on grounds that are reasonable.

4. That little is what the law requires of judges for a §3057(a) report to the U.S. Attorney, although given their legal training and experience, they could have been used as filters to assess the sufficiency of evidence to support an indictment and asked that they report only evidence that would survive at arraignment. What is more, judges have both authority to compel a person

before them to answer questions and power to compel a litigant and even others to produce evidence and witnesses. Nevertheless, §3057(a) only requires judges to have a reasonably grounded belief in order to report that an investigation should be had. If that is all the law requires of judges, why should they impose any other requirement on a litigant, such as that his claims meet criminal evidence sufficiency standards, let alone that he submit concrete evidence that a crime was committed, before they would even consider granting a litigant's request for a §3057(a) report?

5. It would be all the more incomprehensible and unwarranted to impose a higher than the §3057(a) requirement on Dr. Cordero, for he has complained from the beginning –in the statement of issues on appeal of May 5, 2003, and the appeal brief of July 9, 2003- and since then in many of his papers submitted to this Court –as in his recent motion to quash of September 9, 2004, an order of Judge Ninfo- that the judges, trustees, parties, and debtors in this case have unjustifiably denied him the discovery and documentary evidence that he is entitled to. Nevertheless, Dr. Cordero has submitted to this Court detailed descriptions, supported by any documents available, of the many instances in which those people have disregarded legality, concealed or misrepresented the facts, and shown bias against him, the only pro se party and a non-local one to boot.

6. The low threshold set by §3057(a) to trigger a judge's obligation to report his belief in the need for an investigation is not an exception for the benefit of the judges to a normally higher requirement imposed on others. Rather, it is a means for the benefit of the public to satisfy the requirement that justice not only must be done, but must also be seen to be done. Hence, when judges do not have all the evidence to do justice, but have reason to belief that injustice may have been done by somebody's offense or violation of the law, they must ask for an investigation that may gather the necessary evidence for justice to be seen to be done.

7. When judges fail to acquit themselves of their §3057(a) reporting obligation and in so doing give even as little as the appearance of partiality, whether toward their peers or against a litigant, then they trigger another obligation: that of disqualifying themselves so as to make room for another judge that will do justice and be seen to do justice.

8. By contrast, for judges that want to acquit themselves of their §3057(a) reporting obligation, this case presents enough grounds from which their belief can reasonably arise that it should be

investigated by the U.S. Attorney General. To that end, it should be sufficient for those judges to look in the most favorable light at the following statement of those grounds in order to see how the totality of circumstances support the belief that at least one offense, or even more offenses, may have been committed and warrant investigation. Where §3057(a) only requires judges to ask for an investigation, judges should not ask a private citizen to submit the results of an investigation. And just as judges hold litigants to their obligations under the law, judges should hold themselves bound by their obligations under the law, such as that under §3057(a) requiring that they "shall" report their belief that an investigation of offenses against bankruptcy laws should be had.

II. The categories of evidence that raises reasonable suspicion of wrongdoing that should be investigated

9. The evidence of judicial wrongdoing linked to a bankruptcy fraud scheme has accumulated for over two years and is contained or described in a file of over 1,500 pages. Of necessity, only a summary of it can be provided here. Likewise, only the most pertinent documents have been referenced, many of which have already been submitted so that only those updating them have been attached hereto as exhibits; however, all of those included in the Table of Exhibits (19, infra) but not attached, and those referred to in the ones attached are available on request.

10. Yet, this evidentiary summary should be enough, not to establish the commission of a crime, but rather to satisfy the standard of reasonable suspicion applied to the opening of an official investigation. Then it is for those with the duty as well as the necessary legal authority and resources, to call for an investigation and conduct it. Although intertwined, that evidence can be described in a few principal categories:

    1) U.S. Bankruptcy Judge John C. Ninfo, II, and others have protected from discovery, let alone trial, **a)** a trustee sued for negligence and recklessness who had before the Judge some 3,000 cases! –how many do you have?-; **b)** an already defaulted bankrupt defendant against whom an application for default judgment was brought; **c)** parties who have disobeyed his orders, even those that they sought or agreed to; and **d)** debtors who have concealed assets, all to the detriment of Dr. Cordero and while imposing on him burdensome obligations.

2) David DeLano –a lending industry insider who has been for 15 years and still is a bank *loan* officer- and Mary Ann DeLano are suspected of having filed a fraudulent bankruptcy petition and of engaging, among other things, in concealment of assets; but they are being protected from examination under oath and from compulsory production of financial documents, all of which could incriminate them and others in the fraud scheme.

3) Chapter 13 Trustee George Reiber and his attorney, James Weidman, Esq., unlawfully conducted and terminated the meeting of creditors of the DeLanos, and Trustee Reiber, with the support of U.S. Trustees Kathleen Schmitt and Deirdre Martini, has since continued to fail his duty to investigate them, for an investigation could incriminate him for having approved at least a meritless and at worst a known fraudulent bankruptcy petition.

A. Reasonable grounds for believing that Judge Ninfo and others have engaged in a pattern of wrongdoing aimed at preventing incriminating discovery and trial

11. Judge Ninfo failed to comply with his obligations under FRCivP 26 to schedule discovery (Exhibit page 1=E-1)[1] in Pfuntner v. [Chapter 7 Trustee Kenneth] Gordon et al, WBNY docket no 02-2230, filed on September 27, 200*2*. As a result, over 90 days later the Judge still lacked the benefit of any discovery whatsoever.

12. By that time, Dr. Cordero had cross-claimed against Trustee Gordon for defamation as well as negligent and reckless performance as trustee and the Trustee had moved for summary judgment. Despite the genuine issues of material fact inherent in such types of claims and raised by Dr. Cordero, the Judge issued an order on December 30, 200*2*, summarily granting the motion of Trustee Gordon, a local litigant and fixture of his court. (E-2§II)

a) Indeed, the statistics on PACER as of November 3, 2003[2,] showed that since April 12, 2000, Trustee Gordon was the trustee in 3,092 cases! However, by June 26, 2004, he had added 291 more cases for a total of 3,383 cases, out of which he had 3,382[3] cases before Judge

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[1] Exhibits from pages E-1 through E-134 have already been submitted and their titles appear in the Table of Exhibits, at 19, infra; even so, any of them or the whole set is available on demand. However, exhibits E-83 through E-108 just as E-135 et seq. are provided herewith and are easily identifiable because their references are in bold, i.e. (**E-#**).

[2] https://ecf.nywb.uscourts.gov/cgi-bin/login.pl.

[3] Id.

Ninfo…in addition to the 142 cases prosecuted or defended by Trustee Gordon and 76 cases in which the Trustee was a named party.

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

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

    a) Judge Ninfo would not compel Bankrupt Owner Palmer to answer Dr. Cordero's claims even though his address is known and he submitted himself to the court's jurisdiction when he filed a voluntary bankruptcy petition. Why did the Judge need to protect Mr. Palmer from even coming to court, let alone having to face the financial consequences of a default judgment, although it was for Mr. Palmer, not for the Judge, to contest such

judgment under FRCivP 55(c) and 60(b)? (E-4§§C-D) Their relation must be investigated as well as that between the Judge and other similarly situated debtors and the aid provided therefor by others (E-4§§C-D).

15. At the instigation of Mr. Pfuntner, who said that property had been found in his warehouse that might belong to Dr. Cordero, Judge Ninfo ordered Dr. Cordero to travel from New York City all the way to Avon, outside Rochester, to conduct an inspection of it within a month or the Judge would order its removal at Dr. Cordero's expense to any warehouse in Ontario…that is, the N.Y. county or the Canadian province, the Judge could not care less!

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

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

B. Reasonable grounds for believing that the DeLano Debtors have engaged in bankruptcy fraud, such as concealment of assets

18. David and Mary Ann DeLano filed their bankruptcy petition under Chapter 13 of the Bankruptcy Code, 11 U.S.C., on January 27, 2004; WBNY docket no. 04-20280 (**E-153**). The values declared in their schedules and the responses provided to required questions are so out of sync with each other that simply common sense, not expertise in bankruptcy law or practice, is enough to raise reasonable suspicion that the petition is meritless and should be reviewed for fraud. (E-57) Just consider the following salient values and circumstances:

    a) Mr. DeLano has been a bank *loan* officer for 15 years! His daily work must include

ascertaining the creditworthiness of loan applicants and their ability to repay a loan over its life. He is still employed in that capacity by a major bank, Manufacturers and Traders Trust Bank (M&T Bank). As an expert in the matter of remaining solvent, whose conduct must be held up to scrutiny against a higher standard of reasonableness, he had to know better than to do the following together with Mrs. DeLano, who until recently worked for Xerox as a specialist in one of its machines, and as such is a person trained to pay attention to detail and to think methodically along a series steps and creatively when troubleshooting a problem.

b) The DeLanos incurred scores of thousands of dollars in credit card debt;

c) carried it at the average interest rate of 16% or the delinquent rate of over 23% for years;

d) during which they were late in their monthly payments at least 232 times documented by even the Equifax credit bureau reports of April and May 2004, submitted incomplete;

e) have ended up owing $98,092 to 18 credit card issuers listed in Schedule F (**E-153 et seq.**);

f) owe also a mortgage of $77,084;

g) but have near the end of their work lives equity in their house of only $21,415;

h) however, in their 1040 IRS forms declared $291,470 in earnings for just the 2001-03 fiscal years;

i) yet claim that after a lifetime of work they have only $2,910 worth of household goods!;

j) the rest of their tangible personal property is just two cars worth a total of $6,500;

k) their cash in hand or on account declared in their petition was only $535;

l) but made to their son a $10,000 loan, which they declared uncollectible and failed to date, for it may be a voidable preferential transfer;

m) claim as exempt $59,000 in a retirement account and $96,111.07 in a 401-k account;

n) but offer to repay only 22¢ on the dollar for just 3 years and without accrual of interest (**E-185**);

o) refused for months to submit any financial statements covering any length of time so that Trustee Reiber moved on June 15, for dismissal for "unreasonable delay" (E-62; E-65§III).

19. A comparison between the few documents that they produced thereafter, that is, some credit card statements and Equifax reports with missing pages (E-64§II), with their bankruptcy petition

and the court-developed claims register and creditors matrix revealed debt underreporting, accounts unreporting, and substantial non-accountability for massive amounts of earned and borrowed money. Dr. Cordero pointed up these indicia of fraud in a statement of July 9, 2004, (E-64§III) opposing Trustee Reiber's motion to dismiss. The DeLanos responded on July 19 by moving to disallow Dr. Cordero's claim. (E-73; E-117§B) How extraordinary! given that:

a) The DeLanos had treated Dr. Cordero as a creditor for six months;

b) They were the ones who listed Dr. Cordero's claim in Schedule F (**E-153 et seq**.)…for good reason because

c) Mr. DeLano has known of that claim against him since November 21, 200*2*, when Dr. Cordero brought him into Pfuntner v. Gordon et al. as a third-party defendant due to the fact that Mr. DeLano was the loan officer who handled the bank loan to Mr. Palmer for his company, Premier Van Lines, which then went bankrupt! (E-115§A)

20. Extraordinary, for that closes the circuit of relationships between the main parties to the Pfuntner and the DeLano cases. It begs the question: How many of Mr. DeLano's other clients during his long banking career have ended up in bankruptcy and in the hands of Trustees Gordon and Reiber, who as Chapter 7 and 13 *standing* trustees, respectively, are unavoidable? (E-33§II)

21. An impartial observer could reasonably realize that the DeLanos' motion to disallow Dr. Cordero's claim is a desperate attempt to remove belatedly from their case Dr. Cordero, the only creditor that objected to the confirmation of their repayment plan (E-57; **E-185**) and that is insisting on their production of financial documents that can show their concealment of assets, among other things (E-75; E-80**; E-190**). But not Judge Ninfo. He agreed with Dr. Cordero at the July 19 hearing and without objection from the DeLanos' attorney, Christopher Werner, Esq., to issue Dr. Cordero's document production order requested on July 9 (E-69¶31; E-76), whose contents all knew. But after Att. Werner untimely objected (E-79; **E-92§IV**), he refused to even docket it (E-80; **E-84§I; 90§III**) and only issued a watered down version on July 26 of Dr. Cordero's proposed order (E-76; E-81) that he then allowed the DeLanos to disobey by not producing the documents requested in the Judge's order! If not for leverage, what was it issued for?

22. Dr. Cordero moved that the DeLanos be compelled to comply with the production order (**E-98**) and Judge Ninfo reacted by issuing his order of August 30 that suspends all proceedings in the DeLano case until their motion to disallow Dr. Cordero's claim has been determined, *including*

all appeals. (**E-107**; E-121§III) That could take years! during which the other 20 creditors are prejudiced by not receiving any payments. But that is as inconsequential to Judge Ninfo as is his duty under 11 U.S.C. §1325(a)(3) to determine whether the DeLanos submitted their petition "by any means forbidden by law". Why Judge Ninfo disregards his duty and the interests of creditors and the public so as to protect the DeLanos needs to be investigated.

23. By contrast, Judge Ninfo has denied Dr. Cordero the protection to which he is entitled under §1325(b)(1), which entitles a single holder of an allowed unsecured claim to block the confirmation of the debtor's repayment plan; and under §1330(a), which enables any party in interest, even if not a creditor, to have that confirmation revoked if procured by fraud. But that is precisely what Judge Ninfo cannot allow, for if he lets the DeLanos' case go forward concurrently with the determination of their motion to disallow Dr. Cordero's claim, the DeLanos would have to be examined under oath on the stand and at an adjourned meeting of creditors, and Dr. Cordero, as a creditor or a party in interest, could raise objections and examine them. That is risky because the DeLanos, if left unprotected, could talk and incriminate others. Thus, for extra protection of all those at risk, Judge Ninfo stated at the August 25 hearing that until the motion to disallow is decided, no motion or other paper filed by Dr. Cordero will be acted upon. (**cf. E-231¶2**) To afford them protection, Judge Ninfo has gone as far as to deny Dr. Cordero access to judicial process! (E-121§§III-IV) The stakes must be very high!

24. Thus, in his August 30 order (**E-101**) Judge Ninfo required Dr. Cordero to prove his claim against Mr. DeLano, though he cited no legal basis therefor and ignored the legal basis for not doing so. (E-109) Yet, to comply with it, Dr. Cordero requested Mr. DeLano to produce documents (**E-190; E-211**). Mr. DeLano alleged that they were irrelevant to Dr. Cordero's claim against him and produced none. (**E-216**). Dr. Cordero raised a motion (**E-220**) where he discussed the scope of discovery under FRBkrP Rule 7026 and FRCivP Rule 26(b)(1). (**E-223§II**) He argued that he can request discovery not only to prove his claim against Mr. DeLano, but also to defend against the DeLanos' motion to disallow it by showing that it is a blatant attempt to remove him from the case before he can demonstrate that the DeLanos' petition is fraudulent and masks, among other things, concealment of assets.

25. The response to that motion of November 4 was ever so swift: On November 9, Mr. DeLano filed a response denying production of every document requested, alleging them to be irrelevant

or not in his possession (**E-228**) and on November 10, without any hearing, Judge Ninfo entered an order stating that "The Cordero Discovery Motion is in all respects denied". (**E-230**) Neither the Judge nor the attorney for Mr. DeLano, Att. Werner, engaged in any legal discussion, much less cited any legal provision, (cf. E-40-42) for why waste time and effort researching and discussing the law, rules, and facts when the judge is on your side and he has no inhibition about resorting to conclusory statements to achieve his objective: to prevent at all costs Dr. Cordero from discovering information that can link judicial misconduct (E-1) to a bankruptcy fraud scheme. Would you feel proud of having written that order or rather, for standing up for your belief that just and fair process and the integrity of the judiciary require that an investigation should be had?

C. Reasonable grounds for believing that Trustee Reiber and Att. James Weidman have violated bankruptcy law

26. Chapter 13 Trustee Reiber violated his legal obligation under 28 CFR §58.6 to conduct personally the meeting of creditors of David and Mary Ann DeLano, held on March 8, 2004 (**E-149**). Instead, he appointed his attorney, James Weidman, Esq., to conduct it. After all, Trustee Reiber has 3,909[4] *open* cases! He cannot be all the time where he should be.

27. So at the March 8 meeting of creditors, Trustee Reiber's attorney, Mr. Weidman, repeatedly asked Dr. Cordero how much he knew about the DeLanos having committed fraud and when he did not reveal anything, Att. Weidman terminated the meeting although Dr. Cordero had asked only two questions and was the only creditor at the meeting so that there was ample time for him to keep asking questions. Later on that very same day, Trustee Reiber ratified in open court and for the record Att. Weidman's decision, vouched for the DeLanos' honesty, and stated that their petition had been submitted in good faith. (E-40-42)

28. But those were just words, for Trustee Reiber had not asked for any supporting documents from the DeLanos despite his duty to "investigate the financial affairs of the debtor" under 11 U.S.C. §704(4); after Dr. Cordero requested under §704(7) that he do so, Trustee Reiber misled him into believing that he was investigating the DeLanos. (E-65§III) Only after Dr. Cordero asked that he state concretely what kind of investigation he was conducting did the Trustee for the first time, on April 20, 2004, ask for documents, pro forma (E-64§II) and perfunctorily (E-66§IV).

[4] As reported by PACER at https://ecf.nywb.uscourts.gov/cgi-bin/login.pl?601512709478669-L_916_0-1 on April 2, 2004.

29. Thus, Trustee Reiber merely requested documents relating to only 8 out of the 18 credit cards declared by the DeLanos, only if the debt exceeded $5,000, and for only the last three years out of the 15 years put in play by the Debtors themselves, who claimed in Schedule F (**E-153 et seq**.) that their financial problems related to "1990 and prior credit card purchases". Incredible as it does appear, the Trustee did not ask them to account for the $291,470 earned in just the 2001-03 fiscal years despite having declared to have in hand and on account only $535! (E-66§IV; **E-153 et seq**.)

30. Despite Dr. Cordero's repeated requests that Trustee Reiber hold an adjourned meeting of creditors (**E-187; E-205; E-214)** The Trustee has refused alleging that Judge Ninfo suspended all "court proceedings" until the DeLanos' motion to disallow Dr. Cordero's claim has been finally determined (**E-199**). What an untenable pretense! To begin with, his obligation to hold such meeting flows from 11 U.S.C. §341 for the benefit of the creditors and is not subject to the will of the judge. So much so that §341(c) expressly forbids the judge to "preside at, and attend, any meeting under this section including any final meeting of creditors". What the judge cannot even attend, he cannot order not to take place at all. It follows that a meeting of creditors does not fall among "court proceedings" and was not and could not be suspended by Judge Ninfo. (**E-201**)

31. Trustee Reiber is motivated by self-preservation, not duty, for if the DeLanos' petition were established to be fraudulent, he would be incriminated for having approved it despite its patently suspicious contents. That could lead to his being investigated to determine how many of his other 3,909 cases are also meritless or even fraudulent. Worse yet, if he were removed from the DeLano case, as Dr. Cordero has repeatedly requested of Judge Ninfo and of the U.S. Trustees Schmitt and Martini (E-71¶32; **E-93§V**; **E-210**), he would be suspended from all his other cases under §324; cf. UST Manual vol. 5, Chapter 5-7.2.2. No wonder he has been so flagrantly disingenuous in pretending that he cannot hold a §341 examination of the DeLanos because Judge Ninfo's order does not allow him to. (**E-204; E-205; cf. E-200**)

32. So has been Assistant U.S. Trustee Kathleen Dunivin Schmitt, the supervisor of Private Trustees Reiber and Gordon. Dr. Cordero asked her in writing (**E-210**) and in messages left on her voice mail and with her assistants that she instruct Trustee Reiber to hold a §341 examination of the DeLanos or state why neither she or he will do so. She has failed to return his calls or write to him. Instead, she had an assistant state that she "is planning to contact George Reiber, Esq., so they

can coordinate setting up an adjourned meeting of creditors in the [DeLano case]…and will contact you [when she will be in] the office on November 17 to handle court appearances…or prior to it". (**E-213**) However, although she has her office in the same small federal building in Rochester as Bankruptcy Judge Ninfo and the U.S. District Court as well as the U.S. Attorney and the FBI (cf. 16§IV, infra), and she did appear in court on November 17, according to her assistants, and can get a hold of Trustee Reiber there and on the phone, and summon him to her office, she failed to contact Dr. Cordero on that date, prior to it or thereafter, and will not return his messages.

33. Trustee Schmitt has an interest in not letting that examination take place. If Dr. Cordero, as a creditor, examined the DeLanos and found out that their petition was fraudulent, not to mention that Trustee Reiber knew it, and Trustee Reiber were investigated, she too could be investigated for having allowed her Supervisee Reiber –just as she did her Supervisee Gordon- to accumulate thousands of bankruptcy cases that he cannot possibly handle competently, but from each of which he receives a fee. Why? How does she figure that Trustee Reiber could review the bankruptcy petition of each of those 3,909 cases –and Trustee Gordon his 3,383 cases-, ask for and check supporting documents, and monitor the debtors' compliance with the repayment plan *each month for the three to five years that plans last*? How could she expect those trustees to have time to do anything more than rubberstamp petitions and cash in? (14§IIIA, infra) What was she thinking!? Certainly, what she has been doing with those trustees needs to be investigated.

34. So does the kind of supervision that U.S. Trustee for Region 2 Deirdre A. Martini has been or not been exercising over Assistant U.S. Trustee Schmitt. (E-68§V) Dr. Cordero has served on her every paper that he has written in the DeLano case since the unlawful termination of the March 8 meeting of creditors by Trustee Reiber and his attorney, Mr. Weidman; in addition, he has written to her specifically. She has actual and constructive knowledge of the details of this case. In fact, as early as March 17 and without any investigation of the motives for preventing Dr. Cordero from examining the DeLanos, she stated categorically to him that she would not remove Trustee Reiber from the DeLano case, as Dr. Cordero had requested, and that instead she just wanted "closure". How odd, for the case had just gotten started! Then she engaged in deception to avoid sending him information that could allow him to investigate the case on his own. (**E-139¶10**)

35. More recently, Trustee Martini has failed to state, as requested by Dr. Cordero, whether she will ask Trustee Schmitt to instruct Trustee Reiber to hold an examination of the DeLanos at an adjourned meeting of creditors. She too has failed to write to Dr. Cordero thereon as promised in their phone conversation on November 1, the second one that she has deigned to take from him (**E-210; E-233**), just as Trustee Schmitt failed to contact Dr. Cordero on that subject (**E-213**).

36. Something is not right here…or rather a lot. Why none of them wants Trustee Reiber to investigate the DeLanos and all have countenanced his failure to do so calls for an investigation. No doubt, Mr. DeLano, a loan officer for 15 years, knows and could say too much under examination.

III. The Evidence Points to the Operation of A Bankruptcy Fraud Scheme

A. How a bankruptcy fraud scheme works

37. The above-described few elements of the evidence, when reviewed as a 'totality of circumstances' instead of individually, give rise to the reasonable suspicion that these people are acting, not separately, but rather in a coordinated fashion, with judicial misconduct supporting a bankruptcy fraud scheme. It is utterly unlikely that they began so to act just because Dr. Cordero is a party in the Pfuntner case and a creditor of the DeLanos. What is utterly likely is that these people have worked together on so many thousands of cases that they have developed a modus operandi which disregards legality as well as the interests of creditors and the public at large.

38. Thus, as insiders they know that institutional lenders do not participate in bankruptcy proceedings if their respective stake does not reach their threshold of cost-effective participation. This is particularly so if they are unsecured lenders, which explains why the DeLanos distributed their debt over 18 credit card issuers and did not consolidate. Knowing that, they could not have imagined that Dr. Cordero, a pro se and non-local party without anything remotely approaching an institutional lender's resources, would even attend the meeting of creditors, let alone pursue this case any further. Hence, this should have been another garden variety fraudulent bankruptcy within their scheme, with all creditors as losers and the schemers as winners of something.

39. The incentive to engage in bankruptcy fraud is typically provided by the enormous amount of money that an approved debt repayment plan followed by debt discharge can spare the debtor.

That leaves a lot of money to play with, for it is not necessarily the case that the debtor is broke.

40. As for a standing trustee, who is a private professional, not a federal employee, she is appointed under 28 U.S.C. §586(e) for cases under Chapter 13 and is paid 'a percentage fee of the payments made under the debt repayment plan of each debtor'. Thus, after receiving a petition, the trustee is supposed to investigate the financial affairs of the debtor to determine the veracity of his statements. If satisfied that he deserves bankruptcy relief from his debt burden, the trustee approves his plan and submits it to the court for confirmation. A confirmed plan generates a stream of payments from which the trustee takes her fee. But even before confirmation, money begins to roll in because the debtor must commence to make payments to the trustee within 30 days after filing his plan and the trustee must retain those payments, 11 U.S.C. §1326(b).

41. If the plan is not confirmed, the trustee must return the money paid, less certain deductions, to the debtor. This provides the trustee with an incentive to approve the plan and get it confirmed by the court because no confirmation means no further stream of payments and, hence, no fees for her. To insure her take, she might as well rubberstamp every petition and do what it takes to get the plan confirmed by every officer that can derail confirmation. Cf. 11 U.S.C. §326(b).

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

B. Reasonable Grounds For Believing That The Parties Are Operating a Bankruptcy Fraud Scheme

43. Dr. Cordero does not know of anybody paying or receiving an unlawful fee in this case and does not accuse anybody thereof. But he does affirm what he knows:

    a) Trustee Reiber had 3,909 *open* cases on April 2, 2004, according to PACER;

b) got the DeLanos' petition ready for confirmation by the court without ever requesting a single supporting document;

c) chose to dismiss the case rather than subpoena the documents requested but not produced;

d) has refused to trace the substantial earnings of the DeLanos'; and

e) after ratifying the unlawful termination of the meeting of creditors, refuses to hold an adjourned one where the DeLanos would be examined under oath, including by Dr. Cordero.

44. Moreover, there is something fundamentally suspicious when:

a) a bankruptcy judge protects bankruptcy petitioners from a default judgment and from having to account for $291,470;

b) allows the local parties to disobey his orders with impunity;

c) before any discovery has taken place, prejudges in his August 30 order of that their motion to disallow Dr. Cordero's claim is not an effort to eliminate him from the case (**E-106**), although he is the only creditor that threatens to expose their bankruptcy fraud scheme (E-121§IV); and

d) yet shields them from discovery by suspending all further process until their motion to disallow Dr. Cordero's claim is finally determined (**E-107**) and agreeing that they may not produce any documents at all, not even those that he ordered them to produce! (E-81)

45. These facts and circumstances support the reasonable suspicion that they have engaged in coordinated conduct aimed at attaining a mutually beneficial objective, that is, a scheme, and that such conduct originates in bankruptcy fraud. Consequently, what the scheme undermines is, not just the legal, economic, and emotional wellbeing of Dr. Cordero…as if anybody cares…but the integrity of judicial process and the bankruptcy system. That constitutes an offense and there are reasonable grounds for believing that it has been committed and that an investigation thereof should be had.

IV. The need for investigators to be unacquainted with any party that may be investigated

46. However, if that investigation is to have any hope of finding and exposing all the ramifications of the vested interests that have developed rather than being suffocated by them, it must be carried out by investigators that do not even know these people. This excludes not only all those

that are their colleagues or friends, but also those that are their acquaintances either because they work in the same small federal building, as do the U.S. attorneys and FBI agents, or live in the same small community in Rochester or Buffalo, NY. (**E-135-147**) They too may fear the consequences of admitting that right under their noses such a scheme developed. Let out-of-towners conduct all aspects of the investigation…starting by subpoenaing the bank account and *debit* card statements of the DeLanos and then examining them under oath, for what a veteran bank loan officer knows could lead to cracking a far-reaching bankruptcy fraud scheme!

V. Relief requested

47. Therefore, Dr. Cordero respectfully requests that you:

a) report for investigation under 18 U.S.C. §3057(a) or any other pertinent provision of law:

1) Premier Van Lines, CA2 docket no. 03-5023;
2) Mr. Palmer's Premier Van Lines case, WBNY docket no. 01-20692;
3) Pfuntner v. Gordon et al., WBNY docket no. 02-2230; and
4) David and Mary Ann DeLano, WBNY docket no. 04-20280;

b) address the report to the Acting U.S. Attorney General with the recommendation that he appoint experienced investigators who are unrelated to and unacquainted with any of the parties that may be investigated in order to insure that they can conduct a zealous, competent, and exhaustive investigation of the nature and extent of the scheme regardless of who is found to be actively participating in it or looking the other way and that to that end, they be from U.S. Attorney or FBI Offices other than those in Rochester and Buffalo, NY, such as those in Washington, D.C. or Chicago.

Respectfully submitted on,

November 29, 2004

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

TABLE OF EXHIBITS

in support of a

REQUEST

submitted on November 29, 2004

FOR A REPORT TO THE ACTING U.S. ATTORNEY GENERAL UNDER 18 U.S.C. §3057(a) THAT AN INVESTIGATION SHOULD BE HAD IN CONNECTION WITH OFFENSES AGAINST UNITED STATES BANKRUPTCY LAWS

by Dr. Richard Cordero

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A. Basis for Requesting that the Investigators Be Appointed From Outside the Buffalo or Rochester Offices 23

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C. Updating documents that show the efforts of Judge Ninfo, Trustee Reiber, and other parties to prevent discovery that would incriminate the DeLanos and them in the bankruptcy fraud scheme 24

Exhibits=E

I. Documents already submitted, but available on demand

1. Dr. Richard **Cordero**'s judicial misconduct **complaint about** WDNY U.S. Bankruptcy Judge John C. **Ninfo**, II, submitted on **August 11**, and reformatted and **resubmitted** on **August 27**, 2003, to the Chief Judge of the Court of Appeals for the Second Circuit 1

2. Dr. **Cordero**'s **letter** of **February 2**, 2004, to the Hon. John M. Walker, Jr., **Chief Judge** of the Court of Appeals for the Second Circuit, **inquiring** about the status of the complaint **and updating** its supporting evidence 7

3. **Letter** of Clerk of Court Roseann B. **MacKechnie** by Deputy Clerk Patricia Chin-**Allen** of **February 4**, 2004, acknowledging receipt and **returning** Dr. Cordero's five copies of his inquiring and updating **letter** of **February 2**, 2004, to the Chief Judge because a decision has not yet been made 9

4. Clerk **MacKechnie**'s cover **letter** by Deputy **Allen** of **June 8,** 2004, to Dr. Cordero **accompanying** the order of **dismissal** of his **complaint** about Judge **Ninfo** 10

5. Acting Chief Judge Dennis **Jacobs**' order of **June 8**, 2004, **dismissing** Dr. Cordero's **complaint** about Judge **Ninfo**, CA2 docket no. 03-8547 11

6. Dr. **Cordero**'s **letter** of **June 19**, 2004, to Chief Judge **Walker**, stating that the judicial misconduct **orders** and materials have **not** been made publicly **available**, **as required under** the CA2 **Rules** Governing Complaints against Judicial Officers, and requesting that they be made available to Dr. Cordero for his use before the deadline of July 9 for submitting his petition for review 15

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8. Dr. **Cordero**'s **letter** of **June 30**, 2004, to Chief Judge **Walker**, stating that the Court's **archiving** of all **orders** and other materials **disposing of complaints**, except those for the last three years, constitutes a **violation** of **Rule 17** of the CA2 Rules Governing Misconduct Complaints 19

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Dr. Richard Cordero

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March 18, 2005

Att. Franci, Deputy to the Judge
Chief Judge Michael B. Mukasey
U.S. District Court, SDNY
500 Pearl Street, Rm 2240
New York, NY 10007

Re: public comments on the reappointment of Judge John C. Ninfo, II

Dear Chief Judge Mukasey,

I hereby bring to your attention and that of the Court of Appeals and the Judicial Council facts on the basis of which Bankruptcy Judge John C. Ninfo, II, WBNY, should not be reappointed to a new term of office because of his participation in a pattern of wrongdoing and bias.

Those facts are found in the 15 orders of Judge Ninfo (235 et seq., infra*) and other documents and statements entered in the dockets of two cases which I, as a party, know first-hand, i.e., Pfuntner v. Gordon et al, no. 02-2230 (401), and In re DeLano, no. 04-20280 (425). These writings are supplemented by the stenographic recordings of the 15 hearings in those cases (56). These materials produced by or in connection with Judge Ninfo describe action taken by him since 2002 that so repeatedly and consistently disregards the law, the rules, and the facts (cf. 7§2) to the benefit of local parties (15C), including debtors (471 et seq.) that the evidence indicates have concealed assets (18§1; 24§3), and to my detriment, I being the only non-local and pro se party, as to establish his participation in a pattern of non-coincidental, intentional, and coordinated (89F; 168§II) wrongful acts (66§I) supporting a bankruptcy fraud scheme (216§V).

In a judicial misconduct complaint (111) and in motions filed in this Court (125; 201) in In re Premier, dkt. no. 03-5023 (451), I informed of these facts Chief Judge John M. Walker, Jr., (cf. 151; 219) and members of this Court and of the Judicial Council, who dismissed them without any investigation. So routinely this is the way that judges dispose of complaints about their peers that last June Justice Rehnquist appointed Justice Breyer to head a committee to study the judges' misapplication of the Misconduct Act of 1980. Indeed, judges have turned the self-disciplining mechanism of judicial complaints into a sham, a term used advisedly upon the foundation of facts. Do judges also disregard systematically comments from the public before reappointing a bankruptcy judge, thereby turning the request for such comments into a public relations sham (cf 23§2)? The term is justified given that under 28 U.S.C. §152 the appointment does not even require such request, let alone the holding of public hearings, cf. §44(a).

If the judges of the Court or the Council are serious about judicial integrity, they can review the exhibits (51) and ask themselves whether Judge Ninfo abides by his oath of office at §453 or knows the law (41D;131B-C). But if they cannot imagine one of their own being biased unless they witness him being unashamedly so, they can listen to him in his own words by ordering a transcript of the March 1 hearing in the DeLano case (31). Then they can ascertain what drives his conduct and the scheme through a DoJ and FBI investigation (44F). If the appearance, not the reality, of bias is enough under §455 to require the recusal of a judge, as was reaffirmed in *Microsoft v. U.S., 530 U. S. 1301, 1302 (2000) (Rehnquist, C. J.)*, how can the evidence of judicial wrongdoing linked to a bankruptcy fraud scheme not be enough for a judge to discharge his or her duty to investigate a complaint about it or report it for investigation under 18 U.S.C. §3057? How much must Judge Ninfo abuse a litigant or how public must his wrongdoing be before his peers care?

sincerely,

* The documents in the Table of Exhibits (51) have been submitted to Circuit Executive Karen Greve Milton.

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sent to
the Members of the Judicial Council of the Second Circuit
in opposition to the reappointment of
Bankruptcy Judge John C. Ninfo, II, WBNY
to a second term in office

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FOR THE SECOND CIRCUIT
AND
THE JUDICIAL COUNCIL OF THE SECOND CIRCUIT
on March 18, 2005
by Dr. Richard Cordero

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In re David and Mary Ann DeLano, docket no. 04-20280
as of March 14, 2005

1. **December 18, 2002**, Hearing of Trustee Kenneth Gordon's motion of December 5, 2002, to dismiss Dr. Cordero's cross-claims against him in the Pfuntner case
2. **January 10, 2003**, Pre-trial conference in the Pfuntner case
3. **February 12, 2003**, Hearing of Dr. Cordero's motion of January 27, 2003, in Bankruptcy Court to extend time to file notice of appeal
4. **March 26, 2003**, Hearing of Dr. Cordero's motion of February 26, 2003, in Bankruptcy Court for relief from Judge Ninfo's order denying the motion to extend time to file notice of appeal from his dismissal of Dr. Cordero's cross-claims against Trustee Gordon
5. **April 23, 2003**, Hearing of Plaintiff Pfuntner's motion of April 10, 2003, in Bankruptcy Court to discharge Plaintiff Pfuntner from liability other relief; and of Dr. Cordero's measures relating to the trip to Rochester and inspection of property
6. **May 21, 2003**, Hearing for Dr. Cordero to report to Judge Ninfo on the inspection of property at Plaintiff Pfuntner's warehouse on May 19, 2003
7. **June 25, 2003**, Hearing of Dr. Cordero's motion of June 6, 2003, for sanctions and compensation predicated on Mr. Pfuntner's and Mr. MacKnight's failure to comply with discovery orders; and of Dr. Cordero's application, resubmitted on June 16, 2003, for default judgment against David Palmer
8. **July 2, 2003**, Adjourned hearing for Judge Ninfo to set a series of hearings in the Pfuntner case, beginning with hearings in October and November and followed by monthly hearings for 7 to 8 months all of which Dr. Cordero would be required to travel from New York City to Rochester to participate in them in person (and having the clear intention to wear Dr. Cordero down)
9. **October 16, 2003**, First hearing of the series of Judge Ninfo's "discrete" "discreet" hearings
10. **March 8, 2004**, Hearing for confirmation of debtors' debt repayment plans, where Dr. Cordero protested that the attorney for Trustee George Reiber, James Weidman, Esq., prevented him from examining the DeLanos at the meeting of creditors earlier that afternoon; which action was then ratified by Trustee Reiber
11. **July 19, 2004**, Hearing of Trustee Reiber's motion of June 15, 2004, to dismiss the DeLano case
12. **August 23, 2004**, Adjourned hearing of Trustee George Reiber's motion of June 15 to dismiss the DeLano case; and hearing of Dr. Cordero's motion of August 14, 2004, for docketing and issue, removal, referral, examination, and other relief

13. **August 25, 2004**, Hearing of the DeLanos' motion of July 19, 2004, to disallow Dr. Cordero's claim

14. **December 15, 2004**, Hearing to set the date for the evidentiary hearing of the DeLanos' motion to disallow

15. **March 1, 2005**, Evidentiary hearing of the DeLanos' motion to disallow, where Dr. Cordero examined Mr. DeLano on the issue whether Mr. DeLano's handling of the Premier's storage boxes containing Dr. Cordero's property rendered him liable to Dr. Cordero

    a. Statement by **Court Reporter** Mary Dianetti of the **number** of stenographic **tapes** and **folds comprising** her recording of the evidentiary **hearing** in the DeLano case on **March 1**, 2005 31

Dr. Richard Cordero

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August 4, 2005

Ms. Karen Greve Milton
Circuit Executive
U.S. Court of Appeals for the Second Circuit
40 Foley Square, Rm 2904
New York, NY 10007

Re: supplementation of comments on the reappointment of J. John C. Ninfo, II

Dear Ms. Milton,

Last March 17, I made a submission to the Second Circuit Court of Appeals and Judicial Council in response to the request for public comments on the reappointment of Bankruptcy Judge J.C. Ninfo, WBNY. This is a supplement (cf. FRCivP 26(e)) that evidences the pertinence of the statement that I made there: "If the judges of the Court or the Council…cannot imagine one of their own being biased unless they witness him being unashamedly so, they can listen to him in his own words by ordering a transcript of the March 1 hearing in the DeLano case. Then they can ascertain what drives his conduct"

Indeed, on March 1, 2005, the evidentiary hearing took place of the motion to disallow my claim against Mr. DeLano in the bankruptcy case of David and Mary Ann DeLano. Judge Ninfo disallowed it. Oddly enough, Mr. DeLano is a 32-year veteran of the banking industry now specializing in bankruptcies at M&T Bank. He declared having only $535 in cash and account when filing for bankruptcy in January 2004, but earned in the 2001-03 fiscal years $291,470, whose whereabouts the Judge refused to request that he account for and, thus, are unknown to date.

At the end of the hearing, I asked Reporter Mary Dianetti to count and write down the numbers of stenographic packs and folds that she had used, which she did. For my appeal from the disallowance and as part of making arrangements for her transcript, I requested her to estimate its cost and state the numbers of packs and folds that she would use to produce it. As shown in the exhibits pgs. E:1-11, she provided the estimate but on three occasions expressly declined to state those numbers. Her repeated failure to state numbers that she necessarily had counted and used to calculate her estimate was quite suspicious. So I requested that she agree to certify that the transcript would be complete and accurate, distributed only to the clerk and me, and free of tampering influence. However, she asked me to prepay and explicitly rejected my request! If a reporter in this Circuit refuses to vouch for the reliability of her transcript, does this Court vouch in her stead to the Supreme Court? Would you want your rights and obligations decided on such a transcript?

There is evidence that Reporter Dianetti is not acting alone. Other clerks answerable to Judge Ninfo have also violated the rules to deprive me of that transcript and, worse still, did likewise concerning the transcript of a hearing before him in *Pfuntner v. Trustee Gordon et al*., where Mr. DeLano, who handled the bankruptcy for M&T, and I are parties. In both cases, timely and reliable transcripts carried the risk of enabling the peers of Judge Ninfo to 'listen' to his bias and disregard for the law, the rules, and the facts at those hearings. Therefore, I respectfully request that you submit the accompanying supplement and exhibits to the Court and the Council so that they **1)** consider in the reappointment process the evidence showing that Judge Ninfo's conduct and that of others in his court form a pattern of non-coincidental, intentional, and coordinated wrongdoing that supports a bankruptcy fraud scheme and **2)** report it to U.S. Attorney General Alberto Gonzales under 18 U.S.C. 3057(a). Looking forward to hearing from you,

sincerely,

Dr. Richard Cordero

Mk:92

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SUPPLEMENTATION OF COMMENTS
against the reappointment of
Bankruptcy Judge John C. Ninfo, II, WBNY
submitted to
THE COURT OF APPEALS
FOR THE SECOND CIRCUIT
AND
THE JUDICIAL COUNCIL OF THE SECOND CIRCUIT
on August 3, 2005

Dr. Richard Cordero states under penalty of perjury the following:

1. On March 17, 2005, Dr. Richard Cordero submitted comments against the reappointment of Bankruptcy Judge John C. Ninfo, II, WBNY, supported by exhibits showing how Judge Ninfo has engaged and allowed other court officers and local parties to engage since 2002 in a series of acts of bias and disregard for the law, the rules, and the facts so consistently to the benefit of the local parties and the detriment of Dr. Cordero in two related cases, namely, *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, and *David and Mary Ann DeLano,* no. 04-20280, WBNY, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing in support of a bankruptcy fraud scheme.
2. In those comments, Dr. Cordero indicated that the judges of the Court of Appeals and the Judicial Council could witness by themselves the biased conduct of Judge Ninfo if they would "listen to him in his own words by ordering a transcript of the March 1 hearing in the DeLano case. Then they can ascertain what drives his conduct and the scheme." (Exhibit page 257, infra=E:257) He added the caveat that they, however, would have to establish the authenticity of the transcript given the Judge's tolerance for wrongdoing. The pertinence of that statement has now been proved by the express refusal of the official court reporter in Judge Ninfo's court, Reporter Mary Dianetti, to agree to certify that her own transcript of her stenographic recording of that evidentiary hearing before the Judge on March 1 will be complete and accurate, distributed only to the clerk and Dr. Cordero, and free of tampering influence. How extraordinary!, for what is a transcript worth whose reliability the reporter herself will not vouch for?
3. The full significance of Reporter Dianetti's refusal is only deepened upon knowing that the transcript in question would confirm and reveal to the appellate and supervising peers of Judge Ninfo the role that he has played as on-the-bench advocate for Mr. DeLano before and during the

*Pages E:13-257 have been submitted to Circuit Executive K.G. Milton, but are available on demand.

evidentiary hearing. Judge Ninfo called that hearing to hear the motion raised by the DeLanos to disallow Dr. Cordero's claim against Mr. DeLano and his disallowance of the claim was a foregone conclusion. Therefore, let's begin by establishing the circumstances of Reporter Dianetti's refusal to certify the reliability of her own transcript.

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Dates of Letters Exchanged Between			**Exhibit Page E:#**
	Dr. Cordero	**Court Reporter Dianetti**	
1.	April 18, 2005		1
2.		May 3	2
3.	May 10		3
4.		May 19	4
5.	May 26		6
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I. Reporter Dianetti declined stating on three occasions the count of the stenographic packs and folds that she had counted to arrive at her transcript cost estimate; Dr. Cordero requested confirmation that her reluctance was not motivated by her concerns about the transcript's content; but the Reporter requested prepayment while refusing to certify that the transcript would be complete and accurate, distributed only to the clerk and Dr. Cordero, and free of tampering influence

4. At the end of the evidentiary hearing on March 1, 2005, which lasted from 1:31 p.m. till 7:00 p.m., Dr. Cordero approached Reporter Dianetti while she was still at her seat and Court Attendant Larraine Parkhurst was by her side. He asked the Reporter how many packs and folds of stenographic paper she had used. That question spun Reporter Dianetti into a profound state of confusion and nervousness, all the more astonishing since she was only gathering the materials that she had just finished using to record the single hearing that afternoon. (Exhibits page 207, section B, infra=E:207B) The Reporter and Attendant Parkhurst counted the packs and folds and both wrote down the numbers (E:203); but on that occasion, the Reporter did not provide an estimate of the cost of the transcript.
5. Over a month and a half later, contemporaneously with designating the items in the record for the appeal from the decision resulting from that evidentiary hearing, Dr. Cordero requested in his letter of April 18 to Reporter Dianetti (E:1) that she provide a cost estimate and indicate the number of stenographic packs and folds "that you will be using to prepare the transcript". In so doing, Dr. Cordero was simply exercising his right under 28 U.S.C. §753(b), providing that:

> §753(b) [last paragraph] The original notes or other original records and the copy of the transcript in the office of the clerk shall be open during office hours to inspection by any person without charge.

6. Since Dr. Cordero lives in New York City, hundreds of miles away from the bankruptcy clerk's office in Rochester, NY, and since he, by contrast, would be charged for ordering the transcript, it is only reasonable that he would want to have the closest equivalent to an inspection in person of the original records by asking the Court Reporter to describe what she would transcribe at his expense. This sort of "dealings with parties requesting transcripts" must fall precisely within the scope of §753(c). Hence, Dr. Cordero simply asked for information that he was legally entitled to obtain.
7. In her answer of May 3 (E:2), Reporter Dianetti failed to provide any count of packs and folds of stenographic paper because it "was given to you after the hearing was completed". Yet, she must have counted them since she provided "the estimated cost…of $600 to $650". But she added the caveat

"Please understand this is an estimate only." Thereby she undermined the reliability of what in the normal course of business would have been deemed the lower and upper limits of the estimate.

8. Hence, in his letter to her of May 10 (E:3), he asked that she state by how much more her estimate could fluctuate and added "This makes it all the more necessary that you state how many packs of stenographic paper and how many folds in each pack constitute the whole of your recording."
9. In her letter of May 19 (E:4), Reporter Dianetti surprisingly stated that "I am unable to state how much my estimate can fluctuate, if it fluctuates at all, unless I prepare the entire transcript prior to your ordering it." Her statement was self-contradictory because if her estimate may not fluctuate "at all", then how could she provide an initial estimate with lower and upper limits, which by definition mark the margins of fluctuation? What would determine whether the final "cost…of $600 to $650" was $600, $650, anywhere in between, or even outside that range? Since Reporter Dianetti is an official reporter, who earns her living as such, who would prepare the transcript based on her own recording of a proceeding, and who had provided an estimate that already fluctuated by almost 10%, how could she not have an idea of by "how much my estimate can fluctuate"? After all, how many variables can possibly affect the final number of transcript pages? Is one of them censure by somebody else with indisputable authority?
10. Making her estimate even more incomprehensible, Reporter Dianetti again failed to provide in that letter of May 19 the count of stenographic packs and folds that she would use to prepare the transcript because "you already have that information" (E:4). Did she have it too?; if so, why not just restate it in a straightforward business fashion? Moreover, there was something very odd to her failure to appreciate the difference between the count of packs and folds that she had written down for Dr. Cordero on March 1 and what she had recently counted and would actually "be using to prepare the transcript", as Dr. Cordero had asked in his first letter of April 18 (E:1).
11. Thus, in his letter to her of May 26 (E:6), Dr. Cordero pointed out that:

> If you cannot state those limits, the final amount can be anywhere above or below that fork [of $600 to $650]. In practical terms this means that there is no estimate at all. Consequently, I am left to assume all the risk and be liable for whatever final price you bill me for. I hope you will agree that does not sound either fair to me or an acceptable business arrangement.

12. In her response of June 13 (E:7), Reporter Dianetti agreed to an upper limit of $650 and stated a cost per page of $3.30. This implied that for a meeting that lasted 5.5 hours, she had estimated a maximum of 197 pages. However, she added the astonishing statement that:

> Also, I am listing the number of stenographic packs and the number of folds in each pack and this is **the same information** that was given to you on the afternoon of the hearing as I had marked each pack with the number of folds within your view and **am just giving you those exact numbers** at this time. (emphasis added)

13. How astonishing indeed, for Reporter Dianetti was emphatically avoiding any statement of the numbers of packs and folds that she would actually use to prepare the transcript! Why and to what extent would those numbers differ from the numbers of packs and folds that she had used to record the March 1 evidentiary hearing? Moreover, if she did not even have to count the packs and folds to arrive at her estimate of the transcript cost, why would she on her May 3 and 19 letters not simply restate "the same information…[with which] I had marked each pack", thus nipping in the bud any suspicion? Dr. Cordero pointed this out unambiguously in his letter to her of June 25 (E:9):

> Instead, I made what I meant you to state quite clear in my latest letter to you of May 26:
>
> > [since] you necessarily had to count the number of stenographic packs and their folds to calculate the number of transcript pages and estimate the cost of the transcript…provide me with that count…Therefore…
> >
> > 2. state the number of stenographic packs and the number of folds in each that comprise the whole recording of the evidentiary hearing and **that will be translated into the transcript**. (emphasis added)

14. The fact is that Reporter Dianetti recorded the evidentiary hearing on a stenographic machine, presumably the same that she uses for recording every other bankruptcy proceeding, using the same type of stenographic paper, whose folds were pulled in and filled with recording content at the same rate, so that the same amount of content would fill transcription pages at the same rate.
15. Unquestionably, the very aim of a stenographic recording of a proceeding is to record it "verbatim" (§753(b)) so that two stenographers, or for that matter, any number of stenographers possessing the same "qualifications…determined by standards formulated by the Judicial Conference" (§753(a)), and recording the same proceeding on the same type of equipment and paper should end up producing a transcription with the same content having the same length. That is a logical and practical imperative of the system of reporting court proceedings. As the Supreme Court put it, 'the §753(b) duty to produce verbatim transcripts affords no discretion in carrying out this duty to reporters, who are to record, as accurately as possible, what transpires in court', *Antoine v Byers & Anderson, 508 US 429, 124 L Ed 2d 391, 113 S Ct 2167 (1993).*
16. Since her refusal made no sense from either a business or technical point of view, why was she so evasive about stating the number of packs and folds that "will be translated into the transcript"?

Was she concerned about how much content of the evidentiary hearing recording would be allowed to make it into the transcript, which would determine its number of pages, which would in turn reveal the number of packs and folds from which the transcript was produced? If so, her concern cast in issue the transcript's reliability as well as the integrity of the court reporting process.

17. Hence, Dr. Cordero asked her in his letter of June 25 (E:10) to agree to:

> …provide a transcript that is an accurate and complete written representation, with neither additions, deletions, omissions, nor other modifications, of the oral exchanges among the litigants, the witness, the judicial officers, and any other third parties that spoke at the DeLano evidentiary hearing…
>
> …simultaneously file one paper copy with the clerk of the bankruptcy court and mail to [Dr. Cordero] a paper copy together with an electronic copy…and not make available any copy in any format to any other party…[and]
>
> …truthfully state in your certificate [that] you have not discussed with any other party (aside from me)…the content…of your stenographic recording of the DeLano evidentiary hearing or of the transcript…[otherwise] you will state their names, the circumstances and content of such discussions or attempt at such discussions, and their impact on the preparation of the transcript.

18. In her July 1 letter (E:11) the Reporter required that Dr. Cordero prepay by "a money order or certified check in the amount of $650.00 payable to "Mary Dianetti"", made no provision for the final cost coming out, once she applied her own $3.30/page rate, at her own lower estimate of $600 or even lower because, as she had put it in her May 3 letter (E:2), "Please understand this is an estimate only", and then added without offering any explanation: "The balance of your letter of June 25, 2005 is rejected."
19. How come "rejected"?! It must be quite obvious that Reporter Dianetti has no justification to refuse to agree that her transcript will be accurate and complete, not distributed to others (aside from the clerk) yet paid for by Dr. Cordero, and not subject to anybody's tampering influence. Who in his right mind would pay $650 up front for a product that he has already been given evidence will be defective and unsuitable for the intended purpose? Would you want your rights and obligations determined on a transcript for whose reliability the reporter herself will not vouch?
20. The answers to those questions are obvious. In addition, the foundation for asking them becomes all the stronger by the fact that this is not the first time that Reporter Dianetti has tried to prevent Dr. Cordero from obtaining the transcript of her recording of a proceeding before Judge Ninfo, whose disregard for the law, the rules, and the facts would have been revealed by a complete and accurate transcript.

II. Reporter Dianetti already tried on a previous occasion to avoid submitting a transcript and submitted it only over two and half months later and only after Dr. Cordero repeatedly requested it

21. In September 2002, *Pfuntner v. Gordon et al*, docket no. 02-2230, WBNY, was commenced and therein Dr. Cordero was named a defendant. He cross-claimed against Chapter 7 Trustee Kenneth Gordon for having negligently and recklessly performed his duties as trustee to the detriment of Dr. Cordero and for making defamatory statements against him to Judge Ninfo so as to induce the Judge not to cause an investigation of the Trustee, as Dr. Cordero had requested. (E:134¶¶6-11) Trustee Gordon moved to dismiss and his motion was heard on December 18, 2002, with Dr. Cordero appearing pro se by phone. Judge Ninfo dismissed the cross-claims summarily at the hearing despite the genuine issues of material fact raised by Dr. Cordero (E:135§§1-3) and even though discovery had not started on any aspect of the case, not even disclosure pursuant to FRBkrP 7026 and FRCivP 26(a)(1) had been provided by any party other than Dr. Cordero (E:150¶75) although the case had been commenced three months earlier (E:152¶80). At the end of the hearing, Dr. Cordero stated that he would appeal.
22. Interestingly enough, according to PACER, https://ecf.nywb.uscourts.gov/, between April 12, 2000, and June 26, 2004, Trustee Gordon appeared as trustee in 3,383 cases, in 3,382 out of which he did so before Judge Ninfo! By contrast, Dr. Cordero was a non-local litigant living hundreds of miles away in New York City and appearing in one case. Had Judge Ninfo developed a modus operandi with a trustee who had become a fixture litigant in his court so that to protect Trustee Gordon and their modus operandi the Judge got rid of what he could only deem to be one of the weakest of defendants, a one-time non-local pro se on the phone?
23. That question is warranted by the series of acts of disregard for the law, the rules, and the facts engaged in by Judge Ninfo (E:140§§2-4; 62A), District Judge David G. Larimer (E:142C; ¶35 below), clerks (E:92§II; 139B-§B1), trustees (E:134¶¶6-11; 36§V), and parties (E:145D; 68B-71§1) since even before *Pfuntner* was commenced in 2002. Their mutually reinforcing conduct points to systemic disregard for duty and legality among a group of people in daily contact in a small federal building, growing closely-knit by their related functions and the use of their power to do, not the right thing, but rather the good thing for their common interest because each member can count on all the others for similar supportive disregard, to the detriment of non-members (E:151§§1-6; ¶41 below) and the integrity of the system (E:117C-E). The following statement of facts describes an instance of such clique in action.

24. After Judge Ninfo's order of December 30, 2002, dismissing the cross-claims against Trustee Gordon was sent from Rochester and delivered in New York City, Dr. Cordero phoned Reporter Dianetti at (585)586-6392 on January 8, 2003, to request a transcript of the December 18 hearing. After checking her stenographic packs and folds, she called back and told him that there could be some 27 pages and take 10 days to be ready. Dr. Cordero agreed and requested the transcript. Yet, weeks went by without his hearing from her. He had to call her and the Bankruptcy Court on several occasions to ask why he had not received the transcript, but he could only either record messages on her answering machine or leave them for her with a clerk.
25. It was not until March 10, 2003, after Dr. Cordero called Reporter Dianetti and was already recording another message, that she, screening the call, finally picked up the phone. After giving an untenable excuse, she said that she would have the 15 pages ready for…"You said that it would be around 27?!" She gave another untenable excuse and promised to have everything in two days 'and you want it from the moment you came in on the phone.' What an extraordinary comment! It implied that there had been an exchange between the court and Trustee Gordon before Dr. Cordero had been put on speakerphone and that she was not supposed to include it in the transcript, so she wanted to obtain his tacit consent for her to leave it out. Dr. Cordero told her that he wanted everything and that her statement gave him the impression that other exchanges had taken place between the Judge and Trustee Gordon before and after he, Dr. Cordero, was on the phone. She said that she had to look up her notes and put Dr. Cordero on hold. When she came back, she asked him whether he wanted everything from the moment the Judge had said 'Good morning, Dr. Cordero.' He said no, that he wanted everything from the moment the Judge must have said 'Good morning, Mr. Gordon." She again put Dr. Cordero on hold to look up the calendar. She said that before his hearing began, there had been an evidentiary hearing. He asked her the name of the parties, but she said that she would have to look up the calendar. She said that Dr. Cordero's hearing had begun at 9:30 a.m.
26. As attested to by her certificate, Reporter Dianetti did complete the transcript in the next two days, on March 12, 2003. This shows how inexcusable it was for her to delay doing so for more than two months after Dr. Cordero first contacted her on January 8 to have her produce the transcript. However, there is evidence that she did not deliver it directly to him. Indeed, although the date on her certificate is March 12, the transcript was not mailed to him until March 26, precisely the day of the hearing at 9:30 a.m. of Dr. Cordero's motion for relief from Judge Ninfo's denial of his motion to extend time to file the notice of appeal (E:136§3) from the dismissal of his

cross-claims against Trustee Gordon. In fact, the transcript was not entered in docket no. 02-2230 until March 26. It is noteworthy that after Dr. Cordero made a statement at that hearing, Judge Ninfo said that he had not heard anything different from his moving papers, denied the motion, and cut off abruptly the telephone connection through which Dr. Cordero was appearing. The transcript was then mailed and it reached Dr. Cordero on March 28. This reasonably suggests that it was unlawfully withheld from him until the Judge could learn what he had to say at the hearing. Was Reporter Dianetti told to submit her transcript to a higher-up court officer so that its contents could be vetted in light of that hearing before a final version would be sent to Dr. Cordero?

27. The transcript turned out to consist, not of 27 pages as Reporter Dianetti had estimated after consulting her notes on January 8, but only of 15 pages of transcription! She claimed that because Dr. Cordero was on speakerphone, she had difficulty understanding what he said. Her transcription of his statements has many "unintelligible" notes marking missing passages so that it is difficult to make out what he said. If she or the court speakerphone regularly garbled what the person on speakerphone said, it is hard to imagine that either would last long in their respective functions. These facts warrant asking whether she was told to disregard his request for the transcript; and when she could no longer do so, to garble his statements. Has she been told the same in other cases?
28. Was Reporter Dianetti also told and, if so, by whom, to leave out the exchanges between Judge Ninfo and Trustee Gordon before Dr. Cordero was put on speakerphone or after the Judge terminated the phone communication at the hearing on December 18, 2002? The foundation for this question is not only her comment so implying. In fact, on many occasions since then (E:225), Judge Ninfo has cut off abruptly the phone line to Dr. Cordero, in contravention of the norms of civility. It is most unlikely that without announcing that the hearing or meeting was adjourned or striking his gavel, but simply by pressing the speakerphone button to hang up unceremoniously on Dr. Cordero, Judge Ninfo brought thereby the hearing or meeting to its conclusion and the parties in the room just turned on their heels and left without uttering another word.

A. Reporter Dianetti and other officers have disregarded the law and rules by their way of dealing with Dr. Cordero at hearings and his transcript requests

29. It is more likely that on the subject of the hearing or meeting Judge Ninfo spoke with the other parties in Dr. Cordero's absence, thereby engaging in ex parte communications with them "concerning matters affecting a particular case or proceeding" in violation of FRBkrP 9003. (cf. E:119D) Likewise, by so abruptly cutting off a phone connection, the Judge gave any reasonable

person at the opposite end of the phone line cause for offense and the appearance of animosity and unfairness. Moreover, by so doing, the Judge, whether by design or in effect, prevented Dr. Cordero from bringing up any further subjects, even subjects that he had explicitly stated earlier in the hearing that he wanted to discuss; and denied him the opportunity to raise objections for the record. Of graver significance in legal terms is that by Judge Ninfo terminating a proceeding without giving notice thereof to a party he violated his duty to afford all parties to a hearing the same opportunity to be heard and hear the judge and the other parties. Thus, Judge Ninfo showed incivility and partiality, disregarded the rule prohibiting ex parte communications, and denied Dr. Cordero due process of law as required under the 5th Amendment.

30. As to Reporter Dianetti, by not delivering her transcript promptly and directly to Dr. Cordero upon completing it on March 12, 2003, she violated §753(b) which provides that:

> 28 U.S.C. §753(b)…Upon the request of any party to the proceeding which has been so recorded…the reporter…shall **promptly** transcribe the original records…and attach to the transcript his official certificate, and deliver the same to the party…making the request. (emphasis added)

31. The Reporter also violated FRBkrP 8007(a), providing thus:

> FRBkrP 8007. *(a) Duty of reporter to prepare and file transcript.* On receipt of a request for a transcript, the reporter shall acknowledge on the request the date it was received and the date on which the reporter expects to have the transcript completed and shall transmit the request, so endorsed, to the clerk or the clerk of the bankruptcy appellate panel. On completion of the transcript the reporter shall file it with the clerk and, if appropriate, notify the clerk of the bankruptcy appellate panel. If the transcript cannot be completed within 30 days of receipt of the request the reporter shall seek an extension of time from the clerk or the clerk of the bankruptcy appellate panel and the action of the clerk shall be entered in the docket and the parties notified. If the reporter does not file the transcript within the time allowed, the clerk or the clerk of the bankruptcy appellate panel shall notify the bankruptcy judge.

32. If she could not have the transcript "completed within 30 days of receipt of the request", let alone the 10 days that she had said it would take her to transcribe the mere 27 pages that she herself had estimated, why did she not comply with her obligation that "the reporter shall seek an extension of time from the clerk"? If she did, why did the clerk in turn fail to comply with his obliga-tion that "the action of the clerk shall be entered in the docket and the parties notified"? In either event, Dr. Cordero was left without either the transcript or notice. Hence, either the Reporter or the clerk, or both violated the duty to proceed timely, promptly, and with notice. Discharging with promptness transcript-related duties is so important that the FRBkrP restate that obligation thus:

FRBkrP 5007. Record of Proceedings and Transcripts

(a) Filing of record or transcript.

The reporter or operator of a recording device shall certify the original notes of testimony, tape recording, or other original record of the proceeding and **promptly** file them with the clerk. The person preparing any transcript shall **promptly** file a certified copy. (emphasis added)

33. By so dealing with that transcript, Reporter Dianetti also violated §753(a), which provides that "…Each reporter shall take an oath faithfully to perform the duties of his office…." However, her conduct takes on sinister significance because her violations in 2003 occurred in the context of *Pfuntner*, the case that contains Dr. Cordero's claim against Mr. DeLano (E:23 fn.1) and that Judge Ninfo linked to *DeLano* in his decision on appeal of April 4, 2005 (E:46§I, 51§IV. Therefore, it is reasonable to ask whether her refusal to certify the reliability of the transcript in *DeLano* is also linked to her mishandling of the transcript in *Pfuntner*; if so, with whom is she coordinating her conduct?; and why is it important thereby to influence adversely Dr. Cordero's appeals? (E:157F) What is the benefit gained or harm avoided by those engaged in such unlawful conduct?

34. Indeed, there is no reason to think that Reporter Dianetti was 'faithfully performing her duties', as required by the oath that she took under 28 U.S.C. §753(a), until Dr. Cordero just happened to drop in. This warrants asking whether in other cases she has in coordination with other officers manipulated transcripts to alter their contents or even prevent their receipt. Hence, her conduct is evidence of that broader, systemic disregard for duty and legality where manipulation of transcripts is only part of a larger scheme. (E:92§II; 158§1) The evidence providing the foundation for these queries should concern the Court of Appeals and the Judicial Council because such disregard by her and others not only denies due process to individuals, but also undermines the integrity of the administration of justice. That has grave implications, for there is evidence that disregard for duty and legality reaches higher in the judicial hierarchy than the Bankruptcy Court. Do the circuit judges and the members of the Council know that Judge Ninfo has allowed disregard for duty and legality to spread throughout and outside his court?

III. The Clerk of the Bankruptcy Court disregarded the rules by transmitting the record to the District Court when it could not possibly be complete; yet District Judge Larimer disregarded the rules and repeatedly scheduled the appellate brief for a date before Dr. Cordero would receive and use the transcript to write it

35. The evidence points to Reporter Dianetti not having acted alone. Just as Bankruptcy Court Clerk Paul Warren disregarded the rules on that occasion (¶32 above; cf. E:139B-§B1), he has in the instant case, likewise with detrimental effect on any use by Dr. Cordero of the transcript. So Dr. Cordero sent pursuant to FRBkrP 8006 his Designation of Items in the Record to the Bankruptcy Court. Clerk Karen Tacy filed it on April 21, 2005, and on that very same day –after strange hesitation, or was it consultation? (E:188 entries 108 and 109)- transmitted the record to the District Court.

36. However, FRBkrP 8007(b) provides that "When the record is complete for purposes of appeal, the clerk shall transmit a copy thereof forthwith to the clerk of the district court." It is obvious that the record could not possibly have been complete on the very day in which it was filed since the 10 days provided under FRBkrP 8006 for "the appellee [to file and serve] a designation of additional items to be included in the record on appeal" had not even started to run. (E:165) Moreover, contact with Reporter Dianetti for production of the transcript had only been initiated, as shown by the copy of Dr. Cordero's letter of April 18 to her (E:1) accompanying his designation. So when writing his appellant brief, he would hardly be able to take into consideration either the transcript or appellee's designation, submitted only on May 3 (E:229 entry 5) and delivered in NYC on May 10.

37. Nevertheless, District Judge Larimer issued a scheduling order on April 22, the day after receiving the record, providing that "Appellant shall file and serve its brief within 20 days after entry of this order on the docket". (E:167) Since the record contained a copy of Dr. Cordero's April 18 letter to Reporter Dianetti, the Judge too must have known that the Reporter had hardly received it and that no arrangement could have been agreed upon for the production of the transcript. In any event, FRBkrP 8007(a) (¶31 above) would allow the Reporter 30 days to complete the transcript and if she had not done so by that time, she could ask for an extension. Therefore, to require the filing of his appellate brief within 20 days would in effect prevent Dr. Cordero from receiving, let alone using, the transcript in writing the brief or even making it part of the record and thereby available in any subsequent appeal to the Court of Appeals or the Supreme Court.

38. On a phone conversation that Dr. Cordero had with Bankruptcy Clerk of Court Warren on May 2 concerning the premature transmittal of the record in disregard of FRBkrP 8007(b), the Clerk

defended the transmittal and refused to withdraw the record. So on that date, Dr. Cordero faxed to the District Court his objection to its scheduling order and requested that Judge Larimer rescind it. (E:169) He pointed out that the "premature…acts [of both courts] have forced Dr. Cordero to devote time and effort to research and writing to comply with the deadline for submitting his brief while waiting on the Bankruptcy Court to acknowledge its mistake and withdraw the record".

39. Disregarding the violation of the rules and that concrete detriment, Judge Larimer did not rescind his scheduling order. Instead, on May 3 he issued another order requiring Dr. Cordero to file his appellate brief by June 13. (E:171) In so doing, he did not even mention the legal and factual basis of Dr. Cordero's objection to premature transmittal of the incomplete record and the consequences in practical terms of the scheduling order.
40. As a result, Dr. Cordero was forced to write again to raise before Judge Larimer a "Motion for compliance with FRBkrP 8007 in the scheduling of appellant's brief". (E:172) It pointed out that the District Court did not receive a "record [that] is complete for purposes of appeal", as required under FRBkrP 8007(b), so that in contravention of the rules it received an incomplete one; therefore, it had not obtained and still did not currently have jurisdiction over the case to issue a scheduling order.
41. Dr. Cordero noted that there was no justification for all the waste of time and effort as well as enormous aggravation that was being caused to him by requiring that he research, write, and file his brief by June 13 although not only had he not received the transcript, but also nobody knew even when the Reporter would complete it, let alone deliver it to him. Hence, if the transcript were delivered before the brief-filing deadline, he would have to scramble to read its hundreds of pages and then rework his whole brief to take them into consideration and do in a hurry any necessary legal research. Worse yet, if the transcript were delivered after that filing deadline and before the District Court's decision, he would have to move for leave to amend his brief and, if granted, write another brief. But if the transcript were not filed timely and the Bankruptcy Clerk notified Judge Ninfo thereof under FRBkrP 8007(a), the outcome could not be known in advance, not to mention that the circumstances of the Reporter's failure to complete it timely could give rise to a host of issues. And what would happen, Dr. Cordero asked, if the transcript was delivered *after* the Court had issued its decision?! He concluded that there was no legal basis for putting on him the onus of coping with all that burdensome extra work and uncertainty.
42. In its third scheduling order of May 17 (E:175), Judge Larimer did not show any awareness of these issues, let alone that they were his concern. On the contrary, he issued his order as if:

> Appellant requested additional time within which to file and serve his brief. That request is granted, in part. Appellant shall file and serve his brief within twenty (20) days of the date that the transcript of the bankruptcy proceedings is filed with the Clerk of the Bankruptcy Court.

43. No! Dr. Cordero had certainly **not** "requested additional time". What he had requested was for the Court to act in accordance with the law: (E:174)

> Rescind its scheduling order requiring that he file his brief by June 13 and reissue no such order until in compliance with FRBkrP 8007(b) it has received a complete record from the clerk of the bankruptcy court.

44. Judge Larimer's last order means in practice that if Reporter Dianetti ever files her transcript and it is found objectionable, Dr. Cordero will once more have to move the District Court to rescind that order and undertake corrective measures. In terms of the law, it means that the Judge issued a third order with disregard for the legal issues depriving him of jurisdiction to do so. Did Judge Larimer intend for Dr. Cordero to file his brief without the benefit of the transcript? Did the Judge know that if Dr. Cordero insisted on obtaining the transcript, he would be given some sort of such thing whose reliability would be so compromised that Reporter Dianetti would not certify it?

45. These questions are justified because the instant event is an exact repetition of the way Judge Larimer proceeded when Dr. Cordero requested the first transcript: After his colleague Judge Ninfo summarily dismissed Dr. Cordero's cross-claims against Trustee Gordon at the hearing on December 18, 2002 (¶21 above), Dr. Cordero phoned Reporter Dianetti on January 8, to request the transcript. He then sent his notice of appeal, whose receipt was acknowledged by Bankruptcy Case Manager Karen Tacy by letter of January 14 (E:191), where she informed him that the due date for his designation of items was January 27. Yet, already on January 16, 2003, Judge Larimer had an order filed scheduling Dr. Cordero's brief for 20 days hence (E:192) although the Bankruptcy Clerk had transmitted to the District Court a record so unquestionably incomplete that it consisted of merely the notice of appeal! Then Reporter Dianetti tried to avoid submitting that transcript to Dr. Cordero and mishandled its delivery after completing it so that it was sent to him only more than two and a half months later, after Judge Ninfo had found out what Dr. Cordero had to say at the hearing on March 26, 2003 (¶26 above).

46. These facts support the conclusion that just as in the instant case, on that occasion Judge Larimer tried to deprive Dr. Cordero of the transcript by scheduling his brief for a date before he would receive it and be able to take it into account. What a flagrant violation by administrative

and judicial officers of FRBkrP 8006 and 8007 as well as coordinated manipulation of filing dates (cf. E:157F; 73§2) and abusive impairment of the right to appeal! (cf. E:123§III) Was Judge Larimer protecting Colleague Ninfo or Trustee Gordon or both? From what and what for?

47. In light of these precedents, what conceivable reason can Dr. Cordero have to believe that when a complete record is properly before Judge Larimer, the latter will decide the appeal in accordance with the law, the rules, and the facts? Once more, this question is particularly pertinent because in the past Judge Larimer disregarded the law, the rules, and the facts in deciding Dr. Cordero's two appeals from *Pfuntner*: Dr. Cordero's opposition to Trustee Gordon's motion to dismiss the appeal, docket no. 03cv6021 (E:237¶50b)); and his application for default judgment against David Palmer, docket no. 03mbk6001 (E:142§C; 235B-237¶50a)).

IV. Reporter Dianetti's refusal to certify the transcript's reliability is another manifestation of court officers who disregard the law, the rules, and the facts in support of a bankruptcy fraud scheme

48. One must assume that all these officers know that 'the transcript is of critical importance to meaningful appellate review', *U.S. v Workcuff 137 App DC 263, 422 F2d 700 (1970)*, because, among other things, under FRCivP 80(c) 'the stenographically recorded testimony of a witness at a hearing can be used to prove that testimony at a later trial'; for its part, FRAP 10(a) provides that "…the transcript of proceedings, if any,…**shall** constitute [part of] the record on appeal in all cases" (emphasis added). Hence, 'foreclosing examination of a complete transcript renders illusory appellant's right to appeal', *U.S. v Selva, 546 F2d 1173 (CA5 Fl, 1977)*.

49. Harmful assumptions are also made by court officers and parties upon seeing judges and supervisors exhibit lack of commitment to the rule of law and tendency to disregard the high ethical standards that should guide the administration of justice. (cf. E:239C) Their insidious example fosters a permissive environment that is self-reinforcing since 'we can do anything like the bosses do too…and they'd better cover our backs 'cause if we go down they come together with us'. Such everything goes, extortionist mentality ever more profoundly undermines the performance of administrative tasks, indispensable for the judicial process to follow its proper course. This breeds lack of candor, bias, and arbitrariness, which are attitudes inimical to due process; cf. *William Bracy, Petitioner v. Richard B. Gramley, Warden 520 U.S. 899; 117 S. Ct. 1793; 138 L. Ed. 2d 97 (1997)*.

50. In such environment, one can conceive of court officers engaging or allowing others to engage in

conduct that can deprive or is intended to deprive Dr. Cordero of transcripts. In conceiving such conduct, a cautious and objective reader would ask what motive they could have to engage in it. To find the answer, he or she should know who the DeLanos are and what they have done (E:19§I): Among other things, they filed a bankruptcy petition in January 2004, wherein they named Dr. Cordero among their creditors because of his claim against Mr. DeLano pending since November 2002 in *Pfuntner* (E:23 fn.1). Their petition is facially implausible because Mr. DeLano is a 32-year veteran of the banking industry still employed by Manufacturers & Traders Trust Bank (M&T) as an executive handling, of all matters, bankruptcies, but he and his wife pretend to have gone bankrupt with merely $535 in cash and accounts while refusing to provide documents concerning the whereabouts of $291,470 that they earned in just the 2001-03 fiscal years! Yet, to keep those documents from Dr. Cordero they are willing to run up, and their attorney knows they can afford, a legal bill of $16,654. (E:219) A rational man, and a banker at that, would only incur such cost if after doing calculations he had determined that he had more to lose by producing the requested financial documents. Do you too now want to see those documents?

51. Dr. Cordero did and requested Chapter 13 Trustee George Reiber under 11 U.S.C. §1302(b)(1) and §704(4) to "investigate the financial affairs of the debtor", and under §704(7) to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest". The reaction of the Trustee's attorney, James Weidman, Esq., illegally conducting the meeting of creditors on March 8, 2004 (C.F.R. §58.6(a)(10)), was to ask Dr. Cordero what he knew about the DeLanos having committed fraud, and when he would not answer, the Attorney terminated the meeting to prevent Dr. Cordero from examining them. (E:62A) Such termination violated the meeting's purpose under §341, §343, and FRBkrP 2004(b); yet the Trustee ratified it. Judge Ninfo condoned it (E:21§II) as "local practice" (E:23§III; 66§2), thus disregarding his duty under §1325(a)(3) to ascertain whether the petition was "in good faith [or] forbidden by law" and protecting the local parties again (E:116B-C).
52. Indeed, Trustee Reiber had, according to PACER, 3,907 *open cases* before Judge Ninfo! (cf. ¶22 above) He would not request the DeLanos to produce checking and savings account statements. Only at Dr. Cordero's repeated request did he pro forma ask them for other documents…only to allow them to stall producing even the very few that he had asked for. (E:24¶¶14-19) Nevertheless, Trustee Reiber's supervisors, Assistant U.S. Trustee Kathleen Dunivin Schmitt and U.S. Trustee for Region 2 Deirdre Martini, would not require him to investigate the DeLanos (E:20¶g;

36§V) or replace him with a trustee willing and able to do so (E:14§II).

53. On July 9, 2004, Dr. Cordero presented evidence that the DeLanos were engaged in bankruptcy fraud, particularly concealment of assets. He moved for an order to produce documents that could prove it, such as bank accounts. (E:90§I) To eliminate him before he could obtain them, the DeLanos filed on July 22 a motion to disallow his claim. Judge Ninfo supported it, although it was barred by laches and untimely (E:74¶¶46-54) and did not order any production (E:68B; 107). Only at Dr. Cordero's instigation did he issue a watered-down order that he allowed the DeLanos to violate (E:32§3) -just as he has allowed *Pfuntner* parties to do (E:145D)- Then he stopped all other proceedings in *DeLano,* thus forestalling a renewed opposition under §§1325(b) and 102(4) by Dr. Cordero to their repayment plan, and forced him to take discovery of Mr. DeLano to prove his claim against him in *Pfuntner* (E:195§§I-II). The result of his discovery would be presented at an evidentiary hearing on March 1, 2005. But Mr. DeLano and the Judge denied him *every document* that he requested. (E:77§§1-2) Yet, in his decision on appeal of April 4, the Judge disallowed the claim because 'Dr. Cordero did not introduce any document to prove it!' What a set up! (E:33B)

54. However, Dr. Cordero could still introduce on appeal one threatening document: **the transcript.** Indeed, at the March 1 evidentiary hearing he elicited from Mr. DeLano admissions corroborating all the elements of his claim and even new information strengthening it. Judge Ninfo dealt with that testimony in his April 4 decision by dismissing it on the allegation that Mr. DeLano had been "confused" by Dr. Cordero. The ludicrousness of such pretense of a reason for dismissing damaging testimony is all the more obvious because Mr. DeLano was testifying about his own actions as an expert handling the bankruptcy in *Pfuntner*. (E:23 fn.1) Also, he was assisted by two seasoned attorneys, Christopher Werner, Esq., who according to his own statement 'has been in this business for 29 years' now and, as shown in PACER, had already at the time appeared before Judge Ninfo in 525 cases; and Michael Beyma, Esq., who is the attorney for Mr. DeLano and M&T in *Pfuntner* and a partner in the firm of Underberg & Kessler, of which the Judge was also a partner before being appointed to the bench in 1992. The transcript will also allow Judge Ninfo's peers to hear from his own mouth his bias and contempt for due process. (E:209C-E)

55. Mr. DeLano's self-incriminating testimony and Judge Ninfo's performance as his on-the-bench advocate, if it were completely and accurately reflected in the transcript (E:216F), can have devastating consequences: It will show that the untimely motion to disallow and the abuse-of-

process evidentiary hearing constituted a two-punch sham (E:33B) to justify stripping Dr. Cordero of standing as a creditor of the DeLanos so as to prevent him from obtaining the documents that can prove the bankruptcy fraud (cf. E:47§II) of well-connected Veteran Banker DeLano. In his 32-year banking career, he must have come to know too much to be left unprotected from his creditors or, worse, liable to criminal charges and, thus, tempted by a plea bargain to trade in his we-are-all-in-the-same-boat incrimination. (E:83§3)

56. Precisely, Mr. DeLano's admissions can open the way to proving that the long series of acts beginning in *Pfuntner* (E:134§I) of disregard for the law, the rules, and the facts by court officers, all consistently to the detriment of non-local pro se Dr. Cordero and the benefit of local parties (E:117C-E), form a pattern of non-coincidental, intentional, and coordinated wrongdoing in bankruptcy. Therein cases approved generate a commission of all payments by debtors to creditors as well as debt relief that spares concealed assets. That relief alone can save the DeLanos more than $144,000 in debt plus delinquent interest at over 25% per year. (E:248¶75) Money, lots of money, "the source of all evil", and a web of local relations giving rise to what is at stake here: a bankruptcy fraud scheme and its cover-up. (E:234D)
57. Indeed, when so many officers who meet daily in a small building to work as a formal unit of colleagues and appointers-appointees (28 U.S.C. §751(a), (b); §753(a)) disregard their duty and legality as they engage in 'diversity of city' discrimination against a far away litigant, one can infer that they are not simply performing their functions incompetently with a series of accidentally coinciding results. Instead, the law allows the application of common sense to circumstantial evidence to draw the inference of intentionality and coordination from the acts of reasonable persons operating as a team to attain the shared objective of a scheme. On such basis, juries of lay persons are asked every day to make inferences that can lead to a finding of guilt beyond reasonable doubt, which will deprive the accused of his property, his liberty, and even his life. That is what the schemers stand to lose, who can be exposed as such by the transcript of one of their reporters.

V. Conclusion and Requested Action

58. The court officers and local parties are determined not to allow Dr. Cordero to use the *Pfuntner-DeLano* cases as a wedge to crack the bankruptcy fraud scheme. (E:51§IV) But they cannot prevent the Court of Appeals or the Judicial Council from conducting a conscientious and

comprehensive investigation of Judge Ninfo's performance as part of the reappointment process. To that end, the Court and the Council can use Reporter Dianetti's refusal to certify the reliability of her transcript as a starting point to find out and evaluate Judge Ninfo's performance and the motives driving it during and leading up to the March 1 evidentiary hearing. Indeed, a complete and accurate transcript would show how Judge Ninfo used the tandem of the motion to disallow the claim and its hearing to oust Dr. Cordero from *DeLano* before he could obtain the documents from the DeLanos that can prove their bankruptcy fraud, particularly concealment of assets. The Judge's participation in that abuse of process and his performance from the bench at the hearing as an advocate for Mr. DeLano and the scheme would demonstrate his contempt for his duty to be an impartial administrator of justice in accordance to law and, as a result, his unfitness for reappointment to a new term in office. In addition to, and even more important than, determining the issue of Judge Ninfo's reappointment, an investigation from the handling of the transcript request can lead the Court and the Council from a recent wrongful act legally significant in itself through a series of similar acts in a pattern of disregard for duty and legality all the way to the source of wrongdoing infecting the core of judicial integrity in a court under their supervision.

59. It is for each member of the Court or the Council to determine how he or she will handle the people referred to in this supplement and the original March 17 comments. Will each discharge his or her own duty to apply the law even to colleagues and appointees who have broken it for their own advantage, even by denying due process to a non-local person on whom they have inflicted enormous material and emotional injury for years? Failure to do so will only condone and thereby encourage those officers and parties to commit ever bolder acts, which will accumulate until attaining a critical mass threatening to explode and expose them, which will induce them into a cover up requiring ever more egregious, even criminal acts. (E:243D) It is a vicious circle that can only end up in disaster and shame for its active participants as well as those who had the duty to stop them but who instead aided and abetted them through their passivity in dereliction of duty. The choice is between protecting behind a black robe screen unworthy members of the same class and keeping the oath "to administer justice without respect to person…under the Constitution and the laws", 28 U.S.C. §453. (E:253E) Where do your loyalties lie?
60. Sooner or later what drives Judge Ninfo, the other court officers, and the local parties to disregard their duty and legality will be exposed, whether by the Court of Appeals, the Judicial Council, the FBI, the Congressional committees on the judiciary, or investigative journalists.

Those who vote to reappoint Judge Ninfo (cf. E:202) despite all the evidence of the wrongdoing that he has engaged in or condoned collected during the past three years (E:115§II) and presented to each of the members of the Court and the Council (E:239C; 201) by Dr. Cordero will end up embarrassed and having to explain themselves.

61. Therefore, Dr. Cordero respectfully requests that the Second Circuit Court of Appeals and the Judicial Council:
    a. do not reappoint Judge Ninfo to a new term of office as bankruptcy judge;
    b. investigate whether Judge Ninfo influenced directly or indirectly Court Reporter Mary Dianetti with regard to:
        1) her recording of the evidentiary hearing in *DeLano* on March 1, 2005, or her transcription thereof and thereby gave the Reporter cause to refuse to certify that such transcript would be complete and accurate, not distributed to anybody other than the clerk and Dr. Cordero, and free of tampering influence; and
        2) her mishandling of the transcript in *Pfuntner*;
    c. investigate the broader context of the pattern of non-coincidental, intentional, and coordinated acts of bias and disregard for the law, the rules, and the facts engaged in by court officers and parties in the Bankruptcy Court, WBNY, and District Court, WDNY
    d. designate an experienced court reporter, unrelated to either Reporter Dianetti or any court officers, whether judicial or administrative, of either of those Courts, to prepare the transcript based on all the stenographic packs and folds used by her to record the March 1 evidentiary hearing, having due regard for the chain of custody and condition of such packs and folds; and review such transcript; and
    e. refer the *DeLano* and *Pfuntner* cases for investigation under 18 U.S.C. §3057(a) to U.S. Attorney General Alberto Gonzales, with the recommendation that they be investigated by U.S. attorneys and FBI agents, such as those from the Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with either case, and unrelated and unacquainted with any of the parties or officers that may be investigated, and that no staff from such offices in either Rochester or Buffalo participate in any way in such investigation.

Dated: August 3, 2005

Dr. Richard Cordero

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TABLE OF EXHIBITS

in support of the Supplementation of Comments against the reappointment of Bankruptcy Judge John C. Ninfo, II, WBNY submitted to

THE COURT OF APPEALS
FOR THE SECOND CIRCUIT
AND
THE JUDICIAL COUNCIL OF THE SECOND CIRCUIT

on August 3, 2005
by

Dr. Richard Cordero

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Dr. Richard Cordero

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September 6, 2005

Hon. Justice Ruth Ginsburg [and each of the members of the Judicial Council CA2]
Circuit Justice for the 2nd Circuit
In care of: Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543

Re: 2nd supplement to comments against reappointing J. John C. Ninfo, II, WBNY

Dear Madam Justice,

Last March I responded to the Appeals Court's request for comments on the reappointment of Judge Ninfo. I indicated that the Court and the Judicial Council could 'hear' him express his bias and disregard for the law, the rules, and the facts by obtaining the transcript of the evidentiary hearing held on March 1, 2005, of the motion raised by the debtors in *David and Mary Ann DeLano* (04-20280) to disallow my claim. Revealingly enough, that is the transcript that Bankruptcy Court Reporter Mary Dianetti has refused to certify as complete, accurate, and untampered-with. (E:9-11) The evidence thereof is what I submitted to the Court and the Council in the supplement of last August 3.

New evidence discussed in the supplement below shows that the Reporter's refusal is part of a bankruptcy fraud scheme: Judge Ninfo has confirmed the DeLanos' debt repayment plan upon the pretense that the trustee investigated and cleared them of fraud in his "Report" (E:271-273; §I) although the Judge knew that there was no investigation (§IIA) because he had refused to order them to produce even checking and savings account statements and because the trustee, who before asking for any documents from the DeLanos vouched for the good faith of their bankruptcy petition, had a conflict of interests in conducting an investigation that could prove him wrong (§IIB; E:309-323). Through his confirmation without investigation (§IIC), Judge Ninfo allowed the whereabouts of $291,470 earned by the DeLanos in just 2001-03 to remain unknown and the astonishing string of mortgages (¶53, E:284-298) to go unexplained through which the DeLanos took in $382,187 since 1975 only to end up 30 years later with equity in the very same home of a meager $21,415 and a mortgage debt of $77,084! Over $670,000 unaccounted for! Not enough, for Judge Ninfo spared them repayment of over $140,000. Thereby Judge Ninfo protected a scheme and Mr. DeLano, who has spent his 32-year career in banking, is currently in charge of bankruptcies of clients of his bank (¶36), and has learned so much about bankruptcy abuses that the Judge could not risk letting an investigation indict Mr. DeLano for playing the system, lest he disclose his incriminating knowledge in a plea bargain.

Hence, Judge Ninfo cannot let the transcript be produced and the Reporter be investigated or the Trustee be removed. I moved for that on July 18 and 13, respectively; but neither the Reporter nor the Trustee has bothered to file even a stick-it with the scribble "I oppose it". But wait! I raised those motions in my appeal before Judge David Larimer (05cv6190, WDNY). How did they know that he would not grant them by default and cause them to lose their jobs? Yet, they must know that Judge Larimer's protection of Judge Ninfo and the others by not ruling on my motions -four, the earliest filed in *June*- can lead me to petition for a writ of mandamus again (cf. 03-3088, CA2). Do they know that the Court will deny it and leave me with a frozen appeal or no option but to file my brief without the transcript? (E:333-343) The scheme! How high does it reach? (cf. 03-8547 and 04-8510, CA2)

Circumstantial and documentary evidence warrants that Judge Ninfo not be appointed. Instead, let your duty to safeguard the integrity of judicial officers and process cause him to be investigated for participating in a bankruptcy fraud scheme; and let your duty under 18 U.S.C. 3057(a) cause you to report this matter to A.G. Alberto Gonzales for investigation. Looking forward to hearing from you,

sincerely, Dr. Richard Cordero

Mk:116

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2nd SUPPLEMENT WITH NEW EVIDENCE

against the reappointment of

Bankruptcy Judge John C. Ninfo, II, WBNY

submitted to

the Second Circuit

Court of Appeals and Judicial Council

on September 5, 2005

Dr. Richard Cordero states under penalty of perjury the following:

1. On March 17, 2005, Dr. Richard Cordero timely submitted comments against the reappointment of Bankruptcy Judge John C. Ninfo, II, WBNY, based on evidence in two related cases, namely, *Pfuntner v. Trustee Gordon et al.*, docket no. 02-2230, and *David and Mary Ann DeLano*, docket no. 04-20280, of his participation in a series of acts of bias and disregard for the law, the rules, and the facts that form a pattern of non-coincidental, intentional, and coordinated wrongdoing in support of a bankruptcy fraud scheme. (Exhibits, page 12, below = E:12)
2. Last August 3, Dr. Cordero submitted a supplement that discussed the express refusal of Judge Ninfo's Court Reporter, Ms. Mary Dianetti, to agree to certify that her transcript of the stenographic record that she herself had taken of the evidentiary hearing before the Judge on March 1, 2005, would be complete and accurate, distributed only to the clerk and Dr. Cordero, and free of tampering influence. (E:9-11) That transcript is indispensable to Dr. Cordero's appeal to District Court (docket no. 05-cv-6190, WDNY) because it will confirm and reveal to the appellate judges Judge Ninfo's contempt for due process and his role as on-the-bench advocate for Mr. DeLano before and during the evidentiary hearing of the DeLanos' motion to disallow Dr. Cordero's claim as a creditor of them. A reliable transcript would also justify the Court of Appeals and the Judicial Council, as bodies with responsibility for ensuring the integrity of the courts in the Circuit, in investigating Judge Ninfo on the strength of the evidence of his participation in a bankruptcy fraud scheme.
3. That scheme and Judge Ninfo's participation in it are further revealed by the evidence presented

the pretense that the trustee, Chapter 13 Trustee George Reiber, had investigated the DeLanos and found no bankruptcy fraud on their part, yet Judge Ninfo knew that no such investigation of the DeLanos had ever been conducted (§II¶33 below). Indeed, he knew it because of his own acts in *DeLano* and those of the Trustee as well as the latter's filed "Report" (§I¶5 below; E:271-273) and the type of documents that the Trustee and the DeLanos had refused and failed to produce (§A¶36 below) including those that Judge Ninfo ordered them to produce but allowed them not to produce with impunity. By predicating a confirmation of the plan upon the statement known to be false that an investigation had cleared the debtors of fraud, Judge Ninfo and others worked fraud on the court as an institution to the detriment of judicial process and of Dr. Cordero's rights (§C¶61 below).

4. To engage in such fraud, Judge Ninfo and other participants in the scheme have had two motives: One is to avoid a harm in that the confirmation of the plan despite the evidence of bankruptcy fraud insures that the DeLanos will not be charged with fraud and, therefore, will have no incentive to enter into a plea bargain in which Mr. DeLano, who has spent his 32-year career in banking and is currently in charge of bankruptcies of clients of his bank, Manufacturers and Traders Trust Bank (M&T Bank), would disclose what he has during those many years learned about bankruptcy fraud committed by debtors, trustees, and judicial officers, which would result in the likely indictment of those people. The other very powerful and corruptive motive is to gain a benefit: MONEY!, for the plan's confirmation allows the DeLanos to avoid 78¢ on the dollar owed for a saving of over $140,000 plus all compounding delinquent interest at the annual rate of over 25% and in addition spares them having to account for more than $670,000! (§B¶49 below)

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5. The investigation of the confirmation of plan can take as its starting point the following entries in the *DeLano* docket no. 04-20280, which is available through PACER at https://ecf.nywb.uscourts.gov/ (Exhibits to the August 3 Supplement, page 176=1stSupp.E:176)

Filing Date	#	Docket Text
06/23/2005		Clerk's Note: (TEXT ONLY EVENT) (RE: related document(s)5 CONFIRMATION HEARING At the request of the Chapter 13 Trustee, the Confirmation Hearing in this case is being restored to the 7/25/05 Calendar at 3:30 p.m. (Parkhurst, L.) (Entered: 06/23/2005)
07/25/2005	134	Confirmation Hearing Held - Plan confirmed. The Court found that the

07/25/2005	134	Confirmation Hearing Held - Plan confirmed. The Court found that the Plan was proposed in good faith, it meets the best interest test, it is feasible and it meets the requirements of Sec. 1325. The Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none. The Trustee read a statement into the record regarding his investigation. The plan payment were reduced to $635.00 per month in July 2004 and will increase to $960.00 per month when a pension loan is paid for an approximate dividend of five percent. The Trustee will confirm the date the loan will be paid off. The amount of $6,700.00 from the sale of the trailer will be turned over to the Plan. All of the Trustee's objections were resolved and he has no objections to Mr. Werner's attorney fees. Mr. Werner is to attach time sheets to the confirmation order. Appearances: Debtors, Christopher Werner, attorney for debtors, George Reiber, Trustee. (Lampley, A.) (Entered: 08/03/2005)

6. When one clicks on hyperlink 134 what downloads is a three-page document titled "Trustee's Findings of Fact and Summary of 341 Hearing". What shockingly unprofessional and perfunctory scraps of papers! (E:271-273) Their acceptance by Judge Ninfo as the Trustee's "Report" (¶33 below) is so revealing that they warrant close analysis.

7. Even if Trustee Reiber has no idea of what a professional paper looks like, he has the standards of the Federal Rules as a guide to what he can file. One of those Rules provides thus:

> FRBkrP 9004. General Requirements of Form
>
> (a) Legibility; abbreviations
>
> All petitions, pleadings, schedules **and other papers *shall*** be clearly legible. Abbreviations in common use in the English language may be used. (emphasis added)

8. The handwritten jottings on those scrap papers are certainly not "clearly legible". The standard for legibility can further be gleaned from the Local Bankruptcy Rules:

> **Local Bankruptcy Rule 9004. PAPERS**
>
> 9004-1. FORM OF PAPERS *[Former Rule 13 A]*
>
> All pleadings **and other papers *shall*** be plainly and **legibly written**, preferably **typewritten**, printed or reproduced; ***shall*** be **without erasures or interlineations materially *defacing* them**; shall be in ink or its equivalent on durable, white paper of good quality; and, except for exhibits, shall be on letter size paper, and **fastened** in durable covers. (emphasis added)
>
> 9004-2. CAPTION *[Former Rule 13 B]*
>
> All pleadings **and other papers *shall*** be **captioned** with the name of the Court, the title of the case, the proper docket number or numbers, including the initial at the end of the number indicating the Judge to whom the matter has been assigned,

and a **description of their nature**. All pleadings **and other papers**, unless excepted under Rule 9011 Fed.R.Bankr.P., ***shall*** be **dated**, **signed** and have thereon the **name, address and telephone number of each attorney, or** if no attorney, then the **litigant** appearing. (emphasis added)

9004-3. Papers not conforming with this rule generally shall be received by the Bankruptcy Clerk, but the **effectiveness** of any such papers shall be **subject to** determination of the **Court**. *[Former Rule 13 D]* (emphasis added)

9. The interlineations and crossings-out and crisscrossing lines and circles and squares and uncommon abbreviations and the scattering of meaningless jottings deface these scrap papers. Moreover, they are not captioned with the name of any court.

10. What is more, the 'description' "Trustee's Findings of Fact and Summary of 341 Hearing" is ambiguous and confusing. Indeed, there is no such thing as a "341 Hearing". What is there is "§341 Meetings of creditors and equity security holders". The distinction between meetings and hearings is a substantive one because §341 specifically provides as follows:

> 11 U.S.C. §341 (c) the court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors.

11. Neither the court can attend a §341 meeting nor a trustee has any authority to conduct a hearing. The trustee does not listen passively at such a meeting either. This is how his role is described:

> 11 U.S.C.§343. Examination of the debtor
>
> The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of the title. Creditors, any indenture trustee, **any trustee** or examiner in the case, or the United States trustee may **examine the debtor**. The United States trustee may administer the oath required under this section. (emphasis added)

12. The trustee attends a §341 meeting to engage in the active role of an examiner of the debtor. Actually, his role is inquisitorial. So §1302(b) makes most of §704 applicable to a Chapter 13 case, such as *DeLano* is. In turn, the Legislative Report on §704 states that the trustee works "for the benefit of general unsecured creditors whom the trustee represents". That representation requires the trustee to adopt the same inquisitorial, distrustful attitude that the creditors are legally entitled to adopt at their meeting when examining the debtor, which is unequivocally stated under §343 in its Statutory Note and made explicitly applicable to the trustee thus:

> The purpose of the examination is to enable creditors and ***the trustee*** to determine if assets have improperly been disposed of or concealed or if there are grounds for objection to discharge. (emphasis added)

13. Hence, what is it that Trustee Reiber conducts if he does not even know how to refer to it in the title of his scrap papers: a §341 meeting of creditors or an impermissible "341 Hearing" before

Judge Ninfo? And in *DeLano*, when did that "341 Hearing" take place?, for not only is such "Hearing" not dated, but also none of those three scrap papers is dated, in disregard of the requirement under Local Bankruptcy Rule 9004-2 (¶8 above) that they "***shall*** be **dated".** However, if the Trustee's scrap papers refer to a meeting of creditors, to which one given that there were two, one on March 8, 2004, and the other on February 1, 2005? Moreover, on such occasion, what attitude did the Trustee adopt toward the DeLanos: an inquisitorial one in line with his duty to suspect them of bankruptcy fraud or a passive one dictated by the foregone conclusion that the DeLanos had to be protected and given debt relief by confirming their plan?

14. Nor do those scrap papers comply with the requirement that they "***shall*** be **signed".** Merely initializing page 2 (E:272) is no doubt another manifestation of the perfunctory nature of Trustee Reiber's scrap papers, but it is no substitute for affixing his signature to it. Does so initializing it betray the Trustee's shame about putting his full name on such unprofessional filing with a U.S. court?

A. The third scrap of paper "I/We filed Chapter 13 for one or more of the following reasons:" with its substandard English and lack of any authoritative source for the "reasons" cobbled together in such cursory form indicts the Trustee and Judge Ninfo who relied thereon for their pretense that a bankruptcy fraud investigation had been conducted

15. The third scrap paper (E:273) bears the typewritten statement "I/We filed Chapter 13 for one or more of the following reasons:" Which one of the DeLanos, or was it both, made the checkmarks and jottings on it? If the latter were made by Trustee Reiber at his very own "341 Hearing", did he simply hear the DeLanos' "reasons" for filing –assuming such attribution can be made to them– and uncritically accept them? Yet, those "reasons" raise a host of critical questions. Let's examine those that have been checkmarked and have any *handwritten jottings* next to them:

√ Lost employment *(Wife) Age 59*

16. What is the relevance of the Wife losing her employment? Mr. DeLano lost his employment over 10 years ago and then found another one and is currently employed, earning an above-average income of $67,118 in 2003, according to the Statement of Financial Affairs in their petition.
17. Likewise, what is the relevance of her losing her employment at age 59, or was that her age whenever that undated scrap paper was jotted? Given that the last jotting connects a "reason" for filing their petition on January 27, 2004, to a *"pre-1990"* event, it is fair to ask when she lost her employment and what impact it had on their filing now.

√ Hours or pay reduced *(Husband 62) To delay retirement to complete plan*

18. Does the inconsistency between writing *"62"* inside the parenthesis in this "reason" and writing "*Age 59"* outside the parenthesis in the "reason" above reflect different meanings or only stress the perfunctory nature of these jottings? Does it mean that he was 62 when his hours or pay were reduced and that before that age he was earning even more than the $67,118 that he earned in 2003 or that when he turns 62 his hours or pay will be reduced and, if so, by how much, why, and with what impact on his ability to pay his debts? Or does it mean that he will *"delay retirement"* until he turns 62 so as *"to complete plan"*?
19. Otherwise, what conceivable logical relation is there between "Hours or pay reduced" and *To delay retirement to complete plan*? In what way does that kind of gibberish amount to a "reason" for debtors not having to pay their debts to their creditors?
20. Given that 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-, how can he be sure that he remembers correctly whatever it was that he meant when he made such jottings, that is, assuming that it was he and not the "I/We…" who made them?; but if the latter, then there is no way for the Trustee to know with certainty what the "I/We…" meant with those jottings. It is perfunctory per se for the Trustee to submit to a court a scrap paper that is intrinsically so ambiguous that the court cannot objectively ascertain its precise meaning among possible ones.

√ To pay back creditors as much as possible *in 3yrs prior to retirement*

21. If the DeLanos were really interested in paying back all they could, then they would have provided for the plan to last, not the minimum duration of three years under §1325(b)(1)(A), but rather the longer period of five years…or they would not retire until they paid back what they borrowed on the explicit or implicit promise that they would repay it. And they would have planned to pay more than just $635.

$4,886.50	projected monthly income (Schedule I of the DeLanos' bankruptcy petition)
-1,129.00	presumably after Mrs. DeLano's unemployment benefits ran out in 6/04 (Sch. I)
$3,757.50	net monthly income
-2,946.50	for the very comfortable current expenditures (Sch. J) of a couple with no dependents
$811.00	actual disposable income

22. Yet, the DeLanos plan to pay creditors only $635.00 per month for 25 months, the great bulk of the 36 months of the repayment period. By keeping the balance of $176 per month = $811 – 635, they withhold from creditors an extra $4,400 = $176 x 25. No explanation is given for this

…although these objections were raised by Dr. Cordero in his written objections of March 4, 2004, ¶¶7-8. Did Trustee Reiber consider those objections as anything more than an insignificant nuisance and, if so, how could he be so sure that Judge Ninfo would consider them likewise?

√ To cram down secured liens

23. What is the total of those secured liens and in what way do they provide a "reason" for filing a bankruptcy petition?

√ Children's college expenses *pre-1990 when wages reduced $50,000 → 19-000*

24. The DeLanos' children, Jennifer and Michael, went for two years each to obtain associate degrees from the in-state low-tuition Monroe Community College, a local institution relative to the DeLanos' residence, which means that their children most likely resided and ate at home while studying there and did not incur the expense of long distance traveling between home and college. The fact is that whoever wrote that third scrap paper did not check "Student loans". So, what "college expenses" are being considered here? Moreover, according to that jotting, whatever those "college expenses" are, they were incurred *"pre-1990"*. Given that such listed "reasons" as, "Medical problems", "To stop creditor harassment", "Overspending" and "Protect debtor's property" were not checked, how can those "college expenses" have caused the DeLanos to go bankrupt *15 years later?* This is one of the most untenable and ridiculous "reasons" for explaining a bankruptcy…

25. …until one reaches the bottom of that scrap paper and, just as at the top, there is no reference to any Official Bankruptcy Form; no citation to any provision of the Bankruptcy Code or the FRBkrP from which this list of "reasons" was extracted; no reference to any document where the "reasons" checked were quantified in dollar terms and their impact on the DeLanos' income was calculated so that the numerical result would lead to the conclusion that they were entitled under law to avoid paying their creditors 78¢ on the dollar and interest at the delinquent rate of over 25% per year. So, on the basis of what calculations in this scrap paper or why in spite of their absence did Judge Ninfo conclude that the DeLanos' plan "meets the best interest test"? (¶5 above)

26. Nor is there any reference to a document explaining in what imaginable way, for example, "Matrimonial" is a "reason" for anything, let alone for filing for bankruptcy; or how "Reconstruct credit rating" is such an intuitive "reason" for filing for bankruptcy because then your credit rating in credit bureau reports will go up. There is no reference either to a rule describing the mechanism whereby "Student loans" are such a "reason" despite the fact that 11 U.S.C. provides thus:

> §523. Exceptions to discharge
>
> (a) A discharge under section…1328(b) of this title does not discharge

> an individual debtor from any debt-…(8) for an education benefit overpayment or loan made…

27. The lack of grammatical parallelism among the entries on that list is most striking. So the first "reason" appears to be the subordinate clause of the subordinating clause that will be used as an implicit refrain to introduce every "reason" and thereby give the list semantic as well as syntactic consistency: "I/We filed…" because: (I/We omitted but implicit) "Lost employment". However, the second "reason" does not fit this pattern: "I/We filed…" because: "Hours or pay reduced". The next reason is expressed by an adjective, "Matrimonial", while the following one is a noun "Garnishments". A "reason" is set forth with a gerund, "Overspending", but others are stated with the bare infinitive, "Protect debtor's property", whereas others use *to*-infinitive, "To receive a Chapter 13 discharge" (which by the way, is a particularly *enlightening* "reason", for is that not the result aimed at when invoking any other "reason"?). What a mishmash of grammatical constructions! They not only render the list inelegant, but also jar its reading and make its comprehension more difficult. Who bungled that form? Was it approved by any of the U.S. trustees? How many plans has Judge Ninfo confirmed based on it? It was not made specifically for the DeLanos, was it? Is there a financial motive for confirming plans no matter what?
28. The grammar of the "reasons" is not the only bungled feature in this form. In addition, it lacks a caption. Then the sentence that introduces the "reasons" is written in broken English: "I/We filed Chapter 13 for one or more of the following reasons:" What substandard command of the English language must one have not just to say, but also to write in a form presumably to be used time and again and even be submitted formally to a court: 'You filed Chapter 13….'
29. If you were sure, positive, dead certain that your decision was going to be circulated to, and read by, all your peers and hierarchical superiors and even be made publicly available for close scrutiny, would you fill out an order form thus?: "The respondents filed Chapter 13 and win 'cause they *ain't have no money but in the truth they don wanna pluck from their stash and they linked up with their buddies that they are buddies with'em after cookin' a tons of cases to stiff the creditor dupe that his and they keep all dough in all respects denied for the other yo.*" (Completing the order form in handwriting would give it a touch of flair…in pencil, for that would show…no, no! better still, in crayon, shocking pink! It is bound not only to catch the attention of all the peers, so jaded by run-of-the-mill judicial misconduct, but also illustrate to the FBI and DoJ attorneys how sloppiness can be so incriminating by betraying overconfidence grown out of routine participation in a pattern of unchecked wrongdoing and by laying bare utter contempt for the

law, the rules, and the facts while showing no concern for even the appearance of impartiality.)

30. Still worse, the third scrap paper is neither initialized nor signed; of course, it bears no address or telephone number. So who on earth is responsible for its contents? (cf. E:263) And as of what date, for it is not dated either. For such scrap paper, this is what the rules provide:

> FRBkrP 9011. Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers
>
> (a) Signing of papers
>
> Every petition, pleading, written motion, **and other paper,** except a list, schedule or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the **signer's address** and **telephone number**, if any. An **unsigned paper *shall* be stricken** unless omission of the signature is corrected promptly after being called to the attention of the attorney or party. (emphasis added)

31. To the extent that this third scrap of paper is a list that need not be signed by an attorney, the Advisory Committee Notes to Rule 9011, Subdivision (a) states that "Rule 1008 requires that these documents be verified by the debtor." Rule 1008 includes "All…lists" and Rule 9011(e) explains how the debtor verifies them: "an unsworn declaration as provided in 28 U.S.C. §1746 satisfies the requirement of verification". What §1746 provides is that 'the declarant must "in writing" subscribe the matter with a declaration in substantially the form "I declare under penalty of perjury that the foregoing is true and correct. Executed on (date)"'.

32. The shockingly unprofessional and perfunctory nature of Trustee Reiber's three-piece scrap papers can also be established under Local Rule 10 of the District Court, WDNY, requiring that "All text…in…memoranda and other papers shall be plainly and legibly…typewritten…without erasures or interlineations materially defacing them,…signed…and the name, address and telephone number of each attorney or litigant …shall be…thereon. All papers shall be dated."

II. Judge Ninfo confirmed the DeLanos' plan by stating that the Trustee had completed the investigation of the allegations of their fraud and cleared them; yet, he had the evidence showing that the Trustee had conducted no such investigation

33. Judge Ninfo confirmed the DeLanos' plan in his Order of August 9, 2005 (E:275). Therein he stated that he "has considered…the Trustee's Report", which is a reference to Trustee Reiber's three scrap papers since it is the only document that the Trustee filed aside from what the Judge himself referred to as the Trustee's "statement". Indeed, the docket entry (¶2 above) states:

> The Court found that the…Trustee completed his investigation of

> allegations of bankruptcy fraud and found there to be none. The Trustee read a statement into the record regarding his investigation.

34. However, what page 2 of Trustee Reiber's scrap papers (E:272) states is this:

> 7. Objections to Confirmation: **Trustee – disposable income –**
>
> **1) I.R.A. available; 2) loan payment available;**
> **3) pension loan ends 10/05.**

35. There is nothing about Dr. Cordero's objections to the DeLanos' bankruptcy fraud! No mention of his charge that they have concealed assets. Nothing anywhere else in the Trustee's scrap papers concerning any investigation of anything. Nevertheless, in "9. Other comments:", there is, apart from another very unprofessional double strikethrough **"~~1) Best Interest - $1255;~~" "Attorney fees"**. At the bottom of the page is written: "ATTORNEY'S FEES" $ **1350** and, below that, "Additional fees Yes" **$16,655.** The itemized invoice for legal fees billed by Att. Werner shows that those fees have been incurred almost exclusively in connection with Dr. Cordero's request for documents and the DeLanos' efforts to avoid producing them, beginning with the entry on April 8, 2004 "Call with client; Correspondence re Cordero objection" (E:279) and ending with that on June 23, 2005 "(Estimated) Cordero appeal" (E:282).

A. Judge Ninfo knew since learning it in open court on March 8, 2004, that Trustee Reiber had approved the DeLanos' petition without minding its suspicious declarations or asking for supporting documents and opposed every effort by Dr. Cordero to investigate or examine the DeLanos

36. Although Trustee Reiber was ready to submit the DeLanos' debt repayment plan to Judge Ninfo for confirmation on March 8, 2004, he could not do so precisely because of Dr. Cordero's objections of March 4, 2004 and his invocation of the Trustee's duty under 11 U.S.C. §704(4) and (7) to investigate the debtor. Since then and only at Dr. Cordero's instigation, the Trustee, who is supposed to represent unsecured creditors (¶12 above), such as Dr. Cordero, has pretended to have been investigating the DeLanos on the basis of those objections.

37. Yet, any competent and genuine representative of adversarial interests, as are those of creditors and debtors, would have found it inherently suspicious that Mr. DeLano, a banker for 32 years currently handling the bankruptcies of clients of M&T Bank, had gone himself bankrupt: He would be deemed to have learned how to manage his own money as well as how to play the

bankruptcy system. Suspicion about the DeLanos' bankruptcy would have been provided the solid foundation of documentary evidence in their petition's Schedule B, where they declared having only $535 in cash and account despite having earned $291,470 in just the immediately preceding three years yet declaring nothing but $2,910 in household goods, while stating in Schedule F a whopping credit card debt of $98,092! Where did the money go or is?

38. That common sense question would not pop up before Trustee Reiber. He accepted the DeLanos' petition, filed on January 27, 2004, without asking for a single supporting document. He only pretended to be investigating the DeLanos but without showing anything for it. Only after being confronted point blank with that pretension by Dr. Cordero, did the Trustee for the first time request documents from the DeLanos on April 20, 2004…in a pro forma request, for he would not ask them for the key documents that would have shown their in- and outflow of money, namely, the statements of their checking and savings accounts. Moreover, he showed no interest in obtaining even the documents concerned by his pro forma request upon the DeLanos failing to produce them. When at Dr. Cordero's insistence the Trustee wrote to them again, it was on May 18, 2004, just to ask for a "progress" report.

39. So incapable and ineffective did Trustee Reiber prove to be in his alleged investigation of the DeLanos that on July 9, 2004, Dr. Cordero moved Judge Ninfo in writing to remove the Trustee. Dr. Cordero pointed out the conflict of interests that the Trustee faced due to the request that he:

> investigate the DeLanos by requesting, obtaining, and analyzing such documents, which can show that the petition that he so approved and readied [for confirmation by Judge Ninfo on March 8, 2004] is in fact a vehicle of fraud to avoid payment of claims. If Trustee Reiber made such a negative showing, he would indict his own and his agent-attorney [Weidman]'s working methods, good judgment, and motives. That could have devastating consequences [under 11 U.S.C. §324(b)]. To begin with, if a case not only meritless, but also as patently suspicious as the DeLanos' passed muster with both Trustee Reiber and his attorney, what about the Trustee's [3,908] other cases? Answering this question would trigger a check of at least randomly chosen cases, which could lead to his and his agent-attorney's suspension and removal. It is reasonable to assume that the Trustee would prefer to avoid such consequences. To that end, he would steer his investigation to the foregone conclusion that the petition was filed in good faith. Thereby he would have turned the "investigation" from its inception into a sham!

40. So it turned out to be: a sham. At Dr. Cordero's insistence, the DeLanos produced documents, including Equifax credit bureau reports for each of them, but only to the Trustee. The latter sent Dr. Cordero a copy on June 16, 2004. However, he took no issue with the DeLanos when Dr. Cordero showed that those were token documents and were even missing pages! Indeed, the

Trustee had requested pro forma on April 20, the production of the credit card statements for the last 36 months of each of only 8 accounts, even though the DeLanos had listed in their petition's Schedule F 18 credit card accounts on which they had piled up that staggering debt of $98,092. As a result, they were supposed to produce 288 statements (36 x 8). Nevertheless, the Trustee satisfied himself with the mere 8 statements that they produced, a single one for each of the 8 accounts!

41. Moreover, the DeLanos had claimed **15 times** in Schedule F of their petition that their financial troubles had begun with "1990 and prior credit card purchases". That opened the door for the Trustee to request them to produce monthly credit card statements since at least 1989, that is, for 15 years. But in his pro forma request he asked for those of only the last 3 years. Even so, the 8 token statements that the DeLanos produced were between 8 and 11 months old!…insufficient to determine their earnings outflow or to identify their assets, but enough to show that they keep monthly statements for a long time and thus, that they had current ones but were concealing them.
42. Instead of becoming suspicious, the Trustee accepted the DeLanos' implausible excuse that they did not possess those statements and had to request them from the credit card issuers. His reply was that he was just "unhappy to learn that the credit card companies are not cooperating with your clients in producing the statements requested", as he put it in his letter of June 16, 2004, to Att. Werner…but not unhappy enough to ask them to produce statements that they indisputably had, namely, those of their checking and savings accounts. Far from it, the Trustee again refused to request them, and what is more, expressly refused in his letter of June 15, 2004, to Dr. Cordero the latter's request that he use subpoenas to obtain documents from them.
43. Yet, the DeLanos had the obligation under §521(3) and (4) "to surrender to the trustee…any recorded information…", an obligation so strong that it remains in force "whether or not immunity is granted under section 344 of this title". Instead, the Trustee allowed them to violate that obligation then and since then given that to date they have not produced all the documents covered by even his pro forma request of April 20, 2004. The DeLanos had no more interest in producing incriminating documents that could lead to their concealed assets than the Trustee had in obtaining those that could lead to his being investigated. They were part of the same sham!
44. But not just any sham, rather one carried out in all confidence, for by now Trustee Reiber has worked with Judge Ninfo on well over 3,907 cases (¶20 above). Presumably many are within the scope of the bankruptcy fraud scheme given that it is all but certain that *DeLano* is not the first case that they, had they always been conscientious officers, all of a sudden decided to deal

with by coordinating their actions to intentionally disregard the law, the rules, and the facts for the sake of the DeLanos, who in that case would have something so powerful on them as to cause them to violate the law. In any event, one violation is one too many. Actually, what they have on each other is knowledge of their long series of unlawful acts forming a pattern of wrongdoing. Now, nobody can turn against the other for fear that he or she will be treated in kind. Either they stick together or they fall one after the other.

45. Consequently, Trustee Reiber did not have to consider for a second that upon Dr. Cordero's motions of July 9 and August 14, 2004, Judge Ninfo would remove him from *DeLano* under §324(a). That would have entailed his automatic removal as trustee from all other cases under §324(b), and thereby his termination as trustee. Since that would and will not happen, the Trustee did not file even a scrap paper to state pro forma that he opposed the motions. Revealingly enough, he is not concerned either that District Judge David Larimer may remove him upon Dr. Cordero's motion of July 13, 2005. Hence he has not wasted time scribbling anything in opposition.
46. Not only he, but also Reporter Dianetti has not considered it necessary to waste any effort in the formality of opposing Dr. Cordero' motion of July 18 requesting that Judge Larimer designate another individual to prepare the transcript of her recording of the March 1 evidentiary hearing. Yet, all they needed to do was as cursory a gesture as Att. Werner's two conclusory sentences (E:332) to oppose Dr. Cordero's July 13 motion to stay the confirmation hearing…and a cover letter addressed directly to Judge Larimer to show him ingratiating deference (E:331).
47. Can you imagine either the Trustee or the Reporter reacting with such assured indifference to motions that can cost them their livelihood or Att. Werner skipping any legal argument and slipping in a mere courtesy note had this case been transferred to another court, such as that in Albany, NDNY, where they did not know the judge and could not tell on him? Of course not, they could lose the motions by default! But they have nothing to worry about, for Judge Larimer has not decided any of the four motions of Dr. Cordero pending before him, even one as far back as June 20 to link to this case *Pfuntner v. Gordon et at.,* docket no. 02-2230, WBNY, which gave rise to Dr. Cordero's claim against Mr. DeLano. (1st Supp.E:43; 1st Supp.¶33)
48. What a contrast with the celerity with which Judge Larimer reacted when the Bankruptcy Clerk, disregarding FRBkrP 8007, forwarded to him upon receipt on April 21 (E:333-34), Dr. Cordero's designation of items on appeal and a copy of his first letter of April 18 to Reporter Dianetti to make arrangements for the transcript. Though the record was legally incomplete, lacking the transcript and the appellee's designation of additional items and any issues on cross appeal, the

following day, April 22, Judge Larimer issued a scheduling order requiring Dr. Cordero to file his appellate brief 20 days hence (E:335), knowing full well that the date of the Reporter's completion of the transcript was nowhere in sight so that his order would effectively prevent Dr. Cordero from using it when writing his brief. (E:337-343; 1st Supp.§III). Could it not be in Judge Larimer's interest to decide any of those motions, thereby exposing not only this case and the sham investtigation, but also the bankruptcy fraud scheme itself to scrutiny by circuit judges and justices?

B. The sham character of Trustee Reiber's pro forma request for documents and the DeLanos' token production is confirmed by the charade of a §341 meeting through which the Trustee has allowed the DeLanos not to account for hundreds of thousands of dollars obtained through a string of mortgages

49. Trustee Reiber has allowed the DeLanos to produce token documents in connection with one of the most incriminating elements of their petition: their concealment of mortgage proceeds. Indeed, they declared in Schedule A that their home at 1262 Shoecraft Road in Webster, NY, was appraised at $98,500. However, they still owe on it $77,084.49. One need not be a trustee, let alone a competent one, to realize how suspicious it is that two debtors approaching retirement have gone through their working lives and have nothing to show for it but equity of $21,415 in the very same home that they bought 30 years ago! Yet, they earned $291,470 in just the 2001-03 fiscal years. Have the DeLanos stashed away their money in a golden pot at the end of their working life rainbow? Is the Trustee afraid of scooping gold out of the pot lest he may so rattle Mr. DeLano's rainbow, which arches his 32-year career as a banker, as to cause Mr. DeLano to paint in the open for everybody to see all sorts of colored abuses of bankruptcy law that he has seen committed by colluding debtors, trustees, and judicial officers?
50. The fact is that despite Dr. Cordero's protest, both Trustee Reiber ratified and Judge Ninfo condoned the unlawful termination by Att. Weidman of the §341 meeting of creditors on March 8, 2004, where the DeLanos would have had to answer under oath the questions of Dr. Cordero, who was the only creditor present but was thus cut off after asking only two questions. Then it was for the Trustee to engage in his reluctant pro forma request for documents. When Dr. Cordero moved for his removal on July 9, 2004 (¶39 above), he also submitted to Judge Ninfo his analysis of the token documents produced by the DeLanos and showed on the basis of such documentary evidence how they had engaged in bankruptcy fraud, particularly concealment of assets. Thereupon an artifice was concocted to eliminate him from the case altogether: The DeLanos moved to disallow his claim, knowing that Judge Ninfo would disregard the fact, among others,

that such a motion was barred by laches and untimely. Not only did the Judge permit the motion to proceed, but he also barred any other proceeding unrelated to its consideration.

51. From then on, Trustee Reiber pretended that he too was barred from holding a §341 meeting of creditors in order to deny Dr. Cordero's request that such meeting be held so that he could examine the DeLanos under oath. Dr. Cordero confronted not only the Trustee, but also his supervisors, Assistant U.S. Trustee Kathleen Dunivin Schmitt and U.S. Trustee for Region 2 Dierdre A. Martini, with the independent duty under §§341 and 343 as well as FRBkrP 2004(b) for members of the Executive Branch to hold that meeting regardless of any action taken by a member of the Judicial Branch. Neither supervisor replied. Eventually Trustee Reiber relented, but refused to assure him that the meeting would not be limited to one hour. Dr. Cordero had to argue again that neither Trustee Reiber nor his supervisors had any basis in law to impose such arbitrary time limit given that §341 provides for an indefinite number of meetings. In his letter of December 30, 2004 (E:283), he backed down from that limit.
52. Finally, the meeting was held on February 1, 2005, at Trustee Reiber's office. It was recorded by a contract stenographer. The DeLanos were accompanied by Att. Werner. The Trustee allowed the Attorney, despite Dr. Cordero's protest, unlawfully to micromanage the meeting, intervening at will constantly and even threatening to walk out with the DeLanos if Dr. Cordero did not ask questions at the pace and in the format that he, Att. Werner, dictated.
53. Nevertheless, Dr. Cordero managed to point out the incongruities in the DeLanos' statements about their mortgages and credit card use. He requested a title search and a financial examination by an accounting firm that would produce a chronologically unbroken report on the DeLanos' title to real estate and use of credit cards. However, the Trustee refused to do so and again requested pro forma only some mortgage papers. Although the DeLanos admitted that they had them at home, the Trustee allowed them two weeks for their production…and still they failed to produce them by the end of that period.
54. Dr. Cordero had to ask Trustee Reiber to compel the DeLanos to comply with the Trustee's own pro forma request. They produced incomplete documents (E:285-297) once more (¶40 above) because Att. Werner made available only what he self-servingly considered "the relevant portion" of those documents (E:284). Dr. Cordero analyzed them in his letter of February 22, 2005, to the Trustee (E:29) with copy to his supervisors, Trustees Schmitt and Martini, who never replied. But even incomplete, those documents raise more and graver questions than they answer, for they show an even longer series of mortgages relating to the same home at 1262 Shoecraft Road:

Mortgage referred to in the incomplete documents produced by the DeLanos to Trustee Reiber	Exhibit page #	Amounts of the mortgages
1) took out a mortgage for $26,000 in 1975;	E:285	$26,000
2) another for $7,467 in 1977;	E:286	7,467
3) still another for $59,000 in 1988; as well as	E:289	59,000
4) an overdraft from ONONDAGA Bank for $59,000 and	E:298	59,000
5) owed $59,000 to M&T in 1988;	E:298	59,000
6) another mortgage for $29,800 in 1990,	E:291	29,800
7) even another one for $46,920 in 1993, and	E:292	46,920
8) yet another for $95,000 in 1999.	E:293	95,000
	Total	$382,187.00

55. The whereabouts of that $382,187 are unknown. On the contrary, Att. Werner's letter of February 16, 2005 (E:284), accompanying those incomplete documents adds more unknowns:

> It appears that the 1999 refinance paid off the existing M&T first mortgage and home equity mortgage and provided cash proceeds of $18, 746.69 to Mr. and Mrs. DeLano. Of this cash, $11,000.00 was used for the purchase of an automobile, as indicated. Mr. DeLano indicates that the balance of the cash proceeds was used for payment of outstanding debts, debt service and miscellaneous personal expenses. He does not believe that he has any details in this regard, as this transaction occurred almost six (6) years ago.

56. So after that 1999 refinancing, the DeLanos had clear title to their home and even money for a car and other expenses, presumably credit card purchases and debt service. But only 5 years later, they owed $77,084.49 on their home, $98,092.91 on credit cards, and $10,285 on a 1998 Chevrolet Blazer (Schedule D), not to mention the $291,470 earned in 2001-03 that is nowhere to be seen…and owing all that money just before retirement is only "details" that a career banker for 32 years "does not believe that he has". Mindboggling!

57. Although Dr. Cordero identified these incongruous elements (E:300-302) in the petition and documents, the Trustee had nothing more insightful to write to Att. Werner than "I note that the 1988 mortgage to Columbia, which later ended up with the government, is not discharged of record or mentioned in any way, shape, or form concerning a payoff. What ever happened to that mortgage?" (E:306)

58. To that pro forma question Att. Werner produced some documents to the Trustee on March 10, 2005 (E:307), but not to Dr. Cordero, who he could be sure would analyze them. Dr. Cordero protested to Att. Werner and the Trustee for not having been served (E:308). When Att. Werner

belatedly served him (E:309), it became apparent why he had tried to withhold the documents (E:310-323) from him: They were printouts of pages from the website of the Monroe County Clerk's Office that had neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor reference to the involvement of the U.S. Department of Housing and Urban Development . What a pretense on the part of both Att. Werner and Trustee Reiber! No wonder Dr. Cordero's letter of March 29 analyzing those printouts and their implications (E:324) has gone unanswered by Trustees Reiber, Schmitt, and Martini (E:327-330).

59. As a result, hundreds of thousands of dollars received by the DeLanos during 30 years are unaccounted for, as are the $291,470 earned in the 2001-03 period, over $670,000!, because Trustee Reiber evaded his duty under §704(4) and (7) to investigate the debtors by requiring them to explain their suspicious declarations and provide supporting documents. Not coincidentally, when on February 16, 2005, Dr. Cordero asked Trustee Reiber for a copy of the transcript of the February 1 meeting, he alleged that Dr. Cordero would have to buy it from the stenographer because she had the rights to it! Yet she created nothing and simply produced work for hire.
60. The evidence indicates that since that meeting on February 1 till the confirmation hearing on July 25, 2005, Trustee Reiber never intended to obtain from the DeLanos any documents to answer his pro forma question about one undischarged mortgage; they did not serve on Dr. Cordero any such documents even though under §704(7) he is still a party in interest entitled to information; and the Trustee neither introduced them into evidence at that hearing nor made any reference to them in the scrap papers of his "Report". Do they fear that those documents will reveal conceal assets?

C. The affirmation by both Judge Ninfo and Trustee Reiber that the DeLanos were investigated for fraud is contrary to the evidence available and lacks the supporting evidence that would necessarily result from an investigation so that it was an affirmation made with reckless disregard for the truth

61. Judge Ninfo disregarded the evidence that Trustee Reiber never requested a single supporting document from the DeLanos before Dr. Cordero asked that they be investigated and thereafter always avoided investigating them, making pro forma requests and satisfying himself with token documents, if any was produced. The Judge disregarded the incriminating evidence in those documents and the Trustee's conflict of interests between dutifully investigating the DeLanos and ending up being investigated himself. Instead, he accepted the Trustee's "Report" although it neither lists Dr. Cordero's objections nor mentions any investigation, much less any findings. In so doing, he showed his unwillingness to recognize or incapacity to notice how suspicious it was that an investigation that

the Trustee had supposedly conducted over 16 months had not registered even a blip in that "Report". By contrast, the Judge was willing to notice the air exhaled by Trustee Reiber reading his statement into the record despite his failure to file any documents attesting to any investigation. He even allowed the Trustee's ruse of not filing even that statement so as to avoid making it available in the docket, thus requiring the expensive, time consuming, and tamper-susceptible alternative of asking for a transcript from Reporter Dianetti (E:9-11; 1st Supp.§II).

62. Nor did the Judge draw the obvious inference that the same person who produced such damning evidence of his unprofessional and perfunctory work in his scrap paper "Report" was the one who would have conducted the investigation and, thus, would have investigated to the same dismal substandard of performance. Therefore, common sense and good judgment required that the Trustee's investigation be reviewed as to its contents, method, and conclusions. No such review took place, which impugns Judge Ninfo's discretion in rushing to clear the DeLanos from, as he put it, any "allegations (the evidence notwithstanding) of bankruptcy fraud".
63. The documentary and circumstantial evidence justifies the conclusion that Trustee Reiber and Judge Ninfo have engaged with others in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, including a sham bankruptcy fraud investigation, the process-abusive artifice of a motion to disallow Dr. Cordero's claim, and the charade of the meeting of creditors to appease Dr. Cordero and feign compliance with §341. In disregard of the law, the rules, and the facts, they began with the prejudgment and ended with the foregone conclusion that the DeLanos had filed a good faith petition and that their Chapter 13 plan should be confirmed. They confirmed the plan without investigating the DeLanos as the surest way of forestalling a finding of the DeLanos having filed a fraudulent petition, which would have led to their being criminally charged, which in turn would have induced Mr. DeLano to enter into a plea bargain whereby he would provide incriminating testimony of participation in a bankruptcy fraud scheme.
64. It follows that insofar as Trustee Reiber made the untrue statement that "The Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none" in order to induce the Bankruptcy Court to confirm the DeLanos' plan and to escape his own conflict of interests (¶39 above), the Trustee perjured himself and practiced, to secure a benefit for himself, fraud on the Court as an institution even if Judge Ninfo knew that his statement was not true; as well as fraud on Dr. Cordero, to whom he knowingly caused the loss of rights as a creditor of the DeLanos.
65. It also follows that insofar as Judge Ninfo knew or by carrying out his judicial functions with due diligence and impartiality would have known, that Trustee Reiber had conducted no

investigation or that the DeLanos had not filed or supported their petition in good faith, but nevertheless reported the Trustee's statement to the contrary and stated that "The Court found that the Plan was proposed in good faith" in order to confirm their plan, the Judge suborned perjury and practiced fraud on the Court as an institution and on Dr. Cordero, whom he thereby knowingly denied due process. In so doing, the Judge and the Trustee have caused Dr. Cordero the loss of an enormous amount of effort, time, and money and inflicted on him tremendous emotional distress.

III. Request for Relief

66. Therefore, Dr. Cordero respectfully requests that the Court of Appeals and the Judicial Council:

a) do not reappoint Judge Ninfo to a new term of office as bankruptcy judge;

b) open an investigation into the participation of Judge Ninfo in a bankruptcy fraud scheme and determine how high the scheme reaches and whether it involves official corruption;

c) investigate why Trustee Reiber did not investigate the financial affairs of the DeLanos and whether his statement and Judge Ninfo's that he had conducted such investigation and it had cleared the DeLanos of fraud constituted perjury, subornation of perjury, and fraud on the court;

d) determine whether the DeLanos' petition was filed in bad faith and the plan was confirmed by means forbidden by law, in violation of 11 U.S.C. §1325(a)(3), and worked fraud on the court;

e) determine whether Judge Ninfo influenced Reporter Dianetti to refuse to certify the reliability of the transcript of the *DeLano* evidentiary hearing and designate another reporter to prepare it;

f) investigate whether the pattern of non-coincidental, intentional, and coordinated acts of bias and disregard for the law, the rules, and the facts engaged in by Judge Ninfo and others in *DeLano* and *Pfuntner* has become the modus operandi of the Bankruptcy and District Courts, WDNY; and

g) refer the *DeLano* and *Pfuntner* cases for investigation under 18 U.S.C. §3057(a) to U.S. Attorney General Alberto Gonzales, with the recommendation that they be investigated by U.S. attorneys and FBI agents, such as those from the Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with either case, and unrelated and unacquainted with any of the parties or officers that may be investigated, and that no staff from such offices in either Rochester (where the DoJ office is literally the next-door neighbor of the Office of the U.S. Trustee) or Buffalo participate in any way in such investigation.

Dated: September 5, 2005

Dr. Richard Cordero

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in support of

the 2nd Supplement with New Evidence

against the reappointment of

Bankruptcy Judge John C. Ninfo, II, WBNY

submitted to

the Second Circuit

Court of Appeals and Judicial Council

on September 5, 2005

by

Dr. Richard Cordero

I. Comments

E:#=exhibits page #

Dr. **Cordero**'s letter of **March 17**, 2005, **to Circuit Executive** Karen Greve Milton in response to the request of the Court of Appeals for the Second Circuit for public **comment** on the **reappointment** of Bankruptcy Judge John C. **Ninfo**, II, to a new term of office E:12

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41. Dr. **Cordero**'s letter of **April 21**, 2005, **to** Trustee George **Reiber** requesting a response to his letter of March 29 concerning the **uselessness of** the printouts of **screenshots** from the Monroe County Clerk's Office that were to have provided information about the mortgages of the DeLanos and sending him a **copy** of the **Designation** and Statement 329

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    a) "Statement in opposition Cordero motion [sic] to stay confirmation and other relief" 332

43. **Bankruptcy Court's notice** of **April 11**, 2005, **to** Dr. **Cordero** to request that pursuant to Bankruptcy Rule 8006 he **perfect** the **record on appeal** by submitting by April 21 his designation of items in the record 333

44. Letter of Karen Tacy, *DeLano* Case Administrator at the **Bankruptcy Court**, of **April 22**, 2005, **informing** Dr. **Cordero** upon the Court's receipt of his Designation of Items and Statement of Issues of the **transmittal** of the **record to District Court** 334

45. District Judge David G. **Larimer**'s **order** of **April 22**, 2005, **scheduling** Dr. **Cordero**'s appellate **brief** for submission by **20 days hence**, issued with

disregard for FRBkrP 8007(b) a day after Dr. Cordero's designation of items was filed and before the transcript had even been started 335

46. Dr. **Cordero**'s **Objection** of **May 2**, 2005, **to** Judge **Larimer**'s **scheduling order** and request for its urgent rescission 337

47. Judge **Larimer**'s **order** of **May 3**, 2005, **scheduling another date** for Dr. Cordero to file his appellate brief and issued with disregard for the objection that the transmittal of the record was premature since it was still incomplete 339

48. Dr. **Cordero**'s **motion** of **May 16**, 2005, **for compliance** with **FRBkrP 8007** in the **scheduling** of his **appellate brief** and the urgent rescission of the scheduling order because the transcript was not yet in, the record was still incomplete, and the Judge had no jurisdiction over the case 340

49. Judge **Larimer**'s **order** of **May 17**, 2005, **rescheduling** the appellate brief of Dr. Cordero for submission by **20 days after** the filing of the **transcript**, as if he had only requested additional time 343

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January 8, 2006

Chief Judge Michael B. Mukasey
U.S. District Court, SDNY
500 Pearl Street
New York, NY 10007-1312

Dear Chief Judge Mukasey,

I am addressing you, as member of the Judicial Council of the Second Circuit, so that you may bring to the attention of the Council two district local rules and cause it to abrogate them by exercising its authority to do so under 28 U.S.C. §§332(d)(4) and 2071, the latter providing thus:

> **§ 2071. Rule-making power generally**
>
> (a) The Supreme Court and **all courts** established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules **shall be consistent with Acts of Congress and rules of practice and procedure** prescribed under section 2072 of this title.
>
> (c)(1) **A rule of a district court** prescribed under subsection (a) shall remain in effect unless **modified or abrogated by the judicial council** of the relevant circuit. (emphasis added)

In question is Rule 5.1(h) of the Local Rules of Civil Procedure adopted by the U.S. District Court, WDNY. (pages i-iii below) It requires over 40 discrete pieces of factual information to plead a claim under the Racketeer Influenced and Corrupt Organization ("RICO") Act, 18 U.S.C. §§1961-68. By requiring unjustifiably detailed facts to file the claim, Rule 5.1(h) is inconsistent with the notice pleading provision of FRCivP 8. Hence, in adopting it, the Court contravened and exceeded its authority under the enabling provision of FRCivP 83. (1-4).

It is suspicious that the Court has singled out RICO to raise an evidentiary barrier before discovery has started under FRCivP 26. The suspicion is only aggravated by the series of acts of District Court officers of disregard for the law, the rules, and the facts so consistent with those of the Bankruptcy Court, WBNY, as to form a pattern of non-coincidental, intentional, and coordinated wrongdoing. (4-12) These acts include the efforts to keep out of the record on appeal a transcript −cf. the secrecy fostered by Local Rule 83.5 banning recording devices in "the Court and its environs" (iv; 3¶6)− of an evidentiary hearing used to eliminate from a bankruptcy case a creditor who was inquiring why the bankrupt bank officer with 39 years' experience is allowed not to account for over $670,000 and a trustee to have over 3,909 *open* cases. (12-19) The evidence leads to conclude that the District Court devised Rule 5.1(h) as a preemptive attack to deter and impede the filing of any RICO claim so that, with the aid of Rule 83.5, no evidence collection through recording or discovery may expose a bankruptcy fraud scheme and the schemers.

Therefore, I respectfully request that **(1)** you bring the attached Statement and CD before the Council so that it may abrogate Rules 5.1(h) and 83.5; **(2)** investigate those District and Bankruptcy Courts for supporting a bankruptcy fraud scheme and the schemers; and **(3)** report this case to the Attorney General under 28 U.S.C. §3057(a). Meantime, I look forward to hearing from you.

Sincerely,

Dr. Richard Cordero

Mk:141

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LOCAL RULES OF CIVIL PROCEDURE

RULE 5.1

FILING CASES

...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LOCAL RULES OF CIVIL PROCEDURE

RULE 83.5

CAMERAS AND RECORDING DEVICES

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

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

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

RULE 16.2

ARBITRATION

(a) **Purpose and Scope**. This rule governs the consensual arbitration of civil actions as provided by 28 U.S.C. § 651 *et seq*. Its purpose is to promote the speedy, fair and economical resolution of controversies by informal procedures.

(g) **Arbitration Hearing: Conduct of Hearing**.

> (7) **Transcripts**. A party may cause a transcript or recording to be made of the hearing at its expense but shall, at the request and expense of an opposing party, make a copy available to that party.

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January 7, 2006

STATEMENT

To the Judicial Council of the Second Circuit

on how Rule 5.1(h) of the Local Rules of Civil Procedure
of the U.S. District Court, WDNY,[1]
requires exceedingly detailed facts to plead a RICO claim so that it
contravenes FRCivP 8 and 83 and should be abrogated,

and

how Rules 5.1(h) and 83.5 constitute a preemptive attack on any RICO claim
that could expose the District and Bankruptcy Courts'
support for a bankruptcy fraud scheme and the schemers

I. Local Rule 5.1(h) contravenes FRCivP 8 and 83

1. The General Rules of Pleading of FRCivP 8(a)(2) ask only for "a short and plain statement of the claim showing that the pleader is entitled to relief"; and 8(e) adds that "each averment of a pleading shall be simple, concise, and direct". For its part, FRCivP 83(a)(1) provides that "A local rule shall be consistent with –but not duplicative of- Acts of Congress and rules adopted under 28 U.S.C. §2072 and §2075". As stated in the Advisory Committee Notes, 1985 Amendment to Rule 83, local rules shall "not undermine the basic objective of the Federal Rules", which Rule 84 sets forth as "the simplicity and brevity of statement which the rules contemplate". Thereby the national Rules, as indicated in the 1995 Amendments to Rule 83, aim at preventing that a local rule with "the sheer volume of directives may impose an unreasonable barrier". In that vein, the court in *Stern v. U.S. District Court for the District of Massachusetts*, 214 F.3d 4 (1st Cir. 2000) stated that "Even if a local rule does not contravene the text of a national rule, the former cannot survive if it subverts the latter's purpose".

2. Yet such barrier is precisely what the U.S. District Court, WDNY, erects with its Local Rule 5.1(h), which requires a party to provide over 40 discrete pieces of factual information to plead

[1] These Local Rules can be downloaded from the Court's website at http://www.nywd.uscourts.gov/; they are also contained in the CD attached hereto, which also includes the documents referred to between parentheses.

a claim under the Racketeer Influenced and Corrupt Organization ("RICO") Act, 18 U.S.C. §§1961-68 (1970, as amended). Such burdensome requirement contravenes the statement of the Supreme Court that to provide notice a claimant need not set out all of the relevant facts in the complaint (*Atchison, Topeka & Santa Fe Ry. v. Buell*, 480 U.S. 557, 568 n.15, 107 S. Ct. 1410, 94 L. Ed. 2d 563 (1987)). On top of this quantitative barrier a qualitative one is erected because the required information is not only about criminal, but also fraudulent conduct. The latter, by its very nature, is concealed or disguised, so that it is all the harder to uncover it before even disclosure, not to mention discovery, has started under FRCivP 26-37 and 45.

3. Even the requirement of FRCivP 9(b) that fraud be pled with particularity is "relaxed in situations where requisite factual information is peculiarly within defendant's knowledge or control", *In re Rockefeller Ctr. Props., Inc. Secs. Litig*., 311 F.3d 198, 216 (3d Cir. 2002). Actually, Rule 9(b) provides that "Malice, intent, knowledge, and other condition of mind of a person may be averred **generally**" (emphasis added). So even in fraud cases the purpose of the complaint remains that of putting defendant on notice of the claim so that he may know what is at stake and decide how to answer; it does not change into a pretext for the court to prevent the filing of the claim or dismiss it on the pleadings.
4. Local Rule 5.1(h) refers to FRCivP 11 only to improperly replace its relative and nuanced standard of "to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances", by the absolute and strict standard of "facts [that the party] shall state in detail and with specificity us[ing] the numbers and letters as set forth below in a separate RICO Case Statement filed contemporaneously with those papers first asserting the party's RICO claim". To require "facts…in detail and with specificity" is inconsistent with FRBkrP 9011(b)(3), which allows the pleading of "allegations and other factual contentions…likely to have evidentiary support after a reasonable opportunity for further investigation or discovery". Hence, the Court in *Devaney v. Chester*, 813 F2d 566, 569 (2d Cir. 1987) stated that "We recognize that the degree of particularity

should be determined in light of such circumstances as whether the plaintiff has had an opportunity to take discovery of those who may possess knowledge of the pertinent facts". By contrast, Local Rule 5.1(h) provides no opportunity for discovery, but instead requires setting forth facts with "detail and specificity us[ing its] numbers and letters" so as to facilitate spotting any "failure" to comply, which would "result in dismissal". This is the type of result unacceptable under the 1995 Amendments to FRCivP 83 where "counsel or litigants may be unfairly sanctioned for failing to comply with a directive".

5. It is suspicious that the District Court singles out RICO and blatantly impedes the filing, let alone the prosecution, of a claim under it. It is particularly suspicious that it does so by erecting an evidentiary barrier at the pleading stage that so flagrantly disregards and defeats the Congressional Statement of Findings and Purpose that "organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear the unlawful activities of those engaged in organized crime". Hence, Pub.L. 91-451 §904 provided that RICO "shall be liberally construed to effectuate its remedial purpose". But Local Rule 5.1(h) defeats that purpose so that it incurs the sanction stated in *Weibrecht v. Southern Illinois Transfer, Inc.*, 241 F.F3 875, 879 (7th Cir. 2001) "to the extent a local rule conflicts with a federal statute, the local rule must be held invalid".

6. For its part, District Local Rule 83.5 banning cameras and recording devices anywhere in "the Court and its environs" (iv above) defeats the public policy expressed by the Judicial Conference "to promote public access to information", which provides the rationale for setting up the systems for electronic public access to case information and court records, such as PACER and CM/ECF, 28 U.S.C. §1914. Defying logic, such devices may be allowed "for non−judicial hearings or gatherings", that is, for inconsequential activities in terms of the business of the Court as well as for the "informal procedures" of arbitration, where the District Court by Local Rule 16.2(a) and (g)(7) permits "a transcript or recording to be made" as a matter of course (iv above). However, a

litigant is forbidden to bring a recording device to make a transcript of a 'formal proceeding' where matters that could support a RICO claim would be formally discussed…for that would complicate the District Court's unlawful effort to deprive him of the transcript and prevent him from demonstrating by comparison the dismal quality of the official transcript. This is illustrated in this case (12§B & ¶52 below) and shows the insidious purpose of Local Rule 83.5.

7. Likewise, the sinister purpose behind Local Rule 5.1(h) is revealed by the evidence that court officers of both the District and the Bankruptcy Court, WBNY, together with trustees and third parties, have engaged in so long a series of mutually reinforcing acts of disregard for the law, the rules, and the facts as to form a pattern of non-coincidental, intentional, and coordinated wrong-doing (4§II below). They all of do business in the same small federal building in Rochester, NY, so propitious for the formation of a clique, that houses those Courts as well as the Offices of the U.S. Trustees, the U.S. Attorneys, and the FBI. Their pattern of conduct shows that…

II. Rule 5.1(h) is the result of the abusive exercise by the District Court of its local rule-issuing power to preemptively strike down any potential RICO claim that through the collection of evidence, whether by recording devices or discovery, could expose a bankruptcy fraud scheme and the schemers

8. The facts presented here lead (5§A below) from the Bankruptcy Court, WBNY, Judge John C. Ninfo, II, presiding, and its misuse of an evidentiary hearing in a process-abusive stratagem to eliminate Dr. Richard Cordero, a creditor, from *In re DeLano*, docket no. 04−20280, by disallowing his claim before he could obtain certain documents that would expose a bankruptcy fraud scheme and the schemers, (12§B below) to the repeated efforts by the District Court, Judge David G. Larimer presiding, to prevent Dr. Cordero from obtaining the incriminating transcript (see attached CD) of that hearing for his appeal, namely, *Cordero v. DeLano*, docket no. 05cv6190L, WDNY, and to impede public access to the transcript and to the appeal's supporting documents.

A. Judge Ninfo and the trustees protected Mr. DeLano, a bank officer who despite his 39 years' experience went bankrupt, from having to produce documents that could expose his concealment of assets and induce Mr. DeLano to enter into a plea bargain where he would incriminate top schemers in the bankruptcy fraud scheme

9. Mr. David and Mrs. Mary Ann DeLano are not average debtors. Mr. David DeLano has worked in financing for 7 years and as an officer at two banks for 32 years: 39 years professionally managing money!…and counting, for he is still working for a large bank, namely, Manufacturers & Traders Trust Bank (M&T), as a manager in credit administration (Transcript page 15, line 17 to page 16, line 15=Tr:15/17-16/15). As such, he qualifies as an expert in how to assess creditworthiness and remain solvent to be able to repay bank loans. Thus, Mr. DeLano is a member of a class of people who should know better than to go bankrupt.
10. As for Mrs. Mary Ann DeLano, she was a specialist in business Xerox machines. As such, she is a person trained to think methodically so as to ask pointed questions of customers and guide them through a series of systematic steps to solve their technical problems with Xerox machines.
11. Hence, the DeLanos are professionals with expertise in borrowing, dealing with bankruptcies, and learning and applying technical instructions. They must be held to a high standard of responsibility…but instead they were allowed to conceal assets because they know too much.
12. Indeed, because of his very long career in finance and banking, Mr. DeLano has learned not only how borrowers use or abuse the bankruptcy system, but also and more importantly, how trustees and court officers handle their petitions so that rightfully or wrongfully they are successful in obtaining bankruptcy relief. Actually, Mr. DeLano works precisely in the area of bankruptcies at M&T Bank, collecting money from delinquent commercial borrowers and even liquidating their companies (Tr:17.14-19). As a matter of fact, he was in charge of the defaulted loan to Premier Van Lines, a storage company that filed for bankruptcy, *In re Premier Van Lines*, docket no. 01-20692, WBNY, (*Premier*), and gave rise to *Pfuntner v. Trustee Gordon et*

al., docket no. 02-2230, WBNY, (*Pfuntner;* Addendum to the Designated Items, page 531 et seq.=Add:531), and to the claim of Dr. Cordero against Mr. DeLano (Add:534/after entry 13; 891/fn.1). Both cases were brought before Judge Ninfo.

13. In preparation for their golden retirement, the DeLanos too appeared before Judge Ninfo by filing a joint voluntary bankruptcy petition on January 27, 2004 (Designated Items in the Record, pages 27-60=D:27-60; D:496) under 11 U.S.C. Chapter 13 (references to §# are to Title 11 unless the context requires otherwise). They listed 21 creditors, 19 as unsecured, including Dr. Cordero (references to Schedules (Sch:) and other petition parts are to D:27/…; here D:27/Sch:F).

14. Based on what and whom Mr. DeLano knew, the DeLanos could expect their petition to glide smoothly toward being granted (D:269¶¶37-39)…except that a most unforeseen event occurred: a creditor, Dr. Cordero, went through the trouble of examining their petition. Realizing how incongruous their declarations in it were, he invoked §1302(b) and §704(4) and (7) to request a financial investigation of the DeLanos and documents of their in- and outflow of money. (D:63) That set off the alarms, for court officers and trustees were aware that Mr. DeLano could not be allowed to go down on a charge of bankruptcy fraud since he knows about their intentional and coordinated disregard for the law, the rules, and the facts in handling bankruptcy petitions, that is, of their participation in a bankruptcy fraud scheme. In other words, they are all in the same boat and if Mr. DeLano sinks, they plummet. Hence, the schemers closed ranks to protect Mr. DeLano from being investigated or having to produce incriminating documents.

15. Yet even a person untrained in bankruptcy could realize the incongruity of their declarations:

    a) The DeLanos earned $291,470 in just the 2001-2003 fiscal years (D:27/Statement of Financial Affairs and D:186-188);

    b) but they declared having only $535 in hand or accounts (D:27/Sch:B); yet, they and their attorney, Christopher Werner, Esq., know they can afford to pay $18,005 in legal fees for over

a year's maneuvering to avoid producing the documents requested by Dr. Cordero to find the whereabouts of their $291,470 (Add:872-875; 942), not to mention any other concealed assets;

c) indeed, they amassed a whopping debt of $98,092 (D:27/Sch:F), although the average credit card debt of Americans is $6,000, and spread it over 18 credit cards so that no issuer would have a stake high enough to make litigation cost-effective;

d) despite all that borrowing, they declared household goods worth only $2,910 (D:27/Sch:B) …that's all they pretend to have accumulated throughout their combined worklives, including Mr. DeLano's 39 years as a bank officer, although they earned over a *100* times that amount, $291,470, in only the three years of 2001-03…unbelievable!;

e) they also strung mortgages since 1975 through which they received $382,187 (21/Table 1 below) to pay for their home; yet today, 30 years later, they still live in the same home but now owe $77,084 and have equity of merely $21,415 (D:27/Sch:A). *Mindboggling!* (Add:1058¶54)

16. Although the DeLanos have received over $670,000, as shown by even the few documents that they reluctantly produced at Dr. Cordero's instigation, the officers that have a statutory duty to investigate evidence of bankruptcy fraud or report it for investigation not only disregarded such duty (21/Table 2 below), but also refused to require them to produce even statements of their bank and debit card accounts, which can show the flow of their receipts and payments.

17. What has motivated these officers to protect the DeLanos by sparing them production of incriminating documents? (D:458§V) This questions is pertinent because all of them have been informed of the incident at the beginning of *DeLano* that not only to a reasonable person, but all the more so to one charged with the duty to prevent bankruptcy fraud, would have shown that the DeLanos had committed fraud and were receiving protection from exposure: The meeting of their creditors, held pursuant to §341 on March 8, 2004, was attended only by Dr. Cordero. (D:68, 69) Yet, Trustee Reiber's attorney, James W. Weidman, Esq., unjustifiably asked Dr. Cordero

whether and, if so, how much he knew about the DeLanos' having committed fraud, and when he would not reveal what he knew, Mr. Weidman, with the Trustee's approval, rather than let him examine the DeLanos under oath, as §343 requires, while officially being tape recorded, put an end to the meeting after Dr. Cordero had asked only two questions! (D:79§§I-III; Add:889§II)

18. Far from Trustee Reiber, Assistant U.S. Trustee Kathleen Schmitt, and U.S. Trustee for Region 2 Deirdre A. Martini investigating this cover up, they attempted or condoned the attempt to limit to one hour Dr. Cordero's examination of the DeLanos at an adjourned meeting (D:70). They must have known that this limitation was unlawful since §341 provides for a *series* of meetings for the broad scope of examination set forth under FRBkrP 2004(b). (D:283) Upon realizing how broadly Dr. Cordero would examine the DeLanos, the officers attempted or condoned the attempt to prevent the examination by not holding the adjourned §341 meeting at all! (D:296, 299§II)

19. Meantime, Dr. Cordero kept asking Trustees Reiber, Schmitt, and Martini to conduct an investigation of the DeLanos and require them to produce certain documents, including the statements of their bank and debit card accounts, that could show their money flows. (D:77, 104, 112) They refused to request those documents. Instead, Trustee Reiber made a request that was pro forma since it concerned documents for only the last 3 years rather than at least 15 years comprised in the period of "1990 and prior Credit card purchases" in which the DeLanos declared 15 times to have incurred their credit card debts. (D:27/Sch:F) Likewise, his request concerned only 8 of their 18 credit card accounts. (D:120, 124) Yet, even those documents the Trustee allowed them to produce with missing pages or not at all! (D:289¶9 & Table I; 373§1)

20. No doubt Trustee Reiber knew that his document request was objectively insufficient to ascertain the flow of money. But as of April 2, 2004, Trustees Schmitt and Martini had allowed him to carry 3,909 *open* cases! (PACER at https:// ecf.nywb.uscourts.gov; D:92§C) All cannot be investigated just to oppose the confirmation of their debt repayment plan, when one is busy

collecting the percentage set by law from every payment under a confirmed plan. (D:458§V)

21. While Trustee Reiber went on with his pretense at investigating the DeLanos and the latter produced only the documents that they wanted, Dr. Cordero filed his proof of claim on May 19, 2004 (D:142-146). Up to then the DeLanos had treated, and for months thereafter continued to treat, Dr. Cordero as a creditor.

22. However, on July 9, 2004, Dr. Cordero filed a statement showing on the basis of even the few documents that the DeLanos had produced at his instigation (D165-188) that they had committed bankruptcy fraud, particularly concealment of assets. So he requested from Judge Ninfo an order for documents that could lead to the whereabouts of the assets. (D:196§§IV-V; 207, 208) Only then did they come up with the idea of a motion to disallow his claim (D:218) as a means to get rid of him before he could expose the bankruptcy fraud scheme and the schemers.

23. Judge Ninfo not only failed to issue the requested order, though he knew its contents and had agreed to issue it (D:217, 232§I), but also maneuvered to prevent even its docketing (D:234§§II & IV) As to the motion to disallow, which the DeLanos filed on July 22, 2004 (D:218), he disregarded without discussion its defects of untimeliness, laches, and bad faith (D:253§§V & VI) as well as the presumption of validity under FRBkrP 3001(f) in favor of a claim with a filed proof (D:256§VII). The Judge also disregarded Dr. Cordero's analysis showing that the motion was an artifice to get rid of him and his requests for documents that could prove the DeLanos' fraud. (D:240§IV, 253§V) Instead, he heard the motion on August 25 and required Dr. Cordero to take discovery of Mr. DeLano in the other case where his claim had originated (D:272/2nd¶; Add:891/ fn.1), in an attempt contrary to law to try it piecemeal within *DeLano* and eliminate Dr. Cordero from both (D:444§§I & II; Add:851). On December 15, 2004, discovery would be closed and the date set for an evidentiary hearing where to introduce the evidence gathered. (D:278¶¶3 & 4)

24. Revealingly enough, Judge Ninfo wrongly identified the case in which Dr. Cordero's claim

originated as "Adversary Proceeding in Premier Van Lines (01-20692)", just as Att. Werner had done in his cursory motion (D:218). Had either read Dr. Cordero's proof of claim (D:144), they could have realized that his claim against Mr. DeLano originated in *Pfuntner v. Trustee Gordon et al.*, no. 02-2230, not in *Premier*. But since they had decided to eliminate him from *DeLano* regardless of his proof, they had not bothered to read it.

25. Further proving that the motion was an artifice, discovery was rigged, for both the DeLanos (D:314) and Judge Ninfo (D:327¶1) unlawfully denied *every single document* that Dr. Cordero requested (D:287§§A & C, 320§II). What a mockery of process! Since Dr. Cordero did not take discovery of any other *Pfuntner* party, 'they had no clue what he could possibly do at the evidentiary hearing' (Tr:122/16-122/11). Hence, to find out in advance, the so-called meeting of creditors was set for and held on February 1, 2005. It was not intended for Dr. Cordero to examine the DeLanos, but rather for them to depose him! The facts prove it.

26. So, after Judge Ninfo issued his order concerning the evidentiary hearing, Trustees Reiber used it as a pretext to claim that it prevented him from holding the adjourned meeting of creditors and that it could only be held after the hearing…since it was a foregone conclusion that at the hearing the claim of Dr. Cordero would be disallowed and he would be stripped of standing to even call for a meeting. (D:301, 302) They were acting in coordination to evade their duty!

27. An appeal to Trustee Martini was never replied to (D:307). On the contrary, Trustee Reiber reiterated his decision not to hold the meeting. (D:311, 316) Dr. Cordero showed in a motion that a Judicial Branch officer could not prohibit the performance by an Executive Branch appointee of a duty imposed by the Legislative Branch. (D:321§III & ¶30.c) The Judge denied the motion summarily, thus displaying again his unwillingness and inability to argue the law. (D:328¶4) Another appeal to Trustee Martini went by without response. (D:330)

28. Eventually Trustee Reiber agreed to hold a §341 meeting, but gave no explanation for his reversal

in his letter to Dr. Cordero of December 30, 2004 (D:333). However, on December 15, Judge Ninfo had set the date for the evidentiary hearing of the motion to disallow for March 1, 2005 (D:332). Now such meeting came in handy to find out what Dr. Cordero would do at the hearing.

29. That is why Trustee Reiber allowed Att. Werner to micromanage the meeting. (D:464/4th & 5th¶¶), while refusing again to request statements of the DeLanos' bank and debit card accounts. Even the few mortgage documents that he got the Attorney to agree to produce, he allowed him to produce late, only after Dr. Cordero had reminded the Trustee that they were past due. (D:341) Yet, Att. Werner attempted to avoid production (D:473 & 477), and then produced incomplete (D:342) or objectively useless documents (D:477-491). Then the Judge disallowed the claim (D:3) and the Trustee just stopped answering Dr. Cordero's requests (D:492).

30. For her part, Trustee Schmitt attempted to avoid producing copies of the tapes of the meeting of creditors on February 1, 2005, despite Dr. Cordero's request (D:474), sending instead tapes of a different meeting (D:476). Similarly, although Trustee Reiber wrote that "At the request of Dr. Cordero, I will have court reporter [sic] available as well as having a tape recording made of the meeting" (D:333), when Dr. Cordero requested a copy, Trustee Reiber denied it and told him to buy it from the reporter, preposterously alleging that the latter owns its copyright. But what the reporter produced is work for hire and Dr. Cordero was the reason for the Trustee to hire the reporter.

31. Neither the trustees nor the DeLanos ever intended the meeting of creditors to function as stated in the 1978 Legislative Report for §343: "The purpose of the examination is to enable creditors and the trustee to determine if assets have improperly been disposed of or concealed or if there are grounds for objection to discharge". Rather, it was an opportunity for them to pump information out of Dr. Cordero, just as Att. Weidman had tried to do at the first meeting on March 8, 2004, when he repeatedly asked Dr. Cordero what he knew about the DeLanos having committed fraud. The meeting on February 1, 2005, was another abuse of process, a coordinated charade! (Add:966§B)

32. At the evidentiary hearing on March 1, Judge Ninfo abandoned his duty impartially to take in evidence and behaved as Chief Advocate for Mr. DeLano while the latter was the only witness examined and Dr. Cordero the only one to introduce evidence. Although Mr. DeLano made consistent admissions against self-interest and his own attorney deemed his testimony "a fair statement of his position and facts" (Tr:187/21−25), the Judge arbitrarily dismissed them as made while "confused" (D:16)…a still employed bank officer with 39 years' experience bearing witness to his own actions! (Dr. Cordero's Brief=Br:24§§b-d) Thus he reached the predetermined outcome, with no discussion of the law (Br:37§i), just as in his written decision (D:3), of disallowing the claim and stripping Dr. Cordero of standing to participate in *DeLano* anymore.[2] Dr. Cordero appealed on April 11, 2005 (D:1) and requested the transcript of the sham evidentiary hearing.

B. Judge Larimer supported the cover up by trying repeatedly to prevent Dr. Cordero from obtaining the transcript and by denying also *every single document* that he requested, thus protecting from exposure the DeLanos as well as the bankruptcy fraud scheme and the schemers

33. Judge Larimer supported the charade of the meeting of creditors on March 8, 2004, and February 1, 2005, by protecting Trustees Schmitt and Reiber from having to produce any tapes or transcripts of them. To that end, he dispatched Dr. Cordero's requests that he order their production (Add:885¶15, 907, 980§§a & b), if only "for the proper determination of this appeal", let alone "appellant's right of appeal" (Add:951 1001§III), with a lazy and conclusory "These motions are wholly without merit and they are denied in their entirety" (Add:1022).

34. What is more, Judge Larimer repeatedly maneuvered to deprive Dr. Cordero of the transcript of the evidentiary hearing on March 1, 2005, where his colleague, Judge Ninfo, disallowed his claim in *DeLano*. This he did by issuing orders with disregard for the rules so as to schedule Dr.

[2] See in the CD attached hereto Dr. Cordero's Comments of March 18, 2005, against the reappointment to a new term of office of Judge Ninfo as well as his Supplements of August 2 and of September 5, 2005, submitted to the Court of Appeals and to each member of the Judicial Council of the Second Circuit.

Cordero to file his appellate brief by a date by which he, Judge Larimer, knew the transcript would not be ready for Dr. Cordero to use it in writing his brief or make it part of the record.

35. Thus, Bankruptcy Clerk Paul Warren received Dr. Cordero's Designation of Items in the Record on April 21, 2005 (Add:690) and on that same day transmitted an incomplete record to the District Court in violation of FRBkrP 8007. (Add:686-689) In turn, Judge Larimer ordered the next day, April 22, that "Appellant shall file and serve its brief within 20 days after entry of this order on the docket". (Add:692) Yet, the copy of Dr. Cordero's letter of April 18 to Reporter Dianetti accompanying the Designation (Add:681) gave notice to the Judge that the Reporter had barely received the original and that no "satisfactory arrangements" with her for the transcript's preparation and payment, as required under FRBkrP 8006, could have been made. There was not even a date in sight for the transcript's completion, let alone the record's. (Add:1007§V)
36. Judge Larimer issued that April 22 scheduling order as well as those of May 3 and 17 (Add:831, 839; cf. 695, 836), although he had no jurisdiction to issue any orders in the case because the record was incomplete under FRBkrP 8006 and 8007(b), consisting only of the Notice of Appeal and the Designation of Items, so that the transfer of the record from Judge Ninfo's court to him had been unlawful. By disregarding such clear contravention of the Rules, Judge Larimer showed contempt for due process of law and his intent to deprive Dr. Cordero of the transcript.
37. When due to Dr. Cordero's objections, those unlawful orders failed to prevent his eventual receipt of the transcript, Bankruptcy Court Reporter Mary Dianetti entered the scene. She refused to agree to certify that her transcript of her own stenographic recording of the evidentiary hearing would be complete, accurate, and free from tampering influence. (Add:867, 869) Dr. Cordero complained that her refusal rendered its reliability suspect and moved on July 18 for her referral for investigation to the Judicial Conference under 28 U.S.C. §753. (Add:911)
38. Faced with that objective basis for suspicion, a judge committed to preserving the substance as

well as the appearance of the integrity of judicial process would have taken the initiative to replace the Reporter and investigate her refusal. Instead, Judge Larimer disregarded Dr. Cordero's factual and legal analysis and issued another lazy "The motion is in all respects denied", stating that if Dr. Cordero wanted the transcript, he had to request it from Reporter Dianetti (Add:991). He thus revealed his intention to determine the appeal based on a transcript that was suspect before being prepared. By contrast, he refused to request the DeLanos and the trustees to produce documents that they have unjustifiably withheld and that could contribute to establishing the facts, thereby furnishing a just basis for judicial resolution of a controversy. (Add:951, 1022)

39. In his motion of September 20 for reconsideration (Add:993) of that denial, Dr. Cordero pointed out how suspicious it was that although the Reporter could lose her job if referred to the Conference for investigation and replacement, she was so sure that Judge Larimer would not refer her that she did not bother to file even a pink *stick-it* note to object to the initial motion of July 18 (Add:1001§§III & V). The suspicion was only graver because the risk of losing her career as a reporter was particularly heightened since this was the second time that she and Judge Larimer had tried to prevent Dr. Cordero from obtaining a transcript, which they first did in *Pfuntner* in January-March 2003. (Add:922§III, 1011§A) Nevertheless, disregarding once more and without any discussion Dr. Cordero's point of pattern evidence and legal arguments, Judge Larimer simply forced Dr. Cordero in his decision of October 14 to request the transcript from the Reporter and pay her for it lest his appeal be dismissed. (Add:1019, cf. 1025, 1027) Yet, Dr. Cordero's suspicion had been aggravated by the fact that Reporter Dianetti did not object to the motion for reconsideration either! How did the Reporter become so sure that Judge Larimer would not grant either of Dr. Cordero's motions due to her failure to answer any of them? If she did not care, why did the Judge protect her instead of granting either motion by default?

40. Exactly these facts and questions apply, mutatis mutando, to Trustee Reiber. He too felt no need

to object to Dr. Cordero's motions of July 13, August 23, and September 20 requesting his removal as trustee for the DeLanos for failure to investigate them and obtain documents. (Add:881, 953§I, 1017§e) Did he learn from Judge Larimer that the motions would not be granted by both violating the prohibition on "ex parte meetings", FRBkrP 9003(b), "or other communications concerning a pending…proceeding", Canon 3A(4) of the Code of Judicial Conduct?

41. Moreover, none of the other parties filed an answer to the September 20 motion although they had it for over three weeks before the October 14 and 17 orders were issued. (Add:1019, 1021) Does their conduct constitute further evidence of non-coincidental, intentional, and coordinated acts in support of a bankruptcy fraud scheme? Would they have shown such indifference had this case been before a judge that they did not know at the U.S. District Court, NDNY, in Albany?

42. In neither of his orders did Judge Larimer discuss Dr. Cordero's factual or legal contentions. Instead, he lazily resorted to the catch-all phrase "denied in all respects" to dispatch five motions on the conclusory allegation, unsupported by even the semblance of legal argument, that they "are without any merit". These are not orders worthy of a lawyer, let alone a federal judge, but rather fiats that come under the condemnation of the Supreme Court in *Greenholtz v. Inmates of the Nebraska Penal & Correctional Complex, 442 U.S. 1, 40 (1979),* that "an inability to provide any reasons suggests that the decision is, in fact, arbitrary".

43. The arbitrariness of Judge Larimer's decisions is also revealed in that the September 20 motion for reconsideration was returnable on November 18 because on its very first page it "requests that the parties file and serve any answer by October 17 so that [Dr. Cordero] may have time to file and serve a reply as appropriate". (Add:993) Dr. Cordero was not only entitled but also required to make such statement under District Local Rule 7.1 "Service and Filing of Papers". Yet, as prematurely as October 14 the Judge issued his order "denying [it] in all respects". (Add:1019) So he decided over a month too early a motion that was not officially before him. Of course, he failed to explain his

rush to deny the motion to reconsider and through it the original motion concerning Reporter Dianetti of July 18 (Add:911), which means that for months he had disregarded it.

44. By rushing to a decision, Judge Larimer deprived the other parties of the opportunity to file their answers. He deprived Dr. Cordero of the opportunity both to know those answers and reply thereto. More significantly, he deprived himself of the opportunity to receive such answers and reply. Thereby he showed that instead of approaching the motion with an open mind, as judges are required to do, he had set his mind on a prejudged course of action and was not interested in informing himself or his decision with the parties' statements of facts, arguments, and authority. He showed prejudice and bias. (cf. 22/Table 3:Comment on J. Ninfo's order by knee-jerk reaction)

45. Dr. Cordero complied with Judge Larimer's order by requesting the transcript and paying for it. (Add:1031) However, the District Court failed to comply with its duty, for whereas Reporter Dianetti filed her transcript on November 4 with the Bankruptcy Court, which in turn transmitted it "forthwith" that same day from the first floor of the small, 6-story federal building to the District Court upstairs, the latter failed to file it as required under FRBkrP 8007(b). This non-compliance with the Rule caused Dr. Cordero to spend his time, effort, and money to research and write yet another motion on November 15 to move the District Court to comply with its duty to docket the transcript, enter the appeal, and schedule his brief. (Add:1081)

46. When the transcript was finally filed, it was only in the form of "Paper maintained in Clerk's office" (Post Addendum, page 1183, entry23=Pst:1183/entry 23). Yet, Reporter Dianetti submitted also a digital version as a PDF file and the Bankruptcy Court stated in the *DeLano* docket "Transmittal to U.S. District Court of Transcript…on CD-Rom".(D:508e/entry 145) So it could have been effortlessly uploaded to make it available to the public through PACER. Hence Judge Larimer failed to follow through on his own order that "The copy will be of such quality and in a format for the Court to scan it into the CM/ECF system" (Add:992¶3). Is the failure to do so a recognition of

the transcript's substandard quality (¶52 below) or of its incriminating content?

47. In this context, note the Second Circuit Local Rule 32(a)(1) requiring the submission also of a copy in digital format as a PDF file of a brief and "any supplemental material", which even pro se litigants are encouraged to apply; and CA2 Local Rule 25 providing for the scanning of any paper document filed with the Court; both of which apply without page count limitation. (Pst:1171) In line with them, Dr. Cordero submitted his appellate brief, his Designated Items, its Addendum, and the transcript, both in paper and as digital, PDF files on a CD-ROM, like the one attached hereto.

48. But that CD was returned to him (Pst:1213). Yet, "The Court clearly established, by General Order dated October 1, 2003, electronic filing procedures applicable to all civil and criminal cases", including "in PDF format…on CD-ROMs" (Pst:1209-10), making them mandatory for all attorneys admitted to WDNY (Pst:1191), and doing so without excluding digital filings on CD-ROMs by non-practicing attorneys, such as Dr. Cordero. What is more, Judge Larimer has formally indicated by elimination that he prefers to receive such filings in digital format rather than paper. (Pst:1211) Disregarding such official and personal choices, Judge Larimer refused to file electronically the Addendum (Pst:1214). While the brief was so filed, he did not even mention in his order of January 4, 2006, Dr. Cordero's PDF files. Instead, he pretended that only the paper version of only the Addendum was available and that it "exceeds 1,300 pages [and] scanning this lengthy document into the system would be very time consuming and is unnecessary". (id.) However, the Addendum consists of pages xv-xxvii, and 509-1155, and it has page numbers reserved, i.e. 657-680, 697-710, 753-770, 846-850, etc, so that its actual page count is less than 590. How disingenuous of Judge Larimer to disregard and misrepresent the facts! (cf. Add:839, 925¶¶37-38)

49. In that order, he quoted the Court's Administrative Procedure Guide for electronic filing §2(o)(i) (Pst:1203) providing that "[t]he court…may…authorize conventional filing of other documents otherwise subject to these procedures" (Pst:1215), which is totally inapplicable since Dr. Cordero

never requested "conventional filing" so that the Judge could not "authorize" it; what "Dr. Cordero …orally requested" was that his PDF files on the CD "be filed electronically" (Pst:1214) Then Judge Larimer added that "pursuant to section 2(o)(i)(8)(c), "[a]ll other documents in the case, including briefs, will be filed and served electronically unless the court otherwise orders"…but this would be a quotation for applying to Dr. Cordero's files the Court's order making electronic filing the rule, were it not dealing with "(8) Social Security Cases"! (Pst:1205) While Judge Larimer could not care less to find out what his own Court's Guide provides, he knows that he must at all cost, even disingenuously, keep the transcript from Dr. Cordero and prevent electronic public access to it, the Designated Items, and the Addendum. Should you and the Judicial Council not be curious to review them on the attached CD and find out why the Judge so fears that those files support Dr. Cordero's contentions that expose a bankruptcy fraud scheme and the schemers?

50. To answer, consider that after filing the transcript, the Judge rescheduled on November 21 the filing of Dr. Cordero's brief, stating that "It now appears that the record on appeal is complete, and no further action pursuant to Fed.R.Bankr.P. 8007 is required" (Add:1093). Thereby he unwittingly admitted both that the record was incomplete when he issued his order of April 22 (Add:692)− *7 months earlier!* at a time when there was not even an arrangement for Reporter Dianetti to begin preparing her transcript, let alone file it (Add:681, cf. 686-696, 831-845)− requiring Dr. Cordero to file his brief by May 12, and consequently, that he had violated FRBkrP 8006 and 8007.
51. Judge Larimer showed contempt for the law when he violated those Rules and allowed others to violate them too. Hence, it is reasonable to infer from his refusal to refer Reporter Dianetti to the Judicial Conference (¶37 above) that he was protecting himself and them from revealing such contempt. Nevertheless, the Judicial Council can ascertain his contemptuous attitude by reviewing the quality of work that he accepts or approves from them or produces himself. (22/Table 3 below)
52. Reporter Dianetti's transcript (in attached CD) illustrates this attitude. In it everybody appears

speaking Pidgin English, babbling in broken sentences, uttering barbarisms, and sputtering so much solecistic fragments in each line that to recompose them into the whole of a meaningful statement is toil. So the participants at the evidentiary hearing, though professionals, come across in it as a bunch of speech impaired illiterates. Do you speak as they do? Those defects are compounded by the misalignment of *every* page of her PDF version and the ensuing discrepancy between the page numbers of that and the paper version. Her transcript cannot represent the standard of competence under 28 U.S.C. §753 to which the Conference or the Council holds reporters.

53. Thus the Judicial Council too can draw a significant inference from the work of Judges Larimer and Ninfo and the work that they, as chief judges who set the example of attitude and performance in their respective courts, accept from others: They manifest an anything-goes mentality. It is as tolerant of others' substandard performance as it is self-indulgent in their own lazy, sloppy orders. The little pride that they take in their own work reflects itself in their little respect for the rights of others; hence their contempt for due process, which allows them to use transcripts that are an objectively inferior reproduction of court proceedings, such as those of Reporter Dianetti, as the record on which they determine…your rights, your property claims, and maybe your liberty as a litigant. Do you like it? (Add:626¶86) That mentality has no qualms about either abusing the local rule-issuing power so as to protect them preemptively with Local Rules 5.1(h) and 83.5 from RICO claims or supporting a bankruptcy fraud scheme and the schemers.

III. Conclusion and Relief Requested

54. The brewing influence-peddling scandal in Washington centered on Lobbyist Jack Abramoff shows that officers even at the top of the Legislative and Executive Branches are venal. So why should your peers in the Judiciary be deemed incorruptible? (Add:621§1) The fact is that over $670,000 is unaccounted for in just the one case of the DeLanos, and Trustee Reiber has now

more than 3,909 cases and Chapter 7 Trustee Kenneth Gordon had 3,383 as of June 26, 2004, out which 3,382 were before Judge Ninfo (Add:592§A), from whom they can land on appeal before Judge Larimer. Hence, through Local Rules 5.1(h) and 83.5, the District and the Bankruptcy Court cause injury in fact by depriving litigants in general, and Dr. Cordero in particular, of access to RICO to protect their rights, thus forcing them to engage in costly, protracted, and exhausting litigation conducted abusively with the purpose of preventing the exposure of a bankruptcy fraud scheme and the schemers. Will you protect the legally abused or join abusive peers?

55. Therefore, Dr. Cordero respectfully requests that the Judicial Council of the Second Circuit:

a) abrogate Local Rules 5.1(h) and 83.5, and declare RICO claims to be pled like any other;

b) investigate the District and the Bankruptcy Court for supporting a bankruptcy fraud scheme and the schemers, and stay the reappointment of Judge Ninfo until the investigation is done;

c) refer Reporter Dianetti to the Judicial Conference under 28 U.S.C. §753 for investigation of her refusal to agree that her transcript would be complete, accurate, and free from tampering influence, and of her qualification as a reporter in light of the substandard quality of her transcript;

d) refer this Statement together with the evidentiary documents on the CD to U.S. Attorney General Alberto Gonzales under 18 U.S.C. §3057(a), with the recommendation that this case be investigated by U.S. attorneys and FBI agents, such as those from the Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with the case and unacquainted with any of the court officers, trustees, or parties directly or indirectly related to it or that may be investigated, and that no staff from such offices in either Rochester or Buffalo participate in any way in such investigation;

e) inform Dr. Cordero of the action taken.

Dated: January 7, 2006

Dr. Richard Cordero

59 Crescent Street
Brooklyn, NY 11208

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

Table 1: The DeLanos' mortgages and their unaccounted-for proceeds

Mortgages referred to in the incomplete documents produced by the DeLanos to Trustee Reiber	**Exhibit: page #**	**Amounts of the mortgages**
1) took out a mortgage for $26,000 in 1975;	D:342	$26,000
2) another for $7,467 in 1977;	D:343	7,467
3) still another for $59,000 in 1988; as well as	D:346	59,000
4) an overdraft from ONONDAGA Bank for $59,000 and	D:346	59,000
5) owed $59,000 to M&T in 1988;	D:176	59,000
6) another mortgage for $29,800 in 1990;	D:348	29,800
7) even another one for $46,920 in 1993; and	D:349	46,920
8) yet another for $95,000 in 1999	D:350-54	95,000
To buy a home appraised on 11/23/03 at $98,500 (D:27/Sch:A)	Total	$382,187

Table 2: Officers that have disregarded their statutory duty to investigate the DeLano Debtors

	Officer's name and title	Statutory duty to investigate	Request for documents	Response...if any
1.	George Reiber, Standing Chapter 13 Trustee	11 U.S.C. §§1302(b)(1) and. 704(4) & (7)	D:66§IV; D:113¶6; D:492, cf. D:477-491; Add:683	D:74, cf. D:83§A; D:120, cf. D:124 and 193§§I-III; none none
2.	Kathleen Dunivin Schmitt, Assistant U.S. Trustee	28 U.S.C. §586(a)(3)(C) & (F)	D:63§§I & III; D:470, cf. D:461; D:471; D:475§c; Add:685	D:70, cf. D:84§IV; none none none none
3.	Deirdre A. Martini, U.S. Trustee for Region 2	28 U.S.C. §586(b)	D:104, cf. D:90§VII; D:137; Add:682	none D:139, cf. D:141; D:154-157, cf. D:158; none
4.	Bankruptcy Judge John C. Ninfo, II	11 U.S.C. §1325 and 18 U.S.C. §3057(a) (Add:630)	D:198§V and 199¶31, 207-210, 217; D:320§II; D:370§C; Add:1051§II; Add:1133§§I & II	D:220, cf. D:232§§I & V; D:327; D:3; Add:1065, cf. Add:1066, 1094; Add:1125
5.	District Judge David G. Larimer	18 U.S.C. §3057(a) (Add:630)	Add:885¶15, 900§§3 & B, 908§d, 951, 979§III; Add:1098§I	 Add:1021; Add:1155

Table 3

Contempt for the law and litigants' rights shown in the dismal quality of the work produced by Judges Larimer and Ninfo and accepted by them from lawyers and clerks			
	Officer of the court & type of work	**References to work produced or accepted**	**Comment**
1.	Judge Larimer and his orders	Add:692, 831, 839, 991, 1019, 1021, 1092, 1155 Pst:1214	He rarely cites and never analyzes the law or the rules, and never discusses the motions on which he rules, which he dismisses so frequently with a lazy "has no merits and is denied in all respect" , which points to his not even reading them (Add:609§B, 1084§II); when he ventures beyond an offhand dismissal, his orders are sloppy because of grave mistakes of law and fact.
2.	Judge Ninfo and his orders	D:3; 220, 272, 327, 332; Add:719, 725, 729, 731, 741, 749	His orders are equally devoid of legal reasoning and damned by any botched attempt at citing authority (Br:37§i) so that they are conclusory fiats; or worse yet, knee-jerk reactions kicked out before receipt of any answer from the other parties, as shown by the chain of events in Add:1038→1065→1066→1094→1095→1125→ →1126. (cf. ¶44 above)
3.	*Űber*-experienced Trustee Reiber (D:431§C; Add:891/Table)	Add:937-939	He submitted shockingly unprofessional and perfunctory scraps of papers to confirm the DeLanos' debt repayment plan, which Judge Ninfo approved as "the Trustee's Report" (Add:941/2nd ¶; cf. 1041§I, 1094), as did Judge Larimer (Add:953§I, 980§d, 1022/last¶; cf. 1055§B).
4.	Christopher Werner, Esq., the DeLanos' attorney in the bankruptcy case *DeLano* Michael Beyma, Esq., Mr. DeLano's attorney in *Pfuntner* and partner in Underberg & Kessler, the law firm of which Judge Ninfo was a partner before becoming a judge	Br:25§c; D:118, 205, 211 & 214-216 271, 314, 325; Add:936, 988, 1069	He writes back-of-napkin like statements with no discussion of the law, the facts, or the opposing party's arguments, so imitative of the Judges' own orders; hence Judge Ninfo found it unobjectionable that: a)) Att. Werner, who, according to PACER, at the time had appeared before Judge Ninfo in 525 cases, appeared at the evidentiary hearing on March 1, 2005, of his motion to disallow Dr. Cordero's claim without having read the claim or brought a copy of it (Br:32§e; Tr:54/6−55/5, 64/10−66/18, 124/4-20, 137/8-21, 143/17-145/13); and b) Attorneys Werner and Beyma suborned perjury by signaling and mouthing answers to Mr. DeLano while on the stand during that evidentiary hearing (Br:33§f).

5.	Clerks of court	¶¶35 & 45 above; D:106, 232§§I & II, 397§1, 416§F, 476, 495; Add:832	Their disregard for the rules that they are supposed to apply shows participation in a pattern of non-coincidental, intentional, and coordinated wrongdoing, for if their actions were simply 'mistakes' due to incompetence, then it would be reasonable to expect that half of such 'mistakes' would redound to Dr. Cordero's disadvantage and half to his advantage, rather than all of them consistently have a detriment impact on Dr. Cordero's procedural and substantive rights.

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August 1, 2005

Chief Judge Michael B. Mukasey
Member of the Judicial Conference of the U.S.
U.S. District Court, SDNY
500 Pearl Street
New York, NY 10007-1312

Dear Chief Judge Mukasey,

I would like to bring to your attention the petition that I just submitted to the Conference for an investigation under 28 U.S.C. §753(c) of a court reporter's refusal to certify the reliability of her transcript, which is yet another in a long series of acts of disregard for duty and legality stretching over more than three years and pointing to a bankruptcy fraud scheme and a cover up.

Indeed, last March 1 the evidentiary hearing took place of the motion to disallow my claim in the bankruptcy case of David and Mary Ann DeLano. Bankruptcy Judge John C. Ninfo, II, WBNY, disallowed my claim against Mr. DeLano. Oddly enough, he is a 32-year veteran of the banking industry now specializing in bankruptcies at M&T Bank, who declared having only $535 in cash and account when filing for bankruptcy in January 2004, but earned in the 2001-03 period $291,470, whose whereabouts neither the Judge nor the trustees want to request that he account for.

At the end of the hearing, I asked Reporter Mary Dianetti to count and write down the numbers of stenographic packs and folds that she had used, which she did. For my appeal from the disallowance and as part of making arrangements for her transcript, I requested her to estimate its cost and state the numbers of packs and folds that she would use to produce it. As shown in exhibits pgs. E:1-11, she provided the estimate but on three occasions expressly declined to state those numbers. Her repeated failure to state numbers that she necessarily had counted and used to calculate her estimate was quite suspicious. So I requested that she agree to certify that the transcript would be complete and accurate, distributed only to the clerk and me, and free of tampering influence. However, she asked me to prepay and explicitly rejected my request! If a reporter in your court refused to vouch for the reliability of her transcript, would you vouch for it in her stead and use it without hesitation? Would you want your rights and obligations decided on such a transcript?

Moreover, there is evidence, contained in the other exhibits submitted to the Conference and available on demand (pg. 21), that Reporter Dianetti is not acting alone. Bankruptcy clerks and District Judge David G. Larimer, WDNY, also violated FRBkrP 8007 to deprive me of the transcript and, worse still, did the same in connection with the transcript in *Pfuntner v. Trustee Gordon et al*., where Mr. DeLano, who handled its bankruptcy for M&T, and I are parties. Their motives are discussed in the accompanying copy of the petition and in my submissions to the Conference and its members of November 18 and December 18, 2004. The facts stated therein show a pattern of non-coincidental, intentional, and coordinated bias and wrongdoing in support of a bankruptcy fraud scheme. It suffices for those facts to have the appearance of truth for these officers' conduct to undermine the integrity of the judicial process and detract from public trust in the judiciary. Hence, I respectfully request that you cause this matter to be placed on the agenda of the September meeting of the Conference and that meantime, you make a report of it to U.S. Attorney General Alberto Gonzales under 18 U.S.C. 3057(a). Looking forward to hearing from you,

sincerely,

Dr. Richard Cordero

Mk:169

JUDICIAL CONFERENCE OF THE UNITED STATES

PETITION

FOR AN INVESTIGATION UNDER 28 U.S.C. §753(C)

of a Court Reporter's Refusal

to Certify the Reliability of her Transcript and

FOR DESIGNATION UNDER 28 U.S.C. §753(B)

of Another Individual to Produce the Transcript

Dr. Richard Cordero, Petitioner

and Creditor in *David and Mary Ann DeL*ano, no. 04-20280, WBNY

and Appellant in *Cordero v. DeLano*, no. 05-cv-6190L, WDNY

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submitted by

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Judicial Conference of the United States

PETITION for an Investigation under 28 U.S.C. §753(c) of a Court Reporter's Refusal to Certify the Reliability of her Transcript and for Designation under 28 U.S.C. §753(b) of Another Individual to Produce the Transcript

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Dr. Richard Cordero, Petitioner

Creditor in *David and Mary Ann DeLano*, no. 04-20280, WBNY

and Appellant in *Cordero v. DeLano*, no. 05-cv-6190L, WDNY

Dr. Richard Cordero states under penalty of perjury the following:

1. Dr. Richard Cordero petitions the Judicial Conference under 28 U.S.C. §753(c) (¶20 below) for an investigation of the reasons and circumstances why Court Reporter Mary Dianetti has refused to certify the reliability of her transcript of the evidentiary hearing that she recorded stenographically on March 1, 2005, called by Bankruptcy Judge John C. Ninfo, II, WBNY, to hear the motion raised by David and Mary Ann DeLano, debtors, to disallow Dr. Cordero's claim against Mr. DeLano. Judge Ninfo's Decision and Order of April 4, 2005, disallowing that claim is the subject of the above-captioned appeal before District Judge David G. Larimer, WDNY, for which the transcript is indispensable. Hence, .the Conference is petitioned under §753(b) to designate another individual to produce a reliable transcript.

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Dates of Letters Exchanged Between			**Exhibit Page E:#**
	Dr. Cordero	**Court Reporter Dianetti**	
1.	April 18, 2005		1
2.		May 3	2
3.	May 10		3
4.		May 19	4
5.	May 26		6
6.		June 13	7
7.	June 25		9
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I. Reporter Dianetti avoided stating on three occasions the count of the stenographic packs and folds that she had counted to arrive at her transcript cost estimate; Dr. Cordero requested confirmation that her reluctance was not motivated by her concerns about the transcript's content; but the Reporter requested prepayment while refusing to certify that the transcript would be complete and accurate, distributed only to the clerk and Dr. Cordero, and free of tampering influence

2. At the end of the evidentiary hearing on March 1, 2005, which lasted from 1:31 p.m. till 7:00 p.m., Dr. Cordero approached Reporter Dianetti while she was still at her seat and Court

Attendant Larraine Parkhurst was by her side. He asked the Reporter how many packs and folds of stenographic paper she had used. That question spun Reporter Dianetti into a profound state of confusion and nervousness, all the more astonishing since she was only gathering the materials that she had just finished using to record the single hearing that afternoon. (Exhibits page 207, section B, infra=E:207B) The Reporter and Attendant Parkhurst counted the packs and folds and both wrote down the numbers (E:203); but on that occasion, the Reporter did not provide an estimate of the cost of the transcript.

3. Over a month and a half later, contemporaneously with designating the items in the record for the appeal from the decision resulting from that evidentiary hearing, Dr. Cordero requested in his letter of April 18 to Reporter Dianetti (E:1) that she provide a cost estimate and indicate the number of stenographic packs and folds "that you will be using to prepare the transcript". In so doing, Dr. Cordero was simply exercising his right under 28 U.S.C. §753(b), providing that:

> §753(b) [last paragraph] The original notes or other original records and the copy of the transcript in the office of the clerk shall be open during office hours to inspection by any person without charge.

4. Since Dr. Cordero lives in New York City, hundreds of miles away from the bankruptcy clerk's office in Rochester, NY, and since he, by contrast, would be charged for ordering the transcript, it is only reasonable that he would want to have the closest equivalent to an inspection in person of the original records by asking the Court Reporter to describe what she would transcribe at his expense. This sort of "dealings with parties requesting transcripts" must fall precisely within the scope of §753(c). Hence, Dr. Cordero simply asked for information that he was legally entitled to obtain.
5. In her answer of May 3 (E:2), Reporter Dianetti failed to provide any count of packs and folds of stenographic paper because it "was given to you after the hearing was completed". Yet, she must have counted them since she provided "the estimated cost...of $600 to $650". But she added the caveat "Please understand this is an estimate only." Thereby she undermined the reliability of what in the normal course of business would have been deemed the lower and upper limits of the estimate.
6. Hence, in his letter to her of May 10 (E:3), he asked that she state by how much more her estimate could fluctuate and added "This makes it all the more necessary that you state how many packs of stenographic paper and how many folds in each pack constitute the whole of your recording."
7. In her letter of May 19 (E:4), Reporter Dianetti surprisingly stated that "I am unable to state how much my estimate can fluctuate, if it fluctuates at all, unless I prepare the entire transcript prior to your ordering it." Her statement was self-contradictory because if her estimate may not fluctuate "at all",

then how could she provide an initial estimate with lower and upper limits, which by definition mark the margins of fluctuation? What would determine whether the final "cost…of $600 to $650" was $600, $650, anywhere in between, or even outside that range? Since Reporter Dianetti is an official reporter, who earns her living as such, who would prepare the transcript based on her own recording of a proceeding, and who had provided an estimate that already fluctuated by almost 10%, how could she not have an idea of by "how much my estimate can fluctuate"? After all, how many variables can possibly affect the final number of transcript pages? Is one of them censure by somebody else with indisputable authority?

8. Making her estimate even more incomprehensible, Reporter Dianetti again failed to provide in that letter of May 19 the count of stenographic packs and folds that she would use to prepare the transcript because "you already have that information" (E:4). Did she have it too?; if so, why not just restate it in a straightforward business fashion? Moreover, there was something very odd to her failure to appreciate the difference between the count of packs and folds that she had written down for Dr. Cordero on March 1 and what she had recently counted and would actually "be using to prepare the transcript", as Dr. Cordero had asked in his first letter of April 18 (E:1).
9. Thus, in his letter to her of May 26 (E:6), Dr. Cordero pointed out that:

> If you cannot state those limits, the final amount can be anywhere above or below that fork [of $600 to $650]. In practical terms this means that there is no estimate at all. Consequently, I am left to assume all the risk and be liable for whatever final price you bill me for. I hope you will agree that does not sound either fair to me or an acceptable business arrangement.

10. In her response of June 13 (E:7), Reporter Dianetti agreed to an upper limit of $650 and stated a cost per page of $3.30. This implied that for a meeting that lasted 5.5 hours, she had estimated a maximum of 197 pages. However, she added the astonishing statement that:

> Also, I am listing the number of stenographic packs and the number of folds in each pack and this is **the same information** that was given to you on the afternoon of the hearing as I had marked each pack with the number of folds within your view and **am just giving you those exact numbers** at this time. (emphasis added)

11. How astonishing indeed, for Reporter Dianetti was emphatically avoiding any statement of the numbers of packs and folds that she would actually use to prepare the transcript! Why and to what extent would those numbers differ from the numbers of packs and folds that she had used to record the March 1 evidentiary hearing? Moreover, if she did not even have to count the packs and

folds to arrive at her estimate of the transcript cost, why would she on her May 3 and 19 letters not simply restate "the same information…[with which] I had marked each pack", thus nipping in the bud any suspicion? Dr. Cordero pointed this out unambiguously in his letter to her of June 25 (E:9):

> Instead, I made what I meant you to state quite clear in my latest letter to you of May 26:
>
> > [since] you necessarily had to count the number of stenographic packs and their folds to calculate the number of transcript pages and estimate the cost of the transcript…provide me with that count…Therefore…
> >
> > 2. state the number of stenographic packs and the number of folds in each that comprise the whole recording of the evidentiary hearing and **that will be translated into the transcript**. (emphasis added)

12. The fact is that Reporter Dianetti recorded the evidentiary hearing on a stenographic machine, presumably the same that she uses for recording every other bankruptcy proceeding, using the same type of stenographic paper, whose folds were pulled in and filled with recording content at the same rate, so that the same amount of content would fill transcription pages at the same rate.
13. Unquestionably, the very aim of a stenographic recording of a proceeding is to record it "verbatim" (§753(b), ¶59 below) so that two stenographers, or for that matter, any number of stenographers possessing the same "qualifications…determined by standards formulated by the Judicial Conference" (§753(a)), and recording the same proceeding on the same type of equipment and paper should end up producing a transcription with the same content having the same length. That is a logical and practical imperative of the system of reporting court proceedings. As the Supreme Court put it, 'the §753(b) duty to produce verbatim transcripts affords no discretion in carrying out this duty to reporters, who are to record, as accurately as possible, what transpires in court', *Antoine v Byers & Anderson, 508 US 429, 124 L Ed 2d 391, 113 S Ct 2167 (1993).*
14. Since her refusal made no sense from either a business or technical point of view, why was she so evasive about stating the number of packs and folds that "will be translated into the transcript"? Was she concerned about how much content of the evidentiary hearing recording would be allowed to make it into the transcript, which would determine its number of pages, which would in turn reveal the number of packs and folds from which the transcript was produced? If so, her concern cast in issue the transcript's reliability as well as the integrity of the court reporting process.
15. Hence, Dr. Cordero asked her in his letter of June 25 (E:10) to agree to:

> …provide a transcript that is an accurate and complete written representation, with neither additions, deletions, omissions, nor other modifications, of the oral exchanges among the litigants, the witness, the judicial officers, and any other third parties that spoke at the DeLano evidentiary hearing…

> …simultaneously file one paper copy with the clerk of the bankruptcy court and mail to [Dr. Cordero] a paper copy together with an electronic copy…and not make available any copy in any format to any other party…[and]
>
> …truthfully state in your certificate [that] you have not discussed with any other party (aside from me)…the content…of your stenographic recording of the DeLano evidentiary hearing or of the transcript…[otherwise] you will state their names, the circumstances and content of such discussions or attempt at such discussions, and their impact on the preparation of the transcript.

16. In her July 1 letter (E:11) the Reporter required that Dr. Cordero prepay by "a money order or certified check in the amount of $650.00 payable to "Mary Dianetti"", made no provision for the final cost coming out, once she applied her own $3.30/page rate, at her own lower estimate of $600 or even lower because, as she had put it in her May 3 letter (E:2), "Please understand this is an estimate only", and then added without offering any explanation: "The balance of your letter of June 25, 2005 is rejected."
17. How come "rejected"?! It must be quite obvious that Reporter Dianetti has no justification to refuse to agree that her transcript will be accurate and complete, not distributed to others (aside from the clerk) yet paid for by Dr. Cordero, and not subject to anybody's tampering influence. Who in his right mind would pay $650 up front for a product that he has already been given evidence will be defective and unsuitable for the intended purpose? Would you want your rights and obligations determined on a transcript for whose reliability the reporter herself will not vouch?

A. The Judicial Conference's duty to supervise court reporters and their handling of transcripts and deal with parties requesting transcripts

18. This matter should be of importance to the Conference in light of its duty under 28 U.S.C. §331:

> …as to any matters in respect of which the administration of justice in the courts of the United States may be improved. [To that end, the] Conference shall also carry on a continuous study of the operation and effect of the general rules of practice and procedure…to promote…fairness in administration [and] the just determination of litigation…

19. It would be reasonable to expect the Conference to consider that there was substantial room for improvement if it were to find out that the Bankruptcy Court and the District Court, WDNY, deemed Reporter Dianetti's conduct to be customary and acceptable for their reporters in general. But if the Conference found out that the Reporter undermined her transcript's reliability on the advice or order of other officers as part of their handling of Dr. Cordero's cases in particular, would that make it fair and just or, on the contrary, suspicious and requiring closer examination?
20. To find out whether it is one or the other scenario, 28 U.S.C. §753(c) provides the Conference with more particular authority as well as the duty to investigate Reporter Dianetti's performance

in general and her refusal to give assurance about the reliability of this transcript in particular:

> (c) The reporters shall be subject to the supervision of the appointing court and the Judicial Conference in the performance of their duties, including dealings with parties requesting transcripts**.**

21. The incentive for the Conference to conduct a "study of the operation" of those WDNY courts and of Reporter Dianetti's "performance of [her] duties" should be all the stronger because this is not the first time that she together with other officers in those courts have violated "the general rules of practice and procedure" in connection with a transcript requested by Dr. Cordero for appeal purposes.

II. Reporter Dianetti already tried on a previous occasion to avoid submitting a transcript and submitted it only over two and half months later and only after Dr. Cordero repeatedly requested it

22. In September 2002, *Pfuntner v. Gordon et al*, docket no. 02-2230, WBNY, was commenced and therein Dr. Cordero was named a defendant. He cross-claimed against Chapter 7 Trustee Kenneth Gordon for having negligently and recklessly performed his duties as trustee to the detriment of Dr. Cordero and for making defamatory statements against him to Judge Ninfo so as to induce the Judge not to cause an investigation of the Trustee, as Dr. Cordero had requested. (E:134¶¶6-11) Trustee Gordon moved to dismiss and his motion was heard on December 18, 2002, with Dr. Cordero appearing pro se by phone. Judge Ninfo dismissed the cross-claims summarily at the hearing despite the genuine issues of material fact raised by Dr. Cordero (E:135§§1-3) and even though discovery had not started on any aspect of the case, not even disclosure pursuant to FRBkrP 7026 and FRCivP 26(a)(1) had been provided by any party other than Dr. Cordero (E:150¶75) although the case had been commenced three months earlier (E:152¶80). At the end of the hearing, Dr. Cordero stated that he would appeal.
23. Interestingly enough, according to PACER, https://ecf.nywb.uscourts.gov/, between April 12, 2000, and June 26, 2004, Trustee Gordon appeared as trustee in 3,383 cases, in 3,382 out of which he did so before Judge Ninfo! By contrast, Dr. Cordero was a non-local litigant living hundreds of miles away in New York City and appearing in one case. Had Judge Ninfo developed a modus operandi with a trustee who had become a fixture litigant in his court so that to protect Trustee Gordon and their modus operandi the Judge got rid of what he could only deem to be one of the weakest of defendants, a one-time non-local pro se on the phone?
24. That question is warranted by the series of acts of disregard for the law, the rules, and the facts engaged in by Judge Ninfo (E:140§§2-4; 62A), District Judge Larimer (E:142C; ¶36 below),

clerks (E:92§II; 139B-§B1), trustees (E:134¶¶6-11; 36§V), and parties (E:145D; 68B-71§1) since even before *Pfuntner* was commenced in 2002. Their consistent conduct points to systemic disregard for duty and legality among a group of people in daily contact in a small federal building, growing closely-knit by their related functions and the use of their power to do, not the right thing, but rather the good thing for their common interest because each member can count on all the others for similar supportive disregard, to the detriment of non-members (E:151§§1-6; ¶42 below) and the integrity of the system (E:117C-E). What follows is an instance of such clique in action.

25. After Judge Ninfo's order of December 30, 2002, dismissing the cross-claims against Trustee Gordon was sent from Rochester and delivered in New York City, Dr. Cordero phoned Reporter Dianetti at (585)586-6392 on January 8, 2003, to request a transcript of the December 18 hearing. After checking her stenographic packs and folds, she called back and told him that there could be some 27 pages and take 10 days to be ready. Dr. Cordero agreed and requested the transcript. Yet, weeks went by without his hearing from her. He had to call her and the Bankruptcy Court on several occasions to ask why he had not received the transcript, but he could only either record messages on her answering machine or leave them for her with a clerk.

26. It was not until March 10, 2003, after Dr. Cordero called Reporter Dianetti and was already recording another message, that she, screening the call, finally picked up the phone. After giving an untenable excuse, she said that she would have the 15 pages ready for…"You said that it would be around 27?!" She gave another untenable excuse and promised to have everything in two days 'and you want it from the moment you came in on the phone.' What an extraordinary comment! It implied that there had been an exchange between the court and Trustee Gordon before Dr. Cordero had been put on speakerphone and that she was not supposed to include it in the transcript, so she wanted to obtain his tacit consent for her to leave it out. Dr. Cordero told her that he wanted everything and that her statement gave him the impression that other exchanges had taken place between the Judge and Trustee Gordon before and after he, Dr. Cordero, was on the phone. She said that she had to look up her notes and put Dr. Cordero on hold. When she came back, she asked him whether he wanted everything from the moment the Judge had said 'Good morning, Dr. Cordero.' He said no, that he wanted everything from the moment the Judge must have said 'Good morning, Mr. Gordon." She again put Dr. Cordero on hold to look up the calendar. She said that before his hearing began, there had been an evidentiary hearing. He asked her the name of the parties, but she said that she would have to look up the calendar. She said that Dr. Cordero's hearing had begun at 9:30 a.m.

27. As attested to by her certificate, Reporter Dianetti did complete the transcript in the next two days, on March 12, 2003. This shows how inexcusable it was for her to delay doing so for more than two months after Dr. Cordero first contacted her on January 8 to have her produce the transcript. However, there is evidence that she did not deliver it directly to him. Indeed, although the date on her certificate is March 12, the transcript was not mailed to him until March 26, precisely the day of the hearing at 9:30 a.m. of Dr. Cordero's motion for relief from Judge Ninfo's denial of his motion to extend time to file the notice of appeal (E:136§3) from the dismissal of his cross-claims against Trustee Gordon. In fact, the transcript was not entered in docket no. 02-2230 until March 26. It is noteworthy that after Dr. Cordero made a statement at that hearing, Judge Ninfo said that he had not heard anything different from his moving papers, denied the motion, and cut off abruptly the telephone connection through which Dr. Cordero was appearing. The transcript was then mailed and it reached Dr. Cordero on March 28. This reasonably suggests that it was unlawfully withheld from him until the Judge could learn what he had to say at the hearing. Was Reporter Dianetti told to submit her transcript to a higher-up court officer so that its contents could be vetted in light of that hearing before a final version would be sent to Dr. Cordero?
28. The transcript turned out to consist, not of 27 pages as Reporter Dianetti had estimated after consulting her notes on January 8, but only of 15 pages of transcription! She claimed that because Dr. Cordero was on speakerphone, she had difficulty understanding what he said. Her transcription of his statements has many "unintelligible" notes marking missing passages so that it is difficult to make out what he said. If she or the court speakerphone regularly garbled what the person on speakerphone said, it is hard to imagine that either would last long in their respective functions. These facts warrant asking whether she was told to disregard his request for the transcript; and when she could no longer do so, to garble his statements. Has she been told the same in other cases?
29. Was Reporter Dianetti also told and, if so, by whom, to leave out the exchanges between Judge Ninfo and Trustee Gordon before Dr. Cordero was put on speakerphone or after the Judge terminated the phone communication at the hearing on December 18, 2002? The foundation for this question is not only her comment so implying. In fact, on many occasions since then (E:225), Judge Ninfo has cut off abruptly the phone line to Dr. Cordero, in contravention of the norms of civility. It is most unlikely that without announcing that the hearing or meeting was adjourned or striking his gavel, but simply by pressing the speakerphone button to hang up unceremoniously on Dr. Cordero, Judge Ninfo brought thereby the hearing or meeting to its conclusion and the parties in the room just turned on their heels and left without uttering another word.

A. Reporter Dianetti and other officers have disregarded the law and rules by their way of dealing with Dr. Cordero at hearings and his transcript request

30. It is more likely that on the subject of the hearing or meeting Judge Ninfo spoke with the other parties in Dr. Cordero's absence, thereby engaging in ex parte communications with them "concerning matters affecting a particular case or proceeding" in violation of FRBkrP 9003. (cf. E:119D) Likewise, by so abruptly cutting off a phone connection, the Judge gave any reasonable person at the opposite end of the phone line cause for offense and the appearance of animosity and unfairness. Moreover, by so doing, the Judge, whether by design or in effect, prevented Dr. Cordero from bringing up any further subjects, even subjects that he had explicitly stated earlier in the hearing that he wanted to discuss; and denied him the opportunity to raise objections for the record. Of graver significance in legal terms is that by Judge Ninfo terminating a proceeding without giving notice thereof to a party he violated his duty to afford all parties to a hearing the same opportunity to be heard and hear the judge and the other parties. Thus, Judge Ninfo showed incivility and partiality, disregarded the rule prohibiting ex parte communications, and denied Dr. Cordero due process of law as required under the 5th Amendment.
31. As to Reporter Dianetti, by not delivering her transcript promptly and directly to Dr. Cordero upon completing it on March 12, 2003, she violated §753(b) which provides that:

> 28 U.S.C. §753(b)…Upon the request of any party to the proceeding which has been so recorded…the reporter…shall **promptly** transcribe the original records…and attach to the transcript his official certificate, and deliver the same to the party…making the request. (emphasis added)

32. The Reporter also violated FRBkrP 8007(a), providing thus:

> FRBkrP 8007. *(a) Duty of reporter to prepare and file transcript.* On receipt of a request for a transcript, the reporter shall acknowledge on the request the date it was received and the date on which the reporter expects to have the transcript completed and shall transmit the request, so endorsed, to the clerk or the clerk of the bankruptcy appellate panel. On completion of the transcript the reporter shall file it with the clerk and, if appropriate, notify the clerk of the bankruptcy appellate panel. If the transcript cannot be completed within 30 days of receipt of the request the reporter shall seek an extension of time from the clerk or the clerk of the bankruptcy appellate panel and the action of the clerk shall be entered in the docket and the parties notified. If the reporter does not file the transcript within the time allowed, the clerk or the clerk of the bankruptcy appellate panel shall notify the bankruptcy judge.

33. If she could not have the transcript "completed within 30 days of receipt of the request", let alone the 10 days that she had said it would take her to transcribe the mere 27 pages that she herself had

estimated, why did she not comply with her obligation that "the reporter shall seek an extension of time from the clerk"? If she did, why did the clerk in turn fail to comply with his obliga-tion that "the action of the clerk shall be entered in the docket and the parties notified"? In either event, Dr. Cordero was left without either the transcript or notice. Hence, either the Reporter or the clerk, or both violated the duty to proceed timely, promptly, and with notice. Discharging with promptness transcript-related duties is so important that the FRBkrP restate that obligation thus:

> FRBkrP 5007. Record of Proceedings and Transcripts
>
> (a) Filing of record or transcript.
>
> The reporter or operator of a recording device shall certify the original notes of testimony, tape recording, or other original record of the proceeding and **promptly** file them with the clerk. The person preparing any transcript shall **promptly** file a certified copy. (emphasis added)

34. By so dealing with that transcript, Reporter Dianetti also violated §753(a), which provides that "…Each reporter shall take an oath faithfully to perform the duties of his office.…" However, her conduct takes on sinister significance because her violations in 2003 occurred in the context of *Pfuntner*, the case that contains Dr. Cordero's claim against Mr. DeLano (E:23 fn.1) and that Judge Ninfo linked to *DeLano* in his decision on appeal of April 4, 2005 (E:46§I, 51§IV. Therefore, it is reasonable to ask whether her refusal to certify the reliability of the transcript in *DeLano* is also linked to her mishandling of the transcript in *Pfuntner*; if so, with whom is she coordinating her conduct?; and why is it important thereby to influence adversely Dr. Cordero's appeals? (E:157F) What is the benefit gained or harm avoided by those engaged in such unlawful conduct?
35. Indeed, there is no reason to think that Reporter Dianetti was 'faithfully performing her duties' until Dr. Cordero just happened to drop in. This warrants asking whether in other cases she has in coordination with other officers manipulated transcripts to alter their contents or even prevent their receipt. Hence, her conduct is evidence of that broader, systemic disregard for duty and legality where manipulation of transcripts is only part of a larger scheme. (E:92§II; 158§1) These queries need to be investigated because such disregard by her and others not only denies due process to individuals, but also undermines the integrity of the administration of justice. That has grave implications for the quality or seriousness of the §331 "continuous study" carried on by the Judicial Conference, for there is evidence that disregard for duty and legality reaches higher in the judicial hierarchy than the Bankruptcy Court. Did the Conference not know about it?

III. The Clerk of the Bankruptcy Court disregarded the rules by transmitting the record to the District Court when it could not possibly be complete; yet District Judge Larimer disregarded the rules and repeatedly scheduled the appellate brief for a date before Dr. Cordero would receive and use the transcript to write it

36. The evidence points to Reporter Dianetti not having acted alone. Just as Bankruptcy Court Clerk Paul Warren disregarded the rules on that occasion (¶33 above; cf. E:139B-§B1), he has in the instant case, likewise with detrimental effect on any use by Dr. Cordero of the transcript. So Dr. Cordero sent pursuant to FRBkrP 8006 his Designation of Items in the Record to the Bankruptcy Court. Clerk Karen Tacy filed it on April 21, 2005, and on that very same day –after strange hesitation, or was it consultation? (E:188 entries 108 and 109)- transmitted the record to the District Court.
37. However, FRBkrP 8007(b) provides that "When the record is complete for purposes of appeal, the clerk shall transmit a copy thereof forthwith to the clerk of the district court." It is obvious that the record could not possibly have been complete on the very day in which it was filed since the 10 days provided under FRBkrP 8006 for "the appellee [to file and serve] a designation of additional items to be included in the record on appeal" had not even started to run. (E:165) Moreover, contact with Reporter Dianetti for production of the transcript had only been initiated, as shown by the copy of Dr. Cordero's letter of April 18 to her (E:1) accompanying his designation. So when writing his appellant brief, he would hardly be able to take into consideration either the transcript or appellee's designation, submitted only on May 3 (E:229 entry 5) and delivered in NYC on May 10.
38. Nevertheless, District Judge Larimer issued a scheduling order on April 22, the day after receiving the record, providing that "Appellant shall file and serve its brief within 20 days after entry of this order on the docket". (E:167) Since the record contained a copy of Dr. Cordero's April 18 letter to Reporter Dianetti, the Judge too must have known that the Reporter had hardly received it and that no arrangement could have been agreed upon for the production of the transcript. In any event, FRBkrP 8007(a) (¶32 above) would allow the Reporter 30 days to complete the transcript and if she had not done so by that time, she could ask for an extension. Therefore, to require the filing of his appellate brief within 20 days would in effect prevent Dr. Cordero from receiving, let alone using, the transcript in writing the brief or even making it part of the record and thereby available in any subsequent appeal to the Court of Appeals or the Supreme Court.
39. On a phone conversation that Dr. Cordero had with Bankruptcy Clerk of Court Warren on May 2 concerning the premature transmittal of the record in disregard of FRBkrP 8007(b), the Clerk defended the transmittal and refused to withdraw the record. So on that date, Dr. Cordero faxed

to the District Court his objection to its scheduling order and requested that Judge Larimer rescind it. (E:169) He pointed out that the "premature…acts [of both courts] have forced Dr. Cordero to devote time and effort to research and writing to comply with the deadline for submitting his brief while waiting on the Bankruptcy Court to acknowledge its mistake and withdraw the record".

40. Disregarding the violation of the rules and that concrete detriment, Judge Larimer did not rescind his scheduling order. Instead, on May 3 he issued another order requiring Dr. Cordero to file his appellate brief by June 13. (E:171) In so doing, he did not even mention the legal and factual basis of Dr. Cordero's objection to premature transmittal of the incomplete record and the consequences in practical terms of the scheduling order.

41. As a result, Dr. Cordero was forced to write again to raise before Judge Larimer a "Motion for compliance with FRBkrP 8007 in the scheduling of appellant's brief". (E:172) It pointed out that the District Court did not receive a "record [that] is complete for purposes of appeal", as required under FRBkrP 8007(b), so that in contravention of the rules it received an incomplete one; therefore, it had not obtained and still did not currently have jurisdiction over the case to issue a scheduling order.

42. Dr. Cordero noted that there was no justification for all the waste of time and effort as well as enormous aggravation that was being caused to him by requiring that he research, write, and file his brief by June 13 although not only he had not received the transcript, but also nobody knew even when the Reporter would complete it, let alone deliver it to him. Hence, if the transcript were delivered before the brief-filing deadline, he would have to scramble to read its hundreds of pages and then rework his whole brief to take them into consideration and do in a hurry any necessary legal research. Worse yet, if the transcript were delivered after that filing deadline and before the District Court's decision, he would have to move for leave to amend his brief and, if granted, write another brief. But if the transcript were not filed timely and the Bankruptcy Clerk notified Judge Ninfo thereof under FRBkrP 8007(a), the outcome could not be known in advance, not to mention that the circumstances of the Reporter's failure to complete it could give rise to a host of new issues. And what would happen, Dr. Cordero asked, if the transcript was delivered *after* the Court had issued its decision?! He concluded that there was no legal basis for putting on him the onus of coping with all that burdensome extra work and uncertainty.

43. In its third scheduling order of May 17 (E:175), Judge Larimer did not show any awareness of these issues, let alone that they were his concern. On the contrary, he issued his order as if:

> Appellant requested additional time within which to file and serve his brief. That request is granted, in part. Appellant shall file and serve his brief within twenty (20) days of the date that the transcript of the bankruptcy

> proceedings is filed with the Clerk of the Bankruptcy Court.

44. No! Dr. Cordero had certainly **not** "requested additional time". What he had requested was for the Court to act in accordance with the law: (E:174)

> Rescind its scheduling order requiring that he file his brief by June 13 and reissue no such order until in compliance with FRBkrP 8007(b) it has received a complete record from the clerk of the bankruptcy court.

45. Judge Larimer's last order means in practice that if Reporter Dianetti ever files her transcript and it is found objectionable, Dr. Cordero will once more have to move the District Court to rescind that order and undertake corrective measures. In terms of the law, it means that the Judge issued a third order with disregard for the legal issues depriving him of jurisdiction to do so. Did he intend for Dr. Cordero to file his brief without the benefit of the transcript? Did the Judge know that if Dr. Cordero insisted on obtaining the transcript, he would be given some sort of such thing whose reliability would be so compromised that Reporter Dianetti would not certify it?
46. These questions are justified because the instant events are an exact repetition of the way Judge Larimer proceeded when Dr. Cordero requested the first transcript: After his colleague Judge Ninfo summarily dismissed Dr. Cordero's cross-claims against Trustee Gordon at the hearing on December 18, 2002 (¶22 above), Dr. Cordero phoned Reporter Dianetti on January 8, to request the transcript. He then sent his notice of appeal, whose receipt was acknowledged by Bankruptcy Case Manager Karen Tacy by letter of January 14 (E:191), where she informed him that the due date for his designation of items was January 27. Yet, already on January 16, 2003, Judge Larimer had an order filed scheduling Dr. Cordero's brief for 20 days hence (E:192) although the Bankruptcy Clerk had transmitted to the District Court a record so unquestionably incomplete that it consisted of merely the notice of appeal! Then Reporter Dianetti tried to avoid submitting that transcript to Dr. Cordero and mishandled its delivery after completing it so that it was sent to him only more than two and a half months later, after Judge Ninfo had found out what Dr. Cordero had to say at the hearing on March 26, 2003 (¶27 above).
47. These facts support the conclusion that just as in the instant case, on that occasion Judge Larimer tried to deprive Dr. Cordero of the transcript by scheduling his brief for a date before he would receive it and be able to take it into account. What a flagrant violation by administrative and judicial officers of FRBkrP 8006 and 8007 as well as coordinated manipulation of filing dates (cf. E:157F; 73§2) and abusive impairment of the right to appeal! (cf. E:123§III) Was Judge Larimer protecting Colleague Ninfo or Trustee Gordon or both? From what and what for?

48. In light of these precedents, what conceivable reason can Dr. Cordero have to believe that when a complete record is properly before Judge Larimer, the latter will decide the appeal in accordance with the law, the rules, and the facts? Once more, this question is particularly pertinent because in the past Judge Larimer disregarded the law, the rules, and the facts in deciding Dr. Cordero's two appeals from *Pfuntner*: Dr. Cordero's opposition to Trustee Gordon's motion to dismiss the appeal, docket no. 03cv6021 (E:237¶50b)); and his application for default judgment against David Palmer, docket no. 03mbk6001 (E:142§C; 235B-237¶50a)).

IV. Reporter Dianetti's refusal to certify the transcript's reliability is another manifestation of court officers who disregard the law, the rules, and the facts in support of a bankruptcy fraud scheme

49. One must assume that all these officers know that 'the transcript is of critical importance to meaningful appellate review', *U.S. v Workcuff 137 App DC 263, 422 F2d 700 (1970)*, because, among other things, under FRCivP 80(c) 'the stenographically recorded testimony of a witness at a hearing can be used to prove that testimony at a later trial'; for its part, FRAP 10(a) provides that "…the transcript of proceedings, if any,…**shall** constitute the record on appeal in all cases" (emphasis added). Hence, 'foreclosing examination of a complete transcript renders illusory appellant's right to appeal', *U.S. v Selva, 546 F2d 1173 (CA5 Fl, 1977)*.
50. Harmful assumptions are also made by court officers and parties upon seeing judges and supervisors exhibit lack of commitment to the rule of law and tendency to disregard the high ethical standards that should guide the administration of justice. (cf. E:239C) Their insidious example fosters a permissive environment that is self-reinforcing since 'we can do anything like the bosses do too…and they'd better cover our backs 'cause if we go down they come together with us'. Such everything goes, extortionist mentality ever more profoundly undermines the performance of administrative tasks, indispensable for the judicial process to follow its proper course. This breeds lack of candor, bias, and arbitrariness, which are attitudes inimical to due process; cf. *William Bracy, Petitioner v. Richard B. Gramley, Warden 520 U.S. 899; 117 S. Ct. 1793; 138 L. Ed. 2d 97 (1997)*.
51. In such environment, one can imagine court officers engaging or allowing others to engage in conduct that can deprive or is intended to deprive Dr. Cordero of transcripts. But a cautious and objective reader would ask what motive they could have to do so. To find the answer, he or she should know who the DeLanos are and what they have done (E:19§I): Among other things, they filed a bankruptcy petition in January 2004, wherein they named Dr. Cordero among their creditors because of his claim against Mr. DeLano pending since November 2002 in *Pfuntner* (E:23 fn.1).

Their petition is facially implausible because Mr. DeLano is a 32-year veteran of the banking industry still employed by Manufacturers & Traders Trust Bank (M&T) as an executive handling, of all matters, bankruptcies, but he and his wife pretend to have gone bankrupt with merely $535 in cash and accounts while refusing to provide documents concerning the whereabouts of $291,470 that they earned in just the 2001-03 fiscal years! Yet, to keep those documents from Dr. Cordero they are willing to run up, and their attorney knows they can afford, a legal bill of $16,654. (E:219) A rational man, and a banker at that, would only incur such cost if he had more to lose by producing the requested financial documents. Do you too now want to see those documents?

52. Dr. Cordero did and requested Chapter 13 Trustee George Reiber under 11 U.S.C. §1302(b)(1) and §704(4) to "investigate the financial affairs of the debtor", and under §704(7) to "furnish such information concerning the estate and the estate's administration as is requested by a party in interest". The reaction of the Trustee's attorney, James Weidman, Esq., illegally conducting the meeting of creditors on March 8, 2004 (C.F.R. §58.6(a)(10)), was to ask Dr. Cordero what he knew about the DeLanos having committed fraud, and when he would not answer, the Attorney terminated the meeting to prevent Dr. Cordero from examining them. (E:62A) Such termination violated the meeting's purpose under §341, §343, and FRBkrP 2004(b); yet the Trustee ratified it. Judge Ninfo condoned it (E:21§II) as "local practice" (E:23§III; 66§2), thus disregarding his duty under §1325(a)(3) to ascertain whether the petition was "in good faith [or] forbidden by law" and protecting the local parties again (E:116B-C).
53. Indeed, Trustee Reiber had, according to PACER, 3,907 *open cases* before Judge Ninfo! (cf. ¶23 above) He would not request the DeLanos to produce checking and savings account statements. Only at Dr. Cordero's repeated request did he pro forma ask them for other documents…only to allow them to stall producing even the very few that he had asked for. (E:24¶¶14-19) Nevertheless, Trustee Reiber's supervisors, Assistant U.S. Trustee Kathleen Dunivin Schmitt and U.S. Trustee for Region 2 Deirdre Martini, would not require him to investigate the DeLanos (E:20¶g; 36§V) or replace him with a trustee willing and able to do so (E:14§II).
54. On July 9, 2004, Dr. Cordero presented evidence that the DeLanos were engaged in bankruptcy fraud, particularly concealment of assets. He moved for an order to produce documents that could prove it, such as bank accounts. (E:90§I) To eliminate him before he could obtain them, the DeLanos filed on July 22 a motion to disallow his claim. Judge Ninfo supported it, although it was barred by laches and untimely (E:74¶¶46-54) and did not order any production (E:68B; 107). Only at Dr. Cordero's instigation did he issue a watered-down order that he allowed the DeLanos to violate (E:32§3) -just as he has allowed *Pfuntner* parties to do (E:145D)- Then he stopped all other

proceedings in *DeLano,* thus forestalling a renewed opposition under §§1325(b) and 102(4) by Dr. Cordero to their repayment plan, and forced him to take discovery of Mr. DeLano to prove his claim against him in *Pfuntner* (E:195§§I-II). The result of his discovery would be presented at an evidentiary hearing on March 1, 2005. But Mr. DeLano and the Judge denied him *every document* that he requested. (E:77§§1-2) Yet, in his decision on appeal of April 4, the Judge disallowed the claim because 'Dr. Cordero did not introduce any document to prove it!' What a set up! (E:33B)

55. However, Dr. Cordero could still introduce on appeal one threatening document: **the transcript.** Indeed, at the March 1 evidentiary hearing he elicited from Mr. DeLano admissions corroborating all the elements of his claim and even new information strengthening it. Judge Ninfo dealt with that testimony in his April 4 decision by dismissing it on the allegation that Mr. DeLano had been "confused" by Dr. Cordero. The ludicrousness of such pretense of a reason for dismissing damaging testimony is all the more obvious because Mr. DeLano was testifying about his own actions as an expert handling the bankruptcy in *Pfuntner.* (E:23 fn.1) Also, he was assisted by two seasoned attorneys, Christopher Werner, Esq., who according to his own statement 'has been in this business for 29 years' now and, as shown in PACER, had already at the time appeared before Judge Ninfo in 525 cases; and Michael Beyma, Esq., who is the attorney for Mr. DeLano and M&T in *Pfuntner* and a partner in the firm of Underberg & Kessler, of which the Judge was also a partner before being appointed to the bench in 1992[1]. The transcript will also allow Judge Ninfo's peers to hear from his own mouth his bias and contempt for due process. (E:209C-E)

56. Mr. DeLano's self-incriminating testimony and Judge Ninfo's performance as his on-the-bench advocate, if it were completely and accurately reflected in the transcript (E:216F), can have devastating consequences: It will show that the untimely motion to disallow and the abuse-of-process evidentiary hearing constituted a two-punch sham (E:33B) to justify stripping Dr. Cordero of standing as a creditor of the DeLanos so as to prevent him from obtaining the documents that can prove the bankruptcy fraud (cf. E:47§II) of well-connected Veteran Banker DeLano. In his 32-year banking career, he must have come to know too much to be left unprotected from his creditors or, worse, liable to criminal charges and, thus, tempted by a plea bargain to trade in his

[1]Judge Ninfo is up for reappointment and the investigation requested here should assist in deciding whether to reappoint him. Sooner or later what drives him, the other court officers, and the local parties to disregard their duty and legality will be exposed, whether by the Judicial Conference, the FBI, the Congressional committees on the judiciary, or investigative journalists. Those who vote to reappoint him (cf. E:202) despite all the evidence of wrongdoing collected during the past three years (E:115§II) and presented to each of the members of the CA2 and Judicial Council (E:239C; 201) by Dr. Cordero will end up embarrassed and having to explain themselves.

we-are-all-in-the-same-boat incrimination. (E:83§3) Precisely, his confession can open the way to proving that the long series of acts beginning in *Pfuntner* (E:134§I) of disregard for the law, the rules, and the facts by court officers, all consistently to the detriment of non-local pro se Dr. Cordero and the benefit of local parties (E:117C-E), form a pattern of non-coincidental, intentional, and coordinated wrongdoing in bankruptcy. Therein cases approved generate a commission of all payments by debtors to creditors as well as debt relief that spares concealed assets. That relief alone can save the DeLanos more than $144,000 in debt plus delinquent interest at over 25%. (E:248¶75) Money, lots of money, "the source of all evil", and a web of local relations giving rise to what is at stake here: a bankruptcy fraud scheme and its cover-up. (E:234D)

57. Indeed, when so many officers who meet daily in a small building to work as a formal unit of colleagues and appointers-appointees (28 U.S.C. §751(a), (b); §753(a)) disregard their duty and legality as they engage in 'diversity of city' discrimination against a far away litigant, one can infer that they are not simply performing their functions incompetently and with accidentally identical results. Instead, the law allows the application of common sense to circumstantial evidence to draw the inference of intentionality and coordination from the acts of reasonable persons operating as a team to attain the shared objective of a scheme. On such basis, juries of lay persons are asked to make inferences that can lead to a finding of guilt beyond reasonable doubt, which will deprive the accused of his property, his liberty, and even his life. That is what the schemers stand to lose, who can be exposed as such by the transcript of one of their reporters.

V. Bankruptcy court reporters are subject to 28 U.S.C. §753 and the supervision of the Judicial Conference

58. FRBkrP 5007(b) on transcript fees is commented on in the Advisory Committee Notes to that Rule thus: "Subdivision (b) is derived from 28 U.S.C. §753(f)". This shows that §753, the Court Reporter Act of 1944, as amended, is applicable to bankruptcy court reporters, just as it is applicable to district court reporters, who are expressly appointed under §753(a).
59. The same conclusion follows from the applicability of §753 to the district court clerks, who in districts where no bankruptcy clerk has been appointed, perform the same clerkship duties for the respective bankruptcy courts, which follows from FRBkrP 5001, Advisory Committee Notes, 1987 Amendments, "…Clerk means the bankruptcy clerk, if one has been appointed for the district; if a bankruptcy clerk has not been appointed, clerk means clerk of the district court". Therefore, if district court clerks can perform the same duties as bankruptcy court clerks although such duties have

some elements specifically connected with bankruptcy, such as keeping claims registers under FRBkrP 5003(b), then district court reporters can also serve as bankruptcy court reporters and vice versa since the nature of the proceedings that they record does not affect their duty to:

> §753(b)…record verbatim by shorthand, mechanical means, electronic sound recording, or any other method, subject to regulations…[e]ach session of the court and every other proceeding designated by rule or order of the court or by one of the judges… (cf.¶13 above)

60. Applying by analogy the same rules to reporters in either court as is done to clerks performing bankruptcy clerkship duties is supported by §753(d), which provides that reporters' "records shall be inspected and audited in the same manner as the records and accounts of clerks of the district courts".

61. The applicability of §753 to bankruptcy court reporters is also arrived at by elimination. Thus, 28 U.S.C. §156. Staff; expenses, provides under subsection (a) for each bankruptcy judge to appoint a secretary and a law clerk, and under (b) for the bankruptcy judges for a district to appoint a bankruptcy clerk upon certifying that the number of cases and proceedings so warrants. By contrast, §156 does not provide for bankruptcy judges to appoint reporters; neither does FRBkrP Part V-Bankruptcy Courts and Clerks. The appointment of reporters is provided for under §753(a), which empowers the Judicial Conference to determine their number and qualifications.

62. Moreover, bankruptcy courts are adjunct to the district courts, which refer bankruptcy cases to them under 28 U.S.C. §157(a) pursuant to the bankruptcy system set up in the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, in the aftermath of *Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982)*, which drew in question the constitutionality of some appellate aspects of the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (1978). The bankruptcy courts adjudicate cases referred to them by the district courts subject to the same administrative provisions to which district courts are subject if they adjudicate those cases, whether before any referral or after it upon withdrawing them under §156(d) from the bankruptcy courts back to themselves. In either event, the staff of the district or the bankruptcy courts, including the court reporters, perform the same functions subject to the same supervision, just as the public deals with them the same way.

VI. Request for Relief

63. The court officers and local parties are determined not to allow Dr. Cordero to use the *Pfuntner-DeLano* cases as a wedge to crack the bankruptcy fraud scheme. (E:51§IV) But they cannot prevent the Conference from investigating Reporter Dianetti and thus reaching the source of wrongdoing infect-

ing the core of judicial integrity. It is for each Conference member to determine how he or she will handle that clique and their pattern of disregard for duty and legality. Will each discharge his or her own duty to apply the law even to colleagues and appointees who have broken it for their own advantage, even by denying due process to a non-local person on whom they have inflicted enormous material and emotional injury for years? Failure to do so will only condone and thereby encourage those officers and parties to commit ever bolder acts, which will accumulate until attaining a critical mass threatening to explode and expose them, which will induce them into a cover up requiring ever more egregious, even criminal acts. (E:243D) It is a vicious circle that can only end up in disaster and shame for its active participants as well as those who had the duty to stop them but who instead aided and abetted them through their passivity in dereliction of duty. The choice is between sticking with unworthy members of the same class and keeping the oath to uphold the law and to fairness and justice. (E:253E) Where do your loyalties lie?

64. Therefore, Dr. Cordero respectfully requests that the Judicial Conference:
    a. Investigate under 28 U.S.C. §753(c) the refusal of Court Reporter Mary Dianetti to certify the reliability of the transcript in question in connection with the *DeLano* and *Pfuntner* cases as well as with the broader context of the pattern of non-coincidental, intentional, and coordinated acts of disregard for the law, the rules, and the facts engaged in by other court officers and parties in the Bankruptcy Court, WBNY, and District Court, WDNY
    b. Designate under §753(b) 3rd paragraph an experienced court reporter, unrelated to either Court Reporter Mary Dianetti or any court officers, whether judicial or administrative, of either of those Courts, to prepare the transcript based on all the stenographic packs and folds used by her to record the evidentiary hearing of March 1, 2005, having due regard for the chain of custody and condition of such packs and folds; and review such transcript; and
    c. Refer the *DeLano* and *Pfuntner* cases for investigation under 18 U.S.C. §3057(a) to U.S. Attorney General Alberto Gonzales, with the recommendation that they be investigated by U.S. attorneys and FBI agents, such as those from the Department of Justice and FBI offices in Washington, D.C., or Chicago, who are unfamiliar with either case, and unrelated and unacquainted with any of the parties or officers that may be investigated, and that no staff from such offices in either Rochester or Buffalo participate in any way in such investigation.

Dated: July 28, 2005

Dr. Richard Cordero

59 Crescent St.,
Brooklyn, NY 11208,

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

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in support of a Petition under 28 U.S.C. §753 to the Judicial Conference of the United States

submitted on July 28, 2005

by

Dr. Richard Cordero

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August 31, 2005

Chief Judge Michael B. Mukasey
As Member of the Judicial Conference of the U.S.
In care of: U.S. District Court, SDNY
500 Pearl Street
New York, NY 10007-1312

Dear Chief Judge,

On 1 instant, I sent you and the Chief Justice, as members of the Judicial Conference, a letter (E:261 infra) explaining why on the basis of 28 U.S.C. §753(b-c) I had submitted a petition to the Conference for an investigation, in the context of a bankruptcy fraud scheme pointing to official corruption, of a court reporter's refusal to certify the reliability of her transcript. On August 11, I received a cover letter (E:262) returning the petition. Anybody who had read my letter, as short as this one, let alone the caption of the petition, would have realized that neither had anything to do at all with an Article III case sent to the Court. Rather they concerned a request for Conference members to have the Conference carry out its reporter-related duties under §753.

The copies of the petition that I filed with the Administrative Office have also been returned. A perfunctory letter (E:263) does not even mention my discussion of §753 as authority for Conference action (Petition §V); wrongly copies *a docket entry* on exhibit page 230; and states that because I filed in district court a motion concerning the reporter, the Office "cannot address the court on behalf of a private party". But I never asked the Office to do anything, much less address any court; anyway, does it ignore what concurrent jurisdiction is? I filed the copies with it as the "clerk of Conference" and expected it to forward them to the Conference. Neither the Office has any authority to pass judgment on such filings nor the Conference should use it to avoid its statutory duty or stop a citizen from exercising his 1st Amendment right "to petition the [3rd Branch of] Government" by requesting that I cease writing to it. The disingenuousness of the letter is revealed by the fact that nobody wanted to take responsibility for it: it is unsigned!

Another letter (E:264) pretends that a circuit chief judge cannot forward to a colleague who is the chairperson of a Conference committee a petition within its jurisdiction with a note "for any appropriate action". Actually, I wrote to the chair of the Executive Committee (E:265), but have received no answer. There is a pattern: Judges avoid investigating one another and to that end will resort to cursory reading, disingenuous answering, and indifference to official corruption. Yet, there is evidence of a scheme: I served that motion on the Reporter on July 18, but to date she has not filed even a stick-it with the scribble "I oppose it", though by default she could lose her job, as could the Trustee, who has also disregarded my motion of July 13 for his removal. How did they know that Judge D. Larimer would not act on those motions, which implicate Judge J. Ninfo?

I am respectfully submitting to you for the Conference a Supplement to the Petition (51) showing how the Reporter's refusal to certify her transcript is part of a bankruptcy fraud scheme whereby a judge and a trustee have confirmed a debt repayment plan upon the pretense that an investigation cleared the bankrupts of fraud, but the evidence shows that there was never any investigation and the bankruptcy was fraudulent. I kindly request that you handle this Supplement and the Petition that I already sent you so that the Conference acts upon them to ensure judicial integrity and that you also refer them under 18 U.S.C. §3057(a) to Attorney General Alberto Gonzales.

Sincerely, Dr. Richard Cordero

Mk:194

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by
Dr. Richard Cordero

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Judicial Conference of the United States

SUPPLEMENT TO THE PETITION for an Investigation under 28 U.S.C. §753(c) of a Court Reporter's Refusal to Certify the Reliability of her Transcript and for Designation under §753(b) of Another Individual to Produce the Transcript

PROVIDING ADDITIONAL EVIDENCE of how the reporter's refusal forms part of a bankruptcy fraud scheme in which the debt repayment plan of a debtor, who has spent his 32-year career in banking and is currently in charge of bankruptcies of his bank's clients, was confirmed upon the trustee's allegation of having investigated and found no bankruptcy fraud on the debtor's part and the bankruptcy judge's acceptance of such allegation despite the evidence in the trustee's own documents and conduct of never having carried out any such fraud investigation

and how the trustee knows that he is so secure in his position that he never bothered to any of oppose motions for his removal raised before both the bankruptcy and the district judges, WDNY

Dr. Richard Cordero, Petitioner

Dr. Richard Cordero states under penalty of perjury the following:

1. Dr. Richard Cordero filed on July 28, 2005, with the Judicial Conference, and copied to its members, a petition for the Conference to conduct the above captioned investigation and designate a substitute for Court Reporter Mary Dianetti, Bankruptcy Court, WBNY. The transcript whose reliability Reporter Dianetti has refused to certify would show to the Conference –and eventually to the Court of Appeals for the Second Circuit and the Supreme Court- how both the above-mentioned debtor, who together with his wife filed *David and Mary Ann DeLano*, docket no. 04-20280, WBNY, and the bankruptcy judge, John C. Ninfo, II, abused process at the evidentiary hearing on March 1, 2005, of the DeLanos' motion to disallow Dr. Cordero's claim, a motion that was filed as an artifice to eliminate Dr. Cordero from the case

after he introduced evidence found in the DeLanos' bankruptcy petition and some documents that they had produced showing that they had committed bankruptcy fraud, particularly concealment of assets. Had Dr. Cordero not been eliminated, he would have standing to keep asking for an investigation of the DeLanos and requesting documents from them under 11 U.S.C. §704(4) and (7) and would have been able to prevent the undue confirmation of the plan on July 25, 2005, by objecting to it under §1325(b)(1) (all §# references are to 11 U.S.C. unless the context indicates otherwise).

2. Hence, the elimination of Dr. Cordero through the artifice of the motion to disallow opened the way for Chapter 13 Trustee George Reiber to submit the DeLanos' debt repayment plan for confirmation and for Judge Ninfo to confirm it. There are two motives to proceed thus: One is to avoid a harm in that the confirmation of the plan despite the evidence of bankruptcy fraud insures that the DeLanos will not be charged with fraud and, therefore, will have no incentive to enter into a plea bargain in which Mr. DeLano would disclose what he has during his 32-year banking career learned about bankruptcy fraud committed by debtors, trustees, and judicial officers, whereby those people would end up being incriminated. The other very powerful and corruptive motive is to obtain a benefit: MONEY!, for the plan's confirmation allows the DeLanos to avoid 78¢ on the dollar owed for a saving of over $140,000 plus all compounding delinquent interest at over 25% per year and in addition spares them having to account for more than $670,000! (¶48 below)
3. The confirmation of the plan on the pretext that an investigation of the DeLanos had been conducted and cleared them is only the latest in a pattern of non-coincidental, intentional, and coordinated acts in disregard of the law, the rules, and the facts that shows the existence of a bankruptcy fraud scheme. Such scheme provides the context for the other act, that is, the Reporter's refusal to certify the reliability of the transcript of her own recording of the evidentiary hearing. When the Judicial Conference discharges its statutory duty under 28 U.S.C. §753 by investigating such refusal upon Dr. Cordero's original petition (on the scope of that duty, see P.§V¶58 et seq. (P.=original petition)), the Conference should also exercise its duty under 28 U.S.C. §331 "to improve[] any matters in respect of [] the administration of justice in the courts of the United States", foremost among which are the integrity of court officers and judicial process, by investigating the operation of that scheme in confirming the plan as described in this supplement to the petition.

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4. The investigation of the confirmation of plan can take as its starting point the following entries

in the *DeLano* docket no. 04-20280 [Petition Exhibits, page 176=P.E:176]

Filing Date	#	Docket Text
06/23/2005		Clerk's Note: (TEXT ONLY EVENT) (RE: related document(s)5 CONFIRMATION HEARING At the request of the Chapter 13 Trustee, the Confirmation Hearing in this case is being restored to the 7/25/05 Calendar at 3:30 p.m. (Parkhurst, L.) (Entered: 06/23/2005)
07/25/2005	134	Confirmation Hearing Held - Plan confirmed. The Court found that the Plan was proposed in good faith, it meets the best interest test, it is feasible and it meets the requirements of Sec. 1325. The Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none. The Trustee read a statement into the record regarding his investigation. The plan payment were reduced to $635.00 per month in July 2004 and will increase to $960.00 per month when a pension loan is paid for an approximate dividend of five percent. The Trustee will confirm the date the loan will be paid off. The amount of $6,700.00 from the sale of the trailer will be turned over to the Plan. All of the Trustee's objections were resolved and he has no objections to Mr. Werner's attorney fees. Mr. Werner is to attach time sheets to the confirmation order. Appearances: Debtors, Christopher Werner, attorney for debtors, George Reiber, Trustee. (Lampley, A.) (Entered: 08/03/2005)

5. When one clicks on hyperlink 134 what downloads is a three-page document titled "Trustee's Findings of Fact and Summary of 341 Hearing". What shockingly unprofessional and perfunctory scraps of papers! (Exhibits, pages 271-273, infra=E:271-273) Their acceptance by Judge Ninfo as the Trustee's "Report" (¶32 below) is so revealing that they warrant close analysis.
6. Even if Trustee Reiber has no idea of what a professional paper looks like, he has the standards of the Federal Rules as a guide to what he can file. One of those Rules provides thus:

> FRBkrP 9004. General Requirements of Form
> (a) Legibility; abbreviations
> All petitions, pleadings, schedules **and other papers *shall*** be clearly legible. Abbreviations in common use in the English language may be used. (emphasis added)

7. The handwritten jottings on those scrap papers are certainly not "clearly legible". The standard for legibility can further be gleaned from the Local Bankruptcy Rules:

> **Local Bankruptcy Rule 9004. PAPERS**

9004-1. FORM OF PAPERS *[Former Rule 13 A]*

All pleadings **and other papers *shall*** be plainly and **legibly written**, preferably **typewritten**, printed or reproduced; ***shall*** be **without erasures or interlineations materially *defacing* them**; shall be in ink or its equivalent on durable, white paper of good quality; and, except for exhibits, shall be on letter size paper, and **fastened** in durable covers. (emphasis added)

9004-2. CAPTION *[Former Rule 13 B]*

All pleadings **and other papers *shall*** be **captioned** with the name of the Court, the title of the case, the proper docket number or numbers, including the initial at the end of the number indicating the Judge to whom the matter has been assigned, and a **description of their nature**. All pleadings **and other papers**, unless excepted under Rule 9011 Fed.R.Bankr.P., ***shall*** be **dated**, **signed** and have thereon the **name, address and telephone number of each attorney, or** if no attorney, then the **litigant** appearing. (emphasis added)

9004-3. Papers not conforming with this rule generally shall be received by the Bankruptcy Clerk, but the **effectiveness** of any such papers shall be **subject to** determination of the **Court**. *[Former Rule 13 D]* (emphasis added)

8. The interlineations and crossings-out and crisscrossing lines and circles and squares and uncommon abbreviations and the scattering of meaningless jottings deface these scrap papers. Moreover, they are not captioned with the name of any court.
9. What is more, the 'description' "Trustee's Findings of Fact and Summary of 341 Hearing" is ambiguous and confusing. Indeed, there is no such thing as a "341 Hearing". What is there is "§341 Meetings of creditors and equity security holders". The distinction between meetings and hearings is a substantive one because §341 specifically provides as follows:

> 11 U.S.C. §341 (c) the court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors.

10. Neither the court can attend a §341 meeting nor a trustee has any authority to conduct a hearing. The trustee does not listen passively at such a meeting either. This is how his role is described:

> 11 U.S.C.§343. Examination of the debtor
>
> The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of the title. Creditors, any indenture trustee, **any trustee** or examiner in the case, or the United States trustee may **examine the debtor**. The United States trustee may administer the oath required under this section. (emphasis added)

11. The trustee attends a §341 meeting to engage in the active role of an examiner of the debtor. Actually, his role is inquisitorial. So §1302(b) makes most of §704 applicable to a Chapter 13 case, such as *DeLano* is. In turn, the Legislative Report on §704 states that the trustee works "for

the benefit of general unsecured creditors whom the trustee represents". That representation requires the trustee to adopt the same inquisitorial, distrustful attitude that the creditors are legally entitled to adopt at their meeting when examining the debtor, which is unequivocally stated under §343 in its Statutory Note and made explicitly applicable to the trustee thus:

> The purpose of the examination is to enable creditors and ***the trustee*** to determine if assets have improperly been disposed of or concealed or if there are grounds for objection to discharge. (emphasis added)

12. Hence, what is it that Trustee Reiber conducts if he does not even know how to refer to it in the title of his scrap papers: a §341 meeting of creditors or an impermissible "341 Hearing" before Judge Ninfo? And in *DeLano*, when did that "341 Hearing" take place?, for not only is such "Hearing" not dated, but also none of those three scrap papers is dated, in disregard of the requirement under Local Bankruptcy Rule 9004-2 (¶7 above) that they "***shall*** be **dated".** However, if the Trustee's scrap papers refer to a meeting of creditors, to which one given that there were two, one on March 8, 2004, and the other on February 1, 2005? Moreover, on such occasion, what attitude did the Trustee adopt toward the DeLanos: an inquisitorial one in line with his duty to suspect them of bankruptcy fraud or a passive one dictated by the foregone conclusion that the DeLanos had to be protected and given debt relief by confirming their plan?
13. Nor do those scrap papers comply with the requirement that they "***shall*** be **signed".** Merely initializing page 2 (E:272) is no doubt another manifestation of the perfunctory nature of Trustee Reiber's scrap papers, but it is no substitute for affixing his signature to it. Does so initializing it betray the Trustee's shame about putting his full name on such unprofessional filing with a U.S. court?

A. The third scrap of paper "I/We filed Chapter 13 for one or more of the following reasons:" with its substandard English and lack of any authoritative source for the "reasons" cobbled together in such cursory form indicts the Trustee and Judge Ninfo who relied thereon for their pretense that a bankruptcy fraud investigation had been conducted

14. The third scrap paper (E:273) bears the typewritten statement "I/We filed Chapter 13 for one or more of the following reasons:" Which one of the DeLanos, or was it both, made the checkmarks and jottings on it? If the latter were made by Trustee Reiber at his very own "341 Hearing", did he simply hear the DeLanos' "reasons" for filing –assuming such attribution can be made to them– and uncritically accept them? Yet, those "reasons" raise a host of critical questions. Let's examine those that have been checkmarked and have any *handwritten jottings* next to them:

√ Lost employment *(Wife) Age 59*

15. What is the relevance of the Wife losing her employment? Mr. DeLano lost his employment over 10 years ago and then found another one and is currently employed, earning an above-average income of $67,118 in 2003, according to the Statement of Financial Affairs in their petition.
16. Likewise, what is the relevance of her losing her employment at age 59, or was that her age whenever that undated scrap paper was jotted? Given that the last jotting connects a "reason" for filing their petition on January 27, 2004, to a *"pre-1990"* event, it is fair to ask when she lost her employment and what impact it had on their filing now.

√ Hours or pay reduced *(Husband 62) To delay retirement to complete plan*

17. Does the inconsistency between writing *"62"* inside the parenthesis in this "reason" and writing "*Age 59"* outside the parenthesis in the "reason" above reflect different meanings or only stress the perfunctory nature of these jottings? Does it mean that he was 62 when his hours or pay were reduced and that before that age he was earning even more than the $67,118 that he earned in 2003 or that when he turns 62 his hours or pay will be reduced and, if so, by how much, why, and with what impact on his ability to pay his debts? Or does it mean that he will *"delay retirement"* until he turns 62 so as *"to complete plan"*?
18. Otherwise, what conceivable logical relation is there between "Hours or pay reduced" and *To delay retirement to complete plan*? In what way does that kind of gibberish amount to a "reason" for debtors not having to pay their debts to their creditors?
19. Given that 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-, how can he be sure that he remembers correctly whatever it was that he meant when he made such jottings, that is, assuming that it was he and not the "I/We..." who made them?; but if the latter, then there is no way for the Trustee to know with certainty what the "I/We..." meant with those jottings. It is perfunctory per se for the Trustee to submit to a court a scrap paper that is intrinsically so ambiguous that the court cannot objectively ascertain its precise meaning among possible ones.

√ To pay back creditors as much as possible *in 3yrs prior to retirement*

20. If the DeLanos were really interested in paying back all they could, then they would have provided for the plan to last, not the minimum duration of three years under §1325(b)(1)(A), but rather the longer period of five years…or they would not retire until they paid back what they borrowed on the explicit or implicit promise that they would repay it. And they would have

planned to pay more than just $635.

$4,886.50	projected monthly income (Schedule I)
-1,129.00	presumably after Mrs. DeLano's unemployment benefits ran out in 6/04 (Sch. I)
$3,757.50	net monthly income
-2,946.50	for the very comfortable current expenditures (Sch. J) of a couple with no dependents
$811.00	actual disposable income

21. Yet, the DeLanos plan to pay creditors only $635.00 per month for 25 months, the great bulk of the 36 months of the repayment period. By keeping the balance of $176 per month = $811 – 635, they withhold from creditors an extra $4,400 = $176 x 25. No explanation is given for this …although these objections were raised by Dr. Cordero in his written objections of March 4, 2004, ¶¶7-8. Did Trustee Reiber consider those objections as anything more than an insignificant nuisance and, if so, how could he be so sure that Judge Ninfo would consider them likewise?

√ To cram down secured liens

22. What is the total of those secured liens and in what way do they provide a "reason" for filing a bankruptcy petition?

√ Children's college expenses *pre-1990 when wages reduced $50,000 → 19-000*

23. The DeLanos' children, Jennifer and Michael, went for two years each to obtain associate degrees from the in-state low-tuition Monroe Community College, a local institution relative to the DeLanos' residence, which means that their children most likely resided and ate at home while studying there and did not incur the expense of long distance traveling between home and college. The fact is that whoever wrote that third scrap paper did not check "Student loans". So, what "college expenses" are being considered here? Moreover, according to that jotting, whatever those "college expenses" are, they were incurred *"pre-1990"*. Given that such listed "reasons" as, "Medical problems", "To stop creditor harassment", "Overspending" and "Protect debtor's property" were not checked, how can those "college expenses" have caused the DeLanos to go bankrupt *15 years later?* This is one of the most untenable and ridiculous "reasons" for explaining a bankruptcy…
24. …until one reaches the bottom of that scrap paper and, just as at the top, there is no reference to any Official Bankruptcy Form; no citation to any provision of the Bankruptcy Code or the FRBkrP from which this list of "reasons" was extracted; no reference to any document where the "reasons" checked were quantified in dollar terms and their impact on the DeLanos' income was calculated so that the numerical result would lead to the conclusion that they were entitled under law to avoid paying their creditors 78¢ on the dollar and interest at the delinquent rate of over

25% per year. So, on the basis of what calculations in this scrap paper or why in spite of their absence did Judge Ninfo conclude that the DeLanos' plan "meets the best interest test"? (¶4 above)

25. Nor is there any reference to a document explaining in what imaginable way, for example, "Matrimonial" is a "reason" for anything, let alone for filing for bankruptcy; or how "Reconstruct credit rating" is such an intuitive "reason" for filing for bankruptcy because then your credit rating in credit bureau reports will go up. There is no reference either to a rule describing the mechanism whereby "Student loans" are such a "reason" despite the fact that 11 U.S.C. provides thus:

> §523. Exceptions to discharge
> (a) A discharge under section…1328(b) of this title does not discharge an individual debtor from any debt-…(8) for an education benefit overpayment or loan made…

26. The lack of grammatical parallelism among the entries on that list is most striking. So the first "reason" appears to be the subordinate clause of the subordinating clause that will be used as an implicit refrain to introduce every "reason" and thereby give the list semantic as well as syntactic consistency: "I/We filed…" because: (I/We omitted but implicit) "Lost employment". However, the second "reason" does not fit this pattern: "I/We filed…" because: "Hours or pay reduced". The next reason is expressed by an adjective, "Matrimonial", while the following one is a noun "Garnishments". A "reason" is set forth with a gerund, "Overspending", but others are stated with the bare infinitive, "Protect debtor's property", whereas others use *to*-infinitive, "To receive a Chapter 13 discharge" (which by the way, is a particularly *enlightening* "reason", for is that not the result aimed at when invoking any other "reason"?). What a mishmash of grammatical constructions! They not only render the list inelegant, but also jar its reading and make its comprehension more difficult. Who bungled that form? Was it approved by any of the U.S. trustees? How many plans has Judge Ninfo confirmed based on it? It was not made specifically for the DeLanos, was it? Is there a financial motive for confirming plans no matter what?

27. The grammar of the "reasons" is not the only bungled feature in this form. In addition, it lacks a caption. Then the sentence that introduces the "reasons" is written in broken English: "I/We filed Chapter 13 for one or more of the following reasons:" What substandard command of the English language must one have not just to say, but also to write in a form presumably to be used time and again and even be submitted formally to a court: 'You filed Chapter 13….'

28. If you were sure, positive, dead certain that your decision was going to be circulated to, and read by, all your peers and hierarchical superiors and even be made publicly available for close

scrutiny, would you fill out an order form thus?: "The respondents filed Chapter 13 and win 'cause they *ain't have no money but in the truth they don wanna pluck from their stash and they linked up with their buddies that they are buddies with'em after cookin' a tons of cases to stiff the creditor dupe that his and they keep all dough in all respects denied for the other yo.*" (Completing the order form in handwriting would give it a touch of flair…in pencil, for that would show…no, no! better still, in crayon, shocking pink! It is bound not only to catch the attention of all the peers, so jaded by run-of-the-mill judicial misconduct, but also illustrate to the FBI and DoJ attorneys how sloppiness can be so incriminating by betraying overconfidence grown out of routine participation in a pattern of unchecked wrongdoing and by laying bare utter contempt for the law, the rules, and the facts while showing no concern for even the appearance of impartiality.)

29. Still worse, the third scrap paper is neither initialized nor signed; of course, it bears no address or telephone number. So who on earth is responsible for its contents? (cf. E:263) And as of what date, for it is not dated either. For such scrap paper, this is what the rules provide:

> FRBkrP 9011. Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers
>
> (a) Signing of papers
>
> Every petition, pleading, written motion, **and other paper,** except a list, schedule or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign all papers. Each paper shall state the **signer's address** and **telephone number**, if any. An **unsigned paper *shall* be stricken** unless omission of the signature is corrected promptly after being called to the attention of the attorney or party. (emphasis added)

30. To the extent that this third scrap of paper is a list that need not be signed by an attorney, the Advisory Committee Notes to Rule 9011, Subdivision (a) states that "Rule 1008 requires that these documents be verified by the debtor." Rule 1008 includes "All…lists" and Rule 9011(e) explains how the debtor verifies them: "an unsworn declaration as provided in 28 U.S.C. §1746 satisfies the requirement of verification". What §1746 provides is that 'the declarant must "in writing" subscribe the matter with a declaration in substantially the form "I declare under penalty of perjury that the foregoing is true and correct. Executed on (date)"'.

31. The shockingly unprofessional and perfunctory nature of Trustee Reiber's three-piece scrap papers can also be established under Local Rule 10 of the District Court, WDNY, requiring that "All text…in…memoranda and other papers shall be plainly and legibly…typewritten…without erasures or interlineations materially defacing them,…signed…and the name, address and telephone number of each attorney or litigant …shall be…thereon. All papers shall be dated."

II. Judge Ninfo confirmed the DeLanos' plan by stating that the Trustee had completed the investigation of the allegations of their fraud and cleared them; yet, he had the evidence showing that the Trustee had conducted no such investigation

32. Judge Ninfo confirmed the DeLanos' plan in his Order of August 9, 2005 (E:275). Therein he stated that he "has considered…the Trustee's Report", which is a reference to Trustee Reiber's three scrap papers since it is the only document that the Trustee filed aside from what the Judge himself referred to as the Trustee's "statement". Indeed, the docket entry (¶2 above) states:

> The Court found that the…Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none. The Trustee read a statement into the record regarding his investigation.

33. However, what page 2 of Trustee Reiber's scrap papers (E:272) states is this:

> 7. Objections to Confirmation: Trustee – disposable income –
> 1) I.R.A. available; 2) loan payment available;
> 3) pension loan ends 10/05.

34. There is nothing about Dr. Cordero's objections to the DeLanos' bankruptcy fraud! No mention of his charge that they have concealed assets. Nothing anywhere else in the Trustee's scrap papers concerning any investigation of anything. Nevertheless, in "9. Other comments:", there is, apart from another very unprofessional double strikethrough ~~"1) Best Interest - $1255;"~~ "Attorney fees". At the bottom of the page is written: "ATTORNEY'S FEES" $ 1350 and, below that, "Additional fees Yes" $16,655. The itemized invoice for legal fees billed by Att. Werner shows that those fees have been incurred almost exclusively in connection with Dr. Cordero's request for documents and the DeLanos' efforts to avoid producing them, beginning with the entry on April 8, 2004 "Call with client; Correspondence re Cordero objection" (E:279) and ending with that on June 23, 2005 "(Estimated) Cordero appeal" (E:282).

A. Judge Ninfo knew since learning it in open court on March 8, 2004, that Trustee Reiber had approved the DeLanos' petition without minding its suspicious declarations or asking for supporting documents and opposed every effort by Dr. Cordero to investigate or examine the DeLanos

35. Although Trustee Reiber was ready to submit the DeLanos' debt repayment plan to Judge Ninfo for confirmation on March 8, 2004, he could not do so precisely because of Dr. Cordero's objections of March 4, 2004 and his invocation of the Trustee's duty under 11 U.S.C. §704(4) and (7) to investigate the debtor. Since then and only at Dr. Cordero's instigation, the Trustee,

who is supposed to represent unsecured creditors (¶11 above), such as Dr. Cordero, has pretended to have been investigating the DeLanos on the basis of those objections.

36. Yet, any competent and genuine representative of adversarial interests, as are those of creditors and debtors, would have found it inherently suspicious that Mr. DeLano, a banker for 32 years currently handling the bankruptcies of clients of M&T Bank, had gone himself bankrupt: He would be deemed to have learned how to manage his own money as well as how to play the bankruptcy system. Suspicion about the DeLanos' bankruptcy would have been provided the solid foundation of documentary evidence in their Schedule B, where they declared having only $535 in cash and account despite having earned $291,470 in just the immediately preceding three years yet declaring nothing but $2,910 in household goods, while stating in Schedule F a whopping credit card debt of $98,092! Where did the money go or is?

37. That common sense question would not pop up before Trustee Reiber. He accepted the DeLanos' petition, filed on January 27, 2004, without asking for a single supporting document. He only pretended to be investigating the DeLanos but without showing anything for it. Only after being confronted point blank with that pretension by Dr. Cordero, did the Trustee for the first time request documents from the DeLanos on April 20, 2004…in a pro forma request, for he would not ask them for the key documents that would have shown their in- and outflow of money, namely, the statements of their checking and savings accounts. Moreover, he showed no interest in obtaining even the documents concerned by his pro forma request upon the DeLanos failing to produce them. When at Dr. Cordero's insistence the Trustee wrote to them again, it was on May 18, 2004, just to ask for a "progress" report.

38. So incapable and ineffective did Trustee Reiber prove to be in his alleged investigation of the DeLanos that on July 9, 2004, Dr. Cordero moved Judge Ninfo in writing to remove the Trustee. Dr. Cordero pointed out the conflict of interests that the Trustee faced due to the request that he:

> investigate the DeLanos by requesting, obtaining, and analyzing such documents, which can show that the petition that he so approved and readied [for confirmation by Judge Ninfo on March 8, 2004] is in fact a vehicle of fraud to avoid payment of claims. If Trustee Reiber made such a negative showing, he would indict his own and his agent-attorney [Weidman]'s working methods, good judgment, and motives. That could have devastating consequences [under 11 U.S.C. §324(b)]. To begin with, if a case not only meritless, but also as patently suspicious as the DeLanos' passed muster with both Trustee Reiber and his attorney, what about the Trustee's [3,908] other cases? Answering this question would trigger a check of at least randomly chosen cases, which could lead to his and his agent-attorney's suspension and removal. It is reasonable to assume that the Trustee would prefer to avoid such consequences. To

> that end, he would steer his investigation to the foregone conclusion that the petition was filed in good faith. Thereby he would have turned the "investigation" from its inception into a sham!

39. So it turned out to be: a sham. At Dr. Cordero's insistence, the DeLanos produced documents, including Equifax credit bureau reports for each of them, but only to the Trustee. The latter sent Dr. Cordero a copy on June 16, 2004. However, he took no issue with the DeLanos when Dr. Cordero showed that those were token documents and were even missing pages! Indeed, the Trustee had requested pro forma on April 20, the production of the credit card statements for the last 36 months of each of only 8 accounts, even though the DeLanos had listed in Schedule F 18 credit card accounts on which they had piled up that staggering debt of $98,092. As a result, they were supposed to produce 288 statements (36 x 8). Nevertheless, the Trustee satisfied himself with the mere 8 statements that they produced, a single one for each of the 8 accounts!
40. Moreover, the DeLanos had claimed **15 times** in Schedule F of their petition that their financial troubles had begun with "1990 and prior credit card purchases". That opened the door for the Trustee to request them to produce monthly credit card statements since at least 1989, that is, for 15 years. But in his pro forma request he asked for those of only the last 3 years. Even so, the 8 token statements that the DeLanos produced were between 8 and 11 months old!…insufficient to determine their earnings outflow or to identify their assets, but enough to show that they keep monthly statements for a long time and thus, that they had current ones but were concealing them.
41. Instead of becoming suspicious, the Trustee accepted the DeLanos' implausible excuse that they did not possess those statements and had to request them from the credit card issuers. His reply was that he was just "unhappy to learn that the credit card companies are not cooperating with your clients in producing the statements requested", as he put it in his letter of June 16, 2004, to Att. Werner…but not unhappy enough to ask them to produce statements that they indisputably had, namely, those of their checking and savings accounts. Far from it, the Trustee again refused to request them, and what is more, expressly refused in his letter of June 15, 2004, to Dr. Cordero the latter's request that he use subpoenas to obtain documents from them.
42. Yet, the DeLanos had the obligation under §521(3) and (4) "to surrender to the trustee…any recorded information…", an obligation so strong that it remains in force "whether or not immunity is granted under section 344 of this title". Instead, the Trustee allowed them to violate that obligation then and since then given that to date they have not produced all the documents covered by even his pro forma request of April 20, 2004. The DeLanos had no more interest in producing incriminating documents that could lead to their concealed assets than the Trustee had in

obtaining those that could lead to his being investigated. They were part of the same sham!

43. But not just any sham, rather one carried out in all confidence, for by now Trustee Reiber has worked with Judge Ninfo on well over 3,907 cases (¶19 above). Presumably many are within the scope of the bankruptcy fraud scheme given that it is all but certain that *DeLano* is not the first case that they, had they always been conscientious officers, all of a sudden decided to deal with by coordinating their actions to intentionally disregard the law, the rules, and the facts for the sake of the DeLanos, who in that case would have something so powerful on them as to cause them to violate the law. In any event, one violation is one too many. Actually, what they have on each other is knowledge of their long series of unlawful acts forming a pattern of wrongdoing. Now, nobody can turn against the other for fear that he or she will be treated in kind. Either they stick together or they fall one after the other.
44. Consequently, Trustee Reiber did not have to consider for a second that upon Dr. Cordero's motions of July 9 and August 14, 2004, Judge Ninfo would remove him from *DeLano* under §324(a). That would have entailed his automatic removal as trustee from all other cases under §324(b), and thereby his termination as trustee. Since that would and will not happen, the Trustee did not file even a scrap paper to state pro forma that he opposed the motions. Revealingly enough, he is not concerned either that District Judge David Larimer may remove him upon Dr. Cordero's motion of July 13, 2005. Hence he has not wasted time scribbling anything in opposition.
45. Not only he, but also Reporter Dianetti has not considered it necessary to waste any effort in the formality of opposing Dr. Cordero' motion of July 18 requesting that Judge Larimer designate another individual to prepare the transcript of her recording of the March 1 evidentiary hearing. Yet, all they needed to do was as cursory a gesture as Att. Werner's two conclusory sentences (E:332) to oppose Dr. Cordero's July 13 motion to stay the confirmation hearing…and a cover letter addressed directly to Judge Larimer to show him ingratiating deference (E:331).
46. Can you imagine either the Trustee or the Reporter reacting with such indifference to motions that can cost them their livelihood or Att. Werner skipping any legal argument and slipping in a mere courtesy note had this case been transferred to another court, such as that in Albany, NDNY, where they did not know the judge and could not tell on him? Of course not, they could lose the motions by default! But they have nothing to worry about, for Judge Larimer has not decided any of the four motions of Dr. Cordero pending before him, even one as far back as June 20 to link to this case *Pfuntner v. Trustee Kenneth Gordon et at.*, docket no. 02-2230, WBNY, which gave rise to Dr. Cordero's claim against Mr. DeLano. (P.E:43; P.¶34))

47. What a contrast with the celerity with which Judge Larimer reacted when the Bankruptcy Clerk, disregarding FRBkrP 8007, forwarded to him upon receipt on April 21, Dr. Cordero's designation of items on appeal and a copy of his first letter of April 18 to Reporter Dianetti to make arrangements for the transcript. Though the record was legally incomplete, lacking the transcript and the appellee's designation of additional items and any issues on cross appeal, immediately the following day, April 22, Judge Larimer issued a scheduling order requiring Dr. Cordero to file his appellate brief 20 days hence, knowing full well that the date of the Reporter's completion of the transcript was nowhere in sight so that his order would effectively prevent Dr. Cordero from using it when writing his brief. (P.§III¶36 et seq.). Could it not be in Judge Larimer's interest to decide any of those motions, thereby exposing not only this case and the sham investigation, but the bankruptcy fraud scheme itself to scrutiny by circuit judges and justices?

B. The sham character of Trustee Reiber's pro forma request for documents and the DeLanos' token production is confirmed by the charade of a §341 meeting through which the Trustee has allowed the DeLanos not to account for hundreds of thousands of dollars obtained through a string of mortgages

48. Trustee Reiber has allowed the DeLanos to produce token documents in connection with one of the most incriminating elements of their petition: their concealment of mortgage proceeds. Indeed, they declared in Schedule A that their home at 1262 Shoecraft Road in Webster, NY, was appraised at $98,500. However, they still owe on it $77,084.49. One need not be a trustee, let alone a competent one, to realize how suspicious it is that two debtors approaching retirement have gone through their working lives and have nothing to show for it but equity of $21,415 in the very same home that they bought 30 years ago! Yet, they earned $291,470 in just the 2001-03 fiscal years. Have the DeLanos stashed away their money in a golden pot at the end of their working life rainbow? Is the Trustee afraid of scooping gold out of the pot lest he may so rattle Mr. DeLano's rainbow, which arches his 32-year career as a banker, as to cause Mr. DeLano to paint in the open for everybody to see all sorts of colored abuses of bankruptcy law that he has seen committed by colluding debtors, trustees, and judicial officers?
49. The fact is that despite Dr. Cordero's protest, both Trustee Reiber ratified and Judge Ninfo condoned the unlawful termination by Att. Weidman of the §341 meeting of creditors on March 8, 2004, where the DeLanos would have had to answer under oath the questions of Dr. Cordero, who was the only creditor present but was thus cut off after asking only two questions. Then it was for the Trustee to engage in his reluctant pro forma request for documents. When Dr. Cordero

moved for his removal on July 9, 2004 (¶38 above), he also submitted to Judge Ninfo his analysis of the token documents produced by the DeLanos and showed on the basis of such documentary evidence how they had engaged in bankruptcy fraud, particularly concealment of assets. Thereupon an artifice was concocted to eliminate him from the case altogether: The DeLanos moved to disallow his claim, knowing that Judge Ninfo would disregard the fact, among others, that such a motion was barred by laches and untimely. Not only did the Judge permit the motion to proceed, but he also barred any other proceeding unrelated to its consideration.

50. From then on, Trustee Reiber pretended that he too was barred from holding a §341 meeting of creditors in order to deny Dr. Cordero's request that such meeting be held so that he could examine the DeLanos under oath. Dr. Cordero confronted not only the Trustee, but also his supervisors, Assistant U.S. Trustee Kathleen Dunivin Schmitt and U.S. Trustee for Region 2 Dierdre A. Martini, with the independent duty under §§341 and 343 as well as FRBkrP 2004(b) for members of the Executive Branch to hold that meeting regardless of any action taken by a member of the Judicial Branch. Neither supervisor replied. Eventually Trustee Reiber relented, but refused to assure him that the meeting would not be limited to one hour. Dr. Cordero had to argue again that neither Trustee Reiber nor his supervisors had any basis in law to impose such arbitrary time limit given that §341 provides for an indefinite number of meetings. In his letter of December 30, 2004 (E:283), he backed down from that limit.
51. Finally, the meeting was held on February 1, 2005, at Trustee Reiber's office. It was recorded by a contract stenographer. The DeLanos were accompanied by Att. Werner. The Trustee allowed the Attorney, despite Dr. Cordero's protest, unlawfully to micromanage the meeting, intervening at will constantly and even threatening to walk out with the DeLanos if Dr. Cordero did not ask questions at the pace and in the format that he, Att. Werner, dictated.
52. Nevertheless, Dr. Cordero managed to point out the incongruities in the DeLanos' statements about their mortgages and credit card use. He requested a title search and a financial examination by an accounting firm that would produce a chronologically unbroken report on the DeLanos' title to real estate and use of credit cards. However, the Trustee refused to do so and again requested pro forma only some mortgage papers. Although the DeLanos admitted that they had them at home, the Trustee allowed them two weeks for their production…and still they failed to produce them by the end of that period.
53. Dr. Cordero had to ask Trustee Reiber to compel the DeLanos to comply with the Trustee's own pro forma request. They produced incomplete documents (E:285-297) once more (¶39 above) because

Att. Werner made available only what he self-servingly considered "the relevant portion" of those documents (E:284). Dr. Cordero analyzed them in his letter of February 22, 2005, to the Trustee (E:29) with copy to his supervisors, Trustees Schmitt and Martini, who never replied. But even incomplete, those documents raise more and graver questions than they answer, for they show an even longer series of mortgages relating to the same home at 1262 Shoecraft Road:

Mortgage referred to in the incomplete documents produced by the DeLanos to Trustee Reiber	Exhibit page #	Amounts of the mortgages
1) took out a mortgage for $26,000 in 1975;	E:285	$26,000
2) another for $7,467 in 1977;	E:286	7,467
3) still another for $59,000 in 1988; as well as	E:289	59,000
4) an overdraft from ONONDAGA Bank for $59,000 and	E:298	59,000
5) owed $59,000 to M&T in 1988;	E:298	59,000
6) another mortgage for $29,800 in 1990,	E:291	29,800
7) even another one for $46,920 in 1993, and	E:292	46,920
8) yet another for $95,000 in 1999.	E:293	95,000
	Total	$382,187.00

54. The whereabouts of that $382,187 are unknown. On the contrary, Att. Werner's letter of February 16, 2005 (E:284), accompanying those incomplete documents adds more unknowns:

> It appears that the 1999 refinance paid off the existing M&T first mortgage and home equity mortgage and provided cash proceeds of $18, 746.69 to Mr. and Mrs. DeLano. Of this cash, $11,000.00 was used for the purchase of an automobile, as indicated. Mr. DeLano indicates that the balance of the cash proceeds was used for payment of outstanding debts, debt service and miscellaneous personal expenses. He does not believe that he has any details in this regard, as this transaction occurred almost six (6) years ago.

55. So after that 1999 refinancing, the DeLanos had clear title to their home and even money for a car and other expenses, presumably credit card purchases and debt service. But only 5 years later, they owed $77,084.49 on their home, $98,092.91 on credit cards, and $10,285 on a 1998 Chevrolet Blazer (Schedule D), not to mention the $291,470 earned in 2001-03 that is nowhere to be seen…and owing all that money just before retirement is only "details" that a career banker for 32 years "does not believe that he has". Mindboggling!

56. Although Dr. Cordero identified these incongruous elements (E:300-302) in the petition and documents, the Trustee had nothing more insightful to write to Att. Werner than "I note that the

1988 mortgage to Columbia, which later ended up with the government, is not discharged of record or mentioned in any way, shape, or form concerning a payoff. What ever happened to that mortgage?" (E:306)

57. To that pro forma question Att. Werner produced some documents to the Trustee on March 10, 2005 (E:307), but not to Dr. Cordero, who he could be sure would analyze them. Dr. Cordero protested to Att. Werner and the Trustee for not having been served (E:308). When Att. Werner belatedly served him (E:309), it became apparent why he had tried to withhold the documents (E:310-323) from him: They were printouts of pages from the website of the Monroe County Clerk's Office that had neither beginning nor ending dates of a transaction, nor transaction amounts, nor property location, nor current status, nor reference to the involvement of the U.S. Department of Housing and Urban Development . What a pretense on the part of both Att. Werner and Trustee Reiber! No wonder Dr. Cordero's letter of March 29 analyzing those printouts and their implications (E:324) has gone unanswered by Trustees Reiber, Schmitt, and Martini (E:327-330).
58. As a result, hundreds of thousands of dollars received by the DeLanos during 30 years are unaccounted for, as are the $291,470 earned in the 2001-03 period, over $670,000!, because Trustee Reiber evaded his duty under §704(4) and (7) to investigate the debtors by requiring them to explain their suspicious declarations and provide supporting documents. Not coincidentally, when on February 16, 2005, Dr. Cordero asked Trustee Reiber for a copy of the transcript of the February 1 meeting, he alleged that Dr. Cordero would have to buy it from the stenographer because she had the rights to it! Yet she created nothing and simply produced work for hire.
59. The evidence indicates that since that meeting on February 1 till the confirmation hearing on July 25, 2005, Trustee Reiber never intended to obtain from the DeLanos any documents to answer his pro forma question about one undischarged mortgage; they did not serve on Dr. Cordero any such documents even though under §704(7) he is still a party in interest entitled to information; and the Trustee neither introduced them into evidence at that hearing nor made any reference to them in the scrap papers of his "Report". Do they fear that those documents will reveal conceal assets?

C. The affirmation by both Judge Ninfo and Trustee Reiber that the DeLanos were investigated for fraud is contrary to the evidence available and lacks the supporting evidence that would necessarily result from an investigation so that it was an affirmation made with reckless disregard for the truth

60. Judge Ninfo disregarded the evidence that Trustee Reiber never requested a single supporting document from the DeLanos before Dr. Cordero asked that they be investigated and thereafter always avoided investigating them, making pro forma requests and satisfying himself with token

documents, if any was produced. The Judge disregarded the incriminating evidence in those documents and the Trustee's conflict of interests between dutifully investigating the DeLanos and ending up being investigated himself. Instead, he accepted the Trustee's "Report" although it neither lists Dr. Cordero's objections nor mentions any investigation, much less any findings. In so doing, he showed his unwillingness to recognize or incapacity to notice how suspicious it was that an investigation that the Trustee had supposedly conducted over 16 months had not registered even a blip in that "Report". By contrast, the Judge was willing to notice the air exhaled by Trustee Reiber reading his statement into the record despite his failure to file any documents attesting to any investigation. He even allowed the Trustee's ruse of not filing even that statement so as to avoid making it available in the docket, thus requiring the expensive, time consuming, and tamper-susceptible alternative of asking for a transcript from Reporter Dianetti (E:9-11; P.§II).

61. Nor did the Judge draw the obvious inference that the same person who produced such damning evidence of his unprofessional and perfunctory work in his scrap paper "Report" was the one who would have conducted the investigation and, thus, would have investigated to the same dismal substandard of performance. Therefore, common sense and good judgment required that the Trustee's investigation be reviewed as to its contents, method, and conclusions. No such review took place, which impugns Judge Ninfo's discretion in rushing to clear the DeLanos from, as he put it, any "allegations (the evidence notwithstanding) of bankruptcy fraud".
62. The documentary and circumstantial evidence justifies the conclusion that Trustee Reiber and Judge Ninfo have engaged with others in a pattern of non-coincidental, intentional, and coordinated acts of wrongdoing, including a sham bankruptcy fraud investigation, the process-abusive artifice of a motion to disallow Dr. Cordero's claim, and the charade of the meeting of creditors to appease Dr. Cordero and feign compliance with §341. In disregard of the law, the rules, and the facts, they began with the prejudgment and ended with the foregone conclusion that the DeLanos had filed a good faith petition and that their Chapter 13 plan should be confirmed. They confirmed the plan without investigating the DeLanos as the surest way of forestalling a finding of the DeLanos having filed a fraudulent petition, which would have led to their being criminally charged, which in turn would have induced Mr. DeLano to enter into a plea bargain whereby he would provide incriminating testimony of participation in a bankruptcy fraud scheme.
63. It follows that insofar as Trustee Reiber made the untrue statement that "The Trustee completed his investigation of allegations of bankruptcy fraud and found there to be none" in order to induce the Bankruptcy Court to confirm the DeLanos' plan and to escape his own conflict of interests (¶38

above), the Trustee perjured himself and practiced, to secure a benefit for himself, fraud on the Court as an institution even if Judge Ninfo knew that his statement was not true; as well as fraud on Dr. Cordero, to whom he knowingly caused the loss of rights as a creditor of the DeLanos.

64. It also follows that insofar as Judge Ninfo knew or by carrying out his judicial functions with due diligence and impartiality would have known, that Trustee Reiber had conducted no investigation or that the DeLanos had not filed or supported their petition in good faith, but nevertheless reported the Trustee's statement to the contrary and stated that "The Court found that the Plan was proposed in good faith" in order to confirm their plan, the Judge suborned perjury and practiced fraud on the Court as an institution and on Dr. Cordero, whom he thereby knowingly denied due process. In so doing, the Judge and the Trustee have caused Dr. Cordero the loss of an enormous amount of effort, time, and money and inflicted on him tremendous emotional distress.

III. Request for Relief

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

a) Under 28 U.S.C. §753 investigate Reporter Dianetti's refusal to certify the reliability of the transcript of her own recording of the evidentiary hearing at the Bankruptcy Court, WBNY, in *DeLano* on March 1, 2005, and designate another individual to prepare such transcript;

b) Under §331 investigate how the integrity of judicial and other court officers and of judicial process has been compromised in WDNY by participation in a bankruptcy fraud scheme;

c) As part of that investigation, review, among other things, **1)** the tape recording of the meeting of creditors in *DeLano* held on March 8, 2004, in the Office of the U.S. Trustee in Rochester and conducted by Trustee Reiber's attorney, James Weidman, Esq.; **2)** the tape recording and the transcript of the meeting of creditors in *DeLano* held on February 1, 2005, in Trustee Reiber's office; **3)** the documents reviewed by Trustee Reiber in his *DeLano* investigation; **4)** the statement read into the record by Trustee Reiber at the confirmation hearing of the DeLanos' plan held in the Bankruptcy Court on July 25, 2005, and the transcript of that hearing; and

d) Under 18 U.S.C. §3057(a) refer *DeLano* and *Pfuntner* to Attorney General Alberto Gonzales for investigation by U.S. attorneys and FBI agents other than those from Rochester (where the DoJ office is the next-door neighbor of the Office of the U.S. Trustee) or Buffalo, NY.

Dr. Richard Cordero

Dated: August 30, 2005

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TRUSTEE'S FINDINGS OF FACT AND SUMMARY OF 341 HEARING

1. Debtor(s) DAVID G DELANO
MARY ANN DELANO
Bk.# 04-20280

Attorney CHRISTOPHER K WERNER, ESQ FuDI Filing Fees: $ 185 Paid

2. Plan:

A. Summary: $ 1940 per month by wage order

$ 14145 * annually R

Repayment to secured creditors $ 6900

Repayment to priority creditors $ 16,655

Repayment to unsecured creditors $ 4646 ~5 % ~~specific~~ estimated

Classification of unsecured creditors None

Class ____ ____% $ ____ ____

Class ____ ____% $ ____ ____

92,920 TOTAL

Rejection of executory contracts None

Other: * Payments decrease to $635/month in July, 2004; then increase to $960/month in August, 2006. Plus proceeds of accounts receivable.

why then increasing payments

B. Feasibility:

Total Indebtedness $ 185462 including mortgages

Monthly Income (net) $ ~~4886.50 2946.50~~ (gross)$ 7501.

Less Estimated Expenses $ ~~2946.50~~

Excess for Wage Plan $ 1940.

Duration of Plan 3 years

why End of Sev & unemply

Payments are not adequate to execute plan.

C. Valuation of secured claims and lease arrears:

Interest rate unless otherwise stated: 8 1/4 %

Name of Creditor	Amount of Security	Security Claimed	Perfected	341 Valuation	Disputed
Capital One Auto	$ 10,285	'98 Chevy Blazer	Yes	$ 6900	stip

3. Best interest of creditors test:
   A. All assets were listed.
   B. Total market value of assets: $ 256,562

   Less valid liens $ 83734
   Less exempt property $ 171732
   Available for judgment liens $ ④ 266
   Less priority claims $ ⑤ 16,655
   (Support $_____)

   C. Total available for unsecured creditors in liquidation $ ~~1096~~ 0

   D. Amount to be distributed to unsecured creditors $ 4646

   E. Nature of major non-exempt assets: _____

4. Debtor(s) states that the plan is proposed in good faith with intent to comply with the law.

5. Debtor(s) states that to the best of ~~his/her~~/their knowledge there are no circumstances that would affect the ability to make the payments under the plan.

6. (If a business) The Trustee has investigated matters before him relative to the condition of debtor's business, and has not discovered any actionable causes concerning fraud, dishonesty, incompetence, misconduct, mismanagement or irregularities in managing said business.

7. Objections to Confirmation: Trustee - disposable income - 1) I.R.A. available; 2) loan payment available; 3) pension loan ends 10/05.

8. Debtor requests no wage order because, _____ (+) 2 Creditors (-) 1

9. Other comments: ~~1) Best Interest = $1655;~~ (OK) AFIS Attorney fees But Court Allowed in Connection with Confirm order

10. Converted from Chapter 7 because _____ (2)

11. The Trustee recommends that this Plan not be confirmed.

ATTORNEY'S FEES: $ 1350

Additional fees Anticipated? (Yes) no $16,655

GEORGE M. REIBER
TRUSTEE

IN RE: DeLong, David & Mary Ann

BK. # 04-20280

I/We filed Chapter 13 for one or more of the following reasons:

- ✓ **Lost employment** (Wife) Age 59
- ✓ **Hours or pay reduced** (Husband 62) To delay retirement to complete plan
- ____ **Matrimonial**
- ____ **Garnishments**
- ____ **Medical problems**
- ____ **To receive a Chapter 13 discharge**
- ____ **Filed a previous bankruptcy proceeding within six (6) years**
- ____ **Owe priority (example: tax) claims**
- ____ **Reconstruct credit rating**
- ✓ **To pay back creditors as much as possible** w 3yrs prior to retirement
- ____ **To stop creditor harassment**
- ____ **To stop foreclosure or other legal proceedings**
- ✓ **To cram down secured liens**
- ____ **To avoid contracts**
- ____ **Overextension of credit**
- ____ **Decline in income from business, commissions or business failure**
- ____ **Overspending**
- ____ **Student loans**
- ✓ **Children's college expenses** pre-1990 then wages reduced $30,000 to 19,000
- ____ **Avoid Chapter 7 substantial abuse charge**
- ____ **Protect debtor's property**
- ____ **Others:** _____

The file with all the exhibits accompanying the Supplement of August 30, 2005, to Dr. Richard Cordero's petition to the Judicial Conference to investigate a Court Reporter can be downloaded through this link:

http://Judicial-Discipline-Reform.org/Follow_money/exh_30aug5.pdf

The DeLanos' **bankruptcy petition** of January 27, 2004, together with mortgage documents and their 1040 IRS forms for 2001-03 and related financial documents is found at:

http://Judicial-Discipline-Reform.org/Follow_money/DeLano_docs.pdf

The **official statistics** on judicial misconduct complaint collected by the Administrative Office of the U.S. Courts and the **graphs** showing that out of the 7,462 complaints filed between 1997-06 federal judges systematically dismissed them and only disciplined 9 of their peers are found at:

http://Judicial-Discipline-Reform.org/Follow_money/JMukasey.pdf

The description of the Watergate-like *Follow the money!* investigation is found at:

http://Judicial-Discipline-Reform.org/Follow_money/Motive_Strategy.pdf