Pattern of Crime and Treason

Establishing quotas for prosecution which are targeted against the most defenseless members of society, whose alleged transgressions are of dubious certainty and economic significance, is **a perversion of the mission of the DOJ** while also a most dishonorable attempt at self-promotion by government bureaucrats. In the face of the extremely severe multi-million and multi-billion dollar criminal activity benefiting certain lawyers, hedge funds and their ilk, such conduct, being pervasive and at times **blatantly** so in the same federal bankruptcy courts, forms **a pattern of crime and treason**.

BankruptcyMisconduct.com is not surprised that there would be dissent within the ranks of the many attorneys employed within the U.S. Trustee Program at the U.S. Department of Justice (the "DOJ"). We can only hope that additional current and former officers will stand up and speak the truth for the benefit of the people for whom they swore an oath to serve. At the bottom of this page we have reproduced the testimony of an attorney who resigned in the face the apparent misguided administration of the program. But first...

We have a number of illustrative questions to the DOJ:

- What purpose does the DOJ serve in grandstanding their "successful" criminal convictions of individuals when powerful corporate entities including hedge funds and their conflicted attorneys routinely escape investigation and prosecution, even in circumstances where detailed evidence of crimes demanding such action is laid before attorneys at the Office Of The U.S. Trustee?

- **Does the DOJ perceive their role in combating bankruptcy fraud to be limited to action which protects the profits of credit card issuers, and the sub-prime and conventional mortgage underwriters?**

- Assuming for the sake of argument, that the Department Of Justice wishes to send a clear message and combat bankruptcy fraud, wouldn't it make sense for the DOJ to look at the conduct in the mega case bankruptcies, the **multi-million** and **multi-billion dollar bankruptcies**?

- Why would the U.S. Trustees focus so much effort on single parent and female head of household families, families with children, and retired teachers?

- Why would the DOJ refrain from prosecuting attorneys for the crime of filing false declarations under oath, the most fundamental crime of bankruptcy fraud?

- Doesn't the DOJ perceive any benefit in opposing bankruptcy fraud in the Multi-Billion dollar distressed investment markets?
- Does the DOJ believe that members of powerful and connected law firms are **Above The Law** and beyond the reach of justice?

- What was so different about **the lawyer JOHN G. GELLENE** that he seems to be the only big law firm member who was incarcerated in the last few decades for the crime of filing a false declaration in a bankruptcy court?
When so many other lawyers routinely do the same crime?
Could it be that in the Gellene case, a hedge fund got pissed off at the lawyer and wanted justice? And to what sort of "*citizen*" would the DOJ be most responsive upon hearing cries for justice to be served? While a hedge fund does not "vote" per se, hedge funds have more money and influence than every credit card using and sub-prime mortgage borrowing voter put together. *Money Talks, Justice Walks.*

- **Regarding decisions by current U.S. Attorneys to decline the prosecution or investigation of criminal conduct committed by lawyers who themselves are currently employed, or were previously employed, as DOJ attorneys:**

- Are these *de facto* **grants of immunity** extended in accordance with official top level DOJ approval?
- What statutes and case law provides the authority for the DOJ to extend such **grants of immunity** to current and former employees?

- Are such grants beyond the reach of Congressional inquiry and review?
- Must all other governmental entities defer enforcement action, in honor of such grants, such as the **Securities And Exchange Commission** (the "SEC")?

- May such grants be assigned or extended by such DOJ employees to protect their former, current, or prospective **(a)** partners in a law practise; **(b)** clients (such as hedge funds)?
- Please compare and contrast the total dollar amount of annual expenditures by the DOJ for **(a)** resources specifically dedicated towards " **watchdogging** " the inherent corruptive influence that the existence of such grants will impose upon the fair administration of justice and **(b)** the total annual budgetary expenditures by the DOJ for all purposes.

*** Update ***

The inevitable proliferation of extreme corporate malfeasance caused by years of neglect by the DOJ in combating bankruptcy fraud by and among the "professionals" of large mega case bankruptcies continues to have repercussions even years past the climax of Enron. *The Wall Street Journal*
hosts an interesting article about
misconduct related to
Countrywide
.

Some lawyers at the DOJ's office of the U.S. Trustee are speaking out, privately and publicly, about the dubious effectiveness and objectives of the trustee program. We will try to update you about developments...

TESTIMONY OF
MARY POWERS, ESQ.
FORMER TRIAL ATTORNEY FOR THE OFFICE OF THE UNITED STATES TRUSTEE
UNITED STATES TRUSTEE : WATCH DOG OR ATTACK DOG

BEFORE THE
SUBCOMMITTEE ON ADMINISTRATIVE AND COMMERCIAL LAW
HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE

PRESENTED
OCTOBER 2, 2007

My name is Mary Powers and I am an attorney who for the majority of my twenty year legal career practiced bankruptcy law. I was fortunate to begin my career as confidential law clerk to the Honorable Beryl E. McGuire, Chief Judge for the United States Bankruptcy Court for the Western District of New York. After that I worked for two well respected Buffalo law firms, representing debtors, creditors and creditor committees in a variety of bankruptcy matters. In 2002, I applied for the position of Trial Attorney in the Buffalo office of the United States Trustee (UST). At that time, I was very happy at my law firm, received challenging work, was well compensated and, above all, was respected by my colleagues just as I respected them for their integrity and dedication to their clients. There was only one legal position which would have prompted me to leave this wonderful working environment and that was a position with

the Department of Justices United States Trustees Office. I felt my background was ideal, but more importantly, I felt that it would be an honor and a privilege to serve the Department of Justice in its mission to promote the integrity and efficiency of the bankruptcy system. It was a chance, for the lack of a better phrase to wear the white hat. I felt very fortunate to have been offered the position. Over time, it became clear to me however, that what I was doing had very little to do with justice and, as such, my personal passion and enthusiasm slowly eroded. In February 2007, not wanting to spend the remainder of my career doing something that I had trouble believing in, I resigned. I have never once regretted that decision.

Upon my arrival, I came to understand more clearly what was meant by civil enforcement and that the UST was now considered a litigating component of the Department of Justice. I had enough experience at that time to realize that the Buffalo office did not have the resources to be a true litigating force, but I was optimistic that I could still make a difference, elevating the level of practice and protecting both debtors and creditors. During my years, little focus or training emphasized creditor abuse. I quickly came to understand that ferreting out abuse by debtors was of primary importance. I screened numerous filings. Through inquiries of debtors and their attorneys, I confirmed what I could have intuitively guessed from being a Buffalo and Western New York native. The majority of filings were not abusive. Buffalos poor economy caused loss of jobs, loss of medical benefits and often marital dissolution, due in large part to financial setbacks. These factors were at the heart of the vast majority of filings. This became very apparent when the UST implemented a reporting system (one of many) known as SARS (Significant Accomplishments Reporting System). Every action taken by staff was to be documented in this system. Every entry where no action was taken referred to a mitigating factor which obviated the need for any action. Cancer, job loss, divorce were noted frequently, demonstrating what I knew to be the case: that Western New Yorkers were down on their luck. When an abusive filing was found, dismissal or conversion to Chapter 13, was pursued with vigor, but always understanding that the judges in the Buffalo Bankruptcy Court were very aware of the harsh economic realities in Western New York and gave debtors every consideration. Initially it never occurred to me that those in Washington and New York would not trust the assessments of seasoned lawyers, those hired by them for their expertise and experience. I thought it was common sense and easily understood that regions and individual districts differed significantly in their bankruptcy demographics. I learned later that I was quite nave in that belief.

I became aware that the debtor abuse numbers for the Buffalo office were low and that offices that had low numbers were perceived as not looking hard enough to find abuse. This became very apparent when then Director Lawrence Friedman on a visit to the Buffalo office pulled one of our inquiry files and concluded on its face that a debtor examination should take place and he would show us how it was done. He told us that as the debtor was a retired teacher it was likely he had a boat, although none was listed. I was not familiar with the link between retiring teachers and boats, but I assured him I would investigate and do a detailed document request for his review prior to his return to conduct the examination of the debtors. Our independent investigation revealed no intentional omission of assets on the debtors schedules. The examination done by Mr. Friedman also revealed nothing. The debtors were sincere and honest and nothing warranted the dismissal of their case. The case was flagged by our office for one more appropriately in Chapter 13 which is my recollection of what ultimately happened

in the case. I feel certain that this result, as had occurred with other similar cases, would have occurred without the burdensome document requests and a lengthy examination of the debtors. Buffalo is a small community of bankruptcy practitioners and my experience led me to know that for many cases aggressive pursuit was unnecessary to achieve the same result. Unfortunately, as we did not conduct as many unnecessary examinations as other districts , we appeared less aggressive. Again, I felt that we understood the practice in our district best and there was no need to put the debtors and their attorneys through unnecessarily burdensome hoops if the same result could be achieved in a more timely and cost efficient manner for all involved. I felt that treatment of attorneys and debtors in that manner raised our credibility with the bench and bar, fostered cooperation and promoted a much more efficacious system. Unfortunately, the opinions of those in the trenches in the individual offices seemed to matter very little. Although, the same information could be easily obtained at a meeting of creditors, we would have gotten more credit from the powers that be had we engaged in costly examinations and document requests. Our SARS report, a seeming report card, certainly wasnt impressive to those who measured success in terms of dismissals and conversions only. Unfortunately, we could not manufacture abuse where little existed. Even when we did obtain a conversion to Chapter 13 and the total amount of unsecured debt deemed nondischargeable was entered as the result, in truth, most of that debt would be ultimately discharged because the majority of Chapter 13 payment plans were of a very low percentage. If the case was dismissed, it was likely very little of that debt was collectible either. We understood however, that it was partially these numbers that the Office of the United States Trustee relied upon to justify its existence and demonstrate success. Feeding the SARs machine at times seemed as important as practicing meaningful law.

The lack of autonomy and inability to exercise discretion as well as the pressures to produce numbers was exacerbated after the passage of BAPCPA in October of 2005. Admittedly, the UST was forced to comply with a new law everyone was struggling to understand and certainly there would and should be uniformity in policies regarding application, but again the same pressures to produce presumed abuse under the means test was paramount. I remember one pivotal moment for me after the passage of the new bill. I, through the Assistant UST in the office, learned that the US Trustee in the region asked about a specific case. My first thought was that despite a multi-level screening process, something big must have been missed. When I reviewed the filing, I realized that the case wasnt flagged because the debtor was only slightly over the median and had a blended family with six children and all the legitimate expenses that accompany a family of that size. You didnt need the means test to figure that out. Common sense and living in the real world would have sufficed. More importantly, I was incredulous that someone at the level of a UST would not have something more important on her plate than this insignificant case from Buffalo. It was clear that babysitting was the order of the day and that the most important focus of the UST was accounting for debtor abuse and raising the numbers for statistical purposes. It was that day when I knew I could not spend the rest of my career in a micromanaging bureaucracy. I also knew that the satisfaction that would arise from pouring over cell phone bills and determining if grandma was part of the household would be nonexistent, especially when ultimately it would make very little monetary difference to creditors. As one well respected Buffalo attorney told me, the UST had come to be known as the useless Trustees office, not a flattering nickname, but one I sadly understood.

The most unfortunate aspect of this to me was that the Office of the United States Trustee employed many intelligent, hard working individuals all over the country, many of whom I was fortunate to work with and to meet. Those individuals produced many wonderful initiatives over the years. Many of them expressed frustrations similar to those I have expressed, but obviously only one who left government employment would feel free to speak. In closing, it is my belief that the mission of the Office of the United States Trustee is admirable however, the current execution of the mission is flawed, an impediment to the functioning of the system and does very little to promote the integrity of the system.