

**REMARKS BY**

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## **Introduction**

Thank you once again for the opportunity to appear before you to report on some of the major activities of the United States Trustee Program (USTP or Program). You have quite a line up of speakers and interesting topics on the schedule this week, so I am sure this will be a very worthwhile conference.

I told the NACTT when I spoke to them in July how fortunate I have been to have enjoyed an outstanding relationship with the chapter 13 trustees and their association during my five and one-half years as Director. I am here to say the same thing about the NABT. You have been an important partner for the United States Trustee Program in enhancing the integrity and efficiency of the bankruptcy system.

I commend Jim Boyd for his successful term as your President. I have appreciated working with Jim and others in your leadership on many important projects of mutual interest. I congratulate Lynn Schoenmann on her upcoming term. I look forward to working with her. I am certain that with Lynn at the helm, the USTP will benefit from the same productive relationship with the NABT over the next year that we have enjoyed for the past several years.

During my time with you today, I want to update you on some old business and also describe to you some new developments involving both the USTP and NABT.

## **Bankruptcy Trends**

For a few years now, I have started my talks with you by noting the challenges all of us face in administering a burgeoning bankruptcy caseload. In FY 2008, chapter 7 filings rose by 52 percent. Last year, they rose by 46 percent. And, in FY 2010, which ends today, chapter 7 filings will have risen another 15 percent. The cumulative 155 percent increase over three years is of historic proportions. The only prior periods with such explosive growth in filings occurred after World War I and World War II.

I am pleased to note that despite this steep rise in case filings, somehow, you continue to meet the challenge. So many of you have experienced longer section 341 dockets. And the amount of work required in each case is more than it was before the bankruptcy amendments of 2005. So, thank you, for your perseverance and the high quality of your work.

## **Enforcement to Protect Consumers**

For several years, the USTP has emphasized its responsibility to take civil enforcement actions to uphold the integrity of the bankruptcy system. Last year, we took nearly 59,000 civil enforcement and related actions, including those not requiring formal court proceedings. These actions had a total monetary impact of \$1.09 billion. The number of criminal referrals also rose in Fiscal Year 2009 by about 10 percent.

We long have said that our civil enforcement actions were intended not only to address wrongdoing by debtors who failed to play by the rules, but also wrongdoing by those who exploit debtors in contravention of bankruptcy law. Last year, we took more than 9,000 formal and informal civil enforcement actions against creditors, lawyers, and third parties. This was an unprecedented number. Although the Fiscal Year 2010 figures are not yet complete, I can tell you that the number will likely be even greater this year.

The volume of actions we are taking would not be possible without the assistance of chapter 7 trustees. You are on the front lines. You review all of the schedules and you hear from all of the debtors at section 341 meetings. I encourage you to continue to provide your local U.S. Trustee's office with civil enforcement referrals. You are the best defense against fraud and abuse committed by debtors, creditors, lawyers, and assorted scam artists. I commend you for your efforts. I also ask that you maintain your vigilance and know how much we rely on your good work to protect the bankruptcy system.

## **Mortgage Fraud and Abuse**

### **FBI/USTP Intelligence Assessment**

It is especially critical during the current mortgage crisis that we identify those who perpetuate their fraudulent scams through misuse of the bankruptcy system. In May, the Federal Bureau of Investigation issued an Intelligence Assessment titled "US Bankruptcy System Exploited to Perpetrate Foreclosure Rescue Schemes." The Assessment was a joint project with the United States Trustee Program. It describes a wide variety of scams that both the FBI and USTP have uncovered, including advance-fee foreclosure rescue schemes, fractional transfer schemes, and sale-leaseback-repurchase schemes. The Assessment concluded that "[i]ncreasing mortgage loan defaults and foreclosures will continue to provide opportunities to exploit the [U.S. Bankruptcy System] and thereby continue to contribute to the current economic crisis." Though the Assessment was prepared for law enforcement, an unclassified version is available on our Web site ([www.justice.gov/ust](http://www.justice.gov/ust)). I encourage you to read it.

### **Operation Stolen Dreams**

As part of my update on enforcement, I also want to highlight for you the Government's unprecedented emphasis on inter-agency cooperation in combating financial fraud. The USTP is an active member of the President's Financial Fraud Enforcement Task Force, which consists of federal, state, and local agencies that are working cooperatively to address the multi-faceted aspects of white collar fraud.

The Program is particularly involved in the Task Force's mortgage fraud activities. This past June, the Attorney General presented the results of "Operation Stolen Dreams," a take-down day in which the Government announced civil and criminal actions that occurred over a three and a half month period, up to and including arrests made on the day of the announcement.

I proudly report to you that the USTP – again, in part due to your referrals – was a major contributor to the Operation. We were the largest federal contributor to the nearly 200 civil cases included in Stolen Dreams. We also referred numerous criminal cases reflected in the total of more than 1,500 criminal defendants who were charged, were convicted, pled guilty, or were sentenced.

As Operation Stolen Dreams shows, there can be no doubt that the Justice Department has placed a high priority on addressing mortgage fraud and abuse.

### Major Actions Against Creditors

I have reported in the past on the United States Trustee Program's strategy to wage broader national litigation against creditors who violate the law. Again, we often depend on you to sound the alarm so we can initiate investigations and take legal action in the courts.

By leveraging our resources in the field and by seeking multi-jurisdictional resolution of disputes where that is feasible, we can have a greater remedial and deterrent effect. This strategy is only about three years old, but I am pleased to report that we have seen very positive results, including three nationwide settlements with national credit card lenders and mortgage servicers.

In the history of the United States Trustee Program, there has been no more important legal case than the action recently resolved with Countrywide Home Loans and BAC Home Loans, both affiliates of Bank of America.

On June 7<sup>th</sup>, I joined the Chairman of the Federal Trade Commission (FTC) at a news conference announcing a comprehensive settlement of an FTC complaint and USTP litigation nationwide against Countrywide. Due to unprecedented cooperation between the FTC and USTP, we reached an agreement with Countrywide to redress and prevent future violations of homeowners' rights.

A significant portion of the covered homeowners had sought relief in chapter 13 bankruptcy. We alleged that Countrywide inflated claims, charged impermissible fees, and sometimes hid those fees until the homeowners emerged from bankruptcy court protection.

You have heard the criticism of mortgage companies for making "no documentation" (or "no doc") loans. Well, we found that Countrywide took the concept a step further. They made "no doc" loans and then turned around and imposed "no doc charges" for services they did not provide.

To correct these widespread and improper business practices, the agreement contains three major provisions pertaining to chapter 13 debtors.

First, Countrywide paid \$108 million into a fund to be administered by the FTC to compensate homeowners who were harmed by the company's violations. Chapter 13 debtors will share in a significant portion of that fund. This relief ranks as one of the largest monetary

remedies in the history of the FTC, and is the largest in the history of the United States Trustee Program.

Second, Countrywide will establish internal procedures to ensure that the charges it imposes and the claims it files in bankruptcy court are accurate and permissible. In addition, Countrywide will pay for an independent third party to verify compliance with the prescribed internal controls.

And, finally, Countrywide will provide adequate notice of its charges and monthly payment amounts. This will help ensure that trustees, debtors, and the bankruptcy courts can evaluate the legitimacy of the claims. It also will ensure that debtors who emerge from bankruptcy are not then required to pay previously undisclosed charges or risk foreclosure.

Homeowners who file for bankruptcy protection and who obey the rules are entitled to a fresh start. This agreement with Countrywide helps to ensure that they will receive just that.

Let me make clear that our extraordinary enforcement progress against creditors – including mortgage servicers – does not mean that the USTP will let down its guard. Anecdotally, we understand that our local offices are receiving new found cooperation from bankruptcy mills that prosecute foreclosures and from mortgage servicers themselves. But we will continue to investigate and continue to file actions where and whenever necessary.

### **Supreme Court Litigation**

When I spoke to you last year in Boston, I told you that the Solicitor General had agreed to intervene in a case pending before the Supreme Court in support of trustee Bill Schwab. As you know, that case involved the timing of filing objections to exemptions. Based upon the USTP's interest in advancing the integrity and efficiency of the chapter 7 process, the federal Government advocated for trustee Schwab. And you know the rest of the story – our position prevailed. The Supreme Court held that when the declared value of a debtor's claimed exemption falls within the limits set by the Code, the trustee does not need to object to the exemption in order to preserve the estate's ability to recover the value of the asset beyond the dollar value declared exempt. I commend Bill for persevering and pressing an important legal issue that required national and final resolution by the Supreme Court.

The Schwab case was one of three Supreme Court cases heard last term in which the Program's General Counsel appeared as one of the Government's counsel of record. I should note that the Government prevailed on all three.

Next Monday, on the first day of the high Court's new term, the Supreme Court will review Ransom v. MBNA, America Bank, N.A. to consider whether a debtor may deduct an ownership cost for a vehicle that is free of loan or lease payments. The Department of Justice opposes the deduction of these phantom expenses. We anxiously await this decision.

## **Protecting Estate Property**

Before talking about some of the Program's new Initiatives, I want to focus for a few minutes on an old topic – protecting estate assets. There is no more fundamental responsibility of the USTP than to ensure that trustees are efficiently carrying out their responsibilities and properly accounting for estate property. And it is a bedrock duty of trustees to reduce non-exempt assets to money, to distribute resulting funds in priority order, and to account for those funds in accordance with USTP and standard accounting requirements.

Over the years, the NABT and USTP have worked together to streamline reporting and other oversight responsibilities. As we gain knowledge, we should continue to be able to develop report forms and oversight techniques that are more efficient for the trustees and USTP reviewers as well. After all, our goal is not more paperwork, but rather soundness of accounting practices and assurance that estate funds are neither dissipated nor wrongfully taken.

I recently reviewed our history of progress in protecting estate money. The importance of this responsibility is shown by the fact that trustees have distributed over \$85 billion in the past 15 years. Nearly 19 million bankruptcy cases were filed during that same time frame. That is an extraordinary amount of money and an extraordinary number of cases.

I am pleased to report that the private trustees and the United States Trustees have done an outstanding job in protecting these assets. As part of its ongoing review of all Justice Department operations, the DOJ Inspector General reviewed our trustee oversight system in 2008 and found it to be satisfactory. Our reporting requirements and auditing systems are sound.

Well, if the data show that our systems work, and that the bankruptcy system boasts an exceptional corps of capable private trustees, then why do I raise this topic? I do so because of recent news reports on a trustee defalcation. Obviously, I am not in a position to comment on those reports. But, I can tell you that they should serve as a reminder to all of us that we have a constant responsibility to assess our accountability requirements. While we have seen a dramatic decrease in defalcations over the past five years in particular, we must still be vigilant.

One of the key items on the agenda for the NABT-USTP Liaison Committee during the coming year will be a reassessment of our oversight systems. Among other things, the Program will look into arrangements with approved depositories and software providers. We want to ensure that we have immediate access to financial and case management data, as well as computer hardware, when estate assets may be at risk. We will enhance automated data transmissions from banks and trustees so that estate records and bank accounts can be easily reconciled, and fraudulent artifices can be detected more quickly and with greater certainty.

Of course, we approach this project as we do so many others – with confidence that the NABT and its members feel the same stake in the success of the bankruptcy system that we do. We know that you will provide information, insights, and sound judgment that will help to ensure that future years will be as successful as past years in ensuring the integrity of the process and in protecting estate assets.

## New Initiatives

Let me use my remaining time to discuss two new initiatives of significant interest both to the USTP and the NABT.

### Home Affordable Modification Program

Enforcement actions to protect homeowners are important. But there are also other steps we can take to keep families in their homes when it is financially viable for them. I know that many of you and the NACTT have been firm advocates for the Home Affordable Modification Program, which is better known as HAMP.

I understand that there will be a discussion of HAMP on a later panel, so I will not go into the details of this Government-approved initiative to help families in distress save their homes. But I want to be sure that all of you are aware of a Treasury Directive that became effective on June 1<sup>st</sup> which makes HAMP available for chapter 7 and chapter 13 debtors. I have had conversations with officials in the Department of Treasury, as well as with your leadership, to discuss ways in which the USTP and chapter 7 trustees can facilitate HAMP participation.

The Program has taken three important steps to help make HAMP work in the bankruptcy system. First, we have made a one-page fact sheet, along with the forms required to apply under HAMP, available in all of our section 341 meeting rooms. This will help ensure that debtors – especially pro se debtors – are aware of HAMP. Your assistance in ensuring these materials get into the hands of those debtors who might benefit from mortgage modification is greatly appreciated. Second, we have posted Frequently Asked Questions on our Web site. And, third, we have produced a training video that will be distributed within the next few weeks. The video will help USTP staff and trustees become more familiar with HAMP so we can assist debtors and facilitate the HAMP process where that is appropriate.

So, please make sure you are distributing the one page face sheet – which is available both in English and Spanish – and please take a look at the training video as soon as it is provided to you.

### Best Practices on Document Production Requests

The final matter I will cover is the cost of bankruptcy. Everyone knows that the cost of filing for bankruptcy has risen dramatically in the past five years. According to a recent report by Professor Lois Lupica, the median cost for chapter 7 debtors increased by about 50 percent over five years. Costs included debtor's attorney fees and expenses, filing fees, credit counseling and debtor education fees, and other professional fees.

Beyond these fees, another factor that potentially can increase the cost of bankruptcy is unnecessary document production. About one year after the effective date of BAPCPA, the USTP reviewed its typical document production requirements and evaluated what kinds of documents were essential for us to do our jobs. We decided that we would not routinely request

from debtors any documentation that was not otherwise required by the Code or Rules. Obviously, to do our jobs, we sometimes need additional information. But United States Trustee document production requests are required by national policy to be particularized to the case.

In consultation with the NABT, the National Association of Chapter 13 Trustees (NACTT), and the National Association of Consumer Bankruptcy Attorneys (NACBA), we have decided to examine chapter 7 and chapter 13 trustee document request practices. Let me be clear, though. We in the Program do not believe it is practical to prescribe a lengthy and detailed list of uniform and mandatory rules governing trustee document requests. That would not work because, among other things, chapter 7 and chapter 13 practices are vastly different, local rules vary widely, and United States Trustees should not substitute their judgment for trustees who have their own fiduciary responsibilities. We do believe, however, that it is appropriate that we help identify the most cost-efficient document production practices. This will help ensure that the time and resources of trustees and counsel alike are expended on presenting or reviewing only the paperwork that is most likely to advance the proper administration of the bankruptcy case.

Just as some debtor's lawyers tell us that they believe that some document requirements imposed routinely by trustees are not reasonable or expedient for the swift resolution of a case, sometimes debtors counsel poorly serve their clients by failing to respond promptly to legitimate document production requests. I know that USTP offices frequently are frustrated in their efforts to get information before filing a section 707(b) motion. We decline to file motions to dismiss in about 60 percent of all "presumed abuse" chapter 7 cases. Those decisions require investigation into "special circumstances," and we rely on debtor's counsel to assist us. Far too often, the information we need is not forthcoming within the strict deadlines within which the statute requires that we operate. Occasionally, that results in unnecessary cost and anxiety for debtors who may face a Rule 2004 examination, or even a court hearing, because counsel did not provide exculpatory information in a timely manner.

I am pleased that the USTP will work with the NABT, NACTT, and NACBA to identify "best practices" that can be disseminated to trustees nationwide. It is the Program's hope that these practices will enhance the cost-effectiveness of case administration for the benefit of trustees, debtors, and the bankruptcy system. The "Best Practices Manual" can be a training tool for trustees and counsel alike. It will address not only the kinds of documents that are most useful in certain situations, but also the mode of transmission that is most efficient for all concerned.

A group of representatives from the trustee associations, NACBA, and the Program kicked off this project during the NACCT convention in July. The groups then surveyed their members. We met yesterday here in San Francisco to review the results of the surveys and to take the next steps towards production of a useful Manual.

I commend the NABT, NACTT, and NACBA for their enthusiasm and input in tackling this worthwhile project.



## **Conclusion**

I appreciate your attention to this report from the United States Trustee Program which I think illustrates so clearly the cooperation that exists between the NABT and the USTP on so many vital projects.

I continue to rely upon you, the membership of the NABT, for your perspectives and good faith in tackling the myriad issues facing the bankruptcy system. I have found your leadership to be unfailingly professional and the source of an extraordinary amount of relevant information and energy. I trust that same dynamism and positive attitude that benefits the entire bankruptcy system will continue in the coming year.

Thank you for your service and for your hard work. You have made a difference to millions of debtors, creditors, and the American public.

So, with much respect and appreciation, I wish you a great conference and pledge the continued efforts of the USTP in working with you to make the bankruptcy system work for all stakeholders.

Thanks so much for your time.

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