

## **New Perspective, Same View**

By Sam Crocker, United States Trustee for Regions 8 and 20

### From Panel Trustee to U.S. Trustee

Bankruptcy law became my career practice choice long ago. After spending 28 years as a panel trustee, I am about to end my fourth year as a United States Trustee. Those 32 years represent service to the bankruptcy system from two distinct perspectives. I am often asked how I like my “new” job. I explain that I remain fully involved in bankruptcy law, and that I continue to apply whatever expertise I’ve gained along the way to benefit bankruptcy practice and keep the system running as it should.

That summary explanation frequently prompts further questions, especially from private trustees. They wonder about the seemingly inherent conflict between the actor and the monitor, as it is now my job to oversee their actions as independent fiduciaries. I pondered that question when I was a private trustee, long before changing seats in the system. Interestingly, the conclusion I reached then remains consistent with what I think now.

### ‘Heart and Soul’ of Bankruptcy System

As I often said as a director and then president of NABT, chapter 7 trustees are the heart and soul of the American bankruptcy system. You are much more than important. You are fundamental. You guide honest debtors through a difficult process with dignity, and protect them from others that might try to take advantage of them. You take appropriate action against dishonest debtors, and ensure a fair distribution of nonexempt assets to creditors. Those are just a few of your many responsibilities. In short, you are the independent fiduciary in all of your cases, tasked to administer those cases consistent with the myriad duties that entails.

Fundamental duties impose great responsibility. I considered my private trustee work to be distinct from, but just as important as, my legal practice. I viewed it as a separate profession in which I took as much pride as I did in being an attorney. I said more than once that I considered myself a trustee first, then a lawyer. I encouraged all trustees to take similar pride in the trustee profession.

It logically follows that I deemed the actions of incompetent or dishonest trustees impermissible affronts to every member of that profession, as well as detrimental to the profession as a whole. As a U.S. Trustee, it is now my job to assess trustee compliance with the Bankruptcy Code and the *Handbook for Chapter 7 Panel Trustees* and to take appropriate remedial actions. That is completely consistent with what I thought should happen before I changed jobs. It is also what Congress decided and initiated in the 1978 Bankruptcy Code.

What does it take to prompt action by the United States Trustee? Dishonesty is easy. Once discovered it will be swiftly and strictly addressed. I am certain that all honest trustees agree with that result. Fortunately, dishonest trustees are rare.

Some of the other issues that arise in overseeing trustees are not so clear-cut, such as repeat findings on audit reports. Do the trustee and trustee's assistant need more training, or are the errors symptomatic of the trustee's overall lack of care in performing his or her duties? United States Trustees will work with trustees to help correct such problems. No one wants to see a trustee fail. If, however, it becomes apparent that a trustee is no longer operating with the basic competence required for the job, action must be taken. That protects every constituency in the bankruptcy system, including the trustee profession.

### Cooperative Relationship

Private trustees typically regard the United States Trustee Program's (USTP) oversight and monitoring function as the primary, if not sole, interface between them and the United States Trustee. While I certainly agree that it is a prominent part of the relationship, other important aspects are often overlooked. A few examples follow.

I joined the trustee panel in the Middle District of Tennessee in 1984, four years before the USTP began to operate in the district. I remember discussing the forthcoming change with panel trustee Bob Waldschmidt. We agreed that a more organized system was a good idea for all concerned. For example, before the USTP developed Form 1 there was no uniform means of tracking assets during case administration. I had a few medium to large cases before the advent of Form 1, and I struggled with how to keep up with assets. I devised a method through necessity, but it was neither standard nor easily understood by any third party, including judges and the estate administrator. When Form 1 was introduced, I gained an important tool that not only helped me effectively administer assets, but also simplified the oversight functions for auditors, the United States Trustee, and me. Even before I was appointed United States Trustee I always urged trustees to look at the required forms as friendly case administration tools, not annoying pieces of paper.

Of course, back in 1984 to 1988 there was no such thing as IT-coded information that would automatically transfer from a debtor's petition to the official trustee forms. When did that happen, and how did it come about?

The bankruptcy reform law became effective in 2005, but parts of it were set for later implementation, including new 11 U.S.C. § 589b, which required uniform final reporting of a significant amount of previously unreported information about debtors' assets and liabilities. Trustees complained, with reason, that it would not be economically feasible to prepare these reports. As NABT president from 2007 through 2008, I was told many times that implementation of this requirement would put most trustees "out of business." But NABT worked with the USTP, the Administrative Office of the U.S. Courts, and the software vendors to find a solution. NABT's point person, who worked closely with me throughout this process, was former NABT board member and past president James Boyd. He has since been appointed a bankruptcy judge in the Western District of Michigan.

The final rule for uniform reports became effective on April 1, 2009. The importance of the Program's role in the ultimate success of this venture cannot be overstated. I know, because I lived with it for many months.

The USTP also plays a key role in advocating for fair trustee compensation. Last year, the Fourth Circuit Court of Appeals held in *Gold v. Robbins (In re Rowe)*, 750 F.3d 392 (4<sup>th</sup> Cir. 2014), that trustees should receive the maximum commission fee under 11 U.S.C. § 326 absent extraordinary circumstances. The USTP filed an amicus brief explaining that an exceptional circumstances standard is fully justified on policy grounds, and the Fourth Circuit’s decision quoted the USTP’s brief extensively. While the oversight function requires the United States Trustee’s monitoring of trustee compensation, and always will, that activity is not necessarily counter to the trustees’ position.

These are just a few examples of the many cooperative interactions between United States Trustees and panel trustees. I remember frequently calling the Assistant United States Trustee in my district for advice on trustee matters, which she offered respectfully but candidly. We always tried to find the simplest way “from here to there.” There were times, though not often, when we did not agree, and sometimes we litigated. That’s the way the system is designed to work. We were both doing our respective jobs, with respect for what we were both tasked to do.

### Conclusion

I very much enjoyed my time as a private trustee. I also enjoy my present job. I don’t feel conflicted between the two. When I speak to trustee groups I always offer to answer what I call “nuts and bolts” questions about estate administration. I am happy to share the lessons from 28 years of selling assets, including some strange ones in unusual ways, and other matters of interest. Just don’t ask what to do about a shop full of wedding dresses—the only assets I could never sell.