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Analysis of the United States Trustee program

M. Shannon Goetsch

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ANALYSIS OF THE UNITED STATES TRUSTEE PROGRAM

A Project
Presented to the
Faculty of
California State University,
San Bernardino

In Partial Fulfillment
of the Requirements for the Degree
Master of Public Administration

by
M. Shannon Goetsch
June 1991
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ABSTRACT

Congress enacted the Bankruptcy Reform Act of 1978 to address serious deficiencies in the bankruptcy system. The previous system was criticized for appearances of impropriety in bankruptcy proceedings, lack of creditor control over administration of cases, and the court's joint administrative and adjudicative functions. The United States Trustee program was created by Congress to address these issues by providing administrative and oversight functions in the bankruptcy system. This paper analyzes the effectiveness of the program by conducting a review of the substance of the Bankruptcy Act and an examination of the Bankruptcy Code to determine if the problems it sought to correct are continuing. The United States Trustee program is found to be effective and has achieved its program objectives. Conclusions and recommendations are made to further strengthen the program and bankruptcy system.
ACKNOWLEDGEMENT

The support and encouragement given to me by my family and special friends as I pursued academic advancement is greatly appreciated; they all helped lighten the load for me. A special thank you to my children, Kerri and Robert, for their enthusiasm and patience. I sincerely thank my faculty and project advisor, Brian Watts, for his confidence in me, his encouragement of me, and opportunities he provided me.
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CHAPTER I

INTRODUCTION

Article I, Section 8 of the United States Constitution grants authority to the federal government to make uniform laws on the subject of bankruptcy. Pursuant to this authority, Congress had regulated bankruptcies in the United States through a succession of statutes until 1978, when it enacted the Bankruptcy Reform Act of 1978 (BRA).

The BRA has five bankruptcy chapters: Chapter 7 (liquidation); chapter 9 (municipal); chapter 11 (business reorganization); chapter 12 (family farmer reorganization); and chapter 13 (individual reorganization). An appointed trustee in chapter 7 cases administers any assets for the benefit of creditors. Chapters 11, 12, and 13, require the debtor to submit a "plan" to repay creditors, over a period of time, all or a portion of the creditor's claim.

Although bankruptcy is intended to give the debtor a "fresh start," the effect is generally detrimental to creditors, particularly creditors of "no-asset" chapter 7 debtors wherein a general discharge of debts is granted and the creditors receive no monies.

Prior to the BRA, all administrative as well as judicial functions in bankruptcy were handled by the
bankruptcy courts. The administrative functions in bankruptcy cases include the following: ensuring payment of withholding and other taxes by bankrupt debtors, organizing and scheduling meetings of creditors, organizing creditor committees, appointing private trustees in chapter 7 liquidation and chapter 13 wage-earner cases, monitoring the filing of reports and schedules, and monitoring cases for signs of fraud and abuse. Judicial functions were generally limited to rulings by judges on disputed matters in adversary proceedings and on other filings for which court approval is required.

The conflictive nature of handling both administrative and judicial functions by the bankruptcy courts caused public confidence in the system to wane. An awkward relationship between trustees and their appointing judges created an appearance of favoritism, cronyism and bias.

The BRA created the United States Trustee (UST) pilot program and housed it in the executive branch within the Department of Justice (DOJ). The purpose of the program was to separate the administrative duties from the judicial functions in the bankruptcy system. The pilot program originally was to run through 1984 but was extended to 1986.

As part of the legislation establishing the pilot program, Congress mandated that a formal evaluation of it be conducted and a formal recommendation was to be made by the
Attorney General concerning the desirability of nationwide implementation.

This paper will analyze the effectiveness of the UST program under the Bankruptcy Reform Act of 1978. This will be accomplished by considering prior studies and reviewing major parts of the program. A review of the substance of the Bankruptcy Act and an examination of the Bankruptcy Code will be conducted to determine if the problems it sought to correct are continuing. Recommendations will be made as necessary or appropriate.
CHAPTER II

HISTORY OF BANKRUPTCY ADMINISTRATION

Introduction

The current bankruptcy system was established by the Bankruptcy Act of 1898 during the early years of consumer and commercial credit and was designed primarily to handle business cases. The rise in consumer credit after World War II brought a corresponding increase in the number of consumer bankruptcy cases.

District judges referred bankruptcy cases to "referees," who were appointed to two year terms and paid on a commission basis. The judicial role of the referee was minor; most litigation was handled by federal district or state courts. They were perceived to be a supervisor or administrator. Three types of matters were decided by referees: (1) those relating to property over which they had direct control; (2) those referred to them as special

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1Three other "Bankruptcy Acts" preceded the Bankruptcy Act of 1898: (1) The Bankruptcy Act of 1800 (repealed in 1803) allowed involuntary bankruptcy proceedings against merchants; (2) the Bankruptcy Act of 1841 (repealed in 1843) allowed voluntary or involuntary proceedings against merchants or individuals; (3) the Bankruptcy Act of 1867 (repealed in 1878) allowed corporations to file bankruptcy.
masters by district judges; (3) those submitted to them by consent of the parties.

The Chandler Act of 1938 and subsequent legislation gave the referee increasing judicial responsibilities and powers, and transferred many administrative duties to a trustee or clerk. In 1946, referees were made salaried officers of the district courts and their term of office was extended to six years. By legislation enacted in 1966, referees were prohibited from acting as trustees or receivers in bankruptcy cases.

In 1973, on the recommendation of the Judicial Conference, the title "referee" was changed to "bankruptcy judge."\(^2\) This distinction recognized bankruptcy judges as official judicial officers who handle only bankruptcy cases; bankruptcy courts became a specialized court within the district court system. The district judges, then, became less involved with the administration and decision-making in bankruptcy cases, which they considered to be too specialized to be handled on a generalist basis. The only control district judges still retained was in the appointment and removal of bankruptcy judge process, in

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hearing appeals of bankruptcy court decisions, and in the exercise of certain powers reserved to the district courts by statute.

Prior to the BRA, bankruptcy judges administered the bankruptcy system including individual bankruptcy cases. These administrative, supervisory and clerical functions were in addition to their judicial duties. In contrast to most civil litigation, where case administration and supervision is handled by the litigants, the judge in a bankruptcy case takes an active role in the supervision of cases. In bankruptcy cases there is a definite public interest in this method of administration due to the potential for fraud, self-dealing, and diversion of funds. Additionally, bankruptcy cases have the potential for affecting hundreds of creditors, thereby necessitating the active supervision by an impartial person. The Bankruptcy

While district court generally retains the power to hear bankruptcy appeals, an intermediate appeals court has been established (Bankruptcy Appellate Panel) which, unless an objection to jurisdiction has been filed by the parties, may hear appeals from the bankruptcy court. If an objection is filed, then the appeal is transferred for hearing to district court. "The judicial council of a circuit may establish a bankruptcy appellate panel, comprised of bankruptcy judges from districts within the circuit, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section." Bankruptcy Reform Act, U.S. Code, 28, sec. 158(b)(1).

Act of 1898 (Act) was designed so that creditors had control over the "bankrupt's" estate, which theoretically belonged to them. Under the Act, creditors elected a "trustee" to oversee the assets for the benefit of the creditors. They were also permitted to elect a committee to represent them in matters pertaining to the administration of the case as well as in the supervision of the trustee. In reality, however, creditor control existed only in the largest cases and trustee supervision was done by bankruptcy judges. In cases where the creditors refused to exercise their supervisory powers, the judge was forced to do so by appointing a trustee. The judge supervised the trustees and advised them on legal methods to recover assets, reviewed most of the trustee's transactions, and ruled "ex parte" on their propriety. Additionally, the judge presided at the first meeting of creditors and supervised the examinations.

5 The term "bankrupt," denoting the person(s) who filed bankruptcy, was changed to "debtor" with the enactment of the Bankruptcy Reform Act of 1978.

6 The term "estate" is synonymous with "assets" of the person who has filed bankruptcy. The "estate" or "assets" of a debtor come under the jurisdiction of the bankruptcy court and are subject to distribution to creditors under the supervision of the court, generally through a trustee appointed by the creditors or by the court.

7 "Ex parte" is defined as an oral or written communication between the court and a party in interest to an action (the trustee in this instance) which is not made on the public record and to which reasonable prior notice to all parties has not been given.
of the debtors (similar to depositions) which were conducted by the trustee and creditors to obtain information regarding the debtor and the estate.

In 1973, the Commission on Bankruptcy Laws of the United States (Bankruptcy Commission) recommended legislation that was introduced in both houses of Congress. The legislation would separate administrative and adjudicative functions: a bankruptcy court (judicial) and an executive agency (administrative) to be called the United States Bankruptcy Administration.

The National Conference of Bankruptcy Judges drafted an alternative bill that proposed the transfer of non-judicial or administrative duties to bankruptcy clerks and to the Administrative Office of the United States Courts (AO). The National Bankruptcy Conference drafted a third bill that combined elements of the bills recommended by the Bankruptcy Commission and the National Conference of Bankruptcy Judges. After 3 years of hearings, the Bankruptcy Reform Act of 1978 was passed.\(^8\) The UST program was created as a result of this compromise; it provided that it be instituted as a pilot program under the supervision of the Attorney General.

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\(^8\)The substantive portion of the Act is Title I, also known as the Bankruptcy Code.
Problems Before the United States Trustee Program

Inconsistencies between the judicial and administrative roles of bankruptcy judges placed them in a position of conflict. Specifically questioned was their ability to act impartially in disputes between the estate and third parties.

The trustee, an appointee of the bankruptcy judge, represented the estate. The same trustee also may have represented many other estates before the same judge who also appointed him to other cases. A close working relationship generally ensued with frequent "ex parte" contacts between the two in the administration of the case. The appearance of impartiality was thus impugned.

Information obtained during an examination of the debtor at the first meeting of creditors, over which the bankruptcy judge presided, may then have been used in actions later filed by the trustee on the advice of the judge. The judge became an "interested party" and therefore biased about a case.

Creditor control of estates, as envisioned by the framers of the Act, was in reality a myth. The asset case was controlled, not by creditors, but by attorneys; the bankruptcy system operating more for the benefit of attorneys than for the benefit of creditors. The attorneys solicited and obtained proxies from creditors and thus
gained control over the supervision of the case and assets. In areas where trustees were appointed by the judges, the trustee also administered the cases. Again, the relationship between the trustee and the judge was questioned.

Fee generation was another problem. The Act's administrative system provided for trustee compensation in the form of fees to be collected from an estate as an incentive for trustees to collect assets for the estate. If the trustee also served as receiver, additional fees were received even if the work done was part of the work of the trustee. Legislation allowed a fee structure, which was abused, and further allowed the trustee to receive most if not all of the monies from the estate while the creditors received nothing. The assets were applied to the trustee's fee, his attorney's fee, and the required contribution to the Referees Salary and Expense Fund.

The general practices grow from the relationship between the trustees and the bankruptcy judges. The Bankruptcy Act permits election of trustees by creditors. Creditors seldom take an interest in consumer cases, however, and thus the bankruptcy judges appoint their friends as trustees in the vast majority of cases. Thus, litigants and observers frequently object to the apparent, and in many cases real, cronyism between bankruptcy judges and their trustees. The "bankruptcy ring" is reflected not only in the appearance of unfairness in bankruptcy judges ruling in litigation between their appointees and third parties, but also in the awarding of compensation by the appointing authority. The judges protect their appointees, mostly through use of the $150
discretionary fee, to the detriment of both the debtor's fresh start and the creditors' recovery. 9

Last, there was a problem related to the relationship between bankruptcy judges and the bankruptcy bar, especially attorneys representing debtors and trustees. The multitude of contacts between these led to a consensus among non-bankruptcy attorneys that there was a "bankruptcy ring" that had an inside track on all bankruptcy matters, including judicial favoritism. This was reported by Harold Marsh, Chairman of the Bankruptcy Commission in hearings before the Subcommittee on Civil and Constitutional Rights:

As a result of the nature of the system itself, there exists a relationship between the Bankruptcy Judges, the trustees and the counsel for the trustees which many people, including many involved in the system, consider unhealthy from the point of view of proper judicial and governmental administration. The judges by and large appoint the trustees and thereby in effect select the counsel. They do not generally appoint persons who are total strangers to them, and it would be entirely unrealistic to expect that they would or should. These same trustees and lawyers then deal on a day-to-day basis with the judge regarding the routine conduct of the proceeding, and finally these same trustees and lawyers appear before the judge as litigants and counsel when a controversy arises.

As a result of the conditions discussed above, and I am sure for other reasons, there grew up over the years an isolation of the bankruptcy bench and bar from the mainstream of American jurisprudence and from the judiciary and the legal fraternity generally. Persons practicing in the bankruptcy field tended to confine their

activities exclusively to that area, and the Bankruptcy Court, of course, did so from necessity. Therefore, a relatively small group of lawyers controlled the bankruptcy field. Those not within this group tended to regard them with suspicion and distrust. I believe that in the last ten years there may be some evidence that this "separate but unequal" status of the bankruptcy lawyers is being eliminated to some extent; but when the bar associations discuss one of their favorite new subjects, that of "specialization," the first thing that everyone agrees upon is that bankruptcy can be labeled a "specialty," although thereafter consensus immediately disappears. There is no real reason for this other than a historical one.

The problems caused by the combination of the administrative and judicial responsibility for a case, the lack of true creditor control, and the cronyism of the "bankruptcy ring" were not new. The Bankruptcy Commission documented them in detail.¹⁰

Previous Studies

Other studies of the bankruptcy system were made that also recommended a separate agency to administer the bankruptcy caseload. The first major study of the system was done by William J. Donovan for the United States District Court for the Southern District of New York. The Brookings Report (1968) was furnished by a task force from

Brookings Institution. The Commission on the Bankruptcy Laws of the United States was established by Public Law 91-354 and existed from July 24, 1970, to July 30, 1973. It conducted 8 days of public hearings and 44 days of executive sessions.

**Donovan Report**

The *Donovan Report* (1929) was the first major study of the bankruptcy system in the United States. It was headed by William J. Donovan for the United States District Court for the Southern District of New York. The report indicated that bankruptcy law administration was characterized by serious abuses and malpractice on the part of attorneys, receivers, trustees, appraisers, custodians, auctioneers, and other persons and associations. The conditions were caused by two main features of the Act:

1. Slow-moving procedural machinery laid down by the Act;

2. The theory underlying the administrative structure of the Act (creditor control), was not working and the actual administrative functions were being handled by court controlled administrators.

The report stated that there was no agency to study the major problems of administration and there was no uniformity of practice. It concluded that the matters required study on a national scale which could be accomplished only by a
federal executive agency. The report recommended creation of a federal bankruptcy commissioner to license and supervise trustees; investigate complaints against trustees and abuses in administration; make rules and coordinate the system; compile statistics, data, and make studies and reports; establish locally-based bureaus to examine and supervise transactions in nominal and no-asset cases. It was suggested that these changes would separate the judicial functions from the administrative ones and vest the administrative functions in the commissioner.

As a result of the Donovan Report, changes were proposed in the system to solve these problems and to make the bankruptcy system more efficient and fairer. Although the estates would still use private trustees, a government official would supervise bankruptcy administration, thereby ensuring fair and efficient administration.

Brookings Report

A task force to study bankruptcy administration was created in 1968 by the Brookings Institution. Its report,\(^1\) published in 1971, pronounced the current system a failure and recommended elimination of the courts and, in their

place, establishment of an independent executive agency to handle bankruptcy cases. The report stated:

The total bankruptcy system gets its job done according to the literal requirements of the law, but it is a dreary, costly, slow, and unproductive process. Compared to what the system might be doing, the present reality is a shabby and indifferent effort.

Management by coalition of referees, trustees, and the bankruptcy bar, which is of little benefit to debtors, creditors, or the public. Management characterized by loose supervision, infrequent field examinations, little concern for qualifications of personnel, archaic procedures, high costs, and unwarranted delays.

These shortcomings are a natural result of using a judicial system to try to solve problems that are by nature administrative. The judicial system relies on adversary procedure and on judges who are for the most part not highly skilled in the supervision of bankruptcy matters or in the selection of expert referees.

Commission on Bankruptcy Laws of the United States

Congress began hearings on bankruptcy in 1968 and created the Commission on Bankruptcy Laws of the United States (Bankruptcy Commission) in 1970. The purpose of the commission was to study, analyze, and recommend changes in the bankruptcy laws. Submitted to Congress in 1973, the report recommended a separation of judicial and administrative functions by the formation of a bankruptcy court with expanded jurisdiction to handle judicial

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12 Corporate reorganizations were to be filed and administered exclusively by district courts.
functions and an executive agency (United States Bankruptcy Administration) to perform administrative functions.

Conclusion

The common conclusion reached in the Donovan Report, the Brookings Report, and the Bankruptcy Commission report was that there was no agency equipped to handle increasingly complex bankruptcy cases. They recommended that a separate agency be created to handle administration of the bankruptcy system.
CHAPTER III

PILOT PROGRAM

Introduction

Section 408 of the Bankruptcy Reform Act of 1978 established a United States Trustee pilot program that became effective on October 1, 1979 (see Appendix I). The program, housed within the Department of Justice, was under the jurisdiction of the Attorney General (see Appendix II). The Attorney General formulated standards for panels of private trustees and standing trustees as required by title 11 of the legislation.

The U.S. Trustee, rather than the court, in a pilot district will...supervise administration of bankruptcy cases and exercise any other function prescribed by the Attorney General, such as presiding at first meetings of creditors, related to bankruptcy administration....The main purpose of the U.S. trustee is to remove administrative duties from the bankruptcy judge leaving the bankruptcy judge free to resolve disputes untainted by knowledge of matters unnecessary to a judicial determination.\(^\text{13}\)

For courts not involved in the pilot study, the Administrative Office of the United States Courts (AO) performed comparable functions. Non-pilot districts

established a panel of trustees who were to act under the supervision of the AO. Administrative functions were handled by "estate administrators," employed by the bankruptcy clerk's office. The estate administrator system, however, lacked the staffing allocation and authority that the UST was given, which resulted in a lower level of case administration in non-pilot districts.

The pilot program consisted of an Executive Office for United States Trustees and 10 field offices (and necessary satellite offices) headed by United States Trustees. Of the 94 judicial districts, 18 were included in the program.

Organization of the United States Trustee Program

The UST program, which consisted of 10 field offices covering 18 judicial districts throughout the United States, became effective the date of the Bankruptcy Code: October 1, 1979. It began as a five year pilot program under the United States Department of Justice. The newly enacted chapter 39 to title 28 of the United States Code, entitled "United States trustees," established the office of UST and prescribed duties, salaries, and miscellaneous provisions for governance. These provisions are modeled after the United States Attorney system.

The Executive Office for the United States Trustees was established in Washington, D.C. and is headed by an executive director, who is appointed by the United States
Attorney General. The Director provides policy direction, coordination, legal counsel, and administrative support to the individual United States trustees on behalf of the Attorney General.

By way of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, the program became permanent and nationwide. With two states excepted, the Act created 21 regions, each with a UST who is appointed by the Attorney General to a 5 year term. The trustee is subject to removal by the Attorney General. It also allowed the appointment of Assistant United States Trustees as necessary. Although, the program is self-funded from fees collected in various cases (see Appendix III), actual funding of the program is determined by congressional appropriation. During the 1990 fiscal year, approximately $60 million was allocated to the program for the maintenance and operation of 88 regional offices and 800 personnel.¹⁵

¹⁴Alabama (11th Circuit) and North Carolina (4th Circuit) judicial districts opted out of the program. They are to become part of the program at the earlier of: (1) an election by a majority of the bankruptcy judges of such judicial district which chooses to be included in a bankruptcy region established under 28 U.S. Code, sec. 581(a), or (2) October 1, 1992. Bankruptcy Judges, United States Trustees and Family Farmer Bankruptcy Act of 1986, Statutes at Large 100: 3088 (1986).

Role of the United States Trustee

The UST monitors all trustees and cases under chapters 7, 11, 12 and 13. Congress established this office to be "bankruptcy watchdogs to prevent fraud, dishonesty and overreaching in the bankruptcy arena..." to "...relieve bankruptcy judges of their current administrative and supervisory role...become the principal administrative officers of the bankruptcy system." They are not intended to serve as an extension of the court system, but rather as having a separate and distinct role and duty to execute and enforce the bankruptcy laws; to be responsible for supervising the day to day administration of bankruptcy cases to insure that the intent and requirements of the Bankruptcy Code are being met. Various regional and satellite offices monitor trustees and analyze their cases on a continuous basis, as required by the Code, through use of a computerized case management system that both logs and indexes regional bankruptcy filings and can give access to case information from other regions.

Chapter 7 Cases

As provided for under the Bankruptcy Code, the UST maintains and supervises a panel of private individuals to serve as interim trustees in chapter 7 cases; these must meet all qualifications established by the attorney general (see Appendix IV). The interim trustee liquidates the non-
exempt, unencumbered assets of the debtor. Chapter 7 debtors (individuals) receive discharges of their non-dischargeable debts and thus receive their financial "fresh start." The chapter 7 business/corporate debtor does not receive a discharge; rather, the business assets are liquidated and the case is closed.

Interim trustees must be bonded in an amount determined by the regional UST's office. All chapter 7 trustees are required to submit semi-annual reports to the UST for their judicial district. These reports must summarize no-asset cases and provide an itemized breakdown of asset cases. The reports on asset cases include property values, encumbrances, sales, expenses and liquid assets; exemptions and property abandonments for both asset and non-asset cases are included. Chapter 7 trustees are audited by the Office of the Inspector General, DOJ Audit Staff. Information from audits (which includes operational surveys, cash management reviews and compliance inspections) is used to identify internal control weaknesses in the individual trustee's case administration or cash management practices.

Chapter 11 Cases

In chapter 11 business reorganization cases, the debtor remains in possession of and continues to operate the business. Occasionally, and upon court order, a trustee is appointed in lieu of the debtor-in-possession. Under this
chapter, the debt and equity of the debtor can be restructured through a plan of reorganization, which is subject to approval by creditors and the court. Upon confirmation of the plan, chapter 11 provides a framework for its implementation.

The UST of each district assigns an attorney and an analyst (employees of the UST) to monitor the progress of the district's chapter 11 cases. The UST solicits an "official creditors' committee" shortly after the case is filed. This committee oversees the reorganization of the debtor and brings matters to the attention of the UST the committee deems necessary. The UST (as represented by his attorney) meets with the debtor and counsel to discuss aspects of the case such as the reason(s) for the filing; the financial condition and management of the debtor; the prospects for reorganization; and the operating and reporting requirements. In addition to required interim reporting, the debtor is also required to pay quarterly fees to the UST, which are then submitted to the executive office to fund the program. In most "confirmed" chapter 11 cases, the debtor remains in control of the business with oversight.

The "official creditors' committee" consists of the twenty largest unsecured creditors of a chapter 11 debtor. The committee is appointed by the UST as soon as three or more qualified creditors express a willingness to serve. Additional members of the committee are solicited from creditors at the first meeting of creditors.
by a creditors' committee (if any) and the UST; however, in some instances a chapter 11 trustee or receiver is appointed where there is cause.¹⁷

Chapter 13 Cases

Chapter 13 requires that an individual have a regular source of income with which to propose a plan that will pay all or a portion of their debts over a period of time (not to exceed 60 months). This plan is subject to approval by creditors, the standing trustee, and the court.

The UST appoints a chapter 13 standing trustee for each region who is subject to qualifications similar to those required of the chapter 7 trustee. A bond is required for each in an amount equal to or greater than 150 percent of the total monthly average of all bank balances in the standing trustee's bank accounts, including the expense account. Audits are conducted annually by the Office of the Inspector General, DOJ Audit Staff, or by an independent accounting firm. Additionally, chapter 13 trustees are required to submit an annual report and budget for review by the UST.

¹⁷"Cause" may be actions by the debtor-in-possession such as misappropriation of funds, failure to maintain insurance, or to pay taxes and salaries.
Chapter 12 Cases

Chapter 12 is restricted to "family farmers." The UST appoints a standing trustee to oversee cases that are handled in a manner similar to chapter 13.

Other Functions

In addition to the appointment of trustees and oversight of bankruptcy case administration and trustees, the UST has the following responsibilities:

1) The UST authorizes financial institutions to hold deposits for debtors and trustees. These institutions must provide quarterly banking and collateralization reports to the UST showing the amount of liquid assets on deposit for each debtor account, the type(s) of account(s), and the amount of excess funds over $100,000 held for each debtor.

2) The UST may participate in actions for relief, which may be heard on any issue relating to trustee responsibilities in a case under the Code. These actions may be motions to dismiss or convert a case, to appoint a trustee or receiver, to object to the discharge of a debtor, or to other appropriate relief. Because it was the intent of Congress that the UST play an active role in cases under the Bankruptcy Code, many courts have held that the UST should be granted party-in-interest status for all administrative responsibilities.
3) The UST becomes involved in "bad faith" bankruptcy case filings, and/or where bankruptcy crimes may have been committed. Such violations and crimes are reported to the UST who then refers the matter to the United States Attorney or other law enforcement agencies.

Conclusion

The BRA required the Attorney General to conduct a study of the pilot program during the transition period, and annually thereafter, and report his findings to Congress. The section contained a "sunset" provision that would abolish the pilot program as well as the Administrative Office counterpart in the DOJ effective April 1, 1984, assuming Congress refused to extend the UST program.

18"Bad faith" filings consist of multiple filings by a debtor; transfers of property to avoid pending court action; refiling in violation of a previous court order; seeking a discharge of debts within 6 years of a prior discharge; attempts to discharge primarily consumer debts under chapter 7 that could be paid through a chapter 13 plan.

19Bankruptcy "crimes" include the concealment or transfer of estate assets; perjury; failure to disclose ownership and transfers of real property of an estate; providing false information on the bankruptcy petition and schedules; and fraud.

20"Not later than January 3, 1984, the Attorney General shall report to the Congress, to the President, and the Judicial Conference of the United States, as to the feasibility, projected annual cost and effectiveness of the United States trustee system, as determined on the basis of the studies and surveys respecting the operations...together with recommendations as to the desirability and method of proceeding with implementation...in all judicial districts of the United States." Bankruptcy Reform Act of 1978, Statutes at Large 92: 2549 (1978).
Due to a controversy involving the jurisdiction and power of bankruptcy judges, the pilot program was extended twice with the second extension ending September 30, 1986. Passage of the Bankruptcy Amendments and Federal Judgeship Act of 1984 resolved the controversy and allowed further consideration of the UST program.

21"There has been a continuing tension and adjustment between the strictures of Article III of the Constitution, which requires that judges of the federal courts be appointed for life ('good behavior') and the need for more federal judges/arbiters/referees/magistrates. Appointments for life have the partial advantage of political insulation; however, senility, disability, expense and lack of responsiveness are only a few of the disadvantages. When Congress passed the Bankruptcy Reform Act of 1978, the bankruptcy judges were to receive 14-year terms and to be restricted in their exercise of jurisdiction to cases and controversies arising in or related to bankruptcy cases. The jurisdictional grant was too expansive to survive an Article III violation challenge, and a badly divided Supreme Court found in its plurality decision in the Marathon [Northern Pipeline Construction Company v. Marathon Pipe Line Company, 459 U.S. 1094 (1982)] case that the Bankruptcy Code was unconstitutional if the bankruptcy judges had only Article I (term of years) status. Rather than have its decision result in chaos, the Supreme Court took the unusual step of staying its order so that Congress could either elevate the bankruptcy judges to Article III judges or prune back the jurisdiction of the bankruptcy courts to something resembling old summary jurisdiction under the Bankruptcy Act of 1898. After two extensions, Congress finally adopted the latter course, but the system is still unstable." Hon. David N. Naugle, United States Bankruptcy Judge, San Bernardino, California, Interview on April 19, 1991.
CHAPTER IV

EVALUATION OF THE PILOT PROGRAM

Introduction

The 1978 statute mandated that an evaluation of the pilot program be conducted, and it further directed that the DOJ report to Congress, the President, and the Judicial Conference of the United States no later than January 3, 1984, on the effectiveness of the United States trustee system and the desirability and method of proceeding with full implementation in all judicial districts. The evaluation was intended to address the following questions:

1) Has the UST system been successful in accomplishing its objectives?
2) Are there any alternatives to the UST system that could do as well or better at accomplishing the objectives?
3) What modifications to the UST system might improve its effectiveness?
4) How cost-effective is the current pilot program, and what would be the costs of nationwide expansion?


The statutorily mandated study and evaluation of the pilot program was done by an independent consulting firm,
Abt Associates. Its report, forwarded to Congress by the Attorney General, strongly supports the pilot program.\textsuperscript{22} The study compared bankruptcy administration in pilot districts to districts that did not have United States trustees. It concluded that the program was sound in theory and that it demonstrated its effectiveness empirically.

The evaluation design had two components:

1) **Qualitative data** were collected in 11 pilot and 9 non-pilot districts through: (a) examination of local rules, policy statements, manuals, and other written materials; (b) in-depth interviews with UST and clerk's office staff; (c) interviews with judges, trustees, and other members of the bankruptcy community. The qualitative component addressed case administration in the three primary chapters of the Code: 11, 7, and 13.

2) **Quantitative data** were gathered by examining the court dockets and case files of approximately 1,500 cases selected from 18 matched pairs of pilot and non-pilot districts. The cases were randomly sampled from those filed during the year ending June 30, 1981. Three types of cases were sampled: chapter 11 cases; chapter 7 voluntary consumer cases; and chapter 7 business or involuntary cases.

**Summary of results**

Results of the Abt study are organized around the research questions addressed by the evaluation as follows:

1. Has the United States trustee system been successful in accomplishing its objectives?

Abt found that in both concept and practice, the UST system achieves its goals. To assure unbiased and efficient processing of bankruptcy cases, separation of administration and judicial functions is essential. Through active monitoring of cases by the trustee system, interests of creditors are being met. Additionally, the system's "watch-dog" monitoring of attorney's fees has helped prevent excessive fees and poor representation of debtors by the bar.

The program is found to encourage, rather than discourage, participation of creditors in case administration (creditors committees in chapter 11 cases, for example). The trustee, considered to be a disinterested party, can be representative of parallel public interests.

The program is not duplicative of functions performed by the clerks' office, nor is it another bureaucratic "layer" in the bankruptcy system. Some "overlap" in the duties of the UST, the court, and the clerks' office, particularly in chapter 7 case administration, was found. This overlap is considered to be minimal and easily rectified; it is considered to be important as a "check and balance" in the system.
In short, as envisioned by the legislative framers, the program serves a crucial role in bankruptcy administration—a role that is neither excessively duplicative nor unnecessarily expansive.

The report listed the primary functions of the UST program and its findings as to whether or not those functions had been satisfied. They are as follows:

A) Monitor the debtor-in-possession in chapter 11 business reorganization cases and to take appropriate action as necessary.

Finding: While both United States trustees in pilot districts and estate administrators in non-pilot districts consider efficient case monitoring and case administration to be a high priority, the level of both monitoring and case administration was significantly higher in the pilot districts and resulted in a higher percentage of confirmed plans and a lower level of cases showing no activity.

B) Establish, maintain, and supervise panels of private trustees responsible for chapter 7 case administration.

Finding: Due to budgetary cutbacks in 1981 within the UST program and concomitant reduction in staffing, case monitoring was focused on asset chapter 7 cases. Non-pilot districts also placed
chapter 7's at a lower level of priority; routine administration was performed in the clerk's office. Pilot districts, however, provided more training, advice, and supervision to panel trustees than did non-pilot districts. Additionally, both the UST and the court review panel trustees fee applications and bank statements. The UST may remove the panel trustees for inadequate performance. Estate administrators in non-pilot districts do not have removal authority.

C) Appoint and supervise standing trustees who are responsible for chapter 13 case administration.

Finding: Low priority is given by the UST to monitoring chapter 13 standing trustees because of limited funding. The decision was made when the pilot program was commenced to concentrate resources on chapter 11 and chapter 7 cases. Estate administrators in non-pilot districts concentrate on chapter 11 and chapter 7 cases also, so few differences were found in the two programs. The differences that were found in administration were due to variances in local rules and policies rather than to the involvement of the UST. Pilot districts received more
support, auditing, and monitoring of legal fees and fraudulent practices than did non-pilot districts.

2. Are there alternatives to the UST system that could do as well or better at accomplishing objectives?

The study found that the UST trustee program is superior to the estate administrator system. Additional recommendations are made as to the "seating" of the system. The options considered are: the clerk's office; a new independent or quasi-independent agency; the DOJ; another executive agency.

A) The UST system is preferable to estate administrators for the following reasons:

1) Location of estate administrators within the clerks' office does not support the desired separation of administrative and judicial functions;

2) The estate administrator system lacks the staff, resources, and authority to function as the UST does.

B) Housing the program in a new independent or quasi-independent agency would be costly and may subject the program to elimination because of federal budget cuts and/or changes in the political environment.
C) To achieve the goal of separation of judicial and administrative functions, an estate administrator-type system must be completely independent of the court. Maintaining the system within the DOJ is recommended for the following reasons:

1) It maintains continuity of management, policy direction, budgetary planning, and experience.

2) Potential conflicts of interest between the DOJ (advocate of the government) and the UST (impartial case administrator) have not occurred.

3) The pilot program has been effective while housed in the DOJ.

4) The legislative intent for placing the pilot program in the DOJ still applies.^^

3. What modifications to the UST System might improve its effectiveness?

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Drafters of the bankruptcy legislation cited the following reasons for seating the UST program within the Department of Justice: (1) lawyers are readily available who understand the Bankruptcy Code and UST mandate; (2) authority to coordinate support between the UST's and the United States attorneys; (3) prestige to attract qualified UST's; (4) there was in place, within the Department of Justice, an agency with an organizational model (United States Attorney's office) similar to the one recommended for the UST program (3-tiered organizational structure with a central/executive office, regional offices and local/satellite offices).
Expansion of the program is recommended. Modifications are suggested for improved case administration.

A) Intensified monitoring of cases, development of standard specifications for financial reports, and increased use of debtor and creditor conferences are needed for chapter 11 cases.

B) Refinements to the current chapter 7 case administration system, such as increased uniformity of forms, policies and procedures; limiting panel trustee membership so that individual annual caseload is 200-250; reassessing trustee fee structure; instituting an IRS-type audit of debtors.

C) Variability throughout judicial districts is cited as a problem in chapter 13 case administration. It is recommended that there be increased guidance and standardization in case processing.

In addition to chapter specific recommendations, computerized case management and delineation of responsibilities between the trustee and bankruptcy court to reduce overlap are recommended.

4. How cost-effective is the current pilot program, and what would be the costs of nationwide expansion?
An analysis was done of the amount of pilot program funds allocated to offices and functions; percentage of funds for personnel versus non-personnel items; office staffing patterns; and office resources adjusted for caseload.

Assuming sufficient staff to provide the same level of service and a similar regional office model within the clerk's office as proposed for the UST program, it is estimated that start-up costs for the estate administration system would be 20 million dollars for the first year of operation and 19 million dollars for the second.

Cost estimates for the expanded UST program are 24.2 million dollars for the first year and 23 million dollars for the second. These figures assume that the program would maintain its current functions and priorities; be housed within the DOJ; and have the same 3-tiered organizational structure.

Study findings show significant differences in efficient case administration between pilot and non-pilot districts. The increased case administration efficiency in the pilot districts combined with the necessity of administrative and judicial independence outweigh the cost savings of implementing an estate
administrator program within the Administrative Office of the United States courts.

Summary of Recommendations

The 1983 Abt Associates study recommended that the UST Program be expanded and implemented on a nationwide basis. It recommended further that the program remain in the DOJ and expressly recommended that it not be placed within the judiciary (under the control of the Administrative Office of the United States Courts) as this would

in many ways threaten the independence from the judiciary that was originally sought in creating the U.S. Trustee Program....An association between the court and the U.S. trustee's office, even if loosely structured, would hinder both the independent operation of each and the public perception of independence.24

A 3-tiered, regionally structured organization for the program is recommended to minimize costs and maximize continuity with the current pilot program. Preservation of integrity within the bankruptcy system as well as efficient and effective case management justify the costs involved in the implementation of the expanded United States trustee program.

Abt Associates Evaluation Update (1985)

Because of the delay caused by the controversy in Northern Pipeline Construction Company, Congress required an update on the information in the 1983 Abt Associates study.

24Ames et al., p. 258.
The first study was based on data from 20 pilot and non-pilot districts; 6 pilot and 5 non-pilot districts were used by Abt Associates in the update.

Chapter 11 cases

The update found that the UST program made a significant difference in the administration of chapter 11 cases by aggressively monitoring debtors-in-possession and taking remedial action when debtors fail to meet their responsibilities. There has been improvement in the supervision of the chapter 13 standing trustees in pilot districts. This has been done by monitoring budgets, standardizing audit procedures, and improving administrative efficiency. Administration of chapter 7 cases is highly variable among districts and panel trustees; however, policy guidelines have been established that govern the employment of professionals, the abandonment of assets, and the investment of estate funds. Steps have been taken to ensure fiscal accountability through standardized financial reporting and random audits of panel trustees.

Supporting the prior study, United States trustees continue to be more active than estate administrators in monitoring chapter 11 cases. The study identified 2 areas with significant progress: monitoring both the financial position of the debtor-in-possession and the payment of
post-petition taxes. Additionally, the trustee was more likely to take action where cases were not progressing.\textsuperscript{25}

Chapter 7

The original study criticized the lack of uniformity among districts and trustees in case administration and liquidation of estate assets in chapter 7 cases. Although some progress has been made, the 1985 study suggests further strengthening in chapter 7 case administration.

Chapter 13 cases

Monitoring of chapter 13 cases continues to be of low priority in both pilot and non-pilot districts. Substantial variation in case administration by standing chapter 13 trustees remains, due in part to varying judicial standards in confirming chapter 13 plans, caseload size, availability of automation/computers and state tax laws. Some progress has been made in the area of strengthened audit procedures,\textsuperscript{26} automation, and monitoring of chapter 13 standing trustee expenditures. Additionally, the Executive Office of the UST has allotted a staff person to coordinate the chapter 13 program.

\textsuperscript{25}Such actions include motions before the court for dismissal of a case or conversion to chapter 7 when a plan of reorganization has not been timely filed or confirmed.

\textsuperscript{26}An on-site audit is performed by either a national accounting firm (for trustee's annual receipts exceeding $250,000) or by the Department of Justice for standing trustees not subject to audit by the national accounting firm.
Other Functions

The pilot districts have been more successful than non-pilot districts in fulfilling other functions: general "watchdog"; (2) promoting standardization; (3) encouraging automation. The estate administration system's weaknesses in these areas are due primarily to lack of personnel; budgetary restrictions; lack of prestige and authority with attorneys; location within the clerk's office; variability among districts' policies and procedures; lack of authority to take remedial action when debtors-in-possession fail to meet their responsibilities.27

Alternatives

The alternative to the UST program is the estate administration system being used in non-pilot districts. Although deputy clerks have generally performed their function well, the disadvantages, as above-cited, warrant placement of the trustee system outside the judiciary.

Recommendations


27 The Second Circuit Court of Appeals decision in Guam Restaurant v. Speciner further reinforced the lack of standing of the clerk's office by prohibiting sua sponte action by the court.
1. Housing the program

To guarantee separation of administrative and judicial functions, the program should remain housed in the United States DOJ rather than in the Administrative Office of the United States Courts. Housing it in the DOJ allows continuity of the program, management, policy direction, staff, and budgeting. Potential conflicts of interest between the DOJ as an advocate for the United States government and the UST as impartial case administrator have not materialized. The UST program has been effective in this location (DOJ) and has the staff, prestige, authority, and organizational model (United States Attorney) to fulfill the legislative intent of the bankruptcy program.

2. Organizational structure for the UST program

Continuation of the 3-tiered organizational structure is recommended. This consists of:

a) a central/executive office, headed by an executive officer, to provide policy guidance, supervision, and budget management;

b) regional offices, headed by United States trustees, to coordinate functions within a district; monitor activities of local
offices; provide coordination and support; and screen and select assistant United States trustees; c) local offices, headed by Assistant United States trustees, to monitor and administer caseload within local areas.

3. Personnel resources

The 1983 evaluation contained a detailed cost and resource analysis for nationwide expansion of the UST program. A replication of this analysis was considered to be beyond the scope of this study. Some recommendations, however, were proffered should the program be expanded.

A) Seven year appointments by the Attorney General of the UST with assistant UST positions to be by merit rather than appointment;
B) An increase in salary for lawyers and financial analysts in the UST offices to recruit and retain qualified staff;
C) Currently, there are no statutory restrictions for removal from a trustee panel; recommend "for cause" restriction as it is for removal of a trustee from a case;
D) A term of membership, with staggered terms, for panel trustees is recommended to ensure continuity and experience on the panel.

4. Other modifications

Further modifications to the UST trustee system are recommended to make the expanded program more effective and efficient.

A) Chapter 11 cases

1) increase the use of conferences with debtors and creditors;
2) intensify monitoring so that remedial action is taken in a timely manner;
3) clarify statutes on the standing of the UST to take remedial action and advise on matters concerning the adequacy of disclosure statements and plans.

B) Chapter 7 cases

Two alternative approaches for case administration are recommended:
1) Refine the current system by:
   a) fully implementing existing policy directives;
b) continuing with and expanding current efforts to standardize trustee reports and monitoring trustee performance;
c) introducing an IRS-type audit of debtors.

2) Allow in-house administration of small and no-asset cases (less than $500 of non-exempt, unencumbered assets) by the UST office. This option would entail no additional cost to the government as the cost of an in-house attorney would be offset by the "per case" fee that is paid to panel trustees. Advantages of in-house administration include increased efficiency, aggressive pursuit of small assets, and improved public perception of the bankruptcy system. Field testing of this option is recommended.

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28This is not allowed under the statute. The UST may serve as a trustee in a case "where no one is willing to serve" under Section 15701(b) of the Code. A broad interpretation may allow administration by the UST on a case-by-case basis.
C) **Chapter 13 cases**

Continued auditing and monitoring of fees and administrative expenses of the standing trustees is recommended. They should be encouraged to reduce fees when possible. Additionally, the UST should encourage and assist the standing trustees in stream-lining Chapter 13 case administration.

**Conclusion**

The conclusions reached in the original Abt Associates evaluation were reaffirmed in the August, 1985, update of the original study. The update evaluation of the UST pilot program found it to be sound theoretically and effective empirically. The program maintained its strength in chapter 11 case administration, continued to make recommendations for improvements in chapter 7 case administration, and realized improved effectiveness in chapter 13 case administration. Additionally, it contributed to the efficiency and integrity of the bankruptcy system. Nationwide expansion of the program was recommended by both the 1983 Abt Associates evaluation and the 1985 Abt Associates update.
CHAPTER V

CONCLUSION AND RECOMMENDATIONS

The main purpose of the United States trustee system is to separate the administrative from the judicial functions of the court. This "separatism" addressed criticisms of the former bankruptcy system (prior to the Bankruptcy Reform Act of 1978). Those criticisms were as follows:

1) The combination of administrative and judicial responsibility for a case;
2) Lack of true creditor control;
3) Cronyism of the "bankruptcy ring."

The solution to these criticisms appeared to be a combination of professionalization, oversight, financial security, and classical separation of powers.

With passage of the Bankruptcy Reform Act of 1978, a UST pilot program was established to provide administrative and oversight functions to the bankruptcy system while leaving adjudicative matters to bankruptcy judges. This placed judicial functions within the judicial branch and "watchdog" and administrative functions within the executive branch.

The requirements of the Attorney General for appointment of United States Trustees ensured professionalization
(See Appendix IV). Employment of panel and standing trustees is done by the office of the UST instead of by the court, thereby removing the appearance of "cronyism" with the court. Monitoring and auditing of panel and standing trustees, as well as establishing guidelines, policies and procedures provide further evidence of separation from the court of administrative functions.

Creditor control in chapter 11 cases has been regained through use and encouragement by the UST of creditors' committees. Additionally, litigation for the benefit of the estate (thus the creditors) can be initiated by the UST. Such actions can gain assets for the estate, thereby benefitting creditors.

Further oversight and participation by the UST is needed in day-to-day chapter 11 case administration. According to the Abt reports, there are significantly more chapter 11 cases with confirmed plans of reorganization in pilot districts than there are in non-pilot districts. Current policy causes monitoring of cases by the UST to cease after plan confirmation when regular payments are to be made to creditors and taxing agencies. With no oversight during this post-confirmation period, there is no accountability for plan payments by the "reconstituted" debtor. Remedial action must come from the court's involvement in administrative oversight of the case wherein
the matter is brought to the attention of the bankruptcy judge, who then requests action on the part of the UST. Procedurally, the UST is not required to take action since the case has a confirmed plan. Therein lies the conflict: Is the judge entering the administrative arena and through "ex parte" communication requiring or suggesting action from the bankruptcy "watchdog"?

It is recommended that further standardization of policies, procedures, and forms be established within the court. Currently, each district has its own forms and local rules and procedures; the guidelines for the requirements of the UST differ in each district. This can be viewed as confusing and inequitable to the bankruptcy bar. Appearances of cronyism have been reported by bar members who are not familiar with local procedure and who are faulted for failing to follow the local rules. Local practitioners, meanwhile, appear to have easier access to the bench.

Additional refinements in policy are needed regarding the dollar amount of assets in an estate that cause a chapter 7 trustee to declare it a "no-asset" case. Panel trustees within a district self-determine what constitutes an asset versus a no-asset case; many times the ease with which the asset may be realized for the estate is the determining factor. While one trustee may set $500.00 as
the minimum to be realized for an asset case, another trustee may establish $100,000.00 as the criterion. Certainly this lack of an established guideline may lead to enrichment for one estate and enrichment of one trustee in another case. Creditors may realize nothing from an estate while the trustee absorbs the assets to pay his "costs of administration." Additional auditing of fees and expenses claimed by standing and panel trustees is advised to ensure accountability.

Upon expansion of the UST program, trustees appointed under the old system (by the judges) had the option to be "re-employed" as panel trustees under the supervision of the UST. Auditing the records of these "re-employed" trustees is recommended in cases assigned to them prior to UST supervision.29 While the UST is actively and aggressively confronting this issue, more action may be necessary.

The lack of adequate personnel to accomplish these recommendations, as well as recommendations made in the Abt reports, continues to be a problem. Although the UST program is self-funding, the program is subject to limitations imposed by the appropriations process.

The enormous increase in bankruptcy filings and concomitant detrimental effect on numerous creditors

29A case pending in the Northern District of California involves a "court appointed" trustee, for alleged fraudulent actions and misappropriation of estate funds.
requires immediate attention to the bankruptcy system. The establishment of the UST program appears to have a positive effect on the administration of the system, but budgetary priorities must be reevaluated.

Further standardization of policies and procedures within the bankruptcy system and UST program is necessary. Additionally, automation and computerization is essential. Currently there are pilot districts undergoing automation, but many courts are so large that the programs are unable to handle the caseload. With automation comes the ability to audit the bankruptcy system more accurately, something noted in the Abt reports. While the UST program has an automation system that allows for case monitoring, the courts do not have the capability to do so and must rely on other personnel to oversee case administration.

Overall, the UST program (in effect nationwide for 5 years) has proven to be an effective and cost efficient means of monitoring and overseeing bankruptcy case administration. Evaluation of the current program would be valuable in discovering and assessing problem areas within the system. Further Congressional action and legislation may be required to strengthen and refine both the UST program and the bankruptcy system.
APPENDIX I: 28 United States Code, Section 581

United States trustees.

(a) The Attorney General shall appoint one United States trustee for each of the following regions composed of Federal judicial districts (without regard to section 451);

(1) The judicial districts established for the States of Maine, Massachusetts, New Hampshire, and Rhode Island.

(2) The judicial districts established for the States of Connecticut, New York, and Vermont.

(3) The judicial districts established for the States of Delaware, New Jersey, and Pennsylvania.

(4) The judicial districts established for the States of Maryland, North Carolina, South Carolina, Virginia, and West Virginia and for the District of Columbia.

(5) The judicial districts established for the States of Louisiana and Mississippi.

(6) The Northern District of Texas and the Eastern District of Texas.

(7) The Southern District of Texas and the Western District of Texas.

(8) The judicial districts established for the States of Kentucky and Tennessee.
(9) The judicial districts established for the States of Michigan and Ohio.

(10) The Central District of Illinois and the Southern District of Illinois; and the judicial districts established for the State of Indiana.

(11) The Northern District of Illinois; and the judicial districts established for the State of Wisconsin.

(12) The judicial districts established for the States of Minnesota, Iowa, North Dakota, and South Dakota.

(13) The judicial districts established for the States of Arkansas, Nebraska, and Missouri.

(14) The District of Arizona.

(15) The Southern District of California; and the judicial districts established for the State of Hawaii; and for Guam and the Commonwealth of the Northern Mariana Islands.

(16) The Central District of California.

(17) The Eastern District of California and the Northern District of California; and the judicial district established for the State of Nevada.

(18) The judicial districts established for the States of Alaska, Idaho (exclusive of Yellowstone National Park), Montana (exclusive of Yellowstone
National Park), Oregon, and Washington.

(19) The judicial districts established for the States of Colorado, Utah, and Wyoming (including those portions of Yellowstone National Park situated in the States of Montana and Idaho).

(20) The judicial districts established for the States of Kansas, New Mexico, and Oklahoma.

(21) The judicial districts established for the States of Alabama, Florida, and Georgia and for the Commonwealth of Puerto Rico and the Virgin Islands of the United States.

(b) Each United States trustee shall be appointed for a term of five years. On the expiration of his term, a United States trustee shall continue to perform the duties of his office until his successor is appointed and qualifies.

(c) Each United States trustee is subject to removal by the Attorney General.
Duties; supervision by Attorney General.

(a) Each United States trustee, within the region for which such United States trustee is appointed, shall—

(1) establish, maintain, and supervise a panel of private trustees that are eligible and available to serve as trustees in cases under chapter 7 of title 11;

(2) serve as and perform the duties of a trustee in a case under title 11 when required under title 11 to serve as trustee in such a case;

(3) supervise the administration of cases and trustees in cases under chapter 7, 11, or 13 of title 11 by, whenever the United States trustee considers it to be appropriate--

(A) monitoring applications for compensation and reimbursement filed under section 330 of title 11 and, whenever the United States trustee deems it to be appropriate, filing with the court comments with respect to any of such applications;

(B) monitoring plans and disclosure statements filed in cases under chapter 11 of title 11 and filing with the court, in connection with hearings under sections 1125 and 1128 of such title, comments with respect to such plans and
disclosure statements;

(C) monitoring plans filed under chapters 12 and 13 of title 11 and filing with the court, in connection with hearings under sections 1224, 1229, 1324, and 1329 of such title, comments with respect to such plans;

(D) taking such action as the United States trustee deems to be appropriate to ensure that all reports, schedules, and fees required to be filed under title 11 and this title by the debtor are properly and timely filed;

(E) monitoring creditors' committees appointed under title 11;

(F) notifying the appropriate United States attorney of matters which relate to the occurrence of any action which may constitute a crime under the laws of the United States and, on the request of the United States attorney, assisting the United States attorney in carrying out prosecutions based on such action;

(G) monitoring the progress of cases under title 11 and taking such actions as the United States trustee deems to be appropriate to prevent undue delay in such progress; and

(H) monitoring applications filed under
section 327 of title 11 and, whenever the United States trustee deems it to be appropriate, filing with the court comments with respect to the approval of such applications;

(4) deposit or invest under section 345 of title 11 money received as trustee in cases under title 11;

(5) perform the duties prescribed for the United States trustee under title 11 and this title, and such duties consistent with title 11 and this title as the Attorney General may prescribe; and

(6) make such reports as the Attorney General directs.

(b) If the number of cases under chapter 12 or 13 of title 11 commenced in a particular region so warrants, the United States trustee for such region may, subject to the approval of the Attorney General, appoint one or more individuals to serve as standing trustee, or designate one or more assistant United States trustees to serve in cases under such chapter. The United States trustee for such region shall supervise any such individual appointed as standing trustee in the performance of the duties of standing trustee.

(c) Each United States trustee shall be under the general supervision of the Attorney General, who shall provide general coordination and assistance to the United
(d) The Attorney General shall prescribe by rule qualifications for membership on the panels established by United States trustees under paragraph (a)(1) of this section, and qualifications for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11. The Attorney General may not require that an individual be an attorney in order to qualify for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11.

(e)(1) The Attorney General, after consultation with a United States trustee that has appointed an individual under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11, shall fix--

(A) a maximum annual compensation for such individual, not to exceed the annual rate of basic pay in effect for step 1 of grade GS-16 of the General Schedule prescribed under section 5332 of title 5; and

(B) a percentage fee not to exceed--

(i) in the case of a debtor who is not a family farmer, ten percent; or

(ii) in the case of a debtor who is a
family farmer, the sum of--

(I) not to exceed ten percent of the payments made under the plan of such debtor, with respect to payments in an aggregate amount not to exceed $450,000; and

(II) three percent of payments made under the plan of such debtor, with respect to payments made after the aggregate amount of payments made under the plan exceeds $450,000; based on such maximum annual compensation and the actual, necessary expenses incurred by such individual as standing trustee.

(2) Such individual shall collect such percentage fee from all payments received by such individual under plans in the cases under chapter 12 or 13 of title 11 for which such individual serves as standing trustee. Such individual shall pay to the United States trustee, and the United States trustee shall deposit in the United States Trustee System Fund--

(A) any amount by which the actual compensation of such individual exceeds 5 per centum upon all payments received under plans
in cases under chapter 12 or 13 of title 11 for which such individual serves as standing trustee; and

(B) any amount by which the percentage for all such cases exceeds--

(i) such individual's actual compensation for such cases, as adjusted under subparagraph (A) of paragraph (1); plus

(ii) the actual, necessary expenses incurred by such individual as standing trustee in such cases. Subject to the approval of the Attorney General, any or all of the interest earned from the deposit of payments under plans by such individual may be utilized to pay actual, necessary expenses without regard to the percentage limitation contained in subparagraph (d)(1)(B) of this section.
United States Trustee System Fund

(a) There is hereby established in the Treasury of the United States a special fund to be known as the "United States Trustee System Fund" (hereinafter in this section referred to as the "Fund"). Monies in the Fund shall be available to the Attorney General without fiscal year limitation in such amounts as may be specified in appropriations Acts for the following purposes in connection with the operations of United States trustees--

(1) salaries and related employee benefits;
(2) travel and transportation;
(3) rental of space;
(4) communication, utilities, and miscellaneous computer charges;
(5) security investigations and audits;
(6) supplies, books, and other materials for legal research;
(7) furniture and equipment;
(8) miscellaneous services, including those obtained by contract; and
(9) printing.

(b) There shall be deposited in the Fund--
(1) one-third of the fees collected under section 1930(a)(1) of this title;
(2) three-fifths of the fees collected under section 1930(a)(3) of this title;
(3) one-half of the fees collected under section 1930(a)(4) of this title;
(4) one-half of the fees collected under section 1930(a)(5);
(5) all of the fees collected under section 1930(a)(6) of this title;
(6) three-fourths of the fees collected under the last sentence of section 1930(a) of this title; and
(7) the compensation of trustees received under section 330(d) of title 11 by the clerks of the bankruptcy courts.

(c)(1) Except as provided in paragraph (2), amounts in the Fund which are not currently needed for the purposes specified in subsection (a) shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(2) On November 1, 1989, and on November 1 of each year thereafter, the Secretary of the Treasury shall transfer into the general fund of the Treasury the amount, if any, in the Fund that exceeds 110
percent of-

(A) the amount appropriated for the entire current fiscal year for the purposes specified in subsection (a), or

(B) if no appropriation has been made for the entire current fiscal year, the annual equivalent of the aggregate amount appropriated to date for the current fiscal year for the purposes specified in subsection (a).

(d)(1) The Attorney General shall transmit to the Congress, not later than 120 days after the end of each fiscal year, a detailed report on the amounts deposited in the Fund and a description of the expenditures made under this section.

(2) If for each fiscal year in any period of 2 successive fiscal years—

(A) the aggregate amount deposited under subsection (b) in the Fund exceeds 110 percent of expenditures for the purposes specified in subsection (a), or

(B) the costs incurred for the purposes specified in subsection (a) exceed the aggregate amount deposited under subsection (b) in the Fund, then the Attorney General shall include in such report a recommendation regarding the manner in
which the fees payable under section 1930(a) of title 28, United States Code, may be modified to cause the annual amount deposited in the Fund to more closely approximate the annual amount expended from the Fund.

(e) There are authorized to be appropriated to the Fund for any fiscal year such sums as may be necessary to supplement amounts deposited under subsection (b) for the purposes specified in subsection (a).
Qualifications were established by the Attorney General (by authority vested in him by 28 United States Code sections 509 and 510) for membership on panels of private trustees who are eligible to serve as chapter 7 trustees and as standing trustees in chapter 13.

Section 58.3 of Chapter I of Title 28, Code of Federal Regulations reads:

**Qualifications for Membership on Panels of Private Trustees**

(a) To be eligible for appointment to the panel and to retain eligibility therefor, an individual must possess the qualifications described in paragraph (b) of this section in addition to any other statutory qualifications. A corporation or partnership may qualify as an entity for appointment to the private panel. However, each person who, in the opinion of the United States Trustee or of the Director, performs duties as trustee on behalf of a corporation or partnership must individually meet the standards described in paragraph (b) of this section, except that each United States Trustee, with the approval of the Director, shall have the discretion to waive the applicability of subparagraph (b)(6) of this section as to any individual in a non-supervisory position. No
professional corporation, partnership, or similar entity organized for the practice of law or accounting shall be eligible to serve on the panel.

(b) The qualifications for membership on the panel are as follows:

(1) Possess integrity and good moral character.

(2) Be physically and mentally able to satisfactorily perform a trustee's duties.

(3) Be courteous and accessible to all parties with reasonable inquiries or comments about a case for which such individual is serving as private trustee.

(4) Be free of prejudices against any individual, entity, or group of individuals or entities which would interfere with unbiased performance of a trustee's duties.

(5) Not be related by affinity or consanguinity within the degree of first cousin to any employee of the Executive Office for United States Trustees of the Department of Justice, or to any employee of the office of the United States Trustee for the district in which he or she is applying.

(6)(i) Be a member in good standing of the
bar of the highest court of a state or of the District of Columbia; OR

(ii) Be a certified public accountant; OR

(iii) Hold a bachelor's degree from a full four-year course of study (or the equivalent) of an accredited college or university (accredited as described in Part II, § III of Handbook X118 promulgated by the United States Office of Personnel Management) with a major in a business-related field of study or at least 20 semester-hours of business-related courses; or hold a master's or doctoral degree in a business-related field of study from a college or university of the type described above; OR

(iv) Be a senior law student or candidate for a master's degree in business administration recommended by the relevant law school or business school dean and working under the direct supervision of:

(A) a member of a law school faculty;

or

(B) a member of the panel of private trustees; or

(C) a member of a program established by the local bar association to provide
clinical experience to students; OR

(v) Have equivalent experience as deemed acceptable by the United States Trustee.

(7) Be willing to provide reports as required by the United States Trustee.

(8) Have submitted an application under oath, in the form prescribed by the Director, to the United States Trustee for the District in which appointment is sought, provided that this provision may be waived by the United States Trustee on approval of the Director.


*Guam Restaurant v. Speciner,* 737 F.2d 274 (2d Cir. 1984).


