

College Columns

News and Views from The American College of Bankruptcy

Sold Out! Record Numbers Attend Fifth Induction Ceremony

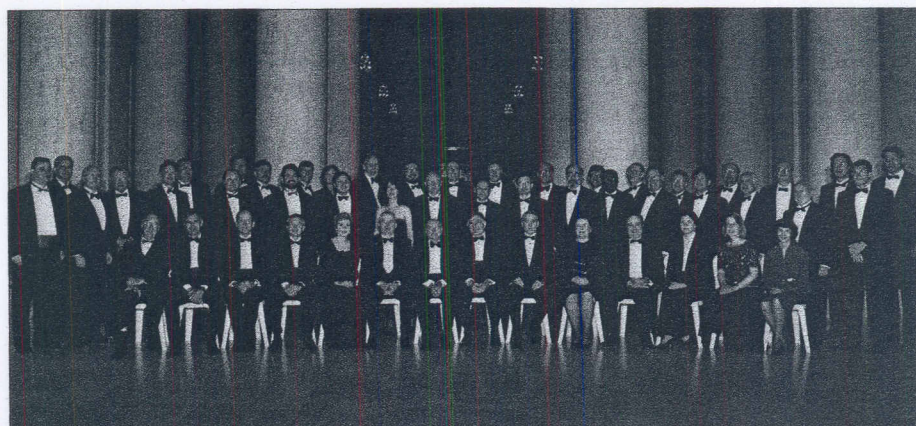
The American College of Bankruptcy inducted its fifth class of Fellows on April 28, 1994, in the Great Hall of the United States Supreme Court before a record crowd. The College was most honored to have United States Supreme Court Associate Justice Clarence Thomas deliver the keynote address. This rare appearance undoubtedly contributed to the high attendance and gave the College greater visibility with C-SPAN coverage of the event.

The 43 Fellows represented all areas of the country. Each judge was nominated by a special committee appointed by the board and each non-judicial Fellow was nominated by the Circuit Admissions Council for each judicial circuit. The Circuit Admissions Council is responsible for recommending non-judicial candidates for membership to the Board of Regents. The Board of

Regents makes the final judgment with respect to admission of proposed candidates. Proposed fellows not present at the induction ceremony must be inducted formally within two years of being nominated to receive membership in the College.

Justice Thomas spoke about the decisions he has authored concerning bankruptcy law. He is not a bankruptcy attorney, but his position on the court has demanded that he write several decisions in this area during his short tenure. He outlined the Court's position on the use of the 15th Amendment in bankruptcy proceedings. (His presentation is excerpted on page 3.) Following the address by Justice Thomas, the inductees accepted their certificates.

A reception was held in the East and West Conference Rooms and Patios after the induction ceremony for the inductees and other Fellows, their guests and members of the American Bankruptcy Institute. Justice Thomas graciously greeted many of those in attendance for more than two hours at the reception. ☰



▲ The Fifth Class of Fellows of the American College of Bankruptcy. With this year's honorees, there are 243 active Fellows in the College.

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Leadership Report to Fellows at First Annual Meeting

by Harry D. Dixon, Jr.
President

More than 80 Fellows attended the first Annual Meeting of College Fellows April 28, 1994, at the Cosmos Club in Washington, DC, prior to the Supreme Court induction ceremony. Chairman Richard Gitlin opened the meeting with a review of the College's history and a State of the College report.

Directors Ed Creel and Jerry Patchan reported on the Scholar-in-Residence project. Creel has headed up an effort to obtain the services of a senior member of the bankruptcy community who will reside in Washington. The scholar in residence will help the College with its projects, particularly requests for *amicus* briefs.

John Barrett reported on a proposed project to create a law journal similar to that of the foreign affairs journal published in New York. It would not be a law review—but instead would deal with policy issues affecting the insolvency world. Other projects that were discussed included a bankruptcy history update and the preparation of partnership law course materials.

As part of the formal agenda, each Fellow was given an opportunity to speak about the College and its directions. Regent Lou Levit inquired as to the policy of the College regarding legislative input. Gitlin said there has been no specific policy to date. Director Ray Shapiro suggested that the College is a resource to assist in the preparation of course materials for law schools and graduate business schools. Barrett encouraged more involvement with foreign practitioners.

Judge Ralph Kelly expressed the need to maintain the high standards for membership. Judge Yacos suggested that the College could become a clearing house of ideas and a channel for communications between Fellows, for the benefit of the membership.

Gitlin initiated a discussion as to whether or not there should be an outside limit on the number of Fellows. He

reported that with the induction of the Fifth Class, the College would be at about 250 members and that he anticipated that the number of members to be inducted in the future would significantly diminish.

Jerry Smith, chairman of the Board of Regents, reviewed for the Fellows the criteria for membership and emphasized that there was no arbitrary cap on the number of members. He reviewed the history of the National Bankruptcy Conference and said its arbitrary limit of 60-65 members had caused it some difficulties in having enough members to have a broad and current perspective. Ron Martin asked what the College has done to build relationships between members and said that such advantages of membership should be encouraged. Morris Macey and Judge Joseph Cosetti proposed and discussed additional ideas. Jerry Shulkin suggested the College hold a retreat to exchange ideas.

The final item on the agenda was the election of new directors. The report of the Nominating Committee was given by Regent Merrill Francis. The nominees

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Movers and Shakers

Please make a note of the following changes in your College directory.

Joseph E. Friend is now with Breazeale, Sachse & Wilson
201 St. Charles Avenue
Suite 4214
New Orleans, LA 70170
504/582-1170, FAX 504/582-1164

Hon. William L. Norton, Jr.
has moved to...
Norton Institutes of Bankruptcy Law
380 Green Street
Gainesville, GA 30501
404/535-7722, FAX 404/536-7072

Jerry Patchan is now Associate General Counsel for the Resolution Trust Corp. He can be reached at:
202/416-7032, FAX 202/416-2517

Justice Clarence Thomas: Views on Bankruptcy

On April 28, 1994, U.S. Supreme Court Associate Justice Clarence Thomas presented the keynote address for the Induction of the Fifth Class of Fellows. His presentation follows.

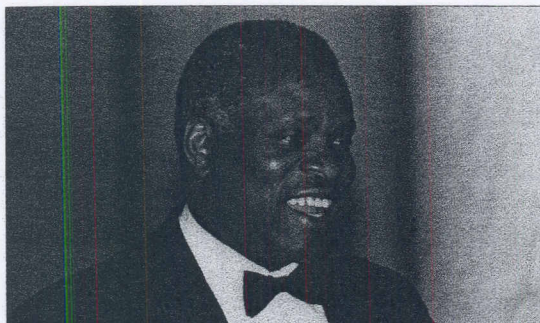
Thank you all so much. Welcome to the Supreme Court of the United States, and welcome to the Great Hall. I am indeed honored to be here tonight. I have had occasion during my brief tenure to be responsible for, on behalf of the Court, a few bankruptcy opinions, and I will note that I will leave very quickly afterwards.

But, in seriousness, I am honored to be here with each of you tonight to celebrate the induction of the Fifth Class of Fellows into the American College of Bankruptcy. There is probably not much that can be said about bankruptcy that you don't already know. Unlike the Fellows and the new inductees, each of whom have practiced in the bankruptcy area for at least 15 years, my own bankruptcy experience is of more recent vintage, as you all know. Recognizing this inverse relationship between your extensive experience and my own, Sam has limited me to five minutes. Hence, I will not attempt to explain the obvious tension between *Ron Pair* and *Dewsnup*. Well, I think if I had 45 minutes I could not explain the tension between *Ron Pair* and *Dewsnup*. And if I had 45 days I probably couldn't resolve it.

I had not practiced in the field of bankruptcy before I came to the Court, but the Chief Justice has seen fit, and I appreciate it, to give me plenty of practice since I've been here. During my first two terms I wrote for the Court in five bankruptcy cases. Most attorneys would probably count writing those opinions along with answering the door at conference as part of the drudgery of being the junior Justice on the Court. I certainly do not consider it that, although I do consider opening the door part of being the junior Justice. In fact I have considered myself privileged to have been able to write on behalf of the

Court in this most important area. Although I am not a bankruptcy buff as one observer has recently guessed, I do take great pleasure and delight in writing opinions in commercial cases, including of course, bankruptcy cases. Now some of you may not delight in reading those opinions or following them. But you may appreciate that when you read one in the future that at least one person got enjoyment out of it.

These cases are among the most significant that the Court hears. Bankruptcy



▲ Justice Clarence Thomas

judges, practitioners and those who study this area as scholars confront cases involving hundreds of millions of dollars in assets and thousands of jobs. And addressing personal bankruptcies, although not large in sums, they have a broad effect on credit markets and the economy as a whole. I do not doubt that each of my colleagues takes these cases as seriously as I do; and believe me I take them most seriously. They are far too important to be neglected.

For this reason, the American Bankruptcy Institute is a particularly important organization. Its efforts to bring together and educate all those involved in the bankruptcy process; members of the business community, consumers, lawyers and accountants can do nothing but help enhance the efficiency and social utility of the bankruptcy process. And its formation was particularly well timed. Since the ABI was founded in 1983, bankruptcy filings have reached record levels nearly every year, and the average workload of bankruptcy

judges has more than doubled.

This increased workload and the Bankruptcy Code has also had an impact on our bankruptcy caseload. In recent years, the Court has heard significantly more bankruptcy cases than in the past. We have heard as many cases—16 cases—in the past three terms, excluding this one, as in the preceding 10 years.

Based on my brief tenure here at the Court, I can assure each of you here tonight that your hard work in the area of bankruptcy is greatly appreciated by this body. Wrestling with just a few of these cases has certainly increased my own appreciation of your important and outstanding work. I congratulate each of the inductees. I congratulate this organization, but before I take my place, I'd like to say a few words about this institution.

Today is the end of the sitting of my third term on the Court, and I can say unequivocally that this is the finest institution that I have ever had the opportunity and privilege to be a part of. The level of civility, the seriousness with which the members of the Court take their work, and the importance that they view this institution, this country and the gravity of their responsibilities is beyond anything I have ever seen. I consider it a privilege to serve the people of this country and to shoulder the responsibilities and obligations of this institution on their behalf. I congratulate each of you new inductees, and, again, I con-



▲ The Fifth Class of Fellows in the Great Hall of the United States Supreme Court.

gratulate this institution. I welcome you all to the Supreme Court of the United States. Thank you so much. ☞

Congratulations to the Class of 1994

Prof. Richard I. Aaron*
Salt Lake City, UT

Hon. Prudence B. Abram*
New York, NY

Mr. Arthur J. Abramowitz*
Cherry Hill, NJ

Mr. Jay Alix*
Southfield, MI

Mr. D. Jansing Baker
Houston, TX

Hon. William T. Bodoh*
Youngstown, OH

Hon. Tina L. Brozman*
New York, NY

Mr. Eric D. Bruce*
Wichita, KS

Mr. C. David Butler*
Atlanta, GA

Mr. Francis L. Carter
Miami, FL

Hon. Leif M. Clark*
San Antonio, TX

Mr. Marc S. Cohen*
Los Angeles, CA

Mr. Neal D. Colton*
Philadelphia, PA

Hon. Joseph L. Cosetti*
Pittsburgh, PA

Hon. E. Stephen Derby*
Baltimore, MD

Mr. Joseph A. Dworetzky*
Philadelphia, PA

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Winston-Salem, NC

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Portland, ME

Mr. Victor Vilaplana*
San Diego, CA

Hon. Arthur N. Votolato, Jr.*
Providence, RI

Mr. Peter J. Walsh*
Wilmington, DE

Mr. C. Kenneth White*
Chicago, IL

Hon. James E. Yacos*
Manchester, NH

* formally inducted

Fellows' First Annual Meeting

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were Richard A. Gitlin, Hon. William L. Norton, Jr., Hon. James Barta, Neal Batson and Mickey Sheinfeld. There were no nominations from the floor and the new directors were elected unanimously.

In closing, procedures for the induction ceremony to follow were reviewed, and Patchan discussed the new rosettes and the history of their use.

Following the annual meeting, there was a luncheon in the garden room of the Cosmos Club. Murray Drabkin, who graciously obtained the use of the club for the Fellows, reviewed the history of the Club and the proud achievements of its members, which include many Nobel prize winners. Smith concluded the luncheon and thanked everyone for attending. ☞

Looking Ahead: The National Conference of Bankruptcy Judges

A number of important events are scheduled for the College during the National Conference of Bankruptcy Judges, October 6-9 in Toronto. Please mark your calendars now.

Saturday, October 8

Committee Meetings

12:00-1:00 pm

- ❖ Partnership Project Committee
- ❖ Bankruptcy History Project Committee
- ❖ On-Line Committee
- ❖ Publications Committee

Board of Directors Meeting

1:00-2:00 pm

Board of Regents Meeting

2:00-5:00 pm

Reception

(for all Fellows and spouses)
5:30-6:30 pm

In Memory Of . . .

Arthur L. Moller, 1912-1993

Fellow Emeritus Arthur L. Moller passed away December 19, 1993, in Houston, Texas. Judge Moller graduated from the University of Texas with both a B.A. and LL.B, practiced as an Assistant Attorney General and Special Counsel to the Governor, as well as an Assistant United States Attorney. While an Assistant U.S. Attorney, he was Chief of the Civil Division. In 1962, Arthur was appointed U.S. Bankruptcy Judge for the Southern District of Texas. He held this position until June 1975. While a bankruptcy judge, he was a member of the Federal Judicial Center Faculty for Bankruptcy Judges, served as Governor for the Fifth Circuit of the National Conference of Bankruptcy Judges and began a 30-year association with Matthew Bender & Company as a contributing author for the 14th and 15th editions of *Collier's* and a contributing author for *Collier Bankruptcy Practice Guide*. He was also an editor consultant for *Collier's Top Form Bankruptcy Filing program*. Judge Moller was Of Counsel to Sheinfeld, Maley & Kay, P.C. for 15 years, a Fellow in the American College of Bankruptcy, a member of the National Bankruptcy Conference for more than a quarter of a century and a recipient of the Herbert M. Bierce Distinguished Judicial Service Award from the National Conference of Bankruptcy Judges. In November 1993, the University of Texas Law School honored him with the establishment of the Arthur L. Moller Chair in Bankruptcy Law and Practice.

Howard Schwartzberg, 1930-1994

Fellow Howard Schwartzberg passed away in Boston, Massachusetts, on March 4, 1994. Judge Schwartzberg was born in Paterson, New Jersey, on March 27, 1930, and received his B.A. and LL.B from New York University in 1950 and 1953, respectively. Judge Schwartzberg was an Editor of the New York University Law Review, served in the United States Naval Reserve from 1951-1959, clerked for the Hon. Richard H. Levet, United States District Judge, Southern District of New York from 1956 to 1957, and received his LL.M from New York University School of Law in 1961. Judge Schwartzberg practiced law as house counsel for M. Lowenstein & Sons, a New York textile company until he was appointed to the bankruptcy bench on April 19, 1971. He was reappointed June 25, 1985. Judge Schwartzberg was a member of the Board of Regents of the American College of Bankruptcy, a former member of the Board of Governors of the National Conference of Bankruptcy Judges, and a Principal Editor of *Norton Bankruptcy Law and Practice*. Judge Schwartzberg had the task of presiding over the Chapter 11 reorganization of Texaco Inc., one of the largest corporate bankruptcies in United States history.

Been in the Limelight Lately?

- When your book goes to press...
- When you have written a paper for a seminar...
- When you appear before a legislative committee, trade group or bar association...
- When you speak at a conference...

Please let us know, we'd like to pass the word on to all the College Fellows.

New Directors Elected



Hon. James J. Barta currently serves as a U.S. Bankruptcy Judge for the district of St. Louis. He is a graduate of St. Mary's University and the St. Louis University School of Law. Prior to his appointment as a U.S. Bankruptcy judge, Judge Barta served as Assistant U.S. Attorney for the Eastern District of Missouri, an Associate at Guifoll, Petzall and Shoemake, Assistant St. Louis Circuit Attorney and as a Special Agent for the F.B.I. Judge Barta is on the Board of Directors of the American Bankruptcy Institute (ABI), the St. Louis CLE Institute and the Supreme Court Advisory Committee on Bankruptcy Rules. He has served the College as the 8th Circuit Regent.

Myron M. Sheinfeld

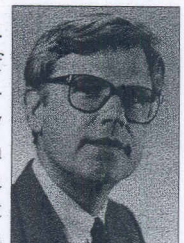
is a shareholder in Sheinfeld, Maley & Kay, P.C. and a consultant to Meyer, Hendricks, Victor, Osborne & Maledon. Sheinfeld is a graduate of Tulane



▲ Myron M. Sheinfeld University and the University of Michigan. He currently serves as an adjunct professor at the University of Texas School of Law. He is also on the Executive Committee of the National Bankruptcy Conference, an active member in the State Bar of Texas and the American Bar Association. He has served the College as the 5th Circuit Regent.

R. Neal Batson

currently serves as partner and chairman of Workouts, Re-organization and Bankruptcy Practice Group with Alston & Bird. He is a graduate of Vanderbilt School of Law. Batson



▲ R. Neal Batson is a member of the American College of Trial Lawyers, the American Law Institute, the Atlanta Bar Association and the Southeastern Bankruptcy Law Institute. He has served as a vice president of ABI and served the College as 4th Circuit Regent. ¶

Revitalizing the Partnership Project

by Gerald K. Smith, Lewis and Roca

In March 1992, Fellow Charles Normandin outlined his thoughts as to how to go about developing course materials for an advanced bankruptcy course covering partnership law, tax law relating thereto and partnership bankruptcy. The following is his vision of the course:

"A. The course will be taught at an advanced level. Students will be expected to have taken a basic bankruptcy course and a basic tax course. No prior course on partnership law will be expected, since such a course is unavailable in most law schools.

B. The course will probably be a seminar, in which the students will be expected to take part in class discussion, and will therefore be expected to do a reasonable amount of preparation and reading prior to each College Partnership Project class. Whether or

not the course is taught as a seminar, it would be designed for a relatively small number of students, say, 15-25. It might be desirable to break the students into a number of small groups or teams, each of which would represent a particular interest or point of view in classroom discussion. One team, for instance, could represent the partnership, another team or teams individual partners, yet another team creditors, and so forth. This would help to ensure preparation by the students, and to focus discussion.

C. The course will not make extensive use of the case method, although some leading opinions will, of course, be studied. Students will be expected to use the Uniform Partnership Act, the Internal Revenue Code and Regulations, and the Bankruptcy Code and Rules in an integrated way to solve the problems presented by the course materials. Secondary materials, including standard textbooks and law review articles, will also be used freely. The materials to be developed specifically for the course will not try to

re-invent the wheel, or to duplicate material which is already available in a handy source. Instead, the course materials will focus on presenting realistic business and legal problems, and showing how a bankruptcy lawyer pulls together the partnership, tax and bankruptcy law required to solve these problems.

D. Although the course will cover partnership law and partnership taxation, it will be primarily an advanced bankruptcy course. The course materials will focus primarily on partnership bankruptcy law, using standard reference materials whenever possible to cover partnership and partnership taxation issues."

The effort to develop such materials was one of the early projects of the College. Since Normandin's initial efforts, the project has stagnated. We need someone who has the time to serve as editor. A number of Fellows are interested in working on the project, there is a wealth of materials available, and some funding can be made available. If you have the time and energy, please contact me to discuss taking on the role of editor for the project. ☰

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