

# College Columns

News and Views from The American College of Bankruptcy

## Three Fellows to Serve on the Bankruptcy Commission

by Beth Gilkeson, Acting Administrator

Three College Fellows were selected to serve on the nine-person National Bankruptcy Review Commission: Jay Alix of Jay Alix & Associates, Hon. Caldwell Butler of Woods, Rogers & Hazlegrove, and Hon. Robert E. Ginsberg, Northern District of Illinois.



▲ Jay Alix

Jay Alix, whose firm is headquartered in Southfield, Michigan, was one of the three appointments made by President Clinton. Mr. Alix first attracted local attention in the late 1980s, while still in his early 30s, when he saved the more-than-century-old Fred Sanders baked goods, candy and ice cream company from liquidation during its bankruptcy reorganization.

In the years since, he has achieved national prominence from his successful corporate turnarounds of General Motors' National Car Rental, Unisys Corp., Wang Laboratories, G. Heileman Brewing Co., Hartmarx Corp. and Cardinal Industries. Most recently, he served as the court-appointed Examiner in the Contentious PharMor

## Request for Publication Committee Members

by Evelyn Biery, Fulbright & Jaworski LLP.

This is the first edition of the *College Columns* since I became Editor. I would like to express my appreciation to the persons who assisted with this edition, and especially Beth Gilkeson, Acting Administrator of the College.

I am seeking members for the Publications Committee. The work of committee members will include (a) preparing reports on the activities during the various meetings of the College; (b) interviewing members of the College, legislators and others whose positions in government or the profession give them the opportunity to influence the practice of bankruptcy law; and (c) preparing thoughtful and somewhat philosophical articles on the current state of bankruptcy policies and the ways in which bankruptcy policies can be improved.

If you would like to serve on the committee, please call me in Houston at 713/651-5544 or in San Antonio at 210/270-7130 or send me a note by facsimile at 713/651-5246.

I welcome any suggestions on how to make the *College Columns* readable, informative and worth the read.



▲ Evelyn H. Biery

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**Hon. Abner J. Mikva to Speak at Induction Ceremony**

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### American College of Bankruptcy

44 Canal Center Plaza, Suite 404  
Alexandria, VA 22314-1592  
(703) 739-0960  
Fax: (703) 739-1060

## College's Scholar-in-Residence Reports on Survey for Commission Agenda

Leon S. Forman of Blank, Rome, Comisky & McCauley is the Scholar-in-Residence for the American College of Bankruptcy. For more than 50 years, his practice has concentrated on bankruptcy, reorganizations and workouts and other banking and commercial lending matters, including loan restructuring, debtor-in-possession financing, intercreditor relationships, and lender liability prevention and defense. Primarily he has represented institutional lenders, lender groups, creditors, creditors' committees, debtors, plan of reorganization proponents and asset purchasers. He has been with his firm since November 1, 1984, when it merged with Wexler, Weisman, Forman & Shapiro.

Leon has surveyed the Fellows to determine the views of the College on a limited number of the more important areas of bankruptcy law that deserve the primary attention of the Commission. It is his hope that we can develop a consensus, or at least a majority view of the College, on those major points and create materials and support for such positions. He hopes that, in this way, the College will have a greater impact on the conclusions of the Commission, leaving the more diverse topics to others.

The results of the survey follow. A substantial number of responses were received, thus representative of the views of the College. Listed below are the six topics selected by the respondents as the most important, along with the percentage each topic bears to the total responding:

Topic	Percentage
Improving Chapter 11	73%
Conversion of Bankruptcy Court to Article III Court	61%
Improving the U.S. Trustee System	58%
Treatment of Environmental Claims	55%
Revision of Section 365	43%
Mass Tort Cases & Future Claims	39%

The leadership of the College is now considering how best to present these results to the Commission and to what extent the selected subjects should be supported by scholarly material prepared by our membership. Further reports will be made to the membership as developments occur. Fellows should be congratulated for their cooperation in the survey.

Leon served as legislative consultant to staff on the House of Representatives Committee on the Bankruptcy Reform Act of 1978. He graduated with honors from the University of Pennsylvania Law School with a J.D. in 1939. At the law school he was a member of the Board of Editors of the Law Review, and, upon graduation, he was awarded a Gowen Memorial Fellowship. Prior to that time, he received an A.B. degree with honors from the University of Pennsylvania in 1936, where he was a member of Pi Gamma Mu Honorary Social Science Fraternity.

He has lectured on bankruptcy law at Temple Law School and the University of Pennsylvania Law School. He has served as the Planning Chair and Panelist for numerous seminars sponsored by the American Law Institute and the American Bar Association on the Bankruptcy Code and other commercial subjects, and he has served as a frequent speaker and panelist on bankruptcy and reorganization at bar association functions and other institutes.

Presently, Leon is a member of the faculty of the Annual Workshop on Bankruptcy and Business Reorganization for the New York University Law School and previously served as a member of the faculty of the Annual Bankruptcy Seminar at Southern Methodist University School of Law. He has received a special award of Merit from ALI-ABA and a special award for contribution to American Bankruptcy Law from the Financial Lawyers Conference of Southern California and the Bankruptcy Section of the Los Angeles County Bar Association.

Leon resides in Wyndmoor, Pennsylvania, is married and has two children. These days he spends a considerable amount of time in Florida, but he is definitely on line and able to communicate with the world at a moment's notice. ☰

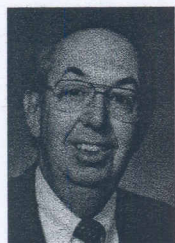
## Fellows Serve on Commission

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bankruptcy to investigate the fraud that resulted in more than \$1 billion in losses. He is a member of the board of directors of Core Industries (NYSE) and is chief executive officer of National Car Rental.

Recognized as one of the nation's leading bankruptcy specialists and most successful turnaround consultants, Mr. Alix has served as an instructor for the nation's federal bankruptcy judges, U.S. district judges and U.S. attorneys on financial analysis of troubled and bankrupt companies, a role normally reserved for judges and law school professors. He also has written widely on bankruptcy and is a member of the boards of directors of the American Bankruptcy Institute and the Turnaround Management Association.

His firm has grown from a solo practice when founded in 1981 to the largest firm of its type in the nation today with offices in Southfield and New York. Mr. Alix is a member of the Fifth Class of Fellows.



▲ Caldwell Butler

Hon. M. Caldwell Butler of Woods, Rogers & Hazlegrove in Roanoke, Virginia, was selected by the former Minority Leader of the House of Representatives.

Born in Roanoke, Mr. Butler served as a United States Naval officer during World War II. He received an A.B. Degree from the University of Richmond in 1948 where he was elected to Phi Beta Kappa. In 1950 he received an LL.B. degree from the University of Virginia School of Law and was elected to the *Order of the Coif*. In 1978 he received an honorary degree of Doctor of Laws from Washington and Lee University.

Mr. Butler served on the Virginia House of Delegates from 1962 to 1972 where he was Minority Leader. He practiced law in Roanoke from 1950 until his election to Congress in 1972 and served five terms in the House of Representatives for the Sixth District of Virginia until his retirement in December 1982. He was a member of the House Judiciary Committee and the Government Operations Committee.

He is a member of the Board of Directors

of the John Marshall Foundation and the Virginia Historical Society, a Fellow of the American Bar Foundation, and a Fellow of the Virginia Law Foundation. He is also a member of the Virginia Bar Association and the American Bar Association and its Business Law Section.

One of his main endeavors during his first six years in Congress was serving on the subcommittee of Judiciary concerned with bankruptcy reform. He was the principal co-sponsor in the House of Representatives (with Don Edwards) of the Bankruptcy Reform Act of 1978. He continued his interest in the Bankruptcy Code through his committee work until his retirement from the Congress.

Bankruptcy, representing both creditors and debtors, has been the main area of his practice. In addition, he was an early member and, for many years, a Director of the American Bankruptcy Institute. He is a Fellow in the First Class of Fellows.



▲ Robert E. Ginsberg

The third Fellow, appointed by Chief Justice Rehnquist, is Hon. Robert E. Ginsberg. Judge Ginsberg is serving in his tenth year as a bankruptcy judge in the Northern District of Illinois. He also has served as a visiting bankruptcy judge in the Central District of Illinois and the Southern District of Florida. He served as a member of the Board of the Federal Judicial Center.

Prior to joining the bench, Judge Ginsberg spent 10 years on the faculty of DePaul University College of Law where he attained the rank of professor, during which time he was of counsel with Scariano, Kula & Elch, a law firm in Chicago. He also has served as a visiting professor at the University of Illinois College of Law. Before teaching, Judge Ginsberg was a trial attorney and special counsel of the Securities and Exchange Commission in Washington, D.C.

Judge Ginsberg received his B.A. from Brown University, his J.D. from American University Washington College of Law, and his LL.M. from Harvard Law School. He has co-authored with Chief Judge Robert D. Martin, Western District of Wisconsin, a four-volume treatise on bankruptcy law and practice and has published numerous articles on

bankruptcy law as well. Judge Ginsberg has lectured on bankruptcy law and related subjects for numerous groups throughout the United States, including the National Conference of Bankruptcy Judges, American Bankruptcy Institute, Practising Law Institute, and the Commercial Law League. He served as former chair of the Bankruptcy and Reorganization Committee of the Chicago Bar Association, and he is a member of the Third Class of Fellows.

The College is proud to be so well represented on the Commission and congratulates each of these Fellows. ☞

## Annual Fellows Meeting and Induction of the Sixth Class in May

The American College of Bankruptcy will induct the Sixth Class of Fellows at the United States Supreme Court on May 3, 1995. The ceremony will begin at 7:00 P.M. and will be followed by a reception in the conference room and courtyard. This year the College expects more than 350 guests to attend the induction ceremonies. This year's guest speaker will be Hon. Abner J. Mikva. (See page 4.)

The College will again host its Annual Meeting of Fellows at the Cosmos Club on Thursday, May 4, 1995. Beginning at 8:00 A.M., several committees will meet, including the On-Line, the Judicial Nominating, the Publications, the Pro Bono, the Partnership and the Bankruptcy History Committees.

The Board of Directors will also meet during this time, followed by the All Fellows Meeting from 9:00 A.M. to 12:00 noon. There are many items on the agenda, including the election of new Directors and a discussion of the recent survey (See page 2.) of the most important topics for consideration by the National Bankruptcy Review Commission. A short presentation will be delivered on each topic, followed by a discussion involving the entire group.

There will be a short coffee break from 12:00 noon to 12:30 P.M. followed by lunch. The luncheon speakers will be Hon. M. Caldwell Butler and Hon. Robert E. Ginsberg speaking on the Bankruptcy Review Commission. ☞

## College Hosts Reception at NCBJ

The American College of Bankruptcy held a reception in conjunction with the National Conference of Bankruptcy Judges Annual Meeting in Toronto, Canada in October. More than 100 Fellows and spouses were in attendance, as well as Hon. Louise De Carl Adler, NCBJ President. Richard Gitlin, Chairman of the Board of Directors, announced that the College Induction ceremony would again be held in the Great Hall of the United States Supreme Court. The affair was such a success that the College plans to host another reception at the NCBJ in New Orleans this year.



▲ Richard Gitlin



▲ From left to right, Christina and Mickey Sheinfeld, Mardi and Merrill R. Francis and Janet and Hon. William T. Bodoh at the College's reception at the NCBJ in Toronto.

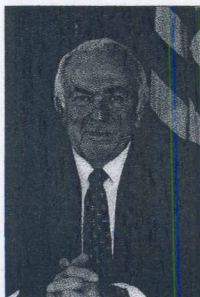
## Get Involved with College Committees!

The following committees will meet from 8:00 to 9:00 A.M., on May 4, 1995, in Washington, DC, during the All Fellows Meeting at the Cosmos Club. We invite all to attend and participate in some very productive meetings. Each of the committee chairs has promised an informative gathering. Don't miss this opportunity to get involved.

- Partnership Committee**—Chairman Hon. John K. Pearson
- Bankruptcy History Committee**—Chairman Hon. John K. Pearson
- Judicial Nominating Committee**—Chairman Hon. Roger Whelan
- Publications Committee**—Chairman Evelyn Biery
- On-Line Committee**—Chairman Ronald Martin
- Pro Bono Committee**—Chairman Jonathan Sykes

Other committees not meeting in Washington:

- Scholar-in-Residence Committee**—Chairman L. Edward Creel
- Bylaws Committee**—Co-chairs Margaret Sheneman and Raymond Shapero



▲ Hon. Abner J. Mikva

## Abner Mikva to Speak at Induction

Abner J. Mikva, Counsellor to President Clinton, will be the guest speaker at the induction. Judge Mikva's distinguished career includes service in all three branches of the federal government. He most recently served on the U.S. Court of Appeals for the District of Columbia Circuit from 1969 until last year, when President Clinton chose him to be Legal Counsel. Judge Mikva also served four terms as a member of Congress, sitting on the House Judiciary Committee, among his other committee assignments.

## Sixth Class of Fellows

The College is pleased to announce the Sixth Class of Fellows. The Induction Ceremony will be held May 3, 1995, at the Supreme Court.

**Hon. Louise DeCarl Adler**  
U.S. Bankruptcy Court, S.D. CA  
San Diego, CA

**Mr. Thomas B. Anderson, Jr.**  
Hughes & Luce, L.L.P.  
Dallas, TX

**Hon. Thomas E. Carlson**  
U.S. Bankruptcy Court, N.D. CA  
San Francisco, CA

**Mr. George B. Cauthen**  
Nelson Mullins Riley & Scarborough  
Columbia, SC

**Ms. Joy Flowers Conti**  
Kirkpatrick & Lockhart  
Pittsburgh, PA

**Mr. Murray Drabkin**  
Hopkins & Sutter  
Washington, DC

**Mr. Ford Elsaesser**  
Elsaesser, Jarzabek & Anderson  
Sandpoint, ID

**Mr. G. Larry Engel**  
Brobeck, Phleger & Harrison  
San Francisco, CA

**Mr. Paul M. Fish**  
Modrall, Sperling, Roehl, Harris & Sisk, P.A.  
Albuquerque, NM

**Mr. Lawrence Goldberg**  
Goldberg, Stinnett, Meyers & Davis, P.C.  
San Francisco, CA

**Mr. Alan B. Hyman**  
Proskauer Rose Goetz & Hendelsohn  
New York, NY

**Mr. Alan W. Kornberg**  
Paul, Weiss, Rifkind, Wharton & Garrison  
New York, NY

**Ms. Lillian E. Kraemer**  
Simpson Thacher & Bartlett  
New York, NY

**Prof. William Tell Laube, Jr.**  
Walnut Creek, CA

**Mr. George J. Marcus**  
Pierce, Atwood, Scribner, Allen, et al.  
Portland, ME

**Mr. Patrick E. Mears**  
Law Offices of Dykema Gossett  
Grand Rapids, MI

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## In Memory Of . . .

### Clive W. Bare, 1914-1994

Judge Clive W. Bare of the Eastern District of Tennessee passed away July 13, 1994, at Knoxville, Tennessee. Born in Marion, Virginia, on March 1, 1914, he grew up in Erwin, Tennessee. He received his L.L.B. degree from Cumberland University at the age of 20. By special act of the Tennessee legislature, he was permitted to commence the practice of law before age 21. He practiced law for five years with his father, James Bare, in his hometown.

Judge Bare entered government service in 1939 and served until 1957 with the Department of Justice, except for time off for military service during World War II. He served as a first Sergeant in the 168th Infantry Regiment of the 34th Division of the 5th Army, primarily in the Italian campaign in 1944-45 where he earned several combat decorations. After the war, Judge Bare resumed work at the Justice Department where he remained until his appointment as a bankruptcy judge for the Eastern District of Tennessee on July 1, 1957.

Judge Bare served as a member of the Program Committee and as a discussion leader at seminars for bankruptcy judges when the program was initiated by the Federal Judicial Center in 1964 and for several years thereafter until 1976. He was very active in the National Conference of Bankruptcy Judges, serving as a committee chairman and on the Board of Governors. He was elected President of the conference in 1969 and presided over the annual meeting in Ottawa in 1970.

He testified before House and Senate subcommittees on several occasions in support of legislation to permit bankruptcy courts to determine the dischargeability of debts and to create a Commission on Bankruptcy Laws of the United States. He also testified on behalf of the National Bankruptcy Conference between 1975 and 1978 during hearings on revision of the bankruptcy laws. He was elected to membership in the National Bankruptcy Conference in the mid-1960s.

In 1985 he became the fourth recipient of the Herbert M. Bierce Distinguished Judicial Service Award, which was presented to him by the NCBJ at its annual meeting that year in Scottsdale, Arizona. That same year, the Section on Commercial and Banking Law of the Tennessee Bar Association established the Clive W. Bare Award for Distinguished Judicial Service and presented the award to him at a banquet in Nashville on November 15, 1985. He was elected to the membership in the American College of Bankruptcy in 1991.

Judge Bare served as a member of the Judicial Conference's Advisory Committee on Bankruptcy Rules from 1979 to 1984 when the committee was reconstituted and undertook the drafting of rules in conformity with the new Bankruptcy Code which took effect October 1, 1979. His handling of the major cases that grew out of the collapse of the Jake and C.H. Butcher banking empire in the early 1980s was much admired by bankruptcy practitioners and scholars.

Judge Bare retired in 1986, at age 72, after which he practiced law for a time in the Knoxville office of Heiskell, Donelson, Bearman, Adams, Williams & Kirsch and taught at the University of Tennessee College of Law. He commenced service as a recalled judge in 1989 and served in that capacity until 1992 in the Eastern District of Kentucky and for a few months in the Southern District of Florida at Miami.

Judge Bare is survived by his wife, Esther, the former Esther Wade of Johnson City, Tennessee, who for many years served as an English instructor at the University of Tennessee, and by their son, Gordon Bare, and two grandchildren.

Judge Bare's presence and dedication to improvement and administration of the law inspired all who knew him. Our profession has suffered a great loss. As stated by Murray Drabkin at the Tennessee Bar Association dinner on November 15, 1985, honoring Judge Bare, "To Clive Bare: lawyer, soldier, judge and, most of all, a kind and generous human being."

## Sixth Class of Fellows

*continued from page 4*

### Mr. Martin Nachimson

Ernst & Young  
Los Angeles, CA

### Mr. R. Todd Neilson

Neilson, Elggren, Durkin & Co.  
Los Angeles, CA

### Mr. Prentice O'Leary

Sheppard, Mullin, Richter & Hampton  
Los Angeles, CA

### Mr. Warren W. Petraglia

Ernst & Young  
New York, NY

### Mr. Ross M. Pyle

Pyle, Simms, Duncan & Stevenson  
San Diego, CA

### Hon. Steven W. Rhodes

U.S. Bankruptcy Judge, E.D. MI  
Detroit, MI

### Mr. Robert G. Sable

Sable, Makoroff & Gusky, P.C.  
Pittsburgh, PA

### Hon. Mary Davies Scott

U.S. Bankruptcy Court, E. & W.D. AR  
Little Rock, AR

### Prof. Morris G. Shanker

Case Western Reserve University  
School of Law  
Cleveland, OH

### Hon. Susan Pierson Sonderby

U.S. Bankruptcy Court, N.D. IL  
Chicago, IL

### Prof. Walter J. Taggart

Villanova University School of Law  
Villanova, PA

### Hon. Kenneth S. Treadwell

Retired Bankruptcy Judge  
Tucson, AZ

### Mr. R. Patrick Vance

Jones, Walker, Waechter, Poitevent et al.  
New Orleans, LA

### Hon. Sidney C. Volinn

U.S. Bankruptcy Appellate Panel  
Pasadena, CA

### Mr. Jack M. Zackin

Sills Cummis Zuckerman Radin et al  
Newark, NJ

### Mr. Samuel J. Zusmann, Jr.

Maguire, Voorhis & Wells, P.A.  
Orlando, FL ☰

## Taking Bankruptcy Communications into the 21st Century

by Ron Martin, Holland & Hart  
Chairman, On-Line Committee

As you would suspect, there are a number of Fellows who continue to communicate only by telephone or written word. On the other hand, there are many who are "in cyberspace," taking on the challenges of the 21st Century.

This information comes as part of the results of a survey conducted by the On-Line Committee of the College about the use of on-line technologies by our Fellows. The purpose of the survey, which nearly 33 percent of all Fellows responded to, was a first step in determining how best to create a communication network to enhance both our individual practices, but more importantly, to enhance the quality of bankruptcy law.

The results show a significant num-


ber of Fellows ready, willing and interested in seeing an On-Line project become a reality. Nearly all of the respondents have a personal computer at their desk and most use a computer at home. Those responding were evenly divided between using DOS-based systems and Windows, while very few use Macintosh. Most of the respondents use a 14,400 baud modem and all but one have access to a modem hooked either directly through their PC or a local area network (LAN).

About half already use on-line services, such as Prodigy, America On-Line, Compuserve, Internet or ABI On-Line from the American Bankruptcy Institute, in roughly equal proportions. A number of the Fellows have more than one on-line service.

In general, Fellows are equally interested in (1) a bulletin board for conferencing with College committees, discussion groups, electronic roundtables; (2) electronic mail for sending private messages to network users; and (3) database searches through journals, law reviews, legislation and Supreme Court

decisions. So it would appear that any service considered should have all three of these functions.

As Chairman of the On-Line Committee, I want to thank those who responded for taking the time and effort. I must tell you that before the survey I had concerns that the qualification for membership alone means that most of us are older than we want to believe we are, and, thus, my presumption was that we would not even meet the introductory level as "techies." I am pleasantly surprised at being wrong and our Committee now has a mandate to move forward to find a program that meets your needs.

The On-Line Committee will meet at 8 A.M. Eastern Standard Time immediately before our general College meeting on May 4, and we would be most pleased to have any of you attend and give your thoughts in person. If anyone has questions prior to the meeting about this initiative, please feel free to contact me at Holland & Hart. 

**American College of Bankruptcy**  
44 Canal Center Plaza, Suite 404  
Alexandria, VA 22314-1592