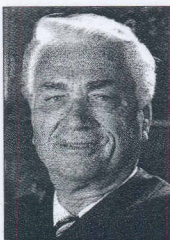


College Columns

News and Views from The American College of Bankruptcy

1996 Induction Scheduled

By Gerald K. Smith



▲ Hon. Charles E. Wiggins

The Seventh Class of Fellows of the American College of Bankruptcy Induction ceremony and reception will be held at the Russell Caucus Room of the Russell Senate Building in Washington, D.C., on the evening of April 24, 1996. We are honored that the Honorable Charles E. Wiggins has agreed to speak at this year's induction ceremony. Judge Wiggins was appointed to the Ninth Circuit Court of Appeals in 1984 and was a member of Congress from California during the period 1967-79. Judge Wiggins' professional affiliations and committee work include the Commission on the Bankruptcy Laws of the United States (1970-73); Federal Commission on Revision of Federal Circuits (1972-74); Federal Commission on Antitrust Laws (1976); Advisory Committee, Federal Rules of Civil Procedure (1979-86); Standing Committee on Rules (1986-present); and Bicentennial Commission on U.S. Constitution (1985-present). The induction is a ticketed event and the number of attendees must be limited for reasons of space and security, so please get your reservations in soon. Invitations have been mailed to each of the members with an RSVP form attached. Please contact Beth Gilkeson at the College with any questions, (703) 739-0960. ☰

Publications Report

By Evelyn H. Biery



▲ Evelyn Biery

The Publications Committee has embarked upon the following projects:

- (a) Chuck Vihon and Wes Steen will solicit from College members the best seminar papers and law review articles published in the United States so that they can be republished in a compendium of "The Best of the Best" articles. The goal of the project is to select seminar papers that otherwise would not have a widespread circulation and distribute them to members of the College and perhaps others.
- (b) Tom Anderson will discuss with the leadership of the College the possibility of conducting a survey of the members of the College, to determine what they think the purposes, goals and mission statement of the College should be.
- (c) Various members will conduct interviews like the interview with Jerry Patchan that appeared in a recent *College Columns*. We welcome any suggestions for interviews.
- (d) At the April 25-27, 1996 ABI meeting in Washington, D.C., the Publications Committee will invite a Washington insider to report to the Committee on

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San Antonio, TX

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

Fellows Meet in New Orleans

By Barbara Everly

On October 29, 1995 an All Fellows Meeting was held in New Orleans, at the National Conference of Bankruptcy Judges. The new officers and Chairman Gerald K. Smith were introduced. Previous Chairman Gitlin and Mr. Creel were recognized for their previous service.

President Dixon's report covered finances of the College, and ideas for increasing revenue, with the goal of the Board being to operate on a balanced budget.

Committee reports included the Bankruptcy Review Commission Project Steering Committee reporting their meeting was very well attended

and that several excellent suggestions were presented. The On-line Committee reported that it is considering a possible merger with ABI On-line. The Publications Committee reported on several proposals, including Fellows' interviews to be published, publication of strongly intellectual topics and possibly creating and publishing an anthology of articles from nationwide bankruptcy seminars. The Pro Bono Committee reported that it may need to fill the vacuum created as a result of loss of Legal Services funding.

The Board of Regents reported there will be invitations to approximately 40 potential Fellows this year.

Fellow Judge Mannes commented on several matters being considered by the Advisory Committee on Bankruptcy Rules.

Meeting adjourned to a social hour. ☞



▲ During the All Fellows meeting held in New Orleans in conjunction with the NCBJ last October, committees reported on their activities.

Publications Report

continued from page 1

President Clinton's bankruptcy policy, and the report will then be published in the *College Columns*.

The Publications Committee intends to provide thought provoking symposium articles in which the best and brightest address tough policy issues, sometimes taking a fresh look at old chestnuts that can be reexamined to determine whether they have continued validity.

My thanks to the current members of the Publications Committee, including the following: Wes Steen, Chuck Vihon, Tom Anderson. ☞

Annual Fellows Meeting

The Annual Fellows Meeting will be held at the Cosmos Club in Washington, D.C. on Wednesday, April 24, 1996.

It is anticipated that much of the meeting will be devoted to reports from the focus groups on topics relative to the work of the Bankruptcy Commission. In addition, five directors will be elected by vote of the Fellows.

A luncheon at the Club will conclude the Fellows meeting. Speakers are being sought for the event.

More information concerning the All Fellows Meeting and Induction Ceremony will be distributed soon. ☞

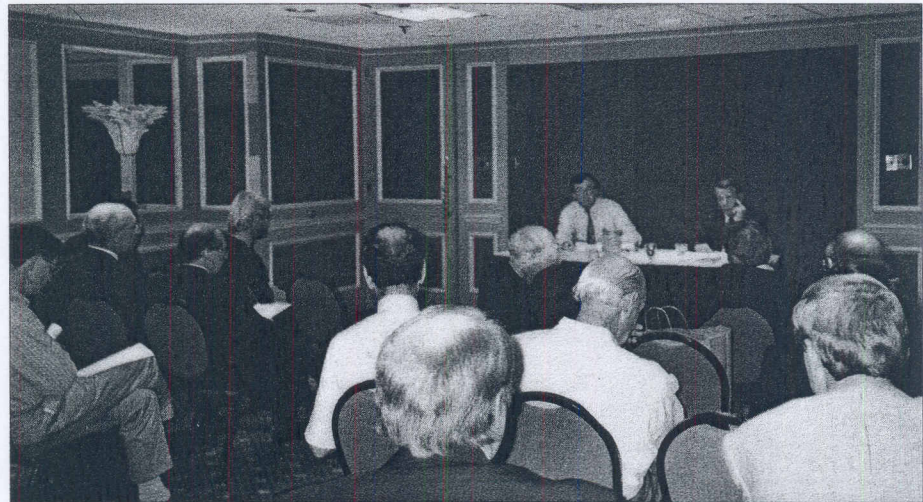
Bankruptcy Review Commission Steering Committee Gets Underway

The Bankruptcy Review Commission Project - Steering Committee held its first meeting on Sunday, October 29, 1995, in conjunction with the meeting of the National Conference of Bankruptcy Judges in New Orleans. Jerry Smith and Neal Batson co-chair the Committee, and Leon Forman is the reporter to the Committee. The members of the Steering Committee are Judge James J. Barta, Stephen H. Case, Judge Leif M. Clark, Barbara Houser, Ronald M. Martin, Gerald F. Munitz, Judge William L. Norton, Jr., Michael H. Reed, Judge Mary Davies Scott, Raymond L. Shapiro, Jerome Shulkin, David T. Sykes, and Richard S. Toder. Since the New Orleans meeting, the Committee has formed six "focus groups" to assist in identifying issues on which the College may wish to take a position. The chairpersons and members of these focus groups are as follows: Chairperson: Ronald M. Martin, Focus Group Members: Judge Leif M. Clark (Texas), Michael J. Cramers (New York), L.E. Creel, III (Texas), Harry D. Dixon, Jr. (Nebraska), Carl A. Eklund (Colorado), Judge Conrad B. Duberstein (New York), and David G. Epstein (Georgia); Chairperson: Gerald F. Munitz, Focus Group Members: Benjamin C. Ackerly (Virginia), Professor John D. Ayer (California), H. Bruce Bernstein (Illinois), Evelyn H. Biery (Texas), Judge Tina L. Brozman (New York), and Jeffrey Chanin (Connecticut); Chairperson: Judge Mary D. Scott, Focus Group Members: William Fowler (Utah), Susan Freeman (Arizona), Richard Gitlin (Connecticut), Judge Ray Graves (Michigan), Herbert Katz (California), Isaac Scott (Arkansas), and Samuel Zusmann (Florida); Chairperson: Raymond L. Shapiro, Focus Group Members: Lillian Kraemer (New York), Louis Levit (Illinois), Alfred Lurey (Georgia), Judge Ralph Mabey (Utah), Mark MacDonald (Texas), and Judge Paul Mannes (Maryland); Chairperson: David T. Sykes, Focus Group Members: Prentice L. O'Leary (California), Robert J.

Rosenberg (New York), Lewis S. Rosenbloom (Illinois), Robert B. Rubin (Alabama), Stanley J. Samorajczyk (Washington, D.C.), and Judge John D. Schwartz (Illinois); Chairperson: Richard S. Toder, Focus Group Members: Lawrence Snider (Illinois), Robert A. Soriano (Florida), Michael L. Temin (Pennsylvania), Judge Peter J. Walsh (Delaware), Professor Barry L. Zaretsky (New York), and Joel B. Zweibel (New York).

During the next few months, each of the focus groups will be addressing a number of questions, including whether a major overhaul or a modest modification of the current bankruptcy system is more desirable; whether chapter 7 and 13 cases should be placed in an administrative system; whether the U.S. Trustee system should be perpetuated in

conflicts; what changes, if any, should be made in chapter 11; and should bankruptcy judges be Article III judges, or, alternatively, is there an Article III problem (*Celotex v. Edwards*, 115 S. Ct. 1493 (1995)) which needs to be addressed by modifying the current structure and, if so, how? The focus group chairpersons will report to the Fellows at the spring meeting of the College on April 24, 1996, at the Cosmos Club in Washington, D.C. In the meantime, the Bankruptcy Commission held its second public hearing (the first was held on November 1, 1995, in conjunction with the NCBJ meeting in New Orleans) in Washington, D.C. on February 23-24, 1996. The hearing was devoted to bankruptcy administration, including jurisdiction, Article I/Article III status, bankruptcy appeals, court management, venue, and the U.S. Trustee system. The next Commission meetings will be held on April 19 in Washington and May 16



▲ Neal Batson and Jerry Smith lead the discussion during the Bankruptcy Review Commission Project Steering Committee meeting.

its current form or modified; whether insurance companies should be eligible for Title 11 relief; whether the *pro hac vice* requirement should be replaced by nationwide admission; whether the "disinterested person" requirement in 11 U.S.C. §372(a) should be applicable to chapter 11 professionals (other than a chapter 11 trustee); the desirability of a federal code of ethics governing the conduct of bankruptcy professionals which would address such issues as

in San Antonio, Texas. If you have any suggestions, issues or comments with respect to the work of the Commission and the College's involvement, please share them with the Reporter of the Steering Committee (Leon S. Forman, Esq., Blank, Rome, Comisky & McCauley, 1200 Four Penn Center Plaza, 16th & Kennedy Boulevard, Philadelphia, Pennsylvania 19103, 215/569-5563, Fax 215/569-5555). ☎

New Officers Elected

At the Board of Directors meeting in New Orleans on October 29, the following new officers were elected to two-year terms.



Gerald K. Smith
(Chairman, Board of Directors)

Mr. Smith is currently a partner with Lewis and Roca LLP in Phoenix, Arizona. He is a member of the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States and an observer for the UCC Article 9 Drafting Committee of the National Conference of Commissioners on Uniform State Laws. He is also an active member of the American Bar Association, National Bankruptcy Conference, American Bankruptcy Institute and American Law Institute. He served the College as Chairman of the Board of Regents prior to his election as Chairman of the Board.



Harry D. Dixon, Jr.
(President)

Mr. Dixon is a partner with Dixon, Dixon & Jessup, Ltd., LLP in Omaha, Nebraska. He serves as Chairman of the American Bankruptcy Institute and is a member of the Governing Council of INSOL International. He was also a member of the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States. He is a founder of the College and was re-elected President of the College.

Raymond L. Shapiro (Vice President)
Mr. Shapiro is a partner with Blank, Rome, Comisky & McCauley. He is a member of the American Bar Association and served the College as Chairman of the Third Circuit Admissions Council. He served the College as the 3rd Circuit Regent and as a Director prior to his election as Vice President of the College.



Margaret Sheneman
(Treasurer)

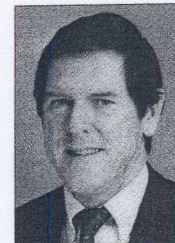
Ms. Sheneman is a shareholder in Murphy, Weir & Butler. She is a Lecturer in Law at Stanford University and was also an Adjunct Professor of Law at the University of San Francisco. She is an active member of the State Bar of California and the American Bar Association. She served the College as a Director prior to her election as Treasurer of the College.



Hon. James J. Barta
(Secretary)

Judge Barta currently serves as a U.S. Bankruptcy Judge for the District of St. Louis. 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 of the F.B.I. Judge Barta is on the Board of Directors of the American Bankruptcy Institute, the St. Louis CLE Institute and the Supreme Court Advisory Committee on Bankruptcy Rules. He served the College as the 8th Circuit Regent and as a Director prior to his election as Secretary.



Merrill Francis
(Chairman, Board of Regents)

Mr. Francis is a partner with Sheppard, Mullin, Richter & Hampton. Francis was a past Chair of Business Bankruptcy Committee and member of the Council of the Business Law Section of the American Bar Association. He served the College as the 9th Circuit Regent prior to his election as a Director and Chairman of the Board of Regents.

Announcing the Seventh Class of Fellows

At the time of printing the *College Columns*, the following had accepted their invitation to become a Fellow of the American College of Bankruptcy:

Thomas L. Ambro
Richard, Layton & Finger, P.A.
Wilmington, DE

Steven H. Ancel
Ancel & Dunlap, P.C.
Indianapolis, IN

Hon. Helen Balick
U.S. Bankruptcy Court
Wilmington, DE

Philip E. Beard
Stonecpher, Cunningham,
Beard & Schmitt
Pittsburgh, PA

Donald S. Bernstein
Davis, Polk & Warwell
New York, NY

Susan Boswell
Streich, Lang, P.A.
Tucson, AZ

Ezra H. Cohen
Troutman Sanders, L.L.P.
Atlanta, GA

Hon. A. Jay Cristol
U.S. Bankruptcy Court
Miami, FL

Robert M. Dombroff
Bingham, Dana & Gould
Hartford, CT

Alan V. Funk, C.P.A.
Alan V. Funk, P.C.
Salt Lake City, UT

Irvin Grodsky
Irvin Grodsky, P.C.
Mobile, AL

Hon. Robert Clive Jones
U.S. Bankruptcy Court
Las Vegas, NV

Richard C. Kennedy
Kennedy, Fulton & Koontz
Chattanooga, TN

Hon. Lloyd King
U.S. Bankruptcy Court
Honolulu, HI

Timothy Deal Kline
Kline & Kline
Oklahoma City, OK

H. Kenneth Lefoldt, Jr., C.P.A.
Lefoldt & Co.
Jackson, MS

Kenneth J. Malek, C.P.A.
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Cleveland, OH

Alan B. Miller
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Kansas City, MO

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Walter O'Cheskey
Lubbock, TX

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Wilmer Cutler & Pickering
Washington, DC

Randall A. Peterman
Elam & Burke, P.A.
Boise, ID

Hon. George L. Proctor
U.S. Bankruptcy Court
Jacksonville, FL

Hugh M. Ray
Andrews & Kurth, L.L.P.
Houston, TX

M. Freddie Reiss
Price Waterhouse LLP
Los Angeles, CA

Hon. Marjorie O. Rendell
U.S. Bankruptcy Court
Philadelphia, PA

Barbara J. Rom
Pepper Hamilton & Scheetz
Detroit, MI

Hon. John E. Ryan
U.S. Bankruptcy Court
Santa Ana, CA

Robert H. Scheibe
Zalkin, Rodin & Goodman
New York, NY

Bettina M. Whyte
Price Waterhouse L.L.P.
Houston, TX

Brady Williamson
LaFollette & Sinykin
Madison, WI

Comments on the Historical Aspects of Bankruptcy

By Myron M. Sheinfeld

I got into bankruptcy in the early part of the 1960s. I started by participating as a receiver and trustee, and from these experiences learned the administration of a bankruptcy estate. This was under the Bankruptcy Act of 1898, with the latest amendment in 1938. My practice expanded into representation of debtors and creditors in significant matters in the 1970s. At that time, many real estate investments took a downward turn. There was financial turmoil in New York, Atlanta, and the Midwest, and a number of major bankruptcies suddenly came on the scene. Some of these of importance were W. T. Grant and Penn Central. I worked in the Penn Central matter for Exxon. This was a railroad reorganization. It was at this time that bankruptcy became a significant factor in the future of the country's economy and the future of the legal profession. I became a member of the National Bankruptcy Conference in the early 1970s and began teaching bankruptcy and reorganization at The University of Houston, SMU, and The University of Texas about that time.

The Bankruptcy Code was significantly changed in 1978. This was the first significant revision since the Bankruptcy Code of 1898 was amended in 1938. In 1978, Chapter X, Corporate Reorganization, was eliminated and Chapter 11 was established to apply to all types of reorganizations, except for railroads and municipalities; debtors were allowed to remain in possession of their companies and manage their way out of reorganization by presenting a Plan; and debtors were given the exclusive right to file Plans for 120 days without interference from creditors. Creditors' Committees were established to aid the reorganization or liquidation process. At that time, Braniff Airlines filed for reorganization and this began the trend of significant airline bankruptcies that was shortly followed by Continental Airlines. Then the oil industry suffered severe economic decline in 1982, and this effectively created broad repercussions for the econo-

my in those areas that were dependent on oil and energy.

My philosophy has been and will continue to be that bankruptcy will be a very important element of the law because business is so dependent on excellent management and realistic financing for expansion and growth. Management can and will always make mistakes, and financing availability is dependent upon so many different factors that its predictability and reliance become questionable. There are many factors that affect access to capital, the rate of interest, collateral, and availability of investors and money; these directly impact the ability of business to expand and grow. Certain areas of business become involved in debt problems

*The bottom line is that
bankruptcy practice
has been and will
remain cyclical...*

in different ways. For example, real estate has had its periods of boom and bust, retailing has been subject to the overall economic well-being of the country and is dependent on consumer spending and available credit, and developmental businesses such as technology, medical care, and defense are cyclical in nature. The bottom line is that bankruptcy practice has been and will remain cyclical depending upon the need and the necessity for financing, product obsolescence, competition, consumer spending and world trade.

I do not believe that bankruptcy practice will be a part of the legal profession that will become obsolete or unattractive. It will be a necessary element of the law, as it has been for centuries. Volume of cases and the need for lawyers specializing in this area will vary from time to time and are affected

by factors that I have tried to explain.

For example, the largest new cases now involve questions of manufacturers' or product liability. The bankruptcy of large manufacturers results from judgments of astronomical dollars recovered by plaintiffs in litigation based on product liability. One may trace this history from asbestos manufacturing to silicon implants and other medical products. The future is unlimited. No doubt there will be further areas of financial impact created by creative litigation involving products, services, or yet to be known issues which will be developed through litigation.

I am including a resumé that will be of some help to you because it will tell you what I have done over these many years. I have written, taught, practiced, and participated in the improvement of the legal profession. I belong to and am active in organizations such as the National Bankruptcy Conference, the ABI, the BA, and local and state bar associations. I was the original chairman of the Bankruptcy Advisory Commission in Texas which has created the most copied and effective specialization program for consumer and business bankruptcy. I remain its chairman to this day. I still practice and write for law reviews, journals, and *Colliers on Bankruptcy*. I am the co-author of a one-volume text entitled *Collier, On Bankruptcy Taxation*.

Perhaps the most enjoyment from my practice has been the opportunity to work with so many fine lawyers throughout the many years. Perhaps the biggest disappointment is the failure of the profession to handle its growth. The management of the legal profession has become a business. The law is commercialized in such a manner so that traditional values of mentorship, collegiality, respect for one another and for the public, and for the public to the profession have been significantly downgraded. Competition, litigation and uncontrolled billing practices have been negative factors that have overtaken the profession and have characterized lawyers in a poor image. The lawyer as an advisor, a peacemaker, a compromiser, a public servant, and a "guiding light to the future" is what we all should strive for. ☞

Report of the Pro Bono Committee

By David Sykes

The committee circulated a series of questions regarding pro bono bankruptcy efforts across the country to the Fellows of the College. We received 12 responses. A summary of the responses identifying specific pro bono bankruptcy programs is set forth below:

1. Pro bono bankruptcy projects (not ranked in any particular order):

| STATE | PROJECT |
|---|--|
| COLORADO , Denver | Thursday Night Bar Program; Denver Bar Association and other Colorado bar organizations. |
| FLORIDA , United States Bankruptcy Court, Middle District of Florida, Orlando Division | Panel of bankruptcy attorneys who provide pro bono services to individuals who have filed pro se. |
| FLORIDA , Orange County Bar Association/Central Florida Bankruptcy Law Association | Requires that attorneys either contribute \$350 per year to the Legal Aid Society or personally handle two pro bono bankruptcy cases; the Central Florida Bankruptcy Law Association Pro Bono Bankruptcy Committee is working with Orange County Bar Association Legal Aid Society to establish procedures whereby attorneys volunteering their time to serve on the bankruptcy pro se panel will receive credit toward their Bar Association pro bono requirements. |
| FLORIDA , Bay Area (Tampa-St. Petersburg) | Volunteer Lawyers Program. |
| ILLINOIS , Chicago | Chicago Legal Clinic and Pro Bono Advocates. |
| ILLINOIS , Harvey and Oak Park | Cook County Legal Assistance Foundation, Inc. |
| MAINE , Portland | Volunteer Lawyers Project. |
| MISSOURI , St. Louis | The St. Louis Bar Association is considering starting a program to represent chapter 7 and chapter 13 debtors in adversary proceedings. |

NEW JERSEY, Camden

Rutgers University School of Law Pro Bono Bankruptcy Project.

OREGON

State Bar Pro Bono Program; The Pro Bono Subcommittee of the Debtor/Creditor Section of the Oregon Bar Association has a program to encourage rural attorneys to donate time to pro bono representation in consumer credit matters in smaller communities and rural areas of the state.

PENNSYLVANIA, Philadelphia

Consumer Bankruptcy Assistance Project, Philadelphia, PA. A § 501(c)(3) organization led by the members of the Eastern District of Pennsylvania Bankruptcy Conference, including lawyers, judges and law professors; volunteer lawyers perform pro bono services of qualified chapter 7 debtors, and limited chapter 13 services, with the help of law students, paralegals and accountants from Philadelphia area schools and firms.

PENNSYLVANIA, Pittsburgh

Bankruptcy and Commercial Law Section of the Allegheny County Bar Association has instituted a pro bono project.

TEXAS, Dallas

Dallas Bar Association is in the process of establishing a pro bono project.

American Bar Association

Litigation Section Pro Bono Bankruptcy Committee Pro Bono Starter Kit.

These were the projects which were mentioned in questionnaire responses. There are many other projects in this country which are dedicated, in whole or in part to pro bono bankruptcy and consumer credit work. I personally know of the efforts of Minneapolis bar members, and the Seattle, Washington Bar Association (the "Debt Clinic"), but I would like to hear from our members who are on the scene about these and other initiatives. More effort should be made to identify additional programs, for the purpose of sharing information about problems faced and challenges met by such programs, and to afford appropriate recognition by the College for work done through the programs.

Spring Meeting Activities Scheduled...

The following committees will meet at the Cosmos Club on April 24, from 9:00 - 10:00 am:

Bankruptcy History Committee – Hon. John K. Pearson, Chairman
 Bankruptcy Review Commission Project-Steering Committee / Focus Groups –
 R. Neal Batson and Gerald K. Smith, Co-Chairs
 Pro Bono Committee – David T. Sykes, Chairman
 Publications Committee – Evelyn H. Biery, Chairman

The Annual Meeting of Fellows will follow the committee meetings from 10:00 am - 12:00 noon.

We will again have a luncheon following the All Fellows Meeting from 12:00 - 1:30 pm.

The Induction of the Seventh Class of Fellows will take place in the Russell Caucus Room of the Russell Senate Building at 7:00 pm, Wednesday, April 24, 1996. For more information, or to purchase your tickets, please call College Headquarters at (703) 739-0960.