



*Excerpt from the Presentation of the*  
**Distinguished Service Award to**  
**David T. Sykes, Esquire,**  
*by the Hon. Marjorie O. Rendell, March 15, 2008*

Judge Rendell reminded us all of our duties to the profession to train young lawyers and to lead by example in her excellent presentation of the American College of Bankruptcy Distinguished Service Award to David T. Sykes. The entire presentation is available on the College's web site.

The following is an excerpt from the Presentation of the Distinguished Service Award to David T. Sykes, Esquire, by the Hon. Marjorie O. Rendell, March 15, 2008.

It is said that a rising tide lifts all boats. David Sykes is a rising tide indeed, lifting up all those who come into contact with him, making them better than they were and in many instances – such as my own – better than they ever thought they could be. With passion, integrity, grit, encouragement, and sometimes tough love, Dave Sykes has been a mentor to so many. I am so fortunate that our paths intersected some 37 years ago when I fell under the spell of this wonderful man.

Dave's uncanny ability to make us reach for higher goals, work harder, and aspire

to perfection, allowed us to achieve those goals and feel good about ourselves. I always advise young lawyers that they must surround themselves with people who will them to succeed, people who view their success as a measure of their own success. That's what Dave has done for so many. His advice would run the gamut from the sophisticated to the obvious – though not so obvious to those new to the profession. "Think before you speak," he would instruct me after a luncheon with a client during which I had clearly rambled on in response to a pointed inquiry. "Lower your voice – you'll sound more authoritative." (That little nugget reverberates in my brain quite often.)

But it was not just individual people who are uplifted by Dave. With his creative genius and caring spirit he reaches out to elevate the practice of law itself and spread access to the law, and particularly to bankruptcy law, to others.

As a young lawyer he worked with the Philadelphia Bar Association's Volunteers for the Indigent Program, where he successfully represented a single unemployed

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*Keynote Address*

**Judge Thomas L. Ambro,**  
**United States Court of**  
**Appeals for the Third Circuit**

*March 15, 2008, The National Building Museum, Washington, D.C.*



▲ Hon. Thomas L. Ambro

*Judge Ambro's comments on professionalism are an excellent guide for us in setting an example as members of the College. The entirety of his presentation is on the College website.*

What is professionalism? It is a set of rules (or, perhaps more apt, principles) by which we govern our conduct with others -- courts, clients, colleagues and other counsel. These principles attempt to ensure fairness in our professional human relations. Professionalism shows itself as respect for the process by which we aid others in their legal affairs.

Professionalism is not something taught in most law schools, and if it is, it is usually not taught well. Why? Because the principles are learned from experience. For that reason, professionalism is not learned quickly.

What are the principles of professionalism that we can pass onto others? I present seven.

1. Be a mentor. Be someone who, to paraphrase former Coach Lou Holtz, can be trusted, who cares about those who work with you, and who will guide them in doing the right thing. Be like David Sykes was described earlier today. I remember everyone who guided me, even those who gave the test first and the lesson later. For another paradigm of a great mentor, I go to the second principle.
2. Gain a sense of history. How many of you under age 60 know who Charles Seligson was? He died over 30 years ago. He, Professor Vern Countryman of Harvard and Professor Frank Kennedy of Michigan were known as the lead-

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▲ David T. Sykes and Fellows of the College from Philadelphia.

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**Chair's Report**

By David G. Heiman

*It is said that a rising tide lifts all boats.*



▲ David G. Heiman

On March 15, 2008, in one short sentence, Judge Marjorie Rendell summed up the impact David Sykes has had on our profession. To me, while perhaps not intentionally, she also set the bar for what we, at the American College of Bankruptcy, should expect of ourselves.

It is our challenge to generate a "rising tide" to lift the profession and, in turn, its impact on those who are touched by financial distress. Unfortunately, we are entering a period when the need for leadership to this end has never been greater.

In the pursuit of goals to enhance the valuable services available to Fellows and the public, we held a special meeting of the Executive Committee in May. By highlighting and prioritizing our objectives we will make it easier for those who have accepted leadership positions to create opportunities for greater participation for all Fellows in College activities. We have set an agenda calculated to promote the highest quality of bankruptcy practice and service to the community. Here are the highlights:

**Pro Bono** (Michael Cook)—Establish a committee of volunteers in each of the circuits to develop and implement pro bono projects in their respective cities.

**Education** (Sally Neely and Kaaran Thomas)—In a similar vein, establish committees within the circuits to conduct law student and other educational programs in their respective cities.

**Council of Regents** (Bill Cohen)—Become more involved in our pro bono and educational activities.

**Strategic Planning** (Richard Toder)—Undertake an in-depth review of our activities and direction, with a view to taking us to the next level.

**International** (Bruce Leonard and Dan Glosband)—Explore methods for increasing participation of our foreign members.

**Judges Outreach** (Judge Barbara Houser)—Increase the involvement of our judicial members.

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**President's Remarks**

By Paul M. Singer



▲ Paul M. Singer

As you can see from this edition of *College Columns* and the recent edition of *College Connections*, the College's operations have undergone a number of changes. A new executive director has been hired. Several new committees have been established, including a Judicial Committee, chaired by Judge Barbara Houser, which will reach out to judges to attempt to secure their participation in College events. In addition, the Liaison Committee, chaired by Chris Meyer, has been reactivated and will seek areas of common interest with other insolvency organizations.

These activities are part of the College's long-standing goals to increase fellow participation in College activities and awareness of the accumulated talents of our fellows in the insolvency community. All our committees, of course, support the College's mission of honoring those who have achieved the highest levels in their profession, as well as given back to the community through support of education and pro bono projects.

Many Fellows have expressed an interest in becoming more involved in College affairs. Although the College does not have substantive legal committees such as those found in the American Bankruptcy Institute and the American Bar Association, there are still many opportunities for service. Those organizations have many more members and more than adequately cover the substantive subjects. Any College activity in these areas would be duplicative.

On the other hand, the College operates through organizational committees such as those discussed above and others, including the Long-Range Planning Committee, the

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## Editor's Perspective

By Grant T. Stein



▲ Grant T. Stein

I hope you like the new format for College Columns. David Heiman has taken the initiative to foment change in several areas, and our new style is reflective of David's leadership.

Putting together College Columns is an enjoyable undertaking as I am given the opportunity to learn all the varied activities that we pursue. By the same token, however, it does entail a little *heavy lifting* from time to time. My burden has been eased by the hard work of our Fellow Jules Cohen who assisted me significantly in putting together this edition of College Columns. To all of you to whom Jules made a request for information or an article, thank you for taking the time to respond to him and for providing us the quality of materials we have presented in this issue.

The presentation of the Distinguished Service Award by Judge Marjorie Rendell to David Sykes, and Judge Thomas Ambro's remarks at the March 15, 2008 Induction Ceremony, are both summarized in this issue of College Columns. The focus of both on professionalism merits each of us taking time to read them to remind us why our peers nominated and selected us for membership in the College. They also, in my view, should be shared with younger lawyers who are not yet in the College as part of our effort to help shape the next generations and continue to elevate our profession, particularly as we practice in the bankruptcy and insolvency arenas.

One question, unfortunately, seems to keep coming up in the course of actual day-to-day practice with the intensity real life brings to us and the clients we represent. How should you respond to what you might consider to be less than professional conduct by adversaries in our adversarial system? What do you do when threatened subtly or overtly? What should you do to address a misrepresentation of fact, or a shading or the truth, or a presentation of less than all of the facts, or when the pressure you bring to bear on the merits of a case becomes too hard so an effort is made to attack the lawyer as messenger instead of the merits of the message? Is taking the high road the only road? Is it always the

## Suzanne Bingham



▲ Suzanne A. Bingham

After more than twelve years of excellent service, Suzanne Bingham has stepped down as the Executive Director of the College to devote more time to family obligations. Bingham isn't leaving the College; just changing hats. Suzanne will serve as the legislative director of Armstrong & Associates International, Inc. tracking legislation for their clients.

In looking back, Bingham says that what she enjoyed most about her role as Executive Director was dealing with the "top notch leadership" that has always been present at the College. She referred to them as the *best of the best*. The feeling is mutual.

Neal Batson noted that Suzanne's knowledge of people, and places, in Washington, as well as her extensive activities on the Hill helped provide the College and

its Fellows with up-to-date and important information on matters affecting the practice of bankruptcy and insolvency law. He also admired her ability to plan and execute all the logistical complexities associated with the College's annual meeting.

Evelyn Biery agreed. "Because she is an exceptionally talented person, she made all of the millions of details of meetings and conferences proceed smoothly and seamlessly, with grace and charm. Every minute of every day she was a delight to work with, and we will all miss her very much." Biery also pointed to Suzanne's remarkable talent for remembering people which enabled her to provide valuable information concerning not only the members of the College but also their spouses and assistants, which let us meet the needs and interests of our Fellows at a very high level.

Ray Shapiro commented that year after year Suzanne's role grew in order to support the expanding needs of the College. He explained that she "served us with distinction and made a significant contribution to our reaching lofty heights, and we applaud her commitment and dedication to help us achieve our many successes as a national organization."

The Executive Director's duties now move on to Shari Bedker's capable hands. ☞

## Shari Bedker, our New Executive Director




▲ Shari Bedker

Shari Bedker is our new Executive Director, but she is not new to the College. Shari has been working with Suzanne Bingham on College business for over ten years.

Shari has a B.S. in Accounting (1987) and an M.S. in Taxation (1997), both from George Mason University. She put herself through college by working full time while attending school full time at night. She is a licensed CPA in the Commonwealth of Virginia.

Shari has an 18 year old son, Matt, who will be going to college in this fall and a 16 year old daughter, Michelle, who will be a junior in high school in the fall. Her husband, Larry, is the CFO for the Program Support Center of the Federal Department of Health and Human Services.

We all know the scope of the job Shari is undertaking and wish her the best as she moves forward with us. ☞



**Save the Date**  
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for details

successful road? Do you respond in equal measure? How do you fulfill your own fiduciary obligation of zealous advocacy, and from a distance, is your opponent doing anything more than that even if you perceive it to be otherwise? Whether at the negotiating table, or in the Courtroom, these issues arise. The comments of both Judge Rendell and Judge Ambro should be constant reminders to us all to remain vigilant in pursuit of our client's interests while at the same time preserving what is best about our profession. ☞

## About The Fellows

## Judge Cristol Acknowledged for Lifelong Contributions

by Philip Hendel



▲ Hon. A. Jay Cristol

Congratulations are in order for one of our most well respected and accomplished jurists. Dow Jones Daily Bankruptcy Review recently provided an unusual glimpse of Judge A. Jay Cristol's life. Judge Cristol has led a stellar career as a U.S. Bankruptcy judge in Miami, overseeing such high profile cases as the Chapter 7 of an O.J. Simpson company, when he upheld Ronald Goldman's family's \$38 million secured claim against a sham company set up by Simpson. He also criticized the Bush administration for its harsh policies toward individuals who file for Chapter 7 and 13 relief.

Judge Cristol's energy seems boundless. Outside the courtroom, Judge Cristol is a well recognized author and a pilot who flew with the U.S. Navy during the Korean Vietnam wars. At age 78, he is still flying planes. He is also an avid volunteer in Miami and works with judges and lawyers from around the world who are interested in learning about U.S. bankruptcy law. In 1997, he earned a Ph.D. at the University of Miami and in 2002 he turned his thesis, about the 1967 Israeli attack on the USS Liberty, into a book.

Cristol's major business cases have included Prime Motor Inns, with more than \$9 billion in debt, and General Development Corporation, with \$5 billion in debt and 330,000 creditors around the world. Despite a storied career, Judge Cristol says he is most proud of his work in consumer bankruptcy cases, not the major business reorganizations. That doesn't surprise Miami bankruptcy attorney Fellow Paul Singerman who says Judge Cristol "will make sure that a pro se litigant is treated with patience and respect, and that doesn't mean he will, from a bleeding-heart perspective, rule for some pro se consumer litigant in every instance. He treats pro se consumer litigants the way he thinks is appropriate and the way he would like to be treated." ☰

## The Passing of Frank R. Kennedy



▲ Frank R. Kennedy

died on February 1, 2008.

Professor Kennedy began his teaching career at the University of Iowa in the early 1940's, prior to his military service in the U.S. Navy. He was the Thomas M. Cooley Professor at Law at the University of Michigan where he taught from 1961 to 1984.

Among his many roles he served as the reporter for the first Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States, and also was the Executive Director of the U.S. Commission on Bankruptcy Law from 1970 - 1973. He was actively involved in the activities that lead to the drafting and passage of the Bankruptcy Reform Act of 1978.

He was a contributing editor to *Colliers on Bankruptcy* and in 2000 published *Kennedy, Countryman & Williams on Partnerships, Limited Liability Entities and S Corporations in Bankruptcy*.

Professor Kennedy became a fellow of the American College of Bankruptcy in its very first Class in 1990. He received the College's first Distinguished Service Award in 1996. ☰

We lost a giant in the field of insolvency and restructuring law in 2008 with the passing of Frank R. Kennedy. Kennedy who was a University of Michigan Law School Professor Emeritus, died at the age of 93

## President's Remarks

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Educational Committee, and the Pro Bono Committee. And there is the College's Foundation, which is involved in the College's charitable affairs. This year, we have attempted to reconstitute many of our committees and will continue to do so in the future. If you wish to join one of the College committees, please let David Heiman, Shari Bedker, or me know.

More important, if you have a suggestion for a committee or a project, please let us know. David and I are committed to providing an opportunity to everyone who wants to participate in the College's efforts to do so. Membership on a committee, the formation of new committees, and the development of local or regional programs are all good ways to put our Fellows' talents to use. ☰

## Chair's Report

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**Communications** (Mark Bloom)—Keep our members better informed via the website, *College Columns*, and *College Connections*.

As Paul Singer suggests in his column, you are encouraged to participate. The greater the effort, the higher the tide!

As you know by now, Suzanne Bingham has retired. You will read more about her elsewhere in this issue; but, on behalf of all of the current and past leadership with whom she has worked, I want to thank her for her extraordinary contribution to the growth and stature of the College. We are fortunate that Shari Bedker has agreed to assume the executive director position, thereby ensuring that we will continue to have outstanding administrative support. ☰

## Request for Information

Please take the time to provide us information and pictures to be used in *College Columns*. Many of our Fellows receive awards and other honors. We would like to know about those and thereby be able to advise the College as a whole about the recognition of one of our Fellows. Other important developments occur in a variety of areas and the best way for us to learn about them is through you. Please take a minute to forward this information to Grant Stein or Jules Cohen at [grant.stein@alston.com](mailto:grant.stein@alston.com) or [jules.cohen@akerman.com](mailto:jules.cohen@akerman.com). ☰

## The Best Practices Committee

by Professor Douglas Baird



▲ Prof. Douglas Baird

The Best Practices Committee has recently brought several projects to fruition. Under the leadership of Corinne Ball and Lloyd Palans, members of the College have revised our comprehensive review of bankruptcy law in the circuits, and we are updating it quarterly. In addition, under the leadership of Carl Jenks and Jan Baker respectively, we have issued best practices reports for Federal Income Tax Practices in Corporate Reorganizations and Debtor Employee Retention and Incentive Compensation Programs in Light of BAPCPA. These materials have been collected in a newly published book, *American College of Bankruptcy 2007 Circuit Review and Best Practices Reports*, available from Lexis/Nexis.

The 2007 Circuit Review is a circuit-by-circuit survey of bankruptcy law issues on which there are disagreements among the federal circuit courts of appeals, and which affect venue selection. It describes the differences among the various circuits on the most critical bankruptcy issues—helping you to determine where filing will best serve your client, or, if filing has already occurred, to anticipate how the court will rule on matters before it. The principal topics covered in the circuit-by-circuit survey are:

- Case Administration
- Filing and Jurisdiction
- Financing
- Sales of Assets
- Executory Contracts
- Avoidance Actions
- Plan Confirmation
- International Aspects of Bankruptcy Law
- Appellate Practice

Also addressed are important decisions on other topics, such as reclamation and priority claims, equitable recharacterization, professional fees, and application of the automatic stay. The second and third parts of the book are the Best Practices Reports:

- *Best Federal Income Tax Practices in Corporate Reorganizations*. This report considers pre-filing practices; first-day order practices; post-filing tax compliance practices; tax refund practices; practices involving tax claims against the debtor; disclosure statement practices; and post-confirmation tax practices.
- *Best Practices for Debtor Employee Retention and Incentive Compensation Programs in Light of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*. Among the many changes effected by the 2005 legislation was the enactment of new Code section 503(c), which was designed to curb the use of retention and severance plans by debtors in bankruptcy. This new section presents perplexing problems, and the report offers a detailed delineation of the section's provisions along with best practices guidelines on the following:
  - determining the need for, and propriety of, a compensation program;
  - determining which employees should participate in the compliance program;
  - developing compensation programs;
  - structuring compensation programs for insiders as well as non-insiders.

This material should be available online in the near future following this path on Lexis/Nexis to find it: Legal > Area of Law - By Topic > Bankruptcy > Search Analysis, Law Reviews & Journals. The *American College of Bankruptcy 2007 Circuit Review and Best Practices Reports* is available for sale at a reduced price of \$125 for College Fellows. To order call LexisNexis at 1-800-223-1940 to receive the discount. ☰

## Pro Bono

by Michael L. Cook



▲ Michael L. Cook

Following its mandate to identify clinical and other community programs devoted to providing debt counseling and other legal services to low income families, the Pro Bono Committee has taken a number of actions already this year.

### Grants

The committee received five grant requests totaling \$28,000 in the first quarter of 2008. Committee members evaluated and approved each request before distributing funds made available by the College and the Foundation. We continue to solicit grant requests from entities that deliver legal services to indigent consumer debtors. Projects that educate not only consumer debtors, but also attorneys who volunteer their services are eligible to receive a grant. Grant request forms are available on the College website.

### Consumer Debtor Bankruptcy Assistance Projects

The committee intends to help establish consumer debtor bankruptcy assistance projects in cities or towns around the country where no such service exists. During the coming year, we intend to establish at least two projects. We have already identified Wilmington, Delaware as the first target location. James Patton, a Fellow and leader of the Wilmington bar, recently joined the committee and agreed to lead this effort. ☰

## New Web Address:

The American College of Bankruptcy website can be reached at [www.amercolbankruptcy.org](http://www.amercolbankruptcy.org). The old domain name <http://www.amercol.org/> is still active and will be used for email and as a redirect for those who have the website bookmarked. ☰





## Distinguished Service Award

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mother in a chapter 13 case, convincing the court that the child support payments she received constituted a "regular stream of income."

In 1986 he challenged the lawyers in our firm's Reorganization Section to research and produce what we referred to familiarly, though sometimes not fondly, as "The Book." *Risk and Recovery: Developments in Business Bankruptcy and Commercial Finance Law*, its actual title, is now firmly entrenched as an annual tradition (curse?). Now in its 25th year, last year "The Book" received a Burton Award for excellence in legal writing in the category of Best Law Firm Compendium.

Of course, Dave is, and will always be, the editor-in-chief of "The Book" – and the one who invariably opens to a random page and finds a typo just as the treatise emerges, hot off the press.

Dave co-founded the Eastern District of Pennsylvania Bankruptcy Conference, which developed into a must-attend annual conference attracting 150 or so bankruptcy practitioners from throughout the region.



▲ Judge Marjorie O. Rendell addresses College Fellows during presentation of the Distinguished Service Award to David T. Sykes.

In 1992, he co-founded the Consumer Bankruptcy Assistance Project – now a national model for providing pro bono legal services to the poor – where he wore many hats: president, instructor, and fundraiser.

And, of course, Dave has worn many hats in his service to the College. He was there at the beginning, as a Charter Fellow, and he subsequently became Vice President, a Director, President, and now Chair of the Board.

Around the firm, when Dave has an idea you know you are in for a wild ride, but you also know that in the end you will be better for it. Dave is passionate and relentless. As he puts it – and this is an actual quote – "I seek not to terrorize, but to inspire." While fussing with his glasses, hands gesticulating and arms flailing as he is making a point, he will stop and find the humor in the bizarre situations we would encounter in the course of a representation.

But let me summarize some of the special qualities that Dave possesses that others have recognized. In 1997, the Business Law Section of the Philadelphia Bar Association named Dave the first recipient of its prestigious Dennis H. Replansky Memorial Award, in recognition of:

. . . his superior legal talent and professionalism in the area of business law; unique contributions to and significant achievements within the business law community in the Philadelphia area; reputation for mentoring young attorneys; significant participation in and contributions to civic and charitable causes in the community; and uniform recognition in the legal community for honesty, integrity and professionalism.

Now, THAT is Dave Sykes.

Let me also echo the words of Judge Peck, who in sharing the anecdote I referred to previously, wrote to me in conclusion:

Dave is and always has been a tenacious advocate and inspirational figure who earned the respect of his peers with his skill, hard work, good humor, uncommon decency and sound judgment. He embodies the highest standards of the profession. I am where I am today because of Dave's influence, guidance and teaching, and I will always be grateful to him. 🙏



## Ambro Keynote

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ing academic experts in bankruptcy of their era. Yet, who remembers any of them (and Frank Kennedy died only six weeks ago)? Professor Larry King, who gave the most-remembered keynote address to the College seven years ago (indeed, just three days before he left us), was the Charles Seligson Professor of Law at NYU Law School. Professor Seligson taught there as well, and was also the name partner in Seligson & Morris, a small firm (only about ten attorneys) in New York City. In that firm were Harvey Miller, Marty Lipton, Len Rosen, George Katz, Ted Gewirtz and later Alan Miller. When litigation had to be sent out-of-office, it was often given to a young man by the name of Herb Wachtell. Professor Seligson was a mentor to them and many more.

The lessons? There are many, but I note two: Don't forget what went before us (including the great persons who preceded us), and while it is unlikely we will ever be as good a mentor as David Sykes or the man who guided Harvey Miller and the founding partners at Wachtell, Lipton, Rosen & Katz, we can nevertheless make a positive difference on those with whom we share our life experiences and insights.

3. Read. Suggest not only that your mentees read, but do so yourself. By reading I do not mean legal reading solely, or even primarily. No, ask them to read non-legal material and apply its lessons to their work. Patricia Millet, formerly of the Solicitor General's Office, has said that reading is the collecting of intellectual capital, writing and speaking are the spending of it. In addition, reading (along with experience) helps impart judgment. No matter how much learning we have based on our research, no matter how well we present it, if our conclusion lacks judgment, others will perceive it and judge not only it, but us, accordingly.
4. Prepare. Good research, good writing and good oral presentations begin with preparation. It is the solid foundation on which all else holds or falls. As they say in the military, "prior proper planning prevents poor performance."
5. Park your ego at the door. The legal profession is one of service. It is not primarily about an attorney's billable rate, perceived place in his or her firm, or how much money he or she makes. It is first about serving others, and serv-

ing them well. Don't let it be said of any of us, "He [or she] had an ego that could accommodate a much greater talent." Don't be, as my Father used to say, a "good investment." When I asked what he meant by a good investment, my Dad responded, "I'd like to buy him for what he's worth, and sell him for what he thinks he's worth. It would be a good investment."

6. Treat others with respect. This is perhaps the hardest principle to follow for anyone who practices in the rough world of bankruptcy. Jan Baker, a member of this College, is one of the best and most effective persons in court I have witnessed. Yet, I never saw



▲ Keynote Address, Judge Thomas L. Ambro, United States Court of Appeals for the Third Circuit, March 15, 2008, The National Building Museum, Washington, D.C.

him be uncivil or lose patience with a client or opposing counsel. All were treated with great respect. No less integrity is demanded of us, no matter how contentious the situation. The offshoot of this is credibility, which leads to the last principle.

7. Make Yourself Credible. Credibility is the coin of the realm in determining how others will judge you. If you are credible, people listen; if not, they won't. To be credible, you must be believed; to be believed, you must be believable; and to be believable, you must tell the truth. From the perspective of a judge, nothing detracts more from an advocate's case than if the judge believes that person is lying. Liars make us uneasy. We don't trust them because they don't care enough to do the right thing. They hurt themselves and ultimately their clients.

When mentees ask how will they know when they have achieved the full measure of professionalism, here are the responses I suggest.

(1) Others will know before you. We never perceive ourselves 100% as others perceive us. But over time others will relate back to you how they perceive you. You will note in them a confidence about your assessments of what can be done realistically, and not, as with so many

others, a glumness that all you have told them is what cannot be done.

(2) When you can be skeptical without being cynical. Skepticism is *sub silentio* the primary trait you take from law school.

Cynicism, however, is what defeatists exhibit. It is what happens when we perceive that we cannot change something that we believe should be changed, and blame the system or others rather than ourselves.

(3) When you confront your weaknesses head on. Do what the best attorneys do. Admit a mistake or weakness and show how you can turn it to your advantage. Chief Justice John Roberts recently noted at Northwestern University School of

Law that the following may be a most effective tactic for advocates: "The biggest argument against us is ...this precedent that you decided six years ago, and if you were going to follow it down the line, my client should probably lose. Here's why I think you shouldn't follow it in this case." That, I believe, is the surest way to create credibility. You connect with the court, and gain credibility in the process.

(4) When perspective prevails over the personal. This allows you to see the single case in the big picture of what the law is and work to make it what it should become.

(5) When you know to show mercy. This follows the favorite case of former Chief Judge Edward Becker of my Circuit, apocryphally named *In Re: Rachmones*. "Rachmones" is Yiddish for mercy. When mercy is called for and you extend it to others, it will come back to you when you least expect it, and it may even do so when you need it the most.

(6) When you know you have enough. Finally, remember this story involving my colleague, Judge Dolores Sloviter, and her now deceased husband - Dr. Henry Sloviter. Dr. Sloviter was a medical researcher of the first rank. While at the Hospital of the University of Pennsylvania, Dr. Sloviter found a way to make artificial red blood. Some investors asked to meet with him and came to his home. Their pitch was that Dr. Sloviter's discovery was worth millions of dollars were he to claim it for himself. Dr. Sloviter listened politely and then said he was not interested. When they left, Dolores asked him why he said this. He responded, "The difference between enough and not enough is a lot. The difference between enough and more than enough is a little. Dolores, we have enough." The lesson for us: when you have enough, to want more is greed.

If all these occur, those who deal with you and the persons you mentor will believe a little more that the system for ordering our legal affairs (including resolving our disputes) is fair. We can ask no more. ☮

## 2008 Distinguished Law Students



▲ 2008 Distinguished Bankruptcy Law Students: Daniel B. Centner (5th circuit), *Tulane Law School*; Erin E. Broderick (6th circuit, *University of Michigan Law School*; Vincent S.J. Buccola (7th circuit), *University of Chicago Law School*; Matthew R. Shaw (8th circuit), *University of Iowa College of Law*; Maya R. Anderson (10th circuit), *University of New Mexico School of Law*



## Circuit Reports

**First Circuit**, Richard E. Mikels

The fifth annual First Circuit educational program was held at Boston College on April 18, 2008. The program, "Anatomy of a Distressed Business," commenced with a lecture by Dan Cohn and Marti Kopacz, experts in the legal and financial advisory aspects of our field. Cohn and Kopacz explained to law school and business school students how insolvency professionals approach and develop strategies for a troubled business. This presentation was followed by break-out sessions led by practitioners during which there was discussion about a hypothetical distressed company from the points of view of various parties to a work-out or Chapter 11 proceeding. At the end of the day, each group reported its conclusions and recommendations to a panel led by the Honorable Joan Feeney. The Education Committee members who organized the event were the Honorable William Hillman, Dan Cohn, Jon Schneider, and Phil Hendel. Approximately 100 law and business students attended the program.

The First Circuit fellows are planning this year's dinner and wine-tasting event for Saturday, January 24, 2009, at the Harvard Club in Boston. The Dinner Committee includes Michael Pappone, Dan Cohn, and John Monaghan. Each year, the circuit honors a participant in the bankruptcy community who has made a significant contribution to the field. This year, bankruptcy judge Joan Feeney will be honored. The event is open to all College fellows.

**Second Circuit**, Alan W. Kornberg

The Second Circuit held a luncheon at Paul Weiss's Washington, D.C., office on Friday, March 14, 2008, before the annual induction ceremony.

**Third Circuit**, Joseph A. Dworetzky

On May 23, 2007, the New Jersey fellows held a networking reception at Mompou in Newark, New Jersey. Ten New Jersey fellows attended, along with David Sykes, Michael Reed, and Judge Gambardella. Sykes gave a state-of-the-college update, and the owner of Mompou gave a historical perspective of the Ironbound section of Newark.

On December 5, 2007, the Third Circuit held a fellows dinner at the National Liberty Museum in Philadelphia to welcome the Third Circuit's newly admitted fellows, Thomas Biron and Norman Pernick. In attendance were David Heiman, chair of the American College of Bankruptcy, and 23 fellows from the Third Circuit despite

the afternoon snow that made travel difficult and stranded several fellows from Pittsburgh.

**Sixth Circuit**, Christopher G. Meyer

On Friday, March 14, 2008, 24 Sixth Circuit fellows gathered for lunch at the Washington offices of Squire, Sanders & Dempsey LLP. Among those present were Michael Coury of Memphis, our 2008 inductee; David Heiman, College chair and Sixth Circuit fellow; and Erin Broderick of the University of Michigan Law School, the Sixth Circuit distinguished bankruptcy law student for 2008.

Shelly Rucker of Miller & Martin PLLC and Richard C. Kennedy of Kennedy, Koontz & Farinash, both of Chattanooga, Tennessee, hosted a Sixth Circuit event in Chattanooga. The event was held in conjunction with the Sixth Circuit Judicial Conference, which took place in Chattanooga on May 8-10, 2008. In addition to the activities scheduled for the Judicial Conference, fellows toured the Reflection Riding Arboretum and had dinner in the Bluff View Arts District. The event was well attended and well received.

**Eighth Circuit**, Faye Knowles

Thompson Coburn hosted the Eighth Circuit lunch at the firm's K Street offices during the March annual meeting in Washington, D.C. At the luncheon, the Eighth Circuit welcomed two new fellows, Gary D. Barnes of Husch Blackwell Sanders LLP in Kansas City and Mark V. Bossi of Thompson Coburn, LLP in St. Louis. Matt Shaw, a law student at the University of Iowa College of Law and the Eighth Circuit distinguished bankruptcy law student this year, also attended.

**Ninth Circuit**, Howard J. Weg

Thirty-eight fellows attended the Ninth Circuit luncheon at Winston & Strawn's office in Washington, D.C., on Friday, March 14. The group included three new inductees, Debra Grassgreen of Pachulski, Stang, Ziehl & Jones in San Francisco; Peter Gilhuly of Latham & Watkins in Los Angeles; and Steven Hedberg of Perkins Coie in Portland. Each delivered a short report on a recent case or topic of interest. Ken Klee discussed his work on an upcoming book on the Supreme Court's bankruptcy jurisprudence. Dan Armel, treasurer of the College's Foundation, discussed the need to find new pro bono projects to support, and Joel Ohlgren announced the newly adopted recommended best practices for each circuit to follow in recommending new fellows.

Earlier in the year, about 25 Ninth Circuit fellows met for dinner and good conversation at the Border Grill in

Santa Monica, including fellows from San Diego, San Francisco, Sacramento, Portland, and Reno.


**Seventh and Tenth Circuits**, Blaine Schwabe

The Tenth Circuit joined the Seventh and the Eleventh Circuits for a combined luncheon on March 14, 2008, at Alston & Bird LLP's offices in Washington, D.C. New Tenth Circuit fellows, John C. Smiley of Linnquist & Vennum in Denver and Robert H. Jacobvitz of Jacobvitz, Thuma & Walker in Albuquerque, and the Tenth Circuit's distinguished law student, Maya Anderson of New Mexico, were introduced.

The Tenth Circuit fellows had a dinner at the Oklahoma City Museum of Art Cafe, on December 5, 2007. The evening was sponsored by the fellows from Oklahoma, and guests attending included out-of-circuit fellows Larry Ponoroff, Mickey Sheinfeld, and Jack Williams who were in town to speak at the Oklahoma Bar Association, Bankruptcy and Reorganization Section, Advanced Bankruptcy Program. (David Epstein was expected but arrived too late to attend because of flight delays.)

**Eleventh Circuit**, Grant T. Stein

The Eleventh Circuit joined the Seventh and the Tenth Circuits in Washington, D.C., on March 14, 2008, for a combined lunch and educational program. The lunch included the introduction of the Eleventh Circuit's three new fellows, J. William Boone of Alston & Bird in Atlanta, Georgia; Patrick Darby of Bradley, Arant Rose & White LLP in Birmingham, Alabama; and Neil Gordon of Arnall Golden Gregory LLP in Atlanta, Georgia. Richard P. Carmody of Adams & Reese LLP in Birmingham, Alabama, led the education program, which included a discussion of the new national and Delaware bankruptcy rules. A dinner for all Eleventh Circuit fellows was held that evening, arranged by Russ Blain of Stichter, Riedel, Blain & Prosser, P.A. in Tampa, Florida.

**NEW:** *The Fifth and Eleventh Circuits will conduct a joint All Fellows Weekend in New Orleans February 6-7, 2009. It will be a reunion weekend for the old Fifth Circuit. All fellows from around the country are invited. Social events will include dinners Friday and Saturday, and an educational program will be held Saturday morning. Contact Shari Bedker, Patrick Vance, Lisa Futrell, Evelyn Biery, or Grant Stein for information. Please save the date, and make your hotel and travel reservations now.* 



## Upcoming Events

### Schedule of Fall 2008 Luncheon and Meetings during NCBJ in Scottsdale, AZ

#### Tuesday, September 23, 2008

2:00-4:30 Foundation Board Meeting, President's Boardroom  
5:30-9:30 Leadership Dinner (Board, Regents, Foundation Board, Committee Chairs)

#### Wednesday, September 24, 2008

8:00-12:00 Board Meeting, Desert Conference Suite I  
9:00-12:00; 2:00-5:00 Board of Regents Meeting, President's Boardroom  
12:00-2:00 All Fellows Luncheon and Panel: Trading Claims

#### Bruce Bennett

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#### Thursday, September 25, 2008

12:30-2:00 ACB/NCBJ Joint-Sponsored Lunch (must register through NCBJ, [www.ncbj.org](http://www.ncbj.org))

**J. Peter Morrow**, chief executive officer of Khan Bank, Mongolia, will present "And You Thought You Had a Tough Job: Bank Reorganization in a Formerly Socialist Country—Khan Bank of Mongolia"

### Draft Schedule of Events for 2009 Induction Ceremony and Events

#### Thursday, March 26, 2009

3:00-4:30 Foundation Board of Directors Meeting  
6:00-7:00 Distinguished Bankruptcy Law Students Reception

#### Friday, March 27, 2009

8:00-12:00 Board of Directors Meeting  
12:00-2:15 Circuit Luncheons  
2:30-3:30 General Session  
3:30-4:30 International Insolvency Institute/College Joint Panel  
6:30-8:00 Induction Ceremony and Reception at U.S. Supreme Court

#### Saturday, March 28, 2009

7:45-8:50 New Fellows Orientation  
9:00-12:30 Educational Panels  
12:30-2:00 Luncheon and Distinguished Service Award Presentation  
6:00-8:30 International Fellows Dinner

### Save the date for 2009 Fall Luncheon and Meetings, Las Vegas, NV

#### October 17, 2009

Foundation Board Meeting  
Leadership Dinner

#### October 18, 2009

Board of Directors Meeting  
Board of Regents Meeting  
All Fellows Luncheon and Panel

#### October 19, 2009

ACB/NCBJ Joint Sponsored Lunch

## American College Of Bankruptcy 2007 Circuit Review and Best Practices Reports

Published by LexisNexis – \$125 for College members; \$225 for non-members

To receive the College discount, please call 1-800-223-1940.


The Circuit Review (Corinne Ball and Lloyd Palans, co-chairs) is a circuit-by-circuit survey of bankruptcy law issues on which there are disagreements among the federal circuit courts of appeals, and which affect venue selection. It cogently describes the differences among the various circuits on the most critical bankruptcy issues of the day—helping you to determine where filing will best serve your client, or, if filing has already occurred, to anticipate how the court will rule on matters before it.

### Best Federal Income Tax Practices in

**Corporate Reorganizations** was prepared by Carl M. Jenks. This report considers pre-filing practices; first-day order practices; post-filing tax compliance practices; tax refund practices; practices involving tax claims against the debtor; disclosure statement practices; and post-confirmation tax practices.

**Best Practices for Debtor Employee Retention and Incentive Compensation Programs in Light of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005** was prepared by the Executive Compensation Committee.

New Code section 503(c) has presented perplexing problems, and the report offers a detailed description of the section's provisions along with best practices guidelines on the following: determining the need for, and propriety of, a compensation program; determining which employees should participate in the compliance program; developing compensation programs; and structuring compensation programs for insiders as well as non-insiders.

For additional information on this publication, visit the LexisNexis online bookstore: <http://bookstore.lexis.com/bookstore/catalog>. 

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## Strategic Planning

by Richard S. Toder, Chair



▲ Richard S. Toder

As was announced at the College's Annual Meeting, a new "Strategic Planning Committee" has been formed. The Committee, which consists of 17 Fellows, held its organizational meeting during the Washington, D.C. meetings held in March, 2008.

Subcommittees have been formed to look into such topics as (i) The size of the College and membership opportunities and obligations; (ii) Relationships with Congress, other organizations, and the judiciary; (iii) Enhanced participation of financial advisors in the College; (iv) Pro bono activities; and (v) Development of a questionnaire to solicit the views of the Fellows. Existing College committees cover parts of these topics listed above. The Strategic Planning Committee views its mission, in part, to make recommendations to other committees for their consideration of various projects. 

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