

College Columns

News and Views from The American College of Bankruptcy

Publications Committee Report



▲ Evelyn H. Biery

By Evelyn H. Biery

The Publications Committee is continuing the projects that it has previously embarked upon, including the following:

- (a) The Memorial Lecture Subcommittee will continue to work with our Scholar In Residence, Leon Forman, to present an ethics lecture. It is our hope that it will take place in a resort and will become an annual event sponsored by the Committee, under the auspices of the College.
- (b) The *College Columns* Subcommittee has published bi-annual issues of the *College Columns* and will continue to do so. We encourage everyone to provide to us Judges' favorite stories, information on our Fellows who have a life outside the practice of law, and items on the achievements and honors of our Fellows.
- (c) The Law Review Articles Subcommittee will continue to review seminar papers and law review articles during the year and forward the most impressive to the College Fellows, as we did with the article on ethics by Jerry Smith and Sally Neely.

At present we have the following committees and I would like volunteers to serve as subcommittee chairs:

- (a) Memorial Lecture Subcommittee: John Barrett, Richard Broude, Jan Hayden, Simon Kimmelman and Michael Reed.

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Chairman's Report



▲ Raymond L. Shapiro

By Raymond L. Shapiro

Ten years pass quickly. Through dedicated leadership since our birth, we have grown in stature and vision. We are on sound financial footings.

Today, with the annual assistance of our Patrons and Sponsors, we not only have the capability of maintaining a reasonable dues structure and charges for events, we can now expand our horizons and fund projects to enhance the bankruptcy process.

The College has funded and will continue to fund worthy pro bono organizations. We will contribute to fund an investigation and study to determine how best to gather and preserve important scholarly papers, including the location of an academic institution as a repository for such documents. We have allocated funds to law schools for special programs dedicated to bankruptcy law and practice. These represent early initiatives in what we hope will blossom into significant programs that we will continue to support with our time, effort and financial resources.

To give us closer focus on our future, we have appointed a special committee, chaired by Paul Singer, to study, discuss and establish our goals and to prepare a road map to follow in the next several years. This Committee consists of a cross section of College Fellows with geographic diversity and includes long standing and newly admitted members,

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Nomination Procedures for Eleventh Class



▲ Merrill R. Francis

By Merrill R. Francis

The Board of Regents will meet in San Francisco, California, at the National Conference of Bankruptcy Judges to act on nominations for the Class of 2000.

Sponsor applications for candidates were due on June 15, 1999. It is imperative that nominees not be contacted. All names of nominees must be kept **confidential!** We want to avoid any potential embarrassment on the part of someone who may be considered but not extended an invitation.

Each Circuit Admissions Council will review nominations received for that Circuit (other than Judges and Foreign Fellows) and make recommendations to the Board of Regents. Each Fellow within a Circuit will receive the names

of the proposed Fellows (other than Judges and Foreign Fellows in that Circuit) and be asked to comment on each proposed Fellow. Final Circuit Admissions Council recommendations have been forwarded to the Board of Regents, which will meet on Wednesday, October 6, 1999, in San Francisco in conjunction with the meeting of the National Conference of Bankruptcy Judges. Invitations to new Fellows for the Class of 2000 will be sent out in mid-November of 1999. ☞

Bankruptcy History Committee Report



▲ R. Neal Batson

By Neal R. Batson

A History Project Committee of the College was formed last winter for the purpose of investigating the feasibility of a program to retrieve and preserve historical

papers, documents, books and other memorabilia related to the history of bankruptcy and insolvency law and those individuals who have been instrumental in its development. The Committee hopes to identify an appropriate educational institution that will be willing to serve as a repository of this information and make it available to scholars and others for research purposes.

Jerry Patchan, Director, Executive Office for United States Trustees, and Hon. Mary D. Scott, President Elect of the National Conference of Bankruptcy Judges, have agreed to co-chair the Committee. Murray Drabkin, Leon S. Forman, Professor Lawrence P. King, Hon. Joe Lee, Hon. Randall J. Newsome, Hon. John K. Pearson, Myron M. Sheinfeld and Gerald K. Smith have agreed to serve as members of the Committee.

The Committee held its organizational meeting in Washington, D.C., on March 12, 1999. It has received funding from the College of \$5,000, as well as a \$5,000 grant from the Retired Judges Committee of the National Conference of Bankruptcy Judges.

The Committee will report on its progress at the October 1999 meeting of the College in San Francisco. ☞

Honors and Achievements

By George B. Cauthen

George B. Cauthen, a College Fellow, and Carl B. Epps III, also a partner at Nelson Mullins Riley & Scarborough, L.L.P. in Columbia, South Carolina, have received The Compleat Lawyer Award from the University of South Carolina School of Law Alumni Association. The award was created in 1992 to recognize attorneys for their civic and professional accomplishments. Cauthen and Epps were awarded Gold Medallions, which are presented to attorneys who have been in practice 15 to 29 years.

In presenting the awards, the Alumni Association commended "the high standards of these individuals, whose conduct, competence and conscience reflect positively upon themselves, the legal profession and the University of South Carolina School of Law." Cauthen has received numerous honors for his pro bono work, the most recent being the Richland County Bar's Civic Star Award for public service. He was the South Carolina Bar's Pro Bono Lawyer of the Year in 1993 and received the Bar's first Distinguished Service Award in 1994 and its Oasis Award in 1997. ☞

New Directors

By Evelyn H. Biery

At the Board of Directors Meeting in Washington, D.C. on March 12, 1999, Daniel M. Glosband and Ronald M. Martin were elected to three-year terms as directors of the College and Louis W. Levit and Hon. Roger M. Whelan were each elected to a second three-year term.



▲ Daniel M. Glosband

(a) Daniel M. Glosband, First Circuit, a partner at Goodwin, Procter & Hoar in Boston, Massachusetts. Dan served as Special Assistant Attorney General for Bankruptcy Matters for the Commonwealth of Massachusetts from 1984 through 1987 and has chaired the Bankruptcy Law Committee of Massachusetts and the International Bankruptcy Committee of the American Bar Association. He was admitted to the Massachusetts Bar in 1969, after receiving his J.D. from Cornell University Law School in 1969. He has previously served the College as Regent for the First Circuit.



▲ Ronald M. Martin

(b) Ronald M. Martin, Fifth Circuit, a partner at Holland & Hart in Colorado Springs, Colorado. Ron served as a Fellow of the College of Law Practice Management and has served as an Adjunct Professor of the University of Colorado at Colorado Springs. Ron has served the College well as Chair of the On Line Committee of the College. He was admitted to the Colorado Bar in 1973, after receiving his J.D. from the University of Colorado Law School in 1973. 🗨



Educational Program Spring 1999



▲ Leon S. Forman

By Leon S. Forman

The Educational Program of the Annual Meeting of the College was held on Saturday, March 13, 1999, at the Cosmos Club in Washington, D.C. As in the past, it was well attended and enthusiastically received. The program consisted of three exciting panels. The first topic was a discussion of Electronic Filing in Bankruptcy Court, and the panel was chaired by Cecelia Morris, the well known clerk of the Bankruptcy Court of the Southern District of New York, where electronic filing has been established for some time. Ms. Morris was very ably assisted in her presentation by Michael Mills of Davis, Polk and Wardwell, the technical wizard of law office accommodation through the Internet, and by Ronald M. Martin of Holland & Hart, Chair of the On Line Committee of the College. The presentation was augmented by special slides and excellent written materials. The subject matter was especially interesting to those in attendance as electronic filing in bankruptcy is being introduced in many other districts.

The second panel discussed the intriguing issues arising from Pitfalls in Preparing and Processing Plans and Disclosure Statements. The Panel consisted of Alan B. Miller, Weil, Gotshal & Manges; the Honorable Ralph R. Mabey, LeBoeuf, Lamb, Greene & MacRae, L.L.P.; and Robert A. Greenfield, Stutman, Treister & Glatt, all three thoroughly experienced and

scholarly experts in the reorganization practice. The panelists reviewed a number of traps which may be encountered in working out a plan in chapter 11 and having it confirmed by the Court. The questions from the audience demonstrated the high level of interest in this subject matter.

The final presentation was a repeat feature of a highly successful innovation of the program from the previous year entitled Hot Topics and Hot Tips. The Panel included three top level practitioners and teachers, all knowledgeable authorities in bankruptcy law, David Epstein, King & Spaulding and the University of Alabama Law School; Sally Neely, Sidley & Austin; and Richard Toder, Morgan, Lewis & Bockius. The Panelists reviewed and commented upon some of the most interesting and significant decisions of the recent period bearing special current interest to bankruptcy lawyers. In March, just after the annual meeting, ten members of the College, including myself, testified before a Subcommittee of the Judiciary Committee of the House of Representatives concerning pending bankruptcy legislation. We were invited to testify as individuals or on behalf of other organizations. The other nine were Professor Lawrence King, The Honorable Joe Lee, The Honorable Raph Mabey, The Honorable William Brown, Professor Kenneth Klee, The Honorable Randall J. Newsome, The Honorable Thomas Carlson, William H. Schorling and The Honorable Tina Brozman.

Each attendee received a program book that outlined the subject matter of each panel and included some special material on Electronic Filing. 🗨

Preview of Fall 1999 Educational Program

By Leon S. Forman

Three Top Experts to Put Finishing Touch on New Value at All Fellows Luncheon

The Supreme Court May 3, 1999, opined on new value as it relates to cramdown under Section 1129(b). But the final word on this Hot Topic will not be heard until the All Fellows Luncheon on Wednesday, October 6, 1999, immediately prior to the National Conference of Bankruptcy Judges. The College has assembled an outstanding Panel of the leading authorities on this latest pronouncement of our highest Court. The Panel will be led by J. Ronald Trost, Sidley & Austin, New York, Chair of the National Bankruptcy Conference and a

long time expert and teacher of this hot issue. The presentation will also include Douglas Baird, former Dean and still Professor at the University of Chicago Law School, whose seminal work, *Elements of Bankruptcy*, was cited in the Court's Opinion, and Donald Bernstein, Davis, Polk & Wardwell, New York, Chairman of the Chapter 11 Committee of the National Bankruptcy Conference and thoroughly experienced in Chapter 11 Reorganizations and New Value. College Fellows should not miss this spectacular event. 🗨

Tenth Class Induction Ceremony



By Hon. Marjorie O. Rendell

In Search of Certainty

I'd like to share some thoughts with you this evening about an aspect of bankruptcy law that bothered me as a practitioner, as a judge on the District Court, and now — even more — as I sit on the Court of Appeals.

In a word, the subject is “certainty.” The law is to be immutable. Precedent and predictability mark our jurisprudence and in fact separate it from all others.

Early in my career, when trying cases before a particular judge in bankruptcy court, I came to believe that predictability was a function of the judge before whom I was appearing. He was a terrific, experienced judge — Emil Goldhaber — and I knew that if I had the facts, he and I both knew the law, and I could predict whether I would win or lose, and what aspects he would find troublesome.

The concept of predictability based upon the judge became ever more apparent to me as I started trying cases before more judges, many of whom were unpredictable, not only in their demeanor but also in their decision-making.

On the district court, I viewed predictability as a function of having a case on point decided by another court, or fairly recognizable legal standards that served as a guide.

Looking at the decisional bankruptcy law on an ongoing basis, however, I am struck by the vagaries of the law; the twists and turns that an issue can follow as it meanders toward its decisional resting place. I am struck, and have been struck over the years, by the downright head-scratching that is commonplace among bankruptcy lawyers. It has very little to do with the judge who decides the case, nor do previous decisions or recognizable standards often serve as guides.

In most areas of the law, the decision comes down on one side or the other; the doctrinal surprises are few and far between. In bankruptcy law, the jurisprudence seems to veer off in search of an answer. In what other area of the law do lawyers remember where

they were when a decision was handed down. Don't we all know where we were when we heard that Marathon was decided? Don't the Third Circuit practitioners in the room remember the moment they first heard the word “Frenville”? Other than prosecutors upon hearing of the Miranda ruling, what greater shocks have befallen attorneys than rulings that have come down in the bankruptcy area?

I started thinking about the aberrant behavior of the appellate courts in bankruptcy cases and came up with a “Top Ten” list. This is the top ten times that you as a bankruptcy lawyer have been thankful that you did not render an opinion as to the outcome in a matter pending before our federal courts. I'll spare you all the gory details, but give you just a few of the highlights.

- Who would have guessed that the Supreme Court — relying on the fact that a trustee (and not the debtor's directors) controls the management of the debtor post-petition — would conclude that the trustee therefore controls the decision as to the waiver of attorney-client privilege as to pre-petition communications?
- Who would have guessed that a government contract that required the consent of the government before it could be assigned would be held to be not subject to assumption by the debtor, which was found to be a materially different entity?
- Who would have predicted that § 362 bars suits on pre-petition claims only if suit could have been brought on the claim pre-petition?
- Who would have guessed that even though there was no colorable basis for a debtor's exemption, a trustee would be barred from contesting the validity of the objection unless he objected to it within 30 days of the end of the first meeting of creditors?

You get the point!

I have given some thought as to why it is that bankruptcy law is dealt this blow — I should say, this unique blow. I will share with you a few theories.

This is the beginning of the presentation made by Hon. Marjorie O. Rendell, Justice for the Third Circuit Court of Appeals. It was a thought-provoking presentation. If you would like to obtain a copy of the remainder of her remarks, please contact Evelyn Biery, Publications Committee Chair. 📄

Directory Committee Report



By Joel B. Piassick

All Fellows should have received their new loose-leaf directory. If you have not, please contact Suzanne Bingham at the College office.

Each Fellow should check carefully his or her individual biography and supply any corrections and additions to Suzanne by marking them clearly on a copy of his or her biography page. Corrections and additions hereafter submitted will be included in the next printing to occur with the admission of a new class in 2000.

We have an extra supply of upgraded binders for those Fellows who missed the first purchase opportunity. Upgraded binders may be purchased by sending \$30 to Suzanne at the College office. Unfortunately, they can no longer be personalized. 📄

Future of the College Committee



By Paul M. Singer

In March of 1999 College chair Raymond L. Shapiro appointed the Future of the College Committee to assist the College in analyzing where we are and where we should

be. The Committee members include the following: Lawrence Ahern, John Barrett, Richardo Kilpatrick, Alan Miller, Cecelia Morris, Sally Neely, Joel Piassick, Alan Resnick, Hon. Mary Davies Scott, Paul Singer, and Patrick Vance.

After receiving a background memorandum generated from the discussions at the joint meeting of the Board of Directors and Board of Regents, the committee met to formulate a program that can be submitted in connection with the Fall meeting in San Francisco.

If you have thoughts concerning what you as a College Fellow would like to have as the vision and goals of the College, please contact either me or another member of the Committee at your convenience. We would be happy to have your input. 📄

Pro Bono Committee Report



By David T. Sykes

Activity in the grant-making area has increased since our October 1998 meeting. After making a grant to the Volunteer Legal Services project of Monroe County, New York, the Pro Bono Committee received and approved two more applications: one from Put Something Back, a Miami pro bono project of the Eleventh Judicial Circuit and the Dade County Bar Association, and the other from Philadelphia's Consumer Bankruptcy Assistance Project. Both were deemed worthy, and President Neal Batson has approved grants to each organization.

Additionally, there have been several requests for application forms from around the country, and we expect to receive applications from a number of pro bono service organizations in the near future.

In the future, the Pro Bono Committee will urge the College to permit an increase in grant funds. The Committee will work with the College to focus on methods of enhancing pro bono services throughout the country, in several ways - including the previously announced coordination with the American Bar Association's Business Bankruptcy Committee's efforts to identify existing and potential providers of such services. The Pro Bono Committee will evaluate whether the College should develop an educational program designed to enable lawyers to give meaningful advice on bankruptcy protection and management of limited financial resources to indigent citizens throughout the country. Also, at the suggestion of Richard Lieb, the Pro Bono Committee will evaluate and make a recommendation to the Directors of the College whether the College should participate in appellate pro bono matters. ¶

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Judiciary Committee Testimony

By Leon S. Forman

In March, just after the Annual Meeting, four members of the College, including myself, testified before a Subcommittee of the Judiciary Committee of the House of Representatives concerning pending bankruptcy legislation. We were invited to testify as individuals and not on behalf of any organization. The other three were Professor Lawrence King, Hon. Joe Lee and Hon. Ralph Mabey. ¶

2000 IS COMING!

SAVE THE DATE

March 17-18, 2000
Eleventh Class Inductees
Supreme Court
Washington, D.C.

Educational Program
Cosmos Club

Dinner And Entertainment
Metropolitan Club

In Memory of Vern Countryman

By Leon S. Forman

Vern Countryman, an expert on commercial law, particularly bankruptcy, died on May 2, 1999, at Mount Auburn Hospital in Cambridge, Massachusetts. He was 81 and lived in Cambridge. A retired professor at Harvard Law School, Vern Countryman was born in Roundup, Mont., on May 13, 1917.

He received a B.A. in political science in 1939 from the University of Washington and a law degree in 1942 from the University of Washington School of Law. He worked as an assistant regional attorney with the National Labor Relations Board in Seattle before serving as a clerk from 1942 to 1943 for Justice William O. Douglas of the United States Supreme Court.

Mr. Countryman then served with the Army Air Forces in Italy during World War II, rising to first lieutenant.

After the war, he served as Assistant Attorney General of Washington State in 1946 and as an instructor at the University of Washington Law School from 1946 to 1947. He held a fellowship at Yale Law School from 1947 to 1948. He was an assistant professor of law from 1948 to 1950 and an associate professor from 1950 to 1955.

Mr. Countryman left Yale after he was denied a full professorship in 1954. He believed, as did many of his colleagues, that he was being punished for criticizing the hunt for Communists during the McCarthy era.

He practiced law as a partner with Shea, Greenman & Gardner in Washington, D.C., from 1955 to 1959 before becoming Dean of the University of New Mexico School of Law in 1959. He served there until 1964, when he became a professor at Harvard Law School. In 1973 he was named the Royall Professor of Law, the oldest professorship at the Law school. He became a professor emeritus in 1987.

At Harvard, Mr. Countryman was a strong supporter of the rights of

debtors. He was also a specialist in commercial law, secured transactions law and civil liberties. He was a founding trustee of the National Consumer Law Center, which annually presents the Vern Countryman Award to honor lawyers who have contributed to the rights and welfare of low-income consumers.

His books included *The Lawyer in Modern Society* (Little, Brown, 1976) with Ted Finman and Theodore J. Schneyer; *Commercial Law* (Little, Brown, 1982) with Andrew Kaufman and Zipporah Wiseman; *Debtors' and Creditors' Rights* (Matthew Bender, 1951) with James William Moore, and *The Judicial Record of Justice William O. Douglas* (Harvard University Press, 1974).

He is survived by two daughters, Debra Green of Freestone, California, and Kay Briggs of Lafayette, California, two grandchildren, and three brothers, Roy of Bozeman, Montana; Robert of Seattle, Washington; and Charles of Yakima, Washington. 🇺🇸

Publications Committee Report

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(b) *College Columns* Subcommittee: Harry Dixon, John Kozyak, Cecelia Morris, Robert Sable and Blaine Schwabe.

(c) Law Review Articles Subcommittee: Tom Ambro, Don Bernstein, Dan Cohn, Hon. Burton Lifland, Joel Pelofsky, Isaac Scott and Walt Taggart.

If you would like to serve on or chair

one of the subcommittees, please contact me at your convenience.

Also, if you would like to make any suggestions for the future work of the Publications Committee, I would be happy to receive them. The Publications Committee stands ready, willing and able to undertake new projects, while it continues its work on the projects that are already underway. We have an excellent group of Committee members, and we will continue to work hard for the good of the College. 🇺🇸

New Regent

By Evelyn H. Biery



▲ Philip J. Hendel

Philip J. Hendel has been appointed to represent the College as the Regent for the First Circuit. A partner at Hendel & Collins in Springfield, Massachusetts, Phil serves on the Board of Directors of the

American Board of Certification. He has also chaired the Business Reorganization Committee of the American Bankruptcy Institute and the Executive Counsel of the Bankruptcy and Insolvency Section of the Commercial Law League of America. He was admitted to the Massachusetts Bar in 1965, after receiving his J.D. from the College of William & Mary School of Law. 🇺🇸



Law School Educational Program Report



By Hon. Roger M. Whelan

We have received the following letter from Rex R. Perschbacher, Dean of the King Hall Law School:

“Thank you for your generous support! Jack Ayer has a long history as one of our most entertaining and challenging teachers at the School of Law. This year, he received our 1999 Distinguished Teaching Award in

recognition of his excellent teaching and service. Your gift is further evidence that his talents are truly appreciated.

I received your gift of \$5,000 on April 27, 1999. You will be recognized on the Donor Honor Roll in our alumni magazine, the *King Hall Counselor*.

Your gift is important to the continued support for a wide variety of student and faculty programs at King Hall. Thank you very much on behalf of the entire Law School.” 🇺🇸

Bankruptcy Legislation



By Myron M. Sheinfeld

▲ Myron M. Sheinfeld

H. R. 833, the Bankruptcy Reform Act of 1999, has been reintroduced by Congressman Gekas (R-PA). The basic bill is essentially the H.R.

3150 Conference Report from 1998. The hearing schedule has been on a fast track. The initial joint Judiciary Subcommittee Hearing, involving the Senate and House, was held on March 11, 1999. There were three panels invited to discuss H.R.833. The creditor representatives on the panel supported H.R. 833. Consumer representatives pointed out deficiencies from the debtor's standpoint and the harm that would befall debtors. The Commercial Law League opposed the bill. Professor Elizabeth Warren supported the consumer position. Judge Edith Jones and Professor Todd Zywicki supported means testing and H.R.833. Leon Forman and Ralph Mabey have also testified before the Subcommittee on Commercial and Administrative Law of the Committee on the Judiciary.

Representative Nadler issued a statement at the markup on H.R. 833 essentially suggesting that the bill does not deal with the serious problems which have been pointed out by the previous testimony on H.R. 3150 in 1998. He quoted from a letter written by Jacob Lew, Director of the Office of Management and Budget ("OMB"). The OMB has taken the position that the Administration supports responsible bankruptcy reform which is balanced and reduces abuses in the system but must require debtors and creditors to act responsibly. Congressman Nadler and Jacob Lew indicated that the Administration expressed strong opposition to H.R. 3150 in the past and stated that the President's advisors had recommended that the President veto the Conference Report. If the present bill remains unchanged from the H.R. 3150 Conference Report the OMP position is unchanged from last year. The Administration, through the OMB, has urged Congress to find a fair balance with regard to certain issues. Those issues are access to Chapter 7, limitation of coercive creditor practices, the requirement for more complete debtor

and consumer information and protection, and modification of homestead exemptions to close "loopholes" allowing wealthy debtors to shield wealth through the use of such exemptions.

H.R. 3150 passed the House and is now pending. With regard to the Senate, the following is a status report:

Senator Grassley, (P-IA) joined by Senators Torricelli (D-VT) and Biden, (D-DE) as co-sponsors, have introduced the Bankruptcy Reform Act of 1999 in the Senate (S.625). The former Senate Bill (S.1301) in 1998 was modified during negotiations with the House and a conference report was approved by the Conference Committee. However, the Senate House Conference Committee measure was never voted on by Senate before the end of the congressional session. Essentially, Senator Grassley has participated in a hearing convened by himself and Representative Gekas (a bicameral hearing) to review the status of bankruptcy reform.

The floor debate on S.625 was postponed until the week after the July 4 recess. To date, nothing has occurred, although the Senate sponsors bankruptcy reform legislation requested the Senate majority leader to schedule floor debate prior to the August recess. In requesting floor debate, Senators Grassley and Toreselli advised the Senate majority leader that a key agreement on the bill's "reaffirmation" language has been reached among the Senate judiciary youth violence subcommittee, the Clinton administration and Senator Reed. The White House has indicated that it would release a statement of administration policy concerning reaffirmation and its resolution. Another proposal has been negotiated to satisfy credit card disclosure statement. This proposal has the approval of the financial services lobby and is another hurdle to the passage of S.625 that has been eliminated. What remains to be resolved is the continued debate and the possibility of a substitute bill in the area of consumer protection.

There were major differences between the Grassley, Torricelli and Biden Bankruptcy Reform Bill and the H.R. 3150 Conference Report. These differences may be summarized into the following categories: Means Testing; Consumer Protection; Child Support and Fewer Non-chargeable Debts.

With regard to the Means Test, the 1999 Senate Bill authorizes bankruptcy judges more discretion in considering

whether to transfer a debtor case from Chapter 7 to Chapter 13. A showing of "Special Circumstances" for Chapter 7 debtors is required to prevent a transfer of a Chapter 7 to Chapter 13. The minimum dollar amount is raised from \$5,000 to \$15,000 so that the Means Test has been somewhat restricted.

With regard to Consumer Protections, the 1999 Senate Bill provides for one prosecutor and one agent, designated by the Attorney General and the FBI Director, in every district to investigate reaffirmation practices which may violate federal criminal law. The state attorney general of each state is granted authority to enforce federal criminal laws against abusive reaffirmation and to enforce state laws regarding unfair trade practices against creditors in their relationships with debtors in the reaffirmation area. The 1999 Senate Bill does not bar class action lawsuits for reaffirmation violations. Additionally, the 1999 Senate Bill provides that a violation of the automatic stay will exist if a creditor threatened to file documents to coerce reaffirmation and provides penalty provisions for creditors who fail to acknowledge payments received through Chapter 13 plans and seek further payment from debtors.

With regard to Child Support, bankruptcy trustees are required to notify appropriate state agencies of the debtor's location if the debtor owes child support. Additionally, the bankruptcy trustee would be required to notify claimants of child support of their right to enforce payment. The state agencies who are responsible for the collection of child support may have access to creditors to obtain addresses and telephone numbers of debtors.

With regard to non-dischargeable debts, the 1999 Senate Bill raises the dollar limit on credit card cash advances obtained shortly before the filing of a bankruptcy. The amount presumptively non-dischargeable is \$750. Purchases and cash advances are presumed non-dischargeable if incurred 70 days prior to the filing of bankruptcy.

There has been some indication by Senator Grassley that amendments would be offered to the Bankruptcy Reform Act of 1999 (S.625) that would add health care provisions which are similar to or identical to those provisions in S.840. The status or sufficiency of these provisions at this time is undetermined.

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Bankruptcy Legislation

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Additionally, some dispute has arisen over one of the provisions of S.625 (section 315(b)) which would require every individual debtor to submit a federal income tax return from the three years prior to the bankruptcy filing with the bankruptcy and allow creditors access to the return. Some opposition has arisen to this provision to protect confidentiality and privacy of the return.

In short, *tempus fugit* - that's Latin for time flies. 🏠

On-Line Committee Report



By Ronald M. Martin

The American College of Bankruptcy Website! It's up and on-line. Working as a team, our Chairman Ray Shapiro, our President

▲ Ronald M. Martin Neal Batson, graphic designer Jon Milburn, webmaster Mitch Turner, the On-Line Committee and most of all our tireless Executive Director Suzanne Bingham and dedicated staff, Shari Bedker and Brian Turnau, have brought our website into existence. You can log into it at <http://www.amercol.org>. Please let Suzanne and her staff or me know of any ways you think our website can serve you better.

While it is still a work in progress, you will be delighted at the ease in which potential clients can search by name, city or state to find the best bankruptcy lawyers in the world. In addition, the purposes and mission of the College is designed to let the world know what we are about and how we intend to make our profession, our specialty and the world a better place.

As yet, there is no chat room or billboard for posting by fellows. Those will be part Phase II. However, you will be able to get the latest College News and keep up-to-date on what is happening within the College. Again, our great thanks is owed to Suzanne for taking the laboring oar in acting as Chief Operating Officer on this important project. 🏠

Induction Ceremony and Events Spring 1999

By Suzanne A. Bingham

The College hosted another elegant Induction Ceremony event for the distinguished bankruptcy and insolvency professionals who were nominated to become Fellows. The Induction was held Friday, March 12, at The Corcoran Gallery of Art. Traditionally, the College hosts the Induction Ceremony at the Supreme Court, but this year the Supreme Court was reserved for March due to Judicial Conference meetings. The Corcoran Gallery of Art is an historic and beautiful building located across from the White House and the event was a night to remember.

Hon. Marjorie O. Rendell, Judge of the United States Court of Appeals for the Third Circuit served as our speaker for the Induction Ceremony. She spoke on the topic of "Certainty," pointing out that the law is to be immutable but ends up not being certain at all. Whereas precedent and predictability mark our jurisprudence and in fact separate it from all others, there is in fact little pre-

dictability and little certainty in the legal precedents, and the search for certainty is a difficult if not impossible task. Her remarks were well received.

Leon Forman, College Scholar-in-Residence and coordinator of the educational program, once again arranged an outstanding program presented on Saturday morning, March 13. The first panel discussed electronic filing in Bankruptcy Court. The second panel discussed pitfalls in preparing and processing plans and disclosure statements; and the final panel presentation, as in the past, featured "Hot Tips and Hot Topics." The All Fellows business meeting luncheon followed. The dinner was held at the Metropolitan Club, featuring the Capitol Steps, a political comedy satire group.

A new addition to the Saturday events, a Spouse Sightseeing Tour of Washington including a tour of the Capitol, the Library of Congress, and the Lincoln Memorial, as well as surrounding memorials was well attended. 🏠

Interests Outside the Practice



John Kozyak

In June of 1998, John Kozyak put down the pipe that had been his almost constant companion for thirty years and began a conditioning program. A year later John and his oldest son, Ben, made it to the summit of Mt. Kilimanjaro in Tanzania.

After Ben asked John along as a high school graduation present for Ben, John agreed and spent two weeks at Canyon Ranch's Life Enhancement Center in Tucson. Shortly afterward, he decided he would try to hike Mt. Kilimanjaro with Ben to celebrate one year of non-smoking. John had taken his family on an East African safari trip in 1992, and Ben had returned to Tanzania in 1997 on a community service project. John and Ben spent seven days hiking up and two days coming down. It was a nontechnical climb, but it was both grueling and satisfying. John especially enjoyed spending so much time with one of his sons. 🏠

Chairman's Report

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attorneys, academics, members of the judiciary, etc. The Committee is an outgrowth of a joint meeting of the Board of Directors and Board of Regents in March when we convened in Washington, D.C., to launch an in-depth probe of our future course.

The College is blessed with dedicated members who serve as officers, on the Board of Directors, on the Board of Regents, and as Chairs of Committees. This leadership performs assigned tasks with distinction, and I am grateful for their support.

The process of selecting the next Class for admission is progressing. I invite you to take the time to carefully consider eligible professionals to recommend to your Circuit Admissions Council. Our Board of Regents and the Circuit Councils conduct their business independent from the Board of Directors. The selection process functions as it is intended to under the Bylaws, to assure integrity in the determination of qualified candidates for admission.

I hope to see all of you in San Francisco in October. 🏠

Distinguished Service Award Recipients



▲ Gerald K. Smith

*Presentations by
Gerald K. Smith,
Distinguished Service
Committee Chair and
Leon S. Forman*

Recipients of 1999 Distinguished Service Awards The Hon Joe Lee and George M. Treister

For the first time, there were two persons selected as recipients of the College's Distinguished Service Award. Hon. Joe Lee and George M. Treister joined the ranks of such notable recipients as Professor Frank R. Kennedy, Professor Lawrence P. King and Leon Forman. It is truly a distinguished group. The recipients of the College award would have been recipients of similar awards if they had chosen to devote their careers to other areas of the law. We are indeed fortunate that they chose bankruptcy.

At the Spring 1999 Meeting of the College, Leon S. Forman made the presentation to Judge Lee (in absentia), and Gerald K. Smith made the presentation to George M. Treister, with the following comments:

Presentation to Hon. Joe Lee



▲ Hon. Joe Lee

Pioneers are rare birds in any field of human endeavor, but especially in the development of legal ideas and particularly in the area of bankruptcy. But we have a pioneer in our midst tonight. Hon. Joe Lee of Kentucky is a giant in his contributions to the evolution and growth of creditors' rights.

To review all his accomplishments and the substantial effort he has devoted to the improvement of bankruptcy law would fill volumes and would take up the rest of this evening. I will merely highlight some of his more significant achievements.

Joe Lee has been a distinguished bankruptcy judge for 38 years, and he

has conducted himself as a model jurist. While he carried a full load on the bench, he served as Editor-in-Chief of the American Bankruptcy Conference in 1973, chairing its Committee on the individual debtor; became a Fellow of the American Bar Foundation; and was selected for membership in this College in 1991. He served as President of the National Conference of Bankruptcy Judges in 1973. In every organization of which he became a member, Joe was never passive. He always engaged fully in the activities and work of the group. He is largely responsible for the Bill produced by the Judges' Conference in 1974 which, together with the draft of the National Bankruptcy Conference, became the basis for the 1978 Code.

My continued use of his first name is not a mark of disrespect. I have known and worked with him in the National Bankruptcy Conference for 25 years, and he has my deepest admiration.

Joe has contributed so many ideas and new directions to the development of consumer bankruptcy law that no group of which he is a member would dare to adopt a position or expose a view in that field without first hearing from him.

Joe has shared with the bankruptcy community his vast knowledge and expertise in 40 scholarly articles, in a practice manual and as a lecturer at the University of Kentucky College of Law.

A person of distinction and prominence, he is nevertheless soft spoken, self-effacing, and a man of few words, but each one meaningful. My wife continues to hope I may some day emulate him in that regard.

Joe has already received many awards and honors for his remarkable achievements. We hope he will put this one at the top of his list. It is a personal privilege and honor to present the 1999 Distinguished Service Award to Hon. Joe Lee of Kentucky.

Presentation to George M. Treister



▲ George M. Treister

George Treister has had a remarkable career. After graduating from UCLA and Yale Law School, he clerked for Chief Justice Gibson of the California Supreme Court and Justice Hugo Black of the United States Supreme Court. He then joined what is

now known as Stutman, Treister & Glatt, one of the preeminent insolvency firms in the United States. Although he has been with that firm since the mid '50s, his real preeminence has been as a teacher and mold of the law.

George Treister joined the National Bankruptcy Conference in 1955 and has been an active Conferee ever since. He was Vice Chairman of the Conference from 1971 to 1984.

In 1963 George was appointed by the Chief Justice of the United States Supreme Court to serve on the Advisory Committee on Bankruptcy Rules. He did so for thirteen years. The work of this Committee under its Chief Reporter created the rules which are still with us today. Perhaps more importantly, the work of that Committee led to many provisions found in the Bankruptcy Code as a result of the heavy reliance on the work of the Rules Committee by the staff of the Commission on the Bankruptcy Laws of the United States in drafting its proposed Bankruptcy Act of 1973.

George Treister is perhaps known best of all for his teaching. We have all had the good fortune at one time or another to learn from George. His teaching has included the law schools of the University of Southern California and Stanford, the judges' seminars since 1968, ALI-ABA, especially the basic bankruptcy course, and the Norton seminars where he lectured for many years on recent cases.

In his letter nominating George, Hon. William L. Norton, Jr. has this to say. "It is unlikely that any single individual in the United States bankruptcy community has epitomized good lawyering, ethical and professional standards, respect and honor for the law and influenced and enhanced the professional standards of our bankruptcy profession as much as George Treister. No one has been as active, prominent, and long tenured in educational service, and in distinguished continuing legal education contributions as George Treister," and "It may not be an exaggeration to say that George may have contributed to the development of the bankruptcy law as a result of judicial decisions under the Bankruptcy Act and the Bankruptcy Code as much as any other single influence . . . [since his] teachings and counsel have inspired and led the judges and countless practicing lawyers . . . [for over 35 years]." 📖

In Memory of Judge James Yacos

By Daniel Glosband



▲ Hon. James Edward Yacos

Hon. James Edward Yacos, who presided over the Public Service Company of New Hampshire bankruptcy case, died on December 30, 1999, after a battle with cancer. He was sixty-six years old when he died a year after retiring as a Bankruptcy Judge in Manchester. Yacos was remembered as an intelligent and dedicated worker with a national reputation.

For fourteen years, Judge Yacos handled the largest businesses failures in the State of New Hampshire, including BankEast Corp., Public Service and the estate of former Newport District Court Judge John Fairbanks, who stole millions from his private law clients. Judge Yacos once said he enjoyed working on the Public Service case because it

explored legal territory that hadn't been dealt with since the Depression. The case lasted three years.

"I didn't feel it was so much a burden. It was a challenge. Most judges would love to have a case like that," he said. "Everything turned out to be a novel question. We had to deal with rates, operations. It took six months just for everyone to get the finances in order."

Northeast Utilities of Berlin, Connecticut, brought Public Service out of bankruptcy with a \$2.3 billion reorganization plan in April 1990, ending the case. During the time the case was active, Yacos' workload piled up as bankruptcies in New Hampshire tripled.

"Everywhere you went in the country for seminars and workshops and saw other judges, they were all highly complimentary," said Bankruptcy Court Judge Mark Vaughn. "All the people who practiced before him not only thought but knew he was an excellent judge."

Nashua attorney Michael Deasy, who has been nominated to a judgeship at the Manchester court and often

practiced as a lawyer before Yacos, said the judge was known far beyond New Hampshire. He said Yacos was respected for his strong work ethic.

"He made all of us better lawyers because he was smart, he demanded preparation, he worked hard himself to be prepared and you knew when you went in there you had to be ready." Deasy said. "He didn't demand any more of you than he demanded of himself."

Judge Yacos was born February 6, 1933, in Portage, Pennsylvania, and graduated in 1940 from Portage High School, in 1953 from the University of Pennsylvania, and in 1956 from Harvard Law School.

He served in the U.S. Federal Court as a Bankruptcy Judge in both Florida and New Hampshire. At various times he was in private practice. He was editor and publisher of the bankruptcy newsletter *Broken Bench Review*. Survivors include his wife, Barbara A. Yacos; two daughters, Karen Yacos Brand and Darby Ferguson; three grandchildren; and a sister, Bahs Yacos. 📖

Executive Director's Report

By Suzanne A. Bingham



▲ Suzanne A. Bingham

The College will be holding the Fall/NCBJ All Fellows luncheon and panel discussion in conjunction with the National Conference of Bankruptcy Judges Annual Meeting on October 6, 1999. The All Fellows luncheon is scheduled to be held at the San Francisco Marriott Hotel in San Francisco, California, on Wednesday, October 6, 1999, from 12:00 noon to 2:00 P.M. Leon Forman, our Scholar-in-Residence, has once again, coordinated an informative and exciting educational panel discussion on the recent Supreme Court decision in *Bank of America National Trust and Savings v. 203 North LaSalle Street Partnership* handed down on May 3, 1999. The Court opined on new value as it relates to cram-down under Section 1129(b) of title 11, U.S.C. The panelists discussing the decision include J. Ronald Trost, of Sidley & Austin, New York; Douglas Baird, Professor and former Dean at the

University of Chicago School of Law, Chicago, Illinois; and Donald S. Bernstein, of Davis, Polk & Wardwell, New York. All panelists are thoroughly experienced in Chapter 11 reorganizations and New Value. It promises to be an informative session, and we hope you will attend. Registration brochures have been mailed to the Fellows.

Save the date in your calendar for the spring College Induction Ceremony, educational session and dinner on March 17-18, 2000. The Induction Ceremony will be held on St. Patrick's Day, and we promise to have a very special event for the Eleventh Class to be held at the Supreme Court in Washington, D.C. The educational session will again be held at the Cosmos Club, and the dinner at the Metropolitan Club will be followed by lively entertainment. Mark your calendars!

Web Site Update: The College is in the process of designing a new Web Site which will include many features. As the Web is designed, we will include our Home Page, General Mission Statement, explanation of the nomination process, list of pro bono projects as they develop, list of the Board of Directors, Board of Regents, Circuit Admission Councils, committees, Distinguished Service Award recipients, and a host page with upcoming scheduled events. The

College directory will be posted, with Fellows listed in alphabetical, city and state order. At a later date, we will include the biographical information and photographs. Look for the College at <http://www.amercol.org>.

We are excited about the new "Listserv" that allows us to email Fellows quickly. For those who do not have email, we have set up a fax broadcasting system. For other Fellows who can not be reached by email or fax, we mail information.

The College now has available its mailing list for limited use and only with prior approval and signature of receipt that the list will be used only for the proposed mailing to Fellows of an address change, new firm affiliation, etc. The College mailing list is not to be entered into a firm's database. Contact headquarters for more information with your specific needs.

The Patrons and Sponsors program has been a great success. It is exciting that we have had so many participate as either a Patron or Sponsor of the College. It does make a significant difference and provides financial stability for our events and operations. Those participating will have their names and firms printed in all publications, event brochures and newsletters. Thank you again for your financial support and participation in this important program. 📖