

College Columns

News and Views from The American College of Bankruptcy

Publications Committee Report



▲ Evelyn H. Biery

By Evelyn H. Biery

Please continue to forward to me information on your honors and achievements, your interests outside the practice of law, and humorous stories about the practice of law. Your fellow Fellows would be delighted to hear more about you.

The Publications Committee is continuing the projects it has previously embarked upon. If you would like to serve on one of the subcommittees, please contact me at your convenience.

The *College Columns* Subcommittee has published bi-annual issues of the *College Columns* and will continue to do so. Its members include Harry Dixon, John Kozyak, Hon. Cecelia Morris, Robert Sable and Blaine Schwabe.

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. Its members include Hon. Tom Ambro, Don Bernstein, Dan Cohn, Hon. Burton Lifland, Joel Pelofsky, Isaac Scott and Walt Taggart.

The Memorial Lecture Subcommittee will continue to work with our Scholar-In-Residence, Prof. Alan Resnick, to present an ethics lecture. Its members include John Barrett, Richard Broude, Jan Hayden, Simon Kimmelman and Michael Reed. It is our hope that the lecture will take place in a resort and will become an annual event

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Chairman's Report



▲ Raymond L. Shapiro

By Raymond L. Shapiro

This will be my last report as Chair of the College. It is a time for brevity.

These past four years zoomed by. I have been blessed with a dedicated group of officers, directors and regents who made my task easy and enjoyable. I am enormously grateful for their encouragement and dedication. I applaud Neal and Merrill in particular. We blended well and inspired each other to get it done. I also thank Suzanne. As our Executive Director she committed to growing with us, and both organizations have benefited from this relationship.

The College has grown in size, stature and independence. We are financially sound due largely to the support of our Patrons and Sponsors. We are now positioned to embark on exciting projects like the National Bankruptcy Archives. It is not, however, a time to look back. The future bodes well for our organization. We will continue to do more for our members and fund new projects related to the bankruptcy process.

At our Washington meetings scheduled in March 2001, we will select a new slate of officers. I am confident that they will take the needed steps to leap forward to the next level of our growth and development. I wish the new officers great success and personal satisfaction from all that they set out to accomplish, and I urge our membership to be supportive.

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Nomination Procedures for Thirteenth Class



By John A. Barrett

In mid-April of 2001, the Board of Regents will write to each Fellow requesting that nominations, together with biographical information and other supporting data, be forwarded to each Circuit Admissions Council by June 15, 2001. Fellows are reminded that the nominations should be complete and that substantial due diligence is required in order to make it likely that a candidate will receive an invitation; incomplete and insubstantial nominations are less likely to receive favorable consideration. 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.

Nominations for Judges should be forwarded to Leonard E. Gilbert, Chair of the Judicial Nominating Committee, and nominations for Foreign Fellows should be forwarded to Daniel M. Glosband, Chair of the Foreign Fellows Nominating Committee. Thereafter, each Circuit Admissions Council will review nominations received for that Circuit, other than Judges and Foreign Fellows, and begin the process of making recommendations to the Board of Regents.

Each Fellow within a Circuit will receive the names of the proposed Fellows in that Circuit other than Judges and Foreign Fellows, and be asked to comment on each proposed Fellow. Final Circuit Admissions Council recommendations and recommendations of the Judicial Nominating Committee and Foreign Fellows Nominating Committee will be forwarded to the Board of Regents, which will meet on Wednesday, October 17, 2001, in Orlando, Florida, in connection with the meeting of the National Conference of Bankruptcy Judges. Invitations to new Fellows for the Class of 2002 will be sent out by mid-November of 2001. ☰

Nomination Procedures for Foreign Fellows



By Daniel M. Glosband

The Foreign Fellows Nominating Committee circulated a memorandum to all Foreign Fellows in mid-June 2000 identifying candidates who had been held over from prior years and soliciting the names of additional candidates. In August the Committee began its consideration of the suggested nominees through a series of memoranda, conference calls and e-mail exchanges. The Nominating Committee members are Dan Glosband, John Barrett, Dick Gitlin, Lewis Kruger, Bruce Leonard, Grant Newton, Gerry Smith, Peter Totty and Jay Westbrook.

Collecting sufficient background information to validate a nomination is particularly difficult with foreign nominees, and several nominations were deferred due to the Committee's inability to obtain completed nomination forms and adequate supporting materials. Nonetheless, from an initial pool of a dozen suggestions, the Nominating Committee ultimately selected four highly qualified candidates for presentation to the Board of Regents.

Of the four, one was presented as an Honorary Foreign Fellow and the other three, all of whom are insolvency lawyers, as Foreign Fellows. The candidates are: Gerold Hermann, Secretary of the United Nations Commission on International Trade Law, as an Honorary Foreign Fellow; Ole Borch, a partner in Dragsted Schluter Aros in Copenhagen; Michael A. Fitch, a partner in Russell & DuMoulin in Vancouver; and Laurence Pereira, a partner in Vorster Pereira Inc. in Sandton, South Africa. The Committee has several carryover candidates to consider for the Class of 2002 but would encourage all Fellows to submit suggestions at any time. ☰



Nomination Procedures for Judicial Fellows



By Leonard H. Gilbert

Our Committee was presented with several outstanding nominations this year. The Committee conducted preliminary meetings which were followed by extensive personal investigation by members of the Committee of contacts in the regional areas of each of the nominees. The information accumulated was then made available to all of the Committee members. Following several meetings to review the qualifications of the candidates, the Committee selected Judges Robert F. Hershner, Jr., Robert J. Kressel, Thomas F. Waldron, and Eugene R. Wedoff to present to the Board of Regents. The Regents approved all of the nominees.

Serving on the Committee this year were: Susan M. Freeman, David G. Heiman, Stuart E. Hertzberg, Hon. Lloyd King, Prof. Kenneth Klee, Lillian E. Kraemer, Sally Neely, Robin E. Phelan and David T. Sykes.

Without a doubt, this is the most dedicated and hardest working Committee on which I have ever had the pleasure to serve. The members of the Committee are extremely diligent in their service and, in particular, in their investigatory role to make sure that we consider only the most qualified candidates for the College.

All members of the College are encouraged to present nominations next year. There are several regions in the Country which ought to be better represented. I hope that we can count on our membership to present the qualified persons to the Judicial Nominating Committee. ☰

Educational Program Spring 2001



By Prof. Alan N. Resnick

The Educational Program at the 2001 Annual Meeting of the College will feature nine exceptional speakers, all experts in their fields, who will discuss timely topics on Saturday morning, March 31, 2001, at the Mayflower Hotel in Washington, D.C. The program promises to be as stimulating and informative as our outstanding programs in the past.

The program will begin at 9:00 A.M. with a discussion of *The Treatment of Insiders in Chapter 11: Releases, Injunctions, and Indemnity Provisions*. The panel will include James L. Garrity, Jr., of Shearman & Sterling, formerly a Bankruptcy Judge in the Southern District of New York; Michael L. Temin of Wolf, Block, Schorr and Solis-Cohen LLP, Philadelphia; and Marc Abrams of Willkie Farr & Gallagher, New York.

The panelists will discuss controversial issues relating to chapter 11 plan provisions that release officers, directors, affiliates and other insiders from claims of creditors and other third parties, as well as provisions that protect them from direct or derivative claims held by the debtor. Plan injunctions designed to protect insiders from future assertions of released claims will be discussed, including amendments to the Federal Rules of Bankruptcy Procedure expected to become effective on December 1, 2001, that will require greater disclosure and notice regarding plan injunctions. The panelists also will discuss the treatment of indemnification rights of past and present officers and directors.

The second panel will be on *The Impact of Revised Article 9 of the UCC on Bankruptcy Cases*, and will feature three outstanding professors who have a wealth of knowledge and experience regarding both the Uniform Commercial Code and bankruptcy. The panel discussing these important changes will include Prof. Charles W. Mooney, Jr., of the University of Pennsylvania Law School, who served as Co-Reporter of the Permanent Editorial Board's Drafting Committee on Revised Article 9; Prof. Kathryn R. Heidt of the University of Pittsburgh School of Law; and Prof. G. Ray Warner of the University of Missouri-Kansas City School of Law, who is currently a visiting professor in the St. John's LL.M. Bankruptcy Program. The Article 9 revisions, which will become effective in the enacting states on July 1, 2001, will have a significant impact on the rights of creditors and debtors in bankruptcy cases. The revisions will affect many areas of bankruptcy, such as the debtor's ability to use cash deposits and the trustee's avoiding powers.

The final presentation, entitled *Hot Topics*, will consist of a review and commentary on the most important and interesting recent judicial decisions of which all bankruptcy professionals should be aware. The panel will consist of Hon. Susan Pierson Sonderby, Bankruptcy Judge in the Northern District of Illinois; Evan D. Flaschen of Bingham Dana LLP, Hartford, Connecticut; and R. Patrick Vance of Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P., New Orleans.

The College will apply for appropriate CLE credit for Fellows who attend the Educational Program. As always, the program will be followed by the All Fellows Luncheon. ☰

Save the Date Fall 2001 Meeting

October 17, 2001

Board of Directors and
Board of Regents Meetings

All Fellows Educational
Luncheon Program

October 18, 2001

Jointly Sponsored
NCBJ/College Luncheon
Marriott Orlando World Center
Hotel Reservations
407.239.4200

Spring 2001 Meeting

March 30, 2001

Twelfth Class Induction Ceremony -
U.S. Supreme Court

March 31, 2001

Educational Program
Mayflower Hotel
Dinner and Entertainment by Capitol
Steps - Metropolitan Club
Mayflower Hotel Reservations
202.347.3000

Janet Chubb on Judicial Council



▲ Janet Chubb

In September of 2000 Janet Chubb was appointed as a Lawyer Representative to the Judicial Council of the Ninth Circuit for a three-year term. She recently completed her second term on the Board of the American Board of Certification. ☰

Induction Ceremony and Events Spring 2001

By Suzanne A. Bingham

The Spring 2001 Meeting will be held a little later than usual this year, because the Supreme Court facilities will be unavailable earlier in the month. Our new host hotel will be the historic and charming Mayflower Hotel in Washington, D.C. No longer will we be holding the educational sessions at the Cosmos Club. Due to the large size of our meetings, we now will hold our educational program at the Mayflower Hotel. This will allow Fellows to walk downstairs to the educational program, no more taking a taxi early on a Saturday morning.

The evening dinner will be held at the Metropolitan Club, and, by popular demand, our entertainment will be the Capitol Steps once again. They should

provide us with a great show after the recent presidential election!

Again, we will have a tour available for those who have never visited the Holocaust Museum. Also a spouse/family tour will be available to visit the Dumbarton House, a unique example of Washington's Federal Style architecture. There you will see eight rooms filled with beautiful 1789 period antiques. Then off by bus to the Tudor Place, the majestic mansion built by Martha Washington's heir set on five acres in the heart of Georgetown, to follow with lunch at Tony & Joe's restaurant located in the beautiful waterfront Washington Harbor of Georgetown (\$65.00 for this tour). Registration brochures have been forwarded to all Fellows. ☰

Educational Program at Fall 2000 Meeting

By Prof. Alan N. Resnick

The All Fellows Luncheon and Panel Discussion held on Wednesday, October 18, 2000, at the Westin Coply Plaza Hotel in Boston featured a spirited and informative panel discussion on *The Duty To Disclose Connections: How To Comply with Bankruptcy Rule 2014*. The distinguished panel included Hon. Mary F. Walrath, Bankruptcy Judge for the District of Delaware, Richard B. Levin of Skadden, Arps, Slate, Meagher & Flom LLP, Los Angeles; and Susan M. Freeman of Lewis & Roca LLP, Phoenix. Prof. Alan Resnick, Scholar-in-Residence of the College, served as moderator. The program was enthusiastically received by the 135 Fellows in attendance.

The panelists discussed the duty of a professional to disclose connections with creditors, shareholders, and other parties in interest when seeking retention under section 327 or 1103 of the Bankruptcy Code. Fellows in the audience participated by asking questions and by expressing their concerns that strict compliance with Rule 2014 disclosure requirements is either impractical or impossible, especially in large cases involving hundreds or thousands of creditors and shareholders. Problems relating to the ambiguous word "connections" were discussed, as was the difficulty in detecting all relationships that a firm may have with parties in interest.

These concerns are heightened by the serious consequences that could result from a failure to detect and disclose a connection with a party in interest.

The panelists discussed internal procedures now used by medium and large firms in attempting to discover all connections, the duty to continuously monitor for conflicts, and the need to make supplemental disclosures during the case. The panelists also discussed strategy regarding the inclusion in a Rule 2014 affidavit of a detailed description of the internal procedures used to detect connections in the case. The program ended with a discussion of proposed amendments to Bankruptcy Rule 2014 that were recently published for public comment. The proposed amendments, if promulgated, would not become effective for at least two years.

Each Fellow in attendance received a program book containing materials prepared by the panelists, including an explanation of the current case law interpreting and applying Bankruptcy Rule 2014 disclosure requirements, suggested procedures for conducting a conflicts inquiry, and an informative chart comparing investigative procedures to detect conflicts used by twelve law firms as disclosed in their employment applications. The program book also contains a summary and the text of proposed amendments to Rule 2014. Following the program, these materials were distributed by e-mail to all Fellows of the College. ☰

In Memory of Shozo Miyake

By John A. Barrett



▲ Shozo Miyake

The College is saddened by the death of College Foreign Fellow Shozo Miyake on October 17, 2000. Born in 1934 in the City of Hiroshima, Japan, the late Mr. Miyake was graduated from Tokyo University with an LL.B. degree in 1957 and was enrolled as an attorney at law in 1959. He was 66 years old at the time of his death.

Of innumerable contributions he made to the world of jurisprudence, the most conspicuous are in the area of bankruptcy law, as evidenced by his service on committees for the Tokyo District Court and the Supreme Court of Japan, as well as for the Ministry of Justice. Among his many contributions was his service as legal trustee in corporate reorganization in a trading house, the first case to which the Corporate Reorganization Law was applied to a named medium-sized trading house. In addition, he served as trustee in bankruptcy for Crown Leasing Company, the record largest insolvency in Japan. He also served as a draft compiler of the Civil Reorganization Law of Japan enacted in December 1999.

His contributions were not limited to Japan. He was a very active member of the International Bar Association and the Inter Pacific Bar Association, where he met his counterparts from all over the world. He will be greatly missed. ☰

Selection of Twelfth Class

By Merrill R. Francis



▲ Merrill R. Francis

In early November of 2000, invitations were extended to 36 prospective Fellows, including 4 Foreign Fellows, 4 Judges, and 28 United States attorneys, accountants, professors, and other professionals. A report on the Fellows who accept the invitation will be included in the next issue of the *College Columns*. ☰

College Luncheon at NCBJ



By Hon. Ralph Mabey

For the first time, the College sponsored a general attendance luncheon at the National Conference of Bankruptcy Judges.

▲ Hon. Ralph Mabey More than 400 NCBJ participants attended.

The luncheon featured the signing of the enabling documents which establish the National Bankruptcy Archives at the University of Pennsylvania Law School.

NCBJ president, Judge Mary Davies Scott, presided at the signing. Dean Michael Fitts represented the Law School, together with Professors Elizabeth Kelly and Charles Mooney. The Archives have been launched with substantial contributions from both the College and the NCBJ. All of the net proceeds of the luncheon will also benefit the National Bankruptcy Archives.

The featured luncheon speaker was William H. Neukom, Executive Vice President for Law and Corporate Affairs at Microsoft. Mr. Neukom forecast future developments in the technology revolution and noted the importance of enlightened laws which both encourage and protect innovation.

The College thanks Jack Gose (Mr. Neukom's fishing partner) and Jerry Shulkin (outside bankruptcy counsel for Microsoft) for facilitating Mr. Neukom's appearance.

The luncheon was organized by the College's NCBJ Liaison Committee, whose members include Arthur Abramowitz and Brad Scheler. ☞

Simon Kimmelman Chair of New Jersey Section



▲ Simon Kimmelman

Simon Kimmelman, a shareholder in the firm of Sterns & Weinroth, Trenton, New Jersey, has been elected the chair of the Bankruptcy Law Section of the New Jersey State Bar Association for a

two-year term. ☞

Future of the College Committee



By Paul M. Singer

On October 11, 2000, the Future of the College Committee (Committee) held a meeting by telephone conference. Members present were: Larry Ahern, Sally Neely, Prof. Alan Resnick, Paul Singer and Hon. Cecelia Morris.

The Committee discussed the following issues:

College Sponsorship of Bankruptcy Program. After a discussion of the three courses which the College sponsored over the past two years, the Committee recommended that the program be continued with preference given to courses at either law schools or business schools which are new and being taught by members of the College. To ensure sufficient proposals as well as College recognition, the Committee suggests that a notice be sent to all law schools and business schools of the existence of the program along with instructions on how to apply. The Committee felt that it should be left to the schools to determine whether the stipend should be used to pay the professor teaching the course or go to the general operating fund of the school.

Development of Leadership and Collegiality. The Committee addressed the question of how to develop future leaders of the College and to foster collegiality. In our formal report we had indicated that the College may wish to explore Circuit meetings in connection with its annual meeting to foster collegiality. The Committee also recommended that the College consider regional meetings. The Committee was advised that Fellows in the planned Southeast region are trying to organize a regional meeting. Some concern was expressed that it was not clear whether the Southeastern regional meeting is a social gathering, educational program or both.

The Committee addressed whether focus groups could be used to help develop leadership. According to several members, the focus groups, which were in place at the time of the National Bankruptcy Review Commission, were not successful in this regard.

Another Committee member suggested that establishing continuing commit-

tees such as ours would go a long way in addressing both objectives. I think it was felt that through our Committee's work our members were able to get to know each other and to stay in touch with College activities. This was aided by reported minutes. As a consequence, it was felt that the College could develop leadership and foster collegiality by capitalizing on the operating committees currently in existence, i.e. publications, pro bono and education, etc., and opening them to all Fellows who wished to participate. The Committees should have regular telephonic meetings during the year followed up by written reports.

The Committee also discussed whether it would be helpful to increase the size of the Circuit Councils as a means of achieving the goals of leadership development and collegiality. It was recommended that the matter should be taken up at the Regents meetings in Boston.

Annual Meeting. The Committee recognized that there continues to be a question as to whether the annual meeting should be held in Washington (notwithstanding the Committee's recommendation in our report last year). As we understand the concern, it is that the Fellows attending the annual meeting consist of about 100-125 regulars and the inductees and their families. Thus, a majority of Fellows never attend. To this end the Committee recommends that we modify the questionnaire which we published last fall and solicit the membership on this question.

Endowment Funds. The Committee discussed the establishment of Endowment Funds (recognizing that Joel Kay is coming up with a proposal) and believed that it was consistent with the goals of the College. The Committee felt, however, that dues should be used solely to fund operations and not placed in the endowment fund. It was suggested that there should be a separate solicitation for the endowment fund (hopefully to get large gifts or bequests) and perhaps consideration of the use of some portion of the sponsorship money for this purpose. The goal of the endowment fund should be to support the three main outside programs, i.e., the bankruptcy history project, the College's pro bono activities and the educational grants, but not growth for the sake of growth without a plan. ☞

Southern Regional Meeting



By Robert B. Rubin

The College has launched what will be a series of regional meetings. The first, the Southern Regional Meeting, coordinated by Bob Rubin, Hon. Russell Hippe and Sam Zusmann, Jr., was held in Miami Beach on Saturday, February 3, 2001. The primary focus audience of the meeting was the Fellows of ten southern states. The location was the Loews Miami Beach Hotel, South Beach, Miami, Florida.

The topic of discussion was the *LaSalle* decision, *Bank of America National Trust and Savings Association v. 203 North LaSalle Street Partnership, 119 S.Ct. 1411 (1999)*. The panelists were the attorneys for the principal parties, Richard M. Bendix, Jr., of Schwartz, Cooper, Greenberger & Krauss, counsel for the debtor, and Tom Kiriakos of Mayer, Brown & Platt, counsel for the bank. The moderator was Hon. Eugene Wedoff of the United States Bankruptcy Court for the Northern District of Illinois, the presiding bankruptcy judge in the case. The discussion included developments in the case subsequent to the Supreme Court decision, as well as its implications for other chapter 11 cases.

On February 3 the morning program began at 8:00 A.M. with continental breakfast, and the educational session followed at 8:30 A.M. From 10:30 A.M. to 11:00 A.M. the Fellows conducted a meeting to discuss College business. The event concluded with a cocktail reception held at the Lowes Hotel, followed by dinner at Q's, a four star hotel that enjoys a national reputation.

The participants in the meeting enjoyed an excellent educational program, followed by a spectacular cocktail reception and dinner. The reports are that it was a smashing success, and more regional and city events will follow. ☞



On Line Committee Report



By Ronald N. Martin

News on our Extranet! We are finishing up our final crossing of t's and dotting of i's to get the Extranet up and running. We are feeling that the best time to give you all an introduction to how to use the Extranet will be at our annual meeting. Ray and Neal have graciously set time aside at our annual lunch for John Tredennick, President of CaseShare LLC, and I to give you all of the information to get started. John is one of the top experts in the country on legal technology and is also a partner at Holland & Hart. This coming year he is the chair-elect of the ABA Law Practice Management Section.

In addition to our talk we will be sending out e-mails to each of you explaining the step-by-step approach to getting onto the Extranet, dealing with names and passwords.

As you have probably already heard, the advantage of having an Extranet over our own website is that we can carry on private discussion groups on specific questions and debate the pros and cons of various positions. If we all participate, you will have at your disposal the brightest minds in bankruptcy to help you with particularly tough issues.

The Extranet will not be set up as a "chat room" but as a private link to each other in asking questions and giving opinions that are typed in and then responded to.

Our Extranet will not replace our website. The website is for the public so that individuals and clients can get to know more about the College and each of us. All bios of the Fellows are now on the website and can be accessed by name, state or city. Check yourself out at www.amercol.com! The Extranet will link you to our website.

After our meeting in March, you will all want to put our Extranet down as one of your "favorites" on your computer and check it regularly. It will be both intellectually stimulating and the best resource you can find for answers to bankruptcy questions.

We look forward to seeing you at the annual meeting and launching this tremendous asset for the Fellows of the College. ☞

Pro Bono Committee Report



By David T. Sykes

Since its formation, the Pro Bono Committee has solicited and evaluated applications for grants to bankruptcy-related pro bono projects, focusing on education. Each of the grants supported by the Committee and approved by the College (through its President) has been utilized to support the education of lawyers, law students and others who assist in the delivery of pro bono bankruptcy services.

The College has considered the Committee's mission a top priority, and has readily supported qualified applicants over the past years. In turn, the pro bono community has attempted to reach out to organizations which might not be familiar with the College's grant program, in order to assure that deserving projects receive needed funding.

Despite these efforts, in the period since the previous College board of directors meeting in March 2000, only one inquiry has been received from an organization in need of funding. When an application is submitted, it will receive prompt attention from the Committee.

Another initiative will soon be presented to the Pro Bono Committee. Through College Fellow Jim Baillie of Minnesota, who is the chair of the Bankruptcy Pro Bono Subcommittee of the American Bar Association's Business Bankruptcy Committee, plans for a national bankruptcy pro bono web site are being made. I am pleased to participate in that effort. Jim asked whether Philadelphia's Consumer Bankruptcy Assistance Project, an organization with excellent staff and a knowledgeable Board of Directors, would be able to create, organize and evaluate content for the proposed web site. The Project's staff and board members were unanimous in their enthusiasm about the Project's role in making available information, educational materials, news about pro bono bankruptcy-related developments and other matters of general interest to those who could (or do) participate in

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Acknowledgements

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William H. Schorling
- Kozyak Tropin & Throckmorton, P.A.*
John W. Kozyak
- Lazard Freres & Co., LLC*
Barry W. Ridings
- Lewis and Roca LLP*
Susan M. Freeman
Gerald K. Smith
- Long Aldridge & Norman LLP*
Charles E. Campbell
- Marcus, Santoro, Kozak & Melvin, P.C.*
Frank J. Santoro
- Mayer Brown & Platt*
Lawrence K. Snider
- Milbank, Tweed, Hadley & McCloy LLP*
Paul S. Aronzon
Robert Jay Moore
- Morgan, Lewis & Bockius LLP*
Michael A. Bloom
Robert H. Scheibe
Richard S. Toder
- Murphy Sheneman Julian & Rogers*
Patrick A. Murphy
Randy Rogers
Bernard Shapiro
Margaret Sheneman
- Navigant Consulting*
Kenneth J. Malek
- Nixon Peabody LLP*
Daniel W. Sklar
William S. Thomas, Jr.
- O'Melveny & Myers LLP*
Robert J. White
Joel B. Zweibel
- Pepper Hamilton LLP*
I. William Cohen
Stuart E. Hertzberg
Michael H. Reed
Barbara J. Rom
- Phillips, Lytle, Hitchcock, Blaine & Huber LLP*
William J. Brown
- Piper Marbury Rudnick & Wolfe LLP*
Richard M. Kremen
- Reed Smith LLP*
Francis P. Dicello
Paul M. Singer
- Schulte Roth & Zabel LLP*
Michael L. Cook
Jeffrey S. Sabin
- Sheppard, Mullin, Richter & Hampton LLP*
Merrill R. Francis
Prentice L. O'Leary
Joel R. Ohlgren
- Stonecipher, Cunningham, Beard & Schmitt, P.C.*
Philip E. Beard
- Troutman Sanders LLP*
Ezra H. Cohen
Mary Grace Diehl
- Wachtell, Lipton, Rosen & Katz*
Chaim J. Fortgang
Prof. Lawrence P. King
Harold S. Novikoff
Leonard M. Rosen
- Waller Lansden Dortch & Davis, PLLC*
Hon. Russell H. Hippe, Jr.
- Womble Carlyle Sandridge & Rice, PLLC*
Bonnie Kay Donahue
William B. Sullivan
Thomas B. Anderson, Jr.
- Please note that this list is in progress of accepting additional Patrons and Sponsors.

Minutes of Board Meeting Spring 2000

By Evelyn H. Biery

**AMERICAN COLLEGE OF BANKRUPTCY
BOARD OF DIRECTORS MEETING
MARCH 17, 2000
APPROVED OCTOBER 18, 2000**

A meeting of the Board of Directors of the College was conducted on Friday, March 17, 2000, at the Mayflower Hotel, Washington, D.C. The following were in attendance: Raymond L. Shapiro, R. Neal Batson, Barbara A. Everly, Myron M. Sheinfeld, David T. Sykes, Bettina M. Whyte, Evelyn H. Biery, Merrill R. Francis, John A. Barrett, Leonard H. Gilbert, David A. Lander, Louis W. Levit, Hon. Ralph R. Mabey, Ronald M. Martin, Jerome Shulkin, Paul M. Singer, Hon. Roger Whelan, Leon S. Forman, Daniel M. Glosband, Prof. Alan Resnick and Suzanne Bingham.

On motion duly made and seconded, the minutes of the October 6, 1999 meeting of the Board of Directors were approved as submitted.

Merrill Francis, Chair of the Board of Regents, presented the report on the selection of regents and circuit council members of the College and the forty-five invitees for the Eleventh Class of Fellows. On April 15, 1999, letters were forwarded to all Fellows asking them to submit nominations to Merrill Francis for Fellows, to Daniel Glosband for Foreign Fellows, and to Leonard Gilbert for Judicial Fellows. Merrill stressed the need for confidentiality and stated that incomplete applications will be deferred. He also reported that the median age of the Fellows is 55 years.

Ray Shapiro, Chair of the Board of Directors, reported that a nominating committee consisting of Jerry Smith, Mickey Sheinfeld, Hon. Ralph Mabey, Merrill Francis, Ray Shapiro and Neal Batson will meet to nominate a new chair for the Board of Regents to enable the nominee to work with Merrill Francis for the remainder of his term as Chair of the Board of Regents.

Jerry Smith, Chair of the Nominating Committee, reported that the Nominating Committee recommended that Joel Piassick be elected to the Board of Directors and that the following Directors be elected to serve an additional term: Leonard Gilbert, Daniel Glosband, Stuart Hertzberg, Louis Levit, Hon. Ralph Mabey, Ronald Martin, Prof. Grant Newton, Jerome Shulkin, Paul Singer, Jerry Smith, Richard Toder, Hon. Roger Whelan and Joel Zweibel.

On motion duly made and seconded, the Board authorized Ray Shapiro to submit the new and renewal Board memberships

to the Fellows for their approval at the meeting to be conducted later in the day.

On motion duly made and seconded, David Lander was thanked for his service as a director.

On motion duly made and seconded, the Board approved the appointment of the regents submitted by the Nominating Committee.

Ray Shapiro reported that the College has received over \$100,000 from patrons and sponsors for the current fiscal year and has accumulated a one-year operating budget. The contributions from the patrons and sponsors will enable the College to sponsor additional educational and pro bono programs.

Bettina White, Treasurer of the College, presented the financial report of the College.

On motion duly made and seconded, the Board authorized Ray Shapiro, Neal Batson and Bettina Whyte to determine what financial information will be provided to the Fellows of the College.

The Board then discussed the accounts of Fellows who have failed to pay their dues.

On motion duly made and seconded, the Board authorized Ray Shapiro to forward a letter to the Fellows who have failed to pay their dues and give them a deadline, after which their membership in the College will be terminated.

On motion duly made and seconded, the Board resolved that the following Fellows be granted emeritus status: Robert Ames as of January 1, 2000; Nate Feinstein as of January 1, 1999; and Hon. John Akard as of April 1, 2000.

Hon. Ralph Mabey, Chair of the Judicial Liaison Committee, presented a report on the luncheon that will be cosponsored by the College and the National Conference of Bankruptcy Judges during the October 2000 meeting of the NCBJ. In accordance with the October 6, 1999 resolution of the Board of Directors, the luncheon will be conducted on a one-year trial basis, net proceeds will be donated to the College History/Archives project, and the details will be worked out between Neal Batson as president of the College and Hon. Mary Davies Scott as incoming president of the NCBJ.

Jerry Shulkin reported that he had contacted William Neukom, Executive Vice President, Law and Corporate Affairs, Microsoft Corporation, who has agreed to speak at the October 19, 2000 luncheon.

There being no further business to become before the meeting, the meeting was adjourned.

Evelyn H. Biery, Secretary ☰

Distinguished Service Award Procedures

By Gerald K. Smith



▲ Jerry Smith

I have again been requested to chair the Selection Committee to review nominees for the Distinguished Service Award and make a recommendation to the Board of Directors. On behalf of the Selection

Committee, I am requesting nominations. Recommendations are due January 31, 2000. My telephone and fax numbers are: 602.262.5348 (phone) and 602.734.3834 (fax).

The award criteria are:

- the recipient must have made significant accomplishments in improving the administration of justice in the insolvency and bankruptcy field;
- the recipient must have provided distinguished service consistently rendered over a considerable period of time or a single outstanding achievement in a particular year (The fact that a single achievement may have occurred before the year of recognition is not material.);
- the accomplishments must arise from voluntary activities rather than for services rendered to a client as a paid professional (This is not intended to exclude members of the judiciary, Congress, or the academic community.);
- it is preferred that the recipient be a member of the American College of Bankruptcy, but it is not mandatory; and the recipient must distinguish himself or herself or his or her institution in a manner and in matters that are consistent with the goals and purposes of the College. ☰

Publications Committee Report

continued from page 1

sponsored by the Committee, under the auspices of the College.

The Publications Committee welcomes all suggestions for its future work. We intend to serve the College to the best of our ability. ☰

Executive Director's Report



By Suzanne A. Bingham

Clearly 2000 has been an exciting and productive year for the American College of Bankruptcy. The Patrons and Sponsors program has been a great success. The pro bono and educational sponsored programs have proven worthy and successful. The College educational programs during the March 2000 Induction and the October 2000 College luncheon (in conjunction with the NCBJ conference) program were superb. Many thanks to our Scholar-in-Residence, Prof. Alan Resnick, for his dedicated efforts in organizing the panels and topics.

This year the College and the NCBJ held the first time ever joint-sponsored luncheon with William H. Neukom, Executive Vice President for Law and Corporate Affairs at Microsoft, addressing nearly 400 attendees in Boston. We are sincerely grateful to Jerry Shulkin for extending the invitation to Mr. Neukom and to Hon. Ralph Mabey for coordinating the logistics. Mark your calendars for the Twelfth Class Induction Ceremony, Educational Program and Dinner to be held March 30-31, 2001, as well as the next College/NCBJ luncheon panel in Orlando, Florida on October 17, 2001, and the second jointly sponsored NCBJ/College luncheon on October 18, 2001.

I am pleased to announce that the first Southern Regional Meeting, scheduled for February 3, 2001, is being coordinated by Bob Rubin, Hon. Russell Hippe and Sam Zusmann, Jr. Ten southern states were selected and Fellows from those states were invited. Of course, anyone who wishes to attend may, since it will be held in the hottest (and I don't mean weather) winter time location, at the Loews Miami Beach Hotel, South Beach, Miami, Florida. This experimental program promises to set off a series of similar regional programs around the country. The topic of discussion will be the *LaSalle* decision, and the two principals representing both sides, Richard M. Bendix, Jr., and Tom Kiriakos, will be on a panel along with the presiding bankruptcy judge in the case, Hon. Eugene Wedoff. On

February 3 the morning will begin at 8:00 A.M. with a continental breakfast followed by the educational session (CLE to be applied for) beginning at 8:30 a.m and concluding by 11:30 A.M. The evening will begin with a reception at the hotel. Dinner will be held at the "in place" Q's Restaurant which is rated four star and has a world-wide reputation. The restaurant will be serving only our group on Saturday night. Sounds like a great educational program and fun experience.

The College's membership continues to grow and, although it is too early to know how many of the Twelfth Class will be inducted, if all 36 nominees accept we will have a total of 521 Fellows. It is inspiring to see how honored the new nominees are as they accept their invitations to become Fellows of the College. As a reminder, the March induction and educational program will be held a little later than usual this year. The dates are March 30-31, 2001. We moved the date to later in the month due to the availability of the Supreme Court. Also, we have changed the venue. An article on the arrangements appears elsewhere in this issue of the *College Columns*.

We have extended an invitation to Senator Paul Wellstone (D-WI), the leader in the Senate opposing the notorious bankruptcy reform legislation that we have been watching, to speak at the Twelfth Class Induction Ceremony. Thanks to Senator Wellstone and a handful of Democrats, bankruptcy "reform" has been slowed. Next Congress may be another story. It isn't over yet.

We look forward to the participation of all Fellows in the many events planned. If you have any questions or wish to register for an event, please call headquarters for details at 703.934.6165. ☰



Judge Dennis Montali Named to Appellate Panel



▲ Hon. Dennis Montali

On May 1, 2000, Dennis Montali, began serving on the Bankruptcy Appellate Panel for the Ninth Circuit. Judge Montali was appointed a Bankruptcy Judge in 1993, when he was a partner with

Pillsbury, Madison and Sutro.

Judge Montali was first appointed to the bench in 1993. During his tenure, he has been active on several judicial committees, including the United States Judicial Conference Committee on the Administration of the Bankruptcy System and the Ninth Circuit Automation Committee. He is also a driving force behind the creation of the Northern District of California's dispute resolution program and the district's bankruptcy court internet website. ☰

Pro Bono Committee Report

continued from page 6

bankruptcy pro bono activities.

Because the Consumer Bankruptcy Assistance Project staff and board are fully occupied with their current workloads, and because there will be funding needs independent of the requirements of those who work on providing content, the undersigned will be presenting a grant request to the Pro Bono Committee and the College at the appropriate time in the near future. ☰

Chairman's Report

continued from page 1

Our conferences in October and March afford us the opportunity to meet with our distinguished professional colleagues. It is a function of our organization that I especially enjoy. I invite you to attend our March 2001 meetings in Washington, D.C.

I thank the membership for allowing me to serve as your Chair. It has been a most pleasurable and rewarding experience. My initial reluctance and anxiety were misplaced, and I am glad that I agreed to undertake such responsibility. It was fun. See you in Washington.. ☰

Guidelines for Donations To The National Bankruptcy Archives

Although the College Fellows previously received the following Guidelines for Donations to the National Bankruptcy Archives by email, we are reprinting them here for ease of reference.

Introduction

The American College of Bankruptcy (College) values the preservation of all documents and materials concerning bankruptcy and insolvency having historical significance. Its recognition of the need to gather these historic materials in one place culminated in a collaboration between the College and the University of Pennsylvania Biddle Law Library (Law Library) in the formation of the National Bankruptcy Archives (NBA). These archives were established by the Law Library pursuant to an Agreement (Agreement) entered into between the College and the Law Library on March 18, 2000. The College Board of Directors assigned the task of preparing Guidelines for Donations to the NBA to the History/Archives Committee of the College which has collaborated with the Law Library in producing them.

Guidelines for All Donations to the NBA

The National Bankruptcy Archives was established to insure that the history and heritage of the bankruptcy and insolvency community's collective memory will be preserved. The NBA's professional archivists will evaluate, arrange, preserve and provide research access to information in its records, not only for members of the College but also for interested scholars and researchers. The NBA will accept donations of materials from the College (see **Appendix A** for provisions governing the formation and operation of the College's Committee on the National Bankruptcy Archives) as well as from other organizations and individuals who have files, documents, recordings, photographs or other items relevant to the purpose of the Archives.

Organization Records Suitable for Transfer to the NBA

Important to the NBA's archival collection are **original, inactive** records and materials that illustrate the purpose and policies of any organization whose activities have been in some way relevant to the history of bankruptcy and insolvency legislation, regulation and administrative and judicial determination or that relate to the activities of individuals who had an impact on this history. The College is an example of such an organization.

What is meant by "inactive," and when are copies of documents acceptable? Although archives normally contain only original documents, copies may be acceptable when the original is lost or when there is **no** chance that the original would ever be available to the NBA and the document is indisputably important. "Inactive" implies that records to be transferred to the NBA should no longer be used for routine business.

Ideally, related groups of materials should be transferred to the NBA together. Because the research value of records is diminished if items are removed or rearranged, records **should not** be weeded, discarded or rearranged before they are donated.

Examples of materials suitable for sending to the NBA by an organization, including the

College, include:

- Articles of incorporation of charters
- Audio recordings
- Budgets*
- Bylaws and revisions
- Clippings
- Committee reports
- Correspondence of officers, committee members and the Executive Director
- Directories
- Electronic records
- Financial statements*
- Handbooks
- Legal documents
- Memoranda
- Minutes of transcripts of meetings
- Membership lists
- Motion picture films and videotapes
- Multimedia assemblages
- Newsletters and other publications generated by the organization
- Organizational charts
- Pamphlets, brochures, fliers, etc.
- Photographs (labeled) or portraits
- Planning documents
- Press releases
- Reports (annual, committee, etc.)
- Research materials
- Rosters
- Scrapbooks
- Speeches
- Subject files
- Tax returns*

*Access to certain records of an organization, records important to the completeness of the archives, may, by agreement with the donor, be limited.

Donations by Individuals to the NBA

In the collections of individuals who have been active in bankruptcy and insolvency practice or teaching and scholarship, there are materials very important to the NBA. Letters, diaries, unpublished writings, tape recordings, photos and other materials collected over the years give vital and unique perspectives. Often the illuminate the history of specific events or societal trends, as well as the financial and cultural history of the bankruptcy and insolvency community.

The NBA welcomes donations as small as a single item or as large as dozens of boxes. Materials need not be "old" and need not be organized. In fact, individual donors and/or their families should be advised that the importance of the material is often diminished if items are removed or rearranged. There may be historical value in the way an individual's papers were arranged.

Examples of historically valuable materials in the collection of individuals include but are not limited to:

- Audio recordings
- Brochures and flyers
- Business records
- Diaries
- Electronic records
- Files relating to an individual's civic, business, professional organization, religious, political and social activities
- Films and videos (Labeled)
- Genealogical information
- Legal Documents

- Letters
- Memoirs/reminiscences
- Memoranda
- Minutes/reports
- Multimedia assemblages
- Photographs (Labeled)
- Professional papers
- Research materials
- Scrapbooks, photos, albums
- Speeches/lectures
- Subject files

Ownership of Materials Placed in the NBA

Transfer of ownership to the NBA of materials deposited with it is **optimum**. Attached to these Guidelines, as **Appendix B**, are copies of two forms for use by donors of materials to the NBA. It is hoped that most donors will use the "Deed of Gift" form. However, donors unable or unwilling to gift the materials may use the form establishing a custody arrangement and assigning copyright interests to the Law Library in so far as that is possible. Neither a gift nor a consignment of materials to the NBA can be effective without the acceptance signature of the Library Director or a designated archivist.

Sensitive material may exist in records transferred to the NBA by the College or by other organizations or individuals. In order to protect the privacy of living individuals or for other good cause, restrictions on access to portions of collections may be necessary. The NBA will work with donors of such material to establish appropriate restrictions or time limitations with a preference for distinct periods of time. If the Law Library, in processing materials contributed to the NBA by the College or other organizations or individuals, notes especially personal or potentially embarrassing contents, that content shall be brought to the attention of the College or other donor for review. The College or other donor may request return of that material with any expenses associated with the return born by the donor.

Copyright

Assignment of copyright in donated materials can be a complex matter. The donor should discuss issues of copyright ownership with the Law Library prior to completing any donor agreement. Generally, copyright belongs to the creator of writings and other original materials, but can be legally transferred to others. Moreover, ownership of copyright is separable from the ownership of the physical item (such as a letter or photo). For this reason, the Law Library for the NBA, like other professional archives, normally requests that donors donate not only the physical papers or other materials but also any copyright in them that the donor has. This practice facilitates the use and quotation of archival materials by researchers at the NBA.

Tax Deductions

Those organizations and individuals donating material to the NBA and interested in seeking a possible tax deduction, will be solely responsible for arranging for and bearing the cost associated with obtaining such a deduction, including attorney or appraiser fees.

Access to the NBA Collection

Generally, the written policies of the Law Library regarding availability, photoduplication

and publication govern access to the materials in the NBA. A copy of the current policy is attached as **Appendix C** to these Guidelines.

APPENDIX A

Operation of the College's Committee on the National Bankruptcy Archives

An organization's institutional memory is in its records. The College values the preservation of its heritage and its place in the history of bankruptcy and insolvency and is committed to saving the original letters, minutes, reports, photographs, publications and other documents that officers, members, directors, employees, or volunteers have produced over the years. These documents will provide unique testimony to the achievements of the College and its members.

Placement of materials in the NBA is not exclusively within the purview of the College. The Agreement between the College and the Law Library envisioned that individuals and organizations should be encouraged to donate relevant materials directly to the Law Library for inclusion in the NBA. The College will assist the Law Library in the buildings of the NBA by soliciting donations of materials from individuals and other organizations.

The College, through its Chair, President and Board of Directors, shall create a permanent committee on the National Bankruptcy Archives through which the College will fulfill its responsibilities under these Guidelines and pursuant to the College's Agreement with the Trustees of the University of Pennsylvania acting through the Law Library of the University of Pennsylvania (effective March 2000).

The purpose of this Committee shall be to act as the liaison between the College and the Law Library in order to facilitate the building of the NBA.

The membership of this Committee shall be determined by the Chair and the President of the College; the President shall designate the Chair of the Committee. Appointment to this Committee should take into consideration diversity, including geographical diversity.

After the Committee on the National Bankruptcy Archives has been constituted, it shall establish **times to meet** and shall file **written reports** of its activities at the mid-year and annual meetings of the College Board of Directors. The committee shall make specific proposals to the Board regarding the donation of College records to the NBA. Those **written recommendations** shall be transmitted, for approval, to the Chair, President and Board of Directors no later than the next regularly scheduled Board meeting after the Committee convenes for the purpose of making these recommendations. The Committee shall also report to the Board concerning donations to the NBA that it has either solicited or received.

The Committee on the National Bankruptcy Archives will look solely to the College Board of Directors and/or any Endowment formed by the College for its funding and requests for funding will be made in writing in compliance with the College rules governing funding responses.

APPENDIX B

ARCHIVES USE ONLY

Record Group _____
Accession Group no. _____
File No. _____

Biddle Law Library Archives Deed of Gift National Bankruptcy Archives

I, _____ (name), of _____ (address or organization), do hereby make a gift of the material specified below to the Biddle Law Library and its successor organizations.

Being the sole owner of the material, I give this material (and any additions which I may make to it) unencumbered to the Biddle Law Library and do declare that I made the gift of my own free will and without influence.

Any copyrights such as I may possess in this material I also assign to the Biddle Law Library. The processing of this material and access to it shall be governed by the policies stated in the Agreement between the American College of Bankruptcy and the Trustees of the University of Pennsylvania.

A schedule of material donated including the number and type of boxes is attached: (Attach list of material to be donated)

Material is to be shipped: Attention Cynthia Arkin or Melissa Backes via _____ at the expense of _____ to:

Special Collection Department
Biddle Law Library
University of Pennsylvania Law School
3460 Chestnut St
Philadelphia 19104-3406

In full accord with the provisions of this deed of gift, I hereunto set my hand.

(Donor signature)(Date):

Signed in the presence of (witness signature and date):

On behalf of the Biddle Law Library, I (Archivist or Library Director), accept this gift. (Archivist or Director signature) (Date):

ARCHIVES USE ONLY

Record Group _____
Accession Group no. _____
File No. _____

Biddle Law Library Custodial Consignment National Bankruptcy Archives

I, _____ (name), of _____ (address or organization), do hereby make a gift of the material specified below to the Biddle Law Library for its permanent custody as a part of the National Bankruptcy Archives to ensure preservation of the material and access to it by researchers and students..

Any copyrights such as I or _____ (copyright owner(s)) may possess in this material I also assign to the Biddle Law Library. The processing of this material and access to it shall be governed by the policies stated in the Agreement between the American College of Bankruptcy and the trustees of the University of Pennsylvania.

A schedule of material donated including the number and type of boxes is attached.

(Attach list of material being consigned)
Material is to be shipped: Attention Cynthia Arkin or Melissa Backes via _____ at the expense of _____ to:

Special Collection Department
Biddle Law Library
University of Pennsylvania Law School
3460 Chestnut St
Philadelphia 19104-3406

In full accord with the provisions of this consignment, I hereunto set my hand.

(Donor signature)(Date):

Signed in the presence of (Witness signature and date):

On behalf of the Biddle Law Library, I (Archivist or Library Director), accept this consignment for permanent custody as a part of the National Bankruptcy Archives.

(Archivist or Director signature) (Date):

APPENDIX C

Biddle Law Library

Policy for Use of Materials in Special Collections (September 2000)

The Department of Special Collections and the Rare Books and Archives Reading Room are located on the second floor of Tanenbaum Hall. Rare Books, archives and manuscript collections are available for research from 9:00 to 5:00, Monday through Friday. Researchers may walk in to use the collections any time the department is open, but all books and documents must be retrieved by librarians and used only in the reading room. All patrons must fill in a sign-in sheet that asks for the patron's name, address, phone number, affiliation, and the materials requested. All note-taking must be done in pencil or on a computer.

Since at the present time most of the rare book titles are not in the library's on-line catalog, researchers may make their visits more productive by phoning, faxing, or e-mailing ahead to make sure the library has what they need. Paper and electronic finding aids are available for the archives and manuscripts collections. Researchers requiring extensive use of the American Law Institute Archives, the National Bankruptcy Archives or the National Conference of Commissioners on Uniform State Laws Archives are also encouraged to make arrangements in advance by writing, phoning, faxing, or e-mailing the Department.

Permission to make copies is granted on a case by case basis, depending on the condition of the particular item, and most copying will be done by the Special Collections staff. The price for copies is the same as it is in the rest of the library. Certain collections require the patron to fill out a separate "Copying Request" form, and have their own pricing schedule. The Special Collections staff will inform patrons about these and any specific requirements or restrictions for the use of any of the collections.

The Special Collections Department may be reached by the following:

Mail:

Special Collections Department
Biddle Law Library
3460 Chestnut Street
Philadelphia, PA 19104-3406

Phone:

Cynthia Arkin, Associate Director for
Special Collections: (215) 898-7418 and
Melissa Backes, Archivist: (215) 898-5011.

Fax:

(215) 898-6619
E-Mail: carkin@law.upenn.edu or
mbackes@law.upenn.edu

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