

College Columns

News and Views from The American College of Bankruptcy

Publications Committee Report



By Evelyn H. Biery

The Publications Committee is continuing the projects that were announced in previous issues of the College Columns.

▲ Evelyn H. Biery

- (a) We have formed a Memorial Lecture Subcommittee, which will be chaired by Richard Broude. The first project for the Subcommittee is an ethics lecture in honor of deceased Fellow William J. Rochelle, Jr., during the October 1999 meeting of the National Conference of Bankruptcy Judges.
- (b) We have previously published an example of a judge's humor, Judge Cristol's ruling in verse. We will in the future add additional examples of Judges' favorite stories. We request that any judge who has a humorous event to relate forward it to me.
- (c) We intend to add to future issues of the College Columns a few stories about lawyers who have a life outside the practice of law. We request that any attorney or judge who has an interesting hobby or adventure to describe forward information on it to me.

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▲ Ninth Class of College Fellows Induction

Chairman's Report



By Raymond L. Shapiro

The outstanding attendance at our Washington, D.C. meetings in mid-March demonstrates a commitment by our membership to be part of College activities. The induction ceremony, educational program, luncheon and dinner all came off without a hitch. We are grateful for the efforts of our Executive Director Suzanne A. Bingham and her staff for assisting us in achieving a successful series of events. The financial assistance of our Patrons and Sponsors provided the needed economic support to establish quality events. Without those annual commitments, our dues structure and fees for these events would be significantly higher. The College is most appreciative of their support.

The complement of officers and directors is outstanding. We have determined to give support to service programs that the College will sponsor. We have approved financial assistance for specific universities. Advanced courses at several law schools will receive funding in the future. Pro bono activities are receiving attention, and the College is committed to continuing to provide economic assistance to other projects.

Given the significant congressional turbulence to speedily reform our bankruptcy laws, we accelerated the review of certain pending legislative recommendations. With your support we provided testimony to the House Subcommittee

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Distinguished Service Award Selection Committee

▲ Gerald K. Smith

By Gerald K. Smith

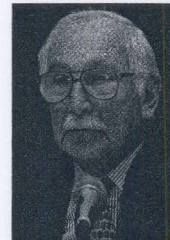
As you are aware, the College has established a Distinguished Service Award. It may be awarded annually, but need not be, to a person or entity that has made an outstanding contribution to the National or International Insolvency Community. In accordance with the resolution of the Board of Directors, the Chair has appointed a Selection Committee to review nominees and to make recommendations to the Board of Directors.

I have been requested to chair this year's Selection Committee. Other members include Hon. Conrad Cyr, Prof. Frank Kennedy, Prof. Lawrence P. King and Jay Alix. On behalf of the Selection Committee, I am requesting nominations. Please drop me a note or give me a call with any recommendations prior to December 1, 1998.

Past recipients are Prof. Frank R. Kennedy, Prof. Lawrence P. King, and Leon S. Forman.

The award criteria are:

1. Significant accomplishments in improving the administration of justice in the insolvency and bankruptcy field;
2. 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;
3. The accomplishments 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;
4. It is preferred that the recipient be a member of the American College of Bankruptcy, but it is not mandatory; and
5. The recipient must distinguish himself or herself or its institution in a manner and in matters that are consistent with the goals and purposes of the College. ☞

Preview of Fall 1988 Educational Program

▲ Leon S. Forman

By Leon S. Forman

There will be a Panel Discussion at the October 22 meeting of the College during the luncheon at the Wyndham Anatole Hotel, Dallas, Texas.

The panelists will be Paul H. Asofsky of Weil, Gotshal & Manges, Houston, Texas; Professor Grant W. Newton, Professor of Accounting, Pepperdine University, Malibu, California; and Grover Hartt, III, Department of Justice, Dallas, Texas.

The luncheon will begin at Noon, and immediately thereafter we will allow approximately one hour for the Educational Program. The topic will be "What Every Bankruptcy Lawyer Should Know About Taxes." ☞

National Bankruptcy Review Commission Plaques

▲ R. Neal Batson

By R. Neal Batson

The College presented plaques to thank the members and staff of the National Bankruptcy Review committee for their work and to recognize their contributions of time and talents to the projects.

The College received several acknowledgements from the recipients expressing their appreciation for the plaques and commending the College for the thoughtful surveys, careful analyses and balanced presentations made by the members of the College. Excerpts from the letters appear on page 6 of this issue of the College Columns. ☞

National Bankruptcy Review Commission Project



By Myron M. Sheinfeld

▲ Myron M. Sheinfeld

Pursuant to the resolution adopted at our recent Washington meetings, Leon Forman, our Scholar in Residence, appeared before the House Subcommittee addressing revisions to the Bankruptcy Code.

The following is a summary of his appearance together with written testimony presented on behalf of the College.

The Board of Directors of the College on March 13, 1998, in Washington, D.C. approved the two Position Papers submitted respectively by the focus group on Chapter 11, and secondly prepared by the officers with respect to proposed changes affecting the bankruptcy of individuals, and recommended adoption by the College, at its annual meeting on March 14, 1998. The Chapter 11 recommendations were the result of a survey of the College of the conclusions of the Focus Group chaired by Ralph Mabey on the changes proposed by the National Bankruptcy Review Commission. At the annual meeting, the College approved both statements and authorized their submission to Congress. Since the College had not had an opportunity to reach a consensus on the consumer legislation before Congress or the recommendations of the National Bankruptcy Review Commission on that subject, the Position Paper suggests instead that the legislative process is moving too rapidly and this complicated subject should be treated more deliberately.

The Board requested and authorized Leon S. Forman to respond on behalf of the College to the invitation of the House Subcommittee to present the foregoing written statements and to testify at the hearing scheduled for March 19, 1998, in Washington.

Copies of the invitation, a copy of the witness list, and a copy of the written testimony of Mr. Forman are attached to this report are available to any College Fellow who requests them.

At various times during the hearings there were between two and four members of the subcommittee present. Congressman George Gekas of Pennsylvania presided. Congressman Jerrold Nadler of New York was always in attendance. As the witness list shows, the panel on which Mr. Forman appeared included seven members. Each panelist was allowed five minutes to summarize his written presentation, although the Chairman permitted the time limit to be modestly exceeded. When all the members of the panel had finished their summaries, the Congressmen present were given a prescribed period of time to interrogate the panelists.

There were no questions on the College's Chapter 11 material but some interrogation on the small business proposals which had been the principal subject of the previous panel. A substantial number of questions were directed to Mr. Forman as to the views of the College expressed in its Position Paper on what should be the appropriate procedure of the Subcommittee with respect to the proposed changes on the bankruptcy of individuals differed from the rapid and hasty approach being taken by the Chairman and the majority of the Subcommittee. Although the questioning and debate were spirited, the atmosphere was cordial and courteous. The testimony of the other members of the panel was largely on the specific matters in which they or their organizations were interested.

Congressman William D. Delahunt of Massachusetts, who was present during Mr. Forman's testimony, approached him when the panel was dismissed and was complimentary on his presentation. Mr. Forman also received favorable comments from others who were in the audience during his panel. It will be important to follow the course of the proposed legislation apart from its significant interest to the membership of the College because if the course of the legislation should slow down, there may be an opportunity for the College at large to review and adopt more specific positions on matters other than Chapter 11. ☞

On Line Committee Report



▲ Ronald M. Martin

By Ronald M. Martin

Electronic Filing: Electronic filing is coming! When is it coming to your district? Beginning on November 25, 1996, the majority of Chapter 11 cases filed in the Southern

District of New York Bankruptcy Court began to be administered electronically over the Internet. Following that, in 1997, the Northern District of Georgia and the District of Arizona set about launching electronic filing within their jurisdiction. Expansion plans are going forward in each of these districts.

The Southern District of California and the Eastern District of Virginia will move forward with their programs this year.

The Board of the College has asked Fellow Cecelia Morris and the On-Line Committee to assist the Bankruptcy Bar nationwide in this transition. Cecelia has extensive experience in her position as the Clerk of the Bankruptcy Court for the Southern District of New York in leading towards electronic filing.

Law firms like Wilkie Farr and Fried Frank already have their own bankruptcy manuals for electronic filing, and the On-Line Committee will use them as a resource in putting together a manual on "Electronic Case Filing for Lawyers." On behalf of the College the Committee will be sponsoring seminars to assist bankruptcy practitioners in understanding what needs to be done in order to convert to electronic filing.

The Committee sees this as an important opportunity to assist the Bankruptcy Bar and add further prestige to the College. The Committee is also anticipating briefing a future meeting of the Fellows on the electronic filing process.

E-Mail Addresses: Just a reminder that if any of you have new e-mail addresses, or have not sent your e-mail address to me, please either e-mail me or fax a letter with your complete e-mail address to Ronald M. Martin, Holland & Hart LLP, 90 South Cascade Avenue, Suite 1000, Colorado Springs, Colorado 80903. ☞

Pro Bono Committee Report



▲ David T. Sykes

By David T. Sykes

On March 13, 1998, at the College's Directors meeting, the Board passed a resolution establishing a fund for grants to bar associations and other legal organizations having bankruptcy pro bono programs, to assist those programs in creating, developing and improving educational efforts. Often lawyers, paralegals and law students who volunteer to take cases on a pro bono basis are unfamiliar with the rudiments of consumer bankruptcy law and the practicalities of case handling. Such matters as creating comprehensive and accurate schedules and statements of financial affairs, dealing with a chapter 7 trustee, paying postpetition bills, and other issues faced by volunteers, should be carefully explained to volunteers before they undertake a representation. Pro bono organizations should, ideally, have educational programs for volunteers which aid in their training.

The Pro Bono Committee will prepare a standard grant application form and will inform bar associations and other organizations about the grant program. Upon receipt of applications, the Committee will review them and make

recommendations for approval by the President of the College.

The full text of the Pro Bono Committee recommendation, as approved by the Board, is set forth below:

The Pro Bono Committee recommends that the American College of Bankruptcy provide the availability of funds, in an amount not to exceed \$5,000 in total over a two-year period, to assist bankruptcy pro bono programs in educating lawyers, law students, paralegals and other volunteers about consumer bankruptcy. No grant may exceed \$500. The grant application should contain information about the Pro Bono program, its proposed education program, and the specific uses to which the funding would be dedicated. The Pro Bono grants would be administered by the Pro Bono Committee and are subject to the approval of the President of the College. ☞

Honors & Achievements

George B Cauthen was one of eight South Carolina Lawyers recently recognized for their significant contributions to improving access for low income citizens during the first decade of the South Carolina bar's pro bono program.

Induction Ceremony and Spring Meeting 1998



By Evelyn H. Biery

The 1998 Induction Ceremony was held at the Supreme Court on Friday, March 13, 1998. The Inductees were then honored in the Great Hall of the Court with a reception in adjoining rooms. Over three hundred Inductees, Fellows and guests attended. The Keynote speaker was Congressman Jerrold Nadler (D-NY).

On Saturday, March 14, Leon Forman produced an enlightening educational program described elsewhere in this issue of the College Columns. After an excellent luncheon, the afternoon was free for sightseeing, with several members touring the Holocaust Museum. The Saturday evening banquet, held at the Metropolitan Club, featured Jim Gossitt, a political comedian who entertained the Fellows and their guests.

The Fellows in the Ninth Class were included in the materials recently forwarded to the College Fellows in connection with the nominations for the Tenth Class. If you would like a separate list, please contact either Evelyn Biery or Suzanne Bingham. ☞

Chairman's Report

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relative to the harm fast track legislation can cause to the bankruptcy process. We intend to express similar views to the Senate Subcommittee if invited to participate. We believe that Congress now recognizes that we are an important organization that should be heard from in the area of bankruptcy reform. Our Focus Groups continue to study the changing terrain of legislative proposals.

The Board approved the issuance of plaques to the members of the National Bankruptcy Review Commission and to senior advisers and members of the support staff to recognize them for their outstanding efforts. They were distributed in late March, and the College has received very gratifying responses from the recipients.

We are now a vital institution with outstanding professionals, including academics, attorneys, financial consultants, professionals in foreign countries, court clerks, and members of the judiciary, etc. This diverse group will continue to grow and provide a resource for the improvement of bankruptcy law and practice.

Our next College function will be in October 1998, in conjunction with the Dallas meeting of the National Conference of Bankruptcy Judges. Leon Forman is arranging an outstanding educational luncheon program, and I hope that many of you will be able to attend. ☞

Publications Committee Report

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(d) We have also collected several items on the achievements and honors of our Fellows. We need additional information, and I encourage our Fellows to forward information on their achievements and honors to me. The reports will be published in future issues of the College Columns.

My thanks to the Publications Committee members who have assisted in the projects this year. At present the subcommittees include the following:

- (a) College Columns Subcommittee: Harry Dixon, John Kozyak, Cecelia Morris, Robert Sable and Blaine Schwabe;
- (b) Law Review Articles Subcommittee: Tom Ambro, Don Bernstein, Dan Cohn, Hon. Burton Lifland, Joel Pelofsky, Isaac Scott and Walt Taggart; and
- (c) Memorial Lecture Subcommittee: John Barrett, Richard Broude, Jan Hayden, Simon Kimmelman and Michael Reed.

Please contact me if you would like to volunteer for service on a subcommittee. ☞

Nomination Procedures for Tenth Class



By Merrill R. Francis

The Board of Regents will meet in Dallas, Texas, at the meeting of the National Conference of Bankruptcy Judges to act on nominations for the Class of 1999. Sponsor applications for candidates were due on May 31, 1998. 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. ☰

Distinguished Service Award to Leon Forman

By Gerald K. Smith

College Fellow Leon S. Forman received the 1998 Distinguished Service Award. The award was presented at the Spring Meeting of the College.

Leon Forman has concentrated his practice for over 60 years on bankruptcy, reorganizations and workouts and related banking and commercial matters. A partner with Wexler, Weisman,



▲ Leon Forman Receiving Distinguished Service Award Forman & Shapiro when it merged with Blank Rome in 1984, he is an elected member of several national professional organizations, including the National Bankruptcy Conference, the American College of Bankruptcy and the American Law Institute. He has also

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Spring 1998 Educational Program

By Leon S. Forman

The Educational Program of the Annual Meeting of the College conducted on Saturday, March 14, 1998, in Washington, D.C. was well attended and well received. Held as in past years at the Cosmos Club, the program consisted of three outstanding Panels. The subject matter of the first discussion was Sovereign Immunity in Bankruptcy After the *Seminole* Decision. Led by well known scholar Professor Kenneth Klee of UCLA Law School and Stutman, Treister & Glatt of Los Angeles, the Panel also included Karen Cordry, counsel of the National Association of Attorneys' General, and Donald Bernstein of Davis, Polk & Wardwell, a leading bankruptcy lawyer in New York. The speakers not only endeavored to explain the scope of the Supreme Court Decision in *Seminole*, but also debated in spirited fashion the possible escape hatches available in this recent development.

The second Panel addressed the ever present and pervasive issues raised by Valuation Standards in Bankruptcy. Sally Schultz Neely of Sidley & Austin in Los Angeles, an experienced bankruptcy practitioner and authority in this field, was to have chaired this Panel but was unfortunately suddenly called out of the country by an important client. Her place was taken by our Scholar-in-Residence, Leon S. Forman. The additional Panelists were Arthur B. Newman, an outstanding investment banker with the Blackstone Group, who has had many years of experience as a reorganization consultant and valuation expert, and David Lander, a bankruptcy teacher and long time practitioner with Thompson Coburn in St. Louis. This Panel discussed at length valuing the debtor as a going concern, as well as for liquidation purposes, and also in respect to the avoiding powers.

The final Panel embarked on a new idea, namely, to present Hot Topics and Hot Tips. The Panel was organized by Stephen Case of Davis, Polk & Wardwell in Washington, D.C., a well known bankruptcy expert and one of the chief staff members of the National

Bankruptcy Review Commission, and also included the Honorable Robert Martin, Chief Bankruptcy Judge, Madison, Wisconsin, and Barbara Houser of Sheinfeld, Maley and Kay, Houston, Texas, one of the bright stars on the bankruptcy horizon. This elite group reviewed twelve recent cases presenting intriguing issues of special current interest to bankruptcy lawyers.

Each attendee received a program book outlining the subject matter of each Panel and including a reproduction of excellent articles relevant to each topic. ¶

Fall 1998 Meeting

By Suzanne A. Bingham

The College will hold its Fall Meeting on Thursday, October 22, 1998, at the Wyndham Anatole Hotel, Dallas, Texas, in conjunction with the meeting of the National Conference of Bankruptcy Judges. If you are registering to attend the NCBJ, your room reservations must be made through NCBJ. If you need NCBJ registration information, please contact Chris Molick, Executive Director, NCBJ, 235 Secret Cove, Lexington, S.C. 29072, or call her at 803-957-6225 or fax her at 803-957-8890. If you are not registering for the NCBJ, you may try to make a reservation through Wyndham Anatole reservations at 214-761-7500.

Thursday, October 22, 1998

8:30 a.m. - 12:00 p.m.

Board of Directors Meeting

10:00 a.m. - 12:00 p.m.

Board of Regents Meeting

12:00 noon - 2:00 p.m.

College Discussion Panel Luncheon

2:00 p.m. - 4:00 p.m.

Continued Board of Regents Meeting ¶

The College Executive Director, Suzanne Bingham, recently forwarded to all Fellows information on the Fall Meeting of the College. Another copy of the registration information is included with this issue of the College Columns.

NBRC Plaques

The College presented commendation plaques to the Commissioners and staff of the National Bankruptcy Review Commission. Below are excerpts from their letters of thank you.

"Thank you for the plaque from the American College of Bankruptcy. It was nice for our efforts to be recognized by your prestigious organization."

M. Caldwell Butler, Jr.

"Thank you very much for the handsome plaque in recognition of my service to the National Bankruptcy Review Commission. I truly appreciate your thoughtfulness and kind words in presenting me with this plaque as a memento of my work on the Commission."

Jay Alix

"Thanks so much for sending me the handsome plaque to commemorate the conclusion of my work as a Commissioner of the NBRC. We did not agree to serve on the Commission in the expectation that we would receive any outside benefits from the work, but we are very pleased that organizations like yours have attributed some value to the enterprise."

Hon. Edith H. Jones

"The College represents the apogee of the distinguished professionals in the field of bankruptcy law. I am honored by your letter and the plaque."

John Gose

"The very attractive plaque which the ACB has so graciously given to me arrived earlier this week and is now prominently displayed on my office wall. I am honored to receive this recognition of the time spent in serving on the NBRC."

James Shepard

"I am deeply honored that the ACB chose to recognize my contribution of time. I am grateful for all the efforts of the College and its members during the long months of the Commission's work."

Prof. Elizabeth Warren

"I am truly grateful for the College's recognition and words of gratitude...The most memorable part of my Commission work was the opportunity to work with people, such as yourself, who are truly bankruptcy experts."

Elizabeth Holland

"Thank you so much for the beautiful plaque in commendation of my work for the NBRC. I would also like to thank you for the invaluable input of the ACB to my Commission work. The College's numerous thoughtful surveys and written analyses were always helpful and much appreciated."

Jennifer C. Frasier

"Thank you so very much for the wonderful, welcome plaque that the College presented me with....The meetings in D.C. were just great. What a pleasure to be together with so many fine professionals and old friends all!"

Stephen Case

Executive Director's Report



By Suzanne A. Bingham

The College has again held a successful Induction Ceremony, educational program and dinner for the

▲ Suzanne A. Bingham Ninth Class in March with 300 Fellows and guests in attendance. The Supreme Court was a magnificent and empowering location for the Induction with all the glamour of a Hollywood event. The 45 inductees seemed to enjoy the honor as they were inducted into the College and have set forth in participating in the American College of Bankruptcy's mission.

The College membership is now 389 and will be growing as each year another class is inducted. You should have received the 1999 Inductee Nomination Procedures letter and application from Merrill R. Francis, Chair of the Board of Regents, in April. The deadline for submission of nominees was May 31, 1998. Applications should have been forwarded to your respective Circuit Regent with as much detailed information as possible. In order to select qualified nominees, it is very important to complete the application and accompanying information fully. Merrill, thank you for your tireless efforts in serving as chair of the Board of Regents and a special thanks to Janice Silvernail, his Executive Assistant.

The annual membership renewals have been forwarded to all Fellows and we are pleased to report a quick response and successful return. The renewals are vital to the operation of the College, so we appreciate your support.

The Board of Directors has agreed that the College Columns will be published only twice a year due to cost. Our editor, Evelyn H. Biery, has an awesome job collecting and compiling articles and keeping the newsletter on schedule. We would like to encourage those contributing to the College Columns to forward Evelyn your articles as she makes the request. We realize the Fellows of the College are busy,

but it is important to forward your article on a timely basis. Thank you, Evelyn, and your Executive Assistant, Chris Onofre.

As Executive Director, I wish to extend grateful appreciation to the Patrons and Sponsors of the College. With their contributions, we have been able to sponsor College events successfully. Although, the College stays within its budget, the special events we host are very costly, and we feel the Fellows deserve unique events and educational opportunities. Within the newsletter is a list of the 1998 Patrons and Sponsors.

The Board of Directors has instructed me to begin updating and revising the College Directory. Soon All Fellows will be receiving a copy of their past issued directory page, and a blank update information sheet with a request for a professional photograph headshot. Although, to date a deadline has not been designated for return, please return this information as soon as possible or we will assume the information is correct and use the previous directory information.

As many of you know, I am a principal of Armstrong & Associates which tracks and monitors bankruptcy legislation. If you are not current, it is important for you to know that the House and Senate Republicans are pushing hard for passage of radical consumer bankruptcy and business bankruptcy reform. The two major bills to date are H.R. 3150 (Rep. Gekas) and S. 1301 (Sen. Grassley). The credit card industry has a full blown ongoing effort (\$40 million) invested to make changes in consumer and business bankruptcy laws. There is great concern that if this legislation passes, as currently drafted, the consumer bankruptcy system will change radically.

Recently, the Senate held a Judiciary Committee mark up of S. 1301 and the bill passed out of committee. Also, be alerted that there is now a focus on business bankruptcy reform in S. 1914 which is expected to be incorporated into S.1301 scheduled for Senate floor debate in mid July.

Again, these proposed major changes will affect your day-to-day operation in chapter 11 (PBGC, healthcare reform, tax reform and other creditor government entities seem to be getting what they request). There is surprise that such bankruptcy reform could pass so quickly without a customary careful deliberation and review.

The end of the 105th Congress is targeted for October 9, 1998, by which time these bills must pass. If they do not pass, the bills will die and will have to be reintroduced in the 106th Congress in January 1999. ☞

Save the Date 1999 Induction Ceremony and Events

By Suzanne A. Bingham

The 1999 Induction Ceremony for the Tenth College Class has been scheduled for March 12-13, 1999, in Washington, D.C. The Corcoran Gallery of Art has been reserved for the Friday, March 12 event. This prestigious and famous gallery will be our host location for the Induction Ceremony for 1999.

The Board of Directors and the Committee meetings will be held during the day on Friday, March 12. The educational program will be held on the morning of Saturday, March 13, followed by a keynote luncheon. The afternoon will be free, and the College will host a banquet on Saturday evening. Make your arrangements to arrive either Thursday, March 11, or the morning of March 12. A block of rooms has been reserved again at the Madison Hotel in Washington, D.C. (202-862-1740) File ACB83F - 800-424-

Friday, March 12, 1999
Induction Ceremony
Corcoran Gallery of Art

Saturday, March 13, 1999
Educational Program
Cosmos Club
Dinner at Metropolitan Club

Report on Legislation June 19, 1998

By Melissa B. Jacoby*

As requested by the Chairman, this column summarizes the content and current status (as of June 19) of the major pieces of pending legislation that would affect bankruptcy law and practice:

H.R. 3150. The Bankruptcy Reform Act of 1998 was introduced by Rep. Gekas (R-PA), Rep. McCollum (R-FL), Rep. Boucher (D-VA), and Rep. Moran (D-VA). On June 10, the House of Representatives passed H.R. 3150 by a vote of 306 to 118. While the highest profile portions of the bill address consumer bankruptcy, other sections of the bill are geared toward small business, single asset real estate, transnational, and general business bankruptcy law and practice. Sections 209 and 210 would impose absolute limits on extensions of exclusivity in cases under Chapter 11 and Chapter 12. Section 411 of the bill would provide for direct appeal of bankruptcy court orders to the circuit courts of appeals. H.R. 3150 also contains a host of provisions affecting the treatment of federal, state, and local taxes in business and consumer cases. While the business and tax provisions have not been immune to criticism, the consumer provisions have received the lion's share of attention, particularly provisions that would increase the amount of credit card debt surviving bankruptcy and would establish an up-front "means test" to determine Chapter 7 eligibility based on budget guidelines prescribed by the Internal Revenue Service. Section 102 of the bill would establish new criteria to govern the payment structure of Chapter 13 plans and would eliminate the ability of sole proprietors to use Chapter 13 to reorganize very small businesses. Section 129 of the bill also would change the section 506(a) valuation standard for personal property in individual debtor cases. When reported out of the Judiciary Committee, the bill contained a \$100,000 cap on state homestead exemptions for bankruptcy purposes, but this cap was eliminated on the amendment of Rep. Gekas, Rep. McCollum, and Rep. Smith (R-TX) on

the floor of the House. When debating this bill, the House also defeated a substitute bill introduced by several Democrats on the House Judiciary Committee; among other adjustments, the substitute bill would have employed an alternative means test using section 707(b), deleted the new exceptions to discharge for credit card debt, and modified the "fast track" small business provisions. On the date of passage, the Administration issued a statement that it "strongly opposes" H.R. 3150 in its current form. The statement reiterates the Administration's concerns regarding the "formulaic" means test and the nondischargeability provisions.

S. 1301. The Consumer Bankruptcy Reform Act of 1997 was reported favorably out of the Senate Judiciary Committee in May by a vote of 16-2. This bill, which was co-sponsored by Senator Grassley (R-IA) and Senator Durbin (D-IL), contains a host of consumer bankruptcy provisions, the bankruptcy judgeship bill, and technical corrections to the Bankruptcy Reform Act of 1994 (most of which track H.R. 764, which passed the House in the first session of the 105th Congress). Many consumer provisions in S. 1301 mirror those in H.R. 3150, but there are significant differences. For example, section 102 of S. 1301 would make ability to pay 20% of one's nonpriority unsecured debts out of disposable income grounds for conversion or dismissal under section 707(b) (and would permit parties in interest to bring such motions against higher income debtors), but would not impose a means test as an initial eligibility threshold. However, under section 321, an individual debtor would not be eligible for bankruptcy at all unless he or she made a good faith attempt to create a debt repayment plan through a consumer credit counseling service within 90 days prior to filing for bankruptcy. In addition, section 302 of the bill would eliminate the ability to "strip down" partially unsecured debts in Chapter 13. The Senate Majority Leader recently indicated that he expects S. 1301 to be brought to the floor of the Senate after the July 4 recess.

S. 1914. The Business Bankruptcy Reform Act, Senator Grassley's busi-

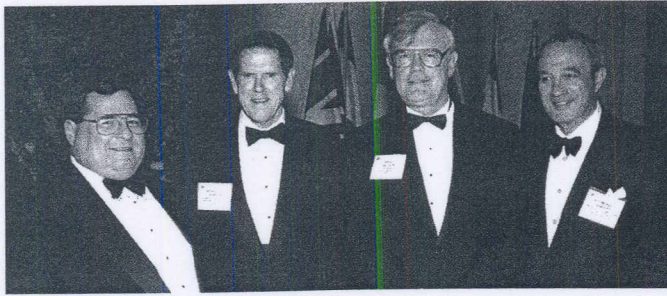
ness bill, covers a wide range of topics. It includes provisions dealing with health care businesses to ensure proper patient treatment and would make HMOs eligible for bankruptcy. Section 215 would deal with asset-backed securitization, and would provide that property has been transferred in a true sale as long as the debtor represented in a written agreement that the assets were conveyed with the intention of removing them from the estate, irrespective of the economic reality or the characterization of the transaction for other purposes. Other provisions would authorize the setoff of claims under financial product master netting agreements, including the authorization of cross-product netting. S. 1914 also would create a "fast track" Chapter 11 procedure for small business and single asset real estate cases and a new chapter for transnational insolvency, generally similar to those in H.R. 3150. Tax provisions, like those in H.R. 3150, are also included. Senator Grassley held one hearing on S. 1914 (excluding the health care business provisions) in May and one hearing exclusively on the health care business provisions in early June. Neither the Judiciary Committee nor the Subcommittee on Administrative Oversight and the Courts has marked up the bill. At this point, it is likely that S. 1914, absent the health care provisions, will be attached to S. 1301 for floor consideration.

H.R. 2709. The purpose of H.R. 2709 is to impose certain sanctions on foreign persons who transfer items contributing to Iran's efforts to acquire, develop, or produce ballistic missiles, and to implement the obligations of the United States under the Chemical Weapons Convention. However, H.R. 2709 contains an important bankruptcy provision: section 273 would replace 11 U.S.C. § 362(b)(4) and (5) with a much broader exception to the automatic stay for governmental units covering actions that otherwise would violate section 362(a) (1), (2), (3) and (6). H.R. 2709 has passed both the House and Senate. At this writing, it is unclear whether the President intends to veto this bill.

S. 1244. The Religious Liberty and

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Induction Ceremony and Spring Meeting 1998



▲ Rep. Jerrold Nadler (D-NY), Keynote Speaker; Merrill Francis, Chair, Board of Regents; Neal Batson, President; and Raymond Shapiro, Chairman, Meeting During March 1998 Supreme Court Induction



▲ Bob Feidler Making Introductions to 1998 Foreign Fellow Inductee Hon. Justice Shinjiro Takagi, Niigata-City, Japan



▲ Jerry Smith Presenting to Leon Forman the 1998 College Distinguished Service Award. Neal Batson & Raymond Shapiro also Presenting to Prof. Larry King a Plaque of Commendation to Commissioners and Staff of the National Bankruptcy Review Commission



▲ Fellows During the Induction Ceremony Hosted at the Supreme Court



▲ Educational Program Panelists including Hon. Robert Martin, Madison, Wisconsin; Barbara Houser, Sheinfeld, Maley & Kay; and Stephen Case, Davis, Polk & Wardwell



▲ Fellows During the Educational Program Hosted at the Cosmos Club

Report on Legislation

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Charitable Donation Protection Act of 1998 would prevent charitable contributions from being avoided as constructive fraudulent transfers and would permit tithing to be taken into account when determining "disposable income" in Chapter 13 cases. S. 1244 has passed both the House and the Senate and President Clinton signed it on June 19,

1998 [P.L.105-183].

H.R. 2592. If U.S. trustees decide to stop assigning cases to a particular trustee, the Private Trustee Reform Act of 1997 would give the trustee the right to seek judicial review of that decision. It also would grant courts the authority to determine trustees' actual and necessary expenses. H.R. 2592 was reported out of the Subcommittee on Commercial and Administrative Law

and was supposed to be marked up by the House Judiciary Committee on June 17, but the mark-up was postponed for approximately one week. ☞

*Melissa Jacoby was senior staff attorney for the National Bankruptcy Review Commission and is currently counsel to the National Bankruptcy Conference. We gratefully acknowledge her assistance.

