

College Columns

News and Views from The American College of Bankruptcy

Editor's Report



By Evelyn H. Biery


By Evelyn H. Biery

This will be my final issue of the *College Columns* as editor-in-chief. Volunteers are needed for the *College Columns*. Please let me know if you are ready, willing and able to commit to serve as editor-in-chief of the *College Columns* or to be in charge of one of four issues next year. Once I collect the names of all the volunteers, I will submit the names to a group who will determine who will be editor-in-chief and who will be in charge of each issue of the *College Columns*.

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 Subcommittee of the Communications Committee continues the projects it has previously embarked upon. If you would like to serve on the *College Columns* subcommittee, please contact me at your convenience.

The *College Columns* Subcommittee has published bi-annual issues of the *College Columns* and will probably publish four issues next year.

The Publications Subcommittee welcomes all suggestions for its future work. We intend to serve the College to the best of our ability. The subcommittee members include Evelyn Biery, Richard Heltzel, Ronald Martin Hon. Cecelia Morris, Joel Piassick, Prof. Alan Resnick and Henry Sommer. 

Chair's Report



By Hon. Ralph Mabey

By Hon. Ralph Mabey

Like the surgeon who performed the world's first appendix transplant, some endeavors are a waste of time.

In sharp contrast, the College brings the best together in the pursuit of the most valuable ethical and professional goals — and in the most collegial of settings. Our pursuit of the best practices leads to the following worthy endeavors:

Nashville: Sunday, October 10 at the NCBJ Meetings: All Fellows Luncheon and Panel Discussion Featuring "Current Tax Developments for Bankruptcy Practitioners." Our All Fellows Luncheon and Panel Discussion, moderated by Alan Resnick, the College Scholar-in-Residence, and featuring Carl M. Jenks of Jones Day and Mickey Sheinfeld of Akin Gump in the definitive discussion of current tax developments, was excellent.

Nashville: Monday, October 11: College/NCBJ Sponsored Luncheon Featuring Enron's Chief Restructuring Officer. The College and the other NCBJ participants enjoyed lunch and the remarks of Stephen F. Cooper, the Chairman of Kroll Zolfo Cooper and the Interim CEO and Chief Restructuring Officer of Enron.

Innovations in Our March 2005 Washington Meetings: Once again, the College's spring meetings on March 18 and 19, 2005, will feature the best educational programs and College business meetings, and will be highlighted by the

continued on page 5

Officers and Directors:

Hon. Ralph R. Mabey
Chair
Evelyn H. Biery
President
Susan M. Freeman
Vice-President
Ronald M. Martin
Vice-President
Hon. Mary Davies Scott
Vice-President
Richard S. Toder
Vice-President
Prof. Grant W. Newton
Treasurer
Daniel M. Glosband
Secretary
Paul M. Singer
Chair, Board of Regents
Raymond L. Shapiro
Chair, ACB Foundation
John A. Barrett
R. Neal Batson
Donald S. Bernstein
I. William Cohen
Neil H. Cooper
David G. Heiman
Stuart Hirshfield
Hon. Barbara J. Houser
Richardo I. Kilpatrick
Sally S. Neely
Richard T. Peters
Joel B. Piassick
Robert B. Rubin
Hon. A. Thomas Small
Lawrence K. Snider
David T. Sykes

Emeritus Directors

Merrill R. Francis
Gerald K. Smith

Board of Regents

Phillip J. Hendel
1st Circuit
Alan W. Kornberg
2nd Circuit
Joseph A. Dworetzky
3rd Circuit
Bonnie Kay Donahue
4th Circuit
R. Patrick Vance
5th Circuit
G. Christopher Meyer
6th Circuit
Richard J. Mason
7th Circuit
Hon. Nancy C. Dreher
8th Circuit
Marc A. Levinson
9th Circuit
Edward J. Nazar
10th Circuit
Mark D. Bloom
11th Circuit
Richard B. Levin
At Large
Hon. Cecelia G. Morris
At Large
Prof. Jeffrey W. Morris
At Large

Scholar-in-Residence

Prof. Alan N. Resnick

Counsel

William J. Perlstein

Executive Director

Suzanne Armstrong Bingham

American College of Bankruptcy

PMB 626A, 11350 Random Hills Rd., Suite 800
Fairfax, VA 22030-6044

(703) 934-6154 Fax: (703) 802-0207

www.amercol.com Email: college@amercol.com

March 2004 Board of Regents Report



By John A. Barrett

By John A. Barrett

In early November of 2003, invitations were extended to 44 prospective Fellows, including 4 International Fellows, 4 judges and 33 United States attorneys, accountants, professors and other professionals. Forty-three nominees accepted the invitation. Many of them were sworn in at the Supreme Court on March 19. Their names appear elsewhere in the *College Columns*.

I want to thank all of those who have assisted in the nomination and approval process during the past three years and particularly the Regents, the Committee Chairs, and the various Circuit Councils and Committees. A great deal of time was expended, and the quality of the Fifteenth Class demonstrates that outstanding nominees are available.

This past year various suggestions have been made to the Bylaws, and certain amendments have been adopted changing some of the nomination processes and forms. Each of the circuits has been subject to rotation due to the mandatory term limits, and there have been replacements of some regents and circuit committee councils. It is to be noted that the newly appointed members will now be for two-year terms, not to exceed two such terms.

Most of the circuits held meetings during the annual meeting of the College in Washington, D.C., on March 19. Additionally, throughout the year many of the circuits held meetings within their circuits, providing educational programs and an opportunity for all of the members to become better acquainted.

With the conclusion of our meetings in Washington, D.C., my term as Chair as Board of the Regents ended. I would like to thank all the members of the College who have been of assistance to me in making the past three years successful. For the Thirteenth, Fourteenth and Fifteenth classes we reviewed and accepted approximately 125 new members, all of whom I believe to be outstanding Fellows for the College. ☰

Judicial Fellows Committee Report



By Leonard H. Gilbert

The Judicial Nominating Committee received an increase in the number of nominations for the 2004 year. The candidates represented both a broad geographical distribution as well as excellent, well-recognized professionals. There were nine nominations that were finally completed and considered by the Committee. Six of the nominees were sent to the Board of Regents for their consideration.

The Committee also reviewed, by an analysis of the judicial circuits, the distribution of Bankruptcy Judges within the College. While most of the circuits have the same relative percentages of membership, there are a noticeable few which are below that number and one circuit which exceeds the median percentage. These findings do not govern the number of nominees, rather, they only indicate where the College should inquire. There is always a place for well-qualified candidates, and we encourage the membership to continue to search them out and to present the nominations to the Committee.

Although there is often a question about the procedures for nominating a judicial candidate, those procedures are, in fact, the same as the nomination of a practicing attorney for membership; and the same requirements exist, as set forth in the Bylaws of the College. Each candidate undergoes a rigorous examination and a thorough investigation of qualifications. You can rest assured that, when a name is presented for consideration to the Board of Regents, the candidate has been thoroughly vetted.

The College is fortunate to have a very strong and experienced Judicial Nominating Committee. They are committed to the task and have expended hundreds of hours on behalf of the College. The Judicial Nominating Committee members are Leonard Gilbert, Chair, James Baillie, Hon. Leif Clark, Hon. Barbara Houser, Alan Miller, Barbara J. Rom, David Sykes and Victor Vilaplana. ☰

International Fellows Committee Report

By E. Bruce Leonard



The International Fellows Nominating Committee nominated four new Fellows for the class of 2004. Three accepted and all of them attended the March Induction Ceremony. They are Prof. Christoph Paulus, Mr. Tomoo Tasaku and Prof. Bob Wessels. In addition, Prof. Jacob Ziegel, who was admitted last year, attended this year's induction. The following International Fellows were also in attendance: Michael Fitch, Bruce Leonard, Hideyuki Sakai and Mel Zwaig.

At the request of the Chair, we submitted several names of candidates to

fill the Board seat created for an International Fellow selected by the Chair and the College Nominating Committee.

In conjunction with the International Insolvency Institute, we have been assisting Prof. Walter Kuemmerle and Prof. Stuart Gilson of the Harvard Business School with a survey of the effect of insolvency laws on managers and owners, and consequently on entrepreneurship. The professors presented the survey results at the annual joint ACB/III program on March 19, 2004.

The members of the International Fellows Committee are Bruce Leonard, Chair, Evan Flaschen, Dr. Hans-Jochem Lüer, Prof. Grant Newton, Michael Steiner, and Prof. Jay Westbrook. ☰

Joint Luncheon with NCBJ Fall 2004



On Monday, October 11, 2004, the College Fellows joined the members of the National Conference of Bankruptcy Judges at a joint luncheon that was co-sponsored by the NCBJ and the College. The speaker

was Stephen F. Cooper, Executive Managing Director and Chairman of Kroll Zolfo Cooper LLC and Kroll's Corporate Advisory Restructuring Group. He assumed both positions in September 2002, when Kroll acquired Zolfo Cooper, LLC, the corporate recovery and crisis management firm that Steve co-founded in 1982. With more than thirty years of experience as a financial advisor, he is a turnaround industry pioneer and much sought-after interim executive for companies in trouble. He is currently serving as Interim CEO and Chief Restructuring Officer of Ernon. An established restructuring specialist, Steve has worked on both the creditor and company sides of distressed situations. His topic was "Enron and the Future of Global Restructuring." ☰

Liaisons Committee Report



By Hon. A. Thomas Small

The committee is exploring the possibility of conducting a joint research project with the National Bankruptcy Conference and the possibility of co-sponsoring an educational component of an American Bankruptcy Institute conference. The component could be a co-sponsored luncheon much like the College luncheon at the NCBJ Annual Meeting, or perhaps a panel of College members speaking on a selected topic. I believe each of these ventures would be a useful undertaking in its own right, and also would have the added benefit of fostering more regular communication between the College and the NCBJ.

The Liaisons Committee members are: Hon. Thomas Small, Chair, Richardo Kilpatrick, Kenneth Lefoldt, Jr., Hon. Ralph Mabey and Hon. Douglas Tice, Jr.. ☰

Distinguished Service Award Committee Report

By John A. Barrett



As noted in other articles, the 2004 Distinguished Service Award was presented on March 20, 2004, to Jerry Patchan, former Director of the Executive Office of the United States Trustee Program.

The Committee is pleased to receive nominations from Fellows of the College. The award criteria for the Distinguished Service Award are:

1. The recipient must have made significant accomplishments in improving the administration of justice in the insolvency and bankruptcy field;
2. 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.);
3. The accomplishments must arise from voluntary activities rather than from 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 his or her institution in a manner and in matters that are consistent with the goals and purposes of the College.

The Distinguished Service Award Committee consists of John Barrett, Chair, Bruce Bernstein, Steven Cousins, Prof. Alan Resnick, Hon. Mary Scott and Gerald Smith. ☰



Save the Date for Possible Future Meetings

Prior to the Meetings of the NCBJ

November 1, 2005
San Antonio, Texas

October 24, 2006
San Francisco, California

October 9, 2007
Orlando, Florida

September 23, 2008
Scottsdale, Arizona

October 17, 2009
Las Vegas, Nevada

October 20, 2010
New Orleans, Louisiana

**All Dates
Tentative**



Educational Program Fall 2004


By Prof. Alan N. Resnick



At the October 2004 All Fellows Luncheon and Educational Program we heard from extraordinary speakers on the topic of Current Tax Developments for Bankruptcy Practitioners. The Luncheon was held on Sunday, October 10, from noon to 2:00 P.M. The speakers were College Fellows Myron M. ("Mickey") Sheinfeld and Carl M. Jenks.

Carl M. Jenks is chair of Jones Day's General Tax practice. His practice covers a wide range of federal income tax areas, including bankruptcy, mergers and acquisitions, and tax controversies. Carl has provided tax advice to debtors and creditors in a number of recent bankruptcy cases, including Burlington Industries (debtor), Dow Corning (special tax counsel to debtor), Globalstar (debtor), HQ Global (debtor), ISG (purchaser of Bethlehem Steel business), Kaiser Aluminum (debtor), Kmart (creditors' committee), Laidlaw (debtor), Loewen (debtor), LTV Steel (debtor), Napster (debtor), NationsRent (debtor), Pillowtex (debtor), USG (debtor), Williams Communications (debtor), and Xcel (parent of debtor NRG). Carl has been responsible for Jones Day's tax advice to clients in a number of significant M&A transactions, including Federated Department Stores' acquisition of Macy's, CTG Resources' merger with Energy East, and Parker Hannifin's acquisition of Commercial Intertech. His practice also involves extensive representation of pri-

vately held companies and venture capital firms, both in Cleveland and in New York. He is tax counsel of record in several important tax cases, including the Dow Corning decision on the accrual of interest by a debtor during bankruptcy, the Elder-Beerman decision on the taxability of tenant allowances, and the Federated decision on the deductibility of "break-up" fees. He is one of the principal authors of Jones Day's forthcoming BNA tax portfolio on corporate bankruptcy and is a frequent speaker on tax topics at tax institutes and seminars around the country. He is a member of the American Law Institute and a conferee of the National Bankruptcy Conference, and is listed in *The Best Lawyers in America*.

Mickey Sheinfeld is Senior Counsel at Akin Gump Strauss Hauer & Feld LLP. He is a member of the National Bankruptcy Conference and a Fellow of the American College of Bankruptcy. Mickey is chair of the Standing Committee on Specialization of the American Bar Association and is a director of the American College of Bankruptcy Foundation. He is also a member and director of the Houston Chapter of the National Association of Corporate Directors. He is a member of the board of editors of *Collier on Bankruptcy* (15th ed., Matthew Bender & Co.) and a co-author of *Collier on Bankruptcy Taxation*. Mickey has written numerous articles and has taught seminars at law schools in Texas and Michigan. He is a graduate of Tulane University and the University of Michigan Law School. 

As You Complete Your Year-End Tax Planning, Remember the American College of Bankruptcy Foundation.

Checks may be forwarded to:

**American College of
Bankruptcy Foundation**
PMB 626A
11350 Random Hills Road
Suite 800
Fairfax, Virginia 22030-6044
USA

Chair's Report

continued from page 1

College's Induction Ceremonies in the Great Hall of the Supreme Court. We are taking effective steps to ease the availability of tickets for the Induction Ceremonies. In addition, for the first time ever, the College has been admitted to the Library of Congress for a gala evening of dinner and entertainment. Immediately following the Induction Ceremonies at the Supreme Court, we will adjourn to the Library of Congress for an evening of dinner, fellowship, and entertainment. We anticipate that none of our Fellows or their guests will be turned away from this singular evening.

The Selection of Worthy New Fellows: Our future stature and accomplishments will grow with the addition of an outstanding Class of 2005 which will be inducted in Washington DC on Friday, March 18. Your conscientious involvement in the selection process, as provided for by your Circuit Council and Board of Regents, is earnestly solicited.

Promoting the Best Practices: The College has called upon a number of its Fellows to begin the articulation of the Best Practices in areas of our expertise. A *Steering Committee* chaired by David Heiman, with Evelyn Biery, Donald Bernstein, Stuart Hirshfield, Richardo Kilpatrick, Hon. Mary Davies Scott, Paul Singer and David Sykes has initially concentrated our efforts in three areas.

- **Consumer Bankruptcy Planning and Preparation.** Henry Sommer chairs this subcommittee, which will articulate the appropriate standards of practice in consumer bankruptcy planning and preparation.
- **Post-Petition Disclosure of Financial Information.** Tom Mayer chairs this important subcommittee, which already has before it his article on *Financial Disclosure Issues in the Context of Claims Trading*. Tom's Committee met in Nashville to advance this project.
- **Venue Selection.** Corinne Ball and Lloyd Palans's subcommittee is finishing up its watershed materials on venue selection.

Between now and the Spring, you can expect significant work product to be presented to the College and then widely disseminated for the benefit of practi-

tioners generally. Please let me know if you are interested in assisting in any of these endeavors.

The Furtherance of Pro Bono Activities: Under the leadership of George Cauthen, the College will this year contribute \$35,000 to assist pro bono activities.

Meetings and Events Committee: Chaired by Bill Cohen, and energized by prominent Fellows in the Federal Circuits, the College continues bringing its collegiality and expertise to our local venues.

International Fellow Joins the College's Board of Directors: Neil Cooper of Kroll became in October the College's first International Fellow to serve on the Board of Directors.

Poorest Chair: Finally, I'd like to thank the Fellow whose five-year-old daughter came up to me in Washington, D.C., last Spring and pushed two nickels into my hand. I thanked her kindly and said I would see that these nickels were donated to our Foundation for the help of poor people who need a lawyer. But she said, "No! This money is for you. Daddy says you're the poorest College Chair we have ever had."

May we all follow the Best Practice of that anonymous Fellow: Candor and Compassion. ☪

Selection of Sixteenth Class Spring 2005

By Paul M. Singer



In mid-April of 2004, Paul M. Singer, Chair of the Board of Regents, wrote to each Fellow requesting that nominations, together with biographical information and other supporting data, be forwarded to

each Circuit Admissions Council by June 15, 2004. Fellows were 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 were forwarded to Leonard E. Gilbert (Chair, Judicial Nominating Committee), and nominations for International Fellows were forwarded to Daniel M. Glosband (Chair, Foreign Fellows Nominating Committee). Thereafter, each Circuit Admissions Council reviewed nominations received for that Circuit (other than Judges and International Fellows) and completed the process of making recommendations to the Board of Regents.

Each Fellow within a Circuit received the names of the proposed Fellows in that Circuit (other than Judges and International Fellows) and was asked to comment on each proposed Fellow. Final Circuit Admissions Council recommendations and recommendations of the Judicial Nominating Committee and Foreign Fellows Nominating Committee were forwarded to the Board of Regents, which met on Wednesday, October 10, 2004, in Nashville, Tennessee, in conjunction with the meeting of the National Conference of Bankruptcy Judges. Invitations to new Fellows for the Class of 2005 will be sent out in mid-November of 2004. ☪



Save the Date Spring 2005 Meeting

March 18-19, 2005

Annual Meeting
Class Sixteen Induction
Washington, D.C.

Remarks of Gerald K. Smith on the Occasion of the Fifteenth Class Induction Ceremony in The Great Hall of the Supreme Court of the United States



“When I was asked to speak at this induction ceremony by our President, Ralph Mabey, I was intimidated, but deeply honored. I was intimidated because of those who had spoken on this occasion before

me. Among those who have addressed the Inductees were the Honorable Marjorie O. Rendell, Judge of the United States Court of Appeals for the Third Circuit, who discussed the lack of predictability and certainty in the bankruptcy law; Honorable Charles E. Wiggins, Judge of the United States Court of Appeals for the Ninth Circuit, who reminisced about the work of the Commission on the Bankruptcy Laws of the United States and the events leading up to the Bankruptcy Reform Act of 1978; the Honorable Justice Clarence Thomas, Associate Justice of the United States Supreme Court, who discussed bankruptcy opinions he had authored while on the Supreme Court; and Professor Lawrence P. King, a distinguished Professor of Law at New York University School of Law and Editor-in-Chief of *Collier on Bankruptcy*. I will return to the subject of Professor King’s speech at the end of my remarks.

“In thinking about a subject for my remarks this evening, my thoughts kept returning to the College itself, and I decided that it would be useful to explain the origin, purposes, and projects of the College. In welcoming the Inductees, the Chairman of the Board of Regents traditionally describes the purposes of the College. They are to honor and recognize distinguished bankruptcy professionals in an effort to set standards of achievement for others in the insolvency community and to fund and assist projects that enhance the highest quality of bankruptcy practice. Membership is limited, not by profession or occupation, but by the requirement that inductees possess the highest ethical standards, a high level of character, integrity, professional expertise and leadership which demonstrates the likelihood that they will continue to contribute to the enhancement of bankrupt-

cy scholarship, continuing education, and the bankruptcy process, and that they have demonstrated significant evidence of scholarship, teaching, lecturing, or writings on bankruptcy practice, procedure, philosophy, improvements or reforms.

“The beginnings of the College go back to the early 1980s when the American Bankruptcy Institute was organized and obtained impetus from a mock hearing in the Senate Judiciary Room on the problems confronting the bankruptcy system as a result of the Supreme Court’s decision in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.* The mock hearing was possible because of strong support from Senator DeConcini and Representative Caldwell Butler, who had very significant roles to play in the final enactment of the Bankruptcy Reform Act of 1978. But the story of ABI is a story for another day. Let it suffice to say that one of the ideas of the founders of the ABI was to form a College, but the formation was postponed until the American Bankruptcy Institute had matured by way of financial resources and membership. By early 1989 the Executive Committee of the American Bankruptcy Institute concluded that the time was right to form a College. It was incorporated in early 1989 by Harry Dixon and the Honorable William L. Norton, Jr. Ed Creel joined them as the original directors and officers. The announcement of the formation of the College was met with some humor. Richard Lieb, a distinguished lawyer in New York City, wrote Judge Norton inquiring ‘how do I get into college?’ It took several years to develop the Bylaws and actually launch the College. One of the early questions which had to be answered was whether judges could be part of the organization. I volunteered the services of my long-time partner and distinguished constitutional scholar, John P. Frank. After Mr. Frank furnished a written opinion to the effect that it was appropriate, judges were included as Fellows. The first class of fifty-seven was substantially comprised of the Board of Directors, the Board of Regents, and the Circuit Admissions Council. In Harry Dixon’s words, “The

first class was a bit adventuresome because they were associating their reputations with an entity that might not be successful. They were also paying \$1,000 for the privilege!” Jerry Patchan came up with the idea of the rosette. But, again, in Harry Dixon’s words, “The real stroke of genius came from Bob Fiedler. Bob came up with the idea of having the Induction Ceremony in the Great Hall of the United States Supreme Court. In his job, he was in a position to talk with Chief Justice Rehnquist about the idea. The Court’s rule was and still is that a Justice had to be present if the Hall was to be used. Chief Justice Rehnquist granted Bob’s request despite the fact that no other organization like the College had ever been so permitted to use the Great Hall.” In later years Justice Sandra Day O’Connor was to do the same.

“The American Bankruptcy Institute was extremely supportive in the early years. It was not until 1996 that the College was able to become truly independent and, with the passage of a resolution of the College’s Board of Directors honoring Mr. Dixon and the American Bankruptcy Institute for their support, the College was on its own.

“The College has been blessed with strong leadership, including the important position of Chairman of the Board of Regents, which selects new members, in Merrill Francis and John Barrett, and in the office of President, which was held by Ed Creel, Ray Shapiro, Neal Batson, Ralph Mabey, and Evelyn Biery. The College has developed in ways that were not even dreamed of initially. Under the guidance of the Honorable Mary Davies Scott, the College is participating with the National Conference of Bankruptcy Judges and others in the funding of the Bankruptcy Archives Project at the University of Pennsylvania Law School. This is a very important project and is progressing better than anyone anticipated due to the financial support of Matthew Bender, Lexis/Nexis in honor of Professor Lawrence P. King. Judge Scott was also able to obtain substantial materials for the archives from the papers of Professors Ken Klee and Lawrence P. King and one hundred boxes of materials from the Southern District of New York rescued with the aid of the Honorable Burt Lifland. Judge Scott also persuaded the National Conference of Bankruptcy Judges to place its archives in the depository.

Judge Scott's interesting report concerning the National Bankruptcy Archives was published in the August 2002 issue of the *College Columns*. Copies of the *College Columns* are available on the College's Extranet created with the help of Fellow Ron Martin.

"Although time limits my discussion of what is underway at the College, I do want to mention two important developments. First, primarily at the urging of John Barrett, the College has expanded its membership to include foreign professionals involved in the insolvency field. This is a recognition of the fact of globalization and the need to exchange ideas in the field of insolvency. It is also a recognition of the importance of cross-border insolvencies, which was also recognized by the American Law Institute in its project that stated the insolvency laws of Canada, Mexico, and the United States, in French, English, and Spanish, and developed principles for handling cross-border insolvencies.

"Second, the College has assigned a priority to, in Professor King's words, 'giving something back,' by supporting local bankruptcy *pro bono* projects throughout the country with grants and by creating a foundation as a funding vehicle for these projects. These activities were summarized by Chairman Batson as follows:

"The Foundation will support the educational and *pro bono* activities of the College, including the National Bankruptcy Archives. It will provide an opportunity for each member of the College to 'put something back' into the profession and the community. During the last several years, the College has made significant contributions in the field of education and in supporting neighborhood justice centers in providing debt counseling to low income families. Specifically, we have sponsored undergraduate and graduate courses in bankruptcy and consumer bankruptcy at St. John's University School of Law, the University of Alabama School of Law and the University of California, Davis School of Law, which have been taught by distinguished members of the College. In addition, the support of neighborhood justice centers has included the "Fresh Start Clinic" in Philadelphia, the "Put Something Back" project in Miami, and similar programs in Tucson, Arizona; Rochester, New York; Des Moines, Iowa; Seattle,

Washington; and the State of New Jersey.

"Since 1996, the College has presented at its Spring Meeting its Distinguished Service Award to one or more persons who have made significant contributions to improving the administration of justice in the insolvency and bankruptcy fields on an uncompensated basis. Recipients have included Professors Frank R. Kennedy and Lawrence P. King, Judges Joe Lee and William L. Norton, Jr., and practitioners Leon Forman, George Treister, Barney Shapiro, and Leonard Rosen. And Saturday afternoon at the College luncheon I will have the privilege of presenting the Award this year to Jerry Patchan. Jerry was a member of the First Class of Inductees. After several careers, he went on to put life into the U.S. Trustee Program. I am a supporter of that program. I had the privilege of serving as Deputy Director of the Staff of the Commission on the Bankruptcy Laws of the United States. One of the important tasks of that Commission was to make recommendations as to the administration of the bankruptcy system. Several studies were done for the Commission, and the Commission had the recently published Bookings Report. I analyzed these materials, the historical materials, and submitted a brief to the Commission. The Commission made a number of administrative recommendations, but the key recommendation was that of an independent agency to administer the system.

"There was resistance to this recommendation. It was implemented in a watered down version as a pilot program and finally, as part of the 1986 Amendments to the Code, it became part of the bankruptcy system, with the exception of the districts for two states. The program varies considerably from the Commission's more adventuresome recommendations.

"The U.S. Trustee Program got off to a rocky start and of course those who were opposed to the program wasted no time in criticizing the program. However, the program survives and was placed on a sound footing under the guidance of College Fellow Jerry Patchan. There probably is not a single one of us that has not had some difficulty, dispute or complaint about the U.S. Trustee Program. This will always be true. But on balance, I believe that the program is working and has brought stability and integrity to the system. And I

was pleased to learn that under the current Executive Director Lawrence Friedman, with the able assistance of General Counsel Joe Guzinski, the Executive Office is studying the Business Judgment Rule.

"I would like to close by commenting more fully on the remarkable presentation by Professor King. His remarks are set forth in the June 2001 *College Columns*, along with comments by Chairman Raymond Shapiro and Scholar-in-Residence Professor Alan N. Resnick. In his speech at the March 30, 2001 Induction Ceremony, Professor King discussed his *pro bono* work in legislative and educational efforts and extolled the Inductees to give generously of their time. In his words:

There is a lot out there that can be done. Legislative work is always timely. Keep in touch with your members of Congress; if you are not known, find someone in your firm, or roster of friends or clients who is. Include Representatives and Senators. If you have a string to the White House, use it and turn it into a rope. Plan in advance. Share your expertise by writing sensible articles. The key word is sensible. Participate in bar association functions; be active, volunteer to do work.

Get involved in *pro bono* work. You will get a lot of satisfaction in helping people. In whatever form you wish to express yourself, remember, give something back.

"I said this was a remarkable speech, but not just because of its message. Larry was in the last days of his battle with cancer. He died after the long drive back to his home in New York City, less than forty-eight hours after his speech!" ☮



Acknowledgements

The American College of Bankruptcy would like to acknowledge and thank the following 2004 Patrons and Sponsors without whose help our educational sessions and events would not be possible.

PATRONS

AlixPartners LLC
Jay Alix
Albert A. Koch
Edward J. Stenger
Bettina M. Whyte

Alston & Bird LLP
R. Neal Batson
Grant T. Stein

Andrews & Kurth, LLP
Hugh M. Ray

BBK, Ltd.
Ray R. Graves

Beckley Singleton
Kaaran E. Thomas

Berger Singerman, PA
Paul Steven Singerman

Bingham McCutchen LLP
Tina L. Brozman
Robert M. Dombroff
Evan D. Flaschen
Guy B. Moss
Michael J. Reilly

Blank Rome LLP
Leon S. Forman
Raymond L. Shapiro

Bush Ross Gardner Warren & Rudy, P.A.
Jeffrey W. Warren

Cohn Khoury Madoff & Whitesell LLP
Daniel C. Cohn

Davis Polk & Wardwell
Donald S. Bernstein
Stephen H. Case

Ernst & Young Corporate Finance LLC
Martin Nachimson
Warren W. Petraglia

Fried, Frank, Harris, Shriver and Jacobson LLP
Brad Eric Scheler
Alan N. Resnick

FTI Consulting Inc.
Dominic DiNapoli
Ronald F. Greenspan
Thomas E. Lumsden
M. Freddie Reiss

Fulbright & Jaworski L.L.P.
John A. Barrett
Evelyn H. Biery
Zack A. Clement

Goldberg Kohn Bell Black Rosenbloom & Moritz, Ltd.
Gerald F. Munitz
Alan P. Solow
Ronald Barliant

Goodwin Procter LLP
Daniel M. Glosband
Michael J. Pappone
Jon D. Schneider

Greenberg Traurig, LLP
Mark D. Bloom
Keith J. Shapiro
G. Ray Warner

Hale and Dorr LLP
Paul P. Daley
Mark N. Polebaum
C. Hall Swaim

Heller, Draper, Hayden, Patrick & Horn L.L.C.
Douglas S. Draper
Jan M. Hayden
Edward M. Heller
William H. Patrick III

Jenner & Block, LLC
Daniel R. Murray
Ronald R. Peterson
Catherine Steege

Jones Day
Corrine Ball
David G. Heiman

Jones, Walker, Waechter, Poitevent, Carrere & Denegre, LLP
Elizabeth J. Futrell
R. Patrick Vance

Kroll Zolfo Cooper, LLC
Stephen F. Cooper

LeBoeuf Lamb Greene & MacRae LLP
Ralph R. Mabey
Steven J. McCardell
Neal L. Wolf

Mayer, Brown, Rowe & Maw LLP
Lawrence K. Snider
J. Robert Stoll

Milbank, Tweed, Hadley & McCloy LLP
Paul S. Aronzon
Robert Jay Moore

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
Richard E. Mikels

Navigant Consulting
Kenneth J. Malek

Norton Institutes on Bankruptcy Law, Inc.
Hon. William L. Norton, Jr.

Pachulski, Stang, Ziehl, Young, Jones & Weintraub
Richard M. Pachulski
Arnold M. Quittner
William P. Weintraub

Pepper Hamilton LLP
I. William Cohen
Robert S. Hertzberg
Stuart E. Hertzberg
Michael H. Reed
Barbara J. Rom

Reed Smith LLP
Francis P. Dicello
Paul M. Singer
Eric A. Schaffer
Claudia Z. Springer

Ropes & Gray LLP
Stuart Hirshfield
William F. McCarthy
Charles P. Normandin

Seyfarth Shaw
Robert Somma

Sheppard, Mullin, Richter & Hampton LLP
Michael H. Ahrens
Merrill R. Francis
Prentice O'Leary
Joel R. Ohlgren

Sidley Austin Brown & Wood LLP
H. Bruce Bernstein
Richard W. Havel
Sally S. Neely
Richard T. Peters

Skadden, Arps, Slate, Meagher & Flom LLP
D. Jansing Baker
John Wm. Butler, Jr.
Richard B. Levin
Alesia Ranney-Marinelli

Stroock & Stroock & Lavan
Lawrence M. Handelsman
Lewis Kruger

Stutman Treister & Glatt
Jeffrey H. Davidson
Herman L. Glatt
Robert A. Greenfield
Isaac M. Pachulski
Alan Pedlar
George M. Treister
George C. Webster II

Weil, Gotshal & Manges, L.L.P.
Martin J. Bienenstock
Marcia L. Goldstein
Stephen Karotkin
Alan B. Miller
Deryck A. Palmer

Willkie Farr & Gallagher LLP
Myron Trepper
Marc Abrams

Winston & Strawn LLP
Matthew J. Botica
Patrick A. Murphy
Randy Rogers
Bernard Shapiro
Margaret Sheneman

SPONSORS

Adams and Reese/Lange Simpson LLP
Richard P. Carmody

Adelman, Gettleman, Merens, Berish & Carter, Ltd.
Howard L. Adelman

Ballard Spahr Andrews & Ingersoll, LLP
Carl A. Eklund

The Blackstone Group LP
Timothy R. Coleman
Arthur B. Newman

Bradley Arant Rose & White, LLP
John P. Whittington

Buchalter, Nemer, Fields & Younger
Pamela Kohlman Webster

Burr & Forman LLP
Robert B. Rubin

Campbell & Levine, LLC
Douglas A. Campbell
Stanley E. Levine

Cozen O'Connor
Arthur J. Abramowitz
Neal D. Colton
William Lipkin

Danning, Gill, Diamond & Kollitz, LLP
David A. Gill

Duane Morris LLP
William S. Katchen
Neil P. Olack
David T. Sykes
John Collen

Felderstein Fitzgerald Willoughby & Pascuzzi LLP
Steven H. Felderstein
Donald W. Fitzgerald

Fowler, Measle and Bell, LLP
Taft A. McKinstry

Fredrikson & Byron, P.A.
James L. Baillie
Faye Knowles

Frost Brown & Todd LLC
Edmund J. Adams
Hon. William T. Bodoh

Gibbons, Del Deo, Dolan, Griffinger & Vecchione
Karen A. Giannelli
Frank J. Vecchione

Gold Lange and Majoros, P.C.
Stuart A. Gold

Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC
Lawrence D. Coppel

Hangley Aronchick Segal & Pudlin
Joseph A. Dworetzky

Haynes and Boone
Robert D. Albergotti
Charles A. Beckham, Jr.
Robin E. Phelan

Hendel & Collins P.C.
Philip J. Hendel

Hennigan, Bennett & Dorman, LLP
Bruce Bennett

Heuking Kühn Lüer Wojtek
Dr. Hans-Jochem Lüer

Holland & Hart LLP
Ronald M. Martin
Larry E. Prince
Jack L. Smith

Holland & Knight LLP
Leonard H. Gilbert
Samuel J. Zusmann, Jr.

Howard, Rice, Nemerovski, Canady, Falk & Rabin
James L. Lopes

Hughes, Watters & Askanase, L.L.P.
Joel P. Kay

Kilpatrick Stockton LLP
Alfred S. Lurey
Joel B. Piassick

Klee, Tuchin, Bogdanoff & Stern LLP
Kenneth Klee
Lee R. Bogdanoff

Klett Rooney Lieber & Schorling, P.C.
William H. Schorling

Kozyak Tropin & Throckmorton, P.A.
John W. Kozyak

Kutak Rock LLP
Kevin R. Huennekens

Lane Powell Spears Lubersky LLP
Charles R. Ekberg
Mary Jo Heston

Latham & Watkins
Michael S. Lurey
Robert J. Rosenberg
Robert B. Wessling

Lewis and Roca LLP
Susan M. Freeman
Gerald K. Smith

McCarter & English LLP
Richard W. Hill

McGuireWoods LLP
H. Slayton Dabney, Jr.
Louis W. Levit
Richard J. Mason
Robert G. Sable

McKenna Long & Aldridge LLP
Charles E. Campbell
Gary W. Marsh

Mesch, Clark & Rothschild, P.C.
Lowell E. Rothschild
Michael W. McGrath

Miller & Martin LLP
Shelley D. Rucker

Morgan, Lewis & Bockius LLP
Michael A. Bloom
G. Larry Engel
Robert H. Scheibe
Richard S. Toder

Edward J. Nazar, Esq.

Neal & Harwell, PLC
James R. Kelley

Nelson Mullins Riley & Scarborough LLP
George B. Cauthen

Nixon Peabody LLP
Mark N. Berman
Daniel W. Sklar
William S. Thomas, Jr.

O'Melveny & Myers LLP
Ben H. Logan
Robert J. White
Joel B. Zweibel

Orrick, Herrington & Sutcliffe LLP
Frederick D. Holden, Jr.
Marc A. Levinson

Paul Hastings Janofsky & Walker LLP
Jesse H. Austin, III

Peitzman, Glassman, Weg & Kempinsky LLP
Lawrence Peitzman
Howard J. Weg

Phillips Lytle LLP
William J. Brown

Piper Rudnick LLP
Richard M. Kremen

Quarles & Brady LLP
Susan G. Boswell
Melanie Rovner Cohen
Roy L. Prange, Jr.

Reimer & Braunstein LLP
Joseph Braunstein

Schulte Roth & Zabel
Michael L. Cook
Jeffrey S. Sabin

Schwartz, Cooper, Greenberger & Krauss
Richard M. Bendix, Jr.
Malcolm M. Gaynor

Seltzer Caplan McMahon Vitek
Victor A. Vilaplana

Shaw Gussis Fishman Glantz & Wolfson & Towbin LLC
Robert M. Fishman
Steven B. Towbin

Stonecipher Cunningham Beard & Schmitt, P.C.
Philip E. Beard

Togut Segal & Segal LLP
Albert Togut

Troutman Sanders LLP
Ezra H. Cohen

Wachtell, Lipton, Rosen & Katz
Harold S. Novikoff
Leonard M. Rosen
Richard G. Mason

Womble Carlyle Sandridge & Rice, PLLC
Thomas B. Anderson, Jr.
Bonnie Kay Donahue
William B. Sullivan

American College of Bankruptcy Foundation Report



By Raymond L. Shapiro

The American College of Bankruptcy Foundation has completed its third full year. Through the support of our donors we have accumulated a base of funds that the Foundation Board determined was appropriate for a start-up organization. We are now able to allocate funding for the coming year for educational programs, pro bono activities, the College Archives and other appropriate charitable endeavors. Allocations have already been approved by the Foundation Board.

The Foundation operates under a Federal tax exemption so that all donations are considered charitable and deductible on an individual donor's income tax return. Our main sources of income are the contributions from the College equal to annual initiation fees, individual donations from Fellows and donations from law firms and other outside organizations. During the year 2004, the aggregate

contributions to the Foundation will exceed \$100,000.

We have expanded our Board to 16 members, which also gives us excellent diversity and enhanced governance. Our accumulated assets will soon reach approximately \$300,000. We are ably serviced by Armstrong & Associates International, Inc., who will continue as our Administrator for 2005.

Fellows are invited to make contributions to the Foundation by adding on a payment to their dues bill and through year end tax planning donations. Of course, our doors are always open to receive contributions. To date in 2004, approximately 100 Fellows contributed to the Foundation. We are hopeful that in 2005 that number will substantially increase and the Foundation will continue to grow to provide needed funding for worthy causes related to the bankruptcy process.

We wish to thank the following Fellows who made individual contributions to the Foundation to date in 2004. Please give something back and add your name to this list.

Foundation Donors List

American College of Bankruptcy Foundation Donations to date for 2004
Total donations of \$31,255 have been received from 100 Fellows as of December 3, 2004

Name	Fellow	Name	Fellow	Name	Fellow
9th Circuit Fellows		Gindin, Hon. William H.		Paskay, Hon. Alexander L.	
Abramowitz, Arthur J.		Glass & Associates, Inc.	Shaun K. Donnellan	Piassick, Joel B.	
AlixPartners LLC	Jay Alix	Glosband, Daniel M.		PwC Advisory	Tomoo Tasaku
Armel, Daniel E.		Gold, Lange & Majoros, P.C.	Stuart A. Gold	Rabin & Rabin Co., LPA	Mary Ann Rabin
Bankruptcy Examiners Inc.		Greenspan, Ronald F.		Redmond, Christopher J.	
and Crumley Consultants	Charles C. Crumley	Hartt, III, Grover		Redmond, Patricia A.	
Batson, R. Neal		Hendel, Philip J.		Reiss, M. Freddie	
Bernstein, Hon. Stuart M.		Hertzberg, Stuart E.		Riblet, Hon. Robin L.	
Biery, Evelyn H.		Houston, III, Hon. David W.		Ropes & Gray LLP	Stuart Hirshfield
Bloom, Michael A.		Hutson Hughes & Powell, P.A.		Sabin, Jeffrey S.	
Bohm, Jeff			Richard M. Hutson, III	Sakai, Hideyuki	
Botica, Matthew J.		Karotkin, Stephen		Schaffer, Eric A.	
Butler, Jr., John Wm.		Kilpatrick and Associates, P.C.		Shapiro, Raymond L.	
Campbell, Charles E.			Richardo I. Kilpatrick	Sheinfeld, Myron M.	
Carmody, Richard P.		Klee Tuchin Bogdanoff & Stern LLP		Sheppard, Mullin, Richter & Hampton LLP	
Cassels Brock & Blackwell	E. Bruce Leonard	Kenneth N. Klee, Lee R. Bogdanoff		Joel R. Ohlgren, William M. Burke,	
Chubb, Janet L.		Kline, Hon. David A.		Merrill R. Francis, Prentice L. O'Leary	
Cohen, I. William		Kozyak Tropin & Throckmorton, P.A.		Singer, Paul M.	
Cohen, Mitchell H.			John W. Kozyak	Snider, Lawrence K.	
Conti, Hon. Joy Flowers		Kraemer, Lillian E.		Springer, Claudia Z.	
Dabney, Jr., H. Slayton		Levin, Richard B.		Stenger, Ted	
Dann Pecar Newman & Kleiman, P.C.		Lifland, Hon. Burton R.		Stichter, Riedel, Blain & Prosser, P.A.	
	David H. Kleiman	Lorch, III, Hon. Basil H.			Harley E. Riedel
Davis Polk & Wardwell	Stephen H. Case	Mabey, Hon. Ralph R.		Stoll, J. Robert	
Derby, Hon. E. Stephen		Malek, Kenneth J.		Sykes, David T.	
Dicello, Francis P.		Mannes, Hon. Paul		Takagi, Hon. Shinjiro	
Dixon, Jr., Harry D.		McDaniel, Jarrel D.		The William Penn Foundation	
Donahue, Bonnie Kay		McFeeley, Hon. Mark B.			Joseph A. Dworetzky
Ellenberg, Mark C.		McGarity, Hon. Margaret Dee		Tice, Jr., Hon. Douglas O.	
Everly, Barbara A.		Miller, Harvey R.		Towbin, Steven B.	
Forman, Leon S.		Munitz, Gerald F.		Vance, R. Patrick	
Forman, Leon S.*	*Award Earmarked for	Nazar, Edward J.		Vaughn, Hon. Mark W.	
National Bankruptcy Archives		Neely, Sally Schultz		Wachtell, Lipton, Rosen & Katz	
Fredrickson & Byron, P.A.	James L. Baillie	Nicholls & Crampton, P.A.	Gregory B. Crampton		Richard G. Mason
Fridy, Tommy Joe (T.J.)		Normandin, Charles P.		Webster II, George C.	
Gibson, Prof. S. Elizabeth		Ogle, Robert E.		Westbrook, Prof. Jay L.	
Gilbert, Leonard H.		Pachulski, Stang, Ziehl, Young, Jones & Weintraub P.C.	William P. Weintraub	Zinman, Prof. Robert M.	

The Directors of the American College of Bankruptcy Foundation include the following: Raymond L. Shapiro, Chair; Joel B. Piassick, Secretary; Leonard H. Gilbert, Treasurer; George B. Cauthen, I. William Cohen, H. Slayton Dabney, Jr.,

Philip J. Hendel, Stuart Hirshfield, Joel P. Kay, Richardo I. Kilpatrick, Edward J. Nazar, Joel R. Ohlgren, Hon. Mary Davies Scott, Myron M. Sheinfeld, Lawrence K. Snider, and David T. Sykes.

**AMERICAN COLLEGE OF BANKRUPTCY BOARD OF DIRECTORS MEETING
October 15, 2003 — APPROVED March 19, 2004**



By Daniel M. Glosband

A meeting of the Board of Directors of the College was conducted on Wednesday October 15, 2003, at the San Diego Marriott and Marina, San Diego, California. The

following were in attendance: Hon. Ralph R. Mabey, Merrill R. Francis, Evelyn H. Biery, Susan M. Freeman, Robert B. Rubin, Ronald M. Martin, I. William Cohen, Sally S. Neely, David Heiman, Joel B. Piassick, Paul M. Singer, Raymond L. Shapiro, Donald S. Bernstein, David T. Sykes, Hon. A. Thomas Small, Hon. Mary Davies Scott, William Perlstein, Gerald K. Smith, John A. Barrett, Prof. Alan Resnick, Stuart Hirshfield (by telephone), Richard S. Toder, Prof. Grant W. Newton, Daniel M. Glosband and Suzanne Bingham.

The minutes of the March 28, 2003 meeting were corrected to note that the term of Jerome Shulkin (and not Stuart Hirshfield) had expired. On motion duly made and seconded, the Board approved the minutes of the March 28, 2003 meeting, as so corrected.

The chair noted that Leonard H. Gilbert, Chair of the Judicial Nominating Committee, was absent. Leonard had recently undergone surgery and was reported to be recovering well.

John A. Barrett, Chair of the Board of Regents, reported that nominations for approximately 60 Fellows (including six judges) had been received and would be considered at the Regents meeting. A new nomination form reflects Bylaw amendments and requires more data than the prior form. There was a 65% turnover among Regents and Circuit Council members this year. Paul Singer will replace John Barrett, whose term as chair ends this year. The Board discussed the disposition of records of the nomination process. On motion duly made and seconded, the Board directed the Board of Regents to draft and propose a policy for the retention or destruction of records by the Regents and Circuit Admission Councils that takes into account both confidentiality and archival issues. The Regents have asked Fourth Circuit Regent Bonnie Kay Donahue to lead this effort. The Board also discussed the apparent failure of the

Second Circuit to circulate the names of proposed nominees to all Fellows in the circuit as required by the Bylaws. The Chair delegated the treatment of this issue to the Board of Regents.

Because Neal Batson, Chair of the Distinguished Service Award Committee, was unable to attend the meeting, John Barrett also presented the Committee's report. The selection process was not concluded at the meeting and continued through circulation of materials to the Directors subsequent to the meeting.

Liaison Committee Chair Tom Small reported on the change in speakers for the joint College/NCBJ lunch. He suggested two projects for consideration. The first would be a joint research project with the National Bankruptcy Conference, while the second would be co-sponsorship of an educational program at an American Bankruptcy Institute conference. Educational Program Committee Chair Sally Neely noted that the College would co-sponsor the 2004 Conference on the valuation of assets at the University of Texas. The Conference will serve as a test to evaluate criteria for future joint programs. Following a discussion of joint activities, the Board agreed that Directors who attend the ABI Winter conference would assess the desirability of formal involvement by the College. Judge Small undertook to further pursue the proposed projects and report to the Board.

Paul Singer, Chair of the Future of the College Committee, reported the reconstitution of the Committee to replace its least active members. He also raised for discussion the College's committee structure, including limits on the number and duration of terms of committee members and chairs, ad hoc versus standing committees on substantive topics, number of committee or other assignments for individual Fellows and the overarching issue of broader Fellow participation. The Committee recommended that the College from time to time designate ad hoc committees to study important topics and develop "best practices" which could be presented as definitive drafts or educational programs and the Board agreed. The Chair appointed a Best Practices

Steering Committee of David Heiman as Chair, Don Bernstein, Paul Singer, Stuart Hirshfield, Mary Scott, Evelyn Biery, Susan Freeman, Richardo Kilpatrick, Alan Resnick and David Sykes. The Future of the College Committee also announced that it would present an orientation for newly inducted Fellows on the morning following the ceremony. Mary Scott and Richard Toder will chair the orientation. On motion duly made and seconded, the Best Practices and Orientation appointments were ratified.

A spirited discussion of Committee term issues led to a majority vote approving a motion duly made and seconded that the terms of committee members and chairs (a) commence simultaneously with the term of the Chair of the Board, (b) be for two years but (c) not be limited to a specified number of terms. Counsel will prepare a draft of Bylaw revisions to implement the vote, subject to review and a vote on the language. The Future of the College Committee also raised the topic of encouraging attendance at the Annual Meeting by professors and judges and suggested creation of a fund to subsidize their expenses. After discussion, on motion duly made and seconded, the Chair was granted discretion to waive registration fees of judges and professors who have no source of reimbursement but no funding was authorized.

Paul Singer reported that the Pro Bono Committee received a strong response to its advertisement for grant requests and awarded over \$23,000 in grants this year. The Committee has focused its funding on projects related to the delivery of legal services without limiting grants to specific, limited activities. The Committee is moving to a model of three-year grants with annual compliance certification.

Professor Grant Newton reported that the College remains solvent and projects calendar 2003 excess of receipts over disbursements of approximately \$6,500. Disbursements include \$34,900 to the American College of Bankruptcy Foundation. He proposed engagement of Harvey Jester, CPA, to perform the 2003 consolidated audit of the College and the Foundation for a fee of approximately \$7,000. On motion duly made and seconded, the Board approved the engagement of the auditor. The proposed budget was modified to reduce

continued on page 11

Changes in Induction Ceremony Weekend

The College has been most successful in attracting outstanding Inductees and in hosting great meetings in Washington, D.C. each year. Successes, of course, help us to reach higher and recommend the following adjustments to our spring meetings. These adjustments should make next spring's meetings, March 18-19, 2005, in Washington, D.C., the best ever.

Friday, March 18, 2005

Induction Ceremony in the Great Hall of the Supreme Court: The Induction Ceremony for the Class of 2005 will, as before, be conducted in the Great Hall of the Supreme Court. Inductees will, as before, receive tickets for a limited number of guests.

Because attendance in the Great Hall is

limited by the Supreme Court security staff to 300 persons, those others of us who desire to attend the Induction Ceremony will be asked to prioritize our interest in attending ((1) extremely interested, (2) very interested, (3) interested if seats are available) so that the remaining seats may be allocated appropriately.

Friday, March 18, 2005, Gala Reception and Dinner at the Library of Congress: Immediately following the Induction Ceremony, the College will gather at the Library of Congress for dinner and celebration. This venue should allow us to accommodate all Fellows and their guests who desire to attend.

The reception previously held at the Supreme Court for Inductees will be replaced by the reception and dinner at the Library of Congress so that all who wish to attend may toast our newest Fellows.

Saturday, March 19, 2005

The College's outstanding educational programs, business meetings, and All Fellows Luncheon will be scheduled as before on Saturday.

There will be no College-wide Saturday evening program at the Metropolitan Club. Circuits and informal groups of Fellows are encouraged to make their own plans for that evening.

Other Events

The College's Salon, the program of the International Insolvency Institute, the meetings of the Board and Regents, the Circuit lunches and all other activities of our spring meetings will proceed as before.

Please reserve for us the dates of March 18 and 19, 2005, in Washington, D.C.

Board of Director's Meeting Minutes

continued from page 10

spending on the archive project, pro bono projects and education by \$5,000 each in light of funding to be provided by the Foundation. On motion duly made and seconded, the Board approved the budget as so modified. Additional financial highlights include the following: a declining number of dues delinquencies to 13; \$146,500 in patron and sponsor pledges, of which \$86,000 has been received; investments in four layered CDs for \$100,000 each; and timely filing of tax returns for 2002.

The National Bankruptcy Archives have received and inventoried almost 200 boxes of materials and is steadily building. Mary Scott advised that the archives need additional committed funding of \$35,000 per year for 2004 and 2005 to supplement the two remaining years of Lexis/Nexis' commitment of \$25,000 per year in honor of Professor Lawrence King. The College's budget (as adjusted for a Foundation contribution) includes this sum for 2004.

Professor Alan Resnick, Scholar in Residence, reported that the All Fellows luncheon would feature a presentation on equitable subordination and debt recharacterization by Professor Ken Klee and Ed Smith. Professor Klee continues work

on a monograph or short book on Supreme Court bankruptcy-related decisions and is seeking a Rockefeller Foundation grant to fund a retreat to work on the project. A suggestion for a similar project on cross-border insolvency cooperation is under consideration. Professor Resnick would like to receive suggestions for the March 2004 programs.

Legal counsel Bill Perlstein distributed Bylaw revisions approved at the March 2003 meeting. In addition, he recommended the elimination of restrictions against (a) more than one nominee per firm per year if their offices are in the same judicial circuit and (b) voting on the nominations of judges by Fellows who reside in the same judicial district in which the judges reside. On motion duly made and seconded, the Board approved the amendments.

Sally Neely reported that the Educational Programs Committee would continue and expand its Honored Law Students Program to include the 5th, 6th, 7th, 8th, 10th and 11th Circuits for 2004. She will solicit assistance in identifying students from Directors and Regents. Expanding on the earlier discussion of the VALCON Conference with the University of Texas, she advised that the College had been influential in selecting faculty and that it had no financial commitment but the possibility of a small financial return.

Meetings and Events Chair Bill

Cohen briefly reported on the 2003 regional programs and promised to stay on top of those programs for 2004.

Ray Shapiro, Foundation Chair, indicated that solicitation of contributions would begin in December. Mechanisms to permit bereavement contributions and estate planning options are being developed. The Foundation Board now has 15 members and may grow to 19. The Board has approved spending of \$25,000 to support projects during 2004 (and the College has reduced its budgeted expenditures by \$15,000 in reliance on contributions of \$5,000 each to its funding for the archives, pro bono grants and educational programs). The Board congratulated the Foundation on its progress. ☰

Fellow on Michigan Gaming Control Board



Barbara Rom, a partner at Pepper Hamilton LLP in Detroit, has been appointed by Governor Jennifer Granholm to serve on the Michigan Gaming Control Board. ☰

In Memory of Hon. Ralph Kelley



Bankruptcy Judge and former Chattanooga, Tennessee Mayor Ralph Kelley died June 22, 2004, after a bout with cancer. As mayor in the early 1960s, Judge Kelley was a leader in calling for racial equality and harmony in the city.

He supported a resolution by the City

Commission in September 1963 that officially desegregated all city-owned facilities.

Judge Kelley was also remembered for his fight to try to have Chattanooga keep the historic locomotive "The General." It had stood as a landmark at the Union Station since 1901, but citizens of Kennesaw, Georgia, claimed it should be in their state. The Louisville and Nashville Railroad began negotiations on behalf of Georgia to acquire The General. When The

General was to pass through Chattanooga from Louisville, Kentucky, on its way to Kennesaw, Mayor Kelley and other officials took over the train control tower and ordered the engine switched to a side track. It was put under guard by local police officers for seven days until Kennesaw finally got a court order directing that it be released. Chattanooga fought the matter in court, but The General wound up at the Big Shanty Museum in Kennesaw. ☪

In Memory of Newell Blair



Newell Blair, 97, a Washington lawyer and businessman who founded three legal newsletters, died of pneumonia June 14, 2004. Newell first lived in Washington as a child during World

War I while his father served with the Salvation Army in France and his mother, who later co-founded the Women's National Democratic Club, worked in the U.S. War Department.

Newell's first legal job in Washington was in 1934 with the Reconstruction Finance Corporation and then with the Securities and Exchange Commission. In 1938, he left government service to start a law practice with his father. When his father retired in 1962, he closed the firm and moved into the business realm while continuing to practice law.

In 1970, Newell started a legal newsletter, Corporate Reorganization Reporter, which followed the bankruptcy proceedings of the Penn Central Railroad. His second publication, Bankruptcy Court Decisions, was tar-

geted to bankruptcy attorneys and referees or judges. His last major publication, Special Education Reporter, is now the Individuals with Disability Education Act Reporter. Mr. Blair sold his firm to LRP Publications in 1988 and retired.

Survivors include his wife of 69 years, Greta Flintermann Blair of Falls Church; four children, Harry W. Blair of Washington and New Haven, Conn., James N. Blair and Gwenda Linda Blair, both of New York, and Katherine Salant of Ann Arbor, Michigan; and seven grandchildren. ☪

Call for Volunteers

Please contact Evelyn Biery, president of the College, if you are interested in serving on the following committees:

Communications Committee

The purpose of the Committee is to oversee publication, revision and maintenance of the College Columns, Directory, Website, Extranet, and databases and to develop more efficient and economical methods of effectively communicating with members of the College on a regular basis.

John W. Kozyak, Chair
305-372-1800

Educational Programs Committee

The purpose of the Committee is to identify professorships and other educational programs for College sponsorship and to develop other programs designed to further the educational purposes of the College.

Sally Neely, Chair
213-896-6024

History of the College Committee

The purpose of the Committee is to gather, preserve and organize historical

materials and develop and publish a history of the College since its inception in 1990.

Ronald M. Martin, Co-Chair
716-475-7730
Mary Davies Scott, Co-Chair
501-221-1208

Liaisons Committee

The purpose of the Committee is to serve as liaison to the National Conference of Bankruptcy Judges, the National Bankruptcy Conference, the American Bankruptcy Institute, the Commercial Law League, the Association of Insolvency and Restructuring Advisors (AIRA), the Business Bankruptcy Subcommittee of the Section of Business Law of the American Bar Association, and other bankruptcy organizations as may be determined by the Chair of the College.

Hon. A. Thomas Small, Chair
919-856-4603

Meetings and Events Committee

The purpose of the Committee is to make arrangements for the Annual Meeting of the College in Washington, D.C., the Midyear Meeting of the College in conjunction with the meeting

of the National Conference of Bankruptcy Judges and other regional, state and city meetings of the Fellows of the College.

I. William Cohen, Chair
313-393-7341

National Bankruptcy Archives Committee

The purpose of the Committee is to carry out the purposes set forth in the agreement between the College and the University of Pennsylvania Law School with respect to the establishment and administration of the National Bankruptcy Archives located at the University of Pennsylvania Law School. Guidelines for donations to the National Bankruptcy Archives are listed on the College website at www.amercol.org/nba.html.

Hon. Mary Davies Scott, Chair
Winter: 850-927-3382

Pro Bono Committee

The purpose of the Committee is to identify clinical and other community programs devoted to providing debt counseling and other legal services to low income families for sponsorship by the College.

George B. Cauthen, Chair
803-799-2000

Induction of Fifteenth Class Spring 2004



Ronald Barliant Goldberg, Kohn, Bell, Black, Rosenbloom & Moritz, Ltd. Chicago, IL USA	John Collen Duane Morris LLP Chicago, IL USA	Hon. Basil H. Lorch III United States Bankruptcy Court New Albany, IN USA	Dean Lawrence Ponoroff Tulane University Law School New Orleans, LA USA	Richard Stern Luskin, Stern & Eisler LLP New York, NY USA
Roy Byrn (Byrnie) Bass, Jr. Harding, Bass, Fargason, Booth, St. Clair & Richards, L.L.P. Lubbock, TX USA	Prof. Marianne B. Culhane Creighton University School of Law Omaha, NE USA	Gary W. Marsh McKenna Long & Aldridge LLP Atlanta, GA USA	Patricia A. Redmond Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson, P.A. Miami, FL USA	Tomoo Tasaku PwC Advisory Chiyoda-ku, Tokyo, Japan
Michael St. Patrick Baxter Covington & Burling Washington, DC USA	Shaun K. Donnellan Glass & Associates, Inc. Canton, OH USA	Richard G. Mason Wachtell, Lipton, Rosen & Katz New York, NY USA	Eric A. Schaffer Reed Smith, LLP Pittsburgh, PA USA	Hon. Douglas O. Tice, Jr. United States Bankruptcy Court Richmond, VA USA
Dennis D. Bean Dennis Bean & Company Fresno, CA USA	Mark C. Ellenberg Cadwalader, Wickersham & Taft Washington, DC USA	W. Clarkson McDow, Jr. United States Department of Justice Office of the United States Trustee Columbia, SC USA	Carolyn S. Schwartz Attorney at Law New York, NY USA	J. Scott Victor SSG Capital Advisors, L.P. West Conshohocken, PA USA
Peter J. Benvenuti Heller Ehrman White & McAuliffe LLP San Francisco, CA USA	Tommy Joe (T.J.) Fridy Fridy Law Firm Sebree, KY USA	Hon. Mark B. McFeeley United States Bankruptcy Court Albuquerque, NM USA	Allan M. Shine Winograd, Shine & Zacks, P.C. Providence, RI USA	Prof. Bob Wessels Vrije University Amsterdam The Netherlands 3311 PB Dordrecht, The Netherlands
Peter C. Blain Reinhart Boerner Van Deuren S.C. Milwaukee, WI USA	Hon. Rosemary Gambardella United States Bankruptcy Court Newark, NJ USA	Michael McGrath Mesch, Clark & Rothschild, P.C. Tucson, AZ USA	Anita L. Shodeen Beving, Swanson & Forrest, P.C. Des Moines, IA USA	Gregory D. Willard Bryan Cave LLP St. Louis, MO USA
Lee R. Bogdanoff Klee, Tuchin, Bogdanoff & Stern, LLP Los Angeles, CA USA	Herbert M. Graves United States Department of Justice Office of United States Trustee Oklahoma City, OK USA	Robert E. Ogle Huron Consulting Group Houston, TX USA	Sheila T. Smith Deloitte Boston, MA USA	Prof. Jack F. Williams Georgia State University College of Law Atlanta, GA USA
Mitchell H. Cohen Gordon Brothers Retail Partners, LLC Boston, MA USA	Kathleen Horne Inglesby, Falligant, Horne, Courington & Chisholm Savannah, GA USA	Isaac M. Pachulski Stutman, Treister & Glatt Los Angeles, CA USA	Jack L. Smith Holland & Hart LLP Denver, CO USA	James H.M. Sprayregen Kirkland & Ellis LLP Chicago, IL USA
	Robbin L. Itkin Kirkland & Ellis LLP Los Angeles, CA USA	Prof. Christoph G. Paulus Humboldt-Universität zu Berlin Berlin, Germany	Ted Stenger AlixPartners LLC New York, NY USA	

Remarks Of Gerald K. Smith on the Occasion of the Presentation of the Distinguished Service Award to Jerry Patchan



"It is my pleasure to say a few words on the occasion of presenting the American College of Bankruptcy's Distinguished Service Award to Jerry Patchan. Prior recipients of the award have included such luminaries as Professors Frank R. Kennedy and Lawrence P. King, Judge William L. Norton, Jr., Judge Joe Lee, George Treister, Barney Shapiro, Leon Forman, and Leonard Rosen. What did they all have in common?"

"Public service – they all gave generously of their time.

World War II

"It is impossible to comprehend or describe the experience of participating in the Normandy Invasion. Jerry was the navigator of an LST, landing ship tank, in the invasion. Later he participated in the invasion of Southern France.

"As I look around the audience, I see many who have real memories of World War II. Although young at the time, I have intense memories not only of World War II, but also of being associated with those who served in the military during the War. At least for me, the most interesting way-posts on Jerry Patchan's journey through life were invasions of Normandy and Southern France. Winston Churchill characterized the Normandy invasion as "the greatest amphibious operation in history." And one in which it was anticipated the American and British would lose 10,000 men.

Lawyer, Judge and Teacher

"After returning from the South Pacific in 1946, Jerry Patchan was employed by May Company and then American Greetings. While at May Company, he got involved in purchasing supplies and worked with counsel. He concluded he could do the paperwork as well as the lawyer and enrolled in night school at the law school. By happenstance, one of his classmates persuaded Jerry to continue on with law school. Jerry did so, graduated, and started practicing as a solo practitioner in 1951.

"He later joined the well-known

Nadler firm and became involved in bankruptcy matters. After fourteen years he was appointed as a bankruptcy referee by the district court and was a referee until 1975 when he joined the well-known Cleveland law firm of Baker & Hostetler.

"I want to touch on Jerry's more academic lives. He was a key participant in the formulation of the Bankruptcy Rules. He served on the Advisory Committee on Bankruptcy Rules from 1978 to 1991. And while Director of the U.S. Trustee Program, he served in an ex-officio capacity from 1995 to 2000. And not only was he a lecturer for the bankruptcy judges, but he also was an adjunct professor at Cleveland State University. But clearly his major academic achievement was establishing the National Bankruptcy Training Institute for the U.S. Trustees and their staff.

Thankless Tasks

"We all recall the real estate depression and the failure of the S&Ls during the late 1980s and early 1990s. Not satisfied with heading up the National Insolvency and Reorganization Practice of Baker & Hostetler LLP, a prestigious Ohio law firm, Jerry Patchan took on a new task, Assistant General Counsel, Complex Litigation, Bankruptcy, and later Deputy General Counsel for the Resolution Trust Corporation. In these roles, he was involved in some of the more interesting cases of the 1990s.

U.S. Trustee

"In 1973, the Commission on the Bankruptcy Laws of the United States recommended an independent agency which would, among other things, police the bankruptcy system. Congressional acceptance of this proposal was halfhearted at best. A less than independent agency did not result until 1986. In its early years, the U.S. Trustee System had its problems, but these were solved and a strong institution developed under Jerry Patchan's leadership. It has a role that is critical to public confidence in the system and, although I would make it independent and broaden its charter, I am proud of my role in the Commission's recommendations, but even prouder of what

Jerry Patchan did. The entire program might have failed but for his leadership. I asked Martha Davis, Principal Deputy Director of the Executive Office of the U.S. Trustee, to describe Jerry's contributions to the U.S. Trustee Program. She did so as follows:

Jerry Patchan served as Director of the United States Trustee Program from December 1994 to February 2000. It was a challenging time for our young organization. The Attorney General had commissioned a study to determine whether the USTP could be privatized. Congress had passed the postconfirmation quarterly fee amendment which spawned court challenges throughout the country. The Judicial Conference sought to have the USTP transferred to the Judiciary. The National Bankruptcy Commission was beginning its work. And, in addition to bankruptcy reform, various bills were introduced and hearings held on the United States Trustee Program and the private trustees' call for due process. That the organization was able to survive these enormous challenges speaks, not only to Jerry's skill as a leader, but to his firm belief and advocacy on behalf of the value added by Program and its place in the bankruptcy system. The experience and respect that Jerry brought to the office as Director helped to bolster the Program's stature and credibility in the bankruptcy community at a time when it was especially needed.

"Jerry also helped us move forward as an organization. One of his acts as Director was to draft the Mission Statement which the Program still operates under today. The Program also developed guidelines for reviewing fees and expenses of bankruptcy professionals, fiduciary standards for Chapter 13 trustees to protect against self-dealing, a mediation process for trustee expense disputes, and an administrative review procedure for trustees who were suspended or terminated. Probably Jerry's most enduring legacy to the Program was the creation of the National Bankruptcy Training Institute in Columbia, South Carolina in 1998, which today trains hundreds of employees and private trustees each year. With a deep appreciation for history and a vision for the future, Jerry also redirected our operations to address the growing need for bankruptcy data, public information and new technologies. Jerry constantly impressed upon us the need to communicate with, and solicit views from, as many interested parties as possible. For him, the process by which a

decision was made was just as important as the decision itself, if not more so, and transparency was his watchword. Much of what he contributed is reflected in the way that we now conduct business.

"In sum, Jerry's staunch belief in what we did, and his commitment to integrity, greatly contributed to the Program's growth and success during a particularly formative stage of its development.

The Lighter Side

"By now, one would think that enough had been accomplished by a World War II veteran. Not so. Jerry Patchan took on a new and I am sure often thankless task. This time he took on the Chairmanship of the Fee Review Committee of Enron and its affiliates. He may have finally tilted at one windmill too many.


"I do not want to leave you with the idea that Jerry never does anything but work. He was an active equestrian. However, his primary hobby is the collection of antiquarian books. In his collection he has a first edition 1898 *Collier's* and a single volume treatise on Scottish bankruptcy law of the late 1700's written by "Bloody" McKenzie. Jerry Patchan is also a fun companion. When he visited our farm in Southeastern Arizona, he placed a bright red sign on an outside wall which announces that a pilot is on duty 24 hours a day. And after learning of our interest in the Indians of the Southwest, Jerry told my wife Jane and me about intricate designs made by the Ojibwa Indians by chewing on birch bark. A week after his visit, two beautiful examples arrived and

now adorn our living room wall.

Conclusion

"Jerry Patchan has had a remarkable career. He has taken on tough jobs and performed each superbly.

"Jerry Patchan played a major role in the development of bankruptcy law and practice over the last quarter of a century. He was a practitioner, educator and judge prior to the 1978 Bankruptcy Reform Act. For nearly 20 years after its enactment, he labored on the rules of bankruptcy practice and legislative changes and he helped establish the U.S. Trustee Program on a firm foundation.

"Please join me in congratulating Jerry on his remarkable career and receipt of the College's Distinguished Service Award." 

Arrangements for Spring 2005 Meeting

2005 Annual Meeting and Induction Ceremony Washington, D.C.

Friday, March 18, 2005

- 8:00 A.M. - 12:00 P.M. Board of Directors Meeting
- 12:00 P.M. - 2:15 P.M. Circuit Luncheons
- 2:30 P.M. - 3:30 P.M. Ralph Mabey College Salon
- 3:30 P.M. - 4:30 P.M. International Insolvency Institute Program
- 5:30 P.M. Photograph Session for Inductees U.S. Supreme Court
- 6:30 P.M. - 7:15 P.M. Induction Ceremony
- 7:30 P.M. - 10:00 P.M. Library of Congress Reception and Dinner

Saturday, March 19, 2005

- Educational Program and Luncheon
- 7:00 A.M. - 9:00 A.M. Continental Breakfast
- 7:45 A.M. - 8:50 A.M. New Fellows Orientation
- 9:00 A.M. - 12:30 P.M. Educational Program
- 12:30 P.M. - 2:00 P.M. All Fellows Luncheon and Program
- 2:00 P.M. - 4:00 P.M. Committee Meetings
- 3:00 P.M. - 5:30 P.M. Holocaust Museum Tour
- 6:00 P.M. - 9:30 P.M. International Fellows Dinner

**The Mayflower Hotel
1127 Connecticut Avenue, N.W.
Washington, D.C. 20036**

Hotel Reservations: 202.347.3000 • Ask for the American College of Bankruptcy block of rooms.



**THE MOST COMPREHENSIVE
AND AUTHORITATIVE SOURCE
OF BANKRUPTCY LAW INFORMATION**

**Collier on Bankruptcy®
15th Edition Revised**

From Matthew Bender

Now part of the LEXIS Publishing™ Family of products and services

For more information (800) 533-1637

100
Collier on Bankruptcy®
ONE HUNDRED YEARS OF CONFIDENCE