

College Columns

Editor's Report

By Philip J. Hendel



▲ Philip J. Hendel

A telephonic meeting of the College Communications Committee was held on May 17th. The principal purpose of the conference was to ensure that communications with College Fellows continue to be

both timely and newsworthy.

In general, College Columns has attempted to highlight a variety of College activities, not only on a national scale but also from circuit to circuit. Practically on a daily basis, we receive information from a variety of sources concerning awards and activities in which Fellows are engaged throughout the world.

Perhaps the best way to describe the evolution of College Columns is the effort made by Evelyn Biery and her predecessors, as editors, to focus on the collegiality of our organization. We have deliberately shied away from substantive law issues as most of us are already deluged with case law reviews and timely articles published by the ABA, ABI, CLLA, TMA and other organizations.

As a result of the recent teleconference, however, we have decided to implement some new features in College Columns without attempting to duplicate substantive law analysis. For example, we intend to provide some practical information on how to utilize the Archives in Philadelphia for research. The Committee also voted to periodically provide a point counterpoint article on best practices/ethical issues. Additionally, committee member Jules Cohen intends to encourage our law professor Fellows to write an occasional

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President's Report

By David T. Sykes



▲ David T. Sykes

Our College bylaws provide that the president shall be the principal operating officer of the College, and, subject to the supervision of the Chair, shall conduct the day-to-day business and affairs of the College.

Having observed the efforts of prior presidents at board meetings and elsewhere, I knew that the "day-to-day business and affairs of the College" required time and attention beyond that called for in other organizations. I also knew, however, that our Executive Director, Suzanne Bingham, our Chair, Evelyn Biery, and the other officers, directors, regents and committee chairs and members would generously give their time to the functioning of the College.

In the past year and a half my expectations of our active Fellows, and of our Executive Director, have been exceeded. The responsiveness of our Fellows and staff is truly remarkable. More often than not, we have to take action promptly. Everyone involved has worked with dispatch to finish College projects and complete necessary College work.

Fellows have willingly pitched in to help with the College's many educational, social and pro bono programs, the arrangements for our fall meeting in San Francisco, College Columns, and other necessary efforts which ensure the College's smooth operation. I am particularly gratified by the responses I receive when I ask for help in various areas.

Another side of the day to day business and affairs of the College involves communications from Fellows to me, Evelyn, or other officers and members of the Board of Directors and the Board of Regents. We need to hear from all of you who have concerns about the College and its operations. I have received several calls and e-mails during my term, and I hope I have

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Chair's Report

By Evelyn H. Biery



▲ Evelyn H. Biery

Non solum fumo speculisque, sed etiam tintinnabulis fistulisque factum est.

As I did for two the previous issues of the *College Columns*, I submit for your consideration a modern phrase in Latin form. It pertains to the Enron criminal convictions. As you probably know, former Enron executives Ken Lay and Jeffrey Skilling were found guilty of fraud and conspiracy in May of 2006, Lay on ten counts against him, including conspiracy to commit securities and wire fraud, as well as bank fraud; and Skilling on nineteen counts of conspiracy, insider trading, false statements to auditors and securities fraud. The translation of the relevant Latin phrase is embedded somewhere in this report.

The Fellows of the American College of Bankruptcy continue to demonstrate their constant regard for the highest standards of professionalism and service to the administration of justice in insolvency law. In March we welcomed twenty-one new Fellows, including fourteen Attorneys, three Judicial Fellows, two Financial Advisors and two International Fellows. Through the efforts of Class Seventeen we look forward to even greater contributions to the improvement of the profession. The Induction Ceremony took place in the National Building Museum, a new venue for us, necessitated by the remodeling of the Supreme Court building. It was a grand affair, in an impressive location.

And here is the translation: It wasn't all done with smoke and mirrors—there were some bells and whistles, too.

At the Annual Meeting of the College we benefited from an excellent educational program, in which College Fellows discussed mass torts and safe

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Jamie Sprayregen to Address All Fellows Luncheon and Discussion Panel During NCBJ

By Michael L. Temin



▲ Michael L. Temin

On Wednesday, November 2, 2006, immediately before the start of the National Conference of Bankruptcy Judges in San Francisco, College Fellow James H.M. Sprayregen will speak at the American College of Bankruptcy luncheon. His topic is "Chapter 11—Not Perfect, But Better Than the Alternatives." Jamie and two of his firm's partners wrote on this subject in an article published in *The Journal of Bankruptcy Law and Practice*. (Vol. 14, No. 6, 2005).

Jamie has been the leader of the Restructuring Practice of Kirkland & Ellis LLP. He represented major U.S. and international companies in and out of Chapter 11. He has also advised buyers and sellers of assets in distressed situations, and counseled boards of directors. More generally, he has represented debtors and creditors in workout, insolvency, restructuring, and bankruptcy matters. Jamie recently accepted an invitation to become a managing director of Goldman Sachs at their New York City headquarters.

Jamie has been recognized as one of the country's outstanding restructuring lawyers by numerous leading publications. In 2004 and 2005, *Chambers USA, America's Leading Lawyers for Business* listed Jamie as one of the leading bankruptcy attorneys. The guide stated that "he is a great clients' lawyer, admired for his 'unflustered ways.'" He was also featured as one of the "Dealmakers of the Year" by *The American Lawyer* in April 2004. From 2003 to 2006, Jamie was selected as one of "The World's Leading Business Lawyers in Insolvency/Corporate Recovery" by Chambers & Partners.

Jamie also serves on the Board for INSOL International. He is a frequent lecturer, speaker, and panel moderator and has published numerous articles on insolvency issues. He received his B.A. from the University of Michigan and his J.D. from the University of Illinois College of Law. ☎

Board of Regents' Report

By Paul M. Singer



▲ Paul M. Singer

In early May, each Fellow received a copy of a letter from me describing the process for nomination of new Fellows, along with a copy of the nomination form for the 2007 Class.

Nominations must be forwarded to the appropriate Regent by August 31, 2006. The Regents will meet to select the new Fellows on November 1, 2006 in San Francisco, a day prior to the start of the National Conference of Bankruptcy Judges.

The College continues to seek and admit the brightest and best in our profession. While the nomination process is quite difficult, in the sense of securing the necessary information about a prospective candidate, it can also be rewarding knowing that your efforts ensure the continuation of our wonderful institution. Please consider participating in the selection process by nominating talented individuals.

Should you have any questions concerning the nomination process, please feel free to contact me or any of the Regents whose names are listed below. Our by-laws contain the criteria for selection. Please take a look at them in your directory or on the College's website to ensure that your candidate will meet our criteria. As I wrote in my May 10th letter, it is also useful to review the name of your candidate with the appropriate Regent prior to undertaking the task of accumulating the confidential information about the candidate. ☎

Communications Committee Members

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Memorial Committee Report

By Richard S. Toder



▲ Richard S. Toder

Last year, the Board of Directors created the Memorial Committee, whose purpose is to honor a deceased leader in the bankruptcy field. The Board recognized that many of the College's members were insufficiently familiar with some of the past bankruptcy "greats," who helped elevate this area of the law to the respectful position that it now occupies.

The Committee consists of Ralph Mabey, Harvey Miller, Len Rosen, Ray Shapiro, Gerry Smith and the Chair. Earlier this year, the Committee met by teleconference and determined that its first honoree would be Professor Vern Countryman. The Committee decided that his achievements would be discussed at the forthcoming College luncheon in San Francisco at the NCBJ meeting in November 2006.

While the details remain to be worked out, it promises to be a wonderful event honoring a truly legendary figure. ☰

Dr. Gerold Herrmann Addresses Joint New York Meeting of the College and the International Insolvency Institute

By E. Bruce Leonard



▲ E. Bruce Leonard

The College co-sponsored an internationally oriented dinner at New York's elegant Cornell Club on the evening of Sunday, June 11, 2006, in conjunction with the International Insolvency Institute. The III is a non-profit association of leading insolvency professionals from around the world. It shares the same goals and objectives as the College. Several Members of the III are Fellows of the College.

The guest speaker at the joint dinner was Dr. Gerold Herrmann, the immediate past Secretary General of the United Nations Commission on International Trade Law (UNCITRAL). UNCITRAL is the United Nations' major commercial agency, which, next year, will be celebrating its 40th anniversary of studying and developing international conventions and agreements. These agreements cover a variety of international, commercial topics, such as secured transactions, arbitrations, evidence, and, most importantly for the College and the III, insolvency.

Dr. Herrmann served as Secretary General of UNCITRAL for over 10 years. He was the driving force behind the creation and development of the UNCITRAL Model Law on Cross-Border Insolvency, which has now been adopted as Chapter 15 of the Bankruptcy Code and has been enacted in ten other countries, including England, Japan and Mexico. The Model Law and its Guide to

Enactment, which is a very helpful commentary, are available on the College website, under International insolvency Resources.

Dr. Herrmann spoke on the strategies involved in the development of the Model Law and the process by which over 90 participating governments and non-governmental organizations negotiated and finalized its terms. He also offered his predictions for future trends in international reorganizations and insolvencies. Dr. Herrmann is also the President of the London-based International Council for Commercial Arbitration, one of the most prominent and significant organizations in the arbitration area. He commented on the procedures and advantages of the new proposals for the use of arbitration in international restructurings.

The dinner attracted a solid turnout on a very pleasant Sunday evening in New York, and there was a solid turnout of College Fellows, particularly from the Second and Third Circuits. Over 100 Fellows of the College and Members of the III took part in the event. Twenty different countries from around the world were represented. Dr. Herrmann's address was edifying and constructive and the evening was so successful that it may become a regular annual event.

Special appreciation for the evening goes to Dan Glosband for arranging the facilities at the Cornell Club, Alan Kornberg, Regent for the Second Circuit, for providing a warm New York welcome to out-of-town and overseas delegates, and Evelyn Biery for a wonderful welcoming address on behalf of the College. ☰

New Fellows Orientation Committee Report

By Stuart Hirshfield



▲ Stuart Hirshfield

The morning after their induction as new Fellows, most of the twenty-two inductees joined the Orientation Committee and many of the College's Committee chairs for a breakfast meeting and orientation. The goal of the orientation was to introduce new Fellows to the numerous opportunities to become involved in the activities of the various committees and to participate in College events, both social and educational, conducted at the Circuit level.

My Co-Chair, Richardo Kilpatrick, and I were joined by Evelyn Biery, David Sykes, Suzanne Bingham, Paul Singer and the chairpersons of several national committees, among others. Each of us reviewed opportunities for active participation.

David Sykes spoke about the history of the College, from its beginning less than 20 years ago when it was composed of fewer than 50 Fellows, to the highly regarded and sought after organization it is today. The College now has more than 650 Fellows, including distinguished judges, academics, lawyers, financial professionals and international Fellows.

Paul Singer informed the new Fellows of the highly confidential nomination process employed by the College through the Board of Regents. He explained that the Regents' selection criteria stress not only professional achievement of the highest caliber, but also a strong and continuing commitment to education, through lecturing and writing, and public service. He urged the new Fellows to become actively engaged in the process by proposing well-qualified candidates to their respective Circuit Admission Councils.

The future of the College rests in the involvement of each of its Fellows. The orientation was intended to show the new Fellows a way to play a part in that future by participating in the numerous activities offered by the College. ☰

Foundation Report

By Joel B. Piassick



▲ Joel B. Piassick

At its spring meeting, the Board of Directors of the College elected new officers and some new directors for the Foundation. The new officers are: myself as Chair, Bill Cohen as Secretary, and Joel Ohlgren as Treasurer. The Foundation's Board now consists of the officers and George Cauthen, Slayton Dabney, Leonard Gilbert, Philip Hendel, Stuart Hirshfield, Joel Kay, Ricardo Kilpatrick, Alan Kornberg, David Kurtz, Rick Mason, Ed Nazar, Rich Peters, Patricia Redmond, Mary Scott, Ray Shapiro, and Micky Sheinfeld.

Since its inception, Ray Shapiro and Leonard Gilbert have served respectively as the Foundation's Chair and Treasurer, and we are all deeply indebted to them for their outstanding work. The good news is that we will continue to have their counsel and involvement on the Foundation Board.

The Foundation, through the support of the College and you, its Fellows, has reached its first plateau of over \$500,000 in invested assets. This has allowed the Foundation to make a 5-year, \$25,000 commitment to the Bankruptcy Archives and a current allocation of \$48,500 to other causes. This includes a \$25,000 commitment to pro bono grants, which will be combined with grants directly from the College.

This is your Foundation, so it is important that you understand its goals. The Foundation Board struggles with two competing goals; to provide funding for beneficial grant requests while at the same time, attempting to build a capital base, to provide income for future commitments. Through your generosity, the Foundation has been able to do both, but we still have a long way to go. The Foundation would like to reach \$1 million in capital under investment, which we believe would provide a base of approximately \$50,000 per year in income for grants. It would also allow future donations to build capital and even greater income for grants.

We won't be bashful about reminding you to keep the Foundation in mind for your charitable efforts. ☰

Best Practices Committee Report

By David G. Heiman



▲ David G. Heiman

I am pleased to report that Professor Douglas Baird has accepted appointment as Co-Chair of the Best Practices Committee. This will bring to the Committee Professor Baird's vast knowledge and creativity and will assure the continued success of the Best Practices Committee. The Committee has overseen the following projects:

- Best Practices For Filing Preparation In Consumer Cases Under The New Bankruptcy Amendment. Materials, including a recommended client questionnaire prepared by a Subcommittee chaired by Henry Sommer, can be found on the College website.
- Best Practices for Post-Petition Financial Disclosure with materials prepared by a subcommittee chaired by Tom Mayer. If you are interested in those materials, please contact Tom directly.
- Circuit-by-Circuit Review of Case Decisions on Critical Bankruptcy Issues—an exhaustive document prepared by a group of representatives from each of the Federal Circuits, and chaired by Corinne Ball and Lloyd Palans. This document, updated each year, will prove invaluable in preparing a case for filing or determining the law within a particular Circuit. We hope to soon make this generally available to College members.

In addition, Carl Jenks and Mickey Sheinfeld are currently working on a review of Best Practices in Bankruptcy Tax matters. Carl and Mickey are still looking for help on this project, so please contact me if you are interested in working with them.

Please send thoughts for new projects or any feedback you may have to Doug Baird or me. ☰



Editor's Report

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article on an issue of particular interest to them. Another new feature will be a profile of one or two international Fellows. This will present an opportunity for U.S. members to become more familiar with the credentials and specialties of foreign Fellows in order to promote international networking opportunities. We do not plan to substantially increase the number of articles beyond those appearing in recent publications because we do not wish to make perusing College Columns an overwhelming project. However, College Columns will continue the practice of providing a summary of the minutes of the Board of Directors' meeting so that non-board members have a perspective on the scope of the special projects undertaken by both the College and the Foundation.

Part of the responsibility of the Communications Committee is to help ensure that our website is versatile and provides a useful source of information which can be utilized for networking and reporting on other College activities. Our Executive Director, Suzanne Bingham, together with President David Sykes and Chairperson Evelyn Biery, asked us to request that you contact Suzanne if you have special talent in your office for upgrading our website in order to achieve these goals.

If have any suggestions for College Columns, feel free to send them to phen-del@hendelcollins.com. ☰

President's Report

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addressed my correspondents' concerns fairly and promptly. Dealing with Fellows' concerns is a major part of my job, and I welcome the opportunity to participate in improving the College through constructive suggestions and effective responses.

Finally, many of you have asked what you can do for the College. I view the identification of qualified professionals who might become College Fellows as one of the most important tasks of current Fellows. I encourage you to work with your Circuit Regents and Councils to achieve this goal. You have received a letter from the Chair of the Board of Regents, Paul Singer, asking you to help identify and sponsor possible new Fellows. I hope you will respond. ☰

The Archives Come Alive!

National Bankruptcy Archives Report

By Jordon Steele

I have recently assumed the position of archivist of the National Bankruptcy Archives. As you well know, the NBA houses and maintains important records regarding the history of bankruptcy law in the United States and beyond. In just over two months in the position, I have helped several researchers on a variety of topics, and more are on the way. This summer, I am particularly excited to be working with a librarian at the federal judiciary to digitize certain reports and minutes of the Advisory Committee on Bankruptcy Rules. I anticipate this project will serve as great publicity for the archives.

In addition to accommodating the requests of researchers, my principal effort as archivist of the NBA is to improve the so-called "web presence" of the archives. Traditionally, researchers have learned of the NBA's treasure trove of materials through informal networks, predominantly word-of-mouth encounters with those of you who have graciously donated your papers to the archives.

However, in this age of digital communication, it is important that we exploit the potential of the web to secure the largest possible research community for the materials. Consequently, I am currently readying about five finding aids, or collection guides, for debut on the internet this summer. This is a painstaking process that often includes the physical reorganization of materials within the collections, but the end result will improve the visibility of the archives and the quality of service provided to researchers. Furthermore, I am working to build relationships with those in the Penn Law School community who have an interest in bankruptcy law. I am also establishing contacts with my colleagues in the archival community in the Philadelphia area and beyond.

I want to thank Suzanne Bingham for giving me the opportunity to introduce myself to the bankruptcy community. I also want to issue a special thanks to Mary Davies Scott, whose continued efforts to develop the collection at the NBA impress me more and more each day. I look forward to working with all of you to develop the Archives into the premiere repository of its kind in the United States.

The National Bankruptcy Archives is

located at the University of Pennsylvania Law School in Philadelphia, PA. You may reach the Archives by phone at (215) 898-5011 or by email at steelej@law.upenn.edu. The mailing address is as follows: Archives, Biddle Law Library, 3460 Chestnut Street, Philadelphia, PA 19107.

You may learn more about the collections that constitute the National Bankruptcy Archives at our website, <http://www.law.upenn.edu/bll/collections/bankruptcy.html>. Site updates should occur frequently, so check back often to see our progress. ☰

Searching the National Bankruptcy Archives: A Personal Memoir

By Professors Ingrid & Michael Hillinger

Those familiar with section 506(b) case law know it is a mess. Indeed, it is maddening. There are at least five different approaches to an oversecured creditor's right to fees, costs and charges under its provisions. Section 506(b)'s legislative history is sparse and cryptic: "if the security agreement between the parties provides for attorneys' fees, it will be enforceable under title 11, notwithstanding contrary law." 124 Cong. Rec. 32,398, 33,997 (1978) [statements of Representative Edwards and Senator DeConcini]. Huh?

At a recent College-sponsored First Circuit program, we kidnapped Ken Klee and conditioned his freedom on explaining section 506(b)'s provenance. He said he thought he remembered someone from Nebraska wanting to make attorneys' fees collectible in bankruptcy even if they were not collectible outside of bankruptcy. He (Klee) chose to curtail the right by limiting it to oversecured creditors seeking reasonable attorneys' fees. Ken suggested that we look at his papers located in the National Bankruptcy Archives at the Biddle Law Library of the University of Pennsylvania.

We e-mailed the archivist, Jordon Steele, who was incredibly helpful and accommodating. Jordon asked us for more information in an effort to narrow our search and limit the number of boxes we would have to examine. We knew we were primarily interested in the Klee papers. Moreover, we had identified when section 506(b)'s mysterious language had appeared. So, going down, we had narrowed our search to the Klee papers and a November 1977-January 1978 time frame.

We stayed at the Sheraton on the UPenn campus (at \$89.00 a night through Hotwire.com). The library was literally around the corner. Jordon arranged for us to get past security. Once there, he gave us visitor cards, which we

had to show every time we went into the building. We stayed for three days.

Before our arrival, Jordon had done some further research into the contents of the Klee boxes (24 in all). Alas, the documents (and boxes) were not necessarily in chronological order. So, we went through EVERY box. Jordan brought up 4 boxes at a time. (The actual archive is located in a large room on the floor below the main library.) After we finished poring through one box, we returned it in exchange for a new one. If we left for lunch, Jordon asked us to give our "working" box to the librarian at the main desk.

Each box contained file folders. The file folders were numbered, e.g., file 1, file 14, file 20. (Those numbers did not connect to any benchmark we could discern.) A given file folder could contain 20 or more documents within it. Jordon asked us to maintain the order in which we found the documents. Because we could not attach post-its to documents or notes of interest, the copying process was laborious. For instance, we had to go back into Box 1, folder 23, and within folder 23, find the notation or document of interest. (Of course, we figured out later that we should have inserted a piece of yellow paper in front of every document of interest. That would not harm the documents and would expedite the process of finding documents of interest that we wanted to copy. Live and learn.)

Perhaps the most frustrating part of our experience was our need to get through 24 boxes in three days and copy what we needed to copy. (The library is only open from 9 until 5 during the summer.) That meant we did not have the luxury of reading discussions and interchanges about cramdown, executory contracts, tax issues and many other interesting, difficult issues. It also meant we had to skim communications between Ken Klee and

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From The Circuits

First Circuit Report

By Richard E. Mikels



▲ Rick Mikels

I am pleased to report that we held our Third Annual Educational Program on April 7, 2006. The program was entitled "Reorganization: Then and Now". Because of the support of the American College of Bankruptcy Education Committee and its Chairman, Sally Neely, we were able, once again, to present a great program to the bankruptcy community, without charge. The program, held at Boston College Law School, attracted over 150 bankruptcy lawyers, students, business consultants and judges. The program was moderated by William C. Hillman, United States Bankruptcy Judge for the District of Massachusetts. The panelists were Kenneth N. Klee, Professor at UCLA School of Law and Partner at Klee, Tuchin, Bodgdanoff & Stern, LLP in Los Angeles; Myron M. Sheinfeld of Akin, Gump, Strauss, Hauer & Feld, LLP of Houston; Michael L. Temin of Wolf, Block, Schorr and Solis-Cohen, LLP of Philadelphia, and William A. Brandt, Jr., President of Development Specialist, Inc. of Chicago, Boston, Los Angeles and Miami. Daniel M. Glosband of Goodwin Procter, LP, moderated a post-presentation discussion. The subject matter of the program was an analysis of developments and trends in bankruptcy practice over the past several decades. The panelists discussed this broad topic with specific reference to changes in the use and results in Chapter 11 cases, venue, claims purchasing, third party releases, exculpation of professionals, deepening insolvency and tax issues impacting reorganizations. The program was planned by the Education Committee for the First Circuit and particularly its Chairman, Ingrid M. Hillinger, Professor of Boston College Law School. The other members of the First Circuit Education

Committee are Honorable William Hillman, Dan Cohn, Phil Hendel and Jon Schneider. We are very pleased that the program was such a success both in terms of the quality of the discussion and the professional enhancement offered to so many members of the bankruptcy community that attended the program. The First Circuit Education Committee has decided that next year's program will be targeted to the needs of law students. Our hope is to provide a program that will provide a broader concept of the overall uses and significance of bankruptcy proceedings than would ordinarily be presented in a law school class. We have asked many attorneys, judges and professors who teach classes in bankruptcy at law schools in New England to confer with their students and to help us determine what type of program would best meet the needs of the students.

The First Circuit also held its annual luncheon meeting at Nixon Peabody in Boston on May 30th, which was attended by 20 Fellows. The luncheon was hosted by Dan Sklar and Mark Berman.

It was decided to hold our Seventh Annual Dinner Reception and Wine Tasting Event in January 2007. The date is not yet set, but we will advise all the members of the College when the date is available so that those of you that wish to join us (and brave January in Boston) will have the opportunity to participate. At the dinner, we welcome new First Circuit Fellows and honor a member of the bankruptcy community who has made substantial contributions to the profession. This year's honoree will be Dan Glosband of Goodwin Procter, LP, who has played a significant role in the bankruptcy community for the past several decades. All of you are well aware of the tremendous work Dan has done in the American College where he presently serves as a Vice President and formerly served as First Circuit Regent. The format of the First Circuit Dinner and Wine Tasting Event has been enormously popular among First Circuit Fellows and their spouses. At last year's event, we were pleased to have as our special guest, Evelyn Biery, Chair of the Board of the College. ☰

Eleventh Circuit Fellows Meet in Savannah

By Jules S. Cohen



▲ Jules S. Cohen

The Eleventh Circuit held a regional meeting in Savannah in May, which was attended by approximately 32 Fellows plus guests.

Activities included a cocktail reception and lavish dinner buffet on Friday evening at the office of Kathy Horne's law firm, Inglesby, Falligant, Horne, Courington & Chisholm. Her office was originally a home built in 1844.

On Saturday morning, the Fellows enjoyed breakfast together and then attended a three hour CLE program presented by Jack Butler of the Chicago office of Skadden, Arps, Alate, Meagher & Flom, LLP on the subjects of corporate governance and deepening insolvency, conducting internal corporate investigations, critical vendors, key employee compensation and the Delphi case. Butler presented excellent, useful material at a very high level in an interesting way.

On Saturday evening, the 40 Fellows and their guests attended a cocktail

reception and low country boil at the Savannah Yacht Club.

There were several Fellows in attendance from outside the Eleventh Circuit, including Evelyn Biery, Chair of the College from Houston in the Fifth Circuit, Jack Butler from Chicago in the Seventh Circuit, Dan Armel, Treasurer of the College from Pasadena, California in the Ninth Circuit, and Bill Katchen from Newark in the Third Circuit.

There was no registration fee for the meeting. The activities were made possible by generous efforts and contributions by Georgia Fellows Neal Batson, Charles Campbell, Ezra Cohen, Dennis Connolly, Kathy Horne, Jerry Kaplan, Al Lurey, Neal Olack, Joel Piassick, Gary Marsh, Jim Pardow and Grant Stein. Special thanks go to Kathy Horne for her hosting of the event.

The Fellows enjoyed the unique ambience of Savannah and a great deal of collegiality. All in attendance agreed that it was a very educational, rewarding, enjoyable, and collegial meeting and we look forward to the next one. ☰



Third Circuit Report

By Joseph A. Dworetzky



▲ Joseph A. Dworetzky

On February 28, 2006, the Pittsburgh area Fellows held a dinner at the Duquesne Club. They were honored to have two of their local bankruptcy judges, Judge Joseph Cosetti and Judge Judith Fitzgerald, one of their district judges, Judge Joy Conti, and one of their Third Circuit Judges, Judge Marjorie Rendell (all College Fellows), in attendance, as well as Evelyn Biery, Chair of the College. By all accounts it was a delightful evening.

On June 8, Michael Bloom will receive the PBA President's Award in recognition of his eight years of service as Chairman of the Pennsylvania Bar Association Judicial Evaluation Commission. Pennsylvania is one of only a very few states which still elects their appellate judges in partisan political elections.

Jack Zackin will be participating in an ALI-ABA course of study on environmental litigation at, and sponsored with the cooperation of, the University of Colorado School of Law in Boulder Colorado from June 21-24, 2006. Jack's topic is "The Resolution of Environmental Disputes in Bankruptcy Court."

William Katchen reports that he is writing an article on Deepening Insolvency, Defenses to Standing, In Pari Delicto and Other Equitable Doctrines.

Michael Sirota reports that the New Jersey Bankruptcy Manual (2d Edition, 2006) was just released. Judge Gambardella served as Editor-in-Chief and Fellows Karen Gianelli, Frank Vecchione, Jack Zackin and Michael Sirota served on the Editorial Board and also authored sections.

Neal Colton received the Champion of Dignity Award recently for his pro bono legal support and services on behalf of Dignity Housing. Dignity Housing is a nonprofit organization that provides affordable housing and social service support to homeless families throughout Philadelphia.

Michael Reed's article, "Successor Liability and Bankruptcy Sales Revisited—A New Paradigm," was published in the November 2005 edition of *The Business Lawyer*.

From April 30 through May 2, sever-

al Third Circuit Fellows participated in the Third Circuit Judicial Conference held at Nemaocolin Woods. This year the Judicial Conference included an extensive and excellent bankruptcy program. Professor Alan Resnick participated in an update on the Bankruptcy Rules and Harvey Miller was the luncheon speaker. A mock argument was held in which Fellow Chuck Mooney argued a bankruptcy appeal against G. Eric Brunstad before a panel that included Judges Ambro, Conti and Rendell.

On May 30, the New Jersey, Philadelphia and Wilmington area Fellows had their annual Spring Dinner at the 821 Restaurant in Wilmington, Delaware. The dinner was hosted by Jim Patton, and approximately 19 Fellows were in attendance. Mike Reed spoke to the group about his article on Section 363. Former Bankruptcy Judge Balick, Bankruptcy Judge Sigmund and Circuit Judge Ambro were in attendance. ☞

Sixth Circuit Held Annual Meeting in Cleveland

By G. Christopher Meyer



▲ G. Christopher Meyer

The annual meeting of the Sixth Circuit Fellows was held in Cleveland, Ohio, on July 21st and 22nd this year. The meeting was attended by 16 Fellows and guests. Highlights included: (1) golf on Friday at Firestone Country Club, followed by a dinner Friday evening hosted by Fellow Mickey Rabin and her husband Erwin at their home; (2) a short educational program Saturday morning at the offices of Squire, Sanders & Dempsey L.L.P. with a presentation by Jerry Patchan, followed by stops at one or more local attractions (the Rock & Roll Hall of Fame, the Great Lakes Science Museum, etc.); and (3) dinner and a concert Saturday night at Blossom Music Center. A program entitled "Gershwin and Bernstein" was performed by the world-famous Cleveland Orchestra. ☞

Eighth Circuit Report

By Faye Knowles



▲ Faye Knowles

After our February 2006 celebration of winter Minnesota-style, Eighth Circuit Fellows are ready for a warmer—not to say more temperate—event, and we found it. The Fellows of the Eighth Circuit and the Tenth Circuit are planning a joint meeting during the College's Annual Meeting in March 2007 to organize and schedule a joint event later in 2007. Anyone interested in the planning of an Eighth Circuit/Tenth Circuit event should contact me at fknowles@fredlaw.com, the Tenth Circuit Regent, Blaine Schwabe, gschwabe@mswerb.com, or Eighth Circuit Fellow, Frank Buckley, fxbuckleyjr@thompsoncoburn.com. ☞

Seventh Circuit Report

By Richard J. Mason



▲ Richard J. Mason

Chicago will host the International Bar Association annual meeting during the week of September 18. Programs sponsored by the Section on Insolvency, Restructuring and Creditors' Rights are expected to attract well over one hundred business insolvency lawyers from Europe, Asia, South America, Canada, and Mexico. The programs will cover the 2005 amendments to the Bankruptcy Code, the spread of turnaround managers around the globe, the impact of choice of law on insolvency matters, and insolvency of governmental units. A number of College members will participate in the programming and other activities, including Evelyn Biery (5th Cir.), Ben Floyd (5th Cir.), Professor Susan Block-Lieb (2d Cir.), Lewis Kruger (2d Cir.), and Richard J. Mason (7th Cir.). On another front, the Circuit Counsel is discussing plans for a Friday afternoon educational program followed by a dinner party. No date has been set. ☞

Special Reports

Hon. Thomas L. Ambro: The Story of a Meteoric Rise From Bankruptcy Lawyer to U.S. Circuit Judge

By Jules S. Cohen

Judge Tom Ambro has been a Fellow of the College since 1996. In 2000, he went from a busy Delaware bankruptcy law practice to a seat on the U.S. Court of Appeals for the Third Circuit. Six years later, he has made some interesting observations concerning this change in his career.

Judge Ambro attended Georgetown University's College and Law School. He clerked for the Chief Justice of the Delaware Supreme Court and then joined the Wilmington law firm of Richards, Layton, and Finger. On his first day, a partner asked if he knew anything about bankruptcy. Judge Ambro replied laughingly, "Yea, if a guy can't pay his debts, he goes bankrupt." The partner did not find humor in the response, and promptly handed him a bankruptcy assignment. After this bankruptcy baptism, Judge Ambro assumed he would remain a litigator. He was wrong, for he was assigned to work on transactional matters (despite his having taken a Uniform Commercial Code course pass/fail in law school, and dropping it for lack of interest).

For the next decade and a half, Judge Ambro negotiated and drafted documents for deals, became active in the legal opinion world, became involved in barreled matters on both the local and national levels, and dove into whatever litigation matters he could find (often in the Bankruptcy Court).

All this changed in December 1990, when Continental Airlines filed Chapter 11 in Delaware. This was a "sea change" for Delaware's bankruptcy practice. A succession of numerous large Chapter 11 filings in Wilmington made the Bankruptcy Court there the busiest in the nation in the 1990s for large Chapter 11 cases.

After Continental filed in 1990, Judge Ambro began practicing bankruptcy

law full time. The bankruptcy group he led in his firm grew exponentially. He maintained a very busy pace, involving seven-day work weeks and fielding about 60-80 telephone calls and approximately 80 e-mails every business day. This pace continued until the year 2000, when he was appointed to the Third Circuit Court of Appeals. Judge Ambro notes that, since he was appointed to the Court, his telephone by comparison hardly rings. E-mails among colleagues are far more the norm.

On the Third Circuit, Judge Ambro is a member of various three-judge panels that consider approximately 240 fully briefed cases per year. He writes opinions in over 80 of those cases (including dissents and concurrences). (In addition, there are pro se prisoner habeas corpus cases, pro se appeals, myriad motions, emergency matters and petitions for rehearing en banc.) He has four law clerks, an administrative assistant and one or two interns working with him.

Judge Ambro finds the work of a judge—analyzing cases, preparing for and participating in oral argument, discussing cases with his clerks, communicating with other judges, and writing opinions—every bit as meaningful as he had hoped. That work is far more than a normal full-time job, with so much to do there is often time to reflect only in the early morning or late at night. (Indeed,

whereas Judge Ambro typically would arrive for work in private practice at 8:30-9:00 a.m., he now often gets to the courthouse shortly after 7:00 a.m.)

When he practiced law, Judge Ambro enjoyed the collegiality of other bankruptcy lawyers. Similarly, he has found exceptional collegiality among the judges of the Third Circuit. [Among others, he served on the Court with Judge (now Supreme Court Justice) Alito.]

As a bankruptcy lawyer, Judge Ambro enjoyed meeting with clients, solving problems and negotiating. In court he was an advocate for a position. As a judge, the obvious difference is that he is reviewing and choosing from competing positions to "get it right."

Other differences are more subtle. Lawyers act, judges react. They decide only the disputes presented to them, and only then if they have jurisdiction to do so. In addition, relationships with former lawyer colleagues are sometimes awkward (being called "Judge" by a long-time colleague seems stilted), but increasingly less so than he initially perceived.

Judge Ambro summed up this way: "When I became a judge I certainly missed the income from private practice. But only two months after being sworn in [June 2000], I woke up one morning, sat up in bed and said to my wife, 'I thought I would miss it [practicing law], but I don't.' Looking back, I liked what I did and still remember fondly the clients, counsel and colleagues. But I love what I do now." ☞

Report on the Committee on Bankruptcy Court Structure and the Insolvency Process of the ABA Business Law Section

By William H. Schorling

The ad hoc Committee on Bankruptcy Court Structure and the Insolvency Process of the ABA Business Law Section has proposed model rules on electronic case filing and on attorney discipline in the bankruptcy courts. The electronic case filing model rule was approved by the ABA House of Delegates in January. The model rule on attorney discipline will be considered by the House of Delegates at the annual meeting in August. The ECF rule pro-

vides that an attorney will be allowed to file electronically if the attorney complies with pro hac vice procedures and has taken ECF training in another district. The rule is intended to stop the practice in some districts of requiring a lawyer to take training in that district in order to file electronically. The disciplinary procedures rule provides uniform procedures for attorney discipline in the bankruptcy courts. ☞



Chair's Report

continued from page 1

harbors. Michael Temin, our current ScholarinResidence, conducted an outstanding program.

A reception for the Distinguished Law Students received rave reviews. They have individually and collectively expressed their gratitude for the personal attention paid by the Board of Directors, the Board of Regents and the Law Students' Mentors. The program for the Distinguished Law Students was once again led by Sally Neely, who always makes every task she undertakes a highlight of every event.

Our Patrons and Sponsors program provides assistance for the operation of the College and the funding of its programs. You will soon receive an invitation to contribute to the Patrons and Sponsors program. Although you will as always have the ability to provide the contribution in 2007, as opposed to 2006, we hope that you will make every effort to make the contribution in 2006. The College is very strong financially, and we would like to maintain that status throughout the next few years.

Our committee chairs have produced excellent results so far this year, and we predict even more success in the year to come. Reports on the committee activities appear in this issue of the *College Columns* or will appear in subsequent issues of the *College Columns*. If you would like to serve on one of the College committees, please let me know. As chair of the College I have the honor and pleasure of adding members to the committees. I will of course consult with the committee chairs concerning any request, in order to ensure good geographical coverage and a reasonable size for each committee. Committee membership, followed by service as a committee chair, is a great stepping stone to leadership positions in the College. I encourage you to offer to serve on a committee.

Paul Singer, the chair of the Board of Regents, continues to provide excellent leadership in the area of nominations and admissions to membership in the College. As a reminder, the Bylaws of the College provide the following information on membership in the College:

"The College is a professional, educational and honorary association of bankruptcy professionals, including lawyers, judges, law professors, accountants, appraisers, auctioneers, officers of the

government, officers of lending institutions, reorganization, workout and liquidation specialists and others who are dedicated to the improvement of the bankruptcy process and the enhancement of the professional quality of and public respect for the insolvency and bankruptcy practice.

"The College honors those professionals whose sustained performances in the practice of their profession exemplify the highest standards of professionalism among bankruptcy specialists by granting them membership as Fellows. Membership shall be restricted by invitation to honor those individuals who have proven to their peers, and to the bar, bench and public, through long, continuous performance in their bankruptcy specialty that they possess (i) the highest professional qualifications and ethical standards; (ii) that high level of character, integrity, professional expertise and leadership which demonstrates the likelihood that they will continue to

contribute to the enhancement of bankruptcy scholarship, continuing education, and the bankruptcy process; (iii) a commitment to fostering and furthering the objectives of the College; (iv) sustained, exceptionally high quality professional services to clients, bar, bench, and public; and (v) significant evidence of scholarship, teaching, lecturing, and/or distinguished published writings on bankruptcy practice, procedure, philosophy, improvements and reforms which demonstrates a consistent contribution to the enhancement of bankruptcy literature, education, bankruptcy practice and the bankruptcy process.

"A nominee whose credentials demonstrate a sufficient number of the above criteria so as to place the nominee at the apex of the most distinguished, preeminent bankruptcy professionals in such person's judicial district and circuit shall be eligible to be honored by admission to membership as a Fellow." ☞

National Bankruptcy Archives

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Professors Countryman and Kennedy, some of which were amusing as well as interesting. (Professor Countryman called Klee "K?". Professor Kennedy referred to him and Richard Levin, his Democratic counterpart, as "Klevin.")

Although we did not come away with a smoking gun for section 506(b), we did find several helpful leads. We also came away in awe of the enormous time, energy and thought that went into the drafting of the Bankruptcy Reform Act of 1978 and the brilliance and eye for detail of those most closely involved in the process. ☞

In Memoriam



▲ William G. Fowler

William G. Fowler of Salt Lake City, UT passed away at his home on March 21, 2006.

Bill began his legal career in 1956 with his close friend Scott Mattheson, who went on to become Governor of Utah. During his time in practice, Bill was admitted to practice law in the United States Supreme Court, the Ninth and Tenth Circuit Courts of Appeal, and the courts of Utah.

Among his many activities, Bill served as Junior Bar Representative to the Utah State Bar commission, Chairman of the Utah State Youth Development Center Advisory Committee, Vice-Chairman of the Utah State Constitutional Revision, and member of the blue ribbon commission to draft legislation respecting the new Utah Court of Appeals. Bill was also a contributing author of *Compendium of Commercial Finance Law*.

Bill was active in the Presidential campaigns of Stevenson, Kennedy, and Johnson, and enjoyed personal friendships with Presidents Truman, Kennedy and Johnson, and Vice-President Humphrey.

Bill is survived by his wife, five children, and seven grandchildren. ☞

Save the Date Annual Meeting

March 23–24, 2007

Class Eighteen Induction

National Building Museum

Washington, D.C.



Awards & Honors

Leonard Gilbert Receives Special Professionalism Award and New Appointment by ABA

By Evelyn H. Biery

Holland & Knight announced on June 14th that Leonard Gilbert, a Tampa partner in the firm's Banking & Finance Group, was honored by the Tampa Bay Bankruptcy Bar Association (TBBBA) as the recipient of the Douglas P. McClurg Professionalism Award.

The award was established to recognize a lawyer for his or her outstanding effectiveness in judicial proceedings through preparation, civility and courtesy to counsel and parties. Leonard is just the second attorney to receive the highly selective award since its inception several years ago.

U.S. Bankruptcy Judge Michael G. Williamson presented Leonard with the award, noting his early involvement in

forming the TBBBA and acting as the first chair of its board. Also highlighted were Leonard's service as president of the Florida Bar and chair of numerous committees focused on business or bankruptcy in both the Florida Bar and the American Bar Association. The committee also recognized his involvement in national and international legal organizations, including the American College, as well as local charitable and civic organizations.

"But if not for your leadership Leonard, the bankruptcy bar in Tampa would have a different culture from the one it enjoys today—that is, a culture of integrity and civility," Williamson said.

Judge Williamson presented Leonard with a plaque which read, "In recognition of having demonstrated over a period of years the traits of professionalism exemplified by Douglas P. McClurg during his lifetime, including the following: Outstanding effectiveness in the presentation of matters to the Bankruptcy Court; a reputation for thorough prepara-

tion; civility and courtesy to opposing counsel; appropriate courtroom demeanor; ethical conduct and professionalism at the highest level; and long-term service to the bankruptcy bar."

In addition to the plaque given to Leonard, a master plaque with his name inscribed will hang in the United States Federal Courthouse in Tampa.

On July 18th, Leonard was appointed by American Bar Association (ABA) President-Elect, Karen Mathis, to the ABA's Committee on Federal Judiciary, representing the Eleventh Circuit. In this role, he will review all Presidential nominees to the Federal Courts in Florida, Georgia and Alabama, as well as all nominees to the United States Supreme Court. He will serve for a three-year term. The Committee evaluates the professional qualifications of persons nominated for appointment to the Supreme Court of the United States, circuit courts of appeals, district courts, the Court of Appeals for the Federal Circuit and the Court of International Trade. ☰

College Fellows Guy Moss and Rick Levine Receive Boston Bar Awards

By M. Ellen Carpenter

At the 16th Annual Bench-Bar Conference in Boston on May 17, 2006, two College Fellows, Guy B. Moss and Richard L. Levine, received awards from the Bankruptcy Section of the Boston Bar Association.

Guy Moss, a partner in the Boston office of Bingham McCutchen LLP and a member of its Financial Restructuring Group, received the Special Achievement Award. This award is presented to an attorney who has made an outstanding contribution to the administration of bankruptcy law either through a special project or BBA activities.

Guy was recognized for his six years of service (still continuing) as the editor of the Newsletter of the Bankruptcy Section, a high quality publication published six times a year and consistently ranked among the best of the BBA section newsletters. Guy's tenure as co-Chair of the Newsletter is the longest in the history of the Bar.

He has actively practiced bankruptcy law for over thirty years and is a frequent author and lecturer in the field.

Rick Levine, of Boston, was the first recipient of the Charles P. Normandin Lifetime Achievement Award, which the BBA renamed in honor of the late College Fellow, Charlie Normandin. He graduated from Harvard Law School in 1966. After completing a stint in the Coast Guard, Rick began his legal career as a prosecutor under then-Attorney General Elliott Richardson, working on organized crime issues.

In 1979, Rick was appointed to serve as head of the newly created United States Trustee Program. He was also appointed to the committee to write the bankruptcy rules under the new bankruptcy code. He appeared frequently before the House Judiciary Committee on bankruptcy issues, and served as the first head of the U.S. Trustee program.

Rick has served as a Board of Bar Overseers hearing officer and is a contributing author to Collier on Bankruptcy. ☰

Ninth Circuit Fellow Marc Cohen Honored by Century City Bar Association as Bankruptcy Lawyer of the Year

By Marc A. Levinson

Marc Cohen, Chair of the Business Re-organization and Creditors' Rights Group of Kaye Scholer's Los Angeles office, was honored by the Century City Bar Association as "Bankruptcy Lawyer of the Year" at the Association's 38th Annual Installation Dinner and Awards Ceremony on March 15, 2006. He was introduced by new College Fellow, Michael Tuchin, and by the Fire Chief of the City of Los Angeles, who spoke about Marc's commitment of time, effort and finances to the fire department. Marc, a member of the Ninth Circuit Admissions Council, Marc is currently representing the Reorganized California Power Exchange in various venues, LAX in the Delta case, and Phillip Morris Capital Corporation in Calpine. ☰

J. Ronald Trost Receives Distinguished Service Award

By Jules S. Cohen



▲ J. Ronald Trost

At the annual meeting of the College in Washington on March 18, J. Ronald Trost was named the recipient of the College's Distinguished Service Award. The award is given for significant accomplishments in improving the administration of justice in the insolvency and bankruptcy field, primarily arising from volunteer activities. The award was presented by Harvey R. Miller, recipient of the award in 2005.

Trost served as chairman of the National Bankruptcy Conference from 1996 through 2004. The Conference consists of lawyers, law professors and bankruptcy judges who have achieved scholarly distinction in the field of bankruptcy law. Its purpose is to study the operation of bankruptcy and related laws and proposals for their reform. The Conference has monitored the operation of bankruptcy law in practice and has participated as a consultant to Congress in most substantial amendments of the Bankruptcy Act and Code.

Trost served as consultant to the 1973 Commission on Bankruptcy Laws of the United States, particularly in formulating the present provisions of Chapter 11.

Trost is a member of the American Law Institute, whose primary project is the drafting and adoption of restatements of the law. The Institute has also collaborated in developing and monitoring the UCC.

Trost has chaired the Chapter 11 programs for the American Law Institute—American Bar Association Committee on Continuing Professional Education for several years and received its Harrison Tweed Award for Special Merit.

He has taught at the University of Southern California Law Center for over 10 years and for several years was on the faculty at the University of California at Los Angeles School of Law.

Trost served as planning chairman for the Williamsburg Conference on Bankruptcy, a review of the first 10 years of the 1978 Bankruptcy Code and an agenda for reform.

Trost received his B.A. at Rice University and his J.D. from the

University of Texas at Austin, where he was a member of the Editorial Board of the Texas Law Review.

Trost is now of counsel to the firm of Cronin & Vris, LLP in New York. Before that, he was chairman of the Corporate Reorganization and

Bankruptcy Group of Sidley Austin Brown & Wood, LLP for eighteen years.

In addition to his extensive record of practice, teaching and service to the profession, Trost and his wife have been major patrons of the arts in New York in recent years. ☞

Two Eleventh Circuit Fellows, Neil P. Olack and Laurel M. Isicoff, Installed as Bankruptcy Judges

By Mark D. Bloom



▲ Mark D. Bloom

The Fellows of the Eleventh Circuit are proud to congratulate two of their colleagues, Neil P. Olack and Laurel Meyerson Isicoff on their recent investitures as United States Bankruptcy Judges.

Inducted into the College in Class 8, Neil was formally invested as a Bankruptcy Judge in the District of Mississippi on June 29, 2006 in Jackson, Mississippi, where he has been hearing cases since May. For the past several years Neil has been a partner in the Atlanta office of Duane Morris LLP, and since 1998 a Director of the American Bankruptcy Institute. Neil is a graduate of Lehigh University and Emory University School of Law, and brings to the bench a vast and widespread array of knowledge accumulated over 25 years of practice. All of us in the Eleventh Circuit are enormously proud of Neil's commitment to public service, and only regret that his new career as a Judge will shift him to the Fifth Circuit.

We hope that Neil will continue to attend our events and remain a part of our Circuit.

Closer to home, Laurel's investiture took place on May 17, 2006 in Miami, Florida, where she becomes the third College Fellow to sit as a Bankruptcy Judge with Chief Judge Robert A. Mark and Chief Judge Emeritus A. Jay Cristol. Inducted this year in Class 17, Laurel joins the bench from the firm of Kozyak, Tropin & Throckmorton. Judge Mark, who presided over the investiture, spoke of her outstanding credentials and excellence in the courtroom. Trish Redmond spoke of Laurel's commitment to the Bar and community. Laurel's longtime partner and mentor John Kozyak spoke with warmth and affection of the personal and professional qualities she brought to his firm and will bring to the bench.

We congratulate Judges Olack and Isicoff on this important event in their distinguished professional careers, and take pride in knowing that each will continue to contribute significantly to the College as a United States Bankruptcy Judge. ☞

New Fellow Stacey Jernigan Appointed as Northern District of Texas Bankruptcy Judge

An inductee of this year's class, Stacey G. C. Jernigan, was recently appointed to the United States Bankruptcy Court for the Northern District of Texas, Dallas Division.

The Judge graduated from the University of Texas at Austin School of Law in 1989. She has been associated for the past 17 years with Haynes and Boone of Dallas, where she participated in many complex Chapter 11 cases and

out-of-court restructurings.

Judge Jernigan was referenced in the 2005 edition of Chambers USA America's Leading Lawyers as one of the leading bankruptcy lawyers in Texas.

In addition to being an active Chapter 11 course instructor for the John C. Ford American Inn of Court, the Judge has been a nationally recognized speaker and author on bankruptcy topics for many years. ☞

Fellow John Kozyak Inducted Into ACTL and Receives Special Award From Florida Bar

By Mark D. Bloom

John Kozyak, a College Fellow since 1993, was inducted into the American College of Trial Lawyers in October.

The American College of Trial Lawyers was founded in 1950 and is dedicated to maintaining and improving the standards of trial practice, the administration of justice, and ethics. Fellowship is limited to less than 1% of the lawyer population in any state. A prospective lawyer must have specialized in trial practice for more than fifteen years and be nominated by a Fellow. He or she is then subjected to a lengthy investigation before being recommended to the other Fellows in his or her state for their unanimous support. The nomination is then submitted to ACTL's Board of Regents.

John was also the recipient of the G. Kirk Haas Award for promoting diversity in the legal profession, at The Florida Bar's Annual Convention in Boca Raton on June 23. The award was presented by outgoing Florida Bar President Alan B. Bookman.

John started his career in 1975 as a commercial litigator, before concentrating on bankruptcy in 1979. He helped found Kozyak Tropin & Throckmorton in Miami in 1979. It is a twenty-lawyer commercial litigation firm, which often represents trustees, receivers, DIPs, and committees in litigation matters throughout the country. The firm regularly represents parties in business tort, securities, professional liability, class action, and intellectual property litigation. John and his firm have been frequently recognized for their work in promoting diversity and inclusion in law schools and in the practice. ☰

Jenks Added to Board of Editors of Colliers

By Stanley J. Samorajczyk

On April 24, 2006, it was announced that Jones Day partner Carl M. Jenks had joined the Board of Editors of Collier on Bankruptcy.

As an expert on bankruptcy taxation matters, Carl is a general tax partner as well as the head of the bankruptcy tax team at Jones Day, where he divides his time between the New York and

Fellow Kevin R. Huennekens To Become Second Bankruptcy Judge in the Eastern District of Virginia

By Stanley J. Samorajczyk

Kevin R. Huennekens, a partner in the Richmond, Virginia office of Kutak Rock, LLP, will soon join the Bankruptcy Court of the Eastern District of Virginia as the second judge in the Richmond Division and the sixth on the court. Kevin will be joining Chief Judge Douglas Tice, Jr., also a Fellow in the College, who has been the lone bankruptcy judge in the division since 2001.

As a partner of Kutak Rock, Kevin represented both creditors and debtors in a variety of complex bankruptcy and

reorganization matters, and has served as a bankruptcy trustee since 1987.

Kevin successfully argued a precedent setting case before the U.S. Supreme Court in 1992, which established the rule that now allows individuals to retain their retirement benefits after filing bankruptcy (see *Patterson v. Shumate*, 504 U.S. 753 (1992)).

Kevin graduated from William & Mary Law School, where he presently teaches the bankruptcy course as an adjunct faculty member. ☰

Getting To Know Our Foreign Fellows: Hon. Ralph Zulman, Justice, Supreme Court of Appeal of South Africa and Gordon Marantz, Former President of INSOL International

By Daniel M. Glosband

Justice Zulman received his B. Com. (Witwatersrand University (Wits)) 1958, LL.B. (Wits) 1961 and LL.M. (Tulane University) 1963. He was admitted as an attorney of the Supreme Court of South Africa (Transvaal Provincial Division) in 1961. He practiced at the Johannesburg, Swaziland, Botswana, and Zimbabwe Bars between 1963 and 1990. He was also called to the English Bar, 1984 (Lincoln's Inn). Justice Zulman is a part-time lecturer as a member of the Witwatersrand University Law Faculty and serves as a member of the of Board of Wits Law Faculty. He also served on a temporary basis on secondment as judge of the High Court of Swaziland. He has been an honorary professor of law at Rand Afrikaans University and a visiting professor at the University of Connecticut School of Law and a Visiting Fellow at the University of New South Wales,

Sidney . He is an honorary fellow of the Institute of Arbitrators. Currently, Justice Zulman is a judge of the Supreme Court of Appeals of South Africa, a position he has held since December of 1995.

Retirement from the active practice of law brought an interesting shift in career for Gordon Marantz, a former President of INSOL International. At the beginning of 2002, he joined the Osler ADR Centre which shared space with his former law firm, Osler Hoskin & Harcourt, LLP. Gordon's ADR practice focused on insolvency and restructuring matters. Under the Canadian Companies' Creditors Arrangement Act a practice developed of the supervising court appointing an independent "Claims Officer" to act as a delegate of the courts in assisting in the resolution of disputed claims. Gordon developed a pro active approach to this role, working closely with the Monitor (also a Court Officer who acts as a liaison between the debtor and its creditors) in expediting the process. Gordon, with the consent of the parties, will act as both a mediator and, if mediation fails, will sit as an adjudicator to resolve the dispute. Gordon finds the work both challenging and rewarding and sees much success in his efforts to get claims resolved without any formal mediation session. ☰

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7/20/06

College Activities Scheduled During NCBJ Conference at the San Francisco Marriott Hotel

Tuesday, Oct. 31, 2006

3:00 p.m. - 4:30 p.m.
ACB Foundation
 Directors' Meeting,
 Room Sierra E

Wednesday, Nov. 1, 2006

Board of Directors
 7:30 - 7:45 a.m.
 Board Buffet breakfast
 Room Sierra I
 7:45 a.m. - 12:00 p.m.
 Board of Directors Meeting
All Fellows Luncheon
 12:00 - 2:00 pm.
 All Fellows Business
 Luncheon,
 Room Golden Gate B

Regents

9:00 - 5:00 p.m.
 (lunch break 12:00 - 2:00)
 Regents Meeting, Room
 Sierra F

III Members' Meeting

2:15 - 4:15 p.m.
 International Insolvency
 Institute Members'
 Meeting, Room Sierra H

Thursday, Nov. 2, 2006

NCBJ/College luncheon,
 12:45 - 2:30 p.m.
 Room Golden Gate A & B
 Ticketed only through NCBJ
 registration www.ncbj.org

Approved Minutes of American College of Bankruptcy Board of Directors Meeting – November 1, 2005

A meeting of the Board of Directors of the College was held on Tuesday, November 1, 2005, at the Marriott Rivercenter Hotel, San Antonio, Texas. The following were in attendance: Evelyn H. Biery, David T. Sykes, Susan M. Freeman, Daniel M. Glosband, Sally S. Neely, Hon. Mary Davies Scott, Daniel E. Armel, Philip J. Hendel, Prof. Douglas G. Baird, John A. Barrett, I. William Cohen, David G. Heiman, Stuart Hirshfield, Hon. Barbara J. Houser, Richardo I. Kilpatrick, David S. Kurtz, Richard T. Peters, Joel B. Piassick, Lewis S. Rosenbloom, Richard S. Toder, Hon. Ralph R. Mabey, Raymond L. Shapiro, and Gerald K. Smith. Donald S. Bernstein participated in the meeting via telephone. Leonard H. Gilbert, Chair of the Judicial Nominating Committee, and Paul M. Singer, Chair of the Board of Regents, were also present for special reports to the Board.

Evelyn Biery thanked the members for attending and recognized Ralph Mabey for his assistance and guidance during the year of transition.

Upon motion duly made and seconded, the minutes of the March 18, 2005 meeting were reviewed and unanimously approved.

Paul Singer, Chair of the Board of Regents, reported that at the March 18, 2005 Induction Ceremony, 31 of the 34 nominees of the 16th Class and one from the 14th Class were inducted as Fellows. Paul said that of the 633 College Fellows, 448 were professionals (lawyers, accountants and turn-around specialists, etc.), 84 judges, 30 academicians, 26 International Fellows, 42 emeritus members, and 5 honorary members. Paul indicated that the Board of Regents had received 36 nominations for potential Fellows this year. Of that number, 3 are judges, 3 are International Fellows, 2 are accountants, and one is a Chapter 13 Trustee. The remaining nominees are attorneys. Paul also suggested that the Board might consider some form of financial assistance to enable International Fellows to attend meetings. Paul believes that there is a need for more substantial involvement by the International Fellows. After some discussion, no further action on this suggestion was taken by the Board.

Leonard Gilbert, Chair of the Judicial Nominating Committee, briefly discussed the method used for choosing judicial candidates. Leonard indicated that only 3 of the 6 candidates were approved by the committee for presentation to the full Board of Regents. The committee, in addition to carefully scrutinizing the applications, solicits views on qualifications of candidates from many sources, including Fellows who practice before nominated judges.

David Sykes gave a report on the nominating committee selections and requested members of the Board to share their thoughts on Fellows who may be qualified to fill the few slots available on the Board.

Ray Shapiro, Chair of the Foundation Board, provided a summary of Foundation activities. Ray announced that the Foundation had received \$53,000 in cash donations and a \$28,000 gift of stock from William Norton. Ray also indicated that the Foundation intended to make a year-end solicitation to all Fellows.

On the grant side of the ledger, Ray reported that the Foundation had approved a \$20,000 grant for pro-bono activities and a \$5,000 grant for the National Bankruptcy Archives. Ray

reported that the Board of the Foundation had approved a commitment to the Archives for 5 years with a minimum of \$5,000 each year.

Ray noted that, as the Foundation Board meeting occurs before the College Board meeting, the Foundation's 2006 budget does not reflect any distribution of any excess funds from the College. Ray also noted that the 2006 budget anticipates continuing support from the College to cover the administrative expenses of the Foundation and its audit. The budget also includes a slight increase for Armstrong & Associates services to the Foundation.

Upon motion made and seconded, it was VOTED to allocate \$20,000 to the Foundation from the Board. The Board, after motion duly made and seconded, VOTED to increase the yearly administrative expense reimbursement to the Foundation Board by \$2,000. Finally, Ray reported that the Foundation Board had approved a new grant request application form in order to standardize the procedure for all applicants seeking funds.

Bill Cohen, Chair of the Meetings and Events Committee, reported that several of the Circuits are now conducting regular activities during the course of the year, including educational programs, symposiums, and luncheons and dinners. Bill distributed details on the various Circuits' planned activities for the period from March 2005 through October 2005.

Evelyn Biery reminded members of the Board of the planned November 2nd luncheon at the NCBJ meeting, co-sponsored by the College. She said that 170 members of the College planned to attend the program, featuring guest speaker James Kenneth Galbraith.

Evelyn indicated that the recently initiated New Fellows Orientation under the leadership of Richard Toder would be continued at our Annual Meeting in Washington. A letter will be circulated to all new members informing them of the potential for committee involvement. Evelyn indicated that her goal is to encourage new Fellows to contact her concerning their interest to serve. Sally Neely proposed that there is a need to speak to the various committee chairs in advance of the New Fellows Orientation in order to define their respective needs and size. Sally said it would be desirable to contact the Regents about involvement at the local level for new Inductees.

Treasurer Dan Armel gave his financial report. Dan reported that cash receipts exceeded disbursements in the non-restricted accounts, resulting in an increase in net assets of \$53,163 or \$43,753 more than the budget. Dan indicated that both cash and investment balances as of September 30, 2005 totaled \$593,999. It was reported that all Fellows paid their dues for 2005 with the exception of 5 individuals. Our revenues received surpassed 2006 anticipated expenses. Dan indicated that he needed certain financial estimates from the Committees in order to finalize the year-end statements. It was reported that Lexis/Nexis has agreed to extend its donation of \$25,000 per year on behalf of the late Professor Larry King, for the National Bankruptcy Archives for 5 more years (2007–2012). The preliminary draft of the College's budget for 2006 was distributed to all members of the Board.

A discussion ensued with respect to the special arrangements Evelyn Biery made at the McNay Art Museum for our reception, dinner, and pri-

vate tour. Upon a motion made by Richard Toder and seconded, it was VOTED to have the College reimburse Evelyn for her out-of-pocket expenses in recognition that the funds paid to the Museum were, in fact, a charitable contribution to the Greater San Antonio Community.

David Heiman, Chair of the Best Practices Committee, reported on the "Circuit Review" Project. He said that the Circuit-by-Circuit review of opinions would include Bankruptcy Court level decisions. This year's project will also include an initiative to make the materials available online. A question was raised as to whether dissemination should be made available outside of the College. No decision was reached by the Board, as some members felt that third parties outside the College should pay for the information.

A decision was made, however, that the materials will be placed on the College website. David indicated that it was his intention to approach Lexis/Nexis with respect to its ideas regarding distribution. David also reported that the committee had recently initiated a new program called the Bankruptcy Tax Practices Project, headed by Carl Jenks and Mickey Sheinfeld. David said that this project would result in a significant review of tax issues that would be useful to College members. Mid-2006 has been established as the target date for completion.

David reported that the Consumer Bankruptcy Project was very busy in light of the new legislation. It was indicated that the College was not going to take a controversial position on the interpretation of any particular sections, including §707(b)(4), until actual case law develops. There was an expression of concern from a few members about alienating any constituency of the College by taking a position on new issues.

Upon motion made by David Sykes, and seconded, the Board VOTED that it will not take a position on any interpretation of new Bankruptcy code provisions until the development of case law interpreting new or revised sections.

Finally, David Heiman indicated that there was a need for the formation of a small business subcommittee, in light of the new and pervasive code provisions. Phil Hendel and Richardo Kilpatrick were asked to form a subcommittee and report on a possible project by the time of the next Board meeting in Washington, D.C.

Ralph Mabey thanked the Board for its assistance during his tenure as Chair. He indicated that plans were well under way for the March 2006 Annual Meeting in Washington, D.C. He announced that Ron Trost was selected as the recipient of the 2006 Distinguished Service Award by the College. Ron will deliver the keynote address to the new Inductees at the Washington meeting, which is being held at the National Building Museum.

Sally Neely, Chair of the Educational Programs Committee, indicated that this year one student from the Fifth, Sixth, Seventh, Eighth and Tenth Circuits will be selected in early 2006 to attend the March 2006 meeting and related College functions. Sally said that her committee was planning a special reception for College leadership to honor, and to provide orientation to, the Distinguished Students on Thursday evening, March 16. The invitees will include College officers, Board members and regents, Foundation Board members, the Distinguished Students and their mentors. Sally indicated that the committee intended to issue a press release at the time of the function and present plaques to the recipients.

The American College of Bankruptcy Foundation Wishes to Express Its Deep Appreciation to the Following 2006 Contributors

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7/2006

TOTAL Donations as of June 12, 2006- \$52,845.00

The issue was raised as to whether the College would discourage spouses and other guests of the Distinguished Students from attending the meeting. It was the consensus of the Board that the educational programs committee should discourage outside guests and family members of the students from attending. Upon motion made by David Sykes and seconded, it was VOTED that the College pay the expenses incurred by the Distinguished Bankruptcy Law School Students program.

Sally then reported that the committee had recommended to the Board and the Board subsequently approved contribution of up to \$8,500 to support a day-long symposium on the Future of Chapter 11 which was presented at Boston College Law School on April 22, 2005. Sally reported that the program was well attended and apparently very successful. Each Fellow of the College will receive a free copy of the December Symposium issue of the BC Law Review, which will be available in early January 2006. Sally praised the First Circuit counsel for an excellent job in assembling a blue ribbon faculty and moderators from around the country for the program, which included many Fellows of the College.

Suzanne Bingham then presented the Executive Director's report. Suzanne indicated that the reception and dinner held for the first time at the Library of Congress was an enormous success. Suzanne indicated that the College has reserved the historic National Building Museum to hold the 2006 Induction Ceremony, reception and dinner during the week-end of March 17-18. Suzanne also indicated that she had placed a similar reservation for March 23-24, 2007 as the Supreme Court will be under reconstruction until at least 2008.

It was reported that the Patron/Sponsor program for 2005 reached an all-time high partici-

ipation level of 45 patrons and 60 sponsors. Total revenue raised was \$202,500. Suzanne once again indicated that the Patron/Sponsor program significantly contributes to reducing the cost to Fellows of our two major events. Suzanne finally reported that the College website and directory were updated throughout the year and now includes information on Board and Committee members and upcoming events, Fellow contact information, past Distinguished Service Award winners as well as speeches of the last several keynote speakers.

Phil Hendel reported that with the assistance of Evelyn and Jon Milburn he had completed the first issue of College Columns. Phil indicated that he anticipated going to press again in midJanuary and requested any news from members of the Board that would be of interest, including special events, meetings, publications, awards to members and obituaries. Phil indicated that he intended to send a letter to all the Regents in December asking for updated information on individual Circuit activities, which will be reported in the January issue.

Mary Scott presented her report on the National Bankruptcy Archives Committee. Mary submitted an annual report from director Paul George of the Biddle Law Library at the University of Pennsylvania School of Law. Mary indicated that this year is exciting as the Archive Project is up and running, having entertained its first scholars using the materials for research projects. Mary also indicated that this year concludes the initial five-year funding pledge made by Lexis/Nexis.

It was reported that Lexis/Nexis has agreed to continue providing \$25,000 per year for the next five years for the archivist's salary. Mary requested a vote of the Board to fund the project during the same period of time as the Lexis/Nexis


pledge. Upon motion made and duly seconded, it was VOTED to provide \$25,000 per year to the National Archive Project concluding in 2010.

David Sykes discussed the fine services that Suzanne Bingham and Armstrong & Associates perform for the College. After some discussion, upon motion of David Sykes, and duly seconded it was VOTED to increase the administrative fee of Armstrong & Associates by an amount to be discussed by Evelyn and Dave with Suzanne, after a review of Armstrong's duties and responsibilities by Dan Armel. Dan reported to the Board that Armstrong's present administrative fee was \$5,500 per month.

Dan Glosband reported on the activities of the International Law Committee. He indicated that Bruce Leonard, Bruce Markel and Christoph Paulus had been making progress with one or more publishers but did not yet have a commitment to pass on to the Board. Dan also reported that while the Board had set aside a budget, its use was contingent on approval by the committee comprised of Neal Batson, Alan Resnik, Rich Peters and himself. Dan indicated that Bruce Leonard would supply an update for the Board shortly.

The Board had some discussion with respect to the Ken Klee Supreme Court project. A motion to reserve an additional \$5,000 in the budget for this project was made, seconded and passed by the Board.

A special thanks was given by the Board to John Barrett and Jerry Smith for their dedicated work for the College upon their retirement from the Board.

Evelyn Biery thanked the members of the Board for their active participation in the College's numerous activities. Upon motion duly made and seconded, it was VOTED to adjourn the meeting at 11:55 A.M. 

18 to 1



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