



2013 Induction of Class XXIV Ceremony and Events

Washington, DC – March 15, 2013



▲ Class 24 Inductees.

By Steven T. Hoort



▲ Steven T. Hoort

The College gathered to welcome its new fellows on March 15 underneath the wavy glass canopy of the Robert and Arlene Kogod courtyard of the Donald W. Reynolds Center For American Art and Portraiture in downtown Washington, D.C. The 39 inductees in Class XXIV include five judges, two law professors, four financial advisors and multiple attorneys. In his welcoming remarks, the Chair of the College, D.J. (Jan) Baker, noted that nearly 550 people were in attendance in the 28,000 square-foot space at the center of the building, the largest crowd in the history of the College, and that the induction brought membership in the College to over 800 restructuring professionals in the United States and 13 other countries. G. Christopher Meyer, Chair of the

Board of Regents, welcomed the inductees, stating the College seeks to select the best and the brightest and that they are indeed among the best and the brightest in all crucial aspects, including the Part B aspects of speaking, writing and other activities. Michael L. Cook, President of the College, introduced the individual inductees and G. Christopher Meyer delivered to the inductees their individual certificates.

Prior to the induction of the new fellows, Ralph R. Mabey presented the College's Distinguished Service Award to the Hon. Burton R. Lifland. He noted Judge Lifland is preeminent among bankruptcy judges of this generation, both presiding over major cases and rendering judicial decisions that have been cited thousands of times, such as *Johns Mansville*, pioneering the appointment of a representative for future claimants, *R. H. Macy & Co.*, and two of the largest fraud cases, *OPM*

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Upcoming Events.

2013 Fall All-Fellows Luncheon

Atlanta, Georgia

Please join us on Wednesday, October 30, 2013 from 12:00 – 2:00 pm for the Fall All-Fellows Luncheon. Four former judges look back on their judicial careers and discuss what they are doing now during our Keynote topic, "Look-Back 2013." Panelists include Hon. Leif Clark, Hon. Judith Fitzgerald, Hon. Arthur Gonzalez and Hon. J. Rich Leonard

Accommodations are available at the Marriott Marquis Atlanta located at 265 Peachtree Center Avenue. For reservations, you may contact the hotel at 1-888-855-5701 and ask for the NCBJ block of rooms. The special

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Chair's Column

D.J. (Jan) Baker, *Chair*



▲ D.J. (Jan) Baker

Thanks to the efforts of its members, 2013 is shaping up to be another great year for the College. As reported elsewhere in this issue, our annual meeting in March was a resounding success.

While there is much to regret about moving the induction ceremony from the Supreme Court, no one could regret being at a venue that comfortably accommodated over 150 more College members and their guests than would have been possible before.

And, happily, in addition to allowing all those who wanted to attend to do so, our new venue – at the Smithsonian American Art Museum and National Portrait Gallery – proved to be a spectacular location. Many of those attending took the opportunity to arrive before the ceremony and view some of the collection.

As we have done for the last few years, the evening combined presentation of the College's Distinguished Service Award with induction of new Fellows. The award this year went to Judge Burt Lifland, one of the country's most accomplished bankruptcy judges. Ralph Mabey, a former board chair of the College and the 2009 recipient of this award himself, presented it to Judge Lifland.

Following the presentation to Judge Lifland, we inducted the members of Class 24 into the College. As indicated in the report by Chris Meyer, the chair of the Board of Regents, it is yet another outstanding class that will contribute much to the College in years to come.

On other fronts, Mike Cook's President's Report gives you a great overview of some of what's going on in the College this year. It also indicates the large number of Fellows across the country who are actively involved in a myriad of College activities. They put a lot of effort into the College, but invariably find that they get even more out of it.

Next year will be the 25th anniversary of the College. When we look at the College today, it is worth reflecting on how far the College has come since its beginning. It started in 1989 with an initial membership of 49 Fellows. Ten years later it had 349 Fellows. Today, we have 719 active Fellows and 88 emeritus Fel-

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President's Column

Michael L. Cook, *President*



▲ Michael L. Cook

The College is thriving, thanks to the support of so many Fellows. Our new class of Sustaining Patrons has enabled the College to maintain and enhance its existing projects, particularly pro bono and education.

Development. The College, through its Patrons and Sponsors program, has raised more money than in all prior years for its important projects. Fellows and their firms have stepped up to meet increasing demands for pro bono and other critical services that the College provides. Similarly, the Foundation, through the concentrated efforts of its directors, raised more money than in all prior years while increasing participation to a record level.

Board of Directors. The Board met on March 15, 2013 to enact resolutions making the College experience more useful to all Fellows and to ensure the College's public service commitment. Starting with the March 15 meeting, the Board will be publishing on the College's website an executive summary of actions that the Board has taken.

Archives/History. The College maintains a treasure trove of historical documents and oral histories at the University of Pennsylvania Law Library. Those of you who have not visited the library are missing a treat. Regardless of whether you go to Philadelphia, many of the project's materials are now available on line. For those of you interested in the history of our profession, the oral histories (taped interviews of key professionals conducted over the past twenty years) are a valuable source. The College's board has encouraged the publishing of excerpts from these histories in all future editions of College Columns.

Policy Committee. The College has taken positions on selected legislative battles, including commenting on the proposed United States Trustee fee guidelines, and proposed amendments to the Uniform Fraudulent Transfer Act. The Board encouraged the committee to consider taking an active litigation role on certain important issues (e.g., an amicus brief in pending battles over bankruptcy jurisdiction).

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Induction of XXIV Class of Fellows

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▲ Induction Ceremony Reception



▲ Presentation of Distinguished Service Award

leasing Services and Bernard Madoff. He noted Judge Lifland is a founding member of the International Insolvency Institute where he pioneered principles of judicial cooperation among nations, including the appointment in bankruptcy cases of foreign representatives so that other governments and foreign insolvency administrators would have clear lines of communication with the U.S. case and the U.S. debtors, and that Judge Lifland was one of the U.S. Delegates that drafted the Model Law that underlies Chapter 15. He also noted Judge Lifland has been a pioneer in innovative judicial administration, including developing electronic filing, court approved mediation resources and consistent professional fee standards. And he stated the humanity, public spirit and goodwill of Judge Lifland are founded in his marriage and family.

Judge Lifland graciously accepted the award, thanking the College, and acknowledging the work of many who influenced him, who he described as legends in developing the bankruptcy practice. He articulated his goal and hope that economic change be channeled into helping insolvency regimes, and in elevating equality and predictability over parochial interests. He analogized Johns Manville and Bernard Madoff as both being mass tort cases which will survive him and for which there were no cookie cutter solutions. He also noted his great pleasure in dealing with and interpreting Chapter 15 of the Bankruptcy Code, where the growth of cross border jurisprudence in attempting to deal with unintended consequences is like "law on steroids". Judge Lifland received standing ovations at both the beginning and the conclusion of his remarks.

D.J.(Jan)Baker rendered congratulations to Judge Lifland and to the new fellows and provided the concluding remarks. 



▲ 2013 Distinguished Bankruptcy Law Students pose with Committee Chair Berry Spears.



▲ Ralph Mabey gives remarks before the presentation of the Distinguished Service Award.

President's Column

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Visibility. The Board authorized last year the formation of a Visibility Committee, chaired by Vice President Mark Bloom. The Committee's goal was to ensure that all Fellows and the general public learn about what the College is doing, particularly with respect to pro bono and educational programs; the induction of new Fellows; the selection of Distinguished Law Students; the International Bankruptcy Law Course; and other social events.

Regents. As noted in the accompanying article by Chris Meyer, Chair of the Board of Regents, the College is committed to maintaining a diverse constituency. Under the leadership of Bob Rosenberg, chair of the International Committee, the College will also continue to attract International Fellows with a strong commitment to public service.

By-Laws. The College By-laws were last amended in 2005. The Board formed an ad hoc committee to review the By-laws and propose amendments if warranted. Bill Perlstein, the College's general counsel, and former College Chair, Paul Singer, will head this effort. Among other things, the new committee will consider refining current term limits for officers, directors and committee members.

Dues/Event Fee Structure. The Board passed a resolution directing that the College's dues and event fee structure should take into account the limited resources of judges, academics, government employees, retirees and members of small professional firms. The College wants to ensure that all Fellows in these categories are able to participate in as many College activities as possible. The College already provides limited stipends for judges to attend the College's major events.

Reconstitution of Committees. The Board urged committee chairs to effect gradual turnover in their committees. In particular, Fellows who have spent more than four years on any one committee should consider moving to another committee. In this way, more Fellows will be able to participate in the full range of the College's worthwhile projects.

Strategic Planning. The Board directed the reconstituting of a strategic plan committee to be headed by Stephen Lerner. The goal is to examine what the College is now doing and to recommend further activity to make the College even more effective.

The College wants to be responsive to your needs. Only by hearing from and listening to you can we ensure that the College continues to thrive as the dominant public service group of our profession. 🏛️

Chair's Column

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lows. Our Foundation has grown to nearly a million dollars since its inception, thanks to the generosity of our members, and the Foundation and College today fund over two dozen pro bono programs throughout the United States every year. The College sponsors highly-regarded programs in every circuit; started the National Bankruptcy Archives project at the University of Pennsylvania, including the Oral History Project; and does a host of other things as well, all listed on the website.

All of these accomplishments have resulted from the talent, interest and dedication of our Fellows over the years. I suspect that it would hardly have seemed possible to those who founded the College nearly 25 years ago that it would be where it is today. If we accomplish as much over the next 25 years as we have since we began, the College – and its Fellows – will be all the better for it.

Best wishes to all Fellows for a healthy and enjoyable summer. I look forward to seeing you in Atlanta. 🏛️

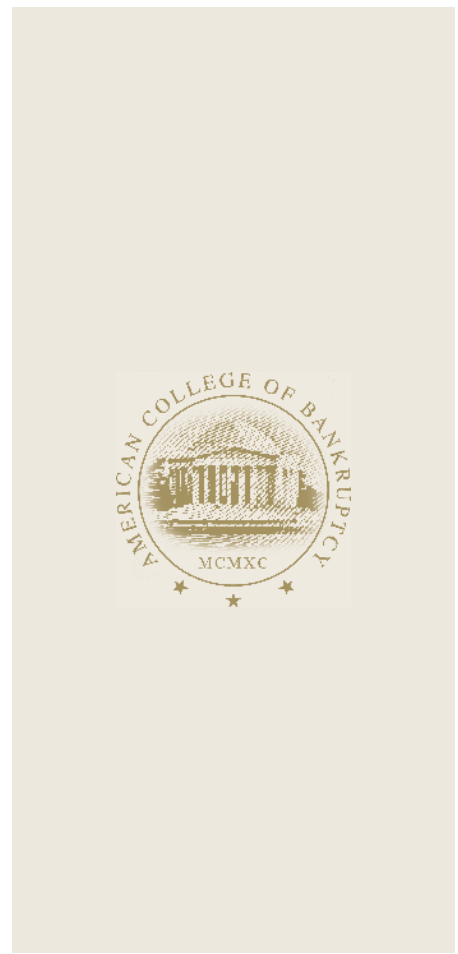
Third Circuit Fellows Gather for Art, Food and Fellowship!

On May 9 the Third Circuit Fellows hosted a private guided tour of the Barnes Foundation in Philadelphia. The Barnes houses one of the world's foremost private collections of European and American masters of impressionism, post-impressionism and



early modern art. The tour was followed by a wonderful dinner at the renowned Four Seasons. Fellows came from New

York, New Jersey, the Midwest, Philadelphia and Wilmington to attend this event. Those who attended had a great time and look forward to the next event. 🏛️



Upcoming Events

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room rate of \$232 per night is available until September 27, 2013. Registration details for the luncheon are available on the College Home Page (www.amercol.org). ☰

Save the Date! Class 25 Induction Ceremony and Related Events

March 13-15, 2014



We are pleased to announce that the Induction Ceremony will again be held in Washington, DC at The Donald W. Reynolds Center for American Art and Portraiture (8th and F Street NW) in the museum's courtyard. The conference hotel will be the Washington Marriott at Metro Center (775 12th Street NW), which is a short walk from the museum. We will have shuttle bus service the evening of the ceremony for those who may not want to walk or in case of inclement weather. The museum is open to the public until 7:00 pm, so attendees are encouraged to arrive early and tour the museum at their leisure. Because of the increased cost associated with closing the museum if our event were to start earlier, we will continue to hold the ceremony at 7:15 pm with a reception to follow from 8:15 pm - 9:00 pm.

Registration for the Class 25 Induction Ceremony & Related Events will be available starting in mid-December. For those who want to plan ahead and make their reservations at the hotel, please call 1-877-212-5752 and ask for the "American College of Bankruptcy" block of rooms. You may also go to https://resweb.passkey.com/Resweb.do?mode=welcome_ei_new&eventID=10652719. The available room rate is \$219 per night. ☰

Got Nominees?

G. Christopher Meyer



▲ G. Christopher Meyer

On March 15, 2013, the College inducted 39 new Fellows as members of Class 24. The group was comprised of 5 judges, 2 law professors, 3 financial advisors, a Chapter 13 Trustee, 3 international practitioners and 24 US lawyers. As with those inducted before them, the Fellows in the 24th class have an impressive record of professional accomplishments. They also have shown a sustained commitment to both the practice and the community. We can all be justly proud to add the members of Class 24 as Fellows. Please make a special effort to reach out to our newest Fellows and to integrate them into the many circuit, committee and other activities of the College.

The Induction Ceremonies took place at our new venue, the Donald W. Reynolds Center for American Art and Portraiture, Smithsonian American Art Museum. The new location allowed for more spacious seating and dramatically improved acoustics, all within a short walk from the hotel. Although it was a shame to lose the special majesty of the Supreme Court, we had long since outgrown that space. That was clearly demonstrated by the fact that 525 people were able to attend this year's ceremony, 150 more than the number that could have been accommodated in the previous location.

Now we turn again to the annual task of identifying worthy candidates for induction as members of Class 25. Nomination materials have been recently distributed to you, together with information on the timetable for the nomination process. I am sure that, like me, many of you are a bit surprised by the prospect of the College's twenty-fifth class. However, in 2014 we will welcome our Silver Anniversary Class.

Please take some time to consider individuals whom you feel are worthy to be named Fellows. In doing so, please consider qualified candidates who will help enhance the diversity of the College - including diversity in gender, ethnicity, age and practice focus. Remember that the continued success of the College will be a direct function of the capability and engagement of those we select.

Discuss your nomination ideas with other Fellows in your Circuit and with your Circuit Regent. And then please submit your nominations by the June 15 deadline. Regular nominations go to the Regent for the Circuit in which the nominee is primarily located. Their names are listed on the College website. International nominations should be submitted to Bob Rosenberg, the Chair of the International Fellows Nominating Committee. Judicial nominations should be submitted to Jim Garrity, the Chair of the Judicial Nominations Committee.

We appreciate your investment of time and effort toward making the College a richer, stronger and more diverse organization as it begins its second quarter century. We will look forward to your input on candidates for selection as part of another strong new class of College Fellows. ☰

Family Fun at Mount Vernon



▲ Spouse event group photo March 16, 2013, Mount Vernon

Many thanks to Cyndi Coury, wife of Class 19 Fellow Michael P. Coury, for organizing another wonderful spouse and guest event. For the third year running,

Cyndi has planned entertainment for the family members who come to Washington DC for our March event. While our Fellows participated in the Saturday Education Sessions, visiting family members toured the home of our nation's first president. A fun time was had by all, as evidenced by the picture below. Thank you, Cyndi, for another job well done!

If you would like your family members to receive notification about future spouse/guest events, please send their email information to the College office at college@amercol.org. ☰

Fellow News

A new section for newsworthy awards and moves by Fellows. If you have news about yourself or a colleague, please send announcements to Shari Bedker at sbedker@amercol.org for inclusion in the next issue of the College Columns, published in June and December each year.

Richard Levin was awarded the *Emory Bankruptcy Developments Journal* Distinguished Service Award for Lifetime Achievement on April 10, 2013.

D.J. (Jan) Baker was awarded on May 22, the 2013 Professor Lawrence P. King award from UJA-Federation of New York.


Stephoe partner **Robbin Itkin**, who heads the firm's West Coast Business & Financial Restructuring Group out of Steptoe's Century City office, has been named Bankruptcy Lawyer of the Year by the Century City Bar Association (CCBA).

J. Rich Leonard, United States Bankruptcy Court Judge for the Eastern District of North Carolina, has been appointed as the next dean of Campbell University's Norman Adrian Wiggins School of Law. Leonard's appointment, effective July 15, 2013, fills the position currently held by Interim Dean Keith Faulkner.

Frost Brown Todd attorney **Edmund Adams** was recognized for his 50 years of practice by The Ohio State Bar Association, April 2013. Also in April he just completed teaching a one-week seminar entitled, "Teaching Law in Eastern Europe", at the Center for International

Legal Studies (CILS) in Salzburg, Austria.

Judge Leif M. Clark retired from the bench on October 20, 2012 in the Western District of Texas and has moved on to a new stage of life as a solo practitioner and mediator.

The ABI National Ethics Task Force released its final report at ABI's 31st Annual Spring Meeting to provide recommendations for both consumer and business practitioners for uniform ethical standards in bankruptcy practice. Funded by ABI's Anthony H.N. Schnelling Endowment Fund, the Task Force formulated a set of uniform ethical standards on a variety of bankruptcy-related matters, including use of conflicts counsel, employment of counsel and necessary disclosures, competency standards, and fiduciary duties of counsel for the debtor in possession (DIP). To read a copy of the final report, please visit <http://go.abi.org/FinalEthicsReport>. Fellows **Prof. Nancy Rapoport**, **Prof. Lois Lupica** and **Richard Carmody** were key contributors to the report. 

Calling All Fellows

Thanks to your generosity 2012 set a new fundraising benchmark for 2013 by increasing the number of Fellows who contributed to the Foundation and by raising more dollars than the year before.

We have seen a dramatic rise in giving by our Fellows from 28% in 2010 to 57% in 2012 when 573 of you reached for your checkbooks. And the increase in donations for those same years went from \$81,570 to \$183,073. What this means is that your support of needy Pro Bono projects has more impact nationally. **Larry Coppel's** article in this edition of the College Columns showcases where your much needed and appreciated donations have landed.

A Shout Out

Kudos and many thanks to GlassRatner Advisory & Capitol Group from Atlanta, Georgia. Much to our delight, the Foundation recently received a \$5,000 do-

nation from a case in which Ron Glass acted as Plan Administrator. Ron's co-principal, **Ian Ratner**, is a member of the 22nd Class of College Fellows.

Some far thinking lawyer had provided in a Liquidation Plan that the Plan Administrator could donate funds under a threshold amount to charities of the Plan Administrator's choosing. As Ron stated in his letter to the Foundation - "it is my pleasure to provide this donation to your organization to assist you in continuing your good works."

We hope that those Fellows who are in the position to similarly plan and act are inspired by the Foundation's good fortune in this case.

Keep the Foundation in mind the next time you are drafting a Plan. You can be assured that your generosity will support the Foundation's good works.

Senior Fellows

Richard Carmody's open letter (pp. 6,7)

to Senior Fellows explains another way you can direct your donations to the Foundation.

Turn Over

We bid adieu to two invaluable Foundation Board members: **Rich Peters** and **Steven McCardell**. The Foundation is most grateful for the services and sagacity of Rich and Steve as they move on. Joining the Board are **Debra Grassgreen** of the Pachulski, Stang, Ziehl & Jones LLP firm and **Danny Kelly** of Stoel Rives LLP. They are both prepared to roll up their sleeves as they dive into our fund raising efforts for 2013.

And Finally . . . The Money Tree Shakers

While the Foundation is most grateful for the generosity of the Fellows, I must acknowledge those who shake the trees - the Foundation Board members and their respective circuit teams. The Board has representatives from all of the circuits who lead the year end solicitation campaign in their circuit along with a team of circuit volunteers. Thanks to the 2012 Board: **Paul Daley**, **Lisa Donahue**, **Richard G. Mason**, **Michael Cook**, **Hon. Diane Sigmund**, **Claudia Springer**, **Michael Baxter**, **Larry Coppel**, **John Penn**, **Chris Meyer**, **Dan Murray**, **Jim Baillie**, **Steven Cousins**, **Mary Jo Heston**, **Tom Lumsden**, **Larry Peitzman**, **Richard Peters**, **Steve McCardell**, **Richard Carmody** and **Hon. Laurel Isicoff**. 

Dear Senior¹ Fellows:

I am writing to advise you of a potential "win-win" opportunity for you and the College Foundation. Many of you are in the position of having to take a "Required Minimum Distribution" (RMD) from your 401K plan or your IRA. The RMD amount generally will be included in your taxable income for this year.

Due to the tax legislation enacted in early January, you can use a portion of the RMD (up to \$100,000) to make gifts to qualified charities, including the College Foundation. The gifted amounts will count as RMD distributions but will not count as taxable income. (Naturally, the gifts also will not count as charitable deductions for tax return itemization purposes). Presently, this treatment only applies to RMDs for 2013.

I realize that everyone's tax situation and income needs are different. You

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The Auto Bankruptcies: Checking The Rear View Mirror: Boston College Law School, March 22, 2013

by Steven T. Hoort

The First Circuit Fellows and Boston College Law School presented an all star panel on the recent Chrysler and General Motors bankruptcies. The panelists were the presiding bankruptcy judges, Hon. Arthur J. Gonzalez (Chrysler) and Hon. Robert E. Gerber (General Motors), the lead bankruptcy lawyers, Corinne Ball of Jones Day for Chrysler, and Harvey R. Miller of Weil Gotshal for General Motors, and Matthew A Feldman, then an advisor to President Obama on the Auto Task Force. First Circuit Bankruptcy Judge Joan Feeney made the introductions and Mark Berman of Nixon Peabody set the stage on the deteriorating financial condition of the auto makers. The panelists articulated the major issues were, first, the auto makers had to overcome their belief that you could not do a chapter 11 of a car company, and, second, convincing the government that there was no other source of funding. On the fundamental issue of why the government should be involved in rescuing the auto makers, the panelists noted that a government rescue of the auto manufacturers was perhaps inevitable after the collapse of Lehman Bros., since the economy could not handle such another shock, and because a failure of any of the major auto manufacturers would not have been contained but would have led to the widespread failure of the auto industry suppliers. Both Judge Gonzalez and Judge Gerber nonetheless stated that their decisions were not driven by the public interest, which they viewed as outside the parameters of what a bankruptcy judge could consider, but rather were driven by the application of fundamental provisions under the Bankruptcy Code. Once the government decided to fund, and given the extremis condition of the auto manufacturers and the absence of other bidders or opportunities, their decisions were the application of those cases such as Lionel and TWA that authorized a 363 sale of substantially all assets in advance of and outside of a plan. Judge Gonzalez noted that the objectors were not really opposed to the sale but instead were seeking to delay the sale to see if

Ninth Circuit Bankruptcy Negotiation Competition USC Gould School of Law

January 26, 2013



▲ Award Reception

The Educational Programs Subcommittee of the Ninth Circuit, together with the University of Southern California Gould School of Law, held its inaugural Ninth Circuit Bankruptcy Negotiation Competition on Saturday January 26, 2013 at the University of Southern California Gould School of Law. Law schools from all over the Ninth Circuit fielded teams for this new program.

The competition involved the preparation and exchange of written term sheets followed by



▲ In-person Negotiations

two rounds of in-person negotiations. Each team consisted of two to three upper level law students and a coach. The American College of Bankruptcy provided judges for the competition and assisted teams in recruiting bankruptcy lawyers, judges, and financial advisors as coaches as necessary. An award reception followed the competition where the law students had an opportunity to meet practitioners and judges. ☰

they could obtain leverage over the USA to have it contribute more. Judge Gerber noted the bidding procedures were relatively easy, since the government was the DIP lender with a right to credit bid and any overbid would have had to be "astronomical". Both Judge's noted their decisions were predicated on not treating the government any differently than any other source of funds and were based on the virtually undisputed evidence presented. Judge Gerber observed the more difficult issues in General Motors had to do with the treatment of future tort claimants and successor liability issues, which may be the subject of future litigation. ☰

Dear Senior Fellows

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should consult with your own tax advisors. For me, I determined that a contribution to the College Foundation (and other charities) created that "win-win" solution.

I encourage each of you to consider a contribution in 2013. As a member of the Foundation's Board and the Pro Bono Committee, I can assure you that your contribution will be prudently invested in making grants to responsible and caring organizations providing pro bono services to needy constituents.

Thank for considering a gift to the Foundation. ☰

*Your fellow Senior Fellow,
Richard P. Carmody*

1. Fellows who will be 701/2 or older in 2013.



Insights in Bankruptcy Practice: the ACB in Action

By Kasie Gorosh¹

In 2012, Judge Judith Fitzgerald and the ACB Law School Liaison Committee created and initiated the *Insights in Bankruptcy Practice Program*. The goals of these programs were to attract and introduce students to bankruptcy law and the American College of Bankruptcy.

Judge Fitzgerald and those on the committee were overwhelmed by the response to the program invitation; program requests came from all over the country.

This year, the committee conducted bankruptcy programs at several law schools nationwide.

On Wednesday, January 30, 2013, bankruptcy judges, practitioners and professors joined efforts to offer one of these programs at the Georgia State University College of Law. Thanks to an impressive panel of college fellows and experts, including Judge Paul Bonapfel, Grant Stein, Sarah Borders, Rich Thomson, Professor Jessica Gabel, Professor Jack Williams, students participated in a program that provided a firsthand overview of bankruptcy practice.

Panelists offered career advice to a group of nearly 70 students. The speakers emphasized that the curriculum students chose in law school would influence their marketability, and the speakers expand-

ed on the courses they found most beneficial. Panelists reminded students that bankruptcy intersects with nearly every course offered in law school; therefore a strong academic foundation and broad knowledge base is the most important preparation for a budding attorney.

In their enthusiastic program evaluations, students thanked panelists for providing candid information including creative ways prospective job seekers might enter the legal market today. Students recognized the value of the program and, based on their reviews, they thought the panelists were outstanding.

If you are a College member and would like to participate in your local area *Insights In Bankruptcy Practice Program*, please contact Judge Judith Fitzgerald, [Judge Judith Fitzgerald@pawb.uscourts.gov](mailto:JudgeJudithFitzgerald@pawb.uscourts.gov). They provide a wonderful opportunity to educate the legal community about bankruptcy. ☰

1. Ms. Gorosh graduated from the Indiana University Maurer School of Law, where she served as President of the Student Bar Association and Executive Judge Coordinator of the Sherman Minton Moot Court Board. Currently, she serves as law clerk to the Honorable C. Ray Mullins, Chief Bankruptcy Judge for the Northern District of Georgia. Ms. Gorosh is a law clerk member of the American College of Bankruptcy Law School Liaison Committee.

Larry King: Master Teacher

By Michael L. Cook



▲ Larry King

Lawrence P. King was a distinguished Professor of Law at New York University School of Law for forty years. Courts, practitioners and scholars regularly relied on

Larry's clear, practical writings, including the Collier Bankruptcy treatise, and other important law review articles. He also spoke widely around the country, free of charge, to bar associations and other legal education groups.

Larry was my favorite law school teacher. He was the model of teaching excellence. Larry's direct, clear and unpretentious manner stayed with you. He was supremely likeable, with an easy teaching style. He walked around the classroom with his tie loosened, engaging us in a mutual learning dialogue.

The following excerpts are from a taped interview with Larry on October 19, 1993, when he was sixty-four years old. In this extensive interview, Larry describes his education and early experience; pre-Code bankruptcy practice; the drafting of the Bankruptcy Rules; and legislative battles over the current Bankruptcy Code. He also gives us a first-hand glimpse of the major personalities engaged in bankruptcy practice during the second half of the twentieth century.

The College awarded Larry its Distinguished Service Award in 1997. Later, on March 30, 2001, just hours before he died, Larry gave the keynote address at the College's induction ceremony. He stressed the importance of public service, urging this distinguished group to contribute something of value:

"Participate in bar association functions; be active, volunteer to do work. Get involved in pro bono work. You'll get a lot of satisfaction in helping people. In whatever form you wish to express yourself, remember, give something back."

Larry described his life as he lived it. ☰



▲ From Left to Right: Professor Jack Williams, Georgia State University College of Law, Sarah Borders, Partner, King & Spalding; Atlanta, Hon. Paul Bonapfel, United States Bankruptcy Court, Northern District of Georgia, Rich Thomson, Clark & Washington, PC; Atlanta, and Professor Jessica Gabel, Georgia State University College of Law.

Lawrence P. King

10/19/93 Interview

Family Background

I was born January 16, 1929 in Schenectady, N.Y.

[My father] got tired of the grocery business in Schenectady and had an opportunity to go to N.Y. In the Bronx he had a fruit store and then some relatives from Omaha who had a big grocery business asked him to come out there and they set him up in a hardware business which didn't work and he left Omaha to go back to N.Y. but by this time he was completely broke. And the children got farmed out to relatives. That's why I went back to Schenectady and then he started a hand laundry business in upper Manhattan in N.Y., and that was where he spent the rest of his life.

My father and mother, the two of them always worked together in the store. And I went to junior high school, high school, college, and law school in N.Y.

My family of course always made education a prime priority for the kids and so we all ended up in college and graduate school.

My parents came to this country from Russia in the early 1920's during the Revolution. My father had served in the Russian Army during the First World War, and he was wounded and captured by the Germans. Then when he went back to Russia after the war the Revolution started, and they wanted him back in the Army. There were a bunch of young people at that time who just fled. The stories that I've gotten from my parents are that they would sleep in the hay lofts during the day and run at night until they crossed the borders and made their way to this country.

Education and Early Work

I graduated from Bronx High School of Science.

From there I went to City College, CCNY, and from there I went to NYU Law School.

I graduated from law school in 1953 and after that I spent 2 years in the Army as a draftee during the Korean War.

Bankruptcy Judge Howard Schwartzberg who sits in White Plains, he was a classmate, and practitioner in N.Y.C. Richard Lieb, main partner in Kronish Lieb, etc. I'm trying to think if, now I have to think some more to see if there are others, but those are the two that immediately come to mind.

I was on the Law Review; I was on the Dean's List all three years; I think I was about 10th or 11th in the class;

I was the articles and book reviews editor of the Law Review. I don't know what else, but that was again, that was a time especially at NYU well it was a time at NYU quite different from today. Law firms did not come to NYU to interview. Graduates of NYU found it extremely difficult if not impossible to get offers from the major Wall Street law firms. In my class maybe one or two did. And not the very top. It was very difficult for NYU graduates at that time to get judicial clerkships. So there really was not all that—today it would be entirely different. Someone with my record I think today... would at least get call backs on interviews, let's put it that way.

I had a very successful [Army] career. I went in as a private and got out as a sergeant.

"Participate in bar association functions; be active, volunteer to do work. Get involved in pro bono work. You'll get a lot of satisfaction in helping people. In whatever form you wish to express yourself, remember, give something back."

I was with the legal department of Paramount Pictures Corp. and was again very fortunate. The legal department was set up in compartments, there was antitrust, there was copyright, contract, tax, real estate. When I was hired I was told that the departments were pretty full, no one needed anybody and therefore my job would be to help out any department that had a problem and also to take on any matter that came along that did not fit into a department so I was a general practitioner.

Bankruptcy Beginning

I had done some work in the [bankruptcy] field starting in law school. I guess it started when I wrote a piece, a note, for the Law Review on accounts receivable financing. It involved a case that dealt with accounts receivable financing and bankruptcy, and my faculty supervisor was

Charles Seligson. I took two courses from him and he, of course, was the bankruptcy teacher. And he and I became friends. I enjoyed the courses very much and I enjoyed the writing. When I was in the Army, strangely enough even though I obviously was not in judge advocate corps, what little legal work came through in my outfit I was asked to help out with. Some of that involved bankruptcy with some of the soldiers getting involved in installment contracts and the like, and so wherever I was I had... occasion to go find the law library and look up Collier on Bankruptcy and read some stuff.

Relationship With Charles Seligson

Charlie [Seligson] was even then recognized as the dean of the bankruptcy bar. He had a very special situation as far as the law school was concerned. He was one of two people who had Board of Trustee approval to be a full time professor as well as holding a full time practice. That just [was] not allowed and certainly is not allowed today. But he was recognized as being the leader of the academic profession and leader of the practitioners.

Charles was a national figure. He was a very important and active member of the National Bankruptcy Conference. He was an author. He was a lecturer, sought after considerably around the country. He travelled on cases all over the country. I remember one time... in my 3rd year of law school I generally did not go to class, I was too busy with the Law Review. I had Charlie's class at 9 o'clock and I had a deal with him that I would come to class if he didn't make me be prepared. But he said

"[Y]ou don't have to be prepared, but after you listen to the discussion if I want to call on you I'm going to call on you for your opinions." And so he would do that so I couldn't just sit in class relaxing in any way. Actually it was much more difficult because I never knew what he was going to ask or when he was going to ask it. But one day he said "Larry," I have to go to Texas to try a case and so I'm having a... judge come in to visit and teach the classes." I said "o.k." And the next week that was occurring I was up in the law review office during the time of his class and he came walking in, or storming in, and he said "why weren't you in class?" I said, "Why aren't you in Texas?" He said "I settled the case." I said "Well, you should have told me." He said "I wanted you in the class so I could get your evaluation of the judge."

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Larry King*continued from page 9***Work at Paramount Pictures**

That lasted about a year and a half, I think, close to two years, but while I was there I enjoyed myself tremendously. I enjoyed the practice, I enjoyed what I was doing, I enjoyed the people. I had a wonderful boss, Lou Phillips, who was vice president and general counsel, and he was also senior partner of Phillips, Nizer, Benjamin and Krim which is a pretty well known firm. But, while there, just all of a sudden, the thought came to me that I might want to go to Michigan to do graduate work. Again, without any thought as to the future. It was just something I felt like doing at the time.

Teaching

[F]or the summer I was fortunate to be able to stay at Michigan and work as a research fellow to one of the faculty members who was doing a book on a brand new subject, the legal aspects of atomic energy. So I researched some of the torts aspects of that for him, but really the reason I was there for the summer is because by that time I had received an offer which I accepted to teach law at Wayne State University in Detroit. When I started the fellowship I had no idea, my expectation was to come back to New York at the end of it and go back into practice although neither Lou Phillips nor I made a commitment either way on that.

I was asked to teach Michigan trial and appellate practice which was perfectly logical for someone coming from New York, civil procedure in the first year, bills and notes, suretyship, I think that was it.

There was no Uniform Commercial Code and Michigan did not have a procedural code, but I had to teach Michigan practice. One of the students caught me in the library one night. I will never forget, a third year student,... at about midnight. He said "you're from New York." I said "Yes." He said "You went to school in N.Y." I said "Yes." "You practiced in N.Y." "Yes" "You're a member of the New York Bar." I said "Yes." He said "Why are you teaching Michigan practice?" I said "Why not?"

Well, while I was in Ann Arbor during that academic year several of my fellows, my colleagues, were asked to go to the annual meeting of the Association of American Law Schools in Chicago which was at that time in addition to being a professional conference was the meat market for hiring young law teachers. And they had interviews set up and

they asked me to go along with them for the ride and help drive and I did. And while there I met, I ran into my Dean from NYU and we knew each other and I knew some of the faculty members and we talked. I was asked to interview at a few schools, about three I think, Boston College was one and one in the Midwest, in fact I think it was Iowa University, and at Wayne State.

When I came back from the Army I went back to the law school and I spoke to one of my professors and he said I'm going to tell the Dean you're available. That was Russell Niles, and two days later the Dean's office called me and said Lou Phillips of Paramount Pictures wants to interview you.

And that's how I got my job. And so when I say I was going to go back to N.Y. to practice, I had no idea where or what or how, and it's just when I had these offers to teach again I was in a particular mode of my life where I had no obligations and I could do whatever I felt like doing and at the moment I felt like teaching. I said again to myself "Why not?" I think I might like it but why not find out. And so I started, I don't have to stay with it if I don't like it, and while I wasn't looking to live in Detroit, on the other hand it didn't make any difference to me where I lived. As a matter of fact my first offer was from Boston University. I had already accepted that, but then they had a problem with their budget. They had to renege on the offer.

And then I got an offer from Wayne State. Again on a lark I accepted it and just then I started teaching. It was the hardest two years of my life, but an awful lot of fun. I enjoyed it tremendously.

Preparing took an awfully long time. It was hard to do. They had an adjunct professor teaching [Michigan practice]. He was one of the most respected elder attorneys in the State of Michigan. He was a sole practitioner. He ran their grievance committee of the State Bar. He was so well respected. But he was an adjunct professor. He knew all this stuff about Michigan practice, but he had a little problem in teaching and communicating it to the students so I was asked by the administration of the law school if he would help me with the subject matter if I would help him with the teaching. And part of the fascinating and wonderful experiences was our co-teaching. I enjoyed it, and he and I became fast friends.

He stayed in the practice. He never became a full time teacher. He really didn't write. He knew everybody. He would in-

troduce me to his friends who were the Supreme Court Judges of Michigan and I would get them to come in and talk to the class and conduct trials. I set up a trial program, a program, a clerk program, and I got to know some of the judges,

Towards the end of the second year I got a phone call from Russell Niles who was still the Dean at NYU and asked me if I would come to N.Y. and talk to some of the faculty. They were interested in hiring me. They had an opening, and I went and talked and I went back to Detroit. They called and made me an offer and for a lot of reasons I didn't have any hesitation in accepting it, going back to N.Y. where my family was.

I started at NYU in September of 1959. I went back at the end of the academic year so I got back to N.Y. in May or June of '59. Charlie Seligson reentered my life. We had been corresponding during all this time, but he reentered because he said "What are you doing this summer?" And I said "nothing." He said "Do you have any money to live on?" I said "No, I have no income because at Wayne State University you got paid on a 10 month basis." Most schools spread it out over 12, but Wayne State didn't and of course I had never saved anything. He said "Look, I'm going away on a trip. There's one project that I need someone [in] my office, would you come and do that?" And so I spent the summer working in his office.

Seligson and Other National Bankruptcy Practitioners, Academics

I think that [Seligson came to New York because] there just was not a career in Raleigh[, North Carolina, his hometown]. He had to spend a fair amount of time in the family hardware business, and when he got that all straightened out I think he just wanted to come to N.Y. and get into a better, I would say more diversified practice of law.

[Other] fine practitioners are Sidney Krause.... He was with the firm... of Krause, Hirsch, and Gross. The Gross part you may recognize as Jack Gross who is still alive I today. Krause, Hirsch are no longer alive, but Sidney Krause was the key man in that firm. Very, very well thought of, very smart.

Bankruptcy law was practiced only by small firms. The so-called white shoe firms or the large Wall Street firms wouldn't touch it with a ten foot pole. If they had a bankruptcy matter, they referred the matter to the small firms. It was basically a small firm... Jewish prac-

tice because the Jewish lawyers couldn't get into the other areas of practice. They couldn't get into the firms.

[Big firms] didn't start going in [for bankruptcy] until after enactment of the 1978 Code.

There are areas of the country where it wasn't true. Dallas, I think, is one example of that. You had again a small firm there.

The original name of it at least as I knew it, was Rochelle and King. That was Bill Rochelle. That was strictly a bankruptcy firm. Now the King is John King who has since moved to Houston and who is now [Fifth Circuit Judge] Caroline King's husband, but he was a partner of Bill Rochelle. Bill Rochelle, Jr. was one of the leading practitioners of that time and he operated out of Dallas. There was Norman [Nachman] in Chicago. Then it became Nachman, Munitz.... That was a boutique firm, very small firm, a couple of associates. In recent years that was taken over by Winston and Strawn where Norman [Nachman] still is today. He is probably the oldest of the active practitioners... of that era. When Charlie Seligson at one point had to hire a lawyer, he hired Norman [Nachman].

In California you had the firm of, the original name I can't, I'm not sure of, but the current name is Stutman, Treister and Glatt.

I forgot Frank Quittner.... Frank Quittner and Jack Stutman were two of the leading lights in California and in the practice there so you get the different cities like that involved. Asa Herzog was one [in New York] before he went on the bench.

Bill Rochelle is a wonderful lawyer. He had all kinds of stories which I enjoyed listening to. They were funny stories, but they were true stories and it pointed out to me his brilliance really in both the law and its practical application. I will give you one example of it. He did receiver and trustee work. He was trustee in Chapter X cases. He did a lot of debtor work. He did some creditor work. He represented, I think, for a long time not on a retainer but the Republic National Bank or Bank of Dallas, but he did do a lot of bank work and bankruptcy. He was a Chapter X trustee.

At that time the solid bankruptcy lawyer not only knew the law but in the particular case got to be an expert in the business. As trustee you had to run the business. As receiver you had to run the business. You really had to learn it from scratch. And you go from business to business.

The really good trustees made a lot of the business decisions themselves and they had an acumen for that. Bill had... either a circus or a zoo I don't remember, and he

sold an elephant. He had sold it to somebody in Atlanta for \$5,000. And I said "Bill, isn't that awfully cheap for an elephant?" He said "Very cheap for an elephant and I was highly criticized for a while." I said "What happened after a while?" He said "Well, we also had this dog. I sold the dog for \$30,000." I said "An elephant for \$5,000 and a dog for \$30,000. How?" He said "you don't understand. Elephants have buddies, and if they don't have their buddies near them all the time they don't eat, they don't sleep, they don't behave. I sold this elephant without his buddy, and his buddy was this dog. These people found they had to buy the dog." Give you the flavor of Bill Rochelle. Wrote a lot. He was much of a contributor. I met him for the first time doing a program for the State Bar of Texas, I think it was in El Paso on the Uniform Commercial Code, and he said "You're Larry King from N.Y.?" I said "Yes." He said "You're a friend of Charlie Seligson?" I said "Yes." He said "That's good enough for me." And we became close friends after that. There were some other names I was trying to think about.

I would term Bill Rochelle as being more down to earth in a way. Not that he dressed poorly or anything like that. He was well dressed. He didn't come in sloppy. I don't mean it that way, but he was more in the vernacular. He would go into Court, he had, he especially put it on in Court, but he also had... a Texas accent. And he'd go into Court and when he was trustee he would turn to the judge and say "Your Honor, these people, let me tell you what they want to do to your trustee." The Court appointed the trustee. Of course everybody is sitting cringing, a wonderful strategist.

It is certainly true with some of the judges. There are times you go into the courtroom in some other part of the country and say but your Honor the statute, the bankruptcy act says. "Don't worry about that, we have our own statutes down here," [the judge will say.]. I know it happens a little bit today but it happened much more then.

Sidney [Krause]: I didn't know him all that well, I didn't have that many dealings with him. My impressions of him are more from meetings of the National Bankruptcy Conference. He was an old time member of that Conference. But the one thing I remember about him he always had his one chair, his seat right next to the head table where the chairman sat. You wouldn't miss a thing and he always was sure he'd be recognized when he raised his hand, and his contributions were all

excellent contributions. If he had something to say, I mean when he said something he had something to say. He was a student of the law. He wrote a little bit. My recollection is he wrote a monograph on I think it was Chapter XI which was well received, a small little PLI book, but many lawyers had that in their offices and on their shelves and used it. He was a very intellectual person. And people, I mean my recollection is that he was very very well respected, never heard anybody say anything bad about him.

And this is true of all these people. This is one of the marks to me that in all the meetings I've attended and just sitting around before, during, or after a meeting at the bar at night having a drink, well it wasn't for the purpose of drinking it was for the purpose of talking, that is where many of the great conversations took place, where I learned [a] great deal, and you know how sometimes people do that and then they will be critical of somebody else and these people I never heard a critical word. [T]hen in the academic community there were people like Frank Kennedy [of Michigan] and Vern Countryman [of Harvard], [but] J.W. Moore [at Yale] was a little bit before me so I never knew him.

Jack Stutman [in Los Angeles] again was... in my impression... a blustery type person. Wonderful, wonderful sense of humor. Great persuader. Again, I didn't work with him on matters but I was with him on programs, and at meetings, and he had a presence in which he attracted people to listen to him. But again he was very creative from all I've heard about him in terms of his work on matters and cases and going into creditors meetings and the like at that time. And Jack Stutman was not a member of the National Bankruptcy Conference, but his partner Frank Quittner was, and I would put in that category Ben Weintraub.

Levin and Winetraub [in New York]. Ben was the more active in matters outside of the practice itself. He did writing, he did some teaching, he was a member of the National Bankruptcy Conference, he lectured. Harris Levin did not do that. He was closely working, but did not do too much else. You didn't get to know him all that much except at local meetings in N.Y.C. I got acquainted with him. Again, a very small firm. The two of them and then one of my first students at NYU was Mike Crammes. I had gotten to know Ben just shortly before that so I knew that Ben was Mike Crammes's father-in-law.

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Then when Mike Crames graduated from law school Ben wanted him to come with him in the firm and Mike was very concerned about doing that. He went to talk to Charlie Seligson and Charlie said "Look, I think what you ought to do is try it. Ben is a wonderful lawyer, the firm is excellent, they get good work. You go. If you don't like it, if it doesn't work out, you can always come to me. I'll be glad to hire you."

Asa [Herzog] [of New York], I did not know as an attorney. Asa I knew as one of the leading bankruptcy judges.

I had met some of these people through Charlie. I didn't know them all that well of course. Once I came back to N.Y. one of the courses I was given to teach was bankruptcy so then I started getting very much involved in it.

I didn't know them well during this period of time [the 1960s]. I knew them, but I didn't know them well because my involvement was with Sidney Krause. He passed away and then it was Hirsh and Gross in the firm and then I think Hirsh retired and Jack Gross took over the firm and he ran it. It was still called Krause, Hirsch and Gross I believe and there were people like Prudence Abram, and others, and Lewis [Kruger].

The small firms [were not respected]. The Jewish lawyers couldn't do anything else. A seedy type of practice.

Some lawyers were, grubbing for business,... at creditors' meetings. It's a step above a collection lawyer. Collection lawyers were not highly thought of. A divorce lawyer was not highly thought of. Personal injury lawyer was not highly thought of. And this was the same perception of bankruptcy lawyers.

Bankruptcy Practice in New York: 1960s

There was a Bankruptcy Bar Association which was local to N.Y. to Manhattan basically. There were bankruptcy sections or committees of the N.Y. County Lawyers Association; there was a Bankruptcy Committee of the Association of the Bar of the City of N.Y. I remember at that time doing a lot of speaking at these groups and sometimes there were meetings at the Courthouse, the Bankruptcy Court, and at night I would give a lecture. That's where I got to know a lot of people. Now you ask me their names. In New York, yes, I mean their names are starting to come back.

I've heard the stories [about a bankruptcy ring] that I believe some to be true. I don't believe there's one in N.Y. I think that the Bar was a little too wide spread for it, or maybe a different kind of people, but the one area where I did hear that it existed was in New Jersey.

The practice that I heard of [in New Jersey] was that when a Chapter XI case was filed, there would be an attorney for the debtor filing the case and that attorney would say o.k. you're going to be the [attorney for] the committee and you're going to be the attorney for the receiver.

Then the next case would come along and they would switch roles, the same people switching roles. Always the same people. If someone else from over there wanted to break in, they couldn't do it. If they wanted to become attorney for creditors committee, they couldn't do it. Now what did happen in N.Y. and other places was without there being a ring there was a pretty disgusting practice of becoming attorney for the creditors committee in Chapter XI cases. That was, the Creditors' Committee was elected by the creditors so that the first meeting of creditors, which is where the election took place, was a real zoo and a circus. Connie Duberstein did a lot of creditors' committee work and that was with Otterberg Steindler. Ottenberg I knew, but I didn't know him well, but they'd go in there and they'd line up the clients and then they'd be able to say I've got all of these creditors [as] my clients. They represent this much money and they are going to vote for themselves to be on the committee and then there would be a major creditor on the committee and that person would be chosen chairman and he'd say who he wanted to be the attorney for the committee because that was where the action was,... to represent the committee. I had to go to a couple of those when I first joined [Wachtell Lipton]. I went with Leonard Rosen and we'd walk out of that meeting just shaking our heads and with a very bad taste in our mouths. We didn't want to have any part of it and we generally didn't do that work just because we didn't want to participate. That was a bad part of the practice.

I think there was the general feeling at the time, a perception not necessarily true, but a perception, of a closeness between the bankruptcy judge and his appointees. The bankruptcy judge appointed the trustee. Now you're sitting in the courtroom and you have a matter on with that trustee and you have your client with you and you see the trustee come walking out of chambers with the judge,

well you know not necessarily anything bad about that. Your client doesn't know that and your client looks at you and says to you "What the hell is going on here?" It's very hard to explain and too many lawyers and too many judges were not perceptive to that reaction. There was absolutely no problem, but the perception that was created was just terrible. I went out of state [in one case] and I went into the courtroom and the judge knew me. He was surprised to see me come in but when the hearing was over he went into chambers and then immediately pokes his head out and said "Larry, can you come in here for a minute to say hello?" Well, the other lawyers were there. First, what do I say, you know. I didn't know how to handle it. Fortunately I had well respected co-counsel, and he said to the other lawyers "Don't worry about it."

Earlier Bankruptcy System

The genesis of the bankruptcy referee system [was] originally... to help the District Court. . .

A lot of administrative work, I think reviewing claims and things like that.

This was back in the '30's I would say. Even before that, the '20's. As a result of the 1898 Act, the bankruptcy itself... was in the Federal District Court. There was not a bankruptcy court. It was in the Federal District Court, and then the referees were appointed to kind of oversee the case as administrators. And as time went on they were able to resolve certain legal issues, even Chapter X when that was put into the Act, and up until at least the time the rules for Chapter X which takes up from '37 to '75. Chapter X was so drafted that while the district judge could refer some matters to the referee for decision, others were left to the district judge. Who appointed the trustee? The district judge, not the referee. The rules came along and tried to make some inroad on that. We don't have to get into that.

And then as time went along on they referees took over some of the judging functions of the District Court, but they remained administrators and they never made the leap into being full fledged judicial officers.

And, at first, until 1946, the referees were paid on a fee basis based on the assets of the estate and some of them made a great deal of money, much more than the district judge. As a matter of fact, in New York it was the judge, I think it was Learnd Hand or Augustus Hand, when referees were appointed by the district judge for 2 years. A judge who said any

referee who makes more than \$20,000 a year will not be reappointed. And there was this referee who took several hundred thousand which he was entitled to under the Statute. And there was a big lawsuit as to whether he had to return that or not.

The [bankruptcy referees] kind of supervised the trustees.

I think they were in a conflict type situation

There were two types of receivers... The main one that created the problem, I think, that would be Chapter XI receivers. Chapter XI for the most part did not contain a provision for the appointment of a trustee. There could be a trustee if the Chapter XI case had been converted from a liquidation case and there was a trustee in the liquidation case so that trustee would continue in the Chapter XI, but that was not the norm. In the Chapter XI case there was provision for retention of debtor-in-possession. This was mandated, but the court had authority under the statute, had discretion under the statute, to appoint a receiver if necessary. The Rules came along and continued the concept, but I don't remember the exact wording, intended to limit the discretion of the referee or the bankruptcy judge. They put in stronger language that a receiver could be appointed for cause. The idea was [that] there should not be a receiver in every case. You didn't need it. That only if the debtor in possession couldn't be trusted or couldn't run the business, there weren't enough people there, or whatever, then the judge could appoint a receiver. This was one of the abuses in the practice, again not nationwide. There were certain areas, Detroit is an example, New Jersey is an example, New York is not an example, and I can't give you other places, where automatically on the filing of a Chapter XI case the judge would appoint a receiver. The receiver would have an attorney so now you have the debtor in possession with an attorney, now you have the receiver with an attorney, and they are both feeding off the estate. This is not what was meant to be, but this is what did happen. That's why you see this rather strange provision in the Code saying there should be no receivers.

The antagonism between District and Bankruptcy Judges does go way back. I think it's... in a sense jealousy [which] is not quite the right word. I can give you a sense of it in a slightly different aspect. During this whole legislative process of the Code there was an event when the House of Representatives passed a bill that would

have made the bankruptcy judges Article III judges. At one time they didn't pass it and then it was reintroduced and they did pass it. I was at a black tie dinner in N.Y. at the Waldorf at that time and it is so clear in my mind I left and went to the men's room. When I came out of the men's room in the corridor there was a federal district judge and his wife and the federal district judge said "Larry, did you hear about it?" I said "Yes, it just happened." And the wife said, "What, you mean the bankruptcy judges would be Article III judges?" "Yes" "Why that would dilute the prestige of the District Judges," and that became the rallying cry, dilution of prestige. But I think if you take that and go even backwards there was the fear that if these people are really judges and they have the same perks as judges, as being part of the federal judicial system, there will be a dilution of the prestige. So I think while jealousy is not right, maybe envy is the word, or something like that. They wanted to keep them down, keep them down.

Wesley Brown started as a bankruptcy judge in Kansas and was appointed to the District Court. He was part of the ad hoc committee of the Judicial Conference during this period of time. And he was one of those who testified. One of the issues was, don't you think that the bankruptcy judges should have a law clerk? And he said no, that's [why] they are there for us. I was sitting in the back of the room and I was absolutely dumbfounded. I think maybe other people on his committee were dumbfounded too.

This would have been about 1977.

There are stories galore on this. Charlie Seligson and I at one point seriously considered suing the bench of the Southern District of New York.

Well, it was right after when 1973 Rules became effective, changing the bankruptcy judges from referees to judges. With the official forms being signed by bankruptcy judge and the like and the order from the district court was that they shall not use the title of bankruptcy judge, they shall not sign their orders bankruptcy judge, they shall not wear robes, they shall not use the judges' elevator. We couldn't do anything about the elevator, maybe not about the robes, but we were upset as to how they were trying to get around the rules. And we let it be known.

The National Bankruptcy Conference

I'm not going to give you too much detail because... I should look it up for a good answer. But it started in about 1937. It started at a time when certain lawyers

were around the country, and this is another set of names from Philadelphia, from Cleveland, from New York... helped Congress in drafting and overseeing the Chandler Amendments, especially Chapters X, XI, and XII. And it evolved as individuals working and meeting together to work and then they formed what came to be the National Bankruptcy Conference. And its basic purpose was really just to help Congress through hearings, through drafting, and the like. It had no other purpose.

Its mission or its charter was essentially to help Congress.

It's a self-perpetuating organization; it is not a public organization. It has nothing to do with the government. It elects its own members. And what it tries to do when, as far as I know, always tried to do is to get representatives from the three groups - lawyers, judges, and law professors. And it tries to get geographic distribution, recognizing that there are different ways of doing things in different parts of the country. Taking all that into account, another motivation for membership, or the way it looks at membership is to try to keep it from getting too big because it is really a debating society. It does all of its work generally speaking at one annual meeting when it sits down and talks. If you have too many people you can't talk. Reminds me of another name which I'll throw in is Harold Marsh from L.A., very well recognized, at that time a law professor in his first years and then since became more of a practitioner than professor. He was a member of National Bankruptcy Conference. Not in those early days. And that is the way it still operates.

Somebody on the National Bankruptcy Conference will recommend this person and then there will be some little investigation, the resume would be passed around, and there is a committee which then goes through the recommendations and that committee, will make recommendations to the Executive Committee of the National Bankruptcy Conference so it doesn't go to the whole Conference, it goes to the membership committee which is made up of about 15-16 people... who are elected for 3 year terms. And that committee will go over everything. The recommendations that come forward even from the individuals or the membership committee are not rubber stamped. The Executive Committee agrees with some and disagrees with others, but it doesn't pull anybody in that it wants to; it just approves or rejects among

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the recommendations that are made, again with an eye to how big can we become and still keep within the function of being able to talk. And those discussions are some of the best discussions that you ever want to hear. I mean they don't start at a basic level. They start at the high level. It works through committees and the committee. There will be a committee let's say on the trustee's avoiding powers and it will come in with a suggestion to make a change in such a fashion because of the case, maybe because of Deprizio. This is a suggestion, they will come in with a draft and then the National Bankruptcy Conference will debate and it may reach another conclusion. It may have further suggestions. It may send it back to the committee. One of the unfortunate aspects... is that it doesn't rush to a conclusion on something. It wants to be as sure as it can that what it is recommending is proper and so, when finished, see if it can get introduced in Congress.

Charlie Seligson was much a part of it. He was at that time one of the important positions on it because of the legislative responsibilities. The committee on legislation [chair] is that person who makes personal contact with Congress, the staffs, and Congressmen and Senators themselves, and Charlie was the chairman of that committee for quite a while and then he became vice chairman of the Conference and then he became Chairman of the Conference. He was one of those who was very active in the discussions. He and Sidney Krause and some of the others [were] very well respected. When they spoke, people listened. I think it must have taken me four or five years before I ever said anything. I was just overawed to sit down there and listen and my unfortunate experience was the first day I got there I got appointed by the chairman to chair two committees. As the youngest member, I don't know why. Charlie had said look, we need a professor and it was the first time it ever came up, the concept of the bankruptcy court system and the status of bankruptcy judges - [whether] they should be Article III judges.

Charlie, after I started teaching bankruptcy at NYU, recommended me to Mathew Bender and Co., the publishers of the Collier [on Bankruptcy treatise]. At that time it was not a public company, it was a private company because they were looking for people to upgrade various chapters. If the supplement got too big, they wanted the chapter updated and

moved out, the material moved out of the supplement so I was asked to do one. I did that. Then I was asked to do another and over the course of time I was given more and more to do. The more I was given to do, the more my name became known I guess. I got to know people in N.Y. like Asa [Herzog], then Weintraub and others and I got invited. I can't remember the first one, well, I do remember the first one I went to, I think it was 1964 of the National Conference of Bankruptcy Judges in San Diego and I was on a panel. Bill Laube chaired the panel. He asked me to be a member of the panel. So that started my doing these types of programs and people got to know me and I think that is what led to my being recommended for the National Bankruptcy [Conference]. Also, the times were a little bit different in the academic community. Bankruptcy was not a hot subject for teachers. They did not elect to teach bankruptcy or to become bankruptcy experts. The person who taught bankruptcy generally taught it as a second or third course or choice or was told to teach it and didn't have an option to teach it. There were very few who taught it as a major interest and so the National Bankruptcy [Conference] in looking for teachers didn't have an awful lot of people to choose from. As I say at that time there was Vern Countryman and Frank Kennedy. I think I became a member almost the same time as Vern, Harold Marsh, Bill Laube, Steve Riesenfeld [of Berkeley], these were all older than I at the time. I was probably the youngest in the group.

That is another thing I did want to mention, the nature of the cases. I was writing, in other words a case would come out and I would write an article or something about it. I had a number of things published in what was called The Journal of the National Association of Referees in Bankruptcy. Charlie and I did a two part article on jurisdiction and venue. There was a case I remember. I was very upset with the decision of the 9th Circuit, Pacific Finance Co., an interpretation of 70(c) of the Act. I wrote that up and then the lawyer for the winning party wrote a response and that pissed me off. Because he didn't acknowledge he was a lawyer of the winning party so I wrote a response to his response. I was doing a fair amount of writing.

New York Bankruptcy Leaders

When Wachtell, Lipton, Rosen & Katz left Charlie Seligson, Harvey was there as an associate and as a partner as well. Alan

Miller was there with Harvey Miller. Rosen and the others wanted Charlie to go with them. They were having trouble with Charlie's partner, Newberger, and they didn't want to stay there anymore. They wanted Charlie to come with them. And Charlie was debating that. He and I used to walk back and forth in Washington Square Park talking about this when he was down teaching, and he decided not to, he felt loyal to his partner, not Newberger, but Morris, that they didn't like. He felt loyal to his partner Morris and didn't want to leave him with the firm, so Charlie said no. About a year or two later Morris reached 65 and retired (laughter), leaving Charlie. Charlie was so upset with that. Charlie did not want to run a firm himself and so he looked around as to what to do and he got an offer to go as counsel to Weil Gotshal and one of his conditions was that he could bring everyone with him. Well, some didn't want to go; most of those did and they went. Harvey was one of those.

And Charlie was going there with the idea to retire. He was going as counsel. He wasn't going to have to work very hard; they had no bankruptcy department at Weil Gotshal and it was not nearly as big as it is now. Charlie went and he brought in an awful lot of business. A big bankruptcy department started developing which Charlie ran and Harvey was really his second in command.

Chrysler

Chrysler's bankruptcy counsel was Ron Trost. He was still in L.A. And then in the course of it Debevoise came into it to work with Ron Trost. A bigger firm, more backup. They needed a lot of help. There was a lot to do. There were major, major meetings going on all the time in 1976.

Could it be restructured outside bankruptcy? And then was Chrysler was trying very hard and it wasn't clear whether it would be successful was whether it could get government guarantees. And so the banks were meeting with Chrysler to try to look at it both ways. That is if you don't get or you do get it. Everybody was trying very hard to keep it out of bankruptcy.

How to restructure the business to get it more profitable and get the banks paid off. At that time you have to remember the automobile industry throughout its whole history was a very lucrative industry. Banks would loan money and they didn't care about collateral. They would lend on unsecured basis so there were these 104 banks all as a group involved with major money and Chrysler was los-

ing money. And the more the word got out about it the more people would stay away from buying its product and it had to use its ingenuity to come up with something that would sell, and also [restore] its credibility with the banks. Otherwise the only recourse was liquidation. It was really too big a company to be liquidated because one of the things that everybody had in mind was the labor force in many different locations, in many states, banks in many states which held the accounts. So it's not that it was a hard negotiation in the sense of this group fighting with this group. It was a hard negotiation in the sense of knowing how to do it.

The banks were trying to be as cooperative as possible. A difficulty was that the banks early on hit on a proposition that whatever the banks did had to be 100% consent. It couldn't be 2/3 or anything else. In other words, what was good for most banks had to be good for all of them. And there was a threat, a lawyer in Chicago called and said that he was going to file an involuntary petition on behalf of 3 banks.

I don't think it's a secret. Mickey Gainer in Chicago. There were 3 smaller banks in that area who wanted to be paid in full, and the banks said you're going to get paid the same as the other banks in this group. And if we don't get paid in full, you're not going to get paid in full. We don't get paid in full. That was a tough part of the negotiation. If there was an involuntary, then it would be immediately converted to chapter 11. No one thought at that time, now we may have a different attitude because of airlines but this was before the airlines, but the concept here was if it went to any chapter would people buy the cars? Would they rely on the warranty that they get? The feeling was that they wouldn't. And so people were ready to throw up their hands if it went in. One of my jobs was to draft papers in preparation of anything, and then the other aspect was how do we get these banks to pull back, the ones that were recalcitrant about it. That was kind of interesting using some extra legal pressure.

We called in Union leaders in these other districts, not Detroit, where there are plants and saying where do you keep your accounts and they said bank so and so. That's one of the banks. Why don't you kind of tell them that you might want to move the account, which did happen, or call the Secretary of the Treasury of the U.S.?

Finally, all banks went along. Then it was a problem. Leonard spent a fair amount of time in Europe going from

bank to bank. They didn't know about our system. What do you mean, what do we care? But we had to get them in line too. An inordinate amount of time was spent on that, and then the president came up with a business plan, models, and stuff like that which were put in. Finally, with a lot of meetings with the government, again the Treasury Department, the government did agree to the guarantees and that kind of threw it over the top I would say.

That took a hard 3 weeks of my time.

New York City's Financial Distress

Congress, the subcommittee of the House was looking at former chapter 9 in 1975. N.Y. City was having its problems and it was aware of the fact that it could not use then chapter 9 because the provisions of it just wouldn't permit it. They had to come in with an accepted plan. You couldn't do that. So they knew it had to be revised so they were looking at ways to do that and I got a call in Mexico City. We want to have a closed session. We know there is this bankruptcy bill that is pending from the Commission but now we're just looking at the chapter 9 stuff and there are things we don't know about bankruptcy and if somebody wants to have a closed session will you come and teach us a little bit about executory contracts.

They contacted me at a conference and said could I come to Washington. So I had to pick up from Mexico City and fly to N.Y. and then fly directly to Washington and what we had was a closed meeting in a committee room where I lectured all morning about executory contracts and the Code and the Statute and whether it could be used in chapter 9 and things like that. There was a lawyer for the city who was present, actually it was Mike Cook. There were a couple of other lawyers not part of the staff or anything and Congressman Butler I remember looked around and said to Congressman Edwards who was chairman and said I thought we were only having professor King here and no other outside lawyers. And Edwards says its o.k., they can attend but they know they can't talk. It was a closed session. We just want to listen to professor King. We will ask him our questions. The lawyers cannot speak. And that's the way it went. Of course they were a very few tough hours before me but it became tougher. What happened after that was they went. . . the sub-committee then went into mark-up session, the draft bill that they had. And

Edwards asked me if I could come to the mark-up session. Now this is a period of time when I was not only teaching but I'm also associate dean at the law school and so I fully expected to go back to N.Y., but he said can you stay over and come to the mark-up the next morning? So I did that and at the end of that day they weren't finished and he said can you come back tomorrow? So I checked into a hotel and came back the next day and again I am now beginning to miss classes at N.Y.U. What was happening was I was sitting in the back, I can't talk, nobody can talk at the mark-up session except the Congressman and the staff. Every time Congressman Butler who was the ranking minority leader, through Ken Klee who was his counsel, offered an amendment, Edwards and Rich Levin who was his counsel looked at me. I found what I was doing was [nodding yes or no].

It was about 1976 the legislation that actually was enacted. So this might have happened in '75, but an interesting aspect of it from my point of view was that Congressman Caldwell Butler who was very very good, and I appreciated his work. He came over to me during a break and said "Do I really understand what is going on here, that you are reacting to my amendments and nodding or shaking your head?" And I said "Yes, Congressman Edwards asked me to do that." He said "Have you seen my amendments?" I said "No." He said "In other words you're hearing them read by Ken Klee and then you're reacting to them?" I said "That's right." He said "Do me a favor. Take the package back to your hotel room tonight, go over them, meet me tomorrow morning and give me your reaction." I said "Fine." And the next morning I met with him, and I told him I had them divided into three groups. I said there is one group of amendments that I think are good. There is another which I don't think are necessary or are undesirable. Then there is a third group which are purely political and that's none of my business. And he said "Thank you." And we talked about it a little bit and then he went. The ones that I said I thought were pretty good he would tell Congressman Edwards I understand this amendment passes muster with N.Y. University. And that would go in. And then he did not introduce the ones which I thought really shouldn't be in the law. So they spent their time arguing about the political ones which is the way it should be and it worked out very well. They saved a lot

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of time on it, but what happened with me was that every morning I'd check out of the hotel expecting to get home. Next night I'd check back into the hotel, and this went on for three weeks until they finished that work.

The consultation for NY City's filing a chapter 11 petition was with Harvey Miller and his firm at that point. There was a lot going on at that time preceding it and up to that point because what was happening was that when notes became due there's a question as to whether there would be enough money to pay them, and that could be a precipitating factor, precipitating a problem. One time I got a call from the controller's office "Can you come over?" This was on a Friday. And I said "Yes." And the problem was there was a payroll due but there were notes due and there was not enough money to pay both and so what was the law, who should be paid first, and unfortunately, as far as I knew the law, the notes had to be paid rather than employees. And I was out of my office going to the elevator when the phone rang, telling me I didn't have to come over, that the pension funds had agreed to loan money, but that's how close it came, to about 15 minutes, so that was one of the things that was occurring at the time.

Of course there was testimony in the Senate, there were hearings in Senate Finance Committee seeking government guarantees and I testified, Mike Cook testified, somebody from Harvey's office testified, but there were Congressmen and Senators from other parts of the country who were dead set against New York so that was very difficult to get and eventually I don't think they got it. There was a lot of research going on, what happens to a city when it goes broke. You can't sell public property, you can't liquidate. The Wall Street Journal ran a little piece on it, saying you have to reorganize, you can't liquidate N.Y.C. I mean who is going to buy it? They had called me in at a time when I was rushing out the door and I gave a stupid line to use and they went and published it, but that is true. The only thing it can do is raise taxes and it gets to a point where it can't raise them more and yet it has to pay its bills. There are a few old cases which say that a court can mandamus, in effect mandamus, a city council to raise taxes to pay its bills. The thing with chapter 9 as it existed was that it literally could

not be used. There is no way that the city could meet the requirements to file a petition. So it was really emergency legislation that I remember President Ford introduced [as a] bill in the Senate for a new chapter, I believe it was a chapter 16 of the Bankruptcy Code for the reorganization of cities with population over one million. There were two things wrong with it. First, they forgot about chapter 15. There was no chapter 15. So I asked if they were saving that for the United States. Because there were hearings, there was a hearing before Senate Judiciary Committee or sub-committee on it, and another thing that was wrong was that it put a lot of other large cities in jeopardy because it made them suspect whether they had a problem or not, like Los Angeles, etc. New York was not alone, Philadelphia was having problems, New Orleans was having problems, Detroit was having problems, Cleveland was having problems.

The Effect of the New Rules and the Code

I mentioned the new Rules Committee. Judge Aldisert was the chairman and a district judge who was appointed at that time for the first time was Morrie Sear who then became chairman of the committee. One of the things they tried to do with the Rules and I think were successful in doing it was to get rid of as much as they could of the mystique about bankruptcy practice. Now the Rules originally tried to do that and that is why you have things like complaints and summons and motion practice and things like that to make the practice in the bankruptcy court much more like practice in the district court so lawyers wouldn't be afraid. This was kept on by Rudy Aldisert and his committee. I think they made some changes along that line. The Code itself I think did the same thing in opening up jurisdiction and part of that whole thing was get rid of, you mentioned the ring before, the closeness of it and open up the practice to other lawyers. And number two, which was of course very important, was that with the increase in bankruptcy filings, the big firms saw that this was an area in which they could make money. They stopped referring bankruptcy matters. They wanted to retain the bankruptcy matters even from a debtor's side, major firms like Davis Polk filed petitions for debtors. Manville for example.

The National Conference of Bankruptcy Judges meetings here, these meetings themselves have bothered me very much. I think

they've expanded and lost their whole function. It has really become a personal contact for everybody involved in the business, not just the lawyers, but accountants, the appraisers, and the auctioneers. It's no longer a bankruptcy judge's conference. The old ones with a small number of people, the judges literally could sit around in the cocktail lounge, as you mentioned, and talk a lot of bankruptcy law. It would be quite a meeting and the few lawyers who came essentially were those invited to come and speak and others basically did not come.

I think that money is driving that, yea, I think so. I don't have any suggestions what to do about it. I think it is wrong. I don't like it. I don't think it is necessary, but it is there.

Difference Between Old Act and New Code

There is a difference between case management and administration. For example, I'm a trustee presently in an old Act case.

And the judge has to sit down and countersign each one of my checks as trustee.

It's kind of stupid but he has to do that. This is the kind of thing that you wanted to get the judge out of and again recognizing that the judge is there to resolve disputes, as much as you can you want to keep him out of getting a lot of background information from other kinds of sources. But you can call it a status conference or case management. There is no reason they can't still keep a hand on what is going on. I think the theory of the [Code] was that that sort of thing would be done by the U.S. Trustee's Office. They don't have enough people, they don't have enough funds.

Asbestos Future Claims

I am a little naive. I believe that some of these asbestos problems are not bankruptcy problems. Bankruptcy problems are the tail end of the problem, but it is not at the outset. I think, first of all, just take our present claimants, 50,000 of them, whatever the number is, there is something wrong with our judicial system if you can't handle that. That's not a bankruptcy problem. Our judicial system should be changed so that claimants of that type can go someplace instead of going into court, having a jury trial, and having the company do everything it can to delay through the appellate process to work out some kind of a settlement. In the meantime this person is getting sicker, sicker, and sicker. This one is dying and they aren't getting anything, whether compensation or whatever. There should be some system where this can

be handled in a very quick manner and where the lawyers are not taking a 1/3 to 1/2 of the recovery. They are not entitled to it. They aren't the ones who are sick. But what pisses me off is that this comes about by way of the bankruptcy instead of where the real problem is. Nothing has been done, but that is where I think something should be done. That is true in environmental law as well. Now at the tail end of the case or the matter, how do you preserve a fund if you can foresee there won't be enough, the company can't stay in business. That's where bankruptcy comes in, and it shouldn't be limited to asbestos. But whatever when you have these situations. You can take a look at how best to establish a fund, because you don't want all the money to be eaten up. This is where I think the Manville case made some innovative changes imperfectly but it certainly can be improved on.

There is one thing that bothers me about a separate chapter of the Code for

mass tort cases. It is a question to which I don't know the answer, and I don't think anybody has. The Supreme Court hasn't ruled and one aspect of it is a major constitutional problem. That is the notice requirement. Because for this sort of thing to work you want to be able tie the hands of those future people. And they have no say in what is going on today. I know they did it in Manville and I know that there is a channeling injunction statute that Congress is thinking about now [§ 524(g)], but that statute is no more constitutional than an order of the Court of Appeals in the Manville case. The Supreme Court has not done anything with it so that I don't know the answer to that. I would hope if anything were done on that line they would attempt it in such a way that it would be constitutional. In other words, the rights of these people would not be affected. I think you could probably do that, no one has a right necessarily to use a particular court. I think you can set up a different kind of dispute

resolving system. You are still going to have a question: were you injured and by how much. I would like to see those two issues resolved quickly. As I say, if that's possible, I'd like to see the [plaintiffs] lawyers get out of that because they just take too much from it.

Importance of History

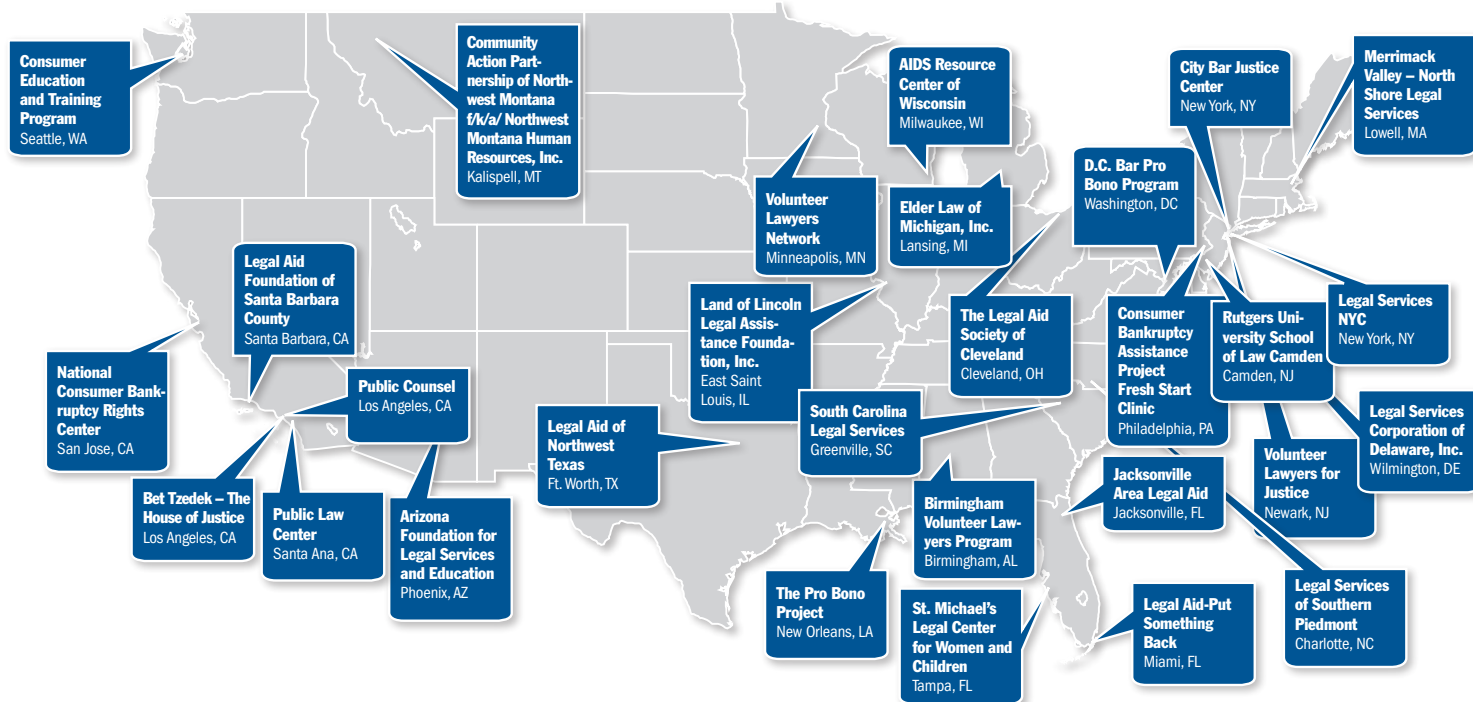
I honestly believe that there is so much in the bankruptcy area today that we can all learn from by being familiar with its history. It's so tied up with what happened before. Even to the extent of writing a brief or memorandum of law, there are so many issues that today come up for which you can use cases decided back in the '30's, or in the '20's even, even perhaps before that. This is certainly one of the areas where that adage holds true: that if we don't know the history we are bound to repeat it. 🏛️



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