

College Columns

News and Views from The American College of Bankruptcy

Publications Report

By Evelyn H. Biery



▲ Evelyn H. Biery

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

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

The College Columns Subcommittee has published bi-annual issues of the College Columns and will continue to publish future issues. Its members include Mary Grace Diehl, Eric Lam, John Kozyak, Hon. Cecelia Morris, Robert Sable and Blaine Schwabe.

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

March Orientation for Inductees

On March 20, 2004, from 7:30 to 8:30 A.M., the College will host an orientation for the Fifteenth Class of the College. This will be the first such orientation. Its purpose is to allow the leadership of the College to describe to the Inductees the goals of the College and the ways in which the new Fellows can become active in the work of the College. All Fellows are encouraged to attend. A continental breakfast will be served. ¶

Chair's Report

By Hon. Ralph Mabey



▲ Hon. Ralph Mabey

A few weeks ago in Pac Bell Park I saw Philadelphia intentionally walk Barry Bonds twice and then pitch to him – a fast ball which he propelled into a “splash hit” in McCovey Cove. These at bats illustrate two reasons Bonds makes the game special: First, his reputation alone changes the game. Second, his performance propels the game to new heights.

The genius of this College is in the Bondsian reputation and performance of its 564 Fellows.

Neal Batson springs to mind. His reputation for excellence and integrity changed the Enron game where he serves as Examiner. And for the past six years, on many nights and weekends, during meeting recesses and while on vacation in Colorado, Neal's dedicated performance has propelled the College to new heights.

Volunteerism is blessed by high ideals and plagued by low priorities. Neal raised our individual priorities to meet his ideals. No assignment in this College has gone unsupervised by Neal. He has been unremitting in obtaining follow-through and success.

I had thought a lawyer who filed a pleading a day early was a lawyer who had miscounted. Neal taught us otherwise. During his tenure as Chair, through the hard work of dozens of you whom he helped energize, our educational, pro bono, community and collegial activities have prospered.

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Nomination Procedures for Fifteenth Class



▲ John A. Barrett

By John A. Barrett

In mid-April of 2003, John A. Barrett, Chair of the Board of Regents, wrote to each Fellow requesting that nominations, together with biographical information and other supporting data, be forwarded to each Circuit Admissions Council by June 15, 2003. Fellows were reminded that the nominations should be complete and that substantial due diligence is required in order to make it likely that a candidate will receive an invitation; incomplete and insubstantial nominations are less likely to receive favorable consideration. It is imperative that nominees not be contacted. All names of nominees must be kept **confidential!** We want to avoid any potential embarrassment on the part of someone who may be considered but not extended an invitation.

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

Each Fellow within a Circuit received the names of the proposed Fellows in that Circuit (other than Judges and International Fellows) and was asked to comment on each proposed Fellow. Final Circuit Admissions Council recommendations and recommendations of the Judicial Nominating Committee and Foreign Fellows Nominating Committee will be forwarded to the Board of Regents, which will meet on Wednesday, October 15, 2003, in San Diego, California, in conjunction with the meeting of the National Conference of Bankruptcy Judges. Invitations to new Fellows for the Class of 2004 will be sent out in mid-November of 2003. 📧

Judicial Fellows Committee Report



▲ Lenoard H. Gilbert

By Leonard H. Gilbert

The Judicial Nominating Committee received an increase in the number of nominations this year. The proposed candidates represented both a broad geographical distribution as well as excellent, well-recognized professionals.

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

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

The College is fortunate to have a very strong and experienced Judicial Nominating Committee. Its present composition is James Baillie, Hon. Leif Clark, David Heiman, Hon. Barbara Houser, Prof. Kenneth Klee, Marc Levinson, Alan Miller, Barbara Rom, David Sykes, and Leonard Gilbert.

We encourage you to consider and to begin working on nominations for the coming year to present to the Committee next summer. We hope that you, the members of the College, will continue to search out and nominate the most qualified Judges to be members of the College. 📧

International Fellows Committee Report



By Daniel M. Glosband

The International Fellows Ad Hoc Committee had been directed to explore ways to increase the involvement of International Fellows in the activities of the College. After surveying the International Fellows, I presented a proposal on behalf of the Ad Hoc Committee and the International Fellows Nominating Committee at the March 28, 2003 meeting of the College's Board of Directors that a dedicated Board seat be established to be held on a shared basis by two International Fellows. The sharing was intended to reduce time and travel requirements while insuring international participation at both of the College's yearly meetings. The Directors discussed the issues of a special seat, of whether it should be shared, of whether it would be voting and of whether there would be an expense subsidy for the holder. Following the discussion, the Board approved the creation of a dedicated, voting Board seat for an International Fellow. The seat would be held by a single Fellow and not shared. The Board also approved an expense subsidy so that the travel costs of the International Fellow Director would not exceed those of domestic Directors. As of August 2003, the Nominating Committee had not recommended a candidate to fill the new seat.

The College presented its second joint program with the International Insolvency Institute at the annual meeting in March. The program, entitled *When Countries Go Bankrupt*, focused on sovereign debt restructuring and featured presentations by Sean Hagan, Assistant General Counsel of the International Monetary Fund, Mr. Justice Adolfo Rouillon of the Argentine Court of Appeals (on leave and serving as a consultant to the World Bank) and Thomas Benes Felsberg of Sao Paulo, Brazil. Bruce Leonard and I served as moderators for the panel.

The ranks of International Fellows grew with the approval by the Board of Regents of four outstanding candidates for induction in the Class of 2003. The first was Mr. Justice Adolfo Rouillon, a

judge in the Civil and Commercial Division of the Court of Appeal in Rosario Argentina. In private practice prior to entering the judiciary, he is a professor of insolvency law at the Rosario State University, is the Director of the Law Department of the Faculty of Business Studies at the Austral University in Rosario and is the author of seven books and hundreds of articles on insolvency law. To eliminate any prospects for leisure time, Justice Rouillon has been serving as an advisor to the World Bank and working on its behalf on the UNCITRAL Legislative Guide on Insolvency Law.

Thomas Benes Felsberg was the second of the 2003 International Fellows. He is one of the most experienced and prominent commercial and insolvency lawyers in Brazil. His firm, Felsberg e Associados, recently opened an office in Washington, D.C. In addition to his Brazilian degrees, Tom received an L.L.M. from Columbia. He has spoken and written extensively and has been active in the International Bar Association, INSOL and a number of regional associations. He also served as Brazilian counsel in the cross-border insolvency cases of Singer and Outboard Marine.

Christopher Grierson of Lovells in London was the third of the 2003 International Fellows. Chris has been

active in the IBA, the ABA, the ABI, the European Association of Insolvency Practitioners, the London Solicitors Litigation Association and the New York Bar Association. He has played a major role in a number of significant international insolvency cases, including acting for the liquidators of Laker Airways, BCCI and Mentor (a Bermuda insurance liquidation). He represented ING in the Barings case.

The final choice for 2003 was Professor Jacob Ziegel, the leading Canadian academic in the insolvency area. Selected as an emeritus fellow due to his retirement from full-time teaching, Jacob is known to many of us from his participation as one of the two Canadian Reporters for the American Law Institute Transnational Insolvency Project. In addition to his years as a professor at the University of Saskatchewan, McGill and Osgoode Hall, he served as Editor in Chief of the Canadian Business Law Journal and as Editor of the International Encyclopaedia of Comparative Law, and is the author of numerous books and articles.

We were honored to have Messrs. Grierson, Felsberg and Rouillon join us for the Induction Ceremony. In addition, Professor Ian Fletcher, a 2002 nominee, attended this year's ceremony. 🏛️

Future of the College Committee Report



By Paul M. Singer

During the Fall of 2002 the Committee sent to Fellows a questionnaire, the form of which had been approved by the Board at the October meeting.

▲ Paul M. Singer

The Committee met in joint session with each of the Pro Bono Committee (January 15, 2003) and the Education Committee (February 5, 2003). At the joint meeting with the Education Committee, the Future of the College Committee indicated that our consensus was the College's educational outreach programs should be directed to bankruptcy related matters not otherwise dealt with by other insolvency groups,

such as the University of Pennsylvania's archive program and the financing of Ken Klee's Supreme Court project. It is the view of the Future of the College Committee that each of the College's Committees need to ensure branding of our programs to secure the best possible return for the investment.

The members Future of the College Committee are: Arthur Abramowitz, John Barrett, Donald Bernstein, Mark Bloom, David Heiman, Simon Kimmelman, Richard Levine, Hon. Ralph Mabey, Richard Mikels, Larry Prince, Prof. Alan Resnick, Brad Eric Scheler, Patrick Vance, Thomas Walper, and Paul Singer, Chairman. 🏛️

Educational Program Spring 2003



By Prof. Alan N. Resnick

At the March 2003 Educational Program we heard from extraordinary speakers on cutting-edge topics in three panel discussions:

The first panel, on Forum Selection: Factors to Consider When Deciding Where to File a Chapter 11 Petition focused on venue issues. The presence of multiple venue possibilities requires counsel to select the best forum for the particular chapter 11 case. The panelists are extraordinary lawyers from the Second, Third, Seventh, and Ninth Circuits, with extensive experience in representing debtors in chapter 11 cases. The discussion focused the differences between the circuits on key substantive bankruptcy issues, as well as on procedural and practice considerations counsel should consider when selecting the best forum. The panelists included Howard L. Adelman of Adelman, Gettleman, Merens, Bersish & Carter, Ltd. (Chicago); Marcia L. Goldstein of Weil, Gotshal & Manges LLP (New York); Sally Schultz Neely of Sidley, Austin, Brown & Wood (Los Angeles); and David T. Sykes of Duane, Morris & Heckscher LLP (Philadelphia).

The second panel was on Bridging the Gap: Resolving Valuation Disputes In Chapter 11 Plan Negotiations. Chapter 11 plan negotiations often boil down to a disagreement over total enterprise value or the value of specific plan securities. These issues are debated against the background of multiple valuation methodologies, disputes over relative priorities and, ultimately, the legal requirement that the plan be fair and equitable to any impaired dissenting class. This discussion focused on how creative plan design can help to resolve these disputes and make a consensual plan possible. The panelists include Donald S. Bernstein of Davis Polk & Wardwell (New York); James H.M. Sprayregen of Kirkland & Ellis (Chicago); Michael A. Kramer of Greenhill & Co. LLC (New York); and Frank A. "Terry" Savage of Lazard LLC (New York).

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Educational Program Fall 2003

By Prof. Alan N. Resnick

The Fall 2003 All Fellows Luncheon and Panel Discussion will be held on October 15, 2003, at the site of the National Conference of Bankruptcy Judges in San Diego. This event promises to be as exciting and informative as our excellent panel discussions in the past. We are fortunate to have two exceptional speakers for our program.

The panel discussion will be on Equitable Subordination and Recharacterization. The speakers will be Prof. Kenneth N. Klee and Edwin E. Smith. The panel will be chaired by Prof. Alan N. Resnick.

Alan N. Resnick is the Benjamin Weintraub Distinguished Professor of Bankruptcy Law of Hofstra University School of Law in Hempstead, New York, and is Of Counsel to the firm of Fried, Frank, Harris, Shriver & Jacobson in New York City. He is a member and former reporter of the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States, a member of the National Bankruptcy Conference, a member of the American Law Institute, and a Fellow of the American Bar Foundation. He is an editor-in-chief of Collier on Bankruptcy (15th ed., Matthew Bender & Co.) and author of Bankruptcy Law Manual (West Group). Professor Resnick has written numerous articles and is a frequent speaker at professional seminars. He received his legal education at Georgetown University Law Center (J.D.) and Harvard Law School (LL.M.).

Kenneth Klee is a professor at the University of California at Los Angeles School of Law and is a founding partner of the firm of Klee, Tuchin, Bogdanoff & Stern LLP. He has also taught as a visiting professor at Harvard Law School. As associate counsel to the Committee on the Judiciary of the U.S. House of Representatives from 1974-1977, he was one of the principal drafters of the Bankruptcy Code. Professor Klee was a

member of the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States, and has served as an advisor to the American Law Institute's Transnational Insolvency Project. He is a member of the National Bankruptcy Conference, a member of the Business Bankruptcy Committee of the ABA, and past president of the Financial Lawyers Conference. He has co-authored Business Reorganization in Bankruptcy (with Scarberry) and Fundamentals of Bankruptcy Law (4th ed. with Treister), and has written numerous articles on bankruptcy law. Professor Klee graduated from Stanford University and Harvard Law School.

Edwin E. Smith is a partner in the Boston office of Bingham McCutchen LLP, where he chairs the firm's Finance Area. His practice is concentrated in general corporate and commercial law, debt financings, structured financings, workouts, bankruptcies and international transactions. He has taught courses at Boston University Law School, Suffolk Law School, and Harvard Law School. He has served as a Uniform Law Commissioner for Massachusetts, a member of the Council of the Business Law Section of the ABA, and as the ABA Advisor/Liaison to the Permanent Editorial Board of the UCC. He is a past Chair of the UCC Committee of the Business Law Section of the ABA. He also served as a U.S. delegate on the United Nations Convention on the Assignment of Receivables in International Trade and currently serves as a U.S. delegate to the U.N. Commission on International Trade Law (UNCITRAL) working group on creating a secured transactions guide for legislation in member countries. He is a member of the American Law Institute and the National Bankruptcy Conference and is past President of the American College of Commercial Finance Lawyers. He is a graduate of Yale University and Harvard Law School. ¶

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We ended our program with a panel discussion on the most interesting and important recent judicial decisions of which bankruptcy lawyers and other professionals should be aware. The panel offered views from the bench, from academia, and from practice. The panelists were Hon. Barbara J. Houser,

United States Bankruptcy Judge (Dallas); Prof. Melissa B. Jacoby of Temple University Beasley School of Law (Philadelphia); Prof. Bruce A. Markell of William S. Boyd School of Law, University of Nevada (Las Vegas); and Brady C. Williamson of LaFollette Godfrey & Kahn (Madison). ¶

Educational Programs Committee Report



By Richard S. Toder

As you will recall, last year the Board of Directors of the College approved two programs of the Education Committee. The first project was an initiative addressed to bankruptcy law professors whereby the resources of the College were to be available to law professors. The second project was to establish a pilot program whereby gifted bankruptcy students from law schools in three Circuits were to be invited to attend the annual meeting of the College in Washington, D.C., in March 2003. This report will chronicle the status of these two initiatives, as well as report on other matters.

Law Professors Initiative: Letters were sent out from the Education Committee to over 300 bankruptcy law professors in January of last year, advising them that if they were to submit topics or questions which they wished to discuss, seek reactions to a particular idea, consider practical applications of a particular bankruptcy code section, or obtain a speaker for class discussions, members of the College were available to assist the professors. The response of the Fellows of the College was quite good, and over 60 Fellows agreed to participate in the project. However, the response from the law professors was non-existent. To my knowledge, there has not been a single inquiry from a law professor seeking assistance of any Fellow of the College.

As reported to the Board of Directors in September of last year, in a conference call among the Education Committee in May 2002, discussion was had as to the reasons for the lack of success of the project and whether it should be abandoned. Rather than abandon the project, it was decided that the Committee would include in the letters being sent to the law schools in connection with the gifted law students initiative a reference to the professors project. The sense that if there were responses, we would consider renewing the initiative; whereas,

if there were no responses, the project would be terminated.

Accordingly, in November 2002, letters sent to the deans and professors in the Second, Third, and Fourth Circuits reiterating the availability of the College as a resource to the bankruptcy law professors. Unfortunately, not a single response was received. During a conference call meeting of the Committee earlier this month, this lack of interest was discussed and the sense of the Committee was to abandon this initiative.

Law Students Initiative: The second initiative approved by the Board has been more successful. The Directors decided to establish a pilot program to invite law students who had shown aptitude and commitment to the field of bankruptcy to the annual meeting of the College. Expenses would be paid by the College, and the law students would participate fully in the activities at the annual meeting. If the pilot program was successful, favorable consideration would be given to expanding the program.

In order to accomplish the mission, a letter was sent to the Regents for the Second, Third, and Fourth Circuit Councils requesting that they communicate with the law schools in their Circuits as to their choice of a law student to be honored. Letters to the law schools were duly sent by the respective Regents in November of last year. Responses have been received and recommendations made to the deserving students. Selections have been made by the Circuit Councils (Students from Hofstra, Temple University, and William & Mary were chosen.) and invitations have been sent to them. Following the annual meeting, an evaluation will be made by the Committee as to whether to recommend to the Board of Directors that the project be expanded.

On other matters, members of our Committee will be reporting shortly on the feasibility and desirability of (a) the Inns of Bankruptcy Court proposal of Professor Norton and (ii) possible development of a bankruptcy program for public television. 🏛️

Chair's Report

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Evelyn Biery built a reputation as the pioneering woman partner in one of the nation's great law firms. Her unstinting enthusiasm and commitment created and continue the College Columns and energized our regional dinners and meetings. As our new President, her slugging percentage continues to climb.

Professor Alan Resnick's reputation and performance have raised him to the editorship of *Collier on Bankruptcy* (with Henry Sommer, also our highly respected Fellow) and continue to elevate our Educational Programs out of sight.

Grant Newton and Bill Perlstein's records and performance make them our ideal accountants' accountant and lawyers' lawyer in their capacities as Treasurer and Counsel.

The College's Board of Directors, Board of Regents (chaired by John Barrett), Foundation Board (chaired by Ray Shapiro) and Committees lend us their great stature, wisdom and leadership.

In each community and courtroom our Fellows burnish our reputation and advance our objectives of excellence, collegiality and service.

At our spring meeting Leonard Rosen, our Distinguished Service Award winner, and Harvey Miller stood for all of us as Harvey celebrated Len's personal and professional excellence – and their profound friendship.

Our Patrons and Sponsors give us our fiscal responsibility and opportunity. LexisNexis Matthew Bender lends its expertise and its resources to our most important undertakings. Suzanne Bingham holds our College together (while the rest of us devote some of our time to making a living).

Thanks for all you're doing and will yet do. I look forward to seeing you in San Diego October 14 - 16 – or give me a call any time.

Bonds! 🏛️



American College of Bankruptcy Foundation



By Raymond L. Shapiro

This is to summarize activities of the Foundation in our first full year:

Tax Exemption: The IRS issued to the Foundation an exemption from federal income tax under §501(c)(3) of the Internal Revenue Code. The exemption was issued on June 24, 2002, and applies to all funds raised in that calendar year. Consequently, all contributors may rely on this exemption for purposes of reporting their contributions as tax deductible items in 2002. Appropriate letters of acknowledgement were sent to contributors, as required by law.

Revenue: In our first full year approximately 60 Fellows made individual contributions to the Foundation. \$10,305 came through the check-off on the dues bills from 45 Fellows (average contribution \$229). Our efforts for a year-end solicitation produced another \$9,600 from 14 Fellows (average contribution \$686). Thus, approximately 60 Fellows contributed \$20,000 in our first year.

New Directors: We have recommended that the Foundation Board be expanded and we understand that the following Fellows should be considered for ratification at the College Board meeting to officially become members of the Foundation Board: Sally Neely, Phil Hendel, Slayton Dabney, Mickey Sheinfeld, Bill Cohen, Larry Snider. All six candidates have agreed to serve on the Foundation Board. This will expand the Board geographically and also involve more Fellows in our fund-raising projects.

Engagement of Administrator: We have engaged Armstrong & Associates through December 31, 2003, to assist us with administrative functions. 📄



Communications Committee Report



By Ronald M. Martin

The Communications Committee is made up of Henry J. Sommer, Prof. Alan N. Resnick, Joel B. Piassick, Hon. Cecilia G. Morris, John W. Kozyak, Richard G. Heltzel, Suzanne Bingham, Evelyn Biery, and Ronald M. Martin.

We have established as our primary means of communication monthly to bimonthly conference calls to discuss our progress on various projects for which we bear responsibility. These include the College Columns, the Directory the internet site, and our extranet site. We have also discussed in these meetings new ways in which individual Fellows can communicate together more effectively and the College can communicate more effectively with the Fellows.

College Columns: Special thanks needs to be given to Evelyn Biery for her continuing hard work and extraordinary efforts to publish the College Columns on a biannual basis. This year Evelyn has sought to improve and add more of a personal touch through stories and other additions to add more value to the Fellows.

The Directory: With the support of Matthew Bender as our sponsor, we have been able to turn out the Directory on time to all of our Fellows. This takes considerable effort, particularly by Suzanne Bingham and her staff with the many changes of our Fellows moving from firm to firm and the tedious job of proofreading to ensure that the Directory is as accurate as possible. They deserve our strong support and thanks for producing this valuable tool.

Internet Site: Our American College of Bankruptcy internet site has to be updated regularly with changes in officers, new College Columns, announcements and making sure that we present a dignified and yet appealing face to the e-world. One of the most extraordinary benefits of the internet site is the search

engine for Fellows and potential individual clients who are searching for the best bankruptcy lawyers they can find in given geographical areas by city and/or state. Again, Suzanne Bingham has done an exceptional job of working with our web people and in working on obtaining a new webmaster for our internet site.

Extranet Site: Being the newest addition to our methods of communicating, there is still some work to be done to take full advantage of the benefits offered by the extranet. The Committee continues to examine new ways to make our extranet more user-friendly. The extranet contains discussion facilities, some of the best research links available, together with links to our internet site's search engine, lists of officers, circuit representatives, and directors, together with their phone numbers and e-mail addresses.

After investigating a new piece of software known as Web Crossing, it was decided that influx of further e-mails to Fellows would constitute more of an annoyance than a way to get them involved in the discussion portion of the extranet site. Despite the information and links on the extranet site containing a wealth of information, our user use is too low among the Fellows. We will be taking steps within the next months to make the extranet more user-friendly by dropping log-in name and password, so that Fellows will not have to remember these items, which tend to block access. In experimenting with this new format, we will seek to advertise to Fellows both through the Columns and through periodic messages to the Fellows how easy it is to use the extranet site. This will hopefully increase use and may lead to additional discussion questions being posted, which is our second area of challenge.

Over the last year there has been little use of the discussion group. John Kozyak in particular has tried very hard by posting questions and seeking to get more involvement in the discussion section. If we cannot in a reasonable period of time find user interest by the Fellows, we will delete this portion of the extranet, or leave it dormant.

I want to thank all of the members of the Communications Committee for giving of their time and being such a dynamic group of creative individuals when it comes to the problems and issues that we face. 📄

Pro Bono Committee Report

By Paul M. Singer

The Pro Bono Committee (the "Committee") was reconstituted in August 2003. George Cauthen was appointed as Chair. The members of the reconstituted Committee are: James L. Baillie, Evelyn Biery, Hon. Joseph L. Cosetti, Hon. Nancy C. Dreher, Prof. Karen Gross, Prentice L. O'Leary, Hon. George C. Paine II, Louis P. Rochkind, Paul M. Singer, Henry J. Sommer, David T. Sykes, and George B. Cauthen, Chairman.

During the year the Committee approved grants in the amount of \$23,200 to 14 entities: Bankruptcy Section of the Minnesota Bar Association \$7,500, Pro Bono Project Silicon Valley \$1,000, Legal Aid Society of Northeastern NY, Inc. \$750, The Legal Aid Society of Northwest N.C., Inc. \$1,000, Volunteer Legal Services Hawaii \$1,000, Legal Services for Cape Cod and Islands, Inc. \$1,200, Legal Services Foundation of Essex County Volunteer Lawyers for Justice Program \$1,000, Idaho Volunteer Lawyers Program \$1,000, D.C. Bar Pro Bono Program \$2,000, Southeastern Massachusetts Legal Assistance Corporation \$1,000, Wind River Legal Services, Inc./Wyoming Legal Services, Inc. \$1,000, The Volunteer Lawyers Service of the Massachusetts Justice Project \$2,000, Maryland Volunteer Lawyers Service \$750, and Put Something Back \$2,000.

On January 15, 2003, the Committee held a joint conference call with the Future of the College Committee to discuss ways to enhance the Committee's efforts in support of worthy pro bono programs.

The joint meeting discussed whether the definition of pro bono services in the bankruptcy area to be supported by the College should include the delivery of legal services or whether it should also include informational subjects such as consumer-debtor education programs. The consensus view was that the College's pro bono activities should be directed to funding projects related to the delivery of legal services in the bankruptcy area. A minority felt that the College should include funding to projects relating to but broader than the delivery of legal services, such as debtor education and the provision of

funds to translate various legal documents for non-English speakers.

The joint meeting also determined that the College's pro bono activities should not be tied to grants to any specific program other than to meet the goal of provision of legal services in the bankruptcy area. Heretofore, grants had been limited to certain amounts and to specific activities, such as the reproduction of educational materials.

The joint meeting also recommended that the College move to a three-year grant program coupled with an annual certification from the recipient organization as to its progress and meeting of its objectives. This process, it was believed, would provide the College with better budgetary controls as well as making it easier for the recipient to provide a grant application. At our May 15, 2003 meeting, the three processes were adopted and several grants were approved on a three year basis as reflected on the attached chart.

Finally, the joint meeting suggested that a letter be developed to send to bar associations, law professors and judges explaining the availability of grants. It is anticipated that this letter will be developed in the near future. The new Committee Chair has agreed to follow-up on this proposal. ¶

Joint Luncheon with NCBJ Fall 2003

By Evelyn H. Biery



▲ George Ellard

On October 16, 2003, from 12:45 P.M. to 2:15 P.M., the College Fellows will join the members of National Conference of Bankruptcy Judges and those attending the 2003 conference at a joint luncheon.

The speaker will be George Ellard, former counsel for the U.S. Senate/House Joint Intelligence Committee Inquiry into the Events of September 11, 2001, now chief counsel to Senator Joseph Biden, chair of the Senate Committee on the Judiciary. His topic will be "Accountants & al - Qa'ida: The Evolution of Criminal Law Since September 11 and the fall of Enron." ¶

Leadership Changes

By Evelyn H. Biery

This year our fourth board chair, R. Neal Batson, stepped down after two years of outstanding service to the College as Chair of the Board and eleven additional years of equally outstanding service in various capacities. The change of leadership led to a change in the other officers and directors of the college. Our new board chair, Hon. Ralph R. Mabey, took office in March of 2003, along with new President Evelyn H. Biery and new Vice President Hon. Mary Davies Scott, who will serve along with continuing vice presidents Ronald M. Martin, Paul M. Singer and Richard S. Toder. Prof. Grant W. Newton will continue to serve as Treasurer, and Daniel M. Glosband will continue to serve as secretary.

New directors include I. William Cohen, Hon. Richardo Kilpatrick, Sally S. Neely, Robert B. Rubin, Hon. Thomas Small and Lawrence K. Snider, who will serve along with continuing directors, Donald S. Bernstein, Merrill Francis, David Heiman, Stuart Hirshfield, Joel B. Piassick, Raymond L. Shapiro, Gerald K. Smith and David T. Sykes.

In addition, the Board of Regents has changed, with Joseph A. Dworetzky, R. Patrick Vance, G. Christopher Meyer and Mark D. Bloom now serving as regents of the Third, Fifth, Sixth and Eleventh Circuits, respectively. Our new regent at large will be Richard B. Levin. John A. Barrett continues as the Chair of the board of regents,

The College thanks outgoing chair, R. Neal Batson, outgoing directors Susan Freeman and Hon. Mary Davies Scott and outgoing Circuit Regents I. William Cohen, Joel P. Kay, Michael L. Temin, and Robert B. Rubin, who provided invaluable service to the College. ¶



Save the Date
2004 Annual Meeting and
Induction Ceremony

Washington, D.C.
March 19-20, 2004

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Honors and Achievements

Janet L. Chubb

Representative to the Ninth Circuit



▲ Janet L. Chubb

Janet L. Chubb, a Reno lawyer with the firm of Jones Vargas in Nevada, has been elected as an At-Large Lawyer Representative to the Ninth Circuit Conference Executive Committee. 📞

Robert F. Hershner, Jr.

Elected to Board of the Federal Judicial Center



▲ Robert F. Hershner, Jr.

Robert F. Hershner, Jr. has been appointed by The Chief Justice of the Supreme Court of the United States to chair the Board Research Committee of the Federal Judicial Center. The Federal Judicial Center is the research and education agency of the federal judicial system. The Research Committee undertakes empirical and exploratory research on federal judicial processes, court management, and sentencing and its consequences, often at the request of the Judicial Conference and its committees, the courts themselves, or other groups in the federal system. 📞

Liaisons Committee Report

By Hon. A. Thomas Small



▲ Hon. Thomas Small

Mark Craige, past chair of the American Board of Certification, is a new member of the committee who agreed to spearhead the committee's efforts to establish at least one new project between the College and another bankruptcy entity. We have discussed the possibility of a College-sponsored luncheon at the annual meeting of the American Bankruptcy Institute, but this has not gone beyond the discussion phase.

As the NCBJ liaison I conferred with Ralph Mabey and Evelyn Biery regarding a speaker for the College luncheon on October 16, 2003, at the NCBJ Annual Meeting in San Diego.

One of the committee's goals is to encourage bankruptcy-related organizations to contribute materials to the Bankruptcy Archives. NCBJ's protocols for submitting materials to the Archives are on the agenda at NCBJ's midyear meeting on March 9, and when the protocols are finalized, they will be a good model for other organizations.

The committee is always available to react to special requests when the need arises. 📞

Supreme Court Project

By Kenneth N. Klee



▲ Kenneth N. Klee

Please be advised that I am working away diligently on researching United States Supreme Court cases as background for writing my book Bankruptcy and the Supreme Court. I have identified the relevant Supreme Court as approved by the Board of Directors of the College cases and have two research assistants summarizing the cases, providing me with hard copy, and loading case summaries into a Microsoft Access database. I expect to complete the case summaries this summer and begin to outline and write the book commencing May 2003.

It will be a book of approximately 180 or 200 printed pages, in traditional law review format, analyzing the decisions of the United States Supreme Court that relate to bankruptcy during the Twentieth Century and the beginning of the Twenty-First Century. LexisNexis Matthew Bender will act as co-publisher with the College.

The College expresses its thanks to LexisNexis Matthew Bender, which has agreed to compose, print, bind, and ship the Work to approximately 8,000 members of the bankruptcy bench and bar. LexisNexis Matthew Bender will perform these services as a public service and will provide the materials necessary or incidental to the performance of these services (including paper, printing, and postage costs). If, after the distribution of the approximately 8,000 copies of the work, there are additional copies from the original print run, LexisNexis Matthew Bender may distribute them at conferences, seminars, trade shows, or other similar events. 📞



In Memory of Wilbur Silberman

By Philip Hendel



▲ Wilbur Silberman

On June 6, 2003, Wilbur G. Silberman, at the age of 83, passed away. Wilbur was a member of the second class of the American College of Bankruptcy, and he served as an active and involved leader of the College, as well as the President of Commercial Law League of America.

Wilbur obtained his Law Degree from the University of Alabama in 1941 (at the age of 21) and, after serving in the U.S. Air Force, returned to Birmingham and began practicing law

with his father (Silberman & Silberman, initially, and then Gordon, Silberman, Wiggins & Childs) for more than fifty years. Wilbur and his wife, Bettye, were active in the affairs and functions of the College, as well as many other legal, civic and charitable organizations. Wilbur contributed to the law, as a student, a teacher, a lecturer and a mentor of many young lawyers, and he will be sorely missed. I, for one, benefited from his tutelage, encouragement and guidance for over 40 years. Wilbur is survived by his daughters, Cindy Bailey and Cathy Watkins, and three grandchildren. We will all feel his loss. 📞

Address of Leonard M. Rosen 2003 Induction Ceremony



▲ Leonard M. Rosen

These are the remarks of Leonard M. Rosen, recipient of the 2003 American College of Bankruptcy Distinguished Service Award, when he spoke to the Fourteenth

Class of the American College of Bankruptcy on March 28, 2003:

I am honored to be invited to speak this evening in this place at the Induction Ceremony for the Fourteenth Class of the American College of Bankruptcy. I congratulate you for the recognition which your peers now give you for the high level of your professional accomplishments.

I am also honored to follow those who have addressed these ceremonies in prior years — in particular, Larry King who spoke here in 2001. He was a close friend and a fellow worker in many areas of our professional lives, and I know the memory of his extraordinary remarks remain vivid in my mind and in the minds of many of you.

When Neal Batson called to ask if I would speak tonight, we agreed that a worthwhile topic might be the recent spectacular corporate collapses caused by management fraud. So here goes.

Our economic system depends upon investors having enough trust in the integrity of our capital markets and in its underlying corporate values that they are willing to invest in those markets even though they have little or no ability to directly influence them. The system relies upon gatekeepers — directors, public accountants, lawyers and investment bankers — who have special sets of skills and responsibilities in protecting the capital invested in the markets.

Much of that trust in our markets has eroded in the last year as the result of very substantial corporate misconduct which our gatekeepers have failed to prevent or, in some cases, have facilitated.

Why did they fail? How do we restore their effectiveness and credibility?

I'll confess up front that I do not have any special expertise with respect to ethical issues or related philosophic matters. The one rule we followed that saved our firm from much grief and aggravation was our application of the "smell" test to potential clients and matters. This test had the virtue of not requiring the

reading of rules to arrive at a conclusion and the further advantage that since there was no written rule it was quite difficult to find gaps in it or ways to get around it.

What Went Wrong In Corporate Governance

- Boards of directors did not act as effective monitors of management.
- Non-management directors did not meet separately for independent discussion of management and compensation issues.
- Ethics codes were waived without directors understanding the transactions in question. Collegiality trumped independence.
- Audit committees didn't understand the accounting — didn't insist on explanations, and failed to obtain professional advice they obviously needed.
- Companies overpaid and extended huge loans to CEOs and senior officers, who also realized huge stock option profits prior to the collapse of the market price of their company's stock.
- The CEO dominated the Board and its selection process. Directors failed to deal with mediocre managers or worse. Warren Buffet suggests that directors must react as did the chorus girl bride of an 85-year-old multimillionaire when he asked whether she would love him if he lost his money. "Of course, the young beauty replied, I would miss you, but I would still love you." Many CEOs merited the same goodbye.

Let's Look At Accounting

- Auditors failed to insist on full and understandable disclosure in financial statements, adhering to specific rules-based GAAP, and went so far as to permit and even suggest gimmicks to create false revenues, false earnings, false cash flow statements and false balance sheets;
- Often they were paid more for consulting than for auditing, raising the question of whether they compromised their audit work as a loss leader or pawn sacrificed to protect the more lucrative consulting work.
- Efforts of FASB to improve accounting rules were effectively resisted by accounting firms and major companies and, in the case of attempts to require the expensing of stock options, they lobbied and pressured the Senate to vote 88-9 against such expensing, a vote which senators undoubtedly came to regret.
- In the end, the accounting profession

and the SEC failed to exercise effective oversight of auditors' performance.

Attorneys — What Went Wrong?

- Lawyers conducted limited, inadequate and inconclusive investigations of concerns raised by whistleblowers and others.
- They went along with transactions and accounting treatments which may have literally complied with applicable rules but completely violated the spirit of the rules, and they did not push for disclosure of potential securities law violations by bringing such matters to the attention of the Board or Audit Committee.

What About The Investment Bankers?

- Wall Street pressured for increased shareholder value; corporate managers were increasingly motivated to manage for short-term stock appreciation in order to satisfy the Street and benefit themselves through the exercise of their stock options.
- The compensation and recommendations of securities analysts became entangled with investment banking business and income.
- Investment bankers assisted accountants and management in "creative accounting" by developing more and more sophisticated structured finance vehicles, in order to keep company liabilities off the balance sheet, including transactions which were essentially loans but which the company nevertheless treated as sales.

These things occurred at a time when the risk of gatekeeper liability for wrongdoing had been reduced as a result of a 1991 Supreme Court decision (*Lampf v. Gilbertson*) that shortened the statute of limitations applicable to securities fraud, and a 1994 Supreme Court decision (*Central Bank of Denver*) that eliminated private "aiding and abetting" liability in securities fraud cases.

In addition, federal statutes enacted in 1995 (*Private Securities Litigation Reform Act*) and 1998 (*Securities Litigation Uniform Standards Act*), intended to curb abuses by attorneys, also had the effect of discouraging and blocking lawsuits brought to remedy abuses by corporate managers and gatekeepers.

What I have described is by no means a list of all that went wrong. Clearly corporate management and the gatekeeper system need a thorough review and overhaul. In some respects the markets will self-correct, but many of the problems which emerged will not

self-correct and remedial statutory and regulatory intervention is needed.

The Sarbanes-Oxley Act of 2002 and new SEC and New York Stock Exchange rules have sought to respond to many of the deficiencies:

- A new Public Company Oversight Accounting Board has been established and given broad powers to oversee the auditing of public companies — as you know from press reports it's off to a slow start.
- CEOs & CFOs now are required to certify that financial statements fairly present condition of the company, and not just in accordance GAAP.
- Boards must have a majority of independent directors. The Audit, Compensation, and Nominating Committees must consist only of independent directors, and those committees, not management, hire the auditors, the compensation consultants and the search firms.
- A "financial expert" is to be on the Audit Committee (or an explanation given as to why not). Non-audit consulting and advising by audit firms is to be limited and requires approval of the Audit Committee.
- Loans to officers and directors are prohibited (with minor exceptions), and shareholder approval of stock options and equity compensation plans is required.
- Attorneys becoming aware of a securities law violation are required to report it to the chief legal officer or the CEO, and if not responded to, then to the Audit Committee.
- All off-balance sheet items are to be disclosed in financial statements.
- Whistleblowers are encouraged and given some protection.
- The Bankruptcy Code is amended to provide that debts from judgements or settlements of securities law violations cannot be discharged in bankruptcy.

Notwithstanding these improvements, questions remain as to what further steps should be taken to restore the credibility and effectiveness of the gatekeepers:

Most importantly, the culture of Boards of Directors needs to change. An article by Professor Jeffrey Sonnenfeld of Yale published in the September 2002 issue of the Harvard Business Review is instructive. His message is that good board governance cannot be achieved by rules and regulations alone. He says, "The key isn't structural, it's social. The most involved, diligent, value-adding boards may or may not follow every rec-

ommendation in the good-governance handbook. What distinguishes exemplary boards is that they are robust, effective social systems ... the highest-performing companies have extremely contentious boards that regard dissent as an obligation and that treat no subject as undiscussable." More rules about structure will be helpful, but boards and CEOs need to be committed to the transparency, trust, participation, knowledge and hard work required to make an excellent board.

The degree of interlocking corporate directors at the largest U.S. corporations has been demonstrated to be substantial. Given the increase in a director's workload under the new regulations and new restrictions on director interlocks, serving on fewer boards would be a positive attribute for a directorship candidate. Nominating Committees and search firms need to go beyond their usual networks and rolodexes in the search for new directors.

Specific rules-based GAAP auditing has clearly proved inadequate to the task of assuring meaningful certification of financial statements. There should also be rules based on principle which are effective to prohibit accounting treatments which may not literally violate any specific rule but which nevertheless frustrate the principles underlying such rules. Such principle-based rules will require an auditor to exercise his own judgment about the propriety of treatments not covered by a specific rule. The exercise of such judgment is the burden of being a professional. Financial statements as a whole must provide a reasonably complete understanding of the client's overall financial position.

Furthermore, public auditors need to be restored to a position where they are not conflicted or even give the appearance of being conflicted in fulfilling the task of certifying financial statements. Is it sufficient for auditors to be hired and compensated by Audit Committees? Or, should that function be served by some public or other body which is more directly charged with representing shareholder and public market interests? Should audit firms just perform audits and not be permitted to offer any consulting and other services? Will the Public Company Accounting Oversight Board and the rules and standards it promulgates prove effective enough to assure that the need for accurate financial information is and will continue to be met? These are not easy questions to answer.

I was an accounting major in college and served in the Army Audit Agency. I've always had a particular interest in the

accounting profession and many years ago worked on a number of cases involving bad audits. I can remember when the opinions of accountants were valued not only for yeses but also for noes when it was a highly respected profession. It's been painful to watch as the major firms consolidated — the big eight become five and now four — and grew larger and larger with more and more offices, often through the acquisition of smaller firms, each a profit center eager to capture and keep clients. Consulting and other services were added to the mix, creating conflicts of interest. Quality standards and internal controls were weakened. Bad audits and restatements became more and more common. Business considerations trumped professional standards. Much needs to be done now to restore confidence in the major accounting firms.

I have watched many law firms expand into national and international firms with hundreds or even thousands of attorneys. As a member of a one-office firm, I sometimes wonder how they have accommodated and hopefully avoided the problems which the major accounting firms have had in maintaining quality control over the work of their professionals.

I was surprised to recently learn that there a number of corporations now engaged in rolling up medium sized accounting firms throughout the country. It doesn't give me a very comfortable feeling.

The problem of what disclosure is required when an attorney learns about client fraud and goes up the ladder to the Audit Committee and fails to elicit a reasonable response still needs to be resolved. A proposed SEC rule is pending. Notwithstanding the importance of the confidentiality of the lawyer-client relationship, when the fraud is continuing and affecting the integrity of the marketplace, shouldn't withdrawal by the attorney be accompanied by disclosure to the SEC (by the attorney or by the company)?

Some lawyers have confused the role of being an advocate, in adverse litigation or negotiations on behalf of a client, with the role of serving the needs of a client for objective advice when structuring transactions. Louis Brandeis, testifying before Congress 92 years ago, said lawyers as advisers should advise conduct that keeps clients away from the "precipice" of illegality, that leaves a margin of safety. Have we learned the lesson?

Investment banks and bankers are the subject of an extensive investigation by the

continued on page 15

Presentation by Harvey R. Miller of Distinguished Service Award to Leonard M. Rosen



▲ Harvey R. Miller

The following remarks were made by Harvey Miller when he introduced Leonard M. Rosen, the recipient of the 2003 American College of Bankruptcy Distinguished Service Award.

Good afternoon.

Before I proceed with my remarks, I just want to correct the record. This morning at the beginning of the educational panel on valuation, Don Bernstein announced that Michael Kramer of Greenhill & Co. was unable to attend and that he had offered me the opportunity to replace Michael on that panel. He said that I had declined because I was not sure I fitted into the garb of an investment banker. That wasn't quite true. What Don failed to state is that the real question presented was the amount and payment of a success fee!

I just wanted to set the record straight.

There is one other problem. Six or more weeks ago, Ralph Mabey called me and asked me if I had prepared my remarks for today. I responded in the negative, but told him I would prepare a draft that evening and send it to him pursuant to his request. When I sent it to him, I did not know that he was going to steal it and use it during last night's ceremony. As a result, I have spent all morning rewriting my remarks.

The ceremony at the Supreme Court was quite impressive. I particularly noted Leonard Rosen's statement that he had majored in accountancy during college and had expected to pursue that profession. I once asked Len why he had not stayed with accounting. He told me that, soon after graduating from college, he went for an interview for an accounting position. There were two candidates, Len and another young man whose name just happened to be Arthur Andersen. During the interview, Len and Mr. Anderson were asked a number of questions. One of those questions was, "How much is 2 + 2?" Len seized the opportunity and replied, "Four." The interviewer turned to Mr. Andersen, and he replied, "How much would you like it to be?"

Len quickly decided that he had better go to law school.

It is now time to proceed. It is a great

pleasure to be here this afternoon, particularly with respect to my assigned role. The subject is Leonard M. Rosen.

In the course of one's life, you meet many persons and one or more of those persons, because of his or her unique talents and personality, may have a significant impact on your life and the lives of others. I was hoping that I could say that Len Rosen is that type of person!

I am glad to say that my hope has been gratified. There is no doubt that Len is a person who has had a significant impact on my life and the lives of many others.

On a personal level, it is conceivable that, but for Len, I might not be standing here this afternoon. I first met Len, as an adversary, in 1960. It almost seems like yesterday. Many of you will be surprised to learn the respective roles we played at that first meeting. It was in the context of a Chapter XI case that was filed in the Southern District of New York. Len Rosen was the attorney for the debtors! Remarkably, I represented the creditors' committee. What a reversal of roles! At that time Len was a partner in Seligson, Morris & Neuberger and worked primarily with Professor Charles Seligson.

Back in those olden, golden days, under Chapter XI of the Bankruptcy Act, there was a provision that required that a debtor post indemnity for the privilege of seeking to reorganize under Chapter XI if it projected losses during the Chapter XI administration. The so-called indemnity hearing was required to occur within the first 10 days of the commencement of a Chapter XI case. It was to be followed shortly by the first meeting of creditors. [Throughout my career, I have searched for the second meeting of creditors. I have never found it!]

In any event, my confrontation with Len occurred at the indemnity hearing. The debtor in that case, Jane Lee Stores, Inc., clearly was going to lose money in its operations post Chapter XI. As a first year associate who happened to be standing in the wrong place in the men's room, I was assigned to handle the indemnity hearing. The assignment presented a difficult problem since I had never taken a course in creditors' rights. Consequently, I diligently and exhaustively prepared for the hearing. I read the Bankruptcy Act provisions carefully. I

discovered that a loss in operations by a debtor in possession, receiver or trustee mandated posting of indemnity. I took the words of the statute at face value. I **pored** over the papers filed by the debtor. I discovered buried in the heap of papers a 30-day forecast that demonstrated a loss in operations. I thought I had a summary judgment case.

I went to the indemnity hearing, waiting to meet my adversaries. For the time, it was a rather large case, and the courtroom was packed. At the time I had no real idea who Charles Seligson was, let alone Len Rosen. Shortly before the 10 o'clock calendar call, a short, rather benign-looking gentleman entered the courtroom followed by a husky young man who immediately moved to the counsel table, pushed my papers aside and sat down.

They were Professor Charles Seligson, the attorney for the debtor, and his then bag carrier and scribe, Len Rosen. Professor Seligson shook hands with me. It was a rather limp handshake. I said to myself, "I can take this guy, and I'm sure that Rosen won't say a word." I was brimming over with confidence.

At 10 o'clock A.M., the court was called to order; the door to the judge's chambers opened; and in walked Asa S. Herzog, then a referee in bankruptcy. He mounted the bench. He looked down and suddenly stood up and said, "Professor Seligson, what an honor and a privilege to have you in my courtroom. And welcome to you, Leonard."

He then came down from the bench, walked around counsel table, past me, and embraced both Professor Seligson and Len Rosen. I broke out in a cold sweat. Nevertheless, I persevered. In a brilliant argument I demonstrated beyond any "peradventure of a doubt" that the debtor would lose money in operations and erode the assets that might be available to satisfy claims of creditors.

The Professor (Charles was always referred to as the "Professor") rose, Len handed him a set of notes, and he proceeded to wax eloquently on the philosophy of rehabilitation and reorganization. He did not refute the fact that the debtor in possession would lose substantial monies in operations during the Chapter XI period. I noted the same in my rebuttal. We rested.

Judge Herzog looked up at the ceiling of the courtroom, paused, looked down at me, and stated unequivocally, "The motion for indemnity is denied. You made a very nice argument, Mr. Miller, but the principles enunciated by the debtor's attorneys as to the objectives and purposes of Chapter XI must be respected. The imposition of indemnity would render those principles illusory."

Although demolished, the consequence of that hearing was the beginning of a friendship with Len as well the Professor that has dramatically changed my life. It led to Len Rosen a year or so later offering me a position with Seligson & Morris. I did not hesitate to accept that position, even though I was warned that it might be temporary. It opened up whole new vistas and intellectual stimulation for me. Len became my boss and very dear friend. The only problem that arose was that about two years later, Len casually announced to me that he, Marty Lipton and George Katz had decided to leave the firm. That was a sad day for me.

So Len went off and helped to build Wachtel, Lipton. I soon discovered he had once again seriously impacted my life. I found that out to my dismay as I periodically read *The American Lawyer* and became aware of the profits per partner at Wachtel Lipton. It is at those moments that I said to myself, "Len, how could you have left me behind?"

Of course, I'm not serious about that. I take great pride in what Len and his partners have accomplished. As the years passed and I discovered that oppressed debtors really needed better representation, our roles reversed as, from time to time, I became a debtor's attorney and Len, more often than not, ended up representing the creditors' committee in cases that I initiated. That is with one exception.

As many of you know, Len was the attorney for W.T. Grant Company, the first billion-dollar Chapter XI case when it was filed in October 1975. Once again, I represented the creditors' committee and thereafter the trustee in bankruptcy. That was the last time that Len Rosen represented a debtor. It was a great and seminal case for all of us. The creditors' committee met twice a week commencing at 7:30 A.M. at the W.T. Grant headquarters in Times Square in New York. The meetings often went into the late hours of the night. It was always exciting to sit there in the boardroom and watch the luncheon

sandwiches curling up as midnight approached. As the case progressed, each day we would watch Len's hair slowly turning gray. It also became painfully obvious that Len had no intention of every representing a debtor again.

Although Len implemented that intention, we continued to work together over the subsequent years to the mutual benefit of our clients and in other aspects for the improvement of our Bankruptcy Code. I am extremely grateful to Len for the very positive impact which he has had on my life and the development of my career.

As to Len's impact upon others, for the past 47+ years, Len Rosen has stood out as an exemplar human being, attorney and teacher. He has pursued with dedication and diligence the improvement of our nation's bankruptcy law. First, as a practicing attorney and a founding partner of the prestigious law firm of Wachtel, Lipton, Rosen & Katz. Second, as an untiring member and, ultimately, Chairperson of the National Bankruptcy Conference from 1984 - 1992, critical years in the evolution of our Bankruptcy Code. Third, as an adjunct professor of law at New York University School of Law for many years.

On top of all of that, Phyllis has told me, and I have no reason to doubt it, that Len is a great husband, and I know he is a wonderful father. All you have to do is speak with any one of his three sons, Adam, Stephen, and David, or his beautiful daughter, Carol, and also their respective spouses and his eight grandchildren.

Throughout his professional career and his personal life, Len has exhibited enormous talent, intellectual honesty, intelligence, objectivity, personal dignity and an infectious good will – qualities that have enabled him to calm stormy waters and allow competing parties to reconcile their differences and resolve their disputes. His ability to defuse conflict is legendary. In more than one complex restructuring or reorganization, it was Len's ingenuity, perseverance and persuasiveness that cut the Gordian knot. The Chrysler restructuring is just one example of this great talent.

Despite his great success, Len is a man of great humanity. He has been, and continues to be, extraordinarily sensitive to the needs and interests of the

underprivileged and the under-represented through his active participation in public and charitable organizations. His wisdom and advice are respected by all who know him. His achievements speak for themselves. During the 43 years that I have known Len, I have never heard anyone utter a bad word about him. Len is always referred to as a "good man." Not many of us can make that claim. It is quite an achievement, particularly in the perspective of our peculiar and often adversarial and litigious environment.

Len has proven that Leo Durocher [for those who are too young to remember him, he was the manager of the Brooklyn Dodgers and then the New York Giants] was absolutely wrong when he said, "Nice guys finish last." Len, unequivocally, has been and continues to be in first place in all divisions.

Len truly is a man for all seasons. It has been and continues to be a great privilege to know him, to work with him and to enjoy life with him. He adds luster to the College by his acceptance of the 2003 Distinguished Service Award. It is my great privilege to stand here today to honor Len and to present him with the College's Distinguished Service Award. 🙏



Save the Date Fall 2004 Meeting

Tuesday, October 8, 2004
College Leadership Dinner

Wednesday, October 9, 2004
College All Fellows Luncheon
and Panel Discussion
Board of Directors and Regents Meetings

National Conference of
Bankruptcy Judges
October 10-13, 2004
Opryland, Nashville, Tennessee

Induction of Fourteenth Class Spring 2003

By John A. Barrett

The Board of Regents met at the Fall 2002 meeting of the College in Chicago, Illinois, and considered over 40 nominations. After extensive discussions, 38 were accepted by the Board of Regents. Several were put on hold to be considered to be invited to join the Fifteenth Class, at a future date pending updated information. Of the 38 invited, one declined to join the College. Of the 37, one will be Honorary, four are International Fellows, one is a judge and the rest are practicing attorneys, accountants, and academics. Of the academics, three are professors, including an international professor in London.



All Inductees have outstanding credentials. The Regents' largest problem was detailed information and recommendations in order to determine the degree of qualification for acceptance.

Michael H. Ahrens Sheppard, Mullin, Richter & Hampton LLP San Francisco, California	Hon. Charles G. Case United States Bankruptcy Court Phoenix, Arizona Deborah Hunt Devan Neuberger, Quinn, Gielen, Rubin & Gibber, P.A. Baltimore, Maryland	Prof. S. Elizabeth Gibson University of North Carolina Law School Chapel Hill, North Carolina	Robert B. Millner Sonnenschein Nath & Rosenthal Chicago, Illinois Stephen Karotkin Weil, Gotshal & Manges, LLP New York, New York	James L. Patton, Jr. Young Conaway Stargatt & Taylor, LLP Wilmington, Delaware
Mark N. Berman Nixon Peabody LLP Boston, Massachusetts	Hon. Arthur B. Federman Unites States Bankruptcy Court Kansas City, Missouri	Stuart A. Gold Gold, Lange & Majoros, P.C. Southfield, Mississippi	Albert A. Koch Alix Partners, LLC Southfield, Mississippi	Thomas E. Ray Samples, Jennings, Ray & Gibbons, PLLC Chattanooga, Tennessee
Prof. Susan Block-Lieb Fordham Law School New York, New York	James M. Carr Baker & Daniels Indianapolis, Indiana	Ronald F. Greenspan FTI Consulting, Inc. Los Angeles, California	David E. Leta Snell & Wilmer L.L.P. Salt Lake City, Utah	Paul Steven Singerman Berger Singerman, P.A. Miami, Florida
Riobert H. Brownlee Thompson Coburn LLP St. Louis, Missouri	Jeffrey H. Davidson Stutman, Treister & Glatt, PC Los Angeles, California	Ben B. Floyd Floyd, Isgur, Rios & Wahrlich, P.C. Houston, Texas	Guy B. Moss Bingham McCutchen LLP Boston, Massachusetts	J. Robert Stoll Mayer, Brown, Rowe & Maw Chicago, Illinois
Prof. Douglas G. Baird University of Chicago Law School Chicago, Illinois	Hon. Thomas B. Donovan United States Bankruptcy Court Los Angeles, California	Hon. William H. Gindin U.S. Bankruptcy Court Trenton, New Jersey	Dennis J. O'Grady Riker, Danzig, Scherer, Hyland & Perretti LLP Morristown, New Jersey	Francis F. Szczebak Administrative Office of the U.S. Courts Washington, DC
Hon. Stuart M. Bernstein United States Bankruptcy Court Southern District of New York New York, New York	Thomas Benes Felsberg Felsberg, Pedretti, Mannrich e Aidar Advogados e Consultores Legais Sao Paulo, SP Brazil	Hon. Arthur J. Gonzalez United States Bankruptcy Court New York, New York	Mary Ann Rabin Rabin & Rabin Co. LPA Cleveland, Onio	Prof. James J. White University of Michigan Law School Ann Arbor, Mississippi
Jeff Bohm McGinnis, Lochridge & Kilgore, L.L.P. Austin, Texas	Donald W. Fitzgerald Felderstein Fitzgerald Willoughby & Pascuzzi LLP Sacramento, California	Christopher K. Grierson Lovells London United Kingdom	Hon. Adolfo Rouillon Civil and Commercial Court of Appeals Rosario, San Francisco	Prof. Jacob S. Ziegel University of Toronto Toronto, Ontario Canada
Gayle E. Bush Bush Strout & Kornfeld Seattle, Washington		Cynthia F. Grimes Grimes & Rebein, L.C. Lenexa, Kansas	Dale L. Somers Wright, Henson, Somers, Sebelius, Clark & Baker, LLP Topeka, Kansas	William P. Weintraub Pachulski, Stang, Ziehl, Young, Jones & Weintraub P.C. New York, New York
Rhett G. Campbell Thompson & Knight LLP Houston, Texas		David H. Kleiman Dann Pecar Newman & Kleiman, P.C. Indianapolis, Indiana		Thomas P. Yoder Barrett & McNagny, LLP Fort Wayne, Indiana
		David S. Kurtz Lazard Freres & Co., LLC Chicago, Illinois		

Address of Leonard M. Rosen


continued from page 11

New York State Attorney General and the SEC relating to their transactions with some of the failed companies. The NASD and GAO are investigating whether financial institutions have been violating rules restricting “tie-ins” – linking an institution’s willingness to lend to the borrower’s willingness to do other business with the institution. The multiple roles of supermarket financial institutions require review in light of the potential conflicts involved in making and syndicating loans, underwriting and acting as a broker for the sale of stocks and bonds and giving investment advice. It is clear that the link between analysts and investment bankers needs to be broken. Whether the Sarbanes-Oxley efforts to deal with these conflict issues are adequate should receive consideration.


Many commentators have suggested that the Supreme Court’s decision in the Central Bank case should be overruled by legislative action that Congress should restore private causes of action against lawyers and accountants for aiding and abetting federal securities law violations and that it is an anomaly not to have such a private cause of action. What do we think?

What can we as members of the gate-

keeper professional class do? Each week seems to bring us news of another massive fraud. HealthSouth this past week. Before memories fade, now is the time to accomplish as much as possible to avoid future debacles. Many of you, having the extraordinary experience of being part of the process of unraveling these frauds, have a special role to play — as advocates in Congress, with the Administration, the SEC and other government agencies, and in bar, accounting and other professional organizations where changes in law and rules are being considered. Rules and regulation may be well intended, but if not carefully considered can prove overly burdensome and have unintended consequences.

And it isn’t all about rules and regulation. Justice Earl Warren has been quoted as saying, “Law floats in a sea of ethics.” We all have social and ethical responsibilities as professionals to help protect important economic and social interests in our society, including the public trust that is essential to the functioning of our capital markets. We need to be a part of the debate that shapes the necessary solutions — leaving our clients and our own self-interest at the door — so that we can play a most persuasive and important role in the battle to restore confidence in our economic system. 

Circuit Meetings at Annual Meeting

As you make your plans to attend the March 2004 Induction Ceremony, please plan to arrive early enough to attend the Circuit Luncheons, to be conducted from noon to 2:00 P.M. at various locations around Washington, D.C., on Friday, March 19, 2004. The purpose of the Circuit Luncheon is to provide a gathering place for the Fellows in each of the circuits to discuss possible candidates for Fellows and to exchange ideas on how to make the College a vibrant organization that satisfies the goals of the College and its Fellows. Inductees for the 2004 Class will very likely be in attendance, and the luncheon for each circuit will provide an opportunity for those who do not know the Inductees to get to know them and to help them to become involved in the work of the College. There will also be an opportunity to discuss ways in which the Fellows in each circuit can ensure that invitations will be extended to the most qualified candidates in each circuit. 

Arrangements for Spring 2004 Meeting

Save the Date
2004 Annual Meeting and Induction Ceremony
Washington, D.C.

Friday, March 19, 2004

8:00 A.M. - 12:00 P.M.	Board of Directors Meeting
12:00 P.M. - 2:00 P.M.	Circuit Luncheons
2:00 P.M. - 3:00 P.M.	Board of Regents Meeting
3:00 P.M. - 4:00 P.M.	International Insolvency Institute Program
4:00 P.M. - 5:00 P.M.	Ralph Mabey College Salon
5:30 P.M.	Photograph Services for Inductees
7:00 P.M. - 9:00 P.M.	Induction Ceremony

Saturday, March 20, 2004

Educational Program and Luncheon	
7:30 A.M. - 8:30 A.M.	Orientation for Inductees
8:00 A.M. - 9:00 A.M.	Continental Breakfast
9:00 A.M. - 1:00 P.M.	Educational Program
1:00 P.M. - 2:30 P.M.	All Fellows Luncheon
2:30 P.M. - 4:30 P.M.	Circuit Meetings
3:00 P.M. - 5:00 P.M.	Holocaust Museum Tour
7:00 P.M. - 8:00 P.M.	Reception at Metropolitan Club
8:00 P.M. - 11:00 P.M.	Dinner and Entertainment

Washington Mayflower Hotel • 1127 Connecticut Avenue, N.W. • Washington, D.C. 20036
Telephone 202.347.3000 • Facsimile 202.776.9182
Hotel Reservations: 202.347.3000 • Ask for the College block of rooms.

Meetings and Events Committee Report



By I. William Cohen

▲ I. William Cohen

During the past two years the Committee has planned, executed and reported on several College meetings and events. These included regional meetings, the Induction Ceremonies and related events, and meetings prior to and during the meetings of the National Conference of Bankruptcy Judges.

First Circuit: On January 25, 2002, the Fellows in the First Circuit enjoyed dinner at the Westin Hotel in Boston. Newly nominated Fellows were guests of honor, and a special tribute was paid to Retired Fellow Charles Normandin by College Fellow Rick Mikels, who described the many contributions Charles has made to the bar and the Boston community. The dinner was attended by 21 Fellows and 13 spouses and other guests and hosted by Philip Hendel.

Georgia Region: On April 4, 2002, the Georgia Fellows enjoyed dinner at the offices of Alston & Bird in Atlanta, Georgia, in conjunction with the Southeastern Bankruptcy Law Institute, at which several Fellows from outside Atlanta served as speakers. The event was attended by 15 Fellows and 5 spouses and hosted by Neal Batson and Joel Piassick.

Seventh and Eighth Circuits: On June 1, 2002, the Fellows in the Seventh and Eighth Circuits attended two educational programs at the offices of Goldberg, Kohn, Bell, Black, Rosenbloom & Moritz in Chicago. Lunch was provided by the Goldberg, Kohn Firm and Ross & Hardies. Hon. Eugene Wedoff led a discussion on jurisdiction of a nonbankruptcy court to decide issues related to the automatic stay. Eric Lam then led a discussion of *In re Babcock & Wilcox*, 215 F.3d 395 (5th Cir. 2001). Hon. Nancy C. Dreher, Faye Knowles, and Lou Levit then led a discussion of officer and director liability in the prebankruptcy stages of a case. The event was attended by 20 Fellows. After an afternoon of leisure, the Fellows and their guests enjoyed dinner at Nicks Fish House. The event was hosted by Hon. Nancy Dreher, Richard Mason and Jerry Munitz.

Second Circuit: On June 26, 2002, the

Fellows in the Second Circuit enjoyed lunch at the offices of Weil, Gotshal & Manges in New York. The speakers were Hon. Burton R. Lifland and Hon. Allan L. Gropper. Judge Lifland concentrated his remarks on the proposed Chapter 15 of the Bankruptcy Code, and Judge Gropper focused on his observations from the bench, which led to an interesting discussion of first day orders, particularly those authorizing critical vendor payments and key employee retention programs. The event was attended by 23 Fellows and hosted by Stuart Hirshfield and Alan Miller.

Tenth Circuit: On June 28, 2002, the Fellows in the Tenth Circuit enjoyed dinner at Santa Café in Santa Fe, New Mexico. The event was attended by 10 Fellows and guests and hosted by Ed Nazar.

Nevada Region: On September 11, 2002, the Nevada Fellows enjoyed dinner at Michael's in Las Vegas in conjunction with the American Bankruptcy Institute Southwestern Bankruptcy Conference. The event was attended by 4 Fellows and 1 Bankruptcy Judge and hosted by Kaaran Thomas.

Ohio, Michigan and Western Pennsylvania Region: On November 15, 2002, the Fellows in the Ohio, Michigan and Western Pennsylvania Region enjoyed dinner at the home of Prof. Kate Heidt. The event was attended by 8 Fellows and 7 guests and hosted by Prof. Kate Heidt, who provided the dinner, and Doug Campbell, who provided the wine. Other hosts were Paul Singer and David Heiman.

Texas Region: On November 20, 2002, the Texas Fellows enjoyed dinner at the Shoreline Grill in Austin, Texas, in conjunction with the University of Texas School of Law Bankruptcy Conference. The event was attended by 12 Fellows and 3 guests and hosted by Evelyn Biery, who provided the wine, and Prof. Jay Westbrook.

Tennessee and Kentucky Region: On November 20, 2002, the Tennessee and Kentucky Fellows enjoyed dinner at Chibo in Nashville, Tennessee, in conjunction with the Mid-South Commercial Law Institute. The event was attended by 9 Fellows and 9 guests, including a newly nominated Fellow, and hosted by Hon. Russell Hippe.

Southern California Region: On November 21, 2002, the Southern

California Region Fellows enjoyed dinner at the UCLA Faculty Center. Cocktails and dinner were followed by a presentation by Fellows Prof. Kenneth Klee and Richard Levin entitled, "The 1978 Bankruptcy Code: Drafters' True Confessions." The event was attended by 30 Fellows and hosted by Joel Ohlgren and Prentice O'Leary.

First Circuit: On January 10, 2003, the Fellows in the First Circuit enjoyed dinner and a wine tasting at the Westin Hotel in Boston. The group honored Circuit Court Judge Conrad Cyr for his contributions to the enhancement of bankruptcy practice in the First Circuit over the past several years. The event was attended by 27 Fellows and 21 spouses and other guests and hosted by Phillip Hendel.

Fifth Circuit: On February 1, 2003, the Fellows in the Fifth Circuit attended an educational program at the offices of Jones Walker in New Orleans and enjoyed breakfast pastries provided by the firm. The Fellows and their guests spent the afternoon at their leisure in New Orleans and later enjoyed dinner at Antoine's. The event was hosted by Pat Vance. Lawrence Ponoroff, the Dean of Tulane law School, spoke on prepetition waivers of their protection of the automatic stay. Hon. Jerry Brown, Bankruptcy Judge for the Eastern District of Louisiana; Douglas S. Draper of Heller, Draper, Hayden, Patrick & Horn, LLC in New Orleans; and Rudy J. Cerone of McGlinchey, Stafford in New Orleans spoke on bankruptcy trends in gaming and the roller coaster in bankruptcy as opposed to the roller coaster of bankruptcy. Hon. Douglas D. Dodd, Bankruptcy Judge for the Middle District of Louisiana; David S. Rubin of Kantrow, Spaht, Weaver & Blitzer, in Baton Rouge; and R. Patrick Vance of Jones Walker in New Orleans spoke on recent cases and the new amendments to the Bankruptcy Rules. The educational program was attended by 27 Fellows and 3 speakers, and the dinner was attended by 14 Fellows, 3 speakers and 11 spouses.

Eleventh Circuit: On May 31, 2003, the Fellows in the Eleventh Circuit enjoyed dinner at the home of Mary Grace Diehl and Michael Jablonski in Atlanta, Georgia. The event was attended by 15 Fellows and sponsored by Mary Grace Diehl.

Texas Region: On May 22, 2003, the Texas Fellows enjoyed dinner at Club Giraud in San Antonio, Texas, in

conjunction with the State Bar of Texas Advanced Business Bankruptcy Seminar. The event was attended by 11 Fellows and hosted by Evelyn Biery.

Sixth, Eighth and Tenth Circuits: On September 5 and 6, 2003, the Fellows in the Sixth, Eighth and Tenth Circuits enjoyed dinner, an educational program and a baseball game in Minneapolis. The event was attended by 20 Fellows and hosted by Hon. Nancy Dreher, Phil Kunkel, Ed Nazar, and Bob Brownlee.

The Committee worked with Executive Director Suzanne Bingham on the October 2002 meetings of the Board of Directors and the Board of Regents and the All Fellows Luncheon and Panel Discussion held on Wednesday, October 17, 2002, in conjunction with the meeting of the National Conference of Bankruptcy Judges in Chicago, Illinois. The College had the honor of hearing James Lopes of Howard, Rice, Nemerovski Canady, Falk & Rabkin in San Francisco. His topic was the Pacific Gas and Electric Company Chapter 11 case. The committee also assisted with the arrangements for the speaker for the luncheon co-sponsored by the College and the National Conference of Bankruptcy Judges Joint Luncheon Meeting.

The Committee worked with Suzanne Bingham on the March 2003 meetings of the Board of Directors and the Board of Regents held on Friday, March 28, the Circuit Luncheons, the Educational Program, the All Fellows Luncheon and the Induction Ceremony conducted on Saturday, March 29. The College arranged for Leonard M. Rosen, the recipient of the 2003 Distinguished Service Award, to be the speaker for the March 29 Induction Ceremony. Hon. Ralph Mabey worked with Bruce Leonard and Dan Glosband on the Joint Meeting of the College and the International Insolvency Institute conducted on March 28. On March 28, Ralph Mabey also chaired the second College Salon conducted on a legal topic. The topic was Asbestos Bankruptcies – Mass Torts, Mass Fillings and Mass Controversy. After

the Induction Ceremony, the Board of Directors of the College hosted the International Fellows at dinner at the Caucus Room. On March 29, following the Educational Program and the All Fellows Luncheon at the Mayflower Hotel, the Fellows enjoyed dinner at the Metropolitan Club, after which the Fellows and their guests were entertained by the Capitol Steps, a nationally-known comedy group known for its witty and politically astute satires and spoofs.

The Committee worked with Suzanne Bingham on the October 2003 meetings of the Board of Directors and the Board of Regents and the All Fellows Luncheon and Panel Discussion to be conducted on Wednesday, October 15, 2003, in conjunction with the meeting of the National Conference of Bankruptcy Judges in San Diego. Through the efforts of Hon. Ralph Mabey, the College will hear George Ellard, former counsel for the U.S. Senate/House Joint Intelligence Committee Inquiry into the Events of September 11, 2001, now chief counsel to US Senator Joseph Biden, chair of the Senate Committee on the Judiciary, on October 16, 2003, at the Joint Luncheon Meeting of the National Conference of Bankruptcy Judges and the College. Suzanne Bingham is working with Chris Molick, executive director of the NCBJ, to make sure that the profits from the Joint Luncheon are donated to the National Bankruptcy Archives. 🏛️

Distinguished Service Award Committee Report

By R. Neal Batson



▲ R. Neal Batson

The award criteria for the Distinguished Service Award are:

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

Executive Director's Report



By Suzanne A. Bingham

The American College of Bankruptcy headquarters staff has forwarded with the 2003 print directory, to all College Fellows, a new format. In the past it was thought that, in order to save on printing costs, we would convert to the "tab" insertion format for the directory. As time went on, it was determined since LexisNexis Mathew Bender has taken over the cost of production, and as our classes continue to grow, the tabbed version of the directory is becoming obsolete. Our Chair and President agreed. Also, in order to preserve the "history" of our

Fellows that either pass away or depart the College for various reasons, it is best to have a "perfect bound" version of the College Directory for each year. This way Fellows may keep each year's edition for years to come so they may reflect at times on old friends of the College. We hope you will enjoy the new format. Also, we have invited the LexisNexis Matthew Bender team to the All Fellows luncheon on October 15 and the Joint Luncheon of the American College of Bankruptcy and the National Conference of Bankruptcy Judges on October 16. Those expected in attendance are: Margie Grodd Brown, George Bearese, Dennis Schneider, Kent Hanson, and David Collins. Please be sure to thank them for supporting the College directory and newsletter. 🏛️



Minutes of Board Meeting Fall 2002

By Daniel M. Glosband

American College Of Bankruptcy
Board Of Directors Meeting
October 2, 2002
Approved March 27, 2003

A meeting of the Board of Directors of the College was conducted on Wednesday, October 2, 2002 at the Hyatt Regency Hotel, Chicago, Illinois. The following were in attendance: R. Neal Batson, Hon. Ralph R. Mabey, John A. Barrett, Paul M. Singer, Richard S. Toder, Daniel M. Glosband, Prof. Grant W. Newton, Donald S. Bernstein, Susan M. Freeman, Leonard H. Gilbert, Stuart E. Hertzberg, Stuart Hirshfield, Lawrence K. Snider, David G. Heiman, David T. Sykes, Gerald D. Smith, Joel B. Piassick, Jerome Shulkin (telephonically), Hon. Mary Davies Scott (telephonically), Hon. Thomas Small, Raymond L. Shapiro and Prof. Alan Resnick.

On motion duly made and seconded, the Board approved the minutes of the meeting of March 29, 2002 after making the following corrections: (a) the paragraph authorizing the expenditure for the Supreme Court project was corrected to note that Professor Resnick would approach Lexis-Nexis for assistance; (b) the paragraph discussing the Pro Bono Committee was changed to read as follows: "David Sykes reported on the programs that have received funds from the College."; (c) the penultimate paragraph was modified so that the first sentence thereof reads as follows: Ron Martin, Chair of the Online Committee, reported that the Extranet..."; and (d) the final paragraph was deleted.

Richard Toder, Chair of the Education Committee, reported that the Committee had written to over 300 professors to offer the assistance of College members. Over 60 Fellows volunteered to speak, answer questions or provide practical advice and insight but there were no responses from the professors. The initiative to invite promising law students to the annual meeting is proceeding, with Regents for the Second, Third and Fourth Circuits charged with soliciting recommendations from law schools within those Circuits.

At her request, Hon. Mary Davies Scott was relieved of her responsibility as Chair of the Liaison Committee and has been replaced by Hon. Thomas Small. Judge Small reported that Judge Scott has continued her efforts in support of the National Bankruptcy Archives and that the National College of Bankruptcy Judges has

developed a protocol for materials to be submitted to the archives. The NCBJ intends to continue working on joint projects with the College, such as the jointly-sponsored luncheon, and the Committee will be considering new joint projects between the College and other organizations.

John Barrett, Chair of the Board of Regents, reported that over 50 nominations had been submitted for consideration during the October 2002 meeting. The Circuits are doing a better job of identifying candidates who are women, minorities, younger and residents of areas with a smaller population of professionals than the two coasts. The Regents proposed changes to the By-laws which govern the nomination process. Bill Perlstein, Counsel to the College, presented the following proposed changes: (1) reduce the maximum period of service of a Regent from two three-year terms to two two-year terms; (2) reduce the maximum period of service of a member of a Circuit Council from two three-year terms to two two-year terms; (3) eliminate the requirement that a sponsor have his or her principal office in the same Circuit as a nominee but require that at least one of the Fellows who seconds the nomination maintain his or her principal office in the Circuit; (4) make clear that a Regent who is a sponsor or co-sponsor of a candidate may participate and vote on the election of the candidate and clarify the language barring a Regent from voting on the nomination of a partner, business associate or relative. The proposal led to discussion and suggested modifications but ultimately, on motions duly made and seconded, each of proposals 1-3 was approved unanimously and proposal 4 carried. All approvals are subject to review of draft language to be circulated.

Daniel M. Glosband, Chair of the International Fellows Nominating Committee and of the International Fellows Ad Hoc Committee reported that there were five nominees for International Fellow presented to the Regents for consideration. The College and the International Insolvency Institute will present their second joint program at the March 2003 annual meeting. The topic will be the IMF proposals for sovereign country insolvency proceedings.

Leonard H. Gilbert, Chair of the Judicial Nominating Committee, reported that, after vetting a number of candidates with six to eight calls per candidate, six judges from geographically diverse areas had been nominated.

Raymond Shapiro, Chair of the American College of Bankruptcy Foundation reported that the Foundation had been granted IRC 501(c)(3) status as a charity. Its initial funding from the College and from a dues addition by Fellows is \$116,000. It is an independent organization with its own nine-member Board of Directors and funding held separately from the College. It is timing its fundraising to avoid conflict with the College's sponsor and patron program. The Foundation requested that the College agree to fund \$12,000 per year for two years to cover expenses until its revenues suffice.

Professor Alan Resnick, Scholar-in-Residence, advised that the program for the joint NCBJ lunch would be on the implications of Enron. Ken Klee has been engaged to undertake the Supreme Court Project and produce a manuscript on the bankruptcy-related decisions of the U.S. Supreme Court during the past century. On motion duly seconded, the Board approved Professor Resnick's request for a \$10,500 supplement to the previously approved \$25,000 budget (\$3,500 in each of three years beginning in 2002) for the expense of research assistants. Matthew Bender has agreed to design, publish and distribute 8,000 copies of the manuscript.

Professor Grant Newton, Treasurer, delivered the financial report by reviewing a balance sheet and proposed 2003 budget distributed to the Board. For 2003, receipts are projected to exceed disbursements (including transfers to the Foundation) by \$24,000. The College is disputing the audit fee of \$15,000 charged for the 2001 audit, since it exceeded the estimate of \$8,200. Engagement of a new auditor, Harvey Jester, was proposed for this year, with an estimated fee of between \$5,000 and \$6,500, capped at \$6,500 plus \$300 in expenses. On motion duly made and seconded, the Board unanimously authorized the Treasurer to negotiate a resolution of the fee dispute for as close to \$8,200 as possible and to engage Harvey Jester on the terms stated.

Professor Newton also reviewed the status of the College's contract with Armstrong & Associates International, Inc. The Armstrong engagement began in 1996 at a fee of \$2,500 per month and was increased to the current \$3,000 per month. The Treasurer proposed the following prospective terms: For the period May 31, 2003 through December 31, 2005, a fee of \$4,000 per month plus \$475 per month for bookkeeping and a fee of \$1,000 per month for the legislative alert. On motion duly made and seconded, the Board unanimously approved the new Armstrong agreement.

Paul M. Singer, Chair of the Pro Bono Committee, reported that pro bono funding would be transferred to the Foundation for delivery to ultimate recipients until the Foundation becomes self-sustaining. Grants made during the year are detailed in the Committee's written report.

The Committee has been unable to give away its full budget and solicited suggestions for identifying potential recipients. Ideas included advertising and designation of one member of each Circuit Council to act as its "pro bono officer." On motion duly made and seconded, the Board unanimously approved the expenditure of \$1,000 for advertising by the Committee.

Paul M. Singer, Chair of the Future of the College Committee, discussed the development of a questionnaire to be circulated to College Fellows. The questionnaire is designed to gauge the Fellows understanding of the workings and purpose of the College and to determine if the College is meeting their expectations. Mr. Singer will send the questionnaire after October 15, 2002.

The Meeting and Events Committee submitted a written report detailing regional meetings held or planned during the year. The annual meeting will be on March 28, 2003 and March 29, 2003 at the Mayflower

Hotel in Washington, D.C.. The Board will meet from 8:00 am to 12:00 noon on the 28th. Also on the 28th, the Circuit meetings will be from 12:00 to 2:30, the joint III/ACB program will be from 3:00 to 4:00 and Ralph Mabey's salon, which will discuss asbestos issues, will be from 4:00 to 5:00. The educational program will be from 9:00 to 12:30 on Saturday the 29th, followed by lunch at 1:00; the Saturday night dinner will be at the Metropolitan Club with entertainment by the Capitol Steps.


In Ron Martin's absence, a brief report was submitted on behalf of the Communications Committee. The latest Directory and College Columns have been distributed. The web site and data base are up to date.

Gerry Smith reported slow progress by the History of the College Committee due to a decline in Leon Forman's ability to work on it. Gerry is recruiting Dick Gitlin to help and assessing Leon's ability to continue.

Neal Batson reported that the Nominating Committee will make proposals by the end of the month for four Directors, four Regents and additional members of the Foundation Board. The Committee is considering recommending two additional ex officio, voting seats on the College Board,

one for an International Fellow and one for the Chairman of the Foundation. Dan Glosband is to survey the International Fellows to determine if there is interest in serving and to determine if expense reimbursement or subsidy would be required. The past Chair of the College would continue to sit on the Board but would convert to having voting status from the current non-voting status. On motion duly made and seconded, the proposals to add the Chair of the Foundation as a voting member of the Board and to grant voting status to the past Chair of the College were unanimously approved.

There was no oral report on the National Bankruptcy Archives but a written report was submitted to the Board.

A long discussion of the legislative role to be played by the College filled the afternoon portion of the meeting. The general view was that the College should provide an educational function in support of bankruptcy-related legislation but should deliver a balanced presentation reflecting all sides of an issue and should not advocate for particular positions. Don Bernstein was charged with drafting a statement of the Board's consensus position and a copy of his draft accompanies these minutes. The draft will be considered at the March 2003 meeting. 

Scholar in Residence Report

By Prof. Alan N. Resnick

This is the Scholar-in-Residence report regarding activities since the October 2002 meeting of the Board of Directors.


March 2003 Educational Program: My primary activity as Scholar-in-Residence since our October 2002 meeting in Chicago has been the planning and implementation of the March 2003 Educational Program. Our March program featured extraordinary speakers and cutting-edge topics. We followed the usual format of having three panel discussions. The report on the program appears elsewhere in this issue.

Supreme Court Project: At the March 2002 meeting, the Board of Directors approved a grant in the amount of \$25,000 to Prof. Kenneth Klee, who will produce a monograph or short book on the bankruptcy-related decisions of the United States Supreme Court during the past century. At the October 2002 meeting, the Board granted Prof. Klee's request that the College reimburse UCLA School of Law for the

expenses incurred in hiring research assistants to assist in the necessary research for the project, up to \$3,500 each year during the project for three years (for a total of \$10,500). If the project goes beyond three years, any unused portion of the \$10,500 may be used to fund research during the fourth year. LexisNexis Matthew Bender has agreed to act as co-publisher with the College of the final work produced by Prof. Klee. LexisNexis Matthew Bender will, at its own cost and for no compensation, compose, print, bind, and ship the work to approximately 8,000 members of the bench and bar. Written contracts have been executed by Prof. Klee and by LexisNexis Matthew Bender with respect to this project. It is anticipated that the final work will be published in 2005.

Articles to Fellows: During the past few years, from time to time I have identified and circulated extraordinary law review articles that would have wide interest among the Fellows. I have not distributed any articles during the past year and would like to invite board members to suggest extraordinary articles of which they may be aware.

International Fellows Report: In

May 2001, I sent an e-mail to all International Fellows informing them of the College's Extranet program and soliciting articles for posting on the Extranet as a regular feature ("Reports from International Fellows"). The response was very light. We received only two reports, one on developments in South Africa and one on developments in New Zealand, which were posted on the Extranet. We received an article on changes in English insolvency laws written by International Fellow Michael Steiner. 



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